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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF SAN DIEGO

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| 10 | THE PEOPLE OF THE STATE OF |) | CASE No.: 37-2008-00088219-CU-SL-CTL |
| 11 | CALIFORNIA, by and through the California |) | |
| | Corporations Commissioner, |) | FIRST AMENDED COMPLAINT FOR |
| 12 | |) | PRELIMINARY INJUNCTION, |
| | Plaintiff, |) | PERMANENT INJUNCTION, ANCILLARY |
| 13 | v. |) | RELIEF AND RESTITUTION |
| 14 | |) | |
| 15 | BRIDGE HARBOR MANAGEMENT, INC., a |) | VIOLATIONS OF CALIFORNIA |
| 16 | suspended California corporation; CREATIVE |) | CORPORATIONS CODE SECTION 25110 |
| 17 | INSURANCE CONCEPTS, INC., a California |) | (SALE OF UNQUALIFIED SECURITIES), |
| 18 | corporation; KATHLEEN SHAVE, an individual; |) | |
| 19 | RUSSELL MILLARD, an individual, and DOES |) | VIOLATIONS OF CALIFORNIA |
| 20 | 1 through 50, inclusive, |) | CORPORATIONS CODE SECTION 25401 |
| 21 | |) | (SALE OF SECURITIES BY MEANS OF |
| 22 | Defendants, |) | FALSE OR MISLEADING |
| 23 | And |) | STATEMENTS) |
| 24 | Ashton Capital Management, Inc., a California |) | |
| 25 | corporation; Bridge Harbor Mortgage Services, |) | VIOLATIONS OF CALIFORNIA |
| 26 | Inc., a California corporation; OFV, Inc., a |) | CORPORATIONS CODE SECTION 25230 |
| 27 | suspended California corporation; BH |) | (UNCERTIFIED INVESTMENT |
| 28 | Channelview, LLC, a Nevada limited liability |) | ADVISER) |
| | company; BH New Storage Bellevue, LLC, a |) | |
| | Nevada limited liability company; BH New |) | ASSIGNED FOR ALL PURPOSES TO: |
| | Storage Vincent, LLC, a Nevada limited liability |) | HON. LUIS R. VARGAS |
| | company; DVM Velp Self Storage, LLC, a |) | |
| | Wisconsin limited liability company; and The |) | DEPARTMENT C-63 |
| | Legacy Fund, LLC, a Nevada limited liability |) | |
| | company, |) | Complaint filed July 23, 2008 |
| | |) | |
| | Relief Defendants. |) | |

FIRST AMENDED COMPLAINT FOR PRELIMINARY INJUNCTION,
PERMANENT INJUNCTION, ANCILLARY RELIEF AND RESTITUTION

1 Preston DuFauchard, California Corporations Commissioner (“Commissioner”), acting to
2 protect the public from the unlawful sale of unqualified and fraudulent securities, brings this action
3 in the public interest in the name of the People of the State of California. The People of the State of
4 California allege as follows on information and belief:

5 **JURISDICTION AND VENUE**

6 1. The Commissioner brings this action to enjoin Defendants from violating the California
7 Corporate Securities Law of 1968 (“CSL”), California Corporations Code section 25000 *et. seq.*, and
8 to request necessary equitable and ancillary relief. The Commissioner is authorized to administer
9 and enforce the provisions of the CSL.

10 2. The Commissioner brings this action pursuant to California Corporations Code Section
11 25530¹ and California Government Code Section 11180 *et seq.* in his capacity as head of the
12 California Department of Corporations (“Department”).

13 3. Defendants and Relief Defendants have transacted business within San Diego County and
14 other counties in California. Defendants’ principle place of business is located in San Diego County.
15 The violations of law described herein have occurred and will continue to occur, unless enjoined,
16 within San Diego County and elsewhere within the State of California.

17 **DEFENDANTS**

18 4. Defendant Bridge Harbor Management, Inc. (“Bridge Harbor”) is a suspended California
19 Corporation with its principal place of business at 10145 Pacific Heights Blvd. Suite 1010, San
20 Diego, CA 92121.

21 5. Defendant Creative Insurance Concepts, Inc. (“CIC”) is a California Corporation with its
22 principal place of business in California at 10145 Pacific Heights Blvd., Suite 1010, San Diego, CA
23 92121.

24 6. Defendant Kathleen Shave (“Shave”) is an individual and a resident of San Diego
25 County. At all times relevant hereto, Shave has conducted business in the county of San Diego and
26 elsewhere in California, including in the following capacities: Shave is President and Chief
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28 ¹ All future references are to the California Corporations Code unless otherwise noted.

1 Executive Officer (CEO) of Bridge Harbor. Shave was at all times relevant hereto a “control”
2 person of Bridge Harbor as that term is defined in California Corporations Code section 160(a).
3 Pursuant to California Corporations Code section 160(a), “control” means the possession, direct or
4 indirect, of the power to direct or cause the direction of the management and policies of the
5 corporation.

6 7. Defendant Russell Millard (“Millard”) is an individual and a resident of San Diego
7 County. At all times relevant hereto, Millard has conducted business in the county of San Diego and
8 elsewhere in California, including in the following capacities: Millard was an agent and
9 representative of Bridge Harbor, and a principal and control person of CIC.

10 8. Defendant Does 1 through 50 are persons, corporations, or other entities that have done
11 or will do acts otherwise alleged in this complaint. Plaintiff is informed and believes, and on such
12 information and belief alleges, that at all times mentioned herein Does 1 through 50, inclusive, have
13 acted and continue to act in concert with the Defendants named herein, and each of them has
14 participated in the acts and transactions that are the subject of this complaint. The true names and
15 capacities of Does 1 through 50, whether individual, corporate, or otherwise, are unknown to
16 Plaintiff, who therefore sues such Defendants under such fictitious names pursuant to section 474 of
17 the California Code of Civil Procedure. Plaintiff asks leave of the Court to amend the Complaint to
18 allege the true names and capacities of such Defendants at such time as the same have been
19 ascertained.

20 9. Plaintiff is informed and believes and based thereon alleges that at all relevant times, the
21 Defendants named as officers, directors, agents or employees acted in such capacities in connection
22 with the acts, practices and schemes of business set forth below.

23 10. Whenever any allegation herein is made as to a “Defendant,” the allegation shall mean
24 the act of each individual Defendant acting individually, jointly and severally and conspiring with
25 the Defendants to so act. Each Defendant alleged to have committed any act did so pursuant to and
26 in furtherance of a common plan, scheme and conspiracy and as the agent for each and every co-
27 Defendant. Each Defendant acted in conspiracy to violate the provisions of the CSL.

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1 25110 or by means of fraud in violation of section 25401, and from violating section 25230(a) by
2 engaging in unlicensed investment adviser activity.

3 26. On or about December 28, 2000, in the Superior Court of California, County of
4 Riverside, Case No. 350077, the court entered a Final Judgment of Permanent Injunction And Other
5 Ancillary Relief against Millard. Among other relief, the judgment permanently enjoined Millard
6 from violating section 25110 by offering or selling any security of any kind unless and until a
7 qualification was obtained from the Commissioner pursuant to sections 25111, 25112 or 25113;
8 permanently enjoined Millard from violating section 25401 by offering or selling any security in this
9 state by means of any written or oral communication of any kind whatsoever which includes an
10 untrue statement of any material fact or omits or fails to state any material fact necessary in order to
11 make the statements made, in light of the circumstances under which they were made, not
12 misleading; permanently enjoined Millard from violating section 25210(a) by engaging in
13 unlicensed broker-dealer activities; permanently enjoined Millard from violating section 25230(a) by
14 engaging in unlicensed investment adviser activity; and awarded civil penalties of \$100,000 against
15 Millard.

16 27. On or about March 7, 2001, in NASD Case No. C02980034, the National Association of
17 Securities Dealers, Inc. (NASD), predecessor to the Financial Industry Regulatory Authority,
18 revoked the registration of Millard as a result of his failure to pay fines and/or costs awarded in
19 NASD Case No. C02980034.

20 28. Despite the foregoing, since on or about December 11, 2002, Defendants have offered
21 and sold unqualified, non-exempt securities in this State in the form of “corporate” and “promissory”
22 notes in issuer transactions by means of fraud, totaling in excess of 8.6 million dollars (\$8,600,000)
23 in at least 92 transactions to known investors.

24 29. In order to sell these securities, Defendants solicited investors by means of informational
25 seminars and by distributing promotional and offering materials and other communications through
26 the mail without being qualified in the State of California.

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1 30. Defendants offered and sold securities in California to residents of the State of California
2 and elsewhere for the alleged purpose of raising capital for short-term needs to expand current
3 businesses. However, Defendants instead engaged in a classic Ponzi scheme.

4 31. Defendants offered and sold securities in California by making material
5 misrepresentations, including without limitation: a) Defendants represented that the investment
6 money would be used to expand current businesses and develop business opportunities, when in
7 fact, the money was used to pay prior investors in a Ponzi scheme; b) Defendants represented that
8 interest payments would be made with the money generated from profits, when in fact, payments
9 were made with money invested by new investors in a Ponzi scheme; c) Defendants misrepresented
10 that the investments were secured by specific collateral totaling \$15,450,000; d) Defendants
11 misrepresented that the investments were secured by real property consisting of four commercial
12 mini-storage properties valued as \$12,100,000; e) Defendants misrepresented that investors would
13 receive regular monthly interest payments; and f) Defendants misrepresented that investors would
14 receive the return of their principal at the end of the investment term, unless the investment was
15 extended by mutual written agreement.

16 32. Defendants offered and sold securities in California by omitting material facts, including
17 without limitation: a) that Bridge Harbor’s corporate status was suspended; b) that Millard had his
18 NASD registration revoked in March 2001; c) that on or about December 28, 2000, in Superior
19 Court of California, County of Riverside, Case No. 350077, the court entered a Final Judgment of
20 Permanent Injunction And Other Ancillary Relief against Millard which permanently enjoined
21 Millard from violating sections 25110, 25210, 25230 and 25401 by offering or selling any security
22 of any kind unless and until a qualification was obtained from the Commissioner pursuant to
23 sections 25111, 25112 or 25113, acting as an unlicensed broker-dealer, acting as an uncertified
24 investment adviser, and offering and selling securities by means of fraud, among other relief; and d)
25 that money from new investors would be used to pay old investors (a Ponzi scheme).

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FIRST CAUSE OF ACTION
SALE OF UNQUALIFIED SECURITIES
IN VIOLATION OF CALIFORNIA CORPORATIONS CODE SECTION 25110
(Against All Defendants)

33. Plaintiff realleges and incorporates by reference paragraphs 1 through 32 of this Complaint as though set forth in full herein.

34. California Corporations section 25110 provides in pertinent part:

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

35. Commencing in or about December 2002, Defendants offered and sold securities in issuer transactions in the State of California.

36. The investments offered and sold by Defendants constitute “securities” within the meaning of California Corporations Code section 25019. These securities include, but are not limited to, corporate notes and promissory notes offering interest payments ranging from eight to eighteen percent (8-18%) per annum.

37. The sales referenced here constitute “issuer transactions” within the meaning of California Corporations Code sections 25010 and 25011.

38. The Defendants “offered and sold” the securities “within the State” of California within the meaning of California Corporations Code sections 25008 and 25017.

39. The Commissioner has not issued a permit or other form of qualification authorizing the Defendants to offer and sell the securities in the State of California.

40. The offer and sale of the securities are not exempt from the requirement of qualification under California Corporations Code section 25110.

41. Defendants offered and sold unqualified, non-exempt securities in violation of California Corporations Code section 25110 and, unless enjoined by this Court, will continue to violate California Corporations Code section 25110.

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SECOND CAUSE OF ACTION
MISREPRESENTATIONS OR OMISSIONS OF MATERIAL
FACTS IN VIOLATION OF CALIFORNIA CORPORATIONS CODE SECTION 25401
(Against All Defendants)

42. The Commissioner realleges and incorporates by reference paragraphs 1 through 41 of this Complaint as though set forth in full herein.

43. California Corporations Code section 25401 provides as follows:

It is unlawful for any person to offer or sell a security in this state or buy or offer to buy a security in this state by means of any written or oral communication which 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.

44. In offering and selling securities in this state, Defendants made untrue statements and/or misrepresentations of material facts to some or all prospective or existing investors. The misrepresentations included, without limitation, the following:

- a. Defendants represented that the investment money would be used to expand current businesses and develop business opportunities, when in fact, the money was used to pay prior investors in a Ponzi scheme;
- b. Defendants represented that interest payments would be made with the money generated from profits, when in fact, payments were made with money invested by new investors in a Ponzi scheme;
- c. Defendants misrepresented that the investments were secured by specific collateral totaling \$15,450,000;
- d. Defendants misrepresented that the investments were secured by real property consisting of four commercial mini-storage properties valued as \$12,100,000;
- e. Defendants misrepresented that investors would receive regular monthly interest payments; and
- f. Defendants misrepresented that investors would receive the return of their principal at the end of the investment term, unless the investment was extended by mutual written agreement.

1 It is unlawful for any investment adviser to conduct business as an
2 investment adviser in this state unless the investment adviser has first
3 applied for and secured from the commissioner a certificate, then in
4 effect, authorizing the investment adviser to do so or unless the
5 investment adviser is exempt by the provisions of Chapter 1
(commencing with Section 25200) of this part or unless the investment
adviser is subject to Section 25230.1.

6 51. Since at least in or about December 2002, and continuing thereafter, Millard has
7 conducted business as an investment adviser in this state, as defined by section 25009. Millard has
8 not applied for and secured from the commissioner a certificate authorizing Millard to conduct
9 business as an investment adviser. Further, such conduct is in violation of the Final Judgment of
10 Permanent Injunction And Other Ancillary Relief entered against Millard on or about December 28,
11 2000, in the Superior Court of California, County of Riverside, Case No. 350077.

12 52. Unless enjoined by this Court, Defendant Millard will continue to violate section 25230.

13 **FOURTH CAUSE OF ACTION**

14 **(Against the Relief Defendants**

15 **As Custodians of Investor Funds)**

16 53. The Commissioner realleges and incorporates by reference paragraphs 1 through 52 of
17 this Complaint as though set forth in full herein.

18 54. Relief Defendants have received from one or more Defendants specific funds and
19 property, which are the proceeds, or traceable to the proceeds, of the unlawful activities of
20 Defendants as set forth herein. Relief Defendants knew or should have known the funds were
21 obtained from such unlawful activities. These specific funds consist of at least \$8,600,000, or an
22 amount according to proof, received from investors through at least 92 transactions in violation of
23 the CSL. Relief Defendants are therefore trustees of the funds gained through such illegal acts for
24 the benefit of the defrauded investors.

25 55. Relief Defendants have obtained the funds and property alleged above under
26 circumstances in which it is not just, equitable or conscionable for them to retain the funds and
27 property. As a consequence, Relief Defendants have been unjustly enriched.
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PRAYER

WHEREFORE, plaintiff prays for judgment as follows:

1. For an Order preliminarily and permanently enjoining all Defendants and their officers, directors, successors in interest, agents, employees, attorneys in fact, and all persons acting in concert or participating with them, from directly or indirectly:
 - a. Violating California Corporations Code section 25110 by offering to sell, selling, arranging for the sale, issuing, engaging in the business of selling, negotiating for the sale of, or otherwise in any way dealing or participating in the offer or sale of, any security of any kind, including but not limited to the securities described in this Complaint, unless such security or transaction is qualified;
 - b. Violating California Corporations Code section 25401 by offering to sell or selling any security of any kind, including but not limited to, the securities described in this Complaint, by means of any written or oral communication, which contains any untrue statements of any material fact or omits or fails to state any material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading, including but not limited to the misrepresentations and omissions alleged in this Complaint;
 - c. Removing, destroying, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, any books, records, computer programs, computer files, computer print-outs, correspondence, brochures, manuals, or any other writings or documents of any kind as defined under California Evidence Code section 250 relating to the transactions and course of conduct as alleged in this Complaint; and
 - d. As to both Defendants and Relief Defendants: transferring, changing, disbursing, selling, dissipating, converting, conveying, pledging, assigning, encumbering, or foreclosing or otherwise disposing of any real or personal property or other assets in their possession or under their control, or in the possession of, or under the control of, any of the Defendants or Relief Defendants, which property or other assets were derived or emanated from directly, or indirectly, the sale and issuance of securities as alleged in this Complaint, without leave of the Court.

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2. For an Order preliminarily and permanently enjoining Defendant Russell Millard from violating California Corporations Code section 25230 by conducting business as an investment adviser in this state without first having applied for and secured from the commissioner a certificate, then in effect, authorizing him to conduct business as an investment adviser.

3. For a Final Judgment requiring Defendants to rescind each and all of the unlawful transactions alleged in this Complaint, as shall be determined by this Court to have occurred, and further requiring Defendants, jointly and severally, to pay full restitution to each person determined to have been subjected to Defendants’ acts or practices which constitute violations of the Corporations Code, with the total amount of funds being at least \$8,600,000 less any repayment of principal, or any other amount according to proof. In addition, to pay either the contracted rate of interest or the legal rate of interest on the amounts invested by the clients from the dates of their investments to the date of judgment herein.

4. For a Final Judgment requiring Defendants to disgorge, to all known persons who invested, all benefits received, including but not limited to salaries, commissions, fees and profits, derived directly or indirectly from the acts or practices in violation of the Corporations Code.

5. For a Final Judgment requiring Defendants to pay \$25,000 to the Department of Corporations as a civil penalty for each act in violation of the CSL as authorized by Corporations Code section 25535, as follows:

a. As to the First Cause of Action, against Defendants Bridge Harbor Management, Inc., Creative Insurance Concepts, Inc., Russell Millard and Kathleen Shave and such Does as may be subsequently named, to be jointly and severally liable for at least \$2,300,000 for at least 92 violations of California Corporations Code section 25110, or other amount according to proof;

b. As to the Second Cause of Action, against Defendants Bridge Harbor Management, Inc., Creative Insurance Concepts, Inc., Russell Millard and Kathleen Shave and such Does as may be subsequently named, to be jointly and severally liable for at least \$2,300,000 for at least 92 violations of California Corporations Code section 25110, or other amount according to proof;

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c. As to the Third Cause of Action, against Defendant Russell Millard, for at least \$2,300,000 for at least 92 violations of California Corporations Code section 25230, or other amount according to proof.

6. For an Order imposing a constructive trust on all funds and property of the Relief Defendants which are the proceeds, or traceable to the proceeds, of the unlawful activities of Defendants as set forth herein, for the benefit of the defrauded investors.

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

8. For such other and further relief as the Court deems necessary and proper.

Dated: July 28, 2008
Los Angeles, CA

PRESTON DuFAUCHARD
California Corporations Commissioner

By _____
Jennifer A. Granat
Corporations Counsel

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