

1 JOHN B. BULGOZDY, Cal. Bar No. 219897  
Email: bulgozdyj@sec.gov  
2 SARA D. KALIN, Cal. Bar No. 212156  
Email: kalins@sec.gov

3 Attorneys for Plaintiff  
4 Securities and Exchange Commission  
5 Rosalind Tyson, Acting Regional Director  
6 Michele Wein Layne, Associate Regional Director  
5670 Wilshire Boulevard, 11th Floor  
7 Los Angeles, California 90036  
Telephone: (323) 965-3998  
Facsimile: (323) 965-3908

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CLERK U.S. DISTRICT COURT  
CENTRAL DISTRICT OF CALIF.  
MONTGOMERY AVENUE

8 UNITED STATES DISTRICT COURT  
9 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
10 EASTERN DIVISION **CV 08 - 01323 CAS**

11 SECURITIES AND EXCHANGE  
12 COMMISSION,

13 Plaintiff,

14 vs.

15 JAMES B. DUNCAN; HENDRIX M.  
16 MONTECASTRO; MAURICE E.  
17 MCLEOD; PACIFIC WEALTH  
18 MANAGEMENT, LLC; STONEWOOD  
CONSULTING, INC.; and TOTAL  
RETURN FUND, LLC,

19 Defendants,

20 and

21 CHRISTOPHER J. OETTING, dba  
22 OETTING INDUSTRIES; ANTHONY M.  
CONTRERAS; and BIOCYBERNAUT  
INSTITUTE, INC.,

23 Relief Defendants.  
24

Case No.

COMPLAINT FOR VIOLATIONS OF  
THE FEDERAL SECURITIES LAWS

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1 Plaintiff Securities and Exchange Commission (“Commission”) alleges as  
2 follows:

3 **JURISDICTION AND VENUE**

4 1. This Court has jurisdiction over this action pursuant to Sections 20(b),  
5 20(d)(1) and 22(a) of the Securities Act of 1933 (“Securities Act”), 15 U.S.C. §§  
6 77t(b), 77t(d)(1) & 77v(a), and Sections 21(d)(1), 21(d)(3)(A), 21(e) and 27 of the  
7 Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §§ 78u(d)(1),  
8 78u(d)(3)(A), 78u(e) & 78aa. Defendants have, directly or indirectly, made use of  
9 the means or instrumentalities of interstate commerce, of the mails, or of the  
10 facilities of a national securities exchange, in connection with the transactions,  
11 acts, practices, and courses of business alleged in this complaint.

12 2. Venue is proper in this district pursuant to Section 22(a) of the  
13 Securities Act, 15 U.S.C. § 77v(a), and Section 27 of the Exchange Act, 15 U.S.C.  
14 § 78aa, because certain of the transactions, acts, practices, and courses of conduct  
15 constituting violations of the federal securities laws occurred within this district,  
16 each of the entity defendants is located in this district, except relief defendant  
17 Biocybernaut Institute, Inc., and each of the individual defendants resides in this  
18 district.

19 **SUMMARY**

20 3. This matter involves two offering frauds orchestrated by defendant  
21 James Duncan that collectively raised over \$11.2 million from at least 95 investors  
22 between 2004 and 2006.

23 4. Between April 2004 and February 2006, Duncan made an  
24 unregistered offering of securities using an entity called the Total Return Fund,  
25 LLC (“TRF”). Through TRF, Duncan raised over \$1.2 million from at least 20  
26 investors by offering “preferred membership units” to the public. TRF’s  
27 promotional materials falsely stated that 95% of investor funds would be invested  
28 in real estate, business assets, or accounts receivable. Instead, funds generated by

1 the TRF offering were commingled with and used to perpetuate a second, larger  
2 offering fraud Duncan and his co-defendants made through an entity named Pacific  
3 Wealth Management, LLC (“PWM”). Funds obtained from investors in TRF  
4 preferred units were misappropriated and used to pay mortgage and other expenses  
5 related to PWM, and to provide operating funds for TRF and PWM and its  
6 affiliates. Finally, in a Ponzi-like scheme, funds from TRF investors were used to  
7 pay returns to other TRF investors.

8         5.       Between October 2004 and June 2006, Duncan and his co-defendants  
9 raised over \$10 million from at least 75 investors nationwide in an offering fraud,  
10 and purchased over \$118 million worth of homes for investors in the offering.  
11 Many of the so-called investment homes are located in Murietta, California.  
12 Defendants Duncan, Hendrix Montecastro, and Maurice McLeod, operating  
13 through co-defendants PWM and Stonewood Consulting, Inc. (“Stonewood”),  
14 focused their offering primarily on affinity groups, such as the Southern California  
15 Filipino community, fellow church members, and military personnel. The  
16 defendants solicited money through word of mouth and investment seminars, and  
17 told potential investors that they could achieve their financial goals by following  
18 the “three rules” of PWM: (1) commit to a three year investment; (2) turn over all  
19 of their financial affairs to PWM; and (3) ask no questions of PWM’s  
20 management.

21         6.       The defendants offered investors securities, in the form of investment  
22 contracts, which centered on the purchase and management of investment homes  
23 for investors in PWM. Defendants and their associates represented that PWM  
24 would fund all of the mortgage payments on the investment homes. The  
25 defendants would locate an investment home, offer to pay the seller’s asking price,  
26 obtain an appraisal to support a mortgage loan for a much higher purchase price,  
27 and then pay themselves a “concession fee” from the excessive mortgage proceeds.

28         7.       Defendants falsely represented to investors that the concession fees,

1 which totaled over \$10 million, would be invested in a variety of investments,  
2 including real estate, stocks, and precious metals. Defendants falsely represented  
3 to investors that the returns on these other investments would fund payments on the  
4 mortgages on the investment homes. Defendants also falsely represented that so-  
5 called “hard money” investors, who were not further identified, but who allegedly  
6 had substantial funds, would contribute money as needed.

7 8. In fact, defendants did not invest the concession fees as represented to  
8 investors and there were no “hard money” investors. Instead, defendants were  
9 operating a Ponzi-like scheme and used the concession fees to fund payments on  
10 mortgages on the investment homes, in order to entice additional potential  
11 investors to participate in the scheme. Defendants misappropriated substantial  
12 amounts of investor funds and used them to purchase or lease expensive cars and  
13 for at least one \$18,000 vacation.

14 9. Defendants failed to disclose to investors that, due to the large  
15 concession fees, sometimes representing up to 15% of an investment home’s  
16 purchase price, investors were unlikely to reap any significant gains if PWM  
17 eventually arranged the sale of investment homes. In order to obtain the excessive  
18 mortgages to fund the purchase of investment homes and the concession fees,  
19 defendants caused false loan applications to be submitted to lending institutions.  
20 Defendants also failed to disclose to investors that several states had issued  
21 administrative orders barring defendant Duncan from selling securities, even  
22 though Duncan was touted as the “brains” behind PWM’s investing success.

23 10. Through their scheme, the defendants variously violated the antifraud  
24 and securities registration provisions of the federal securities laws. By this action,  
25 the Commission seeks permanent injunctions, disgorgement of the defendants’ ill-  
26 gotten gains, and civil penalties.

27 **DEFENDANTS**

28 11. **Pacific Wealth Management, LLC (“PWM”)** was a Nevada limited

1 liability company located in Murrieta, California. PWM was organized in 2003  
2 under the name Sunburst Factor Fund IV, LLC, and its name was changed to PWM  
3 in February 2006. Defendant McLeod was the manager of PWM. PWM purported  
4 to be an investment adviser that invested clients' funds in real estate, stocks,  
5 precious metals, foreign currency, and other unspecified investments. Between  
6 October 2004 and June 2006, PWM raised over \$10,000,000 from at least 75  
7 investors nationwide in an unregistered offering of securities. PWM has never  
8 registered an offering of securities under the Securities Act. PWM is not related to  
9 the California limited liability company which operates under the same name from  
10 offices located in San Diego, California.

11 12. **Stonewood Consulting, Inc. ("Stonewood")** is a California  
12 corporation, formed in 2004, located in Murrieta, California. Montecastro is the  
13 sole officer and director of Stonewood. Stonewood was licensed with the  
14 California Department of Real Estate ("DRE"); however, its license was revoked  
15 in July 2007. Stonewood has never registered an offering of securities under the  
16 Securities Act. Between February 2005 and January 2007, over \$8.6 million was  
17 wired from Stonewood to relief defendant Oetting.

18 13. **Total Return Fund, LLC ("TRF")** is a Nevada limited liability  
19 company organized in 2003 and located in Orange, California. Duncan effectively  
20 controls TRF. TRF held itself out as an investment fund that invested in real estate  
21 and other businesses, and factored accounts receivable. Between April 2004 and  
22 February 2006, TRF conducted an offering that raised over \$1.2 million from at  
23 least 20 investors in four states. TRF has never registered an offering of securities  
24 under the Securities Act.

25 14. **James B. Duncan ("Duncan")** resides in Murrieta, California.  
26 Although others were named as officers, in fact Duncan controlled PWM and TRF.  
27 Between April 2004 and April 2007, Duncan received over \$1.7 million directly or  
28 through an intermediary, from PWM, Stonewood, TRF, or other companies he

1 controlled. Duncan controlled or was affiliated with a number of companies that  
2 received funds from the PWM offering, including Jovane Investments, LLC;  
3 Sunburst Financial Systems, Inc.; Ridgeline Investments; Coast Wealth  
4 Management; Palm Valley Advisors; Cathedral Capital Partners; and The Henson  
5 Group (collectively, "Duncan Companies"). Duncan is the registered agent for  
6 Jovane and The Henson Group. In 2002 and 2003, cease and desist orders were  
7 entered against Duncan by the Iowa Division of Insurance and the Washington  
8 Department of Financial Institutions, Securities Division, relating to violations of  
9 each state's broker-dealer or salesperson registration requirements, antifraud, and  
10 securities registration provisions. In October 2005, the Wisconsin Securities  
11 Commission issued an order prohibiting Duncan from offering unregistered  
12 nonexempt securities.

13 15. **Hendrix M. Montecastro ("Montecastro")** resides in Murrieta,  
14 California. Montecastro was a real-estate broker licensed with the DRE and the  
15 broker of record for Stonewood, which he owned and controlled. In July 2007, the  
16 broker licenses of Montecastro and Stonewood were revoked. Between May 2004  
17 and February 2007, Montecastro received over \$4.5 million directly or through an  
18 intermediary, from Stonewood, PWM, TRF, or the Duncan Companies.

19 16. **Maurice E. McLeod ("McLeod")** resides in Murrieta, California.  
20 McLeod was the manager and sole officer of PWM until he resigned in March  
21 2007. Between May 2005 and April 2007, McLeod received over \$330,000  
22 directly or through an intermediary from PWM, Stonewood, TRF, or the Duncan  
23 Companies. In 1998, McLeod was convicted of check fraud and burglary in the  
24 California Municipal Court in Corona.

#### 25 **RELIEF DEFENDANTS**

26 17. **Christopher J. Oetting ("Oetting")** resides in Palm Desert,  
27 California. Oetting does business as "Oetting Industries." Between April 2004  
28 and April 2007, Oetting Industries received at least \$10,000,000 from PWM,

1 Stonewood, TRF, or the Duncan Companies. Oetting then distributed funds at  
2 Duncan's direction.

3 18. **Anthony M. Contreras ("Contreras")** resides in Murrieta,  
4 California. Between April 2004 and October 2006, Contreras received at least \$2.1  
5 million directly or through an intermediary, from PWM, Stonewood, TRF, or the  
6 Duncan Companies.

7 19. **Biocybernaut Institute, Inc. ("Biocybernaut")** is a California  
8 corporation located in San Francisco, California. Between March 2006 and April  
9 2007, Biocybernaut received over \$700,000 directly or through an intermediary  
10 from PWM, Stonewood, TRF, or the Duncan Companies.

## 11 **THE FRAUDULENT CONDUCT**

### 12 **I. THE TRF OFFERING**

13 20. Between April 2004 and February 2006, Duncan and TRF raised at  
14 least \$1,211,192 from at least 20 investors in four states through its offering of  
15 preferred membership units (the "TRF offering"). TRF provided a private  
16 placement memorandum ("PPM") and other offering materials to potential  
17 investors. Duncan was responsible for either providing documents regarding the  
18 TRF offering, or providing oral information concerning TRF, to investors.

#### 19 **A. THE TRF SALES EFFORT**

20 21. According to the PPM, TRF was offering \$4,000,000 of preferred  
21 membership units at \$4 per unit, with a minimum investment of \$25,000. The TRF  
22 offering documents describe the planned use of investor funds and stated that  
23 approximately 95% of investor funds would be used to purchase real estate,  
24 business assets, or accounts receivable financing.

25 22. Investors were offered three different "asset backed fixed dividend  
26 rate[s] of return" based on the term of investment: a 12-month commitment  
27 yielded a 13% annualized return; a 24-month commitment yielded a 16%  
28 annualized return; and a 36-month commitment yielded a 19% annualized rate of

1 return. According to the TRF offering documents, the source of these dividend  
2 payments would come from assets or factoring, which would produce guaranteed  
3 returns to TRF members for specific periods of time.

4 23. Under the heading, “We’re In This Together,” the TRF offering  
5 documents explained that the managing members would not receive any incentive  
6 payments until investors received their return of capital and the preferred return.  
7 The offering documents stated that TRF and its managing members managed the  
8 fund. Even though Duncan controlled TRF and solicited investors for TRF,  
9 Duncan’s name does not appear in any of TRF’s offering documents.

10 24. TRF solicited investors primarily through referrals and word of  
11 mouth. Duncan was mainly responsible for soliciting investors to invest in TRF.  
12 Duncan personally spoke to TRF investors regarding the TRF offering and is  
13 named as the “fronter” and “closer” on the paperwork related to certain TRF  
14 investors. Duncan asked investors and salespeople to solicit their friends and  
15 relatives, and was often the point of contact for potential investors with questions  
16 about the TRF offering.

17 25. Duncan targeted individuals with retirement accounts, and told them  
18 that TRF would provide much larger returns than a traditional 401(k) or mutual  
19 fund. Along with the TRF promotional materials, investors received all of the  
20 paperwork necessary to establish new IRA accounts with TRF, and TRF facilitated  
21 rolling investor funds over into new accounts.

22 26. The TRF offering was not registered with the Commission, as  
23 required by federal securities laws and regulations.

24 **B. DUNCAN AND TRF MISUSED INVESTOR FUNDS**

25 27. TRF and Duncan materially misrepresented to TRF investors how  
26 investor funds would be used. The TRF offering documents stated that 95% of  
27 investor funds would go towards the purchase of real estate, business assets, or  
28 accounts receivable. TRF touted the accounts receivable financing business by



1 stating that TRF would place a UCC-1 filing on all contractor accounts receivable.  
2 In fact, TRF did not purchase any business assets or accounts receivable, and did  
3 not make any UCC-1 filings.

4 28. TRF funds were used to pay returns to other TRF investors. TRF  
5 funds were also used to pay mortgage and other expenses related to the investment  
6 homes owned by PWM investors. In addition, PWM investors were directed to  
7 wire funds to TRF. TRF investor funds were also paid to PWM employees and the  
8 Duncan Companies. TRF investor funds paid for Duncan's \$18,000 vacation to  
9 Malta.

10 **C. DUNCAN AND TRF ACTED WITH SCIENTER**

11 29. Duncan acted with scienter. He knew, or was reckless in not  
12 knowing, that the funds invested in TRF were being misused. Additionally,  
13 Duncan's mental state is imputed to TRF because he controlled TRF.

14 **II. THE PWM OFFERING**

15 30. Between October 2004 and June 2006, the defendants raised over \$10  
16 million from at least 75 investors nationwide in a securities offering fraud which  
17 involved the purchase of over \$118 million worth of investment homes, most  
18 located in Riverside County, California. During the early stages of the offering,  
19 Duncan and Montecastro used Stonewood as the offeror to sell investors "the  
20 dream," which involved making money through real estate investments. However,  
21 Stonewood was named "Stonewood Consulting, Inc." as opposed to "Stonewood  
22 Real Estate," because Stonewood was not just selling real estate, but was involved  
23 in different investment ventures. When Stonewood encountered problems with the  
24 real estate community regarding its practice of taking concession fees, the  
25 defendants began using PWM as the offeror. In early 2006, Duncan renamed one  
26 of his companies PWM, and defendant McLeod became PWM's manager. Duncan  
27 opened a separate PWM office and a sales team was hired. While McLeod  
28 provided instructions to the sales team, McLeod took his orders from Duncan.

1           A.    THE SALES EFFORT

2           31.   Duncan and Montecastro personally recruited investors and trained  
3 several “referral partners” to solicit new investors from several different affinity  
4 groups, including from the Southern California Filipino community, fellow church  
5 members, and military service personnel. Defendants used word-of-mouth  
6 solicitation, accepted new investors on a referral basis only, related testimonials by  
7 earlier investors, and appealed to investors based on shared religious beliefs to  
8 encourage new investors to join PWM. One of the defendants’ largest referral  
9 partners was a Technical Sergeant in the Air Force who solicited over 48 investors,  
10 some of whom included his fellow servicemen at Davis-Monthan Air Force Base  
11 in Tucson, Arizona.

12           32.   To invest with PWM, prospective investors had to adhere to PWM’s  
13 “three rules,” which required investors to (1) commit to a three year investment;  
14 (2) turn over all of their financial affairs to PWM; and (3) ask no questions of  
15 PWM management regarding the use of their funds or credit. PWM investors who  
16 agreed to follow the three rules were referred to as “Core Clients.” Defendants  
17 told investors that their money would be invested in real estate, stocks, precious  
18 metals, and other unspecified investments.

19           33.   PWM generally did not provide any written documentation about the  
20 investment to investors. PWM did not provide investors with a private placement  
21 memorandum, audited financial statements, or any other written offering material.

22           34.   Eventually, PWM began holding investment seminars in an attempt to  
23 expand its client base. PWM held at least seven seminars between January and  
24 September 2006 in various locations, including Tucson, Arizona, Southern  
25 California, and Berkeley, California. During the seminars, speakers, including  
26 Duncan, McLeod, and Montecastro, encouraged attendees to invest with PWM.  
27 The speakers told potential investors that PWM could make money for them  
28 through investments unavailable to either traditional investment companies or the

1 investors themselves. At the seminars, Duncan was generally identified as the  
2 person responsible for making PWM's investment decisions, and was touted as a  
3 financial expert and genius. McLeod was the featured speaker at several of the  
4 later seminars. At some of the seminars, defendants asked Core Clients to provide  
5 testimonials relating the financial success that they had achieved by investing with  
6 PWM. For example, defendants asked a pastor to describe how pleased he was  
7 with the money PWM had generated for his church.

8 35. Potential investors were referred to a PWM representative. The  
9 PWM representatives often used sales scripts that included success stories of other  
10 PWM investors. PWM representatives used other sales tactics, such as claiming  
11 that they had to determine whether a potential investor was a "good fit" with PWM  
12 before moving them forward in the investor application process. At some point  
13 after the initial phone call with a potential investor, a different PWM representative  
14 would make a "close" call, during which the investor was required to provide all  
15 personal and financial information in order to become a "Core Client."

16 **B. PWM'S PURCHASES OF INVESTMENT HOMES**

17 36. One of the main investments PWM sold to investors was an  
18 investment contract consisting of investment homes purchased by PWM in the  
19 investor's name (the "PWM offering"). Once an investor agreed to invest, PWM  
20 would purchase one or more investment homes that were titled, and mortgaged, in  
21 the investor's name. Defendants selected the home and represented that they  
22 would manage the properties and make all investment decisions concerning the  
23 property. Defendants also represented that they pooled their investors' funds,  
24 which enabled them to purchase investment homes and make mortgage payments  
25 for investors.

26 37. Stonewood employed a team of agents and other real estate  
27 professionals who located, negotiated the purchase price of, and arranged up to  
28 100% financing on residential real estate to be purchased and held in the name of

1 PWM's investors. Stonewood managed the properties for the investors and  
2 handled the logistics of any sale of property if and when PWM decided to sell the  
3 property.

4 38. Stonewood arranged to buy the investment homes at the seller's  
5 offering price, but secured appraisals showing the homes had a much higher  
6 market value. Stonewood arranged financing in an investor's name for the higher  
7 appraisal value. When the transactions closed, the difference between the appraisal  
8 value and the lower selling price was paid to defendants as a so-called "concession  
9 fee." Concession fees generally resulted in a 10-15% mark-up over the amount  
10 paid to the seller. On some transactions, a single concession fee could exceed  
11 \$100,000. Defendants and their agents falsely represented that the concession fees  
12 would be invested for the benefit of investors.

13 39. Defendants raised over \$10,000,000 from concession fees on the  
14 purchase of approximately \$118,250,000 worth of investment homes. Defendants  
15 often arranged for investors to purchase multiple investment homes. Defendants  
16 purchased as many as eight investment homes, in the aggregate, for certain married  
17 couples.

18 40. Defendants Duncan, Montecastro, McLeod, and PWM salespeople  
19 told investors that PWM would make all mortgage payments on the properties that  
20 were purchased, and mortgaged, in the investors' names. They told investors that  
21 PWM was able to make the mortgage payments from income derived by renting  
22 out the newly purchased homes, as well as from earnings generated by investing  
23 the concession fees, and from funds obtained through well-financed "hard money"  
24 investors. In addition, defendants represented that once PWM sold the properties,  
25 the "hard money" investors, who were not identified, would be paid back with a  
26 portion of the sales proceeds, and PWM would split the remaining profits with its  
27 investors.

28 ///

1           **C.    THE CONCESSION FEES DRY UP**

2           41.     In late spring of 2006, defendants stopped arranging property  
3 purchases that yielded large concession fees. However, throughout the offering,  
4 defendants had arranged for potential investors to refinance their own homes to  
5 invest the equity with PWM. While some investors had several homes purchased  
6 in their names, other investors invested their funds with PWM without being given  
7 an investment home. From spring through fall of 2006, defendants arranged  
8 significantly more refinancings for investors, including refinancings of previously  
9 purchased investment homes. Defendants told investors who refinanced homes  
10 that their equity would be invested in real estate, stocks, foreign currency, and  
11 various other investments.

12          42.     During the summer of 2006, PWM began applying for credit cards  
13 and opening new lines of credit in the names of individual investors. Investors  
14 were then contacted by a PWM representative, who directed the investor to draw  
15 down the maximum amount on all of the credit cards and to wire the funds to TRF  
16 or one of the Duncan Companies as an additional investment. Investors who  
17 questioned the wisdom of this strategy were told by, among others, McLeod, that  
18 PWM would stop making mortgage payments if they refused to cooperate.

19          43.     Defendant McLeod and other PWM representatives told investors that  
20 the money from the credit cards would be invested by PWM for their benefit.

21          44.     In November 2006, after having exhausted investors' credit,  
22 defendants concocted a new offering tactic. PWM representatives contacted  
23 investors encouraging them to transfer their retirement funds into one or both of  
24 PWM's "unprecedented" new short-term investments. The first investment  
25 involved real estate and promised, among other things, a \$40,000 return on a  
26 \$5,000 investment within 90 days. The second opportunity was an investment in  
27 an unnamed foreign currency that would purportedly provide an 8:1 return within  
28 six months. Investors were also told that the foreign currency offerings were

1 available only for a limited time.

2 45. By late 2006, PWM was unable to provide its investors with money to  
3 make mortgage payments. In December 2006, defendants concocted a last-ditch  
4 effort to generate cash and investors were solicited to invest in what was generally  
5 known as the “Final Flip.” In the Final Flip, which was offered as a “gift” to Core  
6 Clients, PWM promised to pay six months worth of mortgage payments up front if  
7 the investor agreed to purchase multiple homes through PWM. Investors were not  
8 told which homes they would be purchasing. Unknown to investors, defendants  
9 planned to have investors purchase homes from people who were affiliated with  
10 Duncan or PWM, such as Montecastro’s wife and relief defendant Anthony  
11 Contreras, both of whom held multiple investment homes known as “Partner  
12 Properties.”

13 46. As part of the Final Flip, McLeod attempted to arrange additional  
14 home purchases on behalf of investors he knew were already late on their mortgage  
15 payments. While PWM was able to liquidate several of the Partner Properties and  
16 generate profits for those involved in the fraud or related to the defendants  
17 otherwise, PWM’s investors were stuck with multiple properties they could not  
18 afford.

19 **D. THE DEFENDANTS’ MATERIAL MISREPRESENTATIONS AND**  
20 **OMISSIONS**

21 **1. PWM WAS RUNNING A PONZI-LIKE SCHEME**

22 47. PWM investors were never provided with a specific written statement  
23 of how their funds and credit would be used; however, defendants told investors  
24 that their money would be used for investments that would provide a large return at  
25 the end of three years. In fact, PWM did not make any such investments on behalf  
26 of investors and instead used their funds and credit in an evolving Ponzi-like  
27 scheme.

28 48. PWM raised money in the PWM offering via the concession fees.

1 PWM salespeople told investors that the concession fees would be invested on  
2 their behalf and that the earnings from the investments would be used to help make  
3 the mortgage payments on the investment homes. In fact, PWM did not invest  
4 concession fees as represented to investors. Instead, the fees were paid to  
5 Stonewood and, at Duncan's direction, were later deposited into bank accounts  
6 controlled by relief defendant Oetting.

7 49. Between February 2005 and January 2007, Stonewood wired over  
8 \$8,660,228 million into Oetting's account. Duncan then directed Oetting to  
9 distribute the funds to one of the Duncan Companies, or directly to individuals to  
10 make the mortgage payments on investment homes.

11 50. The statements made to investors regarding the use of funds derived  
12 from the PWM offering, as well as the statements regarding the refinancing, credit  
13 card, foreign currency, and Final Flip transactions, were false and misleading.  
14 Rather than investing the funds as promised, investor funds were pooled in  
15 different bank accounts and then disbursed to make mortgage payments on the  
16 investment homes, and to make payments to Duncan, Montecastro, McLeod, and  
17 the Duncan Companies. Payments to relief defendants Contreras and Biocybernaut  
18 were also made from these bank accounts.

19 51. Duncan was mainly responsible for directing the transfer of funds  
20 between accounts and directing others to make any necessary payments or  
21 distributions of funds.

22 **2. DEFENDANTS FAILED TO DISCLOSE THE EFFECT THE**  
23 **CONCESSION FEES HAD ON INVESTORS' RETURNS**

24 52. Defendants failed to disclose that the large concession fees paid to  
25 Stonewood effectively left investors with negative equity in the investment homes,  
26 and made it highly risky that the investors would be able to realize significant  
27 gains in one to three years, as promised. Investors did not generally understand  
28 that the concession fee essentially left them with a negative equity position in the

1 investment property.

2 53. During the investor solicitation process, defendants told some  
3 investors that “hard money” investors would cover the mortgage payments on  
4 investment homes, and that once the homes were sold, those investors would be  
5 paid back and PWM would split the remaining profits with the investor.  
6 Defendants’ failure to disclose that the concession fees would materially affect any  
7 potential returns to investors rendered these statements materially misleading  
8 because of the risk that, in a three year period, an investment home may not be sold  
9 for an amount large enough to recoup the concession fee, repay three years worth  
10 of mortgage payments, and leave any profits to split between PWM and the  
11 investor.

12 54. Montecastro was responsible for determining the concession fee  
13 amounts in these transactions, and both Duncan and McLeod were aware of the  
14 concession fee arrangement.

15 **3. PWM AND STONEWOOD PROVIDED FALSE**  
16 **INFORMATION ON THE LOAN DOCUMENTATION FOR**  
17 **THE INVESTMENT HOMES**

18 55. PWM and Stonewood led investors to believe that the investors  
19 qualified for multiple mortgages by failing to disclose that false information on  
20 mortgage loan applications was being submitted in the investors’ names. Duncan  
21 devised a plan that enabled investors to qualify for multiple loans. Stonewood,  
22 controlled by Montecastro, was responsible for implementing the plan by  
23 submitting false loan documentation to lenders.

24 56. Stonewood arranged the financing for multiple homes in the names of  
25 investors whose credit would not have otherwise allowed for such purchases. In  
26 order to accomplish this, Stonewood provided false information on investor loan  
27 documentation.

28 57. On some loan applications, Stonewood represented to lenders that, in



1 addition to an investor's income, the investor also owned a certain amount of  
2 liquid assets. Duncan provided false verification of deposit, or "VOD" forms to  
3 lenders indicating that the investor had a specific account with one of the Duncan  
4 Companies with the requisite amount of assets. However, these entities did not  
5 hold separate investor accounts and were merely nominees used to open bank  
6 accounts into which PWM's investor money was deposited and pooled.

7 58. Stonewood falsified other information on client loan documentation,  
8 such as income amounts and job titles. If investors noticed these discrepancies on  
9 loan applications and asked questions, they were told by Stonewood employees  
10 that it was a common practice to inflate income or assets on lending documents, or  
11 that large "hard money" investors had provided the assets on their behalf.

12 **4. PWM, TRF, AND DUNCAN FAILED TO DISCLOSE**  
13 **DUNCAN'S PRIOR SECURITIES LAWS VIOLATIONS**

14 59. PWM and TRF repeatedly touted Duncan's financial expertise. TRF  
15 investors were told that Duncan owned or controlled TRF and that he would ensure  
16 investors would receive the high rates of returns they had been promised. PWM  
17 told investors that Duncan was the main individual in charge of making  
18 investments on behalf of PWM investors.

19 60. PWM, TRF, and Duncan failed to disclose that Duncan had violated  
20 the securities laws of the states of Washington, Iowa, and Wisconsin, resulting in  
21 cease and desist orders filed by the states of Iowa and Washington, and an order  
22 prohibiting him from engaging in unregistered, nonexempt offerings of securities  
23 issued by Wisconsin. This omission rendered the statements regarding Duncan's  
24 investment acumen materially misleading.

25 **5. PWM AND MCLEOD FAILED TO DISCLOSE MCLEOD'S**  
26 **PRIOR FRAUD AND BURGLARY CONVICTIONS**

27 61. McLeod was the manager and sole officer of PWM, ran the day-to-  
28 day operations of the business, and was the featured speaker at several PWM

1 seminars. During the seminars and in one-on-one conversations with potential  
2 investors, McLeod relied heavily on religion and the concepts of trust and faith in  
3 order to recruit investors. For example, investor questionnaires filled out  
4 immediately after two separate seminars at which McLeod spoke indicate that  
5 McLeod made references to “God’s will” in the context of making business  
6 decisions and that potential investors viewed trust as an enticing concept which  
7 persuaded them to invest. However, PWM and McLeod failed to disclose that  
8 McLeod was convicted of fraud and burglary in 1998. This omission rendered  
9 statements regarding McLeod’s trustworthiness materially misleading.

10 **E. THE DEFENDANTS ACTED WITH SCIENTER**

11 62. Duncan acted with scienter. He knew, or was reckless in not  
12 knowing, that PWM was running a Ponzi-like scheme that relied on exorbitant real  
13 estate transaction fees and the submission of fraudulent mortgage loan  
14 applications. Additionally, Duncan knew, or was reckless in not knowing, that  
15 investors relied on his investment acumen, and he failed to disclose his past  
16 securities laws violations. Duncan’s mental state is imputed to PWM because he  
17 controlled PWM.

18 63. Montecastro acted with scienter. He knew, or was reckless in not  
19 knowing, that the “concession fees” taken in PWM real estate transactions would  
20 significantly impair the investors’ ability to sell the investment homes for a profit,  
21 and that false loan documentation was being submitted on behalf of investors.  
22 Additionally, Montecastro knew that his activities were related to PWM, as he  
23 solicited investors and spoke at investment seminars. Montecastro’s mental state is  
24 imputed to Stonewood because he controlled Stonewood.

25 64. McLeod acted with scienter. He knew, or was reckless in not  
26 knowing, that PWM was running a Ponzi-like scheme that involved the submission  
27 of fraudulent mortgage loan applications. Furthermore, McLeod knew, or was  
28 reckless in not knowing, that PWM investors viewed trust as an enticing concept

1 which persuaded them to invest, but he failed to disclose his past fraud and  
2 burglary convictions.

3 **FIRST CLAIM FOR RELIEF**

4 **UNREGISTERED OFFER AND SALE OF SECURITIES**

5 **Violations of Sections 5(a) and 5(c) of the Securities Act**

6 **(Against All Defendants)**

7 65. The Commission realleges and incorporates by reference paragraphs 1  
8 through 64 above.

9 66. The defendants, and each of them, by engaging in the conduct  
10 described above, directly or indirectly, made use of means or instruments of  
11 transportation or communication in interstate commerce or of the mails, to offer to  
12 sell or to sell securities, or to carry or cause such securities to be carried through  
13 the mails or in interstate commerce for the purpose of sale or for delivery after  
14 sale.

15 67. No registration statement has been filed with the Commission or has  
16 been in effect with respect to either of the offerings alleged herein.

17 68. By engaging in the conduct described above, each of the defendants  
18 violated, and unless restrained and enjoined will continue to violate, Sections 5(a)  
19 and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a) and 77e(c).

20 **SECOND CLAIM FOR RELIEF**

21 **FRAUD IN THE OFFER OR SALE OF SECURITIES**

22 **Violations of Section 17(a) Of the Securities Act**

23 **(Against All Defendants)**

24 69. The Commission realleges and incorporates by reference paragraphs 1  
25 through 64 above.

26 70. The defendants, and each of them, by engaging in the conduct  
27 described above, directly or indirectly, in the offer or sale of securities by the use  
28 of means or instruments of transportation or communication in interstate

1 commerce or by use of the mails, with scienter:

- 2 a. employed devices, schemes, or artifices to defraud;
- 3 b. obtained money or property by means of untrue statements of a  
4 material fact or by omitting to state a material fact necessary in  
5 order to make the statements made, in the light of the  
6 circumstances under which they were made, not misleading; or
- 7 c. engaged in transactions, practices, or courses of business which  
8 operated or would operate as a fraud or deceit upon the  
9 purchaser.

10 71. By engaging in the conduct described above, each of the defendants  
11 violated, and unless restrained and enjoined will continue to violate, Section 17(a)  
12 of the Securities Act, 15 U.S.C. § 77q(a).

13 **THIRD CLAIM FOR RELIEF**

14 **FRAUD IN CONNECTION WITH THE PURCHASE OR SALE OF SECURITIES**

15 **Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder**

16 **(Against All Defendants)**

17 72. The Commission realleges and incorporates by reference paragraphs 1  
18 through 64 above.

19 73. The defendants, and each of them, by engaging in the conduct  
20 described above, directly or indirectly, in connection with the purchase or sale of a  
21 security, by the use of means or instrumentalities of interstate commerce, of the  
22 mails, or of the facilities of a national securities exchange, with scienter:

- 23 a. employed devices, schemes, or artifices to defraud;
- 24 b. made untrue statements of a material fact or omitted to state a  
25 material fact necessary in order to make the statements made,  
26 in the light of the circumstances under which they were made,  
27 not misleading; or
- 28 c. engaged in acts, practices, or courses of business which

1 operated or would operate as a fraud or deceit upon other  
2 persons.

3 74. By engaging in the conduct described above, each of the defendants  
4 violated, and unless restrained and enjoined will continue to violate, Section 10(b)  
5 of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. §  
6 240.10b-5.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, the Commission respectfully requests that the Court:

9 **I.**

10 Issue findings of fact and conclusions of law that the defendants committed  
11 the alleged violations.

12 **II.**

13 Issue judgments, in a form consistent with Fed. R. Civ. P. 65(d),  
14 permanently enjoining defendants and their officers, agents, servants, employees,  
15 and attorneys, and those persons in active concert or participation with any of  
16 them, who receive actual notice of the judgment by personal service or otherwise,  
17 and each of them, from violating Sections 5(a), 15 U.S.C. § 77e(a), 5(c), 15 U.S.C.  
18 § 77e(c), and 17(a), 15 U.S.C. § 77q(a), of the Securities Act, and Section 10(b),  
19 15 U.S.C. § 78j(b), of the Exchange Act, and Rule 10b-5 thereunder, 17 C.F.R. §  
20 240.10b-5.

21 **III.**

22 Order the defendants and relief defendants to disgorge all ill-gotten gains  
23 from the illegal conduct alleged herein, together with prejudgment interest thereon.

24 **IV.**

25 Order the defendants to pay civil penalties pursuant to Section 20(d) of the  
26 Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the Exchange Act, 15  
27 U.S.C. § 78u(d)(3).

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1 V.

2 Retain jurisdiction of this action in accordance with the principles of equity  
3 and the Federal Rules of Civil Procedure in order to implement and carry out the  
4 terms of all orders and decrees that may be entered, or to entertain any suitable  
5 application or motion for additional relief within the jurisdiction of this Court.

6 VI.

7 Grant such other and further relief as this Court may determine to be just and  
8 necessary.

9  
10 DATED: February 26, 2008

11 \_\_\_\_\_  
12 JOHN B. BULGOZDY  
13 SARA D. KALIN  
14 Attorneys for Plaintiff  
15 Securities and Exchange Commission  
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