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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA

10 CV09-8975 JFW (JEMx)

11 DAVID A. GILL, solely in his capacity as )  
Permanent Receiver in the matter of )  
12 *Securities and Exchange Commission vs.* )  
*Diversified Lending Group, Inc.; Applied* )  
13 *Equities, Inc.; Bruce Friedman and Tina* )  
*M. Placourakis*, U.S.D.C. Case No. )  
14 CV 09-01533-R-JEM, )  
15 Plaintiff, )  
16 vs. )  
17 ROBERT SITOMER and JULIE )  
SITOMER, )  
18 Defendants. )  
19

Case No.  
**COMPLAINT TO AVOID AND  
RECOVER FRAUDULENT  
TRANSFER, FOR UNJUST  
ENRICHMENT, CONSTRUCTIVE  
TRUST AND EQUITABLE LIEN**

**FILED UNDER SEAL**

20  
21 Plaintiff David A. Gill, Receiver, for his complaint against Defendants, says:

22 **PARTIES, JURISDICTION AND VENUE**

23 1. David A. Gill is the duly appointed Permanent Receiver (the  
24 "Receiver") for Diversified Lending Group ("DLG"), Applied Equities, Inc. ("AEI"),  
25 and their subsidiaries and affiliates.

26 2. Defendant Robert Sitomer is, and at all times mentioned herein was, a  
27 resident of Los Angeles County, California.  
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CENTRAL DISTRICT COURT  
LOS ANGELES

FILED

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1 prohibiting the destruction of documents, (4) granting expedited discovery, and (5)  
2 requiring accountings, and for an order to show cause re preliminary injunction and  
3 appointment of a permanent receiver.

4 9. On March 4, 2009, this Court granted the TRO Application and, among  
5 other things, appointed David A. Gill as Temporary Receiver. Mr. Gill received the  
6 Temporary Restraining Order appointing him as Temporary Receiver early on March  
7 5, 2009, and, within the hour, with his counsel, accountants and field personnel, took  
8 possession of the business premises of DLG and AEI in Sherman Oaks, California.  
9 The order was amended and superseded by two additional orders of the Court. One,  
10 entered on March 10, 2009, appointed Mr. Gill as Permanent Receiver and another,  
11 entered on or about March 31, 2009, clarified the earlier orders by specifically  
12 naming certain wholly owned subsidiaries and their assets as subject to  
13 administration in the receivership (AEI, DLG, and their wholly owned subsidiaries  
14 are collectively referred to as the "Receivership").

15 **B. The Transfer of Funds.**

16 10. The Receiver is informed and believes, and on that basis alleges that on  
17 or about February 10, 2006, Defendants, funded at least in part by DLG, purchased a  
18 parcel of real property improved by a single family dwelling commonly known as  
19 15935 Meadowcrest Road, Sherman Oaks, California, 91403 (the "Property"). The  
20 legal description of the Property is: Lot 46 of Tract 19441, in the City of Los  
21 Angeles, County of Los Angeles, State of California, as per Map recorded in Book  
22 515 Page(s) 1 to 4 inclusive of maps, in the office of the County Recorder of said  
23 County. The Property's Assessor's Parcel Number is 2280-020-047.

24 11. The Receiver is informed and believes, and on that basis alleges that the  
25 Property was paid for, at least in part, by DLG from investor funds, in the total  
26 amount of \$470,929.00.

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1 12. The Receiver is informed and believes, and on that basis alleges that  
2 DLG transferred \$30,000.00 on or about January 12, 2006, to Allan Erdy Escrow on  
3 behalf of and for the benefit of Defendants for the purchase of the Property.

4 13. The Receiver is informed and believes, and on that basis alleges that  
5 DLG transferred \$440,929.00 on or about February 7, 2006, to Allan Erdy Escrow on  
6 behalf of and for the benefit of Defendants for the purchase of the Property.

7 14. The Receiver is informed and believes, and on that basis alleges that a  
8 Grant Deed to the Property was recorded on or about February 10, 2006, in the name  
9 of "Julie Sitomer and Robert Sitomer, wife and husband as joint tenants." The  
10 aforementioned transfers of funds for the purchase of the Property, totaling  
11 \$470,929.00, recorded in the name of the Defendants, are hereinafter referred to as  
12 the "Transfer."

13 15. The Receiver is informed and believes, and on that basis alleges that  
14 DLG did not receive any consideration in exchange for the Transfer.

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16 **FIRST CLAIM FOR RELIEF**

17 **(For Avoidance and Recovery of Fraudulent Transfer)**

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

21 17. The Receiver is informed and believes, and based thereon alleges, that  
22 the Transfer was made by DLG with the actual intent to hinder, delay, or defraud one  
23 or more of its creditors.

24 18. The Receiver is entitled to avoid the Transfer pursuant to California  
25 Civil Code section 3439.05. Furthermore, under California Civil Code section  
26 3439.08, the Receiver is entitled to recover from the Defendants the Property, or the  
27 value of the Transfers, plus interest thereon as allowed by law.

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1 3439.08, the Receiver is entitled to recover from the Defendants the Property, or the  
2 value of the Transfers, plus interest thereon as allowed by law.

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4 **FOURTH CLAIM FOR RELIEF**

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

6 26. The Receiver repeats and re-alleges the allegations contained in  
7 paragraphs 1 through 15, inclusive, hereof and incorporates the same herein by this  
8 reference.

9 27. The Receiver is informed and believes, and based thereon alleges, that  
10 when DLG made the Transfer, it had already incurred, or believed or reasonably  
11 should have believed that it would incur, debts that would be beyond its ability to  
12 pay as such debts matured.

13 28. The Receiver is entitled to avoid the Transfer under California Civil  
14 Code section 3439.04(b)(2). Furthermore, under California Civil Code section  
15 3439.08, the Receiver is entitled to recover from the Defendants the Property, or the  
16 value of the Transfers, plus interest thereon as allowed by law.

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18 **FIFTH CLAIM FOR RELIEF**

19 **(To Avoid Unjust Enrichment)**

20 29. The Receiver repeats and re-alleges the allegations contained in  
21 paragraphs 1 through 15, inclusive, hereof and incorporates the same herein by this  
22 reference.

23 30. 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 or the value of the Transfers, plus interest thereon at the legal rate.

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**SIXTH CLAIM FOR RELIEF**

**(To Impose Constructive Trust)**

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

32. The Receiver is informed and believes, and based thereon alleges, that the Transfers by DLG to Defendants constitutes identifiable and traceable property which was fraudulently transferred to the Defendants or for which title improperly remains in the Defendants, so that the Receiver is entitled to, among other things, a determination that the Defendants hold such property in trust for the benefit of the Receiver.

**SEVENTH CLAIM FOR RELIEF**

**(For Imposition of Equitable Lien)**

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

34. Based upon the above-mentioned conduct, the Receiver is entitled to impress upon the Property with equitable liens to prevent unjust enrichment, to do justice in equity and to prevent unfair results.

WHEREFORE, Receiver prays Judgment as follows:

FOR THE FIRST, SECOND, THIRD AND FOURTH AND FIFTH CLAIMS FOR RELIEF:

35. That a judgment be entered in favor of the Receiver recovering either the Property or the value thereof from the Defendants for the benefit of the Receivership, plus interest thereon at the legal rate;