

Eric N. Miller  
Kurt G. Gresenz  
N. Creola Harry  
Attorneys for Plaintiff  
SECURITIES AND EXCHANGE COMMISSION  
450 Fifth Street, N.W.  
Washington, D.C. 20549-0911  
(202) 942-7275 (Miller)

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

---

**UNITED STATES SECURITIES AND EXCHANGE  
COMMISSION**

**Plaintiff,**

v.

**ELFINDEPAN, S.A.; SOUTHERN FINANCIAL  
GROUP; TRACY CALVIN DUNLAP, J.R.; BARRY  
LOWE; JAMES L. MCCALL; STRATEGIC ASSET  
FUNDS, S.A.; EDMUND MENDEN; MICHAEL  
MENDEN; MICHAEL ZIEGLMEIER; PATRICK  
WILSON; C.R.C.C., LLC; JEFFREY SALAZAR;  
JAS CONSULTING INTERNATIONAL, LLC; P.  
THOMAS MANN; RDC FUNDING  
CORPORATION; RDC DEVELOPMENT  
CORPORATION; AND PTM INVESTMENT  
CORPORATION**

**Defendants.**

**CIVIL ACTION NO.  
1:00CV00742**

---

**SECOND AMENDED COMPLAINT FOR PERMANENT  
INJUNCTION AND OTHER RELIEF**

Plaintiff United States Securities and Exchange Commission (“Commission”)

alleges the following:

## SUMMARY OF THE ELFINDEPAN FRAUD

1. From as early as March 1999 to the present, defendants Elfindopan S.A. ("Elfindopan"), Southern Financial Group ("Southern Financial"), Tracy Calvin Dunlap, Jr. ("Dunlap"), and Barry Lowe ("Lowe") defrauded investors nationwide in connection with the unregistered offer and sale of the securities of Elfindopan, a supposed Costa Rican financial company. Defendants have raised at least \$30 million from the investing public in at least nine states.

2. In connection with these offerings, defendants knowingly and recklessly made, and caused others to make, numerous materially false and misleading statements to investors. Among other things, defendants promised investors highly favorable returns on investments (as much as 40-50% per month), without any reasonable basis for such claims, and falsely stated that the investments were secure. As falsely claimed that Elfindopan investments were associated with the International Monetary Fund and the World Bank. Investors were told that Elfindopan had been in business for 23 years, when in fact the company was less than a year and a half old.

3. Defendants knowingly or recklessly failed to disclose certain material facts to investors regarding Elfindopan. Defendants have omitted to disclose that funds are in fact being disbursed inconsistent with Elfindopan's supposed business purpose. Investors have not been told that proceeds from later investors are being used to pay early investors and distributors, in classic "Ponzi" or pyramid scheme fashion. Investors have not been told that Dunlap has complete control of Elfindopan's finances, and has paid substantial amounts of investor money to his family members, and to support his personal living expenses. While defendants claim Elfindopan provides

loans to businesses and individuals, and engages in factoring for companies with large receivables and cash flow problems, defendants failed to disclose any of the risks incumbent in such activities and therefore in investing in Elfindepan. Defendants have failed to provide investors any detailed information about Elfindepan and its business, including any financial information.

4. The defendants have publicly solicited investors through a website posted on the Internet, through organized investor meetings, and through personal contacts by individuals acting as agents or "distributors" of Elfindepan. Investors were solicited and encouraged to invest moneys from their IRA and other retirement accounts. Defendants Southern Financial, Dunlap and Lowe facilitated these transfers, and failed to disclose to investors that monies were not held in IRA custodial accounts.

5. Three such Elfindepan distributors were defendants Edmund Menden, Michael Menden and Michael Zieglmeier. Edmund Menden, acting alone and with Michael Zieglmeier, offered and sold the fraudulent Elfindepan investments. All three were complicit in the fraud, participating in the aforementioned misrepresentations and omissions of material fact as part of their sales efforts on Elfindepan's behalf.

6. Defendants and their affiliates have offered and sold the securities of Elfindepan without filing a registration statement with the Commission, or otherwise being exempt from registration.

#### SUMMARY OF THE MCCALL FRAUD

7. Defendant James L. McCall ("McCall") is an associate of Dunlap's. Acting on his own (through several interchangeable front companies) and in concert with Dunlap and Elfindepan, McCall also defrauded innocent investors. Like Dunlap and Elfindepan,

McCall employed misrepresentations and omissions of material fact to sell unregistered securities promising guaranteed rates of return as high as 15% per month. McCall perpetrated what is commonly referred to as a "Prime Bank" scheme.

8. McCall's fraud is inextricably intertwined with that of Dunlap and Elfindepan. McCall and Dunlap together hosted sales meetings with prospective investors, "explaining" their bogus investment products and soliciting investor funds. In correspondence, McCall told his investors that their funds were invested with Dunlap and Elfindepan.

9. McCall's promotional brochures and paperwork also announced his affiliation with Dunlap and Elfindepan. McCall's investors were issued "EZ Cards," a Visa debit card issued by Elfindepan, and could purportedly elect to have their investment income paid into their Elfindepan EZ Card accounts. New McCall investors became shareholders of Elfindepan, and the forms McCall required them to fill out were on Elfindepan letterhead. McCall maintained an office in Elfindepan's office suite in Costa Rica and information concerning the investors he defrauded (names, dates, amounts, etc.) was kept on Elfindepan's computer system in Costa Rica. McCall (operating through his various entities) and the Elfindepan scheme are tentacles of the same fraud.

#### SUMMARY OF THE STRATEGIC ASSET FUNDS FRAUD

10. Defendant Strategic Asset Funds, S.A. (SAF)" is a Panama corporation formed by Dunlap in May 2000. Dunlap is the President of the corporation. Dunlap, operating through SAF, perpetrated a variation of his Elfindepan scam exclusively over the Internet. In particular he posted a fraudulent solicitation on an investment website.

repeating the substance of his Elfindepan scam. In this unregistered public offering, Dunlap promised to pay investors guaranteed returns through SAF of up to “30% monthly for a 12 month return of 360%.”

11. Over 860 innocent investors invested over \$6.5 million in Dunlap’s SAF scheme between mid-May and mid-July 2000. Dunlap deposited their funds in bank account he opened in the name of SAF. Although Dunlap represented to investors that their investment returns would begin to payout in August 2000, to date no investor has been paid anything. To the contrary, Dunlap closed the SAF account in mid July 2000, did not invest any of the money as promised and transferred most of it out of the country.

#### SUMMARY OF THE RDC FRAUD

12. Defendants Patrick Wilson (“Wilson”) and the company controlled by him CRCC, LLC (“CRCC”), P. Thomas Mann (“Mann”) and the companies controlled by him, RDC Funding Corporation (“RDC Funding”) RDC Development Company (“RDC Development”) and PTM Investment Corporation (“PTM”), caused the issuance of a bond in the amount of \$100 million, the Indenture between RDC Funding Corporation and Wells Fargo Bank Minnesota, N.A. (“the RDC Bond”) on or about June 2000.

13. Jeffrey A. Salazar and the company owned and controlled by him, JAS Consulting International, LLC (“JAS”), along with Mann and Wilson, solicited investors, including and principally Elfindepan, into a typical prime bank fraud in which they promised that the bond in question would generate revenue through over-night trading in U.S. Treasury securities an amount that would provide over \$10 million in revenue for every \$ 1 million invested within twelve weeks from issuance of the bond. Because Salazar, Mann and Wilson were aware that Dunlap was in possession of ten of millions of

dollars of Elfindepan investor funds, Elfindepan was the principal target of their scam. Salazar, Mann and Wilson assured the investors that their investment would never be at risk and their funds would never leave that bank.

14. In fact, the RDC Bond offering was a sham. By its very terms it could never generate positive revenues. While the bond offering in fact took place, the proceeds of the note were immediately placed in trust to secure eventual repayment of the bondholders on maturity. The few investments permissible under the trust agreement, all U.S. government obligations, generated a rate of return less than the interest paid to the bondholders. Thus, rather than pay over 1000% in twelve weeks, the RDC bond in fact was incapable of generating any positive revenue at all.

15. After the RDC bond had been issued and the investors, including and principally Elfindepan, were not receiving their promised returns, Mann, Wilson and Salazar made numerous oral and written statements lulling investors into believing that their investment was secure when those investors could have taken steps to recover their funds before they were lost entirely.

#### VIOLATIONS

16. With the exception of those Defendants engaged in the RDC Fraud, all defendants, directly or indirectly, violated Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77(e) and (c), 77q(a)] and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]. The RDC fraud defendants violated all the above provisions except sections 5(a) and 5(c) of the Securities Act.

## JURISDICTION

17. The Commission brings this action pursuant to the authority conferred by Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)] and sections 21(d) and 21 (e) of the Exchange Act [15 U.S.C. §§ 78u(d) and 78u(e)].

18. Each of the defendants, directly or indirectly, has used the means or instrumentalities of interstate commerce, or of the mails, in connection with the acts alleged herein, certain of which occurred in the Middle District of North Carolina.

19. This Court jurisdiction pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Sections 21 and 27 of the Exchange Act [15 U.S.C. §§ 78u and 78aa].

20. Unless permanently restrained and enjoined by this Court, each defendant will continue to engage in the acts, transactions, practices, and courses of business alleged herein, and in acts, transactions, practices, and courses of business of similar purport and object.

## DEFENDANTS

21. ELFINDEPAN, S.A. is Costa Rican Corporation controlled by Dunlap and Lowe, with offices in Greensboro, North Carolina and Costa Rica. Elfindepan has raised at least \$30 million through the offer and sale of unregistered securities in the form of investment contracts and common stock in Elfindepan. Sales of Elfindepan's unregistered securities are ongoing.

22. TRACY CALVIN DUNLAP, Jr., age 59, a U.S. citizen purportedly residing in Costa Rica, is the founder and control person of Elfindepan. Prior to founding Elfindepan, Dunlap worked in the textile manufacturing business.

23. SOUTHERN FINANCIAL GROUP is a trust located in Greensboro, North Carolina, controlled by defendants Dunlap and Lowe. Southern Financial Group shares office space with Elfindepan, and is the primary vehicle for transferring funds from investor IRA retirement accounts to the commingled, non-custodial accounts Elfindepan.

24. BARRY LOWE is the owner and operator of industrial plumbing concern who resides in the vicinity of Greensboro, North Carolina. Lowe maintained the Greensboro offices of Elfindepan and Southern Financial, and processed the paperwork converting funds from customer IRA and retirement accounts to Elfindepan accounts.

25. JAMES L. MCCALL, age 69, is a retired chiropractor that claims to be an "Estate Engineer" and "Tax Consultant." He resides in Lafayette, Indiana. McCall, operating through various affiliated entities, offered and sold unregistered and fraudulent securities to the general public.

26. STRATEGIC ASSET FUNDS, S.A. is a corporation formed by Dunlap in Panama in May 2000. Dunlap is the President of the corporation. Its purported place of business was in North Carolina with its bank account in South Carolina. Dunlap perpetrated a second securities fraud through SAF.

27. EDMUND MENDEN, age 68, is a registered securities broker and an insurance salesman who resides in Edina, Minnesota. Until recently, he was registered representative of Fortis Investors, Inc., a broker-dealer doing business in Minnesota.

Fortis terminated its relationship with Edmund Menden upon learning of his involvement with the activities alleged herein. Edmund Menden sold bogus investment products offered by McCall, Dunlap and their affiliated entities.

28. MICHAEL MENDEN, age 44, is the son of Edmund Menden. He resides in Eden Prairie, Minnesota. Michel Menden is a former insurance salesman who claims to earn his living by selling products through network and multi-level marketing activities. Michael Menden was recruited by his father to sell the bogus investment products offered by McCall, Dunlap and their affiliated entities.

29. MICHAEL ZIEGLMEIER lives in the Minneapolis St. Paul area. He was the business partner of Michael Menden in the network and multi-level marketing activities referenced above. Zieglmeier also worked partnership with Michael Menden in the sale of the bogus investment products offered by McCall, Dunlap and their affiliated entities.

30. C.R.C.C. LLC is limited liability company registered in Wyoming. Its principal place of business is given as San Diego, California, although its principal runs the company's affair from Georgia. C.R.C.C. and its principal solicited investors in the RDC Bond based on false representations. C.R.C.C. received \$7 million in proceeds from Dunlap's Elfindapan scam, as well as at least \$4 million from other resources in connection with the RDC Bond offering.

31. PATRICK WILSON owns a residence outside Atlanta, GA. He currently is serving a sentence in Federal prison for mail and wire fraud. Wilson is a principal and the *de facto* control person of C.R.C.C. He orchestrated the transaction by which

C.R.C.C. fraudulently obtain the \$7 million from Elfindepan, as well as \$4 million from others, and was solely responsible for the subsequent disposition of the funds.

32. THOMAS MANN resides in Tulsa, Oklahoma. He own or controls, directly or indirectly, PTM Investment Corporation, RDC Development Corporation and RDC Funding Corporation. Mann, along with Wilson and Salazar fraudulently solicited at least \$ 11 million in investor funds for the RDC Bond and then continuously lulled those investors by representing to them that their investment was safe and secure when he the knew that the RDC bond would never generate a profit of any type and their investment was being expended.

33. RDC FUNDING CORPOATION (RDC FUNDING”) was the issuer of the RDC Bond. RDC Funding at all times relevant was owned or controlled by Thomas Mann, either directly or indirectly.

34. RDC DEVELOPMENT CORPORATION (“RDC Development”) is a Thomas Mann controlled entity. On information and belief, RDC development was the sole shareholder of RDC Funding.

35. PTM INVESTMENT CORPORATION (“PTM”) is an Oklahoma corporation owned and controlled by Thomas Mann. On information and belief, PTM is the sole shareholder of RDC Development.

36. JEFFERY A. SALAZAR is a United States Citizen who resides in Connecticut. Salazar acted as a finder for Wilson and Mann. He brought at least \$11 million in investor funds to the RDC Bond deal was fraudulent and the investors would lose their money. Salazar received at least \$500,000 for his efforts. After the bond deal

closed, Salazar engaged in lulling efforts designed to prevent investors from recovering their investments before they were completely extinguished.

37. JAS CONSULTING INTERNATIONAL, INC. ("JAS") is a Wyoming corporation owned and controlled by Salazar. Salazar used JAS as the principal vehicle for the fraudulent activities alleged herein. JAS was formed Salazar by Wilson to enable them to more easily facilitate the fraud alleged herein.

#### FIRST CAUSE OF ACTION

Violations of Section 17(a) of the Securities Act (15 U.S.C. § 77q (a)), Section 10(b) of the Exchange Act (15 U.S.C. § 78j(b)), and Rule 10b-5 thereunder (17 C.F.R. § 240.10b-5), against defendant Elfindopan, Southern Financial, Strategic Asset Funds, Tracy Calvin Dunlap, Jr., Barry Lowe, James L. McCall, Edmund Menden, Michael Menden and Michael Zieglmeier.

38. Paragraphs 1 through 37 are re-alleged and incorporated herein by reference.

39. Elfindopan purports to be a consortium of Central American stock corporations. It was started by Dunlap in January 1999 with \$700, and incorporated by Dunlap in January 1999 in Costa Rica, where it claims to maintain its principal offices. Dunlap is its President. Barry Lowe is one of its officers and principal "distributors," as well as a co-owner. Elfindopan also maintained an office in Greensboro, North Carolina, staffed by Lowe. SAF purports to be a Panama corporation. It also was formed by Dunlap, in May 2000. Dunlap is its President. SAF claims to operate from an address in Stateville, North Carolina. Southern Financial is a trust formed by Dunlap and Lowe, based in Greensboro, North Carolina. Dunlap and Lowe control every significant aspect

of Southern Financial, SAF and Elfindepan's operations. Neither Elfindepan, Southern Financial nor SAF has ever registered any securities offerings with the Commission.

#### SOLICITATION OF INVESTORS

40. Beginning as early as March 1999, the defendants began soliciting investors to purchase the unregistered securities of Elfindepan. The solicitations were made during face to face meetings with individuals and with groups, through telephone conversations and over the Internet.

41. Dunlap organized a series of "distributors" or affiliates to offer and sell the unregistered securities of Elfindepan. These "distributors" have aided defendants in the sale and solicitation of investments in Elfindepan in at least nine states. Many of these individuals appear to be early investors themselves, and, consistent with the scenario typical of Ponzi or pyramid scheme frauds, at least one these early investors has realized large returns on his investment. Edmund Menden, Michael Menden, Michael Zieglmeier and Lowe were such "distributors". Lowe later became a co-owner and officer of Elfindepan.

42. Defendants and other Elfindepan "distributors" or affiliates have attempted to prevent investors from disclosing information about the company by requiring signature of non-disclosure agreement pursuant to which investors agree not to discuss Elfindepan's business with third parties without written permission of the Elfindepan's business with third parties without written permission of the Elfindepan representative.

43. , SAF, Dunlap's other front company, offered and sold unregistered securities to the general public over the Internet. These securities were variations of

those Dunlap offered through Elfindepan. SAF began soliciting investors in May 2000, extending through at least July 2000.

#### FALSE REPRESENTATIONS AND OMISSIONS

44. The defendants made, or caused others to make, numerous false and misleading representations in connection with the offer or sale of the securities of Elfindepan. As described below, the most significant of the misrepresentations and omissions related to: (a) Elfindepan's business; (2) guaranteed investment returns; (3) safety of the investment; and (4) the use of investor funds.

#### MISPRESENTATIONS AND OMISSIONS ABOUT ELFINDEPAN'S BUSINESS

45. Through its website marketing brochure, and in the personal solicitations, defendants represented that Elfindepan's primary business—4% according to a pie graph found in these materials—is to provide short-term loans to companies awarded government contracts which are required to complete one-third of the projects prior to receipt of any government funding. Marketing materials state that Elfindepan also engages in factoring, or the business of financing accounts receivable—35% according to the chart. The materials explain that these are loans made to companies with large receivables and cash flow problems. The remaining 19% of Elfindepan's business purports to consist of loans to private individuals who are waiting "an average of six months" for banks to approve their mortgage loans. Thus, while a bank is analyzing the viability of the mortgaged asset and the reliability of the individual, Elfindepan, according to these materials, is ready to make the loan.

46. Although all these described loans are traditionally risky ventures—whose upside potential of higher interest rates is offset by correspondingly greater risk of loss of

principal—defendant’s written material provide no discussion of the risk associated with these businesses. In fact, Elfindepan’s written material provide no detail at all of financial performance or results of operations other than generic descriptions of their purported business.

47. Some of the misstatements in the written materials are unequivocal. The marketing brochure claims “23 years of satisfied customers,” a clear impossibility since Elfindepan, by Dunlap’s own testimony, has only been in existence since January of last year. The brochure also falsely claims that Elfindepan has paid out over \$60 million to investors.

48. The oral representations by defendant Dunlap and individuals working in concert with him are even more fanciful. Actual and potential investors have been told, among other falsehoods, that Elfindepan: (1) participates in a “currency trading” program; (2) makes loans to third world countries guaranteed by the International Monetary Fund and the World Bank; (3) loans money to large well-known financial institutions; (4) maintains investors funds in a secure bank account, where such funds somehow “scanned” by international financial institutions and used as collateral for loans to aid developing countries (nowhere in the sales material or oral presentations is the term described); and (5) provides highly profitable loans in connection with third world disaster relief projects.

49. Misrepresentations and omissions about Elfindepan’s guaranteed investment returns. Elfindepan’s website represents that the rate of return on investment is “currently a guaranteed 15%.” The website represents and marketing brochure displays a large chart showing calculations of returns based on a 15% annual return

calculation. The brochure represents to investors that “[i]nterest rates are locked in for a year by contract.” In today’s interest rate environment, a guaranteed annual return of 15% absent extraordinarily high risk is clearly fraudulent.

50. The defendants go much further in oral presentations, however, promising investors returns ranging from 15% annually, 15% monthly, 70% annually, to as much as 40-50% monthly (or as much as 600% annually). One investor, in a private meeting with Dunlap and an Elfindepan “distributor” or affiliate, was guaranteed a 70% annual return on a \$1 million investment. Another investor was told that any investment over \$1 million would see a 50% annual return. An investor who invested \$15,000 was told that he would earn 7% per month (or 84% annually) on his investment. Dunlap told still another investor that an investment greater than \$10 million would earn a 40-50% monthly return (480-600% annually).

51. On request, Elfindepan and its distributors provide account statements that reflect an investors’ principal investment and accrued interest. Several investors have received such statements purporting to show investment gains.

52. Misrepresentations and omissions about the safety of the Elfindepan investments. Elfindepan’s marketing brochure notes that the first characteristic of Elfindepan is to “provide investment vehicles that are secure.” In oral representations, the defendants represented and caused others to represent that Elfindepan was a secure investment. On at least two occasions, Dunlap falsely told investors that principal funds invested with Elfindepan never left the bank, statements clearly in conflict with bank records reflecting large withdrawals and transfers of funds from of the Elfindepan accounts to various locations and payees.

54. To at least one investor, Dunlap represented that Elfindepan was in the business of making loans to third world countries and that such loans were guaranteed by the IMF and/or the World Bank. Again, a misrepresentation easily dissolved, since the IMF's own public release, dated November 18, 1996, warns "financial transactions and operations are carried out directly with its member countries and only through a fiscal agency designated by each member for this purpose (such as the member's Central Bank or Ministry of Finance)." The IMF release also states that the IMF "does not operate through other agents and it does not endorse the activities of any bank, financial institution, or other public or private agency." In addition, Elfindepan "distributors" told one investor that an investment in Elfindepan is safer than the stock market. To further highlight and misrepresent the safety of an Elfindepan investment, the website and brochure offer investors the option of accessing their accumulated interest at ATMs worldwide with an Elfindepan EZ card -- a VISA debit card issued through Elfindepan and a Costa Rican bank.

55. Defendants told investors that Elfindepan was an appropriate investment for IRA funds and encouraged them to withdraw funds from IRA custodial accounts and "roll them over" into an Elfindepan account. Defendants Lowe and Dunlap facilitated the "rollover" through Southern Financial Group by providing the necessary documentation and transferring the liquidated IRA funds to Elfindepan accounts. Although investors are led to believe that the rollover is a legitimate transfer to another IRA custodial account, Southern Financial Group is not an IRA custodian. Formerly tax-deferred IRA investments are instead commingled with Elfindepan funds in a manner that clearly jeopardizes the tax status of those funds. Despite having taken in several million dollars

in IRA and retirement funds, defendants are unable to locate any documents identifying the investors, and the timing and amount of the investments. Defendant Dunlap, meanwhile, keeps the interest earned on those funds.

56. Misrepresentations and omissions about the distribution of Elfindepan investment funds. Contrary to representations about Elfindepan's business, the records of the two known financial institutions where Elfindepan maintains accounts: the Rock Hill Bank and Trust of South Carolina and the Offshore Reserve Fund in New York, reveal four things: (1) funds leave these accounts. These are not, as defendants have represented, secure bank accounts left untouched to collect interest; (2) funds are being used for purposes inconsistent with representations made by defendants about the nature of Elfindepan's business. The bank records contain no hint of, for example, lending to recipients of government contracts, loans for foreign financial institutions, loans based on receivables; (3) at least some of the funds are being used to pay early Elfindepan investors. At least \$348,000 was sent to an early Elfindepan investor, nearly doubling the amount of his principal investment. The payment of early investors from the proceeds of subsequent investors is a classic *indicia* of a Ponzi or pyramid fraud, which inevitably collapse when there are insufficient later investors to pay early investors; and (4) at least some of the funds are being used by Dunlap personally -- over \$125,000 was wired from an Elfindepan bank account in June 2000 for the benefit of three of Dunlap's children.

57. Material omissions about SAF's business. According to SAF's written offering materials, SAF "was created for the purpose of offering secure, private yield funds for the asset growth of its members worldwide." It purports to be "a private organization located in Costa Rica." SAF does not identify exactly what kind of

company it is, who its principals are, what specific business it is in, what investments it will make with investor funds, or how it will pay the high returns it promises. Nowhere does it inform investors that its sole purpose is to steal their money. In all material respects, SAF's position as to its business constitutes fraud.

58. Dunlap claimed that SAF would be utilizing "the expertise and assistance of an established and proven [company] with 23 years of satisfied customers and over 60 Million currently paid out in interest," *i.e.*, Elfindepan. In particular, in its promotional brochure Elfindepan holds itself out as having "23 Years of satisfied customers ... 60 Million currently paid out in interest...." As alleged elsewhere, these representations are demonstrably false.

59. Misrepresentations about SAF's guaranteed investment returns. SAF makes the following promises in its written offering materials:

"Strategic Asset Funds will offer its members a safe, private, vehicle in which to diversify their portfolios while offering a high yield, 20% to 30% monthly over a 12 month period. Strategic Asset Funds will be utilizing a 4-tier payment structure.

...

1. \$1,000 to 4,999 deposit earns 20% monthly  
for a 10 month return of 200%
2. \$5,000 to 19,999 deposit earns 20% monthly  
for a 12 month return of 240%
3. \$20,000 to 49,999 deposit earns 25%  
monthly for a 12 month return of 300%

4. \$50,000 deposit and up earns 30% monthly  
for a 12 month return of 360%.

These promises are so patently absurd and fraudulent that Dunlap and SAF do not even try to explain how they will pay these returns, much less identify the specific investments they will make with investor funds that will generate such rates of return.

60. Misrepresentations and omissions about the safety of the SAF investments. SAF uses adjectives like “safe” and “secure” to characterize its investments, stating in its offering materials that investments “are insured with a \$1 million fidelity bond and are protected against employee theft. In addition funds will be ... secured by a CD.” These representations are demonstrably false. Investor funds were neither safe nor secure, as Dunlap closed the SAF account and dissipated the funds in a matter of days. Most of the funds are beyond the jurisdiction of United States courts. There is not now and never was a fidelity bond or certificate of deposit guaranteeing investor funds against loss or theft.

61. Misrepresentations and omissions about the distribution of SAF investment funds. Dunlap and SAF represented as follows in their written offering materials: “[SAF] is diligently working to begin accepting funds on or about May 1, 2000.... Traditionally it takes 30 to 40 days to finalize the fidelity bond [,] secure the CD. and initiate the program. This move[s] the actual program start date to a period between July 1st and July 10, 2000. Your monthly disbursements will begin 30 days thereafter.” Thus, despite the promise to begin payouts by mid August 2000, to date no investor has been paid anything.

62. In approximately a six or seven week period beginning in May 2000, Dunlap raised more than \$6.5 million from over 860 investors by means of his SAF scam, depositing the misappropriated funds in a bank in South Carolina. Despite his representations, Dunlap did not invest any of the funds. To the contrary, on or about July 18, 2000, Dunlap closed the SAF bank account and dissipated the funds in a matter of days. Of the approximate \$6.5 million raised, Dunlap wired (1) \$4 million to an account in Canada, which was immediately wired to an account in Switzerland, (2) \$1.5 million to an individual in Texas, purportedly in satisfaction of a debt or obligation, (3) \$85,000 as gifts to his children, and (4) approximately \$600,000 to another account he controlled (an Elfindepan bank account).

63. McCall's Misrepresentations and Omissions. McCall operation is a "Prime Bank" scheme. In classic "Prime Bank" fashion, a recent offering document claims to be an investment vehicle where the principal investment is "fully secured" by a "Bank Endorsed Guarantee." Other investors have been told that McCall and his affiliated entities invest with various unnamed world banking institutions and "international traders" which are able to pay the huge monthly guaranteed rates of return, another hallmark of a "Prime Bank" scheme. Promised returns range from 11% monthly (promised in written materials) to 15% monthly (promised by McCall in person).

64. When pressed for details of specific investments or investment contacts, McCall refuses to provide further information. Just like Dunlap, Lowe, Elfindepan and SAF, he has in all respects failed to identify where he invests, how he invests, what specific investments he makes, or who can verify the existence of his investments.

65. McCall's Interchangeable Front Companies. McCall operates through over a dozen interchangeable front companies, switching between them to avoid scrutiny by state and federal regulators. These entities include Acorn Enterprise Group, Acorn Group Limited, Acorn Enterprises Limited, Acorn Investment Enterprises, Global Asset Management Group and Global Asset Management, S.A., Consultorias Okama, S.A., International Asset Management Corporation, S.A., Georgia Trust, HISway 65Financial Associates, HISway Financial Inc., HISWAY International Ministries and Spirit Enterprises. The entities designated as "S.A." are purportedly Costa Rican corporations. All of the entities are based in Lafayette, Indiana at McCall's home address. The HISway entities are purportedly religious organizations that, in addition to pursuing various international ministries with funds solicited from investors, are also able to pay their investors the same guaranteed high monthly rates of return. McCall holds himself out as a "Steward" of the HISway entities. None of these entities is registered with the Commission.

66. McCall's Misrepresentations Concerning Investor Returns. Despite repeated pleas by investors to get their investments returned, McCall has ignored their correspondence and avoided their telephone calls. He has engaged in a strategy of delay to put off increasingly suspicious investors, utilizing a repeating cycle of oral and written promises of imminent payment followed by excuses why payment did not happen. This pattern has continued from at least May 2000 to the present. One such excuse for nonpayment is McCall's claim that he transferred investor funds offshore to avoid Commission interference.

67. Other investors have been sent checks in payment on their investments, but the checks were returned because the bank account was either closed or lacked sufficient funds. Still other investors have received partial payments only after threatening McCall with criminal prosecution. Even so, the checks they received contained a myriad of releases and disclaimers in an effort to avoid liability.

68. McCall's Nexus to the Dunlap and Elfindepan fraud. McCall's fraud is inextricably intertwined with that committed by Dunlap and Elfindepan. In late 1999 and early 2000, McCall began introducing his investors to Dunlap and Elfindepan. In various domestic sales meetings in this time period, McCall told his investors and distributors that their money was invested with Dunlap and Elfindepan. According to correspondence from McCall to his investors, "I will no longer have control of operations. I have contracted with Elfindepan, S.A. (Mr. T.C. Dunlap, the Director. He's been in this business for almost twenty years.), with whom we are also now associated, to manage our operations in Costa Rica." McCall's promotional materials and paperwork also announced his affiliation with Dunlap and Elfindepan. McCall's investors were issued "EZ Cards," a Visa debit card issued by Elfindepan, and could purportedly elect to have their investment income paid into their Elfindepan EZ Card accounts. New investors became shareholders of Elfindepan and the forms McCall required them to fill out were on Elfindepan letterhead.

69. According to a McCall distributor, McCall (operating through his various entities) and Elfindepan are one and the same. McCall maintains an office in Elfindepan's office suite in Costa Rica. Further, information concerning McCall's investors (names, dates, amounts, etc.) is stored on Elfindepan's computer system in

Costa Rica. The extent of McCall's fraud is presently unknown as he refused to answer the Commission's questions based on the Fifth Amendment.

70. Defendants, directly or indirectly, have knowingly or recklessly engaged in the acts and practices described herein in the First Cause of Action. By reason of the foregoing these defendants have violated, are violating, and unless enjoined, will continue to violate the provisions of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] and Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

### SECOND CAUSE OF ACTION

**Violations of Sections 5(a) and 5(c) of the Securities Act (15 U.S.C. §§ 77e(a) and (c)) against defendants Elfindepan, Southern Financial, Strategic Asset Funds, Tracy Calvin Dunlap, Jr., Barry Lowe, James L. McCall, Edmund Menden, Michael Menden and Michael Zieglmeier.]**

71. Paragraphs 1 through 70 are re-alleged and incorporated herein by reference.

72. Defendants are offering, selling and distributing unregistered securities of Elfindepan and SAF in the form of investment contracts and common stock.. The various McCall offerings (through his interchangeable front companies) also constitute unregistered securities in the form of investment contracts.

73. In the offer and sale of the securities of Elfindepan, SAF and McCall, the defendants, and other persons under their control or acting in concert with them, engaged in general, nationwide solicitations of investors, predominantly through a website posting, face-to-face meetings and/or telephone solicitations. Representatives of the defendants also made presentations to prospective investors in Minnesota, Washington, South Carolina and North Carolina, and at least five other states. The unregistered

securities of Elfindepan, SAF and McCall were sold and distributed nationwide to the investing public.

74. Investors were solicited and allowed to purchase Elfindepan, SAF and McCall securities without regard to their financial condition or financial sophistication.

75. The defendants did not provide investors any financial statements or other detailed financial information with respect to their investments.

76. No registration statements have been filed with the Commission or have been in effect as to the offer or sales of the securities of Elfindepan, SAF or McCall, and no exemption from registration was available, for the offers, sales, and distributions of these unregistered securities.

77. By reason of the foregoing, these defendants violated, are violating and unless restrained and enjoined will continue to violate Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and (c)].

### THIRD CAUSE OF ACTION

Violations of Sections 17(a) of the Securities Act (15 U.S.C. § 767q(a), Section 10(b) of the Exchange Act (15 U.S.C. § 78; (b)) and Rule 10b-5 hereunder (17 C.F.R. § 240.10b-5), against defendants Wilson, Mann, Salazar, CRCC, RDC Funding, RDC Development, PTM and JAS.

78. Paragraphs 1 through 77 are re-alleged and incorporated herein by reference.

### The RDC FRAUD

79. On or about April 2000, Salazar contacted Dunlap and proposed that Dunlap consider investing Elfindepan funds in an investment venture created by Thomas Mann and Patrick Wilson.

80. Salazar advised Dunlap that the investment would be risk free and that Dunlap would receive in approximately twelve weeks between \$7 million and \$10 million for every \$1 million invested in the venture.

81. Salazar later in April 2000 put Dunlap in contact with Patrick Wilson who provided Dunlap with both written and oral information regarding the RDC Bond deal. Wilson falsely represented to Dunlap during this period that for every \$ 1 million invested in the venture Dunlap and Elfindepan would receive a \$10 million return within twelve weeks. Wilson further represented that the investor funds were secured, would never be at risk and would never leave the bank. Wilson told Dunlap that the 1000% return promised would be obtained through "leveraging" and "trading" in connection with the RDC Bond, which was backed by Thomas Mann, a wealthy Oklahoma real estate developer. Wilson met in person with Dunlap in North Carolina in the last week of April 2000 and reiterated all the above. At all time, Wilson knew his representations to Dunlap were false and impossible to achieve.

81. In fact, the RDC Bond, although a legitimate financial instrument, was a sham transaction. It had no legitimate business or economic purpose. First, the proceeds of the note were immediately placed in trust to secure eventual repayment of the bondholder on maturity. Second, the few investments permitted by the terms of the

RDC Bond were limited to short term U.S. government obligations to defray interest on the note. The rate of return for these obligations was for less than the interest payable to the bondholders. Accordingly, as structured, the bond offering was incapable of generating a positive return on capital.

82. In May 2000, Dunlap, based on the above representations by Salazar and Wilson invested \$7 million of Elfindepan investor funds in the RDC bond deal expecting to receive at least \$70 million within twelve weeks.

83. Similarly, between February and April 2000, Salazar solicited three other unwitting investors to make a total investment of \$4 million in the RDC Bond deal. In each case, the investor were told by Salazar that their money would never be at risk and that they would receive a 700% to 1000% return in approximately twelve weeks. At the time Salazar made these representations he knew them to be false.

84. In April 2000, Salazar put the above investors in contact with Patrick Wilson and Thomas Mann. Wilson and Mann reiterated Salazar's representations and specified that the investors' funds would never be at risk and guaranteed a return of a least 1000% within twelve weeks. Wilson and Mann knew their representations were false and impossible to achieve.

85. Based on the representations specified above, by Salazar, Wilson and Mann the additional three investors invested \$4 million into the fraudulent RDC Bond deal.

86. Throughout June, July and August, the investors in the RDC Bond deal became increasingly nervous because the promised extraordinary returns were not materializing. Salazar's excuses were unresponsive and Wilson and Mann rarely if

ever responded to telephone call or written communications by the investors, their attorneys or representatives.

87. By September, 2000 the investors had become desperate and demanded a meeting with Wilson and Mann. On September 6, 2000 a meeting was held at Wilson's home outside Atlanta, Georgia to discuss the situation. At that meeting, Wilson announced that the RDC Bond deal would be paying out the promised returns within two to three weeks. This meeting constituted lulling activity on the part of Wilson. Not surprisingly, Wilson's promised payout failed to materialize.

88. Salazar, Wilson and Mann continued throughout October and November 2000 to knowingly falsely represent that the promised payouts were forthcoming, when, in fact, they knew they were not.

89. By December 2000, the investors had become frantic. They demanded and received a meeting with Mann in mid December, 2000 in the office of his attorney in Tulsa, Oklahoma. Despite being told by his attorney prior to this meeting that such payouts were possible from the RDC Bond deal, Mann again promised the investors that the 1000% payout would be forthcoming within in the next few weeks. Mann knew this was a lie. He continued to make these false representations through January and February 2001. Such representations constituted lulling activity by Mann.

RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that this Court:

I.

As to defendants Salazar, Wilson, Mann, RDC Development, RDC Funding, PTM, CRCC, JAS, SAF, McCall, Edmund Menden, Michael Menden and Zieglmeier,<sup>1</sup> issue a temporary restraining order, preliminary and permanent injunctions, and other emergency and preliminary relief, restraining and enjoining these defendants, and their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them, and each of them, from engaging in transactions, acts, practices, courses of business, and conduct of similar purport and object, in connection with transactions which, directly or indirectly, constitute violations, or aiding and abetting violations, of the provisions of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

## II.

As to defendants Salazar, Wilson, Mann, RDC Development, RDC Funding, PTM, CRCC, JAS, SAF, McCall, Edmund Menden, Michael Menden and Zieglmeier, issue a temporary restraining order, preliminary and permanent injunctions, and other emergency and preliminary relief, restraining and enjoining defendants, and their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them, and each of them, from engaging in transactions, acts, practices, courses of business, and conduct of similar purport and object, in connection with transactions which, directly or indirectly, constitute violations, or aiding and abetting violations, of the provisions of Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and (c)].

---

<sup>1</sup> Defendants Flindapan, Southern Financial, Dunlap and Lowe are already subject to the preliminary injunction entered against them on August 17, 2000.

III.

Enter an order requiring all defendants and relief defendants to account for and to disgorge all proceeds (with prejudgment interest) resulting from the transactions complained of herein. In the alternative, or in addition thereto, the Commission requests that the Court order the equitable remedy of rescission.

IV.

Enter an order directing defendants to pay civil penalties pursuant to Section 20(d) of the Securities Act of 1933 and Section 21(d) of the Securities Exchange Act of 1934.

V.

Enter an order finding that the named relief defendants are constructive trustees of any and all funds entrusted to them by the defendants, requiring them to disgorge the full amount of such funds, including interest for the time of their holding such funds.

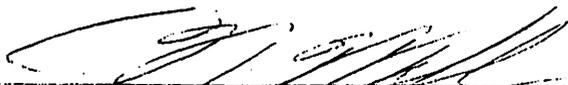
VI.

Grant all further relief, legal or equitable, that the Court believes is warranted under the circumstances.

July 16, \_\_, 2001

UNITED STATES SECURITIES AND  
EXCHANGE COMMISSION

By: \_\_\_\_\_

  
Eric N. Miller  
Kurt G. Gresenz  
N. Creola Harry  
450 Fifth Street, NW  
Washington, D.C. 20549-0911 of  
202-942-7275 (Miller)