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CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MEJ

CV 10 3859

Counsel for Plaintiffs and the Putative Class

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

19 MARY SCALA and SEBASTIAN SCALA,)
20 individually and on behalf of themselves and all)
21 others similarly situated,)

22 Plaintiffs,)

23 v.)

24 CITICORP, INC., CITIBANK, N.A.,)
25 CITIGROUP GLOBAL MARKETS, INC.,)

26 Defendants.)
27)
28)

CLASS ACTION COMPLAINT

- (1) Aiding and Abetting Fraud and Fraudulent Concealment;
- (2) Aiding and Abetting Conversion;
- (3) Aiding and Abetting Breach of Fiduciary Duty;
- (4) Violation of California Unfair Competition Law, Cal. Bus. & Prof. Code §1700, *et seq.*

JURY TRIAL DEMANDED

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2 Plaintiffs Sebastian Scala and Mary Scala (hereinafter "Plaintiffs"), individually and on
3 behalf of the Class described below, bring this action for damages and injunctive relief. Plaintiffs
4 complain and allege upon information and belief based, *inter alia*, upon investigations conducted
5 by Plaintiffs and their counsel, except as to those allegations pertaining to Plaintiffs personally,
6 which are alleged upon actual knowledge:

7
8 **I.**

9 **INTRODUCTION**

10 1. This class action is brought on behalf of the victims of a \$20 million-plus Ponzi
11 scheme perpetrated by former felon and escaped prisoner, Joseph Viola, aka "Giuseppe" Viola
12 ("Viola"). Plaintiffs assert that at all times relevant, Defendants knew of Viola's prior criminal
13 history, and of his fraud, and notwithstanding, provided Viola with a variety of banking services
14 in violation of federal banking rules and regulations and directly assisted Viola in recruiting
15 victims for his scheme. Plaintiffs contend that in providing Viola with banking services and in
16 engaging in the other acts and conduct hereinafter alleged, Defendants aided and abetted Viola's
17 fraud, conversion of Plaintiffs and members of the Class' money and aided and abetted Viola's
18 breach of fiduciary duty owed to Plaintiffs and members of the Class and thus caused damages to
19 the Plaintiffs and members of the Class, in an amount believed to be in excess of \$ 20 million.

20 **II.**

21 **JURISDICTION AND VENUE**

22 2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.
23 §1332 because it involves a matter in controversy between citizens of different states and the
24 amount in controversy is in excess \$75,000, exclusive of interest and costs.

25 3. This Court has personal jurisdiction over the Defendants in that the Defendants are
26 authorized to and to do business within this judicial district. Defendants have sufficient minimum
27 contacts with the State of California, and/or the Defendants otherwise intentionally avail
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1 themselves of markets in the State of California and this judicial district as to the promotion,
2 marketing and sales of its products and services so as to render the exercise of jurisdiction by the
3 court permissible under traditional notions of fair play and substantial justice.

4 4. Venue is proper in this Court pursuant to 28 U.S.C. §1391(a) because Defendants
5 involvement in the Viola scheme was principally through its San Francisco branch offices and
6 therefore, a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in
7 this judicial district.

8 5. The vast majority of witnesses and documents related to the Viola Ponzi scheme
9 are likely located at or near the Defendants separate San Francisco branch offices. The key
10 Defendant employee involved with the Viola Ponzi scheme, Rik Schramell, resides and works in
11 around San Francisco, California. As such, this venue is also the most convenient for prosecuting
12 this litigation.

13 III.

14 PARTIES

15 A. REPRESENTATIVE PLAINTIFFS

16 6. Plaintiffs Mary and Sebastian Scala (hereinafter "Plaintiffs") are husband and wife
17 and residents of the State of California. They bring this action as individuals and on behalf of a
18 class of similarly situated persons as defined below.

19 B. DEFENDANTS

20 7. Defendant Citicorp, Inc. (hereinafter "Citicorp") is a corporation organized under
21 the laws of the State of Delaware. Citicorp is one of the world's largest financial services
22 companies, providing a range of financial products and services, including consumer banking and
23 securities brokerage.

24 8. Defendant Citibank, N.A. is a national banking association organized under the
25 laws of the United States. Citibank is one of the largest banks in the world and operates one of the
26 largest private banks in the US and globally.

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1 9. Defendant Citigroup Global Markets. Inc. is a corporation organized under the
2 laws of the State of New York.

3 10. Defendants Citigroup Global Markets, Inc. and Citibank N.A. are wholly owned
4 subsidiaries of Citicorp, Inc. that provide banking and investment services to individual
5 consumers and small businesses.

6 11. Defendants Citicorp, Citibank, and Citigroup and Defendants Citigroup Global
7 Markets, Inc. and Citibank N.A (hereinafter collectively “CIS” or “Defendants”) are jointly
8 engaged in the business of providing banking, investment, and other financial services to
9 individuals and corporations. At all times relevant, Defendants were and are doing business in the
10 City and County of San Francisco, California.

11 12. Defendants’ entities use the fictitious business name of "Citi Personal Wealth
12 Management," formerly known as "Citi Smith Barney" and "Citicorp Investment Services."

13 13. Plaintiffs allege that Rik Schramell conspired with numerous individuals and
14 entities in furtherance of the wrongful acts alleged in this complaint. With regard to unknown co-
15 conspirators, Plaintiffs reserve the right to bring civil claims against these unknown
16 coconspirators and entities at a later date.

17 **IV.**

18 **FACTUAL ALLEGATIONS**

19 **A. BACKGROUND INFORMATION ON JOSEPH “GIUSEPPE”**
20 **VIOLA**

21 14. Viola is a convicted felon who, before his latest white collar crime spree in San
22 Francisco, served a five year sentence for fraud in the 1980s. Viola was indicted in 1990 by the
23 Maricopa County Grand Jury, charged with perpetrating an investment fraud scheme. While
24 awaiting trial, and out on bail, Viola fled the State of Arizona to San Francisco, California. He
25 was arrested on or about March 10, 2010, in San Francisco and extradited to Maricopa County,
26 Arizona, where he remains incarcerated.

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1 15. On August 3, 2010, the United States Department of Justice filed a criminal
2 indictment against Viola alleging that he engaged in an illegal financial investment scheme which
3 defrauded dozens of investors of approximately \$7 million. Plaintiffs are informed and believe
4 that the actual amount of investor loss is in excess of \$ 20 million. As set forth in the indictment,
5 using his San Francisco locale as the center of operations, Viola fraudulently induced dozens of
6 investors in the San Francisco area and elsewhere in the United States to invest in business
7 entities he had formed, for the purposes of perpetrating another fraud/Ponzi scheme.

8 16. Viola's latest fraudulent scheme began in or about at least 2000, during which time
9 he purported to provide investment consulting services to investors as the "Administrator" of an
10 entity known as "Amicus Curiae Legal Dispute Resolution" ("Amicus").

11 17. As part of his investment scheme, Viola provided written agreements to his
12 investors at the inception of the investors' relationship with him (the "Letter Agreements"). In the
13 Letter Agreements, Viola represented to investors, among other things, that he would render
14 "investment consulting services," "manage an investment account on [their] behalf," and would
15 trade in "investment instruments including, but not limited to, stocks, bonds, mutual funds,
16 futures, options, and such other instruments and derivatives thereof, in which general commerce
17 is conducted." The Letter Agreements also provided that the investors' "funds are to be traded
18 simultaneously with others under our management in our existing accounts with Citigroup
19 Investor Services, Citibank, E.D. & F. Man and Peregrine Financial Group, among others, and
20 will be held and accounted for on your behalf therein." The Letter Agreements further represent
21 that a "monthly statement of account balances, open positions, and trade activity shall be
22 generated" and that investors could withdraw "non-invested cash reserves" with three days notice,
23 and "funds in active open positions" with thirty days notice.

24 18. Viola used certain bank, trading and brokerage accounts in connection with his
25 investment consulting business and for other purposes. The principal accounts Viola used
26 included a bank account opened at CIS using the account name "Ralph Napolitano Living Trust
27 Account," which ended in account number -1666) (describe in detail below) and accounts at other
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1 trading and brokerage firms including CIS, E.D. & F. Man and Peregrine Financial Group, which
2 accounts were also in the name of Ralph Napolitano Living Trust, with Viola having the
3 purported authority to use the accounts as trustee for the Ralph Napolitano Living Trust or other
4 form of representative. Viola deposited, and directed investors to deposit, their funds primarily
5 into the CIS Ralph Napolitano Living Trust Account and another account at CIS (ending in
6 account number -4111) as to which he was not an account signatory.

7 19. After the investors' initial investment, Viola mailed or hand-delivered monthly
8 account statements to investors. The account statements purported to reflect, among other things,
9 the trading activity in the account "open positions," the total net proceeds generated by that
10 month's trading, distributions or withdrawals paid to the investor, and the ending balance. The
11 account statements generally showed positive investment returns. The information set forth on the
12 account statements was not true.

13 20. Based upon, among other things, the Letter Agreements and monthly account
14 statements, Viola caused investors to believe that he was investing their money in the financial
15 markets, that their investments were performing well, and that the source of any distributions they
16 received were funds derived from investment performance.

17 **B. VIOLA'S SCHEME TO DEFRAUD**

18 21. As determined herein, Viola engaged in a material scheme, plan and artifice to
19 defraud investors, and to obtain money and property by means of materially false and fraudulent
20 pretenses, representations and promises, by making materially false statements, and omitting to
21 disclose material facts, to investors. Investors entrusted Viola with millions of dollars, but Viola
22 deceived investors by: (a) misrepresenting (i) the nature of the trading activity in which he was
23 engaged, (ii) the performance of the investors' accounts, and (iii) the true value of the investors'
24 account balances; (b) falsely representing to investors that he was investing and trading their
25 funds, when in truth, he did not invest or trade, but instead diverted investors' funds to non-
26 investment purposes; and (c) paying purported "distributions" to investors with funds unrelated to
27 the performance of their investment accounts.

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22. As part of the scheme to defraud, Viola, among other conduct:

a. Represented to investors in monthly account statements that he was trading primarily in futures contracts based on the Standard & Poor 500 Index and on 30-Year Treasury Bills, when in truth, he employed a high-risk strategy of “shorting” the crude oil market (i.e., betting that the price of crude oil would decrease) by trading almost exclusively in crude oil futures contracts,

b. Represented to investors in monthly account statements that their accounts were profitable, when in truth, as Viola knew, the investors had suffered heavy losses;

c. Materially inflated the value of the investors’ accounts as reflected in the final balance in their monthly account statements, when in truth, as Viola knew, the market value of the trading accounts in which he had invested their money was millions of dollars less than the combined values of the final account balances reflected on the investors’ statements;

d. Sent or otherwise delivered to investors fake account statements reflecting trading activity that did not occur, because Viola stopped trading after December 2008;

e. Induced investors to open and fund new accounts or add funds to existing accounts based on Viola’s representation that he would invest their money, when in truth, as Viola knew, he intended to, and did, divert their funds for non-investment purposes, including among other improper expenditures, approximately \$2 million on a venture to design, produce and sell a sports car known as the “SV 9 Competizione”

f. Caused investors to believe that distribution payments he made to them derived from the performance of their accounts, when in truth, as Viola knew, the source of the funds was unrelated to successful investment activity and instead was from new funds deposited by investors; and

g. Possessed and used, without lawful authority, the name, date of birth and social security number of Ralph Napolitano to open and maintain bank, trading and brokerage accounts, including the Ralph Napolitano Trust Account and accounts at trading and brokerage firms including CIS, through which Viola conducted, among other things, the fraudulent activity

1 described in a through f above when, as Viola knew, Ralph Napolitano was deceased as of the
2 year 2000.

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4 23. In furtherance of the scheme to defraud, Viola used the mails and interstate wires
5 for, among other things, sending account statements and distribution checks to investors,
6 receiving investment funds from investors, transferring funds to and from trading firms, and
7 diverting investor funds to his sports car venture and other non-investment purposes.

8 24. As a result of his scheme to defraud, Viola, among other conduct
9 caused investors to lose approximately \$ 20 million.

10 **C. DEFENDANTS CONDUCT IN VIOLA'S FRAUDULENT SCHEME**

11 25. Viola was a customer of CIS in the 1980's. His account relationship was
12 terminated by CIS due to his conviction for fraudulent business practices in the mid 1980's and
13 his 1990 Arizona indictment, and as a result of CIS' own internal audits.

14 26. Notwithstanding CIS knowledge of Viola's previous fraud, CIS knowledge of the
15 termination of his account relationship, and CIS knowledge that Viola had "jumped bail," in
16 1999, CIS allowed Viola to again open new accounts at, and conduct business with CIS under the
17 false name "Giuseppe" Viola. At the time the account was opened, CIS did not request
18 appropriate identification and violated its own and federal banking rules and regulations in
19 establishing the account.

20 27. In addition, in or around 1999, Defendants allowed Viola to open an account with
21 a now deceased individual named Ralph Napolitano at CIS' 451 Montgomery St., San Francisco,
22 California branch, again without requesting or requiring appropriate identification and in
23 violation of its own and federal banking rules and regulations for establishing the account. The
24 account was designated "The Ralph Napolitano Irrevocable Living Trust DTD April 13, 1999",
25 CIS Account No. XXXXX 91666. Two days later, on April 16, 1999, CIS established an
26 investment brokerage account also in the name of "The Ralph Napolitano Irrevocable Living
27 Trust DTD April 13, 1999", Citicorp Investment Services Account No. XXXXX654.
28 Collectively, the two accounts and any other CIS accounts are referred to herein as the

1 “Napolitano/Viola Accounts.” In connection therewith, Viola, Mr. Napolitano, and, on behalf of
2 Defendants, CIS account executive, Mr. Schramell, executed an “Account Opening Form.”

3 Pursuant to the Account Opening Form, Mr. Napolitano was described as a mechanic born on
4 12/17/35, he earned \$25,000 per year, and his entire net worth was \$220,000. The “Account
5 Opening Form” further identified Mr. Viola as a “Trustee,” contained a false representation that
6 he had been a self-employed attorney for “10 yrs +”, and listed his address as “268 Bush St. No.
7 3022, San Francisco, CA 94104”, which, in fact, was and is a privately operated mail box at a
8 UPS Store.

9 28. The Napolitano/Viola Account documents state that “Such Trust shall be
10 established and maintained at the offices of Citibank and Citicorp Investment Services through
11 Mr. Rik Schramell, Citigold Executive.” The Napolitano/Viola Account documents were
12 executed in Mr. Schramell’s presence and notarized by CIS employee Richard L. Tong. Mr.
13 Schramell was named successor in interest Trustee to the Napolitano/Viola Accounts. This
14 position, whereby a bank officer would serve as a successor trustee, is a clear conflict of interest
15 and violates CIS and federal banking rules and regulations.

16 29. After the establishment of the Napolitano/Viola Accounts, Defendants deliberately
17 failed to monitor properly the Napolitano/Viola Accounts to ensure that the Napolitano/Viola
18 Accounts were conducted in conformance with CIS and federal rules and regulations. By way of
19 example, CIS failed to require that Viola produce valid identification necessary for the
20 establishment of the Napolitano/Viola Accounts. In addition, by May 2005, the Napolitano/Viola
21 Accounts had balances of over \$750,000. Due to the enactment of anti-money laundering
22 provisions of The Patriot Act, 31U.S.C. Sections 5318(h) and (l), and the significantly increased
23 account balances in the Napolitano/Viola Accounts on May 13, 2005, CIS asked Viola, as the
24 Trustee of the Napolitano/Viola Accounts to execute a “Citicorp Investment Services
25 Supplemental Information Form.” This document was not in compliance with the requirements
26 of “The Patriot Act” as it was not signed by Mr. Napolitano. The Citicorp Investment Services
27 Supplemental Information Form again listed Mr. Napolitano’s annual income at \$25,000, but
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1 represented that his total net worth was now \$2,000,000. Defendants deliberately made no effort
2 to ascertain how the net worth of this elderly, retired mechanic could increase from \$200,000 to
3 \$2,000,000. Defendants also requested a picture ID from Viola in connection with this updating
4 process. Viola produced a purported identification card for tenants of the Monadnock Building,
5 564 Market St. San Francisco, CA, dated 2/2/94, which identified Viola as being connected with a
6 non-existent firm, "Huntington & Company" at a non-existent Suite, No. 855.

7 30. On or around December 29, 2005, CIS again requested that Viola execute updated
8 account information forms for the Napolitano/Viola Accounts. On or around January 6, 2006,
9 Viola submitted a revised form, purportedly signed by both Viola and Mr. Napolitano. This form
10 contained a number of indications that it was fraudulent and in violation of 31 U.S.C. §§ 5318(h)
11 and (l) and related regulations, including that (1) Mr. Napolitano and Viola now supposedly had
12 the same address – the post office box at the UPS Store on 268 Bush St., San Francisco, CA
13 [approximately two blocks from Mr. Schramell's offices]; (2) Mr. Napolitano and Viola now
14 supposedly had the same daytime and evening phone numbers – (415) 505-3976, (3) the business
15 address for the Viola's "legal services" firm in which he was an "attorney" was Mr. Napolitano's
16 post office box at the U.S. Post Office branch located at a residential neighborhood near Geary
17 and Arguello Boulevards in western San Francisco, and (4) Mr. Napolitano's net worth had
18 increased to \$2 million on his \$25,000 annual salary.

19 31. At the time of the opening of the Napolitano/Viola Accounts and thereafter during
20 the time the Napolitano/Viola Accounts remained open, CIS, knew and had actual knowledge that
21 the information on the updated account information forms was false, in that the documentation
22 stated Mr. Schramell had met with Mr. Napolitano when in fact he did not, and that Mr.
23 Napolitano had signed the document when in fact he had not. Notwithstanding CIS's knowledge
24 of these irregularities and falsehoods, CIS continued to allow Viola to use the Napolitano/Viola
25 Accounts to operate his business enterprises.

26 32. As part of his investment fraud, as set forth above, Viola offered investment
27 returns that purportedly generated regular, positive returns, regardless of the market conditions.
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1 His scheme involved investments that were not registered with the SEC or other state regulators.
2 He was an unlicensed investment professional operating within an unlicensed and unregistered
3 firm; information about Viola and that his investments were not put in writing and did not
4 contains prospectuses. Plaintiffs allege that CIS had actual knowledge of Viola's business
5 activities and had actual knowledge that Viola was operating without appropriate federal and state
6 licenses and thus in violation of federal and state securities laws, rules and regulations. CIS was
7 well aware of the banking regulation and the requirements of the Patriot Act which it violated, as
8 it had been publically chastised by regulators and other officials on numerous occasions for its
9 failures to detect and prevent money laundering and Ponzi schemes. As a result, Plaintiffs allege
10 that CIS had developed its own internal audit procedures to uncover and prevent frauds such as
11 the ones perpetrated by Viola. Plaintiffs further allege that these internal procedures, including
12 without limitation the need for adequate identification, revealed the specific conduct of Viola in
13 perpetrating his scheme.

14 33. In or around January 2005, the account balances in the Napolitano/Viola Accounts
15 received substantial monies from Plaintiffs and other investors. The balance in the Napolitano
16 Accounts by December 31, 2005 was \$771,000.

17 34. From January 2006 through September 2009, the balance of the Napolitano/Viola
18 Accounts continued to increase, as did the number and amount of financial transactions connected
19 with the accounts. During this time investor funds totaling more than \$17,000,000 were
20 transferred into the Napolitano/Viola Accounts. Plaintiffs and the other investors (hereinafter
21 "the Class") are residents of California, New York, New Jersey, Virginia, and New Mexico.

22 35. Viola instructed Plaintiffs and other class members to wire funds directly to
23 Citibank at the 451 Montgomery Street office, attention Stanley Fu, "Financial Analyst" for credit
24 to "Napolitano Trust," Giuseppe Viola, Trustee, 120 Montgomery Street, #2290, San Francisco,
25 CA 94104.

26 36. With the influx of funds from Plaintiffs and the Class, the accounts reached a high
27 balance of \$9,452,583.34 on February 21, 2008.

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1 37. In or around October 2008, after Viola had lost \$4,000,000 of his investor's funds
2 in a commodities trading account established at Rosenthal Collins Group LLC, CIS sent
3 knowingly false letters of reference, attesting to Viola's wealth, sophistication and integrity to
4 Rosenthal Collins in order to keep that trading account open.

5 38. At or about the same time (October 2008) CIS, via Citibank employee Roger Ho,
6 hosted meetings and social functions supporting Viola's business activities and met with investors
7 and falsely assured them that an officer of CIS was the successor trustee of the Napolitano Trust
8 and would return investors' funds if Viola became incapacitated. During these meetings, CIS
9 falsely represented that Viola was a skilled estate planning attorney; that Viola was a skilled
10 investment advisor in high risk commodities transactions; that Viola was generating excellent
11 investment returns for the investors and recommended transferring their investment portfolios to
12 the Napolitano/Viola Accounts. Again, given CIS' own internal controls and their knowledge of
13 Viola's prior conduct, CIS knew that these representations were false.

14 39. Based upon the account activity as set forth above, Citibank approved and
15 accepted dozens of deposits from investors, helping launder the money to Viola's accounts and
16 then allowing Viola to effectuate the fraud in a more efficient manner with no oversight from
17 bank personal, notwithstanding that CIS had internal reports and audits that demonstrated the
18 Viola had been and was engaging in a Ponzi scheme and that the Napolitano/Viola Accounts
19 activity violated federal banking regulations, including, but not limited to, certain provisions of
20 The Patriot Act. In conjunction therewith, and ignoring its internal audit reports, CIS approved
21 the opening of the Napolitano/Viola Accounts without any true identification, allowed the transfer
22 of millions of dollars in funds, including overseas transfers without oversight, knew that the risky
23 investments by Viola had generated huge losses but continued to publicly vouch for him as a
24 sound investment advisor and failed to close the Napolitano/Viola Accounts even though CIS
25 knew that the transactions made no sense given the nature of the Napolitano/Viola Accounts. In
26 addition, Viola's use of the Napolitano/Viola Accounts, the deposits made therein, and the
27 withdrawals therefrom, violated CIS' own internal controls and the requirements of the banking
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1 laws and the Patriot Act, which provided CIS with the knowledge that the Napolitano/Viola
2 Accounts activity was a Ponzi scheme.

3 40. By July 2009, the Napolitano Accounts were significantly depleted. As of July 1,
4 2009, the accounts' balance was \$911,904.67. On July 3, 2009, Citibank's Senior Vice President
5 and Assistant General Counsel, Gary J. Sullivan, telephoned Viola and requested the
6 Napolitano/Viola Accounts be closed.

7 41. On July 6, 2009, Mr. Sullivan sent Viola an email admitting that Defendants'
8 compliance department had noticed an \$8 Million foreign wire transfer into the Napolitano/Viola
9 Accounts almost 18 months prior to that time (which by July 6, 2009 had been entirely
10 misappropriated by Viola), admitting that Viola had repeatedly made frequent, large dollar
11 amount transactions over short periods of time, admitting that it was a conflict of interest for
12 Defendants' Mr. Schramell to serve as the successor trustee on the Napolitano/Viola Accounts,
13 admitting that the nature of the transactions were wholly inconsistent with those legitimately
14 associated with a personal trust account, and informing the Viola that "if the account is actually a
15 personal investment company, it is considered to be a high risk business, and Citibank will have
16 additional account diligence requirements that will need to be satisfied for Citibank to be able to
17 maintain this account."

18 42. Viola failed to provide the necessary legitimate requested information to CIS.
19 Nevertheless, CIS allowed Viola to continue operate the Napolitano/Viola Accounts for an
20 additional sixty days. During this time, Viola transferred an additional \$112,220.54 of investor
21 funds into the Napolitano/Viola Accounts and disbursed \$912,240.22 out of the Napolitano/Viola
22 Accounts.

23 43. The Napolitano/Viola Accounts were closed on September 30, 2009.

24 44. In or around this same time period, CIS allowed Viola to open additional checking
25 accounts in the name of a shell corporation called "SV Holdings." "SV Holdings" was a
26 Delaware corporation of which Viola appointed himself "Administrator," which is not a
27 recognized officer under the laws of the State of Delaware or California. The new checking
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1 accounts were opened at the North Beach branch of Citibank, where Mr. Schramell maintained
2 office hours.

3 45. Between September 2009 and his March 2010 arrest, Viola transferred
4 fraudulently obtained investor funds into the SV Holdings bank account and misappropriated
5 these funds for fraudulent purposes. In addition, Viola also defrauded the owners of the Stella
6 Bakery franchise, causing severe financial damage and loss of reputation for the owners of Stella
7 Bakery.

8 46. On March 16, 2010, certain of Viola's defrauded investors filed an Involuntary
9 Petition for Relief against Viola. A trustee was appointed.

10 47. On or about March 10, 2010, Viola was arrested for "jumping bail" in regard to his
11 Arizona indictment.

12 48. On April 27, 2010, Mr. Schramell resigned his position at CIS.

13 49. On August 3, 2010, the United States Grand Jury indicted Viola on several counts
14 including mail fraud, wire fraud, and aggravated identity theft.

15 V.

16 **CLASS ALLEGATIONS**

17 50. This action is brought by Plaintiffs, individually and on behalf of all others
18 similarly situated, for violations of California common and statutory law, pursuant to federal rule
19 of civil procedure 23. The class is defined as follows:

20 "All individuals or entities in the United States who invested funds with Mr. Joseph
21 "Giuseppe" Viola that were deposited in CIS Napolitano/Viola Accounts, during the
22 period 1999 through 2010."

23 51. Excluded from the Class are governmental entities, Defendants, any entity in
24 which Defendants have a controlling interest, and Defendants' officers, directors, legal
25 representatives, successors, subsidiaries, and assigns. Also excluded from the Class is any judge,
26 justice, or judicial officer presiding over this matter and the members of their immediate families
27 and judicial staff.
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1 52. Plaintiffs reserve the right to modify the Class definition and Class period based on
2 the results of discovery.

3 53. Plaintiffs seek to recover damages for themselves and the Class under the Unfair
4 Business Practices Act, California Business & Professions Code §17200, *et seq.* and for
5 violations of California common law.

6 54. Plaintiffs also bring this action for equitable, injunctive, and declaratory relief
7 pursuant to subdivisions (b)(1), (b)(2) and (b)(3) of Rule 23 of the Federal Rules of Civil
8 Procedure.

9 55. The Class is so numerous that joinder of all members is impracticable. While the
10 exact number of Class members is unknown at this time, Plaintiffs are informed and believe that
11 the number is between sixty and one hundred.

12 56. Common questions of law and fact exist as to all Class members and predominate
13 over questions affecting only individual Class members. Defendants have acted, with respect to
14 the Class, in a manner generally applicable to the Plaintiffs and each Class member. There is a
15 well-defined community of interest in the questions of law and fact involved in this action, which
16 affects all class members.

17 57. Plaintiffs' claims are typical of the claims of other members of the Class in that
18 Plaintiffs and other Class members were similarly harmed by the actions of Defendants as a
19 knowing participant in the Viola Ponzi scheme. Plaintiffs are members of the Class they seek to
20 represent and have suffered harm due to the unfair, deceptive, unreasonable and unlawful
21 practices of Defendants.

22 58. Plaintiffs will fairly and adequately represent the interests of the Class; their
23 interests are coincident with, and not antagonistic to those of the Class they seek to represent.
24 Plaintiffs are represented by experienced and able attorneys who intend to prosecute this action
25 vigorously for the benefit of Plaintiffs and all Class members. Plaintiffs and their counsel will
26 fairly and adequately protect the interests of the Class members.

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1 59. Defendants have acted or refused to act, with respect to some or all issues
2 presented in this complaint, on grounds generally applicable to the Class, thereby making it
3 appropriate to provide relief with respect to the Class as a whole.

4 60. A class action is the best available method of the efficient adjudication of this
5 litigation because individual litigation of Class members' claims would be impracticable and
6 unduly burdensome to the courts, and have the potential to result in inconsistent or contradictory
7 judgments. There are no unusual difficulties likely to be encountered in the management of this
8 litigation as a class action. A class action presents fewer management problems and provides the
9 benefits of single adjudication, economies of scale, and comprehensive supervision by a single
10 court.

11 VI.

12 **CLAIMS FOR RELIEF**

13 **FIRST CLAIM FOR RELIEF**

14 **(Aiding and Abetting Fraud and Fraudulent Concealment as Against All Defendants)**

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16 61. Plaintiffs and Class members reallege and incorporate herein by reference
17 paragraphs 1 through 60 inclusive, as though the same were fully set forth herein.

18 62. As alleged herein, and as set forth below, Defendants had actual knowledge of the
19 fraud being perpetrated on Plaintiffs and the Class by Viola. Specifically, Defendants actual
20 knowledge included but is not limited to the facts that:

- 21 (a) Viola was using false identification;
22 (b) Napolitano never verified the accounts as his;
23 (c) The Napolitano/Viola Accounts were not legitimate given the known income and
24 assets of Napolitano;
25 (d) Viola was using false addresses and phone numbers for his purported business
26 operations;
27 (e) Viola was a convicted felon;
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- 1 (f) Viola was not and could not have been a licensed or registered investment advisor or
2 attorney given his previous criminal conviction for fraud;
- 3 (g) The funds deposited in the Napolitano/Viola Accounts did not come from legitimate
4 sources of investment or income sources;
- 5 (h) Viola's account activities violated federal banking rules and regulations including but
6 not limited to The Patriot Act;
- 7 (i) Viola's activities violated defendants own control procedures;
- 8 (j) CIS's internal audits disclosed that Viola's account activity was a Ponzi scheme;
- 9 (k) Viola failed to provide the necessary legitimate requested information to CIS, and that
10 notwithstanding CIS allowed Viola to continue operate the Napolitano Accounts during
11 which time. Viola transferred an additional \$112,220.54 of investor funds into the account
12 and disbursed \$912,240.22 out of the account.

13 63. As a result of the Defendant's knowledge of the Viola fraud and in providing
14 Viola with CIS banking facilities and services, Defendants aided and abetted Viola in perpetrating
15 his fraud. Without Defendants' substantial assistance, Viola would not have been able to defraud
16 Plaintiffs and the Class. In fact, CIS' involvement, including without limitation defendants
17 repeated representations to investors as to Viola's abilities and background, gave Viola's scheme
18 an aura of legitimacy that allowed him to perpetrate his fraudulent scheme on Plaintiffs and the
19 Class.

20 64. As a result of direct and proximate result of CIS conduct as hereinabove alleged,
21 Plaintiffs and the Class suffered economic losses in an amount to be proven at trial but believe to
22 be in excess of \$20 million.

23 65. Defendant's wrongful acts as alleged herein were done maliciously, oppressively,
24 and with intent to defraud, and Plaintiffs and the Class are entitled to punitive and exemplary
25 damages in an amount to be ascertained according to proof at trial.

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1 **SECOND CLAIM FOR RELIEF**

2 **(Aiding and Abetting Conversion as Against All Defendants)**

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4 66. Plaintiffs and Class members reallege and incorporate herein by reference
5 paragraphs 1 through 65 inclusive, as though the same were fully set forth herein.

6 67. Viola, through the wrongful conduct alleged above misappropriated and converted
7 funds belonging to Plaintiffs and the Class.

8 68. As set forth above, Defendants had actual knowledge of the conversion of funds
9 belonging to Plaintiffs and the Class by Viola. Specifically, Defendants had actual knowledge
10 that included but was not limited to the facts that:

11 (a) Viola was using false identification;

12 (b) Napolitano never verified the accounts as his;

13 (c) The Napolitano/Viola Accounts was not legitimate given the known income and assets
14 of Napolitano;

15 (d) Viola was using false addresses and phone numbers for his purported business
16 operations;

17 (e) Viola was a convicted felon;

18 (f) Viola was not and could not have been a licensed or registered investment advisor or
19 attorney given his previous criminal conviction for fraud;

20 (g) The funds deposited in the Napolitano/Viola Accounts did not come from legitimate
21 sources of investment or income sources;

22 (h) Viola's account activities violated federal banking rules and regulations including but
23 not limited to The Patriot Act;

24 (i) Viola's activities violated defendants own control procedures;

25 (j) CIS's internal audits disclosed that Viola's account activity was a Ponzi scheme;

26 (k) Viola failed to provide the necessary legitimate requested information to CIS, and that
27 notwithstanding CIS allowed Viola to continue operate the Napolitano Accounts during
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1 which time, Viola transferred an additional \$112,220.54 of investor funds into the account
2 and disbursed \$912,240.22 out of the account;

3 (l) Viola used the funds from the Napolitano Accounts for his own personal benefit and
4 expenses, rather than for legitimate business purposes for the benefit of the investors.

5 69. As a result of the Defendant's knowledge of the Viola fraud and in providing
6 Viola with CIS banking facilities and services, Defendants aided and abetted Viola in perpetrating
7 his fraud and in the conversion by Viola of Plaintiffs' and the Class funds. Without Defendants'
8 substantial assistance, Viola would not have been able to convert Plaintiffs' and the Class funds.
9 In fact, CIS' involvement, including without limitation Defendants repeated representations to
10 investors as to Viola's abilities and background, gave Viola's scheme an aura of legitimacy that
11 allowed him to perpetrate his fraudulent scheme on Plaintiffs and the Class.

12 70. As a result of direct and proximate result of CIS conduct as hereinabove alleged,
13 Plaintiffs and the Class suffered economic losses in an amount to be proven at trial but believe to
14 be in excess of \$20 million.

15 71. Defendants' wrongful acts as alleged herein were done maliciously, oppressively,
16 and with intent to defraud, and Plaintiffs and the Class are entitled to punitive and exemplary
17 damages in an amount to be ascertained according to proof at trial.

18 **THIRD CLAIM FOR RELIEF**

19 **(Aiding and Abetting Breach of Fiduciary Duty as Against All Defendants)**

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21 72. Plaintiffs and Class members reallege and incorporate herein by reference
22 paragraphs 1 through 71 inclusive, as though the same were fully set forth herein.

23 73. By virtue of their relationship, activities, and actions, including but not limited to
24 actively seeking the investment funds of Plaintiffs and other Class members, Viola set out to
25 create and did in fact create a special relationship of fidelity and integrity with the Plaintiffs and
26 members of the Class. In conjunction therewith, Viola set out to induce and did induce Plaintiffs
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1 and the Class to rely upon his advice and guidance with respect to financial transactions and
2 investments. A confidential and fiduciary relationship existed at all times herein.

3 74. As set forth above, Viola breached that fiduciary duty by misappropriating and
4 converting the funds of Plaintiffs and the Class, including using the funds for his personal use.

5 75. As set forth above Defendants had actual knowledge of the fiduciary relationship
6 between Viola and the Plaintiffs and members of the Class and Viola's and the breach of
7 fiduciary duty being committed by Viola, in that Defendants knew that Viola was acting as an
8 investment advisor, and knew that Viola was using the funds deposited in the trust account for
9 improper purposes including using the funds for his own personal account and expenses.

10 76. As a result of the Defendant's knowledge of the Viola fraud and in providing
11 Viola with CIS banking facilities and services. Defendants aided and abetted Viola in perpetrating
12 his fraud and violating his fiduciary obligation owed to Plaintiffs and members of the Class.
13 Without Defendants' substantial assistance, Viola would not have been able to convert Plaintiffs'
14 and the Class funds, perpetrate his fraud, and violate his fiduciary obligations owed to Plaintiffs
15 and the members of the Class. In fact, CIS' involvement, including without limitation defendants
16 repeated representations to investors as to Viola's abilities and background, gave Viola's scheme
17 an aura of legitimacy that allowed him to perpetrate his fraudulent scheme on Plaintiffs and the
18 Class.

19 77. As a result of direct and proximate result of CIS conduct as hereinabove alleged,
20 Plaintiffs and the Class suffered economic losses in an amount to be proven at trial but believe to
21 be in excess of \$20 million.

22 78. Defendants' wrongful acts as alleged herein were done maliciously, oppressively,
23 and with intent to defraud, and Plaintiffs and the Class are entitled to punitive and exemplary
24 damages in an amount to be ascertained according to proof at trial.

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FOURTH CLAIM FOR RELIEF
(Unlawful Business Practices – Violation of Cal. Bus. & Prof. Code
§17200, et seq as Against All Defendants)

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79. Plaintiffs and Class members reallege and incorporate herein by reference paragraphs 1 through 78 inclusive, as though the same were fully set forth herein.

80. Defendants' acts and practices as described herein constitute unlawful, fraudulent, and unfair business practices in that (1) the justification for Defendants' conduct is outweighed by the gravity of the consequences to Plaintiffs and the Class, (2) Defendants' conduct is illegal, immoral, unethical, oppressive, unscrupulous, unconscionable or substantially injurious to Plaintiffs and the Class, and/or (3) the uniform conduct had a tendency to deceive Plaintiffs and the Class.

81. As set forth above, Defendants' unlawful, unfair, and fraudulent business acts and practices include, but are not limited to, providing substantial assistance to Viola. In addition, Defendants' actions constitute unlawful business acts and practices pursuant to California Business & Professions Code §17200, et seq., and other similar state unfair competition and unlawful business practices statutes.

82. Pursuant to Business and Professions Code §§17200 and 17203, Plaintiffs, on behalf of themselves and all other similarly situated, seek relief as prayed for below.

VII.
PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and the Class pray for judgment against Defendants as follows:

1. An order that Defendants be permanently enjoined from the improper conduct and deceptive practices alleged herein;

1 2. A judgment awarding Plaintiffs and the Class actual damages in an amount
2 according to proof under all causes of action herein entitling Plaintiffs and the Class to actual
3 damages;

4 3. A judgment awarding Plaintiffs and the Class restitution, including, without
5 limitation, disgorgement of all profits and unjust enrichment obtained by Defendant as a result of
6 its unlawful, unfair, and fraudulent business practices and conduct alleged herein;

7 4. A judgment awarding Plaintiffs and the Class exemplary damages for Defendants'
8 knowing, willful, and intentional conduct, as alleged herein;

9 5. For an order awarding Plaintiffs and the Class pre-judgment and post-judgment
10 interest, as well as their reasonable attorneys' and expert-witness fees, and other costs, and

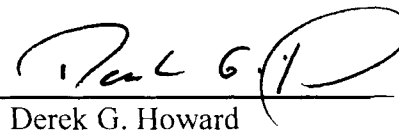
11 6. For such additional or further relief as this Court deems just and appropriate.

12 DATED: August 27, 2010

Respectfully Submitted,

MINAMI TAMAKI LLP

By:


Derek G. Howard

Counsel for Plaintiffs

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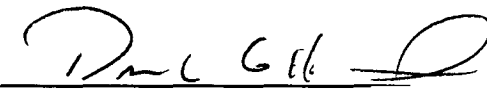
VIII.
DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by jury of all the claims asserted in this Complaint so triable.

DATED: August 27, 2010

Respectfully Submitted,

MINAMI TAMAKI LLP

By: 
Derek G. Howard

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