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

ENDORSED
FILED
San Francisco County Superior Court
JAN 13 2011
CLERK OF THE COURT

BY: PARAM NATT
Deputy Clerk

12 THE PEOPLE OF THE STATE OF
13 CALIFORNIA, by and through the
14 CALIFORNIA CORPORATIONS
COMMISSIONER,

15 Plaintiff,

16 v.

17 INVESTCO MANAGEMENT &
18 DEVELOPMENT LLC; CHRISTOPHER P.
EPSHA; STEVEN G. THOMPSON; BARRY D.
19 LeBENDIG; DOUGLAS R. HANSON;
20 INVESTCO AV7 LLC; INVESTCO AV8 LLC;
INVESTCO AV9 LLC; INVESTCO AV10
21 LLC; INVESTCO AV11 LLC; INVESTCO
AV12 LLC; INVESTCO AV14 LLC;
22 INVESTCO AV15 LLC; INVESTCO AV16
LLC; INVESTCO AV17 LLC; INVESTCO
23 AV18 LLC; INVESTCO AV19 LLC;
24 INVESTCO AV20 LLC; INVESTCO AV21
LLC; INVESTCO AV22 LLC; and DOES 1-
25 100, inclusive,

26 Defendants.

) CASE NO. CGC-11-507316
)
) COMPLAINT FOR PRELIMINARY
) INJUNCTION AND PERMANENT
) INJUNCTION, CIVIL PENALTIES AND
) ANCILLARY RELIEF
)
) VIOLATIONS OF CORP. CODE § 25110
) **(UNQUALIFIED OFFER AND SALE OF**
) **SECURITIES)**
)
) VIOLATIONS OF CORP. CODE § 25401
) **(FRAUD IN CONNECTION WITH THE**
) **OFFER AND SALE OF SECURITIES)**
)
) VIOLATIONS OF CORP. CODE § 25532
) **(VIOLATION OF DESIST & REFRAIN**
) **ORDER)**

1 Preston DuFauchard, California Corporations Commissioner (“Commissioner”), acting to
2 protect the public from the unlawful and fraudulent sale of unqualified securities brings this action in
3 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:

5 **JURISDICTION AND VENUE**

6 1. The Commissioner brings this action on behalf of the Plaintiff, the People of the State
7 of California, to enjoin the defendants from violating the provisions of the California Corporate
8 Securities Law of 1968 ("CSL")(Corporations Code §§ 25000 et seq.) and to request necessary civil
9 penalties and ancillary relief including restitution to investors.

10 2. The Commissioner is authorized to administer and enforce the provisions of the CSL
11 and the regulations thereunder at Title 10, California Code of Regulations. The Commissioner
12 brings this action pursuant to Corporations Code Sections 25530 and 25535 and Government Code
13 Sections 11180 et seq. in his capacity as head of the California Department of Corporations
14 (“Department”).

15 3. Defendants, and each of them, have transacted and continue to transact business within
16 the County of San Francisco and other counties in California. The violations of law herein have
17 occurred and will continue to occur, unless enjoined, within the County of San Francisco and
18 elsewhere within the state of California.

19 **DEFENDANTS**

20 4. Defendant Investco Management & Development LLC (“IM&D”), at all relevant times
21 hereto, was a California limited liability company formed on February 17, 2006, with a principal
22 place of business of 2145 19th Avenue, Suite 203, San Francisco, CA 94116, engaged in the
23 business of purchasing and managing real property on behalf of limited liability companies.

24 5. Defendant Christopher P. Epsha (“Christopher Epsha”) is an individual doing business
25 in San Francisco County, and at all relevant times hereto, was a co-founder and managing member
26 of IM&D, a licensed attorney, and on February 2, 2006 became a licensed real estate broker in
27 California.

1 6. Defendant Steven G. Thompson (“Steven Thompson”) is an individual doing business
2 in San Francisco County, and at all relevant times hereto, was a co-founder and a managing member
3 of IM&D and a licensed real estate broker in California.

4 7. Defendant Barry D. LeBendig (“LeBendig”) is an individual doing business in San
5 Francisco County, and has been the Director of Sales for IM&D since May 2007; he is a managing
6 member of IM&D and a licensed real estate salesperson in California.

7 8. Defendant Douglas R. Hanson (“Douglas Hanson”) is an individual doing business in
8 San Francisco County, and at all relevant times hereto, was a co-founder and managing member of
9 IM&D and a licensed real estate salesperson in California.

10 9. Defendants INVESTCO AV7 LLC; INVESTCO AV8 LLC; INVESTCO AV9 LLC;
11 INVESTCO AV10 LLC; INVESTCO AV11 LLC; INVESTCO AV12 LLC; INVESTCO AV14
12 LLC; INVESTCO AV15 LLC; INVESTCO AV16 LLC; INVESTCO AV17 LLC; INVESTCO
13 AV18 LLC; INVESTCO AV19 LLC; INVESTCO AV20 LLC; INVESTCO AV21 LLC; and
14 INVESTCO AV22 LLC, are limited liability companies doing business in the state of California and
15 formed and managed by IM&D.

16 10. Plaintiff is informed and believes and on such information and belief alleges that, at all
17 relevant times, those defendants named as managers and agents acted in such capacities; and the
18 defendants, and each of them, directly or indirectly controlled other co-defendants and agents by
19 knowingly inducing, or by knowingly providing substantial assistance to them in connection with the
20 acts, practices and schemes of business set forth below.

21 11. Each defendant alleged to have committed any act, committed the same pursuant to a
22 common plan and scheme among all named defendants, and did so as the agent for each and all of
23 his or her co-defendants and pursuant to and in furtherance of such common plan and scheme.

24 12. Plaintiff is informed and believes that at all times herein mentioned, the business entity
25 defendants, continue in existence as alter egos of the individual defendants pursuant to a scheme to
26 obtain money from the public through the offer and sale of securities to the public, and are shells and
27 conduits used to transmit investors' money for their own benefit and for the benefit of their affiliates
28 named herein.

1 19. Defendants represented to prospective members of these Investco AV LLCs that their
2 investment funds would be used by IM&D to negotiate and to purchase at a favorable price specific
3 real property in rural Los Angeles County, to manage the property for a period of time in
4 anticipation of appreciation due to projected population growth, and then to sell the property either
5 “as is”, with entitlements for development, or developed.

6 20. Defendants disclosed to prospective investors in the Investco AV LLCs only the
7 compensation IM&D would receive as a manager of an Investco AV LLC, which would include a
8 commission at the time of the purchase of the property, a commission at the time of the eventual sale
9 of the property, management fees over several years, and a share of the profits upon the eventual sale
10 of the property.

11 21. Defendants did not disclose to prospective investors in the Investco AV LLCs that for
12 each Investco LLC formed, IM&D had formed and were managers of a corresponding consecutively
13 numbered Landco LLC, specifically Landco AV7 LLC through Landco AV22 LLC; and that (with
14 the exception of real property purchased directly by Investco AV10 LLC and Investco AV11 LLC)
15 for each real property purchased by an Investco LLC, a Landco LLC had first purchased the same
16 real property only weeks or months before at a substantially lower price, and that as the Landco LLC
17 manager, IM&D was receiving significant fees, commissions, or profits from the prior purchase and
18 from the sale of the property to the Investco AV LLC. These material facts caused the value of the
19 interests in the Investco AV LLCs to be significantly lower than what was represented by
20 Defendants to prospective investors, and the Defendants failure to disclosure those facts was
21 fraudulent.

22 22. On February 18, 2009 the Commissioner issued a Desist and Refrain Order to
23 Defendants IM&D, Christopher Epsha, and Steven Thompson for violations of Corporations Code
24 sections 25110 and 25401, finding that the interests in the Investco AV LLCs were securities that
25 had been offered and sold without qualification or exemption through general solicitations, including
26 solicitations at trade show booths; and finding further that in connection with these offers and sales,
27 IM&D omitted to disclose the following material facts:
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“a.) For each Investco LLC formed, IM&D had formed and were managers of a corresponding consecutively numbered Landco LLC, specifically Landco AV7 LLC through Landco AV22 LLC;

b.) With the exception of real property purchased directly by Investco AV10 LLC and Investco AV11 LLC, for each real property purchased by an Investco LLC, a Landco LLC had first purchased the same property only weeks or months before and at a substantially lower price;

c.) Specifically, Investco 12 investors were not told that the real property they purchased from Landco AV12 LLC (“Landco 12”) for \$375,000 (with an escrow closing date of September 17, 2007) had been purchased by Landco 12 for \$207,850 just one month earlier (with an escrow closing date of August 14, 2007), and that IM&D was to receive from the sale of the real property by Landco 12 to Investco 12, 81.9% of the net profit and a total of \$150,000 in profit, commissions, and management fees.”

Pursuant to Corp. Code section 25532, Defendants IM&D, Christopher Epsha, and Steven Thompson were ordered by the Commissioner to desist and refrain from the further offer or sale of securities, including but not limited to interests in a limited liability company, unless and until qualification had been made or unless exempt, and by means of any material misrepresentation or omission.

23. Defendants IM&D, Christopher Epsha, and Steven Thompson requested an administrative hearing to challenge the allegations and findings in the February 18, 2009 Desist and Refrain Order and a hearing was held before an Administrative Law Judge of the Office of Administrative Hearings, State of California, over a three day period on September 29 and 30 and November 4, 2009. The Administrative Law Judge upheld the Desist and Refrain Order in its entirety in a Proposed Decision dated March 8, 2010, which the Commissioner adopted as his Decision on April 6, 2010. A writ was not sought pertaining to that Decision and it is now final.

24. Following issuance of the Desist and Refrain Order on February 18, 2009, and in violation of that Order, the Defendants continued to offer and sell unqualified non-exempt securities at trade shows and fairs and through general solicitations, and continued to misrepresent and omit to disclose material facts in the offer or sale of these securities, including the February 18, 2009 Desist and Refrain Order.

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FIRST CAUSE OF ACTION

**OFFER AND SALE OF UNQUALIFIED, NON-EXEMPT SECURITIES IN VIOLATION OF
CORPORATIONS CODE SECTION 25110
(ALL DEFENDANTS)**

25. Plaintiff incorporates by reference paragraphs 1 through 24 of this Complaint as though fully set forth herein.

26. Corporations Code Section 25110 provides in relevant part as follows:

“It is unlawful for any person to offer or sell in this state any security in an issuer transaction . . . unless such sale has been qualified under Section 25111, 25112 or 25113 . . . or unless such security or transaction is exempted or not subject to qualification under Chapter 1 (commencing with Section 25100) of this part...”

27. Beginning in January 2006 and continuing thereafter, Defendants, and each of them, have offered and sold securities in issuer transactions in the state of California.

28. The investments offered and sold by Defendants were "securities" within the meaning of Corp. Code Section 25019 and case law thereunder. The securities were in the form of interests in several Investco AV limited liability companies, including Investco AV7 LLC up through at least Investco AV 22 LLC.

29. Defendants offered to sell and sold these securities to the public through the internet at websites www.investcomanagement.com and www.imdira.com and through trade shows and county and state fairs, and in doing so engaged in general solicitations.

30. The Commissioner has not issued a permit or other form of qualification authorizing the Defendants, or any Investco AV limited liability company Defendants’ manage, to offer and sell the securities referred to herein in the state of California.

31. On behalf of several Investco AV limited liability companies, IM&D filed with the Department notices of sales of securities claiming exemptions from qualification pursuant to either California Corporations Code Section 25102(f) or federal Rule 506 of Regulation D, but these exemptions are not available when there is general solicitation.

32. Defendants, and each of them, offered and sold unqualified, non-exempt, securities in violation of Corporations Code Section 25110.

1 37. The misstatements and omissions referred to herein were "material facts" within the
2 meaning of Corp. Code Section 25401 since they concerned matters which a "reasonable investor"
3 would consider in deciding whether to invest. The fraud resulted in the value of the Investco AV
4 LLCs interests to be substantially lower than that represented by Defendants to prospective
5 investors.

6 38. Defendants' misrepresentations and omissions were in connection with the offer and
7 sale of securities within the meaning of Corp. Code Section 25401.

8 39. Unless enjoined, Defendants will continue to violate Corp. Code Section 25401.

9 **THIRD CAUSE OF ACTION**

10 **VIOLATIONS OF PRIOR DESIST AND REFRAIN ORDER ISSUED BY THE**
11 **COMMISSIONER**

12 **CORPORATIONS CODE SECTION 25532**

13 **(ALL DEFENDANTS)**

14 40. Plaintiff incorporates by reference paragraphs 1 through 39 of this Complaint as
15 though fully set forth herein.

16 41. Corporations Code section 25532 provides, in pertinent part, as follows:

17 (a) If, in the opinion of the commissioner, (1) the sale of a security is subject to
18 qualification under this law and it is being or has been offered or sold without first
19 being qualified, the commissioner may order the issuer or offeror of the security to
20 desist and refrain from the further offer or sale of the security until qualification has
21 been made under this law

22 (c) If, in the opinion of the commissioner, a person has violated or is violating
23 Section 25401, the commissioner may order that person to desist and refrain
24 from the violation....

25 42. On February 18, 2009 the Commissioner issued a Desist and Refrain Order to
26 Defendants IM&D, Christopher Epsha, and Steven Thompson for violations of Corporations Code
27 sections 25110 and 25401, finding that the interests in Investco AV limited liability companies were
28 securities that they had been offered and sold without qualification or exemption through general
solicitations, including solicitations at trade show booths; and finding further that in connection with
these offers and sales, IM&D omitted to disclose the following material facts:

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“a.) For each Investco LLC formed, IM&D had formed and were managers of a corresponding consecutively numbered Landco LLC, specifically Landco AV7 LLC through Landco AV22 LLC;

b.) With the exception of real property purchased directly by Investco AV10 LLC and Investco AV11 LLC, for each real property purchased by an Investco LLC, a Landco LLC had first purchased the same property only weeks or months before and at a substantially lower price;

c.) Specifically, Investco 12 investors were not told that the real property they purchased from Landco AV12 LLC (“Landco 12”) for \$375,000 (with an escrow closing date of September 17, 2007) had been purchased by Landco 12 for \$207,850 just one month earlier (with an escrow closing date of August 14, 2007), and that IM&D was to receive from the sale of the real property by Landco 12 to Investco 12, 81.9% of the net profit and a total of \$150,000 in profit, commissions, and management fees.”

Pursuant to Corp. Code section 25532, Defendants IM&D, Christopher Epsha, and Steven Thompson were ordered to desist and refrain from the further offer or sale of securities, including interests in a limited liability company, unless and until qualification had been made or unless exempt, and by means of misrepresentation or omission of material fact.

43. Following issuance of the Desist and Refrain Order, the Defendants continued to offer and sell unqualified nonexempt securities, and continued to misrepresent and omit material facts in the offer or sale of securities, including the existence and scope of the Order, in violation of that Order.

44. Unless enjoined Defendants will continue to violate the Desist and Refrain Order.

PRAYER

WHEREFORE, plaintiff prays for judgment against defendants and each of them as follows:

1. For an order of preliminary injunction and a judgment of permanent injunction, pursuant to Corporations Code section 25530(a), enjoining Defendants Investco Management & Development LLC, Christopher P. Epsha, Stephen G. Thompson, Barry D. LeBendig, Douglas R. Hanson, and such Does as may be subsequently named, and their officers, directors, successors in interest, agents, employees, attorneys in fact, and all persons acting in concert or participating with them, or any of them, from directly or indirectly:

1 a. Violating Corporations Code Section 25110, by offering to sell, selling, arranging
2 for the sale of, issuing, engaging in the business of selling, negotiating for the sale of, or otherwise in
3 any way dealing or participating in the offer or sale of, any security of any kind, including but not
4 limited to the securities described in this Complaint, unless such security or transaction is qualified
5 or exempted or not subject to qualification;

6 b. Violating Corporations Code Section 25401, by offering to sell, selling, arranging
7 for the sale of, issuing, engaging in the business of selling, negotiating for the sale of, or otherwise in
8 any way dealing or participating in the offer or sale of, any security of any kind, including but not
9 limited to the securities described in this Complaint, by means of any written or oral communication
10 which includes any untrue statement of material fact or omits or fails to state any material fact
11 necessary in order to make the statements made, in the light of the circumstances under which they
12 are made, not misleading, including but not limited to the misrepresentations and omissions alleged
13 in this Complaint;

14 c. Violating the Desist and Refrain Order issued by the California Corporations
15 Commissioner on February 18, 2009;

16 d. Removing, destroying, mutilating, concealing, altering, transferring, or otherwise
17 disposing of, in any manner, any books, records, computer programs, computer files, computer
18 printouts, correspondence, brochures, manuals, or other writings or documents of any kind as
19 defined in California Evidence Code Section 250, relating to the transactions and course of conduct
20 as alleged in this Complaint, unless authorized by this Court;

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

26 f. Withdrawing, transferring, changing, disbursing, dissipating, converting, pledging,
27 or assigning any funds or other assets which were derived or emanated, directly or indirectly, from
28 the offer or sale of securities as alleged in this Complaint, from any accounts at any bank, savings

1 and loan association, broker-dealer or any other financial institution in the name of any of the
2 Defendants, or controlled by any of the Defendants, without leave of the Court.

3 2. For a Final Judgment, pursuant to Corporations Code section 25530(b), requiring,
4 Defendants Investco Management & Development LLC, Christopher P. Epsha, Stephen G.
5 Thompson, Barry D. LeBendig, Douglas R. Hanson, and such Does as may be subsequently named,
6 individually, jointly and severally, to rescind each and all of the unlawful transactions alleged in this
7 Complaint, as shall be determined by this Court to have occurred; to pay full restitution to each
8 person determined to have been subject to Defendants acts, practices, or transactions which
9 constitute violations of the California Corporate Securities Law of 1968, in an amount of at least
10 \$12,283,000 to at least 251 investors, or according to proof; and to pay the legal rate of interest on
11 the amounts invested by each such investor from the date of their investment to the date of judgment
12 herein.

13 3. For a Final Judgment, pursuant to Corporations Code section 25530(b), requiring
14 Defendants Investco Management & Development LLC, Christopher P. Epsha, Stephen G.
15 Thompson, Barry D. LeBendig, Douglas R. Hanson, and such Does as may be subsequently named,
16 individually, jointly and severally, to disgorge to all known investors all benefits received, including
17 but not limited to, salaries, commissions, fees, profits and any other remuneration, derived directly
18 or indirectly, from the actions or practices which constitute violations of the California Corporate
19 Securities Law of 1968.

20 4. For a Final Judgment, pursuant to Corporations Code section 25535(a), requiring
21 Defendants Investco Management & Development LLC, Christopher P. Epsha, Stephen G.
22 Thompson, Barry D. LeBendig, Douglas R. Hanson, and such Does as may be subsequently named,
23 individually, jointly and severally, to pay to the Department of Corporations \$25,000 as a civil
24 penalty for each act in violation of the Corporate Securities Law of 1968, as follows:

25 a. As to the First Cause of Action, to be individually, jointly and severally liable
26 for at least \$6,275,000 for at least 251 violations of Corporations Code Section 25110, or any other
27 amount according to proof;

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b. As to the Second Cause of Action, to be individually, jointly and severally liable for at least \$6,275,000 for at least 251 violations of Corporations Code Section 25401, or any other amount according to proof; and

c. As to the Third Cause of Action, to be individually, jointly and severally liable for at least \$100,000 for each offer and sale of a security in violation of the Desist & Refrain Order following its issuance on February 18, 2009, or any other amount according to proof.

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

6. For cost of suit herein, including costs of investigation; and

7. For such other and further relief as this Court may deem necessary and proper.

Dated: January 13, 2011

PRESTON DuFAUCHARD
California Corporations Commissioner

By: _____
EDWARD KELLY SHINNICK
Corporations Counsel
Attorneys for Plaintiff