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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10

11 DAVID ANDERSON, LT. COL.;
12 NELSON L. REYNOLDS, LT. COL.;
13 SHEILA MORRIS; PATRICK
14 CLUNEY; ROBERT HOLLENEGG;
ALLAN TREFFREY; and REECE
15 HAMILTON, individually and on
behalf of all similarly situated,

16
17 Plaintiffs,

18 vs.

19 CHRISTOPHER COX, an individual;
20 MARY L. SCHAPIRO, an individual;
21 CYNTHIA A. GLASSMAN, an
individual; PAUL S. ATKINS, an
22 individual; ROEL C. CAMPOS, an
individual; ANNETTE L. NAZARETH,
23 an individual; LUIS A. AGUILAR, an
24 individual; ELISSE B. WALTER, an
25 individual; KATHLEEN L. CASEY, an
26 individual; and DOES 1 through 10,
inclusive,

27
28 Defendants.

Case No.: CV-01-03894-RSWL
(SHx)

Honorable James V. Selna

**FIRST AMENDED
COMPLAINT FOR
DECLARATORY JUDGMENT
AND FOR DAMAGES FOR
VIOLATION OF CIVIL
RIGHTS**

(JURY TRIAL DEMANDED)

1 **COME NOW** Plaintiffs DAVID ANDERSON, LT. COL.; NELSON
2 L. REYNOLDS, LT. COL.; SHEILA MORRIS; PATRICK CLUNEY;
3 ROBERT HOLLENEGG; ALLAN TREFFRY; and REECE HAMILTON,
4 individually and on behalf of all similarly situated, who, for causes
5 of action herein, allege:

6 **INTRODUCTION**

7 1. This action for declaratory judgment and for damages
8 for violations of the Plaintiffs' civil rights under *Bivens v. Six*
9 *Unknown Agents of the FBI*, 403 U.S. 388 (1971), against
10 Commissioners of the Securities and Exchange Commission, arises
11 out of actions and failures to act occurring over the period from
12 January 1, 2006, to date, by Defendants CHRISTOPHER COX, an
13 individual; MARY L. SCHAPIRO, an individual; CYNTHIA A.
14 GLASSMAN, an individual; PAUL S. ATKINS, an individual; ROEL C.
15 CAMPOS, an individual; ANNETTE L. NAZARETH, an individual;
16 LUIS A. AGUILAR, an individual; ELISSE B. WALTER, an individual;
17 KATHLEEN L. CASEY, an individual, and other government agents
18 whose names are not now known to the Plaintiffs.

19 2. The Defendants, acting in the course and scope of their
20 employment by the United States of America, as duly authorized
21 Commissioners of the Securities and Exchange Commission, a
22 federal agency, through their acts and omissions knowingly,
23 consciously, wrongly, without compensation and without due
24 process of law have effected a taking of property from each of the
25 named Plaintiffs and all who are similarly situated.

26 **JURISDICTION AND VENUE**

27 3. This action for declaratory judgment and damages is
28 predicated on the provisions of the Constitution and Statutes of

1 the United States, the legal and equitable jurisdiction of this Court,
2 the principles of common law, and this Court's concurrent and
3 pendent jurisdiction.

4 4. This Court has jurisdiction over the Plaintiffs' claims
5 under Article III of the United States Constitution and the Fifth
6 Amendment thereto. This Court has jurisdiction over Plaintiffs'
7 property rights under the foregoing citations and, in addition,
8 pursuant to Title 28 U.S.C., Section 1331, and the case law
9 precedent of *Bivens v. Six Unknown Agents of the FBI*, 403 U.S.
10 388 (1971).

11 5. Venue is proper in this Court under Title 28 U.S.C.,
12 Section 1391(e)(1)/(2). Defendants are all past or current
13 Commissioners of the Securities and Exchange Commission and
14 therefore agents of the United States Government, and a
15 substantial part of the property, and the acts related to such
16 property subject to Plaintiffs' claims, occurred or was situated in
17 this Central District of California at all times.

18 **PARTIES**

19 **The Plaintiffs**

20 6. Plaintiff DAVID ANDERSON, LT. COL., U.S. Air Force
21 pilot, resides in the State of Missouri, owns more than
22 280,000,000 shares of stock in CMKM Diamonds, Inc., and at all
23 times relevant to the allegations set forth herein, was a citizen of
24 the United States.

25 7. Plaintiff NELSON L. REYNOLDS, LT. COL., U.S. Air Force
26 pilot, resides in the State of Texas, owns more than 15,000,000
27 shares of stock in CMKM Diamonds, Inc., and at all times relevant
28

1 to the allegations set forth herein, was a citizen of the United
2 States.

3 8. Plaintiff SHEILA MORRIS, a company owner/CEO,
4 resides in the State of North Carolina, owns more than
5 400,000,000 shares of stock in CMKM Diamonds, Inc., and at all
6 times relevant to the allegations set forth herein, was a citizen of
7 the United States.

8 9. Plaintiff PATRICK CLUNEY, a retired professional
9 athlete, resides in the State of Florida, owns more than
10 680,000,000 shares of stock in CMKM Diamonds, Inc., and at all
11 times relevant to the allegations set forth herein, was a citizen of
12 the United States.

13 10. Plaintiff ROBERT HOLLENEGG resides in the State of
14 North Carolina, owns more than 85,000,000 shares of stock in
15 CMKM Diamonds, Inc., and at all times relevant to the allegations
16 set forth herein, was a citizen of the United States.

17 11. Plaintiff ALLAN TREFFRY, a licensed State of California
18 Attorney, resides in the County of Los Angeles, State of California,
19 owns more than One Billion shares of stock in CMKM Diamonds,
20 Inc., and at all times relevant to the allegations set forth herein,
21 was a citizen of the United States.

22 12. Plaintiff REECE HAMILTON, a business owner/partner,
23 resides in the County of Los Angeles, State of California, owns
24 more than One Billion shares of stock in CMKM Diamonds, Inc.,
25 and at all times relevant to the allegations set forth herein, was a
26 citizen of the United States.

27 / / /

28 / / /

The Defendants

13. At all times herein mentioned, and specifically from August 3, 2005 to January 20, 2009, Defendant CHRISTOPHER COX (hereinafter "COX") acted individually and in the course and scope of his employment as the 28th Chairman of the United States Securities and Exchange Commission.

14. At all times herein mentioned, and specifically from January 22, 2009 to the present, Defendant MARY L. SCHAPIRO (hereinafter "SCHAPIRO") acted individually and in the course and scope of her employment as the 29th Chairwoman of the United States Securities and Exchange Commission.

15. At all times herein mentioned, and specifically from January 28, 2002 through July 14, 2006, Defendant CYNTHIA A. GLASSMAN (hereinafter "GLASSMAN") acted individually and in the course and scope of her employment as a Commissioner, and during the Summer of 2005, as Acting Chairwoman, of the United States Securities and Exchange Commission.

16. At all times herein mentioned, and specifically from July 9, 2002 to August, 2008, Defendant PAUL S. ATKINS (hereinafter "ATKINS") acted individually and in the course and scope of his employment as a Commissioner of the United States Securities and Exchange Commission.

17. At all times herein mentioned, and specifically from August 22, 2002 to September, 2007, Defendant ROEL C. CAMPOS (hereinafter "CAMPOS") acted individually and in the course and scope of his employment as a Commissioner of the United States Securities and Exchange Commission.

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1 18. At all times herein mentioned, and specifically from
2 August 4, 2005 to July 31, 2008, Defendant ANNETTE L.
3 NAZARETH (hereinafter "NAZARETH") acted individually and in the
4 course and scope of her employment as a Commissioner of the
5 United States Securities and Exchange Commission.

6 19. At all times herein mentioned, and specifically from
7 August 1, 2008 to the present, Defendant TROY A. PAREDES
8 (hereinafter "PAREDES") acted individually and in the course and
9 scope of his employment as a Commissioner of the United States
10 Securities and Exchange Commission.

11 20. At all times herein mentioned, and specifically from
12 June 27, 2008 to the present, Defendant LUIS A. AGUILAR
13 (hereinafter "AGUILAR") acted individually and in the course and
14 scope of his employment as a Commissioner of the United States
15 Securities and Exchange Commission.

16 21. At all times herein mentioned, and specifically from July
17 9, 2008 to the present, Defendant ELISSE B. WALTER (hereinafter
18 "WALTER") acted individually and in the course and scope of her
19 employment as a Commissioner, and during January of 2009, as
20 Acting Chairwoman, of the United States Securities and Exchange
21 Commission.

22 22. At all times herein mentioned, and specifically from July
23 17, 2006 to the present, Defendant KATHLEEN L. CASEY
24 (hereinafter "CASEY") acted individually and in the course and
25 scope of her employment as a Commissioner of the United States
26 Securities and Exchange Commission.

27 23. At all times herein mentioned, each of the named
28 Defendants were acting as individuals and as Chairpersons and/or

1 Commissioners of the Securities and Exchange Commission, an
2 agency of the UNITED STATES OF AMERICA, holding primary
3 responsibility for enforcing the federal securities laws and
4 regulating the securities industry, the nation's stock and options
5 exchanges, and other electronic securities markets in the United
6 States. These individual Defendants are the real parties in interest
7 in the claims set forth herein.

8 24. Other employees and servants of the Securities and
9 Exchange Commission are also liable for damages under the
10 causes of action set out in this Complaint. However, the names of
11 these employees and servants are not now known to Plaintiffs,
12 who thereby name them herein as DOES 1 through 10. When the
13 names of these employees and servants become known, Plaintiffs
14 reserve the right to amend this Complaint to add the names of
15 these DOE Defendants.

16 **FACTUAL CONTENTIONS APPLICABLE TO ALL CAUSES OF**
17 **ACTION**

18 25. In November and December, 2002, CYBER MARK
19 INTERNATIONAL INC., a public company domiciled in Nevada,
20 reverse-merged with Casavant Mineral Claims, which then held
21 mineral claims to more than 600,000 acres within Saskatchewan,
22 Canada, increased authorized capital from 500,000,000 to
23 10,000,000,000 common shares, cancelled all preferred shares,
24 and changed its name to CASAVANT MINING KIMBERLITE
25 INTERNATIONAL, INC. (CMKI); as of February 3, 2003,
26 7,241,653,404 shares were issued and outstanding.

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1 26. During the succeeding months CMKI declared a 2 for 1
2 stock split and filed with the Securities and Exchange Commission:
3 Form 15 exemption claim, July, 2003; Certificate of Amendment to
4 Articles of Incorporation changing its name to CMKM DIAMONDS,
5 INC. (CMKM), February 5, 2004; Certificate of Amendment to
6 Articles of Incorporation raising its authorized capital to
7 500,000,000,000 common shares @ \$0.001 par value, March 1,
8 2004; Certificate of Amendment to Articles of Incorporation
9 correcting the par value of common shares as of December 26,
10 2002 to \$0.0001 par value, July 13, 2004; Certificate of
11 Amendment to Articles of Incorporation raising its authorized
12 capital to 800,000,000,000 common shares @ \$0.0001 par value,
13 July 13, 2004.

14 27. During the summer and fall of 2004: New York Attorney
15 Roger Glenn was retained by the company; the number of acres
16 upon which CMKM held claims increased to over 1.2 Million acres;
17 claims development activity was pursued by the company; and a
18 shareholders appreciation party was planned to be celebrated in
19 Las Vegas, Nevada to thank the shareholders, to give them an
20 opportunity to meet company personnel, and to announce an
21 agreed upon merger with another public company, U.S. CANADIAN
22 MINERALS INC. On the eve of the party celebration, Defendants
23 GLASSMAN, ATKINS, and CAMPOS, *inter alia*, had an order placed
24 on CMKM preventing any public disclosure of anticipated mergers
25 or other development information.

26 28. In early 2005, CMKM announced the addition of Robert
27 A. Maheu to the Board of Directors who shortly thereafter became
28 the co-chairman of the Board; CMKM announced a new "corporate

1 strategy plan to dramatically and comprehensively transform" the
2 company for generation of consistent, long-term growth and
3 profitability for the shareholders; CMKM filed an amended Form 15
4 on February 17, 2005 reinstating the company to a public
5 reporting status; and on March 3, 2005 was notified by the
6 Securities and Exchange Commission of a temporary suspension of
7 trading of the company's stock (Pink Sheets-CMKX) based upon,
8 *inter alia*, concerns over the "adequacy" of publicly available
9 information.

10 29. On March 16, 2005, Defendants GLASSMAN, ATKINS,
11 and CAMPOS, *inter alia*, had a public administrative proceeding
12 pursuant to Section 12(j) of the Securities Exchange Act of 1934
13 instituted against CMKM to determine whether the company was
14 required to file periodic reports under Section 12(g), and whether
15 CMKM failed to comply with Section 13(a), and rules there-under,
16 by failing to so file. CMKM responded on April 11, 2005 admitting
17 that CMKM had a duty to file public reports and alleging various
18 grounds of mistake, malpractice and other affirmative defenses to
19 the factual allegations.

20 30. From March 17, 2005 through April 29, 2005 CMKM
21 traded publicly in the US under the trading symbol "CMKX," a total
22 of 551,756,751,833 shares, an average share volume of more
23 than 17 billion shares per day, reaching a maximum on April 21,
24 2005 of 94,654,588,201 shares. These figures do not include
25 foreign trades, nor trades made on an ex-clearing basis such as
26 those disclosed by Jefferies & Company, Inc. on May 6, 2005:
27 between March 25, 2004 and September 21, 2004 Jefferies traded
28 111,780,681,204 shares of CMKX stock on an ex-clearing basis.

1 31. More than 90 billion shares of this company were
2 traded in one day in April, 2005. Defendant COX has since been
3 quoted as saying this was the most heavily naked shorted
4 company in the history of the world.

5 32. NASD companies in business during that period of time
6 were reportedly told: "It's free money; you can sell as many
7 shares as you can find buyers for and put all of the money in your
8 pocket. You don't ever have to buy the shares." Many of those
9 companies were on a no-borrow list at that time, and to borrow
10 shares, as a legitimate broker in 2005, required \$2.50/share for
11 borrowing. Nonetheless, some companies sold an average of 17
12 billion shares a day into the market, with the money accumulated
13 subsequently transferred to offshore hedge funds, Hezbollah, and
14 various groups in Iraq, Iran and Afghanistan.

15 33. On May 10, 2005 the Section 12(j) administrative
16 proceeding was conducted in a United States Central District of
17 California courtroom; the Administrative Law Judge, Honorable
18 Brenda P. Murray entered her decision on July 12, 2005, finding
19 the facts to be as alleged by the Securities and Exchange
20 Commission and Defendants GLASSMAN and ATKINS. CMKM then
21 filed a Petition for Review, which was granted, and a briefing
22 schedule set.

23 34. On October 20, 2005: Robert A. Maheu resigned as a
24 member and co-chairman of the CMKM Board of Directors; Urban
25 Casavant agreed to remain as the sole officer and Director of
26 CMKM until the affairs of CMKM were wound up to ensure all
27 shares and other assets of CMKM were properly distributed to its
28 stockholders; CMKM entered into an agreement with Entourage

1 Mining Ltd. pursuant to which CMKM assigned its 50% interest in
2 United Carina Resources Corp. to Entourage for 15,000,000 shares
3 of stock, sold its 36% interest in Nevada Minerals, Inc. claims to
4 Entourage for 5,000,000 shares of stock, and made a joint
5 agreement with 101047025 Saskatchewan Inc. and Entourage
6 whereby certain claims were transferred and CMKM became
7 entitled to receive 30,000,000 shares of Entourage stock; CMKM's
8 other agreements with United Carina Resources Corp. and Nevada
9 Minerals Inc. were terminated.

10 35. On October 21, 2005 pursuant to a corporate resolution
11 to self-liquidate, CMKM approved formation of a Task Force
12 consisting of Robert A. Maheu, Donald J. Stoecklein and Bill Frizzell
13 for the purpose of assisting CMKM and Mr. Maheu, as "designated
14 Trustee, to conduct an orderly and verifiable pro rata liquidating
15 distribution of any Entourage Mining Ltd. shares...and any other
16 available assets of CMKM;" the SEC Petition for Review was
17 withdrawn by CMKM on October 21, 2005 and a Securities and
18 Exchange Commission Order of Defendants COX, GLASSMAN,
19 ATKINS, CAMPOS, and NAZARETH, de-registering CMKM,
20 subsequently was formally entered on October 28, 2005, based on
21 the findings of Administrative Law Judge Brenda P. Murray. CMKM
22 had 703,518,875,000 shares of common stock issued and
23 outstanding on that date.

24 36. On November 4, 2005 CMKM established a web site
25 (CMKMTaskForce.com) for the purpose, *inter alia*, of advising all
26 shareholders to request physical share certificates evidencing their
27 ownership interest in CMKM as one means of establishing that they
28 were bona fide shareholders of the company. Pursuant to its

1 corporate resolution, the company intended at that time to wind
2 up its affairs and distribute the 50 million shares of Entourage
3 Mining Ltd. stock and any other assets, including previously unpaid
4 dividends, to the bona fide shareholders. The web site set forth
5 procedures to be followed and established a means of registering
6 all bona fide shareholder certificates prior to December 31, 2005;
7 certificates evidencing 43,309,298,585, shares had been
8 registered at that time.

9 37. A frequently asked question (FAQ) page was added to
10 the web site on the evening of November 4, 2005 and in response
11 to a question about the degree of naked shorting of CMKM stock,
12 the Task Force indicated that "Credible information indicates the
13 number of naked short shares is potentially as high as 2 Trillion
14 shares."

15 38. The Task Force issued a press release on January 19,
16 2006 discussing a reduction in total shares of Entourage Mining
17 Ltd. stock to be distributed to CMKM shareholders from 50 Million
18 shares to 45 Million shares as a result of a reduction in mining
19 claims involved. The Task Force also discussed issues involving
20 difficulties obtaining physical share certificates being experienced
21 by shareholders; accordingly the deadline date for registration of
22 shares was extended to March 15, 2006. The Task Force was
23 provided a new "cert list" by First Global Stock Transfer showing
24 certs issued "and active" on January 13, 2006; ADP Services also
25 provided information to the Task Force. This data reflected a
26 sample of 25,021 certificates representing 350,000,000,000 plus
27 shares of stock and a total of more than 67,000 additional
28 certificates to be counted.

1 39. The CMKM shareholders, at this time, properly believed
2 a pro-rata share of the assets that the company possessed would
3 be duly distributed. The company then owned all of the monies
4 that had been accumulated and placed into trusts. Since
5 Entourage had considerable assets and no substantial liabilities,
6 the shareholders then held a vested pro-rata property right
7 interest protected under the Constitution.

8 40. On March 16, 2006 the Task Force issued a public
9 release which stated "...we received a visit in our office [in Tyler,
10 Texas] by an E-Trade rep today. This rep personally hand
11 delivered copies of approximately 4000" CMKM stock certificates.
12 Further information regarding on-going discussions with the DTCC
13 and other brokerage houses was also provided.

14 41. The Task Force provided additional information on
15 March 20, 2006, extending the time for registration of certificates
16 to May 15, 2006, advising the shareholders that Urban Casavant
17 and his immediate family would not participate in the share
18 distribution, and advising that a printed notice to stock holders
19 would be published in at least one nationally circulated United
20 States newspaper.

21 42. On May 25, 2006 the Task Force received a second
22 batch of 1,200 share certificates from AmeriTrade, having received
23 some 1,000 share certificates a week earlier. AmeriTrade's cover
24 letter indicated that several hundred more certificates would be
25 delivered within "the next few days." The deadline for registering
26 certificates of May 15, 2006 had not been extended, although the
27 Task Force continued to advise shareholders that they should
28 obtain their certificates, and that the Task Force would honor any

1 bona fide shareholder at the time of asset distribution. By late
2 Fall, 2006, the Task Force had received and counted copies of
3 certificates from more than 39,000 shareholders, evidencing more
4 than 635 Billion shares.

5 43. Kevin West was hired pursuant to a written agreement
6 by CMKM during the summer of 2006 to assist in winding up the
7 affairs of the company and, more specifically, coordinating the
8 share certificate pull. After serving nearly a year as Interim CEO,
9 Kevin West was appointed Chairman of the Board on March 29,
10 2007 after which Urban Casavant stepped down as sole director,
11 president, secretary and treasurer of CMKM Diamonds, Inc. Mr.
12 West soon thereafter appointed Bill Frizzell as CMKM General
13 Counsel and provided instructions for the filing of a number of
14 lawsuits to attempt to recover moneys and other assets which had
15 been wrongfully taken from the company.

16 44. During the period of June 1, 2004 through October 28,
17 2005 a total of 2.25 Trillion "phantom" shares of CMKM Diamonds
18 Inc, was sold into the public market through legitimate brokers,
19 illegitimate brokers and dealers, market makers, hedge funds, ex-
20 clearing transactions and private transactions. The sales of the
21 majority of such shares were at all such times known to
22 Defendants COX, GLASSMAN, ATKINS, CAMPOS and NAZARETH.

23 45. At some date prior to June 1, 2004, Defendants
24 GLASSMAN, ATKINS, and CAMPOS, in concert with the Department
25 of Justice of the United States, together combined with Robert A.
26 Maheu and others to facilitate a "sting operation," utilizing CMKM
27 Diamonds, Inc. (without the knowledge or consent of its
28 shareholders), for the purpose of trapping a number of widely

1 disbursed entities and persons who were believed to be engaged in
2 naked short selling of CMKM Diamonds Inc. stock, and in cellar
3 boxing the company. Defendants GLASSMAN, ATKINS and
4 CAMPOS, in conjunction with the Department of Justice, and with
5 the assistance of the Department of Homeland Security, believed
6 and developed evidence that said short sellers were utilizing their
7 activities to illegally launder moneys, wrongfully export moneys,
8 avoid payment of taxes, and to support foreign terrorist
9 operations. To fulfill the plan to criminally trap such wrongdoers,
10 Defendants GLASSMAN, ATKINS and CAMPOS, with assistance
11 from the Departments of Justice and Homeland Security:

- 12 a) Assisted in and approved the retention of Roger Glenn,
13 an ex-SEC trial attorney and drafter of Sarbanes-Oxley,
14 to join CMKM Diamonds Inc. for the purpose of
15 verifying claims value, increasing authorized shares of
16 stock to 800,000,000,000, and supervising from the
17 inside of the company;
- 18 b) Encouraged the company to "pump the stock," by
19 expanding its promotional activities, assisting in the set
20 up of the "racing activities" of the company,
21 underwriting a substantial portion of the cost of such
22 activities with the purchase of a drag racing car with
23 "CMKX" painted on the outside, photographs of which
24 were publicly bandied about the Internet, and
25 presenting the car for racing events in several
26 jurisdictions;
27

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- 1 c) Consented to, facilitated, and supported the sale of
2 certain company claims to several foreign corporations;
3 d) Consented to, facilitated, and supported the
4 conferences between Robert A. Maheu and his
5 associates on the one hand, and the wrongdoing short
6 sellers on the other, all for the purpose of settling the
7 potential liability of said wrongdoers with consent of the
8 U. S. Government and a representation of no criminal
9 prosecution for such illegal sales;
10 e) Consented to, facilitated, and supported the declaration
11 of dividends payable by the company to each common
12 shareholder of CMKM Diamonds, Inc.;
13 f) Consented to, facilitated, and supported the distribution
14 of shares of CIM, a private company owned by Urban
15 Casavant, as a stock dividend, including consent and
16 approval of distribution of said shares to holders of
17 more than 1.4 Trillion shares of CMKM Diamonds, Inc.
18 common stock; and
19 g) Consented to, facilitated, and supported numerous
20 other acts and deceptions consistent with effecting the
21 "sting operation."
22

23 46. Plaintiffs are informed and believe and thereon allege
24 that Defendants, and each of them, facilitated the above-described
25 "sting operation" without the knowledge or consent of the
26 shareholders, and entered into agreements Defendants knew would
27 damage the shareholders by driving CMKM Diamonds, Inc. out of
28 business.

1 47. During the period from November, 2004 through April,
2 2005, CMKM Diamonds, Inc. negotiated the sale of some of its
3 Saskatchewan, Canada mineral claims to three Chinese domiciled
4 corporations with the advice and consent, *inter alia*, of Defendants
5 GLASSMAN, ATKINS and CAMPOS. Proceeds from the
6 consummation of such sales were placed into a frozen trust for
7 disbursal at a later time upon self-liquidation.

8 48. During the period from March, 2004 through August,
9 2006, on behalf of CMKM Diamonds, Inc. Robert A. Maheu, with
10 assistance from others, negotiated a settlement with the
11 illegitimate brokers, dealers, market makers, hedge funds, and
12 other persons and entities that had engaged in naked short selling
13 of CMKM Diamonds Inc. stock and cellar boxing the company. In
14 exchange for a U. S. Government promise of no prosecution for
15 such sales, the wrongdoers each promised to pay negotiated
16 amounts to a frozen trust for disbursal at a later time. This
17 negotiated settlement was achieved by gathering representatives
18 of the illegitimate brokers, dealers, market makers, hedge funds
19 and other persons who had engaged in naked short selling of the
20 stock into a large venue, where they watched a video and slide
21 presentation of all of the evidence of their wrongdoing. They were
22 offered an opportunity to either pay a reasonable amount for each
23 transaction conducted illegally, or to walk out of the venue subject
24 to criminal prosecution. They were also placed on notice that the
25 U.S. Government was watching them, and warned to refrain from
26 any future illicit and illegal behavior. Each attendee paid.

27 49. Once the moneys had been collected, Defendants COX,
28 GLASSMAN, ATKINS, CAMPOS, and NAZARETH assumed

1 disbursement control of the funds, and the right to determine when
2 the release of the moneys to the shareholders would occur.
3 Because it was required to fulfill the "sting operation" goals, Robert
4 Maheu agreed that these Defendants should control the distribution
5 time for the funds after they determined the "sting operation" goals
6 had been fulfilled. Robert Maheu further agreed that no CMKM
7 liquidation assets would be distributed without consent of the
8 Defendant Commissioners.

9 50. Plaintiffs herein are informed and believe, and based
10 thereon allege, that other moneys have been collected for the
11 benefit of the shareholders of CMKM Diamonds, Inc. from the
12 Depository Trust & Clearing Corporation, from the United States
13 Government, and from the sale of additional assets including
14 consent to enter into joint venture agreements with other
15 companies holding mineral claims in Saskatchewan, Canada.

16 51. Plaintiffs herein are further informed and believe, and
17 based thereon allege, that said moneys, collected for the benefit of
18 shareholders have been placed in a trust, or are otherwise now
19 held in trust, by the Depository Trust & Clearing Corporation, a
20 privately-owned clearing house for all secured financial transactions
21 which take place in the United States, and the United States
22 Treasury, pursuant to a Trust Agreement on behalf of the
23 shareholders.

24 52. By operation of Federal Law, at all times mentioned
25 herein, the then acting Chairpersons and Commissions of the
26 Securities and Exchange Commission (the named Defendants
27 herein) held and hold the sole, final and absolute discretion to
28 determine when moneys collected pursuant to the scheme set forth

1 above would and could be released for distribution, and must do so
2 pursuant to their mandate under the law to protect the
3 shareholders.

4 53. Plaintiffs are informed and believe and thereon allege
5 that pursuant to the terms of the agreements entered into, all
6 moneys were to have been released within one year of the time the
7 company was originally de-listed, in October of 2005. It has now
8 been almost five years, and the Defendants, and each of them,
9 have failed and refuse to release these funds to the shareholders.

10 54. Demand for release of said moneys has been repeatedly
11 presented to Defendants, and each of them, without result.
12 Defendants, and each of them, acting in concert with the
13 Department of Justice have represented repeatedly that the release
14 of moneys for distribution was imminent, and/or would occur within
15 several weeks, and/or would occur within less than a month. Each
16 such representation has been made knowing it to be false. These
17 repeated actions of withholding distribution of said moneys, without
18 compensation, and without due process of law, amount to a taking
19 of the property of the individual Plaintiffs and of all similarly
20 situated.

21 55. At all times mentioned herein, Defendants, and each of
22 them, have acted with deliberate indifference or reckless disregard
23 for the Constitutional and other rights of all Plaintiffs, or with the
24 intention and knowledge that they were violating Plaintiffs'
25 Constitutional or other rights or to cause them other injuries,
26 losses and damage.

27 56. As a result of misconduct of Defendants, and each of
28 them, each of the named Plaintiffs and all of those similarly

1 situated, have been denied their Constitutional rights, including,
2 but not limited to, their Fifth Amendment right to be secure in their
3 property, free from taking without just compensation and without
4 due process of law, and have suffered injuries and property loss in
5 excess of Three Trillion Dollars.

6 **CLASS ACTION ALLEGATIONS**

7 57. Plaintiffs bring this action individually, and on behalf of
8 all others similarly situated, and in the public interest.

9 58. Plaintiffs bring this action on behalf of a class of
10 persons who were and are bona fide shareholders in CMKM
11 Diamonds, Inc., a public company directly supervised by the
12 Defendants, and each of them.

13 59. Plaintiffs are members of said class, have a claim
14 typical of the claims of all members of said class, and will fairly
15 and adequately represent the interests of the members of said
16 class.

17 60. The members of said class are so numerous that
18 joinder of all members is impracticable.

19 61. All of the class members are wholly identifiable from
20 documents known to be in the possession of Defendants.

21 62. The claims of the members of said class present
22 common issues of fact and law which predominate over any
23 questions affecting only individual members of the class.

24 63. The defenses available to defendants to the claims of
25 the members of the class present common issues of fact and law
26 which predominate over any questions affecting only individual
27 members of the class.

28 / / /

1 64. The prosecution of separate actions by the individual
2 members of the class would create a risk of inconsistent or varying
3 adjudications which would establish incompatible standards of
4 conduct for defendants.

5 65. Adjudications with respect to individual members of
6 said class would, as a practical matter be dispositive of the interest
7 of other members not parties to the individual adjudications or
8 would substantially impair or impede the right and/or ability to
9 protect their interest.

10 66. Defendants, and each of them, have acted or refused to
11 act on grounds generally applicable to said class thereby making
12 appropriate final injunctive relief with respect to the class as a
13 whole.

14 67. Unless ordered by this court, Defendants SCHAPIRO,
15 PAREDES, AGUILAR, WALTER and CASEY will continue their illegal
16 and wrongful conduct, and repeated actions by individual class
17 members will be required to obtain relief; and thereby the
18 remedies available at law are inadequate.

19 68. For all of the above reasons, a class action is superior
20 to other available methods for the fair and efficient adjudication of
21 the claims alleged herein.

22 **FIRST CAUSE OF ACTION**

23 **(FOR DECLARATORY RELIEF AGAINST ALL DEFENDANTS)**

24 69. Plaintiffs incorporate as though fully set forth herein, all
25 of the allegations contained in Paragraphs 1 through 68 above.

26 70. Plaintiffs allege that an actual controversy exists in this
27 jurisdiction, in that it is the Plaintiffs' contention that:

28 ///

- 1 a) The Defendants are, or in the past were, Chairpersons
2 or Commissioners of the Securities and Exchange
3 Commission, an agency of the UNITED STATES OF
4 AMERICA. At all relevant times herein, said Defendants
5 were acting as individuals and in their official capacity
6 as agents of the Securities and Exchange Commission.
- 7 b) On and after January 1, 2006, the Defendants, and
8 each of them, acting alone and acting in concert with
9 each other, and acting without just cause, did
10 consciously, knowingly, intentionally and wrongfully
11 cause certain acts and omissions to proceed in such
12 manner as to hinder, delay, and ultimately prevent the
13 distribution of moneys held for the benefit of Plaintiffs,
14 and all similarly situated, said moneys being payable to
15 each said person on a per share basis.
- 16 c) The Defendants, and each of them, acted in their
17 individual and their official capacities with deliberate or
18 reckless disregard for the Constitutional and other
19 rights of Plaintiffs and all similarly situated or with
20 malicious intent and with the knowledge that their acts
21 and omissions violated and denied the Constitutional
22 and other rights of Plaintiffs and all similarly situated,
23 or that their acts would cause said Plaintiffs and all
24 similarly situated other injuries.
- 25 d) The Defendants, and each of them, did unlawfully and
26 wrongfully cause certain acts and omissions to proceed
27 in such manner as to hinder, delay, and ultimately
28 prevent the distribution of moneys held for the benefit

1 of Plaintiffs and all similarly situated, even though the
 2 Defendants knew that said persons had a vested
 3 interest and Constitutional right to receive said moneys
 4 in a timely, unfettered and unconstrained manner.

- 5 e) The Defendants, and each of them, knew that Plaintiffs
 6 and all similarly situated had a vested interest and
 7 Constitutional right to receive said moneys in a timely,
 8 unfettered and unconstrained manner when they
 9 committed the acts and omissions set forth above,
 10 causing each said person to be deprived of property
 11 without just compensation and without due process of
 12 law.

13 71. The Defendants, and each of them, contend to the
 14 contrary. Therefore, it is necessary and proper for this Court at
 15 this time to determine and declare the validity of the contentions
 16 of the parties as set forth above.

17 **SECOND CAUSE OF ACTION**

18 **(FOR VIOLATION OF THE PLAINTIFFS' CONSTITUTIONAL** 19 **RIGHTS AGAINST DEFENDANTS COX, SHAPIRO, GLASSMAN,** 20 **ATKINS, CAMPOS, NAZARETH, PAREDES, AGUILAR,** 21 **WALTER, and CASEY)**

22 72. Plaintiffs incorporate as though fully set forth herein all
 23 of the allegations contained in Paragraphs 1 through 68, above.

24 73. Defendants, and each of them, by committing the
 25 above-mentioned acts and omissions, violated and denied the
 26 Plaintiffs' Constitutional rights, and those of all similarly situated,
 27 including, but not limited to, their Fifth Amendment right to be
 28 secure in their property, free from taking without just

1 compensation and without due process of law.

2 74. Defendants, and each of them, acted and failed to act
3 with the intent to deny the Constitutional rights of Plaintiffs and of
4 all those similarly situated, or with the intentional or callous
5 disregard or deliberate indifference to those rights. The above
6 described acts of the Defendants, all charged with securities law
7 enforcement as Chairpersons and Commissioners of the Securities
8 and Exchange Commission, in violation of the Constitutional rights
9 of Plaintiffs and of all those similarly situated, were not intended to
10 be exempt from liability.

11 75. As a result of the Defendants' acts, Plaintiffs and all
12 those similarly situated have suffered injuries and property loss in
13 excess of 3.87 Trillion Dollars in an exact amount to be
14 determined at the time of Trial. Because Defendants' actions were
15 intentional or done with callous disregard or deliberate indifference
16 to the Constitutional and other rights of all Plaintiffs, this Court
17 should award punitive damages against each individually named
18 Defendant.

19
20 **WHEREFORE**, Plaintiffs seek judgment as follows:

- 21 1. For a declaratory judgment, pursuant to Title 28 U.S.C.,
22 Sections 2201 and 2202, which determines and
23 declares the validity of the contentions of the parties
24 set forth in Paragraphs 69 through 71, above;
- 25 2. For a judgment for compensatory, general and special
26 damages in the amounts prayed for in the Second
27 Cause of action set forth above;

28 ///

- 1 3. For a judgment for punitive damages in an amount
- 2 sufficient to punish and to make examples of these
- 3 Defendants, and to deter these Defendants and others
- 4 from engaging in similar conduct;
- 5 4. For an award of reasonable attorney's fees, expenses
- 6 and costs of suit incurred herein; and
- 7 5. For such other and further relief as this Court deems
- 8 just and proper.
- 9

10 Dated: September 14, 2010.

11 **HODGES AND ASSOCIATES**

12
13
14 By: /s/ A. Clifton Hodges
15 A. CLIFTON HODGES
16 Attorney for Plaintiffs
17

18 **DEMAND FOR JURY TRIAL**

19 Plaintiffs demand a jury trial on all issues so triable.
20

21 Dated: September 14, 2010.

22 **HODGES AND ASSOCIATES**

23
24
25 By: /s/ A. Clifton Hodges
26 A. CLIFTON HODGES
27 Attorney for Plaintiffs
28