

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

Michael J. Quilling, Receiver for Frederick J. Gilliland,)	Case No. 3:04-CV-251
)	
Plaintiff,)	
)	ANSWER, COUNTERCLAIM, AND
v.)	CROSS-CLAIMS OF REIN EVANS &
)	SESTANOVICH, LLP
Grand Street Trust, Heartland Control Trust, Future Control Trust, Marie Margarite Gueco Mercado Paquette, Rein Evans Sestanovich, L.L.P. f/k/a Dressler Rein Evans & Sestanovich, L.L.P., Melrose Escrow, Inc., and Paul J. Cohen,)	(Jury Trial Demanded)
)	
Defendants.)	
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REIN EVANS & SESTANOVICH LLP Counterclaimant,)	
)	
vs.)	
Michael J. Quilling, Receiver for Frederick J. Gilliland,)	
)	
Counterdefendant)	
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REIN EVANS & SESTANOVICH LLP, Cross-claimant,)	
)	
vs.)	
Marie Margartite Gueco Mercado Paquette, Grand Street Trust, Heartland Control Trust, Future Control Trust, Melrose Escrow, Inc., and Paul J. Cohen,)	
)	
Cross-defendants)	
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Defendant Rein Evans & Sestanovich, L.L.P., f/k/a Dressler Rein Evans & Sestanovich, L.L.P. ("Rein Evans"), hereby answers the Complaint of the Plaintiff as follows:

1. The allegations of paragraph 1 are denied, except it is admitted that the Order appointing Michael J. Quilling as the Reciever appointed for Frederick J. Gilliland in Civil Action No. 3:02CV128-McK is a writing and speaks for itself as to its terms and conditions.

2. Rein Evans is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2 and the same are therefore denied.

3. Rein Evans is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 3 and the same are therefore denied.

4. Rein Evans is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4 and the same are therefore denied.

5. Rein Evans is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5 and the same are therefore denied.

6. The allegations of paragraph 6 are admitted.

7. Rein Evans is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 7 and the same are therefore denied.

8. Rein Evans is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 8 and the same are therefore denied.

9. The allegations of paragraph 9 state a legal conclusion to which no response is required. To the extent a response is required, the allegations of paragraph 9 are denied.

10. The allegations of paragraph 10 state a legal conclusion to which no response is required. To the extent a response is required, the allegations of paragraph 10 are denied.

11. The allegations of paragraph 11 are denied, except it is admitted that on or about March 27, 2002, the United States Securities and Exchange Commission ("SEC") initiated Case No. 3:02CV128-McK, in which the pleadings and other papers are in writing and speak for themselves as to their terms and conditions. Rein Evans further admits that the Order entered on May 21, 2003 in that proceeding is in writing and speaks for itself as to its terms and conditions.

12. Rein Evans is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 12, and the same are therefore denied, except it is

admitted that the pleadings and other papers in Case No. 3:01CV205-McK are in writing and speak for themselves as to their terms and conditions.

13. Rein Evans is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 13, and the same are therefore denied, except it is admitted that Rein Evans received certain funds in connection with the rendering of legal advice and services, and that Rein Evans in its capacity as counsel and trustee of certain client funds received and subsequently distributed certain of those funds pursuant to lawful instructions it was duty bound to follow that were in accord with settlement agreements pertaining to several law suits and related disputes.

14. Rein Evans is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 14, and the same are therefore denied.

15. Rein Evans realleges and incorporates by reference herein its response to paragraphs 1 through 14 of this Answer.

16. Rein Evans is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 16, and the same are therefore denied.

17. Rein Evans realleges and incorporates by reference herein its response to paragraphs 1 through 16 of this Answer.

18. The allegations of paragraph 18 are denied.

19. Paragraph 19 does not state any allegations which require a response. To the extent a response is required, the allegations of paragraph 19 are denied.

20. Paragraph 20 does not state any allegations that require a response.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE
(FAILURE TO STATE CLAIM)

The Complaint fails to state facts sufficient to state a claim against Rein Evans.

SECOND AFFIRMATIVE DEFENSE
(ACTS OF OTHERS)

Any damage or loss suffered by the Plaintiff as alleged in the Complaint was proximately and solely caused by the intentional acts, conduct, negligence, or omissions of persons or entities other than Rein Evans.

THIRD AFFIRMATIVE DEFENSE
(CONTRIBUTORY/COMPARATIVE NEGLIGENCE)

Any damage or loss suffered by the Plaintiff as alleged in the Complaint was proximately and solely caused by the conduct and/or intentional acts, negligence, or omissions of the Plaintiff or his predecessors in interest.

FOURTH AFFIRMATIVE DEFENSE
(CONSENT)

The claims alleged in the Complaint against Rein Evans are barred by the Plaintiff's (or that of his predecessors in

interest) consent, acquiescence, or ratification of the acts, conduct, omissions or transactions of persons or entities other than Rein Evans.

FIFTH AFFIRMATIVE DEFENSE
(WAIVER)

Plaintiff's claims alleged in the Complaint have been waived against Rein Evans by virtue of Plaintiff's (or that of his predecessors in interest) consent, acquiescence, or ratification of the acts, conducts, omissions or transactions of persons or entities other than Rein Evans.

SIXTH AFFIRMATIVE DEFENSE
(NO JOINT AND SEVERAL LIABILITY)

Rein Evans is not jointly and severally liable for any of the damages suffered by the Plaintiff as alleged in the Complaint.

SEVENTH AFFIRMATIVE DEFENSE
(NO VICARIOUS LIABILITY)

Rein Evans is not vicariously liable for the acts, conduct, omissions or transactions of any other individual or entity or third party or the damages suffered by the Plaintiff as alleged in the Complaint.

EIGHTH AFFIRMATIVE DEFENSE
(EQUITABLE ESTOPPEL)

The Plaintiff is estopped from seeking an award of damages and/or contribution from Rein Evans by virtue of his own conduct or that of his predecessors in interest.

NINTH AFFIRMATIVE DEFENSE
(MITIGATION)

Plaintiff's claims alleged in the Complaint against Rein Evans are barred or reduced by the Plaintiff's (or that of his predecessors in interest) failure to take reasonable steps or measures to mitigate the damages that the Plaintiff or his predecessor attributes to Rein Evans as alleged in the Complaint.

TENTH AFFIRMATIVE DEFENSE
(STATUTE OF LIMITATIONS)

Plaintiff's claims are barred by the applicable statute of limitations, including but not limited to N.C. Gen. Stat. § 39-23.9 and Cal. Civ. Code § 3439.09.

ELEVENTH AFFIRMATIVE DEFENSE
(LACHES)

Plaintiff's claims (or those of Plaintiff's predecessor in interest) are barred by the doctrine of laches.

TWELFTH AFFIRMATIVE DEFENSE
(NO COLLUSION)

The transfers alleged in the Complaint to be fraudulent and made to Rein Evans by any of the co-defendant or other parties are not voidable against Rein Evans because Rein Evans did not collude or actively participate in any other way in a fraudulent scheme with any co-defendant or any other party. Rein Evans had no knowledge as to the alleged fraudulent intent, if any, of any co-defendants or any other party, including Plaintiff's

predecessors in interest, regarding the transfer of funds and as described in the Complaint.

THIRTEENTH AFFIRMATIVE DEFENSE
(CREDITOR)

As a defense to each and every cause of action to set aside a fraudulent conveyance alleged in the Complaint against Rein Evans, Rein Evans is a creditor of co-defendant Marie Margarite Gueco Mercado Paquette ("Mercado Paquette") and gave reasonable and equivalent value, in good faith, and without actual or constructive notice of any infirmities, claims or equities against Rein Evans by said co-defendant, or the Plaintiff, or his predecessors in interest, or any other person or entity, for work, labor and services rendered at the special request of said co-defendant.

FOURTEENTH AFFIRMATIVE DEFENSE
(SUBSEQUENT TRANSFEREE)

As a defense to each and every cause of action to set aside a fraudulent conveyance alleged in the Complaint against Rein Evans, Rein Evans is a subsequent and good faith transferee of Mercado Paquette and without actual or constructive notice of any infirmities, claims or equities against said co-defendant by Plaintiff.

FIFTEENTH AFFIRMATIVE DEFENSE
(ORDINARY COURSE OF BUSINESS AND NEW VALUE)

As a defense to each and every cause of action to set aside a fraudulent conveyance alleged in the Complaint against Rein Evans, the transfer from Mercado Paquette to Rein Evans is not voidable because the transfer was made in the ordinary course of business with said co-defendant and because Rein Evans gave new value to Mercado Paquette.

SIXTEENTH AFFIRMATIVE DEFENSE
(STANDING)

Plaintiff (or Plaintiff's predecessor in interest) lacks standing to prosecute or litigate any against Rein Evans as alleged in the Complaint or otherwise.

SEVENTEENTH AFFIRMATIVE DEFENSE
(LACK OF PERSONAL JURISDICTION)

There is no basis to support or maintain the Court's personal jurisdiction over Rein Evans.

EIGHTEENTH AFFIRMATIVE DEFENSE
(ATTORNEY CLIENT PRIVILEGE)

As a defense to each and every cause of action alleged in the Complaint against Rein Evans, Rein Evans cannot mount a defense to the Complaint without violating the attorney-client privilege with its client Mercado Paquette, who has not waived the privileges.

NINETEENTH AFFIRMATIVE DEFENSE
(SETTLEMENT/CONFIDENTIALITY PRIVILEGE)

As a defense to each and every cause of action alleged in the Complaint against Rein Evans, Rein Evans cannot mount a

defense to the Complaint without violating the terms of the confidentiality provision in the settlement agreement entered into between Mercado Paquette, on the one hand, and Capital Ventures, Ltd., Peter Coleman, Ray Nola and Brent Grubbs, on the other hand, in the civil action entitled *Capital Ventures, Ltd. V. First Consortium International, Inc. etc.*, Los Angeles County Superior Case No. 781011.

COUNTERCLAIM AND CROSS-CLAIMS

For its counterclaim and cross-claims, Rein Evans & Sestanovich LLP (hereinafter referred to as "Rein Evans") alleges as follows:

PARTIES

1. Michael J. Quilling ("Receiver") is the Receiver appointed for Frederick J. Gilliland ("Gilliland") in Civil Action No. 3:02CV128-McK.

2. Marie Margarite Gueco Mercado Paquette ("Mercado Paquette") is an individual and resident of Canada residing at 2701 Cartier Street, Calgary, Alberta, Canada T2T 3J5.

3. Upon information and belief, Grand Street Trust is a trust established pursuant to the laws of the State of California and may be served with process by and through its trustee, Mercado Paquette, at her residence address.

4. Upon information and belief, Heartland Control Trust is a trust established pursuant to the laws of the State of California and may be served with process by and through its trustee, Mercado Paquette, at her residence address.

5. Upon information and belief, Future Control Trust is a trust established pursuant to the laws of the State of California and may be served with process by and through its trustee, Mercado Paquette, at her residence address.

6. Melrose Escrow, Inc. ("Melrose Escrow") is a corporation organized and existing under the laws of the State of California with its principal place of business in Los Angeles, California.

7. Paul J. Cohen ("Cohen") is an individual residing in the County of Los Angeles, State of California. Cohen is an attorney at law licensed to practice law in the State of California.

BACKGROUND FACTS

8. On or about February 22, 1998, at Los Angeles, California, Rein Evans and Mercado Paquette entered into a written contract (the "Contract") in which Rein Evans agreed to provide legal services at the request of Mercado Paquette for the benefit of Mercado Paquette, her affiliated companies and/or any other person or entity designated by Mercado Paquette.

Mercado Paquette agreed to pay Rein Evans for these legal services rendered by Rein Evans and to reimburse Rein Evans for all costs and expenses associated or related to the legal services provided by Rein Evans at the behest of Mercado Paquette.

9. At the behest and request of Mercado Paquette, Rein Evans handled a number of legal matters for Mercado Paquette.

10. Commencing in early 1998, Mercado Paquette and Melrose Escrow were involved in a business dispute. Upon retention by Mercado Paquette, Rein Evans, acted as counsel for Mercado Paquette. Through extensive negotiations with the representatives of Melrose Escrow and other interested parties, a compromise and settlement of the business dispute occurred.

11. As part of the settlement, on or about October 20, 1998, and on or about November 4, 1998, Rein Evans received via wire transfers from Mercado Paquette, and/or Grand Street Trust, and/or Heartland Control Trust and/or Future Control Trust a total of \$700,000. Rein Evans deposited these wired funds into its Client Trust Account at Wells Fargo Bank, Account No. 0488-478215 ("Client Trust Account").

12. Per the instructions of the parties, as part of the settlement of their business dispute, during the months of October 1998 and November 1998, Rein Evans wire transferred

\$700,000 from its Client Trust Account to Melrose Escrow's account with Bank of America, Account No. 00500-13203, and the dispute with Melrose Escrow, was concluded and settled. True and correct copies of Rein Evans's outgoing wire transfer requests with Wells Fargo are attached hereto as Exhibit A and they are incorporated herein by this reference.

13. In May 1998, Mercado Paquette retained Rein Evans to replace Richard A. Holmes, Esq. and represent her in the civil matter entitled *Capital Ventures, Ltd. v. First Consortium, International, Inc.*, Orange County Superior Court Case No. 741011 ("Civil Action"). Cohen represented Capital Venture, Ltd.

14. After extensive negotiations between the parties through their counsel, a compromise of the Civil Action was reached on or about June 1, 1998, and the terms were memorialized by a Settlement Agreement and Mutual Release ("Settlement Agreement"). The Settlement Agreement contains a confidentiality clause.

15. On or about October 19, 1998, Rein Evans received by wire transfer from Mercado Paquette, and/or Grand Street Trust, and/or Heartland Control Trust and/or Future Control Trust the sum of \$225,000. These wired funds were deposited into Rein Evans's Client Trust Account and were then transferred on

October 22, 1998 to Cohen's client trust account with Citibank, Account No. 601054448. A true and correct copy of Rein Evans's outgoing wire transfer request with Wells Fargo is attached hereto as Exhibit B and it is incorporated herein by this reference.

16. Rein Evans represented Mercado Paquette until 2001, but ceased its representation of Mercado Paquette because of her failure to pay the legal fees and expenses incurred by Rein Evans at the behest and for the benefit of Mercado Paquette and her business entities and associates.

COUNTERCLAIM

DECLARATORY JUDGEMENT AS TO MICHAEL J. QUILLING, RECEIVER

17. Rein Evans refers to and incorporates as though fully set forth herein Paragraphs 1 through 16.

18. On or about May 20, 2004, the Receiver commenced the present action to set aside certain wire transfers of money to Melrose Escrow and to Cohen, as well as the payment by Mercado Paquette of legal fees and expenses incurred by Rein Evans for the legal services it performed at the behest and per the instructions of Mercado Paquette. The Complaint alleges that the funds received by Rein Evans constitute fraudulent transfers of the funds Gilliland received from certain investors. (Compl. ¶ 16).

19. The Complaint alleges that on October 2, 1998, Gilliland caused \$2,500,000 of the investors' funds to be wire transferred from an account controlled by Gilliland with NationsBank, to Wells Fargo's Account No. 6465-510055 in the name of Grand Street Trust, and then allegedly "laundered through a series of accounts in the name of Grand Street Trust, Heartland Control Trust and Future Control Trust." (Compl. ¶ 13). Thereafter, Mercado Paquette, and/or Grand Street Trust, and/or Heartland Control Trust, and/or Future Control Trust allegedly wired funds totaling \$1,500,000 to Rein Evans, and that Rein Evans transferred \$700,000 to Melrose Escrow, \$225,000 to Cohen and allegedly retained the sum of \$150,000 for legal services rendered to Mercado Paquette by Rein Evans. (Id.) The Receiver alleges that no consideration of any value was given for these transfers to Gilliland's investors.

20. The Complaint further alleges that Grand Street Trust, Heartland Control Trust, and Future Control Trust are the *alter egos* of Mercado Paquette. (Compl. ¶ 14). The Complaint also alleges that Gilliland operated "fraudulent Ponzi schemes" and that the \$1,500,000 transferred by Mercado Paquette through her *alter egos* to Rein Evans are fraudulent transfers. (Compl. ¶¶ 13, 16).

21. At the time these transfers took place, Rein Evans had no knowledge of Gilliland's alleged Ponzi scheme or of Gilliland's creditors/investors purported claims against Gilliland. Further, Rein Evans had no knowledge of Gilliland's actual intent to hinder delay or defraud his creditors in the collection of their claims against him nor did Rein Evans have knowledge of any facts which would put it on notice of Gilliland's alleged Ponzi scheme or of the claims of Gilliland's creditors/investors.

22. With respect to the wire transfers to Melrose Escrow and to Cohen, Rein Evans was an innocent and good faith subsequent transferee. Rein Evans acted in its capacity as legal counsel for Mercado Paquette and followed her instructions.

23. With respect to funds received from Mercado Paquette and applied to unpaid legal fees and expenses, Rein Evans gave good and valuable consideration for these funds by providing Mercado Paquette legal services. This consideration constituted reasonable equivalent value for the legal services provided to Mercado Paquette at her request. Rein Evans has so advised the Receiver, but the Receiver has elected to sue Rein Evans.

24. Therefore, an actual controversy has arisen and now exists between Rein Evans and the Receiver concerning their

respective rights in the funds transferred to Melrose Escrow and to Cohen and the funds retained by Rein Evans for payment of legal fees incurred by Rein Evans at the behest of Mercado Paquette. Specifically, Rein Evans contends that in the event the Receiver is adjudged entitled to the funds wired to Melrose Escrow and to Cohen, then Mercado Paquette, Grand Street Trust, Heartland Control Trust, Future Control Trust, Melrose Escrow, and Cohen, but not Rein Evans, are liable to the Receiver and must disgorge these funds or have judgment entered against them but not Rein Evans. Concerning the funds retained by Rein Evans as payment of its legal fees incurred at the behest for the benefit of Mercado Paquette, if the Receiver is adjudged entitled to have these funds set aside, Rein Evans is entitled to retain an interest in or lien on these funds.

25. Upon information and belief, the Receiver disputes these contentions and contends that the funds Rein Evans received from Mercado Paquette are not subject to any such interest or lien as claimed by Rein Evans.

26. Rein Evans desires a judicial determination of its rights, and in particular, a declaratory judgment in the event that the Receiver is entitled to have the alleged fraudulent conveyances set aside, Rein Evans is entitled to retain a lien

on the funds as security for repayment of the consideration given for these funds.

27. Such a declaration is necessary and appropriate at this time in order that Rein Evans may ascertain its rights in these funds.

FIRST CROSS-CLAIM

BREACH OF CONTRACT AS AGAINST MERCADO PAQUETTE

28. Rein Evans refers to and incorporates as though fully set forth herein Paragraphs 1 through 27.

29. Rein Evans has performed all the acts, services, and conditions required by the Contract to be performed on its part.

30. In rendering the services herein alleged, Rein Evans incurred costs and expenses on behalf of Mercado Paquette totaling \$110,398.02, plus prejudgment interest.

31. Rein Evans demanded payment from Mercado Paquette for its costs and expenses in the amount of \$110,398.02, and has served on Mercado Paquette a Notice of Client's Right Arbitration, but Mercado Paquette has failed and refused to make payment, and there is now due and owing from Mercado Paquette to Rein Evans the sum of \$110,398.02, plus interest at the legal rate as permitted under California law.

32. The Contract between Rein Evans and Mercado Paquette also provides that the prevailing party shall be entitled to

recover reasonable attorney's fees necessitated by a legal action to enforce the terms of the Contract.

SECOND CROSS-CLAIM

QUANTUM MERUIT AGAINST MERCADO PAQUETTE

33. Rein Evans refers to and incorporates as though fully set forth herein Paragraphs 1 through 32.

34. During the period February 1998 through approximately April 2001, at Los Angeles, California, Rein Evans rendered legal services to Mercado Paquette and incurred costs and expenses in rendering said legal services for her benefit and at her request, and she agreed to pay Rein Evans the reasonable value of such legal services.

35. The reasonable value of such legal services is the sum of \$110,398.02.

36. Rein Evans demanded payment from Mercado Paquette for that sum but she has failed and refused to make payment, and there is now due and unpaid from Mercado Paquette to Rein Evans the sum of \$110,398.02.

THIRD CROSS-CLAIM

ACCOUNT STATED AS AGAINST MERCADO PAQUETTE

37. Rein Evans refers to and incorporates as though fully set forth herein Paragraphs 1 through 36.

38. Between February 1998 and April 2001, Rein Evans performed legal services and advanced costs and expenses for Mercado Paquette at her request.

39. On or about May 1, 2001, at Los Angeles, California, an account was stated in writing by and between Rein Evans and Mercado Paquette in the amount of \$110,398.02 and Mercado Paquette agreed to pay that balance.

40. Although Rein Evans has demanded payment, and has served on Mercado Paquette a Notice of Client's Right to Arbitration, Mercado Paquette has failed and refused to make payment and there is now due and unpaid from Mercado Paquette to Rein Evans the sum of \$110,398.02.

FOURTH CROSS-CLAIM

DECLARATORY RELIEF AND INDEMNITY AS AGAINST
MERCADO PAQUETTE, GRAND STREET TRUST,
HEARTLAND CONTROL TRUST, FUTURE CONTROL TRUST
AND MELROSE ESCROW

41. Rein Evans refers to and incorporates as though fully set forth herein Paragraphs 1 through 40.

42. An actual controversy has arisen and now exists between Rein Evans and Mercado Paquette, Grand Street Trust, Heartland Control Trust, Future Control Trust, and Melrose Escrow because Rein Evans contends and Mercado Paquette, Grand Street Trust, Heartland Control Trust, Future Control Trust, and Melrose Escrow deny the following:

a. That, as between Rein Evans and Mercado Paquette, Grand Street Trust, Heartland Control Trust, Future Control Trust, and Melrose Escrow liability for the \$700,000 wired by Rein Evans to Melrose Escrow, if any, and that liability for the damages claimed by the Receiver herein rests entirely or partially on Mercado Paquette, Grand Street Trust, Heartland Control Trust, Future Control Trust, and Melrose Escrow only; and

b. That, as a result, Mercado Paquette, Grand Street Trust, Heartland Control Trust, Future Control Trust, and Melrose Escrow are obligated to partially or fully indemnify Rein Evans for any sums that Rein Evans may be compelled to pay as the result of any damages, judgment, or other awards recovered by the Receiver against Rein Evans.

43. Rein Evans desires a judicial determination of the respective rights and duties of Rein Evans and Mercado Paquette, Grand Street Trust, Heartland Control Trust, Future Control Trust, and Melrose Escrow with respect to the \$700,000 wired by Rein Evans to Melrose Escrow and the damages claimed in the Complaint by the Receiver. In particular, Rein Evans desires a declaration of the comparative liability of Rein Evans and Mercado Paquette, Grand Street Trust, Heartland Control Trust, Future Control Trust, and Melrose Escrow for these damages, and

a declaration of Mercado Paquette's, Grand Street Trust's, Heartland Control Trust's, Future Control Trust's, and Melrose Escrow's responsibility for comparative indemnity to Rein Evans for any sums that Rein Evans may be compelled to pay and for which Mercado Paquette, Grand Street Trust, Heartland Control Trust, Future Control Trust, and Melrose Escrow are determined responsible, entirely or in part.

44. Such a declaration is necessary and appropriate at this time in order that Rein Evans may ascertain its rights and duties with respect to the Receiver's claim for damages and/or constructive trust. Furthermore, the claim of the Receiver, and the claims of Rein Evans arise out of the same transaction, and determination of both in one proceeding is necessary and appropriate in order to avoid the multiplicity of actions that would result if Rein Evans is required now to defend against the claims of the Receiver and then bring a separate action against Mercado Paquette, Grand Street Trust, Heartland Control Trust, Future Control Trust, and Melrose Escrow for indemnification of sums that Rein Evans may be compelled to pay as the result of any damages, judgment, or other awards recovered by the Receiver against Rein Evans.

FIFTH CROSS-CLAIM

DECLARATORY RELIEF AND INDEMNITY AS AGAINST
MERCADO PAQUETTE, GRAND STREET TRUST, HEARTLAND CONTROL TRUST,
FUTURE CONTROL TRUST, AND COHEN

45. Rein Evans refers to and incorporates as though fully set forth herein Paragraphs 1 through 44.

46. An actual controversy has arisen and now exists between Rein Evans and Mercado Paquette, Grand Street Trust, Heartland Control Trust, Future Control Trust, and Cohen because Rein Evans contends and Mercado Paquette, Grand Street Trust, Heartland Control Trust, Future Control Trust, and Cohen deny the following:

a. That, as between Rein Evans and Mercado Paquette, Grand Street Trust, Heartland Control Trust, Future Control Trust, and Cohen, liability for the \$225,000 wired by Rein Evans to Cohen, if any, and that the damages claimed by the Receiver herein, rest entirely or partially on Mercado Paquette, Grand Street Trust, Heartland Control Trust, Future Control Trust, and Cohen; and

b. That, as a result, Mercado Paquette, Grand Street Trust, Heartland Control Trust, Future Control Trust, and Cohen are obligated to partially or fully indemnify Rein Evans for any sums that Rein Evans may be compelled to pay as the result of any damages, judgment, or other awards recovered by the Receiver against Rein Evans.

47. Rein Evans desires a judicial determination of the respective rights and duties of Rein Evans and Mercado Paquette,

Grand Street Trust, Heartland Control Trust, Future Control Trust, and Cohen with respect to the \$225,000 wired by Rein Evans to Cohen and the damages claimed in the Complaint by the Receiver. In particular, Rein Evans desires a declaration of the comparative liability of Rein Evans and Mercado Paquette, Grand Street Trust, Heartland Control Trust, Future Control Trust, and Cohen for these damages, and a declaration of Mercado Paquette's, Grand Street Trust's, Heartland Control Trust's, Future Control Trust's, and Cohen's responsibility for comparative indemnity to Rein Evans for any sums that Rein Evans may be compelled to pay and for which Mercado Paquette, Grand Street Trust, Heartland Control Trust, Future Control Trust, and Cohen are determined responsible, entirely or in part.

48. Such a declaration is necessary and appropriate at this time in order that Rein Evans may ascertain its rights and duties with respect to the Receiver's claim for damages and/or constructive trust. Furthermore, the claim of the Receiver, and the claims of Rein Evans arise out of the same transaction, and determination of both in one proceeding is necessary and appropriate in order to avoid the multiplicity of actions that would result if Rein Evans is required now to defend against the claims of the Receiver and then bring a separate action against Mercado Paquette, Grand Street Trust, Heartland Control Trust, Future Control Trust, and Cohen for indemnification of sums that

Rein Evans may be compelled to pay as the result of any damages, judgment, or other awards recovered by the Receiver against Rein Evans.

SIXTH CROSS-CLAIM

CONTRIBUTION AS AGAINST MERCADO PAQUETTE,
GRAND STREET TRUST, HEARTLAND CONTROL TRUST,
FUTURE CONTROL TRUST, AND MELROSE ESCROW

49. Rein Evans refers to and incorporates as though fully set forth herein Paragraphs 1 through 48.

50. Mercado Paquette, Grand Street Trust, Heartland Control Trust, Future Control Trust, and Melrose Escrow have failed to contribute to Rein Evans their share of the \$700,000 or any part thereof, despite Rein Evans's demand for the same.

SEVENTH CROSS-CLAIM

CONTRIBUTION AS AGAINST MERCADO PAQUETTE
GRAND STREET TRUST, HEARTLAND CONTROL TRUST,
FUTURE CONTROL TRUST, AND COHEN

51. Rein Evans refers to and incorporates as though fully set forth herein Paragraphs 1 through 50.

52. Mercado Paquette, Grand Street Trust, Heartland Control Trust, Future Control Trust, and Cohen have failed and refused to contribute to Rein Evans their share of the \$225,000 or any part thereof, despite Rein Evans demand for the same.

WHEREFORE, Rein Evans respectfully prays as follows:

1. That Plaintiff takes nothing from Rein Evans and that the Complaint be dismissed with prejudice and forever barred;

2. For costs of suit, including, but not limited to reasonable attorney's fees and court costs as allowed by law;

On the **COUNTERCLAIM** as against the Receiver:

3. For a declaratory judgment, in the event the Receiver is adjudged entitled to set aside the aforementioned transfers, that Rein Evans is entitled to retain an interest in or lien on the funds to the extent of the consideration given therefore; and

4. For a declaratory judgment, in the event the Receiver is adjudged entitled to set aside the aforementioned wire transfers to Melrose Escrow and to Cohen, that Mercado Paquette, Grand Street Trust, Heartland Control Trust, Future Control Trust, Melrose Escrow and Cohen, but not Rein Evans, are liable to the Receiver and they must disgorge these funds or have judgment entered against them, but not Rein Evans.

On the **FIRST CROSS-CLAIM** as against Mercado Paquette:

5. For the sum of \$110,298.02 with interest thereon at the rate of ten percent per annum from May 1, 2001 until judgment is entered; and

6. For reasonable attorney's fees and costs of suit herein incurred.

On the **SECOND AND THIRD CROSS-CLAIMS** as against Mercado Paquette:

7. For the sum of \$110,298.02 with interest thereon at the rate of ten percent per annum from May 1, 2001 until judgment is entered;

On the **FOURTH CROSS-CLAIM** as against Mercado Paquette, Grand Street Trust, Heartland Control Trust, Future Control Trust, and Melrose Escrow:

8. For a judicial determination of the comparative fault of Rein Evans and Mercado Paquette, Grand Street Trust, Heartland Control Trust, Future Control Trust, and Melrose Escrow for the damages claimed by the Receiver, if any are found to exist; and

9. For a declaration of the amount that Mercado Paquette, Grand Street Trust, Heartland Control Trust, Future Control Trust, and Melrose Escrow are obligated to indemnify Rein Evans if Rein Evans is compelled to pay any sum as the result of any damages, judgment, or other awards recovered by the Receiver against Rein Evans.

On the **FIFTH CROSS-CLAIM** as against Mercado Paquette, Grand Street Trust, Heartland Control Trust, Future Control Trust, and Cohen:

10. For a judicial determination of the comparative fault of Rein Evans and Mercado Paquette, Grand Street Trust, Heartland Control Trust, Future Control Trust, and Cohen for the damages claimed by the Receiver, if any are found to exist; and

11. For a declaration of the amount that Mercado Paquette, Grand Street Trust, Heartland Control Trust, Future Control Trust, and Cohen are obligated to indemnify Rein Evans if Rein Evans is compelled to pay any sum as the result of any damages, judgment, or other awards recovered by the Receiver against Rein Evans.

On the **SIXTH CROSS-CLAIM** as against Mercado Paquette, Grand Street Trust, Heartland Control Trust, Future Control Trust, and Melrose Escrow:

12. For a total contribution in the amount of \$700,000 to be divided equally among Mercado Paquette, Grand Street Trust, Heartland Control Trust, Future Control Trust, and Melrose Escrow.

On the **SEVENTH CROSS-CLAIM** as against Mercado Paquette, Grand Street Trust, Heartland Control Trust, Future Control Trust, and Cohen:

13. For a total contribution in the amount of \$225,000 to be divided equally among Mercado Paquette, Grand Street Trust, Heartland Control Trust, Future Control Trust, and Cohen.

On all **CLAIMS FOR RELIEF**:

14. For cost of suit;
15. For a jury trial on all issues so triable; and
16. For such other and further relief as the Court deems just and proper.

This the 22nd day of September, 2005.

RAYBURN COOPER & DURHAM, P.A.

By: s/David S. Melin

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Sestanovich LLP*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **ANSWER, COUNTERCLAIMS, AND CROSS-CLAIMS OF REIN EVANS & SESTANOVICH LLP** was served on this date upon the parties who have appeared in this action, postage prepaid, as follows:

Michael J. Quilling, Esq.
Quilling Selander Cumiskey Lownds
Bryan Tower
2001 Bryan Street, Suite 1800
Dallas, TX 75201

Marie Margarite Gueco Mercado Paquette
Grand Street Trust, Heartland Control Trust
and Future Control Trust
2701 Cartier Street
Calgary, Alberta, Canada T2T 3J5

This the 22nd day of September, 2005.

S/ David S. Melin
David S. Melin

WELLS FARGO

WEBS - OUTGOING WIRE TRANSFER REQUEST

YOUR TRANSFER FROM ACCOUNT WILL BE CHARGED A FEE FOR PROCESSING THIS WIRE.

or Bank Use Only:

TRANSFER FEE AMOUNT: \$ 30 (U.S. Dollars)

TRANSFER FROM ACCOUNT NUMBER:

0488 - 478215

Must be a Wells Fargo Bank checking, savings, market rate or wholesale checking account

U.S. DOLLAR AMOUNT:

100,000.00

COMPLETE IF TRANSACTION DATE OTHER THAN TODAY:

SEND DATE: 10 22 98
MONTH DAY YEAR

Branch must hold until send date indicated if date other than today.

For Bank Use Only:

Wires in Process Account Funded by:

- A Customer paid with cash
- B Customer paid with check
- C Customer paid through account other than checking, savings, MRA or WDDA.

Other Account:
(i.e. CD or loan account)

Non-Customer (Call Branch Connection if \$3,000.00 or more).

Method of payment

TRANSFER FROM ACCOUNT:

Name: DRESSLER, REIN, EVANS
 Address: 1800 CENTURA PARK EAST #1050
 City/State/Zip: LOS ANGELES, CA. 90067

IF WIRING FOREIGN CURRENCY COMPLETE FIELDS BELOW:

FOREIGN CURRENCY NAME:
 FOREIGN CURRENCY AMOUNT:
 U.S. DOLLAR EQUIVALENT:
 For Bank Use Only:
 RATE:
 REQUIRED IF OVER \$15,000.00 U.S. DOLLAR EQUIVALENT:
 CONTRACT NUMBER: FX TRADER CONTACT:

BENEFICIARY INFORMATION:

Beneficiary Name: HELROSE ESCROW INC.
 Beneficiary Account Number: 00500-13203

BENEFICIARY BANK INFORMATION:

Beneficiary Bank ABA or Bank Identifier Code: 121000358 International Sort Code (If Applicable):
 Beneficiary Bank Name: BANK OF AMERICA
 City: SAN DIEGO State: CA Country: USA

ADDITIONAL OPTIONAL INFORMATION:

Special Information for Beneficiary:
 Special Information for Beneficiary Bank: 10/22/98 12:05

ENTERED BY: [Signature] 1ST APPROVAL: [Signature] 2ND APPROVAL: _____

My signature here indicates agreement to all the information on this Outgoing Wire Transfer Request and to the terms and conditions of the Wire Transfer Agreement For One Funds Transfer on the reverse of this Request. Wells Fargo Bank is authorized to rely on the information on this Request in making the requested funds transfer.

Customer's Signature: [Signature] Customer ID: 44563 Date: 10-22-98

CALL BACK CONFIRMATION

Time: _____ Date: _____ Phone: _____ Brand ID: _____

Wells Fargo Bank
 10/22/98 11:53 AM

WELLS FARGO

WEBS - OUTGOING WIRE TRANSFER REQUEST

YOUR TRANSFER FROM ACCOUNT WILL BE CHARGED A FEE FOR PROCESSING THIS WIRE.

For Bank Use Only:

TRANSFER FEE AMOUNT: \$ 30 (U.S. Dollars)

TRANSFER FROM ACCOUNT NUMBER:

0488 - 478215

Must be a Wells Fargo Bank checking, savings, market rate or wholesale checking account

U.S. DOLLAR AMOUNT:

100,000.00

COMPLETE IF TRANSACTION DATE OTHER THAN TODAY:

SEND DATE: 10/21/99

Branch must hold until send date indicated if date other than today.

For Bank Use Only:

Wires in Process Account Funded by:

- A Customer paid with cash
B Customer paid with check
C Customer paid through account other than checking, savings, MRA or WDDA.

Non-Customer (Call Branch Connection if \$3,000.00 or more)

Method of payment

TRANSFER FROM ACCOUNT:

Name: DRESSLER, REIN, EVANS, ET AL
Address: 1800 CONZUEVA PARK EAST #1050
City/State/Zip: LOS ANGELES CA. 90057.

IF WIRING FOREIGN CURRENCY COMPLETE FIELDS BELOW:

FOREIGN CURRENCY NAME:
FOREIGN CURRENCY AMOUNT:
U.S. DOLLAR EQUIVALENT:
For Bank Use Only:
RATE:
REQUIRED IF OVER \$15,000.00 U.S. DOLLAR EQUIVALENT:
CONTRACT NUMBER:
FX TRADER CONTACT:

BENEFICIARY INFORMATION:

Beneficiary Name: HEROSE ESCROW INC.
Beneficiary Account Number: 00500-13203

BENEFICIARY BANK INFORMATION:

Beneficiary Bank ABA or Bank Identifier Code: 121000358
Beneficiary Bank Name: BANK OF AMERICA
City: SAN DIEGO
State: CA
Country: USA

ADDITIONAL OPTIONAL INFORMATION:

Special Information for Beneficiary:
Special Information for Beneficiary Bank:

ENTERED BY: [Signature] 1ST APPROVAL: [Signature] 2ND APPROVAL:

My signature here indicates agreement to all the information on this Outgoing Wire Transfer Request and to the terms and conditions of the Wire Transfer Agreement For One Funds Transfer on the reverse of this Request.

Customer's Signature: [Signature] Customer ID: 8-4-99 Date: 10-21-99

CALL BACK CONFIRMATION
Time: Date: Phone: Brand ID:

Vertical Signature
WELLS FARGO BANK
DATE: 10/21/99

YOUR TRANSFER FROM ACCOUNT WILL BE CHARGED A FEE FOR PROCESSING THIS

TRANSFER FROM ACCOUNT

For Bank Use Only
TRANSFER FEE AMOUNT: \$ (U.S. Dollars)

Name: DESSLEGA, KEIN, EVANS ET AL
Address: 1800 CENTURY PARK EAST F1050
City/State/Zip: LOS ANGELES, CA 90067

TRANSFER FROM ACCOUNT NUMBER:
0488 - 478215

Must be a Wells Fargo Bank checking, savings, market rate or wholesale checking account

U.S. DOLLAR AMOUNT:
500,000.00

COMPLETE IF TRANSACTION DATE OTHER THAN TODAY:

SEND DATE: 11 / 05 / 98
MONTH DAY YEAR
Branch must hold until send date indicated if date other than today

For Bank Use Only
Wires are Processed Account funded by:
A Customer paid with cash
B Customer paid with check
C Customer paid through account (other than checking/savings MFA or WDDA)
Other account: _____
(MFA or WDDA or loan account)
D Non-Customer (Call Branch Connection \$3,000.00 or more)
Method of payment

IF WIRING FOREIGN CURRENCY COMPLETE FIELDS BELOW:
FOREIGN CURRENCY NAME:
FOREIGN CURRENCY AMOUNT:
U.S. DOLLAR EQUIVALENT:
For Bank Use Only
RATE:
REQUIRED IF OVER \$15,000.00 U.S. DOLLAR EQUIVALENT
CONTRACT NUMBER: FX TRADER CONTACT:

BENEFICIARY INFORMATION:
Beneficiary Name: HEIPAGE ESCROW INC
Beneficiary Account Number: 00500-13203

BENEFICIARY BANK INFORMATION:
Beneficiary Bank ABA or Bank Identifier Code: 121000358
International Sort Code (if Applicable):
Beneficiary Bank Name: BANK OF AMERICA
City: SAN DIEGO State: CA Country: USA

ADDITIONAL OPTIONAL INFORMATION:
Special Information for Beneficiary:
Special Information for Beneficiary Bank:

ENTERED BY: [Signature] 1ST APPROVAL: _____ 2ND APPROVAL: _____
My signature here indicates agreement to all the information on this Outgoing Wire Transfer Request and to the terms and conditions of the Wire Transfer Agreement For One Funds Transfer on the reverse of this Request.
Wells Fargo Bank is authorized to rely on the information on this Request in making the requested funds transfer.
Customer's Signature: [Signature] Customer ID: 441568398499 Date: 11-05-98

CALL BACK CONFIRMATION
Time: _____ Date: _____ Phone: _____ Brand ID: _____

WELLS FARGO

310-511-3100

WEBS - OUTGOING WIRE TRANSFER REQUEST

YOUR TRANSFER FROM ACCOUNT WILL BE CHARGED A FEE FOR PROCESSING THIS WIRE.

For Bank Use Only:

TRANSFER FEE AMOUNT: \$ 30 (U.S. Dollars)

TRANSFER FROM ACCOUNT NUMBER:

0488 - 478215

Must be a Wells Fargo Bank checking, savings, market rate or wholesale checking account

U.S. DOLLAR AMOUNT:

225,000.00

COMPLETE IF TRANSACTION DATE OTHER THAN TODAY:

SEND DATE: 10 20 98 Branch must hold until send date indicated if date other than today.

For Bank Use Only:

Wires in Process Account Funded by:

- A Customer paid with cash
B Customer paid with check
C Customer paid through account other than checking, savings, MRA or WDDA.

Other Account:

(i.e. CD or loan account)

on-Customer (Call Branch Connection if \$3,000.00 or more)

Method of payment

TRANSFER FROM ACCOUNT:

Name: DRESSLER, REIN, EVANS, ETAL
Address: 1800 CENTURY PARK EAST #1000
City/State/Zip: LOS ANGELES, CA. 90067

IF WIRING FOREIGN CURRENCY COMPLETE FIELDS BELOW:

FOREIGN CURRENCY NAME:
FOREIGN CURRENCY AMOUNT:
U.S. DOLLAR EQUIVALENT:
For Bank Use Only:
RATE:
REQUIRED IF OVER \$15,000.00 U.S. DOLLAR EQUIVALENT:
CONTRACT NUMBER:
FX TRADER CONTACT:

BENEFICIARY INFORMATION:

Beneficiary Name: PAUL COHEN CHANT'S TRUST ACCT.
Beneficiary Account Number: 601054448

BENEFICIARY BANK INFORMATION:

Beneficiary Bank ABA or Bank Identifier Code: 322271734
Beneficiary Bank Name: CITIBANK
City: NORTH HOLLYWOOD
State: CA.
Country: U.S.A.

ADDITIONAL OPTIONAL INFORMATION:

Special Information for Beneficiary:
Special Information for Beneficiary Bank:

ENTERED BY:

1ST APPROVAL:

2ND APPROVAL:

My signature here indicates agreement to all the information on this Outgoing Wire Transfer Request and to the terms and conditions of the Wire Transfer Agreement For One Funds Transfer on the reverse of this Request.

Customer's

Signature: [Handwritten Signature]

Customer ID:

CD 4456835 8-4-99

Date:

CALL BACK CONFIRMATION

Time: Date: Phone:

Phone:

verified signature w/ Jim Hodges at branch
Brand ID: [Handwritten]