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Attorney for Plaintiff
FFCF INVESTORS , LLC,

**IN THE THIRD JUDICIAL DISTRICT COURT FOR SALT LAKE COUNTY,
STATE OF UTAH**

FFCF INVESTORS, LLC, a Utah Limited
Liability Company,)

Plaintiff,)

vs.)

RICHARD SMITH, an individual; STEVEN
JAMES, an individual; BARRY JONES,
an individual; JERRY MILLARD, an individual;
MILLARD LIVING TRUST, form unknown;
STANFORD PETERSEN, an individual;
KATHRYN ROWLEY, an individual; THOMAS
COURTNEY SMITH, an individual; MICHAEL
USHER, an individual; ALBERT WIRTH, an
individual; ROBERT WORKMAN, an individual;
DAVID YOUNG, an individual; RICHARD
YOUNG, an individual; and DOES 1 through 10;)

Defendants.)

Plaintiff alleges the following:

COMPLAINT FOR:

- 1. FRAUD**
- 2. BREACH OF FIDUCIARY DUTY**
- 3. CONVERSION**
- 4. UNJUST ENRICHMENT**
- 5. DECLARATORY RELIEF**
- 6. CONSTRUCTIVE TRUST**

(JURY DEMANDED)

CIVIL NO.: _____

JUDGE: _____

PARTIES

1. Plaintiff, FFCF INVESTORS, LLC ("FFCF"), is a limited liability corporation registered with the State of Utah.

2. Defendants, Richard Smith ("SMITH"), Steven James ("JAMES"), Barry Jones

("JONES"), Jerry Millard ("MILLARD"), Stanford Petersen ("PETERSEN"), Kathryn Rowley ("ROWLEY"), Thomas Courtney Smith (" T. SMITH"), Michael Usher ("USHER"), Robert Workman ("WORKMAN"), David Young ("DAVID YOUNG"), and Richard Young ("RICHARD YOUNG"), are all individuals residing in the State of Utah. Millard Living Trust ("MILLARD TRUST") is an entity, form unknown, controlled by Defendant Jerry Millard. Defendant Albert Wirth ("WIRTH") is an individual and resident of the State of Illinois.

3. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, associate or otherwise, of Defendants designated and sued herein as Does 1 through 10, inclusive, and therefore sues said Defendants by such fictitious names. As soon as the true names and capacities of Defendants 1 through 10 have been ascertained, Plaintiff will move to amend this complaint accordingly.

JURISDICTION AND VENUE

4. Defendants JONES, MILLARD, MILLARD TRUST, DAVID YOUNG, RICHARD YOUNG, WORTH and WORKMAN are former members of the FFCF limited liability corporation formed in the State of Utah. Defendants JAMES, PETERSON, ROWLEY, COURTNEY SMITH and USHER improperly received FFCF funds. Current members of FFCF who have been damaged by the conduct as described below are Doug Anderson, Alex Bankhead, David Barnes, Ned Bushnell, Kelly Cook, Annette Kay Donnell, John Grobbs, Mark Haren, Brad Holmes, Rodney Hulse, Stan Hulse, Sherman Johnson, Earl Knight, Lighted Candle Society, Roy Molina, Wayne Mortensen, Quenalee Johnson, Douglas Osburn, Rodney Peterson, Jamey West and Sharon Wilcox. The conduct of FFCF and the Defendants as alleged herein

occurred in the State of Utah. Additionally, the torts that are the subject of this action occurred in Utah. Therefore, jurisdiction and venue are proper in the State of Utah.

FACTS COMMON TO ALL CAUSES OF ACTION

5. On or about February, 2006, SMITH formed FFCF Investors, LLC, a Utah limited liability company.

6. From the inception of FFCF through September, 2008, SMITH acted as the Manager of FFCF. SMITH listed Roger Taylor as the Manager of FFCF with out Mr. Taylor's knowledge or consent.

7. FFCF was created by SMITH in order to pool funds from members to invest in a money management fund known as LBS, which required a large initial investment.

8. FFCF received a total of approximately \$10,910,899.03 from its members.

9. SMITH failed to transfer all of these funds into LBS. Instead he transferred only \$8,027,550.00 to LBS.

10. The FFCF funds in LBS earned a total of \$1,212,195.62.

11. From February, 2006, through approximately June, 2008, SMITH paid a total of approximately \$10,781,191.64 of FFCF funds to both FFCF members and non-members. Attached hereto and incorporated by reference as Exhibit A is a summary of the contributions and withdrawals from FFCF.

12. SMITH mismanaged FFCF by:

- a. Failing to transfer the entire amount of funds received by FFCF to LBS;
- b. Overstating the earnings on member contributions;

- c. Misleading certain people into believing they were members of FFCF;
- d. Paying FFCF funds to non-members;
- e.. Paying certain FFCF members more than their contributions; and
- f. Depleting FFCF funds by paying FFCF funds to non-members and overpaying certain members.

13. In 2007 and 2008, Defendants JONES, DAVID YOUNG, RICHARD YOUNG, WIRTH and WORKMAN, requested to withdraw from FFCF and its LBS investment. SMITH, in an effort to conceal his mismanagement, paid these members the amount that he had previously misrepresented they were due. SMITH made these payments knowing that by doing so, insufficient funds would be available for the remaining FFCF members to recoup their contributions, let alone any profits derived therefrom.

14. From 2006 through 2008, SMITH paid FFCF funds to Defendants JAMES, MILLARD, PETERSON, ROWLEY, T. SMITH, and USHER, even though these Defendants never made a contribution to FFCF and were not members of FFCF. Again, SMITH made these payments knowing that by doing so, insufficient funds would be available for the FFCF members to recoup their contributions, let alone any profits derived therefrom.

15. The Defendants named herein are all former members of FFCF or non-members who received more funds from FFCF than they contributed to FFCF, specifically as follows:

- a. Defendant JAMES made no contributions to FFCF. However, JAMES received the following payments of FFCF funds from SMITH: \$915.82 on June 15, 2006; \$1065.56 on July 14, 2006; \$500.00 on July 26, 2006;

\$20,812.00 on August 14, 2006; \$8,712.22 on February 5, 2007; and \$5,410.00 on February 25, 2008. The total payments to JAMES were \$37,415.60.

b. Defendant JONES made the following contributions to FFCF: \$50,000.00 on February 21, 2006 and \$98,000.00 on May 17, 2006. SMITH paid JONES the following amounts of FFCF funds: \$56,000.00 on December 26, 2007; and \$124,035.11 on January 9, 2008. The total payments to JONES were \$180,085.11.

c. Defendant MILLARD and/or MILLARD TRUST contributed \$20,000.00 to FFCF on November 21, 2007. SMITH paid MILLARD and/or MILLARD TRUST \$51,000.00 of FFCF funds on May 22, 2006.

d. Defendant PETERSEN made no contribution to FFCF. However, SMITH paid PETERSEN \$25,000.00 of FFCF funds on June 28, 2007.

e. Defendant ROWLEY made no contribution to FFCF. However, SMITH paid ROWLEY the following amounts of FFCF funds: \$4,407.00 on February 17, 2006; \$4,407.00 February 24, 2006; \$5,209.27 on March 14, 2006; \$4,806.27 on April 11, 2006; \$4,769.60 on May 15, 2006; \$3,982.32 on June 22, 2006; \$4,272.31 on July 19, 2006; \$5,072.31 on August 8, 2006; \$4,284.32 on September 13, 2006; \$8,384.11 on November 15, 2006; \$4,584.22 on December 26, 2006; \$8,984.22 on February 23, 2007; \$5,984.22 on May 11, 2007; \$150,000.00 on August 20, 2007; and \$17,822.00 on September 17, 2007. The total payments to ROWLEY were \$236,969.17.

f. Defendant T. SMITH made no contribution to FFCF. However, SMITH paid T. SMITH the following amounts of FFCF funds: \$1,500.00 on February 16, 2006;

\$1,000.00 on March 14, 2006; \$1,500.00 on April 4, 2006; \$3,000.00 on May 3, 2006; \$3,000.00 on June 1, 2006; \$3,000.00 on July 8, 2006; \$3,000.00 on August 7, 2006; \$3,000.00 on September 5, 2006; \$3,000.00 on October 12, 2006; \$3,000.00 on November 10, 2006; \$3,000.00 on December 13, 2006; \$3,000.00 on January 9, 2007; \$3,000.00 on February 20, 2007; \$3,000.00 on March 15, 2007; \$2,500.00 on April 18, 2007; \$2,000.00 on May 17, 2007; \$5,000.00 on September 5, 2007; \$3,000.00 on January 10, 2008; \$2,000.00 on February 19, 2008; and \$2,000.00 on March 18, 2008. The total payments to T. SMITH were \$53,500.00

g. Defendant USHER made no contribution to FFCF. However, SMITH paid USHER the following amounts of FFCF funds: \$3,400.60 on February 15, 2006; \$2,700.60 on April 10, 2006; \$1,027.60 on June 22, 2006; \$25,000.00 on July 17, 2006; \$1,710.22 on August 10, 2006; \$15,710.22 on September 27, 2006; \$1,022.17 on January 25, 2007; \$8,000.00 on October 17, 2007; and \$7,122.17 on April 11, 2007. The total payments to USHER were \$65,693.58.

h. Defendant WIRTH made the following contributions to FFCF: \$1,382,545.85 on February 10, 2006; \$1,286.03 on February 28, 2006; \$464,414.62 on February 28, 2006; \$1,350.21 March 2, 2006; and \$1,000.00 on May 11, 2006. The total amount WIRTH deposited into FFCF was \$1,850,596.71. However, SMITH paid WIRTH the following amounts of FFCF funds: \$29,270.00 on April 27, 2006; \$101,159.71 on July 21, 2006; \$92,100.17 on October 30, 2006; \$78,500.00 on January 18, 2007; \$3,357,755.38 on April 16, 2007; \$494,993.54 on April 16, 2007; \$100,732.66

on April 17, 2007; \$2,278.33 on April 30, 2007; \$15,454.87 on May 15, 2007; and \$15.00 on May 15, 2007. The total payments to WIRTH were \$4,272,259.66.

i. Defendant WORKMAN contributed \$720,336.94 to FFCF on February 10 2006. However, SMITH paid WORKMAN the following amounts of FFCF funds: \$9,686.14 on May 1, 2006; \$27,159.71 on July 21, 2006; \$41,221.30 on October 18, 2006; \$275,000.00 on January 26, 2007; \$150,000.00 on February 5, 2007; \$125,000.00 on February 14, 2007; and \$517,652.96 on March 14, 2007. The total amount paid to WORKMAN was \$1,145,720.11.

j. Defendant DAVID YOUNG contributed \$101,685.31 to FFCF on February 22, 2006. However, SMITH paid DAVID YOUNG the following amounts of FFCF funds: \$2,000.00 on July 27, 2006; \$71,662.36 on March 21, 2007; \$5,000.00 on July 23, 2007; \$30,000.00 on July 26, 2007; \$77,000.00 on July 30, 2007; \$500.00 on September 5, 2007; and \$500.00 on September 25, 2007. The total amount paid to DAVID YOUNG was \$186,662.36.

k. Defendant RICHARD YOUNG contributed \$1,719,065.42 to FFCF on February 6, 2006. However, SMITH paid RICHARD YOUNG the following amounts of FFCF funds: \$21,765.27 on April 19, 2006; \$195,165.18 on February 12, 2007; \$56130.70 on April 18, 2007; \$1,545,000.00 on June 30, 2007; and \$15,122.00 on September 6, 2007. The total amount paid to RICHARD YOUNG was \$1,833,183.15.

16. By the end of 2007, the majority of FFCF funds that had been invested with LBS and earnings thereon had been disbursed.

17. SMITH attempted to continue to make good on his false promises and misrepresentations to the remaining FFCF members by making payments to them when they so requested. However, he often delayed in making such payments and when he did, the checks often bounced.

18. Finally, in approximately June, 2008, SMITH could no longer endure the stress created by his misrepresentations and repeated demands of FFCF members. He attempted suicide. Later, SMITH wrote a letter to FFCF members and others explaining the chain of events that ultimately led to the collapse of FFCF. Attached hereto and incorporated by reference is Exhibit B, a true and correct copy of the SMITH letter.

19. In September, 2008, the majority of existing FFCF members elected Roger Taylor to act as the new Manager of FFCF.

FIRST CAUSE OF ACTION
(Intentional Misrepresentation against Smith)

20. Plaintiff realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 19, inclusive.

21. SMITH represented to Defendants, both verbally and in writing, that they were owed certain amounts of money.

22. In fact, none of the Defendants was actually owed the amounts SMITH had represented. Instead, Defendants were owed less because SMITH had overstated the profits earned on the Defendants' contributions.

23. SMITH knew that he had overstated the amounts due the Defendants.

24. As a direct and proximate result of SMITH's misrepresentations, Plaintiff FFCF

COMPLAINT BY FFCF INVESTORS, LLC

was harmed in that the Defendants were paid money in excess of the amount they were owed which resulted in the depletion of FFCF assets to the detriment of the remaining members.

SECOND CAUSE OF ACTION
(Breach of Fiduciary Duty against Smith)

25. Plaintiff realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 24.

26. At all relevant times herein, a fiduciary relationship existed between FFCF and SMITH since SMITH was the Manager of FFCF.

27. Due to the relationship as referenced above, SMITH had a legal and fiduciary duty to FFCF and its members not to abuse the rights and interests of FFCF to its detriment and to act in good faith at all times. This obligation included but is not limited to refraining from intentional misconduct to the detriment of the best interests of FFCF.

28. As a fiduciary of FFCF, SMITH had the obligation to exercise the highest good faith and loyalty in his dealings with FFCF, including but not limited to, refraining from acts detrimental to FFCF and its members such as making material misrepresentations, using FFCF funds for non-FFCF business, and using FFCF funds to overpay members.

29. SMITH breached his fiduciary duties to FFCF and its members as follows:
- a. Failing to transfer the entire amount of funds received by FFCF to LBS;
 - b. Overstating the earnings on member contributions;
 - c. Paying FFCF funds to non-members;
 - d.. Paying certain FFCF members more than their contributions; and

e. Depleting FFCF funds by paying FFCF funds to non-members and overpaying certain members.

30. In acting as described above, the SMITH did not exercise that degree of loyalty required of fiduciaries in that he used his position of control to continue his fraudulent scheme to the detriment of FFCF and its members.

31. As a proximate result of the acts of SMITH, FFCF and its members were injured and suffered damages in an amount to be proven at trial.

THIRD CAUSE OF ACTION
(Conversion against Smith)

32. Plaintiff realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 31.

33. Plaintiff FFCF is the rightful owner of the amounts wrongfully paid to Defendants.

34. As a direct and proximate result of SMITH's acts and/or omissions, Plaintiff has been damaged in an amount in excess of \$3,700,802.42 to be proven at trial.

FOURTH CAUSE OF ACTION

(Unjust Enrichment against James, Jones, Millard, Millard Trust, Peterson, Rowley, T. Smith, Usher, Wirth, Workman, David Young and Richard Young)

35. Plaintiff realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 34.

36. The Defendants JONES, MILLARD, MILLARD TRUST, DAVID YOUNG,

RICHARD YOUNG, WORTH and WORKMAN have been unjustly enriched at the expense of FFCF and its remaining members by receiving FFCF funds in excess of their contributions, the result of which depleted the assets of FFCF leaving no funds available for the remaining FFCF members to recoup their contributions .

37. As a direct and proximate result, FFCF and its members have been damaged and in an amount to be proven at trial.

FIFTH CAUSE OF ACTION

(Declaratory Relief against Smith, James, Jones, Millard, Millard Trust, Peterson, Rowley, T. Smith, Usher, Wirth, Workman, David Young and Richard Young)

38. Plaintiff realleges and incorporates by reference each and every allegation contained in Paragraph 1 through 37.

39. Plaintiff is informed and believes and thereon alleges that Defendants are legally responsible for the damages and injuries alleged in Plaintiff's Complaint on the grounds the Defendants' conduct resulted in the injuries and damages alleged by Plaintiff.

40. An actual controversy has arisen and now exists between Plaintiff and Defendants specified herein and each of them concerning their respective interests, rights and duties with respect to their and obligation to Plaintiff.

41. Plaintiff is informed and believe thereon alleges that Defendants dispute the contentions of Plaintiff.

42. Plaintiff desires a judicial determination concerning its respective interests, rights and duties with respect to the conduct alleged in the Complaint.

SIXTH CAUSE OF ACTION

(Constructive Trust against James, Jones, Millard, Millard Trust, Peterson, Rowley, T. Smith, Usher, Wirth, Workman, David Young and Richard Young)

43. As a proximate result of the Defendants fraudulent misrepresentation and otherwise wrongful conduct as alleged herein, the funds of FFCF has been depleted to the point whereby there are insufficient funds to allow the current FFCF members to recoup their contributions.

44. By reason of the fraudulent and otherwise wrongful manner in which the Defendants, or any of them, obtained their alleged right, claim mor interest in and to the property, Defendants, and each of them, have no legal or equitable right, claim or interest therein, but, instead, Defendants, and each of them are involuntary trustees holding said property and profits therefrom in constructive trust for FFCF with the duty to convey to FFCF funds received which are over and above their contributions to FFCF.

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

1. Compensatory damages according to proof;
2. Punitive damages according to proof
3. Declaratory relief;
4. A declaration that Defendants hold FFCF property improperly obtained as constructive trustees for the benefit of Plaintiff;
5. Costs of suit;

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6. Any further relief the court deems proper.

JURY DEMAND

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

Dated: Dec. 16, 2008

By: Sara J. Pfrommer

Sara J. Pfrommer
Attorney for Plaintiff

Plaintiff's Address:

222 E. South Temple Street
Salt Lake City, UT 84111