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United States of America

11 UNITED STATES DISTRICT COURT  
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
13 WESTERN DIVISION

14 UNITED STATES OF AMERICA, ) NO. CV 09-2398 RGK (RZx)  
15 )  
Plaintiff, ) GOVERNMENT'S NOTICE OF MOTION  
16 ) AND MOTION FOR AN ORDER  
v. ) APPROVING INTERIM DISTRIBUTION  
17 ) OF A PORTION OF THE DEFENDANT  
\$6,874,561.25 IN FUNDS FROM SIX) SEIZED ASSETS ON A PRO-RATA  
18 WELLS FARGO BANK ACCOUNTS, et ) BASIS; MEMORANDUM OF POINTS AND  
al., ) AUTHORITIES IN SUPPORT;  
19 ) DECLARATIONS IN SUPPORT  
Defendants. )  
20 \_\_\_\_\_) DATE: March 7, 2011  
TIME: 9:00 a.m.  
21 COURTROOM 850

22 PLEASE TAKE NOTICE that on March 7, 2011, at 9:00 a.m., or  
23 as soon thereafter as the matter may be heard in Courtroom 850  
24 before the Honorable Robert G. Klausner, United States District  
25 Judge, located in the Roybal Federal Building, 255 E. Temple  
26 Street, Los Angeles, California, plaintiff United States of  
27 America will and hereby does move for an Order Approving Interim  
28 Distribution of a Portion of the Defendant Seized Assets on a

1 Pro-rata Basis.

2 To summarize the motion: of the 2,240 investors in Best  
3 Diamond Funding, approximately 1,778 have thus far agreed that  
4 the Special Master's calculation of their losses is correct, that  
5 they will not file a court claim in this matter, and that they  
6 will accept a pro-rata distribution of seized funds (pending  
7 court approval). An additional 48 investors did not agree with  
8 the Special Master's calculation, but are time-barred from filing  
9 a claim in court to contest forfeiture; therefore their loss  
10 calculations are also final. While approximately 416 investors'  
11 claims remain to be finalized, the government and the Special  
12 Master agree that an interim distribution of approximately \$9.2  
13 million of the seized funds should be performed as soon as  
14 possible due to the high rate of acceptance of the Special  
15 Master's Proposed Loss Amount calculations thus far.

16 This Motion is based upon this Notice of Motion and Motion,  
17 the Memorandum of Points and Authorities, the Declarations of  
18 Monica Tait and Brick Kane attached thereto, other facts  
19 appearing in the Court's file, and upon such further evidence,  
20 oral or documentary, as may be presented prior to or at any  
21 hearing on this motion.

22 There are as yet no parties to this case other than the  
23 United States. Because the titleholders to the defendant assets  
24 have been held in default by the clerk, this motion has not been  
25 served on them. Fed. R. Civ. P. 5(a)(2). The only potentially  
26 interested parties are victims of the scheme to defraud described  
27 in the complaint, who have Article III standing to become  
28 claimants in this case for purposes of asserting a constructive

1 trust pursuant to Ninth Circuit case authority. United States v.  
2 \$4,224,958.57, 392 F.3d 1002 (9th Cir. 2004) ("Boylan").

3 By February 7, 2011, the government will notify the known  
4 investors of this Motion by mail using a one-page summary of the  
5 motion in English and Spanish. The investors will be notified  
6 that they can either read this motion and the proposed Order on  
7 the Internet at the United States Attorneys' Office website or  
8 request to receive a paper copy of the government's Motion and  
9 proposed order by mail. The motion hearing date has been set  
10 sufficiently far in advance to allow time for the investors to be  
11 heard on the motion (should any wish to be heard).

12 DATE: February 2, 2011 Respectfully submitted,

13 ANDRÉ BIROTTE JR.  
14 Acting United States Attorney  
15 ROBERT E. DUGDALE  
16 Assistant United States Attorney  
17 Chief, Criminal Division  
18 STEVEN R. WELK  
19 Assistant United States Attorney  
20 Chief, Asset Forfeiture Section

21 /s/ Monica E. Tait  
22 MONICA E. TAIT  
23 Assistant United States Attorney

24 Attorneys for Plaintiff  
25 United States of America  
26  
27  
28

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1                                   **MEMORANDUM OF POINTS AND AUTHORITIES**

2           In October and December 2008, the government seized  
3 approximately \$12 million in assets from Milton Retana, Best  
4 Diamond Funding Corp., and associated companies (collectively,  
5 "BDF"). Those seized assets are the defendants in this *in rem*  
6 civil forfeiture case.<sup>1</sup> The titleholders to the seized assets  
7 (including convicted criminal defendant Milton Retana) are not  
8 contesting the forfeiture. All that remains in the case is to  
9 settle or adjudicate the interests of the approximately 2,250  
10 fraud victims ("investors"), whom the government believes  
11 collectively lost approximately \$30 million.

12           On February 11, 2010, this Court granted the government's  
13 motion to appoint Robb Evans as Special Master. The Special  
14 Master was ordered to pre-calculate the investors' individual  
15 losses so that qualified investors could choose to accept a  
16 pro-rata share of the defendant assets based upon the  
17 pre-calculated loss figure instead of filing a court claim and  
18 becoming a litigant (the "no-litigation option" or "Option A").  
19 See Special Master Order, attached hereto as Exhibit 1, ¶¶ 6-9.

20           **A.   REPORT CONCERNING THE INVESTOR NOTIFICATION PROCESS**

21           On September 30, 2010, approximately 2,250 investors were  
22 each notified by a mailing at government expense of the Special  
23 Master's loss calculation concerning their particular investment  
24

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25           <sup>1</sup> An additional set of assets (worth about \$100,000 or  
26 less, depending on how much is collected from previously uncashed  
27 checks) is the subject of a second civil forfeiture case, United  
28 States v. \$6,601.00 in U.S. Currency, et al., CA 10-06831-RGK  
(AGRx). Claims in the \$6,601.00 case are being handled as part  
of the process described in the text.

1 (the "Proposed Loss Amount"). Along with that notification, the  
2 government also notified the investors of this action and of the  
3 need to file claims and answers and litigate their claims in  
4 court if they disagreed with the Special Master's calculations.  
5 Attached as Exhibit 2 is a copy of the government's English  
6 language letter to the investors; because many of the investors  
7 speak only Spanish, a Spanish translation was mailed at the same  
8 time. Exhibit 3 is a sample "NOTICE TO INVESTOR." The Special  
9 Master prepared an individualized Notice in this format for each  
10 investor which calculated the investor's Proposed Loss Amount.

11 The investors were notified that they had two options in  
12 response to the September 30, 2010 notification:

13 (1) File a claim with this Court by no later than November  
14 5, 2010 to contest the forfeiture of their interests in the  
15 seized assets; or

16 (2) Return a Response form by November 5, 2010 selecting  
17 one of the following Options:

18 OPTION A: If an investor agreed with the Special  
19 Master's calculation of the investor's Proposed Loss Amount,  
20 and agreed to accept a pro-rata share of the seized assets  
21 in a future distribution, the investor was asked to sign and  
22 date an election of "Option A" on the response form.

23 OPTION B: If an investor disagreed with the Proposed  
24 Loss Amount and requested a recalculation of the investor's  
25 Proposed Loss Amount, the investor was asked to select  
26 "Option B" on the response form. All investors timely  
27 selecting Option B were informed that the date for filing a  
28 claim with this Court to contest forfeiture would be

1 extended until 30 days after the Special Master responded to  
2 that investor's Option B request.

3 Exhibit 4 is a copy of a blank Response form setting forth the  
4 format of the Option A and Option B elections.

5 Since September 30, 2010, the Special Master's staff has  
6 received, organized, and recorded the investors' responses, and  
7 has met or spoken with numerous investors concerning their  
8 claimed losses. The number of Option A investors has grown  
9 steadily over time, with many of the Option B investors  
10 ultimately converting to Option A. As the court is aware, no  
11 investor has filed a court claim to date. The overwhelming  
12 majority of the investors (approximately 79%) have selected  
13 Option A, a resounding success rate that has achieved the goal of  
14 limiting the potential for litigation in this action. As shown  
15 in the chart below, the majority of the remaining investors have  
16 not rejected Option A, but either did not receive the September  
17 30, 2010 notice, or received it but did not respond. The  
18 following chart sets forth the results as of January 21, 2011:

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Category	Appx. How Many	Description of Investors in this Category
Option A	1,778	Analysis of these claims is complete. Investors have agreed with Proposed Loss Amount, will not litigate in court, and will accept a pro-rata share of seized assets. The Proposed Loss Amounts for these investors are <b>final</b> .
Option B, court claim barred	48	These investors have not agreed with the Proposed Loss Amount, but have exhausted the time for both (1) proving further losses to the Special Master, and (2) filing a court claim to contest their interest in the seized assets. Because these investors can no longer file a court claim, their Proposed Loss Amounts as calculated by the Special Master are <b>final</b> .
Option B, unresolved	51	These investors have not yet agreed with the Proposed Loss Amount, but still had time as of 1/21/2011 to either to prove further losses to the Special Master or file a court claim. Most deadlines for filing court claims in this group will pass within the next few weeks. (This category also includes an Option A investor whose Proposed Loss Amount may or may not be revised.)
Non-responder, court claim barred	89	These investors received the government's notices and did not timely respond in any fashion. Although they are time-barred from filing <u>court</u> claims, the government has offered them one final opportunity to participate in the distribution of assets. For the majority of them, this opportunity will expire in February 2011.
Non-responder, unresolved	277	The notice packets to these investors were either returned to sender by the post office, or the government has no proof that the investor received the notice packet. Notices were re-sent in January 2011, and responses are due in February 2011.
<b>Total</b>	<b>2243</b>	<b>Percentage of Total whose Proposed Loss Amounts are final:</b> 1827 of 2243 = <b>81.45%</b>

1           **B.    Proposed Interim Distribution**

2           In light of the experience of the Special Master and his  
3 staff in conducting distributions of seized Ponzi scheme  
4 proceeds, the undersigned requested that the Special Master's  
5 chief executive, Brick Kane, advise whether in his experience it  
6 would be appropriate to recommend that this Court permit an  
7 interim distribution of some of the seized funds under the  
8 Court's control, or whether an interim distribution would be too  
9 risky in light of the amount of unresolved investor losses.  
10 After considering the data, Mr. Kane indicated that he believed,  
11 based on his experience managing similar cases, that an interim  
12 distribution would be appropriate at this time as we await the  
13 finalization of the non-responders' Proposed Loss Amounts.  
14 (Declaration of Brick Kane, ¶ 3.)

15           The danger of conducting an interim pro-rata distribution of  
16 the seized funds before all of the investors' losses are pinned  
17 down is that we could distribute too much money during the first  
18 distribution, and not hold back enough money to pay the same pro-  
19 rata share to the currently unresolved investors. In light of  
20 that danger, the government requested that Mr. Kane and his  
21 accounting staff (headed by Lillian Lee) supply a proposed  
22 distribution plan which they believed, based on their experience  
23 in these kinds of cases, would return a significant pro-rata  
24 distribution to the 81.45% of investors whose losses have been  
25 finalized, but would likely hold back enough of the seized money  
26 to be able to pay the same pro-rata share to the remaining  
27 investors (once their losses are final). Kane Decl., ¶ 4.  
28 Keeping in mind that the Special Master's team must continue to

1 work on the unresolved investors' losses, the government  
2 requested that the distribution plan also hold back enough money  
3 to pay the anticipated costs of the Special Master's work as this  
4 matter is brought to a close. (Id.) No payments to the Special  
5 Master are made without this Court's approval.

6 In response, Ms. Lee supplied to the undersigned the chart  
7 set forth at Exhibit 5. (Kane Decl., ¶ 5.) The Court presently  
8 has jurisdiction over seized liquid assets in the amount of  
9 \$12,029,255.76.<sup>2</sup> The government recommends, pursuant to Exhibit  
10 5, that this Court approve the interim distribution of  
11 \$9,216,851.32 now to the 1,826 investors whose losses are final  
12 and cannot change (because the time for filing a court claim to  
13 contest the Special Master's calculations has passed). The \$9.2  
14 million will be distributed to these investors on a pro-rata  
15 basis, and each investor will receive 32.65% of his Final Loss  
16 Amount. Therefore, an investor whose Final Loss Amount is  
17 \$10,000 would receive an interim distribution of \$3,265.00.<sup>3</sup>

18 The proposed Interim Distribution Plan would hold back a  
19 total of \$398,285.59 for already approved, pending, and projected  
20 fees and expenses of the Special Master. Of this amount, the  
21

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22 <sup>2</sup> The government will apply separately to the court to  
23 liquidate the two defendant vehicles; the liquidated value of  
24 those assets can be distributed in a future distribution.

25 <sup>3</sup> Interest that has actually accrued on the seized funds to  
26 be distributed under the proposed Order would be computed by the  
27 U.S. Marshals Service (the holder of the seized assets) and would  
28 be paid to each investor separately, unless the government  
concludes that payment of interest with the Interim Distribution  
Plan would be unfair to the unresolved investors (if so, the  
actually accrued interest would be paid in the final  
distribution).

1 Court has already ordered the payment of \$125,146.74 to the  
2 Special Master from the seized funds for work performed between  
3 February and August 2010. Approximately \$153,000 is held back  
4 for work already performed but pending Court approval, and  
5 approximately \$111,500 is the projected cost of future work  
6 needed to complete the analysis of the approximately 400  
7 unresolved investors (although it is hoped that the actual costs  
8 will be less). (Exhibit 5 (top half of page).) The undersigned  
9 agrees that the estimate is reasonable.

10 The proposed Interim Distribution Plan holds back  
11 \$2,422,118.85 of the seized funds for future payment pro-rata to  
12 the unresolved investors. As explained by Ms. Lee to the  
13 undersigned (Tait Decl., ¶ 6), the logic behind holding back this  
14 amount is conservative:

- 15 1. Ms. Lee has estimated, based on BDF's internal records,  
16 BDF's bank records, and sworn questionnaires from some  
17 of the unresolved investors, that the maximum potential  
18 net loss to be claimed by the as-yet unresolved  
19 investors is approximately \$7.423 million. (Ex. 5,  
20 "Potential Maximum Net Loss" column). Ms. Lee has  
21 indicated to the undersigned that based on her  
22 experience in this case to date, and her past  
23 experience in similar cases, she predicts that the  
24 final net loss amount for the unresolved investors will  
25 be less than \$7.423 million.
- 26 2. Ms. Lee added the Potential Maximum Net Loss to the  
27 finalized net loss amount (i.e., the finalized losses  
28 of the 1,826 investors who would receive the proposed

1 interim distribution) to estimate the total potential  
2 net loss in this case, which is approximately \$35.6  
3 million. (Id., "Total Potential Net Loss" column).

- 4 3. To calculate a conservative pro-rata distribution  
5 percentage for the proposed Interim Distribution Plan,  
6 Ms. Lee expressed the net amount of seized funds  
7 available for distribution as a percentage of the Total  
8 Potential Net Loss. The resulting percentage is 32.65%  
9 (Id., bottom of first page).

10 Accordingly, if the Court permits a pro-rata interim distribution  
11 of 32.65% now, then even if the unresolved claims rose to the  
12 level of \$7.423 million in net losses (which Ms. Lee predicts is  
13 unlikely) there will still be enough money left to distribute  
14 32.65% of such losses to those investors as well.

15 The government agrees that this approach appears  
16 conservative, and recommends that the Court order the release of  
17 \$9,216,851.32 of the seized funds within the Court's *in rem*  
18 jurisdiction to the investors listed on Exhibit 6.<sup>4</sup> The majority

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19  
20 <sup>4</sup> Exhibit 6 was prepared by the Special Master's staff and  
21 lists the investors by their contract numbers for this public  
22 filing, and their corresponding proposed interim distribution  
23 amounts. (Kane Decl., ¶ 8.) The investors know their contract  
24 numbers, and therefore an interested investor will be able to see  
25 from the public record how much he would receive from the seized  
26 assets as part of the proposed Interim Distribution Plan.

27 The government will separately file, under seal, a separate  
28 listing of the names and addresses of each investor so that a  
record may be maintained by the court of the persons to whom  
funds are distributed ("Sealed Interim Distribution List"). In  
addition, the government would provide a copy of the sealed  
filing to the U.S. Probation Officer administering the  
restitution order entered against Milton Retana in his related  
criminal case.

1 of the investors in this case are working people who could not  
2 afford to lose the money they invested in the BDF Ponzi scheme.  
3 Many were left in desperate need as a result of their losses in  
4 the scheme. The Option A investors, in particular, merit special  
5 consideration. These investors responded diligently to the  
6 Special Master process established for this case, and deserve the  
7 benefit of a distribution as soon as possible.

8 The government respectfully submits that it does not make  
9 sense to make 1,800 investors whose losses are final wait several  
10 more months until the remaining 400 or so investors' losses are  
11 concluded. The Special Master's proposed Interim Distribution  
12 Plan protects the unresolved investors by releasing a  
13 conservative amount of the seized funds on an interim basis while  
14 setting aside funds to cover the same pro-rata share of the  
15 unresolved investors' potential losses. The government notes  
16 further that in the final distribution, additional assets will  
17 likely be added to the pot: First, the liquidated value of two  
18 vehicles (n.2, supra); and second, \$50,000 or more from assets in  
19 the related case described in note 1. These assets will augment  
20 the amount of funds reserved for the unresolved investors,  
21 building in additional protection against the unknown into this  
22 process.

23 If the court approves the proposed Interim Distribution  
24 Plan, the government will apply for another distribution covering  
25 any newly resolved losses on a timetable to be recommended by the  
26 Special Master. (The government anticipates that, due to the  
27 expense and logistical difficulty of issuing hundreds of checks,  
28 the next request will be the final request for distribution.)

1 The Special Master will recommend to the Court and the government  
2 at that time whether the current Distribution Percentage (32.65%)  
3 can be adjusted upward for all investors, including those who  
4 receive an Interim distribution as a result of this Motion. If  
5 so, these 1,826 investors would receive a second (smaller)  
6 payment as part of the final distribution.

7 **C. The Proposed Order**

8 The government is entitled to dismiss assets from this  
9 action because no answers have yet been filed. Fed. R. Civ. P.  
10 41(a)(1). However, because the seized assets have not actually  
11 been forfeited to the government and because the Court has  
12 previously approved the Special Master process, the government  
13 does not believe it should decide unilaterally how to distribute  
14 assets that are released from this case. The proposed Order  
15 combines the dismissal of such assets as are successfully paid<sup>5</sup> as  
16 part of the interim distribution with an exercise of this Court's  
17 *in rem* jurisdiction over the funds in the course of assuring that  
18 no investor obtains more than his or her fair share. Cf. United  
19 States v. \$4,224,958.57, 392 F.3d 1002, 1005 (9th Cir. 2004)  
20 ("Boylan") (discussing court's role in administration of seized  
21 funds where court has found constructive trust to exist).

22 Because this is the first case of its kind in this district  
23 (and possibly this circuit), the government cannot point the  
24 court to any published examples of similar orders. However,  
25 interim distributions are common in fraud cases in which

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26  
27 <sup>5</sup> The Order provides for the provisional dismissal of the  
28 funds to be paid - - if particular checks to investors are  
returned uncashed, the funds can be restored to the defendant  
assets for future distributions or forfeiture. Order, ¶ 8.

1 receivers administer frozen assets (such as cases brought by the  
2 Securities and Exchange Commission). (Kane Decl., ¶ 9.) When  
3 considering whether to release the funds pursuant to the proposed  
4 Interim Distribution Plan, the government recommends that the  
5 Court bear in mind the following.

6 First, there is no danger that the titleholders of the  
7 seized assets could object to the distribution. The titleholders  
8 of the seized assets are in default, having never filed any  
9 claims to contest forfeiture. Moreover, Milton Retana and his  
10 wife (the likely true owners of all the seized assets) have  
11 affirmatively released all right, title and interest in the  
12 seized assets to the government. See Docket no. 22 (copies of  
13 releases).

14 Second, none of the investors has thus far filed a court  
15 claim to contest forfeiture, and more than 1,900 investors are  
16 now time-barred from doing so. (See chart on p. 4, *supra*.) The  
17 investors were notified in December 2009 that the government  
18 intended to seek to distribute the seized funds pro-rata  
19 according to the Special Master's calculations, and no objections  
20 were filed at that time opposing the principle of pro-rata  
21 distribution. All investors will have been sent notice of the  
22 proposed Interim Distribution Plan in advance of the date  
23 designated for hearing of this Motion.

24 Finally, even if an investor were to file a court claim, the  
25 only claim available is the imposition of a constructive trust  
26 over a portion of the seized assets. Boylan, 392 F.3d at 1004-5.  
27 However, imposition of a constructive trust (which requires proof  
28 of tracing) has been ruled inappropriate in a large-scale Ponzi



1 investment fraud scheme like this case. United States v. Real  
2 Property Located at 13328 and 13324 State Highway 75 North,  
3 Blaine County, Idaho, 89 F.3d 551, 553-554 (9th Cir. 1996)  
4 (equity demands all innocent defrauded claimants to a res must  
5 share equally regardless of tracing fictions). Accordingly, the  
6 best any investor is likely to obtain even if he were to file a  
7 Court claim is the return of a pro-rata share of his net loss,  
8 which is exactly what the government is proposing here.

9 Based upon all the above, the government recommends the  
10 proposed Interim Distribution Plan. The Plan orders the U.S.  
11 Marshals Service ("USMS") to release the amounts indicated on  
12 Exhibit 6 to the approximately 1,800 investors identified  
13 therein. The USMS would be ordered to make the payment by check  
14 (because the government does not have access to the investors'  
15 electronic banking information), to mail the check to the address  
16 listed on the Sealed Interim Distribution List, and to make the  
17 payment even if an investor's Social Security Number ("SSN") is  
18 unknown.<sup>6</sup> Finally, if any checks paid pursuant to the Interim  
19 Distribution Plan are returned to the agency that mailed the  
20 checks, the USMS is ordered to pay those funds again to the

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24  
25 <sup>6</sup> Ordinarily, the Department of Treasury requires a Social  
26 Security Number ("SSN") before making a payment from funds held  
27 by the government. While the government has many of the  
28 investors' SSNs, given the extraordinary circumstances of this  
case, the government does not believe it would be in the  
interests of justice to delay the interim distribution in order  
to obtain all the investors' SSNs.

1 designated investor upon direction of an attorney for the  
2 government at any time before the government moves for a final  
3 distribution in this matter.

4 DATE: February 2, 2011 Respectfully submitted,

5 ANDRÉ BIROTTE JR.  
Acting United States Attorney  
6 ROBERT E. DUGDALE  
Assistant United States Attorney  
7 Chief, Criminal Division  
STEVEN R. WELK  
8 Assistant United States Attorney  
Chief, Asset Forfeiture Section

9 /s/ *Monica E. Tait*  
10 MONICA E. TAIT  
Assistant United States Attorney

11 Attorneys for Plaintiff  
12 United States of America  
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1                                    DECLARATION OF MONICA E. TAIT

2            1.    I am an Assistant United States Attorney in the Central  
3 District of California. I am the attorney chiefly responsible  
4 for representing the government's interest in the action United  
5 States v. \$6,874,561.25 in Funds from Six Wells Fargo Bank  
6 Accounts, et al., CV 09-2398 RGK (RZx). I have personal  
7 knowledge of the following facts unless otherwise indicated and,  
8 if called as a witness, would testify thereto under oath.

9            2.    Attached as Exhibit 1 is a true and correct copy of  
10 this Court's Order appointing Special Master in this case.

11           3.    Attached as Exhibit 2 is a true and correct copy of the  
12 government's English language letter to the investors-victims of  
13 Best Diamond Funding ("BDF"), sent to all known investors (with  
14 exceptions noted below) on September 30, 2010. Because many of  
15 the investors speak only Spanish, a Spanish translation was  
16 mailed at the same time. The exceptions were a set of less than  
17 10 investors: the government considers these investors to be  
18 insiders at BDF, and notified them that they would need to come  
19 to court to contest their claims, rather than participate in the  
20 Special Master process. None of these investors have filed court  
21 claims to date, and the clerk has entered default against 5 of  
22 them thus far.

23           4.    Attached as Exhibit 3 is a sample (redacted) "NOTICE TO  
24 INVESTOR," sent as part of the September 30, 2010 packet. The  
25 Special Master prepared an individualized Notice in this format  
26 for each investor and calculated that investor's Proposed Loss  
27 Amount.

28           5.    Attached as Exhibit 4 is a true and correct copy of the

1 RESPONSE form on which the investors were instructed to selection  
2 Option A or Option B.

3 6. Exhibits 5 and 6 are described in the Declaration of  
4 Brick Kane. The proposed Interim Distribution Plan holds back  
5 \$2,422,118.85 of the seized funds for future payment pro-rata to  
6 the unresolved investors. As explained to me by Ms. Lee, the  
7 logic behind holding back this amount is conservative:

8 - Ms. Lee has estimated, based on BDF's internal  
9 records, BDF's bank records, and sworn questionnaires from some  
10 of the unresolved investors, that the maximum potential net loss  
11 to be claimed by the as-yet unresolved investors is approximately  
12 \$7.423 million. Ms. Lee has indicated to the undersigned that  
13 based on her experience in this case to date, and her past  
14 experience in similar cases, she predicts that the final net loss  
15 amount for the unresolved investors will be less than \$7.423  
16 million.

17 - Ms. Lee added the Potential Maximum Net Loss to  
18 the finalized net loss amount (i.e., the finalized losses of the  
19 1,826 investors who would receive the proposed interim  
20 distribution) to estimate the total potential net loss in this  
21 case, which is approximately \$35.6 million

22 - To calculate a conservative pro-rata distribution  
23 percentage for the proposed Interim Distribution Plan, Ms. Lee  
24 expressed the net amount of seized funds available for  
25 distribution as a percentage of the Total Potential Net Loss.

26 //

27 //

28 //

1 The resulting percentage is 32.65%.

2 I declare under penalty of perjury that the foregoing is  
3 true and correct.

4 Executed this 1<sup>st</sup> day of February, 2011 at Los Angeles,  
5 California.

6 /s/ \_\_\_\_\_  
MONICA E. TAIT

NOTE CHANGES MADE BY THE COURT.

1 GEORGE S. CARDONA  
Acting United States Attorney  
2 CHRISTINE C. EWELL  
Assistant United States Attorney  
3 Chief, Criminal Division  
STEVEN R. WELK  
4 Assistant United States Attorney  
Chief, Asset Forfeiture Section  
5 MONICA E. TAIT  
Assistant United States Attorney  
6 California Bar No. 157311  
1400 United States Courthouse  
7 312 North Spring Street  
Los Angeles, California 90012  
8 Telephone: (213)894-2931  
Facsimile: (213)894-7177  
9 E-Mail: Monica.Tait@usdoj.gov

10 Attorneys for Plaintiff  
United States of America

11 UNITED STATES DISTRICT COURT  
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
13 WESTERN DIVISION

14 UNITED STATES OF AMERICA, ) NO. CV 09-2398 RGK (RZx)  
15 )  
Plaintiff, ) ~~PROPOSED~~ ORDER APPOINTING  
16 ) SPECIAL MASTER  
v. )  
17 )  
\$6,874,561.25 IN FUNDS FROM SIX) DATE: January 25, 2010  
18 WELLS FARGO BANK ACCOUNTS, et ) TIME: 9:00 A.M.  
al., ) PLACE: ROYBAL 850  
19 )  
Defendants. )  
20 )

21 This Court, having granted plaintiff's Motion for  
22 Appointment of a Special Master, hereby finds and ORDERS as  
23 follows:

24 1. Pursuant to this Court's authority under Rule  
25 53(a)(1)(C), Fed. R. Civ. P., and the Court's inherent power to  
26 seek assistance in order to administer the cases before it  
27 efficiently, economically, and in the interests of justice, the  
28 Court orders that Robb Evans shall be appointed as

1 Special Master in this action, <sup>upon filing of</sup> ~~effective immediately.~~ The  
2 ~~Special Master has filed~~ the affidavit required by Fed. R. Civ.  
3 P. 53(b)(3)(A), stating that there are no grounds for  
4 disqualification under 28 U.S.C. § 455.

5 2. The Court finds that appointment of a Special Master is  
6 necessary to address matters that cannot be effectively and  
7 timely addressed by an available district judge or magistrate  
8 judge of this district, because:

- 9 a. The matters remaining to be adjudicated in this case  
10 involve the potential claims of approximately 2,300  
11 persons, requiring complicated or detailed computations  
12 of losses suffered in a Ponzi-style investment fraud  
13 scheme and presenting a great organizational challenge;  
14 b. The individual adjudication of each such claim without  
15 the aid of a Special Master will result in delay, to  
16 the prejudice of all of the affected persons; and  
17 c. The work of the Special Master as set forth herein is  
18 likely to have the positive effects of reducing the  
19 number of contested claims in this action and  
20 streamlining the issues to be decided for the contested  
21 claims.

22 3. The Special Master shall proceed with all reasonable  
23 diligence pursuant to Fed. R. Civ. P. 53(b)(2).

24 4. The duties and powers of the Special Master are limited  
25 to those specifically set forth herein. The Special Master shall  
26 not have the power to issue any orders or impose any sanctions.

27 5. For purposes of this Order, the following terms have  
28 the following meanings:

1 a. "Defendant Assets" shall mean and refer to the  
2 assets named as defendants in this *in rem* civil  
3 forfeiture action, which are more particularly  
4 described in paragraph 5 of the government's  
5 Verified Complaint for Forfeiture In Rem  
6 ("Complaint").

7 b. "BDF" shall mean and refer to Best Diamond Funding  
8 Corp., Best Diamond Realty Corp., Libreria Del  
9 Exito Mundial, Best Alliance Construction Inc.,  
10 First Class Bancorp Inc., Milton Retana, Lidia E.  
11 Campos, and any other person or entity through  
12 which Milton Retana conducted the scheme to  
13 defraud described in the Complaint.

14 c. "Victim" shall mean and refer to a person who  
15 invested funds in the scheme to defraud described  
16 in the Complaint.

17 d. The clerk has already entered default against the  
18 interests of all potential claimants to the  
19 Defendant Assets "except persons who invested in  
20 the scheme to defraud described in the  
21 government's complaint for forfeiture."  
22 Accordingly, "victim" shall not mean or refer to a  
23 creditor of BDF, except to the extent such  
24 creditor meets the definition of victim stated in  
25 the preceding paragraph.

26 **POWERS AND DUTIES OF SPECIAL MASTER**

27 6. The Special Master shall collect evidence or data,  
28 including but not limited to bank records for each bank account



1 maintained by BDF, sufficient to establish the following:

- 2 a. the amount of money invested with BDF by each victim;
- 3 b. the amount of money paid by BDF to each victim for any
- 4 purpose, including alleged "interest" payments and
- 5 refunds;
- 6 c. the identity of each victim; and
- 7 d. the amount claimed by each victim as a loss based on
- 8 his/her asserted investment with BDF.

9 7. The Special Master may issue compulsory process to third  
10 parties pursuant to Fed. R. Civ. P. 45 to aid in his/her  
11 collection of evidence and data.

12 8. The Special Master may demand by letter (provided in  
13 English with accompanying Spanish translation) that victims  
14 declare in writing under penalty of perjury the amount of money  
15 they invested with BDF, and the amount of money BDF paid to them,  
16 and any other factual matters the Special Master deems essential  
17 to carry out his/her duties, and may further require that the  
18 victims provide to the Special Master all documentary proof of  
19 the money they paid and the money they received. The Special  
20 Master may set a reasonable time limit for complying with the  
21 demands set forth in this paragraph. *Provided*, to the extent a  
22 victim has already provided the information and documents set  
23 forth in this paragraph to the government, it would not be  
24 essential to carrying out the Special Master's duties to demand  
25 that the victim submit the same information again.

26 9. The Special Master shall analyze the evidence and data  
27 as it is collected, and shall calculate and report to the  
28 government in writing (and to any victim upon request) the

1 following based upon such analysis:

- 2 a. the total amount of money actually paid to BDF by each  
3 victim ("Payments In") for purposes of investment, and  
4 the date and amount of each payment;
- 5 b. the total amount of money paid by BDF to each victim  
6 for any purpose ("Payments Out"), and the date, amount,  
7 and purpose (if discernable) of each such payment.  
8 *Provided*, hourly salary payments, if any, to a victim  
9 who was a BDF employee shall not be included in  
10 Payments Out, but commissions or premiums for  
11 attracting new investors shall be so included; and
- 12 c. a proposed loss amount equal to the difference between  
13 Payments In and Payments Out. If the difference is a  
14 negative number or zero, the proposed loss amount shall  
15 be zero.

16 In addition, the Special Master shall prepare and deliver to the  
17 government a written report for each victim setting forth the  
18 above calculations for that victim (and a summary of the  
19 calculations for the entire pool of victims). To the extent the  
20 individualized report calculations differ from the losses the  
21 victim has previously claimed (whether to the government or to  
22 the Special Master pursuant to paragraph 8), the report shall  
23 concisely state the Special Master's bases and reasons for such  
24 differences. The government shall send a victim's individual  
25 written report, to that victim by certified mail, along with a  
26 notice of the opportunity to file a claim in this action pursuant  
27 to Rule G(4)(b), Supplemental Rules for Certain Admiralty and  
28 Maritime Claims and Asset Forfeiture Actions, Federal Rules of

1 Civil Procedure.

2 10. The Special Master shall make every effort to minimize  
3 his/her expenses while at the same time carrying out the mandates  
4 of this Order. The Special Master shall have the sole discretion  
5 to determine the appropriate procedures for resolution of all  
6 assigned duties and shall have the authority to take all  
7 appropriate measures to perform the assigned duties.

8 **EX PARTE COMMUNICATIONS**

9 11. Because the duties of the Special Master will require  
10 him/her to collect evidence from the government (to the extent  
11 permitted by law) and from the victims, the Special Master shall  
12 be allowed to engage in ex parte conversations with counsel for  
13 the government and for the victims, and with the victims  
14 themselves (to the extent consistent with the California Rules of  
15 Professional Responsibility governing contacts with represented  
16 parties), in order to perform his/her duties. Unless otherwise  
17 ordered, the Special Master may not communicate with the Court ex  
18 parte.

19 **RECORDS THE SPECIAL MASTER MUST MAINTAIN**

20 12. The Special Master shall maintain and preserve the  
21 following records:

- 22 a. Normal billing records of time spent on the matter,  
23 with reasonably detailed descriptions of activities and  
24 matters worked on;  
25 b. Formal written reports regarding any matter, including  
26 the reports described in paragraph 9;  
27 c. Documents created by the Special Master that are  
28 docketed in court;

- d. Documents received by the Special Master from counsel or from the victims;
- e. Documents obtained pursuant to compulsory process; and
- f. A complete record of the evidence considered by the Special Master in creating the reports described in paragraph 9.

13. The Special Master shall file a report with the Court every 120 days describing the work completed during the preceding 120 days, and describing whether and the extent to which duties described by this Order remain to be completed. The Special Master shall file a final report after the completion of all reports required by paragraph 9.

#### COMPENSATION

14. All payments to the Special Master for work done pursuant to this Order, and reimbursements for reasonable expenses incurred pursuant to this Order, shall be paid from the Defendant Assets rather than by the parties. The Defendant Assets constitute a fund under the Court's control pursuant to Fed. R. Civ. P. 53(g)(2)(B). By deciding to appoint a Special Master, the Court has considered the fairness of imposing the likely expenses on the parties and has taken steps to protect against unreasonable expense or delay. Fed. R. Civ. P. 53(a)(3).

15. The Special Master shall be paid \$325.00 per hour for work done pursuant to this Order (the "Special Master's fees").  
*The Special Master may petition the Court for*  
~~and shall be reimbursed for all reasonable expenses incurred.~~  
*permission to hire an Accountant, Attorney, or*  
~~The Special Master is authorized to hire accountants to assist in~~  
*other personnel to assist in completion of the*  
~~completion of the duties set forth in this Order, at a rate not~~  
*duties set forth in this Order, at a specified*  
~~to exceed \$325.00 per hour (the "Accountant's fees"), and~~  
*fee rate, if good cause is shown.*

~~attorneys at a rate not to exceed \$375.00 per hour (the "Counsel  
Fees"). The Special Master may hire or employ other personnel to  
assist in completion of the duties set forth in this Order at a  
reasonable market rate, and shall be reimbursed for payments made  
to such personnel as part of the reasonable expenses incurred.~~

16. Beginning 30 days after entry of this Order, and  
continuing every 60 days thereafter until the Special Master's  
duties are completed, the Special Master shall apply to the Court  
for payment from the Defendant Assets of the Special Master's  
fees, Accountant's fees, Counsel fees, and reasonable expenses.  
All applications for payment shall be filed with the court and  
served on the government and on any person who has then filed a  
claim pursuant to Rule G(5)(a)(i) (Supplemental Rules for Certain  
Admiralty and Maritime Claims and Asset Forfeiture Actions,  
Federal Rules of Civil Procedure), and shall set forth in  
reasonable detail the nature of the services for which payment is  
requested. The application shall be noticed for hearing on the  
next Monday that is at least ten calendar days after the date the  
application is filed. The proposed order will direct the United

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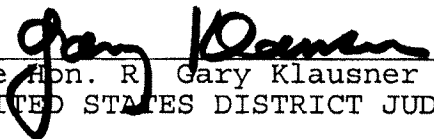
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1 States Marshals Service to pay the amount ordered by the Court  
2 from the Defendant Assets.

3 IT IS SO ORDERED.

4 Dated: 2/11/2010

  
The Hon. R. Gary Klausner  
UNITED STATES DISTRICT JUDGE

6 Presented by:

7 GEORGE S. CARDONA  
8 Acting United States Attorney

9 by: \_\_\_\_\_  
10 MONICA E. TAIT  
11 Assistant United States Attorney  
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U. S. Department of Justice

*United States Attorney*  
Central District of California

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*U.S. Courthouse, 14<sup>th</sup> Floor  
312 North Spring Street  
Los Angeles, California 90012*

September 30, 2010

**BY CERTIFIED MAIL**

Re: United States v. \$6,874,561.25 in Funds from Six Wells Fargo Bank Accounts, et al., CV 09-2398  
RGK (RZx)

United States v. \$6,601.00 in U.S. Currency, et al., CA 10-06831-SVW (AGRx)

Dear Best Diamond Funding investor or other interested party:

Representatives of Robb Evans, the Special Master appointed by the court, have been at work for many months calculating the amount invested in Best Diamond Funding ("Best Diamond") by each of the approximately 2,200 people who have returned questionnaires to the government in connection with the criminal case involving Milton Retana. Enclosed with this letter is a **BEST DIAMOND FUNDING NOTICE TO INVESTOR** prepared for you by the Special Master. Also enclosed is a set of answers to potential questions you may have about this matter. This letter is being sent to you on or before September 30, 2010.

***I. The enclosed NOTICE TO INVESTOR***

On the NOTICE TO INVESTOR, immediately below the "Summary of Deposits and Payments Based on the Special Master's Review" is a personalized "Proposed Loss Amount" (item "(F)" on the Notice) that has been calculated by the Special Master's staff based on what is known about your particular investment. This number is based on Best Diamond's bank records, questionnaires and other documents you may have previously sent to the government or the Special Master, and Best Diamond's internal accounting records.<sup>1</sup>

Although the government was able to seize approximately \$12 million from Best Diamond, the combined losses of all the investors are much greater (approximately \$29 million<sup>2</sup>). Therefore, it is not possible to offer to cover any one investor's losses in full from the seized assets, and we believe everyone must share pro-rata according to the amount they lost. "Pro-rata sharing" means that each investor gets an equal proportion of the final approved loss amount for all investors combined (total amount invested in Best Diamond, minus the total payments received from Best Diamond). Here's how pro-rata sharing works, using a hypothetical investor ("Investor A"). Let's assume Investor A's loss amount is \$20,000 and the total approved loss amount for all of the investors added together is \$30 million. Assuming there is only \$12 million in seized money to distribute, the pro-rata sharing ratio for all investors is 40% (\$12 million to distribute is 40% of the \$30 million in total approved loss). Using the pro-rata sharing method, Investor A would receive \$8,000 of the seized funds (40% of his \$20,000 loss).

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<sup>1</sup> Please note that "roll over" investments using fictitious interest payments from BDF are not counted as "money in" to BDF for the Proposed Loss Amount.

<sup>2</sup> This estimate may increase depending on whether some investors supply additional proof of losses.

Please review the enclosed NOTICE TO INVESTOR. The Proposed Loss Amount is the Special Master's calculation of the money you paid to invest in Best Diamond, minus the money Best Diamond paid you or returned to you in interest, bonuses, or other "contract" payments. If the Proposed Loss Amount listed for you is "\$0," please read footnote 2.<sup>3</sup>

**If you believe that the Proposed Loss Amount is correct, we encourage you to agree to accept a pro-rata share of the seized assets based on your Proposed Loss Amount (Option A below), without the need for you to come to court to fight your claim.** This is the "no-litigation option." If a large majority of the 2,200 investors choose the "no litigation option," we believe the process of distributing seized money will be faster. On the other hand, if many victims choose to come to court to fight their claims, we believe this will slow down the process for everyone by tying up some or all of the seized assets until the court decides the claims of those investors.

## ***II. You Must Take Action by November 5, 2010***

Here's what you need to do, by no later than November 5, 2010:

**Option A. If you agree that you will accept a pro-rata share of the seized assets based on your Proposed Loss Amount, without the need for you to come to court to fight your claim, please fill out and sign the TOP HALF of the enclosed form called "RESPONSE TO SEPTEMBER 30, 2010 PROPOSED LOSS AMOUNT," and mail it to: Special Master of Best Diamond Funding c/o Robb Evans and Associates LLC; 11450 Sheldon Street; Sun Valley, California 91352-1121. We will contact all investors who choose Option A by December 31, 2010 to update them about the possibility of an interim distribution of seized funds.**

**-OR-**

**Option B.** If you think the Special Master's calculation of the Proposed Loss Amount is not correct and you would like the Special Master to recalculate it, please fill out and sign the BOTTOM HALF of the "RESPONSE TO SEPTEMBER 30, 2010 PROPOSED LOSS AMOUNT" form, and mail it to Robb Evans at the address in the previous paragraph. **You must include with the completed form all documentation to support your loss.** Please review the "Explanations" at the end of the NOTICE TO INVESTOR to see if the Special Master has requested specific documentation from you (such as a signed questionnaire, or bank records). If you return the completed form and your documentation by November 5, 2010, you will receive an automatic extension of the court Claim deadline discussed in Section III below until 30 days after the Special Master responds to your request for recalculation of your Proposed Loss Amount. When the Special Master responds to your request with a Proposed Loss

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<sup>3</sup> For about 20% of the investors, the Special Master has calculated the Proposed Loss Amount as "\$0." There are four possible reasons for this calculation: (1) we do not have a completed questionnaire for the investor (and therefore the "\$0" may increase if that person responds to this letter with a questionnaire); (2) the available records show that the investor received more money from Best Diamond than the investor paid to Best Diamond; (3) the investor is listed twice in our database under two control numbers - - such an investor will receive two Notices to Investor. The Special Master has made the loss calculations for one of the control numbers, and has assigned a \$0 value to the duplicate; or (4) the investor's loss is a duplicate of a spouse or relative's loss, and the spouse/relative has been sent a Notice to Investor containing the calculations for the combined investment. If you have a \$0 Proposed Loss Amount and you have proof of your losses and payments from Best Diamond that you want the Special Master to consider, please follow the instructions in Section II.



Amount, you will have another opportunity to either accept his response and request a pro-rata share, or come to court to dispute your claim.

If you do nothing by the November 5, 2010 deadline, you may be excluded from receiving any share of the seized assets.

**When communicating with the Special Master, you must always print or type your “Contract Number,” which appears on the first page of the NOTICE TO INVESTOR.** If you change your address, you must directly notify the Special Master of your new address by mail at Special Master for Best Diamond Funding, c/o Robb Evans and Associates LLC; 11450 Sheldon Street; Sun Valley, California 91352-1121. From now on, the Victim Notification System will not be used for communications about seized assets in this case.

### *III. Notification of the Forfeiture Complaints*

**You do not have to come to court to agree to a pro-rata distribution of the seized funds, or to ask the Special Master to recalculate your Proposed Loss Amount.** You can participate without coming to court at this time by following the instructions in Section II above. However, even though the government does not expect to actually forfeit the seized assets (because we hope to agree with all of the victims on a Proposed Loss Amount for each victim), the government believes it has to notify you that you may have the right to appear in court to contest the forfeitability of the seized assets. We enclose copies of (1) the Complaints for Forfeiture, (2) the notices of filing the complaints, and (3) the Notice of Assignment to United States Magistrate Judge for Discovery.

If you want to come to court to contest forfeitability, you must file a Claim in each of the forfeiture cases identifying your right or interest with the Clerk of the United States District Court for the Central District of California on or before **November 5, 2010** (unless you have followed the instructions in Option B on the previous page; if you take Option B, you will receive an extension of this deadline), and a separate Answer (or a Motion pursuant to Federal Rule of Civil Procedure 12) within 21 days thereafter. At the same time you file your papers with the court, you must mail a copy of each document you file to me at the address listed on page 1 of this letter.

If you decide to file a court Claim, it must comply with the provisions of Rule G(5) of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions, which Rules are a supplement to the Federal Rules of Civil Procedure; you are required to comply with the Local Rules of the District Court for the Central District of California; your claim and answer must be filed on time; and the court may require you to participate in electronic document filing using the Electronic Case Filing System (“ECF”). An ECF User Registration form is also enclosed with this letter.

Very truly yours,

ANDRÉ BIROTTE, JR.  
United States Attorney

*Monica E. Tait*  
MONICA E. TAIT  
Assistant United States Attorney

**Robb Evans, Special Master**  
**Best Diamond Funding Notice to Investor**  
**September 30, 2010**

***Robb Evans, Funcionario Especial***  
***Aviso a los inversionistas de Best Diamond Funding***  
***30 de septiembre de 2010***

<b>Contract Number</b> <b><i>Número de contrato</i></b>	
<b>USDOJ Control Number</b> <b><i>Número de control del Ministerio de Justicia</i></b>	
<b>Total Investment based on Questionnaire (A)</b> <b><i>Inversión total basada en el Cuestionario (A)</i></b>	
<b>Total Payment -Questionnaire (B)</b> <b><i>Pago total - Cuestionario (B)</i></b>	
<b>Net Loss (or Overpayment) Calculated –</b> <b>Questionnaire (C) = (A) – (B)</b> <b><i>Pérdida neta (o pago excesivo) calculada –</i></b> <b><i>Cuestionario (C) = (A) – (B)</i></b>	

**Summary of Deposits and Payments Based on the Special Master's Review**  
***Resumen de los depósitos y pagos según la revisión del Funcionario Especial***

<b>Proposed Loss Amount (F) = (D) – (E), except when the Net Loss is a negative number or zero and/or when the questionnaire has not been received, the Proposed Loss Amount is zero.</b> <b><i>Monto propuesto de pérdida (F) = (D) – (E), excepto cuando la pérdida neta sea un número negativo o cero o cuando no se reciba el cuestionario, el monto propuesto de pérdida es cero.</i></b>	<b>\$4000</b>
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**Please see the Transaction Details for "D" and "E", if applicable, attached to the Investor Notice.**  
***Por favor, consulte los detalles de transacción de "D" y "E", si corresponde, aneja a la Comunicación con Inversores.***

<p>Explanations (and supporting documents needed, if applicable) for the difference between the questionnaire loss (C ) and Special Master's Proposed Loss Amount (F), if (C ) is greater than (F)</p> <p><i>Las explicaciones (y los documentos de apoyo necesarios, si corresponde) en la diferencia entre la pérdida del cuestionario (C) y el monto propuesto de pérdida del Funcionario Especial (F), si (C) es mayor que (F)</i></p>	
<p>1. Support (e.g. check copies, bank records, cash receipts, contracts, promissory notes, personal data or application, etc.) needed for deposit(s) on the estimated Date(s). If the amount(s) is not an actual deposit from you, and represents interest rollover, please indicate so.</p> <p><i>1. El apoyo (por ejemplo, copias de los cheques, registros bancarios, pagarés, datos o solicitudes personales, etc.) necesario para los depósitos en las fechas calculadas. Si los montos no es un depósito suyo en realidad, y representa interés de reinversiones, indique eso.</i></p>	
<p>2. Checks/ Cashier's Checks Provided were not located from the bank records of Best Diamond Funding (if you believe this not true, please provide the canceled checks with the front and back).</p> <p><i>2. Los cheques o cheques de caja provistos no se encontraron en los registros bancarios de Best Diamond Funding (si cree que no es cierto, sírvase proporcionar los cheques cancelados con el frente y el reverso).</i></p>	
<p>3. Cashier's Checks were not cashed by Best Diamond Funding and were seized by USDOJ. USDOJ is seeking to negotiate the check(s), which could increase your Proposed Loss Amount.</p> <p><i>3. Los cheques de caja no los cobró Best Diamond Funding y fueron incautados por el Ministerio de Justicia (USDOJ). El USDOJ está tratando de negociar los cheques, lo cual podría aumentar el monto propuesto de pérdida suya.</i></p>	
<p>4. Questionnaire was not received by USDOJ. Please complete and submit the attached questionnaire, and provide the items described in 5.</p> <p><i>4. El USDOJ no recibió el cuestionario. Sírvase llenar y presentar el cuestionario adjunto, y proporcione los artículos descritos en el inciso 5.</i></p>	
<p>5. Summarize each deposit and payment, including the amount and date. Provide the supporting documents (e.g. check copies, bank records, cash receipts, contracts, promissory notes, personal data or application, etc.). Do not include interest rollover.</p> <p><i>5. Resuma cada depósito y pago, incluso el monto y la fecha. Proporcione los documentos de apoyo (por ejemplo, copias de los cheques, registros bancarios, recibos de efectivo, contratos, pagarés, datos o solicitudes personales, etc.). No incluya el interés de reinversiones.</i></p>	
<p>6. Your questionnaire understated the amount BDF paid you. See the transactions listed above.</p> <p><i>6. Su cuestionario subestimó el monto que BDF le pagó. Vea las transacciones indicadas arriba.</i></p>	Yes / Sí
<p>7. Your questionnaire overstated the amount BDF paid you. See the transactions listed above.</p> <p><i>7. Su cuestionario sobreestimó el monto que BDF le pagó. Vea las transacciones indicadas arriba.</i></p>	

<p>8. Your investment may be listed twice on the USDOJ's victim list. If you believe this is not true, please complete and submit the attached questionnaire, and provide the items described in 5.</p> <p><i>8. Su inversión podría estar mencionada dos veces en la lista de víctimas del USDOJ. Si cree que no es cierto, sírvase llenar y presentar el cuestionario adjunto, y proporcionar los artículos descritos en el Inciso 5.</i></p>	
<p>9. The same supporting document was presented by another victim.</p> <p><i>9. Otra víctima presentó los mismos documentos de apoyo.</i></p>	
<p>10. Others</p> <p><i>10. Otros</i></p>	

Transaction Details Transaccion Detalles				D	E
Contract Number Numero de contrato	Investor Name Nombre del inversionista	Transaction Date Fecha de la transaccion	Check Number Numero de cheque	Deposit/Credit Monto de deposito/credito	Payment/Debit Monto de pago/debito
[REDACTED]					
		10/24/2007	Cash Receipt	\$5,000.00	\$0.00
		2/26/2008	2503	\$0.00	(\$350.00)
		4/2/2008	3530	\$0.00	(\$350.00)
		6/3/2008	5853	\$0.00	(\$350.00)
		6/24/2008	Cash Receipt#2	\$2,500.00	\$0.00
		6/26/2008	6384	\$0.00	(\$350.00)
		7/28/2008	9134	\$0.00	(\$525.00)
		8/26/2008	11173	\$0.00	(\$525.00)
		9/29/2008	13486	\$0.00	(\$525.00)
		10/27/2008	17152	\$0.00	(\$525.00)
Summary for 'Contract Number' = [REDACTED] (10 detail records)					
Sum				\$7,500.00	(\$3,500.00)
Summa					

**RESPONSE TO SEPTEMBER 30, 2010 PROPOSED LOSS AMOUNT**

**Instructions:** 1. Enter your contract number and name below;  
2. Select OPTION A or OPTION B as described in the accompanying letter from the United States Attorney's Office. Please choose only one OPTION;  
3. Sign and date only under the Option you selected; and  
4. Mail completed form and any required documentation **by November 5, 2010** to:

Special Master of Best Diamond Funding  
c/o Robb Evans and Associates LLC  
11450 Sheldon Street  
Sun Valley, CA 91352-1121

**CONTRACT NUMBER :**

(from the NOTICE TO INVESTOR form)

**PRINTED NAME:**

**OPTION A: Agree with Proposed Loss Amount**

I have reviewed the **Proposed Loss Amount** calculated for me by the Special Master and listed on the BEST DIAMOND FUNDING NOTICE TO INVESTOR dated 9/30/2010 under the above contract number. I agree that the Proposed Loss Amount is correct, and I will accept a pro-rata share of the seized assets based on that Proposed Loss Amount.

Dated: \_\_\_\_\_ Signature: \_\_\_\_\_

**OPTION B: Request Recalculation of Proposed Loss Amount and extension of court claim filing deadline**

I believe the **Proposed Loss Amount** calculated for me by the Special Master and listed on the BEST DIAMOND FUNDING NOTICE TO INVESTOR dated 9/30/2010 under the above contract number is not correct, and I request a recalculation. I have enclosed with this form all documentation of money I paid to Best Diamond, and money Best Diamond paid to me, including all documentation requested by the Special Master at the end of the NOTICE TO INVESTOR. I understand that when the Special Master responds to this request, I will have another opportunity to either accept his response and request a pro-rata share, or come to court to dispute my claim.

Dated: \_\_\_\_\_ Signature: \_\_\_\_\_

DECLARATION OF BRICK KANE

I, Brick Kane, declare and state as follows:

1. I am the Chief Operating Officer at the firm of Robb Evans & Associates LLC. I have personal knowledge of the following facts unless otherwise indicated and, if called as a witness, would testify thereto under oath.

2. On February 11, 2010, on the government's motion, the Court appointed Robb Evans as Special Master in United States v. \$6,874,561.25 in Funds from Six Wells Fargo Bank Accounts, et al., CV 09-2398-RGK (RZx) to analyze losses incurred by the victims of Milton Retana and Best Diamond Funding (collectively, "BDF"). The Court later approved the employment of Robb Evans & Associates LLC to assist the Special Master in carrying out his duties. As of January 21, 2011, the loss amounts of 1,826 of the investors have been finalized.

3. Beginning in November and December 2010, I was asked by government counsel (Monica Tait) to advise whether in my experience it would be appropriate to recommend that this Court permit an interim distribution of some of the seized funds under the Court's control, or whether an interim distribution would be too risky in light of the amount of unresolved investor losses.

After considering the data, I have concluded that an interim distribution would be appropriate to recommend to the Court at this time as we await the finalization of all the investors' claims.

4. The government requested that my firm supply a proposed distribution plan which, based on our experience in these kinds of cases, would return a significant pro-rata distribution to the investors whose losses have been finalized, but would likely hold back enough of the seized money to be able to pay the same pro-rata share to the remaining investors (once their losses are final). The government requested that the distribution plan also hold back enough money to pay the anticipated costs of the Special Master's work as this matter is brought to a close.

5. Attached as Exhibit 5 is a spreadsheet setting forth the details of the proposed interim distribution plan with data accurate as of January 21, 2011. The top half of the spreadsheet lists the following information:

- The amount of liquid assets in the case (as calculated by the government);

- The amount of money this Court has already ordered to be paid from the liquid assets to the Special Master;



-The amount of money to set aside for work already performed by the Special Master and staff, but for which payment has not yet been requested; and

-the projected cost of the Special Master's work going forward.

6. Below the yellow bar running horizontally across Exhibit 5, my staff (led by accountant Lillian Lee) has described the status of the investor loss analysis. The investors whose losses are final are those listed in the left hand column as "Option A Claims" or "I," and "Option B Claims Finalized" or "J." These are the 1,826 investors to whom an interim distribution is proposed. The remaining investors' claims have not been finalized.

7. Based on the calculations set forth in Exhibit 5, I recommend that the Court approve the interim distribution of \$9,216,851.32 now to the 1,826 investors whose losses are final. The \$9.2 million would be distributed to these investors on a pro-rata basis, and my staff has calculated that each investor should receive 32.65% of his Final Loss Amount, based on the total amount of potential losses in this matter and the amount available for distribution.

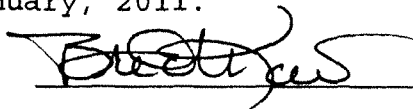
8. Attached as Exhibit 6 is a spreadsheet listing all

1,826 investors to whom interim distribution is recommended. Exhibit 6 identifies the investors by contract number, states their finalized loss amounts, and states the dollar amount of the proposed interim distribution to each investor (i.e., 32.65% of each finalized loss amount).

9. Robb Evans has been appointed numerous times in this district and elsewhere as the receiver for companies accused of committing investor fraud. As delegated by Mr. Evans, I have managed the day to day aspects of such receiverships. In my experience with such receiverships, where substantial receivership assets exist and where a majority of the potential claims to the assets have been finalized, it is customary for the receiver to request court permission to conduct an interim distribution of receivership assets, even though the losses of all investors are not yet known.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 31<sup>st</sup> day of January, 2011.

A handwritten signature in black ink, appearing to read "Brick Kane", is written over a horizontal line.

BRICK KANE