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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SACRAMENTO

10 THE PEOPLE OF THE STATE OF
CALIFORNIA, by and through the
11 CALIFORNIA CORPORATIONS
COMMISSIONER,

12 Plaintiff,

13 vs.
14

15 DERIVIUM CAPITAL, LLC, a South
Carolina Corporation; FIRST SECURITIES
16 CAPITAL, LLC, a South Carolina
Corporation; FSC FIRST SECURITIES
17 CAPITAL, LLC, a Texas Corporations;
DIVERSIFIED DESIGN ASSOCIATES, an
18 Irish Corporation; DR. CHARLES
CATHCART, individually and doing
19 business as DERIVIUM CAPITAL, LLC
FSC FIRST SECURITIES CAPITAL and
20 FIRST SECURITIES CAPITAL, LLC;
SCOTT CATHCART, individually and doing
21 business as DERIVIUM CAPITAL, LLC,
FSC FIRST SECURITIES CAPITAL and
22 FIRST SECURITIES CAPTIAL, LLC; YURI
DEBEVC, individually and doing business
23 as DERIVIUM CAPITAL, LLC FSC FIRST
SECURITIES CAPITAL and FIRST
24 SECURITIES CAPITAL, LLC , BANCROFT
VENTURES LIMITED, an Isle of Man
25 Corporation, and DOES 1 through 70,

26 Defendants.
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28

Case No.: 02AS05849

**COMPLAINT FOR PERMANENT
INJUNCTION, CIVIL PENALTIES AND
ANCILLARY RELIEF**

(Corporations Code §§ 25210, 25530 and
25535; Financial Code §§ 22100 and
22713)

1 Demetrios A. Boutris, California Corporations Commissioner, acting to protect the
2 public from unlawful, unlicensed finance lending and/or brokering activity, and unlawful,
3 unlicensed broker-dealer activity brings this action in the public interest in the name of the
4 People of the State of California, and alleges as follows:

5 **SUMMARY OF ALLEGATIONS**

6 1. All named Defendants marketed "stock loans" giving "borrowers" up to 90%
7 of the value of their stock, which was allegedly pledged as collateral. More than 200
8 Californians took advantage of these transactions, which, by their characterizations as
9 loans rather than sales, enabled these "borrowers" to defer indefinitely the tax liabilities
10 on up to \$350 million. However, because the "borrowers" transferred all rights to their
11 stock, for at least a three-year period, to Defendants who in most cases immediately sold
12 the stock in order to fund these "loans," these transactions actually involved the sales of
13 securities. Despite their insistence that these were loans, Defendants were neither
14 licensed to act as finance lenders or brokers, nor were they registered to sell securities in
15 the State of California.

16 **VENUE AND JURISDICTION**

17 2. Plaintiff, by this action and pursuant to Financial Code section 22713, seeks
18 to enjoin defendants from engaging in the business of a finance lender or broker without
19 having secured from the Commissioner a license authorizing defendants to act in that
20 capacity, and also seeks civil penalties. Pursuant to Corporations Code section 25530,
21 plaintiff seeks to enjoin defendants from effecting transactions in, or inducing or
22 attempting to induce the purchase or sale of, securities in this state without having
23 secured from the Commissioner a certificate authorizing defendants to act in that
24 capacity. Plaintiff also seeks civil penalties pursuant to Corporations Code section 25535
25 and other ancillary relief as is appropriate.

26 **INDIVIDUAL DEFENDANTS**

27 3. Defendant Dr. Charles Cathcart, and Does 1 through 10, inclusive,
28 (hereafter collectively referred to as "Dr. Cathcart") were natural persons residing in the

1 State of South Carolina and at all times mentioned, herein engaged in activity which
2 involved violations of law hereinafter described conducted in various counties in the State
3 of California. Plaintiff is informed and believes, and thereon alleges, that Dr. Cathcart
4 was the principal control person of Derivium (described below) and FSC (described
5 below) and activities involving all defendants which were intended to willfully engage in
6 the business of a finance broker or lender without a license and effecting transactions in,
7 or inducing or attempting to induce the purchase or sale of securities in this state without
8 having obtained the proper license from the Commissioner.

9 4. Defendant Scott Cathcart, and Does 11 through 20, inclusive, (hereafter
10 collectively referred to as "Scott Cathcart") at all time mentioned are natural persons who
11 resided in the County of San Francisco and were, upon information and belief, a principal
12 officer or control person in Derivium and FSC and in that capacity, engaged in the
13 unlawful acts along with Dr. Cathcart.

14 5. Defendant Yuri Debevc, and Does 21 through 30, inclusive, (hereafter
15 collectively referred to as "Debevc") at all time mentioned are natural persons who
16 resided in the State of South Carolina and were, upon information and belief, a principal
17 officer or control person in Derivium and FSC and in that capacity, engaged in the
18 unlawful acts along with Dr. Cathcart.

19 **ENTITY DEFENDANTS**

20 6. Defendant Derivium Capital, LLC, and Does 31 through 40 (collectively
21 referred to throughout as "Derivium"), are and at all times mentioned herein were
22 corporations formed in the State of South Carolina and registered and authorized to
23 transact intrastate business in the State of California. Plaintiff is informed and believes,
24 and therein alleges that Derivium, the successor firm to FSC (described below) was
25 established and utilized by Dr. Cathcart and as an alter ego of Dr. Cathcart to willfully
26 engage in business as a finance lender or broker and to effect transactions in, or induce
27 or attempt to induce the purchase or sale of securities in this state.

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1 10. At all relevant times herein, Defendants engaged in the business of making
2 available to investors transactions in which the investor would give stock to Defendants in
3 exchange for money. Marketing these transactions as stock loans, Defendants claimed
4 that investors would pledge their stock as collateral in exchange for non-recourse loans
5 of up to 90% of the market value of the stock for a three-year period. This pledge
6 required investors to give up all rights to the stock for the entire three-year period and
7 gave Defendants the right to dispose of the stock including by sale. Investors were also
8 given the option to repurchase the same number of shares, adjusted for splits or other
9 changes, at the end of the three-year period. Defendants charged a 10% per year
10 interest rate on these transactions only if the investor requested the stock back at the end
11 of the three-year period. Defendants would pay each other fees and other charges for
12 marketing and servicing the loans, and for engaging in hedging transactions designed to
13 reduce exposure to the risk of loss of the value of the stock during the three-year period,
14 which included selling the stock outright.

15 11. At all relevant times hereto, Dr. Cathcart, individually and doing business as
16 and as the Chief Executive Officer and/or President of Derivium and FSC, in this state
17 engaged in the business of finance lending or brokering and in effecting transactions in,
18 or inducing or attempting to induce the purchase or sale of securities in this state without
19 having obtained the proper license or certificate from the Commissioner. While
20 unlawfully engaged Dr. Cathcart willfully acted as a finance lender or broker and engaged
21 in the business of offering to buy or sell and buying and selling securities in more than
22 500 transactions involving more than 200 California investors and totaling more than
23 \$350 million. Plaintiff is informed and believed that the total number of offerees will
24 ultimately be significantly more than currently documented.

25 12. At all relevant times hereto, Scott Cathcart, individually and as an officer
26 and/or director of Derivium and FSC, in this state engaged in the business of finance
27 lending or brokering and in effecting transactions in, or inducing or attempting to induce
28 the purchase or sale of securities in this state without having obtained the proper license

1 or certificate from the Commissioner. While unlawfully engaged Scott Cathcart, operating
2 the San Francisco offices of FSC and Derivium, willfully acted as a finance lender or
3 broker and engaged in the business of offering to buy or sell and buying and selling
4 securities in more than 500 transactions involving more than 200 California investors
5 totaling more than \$350 million.

6 13. At all relevant times hereto, Debevc, individually and as an officer and/or
7 director of Derivium and FSC, in this state engaged in the business of finance lending or
8 brokering and in effecting transactions in, or inducing or attempting to induce the
9 purchase or sale of securities in this state without having obtained the proper license or
10 certificate from the Commissioner. While unlawfully engaged Debevc willfully acted as a
11 finance lender or broker and engaged in the business of offering to buy or sell and buying
12 and selling securities in over 500 transactions involving more than 200 California
13 investors totaling over \$350 million.

14 14. At all relevant times hereto, Derivium, engaged in the business of finance
15 lending or brokering and in effecting transactions in, or inducing or attempting to induce
16 the purchase or sale of securities in this state without having obtained the proper license
17 or certificate from the Commissioner.

18 15. At all relevant time hereto FSC engaged in the business of finance lending
19 or brokering and in effecting transactions in, or inducing or attempting to induce the
20 purchase or sale of securities in this state without having obtained the proper license or
21 certificate from the Commissioner.

22 16. At all relevant times hereto DDA engaged in the business of finance lending
23 or brokering and in effecting transactions in, or inducing or attempting to induce the
24 purchase or sale of securities in this state without having obtained the proper license or
25 certificate from the Commissioner.

26 17. At all relevant times hereto, BVL engaged in the business of finance lending
27 or brokering and in effecting transactions in, or inducing or attempting to induce the
28

1 purchase or sale of securities in this state without having obtained the proper license or
2 certificate from the Commissioner.

3 18. Defendants sued herein under the fictitious names Does 1 through 70,
4 inclusive, are unknown to plaintiff who therefore sues such defendants by such fictitious
5 names. Plaintiff will amend this complaint to show the true name of each such defendant
6 when the same has been ascertained. Plaintiff is informed and believes, and thereon
7 alleges, that all defendants, including the Doe defendants, were at all times mentioned,
8 principals, agents, employers, employees, co-venturers, or co-conspirators, and were
9 acting in their respective capacities in doing the acts complained of, thereby imputing
10 liability to each other.

11 19. Plaintiff alleges upon information and belief that at all times mentioned
12 herein, all defendants, Dr. Cathcart, Scott Cathcart, Debevc, Derivium, FSC, DDA, BVL
13 and all Doe defendants, were each alter egos of the other, being concurrently engaged
14 and cooperating with each other in unlicensed finance lending and brokering activity and
15 in the offer and sale of unregistered, nonexempt securities in the State of California, to
16 investors in California upon belief, other states as well. As a result, each defendant
17 should be held jointly and severally liable for the acts and omissions, of all other
18 defendants.

19 **FIRST CAUSE OF ACTION**

20 UNLICENSED FINANCE LENDER OR BROKER ACTIVITY
21 (Financial Code §22100)
22 AS AGAINST ALL DEFENDANTS

23 20. Plaintiff realleges and incorporates herein by reference paragraphs 1
24 through 19, inclusive, as though set forth at length herein.

25 21. Financial Code section 22100 sets forth the finance lender or broker
26 licensure requirement as follows: "no person shall engage in the business of a finance
27 lender or broker without obtaining a license from the commissioner."

28 Financial Code section 22713 states:

1 (a) Whenever the commissioner believes...that any person has violated or is about
2 to violate a provision of this division...the commissioner may, in the
3 commissioner's discretion, bring an action...against that person to enjoin that
4 person from continuing that violation or doing any act in furtherance of the
5 violation. Upon a proper showing, a permanent or preliminary injunction,
6 restraining order, or writ of mandate shall be granted and other ancillary relief may
7 be granted as appropriate.

8 (b) If the commissioner determines that it is in the public interest, the
9 commissioner may include in any action authorized by subdivision (a) a claim for
10 ancillary relief, including, but not limited to, a claim for restitution, disgorgement, or
11 damages on behalf of the persons injured by the act or practice constituting the
12 subject matter of the action. The court shall have jurisdiction to award additional
13 relief.

14 (c) Any person who willfully violates any provisions of this division, or who willfully
15 violates any rule or order adopted pursuant to this division, shall be liable for a civil
16 penalty not to exceed two thousand five hundred dollars (\$ 2,500) for each
17 violation, which shall be assessed and recovered in a civil action brought in the
18 name of the people of the State of California by the commissioner in any court of
19 competent jurisdiction...

20 22. Defendants Dr. Cathcart, Scott Cathcart, Debevc, Derivium, FSC, DDA,
21 BVL and all Doe defendants, are not licensed to engage in the business of a finance
22 lender or broker by the State of California, or any other similar licensing entity. Beginning
23 at a time unknown to plaintiff, but at least since 1997 and continuing until at least October
24 2001, defendants, and each of them willfully and unlawfully engaged in the business of a
25 finance lender or broker in the State of California by acting in such capacity without
26 securing from the Corporations Commissioner or any similar licensing entity an
27 authorizing finance lender or broker license. Defendants' unlawful acts include, but are
28 not limited to, engaging in a course of business of marketing, advertising and making
non-recourse loans to investors in exchange for the investor's pledge of stock as
collateral. Defendants entered into such alleged stock loans on more than 500 occasions
with more than 200 California investors. The value of these transactions in California
was in excess of \$350,000,000.

23 23. Defendants' pattern of conduct, as set forth above, demonstrates the
24 necessity for granting permanent injunctive and ancillary relief restraining such and
25 similar acts in violation of §22100, as well as imposition of appropriate civil penalties, and
26 other remedies as deemed appropriate at trial.
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1 WHEREFORE, Plaintiff prays for judgment against defendants, and each of them,
2 as set forth below.

3 **SECOND CAUSE OF ACTION**

4 UNLICENSED BROKER-DEALER ACTIVITY
5 (Corporations Code §25210)
6 AS AGAINST ALL DEFENDANTS

7 24. Plaintiff realleges and incorporates herein by reference paragraphs 1
8 through 23, inclusive, as though set forth at length herein.

9 25. Corporations Code §25210(a) sets forth the securities broker-dealer
10 licensure requirement as follows:

11 Unless exempted under the provisions of Chapter 1 (commencing with
12 Section 25200) of this part, no broker-dealer shall effect any transaction
13 in, or induce or attempt to induce the purchase or sale of; any security in
14 this state unless the broker-dealer has first applied for and secured from
15 the commissioner a certificate, then in effect, authorizing that person to
16 act in that capacity.

17 Corporations Code §25535 states:

18 (a) Any person who violates any provision of this law, or who violates any
19 rule or order under this law, shall be liable for a civil penalty not to exceed
20 twenty-five thousand dollars (\$25,000) for each violation, which shall be
21 assessed and recovered in a civil action brought in the name of the people
22 of the State of California by the commissioner in any court of competent
23 jurisdiction.

24 26. Defendants Dr. Cathcart, Scott Cathcart, Debevc, Derivium, FSC, DDA,
25 BVL and all Doe defendants, are not licensed to sell securities by the State of California,
26 or any other similar licensing entity. Beginning at an exact date that is unknown to
27 plaintiff, but at least since 1997 and continuing until at least October 2001, all defendants
28 unlawfully engaged in the business of effecting transactions in, or inducing or attempting
to induce the purchase or sale of securities in the State of California by acting in such
capacity without securing from the Corporations Commissioner an authorizing broker-
dealer certificate. Defendants' unlawful acts include, but are not limited to, engaging in a
course of business of offering to buy or sell and buying and/or selling securities in the
form of stock.

1 or in concert with or for them, with actual or constructive notice of any injunction or
2 restraining order issued in this matter, shall be enjoined and restrained from effecting
3 transactions in any security in this state without first applying for and securing from the
4 Corporations Commissioner a certificate authorizing defendants to act in the capacity of a
5 broker-dealer unless exempted;

6 3. That pursuant to Financial Code section 22713 defendants Dr. Cathcart,
7 Scott Cathcart, Debevc, Derivium, FSC, DDA, BVL, and each of them, be assessed a
8 civil penalty in an amount not to exceed Twenty Five Hundred Dollars (\$2,500) for each
9 separate violation of Financial Code section 22100 committed by defendants as alleged
10 in the First Cause of Action, according to proof at trial;

11 4. That pursuant to Corporations Code section 25535 defendants Dr.
12 Cathcart, Scott Cathcart, Debevc, Derivium, FSC, DDA, BVL, and each of them, be
13 assessed a civil penalty in an amount not to exceed Twenty Five Thousand Dollars
14 (\$25,000) for each separate violation of Corporation Code section 25210 committed by
15 defendants as alleged in the Second Cause of Action, according to proof at trial;

16 5. That plaintiff recover its costs of suit herein, including costs of investigation;

17 6. For such and further relief as the court may deem just and proper.

18 Dated: September 25, 2002

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20 DEMETRIOS A. BOUTRIS
California Corporations Commissioner

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22 By: _____
23 DANIEL P. O'DONNELL
24 Attorney for Plaintiff
25 People of the State of California
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