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Vivian R. Hays; Leapin Eagle, LLC; Denise J. Wilson; Gerald
R. Terry, Ann T. Robbins, Jane T. Evans, on behalf of
themselves individually and on behalf of a class of others
similarly situated.*

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

In re:
Land America Financial Group, Inc., et al.,

Debtors.

LAND AMERICA 1031 EXCHANGE
SERVICES, INC., and LANDAMERICA
FINANCIAL GROUP, INC.,

Plaintiffs,

Chapter 11

Case No. 08-35994 (KRH)

Jointly Administered

Adv. Proc. No. 09-3146 (KRH)

vs.

ANGELA M ARTHUR, AS TRUSTEE OF THE ARTHUR DECLARATION OF TRUST, DATED DECEMBER 29, 1988; VIVIAN R. HAYS; LEAPIN EAGLE, LLC; DENISE J. WILSON; GERALD R. TERRY; ANN T. ROBBINS; JANE T. EVANS, on behalf of themselves individually and on behalf of a class of others similarly situated,

Defendants

**DEFENDANTS' ANSWER
TO COMPLAINT FOR
INJUNCTIVE RELIEF**

The Defendants, Angela M Arthur, as Trustee of the Arthur Declaration of Trust, dated December 29, 1988; Vivian R. Hays; Leapin Eagle, LLC; Denise J. Wilson; Gerald R. Terry, Ann T. Robbins, and Jane T. Evans, on behalf of themselves and on behalf of a class of others similarly situated (collectively "Defendants"), for their answer to the Complaint for Injunctive Relief, would state that all allegations not specifically admitted or qualified below are denied. In response to the specific allegations of the Complaint, the Defendants would state as follows:

**FOR A FIRST DEFENSE
(Specific Responses)**

As To Statutory Predicates, Jurisdiction, and Venue

1. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334.

RESPONSE: Defendants admit that this Court has jurisdiction over this proceeding.

2. This is a core proceeding to be heard and determined by the Bankruptcy Court pursuant to 28 U.S.C. § 157(b)(2)(A), (G), and (0).

RESPONSE: Defendants admit this matter is a core proceeding to be heard and determined by this Bankruptcy Court.

3. Venue is proper in this District pursuant to 28 U.S.C. § 1409(a).

RESPONSE: Defendants admit that venue is proper in this District.

4. The Debtors commence this adversary proceeding pursuant to sections 362(a) and 105(a) of chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), section 1334 of chapter 28 of the United States Code, and Rules 7001(7) and 7065 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

RESPONSE: Defendants admit the allegations of paragraph 4.

As To The Parties

1. Plaintiff Land America 1031 Exchange Services, Inc. (“LES”) is a business incorporated under the laws of Maryland and is a debtor and debtor in possession in this Court in connection with jointly administered Chapter 11 Case Number 08-35994 (KRH).

RESPONSE: Defendants admit the allegations of paragraph 1.

2. Plaintiff Land America Financial Group, Inc. (“LFG”) is a business incorporated under the laws of Virginia and is a debtor and debtor in possession in this Court in connection with jointly administered Chapter 11 Case Number 08-35994 (KRH).

RESPONSE: Defendants admit the allegations of paragraph 2.

3. Defendants Angela M. Arthur, as trustee of the Arthur Declaration Trust dated December 29, 1988, Vivian R. Hays, Leapin Eagle, LLC, Denise J. Wilson, Gerald R. Terry, Ann T. Robbins, and Jane T. Evans are plaintiffs in a multidistrict putative class action litigation styled as In re: LandAmerica 1031 Exchange Services, Inc., Internal Revenue Service 1031 Tax Deferred Exchange Litigation, pending before the United States District Court for the District of South Carolina, Anderson Division, Case No. MDL No. 2054 (the “MDL”) (comprising Angela M. Arthur, et al. v. SunTrust Banks, Inc., et al., Case No. 8:09-cv-1739 (D. S.C.) and Gerald R. Terry, et al. v. SunTrust Banks, Inc., et al., Case No. 8:09-cv-415 (D. S.C.)).

RESPONSE: Defendants admit the allegations of paragraph 3.

4. On information and belief, Defendant Angela M. Arthur is a Trustee of the Arthur Declaration of Trust, dated December 29, 1988.

RESPONSE: Defendants admit the allegations of paragraph 4.

5. On information and belief, Defendant Vivian R. Hays is an individual residing in Hayden, Idaho.

RESPONSE: Defendants admit the allegations of paragraph 5.

6. On information and belief, Defendant Leapin Eagle LLC is a New York Limited Liability Company doing business in Brooklyn, New York.

RESPONSE: Defendants admit the allegations of paragraph 6.

7. On information and belief, Defendant Denise J. Wilson is an individual residing in Tacoma, Washington.

RESPONSE: Defendants admit the allegations of paragraph 7.

8. On information and belief, Defendant Gerald R. Terry is an individual residing in Anderson County, South Carolina.

RESPONSE: Defendants admit the allegations of paragraph 8.

9. On information and belief, Defendant Jane T. Evans is an individual residing in Horry County, South Carolina.

RESPONSE: Defendants admit the allegations of paragraph 9.

10. On information and belief, Defendant Ann T. Robbins is an individual residing in Georgia.

RESPONSE: Defendants admit the allegations of paragraph 10.

As To Facts

11. On November 26, 2008 (the "Petition Date"), LFG and LES filed voluntary petitions in this Court for relief under chapter 11 of the Bankruptcy Code. The Debtors continue to manage their properties as debtors in possession pursuant to Bankruptcy Code sections 1107 and 1108. No trustee or examiner has been appointed in these chapter 11 cases.

RESPONSE: Defendants admit the allegations of paragraph 11.

12. On December 3, 2008, the United States Trustee for the Eastern District of Virginia appointed an Official Committee of Unsecured Creditors in each of the LFG and LES cases (collectively, the “Creditors’ Committees”).

RESPONSE: Defendants admit the allegations of paragraph 12.

13. Prior to the Petition Date, LES operated as a “qualified intermediary” under Section 1.1031(k)-1(g)(4) of the Treasury Regulations and Section 1031 of the Internal Revenue Code (the “Tax Code”). By way of background, the Tax Code generally imposes taxes when property is sold or transferred and a gain is realized. Pursuant to Section 1031 of the Tax Code and the applicable Treasury Regulations, if a taxpayer adheres to certain guidelines, then all or a portion of the gains from the disposition of business or investment property can be deferred. To qualify for such tax deferral, the taxpayer must structure the transaction as an exchange of one property for another of “like kind.” This includes a requirement that the taxpayer receive the new “like kind” property within 180 days after the date on which the taxpayer transferred the relinquished property. Section 1031 exchanges typically are facilitated by a qualified intermediary, like LES.

RESPONSE: Defendants admit the allegations of paragraph 13.

14. Prior to the Petition Date, LES entered into agreements with its customers (the “Exchange Agreements”) whereby it acquired the net proceeds of the sales of relinquished properties (the “Exchange Funds”) in order to facilitate a like kind exchange in accordance with the requirements of the Tax Code.

RESPONSE: Defendants admit the allegations of paragraph 14, but would qualify the allegations by stating that LES acquired the net proceeds by taking actual possession and thus legal title to the proceeds but did not obtain equitable title or beneficial interest in the net proceeds.

15. Debtors believe that as of the Petition Date, the Exchange Funds maintained by LES included funds acquired from approximately 450 customers pursuant to separate Exchange Agreements; approximately 50 related to Segregated Exchange Agreements, while the remaining approximately 400 related to Commingled Exchange Agreements. Over 100 of these customers have already brought adversary proceedings in this Court regarding the Exchange Funds and it can reasonably be expected that other customers will continue to do so.

RESPONSE: Defendants admit the allegations of paragraph 15, except that (1) the Debtors failed to maintain the Exchange Funds but instead used the Defendants’

Exchange Funds to fund exchanges of prior clients; and (2) the Defendants are without knowledge or information sufficient to form a belief whether other customers are expected to bring adversary proceedings and therefore deny such part of the allegations.

16. Due to the great number of suits and the need for the Court to deal with these claims in an orderly and efficient manner, LES sought to establish procedures to settle disputes relating to the ownership of Exchange Funds through the appointment of certain test cases (the “Lead Cases”), by which the common legal and factual issues involved in the adversary proceedings would be litigated and all adversary proceedings other than the Lead Cases would be stayed. After a hearing, the Debtors and the LES Official Committee of Unsecured Creditors met and conferred and agreed to the designation of certain Lead Cases and a schedule for their resolution.¹

RESPONSE: Defendants admit so much of paragraph 16 as alleges that this Court established five lead cases by which the common legal and factual issues involved in the adversary proceedings would be litigated and all adversary proceedings other than the lead cases would be stayed. Defendants lack sufficient information to form a belief as to the truth or falsity of the remainder of the allegations of paragraph 16 and therefore deny the same.

17. On January 16, 2009, after objections to LES’s and the Committee’s joint motion to establish a scheduling protocol were made and heard, this Court entered the Protocol Order. A copy of the Protocol Order is annexed hereto as Exhibit A.

RESPONSE: Defendants admit the allegations of paragraph 17.

As To The MDL

18. On January 14, 2009, Angela M. Arthur, as Trustee of the Arthur Declaration of Trust, dated December 29, 1988, Vivian R. Hays, Leapin Eagle, LLC, and Denise J. Wilson, on behalf of themselves and others similarly situated, filed a complaint against Evans, Connor, and SunTrust Banks, Inc. (“SunTrust”) in the United States District Court for the Southern District of California (the “California Action”). On February 11, 2009, Gerald R. Terry, Ann T. Robbins, and Jane T. Evans, on behalf of

¹ A total of five Lead Case were ultimately designated.

themselves and others similarly situated, filed a complaint against Chandler, Vlahcevic, Evans, Connor, and SunTrust in the Court of Common Pleas, Tenth Judicial Circuit, State of South Carolina (the “South Carolina Action”). On February 19, 2009, the South Carolina Action was removed to the District of South Carolina. On June 12, 2009, the United States Judicial Panel on Multidistrict Litigation ordered the California Action transferred to the District of South Carolina for coordination or consolidation of pretrial proceedings with the South Carolina Action. The complaints in the California Action and South Carolina Action are annexed hereto as Exhibits B and C.

RESPONSE: Defendants admit the allegations of paragraph 18 other than the date of filing of the South Carolina action, which was February 2, 2009 with an amended complaint filed on February 11, 2009. The Defendants would further show that they filed an Amended Consolidated Complaint in the MDL action (“MDL Complaint”) on August 3, 2009 in which individual Defendant Christine Vlahcevic was dropped as a named Defendant and in which Ronald B. Ramos, Devon M. Jones, and Brenton J. Allen were added as individual defendants. The individual defendants in the MDL action at this point are Theodore L. Chandler, Jr., G. William Evans, Stephen Connor, Ronald B. Ramos, Devon M. Jones, and Brenton J. Allen (“Individual Defendants”). The MDL Complaint is annexed hereto as Exhibit 1.

19. The MDL Plaintiffs allege that the MDL defendants “participated in and provided assistance to LES in committing fraudulent acts, in converting exchange funds that were entrusted to it to its own use, and in breaching fiduciary duties owed to Plaintiffs and others similarly situated.”

RESPONSE: Defendants admit the allegations of paragraph 19.

20. But for the deliberate omission of LES as a named defendant, the claims raised in the MDL are indistinguishable from those that have been raised in a number of other adversary proceedings filed in this Court which, subject to the terms of the Protocol Order, have been uniformly stayed. Each of the MDL plaintiffs has filed proofs of claim in the Bankruptcy Court to recover their Exchange Funds in bankruptcy.

RESPONSE: Defendants deny the allegations contained in paragraph 20 of the Adversary Complaint other than that the MDL Plaintiffs have filed proofs of claim in the Bankruptcy proceeding with regard to their lost exchange funds.

21. As the Court knows, earlier this year LES (together with a number of parties in interest) participated in an expedited litigation of the Lead Cases including one or more involving Commingled Exchange Agreements such as the ones involved in the MDL. That litigation culminated in certain summary judgment rulings (including one referable to Commingled Exchange Agreements) from this Court resolving some, but not all of the issues raised in the Lead Cases and the corresponding stayed adversary proceedings.

RESPONSE: Defendants admit the allegations of paragraph 21 but are informed and believe that various claimants have reserved their rights to appellate review.

22. Thereafter, LES, in consultation with the LES and LFG Committees and other interested parties, agreed to submit certain remaining issues raised in the Lead Cases and the associated adversary proceedings to mediation. By order of this Court dated May 21, 2009 (the "Mediation Protocol Order") and by agreement of the parties, that mediation is scheduled to commence on Monday, July 13, 2009 (the "Mediation"). It is the Debtors' hope and expectation that the issues raised in the Lead Cases and the associated adversary proceedings can be resolved in connection with the Mediation, such that the claims of all Exchangers (including the purported class plaintiffs in the MDL) can be resolved on a global basis either through settlements submitted to and approved by this Court, or in a plan voted on and accepted by the affected Exchangers consistent with the requirements of the Bankruptcy Code. In the absence of such a settlement, claims of all Exchangers (Lead Case, Adversary Proceeding, and MDL Plaintiffs alike) should be adjudicated and resolved in and by this Court pursuant to the claims adjudication process provided for under the Bankruptcy Code, not in piecemeal litigation in numerous fora across the country. Were the MDL permitted to proceed, there is a substantial risk of inconsistent factual and/or legal findings that could be prejudicial to the Debtors (or other parties in interest) in connection with the adjudication of the remaining claims of Exchangers within the context of these bankruptcy proceedings.

RESPONSE: The Defendants are without knowledge or information sufficient to form a belief as to the allegations in the first three sentences of paragraph 22 and therefore deny such allegations. Defendants specifically deny the remaining allegations of paragraph 22. Defendants affirmatively allege with regard to paragraph 22 that Debtors are not in possession of assets sufficient to satisfy the

claims of the exchangers particularly considering the rate of expenditures from the remaining exchange funds to pay law firms and consultants hired by Debtors to defend the exchangers's claims. Defendants further specifically allege with regard to paragraph 22 that there is no risk or prejudice to Debtors arising from continuation of the MDL but rather allege that Debtors would reap benefits from exchangers recouping all or a part of their lost exchange funds from a source other than estate property. Defendants further allege with regard to paragraph 22 that there is no risk of "piecemeal litigation in numerous fora across the country" since the MDL panel has already spoken and consolidated this putative class action in one forum before one judge. Subsequent actions, if any are filed, would be transferred to the District of South Carolina.

**As To The Debtors' Obligations to Indemnify Directors, Officers,
and Other Employees**

23. Section Two of the Amended and Restated Bylaws of LES (the "Bylaws") provides that the officers, directors, and employees of LES are indemnified to the fullest extent authorized by Maryland law, the state in which LES was incorporated. A true and correct copy of the LES Bylaws is annexed hereto as Exhibit D.

RESPONSE: With regard to paragraph 23 Defendants crave reference to the Amended and Restated Bylaws which document speaks for itself.

24. Maryland Corporation Law allows a company to indemnify any person sued as a director, officer, employee, or agent of the company if the person did not act in bad faith. Md. Code Ann. § 2-418(b) (2008). Maryland law also permits the Debtors to advance indemnity payments prior to a final disposition of the main action under certain terms and circumstances.

RESPONSE: Defendants admit the allegations of paragraph 24 subject to the qualifications below. Maryland Code Ann. § 2-418(b)(1) specifically excludes from

indemnification acts or omissions committed in bad faith. The statute provides: “A corporation may indemnify any director...unless it is established that... [t]he act or omission of the director was material to the matter giving rise to the proceeding; and ... [w]as committed in bad faith or ... [w]as the result of active and deliberate dishonesty”. Md. Code Ann. § 2-418(b)(1)(i)(1) & (2) (2008). The MDL Complaint asserts in extensive detail, and the proof will show, that after the freeze of the markets for auction rate securities in February 2008 the Debtors were taking deposits from new exchange clients to fund exchanges for prior clients. The Debtors were thus running a Ponzi scheme. The Individual Defendants were personally involved in the Debtors’ operation of the Ponzi scheme which caused the Defendants’ losses. (See, *e.g.*, Exhibit 1, MDL Complaint, ¶¶ 78 and 120). The acts and omissions of the Individual Defendants in operating the Debtors’ Ponzi scheme were committed in bad faith and were the result of active and deliberate dishonesty. Therefore the Individual Defendants do not have a right of indemnification from Debtors.

25. Were the MDL to proceed, the MDL defendants would likely claim indemnification rights under Maryland law, as well as under the LES governing documents, to be reimbursed for their legal defense costs as well as any liability imposed against them (subject to the bad faith limitation). Indeed, MDL defendants Chandler, Vlahcevic, and Evans have already submitted proofs of claim for an undetermined amount for any claims that each may have against LFG and its subsidiaries. Were the Debtors called on to provide such indemnification and advance cash to or for the benefit of the MDL defendants, it would effectively result in a distribution of property of the Debtors’ estates to the purported Class plaintiffs (who are otherwise unsecured creditors like many other Exchangers) outside of the distribution scheme provided under the Bankruptcy Code. Equally troubling, in the event the MDL were permitted to proceed and resulted in a favorable outcome for the MDL plaintiffs, the recovery obtained (ostensibly against a non-debtor employee, but in reality against the Debtor) could differ materially from the recovery that other Exchange Agreement claimants obtain through the bankruptcy cases. A stay is therefore warranted not only to protect the Debtors and

their estate property, but also to protect the integrity of the bankruptcy process, which strives for fair and equitable distribution among similarly situated creditors.

RESPONSE: Defendants deny the allegations of paragraph 25 other than the allegation that certain individual MDL Defendants have filed proofs of claim in the Bankruptcy Court. Further with regard to the allegations of paragraph 25 asserting a risk of disparate treatment among exchangers, Defendants' MDL proceeding is styled as a class action, meets all the criteria of Fed. R. Civ. P. 23, and proceeding as a class in the MDL will allow exchangers as a group to seek, among other sources of recovery, millions of dollars of insurance coverage that has not been triggered in the Bankruptcy Court and would not be otherwise available other than through the MDL action.

As To The D&O Insurance Policies

26. LFG is party to an Officers and Directors insurance contract issued by the U.S. Specialty Insurance Company with an inception date of October 30, 2008 (the "LFG D&O Policy"). The LFG D&O Policy provides \$10 million of primary coverage for the benefit of LFG and its subsidiaries (including LES) as well as their respective officers and directors during the period October 30, 2008 through October 30, 2009. A true and correct copy of the LFG D&O Policy is annexed hereto as Exhibit E.

RESPONSE: With regard to paragraph 26, the Defendants crave reference to the terms and conditions as shown in the policy and deny any allegations inconsistent therewith.

27. The MDL individual defendants have already retained counsel whose fees they have claimed are reimbursable under the LFG D&O Policy.² Thus, the MDL proceeding (and its California and South Carolina antecedents) have already caused an erosion of the coverage otherwise available under the D&O Policy and a distribution of property of the estate outside of the distribution scheme provided under the Bankruptcy Code. In addition, the MDL individual defendants might further assert claims under the LFG D&O Policy to provide coverage for any liability imposed against them in the MDL

² The primary D&O carrier has denied coverage. At present, the "Side A only" carriers are funding legal defense costs, subject to their right to seek reimbursement from the primary and excess D&O carriers.

were it to proceed and result in a finding of liability on the part of any of the MDL individual defendants (thus further potentially eroding coverage and resulting in additional distributions of property of the estate outside of the Bankruptcy Code).

RESPONSE: The Defendants deny that all Individual Defendants have retained counsel in the MDL proceedings. The Defendants are informed and believe that Defendants Theodore L. Chandler, Jr., G. William Evans, and Christine Vlahcevic have retained counsel. The Defendants are without knowledge or information sufficient to form a belief as to whether individual Defendants Stephen Conner, Ronald B. Ramos, Devon M. Jones and Brenton J. Allen have retained counsel and therefore deny such allegations. The Defendants are also without knowledge or information sufficient to form a belief as to the statements in footnote 2 of paragraph 27 and therefore deny such allegations. Defendants deny the remaining allegations of paragraph 27. Further responding to paragraph 27, Defendants are informed and believe that under the circumstances presented here the proceeds of the D&O policies are not property of the estate.

As To The Nature of This Action

28. The Debtors seek injunctive relief staying the continuation of the MDL pursuant to sections 362(a) and 105(a) of the Bankruptcy Code and 28 U.S.C. 1334.

RESPONSE: Defendants deny the Debtors are seeking a stay of the entire MDL proceedings and deny that the Debtors are entitled to such relief as requested in paragraph 28. The Debtors have said on record in the MDL proceedings that they are not seeking to stay the entire MDL action. They have represented to the MDL Court and to the Defendants both before and after the filing of this Complaint that they are only seeking a stay of the Defendants' actions against the individual MDL

Defendants and do not seek to stay Defendants' actions against MDL Defendant SunTrust. Debtors' counsel in an e-mail of July 14, 2009 to Defendants' attorneys stated: "Finally, per your request, this will confirm that we do not seek in our motion a stay of the MDL proceeding as it relates to SunTrust Banks." The e-mail of July 14, 2009 is annexed hereto as Exhibit 2.

As To Count I - Injunctive Relief

29. Plaintiffs restate and reallege paragraphs 1 through 28 above as though fully set forth herein.

RESPONSE: Defendants restate and reallege all the above answers in response to paragraph 29 of the Complaint.

30. The Debtors seek injunctive relief pursuant to sections 105(a) and 362(a) of the Bankruptcy Code, and 28 U.S.C. 1334, enjoining the continued prosecution of the MDL and enjoining Defendants from commencing or continuing any lawsuit or proceeding against the Plaintiffs based on the factual allegations raised in the MDL.

RESPONSE: Defendants deny the Debtors are seeking to enjoin the continued prosecution of the entire MDL proceedings and deny that the Debtors are entitled to such relief as requested in paragraph 30 since the Defendants have not commenced any lawsuit or proceeding against the Debtors. The Debtors have said on record in the MDL proceedings that they are not seeking to stay the entire MDL action. They have represented to the MDL Court and to the Defendants both before and after the filing of this Complaint that they are only seeking a stay of the Defendants' actions against the individual MDL Defendants and do not seek to stay Defendants' actions against MDL Defendant SunTrust.

31. Prosecution of the MDL is tantamount to a direct action against the Debtors and/or the property of their bankruptcy estates and subjects the Debtors to potential indemnification and/or contribution claims as well as possible threats of

collateral estoppel, vicarious liability, imputed admissions, and respondeat superior liability from the non-debtor parties named as defendants in the MDL, which could give rise to direct liability against the Debtors in connection with the MDL.³

RESPONSE: Defendants deny the allegations of paragraph 31 and footnote 3 contained therein.

32. Further, if any alleged liability of the MDL defendants is proven to constitute an act compensable under the LFG D&O Policy, such a result may diminish or exhaust the Debtors' coverage limits under the policy, leaving little or no available coverage for other similarly-situated claimants, and potentially creating direct claims against the Debtors if the policy limits are exceeded.

RESPONSE: Defendants admit that recovery covered by the LFG D&O Policy may affect the policy itself but deny the remaining allegations of paragraph 32.

33. Under applicable state law, the Debtors may be obligated to reimburse and indemnify any officer, director, or employee for expenses or losses incurred as a result of the MDL, including the costs incurred in their own defense, thereby potentially creating direct claims against the Debtors.

RESPONSE: Defendants deny the allegations of paragraph 33.

34. Allowing the MDL to threaten the dissipation of assets of the Debtors' estates, or the recovery of property of the estates outside of a Bankruptcy Court-supervised process, would eviscerate the fundamental Bankruptcy Code policy of requiring similarly situated creditors to be treated equally.

RESPONSE: Defendants deny the allegations of paragraph 34.

35. The MDL should also be enjoined in order to prevent the diversion of key personnel of the Debtors from important activities associated with these bankruptcy cases. The Debtors have made strides to put in place a process (i.e., the Protocol Order and the Mediation Protocol Order) for the orderly resolution on an expedited basis of common issues pertaining to the parties' rights under the Exchange Agreements. For that process to succeed, the Debtors (together with their legal advisors and the knowledgeable witnesses) will be required to stay focused on the demands of the expedited schedule set

³ While the risks that parties in interest may seek to use adverse factual or legal findings against the Debtors based on some form of respondeat superior or preclusion theory justify the imposition of a stay, in the event a stay is not imposed and the MDL is permitted to proceed (either in whole or in part), the Debtors reserve any and all rights they may have under applicable law to oppose any attempt by a future claimant to argue that any findings resulting from the non-stayed action should have any respondeat superior or preclusive effect on the Debtors.

forth in the Protocol Order and the Mediation Protocol Order. Moreover, LFG is in the process of implementing an orderly wind-down and/or sale of its remaining assets and operations. Any distraction associated with the simultaneous defense of the MDL on multiple fronts (aside from creating the dangers of preclusive inconsistent judgments) will impede the parties and this court from effectively litigating the Lead Cases and maximizing value.

RESPONSE: Defendants deny the allegations of paragraph 35.

FOR A SECOND DEFENSE TO COUNT I

36. Defendants incorporate by reference the responses stated above as if fully repeated herein.

37. The Individual Defendants committed material acts or omissions in bad faith or with active and deliberate dishonesty in causing the Defendants' losses. As a result, the Debtors do not have an obligation or right to indemnify the Individual Defendants under Md. Code Ann. § 2-418 (b)(1) and case law thereunder.

FOR A THIRD DEFENSE

38. Defendants incorporate by reference the responses stated above as if fully repeated herein.

39. The Debtors and the Individual Defendants through whom the Debtors acted proceeded in bad faith and with active and deliberate dishonesty in conducting the operations of the Debtors as a Ponzi scheme. The Debtors are therefore prevented from seeking injunctive relief under the doctrines of unclean hands and *in pari delicto*.

FOR A FOURTH DEFENSE

40. Defendants incorporate by reference the responses stated above as if fully repeated herein.

41. The Plaintiffs' Complaint for Injunctive Relief, in whole or in part, fails to state a cause of action upon which relief may be granted.

FOR A FIFTH DEFENSE

42. Defendants incorporate by reference the responses and statements stated above as if fully repeated herein.

43. The Plaintiffs lack standing to interfere in an action between Defendants and the MDL Defendants. Defendants' claims against the MDL Defendants are clearly distinguishable from those raised in adversary proceedings filed in this Court.

FOR A SIXTH DEFENSE

44. Defendants incorporate by reference the responses and statements stated above as if fully repeated herein.

45. The Plaintiffs have represented to Defendants both before and after the filing of the Complaint in this case and to the MDL Court that they are only seeking a stay of the Defendants' actions against the individual MDL Defendants and do not seek to stay Defendants' actions against MDL Defendant SunTrust. Defendants would assert that the Plaintiffs are barred by the doctrines of estoppel and/or waiver from seeking a stay of the Plaintiffs' MDL action against SunTrust.

FOR A SEVENTH DEFENSE

46. Defendants incorporate by reference the responses and statements stated above as if fully repeated herein.

47. Any claim for preliminary injunctive relief fails as a matter of law because there is no likelihood of success on the merits of Plaintiffs' claim for a stay of Defendants' MDL action against each of the MDL Defendants.

WHEREFORE, the Defendants pray that the Complaint for Injunctive Relief be dismissed with prejudice and that Defendants be awarded their costs and all other relief to which they are entitled.

Dated: August 13, 2009

Respectfully submitted,

LEONARD STARR, P.C.

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and exact copy of the Defendants' **ANSWER TO COMPLAINT FOR INJUNCTIVE RELIEF** was served by operation of the Court's electronic filing system to all parties entitled to receive electronic notice in this adversary proceeding on August 13, 2009 and by first class mail and facsimile to the following parties on August 13, 2009:

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