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**ELECTRONICALLY FILED**  
Superior Court of California,  
County of Orange

**10/28/2010** at 10:12:23 AM  
Clerk of the Superior Court  
By Maarit H Nordman, Deputy Clerk

6 Attorneys for Plaintiffs  
CALIFORNIA PLASTERING, INC.; COLLINS BUILDERS, INC.;  
7 EVANS & SON, INC.; PACIFIC WALL SYSTEMS, INC.;  
QUALITY PRODUCTION SERVICES, INC.; RUTHERFORD CO.,  
8 INC.; SOUND CONTROL COMPANY; SOUTHERN CALIFORNIA  
BOILER, INC.; SUMMER SYSTEMS, INC.; VERSATILE  
9 COATINGS, INC., and VISION BUILDERS GROUP

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 FOR THE COUNTY OF ORANGE

12 CALIFORNIA PLASTERING, INC.; ) Case No. 30-2010-00420488-CU-SL-CXC  
13 COLLINS BUILDERS, INC.; EVANS & )  
SON, INC.; PACIFIC WALL SYSTEMS, ) Judge Gail A. Andler  
14 INC.; QUALITY PRODUCTION SERVICES, )  
INC.; RUTHERFORD CO., INC.; SOUND )  
15 CONTROL COMPANY; SOUTHERN ) COMPLAINT FOR FRAUD, NEGLIGENT  
CALIFORNIA BOILER, INC.; SUMMER ) MISREPRESENTATION, NEGLIGENCE,  
16 SYSTEMS, INC.; VERSATILE COATINGS, ) BREACH OF FIDUCIARY DUTY, AIDING  
INC. and VISION BUILDERS GROUP, ) AND ABETTING BREACH OF FIDUCIARY  
17 ) DUTY, VIOLATION OF CALIFORNIA  
Plaintiffs, ) SECURITIES STATUTES AND VIOLATION  
18 ) OF BUSINESS & PROFESSIONS CODE  
v. ) § 17200

19 )  
20 PRIDEMARK-EVEREST INSURANCE ) JURY TRIAL DEMANDED  
SERVICES, INC.; WILLIAM HOLDREN; )  
21 LEAVITT GROUP ENTERPRISES, INC.; )  
COMPENSATION RISK MANAGERS LLC; )  
22 COMPENSATION RISK MANAGERS OF )  
CALIFORNIA LLC; CRM USA HOLDINGS, )  
23 INC.; MAJESTIC INSURANCE COMPANY; )  
MAJESTIC USA CAPITAL, INC.; )  
24 MOHAMMED CHAHINE; RONALD )  
HUDSON and DOES 1 THROUGH 100, )  
25 )  
Defendants. )  
26 )  
27 )

1 Plaintiffs California Plastering, Inc.; Collins Builders, Inc. Evans & Son, Inc.; Pacific Wall  
2 Systems, Inc.; Quality Production Services, Inc.; Rutherford Co., Inc.; Sound Control Company;  
3 Southern California Boiler, Inc.; Summer Systems, Inc.; Versatile Coatings, Inc.; and Vision  
4 Builders Group allege as follows:

5 **I. THE PARTIES**

6 1. Plaintiff California Plastering, Inc. (“California Plastering”) is a California  
7 corporation with its principal place of business in Sun Valley, California.

8 2. Plaintiff Collins Builders, Incorporated (“Collins”) is a California corporation with  
9 its principal place of business in Huntington Beach, California.

10 3. Plaintiff Evans & Son, Inc. (“Evans”) is a California corporation with its principal  
11 place of business in Santa Clarita, California.

12 4. Plaintiff Pacific Wall Systems, Inc. (“Pacific Wall Systems”) is a California  
13 corporation with its principal place of business in Anaheim, California.

14 5. Plaintiff Quality Production Services, Inc. (“Quality Production Services”) is a  
15 California corporation with its principal place of business in Torrance, California

16 6. Plaintiff Rutherford Co., Inc. (“Rutherford”) is a California corporation with its  
17 principal place of business in Los Angeles, California.

18 7. Plaintiff Sound Control Company (“Sound Control”) is a California corporation  
19 with its principal place of business in Glendale, California.

20 8. Plaintiff Southern California Boiler, Inc. (“Southern California Boiler”) is a  
21 California corporation with its principal place of business in Huntington Beach, California.

22 9. Plaintiff Summer Systems, Inc. (“Summer Systems”) is a California corporation  
23 with its principal place of business in Valencia, California.

24 10. Plaintiff Versatile Coatings, Inc. (“Versatile Coatings”) is a California corporation  
25 with its principal place of business in Azusa, California.

26 11. Plaintiff Vision Builders Group, Inc. (“Vision Builders”) is a California corporation  
27 with its principal place of business in Pacoima, California

28 12. Defendant PrideMark-Everest Insurance Services, Inc. (“PrideMark”) is a

1 California corporation with its principal place of business at 1820 E. 1st Street in Santa Ana,  
2 California, and a licensed insurance broker. At all times, PrideMark held itself out as an expert in  
3 the area of insurance and workers’ compensation coverage matters.

4 13. Defendant William Holdren is a licensed insurance broker, and at all relevant times  
5 was authorized to conduct business on behalf of, and was an agent of, PrideMark. At all times,  
6 defendant William Holdren held himself out as an expert in the area of insurance and workers’  
7 compensation coverage matters.

8 14. Defendant Leavitt Group Enterprises, Inc. (“Leavitt”) is a Nevada corporation with  
9 its principal place of business in Cedar City, Utah, and an office at 1820 E. 1st Street in Santa Ana  
10 California, which was held out at all relevant times as the parent of PrideMark. PrideMark touted  
11 its status as part of “The Leavitt Group” to induce confidence in and reliance on its expertise and  
12 depth.

13 15. Defendant Compensation Risk Managers LLC is limited liability company with its  
14 principal place of business in Poughkeepsie, New York, that, at all relevant times, was doing  
15 business in California, maintained a regional office in Irvine, California and performed acts in  
16 issue in California. Defendant Compensation Risk Managers of California, LLC is a limited  
17 liability company with its principal place of business on Michelson Drive in Irvine, California.  
18 Defendant CRM USA Holdings, Inc. is a subsidiary of CRM Holdings, Ltd, a Bermuda Holding  
19 Company, and the parent company of Compensation Risk Managers LLC and Compensation Risk  
20 Managers of California, LLC. (On May 5, 2010, CRM Holdings, Ltd. changed its name to  
21 Majestic Capital, Ltd. and the name of CRM USA Holdings Inc. was changed to Majestic USA  
22 Capital, Inc.). At all times, these three defendants, collectively referred to as “CRM,” acted jointly  
23 and as each others’ agents and are responsible for the actions of each other as alleged herein.

24 16. Defendant Majestic Insurance Company (“Majestic”) is a California corporation  
25 with its principal place of business in San Francisco, California, and an office at the same address  
26 as CRM on Michelson Drive in Irvine. Majestic is an affiliate of CRM.

27 17. Defendant Mohammed Chahine (“Chahine”) is, on information and belief, an  
28 individual doing business in the County of Los Angeles, California. At all relevant times, Mr.

1 Chahine was an officer and Chairman of the Board of Trustees of the Contractors Access Program  
2 of California, Inc.

3 18. Defendant Ronald Hudson (“Hudson”) is, on information and belief, an individual  
4 residing and doing business in the County of Orange, California, and at relevant times, was an  
5 officer and a member of the Board of Trustees of the Contractors Access Program of California,  
6 Inc.

7 19. The true names of defendants named herein as Does 1 through 100, inclusive, are  
8 presently unknown to plaintiffs. Plaintiffs will seek leave to amend this Complaint when the true  
9 names and capacities of the Doe defendants have been ascertained. At all relevant times, each  
10 defendant acted in concert with and is responsible for the acts of the other defendants.

11 **II. INTRODUCTION**

12 20. This case concerns defendants’ fraud, breach of fiduciary duties and other wrongful  
13 conduct with respect to the Contractors Access Program of California, Inc. (“CAP”). CAP was  
14 designed as a self-funded worker’s compensation program for companies engaged in commercial  
15 construction activities. The CAP program was established in 2004 with its principal place of  
16 business in Woodland Hills, California, and purported to provide reasonably priced workers  
17 compensation insurance to a select group of low-risk contractors, to protect the members from risk  
18 and to provide investment dividend income to its members.

19 21. Each plaintiff invested in the program for various periods from 2004 through 2009.  
20 The years of each plaintiff’s investments are set out on Exhibit A hereto and incorporated herein.  
21 Prior to each investment, plaintiffs were informed that the financial condition of CAP was strong,  
22 that high underwriting standards would prevent excessive claims or losses, that CAP was operating  
23 profitably and that dividends would be paid. Plaintiffs were informed that the purchase of excess  
24 insurance would preclude exposure beyond their premium and deposit payments. Plaintiffs were  
25 told that the program would be managed professionally by CRM, and in a manner that would  
26 protect the plaintiffs from financial exposure. This was untrue.

27 22. Prior to each investment, critical facts about the true financial condition and risks  
28 associated with the investment were withheld from the plaintiff investors. As described more fully

1 below, plaintiffs were not informed that the program was not financially sound, that the program  
2 intended to pay and did pay millions of dollars contributed by the members to resolve a lawsuit  
3 unrelated to any workers' compensation claims, that the program was operating at a loss from  
4 2006 forward, and that the program did not have adequate resources to resolve the workers'  
5 compensation claims asserted with respect to the members. Plaintiffs were not informed that they  
6 faced financial risk for assessments well beyond their initial deposits and investments in the  
7 program.

8 23. Also withheld from the plaintiff investors were the true facts about CRM's  
9 mismanagement of CAP and misuse of CAP funds. Contrary to representations made to the  
10 plaintiff members, CRM did not manage CAP competently or in a manner designed to protect the  
11 plaintiff investors. Indeed, through fraud and self-dealing, CRM managed CAP for its own  
12 benefit, reaping inflated fees, while using plaintiffs' investments for its own purposes, rather than  
13 for the legitimate management of the program. The other defendants assisted in and aided CRM's  
14 misconduct.

15 24. CRM caused CAP to pay millions of dollars of plaintiffs' investments to resolve  
16 CRM's exposure in a lawsuit brought by CAP's marketing agent, after CRM caused CAP to  
17 terminate the marketing agent. CRM also caused the program to make payments to an affiliated  
18 company for "excess insurance" that has provided little or no payments or benefits to the members.  
19 CRM did not properly evaluate the compensation claims or insure the program was adequately  
20 funded. CRM operated the program for its own benefit and in disregard of the rights of the  
21 members.

22 25. Defendants withheld critical financial information from plaintiffs each year that the  
23 plaintiffs invested in the program in order to induce plaintiffs to remain in and reinvest in the  
24 program and to refrain from obtaining the return of their deposits.

25 26. In late 2009, as a result of previously undisclosed financial losses, mismanagement  
26 and other wrongful conduct by defendants, the CAP program collapsed. Even at that time, many  
27 of the material facts noted above were withheld from or misrepresented to plaintiffs. The  
28 California Department of Industrial Relations appointed a Conservator to take over the program,

1 and the Conservator has imposed initial assessments on the members of over \$20 million to meet  
2 the financial obligations of the program, and indicated that the program has incurred additional  
3 losses of millions of dollars that may be sought from the members. Thus, the current assessments  
4 are only the tip of the iceberg. The Conservator has noted that further assessments will be made  
5 and the additional assessments that may turn out to be multiples of those already made. Plaintiffs  
6 face uncertain and potentially catastrophic liability.

7 27. The consequence to plaintiffs' businesses from these assessments may be  
8 disastrous. As described below, defendants, and each of them, are jointly responsible for this  
9 extreme financial detriment and injury to plaintiffs arising from the collapse of the program, the  
10 resulting assessments and the loss of their deposits in the program. In addition, defendants are  
11 responsible for the injuries to plaintiffs' businesses that have and continue to result from  
12 defendants' conduct, including the harm that may result should the CAP surety bond be invoked.

13 28. If defendants had fulfilled their responsibilities or had disclosed the true facts about  
14 the CAP program, plaintiffs would not have invested in the program, would not have renewed and  
15 reinvested each year, would have obtained the return of their deposits and would have obtained  
16 proper insurance, and would not be facing unlimited financial obligations and the loss of their  
17 investments and the resulting jeopardy to their businesses.

### 18 **III. STATEMENT OF FACTS**

#### 19 **A. Formation and Marketing of CAP**

20 29. In 2003, CRM through certain Trustees, formed CAP and located its business office  
21 at 5850 Canoga Avenue, Woodland Hills, California. At that time, Cornerstone Program  
22 Management & Insurance Services, Inc. ("Cornerstone"), a company owned and controlled by  
23 defendant William Holdren's son, Chuck Holdren, became the marketing agent for CAP under an  
24 arrangement that provided the company would be paid a whopping 9.5% of all member  
25 contributions to the program.

26 30. PrideMark and William Holdren ("Holdren") with the assistance of Leavitt  
27 subsequently, and in the following years, began to aggressively market the CAP program to their  
28 clients utilizing false or misleading sales materials and statements that were, in large part, common

1 to all plaintiffs. PrideMark and Holdren also failed to disclose critical information about the  
2 program, its finances and operations to any of the plaintiffs.

3 31. As licensed insurance brokers, Leavitt, PrideMark and Holdren held themselves out  
4 as having particular expertise in insurance and workers' compensation matters. PrideMark touted  
5 its over 70 years of insurance industry experience, providing the highest quality of service and  
6 with representatives among the most highly qualified in the industry, capable of recommending the  
7 commercial coverage that was right for its clients' businesses. PrideMark and Holdren represented  
8 that they had particular experience and skill in workers' compensation matters, and informed  
9 clients that their goal was to "help each and every client implement the most cost-effective  
10 program available" for workers' compensation.

11 32. To induce plaintiffs to place trust and confidence in it, PrideMark stated that it  
12 "views its role as much more than a broker of insurance products," and that it sought to become its  
13 clients' "partner in risk management functions." PrideMark and Leavitt affirmed to plaintiffs that  
14 they had particular expertise and experience in insurance matters, stating "The Leavitt Group,  
15 founded in 1952, is one of the largest insurance brokerages in the United States," and that "Leavitt  
16 Group affiliates are able to provide effective, sophisticated and creative risk management and risk  
17 transfer solutions . . . ." PrideMark and Leavitt further stated that "Because the Leavitt Group  
18 ranks in the top 1% of brokerages in the United States," it can "afford clients the most appropriate  
19 and affordable coverages." PrideMark and Leavitt informed potential clients that "With the  
20 Leavitt Group, you can be assured of the best of both worlds: the strength and creativity of a  
21 national insurance broker and the personalized touch of a locally owned brokerage."

22 33. Plaintiffs relied on PrideMark, Leavitt, Holdren and other PrideMark and Leavitt  
23 representatives to recommend appropriate workers' compensation coverage, and placed trust a  
24 confidence in their expertise. Plaintiffs expected and understood that PrideMark and Holdren  
25 would put plaintiffs' interests ahead of their own, and would have a basis for and truthfully  
26 disclose the facts about any recommendation. Defendants Holdren, and PrideMark, Leavitt and  
27 their other agents, owed a duty to plaintiffs to disclose complete and accurate information about  
28 CAP, its financial status, the risks associated with becoming or remaining a member of CAP and

1 the true facts about CRM's competency and management of CAP.

2 **B. Improper Diversion of Funds**

3 34. In 2004, CRM caused the CAP Board of Directors to terminate Cornerstone as the  
4 CAP marketing agent. CRM did so in order to take over Cornerstone's role as CAP's marketing  
5 agent and reap the lucrative benefits of the Cornerstone marketing agreement, in addition to the  
6 excessive payments it was already receiving as CAP's administrative agent. In addition to  
7 allowing CRM to garner outsized fees and profits, CRM's actions were part of a plan and scheme  
8 to increase its sales and revenues in various self-funded programs in California and New York, so  
9 as to increase the value of its stock offering.

10 35. In April 2005, Cornerstone and Chuck Holdren, Holdren's son, brought suit against  
11 CRM and CAP over their ouster as marketing agent for CAP. In 2006, CRM and CAP settled the  
12 lawsuit, with a payment by CAP of over \$6 million in or about September 2006. This lawsuit and  
13 payment were not disclosed to plaintiffs or other CAP members, and plaintiffs did not know that  
14 millions of dollars in fees that they paid into the program to resolve workers' compensation claims  
15 would instead be paid out to Holdren's son, and would benefit CRM and Holdren's son without  
16 any benefit to the CAP members, or that the payment depleted funds needed to operate the  
17 program and pay claims on behalf of the members. CRM and the CAP officers and Board of  
18 Directors breached their fiduciary duties to CAP by exposing the CAP fund to claims by  
19 Cornerstone and Holdren's son resulting from the lucrative Cornerstone contract, by making  
20 additional, exorbitant payments to CRM following Cornerstone's ouster, by permitting CRM to  
21 control the defense of the suit on behalf of CAP and by causing this payment to be made. CRM  
22 and the CAP Board of Directors also violated the CAP Bylaws which prohibit the Board members  
23 and the Group Administrator [CRM] from using

24 any funds collected from [CAP] members for any purpose not  
25 directly related to the payment of compensation liabilities of [CAP],  
26 posting of security deposit, payment of assessments and  
27 penalties . . . or the reasonable costs of operation of [CAP].

28 Further, PrideMark, Leavitt and Holdren had a duty to disclose this material information and



1 breach to CAP investors, and to those plaintiffs considering an investment or reinvestment in the  
2 program, but did not do so.

3 **C. Misrepresentations and Omissions of Material Information**

4 36. In order to induce plaintiffs to invest in the program, and to reinvest each year  
5 rather than terminating and obtaining appropriate insurance and a return of their deposits,  
6 PrideMark, Leavitt and their agents, including Holdren, represented that the plan was a financially  
7 strong and stable workers' compensation program that would provide appropriate workers'  
8 compensation coverage for plaintiffs. In fact, PrideMark, Leavitt and Holdren failed to disclose  
9 that the CAP program was wholly inappropriate and would expose plaintiffs to unknown or nearly  
10 unlimited risk, and defendants should not have recommended the program for plaintiffs' workers'  
11 compensation needs.

12 37. To induce plaintiffs investments and re-investments in the program, CRM,  
13 PrideMark and its agents made the following representations as part of their uniform sales  
14 presentations:

- 15 a) CAP was a "high quality" and "cost effective" program;
- 16 b) CAP was operating at a profit;
- 17 c) A "safety net" would be provided through excess insurance;
- 18 d) Plaintiffs would own the group surplus and would be entitled to and would  
19 receive dividend and interest income from that surplus;
- 20 e) Only low risk members would be admitted;
- 21 f) Members' payments would be used to pay "claims and expenses";
- 22 g) Members' payments would result in "Savings, Service and Security";
- 23 h) CRM could and would provide "Superior underwriting, claims oversight,  
24 loss control and administration," and that its rigorous underwriting would provide savings "while  
25 preserving the integrity of the program"; and
- 26 i) Members would receive timely financial statements and year-end "premium  
27 Audits."

28 These representations were untrue.

1           38.     Plaintiffs were informed in written materials distributed by CRM, PrideMark,  
2 Leavitt and Holdren, and/or in oral communications by Leavitt, PrideMark and its agents, that  
3 excess insurance would protect the members from any payments above the self-insured retention,  
4 i.e. the members' deposits and premium contributions. For example:

5           a)     Written sales materials stated that excess insurance would limit claims to the  
6 "Self Insured Retention," and that aggregate excess coverage would protect the members from  
7 adverse claim frequency;

8           b)     Written sales materials stated that reinsurance would provide "a level of  
9 protection on an aggregated basis to prevent small claims from eroding the assets of the program;"

10          c)     In January 2005, PrideMark and Holdren further informed Evans that  
11 reinsurance protection would protect against the "highly unlikely scenario" of "adverse claims  
12 frequency";

13          d)     Quality Production Services was informed by PrideMark and Holdren in  
14 late 2005, prior to investing, that the purchase of excess insurance would protect the members  
15 from any assessments beyond its premium payments, and that any concern about joint and several  
16 exposure had thus been resolved;

17          e)     In April 2005, plaintiff California Plastering was informed by Kemper  
18 Eakle, on behalf of PrideMark and Leavitt, that claims within the group would be capped at  
19 \$500,000, and that the members would be protected because reinsurers would pick up any  
20 additional losses on an unlimited basis; in May 2005, Kemper Eakle, on behalf of PrideMark and  
21 Leavitt, again stated that that, as a result of the excess coverage, "the maximum exposure to the  
22 group," regardless of the number of occurrences, would be \$500,000, with "unlimited coverage"  
23 thereafter;

24          f)     At a November 27, 2006 meeting, Holdren, on behalf of PrideMark,  
25 informed Rutherford that the group would only be responsible for the first \$500,000 of liability  
26 and then excess insurance would cover the rest;

27          g)     In July 2007, CRM and PrideMark again confirmed to California Plastering  
28 that the members would have no exposure beyond their initial contributions, stating that the

1 members' contributions were akin to a "self-insured retention" ("SIR"), and that there was  
2 "unlimited statutory excess coverage" for any amounts above the SIR;

3 h) In April 2009, Kemper Eakle, on behalf of PrideMark and Leavitt, stated to  
4 plaintiff Southern California Boiler that any exposure over \$500,000 from all claim costs would be  
5 covered by excess insurance, and called "comments about your being at risk" for exposure  
6 resulting from joint and several liability a "nonsequitur."

7 These representations were untrue. In fact, plaintiffs were not protected against liability in excess  
8 of their deposits and premium payments, and the excess insurance that was purchased from a CRM  
9 affiliate did not provide these represented protections.

10 39. PrideMark and Holdren or other PrideMark or Leavitt agents also made the  
11 following representations:

12 a) In each year, plaintiffs were told that the program was profitable;

13 b) In January 2005, CRM and PrideMark informed plaintiff Evans that "many  
14 layers of protection" mitigated any joint and several liability, that any exposure was adequately  
15 controlled "through regulation, pro-active management services and protective insurance/financial  
16 vehicles," which included "protective re-insurance" and a "protective surety bond." They also  
17 informed Evans that the Comptroller of the Currency for the federal Department of Treasury had  
18 determined that the exposure in the CAP model was less than 1% and "insignificant."

19 c) Evans was also informed in January 2005, prior to investing, that quarterly  
20 financial statements would be presented to the CAP Board of Trustees, and that the Board would  
21 protect the solvency of the group.

22 d) In a May 3, 2005 response to questions posed by Roger Gackenback of  
23 California Plastering, Kemper Eakle, a representative of Leavitt and PrideMark, stated that "The  
24 program is in its second year and is extremely profitable." He stated that "the likelihood is that the  
25 premium costs will go down due to competition and due to the profitability of this program." The  
26 letter attached projected financial statements showing significant profits in subsequent years.

27 e) A December 12, 2006 letter from Tom Foster of CRM to Evans, and copied  
28 to PrideMark, seeking to induce re-investment by Evans for the 2007 year, stated that "we are

1 proud to point out how strong CAP is financially.” The letter said that “in the year 2007 your  
2 program will likely be eligible to distribute a dividend to its members according to California DIR  
3 regulations. Needless to say, this distribution will only be available to existing members of the  
4 CAP program.”

5 f) On December 18, 2007, William Holdren and PrideMark informed plaintiff  
6 Quality Control, of the “Good News” that “Your CAP Workers Compensation Program continues  
7 to be profitable for all members.” He further stated that “You are in dividend territory and will be  
8 advised sometime in 2008.” William Holdren and PrideMark also informed Quality Control that  
9 other members had received dividends.

10 g) On December 21, 2007, Kemper Eakle, on behalf of PrideMark and Leavitt,  
11 informed plaintiff California Plastering, of the “Good News” that that “Your CAP Workers  
12 Compensation Program continues to be profitable for all members.” He further stated that “You  
13 are in dividend territory and will be advised sometime in 2008.” California Plastering was further  
14 told that the CAP program provided “the Very Best loss control and claims control services  
15 available.”

16 h) On December 17, 2008, in order to induce the plaintiffs to renew their  
17 memberships for the 2009 year, PrideMark and its agents, including Holdren, again informed  
18 plaintiffs, including Evans, Pacific Wall Systems and Sound Control, in writing of the “GOOD  
19 NEWS” that “Your CAP Workers Compensation Program continues to be profitable for all  
20 members.”

21 i) In order to induce plaintiffs to renew their memberships, various plaintiffs  
22 including California Plastering, Evans and Southern California Boiler were told that dividends  
23 would be paid and that they would need to remain invested and renew their memberships in the  
24 program to receive those dividends;

25 j) On December 22, 2008, PrideMark and Holdren informed Sound Control  
26 that the program continues to be “prosperous.”

27 k) In April 2009, Kemper Eakle, on behalf of PrideMark and Leavitt, informed  
28 Southern California Boiler about CRM’s “excellent loss prevention and claims management

1 expertise” and stated that CRM’s abilities “have kept the claims down and the success of the  
2 program up.” Mr. Eakle referenced CRM’s “financial strength” and stated that the “board of  
3 directors may declare dividends in the future.”

4 These representations were untrue. In fact, the program was operating at a loss from 2006 forward  
5 and was not financially sound, there was no chance that dividends would be paid, the Board did  
6 not and could not responsibly operate or protect the plan, and plaintiffs faced exposure well  
7 beyond their contributions. The members were not protected from exposure by excess insurance  
8 or reinsurance. Defendants CRM, PrideMark, Leavitt and Holdren knew the representations were  
9 untrue and/or made the statement recklessly and without any basis or regard for their truth.

10 40. In order to induce plaintiffs to invest in the program, and to re-invest each year  
11 rather than terminating and obtaining a return of their deposits, CRM, PrideMark, Leavitt and  
12 Holdren withheld and failed to disclose the following material information, none of which was  
13 known or could have been known to the plaintiffs:

14 a) The fact that millions of dollars in funds invested by the members were  
15 diverted to payments to Holdren’s son and Cornerstone, rather than being utilized for the benefit of  
16 the members;

17 b) The fact that the CAP program, from 2006 forward, was operating at a loss  
18 and that the assertions that dividends would be paid were completely untrue;

19 c) The fact that Bylaws existed and purported to govern the management of  
20 CAP by the Board members and CRM, and that the Board members and CRM disregarded the  
21 Bylaws and failed to provide the required financial statements to the members;

22 d) The fact that CRM purchased excess insurance from an affiliate, and that the  
23 insurance did not protect the members from exposure;

24 e) The fact that the Board of Trustees did not provide any oversight  
25 whatsoever of the program, did not look out for the interests of the members, did not oversee or  
26 even monitor the program’s financial affairs, and that, in fact, the program was operated by CRM  
27 without oversight and for its own benefit.

28 f) The fact that, as a result of actions by New York regulators in 2008, CRM

1 surrendered its license to act as a third party administrator for self-insured trusts in New York and  
2 was under investigation by the New York State Attorney General’s Office for mismanagement of  
3 self-insured workers’ compensation trusts.

4 g) The fact that in 2008, as a result of mismanagement and other wrongful  
5 conduct, several New York trusts that CRM managed had failed.

6 41. Holdren and PrideMark also took steps to prevent Plaintiffs from learning the true  
7 facts.

8 42. In a letter dated November 5, 2009, the Board of Directors notified all members for  
9 the first time that the program would be discontinued for the following year. The letter also stated  
10 for the first time that, contrary to all prior representations, the program was “running at a  
11 cumulative 7% deficit through 2008.” In a March 31, 2010 letter, the Board further set out the  
12 disastrous and undisclosed financial state of the program: “our incurred losses alone were  
13 approximately \$28.4M as of 2007, \$41.9M as of 2008 and \$60.3M as of 2009.”

14 **D. Mismanagement and Breaches**

15 43. PrideMark, Holdren and CRM represented that CRM was an experienced and  
16 superior program manager who could and would operate the CAP program properly and for the  
17 benefit of the members. In fact, CRM mismanaged the CAP Program, paid excessive fees to itself  
18 and to its affiliate, Majestic, and failed to maintain CAP in a financially sound manner with the  
19 ability to meet its obligations to pay claims on behalf of the members. CRM replaced the excess  
20 insurance with insurance from its affiliate, which has not provided protection to the members or  
21 the coverage represented. CRM managed the CAP program for its own benefit and in disregard  
22 for its obligations to the members.

23 44. Defendants Chahine and Hudson, as members of the Board of Directors and  
24 Trustees of CAP, owed a fiduciary duty to its members to oversee and operate CAP in good faith,  
25 in accordance with the Bylaws and for the benefit of the members. Defendants Chahine and  
26 Hudson failed to do so, failed to oversee the operations of the fund or the activities of CRM, failed  
27 to disclose and actively concealed the true finances and operation deficiencies of CAO, and  
28 additionally acted negligently and in violation of their fiduciary duties in the following ways:

1 a) Defendants permitted the payment of over \$6 million to Cornerstone and  
2 Holdren's son, although no benefit to the members arose and such payment violated Article III of  
3 the Bylaws;

4 b) Defendants failed to provide annual audited financial statements to the CAP  
5 members, as required by Article IV, Section 6 of the Bylaws, and failed to provide truthful  
6 financial information or to disclose that the fund was operating at a loss to the members;

7 c) Defendants failed to inform CAP members about the Bylaws, and failed to  
8 conduct elections for Board members as required by those Bylaws;

9 d) Defendants failed to exercise oversight over CRM's administration of the  
10 fund, and failed to take any steps at all to preserve the financial integrity of the fund; and

11 e) Defendants failed to disclose the material information described above to  
12 the members, including plaintiffs.

13 45. Defendant CRM owed a fiduciary duty to CAP and its members to operate the  
14 program for the benefits of the CAP members and in accordance with the Bylaws of the program.  
15 CRM violated the Bylaws governing its performance, failed to operate CAP in a financially sound  
16 manner and for the benefit of the members. CRM assisted and directed the Board of Director to  
17 operate the CAP program in a manner that it knew violated their duties to CAP and its members.  
18 And, in violation of its duties CRM made or assisted in making the misrepresentations described  
19 above.

20 **FIRST CAUSE OF ACTION**

21 **(Fraud against CRM, PrideMark, Leavitt and Holdren and Does 1-25)**

22 46. Plaintiffs incorporate the preceding paragraphs as though fully set forth herein.

23 47. In order to induce each plaintiff's investments into the CAP program, and to induce  
24 each plaintiff to reinvest each year and to refrain from terminating the membership and seeking the  
25 return of their deposits, CRM, PrideMark, Leavitt and Holdren made the intentional and  
26 unwarranted misrepresentations of fact and failed to disclose material facts, as more fully and  
27 specifically set out above. Further, PrideMark touted its purported experience and sophistication,  
28 and membership in the Leavitt Group, to induce each plaintiff to rely on its advice and make the

1 CAP investment.

2 48. Unaware of the true facts, and in reliance on the misrepresentations and omissions  
3 of these defendants, plaintiffs made the CAP investments in each year and paid the deposits and  
4 premiums reflected in Exhibit A hereto. If plaintiffs had been aware of the true facts, they would  
5 not have entered into or renewed the investments in any year. If plaintiffs had been informed of  
6 the true facts, they would have withdrawn from the investment and taken steps to avoid the  
7 assessments and losses they now face.

8 49. As a direct and proximate result of the fraud of CRM, PrideMark, Leavitt and  
9 Holdren, plaintiffs have incurred and continue to incur, damages in excess of \$10 million and will  
10 continue to incur damages that could exceed \$30 million.

11 50. The acts of defendants CRM, PrideMark, Leavitt and Holdren were performed with  
12 oppression, fraud and malice, thereby entitling plaintiffs to punitive damages.

13 **SECOND CAUSE OF ACTION**

14 **(Negligent Misrepresentation against CRM, PrideMark, Leavitt and**  
15 **Holdren and Does 1-100)**

16 51. Plaintiffs incorporate the preceding paragraphs as though fully set forth herein.

17 52. In making the representations described above, and in failing to disclose the  
18 material information, CRM, PrideMark, Leavitt and Holdren acted with the intent to induce, and  
19 did induce, plaintiffs to enter into and to renew with the CAP program.

20 53. CRM, PrideMark, Leavitt and Holdren made the representations negligently and  
21 with no reasonable grounds for believing their statements to be true.

22 54. As a direct and proximate result of the negligent misrepresentations by CRM,  
23 PrideMark, Leavitt and Holdren, have incurred and continue to incur, damages in excess of \$10  
24 million and will continue to incur damages that could exceed \$30 million.

25 **THIRD CAUSE OF ACTION**

26 **(Negligence and Professional Negligence against PrideMark, Holdren and Does 1-100)**

27 55. Plaintiffs incorporate the preceding paragraphs as though fully set forth herein.

28 56. As plaintiffs' professional advisors regarding insurance and workers' compensation



1 coverage, and as a result of their superior knowledge and expertise, PrideMark and Holdren owed  
2 to plaintiffs a duty of care and a duty to act with the skill, prudence and diligence as other  
3 members of the profession commonly possess.

4 57. PrideMark and Holdren held themselves out to plaintiffs as highly qualified  
5 advisors with respect to insurance and workers' compensation coverage, who were prudent or  
6 skilled in providing advice regarding such matters.

7 58. PrideMark and Holdren breached their duty of care, and failed to provide their  
8 professional services in a proper, skillful manner or in accordance with the requisite standard of  
9 care.

10 59. As a direct and proximate result of the professional negligence of PrideMark and  
11 Holdren, plaintiffs entered into the CAP program, renewed their investments in the CAP program  
12 each year and have incurred and continue to incur, damages in excess of \$10 million and will  
13 continue to incur damages that could exceed \$30 million.

#### 14 **FOURTH CAUSE OF ACTION**

##### 15 **(Breach of Fiduciary Duty against PrideMark, Holdren and Does 1-100)**

16 60. Plaintiffs incorporate the preceding paragraphs as though fully set forth herein.

17 61. As professional advisors who held themselves out as having particular expertise and  
18 skill and superior knowledge with respect to insurance and workers' compensation coverage, and  
19 by virtue of the trust and confidence thereby placed in them by plaintiffs, who lacked such  
20 expertise, skill and knowledge, PrideMark and Holdren owed to plaintiffs a fiduciary duty,  
21 including a duty to place plaintiffs' interests above their own interests.

22 62. Further, PrideMark and Holdren owed a fiduciary duty to plaintiffs by virtue of  
23 their superior knowledge of the CAP program, which PrideMark and Holdren acquired in its  
24 capacity as broker for the program, which knowledge plaintiffs did not possess.

25 63. PrideMark and Holdren breached their fiduciary duties by virtue of the acts,  
26 omissions and advice described above.

27 64. As a direct result of the breaches of fiduciary duty by PrideMark and Holdren,  
28 plaintiffs have incurred and continue to incur, damages in excess of \$10 million and will continue

1 to incur damages that could exceed \$30 million.

2 65. In doing these acts, PrideMark and Holdren acted with oppression, fraud or malice  
3 thereby entitling plaintiffs to punitive damages.

4 **FIFTH CAUSE OF ACTION**

5 **(Negligence against Chahine and Hudson and Does 1-100)**

6 66. Plaintiffs incorporate the preceding paragraphs as though fully set forth herein.

7 67. As officers and members of the Board of Directors and Trustees of CAP,  
8 defendants Chahine and Hudson owed a duty to plaintiffs to oversee and manage CAP with  
9 reasonable care.

10 68. Defendants Chahine and Hudson, by virtue of the actions described above,  
11 including their failure to inform CAP members of the financial condition of the program, breached  
12 their duty of care.

13 69. As a direct and proximate result of the breaches of duty of defendants Chahine and  
14 Hudson, plaintiffs have incurred and continue to incur, damages in excess of \$10 million and will  
15 continue to incur damages that could exceed \$30 million.

16 **SIXTH CAUSE OF ACTION**

17 **(Breach of Fiduciary Duty/Aiding and Abetting Breaches of Fiduciary Duty against CRM,  
18 Majestic, Chahine and Hudson and Does 1-100)**

19 70. Plaintiffs incorporate the preceding paragraphs as though fully set forth herein.

20 71. As officers and members of the Board of Directors of CAP, and by virtue of the  
21 trust and confidence thereby placed in them by plaintiffs, Chahine and Hudson owed a fiduciary  
22 duty to plaintiffs, who were members of CAP, including a duty to manage the finances and funds  
23 of the program and to place plaintiffs' interests above their own interests.

24 72. As administrator of CAP, and by virtue of the trust and confidence thereby placed  
25 in it by plaintiffs, CRM owed a fiduciary duty to plaintiffs, who were members of CAP, including  
26 a duty to manage the finances and funds of the program a duty to place plaintiffs' interests above  
27 their own interests.

28 73. Further, Chahine and Hudson, and CRM owed a fiduciary duty to plaintiffs by

1 virtue of their superior knowledge of the CAP program, which was obtained in the course of their  
2 role as officers and members of the Board of Directors or as administrator of CAP, which  
3 knowledge plaintiffs did not possess.

4 74. Chahine and Hudson, and CRM, breached their fiduciary duties by virtue of the  
5 acts, omissions and advice described above. Chahine and Hudson further failed to disclose to  
6 plaintiffs that CAP was operating at a loss and that CAP members faced significant financial risks.

7 75. CRM further breached its duty by, in conflict with the interests of CAP and its  
8 members, engaging in transactions and obtaining excess insurance from its affiliate, Majestic. And  
9 as a result, CRM had no incentive to obtain proper coverage or ensure the payment of reasonable  
10 fees. Magestic, through its common control and affiliation with CRM, and acceptance of fees  
11 resulting from CRM's management and knowledge, through its affiliation, that it was not  
12 providing excess insurance in the manner represented to plaintiffs, aided and abetted CRM's  
13 breach of fiduciary duty.

14 76. Further, Chahine, Hudson and CRM acted in concert with each other with respect to  
15 the management and administration of the CAP program and each was aware of and materially  
16 assisted in the breaches of fiduciary duty by the others. Defendants Chahine, Hudson and CRM  
17 each thereby aided and abetted the breaches of fiduciary duty by the others.

18 77. As a direct result of the breaches of fiduciary duty and aiding and abetting breaches  
19 of fiduciary duty by Chahine, Hudson, CRM and Majestic, plaintiffs have incurred and continue to  
20 incur, damages in excess of \$10 million and will continue to incur damages that could exceed \$30  
21 million.

22 78. In doing these acts, Chahine, Hudson, and CRM acted with oppression, fraud or  
23 malice thereby entitling plaintiffs to punitive damages.

24 **SEVENTH CAUSE OF ACTION**

25 **(Aiding and Abetting a Breach of Fiduciary Duty**

26 **against Leavitt, PrideMark, Holdren and Does 1-100)**

27 79. Plaintiffs hereby incorporate the preceding paragraphs as though fully set forth  
28 herein.



1 exempt from qualification, and sale of those interests, in the absence of qualification, violated  
2 Corporations Code § 25110.

3 87. Corporations Code § 25503 imposes liability for violations of Corporations Code  
4 § 25110 on the seller or issuer of an unqualified security to anyone who acquires the security from  
5 him. Corporations Code § 25504 places joint and several liability on those broker-dealers who  
6 assist in the violation, unless that person had no knowledge of or reasonable grounds to believe the  
7 existence of the facts by reason of which the liability is alleged to exist.

8 88. Corporations Code § 25504.1 imposes liability on any person who materially assists  
9 in a violation of Corporations Code § 25110 with the intent to deceive or defraud.

10 89. Defendants PrideMark and Holdren acted as broker-dealers in connection with the  
11 sales of the CAP interests, and knew or had reasonable grounds to believe the existence of the facts  
12 by reason of which the liability is alleged to exist. In addition, defendants PrideMark, Holdren and  
13 CRM materially assisted CAP in the sale of unqualified security interests in CAP by making  
14 material misstatements and omitting to disclose material information, with the intent to deceive or  
15 defraud plaintiffs and are jointly liable for the acts of those violating § 25510.

16 90. Plaintiffs rescind and seek the recovery of all amounts paid for the interests,  
17 including the deposits and premiums paid or reinvested for the CAP memberships, resulting from  
18 all violations during the statutory limitations period. In the alternative, plaintiffs seek the return of  
19 all amounts paid for the interests less any current value of those interests, which currently have no  
20 or negative value.

21 **NINTH CAUSE OF ACTION**

22 **(Violation of Sections 25401, 25501 and 25504.1 of the Cal. Corp. Code**  
23 **against CRM, PrideMark, Holdren and Does 1-100)**

24 91. Plaintiffs hereby incorporate the preceding paragraphs as though fully set forth  
25 herein.

26 92. Under Corporations Code § 25401, it is illegal to sell a security by means of any  
27 written or oral communication that contains an untrue statement of material fact or omits to state a  
28 material fact necessary in order to make the statements made in light of the circumstances under

1 which they were made, not misleading.

2 93. Corporations Code § 25501 provides a private right of action for violation of this  
3 section, and Corporations Code § 25504 provides that specified persons who materially aid in the  
4 act or transaction is jointly and severally liable with the person from whom the security was  
5 acquires unless that person had no knowledge of or reasonable grounds to believe the existence of  
6 the facts by reason of which the liability is alleged to exist. Corporations Code § 25504.1 extends  
7 liability to any person who materially assists in the violation of § 25401 with intent to deceive or  
8 defraud.

9 94. As alleged above, the CAP memberships were sold to plaintiffs by means of untrue  
10 statements of fact and material omissions required to make the statements made not misleading.  
11 PrideMark, Holdren and CRM had knowledge of the false statements and omissions and/or had  
12 reasonable grounds to believe the existence of the material facts alleged above. Further,  
13 PrideMark, Holdren and CRM actively marketed the CAP investments to plaintiffs and materially  
14 assisted in the violation of Corporations Code § 25401 with the intent to deceive or defraud  
15 plaintiffs and are jointly liable for the acts of the other violators.

16 95. Plaintiffs are entitled to recover all damages resulting for the violation of  
17 Corporations Code § 25401 during the statutory period, including the recovery of any assessments,  
18 premiums and deposits paid or that would have been recovered or not paid if plaintiffs had been  
19 informed of the true facts and terminated their investments in, and not reinvested each year, in the  
20 CAP program.

21 **TENTH CAUSE OF ACTION**

22 **(Violation of Section 25501.5 of the Cal. Corp. Code against PrideMark and Does 1-100)**

23 96. Plaintiffs hereby incorporate the preceding paragraphs as though fully set forth  
24 herein.

25 97. As a seller of securities, PrideMark was required to be licensed as a broker-dealer.  
26 Corporations Code § 25210. PrideMark was not licensed as a broker-dealer.

27 98. Under Corporations Code § 25501.5, plaintiffs are entitled to rescind their  
28 purchases of investments in CAP from PrideMark and are entitled to recover all consideration paid

1 plus interest thereon at the legal rate pursuant to Corporations Code § 25501.5 (a) (2). In  
2 accordance with that provision, plaintiffs hereby tender their CAP memberships to PrideMark. In  
3 the alternative, plaintiffs are entitled to recover as damages the consideration paid plus interest,  
4 less the value of the security, which currently have no value. In addition, plaintiffs seek attorneys'  
5 fees and costs pursuant to Corporations Code § 25501.5(b) and attorneys' fees, costs and treble  
6 damages pursuant to Civil Procedure Code § 1029.8.

7 **ELEVENTH CAUSE OF ACTION**

8 **(Violation of Section 17200, et seq. of the Cal. Bus. & Prof. Code against all Defendants)**

9 99. By virtue of the acts described above, including the misstatements and failure to  
10 disclose material information relating to the CAP program, defendants engaged in unlawful, unfair  
11 and fraudulent business acts and practices directed at members and potential members of the CAP  
12 program in violation of California Business & Professions Code §§ 17200 et. seq.

13 100. As a direct result of their improper acts, defendants have been unjustly enriched in  
14 an amount to be determined according to proof. Plaintiffs are entitled under Bus. & Prof. Code §  
15 17200, and hereby seek, restitution of the benefits acquired by plaintiffs as a result of their  
16 unlawful, unfair and fraudulent business acts and practices.

17 **PRAYER**

18  
19 WHEREFORE, plaintiffs pray for judgment as follows:

20 1. On the First Cause of Action:

21 a. For damages against CRM, PrideMark, Leavitt and Holdren in excess of  
22 \$30 million, or according to proof at trial; and

23 b. For punitive damages in an amount sufficient to punish and to deter them  
24 from engaging in wrongful conduct in the future.

25 2. On the Second Cause of Action:

26 a. For damages against CRM, PrideMark, Leavitt and Holdren in excess of  
27 than \$30 million, or according to proof at trial.

28 3. On the Third Cause of Action:

1           a.       For damages against PrideMark and Holdren in excess of \$30 million, or  
2 according to proof at trial.

3           4.       On the Fourth Cause of Action:

4           a.       For damages against PrideMark and Holdren in an amount in excess of \$30  
5 million, or according to proof at trial;

6           b.       For punitive damages in an amount sufficient to punish and to deter them  
7 from engaging in wrongful conduct in the future.

8           5.       On the Fifth Cause of Action:

9           a.       For damages against Chahine and Hudson in an amount in excess of \$30  
10 million, or according to proof at trial.

11          6.       On the Sixth Cause of Action:

12          a.       For damages against CRM, Majestic, Chahine and Hudson in an amount in  
13 excess of \$30 million, or according to proof at trial;

14          b.       For punitive damages in an amount sufficient to punish and to deter CRM,  
15 Chahine and Hudson from engaging in wrongful conduct in the future.

16          7.       On the Seventh Cause of Action:

17          a.       For damages against PrideMark, Leavitt and Holdren in an amount in excess  
18 of \$30 million, or according to proof at trial;

19          b.       For punitive damages against PrideMark and Holdren in an amount  
20 sufficient to punish and to deter them from engaging in wrongful conduct in the future.

21          8.       On the Eighth Cause of Action:

22          a.       For rescission of plaintiffs' purchase of memberships in the CAP program  
23 and return of their deposits and premiums paid into the program, or damages, according to proof at  
24 trial.

25          9.       On the Ninth Cause of Action:

26          a.       For the recovery of all deposits and premiums, or damages, against CRM,  
27 PrideMark and Holdren according to proof at trial.

28          10.       On the Tenth Cause of Action:



1 a. For rescission of plaintiffs' purchase of memberships in the CAP program  
2 and return of their deposits and premiums paid into the program, or damages according to proof at  
3 trial;

4 b. For treble damages of the foregoing amounts against PrideMark, according  
5 to proof at trial;

6 c. For attorneys' fees and costs.

7 11. On the Eleventh Cause of Action:

8 a. For restitution of all ill-gotten gains, earnings, profits and benefits,  
9 according to proof.

10 12. And, On All Causes of Action:

11 a. An award of all costs incurred by plaintiffs herein;

12 b. An award of prejudgment interest as authorized by law; and

13 c. Such other and further relief as the Court deems just and proper.  
14

15 DATED: October 28, 2010

HENNIGAN, BENNETT & DORMAN LLP

16  
17 By: \_\_\_\_\_ /S/

Laura Lindgren

18  
19 Attorneys for Plaintiffs  
20 CALIFORNIA PLASTERING, INC.; COLLINS  
21 BUILDERS, INC.; EVANS & SON, INC.;  
22 PACIFIC WALL SYSTEMS, INC.; QUALITY  
23 PRODUCTION SERVICES, INC.;  
24 RUTHERFORD CO., INC.; SOUND  
25 CONTROL COMPANY; SOUTHERN  
26 CALIFORNIA BOILER, INC.; SUMMER  
27 SYSTEMS, INC.; VERSATILE COATINGS,  
28 INC.; and VISION BUILDERS GROUP

EXHIBIT "A"

<u>Plaintiff</u>	<u>Years of Investment/ Membership</u>	<u>Deposits and Premiums Paid</u>
California Plastering, Inc.	2005, 2006, 2007, 2008	\$2,751,633.46
Collins Builders, Inc.	2008 and 2009	\$30,389.41
Evans & Son, Inc.	2006, 2007, 2008 and 2009	\$516,160.78
Pacific Wall Systems, Inc.	2008 and 2009	\$162, 149.79
Quality Production Services, Inc.	2006, 2007, 2008 and 2009	\$495, 535.06
Rutherford Co., Inc.	2008 and 2009	\$445,269.00
Sound Control Company	2006, 2007, 2008 and 2009	\$193,035.54
Southern California Boiler, Inc.	2005, 2006, 2007, 2008 and 2009	\$681,223.00
Summer Systems	2007, 2008 and 2009	\$407,131.00
Versatile Coatings, Inc.	2004, 2005, 2006, 2007, 2008 and 2009	\$780,798.20
Vision Builders Group	2008	\$68,713.00