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CIVIL BUSINESS OFFICE 9  
CENTRAL DIVISION

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CLERK-SUPERIOR COURT  
SAN DIEGO COUNTY, CA

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 FOR THE COUNTY OF SAN DIEGO

11 THE PEOPLE OF THE STATE OF  
12 CALIFORNIA, by and through the  
California Corporations Commissioner,

13 Plaintiff,

14 vs.

15 RMC CAPITAL MANAGEMENT, INC., a  
California corporation; BURGESS  
16 NATHANIEL HALLUMS, an individual;  
INNOVATION FUND 2000, LLC, a  
17 California limited liability company; SEGUE  
CAPITAL, INC., a California corporation;  
18 PACIFIC PHOENIX COMMUNITIES, LLC,  
a California limited liability company; and  
19 DOES 1-10, inclusive,

20 Defendants,

and

21 IMMCAPNMOTION, INC., a Delaware  
corporation; MISTNET MEDICAL  
22 DEVICES, INC., a Delaware corporation;  
MAGNETO INERTIAL SENSING  
23 TECHNOLOGY, INC., aka, MIST, a Nevada  
corporation; MIST NET, INC., an entity of  
24 unknown form; MIST, INC., an entity of  
unknown form; TWIN DEVELOPMENT,  
25 LLC, a California limited liability company;  
THORNTON CAPITAL ADVISORS, INC.,  
26 a California corporation; DONALD J.  
COURTNEY, an individual; WALLACE  
27 BENWARD, an individual; and RELIEF  
DOES 1-10, inclusive,

28 Relief Defendants.

Case No.: 37-2011-00103198-CU-MC-CTL

**FIRST AMENDED COMPLAINT FOR  
TEMPORARY RESTRAINING ORDER;  
PRELIMINARY INJUNCTION;  
PERMANENT INJUNCTION; FREEZING  
OF ASSETS; APPOINTING A RECEIVER;  
CIVIL PENALTIES; AND ANCILLARY  
RELIEF**

(Corporations Code §§ 25235, 25238, 25241, and  
25404, and California Code of Regulations, Title  
10, §§ 260.237, 260.238, and 260.241.3)

**IMAGED FILE**

Judge: Hon. William S. Dato  
Dept: C-67

Date Action Filed: December 30, 2011

1 Jan Lynn Owen, California Corporations Commissioner, acting to protect the public from  
2 unlawful and fraudulent investment advisers, brings this action in the public interest, in the name of  
3 the People of the State of California. The People of the State of California allege:

4 **JURISDICTION AND VENUE**

5 1. Plaintiff, the California Corporations Commissioner (“Plaintiff” or “Commissioner”),  
6 in the name of the People of the State of California and in her capacity as head of the California  
7 Department of Corporations (“Department”), brings this action to protect the public by enjoining the  
8 defendants from violating the California Corporate Securities Law of 1968 (“CSL”) (Corp. Code, §  
9 25000 *et seq.*), and to request appointment of a receiver, a freeze of assets, civil penalties, and  
10 ancillary relief.

11 2. This court has jurisdiction pursuant to Corporations Code sections 25530 and 25535.  
12 Venue is proper in this Court because the violations of the CSL described below have occurred and  
13 will continue to occur within the County of San Diego and throughout this state unless enjoined.

14 3. Defendants and relief defendants have transacted business within San Diego County  
15 and other counties in California. Defendants and relief defendants’ principle places of business are  
16 located in San Diego County.

17 **SUMMARY**

18 4. This matter involves fraudulent, manipulative, and deceptive investment advisory  
19 activities perpetrated by defendants, and defendants’ failure to disclose a material fact in connection  
20 with the offer and sale of securities, in California.

21 5. From 2000 to 2011, defendants raised approximately \$11.5 million from at least fifty  
22 nine clients, some of which are California residents.

23 6. Defendants engaged in multiple violations of the CSL, including violations of: (a)  
24 Corporations Code section 25235, by employing fraudulent, deceptive and manipulative practices to  
25 the detriment of clients; and operating a Ponzi-like scheme, where money from new clients is used to  
26 pay off existing clients; (b) Corporations Code section 25238, by engaging in investment advisory  
27 activities in an unfair, inequitable and unethical manner; (c) Corporations Code section 25241, by  
28 maintaining false and inaccurate books and records; (d) Corporations Code section 25404, by

1 misleading the Commissioner during his investigation; and (e) Corporations Code section 25401, by  
2 failing to disclose a material fact in connection with the offer and sale of securities, in California.

3 7. Plaintiff is informed and believes that defendants used Immcapnmotion, Inc., Mistnet  
4 Medical Devices, Inc., Magneto Inertial Sensing Technology, Inc., aka, Mist, Mist, Inc., Mist Net,  
5 Inc., Donald J. Courtney, Twin Development, LLC, Wallace Benward, and Thornton Capital  
6 Advisors, Inc. (collectively, "Relief Defendants") to perpetrate their fraud and unlawful activities.  
7 Relief Defendants received ill-gotten gains resulting from defendants' violations of the CSL.

8 8. The Commissioner brings this action, in the name of the People, in order to obtain  
9 (a) a temporary restraining order restraining and enjoining defendants from violating the CSL; (b)  
10 locating and freezing defendants and Relief Defendants' business and personal assets; and (c)  
11 appointing a receiver to take custody and control over defendants and Relief Defendants' business  
12 and assets until an accounting can be performed by the receiver and recommendations made to the  
13 court, to preserve any remaining assets and allow the receiver to determine the extent to which  
14 defendants defrauded clients. Defendants have custody or possession of client funds and securities  
15 and allowing client funds and securities to remain under the custody or possession of defendants puts  
16 these funds and securities in further jeopardy.

17 **DEFENDANTS**

18 9. RMC Capital Management, Inc. ("RMC"), a California corporation, is a licensed  
19 investment adviser that provides investment adviser services to the investing public, and maintains a  
20 principal place of business at 1140 Main Street, Suite 115, Ramona, California 92065.

21 10. Burgess Nathaniel Hallums ("HALLUMS"), an individual, is an investment adviser  
22 representative who provides investment adviser services, through RMC, to clients.

23 11. Innovation Fund 2000, LLC ("INNOVATION FUND"), a California limited liability  
24 company, is a pooled investment vehicle where client funds are deposited. INNOVATION FUND  
25 maintains a principal place of business at 1140 Main Street, Suite 115, Ramona, California 92065.  
26 INNOVATION FUND is controlled by HALLUMS and RMC.

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1           27. In response to the Department's request for information to IA DEFENDANTS, they  
2 mainly provided INNOVATION FUND's books and records. The books and records provided to the  
3 Department were incomplete. According to IA DEFENDANTS, some of their records were  
4 destroyed in a fire.

5           28. The Department has reviewed and analyzed the limited books and records produced  
6 by IA DEFENDANTS, including, but not limited to, financial statements, HALLUMS' oral and  
7 written statements, correspondence, and private holding documents. In addition, the Department  
8 reviewed and analyzed licensing disclosure documents filed by RMC and HALLUMS. A review  
9 and analysis of these documents and HALLUMS' statements reveals the following:

10           **A. OPERATING A PONZI SCHEME**

11           29. IA DEFENDANTS operated a Ponzi scheme by using funds from new clients of  
12 INNOVATION FUND to cover withdrawals of funds made by existing clients of INNOVATION  
13 FUND.

14           30. For example, in September 2010, INNOVATION FUND's Bank of America  
15 checking account ("BOA"), where clients' funds are maintained, had a balance of \$331.05. IA  
16 DEFENDANTS used deposits from two of their new clients, in an amount of \$190,000, to pay  
17 withdrawals of funds made by existing clients, in the amount of \$40,085.89, and to pay withdrawal  
18 of funds made by SEGUE, in the amount of \$2,500.

19           31. As stated previously, HALLUMS is the Chief Executive Officer, Chief Financial  
20 Officer, President, Secretary and Agent for Service of Process of SEGUE, which shares the same  
21 principal place of business as IA DEFENDANTS.

22           32. HALLUMS exercises control over SEGUE, an investor in the INNOVATION  
23 FUND.

24           33. In 2011, at least two INNOVATION FUND clients received payments largely  
25 derived from investments from new clients of INNOVATION FUND.

26           **B. MISUSE OF CLIENTS' FUNDS**

27           34. In 2004, IA DEFENDANTS used their clients' funds to make a loan to TWIN, in the  
28 approximate amount of \$225,000. Plaintiff does not believe that this loan has been repaid.

1           35. In 2008, IA DEFENDANTS used their clients' funds to make a payment to  
2 COURTNEY, in the approximate amount of \$10,000. IA DEFENDANTS did not produce any  
3 records to the Department explaining this payment.

4           36. Records produced by IA DEFENDANTS show payments and loans to MIST  
5 DELAWARE, MIST NEVADA, MIST NET, INC. and/or MIST, INC. (collectively, "MIST  
6 ENTITIES"). IA DEFENDANTS' records fail to clearly classify which MIST ENTITIES received  
7 these payments and loans.

8           37. In 2010, IA DEFENDANTS used clients' funds to make at least two loans to the  
9 detriment of their clients: (1) a promissory note in the amount of \$35,000 paid to AGC Capital Inc.  
10 and Troy Wilkinson; and (2) a promissory note in the amount of \$74,000 paid to the MIST  
11 ENTITIES.

12           38. Both promissory notes contain the same illusory promise, and are detrimental to IA  
13 DEFENDANTS' clients because the loans will not be paid back unless there is a positive cash flow  
14 from the borrowers. There is no record of any payment or income coming back to clients, as the  
15 result of these loans.

16           39. In addition to the two loans, INNOVATION FUND's Balance Sheet shows six  
17 payments to the MIST ENTITIES, in the total amount of \$42,600, from June 2010 to November  
18 2010. Three out of the six payments are listed as loans in the sum of \$19,700. IA DEFENDANTS  
19 failed to provide the Department with records corresponding to the three loans and any other record  
20 explaining the reason for the payments to the MIST ENTITIES.

21           **C. OVERSTATING VALUE OF THE PRIVATELY HELD SECURITIES**

22           40. IA DEFENDANTS invested clients' funds in privately held securities that are  
23 affiliated and/or controlled by HALLUMS, including, the MIST ENTITIES, IMMCAP, and  
24 THORNTON.

25           41. In response to the Department's inquiry about the amount of investments in privately  
26 held securities made by the INNOVATION FUND, IA DEFENDANTS produced four versions of a  
27 one-page document titled Innovation Fund Pricing ("IFP"). Each IFP version shows a different  
28

1 value assigned by IA DEFENDANTS to these privately held companies, for the same time period in  
2 2010.

3 42. IA DEFENDANTS valued IMMCAP at \$1,200,000, \$1,400,000 or \$2,000,000; the  
4 MIST ENTITIES at \$2,400,000 or \$2,900,000; and THORNTON at \$1,750,000 or \$2,900,000. IA  
5 DEFENDANTS failed to produce documents substantiating the actual amounts invested in these  
6 privately held securities.

7 43. Records produced by IA DEFENDANTS contradict the value assigned to  
8 THORNTON. In 2008, IA DEFENDANTS sent correspondence to a third party custodian and  
9 clients stating that THORNTON was worthless and had no value.

10 44. THORNTON had ceased business and took a total loss, as of December 2006. In or  
11 about December 2006, HALLUMS, a Director of THORNTON, had attended various telephonic  
12 meetings where THORNTON had discussed its closure and capital losses.

13 45. In 2011 and in response to the Department's examination addressing the valuation of  
14 THORNTON, HALLUMS claimed that THORNTON still has a value of \$2.9 million.

15 46. Despite THORNTON's worthless value, the December 31, 2010 statements sent to  
16 clients reflected that THORNTON had value.

17 47. The IFP documents show that IA DEFENDANTS invested clients' funds in other  
18 privately held securities, such as EAGENCY, INC. ("EAGENCY"), a Delaware corporation. IA  
19 DEFENDANTS valued EAGENCY at \$300,000, as of December 31, 2010.

20 48. Based on EAGENCY's Balance Sheet dated June 30, 2010, its current liabilities  
21 exceeded its current assets by \$916,055. EAGENCY's financial statements reflect negative retained  
22 earnings and equity, and the \$300,000 value reported by IA DEFENDANTS is false.

23 49. An analysis of records produced by IA DEFENDANTS reveals that INNOVATION  
24 FUND's value at cost is overstated by at least \$3,500,000.

25 **D. INFLATED ADVISORY FEES**

26 50. The overvaluation of the INNOVATION FUND's value resulted in inflated advisory  
27 fees being charged to clients for management of the INNOVATION FUND.

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1 51. RMC is the manager of the INNOVATION FUND, and also an investor in the  
2 INNOVATION FUND.

3 52. RMC, as the manager of the INNOVATION FUND, charges a fee for its  
4 management of the INNOVATION FUND.

5 53. The advisory fees for RMC's management of the INNOVATION FUND, in the  
6 amount of \$499,089, were never deducted from the INNOVATION FUND and instead only added  
7 to RMC's position, as an investor in the INNOVATION FUND. Because the added advisory fees  
8 were not actual growth or increase in the INNOVATION FUND's value, as of 2008, the  
9 INNOVATION FUND's value is overstated in the amount of \$499,089.

10 **E. FALSE STATEMENTS SENT TO CLIENTS**

11 54. Falsely leading clients to presume that their investment in the INNOVATION FUND  
12 were worth more than its actual value, the December 2010 statements sent to clients reflect a price  
13 per share of \$43. According to HALLUMS, the reported \$43 per share is based on the  
14 INNOVATION FUND's value being \$15,000,000.

15 55. In response to the Department's examination, HALLUMS admits that there was a  
16 problem with the \$43 share price and INNOVATION FUND probably should have been valued at  
17 approximately \$7,500,000 instead of \$15,000,000.

18 **F. FALSE AND INACCURATE RECORD KEEPING**

19 56. IA DEFENDANTS maintained false and inaccurate books and records.

20 57. The following are examples of IA DEFENDANTS failure to maintain true and  
21 accurate books and records: (a) Contrary to the reported assets, in the amount of \$7,503,306,  
22 INNOVATION FUND's Balance sheet, Income Statement and General Ledger, as of December 31,  
23 2010, reflect assets in the amount of \$111,821; (b) Contrary to the IFP documents, the MIST  
24 ENTITIES, IMMCAP, THORNTON and EAGENCY's value were not reported on INNOVATION  
25 FUND's Balance Sheet and General Ledger as of December 31, 2010; (c) The IFP documents,  
26 valuing THORNTON at \$1,750,000 and \$2,900,000, are contrary to THORNTON's closure and  
27 correspondence sent to a third party custodian and clients; (d) The IFP documents, valuing  
28 EAGENCY at \$300,000, are contrary to EAGENCY's negative retained earnings and equity; (e) The

1 IFP documents show conflicting values for IMMCAP and the MIST ENTITIES, for the same time  
2 period in 2010; (f) The discrepancies between INNOVATION FUND's Balance Sheet, Spreadsheet  
3 and the IFP documents are irreconcilable; (g) INNOVATION FUND's brokerage trading account at  
4 BrokersXpress, LLC was not reported on INNOVATION FUND's Balance Sheet and General  
5 Ledger as of December 31, 2010; (h) Six payments to the MIST ENTITIES for the period of June  
6 2010 to November 2010 in the sum of \$42,600 are not reconciled to the IFP documents. Three out  
7 of six payments are listed as loans; yet, there are no records substantiating these payments; (i) An  
8 unexplained mortgage payment, in an amount of \$2,363.54, and a payment to Impulsive Profit, Inc.,  
9 in an amount of \$50,000, are recorded on the General Ledger; (j) Unverified continual increase in  
10 assets and price per share - IA DEFENDANTS' books and records do not include any accounting or  
11 schedule that keeps track of any gains or losses to demonstrate how the assets or the price per share  
12 have increased over the years; (k) There is a discrepancy, in the amount of \$1,070,304, between  
13 INNOVATION FUND's 2010 schedule of investments and its 2010 balance sheet, for RMC's  
14 position as an investor; (l) Lack of documentation substantiating the amount of clients' funds being  
15 invested in the MIST ENTITIES and IMMCAP, in the amount of \$3,600,000; and (m) An  
16 unexplained payment to COURTNEY, in an amount of \$10,000.

17 **G. FAILURE TO HAVE CLIENT FUNDS AND SECURITIES AUDITED**

18 58. RMC, an investment adviser, has custody and possession of client funds and  
19 securities and is subject to an annual audit.

20 59. HALLUMS admitted that there has never been an annual audit or verification of  
21 clients' funds or securities, nor has any filing of these types of reports ever been made with the  
22 Department. IA DEFENDANTS failed to have clients' funds and securities audited by an  
23 independent Certified Public Accountant or a public accountant from 2000 to 2010.

24 **H. FAILURE TO PROVIDE ITEMIZED STATEMENTS TO CLIENTS**

25 60. HALLUMS admitted that IA DEFENDANTS did not provide itemized statements to  
26 clients from 2000 to 2010.

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1           69.     Operating a Ponzi-like scheme, and in violation of Corporations Code section 25235,  
2 subdivisions (a) and (b), IA DEFENDANTS employed a scheme to defraud and engaged in  
3 transactions that operated as a fraud by using funds from INNOVATION FUND's new clients to  
4 cover withdrawals of funds made by INNOVATION FUND's existing clients.

5           70.     For example, in September 2010, INNOVATION FUND's BOA had a balance of  
6 \$331.05. IA DEFENDANTS used deposits from two new clients, in an amount of \$190,000, to pay  
7 withdrawals of funds made by existing clients, in the amount of \$40,085.89. IA DEFENDANTS  
8 also used the deposits from the two new clients to pay withdrawals of funds made by SEGUE,  
9 HALLUMS' corporation, in the amount of \$2,500.

10          71.     In 2011, at least two INNOVATION FUND clients received payments largely  
11 derived from investments from new clients of INNOVATION FUND.

12          72.     In violation of Corporations Code section 25235(a) and (b), IA DEFENDANTS  
13 employed a scheme to defraud and engaged in transactions that operated as a fraud by using clients'  
14 funds for loans to the detriment of their clients, where the borrowers would perform only if the  
15 borrowers have a positive cash flow.

16          73.     In 2004, IA DEFENDANTS used their clients' funds to make a loan to TWIN, in the  
17 approximate amount of \$225,000. Plaintiff does not believe that this loan has been repaid.

18          74.     IA DEFENDANTS loaned \$74,000 to the MIST ENTITIES, which will not be paid  
19 back unless the MIST ENTITIES has a positive cash flow. The other promissory note in the amount  
20 of \$35,000 to AGC Capital Inc. and Troy Wilkinson contains the same illusory promise as  
21 promissory note to the MIST ENTITIES. Neither the MIST ENTITIES or AGC Capital Inc. and  
22 Troy Wilkinson are required to pay the loan back unless they have a positive cash flow. There is no  
23 record of any payment or income coming back to clients, as the result of these loans.

24          75.     In violation of Corporations Code section 25235(a) and (b), IA DEFENDANTS  
25 employed a scheme to defraud and engaged in transactions that operated as a fraud by making  
26 unexplained and unsubstantiated payments to the MIST ENTITIES and COURTNEY.

27          76.     In 2008, IA DEFENDANT used their clients' funds to make a payment to  
28 COURTNEY, in the approximate amount of \$10,000.

1 77. From June 2010 to November 2010, IA DEFENDANTS made six payments, in the  
2 total amount of \$42,600, to the MIST ENTITIES. Three out of the six payments are listed as loans,  
3 in the sum of \$19,700. Yet, there are no promissory notes corresponding to the three loans and no  
4 other record explaining the reason for these payments to the MIST ENTITIES.

5 78. In violation of Corporations Code section 25235(a) and (b), IA DEFENDANTS  
6 employed a scheme to defraud and engaged in transactions that operated as a fraud by overstating  
7 the value of investments in privately held securities, three of which are affiliated and/or controlled  
8 by HALLUM. The investment amounts in the privately held securities, reported in the IFP  
9 documents, varied for the same time period.

10 79. As stated earlier, IA DEFENDANTS valued IMMCAP at \$1,200,000, \$1,400,000 or  
11 \$2,000,000; the MIST ENTITIES at \$2,400,000 or \$2,900,000; and THORNTON at \$1,750,000 or  
12 \$2,900,000, for the same time period. IA DEFENDANTS failed to produce documents  
13 substantiating the actual amounts invested in these privately held securities.

14 80. Records produced by IA DEFENDANTS contradict the value assigned to  
15 THORNTON. 2008 correspondence from HALLUMS to a third party custodian and clients show  
16 THORNTON was valued at zero and considered worthless.

17 81. THORNTON had ceased business and took a total loss, as of December 2006.  
18 Despite THORNTON's worthless value, the statements sent to clients reflected that THORNTON  
19 had value.

20 82. IA DEFENDANTS further value EAGENCY at \$300,000. As of June 30, 2010,  
21 EAGENCY's Balance Sheet showed its current liabilities exceeded its current assets by \$916,055.  
22 EAGENCY had negative retained earnings and equity, and the \$300,000 value reported by IA  
23 DEFENDANTS is false.

24 83. In violation of Corporations Code section 25235(a) and (b), IA DEFENDANTS  
25 employed a scheme to defraud and engaged in transactions that operated as a fraud by overstating  
26 INNOVATION FUND's value by at least \$3,500,000.

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1 84. In violation of Corporations Code section 25235(a) and (b), IA DEFENDANTS  
2 employed a scheme to defraud and engaged in transactions that operated as a fraud by adding  
3 inflated advisory fees to the value of INNOVATION FUND.

4 85. The overvaluation of INNOVATION FUND resulted in inflated advisory fees being  
5 charged to clients for RMC's management of the INNOVATION FUND. As stated before, RMC's  
6 advisory fees, in an amount of \$499,089, were never deducted from INNOVATION FUND and  
7 instead added only to RMC's position, as an investor in the INNOVATION FUND. Because the  
8 added advisory fees were not actual growth or increase in the INNOVATION FUND's value, as of  
9 2008, INNOVATION FUND's value is overstated, in the amount of \$499,089.

10 86. In violation of Corporations Code section 25235(a) and (b), IA DEFENDANTS  
11 employed a scheme to defraud and engaged in transactions that operated as a fraud by sending  
12 statements to clients showing INNOVATION FUND was worth more than its actual value.

13 87. Despite THORNTON's worthless value, EAGENCY's negative retained earnings and  
14 equity, and the MIST ENTITIES and IMMCAP's unsubstantiated value, in December 2010, IA  
15 DEFENDANTS sent false statements to clients reporting a price per share of \$43, which represents a  
16 value of approximately \$15,000,000 assigned to INNOVATION FUND. HALLUMS admits that  
17 there was a problem with the \$43 share price, and INNOVATION FUND probably should have been  
18 valued at approximately \$7,500,000 instead of \$15,000,000.

19 88. IA DEFENDANTS' pattern of conduct, as set forth above, demonstrates the necessity  
20 for granting injunctive relief restraining such and similar acts, appointment of a receiver, and for  
21 ancillary relief.

22 **SECOND CAUSE OF ACTION**  
23 **UNETHICAL, UNFAIR AND INEQUITABLE CONDUCT**  
24 **(Violations of Corp. Code § 25238, and Cal. Code of Regs. § 260.238)**  
25 **(AGAINST DEFENDANTS RMC, HALLUMS, and INNOVATION FUND)**

26 89. Plaintiff incorporates by reference paragraphs 1 through 88 of this Complaint as  
27 though fully set forth herein.

28 90. The CSL and the California Code of Regulations, Title 10, (§ 260.000 et seq.),  
contain provisions that govern persons licensed to operate in the securities industry. To ensure the

1 protection of the public, the Commissioner requires compliance with these provisions by persons or  
2 entities that seek to act as investment advisers.

3 91. Corporations Code section 25237 authorizes the Commissioner to prescribe rules for  
4 investment advisers who have custody and control of the clients' securities or funds or who have any  
5 power of attorney from their clients to execute transactions. The Commissioner has done so by,  
6 among other requirements, prohibiting the violation of fair, equitable and ethical principals under  
7 Corporations Code Section 25238.

8 92. California Code of Regulations section 260.238 (h), in pertinent part, prohibits  
9 investment advisers from misrepresenting to any advisory client, or any prospective advisory client,  
10 the nature of the advisory services being offered or fees to be charged for such service, or omitting to  
11 state a material fact necessary to make the statements made regarding the services or fees, in light of  
12 the circumstances under which they are made, not misleading.

13 93. In violation of California Code of Regulations section 260.238 (h), IA  
14 DEFENDANTS misrepresented or omitted to state material facts about fees for the advisory  
15 services. As stated above, IA DEFENDANTS calculated advisory fees based on an overstated  
16 INNOVATION FUND value.

17 94. The advisory fees were never deducted from INNOVATION FUND and instead were  
18 added only to RMC's position, as an investor in the INNOVATION FUND. Because there was  
19 never an actual growth or increase in the INNOVATION FUND, as of 2008, INNOVATION  
20 FUND's value was overstated in the amount of \$499,089.

21 95. IA DEFENDANTS' pattern of conduct, as set forth above, demonstrates the necessity  
22 for granting injunctive relief restraining such and similar acts, appointment of a receiver, and for  
23 ancillary relief.

24 **THIRD CAUSE OF ACTION**  
25 **MAINTAINING FALSE AND INACCURATE RECORDS**  
26 **(Violations of Corp. Code § 25241 and Cal. Code Regs. §260.241.3)**  
27 **(AGAINST DEFENDANTS RMC, HALLUMS, and INNOVATION FUND)**

28 96. Plaintiff incorporates by reference paragraphs 1 through 95 of this Complaint as  
though fully set forth herein.

1           97.     Corporations Code section 25241 authorizes the Commissioner to prescribe rules for  
2 investment advisers to make and keep certain specified records and accounts. The Commissioner  
3 has done so by specifying, among other requirements, that investment advisers must make and keep  
4 true, accurate and current books and records relating to the person's investment advisory business.  
5 Those regulations are contained in California Code of Regulations section 260.241.3.

6           98.     In violation of Corporations Code section 25241 and California Code of Regulations  
7 section 260.241.3, IA DEFENDANTS maintained false and inaccurate books and records.

8           99.     The Department discovered numerous inaccuracies in IA DEFENDANTS' books and  
9 records. The following are examples of IA DEFENDANTS' failure to maintain true and accurate  
10 books and records: (a) Contrary to the reported assets, in the amount of \$7,503,306, INNOVATION  
11 FUND's Balance sheet, Income Statement and General Ledger, as of December 31, 2010, reflect  
12 assets in the amount of \$111,821; (b) Contrary to the IFP documents, the MIST ENTITIES,  
13 IMMCAP, THORNTON and EAGENCY's value were not reported on INNOVATION FUND's  
14 Balance Sheet and General Ledger as of December 31, 2010; (c) The IFP documents, valuing  
15 THORNTON at \$1,750,000 and \$2,900,000, are contrary to THORNTON's closure and  
16 correspondence sent to a third party custodian and clients; (d) The IFP documents, valuing  
17 EAGENCY at \$300,000, are contrary to EAGENCY's negative retained earnings and equity; (e) The  
18 IFP documents show conflicting values for IMMCAP and MIST ENTITIES, for the same time  
19 period in 2010; (f) The discrepancies between INNOVATION FUND's Balance Sheet, Spreadsheet  
20 and the IFP documents are irreconcilable; (g) INNOVATION FUND's brokerage trading account at  
21 BrokersXpress, LLC was not reported on INNOVATION FUND's Balance Sheet and General  
22 Ledger as of December 31, 2010; (h) Six unexplained payments to the MIST ENTITIES for the  
23 period of June 2010 to November 2010 in the sum of \$42,600 are not reconciled to the IFP  
24 documents. Three out of six payments are listed as loans; yet, there are no loan documents  
25 substantiating these payments; (i) An unexplained mortgage payment, in an amount of \$2,363.54,  
26 and a payment to Impulsive Profit, Inc., in an amount of \$50,000, are recorded on the General  
27 Ledger; (j) Unverified continual increase in assets and price per share - IA DEFENDANTS' books  
28 and records do not include any accounting or schedule that keeps track of any gains or losses to

1 demonstrate how the assets or the price per share have increased over the years; (k) There is a  
2 discrepancy, in the amount of \$1,070,304, between INNOVATION FUND's 2010 schedule of  
3 investments and its 2010 balance sheet, for RMC's position as an investor; (l) Lack of  
4 documentation substantiating the amount of clients' funds being invested in the MIST ENTITIES  
5 and IMMCAP, in the amount of \$3,600,000; and (m) An unexplained payment to COURTNEY, in  
6 an amount of \$10,000.

7 100. IA DEFENDANTS' pattern of conduct, as set forth above, demonstrates the necessity  
8 for granting injunctive relief restraining such and similar acts, appointment of a receiver, and for  
9 ancillary relief.

10 **FOURTH CAUSE OF ACTION**  
11 **KNOWINGLY MAKING UNTRUE STATEMENTS TO THE COMMISSIONER**  
12 **(Violations of Corp. Code § 25404)**  
13 **(AGAINST DEFENDANT HALLUMS)**

14 101. Plaintiff incorporates by reference paragraphs 1 through 100 of this Complaint as  
15 though fully set forth herein.

16 102. Corporations Code section 25404, subdivision (b), states, in pertinent part, that it is  
17 unlawful for any person to knowingly make an untrue statement to the commissioner during the  
18 course of investigation or examination, with the intent to impede, obstruct, or influence the  
19 administration or enforcement of this division.

20 103. In violation of Corporations Code section 25404, subdivision (b), HALLUMS made  
21 an untrue statement to the Commissioner during the course of an examination with the intent to  
22 impede, obstruct or influence the administration or enforcement of this division. As stated above, in  
23 2010, IA DEFENDANTS valued THORNTON at \$1,750,000 or \$2,900,000.

24 104. As an officer and director of THORNTON, HALLUMS knew the THORNTON was  
25 worthless and had no value. In December 2006, HALLUMS attended various telephonic meetings  
26 where THORNTON had discussed its closure and capital losses.

27 105. Further, IA DEFENDANTS' records contradict the value assigned to THORNTON.  
28 Yet, in response to the Department's examination, HALLUMS told the Department's examiner that  
THORNTON is valued at \$2.9 million.

1 106. HALLUMS' pattern of conduct, as set forth above, demonstrates the necessity for  
2 granting injunctive relief restraining such and similar acts, appointment of a receiver, and for  
3 ancillary relief.

4 **FIFTH CAUSE OF ACTION**  
5 **FRAUD BY INVESTMENT ADVISER**  
6 (Violations of Corp. Code § 25235 and Cal. Code of Regs. § 260.237)  
7 (AGAINST DEFENDANTS RMC and HALLUMS)

8 107. Plaintiff incorporates by reference paragraphs 1 through 106 of this Complaint as  
9 though fully set forth herein.

10 108. California Code of Regulations section 260.237 contains rules, and specifies conduct  
11 by investment advisers that constitutes fraudulent, deceptive and manipulative practices under  
12 Corporations Code section 25235.

13 109. California Code of Regulations section 260.237, in pertinent part, states that it is  
14 considered fraudulent, deceptive and manipulative conduct for investment advisers to have custody  
15 and control over client funds unless:

- 16 (d) the investment adviser sends to each client, not less frequently than once  
17 every three months, an itemized statement showing the funds and securities in  
18 the custody or possession of the investment adviser at the end of the period, and  
19 all debits, credits and transactions in the client's account during the period; and  
20 (e) all funds and securities of clients are verified by actual examination at least  
21 once during each calendar year by an independent certified public accountant or  
22 public accountant at a time which shall be chosen by the accountant without  
23 prior notice to the investment adviser. A certificate of the accountant stating that  
24 such person has made an examination of the funds and securities, and describing  
25 the nature and extent of the examination, shall be filed with the Commissioner  
26 promptly after each examination.

27 110. As stated previously, IA DEFENDANTS' have custody and control of client funds.  
28 IA DEFENDANTS' failed to have clients' funds and securities audited by an independent Certified  
Public Accountant or a public accountant from 2000 to 2010.

111. HALLUMS admits that there has never been an annual audit or verification of client  
funds or securities, nor has any filing of these types of reports ever been made with the Department.

112. HALLUMS further admits that IA DEFENDANTS did not provide itemized financial  
statements to clients from 2000 to 2010.

1 113. RMC and HALLUMS' pattern of conduct, as set forth above, demonstrates the  
2 necessity for granting injunctive relief restraining such and similar acts, appointment of a receiver,  
3 and for ancillary relief.

4 **SIXTH CAUSE OF ACTION**  
5 FAILURE TO DISCLOSE A MATERIAL FACT  
6 IN VIOLATION OF CALIFORNIA CORPORATIONS CODE SECTION 25401  
7 (AGAINST DEFENDANTS HALLUMS, SEGUE, and PHOENIX)

8 114. Plaintiff alleges and incorporates by reference paragraphs 1 through 113 of this  
9 Complaint as though fully set forth herein.

10 115. California Corporations Code section 25401 provides as follows:

11 It is unlawful for any person to offer or sell a security in this state or buy or  
12 offer to buy a security in this state by means of any written or oral  
13 communication which includes an untrue statement of a material fact or  
14 omits to state a material fact necessary in order to make the statements  
15 made, in the light of the circumstances under which they were made, not  
16 misleading.

17 116. In or about August 2011, HALLUMS, SEGUE, and PACIFIC PHOENIX offered and  
18 sold securities, in the form of membership interests in PACIFIC PHOENIX, in California.

19 117. In offering and selling the securities referred to herein, HALLUMS, SEGUE and  
20 PACIFIC PHOENIX failed to disclose a material fact to one or all of the prospective or existing  
21 investors. The omission included, without necessarily being limited to, the following: BENWARD  
22 and TWIN, PACIFIC PHOENIX's managing members, had defaulted on a loan, in the principal  
23 amount of approximately \$16.5 million.

24 118. Defendants HALLUMS, SEGUE and PACIFIC PHOENIX' pattern of conduct, as set  
25 forth above, demonstrates the necessity for granting injunctive relief restraining such and similar  
26 acts, continuing the appointment of the Receiver, and for ancillary relief.

27 **SEVENTH CAUSE OF ACTION**  
28 UNJUST ENRICHMENT  
(AGAINST ALL RELIEF DEFENDANTS)

119. Plaintiff incorporates by reference paragraphs 1 through 118 of this Complaint as  
though fully set forth herein.

///  
- 19 -



1 fund value;

2 3. Violating Corporations Code section 25241 and California Code of Regulations  
3 section 260.241.3 by maintaining false and inaccurate and books and records;

4 4. Violating Corporations Code section 25404 by knowingly making an untrue  
5 statement to the Commissioner during the course of his investigation and examination, with the  
6 intent to impede, obstruct, or influence the administration or enforcement of CSL;

7 5. Violating California Code of Regulations section 260.237, by failing to have clients'  
8 funds and securities audited and failing to provide itemized statements to clients; and

9 6. Violating Corporations Code section 25401 by offering to sell or selling any security  
10 of any kind, including but not limited to, the securities described in this Complaint, by means of any  
11 written or oral communication which includes any untrue statement of material fact or omits or fails  
12 to state any material fact necessary in order to make the statements made, in the light of the  
13 circumstances under which they are made, not misleading, including but not limited to the  
14 misrepresentations and/or omissions alleged in this Complaint.

15 **II. CONSTRUCTIVE TRUST**

16 For a Final Judgment imposing a constructive trust on all funds and properties of Relief  
17 Defendants, which are the proceeds, or traceable to the proceeds of the unlawful activities of  
18 defendants, in an amount that could be as much as \$7.5 million, or according to proof.

19 **III. RESCISSION, RESTITUTION, AND DISGORGEMENT**

20 For a Final Judgment requiring defendants to:

21 1. Rescind each and all of the unlawful transactions alleged in this Complaint, pursuant  
22 to Corporations Code section 25530, subdivision (b), as shall be determined by this Court to have  
23 occurred;

24 2. To pay full restitution to each person determined to have been subject to acts,  
25 practices, or transactions which constitute violations of the CSL, in the amount of \$15,000,000 or  
26 according to proof;

27 3. To disgorge any profits and proceeds gained as a result of the unlawful transactions  
28 alleged in this Complaint, in the amount of \$15,000,000 or according to proof; and

1           4.       To pay the legal rate of interest on the principal amount invested by each and every  
2 investor from the date of their investments to the date of judgment herein.

3           **IV.    CIVIL PENALTIES**

4           For a Final Judgment requiring defendants to pay the Department \$25,000 as a civil penalty  
5 for each act in violation of the CSL, pursuant to Corporations Code section 25535, in the amount of  
6 \$800,000 or according to proof.

7           **V.    APPOINTMENT OF A RECEIVER**

8           For said Temporary Restraining Order to further provide for an Appointment of a Receiver  
9 over defendants and Relief Defendants and such Does as may be subsequently named, and their  
10 respective subsidiaries, affiliates, agents, employees, representative, successor in interest and  
11 assigns, wherever situated (collectively, "Receivership Defendants and Relief Defendants"):

12           1.       The receiver, prior to entry of his duties, shall take an oath to support the  
13 constitutions of the United States and the State of California and shall be bonded according to law.

14           2.       The receiver shall be authorized, empowered and directed:

15           a.       To take possession of all "Receivership Assets," defined as:

16           i.       Any and all real and personal property, investor funds, client funds,  
17 collateral, premises, choses of action and other assets, books, records and papers in the possession,  
18 custody or control of Receivership Defendants and Relief Defendants, or to which Receivership  
19 Defendants and Relief Defendants have any right of possession, custody or control, beneficially or  
20 otherwise, irrespective of whosoever holds such assets, including all such assets which Receivership  
21 Defendants and Relief Defendants carry or maintain, or which may be received during the pendency  
22 of this receivership;

23           ii.      Distributions, salaries, bonuses, funds, or other forms of compensation  
24 which were derived from client funds, in the possession, custody or control of Receivership  
25 Defendants and Relief Defendants to which Defendants have any right of possession, custody or  
26 control, beneficially or otherwise, irrespective of whosoever holds such assets, including all such  
27 assets which Receivership Defendants and Relief Defendants carry or maintain, or which may be  
28 received during the pendency of this receivership;

1                   iii. All funds, negotiable instruments and/or assets held in Bank of  
2 America, N.A., account number 24679-01067, in the name of Defendants; and

3                   iv. All funds, negotiable instruments and/or assets held in Bank of  
4 America, N.A., account numbers ending in 5431, 5971, 4999, 1249, 0561, 6538, and 6595, in the  
5 name of Defendants and Relief Defendants, in the name of Defendants and Relief Defendants,  
6 directly or indirectly, and each of them.

7                   b. Except for an act of gross negligence, the Receiver shall not be liable for any  
8 loss or damage incurred by any of the Receivership Defendants and Relief Defendants, and their  
9 owners, officers, directors, shareholders, agents, employees, representatives, salespersons,  
10 successors in interest, attorneys, assigns, subsidiaries, affiliates, or any other person, by reason of  
11 any act performed or omitted to be performed by the Receiver in connection with the discharge of  
12 his duties and responsibilities. For good cause appearing, the receiver's bond is hereby waived.

13                   c. The Receiver shall have full power to marshal, collect, receive, review,  
14 observe, discover and take charge of all Receivership Assets and all accounts or safe deposit boxes  
15 held in the name of Receivership Defendants and Relief Defendants in any financial depositories or  
16 other institutions, including, but not limited to all Bank of America accounts, on an ongoing and  
17 continual basis pursuant to this Court's order.

18                   d. The Receiver may employ other such persons, including accountants,  
19 investigators, clerical and professional personnel, and the Receiver's law firm's in-house staff,  
20 counsel, paralegals and attorneys, to perform such tasks as may be necessary to aid the Receiver in  
21 the performance of his duties and responsibilities, without further order of the court.

22                   e. The Receiver may employ outside attorneys upon further order of this Court  
23 to assist the Receiver in the performance of his duties and responsibilities, such employment to be  
24 approved by the Court upon ex parte application of the Receiver.

25                   f. Periodically, as set forth in paragraphs (g) and (h), below, the Receiver shall  
26 report to this Court the results of the collection, receiving, review, observation, discovery and  
27 abstracts resulting from the activities of the Receiver as ordered by this Court, and specifically on  
28 any commingling of funds, unauthorized use of, or other disposition of assets of whatever

1 description by and between any and each of the Receivership Defendants and Relief Defendants  
2 and/or any person, corporation, entity, sole proprietorship, affiliate, association of whatever type of  
3 structure, whether or not said entities are or are not defendants or relief defendants in this action.

4 g. The Receiver shall file, within 30 days of his appointment, an initial inventory  
5 of all Receivership Assets, which he shall then have collected, received, reviewed, observed and/or  
6 discovered pursuant to this Court's order. Additionally, the Receiver is to file one or more  
7 supplemental inventories when and if he shall subsequently come into knowledge of additional items  
8 appropriate to the inventory.

9 h. The Receiver shall undertake an independent review into the affairs and  
10 transactions of Receivership Defendants and Relief Defendants and file with this Court, within 120  
11 days, and every six months thereafter, a report detailing the Receiver's findings of his review of the  
12 condition of the Receivership Assets and Receivership Defendants and Relief Defendants, or other  
13 affairs and transactions of Receivership Defendants and Relief Defendants, reflecting the existence  
14 of any liabilities, both those claimed by others to exist and those to which the Receiver believes to be  
15 the legal obligations of each of said Receivership Defendants and Relief Defendants, including a  
16 review of any possible conflicts of interest and any further information the Receiver believes may  
17 assist in an equitable disposition of this matter, and to include in the report the Receiver's opinion  
18 regarding the ability of the Receivership Defendants and Relief Defendants to meet their obligations  
19 as they come due, and the Receiver's recommendation regarding the necessity for, and the best  
20 method of handling, preserving, or disposing of the Receivership Assets.

21 i. The Receiver shall invest the funds of the Receivership Assets in any interest-  
22 bearing obligations of the United States or in any interest-bearing accounts in financial institutions  
23 approved by the United States Trustee as an authorized depository for funds of bankruptcy estates,  
24 without further order of the Court, and will be the signatory on the bank accounts of Receivership  
25 Defendants and Relief Defendants, and each of them, including, but not limited to all of  
26 Receivership Defendants and Relief Defendants' Bank of America accounts and any depository or  
27 investment account in any financial institution that the Receiver may discover at a later date  
28 containing Receivership Assets.

1           j.       The Receiver shall bring such proceedings as are necessary to enforce the  
2 provisions hereof, including issuance of subpoenas to compel testimony or production of documents  
3 as to the existence or location of Receivership Assets or any other information pertinent to the  
4 business, financial affairs, or other transactions of Receivership Defendants and Relief Defendant.

5           k.       If the Receiver discovers that funds have been transferred from Receivership  
6 Defendants and Relief Defendants to other persons or entities, and deems it advisable, the Receiver  
7 may extend and expand the receivership over any person or entity holding such funds, without  
8 further order of the Court.

9           l.       The Receiver shall bring such proceedings as are necessary to modify the  
10 provisions hereof, as the Receiver deems appropriate.

11           m.       The Receiver shall make such payments and disbursements from the funds of  
12 the Receivership Assets so taken into possession, custody and control of the Receiver or otherwise  
13 received by him, as may be necessary and advisable in discharging his duties as receiver, without  
14 further order of the Court, including, without limitation, the payment of interim compensation to the  
15 Receiver and persons or entities under paragraphs (d) and (e), above, subject to the provisions of  
16 paragraphs (z) and (aa), below.

17           n.       The Receiver shall carry on any lawful business activities of Receivership  
18 Defendants and Relief Defendants, to preserve Receivership Assets, and to foreclose and/or actively  
19 seek and negotiate with potential buyers, assignees or other parties who may be interested in  
20 acquiring, purchasing, leasing, subleasing or renting Receivership Assets and to sell, lease, sublease  
21 or rent Receivership Assets, subject to Court approval.

22           o.       The Receiver shall institute, prosecute, defend, compromise, intervene in and  
23 become a party, either in his own name or in the name of Receivership Defendants and Relief  
24 Defendants, to such suits, actions or proceedings as may be necessary for the protection,  
25 maintenance, recoupment or preservation of the Receivership Assets in his custody, in his discretion,  
26 without further order of the Court.

27           p.       The Receiver shall divert, take possession of and secure all mail of  
28 Receivership Defendants and Relief Defendants, in order to screen such mail, retaining so much as

1 relates to the business of Receivership Defendants and Relief Defendants, and forwarding to the  
2 individual or other appropriate addresses so much as is not, in the Receiver's opinion, appropriate  
3 for retention by him, and to effect a change in the rights to use any and all post office boxes and  
4 other mail collection facilities used by Receivership Defendants and Relief Defendants.

5 q. Upon the Receiver's appointment, the Receiver shall undertake an immediate  
6 review of all readily available Receivership Assets in order to determine the economic viability of a  
7 receivership. Upon such review, if the Receiver determines that sufficient Receivership Assets are  
8 readily available to fund the receivership, then the Receiver shall file such finding with the Court,  
9 and the receivership shall continue until further order of the Court. If upon initial review the  
10 Receiver determines that readily available funds are insufficient to maintain the receivership, then  
11 the Receiver shall so notify the Court, and may request that the Court dissolve the receivership, or  
12 modify the duties and responsibilities of the Receiver and Receivership Defendants and Relief  
13 Defendants, and Plaintiff will not oppose such request, it being understood that the Receiver and  
14 professionals employed by the Receiver shall not be expected to perform services unless readily  
15 available assets exist to pay the expenses of the receivership.

16 r. The Receiver shall cooperate fully with the California Department of  
17 Corporations or other regulatory agencies having jurisdiction over matters relating to the conduct of  
18 business of Receivership Defendants and Relief Defendants so as not to impair the ability of said  
19 regulatory agencies to perform their duly authorized investigative and enforcement duties.

20 s. Any regulatory agency having jurisdiction over matters relating to  
21 Receivership Defendants and Relief Defendants' business shall be permitted to review, without  
22 exception, all reports of the Receiver and all books, records and files of Receivership Defendants  
23 and Relief Defendants at any time during normal business hours, with reasonable notice, and to  
24 make any abstracts or copies of said documents as it desires, provided that nothing herein shall  
25 waive or abrogate any applicable attorney-client or other legally recognized privilege.

26 t. The Receiver's powers shall be in addition to, and not by way of limitation of,  
27 the powers described in California Corporations Code section 25530, subdivision (a), California  
28 Government Code section 13975.1 and California Code of Civil Procedure section 564 *et seq.*

1           u.       The Receiver shall be vested with, and is authorized, directed and empowered  
2 to exercise, all of the powers of Receivership Defendants and Relief Defendants, their owners,  
3 officers, directors, shareholders, general partners or persons who exercise similar powers and  
4 perform similar duties; and that Receivership Defendants and Relief Defendants, their owners,  
5 officers, directors, shareholders, agents, employees, representatives, successors in interest, attorneys  
6 in fact and all persons acting in concert or participating with them, are hereby divested of, restrained  
7 and barred from exercising any of the powers vested herein in the Receiver.

8           v.       Receivership Defendants and Relief Defendants, including, but not limited to  
9 their owners, officers, directors, shareholders, agents, employees, representatives, salespersons,  
10 successors in interest, attorneys, assigns, subsidiaries, affiliates, and any other persons or entities  
11 under their control and all persons or entities in active concert or participation with Receivership  
12 Defendants and Relief Defendants, and all persons owing a duty of disclosure to Receivership  
13 Defendants and Relief Defendants, and each of them, shall cooperate with the Receiver in his  
14 investigation and shall immediately turn over to the Receiver Receivership Assets, books, records,  
15 papers, documentations, charts and/or descriptive material of all Receivership Assets, owned  
16 beneficially or otherwise, and wherever situated, and all books and records of accounts, title  
17 documents and other documents in the possession or under their control, which relate, directly or  
18 indirectly, to the Receivership Assets.

19           x.       Except by leave of this Court and during the pendency of this receivership, all  
20 clients, investors, trust beneficiaries, note holders, creditors, claimants, lessors and all other persons  
21 or entities seeking relief of any kind, in law or in equity, from Receivership Defendants and Relief  
22 Defendants and Receivership Assets, and all others acting on behalf of any such persons, including  
23 sheriffs, marshals, agents, employees, and attorneys are hereby restrained and enjoined, directly or  
24 indirectly, with respect to Receivership Defendants and Relief Defendants and Receivership Assets,  
25 from:

26                   i.       Commencing, prosecuting, continuing or enforcing any suit or  
27 proceeding, including arbitration, except by motion before this Court;

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- ii. Executing or issuing or causing the execution or issuance of any court attachment, subpoena, replevin, execution or other process for the purpose of impounding or taking possession of or interfering with or creating or enforcing a lien;
- iii. Commencing or continuing judicial or non-judicial foreclosure proceedings or proceedings for the appointment of a receiver;
- iv. Creating, perfecting, or enforcing any lien or encumbrance;
- v. Accelerating the due date of any obligation or claimed obligation;
- vi. Exercising any right of set-off;
- vii. Taking, retaining, retaking or attempting to retake possession;
- viii. Withholding or diverting any rent or other obligations;
- ix. Using self-help or executing or issuing or causing the execution or issuance of any court attachment, subpoena, replevin, execution or other process for the purpose of impounding or taking possession of or interfering with or creating or enforcing a lien; and
- x. Doing any act or thing whatsoever to interfere with the control of, the possession of, or management by, the Receiver herein, or to, in any way, interfere with or harass the Receiver or to interfere in any manner during the pendency of this proceeding, the discharging of the Receiver's duties and responsibilities, and with the exclusive jurisdiction of this Court.

y. Any and all provisions of any agreement entered by and between any third party and Receivership Defendants and Relief Defendants, including, by way of illustration, but not limited to, the following types of agreements (as well as any amendments or modifications thereto), mortgages, partnerships agreements, financial guarantee bonds, joint venture agreements, promissory notes, remarketing agreements, loan agreements, security agreements, indemnification agreements, subrogation agreements, subordination agreements, deeds of trust, pledge agreements, assignments of rents and other collateral, financing statements, letters of credit, leases, insurance

1 policies, guarantees, escrow agreements, management agreements, real estate brokerage and rental  
2 agreements, servicing agreements, consulting agreements, easement agreements, license agreements,  
3 franchise agreements, construction contracts, or employment contracts that provide in any manner  
4 that the selection, appointment, or retention of a Receiver or trustee by any court, or the entry of an  
5 order such as hereby made, shall be deemed to be, or otherwise operate as a breach, violation, event  
6 of default, termination, event of dissolution, event of acceleration, insolvency, bankruptcy, or  
7 liquidation, shall be stayed, and the assertion of any and all rights and remedies relating thereto shall  
8 also be stayed and barred, except as otherwise ordered by this Court, and this Court shall retain  
9 jurisdiction over any causes of action that have arisen or may otherwise arise under any such  
10 provision.

11 z. Receivership Defendants and Relief Defendants are responsible for the  
12 payment of costs, fees and expenses of Receiver incurred in connection with the performance of his  
13 duties, including the costs, fees and expenses of those persons who may be engaged or employed by  
14 the Receiver to assist him in carrying out his duties and obligations. The Receiver, the Receiver's  
15 employees and agents, and professionals employed by the Receiver, are entitled to monthly payment  
16 of interim compensation for services rendered, at their normal hourly rate, and monthly  
17 reimbursement for all expenses incurred by them on behalf of the receivership estate, and the  
18 Receiver is authorized to make such payments without further order of the Court. Within 10 days  
19 after such monthly payments, the Receiver shall serve written notice upon the counsel of record for  
20 Receivership Defendants and Relief Defendants and Plaintiff of the amount paid to each payee, with  
21 an itemization of the services rendered or expenses incurred.

22 aa. Interim monthly fees paid shall be subject to review and approval by the  
23 Court, on a quarterly basis. This Court retains jurisdiction to award a greater or lesser amount as the  
24 full, fair and final value of such services. In the event that extraordinary services are performed by  
25 the Receiver, or any professionals employed by the Receiver, the Court may approve extraordinary  
26 compensation to such persons.

27 ab. Neither Plaintiff, the State of California, the California Corporations  
28 Commissioner, the California Department of Corporations, nor any officer, employee or agent

1 thereof shall have any liability for the payment, at any time, for any such fees or expenses in  
2 connection with said receivership.

3 ac. That Receivership Defendants and Relief Defendants, their owners, officers,  
4 directors, shareholders, agents, employees, representatives, successors in interest, attorneys, and any  
5 other persons shall not take any action or purport to take any action, in the name of or on behalf of  
6 any Receivership Defendants and Relief Defendants or any of their subsidiaries and affiliates,  
7 without the written consent of the Receiver or order of this Court.

8 ad. That Receivership Defendants and Relief Defendants and their subsidiaries  
9 and affiliates and their owners, officers, directors, shareholders, agents, employees, representatives,  
10 successors in interest, and attorneys, shall cooperate with and assist the Receiver and shall take no  
11 action, directly or indirectly, to hinder, obstruct, or otherwise interfere with the Receiver in the  
12 conduct of his duties or interfere in any manner, directly or indirectly, with the custody, possession,  
13 management, or control by the Receiver of the Receivership Defendants and Relief Defendants and  
14 Receivership Assets, as described above.

15 ae. Receivership Defendant and Relief Defendant shall, within 10 days of the  
16 entry of the appointment, prepare and deliver to the Receiver and Plaintiff a detailed and complete  
17 schedule of all of their real and personal properties, and other assets, with a minimum value of  
18 \$1,000, including a description of the source of funds for the purchase of such assets. For purposes  
19 of this Order, the term “assets” shall include, but is no way limited to, income/compensation or right  
20 of income/compensation from any source, and any financial or controlling interest in any business  
21 entity, including, but not limited to, a partnership, trust, corporation, or limited liability company.  
22 Such accounting shall be filed with the Court and a copy shall be delivered to the Receiver. After  
23 completion of the accounting, each Receivership Defendant and Relief Defendant shall produce to  
24 the Receiver at a time agreeable to the Receiver, all books, records and other documents supporting  
25 or underlying his accountings.

26 af. Receivership Defendants and Relief Defendants, within 20 days from the date  
27 of entry of the appointment, all shall transfer to a trust account of the Receiver all Receivership  
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1 Assets that are presently held in domestic and foreign locations, to the extent said assets are  
2 transferable.

3           ag.     The Receiver shall determine upon taking possession of all real property of  
4 the Receivership Assets whether in the Receiver's judgment there is sufficient insurance coverage.  
5 With respect to any insurance coverage in existence or obtained, the Receiver shall be named as an  
6 additional insured on the policies for the period that the Receiver shall be in possession of the real  
7 property of the Receivership Assets. If sufficient insurance coverage does not exist, the Receiver  
8 shall immediately notify the parties to this lawsuit and shall take reasonable measures, within 30  
9 days, to procure sufficient all-risk and liability insurance on all real property (excluding earthquake  
10 and flood insurance) provided, however, that if the Receiver does not have sufficient funds to do so,  
11 the Receiver shall seek instructions from the Court with regard to whether insurance shall be  
12 obtained and how it is to be paid for. The Receiver shall not be responsible for claims arising from  
13 the lack of procurement or inability to obtain insurance.

14           **VI. FREEZING OF ASSETS**

15           For a freeze to be placed on all funds, negotiable instruments and/or assets held in any bank,  
16 savings or checking, brokerage or other accounts, certificates of deposit, safe deposit box, or  
17 otherwise, without limitation, in the name of Defendants and Relief Defendants, or for the benefit of  
18 Defendants and Relief Defendants directly or indirectly, and each of them, and any depository or  
19 investment account in any financial institution that the Receiver may discover at a later date  
20 containing clients' funds.

21           **VII. OTHER RELIEF**

22           For such and further relief as the Court may deem just and proper.

23 Dated: February 10, 2011

JAN LYNN OWEN  
California Corporations Commissioner

24  
25  
26           By: \_\_\_\_\_  
27                   AFSANEH EGHBALDARI  
28                   Corporations Counsel  
                  Attorney for the People of California