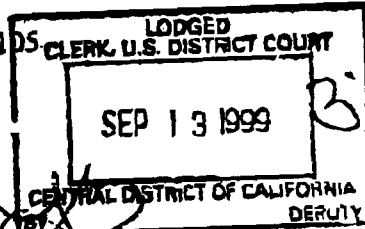


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WESTERN DIVISION

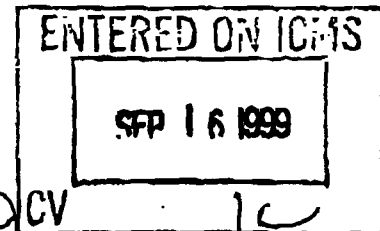
15 CHUCK QUACKENBUSH, as Commissioner  
16 of Insurance for the State of California and as  
17 conservator, liquidator, and rehabilitator of  
18 EXECUTIVE LIFE INSURANCE COMPANY,  
19 Plaintiff,

18 v.

19 ALTUS FINANCE S.A., a corporation  
20 organized under French Law; CDR  
21 ENTERPRISES, a corporation organized under  
22 French law; CONSORTIUM DE REALI-  
23 SATION S.A., a corporation organized under  
24 French law; MAAF ASSURANCES, a mutual  
25 insurer organized under French law; MAAF  
26 VIE S.A., a corporation organized under French  
27 law; OMNIUM GENÈVE S.A., a corporation  
28 organized under Swiss law; CREDIT  
LYONNAIS S.A., a corporation organized  
under French law; JEAN-CLAUDE SEYS, an  
individual; JEAN-FRANCOIS HENIN, an  
individual; JEAN IRIGOIN, an individual,  
Defendants.

CASE NO. 99-02829 AHM(CWX)

STIPULATION TO ALLOW FILING OF  
SECOND AMENDED COMPLAINT  
(Rule 15, Fed. R. Civ. Pro.)

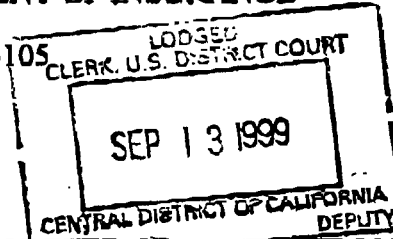


STIPULATION TO ALLOW FILING OF SECOND AMENDED COMPLAINT

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11 UNITED STATES DISTRICT COURT  
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
13 WESTERN DIVISION

14 CHUCK QUACKENBUSH, as Commissioner  
of Insurance for the State of California and as  
15 conservator, liquidator, and rehabilitator of  
EXECUTIVE LIFE INSURANCE  
16 COMPANY,

17 Plaintiff,

18 V.

19 ALTUS FINANCE S.A., a corporation  
organized under French Law; CDR  
20 ENTERPRISES, a corporation organized  
under French law; CONSORTIUM DE  
21 REALISATION S.A., a corporation organized  
under French law; MAAF ASSURANCES, a  
22 mutual insurer organized under French law;  
MAAF VIE S.A., a corporation organized  
23 under French law; OMNIUM GENEVE S.A.,  
a corporation organized under Swiss law;  
24 CREDIT LYONNAIS S.A., a corporation  
organized under French law; JEAN-CLAUDE  
25 SEYS, an individual; JEAN-FRANCOIS  
HENIN, an individual; JEAN IRIGOIN, an  
26 individual,

27 Defendants.

CASE NO 99-02829 AHM(CWX)

15 SECOND AMENDED COMPLAINT FOR  
16 FRAUD, MISREPRESENTATION,  
DECEIT, CONSPIRACY, UNJUST  
17 ENRICHMENT, INVOLUNTARY TRUST,  
MONEY HAD AND RECEIVED,  
18 CONVERSION AND UNFAIR  
COMPETITION

20 DEMAND FOR JURY TRIAL

1 COMES NOW plaintiff Chuck Quackenbush, as Insurance Commissioner of the State of  
2 California and as Conservator, Liquidator, and Rehabilitator of Executive Life Insurance  
3 Company, and alleges as follows:

4 **JURISDICTION**

5 1. On or about March 18, 1999, Defendants Credit Lyonnais S.A. and CDR  
6 Enterprises removed this action from Los Angeles County Superior Court (where it was filed as  
7 Civil Action No. BC205570). Defendants Credit Lyonnais S.A. and CDR Enterprises purport to  
8 invoke the court's jurisdiction under the provisions of 28 U.S.C. § 1330(a) and 28 U.S.C.  
9 § 1441(d) on the claim that it is a civil action against a foreign state as that term is defined by the  
10 Foreign Sovereign Immunities Act. Defendants Credit Lyonnais S.A. and CDR Enterprises  
11 further invoke this Court's jurisdiction under 28 U.S.C. § 1332 and 28 U.S.C. § 1441(b) on the  
12 grounds that complete diversity of citizenship exists among the parties and the matter in  
13 controversy exceeds the sum of \$75,000, exclusive of interest and costs.

14 **PARTIES**

15 2. Plaintiff Chuck Quackenbush is the Insurance Commissioner of the State of  
16 California. He is filing this lawsuit in his capacity as the Insurance Commissioner for the State  
17 of California and as Conservator, Liquidator, and Rehabilitator of the Estate of Executive Life  
18 Insurance Company ("ELIC").

19 3. Defendant Altus Finance S.A. ("Altus") is a corporation organized under French  
20 law. Altus changed its name to CDR Enterprises in or about January 1996 and is therefore the  
21 predecessor, predecessor in interest, and alter ego of defendant CDR Enterprises. At all times  
22 material hereto, Altus was owned and controlled by defendant Credit Lyonnais. At all times  
23 material hereto Altus was engaged in doing business in the United States and the State of  
24 California.

25 4. Defendant CDR Enterprises is a corporation organized under French law. CDR  
26 Enterprises is a successor, successor in interest and alter ego of Altus.

27 5. CDR Enterprises is wholly owned by Defendant Consortium de Realisation S.A.,  
28 a corporation organized under French law, and successor in interest to Credit Lyonnais.

1 Defendants CDR Enterprises and Consortium de Realisation S.A. (collectively referred to as  
2 "CDR") are responsible for all debts and liabilities of Altus and Credit Lyonnais arising in  
3 connection with the acts complained of herein as successors in interest.

4 6. Defendant MAAF Assurances is a mutual insurance company organized under  
5 French law, sometimes known as La Société Mutuelle Assurance Artisanale De France  
6 (collectively, "MAAF").

7 7. Defendant MAAF Vie S.A. is a stock life insurance company organized under  
8 French law, sometimes known as La Société Mutuelle Assurance Artisanale de France Vie S.A  
9 (Collectively, "MAAF Vie"). It is wholly owned by defendant MAAF.

10 8. Defendant Omnium Geneve S.A. ("Omnium Geneve") is a holding company  
11 organized under Swiss law.

12 9. Defendant Credit Lyonnais S.A. ("Credit Lyonnais") is a corporation organized  
13 under French law and conducting commercial activities in the United States and in the State of  
14 California. Credit Lyonnais is and was an alter ego of Altus and CDR.

15 10. Defendant Jean-Claude Seys is, and at all times relevant hereto was, an officer of  
16 MAAF and MAAF Vie and was responsible for the general management of both entities.

17 11. At all times relevant hereto, defendant Jean-Francois Henin was the chief  
18 executive officer of Altus.

19 12. At all times relevant hereto, defendant Jean Irigoien was an officer and/or director  
20 of MAAF and MAAF Vie.

21 13. Artemis S.A. ("Artemis") is a corporation organized under French law. At all  
22 times material hereto, Artemis was owned, in part, by defendant Altus.

23 14. Aurora National Life Assurance Company ("Aurora") is a stock life insurance  
24 company organized under the laws of the State of California.

25 15. New California Life Holdings, Inc ("New California") is a corporation organized  
26 under the laws of the State of Delaware. New California owns all the outstanding stock of  
27 Aurora.

28

1           16.     Jean-Yves Harberer ("Harberer") was the president of defendant Credit Lyonnais  
2 during the period from 1988 through 1993. Plaintiff is informed and believes and thereupon  
3 alleges that Harberer was also the president of defendant Altus during the period 1990 through  
4 1993. Through Harberer, defendant Credit Lyonnais is imputed to have knowledge of the acts  
5 and omissions of defendant Altus in connection with the actions and transactions referred to  
6 herein. Defendant Altus is also therefore imputed to have knowledge of the acts and omissions  
7 of defendant Credit Lyonnais in connection with the actions and transactions referred to herein.

8           17.     Defendant Credit Lyonnais, at all times relevant hereto, held a controlling  
9 majority of the shares of stock of defendant Altus. By January 1993, defendant Credit Lyonnais  
10 held at least 99.9% of the total shares issued by Altus. At all times relevant hereto, there existed  
11 a unity of interest between Credit Lyonnais and Altus such that any individuality and  
12 separateness between said defendants ceased and defendant Credit Lyonnais was the alter ego of  
13 defendant Altus. Credit Lyonnais placed its employees on Altus' board of directors and Credit  
14 Lyonnais' employees could control and dictate the operations of Altus. Plaintiff is informed and  
15 believes and thereupon alleges that Credit Lyonnais' employees interfered with the operations of  
16 Altus, and that Credit Lyonnais caused Altus to declare dividends equal to its net profits such  
17 that Altus was left with capital insufficient for the business it conducted.

18           18.     Adherence to the fiction of the separate existence of Altus as an entity distinct  
19 from defendant Credit Lyonnais would permit an abuse of the corporate privilege and would  
20 sanction the fraud of Credit Lyonnais and Altus, as described in more detail herein, and promote  
21 injustice in that Credit Lyonnais used defendant Altus to defraud plaintiff.

22           19.     Plaintiff is informed and believes and thereupon alleges that the defendants  
23 entered into a joint venture to fraudulently and wrongfully obtain the assets of ELIC from the  
24 Commissioner, as described below, such that they had a community of interest in this  
25 undertaking and agreed to share the profits derived from such scheme, and therefore each  
26 defendant is responsible for the acts and omissions of each of the other defendants.

27           20.     Plaintiff is informed and believes, and on that basis alleges, that all the acts and  
28 omissions described in this Second Amended Complaint alleged to have been done by any

1 defendant or defendants were duly performed by, and attributable to, all defendants, each acting  
2 as agent, as employee, alter ego and/or under the direction and control of the others, and that said  
3 acts and omissions were within the scope of said agency, employment, alter ego direction, and/or  
4 control. Whenever and wherever reference is made in this complaint to any acts of defendants,  
5 such allegations and references shall also be deemed to mean the acts of each defendant acting  
6 individually, jointly or severally.

7 **STATEMENT OF FACTS**

8 21. On April 11, 1991, plaintiff's predecessor, John Garamendi, was appointed  
9 conservator of ELIC pursuant to orders issued by the Los Angeles County Superior Court ("the  
10 Rehabilitation Court").

11 22. Plaintiff is informed and believes and on that basis alleges that Defendants Altus  
12 and Credit Lyonnais were aware of ELIC's precarious financial condition prior to April 11,  
13 1991, and further, that they conceived and adopted a joint plan of action for the purpose of  
14 acquiring ELIC's valuable portfolio of high yield bonds prior to that date.

15 23. In May 1991, Commissioner Garamendi announced that he intended to negotiate  
16 with Altus in an effort to develop a "definitive agreement" to restructure and rehabilitate ELIC.  
17 The Commissioner also announced that any such agreement would have to comply with various  
18 criteria that he had established and it would be subject to a competitive bidding process. One of  
19 the criteria announced by the Commissioner and required of all potential bidders was experience  
20 in operating a life insurance company.

21 24. Neither Altus nor Credit Lyonnais could hold itself out as having adequate  
22 experience in operating a life insurance company. As a result, Altus and Credit Lyonnais  
23 understood that they would need to partner with an insurance company to make a joint proposal  
24 if they were to be successful in acquiring the ELIC high yield bond portfolio. In addition, Altus  
25 and Credit Lyonnais were aware that each of them was prohibited from acquiring the insurance  
26 business of ELIC itself. Insurance Code section 699.5 provided that the Commissioner, subject  
27 to certain exceptions, could not issue a certificate of authority to operate an insurance business in  
28 the State of California to an insurer that was owned, operated, or controlled, directly or

1 indirectly, by a foreign government or an agency or subdivision thereof. In addition, the Bank  
2 Holding Company Act, 12 U.S.C. Section 1841 *et seq.*, provided, *inter alia*, that a bank holding  
3 company could not, directly or indirectly, have an ownership interest in excess of 25% in any  
4 company that was not a bank or other authorized business. Altus and Credit Lyonnais further  
5 understood that the above statutes would require that any insurance company they partnered with  
6 in a joint bid would have to be genuinely independent of Altus and Credit Lyonnais, and could  
7 not act as a mere front for those two entities.

8       25. Commencing in or about May 1991, Altus and Credit Lyonnais sought  
9 unsuccessfully to enlist the participation of various insurance companies in their plan to acquire  
10 control of the ELIC's bond portfolio and insurance business. In July 1991, as the deadline for  
11 negotiating a definitive agreement with the Commissioner drew near, Altus and Credit Lyonnais  
12 identified MAAF, a French automobile insurer, as a partner in their bidding syndicate.

13       26. On or about August 7, 1991, Commissioner Garamendi announced that he had  
14 signed a "definitive agreement" to purchase and rehabilitate ELIC with Altus and what he  
15 described as "a French investment group led by Paris-based MAAF, one of the largest mutual  
16 insurance companies in France" (referred to herein as the "MAAF syndicate"). The  
17 Commissioner announced that under the terms of the Altus/MAAF proposal, Altus would  
18 purchase the ELIC high yield bond portfolio. The insurance business of ELIC, including the  
19 insurance contracts held by ELIC's policyholders, the proceeds from the sale of the high yield  
20 bond portfolio to Altus, and other assets of ELIC, would be transferred to a new insurance  
21 company (Aurora), the shares of which would be held by a holding company (New California)  
22 which would in turn be held by members of the MAAF syndicate. Thus, in essence, Altus would  
23 buy the bonds and the MAAF syndicate would acquire the ELIC insurance business in  
24 rehabilitation.

25       27. Meanwhile, defendants Altus, Credit Lyonnais, MAAF, MAAF Vie, Omnium  
26 Geneve, Henin, Seys and Irigoien entered into a secret conspiracy to obtain the ELIC assets from  
27 the Commissioner through fraud. In furtherance of said conspiracy, on or about August 6, 1991  
28 certain agreements were entered into between MAAF, on behalf of itself and MAAF Vie, and

1 Altus, which were amended and re-executed on or about November 15, 1991. Those agreements  
2 provided that MAAF would act as a front for Altus in acquiring the insurance business of ELIC.  
3 An agreement referred to as the "Forward Sale Contract" provides that MAAF agrees to sell all  
4 the shares it will obtain in New California to Altus, or Altus' designee, at a date in the future.  
5 The agreement is subject to an explicit secrecy provision which prevents any party from  
6 disclosing its terms to any and all third parties.

7 28. On the same date an agreement referred to as the "Management Agreement" was  
8 entered into between Altus and MAAF, on behalf of itself and MAAF Vie, which provides that  
9 while MAAF or MAAF Vie holds the New California shares, MAAF or MAAF Vie will exercise  
10 any rights it may have as shareholder only at the direction of Altus in order to implement Altus'  
11 strategy with respect to such holdings. MAAF and MAAF Vie are referred to in the Agreement  
12 as "temporary managers" of New California, while Altus is recognized as the true managing  
13 entity of New California. The Management Agreement recites that it is intended to relieve  
14 MAAF and MAAF Vie of all responsibility or liability in connection with the management of  
15 New California and Aurora, and to that end it provides that Altus will hold MAAF and MAAF  
16 Vie harmless against loss in connection with playing the fronting role. This agreement, like the  
17 Forward Sales Agreement, provides that it is to be kept secret from any and all third parties. The  
18 above Forward Sale Contract, Management Agreement, prior versions of such agreements, and  
19 various amendments thereto, are referred to collectively herein as the "*contrat de portage*," a  
20 French term referring to contracts which can be used to establish secret fronting relationships  
21 such as those reflected in the above agreements. On information and belief, a *contrat de portage*  
22 such as described above was also entered into between Altus and Omnium Geneve and between  
23 Altus and each of the other entities that were members of the MAAF syndicate at the time the  
24 Altus/MAAF proposal was submitted to the Commissioner for approval and at the time the  
25 syndicate obtained ownership of the ELIC assets.

26 29. The *contrats de portage* were intended to and did make it appear as if MAAF and  
27 the other members of the MAAF syndicate were legitimate, independent investors and  
28 participants in the bidding syndicate while secretly giving Altus and Credit Lyonnais total



1 ownership and control over ELIC's bond portfolio and insurance business. In reality, MAAF's  
2 participation, as well as that of the other syndicate members, was a sham designed to mislead the  
3 Commissioner, other potential bidders and the Rehabilitation Court. Credit Lyonnais was fully  
4 aware of these secret agreements and of the fraudulent manner in which they were to be used in  
5 the United States.

6 30. On various occasions commencing in or about August, 1991, and continuing for  
7 at least four years thereafter, defendants MAAF Vie, MAAF, and Omnium Geneve and their  
8 agents made statements of fact to the Commissioner and his agents in California, in  
9 communications over the telephone and by mail or other private or commercial carrier, in which  
10 those defendants stated that they were to be the true owners of the shares in New California,  
11 which, in turn, would be the sole shareholder of Aurora. Those defendants also misrepresented  
12 and failed to disclose that Altus and Credit Lyonnais would control all aspects of their ownership  
13 and management of New California and Aurora pursuant to the *secret contrats de partage*.

14 31. During the same period of time, Altus and Credit Lyonnais made similar  
15 statements of fact in communications to the Commissioner and his agents in California, over the  
16 telephone and by mail or other private or commercial carrier, in which they stated that Aurora  
17 would not be subject to ownership or control, directly or indirectly, by Altus or Credit Lyonnais  
18 or by any foreign government and that the members of the MAAF syndicate were not subject to  
19 such control.

20 32. For example, on or about September 17, 1991, David Harbaugh of Morgan,  
21 Lewis & Bockius, acting as the agent of defendants Altus, Credit Lyonnais, MAAF, MAAF Vie,  
22 and Omnium Geneve, submitted to the Commissioner, via U.S. mail or private or commercial  
23 carrier, documentation showing that MAAF Vie would own the largest share of Aurora. That  
24 documentation purported to describe all entities which would have a 10% or greater interest in  
25 Aurora. That documentation failed to disclose any of the secret agreements involving Altus and  
26 members of the MAAF syndicate which gave Altus and Credit Lyonnais effective ownership and  
27 control of Aurora and New California.

1           33.     On or about November 18, 1991, hearings to approve the Altus/MAAF bid began  
2 in the Rehabilitation Court. As a result of being misled by defendants' misrepresentations and  
3 omissions, the Commissioner supported the Altus/MAAF bid in the Rehabilitation Court.  
4 During the course of these hearings, defendants and their agents falsely represented to  
5 Commissioner, the parties and the Court that MAAF, MAAF Vie, Omnium Geneve and the other  
6 members of the "MAAF-led investor group" were independent investors whose interests in  
7 Aurora and New California were not owned or controlled in any way by Altus or Credit  
8 Lyonnais. These false statements were part of a deliberate and premeditated plan by Altus and  
9 Credit Lyonnais to obtain control of ELIC's bond portfolio and insurance business in violation of  
10 sections 699.5 and 1215.2 of the California Insurance Code and other provisions of California  
11 and federal law.

12           34.     On or about December 11, 1991, defendants MAAF, MAAF Vie, Omnium  
13 Geneve, Credit Lyonnais and Altus, through their agents, submitted via U.S. mail or private or  
14 commercial carrier an Amended Application for Organizational Permit to the Commissioner and  
15 the California Department of Insurance purporting to describe the ownership of Aurora and New  
16 California. Defendants' communication admitted that Altus was controlled by Credit Lyonnais  
17 and CL Thomson, both of which are owned and controlled by the French government.  
18 Defendants falsely stated with respect to Altus, Credit Lyonnais and CL Thomson that "none of  
19 these entities will own any interest in Aurora or its parent, New California Life Holdings, Inc."

20           35.     On or about December 13, 1991, Morgan, Lewis & Bockius, acting as the agent  
21 for defendants Altus, Credit Lyonnais, MAAF, MAAF Vie and Omnium Geneve, submitted to  
22 plaintiff's agents, via U.S. mail or private or commercial carrier, declarations by defendants Seys  
23 and Irigoien, made on behalf of MAAF and MAAF Vie, respectively, in which each states that no  
24 government entity directs or has the power to direct the management or policies of MAAF,  
25 MAAF Vie or any persons owning directly or indirectly any share or other interest in MAAF and  
26 MAAF Vie by means of any contract. These documents failed to disclose the secret *contrat de*  
27 *portage* or the true relationship among Credit Lyonnais, Altus and the members of the MAAF  
28 syndicate.

1           36.     On or about December 24, 1991, Morgan, Lewis & Bockius, acting as the agent  
2 for defendants Altus, Credit Lyonnais, MAAF, MAAF Vie and Omnium Geneve, submitted to  
3 the Commissioner, via U.S. mail or private or commercial carrier, a declaration by defendant  
4 Irigoin, made on behalf of MAAF Vie in which defendant Irigoin again states that no  
5 government entity directs or has the power to direct the management or policies of MAAF,  
6 MAAF Vie or any persons owning directly or indirectly any share or other interest in MAAF and  
7 MAAF Vie by means of any contract. Again, defendant Irigoin, on behalf of defendant MAAF  
8 Vie, failed to disclose the secret *contrat de portage* or the true relationship among Credit  
9 Lyonnais and the members of the MAAF Syndicate.

10           37     Based in material part on the above misrepresentations and omissions, the  
11 Commissioner sought approval by the Rehabilitation Court for the Altus/MAAF bid and on  
12 December 26, 1991 the Rehabilitation Court approved the Altus/MAAF bid. Had the secret  
13 *contrat de portage* and the true facts concerning Altus' and Credit Lyonnais' control over MAAF  
14 and the other members of the Altus/MAAF bidding syndicate been disclosed, neither the  
15 Commissioner nor the Court would have approved the Altus/MAAF bid

16           38.     In February and March of 1992, defendants Altus, Credit Lyonnais, MAAF,  
17 MAAF Vie, and Omnium Geneve made additional misrepresentations to the Commissioner. For  
18 example, on or about February 12, 1992, defendants Altus, Credit Lyonnais, MAAF, MAAF Vie  
19 and Omnium Geneve caused additional documents to be transmitted to the Commissioner via  
20 U.S. mail or private or commercial carrier by their agent at Morgan, Lewis & Bockius purporting  
21 to disclose all Altus' and Credit Lyonnais' interests in MAAF, Omnium Geneve, and their  
22 affiliates. Those documents again failed to disclose the existence of the secret agreements  
23 involving Altus, MAAF, MAAF Vie and Omnium Geneve which gave Altus and Credit  
24 Lyonnais effective ownership and control of Aurora and New California.

25           39.     On February 18, 1992 the Rehabilitation Court issued an order approving transfer  
26 of the bond portfolio to Altus pursuant to the Commissioner's application. On or about March 3,  
27 1992, with the approval of the Rehabilitation Court, the Commissioner transferred ownership of  
28 the majority of ELIC's high yield bond portfolio to Altus. But for the deceit and fraudulent

1 statements made by Credit Lyonnais, Altus, MAAF, MAAF Vie, Omnium Geneve and their  
2 agents and the other acts and omissions complained of herein, neither the Commissioner nor the  
3 Court would have allowed ELIC's bond portfolio to be sold to Altus. Had the Commissioner or  
4 the Rehabilitation Court been aware of the secret *contrat de portage* agreements or the true  
5 relationships among Credit Lyonnais, Altus, and the MAAF syndicate, Altus and Credit  
6 Lyonnais would have been prevented from obtaining control over the bond portfolio. Had the  
7 bond portfolio not been sold to Altus in March 1992, the portfolio would have been managed by  
8 the Commissioner, transferred to other bidders, or otherwise disposed of in a manner that would  
9 have resulted in substantially greater profits to the ELIC estate and a higher recovery by the  
10 ELIC estate and the policyholders.

11 40. On or about March 11, 1992, Morgan, Lewis & Bockius, as agent for defendants  
12 Credit Lyonnais, Altus, MAAF, MAAF Vie and Omnium Geneve submitted to plaintiff's agents  
13 via U.S. mail or private or commercial carrier a document purporting to disclose all business  
14 dealings and arrangements between Altus or Credit Lyonnais and MAAF or MAAF Vie. The  
15 document failed to disclose the existence of the secret agreements involving Altus, MAAF and  
16 MAAF Vie which gave Altus and Credit Lyonnais effective ownership and control of Aurora  
17 and New California.

18 41. On or about March 24, 1992, Jacques Thunnissen, a representative for defendant  
19 Omnium Geneve, executed a document under penalty of perjury purporting to disclose all  
20 business dealings and arrangements between Altus or Credit Lyonnais and Omnium Geneve.  
21 The document failed to disclose the existence of the secret agreements involving Altus and  
22 Omnium Geneve which gave Altus and Credit Lyonnais effective ownership and control of  
23 Aurora and New California.

24 42. On or about March 26, 1992, Morgan Lewis & Bockius, acting as the agent of  
25 Altus, Credit Lyonnais, MAAF, MAAF Vie, and Omnium Geneve, sent statements via U.S. mail  
26 or private or commercial carrier to the Commissioner concerning Altus/Credit Lyonnais'  
27 ownership interests in MAAF Vie and MAAF. In these statements, executed under penalty of  
28 perjury, defendants' agents stated that "[t]here are no contracts or similar arrangements presently

1 in effect pursuant to which Altus/Credit Lyonnais (or affiliates) exert or can exert directly or  
2 indirectly, control over the management or policies of MAAF, MAAF Vie or their affiliates.”  
3 These statements were false in that they failed to disclose the existence of the secret agreements  
4 involving Altus, MAAF and MAAF Vie which gave Altus and Credit Lyonnais effective  
5 ownership and control of Aurora and New California.

6 43. On or about April 7, 1992, Morgan Lewis & Bockius, acting as the agent of Altus,  
7 Credit Lyonnais, MAAF, MAAF Vie, and Omnium Geneve, again wrote to the Commissioner  
8 stating that “There is no ‘side agreement’ or understanding that Aurora will be purchasing assets  
9 from, or selling assets to, Altus/Credit Lyonnais in the future . . . . We would also note that  
10 Altus/Credit Lyonnais will not be ‘affiliated’ with Aurora, Holdco [New California] or any of the  
11 Investor Group’s members.” That communication, sent via the U.S. mail or a private or  
12 commercial carrier, failed to disclose the existence of the secret agreements involving Altus and  
13 members of the MAAF syndicate which gave Altus and Credit Lyonnais effective ownership and  
14 control of Aurora and New California.

15 44. Based in material part on the above misrepresentations and omissions, the  
16 Commissioner sought approval by the Rehabilitation Court of the proposed rehabilitation plan  
17 and the transfer of ELIC’s insurance business from the Commissioner to New California and the  
18 MAAF syndicate and on or about July 31, 1992, the Court granted such approval. Had the secret  
19 *contrats de portage* and the true facts concerning Altus’ and Credit Lyonnais’ roles and their  
20 ownership interests and their control over the MAAF syndicate been disclosed to or known by  
21 the Commissioner, neither the Commissioner nor the Court would have approved the transfer of  
22 the insurance business to the MAAF syndicate.

23 45. On or about August 21, 1992 and on several occasions thereafter, including but  
24 not limited to August 28, 1992 and October 6, 1992, Morgan, Lewis & Bockius, acting as the  
25 agent of Altus, Credit Lyonnais, MAAF, MAAF Vie and Omnium Geneve submitted an  
26 Application to Amend Organizational Permit purporting to disclose all the parties that would  
27 own and/or control New California, the parent of the applicant, Aurora, and made other false  
28 representations in connection with said application. Those transmissions, sent via the U.S. mail

1 or a private or commercial carrier, failed to disclose the existence of the secret agreements  
2 involving Altus and members of the MAAF syndicate which gave Altus and Credit Lyonnais  
3 effective ownership and control of Aurora and New California.

4 46. On or about December 16, 1992, in reliance upon the false applications that the  
5 defendants filed with the Department of Insurance, and the fraudulent statements made to the  
6 Commissioner, the Department of Insurance issued a Certificate of Authority to operate an  
7 insurance company in California to Aurora. But for said false applications and statements, the  
8 Commissioner would not have issued the Certificate of Authority to Aurora.

9 47. On or about March 23, 1993, the Rehabilitation Court's July 31, 1992 order was  
10 vacated by the California Court of Appeal on the ground that the proposed rehabilitation plan  
11 was illegal. The case was thereupon remanded to the Rehabilitation Court for further  
12 proceedings.

13 48. In May 1993, again acting in reliance upon the misrepresentations and omissions  
14 described above, the Commissioner sought judicial approval for a revised plan of rehabilitation  
15 that would transfer ownership of ELIC's insurance business from the Commissioner to New  
16 California and the MAAF syndicate.

17 49. On or about May 7, 1993, Aurora, acting as the agent for defendants Credit  
18 Lyonnais, Altus, MAAF, MAAF Vie and Omnium Geneve, submitted to the Rehabilitation  
19 Court the Opposition of Aurora and Joinder in Commissioner's Opposition to Motion for Order  
20 Directing Compliance or Proof of Compliance by Commissioner with Federal Bank Holding  
21 Company Act and California Insurance Code which states that Altus "has no ownership interest  
22 in New California, no interest in the profits of New California, and no right to control the  
23 operation or management of Aurora." Such statement was false and misleading at the time it  
24 was made and was designed to induce the Commissioner to support the revised rehabilitation  
25 plan and the Rehabilitation Court to approve said plan. This statement was made in a deliberate  
26 attempt to deceive the Commissioner, the Rehabilitation Court and the parties to the proceedings  
27 concerning the nature and extent of Altus' and Credit Lyonnais' ownership interests in New  
28

1 California and to mask their deliberate and premeditated violations of the California Insurance  
2 Code and federal banking laws which prohibited any such ownership or control.

3 50. In reliance upon these and other false statements, pleadings, documents and  
4 applications made, submitted or filed by Altus, MAAF, MAAF Vie, Omnium Geneve, Credit  
5 Lyonnais and/or their agents, the Commissioner sought approval of the modified rehabilitation  
6 plan and on or about August 13, 1993, the Rehabilitation Court approved said modified  
7 rehabilitation plan. That order and the subsequent sale of ELIC's insurance business to New  
8 California and the MAAF syndicate were affirmed by the California Court of Appeal in or about  
9 February 1995.

10 51. But for the deceit and fraudulent statements made by Credit Lyonnais Altus,  
11 MAAF, MAAF Vie, Omnium Geneve and their agents and other acts and omissions complained  
12 of herein, neither the Commissioner nor the Rehabilitation Court would have allowed ELIC's  
13 insurance business to be sold to New California and the MAAF syndicate. Had the  
14 Commissioner or the Rehabilitation Court been aware of the secret *contrat de portage*  
15 agreements and the true relationship among Credit Lyonnais, Altus and the MAAF syndicate,  
16 defendants would have been prevented from obtaining control over ELIC's insurance business.  
17 Had ELIC's insurance business not been sold to the MAAF syndicate, the assets would have  
18 been managed by the Commissioner, transferred to other bidders or otherwise disposed of in a  
19 manner that would have resulted in profits to the ELIC estate and a higher return to the ELIC  
20 estate and policyholders.

21 52. As a result of the fraud perpetrated by the defendants, the plaintiff parted with an  
22 opportunity to sell ELIC's bonds and insurance business to other investors under a court  
23 approved rehabilitation plan that would have finally resolved many of the claims and disputes  
24 concerning the rights of creditors against the ELIC estate. Instead, the value of the transaction to  
25 the Commissioner has been substantially reduced by the risks associated with litigation  
26 commenced by parties other than the Commissioner based on the defendants' fraudulent conduct  
27 and the lack of finality associated with such litigation.

1           53.     On or about October 13, 1993, Morgan, Lewis & Bockius, acting as agent for  
2 defendants of Altus, Credit Lyonnais, MAAF, MAAF Vie and Omnium Geneve submitted an  
3 application to the Department of Insurance requesting approval of the transfer of stock in New  
4 California held by S. A. Chauray Valeurs to MAAF Vie. In such application, Morgan, Lewis &  
5 Bockius, acting as agent for said defendants, stated that the transfer of shares from S. A. Chauray  
6 Valeurs to MAAF Vie should be of no consequence because both S. A. Chauray Valeurs and  
7 MAAF Vie were both owned by MAAF. However, in the application, sent via the U.S. mail or a  
8 private or commercial carrier, Morgan, Lewis & Bockius, acting as agent for said defendants,  
9 failed to disclose the existence of the secret agreements involving Altus and members of the  
10 MAAF syndicate which gave Altus and Credit Lyonnais effective ownership and control of  
11 Aurora and New California.

12           54.     In reliance upon these false submissions and representations, the Commissioner  
13 approved the transfer of stock in New California from S.A. Chauray Valeurs to MAAF Vie.

14           55.     But for these false submissions and representations and the defendants' failure to  
15 disclose the existence and terms of the *contrat de portage*, the Commissioner would not have  
16 approved the transfer of stock in New California from S.A. Chauray Valeurs to MAAF Vie.

17           56.     In or about March 1994, Artemis, acting as agent for defendants Altus, Credit  
18 Lyonnais, MAAF, MAAF Vie and Omnium Geneve began the process of seeking approval from  
19 the Commissioner for the transfer of stock held by defendant Omnium Geneve and a portion of  
20 the stock held by defendant MAAF Vie to Artemis. On or about July 6, 1994, the formal  
21 application for approval of such transfer was filed with the Commissioner by Artemis, acting as  
22 agent for said defendants. In these submissions to the Commissioner and the discussions held  
23 between the representatives of Artemis and the Commissioner, Artemis failed to disclose that  
24 Omnium Geneve and MAAF Vie were selling their interests in New California pursuant to the  
25 direction of defendants Altus and Credit Lyonnais and in accordance with the *contrat de portage*.

26           57.     In reliance upon these false submissions and representations by Artemis, acting as  
27 agent for defendants Altus, Credit Lyonnais, MAAF, MAAF Vie and Omnium Geneve, on or  
28



1 about August 25, 1994, the Commissioner approved the transfer of stock in New California from  
2 Omnium Geneve and MAAF Vie to Artemis.

3 58. But for these false submissions and representations by Artemis, acting as agent  
4 for defendants Altus, Credit Lyonnais, MAAF, MAAF Vie and Omnium Geneve, and the failure  
5 of Artemis to disclose the existence of the secret agreements involving Altus and members of the  
6 MAAF syndicate which gave Altus and Credit Lyonnais effective ownership and control of  
7 Aurora and New California, the Commissioner would not have approved the transfer of stock in  
8 New California from Omnium Geneve and MAAF Vie to Artemis.

9 59. On or after April 5, 1995, defendant Consortium de Realisation joined the  
10 conspiracy with defendants Credit Lyonnais, Altus, MAAF, MAAF Vie, Omnium Geneve,  
11 Henin, Seys and Irigoien by ratifying the acts of its co-conspirators by failing to disclose its co-  
12 conspirators' fraud and enjoying the benefits of said fraud.

13 60. In or about July 1995, Artemis, acting as agent for defendants Altus, Credit  
14 Lyonnais, MAAF and MAAF Vie sought the approval of the Commissioner for the transfer of  
15 stock held by defendant MAAF Vie to Artemis. In its submissions to the Commissioner and the  
16 discussions held between the representatives of Artemis and the Commissioner, Artemis failed to  
17 disclose that MAAF Vie was selling its interest in New California pursuant to the direction of  
18 defendant Altus and Credit Lyonnais and in accordance with the *contrat de portage*.

19 61. In reliance upon these false submissions and representations of Artemis, acting as  
20 agent for defendants Altus, Credit Lyonnais, MAAF and MAAF Vie on or about August 15,  
21 1995, the Commissioner approved the transfer of stock in New California from MAAF Vie to  
22 Artemis.

23 62. But for these false submissions and representations of Artemis, acting as agent for  
24 defendants Altus, Credit Lyonnais, MAAF and MAAF Vie and the failure of Artemis to disclose  
25 the existence of the secret agreements involving Altus and members of the MAAF syndicate  
26 which gave Altus and Credit Lyonnais effective ownership and control of Aurora and New  
27 California, the Commissioner would not have approved the transfer of stock in New California  
28 from MAAF Vie to Artemis.

1           63. Plaintiff is informed and believes and upon that basis alleges that beginning in  
2 1993 and continuing to the present, Aurora has declared dividends to New California derived  
3 from profits generated by ELIC's insurance business and paid principal and interest on  
4 certificates of contribution to New California. New California has, in turn, declared dividends in  
5 favor of its shareholders, including but not limited to Artemis and defendants MAAF Vie and  
6 Omnium Geneve, and such dividends were ultimately transferred to defendants MAAF, Altus,  
7 Credit Lyonnais, CDR Enterprises and Consortium de Realisation. New California has also  
8 made payments of principal and interest to Altus. On information and belief such dividends and  
9 repayments of principal and interest have been in excess of \$450 million.

10           64. Defendants Altus, MAAF, MAAF Vie and Omnium Geneve, as parties to the  
11 various agreements giving control of the New California shares to Altus and Credit Lyonnais,  
12 were aware of the falsity of the statements, applications and pleadings described in paragraphs  
13 22 through 63 above. Defendants made these statements and filed these applications and  
14 pleadings with the intent to deceive and defraud the Commissioner, the Rehabilitation Court and  
15 the parties to the Rehabilitation proceedings, to induce them to act in reliance on those  
16 statements, applications and pleadings in the manner described above, and with the expectation  
17 that they would so act.

18           65. Defendants Seys, Henin and Irigoien were aware of the existence of the secret  
19 agreements involving MAAF, MAAF Vie, Omnium Geneve and Altus and actively participated  
20 in the plan to deceive the Commissioner, other regulatory agencies and the Rehabilitation Court  
21 regarding the true role of MAAF, MAAF Vie and Omnium Geneve and the extent to which  
22 Altus and Credit Lyonnais owned and controlled New California. Their participation took the  
23 form of various acts, including but not limited to execution of the secret agreements and their  
24 submission of declarations to the Commissioner, including declarations pursuant to California  
25 Insurance Code, § 699.5, declarations setting forth their companies' relations with defendants  
26 Credit Lyonnais and Altus and their submission of other documents in connection with the  
27 applications and hearings described above.

1           66. Defendant Credit Lyonnais had actual or constructive knowledge of the acts and  
2 omissions described herein, and of the falsity of the statements, applications and pleadings  
3 described in this Second Amended Complaint.

4           67. On numerous other occasions preceding the sale of ELIC's bond portfolio to  
5 Altus and preceding the transfer of ELIC's insurance business to Aurora, and in furtherance of  
6 their scheme, defendants made representations by telephone, in person, and in writing sent via  
7 U.S. mail or a commercial or private carrier to the Board of Governors of the Federal Reserve  
8 System regarding the participation of Altus and Credit Lyonnais in the purchase, ownership and  
9 control of ELIC, Aurora and New California. For example, in a letter dated August 19, 1991, the  
10 law firm of Sullivan & Cromwell, as agent of Credit Lyonnais and Altus, represented to the  
11 General Counsel to the Board of Governors of the Federal Reserve System that, subsequent to  
12 the transfer of ELIC's insurance business to Aurora, Altus would have "no continuing role with  
13 [MAAF, MAAF Vie, and Omnium Geneve]." That letter further stated that "The Credit  
14 Lyonnais involvement in the Proposed Transaction consists of the Altus loan, the commitment  
15 letters, and Altus' purchase of the high-yield bonds. In particular, Credit Lyonnais, its affiliates  
16 and employees (the 'Credit Lyonnais Group') will own no common stock or other equity  
17 securities of either Newco [Aurora] or Holdco [New California] . . . The Credit Lyonnais Group  
18 will not control any aspect of the business of either Newco [Aurora] or Holdco [New  
19 California]."

20           68. The statements made by Credit Lyonnais and Altus set forth in paragraph 67 were  
21 made with the intent to deceive the Federal Reserve Board into withholding objection to the sale  
22 of ELIC's insurance business to defendants under United States banking laws which strictly limit  
23 a bank's ownership of an insurance company and were made in furtherance of defendants' illegal  
24 scheme to secretly gain control of ELIC's bond portfolio and its insurance operations.

25                           **VENUE AND IN PERSONAM JURISDICTION**

26           69. Plaintiff is informed and believes and on that basis alleges that each of the  
27 defendants engaged in conduct targeted at the state of California in perpetrating the above  
28 scheme. Each defendant traveled to California and was present in this state on one or more

1 occasions for the specific purpose of conducting activities in furtherance of the purposes of the  
2 deceptive and fraudulent scheme described herein or is the successor-in-interest to such a  
3 defendant. Alternatively each defendant created documents which were intended to be and were  
4 in fact submitted to the Commissioner and the Rehabilitation Court in California for the purpose  
5 of inducing the Commissioner and the Court to grant the approvals and take the actions  
6 described in the above paragraphs.

7 70. Various of the actions taken by the defendants and their agents in furtherance of  
8 their fraudulent and illegal purposes described herein took place in the City and County of Los  
9 Angeles. These actions included false statements made to Commissioner Garamendi and his  
10 staff, false regulatory filings made at the California Department of Insurance, and false pleadings  
11 and statements made in the Rehabilitation Court.

### 12 CONCEALMENT AND SUBSEQUENT HISTORY

13 71. At the time the acts and omissions described herein were committed, plaintiff was  
14 ignorant of the deceptive and fraudulent character of defendants' statements and the applications  
15 that were filed and believed each of them to be true.

16 72. The deceit of defendants alleged here was not discovered by plaintiff until  
17 January 1999, within three years before commencement of this action. Plaintiff could not, with  
18 reasonable diligence, have discovered the fraud and deceit of defendants until on or about this  
19 date because defendants actively concealed their misconduct from plaintiff and swore one  
20 another to secrecy concerning the *contrats de portage*, described in paragraphs 27-28, and other  
21 fraudulent and deceptive agreements that had been executed by and among themselves.

22 73. As a result of the affirmative efforts of the defendants to conceal the existence of  
23 the secret agreements between Altus and Omnium Geneve and among Altus, MAAF and MAAF  
24 Vie from plaintiff and as a result of the various statements to plaintiff by defendants and their  
25 agents that there were no contracts or agreements of any kind that gave Altus or Credit Lyonnais  
26 control over MAAF, MAAF Vie, Omnium Geneve, New California or Aurora, plaintiff was  
27 reasonably led to believe from August 1991 to January 1999 that no violation of law had  
28 occurred. During that period of time, plaintiff had neither actual nor constructive notice of the

1 acts complained of herein and any period of limitations that might otherwise have run during that  
2 period of time is subject to the doctrine of equitable tolling.

3 74. Since the Rehabilitation Court approved the Modified Plan of Reorganization on  
4 or about August 13, 1993, plaintiff and defendants have acted in accordance with the terms of  
5 said modified plan and plaintiff has approved the declaration of dividends from Aurora to New  
6 California. Plaintiff and former ELIC policyholders have therefore changed their positions in  
7 reliance upon the terms of the modified plan, including but not limited to making distributions to  
8 policyholders and creditors pursuant to the terms of the modified plan and approving the  
9 payment of said dividends.

10 75. Plaintiff seeks to recover the profits lost as a result of entering into the agreement  
11 to sell ELIC's bond portfolio and insurance business to the Altus/MAAF Group. Because of the  
12 passage of time, the parties' reliance upon the terms of the sale and the effect rescission would  
13 have on the policyholders, it would be impractical and impossible for plaintiff to return the  
14 consideration he received pursuant to said agreement. Defendants knew that plaintiff would act  
15 in reliance upon the agreement and change his position such that he could not return the  
16 consideration he received and thereafter rescind the agreement based upon defendants' fraud.  
17 Defendants will not be harmed by plaintiff's inability to rescind the agreement and return the  
18 consideration received since the court may adjust the equities between the parties to award the  
19 appropriate relief to plaintiff.

20 76. Moreover, as to defendants CDR Enterprises, Consortium de Realisation, MAAF,  
21 MAAF Vie, Omnium Geneve, Credit Lyonnais, Jean-Claude Seys, Henin and Irigoien, it is not  
22 necessary for plaintiff to seek rescission of the sale of ELIC's bond portfolio and insurance  
23 business to recover profits the plaintiff lost on such property, because these defendants were not  
24 parties to the agreement pursuant to which such property was sold.

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1 **FIRST CLAIM FOR RELIEF**

2 **Fraud and Deceit by Intentional Misrepresentation**

3 **(Against All Defendants)**

4 77. Plaintiff realleges and incorporates here the allegations contained in paragraphs 1  
5 through 76 above.

6 78. Every representation made by defendants, and each of them, as alleged in  
7 paragraphs 22 through 70, was false.

8 79. Said false representations were known by defendants, and each of them, to be  
9 false at the time they were made.

10 80. Said false representations were made with the intent to deceive and defraud the  
11 plaintiff, the Rehabilitation Court, ELIC's policyholders and the public.

12 81. Plaintiff actually and justifiably relied on said false representations and was  
13 damaged as a direct and proximate result of said false representations in an amount according to  
14 proof.

15 82. Said false representations were made with oppression, fraud, and malice.

16 **SECOND CLAIM FOR RELIEF**

17 **Fraud and Deceit by Negligent Misrepresentation**

18 **(Against All Defendants)**

19 83. Plaintiff realleges and incorporates here the allegations contained in paragraphs 1  
20 through 76, above.

21 84. Each and every representation made by defendants, and each of them, as alleged  
22 in paragraphs 22 through 70 was false.

23 85. At the time defendants, and each of them, made said false representations,  
24 defendants, and each of them, had no reasonable grounds for believing the statements to be true.

25 86. At the time defendants, and each of them, made said false representations,  
26 defendants, and each of them, implied that they had knowledge of the true facts but in fact were  
27 actually ignorant of the true facts.

1           87. Said false representations were made without regard for the truth of said  
2 representations and with the intent that the plaintiff, the Rehabilitation Court, ELIC's  
3 policyholders and the public rely on said representations.

4           88. Plaintiff actually and justifiably relied on said false representations.

5           89. Plaintiff was damaged by said false representations in an amount according to  
6 proof.

7   **THIRD CLAIM FOR RELIEF**

8   **Fraud and Deceit by Suppression of Facts**

9   **(Against All Defendants)**

10          90. Plaintiff realleges and incorporates here the allegations contained in paragraphs 1  
11 through 76, above.

12          91. Defendants, and each of them, as alleged in paragraphs 22 through 76, suppressed  
13 and actively concealed the true facts.

14          92. Defendants, and each of them, had exclusive knowledge of the true facts.

15          93. Said suppression and concealment was undertaken with the intent to deceive and  
16 defraud the plaintiff, the Rehabilitation Court, ELIC's policyholders and the public.

17          94. Plaintiff actually and justifiably relied on the state of facts they were given and on  
18 the absence of the facts that were suppressed and concealed.

19          95. Defendants and each of them were under a legal duty to disclose to plaintiff the  
20 facts that were suppressed.

21          96. Plaintiff was damaged by said false representations in an amount according to  
22 proof.

23          97. Said suppression and concealment were undertaken with oppression, fraud, and  
24 malice.  
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**FOURTH CLAIM FOR RELIEF**

**Constructive Fraud**

**(Against All Defendants)**

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2  
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4 98. Plaintiff realleges and incorporates here the allegations contained in paragraphs 1  
5 through 76, above.

6 99. Each and every representation made by defendants, and each of them, as alleged  
7 in paragraphs 22 through 70 was false and deceptive.

8 100. Said false and deceptive representations were known by defendants, and each of  
9 them, to be false at the time they were made.

10 101. Defendants, and each of them, gained advantage over plaintiff from the false and  
11 deceptive representations.

12 102. Defendants, and each of them, were in a special and confidential relationship to  
13 plaintiff.

14 103. Plaintiff actually and justifiably relied on said false and deceptive representations.

15 104. Plaintiff was damaged by said false and deceptive representations in an amount  
16 according to proof.

17 105. Said false and deceptive representations were made with oppression, fraud, and  
18 malice.

19 **FIFTH CLAIM FOR RELIEF**

20 **Fraud and Deceit based on Conspiracy**

21 **(Against All Defendants)**

22 106. Plaintiff realleges and incorporates here the allegations contained in paragraphs 1  
23 through 76 above.

24 107. Plaintiff is informed and believes that in or about 1991, defendants Credit  
25 Lyonnais, Altus, MAAF, MAAF Vie, Seys, Irigoien and Henin knowingly and willingly  
26 conspired and agreed among themselves to fraudulently and wrongfully obtain the ELIC assets  
27 from plaintiff.



1 **SIXTH CLAIM FOR RELIEF**

2 **For Involuntary Trust**

3 **(Against All Defendants)**

4 116. Plaintiff realleges and incorporates here the allegations contained in paragraphs 1  
5 through 115, above.

6 117. By means of the fraud, accident, mistake, undue influence, the violation of a trust  
7 or other wrongful acts alleged above, defendants, and each of them, acquired money and  
8 property, including specifically ELIC's bond portfolio and the proceeds of such bonds, and  
9 ELIC's insurance business and the profits and dividends generated by such insurance business  
10 and wrongfully detain said money and property such that they became involuntary trustees of  
11 such money and property for the benefit of plaintiff pursuant to California Civil Code sections  
12 2223 and 2224.

13 **SEVENTH CLAIM FOR RELIEF**

14 **Unjust Enrichment**

15 **(Against All Defendants)**

16 118. Plaintiff realleges and incorporates here the allegations contained in paragraphs 1  
17 through 117, above.

18 119. By means of the fraud and other wrongful acts alleged above, defendants, and  
19 each of them, acquired money and property, with knowledge of said fraudulent and wrongful  
20 acts, including specifically ELIC's bond portfolio and the proceeds of such bonds and ELIC's  
21 insurance business and the profits and dividends generated by such insurance business, such that  
22 defendants hold such profits and dividends in constructive trust for plaintiff and/or must make  
23 restitution to plaintiff in a sum sufficient to deprive defendants of all unjust enrichment derived  
24 from such sale, including but not limited to all proceeds and profits earned by defendants from  
25 the bond portfolio and all profits and dividends generated by the insurance business.

1 **EIGHTH CLAIM FOR RELIEF**

2 **Money Had and Received (Indebitus Assumpsit)**

3 **(Against All Defendants)**

4 120. Plaintiff realleges and incorporates here the allegations contained in paragraphs 1  
5 through 119 above.

6 121. In or about March 1992 and again in or about August 1993, defendants became  
7 indebted to plaintiff, in a sum to be proved at trial, for money had and received by defendants  
8 which in equity and good conscience belongs to plaintiff.

9 122. By virtue of the complaint, first amended complaint and this second amended  
10 complaint, plaintiff demanded payment from defendants.

11 123. No payment has been made by defendants to plaintiff, and there is now owing a  
12 sum to be proved at trial, with interest on said sum.

13 124. To the extent said debt arose more than two years prior to the commencement of  
14 this action, defendants fraudulently concealed their conduct and plaintiff was unable to discover  
15 such conduct, as more fully alleged in paragraphs 22 through 76, such that the filing of this claim  
16 is timely.

17 **NINTH CLAIM FOR RELIEF**

18 **Conversion**

19 **(Against All Defendants)**

20 125. Plaintiff realleges and incorporates here the allegations contained in paragraphs 1  
21 through 124, above.

22 126. At all times herein mentioned, and in particular, on or about March 1992, plaintiff  
23 was the rightful owner, and was entitled to the possession of the ELIC bonds.

24 127. At all times herein mentioned, and in particular, on or about September 1993,  
25 plaintiff was the rightful owner and was entitled to the possession of the ELIC insurance  
26 business.

1 128. In or about March 1992, the ELIC bond portfolio had a value to be proved at trial.  
2 In or about September 1993, ELIC's insurance business had a value in an amount to be proved at  
3 trial.

4 129. By means of misrepresentations and omissions made in and prior to March 1992,  
5 defendants fraudulently and wrongfully induced plaintiff to sell the ELIC bond portfolio and  
6 converted the same to their use. By means of misrepresentations and omissions made in and  
7 prior to September 1993, defendants fraudulently and wrongfully induced plaintiff to sell ELIC's  
8 insurance business and converted the same to their use.

9 130. By virtue of the complaint, first amended complaint and this second amended  
10 complaint, plaintiff demanded defendants to return the above-mentioned property but defendants  
11 failed and refused, and continue to fail and refuse, to return the property to plaintiff.

12 131. As a proximate result of defendants' conversion, plaintiff has been denied the  
13 ability to sell ELIC's assets to another qualified purchaser, all to plaintiff's damage in an amount  
14 to be proved at trial.

15 132. Since the time of the defendants' conversion of the above-mentioned property to  
16 their own use plaintiff has incurred costs, including but not limited to, costs to investigate said  
17 conversion and to resolve many claims and disputes concerning the rights of creditors against the  
18 ELIC estate, all to plaintiff's further damage in an amount to be proved at trial.

19 133. The defendants' acts alleged herein were oppressive, fraudulent and malicious.

20 134. To the extent said conversion occurred more than three years prior to the  
21 commencement of this action, defendants fraudulently concealed their conduct and plaintiff was  
22 unable to discover such conduct, as more fully alleged in paragraphs 22 through 76, such that the  
23 filing of this claim is timely.

24 **TENTH CLAIM FOR RELIEF**

25 **Violations of Unfair Competition Law**

26 **(Against All Defendants)**

27 135. Plaintiff realleges and incorporates here the allegations contained in paragraphs 1  
28 through 134, above.

1           136. In making said false representations, in said concealment and suppression of facts,  
2 and in the other practices alleged in paragraphs 22 through 134, defendants, and each of them,  
3 engaged in unlawful, fraudulent, and unfair business practices, in violation of California  
4 Business and Professions Code sections 17200 *et seq.*

5           137. Specifically, defendants, and each of them, committed acts of unfair competition  
6 by engaging in fraudulent business acts and acquired interests in money and property by means  
7 of unfair competition, as alleged in paragraphs 22 through 134. In addition, defendants, and each  
8 of them, committed acts of unfair competition and acquired interests in money and property by  
9 means of such unfair competition by engaging in unlawful acts, including but not limited to the  
10 following:

11           Defendants, and each of them, violated Insurance Code sections 699.5, 790.03,  
                  and 1215-1216.

12           Defendants, and each of them, violated California Code of Regulations, title 10,  
                  section 2683 *et seq.*

13           Defendants, and each of them, violated the Bank Holding Company Act,  
                  12 U.S.C. section 1843 *et seq.*

14           Defendants, and each of them, committed, aided or abetted perjury in violation of  
                  California Penal Code section 118 *et seq.*

15           Defendants, and each of them, violated 18 U.S.C. section 1341, prohibiting mail  
                  fraud.

16           Defendants, and each of them, violated 18 U.S.C. section 1343, prohibiting wire  
                  fraud.

17           138. In making said false representations, in said concealment and suppression of facts,  
18 and in the other practices alleged in paragraphs 22 through 134, defendants, and each of them,  
19 were, and currently are, engaged in unfair business practices, in violation of California Business  
20 and Professions Code section 17200 *et seq.*

21           139. In making said false representations, in said concealment and suppression of facts,  
22 and in the other practices alleged in paragraphs 22 through 134, defendants, and each of them,  
23 were, and currently are, engaged in fraudulent business practices, in violation of California  
24 Business and Professions Code section 17200 *et seq.*

25           140. To the extent said unfair competition may have occurred more than four years  
26 prior to the commencement of this action, defendants fraudulently concealed their conduct and  
27

1 plaintiff was unable to discover such conduct, as more fully alleged in paragraphs 22 through 76,  
2 such that the filing of this claim is timely.

3 141. To the extent the defendants' unfair competition constituted fraud, the plaintiff's  
4 claim did not accrue until he discovered the facts constituting the fraud, and the claim based on  
5 such unfair competition is timely.

6 **PRAYER FOR RELIEF**

7 **WHEREFORE**, plaintiff prays for judgment as follows:

8 1. On the first claim for relief, that this Court award compensatory damages,  
9 including but not limited to profits lost due to defendants' conduct and other consequential  
10 damages, in an amount according to proof and punitive damages in an amount appropriate to  
11 punish defendants, to deter others from engaging in such conduct, and to set an example of  
12 defendants.

13 2. On the second claim for relief, that this Court award compensatory damages,  
14 including but not limited to profits lost due to defendants' conduct and other consequential  
15 damages, in an amount according to proof.

16 3. On the third claim for relief, that this Court award compensatory damages,  
17 including but not limited to profits lost due to defendants' conduct and other consequential  
18 damages, in an amount according to proof and punitive damages in an amount appropriate to  
19 punish defendants, to deter others from engaging in such conduct, and to set an example of  
20 defendants.

21 4. On the fourth claim for relief, that this Court award compensatory damages,  
22 including but not limited to profits lost due to defendants' conduct and other consequential  
23 damages, in an amount according to proof and punitive damages in an amount appropriate to  
24 punish defendants, to deter others from engaging in such conduct, and to set an example of  
25 defendants.

26 5. On the fifth claim for relief, that this Court award compensatory damages,  
27 including but not limited to profits lost due to defendants' conduct and other consequential  
28 damages, in an amount according to proof and punitive damages in an amount appropriate to

1 punish defendants, to deter others from engaging in such conduct, and to set an example of  
2 defendants.

3 6. On the sixth claim for relief, that this Court impose and enforce an involuntary  
4 trust against defendants, and each of them, on the basis of California Civil Code sections 2223  
5 and 2224 and order defendants to return to plaintiff all money and property, and the proceeds  
6 thereof, that they have acquired in the course of their deceitful, fraudulent and wrongful conduct  
7 as described in paragraphs 22 through 115, above and award punitive damages in an amount  
8 appropriate to punish defendants, to deter others from engaging in such conduct, and to set an  
9 example of defendants, according to proof.

10 7. On the seventh claim for relief, that this court award restitution in the form of a  
11 money judgment and/or impose a constructive trust in an amount to deny defendants of all unjust  
12 enrichment derived from ELIC's bond portfolio and insurance business, including but not limited  
13 to the value of the bond portfolio plus all proceeds and profits from the bond portfolio and the  
14 value of the insurance business plus all profits and dividends generated by the insurance business  
15 and award punitive damages in an amount appropriate to punish defendants, to deter others from  
16 engaging in such conduct, and to set an example of defendants, according to proof.

17 8. On the eighth claim for relief, for the principal sum to be proved at trial, plus  
18 interest on said amount, as allowed by law.

19 9. On the ninth claim for relief, for the value of the property converted; for interest  
20 on the foregoing sum in the amount allowed by law; for damages for the proximate and  
21 foreseeable loss resulting from defendants' conversion of said sum; for damages equal to the  
22 costs incurred in pursuit of the converted property in a sum to be proved at trial; and award  
23 punitive damages in an amount appropriate to punish defendants, to deter others from engaging  
24 in such conduct, and to set an example of defendants, according to proof.

25 10. On the tenth claim for relief, that this Court require defendants to make restitution  
26 to plaintiff of all funds acquired by means of any act found by this Court to be an unlawful,  
27 unfair or fraudulent business act or practice under California Business and Professions Code  
28 sections 17200 *et seq.* and to take all other steps necessary to make plaintiff whole from the acts

1 and omissions of defendants set forth above including but not limited to attorneys' fees; that this  
2 Court require defendants to disgorge all monies acquired by means of any act or practice found  
3 by this Court to be an unlawful, unfair or fraudulent business act or practice under California  
4 Business and Professions Code sections 17200 *et seq.*; and that this Court issue any and all  
5 appropriate injunctive relief.

6 11. On each and every claim for relief, that this Court grant plaintiff its costs of suit,  
7 including expenses and reasonable attorneys' fees; and

8 12. On each and every claim for relief, that this Court grant such other, different, or  
9 further relief as the Court considers proper.

10 **DEMAND FOR JURY TRIAL**

11 Plaintiff hereby demands a trial by jury for all issues so triable.

12  
13 Dated: September 9, 1999

THELEN REID & PRIEST LLP

14 By Gary L. Fontana  
15 \_\_\_\_\_

16 Gary L. Fontana  
17 Attorneys for Plaintiff  
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**PROOF OF SERVICE**

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STATE OF CALIFORNIA )  
COUNTY OF LOS ANGELES )

I am employed in Los Angeles County. My business address is 333 S. Grand Avenue, Suite 3400, Los Angeles, California 90071, where this mailing occurred. I am over the age of 18 years and am not a party to this cause. I am readily familiar with the practices for collection and processing of correspondence for mailing with the United States Postal Service. Such correspondence is deposited with the United States Postal Service the same day in the ordinary course of business.

On September 13, 1999, I served the foregoing document, bearing the title

**SECOND AMENDED COMPLAINT FOR FRAUD, MISREPRESENTATION, DECEIT, CONSPIRACY, UNJUST ENRICHMENT, INVOLUNTARY TRUST, MONEY HAD AND RECEIVED, CONVERSION AND UNFAIR COMPETITION**

on the interested parties in this action

by placing true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list.

by placing  the original  true copies thereof enclosed in sealed envelopes addressed as follows:

See attached service list.

(BY MAIL) I placed such envelopes for collection and mailing on this date following ordinary business practices.

(BY PERSONAL SERVICE) I delivered such envelopes by hand to the offices of the addresses.

(State) I declare under penalty of perjury that the foregoing is true and correct.

(Federal) I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on September 13, 1999, at Los Angeles, California.

  
Elvia Palm



Service List

Quackenbush v. Ahus Finance, SA, et al; C.D. Cal. No. 99-02829 AHM (CWx)

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