JUDGE
RENAE HOFF

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E. P. GARCIA, DEPUTY

LAWRENCE G. WASDEN
Attorney General

A. RENÉ MARTIN
Deputy Attorney General
State of Idaho
Department of Finance
P.O. Box 83720
Boise, Idaho 83720-0031
Telephone: (208) 332-8092
Facsimile: (208) 332-8099
Idaho State Bar #3188

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR CANYON COUNTY

STATE OF IDAHO, DEPARTMENT OF FINANCE, SECURITIES BUREAU, Plaintiff, vs. DELBERT W. GRAY, an individual, and HERITAGE FINANCIAL GROUP, INC., an Idaho corporation, Defendants,	Case No. CV03-1361 **VERIFIED COMPLAINT** Fee category: Exempt

COMES NOW the State of Idaho, Department of Finance, Securities Bureau, Gavin M. Gee, Director, by and through its counsel, A. René Martin, Deputy Attorney General, and upon information and belief complains and alleges as follows:

1.

This action is brought pursuant to the Idaho Securities Act, Title 30, Chapter 14, Idaho Code (the Act), and in particular, Idaho Code § 30-1442, wherein the Director is authorized 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 promulgated thereunder.

2.

The acts and practices alleged herein comprising violations of law by the above-named defendants occurred in the conduct of trade and commerce in Canyon County, Idaho, and elsewhere in the state of Idaho.

DEFENDANTS

3.

Delbert W. Gray (Gray), Defendant herein, is an individual who is approximately 46 years old, residing at 4437 Red Grass Ct., Meridian, Idaho 83642. Gray has been registered with the Idaho Department of Finance (Department) and with the National Association of Securities Dealers (NASD) as a securities salesman since April of 1989. Gray has been employed by Securian Financial Services, Inc. (Securian), since April of 1989. Gray is also licensed as an insurance agent in Idaho, and engages in a tax preparation business.

4.

Heritage Financial Group, Inc. (Heritage), is an Idaho corporation in good standing with its offices located at 16 12th Avenue South, Suite 102, Nampa, Idaho 83651. Gray is the director, president, and sole shareholder of such corporation, which was incorporated on January 6, 1997. Heritage is a separate and unrelated corporation from a Utah corporation with the same name, which Utah corporation is a branch office of Securian.

5.

During the time period from approximately 1993 through at least December of 2002, Gray defrauded various Idaho residents who were his investment and insurance clients by obtaining monies from such individuals in connection with the offer, sale or purchase of securities, and then misappropriating and converting such monies to his own use by depositing them in his personal business account in the name of Heritage Financial Group, Inc. Gray defrauded his investment clients by obtaining monies purportedly for investing the same in various investments, and then misappropriating such investment monies, and using such monies to pay personal and/or business expenses. To the best of the Department's information and belief, Gray's fraudulent acts resulted in losses to victims of at least $635,400.

FACTS

6.

(VICTIM M.B.)

M.B. is an 82-year-old woman who lived in Oregon until July 28, 1997, when she moved to Nampa, Idaho. On or about July 3, 1995, M.B. wrote two $10,000 checks to Heritage and delivered the checks to Gray. Gray represented to M.B. that the $20,000 reflected in the two checks would be invested in a certificate of deposit held in an account maintained by Heritage. Gray represented that such certificate of deposit would be a safe investment and would pay interest to M.B.'s account with Heritage, and such interest would be available to M.B. for withdrawal at any time. In fact, Gray misappropriated and converted M.B.'s $20,000 to his own use, by depositing such funds in the Heritage business operating account and using such funds to

pay business expenses incurred by Gray and/or Heritage, including the payment of salaries, and to pay Gray's personal expenses.

7.

Over the time period between December 14, 1995 and June 19, 2001, M.B. purchased additional securities from Gray, writing checks made out to Heritage in the total amount of at least $61,500, which checks she gave to Gray. Gray represented to M.B. that such funds would be invested in certificates of deposit which would be held in her Heritage account, and which would incur interest payable to such account, which interest would be available to M.B. for withdrawal at any time. In fact, Gray misappropriated and converted such funds to his own use. The total amount Gray misappropriated from M.B. and converted to his own use, is at least $81,500.

(VICTIMS D.R. AND C.R.)

8.

D.R. and C.R. are a married couple residing in Meridian, Idaho at all times relevant hereto. In or about December of 2000, D.R. and C.R. sold their home and gave the $239,000 in proceeds to Gray to invest. Gray told D.R. and C.R. that such funds would be invested in a money market fund in an account maintained for D.R. and C.R. at Heritage, and that such funds would be available for withdrawal by D.R. and C.R. at any time. D.R. and C.R. later asked Gray for withdrawal of the $239,000 in funds and received such funds plus interest in the form of a check from Heritage. When D.R. and C.R. asked Gray for statements reflecting the transactions relating to the $239,000 in investment funds, Gray stated that no documents were generated relating to those transactions.

9.

In or about April of 2002, Gray solicited and sold a security to D.R. and C.R. in the amount of $30,000, purportedly to be invested in a government bond fund. Gray told D.R. and C.R. that such investment would earn 9.64% interest. In or about October of 2002, D.R. and C.R. gave Gray another $10,000 to invest in a purported bond fund that Gray represented would pay 9.6%. D.R. and C.R. received no disclosure documents, statements, or tax information relating to such investment.

10.

On or about October 24, 2002, D.R. and C.R. asked Gray for a withdrawal of $40,000 from the funds D.R. and C.R. had invested with Gray. Gray gave D.R. and C.R. a check drawn on a Heritage bank account at Washington Mutual Bank in the amount of $41,700.16. D.R. and C.R. deposited such check, but were alerted by their bank that the check did not clear due to insufficient funds.

11.

When D.R. and C.R. asked Gray for an explanation as to the $41,700.16 insufficient funds check referenced in ¶ 10 above, Gray gave D.R. and C.R. another check, this time in the amount of $42,009.58. When D.R. and C.R. deposited such check, they were alerted by their bank that the check did not clear due to insufficient funds.

12.

When D.R. and C.R. asked Gray for an explanation as to the $42,009.58 insufficient funds check referenced in ¶ 11 above, Gray then gave D.R. and C.R. two checks, one in the amount of $22,009.58, and another in the amount of $20,000. D.R. and C.R. cashed the $20,000

check, but were alerted by their bank that the check for $22,009.58 would not clear due to insufficient funds. D.R. and C.R. submitted the $22,009.58 check again, and ultimately it cleared.

13.

The $279,000 in total investment funds given to Gray by D.R. and C.R., as referenced in paragraphs 10, 11, and 12 above, were not invested by Gray. In fact, Gray deposited such funds in Heritage's business operating account, and used such funds for Gray's business and personal expenses. Gray later wrote D.R. and C.R. a check on the Heritage business account, and paid back the $279,000 in full plus interest.

(VICTIMS B.B AND S.B.)

14.

B.B. and S.B. are a married couple residing in Nampa, Idaho at all times relevant hereto. On or about December 2, 2002, Gray solicited and sold to B.B. and S.B. an investment in the amount of $25,000, purportedly in a government bond portfolio held by Albertson's College in Caldwell, Idaho. Gray represented to B.B. and S.B. that their investment would be in the form of a certificate of deposit held for them in a Heritage account. He also represented to B.B. and S.B. that Heritage was a large Utah firm, and that their money would be sent to Heritage's Utah office for the investment.

15.

In fact, Gray misappropriated and converted the investment funds of B.B. and S.B., in the total amount of at least $25,000, by placing such funds in Heritage's business operating account, and apparently using such funds to repay Victims D.R. and C.R., as referenced in paragraphs 8

through 13 above, to further Gray's Ponzi scheme or to pay Gray's personal and/or business expenses.

(VICTIM R.C.)

16.

R.C. is an 80-year-old gentleman who resides in Nampa, Idaho. Between January 30 and December 22, 2002, Gray solicited and sold securities to R.C. in the amount of at least $55,000. Gray failed to invest such funds as represented to R.C., but misappropriated and converted the same to his own use.

(VICTIM N.C.)

17.

N.C. is a 55-year-old woman who resides in Nampa, Idaho. On or about December 17, 2002, Gray solicited and sold securities to N.C. in the amount of at least $80,000. Gray failed to invest such funds as represented to N.C., but misappropriated and converted the same to his own use.

(VICTIM L.G.)

18.

L.G. is a 60-year-old gentleman who resides in Nampa, Idaho. On or about June 6, 1999, Gray solicited and sold a security to L.B. in the amount of at least $10,000. Gray failed to invest such funds as represented to L.B., but misappropriated and converted the same to his own use.

(VICTIM B.F.)

19.

B.F. is a 70-year-old woman who lives in Nampa, Idaho. Over a period of time between 1993 through December of 2002, Gray solicited and sold securities to B.F. in the amount of at least $100,000. Gray failed to invest such funds as represented to B.F., but misappropriated and converted the same to his own use.

(VICTIM R.M. AND J.M.)

20.

R.M. and J.M. are a married couple in their 60s, who live in Nampa, Idaho. During the time period between October of 2000 and December of 2001, Gray solicited and sold securities to R.M. and J.M. in the amount of at least $69,900. Gray failed to invest such funds as represented to R.M. and J.M., but misappropriated and converted the same to his own use.

(VICTIM J.R.)

21.

J.R. lives in Meridian, Idaho. On or about September 23, 1998, Gray solicited and sold a security to J.R. in the amount of at least $90,000. Gray failed to invest such funds as represented to J.R., but misappropriated and converted the same to his own use.

(VICTIMS J.C. AND E.C.)

22.

J.C. and E.C. are a married couple who live in Meridian, Idaho. During the time period between December 28, 2001 and February 5, 2002, Gray solicited and sold securities to J.C. and

E.C. in the amount of at least $77,000. Gray failed to invest such funds as represented to J.C. and E.C., but misappropriated and converted the same to his own use.

(VICTIM G.G.)

23.

G.G. lives in Nampa, Idaho. During the year 1999, Gray solicited and sold securities to G.G. in the amount of at least $14,000. Gray failed to invest such funds as represented to G.G., but misappropriated and converted the same to his own use.

(VICTIMS A.M. AND V.M)

24.

A.M. and V.M. are a married couple who live in Meridian, Idaho. During June and July of 2002, Gray solicited and sold securities to A.M. and V.M. in the amount of at least $23,000. Gray failed to invest such funds as represented to A.M. and V.M., but misappropriated and converted the same to his own use.

(VICTIMS J.M. AND J.M.)

25.

J.M. and J.M. are a married couple who live in Nampa, Idaho. During 1999, Gray solicited and sold securities to J.M. and J.M. in the amount of at least $35,000. Gray failed to invest such funds as represented to J.M. and J.M., but misappropriated and converted the same to his own use. When J.M. and J.M. asked to withdraw $25,000 of such investor funds, Gray wrote them a check for that amount on the Heritage Financial account, reducing their losses due to Gray's wrongful acts to $10,000.

(VICTIMS AS YET UNKNOWN)

26.

During the time period between at least 1993 and the current date, Gray solicited and sold securities to other investors who may be yet unidentified, in amounts not yet known, and misappropriated and converted such investor funds to his own use.

COUNTS ONE THROUGH TWELVE: VIOLATIONS OF THE ANTIFRAUD PROVISIONS OF THE ACT / MISAPPROPRIATION AND CONVERSION OF INVESTMENT MONEYS

27.

The allegations set forth in paragraphs 1 through 26 above are fully incorporated herein by this reference.

28.

Idaho Code § 30-1403(1) provides that it is unlawful for any person, in connection with the offer, sale or purchase of any security, directly or indirectly, to employ any device, scheme or artifice to defraud. From at least July of 1993 through December of 2002, Gray took investment monies from victims M.B.; D.R. and C.R.; B.B. and S.B., R.C., N.C.; L.G.; B.F.; R.M. and J.M.; J.R.; J.C. and E.C.; G.G.; A.M. and V.M.; J.M. and J.M., and from other victims yet unidentified, (as referenced in paragraphs 6 through 26 above) in connection with the offer, sale or purchase of a security, directly or indirectly, which monies Gray misappropriated and converted to his own use, in violation of Idaho Code § 30-1403(1). Each act of misappropriation and conversion of investor funds committed by Gray constitutes a separate violation of Idaho Code § 30-1403(1).

29.

Idaho Code § 30-1403(3) provides that it is unlawful for any person to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person. Gray's acts, practices, and courses of business which operated as a fraud or deceit include his acts of taking monies from the victims referenced in ¶ 28 above, in connection with the offer, sale or purchase of a security, directly or indirectly, and misappropriating and converting the same to his own use, constitute a violation of Idaho Code § 30-1403(3). Each of these acts of misappropriation and conversion of investor funds committed by Gray constitutes a separate violation of Idaho Code § 30-1403(3).

COUNTS THIRTEEN AND FOURTEEN: VIOLATION OF THE ANTIFRAUD PROVISIONS OF THE ACT / OMISSIONS AND MISREPRESENTATIONS

30.

The allegations set forth in paragraphs 1 through 29 above are fully incorporated herein by this reference.

31.

Idaho Code § 30-1403(2) provides that it is unlawful for any person, in connection with the offer, sale or purchase of any security, directly or indirectly, to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.

32.

Gray violated Idaho Code § 30-1403(2) in that he omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. Gray's omissions include, but are not limited to, the following:

(A) Gray failed to disclose to investors that their investment monies would be deposited in Heritage's operating account, or other business or personal account(s) maintained or controlled by Gray, and used for Heritage and/or Gray's business or personal expenses, rather than invested in certificates of deposit, money market or bond funds, or other investments, as Gray had represented.

33.

Gray violated Idaho Code § 30-1403(2) in that he made untrue statements of material facts in connection with the offer, sale or purchase of a security. Such misrepresentations include, but are not limited to, the following:

(A) Gray's representation to his investment clients that monies received from them would be deposited in client investment accounts and used to purchase certificates of deposit, or to purchase shares of money market or bond funds or other investments, when in reality Gray took such monies as part of a scheme to misappropriate and convert the same to his own use, or to use such funds to pay back other investors as part of a Ponzi scheme.

(B) Gray represented to investors that Heritage Financial Group, Inc., an Idaho corporation of which he was president, director, and sole shareholder, was affiliated with a Utah investment firm by that same, which Utah corporation was a

branch office of Securian, Gray's employer. In fact, there was no relationship between the two corporations.

(C) Gray represented to investors that they would receive at least a 9% return on their investments placed through him, and that such investments were "safe." In fact, the investors' monies were not invested by Gray, but were used for his personal or business purposes.

COUNT FIFTEEN: VIOLATION OF THE ANTIFRAUD PROVISIONS OF THE ACT / ACTS, PRACTICES, COURSES OF BUSINESS

34.

The allegations set forth in paragraphs 1 through 33 above are fully incorporated herein by this reference.

35.

Gray violated Idaho Code § 30-1403(3), an antifraud provision of the Act, in that in the course of offering or selling securities in Idaho, he engaged in acts, practices, and courses of business which operated as a fraud or deceit upon other persons. Gray's acts, practices, and courses of business which operated as a fraud or deceit include, but are not limited to, the pattern of misappropriation and conversion of investment funds to his own use, using such funds to further his Ponzi scheme, and the pattern of omissions and misrepresentations referenced in Counts One through Fourteen above.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for a judgment in favor of Plaintiff and against the Defendants as follows:

(1) That Defendants be adjudged to have violated the Idaho Securities Act as to any and all counts alleged above, as well as any additional counts proved at trial;

(2) That Defendants be permanently enjoined from engaging in any acts, practices or courses of business which would constitute violations of the Idaho Securities Act, Title 30, Chapter 14, Idaho Code, and in particular, that he be permanently enjoined from:

(A) 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;

(B) Selling or offering for sale nonexempt securities in any form in the state of Idaho until such time as Defendant Gray has properly registered with the Idaho Department of Finance, in accordance with Title 30, Chapter 14, Idaho Code;

(C) While engaged in or in connection with the offer, sale or purchase of any security:

(1) Employing any device, scheme or artifice to defraud any investors or prospective investors;

(2) 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;

(3) 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 (C)(1), (C)(2), or (C)(3) above;

(3) That Defendant Gray be prohibited from claiming the availability of, using, or offering or selling securities under any exemptions under the Idaho Securities Act without receiving the prior written consent of the Director;

(4) That Defendants 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, and that the court award a money judgment in the amount of at least $635,400, or such amount as is proved at trial, as restitution for the victims of Defendant Gray's violations of the Idaho Securities Act, pursuant to Idaho Code § 30-1442(3)(a);

(5) That Defendants be ordered to pay attorney fees and costs incurred in the preparation and the prosecution of this action and reimbursement for investigative efforts, pursuant to Idaho Code § 30-1442(3)(c). If judgment is taken by default herein, that $10,000 is a reasonable sum for the same;

(6) For the appointment of a receiver for the Defendants' assets, pursuant to Idaho Code § 30-1442(3); and

(7) For such further relief as this Court may deem equitable and just under the circumstances.

DATED this 7th day of February, 2003.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

A. RENÉ MARTIN
Deputy Attorney General

VERIFICATION

STATE OF IDAHO)
)ss.
County of Ada)

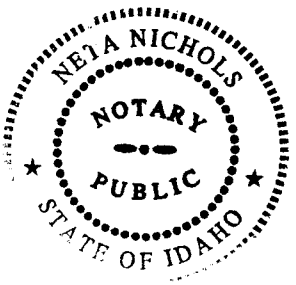
MARILYN T. CHASTAIN, Bureau Chief of the Securities Bureau of the Department of Finance, State of Idaho, being first duly sworn, deposes and says:

That she has read the foregoing verified complaint, that she knows the contents thereof, and the same are true to the best of her knowledge and belief.

DATED this 7th day of February, 2003.

Marilyn T. Chastain
MARILYN T. CHASTAIN

SUBSCRIBED AND SWORN to before me this 7th day of February, 2003.



Neta Nichols
Notary Public for Idaho
Residing at: Boise
My Commission Expires: 10-25-2006