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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION

E-filing

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CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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CV 10 4535

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14 SECURITIES AND EXCHANGE COMMISSION,
15 Plaintiff,
16 vs.
17 BARBRA ALEXANDER, BETH PIÑA, MICHAEL E.
SWANSON, AND APS FUNDING, INC.,
18 Defendants.
19

Civil Action No. _____

COMPLAINT

[JURY TRIAL DEMANDED]

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21 Plaintiff Securities and Exchange Commission ("Commission") alleges:

22 SUMMARY OF THE ACTION

23 1. From 2006 through 2009, Barbra Alexander, Beth Piña, and Michael E. Swanson
24 misappropriated approximately \$2.5 million of the \$7 million they raised from close to 50
25 investors through the fraudulent sale of interests in two real estate investments funds. Alexander,
26 the President of a Monterey, California-based real estate loan company, APS Funding, Inc. ("APS
27 Funding"), solicited investments for APS Funding's GCF Investment LLC ("GCF Investment
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1 Fund”), and Greenlight Fund, LLC (“Greenlight Fund”) (collectively, the “Funds”). Using her
2 status as host of an internationally syndicated financial radio show to lure investors, Alexander
3 told prospective investors that their money would fund short-term fixed-rate loans secured by real
4 property. Alexander also told these would-be investors that they would receive 12% annual
5 returns. Swanson, telling investors the same thing as Alexander, also brought investors into the
6 Funds. While Piña did not bring in investors, she handled APS Funding and the Funds’
7 bookkeeping and created and sent investors monthly checks and account statements.

8 2. In truth, a significant portion of the money invested did not fund short-term loans to
9 third parties. Instead, over a third of investor funds – \$2.5 million of the \$7 million raised – was
10 siphoned off by Alexander, Piña, and Swanson and funneled to themselves and the various entities
11 they controlled. Alexander and the entities she controlled received \$1.6 million, while Piña and
12 Swanson and the entities they controlled equally split the remaining \$900,000 of misappropriated
13 funds.

14 3. For the second half of 2008 and all of 2009, while the three partners paid
15 themselves at least \$30,000 a month, APS Funding failed to make any legitimate loans. Instead,
16 Alexander used investor funds to pay for her other businesses, home renovation, and for her radio
17 show, *MoneyDots*.

18 4. By the end of 2008, over 70% of the loans made in 2007 and in the first half of
19 2008 were in some state of arrears. Nonetheless, Alexander, Piña, and Swanson continued to take
20 money from the funds, pay purported “returns” to investors, and reflect fictitious accumulated
21 interest on monthly account statements provided to investors. Additionally, during this time,
22 Alexander continued to solicit new investors to the Funds.

23 5. Alexander, Piña, and Swanson, and their company, APS Funding (collectively,
24 “Defendants”), violated numerous provisions of the federal securities laws, including the antifraud
25 statutes, by misappropriating investor assets, making materially false and misleading statements in
26 connection with the purchase or sale of securities, and perpetrating a fraud on their investors. The
27 Commission seeks a court order that enjoins Defendants from further violations of the securities
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1 laws, requires them to disgorge their ill-gotten gains, and imposes civil money penalties on
2 Alexander, Piña, and Swanson.

3 JURISDICTION AND VENUE

4 6. The Commission brings this action pursuant to Section 20(b) of the Securities Act
5 of 1933 (“Securities Act”) [15 U.S.C. § 77t(b)] and Sections 21(d) and 21(e) of the Securities
6 Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §§ 78u(d) and 78u(e)].

7 7. This Court has jurisdiction over this action pursuant to Section 22(a) of the
8 Securities Act [15 U.S.C. § 77v(a)] and Sections 21(d)(3), 21(e), and 27 of the Exchange Act [15
9 U.S.C. §§ 78u(d)(3), 78u(e), and 78aa]. Defendants, directly or indirectly, have made use of the
10 means and instrumentalities of interstate commerce or of the mails in connection with the acts,
11 transactions, practices, and courses of business alleged in this complaint.

12 8. Venue in this District is proper pursuant to Section 22 of the Securities Act [15
13 U.S.C. § 77v] and Section 27 of the Exchange Act [15 U.S.C. § 78aa] because a substantial
14 portion of the conduct alleged in this complaint occurred within the Northern District of
15 California.

16 9. Assignment to the San Jose Division is proper pursuant to Northern District of
17 California Civil Local Rule 3-2 because a substantial portion of the facts leading to this action
18 arose in Monterey County.

19 DEFENDANTS

20 10. Defendant Barbra Alexander, age 63, is a Monterey, California resident and was the
21 President of APS Funding from November 2006 through March 2010. Alexander is a California
22 licensed real estate agent and broker. In addition to serving as president of APS Funding,
23 Alexander hosts a syndicated radio show, *MoneyDots*. *MoneyDots* claims to be syndicated in over
24 60 markets nationwide and is broadcast in Europe and Africa. In testimony before the
25 Commission, Alexander asserted her Fifth Amendment privilege against self-incrimination in
26 response to questions regarding APS Funding.

27 11. Defendant Beth Piña, age 44, is a resident of Fairfield, Idaho and Secretary/Chief
28 Financial Officer of APS Funding.

1 12. Defendant Michael E. Swanson, age 62, is a Seaside, California resident and the
2 Vice-President of APS Funding since February 2008. From November 2006 through January
3 2008, Swanson provided consulting services to Alexander, Piña, and their company A&P
4 Properties, Inc., the predecessor to APS Funding.

5 13. Defendant APS Funding, Inc., is a California corporation, formerly known as A&P
6 Properties, Inc. APS Funding, formed in November 2006 and located in Monterey, California,
7 allegedly makes loans to individuals and entities that cannot otherwise receive bank financing.
8 APS Funding is the managing member of two investment funds, GCF Investment, LLC and
9 Greenlight Fund, LLC. From at least November 2006 through February 2008, Alexander and Piña
10 were the principals of A&P Properties. From February 2008 through December 2009, the
11 principals of APS Funding were Alexander, Piña, and Swanson.

12 **FACTUAL ALLEGATIONS**

13 **Alexander Created The GCF Investment and Greenlight Funds and Raised Nearly \$7**
14 **Million from Investors**

15 14. In November 2006, Alexander created the GCF Investment Fund, a California
16 limited liability company that noted in its Private Placement Memorandum (“PPM”) that it was
17 formed “to raise a pool of capital to be used for short-term, fixed-rate mortgage financing.” GCF
18 Investment Fund offered Units to investors, with each Unit representing a \$10,000 investment in
19 the pooled fund. A&P Properties, Inc., a California corporation, was created to manage the fund.
20 Alexander and Piña were the principals of A&P Properties, and Alexander served as Chief
21 Executive Officer (“CEO”) of A&P Properties while Piña operated as Chief Financial Officer
22 (“CFO”). Swanson acted as a consultant to A&P Properties from its inception through January
23 2008.

24 15. In February 2008, Alexander amended the GCF Investment Fund offering to add
25 Swanson as a principal and later that year changed the name of A&P Properties to APS Funding.
26 Swanson served as Vice-President of APS Funding.

27 16. In June 2008, Alexander created the Greenlight Fund, a California limited liability
28 company formed for roughly the same purpose as the GCF Investment Fund. Greenlight Fund’s

1 PPM stated that the fund was formed “to raise a pool of capital to be used for short-term
2 financing.” Like GCF Investment Fund, Greenlight Fund offered Units to investors, with each
3 Unit representing a \$10,000 investment in the pooled fund. APS Funding also managed the
4 Greenlight Fund.

5 17. The offering documents for GCF Investment Fund and Greenlight Fund stated that
6 investors would receive a 12% annual return on their investment. Both the GCF Investment Fund
7 and the Greenlight Fund offering documents, including the PPMs, were sent to the investors by
8 mail. Neither the GCF Investment Fund nor the Greenlight Fund offering was registered with the
9 Commission. Alexander and Swanson verbally relayed the information contained in the offering
10 documents to potential investors, prior to investing.

11 18. Defendants attracted investors to the two Funds through personal referrals and
12 word-of-mouth campaigns. The three Defendants also created a flyer for the GCF Investment
13 Fund which was distributed to prospective investors at real estate investment seminars by APS
14 Funding employees. The flyer bore the headline “Secure your future through Investment” and told
15 the investors that their money would be “placed in Short Term, Recorded, Deeds of Trust on Real
16 Property.” The flyer noted that the loans would be used to purchase property, for new
17 construction, for remodeling, or for improvements.

18 19. From November 2006 to December 2009, Defendants sold investors approximately
19 \$6.7 million of membership units in the two Funds. Defendants raised \$5 million from
20 approximately 30 investors in the GCF Investment Fund and over \$1.7 million from approximately
21 15 investors in the Greenlight Fund. Most of the investors in the two Funds came from central and
22 northern California.

23 20. As noted earlier, the GCF Investment Fund and Greenlight Fund were described in
24 offering documents called private placement memoranda (“PPMs”). According to the PPMs, the
25 Funds specialize in making short-term, fixed rate loans typically used for property enhancements
26 and improvements. The GCF Investment Fund PPM stated that the loans would be secured by
27 residential property, commercial property, or vacant land. The Greenlight Fund PPM said that
28 loans would typically be secured. The offering documents further stated that the principals would

1 not be paid or receive fees or other compensation but instead would receive any money that
2 remained after the investors were paid 12% annual returns on their investment.

3 21. The PPMs also noted that investors must be sophisticated with knowledge and
4 experience in financial and business matters and must be able to bear the risks of the investment.
5 The PPMs described a suitable investor as someone with a household net worth of at least \$1
6 million and an annual gross income of at least \$100,000. Despite this, Alexander routinely sold
7 GCF Investment Fund and Greenlight Fund securities to investors she knew did not meet these
8 requirements. For example, investors in both GCF Investment Fund and Greenlight Fund included
9 retirees on fixed incomes, a window washer, and a car painter – none of whom met the Funds’
10 suitability requirements.

11 **The Defendants Misappropriated \$2.5 Million in Investor Funds**

12 22. Contrary to what investors were told by Alexander and Swanson and the language
13 contained in the offering documents, the three principals did not use the proceeds as promised.
14 From its inception, the principals of A&P (and later APS Funding) used investor money contrary
15 to the offering documents’ description of the investment. Of the \$6.7 million raised from the two
16 Funds, \$2.5 million went to the three principals, APS Funding’s other business ventures, and
17 Alexander’s separate businesses. The money was used to support the *MoneyDots* show and
18 provide \$10,000 to \$15,000 a month each to Alexander, Swanson, and Piña. In addition to her
19 monthly “commissions” or “management fee advances” (as they were called by Defendants), in
20 2008, Alexander used almost \$200,000 in investor funds to remodel the kitchen in the house she
21 rented. Indeed, when the remodel was complete, a number of investors attended a house party
22 thrown by Alexander without knowing that their money had paid for all of the improvements.

23 23. With the knowledge and consent of Piña, A&P Properties first began to divert
24 investor money to Alexander’s separate businesses, including her radio show, soon after the
25 formation of the GCF Investment Fund in November 2006. Additionally, from 2008 through
26 2009, businesses related to APS Funding – but not related to the business of short-term, secured
27 loans – received investor funds. During this time, Alexander, Piña, and Swanson were aware that
28 investor funds were being diverted to APS Funding’s other businesses. From 2006 through the

1 end of 2009, \$1.3 million was diverted to APS Funding's other business ventures, and Alexander's
2 separate businesses (including \$335,000 to *MoneyDots*).

3 24. After a year of misappropriating investor funds to Alexander's personal businesses,
4 Defendants started diverting investor funds directly to Alexander, Piña, and Swanson. Swanson
5 was the first to be compensated in late 2007. Swanson received a "loan" from A&P of \$100,000
6 to be paid back in one year at 14% interest. He did not repay the loan within one year.

7 25. This initial loan to Swanson opened the floodgates for loans to the principals of
8 A&P and then APS Funding. Over the course of the next two years, Alexander loaned herself
9 \$535,000. Swanson loaned himself \$376,000 (including the initial \$100,000), and Piña loaned
10 herself \$325,000. All the loans appear to be on the same terms as Swanson's initial loan – 14%
11 interest and a one year payment term. These \$1.2 million in loans to the principals (representing
12 18% of all investor monies raised by the Funds) were not secured and were not paid back by
13 Alexander, Piña, or Swanson (Although some repayments were made after Defendants learned of
14 the Commission's investigation).

15 26. Between the \$1.2 million Alexander, Piña, and Swanson paid themselves and the
16 \$1.3 million diverted by the Defendants to other business ventures, the Defendants
17 misappropriated a total of \$2.5 million in investor funds.

18 **Alexander, Piña, and Swanson Misrepresented the Investment and the Returns**
19 **Investors were Getting**

20 27. From late 2007 through December 2009, Piña prepared and sent through the mail
21 monthly GCF Investment Fund and Greenlight Fund account statements and checks to investors
22 falsely informing them that they had earned 12% annual returns. The statements, sent to investors
23 who reinvested their returns, showed account balances that made it appear that investors' principal
24 was intact and they were earning 12% on their investments. Additionally, for those investors who
25 opted to receive monthly payment of their interest, their checks supposedly reflected gains from
26 the investment. Based on these false documents created by Piña, investors invested more money
27 with APS Funding and encouraged friends and family to invest as well. Alexander and Swanson
28 were aware that investors were receiving the false monthly account statements and checks.

1 28. The monthly account statements and interest payments sent to investors were false
2 because a substantial amount of investor funds were going to the principals, APS Funding's other
3 business ventures, and Alexander's separate businesses. Additionally, the few legitimate loans
4 that were made did not generate sufficient returns to justify the "interest" being paid to investors
5 and reflected in monthly account statements. For example, in 2009, Greenlight Fund brought in a
6 mere \$54,000 in interest on a \$1.7 million investment portfolio (a 3.2% return). However,
7 Greenlight Fund distributed – both in checks and as accrued interest in monthly statements –
8 \$144,000 for 2009 (a \$90,000 difference that, in the classic hallmark of a Ponzi scheme, came
9 from new investors). In that same year, GCF Investment Fund collected interest of \$338,000 on a
10 \$5.3 million investment portfolio (a 6.4% return). GCF Investment Fund distributed \$524,000 in
11 2009, exceeding its interest by \$186,000 (again, money that came from new investors). All three
12 individual defendants were aware of the Funds' precarious financial condition. Piña knew because
13 she prepared the financial documents reflecting these facts and Alexander and Swanson knew
14 because Piña shared these financial documents with them on a quarterly basis. Investors, however,
15 did not know that their returns were fictitious and that the Funds were depleted regularly to fund
16 the operations of other companies and as compensation to Alexander, Piña, and Swanson.

17 29. When the scheme began to unravel in December 2009, the Funds' records showed
18 that investors had account balances exceeding \$7 million. Yet, at the time, the APS Funding, GCF
19 Investment Fund, and Greenlight Fund bank accounts each held negative balances, and the Funds
20 held assets valued at significantly less than \$7 million. Contrary to the account statements, as
21 Defendants knew, or were reckless in not knowing, the Funds' money had been misappropriated.

22 30. As described above, from the start Alexander had diverted investor funds to other
23 entities, and beginning in late 2007 all three principals had diverted funds to themselves. Yet,
24 Alexander and Swanson continued to solicit investments in the Funds, all the while continuing to
25 misrepresent how the money was being used.

26 31. Defendants knew, or were reckless in not knowing, that diverting investor money
27 for their own personal use and to fund other businesses was contrary to what investors were told in
28 the Funds' offering documents. Defendants also knew, or were reckless in not knowing, that

1 sending monthly checks and account statements reflecting a 12% annualized return was false and
2 misleading to investors.

3 **Investors Were Harmed by the Defendants' Scheme to Defraud**

4 32. In one example of the harm caused by the Defendants' fraudulent scheme, in
5 October 2008, a Seaside, California couple invested \$10,000 – representing most of their cash – in
6 the Greenlight Fund. The couple, a semi-retired art teacher and a licensed contractor, heard about
7 the investment opportunity when the husband worked on Alexander's home remodel (paid for by
8 investor funds).

9 33. Alexander took the couple's investment even though they did not meet the
10 suitability requirements outlined in the PPM, as they did not have a net worth of over \$1 million or
11 have an annual income over \$100,000. The couple received \$1,200 in interest payments from
12 December 2008 through November 2009. The interest payments stopped in December 2009.

13 34. In another example, a Monterey, California man invested over \$200,000 with APS
14 Funding in October 2008. His decision to invest in the GCF Investment Fund was based on a
15 recommendation from his father, an APS Funding investor living in Arizona, and a conversation
16 with Alexander. The source of the investment funds came from the sale of a home and represented
17 most of his liquid net worth. The man, a window-washer by trade, did not meet the suitability
18 requirements described in the GCF Investment Fund PPM. Nonetheless, Alexander welcomed
19 him as an investor and took his money.

20 35. After his monthly interest check from GCF Investment Fund was returned for
21 insufficient funds in December 2009, he approached Alexander about the investment. Alexander
22 informed him that APS Funding was experiencing issues with "two or three" borrowers that were
23 not paying on their loans. Alexander assured the investor that he would be paid back once they
24 foreclosed and sold the properties. He has yet to receive any payment. The lack of monthly
25 interest payments, the failure to return his investment, and a slow-down in his window washing
26 business has caused him severe economic harm.

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FIRST CLAIM FOR RELIEF

**(Violations of Section 10(b) of the Exchange Act
and Rule 10b-5 Thereunder by Defendants Alexander, Swanson, and APS Funding)**

36. The Commission incorporates and realleges here paragraphs 1 through 35, above.

37. Defendants Alexander, Swanson, and APS Funding have, by engaging in the conduct set forth above, directly or indirectly, by use of means or instrumentalities of interstate commerce, or of the mails, or of a facility of a national security exchange, with scienter: (a) employed devices, schemes, or artifices to defraud; (b) made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon other persons, in connection with the purchase or sale of securities.

38. By reason of the foregoing, defendants Alexander, Swanson, and APS Funding have directly or indirectly violated, and unless enjoined will continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5].

SECOND CLAIM FOR RELIEF

**(Violations of and Aiding and Abetting Violations of Section 10(b) of the Exchange Act
and Rule 10b-5 Thereunder by Defendant Piña)**

39. The Commission incorporates and realleges here paragraphs 1 through 35, above.

40. Defendant Piña has, by engaging in the conduct set forth above, directly or indirectly, by use of means or instrumentalities of interstate commerce, or of the mails, or of a facility of a national security exchange, with scienter: (a) employed devices, schemes, or artifices to defraud; (b) made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon other persons, in connection with the purchase or sale of securities.

1 41. By reason of the foregoing, Defendant Piña has directly or indirectly violated, and
2 unless enjoined will continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)]
3 and Rule 10b-5 [17 C.F.R. § 240.10b-5].

4 42. As further alleged herein, Defendant Piña knowingly provided substantial assistance to
5 violations by others of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Pursuant to
6 Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)], defendant Piña aided and abetted, and unless
7 enjoined and restrained will continue to aid and abet, violations of Section 10(b) of the Exchange Act
8 [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. 240.10b-5].

9 **THIRD CLAIM FOR RELIEF**

10 **(Violations of Securities Act
11 Section 17(a)(1) by all Defendants)**

12 43. The Commission incorporates and realleges here paragraphs 1 through 35, above.

13 44. By engaging in the conduct described above, Defendants, directly or indirectly, in
14 the offer or sale of securities, by use of the means or instruments of transportation or
15 communication in interstate commerce or by use of the mails, with scienter, employed devices,
16 schemes or artifices to defraud.

17 45. By reason of the foregoing, Defendants violated, and unless restrained and
18 enjoined, will continue to violate Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)].

19 **FOURTH CLAIM FOR RELIEF**

20 **(Violations of Securities Act
21 Sections 17(a)(2) and (3) by all Defendants)**

22 46. The Commission incorporates and realleges here paragraphs 1 through 35, above.

23 47. By engaging in the conduct described above, Defendants, directly or indirectly, in
24 the offer or sale of securities, by use of the means or instruments of transportation or
25 communication in interstate commerce or by use of the mails: (a) obtained money or property by
26 means of untrue statements of material fact or by omitting to state a material fact necessary in
27 order to make the statements made, in light of the circumstances under which they were made, not
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1 misleading; and (b) engaged in transactions, practices, or courses of business which operated or
2 would operate as a fraud or deceit upon the purchasers.

3 48. By reason of the foregoing, Defendants violated, and unless restrained and
4 enjoined, will continue to violate Sections 17(a)(2) and (3) of the Securities Act [15 U.S.C. §
5 77q(a)(2) and (3)].

6 **FIFTH CLAIM FOR RELIEF**

7 **(Violations of Securities Act**
8 **Sections 5(a) and 5(c) by Defendants Alexander, Swanson, and APS Funding)**

9 49. The Commission incorporates and realleges here paragraphs 1 through 35, above.

10 50. During the relevant period, Defendants Alexander, Swanson, and APS Funding,
11 directly or indirectly, made use of the means or instruments of transportation or communication in
12 interstate commerce or of the mails to offer and to sell securities through the use or medium of a
13 prospectus or otherwise when no valid registration statement had been filed or was in effect as to
14 such offers and sales of such securities and no exemption from registration was available.

15 51. Defendants Alexander, Swanson, and APS Funding engaged in or participated in
16 the unlawful distribution of GCF Investment and Greenlight Funds securities as described above.

17 52. By reason of the foregoing, Defendants Alexander, Swanson, and APS Funding,
18 directly or indirectly, violated, and unless enjoined will continue to violate, Sections 5(a) and 5(c)
19 of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)].

20 **PRAYER FOR RELIEF**

21 WHEREFORE, the Commission respectfully requests that the Court:

22 I.

23 Permanently enjoin and restrain Defendants from, directly or indirectly, engaging in
24 conduct in violation of Sections 17(a) of the Securities Act [15 U.S.C. § 77q(a)] and Section 10(b)
25 of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].
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1 II.

2 Permanently enjoin and restrain Defendants Alexander, Swanson, and APS Funding from,
3 directly or indirectly, engaging in conduct in violation of Sections 5(a) and 5(c) of the Securities
4 Act [15 U.S.C. §§ 77e(a) and 77e(c)].

5 III.

6 Order Defendants to disgorge their ill-gotten gains in an amount according to proof, plus
7 prejudgment interest thereon.

8 IV.

9 Order Defendants Alexander, Piña, and Swanson to pay civil money penalties pursuant to
10 Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d) of the Exchange Act [15
11 U.S.C. § 78u(d)].

12 IV.

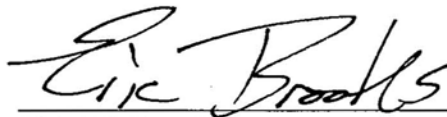
13 Retain jurisdiction of this action in accordance with the principles of equity and the Federal
14 Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees
15 that may be entered, or to entertain any suitable application or motion for additional relief within
16 the jurisdiction of this Court.

17 V.

18 Grant such other and further relief as this Court may deem just, equitable, and necessary.

19
20 Dated: October 7, 2010

21 Respectfully submitted,

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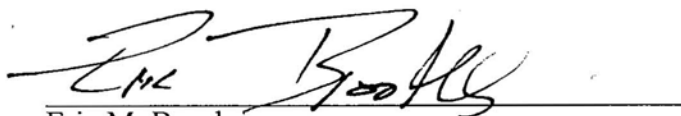
24 Eric M. Brooks
25 Attorney for Plaintiff
26 SECURITIES AND EXCHANGE COMMISSION
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DEMAND FOR JURY TRIAL

The Commission hereby demands a jury trial on all claims in the Complaint.

Dated: October 7, 2010

Respectfully submitted,



Eric M. Brooks
Attorney for Plaintiff
SECURITIES AND EXCHANGE COMMISSION

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