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Franklin Resources, Inc.
One Franklin Parkway
San Mateo, CA 94403-1906
tel 650/312.2000
franklintempleton.com

VIA FIRST CLASS MAIL

811-08962
(Franklin Temp. Money Fund)
Branch 18

January 19, 2005



05045057

Filing Desk
U.S. Securities and Exchange Commission
450 Fifth Street N.W.
Washington, DC 20549

Re: Binford v. Abbott, et al., Case No. C 05 00155

Ladies and Gentlemen:

Enclosed for filing, pursuant to Section 33 (a) of the 1940 Act, on behalf of the named defendants, is a copy of the Class Action Complaint filed on January 10, 2005 in the United States District Court, Northern District of California, San Francisco Division in the matter of *Binford v. Abbott, et al.*, case number C 05 00155. Plaintiffs served certain of the defendants on January 14, 2005.

Please acknowledge receipt of this filing by date-stamping the enclosed copy of this letter and returning it in the envelope provided.

If you have any questions, please contact me at (650) 312-4843.

Sincerely,

Aliya S. Gordon
Associate Corporate Counsel

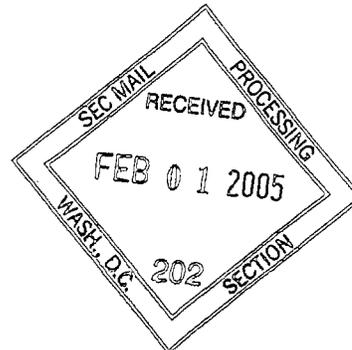
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FINANCIAL

Enclosure

cc: Barbara J. Green, Esq. (w/o enclosure)
Murray L. Simpson, Esq. (w/o enclosure)





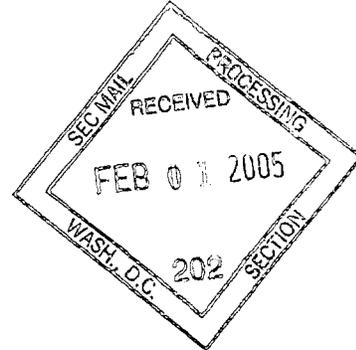
FRANKLIN TEMPLETON
INVESTMENTS

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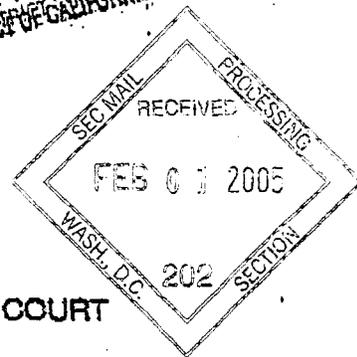
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5

ORIGINAL
FILED

JAN 10 2005

E-filing

RICHARD W. WICKING
NORTHERN DISTRICT OF CALIFORNIA



6 Attorneys for Plaintiffs,
7 B.E. BINFORD AND ROBERT WELLS,
on Behalf of Themselves and All Others
8 Similarly Situated

9 UNITED STATES DISTRICT COURT

10 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

VRW

11
12 B.E. BINFORD AND ROBERT WELLS, on
Behalf of Themselves and All Others
13 Similarly Situated,

CASE NUMBER 05 00155

CLASS ACTION COMPLAINT FOR DAMAGES:

14 Plaintiffs,

- 1. Breach of Fiduciary Duty;
- 2. Negligence Against All Defendants;
- 3. Violation of Section 36(a) of the Investment Company Act;
- 4. Violation of Section 36(b) of the Investment Company Act; and,
- 5. Violation of Section 47(b) of the Investment Company Act.

15 v.

16 FRANK H. ABBOTT, III, HARRIS J.
ASHTON, S. JOSEPH FORTUNATO,
17 EDITH E. HOLIDAY, FRANK W.T.
LAHAYE, GORDON S. MACKLIN,
18 HARMON E. BURNS, CHARLES B.
JOHNSON, RUPERT H. JOHNSON, JR.,
19 FRANKLIN RESOURCES, INC.,
FRANKLIN ADVISORS, INC., and JOHN
20 DOES NO. 1 through 100,

DEMAND FOR JURY TRIAL

21 Defendants.

22 INTRODUCTION

23
24 1. This is a national class action lawsuit on behalf of investors in open-ended
25 mutual funds with equity securities holdings in the Franklin Templeton Family of Funds (the
26 "Funds") against the Defendant directors, investment advisors, and affiliates of the Funds
27 alleging that the Defendants breached fiduciary duties and duties of care owed directly to the
28

1 Plaintiffs and members of the Class, including duties arising under Sections 36(a), 36(b), and
2 47(b) of the Investment Company Act of 1940 (ICA), 15 U.S.C. § 80a *et seq.*, by failing to
3 ensure that the Funds participated in securities class action settlements for which the Funds
4 were eligible. B.E. Binford and Robert Wells file on their own behalf, as well as
5 representatives of a Class of all persons who owned Funds at any time during the time period
6 of January 10, 2001 to the present. Plaintiffs seek compensatory damages, disgorgement of
7 the fees paid to the investment advisors, and punitive damages.
8

9 2. Over 90 million Americans entrust their savings to the directors and advisors of
10 mutual funds. Mutual funds are so attractive and popular because they purport to provide
11 professional money management services to investors who otherwise would not be able to
12 afford such services. Rather than select and monitor the securities that make up her portfolio,
13 an investor pools her money with other investors in a mutual fund and entrusts complete
14 control and dominion over her investments to the directors and advisors of the mutual fund.
15 As a result of this relationship of special trust, directors and advisors of mutual funds owe a
16 fiduciary duty directly to each individual investor in the fund and are required to act with the
17 highest obligations of good faith, loyalty, fair dealing, due care, and candor.
18

19 3. "A mutual fund is a 'mere shell,' a pool of assets consisting mostly of portfolio
20 securities that belong to the individual investors holding shares in the fund." *Tannenbaum v.*
21 *Zeller*, 552 F.2d 402, 405 (2d Cir. 1977). Each investor who pools his money with others in
22 a mutual fund owns a proportionate share of the total assets of the mutual fund. The value
23 of each investor's portion of those pooled assets is determined by taking the market value of
24 all of the fund's portfolio securities, adding the value of any other fund assets, subtracting fund
25 liabilities, and dividing the result by the number of shares outstanding. *United States v.*
26
27
28

1 *Cartwright*, 411 U.S. 546, 548 (1973). This so-called "per share net asset value" (NAV) is
2 computed daily so that any gain or loss in fund assets is immediately allocated to the individual
3 investors as of that specific date. Accordingly, mutual funds are unlike conventional
4 corporations in that any increase or decrease in fund assets is immediately passed on or
5 allocated to the fund investors as of the date of the relevant recalculation of the NAV.
6

7 4. In the mid to late 1990s, the number of investor securities class action lawsuits
8 against publicly traded companies alleging violations of the Securities Act of 1933 and the
9 Securities Exchange Act of 1934 (collectively the "Securities Acts") exploded.¹ In the fall of
10 2001, suits brought pursuant to the Securities Acts became magnified by the popular press
11 after the corporate scandals and misdeeds at Enron, WorldCom, Tyco, and Adelphia. When
12 a recovery is achieved in a securities class action lawsuit, investors who owned shares in the
13 company settling the lawsuit, investors who owned shares in the
14 company settling the lawsuit have the option to either: (1) opt-out of the class action and
15 pursue their own remedy or (2) remain in the class and participate in the recovery achieved.
16 The process by which a member of the class collects the money to which he is entitled is
17 intentionally quite simple in order to encourage participation. A class member completes a
18 short form called a Proof of Claim and submits it to the Claims Administrator. After the Claims
19 Administrator receives all Proof of Claim forms, it disperses money from the settlement fund
20 to those persons and entities with valid claims.
21

22 5. Defendants serve in various capacities as mutual fund directors, advisors, and
23 affiliates as will be identified herein. The Funds were putative members of dozens of class
24 actions brought under the Securities Acts, by virtue of Funds owning the securities against
25

27 ¹ There were 1,517 federal class action lawsuits brought under the Securities Acts between
28 1996 and 2003. *Securities Class Action Case Filings. 2003: A Year in Review. Cornerstone Research.*

1 which the suits were brought. However, upon information and belief that the allegations are
2 likely to have evidentiary support and upon the representation that they will be withdrawn or
3 corrected if reasonable opportunity for further investigation or discovery indicates insufficient
4 evidentiary support (hereafter "upon information and belief"), Defendants failed to ensure that
5 the Funds participated in (or opted out of) many of these class action settlements. As a result,
6 because of Defendants' refusal to complete and submit a short form, monies contained in
7 dozens of Settlement Funds, which rightfully belonged to the Funds' investors have gone
8 unclaimed. Defendants' failure to protect the interests of Fund investors by recovering monies
9 owed them is a breach of the fiduciary duty they each owe directly to Plaintiffs and members
10 of the Class.
11
12

13 6. The class period begins January 10, 2001. On or before that date, the
14 Defendants began the illegal conduct complained of herein. The Class consists of all persons
15 who owned one of the Funds at any time between January 10, 2001 through January 10, 2005
16 and who suffered damages thereby.²
17

18 JURISDICTION AND VENUE

19 7. This court has jurisdiction over the subject matter of this action pursuant to
20 Section 36(b) and 44 of the Investment Company Act, 15 U.S.C. § 30a-35(b) & -43, and 28
21 U.S.C. § 1331(a). This Court has supplemental jurisdiction, pursuant to 28 U.S.C. § 1367(a),
22 over the state law claims asserted herein because they arise out of a common nucleus of
23 operative facts and are part of the same case or controversy as plaintiffs' federal claims.
24
25

26 ² Because the full extent of Defendants' breaches of fiduciary duty have yet to be revealed or
27 have subsequently stopped, the Class Period will be expanded forward to include the period of time between
28 January 10, 2005 and the date of the cessation of the unlawful activities detailed herein.

1 8. Venue is proper in this District because the acts and omissions complained of
2 herein occurred in this District and Parent Company Defendant was, at all relevant times, and
3 still is, headquartered in San Mateo, California.

4
5 9. In connection with the acts and practices alleged herein, Defendants directly or
6 indirectly used the instrumentalities of interstate commerce, including the mail systems,
7 interstate telephone communications, and the facilities and instrumentalities of the national
8 securities markets and national securities exchanges.

9 **PARTIES**

10 **Plaintiffs.**

11
12 10. A. Plaintiff B. E. Binford resides in Harris County, Texas at all relevant times
13 owned one of the Funds.

14 B. Plaintiff Robert Wells resides in St. Lawrence County, New York at all relevant
15 times owned one of the Funds.

16 **Defendants.**

17
18 11. Defendant Franklin Resources, Inc. is the ultimate parent of Franklin Advisors,
19 Inc. Through its subsidiaries and divisions, Franklin Resources, Inc. markets, sponsors, and
20 provides investments advisory, distribution and administrative services to the Franklin
21 Templeton Family of Funds, which consists of approximately 102 funds. Franklin Resources,
22 Inc. shall be referred to herein as the "Parent Company Defendant." Franklin Resources, Inc.
23 maintains its principal executive offices at One Franklin Parkway, San Mateo, California,
24 94403.

25
26 12. Frank H. Abbott, III, Harris J. Ashton, S. Joseph Fortunato, Edith E. Holiday,
27 Frank W.T. LaHaye, Gordon S. Macklin, Harmon E. Burns, Charles B. Johnson, and Rupert
28

1 H. Johnson, Jr. are each members of the Board of Directors for the Funds. The Funds' Board
2 of Directors oversee the management of the Funds. Collectively, these defendants shall be
3 referred to as the "Director Defendants."
4

5 13. Defendant Franklin Advisors, Inc. is a registered investment advisor and has the
6 responsibility for the day-to-day management of the Franklin Templeton Family of Funds.
7 Franklin Advisors, Inc. has approximately \$210 billion in assets under management in total.
8 Franklin Advisors, Inc. is located at One Franklin Parkway, San Mateo, California, 94403.
9 Franklin Advisors, Inc. shall be referred to as the "Advisor Defendant."

10 14. The true names and capacities of Defendants sued herein as John Does 1
11 through 100 are often active participants with the above-named Defendants in the widespread
12 unlawful conduct alleged herein whose identities have yet to be ascertained. Such
13 Defendants served as fiduciaries on behalf of fund investors. Plaintiffs will seek to amend this
14 complaint to state the true names and capacities of said Defendants when they have been
15 ascertained.
16

17 15. Collectively, all Defendants named above shall be referred to herein as
18 "Defendants."
19

20 **CLASS ACTION ALLEGATIONS**

21 16. This action is brought by Plaintiffs as a class action, on their own behalf and on
22 behalf of all others similarly situated, under the provisions of Rule 23 of the Federal Rules of
23 Civil Procedure for compensatory and punitive damages, forfeiture of all commissions and
24 fees paid by the Class, costs, and attorneys fees. Plaintiffs seek certification of this action as
25 a class action on behalf of all persons owning one of the Funds at any time between January
26 10, 2001 through January 10, 2005, and who were damaged by the conduct alleged herein.
27
28

1 This case is properly brought as a class action under Rule 23 of the Federal Rules of Civil
2 Procedure for the reasons set forth in the following paragraphs.

3 17. The members of the Class are so numerous that joinder of all members is
4 impracticable. While the exact number of the Class members is unknown to Plaintiffs at this
5 time and can only be ascertained through appropriate discovery, Plaintiffs believe that there
6 are tens of thousands of members in the proposed Class. Record owners of the Funds during
7 the relevant time period may be identified from records maintained by the Defendants and
8 may be notified of the pendency of this action by mail, using a form of notice similar to that
9 customarily used in securities class actions.
10

11 18. Plaintiffs' claims are typical of the claims of the members of the Class as all
12 members of the Class are similarly affected by Defendants' wrongful conduct that is
13 complained of herein.
14

15 19. Common questions of law and fact exist as to all members of the Class and
16 predominate over any questions solely affecting individual members of the Class. Among the
17 questions of law and fact common to the Class are:
18

- 19 1) Whether Defendants owe the investors in the fund a fiduciary duty to submit
20 Proof of Claim forms on behalf of the Funds in settled securities cases;
- 21 2) Whether Defendants owe the investors in the fund a duty of care to act in a
22 reasonable manner to protect and maximize Fund investors' investments by
23 participating in settled securities class actions;
- 24 3) In which securities class action settlements the Funds were eligible to
25 participate;
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4) Whether Defendants submitted Proof of Claim forms (or opted out of the class action and pursued their own remedy) for those securities class action settlements in which Funds were eligible to participate;

5) To what extent the member of the Class have sustained damages and the proper measure of such damages.

20. The claims of the Plaintiffs, who are representatives of the Class herein, are typical of the claims of the Class in that the claims of all members of the Class, including the Plaintiffs, depend on a showing of the acts or omissions of the Defendants giving rise to the right of the Plaintiffs to the relief sought herein. There is no conflict between any individual named Plaintiff and other members of the Class with respect to this action, or with respect to the claims for relief set forth herein.

21. The named Plaintiffs are the representatives parties for the Class and are able to and will fairly and adequately protect the interests of the Class. The attorneys for the Plaintiffs are experienced and capable in civil litigation and class actions.

22. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it virtually impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action. A class action will redress the Defendants' wrongful conduct described herein.

/////
/////

1 **SUBSTANTIVE ALLEGATIONS**

2 23. At all relevant times during the Class Period, the Franklin Templeton Family of
3 Funds held assets of approximately \$210 billion. Approximately 55 of the 102 Funds have the
4 stated investment objective of owning equity securities, varying among the funds as to the
5 preferred market capitalization and market sector of the companies owned. As such,
6 throughout the Class Period, the Franklin Templeton Funds held billions of dollars of
7 investments in equity security traded on the United States' stock exchanges.
8

9 24. During the Class Period, hundreds of securities class action cases were settled
10 (the "Securities Class Actions"). Of the Securities Class Actions, the Funds were eligible to
11 participate in the recovery in a significant number of the cases by virtue of their ownership of
12 the securities during the requisite time period of each case. While not an exhaustive list, upon
13 information and belief, the Funds owned shares and had valid claims in many, if not all, of the
14 following securities class action cases:
15

16

17 Case Style	Class Period	Deadline to Submit Proof of Claim
18 In re Accelr8 Technology Corp. Securities Litigation	10/7/97 - 11/16/99	6/16/2003
19 In re Acrodyne Communications, Inc.	1/1/98 - 8/14/00	8/24/2001
20 Lewis v. Advanced Technical Products, Inc. et al.	4/22/98 - 4/28/00	2/1/2003
21 In re Allaire Corporation Securities Litigation	12/7/99 - 9/18/00	12/18/2003
22 In re Anicom, Inc. Securities Litigation	2/17/99 - 7/18/00	1/24/2003
23 In re Applied Digital Solutions Litigation	1/19/00 - 5/21/02	3/15/2004
24 In re ATI Technologies, Inc. Securities Litigation	1/13/00 - 5/24/00	5/26/2003
25 Bryant v. Avado Brands, Inc., et al. (Applesouth)	5/26/95 - 9/24/96	3/5/2003
26 In re Avant! Corporation Securities Litigation	6/6/95 - 12/6/95	7/19/2001
27 In re Bergen Brunswick Corp. Securities Litigation	3/16/99 - 10/14/99	8/13/2001
28 In re Brightpoint, Inc. Securities Litigation	1/29/99 - 1/31/02	8/29/2003

1	Sinay v. Boron LePore & Associates, Inc. et al.	5/5/98 - 2/4/99	7/17/2002
2	In re California Software Corporation Securities Litigation	2/9/00 - 8/6/00	3/26/2002
3	In re Campbell Soup Co. Securities Litigation	9/8/97 - 1/8/99	7/10/2003
4	Katz v. Carnival Corporation et al.	7/28/98 - 2/28/00	2/6/2004
5	In re CHS Electronics, Inc. Securities Litigation	8/7/97 - 5/13/99	3/31/2002
6	Deborah Anderton v. ClearOne Communications, Inc. et al.	4/17/01 - 1/15/03	4/8/2004
7	Sherma v. Cole National Corporation, et al.	1/31/98 - 5/16/03	10/28/2003
8	In re Commtouch Software LTD. Securities Litigation	4/19/00 - 2/13/01	9/3/2003
9	In re Consec, Inc. Securities Litigation	4/28/99 - 4/14/00	11/30/2002
10	In re Covad Communications Group Securities Litigation	4/19/00 - 6/24/01	2/4/2003
11	In re Cutter & Buck Inc. Securities Litigation	6/1/00 - 8/12/02	1/12/2004
12	Graf v. CyberCare Inc. et al.	1/4/99 - 5/12/00	1/24/2003
13	Maley v. DelGlobal Technologies Corporation et al.	11/6/97 - 11/6/00	1/7/2002
14	In re Dollar General Corporation Securities Litigation	3/5/97 - 1/14/02	7/8/2002
15	In re DOV Pharmaceutical, Inc. Securities Litigation	4/25/02 - 12/20/02	6/16/2003
16	In re DPL, Inc. Securities Litigation	11/15/98 - 8/14/02	3/1/2004
17	In re DiKoop.Com, Inc. Securities Litigation	6/8/99 - 12/7/02	1/14/2002
18	In re ECI Telecom LTD Securities Litigation	5/12/00 - 2/14/01	1/14/2003
19	In re eConnect, Inc. Securities Litigation	11/18/99 - 3/13/00	10/12/2001
20	In re Mex. Corporation Securities Litigation	4/9/01 - 5/23/01	1/16/2004
21	In re Emulex Corporation Securities Litigation	1/18/01 - 2/9/01	10/27/2003
22	In re Engineering Animation Securities Litigation	2/19/98 - 10/1/99	6/1/2001
23	In re Envoy Corporation Securities Litigation	2/12/97 - 8/18/98	2/20/2004
24	In re Federal-Mogul Corp. Securities Litigation	10/22/98 - 5/25/00	1/9/2004
25	In re Fidelity Holdings, Inc. Securities Litigation	6/24/99 - 4/17/00	4/21/2003
26	In re Finova Group Inc. Securities Litigation	1/14/99 - 11/13/02	9/30/2002
27	In re Flir Systems, Inc. Securities Litigation	3/3/99 - 3/6/00	5/3/2001
28	In re FPA Medical Management, Inc. Securities Litigation	1/3/97 - 5/14/98	11/25/2003
	In re Gateway, Inc. Securities Litigation	4/14/00 - 2/28/01	9/30/2002
	In re Gliatech Inc. Securities Litigation	4/9/98 - 8/29/00	5/3/2003
	Pirelli Armstrong et al. v. Hanover Compressor Co., et al.	5/4/99 - 12/23/02	3/12/2004

1	Warstadt et al. v. Hastings Entertainment, Inc., et al.	6/12/98 - 5/2/00	4/24/2003
2	White v. Heartland High-Yield Municipal Bond Fund, et al.	1/2/97 - 10/16/00	11/18/2002
3	In re HI/FN, Inc. Securities Litigation	7/26/99 - 11/7/99	9/20/2003
4	In re Homestore.com, Inc. Securities Litigation	1/1/00 - 12/21/01	12/5/2003
5	In re IBP, Inc. Securities Litigation	2/7/00 - 1/25/01	10/31/2003
6	Fogel v. Information Management Associates, Inc., et al.	8/12/99 - 11/18/99	1/17/2003
7	In re InaCom Corp. Securities Litigation	11/9/98 - 5/17/00	2/12/2003
8	In re Independent Energy Holdings PLC	2/14/00 - 9/8/00	12/3/2002
9	In re InterSpeed, Inc. Securities Litigation	9/24/99 - 10/6/00	8/10/2001
10	In re IXL Enterprises, Inc. Securities Litigation	11/30/99 - 9/1/2000	8/20/2003
11	Garza v. JD Edwards & Company et al.	1/22/98 - 12/3/98	5/6/2002
12	In re JDN Realty Corporation Securities Litigation	2/15/97 - 4/12/00	12/15/2001
13	Harold Ruttenberg, et al. (Just for Feet, Inc.)	4/12/99 - 11/3/99	11/13/2002
14	In re L90, Inc. Securities Litigation	4/28/00 - 5/9/03	5/18/2004
15	In re Landry's Seafood Restaurants, Inc. Sec. Litigation	12/19/97 - 9/18/98	7/19/2002
16	In re Legato Systems, Inc. Securities Litigation	4/22/99 - 5/17/00	9/30/2002
17	Molholt v. Loudcloud Inc., et al.	3/8/01 - 5/1/01	10/29/2003
18	In re Lucent Technologies Inc. Securities Litigation	10/26/99 - 12/21/00	3/31/2004
19	In re M&A West, Inc. Securities Litigation	10/4/99 - 12/28/00	3/4/2004
20	Dusek v. Mattel, Inc., et al.	2/2/99 - 10/1/99	10/23/2003
21	Haack v. Max Internet Communications, Inc., et al.	11/12/99 - 5/12/00	11/25/2002
22	In re Medi-Hut Co., Securities Litigation	11/7/99 - 8/19/03	7/2/2004
23	In re Medirisk, Inc. Securities Litigation	5/4/98 - 6/30/98	4/30/2004
24	In re MicroStrategy inc. Securities Litigation	6/11/98 - 3/20/00	9/3/2001
25	In re Mitek Systems, Inc. Securities Litigation	12/27/99 - 9/29/00	4/8/2002
26	In re MP3.Com, Inc. Securities Litigation	1/13/00 - 9/7/00	8/9/2001
27	In re Mpower Communications Corp. Securities Litigation	2/4/00 - 9/7/00	8/29/2003
28	In re MSC Industrial Direct Co., Securities Litigation	1/11/99 - 8/5/02	4/30/2004
	In re MTI Technology Corp. Securities Litigation, II	7/22/99 - 7/2/00	9/2/2003
	In re Navigant Consulting, Inc. Securities Litigation	1/1/99 - 11/19/99	3/22/2001
	In re NetEase.Com, Inc. Securities Litigation	7/3/00 - 8/31/01	6/13/2003

1	In re Netsolve Incorporated Securities Litigation	4/18/00 - 8/18/00	9/13/2002
2	In re Network Associates Inc. Securities Litigation	1/20/98 - 4/6/99	6/14/2002
3	In re Network Associates, Inc. II Securities Litigation	4/15/99 - 12/26/00	3/2/2004
4	New Era of Networks, Inc.	10/29/98 - 7/6/99	12/31/2001
5	Norman v. New Era Of Networks, Inc., et al.	10/18/00 - 1/5/01	8/12/2002
6	In re Newpower Holdings, Inc. Securities Litigation	10/5/00 - 12/5/01	4/7/2004
7	In re Nice Systems, Ltd. Securities Litigation	11/3/99 - 2/7/01	5/1/2003
8	In re Nike, Inc. Securities Litigation	6/29/00 - 2/26/01	3/10/2003
9	Stuart Markus, et al v. The Northface, Inc.	4/24/77 - 4/1/99	5/24/2001
10	In re Northpoint Communications Group, Inc. Sec. Litigation	8/8/00-11/29/00	2/11/2004
11	In re Nuance Communications, Inc.	1/31/01 - 3/15/01	12/15/2003
12	In re On-Point Technology Systems, Inc. Securities Litigation	5/19/97 - 4/7/00	8/21/2001
13	In re Onyx Software Corporation Securities Litigation	Pursuant to 2/2001 Offering	6/28/2004
14	In re Optical Cable Corporation Securities Litigation	6/14/00 - 9/26/01	11/1/2002
15	In re Oxford Health Plans, Inc. Securities Litigation	11/6/96 - 12/9/97	7/11/2003
16	In re Paradyne Networks, Inc. Securities Litigation	3/20/00 - 9/28/00	7/12/2004
17	In re Party City Corporation Securities Litigation	2/26/98 - 3/18/99	8/12/2003
18	In re P-COM, Inc. Securities Litigation	4/15/97 - 9/11/98	3/15/2002
19	In re Penn Treaty Schwab Corporation Sec. Litig.	7/23/00 - 3/29/01	2/23/2004
20	In re PeopleSoft, Inc. Securities Litigation	5/27/98 - 1/28/99	9/4/2001
21	In re Performance Technologies, Inc. Securities Litigation	2/2/00 - 5/19/00	7/18/2003
22	In re PhyCor Corporation Securities Litigation	4/22/97 - 9/22/98	8/5/2002
23	In re Pilot Network Services, Inc. Securities Litigation	8/11/98 - 10/17/00	5/2/2002
24	In re PSS World Medical, Inc. Securities Litigation	10/26/99 - 10/3/00	5/14/2004
25	In re Reliance Securities Litigation	3/14/95 - 11/14/97	3/23/2002
26	In re Rent-Way Securities Litigation	12/10/98 - 10/27/00	11/23/2003
27	In re Rite Aid Corporation Securities Litigation	5/2/97 - 11/10/99	6/30/2003
28	In re Robotic Vision Systems, Inc. Securities Litigation	1/27/00 - 5/15/01	8/11/2003
	Paul Ruble v. Rural / Metro Corporation et al.	4/24/97 - 6/11/98	12/15/2003
	Stanley v. Safeskin Corporation, et al.	2/18/98 - 3/11/99	4/28/2003
	In re Sagent Technology Inc. Securities Litigation	10/21/99 - 4/18/00	5/27/2003

1	In re SCB Computer Technology, Inc. Securities Litigation	11/19/97 - 4/14/00	3/20/2002
2	Lone Star et al. v. Schlotzsky's Inc., et al.	9/24/1997	5/23/2002
3	In re Select Comfort Corporation Securities Litigation	12/3/98 - 6/7/99	4/30/2003
4	In re Sensormatic Electronics Corp. Securities Litigation	8/8/00 - 4/26/01	11/14/2003
5	Steinbeck v. Sonic Innovations, Inc. et al.	5/2/00 - 10/24/00	6/21/2004
6	Klein v. Southwest Gas Corporation, et al.	12/14/98 - 1/21/00	11/5/2001
7	In re Starnet Communications Int'l, Inc. Sec. Litigation	3/11/99 - 8/20/99	9/20/2002
8	In re Steven Madden Ltd. Securities Litigation	6/21/97 - 6/20/00	6/18/2004
9	In re Supervalu, Inc. Securities Litigation	7/19/99 - 7/25/02	8/2/2004
10	In re Sykes Enterprises, Inc. Securities Litigation	7/27/98 - 9/18/00	4/9/2003
11	In re Synsorb BioTech, Inc. Securities Litigation	4/4/01 - 12/10/01	1/10/2004
12	In re Take Two Interactive Software, Inc. Securities Litigation	2/24/00 - 12/17/01	1/2/2003
13	In re Team Communications Group, Inc. Securities Litigation	11/19/99 - 3/16/01	8/22/2002
14	In re Telxon Corporation Securities Litigation	5/21/96 - 2/23/99	6/11/2004
15	Spiegel v. Tenfold Corporation, et al.	5/21/99 - 4/12/01	1/9/2003
16	In re THG, Inc. Securities Litigation	10/26/99 - 5/24/00	6/30/2003
17	In re Turnstone Systems, Inc. Securities Litigation	Pursuant to 9/2/00	10/31/2003
18	In re Tut Systems, Inc. Securities Litigation	7/20/00 - 1/31/01	6/21/2004
19	In re UniStar Financial Service Corp. Securities Litigation	10/15/98 - 7/20/99	8/17/2001
20	In re US Franchise Systems, Inc. Securities Litigation	5/6/99 - 10/29/99	6/5/2002
21	In re US Interactive, Inc. Securities Litigation	2/10/00 - 11/8/00	12/2/2003
22	O'Neal Trust v. VanStar Corporation, et al.	3/11/96 - 3/14/97	11/26/2001
23	Rasner v. Vari-L Company, Inc. et al.	12/17/97 - 7/6/00	5/5/2003
24	Helwig v. Vencor, Inc. et al.	2/10/97 - 10/21/97	6/14/2002
25	In re Versata, Inc. Securities Litigation	3/2/00 - 4/30/01	3/17/2003
26	In re Vesta Insurance Group, Inc. Securities Litigation	6/2/95 - 6/28/98	10/17/2002
27	In re Vision America, Inc. Securities Litigation	11/5/98 - 3/24/00	7/30/2002
28	In re Vision America, Inc. Securities Litigation	4/24/99 - 3/24/00	10/8/2003
	In re The Warnaco Group, Inc. Securities Litigation	9/17/97 - 7/19/00	3/5/2004
	In re Waste Management Inc. Securities Litigation	6/11/99 - 11/9/99	7/15/2002
	In re Westell Technologies, Inc. Securities Litigation	6/27/00 - 11/18/00	8/31/2003
	In re Ziff Davis Inc. Securities Litigation	4/29/98 - 11/8/98	4/5/2002

1 25. If the Defendants had submitted Proof of Claim forms on behalf of the Funds in
2 these cases and all others to which the Funds had valid claims, the settlement funds would
3 have increased the total assets held by the Funds, and such increase would have been
4 allocated immediately to the then-current investors upon the recalculation of the Net Asset
5 Value (NAV).
6

7 26. However, upon information and belief, the Defendants failed to submit Proof of
8 Claim forms in these cases and thereby forfeited Plaintiffs' rightful share of the recover
9 obtained in the securities class actions.
10

11 27. By virtue of their position as investment advisors to the Funds with complete
12 control of Plaintiffs' investments, the Investment Advisor Defendants (and any sub-advisors
13 and affiliates) directly owed Plaintiffs and other fund investors a fiduciary duty to act in their
14 best interests. *See McLachlan v. Simon*, 31 F.Supp.2d 731, 737 (N.D. Cal. 1998). Likewise,
15 Directors of mutual funds owe a fiduciary duty directly to the person who invests in the Funds.
16 *See id.*
17

18 28. Plaintiffs entrusted Defendants to fulfill their fiduciary duties and not knowingly
19 to refuse to recover money rightfully belonging to the Fund investors at the time of settlement
20 disbursement. As the Fund investors' fiduciary, only Defendants were able to submit the
21 necessary Proof of Claim forms to recover the share of the settlements allocated to the Fund
22 and Fund investors in the securities class action suits. Plaintiffs did not receive notice of the
23 proposed settlements nor did they have the option of submitting a Proof of Claim form in their
24 individual capacities as individual investors. Plaintiffs and member of the Class trusted
25 Defendants to carry out this simple task on their behalf, and, on information and belief,
26 Defendants failed to do so. By failing to submit Proof of Claim forms, Defendants breached
27
28

1 the fiduciary duty and standard of care that they owed directly to Plaintiffs and members of the
2 Class.

3
4 **Standing.**

5 29. The Funds were all created and sponsored by the Parent Company Defendant.
6 The day-to-day operations of the Funds are managed by the same Investment Advisor or a
7 sub-advisor who reports to the Advisor. The Funds have the same directors who meet for all
8 the funds at once. All of the contracts for all of the Funds are identical for the purposes of this
9 action. The Funds share many expenses between and among one another. The same policy
10 or custom related to participation in securities class action settlements applies to all the Funds.
11 Plaintiffs therefore bring this action on behalf of all the Funds.
12

13 **COUNT I**
14 **BREACH OF FIDUCIARY DUTY**

15 30. Plaintiffs repeat and re-allege each of the preceding allegations as though fully
16 set forth herein.

17 31. All of the Defendants owed fiduciary duties directly to Plaintiffs and members of
18 the Class and were required to act with the highest obligations of good faith, loyalty, fair
19 dealing, due care, and candor.
20

21 32. As set forth above, on information and belief, the Defendants breached the
22 fiduciary duties they owed directly to Plaintiffs and members of the Class by failing to submit
23 Proof of Claim forms or to otherwise participate in settled securities class actions and thereby
24 recover money rightfully belonging to the Fund investors. Plaintiffs and members of the class
25 have been injured as a direct, proximate, and foreseeable result of such breach on the part
26 of the Defendants and have suffered substantial damages.
27
28

1 44. Plaintiffs and members of the Class have been injured as a direct, proximate,
2 and foreseeable result of such breach on the part of the Defendants and have suffered
3 substantial damages.

4
5 **COUNT V**
6 **VIOLATION OF SECTION 47(b) OF THE INVESTMENT COMPANY ACT**
7 **(AGAINST ADVISOR DEFENDANTS AND PARENT COMPANY DEFENDANT)**

8 45. Plaintiffs repeat and re-allege each of the preceding allegations as though fully
9 set forth herein.

10 46. Pursuant to Section 47(b) of the ICA, 15 U.S.C. 80a-46(b), any contract made
11 in violation, or performance of which results in violation, of the ICA is declared unenforceable.

12 47. For reasons alleged herein, the Agreements between the Advisor Defendants
13 (and the Parent Company and other Affiliates) and the Funds were performed, on information
14 and belief, in violation of the Investment Company Act and are therefore unenforceable.

15 48. Under Section 47(b) of the ICA, 15 U.S.C. 80a-46(b), the advisory agreements
16 may be voided, and the Advisor Defendants, the Parent Company Defendant, and other
17 affiliates are liable to return to the Funds and Fund investors all of the fees and consideration
18 of any kind paid to them during the time period that the violations occurred.

19
20 49. Plaintiffs demand a jury trial.

21 WHEREFORE, Plaintiffs demand judgment against Defendants as follows:

22 (a) Recognizing, approving and certifying the Class as specified herein.

23 (b) In favor of the Class for compensatory and punitive damages, forfeiture of all
24 commissions and fees paid by the Class, plus the costs of this action together with
25 reasonable attorneys fees.
26

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(c). For such other and further relief as this Court deems just.

Dated: January 10, 2005



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UNITED STATES DISTRICT COURT

JAN 10 2005

NORTHERN DISTRICT OF CALIFORNIA RICHARD W. WILSON, CLERK, U.S. DISTRICT COURT

FILED

B.E. BINFORD)
)
Plaintiff(s))
)
-v-)
)
FRANK H. ABBOTT III)
Defendant(s))

C 05-00155 VRW

ORDER SETTING INITIAL CASE MANAGEMENT CONFERENCE

IT IS HEREBY ORDERED that this action is assigned to the Honorable Vaughn R. Walker. When serving the complaint or notice of removal, the plaintiff or removing defendant must serve on all other parties a copy of this order, the handbook entitled "Dispute Resolution Procedures in the Northern District of California" and all other documents specified in Civil Local Rule 4-2. Counsel must comply with the case schedule listed below unless the Court otherwise orders.

IT IS FURTHER ORDERED that this action is assigned to the Alternative Dispute Resolution (ADR) Multi-Option Program governed by ADR Local Rule 3. Counsel and clients must familiarize themselves with that rule and with the handbook entitled "Dispute Resolution Procedures in the Northern District of California."

CASE SCHEDULE [ADR MULTI-OPTION PROGRAM]

Date	Event	Governing Rule
01/10/2005	Complaint filed	
04/19/2005	Last day to meet and confer re initial disclosures, early settlement, ADR process selection, and discovery plan	FRCivP 26(f) & ADR LR 3-5
04/19/2005	Last day to file Joint ADR Certification with Stipulation to ADR process or Notice of Need for ADR Phone Conference	Civil L.R. 16-8
05/03/2005	Last day to complete initial disclosures or state objection in Rule 26(f) Report, file/serve Case Management Statement, and file/serve Rule 26(f) Report	FRCivP 26(a)(1) Civil L.R.16-9
05/10/2005	Case Management Conference in Courtroom 6, 17th Floor at 9:00 AM	Civil L.R. 16-10

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ORIGINAL FILED

JAN 10 2005

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RICHARD W. WILKINS...
CLERK OF DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA

B.E. BINFORD
Plaintiff(s)

-v-

FRANK H. ABBOTT III
Defendant(s)

C 05-00155 VRW

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CONFERENCE

E-Filed

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C 05 00155

E-filing
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U.S. District Court Northern California

ECF Registration Information Handout

The case you are participating in has been designated for this court's Electronic Case Filing (ECF) Program, pursuant to Local Rule 5-4 and General Order 45. This means that you must (check off the boxes when done):

- 1) Register to become an efiler by filling out the efiler application form. Follow ALL the instructions on the form carefully. If you are already registered in this district, do not register again, your registration is valid for life on all ECF cases in this district.
- 2) Serve this ECF Registration Information Handout on all parties in the case along with the complaint, or for removals, the removal notice. DO NOT serve the efiler application form, just this handout.
- 3) Email (do not efile) the complaint and, for removals, the removal notice and all attachments, in PDF format within ten business days, following the instructions below. You do not need to wait for your registration to be completed to email the court.
- 4) PACER (Public Access to Court Electronic Records) access is mandatory to access dockets and documents. If your firm already has a PACER account, please use that - it is not necessary to have an individual account. PACER registration is free. If you need to establish or check on an account, visit: <http://pacer.nsc.uscourts.gov> or call (800) 676-6856.

BY SIGNING AND SUBMITTING TO THE COURT A REQUEST FOR AN ECF USER ID AND PASSWORD, YOU CONSENT TO ENTRY OF YOUR E-MAIL ADDRESS INTO THE COURT'S ELECTRONIC SERVICE REGISTRY FOR ELECTRONIC SERVICE ON YOU OF ALL E-FILED PAPERS, PURSUANT TO RULES 77 and 5(b)(2)(D) (eff. 12.1.01) OF THE FEDERAL RULES OF CIVIL PROCEDURE.

All subsequent papers in this case shall be filed electronically:

ECF registration forms, interactive tutorials and complete instructions for e-filing may be found on the ECF website: <http://ecf.cand.uscourts.gov>

Submitting Initiating Documents

PDF versions of all the initiating documents originally submitted to the court (Complaint or Notice of Removal, Civil Cover Sheet, exhibits, etc.) must be **emailed (not efiled)** to the PDF email box for the presiding judge (not the referring judge, if there is one) **within 10 (ten) business days** of the opening of your case. For a complete list of the email addresses, please go to: <http://ecf.cand.uscourts.gov> and click on [Judges].

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NOTICE OF AVAILABILITY OF MAGISTRATE JUDGE
TO EXERCISE JURISDICTION

In accordance with the provisions of Title 28, U.S.C., § 636(c), you are hereby notified that a United States magistrate judge of this district is available to exercise the court's jurisdiction and to conduct any or all proceedings in this case including a jury or nonjury trial, and entry of a final judgment. Exercise of this jurisdiction by a magistrate judge is, however, permitted only if all parties voluntarily consent.

You may, without adverse substantive consequences, withhold your consent, but this will prevent the court's jurisdiction from being exercised by a magistrate judge.

An appeal from a judgment entered by a magistrate judge may be taken directly to the United States court of appeals for this judicial circuit in the same manner as an appeal from any other judgment of a district court.

Copies of the Form for the "Consent to Exercise of Jurisdiction by a United States Magistrate Judge" are available from the clerk of court.

The plaintiff or removing party shall serve a copy of this notice upon all other parties to this action pursuant to Federal Rules of Civil Procedure 4 and 5.

FOR THE COURT
RICHARD W. WIEKING, CLERK

Mary Ann Buckley
By: Deputy Clerk

mailed



Dispute Resolution Procedures

in the
Northern District
of California

United States District Court

