

1 misrepresenting to the DLG investors Jackson National's role in the DLG investment
2 program.

3 454. Jackson National further breached its duty to supervise Cano because it
4 knew that the Collateral Assignments, whose value was being misrepresented, were
5 being used as DLG's security for the principal amounts invested by participants in
6 DLG's 9% Program.

7 455. Jackson National breached its duty not to execute the Collateral
8 Assignments when Jackson National had knowledge that the Collateral Assignments
9 contained misrepresentations. Jackson National came to learn that the Collateral
10 Assignments contained misrepresentations. Jackson National also came to learn that
11 the Collateral Assignments that it had issued were being misused in a Ponzi scheme.
12 Notwithstanding this knowledge, Jackson National continued to execute Collateral
13 Assignments.

14 456. Jackson National breached its duty to follow its own procedures for the
15 issuance of annuities because it did not insure, with respect to each Annuity that it
16 issued to DLG, that it received from DLG the questionnaire concerning the annuity.

17 457. Jackson National breached its duties to DLG by failing to supervise
18 Cano to prevent the use of its Annuities which were collaterally assigned to investors
19 in order to make false promises to the investors.

20 458. Jackson National breached its duties to DLG by failing to supervise
21 Mehlman to prevent the use of its annuities which were collaterally assigned to
22 investors in order to make false promises to the investors.

23 459. Jackson National breached its duties to DLG by failing to respond to its
24 knowledge that DLG was disseminating misleading information regarding the
25 amount of the Annuities relative to the amount of the investors' principal
26 investments, which information was known to Jackson National and was known to
27 its employees and agents.

28

1 460. Jackson National breached its duties to DLG by failing to respond to the
2 dissemination of misleading information regarding the use of Jackson National's
3 name and reputation as fully backing the 9% and 12% Programs, which information
4 was known to Jackson National and was known to its employees and agents.

5 461. Jackson National breached its duties to DLG by failing to terminate its
6 relationship with DLG immediately upon learning that DLG was misusing the
7 collateral assignment forms prepared by it to mislead investors into believing that
8 their investments were fully secured.

9 462. Jackson National breached its duties to DLG by failing to follow its
10 established policies and procedures governing the issuance of the Annuities.

11 463. Jackson National breached its duties to DLG by failing to follow its
12 established policies and procedures governing the issuance of the Collateral
13 Assignments.

14 464. Jackson National, Cano and Mehlman breached their duty of care to
15 DLG.

16 465. As a direct and proximate result of Jackson National's, Cano's and
17 Mehlman's breach of their duties of care to DLG, DLG has been damaged.

18 466. Jackson National's negligent issuance of the Annuities and Collateral
19 Assignments enabled DLG to continue to attract new investors to the 9% Program
20 because it appeared to these DLG investors that their principal would be secure.
21 Accordingly, Jackson National enabled DLG to perpetuate its existence well after the
22 point when its true, insolvent financial condition should have been disclosed and the
23 company's affairs wound up.

24 467. It was foreseeable to Jackson National, Cano and Mehlman, who knew
25 that the value of the Collateral Assignments was misrepresented, that the Collateral
26 Assignments were being misused, that Jackson National's name and reputation were
27 being misused, that DLG was engaged in wrongdoing and that DLG was incurring
28 additional liabilities as a result thereof and that DLG might be subjected to

1 investigation and receivership proceedings.

2 468. DLG increased its liabilities as a result of actions of Jackson National,
3 Cano and Mehlman as new investors relied on Jackson National's role in the
4 investment program to contribute new monies, thereby creating new claims of DLG.
5 As a result, DLG is now liable to these investors.

6 469. Jackson National's, Cano's and Mehlman's perpetuation of DLG's
7 existence beyond its insolvency increased the likelihood that DLG would be
8 subjected to investigation by government agencies and receivership proceedings. As
9 a direct and proximate result of the breach of its duties, DLG has been harmed by
10 having to incur all of the costs associated with its receivership, including
11 investigation, accounting, and legal fee costs.

12 470. Jackson National's, Cano's and Mehlman's perpetuation of DLG's
13 existence from at least March 23, 2007 through March 4, 2009, caused DLG to
14 suffered damages by way of the increased liabilities arising from the new
15 investments made to DLG in reliance on Jackson National's involvement in the
16 fraudulent scheme and by the looting of the corporate assets by the DLG Defendants.

17 471. Jackson National's, Cano's and Mehlman's perpetuation of DLG's
18 existence from at least March 23, 2007 through March 4, 2009, caused DLG to
19 expend corporate assets on investigating wrongdoing, accounting for investor
20 monies, and pursuing legal actions that DLG would not have had to expend had
21 Jackson National, Cano and Mehlman not made the misrepresentations in the first
22 instance and had the truth of DLG's operations been disclosed.

23 472. As a direct and foreseeable result of the conduct of Jackson National,
24 Cano and Mehlman, DLG remained in existence beyond the point when it should
25 have been dissolved. DLG's corporate existence was artificially maintained and
26 prolonged, and DLG suffered injury from this fraudulently extended life, dissipation
27 of assets and increased insolvency.

28

1 business or a transaction, for which any property remaining with DLG was
2 unreasonably small in relation to the business or transaction.

3 483. The Receiver is entitled to avoid the Transfers under California Civil
4 Code section 3439.04(a)(2). Furthermore, under California Civil Code section
5 3439.08, the Receiver is entitled to recover from Jackson National, the DLG
6 Defendants, Mehlman, American Accounting, Belvani Inc. and the Sales People the
7 value of the Transfers, plus interest thereon as allowed by law.

8
9 **TWELFTH CLAIM FOR RELIEF**

10 **(For Avoidance and Recovery of Fraudulent Transfers)**

11 **(Against Defendant Jackson National, the DLG Defendants, Mehlman,
12 American Accounting, Belvani Inc., and the Sales People)**

13 484. The Receiver repeats and re-alleges the allegations contained in
14 paragraphs 1 through 331, inclusive, hereof and incorporates the same herein by this
15 reference.

16 485. The Receiver is informed and believes, and based thereon alleges, that
17 when DLG made the Transfers, it had already incurred, or believed or reasonably
18 should have believed that it would incur, debts that would be beyond its ability to
19 pay as such debts matured.

20 486. The Receiver is entitled to avoid the Transfers under California Civil
21 Code section 3439.04(a)(2). Furthermore, under California Civil Code section
22 3439.08, the Receiver is entitled to recover from Jackson National, the DLG
23 Defendants, Mehlman, American Accounting, Belvani Inc. and the Sales People the
24 value of the Transfers, plus interest thereon as allowed by law.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

THIRTEENTH CLAIM FOR RELIEF

(Against the Subsequent Transferee Defendants)

(For Avoidance and Recovery of Fraudulent Transfers)

487. The Receiver repeats and re-alleges the allegations contained in paragraphs 1 through 331, inclusive, hereof and incorporates the same herein by this reference.

488. The Receiver is informed and believes, and based thereon alleges, that the Subsequent Transfers were made with the actual intent to hinder, delay, or defraud one or more of DLG's creditors.

489. The Receiver is entitled to avoid the Subsequent Transfers pursuant to California Civil Code section 3439.05. Furthermore, under California Civil Code section 3439.08, the Receiver is entitled to recover from the Subsequent Transferee Defendants the property transferred to them, or the value of the Subsequent Transfers, plus interest thereon as allowed by law.

FOURTEENTH CLAIM FOR RELIEF

(For Avoidance and Recovery of Fraudulent Transfers)

(Against the Subsequent Transferee Defendants)

490. The Receiver repeats and re-alleges the allegations contained in paragraphs 1 through 331, inclusive, hereof and incorporates the same herein by this reference.

491. The Receiver is informed and believes, and based thereon alleges, that the Transfers were made without fair consideration or reasonably equivalent value having been given in exchange.

492. The Receiver is informed and believes, and based thereon alleges, that the Transfers occurred at a time when DLG was insolvent or that DLG became insolvent as a result of the Transfers.

1 were being used to perpetrate a Ponzi scheme, it engaged in fraudulent business
2 practices banned under the UCL.

3 506. Because the seriousness of the harm that Jackson National has caused to
4 DLG so outweighs the utility, if any, of its conduct, Jackson National has engaged in
5 unfair business practices banned by the UCL. Jackson National also engaged in
6 unfair practices under the UCL because its misconduct enabled it to gain an
7 advantage over those of its competitors who do not profit by making negligent
8 misrepresentations.

9 507. The DLG Defendants defrauded DLG, to which they owed fiduciary
10 duties, and therefore engaged in unlawful and fraudulent business practices banned
11 by the UCL.

12 508. The actions of the DLG Defendants constitute unfair business practices
13 banned by the UCL because the seriousness of the harm that they caused to DLG
14 outweighs the utility, if any, of those actions. The DLG Defendants also engaged in
15 unfair business practices because, by misappropriating investor monies and engaging
16 in conduct that was harmful to DLG, the DLG Defendants were able to gain an
17 advantage on those of its competitors who operate within the boundaries of the law.

18 509. Accordingly, the Receiver may obtain all remedies and penalties
19 authorized by the statute, including without limitation, restitution, disgorgement, and
20 other penalties for each unfair, illegal, or fraudulent business practice, and attorney's
21 fees.

22
23 **EIGHTEENTH CLAIM FOR RELIEF**

24 **(For Unauthorized Sale of Unregistered Securities)**

25 **(Cal. Corp. Code § 25110)**

26 **(Against DLG Defendants and Sales People)**

27 510. The Receiver repeats and re-alleges the allegations contained in
28 paragraphs 1 through 331, inclusive, hereof and incorporates the same herein by this

1 reference.

2 511. Between May 18, 2004 and March 4, 2009, DLG was engaged in the
3 sale of securities which were not qualified or exempted from qualification under
4 California law.

5 512. The DLG Defendants sold the securities directly or retained the Sales
6 People to sell the securities to the public.

7 513. The Sales People sold DLG's securities to the public even though the
8 securities were not qualified or exempted from qualification under California law.

9 514. As a result, DLG increased its insolvent position by adding additional
10 liabilities with each new sale of security as an investment to the DLG investors.

11 515. Pursuant to Cal. Corp. Code § 25503, the Receiver is entitled to
12 judgment against the DLG Defendants and the Sales People in the amount to be
13 proven at the time of trial.

14

15 **NINETEENTH CLAIM FOR RELIEF**

16 **(For Deepening Insolvency)**

17 **(Against Defendant Jackson National)**

18 516. The Receiver repeats and re-alleges the allegations contained in
19 paragraphs 1 through 331, inclusive, hereof and incorporates the same herein by this
20 reference.

21 517. Jackson National issued more and more Annuities, and permitted more
22 and more Collateral Assignments, which misrepresented that 100% of the principal
23 amounts that investors in the 9% Program had invested was secure, permitting DLG
24 to continue a business model which Jackson National knew was fraudulent.

25 518. The truth was that the Annuities that Jackson National had issued and
26 then collaterally assigned, ostensibly to secure the investments of 9% Program
27 participants, were funded in an amount that was equal only to 10% of the value of the
28 principal amounts invested in the 9% Program, not 100% of the value.

1 519. Jackson National knew that DLG was misrepresenting the value of the
2 Collateral Assignments and that DLG was misrepresenting Jackson National's role in
3 the fraudulent scheme as a full "reinsurer" of the 9% Program..

4 520. In the March and October Cease and Desist Letters that Jackson
5 National issued to DLG, Jackson National revealed its knowledge of the scheme by
6 which the Collateral Assignments were presented to investors as the means their
7 principal would be secured.

8 521. Notwithstanding the fact that Jackson National had knowledge of the
9 misrepresentations being made by DLG, it continued to issue Annuities, to
10 collaterally assign the annuities, and to collect premiums, and fees for the Annuities
11 and their collateral assignment.

12 522. The premiums, commissions, and fees that Jackson National and its
13 agents receive for the issuance of the Annuities and the collateral assignment of
14 Annuities is based on the value of the Annuities. The greater the value of the annuity,
15 the greater the premiums, commissions, and fees that Jackson National and its agents
16 receive.

17 523. As of at least March 23, 2007, DLG was insolvent.

18 524. Jackson National continued to issue the Annuities and to permit the
19 Collateral Assignments even though Jackson National knew that the Annuities and
20 the Collateral Assignments did not have the value that they purported to have.
21 Accordingly, Jackson National made DLG appear to be a creditworthy company and
22 a sound investment opportunity when, in reality, it was insolvent and on the brink of
23 being investigated by the United States Securities and Exchange Commission and
24 subjected to receivership proceedings.

25 525. Jackson National continued to permit the use of its name and reputation
26 by DLG as a reinsurer of DLG's program despite the fact that Jackson National knew
27 it was not fully backing DLG's program.

28 526. Accordingly, the actions of Jackson National enabled DLG to perpetuate

1 its existence well after the point when its true, insolvent financial condition should
2 have been disclosed and the company's affairs wound up. Specifically, because of
3 Jackson National's actions alleged herein, DLG was able to continue to attract new
4 investors to the 9% Program. These investors were eventually harmed by the
5 collapse of DLG and lost the value of their investments. As a result, DLG is now
6 liable to these investors.

7 527. Because of Jackson National's actions as alleged herein, DLG remained
8 in existence beyond the point when it should have been dissolved. DLG's business
9 was fraudulently continued for almost 2 years beyond when Jackson National knew
10 of DLG's fraudulent scheme, at which time DLG was insolvent. During this period,
11 DLG suffered massive losses and became more and more deeply insolvent, costing
12 creditors substantial value. As a direct and proximate result of Jackson National's
13 conduct, DLG's corporate existence was artificially maintained and prolonged, and
14 DLG suffered injury from the fraudulently extended life, dissipation of assets, and
15 increased insolvency.

16 528. Jackson National's Actions allowed DLG to remain operating when it
17 was clear DLG was insolvent and engaged in a fraud, resulting in further debts to an
18 increased number of creditors, and thereby reducing any potential recovery for
19 creditors in this receivership case.

20 529. DLG has had to expend corporate assets on investigating wrongdoing,
21 accounting for investor monies, and pursuing legal actions that DLG would not have
22 had to expend but for Jackson National's actions and had the truth of DLG's
23 operations been disclosed.

24 530. Accordingly, Jackson National's misrepresentations increased the
25 likelihood that DLG would be subjected to investigation by the United States
26 Securities and Exchange Commission and receivership proceedings.

27 531. It was foreseeable to Jackson National that DLG was involved in
28 wrongdoing and that it might be subject to government investigation and receivership

1 because Jackson National knew that DLG was representing to investors that their
2 principal was 100% secured when, in reality, that principal was secured only up to
3 10%.

4 532. Accordingly, because Jackson National permitted the fraudulent use of
5 its name and reputation and program relating to collateral assignments of annuities
6 for about two years or more after DLG became insolvent, it has violated the
7 deepening insolvency doctrine and is liable for damages in amount to be determined
8 at trial.

9
10 **TWENTIETH CLAIM FOR RELIEF**

11 **(For Deepening Insolvency)**

12 **(Against the DLG Defendants)**

13 533. The Receiver repeats and re-alleges the allegations contained in
14 paragraphs 1 through 331, inclusive, hereof and incorporates the same herein by this
15 reference.

16 534. Once DLG became insolvent, the DLG Defendants had a duty to inform
17 the DLG board of directors of that insolvency and to recommend steps to dissolve or
18 reorganize DLG so as to lessen the adverse effects of deepening insolvency. The
19 DLG Defendants failed to do so. This concealment of the deterioration of DLG's
20 financial condition artificially prolonged DLG's existence. In doing so, the DLG
21 Defendants harmed DLG.

22 535. Once DLG became insolvent, the DLG Defendants had a duty to inform
23 all interested parties so that steps could be taken to preserve the corporation's assets.
24 The DLG Defendants failed to do so. This concealment of the deterioration of
25 DLG's financial condition artificially prolonged DLG's existence. This failure to act
26 harmed DLG while benefiting the DLG Defendants.

27 536. At all points in time, the DLG Defendants had a duty of loyalty to DLG.
28 Over the course of time, however, the DLG Defendants abdicated this duty by

1 exercising dominion and control over DLG for the purpose of enriching themselves.

2 537. The harm suffered by DLG by the deepening insolvency caused by the
3 DLG Defendants is separate and distinct from the harm suffered by the investors in
4 DLG.

5 538. The law recognizes that a party who suffers injury or loss by reason of
6 the conduct of a tortfeasor is entitled to just and full compensation.

7 539. By deepening the insolvency of DLG, the DLG Defendants injured
8 DLG.

9 540. DLG is entitled to just and full compensation as a result of these
10 injuries.

11
12 **TWENTY-FIRST CLAIM FOR RELIEF**

13 **(For Unjust Enrichment)**

14 **(Against All Defendants)**

15 541. The Receiver repeats and re-alleges the allegations contained in
16 paragraphs 1 through 331, inclusive, hereof and incorporates the same herein by this
17 reference.

18 542. As described in detail above, all defendants benefited from receiving
19 property from DLG to which they were not entitled and benefitted unjustly at DLG's
20 expense.

21 543. It is inequitable and unjust for Defendants to have received, been
22 enriched by, and retained without payment of value, such benefits from DLG.

23 544. The Receiver is informed and believes, and based thereon alleges, that
24 as a result of the transactions herein alleged, the Defendants have been unjustly
25 enriched, so that the Receiver is entitled to recover from the Defendants the property
26 that was transferred to or for their benefit, or the value thereof, plus interest thereon
27 at the legal rate.

28

1 **WHEREFORE**, the Receiver prays for judgment as follows:
2

3 **ON THE FIRST THROUGH FOURTH CLAIMS FOR RELIEF:**

4 1. For actual and foreseeable damages to be determined according to proof
5 at trial because the Receiver has not yet obtained all information supporting claims
6 against DLG, but he estimates that the total damages may be at least \$200 million;

7 2. For an award of punitive damages in a sum to be determined according
8 to proof at trial;

9 **ON THE FIFTH THROUGH EIGHTH CLAIMS FOR RELIEF:**

10 1. For actual and foreseeable damages to be determined according to proof
11 at trial because the Receiver has not yet obtained all information supporting claims
12 against DLG, but he estimates that the total damages may be at least \$200 million;

13 **ON THE NINTH THROUGH TWELFTH CLAIMS FOR RELIEF:**

14 1. That a judgment be entered in favor of the Receiver recovering the
15 property transferred to Defendants Jackson National, the DLG Defendants,
16 Mehlman, American Accounting, Belvani Inc. and the Sales People or recovering the
17 value of the respective Transfers made to each of them for the benefit of the
18 Receivership, plus interest thereon at the legal rate;

19 **ON THE THIRTEENTH THROUGH SIXTEENTH CLAIMS FOR RELIEF:**

20 1. That a judgment be entered in favor of the Receiver recovering the
21 property transferred to the Subsequent Transferee Defendants or recovering the value
22 of the respective Subsequent Transfers made to each of them for the benefit of the
23 Receivership, plus interest thereon at the legal rate;

24 **ON THE SEVENTEENTH CLAIM FOR RELIEF:**

25 1. For restitutionary damages to be determined according to be proof at
26 trial because the Receiver has not yet obtained all information supporting claims
27 against DLG, but he estimates that the total damages may be at least \$200 million;
28

1 2. For an award of punitive damages in a sum to be determined according
2 to proof at trial;

3 **ON THE EIGHTEENTH CLAIM FOR RELIEF:**

4 1. For actual and foreseeable damages to be determined according to be
5 proof at trial, but estimated to be at least \$200 million;

6 **ON THE NINETEENTH CLAIM FOR RELIEF:**

7 1. For actual and foreseeable damages to be determined according to be
8 proof at trial, but estimated to be at least \$200 million;

9 **ON THE TWENTIETH CLAIM FOR RELIEF:**

10 1. For actual and foreseeable damages to be determined according to be
11 proof at trial, but estimated to be at least \$200 million;

12 **ON THE TWENTY-FIRST CLAIM FOR RELIEF:**

13 1. For actual and foreseeable damages to be determined according to be
14 proof at trial, and in no event less than the sum of \$75,429.962;

15 **ON ALL CLAIMS FOR RELIEF:**

- 16 1. For costs of suit incurred herein;
17 2. For an award of interest where authorized by law;
18 3. For such other and further relief as the Court may deem just and proper.

19 Dated: March 2, 2010

DANNING, GILL, DIAMOND & KOLLITZ, LLP

21
22 By: 

Kathy Bazoian Phelps
Attorneys for David A. Gill, Receiver