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Attorneys for Plaintiffs

U.S. DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

MARK FERRY, IGOR KOROSTELEV
and RYAN KRAUSE, on behalf of
themselves and all others similarly
situated,

Plaintiffs,

vs.

DF GROWTH REIT, LLC,
DF GROWTH REIT II, LLC,
DIVERSYFUND, INC.,
CRAIG CECILIO, and ALAN LEWIS,

Defendants.

Case No.: '22CV2001 H WVG

**CLASS ACTION COMPLAINT
FOR:**

**1) VIOLATION OF CAL. CORP.
CODE § 25401**

**2) VIOLATION OF CAL. CORP.
CODE § 25504**

JURY TRIAL DEMANDED

1 Plaintiffs Mark Ferry, Igor Korostelev and Ryan Krause, by and through
2 their undersigned counsel, hereby allege upon information and belief¹ except as to
3 their own transactions, as and for their Class Action Complaint² against the above-
4 captioned Defendants (as further defined below) as follows:
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7 **JURISDICTION AND VENUE**

8 1. This Court has jurisdiction over the subject matter presented by this
9 Class Action Complaint because it is a class action arising under the Class Action
10 Fairness Act of 2005, Pub. L. No. 102-2, 119 Stat. 4 (2005) (“CAFA”), which
11 explicitly provides for the original jurisdiction of the federal courts of any class
12 action in which any member of the plaintiff class is a citizen of a state different
13 from any defendant, and in which the matter in controversy exceeds in the
14 aggregate the sum of \$5,000,000.00, exclusive of interest and costs.
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23 1. Plaintiffs’ allegations on information and belief are based upon publicly available information
24 including, *inter alia*, filings with the U.S. Securities and Exchange Commission (“SEC”), court
25 and administrative filings including those in SEC Administrative Proceeding File No. 3-20801
26 and related litigation, filings with the California Bureau of Real Estate, and websites and Internet
27 advertisements prepared and/or disseminated by Defendants.

28 2. The putative Class is defined as all persons who purchased DiversyFund Investor
Shares (as defined below) between November 13, 2018 and March 16, 2022 (the “Class
Period”).

1 2. Plaintiffs allege that the total claims of the individual members of the
2 Class in this action are in excess of \$5,000,000.00 in the aggregate, exclusive of
3 interest and costs, as required by 28 U.S.C. § 1332(d)(2), (5).
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5 3. Plaintiffs are citizens of Kansas, Illinois and Arizona, and as set forth
6 below, Defendants can be considered citizens of California by virtue of the
7 locations of their residences and/or principal offices. Therefore, diversity of
8 citizenship exists under CAFA as required by 28 U.S.C. § 1332(d)(2)(A) because
9 “any member of a class of plaintiffs is a citizen of a State different from any
10 defendant.”
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12 4. Furthermore, Plaintiffs allege that more than two-thirds of all of the
13 members of the proposed Class in the aggregate are citizens of a state other than
14 California, in which this action is originally being filed, and that the total number
15 of members of the proposed Class is greater than 100, pursuant to 28 U.S.C. §
16 1332(d)(5)(B).
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18 5. Venue in this judicial district is proper pursuant to 28 U.S.C. § 1391
19 because, as set forth below, Defendants conduct business in, and may be found in,
20 this District.
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1 **THE PARTIES AND SIGNIFICANT NONPARTY**

2 6(a). Plaintiff Mark Ferry, a citizen and resident of Kansas, invested
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4 \$25,000 in DiversyFund Investor Shares (as defined below) in or about 2020.

5 (b). Plaintiff Igor Korostelev, a citizen and resident of Illinois,
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7 invested over \$500 in DiversyFund Investor Shares between 2018 and the present.

8 (c). Plaintiff Ryan Krause, a citizen and resident of Arizona, invested
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10 \$500 in DiversyFund Investor Shares between 2018 and the present.

11 7. Defendant DF Growth REIT, LLC (“REIT I”) is a Delaware limited
12 liability company formed in 2018. REIT I’s principal executive offices are
13 located at 750 B Street Suite 1930, San Diego, California. REIT I was formed as a
14 “blind pool” company and filed an offering statement in connection with an
15 offering pursuant to SEC Regulation A to raise up to \$50 million through the sale
16 of its Class A Investor Shares (“REIT I Offering”). REIT I was subsequently
17 authorized to raise up to a total of \$75 million by selling Class A Investor Shares
18 and raised a total of \$65,342,869 through the sale of stock to approximately 25,828
19 public investors before ceasing its offering on November 13, 2021. REIT I has
20 invested proceeds of the REIT I Offering in equity in thirteen real estate projects,
21 including eleven managed by its Sponsor, DiversyFund (as defined below). Upon
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1 information and belief, REIT I has no employees and is completely reliant on
2 DiversyFund for its day-to-day operations.
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4 8. Defendant DF Growth REIT II, LLC (“REIT II”) is a Delaware
5 limited liability company formed in 2020. REIT II’s principal executive offices
6 are located at 750 B Street Suite 1930, San Diego, California. REIT II was formed
7 in 2020 as a “blind pool” company and filed an offering statement in connection
8 with an offering pursuant to SEC Regulation A to raise up to \$50 million through
9 the sale of its Class A Investor Shares (“REIT II Offering”). As of April 29, 2022,
10 REIT II had raised approximately \$10,737,607 through the sale of stock to
11 approximately 3,712 public investors. REIT II has invested proceeds of the REIT
12 II Offering in equity in five real estate projects, including three managed by its
13 Sponsor, DiversyFund, Inc. (as defined below). Upon information and belief, REIT
14 II has no employees and is completely reliant on DiversyFund for its day-to-day
15 operations.
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21 9. Significant non-party DF Manager, LLC (“DF Manager”) is a
22 Delaware limited liability company formed in 2018. DF Manager’s principal
23 executive offices are located at 750 B Street Suite 1930, San Diego, California.
24 DF Manager serves as manager of both REIT I and REIT II pursuant to certain
25 management agreements dated August 1, 2018 and August 20, 2020, respectively.
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1 Upon information and belief, DF Manager has no employees and is completely
2 reliant on DiversyFund for its day-to-day operations.
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4 10. Defendant DiversyFund, Inc. (“DiversyFund” or the “Sponsor”) is a
5 Delaware corporation formed in 2016. DiversyFund’s principal executive offices
6 are located at 750 B Street Suite 1930, San Diego, California. DiversyFund serves
7 as the sponsor of REIT I and REIT II, and owns 100% of DF Manager.
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9 11. Defendant Craig Cecilio, formerly known as Charles Craig Cecilio
10 (“Cecilio”), is and was at all relevant times the co-founder and Chief Executive
11 Officer of DF Manager and DiversyFund. Cecilio co-owns DF Manager along
12 with Defendant Alan Lewis and, along with Lewis, has complete *de facto* control
13 of REIT I and REIT II. Cecilio is a citizen and resident of California.
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16 12. Defendant Alan Lewis (“Lewis”) is and was at all relevant times the
17 co-founder and Chief Investment Officer of REIT I, REIT II, DF Manager and
18 DiversyFund. Lewis co-owns DF Manager along with Cecilio and, along with
19 Lewis, has complete *de facto* control of REIT I and REIT II. Lewis is a citizen and
20 resident of California. Defendants REIT I, REIT II, DiversyFund, Cecilio and
21 Lewis are hereinafter sometimes collectively referred to as “Defendants”.
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1 **FACTUAL BACKGROUND**

2 **A. Business of DiversyFund**

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4 13. A certain exemption from registration known as “Regulation A” (set
5 forth in 17 C.F.R. §230.251 *et seq.*) allows companies to offer and sell securities to
6 the public without having to register the offerings with the SEC so long as the
7 issuer fully complies with the regulation’s requirements. Regulation A, which
8 went into effect in 2015, has permitted certain issuers to sell unregistered securities
9 to larger numbers of small retail investors than would have been possible under
10 exemptions from registration that existed prior to its promulgation.
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14 14. Against this backdrop, DiversyFund has sponsored and offered to the
15 public a series of securities that are exempt from registration – some under
16 Regulation A, and others under the exemption from registration set forth in 17
17 C.F.R. §230.506 and commonly referred to as “Regulation D”.

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19 15. Prior to 2016, Defendants Cecilio and Lewis used DiversyFund as a
20 loose assumed name for their respective real estate business ventures. However, in
21 2016 Defendants Cecilio and Lewis formalized this loose assumed name by
22 incorporating DiversyFund, Inc., with the stated purpose of bringing the wealth-
23 building investment tools traditionally used by the wealthy (“the 1%”) to the
24 everyday investor through participation in alternative investments, such as REITs.
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1 DiversyFund actively markets and sells its securities offerings directly to
2 individual retail investors though, for example, posts on social media platforms
3 such as Twitter and Facebook, content on its own website, and what appear to be
4 “sponsored content” articles on various finance-oriented websites such as Morning
5 Brew, Business Insider and Nerdwallet. DiversyFund’s target investors are
6 generally unsophisticated, non-accredited individual retail investors. Upon
7 information and belief, DiversyFund pays handsomely for advertising on these
8 online websites, newsletters, and social media platforms, with a general marketing
9 budget to spend of as much as \$200,000 a month at relevant times.
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14 16. DiversyFund represents to the public that its real estate investments
15 are categorized as “growth” investments, as opposed to “income” investments. Its
16 business model is purportedly based on a five-stage growth cycle that includes: (1)
17 raising capital, (2) acquiring assets, (3) performing value-add renovations to the
18 properties which allows for increased rents and greater appreciation, (4) time for
19 natural market appreciation, and (5) sale of the property based on market
20 conditions.
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23 17. In addition to REIT I and REIT II offerings qualified under
24 Regulation A, DiversyFund has sponsored or managed approximately eight issuers
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1 raising capital under the exemption from registration set forth in 17 C.F.R.
2 §230.506 (commonly referred to as “Regulation D”).
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4 18. Consistent with DiversyFund’s business model and marketing
5 strategy, REITs I and II currently have thousands of individual retail shareholders
6 of securities previously offered pursuant to the Regulation A exemption, and sold
7 directly to investors by DiversyFund in increments of as little as \$500. The stated
8 purpose of REIT I and REIT II is to invest in real estate projects and assets across
9 the United States, focusing primarily on multifamily value-add properties.
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12 19. Also consistent with DiversyFund’s business model, both REIT I and
13 REIT II have solicited large numbers of very small public investors via the Internet
14 and social media advertising. REITs I and II reportedly have a total of 29,550
15 investors between them, which based on the total of approximately \$73 million
16 raised, suggests that the average investor in REITs I and II has invested less than
17 \$3,000.
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21 **B. REIT I**

22 20. REIT I, formed in 2018, filed an offering statement on October 3,
23 2018 under Regulation A to raise up to \$50 million through the REIT I Offering.
24 All of the sales in the REIT I Offering to Plaintiffs and the Class were made
25 pursuant to the Form 1-A/A filed with the SEC and dated October 22, 2018, and
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1 subsequent supplements thereto. REIT I also filed semi-annual and annual reports
2 with the SEC that contained additional disclosures from REIT I about REIT I and
3 the Defendants.
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5 21. REIT I was subsequently authorized to raise up to a total of \$75
6 million by selling Class A Investor Shares and, as of June 30, 2022, had raised a
7 total of \$65,342,869 through the sale of stock to approximately 25,828 public
8 investors. REIT I has invested proceeds of the REIT I Offering in equity in
9 thirteen real estate projects, including eleven managed by its Sponsor,
10 DiversyFund.
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13 22. As the Sponsor of REIT I, DiversyFund is entitled to receive a panoply
14 of fees in connection with REIT I's acquisition of properties, including an 8%
15 acquisition fee directly from REIT I's real estate investments for sponsoring the
16 acquisition of each asset. DiversyFund is also entitled to receive a financing fee at
17 the asset level of up to 1% of the total debt amount obtained for a project. In addition
18 to these transaction-based fees, through its wholly owned subsidiary DF Manager,
19 DiversyFund was entitled to receive an asset management fee equal to 0.1667% of
20 the investors' aggregate capital accounts per month, or approximately 2% per year-
21 although it appears that DF Manager has not collected these asset management fees
22 to date. Upon information and belief, DiversyFund relied on revenue derived from
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1 some combination of the foregoing fees to cover its day-to-day operating expenses,
2 including payroll for its 19+ employees and contractors.
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4 23. REIT I has been authorized to raise up to \$75,000,000 of capital by
5 selling Class A Investor Shares. As of November 12, 2021, REIT I completed
6 raising new capital. As of June 30, 2022, the REIT I Offering had raised
7 \$65,342,869 in total proceeds.
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9 **C. REIT II**
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11 24. REIT II was formed in August 2020 and filed an offering statement
12 under Regulation A to raise up to \$50 million through the sale of its Class A
13 Investor Shares via the REIT II Offering.
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15 25. As with REIT I, DiversyFund is entitled to receive a panoply of
16 transaction-based fees in connection with REIT II's acquisition of properties,
17 including an acquisition fee of 1-4%. As with REIT I, through its wholly owned
18 subsidiary DF Manager, DiversyFund is also entitled to charge an annual asset
19 management fee equal to 2% of the capital raised from the sale of Class A investor
20 shares.
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23 26. Unlike REIT I, on information and belief REIT II actually has been
24 charged asset management fees by DiversyFund (per DF Manager) to date, and has
25 disclosed that it may potentially be required to pay up to five years' annual asset
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1 management fees in advance, at DiversyFund's sole discretion. DF Manager
2 serves as manager of REIT II pursuant to a management agreement dated August
3 20, 2020 under which DF Manager is entitled to collect a management fee
4 described as follows:
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6 **Management Fee.** Each month, the Manager shall be entitled to an asset
7 management fee equal to one-sixth of one percent (0.167%) of the aggregate
8 capital accounts of the Members on the last day of such month. Such fee
9 shall be paid by the fifteenth (15th) day of the following month.

10 Based on DiversyFund's 100% ownership of DF Manager, these asset management
11 fees would flow back to DiversyFund.
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13 27. As of December 13, 2021, REIT II had raised approximately
14 \$8,032,282 through the sale of stock to approximately 3,712 public investors.
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16 28. In March 2022, the SEC alleged that REIT II had violated various
17 regulations (see *infra*). DiversyFund subsequently terminated REIT II's offering in
18 June 2022.
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20 29. REIT II has invested proceeds of the REIT II Offering in equity in
21 five real estate projects, including three managed by DiversyFund. REIT II is a co-
22 investor with REIT I in multiple projects including a joint investment by both
23 REITs in two Texas multifamily properties
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1 **D. The SEC Cases**

2 30. DiversyFund appears to have had a long history of entanglement with
3 the SEC. On January 14, 2020, the Los Angeles Office of the SEC (Investigation
4 No. LA-5069) communicated that it had closed an investigation into DiversyFund,
5 Inc. The pendency of this investigation was not contemporaneously disclosed by
6 DiversyFund either to existing investors or new investors in REIT I. Given the
7 integral role DiversyFund played in the success or failure of REIT I as its sponsor
8 and parent company (on which REIT I completely relied on to operate), the
9 pendency or closure of an SEC investigation into DiversyFund was a crucial fact
10 that any individual retail investor would have found to be material.

11 31. In late 2021 the SEC launched a second investigation (Investigation
12 No. LA-5266) into DiversyFund and its affiliates. This second investigation
13 eventually resulted in the SEC’s temporary suspension of REIT II’s Regulation A
14 exemption from registration in an Order (Ad. Proc. File No. 3-20801) dated March
15 16, 2022, based upon the SEC’s stated belief that REIT II’s offering did not
16 comply with certain terms, conditions or requirements of Regulation A.
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18 32. The SEC further alleged that it had reason to believe that “REIT II’s
19 offering documents and the website it uses to solicit investors contain untrue
20 statements of a material fact or omit to state a material fact necessary in order to
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1 make the statements made, in light of the circumstances under which they are
2 made, not misleading.” *See* 17 C.F.R. § 230.258(a)(2).
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4 33. Specifically, the SEC alleged that REIT II’s January 2021 offering
5 circular (“REIT II Offering Circular”), and REIT II’s August 26, 2021 offering
6 circular supplement made materially misleading representations regarding REIT II
7 being a separate investment vehicle from REIT I, regarding how much capital
8 REIT II needed to raise from investors, regarding its plan of operation based on the
9 amount of capital raised, and regarding its fees.
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12 34. In connection with this second investigation, on November 29, 2021,
13 the SEC’s staff informed REIT II that it could no longer sell securities in the REIT
14 II Offering because of 17 C.F.R. §230.262(a)(7), which provides that issuers
15 “under investigation” are disqualified.
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18 35. REIT II then submitted a request for a waiver of disqualification, as
19 permitted by 17 C.F.R. §230.262(b). The waiver request asserted that
20 disqualification was inappropriate because the SEC had not alleged any specific
21 wrongdoing, and because REIT II and its investors would be harmed by the
22 disqualification. The SEC denied REIT II’s request for waiver.
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25 36. On December 6, 2021, REIT II filed a notice of intent to file a petition
26 pursuant to Rule 430(b)(1) of the SEC’s Rules of Practice. On December 13,
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1 2021, the Company filed the petition, which had the effect of pausing REIT II's
2 automatic disqualification.
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4 37. On January 26, 2022, the SEC provided the REIT II with two orders
5 that had the effect of reinstating disqualification of the REIT II Offering under 17
6 C.F.R. §230.262(a)(7). As a result, REIT II promptly ceased offers or sales of
7 Class A Investor Shares.
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9 38. On March 16, 2022, the SEC issued a temporary suspension order
10 (annexed as **Exh. 1**) under Rule 258 based on alleged violations of SEC rules
11 including, *inter alia*, REIT II's failure to commence the REIT II Offering within
12 the time required by Regulation A and REIT II's alleged misrepresentations of fact
13 made on DiversyFund's website.
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15 39. The SEC case remains pending and will likely proceed to a hearing on
16 the merits in 2023.
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19 **E. Craig Cecilio's Regulatory Sanctions by the California Bureau of**
20 **Real Estate**

21 40. Just before DiversyFund launched REIT I, Defendant Cecilio and a
22 company that he controlled (and that also was apparently marketed under the
23 DiversyFund name) faced administrative accusations by the California Real
24 Estate Bureau.
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1 41. On or about February 15, 2017, the California Bureau of Real Estate
2 brought an administrative accusation against Cecilio and a company 100% owned
3 and controlled by him, Coastal California Funding Group, Inc. (“Coastal”),
4 alleging that Coastal had incurred shortages in trust accounts entrusted to it in
5 connection with Coastal’s loan servicing business, and that Cecilio failed to
6 properly supervise Coastal and its staff. *See In Coastal California Funding Group*
7 *Inc.*, Accusation No. H-04876 SD.

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11 42. Audits by the Bureau of Real Estate also found that Coastal had
12 recorded sums in its books and records as deposited that had not in fact been
13 deposited, in the sum of \$1,224,406.26. This inability to properly manage the trust
14 account resulted in a shortfall of \$94,813.20, which Defendant Cecilio appears to
15 have covered personally.
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18 43. Finally, the Bureau of Real Estate found the Coastal had in fact
19 conducted business as “DiversyFund” as a false or fictitious business name on
20 business cards and in e-mails without obtaining a license from the Bureau.
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22 44. Based on the foregoing, the Bureau charged that Cecilio had failed to
23 adequately supervise the activities of Coastal to ensure compliance with applicable
24 laws and regulations, and that his conduct constituted “cause for suspension or
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1 revocation of [his and Coastal’s] real estate licenses... for willful disregard of the
2 Real Estate Law.”

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4 45. Ultimately, Defendant Cecilio consented to having his real estate
5 license suspended on October 2, 2017, which suspension was stayed for a period of
6 two years on terms and conditions. Cecilio agreed to monetary penalties and the
7 temporary suspension of his real estate license in a stipulation signed on July 28,
8 2017.
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11 **F. Misrepresentations and Omissions of Material Fact by**
12 **Defendants**

13 **1. Separation of REIT I and REIT II**

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15 46. REIT I and REIT II were advertised as being completely separate
16 investment funds. In November 2021, when both REIT I and REIT II were selling
17 securities to the public, DiversyFund’s website, www.DiversyFund.com,
18 advertised to investors that REIT I and REIT II “operate as separate investment
19 vehicles” and that “REIT I will not be impacted by REIT II in any way.”
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22 47. In REIT II’s offering materials, it also represented to investors that
23 there was no minimum amount that it needed to raise in its Regulation A offering.
24 For example, in the REIT II Offering Circular (dated January 19, 2021), REIT II
25 represented that its Regulation A offering “has no minimum amount,” and as such,
26 “we will begin to deploy (spend) the money we raise right away, no matter how
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1 much or how little we raise.” (REIT II Offering Circular, p. 1) REIT II also
2 represented that “[w]hether we raise \$50 million in offering or something less,
3 proceeds of the Offering will satisfy our cash requirements. If we raise less than
4 \$50 million, we will simply make fewer investments.” (REIT II Offering Circular,
5 pp. 8, 73)
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8 48. After the SEC commenced its proceeding discussed above, REIT II
9 then submitted a declaration sworn to by Defendant Lewis to the U.S. Court of
10 Appeals for the Ninth Circuit in connection with a petition to stay the SEC’s orders
11 (Case No. 22-70023) in which Lewis stated under oath that the loss of REIT II’s
12 ability to raise funds pursuant to Regulation A “will cause significant and
13 irreparable harm to DiversyFund and their 30,000 investors” including investors in
14 both REIT I and REIT II. In the declaration, Lewis also indicated that if REIT II
15 did not co-invest in certain real estate deals alongside REIT I, “the deals will fall
16 through and investors in REIT I will suffer a loss of nearly \$1 million of deposits
17 that have already been put toward the deals.” In a later supplemental declaration,
18 Lewis painted an even more dire picture, stating that if the SEC case dragged on
19 and prevented DiversyFund from raising additional capital under Regulation A,
20 “all of the Petitioning Entities would be driven out of business” and stating that
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1 “[c]ontinued exempt offerings are the **only viable means** of continuing to meet
2 [REIT I] and REIT II’s capital needs... .” (Emphasis supplied).
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4 49. The SEC charges that statements in court filings by REIT II, in which
5 REIT II argued that the SEC’s actions leading to a cessation of fundraising under
6 Regulation A would cause losses to thousands of investors in REIT I and REIT II,
7 show that REIT II’s representations that its offering had “no minimum amount”
8 were false and misleading. The SEC further charges that REIT II’s previous
9 representations to investors in the REIT II Offering Circular that the REIT II
10 offering had “no minimum amount” and that “[w]hether we raise \$50 million in
11 offering or something less, proceeds of the Offering will satisfy our cash
12 requirements” were false and misleading.
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16 50. Although it made boilerplate disclosures about the potential adverse
17 results of failing to raise sufficient capital, REIT II did not disclose in its offering
18 materials – in its risk factors or otherwise – that it needed to raise more than \$10
19 million to be viable, or the known harm that would befall REIT II and its investors
20 (closure of the business and losses to all investors) if it were unable to continue to
21 raise additional funds in reliance on its Regulation A exemption. Indeed, REIT II
22 said the opposite: “[w]hether we raise \$50,000,000 in the Offering or something
23 less, we believe the proceeds of the Offering will satisfy our cash requirements. If
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1 we raise less than \$50,000,000, we will simply make fewer investments.” (REIT II
2 Offering Circular, p. 58)

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4 51. Based on the foregoing, REIT II’s representations to its investors
5 regarding the separateness of REITs I and II were false and misleading, and also
6 show that REIT II needed to raise far more than the approximately \$10 million it
7 had raised by early 2022 in order to be viable.
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10 52. REIT I similarly failed to disclose the known harm that would befall
11 REIT I and its investors if REIT II were unable to continue to raise sufficient funds
12 in continuing reliance on its Regulation A exemption, due to the two REITs’
13 interconnected investments and common management by DiversyFund and DF
14 Manager.
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17 53. In addition, REIT I failed to disclose to REIT I investors that—
18 contrary to its representation “REIT I will not be impacted by REIT II in any
19 way”— in order to remain operational as REIT I’s sponsor, DiversyFund needed to
20 obtain an ongoing source of funding or new investor capital such as that raised
21 from REIT II investors. In fact, in 2021, REIT I had to loan DiversyFund
22 \$2,500,000 just to pay DiversyFund’s operational expenses. Not surprisingly, there
23 is no corresponding disclosure in REIT I’s offering circular that contemplates loans
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1 from REIT I to DiversyFund to cover day-to-day operating expenses for the
2 sponsor.
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4 54. Furthermore, investors who invested in REIT I after the REIT II
5 Offering commenced also would have been misled by Defendants' misstatements
6 as to the interdependence of the two REITs. The Q&A statement on DiversyFund's
7 website as of November 2021 was also false and misleading. The website question
8 and answer read as follows: "Will launching REIT II impact my original REIT
9 investment in any way? No, REIT I will not be impacted by REIT II in any way.
10 The assets in REIT I will continue to be owned and operated by REIT I." The
11 interdependence of the two REITs and REIT I's dependence on REIT II's
12 continued fundraising under Regulation A rendered DiversyFund's foregoing
13 statement on its website false and misleading.
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18 55. REIT II's and Lewis's statements in REIT II's court filings quoted
19 above demonstrate that both REIT I *and* REIT II's continued viability was
20 contingent on REIT II's continued ability to raise new investor capital under the
21 Regulation A exemption.
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23 2. Fees

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25 56. Both REIT I and REIT II heavily advertised as a selling point on
26 DiversyFund's website and elsewhere having "no management fees". In the case
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1 of REIT II, this representation was flatly untrue, as REIT II did in fact charge
2 management fees. In the case of REIT I, it was a best a half truth, as DF Manager
3 was entitled to collect a 2% per annum management fee for investments made on
4 or after January 1, 2020. REIT I had previously *waived* management fees to which
5 DF Manager would otherwise have been entitled, for investments made on or
6 before December 31, 2019 *only*.

9 57. Although part of REIT I's original business plan contemplated that it
10 would be charged 2% a year asset management fees by DF Manager, within
11 months of becoming qualified, in February 2019 REIT I announced that it was
12 temporarily offering a lifetime waiver of asset management fees for new REIT I
13 investors for investments made prior to March 31, 2019. Shortly thereafter, in
14 May 2019, REIT I also announced that it was dropping its minimum investment
15 from \$2,500 to \$500.

19 58. In August 2019, DiversyFund extended the waiver of management
20 fees for investments in REIT I made through the end of 2019. Upon information
21 and belief, this reduction of minimums and waiver of fees was a device and
22 mechanism used by Defendants to induce more investors to invest their hard-
23 earned funds into REIT I. And as it turned out, it worked.
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1 59. By the end of 2019, REIT I had raised over \$6.4 million from the sale
2 of its Class A shares to hundreds of retail investors. The twin pillars of low
3 investment minimums and no management (platform) fees became part of
4 Defendants’ pitch to investors through its website and aggressive social media
5 advertising campaigns that echoed the same representations.
6
7

8 60. DF Manager served as manager of REIT I pursuant to a management
9 agreement dated August 1, 2018 under which it was entitled to collect an asset
10 management fee equal to one-sixth of one percent of the aggregate capital under
11 management of REIT I per month- or approximately 2% per year- of assets under
12 management on shares purchased on or after January 1, 2020. Further,
13 DiversyFund was also entitled to receive an asset management fee of up to 2% of
14 collected rents from each project in which REIT I invested- another recurring fee
15 that is akin to a recurring management fee.
16
17

18 61. In other words, DiversyFund, per DF Manager, was entitled to collect
19 management fees on investments made on or after January 1, 2020– these recurring
20 asset management fees were only waived as an inducement to investors for
21 investments made **on or before December 31, 2019**. Yet through 2020 and most
22 of 2021, DiversyFund continued to sell REIT I Investor Shares under the premise
23 of “no management fees”.
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1 62. In the case of REIT II, the representations on DiversyFund’s website
2 and elsewhere in advertising materials concerning “no management fees” were flat
3 out false because DiversyFund collected management fees from REIT II. In its
4 August 26, 2021 Offering Circular Supplement, filed contemporaneously with
5 REIT II’s actual commencement of sale of securities to the public, REIT II stated
6 that “the Sponsor [DiversyFund] will charge the Company an annual asset
7 management fee equal to 2% of the capital raised from the sale of Class A Investor
8 Shares.”
9
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11

12 63. Despite the fact that management fees were clearly to be charged to
13 REIT II investors, in September through November 2021, the DiversyFund
14 website represented to investors that DiversyFund required a “minimum
15 investment of only \$500 and **no management fees.**” (emphasis added).
16
17

18 64. It was only in December 2021, after the SEC called the inaccuracy of
19 its website to DiversyFund’s attention, that DiversyFund removed the “no
20 management fees” representations from its website. But this change occurred over
21 three months after the sale of REIT II Investor Shares had commenced. And, the
22 website was also false and misleading with respect to REIT I shares to be
23 purchased on or after January 1, 2020, insofar as DiversyFund remains entitled to
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1 collect recurring management fees on capital raised via sale of those shares (even if
2 it has not collected management fees to date).

3
4 65. Defendant Lewis, DiversyFund’s Chief Investment Officer, later
5 acknowledged in sworn testimony that REIT II’s representations that the
6 representation that there would be “no management fee” was not accurate as to
7 REIT II, which did in fact charge a 2% management fee.
8

9
10 66. Investors were misled by these representations, and a reasonable
11 investor who relied exclusively on DiversyFund’s website prior to November 2021
12 would have mistakenly believed the REIT II charged no management fees and that
13 DiversyFund was not entitled to any management fees with respect to REIT I.
14

15 **3. REIT II’s Failure to Adhere to Regulation A**

16
17 67. In addition to the foregoing, REIT I and REIT II failed to disclose that
18 REIT II had not adhered to the requirements of Regulation A and therefore ran the
19 risk of being disqualified from utilizing the Regulation A exemption from
20 registration.
21

22
23 68. For example, REIT II failed to commence the REIT II Offering until
24 September 2021, even though it was required to commence its continuous offering
25 of REIT II Investor Shares within two days after the qualification of its offering
26 statement on January 21, 2021.
27

1 completely omitted the Bureau of Real Estate accusations and consent order, which
2 are highly material to Mr. Cecilio and DiversyFund’s ability to maintain accurate
3 books and records – a skill that is critical for any high volume real estate
4 investment business. Naturally, if Mr. Cecilio and DiversyFund (which was a
5 DBA of Coastal) cannot maintain accurate books and records for a few hundred
6 investors, it draws into serious question their ability to do so for tens of thousands
7 of investors.
8
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11 73. Accordingly, the California Bureau of Real Estate Accusation and
12 Consent Order involving Cecilio would have altered the total mix of information
13 available to any reasonable investor deciding whether or not to invest into REIT I
14 or REIT II, and should have been disclosed in light of DiversyFund’s touting of
15 Cecilio’s experience and background as a selling point.
16
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18 74. Similarly, the pendency and closure of an SEC investigation
19 (Investigation No. LA-5069) into DiversyFund is a highly material fact that any
20 reasonable investor would have wanted to know in connection with deciding
21 whether or not to invest in REIT I or REIT II, or conduct business with Defendants
22 generally, as it goes directly to Defendants’ ability to run the enterprise within the
23 strict confines of a highly regulated environment. The disclosure of a pending SEC
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1 investigation into DiversyFund would have altered the total mix of information
2 available to any reasonable investor deciding whether or not to invest into REIT I.
3

4 75. Moreover, given REIT I and REIT II's heavy reliance on access to
5 new investor capital raised under Regulation A to run the day-to-day operations of
6 the DiversyFund, compliance with Regulation A and other SEC regulations was at
7 all relevant times critical to the success or failure of REIT I and REIT II. As such,
8 a pending or recently closed SEC investigation draws into serious question
9 Defendants' ability to comply with applicable laws and regulations – a fact that
10 would be material for any REIT I or REIT II investor to know prior to investing.
11
12

13 76. Although Defendants would have preferred not to disclose a pending
14 SEC investigation, once they provided disclosure on a particular issue (such as
15 government investigations), they had a duty to speak on an issue and supplement
16 any previous disclosure to make it accurate and complete.
17
18

19 77. In the REIT I offering circular dated October 2018, Defendants
20 provided the following disclosure to investors:
21

22 Neither the Company itself, the Manager, the Sponsor, or any of their
23 respective employees, officers, directors, managers, or members is, to
24 the knowledge of the Company, currently the **subject of any
25 investigation or proceedings by any governmental authorities.**

26 (REIT I Offering Circular, p. 54). (Emphasis supplied).
27
28

1 legal proceedings was rendered misleading and incomplete by the omission of the
2 fact of the first SEC investigation.
3

4 **G. Current Status of REITs I and II and DiversyFund**

5 81. Defendants' actions have placed the entire DiversyFund enterprise in
6 peril and call into question the ongoing value of REITs I and II. As discussed
7 above, REIT I and II have no infusion of fresh capital or other revenue to support
8 the operations at the DiversyFund (parent) level, leaving DiversyFund to resort to
9 measures such as borrowing funds from REIT I to support its operations. Both
10 REIT I and REIT II and are also now stuck with illiquid real estate ventures that
11 may need to survive without any infusions of fresh investor capital via
12 DiversyFund until a liquidity event at some future date.
13
14
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16 82. As of the most recent financial statements, REIT I experienced
17 mounting operating losses in the millions of dollars during 2021 and 2022. REIT
18 II also has reported substantial operating losses and is down to less than \$112,000
19 in cash to fund operations. As a direct and proximate result of the
20 misrepresentations and omissions alleged herein, the Plaintiffs and the Class have
21 been damaged and are entitled to statutory damages in an amount according to
22 proof.
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CLASS ACTION ALLEGATIONS

1
2 83. Plaintiffs bring this action as a class action pursuant to Rule 23 of the
3
4 Federal Rules of Civil Procedure (“FRCP”). The Class in this action (“Class”)
5 consists of the individuals:

6
7 All persons who purchased Class A Investor Shares in REIT I and/or
8 REIT II (“DiversyFund Investor Shares”) between November 13,
9 2018 and March 16, 2022 (the “Class Period”).

10 Excluded from the Class are Defendants and any person, firm, trust, corporation or
11 other entity related to or affiliated with Defendants.

12 84. At least thousands of persons are believed to be members of the
13 putative Class, and those persons or entities are geographically dispersed.

14
15 Therefore, joinder is impracticable pursuant to FRCP Rule 23(a)(1).

16 85. Common issues of fact or law predominate over individual issues
17 within the meaning of FRCP Rule 23(a)(2). Common issues of law and fact
18 include but are not limited to:

19
20 (a) whether Defendants made misrepresentations of material facts or
21 omitted to state material facts necessary to make the statements that they made not
22 misleading in violation of Section 25401 of the Cal. Corp. Code;

23
24 (b) whether the Defendants’ public statements on DiversyFund’s website
25 and its Internet advertisements and in REIT I and REIT II’s SEC filings were false
26
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1 and misleading, or were rendered misleading by material omissions, in violation of
2 Section 25401 of the Cal. Corp. Code;

3
4 (c) whether Defendants DiversyFund, Cecilio and Lewis are jointly and
5 severally liable or otherwise deemed to be control persons of REIT I and/or REIT
6 II within the meaning of Section 25504 of the Cal. Corp. Code;

7
8 (d) whether Defendants DiversyFund, Cecilio and Lewis materially aided
9 other Defendants in their violations of Section 25504 of the Cal. Corp. Code; and

10
11 (e) the proper measure of statutory damages or the nature and scope of
12 other remedies to which Plaintiffs and the Class are entitled.

13
14 86. Plaintiffs' interests are typical of, and not antagonistic to the interests
15 of, the Class.

16
17 87. Plaintiffs have retained competent counsel experienced with class
18 actions and complex litigation and intend to vigorously prosecute this action.

19
20 88. A class action is superior to all other methods for the fair and efficient
21 adjudication of this controversy. Indeed, given the relatively small size of Class
22 members' individual claims, a class action is the only method by which Plaintiffs
23 and the Class can efficiently seek redress and obtain a uniform adjudication of their
24 claims.
25

1 89. The size of individual damages is small in comparison to the scope
2 and scale of the Defendants’ alleged violations of law. Plaintiffs do not anticipate
3 any difficulties in the management of this action as a class action.
4

5 **COUNT I**

6 **Violations of Section 25401 of the Cal. Corp. Code**

7 **(Plaintiffs against Defendants REIT I and REIT II)**

8
9 90. Plaintiffs reallege and incorporate by reference each and every
10 allegation contained in the paragraphs above as though fully set forth herein.
11

12 91. Under § 25401 of the Cal. Corp. Code, it is unlawful for any person to
13 offer or sell a security in this state, or to buy or offer to buy a security in this state,
14 by means of any written or oral communication that includes an untrue statement
15 of a material fact or omits to state a material fact necessary to make the statements
16 made, in the light of the circumstances under which the statements were made, not
17 misleading.
18

19 92. As described above, Defendants REIT I and REIT II violated § 25401
20 of the Cal. Corp. Code by making statements of material fact regarding (i) the
21 interdependency between REIT I and REIT II; (ii) the fees charged by REIT I and
22 REIT II; (iii) the background of management; and (iv) REIT I and REIT II’s lack
23 of a need to raise a minimum amount of capital, that were untrue, and/or omitted to
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1 state material facts necessary to make the statements made, in the light of the
2 circumstances under which the statements were made, not misleading.
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4 93. Defendants REIT I and REIT II also discussed the qualifications and
5 experience of management and regulatory investigations in the offering materials
6 for the REITs and elsewhere without disclosing material facts concerning legal
7 proceedings by the California Real Estate Bureau that had resulted in the
8 suspension of Defendant Cecilio's real estate license in 2017 – the year before the
9 commencement of the REIT I Offering, or the fact of an SEC investigation that
10 was pending at relevant times before being closed in or about early 2020.
11
12

13 94. As a result of the sale of REIT I and REIT II securities to the
14 Plaintiffs and the Class by means of written and oral untrue statements of material
15 fact, and omissions of material fact, Defendants REIT I and REIT II are each liable
16 to Plaintiffs under § 25501 of the Cal. Corp. Code.
17
18

19 **COUNT II**

20 **Liability Under Section 25504 of the Cal. Corp. Code**

21 **(Plaintiff against Defendants DiversyFund, Cecilio and Lewis)**

22 95. Plaintiffs reallege and incorporate by reference each and every
23 allegation contained in the paragraphs above as though fully set forth herein.
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1 96. Defendants DiversyFund, Cecilio and Lewis each directly or
2 indirectly controlled persons liable under Section 25401 of the Cal. Corp. Code.
3 Cecilio and Lewis were founders of, business partners in, and owners of
4 DiversyFund, and were each executive officers and/or directors of REIT I and
5 REIT II.
6
7

8 97. Defendants DiversyFund, Cecilio and Lewis each materially aided in
9 the acts and/or transactions constituting the primary violations of Cal. Corp. Code
10 § 25401 alleged herein, and had knowledge of or reasonable grounds to believe in
11 the existence of the facts by reason of which the liability is alleged to exist.
12
13

14 98. As a result of their status as control persons and material aid in the
15 primary violations, Defendants DiversyFund, Cecilio and Lewis are each jointly
16 and severally liable with one another, to the same extent as each of REIT I and/or
17 REIT II are liable, for the damages and other relief sought herein.
18

19 **JURY DEMAND**

20
21 99. Plaintiffs demand a trial by jury on all claims so triable.

22 **PRAYER FOR RELIEF**

23 Wherefore, Plaintiffs respectfully request the Court grant Plaintiffs and the
24 Class following relief against the Defendants:
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- 1 a. Ordering that this action proceed as a class action as to all claims
2 previously alleged;
3
4 b. Awarding damages under the Cal. Corp. Code;
5
6 c. Awarding attorneys' fees, costs, and prejudgment interest at the legal
7 rate; and
8
9 d. Granting such other and further relief as this Court deems just and
10 proper.

11 Dated this December 16, 2022

12 /s/ Todd M. Friedman

13

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