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10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12 SOUTHERN DIVISION

13 SECURITIES AND EXCHANGE
14 COMMISSION,

15 Plaintiff,

16 vs.

17 APARTMENTS AMERICA, LLC;
18 MICHAEL J. STEWART; JOHN J.
PACKARD; and RANDALL A. SMITH,

19 Defendants.

Case No. **SA CV 12-754** DOC(ANX)
**COMPLAINT FOR VIOLATIONS OF
THE FEDERAL SECURITIES LAWS**

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

3 **SUMMARY**

4 1. Apartments America, LLC (“Apartments America”), and its
5 principals, Michael J. Stewart (“Stewart”), John J. Packard (“Packard”), and
6 Randall A. Smith (“Smith”) engaged in a scheme to defraud potential investors
7 through the offer of unregistered securities in Apartments America. Defendants
8 made numerous material misrepresentations and omissions in the offer of these
9 securities, beginning in January 2010 through at least March 2012.

10 2. Stewart, Packard, and Smith formed Apartments America in
11 September 2009, three months after Stewart’s and Packard’s prior company,
12 Pacific Property Assets, LLC (“PPA”) filed for bankruptcy and defaulted on \$91.6
13 million in promissory notes held by 647 investors. Defendants planned to use the
14 same business model for Apartments America as they had for PPA, which was to
15 pool investor proceeds to purchase apartment buildings. Defendants offered
16 unregistered securities in Apartments America through a variety of methods,
17 including an internet website, advertisements/postings on internet sites, solicitation
18 letters and cold calls to potential investors, advertisements in a national newspaper,
19 and other marketing materials. Defendants Stewart, Packard, and Smith engaged
20 in a concerted scheme to distance themselves from PPA and its bankruptcy, while
21 selectively using some of PPA’s historic investments to tout their purported real
22 estate expertise.

23 3. In their various solicitation materials, defendants repeatedly
24 misrepresented Apartments America’s business operations and track record, and
25 omitted material information about PPA’s bankruptcy, in a fraudulent scheme to
26 lure investors to their new company. Defendants falsely touted Apartments
27 America’s track record, when in fact Apartments America was a new company
28 with no assets and no track record. Defendants misrepresented the track records of

1 Stewart, Packard, and Smith, by selectively disclosing information about PPA's
2 operations, while omitting to disclose other material information, including PPA's
3 bankruptcy. In some of their materials, defendants falsely claimed to have a
4 "Track Record" of producing a 60% (or better) average annualized return on
5 equity. In fact, neither Apartments America nor the individual defendants had
6 such a record. Defendants arrived at this number only by cherry-picking PPA's
7 successful property investments, while omitting material information concerning
8 the losses incurred on over 50 properties in PPA's portfolio at the time of its
9 bankruptcy. Defendants falsely represented that the individual defendants had
10 created over \$100 million in net equity, which defendants calculated by using some
11 of PPA's property investments, while omitting material information about PPA's
12 bankruptcy and the losses on PPA's bankrupt properties. Defendants falsely
13 represented that the individual defendants were managing a property portfolio
14 valued at more than \$200 million, which referred to PPA's bankrupt property
15 portfolio. In fact, the individual defendants were not managing PPA's bankrupt
16 property portfolio because the management had been turned over to the
17 Bankruptcy Trustee.

18 4. Many of defendants' solicitation materials omitted material
19 information about PPA's bankruptcy, while defendants selectively used some
20 information from PPA's business to tout their experience and raise money for
21 Apartments America. For example, defendants did not disclose PPA's bankruptcy
22 on Apartments America's website until about July 2010. However, a November
23 2010 internet advertisement again used numbers derived selectively from PPA's
24 history, which were inherently false and misleading, and failed to disclose PPA's
25 bankruptcy. Although defendants have been unsuccessful in raising funds from
26 investors, defendants have continued to solicit potential investors.

27 5. Defendants engaged in this fraudulent scheme to create the
28 appearance that Apartments America was a successful venture and a sound

1 investment, to solicit potential investors into investing with defendants. By
2 engaging in the conduct described in this complaint, defendants have violated, and
3 unless enjoined will continue to violate, the registration provisions of the federal
4 securities laws, specifically Section 5(c) of the Securities Act of 1933 (“Securities
5 Act”), 15 U.S.C. §77e(c), and antifraud provisions of the federal securities laws,
6 specifically Section 17(a)(1) and 17(a)(3) of the Securities Act, 15 U.S.C. §§
7 77q(a)(1) & 77q(a)(3). By this action, the Commission seeks permanent
8 injunctions, conduct based injunctions, disgorgement with prejudgment interest,
9 and civil penalties.

10 JURISDICTION AND VENUE

11 6. This Court has jurisdiction over this action pursuant to Sections 20(b),
12 20(d)(1) and 22(a) of the Securities Act of 1933 (“Securities Act”), 15 U.S.C. §§
13 77t(b), 77t(d)(1), & 77v(a). Defendants have, directly or indirectly, made use of
14 the means or instrumentalities of interstate commerce, of the mails, or of the
15 facilities of a national securities exchange in connection with the transactions, acts,
16 practices and courses of business alleged in this Complaint.

17 7. Venue is proper in this district pursuant to Section 22(a) of the
18 Securities Act, 15 U.S.C. § 77v(a), because certain of the transactions, acts,
19 practices, and courses of conduct constituting violations of the federal securities
20 laws occurred within this district, and the individual defendants reside or are
21 located in this district.

22 DEFENDANTS

23 8. **Apartments America, LLC (“Apartments America”)** is a
24 California limited liability company that began operations in September 2009, and
25 is equally owned by Stewart, Packard, and Smith. From about January 2010
26 through September 2010, Apartments America was headquartered in Irvine,
27 California. Starting in October 2010, Apartments America did not have an office.
28 Apartments America planned to purchase apartment buildings in Southern

1 California and Arizona. Apartments America and its securities have never been
2 registered with the Commission in any capacity.

3 9. **Michael J. Stewart (“Stewart”)**, age 64, of San Clemente,
4 California, is a principal of Apartments America, and holds his one-third
5 ownership interest through a Wyoming limited liability company named Northwest
6 Capital Group, LLC. Stewart is a California licensed attorney and a California and
7 Arizona licensed real estate broker. He does not hold any securities licenses and
8 has never been registered with the Commission in any capacity. Prior to his
9 association with Apartments America, Stewart was a principal of PPA.

10 10. **John J. Packard (“Packard”)**, age 61, of Long Beach, California, is
11 a principal of Apartments America, and holds his one-third ownership interest
12 through a Wyoming limited liability company named Northwest Capital Group,
13 LLC. Packard does not hold any securities licenses and has never been registered
14 with the Commission in any capacity. Prior to his association with Apartments
15 America, Packard was a principal of PPA.

16 11. The California Department of Corporations issued desist and refrain
17 orders against Stewart, Packard, and PPA in 2002 and again in 2006. In 2007,
18 Stewart, Packard, and PPA entered into a stipulation with the California
19 Department of Corporations, in which they agreed, among other things, not to sell
20 unqualified securities without an exemption and to disclose all previously issued
21 desist and refrain orders and the stipulation to potential investors.

22 12. **Randall A. Smith (“Smith”)**, age 50, of Long Beach, California, is a
23 principal of Apartments America, and holds his one-third ownership interest in his
24 name. Before joining Apartments America, Smith was a PPA employee from
25 April 2009 to December 2009. Smith is a California licensed real estate broker.
26 He does not hold any securities licenses and has never been registered with the
27 Commission in any capacity.

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1 **THE SCHEME TO DEFRAUD**

2 **I. Defendants' Involvement in PPA**

3 13. Prior to forming Apartments America, Stewart and Packard owned
4 PPA, which sold "secured promissory notes" to investors, and used the proceeds to
5 invest primarily in apartment buildings in Southern California and Arizona. Smith
6 worked at PPA beginning in April 2009.

7 14. In May 2009, PPA defaulted on \$91.6 million in promissory notes
8 held by 647 investors in 37 investment programs. In the months prior to default,
9 PPA had actively solicited investor funds, and was promising an annual interest
10 rate of 24% to 30% on its promissory notes. In June 2009, one month after its
11 default, PPA filed for Chapter 11 bankruptcy, which was converted to a Chapter 7
12 bankruptcy in September 2010.

13 15. The Bankruptcy Trustee took over all management of PPA's property
14 portfolio in April 2010. According to the bankruptcy filings, defendants Stewart
15 and Packard drew substantial salaries paid from PPA assets until the default.

16 16. In September 2009, three months after PPA filed for bankruptcy,
17 Stewart, Packard, and Smith formed Apartments America. Defendants planned
18 and agreed to resume through Apartments America the same business model they
19 had been employing as PPA, which was to raise funds from investors and pool the
20 proceeds to purchase apartment buildings in Southern California and Arizona.

21 17. In their effort to raise funds from investors, defendants engaged in a
22 scheme to defraud potential investors by: (1) offering unregistered securities; and
23 (2) making material misrepresentations and omissions to potential investors.

24 **II. Apartments America's Unregistered Offering**

25 18. Beginning in January 2010 to at least March 2012, defendants offered
26 to sell securities in Apartments America through Apartments America's internet
27 website and other solicitation materials, in a general offering to the public.
28 Defendants offered to sell potential investors "membership units" in LLCs, and

1 defendants were going to have the LLCs purchase apartment buildings.
2 Apartments America's website stated that it was going to form an LLC for each
3 real estate "investment program," and investors would become members/owners of
4 the LLC. Defendants were going to pool investor funds in the LLCs to purchase
5 apartment buildings, and investors were to rely on defendants' management
6 expertise to provide investment returns. Prospective investors were led to believe
7 that their return on investment would come from the efforts of the individual
8 defendants, operating as Apartments America.

9 19. Apartments America's internet website included a page titled "Current
10 Offerings" from at least January to June 2010, later changed to "Target Properties
11 in Due Diligence" by around July 2010, that listed six properties in California and
12 Arizona, along with a target acquisition price, equity requirement, and target exit
13 price. The equity requirements for the properties ranged from \$450,000 to \$3
14 million, and the total equity required for all six properties was approximately \$12.5
15 million.

16 **III. Apartments America's Solicitation Scheme**

17 20. Defendants actively engaged in a scheme to solicit and lure
18 prospective investors to invest in Apartments America, using Apartments
19 America's internet website, advertisements/postings on two other internet
20 websites, advertisements in a national newspaper, cold-calls, solicitation letters
21 sent to prospective investors, and marketing materials that consisted of a business
22 plan, investment proposal, and track record chart. Defendants Packard, Stewart,
23 and Smith prepared and/or reviewed Apartments America's internet website,
24 solicitation letters, business plan, investment proposal, and track record chart,
25 before they were publicized to potential investors.

26 21. From about January 2010 through March 2012, defendants solicited
27 potential investors using Apartments America's website,
28 www.apartmentsamerica.us. As of January 2010, the home page of Apartments

1 America's website included the tag line: "Improving communities for over a
2 decade," and promised "extraordinary returns for our investors and partners." On
3 the "Company Overview" page, defendants stated that Apartment America's team
4 was responsible for the "creation of more than \$100 million in net equity growth."
5 On a page titled "2000 -2008 Track Record Chart – Return on Equity," defendants
6 listed transactions involving 39 properties, and totaled the column headed "Annual
7 ROE Before Fees" to state "63.43%." On a page titled "Investment Objectives,"
8 defendants stated: "The principals of Apartments America currently have an
9 equity stake in and oversee a multi-family portfolio of more than \$200 million."
10 On the "Investor Q&A" page, under the heading "Historical Results," defendants
11 stated: "A review of our Track Record covering projects acquired in Arizona and
12 California confirms that in general Apartments America has experienced average
13 annual profit returns of 63% or more on invested equity." This page included a
14 link to the "Track Record" page.

15 22. In or about June 2010, defendants had made some minor
16 modifications to the Apartments America website. Specifically, the "Track
17 Record" page was re-formatted , and at the bottom of the page, defendants now
18 stated: "1999-2005 Average ROE* = 63.43%."

19 23. In or about July 2010, defendants added some disclosure on
20 Apartments America website about the PPA bankruptcy, although defendants still
21 claimed to be responsible for "the creation of more than \$100 million in net equity
22 growth" on the "Company Overview" page. A page titled "Previous Investments"
23 directed visitors to the "Track Record" page, which still listed 39 transactions but
24 now stated: "1996-2008 Average ROE* = 63.43%." A note on the Track Record
25 page stated that the calculation "excludes properties still under management by a
26 predecessor entity Pacific Property Assets in 2009, when fallout from the banking
27 and credit crisis resulted in numerous properties being placed under voluntary
28 bankruptcy protection." The "Investment Objectives" page continued to state:

1 “The principals of Apartments America currently have an equity stake in and
2 oversee a multi-family portfolio of more than \$200 million.” On the “Investor
3 Q&A” page, under the heading “Historical Results,” defendants stated: “A review
4 of the Track Record of our management’s prior ventures covering projects
5 acquired in Arizona and California confirms that during the period 1996-2008, the
6 principals of AA acquired, renovated and resold a total of 40 apartment complexes
7 for an average gross annual return on investment of over 60%. Many of the
8 properties still under management in 2009 by a predecessor entity Pacific Property
9 Assets were place in voluntary bankruptcy proceedings due to fallout from the
10 financial and banking crisis.”

11 24. Defendants solicited potential investors by posting two website
12 advertisements on an investor sourcing website and a social networking website.
13 Stewart directed an Apartments America employee to prepare the website
14 advertisements, and Stewart provided the employee with information about
15 Apartment America’s track record and equity created by its principals. One of the
16 website advertisements stated that Apartments America was “looking for equity or
17 debt investors for individual transactions,” and that: “This proven team created
18 \$100 million in net equity growth during an eight-year period through the
19 acquisition of value-add multifamily properties.” The advertisement further stated:
20 “This proven team has successfully acquired and renovated nearly 100 individual
21 assets with those sold to third parties yielding an average ROI of 63% PER
22 ANNUM” (emphasis in original). The website advertisement was available at
23 least from November 16, 2010.

24 25. Smith reviewed and approved a separate advertisement/posting on the
25 social networking site, which was available at least from April 2011. In that
26 advertisement, defendants stated: “From 2001-2008, 40 properties from within
27 this portfolio were sold and produced an average annualized return on investment
28 of over 60%.” This advertisement also referred to Apartments America’s

1 management as a team with a “proven track record” that would “generate
2 extraordinary returns for partners and investors.” Neither advertisement disclosed
3 defendants’ prior association with PPA or its bankruptcy.

4 26. Apartments America’s website and its website
5 advertisements/postings were not password protected, and were generally available
6 to the public.

7 27. Apartments America’s website appears to have been removed from
8 the internet on or about March 28, 2012. However, defendants continue to offer
9 interests in Apartments America through the website advertisements, which remain
10 available on the internet.

11 28. Stewart placed an advertisement for Apartments America in a national
12 newspaper on two occasions, on or about June 2 and 9, 2010. Packard asked
13 Stewart to run this advertisement. The advertisement was headlined
14 “Apartments!” and stated: “Huge opportunity in AZ & CA complexes. JV,
15 priority return/bonus and/or equity. Impressive track record in these markets,”
16 and provided Apartments America’s website address, as well as a telephone
17 number to call. At least three potential investors contacted Apartments America as
18 a result of the national newspaper advertisements.

19 29. Stewart instructed an Apartments America employee to cold-call
20 potential investors to solicit their investment, and Stewart searched the internet to
21 find potential investors.

22 30. Defendants sent two solicitation letters to potential investors.
23 Defendants sent one letter dated May 26, 2010 to approximately 700 individuals
24 who allegedly had previously contacted PPA, and another letter dated August 11,
25 2010 to approximately 700 PPA investors. The May 26, 2010 letter, on
26 Apartments America letterhead, was signed by defendant Smith, and while it
27 mentioned that “PPA Real Estate” was a predecessor company to Apartments
28 America, the letter did not disclose PPA’s bankruptcy. In that letter, defendants

1 stated: "In just the past decade, the principals of Apartments America have
2 collectively acquired and renovated more than 3,000 apartment units in these
3 markets. Even better, between 2001 and 2008 alone, 40 portfolio properties were
4 sold in arms-length transactions that produced an average annualized return on
5 investment of over 60%." The August 11, 2010 letter, signed by defendants
6 Stewart and Packard, was sent to PPA investors, and in this letter defendants
7 acknowledged PPA's bankruptcy and disclosed that management of PPA's real
8 estate portfolio had been turned over to the Chapter 11 Trustee in early April 2010.
9 In this letter, defendants introduced Apartments America as their new venture, and
10 stated: "Discounting the events precipitated by the recent and unprecedented
11 credit-and-market crash, our business model of acquiring and renovating working-
12 class properties has been phenomenally successful. Consider that during the entire
13 period from 2001-2008, we sold a total of 40 of our renovated apartment buildings
14 to third-party buyers resulting in an average return on investment of over 60% per
15 annum."

16 31. Stewart and Packard also sent Apartments America's business plan,
17 investment proposal, and/or track record chart to some potential investors.

18 **IV. Defendants' Scheme to Hide PPA's Failure by Making**
19 **Misrepresentations and Omissions in Apartments America's Marketing**
20 **Materials**

21 32. As alleged below, defendants made false and misleading
22 representations and concealed material information as part of a fraudulent scheme
23 to create the illusion that Apartments America was a sound and lucrative
24 investment. Defendants engaged in this scheme to mislead prospective investors
25 into investing in Apartments America when, in fact, neither Apartments America
26 nor the individual defendants could substantiate their claims, and Apartments
27 America was not the safe and sound investment portrayed by defendants.

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1 **A. Defendants Misrepresented Their Annual Return on Equity**

2 33. As specifically alleged above, defendants repeatedly stated that
3 Apartments America and/or its principals have a track record of over a 60%
4 average annualized return on equity. While the specific wording and time frame
5 varied slightly among Apartments America's website, the website advertisements,
6 and letters to investors, defendants consistently represented that their "Track
7 Record" showed that they had produced an annual return in excess of 60%.

8 34. Defendants' representations that Apartments America or the
9 individual defendants had a "track record" of providing a "60%" (or better)
10 average annual return were materially false and misleading for several reasons.
11 Apartments America never purchased or sold any real estate, and did not have a
12 track record at all. Accordingly, the statement that appeared on Apartments
13 America's website, from January 2010 through at least June 2010, representing
14 "that in general Apartments America has experienced average annual profit returns
15 of 63% or more on invested equity" lacked any factual basis. In or about July
16 2010, defendants had modified the website to claim "an average gross annual
17 return on investment of over 60%" from 40 apartment complexes; however, this
18 statement was also misleading because it omitted material information about losses
19 on bankrupt properties.

20 35. The individual defendants Stewart, Packard, and Smith did not have a
21 track record of producing 60% annual returns. This claim was materially
22 misleading because defendants deliberately excluded from this calculation the
23 losses incurred on the approximately 50 properties that PPA owned when it
24 declared bankruptcy, which would substantially lower, if not entirely wipe-out,
25 defendants' claimed 60% average annual return. Defendants omitted material
26 information about these remaining 50 properties and the impact that the losses on
27 these properties would have on the calculation of any average annual returns.

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1 **B. Defendants Misrepresented That They Created More Than \$100**
2 **Million in Equity for Investors**

3 36. As specifically alleged above, defendants repeatedly stated that
4 Apartments America's principals created more than "\$100 million in net equity."
5 While the time frame for this representation varied, defendants consistently made
6 this representation in solicitations to investors.

7 37. Defendants' representation that Apartments America's principals
8 created more than "\$100 million in net equity" was materially false and misleading
9 because defendants omitted material information from their calculation about the
10 losses incurred from, and the lack of equity in, the approximately 50 properties that
11 PPA owned when it declared bankruptcy in 2009. Defendants' claim was false and
12 misleading because PPA's bankruptcy erased any "equity" that PPA had
13 accumulated, and it was misleading to claim to have created equity without
14 disclosing that all such equity had been wiped out by PPA's bankruptcy.

15 38. In fact, in a Private Placement Memorandum ("PPM") prepared for a
16 PPA offering, dated January 19, 2009, PPA disclosed that any "unrecognized gain"
17 on PPA's unaudited balance sheet – which corresponded to the \$100 million net
18 equity figure in the Apartments America material – was based on the "emerging
19 Market Value Accounting and Information Standards." The PPM explained that
20 the "unrecognized gain" on the balance sheet "reflects the difference between the
21 current market value of the assets, principally real property, and the acquisition
22 cost of these assets." The PPM further explained that the "market values" used
23 were "fair and appropriate estimates" obtained "in most cases, without the aid of
24 independent third-party appraisals." The PPM cautioned that potential investors
25 therefore "should not base their investment decision in reliance on them." The
26 PPM went on to disclose that under GAAP, the unrecognized gain would be
27 eliminated: "SHOULD ONLY STRICT GENERALLY ACCEPTED
28 ACCOUNTING PRINCIPALS [sic] BE APPLIED BOTH THE ASSET VALUES

1 RELATED TO THE APPRECIATED REAL PROPERTY AND THE INCOME
2 ASSOCIATED WITH THE REFINANCINGS WOULD BE ELIMINATED.”
3 (Emphasis in original). The Apartments America literature contained no such
4 disclosures about the defendants’ claims that they had created \$100 million in net
5 equity.

6 **C. Defendants Misrepresented That They Were Overseeing a \$200**
7 **Million Property Portfolio**

8 39. As specifically alleged above, from about April 2010 to about October
9 or November 2011, defendants stated on Apartments America’s website that the
10 “principals of Apartments America currently have an equity stake in and oversee a
11 multi-family portfolio of more than \$200 million.” This representation was
12 materially false and misleading because after April 2010, the principals of
13 Apartments America were not overseeing any such property portfolio. The \$200
14 million property portfolio that was the purported basis for that statement was
15 PPA’s portfolio. In fact, in April 2010, Stewart and Packard were replaced by the
16 Bankruptcy Trustee who oversees PPA and its property portfolio.

17 40. Defendants did not disclose that the \$200 million property portfolio
18 that was their basis for this representation was PPA’s property portfolio, that PPA
19 had declared bankruptcy, or that as of April 2010, defendants had been replaced by
20 the Bankruptcy Trustee. Starting in or about July 2010, Apartments America’s
21 website disclosed PPA’s bankruptcy, but this disclosure appeared on a different
22 page of the website than the page on which this representation about management
23 of a large property portfolio appeared, and defendants continued to represent that
24 they had management authority over this portfolio although there was no basis in
25 fact for such a representation because they had been replaced by the Bankruptcy
26 Trustee.

27 41. Even though Stewart, Packard, and Smith each knew that the
28 representation concerning the management of a \$200 million property portfolio

1 was false, defendants did not remove this representation from Apartments
2 America's website until October or November 2011.

3 **D. Defendants Failed to Disclose PPA's Bankruptcy**

4 42. Defendants failed to disclose PPA's bankruptcy on Apartments
5 America's website from at least January 2010 through June 2010. In or about July
6 2010, defendants disclosed PPA's bankruptcy on Apartments America's website.
7 In or about July 2010, Apartments America's website, including the track record
8 chart on the website, disclosed that numerous PPA properties were placed in
9 voluntary bankruptcy in 2009. This disclosure, however, did not clarify that the
10 60% (or better) annual return on equity number was calculated using some of
11 PPA's properties, and that the annual return on equity amount would be
12 substantially lower, if not entirely wiped out, if PPA's approximately 50 bankrupt
13 properties were included in the calculation. While defendants disclosed PPA's
14 bankruptcy in the August 11, 2010 solicitation letter sent to PPA investors,
15 defendants failed to disclose PPA's bankruptcy, and its effect on many of their
16 claims, in the website advertisements/postings, business plan, investment proposal,
17 "Track Record" chart, and May 26, 2010 solicitation letter to potential investors.

18 43. PPA's bankruptcy, and defendants' role as managers of PPA when it
19 declared bankruptcy, was material information to investors. Information about
20 PPA's bankrupt property portfolio was material information to investors, because
21 including that information had a material effect on the results being touted by
22 defendants in their solicitation efforts for Apartments America.

23 **E. Defendants Acted with Scier**

24 44. At all relevant times, defendants Stewart, Packard, and Smith acted
25 with scier. The mental state of defendants Stewart, Packard, and Smith is
26 imputed to defendant Apartments America because Stewart, Packard, and Smith
27 were principals Apartments America.

28 45. Defendants Stewart, Packard, and Smith knew, or were reckless in not

1 knowing, that by cherry-picking certain information from PPA's history to arrive
2 at a purported annual return and creation of equity, defendants were materially
3 misrepresenting their track record and performance history. Defendants Stewart,
4 Packard, and Smith engaged in a concerted scheme to distance themselves from
5 PPA and its bankruptcy, while selectively using some of PPA's historic
6 investments to tout their real estate expertise. Defendants Stewart, Packard, and
7 Smith knew, or were reckless in not knowing, that their failure to disclose PPA's
8 bankruptcy and its effect on their so-called track record was materially misleading.

9 **FIRST CLAIM FOR RELIEF**

10 **Unregistered Offer of Securities**

11 **Violations of Section 5(c) of the Securities Act**

12 **(Against All Defendants)**

13 46. The Commission realleges and incorporates by reference paragraphs 1
14 through 45 above.

15 47. The defendants, and each of them, by engaging in the conduct
16 described above, directly or indirectly, made use of means or instruments of
17 transportation or communication in interstate commerce or of the mails to offer to
18 sell securities.

19 48. No registration statement has been filed with the Commission or has
20 been in effect with respect to any offering alleged herein.

21 49. By engaging in the conduct described above, all of the defendants
22 violated, and unless restrained and enjoined will continue to violate, Section 5(c)
23 of the Securities Act, 15 U.S.C. § 77e(c).

24 **SECOND CLAIM FOR RELIEF**

25 **Fraud in the Offer or Sale of Securities**

26 **Violations of Sections 17(a)(1) and 17(a)(3) of the Securities Act**

27 **(Against All Defendants)**

28 50. The Commission realleges and incorporates by reference paragraphs 1

1 through 45 above.

2 51. The defendants, and each of them, by engaging in the conduct
3 described above, in the offer or sale of securities by the use of means or
4 instruments of transportation or communication in interstate commerce or by use
5 of the mails directly or indirectly:

- 6 a. with scienter, employed devices, schemes, or artifices to defraud; or
- 7 b. engaged in transactions, practices, or courses of business which
8 operated or would operate as a fraud or deceit upon the purchaser.

9 52. By engaging in the conduct described above, all of the defendants
10 violated, and unless restrained and enjoined will continue to violate, Sections
11 17(a)(1) and 17(a)(3) of the Securities Act, 15 U.S.C. §§ 77q(a)(1) & 77q(a)(3).

12 **PRAYER FOR RELIEF**

13 WHEREFORE, the Commission respectfully requests that the Court:

14 **I.**

15 Issue findings of fact and conclusions of law that defendants committed the
16 alleged violations.

17 **II.**

18 Issue judgments, in forms consistent with Rule 65(d) of the Federal Rules of
19 Civil Procedure, permanently enjoining defendants and their officers, agents,
20 servants, employees, and attorneys, and those persons in active concert or
21 participation with any of them, who receive actual notice of the judgment by
22 personal service or otherwise, and each of them, from violating Section 5 of the
23 Securities Act, 15 U.S.C. §77e, and Section 17(a) of the Securities Act, 15 U.S.C.
24 § 77q(a).

25 **III.**

26 Issue judgments, in forms consistent with Rule 65(d) of the Federal Rules of
27 Civil Procedure, ordering conduct based injunctions permanently enjoining
28 Stewart, Packard, and Smith and any entities they own or control from offering

