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8 Geneva Fund LLC

9 UNITED STATES BANKRUPTCY COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 OAKLAND DIVISION

12 In re:) Case No. 10-70580

13 Carl Miller) Chapter 7

14 Debtor)

15 Geneva Fund LLC) A. P. No.

16 Plaintiff,)

17 Carl Miller)

18 Defendant.)

COMPLAINT TO DETERMINE
DISCHARGEABILITY OF DEBT
(11 U.S.C. Sections 523 (a) (4), (6))

19 Plaintiff, Geneva Fund LLC, a duly registered California Limited Liability
20 Corporation, hereby alleges the following:

21 1. This Court has jurisdiction over this matter which is a core proceeding, by
22 virtue of 28 U.S.C. Section 157 (a), 157 (b) (2) (I) and 1334, and 11 U.S.C. Section 523.

23 2. Plaintiff, holds a claim against the debtor and Defendant, Carl Miller

24 3. Defendant filed a petition for relief in this Court under Title 11,
25 Chapter 7 on September 15, 2010.

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FIRST CLAIM FOR RELIEF
(To Determine the DISCHARGEABILITY of Debt)
11 U.S.C. Sec. 523 (a) (4)

FRAUD

4. Plaintiff hereby incorporates each and every allegation set forth in Paragraphs 1 through 3, above, as though fully set forth herein.

5. Defendant is indebted to the Plaintiff in the amount estimated to be at least \$740,000.00 as set forth in Defendant's Schedule F filed on September 15, 2010. Defendant is a licensed real estate broker licensed by the State of California. Defendant had a management agreement with Plaintiff to locate real estate investment properties that had value and to use the funds received from Plaintiff to make secured first deeds of trust loans on these properties

6. Beginning in on or about April 21, 2005 Defendant began taking the funds from the Plaintiff. On April 5, 2005, he took \$300,000.00. Again on November 21, 2005, he took \$100,000.00. On March 24, 2006, he took \$50,000.00. On March 29, 2006, he took \$140,000.00. Defendants continued to take funds on May 26, 2006 he took another \$50,000.00. And on August 18, 2006, he took \$100,000.00. These funds were all taken and used by the Defendant for his own personal use and without the knowledge and permission of the Plaintiff.

7. Defendant unlawfully used said funds with full knowledge of the consequences that Petitioner would suffer upon his fraud, theft and embezzlement and misappropriation of the Plaintiff's funds.

8. Defendant had a fiduciary to Plaintiff to invest the monies of Plaintiff in a wise and prudent manner. Defendant breached that fiduciary duty due to his fraud, theft and embezzlement and misappropriation of Plaintiff's funds

9. The debt owed by Defendant to Plaintiff for this unlawful taking and use of said funds is nondischargeable under section 523 (a) (4) of the United States Bankruptcy Code.

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SECOND CLAIM FOR RELIEF
(To Determine the DISCHARGEABILITY of Debt)
11 U.S.C. Sec. 523 (a) (4)

BREACH OF FIDUCIARY DUTY

10. Plaintiff hereby incorporates each and every allegation set forth in Paragraphs 1 through 3, above, as though fully set forth herein.

11. Defendant, Carl Miller, entered into a management/operating agreement with Plaintiff, Geneva Fund LLC. In the terms of the operating agreement Defendant was to secure only well secured first deeds of trust. Defendant willfully and maliciously disregarded his agreement with Plaintiff and invested approximately \$1,100,000.00 of Plaintiff's funds in second, third, fourth and even fifth mortgages. By investing in these questionable mortgages Defendant willfully breached his duty to Plaintiff. Defendant was the only one to profit from these transactions as he received commissions for these questionable loans.

THIRD CLAIM FOR RELIEF
(To Determine the DISCHARGEABILITY of Debt)
(11 U.S.C. Sec. 523 (a) (6))

INTENTIONAL INFLICTION OF HARM

12. Plaintiff hereby incorporates each and every allegation set forth in Paragraph 1 through 11, above as though fully set forth herein.

13. Defendant used \$740,000.00 of the Plaintiff's funds for this own personal benefit.. Defendant knew that by unlawfully taking the \$740,000.00 that Plaintiff was going to suffer irreparable harm. Investors that had placed their savings through the Plaintiff and with the Defendant were now faced with a total loss of their savings

14. Defendant willfully, maliciously and with wanton disregard to the consequences that would be suffered by Plaintiff.

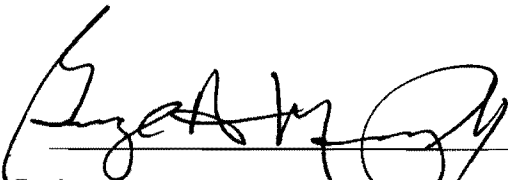
15. The debt owed by Defendant to Plaintiff as the result of said willful, malicious

1 and wanton disregard for Plaintiff through his unlawful and unauthorized use of said
2 aforementioned funds nondischargeable under section 523 (a) (6) of said. Code.

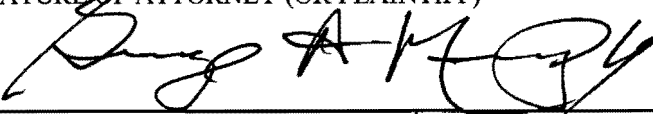
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4 WHEREFORE, Plaintiff prays for entry of judgment against Defendant as follows

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6 1. That this Court determine that the Defendant's obligation to Plaintiff is
7 nondischargeable pursuant to 11 U.S.C. Section 523 (a) (4), (6).
8 2. That interest, cost and attorney fees be awarded to Plaintiff on the
9 above described obligation to the maximum amount allowed by law.
10 3. That damages of \$1,840,000.00 be awarded Plaintiff sufficient to
11 compensate Plaintiff for the losses incurred due to the fraud, theft and
12 embezzlement of breach of fiduciary duty and intentional infliction of
13 harm by Defendant.
14 4. For such other and further relief that this Court deems proper and just.

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17 Dated: December 14, 2010

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20 George A. Murphy, Attorney for Plaintiff
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ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)		ADVERSARY PROCEEDING NUMBER (Court Use Only)
PLAINTIFFS Geneva Fund LLC		DEFENDANTS Carl Miller
ATTORNEYS (Firm Name, Address, and Telephone No.) George A. Murphy Telephone 707 746-5864 Law office of George A. Murphy 831 East 2nd Street Suite 203, Benicia, CA 94510		ATTORNEYS (If Known)
PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input checked="" type="checkbox"/> Creditor <input type="checkbox"/> Trustee <input type="checkbox"/> Other		PARTY (Check One Box Only) <input checked="" type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Trustee <input type="checkbox"/> Other
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) Complaint for Dischargeability of Debt under 11 U.S.C. sec. 523(a)(4)&(6)		
NATURE OF SUIT (Number up to five (5) boxes starting with the lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)		
FRBP 7001(1) – Recovery of Money/Property <input type="checkbox"/> 11 - Recovery of money/property - § 542 turnover of property <input type="checkbox"/> 12 - Recovery of money/property - § 547 preference <input type="checkbox"/> 13 - Recovery of money/property - § 548 fraudulent transfer <input type="checkbox"/> 14 - Recovery of money/property - other FRBP 7001(2) – Validity, Priority or Extent of Lien <input type="checkbox"/> 21 - Validity, priority or extent of lien or other interest in property FRBP 7001(3) – Approval of Sale of Property <input type="checkbox"/> 31 - Approval of sale of property of estate and of a co-owner - § 363(h) FRBP 7001(4) – Objection/Revocation of Discharge <input type="checkbox"/> 41 - Objection/revocation of discharge - § 727(c), (d), (e) FRBP 7001(5) – Revocation of Confirmation <input type="checkbox"/> 51 - Revocation of confirmation FRBP 7001(6) – Dischargeability <input type="checkbox"/> 66 - Dischargeability - § 523(a)(1), (14), (14A) priority tax claims <input type="checkbox"/> 62 - Dischargeability - § 523(a)(2), false pretenses, false representation, actual fraud <input checked="" type="checkbox"/> 67 - Dischargeability - § 523(a)(4), fraud as fiduciary, embezzlement, larceny (continued next column)		FRBP 7001(6) – Dischargeability (continued) <input type="checkbox"/> 61 - Dischargeability - § 523(a)(5), domestic support <input checked="" type="checkbox"/> 68 - Dischargeability - § 523(a)(6), willful and malicious injury <input type="checkbox"/> 63 - Dischargeability - § 523(a)(8), student loan <input type="checkbox"/> 64 - Dischargeability - § 523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65 - Dischargeability - other FRBP 7001(7) – Injunctive Relief <input type="checkbox"/> 71 - Injunctive relief - imposition of stay <input type="checkbox"/> 72 - Injunctive relief - other FRBP 7001(8) – Subordination of Claim or Interest <input type="checkbox"/> 81 - Subordination of claim or interest FRBP 7001(9) – Declaratory Judgment <input type="checkbox"/> 91 - Declaratory judgment FRBP 7001(10) – Determination of Removed Action <input type="checkbox"/> 01 - Determination of removed claim or cause Other <input type="checkbox"/> SS-SIPA Case - 15 U.S.C. §§ 78aaa <i>et. seq.</i> <input type="checkbox"/> 02 - Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)
<input type="checkbox"/> Check if this case involves a substantive issue of state law	<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23	
<input type="checkbox"/> Check if a jury trial is demanded in complaint	Demand \$	
Other Relief Sought		

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR Carl Miller		BANKRUPTCY CASE NO. 10-70580 EDJ
DISTRICT IN WHICH CASE IS PENDING Northern District of California	DIVISION OFFICE Oakland	NAME OF JUDGE Edward D. Jellen
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) 		
DATE 12-14-10	PRINT NAME OF ATTORNEY (OR PLAINTIFF) George A. Murphy	

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 104, the Adversary Proceeding Cover Sheet, if it is required by the court. In some courts, the cover sheet is not required when the adversary proceeding is filed electronically through the court's Case Management/Electronic Case Files (CM/ECF) system. (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and Defendants. Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.