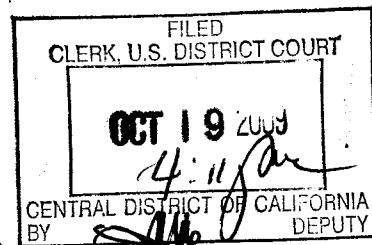


ORIGINAL

1 CHARLES E. PATTERSON (CA SBN 120081)
CPatterson@mof.com
2 SETH M. HUFSTEDLER (CA SBN 21421)
SethHufs@mof.com
3 MATTHEW D. PETERSON (CA SBN 251490)
MPeterson@mof.com
4 MORRISON & FOERSTER LLP
555 West Fifth Street
5 Los Angeles, California 90013-1024
Telephone: 213.892.5200
6 Facsimile: 213.892.5454



7 SEAN P. FITZGERALD
Sean.fitzgerald@kreisenderle.com
8 KREIS, ENDERLE, HUDGINS & BORSOS, P.C.
171 Monroe Ave. N.W., Suite 900B
9 Grand Rapids, Michigan 49503
Telephone: 616.254.8400

10 Attorneys for KRAIG S. IVIE, SEAN P.
11 FITZGERALD, HEATHER A. BELL

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

16 SECURITIES AND EXCHANGE
17 COMMISSION,

18 Plaintiff,

19 v.

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

22 Defendants.

23 and

24 TINA M. PLACOURAKIS,

25 Relief Defendant.
26
27
28

Case No. CV 09-01533-R-JEMx

**RESPONSE AND BRIEF IN
OPPOSITION TO
RECEIVER'S EX PARTE
APPLICATION FOR ORDER
TO SHOW CAUSE RE
KRAIG S. IVIE, SEAN P.
FITZGERALD, ESQ., AND
HEATHER A. BELL, ESQ. TO
BE HELD IN CONTEMPT OF
PRIOR COURT ORDER
ENTERED MARCH 30, 2009**

Date: November 9, 2009
Time: 11:00 a.m.
Location: Courtroom 8
312 North Spring Street
Los Angeles, California

1 **INTRODUCTION**

2 In an order issued March 30, 2009, this Court prohibited parties who are
3 “seeking relief of any kind” from commencing suit against the defendants in this
4 action, including Diversified Lending Group, Inc. (“DLG”). Kraig S. Ivie, Sean P.
5 Fitzgerald, Heather A. Bell (collectively, the “Ivie Parties”), were aware of this
6 order, and believed that as long as a new claim did not seek any relief from DLG,
7 the claim would not violate this Court’s prohibition. Pursuant to this interpretation
8 and belief, the Ivie Parties filed a suit in the Western District of Michigan
9 (“WDMI”), and included DLG as a defendant, but stayed their claims against DLG
10 in the complaint itself. Because the Ivie Parties have acted consistent with the
11 language and spirit of the Court’s order, the Ivie Parties respectfully request the
12 Court deny the application for a contempt order that has been filed against them.

13 **LEGAL STANDARD**

14 Sanctions for civil contempt may be imposed to coerce obedience to a court
15 order, or to compensate the party pursuing the contempt action for injuries resulting
16 from the contemptuous behavior, or both. *United States v. United Mine Workers*,
17 330 U.S. 258, 303-04 (1947).

18 A finding of contempt against a party who allegedly violates a court order
19 requires (1) a finding that the party has “violated a court order, (2) beyond
20 substantial compliance, (3) not based on a good faith and reasonable interpretation
21 of the order, (4) by clear and convincing evidence.” *Labor/Comm. Strategy Ctr. v.*
22 *Los Angeles County Metropolitan Transportation Authority*, 564 F.3d 1115, 1123
23 (9th Cir. 2009) (citation omitted); *see also Vertex Distributing, Inc. v. Falcon Foam*
24 *Plastics, Inc.*, 689 F.2d 885, 889 (9th Cir. 1982) (contempt must be proven by clear
25 and convincing evidence).

26 Where the language of an order is ambiguous, courts have found that absent a
27 clear and convincing showing to the contrary by the moving party, no resultant
28 finding of contempt will occur. *See Labor/Comm*, 564 F.3d at 1124. Parties who

1 appear to act in good faith and on the basis of reasonable interpretation of a court's
2 order should not be held in contempt. *Vertex Distributing*, 689 F.2d. at 889.
3 Indeed, "if a violating party has taken 'all reasonable steps' to comply with the
4 court order, technical or inadvertent violations of the order will not support a
5 finding of civil contempt." *Gen. Signal Corp. v. Donallco, Inc.*, 787 F.2d 1376,
6 1379 (9th Cir. 1986).

7 Substantial compliance with a consent judgment or injunction is a valid
8 defense to a finding of civil contempt. *Vertex Distributing*, 689 F.2d at 891. Even
9 where compliance by parties does not follow the letter of the governing court order,
10 courts are not willing to find that an apparent minor violation of the order is
11 sufficient to hold the violating party in contempt. *See id.* at 891-92.

12 Compensatory awards must "be based upon evidence of complainant's actual
13 loss." *United Mine Workers*, 330 U.S. at 304.

14 BACKGROUND

15 On March 30, 2009, this Court issued an *Amended Order of Preliminary*
16 *Injunction and Orders: (1) Continuing Asset Freeze, (2) Appointing a Permanent*
17 *Receiver, (3) Prohibiting the Destruction of Documents, (4) Granting Expedited*
18 *Discovery, and (5) Recovering Accountings*. The March 30, 2009 order was
19 substantially similar to orders previously issued on March 10, 2009 and March 4,
20 2009 (collectively, the "Order"). Section IX of the Order precludes investors who
21 are "seeking relief of any kind" from commencing suit against DLG:

22 IT IS FURTHER ORDERED that, except by leave of this Court,
23 during the pendency of this receivership, all clients, investors, trust
24 beneficiaries, note holders, creditors, claimants, lessors, consultant
25 groups and all other persons or entities *seeking relief of any kind*, in
26 law or in equity, from the Defendants...are hereby restrained and
27 enjoined from . . . commencing, prosecuting, continuing or enforcing
28 any suit or proceeding (emphasis added.)

29 Mr. Ivie is an investor who lost his retirement savings, in the amount of
30 roughly \$2.2 million, through his investment in DLG, which was supposedly "re-

1 insured” through a policy issued by Jackson National Life Insurance Co.
2 (“Jackson”). In an effort to recoup his losses, on August 13, 2009, Mr. Ivie filed a
3 Complaint against Defendants Jackson and DLG, the latter in name only and
4 subject to the stay imposed by the Order, in the Western District of Michigan (the
5 “WDMI Complaint”), attached hereto as Exhibit A. The WDMI Complaint
6 contained the following language in Footnote 1 to apprise the Court in the WDMI
7 of the stay of litigation and existence of the Order:

8 All claims against DLG have been stayed pursuant to the March 10, 2009
9 Stipulation and Order filed regarding Consent to Issuance of Preliminary
10 Injunction and Other Relief, and Request for Limited Relief from Asset
11 Freeze (a copy of which is attached as Exhibit A), issued in the action
12 entitled Securities and Exchange Commission v. Diversified Lending Group,
13 Bruce Friedman, Applied Equities, Inc., et al., Case No. CV-09:01-01533-R-
(JTLx). Subject to the stay, Plaintiff is including DLG as a Defendant, and
continuing to pursue his claims against Jackson National Life Insurance Co.

14 As noted in the footnote, the WDMI Complaint included a copy of the Order as an
15 exhibit.

16 The Ivie Parties included DLG as a defendant in the WDMI Complaint to
17 zealously protect Mr. Ivie’s interests. The Ivie Parties believed that, out of an
18 abundance of caution, DLG needed to be named to ensure the statutes of limitation
19 were tolled. The Ivie Parties further believed that, under relevant 6th Circuit law,
20 DLG was a necessary and indispensable party under Federal Rules of Civil
21 Procedure Rule 19, that must be named as a defendant.

22 Subsequent to filing, the Receiver was personally served on August 21, 2009,
23 with a copy of the WDMI Complaint. Upon objection from the Receiver, the Ivie
24 Parties further sought to comply with the Order by offering to execute a formal stay
25 with the Receiver on that same day.¹ This request was denied by the Receiver, who

26 _____
27 ¹ See the e-mail exchange between Ms. Bell and Receiver’s counsel dated
28 August 21, 2009, attached hereto as Exhibit B.

1 demanded that the only possible recourse would be to dismiss DLG, and argued all
2 litigation against DLG was precluded by the Order.

3 In response, the Ivie Parties explained their understanding that under the
4 terms of the Order, actions against DLG were permitted as long as no relief was
5 sought from DLG. Thus, because the WDMI Complaint did not seek relief from
6 DLG, the Order had not been violated. The Receiver did not respond to this
7 position, and instead expressed a concern regarding the actions of other unrelated
8 individuals and resulting costs, questioned why DLG was named in the WDMI
9 Complaint, and again demanded a dismissal.

10 The Ivie Parties explained to the Receiver' that the WDMI court was well
11 advised that claims against DLG were stayed pursuant to the Order. The Ivie
12 Parties further explained that they had no desire to cause unnecessary expense, cost
13 or injury to the DLG receivership estate and that staying Mr. Ivie's causes of action
14 against DLG should have insulated the receivership estate from any unnecessary
15 expense or cost. The Ivie Parties reiterated their offer to enter into a stipulation for
16 a formal order of stay in favor of DLG in the WDMI action. The Receiver rejected
17 this offer.

18 To further insure compliance with the Order, after the Receiver advised it
19 would not agree to a stay of proceedings in the WDMI, the Ivie Parties reached out
20 to the lead counsel for the United States Securities and Exchange Commission (the
21 "Commission") in this matter. On Monday August 24, 2009 and again on Tuesday,
22 August 25, 2009, Ms. Bell sent an email to John McCoy, Esq. at the Commission to
23 seek a resolution to alleviate the Receiver's concerns, while still complying with the
24 Order and preserving Mr. Ivie's claims.² No response to these inquiries was
25 received.

26

27 ² A copy of this e-mail correspondence is attached hereto as Exhibit C.
28

1 On September 22, 2009, to prevent any doubt regarding the Ivie Parties'
2 intent to comply with the Order, the Ivie Parties filed in the WDMI court a *Motion*
3 *for Stay of Proceedings Against Defendant Diversified Lending Group, Inc.*
4 pending the lifting of the Order.³ On the same date, Ms. Bell sent counsel for the
5 Receiver a letter to reiterate Mr. Ivie's position.⁴ No opposition was filed to the
6 motion and the WDMI court entered an *Order Staying Proceedings Against*
7 *Defendant Diversified Lending Group, Inc.* on October 14, 2009.⁵

8 Concurrent to these proceedings, another matter is pending in the Central
9 District of California against DLG and Jackson: *Markowitz v. DLG, et al.*, Case No.
10 2:09-cv-00483-FMC-RZx. The *Markowitz* matter was filed prior to the time of
11 entry of the Order. After the issuance of the Order, and pursuant thereto, the
12 *Markowitz* Court entered an order staying proceedings against DLG.⁶ DLG was not
13 dismissed as a party to the suit, nor did DLG or the Receiver seek dismissal from
14 that suit. On the contrary, DLG, through counsel, provided notice to the Court that
15 the claims against it should be stayed pursuant to the Order.⁷ At no point has the
16 Receiver demanded the dismissal of the claims against DLG in the *Markowitz*
17 matter. Indeed, on October 1, 2009, Markowitz filed his Second Amended
18

19 ³ A copy of the *Motion for Stay of Proceedings Against Defendant*
20 *Diversified Lending Group, Inc.* and related supportive papers are attached hereto
21 as Exhibit D.

22 ⁴ A copy of the September 22, 2009 letter is attached hereto as Exhibit E.

23 ⁵ A copy of the *Order Staying Proceedings Against Defendant Diversified*
Lending Group, Inc. is attached hereto as Exhibit F.

24 ⁶ A copy of the *Order Granting Stay as to Defendant Diversified Lending*
25 *Group, Inc.* dated July 21, 2009 is attached hereto as Exhibit G.

26 ⁷ A copy of DLG's *Notice of Stay of Action Pursuant to Stipulation and*
27 *Order Re Consent to Issuance of Preliminary Injunction and Other Relief, and*
Request for Limited Relief from Asset Freeze is attached hereto as Exhibit H.

1 Complaint, again naming DLG as a defendant, without objection from DLG or the
2 Receiver.⁸

3 On October 1, 2009, the Receiver filed its *Application for Order to Show*
4 *Cause Re Kraig S. Ivie, Sean P. Fitzgerald, Esq., and Heather A. Bell, Esq. to be*
5 *Held in Contempt of Prior Court Order Entered March 30, 2009*, along with a
6 supporting declaration, request for judicial notice, and proposed order (collectively,
7 the “Application”).

8 On October 6, 2009, the Court issued the *Order to Show Cause Why Kraig S.*
9 *Ivie, Sean P. Fitzgerald, Esq., and Heather A. Bell, Esq., Should Not be Held in*
10 *Contempt and Assessed Sanctions for Failure to Obey Order Entered March 30,*
11 *2009.*

12 **ARGUMENT**

13 **I. THE IVIE PARTIES ACTED IN GOOD FAITH TO COMPLY**
14 **WITH THE ORDER’S TERMS**

15 Because the Ivie Parties acted consistent with a reasonable and good faith
16 interpretation of the Order, a finding of contempt is not warranted. *Labor/Comm.*
17 *Strategy Ctr. v. Los Angeles County Metropolitan Transportation Authority*, 564
18 F.3d 1115, 1123 (9th Cir. 2009).

19 The Order prohibited commencing suit by any party “seeking relief of any
20 kind.” The Ivie Parties interpreted this qualifying language to mean that they may
21 file suit as long as they did not seek any relief from DLG. The Ivie Parties believed
22 that had the Order intended to prescribe all forms of claims from being filed,
23 irrespective of a desire to seek relief from DLG, it would not have contained the
24 “seeking relief” phrase. Thus, the Ivie Parties believed they could file the WDMI
25 Complaint, naming DLG as a defendant, provided that they (1) alert the WDMI

26 _____
27 ⁸ A copy of Markowitz’s Second Amended Complaint is attached hereto as
28 Exhibit I.

1 court to the stay and indicate Mr. Ivie was only proceeding with his claims against
2 Jackson, and (2) did not attempt in any fashion to seek relief from DLG until the
3 resolution of the Order. (Declaration of Sean P. Fitzgerald in Support of Response
4 and Brief in Opposition to Receiver's Ex Parte Application for Order to Show
5 Cause Re Kraig S. Ivie, Sean P. Fitzgerald, Esq., and Heather A. Bell, Esq. to be
6 held in Contempt of Prior Court Order Entered March 30, 2009 ("Fitzgerald
7 Declaration") ¶ 2; Declaration of Heather A. Bell in Support of Response and Brief
8 in Opposition to Receiver's Ex Parte Application for Order to Show Cause Re
9 Kraig S. Ivie, Sean P. Fitzgerald, Esq., and Heather A. Bell, Esq. to be held in
10 Contempt of Prior Court Order Entered March 30, 2009 ("Bell Declaration") ¶ 2.)

11 Consistent with this belief, and in desire to comply with the Order, the Ivie
12 Parties indicated on the first page of the WDMI Complaint that all their claims
13 against DLG were stayed pursuant to the Order. The Ivie Parties also attached a
14 copy of the Order to the WDMI Complaint. To date, pursuant to the Order, the Ivie
15 Parties have not, in any way, sought relief from DLG.

16 The Ivie Parties' interpretation of the Order and subsequent actions were
17 supported by Ms. Bell's prior experience in similar matters. Having acted as
18 counsel to federally court-appointed receivers in various securities enforcement
19 actions,⁹ Ms. Bell is fully aware of the implications of the Order and the deference
20 that its readers and those acting under it must demonstrate to the Court. (Bell
21 Declaration ¶ 5.) Ms. Bell is further aware of several instances in SEC

22
23 ⁹ Representative matters include *SEC v. Charles R. Homa, et al.*, Case No.
24 99-cv-6895 (U.S. District Court for the Northern District of Illinois); *SEC v.*
25 *Beacon Hill Asset Management, et al.*, Case No. 02-cv-8855 (U.S. District Court
26 for the Southern District of New York); *FTC v. International Product Design, Inc.,*
27 *et al.*, Case No. 1:07-cv-01114 (U.S. District Court for the Eastern District of
28 Virginia); *The Government of the Virgin Islands, Bureau of Internal Revenue v.*
William Lansdale, et al., Case No. 1997-0079 (U.S. District Court of the Virgin
Islands, St. Thomas and St. John Division).

1 receiverships in which the preliminary injunction issued by the receivership court
2 contains nearly identical language to the relevant language in the Order. (*Id.* ¶ 6.)
3 On more than one occasion, in Ms. Bell’s experience, litigants have filed claims
4 against the entities in receivership, knowing that the claims would be subject to the
5 stay established by the related preliminary injunction. (*Id.* ¶ 7.) Because no
6 arguable or demonstrable injury occurs to the receivership estate in those instances
7 where a matter is stayed, either the receiver or the presiding court, or both, have
8 ultimately agreed to the stayed claims. (*Id.*) Based on this prior experience, the
9 Ivie Parties believed the filing of the WDMI Complaint and its related actions were
10 in compliance with the express language and spirit of the Order.

11 More importantly, the Receiver has failed to satisfy its burden to show the
12 Ivie Parties’ actions were not in good faith. The Application fails to reference or
13 discuss the “seeking relief of any kind” language in the Order upon which the Ivie
14 Parties relied. Similarly, the Receiver chose to disregard Ms. Bell’s questions and
15 concerns related to the “seeking relief” phrase in the e-mail exchange between the
16 parties prior to the filing of the Application. By ignoring the language upon which
17 the Ivie Parties proceeded, the Application fails to present clear and convincing
18 evidence that the Ivie Parties did not act “based on a good faith and reasonable
19 interpretation” of the Order, and therefore fails to demonstrate a finding of
20 contempt is appropriate. *Labor/Comm.*, 564 F.3d at 1123-24.

21 **II. THE IVIE PARTIES ACTED IN GOOD FAITH TO COMPLY** 22 **WITH THE SPIRIT OF THE ORDER**

23 Throughout these proceedings, the Ivie Parties have been clear and open with
24 all parties regarding their intentions and have attempted in good faith to comply
25 with the spirit of the Order. The Ivie Parties were up front with the WDMI court
26 about the existence of the Order, provided the court with a copy of the Order, and
27 stayed their claims against DLG from the outset.
28

1 After filing the WDMI Complaint, there was no attempt to hide those
2 proceedings from DLG or the Receiver. Instead, the Ivie Parties served a copy of
3 the WDMI Complain on the Receiver to apprise it of the matter.

4 Upon the Receiver's objections, the Ivie Parties immediately offered to enter
5 into a formal stay of the WDMI action against DLG to avoid any prejudice or
6 unnecessary expenditures of the receivership estate. Though the Receiver refused
7 to stipulate to a stay, the Ivie Parties, at their own expense, petitioned for and
8 received a formal stay of the action against DLG from the WDMI court.

9 The Ivie Parties did not seek entry of default against DLG for failure to
10 respond to the WDMI Complaint, and have taken no other actions to prejudice
11 DLG in any way or otherwise attempted to avoid the Order's requirements. Thus,
12 the Ivie Parties have, in good faith, attempted to comply with the spirit of the Order,
13 as well as its express language.

14 **III. DLG WAS A NECESSARY DEFENDANT TO THE WDMI**
15 **COMPLAINT**

16 Because the Ivie Parties were aware of and understood the Order's
17 restrictions, DLG was only named as a defendant to the WDMI Complaint out of
18 necessity to protect Mr. Ivie's interests and comply with relevant 6th Circuit
19 authority.

20 First, the Ivie Parties desired to preserve Mr. Ivie's claims against DLG
21 within the parameters of applicable statutes of limitation. Out of an abundance of
22 caution, Mr. Fitzgerald and Ms. Bell, in their professional judgment, decided that to
23 ensure the various applicable statutes of limitations were tolled, it was critical that
24 Mr. Ivie file claims against DLG, even though the claims were immediately stayed
25 and no relief was sought. (Fitzgerald Declaration ¶ 3; Bell Declaration ¶ 3.)

26 Second, Mr. Fitzgerald and Ms. Bell, in their professional judgment,
27 determined that, under relevant 6th Circuit law, DLG was a necessary and
28 indispensable party under Federal Rules of Civil Procedure Rule 19, and must be

1 named as a defendant. (Fitzgerald Declaration ¶ 4; Bell Declaration ¶ 4.) *See*
2 *Keweenaw Bay Indian Cmty v. Michigan*, 11 F.3d 1341 (6th Cir. 1993). In
3 particular, there was and continues to be a risk of inconsistent judgments if DLG
4 remains a defendant in the *Markowitz* matter, but is forcibly dismissed from the
5 WDMI action, which could significantly prejudice Mr. Ivie's ability to recover his
6 retirement savings. *See e.g., Employers Ins. Of Wausau v. Jostens, Inc.*, 181 FRD
7 623, 624-26 (D. Minn. 1998) (allowing party to be joined as necessary by
8 recognizing the possibility of inconsistent judgments in parallel federal actions
9 resulting from a party's lack of complete presence in both proceedings and
10 recognizing that allowing both actions to proceed may provide the party with an
11 opportunity to externalize its liability); *see also Cont'l Cas. Co. v. Taco Bell Corp.*,
12 127 F. Supp. 2d 864, 868-69 (W.D. Mich. 2001).

13 **IV. THE RECEIVER HAS NOT BEEN INJURED**

14 The Application fails to demonstrate the Receiver has suffered any "actual
15 loss" based on the filing of the WDMI Complaint. *United Mine Workers*, 330 U.S.
16 at 304. The Application notes that the Receiver was personally served with a copy
17 of the WDMI Complaint on August 21, 2009, but fails to demonstrate any resulting
18 injury. In addition, the Receiver did not object to a stay of claims against DLG in
19 the *Markowitz* matter, and therefore cannot justify his unwillingness to enter into a
20 stay in the WDMI action, and cannot hold the Ivie Parties responsible for the
21 attorneys' fees incurred in the preparation and filing of the Application.
22 Furthermore, by obtaining a court ordered stay of claims against DLG in the WDMI
23 action, the Ivie Parties ensured the Receiver will not suffer any future loss in that
24 action, at least until the Commission's claims are resolved and the Order lifted.
25 Finally, the Receiver's concerns regarding having to monitor hundreds of investor
26 cases throughout the country are speculative at best, and no evidence in support of
27 these concerns was offered in the Application.
28

1 As a result, the Application fails to demonstrate any actual loss to the
2 Receiver due to the WDMI action that is attributable to the Ivie Parties, and
3 therefore fails to demonstrate a finding of contempt is appropriate on this ground.
4 *United Mine Workers*, 330 U.S. at 304.


5 **CONCLUSION**

6 For the reasons discussed above, the Ivie Parties respectfully request that the
7 Receiver's *Ex Parte Application for Order to Show Cause re Kraig S. Ivie, Sean P.*
8 *Fitzgerald, Esq. and Heather A. Bell, Esq. to be held in Contempt of Prior Court*
9 *Order Entered March 30, 2009*, be denied.

10 Dated: October 19, 2009

11 CHARLES E. PATTERSON
12 SETH M. HUFSTEDLER
13 MATTHEW PETERSON
14 MORRISON & FOERSTER LLP

15 SEAN P. FITZGERALD
16 KREIS, ENDERLE, HUDGINS &
17 BORSÓS, P.C.

18 By: 
19 Charles E. Patterson

20 Attorneys for KRAIG S. IVIE,
21 SEAN P. FITZGERALD,
22 HEATHER A. BELL
23
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25
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27
28

Exhibit A

FILED - GR

August 13, 2009 3:16 PM

TRACEY CORDES, CLERK
U.S. DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
BY: aid /

Q/B

Heather A. Bell (P66451)
Sara E.D. Fazio (P62046)
Sean P. Fitzgerald (P60654)
Kreis, Enderle, Hudgins & Borsos, P.C.
171 Monroe Ave. N.W., Suite 900B
Grand Rapids, MI 49503
(616) 254-8400
heather.bell@kreisenderle.com

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MICHIGAN**

KRAIG S. IVIE, an individual,)	Case No.: CV-09-	1:09-cv-751
)		
Plaintiff,)	COMPLAINT	Gordon J Quist
)		U.S. District Judge
vs.)		
)		
DIVERSIFIED LENDING GROUP,)		
INC., a California corporation, and)		
JACKSON NATIONAL LIFE)		
INSURANCE CO., a Michigan)		
corporation.)		
)		
Defendants.)		
)		
)	DEMAND FOR JURY TRIAL	
)		

Plaintiff KRAIG S. IVIE, an individual, respectfully submits this Complaint against Defendants DIVERSIFIED LENDING GROUP, INC., a California corporation,¹

¹ All claims asserted against Diversified Lending Group have been stayed pursuant to the March 10, 2009 Stipulation and Order filed regarding *Consent to Issuance of Preliminary Injunction and Other Relief, and Request for Limited Relief from Asset Freeze* (a copy of which is attached as **Exhibit A**), issued in the action entitled *Securities and Exchange Commission v. Diversified Lending Group Bruce Friedman, Applied Equities, Inc., et al.*, Case No. CV-09:01-01533-R-(JTLx). Subject to the stay, Plaintiff is including DLG as a Defendant, and continuing to pursue his claims against Jackson National Life Insurance Co.

and JACKSON NATIONAL LIFE INSURANCE COMPANY, a Michigan corporation, and alleges and states as follows:

PARTIES

1. Plaintiff Kraig S. Ivie ("Ivie") is a resident of the State of Michigan, residing in Vicksburg.

2. Defendant Diversified Lending Group, Inc. ("DLG") is a California corporation with its principal place of business in Sherman Oaks, California. DLG's principal, president and/or Chief Executive Officer is Bruce Friedman ("Friedman"). DLG is a licensed mortgage company in California.

3. Defendant Jackson National Life Insurance Company ("Jackson") is a Michigan corporation with its principal place of business in Lansing, Michigan.

JURISDICTION AND VENUE

4. Jurisdiction is predicated on subject matter jurisdiction under 28 U.S.C. § 1331, because Plaintiff's claims arise under 18 U.S.C. § 1964.

5. This Court has personal jurisdiction over Defendant Jackson because Jackson is a Michigan corporation with its principal place of business within the State.

6. This Court has personal jurisdiction over Defendant DLG because it was transacting business and selling its investments in Michigan, despite the fact that it was not registered or licensed by the State of Michigan.

7. Venue is appropriate in this Court pursuant to 28 U.S.C. § 1391 because Defendant Jackson resides and conducts business in this District and material events giving rise to this action occurred in this District.

BACKGROUND

8. This matter arises out of a fraudulent investment scheme perpetrated by DLG and Jackson against Ivie.

9. DLG represented to potential investors, including Ivie, that it was a “private real estate investment pool” whose primary business involved the “acquisition, rehabilitation and operation of income producing real estate.”

10. DLG further represented that it invested “substantially all of [its] net investable funds” in “mortgage loans and real property” with a blend of 70% in real estate and 30% in mortgage lending, while maintaining at least 3% in a cash reserve.

11. DLG offered investments in the form of loans made by investors to DLG.

12. The loans were one (1) or five (5) year “Secured Investment Notes” with a guaranteed return rate of either 12% or 9%, compounded monthly.

13. The 12% rate was guaranteed by DLG, and DLG claimed that the 9% notes were guaranteed through “reinsurance” offered from an A+ rated national life insurance company.

14. Once investors purchased the Notes, DLG continued to represent that the investment would be safe and profitable.

15. Investors were issued an investment contract that promised the 12% or 9% rate of return, and DLG sent monthly and quarterly statements to investors in which DLG claimed that the investments were producing the results that DLG had promised.

16. In reality, DLG’s investment scheme was a fraud.

17. DLG did not invest the money as it represented, but instead diverted substantial sums of money to Friedman for his personal use, and invested some of the money in ventures unrelated to mortgage loans or income-producing real property.

18. DLGs' monthly and quarterly statements were fraudulent, because DLG was not profiting as claimed in the statements.

19. Indeed, the company was insolvent.

20. The assets that DLG alleged it owned were bogus, and it survived only because it obtained money from new investors to pay the withdrawals of the prior investors. In short, DLG was a Ponzi scheme.

21. The "reinsurance" of the 9% notes was fraudulent as well, because the investment was not insured as stated.

22. Instead, when investors chose to reinsure their principal investment, DLG purchased an annuity from Jackson in an amount of approximately ten percent of the value of the investment.

23. DLG then assigned the annuity to the investor, but did not tell the investor that the annuity was only a fraction of the value of the investment.

24. The annuity assignment did not state that the value of the annuity was only a fraction of the value of the investment.

25. Instead, the annuity assignment stated that the "Loan No. or Description of Liability" was "Not more than" the amount of the investment, with a reference to the DLG loan.

26. The reinsurance clause contained in the DLG contract guaranteed that the principal investment with DLG would be reinsured.

27. Upon information and belief, Jackson knew that DLG represented to its investors that the annuity-assignments were reinsurance of DLG investments.

28. Upon information and belief, Jackson knew that the annuity-assignments were offered as part of a fraud meant to bilk DLG investors.

29. Upon information and belief, Jackson further knew that the annuity-assignments offered to investors were worth only 10% of the apparent face value of the policy and the underlying investment with DLG.

30. On November 21, 2008, the State of Michigan Department of Labor & Economic Growth Office of Financial and Insurance Regulation issued an *Order to Cease and Desist* against DLG (the Order is attached as **Exhibit B**), finding, *inter alia*, that DLG had violated Section 301 of the Michigan Uniform Securities Act, as amended, MCL 451.501 *et seq.* and MCL 451.701 for engaging in the unlawful sale of unregistered securities, without having secured a license or registration from the State of Michigan.

31. The Order required that DLG repay Michigan investors their investment, plus 6% interest.

32. On March 4, 2009, the United States Securities and Exchange Commission filed a Complaint against DLG, Friedman, and others, alleging that DLG had violated antifraud “provisions of the federal securities laws by misrepresenting their use of investor proceeds,” effectively bilking investors out of roughly \$216 million (the “SEC Action”). The SEC Action remains pending in the U.S. District Court for the Central District of California.

Mr. Ivie’s Investment in DLG.

33. Mr. Ivie became aware of DLG sometime in March or April 2007 while employed by, and President/owner of, American Benefits Concepts, Inc., a Michigan corporation that engaged in the business of selling insurance (“ABC”).

34. Jason E. Juberg, an employee and Vice President of ABC, was approached by Chad Reynolds (“Reynolds”) and Kevin Mehlman (“Mehlman”), representatives of DLG, regarding “marketing the DLG opportunity” and was presented with several DLG marketing materials, including the *Information Circular*, which is attached as **Exhibit C**.

35. Upon information and belief, prior to the time that Reynolds and Mehlman worked as representatives for DLG, both had been employed as wholesale marketers for Jackson.

36. Upon information and belief, Mehlman is Friedman’s step-son.

37. Mr. Ivie was then contemplating the sale of ABC to Juberg and another ABC employee, Matthew Harper (“Harper”).

38. After selling ABC to Juberg and Harper in September 2007, however, ABC began to market DLG investments.

39. Juberg reiterated to Mr. Ivie that DLG offered what appeared to be a safe and profitable investment, particularly the 9% reinsured investment.

40. Ivie received and reviewed a power point presentation from DLG, which represented the following: (1) DLG held “\$552MM and over 100 properties in 48 States and Internationally;” (2) DLG is the “2nd Largest Private Real Estate Investment Pool-Citibank is #1....for now;” and (3) DLG’s “Debt Ratio less than 10%-Most Insurance Companies are 45%-70%.” A copy of the Power Point presentation is attached as **Exhibit D**.

41. The DLG power point presentation also stated that “DLG operates the second largest private investment pool in the Western U.S. with over \$1.5 Billion in market value real estate. *\$1 Billion ahead of what they paid cash for.*”

42. DLG further represented that it had “over 24 years of continued operations.”

43. DLG also produced and shared with Ivie a copy of a letter dated March 12, 2007, written by legal counsel, Caceres & Shamash, LLP, stating that the DLG product “would not be classified as a “Security” under the current [SEC] regulations.” A copy of counsel’s letter is attached as **Exhibit E**.

44. Ivie talked to other representatives of DLG about DLG’s investments, who reiterated that DLG was a safe and conservative investment because DLG invested in income-producing real estate, and because the 9% notes were guaranteed by an A+ rated insurance company that issued “reinsurance” policies to reinsure Mr. Ivie’s principal investment.

45. On September 27, 2007, in reliance on DLG’s representations and solely because he believed his principal investment would be reinsured, Ivie invested \$2,200,000.

46. Ivie invested in the 9% reinsured notes, which DLG promised were reinsured through an A+ insurance company.

47. Following Ivie’s investment, on a monthly basis, DLG sent a “Secured Investment Statement” to Ivie, providing a balance statement of interest earned on, as well as credits and debits to Ivie’s account. Copies of these secured investment statements are attached as **Exhibit F**.

48. On a periodic basis, DLG also sent to Ivie a global statement of DLG's fund summary and investment overview in relation to the real estate market.

49. In the global statements, DLG reiterated its "investment philosophy" "built on the following three pillars: (1) Preservation of our investors' capital; (2) Delivering absolute returns; and (3) Having lower volatility than major traditional indices." Copies of the DLG global statements are attached as **Exhibit G**.

50. On December 13, 2007, DLG sent Ivie a letter announcing that DLG was "declaring a 2% bonus" for investors due to the fact that DLG's actual performance exceeded its annual performance goal. A copy of this letter is attached as **Exhibit H**.

51. On January 31, 2008, DLG sent Ivie another letter reporting the value of Ivie's 2% bonus for DLG contract no. 07-01408 as \$11,341.13. A copy of this letter is attached as **Exhibit I**.

52. On December 16, 2008, DLG sent Ivie a letter disclosing for the first time Friedman's prior criminal convictions and involvement in an investigation by the U.S. Attorney's Office for the Southern District of New York in earlier years.

53. The December 16, 2008 letter went on to represent that DLG "has always fulfilled its financing obligation on each and every investment contract" and that DLG has "more than sufficient resources to continue to meet our obligations, and to grow." A copy of the December 16, 2008 letter is attached as **Exhibit J**.

Jackson's role in furthering DLG's fraud.

54. On November 14, 2007, to "reinsure" Ivie's investment, Jackson issued an assignment ("Jackson Assignment") of an annuity that had been purchased in the name of Bruce Friedman.

55. The annuity's value was approximately \$220,000, but the Jackson Assignment did not state that sum. Rather, the Jackson Assignment stated that the "Loan No. or Description of Liability" was "Reference No.:07-01408 - Not more than \$2,200,000." (Ivie's investment in DLG was numbered 07-01408.) The Jackson Assignment is attached as **Exhibit K**.

56. The underlying contract number 07-01408 issued by DLG to Ivie, incorporated by reference into the Jackson Assignment, contained a "Reinsurance Endorsement," which read, in part:

When this endorsement is attached and executed by the company and contract owner it will amend the original contract from that of a corporate guarantee to a principal reinsured contract. The Principal amount of the investment will be reinsured by a AA Rated or better insurance company...The company will issue or caused to be issued a "Collateral Assignment" in the principal amount of the contract investment...

The DLG contract is attached as **Exhibit L**.

57. Upon information and belief, at the time that Jackson issued the assignment, Jackson knew or should have known that DLG had marketed the assignment to Ivie as "reinsurance" of his investment, and that the annuity value was only a fraction of the value of the investment.

58. Several months prior to the time Ivie invested in DLG, on March 23, 2007, Jackson sent a cease and desist letter to DLG directing that DLG immediately stop representing that Jackson was a reinsurance company.

59. In the alternative, the March 23, 2007 letter from Jackson advised that DLG "must use the following disclaimer in any materials that refer in any way to Jackson":

Jackson National Life Insurance Company is not affiliated with this program, does not underwrite, reinsure or endorse this program, nor does it offer an opinion on the legality of Investment Notes described in these materials.

The letter provided DLG ten (10) days to take corrective action. A copy of the cease and desist letter is attached as **Exhibit M**.

60. At no point in time did DLG comply with Jackson's cease and desist order, nor did they ever include the disclaimer requested by Jackson regarding reinsurance.

61. By continuing to ratify the collateral assignments like the Jackson Assignment issued to Ivie, which integrated by reference the DLG contract, Jackson knew or should have known that DLG was continuing to hold Jackson out as providing reinsurance for the DLG investor's principal investment.

62. Ivie received various correspondence from Jackson, including one letter dated December 22, 2008, that disavowed any knowledge of the value of the Jackson Assignment. A copy of the December 22, 2008 correspondence is attached as **Exhibit N**.

63. On November 27, 2007, Jackson sent Ivie a letter that enclosed the Jackson Assignment and named Diane Marie Cano ("Cano") as Ivie's Jackson representative. A copy of this letter is attached as **Exhibit O**.

64. Upon information and belief, Cano not only acted as a Jackson representative, but, per correspondence dated October 11, 2007, Cano also served as President of Applied Equities, Inc. ("AEI"). AEI was the "Investment Servicing Division" for DLG. A copy of Cano's letter to Ivie dated October 11, 2007 is attached as **Exhibit P**.

65. On February 25, 2009, following receipt of the letter from Jackson advising that Jackson was unaware of the value of the Jackson Assignment, Ivie called and had a conversation with Jackson's in-house counsel, who advised that she had been "concerned" about the DLG/JNL connection for approximately three years, and the fact that the Jackson Assignments were valued at only 10% of the underlying investment with DLG.

66. Despite having sent DLG a cease and desist letter, with which DLG never complied, together with the expressed "concern" of Jackson's in-house counsel, Jackson continued to conduct business with DLG and to issue and ratify policies like the Jackson Assignment to Mr. Ivie.

Mr. Ivie's attempts to withdraw his Investment.

67. The following year, in December 2008, Ivie requested a withdrawal of \$120,000 from his account at DLG. Under the written terms of the agreement, Ivie was entitled to a withdrawal.

68. Under the Cease and Desist Order, DLG was required to repay all Michigan investors their principal and 6% interest.

69. DLG refused to remit to Ivie the money that he asked for and that he was entitled to.

70. Ivie also requested that Jackson pay to Ivie the amounts that he was due. Jackson also refused.

Count 1 – Breach of Fiduciary Duty against DLG

Mr. Ivie alleges and reincorporates by reference paragraphs one through seventy of this Complaint.

71. By selling the investment to Ivie, DLG assumed a position of trust and confidence such that DLG was a fiduciary of Ivie, and owed Ivie certain fiduciary duties.

72. As a fiduciary, DLG was required to look out for the best interests of Ivie.

73. DLG breached its fiduciary duties by making false representations to Ivie, including falsely representing that:

- A. DLG owned \$1.5 billion in real estate;
- B. DLG was financially stable;
- C. Ivie's investment in DLG was low risk;
- D. Ivie's investment was guaranteed a return of 9% annually;
- E. The principal amount that Ivie's invested was guaranteed through an A+ rated insurance company;
- F. The Jackson Assignment was reinsurance of Ivie's entire principal investment;
- G. Ivie could withdraw his investment;

74. DLG also breached its fiduciary duty by not investing Ivie's funds in real estate or mortgages, and by failing to repay Ivie when Ivie requested repayment.

75. As a result of DLG's breaches of fiduciary duty, Ivie was damaged.

WHEREFORE Ivie requests that this Court enter a judgment in favor of Ivie and against DLG in the amount of \$2,200,000 plus interest, costs, and attorney fees and any other relief this Court deems fair and equitable.

Count 2 – Aiding and Abetting Breach of Fiduciary Duty against Jackson

Mr. Ivie alleges and reincorporates by reference paragraphs one through seventy-five of this Complaint.

76. DLG was a fiduciary of Ivie, and owed Ivie fiduciary duties.

77. DLG breached its fiduciary duties.
78. Jackson knew that DLG breached its fiduciary duties to Ivie.
79. Jackson knowingly joined in DLG's breach in the following ways:
 - A. Jackson knew that DLG marketed the Jackson Assignment to Ivie as reinsurance, but Jackson did not inform Ivie that it was not reinsurance.
 - B. Jackson knew that the Jackson Assignment was only valued at approximately \$220,000, but Jackson represented to Ivie that it was valued at \$2,200,000.
 - C. Jackson knew that the purpose of the Jackson Assignment was to induce Ivie to purchase the DLG investment, and Jackson participated in DLG's scheme by providing to DLG the Jackson Assignment.
80. Jackson profited by DLG's breach of fiduciary duty.
81. As a result of Jackson's actions in aiding and abetting DLG's breach of fiduciary duty, Ivie was damaged.

WHEREFORE Ivie requests that this Court enter a judgment in favor of Ivie and against Jackson in the amount of \$2,200,000 plus interest, costs, and attorney fees and any other relief this Court deems fair and equitable.

Count 3 – Negligent Misrepresentation against DLG

Mr. Ivie alleges and reincorporates by reference paragraphs one through eighty-one of this Complaint.

82. DLG owed Ivie a duty to take reasonable care to ensure that the information that it communicated relating to Ivie's investment with DLG was true.

83. DLG communicated to Ivie the following information relating to Ivie's investment with DLG:

- A. That DLG owned \$1.5 billion in real estate.

- B. That DLG was financially stable.
- C. That Ivie's investment in DLG was low-risk.
- D. That Ivie's investment was guaranteed a return of 9% annually.
- E. That the principal amount that Ivie's invested was guaranteed through an A+ rated insurance company.
- F. That the Annuity Assignment was reinsurance of Ivie's entire investment.

84. DLG failed to take reasonable care to ensure that the information it communicated to Ivie was true.

85. The information that DLG provided to Ivie was false.

86. Ivie reasonably relied on DLG's communications.

87. Ivie was damaged by his reliance on DLG's communications.

WHEREFORE Ivie requests that this Court enter a judgment in favor of Ivie and against DLG in the amount of \$2,200,000 plus interest, costs, and attorney fees and any other relief this Court deems fair and equitable.

Count 4 – Negligent Misrepresentation against Jackson

Mr. Ivie alleges and reincorporates by reference paragraphs one through eighty-seven of this Complaint.

88. Jackson owed Ivie a duty to take reasonable care that the information contained in the Jackson Assignment and related correspondence with Ivie was true.

89. The Jackson Assignment indicated that the "Loan No. or Description of Liability" was "Not more than \$2,200,000.00."

90. The Jackson Assignment contained the Reference No. of Ivie's contract with DLG, which was valued at approximately \$2,200,000.00; but the Jackson Assignment was only worth approximately \$220,000.

91. Ivie reasonably relied on the Description of Liability and the Reference No. to form his belief that the Jackson Assignment was valued at \$2,200,000.00.

92. Ivie was damaged by his reliance on Jackson's misrepresentations.

WHEREFORE Ivie requests that this Court enter a judgment in favor of Ivie and against Jackson in the amount of \$2,200,000 plus interest, costs, and attorney fees and any other relief this Court deems fair and equitable.

Count 5 – Negligence against Jackson

Mr. Ivie alleges and reincorporates by reference paragraphs one through ninety-two of this Complaint.

93. Jackson held itself out to the public and to Ivie as a professional in annuity sales and a reinsurance company.

94. Jackson owed Ivie a duty to exercise that degree of skill and care ordinarily exercised by others in the annuity sales and investment management profession.

95. Jackson breached that standard of care by failing to disclose to Ivie that the Jackson Assignment was worth only a fraction of Ivie's investment, when Jackson knew or should have known that DLG had represented to Ivie that the Jackson Assignment was reinsurance of Ivie's entire investment.

96. As a direct and proximate result of Jackson's breach, Ivie suffered damages.

WHEREFORE Ivie requests that this Court enter a judgment in favor of Ivie and against Jackson in the amount of \$2,200,000 plus interest, costs, and attorney fees and any other relief this Court deems fair and equitable.

Count 6 – Breach of Contract against DLG

Mr. Ivie alleges and reincorporates by reference paragraphs one through ninety-six of this Complaint.

97. Ivie and DLG entered into an agreement whereby Ivie invested \$2,200,000 in exchange for an investment in DLG with a guaranteed 9% annual return.

98. In addition, under the terms of the agreement, DLG agreed to purchase for Ivie a reinsurance policy, from an A+ rated insurance company, to guarantee Ivie's principal investment.

99. DLG breached the contract by not investing Ivie's money as it promised.

100. DLG also breached the contract by failing to purchase reinsurance from an A+ rated insurance company.

101. DLG also breached by refusing to return Ivie's investment upon Ivie's demand.

102. As a result of DLG's breaches, Ivie was damaged.

WHEREFORE Ivie requests that this Court enter a judgment in favor of Ivie and against DLG in the amount of \$2,200,000 plus interest, costs, and attorney fees and any other relief this Court deems fair and equitable.

Count 7 – Breach of the Duty of Good Faith and Fair Dealing against DLG

Mr. Ivie alleges and reincorporates by reference paragraphs one through one-hundred and two of this Complaint.

103. Ivie and DLG entered into an agreement.

104. The agreement imposed on DLG the implied duty of good faith and fair dealing.

105. The duty of good faith and fair dealing required DLG to be honest in fact.

106. DLG breached the duty because it was not honest in fact, in the following ways:

- A. DLG represented to Ivie that DLG owned \$1.5 billion in real estate.
- B. DLG represented to Ivie that DLG was financially stable.
- C. DLG represented to Ivie that Ivie's investment in DLG was low risk.
- D. DLG represented to Ivie that Ivie's investment was guaranteed a return of 9% annually.
- E. DLG represented to Ivie that his principal investment was guaranteed through an A+ rated insurance company.
- F. DLG represented to Ivie that the Annuity Assignment was reinsurance of Ivie's entire investment.
- G. DLG represented to Ivie that he could withdraw his investment.
- H. DLG promised to invest Ivie's money in real estate or mortgages.
- I. DLG promised to repay Ivie when Ivie requested repayment, but when Ivie requested repayment DLG did not repay.

107. Ivie was damaged by DLG's breach of the duty of good faith and fair dealing.

WHEREFORE Ivie requests that this Court enter a judgment in favor of Ivie and against DLG in the amount of \$2,200,000 plus interest, costs, and attorney fees and any other relief this Court deems fair and equitable.

Count 8 – Breach of Contract against Jackson

Mr. Ivie alleges and reincorporates by reference paragraphs one through one-hundred and seven of this Complaint.

108. DLG and Jackson entered into a contract for the annuity.

109. DLG assigned its rights to the annuity to Ivie.

110. Jackson undertook to provide Ivie the rights under the contract, thereby making Ivie a third-party beneficiary under the contract.

111. As a third-party beneficiary, Ivie had the rights to the proceeds of the annuity.

112. Ivie demanded that Jackson pay to Ivie the value of the annuity.

113. Jackson refused to repay Ivie the value of the annuity.

114. Jackson breached the contract.

115. Jackson's breach of contract caused damage to Ivie.

WHEREFORE Ivie requests that this Court enter a judgment in favor of Ivie and against Jackson in the amount of \$2,200,000 plus interest, costs, and attorney fees and any other relief this Court deems fair and equitable.

Count 9 – Breach of the Duty of Good Faith and Fair Dealing against Jackson

Mr. Ivie alleges and reincorporates by reference paragraphs one through one-hundred and fifteen of this Complaint.

116. DLG assigned its rights to the annuity to Ivie.

117. Jackson undertook to provide Ivie the rights under the contract, thereby making Ivie a third-party beneficiary under the contract.

118. Because Ivie was a third-party beneficiary, Jackson owed Ivie the duty of good faith and fair dealing.

119. Jackson breached the duty of good faith and fair dealing in the following ways:

- A. Jackson knew that the Jackson Annuity was marketed by DLG as reinsurance.
- B. Jackson knew that the Jackson Annuity was marketed by DLG as insuring an investment with a principal value of \$2,200,000.
- C. The Jackson Assignment indicated that the "Loan No. or Description of Liability" was "Not more than \$2,200,000."
- D. The value of the annuity was approximately \$220,000.
- E. When Jackson issued the Jackson Assignment, Jackson listed DLG's loan number.

120. Ivie relied on the Jackson Assignment to insure his DLG investment.

121. Because of Jackson's breach of its duty of good faith and fair dealing, Ivie did not know that the annuity was only worth \$220,000.

122. Ivie was damaged by Jackson's breach of its duty of good faith and fair dealing.

WHEREFORE Ivie requests that this Court enter a judgment in favor of Ivie and against Jackson in the amount of \$2,200,000 plus interest, costs, and attorney fees and any other relief this Court deems fair and equitable.

Count 10 – Fraud against DLG

Mr. Ivie alleges and reincorporates by reference paragraphs one through one-hundred and twenty-two of this Complaint.

123. Prior to Ivie's investment with DLG, DLG made the following representations to Ivie:

- A. DLG owned \$1.5 billion in real estate.
- B. DLG was financially stable.
- C. Ivie's investment in DLG was low risk.
- D. Ivie's investment was guaranteed a return of 9% annually.
- E. The principal amount that Ivie's invested was guaranteed through an A+ rated insurance company.
- F. The Annuity Assignment was reinsurance of Ivie's entire investment.
- G. Ivie could withdraw his investment.
- H. DLG promised to invest Ivie's money in real estate or mortgages.
- I. DLG promised to repay Ivie when Ivie requested repayment.

124. When DLG made those representations, DLG knew that they were false.

125. DLG made those representations with the intent that Ivie would rely on them.

126. Ivie relied on DLG's representations, and was damaged as a result of DLG's misrepresentations.

WHEREFORE Ivie requests that this Court enter a judgment in favor of Ivie and against DLG in the amount of \$2,200,000 plus interest, costs, and attorney fees and any other relief this Court deems fair and equitable.

Count 11 – Fraudulent Misrepresentation against Jackson

Mr. Ivie alleges and reincorporates by reference paragraphs one through one-hundred and twenty-six of this Complaint.

127. The Jackson Assignment stated “Loan No. or Description of Liability” as “Reference No. 07-01408 - Not more than \$2,200,000.00.”

128. Ivie’s investment contract with DLG was numbered 07-01408, and was valued at \$2,200,000.00.

129. The Jackson Assignment was worth approximately \$220,000.

130. The statement on the Jackson Assignment was a misrepresentation because it represented that the value of the annuity was \$2,200,000, when in fact the value was approximately \$220,000.

131. Jackson knew that DLG marketed the Jackson Assignment as reinsurance.

132. Jackson knew that DLG marketed the Jackson Assignment as reinsurance of the entire principal amount of Ivie’s investment with DLG.

133. When Jackson issued the Jackson Assignment, Jackson knew that the statement misrepresented the value of the assignment.

134. When Jackson issued the Jackson Assignment, Jackson intended that Ivie would rely on the statement.

135. When Jackson issued the Jackson Assignment, Jackson intended that Ivie would believe that the Jackson Assignment was reinsurance of Ivie’s entire principal investment.

136. Ivie relied on Jackson’s statement.

137. As a result, Ivie was damaged.

WHEREFORE Ivie requests that this Court enter a judgment in favor of Ivie and against Jackson in the amount of \$2,200,000 plus interest, costs, and attorney fees and any other relief this Court deems fair and equitable.

Count 12 – Silent Fraud against Jackson

Mr. Ivie alleges and reincorporates by reference paragraphs one through one-hundred and thirty-seven of this Complaint.

138. Jackson knew that DLG marketed Jackson's annuities as reinsurance.

139. Jackson knew that DLG marketed Jackson's annuities as reinsurance of the entire principal amount of investors' investments with DLG.

140. Jackson issued the Jackson Assignment in favor of Ivie.

141. At the time that Jackson issued the Jackson Assignment, Jackson had the duty to disclose to Ivie that the Jackson Assignment was not reinsurance of the entire principal amount of Ivie's investment with DLG.

142. Jackson did not disclose to Ivie that the Jackson Assignment was not reinsurance of the entire principal amount of Ivie's investment with DLG.

143. In reliance on Jackson's nondisclosure, Ivie was damaged.

WHEREFORE Ivie requests that this Court enter a judgment in favor of Ivie and against Jackson in the amount of \$2,200,000 plus interest, costs, and attorney fees and any other relief this Court deems fair and equitable.

Count 13 – Civil Conspiracy against Jackson and DLG

Mr. Ivie alleges and reincorporates by reference paragraphs one through one-hundred and forty-three of this Complaint.

144. DLG engaged in a scheme to unlawfully defraud Ivie by selling Ivie a worthless investment.

145. As a way to make Ivie's investment with DLG appear valuable, DLG purchased an annuity from Jackson, and assigned it to Ivie.

146. The value of the annuity was only \$220,000, and the value of Ivie's investment was \$2,200,000.

147. Jackson and DLG agreed that Jackson would sell the annuity to DLG, and that Jackson would conceal from Ivie the actual value of the annuity.

148. To further the conspiracy between Jackson and DLG, Jackson represented to Ivie that Cano was his "Jackson representative," knowing that Cano also acted as President of AEI, DLG's Investment Servicing Division.

149. Jackson profited by selling the annuity to DLG.

150. Ivie was damaged by the purchasing the investment from DLG.

WHEREFORE Ivie requests that this Court enter a judgment in favor of Ivie and against DLG and Jackson in the amount of \$2,200,000 plus interest, costs, and attorney fees and any other relief this Court deems fair and equitable.

Count 14 – RICO against DLG under 18 USC §§1962(a), (b), and (c).

Mr. Ivie alleges and reincorporates by reference paragraphs one through one-hundred and fifty of this Complaint.

151. DLG engaged in a scheme to defraud Ivie by selling Ivie a worthless investment.

152. In furtherance of the fraudulent scheme, DLG sent Ivie several letters through the United States mail, in violation of 18 USC § 1341.

- A. Exhibit F contains copies of Secured Investment Statements sent to Ivie from DLG regarding the performance/balance of his principal investment.
- B. Exhibit G contains copies of certain global statements sent by DLG to Ivie regarding DLG's performance overall vis a vis the real estate market.
- C. Exhibit P is a letter dated October 11, 2007, drafted by Diane Cano, president of Applied Equities, Inc. ("AEI"). AEI is the investment servicing division for DLG. Cano sent the letter to inform Ivie how DLG accepted deposits and paid withdrawals.
- D. Exhibit H is a letter from DLG and AEI, dated December 13, 2007. The letter informed Ivie that his investment exceeded its annual percentage goal, and Ivie would be receiving a 2% bonus.
- E. Exhibit I is a letter from DLG dated January 31, 2008, in which DLG asked Ivie how Ivie wanted to process the 2% bonus.
- F. Exhibit J is a letter from DLG to Ivie dated December 16, 2008, disclosing Friedman's prior convictions and criminal activities, but reassuring investors that DLG had "sufficient resources" to make good on its investment contracts.

153. Upon information and belief, DLG sent many similar letters to many other investors.

154. Each of those letters was an instance of a racketeering activity under 18 U.S.C. § 1961.

155. The sequence of letters was a pattern of racketeering activity.

156. DLG derived income from Ivie by sending that sequence of letters, and invested all or some of that income, or the proceeds of that income, in acquisition of an interest in, or the establishment of operation of, an enterprise that is engaged in, or affects, interstate commerce. 18 USC §1962(a).

157. DLG used the sequence of letters to acquire or maintain an interest or control of an enterprise that was engaged in interstate commerce. 18 USC §1962(b).

158. DLG was associated with an enterprise that was engaged in interstate commerce. 18 USC §1962(c).

WHEREFORE Ivie requests that this Court enter a judgment in favor of Ivie and against DLG for treble damages, in the amount of \$6,600,000 plus interest, costs, and attorney fees and any other relief this Court deems fair and equitable.

Count 15 – RICO against Jackson under 18 USC §§1962(a), (b), and (c).

Mr. Ivie alleges and reincorporates by reference paragraphs one through one-hundred and fifty-eight of this Complaint.

159. Jackson engaged in a scheme to defraud Ivie by selling DLG an annuity valued at only \$220,000, and representing to Ivie that it was security for a loan of \$2,200,000.

160. In furtherance of the fraudulent scheme, Jackson sent Ivie letters through the United States mail, in violation of 18 USC § 1341.

- A. Exhibit O is a letter from Laura Prieskorn, Vice President, Jackson Customer Service Center, dated November 27, 2007, in which Ms. Prieskorn told Ivie that Jackson had received and recorded the Jackson Assignment. Included in that letter was the Jackson Assignment.
- B. Exhibit N is another letter from Ms. Prieskorn, dated December 22, 2008. This letter responds to Ivie's inquiry regarding the value of the Jackson Assignment. Ms. Prieskorn refused to tell Ivie the value of the assignment, but was aware that the value could not be more than approximately \$220,000.00.

161. Upon information and belief, Jackson sent similar letters to many other investors.

162. The Jackson letters are instances of a racketeering activity under 18 USC § 1961.

163. The letters form a pattern of racketeering activity.

164. Jackson derived income from Ivie by sending that sequence of letters, and invested all or some of that income, or the proceeds of that income, in acquisition of an interest in, or the establishment of operation of, an enterprise that is engaged in, or affects, interstate commerce. 18 USC §1962(a).

165. Jackson used the sequence of letters to acquire or maintain an interest or control of an enterprise that was engaged in interstate commerce. 18 USC §1962(b).


166. Jackson was associated with an enterprise that was engaged in interstate commerce. 18 USC §1962(c).

WHEREFORE Ivie requests that this Court enter a judgment in favor of Ivie and against Jackson for treble damages, in the amount of \$6,600,000 plus interest, costs, and attorney fees and any other relief this Court deems fair and equitable.

Dated: August 12, 2009

Respectfully submitted,

Kreis, Enderle, Hudgins & Borsos, P.C.

By: 
Heather A. Bell (P66451)
Sara E.D. Fazio (P62046)
Sean P. Fitzgerald (P60654)
171 Monroe Ave. N.W., Suite 900B
Grand Rapids, MI 49503
(616) 254-8400

Dated: August 12, 2009

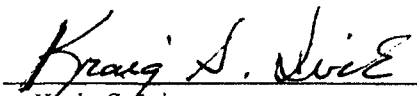
By: 
Craig S. Ivie

Exhibit B

Heather Adams Bell

From: Heather Adams Bell
Sent: Friday, August 21, 2009 3:46 PM
To: 'George E. Schulman'
Cc: Kathy Bazoian Phelps; Sean P. Fitzgerald; Gilbert G. Mikalian; Ryan Conboy
Subject: RE: [EmailDefender SPAM suspect] RE: Diversified Lending Group, Inc.

Mr. Schulman:

I find it interesting that you have agreed to a stay in the Markowitz v. DLG matter, despite the language of the preliminary injunction which you insist precludes the commencement or continuance of claims against DLG, irrespective of the plaintiff's willingness to stay. All we are trying to achieve in the Ivie matter is to preserve Mr. Ivie's rights, while also preserving receivership estate assets by agreeing to a stay of his claims against DLG.

The offer to enter into a stipulated agreement to stay stands.

Heather

From: George E. Schulman [mailto:GSchulman@dgdg.com]
Sent: Friday, August 21, 2009 2:58 PM
To: Heather Adams Bell
Cc: Kathy Bazoian Phelps; Sean P. Fitzgerald; Gilbert G. Mikalian; Ryan Conboy; George E. Schulman
Subject: [EmailDefender SPAM suspect] RE: Diversified Lending Group, Inc.

Ms. Bell:

There is no reason for the Receiver to stipulate to an order in the District Court in Michigan to stay an action brought in violation of another District Court's preliminary injunction. The decision to file a case in violation of the preliminary injunction can hardly be characterized as good faith.

I take your latest communication as a refusal to dismiss the action as to Diversified Lending Group and will advise the Receiver to act accordingly.

George E. Schulman
Danning, Gill, Diamond & Kollitz, LLP
2029 Century Park East, Third Floor
Los Angeles CA 90067
(310) 277-0077 tel | (310) 277-5735 fax | 818-648-8688 cell
GSchulman@dgdg.com | www.dgdg.com

From: Heather Adams Bell [mailto:hbell@KreisEnderle.com]
Sent: Friday, August 21, 2009 11:43 AM
To: George E. Schulman
Cc: Kathy Bazoian Phelps; Sean P. Fitzgerald; Gilbert G. Mikalian; Ryan Conboy
Subject: RE: [EmailDefender SPAM suspect] RE: Diversified Lending Group, Inc.

Mr. Schulman:

In no capacity am I or my client in willful violation of the preliminary injunction. We are aware of its existence and interpret it to mean that parties seeking relief from the Defendants are enjoined from commencing suit. We are not seeking relief from DLG and have well advised the Court in the Western

District of Michigan of the same. Again, we have in no way violated the injunction by advising the Court as to the stay so that our intentions with respect to DLG are clear from the commencement of the Ivie matter. We are not seeking relief from DLG. We recognize and appreciate that the injunction exists and intend to comply with the stay against DLG. We are not presently seeking to bring injury to DLG or in any way to harm the receivership estate's resources. The addition of DLG to Mr. Ivie's complaint was a strategic litigation decision. I have zero control over the strategy that other investors and their counsel may or may not choose to employ in rendering similar, good faith decisions.

If you are concerned about preserving estate assets, the simplest way to avoid further draining resources is by stipulating to an order of stay in favor of DLG in the Ivie matter. I have represented federally appointed receivers in the past in cases where we have entered into similar stipulations. Obviously the length of the stay will be for the duration of the SEC's suit against DLG. There should be no cause for DLG to stay involved in the Ivie matter provided that the stay remains in effect. I am more than willing to prepare the stipulation.

Let me know. Thanks.

Thanks.

Heather

From: George E. Schulman [mailto:GSchulman@dgdgk.com]
Sent: Friday, August 21, 2009 1:55 PM
To: Heather Adams Bell
Cc: Kathy Bazoian Phelps; Sean P. Fitzgerald; Gilbert G. Mikalian; George E. Schulman
Subject: [EmailDefender SPAM suspect] RE: Diversified Lending Group, Inc.

Ms. Bell:

The Receiver does not propose to monitor Mr. Ivie's lawsuit, and who knows how many others which may be filed once word gets out describing your strategy, on your premise that you can willfully violate a Federal court preliminary injunction as long as you promise not to benefit from it in the short term. We will have to monitor the suit and others like it, and will no doubt be called upon to account to various courts (as your idea circulates) as to the status of the receivership and the prospects for moving the case off that court's calendar. I cannot imagine what good you think naming Diversified does for your client; I know that, in addition to being a violation of the preliminary injunction, these sort of cases prove to be a continual distraction which costs the estate time and money which ought to be directed to recovering money for Mr. Ivie, rather than dealing with his violation of the court's order.

In any event, we are waiting to see the dismissal. The Receiver will take action against you and your client if the dismissal is not received. Today would not be too soon.

Please feel free to call if you have any questions.

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GSchulman@dgdgk.com | www.dgdgk.com

From: Heather Adams Bell [mailto:hbelle@KreisEnderle.com]
Sent: Friday, August 21, 2009 10:09 AM
To: George E. Schulman
Cc: Kathy Bazoian Phelps; Sean P. Fitzgerald; Gilbert G. Mikalian

Subject: RE: Diversified Lending Group, Inc.

Section IX enjoins persons or entities who are seeking relief from DLG. We are fully cognizant of the stay and intend to comply with it, but desire to preserve our client's claims against DLG. Recognizing the stay, we are not seeking relief from DLG at this time. Given that the claims are stayed, DLG will not be required to monitor the suit, unless or until the injunction is lifted.

From: George E. Schulman [mailto:GSchulman@dgdk.com]
Sent: Friday, August 21, 2009 12:33 PM
To: Heather Adams Bell
Cc: Kathy Bazoian Phelps; Sean P. Fitzgerald; George E. Schulman; Gilbert G. Mikalian
Subject: RE: Diversified Lending Group, Inc.

Ms. Bell:

The District Court's order enjoins commencement of any litigation against Diversified Lending Group. It does not say that you may commence litigation so long as you tell the court in which you file a case that the case is stayed by an existing Preliminary Injunction. The Receiver does not need to stipulate with you that Mr. Ivie's case is stayed, as you suggest. Commencement of Mr. Ivie's case was enjoined. You and Mr. Ivie both knew of the injunction because you mention it in Mr. Ivie's pleadings, you attach it as an exhibit. You both signed Mr. Ivie's complaint.

Kindly dismiss the case as to Diversified today and provide me with a copy of the dismissal. If you do not do so, we will advise the Receiver of his rights and recommend that he take action to remedy what appears to be a willful violation of the District Court preliminary injunction by both you and your client. I am sure you understand the the estate does not need to undertake the burden of monitoring dozens or hundreds of lawsuits around the country by investors who may chose to try and emulate your strategy.

Feel free to call with any questions, but we do expect to see the dismissal today.

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GSchulman@dgdk.com | www.dgdk.com

From: Heather Adams Bell [mailto:hbelle@KreisEnderle.com]
Sent: Friday, August 21, 2009 6:33 AM
To: George E. Schulman
Cc: Kathy Bazoian Phelps; Sean P. Fitzgerald
Subject: RE: Diversified Lending Group, Inc.

Hi Mr. Schulman:

Footnote A of our Complaint advises the Court of the stay against DLG. I am willing to stipulated to an Order staying the case as to DLG, but do not intend to file a dismissal at this point.

Feel free to call me with questions/additional concerns. Thanks.

Heather

From: George E. Schulman [mailto:GSchulman@dgdk.com]
Sent: Thursday, August 20, 2009 8:31 PM
To: Heather Adams Bell
Cc: George E. Schulman; Kathy Bazoian Phelps
Subject: Re: Diversified Lending Group, Inc.

Ms. Bell:

We represent David A. Gill, Receiver for Diversified Lending Group, Inc. On August 20 your process server delivered a summons and complaint in Ivie vs. Diversified Lending Group, Inc., et al., Case no. 1:09-cv-751 (WD Mi). Suits against Diversified are enjoined by the Preliminary Injunction issued by the United States District Court for the Central District of California. Paragraph IX of the Preliminary Injunction attached as Exhibit A to your complaint says so.

Kindly advise that you have dismissed Diversified as a defendant. You may do so without prejudice to Mr. Ivie's rights.

If you have any questions, please feel free to call.

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Exhibit C

Heather Adams Bell

From: Heather Adams Bell
Sent: Tuesday, August 25, 2009 11:47 AM
To: 'mccoyj@sec.gov'
Subject: RE: Diversified Lending Group, Inc.

I'm resending the below email to ensure that it reaches you without getting caught into a spam filter, given that the re line previously contained the word spam. Thanks.

From: Heather Adams Bell
Sent: Monday, August 24, 2009 10:50 AM
To: 'mccoyj@sec.gov'
Cc: Ryan Conboy; Sean P. Fitzgerald
Subject: FW: [EmailDefender SPAM suspect] RE: Diversified Lending Group, Inc.

Dear Mr. McCoy:

I am forwarding the below chain of emails to your attention to see if you have any additional input for me. I represent an investor in DLG who is currently pursuing claims against Jackson National Life Insurance Co. in Michigan. We named DLG as a party to the suit, but advised the Court in Michigan of the Preliminary Injunction and further represented to the Court in the body of the Complaint that we had no intention of pursuing claims against DLG until (and if) the injunction is lifted. Recognizing that the injunction will likely never be lifted, the purpose of including DLG was merely to advise the Court of my client's claims against DLG, which serve in several instances as the foundation for and to substantiate my client's claims against Jackson National. Given that we are not seeking relief against DLG, we do not view our actions as having been adverse to either the injunction or the receivership estate. We have zero desire to deplete the assets of the receivership estate by engaging in a battle with counsel for the receiver. We have advised the Receiver that we are more than willing to enter into a stipulated order staying all claims against DLG, if the Court in Michigan even requires such an Order given that we have already advised the Court that we are not pursuing our claims against DLG.

Having spent many years representing federally appointed receivers in SEC actions, I am all too aware of the need not to deplete receivership resources so that the ultimate return to injured investors can be maximized. I have no desire to engage in a protracted dispute with the Receiver's counsel for DLG. I am also aware that it is fairly common practice for investors to name the underlying entity in a lawsuit, despite the existence of an injunction, fully anticipating a stay of the same claims, where the investor desires to preserve both statute of limitations rights and aiding and abetting claims against parties who facilitated or assisted in the fraud against the investors. I can see no harm in agreeing to such a stay in my client's case. I also note that a similar stay has been entered in other pending investor cases.

If there is a way we can resolve this dispute so that the Receiver's counsel does not further deplete the estate's resources by arguing with me and my client and so that my client can nonetheless be protected and his interests served in pursuing claims against Jackson National, I would appreciate your insight.

Please do not hesitate to call me at 616.254.8413.

Kind regards,
Heather Adams Bell
Kreis, Enderle, Hudgins & Borsos, P.C.
171 Monroe Ave NW, Suite 900B
Grand Rapids, MI 49503
direct dial: (616) 254-8413
ph: (616) 254-8400
fax: (616) 254-8410

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From: Heather Adams Bell
Sent: Friday, August 21, 2009 3:46 PM
To: 'George E. Schulman'
Cc: Kathy Bazoian Phelps; Sean P. Fitzgerald; Gilbert G. Mikalian; Ryan Conboy
Subject: RE: [EmailDefender SPAM suspect] RE: Diversified Lending Group, Inc.

Mr. Schulman:

I find it interesting that you have agreed to a stay in the Markowitz v. DLG matter, despite the language of the preliminary injunction which you insist precludes the commencement or continuance of claims against DLG, irrespective of the plaintiff's willingness to stay. All we are trying to achieve in the Ivie matter is to preserve Mr. Ivie's rights, while also preserving receivership estate assets by agreeing to a stay of his claims against DLG.

The offer to enter into a stipulated agreement to stay stands.

Heather

From: George E. Schulman [mailto:GSchulman@dgdk.com]
Sent: Friday, August 21, 2009 2:58 PM
To: Heather Adams Bell
Cc: Kathy Bazoian Phelps; Sean P. Fitzgerald; Gilbert G. Mikalian; Ryan Conboy; George E. Schulman
Subject: [EmailDefender SPAM suspect] RE: Diversified Lending Group, Inc.

Ms. Bell:

There is no reason for the Receiver to stipulate to an order in the District Court in Michigan to stay an action brought in violation of another District Court's preliminary injunction. The decision to file a case in violation of the preliminary injunction can hardly be characterized as good faith.

I take your latest communication as a refusal to dismiss the action as to Diversified Lending Group and will advise the Receiver to act accordingly.

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From: Heather Adams Bell [mailto:hbelle@KreisEnderle.com]
Sent: Friday, August 21, 2009 11:43 AM

To: George E. Schulman
Cc: Kathy Bazoian Phelps; Sean P. Fitzgerald; Gilbert G. Mikalian; Ryan Conboy
Subject: RE: [EmailDefender SPAM suspect] RE: Diversified Lending Group, Inc.

Mr. Schulman:

In no capacity am I or my client in willful violation of the preliminary injunction. We are aware of its existence and interpret it to mean that parties seeking relief from the Defendants are enjoined from commencing suit. We are not seeking relief from DLG and have well advised the Court in the Western District of Michigan of the same. Again, we have in no way violated the injunction by advising the Court as to the stay so that our intentions with respect to DLG are clear from the commencement of the Ivie matter. We are not seeking relief from DLG. We recognize and appreciate that the injunction exists and intend to comply with the stay against DLG. We are not presently seeking to bring injury to DLG or in any way to harm the receivership estate's resources. The addition of DLG to Mr. Ivie's complaint was a strategic litigation decision. I have zero control over the strategy that other investors and their counsel may or may not choose to employ in rendering similar, good faith decisions.

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Let me know. Thanks.

Thanks.

Heather

From: George E. Schulman [mailto:GSchulman@dgd.com]
Sent: Friday, August 21, 2009 1:55 PM
To: Heather Adams Bell
Cc: Kathy Bazoian Phelps; Sean P. Fitzgerald; Gilbert G. Mikalian; George E. Schulman
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Ms. Bell:

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In any event, we are waiting to see the dismissal. The Receiver will take action against you and your client if the dismissal is not received. Today would not be too soon.

Please feel free to call if you have any questions.

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From: Heather Adams Bell [mailto:hbell@KreisEnderle.com]
Sent: Friday, August 21, 2009 10:09 AM
To: George E. Schulman
Cc: Kathy Bazoian Phelps; Sean P. Fitzgerald; Gilbert G. Mikalian
Subject: RE: Diversified Lending Group, Inc.

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Sent: Friday, August 21, 2009 12:33 PM
To: Heather Adams Bell
Cc: Kathy Bazoian Phelps; Sean P. Fitzgerald; George E. Schulman; Gilbert G. Mikalian
Subject: RE: Diversified Lending Group, Inc.

Ms. Bell:

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Kindly dismiss the case as to Diversified today and provide me with a copy of the dismissal. If you do not do so, we will advise the Receiver of his rights and recommend that he take action to remedy what appears to be a willful violation of the District Court preliminary injunction by both you and your client. I am sure you understand the the estate does not need to undertake the burden of monitoring dozens or hundreds of lawsuits around the country by investors who may chose to try and emulate your strategy.

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Cc: Kathy Bazoian Phelps; Sean P. Fitzgerald
Subject: RE: Diversified Lending Group, Inc.

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Footnote A of our Complaint advises the Court of the stay against DLG. I am willing to stipulated to an Order staying the case as to DLG, but do not intend to file a dismissal at this point.

Feel free to call me with questions/additional concerns. Thanks.

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Cc: George E. Schulman; Kathy Bazoian Phelps
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We represent David A. Gill, Receiver for Diversified Lending Group, Inc. On August 20 your process server delivered a summons and complaint in Ivie vs. Diversified Lending Group, Inc., et al., Case no. 1:09-cv-751 (WD Mi). Suits against Diversified are enjoined by the Preliminary Injunction issued by the United States District Court for the Central District of California. Paragraph IX of the Preliminary Injunction attached as Exhibit A to your complaint says so.

Kindly advise that you have dismissed Diversified as a defendant. You may do so without prejudice to Mr. Ivie's rights.

If you have any questions, please feel free to call.

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