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16 **UNITED STATES DISTRICT COURT**
 17 **CENTRAL DISTRICT OF CALIFORNIA**
 18 **SOUTHERN DIVISION**

19 **SACV06-943 JVS (ANx)**

20 **SECURITIES AND EXCHANGE**
 21 **COMMISSION,**

22 **Plaintiff,**

23 **vs.**

24 **SALVATORE FAVATA,**

25 **Defendant.**

Case No.:

**COMPLAINT FOR VIOLATIONS OF THE
 FEDERAL SECURITIES LAWS**

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1 Plaintiff Securities and Exchange Commission (“Commission”) for its
2 Complaint for Violations of the Federal Securities Laws (“Complaint”) against
3 Salvatore Favata (“Favata”) alleges as follows:

4 **JURISDICTION AND VENUE**

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

13 2. Venue is proper in this district pursuant to Section 22(a) of the
14 Securities Act [15 U.S.C. § 77v(a)], and Section 27 of the Exchange Act [15
15 U.S.C. § 78aa], because the Defendant resides in the district and because certain of
16 the transactions, acts, practices, and courses of conduct constituting violations of
17 the federal securities laws occurred within this district.

18 **SUMMARY**

19 3. From late 2001 through March 2006 Favata, acting through National
20 Consumer Mortgage, LLC (“NCM”), a real estate mortgage and investment
21 company located in Orange, California, defrauded 233 investors out of more than
22 \$30 million by offering and selling so-called “private money investment notes”
23 (“notes”).

24 4. Favata falsely told investors that their money would be used to fund
25 high interest rate residential mortgage loans, that they would receive annual
26 interest payments between 30-60 percent of their original investment, and that the
27 loans underlying the notes would be secured by real property. In reality, Favata
28 used investor funds to pay returns to existing investors in a Ponzi-scheme fashion,

1 to pay operating expenses of NCM's more conventional mortgage brokerage
2 business and to pay Favata's gambling debts which amounted to more than \$10
3 million.

4 5. Defendant Favata, directly and indirectly, has engaged and, unless
5 enjoined, will continue to engage in acts, practices and courses of business which
6 constitute violations of the antifraud, registration and certain broker-dealer
7 provisions of the federal securities laws [Sections 5(a), 5(c) and 17(a) of the
8 Securities Act (15 U.S.C. §§ 77e(a), 77e(c), and 77q(a)) and Sections 10(b), 15(a)
9 of the Exchange Act (15 U.S.C. §§ 78j(b), 78o(a), and 78o(c)) and Rule 10b-5 (17
10 C.F.R. § 240.10b-5) promulgated thereunder.]

11 6. The Commission seeks an injunction against future violations of the
12 federal securities laws cited herein.

13 **DEFENDANT**

14 7. Favata, age 46, resides in Yorba Linda, California. Favata was the
15 president of NCM's so-called "private money investment" division. NCM was a
16 privately held limited liability company and licensed mortgage broker based in
17 Orange, California. While Favata was NCM's chief operator, his wife and mother
18 were the company's listed principals. Initially, Favata was excluded from any
19 ownership or management role because of his prior felony conviction. On May 12,
20 2006, a Chapter 11 trustee was appointed to manage the ongoing operations of
21 NCM. On June 26, 2006 the trustee terminated NCM's operations and sold its
22 assets at auction.

23 **FACTUAL ALLEGATIONS**

24 8. In December 2002 Favata commenced the operations of NCM's so-
25 called "private money" division and devised a scheme to raise investor funds
26 through the offer and sale of the notes purportedly to fund residential loans secured
27 by real property. From its inception until March 2006, Favata raised over \$30
28 million from approximately 233 investors primarily located in California and

1 Colorado through the offer and sale of the notes ranging in terms from one to four
2 years and promising returns of between 7 and 60 percent. Investors were told that
3 they would be paid interest on a monthly basis and that their principal would be
4 returned at the end of the term.

5 9. During the relevant period Favata solicited investors in face-to-face
6 settings, including church gatherings and investment seminars, and also persuaded
7 mortgage refinance clients to take cash out of their refinancing and use that cash to
8 invest in NCM notes.

9 10. Favata falsely told potential investors that investor funds would be
10 loaned by NCM to homeowners who could not qualify for traditional mortgages.
11 Favata told investors that the return on the notes would be generated through the
12 interest NCM received on the mortgage loans. Favata claimed that the notes were
13 guaranteed by the real estate securing the underlying residential loans and that
14 NCM only lends on properties that have a 65 percent or lower loan to value ratio
15 ensuring a low default rate and the investors' principal in the event of a
16 foreclosure. Favata also told potential investors that NCM maintained deeds of
17 trust for the real estate securing the investments.

18 11. In addition to the oral solicitations, Favata drafted and distributed
19 promotional materials that falsely described the investments as follows: a) since
20 1989 NCM investment plans have earned on average 10-14 percent per annum; b)
21 NCM offers two investment plans consisting of retirement investments and short-
22 term private real estate money notes; c) NCM investment plans provide monthly
23 interest payments and return of the principal at the completion of the investment
24 note term with an option to reinvest; d) NCM specializes in non-qualified and
25 qualified retirement investment plans that yield a 10 percent rate of return per
26 annum; e) all investments are secured by real property; and f) NCM receives 10-20
27 loan requests per week that range in value from \$25,000 to \$25 million.

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1 transactions, acts, practices, and courses of business that violated Sections 5(a) and
2 5(c) of the Securities Act [15 U.S.C. §§77e (a) and (c)].

3 **COUNT II**

4 **FRAUD IN VIOLATION OF SECTION 17(a)(1), (2) AND (3) OF THE SECURITIES ACT**

5 18. Paragraphs 1 through 12 are realleged and incorporated by reference
6 as if set forth fully herein.

7 19. At the times alleged in the Complaint, Defendant Favata, in the offer
8 and sale of the securities described above, by the use of means and instruments of
9 transportation and communication in interstate commerce and by the use of the
10 mails, directly and indirectly, employed devices, schemes and artifices to defraud.

11 20. Defendant Favata, in the offer and sale of the securities described
12 above, by the use of means and instruments of transportation and communication
13 in interstate commerce, and by use of the mails, directly and indirectly, obtained
14 money and property by means of untrue statements of material facts and omissions
15 to state material facts necessary in order to make the statements made, in light of
16 the circumstances under which they were made, not misleading.

17 21. Defendant Favata, in the offer and sale of the securities described
18 above, by use of means and instruments of transportation and communication in
19 interstate commerce, and by use of the mails, directly and indirectly, engaged in
20 transactions, practices or courses of business which operated as a fraud and deceit
21 upon purchasers and prospective purchasers as more fully described herein.

22 22. By the conduct described above, the defendant violated Sections
23 17(a)(1), (2) and (3) of the Securities Act [15 U.S.C. §77q(a)(1)-(3)].

24 **COUNT III**

25 **ACTING AS UNREGISTERED BROKER DEALER IN VIOLATION**
26 **OF SECTION 15(a) OF THE EXCHANGE ACT**

27 23. Paragraphs 1 through 12 are realleged and incorporated by reference
28 as if set forth fully herein.

1 IV.

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

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5 Dated: October 5, 2006

Respectfully submitted,

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7 JOHN REED STARK

8 ROBERTO A. TERCERO

9 Attorneys for Plaintiff

10 Securities and Exchange Commission