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Consolidated Management Group, LLC
Consolidated Leasing Anadarko Joint Venture
Consolidated Leasing Hugoton Joint Venture #2

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

JSW

C 06 4203

Consolidated Management Group, LLC, a Kansas limited liability company, Consolidated Leasing Anadarko Joint Venture, a Kansas general partnership, and Consolidated Leasing Hugoton Joint Venture #2, a Kansas general partnership,

Plaintiffs,

v.

Preston DuFauchard, California Corporations Commissioner
and
California Department of Corporations,

Defendants.

Case No. _____

VERIFIED COMPLAINT FOR VIOLATIONS OF 42 U.S.C. § 1983 AND THE SUPREMACY CLAUSE AND FOR INJUNCTIVE AND DECLARATORY RELIEF

Plaintiffs, Consolidated Management Group, LLC, Consolidated Leasing Anadarko Joint Venture, and Consolidated Leasing Hugoton Joint Venture #2 ("Plaintiffs"), hereby allege as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 because this matter involves a federal question arising under the Supremacy Clause and federal statutes enacted by Congress, including 42 U.S.C. § 1983 and 42 U.S.C. § 1343(a)(3). Abstention from jurisdiction under *Younger v. Harris*, 401 U.S. 37 (1971) is not appropriate in this case, because it is "readily apparent" that the Commissioner's actions in issuing the D&R are preempted by NSMIA, and, therefore, "no significant state interest [would be] served" by abstention. *See Bud Antle, Inc. v. Barbosa*, 45 F.3d 1261, 1266 (9th Cir. 1994) (reversing dismissal of Plaintiff's complaint for injunctive relief against a California agency because it was "readily apparent" that the agency was acting beyond its authority, and therefore, abstention was not appropriate).

2. Venue is proper in the United States District Court for the Northern District of California pursuant to 28 U.S.C. § 1391(b) because this civil action is not founded on diversity of citizenship, both Defendants reside in this district, and a substantial part of the events giving rise to the claims alleged in this Complaint occurred in this district. The California Department of Corporations is a State agency, and Preston DuFauchard as California Corporations Commissioner is an official with that agency, both of which are deemed to reside in the district(s) where their official duties are performed. *See Florida Nursing Home Ass'n v. Page*, 616 F.2d 1355, 1360 (5th Cir. 1980), *rev'd on other grounds*, 450 U.S. 147 (1981); *see also Straus Family Creamery v. Lyons*, 219 F. Supp. 2d 1046, 1048 (N.D. Cal. 2002). Both the California Corporations Commissioner and the Department of Corporations perform their official duties and have offices in the Northern District of California, and the events giving rise to the claims asserted herein occurred in this district.

THE PARTIES

3. Plaintiff Consolidated Management Group, LLC ("Consolidated") is a limited liability company organized and existing under the laws of Kansas with its principal place of business located at 410 Urban Drive, Hutchinson, Kansas 67501.

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4. Consolidated Leasing Anadarko Joint Venture ("Anadarko Joint Venture") is a general partnership formed under and pursuant to the laws of Kansas with its principal place of business located at 410 Urban Drive, Hutchinson, Kansas 67501.

5. Consolidated Leasing Hugoton Joint Venture #2 ("Hugoton Joint Venture") is a general partnership formed under and pursuant to the laws of Kansas with its principal place of business located at 410 Urban Drive, Hutchinson, Kansas 67501.

6. Defendant Preston DuFauchard is the California Corporations Commissioner and is sued in his official capacity. Defendant DuFauchard conducts business out of and can be served with process at any of the four offices of the Department of Corporations in the State of California, including the office located at 1515 K Street, Suite 200, Sacramento, CA 95814-4052.

7. Defendant California Department of Corporations is an executive department of the state of California. The Department of Corporations, of which the Commissioner of Corporations is the chief officer, is a division of the California Business and Transportation Agency. *See* Cal. Corp. Code § 25600 (Deering 2006). The Department of Corporations can be served at 1515 K Street, Suite 200, Sacramento, CA 95814-4052.

FACTUAL AND LEGAL BACKGROUND

8. Consolidated is a Kansas limited liability company, formed in 2003 for the purpose of, among other things, acting as managing venturer of partnerships, joint ventures, and other entities formed by Consolidated in connection with the oil and gas industry. More specifically, Consolidated sponsors and acts as managing venturer for joint ventures (general partnerships) that purchase and lease drilling and other heavy-duty equipment utilized in the oil and gas industry.

9. In approximately August of 2005, Consolidated sponsored the offer and sale of interests in the Hugoton Joint Venture. The Hugoton Joint Venture is a Kansas general partnership, formed for the purpose of acquiring and leasing energy-related service equipment. In connection with the proposed offer and sale of joint venture interests in the Hugoton Joint Venture, Consolidated (as managing venturer) filed with the United States Securities and Exchange Commission ("SEC") a Form D, Notice of Sale of Securities Pursuant to Regulation D (Rules 501 – 508 [17 C.F.R. 230.501 et seq.]) promulgated pursuant to the Securities Act of 1933, as amended

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[15 U.S.C. § 77a et seq.] (the "Securities Act")). Specifically, Consolidated and the Hugoton Joint Venture took advantage of the safe harbor provisions (exemption from registration) pursuant to Rule 506 [17 C.F.R. 230.506] of Regulation D.[1]

10. Also in August of 2005, Consolidated filed and served with the California Corporations Commissioner ("the Commissioner"), Department of Corporations, two copies of the Form D filed with the SEC for the Hugoton Joint Venture, two copies of the U-2 Uniform Consent to Service of Process, and the $300.00 notice filing fee required under California Corporations Code Section 25102.1(d). It is undisputed that Consolidated filed the referenced materials with the Department of Corporations on behalf of the Hugoton Joint Venture.

11. In approximately November of 2005, Consolidated sponsored the offer and sale of interests in the Consolidated Leasing Anadarko Joint Venture. The Anadarko Joint Venture is a Kansas general partnership, formed for the purpose of acquiring and leasing energy-related service equipment. In connection with the proposed offer and sale of joint venture interests in the Anadarko Joint Venture, Consolidated (as managing venturer) filed with the SEC a Form D, Notice of Sale of Securities Pursuant to Regulation D (in identical manner to the filing in the Hugoton Joint Venture).

12. Also in November of 2005, Consolidated filed and served with the Commissioner two copies of the Form D filed with the SEC for the Anadarko Joint Venture, two copies of the U-2 Uniform Consent to Service of Process, and the $300.00 notice filing fee required under California Corporations Code Section 25102.1(d). It is undisputed that Consolidated filed the referenced materials with the Department of Corporations on behalf of the Anadarko Joint Venture.

13. On or about January 23, 2006, Wayne Strumpfer, then-acting California Corporations Commissioner, issued a "Desist and Refrain Order" ("D&R") to Kenneth W. Keegan, Faber Lane

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[1] Notwithstanding the filing of the Forms D by Consolidated with respect to the Hugoton and Anadarko Joint Ventures, Consolidated takes the position and has always taken the position, that the interests in the Hugoton and Anadarko Joint Ventures are *not* securities but are true general partnership interests with all the attendant liabilities, management powers, and duties associated with a general partnership. The details of these liabilities, duties, responsibilities, and Consolidated's position that the joint venture interests are not securities are all set forth in the Confidential Information Memoranda, Joint Venture Agreements, and all other accompanying and related materials for the joint ventures. The filing of the Forms D is done out of an over-abundance of caution and so Consolidated can avail itself of the safe harbor provisions afforded it under Regulation D.

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Johnston, Brandon Taylor, Guardian Capital Management, Consolidated Management Group, LLC, Consolidated Leasing Anadarko Joint Venture, and Consolidated Leasing Hugoton Joint Venture #2 (collectively, "the Respondents"). The D&R alleges violations of sections 25110 and 25210 of the California Corporations Code.

14. The D&R asserts that Consolidated, the Hugoton Joint Venture, and the Anadarko Joint Venture (as well as the other Respondents) "are engaged in the offer and sale of securities in the form of joint venture interests" and that they "have engaged in general solicitations to the public to offer and sell these joint venture interests." The D&R further alleges that the "Department of Corporations has not issued a permit or other form of qualification authorizing any person to offer and sell these securities in this state." The D&R concludes, based upon the referenced findings, that the joint venture interests offered and sold in the Hugoton and Anadarko Joint Ventures "are securities and are subject to qualification under the California Corporate Securities Law of 1968, and that these securities have been offered and sold without being qualified in violation of Corporations Code section 25110 and are not exempt."

15. As a result of the Commissioner's findings, the Commissioner ordered Consolidated, the Hugoton Joint Venture, and the Anadarko Joint Venture (as well as the other Respondents) to desist and refrain from "the further offer or sale in the State of California of securities, including but not limited to joint venture interests, unless and until qualification has been made under the law or unless exempt." The D&R does *not* assert any allegation of fraud.

16. On February 21, 2006, Consolidated, the Anadarko Joint Venture, and the Hugoton Joint Venture (collectively, "the Consolidated Respondents") filed with the Department of Corporations their Request for Hearing, Motion to Dismiss, and Notice of Defense. In their Motion to Dismiss, the Consolidated Respondents asserted, among other things, that the Commissioner lacked jurisdiction over them because the Joint Venture Interests are not securities, and further, even if the Joint Venture Interests were to be interpreted as securities, the filing with the State of California of the Forms D, U-2, and fees made the sale of the Joint Venture Interests exempt from the registration requirements of California's securities code. The Motion to Dismiss also asserted that the Commissioner's authority over the Consolidated Respondents with respect to the sale of the

Joint Venture Interests was preempted by the application of the National Securities Markets Improvement Act of 1996 ("NSMIA") [15 U.S.C. § 77r], which by its title, "Exemption from State Regulation of Securities Offerings," is self-explanatory.[2]

17. On February 22, 2006, Kenneth Keegan, Faber Laine Johnston, Brandon Taylor, and Guardian Capital Management (collectively, "the Guardian Respondents") joined in the Consolidated Respondents' Request for Hearing, Motion to Dismiss, and Notice of Defense. On March 2, 2006, the Guardian Respondents withdrew their Request for Hearing and consented to the D&R (as to themselves only).

18. On March 6 and 7, 2006, the Consolidated Respondents and counsel for the Department of Corporations and the Commissioner proceeded with the scheduled hearing before an Administrative Law Judge at the Office of Administrative Hearings in Oakland, California. At that hearing, the Consolidated Respondents reiterated that the Commissioner's actions against the Consolidated Respondents through the D&R are preempted under NSMIA and that the Commissioner lacks jurisdiction over the Respondents.

19. The Administrative Law Judge took the Consolidated Respondents' Motions and arguments under advisement and ordered the hearing to proceed. The hearing took place over two full days, and at the conclusion of the second day the parties and the Administrative Law Judge agreed upon a post-hearing briefing schedule. The final brief was submitted to the Administrative Law Judge on April 5, 2006, and the matter was "deemed submitted" to him on that date for purposes of rendering his proposed decision within thirty (30) days.

20. On May 5, 2006, the Administrative Law Judge issued his proposed decision on the D&R. The Administrative Law Judge stated the following with respect to the NSMIA preemption issue:

> While the issue of federal preemption may be raised in an administrative proceeding, **it cannot be decided here**. Article III, section 3.5, of the California Constitution provides, in relevant part, as follows:

[2] The Consolidated Respondents also filed a separate motion to dismiss and brief on the issue of NSMIA preemption. These were served on the Commissioner on February 27, 2006.

> An administrative agency ... has no power:
>
> [¶] ... [¶]
>
> (c) To declare a statute unenforceable, or to refuse to enforce a statute on the basis that federal law or federal regulations prohibit the enforcement of such statute unless an appellate court has made a determination that the enforcement of such statute is prohibited by federal law or federal regulations.

The Administrative Law Judge then denied the Consolidated Respondents' (preemption) Motion to Dismiss.

21. Plaintiffs (the Consolidated Respondents) never alleged that the statute at issue (California Corporations Code section 25102.1) was unenforceable. On the contrary, Plaintiffs argued just the opposite. Plaintiffs believe the California statute as written complies with the mandates of federal preemption set forth in NSMIA. Plaintiffs believe it is the Commissioner's *interpretation* of the statute that is the problem, because the Commissioner believes he has the authority to "look behind" the covered security exemption claimed by the Plaintiffs for an alleged *registration* violation. For this reason, Plaintiffs believe the Commissioner has overstepped his authority, even under the California statute.

22. Under California Government Code Section 11517(c)(2), the Commissioner has until August 13, 2006 (the 100th day following receipt of the proposed decision) to act on the Administrative Law Judge's proposed decision. The Commissioner can adopt the decision in its entirety, reject it, or make certain changes to it. Plaintiffs remain subject to the terms of the D&R, and they continue to suffer harm as a result of the prohibitions in the D&R. Additionally, Plaintiffs are seriously harmed by the Commissioner's (and Administrative Law Judge's) erroneous conclusion that the Joint Venture Interests are securities, a conclusion that the Administrative Law Judge should never have had the opportunity to consider, because the entire basis for the administrative proceeding is preempted by federal law.

23. Plaintiffs seek relief from this Court from the Commissioner's actions in issuing the D&R for alleged registration violations of the California Corporations Code, such actions being expressly prohibited under NSMIA.

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FIRST CLAIM FOR RELIEF

(Declaratory Judgment)

24. Plaintiffs hereby incorporate by reference the preceding paragraphs in this claim for relief.

25. In 1996, Congress enacted NSMIA, which eliminated the dual system of regulation for certain securities offerings and prohibited states from requiring the registration of such securities. *See* 15 U.S.C. § 77r (1997); *Temple v. Gorman*, 201 F. Supp. 2d 1238, 1243 (S.D. Fla. 2002).

26. The NSMIA "Exemption from State Regulation of Securities Offerings" provides:

> No law, rule, regulation, or order or other administrative action of any State or any political local division thereof—requiring, or with respect to, registration or qualification of securities transactions, shall directly or indirectly apply to a security that . . . is a covered security; or . . . shall directly or indirectly prohibit, limit, or impose conditions, based on the merits of such offering or issuer, upon the offer or sale of any [covered security].

15 U.S.C. § 77r(a).

27. The purpose of NSMIA was to "further and advance the development of national securities markets and eliminate the costs and burdens of duplicative and unnecessary regulation by, as a general rule, designating the Federal government as the exclusive regulator of national offerings of securities." *See* H.R. Rep. No. 104-622, at 16 (1996); *Temple,* 201 F. Supp. 2d at 1243.

28. "Where a Form D is filed with the SEC for a transaction that purports to merit an exemption from federal registration pursuant to Regulation D, [states cannot] require duplicative registration or a transactional exemption from registration." *See Temple*, 201 F. Supp. 2d at 1243.

29. Consolidated filed with the SEC a Form D with respect to the sale of interests in both the Hugoton and Anadarko Joint Ventures. Therefore, even if the sale of the joint venture interests were securities transactions (which Plaintiffs assert that they are not), the joint venture interests fall within the definition of "covered securities." The Federal government—not the State of California—is the only party authorized by Congress to scrutinize the merits of Plaintiffs' offering. If California, or any other state, had the authority to challenge the basis for a party's Form D filing, particularly for a State-securities-registration violation, there would exist an incongruous system of

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securities regulation that would eliminate a party's ability to rely upon a Form D filing under Rule 506. This is exactly what NSMIA was intended to eliminate.

30. Plaintiffs request that this Court declare, pursuant to 28 U.S.C. § 2201(a), that because they filed Forms D under Rule 506 with respect to the sale of the Joint Venture Interests, NSMIA prohibits the Commissioner from challenging the status of those transactions as "covered securities" and prohibits the Commissioner from requiring that Plaintiffs comply with California's registration requirements with respect to the sale of joint venture interests.

31. A declaratory judgment is appropriate because it will serve the useful purpose of clarifying and settling the legal issue of whether the Commissioner is preempted by NSMIA from challenging the merits of Plaintiffs' Form D filing, and, if answered in the affirmative, whether the Commissioner is prohibited by NSMIA from imposing registration requirements on Plaintiffs with respect to the sale of the Joint Venture Interests (in light of the Form D filings under Rule 506). A declaratory judgment is also appropriate because it will terminate and afford Plaintiffs relief from the impermissibly issued D&R.

SECOND CLAIM FOR RELIEF

(Violations of 42 U.S.C. § 1983 and the Supremacy Clause)

32. Plaintiffs hereby incorporate by reference the preceding paragraphs in this claim for relief.

33. "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities, secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress . . . ." 42 U.S.C. § 1983 (2003).

34. A Section 1983 claim arises when (1) the provision in question creates obligations that are binding on the governmental unit, (2) the statute, by its terms, or as interpreted, creates obligations sufficiently specific and definite to be within the competence of the judiciary to enforce, (3) the provision is intended to benefit the putative plaintiff, and (4) such claim is not foreclosed by

express provision or other specific evidence from the statute itself. *See Golden State Transit Corp. v. City of Los Angeles*, 493 U.S. 103, 107-109 (1989).

35. The Supremacy Clause of the Constitution invalidates state action that interferes with, or is contrary to, federal law. *Bernhardt v. Pellman*, 339 F.3d 920, 929 (9th Cir. 2003).

36. "Even in the absence of an explicit statutory provision establishing a cause of action, a private party may ordinarily seek declaratory and injunctive relief on the basis of federal preemption." *Bud Antle, Inc. v. Barbosa*, 45 F.3d 1261, 1269 (9th Cir. 1994); *see also Bernhardt*, 339 F.3d at 929 (finding that a Supremacy Clause claim does not depend upon the existence of a civil rights claim).

37. NSMIA creates specific and definite obligations that are binding on California (and all the States) by prohibiting it from imposing laws, rules, regulations, orders, **or other administrative actions** that require issuers of "covered securities" to register or qualify securities transactions. *See* 15 U.S.C. § 77r(a) (1997).

38. "Covered securities" are defined to include securities that are exempt from registration under 15 U.S.C. § 77r(a) pursuant to SEC rules or regulations issued under 15 U.S.C. § 77d(2) (not involving a public offering). *See* 15 U.S.C. 77r(b)(4)(D).[3] A party that timely and properly files a Form D under Rule 506 with the SEC and the State in which the offering will be made is deemed to fall within the exemption for "covered securities," and therefore, is exempt from state registration and/or qualification requirements. *See Temple*, 201 F. Supp. 2d at 1243.

39. Plaintiffs are the intended beneficiaries of NSMIA because NSMIA is intended to relieve parties of the burden of duplicative regulation in the area of securities registration. *See Temple*, 201 F. Supp.2d at 1243; *see also Zuri-Invest AG v. Natwest Finance Inc.*, 177 F. Supp. 2d 189, 193 (S.D.N.Y. 2001) (discussing NSMIA and stating that provisions 77r(a)(2) and (a)(3) were intended specifically to "prevent an end run around the first preemption provision by states seeking to impose their own registration requirements").

[3] States are not prohibited from imposing notice filing requirements that are substantially similar to those imposed by 15 U.S.C. § 77d(2). *See* 15 U.S.C. 77r(b)(4)(D). However, this is irrelevant here because it is undisputed that Plaintiffs complied with all of California's notice filing requirements.

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40. As noted above, Consolidated filed Forms D with respect to the sale of interests in each of the Joint Ventures. Therefore, even if the sale of the Joint Venture Interests were securities transactions (which Plaintiffs assert that they are not), the sale of the interests falls within the definition of "covered securities," and California is preempted from imposing registration requirements with respect to these transactions.

41. The D&R violates 28 U.S.C. § 1983 and the Supremacy Clause of the Constitution because it violates the unequivocal mandate of 15 U.S.C. § 77r by imposing on Plaintiffs the obligation to register and/or qualify the sale of "covered securities" within the State of California.

THIRD CLAIM FOR RELIEF

(Preliminary and Permanent Injunction)

42. Plaintiffs hereby incorporate by reference the preceding paragraphs in this claim for relief.

43. "The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." *See* 28 U.S.C. § 1651(a) (1994).[4] Pursuant to this Court's authority under the All Writs Act, Plaintiffs seek a preliminary injunction pending final resolution of their claims and a permanent injunction that prohibits the Commissioner from the following activities:

a. Requiring that Plaintiffs register and/or qualify the sale of joint venture interests in the State of California when Plaintiffs have filed the appropriate Forms D and U-2 under Rule 506, have complied with all notice filing requirements, and have paid the required fees.

b. Entering orders that prohibit Plaintiffs from selling joint venture interests in the State of California when Plaintiffs have filed the appropriate Forms D and U-2 under Rule 506, have complied with all notice filing requirements, and have paid the required fees.

c. Enforcing the D&R entered on or about January 23, 2006.

[4] The Anti-Injunction Act does not limit this Court's ability to enjoin the Commissioner because the Act does not apply to state administrative proceedings. *See Bud Antle*, 45 F.3d at 1265; *California v. M&P Invs.*, 46 F. App'x 876, 878 (9th Cir. 2002).

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44. Plaintiffs are entitled to a preliminary injunction because there is a probable success on the merits of their claims for violations of 28 U.S.C. § 1983 and the Supremacy Clause and the D&R is causing Plaintiffs to suffer irreparable harm.

45. Plaintiffs are suffering irreparable harm because the Commissioner has made erroneous findings that prevent Plaintiffs from doing business in California. Specifically, the D&R contains findings that the sale of the Joint Venture Interests are "securities" and are not exempt transactions. The business model upon which the Joint Ventures are based is the same model used by Consolidated for the offer and sale of joint venture interests in California, as well as in other states. Therefore, the Commissioner's erroneous findings have far-reaching effects on Consolidated, not just in California, but in all other states in which Consolidated does business, all based on the over-reaching, preempted acts of the Commissioner for alleged registration violations. NSMIA was intended to give parties the right to be free from state regulation in the area of securities registration and qualification of "covered securities." The D&R explicitly denies Plaintiffs that right.

46. Plaintiffs are also suffering irreparable harm because they are being denied the right under Federal law to sell joint venture interests in California, lest they be held in contempt of court for violating the D&R.

47. Furthermore, the public interest warrants the issuance of a preliminary injunction because the Commissioner's actions attempt to impose additional regulation on "covered securities" that Congress intended to eliminate.

48. Plaintiffs are willing and able to post a bond.

49. Plaintiffs' request for preliminary injunction is supported by the Verification of Mike McNaul.

DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS

50. Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court enter judgment against Defendants:

(a) Declaring that because Plaintiffs filed Form D under Rule 506 with respect to the offer and sale of the Joint Venture Interests, NSMIA prohibits the Commissioner from challenging the status of those transactions as "covered securities" and prohibits the Commissioner from requiring that Plaintiffs comply with California's registration and/or qualification requirements with respect to the sale of joint venture interests;

(b) Ordering that the D&R is invalid and in violation of 28 U.S.C. § 1983 and the Supremacy Clause of the Constitution;

(c) Enjoining Defendants and their officers, agents, employees, representatives, and all persons in privity therewith, from:

1. Requiring that Plaintiffs register and/or qualify the sale of joint venture interests in the State of California when Plaintiffs have filed the appropriate Forms D and U-2 under Rule 506, have complied with all notice filing requirements, and have paid the required fees;

2. Entering orders that prohibit Plaintiffs from selling joint venture interests in the State of California when Plaintiffs have filed the appropriate Forms D and U-2 under Rule 506, have complied with all notice filing requirements, and have paid the required fees;

3. Enforcing the D&R entered by the Commissioner against Plaintiffs on or about January 23, 2006.

VERIFICATION

I, Mike McNaul, declare:

I am a Principal for Consolidated Management Group, LLC, which is a party to the above action and which is the Managing Venturer for Consolidated Leasing Anadarko Joint Venture and Consolidated Leasing Hugoton Joint Venture #2, also parties to the above action.. I have read **PLAINTIFFS' VERIFIED COMPLAINT FOR VIOLATIONS OF 42 U.S.C. § 1983 AND THE SUPREMACY CLAUSE AND FOR INJUNCTIVE AND DECLARATORY RELIEF** and know the contents thereof.

The matters stated in paragraphs 3 through 23 are true and correct of my own knowledge.

I declare under penalty of perjury under the laws of the United States and of the State of California that the foregoing is true and correct, and that this verification was executed by me on July 7, 2006.

Mike McNaul

(d) Ordering that Defendants reimburse Plaintiffs for their costs of suit and for such other relief as justice may provide.

Dated: July 7, 2006

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By: _____
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