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13 UNITED STATES DISTRICT COURT
 14 CENTRAL DISTRICT OF CALIFORNIA

CV10 1475 PSG (JGx)
Case No.

15 DAVID A. GILL, solely in his capacity as
 16 Permanent Receiver in the matter of
 17 *Securities and Exchange Commission vs.*
 18 *Diversified Lending Group, Inc.; Applied*
 19 *Equities, Inc.; Bruce Friedman and Tina*
 20 *M. Placourakis*, U.S.D.C. Case No.
 21 CV 09-01533-R-SS,

COMPLAINT TO AVOID AND
RECOVER FRAUDULENT
TRANSFER, FOR UNJUST
ENRICHMENT, CONSTRUCTIVE
TRUST AND EQUITABLE LIEN

Plaintiff,

vs.

22 TIERRA REJADA GOLF CLUB, LLC, a
 23 California limited liability company, and
 24 LENDERS DEPOT, INC., a California
 25 corporation,

Defendants.

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

PARTIES, JURISDICTION AND VENUE

1. David A. Gill is the duly appointed Permanent Receiver (the
 “Receiver”) for Diversified Lending Group, Inc. (“Diversified”), and Applied
 Equities, Inc. (“Applied Equities”), and their subsidiaries and affiliates, including but
 not limited to MMHIM, Inc., DLG International, a Panamanian company, and
 SunWest Bottlers, LLC.

COPY

1 2. Defendant Tierra Rejada Golf Club, LLC ("Tierra Rejada"), is a
2 California limited liability company whose offices are, and at all times mentioned
3 herein was, in Los Angeles County, California.

4 3. Defendant Lenders Depot, Inc. ("Lenders Depot"), is a California
5 corporation whose primary place of business is, and at all times mentioned herein
6 was, in Riverside County, California.

7 4. This Court has jurisdiction over this proceeding under 15 U.S.C.
8 § 77v(a), 15 U.S.C. § 78aa, and Cal. Civ. Code § 3439.04 because the proceeding is
9 ancillary to the case *Securities and Exchange Commission vs. Diversified Lending*
10 *Group, Inc.; Applied Equities, Inc.; Bruce Friedman and Tina M. Placourakis*,
11 presently pending before the United States District Court as Case No. CV 09-01533-
12 R-SS (the "SEC Action").

13 5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391.
14

GENERAL ALLEGATIONS

A. The SEC Action

16 6. On March 4, 2009, the Securities and Exchange Commission ("SEC")
17 filed a Complaint (the "Complaint") in the SEC Action, alleging two fraud claims for
18 relief against Diversified, Applied Equities, and Bruce Friedman ("Friedman"), as
19 well as Relief Defendant Tina M. Placourakis.
20

21 7. The Complaint alleged, among other things, that Diversified, Applied
22 Equities and Bruce Friedman perpetrated an ongoing fraudulent investment scheme
23 whereupon Diversified raised at least \$216 million by offering and selling securities
24 in the form of one or five year "Secured Investment Notes" to numbers of investors
25 nationwide, many of whom are older Americans. The Complaint further alleged that
26 Diversified did not invest Diversified investor money as represented; rather, it
27 diverted a substantial amount of investor money to undisclosed business ventures or
28 investments, as well as to Bruce Friedman's family members and friends.

1 8. At the time it filed the Complaint, the SEC also filed in the SEC Action
2 an ex parte application (the "TRO Application") for a temporary restraining order
3 and for orders: (1) freezing assets, (2) appointing a temporary receiver, (3)
4 prohibiting the destruction of documents, (4) granting expedited discovery, and (5)
5 requiring accountings, and for an order to show cause re preliminary injunction and
6 appointment of a permanent receiver.

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

18 **B. The Ponzi Scheme**

19 10. Diversified was formed on May 18, 2004, by Friedman, but it has been
20 represented that its business had been conducted by Friedman since about 1983.

21 11. Friedman was convicted of grand theft in 1981 and was incarcerated for
22 about 23 months. Friedman also filed for personal bankruptcy in April 1993, and
23 received a discharge. In 2000, the United States Attorney for the Southern District of
24 New York filed a criminal complaint against Friedman alleging that he had
25 committed wire fraud, which was dismissed.

26 12. Diversified, Friedman, among others, solicited and obtained
27 approximately \$227,844,000 million of investor deposits between 2004 and March 4,
28

1 2009 (the "Investor Funds"), from the investors in Diversified (the "Diversified
2 investors").

3 13. On or about December 16, 2008, with the assistance of the law firm of
4 Kirkland & Ellis, Friedman sent a letter to the Diversified investors advising them of
5 his criminal conviction, personal bankruptcy filing, and the wire fraud allegations.

6 14. Diversified, through its employees, officers, insiders, and sales people,
7 was run as a classic Ponzi scheme throughout its existence up until the time of the
8 appointment of the Receiver on March 4, 2009. Diversified, either directly or
9 through the actions of Friedman and others, solicited investments from individuals
10 and trusts, offering them above-market guaranteed or insured rates of return, and
11 representing to them that their funds would be used in the operation of Diversified's
12 business of investing in income producing "scratch and dent" real estate properties.

13 15. Diversified, through its employees, officers, insiders, and sales people,
14 represented to its investors that its business operations consisted of the "acquisition
15 and operation of income producing property, insurance and financial service
16 brokerage business and private investment pools." Diversified and Friedman, among
17 others, further represented to its investors that Diversified and its subsidiaries
18 "engaged in asset management, real estate lending and other financial services."

19 16. Diversified, through its employees, officers, sales people and others,
20 further represented that its programs were safe and falsely assured investors that their
21 investments were secure. In marketing and selling its investment product,
22 Diversified, through its employees, officers and sales people, repeatedly touted the
23 program's safety and security and consistent high returns on its investment portfolio.

24 17. Diversified and its officers, employees, sales people and others prepared
25 and delivered to Diversified investors a monthly Investor Information Sheet
26 containing an "Investment Overview" which stated that Diversified's "investment
27 philosophy is built on the following three pillars:
28

- 1 i. Preservation of our investors' capital
- 2 ii. Delivering absolute returns
- 3 iii. Having lower volatility than major traditional indices.

4 To meet these objectives, Diversified Lending Group uses only investments in
5 Income Stream Real Estate. . ." A sample of one the monthly Investor Information
6 Sheets, for the month ended September 20, 2008, is attached hereto as Exhibit "1".

7 18. Diversified and Friedman, among others, further provided financial
8 statements to interested investors and others which were materially false.

9 19. Contrary to the representations of Diversified and Friedman, as well as
10 others, regarding the alleged portfolio of real property, Diversified did not use any of
11 the Investor Funds to purchase any income producing "scratch and dent" real
12 properties. In fact, Diversified did not purchase any such property at any time.

13 20. Instead, significant portions of the Investor Funds were misappropriated
14 by Diversified and Friedman and were either placed in speculative investments
15 (many of them illiquid, such as private loan and equity deals), diverted to Friedman
16 and other Diversified insiders, and used to finance Friedman's lavish lifestyle (e.g.,
17 jet planes, vacation homes, luxury cars, travel, gambling, company credit card, etc.).
18 Friedman also made loans and gifts to family and friends totaling over \$10 million.

19 21. Diversified also paid over \$37,833,000 of the Investor Funds to certain
20 Diversified investors as fictitious returns on their investments, in order to induce
21 them and other investors into making further investments.

22 22. Diversified, Applied Equities and others represented that Applied
23 Equities was Diversified's "Investment Servicing Division".

24 23. Diversified, either directly or through its officers, employees, sales
25 people and others, offered two investment options to the Diversified investors.

26 24. One option offered the Diversified investors a promissory note bearing a
27 12% interest rate with a corporate guarantee of both the principal and the promised
28 interest. Diversified represented that investors placing their money in the 12%

1 investment program (the "12% Program") would receive a securitized note and
2 would receive a guaranteed annual return of 12%. The corporate guaranty was
3 illusory because it was from Diversified. These notes bore maturities of 1 or 5 years.

4 25. The second investment option offered the Diversified investors a
5 promissory note bearing a 9% interest rate, with an endorsement that the principal
6 amount of the investment "will be insured by a AA rated or better insurance
7 company" (the "9% Program"). In some instances, it was specifically represented
8 that the principal was insured by Jackson National or American National Insurance
9 Company.

10 26. The 9% Program provided that the investors in that program would
11 receive a collateral assignment of annuities issued by Jackson National in which
12 Diversified was the owner (the "Collateral Assignments"). Diversified's marketing
13 materials explained that the reinsurance of the principal amount was to be
14 accomplished by the Collateral Assignments.

15 27. In order to provide the Collateral Assignments, Diversified would
16 purchase an annuity at Jackson National through Diane Cano ("Cano"), as an
17 authorized representative of Jackson National, and Cano would then prepare a
18 collateral assignment of the annuity to the investor who had invested in the 9%
19 Program.

20 28. Although it was represented to the Diversified investors in the 9%
21 Program that their principal investment would be 100% secured by the Collateral
22 Assignment, in most instances the annuity that was purchased by Diversified through
23 Cano was only funded in an amount of 10% of the principal amount invested, not
24 100%. Friedman, Cano and others knew that the annuities were funded with only
25 10% of the principal amount of investments, and Friedman and Cano also knew that
26 Diversified was representing that the principal amounts were fully reinsured by
27 Jackson National. Cano was responsible for preparing the Collateral Assignments on
28 Jackson National forms.

1 29. In order to entice investors to invest in the 9% Program and the 12%
2 Program, Diversified disseminated information circulars to prospective investors.
3 For example, an Information Circular dated July 2007, represented, among other
4 things, that Diversified had assets of \$501,242,761 as of December 31, 2005, and
5 assets of \$571,679,792 as of December 31, 2006. The July 2007 Information
6 Circular further stated that Diversified had revenue of \$161,786,242 as of December
7 31, 2005, and revenue of \$197,105,784 as of December 31, 2006. A copy of the July
8 2007 Information Circular is attached hereto as Exhibit "2".

9 30. In 2008, Diversified retained the law firm of Kirkland & Ellis to prepare
10 a private placement memorandum so that the notes could be sold under an exemption
11 to the securities laws.

12 31. Diversified disseminated a Private Placement Memorandum dated
13 October 1, 2008 (the "October 2008 PPM"), which contained false financial
14 statements. A copy of the October 2008 PPM is attached hereto as Exhibit "3". The
15 October 2008 PPM misrepresented, among other things, that Diversified had
16 \$501,242,761 in assets under management as of December 31, 2005, \$571,679,792
17 in assets under management as of December 31, 2006, and \$655,463,336 in assets
18 under management as of December 31, 2007. Diversified did not have assets worth
19 anywhere near these amounts in 2005, 2006 and 2007, or at any time. The October
20 2008 PPM also misrepresented that Diversified had revenue of \$161,786,242 as of
21 December 31, 2005, \$197,105,784 of revenue as of December 31, 2006, and revenue
22 of \$268,982,326 as of December 31, 2007. Diversified never had revenue anywhere
23 near the represented sums.

24 32. The October 2008 PPM did not disclose Friedman's prior criminal
25 felony conviction, his bankruptcy, or the wire fraud charges.

26 33. On or about December 16, 2008, as stated in paragraph 13, above, with
27 the assistance of Kirkland & Ellis, Diversified issued a letter to its investors
28 disclosing for the first time that Friedman had served approximately two years in

1 prison on a conviction for grand theft of personal property, that he had filed for
2 personal bankruptcy in April 1993, and that a criminal complaint had been filed
3 against him in 2000 for wire fraud, which complaint was subsequently dismissed.
4 Diversified's letter additionally disclosed that it had been the subject of securities
5 investigations in the states of Michigan, Arkansas and Wisconsin. Additionally,
6 Diversified falsely stated that it had engaged Deloitte & Touche LLP as an
7 independent auditor, and falsely stated that Deloitte & Touche LLP had declined the
8 engagement.

9 34. Diversified provided statements to its investors on a quarterly basis.
10 The statements contained reports that the value of their accounts was increasing and
11 reflected false profits.

12 35. During the scheme, some Diversified investors requested distributions
13 of their profits identified on statements sent to them, which were in reality fictitious
14 profits. Diversified had dissipated the investors' principal and had not made any
15 profits. However, in order to conceal the ongoing fraud and in order to bolster the
16 false representations of profits, Diversified paid to certain investors the amounts of
17 fictitious profits reflected in the falsified statements, including both the dissipated
18 principal and fictitious profits.

19 36. Between 2004 and March 4, 2009, Diversified paid at least \$37,833,000
20 of the Investor Funds obtained from new investments made in Diversified to earlier
21 investors as fictitious profits. Virtually none of the funds paid back to investors were
22 funds obtained from legitimate business operations of Diversified, and none of those
23 funds were from revenues from income producing properties.

24 37. Some of the Diversified investors who received payments of fictitious
25 profits or return of principal later re-invested funds with Diversified.

26 38. Diversified used funds deposited by new investors and new investments
27 from existing customers to continue operations and to make distributions to earlier
28 investors or to make other transfers. Since new funds were used to pay requests for

1 distributions to older investors, Diversified did not have sufficient funds from
2 income to repay the principal amounts due to the new investors. Diversified was
3 only able to continue operations by using the principal invested by new investors to
4 pay the old investors.

5 39. The money obtained from new investments was used to keep the
6 operation going, and to enrich Friedman, as well as other insiders. Friedman, with
7 the substantial assistance of other insiders, was able to maintain the fraud, attracting
8 millions of dollars of investments and then paying off older investors with new
9 monies that he fraudulently obtained from new investors.

10 40. For all relevant time periods, Diversified operated its business as a
11 Ponzi scheme and concealed the ongoing fraud in an effort to hinder, delay and
12 defraud its current and prospective investors and other creditors from discovering the
13 fraud.

14 41. Diversified used registered brokers, unregistered sales people and
15 insurance agents (the "Sales People") to solicit new investor funds in furtherance of
16 the fraudulent scheme, whereby Diversified would use new investor funds to pay
17 promised returns to earlier investors. Over a six-year period, these Sales People
18 received commissions ranging in amounts up to over \$1.7 million each, to promote
19 the sales of Diversified's investment products. Collectively, these Sales People and
20 others received more than \$16 million in commissions and other compensation paid
21 from the Investor Funds during that period.

22 42. Commissions paid to Sales People in connection with the fraudulent
23 Ponzi scheme described above were transferred by Diversified solely for the purpose
24 of concealing and perpetuating the fraudulent scheme. The commissions were not
25 paid from legitimate investment returns or returns of principal but were paid from
26 funds supplied by other investors who invested new funds after the earlier investors
27 had invested their funds. The Sales People did not perform services (or performed
28 only services that were in furtherance of the fraudulent scheme) in exchange for

1 these payments. Therefore, the Sales People do not have any rightful ownership
2 interest that could justify their retaining possession of these funds, which are
3 properly considered assets of the Receivership Estate.

4 43. The notes sold by Diversified were securities. Until at least September
5 15, 2008, all sales were illegal. The Sales People were paid commissions for the
6 sales of unregistered securities not subject to any exemption.

7 44. The Ponzi scheme collapsed when the requests for withdrawals
8 exceeded the flow of new investments which was a result of, among other things:
9 Friedman's disclosure by letter to Diversified investors that he was a convicted felon
10 and had previously filed bankruptcy, thereby significantly slowing down the inflow
11 of new investor funds; new investor funds were hard to attract due to the collapse of
12 the financial markets in 2008; and Diversified was the subject of securities fraud
13 investigations in at least three states.

14 45. At all relevant times herein, the liabilities of Diversified were
15 significantly greater than the assets of Diversified.

16 46. At all relevant times herein, Diversified was insolvent in that (i) its
17 assets were worth less than the value of its liabilities; (ii) it could not meet its
18 obligations as they came due; and (iii) at the time of the transfers, it was left with
19 insufficient capital.

20 **C. Facts Relating to Ponzi Proceeds Taken By Bruce Friedman**

21 47. During all relevant times herein, Friedman was considered a successful
22 businessman. However, Friedman operated a Ponzi scheme by using Diversified and
23 its false investment program in order to generate over \$227,844,000 in investor
24 funds, much of which he used to fund his lavish lifestyle and his pet projects, often
25 involving family members and friends.

26 48. During the years 2004 through 2009, Friedman withdrew cash from
27 Diversified in the amount of at least \$943,831.

28

1 49. Friedman paid personal credit card bills of himself and a woman
2 sometimes identified as his wife, Wendy Mehlman, in the amount of at least
3 \$830,491.

4 50. Friedman purchased jewelry for himself and family members using
5 Diversified Ponzi proceeds in the amount of at least \$1,480,509.67.

6 51. Friedman purchased numerous vehicles for himself and his family
7 members using Diversified Ponzi proceeds in the amount of at least \$1,418,739.75.

8 52. Friedman used at least \$530,000.69 of Diversified Ponzi proceeds to
9 shop for himself and buy gifts for others.

10 53. Friedman purchased artwork for himself and family members using
11 Diversified Ponzi proceeds in the amount of at least \$76,036.64.

12 54. Friedman spent at least \$1,244,353.25 of Diversified Ponzi proceeds for
13 hotels and gambling losses at casinos.

14 55. Friedman spent at least \$538,131.24 of Diversified Ponzi proceeds for
15 travel.

16 56. Friedman spent at least \$681,357.26 of Diversified Ponzi proceeds for
17 food and entertainment for himself and his family and friends.

18 57. Friedman purchased interests or leases in airplanes for his and his
19 family and friends' private use using Diversified Ponzi proceeds in the amount of at
20 least \$8,893,737.39.

21 58. Friedman used at least \$4,876,078.64 of Diversified Ponzi proceeds to
22 make contributions to various charitable organizations.

23 59. Friedman used at least \$610,206.27 of Diversified Ponzi proceeds for
24 personal expenses, and another \$396,069.24 of Diversified Ponzi proceeds were used
25 for unknown purposes.

26 60. Friedman used at least \$1,089,828 of Diversified Ponzi proceeds to pay
27 premiums for his own personal life insurance policies.

28

1 61. Diversified acquired a house in the name of MMHIM, Inc., a subsidiary
2 of Diversified, located at 31610 Broad Beach, Malibu, California, which was
3 purchased and improved using Diversified Ponzi proceeds in the amount of at least
4 \$8,460,699.40. The Receiver is informed and believes Friedman intended to live in
5 the house.

6 62. Diversified acquired a house in the name of MMHIM, Inc., located at
7 127 North Mountain Rd., Montclair, New Jersey, which was purchased using
8 Diversified Ponzi proceeds in the amount of at least \$668,311.14.

9 63. Friedman owned a house in his own name located at 174 Upper
10 Mountain Ave., Montclair, New Jersey, which he purchased using Diversified Ponzi
11 proceeds in the amount of at least \$2,945,845.29.

12 64. Friedman owned a 50% interest in 55 Edgemere LLC, which owned the
13 residential property located at 55 Edgemere, Greenwood Lake, New York, which he
14 purchased and improved using Diversified Ponzi proceeds in the amount of at least
15 \$634,564.18.

16 65. Friedman had an agreement regarding ownership in a condominium in
17 Cancun Mexico, which he purchased and furnished using Diversified Ponzi proceeds
18 in the amount of at least \$328,500.

19 66. Friedman made an unsecured loan of at least \$6 million of Diversified
20 Ponzi proceeds to his cousin, Mark Friedman.

21 67. Friedman made an unsecured loan to a friend, Robert Fields, for at least
22 \$250,000 using Diversified Ponzi proceeds and then advised Fields that he need not
23 pay back the loan.

24 68. Friedman paid at least \$4.3 million of Diversified Ponzi proceeds in an
25 undocumented transaction to Wind Options, LLC, a company in which his brother,
26 Gary Friedman, owns an interest and made other payments for the benefit of Wind
27 Options and Gary Friedman, bringing the total paid to or for the benefit of this
28 business to at least \$5,503,415.

1 69. Friedman diverted at least \$1.3 million of Diversified Ponzi proceeds to
2 fund the purchase of a house in the name of the Chief Financial Officer of
3 Diversified and friend, Karen O'Callaghan (O'Callaghan). O'Callaghan
4 subsequently refinanced the house and pulled out \$500,000 of equity, the use of
5 which she has concealed.

6 70. Friedman diverted at least \$1.3 million of Diversified Ponzi proceeds to
7 fund the purchase of a house in the name of his assistant and friend, Kevin Keller.

8 71. Friedman diverted at least \$310,480 of Diversified Ponzi proceeds to
9 fund part of the purchase of a house in the name of his son-in-law Kevin Mehlman.

10 72. Friedman diverted at least \$325,772 of Diversified Ponzi proceeds to
11 fund part of the purchase of a house in the name of his daughter, Shawna Friedman.

12 73. Friedman diverted at least \$471,314 of Diversified Ponzi proceeds to
13 fund part of the purchase of a house in the name of his daughter-in-law, Julie
14 Sitomer, aka Julie Melhman, and her husband.

15 **D. The Transfers to Tierra Rejada on Behalf of Lenders Depot**

16 74. On March 9, 2004, Tierra Rejada filed a complaint against Lenders
17 Depot and Friedman for (a) Breach of Fiduciary Duty, (b) Fraud in the Inducement,
18 and (c) Violations of Business and Professions Code § 17200 et seq. in the matter
19 *Tierra Rejada Golf Club, LLC v. Bruce Friedman and Lenders Depot, Inc.* in
20 Superior Court for the State of California, Los Angeles County, case number
21 SC080908 (the "Tierra Rejada Action"). The complaint was later amended to
22 include a Negligence cause of action.

23 75. Tierra Rejada's attorneys of record in the Tierra Rejada Action was
24 Steven E. Young, Esq., for Freeman, Freeman & Smiley, LLP, a California limited
25 liability partnership ("Freeman-Smiley").

26 76. On or about January 18, 2005, Tierra Rejada, Lenders Depot and
27 Friedman entered into an Agreement of Settlement and Mutual and General Release
28 (the "Settlement Agreement") whereby Friedman and Lenders Depot agreed to pay

1 the total sum of \$58,000.00 in order to settle all causes of action in the Tierra Rejada
2 Action. The Settlement Agreement provided that in the event of default, a stipulated
3 judgment in the amount of \$100,000.00, less any payments made, would be entered
4 against Lenders Depot and Friedman.

5 77. On or about February 11, 2005, Diversified paid the sum of \$20,000.00
6 to Freeman-Smiley pursuant to the Settlement Agreement for the benefit of Lenders
7 Depot, Inc. Lenders Depot and Friedman failed to make subsequent payments in
8 accordance with the Settlement Agreement.

9 78. On April 19, 2005, the Tierra Rejada Action parties filed the Stipulation
10 for Entry of Judgment and Judgment Thereon (the "Judgment") based on Lender
11 Depot's and Friedman's default under the Settlement Agreement. On that same date,
12 the Judgment was entered against Friedman and Lenders Depot, Inc., in the amount
13 of \$80,000, which represented the stipulated judgment of \$100,000 less the \$20,000
14 payment received on or about February 11, 2005.

15 79. On information and belief, it is alleged that Tierra Rejada levied assets
16 totaling approximately \$77,750 in its attempt to satisfy its Judgment.

17 80. On or about February 28, 2006, Diversified paid the sum of \$2,250.00 to
18 Freeman-Smiley as the final satisfaction of the Judgment for the benefit of Lenders
19 Depot, Inc. In total, Diversified paid no less than \$22,250.00 to Tierra Rejada for the
20 benefit of Lenders Depot, Inc. (the "Transfers").

21 81. On March 28, 2006, Tierra Rejada filed its Acknowledgment of
22 Satisfaction of Judgment in the Tierra Rejada Action.

23 **FIRST CLAIM FOR RELIEF**

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

25 **(Against All Defendants)**

26 82. The Receiver repeats and re-alleges the allegations contained in
27 paragraphs 1 through 81, inclusive, hereof and incorporates the same herein by this
28 reference.

1 **THIRD CLAIM FOR RELIEF**

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

3 **(Against All Defendants)**

4 89. The Receiver repeats and re-alleges the allegations contained in
5 paragraphs 1 through 81, inclusive, hereof and incorporates the same herein by this
6 reference.

7 90. The Receiver is informed and believes, and based thereon alleges, that
8 when Diversified made the Transfers, it was engaged in, or was about to engage in,
9 business or a transaction, for which any property remaining with Diversified was an
10 unreasonably small capital.

11 91. The Receiver is entitled to avoid the Transfers under California Civil
12 Code section 3439.04(b)(1). Furthermore, under California Civil Code section
13 3439.08, the Receiver is entitled to recover from the Defendants the value of the
14 Transfers plus interest thereon as allowed by law.

15 **FOURTH CLAIM FOR RELIEF**

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

17 **(Against All Defendants)**

18 92. The Receiver repeats and re-alleges the allegations contained in
19 paragraphs 1 through 81, inclusive, hereof and incorporates the same herein by this
20 reference.

21 93. The Receiver is informed and believes, and based thereon alleges, that
22 when Diversified made the Transfers, it had already incurred, or believed or
23 reasonably should have believed that it would incur, debts that would be beyond its
24 ability to pay as such debts matured.

25 94. The Receiver is entitled to avoid the Transfers under California Civil
26 Code section 3439.04(b)(2). Furthermore, under California Civil Code section
27 3439.08, the Receiver is entitled to recover from the Defendants the property
28

1 transferred to them or the value of the Transfers plus interest thereon as allowed by
2 law.

3 **FIFTH CLAIM FOR RELIEF**

4 **(To Avoid Unjust Enrichment)**

5 **(Against All Defendants)**

6 95. The Receiver repeats and re-alleges the allegations contained in
7 paragraphs 1 through 81, inclusive, hereof and incorporates the same herein by this
8 reference.

9 96. The Receiver is informed and believes, and based thereon alleges, that
10 as a result of the Transfers herein alleged, the Defendants have been unjustly
11 enriched, so that the Receiver is entitled to recover from the Defendants the property
12 transferred to them or the value of the Transfers plus interest thereon at the legal rate.

13 **SIXTH CLAIM FOR RELIEF**

14 **(To Impose Constructive Trust)**

15 **(Against All Defendants)**

16 97. The Receiver repeats and re-alleges the allegations contained in
17 paragraphs 1 through 96, inclusive, hereof and incorporates the same herein by this
18 reference.

19 98. The Receiver is informed and believes, and based thereon alleges, that
20 the Transfers by Diversified to Defendants constitutes identifiable and traceable
21 property which was fraudulently transferred to the Defendants so that the Receiver is
22 entitled to, among other things, a determination that the Defendants holds such
23 property in trust for the benefit of the Receiver.

1 **SEVENTH CLAIM FOR RELIEF**

2 **(For Imposition of Equitable Lien)**

3 **(Against All Defendants)**

4 99. The Receiver repeats and re-alleges the allegations contained in
5 paragraphs 1 through 96, inclusive, hereof and incorporates the same herein by this
6 reference.

7 100. Based upon the above-mentioned conduct, the Receiver is entitled to
8 impress upon the property transferred, or the value thereof, with equitable liens to
9 prevent unjust enrichment, to do justice in equity and to prevent unfair results.

10
11 WHEREFORE, Receiver prays Judgment as follows:

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

14 101. That a judgment be entered in favor of the Receiver recovering the
15 property transferred to the Defendants or the value of the Transfers from the
16 Defendants, plus interest thereon at the legal rate;

17 **FOR THE SIXTH CLAIM FOR RELIEF:**

18 102. For a judgment imposing a constructive trust on the property received
19 by the Defendants from Diversified and determining that the Defendants hold said
20 property in trust for the Receiver;

21 **FOR THE SEVENTH CLAIM FOR RELIEF:**

22 103. For a judgment imposing an equitable lien upon the property held by
23 Defendants;

1 **FOR ALL CLAIMS FOR RELIEF:**

2 104. For interest on the sums recovered;

3 105. For costs of suit incurred herein; and

4 106. For all other and further relief as the Court deems just and proper.

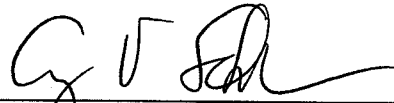
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6 Dated: February 26, 2010

DANNING, GILL, DIAMOND & KOLLITZ, LLP

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By:



George E. Schulman

Attorneys for David A. Gill, Receiver

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