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J. DAVID NAVARRO, Clerk
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DEPUTY

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**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT**

**OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

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| STATE OF IDAHO, Department of Finance,<br><br>Plaintiff,<br><br>vs.<br><br>MARILYN K. GERTSCH,<br><br>Defendant. | Civil No CV OC 9800279D<br><br>**COMPLAINT**<br><br>Fee Category: Exempt |

Comes now the State of Idaho, Department of Finance, Gavin M. Gee, Director, by and through counsel, to complain and allege as follows:

## JURISDICTION

1. This action is brought under the provisions of the Idaho Securities Act, Title 30, Chapter 14, Idaho Code, and in particular Idaho Code § 30-1442 wherein the Director of the

Idaho Department of Finance (Department) is empowered to bring actions seeking injunctive and other relief against defendants who have either violated or are about to violate provisions of the Idaho Securities Act or any rule or order thereunder.

## VENUE

2. The acts and practices alleged herein comprising violations of law by the above-named Defendant occurred in the conduct of trade and commerce in Ada County, and elsewhere in the State of Idaho.

## DEFENDANT

3. Defendant Marilyn K. Gertsch is an Idaho resident active in soliciting funds from Idaho residents for investment in investment programs.

## BACKGROUND

4. Beginning on a date uncertain, but at least since January 1997, Defendant offered and sold investment opportunities to Idaho residents. Some of the investment opportunities were offered in conjunction with travel services also offered by Defendant. For example, Defendant has used the offer of free travel as an inducement for Idaho residents to participate in an investment program. Defendant has recently represented to Idaho residents that the investment programs would pay a return of twenty-five percent (25%) per quarter.

## COUNT ONE

The allegations contained in paragraphs 1 through 4 are hereby realleged as if fully set forth.

5. Beginning on a date uncertain but at least since January 1997, Defendant sold or offered for sale, or caused to be sold, either directly or indirectly, or aided and abetted in the offer or sale of securities in the form of investment contracts and/or evidences of indebtedness.

6. The securities offered and sold by Defendant were not registered with the Department as required by Idaho Code § 30-1416.

7. Defendant has violated Idaho Code § 30-1416.

## COUNT TWO

The allegations contained in paragraphs 1 through 7 are hereby realleged as if fully set forth.

8. At no time has the Defendant been licensed by the Department of Finance as a broker-dealer or salesman to sell or offer for sale securities as required by Idaho Code § 30-1406.

9. Defendant has violated Idaho Code § 30-1406.

## COUNT THREE

The allegations contained in paragraphs 1 through 9 are hereby realleged as if fully set forth.

10. In connection with the offer and sale of securities, Defendant made misrepresentations of material fact in violation of the antifraud provision of the Idaho Securities Act. These misrepresentations include, but are not limited to, the following:

A. Representing that the investment program was safe and that the risk of losing invested principal was very low.

11. Defendant has violated Idaho Code § 30-1403(2).

## COUNT FOUR

The allegations contained in paragraphs 1 through 11 are hereby realleged as if fully set forth.

12. In connection with the offer or sale of securities, Defendant omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which

they were made, not misleading in violation of the antifraud provision of the Idaho Securities Act. The omissions of Defendant include, but are not limited to, the following:

A. Defendant failed to inform offerees and/or investors of her financial condition and the exact uses toward which investor proceeds would be applied.

B. Defendant failed to inform offerees and/or investors that as of May, 1997 a travel agency ceased extending her credit due to a $40,000 outstanding balance.

C. Defendant failed to disclose information regarding her history of raising money and paying returns on investments. Further, Defendant failed to disclose the amount of outstanding obligations accrued as a result of her promises to fund travel, and to pay principal and investment returns on investments in the investment programs.

D. Defendant failed to disclose the nature and amounts of any compensation or other remuneration accruing to Defendant through the travel or investment programs.

E. Defendant failed to disclose that she had previously filed for a Chapter 7 bankruptcy while residing in the State of California.

F. Defendant failed to disclose the risks associated with committing funds to the travel or investment programs.

G. Defendant failed to disclose that the securities were not registered with the Idaho Department of Finance as required under Idaho Code § 30-1416.

H. Defendant failed to disclose that she was not licensed with the Idaho Department of Finance as required under Idaho Code § 30-1406.

13. Defendant has violated Idaho Code § 30-1403(2).

## PRAYER FOR RELIEF

Wherefore, Plaintiff prays for a Judgment in favor of Plaintiff and against Defendant as

follows:

A. That Defendant be adjudged to have violated the Idaho Securities Act.

B. That Defendant be permanently enjoined from engaging in any acts, practices or omissions which would constitute violations of the Idaho Securities Act, Title 30, Chapter 14, Idaho Code, or any rule or order thereunder, and in particular, that she be permanently enjoined from:

1. Selling or offering for sale nonexempt securities in any form in the State of Idaho until such time as the securities have been registered with the Idaho Department of Finance in accordance with Title 30, Chapter 14, Idaho Code;

2. Selling or offering for sale nonexempt securities in any form in the State of Idaho until such time as Defendant has registered as a broker-dealer or salesman for a broker-dealer or issuer with the Idaho Department of Finance, in accordance with Title 30, Chapter 14, Idaho Code;

3. While engaged in or in connection with the offer, sale or purchase of any security:

   (a) Employing any device, scheme or artifice to defraud any investors in the securities;

   (b) Making any untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading;

   (c) Engaging in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

4. Aiding, abetting, counseling, inducing or causing any other person to engage in any of the types of conduct described in paragraphs 1, 2, or 3, above.

C. That Defendant be prohibited from claiming the availability of, using, or offering or selling securities under, any exemption under the Idaho Securities Act without receiving the prior written

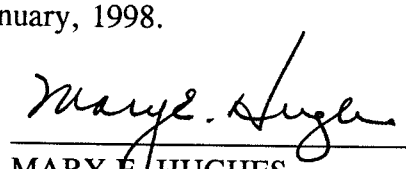
consent of the Director.

D. That Defendant be ordered to restore to each person in interest any consideration which may have been acquired or transferred in violation of the Idaho Securities Act.

E. That Plaintiff be awarded attorney's fees and costs incurred in the preparation and the prosecution of this action, and if judgment is taken by default herein, that $5,000 is a reasonable attorney's fee.

F. Such other and further relief as this Court may deem equitable and just.

DATED this 21st day of January, 1998.



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