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**STATE OF CALIFORNIA**  
**BUSINESS, TRANSPORTATION AND HOUSING AGENCY**  
**DEPARTMENT OF CORPORATIONS**

**TO:** EMPIRE RAILCAR CORPORATION  
MICHAEL DACOLIAS  
RICHARD BERG  
500 South Palm Canyon Drive, Suite 205  
Palm Springs, CA 92264  
and  
2825 East Tahquitz Canyon Way, Suite D-1  
Palm Springs, CA 92262

**DESIST AND REFRAIN ORDER**  
**(For violations of section 25110 of the Corporations Code)**

The California Corporations Commissioner finds that:

1. At all relevant times, EMPIRE RAILCAR CORPORATION. (“ERC”) is or was a valid California corporation operating from and within Palm Springs, California.
2. At all relevant times MICHAEL DACOLIAS is or was the Chief Executive Officer, President, Secretary and Director of ERC.
3. At all relevant times RICHARD BERG is or was the Chief Financial Officer, Treasurer and Director of ERC.
4. Beginning in at least July 2005, ERC operated an internet website at:  
<http://www.empirerailcar.com>.
5. The internet website advertises that for a minimum investment of \$60,000, ERC will help the investor acquire and manage an ownership interest in a railroad tank car.
6. ERC claims that it currently “manages approximately 200 railroad tank cars.” Furthermore, ERC claims that the cars “under ERC’s management should produce an annual net return of 8 to 10%”.

1 7. ERC also advertises this as a no risk investment opportunity by claiming that, “ In  
2 times of stress and uncertainty within the financial market, many careful and conservative  
3 investors seek to place their funds into a solid, secure investment. Investors want something  
4 they can trust and feel confident will bring them long-term financial security. Now our third  
5 generation operation, Empire Railcar Corporation provides such an opportunity with no risk  
6 involved. Never under the management of Empire Railcar Corporation, has any investor  
7 ever failed to receive a quarterly distribution.”

8 8. These ownership interests in railroad tank cars are securities in the form of  
9 investment contracts and are being offered or sold in this state in issuer transactions. The  
10 Department of Corporations has not issued a permit or other form of qualification authorizing  
11 any person to offer and sell these securities in this state.

12 Based on the foregoing findings, the California Corporations Commissioner is of the  
13 opinion that the investment contracts in railcar ownership and management contracts being  
14 offered and/or sold by Empire Railcar Corporation, Michael Dacolias and Richard Berg are  
15 securities that are subject to the qualification requirements of the California Corporate  
16 Securities Law of 1968 and are being offered, or have been offered, or sold without being  
17 qualified in violation of California Corporations Code section 25110..

18 Pursuant to Section 25532 of the Corporate Securities Law of 1968, Empire Railcar  
19 Corporation, Michael Dacolias and Richard Berg are **HEREBY ORDERED TO DESIST AND**  
20 **REFRAIN** from the further offer or sale in the State of California, of securities in the form of  
21 investment contracts, unless and until qualification has been made under said law.

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1 This Order is necessary, in the public interest, for the protection of investors and is  
2 consistent with the purposes, policies, and provisions of the Corporate Securities Law of  
3 1968.

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5 Dated: September 7, 2005  
6 Los Angeles, California

7 WAYNE STRUMFER  
8 Acting California Corporations Commissioner

9 By: \_\_\_\_\_  
10 ALAN S. WEINGER  
11 Acting Deputy Commissioner  
12 Enforcement Division  
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