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9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 SECURITIES AND EXCHANGE
12 COMMISSION,

13 Plaintiff,

14 vs.

15 REAL ESTATE PARTNERS, INC.;
16 REAL ESTATE PARTNERS INCOME
17 FUND I, LLC; REAL ESTATE
18 PARTNERS INCOME FUND II, BT;
19 REAL ESTATE PARTNERS INCOME
20 FUND III, BT; REAL ESTATE
21 PARTNERS UNIT INVESTMENT
22 BUSINESS TRUST I; REAL ESTATE
23 PARTNERS UNIT INVESTMENT
24 BUSINESS TRUST II; REAL ESTATE
25 PARTNERS EQUITY FUND, BT;
26 REAL ESTATE PARTNERS GROWTH
27 FUND, BT; DAWSON DAVENPORT;
28 MICHAEL P. OWENS; DONALD G.
RYAN; RICHARD McGILL; WILLIAM
L. SANDERS; MICHAEL TUCHMAN;
and DANNY RAYBURN,

Defendants.

Case No.: **SACV07-1022 AG (RNBx)**

**COMPLAINT FOR VIOLATIONS OF THE
FEDERAL SECURITIES LAWS**

2007 SEP -5 11:12:00
FILED

1 Plaintiff Securities and Exchange Commission (“Commission”) alleges as
2 follows:

3 **JURISDICTION AND VENUE**

4 1. This Court has jurisdiction over this action pursuant to Sections 20(b),
5 20(d)(1) and 22(a) of the Securities Act of 1933 (“Securities Act”), 15 U.S.C.
6 §§ 77t(b), 77t(d)(1) & 77v(a), and Sections 21(d)(1), 21(d)(3)(A), 21(e) and 27 of
7 the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §§ 78u(d)(1),
8 78u(d)(3)(A), 78u(e) & 78aa. Defendants have, directly or indirectly, made use of
9 the means or instrumentalities of interstate commerce, of the mails, or of the
10 facilities of a national securities exchange, in connection with the transactions,
11 acts, practices, and courses of business alleged in this Complaint.

12 2. Venue is proper in this district pursuant to Section 22(a) of the
13 Securities Act, 15 U.S.C. § 77v(a), and Section 27 of the Exchange Act, 15 U.S.C.
14 § 78aa, because certain of the transactions, acts, practices, and courses of conduct
15 constituting violations of the federal securities laws occurred within this district,
16 each of the entity defendants is located in this district, and each of the individual
17 defendants resides in this district.

18 **SUMMARY**

19 3. Between January 2003 and August 2006, the defendants raised
20 approximately \$50 million, defrauding approximately 1600 investors nationwide
21 during the course of several securities offerings. The defendants offered investors
22 interests in a series of seven offerings (the “Offerings”), the proceeds of which
23 were purportedly to be invested in various properties purchased and maintained by
24 defendant Real Estate Partners, Inc. (“REP”). The interests in the Offerings were
25 securities. The Offerings were not registered with the Commission, however, as
26 required by Section 5 of the Securities Act, 15 U.S.C. § 77e.

27 4. Operating out of two Orange County, California based boiler rooms
28 run by defendants Michael P. Owens and Donald G. Ryan, REP’s sales force used

1 lead lists and scripts containing false representations to cold-call hundreds of
2 potential investors each day, enticing investors with promises of lucrative returns
3 based on the revenue generated from properties REP was purportedly purchasing
4 and managing.

5 5. The entity defendants and defendants Davenport, Owens and Ryan
6 caused the following misrepresentations and omissions of material fact to be made
7 to investors in connection with the Offerings:

8 a. The prominent real estate company Coldwell Banker was
9 falsely represented to investors to be involved in the Offerings, when in fact
10 Coldwell Banker had nothing to do with the Offerings.

11 b. The use of proceeds from the Offerings was misrepresented.
12 Investors were not told that over 52% of the \$50 million in funds they invested
13 were used to pay sales commissions, including payments of \$10.9 million to two
14 companies controlled by defendant Michael P. Owens and over \$3 million to a
15 company controlled by defendant Donald G. Ryan, and payments of commissions
16 ranging from over \$300,000 to just over \$1 million to defendant sales agents
17 Richard McGill, William L. Sanders, Michael Tuchman and Danny Rayburn.

18 c. Sales materials reviewed and approved by defendants Dawson
19 Davenport and Michael P. Owens that were disseminated to investors falsely
20 projected yearly returns averaging approximately 54% and five-year cumulative
21 returns averaging approximately 270%, when there was no basis for making such
22 optimistic projections. Further, in order to lull investors into believing that their
23 investments were in fact profitable and to encourage additional investments,
24 investors were paid "dividends" of approximately 4% or 8% per year, depending
25 on the Offering. In fact, the source of funds for these "dividends" was not profits,
26 but new investor monies, and the dividend payments were being made to
27 perpetuate the defendants' Ponzi-like scheme. Indeed, rather than being profitable,
28 the Offerings incurred a combined net loss of \$2.78 million.

1 10. **Real Estate Partners Income Fund III, BT (“IF III”)** is a Nevada
2 business trust formed in April 2004 and based in Irvine, California. REP is the
3 trustee of IF III. IF III claims to invest in real estate and real estate secured assets.
4 Between January 2004 and December 2004, the defendants raised \$4.93 million
5 from 192 investors in IF III nationwide. No registration statement has been filed or
6 is in effect with respect to IF III.

7 11. **Real Estate Partners Unit Investment Business Trust I (“UIBT I”)**
8 is a Nevada business trust formed in June 2003 and based in Irvine, California.
9 REP is the trustee of UIBT I. UIBT I claims to invest in real estate and real estate
10 secured assets. Between January 2003 and June 2004, the defendants raised
11 \$4.955 million from 175 investors in UIBT I nationwide. No registration
12 statement has been filed or is in effect with respect to UIBT I.

13 12. **Real Estate Partners Unit Investment Business Trust II (“UIBT**
14 **II”)** is a Nevada business trust formed in April 2004 and based in Irvine,
15 California. REP is the trustee of UIBT II. UIBT II claims to invest in real estate
16 and real estate secured assets. Between January 2004 and May 2005, the
17 defendants raised \$4.875 million from 168 investors in UIBT II nationwide. No
18 registration statement has been filed or is in effect with respect to UIBT II.

19 13. **Real Estate Partners Equity Fund, BT (“Equity Fund”)** is a
20 Nevada business trust formed in December 2004 and based in Irvine, California.
21 REP is the trustee of Equity Fund. Equity Fund claims to invest in real estate and
22 real estate secured assets. Between January 2005 and July 2006, the defendants
23 raised \$13.12 million from 350 investors in Equity Fund nationwide. No
24 registration statement has been filed or is in effect with respect to Equity Fund.

25 14. **Real Estate Partners Growth Fund, BT (“Growth Fund”)** is a
26 Nevada business trust formed in December 2004 and based in Irvine, California.
27 REP is the trustee of Growth Fund. Growth Fund claims to invest in real estate
28 and real estate secured assets. Between January 2005 and July 2006, the

1 defendants raised approximately \$12.9 million from 352 investors in Growth Fund
2 nationwide. No registration statement has been filed or is in effect with respect to
3 Growth Fund.

4 **B. THE INDIVIDUAL DEFENDANTS**

5 15. **Dawson L. Davenport (“Davenport”)** is a resident of Lake Forest,
6 California. Davenport is the founder and CEO of REP.

7 16. **Michael P. Owens (“Owens”)** is a resident of Newport Coast,
8 California. Owens ran REP’s sales operation. Owens was paid by REP through
9 REP’s payments to Pine Mountain Capital Corporation and Network Real Estate
10 Corporation. Owens is the president of Network Real Estate Corporation. Pine
11 Mountain Capital and Network Real Estate were consultants retained by REP to
12 implement and oversee REP’s fundraising efforts. Between January 2003 and
13 August 2006, REP collectively paid Pine Mountain Capital and Network Real
14 Estate \$10.9 million -- 21% of all funds raised. Owens is not registered with the
15 Commission as a broker or dealer.

16 17. **Donald G. Ryan (“Ryan”)** is a resident of Irvine, California. Ryan is
17 the sole principal of Principal Management Group, a Nevada corporation formed in
18 2001, which raised funds for REP. Between April 2003 and August 2006, REP
19 paid Principal Management Group \$3,081,607, and Ryan an additional \$200.
20 Ryan is not registered with the Commission as a broker or dealer.

21 18. **Richard McGill (“McGill”)** is a resident of Laguna Niguel,
22 California. McGill has worked with Ryan selling investments since the mid-1990s.
23 Between April 2003 and August 2006, REP paid McGill \$679,665 in sales
24 commissions. McGill is not registered with the Commission as a broker or dealer.

25 19. **William L. Sanders (“Sanders”)** is a resident of Norco, California.
26 Sanders has worked with Ryan selling investments since the late 1990s. Between
27 April 2003 and August 2006, REP paid Sanders \$1,048,343 in sales commissions.
28 Sanders is not registered with the Commission as a broker or dealer.

1 in IF I were paid 8% annually for the first two years of their investment. Investors
2 in the subsequent Offerings were each paid 4% annually, for either one or two
3 years depending on the Offering.

4 25. None of these securities offerings was registered with the
5 Commission, as required by Section 5 of the Securities Act.

6 **B. THE FRAUDULENT SALES EFFORT**

7 26. The defendants offered and sold the Offerings through a massive
8 boiler room sales operation. In late 2002, Davenport contracted with Owens to
9 coordinate raising funds for the Offerings. Both Davenport and Owens reviewed
10 the IF I private placement memorandum (“PPM”) before they caused it to be
11 disseminated to investors.

12 **1. THE DEFENDANTS CONDUCT THE OFFERING FROM TWO BOILER**
13 **ROOMS**

14 27. REP primarily relied upon Owens’ salesroom located in Santa Ana,
15 California (the “Santa Ana office”) in order to offer and sell interests in IF I.
16 Owens controlled the salesroom. Specifically, Owens hired, fired, and trained the
17 sales force, and set the sales goals of the Santa Ana office. Owens approved
18 payments to vendors. Owens and his staff were also responsible for investor
19 relations. Although Davenport was REP’s CEO, Owens routinely handled investor
20 inquiries and complaints. Owens also instructed the Santa Ana office salespeople
21 what to tell investors. Owens closely monitored the sales force, including using
22 video surveillance equipment, which he had ordered installed.

23 28. Sometime in the spring of 2003, Owens hired defendant Ryan to help
24 in the sales effort. Ryan headed a sales force in Irvine, California (the “Irvine
25 office”). Ryan’s top salespeople included defendants McGill, Sanders, Tuchman,
26 and Rayburn. Beginning with Ryan’s arrival, REP began conducting two
27 concurrent Offerings, one sold primarily by the Santa Ana office, and one sold by
28 the Irvine office. Owen’s Santa Ana Office was primarily responsible for offering

1 and selling interests in the IF I, IF II, IF III, and Growth Fund offerings; Ryan's
2 Irvine office was primarily responsible for offering and selling interests in the
3 UIBT I, UIBT II, and Equity Fund offerings.

4 29. The Santa Ana and Irvine offices operated in a similar manner. Both
5 employed "fronters" and "closers." The fronters cold-called potential investors
6 and mailed them sales materials. The closers followed up with prospective
7 investors and made the sales pitch. The fronters were paid an hourly wage plus
8 approximately a 5% commission, and the closers were paid between 15% and 20%
9 commissions, less what they paid their fronters.

10 30. Ryan and the closers in his salesroom expected the fronters to cold-
11 call as many as 300 people a day from investor lead lists provided by REP. REP
12 spent thousands of dollars each week purchasing these leads. Some of the fronters
13 used sales scripts written by the closers, including scripts authored by Tuchman.
14 The sales scripts emphasized REP's purported affiliation with Coldwell Banker,
15 claiming that in the last eight years REP was the third-largest Coldwell Banker
16 franchise in the country. The scripts also touted REP's purported track record of
17 successful real estate purchases and the possibility of investors making up to ten
18 times return on their initial investment.

19 31. Prospective investors were sent packages containing a glossy, twelve
20 page brochure that summarized the Offering, a glossy REP quarterly newsletter
21 featuring a "message" from Davenport, and other promotional material, a copy of
22 the Offering PPM, a subscription agreement, a purchaser questionnaire, and, in
23 case the investor wanted to invest in the Offering using their retirement funds, as
24 several did, an IRA application.

25 2. DAVENPORT AND OWENS CREATE AND DISSEMINATE FALSE AND
26 MISLEADING SALES MATERIALS

27 32. The glossy sales brochures were created by Davenport, Owens, and an
28 outside marketing consultant. The sales brochures contained information