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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 COUNTY OF LOS ANGELES – SANTA MONICA BRANCH

14 WILLIAM C. KRANER, an individual.  
15  
16 Plaintiff,

17 vs.

18 SEACOAST COIN, INC. dba MERIT  
19 FINANCIAL, MERIT GOLD AND  
20 SILVER, and MERIT GOLD, a California  
21 Corporation; JOE GROSSMAN, an  
22 individual; and DOES 1 through 25  
23 Inclusive;

24 Defendants.

) Case No.: SC122137

) **UNLIMITED CIVIL CASE**

) **SECOND AMENDED COMPLAINT**  
) **FOR DAMAGES & INJUNCTIVE**  
) **RELIEF**

- ) 1. **Fraud;**  
) 2. **Breach of Fiduciary Duty;**  
) 3. **Breach of Contract;**  
) 4. **Violation of Cal. Bus. Prof. Code §§**  
) **17200, et seq. (“UCL”);**  
) 5. **Violation of Cal. Bus. Prof. Code §§**  
) **17500, et seq. (“False Advertising”);**  
) 6. **Violation of California Consumers**  
) **Legal Remedies Act, Cal. Civ. Code §**  
) **1750, et seq. (“CLRA”); and**  
) 7. **Financial Elder Abuse**

) **DEMAND FOR JURY TRIAL**

) Assigned to the Hon. Gerald Rosenberg

) Case filed on February 27, 2014

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Superior Court of California  
County of Los Angeles

JUN 06 2014

Sherri R. Carter, Executive Officer/Clerk  
By Darnetta Smith, Deputy

SECOND AMENDED COMPLAINT FOR DAMAGES & INJUNCTIVE RELIEF;  
DEMAND FOR JURY TRIAL

1 **I. INTRODUCTION**

2 1. COMES NOW plaintiff WILLIAM C. KRANER (“Kraner” or “Plaintiff”), and  
3 alleges causes of action against defendants SEACOAST COIN, INC. dba MERIT  
4 FINANCIAL, MERIT GOLD AND SILVER and MERIT GOLD and JOE GROSSMAN and  
5 DOES 1 through 25 for damages and injunctive relief.

6 2. These causes of action arise from the fraudulent and illegal tactics used by  
7 defendants to harm Plaintiff and others when they attempted to purchase gold and other  
8 precious metals from defendants and were steered into purchasing overpriced numismatic coins  
9 that hold no tangible value besides their metal content.

10 **II. PARTIES**

11 3. Plaintiff WILLIAM C. KRANER is, and at all times mentioned was, an adult  
12 residing in the State of Ohio. Kraner is currently 77 years old and his mental faculties are  
13 slowing.

14 4. Plaintiff is informed and believes, and upon such information and belief alleges  
15 thereon, that at all times herein mentioned defendant SEACOAST COIN, INC. dba MERIT  
16 FINANCIAL, MERIT GOLD AND SILVER and MERIT GOLD (hereinafter “Merit” or  
17 “Defendant”) is a corporation organized and existing under the laws of the state of California,  
18 with its principal place of business at 1300 4th Street, Suite 303, Santa Monica, California  
19 90401. Merit is qualified to and is doing business in the State of California, and may be served  
20 in this State through its registered agent: Peter M. Epstein at the same location. In addition, at  
21 all times relevant hereto, Merit conducted regular and sustained business in Los Angeles  
22 County, California, by promoting and providing its services within said county.

23 5. Plaintiff is informed and believes, and upon such information and belief alleges  
24 thereon, that at all times herein mentioned defendant JOE GROSSMAN (hereinafter  
25 “Grossman” or “Defendant”) is a resident of Los Angeles, California and was, and is, an  
26 employee of Merit and that his actions herein were conducted within the course and scope of his  
27 employment with Merit and ratified by Merit, with Merit’s advanced knowledge of his  
28 unfitness.

1           6.       The true names and capacities of defendants sued herein as Does 1 through 25,  
2 inclusive are unknown to Plaintiff who therefore sues said defendants by such fictitious names.  
3 Plaintiff prays for leave to amend this Complaint to show their true names and capacities when  
4 the same have been finally determined. Plaintiff is informed and believes, and upon such  
5 information and belief alleges thereon, that each of the defendants designated herein as DOE is  
6 negligently, intentionally, strictly liable or otherwise legally responsible in some manner for the  
7 events and happenings herein referred to, and negligently, strictly liable intentionally or  
8 otherwise caused injury and damages proximately thereby to Plaintiff, as is hereinafter alleged.

9           7.       At all times herein mentioned, each and every defendant herein was the owner,  
10 agent, servant, joint venture, alter ego and employee, each of the other and each was acting  
11 within the course and scope of his or him ownership, agency, service, joint venture and  
12 employment.

13           8.       At all times mentioned herein, each and every defendant was the successor of the  
14 other and each assumes the responsibility for the acts and omissions of all other defendants.

15       **III.    VENUE AND JURISDICTION**

16           9.       Jurisdiction and venue are proper in the Los Angeles Superior Court, Santa  
17 Monica branch. At the time of the acts and omissions, all Defendants were residents or had  
18 their principal places of business in or near Santa Monica in Los Angeles County, California.  
19 Furthermore, this venue is convenient to the parties and is an appropriate venue for a civil  
20 action for damages and injunctive relief.

21           10.      “Protection against local prejudice is the essential purpose of removal  
22 jurisdiction based on diversity of citizenship. Thus, defendants cannot remove a case to federal  
23 court if any defendant joined and served resides in the state where the action is pending.” 28  
24 U.S.C. §1441(b). This is even if there is complete diversity. Spencer v. Altec Industries, Inc.  
25 (9th Cir. 2004) 393 F.3d 867, 870.

26       **IV.    ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

27           **(Against All Defendants)**

28           11.      Merit is the gold standard of gold scams.

1           12. Merit sells gold, silver and other precious metals to customers, mostly in the  
2 form of common and easily obtainable gold and silver coins. Merit has perfected over the years  
3 marketing to consumers the fear of runaway inflation and a monetary system meltdown  
4 resulting in part from the de-coupling of the monetary system from the gold standard.

5           13. Merit’s advertisement infers, represents and suggests that it is in fact an  
6 investment advisor, and that it will serve as an agent to assist clients to purchase gold.

7           14. Most importantly, in all its advertisements, Merit tells individuals repeatedly to  
8 “trust” Merit. Merit’s website and online advertising presence is dominated by the term  
9 “invest” and that individuals should diversify their portfolios.

10           **(A) THE ADVERTISING BAIT**

11           15. Merit’s scheme boils down to a massive bait and switch. First, Merit hooks  
12 consumers, like Kraner, with a multi-million dollar national television advertising campaign  
13 promising to sell gold and silver bullion at one percent (1%) over cost. When customers, like  
14 Kraner, call Merit, its sales people, including Grossman use deceptive and aggressive tactics to  
15 steer consumers away from buying bullion, persuading them instead to buy certain gold and  
16 silver coins. These coins are priced far above Merit’s costs, netting Merit a tremendous profit  
17 and Grossman enormous commissions. Merit also sends constant emails suggesting the price of  
18 gold will increase exponentially in the near future.

19           16. Kraner saw Merit’s ads since 2011 and through 2013. In ads, Merit’s spokesman  
20 stated “ and we offer gold and silver bullion at **just** one (1%) over dealer cost.” At the same  
21 time, as the spokesman made his pitch, an image would merge from his shoulder highlighting  
22 “1% Over Dealer Cost.” An image from one of the TV advertisements is below:



1           17.     The commercials centered on bullion and bullion products only. They would  
2 reiterate that Merit “had added even more popular bullion coins and bars to our product lines,  
3 ALL at 1% over dealer costs.” Furthermore, Merit’s ads explicitly stated that it had been in  
4 business for years and that it had an “A” or at other times an “A+” rating with the better  
5 business bureau<sup>1</sup> and that “there is no more trusted name than Merit Financial.”

6           **(B)     THE SWITCH TACTICS**

7           18.     Merit’s Senior Account Executives earn their living on commissions. They are  
8 exponentially incentivized to sell their clients coins other than those that Merit advertises. The  
9 Senior Account executives, including Grossman, earn approximately 0.25 to 0.5 % in  
10 commission for selling the advertised bullion coins. If they sell other allegedly “rare” coins,  
11 they earn approximately 20 times more in commissions. For example, if a Merit Senior  
12 Account Executive sold a client \$10,000.00 in the advertised bullion coins, the salesman would  
13 receive at most \$50.00. However, if they steered the client into spending \$10,000.00 on the  
14 marked up allegedly rare coins, the Senior Account Executive would receive \$1,000.00 in  
15 commission.

16           19.     Merit trains its sales representatives to conceal from customers during the sales  
17 process the actual markup Merit charges its customers. Such sales typically take place over the  
18 telephone. In fact, as a matter of custom and practice, during the telephonic sales process, Merit  
19 does not, and did not to Kraner, disclose the actual markup charged. If a customer asks what  
20 the commission or markup is, as a matter of custom and practice, the sales representative  
21 misrepresents the actual markup being charged. As part of their “sales pitch,” Merit sales  
22 representatives are also instructed to represent to customers, and did represent, that Merit’s fees  
23 are the lowest in the industry.

24           20.     Merit disguises the amount of the markup price on the precious metals and coins

25 \_\_\_\_\_  
26 <sup>1</sup> The Better Business Bureau that Merit was referencing was shutdown after revelation by ABC  
27 News that it was a pay to play organization, a fact known to Merit. Not only did the BBB give  
28 Merit an A+ rating, but it also provided the terrorist organization Hamas an A minus grade for  
\$425.00 and a skinhead group got an A+, slightly better than Merit. The allegations against the  
BBB were made in 2010, yet Merit continued to brag in advertisements that it received an A or A+  
rating from an organization it knew provided false and deceptive ratings. Merit also trolled fake  
recommendations on websites.

1 by representing that there is a buyback or “bid” price for the metals and that the difference  
2 (spread) between such bid/buy price and the actual ask/sell price the customer is paying is  
3 within a specified range, depending on the nature of the metal or coin. The “bid” price is an  
4 arbitrary price set by Merit. In fact, unbeknownst to the customer, Merit’s markup that it  
5 charges customers is greater than the spread specified to the clients. Once Merit enters into a  
6 fiduciary relationship with the clients, Merit does not disclose the true facts to the customers,  
7 but conceals them with the intent of defrauding the customers.

8 (C) **THE SWITCH TO KRANER AND FALSE STATEMENTS MADE BY**  
9 **MERIT & GROSSMAN**

10 21. After seeing the commercials for Merit on television where it mentioned, as  
11 stated above, that it sold gold bullion coins and bars for 1% over dealer costs, Kraner called the  
12 toll free number for the first time on July 22, 2011. Kraner’s call was immediately put through  
13 to Grossman, who declared himself a “Senior Account Executive” to Kraner. Kraner also spoke  
14 with Grossman on July 25, 2011, August 1, 2011, August 2, 2011, August 10, 2011, November  
15 29, 2011, April 27, 2012, August 28, 2012 and October 4, 2012. On those dates, Kraner  
16 purchased coins from Merit.

17 22. On the dates Plaintiff called, or was called by Grossman, he requested to  
18 purchase the bullion at 1% over costs. Grossman told Kraner that what he really wanted to  
19 purchase were rare coins that Merit had just received. Grossman told Kraner that the “rare”  
20 coins were far better deal for him than the advertised coins, because he would earn more.  
21 Grossman would tell Plaintiff on these dates referenced above that Merit would not provide the  
22 coins to anyone else, just Kraner because he was a big customer. Grossman would tell Kraner  
23 on these dates that gold has always gone up in value, even though Grossman knew this was not  
24 true. Grossman would tell Kraner on these dates that Gold was his insurance and he needed to  
25 protect his investment. Grossman also told Kraner that the “rare” coins were more valuable  
26 because he would not have to report owning or selling the coins to any government entity.  
27 Furthermore, Grossman told Kraner that the “rare” coins could not be confiscated by the US  
28 government.

1           23.     Grossman also caused Kraner to believe that the coins Grossman was selling him  
2 were also 1% over dealer costs, as the advertised coins were claimed to be. Kraner asked  
3 Grossman how the coins were 1% over costs, Grossman would tell Kraner to trust him that  
4 everything was above board, but that he himself could not do the accounting to explain how the  
5 coins Kraner was purchasing were 1% over dealer costs, or any of the coins were 1% over  
6 dealer costs, but nevertheless to trust him that the coins were 1% over dealer costs.

7           24.     Grossman did not disclose that to Kraner that his commission to sell the marked  
8 up allegedly “rare” coins was twenty (20) times greater than the advertised bullion coins.  
9 Grossman earned approximately ten (10) percent for the sale of the allegedly “rare” coins.  
10 When pressed by Kraner, Grossman lied and said he had no idea how the costs were allocated.  
11 Grossman worked at Goldline beforehand and is well aware of the approximate costs of the  
12 different bullion coins and “rare” coins to Merit because they are at or near the spot price of  
13 gold.

14           25.     Merit and Grossman falsely implied that its owner, Peter M. Epstein, was a  
15 police officer.

16           26.     Grossman would tell Kraner that he had to make the purchases within minutes,  
17 or the coins would be gone and that he needed to get on the train. Grossman told Kraner that  
18 only he had access to the coins, because he was his number one customer. Grossman would  
19 also guarantee that certain coins would increase in value.

20           27.     The gold and other coins are not “rare.” The gold coins are not “non-  
21 confiscateable.” And if someone sells the gold coins for a profit, they have to in fact report the  
22 profit to the Internal Revenue Service as income from property, not as an “investment” at the  
23 preferred capital gains. The coins had/have little or no value beyond their melt value for the  
24 actual gold or silver they contained.

25           28.     While doing this, Merit intentionally confused Kraner by causing him to believe  
26 that he was only paying one percent (1%) over costs, when in fact he paid considerably more.

27     ///

28     ///

1                   **(D) MERIT & GROSSMAN KNEW THE STATEMENTS ABOUT THE**  
2                   **WERE FALSE**

3                   29. Grossman and Merit knew the statements referenced above were false.  
4 Grossman and Merit knew the coins it sold Kraner were not “rare”, “non-reportable” or “non-  
5 confiscateable.” They knew the “rare” coins were in fact not better than the bullion. The  
6 defendants knew the coins were not insurance. The defendants knew that they were not selling  
7 the allegedly “rare” coins to Kraner at 1% over dealer costs. Defendants knew that Peter  
8 Epstein is not a real police officer and has a ceremonial badge from a small entity.

9                   30. In short, Merit and Grossman lied and misrepresented to Kraner regarding the  
10 qualities and price of the gold and silver coins. Merit never informed Kraner that the true costs  
11 of the “investments” were approximately 50% of the price Kraner paid. Kraner spent  
12 approximately \$3,600,000.00 to \$4,000,000.00 on gold and silver coins from Merit. Despite  
13 Merit’s advertisements to “invest in gold” and diversify your portfolio by trusting Merit and to  
14 avoid overpaying for gold, Kraner overpaid for gold. Instead of receiving anywhere near the  
15 purchase price in gold and silver for his investments, Kraner received approximately  
16 \$2,000,000 in gold and silver coins that were not rare, were not “non-confiscateable” and, if he  
17 ever receives a profit by selling the coins, Kraner may have to report it as income from  
18 property, not investment/capital gains.

19                   31. Furthermore, Defendants concealed the true information despite inquiries from  
20 Kraner on how they could sell the coins to him that he was purchasing at one percent (1%) over  
21 cost.

22                   **(E) MERIT & GROSSMAN INTENDED THAT KRANER RELY ON THEIR**  
23                   **FALSE REPRESENTATIONS**

24                   32. Merit and Grossman intended that Kraner would rely on the false statements  
25 referenced above to encourage him to purchase coins that were not sold at 1% over dealer costs,  
26 but with significantly greater markups.

27 ///

28 ///



1 (F) **KRANER REASONABLY RELIED ON MERIT & GROSSMAN'S FALSE**  
2 **REPRESENTATIONS**

3 33. Kraner reasonably relied on the false statements by Merit and Grossman. Kraner  
4 never would have entered into any agreement with Merit had Merit informed him that the coins  
5 were not "rare," "non-confiscateable" and/or "non-reportable," or were sold at approximately  
6 one percent (1%) over costs.

7 V. **CAUSES OF ACTION**

8 **FIRST CAUSE OF ACTION**

9 (FRAUD)

10 (Against All Defendants)

11 34. Plaintiff hereby incorporates by reference and re-alleges each and every  
12 allegation set forth in each and every preceding paragraph of this Complaint, as though fully set  
13 forth herein.

14 35. Merit knew that Kraner was being overcharged for the gold and other coins it  
15 allegedly purchased on his behalf and/or for Kraner through Grossman. Merit knew the gold  
16 and other coins were not "rare," "non-confiscateable" or "non-reportable."

17 36. Merit concealed from Kraner that he was being vastly overcharged, with the  
18 intent of inducing Kraner to purchase the coins from Merit. Merit also informed Kraner that the  
19 coins were "rare," "non-confiscateable" and/or "non-reportable" and guaranteed their increase  
20 in value.

21 37. As a result of Merit's wrongful acts in concealing the fact that Kraner was being  
22 vastly overcharged and in misrepresenting the quality, price and attributes of the coins, Kraner  
23 purchased gold and silver coins through Merit and has been significantly damaged thereby.  
24 Kraner has also suffered incidental and consequential damages.

25 38. Kraner discovered that Merit had fraudulently overcharged him for the coins  
26 within three years of purchasing the coins. Kraner had no reason to know he had been  
27 fraudulently overcharged before such discovery because Kraner lacked sufficient information to  
28 enable him to make that determination, and such information was not available to him. In

1 addition, Merit concealed the true facts from Kraner and provided him false representations  
2 about the quality, price, rarity and attributes of the coins.

3 39. The actions were done by Defendants with malice, oppression and fraud and all  
4 acts were ratified by the other Defendants. The foregoing conduct of Merit: (i) constitutes  
5 intentional misrepresentation, deceit, and/or concealment of material facts known to Merit with  
6 the intent on the part of Merit of depriving Kraner of his capital, property and legal rights or  
7 otherwise causing Kraner injury; (ii) was intended by Merit to cause injury to Kraner and/or  
8 was despicable conduct that was carried out by Merit with a willful and conscious disregard of  
9 the rights of Kraner; and/or (iii) was despicable conduct that subjected Kraner to cruel and  
10 unusual hardship in conscious disregard of Kraner's rights so as to justify an award of punitive  
11 damages against Merit pursuant to California *Civ. Code* § 3294.

12 **SECOND CAUSE OF ACTION**

13 **BREACH OF FIDUCIARY DUTY**

14 **(Against All Defendants)**

15 40. Plaintiff hereby incorporates by this reference as if fully set further herein, each  
16 and every allegation set forth in the preceding paragraphs of this claim.

17 41. Merit and Kraner entered into a fiduciary relationship, as described above, and  
18 additionally wherein Merit acted as Kraner's agent to procure coins that Merit described as  
19 investments to diversify Kraner's portfolio. Kraner and Merit treated the relationship as  
20 confidential throughout the relevant period.

21 42. Merit had a duty to disclose to Kraner the markup or premium he was being  
22 charged for the coins. Merit further had a duty to disclose to Kraner the true nature and market  
23 of the coins it was selling. Instead, Merit informed Kraner that the coins had properties that  
24 they did not have, such as being rare, or immune from confiscation at any time in the future by  
25 the government, and that those properties made the coins more valuable than other coins or  
26 investments.

27 43. As a result of Merit's wrongful acts in concealing and misrepresenting these  
28 facts, Kraner purchased gold, silver and platinum coins through Merit and has been

1 significantly damaged thereby. Kraner has also suffered incidental and consequential damages.

2 44. Kraner discovered that Merit had fraudulently overcharged him for the coins  
3 within three years of purchasing the coins. This is despite Merit's express statements that  
4 Kraner should hold onto the coins for at least three years. Kraner had no reason to know he had  
5 been fraudulently overcharged before such discovery because Kraner lacked sufficient  
6 information to enable him to make that determination, and such information was not available  
7 to him. In addition, Merit concealed the true facts from Kraner and provided him false  
8 representations about the quality, price, rarity and attributes of the coins.

9 45. The actions were done by Defendants with malice, oppression and fraud and all  
10 acts were ratified by the other Defendants. The foregoing conduct of Merit: (i) constitutes  
11 intentional misrepresentation, deceit, and/or concealment of material facts known to Merit with  
12 the intent on the part of Merit of depriving Kraner of him capital, property and legal rights or  
13 otherwise causing Kraner injury; (ii) was intended by Merit to cause injury to Kraner and/or  
14 was despicable conduct that was carried out by Merit with a willful and conscious disregard of  
15 the rights of Kraner; and/or (iii) was despicable conduct that subjected Kraner to cruel and  
16 unusual hardship in conscious disregard of Kraner's rights so as to justify an award of punitive  
17 damages against Merit pursuant to California *Civ. Code* § 3294.

18 **THIRD CAUSE OF ACTION**

19 **BREACH OF CONTRACT**

20 **(By Plaintiff against Merit.)**

21 46. Plaintiff hereby incorporates by this reference as if fully set further herein, each  
22 and every allegation set forth in the preceding paragraphs of this claim.

23 47. Kraner entered into an ORAL agreement with Merit relating to his  
24 purchase/investment in gold, silver and platinum coins through Merit. Merit represented that  
25 the price it charged Kraner was within a specific "spread" range and that it would re-purchase  
26 any coins.

27 48. Kraner has performed all obligations under the agreement, except for those that  
28 have been excused.

1 49. Merit and Grossman refused to re-purchase coins from Kraner, unless he agreed  
2 to sign an agreement with an arbitration clause. Kraner refused and has never signed an  
3 agreement with an arbitration clause with Merit or Grossman.

4 50. Merit breached the terms of the agreement by charging Kraner a price greater  
5 than the range represented in their agreement and representations to Kraner.

6 51. As a result of Merit's breach of contract, Kraner has been damaged at least by  
7 \$4,000,000.00.

8 **FOURTH CAUSE OF ACTION**

9 **CALIFORNIA UNFAIR COMPETITION LAW**

10 **(By Plaintiff against Merit.)**

11 52. Plaintiff hereby incorporates by this reference as if fully set further herein, each  
12 and every allegation set forth in the preceding and subsequent paragraphs of this claim.

13 53. Merit's practices as alleged in this claim constitute unlawful, fraudulent, and  
14 unfair business acts and practices under California's Unfair Competition Law ("UCL"), *Bus. &*  
15 *Prof. Code* §§ 17200, *et seq.*

16 54. By engaging in the above-described acts and practices, Merit has committed one  
17 or more acts of unfair competition within the meaning of *Bus. & Prof. Code* §§ 17200, *et seq.*

18 55. Merit committed "unlawful" business acts and practices by:

19 (a) engaging in conduct that violates California's Consumers Legal  
20 Remedies Act, *Civ. Code* §§ 1770(a)(2), (a)(5), (a)(7), (a)(13), (a)(14) and (a)(19); and

21 (b) engaging in conduct that violates 18 U.S.C. §§ 1341 (Mail Fraud) and  
22 1343 (Wire Fraud);

23 (c) engaging in conduct that violates the federal prohibition on bait and  
24 switch advertising tactics in violation of 16 C.F.R. 238, *et seq.*

25 56. Merit committed "unfair" business acts and practices by:

26 (a) engaging in conduct where the utility of such conduct, if any, is  
27 outweighed by the gravity of the consequences to Kraner; and

28 (b) engaging in conduct that is immoral, unethical, oppressive, unscrupulous,

1 or substantially injurious to Kraner.

2 57. Merit committed “fraudulent” business acts and practices by:

- 3 (a) selling Plaintiff coins that did not possess the attributes Merit claimed;
- 4 (b) creating an artificial bid/buy price that was intended to confuse the
- 5 consumer, and did confuse Plaintiff, regarding the actual markup on the coins; and
- 6 (c) creating an environment that Merit was an investment adviser in precious
- 7 metals and cloaking itself as a standard securities dealer, wherein customers have
- 8 additional statutory protections.
- 9 (d) claiming it sells metals at one percent (1%) over costs.

10 58. Specifically, Merit engaged in “unfair”, “unlawful” and “fraudulent” business

11 acts and practices by selling Kraner gold and other coins at misrepresented marked up prices,

12 after entering into a confidential relationship to assist him in investing and developing him a

13 portfolio. In the process, Merit gave Kraner false information regarding the

14 commission/markups he was being charged and was told false and misleading representations

15 regarding the properties, value and rarity of the coins.

16 59. Kraner relied on Merit to his detriment in making decisions to invest by

17 purchasing coins through Merit.

18 60. Kraner suffered an injury in fact in that he lost money, capital and property as a

19 result of Merit’s unlawful, fraudulent, and unfair practices, in that, among other things:

- 20 (a) Kraner would not have bought the coins at the price that he did; and
- 21 (b) Kraner would have purchased far more coins at the time had he
- 22 purchased them at market prices at or near the spot price of gold/silver at the time.

23 61. Merit’s practices, as set forth above, have misled Kraner. Consequently, Merit’s

24 practices constitute an unlawful, unfair, and fraudulent business practice within the meaning of

25 the UCL.

26 62. Pursuant to Cal. *Bus. & Prof. Code* § 17204, an action for unfair competition

27 may be brought by any “person . . . who has suffered injury in fact and has lost money or

28 property as a result of such unfair competition.” Merit’s wrongful misrepresentations and

1 omissions have directly and seriously injured Kraner by causing him to purchase coins based  
2 upon false and misleading acts. Kraner reasonably relied upon Merit's representations and  
3 purchased coins at a price far above the market rate, and he has suffered injury in fact as a  
4 result.

5 63. Kraner seeks declaratory relief, restitution and disgorgement of all profits  
6 obtained.

7 **FIFTH CAUSE OF ACTION**

8 **CALIFORNIA FALSE ADVERTISING LAW**

9 **(By Plaintiff against Merit.)**

10 64. Plaintiff hereby incorporates by this reference as if fully set further herein, each  
11 and every allegation set forth in the preceding paragraphs of this claim.

12 65. California *Bus. & Prof. Code* § 17500 provides that "[i]t is unlawful for any ...  
13 corporation ... with intent ... to dispose of ... personal property ... to induce the public to enter  
14 into any obligation relating thereto, to make or disseminate or cause to be made or disseminated  
15 ... from this state before the public in any state, in any newspaper or other publication, or any  
16 advertising device, or by public outcry or proclamation, or in any other manner or means  
17 whatever, including over the Internet, any statement ... which is untrue or misleading, and  
18 which is known, or which by the exercise of reasonable care should be known, to be untrue or  
19 misleading...."

20 66. Merit misled Kraner by stating that it could assist him in investing in gold, and  
21 diversifying his portfolio, and not to "overpay" for gold, and that certain "coins" were "rare,"  
22 "non-confiscateable" and "non-reportable" as well as suggesting that it sold all coins at 1% over  
23 costs. Merit knew that its representations and omissions were untrue and misleading, and  
24 deliberately made the aforementioned representations and omissions in order to deceive Kraner.

25 67. As a direct and proximate result of Merit's misleading and false advertising,  
26 Kraner suffered injury in fact and has lost money or property. Kraner reasonably relied upon  
27 Merit's representations as discussed above. In reasonable reliance on Merit's false advertising,  
28 Plaintiff suffered injury in fact as a result.

1 68. Kraner seeks declaratory relief, restitution and disgorgement of all profits  
2 obtained.

3 **SIXTH CAUSE OF ACTION**

4 **CALIFORNIA LEGAL REMEDIES ACT**

5 **(By Plaintiff against Merit.)**

6 69. Plaintiff hereby incorporates by this reference as if fully set further herein, each  
7 and every allegation set forth in the preceding paragraphs of this claim.

8 70. The California Consumers Legal Remedies Act ("CLRA"), California *Civ.*  
9 *Code* §§ 1770, *et seq.*, was enacted to protect consumers against unfair and deceptive  
10 business practices. It creates a non-exclusive statutory remedy for unfair methods of  
11 competition and unfair or deceptive acts or business practices. Its self-declared purpose is  
12 to protect consumers against these unfair and deceptive business practices, and to provide  
13 efficient and economical procedures to secure such protection. *Cal. Civ. Code* § 1760. The  
14 CLRA was designed to be liberally construed and applied in favor of consumers to promote its  
15 underlying purposes. *Id.* The CLRA applies to Merit's acts and practices described herein  
16 because it extends to transactions that are intended to result, or which have resulted, in the sale  
17 or lease of goods or services to Kraner.

18 71. The coins themselves are "goods" within the meaning of *Cal. Civ. Code* §  
19 1761(a), and the transactions/agreements are "transactions" within the meaning of *Cal. Civ.*  
20 *Code* § 1761(e).

21 72. Kraner is a "consumer" within the meaning of *Cal. Civ. Code* § 1761(d).

22 73. Merit's acts and practices occurred within the process of selling "goods" and/or  
23 entering into "transactions."

24 74. Merit had exclusive knowledge of undisclosed material facts, *i.e.* the actual  
25 price of the coins and their properties, which was not known to Plaintiff.

26 75. Merit engaged in unfair acts and practices by withholding and misrepresenting  
27 material facts about the price and properties of the coins from Kraner.

28 76. Kraner was not aware of the actual price and properties of the coins at the times

1 of sale.

2 77. Had Kraner known of the price and/or properties of the coins, he would not have  
3 proceeded with purchasing them through Merit.

4 78. Merit has violated the CLRA by engaging in the above unfair acts and  
5 practices, which results in the following violations:

6 (a) In violation of § 1770(a)(2), Merit has misrepresented the source,  
7 sponsorship, approval, or certification of goods or services;

8 (b) In violation of § 1770(a)(5), Merit has represented that the coins have  
9 characteristics, uses and benefits that they do not have;

10 (c) In violation of 1770(a)(7), Merit has represented that the coins are of a  
11 particular standard, quality or grade when they are not;

12 (d) In violation of 1770(a)(9), Merit has advertised goods or services with  
13 intent not to sell the as advertised;

14 (e) In violation of 1770(a)(13), Merit has made false or misleading  
15 statements of fact concerning reasons for, existence of, or amounts of price reductions;

16 (f) In violation of 1770(a)(14), Merit has made false or misleading  
17 statements that a transaction confers or involves rights, remedies, or obligations which it  
18 does not have or involve, or which are prohibited by law; and

19 (g) In violation of 1770(a)(19), Merit inserted unconscionable provisions in  
20 allegedly binding notices to, if they even apply, including, but not limited to, waiving  
21 claims for certain damages, including but not limited to, claims for punitive damages.

22 79. The actions were done by Defendants with malice, oppression and fraud and all  
23 acts were ratified by the other Defendants.

24 80. On February 27, 2014, Plaintiff provided Merit with written notice of his claims,  
25 via U.S. certified mail, return receipt requested, and demanded that, within 30 days, Merit  
26 correct, repair, replace or other rectify the acts and practices complained of herein pursuant to  
27 Section 1770 of the CLRA. Merit failed to do so or agree to do so. Therefore Plaintiff now  
28 seeks damages for such deceptive practices pursuant to California Civil Code § 1782.



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12304 Santa Monica Blvd., Suite 221  
Los Angeles, California 90025

**SEVENTH CAUSE OF ACTION**

**ELDER FINANCIAL ABUSE**

**(By Plaintiff against all Defendants.)**

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3  
4 81. Plaintiff hereby incorporates by this reference as if fully set further herein, each  
5 and every allegation set forth in the preceding paragraphs of this claim.

6 82. Defendants took, secreted, appropriated, obtained or retained personal property  
7 of an elder, Kraner, for wrongful use or with the intent to defraud, or both.

8 83. Defendants assisted in secreting, appropriating, obtaining or retaining personal  
9 property of an elder, Kraner, for wrongful use or with the intent to defraud, or both.

10 84. Defendants took, secreted, appropriated, obtained or retained personal property  
11 of an elder, Kraner, by undue influence as defined in Cal. *Welf. & Inst. Code* § 15610.70.

12 85. Defendants knew, or should have known that the conduct was likely to be  
13 harmful to the elder, Kraner.

14 86. Defendants' conduct was a substantial factor in causing Kraner to be damaged at  
15 least by \$4,000,000.00.

16 87. Merit had advanced knowledge of the unfitness of Grossman, and also  
17 authorized his acts and/or adopted or approved of the acts after they occurred.

18 88. The actions were done by Defendants with malice, oppression and fraud and all  
19 acts were ratified by the other Defendants. The foregoing conduct was intended by Defendants  
20 to cause injury to Kraner and/or was despicable conduct that was carried out by Defendants  
21 with a willful and conscious disregard of the rights of Kraner; and/or was despicable conduct  
22 that subjected Kraner to cruel and unusual hardship in conscious disregard of Kraner's rights so  
23 as to justify an award of punitive damages against Merit pursuant to California *Civil Code* §  
24 3294, treble damages pursuant to California *Civil Code* § 3345 and pursuant to the Elder  
25 Financial Abuse Act and Elder Abuse & Dependent Adult Civil Protection Act..

**PRAYER FOR RELIEF**

26  
27 WHEREFORE, Kraner prays for the following relief:

28 1. Other than for Kraner's claims for violation of the UCL and FAL, an award

1 requiring Merit to pay Kraner an amount of actual, direct, incidental, consequential, and  
2 statutory damages in an amount to be determined at trial;

3 2. An award of restitution and/or disgorgement of profits as to all causes of action  
4 where restitution and/or disgorgement of profits is/are available;

5 3. An award of pre-judgment and post-judgment interest;

6 4. An award of reasonable attorney's fees and costs of suit as permitted by law;

7 5. An award of exemplary/punitive damages;

8 6. For Kraner's breach of contract claim, damages of at least \$4,000,000.00;

9 7. Damages for deceptive practices pursuant to Cal. *Civ. Code* § 1782 according to  
10 proof of at least \$4,000,000.00;

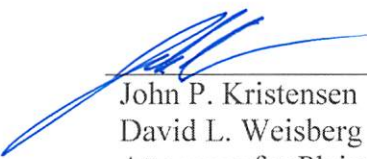
11 8. Treble damages pursuant to Cal. *Civ. Code* §§ 1780 and 3345;

12 9. For injunctive relief; and

13 10. Such other and further relief as may be deemed just and proper.

14  
15 Dated: June 6, 2014

**KRISTENSEN WEISBERG, LLP**

16  
17   
18 \_\_\_\_\_  
19 John P. Kristensen  
20 David L. Weisberg  
21 Attorneys for Plaintiff  
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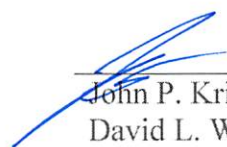
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**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury on all issues which may be tried by a jury.

Dated: June 6, 2014

**KRISTENSEN WEISBERG, LLP**

  
\_\_\_\_\_  
John P. Kristensen  
David L. Weisberg  
Attorneys for Plaintiff

**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is:

12304 Santa Monica Boulevard, Suite 221, Los Angeles, California 90025  
On Friday, June 06, 2014, I served the foregoing document described as:

**SECOND AMENDED COMPLAINT FOR DAMAGES & INJUNCTIVE RELIEF**

[ X ] by placing [ ] the original [x] copies addressed as follows:

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Gary Rhoades  
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[X] VIA ELECTRONIC TRANSMISSION

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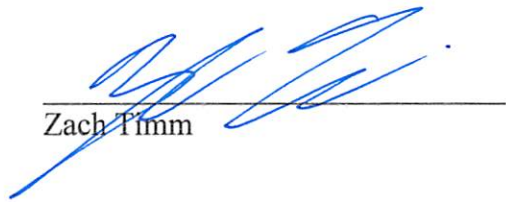
(BY MAIL) I am familiar with the practice of Kristensen Weisberg, LLP for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business. On this date, a copy of said document was placed in a sealed envelope, with postage fully prepaid, addressed as set forth herein, and such envelope was placed for collection and mailing at Kristensen Weisberg, LLP, Los Angeles, California, following ordinary business practices.

(BY FEDEX) I am familiar with the practice of Kristensen Weisberg, LLP for collection and processing of correspondence for delivery by overnight courier. Correspondence so collected and processed is deposited in a box or other facility regularly maintained by FedEx that same day in the ordinary course of business. On this date, a copy of said document was placed in a sealed envelope designated by FedEx with delivery fees paid or provided for, addressed as set forth herein, and such envelope was placed for delivery by FedEx at Kristensen Weisberg, LLP, Los Angeles, California, following ordinary business practices.

(BY PERSONAL DELIVERY) I caused such envelope to be delivered by hand to the addressee.

(BY FACSIMILE TRANSMISSION) On this date, indicated on the transmittal sheet I transmitted from a facsimile transmission machine, which telephone number is (310) 507-7906, the document described above and an unsigned copy of this declaration to the person, and at the facsimile transmission telephone numbers, set forth herein. The above-described transmission was reported as complete and without error by a properly issued transmission report issued by the facsimile transmission machine upon which the said transmission was made immediately following the transmission.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on Friday, June 06, 2014, at Los Angeles, California.

  
Zach Timm