



COPY

State of California - Department of Corporations

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Los Angeles Superior Court

JUL 29 2005

John A. Clarke, Executive Officer/Clerk

By S. Gabb Deputy

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Acting California Corporations Commissioner
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Acting Deputy Commissioner
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9 Attorneys for Plaintiff

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF LOS ANGELES

14 THE PEOPLE OF THE STATE OF
15 CALIFORNIA, by and through the
16 California Corporations Commissioner,
17 Plaintiff,
18 v.
19 FIRST CALIFORNIA DIVERSIFIED FUND,
20 LLC, a California Limited Liability Company;
21 TOM KELLY and DOES 1 through 200,
inclusive,
22 Defendants.

) CASE NO. BC337379
) COMPLAINT FOR PRELIMINARY
) INJUNCTION; CIVIL PENALTIES AND
) ANCILLARY RELIEF
) VIOLATIONS OF CAL. CORP. CODE § 25110
) (QUALIFICATION PROVISION)
) VIOLATIONS OF CAL. CORP. CODE § 25401
) (ANTI-FRAUD PROVISION)

1 THE PEOPLE OF THE STATE OF CALIFORNIA, by and through WAYNE
2 STRUMPFER, Acting California Corporations Commissioner ("COMMISSIONER"), allege as
3 follows on information and belief:

4 **JURISDICTION AND VENUE**

5 1. The COMMISSIONER brings this action to enjoin the Defendants from violating the
6 provisions of the California Corporate Securities Law of 1968 ("CSL")(California Corporations
7 Code §25000 et seq.) and to request necessary equitable and ancillary relief. The COMMISSIONER
8 is authorized to administer and enforce the provisions of the CSL and the regulations thereunder at
9 Title 10, California Code of Regulations. ("CCR").

10 2. The COMMISSIONER brings this action pursuant to California Corporations Code
11 section 25530 and California Government Code section 11180 et seq. in his capacity as head of the
12 California Department of Corporations.

13 3. Defendants, and each of them, have transacted and continue to transact business within
14 Los Angeles County and other counties in California. The violations of law herein have occurred
15 and will continue to occur, unless enjoined, within Los Angeles County and elsewhere within the
16 State of California.

17 **DEFENDANTS**

18 4. Defendant FIRST CALIFORNIA DIVERSIFIED FUND, LLC ("FCDF") is or has been
19 a California limited liability company. with its principal place of business at 12304 Santa Monica
20 Blvd., Suite 300, Los Angeles, California 90025.

21 5. Defendant TOM KELLY ("KELLY") is an individual and a resident of Los Angeles
22 County. At various times relevant to this complaint, KELLY is or was the Managing Director and
23 Managing Member of FCDF. In view of his position, KELLY was at all times relevant hereto, a
24 "control" person of FCDF, as that term is defined in California Corporations Code section 160
25 subdivision (a). Pursuant to section 160 subdivision (a), "control" means the possession, direct or
26 indirect, of the power to direct or cause the direction of the management and policies of the
27 corporation.

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1 6. Defendants DOES 1 through 200 are persons, corporations, partnerships, or other
2 entities who have done or will do acts otherwise alleged in this Complaint. Plaintiff is informed and
3 believes, and on such information and belief alleges, that Defendants DOES 1 through 200 inclusive,
4 at all times mentioned herein, have acted and are continuing to act in concert with the Defendants
5 named herein, and that each of them has participated in the acts and transactions which are the
6 subjects of this Complaint. The true names and capacities of DOES 1 through 200, whether
7 individual, corporate, or otherwise, are unknown to Plaintiff, who therefore sues such Defendants
8 under such fictitious names, pursuant to the provisions of California Civil Procedure Code section
9 474. Plaintiff asks leave of the court to amend the Complaint to allege the true names and capacities
10 of such Defendants at such time as the same have been ascertained.

11 7. Plaintiff is informed and believes and on such information and belief alleges that, at all
12 relevant times, the Defendants named as officers, directors, agents or employees, acted in such
13 capacities in connection with the acts, practices and schemes of business set forth below.

14 8. Whenever any allegation is made in this Complaint to "Defendants" doing any act, the
15 allegation shall mean the act of each individual Defendant acting individually, jointly and severally
16 and the conspiring of these Defendants to so act. Each Defendant alleged to have committed any act
17 did so pursuant to and in furtherance of a common plan, scheme and conspiracy and as the agent for
18 each and every co-Defendant. Each Defendant acted in conspiracy to violate the provisions of the
19 CSL.

20 9. Whenever any allegation is made in this Complaint to any business entity doing any
21 act, the allegation shall mean acts done or authorized by the officers, managers, directors, agents,
22 and employees of the Defendant while actively engaged in the management, direction, or control of
23 the affairs of the Defendant, and while acting within the course and scope of their employment.

24 STATEMENT OF FACTS

25 10. Since at least March 2004 and continuing thereafter, the Defendants, their agents,
26 representatives and affiliates have engaged in and continue to engage in business in the State of
27 California in violation of the CSL. These violations consist of offering and selling unqualified, non-
28 exempt securities by means of fraud to members of the public.

1 11. Beginning on or about March 2004, Defendants sold securities to investors totaling
2 up to \$1.5 million to at least 25 known investors. The securities were in the form of limited liability
3 company interests ("units" or "shares") issued by FCDF. Funds raised were purportedly to be used
4 to assist certain Indian Tribes needing support to develop gambling resort facilities on reservation
5 property or to acquire a better located property, closer to urban areas, as an extension of their
6 reservations.

7 12. In order to sell these securities, Defendants solicited investors by means of cold calls.
8 Defendants mailed prospectuses and offering circulars to prospective investors subsequent to the
9 calls. The mailed documents included letters from the Fort Independence Paiute Indian Tribe, the
10 Shasta Nation Indian Tribe and the San Fernando Band of Mission Indians ("the Tribes"). The
11 Indian tribe representatives had initially sent these letters to KELLY in response to discussions
12 between the Tribes and KELLY. The letters describe the use of FCDF services to fund tribal
13 property acquisition programs and other economic developments, including that of a gaming facility,
14 under the auspices of the Tribes, if and when an agreement was reached upon tribal vote. FCDF
15 never had authority from the Tribes to forward the letter to potential investors or anyone.

16 13. The letters that FCDF sent with their offering circular did not have a date. The dates
17 on the original letters sent by the Tribes to FCDF had been removed. The letters included phone
18 numbers unrelated to the Tribes. When called by some of the investors, the phone number only rang
19 to First California Diversified Fund offices. The altered letters interfered with the public's ability to
20 directly contact the Tribes. Because the offering materials included letters from the Tribes, investors
21 were led to believe that the Tribes and Defendants had an agreement with regards to the gaming
22 casino investment opportunity to be located in the North Los Angeles county area of Six Flags
23 Magic Mountain.

24 14. According to the FCDF bank account records, none of the funds received from the
25 investors were used to pay for the development and operation expenses that FCDF would have
26 incurred to develop a gaming casino with the Tribes.

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1 15. The units issued by the FCDF guaranteed a fixed rate of yearly return on investment
2 per \$25,000 unit, ranging from 145% to 434% on a yearly basis between Year 1 and Year 7, through
3 2011.

4 16. On March 24, 2005, the COMMISSIONER issued a Desist and Refrain Order
5 pursuant to California Corporations Code section 25532 against KELLY, and FCDF, for the offer
6 and sale of unqualified, non-exempt securities by means of fraud in the state of California in
7 violation of Corporations Code sections 25110 and 25401.

8 **FIRST CAUSE OF ACTION**

9 **OFFER AND SALE OF UNQUALIFIED, NON-EXEMPT SECURITIES**
10 **IN VIOLATION OF CALIFORNIA CORPORATIONS CODE SECTION 25110**

11 **(Alleged Against All Defendants)**

12 17. Plaintiff incorporates by reference paragraphs 1 through 16 of this complaint as
13 though fully set forth herein.

14 18. California Corporations Code section 25110 provides, in pertinent part, that:
15 It is unlawful for any person to offer or sell in this state any security in an issuer
16 transaction . . . unless such sale has been qualified under sections 25111, 25112, or
17 25113 . . . or unless such security is exempted or not subject to qualification under
Chapter 1 (commencing with section 25100) of this part.

18 19. Commencing at least as early as March 2004, the Defendants, and each of them,
19 offered and sold, securities in issuer transactions in the state of California.

20 20. The investments offered and sold by Defendants, and each of them, are "securities"
21 within the meaning of California Corporations Code section 25019. The securities included, but are
22 not limited to, limited liability company interests issued by FCDF.

23 21. The sales referred to herein, were "issuer transactions" within the meaning of sections
24 25010 and 25011 of the California Corporations Code.

25 22. The Defendants "offered and sold" the securities referred to herein in the state of
26 California within the meaning of California Corporations Code sections 25008 and 25017.

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1 23. The commissioner has not issued a permit or other form of qualification authorizing
2 the Defendants, and each of them, to offer and sell the securities referred to herein in the state of
3 California.

4 24. The offer and sale of securities referred to herein are not exempt from the requirement
5 of qualification under California Corporations Code section 25110.

6 25. Defendants and each of them, offered or sold, unqualified, non-exempt securities in
7 violation of California Corporations Code section 25110. Unless enjoined by this Court, Defendants
8 and each of them will continue to violate California Corporations Code section 25110.

9 **SECOND CAUSE OF ACTION**

10 **MISREPRESENTATIONS OR OMISSIONS OF MATERIAL**

11 **FACTS IN VIOLATION OF CALIFORNIA CORPORATIONS CODE SECTION 25401**

12 **(Alleged Against All Defendants)**

13 26. Plaintiff realleges and incorporates by reference paragraphs 1 through 25 of this
14 Complaint as though fully set forth herein.

15 27. California Corporations Code section 25401 provides as follows:
16 It is unlawful for any person to offer or sell a security in this state or buy or offer to
17 buy a security in this state by means of any written or oral communication which
18 includes an untrue statement of a material fact or omits to state a material fact
19 necessary in order to make the statements made, in the light of the circumstances
20 under which they were made, not misleading.

21 28. In offering and selling the securities referred to herein, Defendants made, untrue
22 statements and/or misrepresentations of material facts to some or all prospective or existing
23 investors. The misrepresentations of material facts included, without necessarily being limited to,
24 the following:

- 25 a. Misrepresenting that the Tribes "are looking to acquire better located property,
26 closer to urban areas as an extension of the reservation";
- 27 b. Misrepresenting that "a Native American tribe, long indigenous to the area, has
28 agreed to participate" and that the Shasta Nation Tribe, Fort Independence
Paiute Indian Tribe and San Fernando Band of Mission Indians had an
agreement with Defendants to develop land in the Six Flags Magic Mountain
area in North Los Angeles County for a gaming casino;

- 1 c. Misrepresenting that tribes have a "state mandated, exclusive right" to develop
2 Las Vegas style gambling casino resorts in the State of California;
- 3 d. Misrepresenting expected returns on investment per \$25,000 unit purchased
4 would be 145% in year 1; 174% in year 2; 209% in year 3; 251% in year 4;
5 302% in year 5; 362% in year 6 and 434% in year 7, when in fact none of the
6 investors' monies were used for the purposes represented;
- 7 e. Misrepresenting that the Tribes had jurisdiction over the land upon which the
8 gambling activity was to be conducted; and
- 9 f. Misrepresenting the Tribes' phone numbers by altering the phone numbers on the
10 Tribes' letterhead sent with the offering circular.

11 29. In offering and selling the securities referred to herein, Defendants also omitted to state,
12 material facts to some or all of the prospective or existing investors. The omissions included,
13 without necessarily being limited to, the following:

- 14 a. Defendants failed to disclose that there are no Indian casinos or established
15 reservations in Los Angeles County, therefore none of the Tribes referred to in the
16 offering circular could have entered into an agreement with FCDF to have a
17 casino operate on the land adjacent to Six Flags Magic Mountain;
- 18 b. Pursuant to federal law, any Indian tribe having jurisdiction over the Indian lands
19 upon which gambling activity is being conducted, or is to be conducted, shall
20 request the State in which such lands are located to enter into negotiations for the
21 purpose of entering into a Tribal-State compact governing the conduct of gaming
22 activities and that such negotiations never took place for a casino to be built and
23 operated on the land adjacent to Six Flags Magic Mountain;
- 24 c. That according to the National Indian Gaming Commission, Shasta Nation Tribe,
25 Fort Independence Paiute Indian Tribe and the San Fernando Band of Mission
26 Indian Tribe are not federally recognized and therefore they could not build a
27 casino to be operated by them with FCDF;
- 28 d. Gaming activities shall be lawful on Indian lands only if such activities are
authorized by an ordinance or resolution that is adopted by the governing body of
the Indian tribe having jurisdiction over such lands; and
- e. Failing to disclose that the investors' monies were being used for the personal
benefit of KELLY and not used for the purposes represented in the offering
circular.

1 The misstatements and omissions referred to herein were of "material facts" within the meaning of
2 California Corporations Code section 25401.

3 30. Defendants made untrue statements and/or omitted to disclose statements of material
4 facts in connection with the offer and sale of securities in violation of California Corporations Code
5 section 25401.

6 31. Unless enjoined by this Court, defendants and each of them, will continue to violate
7 California Corporations Code section 25401.

8 **PRAYER**

9 WHEREFORE, plaintiff prays for judgment as follows:

10 **AGAINST ALL DEFENDANTS:**

11 1. For Orders of Preliminary and Permanent Injunctions enjoining all Defendants and each of
12 them, and their officers, directors, successors in interest, agents, employees, attorneys in fact, and all
13 persons acting in concert or participating with them, from directly or indirectly violating:

14 a. California Corporations Code section 25110 by offering to sell, selling, arranging for the
15 sale, issuing, engaging in the business of selling, negotiating for the sale of, or otherwise in any way
16 dealing or participating, with respect to the public or to other persons, any securities, including but
17 not limited to, limited liability company interests ("units" or "shares") issued by FIRST
18 CALIFORNIA DIVERSIFIED FUND, LLC, unless and until Defendants shall have first applied for,
19 and secured from the Commissioner, a qualification pursuant to California Corporations Code
20 sections 25111, 25112, or 25113 authorizing the offer and sale of such securities, and

21 b. California Corporations Code section 25401 by offering to sell or selling any securities,
22 including but not limited to, limited liability interests ("units" or "shares") issued by FIRST
23 CALIFORNIA DIVERSIFIED COMPANY, LLC, by means of any written or oral communication
24 which includes any untrue statement of material fact or omits or fails to state any material fact
25 necessary in order to make the statements made, in the light of the circumstances under which they
26 are made, not misleading, including but not limited to the misrepresentations and omissions alleged
27 in the Complaint;

1 c. Removing, destroying, mutilating, concealing, altering, transferring, or otherwise
2 disposing of, in any manner, any books, records, computer programs, computer files, computer print-
3 outs, correspondence, brochures, manuals, or any other writings or documents of any kind as defined
4 under California Evidence Code section 250 relating to the transactions and course of conduct as
5 alleged in the complaint in this action;

6 d. Transferring, changing, disbursing, selling, dissipating, converting, conveying, pledging,
7 assigning, encumbering, or foreclosing or otherwise disposing of any real or personal property or
8 other assets in their possession or under their control, or in the possession of, or under the control of,
9 any of them, for the benefit of Defendants' investors and/or creditors, without leave of the Court; and

10 e. Withdrawing from any bank account, transferring, changing, disbursing, selling,
11 dissipating, converting, pledging, assigning, foreclosing, or otherwise disposing of any real property
12 or personal property in their possession or under their control, or in the possession of, or under the
13 control of, any of the Defendants, which property or other assets were derived or emanated from
14 directly, or indirectly, the sale and issuance of securities as alleged in the complaint in this action,
15 without leave of the Court.

16 **AGAINST ALL DEFENDANTS**

17 2. For an Order of Final Judgment granting a permanent injunction to include provisions similar
18 to those in the prayer for preliminary injunction, and additionally to include provisions requiring
19 Defendants, and each of them, jointly and severally, to rescind each and all of the unlawful
20 transactions alleged in the complaint, as shall be determined by this Court to have occurred, and
21 further requiring Defendants, and each of them, individually, jointly and severally, to make full
22 restitution to each person determined to have been subjected to Defendants' unlawful sales of
23 securities or other unlawful transactions or schemes, all in the amounts and manner provided for in
24 law and equity.

25 3. For an Order of Final Judgment requiring Defendants, and each of them, individually, jointly
26 and severally, to pay full restitution to all known investors of funds invested in the amount of up to
27 \$1.5 million or any other amount according to proof.
28

1 4. For an Order of Final Judgment requiring Defendants, and each of them, individually, jointly
2 and severally, to pay \$25,000 to the Department of Corporations as a civil penalty for each act in
3 violation of the Corporate Securities Law, as authorized by Corporations Code section 25535:

4 a. As to the First Cause of Action, against Defendants FIRST CALIFORNIA DIVERSIFIED
5 FUND, LLC and KELLY to be jointly and severally liable for at least \$775,000, for at least 31
6 (thirty-one) violations of California Corporations Code section 25110, or any other amount
7 according to proof; and

8 b. As to the Second Cause of Action, against Defendants FIRST CALIFORNIA
9 DIVERSIFIED FUND, LLC and KELLY to be jointly and severally liable for at least \$775,000, for
10 at least 31 (thirty-one) violations of California Corporations Code section 25401, or any other
11 amount according to proof.

12 5. For an Order of Final judgment that Plaintiff recovers its costs and reasonable attorneys' fees
13 from Defendants, and each of them, individually, jointly and severally.

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

17 **AGAINST ALL DEFENDANTS:**

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

19 Dated: July 29, 2005
20 Los Angeles, California

21 Respectfully submitted,
22 WAYNE STRUMPFER
23 Acting California Corporations Commissioner
24 ALAN S. WEINGER
25 Acting Deputy Commissioner

26 By: _____
27 URSULA L. CLEMONS
28 Corporations Counsel
Attorney for Plaintiff

COPY

SUMMONS (CITACION JUDICIAL)

SUM-100

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT:

(AVISO AL DEMANDADO):

FIRST CALIFORNIA DIVERSIFIED FUND, LLC, a California limited liability company; TOM KELLY, an individual; and DOES 1 through 200, inclusive

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

THE PEOPLE OF THE STATE OF CALIFORNIA, by and through the California Corporations Commissioner

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

Superior Court of the State of California
County of Los Angeles, Central District
111 North Hill Street
Los Angeles, CA 90012

CASE NUMBER:
(Número del Caso):

BC337379

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Ursula L. Clemons, Corporations Counsel, CA St. Bar No. 162302 (213) 576-7586
Marlou de Luna, Sr. Corporations Counsel, CA St. Bar No. 162259

Department of Corporations
320 W. 4th Street, Ste. 750, Los Angeles, CA 90013-2344

DATE:

(Fecha) JUL 29 2005

John A. Clarke

Clerk, by

S. Gabb

Deputy

(Secretario)

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
3. on behalf of (specify):

- under:
- | | |
|--|---|
| <input type="checkbox"/> CCP 416.10 (corporation) | <input type="checkbox"/> CCP 416.60 (minor) |
| <input type="checkbox"/> CCP 416.20 (defunct corporation) | <input type="checkbox"/> CCP 416.70 (conservatee) |
| <input type="checkbox"/> CCP 416.40 (association or partnership) | <input type="checkbox"/> CCP 416.90 (authorized person) |
| <input type="checkbox"/> other (specify): | |

4. by personal delivery on (date):

Page 1 of 1