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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY _____

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10
11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA

13 W 05-06121

SJO (SHx)

14 SECURITIES AND EXCHANGE
15 COMMISSION,

Case No.

16 Plaintiff,

COMPLAINT FOR
VIOLATIONS OF THE
FEDERAL SECURITIES
LAWS

17 vs.

18 RAINMAKER MANAGED LIVING, LLC,
a New York limited liability company;
19 RAINMAKER MANAGED LIVING, LLC,
a California limited liability company;
20 FURMAN & DILMAGHANI P.C., a New
York professional service corporation;
21 ALIREZA DILMAGHANI; SIDNEY F.
LEVINE; and JAMES JOSEPH CONWAY,

22 Defendants.

23
24 Plaintiff Securities and Exchange Commission ("Commission") alleges as
25 follows:

26 JURISDICTION AND VENUE

27 1. This Court has jurisdiction over this action pursuant to Sections 20(b),
28 20(d)(1) and 22(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§

1 77t(b), 77t(d)(1) & 77v(a) and Sections 21(d)(1), 21(d)(3)(A), 21(e) and 27 of the
2 Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§ 78(u)(d)(1),
3 78u(d)(3)(A), 78u(e) & 78aa. Defendants have, directly or indirectly, made use of
4 the means or instrumentalities of interstate commerce, of the mails, or of the
5 facilities of a national securities exchange in connection with the transactions, acts,
6 practices and courses of business alleged in this complaint.

7 2. Venue is proper in this district pursuant to Section 22(a) of the
8 Securities Act, 15 U.S.C. § 77v(a), and Section 27 of the Exchange Act, 15 U.S.C.
9 § 78aa, because certain of the transactions, acts, practices and courses of conduct
10 constituting violations of the federal securities laws occurred within this district,
11 and defendant James Joseph Conway resides in this district.

12 SUMMARY

13 3. This case involves the ongoing fraudulent offer and sale of
14 unregistered securities by Rainmaker Managed Living, LLC, a New York limited
15 liability company ("Rainmaker NY"); Rainmaker Managed Living, LLC, a
16 California limited liability company ("Rainmaker CA", and together with
17 Rainmaker NY, "Rainmaker"); Furman & Dilmaghani P.C., a New York
18 professional service corporation ("Furman & Dilmaghani"); Alireza Dilmaghani
19 ("Dilmaghani"), an attorney and the managing member of Rainmaker NY; Sidney
20 F. Levine ("Levine"); and James Joseph Conway ("Conway", and collectively,
21 "Defendants"). Defendants have been engaged in the fraudulent offering since at
22 least mid-2004. Defendants have raised at least \$7.03 million (and probably more
23 than \$8.11 million) from at least 70 investors, including at least 20 from Southern
24 California, over the last nine months.

25 4. Defendants offer and sell securities in the form of "units" of interest in
26 Rainmaker. Investors are required to invest a minimum of \$10,000 in Rainmaker,
27 which promises to use that money to acquire, build and refurbish assisted living
28 centers for retirees. Defendants guarantee annual returns of 25%, paid monthly.

1 They also represent that while Rainmaker is in the process of acquiring, building
2 and refurbishing assisted living centers, the 25% annual return will be paid from
3 other sources, including revenues of the "Furman Law Firm," which appears to be
4 a reference to Dilmaghani's law practice. Defendants tell investors that their
5 money will be held in an escrow or client trust account and will only be used to
6 acquire, build and refurbish assisted living centers. Additionally, Defendants tell
7 investors that their investments are safe, that risks are minimized as a result of the
8 involvement of an experienced law firm, and that investors can obtain full refunds.

9 5. Of the \$8.27 million deposited into Rainmaker's bank account over
10 the last eight months, Defendants have used \$4.67 million for purposes contrary to
11 their representations, leaving only \$2.83 million in Rainmaker's bank account as of
12 July 31, 2005. Specifically, Defendants Dilmaghani and Conway have taken
13 \$3.7 million from Rainmaker's bank account for themselves, while Defendants
14 have paid an additional \$878,000 out of Rainmaker's bank account back to
15 investors as purported interest. Finally, Defendants promote the involvement of a
16 licensed attorney, and his law firm, as a guarantee of the safety and legitimacy of
17 the investment scheme, when, in reality, this very attorney's misuse of investor
18 funds renders the investment inherently unsafe and illegitimate.

19 DEFENDANTS

20 6. Rainmaker Managed Living, LLC ("Rainmaker NY") is a New York
21 limited liability company located in New York City, New York. Rainmaker NY
22 purports to be in the business of developing real estate for use as assisted living
23 centers. Rainmaker NY is not registered with the Commission.

24 7. Rainmaker Managed Living, LLC ("Rainmaker CA") is a California
25 limited liability company with a registered business address in Palm Beach
26 Gardens, Florida. Rainmaker CA is not registered with the Commission.
27 (Rainmaker NY and Rainmaker CA are collectively referred to herein as
28 "Rainmaker.")

1 8. Furman & Dilmaghani P.C. (“Furman & Dilmaghani”) is a New York
2 professional service corporation, formed to engage in the practice of law, with a
3 registered business address identical to Rainmaker NY. Furman & Dilmaghani is
4 not registered with the Commission. Furman & Dilmaghani appears to do business
5 as the “Furman Law Firm.” Further, the “Furman Law Firm” purports to have a
6 wholly-owned, not-for-profit subsidiary called “Freedom Forum of New York
7 City.”

8 9. Alireza Dilmaghani (“Dilmaghani”), age 41, resides in New York
9 City, New York. Dilmaghani, an attorney licensed in New York, is identified as a
10 member of Rainmaker NY and the sole shareholder and director of Furman &
11 Dilmaghani. Some written offering materials identify Dilmaghani as Rainmaker’s
12 managing partner. Dilmaghani is the sole signatory on the Rainmaker bank
13 account into which investor funds have been deposited since December 2004.

14 10. Sidney F. Levine (“Levine”), age and residence unknown, is identified
15 in at least one version of Rainmaker’s website as Rainmaker’s managing partner.
16 Rainmaker’s website tells investors to call Levine if they have any questions. In
17 addition, Levine fields calls from potential investors who are routinely referred to
18 him for more information by Rainmaker’s sales agent, defendant Conway.

19 11. James Joseph Conway (“Conway”), age 50, resides in San Pedro,
20 California. Conway is Rainmaker’s sales agent, soliciting investments in
21 Rainmaker, including from potential investors who respond to newspaper
22 advertisements seeking investors. Conway is the registered agent of Rainmaker
23 CA. Conway is not registered with the Commission as a broker or dealer or
24 affiliated with an entity that is registered with the Commission as a broker or
25 dealer.

THE FRAUDULENT SCHEME

The Investment As Represented To Investors

26
27
28 12. Defendants have been offering and selling investments in Rainmaker

1 since at least the summer of 2004. From December 2004 through July 2005,
2 Defendants raised at least \$7.03 million (and more likely more than \$8.11 million)
3 from investors nationwide, and their conduct is continuing. Rainmaker has
4 advertised in major newspapers, including The Wall Street Journal and the Los
5 Angeles Times. Rainmaker has also solicited investments with a website, the
6 content of which has changed as Defendants' fraudulent scheme has evolved.
7 Until approximately June 2005, Rainmaker's website was located at
8 www.realtypartners.org; its website is currently located at
9 www.rainmakerlifecare.com. The website lists Rainmaker offices in New York,
10 California, and New Jersey.

11 13. Potential investors who call the number listed in the Rainmaker
12 newspaper advertisements reach Conway, who has also affirmatively sought out
13 investors. Conway sells a number of investment opportunities, including
14 Rainmaker. Since mid-2004, Conway has sold investments in Rainmaker to
15 approximately seventy investors nationwide.

16 14. Conway tells Rainmaker investors that (1) they will receive a
17 "guaranteed minimum" return of 25% per year, paid monthly; (2) all investor
18 money will be put into an escrow or attorney trust account held by the Furman Law
19 Firm; (3) the investor funds will be used solely for the acquisition or construction
20 of assisted living centers; (4) the Furman Law Firm will provide the money to pay
21 the 25% return while the company is acquiring and developing its assisted living
22 centers, and (5) some of the money used to pay returns will be generated from
23 other activities such as providing legal services. Conway does not tell investors
24 that he receives a commission for selling investments in Rainmaker. Conway also
25 refers potential investors to Rainmaker's website and to Levine, who confirms
26 Conway's representations to investors. Dilmaghani also solicits investors and
27 reassures them of the safety engendered by the involvement of a law firm.

28 15. After speaking with potential investors, Conway mails them a package

1 of information. While Rainmaker's offering materials have changed over time,
2 including the actual name of the investment that all include variations beginning
3 with "Rainmaker," they typically consist of a summary introduction sheet
4 highlighting certain features of the investment, an offering memorandum which is
5 referred to as a "report" or "program report," sample ownership certificates,
6 operating agreements, and miscellaneous promotional materials, such as
7 descriptions of properties purportedly under consideration for acquisition
8 (collectively, the "Offering Materials"). Many of these same types of documents
9 have appeared on Rainmaker's website.

10 16. Typically, the summary introduction contained in the Offering
11 Materials provides key highlights of the investment. For example, one of the
12 brochures told potential investors:

- 13 • "25% Guaranteed Annual interest, paid monthly"
- 14 • "Anticipated Rate of Return for the first year of 37%;"
- 15 • "Anticipated Rate of Return for the second year of 49%;"
- 16 • "Anticipated Rate of Return for the third year and each year thereafter of
17 60%;"
- 18 • "The security of having your investment backed by California real
19 estate;" and
- 20 • "The ability to redeem your shares at anytime after the partnerships
21 closes [sic]."

22
23 17. The Offering Materials present conflicting descriptions regarding the
24 entities that are used to carry out the stated "business" of locating, acquiring and
25 developing assisted living centers. They also present a confusing picture of the
26 roles played by Dilmaghani and Levine. For example, in late 2004, Dilmaghani is
27 identified as the "managing partner" or as the "manager" of Rainmaker, while
28

1 Levine is referred to variously as the “agent for Rainmaker Realty Partners” and as
2 the “project manager” for Rainmaker. Dilmaghani is also the listed signatory on
3 an unexecuted operating agreement dated November 15, 2004 that was provided to
4 investors. On the Rainmaker website available June 30, 2005, Levine was
5 identified as the “managing partner” for Rainmaker and the “managing member”
6 of Rainmaker. Levine also appears as the signatory on at least one version of a
7 “program report” provided to investors, which, while entitled a “report,” purported
8 to be an agreement between Rainmaker and the investors.

9 18. Investments in Rainmaker consist of units of interest for \$1,000 each,
10 with a minimum purchase requirement of \$10,000. Defendants promise to use
11 investors’ money to acquire, build and refurbish assisted living centers for retirees.

12 19. One version of Rainmaker’s website explained that while Rainmaker
13 is acquiring and developing properties, the guaranteed 25% annual return is going
14 to be derived from a variety of sources including short-term investments in real
15 estate bridge loans, government securities, foreclosed rollovers, and “income from
16 the operations of the Managing partners [sic] law firm, proceeds from collection on
17 pending litigation, and consulting services to other third party assisted living and
18 nursing facilities . . .”

19 20. Rainmaker’s Offering Materials state that Rainmaker “seeks to invest
20 100 percent of its assets directly in real estate, commercial ventures, assisted living
21 centers and real estate-related investments.” The Offering Materials further assure
22 investors that “[a]ll funds are held in an attorney’s trust account for use in
23 partnership real estate related activities only.”

24 21. The Offering Materials tell investors that they will be given an
25 opportunity to vote on the properties recommended for acquisition by Rainmaker.
26 At the same time, the Offering Materials emphasize the real estate expertise of
27 Rainmaker’s management by explaining that Rainmaker will “locate and inspect
28 the properties” and that the “professional management team handles all the

1 financial and legal concerns.” The Offering Materials tell investors that they will
2 have “no managerial responsibilities.”

3 22. Portions of the Offering Materials indicate variously that Rainmaker’s
4 management (sometimes referred to as Levine, sometimes Dilmaghani) will
5 receive \$1 per year in compensation. Other sections of the Offering Materials say
6 that there will be a management fee of 25% of profits, but only after facilities are
7 operational.

8 23. Rainmaker’s Offering Materials promise that, upon reaching certain
9 milestones, such as completion of the offering and the purchase of a certain
10 amount of property by Rainmaker, it will “repurchase and/or arrange
11 liquidation . . . within 30 to 60 business days of the demand for repurchase” any
12 interests purchased by investors. Until recently, Rainmaker’s website made a
13 similar representation relating to the availability of refunds.

14 24. Rainmaker’s Offering Materials consistently go to great lengths to
15 describe the expertise of Rainmaker, the Furman Law Firm, and Dilmaghani to
16 select, purchase and develop assisted living centers, as well as the purported
17 protection afforded by the involvement of attorneys. For example, one document
18 provided to investors identifies Dilmaghani as “General Counsel of the Furman
19 Law Firm” and “managing partner for the Rainmaker programs.” It goes on to
20 promise investors that the “professional guidance of the Furman Law legal staff,
21 through the not-for-profit Freedom Forum of New York City, which manages the
22 Rainmaker Programs [sic] gives you a safety net never before experienced.”

23 25. The Offering Materials further state that “Rainmaker partners
24 enjoy . . . the proven management experience of the legal staff of the Furman Law
25 Firm.” In addition, the Offering Materials advise investors of the lawyers’ real
26 estate experience which supposedly reduces risk and other “general problems
27 usually associated with the selling of real estate investments,” the lawyers’ ability
28 to “anticipate governmental regulations,” and their ability to “anticipate and plan to

1 make sure the partnership does not suffer catastrophic financial losses.”

2 **The Falsity Of Defendants’ Representations**

3 26. Rather than segregating investor funds and using 100% of them to
4 acquire and construct assisted living facilities as promised, Defendants have treated
5 investor funds as if they were their personal assets. In particular, Dilmaghani, the
6 sole signatory on the account into which investor funds have been deposited since
7 December 2004, signed checks payable to himself, signed checks made out to cash
8 which he then endorsed, and directed money to himself through American
9 Planning Incorporated, an entity he controlled, totaling more than \$2 million from
10 December 2004 through July 2005. In that same period, Dilmaghani also signed
11 checks made payable to Conway totaling over \$1.75 million. Additionally,
12 Defendants made over \$878,000 in purported interest payments to investors out of
13 the account during that same time period. Thus, of the \$8.27 million deposited
14 into the account (of which at least \$7.03 million to \$8.11 million is investor
15 money), Defendants have disbursed \$4.67 million—over half of the deposits—for
16 purposes inconsistent with the representations to investors, including that their
17 funds will be used solely to acquire and develop assisted living facilities.

18 27. The payments to Defendants are not disclosed to investors.
19 Specifically, the Offering Materials state: “Your partnership is managed by an
20 experienced law firm staffed with real estate professionals who work for you for
21 free.” Other portions of the Offering Materials state that Rainmaker’s manager
22 (sometimes identified as Dilmaghani, sometimes as Levine) will receive
23 compensation of one dollar per year.

24 28. Unbeknownst to investors, in exchange for his work selling
25 investments in Rainmaker, Conway receives a commission that he terms a
26 “bonus,” which depends on the amount he raises for Rainmaker. Neither the
27 Offering Materials nor Conway disclose this compensation to investors, but as
28 described above, he received over \$1.75 million from the account into which

1 investor funds were deposited from December 2004 through July 2005.

2 29. Defendants promise investors that Rainmaker will “repurchase
3 and/or arrange liquidation . . . within 30 to 60 business days of the demand for
4 repurchase” any interests purchased by investors. However, Defendants do not
5 disclose that, as a result of their misappropriation, there remained in the account
6 only \$2.38 million as of July 31, 2005; thus there is no reasonable basis to
7 represent that full refunds will be available for all investors.

8 30. Further, Defendants repeatedly reference the involvement of an
9 experienced attorney and law firm as proof of the safety and legitimacy of their
10 investment program, promising investors that the “professional guidance of the
11 Furman Law legal staff, through the not-for-profit Freedom Forum of New York
12 City, which manages the Rainmaker Programs [sic] gives you a safety net never
13 before experienced.” However, the very attorney whose involvement is touted as
14 enhancing the safety of the investment is actually diverting investor funds from
15 their promised use.

16 **Defendants Know Or Are Reckless In Not Knowing The Falsity Of Their**
17 **Representations**

18 31. In his role as a Rainmaker manager, Dilmaghani is responsible for
19 Rainmaker’s operations and Rainmaker’s representations to investors. Dilmaghani
20 explains Rainmaker’s business to investors. He is also the sole signatory on the
21 account into which investor funds are deposited and out of which their funds were
22 diverted. Dilmaghani signed millions of dollars of checks payable to himself, to
23 cash, and to Conway. Dilmaghani knows or is reckless in not knowing that
24 investors are being misled by this fraudulent scheme, investor funds are being
25 misused, and that the promise of refunds is baseless.

26 32. Levine, in his role as a manager of Rainmaker, and with the resultant
27 access to information about Rainmaker’s operations and actual use of investor
28 funds, as well as his activities speaking to investors and confirming the

1 representations made by Conway, knows or is reckless in not knowing that investor
2 funds are being misused, and that the promise of refunds is baseless.

3 33. Conway, who has received over \$1.75 million from Rainmaker,
4 knows or is reckless in not knowing that investor funds are being diverted from
5 their promised use. Conway has received checks out of the same account into
6 which he directed investors to deposit their investments. Conway knows or is
7 reckless in not knowing that the promise of refunds is baseless, and that the
8 investment is inherently unsafe. Further, Conway knew or was reckless in not
9 knowing that it was misleading not to disclose the commissions he received on his
10 sales of investments in Rainmaker.

11 **FIRST CLAIM FOR RELIEF**

12 **UNREGISTERED OFFER AND SALE OF SECURITIES**

13 **Violations Of Sections 5(a) And 5(c) Of The Securities Act**

14 **(Against All Defendants)**

15 34. The Commission realleges and incorporates by reference paragraphs 1
16 through 33 above.

17 35. Defendants, and each of them, by engaging in the conduct described
18 above, directly or indirectly, made use of means or instruments of transportation or
19 communication in interstate commerce or of the mails, to offer to sell or to sell
20 securities, or to carry or cause such securities to be carried through the mails or in
21 interstate commerce for the purpose of sale or for delivery after sale.

22 36. No registration statement has been filed with the Commission or has
23 been in effect with respect to the offerings alleged herein.

24 37. By engaging in the conduct described above, each of the Defendants
25 violated, and unless restrained and enjoined will continue to violate, Sections 5(a)
26 and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a) and 77e(c).

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SECOND CLAIM FOR RELIEF

FRAUD IN THE OFFER OR SALE OF SECURITIES

Violations Of Section 17(a) Of The Securities Act

(Against All Defendants)

38. The Commission realleges and incorporates by reference paragraphs 1 through 33 above.

39. Defendants, and each of them, by engaging in the conduct described above, directly or indirectly, in the offer or sale of securities by the use of means or instruments of transportation or communication in interstate commerce or by use of the mails:

- a. with scienter, employed devices, schemes, or artifices to defraud;
- b. obtained money or property by means of untrue statements of a material fact or by omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- c. engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon the purchaser.

40. By engaging in the conduct described above, each of Defendants violated, and unless restrained and enjoined will continue to violate, Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a).

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THIRD CLAIM FOR RELIEF

**FRAUD IN CONNECTION WITH THE PURCHASE OR SALE OF
SECURITIES**

**Violations Of Section 10(b) Of The Exchange Act And Rule 10b-5 Thereunder
(Against All Defendants)**

41. The Commission realleges and incorporates by reference paragraphs 1 through 33 above.

42. Defendants, and each of them, by engaging in the conduct described above, directly or indirectly, in connection with the purchase or sale of a security, by the use of means or instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange, with scienter:

- a. employed devices, schemes, or artifices to defraud;
- b. made untrue statements of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- c. engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon other persons.

43. By engaging in the conduct described above, each of the Defendants violated, and unless restrained and enjoined will continue to violate, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

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1 **FOURTH CLAIM FOR RELIEF**

2 **VIOLATION OF THE BROKER-DEALER REGISTRATION PROVISIONS**

3 **Violations of Section 15(a) of the Exchange Act**

4 **(Against Defendant Conway)**

5 44. The Commission realleges and incorporates by reference paragraphs 1
6 through 33 above.

7 45. Defendant Conway, by engaging in the conduct described above,
8 made use of the mails or means or instrumentalities of interstate commerce to
9 effect transactions in, or to induce or attempt to induce the purchase or sale of,
10 securities, without being registered as a broker or dealer in accordance with
11 Section 15(b) of the Exchange Act, 15 U.S.C. § 78o(b).

12 46. By engaging in the conduct described above, defendant Conway
13 violated, and unless restrained and enjoined will continue to violate, Section 15(a)
14 of the Exchange Act, 15 U.S.C. § 78o(a)

15 **PRAYER FOR RELIEF**

16 WHEREFORE, the Commission respectfully requests that the Court:

17 **I.**

18 Issue findings of fact and conclusions of law that Defendants committed the
19 alleged violations.


20 **II.**

21 Issue judgments, in a form consistent with Fed. R. Civ. P. 65(d),
22 temporarily, preliminarily and permanently enjoining defendants and their officers,
23 agents, servants, employees, and attorneys, and those persons in active concert or
24 participation with any of them, who receive actual notice of the judgment by
25 personal service or otherwise, and each of them, from violating Sections 5(a), 5(c),
26 and 17(a) of the Securities Act, 15 U.S.C. §§ 77e(a), 77e(c) & 77q(a), and Section
27 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17
28 C.F.R. § 240.10b-5.

VIII.

Grant such other and further relief as this Court may determine to be just and necessary.

DATED: August 22, 2005



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