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FILED
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF ORANGE
 CIVIL COMPLEX LITIGATION CENTER

APR 23 2007

ALAN SLATER, Clerk of the Court
[Signature]
 BY P. RIEB

9 Attorneys for Plaintiffs

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 11 **FOR THE COUNTY OF ORANGE**

12 DO RIGHT'S PLANT GROWERS, a)
 13 California Corporation, GOLDEN)
 14 EAGLE MOVING SERVICES, a)
 California Corporation, in their)
 15 Corporate Capacity and on Behalf of)
 All Others Similarly Situated,)

16 Plaintiffs,

17 vs.

18 RSM EQUICO, INC., a Delaware)
 Corporation; RSM MCGLADREY,)
 19 INC., a Delaware Corporation; RSM)
 EQUICO CAPITAL MARKETS, LLC;)
 20 RSM MCGLADREY BUSINESS)
 SERVICES, INC., and DOES 2 to)
 21 100, Inclusive,)

22 Defendants.

Case No.: 06CC00137
 ASSIGNED FOR ALL PURPOSES TO THE
 HON. THIERRY PATRICK COLAW, DEPT. CX104

**THIRD AMENDED CLASS ACTION
 COMPLAINT FOR DAMAGES**

1. FRAUD (CONCEALMENT)
2. FRAUD (INTENTIONAL MISREPRESENTATION)
3. NEGLIGENT MISREPRESENTATION
4. BREACH OF WRITTEN CONTRACT
5. BREACH OF ORAL CONTRACT
6. RESCISSION
7. VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE, SECTIONS 17200 AND 17500, ET SEQ.
8. CONVERSION

DEMAND FOR JURY TRIAL

Complaint Filed: 07/11/06
 Trial Date: None

25 Plaintiffs, DO RIGHT'S PLANT GROWERS and GOLDEN EAGLE MOVING
 26 SERVICES, for themselves and all other entities similarly situated, hereby demand a trial
 27 by jury, and based upon information and belief, allege as follows:

28 ///

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PARTIES

1
2 1. Plaintiff, DO RIGHT'S PLANT GROWERS ("DO RIGHT'S"), is a California
3 corporation authorized to do business in the State of California with its principal place of
4 business in Santa Paula, California. DO RIGHT'S PLANT GROWERS has been in
5 business for approximately 34 years.

6 2. Plaintiff, GOLDEN EAGLE MOVING SERVICES ("GOLDEN EAGLE"), is a
7 California corporation authorized to do business in the State of California with its
8 principal place of business in Upland, California. GOLDEN EAGLE has been in
9 business for approximately 25 years.

10 3. Defendant, RSM EQUICO, INC., is a Delaware Corporation with its
11 principal place of business in the City of Costa Mesa, County of Orange, State of
12 California.

13 4. Defendant, RSM McGLADREY, INC., is a Delaware Corporation with its
14 principal place of business in the City of Bloomington, State of Minnesota.

15 5. Defendant, RSM EQUICO CAPITAL MARKETS, LLC (formerly "DOE 1"),
16 is a Delaware Limited Liability Company with its principal place of business in the City
17 of Costa Mesa, County of Orange, State of California.

18 6. Defendant, RSM McGLADREY BUSINESS SERVICES, INC., is a
19 Delaware Limited Liability Company with its principal place of business in the City of
20 Costa Mesa, County of Orange, State of California.

21 7. At all relevant times, Defendants, RSM EQUICO, INC., RSM
22 McGLADREY, INC., RSM EQUICO CAPITAL MARKETS, LLC and RSM McGLADREY
23 BUSINESS SERVICES, INC. (collectively "Defendants"), were and are qualified to do
24 and were doing business in the State of California. Based upon information and belief,
25 Plaintiffs allege that RSM EQUICO, INC., RSM EQUICO CAPITAL MARKETS, LLC and
26 RSM McGLADREY BUSINESS SERVICES, INC. are subsidiaries and/or divisions
27 and/or affiliates of RSM McGLADREY, INC.

28 8. Plaintiffs are ignorant of the true names and capacities of Defendants

1 sued herein as DOES 2 through 100, and therefore sue said Defendants by fictitious
2 names. Plaintiffs are informed and believe, and based thereon allege, that each of the
3 DOE Defendants is responsible for the claims and damages alleged herein and each
4 DOE Defendant is jointly and severally liable with all other Defendants. Plaintiffs will
5 amend this Complaint to allege the true names and capacities of DOES 2 through 100
6 when the same are ascertained.

7 9. At all times relevant herein, each of the Defendants, including the DOE
8 Defendants, was the agent, ostensible agent, employee, alter ego, division, affiliate,
9 aider and abetter and/or co-conspirator of each of the remaining Defendants and at all
10 times was acting within the purpose and scope of such relationship(s) and with the
11 knowledge, authorization, permission, consent and/or subsequent ratification and
12 approval of each co-defendant. The Defendants knowingly and willfully conspired and
13 aided and abetted and agreed among themselves to deprive Plaintiffs of their rights and
14 to cause the damages herein described.

15 10. At all times relevant herein, the activities of Defendants originated and
16 primarily emanated from the State of California, and were controlled and directed from
17 Defendants' principal place of business in California, which was located in the County
18 of Orange.

19 11. Defendants' business practices set forth herein amounted to a highly
20 developed and well-orchestrated program of deception which resulted in defrauding
21 medium-sized businesses such as Plaintiffs herein.

22
23 **FACTUAL BACKGROUND**

24 12. Defendants are businesses and individuals who aggressively advertise,
25 market and/or sponsor to the general public various seminars and services for purposes
26 of enticing medium-sized businesses and their owners to utilize Defendants for the
27 purpose of marketing and selling those businesses.

28 13. By means of said advertisements, marketing and seminars, Defendants

1 aggressively targeted medium-sized businesses and business owners, such as
2 Plaintiffs, who might be interested in selling their businesses. Defendants represented
3 themselves as the "Merger and Acquisition Specialist For The Middle Market
4 Companies."

5 14. As a condition to having Defendants market their businesses, the
6 prospective client was required to pay Defendants an advance fee of roughly \$50,000
7 to appraise in writing and market Plaintiffs' businesses. Defendants termed these
8 written appraisals "Platform Agreements." The monies paid by Plaintiffs for these
9 Platform Agreements were specifically designated as an "advance fee" against the
10 commission later to be earned by Defendants upon the sale of a client's business,
11 pursuant to *Business and Professions Code*, § 10146. Defendants represented to
12 Plaintiffs that upon payment of the advance fee they would be obligated to market
13 Plaintiffs' businesses.

14 15. Defendants' business operation was divided into three Divisions: (1)
15 Client Acquisition (2) Professional Services Group and (3) Capital Markets Division.
16 The Client Acquisition Division was charged with contacting prospective clients such as
17 Plaintiffs and inviting them to seminars where Defendants' expertise as a small to mid-
18 sized business broker was proclaimed. At these seminars, Defendants would represent
19 that they had a unique capability of selling to eager, "offshore" buyers through
20 European symposia regularly conducted by Defendants. These representations were
21 untrue.

22 16. As a part of Client Acquisition, Defendants employed salespeople called
23 "Business Analysts," who would meet with prospective clients at and following the
24 seminars and attempt to persuade them to hire Defendants to market their businesses.
25 The Business Analysts would review the financial books and records of prospective
26 clients, including Plaintiffs, and represent to them that Defendants were particularly
27 interested in marketing their business because their particular industry and financial
28 status made their business so attractive to the pertinent market. In this regard, the

1 Business Analysts, with the express authorization of the managing agents and directors
2 of Defendants, would reveal to the prospective client a "confidential" internal
3 memorandum, purportedly sent to the Business Analysts by Defendants' managing
4 agents and purporting to set forth Defendants' desire to market that particular business
5 because that particular business would be in such high demand in the marketplace.
6 Defendants, through the Business Analysts, used these memoranda in every single
7 sales approach, including those with Plaintiffs herein. In fact, these internal
8 memoranda were untrue, devised to make prospective customers such as Plaintiffs
9 believe that Defendants had a particular interest in selling their businesses when, in
10 reality, Defendants had *no such intention whatsoever*.

11 17. After signing on a client such as Plaintiffs, Defendants' Professional
12 Services Group Division would then prepare the Platform, which Defendants
13 represented to Plaintiffs was an honest and accurate appraisal of their businesses
14 consisting of original, expert research and analysis specifically tailored to those
15 businesses. This representation was false and fraudulent. In reality, 80% of the
16 Platform was pre-canned with generic information and material appearing in *all* client
17 Platforms. Moreover, the "valuation" set forth in the Platforms was actually that of
18 Defendants' Capital Markets Division, the division responsible for actually marketing
19 and selling client businesses, and not that of a business appraiser qualified and
20 competent to appraise businesses such as plaintiffs'.

21 18. Prior to entering into negotiations with Plaintiffs, Defendants were well
22 aware at all times material herein that RSM Equico and all other Defendants sued
23 herein only sold 5% of all businesses which they contracted to sell. Despite this fact
24 Defendants never revealed this information to Plaintiffs at any time during the
25 transactions which are the subject matter of this lawsuit. Had Plaintiffs been advised of
26 this material fact, which was deliberately omitted by Defendants, no Plaintiff would have
27 ever agreed to contract with Defendants for the very services Plaintiffs did indeed
28 contracted with Defendants to provide.

1 19. Prior to entering into negotiations with Plaintiffs, Defendants were well
2 aware at all times material herein that RSM Equico and all other Defendants sued
3 herein only marketed 10% of all businesses. Despite this fact Defendants never
4 revealed this information to Plaintiffs at any time during the transactions which are the
5 subject matter of this lawsuit. Had Plaintiffs been advised of this material fact, which
6 was deliberately omitted by Defendants, no Plaintiff would have ever agreed to contract
7 nor contracted with Defendants for the very services Plaintiffs did indeed contract with
8 Defendants to provide.

9 20. Prior to and at the time of accepting Plaintiffs' \$50,000 payment,
10 Defendants never intended to accurately appraise Plaintiffs' businesses, and never did
11 appraise Plaintiffs' businesses in any good-faith or legitimate manner that was
12 reasonably accurate. Furthermore, at said time Defendants never intended to market
13 Plaintiffs' businesses and never did so. Furthermore, prior to and at the time of
14 accepting Plaintiffs' \$50,000 payment, Defendants never intended to sell Plaintiffs'
15 businesses and never did so.

16 21. Actual fraud is defined within the Civil Code as the suppression of a fact
17 which is true by one having knowledge or belief of the fact, as well as any other act
18 intended to deceive. The specific conduct described herein was systemic to
19 Defendants' business plan and method of operation, and was implemented out of
20 Defendants' base of operations in the following respects:

21 Prior to contacting Plaintiffs,

22 (1) Defendants, through their managing agents Richard Rodnick and Jacob
23 Sonenshine, Defendants' Chief Executive Officer and President,
24 respectively, specifically decided to conceal, when selling, advertising and
25 marketing Defendants' alleged business expertise in the sale of
26 businesses such as Plaintiffs', the fact that 90% of client businesses are
27 never taken to market, and that said Defendants' success rate in actually
28 selling client businesses was at or less than five percent (5%).

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Specifically, the testimony of witnesses Robert Phillips (who served as Defendants' Professional Services Group Senior Evaluator), David Walker (who served as Defendants' Professional Services Group Senior Vice President) and Lawrence Hoffman (who served variously as Defendants' Professional Services Group Senior Vice President, Senior Managing Director, Business Analyst, Senior Business Analyst and was an advisor to both the Chairman and the Board) establishes that, during approximately the years 2000 through 2005, there was a decision made by the Managing Board of Defendants, including Jacob Sonenshine and Richard Rodnick, that no Business Analysts, seminar leaders or any other member of Defendants were to divulge to prospective purchasers of Platform Agreements the fact that only 10% of client business Defendants contracted to sell are ever taken to market and only 5% of all such businesses were actually sold. More specifically, said individuals testified that when requested by personnel in each of the three divisions of Defendants (Client Acquisitions, Professional Service Group and Capital Markets) to in fact be given permission to make such disclosures to purchasers and potential purchasers of Platform Agreements; Messrs. Rodnick and Sonenshine flatly refused and directed all personnel to refrain from any such disclosure to any customer or prospective customer of Defendants at every and each instance in connection with the business transaction, from beginning to end, for each client. To this end, Plaintiffs were not told when they contracted with Defendants that, indeed, only 10% of client businesses Defendants contracted to sell are ever taken to market and only 5% of all businesses Defendants attempted to sell were ever sold. Plaintiffs were thus induced into signing a contract when a material fact known to affect the basis of the contract was specifically and actively hidden. More significantly, actual fraud, as defined in the *Civil*

1 Code, consists of an act committed by a party to the contract with intent to
2 deceive another party or induce him to enter into the contract. The failure
3 to disclose these material facts to Plaintiffs was specifically designed so
4 as to induce Plaintiffs to enter into the contract.

5 22. Moreover, Messrs. Phillips and Hoffman further testified that Plaintiffs, as
6 with all other prospective customers and customers of Defendants, were never given a
7 true appraisal of their businesses as promised by Defendants. This is true because
8 Plaintiffs, as with all other customers of Defendants, were simply given a "pre-canned
9 appraisal" of their businesses, rather than an actual appraisal of their businesses,
10 because at all times pertinent hereto the managing agents of Defendants, Messrs.
11 Rodnick and Sonenshine, had no intention of marketing Plaintiffs' businesses. The
12 testimony of Messrs. Phillips and Hoffman reveals that as a common practice and
13 design, Defendants had *no intention* of marketing, no less selling, any of plaintiffs'
14 businesses.

15 23. Despite this common scheme and design, it was never disclosed to
16 Plaintiffs, nor any other customers nor prospective customers of Defendants, that the
17 true intention of Defendants was merely to accept the payment of Plaintiffs' appraisal
18 fee without ever intending either to accurately appraise, market or sell Plaintiffs'
19 businesses. Evidence of this plan and design, squarely encompassed by the definition
20 of actual fraud as contained in the *Civil Code*, includes the testimony of Messrs.
21 Phillips, Walker and Hoffman.

22 24. The *Civil Code* further defines fraud as where one willfully deceives
23 another with intent to induce the latter to alter his position to his injury or risk. Plaintiffs
24 were specifically deceived with the intent to induce them to alter their position to their
25 financial detriment by inducing them to pay \$50,000 so their businesses could be
26 appraised, marketed and sold by Defendants when Defendants had no intention of
27 accurately appraising, marketing or selling such businesses. Moreover, Defendants
28 had no intention of disclosing and failed to disclose to Plaintiffs that only 10% of client

1 businesses Defendants contracted to sell are ever taken to market and only 5% of all
2 businesses were ever sold, and that the businesses which Plaintiffs owned were not of
3 the type nor kind that Defendants ever sold, nor had any intention to either appraise or
4 sell or attempt to sell. This was the common, scheme of the managing agents of
5 Defendants, Messrs. Rodnick and Sonenshine, during the years that Plaintiffs
6 contracted with Defendants and paid them \$50,000 to appraise and sell their
7 businesses.

8 25. Fraud and deceit is further defined in the *Civil Code* as the suppression of
9 a fact by one who is bound to disclose it, such as a party in contractual privity, or who
10 gives information of other facts which are likely to mislead for want of communication of
11 that fact. The failure of Defendants to disclose to Plaintiffs that Defendants had no
12 intention to either adequately or accurately appraise Plaintiffs' businesses or sell or
13 attempt to sell them is the suppression of a fact by a party who is bound to disclose
14 such fact. Defendants were bound to disclose that they had no intention of adequately
15 appraising Plaintiffs' businesses, and had no intention of marketing or selling Plaintiffs'
16 businesses when, in fact, to the contrary, Defendants represented to Plaintiffs that the
17 opposite was true. In fact, the testimony of Messrs. Phillips, Walker and Hoffman
18 demonstrates that representations to clients such as Plaintiffs that their businesses
19 would be accurately appraised, aggressively marketed and sold was a complete and
20 utter falsehood. To the contrary, Plaintiffs' businesses were never adequately
21 appraised, or marketed, or sold and, in fact, Defendants never intended to adequately
22 appraise, market, or to sell Plaintiffs' businesses as decided upon by the managers and
23 managing agents of Defendants, including Messrs. Rodnick and Sonenshine, during
24 the years in question.

25 26. Actionable fraud is further defined in the *California Civil Code* as a
26 promise made without any intention of performing it. Here, the Defendants promised to
27 honestly appraise, market and sell Plaintiffs' businesses, without any intent whatsoever
28 of honoring such promise. To the contrary, a decision on behalf of the managing

1 agents of Defendants, including Messrs. Sonenshine and Rodnick, was that businesses
2 such as Plaintiffs' would indeed *not* be marketed nor sold by Defendants. These
3 decisions by the managing agents of Defendants, including Messrs. Rodnick and
4 Sonenshine, were made before any contact with Plaintiffs was initiated. Despite this,
5 Defendants, through their Business Analysts such as Larry Schwimmer, the Business
6 Analyst who sold the Platform Agreements to Plaintiffs and who signed the Agreements
7 on behalf of Defendants, represented to Plaintiffs that their businesses would be
8 accurately appraised and marketed in exchange for the payment of \$50,000, when in
9 fact Defendants never had any intention of marketing or selling such businesses, and
10 Schwimmer knew this at the time he sold the Platform Agreements to Plaintiffs.
11 Schwimmer made these representations to Plaintiff Do Right's owners on or about July
12 28, 2004. Schwimmer made these representations to Golden Eagle's owners on or
13 about February 4, 2004. At the time Defendants' Business Analyst Schwimmer made
14 said representations to Plaintiffs that Defendants would accurately appraise their
15 businesses and market them, he *knew* these representations to be false.

16 27. The fraudulent conduct alleged in paragraphs 1 thru 26, above, is
17 exemplified even more clearly by the following activities that occurred, between the year
18 2000 and the filing of this complaint, as testified to by Charles Lawrence Hoffman, who
19 during such time occupied the positions of Business Analyst, Senior Business Analyst,
20 Managing Director in the Client Acquisition Group, Senior Managing Director in the
21 Client Acquisition Group, as well as advisor to the Chairman and the Board.

22 (a) Defendants would solicit by telephone, and did in fact solicit by telephone,
23 Plaintiffs and represented at the time of such solicitation that Defendants had buyers for
24 Plaintiffs' businesses, which representation was false because Defendants had no
25 buyers whatsoever for Plaintiffs' businesses. Additionally, Defendants would solicit by
26 letter, and did in fact solicit by letter Plaintiffs, and represented at the time of such
27 solicitation that Defendants had buyers for Plaintiffs' businesses, which representation
28 was false because Defendants had no buyers whatsoever for Plaintiffs' businesses.

1 Plaintiffs relied on these representations both by telephone and in letter form and paid
2 Defendants \$50,000 each in such reliance. On or about June 28, 2004, Plaintiff Do
3 Right's received a letter of solicitation from Coby Sonenshine, President of RSM
4 EquiCo, inviting them to a seminar entitled "How to Sell All or Part of Your Business at
5 the Right Time and Right Price." The letter represented that RSM EquiCo's
6 professionals had more than a half a century of experience in locating and negotiating
7 with premium buyers and that it had experience in thousands of transactions involving
8 mid-size markets worldwide. It also represented that international firms were paying
9 hefty premiums for North American businesses. In reliance on Mr. Sonenshine's
10 solicitation, which was false and untrue, Plaintiff Do Right's attended a seminar at the
11 Embassy Suites Hotel Mandalay Beach Resort, located at 2102 Mandalay Beach Road,
12 in Oxnard, California, on or about July 27, 2004. The very type of letter solicitation
13 described in this sub-section of paragraph 27, or a telemarketing phone call expressing
14 the identical content, as was provided in the letter to plaintiff Do Right's was
15 provided/delivered to plaintiff Golden Eagle. And just like plaintiff Do Right's, plaintiff
16 Golden Eagle attended a seminar in reliance on the false and untrue solicitation herein
17 described in this sub-section of paragraph 27. The solicitation provided to plaintiff Do
18 Right's and the solicitation provided to plaintiff Golden Eagle was false, untrue and
19 dishonest.

20 (b) During seminars Plaintiffs attended, Defendants specifically represented
21 to Plaintiffs that were they to pay the sum of \$50,000 Defendants would present their
22 businesses for sale to buyers already interested in businesses of the kind Plaintiffs
23 owned. These statements were false and without any basis and fact. Plaintiffs relief on
24 these statements and paid defendants \$50,000 each in such reliance. Both Plaintiff Do
25 Right's and Plaintiff Golden Eagle, in reliance on the false and misleading solicitations
26 hereinabove described, attended Defendants' seminar. Plaintiff Do Right's attended a
27 seminar conducted by Scott D. Hoeschen, Defendants' M&A Advisor, and Mr.
28 Schwimmer. During the seminar, Defendants represented their expertise as Merger

1 and Acquisition Specialists For The Middle Market Companies, who could maximize an
2 owner's return on investment by determining the right time and the right buyers to whom
3 to sell. They created a sense of urgency to retain their services under the pretense that
4 Defendants were soon going to be conducting a European symposium, during which
5 they could market Plaintiff Do Right's to European buyers in order to gain top dollar for
6 the business. All these representations were false, without truth and Defendants knew
7 such to be the case when said representations were made. Plaintiff Golden Eagle
8 attended a seminar on February 3, 2004, at the Radisson Hotel San Bernardino
9 Convention Center, located at 295 North E. Street, San Bernardino, CA 92401. During
10 that seminar, Larry Schwimmer and Art Ward, Jr., Defendants' M&A Advisor, made
11 similar representations as alleged above in this subpart (b) to paragraph 26 herein, and
12 concealed and/or misrepresented material facts as alleged above in this subpart (b) to
13 paragraph 27 herein.

14 (c) Defendants approached Plaintiffs at these seminars discussed in
15 paragraph 27 (b) above and specifically told Plaintiffs that their business was of interest
16 to Defendants and that the Defendants could sell it. These statements were false and
17 without any truth. Plaintiffs relied on these statements and paid Defendants \$50,000
18 each in such reliance.

19 (d) Defendants represented to Plaintiffs following these seminars herein and
20 above referenced that their businesses were marketable and that if Plaintiffs would pay
21 \$50,000, Defendants would market and sell their businesses. Defendants made these
22 representations when they knew they were false and furthermore knew at the time such
23 statements were made that the opposite was true. Plaintiffs relief on these statements
24 and paid Defendants \$50,000 each in such reliance.

25 (e) Defendants knew that the businesses they could market and sell were
26 those other than businesses owned by Plaintiffs. Despite this fact Defendants made
27 those representations contained in paragraph 27 (a) - (d) to Plaintiffs. These
28 falsehoods were relied upon by Plaintiffs to their detriment, and in so doing each paid

1 \$50,000 to Defendants. Plaintiffs relied on these statements and paid Defendants
2 \$50,000 each in such reliance.

3 (f) The chairman of the Board of Defendants, Richard Rodnick, specifically
4 instructed all business analysts who attended the seminars discussed in paragraph 27
5 (a) - (e) to conceal from Plaintiffs the fact that only 5% of Defendants' customers were
6 ever able to sell their business with the help of Defendants, and only 10% were even
7 taken to market.

8 (g) At the seminars discussed in this paragraph 27 (a) -(f) Defendants told
9 Plaintiffs that there were European buyers anxious to purchase Plaintiffs' businesses.
10 These statements were false and only 3/10 of 1 % (i.e., .3%) of all businesses sold by
11 Defendants were purchased by European buyers. Diane E. Forsman, Executive Vice
12 President of RSM EquiCo, represented that at these seminars that RSM EquiCo would
13 provide information to Plaintiffs on how and when to sell a business and that RSM
14 EquiCo had access to international firms that would pay hefty premiums for North
15 American businesses. These representations were false, misleading and untrue. Ms.
16 Forsman further represented to Plaintiffs that the European buyers would pay a hefty
17 premium for North American businesses. These statements were false, misleading and
18 untrue. During the seminars discussed above, Arthur Garry, Sr. Managing Director of
19 RSM EquiCo, approached the attendees, which included Plaintiffs and advised that the
20 upcoming European symposium would expose their businesses to European buyers
21 who pay hefty premiums for businesses just like Plaintiffs'. Plaintiffs relied on the
22 misrepresentations outlined in paragraph 27 subpart (g) herein to their detriment and
23 paid Defendants \$50,000 in such reliance. The events in subpart (g) of paragraph 27
24 detailed herein all occurred on and before the end of calendar year 2004.

25 (h) From 2000 to the filing of the Complaint herein, Defendants conducted
26 thousands of seminars throughout the country at which they made the false
27 representations outlined in the various subparts of paragraph 27. Moreover, at each of
28 the seminars hereinabove described, each Plaintiff was given a letter describing in

1 detail an interest on the part of RSM EquiCo that their business contract with RSM
2 EquiCo so that the business indeed could be sold by RSM EquiCo. This letter also told
3 Plaintiffs that RSM EquiCo had specific buyers for their specific business. Each letter
4 received by Plaintiffs in this regard was identical to that received by all other Plaintiffs.
5 These letters were false, untrue, fraudulent, inaccurate, and grossly misleading.
6 Defendants knew of their falsehood, and nevertheless submitted them to Plaintiffs.
7 Plaintiffs relied upon these letters and paid Defendants \$50,000 in such reliance.

8 (i) Defendants, in the perpetration of the fraud against Plaintiffs, hereinabove
9 described in paragraph 27 and above in this Complaint, created an artificially low
10 appraisal value for all of Plaintiffs' businesses so that Defendants would not be
11 obligated to sell said businesses. Defendants knew that the artificially low appraisal
12 would discourage any Plaintiff from going forward following the appraisal process and
13 actually marketing their business. This fraudulent scheme perpetrated by Defendants
14 allowed Defendants to accept \$50,000 from each Plaintiff yet eliminate Defendants'
15 obligation to market any of Plaintiffs' businesses. This fraudulent scheme was
16 designed so as to allow Defendants to operate their business without hiring additional
17 personnel which would be required if Defendants were in business to market and sell
18 businesses, as opposed to merely selling an illusory promise to do just that. In reality,
19 Defendants were in business to sell an illusory promise for \$50,000 that Plaintiffs'
20 businesses would be appraised, marketed and sold. The appraisal was false, thus
21 giving Defendants an opportunity to "get off the hook" of their legal obligation to market
22 and sell the very businesses of Plaintiffs that Defendants promised to market and sell.
23 This artificial lowering of the true appraised value was done with the conscious intent of
24 Defendants so that no Plaintiff would ever request that their business be marketed or
25 sold, thus eliminating the obligation on the part of the Defendants to do so.

26 (j) Defendants arranged for a business analyst by the name of Larry
27 Schwimmer to meet with Plaintiff Do Right's and Plaintiff Golden Eagle at and following
28 the seminar that each Plaintiff attended. Defendants' agent Larry Schwimmer

1 concealed from Plaintiff Do Right's and Plaintiff Golden Eagle the fact that all the
2 information given at the seminar was false, including but not limited to those allegations
3 set forth in paragraph 27 herein. Moreover, business analyst Schwimmer also
4 concealed from Plaintiff Do Right's and Plaintiff Golden Eagle the fact that Defendants
5 had only sold 5% of all previous clients' businesses and had only marketed 10% of all
6 previous clients' businesses. In reliance on these fraudulent omissions and in reliance
7 on these material omissions which business agent Schwimmer intentionally omitted to
8 disclose, Plaintiff Do Right's and Plaintiff Golden Eagle tendered checks for roughly
9 \$50,000 each.¹

10 11 CLASS ACTION ALLEGATIONS

12 28. Plaintiffs bring this action on behalf of themselves and all others similarly
13 situated as a Class Action pursuant to California *Code of Civil Procedure*, § 382.

14 Plaintiffs seek to represent one class composed of and defined as follows:

15 All persons and/or entities who paid advance fees (aka Platform Fees) to
16 any of the Defendants and whose businesses were never marketed or
17 sold by Defendants.

18 29. Plaintiffs reserve the right to amend or modify the class description with
19 greater specificity or further division into subclasses or limitation to particular issues.

20 30. Jurisdiction is proper in California State Court. Plaintiffs allege that more
21 than two-thirds of the putative class members reside in the State of California.
22 Defendants RSM EQUICO, INC. and RSM EQUICO CAPITAL MARKETS, LLC are
23 citizens of the State of California, having their principal places of business in Costa
24 Mesa, California. The wrongdoing alleged throughout this Complaint occurred within the
25 State of California, or was originated by Defendants in the State of California.
26 Significant relief is being sought from Defendants RSM EQUICO, INC. and RSM
27 EQUICO CAPITAL MARKETS, LLC, whose misconduct forms a significant basis for

28

¹ Specifically, Do Right's check was for \$48,500 and Golden Eagle's check was for \$47,500.

1 Plaintiffs' claims.

2 **A. Numerosity**

3 31. The potential members of the Class as defined are so numerous that
4 joinder of all the members of the Class is impracticable. While the precise number of
5 Class Members has not been determined at this time, Plaintiffs are informed and
6 believe that Defendants, during the relevant time period, sold more than thousands of
7 Platform agreements to Class Members without thereafter making any effort to market
8 or sell Class Members' businesses.

9 **B. Commonality**

10 32. There are questions of law and fact common to the Class that
11 predominate over any questions affecting only individual Class Members. These
12 common questions of law and fact include, without limitation:

- 13 (a) Whether Defendants ever intended to market and/or sell Plaintiffs'
14 businesses at the time Plaintiffs paid their Platform fee;
- 15 (b) Whether Defendants concealed from Plaintiffs the material fact that
16 Defendants actually sold less than 5% of all businesses they signed to
17 Platform Agreements;
- 18 (c) Whether Defendants concealed from Plaintiffs the material fact that
19 Defendants actually took to market only 10% of all businesses they signed
20 to Platform Agreements;
- 21 (d) Whether Defendants violated *Civil Code*, § 1709 (Deceit-Damages), as
22 well as *Business & Professions Code*, § 17200 *et seq.* (Unfair
23 Competition) and *Business & Professions Code*, § 17500 *et seq.* (False
24 Advertising) by engaging in the acts previously alleged;
- 25 (e) Whether Defendants violated *Business and Professions Code*, § 10146,
26 and other California statutes which require business opportunity brokers
27 to deposit advance fees into a trust account, and to report such fees in
28 compliance with the requirements established by the California Real

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Estate Commissioner; and,

(f) Whether Plaintiffs and the members of the Class are entitled to equitable relief pursuant to *Business & Professions Code*, § 17200 *et seq.* and *Business & Professions Code*, § 17500 *et seq.*;

C. Typicality

33. The claims of the named Plaintiffs are typical of the claims of the Class. Plaintiffs and all members of the Class sustained injuries and damages arising out of and caused by Defendants' systematic and common course of conduct in violation of laws, and regulations that have the force and effect of law, and statutes as alleged herein. Plaintiffs and all members of the Class were recipients of a common and uniform broadcast by Defendants concerning the issues set forth above, including but not limited to the representations that in exchange for payment of the advance fee by the Plaintiff class members, Defendants would in good faith accurately appraise their businesses and bring them to market.

D. Adequacy of Representation

34. Plaintiffs will fairly and adequately represent and protect the interests of the members of the Class. Counsel who represents Plaintiffs is competent and experienced in litigating complex cases and class actions.

E. Superiority of Class Action

35. A class action is superior to other available means for the full and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class.

36. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiffs are unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

1 of the jurisdictional limits of this Court and which are subject to proof at trial.

2 42. The aforementioned misconduct amounts to fraudulent, oppressive and
3 despicable conduct that subjected Plaintiffs to unjust hardship in conscious disregard of
4 Plaintiffs' rights, so as to justify an award of exemplary and punitive damages. As a
5 result thereof, Plaintiffs are entitled to punitive damages in an amount sufficient to deter
6 Defendants from such conduct in the future.

7
8 **SECOND CAUSE OF ACTION**

9 **FRAUD (INTENTIONAL MISREPRESENTATION)**

10 **(By Plaintiffs and the Plaintiff Class Against All Defendants)**

11 43. Plaintiffs reallege and incorporate by reference every allegation in
12 paragraphs 1 through 42 in this Complaint as though set forth herein in full.

13 44. At all relevant times, Defendants and their actual and ostensible agents,
14 employees and representatives made intentional written and oral misrepresentations of
15 material fact to Plaintiffs in the course of advertising and promoting their purported
16 services and persuading Plaintiffs to pay the advance fee. The misrepresentations
17 made to Plaintiffs and the Plaintiff Class at or about the time Plaintiffs paid their
18 Platform fees include the misrepresentations more fully set forth above, including the
19 "facts" that Defendants intended to accurately appraise, market and sell Plaintiffs'
20 businesses when, in truth, Defendants had no such intent to do so and did not do so.
21 Had Plaintiffs been informed of these facts, they would not have entered into the
22 Platform Agreements.

23 45. At the time the aforementioned written and oral statements were made,
24 Defendants knew the statements were false. Nevertheless, Defendants willfully
25 deceived Plaintiffs by asserting these misrepresentations for financial gain and to
26 induce Plaintiffs to pay the Platform fee.

27 46. Defendants made these representations with the intent to deceive
28 Plaintiffs and the Plaintiff Class and with the knowledge that Plaintiffs would rely on

1 Defendants' statements to pay the Platform fee.

2 47. Further, such misrepresentations were made with the knowledge,
3 consent, authorization, ratification and direction of all Defendants.

4 48. Plaintiffs reasonably and justifiably relied on the representations made by
5 Defendants to their detriment. As a direct and proximate result of Defendants'
6 misrepresentations, Plaintiffs have been damaged in an amount which is not precisely
7 known at this time, but which is in excess of the jurisdictional limits of this court.

8 49. At all relevant times, Defendants acted fraudulently, oppressively,
9 maliciously, and with a willful, conscious and reckless disregard of Plaintiffs' rights and
10 the consequences of Defendants actions, and with the intent to injure Plaintiffs and to
11 benefit themselves financially, as more fully described above. As a result thereof,
12 Plaintiffs are entitled to punitive damages in an amount sufficient to deter Defendants
13 from such conduct in the future.

14

15

THIRD CAUSE OF ACTION

16

NEGLIGENT MISREPRESENTATION

17

(By Plaintiffs and the Plaintiff Class Against all Defendants)

18

19 50. Plaintiffs reallege and incorporate by reference every allegation in
20 paragraphs 1 through 49 in this Complaint as though set forth herein in full.

21

22 51. When Defendants made the written and oral misrepresentations to
23 Plaintiffs as alleged throughout the Complaint, Defendant's had no reasonable grounds
24 for believing them to be true. The misrepresentations made to Plaintiffs and the
25 Plaintiff Class at or about the time Plaintiffs paid their advance fee included the
26 misrepresentations more fully set forth above. Defendants made these representations
27 to Plaintiffs for the purpose of inducing Plaintiffs pay the Platform Fee in reliance on
28 said misrepresentations.

27

28 52. Further, such misrepresentations were made with the knowledge,
consent, authorization, ratification and direction of all Defendants.

1 *inter alia*, the California Business and Professions Code and the California
2 Administrative Code, which requires advance fees to be deposited into a trust account,
3 and reported in compliance with the requirements established by the California Real
4 Estate Commissioner.

5 57. Plaintiffs also signed a confidentiality agreement and turned over
6 confidential financial information pursuant to Defendants' instructions. Although the
7 agreements between Defendants and Plaintiffs called for Defendants to continue their
8 efforts to sell Plaintiffs' business for a period of 60 months, Defendants failed to
9 undertake any efforts to attempt to market and/or sell Plaintiffs' businesses and/or to
10 follow up with Plaintiffs.

11 58. Plaintiffs entered into these written contracts with Defendants so that
12 Defendants would accurately appraise their businesses and take them to market.

13 59. Plaintiffs have fully performed all of the terms and conditions required of
14 them under the contracts except those which are excused by Defendants' fraudulent
15 representations and breaches of the contract.

16 60. Defendants breached the contracts with Plaintiffs by engaging in the acts
17 and omissions described in this Complaint, and by failing to perform as Defendants
18 represented they would.

19 61. As a direct and proximate result of Defendants' breach of the subject
20 contracts, Plaintiffs have suffered and continue to suffer damages and harm, the exact
21 nature and extent of which will be proven at time of trial.

22
23 **FIFTH CAUSE OF ACTION**

24 **BREACH OF ORAL CONTRACT**

25 62. Plaintiffs reallege and incorporate by reference every allegation in
26 paragraphs 1 through 61 in this Complaint as though set forth herein in full.

27 63. Plaintiffs contracted with Defendants based on their oral representations
28 that if Plaintiffs paid the Platform fee to Defendants, Defendants would accurately

1 appraise Plaintiffs' businesses and take them to market.

2 64. Plaintiffs have fully performed all of the terms and conditions required of
3 them under the oral contracts except those which were excused by Defendants'
4 fraudulent representations and breaches of the contract.

5 65. Defendants breached the oral contracts with Plaintiffs by engaging in the
6 acts and omissions described in this Complaint, and by failing to perform as Defendants
7 represented they would.

8 66. As a direct and proximate result of Defendants' breach of the subject oral
9 contract, Plaintiffs have suffered and continue to suffer damages and harm, the exact
10 nature and extent of which will be proven at time of trial.

11
12 **SIXTH CAUSE OF ACTION**

13 **RESCISSION**

14 67. Plaintiffs reallege and incorporate by reference every allegation in
15 paragraphs 1 through 66 in this Complaint as though set forth herein in full.

16 68. The fraudulent and negligent misrepresentations and omissions made by
17 Defendants, on which Plaintiffs relied, induced Plaintiffs to pay the Platform fees to
18 Defendants, as more fully set forth above.

19 69. Plaintiffs have performed all terms and conditions of the oral and/or
20 written contracts alleged above. Defendants have breached those contracts by failing
21 to accurately appraise, market or sell their business, despite their representations to the
22 contrary.

23 70. Because of the above, Plaintiffs reasonably believed and relied on the fact
24 that Defendants intended to uphold the terms of their agreement, and Plaintiffs are thus
25 entitled to have restored to them the consideration they paid for Defendants'
26 performance, namely, the Platform fees.

27 **///**

28 **///**

1 fully disgorge the revenues obtained from Plaintiffs for unlawful, unfair, fraudulent and
2 deceptive acts in competition and for false and misleading advertising.

3 75. Plaintiffs further pray for any other appropriate equitable and/or injunctive
4 relief as determined by this court, including an order enjoining and requiring Defendants
5 to cease and desist from making the statements and representations set forth
6 hereinabove and advertising their services as such and enjoining Defendants from their
7 unlawful, unfair, fraudulent or deceptive acts in competition and false and misleading
8 advertising.

9

10

EIGHT CAUSE OF ACTION

11

CONVERSION

12

(By Plaintiffs, and the Plaintiff Class, Against All Defendants)

13

76. Plaintiffs repeat and reallege each and every allegation set forth in
14 Paragraphs 1 through 75, inclusive, as if fully set forth herein.

15

77. Plaintiffs had a right of possession with respect to the advance fees paid
16 to Defendants as set forth above.

17

78. Defendants willfully and wrongfully converted the advance fees provided
18 to Defendants, by willfully and wrongfully taking those monies as set forth above and
19 using them for Defendants own purposes, and by preventing Plaintiffs from having
20 access to those monies for a significant period of time.

21

79. Plaintiffs did not consent to this action by Defendants.

22

80. Plaintiffs and the Plaintiff Class were damaged by Defendants' conversion
23 of the advance fee monies paid to Defendants as set forth above. Plaintiffs therefore
24 seek compensatory and punitive damages for Defendants' willful conduct, according to
25 proof.

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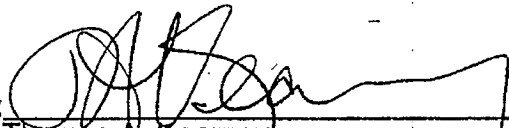
PRAYER

WHEREFORE, plaintiffs pray for the following relief:

1. For damages in a sum in excess of this court's minimum jurisdictional limit, according to proof;
2. For punitive and exemplary damages according to proof;
3. For disgorgement of all monies wrongfully obtained;
4. For rescission and restitution in an amount according to proof;
5. For injunctive relief enjoining and requiring Defendants to cease and desist their unlawful, unfair, fraudulent or deceptive acts, unfair competition and false and misleading advertising;
6. Such other equitable and/or injunctive relief as may be deemed appropriate and ordered by this court in order to deter and/or prevent said unlawful, unfair, fraudulent or deceptive acts, unfair competition and false and misleading advertising;
7. For prejudgment interest according to proof;
8. For costs of suit incurred;
9. For their attorney's fees; and
10. For such other and further relief as this Court deems just and proper.

Dated: March 8, 2007

RINGLER KEARNEY ALVAREZ, LLP

By: 
Thomas A. Kearney
Attorneys For Plaintiffs

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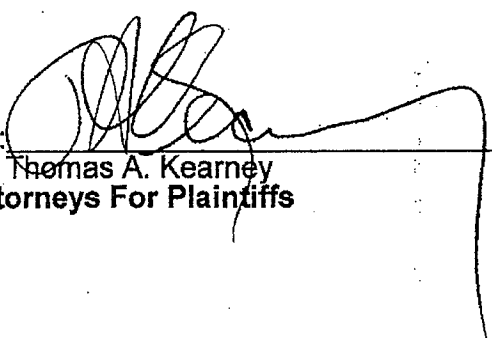
DEMAND FOR JURY TRIAL

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Plaintiffs hereby demand trial of their claims by jury to the extent authorized by law.

Dated: March 8, 2007

RINGLER KEARNEY ALVAREZ, LLP

By: 
Thomas A. Kearney
Attorneys For Plaintiffs