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

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

14 Plaintiff,

15 vs.

16 MICHAEL P. GAMBOA; individually and  
17 doing business as GAMBOA & COMPANY;  
MPG, LLC; MARK H. POORE; RMB  
18 OPERATIONS, LLC; PALETTE SIENNA  
INTERNATIONAL FUND, LLC;  
19 PALETTE GROUP, LLC; PALETTE II  
GROUP, LLC; PALETTE III GROUP, LLC;  
20 PALETTE IV GROUP, LLC; PALETTE  
AQUA INVESTMENT FUND, LLC;  
21 PALETTE COBALT INVESTMENT  
FUND, LLC; THE CRIMSON FUND, LLC;  
22 EPLAY, LLC; EPLAY INVESTMENTS  
LLC; EPLAY INVESTMENTS 2 LLC;  
23 POGA MANAGEMENT PARTNERS, LLC;  
401K RETIREMENT SOLUTIONS, LLC;  
24 MXM INVESTMENTS, LLC and DOES 1-  
25 100  
26

27 Defendants.  
28

ENFORCED  
San Francisco County Superior Court

AUG 31 2009

GOHEON PARRILL, Clerk  
by: CRISTINA E. BAUTISTA  
Deputy Clerk

Case No. CGC - 09 - 492027

COMPLAINT FOR TEMPORARY  
RESTRAINING ORDER; PRELIMINARY  
INJUNCTION; APPOINTMENT OF A  
RECEIVER; CIVIL PENALTIES; AND  
ANCILLARY RELIEF

(Corporations Code §§ 25110, 25401, 25241,  
25404, 25235, 25238.  
California Code of Regulations, Title 10, sections  
26235, 260.235.2, 260.237, 260.238,  
Financial Code §§ 22100)

1 Preston DuFauchard, Commissioner of Corporations for the State of California, acting to  
2 protect the public from the unlawful and fraudulent sale of unqualified securities, fraudulent  
3 manipulative and deceptive investment adviser activities and unlicensed finance lending, brings this  
4 action in the public interest in the name of the People of the State of California. The People of the  
5 State of California allege as follows:

6 **SUMMARY**

7 1. The individual Defendants, Michael P. Gamboa and Mark H. Poore, own or control all the  
8 corporate entity Defendants and used them in a complex network of funds and businesses to  
9 fraudulently obtain funds from investors in violation of the California Corporate Securities Law and  
10 divert them for their own personal use. Millions of dollars of the fraudulently obtained funds came  
11 from the clients of Defendant MPG, LLC, a licensed investment adviser, which Defendant Michael  
12 P. Gamboa owns and controls. The complaint alleges multiple violations of the California Corporate  
13 Securities Law and the California Finance Lenders Law. These include the sale of unqualified  
14 securities and the sale of securities by means of misstatements and omissions of material facts in  
15 violation of Corporations Code sections 25110 and 25401. The complaint also alleges violations of  
16 Corporations Code section 25235, which prohibits investment advisers from engaging in  
17 manipulative, deceptive or fraudulent conduct, in addition to numerous other violations of  
18 investment adviser regulations and duties. The complaint also alleges violations of Financial Code  
19 sections 22100, which prohibits the operation of a finance lending business without a license.

20 2. Although the extent of some of the corporate entity Defendants involvement in illegal  
21 conduct is not yet known, they are named as Defendants in this action in order to obtain equitable  
22 relief, including a freeze of their assets and the appointment of a receiver in order to preserve any  
23 remaining assets and allow the receiver to determine the extent to which the individual Defendants  
24 commingled and diverted investor funds amongst the network of companies they control. Plaintiff  
25 is informed and believes that the corporate Defendants have custody and control of over more than  
26 30 millions dollars in investor funds which should not be allowed to remain under the control of the  
27 individual Defendants, given the evidence of their involvement in fraud and the misappropriation of  
28 investor assets.

**JURISDICTION AND VENUE**

3. The California Corporations Commissioner (“Commissioner”) brings this action to enjoin the Defendants from violating the Corporate Securities Law of 1968 (California Corporations Code sections 25000, *et seq.*, California Finance Lenders Law (Financial Code sections 21000 *et seq.*) and to request necessary civil penalties and ancillary relief.

4. The Commissioner brings this action pursuant to California Corporations Code sections 25530, 25535, Financial Code section 22713 and Government Code sections 11180 *et seq.*, in his capacity as head of the California Department of Corporations (“DOC”).

5. Defendants Michael P. Gamboa, both individually and doing business as Gamboa & Company (Gamboa), and MPG, LLC a California Corporation, have a principal place of business located at 3 Embarcadero Center, Suite 1180, San Francisco, California 94111. MPG, LLC has an investment adviser license issued by the California Department of Corporations (CRD number 136337, DOC number 925-3302). Gamboa owns and controls MPG, LLC and is listed as the representative of the investment adviser with the DOC. Plaintiff is informed and believes, and thereon alleges, that Gamboa was a principal control person of activities involving the entities named as Defendants below which were used by Gamboa to defraud investors in California with the fraudulent offer and sale of unqualified securities by means of material misstatements and omissions of fact, fraudulent, deceptive and manipulative investment adviser activities, and unlicensed finance lending activities. Gamboa and MPG, LLC at all times mentioned herein have engaged in these unlawful activities throughout the State of California, while their primary place of business was in the County of San Francisco, State of California. The violations of law described herein have occurred and will continue to occur within the City and County of San Francisco and throughout the state unless enjoined.

**DEFENDANTS**

6. Defendant Michael P. Gamboa, is an individual residing in the State of California and does business as Gamboa & Company (Gamboa), and has a principal place of business located at 3 Embarcadero Center, Suite 1180, San Francisco, California 94111. Plaintiff is informed and

1 believes and thereon alleges that Gamboa was a principal control person of the corporate entity  
2 Defendants listed below and controlled the activities of all Defendants to willfully engage in  
3 fraudulent, deceptive and manipulative conduct in violation of the California Corporate Securities  
4 Law and Finance Lenders Law as described more fully below.

5 7. Defendant MPG, LLC is a California Corporation and is an investment adviser licensed  
6 by the DOC (CRD number 136337, DOC number 925-3302). MPG, LLC is owned and operated by  
7 Gamboa and has a business address of 3 Embarcadero Center, Suite 1180, San Francisco, California  
8 94111. Gamboa is registered with the DOC as an investment adviser representative of MPG, LLC.  
9 MPG, LLC was established and utilized as an alter ego of Gamboa to willfully engage in fraudulent,  
10 deceptive and manipulative conduct in violation of the California Corporate Securities Law as  
11 described more fully below.

12 8. Defendant Mark H. Poore (Poore) is an individual whose residence and principal place of  
13 business is 2139 North Beachwood Drive, Los Angeles, California. He is a Certified Public  
14 Accountant who performs accounting services for Gamboa and the Defendant Corporations he owns  
15 or controls. Poore also acts as a general partner and/or a control person for Defendant Corporations  
16 as alleged more fully below.

17 9. Defendant RMB Operations, LLC is a Maryland Corporation registered to do business in  
18 California and lists its address with the California Secretary of State as 302 North Talbot Street, St.  
19 Michaels, Maryland and Defendant Mark Poore at the address of 2139 North Beachwood Drive, Los  
20 Angeles, California as the registered agent of service of process for the corporation. Plaintiff is  
21 informed and believes, and thereon alleges, that Poore was owner and principal control person of  
22 Defendant RMB Operations, LLC, and that RMB Operations, LLC was operated and utilized as an  
23 alter ego of Gamboa and Poore to willfully engage in fraudulent, deceptive and manipulative  
24 conduct in violation of the California Corporate Securities Law and to engage in unlicensed lender  
25 activity as described more fully below.

26 10. Defendant Palette Sienna International Fund, LLC is a California limited liability  
27 corporation and lists its address with the California Secretary of State as 2139 North Beachwood  
28 Drive, Los Angeles, California and its agent for service of process as Poore. Poore and Gamboa are

1 control persons of Palette Sienna International Fund, LLC and established and utilized Palette Sienna  
2 International Fund, LLC as an alter ego of Gamboa and Poore to willfully engage in fraudulent,  
3 deceptive and manipulative conduct in violation of the California Corporate Securities Law as  
4 described more fully below.

5 11. Defendant Palette Group, LLC is a California limited liability corporation and lists its  
6 address with the California Secretary of State as 2139 North Beachwood Drive, Los Angeles,  
7 California and its agent for service of process as Poore. Poore and Gamboa are control persons of  
8 Palette Group, LLC and established and utilized Palette Group, LLC as an alter ego of Gamboa and  
9 Poore to willfully engage in fraudulent, deceptive and manipulative conduct in violation of the  
10 California Corporate Securities Law as described more fully below.

11 12. Defendant Palette II Group, LLC is a California limited liability corporation and lists its  
12 address with the California Secretary of State as 2139 North Beachwood Drive, Los Angeles,  
13 California and its agent for service of process as Poore. Poore and Gamboa are control persons of  
14 Palette II Group, LLC and established and utilized Palette II Group, LLC as an alter ego of Gamboa  
15 and Poore to willfully engage in fraudulent, deceptive and manipulative conduct in violation of the  
16 California Corporate Securities Law as described more fully below.

17 13. Defendant Palette III Group, LLC is a California limited liability corporation and lists its  
18 address with the California Secretary of State as 2139 North Beachwood Drive, Los Angeles,  
19 California and its agent for service of process as Poore. Poore and Gamboa are control persons of  
20 Palette III Group, LLC and established and utilized Palette III Group, LLC as an alter ego of  
21 Gamboa and Poore to willfully engage in fraudulent, deceptive and manipulative conduct in  
22 violation of the California Corporate Securities Law as described more fully below.

23 14. Defendant Palette IV Group, LLC is a California limited liability corporation and lists its  
24 address with the California Secretary of State as 2139 North Beachwood Drive, Los Angeles,  
25 California and its agent for service of process as Poore. Poore and Gamboa are control persons of  
26 Palette IV Group, LLC and established and utilized Palette IV Group, LLC as an alter ego of  
27 Gamboa and Poore to willfully engage in fraudulent, deceptive and manipulative conduct in  
28 violation of the California Corporate Securities Law as described more fully below.

1           15. Defendant Palette Aqua Investment Fund, LLC is a California limited liability  
2 corporation and lists its address with the California Secretary of State as 2139 North Beachwood  
3 Drive, Los Angeles, California and its agent for service of process as Poore. Poore and Gamboa are  
4 control persons of Palette Aqua Investment Fund, LLC and established and utilized Palette Aqua  
5 Investment Fund, LLC as an alter ego of Gamboa and Poore to willfully engage in fraudulent,  
6 deceptive and manipulative conduct in violation of the California Corporate Securities Law as  
7 described more fully below.

8           16. Defendant Palette Cobalt Investment Fund, LLC is a California limited liability  
9 corporation and lists its address with the California Secretary of State as 2139 North Beachwood  
10 Drive, Los Angeles, California and its agent for service of process as Poore. Poore and Gamboa are  
11 control persons of Palette Cobalt Investment Fund, LLC and established and utilized Palette Cobalt  
12 Investment Fund, LLC as an alter ego of Gamboa and Poore to willfully engage in fraudulent,  
13 deceptive and manipulative conduct in violation of the California Corporate Securities Law as  
14 described more fully below.

15           17. Defendant The Crimson Fund, LLC is a California limited liability corporation and lists  
16 its address with the California Secretary of State as 2139 North Beachwood Drive, Los Angeles,  
17 California and its agent for service of process as Poore. Poore and Gamboa are control persons of  
18 The Crimson Fund, LLC and established and utilized The Crimson Fund, LLC as an alter ego of  
19 Gamboa and Poore to willfully engage in fraudulent, deceptive and manipulative conduct in  
20 violation of the California Corporate Securities Law as described more fully below.

21           18. Defendant Eplay, LLC is a Delaware Corporation registered to do business in the State  
22 of California which lists its address with the California Secretary of State as 15260 Ventura  
23 Boulevard, Suite 2100, Sherman Oaks, California 91403 and its registered agent for service of  
24 process as Bernie Gudvi of GSO Group at that address. Eplay, LLC operates an internet website  
25 which summarizes and contains news on celebrities and pop culture and purports to allow members  
26 to vote on what they predict celebrity news will occur in the future. Its primary business operations  
27 are located at 3 Embarcadero Center, Suite 1180, San Francisco, California 94111, and it shares the  
28 same office space as Defendants Gamboa, and MPG, LLC. Gamboa is a general partner and a

1 primary control person of Eplay, LLC and has solicited investments for Eplay, LLC from his  
2 investment adviser clients and through various corporate entities he owns and controls in violation of  
3 the California Corporate Securities Law as explained below.

4 19. Defendant Eplay Investments LLC is a Delaware Corporation registered to do business  
5 in the State of California which lists its address with the California Secretary of State as 3  
6 Embarcadero Center, Suite 1180, San Francisco, California 94111, and its registered agent for  
7 service of process as Bernie Gudvi at 15260 Ventura Boulevard, Suite 2100, Sherman Oaks,  
8 California 91403. Gamboa is a general partner and the primary control person of Eplay Investments  
9 LLC and has used it to solicit and receive investments to fund and operate Eplay, LLC from his  
10 investment adviser clients and others in violation of the California Corporate Securities Law as  
11 explained below.

12 20. Defendant Eplay Investments 2 LLC is a Delaware Corporation registered to do business  
13 in the State of California which lists its address with the California Secretary of State as 3  
14 Embarcadero Center, Suite 1180, San Francisco, California 94111, and its registered agent for  
15 service of process as Bernie Gudvi at 15260 Ventura Boulevard, Suite 2100, Sherman Oaks,  
16 California 91403. Gamboa is a general partner and the primary control person of Eplay Investments  
17 2 LLC and has used it to solicit and receive investments to fund and operate Eplay, LLC from his  
18 investment adviser clients and others in violation of the California Corporate Securities Law as  
19 explained below.

20 21. Defendant Poga Management Partners, LLC is a California Corporation which lists its  
21 address with the California Secretary of State as 3 Embarcadero Center, Suite 1180, San Francisco,  
22 California 94111 and its registered agent for service of process as Poore. Poore and Gamboa are  
23 primary control persons of Poga Management Partners, LLC and established and utilized Poga  
24 Management Partners, LLC as an alter ego of Gamboa and Poore to willfully engage in fraudulent,  
25 deceptive and manipulative conduct in violation of the California Corporate Securities Law as  
26 described more fully below.

27 22. 401K Retirement Solutions, LLC is a Nevada Corporation which lists with the Nevada  
28 Secretary of State that its managing member is Gamboa at the address of 3 Embarcadero Center,

1 Suite 1180, San Francisco, California 94111. It also reportedly has offices at 450 Seventh Avenue,  
2 Suite 905, New York, New York 10123. Gamboa is a primary control person of 401K Retirement  
3 Solutions, LLC and established and utilized 401K Retirement Solutions, LLC as an alter ego of  
4 Gamboa to willfully engage in fraudulent, deceptive and manipulative conduct in violation of the  
5 California Corporate Securities Law as described more fully below. Records of the Nevada  
6 Secretary of State indicate 401K Retirement Solutions, LLC's corporate status was revoked as of  
7 March 1, 2008.

8 23. Defendant MXM Investments, LLC is a California limited liability corporation and lists  
9 its address with the California Secretary of State as 2139 North Beachwood Drive, Los Angeles,  
10 California and its agent for service of process as Poore. Poore and Gamboa are control persons of  
11 Defendant MXM Investments, LLC and established and utilized MXM Investments, LLC as an alter  
12 ego of Gamboa and Poore to willfully engage in fraudulent, deceptive and manipulative conduct in  
13 violation of the California Corporate Securities Law as described more fully below.

14 24. Defendants sued herein under the fictitious names Does 1 through 100, inclusive, are  
15 unknown to Plaintiff who therefore sues such Defendants by such fictitious names. Plaintiff will  
16 amend this complaint to show the true name of each such Defendant when the same has been  
17 ascertained. Plaintiff is informed and believes, and thereon alleges, that all Defendants, including  
18 the Doe Defendants, were at all times mentioned, principals, agents, employers, employees, co-  
19 venturers, or co-conspirators, and were acting in their respective capacities in doing the acts  
20 complained of, thereby imputing liability to each other.

#### 21 FACTUAL BACKGROUND

##### 22 **A. MPG, LLC's Investment Adviser Business Was Used by Gamboa and Poore** 23 **to Fraudulently Obtain Client Money and Divert it for Their Personal Use.**

24  
25 25. MPG, LLC (DOC # 925-3302) is a California limited liability corporation and an  
26 investment adviser registered with the California Department of Corporations. Defendant Michael  
27 P. Gamboa also doing business under the name Gamboa and Company (Gamboa) is the President,  
28 owner, and primary control person for MPG, LLC. Gamboa is listed as the manager and an



1 investment adviser representative of MPG, LLC with the DOC. Gamboa and MPG, LLC provide  
2 investment adviser services to its clients (clients) and has custody and control over the client's  
3 brokerage accounts and authority to direct client funds to various investments. Mark H. Poore  
4 (Poore) is a certified public accountant that provided accounting services for the Defendant  
5 corporations and provided substantial assistance to Gamboa in the violations of California Corporate  
6 Securities Law alleged herein. Defendants Gamboa and Poore used MPG, LLC and a complex  
7 network of companies they owned and controlled to fraudulently obtain millions of dollars of client  
8 funds and divert them for their personal use. The network of companies Gamboa and Poore  
9 operated which are named as Defendants include investment funds, an internet company, a finance  
10 lending company, a real estate investment company and a company that manages employer  
11 sponsored 401K retirement plans.

12 **B. Investment Fund Companies Offered and Sold Securities to Clients by Means**  
13 **of Misrepresentations and Omissions of Material Fact.**

14 26. Defendants Gamboa and Poore established and operated a network of corporations  
15 represented to be investment funds, which offered and sold securities to clients of MPG, LLC.  
16 These corporations included Defendants Palette Group, LLC; Palette II Group, LLC; Palette III  
17 Group, LLC and Palette IV Group, LLC; The Crimson Fund, LLC; The Palette Sienna International  
18 Fund, LLC; The Palette Cobalt Investment Fund, LLC; and The Palette Aqua Investment Fund, LLC  
19 (the Investment Funds.) Gamboa and Poore are general partners of the Investment Funds. Poore,  
20 along with Gamboa is a primary control person for these corporations. All of these Investment  
21 Funds list Poore as their agent for service of process and Poore's address as the corporations'  
22 addresses with the California Secretary of State. The Investment Funds were established and  
23 operated by Gamboa and Poore as their alter egos in order to fraudulently obtain client funds and  
24 divert them for their own personal use.

25 27. Beginning at least in 2003 and continuing through 2009, Gamboa offered and sold  
26 securities issued by the Investment Funds to the clients of MPG, LLC. Clients of MPG, LLC were  
27 the primary, if not exclusive investors, in the Investment Funds. According to offering materials  
28 provided to investors by Gamboa for the Investment Funds, each Investment Fund purported to offer

1 a different type of investment strategy. However, contrary to the representations made in the  
2 offering materials as to the investment strategy, millions of dollars invested by clients were diverted  
3 into a complex network of companies controlled by Gamboa and Poore, which in turn diverted the  
4 millions of dollars of clients' funds to Gamboa and Poore for their personal use. Other  
5 misrepresentations and omissions of material fact were also made as to the sale of these securities as  
6 alleged below.

7 28. The offering materials provided for the Investment Fund, Defendant Palette Sienna  
8 International Fund, LLC (PSIF) represented: 1) Its investment strategy was to invest in foreign funds  
9 and securities; 2) that it would be managed by third-party investment managers; and 3) that audited  
10 financial statements would be prepared by outside auditors for the fund every year. However,  
11 contrary to these representations, millions of dollars in client funds invested in PSIF were instead  
12 invested exclusively in domestic companies which Gamboa and Poore owned and controlled. A  
13 third-party investment manager did not manage the fund and no audited financial statements were  
14 ever prepared for PSIF. It was also not disclosed to investors that the companies that PSIF invested  
15 in were owned and controlled by Gamboa and Poore and diverted investor money to Gamboa and  
16 Poore for their own personal use in the form of loans and consulting fees.

17  
18 **C. Defendant Companies Then Diverted Client Money Fraudulently Obtained by**  
19 **The Investment Funds to Gamboa and Poore for Their Personal Use.**

20 29. According to the financial statements that were prepared for PSIF, of the \$5,055,000  
21 dollars under its management as of April 2009, \$3,527,684 had been invested in a loan to Defendant  
22 RMB Operations, LLC a company owned and controlled primarily by Poore. RMB Operations,  
23 LLC used the client funds obtained from PSIF to make loans to others. These loans included  
24 personal loans to Gamboa and Poore totaling more than 1.9 million dollars. The loans were  
25 purported to be secured by residential property including Gamboa and Poore's personal residences  
26 according to the loan documents. However, neither Poore nor Gamboa ever recorded notice of the  
27 loans secured by the real property in order to secure the loans from other judgments or lien holders.  
28 RMB Operations, LLC also loaned \$124,000 to Defendant MXM Investments, LLC, a company

1 owned and controlled by Poore which claims to be in the business of buying, remodeling and  
2 reselling residential properties.

3 30. RMB Operations, LLC also loaned \$475,000 of the money obtained from PSIF to  
4 Defendant Eplay, LLC. Eplay, LLC is an Internet company owned by Gamboa, which is located in  
5 Gamboa's San Francisco offices. Its core business is its operation of a website containing  
6 entertainment news where members can try to predict future events in entertainment. However,  
7 according to its financial records Eplay, LLC has generated little income from its core website  
8 business which totaled less than 1% of its operating costs and its current debts exceed 2 million  
9 dollars. Eplay, LLC was used to divert client money for Gamboa's personal use as Gamboa received  
10 at least \$266,542 in "consulting fees" from Eplay, LLC in 2008-2009.

11 31. Gamboa and Poore also formed two additional Defendant companies to raise money for  
12 operating capital for Eplay, LLC. This included Defendants Eplay Investments LLC and Eplay  
13 Investments 2 LLC. In addition to the loans from RMB Operations, LLC; Eplay, LLC and its related  
14 funds also received client money in the form of loans directly from PSIF, which amounted to an  
15 additional \$767,030. These Defendants failed to disclose material facts to clients and other investors  
16 including that Eplay, LLC was owned and controlled by Gamboa, paid Gamboa hundreds of  
17 thousands of dollars in consulting fees, had debts in excess of 2 million dollars and whose income  
18 from its website business was less than 1% of its total operating costs.

19 32. Gamboa recently represented to DOC examiners in 2009 that he is currently raising  
20 additional funds from new investors to keep Eplay, LLC operating and that he will use money  
21 obtained from new investors to pay interest on the prior loans from investors. Plaintiff is informed  
22 and believes that Defendant Eplay, LLC is not economically viable and is not a going concern, and  
23 that new investor money is being used to pay interest to previous investors without disclosing this or  
24 the poor financial condition of the company to the new investors.

25 33. All of the loans made with client funds to Poore, Gamboa and the companies they own  
26 and control are currently in default as a result of their failure to make payments of interest or  
27 principal as required under the terms of the loan agreements. No efforts have been made to attempt  
28 to collect on the loans made to Gamboa and Poore or their companies.

1           **D. Defendants Violated Numerous Investment Adviser Regulations Regarding**  
2           **Books and Records, Minimum Net Worth Requirements, Client Fees and**  
3           **Knowingly Making False Statements To the DOC.**

4           34. In or about May 2008, the DOC began a routine regulatory examination of the books and  
5 records of MPG, LLC pursuant to its authority as the licensing agency for investment advisers in  
6 California. The examination is continuing as during the course of the examination Defendants  
7 demonstrated a pattern and practice of delay, inability and unwillingness to produce documents  
8 requested for inspection, which continues to the present time. In addition to the fraudulent diversion  
9 of client funds described above, the examination eventually revealed numerous other violations of  
10 investment adviser duties required by the California Corporations Code and related regulations  
11 issued by the DOC. These included failures to prepare audited financial statements for the  
12 investment adviser business, keep accurate books and records for inspection, charging of excessive  
13 and undisclosed fees to client accounts, making false advertising claims as to the amount of assets  
14 under management and failing to maintain minimum net worth requirements for investment advisers.  
15 It was also discovered that Gamboa had knowingly made untrue statements to the DOC in order to  
16 obtain the Investment Adviser license initially and did so again in 2009 during an examination.

17           35. The DOC originally granted an Investment Adviser license to Gamboa and MPG, LLC  
18 under the condition that Gamboa sign an Undertaking Agreement stating that MPG, LLC had taken  
19 specific acts to assure it would not inadvertently or otherwise violate California Laws. The written  
20 undertaking agreement signed by Gamboa during the course of licensing by the DOC stated that he  
21 agreed that "the applicant has taken steps reasonably designed to assure that it will not, inadvertently  
22 or otherwise, violate the laws of the State of California, which steps include adaptation of written  
23 compliance and supervisory procedures and designation of a compliance officer to carry out the  
24 procedures."

25           36. The examination by the DOC revealed that no written compliance procedures had been  
26 adopted nor a compliance officer designated as Gamboa had represented in the Undertaking  
27 Agreement. A DOC examiner questioned Gamboa during the examination as to why he had not  
28 designated a compliance officer as specified in the Undertaking Agreement. Gamboa responded by

1 asking the examiner what a compliance officer did. Gamboa's response demonstrated he had  
2 knowingly made untrue statements to the DOC during the course of licensing by representing he had  
3 already adopted written procedures to assure compliance with the laws and designated a compliance  
4 officer to implement them.

5         37. Gamboa made additional untrue statements to DOC examiners during the examination in  
6 2009. DOC examiners asked Gamboa if he had filed any notice with state or federal regulators  
7 claiming that his offer and sale of securities were exempt from the registration requirements under  
8 Federal and State Corporate Securities Laws. In response, Gamboa provided the examiner with a  
9 copy of a document which had been filed with the SEC, commonly referred to as a "Reg D" notice  
10 for a company called E-play, LLC. Reg D notices are used to notify state and federal securities  
11 regulators that the sale of certain securities are claimed to be exempt from qualification under  
12 specific exemptions authorized by federal securities laws. However, inspection of the document  
13 provided by Gamboa revealed that it pertained to a different company based in Ohio which was  
14 called "E-play, LLC" but which was unrelated to Eplay, LLC or Gamboa. It also appeared that the  
15 document had been altered to delete or obscure some of the information and then copied. In fact no  
16 notice of exemption had been filed by Eplay, LLC or Gamboa. Gamboa therefore knowingly made  
17 untrue statements during the course of a regulatory examination to the DOC in an attempt to impede  
18 or obstruct its investigation by falsely representing Eplay, LLC had filed a notice of exemption and  
19 that the Reg D notice he provided to examiners was for his company.

20         38. The examination by the DOC of MPG, LLC's investment adviser business revealed that  
21 in addition to the conduct alleged above Defendants had: 1) failed to keep required financial books  
22 and records and produce them for inspection; 2) failed to maintain minimum net worth financial  
23 requirements; 3) failed to disclose potential conflicts of interests to clients; and 4) charged clients  
24 unjustified and undisclosed management fees, all in violation of the California Corporations Code  
25 and regulations promulgated thereunder by the DOC.

26         39. The examination found that many of the financial records kept for Gamboa and Poore's  
27 controlled companies were out of date, often had not been prepared for over a year and contained  
28 inaccuracies and inconsistencies which indicated they were generally unreliable. The examination

1 also revealed that no independently audited financial statements had ever been prepared for MPG,  
2 LLC. The California Corporations Code requires investment advisers that have custody or control  
3 over client assets to have outside audited financial statements prepared annually. Production of  
4 many of the financial records requested by the DOC for inspection like those for Defendant 401K  
5 Retirement Solutions, LLC were also delayed for many months without reasonable excuse or not  
6 produced at all. Failure of an investment adviser to keep required books and records and produce  
7 them for inspection when requested by the DOC is a violation of California Corporations Code  
8 Section 25241.

9 40. Investment advisers are also required to keep minimum net worth financial reserves  
10 under the California Corporations Code and regulations. The examination revealed that although  
11 MPG, LLC was required to maintain a minimal financial net worth of at least \$35,000 at all times,  
12 its records revealed that as of 2009 it had a net worth deficiency of over \$900,000.

13 41. The examination also revealed that clients of MPG, LLC had been charged unjustified  
14 and undisclosed fees in violation of investment adviser regulations. These included inflating the  
15 actual value of assets under management to justify higher management fees which were based on a  
16 percentage of the actual value of assets under management. This included Defendants Gamboa,  
17 Poore and MPG, LLC's valuation of loans and investments made by PSIF at the full value of the  
18 interest and penalties owed PSIF and claiming that it had a positive net income of \$77,892 in 2009.  
19 Defendants knew that in fact all the loans made by PSIF and the companies they invested in were in  
20 default due to failure to pay interest and principal, had not been secured by real property as agreed in  
21 loan documents and were owed by persons or companies that had insufficient assets and income  
22 with which to repay the loans. This information indicated it was highly unlikely the interest and  
23 principal on the loans would be collectable and therefore Defendants should have reported the value  
24 of these loans to be much lower or zero for the purposes of charging fees. Gamboa and Poore had  
25 direct knowledge of such facts since they and the companies they owned and controlled were  
26 recipients of all of the loans that were in default.

27 42. In addition, an equity interest in a privately held company called 1-800Wineshop was  
28 reported by Defendants to have increased in value by \$96,750 in 2005 for the purposes of

1 determining management fees. When DOC examiners asked Poore during the 2009 examination  
2 what information he had that justified this increase in valuation of this asset, Poore failed to produce  
3 any and subsequently wrote down the increase in value to zero. It was also found that Defendants  
4 charged clients a "forfeiture fee" which had not been disclosed in the fee agreements when money  
5 was moved from the clients managed brokerage accounts to the Investment Funds like PSIF. These  
6 fees were claimed by Defendants to be justified to make up for the fact that such assets would no  
7 longer be subject to the management fees clients had agreed to. Clients were also charged additional  
8 "monitoring fees" by Defendants which appeared to be undisclosed and duplicative of "accounting  
9 fees" that were agreed to by clients as part of the fee agreements.

10 **E. Defendant Entities Which Are Named Primarily to Obtain Equitable Relief to**  
11 **Preserve and Return Investor Assets Still Under Control of Gamboa and Poore**

12 43. Due to the number and complexity of the network of companies controlled by Gamboa  
13 and Poore, their inadequate record keeping and unwillingness to produce documents for inspection,  
14 Plaintiff has not yet been able to determine if all of their corporate entities received fraudulently  
15 obtained investor money or diverted it improperly. Plaintiff has named these entities as Defendants  
16 initially only to seek equitable relief including a temporary asset freeze and the appointment of a  
17 receiver. These companies still have custody and control over millions of dollars in investor assets.  
18 The conduct described above establishes Gamboa and Poore fraudulently obtained and diverted  
19 millions of dollars in investor assets for personal use using at least several of the complex networks  
20 of companies they control. This indicates they should not be trusted to responsibly manage investor  
21 assets with regard to any of the companies they still control and that millions of dollars in investors'  
22 assets in these companies remain accessible to them and are at risk. A freeze of these corporations'  
23 assets and the appointment of a receiver are appropriate and necessary as to these Defendants in  
24 order to preserve investor assets and facilitate their orderly return to investors. The receiver will also  
25 assist in securing and analyzing records for these Defendants to determine whether investor money  
26 was illegally obtained or diverted to or from these companies and whether additional relief is  
27 appropriate. The Defendants named initially only for equitable relief at this time include Poga  
28 Management Partners, LLC, 401K Retirement Solutions, LLC and all of the Investment Funds

1 except PSIF.

2 44. An asset freeze and appointment of a receiver is particularly necessary as to Defendant  
 3 401K Retirement Solutions, LLC despite a lack of clear evidence of its involvement in fraud at this  
 4 time. This company is owned by Poga Management Partners, LLC, which in turn is owned and  
 5 controlled by Gamboa and Poore. 401K Retirement Solutions, LLC manages employer-sponsored  
 6 401K retirement programs for various companies' employees. According to documents it filed with  
 7 federal regulators, it had approximately 19 million dollars in client 401K assets under its  
 8 administration as of 2007. Despite repeated requests by the DOC for books, records and financial  
 9 statements regarding this company, Gamboa failed to produce requested records for many months or  
 10 not at all. Further, records of the Nevada Secretary of State where it is incorporated revealed that  
 11 401K Retirement Solutions, LLC's corporate status was revoked as of March 1, 2008. Based on this  
 12 evidence of improper conduct by 401K Retirement Solutions, LLC the asset freeze and appointment  
 13 of a receiver is appropriate and necessary to preserve these assets.

14 **FIRST CAUSE OF ACTION**

15 **UNLAWFUL OFFER AND SALE OF UNQUALIFIED, NONEXEMPT SECURITIES**  
 16 **(Corporations Code §25110)**  
 17 **AS AGAINST ALL DEFENDANTS**

18 45. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 44,  
 19 inclusive, as though set forth at length herein.

20 46. Corporations Code §25110 makes it unlawful to offer or sell nonexempt, unqualified  
 21 securities. That section states:

22 It is unlawful for any person to offer or sell in this state any security in an issuer  
 23 transaction (other than in a transaction subject to Section 25120), whether or not by or  
 24 through underwriters, unless such sale has been qualified under Section 25111, 25112  
 25 or 25113 (and no order under Section 25140 or subdivision (a) of Section 25143 is in  
 effect with respect to such qualification) or unless such security or transaction is  
 exempted or not subject to qualification under Chapter 1 (commencing with Section  
 25100) of this part.

26 47. Beginning at an exact date that is unknown to Plaintiff; but at least since 2003, and  
 27 continuing through 2009, Defendants unlawfully offered and sold to residents of the State of  
 28 California unqualified, nonexempt securities in the form of investments in various funds and



1 businesses owned and controlled by Defendants Gamboa and Poore, specifically including, but not  
2 limited to, securities issued by entity Defendants Palette Sienna International Fund, LLC and Eplay,  
3 LLC.

4 48. Defendants' pattern of conduct, as set forth above, demonstrates the necessity for  
5 granting injunctive and ancillary relief restraining such and similar acts in violation of §25110,  
6 issuing an asset freeze, appointing a receiver, providing restitution or disgorgement to investors, as  
7 well as imposition of appropriate civil penalties.

8 **SECOND CAUSE OF ACTION**

9 UNLAWFUL OFFER AND SALE OF SECURITIES BY MEANS OF  
10 UNTRUE STATEMENTS OR OMISSIONS OF MATERIAL FACT  
11 (Corporations Code §25401)  
(AGAINST ALL DEFENDANTS)

12 49. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 48,  
13 inclusive, as though set forth at length herein.

14 50. Corporations Code §25401 makes it unlawful to offer or sell securities by means of  
15 untrue statements or omissions of material fact. This section states:

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

19 51. Beginning at an exact date that is unknown to Plaintiff; but at least since 2003, and  
20 continuing, Defendants offered and sold to California's investing public securities by means of  
21 untrue statements of material fact and omissions of material facts.

22 52. Defendants, specifically including but not limited to Gamboa, Poore, MPG, LLC,  
23 Palette Sienna International Fund, LLC and Eplay, LLC offered and sold securities by means of  
24 misrepresentations and omissions of material facts including, but not limited to the following:

- 25 a. PSIF would invest client funds in foreign funds and securities when in fact it  
26 invested all funds in domestic companies owned and controlled by Gamboa and  
27 Poore who diverted millions of dollars of the client funds for their personal use.  
28

- 1 b. That PSIF investment would be managed by third-party investment managers
- 2 when in fact it was managed by Gamboa and Poore.
- 3 c. That audited financial statements would be prepared for PSIF by outside auditors
- 4 annually when in fact none were ever prepared.
- 5
- 6 d. Omitting to tell investors that the income generated by Eplay, LLC's core website
- 7 business was less than 1% of its operating cost and that it had debts in excess of 2
- 8 million dollars with no apparent means of generating enough income to pay them.
- 9 e. Omitting to tell new investors that money they invested in Eplay, LLC would be
- 10 used to pay interest on debts to previous investors and the company had no other
- 11 means of generating income sufficient to pay their debts.
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13  
14 53. Defendants' pattern of conduct, as set forth above, demonstrates the necessity for  
15 granting injunctive and ancillary relief restraining such and similar acts in violation of California  
16 Corporations Code section 25401, issuing an asset freeze, appointing a receiver, providing restitution  
17 or disgorgement to investors, as well as imposition of appropriate civil penalties.

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19 **THIRD CAUSE OF ACTION**

20 **FRAUD AND UNETHICAL CONDUCT BY INVESTMENT ADVISER**  
21 **(Violation of Corporations Code § § 25235, 25238)**  
22 **(AGAINST DEFENDANTS GAMBOA, POORE AND MPG, LLC)**

23 54. Plaintiff incorporates by reference paragraphs 1 through 53 of this Complaint as though  
24 fully set forth herein.

25 55. The Corporate Securities Law of 1968 (Corp. Code, § 25000 *et seq.*), and the California  
26 Code of Regulations, Title 10, (§ 260.000 *et seq.*), contain provisions that govern persons licensed to  
27 operate in the securities industry. To ensure the protection of the public, the Commissioner requires  
28 compliance by persons or entities that seek to act as investment advisers with licensing requirements  
of these laws and regulations. It is also required that persons that obtain licenses as investment

1 advisers comply with the requirements of the Corporate Securities Laws and regulations. These  
2 include the requirement that investment advisers fully disclose to clients any material fact or  
3 potential conflict of interest the investment adviser may have with regard to investments made on the  
4 clients behalf.

5 56. Corporations Code section 25237 authorizes the Commissioner to prescribe rules for  
6 investment advisers who have custody and control of the clients' securities or funds or who have any  
7 power of attorney from their clients to execute transactions. The Commissioner has done so by  
8 specifying, among other requirements, prohibiting the violation of fair, equitable and ethical  
9 principals under Corporations Code Section 25238. This requires the disclosure of any material  
10 facts or conflicts of interest to clients the investment adviser may have with regard to any investment  
11 made on behalf of or recommended to the client. Those regulations are contained in California Code  
12 of Regulations, Title 10 sections 260.238 (f), (k) (1), (k) (2) and (o) which prohibit investment  
13 advisers from:  
14  
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16 (f) Borrowing money or securities from a client unless the client is a  
17 broker-dealer, an affiliate of the adviser, or a financial institution  
18 engaged in the business of loaning funds or securities;

19 (k) Failing to disclose to a client in writing before entering into or  
20 renewing an advisory agreement with that client any material conflict  
21 of interest relating to the adviser, its representatives or any of its  
22 employees, which could be reasonably expected to impair the rendering  
23 of unbiased and objective advice including;

24 (1) Compensation arrangements connected with advisory services to  
25 clients, which are in addition to compensation from such clients for  
26 such services;

27 (2) Charging a client an advisory fee for rendering advice without  
28 disclosing that a commission for executing securities transactions  
pursuant to such advice will be received by the adviser, its  
representatives or its employees, or that such advisory fee is being  
reduced by the amount of the commission earned by the adviser, its  
representatives or employees for the sale of securities to the client; and

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(o) Making any untrue statement of a material fact or omitting a statement of material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading in the solicitation of advisory clients.

57. California Corporations Code section 25235 further states that it is unlawful for any investment adviser directly or indirectly:

(a) To employ any device, scheme, or artifice to defraud any client or prospective client.

(b) To engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon any client or prospective client.

(c) Acting as principal for his own account, knowingly to sell any security to or purchase any security from a client for whom he is acting as investment adviser, or, acting as broker for a person other than such client, knowingly to effect any sale or purchase of any security for the account of such client, without disclosing to such client in writing before the completion of the transaction the capacity in which he is acting and obtaining the written consent of the client to such transaction.

(d) To engage in any act, practice, or course of business which is fraudulent, deceptive, or manipulative. The commissioner shall, for the purpose of this subdivision, by rule define and prescribe means reasonably designed to prevent such acts, practices, and courses of business as are fraudulent, deceptive, or manipulative.

58. California Code of Regulations, Title 10 section 260.235.2 also specifies conduct by investment advisers that constitutes fraudulent, deceptive and manipulative practices under California Corporations Code section 25235. It states such conduct includes the failure to disclose in writing to an investment adviser client at the time of entering into any contract for the delivery of a financial plan:

(1) Whether the investment adviser, or an affiliate or associated person of the investment adviser, will receive commissions from the sale of insurance or real estate or will receive fees or other compensation from the sale of securities or other products or services recommended in the financial plan or otherwise has a conflict of interest.

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1 59. California Code of Regulations, Title 10 section 260.237(e) specifies additional  
2 conduct by investment advisers that constitutes fraudulent, deceptive and manipulative practices  
3 under California Corporations Code section 25235, which was also engaged in by Defendants.  
4 Section 260.237(e) states that it is considered fraudulent, deceptive and manipulative conduct  
5 for investment advisers to have custody and control over client funds unless:

6 All funds and securities of clients are verified by actual examination at least once  
7 during each calendar year by an independent certified public accountant or public  
8 accountant at a time which shall be chosen by the accountant without prior notice to  
9 the investment adviser.

10 Defendants had custody and control of client funds but never performed any  
11 independent audited examinations of funds and securities in client accounts.

12 60. Defendants represented in advertisements to prospective clients and to the DOC in  
13 required filings that Defendants investment adviser business had 200 million dollars in assets  
14 under management. The examination by the DOC revealed the amount was in fact less than 50  
15 million and Gamboa admitted to DOC examiners the 200 million dollar figure was not correct.  
16 Making false representations of a material fact in advertisements is also deemed to be fraudulent  
17 deceptive and manipulative conduct in violation of California Corporations Code section 25235  
18 pursuant to California Code of Regulations, Title 10, section 260.235 (a) (5).

19 61. Defendants engaged in fraudulent, deceptive and manipulative practices as an  
20 investment adviser within the meaning of California Corporations Code sections 25235  
21 subdivision (d), and unethical practices within the meaning of 25238 pursuant to the California  
22 Code of Regulations, Title 10, sections 260.235, 260.235.2, 260.237 and 260.238 by engaging  
23 in the conduct alleged above.

24 62. Defendants' pattern of conduct, as set forth above, demonstrates the necessity for  
25 granting injunctive and ancillary relief restraining such and similar acts in violation of California  
26 Corporations Code sections 25235, 25238 and California Code of Regulations, Title 10, sections  
27 260.235, 260.235.2, 260.237 and 260.238, issuing an asset freeze, appointing a receiver, providing  
28 restitution or disgorgement to investors, as well as imposition of appropriate civil penalties.

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**FOURTH CAUSE OF ACTION**

**KNOWINGLY MAKING UNTRUE STATEMENTS TO THE DEPARTMENT OF  
CORPORATIONS**

(California Corporations Code section 25404)  
(AS AGAINST DEFENDANTS GAMBOA, and MPG, LLC)

63. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 62, inclusive, as though set forth at length herein.

California Corporations Code section 25404 (b) states:

It is unlawful for any person to knowingly make an untrue statement to the commissioner during the course of licensing, investigation, or examination, with the intent to impede, obstruct, or influence the administration or enforcement of this division.

64. Defendants Gamboa and MPG, LLC violated section 25404 (b) by knowingly making false statements to examiners from the DOC during the course of licensing and examination of their investment adviser business as alleged above. This included, but is not limited to:

- a.) Gamboa knowingly making an untrue statement to the DOC to obtain the investment adviser license by signing an undertaking agreement during licensing representing that he had already adopted written procedures and designated a compliance officer to monitor compliance with the Corporate Securities Law when he knew that he had not done so at that time, and did not do so at any time thereafter.
- b.) Gamboa represented to DOC examiners during an examination of his business in 2009 that Eplay, LLC had filed a notice of exemption from securities registration with the SEC, when he knew they had not and that the copy of the notice he provided to the examiner was for a different company.

65. Defendants' pattern of conduct, as set forth above, demonstrates the necessity for granting injunctive and ancillary relief restraining such and similar acts in violation of California Corporations Code section 25404, issuing an asset freeze, appointing a receiver, providing restitution or disgorgement to investors, as well as imposition of appropriate civil penalties.

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**FIFTH CAUSE OF ACTION**

**UNLICENSED FINANCE LENDER OR BROKER ACTIVITY  
(Financial Code §22100)  
(AS AGAINST DEFENDANTS GAMBOA, POORE, PSIF AND RMB OPERATIONS, LLC)**

66. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 65, inclusive, as though set forth at length herein.

67. Financial Code section 22100 sets forth the finance lender or broker licensure requirement as follows: “no person shall engage in the business of a finance lender or broker without obtaining a license from the commissioner.”

68. Defendants Gamboa, Poore, RMB Operations, LLC, PSIF and all Doe Defendants, are not licensed to engage in the business of a finance lender or broker by the State of California, or any other similar licensing entity. As alleged above, beginning at a time unknown to Plaintiff, but at least since 2003 and continuing until at least November 2008, Defendants, and each of them, willfully and unlawfully engaged in the business of a finance lender or broker in the State of California and acted in such capacity without securing from the Corporations Commissioner or any similar licensing entity an authorizing finance lender or broker license. Defendants’ unlawful acts include, but are not limited to, engaging in a course of business of making loans to and from RMB Operations, LLC, PSIF to Gamboa, Poore and affiliated companies they own and control including Defendants MXM Investments, LLC and Eplay, LLC.

69. Defendants’ pattern of conduct, as set forth above, demonstrates the necessity for granting injunctive and ancillary relief restraining such and similar acts in violation of California Financial Code section §22100, issuing an asset freeze, appointing a receiver, providing restitution or disgorgement to investors, as well as imposition of appropriate civil penalties.

**RELIEF REQUESTED**

**AS AGAINST DEFENDANTS MICHAEL P. GAMBOA; individually and doing business as GAMBOA & COMPANY; MPG, LLC; PALETTE SIENNA INTERNATIONAL FUND, LLC; MARK H. POORE; RMB OPERATIONS, LLC AND DOES 1-10:**

1 1. For a temporary restraining order, issued upon ex parte application without notice, and an  
2 injunction restraining and enjoining all Defendants, their officers, directors, successors in interest,  
3 agents, employees, attorneys in fact, and all persons acting in concert or participating with them, or  
4 any of them, except the Receiver in the lawful exercise of his duties under the receivership, from  
5 directly or indirectly:

6 a. Violating California Corporations Code sections 25235 subdivision (d) and section 25238  
7 by engaging in fraudulent, deceptive, manipulative or unethical practices as an investment adviser,  
8 including but not limited to fraudulently obtaining client money by means of misstatement or  
9 omission of material fact, diverting client funds for personal use including borrowing client funds,  
10 failing to disclose to clients in writing conflicts of interest, charging clients undisclosed and  
11 unjustified management fees, failing to keep books and record and have clients' accounts audited by  
12 an outside accountant on an annual basis, failure to maintain minimum net worth requirements, and  
13 making false statements in advertising all within the meaning of the California Code of Regulations,  
14 Title 10, sections 260.235, 260.235.2, 260.237 and 260.238;

15 b. Violating California Corporations Code section 25404 by making knowingly false  
16 statements to the Department of Corporations during the course of licensing and examination with  
17 the intent to impede, obstruct or influence the administration or enforcement of the California  
18 Corporations Code;

19 c. Violating Financial Code §22100 by engaging in the business of a finance lender or  
20 broker in this state without first applying for and securing from the Commissioner of Corporations a  
21 license authorizing Defendants to act in the capacity of a finance lender or broker unless exempted;

22 2. For an Order that, pursuant to section 25535 of the Corporations Code Defendants, and each  
23 of them, individually, jointly and severally, pay to the Department of Corporations, a civil penalty in  
24 the maximum sum of \$25,000 (Twenty-Five Thousand Dollars) for each act in violation of  
25 Corporations Code Sections 25235, 25238 and 25404 as authorized by Corporations Code Section  
26 25535 in an amount of 1 million dollars each or according to proof at trial;

27 3. That pursuant to Financial Code section 22713 Defendants Gamboa, Poore and RMB  
28 Operations, LLC, and PSIF and each of them, be assessed a civil penalty in an amount not to exceed



1 Twenty Five Hundred Dollars (\$2,500) for each separate violation of Financial Code section 22100  
2 committed by Defendants as alleged in the Fifth Cause of Action, in an amount of 1 million dollars  
3 each or according to proof at trial;

4 4. That pursuant to section 25530(b) of the Corporations Code Defendants, and each of them,  
5 be ordered to disgorge all profits and compensation obtained as a result of the violations of law  
6 complained of herein, all in the amounts and manner provided for by law in an amount of 10 million  
7 dollars each or according to proof at trial.

8 **AS AGAINST DEFENDANTS** MICHAEL P. GAMBOA; individually and doing business as  
9 GAMBOA & COMPANY; MPG, LLC; MARK H. POORE; RMB OPERATIONS, LLC; THE  
10 PALETTE SIENNA INTERNATIONAL FUND, LLC; EPLAY, LLC; and DOES 10-30:

11 1. For a temporary restraining order, issued upon ex parte application without notice, and an  
12 injunction restraining and enjoining all Defendants, their officers, directors, successors in interest,  
13 agents, employees, attorneys in fact, and all persons acting in concert or participating with them, or  
14 any of them, except the Receiver in the lawful exercise of his duties under the receivership, from  
15 directly or indirectly:

16 a. Violating Corporations Code section 25110 by offering or selling securities,  
17 including but not limited to those issued by PSIF, Eplay, LLC, and RMB Operations, LLC without  
18 those securities being qualified pursuant to the Corporate Securities Law of 1968, or unless exempt;

19 b. Violating Corporations Code section 25401 by offering or selling any  
20 securities by means of any written or oral communication which includes an untrue statement of a  
21 material fact or omits to state a material fact necessary in order to make the statements made, in light  
22 of the circumstances under which they were made, not misleading.

23 2. For an Order that, pursuant to section 25535 of the Corporations Code Defendants, and each  
24 of them, individually, jointly and severally, pay to the Department of Corporations, a civil penalty in  
25 the maximum sum of \$25,000 (Twenty-Five Thousand Dollars) for each act in violation of  
26 Corporations Code section 25110, and a maximum of \$25,000 (Twenty-Five Thousand Dollars) for  
27 each act in violation of Corporations Code Section 25401 as authorized by Corporations Code  
28 section 25535 in an amount of 1 million dollars each or according to proof at trial.

1 3. That pursuant to section 25530(b) of the Corporations Code Defendants, and each of them,  
2 be ordered to disgorge all profits and compensation obtained as a result of the violations of law  
3 complained of herein, all in the amounts and manner provided for by law in an amount of 10 million  
4 dollars each or according to proof at trial.

5 **AS AGAINST ALL DEFENDANTS**

6 1. For a temporary restraining order, issued upon ex parte application without notice, and an  
7 injunction to remain in effect during the pendency of this action or until further order of the court  
8 placing an immediate freeze on all funds, negotiable instruments and/or assets held in any bank or  
9 other accounts, certificates of deposit or otherwise, without limitation, in the name of or for the  
10 benefit of Defendants Michael P. Gamboa, individually and doing business as Gamboa and  
11 Company, MPG, LLC; Mark H. Poore; RMB Operations, LLC; The Palette Sienna International  
12 Fund, LLC; The Palette Group, LLC; The Palette II Group, LLC; The Palette III Group, LLC; The  
13 Palette IV Group, LLC; The Palette Aqua Investment Fund, LLC; The Palette Cobalt Investment  
14 Fund, LLC; Eplay, LLC; Eplay Investments 2 LLC; Poga Management Partners, LLC; 401K  
15 Retirement Solutions, LLC and MXM Investments, LLC directly or indirectly, and each of them.

16 2. For an order appointing a receiver, issued upon ex parte application without notice, to remain  
17 in effect during the pendency of this action or until further order of the court, to take possession of  
18 all real and personal property and assets of Defendants Michael P. Gamboa, individually and doing  
19 business as Gamboa and Company, MPG, LLC; Mark H. Poore; RMB Operations, LLC; The Palette  
20 Sienna International Fund, LLC; The Palette Group, LLC; The Palette II Group, LLC; The Palette III  
21 Group, LLC; The Palette IV Group, LLC; The Palette Aqua Investment Fund, LLC; The Palette  
22 Cobalt Investment Fund, LLC; Eplay, LLC; Eplay Investments 2 LLC; Poga Management Partners,  
23 LLC; 401K Retirement Solutions, LLC and MXM Investments, LLC whether directly or indirectly  
24 owned, beneficially or otherwise by, or in the possession, custody or control of Defendants, and each  
25 of them, and such Does as may be subsequently named (hereinafter "receivership Defendants"), and  
26 their respective subsidiaries and affiliates, and their successors and assigns wherever situated, or to  
27 which receivership Defendants have any right of possession, custody or control, beneficially or  
28 otherwise, irrespective of whosoever holds such assets, including all such assets which receivership

1 Defendants carry or maintain, or which may be received during the pendency of this receivership, in  
2 order to obtain an adequate accounting of receivership Defendants' assets and liabilities and to  
3 secure a marshalling of said assets; and

4 FOR SAID ORDER TO FURTHER PROVIDE THAT:

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

7 B. The receiver shall be authorized, empowered and directed:

8 1. To marshal, collect, review, observe, discover and take charge of all the real  
9 and personal property, premises and other assets of, or in the possession of or under the control of  
10 receivership Defendants, beneficially or otherwise, or wherever else situated, all accounts of  
11 receivership Defendants in financial depository or other institutions, and of any other property in  
12 which receivership Defendants have an interest, regardless by whom it may be held, beneficially or  
13 otherwise, on an ongoing and continual basis pursuant to this Court's order. The receiver shall  
14 report to this Court the results of the review, observation, discovery and abstracts resulting from the  
15 activities of the receiver as ordered by this Court, and specifically on any commingling of funds,  
16 unauthorized loans or other disposition of property of whatever description between any and each of  
17 the receivership Defendants herein and/or any person, corporation, entity, sole proprietorship,  
18 affiliate, association of whatever type or structure, whether or not said entities are or are not  
19 Defendants in this action;

20 2. To employ attorneys to assist the receiver in the performance of his duties and  
21 responsibilities, such employment to be approved by the Court upon ex parte application of the  
22 receiver;

23 3. To employ other such persons, including accountants, investigators, clerical  
24 and professional personnel, and the receiver's in-house staff and counsel, to perform such tasks as  
25 may be necessary to aid the receiver in the performance of his duties and responsibilities, without  
26 further order of the Court;

27 4. To file, within 30 days of his qualification and appointment hereunder, an  
28 initial inventory of all property which he shall then have reviewed, observed and/or discovered

1 pursuant to this Court's order. Additionally, the receiver is to file one or more supplemental  
2 inventories when and if he shall subsequently come into knowledge of additional items appropriate  
3 to the inventory;

4           5. To undertake an independent review into the affairs and transactions of  
5 receivership Defendants and to file with this Court, within 120 days, and every six months thereafter,  
6 a report detailing the receiver's findings of his review of the condition of receivership Defendants,  
7 other affairs and transactions of receivership Defendants, reflecting the existence of any liabilities,  
8 both those claimed by others to exist and those to which the receiver believes to be the legal  
9 obligations of each of said receivership Defendants, including a review of any possible conflicts of  
10 interest and any further information the receiver believes may assist in an equitable disposition of  
11 this matter, and to include in the report the receiver's opinion regarding the ability of said  
12 receivership Defendants to meet their obligations as they come due, and the receiver's  
13 recommendation regarding the necessity for, and the best method of handling, preserving, or  
14 disposing of said assets;

15           6. To invest funds of the receivership estate in any interest-bearing obligations of  
16 the United States or in any interest-bearing accounts in financial institutions approved by the United  
17 States Trustee as an authorized depository for funds of bankruptcy estate, without further order of  
18 the Court; and to be the signatory on all bank accounts of receivership Defendants, and each of them;

19           7. To bring such proceedings as are necessary to enforce the provisions hereof,  
20 including issuance of subpoenas to compel testimony or production of documents as to the existence  
21 or location of assets or any other information pertinent to the business, financial affairs, and other  
22 transactions of receivership Defendants;

23           8. To bring such proceedings as are necessary to modify the provisions hereof,  
24 as the receiver deems appropriate;

25           9. To make such payments and disbursements from the funds so taken into  
26 custody, control and possession of the receiver or otherwise received by him, as may be necessary  
27 and advisable in discharging his duties as receiver, without further order of the Court, including,  
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1 without limitation, the payment of interim compensation to the receiver and persons or entities under  
2 (b) and (c) above, subject to the provisions of paragraph 11;

3 10. To carry on any lawful business activity of the entities and persons or entities  
4 in receivership, to preserve investors' assets and to foreclose and/or actively seek and negotiate with  
5 potential buyers, assignees or other parties who may be interested in acquiring, purchasing, leasing,  
6 subleasing or renting real or personal property of Defendants and to sell, lease, sublease or rent such  
7 real or personal property of Defendants, subject to court approval;

8 11. To institute, prosecute, defend, compromise, intervene in and become a party,  
9 either in his own name or in the name of Defendants, to such suits, actions or proceedings as may be  
10 necessary for the protection, maintenance, recoupment or preservation of the assets or property of  
11 receivership Defendants, or in his custody, in his discretion, without further order of the Court; and

12 12. To divert, take possession of and secure all mail of receivership Defendants,  
13 in order to screen such mail, retaining so much as it relates to the business of receivership  
14 Defendants, and forwarding to the individual or other appropriate addresses so much as is not, in the  
15 receiver's opinion, appropriate for retention by him, and to effect a change in the rights to use any  
16 and all post office boxes and other mail collection facilities used by receivership Defendants; and

17 13. Upon the receiver's appointment, the receiver shall undertake an immediate  
18 review of all readily available assets of the receivership Defendants in order to determine the  
19 economic viability of a receivership. Upon such review, if the receiver determines that sufficient  
20 assets are readily available to fund the receivership, then the receiver shall file such finding with the  
21 Court, and the receivership shall continue until further order of the Court. If upon initial review the  
22 receiver determines that readily available assets are insufficient to maintain the receivership, then the  
23 receiver shall so notify the Court, and may request that the Court dissolve the receivership, or  
24 modify the duties and responsibilities of the receiver, and Plaintiff will not oppose such request, it  
25 being understood that the receiver and professionals employed by the receiver shall not be expected  
26 to perform services unless readily available assets exist to pay the expenses of the receivership.

27 14. The receiver shall cooperate fully with the California Department of  
28 Corporations, and any other state and federal law enforcement and regulatory agencies having

1 jurisdiction over matters relating to the conduct or business of Defendants so as not to impair the  
2 ability of said state and federal law enforcement regulatory agencies to perform their duly authorized  
3 investigative and enforcement duties.

4           15. The receiver's powers shall be in addition to, and not by way of limitation of,  
5 the powers described in Corporations Code sections 29540 and 25530(a), Financial Code section  
6 22713, and Government Code section 13975.1 and Code of Civil Procedure sections 564, *et seq.*

7           16. The receiver shall be vested with, and is authorized, directed and empowered  
8 to exercise, all of the power of receivership Defendants, their officers, directors, shareholders,  
9 general partners or persons who exercise similar powers and perform similar duties; and that  
10 receivership Defendants, their officers, agents, employees, representatives, directors, successors in  
11 interest, attorneys in fact and all persons acting in concert or participating with them, are hereby  
12 divested of, restrained and barred from exercising any of the powers vested herein in the receiver.

13           17. Any state or federal law enforcement or regulatory agency having jurisdiction  
14 over matters relating to Defendants' business shall be permitted to review, without exception, all  
15 reports of the receiver and all books, records, and files of Defendants at any time during normal  
16 business hours, with reasonable notice, and to make any abstracts or copies of said documents as it  
17 desires, provided that nothing herein shall waive or abrogate any applicable attorney-client or other  
18 legally recognized privilege; and

19           18. Defendants, including, but not limited to the receivership Defendants, their  
20 officers, directors, shareholders, agents, servants, employees, attorneys, salespersons, successors,  
21 assigns, subsidiaries, affiliates, and other persons or entities under their control and all persons or  
22 entities in active concert or participation with Defendants, and all persons owing a duty of disclosure  
23 to Defendants, and each of them, shall cooperate with the receiver in his investigation and turn over  
24 to the receiver records, documentation, charts and/or descriptive material of all funds, assets,  
25 property owned beneficially or otherwise, and all other assets of receivership Defendants wherever  
26 situated, and all books and records of accounts, title documents and other documents in the  
27 possession or under their control, which relate, directly or indirectly, to assets of receivership  
28 Defendants; and

1           19. Except by leave of this Court and during the pendency of this receivership, all  
2 claimants, creditors and other persons seeking relief of any kind, in law or in equity, from  
3 receivership Defendants, and all others acting on behalf of any such persons, including sheriffs,  
4 marshals, servants, agents and employees, are restrained from:

5           a. Commencing, prosecuting, continuing or enforcing any suit or  
6 proceeding, except by motion before this Court;

7           b. Executing or issuing or causing the execution or issuance of any court  
8 attachment, subpoena, replevin, execution or other process for the purpose of impounding or taking  
9 possession of or interfering with or creating or enforcing a lien upon any property owned or in the  
10 possession of receivership Defendants, its subsidiaries or affiliates, or the receiver appointed therein,  
11 wherever situated;

12           c. Commencing or continuing judicial or non-judicial foreclosure  
13 proceedings or proceedings for the appointment of a receiver for any property owned or claimed by  
14 receivership Defendants in this action;

15           d. Creating, perfecting, or enforcing any lien or encumbrance against any  
16 real or personal property;

17           e. Accelerating the due date of any obligation or claimed obligation;

18           f. Exercising any right of set-off;

19           g. Taking, retaining, retaking or attempting to retake possession of any  
20 real or personal property;

21           h. Withholding or diverting any rent or other obligation; and

22           i. Doing any act or thing whatsoever to interfere with the possession of  
23 or management by the receiver herein and of the property and assets owned, controlled or in the  
24 possession of receivership Defendants or to, in any way, interfere with the receiver or to interfere in  
25 any manner during the pendency of this proceeding with the exclusive jurisdiction of this Court over  
26 Defendants.

27           20. Any and all provisions of any agreement entered into by and between any third-party  
28 and receivership Defendants, including, by way of illustration, but not limited to, the following types

1 of agreements (as well as any amendments or modifications thereto), mortgages, partnership  
2 agreements, financial guarantee bonds, joint venture agreements, promissory notes, remarketing  
3 agreements, loan agreements, security agreements, indemnification agreements, subrogation  
4 agreements, subordination agreements, deeds of trust, pledge agreements, assignments of rents and  
5 other collateral, financing statements, letters of credit, leases, insurance policies, guarantees, escrow  
6 agreements, management agreements, real estate brokerage and rental agreements, servicing  
7 agreements, consulting agreements, easement agreements, license agreements, franchise agreements,  
8 construction contracts, or employment contracts that provide in any manner that the selection,  
9 appointment, or retention of a receiver or trustee by any Court, or the entry of an order such as  
10 hereby made, shall be deemed to be, or otherwise operate as a breach, violation, event of default,  
11 termination, event of dissolution, event of acceleration, insolvency, bankruptcy, or liquidation, shall  
12 be stayed, and the assertion of any and all rights, remedies relating thereto shall also be stayed and  
13 barred, except as otherwise ordered by this Court, and this Court shall retain jurisdiction over any  
14 causes of action that have arisen or may otherwise arise under any such provision.

15         21. The receiver, the receiver's employees and agents, and professionals employed by the  
16 receiver, are entitled to monthly payment of interim compensation for services rendered, at their  
17 normal hourly rates, and monthly reimbursement for all expenses incurred by them on behalf of the  
18 receivership estate, and the receiver is authorized to make such payments without further order of the  
19 Court. Within 10 days after such monthly payments, the receiver shall serve written notice upon the  
20 counsel of record for receivership Defendants of the amount paid to each payee, with an itemization  
21 of the services rendered or expenses incurred.

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

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



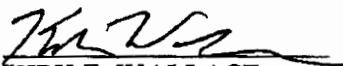
1 liability for the payment, at any time, for any such fees or expenses in connection with said  
2 receivership.

3 3. That plaintiff recover its costs of suit herein, including costs of investigation;

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

5 Dated: August 31, 2009

6 PRESTON DuFAUCHARD  
7 California Corporations Commissioner

8  
9 By:   
10 KIRK E. WALLACE  
11 Corporations Counsel  
12 Attorney for the People of California  
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