

FILED

2009 JUL 27 AM 11:19

**CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
SANTA ANA**

BY: _____

1 DAVID J. VAN HAVERMAAT (Cal. Bar No. 175761)
E-mail: vanhavermaatd@sec.gov
2 LORRAINE B. ECHAVARRIA (Cal. Bar No. 191860)
E-mail: echavarria@sec.gov
3 TERI M. MELSON (Cal. Bar No. 185209)
E-mail: melsont@sec.gov

4 Attorneys for Plaintiff
5 Securities and Exchange Commission
Rosalind R. Tyson, Regional Director
6 Michele Wein Layne, Associate Regional Director
John M. McCoy III, Regional Trial Counsel
7 5670 Wilshire Boulevard, 11th Floor
Los Angeles, California 90036
8 Telephone: (323) 965-3998
Facsimile: (323) 965-3908

10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12 **SOUTHERN DIVISION**

14 **SECURITIES AND EXCHANGE
COMMISSION,**

15 Plaintiff,

16 vs.

17 **DIVERSITY CAPITAL INVESTMENTS,
18 INC.; DIVERSITY CAPITAL BANCORP
DE MEXICO LTD.; STRONG'S
19 CAPITAL INVESTMENTS, INC.; THE
OPTIMUS FUND, INC.; DAMIAN
20 MENESES; EDWARD LANTZ
FERGUSON, and JOEL S. LEY, JR.**

21 Defendants,

22 and

23 **JUAN GALINDO FLORES and
24 SOCORRO TERLIZZI,**

25 Relief Defendants.

Case No. **CV09-5449 ODW(RCX)**

**COMPLAINT FOR
VIOLATIONS OF THE
FEDERAL SECURITIES LAWS**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 Plaintiff Securities and Exchange Commission (“Commission”) alleges as
2 follows:

3 **JURISDICTION AND VENUE**

4 1. This Court has jurisdiction over this action pursuant to Sections 20(b),
5 20(d)(1) and 22(a) of the Securities Act of 1933 (“Securities Act”), 15 U.S.C.
6 §§ 77t(b), 77t(d)(1) & 77v(a), and Sections 21(d)(1), 21(d)(3)(A), 21(e) and 27 of
7 the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §§ 78u(d)(1),
8 78u(d)(3)(A), 78u(e) & 78aa. Defendants have, directly or indirectly, made use of
9 the means or instrumentalities of interstate commerce, of the mails, or of the
10 facilities of a national securities exchange in connection with the transactions, acts,
11 practices and courses of business alleged in this Complaint.

12 2. Venue is proper in this district pursuant to Section 22(a) of the
13 Securities Act, 15 U.S.C. § 77v(a), and Section 27 of the Exchange Act, 15 U.S.C.
14 § 78aa, because certain of the transactions, acts, practices and courses of conduct
15 constituting violations of the federal securities laws occurred within this district.
16 Specifically, individuals residing in this district purchased the securities offered
17 and sold by Defendants.

18 **SUMMARY**

19 3. This matter involves the ongoing fraudulent offer and sale of
20 securities by three individual defendants and the entities that they control and
21 through which they have solicited investors: Damian Meneses (“Meneses”), who
22 operates Diversity Capital Investments, Inc. (“Diversity Capital”) and its affiliate,
23 Diversity Capital Bancorp de Mexico Ltd. (“DCBM”), Edward Lantz Ferguson
24 (“Ferguson”), president of Strong’s Capital Investments (“Strong’s Capital”), and
25 Joel S. Ley, Jr. (“Ley”), president of The Optimus Fund, Inc. (“Optimus Fund”).

26 4. From May 2007 through the present, Defendants have raised at least
27 \$14.7 million from investors in the United States and Mexico. Defendants solicit
28 investors by referrals from existing customers and, in the cases of Diversity Capital

1 and the Optimus Fund, through password protected websites that invite potential
2 investors to contact them to learn more about the investments they offer. Diversity
3 Capital and the Optimus Fund continue to solicit investors through their websites.

4 5. Meneses, together with relief defendant Juan Galindo Flores
5 (“Flores”), operates Diversity Capital and DCBM. They collected over \$12.5
6 million from investors between May 2007 and May 2008. Diversity Capital may
7 be continuing to accept investor funds through an offshore wire transfer platform
8 that is registered in the British Virgin Islands, Cayman Islands and Nevis.

9 6. Ferguson, through Strong’s Capital, collected over \$4.4 million from
10 investors from November 2007 through November 2008. Of that amount,
11 Ferguson transferred nearly \$3 million to Diversity Capital. Ley, through the
12 Optimus Fund, has collected at least \$1 million from investors since May 2008. Of
13 that amount, Ley transferred less than \$270,000 to Diversity Capital and DCBM.
14 As of at least March 31, 2009, the Optimus Fund was still receiving investor funds.

15 7. Defendants make several misrepresentations to investors.
16 Specifically, Defendants represent to investors that their money will be used for
17 foreign currency trading by Diversity Capital and that they will receive returns of
18 at least 4% per month and, in some cases, as much as 8.25% per month. Contrary
19 to Defendants’ representations to investors, Diversity Capital does not engage in
20 foreign currency trading. Instead, it uses funds from later investors to pay earlier
21 investors in a Ponzi-like fashion.

22 8. In addition, Ferguson and Ley misrepresent to investors in Strong’s
23 Capital and the Optimus Fund, respectively, that 100% of their money will be sent
24 to Diversity Capital, where their funds will be used for foreign currency trading.
25 They tell investors that Diversity Capital pays them at least 15% per month, from
26 which they pay investors their returns. In fact, Ferguson and Ley have failed to
27 send substantial amounts of the investor funds they collected on to Diversity
28 Capital, and they have received from Diversity Capital only a few insignificant

1 payments, which are not sufficient to make the promised payments to their
2 investors. Instead of sending investor funds to Diversity Capital for foreign
3 currency trading, Ferguson and Ley each have been using new investor funds to
4 pay earlier investors.

5 9. Defendants also tout the safety of investments in their programs.
6 Defendants represent to investors that investor funds are secured by promissory
7 notes and loan agreements. Defendants tell investors that these notes and
8 agreements mean that even if the foreign currency trading was not successful
9 during a month, investors are guaranteed to receive their monthly returns because
10 their investments are backed by these notes and agreements. In addition, Diversity
11 Capital, Strong's Capital, and the Optimus Fund all claim to have substantial
12 reserves and assets that could be used to pay investors. Contrary to Defendants'
13 representations to investors, the claimed reserves do not exist.

14 10. Defendants are also misappropriating investor funds. Undisclosed to
15 investors, Diversity Capital, in addition to using new investor funds to pay earlier
16 investors, has used hundreds of thousands of dollars of investor funds for personal
17 expenses of its principals, including mortgage and auto loan payments, meals,
18 travel, and related purchases. Contrary to Ferguson's representations to investors
19 in Strong's Capital that all of their funds will be used for foreign currency trading,
20 Ferguson has transferred hundreds of thousands of dollars of investor funds to his
21 personal account, from which it was drawn as a purported salary and spent on
22 personal expenses, legal bills, retail purchases and travel. Similarly, contrary to
23 Ley's representations to investors in the Optimus Fund, Ley has withdrawn over
24 \$123,000 in investor funds in cash and used at least an additional \$158,000 for
25 travel, automobile and motorcycle payments, meals, and retail purchases.

26 11. Defendants' scheme appears to be collapsing, if it has not already
27 done so. In October 2008, investors in Diversity Capital were sent notifications
28 informing them that their accounts would be frozen for at least six months due to

1 the worldwide economic crisis and the devaluation of the Euro. Meneses went into
2 hiding at that time. In November 2008, Strong's Capital sent out nearly identical
3 notifications to its investors. Defendants ceased making payments to their
4 investors in late 2008.

5 12. Defendants, by engaging in the conduct described in this Complaint,
6 have violated, and unless enjoined will continue to violate, the antifraud and
7 securities registration provisions of the federal securities laws. By this complaint,
8 the Commission seeks emergency relief against Defendants, including a temporary
9 restraining order, an asset freeze, accountings, a repatriation order, an order
10 expediting discovery, and an order prohibiting the destruction of documents, as
11 well as preliminary and permanent injunctions, disgorgement with prejudgment
12 interest, and civil penalties. The Commission also seeks an asset freeze and a
13 repatriation order against two relief defendants who received proceeds from the
14 fraudulent scheme, along with disgorgement from them.

15 **DEFENDANTS**

16 13. Diversity Capital Investments, Inc. was incorporated in California in
17 August 2007 and its principal place of business is in Chula Vista, California. It
18 uses its website, www.diversitycapital.co.nz, to offer and sell investments. No
19 registration statement has been filed or is in effect with the Commission in
20 connection with the offer and sale of the Diversity Capital investments. Socorro
21 Terlizzi ("Terlizzi"), who is believed to be Meneses' wife, is listed as the president
22 of Diversity Capital in its filing with the California Secretary of State.

23 14. Diversity Capital Bancorp de Mexico Ltd. was incorporated in New
24 Zealand in April 2008 and its principal place of business appears to be the same as
25 the Diversity Capital office in Chula Vista, California. The
26 www.diversitycapital.co.nz website states that DCBM is a "Finance Company"
27 that is "not a registered bank under supervision by the Reserve Bank of New
28 Zealand." Its website claims that it has offices throughout Mexico and Panama.

1 No registration statement has been filed or is in effect with the Commission in
2 connection with the offer and sale of the DCBM investments. DCBM has not filed
3 a prospectus and is not regulated as an issuer of securities under New Zealand
4 securities law. Meneses represents himself as the president of DCBM, and Flores
5 is the sole director of DCBM. Defendants used Diversity Capital and DCBM
6 interchangeably when communicating with investors. They told investors that
7 DCBM was the affiliate of Diversity Capital that was responsible for conducting
8 the purported foreign currency trading. Investors in Diversity Capital were sent
9 letters from DCBM regarding the status of their Diversity Capital accounts. The
10 DCBM web sites, www.diversitydemexico.com and www.dcbm.com, redirect
11 investors to the Diversity Capital web site.

12 15. Strong's Capital Investments, Inc. was incorporated in California in
13 September 2007 and its principal place of business is in Chula Vista, California. It
14 used its website, www.strongscapital.com, to offer and sell investments that
15 guaranteed monthly returns of 3% to 6%. No registration statement has been filed
16 or is in effect with the Commission in connection with the offer and sale of the
17 Strong's Capital investments.

18 16. The Optimus Fund, Inc., was incorporated in California in April 2008
19 and its principal place of business is in San Diego, California. It uses its website
20 www.theoptimusfund.com to offer and sell investments that guarantee monthly
21 returns of 4%. No registration statement has been filed or is in effect with the
22 Commission in connection with the offer and sale of the Optimus Fund
23 investments.

24 17. Damian Meneses, aka Damian Meneces, aka Abel Dominguez Meneces,
25 aka Francisco D. Dominguez Meneses, age 36 or 37, is believed to be a citizen of
26 Mexico, and it is believed that he is currently in Mexico. Meneses identifies himself
27 as the vice president of Diversity Capital and the president of DCBM, and he has
28 solicited investors in Diversity Capital through meetings he has held in California

1 and in Mexico. Meneses is not registered with the Commission and has not held any
2 securities licenses. Meneses is an authorized signatory for all of Diversity Capital's
3 bank accounts.

4 18. Edward Lantz Ferguson, age 37, resides in Chula Vista, California.
5 Ferguson has identified himself as the president of Strong's Capital and has
6 solicited investors in Strong's Capital. Ferguson is not registered with the
7 Commission and has not held any securities licenses. Ferguson is the authorized
8 signatory for all of Strong's Capital's bank accounts.

9 19. Joel S. Ley Jr., age 31, resides in Chula Vista, California. Ley
10 identifies himself as the president of the Optimus Fund and he solicits investors in
11 the Optimus Fund. He also represented himself as "VP of Alternative
12 Investments" for DCBM. Ley is not registered with the Commission and has not
13 held any securities licenses. Ley is the sole authorized signatory for the Optimus
14 Fund's bank accounts, and he is also a signatory for a Diversity Capital account.

15 **RELIEF DEFENDANTS**

16 20. Juan Galindo Flores, aka Juan Flores Galindo, age 48, resides in San
17 Diego, California. His current whereabouts are unknown. Investors were told that
18 Flores founded Diversity Capital, and he is listed as the sole director of DCBM.
19 Flores has received at least \$300,000 in investor funds from Diversity Capital.

20 21. Socorro Guerrero Terlizzi, age 41, resides in San Diego, California.
21 Terlizzi is listed as the agent for service of process for Diversity Capital with the
22 California Secretary of State. Terlizzi is believed to be Meneses' wife. Several of
23 the Diversity Capital bank accounts are in the name of Terlizzi (as well as
24 Meneses). She has received more than \$56,000 in direct payments from investor
25 funds and, along with Meneses, she received over \$300,000 in additional investor
26 funds.

27 ///

28 ///

1 **THE FRAUDULENT OFFERING**

2 **A. Overview And Structure Of The Investment Program**

3 22. From at least May 2007 until approximately May 2008, Diversity
4 Capital raised over \$12.5 million from investors in the United States and Mexico.
5 Meneses represented to investors in Diversity Capital that their money would be
6 pooled together and used for foreign currency trading, and that they would earn
7 returns of at least 4% per month.

8 23. Meneses, who identifies himself to investors as the vice president of
9 Diversity Capital and the president of DCBM, worked out of the Diversity Capital
10 office in Chula Vista, California and also met with investors at their homes in the
11 Los Angeles area. In addition, Meneses solicited investors from California during
12 a meeting in Tijuana, Mexico. Meneses told investors that Diversity Capital was
13 owned by Flores and that Flores served as the president of Diversity Capital.
14 Meneses told investors that he began running the Diversity Capital office in Chula
15 Vista because Flores was working in Europe to oversee the foreign currency
16 trading for Diversity Capital.

17 24. Diversity Capital appears to target members of the Hispanic
18 community and members of Meneses' church. For example, Meneses told
19 investors that although the minimum investment in Diversity Capital was
20 \$100,000, he would make an exception for members of the church and would
21 allow them to invest in Diversity Capital if they had \$10,000 to invest. Diversity
22 Capital's solicitation materials and its website contain information in both English
23 and Spanish.

24 25. Meneses told investors that they could act as brokers for Diversity
25 Capital and would earn a monthly fee of 1% to 3% of the amount invested by any
26 investor brought into the Diversity Capital program. Meneses also encouraged
27 Diversity Capital investors to refinance their homes and to invest the proceeds in
28 Diversity Capital. Many investors did so.

1 26. Ferguson and Ley represent to investors in Strong's Capital and the
2 Optimus Fund, respectively, that all of their money is sent to Diversity Capital
3 where it is used for foreign currency trading. The offering materials for Strong's
4 Capital represented that "[t]here will be absolutely no commissions charged to
5 your account." Ferguson initially operated Strong's Capital out of the same office
6 location as Diversity Capital. Ley informs investors that he worked for Diversity
7 Capital for five years and he stated that the Optimus Fund was the United States
8 arm of Diversity Capital. From November 2007 to November 2008, Ferguson
9 raised approximately \$4.4 million from approximately 34 investors in Strong's
10 Capital. From May 2008 through at least March 2009, Ley raised over \$1 million
11 from investors in the Optimus Fund.

12 **B. Defendants Falsely Represent That Investors Profit From Foreign**
13 **Currency Trading And That They Will Receive A Guaranteed**
14 **Monthly Return Of At Least 4%**

15 27. Meneses represents to investors in Diversity Capital that Diversity
16 Capital traders earn, on average, 15% each month through foreign currency trading
17 and that they sometimes earned as much as 19-20% in a month. Meneses tells
18 investors that Diversity Capital has "a large team" that monitors the news and
19 determines which currencies to buy and sell. Investors are told that although
20 Diversity Capital makes very little on each trade, the traders engage in thousands
21 of transactions per day, and that this heavy volume of trading enables Diversity
22 Capital to earn its returns, from which they pay investors a guaranteed return of 4%
23 each month. The Diversity Capital website includes a graph that lists annual
24 returns for "DCBM" as 48%. Diversity Capital provides investors with monthly
25 statements that list a 4% return on their investment each month.

26 28. Ferguson and Ley similarly inform investors in Strong's Capital and
27 the Optimus Fund that all of their money is sent to Diversity Capital, where it
28 purportedly is used for foreign currency trading through Varengold Bank by

1 Diversity Capital's experienced traders. Ley claims that the trading is conducted
2 by very experienced traders in Germany who were licensed by Varengold but who
3 "work for us."

4 29. Similarly, Strong's Capital's offering materials promised returns of
5 3% to 6% per month. Ferguson offered investors a greater monthly rate of return if
6 they invested more than \$10,000. Ferguson promised one investor, who invested
7 nearly \$1 million in Strong's Capital, monthly returns of 8.25%. Ferguson sent
8 investors monthly statements that reflected a 3% to 8.25% monthly return. In
9 April 2008, Ferguson sent a mass e-mail to investors stating that "our return for
10 last month was 15.23% and we continue to expect the same for the rest of 2008."

11 30. Ferguson told investors in Strong's Capital that he received from
12 Diversity Capital foreign currency trading profits of approximately 15% each
13 month, and that investors were paid out of those profits. Ley represented that from
14 April 2008 (when he started the Optimus Fund) until February 2009, the Optimus
15 Fund earned almost 30% each month from its investments with Diversity Capital.

16 31. In fact, Diversity Capital did not engage in any foreign currency
17 trading, and investor funds were not used for that purpose. Moreover, none of the
18 defendants has ever traded through an account at Varengold Bank. In August
19 2008, Flores opened an account with Varengold under the name of Diversity
20 Capital Investments Corp., but he never funded the account.

21 32. Although Ferguson told investors in Strong's Capital that 100% of
22 their money would be sent to Diversity Capital for foreign currency trading, he
23 stopped sending investor funds on to Diversity Capital in May 2008. Between
24 May 2008 and October 2008, Ferguson collected over \$536,000 from various
25 investors but never transferred those funds to Diversity Capital. Instead, Ferguson
26 used investor funds for his own personal use and to pay out to earlier investors.
27 While Ferguson and Ley both informed investors that they received monthly
28 payments from Diversity Capital and would use those funds to pay investors,

1 neither of them received regular or significant payments from Diversity Capital
2 that would have enabled them to do so.

3 33. Ley represents to investors that they will receive a guaranteed return
4 of 4% per month. Ley sends investors monthly statements from the Optimus Fund
5 which represent that they are, in fact, earning 4% per month on their investments.

6 **C. Defendants Misrepresent The Safety Of Investments In Their**
7 **Programs**

8 34. Defendants tout the safety of investments in Diversity Capital's
9 purported foreign currency trading program. Meneses represents to investors that
10 Diversity Capital is insured and regulated. He tells investors that Diversity Capital
11 conducts "trading only with 25 or 30%" of investor funds. Meneses also informs
12 investors that he would not risk investor funds and represents that "we have
13 controls, if there are losses, those losses will be covered with the extra money that
14 has been earned on other occasions." The Diversity Capital website states that
15 Diversity Capital "represents one of the largest private funds in the market" and
16 has a "diverse group of corporate and private investors who have trusted us with
17 over 1.7 billion dollars!"

18 35. Diversity Capital represents to investors that its trading strategy "is a
19 conservative one." Diversity Capital's purported goal is to generate a fifteen to
20 twenty percent return each month. Investors are told that, once Diversity Capital
21 reaches that goal, it ceases trading for the month.

22 36. Diversity Capital represents to investors that over fifty percent of its
23 monthly gains are used to fund a reserve account. The reserve account purportedly
24 is set up to safeguard Diversity Capital investors "if we should ever have a bad
25 month." Defendants also represent to investors that Diversity Capital's reserve
26 account is "roughly five times greater than the amount we trade any given month."

27 37. Ferguson represented to potential investors that he had substantial
28 assets backing Strong's Capital and always maintained a reserve fund of \$500,000.

1 Strong's Capital's offering materials assured investors that Ferguson and Strong's
2 Capital performed due diligence on Diversity Capital. Ferguson told investors that
3 Diversity Capital was a safe investment and that Diversity Capital employed stop
4 losses and other techniques in order to ensure that it never lost any money.
5 Ferguson also informed investors that once Diversity Capital traders earned 15%
6 they ceased trading for the rest of the month. Ferguson and Strong's Capital did
7 not disclose to investors any risk involved in investing with Strong's Capital.

8 38. When investors received a questionnaire from the California
9 Department of Corporations regarding Strong's Capital's failure to register its
10 offering with that agency, Ferguson falsely assured investors in writing that "[t]he
11 money you have invested with us is currently safe and is earning the interest that
12 you receive on your statements." Ferguson falsely informed investors that he was
13 "filing with the SEC, NASD and the California Department of Corporations" and
14 he stated that, in doing so, "it adds credibility to our program and gives everyone
15 more confidence." Ferguson also informed investors that they could liquidate their
16 account as long as they provided him with sixty days notice.

17 39. Ley touts the safety of investments with the Optimus Fund. Ley
18 represents to investors that the Optimus Fund has at least \$7 million in assets and
19 maintains a reserve account "to safeguard our investors if we should ever need it."

20 40. All of Defendants' representations are false. Diversity Capital has not
21 generated any profits from foreign currency trading and relies on later investor funds
22 to pay earlier investors in a Ponzi-like fashion. In addition, Diversity Capital never
23 had more than a total of \$2.1 million in all of the bank accounts under its name,
24 which is significantly less than the \$1.7 billion it claimed to have under management.
25 Although Diversity Capital assured investors that their money was safe and was
26 secured by a loan agreement and promissory note, investors have not been repaid,
27 despite their repeated requests. Diversity Capital's purported reserve account does
28 not exist.

1 41. Similarly, Ferguson used investor funds to pay out earlier investors
2 and he never maintained a reserve fund. He personally filed Chapter 13
3 bankruptcy petitions in April and May 2008 – the very same time at which he was
4 soliciting investors in Strong’s Capital and representing that his fund was
5 extraordinarily profitable. Ferguson did not receive any significant or regular
6 payments from Diversity Capital and, therefore, he had no basis for the returns he
7 listed in the written monthly statements he sent out to investors.

8 42. Ley also has used later investor funds to pay earlier investors and,
9 although he claimed to maintain a substantial reserve account, his combined bank
10 accounts never had a balance greater than \$146,000. Although Ley sent investors
11 monthly statements that indicated they were earning 4% per month on their
12 investment and claiming that the Optimus Fund earned almost 30% each month
13 from Diversity Capital, it does not appear that he ever received more than a total of
14 \$5,000 from Diversity Capital.

15 **D. Defendants Are Misappropriating And Misusing Investor Funds**

16 43. Contrary to Defendants’ representations to investors in Diversity
17 Capital that 100% of their money would be used for foreign currency trading,
18 much of the investors’ funds are used for the principals’ personal expenses and
19 related purchases. Diversity Capital, in addition to using new investor funds to pay
20 existing investors, uses investor funds for its’ principals’ personal expenses,
21 including mortgage and auto loan payments, meals, travel, and retail purchases.
22 Flores received more than \$300,000 in investor funds from Diversity Capital.
23 Terlizzi and Meneses together received more than \$300,000 in investor funds, and
24 Terlizzi separately received more than \$56,000 of additional investor funds.
25 Millions of dollars of investor funds have been transferred to an assortment of
26 payees who cannot be identified, including substantial transfers to accounts in
27 Liechtenstein and Mexico.

28 44. Contrary to Strong’s Capital’s representations that all of the investors’

1 funds would be forwarded to Diversity Capital for foreign currency trading,
2 Ferguson misappropriated large amounts of investor funds. Ferguson transferred
3 \$329,000 of investor funds to one of his separate accounts with the notations
4 “salary for me” or “salary to Eddie.” He withdrew over \$135,000 in cash from the
5 bank account that holds investor funds. Additionally, he spent over \$58,000 of
6 investor funds on personal expenses and retail purchases, over \$37,000 on legal
7 bills, and over \$12,000 on travel. Ferguson told one investor, who became
8 concerned after Strong’s Capital stopped making payments to investors, that the
9 “worst thing” he had done was to use the Strong’s capital account to pay for gas
10 for his truck. Ferguson told the investor that he ceased that practice after his
11 accountant advised him to do so.

12 45. Despite Ley’s similar representations, Ley misappropriated substantial
13 amounts of investor funds. Ley withdrew over \$123,000 of investor funds in cash
14 and used over \$158,000 of investor funds for travel, automobile and motorcycle
15 payments, meals, and retail purchases. None of the investors authorized
16 Defendants to use their money for personal expenses.

17 **E. Although Defendants’ Scheme Appears To Have Collapsed,**
18 **Diversity Capital And Strong’s Capital Continue To Make**
19 **Misrepresentations In Order To Lull Investors**

20 46. In late 2008 Diversity Capital ceased making payments to investors
21 and informed investors that it could no longer afford to trade foreign currency
22 because of the overall financial crisis and the devaluation of the Euro. In October
23 2008, Diversity Capital sent a “Commitment Statement” to investors stating that all
24 customer accounts had been frozen and that investor funds would not be available
25 for six to twelve months. In November 2008, Strong’s Capital ceased paying
26 investors and sent investors a nearly identical letter. Strong’s Capital and Diversity
27 Capital have continued to lull investors with false written assurances that their
28 principal is safe and they will be repaid soon. But none of these entities have

1 sufficient funds to repay investors. For example, the combined balance of all of
2 Ferguson's bank accounts was less than \$80,000 in November 2008 – the same
3 month that he assured investors that their principal and interest were safe.

4 47. Both Diversity Capital and Strong's Capital have recently made additional
5 misrepresentations in an effort to lull investors and prevent them from making
6 complaints to the authorities. For example, Diversity Capital has falsely informed
7 investors that it is working on a repayment plan and that it is working with the
8 California Department of Corporations to ensure that it is complying with the "details
9 required by that department." No such discussions have taken place. Diversity Capital
10 also informed investors that it would liquidate their accounts at the end of April 2009.
11 Similarly, on March 31, 2009, Ferguson sent an e-mail to investors stating that
12 Strong's Capital expected to return investors' funds within a few weeks. To date,
13 Diversity Capital and Strong's Capital have failed to repay investors.

14 **FIRST CLAIM FOR RELIEF**

15 **Unregistered Offer And Sale Of Securities**

16 **Violations of Sections 5(a) and 5(c) of the Securities Act**

17 **(Against All Defendants)**

18 48. The Commission realleges and incorporates by reference paragraphs 1
19 through 47 above.

20 49. Defendants, and each of them, by engaging in the conduct described
21 above, directly or indirectly, made use of means or instrumentalities of
22 transportation or communication in interstate commerce or of the mails, to offer to
23 sell or to sell securities, or to carry or cause such securities to be carried through
24 the mails or in interstate commerce for the purpose of sale or delivery after sale.

25 50. No registration statement has been filed with the Commission or has
26 been in effect with respect to the offering alleged herein.

27 51. By engaging in the conduct described above, Defendants violated, and
28 unless restrained and enjoined will continue to violate, Sections 5(a) and 5(c) of

1 the Securities Act, 15 U.S.C. §§ 77e(a) and 77e(c).

2 **SECOND CLAIM FOR RELIEF**

3 **Fraud In The Offer Or Sale Of Securities**

4 **Violations of Section 17(a) of the Securities Act**

5 **(Against All Defendants)**

6 52. The Commission realleges and incorporates by reference paragraphs 1
7 through 47 above.

8 53. Defendants, and each of them, by engaging in the conduct described
9 above, in the offer or sale of securities by the use of means or instruments of
10 transportation or communication in interstate commerce or by use of the mails
11 directly or indirectly:

12 a. with scienter, employed devices, schemes, or artifices to
13 defraud;

14 b. obtained money or property by means of untrue statements of a
15 material fact or by omitting to state a material fact necessary in
16 order to make the statements made, in light of the

17 circumstances under which they were made, not misleading; or
18 c. engaged in transactions, practices, or courses of business which
19 operated or would operate as a fraud or deceit upon the
20 purchaser.

21 54. By engaging in the conduct described above, Defendants violated, and
22 unless restrained and enjoined will continue to violate, Section 17(a) of the
23 Securities Act, 15 U.S.C. § 77q(a).

24 **THIRD CLAIM FOR RELIEF**

25 **Fraud In Connection With The Purchase Or Sale Of Securities**

26 **Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder**

27 **(Against All Defendants)**

28 55. The Commission realleges and incorporates by reference paragraphs 1

1 through 47 above.

2 56. Defendants, and each of them, by engaging in the conduct described
3 above, directly or indirectly, in connection with the purchase or sale of a security,
4 by the use of means or instrumentalities of interstate commerce, of the mails, or of
5 the facilities of a national securities exchange, with scienter:

- 6 a. employed devices, schemes, or artifices to defraud;
- 7 b. made untrue statements of a material fact or omitted to state a
8 material fact necessary in order to make the statements made, in
9 the light of the circumstances under which they were made, not
10 misleading; or
- 11 c. engaged in acts, practices, or courses of business which
12 operated or would operate as a fraud or deceit upon other
13 persons.

14 57. By engaging in the conduct described above, Defendants violated, and
15 unless restrained and enjoined will continue to violate, Section 10(b) of the
16 Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R.
17 § 240.10b-5.

18 **FOURTH CLAIM FOR RELIEF**
19 **(Against All Relief Defendants)**

20 58. The Commission realleges and incorporates by reference paragraphs 1
21 through 47 above.

22 59. In the manner described above, each relief defendant received ill-
23 gotten gains for which they gave no consideration and to which they have no
24 legitimate claim.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, the Commission respectfully requests that the Court:

27 **I.**

28 Issue findings of fact and conclusions of law that the defendants committed

1 the alleged violations.

2 **II.**

3 Issue judgments, in forms consistent with Fed. R. Civ. P. 65(d), temporarily,
4 preliminarily and permanently enjoining the defendants and their officers, agents,
5 servants, employees, and attorneys, and those persons in active concert or
6 participation with any of them, who receive actual notice of the judgment by
7 personal service or otherwise, and each of them, from violating Sections 5(a), 5(c)
8 and 17(a) of the Securities Act, 15 U.S.C. §§ 77e(a), 77e(c) and 77q(a), and
9 Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder,
10 17 C.F.R. § 240.10b-5.

11 **III.**

12 Issue, in a form consistent with Fed. R. Civ. P. 65, a temporary restraining
13 order, and a preliminary injunction freezing the assets of each of the defendants
14 and relief defendants, directing the assets of each of the defendants and the relief
15 defendants to be repatriated to the United States, prohibiting each of the defendants
16 from destroying documents, granting expedited discovery, and requiring
17 accountings from each of the defendants.

18 **IV.**

19 Order each defendant and relief defendant to disgorge all ill-gotten gains
20 from their illegal conduct, together with prejudgment interest thereon.

21 **V.**

22 Order each defendant to pay civil penalties under Section 20(d) of the
23 Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the Exchange Act, 15
24 U.S.C. § 78u(d)(3).

25 **VI.**

26 Retain jurisdiction of this action in accordance with the principles of equity
27 and the Federal Rules of Civil Procedure in order to implement and carry out the
28 terms of all orders and decrees that may be entered, or to entertain any suitable

1 application or motion for additional relief within the jurisdiction of this Court.

2 **VII.**

3 Grant such other and further relief as this Court may determine to be just and
4 necessary.

5
6 DATED: July 27, 2009



7 David J. Van Havermaat
8 Attorney for Plaintiff
9 Securities and Exchange Commission
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28