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12  
 13 **UNITED STATES DISTRICT COURT**  
 14 **CENTRAL DISTRICT OF CALIFORNIA**  
 15 **WESTERN DIVISION**

16 SECURITIES AND EXCHANGE  
 17 COMMISSION,

18 Plaintiff,

19 vs.

20 DIVERSIFIED LENDING GROUP, INC.;  
 21 APPLIED EQUITIES, INC.; and BRUCE  
 FRIEDMAN;

22 Defendants,

23 and

24 TINA M. PLACOURAKIS,

25 Relief Defendant.

Case No. CV 09-1533 R (JTLx)

**MEMORANDUM OF POINTS AND  
 AUTHORITIES IN SUPPORT  
 APPLICATION BY PLAINTIFF  
 SECURITIES AND EXCHANGE  
 COMMISSION FOR  
 PRELIMINARY INJUNCTION AND  
 ORDERS: (1) CONTINUING  
 FREEZE OF ASSETS,  
 (2) APPOINTING A PERMANENT  
 RECEIVER, (3) PROHIBITING  
 THE DESTRUCTION OF  
 DOCUMENTS, (4) GRANTING  
 EXPEDITED DISCOVERY, AND  
 (5) REQUIRING ACCOUNTINGS**

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1 **I. INTRODUCTION AND PRELIMINARY STATEMENT**

2 On March 4, 2009, the Plaintiff Securities and Exchange Commission  
3 (“Commission”) filed its *Ex Parte* Application seeking a Temporary Restraining  
4 Order (“TRO”) against defendants Diversified Lending Group, Inc. (“DLG”),  
5 Applied Equities, Inc. (“AEI”), and Bruce Friedman (“Friedman”) (collectively,  
6 “the Defendants”). The Application was supported by a Complaint, a  
7 Memorandum and the Declarations of Melissa Grant and Nina Yamamoto,  
8 including exhibits thereto. On that date the Court issued its Order entitled:  
9 Temporary Restraining Order and Orders: (1) Freezing Assets, (2) Appointing a  
10 Temporary Receiver, (3) Prohibiting the Destruction of Documents, (4) Granting  
11 Expedited Discovery, and (5) Requiring Accountings; and Order to Show Cause re  
12 Preliminary Injunction and Appointment of Permanent Receiver (“TRO Order”).

13 On March 5, 2009, Defendant DLG was served with a copy of the  
14 Complaint, the TRO Order and the related papers. David A. Gill, the court-  
15 appointed Temporary Receiver, has taken possession and control of the offices  
16 operated by the Defendants. Receiver Gill has also interviewed Friedman at length.

17 The Commission filed its Complaint and emergency Ex Parte Application,  
18 together with its supporting papers, because the Defendants were violating the  
19 antifraud provisions of the federal securities laws. In particular, the Defendants  
20 had raised approximately \$216 million from hundreds of investors nationwide since  
21 at least January 2004 through an ongoing fraudulent scheme. The Defendants  
22 offered and sold securities in the form of one or five year “Secured Investment  
23 Notes” (the “Notes”) representing that DLG pools investor money and invests it  
24 70%-80% in real estate property and 20%-30% in mortgage lending.

25 In truth and in fact, the Defendants did not invest DLG investor proceeds as  
26 represented. Rather, they instead diverted a very large amount of investor money  
27 to undisclosed business ventures or investments unrelated to real property or  
28 mortgage lending, including Friedman’s charitable foundation, equity securities,

1 and businesses operated by affiliates and Friedman's family members and friends.

2        Additionally, Friedman has misappropriated millions of dollars from DLG  
3 for his personal use. Of the approximately \$216 million raised from investors since  
4 2004, Friedman misappropriated at least \$17 million to support his lavish lifestyle,  
5 including purchases of luxury homes, cars, vacations, jewelry, and designer  
6 clothing and accessories.

7        By engaging in this conduct, the Defendants have violated, and unless  
8 enjoined will continue to violate, the antifraud provisions of Section 17(a) of the  
9 Securities Act of 1933 ("Securities Act"), 15 U.S.C. § 77q(a), and Section 10(b) of  
10 the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78j(b), and  
11 Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

12        Because of these blatant and continuing violations of the federal securities  
13 laws, Commission now seeks preliminary and permanent injunctions enjoining  
14 each of the Defendants from violating the above antifraud provisions; orders  
15 continuing the freeze of the assets of each of the Defendants and relief defendant  
16 Tina M. Placourakis ("Relief Defendant Placourakis") and prohibiting them from  
17 destroying documents; the appointment of David A. Gill as permanent receiver  
18 over Defendants DLG and AEI, their subsidiaries and affiliates; expedited  
19 discovery; and an order that the Defendants provide accountings.

## 20 **II. STATEMENT OF FACTS**

### 21 **A. The Defendants**

22        **Diversified Lending Group, Inc.** is a closely held California corporation,  
23 with its principal place of business in Sherman Oaks, California. (Declaration of  
24 Melissa Grant ("Grant Declaration") ¶ 5.)<sup>1</sup> Neither DLG nor its securities is  
25 registered with the Commission. (*See id.*) DLG is licensed by the California  
26 Department of Real Estate. (*See id.*)

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27  
28 <sup>1</sup> References are to the papers filed in support of the initial Ex Parte  
Application for the TRO Order.

1           **Applied Equities, Inc.** is a California corporation and wholly-owned  
2 subsidiary of DLG, with its principal place of business in Sherman Oaks,  
3 California. (Grant Declaration ¶ 6.) AEI is not registered with the Commission.  
4 (*See id.*) It is licensed by the California Department of Insurance. (*See id.*)

5           **Bruce Friedman**, age 59, resides in Los Angeles County, California. (Grant  
6 Declaration ¶ 7.) He is the president, CEO, and sole shareholder of DLG, and  
7 through DLG controls AEI. (*See id.*) Friedman was a real estate broker licensed  
8 by the California Department of Real Estate, but that license expired in 2000. (*See*  
9 *id.*) Friedman is not registered with the Commission. (*See id.*) In 1981, Friedman  
10 was convicted by the State of California for grand theft of personal property (CA  
11 Penal Code § 487.1) and was incarcerated for 23 months. (*See id.*)

12           **B.     The Relief Defendant**

13           **Tina M. Placourakis**, age 49, resides in Scottsdale, Arizona. (Grant  
14 Declaration ¶ 8.) Investor funds were transferred to an account controlled jointly  
15 by Placourakis and Friedman. (Declaration of Nina Y. Yamamoto (“Yamamoto  
16 Declaration”) ¶ 11.)

17           **C.     The Fraudulent Scheme**

18           **1.     The Secured Investment Notes and Solicitation of Investors**

19           Friedman formed DLG, a purportedly income-producing “scratch and dent”  
20 (*i.e.*, damaged and distressed) real estate business, in May 2004 and acquired AEI  
21 as its wholly-owned subsidiary shortly thereafter. (Grant Declaration ¶ 27.) The  
22 Defendants describe DLG as a “boutique mortgage banking firm with more than  
23 80 years experience,” and AEI as DLG’s investment servicing division. (*See id.*)  
24 The Defendants represent that DLG sells Secured Investment Notes (the “Notes”)  
25 to generate proceeds for DLG’s so-called “investment pool,” which purportedly  
26 reinvests those funds in real estate and mortgage lending ventures. Investors have  
27 the option of loaning DLG money through one-year or five-year Notes. DLG  
28 promises to repay investors their principal and guarantees that investors will

1 receive an additional rate of return of either 9% or 12% per month. (*See*  
2 Declaration of Gerrit J. Bol (“Bol Declaration”) ¶¶ 5-6; Declaration of Carl  
3 Pytlinski (“Pytlinski Declaration”) ¶ 4.)

4           **2. The Defendants Falsely Represented that Investor Proceeds**  
5           **Would Be Used to Invest in Real Estate and Mortgage Loans**

6           Both orally and in written DLG materials, the Defendants represented that  
7 investor proceeds would be used for real property and mortgage loans. First, the  
8 Defendants trained sales agents to tell prospective investors that DLG investor  
9 proceeds would be used for these purposes. (Grant Declaration ¶¶ 24, 26;  
10 Declaration of H. Joseph Steck (“Steck Declaration”) ¶¶ 5-8.) Second, through  
11 written materials created and maintained by the Defendants and distributed by the  
12 sales agents, the Defendants again represented to investors that their money would  
13 be pooled and invested in real estate or mortgage loans. (*See id.* ¶ 27.)

14           In reality, the Defendants did not use investor funds solely to invest in real  
15 estate and mortgage loan ventures. Instead, they used investor proceeds for other  
16 undisclosed purposes, such as to fund Friedman’s charitable foundation or to  
17 purchase auction rate securities. (Yamamoto Declaration ¶ 11) They also used  
18 investor funds to finance undisclosed business activity, such as the \$13 million  
19 acquisition of magnetic resonance imaging businesses. (*See id.*) Accordingly, the  
20 proposed Defendants’ representations that DLG would invest substantially all of its  
21 investors’ proceeds in real estate and mortgage loan activities were false.

22           **3. Investor Funds Have Been Misappropriated and Misused by**  
23           **Friedman and Placourakis for Personal Expenditures**

24           Friedman misappropriated at least \$17 million of investor funds to finance  
25 his extravagant lifestyle. (Yamamoto Declaration ¶ 11) Friedman used these  
26 funds to buy lavish vacations, jewelry, designer clothing and accessories,  
27 electronics, tickets for sporting events, and a \$6.5 million home in Malibu,  
28 California. (*See id.*) Placourakis has misappropriated at least \$275,000 in investor

1 funds in 2007 and 2008. (*See id.*) Placourakis received \$200,000 from DLG in a  
2 bank account she holds jointly with Friedman. (*See id.*) In addition, from April  
3 2007 to April 2008, DLG paid Placourakis \$75,504 purportedly for “consulting”  
4 services (*see id.*), despite the fact that Placourakis does not appear to have any  
5 connection to DLG’s real estate and mortgage lending business.

6 Friedman never disclosed to DLG investors that he transferred investor  
7 proceeds from the investment pool to accounts for his own use. (Grant Declaration  
8 ¶¶ 13, 30, Ex. 6.) To the contrary, while he was misappropriating millions of  
9 investors’ funds, Friedman sent DLG investors monthly mailings representing that  
10 DLG continued to use investor proceeds for real estate and mortgage lending. (*See*  
11 *id.* ¶¶ 23, 28-29, Ex. 11.)

### 12 **III. ARGUMENT**

#### 13 **A. The Court Should Issue a Preliminary Injunction Prohibiting** 14 **Violations of the Antifraud Provisions of the Securities Laws**

##### 15 **1. Special Standards Apply to the Commission’s Request for a** 16 **Preliminary Injunction**

17 Section 21(d) of the Exchange Act provides that the Commission may obtain  
18 a permanent or temporary injunction or restraining order without a bond on a  
19 proper showing. 15 U.S.C. § 78u(d). To obtain such relief, the Commission must  
20 demonstrate: (1) a *prima facie* case that a violation of the securities laws has  
21 occurred; and (2) a reasonable likelihood that the violation will be repeated. *See*  
22 *SEC v. Unique Fin. Concepts, Inc.*, 196 F.3d 1195, 1199 n.2 (11th Cir. 1999); *SEC*  
23 *v. United Financial Group, Inc.*, 474 F.2d 354, 358-59 (9th Cir. 1973).

24 The Commission appears before this Court “not as an ordinary litigant, but  
25 as a statutory guardian charged with safeguarding the public interest in enforcing  
26 the securities laws.” *SEC v. Management Dynamics, Inc.*, 515 F.2d 801, 808 (2d  
27 Cir. 1975). The need for temporary relief is of great importance where, as here, the  
28 Commission acts to protect the public interest and the investing public. “[W]hen

1 ‘the public interest is involved in a proceeding of this nature, [the district court’s]  
2 equitable powers assume an even broader and more flexible character than when  
3 only a private controversy is at stake.’” *FSLIC v. Sahni*, 868 F.2d 1096, 1097 (9th  
4 Cir. 1989), *citing FTC v. H.N. Singer, Inc.*, 668 F.2d 1107, 1112 (9th Cir. 1982).

5 For these reasons, the Commission faces a lower burden than a private civil  
6 litigant when seeking a preliminary injunction or other pretrial relief. Unlike with  
7 private litigants, the courts presume irreparable injury in Commission enforcement  
8 actions in which injunctive relief is sought. *United States v. Nutri-Cology, Inc.*,  
9 932 F.2d 394, 397-98 (9th Cir. 1992). Because the evidence in this case  
10 establishes that the Defendants are violating the federal securities laws, and that it  
11 is reasonably likely they will continue to do so unless enjoined, the Court should  
12 grant the Commission’s request for a preliminary injunction.

13 **2. The Defendants Have Violated the Antifraud Provisions**

14 **a) The Interests Sold by Defendants Were Securities**

15 The Notes sold by the Defendants were securities. The offer and sale of a  
16 promissory note is the offer and sale of a “security.” Promissory notes constitute a  
17 “security” both within the meaning of Section 2(a)(1) of the Securities Act, 15  
18 U.S.C. § 77b(a)(1), and Section 3(a)(10) of the Exchange Act, 15 U.S.C. §  
19 78c(a)(10).

20 The Supreme Court has addressed this issue in *Reves v. Ernst & Young*, 494  
21 U.S. 56, 110 S. Ct. 945, 108 L. Ed. 2d 47 (1990), where the Court held that  
22 demand notes issued by the Farmers Cooperative of Arkansas and Oklahoma were  
23 “securities” within the meaning of Section 3(a)(10) of the Exchange Act, 15 U.S.C.  
24 § 78c(a)(10). The *Reves* notes, as here, were marketed as an “Investment  
25 Program.” *Reves*, 494 U.S. at 58-59. The Supreme Court in *Reves* adopted a  
26 “family resemblance” test in determining whether a financial instrument is a  
27 security. Under the “family resemblance” test, a note is presumed to be a security  
28 unless the note resembles one of the several judicially-enumerated instruments that

1 are not securities. The Supreme Court held in *Reves* that the demand notes in issue  
2 were “securities” and hence the District Court had jurisdiction of the antifraud  
3 action under the Exchange Act. *Reves*, 494 U.S. at 73.

4 The Second Circuit in *Pollack v. Laidlaw Holdings, Inc.*, 27 F.3d 808, 812  
5 (2d. Cir. 1994), has identified four factors originally cited in *Reves* as to whether a  
6 note is a security:

7 (1) the motivations that would prompt a reasonable buyer and seller to  
8 enter into the transaction; (2) the plan of distribution of the instrument; (3)  
9 the reasonable expectations of the investing public; and (4) whether some  
10 factor, such as the existence of another regulatory scheme, significantly  
11 reduces the risk of the instrument, thereby rendering application of the  
12 securities laws unnecessary (citing *Banco Espanol de Credito v. Security*  
13 *Pac. Nat’l Bank*, 973 F.2d 51, 55 (2d Cir. 1992)).

14 In *Pollack*, the Second Circuit held that mortgage participation notes were  
15 securities for purposes of the securities laws. In *SEC v. Wallenbrock*, 313 F.3d 532  
16 (9th Cir. 2002), the Ninth Circuit has held that promissory notes issued by an  
17 investment firm, purportedly secured by accounts receivable of foreign latex glove  
18 manufacturers, were securities.

19 The notes sold by Defendants here are clearly securities. They were sold for  
20 the purpose of raising capital for the general business activities of the entity  
21 Defendants; the notes were sold to the general public; and there were no risk  
22 reducing factors making protection of the federal securities laws unnecessary.

23 DLG and the sales agents engaged by AEI to offer and sell the Notes  
24 characterized the Notes as “investments,” the people who bought the Notes as  
25 “investors,” the fund into which their money was deposited as the “investment pool,”  
26 and the objectives of the Fund as DLG’s “investment philosophy.” (Grant  
27 Declaration ¶ 27.) Given those characterizations, a reasonable member of the  
28 investing public would consider DLG’s Notes to be investments, not short term loans.

1 The promissory notes sold by Defendants are also securities because they are  
 2 “investment contracts.” Section 2(a)(1) of the Securities Act and Section 3(a)(10)  
 3 of the Exchange Act define the term “security” to include any “investment  
 4 contract.” An investment contract is (1) an investment of money; (2) in a common  
 5 enterprise; (3) with an expectation of profits derived from the efforts of others.  
 6 *SEC v. Edwards*, 540 U.S. 389, 393-96, 124 S. Ct. 892, 157 L. Ed. 2d 813 (2004);  
 7 *SEC v. W.J. Howey Co.*, 328 U.S. 293, 298-99, 66 S. Ct. 1110, 90 L. Ed. 1244  
 8 (1946); *SEC v. R.G. Reynolds*, 952 F.2d 1125, 1130 (9th Cir. 1991).

9 **b) The Defendants’ Representations and Actions Were**  
 10 **Fraudulent**

11 Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), prohibits fraud in the  
 12 offer or sale of securities, and Section 10(b) of the Exchange Act, 15 U.S.C.  
 13 § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5, prohibit fraud in  
 14 connection with the purchase or sale of any security.

15 The antifraud provisions of the Securities Act and the Exchange Act both  
 16 prohibit fraudulent conduct or practices in connection with the offer or sale of  
 17 securities. *See SEC v. Dain Rauscher, Inc.*, 254 F.3d 852, 855 (9th Cir. 2001).  
 18 Violations of Section 17(a)(1) of the Securities Act, 15 U.S.C. § 77q(a)(1), and  
 19 Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R.  
 20 Section 240.10b-5, thereunder require proof of scienter. Violations of Sections  
 21 17(a)(2) and (3), 15 U.S.C. § 77q(a)(2) and (3) merely require a showing of  
 22 negligence. *Id.* at 856.

23 **c) The Defendants’ Misrepresentations Were Material**

24 Violations of the antifraud provisions require that the misstatements and  
 25 omissions made by the Defendants concern material facts. *Basic Inc. v. Levinson*,  
 26 485 U.S. 224, 231-32, 108 S. Ct. 978, 99 L. Ed. 2d 194 (1988); *TSC Indus., Inc. v.*  
 27 *Northway, Inc.*, 426 U.S. 438, 449, 96 S. Ct. 2126, 48 L. Ed. 2d 757 (1976). *See*  
 28 *also SEC v. Dain Rauscher, Inc.* 254 F.3d at 856. A fact is material if there is a

1 substantial likelihood that a reasonable investor would consider it important in  
2 making an investment decision. *Id.* Liability arises not only from affirmative  
3 representations but also from failures to disclose material information. *SEC v.*  
4 *Dain Rauscher*, 254 F.3d at 855-56. The antifraud provisions impose “a duty to  
5 disclose material facts that are necessary to make disclosed statements, whether  
6 mandatory or volunteered, not misleading.” *SEC v. Fehn*, 97 F.3d 1276, 1290 n.12  
7 (9th Cir. 1996).

8 Here, the Defendants unquestionably made misrepresentations and omissions  
9 of material fact. Investors were led to understand from both oral and written  
10 misrepresentations made by the Defendants that DLG used investor funds to invest  
11 in real estate and mortgage lending ventures that would generate returns of 9% to  
12 12% compounded monthly. (Grant Declaration ¶ 27; Bol Declaration ¶¶ 5-6;  
13 Pytlinski Declaration ¶ 4.) But the Defendants actually used substantial amounts of  
14 investor proceeds to fund other business ventures and investments, including  
15 Friedman’s charitable foundation, auction-rate securities, and the acquisition of  
16 companies in the healthcare industry. (Yamamoto Declaration ¶ 11; Grant  
17 Declaration ¶ 12.) The proposed Defendants also omitted to disclose that Friedman  
18 used at least \$17 million of investor funds for his personal benefit. (Yamamoto  
19 Declaration ¶ 11.) These misrepresentations and omissions are material reasonable  
20 investors would consider them important in deciding whether to invest.

21 Nor did the Defendants disclose Friedman’s prior criminal conviction until  
22 forced to do so by regulatory and media scrutiny in December 2008. (Grant  
23 Declaration ¶ 33, Ex. 15.) A reasonable investor would consider Friedman’s prior  
24 criminal conviction for grand theft most material in deciding whether to invest  
25 with DLG.

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1                                    **d)     The Defendants Acted with Scienter**

2                    Violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder  
 3 require a showing of scienter. *Aaron v. SEC*, 446 U.S. 680, 701-02, 100 S. Ct.  
 4 1945, 64 L. Ed. 2d 611 (1980). Scienter is a “mental state embracing intent to  
 5 deceive, manipulate or defraud.” *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193  
 6 n.12, 96 S. Ct. 1375, 47 L. Ed. 2d 668 (1976). In the Ninth Circuit, scienter may  
 7 be established by a showing of recklessness. *SEC v. Rubera*, 350 F.3d 1094 (9th  
 8 Cir. 2001); *SEC v. Dain Rauscher, Inc.*, 254 F.3d at 856. Proof of recklessness  
 9 may be inferred from circumstantial evidence. *Herman & MacLean v. Huddleston*,  
 10 459 U.S. 375, 390-91, n.30, 103 S. Ct. 683, 74 L. Ed. 2d 548 (1983); *SEC v. Burns*,  
 11 816 F.2d 471, 474 (9th Cir. 1987).

12                    Friedman clearly acted with scienter. In turn, Friedman’s scienter may be  
 13 imputed to DLG and AEI, which Friedman owned and controlled. *See SEC v.*  
 14 *Manor Nursing Centers, Inc.*, 458 F.2d 1082, 1089 n.3 (2d Cir. 1972). As the  
 15 principal of both DLG and AEI, Friedman knew or was reckless in not knowing  
 16 that he and the sales agents represented to DLG investors orally and in writing that  
 17 investor proceeds would be used for real estate and mortgage lending ventures  
 18 when, in reality, investor proceeds were used for other, undisclosed business  
 19 ventures. (Yamamoto Declaration ¶ 11; Grant Declaration ¶ 28.) Additionally,  
 20 Friedman was the signatory on the DLG bank accounts to which investor proceeds  
 21 were transferred and then used for undisclosed business dealings. (Yamamoto  
 22 Declaration ¶ 5.) In short, Friedman made the material misrepresentations and  
 23 omissions in this case with full knowledge of their false and misleading nature.

24                    **3.     There Is a Reasonable Likelihood that the Defendants Will**  
 25                    **Continue Their Fraudulent Scheme unless this Court Issues**  
 26                    **a Preliminary Injunction**

27                    To obtain an injunction, the Commission must establish that there is a  
 28 reasonable likelihood of future violations. *See SEC v. Murphy*, 626 F.2d 633, 655

1 (9th Cir. 1980). Whether a likelihood of future violations exists depends upon the  
2 totality of the circumstances. *Id.* The existence of past violations may give rise to  
3 an inference that there will be future violations. *Id.*; *United States v. Odessa Union*  
4 *Warehouse Coop*, 833 F.2d 172, 176 (9th Cir. 1987); *SEC v. Koracorp Industries,*  
5 *Inc.*, 575 F.2d 692, 698 (9th Cir. 1978). The Court may also appropriately  
6 consider factors such as the degree of scienter involved, the isolated or recurrent  
7 nature of the violative conduct, the defendant's recognition of the wrongful nature  
8 of the conduct, the likelihood that, because of the defendant's occupation, future  
9 violations may occur, and the sincerity of defendant's assurances (if any) against  
10 future violations. *SEC v. Murphy*, 626 F.2d at 655.

11 Because the Defendants' statutory violations here are egregious, because  
12 they raised approximately \$216 million from hundreds of investors nationwide,  
13 and continue with their fundraising efforts and may further dissipate investor  
14 funds, the issuance of a preliminary injunction is both appropriate and necessary.

15 **B. The Court Should Continue the Asset Freeze**

16 It is well established that a district court has the equitable authority to  
17 impose a receivership to preserve assets against further misappropriation and  
18 dissipation, and to clarify the financial affairs of the entities involved for the  
19 benefit of innocent investors. *See SEC v. Wencke*, 622 F.2d 1363, 1372 (9th Cir.  
20 1980) ("*Wencke II*"); *SEC v. Wencke*, 577 F.2d 619, 623 (9th Cir. 1978) ("*Wencke*  
21 *I*"); *SEC v. American Principals Holding, Inc.*, 962 F.2d 1402, 1405-06 (9th Cir.  
22 1992); *SEC v. Manor Nursing Centers, Inc.*, 458 F.2d at 1105.

23 Included in the Court's equitable powers is the authority to freeze assets, of  
24 both parties and nonparties. *SEC v. Hickey*, 322 F.3d 1123, 1131 (9th Cir. 2003);  
25 *SEC v. International Swiss Investments Corp.*, 895 F.2d 1272, 1276 (9th Cir.  
26 1990). Courts use freeze orders to prevent waste and dissipation of assets and to  
27 ensure their availability for disgorgement for the benefit of victims of the fraud.  
28 *See e.g., SEC v. Hickey*, 322 F.3d at 1132; *SEC v. Manor Nursing Centers*, 458

1 F.2d at 1105-06. Indeed, the Ninth Circuit specifically has found that “the public  
2 interest in preserving the illicit proceeds [of a defendant’s fraud] for restitution is  
3 great.” *FTC v. Affordable Media, LLC*, 179 F.3d 1228, 1233 (9th Cir. 1999).  
4 Courts have similarly recognized that a disgorgement order will often be rendered  
5 meaningless unless an asset freeze is imposed and maintained prior to the entry of  
6 final judgment. *See SEC v. Unifund SAL*, 910 F.2d 1028, 1041 (2d Cir. 1990);  
7 *SEC v. Musella*, 578 F. Supp. 425, 429 (S.D.N.Y. 1984).

8 To obtain an asset freeze, the Commission need only establish the mere  
9 possibility that dissipation of assets exists. *FSLIC v. Sahni, Inc.*, 668 F.2d at 1112.  
10 Because the Defendants have already misappropriated at least \$17 million of  
11 investor assets (Yamamoto Declaration ¶ 11) and are seeking to raise new investor  
12 funds, a continued asset freeze is necessary to prevent further misappropriation.

13 An asset freeze is also necessary to prevent Relief Defendant Placourakis  
14 from spending or secreting any more funds so that such funds are available to  
15 satisfy any judgment against the Defendants. A defendant may be joined as a party  
16 defendant notwithstanding the fact that she is not alleged to have violated the  
17 securities laws, to aid in obtaining relief where the defendant possesses illegally  
18 obtained profits but has no legitimate claim to them. *See SEC v. Cavanaugh*, 153  
19 F.3d 129, 136 (2d Cir. 1998), *SEC v. Colello*, 139 F.3d 674, 676 (9th Cir. 1998). A  
20 district court can freeze a defendant’s assets to protect any ill-gotten gains. *See*  
21 *Cavanaugh*, 153 F.3d at 136; *SEC v. Heden*, 51 F.Supp.2d 296, 299 (S.D.N.Y.  
22 1999). Here, Placourakis received over \$275,000 in investor funds. (Yamamoto  
23 Declaration, ¶ 11.)

24 **C. The Appointment of a Permanent Receiver Is Both Necessary and**  
25 **Appropriate**

26 The Court has broad discretion to appoint a permanent equity receiver in  
27 Commission enforcement actions. *Wencke II*, 622 F.2d at 1365. A receiver plays  
28 a crucial role in preventing further dissipation and misappropriation of investors’

1 assets. *SEC v. Wencke*, 783 F.2d 829, 836-37 n.9 (9th Cir. 1986). Factors such as  
2 the integrity of management and the likelihood of future misuse of assets are  
3 critical in determining whether a receiver should be appointed. *See SEC v. Fifth*  
4 *Ave. Coach Lines, Inc.*, 289 F. Supp. 4, 42 (S.D.N.Y. 1968).

5 There is no question that the Court should appoint a permanent receiver over  
6 Defendants DLG and AEI in this case. In addition, a permanent receiver is needed  
7 to prevent the dissipation of investor assets and to ensure that the distribution of  
8 these funds is done equitably and in an orderly fashion. *SEC v. Credit First Fund,*  
9 *LP*, 2006 U.S. Dist. Lexis 96697, at \*49-\*50 (C.D. Cal., Feb. 13, 2006).

10 **D. This Court Should Continue in Effect Its Orders Prohibiting the**  
11 **Destruction of Documents, Expediting Discovery, and Requiring**  
12 **Accountings Are Necessary and Appropriate**

13 The Court's broad equitable powers in Commission enforcement actions  
14 include the ability to order ancillary relief to prohibit document destruction,  
15 expedite discovery, and require accountings. *Wencke II*, 622 F.2d at 1369. This  
16 Court should continue its order prohibiting the destruction of documents because  
17 of the possibility that the Defendants will destroy evidence of their ongoing fraud.  
18 Expedited discovery is appropriate here in order to develop additional evidence  
19 regarding the Defendants' violative conduct, money transfers, and the relationship  
20 between the Defendants and relief defendant Placourakis, and to ensure that any  
21 asset freeze is fully implemented. Finally, it is necessary to identify all available  
22 assets to help ensure that funds and assets are frozen properly and available to  
23 satisfy any future order of disgorgement or civil penalties against the Defendants.  
24 *SEC v. International Swiss Investment Corp.*, 895 F.2d at 1276. Accountings are  
25 appropriate here because it is unclear what happened to millions of dollars in  
26 investor monies.

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1 **IV. CONCLUSION**

2 For the foregoing reasons, the Court should enter a Preliminary Injunction  
3 and the related requested ancillary relief against the Defendants and should appoint  
4 the Temporary Receiver as a Permanent Receiver of the entities.

5  
6 Dated: March 6, 2009

Respectfully submitted,

7 /s/ John M. McCoy III  
8 John M. McCoy, III  
9 Attorney for Plaintiff  
Securities and Exchange Commission

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**PROOF OF SERVICE**

I am over the age of 18 years and not a party to this action. My business address is:

U.S. SECURITIES AND EXCHANGE COMMISSION, 5670 Wilshire Boulevard, 11th Floor, Los Angeles, California 90036-3648

Telephone No. (323) 965-3998; Facsimile No. (323) 965-3908.

On March 6, 2008, I caused to be served the document entitled **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT APPLICATION BY PLAINTIFF SECURITIES AND EXCHANGE COMMISSION FOR PRELIMINARY INJUNCTION AND ORDERS: (1) CONTINUING FREEZE OF ASSETS, (2) APPOINTING A PERMANENT RECEIVER, (3) PROHIBITING THE DESTRUCTION OF DOCUMENTS, (4) GRANTING EXPEDITED DISCOVERY, AND (5) REQUIRING ACCOUNTINGS** on all the parties to this action addressed as stated on the attached service list:

**OFFICE MAIL:** By placing in sealed envelope(s), which I placed for collection and mailing today following ordinary business practices. I am readily familiar with this agency's practice for collection and processing of correspondence for mailing; such correspondence would be deposited with the U.S. Postal Service on the same day in the ordinary course of business.

**PERSONAL DEPOSIT IN MAIL:** By placing in sealed envelope(s), which I personally deposited with the U.S. Postal Service. Each such envelope was deposited with the U.S. Postal Service at Los Angeles, California, with first class postage thereon fully prepaid.

**EXPRESS U.S. MAIL:** Each such envelope was deposited in a facility regularly maintained at the U.S. Postal Service for receipt of Express Mail at Los Angeles, California, with Express Mail postage paid.

**HAND DELIVERY:** I caused to be hand delivered each such envelope to the office of the addressee as stated on the attached service list.

**FEDERAL EXPRESS:** By placing in sealed envelope(s) designated by Federal Express with delivery fees paid or provided for, which I deposited in a facility regularly maintained by Federal Express or delivered to a Federal Express courier, at Los Angeles, California.

**ELECTRONIC MAIL:** By transmitting the document by electronic mail to the electronic mail address as stated on the attached service list.

**FAX:** By transmitting the document by facsimile transmission. The transmission was reported as complete and without error.

**(Federal)** I declare under penalty of perjury that I am a member of the bar of this Court and that the foregoing is true and correct.

Date: March 6, 2009

/s/ John M. McCoy III  
John M. McCoy III

1                    **SEC v. DIVERSIFIED LENDING GROUP, INC., et al.**  
2                    **United States District Court – Central District of California**  
3                    **Case No. CV 09-01533 R (JTLx)**  
4                    **(LA-3591)**

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