CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Alex Calero SBN: 238389
California Department of Corporations
1350 Front Street, Room 2034

San Diego, CA 92101
TELEPHONE NO.: (619) 525-4044 FAX NO.: (619) 525-4045
ATTORNEY FOR (Name): The People of the State of California

FOR COURT USE ONLY

FILED
CIVIL BUSINESS OFFICE 17
07 JUL 19 PM 1:37
CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego
STREET ADDRESS: 330 West Broadway
MAILING ADDRESS:
CITY AND ZIP CODE: San Diego 92101
BRANCH NAME: Hall of Justice

CASE NAME: People v. Monumental Funding et al.

CIVIL CASE COVER SHEET
[X] Unlimited (Amount demanded exceeds $25,000) [ ] Limited (Amount demanded is $25,000 or less)

Complex Case Designation
[ ] Counter [ ] Joinder
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: **37-2007-00071452-CU-MC-CTL**
JUDGE:
DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort
- [ ] Auto (22)
- [ ] Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
- [ ] Asbestos (04)
- [ ] Product liability (24)
- [ ] Medical malpractice (45)
- [ ] Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort
- [ ] Business tort/unfair business practice (07)
- [ ] Civil rights (08)
- [ ] Defamation (13)
- [ ] Fraud (16)
- [ ] Intellectual property (19)
- [ ] Professional negligence (25)
- [ ] Other non-PI/PD/WD tort (35)

Employment
- [ ] Wrongful termination (36)
- [ ] Other employment (15)

Contract
- [ ] Breach of contract/warranty (06)
- [ ] Rule 3.740 collections (09)
- [ ] Other collections (09)
- [ ] Insurance coverage (18)
- [ ] Other contract (37)

Real Property
- [ ] Eminent domain/Inverse condemnation (14)
- [ ] Wrongful eviction (33)
- [ ] Other real property (26)

Unlawful Detainer
- [ ] Commercial (31)
- [ ] Residential (32)
- [ ] Drugs (38)

Judicial Review
- [ ] Asset forfeiture (05)
- [ ] Petition re: arbitration award (11)
- [ ] Writ of mandate (02)
- [ ] Other judicial review (39)

Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)
- [ ] Antitrust/Trade regulation (03)
- [ ] Construction defect (10)
- [ ] Mass tort (40)
- [ ] Securities litigation (28)
- [ ] Environmental/Toxic tort (30)
- [ ] Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment
- [ ] Enforcement of judgment (20)

Miscellaneous Civil Complaint
- [ ] RICO (27)
- [X] Other complaint *(not specified above)* (42)

Miscellaneous Civil Petition
- [ ] Partnership and corporate governance (21)
- [ ] Other petition *(not specified above)* (43)

2. This case [ ] is [X] is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
   a. [ ] Large number of separately represented parties
   b. [ ] Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
   c. [ ] Substantial amount of documentary evidence
   d. [ ] Large number of witnesses
   e. [ ] Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
   f. [ ] Substantial postjudgment judicial supervision
3. Remedies sought *(check all that apply)*: a. [X] monetary b. [X] nonmonetary; declaratory or injunctive relief c. [X] punitive
4. Number of causes of action *(specify)*: Three causes of action
5. This case [ ] is [X] is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. *(You may use form CM-015.)*

Date: July 19, 2007
Alex Calero SBN: 238389
(TYPE OR PRINT NAME) (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE
- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Legal Solutions Plus

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

CM-010

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than $25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort
- Auto (22)—Personal Injury/Property Damage/Wrongful Death
- Uninsured Motorist (46) *(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)*

Other PI/PD/WD (Personal Injury/ Property Damage/Wrongful Death) Tort
- Asbestos (04)
  - Asbestos Property Damage
  - Asbestos Personal Injury/ Wrongful Death
- Product Liability *(not asbestos or toxic/environmental)* (24)
- Medical Malpractice (45)
  - Medical Malpractice–Physicians & Surgeons
  - Other Professional Health Care Malpractice
- Other PI/PD/WD (23)
  - Premises Liability (e.g., slip and fall)
  - Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
  - Intentional Infliction of Emotional Distress
  - Negligent Infliction of Emotional Distress
  - Other PI/PD/WD

Non-PI/PD/WD (Other) Tort
- Business Tort/Unfair Business Practice (07)
- Civil Rights (e.g., discrimination, false arrest) *(not civil harassment)* (08)
- Defamation (e.g., slander, libel) (13)
- Fraud (16)
- Intellectual Property (19)
- Professional Negligence (25)
  - Legal Malpractice
  - Other Professional Malpractice *(not medical or legal)*
- Other Non-PI/PD/WD Tort (35)

Employment
- Wrongful Termination (36)
- Other Employment (15)

Contract
- Breach of Contract/Warranty (06)
  - Breach of Rental/Lease Contract *(not unlawful detainer or wrongful eviction)*
  - Contract/Warranty Breach—Seller Plaintiff *(not fraud or negligence)*
  - Negligent Breach of Contract/ Warranty
  - Other Breach of Contract/Warranty
- Collections (e.g., money owed, open book accounts) (09)
  - Collection Case—Seller Plaintiff
  - Other Promissory Note/Collections Case
- Insurance Coverage *(not provisionally complex)* (18)
  - Auto Subrogation
  - Other Coverage
- Other Contract (37)
  - Contractual Fraud
  - Other Contract Dispute

Real Property
- Eminent Domain/Inverse Condemnation (14)
- Wrongful Eviction (33)
- Other Real Property (e.g., quiet title) (26)
  - Writ of Possession of Real Property
  - Mortgage Foreclosure
  - Quiet Title
  - Other Real Property *(not eminent domain, landlord/tenant, or foreclosure)*

Unlawful Detainer
- Commercial (31)
- Residential (32)
- Drugs (38) *(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)*

Judicial Review
- Asset Forfeiture (05)
- Petition Re: Arbitration Award (11)
- Writ of Mandate (02)
  - Writ–Administrative Mandamus
  - Writ–Mandamus on Limited Court Case Matter
  - Writ–Other Limited Court Case Review
- Other Judicial Review (39)
  - Review of Health Officer Order
  - Notice of Appeal–Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)
- Antitrust/Trade Regulation (03)
- Construction Defect (10)
- Claims Involving Mass Tort (40)
- Securities Litigation (28)
- Environmental/Toxic Tort (30)
- Insurance Coverage Claims *(arising from provisionally complex case type listed above)* (41)

Enforcement of Judgment
- Enforcement of Judgment (20)
  - Abstract of Judgment (Out of County)
  - Confession of Judgment *(non-domestic relations)*
  - Sister State Judgment
  - Administrative Agency Award *(not unpaid taxes)*
  - Petition/Certification of Entry of Judgment on Unpaid Taxes
  - Other Enforcement of Judgment Case

Miscellaneous Civil Complaint
- RICO (27)
- Other Complaint *(not specified above)* (42)
  - Declaratory Relief Only
  - Injunctive Relief Only *(non-harassment)*
  - Mechanics Lien
  - Other Commercial Complaint Case *(non-tort/non-complex)*
  - Other Civil Complaint *(non-tort/non-complex)*

Miscellaneous Civil Petition
- Partnership and Corporate Governance (21)
- Other Petition *(not specified above)* (43)
  - Civil Harassment
  - Workplace Violence
  - Elder/Dependent Adult Abuse
  - Election Contest
  - Petition for Name Change
  - Petition for Relief from Late Claim
  - Other Civil Petition

PRESTON DuFAUCHARD
California Corporations Commissioner
WAYNE STRUMPFER
Deputy Commissioner
ALAN S. WEINGER
Lead Corporations Counsel
ALEX CALERO (SBN 238389)
Corporations Counsel
CALIFORNIA DEPARTMENT OF CORPORATIONS
1350 Front Street, Room 2034
San Diego, California 92101
Telephone: (619) 525-4044

Attorneys for the People of the State of California

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

THE PEOPLE OF THE STATE OF CALIFORNIA, by and through the CALIFORNIA COMMISSIONER CORPORATIONS, Plaintiff, vs. MONUMENTAL FUNDING, L.L.C., a California limited liability company; MONUMENTAL FUNDING CORPORATION, a California corporation; JERMAINE D. BOONE, as an individual; WILLIAM E. BIDDLE III, as an individual; and Does 1 through 10, inclusive, Defendants.	Case No.: MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF EX PARTE APPLICATION AND APPLICATION FOR TEMPORARY RESTRAINING ORDER; AND ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION Judge: Dept: Hearing Date: Hearing Time: Date Action Filed: Trial Date:

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State of California - Department of Corporations

MEMORANDUM OF POINTS AND AUTHORITIES

IN SUPPORT OF APPLICATION FOR:

TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION ENJOINING DEFENDANTS FROM:

(A) VIOLATING CALIFORNIA CORPORATIONS CODE SECTION 25110, BY OFFERING TO SELL, SELLING, ARRANGING FOR THE SALE OF, ISSUING, ENGAGING IN THE BUSINESS OF SELLING, NEGOTIATING FOR THE SALE OF ANY SECURITY OF ANY KIND, UNLESS SUCH SECURITY OR TRANSACTION IS QUALIFIED;

(B) VIOLATING CALIFORNIA CORPORATIONS CODE SECTION 25401, BY OFFERING TO SELL OR SELLING ANY SECURITY OF ANY KIND, INCLUDING BUT NOT LIMITED TO, THE SECURITIES DESCRIBED IN THIS COMPLAINT, BY MEANS OF ANY WRITTEN OR ORAL COMMUNICATION WHICH INCLUDES ANY UNTRUE STATEMENT OF MATERIAL FACT OR OMITS OR FAILS TO STATE ANY MATERIAL FACT NECESSARY IN ORDER TO MAKE THE STATEMENTS MADE, IN THE LIGHT OF THE CIRCUMSTANCES UNDER WHICH THEY ARE MADE, NOT MISLEADING;

(C) VIOLATING THE DESIST AND REFRAIN ORDER ISSUED BY THE CALIFORNIA CORPORATIONS COMMISSIONER ON DECEMBER 4, 2006, BY OFFERING AND SELLING UNQUALIFIED, NON-EXEMPT SECURITIES IN VIOLATION OF CALIFORNIA CORPORATIONS CODE SECTION 25110;

(D) REMOVING, DESTROYING, MUTILATING, CONCEALING, ALTERING, TRANSFERRING, OR OTHERWISE DISPOSING OF, IN ANY MANNER, ANY BOOKS, RECORDS, COMPUTER PROGRAMS, COMPUTER FILES, COMPUTER PRINTOUTS, CORRESPONDENCE, BROCHURES, MANUALS, OR ANY OTHER "WRITING" OR "DOCUMENT" OF ANY KIND AS DEFINED UNDER CALIFORNIA EVIDENCE CODE SECTION 250, RELATING TO THE TRANSACTIONS AND COURSE OF CONDUCT AS ALLEGED IN THE COMPLAINT OF THIS ACTION, UNLESS AUTHORIZED BY THIS COURT; AND

(E) WITHDRAWING FROM ANY BANK ACCOUNT OR DISPOSING OF ANY

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REAL OR PERSONAL PROPERTY IN THEIR POSSESSION, CUSTODY OR CONTROL, WITHOUT LEAVE OF THE COURT.

I. INTRODUCTION

One of the main objectives of the securities law is to protect the investing public against the imposition of unsubstantial, unlawful and fraudulent investment schemes and to promote full disclosure of all information that is necessary to make informed and intelligent investment decisions. One way to ensure that this objective is met is to require that all securities that are offered or sold throughout the State of California be statutorily qualified or meet the requirements for an exemption from qualification.

Monumental Funding L.L.C., a California limited liability company, Monumental Funding Corporation, a California corporation, Jermaine D. Boone, an individual ("Boone"), William E. Biddle III, an individual ("Biddle") and Does 1 through 10 (collectively referred to as "Defendants") have offered and sold unqualified, non-exempt securities throughout the State of California in violation of California Corporations Code section 25110. Defendants continue to offer or sell said securities despite being personally served a Desist and Refrain Order, issued by the California Corporations Commissioner, ordering the Defendants to desist and refrain from offering or selling unqualified, non-exempt securities.

Further, Defendants have made material misrepresentations regarding a license, that defendants in fact do not hold, and omitted to disclose the existence of the Desist and Refrain Order to investors and potential investors in violation of California Corporations Code section 25401.

The People of the State of California, by and through the California Corporations Commissioner ("Commissioner"), seek an Order, with due notice to Defendants, issuing a Temporary Restraining Order and request for an Order to Show Cause Re: Preliminary Injunction to prevent ongoing and continuing violations of the California Securities Law of 1968 ("CSL") (California Corporations Code, sections 25100 et seq.).

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II. STATEMENT OF FACTS

Beginning in at least October 2006, and continuing thereafter, Monumental Funding, L.L.C., a California limited liability company, Monumental Funding Corporation, a California corporation, Boone, Biddle, their agents, representatives, and affiliates (collectively referred to as "Defendants") offered and sold unqualified, non-exempt securities, in the form of promissory notes or investment contracts, to at least 53 investors residing in California, raising at least $3,233,223.00.

Defendants, according to the Monumental Funding Private Placement Memorandum, offered and sold securities to California residents for the purported purpose of raising funds to purchase deeds of trust or "monthly interest notes" secured by real property in and around the Los Angeles area. A true and correct copy of the Monumental Funding Private Placement Memorandum is attached to the Memorandum of Points and Authorities as Exhibit 1, specifically see page DOC00014.

Defendants solicited California residents, to invest in the securities, by way of general solicitations on Defendants' Web site www.monumentalfunds.com, and advertisements in the Los Angeles Times newspaper and Napa Valley Marketplace Magazine.

The Defendants' Web site stated that the company is "an integrated real estate firm which specializes in Deeds of Trust secured by Residential and Commercial Real estate . . . Strict underwriting criteria has resulted in a 100% success rate on all of our offerings. Our current investments are yielding 17% annually." A true and correct copy of the Defendants' Web site is attached to the Memorandum of Points and Authorities as Exhibit 2, specifically see page DOC00053.

On October 10, 2006, the Los Angeles Times published the Defendants' advertisement in which Defendants offered "LET YOUR MONEY DO ALL THE WORK . . . 17.31% APY 6 Month or 12 Month Term . . . INVESTMENT YIELD IS A FIXED RATE . . . Receive Monthly Interest Payments." A true and correct copy of the October 10, 2006, Los Angeles Times advertisement is attached to the Memorandum of Points and Authorities as Exhibit 3.

On November 2, 2006, the Defendants filed an exemption notice pursuant to California Corporations Code section 25102(f), with the California Department if Corporations ("Department").

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The Department became aware that the Defendants offer or sale of securities may be in violation of the CSL, and as a result on November 6, 2006, the Department issued a Subpoena Duces Tecum upon the Defendants to produce certain documents relevant to the Department's investigation. A true and correct copy of the Subpoena Duces Tecum is attached to the Memorandum of Points and Authorities as Exhibit 4, specifically see page DOC000059.

On November 28, 2006, the Los Angeles Times published Defendants' advertisement which stated "LET YOUR MONEY DO ALL THE WORK . . . 17.31% APY 6 Month Term . . . INVESTMENTS YIELDS MAY RISE, BUT WILL NOT FALL BELOW THIS MINIMUM . . . Receive Monthly Interest Payments . . . License #0009566." A true and correct copy of the November 28, 2006, Los Angeles Times advertisement is attached to the Memorandum of Points and Authorities as Exhibit 5.

On December 4, 2006, the Commissioner issued a Desist and Refrain Order ("December 2006 Order") against defendants, Monumental Funding, L.L.C., Monumental Funding Corporations, Boone and Biddle, for offering and selling unqualified, non-exempt securities, in violation of CSL section 25110. The December 2006 Order orders those defendants to desist and refrain from the further offer or sale of unqualified, non-exempt securities, in the State of California. The December 2006 Order was personally served on defendants on December 5, 2006. A true and correct copy of the December 2006 Order along with the Proof of Service is attached to the Memorandum of Points and Authorities as Exhibit 6.

Defendants did not request an administrative hearing to challenge the allegations and findings in the December 2006 Order. The December 2006 Order is now final.

On or about January 29, 2007, the Defendants removed the securities offering language from their Web site at the behest of the Department.

Notwithstanding the December 2006 Order, Defendants continued to sell securities to at least 36 investors residing in California to raise at least $2,565,982.00.

Notwithstanding the December 2006 Order, Defendants continued to offer securities by way of general solicitations in the form of advertisements in the Napa Valley Marketplace Magazine, as discussed more fully below.

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The Napa Valley Marketplace Magazine published Defendants' advertisements beginning in November 2006 and continuing until June 2007.

Defendants' advertisements in the Napa Valley Marketplace Magazine state "LET YOUR MONEY DO ALL THE WORK . . . 17.31% APY 6 Month Term . . . INVESTMENTS YIELDS MAY RISE, BUT WILL NOT FALL BELOW THIS MINIMUM . . . Receive Monthly Interest Payments . . . License #0009566." A true and correct copy of the most recent (June 2007) Napa Valley Marketplace Magazine advertisement is attached to the Memorandum of Points and Authorities as Exhibit 7. A true and correct copy of a billing statement from Napa Valley Marketplace Magazine to Defendants is attached to the Memorandum of Points and Authorities as Exhibit 8.

As of the date of this pleading, Defendants have failed to fully comply with the Subpoena Duces Tecum and produce all documents requested therein despite the Department granting seven deadline extensions to the date of production.

Defendants' partial responses to the Subpoena Duces Tecum demonstrates that Defendants only possess one license, # 01791269, from the California Department of Real Estate. A true and correct copy of Defendants' response letter is attached to the Memorandum of Points and Authorities as Exhibit 9, specifically see page DOC00084. Defendants' partial responses demonstrate that Defendants have sold unqualified, non-exempt securities to at least 53 California residents. A true and correct copy of Defendants' response chart and executed agreements are attached to the Memorandum of Points and Authorities as Exhibit 10.

Defendants' partial responses also demonstrate that Defendants have offered said securities to at least 23 residents of San Diego County. A true and correct copy of Defendants' response list of investors offered securities is attached to the Memorandum of Points and Authorities as Exhibit 11, specifically see pages DOC00156 & DOC00161-DOC00183. Further, Defendants sold securities to at least two residents of San Diego County. A true and correct copy of Defendants' response chart and executed agreements are attached to the Memorandum of Points and Authorities as Exhibit 10. A true and correct copy of the Declaration of Chernoff is attached to the Memorandum of Points and Authorities as Exhibit 12.

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Defendants have made and continue to make material misrepresentations by including in Defendants' advertisements that Defendants maintain "License #0009566" when, in fact, they do not maintain any license with the number 0009566.

The Defendants have omitted and continue to omit to disclose material facts, namely the existence of the December 2006 Order to investors and potential investors. (See Exhibit 12, specifically DOC00185.)

The Commissioner has not issued a permit or other form of qualification authorizing the offer and sale of the securities referred herein in the State of California. A true and correct copy of the certificate of search is attached to the Memorandum of Points and Authorities as Exhibit 13.

Defendants have violated the CSL, specifically sections 25110 and 25401, and the Commissioner's December 2006 Order for the reasons set forth above. Accordingly Defendants must be enjoined from further violation of the CSL and orders issued thereunder.

III. ARGUMENT

A. THE COMMISSIONER HAS THE AUTHORITY TO BRING THIS ACTION TO SEEK A TEMPORARY RESTRAINING ORDER

CSL section 25530 and California Government Code section 11180 provide the Commissioner with broad, discretionary authority to bring actions for injunctive and other ancillary relief whenever it appears that any person has engaged in or is about to engage in any act or practice in violation of the CSL. Section 25530, provides, in relevant part:

> Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this division or any rule or order hereunder, the commissioner may in the commissioner's discretion bring an action in the name of the people of the State of California in the superior court to enjoin the acts or practices or to enforce compliance with this law or any rule or order hereunder. Upon a proper showing, a permanent or preliminary injunction, restraining order, . . . shall be granted and a receiver, monitor, conservator, or other designated fiduciary or officer of the court may be appointed for the defendant . . . or any other ancillary relief may be granted as appropriate.

(Corp. Code § 25530, subd. (a).)

Where an injunction is authorized by statute to protect the public interest, the usual equitable considerations, such as inadequacy of legal remedy, irreparable harm, and balancing of interests are irrelevant and it is not necessary to allege or prove them. (*Porter v. Fiske* (1946) 74 Cal.App.2d 332,

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338.)

The California Supreme Court in *IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63, 72, states the proper standard to be applied when a governmental entity seeks to enjoin alleged violations of a statute as follows:

> Where a governmental entity seeking to enjoin the alleged violation of an ordinance which specifically provides for injunctive relief establishes that it is reasonably probable it will prevail on the merits, a rebuttable presumption arises that the potential harm to the public outweighs the potential harm to the defendant . . . .

(*IT Corp. v. County of Imperial, supra,* 35 Cal.3d at p. 72, emphasis added.)

In the instant case, the evidence presented in these points and authorities and the declarations filed herewith clearly demonstrate a reasonable probability that the Department will prevail on the merits. The present action seeks to protect the public by enjoining violations of the CSL. Here, Plaintiff has provided substantive evidence, that Defendants have violated CSL section 25110 by offering and selling unqualified, non-exempt securities to investors residing in the State of California. Further, Defendants violated CSL section 25401 by misrepresenting that they hold "License #0009566" and omitting to disclose the existence of the December 2006 Order to investors and potential investors. Lastly, Defendants have violated the December 2006 Order by continuing to offer and sell unqualified, non-exempt securities in the State of California. The Court, therefore, has ample authority to grant the temporary restraining order and ancillary relief prayed for.

B. DEFENDANTS MADE OFFERS AND SALES OF UNQUALIFIED, NON-EXEMPT SECURITIES IN VIOLATION OF SECTION 25110

CSL section 25110 provides, in relevant part:

> It is unlawful for any person to offer or sell in this state any security in an issuer transaction . . . , unless such sale has been qualified . . . or unless such security or transaction is exempted or not subject to qualification under Chapter 1 [commencing with Section 25100] of this part.

(Corp. Code, § 25110.)

1. Defendants' notes are securities

CSL section 25019 defines the term security to include "any note." The securities that the defendants offered for sale were referred to as "promissory notes." These "notes" are within the

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definition of a security found in CSL section 25019.

Section 25019 also defines a security to include an "investment contract." In *S.E.C. v. W.J. Howey Co.* (1946) 328 U.S. 293, 298-299, the United States Supreme Court held that "[a]n investment contract . . . means a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party." (*S.E.C. v. W.J. Howey Co.* (1946) 328 U.S. 293, 298-299.)

In the alternative, Defendants' "promissory notes" are also investment contracts; investors gave capital to the Defendants in exchange for a promissory note instrument and in return the investors are promised a rate of return as a result of Defendants' efforts. As such, the promissory notes or investment contracts offered and sold by Defendants, are securities within the meaning of CSL section 25109.

2. Defendants "offered and sold" the securities

CSL section 25017 defines the terms "sale" or "sell" to include every contract of sale of, disposition of, contract to sell, a security or interest in a security for value. (Corp. Code, § 25017, subds. (a).) CSL section 25017 also defines the terms "offer" and "offer to sell" to include every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value. (Corp. Code, § 25017, subds. (b).)

In the instant case, Defendants offered securities to the general public through advertisements on Defendant's Web site and published in the Los Angeles Times and Napa Valley Marketplace Magazine. (See Exhibits 2, 3, 5 and 7.) Further, the Defendants have sold these securities to at least 53 California residents in return for valuable consideration. (See Exhibit 10.) As such, Defendants "offered" and "sold" securities within the meaning of CSL section 25017.

3. Defendants' securities transactions were "in this state"

As set forth in CSL section 25008, "[a]n offer or sale of a security is made in this state when an offer to sell is made in this state, or an offer to buy is accepted in this state, or (if both seller and buyer are domiciled in the state) the security is delivered to the purchaser in this state." (Corp. Code, § 25008, subd. (a).) Defendants are located in and conducted business within the State of California. Defendants' advertisements were published in the State of California, specifically in the Los Angeles

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Times and Napa Valley Marketplace Magazine. (See Exhibits 3, 5 and 7.) At least 53 investors who purchased securities from the Defendants are California residents – securities were offered and sold by the Defendants in this state and investor funds were received in this state. (See Exhibit 10.) The facts make it clear that Defendants offered and sold securities "in this state" within the meaning of section 25008.

4. Defendants' security transactions were "issuer transactions"

CSL section 25010 defines the term "issuer" to mean "any person who issues or proposes to issue any security." CSL section 25011 states that a "[n]on-issuer transaction means any transaction not directly or indirectly for the benefit of the issuer. A transaction is indirectly for the benefit of the issuer if any portion of the purchase price of any securities involved in the transaction will be received indirectly by the issuer." (Corp. Code, § 25011.) Therefore, CSL section 25010 read in conjunction with section 25011, defines an issuer transaction as any transaction that directly or indirectly benefits the person who issues or proposes to issue a security.

Here, as a result of selling securities, the Defendants received a benefit in the form of an inflow of capital from investors for the purported purpose of raising funds to purchase deeds of trust or "monthly interest notes" secured by real property in and around the Los Angeles area. (See Exhibit 1.) Therefore, Defendants offered or sold securities in an "issuer transaction" within the meaning of section 25008.

5. The securities offered and sold by Defendants are neither "qualified" nor "exempt"

As stated above, CSL section 25110 states that in order to offer or sell securities in the State of California such securities must be either qualified or exempt. The Commissioner has not issued a permit or other form of qualification authorizing the offer or sale of the securities referred herein in the State of California (See Exhibit 13). Therefore, Defendants offered and sold unqualified, non-exempt securities.

Additionally, the securities were not exempt from the requirements of section 25110. CSL section 25102, subdivision (f), provides for an exemption from the requirements of qualification under 25110. In order for the section 25102, subdivision (f), exemption to apply, an issuer must

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refrain from using general solicitations, such as newspaper and Internet advertisements, in the offer or sale of securities. (Corp. Code, § 25102, sud. (f)(4).) Further, CSL section 25613 provides that the burden of proving the applicability of an exemption is on the party claiming the exemption.

Defendants' offer and sale of securities by way of general solicitation, on Defendants' Web site, the Los Angeles Times and Napa Valley Marketplace Magazine, precludes Defendants from availing themselves of the exemption provided for in CSL section 25102, subdivision (f). As such, the securities offered and sold by Defendants were both unqualified and non-exempt.

C. DEFENDANTS MADE UNTRUE STATEMENTS OF AND/OR OMITTED TO STATE MATERIAL FACTS TO INVESTORS IN VIOLATION OF CSL SECTION 25401

CSL section 25401 states:

> It is unlawful for any person to offer or sell a security in this state . . . by means of any written or oral communication which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

(Corp. Code, § 25401.)

This section differs from common law fraud in that the party accused, in a civil or administrative action, of misrepresentation or omission need not be shown to have acted intentionally. (*Bowden v. Robinson* (1977) 67 Cal.App.3d 705, 714-715.) No showing is needed of investor reliance or causation. (*Lynch v. Cook* (1983) 148 Cal.App.3d 1072, 1087-1088, disapproved on other grounds in *In re marriage of Arceneaux*, 51 Cal.3d 1130, 1137-1138) The California Supreme Court in (*People v. Simon* (1995) 9 Cal.4th 493) stated:

> An enforcement action by the commissioner to enjoin future sales by means of false or misleading statements are designed to protect the public. (Citations omitted.) For that reason, it is irrelevant that the defendant knows that the statements or omissions are false or misleading. In light of the language of section 25401, it is reasonable to conclude that the Legislature did not intend to permit members of the public to be harmed by such sales simply because the offeror was unaware that his or her sales pitch was misleading.

(*People v. Simon, supra,* 9 Cal.4th at pp. 515-516.)

In interpreting section 25401, the court in *Insurance Underwriters Clearing House, Inc. v. Natomas Co.* ((1984) 184 Cal.App.3d 1520) held that "a fact is material if there is a substantial

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likelihood that, under all the circumstances, a reasonable investor would consider it important in reaching an investment decision." (*Id.* at p. 1526.)

Federal courts have held that failure to disclose a regulatory Desist and Refrain Order is a "material" omission. (*S.E.C. v. Paro* (1979) 468 F.Supp. 635, 646.; see also *S.E.C. v. Merchant Capital, LLC* (2007) 483 F.3d 747, 68 ["The existence of a state cease and desist order against identical instruments is clearly relevant to a reasonable investor, who is naturally interested in whether management is following the law in marketing the securities."].)

In this case, Defendants misrepresented to investors and potential investors that they hold "License #0009566." Defendants' Subpoena Duces Tecum responses demonstrate that Defendants do not hold license #0009566. (See Exhibit 9, specifically page DOC00084.) The inclusion of a license number on advertisements suggest a false sense of legitimacy to prospective investors.

Further, the Defendants failed to disclose to investors that they were the subjects of the December 2006 Order ordering Defendants to desist and refrain offering and selling unqualified, non-exempt securities in the State of California. (See Exhibit 12, specifically page DOC00185.) In accordance with federal case law, a reasonable investor would want to know that the Defendants are the subjects of the December 2006 Order for the same or similar activities in which the investor is going to invest in. In fact, investors did find the December 2006 Order material. (See Exhibit 12, specifically page DOC00185.) For these reasons, the Defendants have made misrepresentations of material fact and omitted to disclose material facts in violation of CSL section 25401.

D. DEFENDANTS VIOLATED THE DESIST AND REFRAIN ORDER ISSUED BY THE COMMISSIONER

On December 4, 2006, the Commissioner issued a Desist and Refrain Order against the defendants, Monumental Funding L.L.C., a California limited liability company, Monumental Corporation, a California corporation, Boone and Biddle, for offering or selling unqualified, non-exempt securities. The December 2006 Order explicitly orders defendants to stop offering and selling securities, unless exempt or qualified. (See Exhibit 6.)

Notwithstanding the issuance and personal service of the December 2006 Order, the

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Defendants continued to offer securities in the January 2007, February 2007, March 2007, April 2007, May 2007, and June 2007 issues of the Napa Valley Marketplace Magazine. (See Exhibits 7 and 8.) Further, despite issuance and personal service of the December 2006 Order Defendants sold securities to at least 36 investors residing in California, raising at least $2,565,982.00. (See Exhibits 10 & 12.) Therefore, the Defendants have violated the December 2006 Order and should be enjoined from further violations of said order.

E. THE POTENTIAL DANGER TO THE PUBLIC JUSTIFIES THE EX PARTE ISSUANCE OF A TEMPORARY RESTRAINING ORDER

One of the Legislature's main purposes in enacting the CSL is to protect the public against the imposition of unsubstantial, unlawful and fraudulent investment schemes and the securities based thereon, (*People v. Syde* (1951) 37 Cal.2d 765, 768), and to promote full and fair disclosure of all information necessary to make informed and intelligent investment decisions. (*People v. Park*, (1978) 87 Cal.App.3d 550, 565.)

CSL section 25530, subdivision (a), in fact, authorizes the Commissioner to bring an action against any person who has violated any provision of the CSL or any rule or order issued thereunder. Moreover, injunctive relief may be granted to enforce compliance with the law. (Corp. Code, § 25530, subd. a.)

If the Defendants are allowed to continue to deliberately ignore the December 2006 Order and continue to offer and sell securities, the public is placed at an unreasonable risk. The Defendants' offer and sale of unqualified, non-exempt securities and misrepresentation and omission of material facts in connection with the offer and sale of securities is the risk of injury that the CSL was put in place to guard against.

The Court has the power to grant the relief prayed for, and protection of the uninformed public from further action by the Defendants makes granting said relief an immediate necessity to prevent more investors from being harmed. Therefore, an immediate ex parte injunction is proper, necessary and should be granted.

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IV. CONCLUSION

The evidence filed herein demonstrates that the Defendants, Monumental Funding L.L.C., a California limited liability company, Monumental Funding Corporation, a California corporation, Jermaine D. Boone, an individual, William E. Biddle III, an individual, and Does 1 through 10 have violated the California Corporate Securities Law of 1968 (California Corporations Code, section 25100 et seq.), by offering and selling unqualified, non-exempt securities, by misrepresenting material facts in connection with the offer and sale of securities, and by omitting to state material facts, namely the existence of the December 4, 2006, Desist and Refrain Order issued by the Commissioner. The public is at risk as long as the Defendants continue to entice them with the promise of easy money.

Based on these Points and Authorities, Declarations and exhibits filed herewith, it is respectfully requested that the Court issue a temporary restraining order enjoining the Defendants from (1) violating California Corporations Code section 25110, (2) violating California Corporations Code section 25401, (3) violating the Desist and Refrain Orders issued by the Commissioner, (4) removing, destroying, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, books, records, documents, correspondence, brochures, manuals, or other documents of any kind in the possession, custody or control of the Defendants, including but not limited to those pertaining to the above referenced facts, (5) withdrawing from any bank account or disposing of any real or personal property in their possession, custody or control, and (6) to issue an Order to Show Cause regarding the issuance of a preliminary injunction.

Dated: July 19, 2007

PRESTON DuFAUCHARD
California Corporations Commissioner

By: _____
ALEX CALERO
Corporations Counsel
Attorney for the People of California

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