

1 Preston DuFauchard, California Corporations Commissioner (“Commissioner”), acting to
2 protect the public from the unlawful sale of unqualified and fraudulent securities, brings this action
3 in the public interest in the name of the People of the State of California. The People of the State of
4 California allege as follows on information and belief:

5 **JURISDICTION AND VENUE**

6 1. The Commissioner brings this action to enjoin the defendants from violating the
7 provisions of the California Corporate Securities Law of 1968 (“CSL”) (Cal. Corp. Code Sections
8 25000 et seq.) and to request necessary equitable and ancillary relief. The Commissioner is
9 authorized to administer and enforce the provisions of the CSL.

10 2. The Commissioner brings this action pursuant to California Corporations Code Section
11 25530 and California Government Code Section 11180 et seq. in his capacity as head of the
12 California Department of Corporations (“Department”).

13 3. Defendants have transacted business within Orange County and other counties in
14 California. Defendants principle place of business is located in Orange County. The violations of
15 law described herein have occurred and will continue to occur, unless enjoined, within Orange
16 County and elsewhere within the State of California.

17 **DEFENDANTS**

18 4. Defendant Super Absorbent Company (“SAC”) is a Nevada Corporation with its
19 principal place of business in California at 10 Chrysler, Suite B, Irvine, California 92618, and
20 formerly at 20532 El Toro Road, Suite 202, Mission Viejo, California 92692.

21 5. Defendant Synchronized Funding, LLC (“SFL”) is a California Limited Liability
22 Company with its principal place of business in California at 26861 Highwood Circle, Laguna Hills,
23 California 92653, and formerly at 34 Hawaii Drive, Aliso Viejo, CA 92656.

24 6. Defendant Phillip Berlin (“Berlin”) is an individual and believed to be a resident of
25 Orange County. Berlin is and was conducting business in the county of Orange and elsewhere in
26 California. Berlin has acted in the following capacities at various times relevant to this complaint.
27 Berlin is the Chief Executive Officer (“CEO”) of SAC and a managing partner of SFL. Berlin was
28 at all times relevant hereto, a “control” person of SAC and SFL as that term is defined in California

1 Corporations Code section 160(a). Pursuant to California Corporations Code section 160(a),
2 “control” means the possession, direct or indirect, of the power to direct or cause the direction of the
3 management and policies of the corporation.

4 7. Defendant Mark Ian Sinkinson (“Sinkinson”) is an individual and a resident of Orange
5 County. Sinkinson is and was conducting business in the county of Orange and elsewhere within
6 California. Sinkinson has acted in the following capacities at various times relevant to this
7 complaint. Sinkinson is the President, Treasurer, and a Director of SAC and the CEO and managing
8 partner of SFL. Sinkinson was at all times relevant hereto, a “control” person of SAC and SFL as
9 that term is defined in California Corporations Code section 160(a).

10 8. Defendants Does 1 through 50 are persons, corporations, or other entities that have
11 done or will do acts otherwise alleged in this complaint. Plaintiff is informed and believes, and on
12 such information and belief alleges, that Defendants Does 1 through 50 inclusive, at all times
13 mentioned herein have acted and are continuing to act in concert with the Defendants named herein,
14 and that each of them has participated in the acts and transactions which are the subject of this
15 complaint. The true names and capacities of Does 1 through 50, whether individual, corporate, or
16 otherwise, are unknown to Plaintiff, who therefore sues such Defendants under such fictitious
17 names, pursuant to the provisions of section 474 of the California Code of Civil Procedure. Plaintiff
18 asks leave of the court to amend the complaint to allege the true names and capacities of such
19 Defendants at such time as the same have been ascertained.

20 9. Plaintiff is informed and believes and on such information and belief alleges that, at all
21 relevant times, the Defendants named as officers, directors, agents or employees, acted in such
22 capacities in connection with the acts, practices and schemes of business set forth below.

23 10. Whenever any allegation is made in this complaint to "Defendants" doing any act, the
24 allegation shall mean the act of each individual Defendant acting individually, jointly and severally
25 and the conspiring of these Defendants to so act. Each Defendant alleged to have committed any act
26 did so pursuant to and in furtherance of a common plan, scheme and conspiracy and as the agent for
27 each and every co-defendant. Each Defendant acted in conspiracy to violate the provisions of the
28 CSL.

1 exempt securities in nonissuer transactions by means of fraud, totaling in excess of \$5,500,000 in
2 SAC shares owned by Berlin and Sinkinson to at least 251 known investors in 446 transactions.
3 Money received from the sale of Berlin's and Sinkinson's personal shares of SAC to investors was
4 put in SFL's bank account.

5 17. Furthermore, from August 28, 2001 through October 21, 2003, Defendants offered and
6 sold securities fraudulently, totaling in excess of \$1,300,000 in SAC convertible preferred stock to at
7 least 104 known investors in 117 transactions.

8 18. In order to sell these securities, Defendants solicited investors by means of cold calls
9 and by distributing offering materials and other communications through the mail without being
10 qualified in the State of California.

11 19. SAC's stated business purpose is the production, marketing and distribution of
12 biodegradable super-absorbent starch based polymers primarily used in the agriculture industry to
13 reduce irrigational requirements while simultaneously increasing crop yields.

14 20. Defendants offered and sold securities in California to residents of the State of
15 California and elsewhere for the alleged purpose of raising capital for: 1) SAC to improve and
16 modernize their current production facility, 2) acquiring equipment to increase production, 3) leasing
17 and building out a new facility, 4) marketing their product and 5) working capital.

18 21. In 2005, SAC had an operating loss of approximately \$966,555. Through September
19 2006, SAC had an operating loss of approximately \$1,241,361. The total operating loss of SAC
20 from its inception in May 2001 through September 2006 is approximately \$3,198,066.

21 22. Defendants offered and sold securities in California by making material
22 misrepresentations, including: a) Defendants misrepresented that their forward looking profit
23 projections were attainable within the time period given, while the company has been operating at a
24 significant loss for the last five plus years; b) Defendants misrepresented that more than sixty
25 percent of the proceeds from their offering would be used on equipment and manufacturing
26 expenditures; and c) Defendants misrepresented that SAC would have an initial public offering
27 within months of their private common stock offerings.

1 23. Defendants offered and sold securities in California by omitting material facts,
2 including: a) Defendants failed to disclose that SAC had significantly failed in its attempt to meet
3 prior profit projections and in fact has operated at a significant loss for the last five plus years; b)
4 Defendants failed to disclose the past business failures of SAC's CEO Berlin and President
5 Sinkinson; c) Defendants failed to disclose that investors in the past business ventures of Berlin and
6 Sinkinson lost their entire investment; and d) Defendants failed to disclose to investors that Berlin
7 and Sinkinson sold their own personal shares of SAC to investors for personal profit in excess of \$5
8 million instead of selling company shares of SAC that would benefit the corporation.

9 24. On August 21, 2002, the Commissioner issued a Desist and Refrain Order against
10 Berlin and Sinkinson for violations of CSL Section 25110 for selling unqualified, non-exempt
11 securities in the form of stock in MyOnlyCatalog.com, Inc., now known as Commerce Syndication
12 Network, Inc. The Commissioner ordered Berlin and Sinkinson to desist and refrain from the further
13 offer or sale in the State of California of securities in the form of stock, unless and until qualification
14 has been made under said law or unless exempt.

15 25. In addition, on August 21, 2002, the Commissioner issued a Desist and Refrain Order
16 against Defendants Berlin and Sinkinson in connection with an illegal securities offering known as
17 S.K.B. Trading Group, Inc.

18 26. Furthermore, the Commissioner and other states have issued Orders against BERLIN:
19 1) In November 1994, the Commissioner issued a Desist and Refrain Order against Berlin in
20 connection with Capital Peak Partners, ordering him to desist and refrain from the further offer or
21 sale in the State of California of securities including, but not limited to investment contracts in the
22 form of general partnership interests; 2) In September 1995, the State of South Dakota Department
23 of Commerce and Regulation Division of Securities issued an Order to Cease and Desist and Refrain
24 and Order Denying Private Placement Exemptions against Berlin in connection with an illegal
25 securities offering known as Creative Pet Products, Inc. ("CPP"); and 3) In July 1996, The
26 Department of Consumer and Business Services for the State of Oregon issued a Final Order to
27 Cease and Desist, Denial of Exemptions, and Assessment of Civil Penalties against Berlin in
28 connection with CPP.

1 44. Defendants and each of them, offered or sold unqualified, non-exempt securities in
2 violation of California Corporations Code section 25130. Unless enjoined by this Court, Defendants
3 and each of them, will continue to violate California Corporations Code section 25130.

4 **THIRD CAUSE OF ACTION**
5 **MISREPRESENTATIONS OR OMISSIONS OF MATERIAL**
6 **FACTS IN VIOLATION OF CALIFORNIA CORPORATIONS CODE SECTION 25401**
7 **(Against All Defendants)**

8 45. The Commissioner realleges and incorporates by reference paragraphs 1 through 44 of
9 this Complaint as though fully set forth herein.

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

16 47. In offering and selling the securities referred to herein, Defendants made untrue
17 statements and/or misrepresentations of material facts to some or all prospective or existing
18 investors. The misrepresentations included, without necessarily being limited to, the following:

19 a. Defendants misrepresented that their forward looking profit projections were attainable
20 within the time period given, while the company has been operating at a significant loss for the last
21 five plus years;

22 b. Defendants misrepresented that more than sixty percent of the proceeds from their
23 offering would be used on equipment and manufacturing expenditures; and

24 c. Defendants misrepresented that SAC would have an initial public offering within
25 months of their private common stock offerings.

26 48. In offering and selling the securities referred to herein, Defendants also omitted to state
27 material facts to some or all of the prospective or existing investors. The omissions included,
28 without necessarily being limited to, the following:

1 a. Defendants failed to disclose that SAC had significantly failed in its attempt to meet
2 prior profit projections and in fact has operated at a significant loss for the last five plus years;

3 b. Defendants failed to disclose the past business failures of SAC's CEO Berlin and
4 President Sinkinson;

5 c. Defendants failed to disclose that investors in the past business ventures of Berlin and
6 Sinkinson lost their entire investment; and

7 d. Defendants failed to disclose to investors that Berlin and Sinkinson sold their own
8 personal shares of SAC to investors for personal profit in excess of \$5 million instead of selling
9 company shares of SAC that would benefit the corporation.

10 49. The misstatements and omissions referred to herein were of "material facts" within the
11 meaning of California Corporations Code section 25401.

12 50. Defendants and each of them, made untrue statements and/or omitted to disclose
13 material facts in connection with the offer and sale of securities in violation of California
14 Corporations Code section 25401.

15 51. Unless enjoined by this Court, Defendants and each of them, will continue to violate
16 California Corporations Code section 25401.

17 **FOURTH CAUSE OF ACTION**
18 **VIOLATIONS OF PRIOR DESIST AND REFRAIN ORDER ISSUED BY THE**
19 **COMMISSIONER**
(Against All Defendants)

20 52. Plaintiff incorporates by reference paragraphs 1 through 51 of this Complaint as
21 though fully set forth herein.

22 53. Corporations Code section 25530 provides, in pertinent part, as follows:

23 (a) Whenever it appears to the commissioner that any person has engaged or is
24 about to engage in any act or practice constituting a violation of any provision of
25 this division or any rule or order hereunder, the commissioner may in the
26 commissioner's discretion bring an action in the name of the people of the State
27 of California in the superior court to enjoin the acts or practices or to enforce
28 compliance with this law or any rule or order hereunder....

1 sale, issuing, engaging in the business of selling, negotiating for the sale of, or otherwise in any way
2 dealing or participating in the offer or sale of, any security of any kind, including but not limited to
3 the securities described in this Complaint, unless such security or transaction is qualified;

4 c. California Corporations Code section 25401 by offering to sell or selling any security of
5 any kind, including but not limited to, the securities described in this Complaint, by means of any
6 written or oral communication, which contains any untrue statements of any material fact or omits or
7 fails to state any material fact necessary in order to make the statements made, in the light of the
8 circumstances under which they are made, not misleading, including but not limited to the
9 misrepresentations and omissions alleged in this Complaint;

10 d. The Desist and Refrain Order issued against Berlin and Sinkinson in August 2002 in
11 connection with MyOnlyCatalog.com, Inc., now known as Commerce Syndication Network, Inc.,
12 and the Desist and Refrain Order issued against Berlin in November 1994 in connection with Capital
13 Peak Partners;

14 e. Removing, destroying, mutilating, concealing, altering, transferring, or otherwise
15 disposing of, in any manner, any books, records, computer programs, computer files, computer print-
16 outs, correspondence, brochures, manuals, or any other writings or documents of any kind as defined
17 under California Evidence Code section 250 relating to the transactions and course of conduct as
18 alleged in the complaint in this action; and

19 f. Transferring, changing, disbursing, selling, dissipating, converting, conveying, pledging,
20 assigning, encumbering, or foreclosing or otherwise disposing of any real or personal property or
21 other assets in their possession or under their control, or in the possession of, or under the control of,
22 any of the Defendants, which property or other assets were derived or emanated from directly, or
23 indirectly, the sale and issuance of securities as alleged in this Complaint, without leave of the Court.

24 2. For a Final Judgment requiring Defendants and each of them, and such Does as may be
25 subsequently named, individually, jointly and severally, to rescind each and all of the unlawful
26 transactions alleged in this Complaint, as shall be determined by this Court to have occurred, and
27 further requiring Defendants and such Does as may be subsequently named individually, jointly and
28 severally, to pay full restitution to each person determined to have been subjected to Defendants'

1 acts or practices which constitute violations of the Corporations Code, with the total amount of funds
2 being at least \$12,800,000 less the amount of any repayment of principal, or any other amount
3 according to proof. In addition, to pay either the contracted rate of interest or the legal rate of
4 interest on the amounts invested by the clients from the dates of their investments to the date of
5 judgment herein.

6 3. For a Final Judgment requiring all Defendants and each of them, and such Does as may be
7 subsequently named, individually, jointly and severally, to disgorge according to proof, to all known
8 persons who invested, all benefits received, including but not limited to, salaries, commissions, fees
9 and profits, derived directly or indirectly, from the acts or practices which constitute violations of the
10 Corporations Code.

11 4. For a Final Judgment requiring Defendants and each of them, and such Does as may be
12 subsequently named, to pay \$25,000 to the Department of Corporations as a civil penalty for each
13 act in violation of the CSL, as authorized by Corporations Code section 25535 as follows:

14 a. As to the First Cause of Action, against Defendants SAC, SFL, Sinkinson and Berlin to be
15 jointly and severally liable for at least \$4,900,000 for at least 196 violations of California
16 Corporations Code section 25110, or any other amount according to proof;

17 b. As to the Second Cause of Action, against Defendants SAC, SFL, Sinkinson and Berlin to
18 be jointly and severally liable for at least \$6,275,000 for at least 251 violations of California
19 Corporations Code section 25130, or any other amount according to proof;

20 c. As to the Third Cause of Action, against Defendants SAC, SFL, Sinkinson and Berlin to be
21 jointly and severally liable for at least \$13,775,000 for at least 551 violations of California
22 Corporations Code section 25401, or any other amount according to proof; and

23 d. As to the Fourth Cause of Action, against Defendants to be jointly and severally liable for
24 at least \$4,900,000 for at least 196 violations of the prior Desist and Refrain Order, or any other
25 amount according to proof.

1 **II. OTHER RELIEF:**

2 1. For an Order of Final Judgment that plaintiff recovers his costs and reasonable
3 attorneys' fees from defendants, and each of them, individually, jointly and severally.

4 2. For an Order that this court will retain jurisdiction of this action in order to implement
5 and carry out the terms of all orders and decrees that may be entered herein or to entertain any
6 suitable application or motion by Plaintiff for additional relief within the jurisdiction of this Court.

7 3. For such other and further relief as the Court deems necessary and proper.

8 Dated: August 3, 2007

9 Los Angeles, California

10 Respectfully submitted,

11 PRESTON DuFAUCHARD
12 California Corporations Commissioner

13 By: _____
14 MICHELLE LIPTON
15 Senior Corporations Counsel
16 Attorney for Plaintiff
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