

USDC SCAN INDEX SHEET



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3:04-CV-02184 GUESS V. BUCK

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CMP.

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FILED
04 OCT 29 PM 3:47
CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY: *[Signature]* DEPUTY

7 UNITED STATES DISTRICT COURT
8
9 SOUTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,)
11)
12 Plaintiff,)
13)
14 v.)
15 L. DONALD GUESS, LESLIE S. BUCK,)
16 DAVID JACQUOT, MONTE T. MELLON,)
17 G. THOMAS ROBERTS, CHRIS G. EVANS,)
18 NIGEL BAILEY, DOCTORS BENEFIT)
19 INSURANCE COMPANY, LTD., DOCTORS)
20 BENEFIT HOLDING COMPANY, DOCTORS)
21 INSURANCE SERVICES, INC., XÉLAN)
22 INVESTMENT SERVICES, INC., XÉLAN)
23 ANNUITY CO., LTD., XÉLAN ADMINIS-)
24 TRATIVE SERVICES, INC., XÉLAN FOUN-)
25 ATION, INC., XÉLAN OF TEXAS, INC.,)
26 XÉLAN, INC., XÉLAN, THE ECONOMIC)
27 ASSOCIATION OF HEALTH PROFES-)
28 SIONALS, INC., PYRAMIDAL FUNDING)
SYSTEMS, INC., dba XÉLAN INSURANCE)
SERVICES, XÉLAN PENSION SERVICES,)
INC., XÉLAN FINANCIAL PLANNING,)
INC., EURO- AMERICAN TRUST COM-)
PANY, AMS TRUST COMPANY, and)
JOHN DOES, UNKNOWN PERSONS WHO)
ARE TRUSTEES OF XÉLAN LONG TERM)
CARE TRUST, XÉLAN DISABILITY)
EQUITY TRUST, XÉLAN MALPRACTICE)
EQUITY TRUST, and XÉLAN MEDICAL)
SAVINGS EQUITY TRUST,)
Defendants)

'04 CV 2184 W (AJB)

Case No.

FILED UNDER SEAL

COMPLAINT OF THE UNITED STATES
PURSUANT TO 18 U.S.C. §1345 AND
26 U.S.C. §7402(a) FOR INJUNCTIVE
RELIEF

1 COMES NOW the United States of America ("United States"), by and through its
2 undersigned attorneys, and for its complaint against the defendants alleges as follows:
3

4 **JURISDICTION**

5 1. This is a civil action brought by the United States against defendants L. Donald
6 Guess, Leslie S. Buck, David Jacquot, Monte T. Mellon, G. Thomas Roberts, Chris G. Evans, Nigel
7 Bailey, Doctors Benefit Insurance Company, Ltd., Doctors Benefit Holding Company, Doctor's
8 Insurance Services, Inc., xélan Investment Services, Inc., xélan Annuity Co., Ltd., xélan
9 Administrative Services, Inc., xélan Foundation, Inc., xélan of Texas, Inc., xélan, Inc.; xélan, The
10 Economic Association of Health Professionals, Inc., Pyramidal Funding Systems, Inc., dba xélan
11 Insurance Services, xélan Pension Services, Inc., xélan Financial Planning, Inc., Euro-American
12 Trust Company [Tortola, BVI], AMS Trust Company, and the yet unknown trustees of the xélan
13 Long Term Care Trust, xélan Disability Equity Trust, xélan Malpractice Equity Trust, xélan Medical
14 Savings Equity Trust, pursuant to the fraud injunction statute, 18 U.S.C. § 1345, and the equitable
15 jurisdiction vested in district courts by the Internal Revenue Code, 26 U.S.C. §7402(a).
16
17

18 2. The court has jurisdiction over this action pursuant to 18 U.S.C. §1345, 26 U.S.C.
19 §7402(a), and 28 U.S.C. §§1331 and 1345.
20

21 **VENUE**

22 3. Venue lies in this district pursuant to 28 U.S.C. §1345(a)(1) and 28 U.S.C.
23 §1391(b)(2) as the judicial district in which a substantial part of the events or the omissions giving
24 rise to the action occurred.

25 **PARTIES**

26 4. Plaintiff is the United States.
27
28

1 5. Defendant L. Donald Guess is a citizen of the United States and resides in this judicial
2 district. On information and belief, Guess controls – directly or indirectly – some or all of the
3 entities named as defendants in this action.
4

5 6. Defendant Leslie S. Buck is a citizen of the United States and resides in the State of
6 Maryland. On information and belief, Buck controls – directly or indirectly – some or all of the
7 entities named as defendants in this action.
8

9 7: Defendant David Jacquot, a former resident of California who now resides in Idaho, is
10 a former general counsel of the xélan family of companies.
11

12 8. Defendant Monte T. Mellon, who resides in California, is a former Director of the
13 Department of Client Services for xélan, Inc., and is presently a Director of defendant Doctors
14 Benefit Insurance Company, Ltd. The United States is informed and believes that Mellon has an
15 ownership interest in at least two of the entities named as defendants in this action, Doctors Benefit
16 Holding Company, and Doctors Benefit Insurance Company, Ltd.
17

18 9. Defendant G. Thomas Roberts, who on information and belief resides in
19 Pennsylvania, is a director of defendant Doctors Benefit Insurance Company, Ltd.
20

21 10. Defendant Chris G. Evans, who on information and belief resides in Barbados, is a
22 vice-president and director of defendant Doctors Benefit Insurance Company, Ltd.
23

24 11. Defendant Nigel Bailey, who on information and belief resides in Barbados, is a vice-
25 president of defendant Doctors Benefit Insurance Company, Ltd.
26

27 12. On information and belief, defendant Doctors Benefit Insurance Company, Ltd., is a
28 corporation that purports to have been established under the laws of Barbados, and purports to be
operated in Barbados. On information and belief, defendant Doctors Benefit Insurance Company is,

1 in fact, operated by one or more of the individual defendants in this case, including Leslie S. Buck.
2 On information and belief, Doctors Benefit Insurance Company is operated, at least in part, through
3 the other defendants in this case.
4

5 13. On information and belief, defendant Doctors Benefit Holding Company, is a
6 corporation that purports to have been established under the laws of Barbados, and purports to be
7 operated in Barbados. On information and belief, defendant Doctors Benefit Holding Company,
8 which is owned by a number of xélan doctors, including defendant Monte T. Mellon, owns
9 defendant Doctors Benefit Insurance Company.
10

11 14. On information and belief, that defendant Doctors Insurance Services, Inc. is a
12 corporation organized under the laws of the State of Maryland, and is owned and operated by
13 defendant Leslie S. Buck.
14

15 15. Defendants xélan Investment Services, Inc., xélan Administrative Services, Inc., xélan
16 Foundation, Inc., xélan of Texas, Inc., xélan, Inc.; xélan, The Economic Association of Health
17 Professionals, Inc., Pyramidal Funding Systems, Inc., dba xélan Insurance Services, xélan Pension
18 Services, Inc., xélan Financial Planning, Inc., are corporations with their principal place of business
19 at 401 "A" Street, 22nd Floor, San Diego, California. They are presently either owned or controlled –
20 directly or indirectly – by defendant L. Donald Guess.
21

22 16. The United States is informed and believes that defendants xélan Annuity Co., Ltd.
23 Euro-American Trust Company [Tortola, BVI], AMS Trust Company, xélan Long Term Care Trust,
24 xélan Disability Equity Trust, xélan Malpractice Equity Trust, and xélan Medical Savings Equity
25 Trust are corporations or trusts that purport to be established under the laws of either the British
26 Virgin Islands, the United States Virgin Islands, or Barbados, at the direction of one or more of the
27

1 individual defendants in this case, including L. Donald Guess, and other defendants whose identities
2 are not yet known to the plaintiff. The plaintiff will seek to amend its complaint to add these
3 additional defendants, when it learns their identities.
4

5 **THE SCHEMES TO DEFRAUD**

6 17. From 1998 (and perhaps earlier) on, defendants have been operating a number of
7 schemes to defraud members of the public – medical doctors, in particular – by soliciting their
8 participation in a number of purported insurance, retirement, investment, and charitable giving
9 arrangements. These arrangements are not what they purport to be, but have been established and
10 used for purposes other than as presented to the doctors. The defendants have also established and
11 used these schemes to defraud the United States of taxes, by establishing, selling and maintaining
12 non-tax-deductible retirement savings plans in the guise of tax-deductible insurance and charity
13 programs.
14

15 18. From 1998 (and perhaps earlier) up until the present, defendants Guess and others
16 have been aggressively soliciting medical doctors around the country, to participate in schemes that
17 Guess and xélan represent to prospective participants are legal methods to amass savings for
18 retirement, with tax-deductible dollars. These xélan “tax-deductible savings programs” involve – for
19 the most part – allegedly supplemental insurance arrangements, that purport to provide supplemental
20 insurance to Subchapter C corporations that doctors set up under xélan’s guidance. Each doctor’s
21 corporation pays a minimum of \$4,000, and up to hundreds of thousands of dollars, each year to buy
22 so-called supplemental insurance through xélan from a “captive” offshore company called Doctors
23 Benefit Insurance Co. (DBIC). DBIC, which purports to be an “independent” Barbados-licensed
24 insurance company, then issues “certificates of insurance” purporting to evidence insurance.
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1 19. The defendants fraudulently advise doctors that their subchapter C corporations can
2 deduct 100% of the premiums as "ordinary and necessary" business expenses under one section of
3 the Internal Revenue Code (26 U.S.C. §162), though the "premiums" bear no relation to the cost of
4 any insurance, but merely reflect what the doctor believes he can afford to save towards retirement in
5 any given year. The defendants fraudulently fail to disclose that another section of the Internal
6 Revenue Code (26 U.S.C. §419(a)) places strict limits on the deductibility of insurance premiums,
7 and that the payments that xélan doctors make for the xélan supplemental insurance programs are not
8 fully deductible because of that section. The defendants also fraudulently fail to disclose that xélan
9 doctors may not be able to exclude from their gross income all of the money that their subchapter C
10 corporations pay to xélan for this "supplemental insurance." In furtherance of this scheme,
11 defendant Roberts has prepared "tax opinion letters" that fraudulently omit the correct tax advice,
12 and fraudulently fail to disclose his relationship with xélan, and his role as a Director of DBIC.

15 20. The defendants and their agents present these programs orally at "seminars" for
16 doctors who were invited by mail, by wire and in person, as well as through a network of financial
17 counselors who solicit prospective participants by mail, by wire, and in person. At these seminars,
18 and through mail and wire communications, Guess, Mellon and others acting in concert with them
19 make the following false and fraudulent representations to induce potential participants to join xélan:
20

- 21 a. that 100% of the payments to the programs are tax deductible;
- 22 b. that each doctor maintains ownership and control over the funds that are paid into
23 the programs, and held in a segregated account in the doctor's name;
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1 c. that all the funds that doctors have paid into the programs – minus commissions
2 and fees disclosed to the doctors – are invested according to the doctors' choice, and that the funds
3 are available for the doctors to withdraw at any time;

4
5 d. that the programs provide "Maximum Safety," referring in part to safety from IRS
6 audit, when Guess and others know that the programs are likely to be – and have, in fact been –
7 audited by the Internal Revenue Service, and that doctors may be at risk for substantial additional
8 federal income taxes, penalties and interest;

9
10 21. At these seminars, and through mail and wire communications, Guess, Mellon and
11 others acting in concert with them falsely and fraudulently fail to disclose the following material
12 facts to potential participants:

13 a. failing to disclose that Guess, the founder of xélan, receives commissions on all
14 insurance products sold by xélan;

15
16 b. failing to disclose that Guess, the founder of xélan, receives commissions on the
17 management of funds held by xélan-affiliated entities Doctors Benefit Insurance Company, Ltd., Inc.
18 and xélan Foundation;

19 c. failing to disclose that funds invested in the programs are used to pay the legal fees
20 and other liabilities of xélan and its affiliated entities; and

21
22 d. failing to disclose that funds invested in the programs were paid to Buck in his
23 individual capacity.

24 22. In another fraudulent xélan scheme, defendant Guess and others acting in concert with
25 him have fraudulently represented to doctors that they can generate significant tax savings by
26 participating in a xélan-sponsored "welfare benefit plan" authorized by a section of the Internal
27

1 Revenue Code, 26 U.S.C. §419A. The defendants have fraudulently advised doctors that their
2 subchapter C corporations can pay into the xélan 419 Plan with large amounts of tax-deductible
3 dollars, which the Plan uses to purchase insurance from Indianapolis Life Insurance Co. The
4 defendants fraudulently failed to advise doctors that, at the time the Plan was established, the IRS
5 had issued temporary regulations – which have since become permanent – that disallow the tax
6 benefits the defendants touted to doctors. The defendants also fraudulently failed to advise doctors
7 that Guess was receiving commissions on the Trust’s purchase of insurance from Indianapolis Life, a
8 practice that is made illegal by 18 U.S.C. §1954. Finally, the defendants fraudulently advised
9 doctors that the policy benefits vest after five years, that the doctors are the beneficiaries of the
10 policies, and that the amount that xélan charges for the policies reflects the cost of the premiums. In
11 fact, none of those material representations is true.
12
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14 23. In another fraudulent scheme, defendants operate what purports to be a public charity,
15 the xélan Foundation. Established and operated as a donor-directed fund, the Foundation
16 purportedly allows doctors to make tax-deductible donations, and then direct those donations to pay
17 for the college tuition of the doctors’ children (either as an outright payment to the college or
18 university, or as a purported loan to the donor’s child), or to pay the doctors for doing charitable,
19 “pro bono,” work. Operated in this way, the Foundation fraudulently advises doctors that they can
20 pay their children’s college tuition with tax-deductible “donations,” pay themselves with tax-
21 deductible donations for doing “volunteer” work for charitable organizations, and claim a charitable
22 contribution deduction for payments to the Foundation.
23
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25 24. By engaging in this conduct, defendants Guess, Buck, Jacquot, Mellon, Roberts, and
26 others acting in concert with them, have also engaged in a conspiracy to defraud the United States by
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1 selling the xélan insurance and charitable giving programs as legitimate tax reduction strategies,
2 knowing that – as designed and operated – the xélan programs do not produce the tax benefits they
3 have touted to xélan doctors. In addition, the defendants and others have perpetuated these frauds by
4 attempting to prevent the doctors and other law enforcement officials from learning the underlying
5 facts about xélan’s programs. In that respect, defendants Guess, Buck, Jacquot, Mellon, Roberts and
6 others have engaged in conduct designed to obstruct IRS audits by preventing or dissuading xélan
7 doctors from seeking their own independent financial and legal advice, making knowingly false
8 statements in connection with Internal Revenue Service summons enforcement actions, and making
9 knowingly false statements in connection with pending bankruptcy proceedings involving four of the
10 defendants, xélan, Inc., Pyramidal Funding Systems, Inc., xélan Pension Services, Inc., and xélan
11 Financial Planning, Inc.
12

13
14 25. Over the past three years, some xélan doctors have complained to the defendants
15 about the xélan programs in which they have participated. In some cases, those complaints have
16 taken the form of lawsuits filed against one or more of the defendants, seeking damages for fraud and
17 other misconduct. In order to prevent other xélan doctors from learning of xélan’s fraud, the
18 defendants have liquidated funds controlled by DBIC – in violation of representations they have
19 made to other doctors who participate in xélan programs – in order to pay the complainants. The
20 defendants have made these payments on the condition that the complainants remain silent about
21 their complaints, and do not disclose their allegations or the settlement to law enforcement agencies
22 or to other xélan doctors.
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1 **THE CONSEQUENCES TO DOCTORS AND THE UNITED STATES**

2 26. On information and belief, the defendants presently control assets with a present value
3 of approximately \$600 million. Those assets reflect funds that xélan doctors paid to participate in
4 one or more of xélan's fraudulent tax reduction schemes, and earnings on those funds. Most of the
5 funds are invested in accounts maintained at The Vanguard Group, a large investment firm based in
6 the Philadelphia area. Other funds are held in bank accounts located in the United States, in the
7 British Virgin Islands and, perhaps, elsewhere. To the extent the information is known to the United
8 States, the accounts and other funds are located in the places identified in **Exhibit A** attached hereto.
9

10
11 27. As alleged earlier, the defendants have falsely represented to doctors that funds paid
12 into xélan's fraudulent tax reduction schemes are held in "segregated" accounts, in the doctor's name
13 and under the doctor's control. In fact, the defendants have taken funds that doctors have paid into
14 xélan's fraudulent tax reduction schemes, held them in non-segregated accounts, exercised control
15 over them, and diverted them to their personal use, to the use of other xélan doctors, and to other
16 unknown uses that were not disclosed to or authorized by the doctors. Those diversions of funds
17 have jeopardized the safety of the doctors' funds, and have reduced the likelihood that the doctors
18 will eventually be able to recover the millions of dollars they have paid into xélan.
19

20 28. No defendant had any lawful right to any of the doctors' funds. On information and
21 belief, no defendant was a bona fide transferee for value of any of the doctors' funds or any interest
22 in real or personal property acquired with those funds. On information and belief, no defendant gave
23 reasonably equivalent value or any other consideration in exchange for the doctors' funds which may
24 be traceable to interests in real or personal property acquired with those funds.
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1 29. The defendants' diversion of doctors' funds also reduces the likelihood that the xélan
2 doctors will have assets readily available from which they can pay the additional taxes, penalties and
3 interest that they are likely to owe on the improper tax benefits claimed from their participation in
4 xélan's fraudulent tax reduction schemes.
5

6 30. The Internal Revenue Service estimates that the defendants have sold their fraudulent
7 tax reduction schemes to approximately 3,900 - 4,100 doctors. Of that number, the defendants sold
8 one or more fraudulent supplemental insurance schemes to approximately 2,800 doctors, the
9 fraudulent 419A Plan to approximately 700-800 doctors, and the fraudulent charitable foundation
10 scheme to approximately 300-400 doctors.
11

12 31. Assuming that each xélan doctor has improperly deducted or excluded from their
13 taxable income \$100,000 per year as a result of their participation in one or more of xélan's
14 fraudulent tax reduction schemes, that each of those doctors pays income tax at a 35% marginal rate,
15 and that the IRS may assess additional taxes, penalties and interest against each doctor for the
16 preceding three years, these xélan tax reduction schemes have cost the United States approximately
17 \$420 million in income taxes, plus any penalties and interest that might be due.
18

19 32. Many of the doctors who have purchased xélan's fraudulent tax reduction schemes
20 have placed a significant portion of their assets in accounts managed by one or more of the
21 defendants. Both the xélan doctors and the Internal Revenue Service may eventually have to look to
22 those xélan-held accounts as a source of paying taxes, penalties and interest that the IRS, based on
23 information currently available to it, expects to assess against xélan doctors.
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1 CAUSES OF ACTION

2 COUNT 1

3 Fraud Injunction Statute – 18 U.S.C. §1345

4
5 33. Paragraphs 1 through 32 of this complaint are hereby realleged and incorporated as
6 though set forth in full herein.

7 34. Beginning at least as early as 1998 and continuing up to the present, defendants L.
8 Donald Guess, Leslie S. Buck, David Jacquot, Monte T. Mellon, G. Thomas Roberts, and others
9 devised and intended to devise a scheme or artifice to defraud others of money or property, and used
10 and caused others to use the United States mails and/or interstate wire communications in
11 furtherance of the scheme. The targets of this fraudulent scheme are members of the public, and
12 doctors in particular. This mail and wire fraud scheme violates 18 U.S.C. §§ 1341 and 1343.

13
14 35. Beginning at least as early as 1998 and continuing up to the present, defendants L.
15 Donald Guess, Leslie S. Buck, David Jacquot, Monte T. Mellon, G. Thomas Roberts, and others
16 have been engaged in a conspiracy to defraud the United States and aid others to defraud the United
17 States of federal income taxes, by designing, selling and implementing the xélan fraudulent tax
18 reduction schemes alleged above. That conduct violates 18 U.S.C. §371.

19
20 36. Defendants L. Donald Guess, Leslie S. Buck, David Jacquot, Monte T. Mellon, G.
21 Thomas Roberts, and others received the proceeds of this fraudulent scheme and are continuing to
22 dispose of those proceeds. In addition, defendants L. Donald Guess, Leslie S. Buck, David Jacquot,
23 Monte T. Mellon, G. Thomas Roberts, and others are continuing to alienate and dispose of property
24 which is traceable to the proceeds of the fraudulent scheme.

25
26 37. Defendants' scheme to defraud the public and the United States is continuing.
27
28

1 38. Unless restrained by this Court, defendants will continue to promote, sell and service
2 to members of the public in violation of 18 U.S.C. §§1341 and 1343, to conspire to operate a scheme
3 to defraud the United States in violation of 18 U.S.C. §371, and will continue to alienate or dispose
4 of the proceeds of these fraudulent schemes.
5

6 39. The Attorney General is authorized under 18 U.S.C. §1345 and Federal Rule of Civil
7 Procedure 65 to commence an action for an immediate injunction, restraining order, preliminary
8 injunction, permanent injunction, prohibition, the appointment of a receiver, and other measures
9 against these defendants to prevent the continuing injury now occurring to members of the public
10 and to the United States.
11

12 40. Pursuant to 18 U.S.C. §1345, plaintiff United States is entitled to an immediate
13 injunction, restraining order, prohibition, the appointment of a receiver, and other measures against
14 these defendants as warranted to prevent the continuing and substantial injury to the United States
15 and to members of the public.
16

17 **COUNT 2**

18 **Tax Injunction Statute – 26 U.S.C. §7402(a)**

19 41. Paragraphs 1 through 40 of this complaint are hereby realleged and incorporated as
20 though set forth in full herein.
21

22 42. Defendants L. Donald Guess, Leslie S. Buck, Monte T. Mellon, G. Thomas Roberts,
23 Chris G. Evans, Nigel Bailey, and others presently control approximately \$600 million in funds held
24 for the benefit of xélan doctors. If not dissipated, diverted, stolen, or wasted, those funds could be
25 used to pay the substantial tax liabilities that xélan doctors will likely owe as a result of the IRS
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1 disallowing tax benefits the doctors improperly claimed from participating in xélan's fraudulent tax
2 reduction schemes.

3
4 43. It is necessary or appropriate for the administration of the internal revenue laws for
5 the court to freeze the funds controlled by the defendants, so that the xélan doctors for whose benefit
6 the funds are held may have access to the funds to pay anticipated tax deficiencies, and so that the
7 Internal Revenue Service will be able to collect those taxes.

8
9 44. Pursuant to 26 U.S.C. §7402(a), plaintiff United States is entitled to an immediate
10 injunction, restraining order, prohibition, and other measure against these defendants as warranted to
11 aid in the administration of the internal revenue laws, and to prevent the continuing and substantial
12 injury to the United States and to members of the public. The Secretary of the Treasury or his
13 delegate has authorized this action.

14
15 45. Pursuant to 26 U.S.C. §7402(a), the United States is entitled to the appointment of a
16 receiver to take control of all property acquired in these fraudulent schemes, to make an accounting,
17 and to preserve that property for tax administration purposes. The United States is also entitled to an
18 order requiring the defendants to identify property located outside the United States, to repatriate that
19 property, to remain within the United States until after the receiver has identified and secured all
20 property acquired in these fraudulent schemes. Finally, the United States is entitled to any other
21 orders necessary to aid and assist the receiver to identify, obtain control over, and account for the
22 xélan assets and claims to those assets.
23

PRAYER FOR RELIEF

WHEREFORE, the United States requests the following relief against the defendants:

46. Plaintiff asks the Court to enjoin the defendants, their agents, servants, employees and all individuals acting in concert, with them from selling, assigning, hypothecating, pledging, withdrawing, transferring, removing, dissipating, or disposing of any or all of their interest in property that they obtained as a result of their fraudulent conduct.

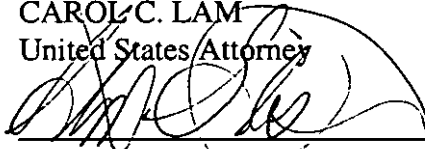
47. Plaintiff asks the Court to appoint a receiver to immediately take control of all property generated from these fraudulent schemes, and to make an accounting of the disposition of all the property acquired or obtained in these fraudulent schemes.

48. Plaintiff asks the Court to order the defendants to repatriate all property generated from these fraudulent schemes, and all proceeds from the sale of such property, which has been removed from the United States or transferred to persons or entities outside the United States.

49. Plaintiff asks the Court to enter a writ of *ne exeat republica*, ordering the individual defendants to surrender their passports, and enjoining the individual defendants from leaving the United States until after the receiver has identified and secured all property acquired in these fraudulent schemes, except as allowed by this Court.

50. Plaintiff asks the Court to grant such other and further relief as it deems just and proper to prevent a continuing and substantial injury to members of the public and the United States.

DATED: October 29, 2004

CAROL C. LAM
United States Attorney

STUART D. GIBSON
Senior Litigation Counsel
Department of Justice, Tax Division

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

UNITED STATES OF AMERICA

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF (EXCEPT IN U.S. PLAINTIFF CASES)

San Diego

DEFENDANTS

'04 CV 2184 W

(AJB)

SEE ATTACHMENT

04 OCT 29 PM 3:45

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT

Defendant

(IN U.S. PLAINTIFF CASES ONLY) SOUTHERN DISTRICT OF CALIFORNIA

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

STUART D. GIBSON TAX DIVISION, US DOJ P.O. BOX 227 WASHINGTON, DC 20044 (202) 307-6586

ATTORNEYS (IF KNOWN)

DEPUTY

DARRELL D. HALLETT, ESQ. 1011 WESTERN AVENUE, SUITE 803 SEATTLE, WA 98104 (206) 223-0800

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff
3 Federal Question (U.S. Government Not a Party)
2 U.S. Government
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business in This
Incorporated and Principal Place of Business in Another
Foreign Nation

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

TITLE 18, UNITED STATES CODE, SECTION 1345 & 26 U.S.C. 7402(a) -

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, TORTS, PERSONAL INJURY, PERSONAL PROPERTY, FORFEITURE/PENALTY, LABOR, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Land Condemnation, Voting, Employment, etc.

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- 1 Original Proceeding
2 Removal from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: YES NO

VIII. RELATED CASE(S) IF ANY (See

JUDGE

Docket Number

DATE 10/29/2004

Handwritten signature of Stuart D. Gibson

SIGNATURE OF ATTORNEY OF RECORD

STUART D. GIBSON, SENIOR LITIGATION COUNSEL

ATTACHMENT:

L. DONALD GUESS,
LESLIE S. BUCK,
DAVID JACQUOT,
MONTE T. MELLON,
G. THOMAS ROBERTS,
CHRIS G. EVANS,
NIGEL BAILEY,
DOCTORS BENEFIT INSURANCE COMPANY, LTD.
DOCTORS BENEFIT HOLDING COMPANY,
DOCTORS INSURANCE SERVICES, INC.,
XELAN INVESTMENT SERVICES, INC.,
XELAN ANNUITY CO., LTD.,
XELAN ADMINISTRATIVE SERVICES, INC.,
XELAN FOUNDATION, INC.,
XELAN OF TEXAS, INC.
XELAN, INC.,
XELAN, THE ECONOMIC ASSOCIATION OF HEALTH PROFESSIONALS, INC.,
PYRAMIDAL FUNDING SYSTEMS, INC., DBA XELAN INSURANCE SERVICES,
XELAN PENSION SERVICES, INC.,
XELAN FINANCIAL PLANNING, INC.,
EURO-AMERICAN TRUST COMPANY,
AMS TRUST COMPANY, and
JOHN DOES, UNKNOWN PERSONS WHO
ARE TRUSTEES OF XELAN LONG TERM CARE TRUST,
XELAN DISABILITY EQUITY TRUST,
XELAN MALPRACTICE EQUITY TRUST, AND
XELAN MEDICAL SAVINGS EQUITY TRUST,

DEFENDANTS.