

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

<p>In re:</p> <p>WOODBRIIDGE GROUP OF COMPANIES, LLC, <i>et al.</i>,<sup>1</sup></p> <p style="text-align: center;">Debtors.</p>	<p>Chapter 11</p> <p>Case No. 17-12560 (KJC)</p> <p>(Jointly Administered)</p>
<p>WOODBRIIDGE GROUP OF COMPANIES, LLC,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>DONALD G. DURR,</p> <p style="text-align: center;">Defendant.</p>	<p>Adversary Proceeding</p> <p>Case No. 18-_____ (KJC)</p>

**COMPLAINT OBJECTING TO CLAIM AND COUNTERCLAIMING FOR  
AVOIDANCE AND RECOVERY OF AVOIDABLE TRANSFERS AND FOR  
EQUITABLE SUBORDINATION**

<sup>1</sup> The last four digits of Woodbridge Group of Companies, LLC's federal tax identification number are 3603. The mailing address for Woodbridge Group of Companies, LLC is 14140 Ventura Boulevard #302, Sherman Oaks, California 91423. Due to the large number of debtors in these cases, which are being jointly administered for procedural purposes only, a complete list of the Debtors, the last four digits of their federal tax identification numbers, and their addresses are not provided herein. A complete list of this information may be obtained on the website of the Debtors' noticing and claims agent at [www.gardencitygroup.com/cases/WGC](http://www.gardencitygroup.com/cases/WGC), or by contacting the undersigned counsel for the Debtors.

The Woodbridge Group of Companies, LLC, debtor and debtor in possession (“Plaintiff”) hereby alleges for its Complaint as follows:

**NATURE OF THE ACTION**

1. At least since August 2012 until shortly before it sought bankruptcy protection, the Plaintiff and its many hundreds of debtor affiliates (collectively with Plaintiff, the “Debtors”) were operated by their founder and principal, Robert Shapiro (“Shapiro”), as a Ponzi scheme. As part of this fraud, Shapiro utilized the Debtors to raise over one billion dollars from approximately 10,000 investors as either Noteholders or Unitholders (collectively, “Investors”).

2. Those Investors often placed a substantial percentage of their net worth (including savings and retirement accounts) with the Debtors and now stand to lose a significant portion of their investments and to be delayed in the return of the remaining portion. The quality of the Investors’ lives will likely be substantially and adversely affected by the fraud perpetrated by Shapiro.

3. Investors were often told that they were investing money to be loaned with respect to particular properties owned by third parties, that those properties were worth substantially more than the loans against the properties, and that they would have the benefit of a stream of payments from these third parties for high-interest loans, protected by security interests and/or mortgages against such properties. In reality, these statements were lies. Investors’ money was almost never used to make high-interest loans to unrelated, third-party borrowers, there was no stream of payments, Investors’ money was commingled and used for an assortment of expenses, including maintaining a lavish lifestyle for Shapiro and his family, brokers’ commissions, overhead (largely for selling even more notes and units to investors), and payment of principal and interest to existing investors. The money that was used to acquire property

(almost always owned by a disguised affiliate) cannot be traced to any specific Investor. These are typical characteristics of Ponzi schemes.

4. Because the Debtors operated as a Ponzi scheme, obtaining new money from Investors into the Ponzi scheme conferred no net benefit on the Debtors; on the contrary, each new investment was a net negative. Money was siphoned off to pay the expenses described above, so that the Debtors actually received only a fraction of the investment dollars. New money also perpetuated the Ponzi scheme, enabling the Debtors to return fictitious profits to early Investors; in the absence of new investment, the house of cards would fall (as it eventually did). At the same time, each investment created an obligation to return to the defrauded Investor 100% of the investment, such that each new investment increased the Debtors' liabilities and ultimately left them unable to satisfy their aggregate liabilities.

5. The purpose of this lawsuit is (i) to object to the Claim (defined below) so that Claimant (defined below) is not further compensated at the expense of legitimate creditors for activities that advanced the Ponzi scheme and further drove the Debtors into insolvency, (ii) to recover monies previously paid to Claimant by reason of these activities, and, (iii) to the extent the Claim, or any new or amended claims, survive, to equitably subordinate them.

#### **JURISDICTION AND VENUE**

6. The Court has jurisdiction over this action under 28 U.S.C. §§ 157(a) and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012. This adversary proceeding is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(B), (C), (F), and (H). In any event, Plaintiff consents to entry of final orders or judgment by the bankruptcy court. Venue of this adversary proceeding is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

**GENERAL BACKGROUND**

7. On December 4, 2017 (the “Petition Date”), Plaintiff commenced a voluntary case under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”). Other of the Debtors also filed voluntary chapter 11 cases either on the Petition Date or within the following four months (collectively with Plaintiff’s case, the “Bankruptcy Cases”).

8. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108. No trustee or examiner has been appointed in these cases.

9. These cases are being jointly administered for procedural purposes pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure.

**FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

10. Donald G. Durr (“Claimant”) has filed the following claim (the “Claim”) in one or more of the Bankruptcy Cases:

- a. Claim No. 599 for \$750.00. Claimant asserts that the Claim is entitled to priority under Bankruptcy Code section 507(a)(4).

11. Plaintiff is informed and believes that Claimant seeks recovery on the Claim based upon Claimant’s activities that generated investments in the Debtors. In particular, Claimant was an external broker (*i.e.*, not an employee of the Debtors) who marketed Notes and/or Units to potential Investors.

12. Plaintiff is informed and believes and thereupon alleges that within the two years preceding the Petition Date, Claimant received transfers totaling not less than \$44,750.00, or more according to proof (the “Two Year Transfers”). The precise transfers – including the

transferor, its petition date, the date of each transfer, and the amount of each transfer – are set forth on Exhibit 1.

13. Plaintiff is informed and believes and thereupon alleges that within the four years preceding the Petition Date, Claimant received transfers totaling not less than \$44,750.00, or more according to proof (the “Four Year Transfers”). The precise transfers – including the transferor, its petition date, the date of each transfer, and the amount of each transfer – are set forth on Exhibit 2. The Four Year Transfers are inclusive of the Two Year Transfers, but Plaintiff does not seek to recover the same sum more than once.

### **FIRST CLAIM FOR RELIEF**

#### **Objection to Claims**

14. Plaintiff realleges and incorporates herein Paragraphs 1 through 13, as if fully set forth herein.

15. Plaintiff’s obligation to honor and/or satisfy the Claim is unenforceable and/or avoidable for multiple reasons, as set forth below in paragraphs 16 through 19, including subparts thereof. Any of the reasons set forth in said paragraphs, including subparts thereof, is individually a basis for disallowance of the Claim.

16. Without shifting the burdens of proof or persuasion, which remain on Claimant, Plaintiff is informed and believes and thereupon alleges that its obligation, if any, to honor and satisfy the Claim is unenforceable, in whole or in part, under applicable nonbankruptcy law (other than because the Claim is contingent or unmatured); thus, the Claim is not allowable under Bankruptcy Code section 502(b)(1). The nonbankruptcy law deficiencies include, without limitation, the following:

- a. There was no agreement for paying commissions; and/or

- b. Claimant was not properly licensed to sell securities; and/or
- c. Any payment of commissions would constitute unjust enrichment; and/or
- d. Any obligation to compensate Claimant for activities that perpetuated a fraud is contrary to public policy; and/or
- e. Recovery is barred by the doctrines of in pari delicto and/or unclean hands.

17. Plaintiff's obligations, if any, to honor and satisfy the Claim were incurred in a manner which is avoidable under Bankruptcy Code section 548 because:

- a. The obligations were incurred by the Plaintiff with actual intent to hinder or delay or defraud its creditors insofar as the services to be provided in exchange for such obligations would perpetuate a Ponzi scheme; and/or
- b. The obligations were incurred by the Plaintiff for less than reasonably equivalent value at a time when the Plaintiff was insolvent; and/or
- c. The obligations were incurred by the Plaintiff for less than reasonably equivalent value at a time when the Plaintiff was engaged or about to engage in business or a transaction for which any capital remaining with the Plaintiff was an unreasonably small capital; and/or
- d. The obligations were incurred by the Plaintiff for less than reasonably equivalent value at a time when the Plaintiff intended to incur, or believed that it would incur, debts beyond its ability to pay as such debts matured.

18. The Claim is, therefore, premised entirely on avoidable obligations under Bankruptcy Code section 548(a) and not allowable.

19. The Claim is further not allowable because:

- a. Claimant has received property, including one or more of the Two Year Transfers or the Four Year Transfers, recoverable under Bankruptcy Code section 550; and/or
- b. Claimant has received a transfer, including one or more of the Two Year Transfers or the Four Year Transfers, avoidable under Bankruptcy Code section 544 or section 547 or section 548.

In either event, the Claim must be disallowed under Bankruptcy Code section 502(d).

### **SECOND CLAIM FOR RELIEF**

#### **Avoidance and Recovery of Actual Intent Fraudulent Transfers – Bankruptcy Code**

20. Plaintiff realleges and incorporates herein Paragraphs 1 through 12, as if fully set forth herein.
21. The Two Year Transfers constituted transfers of the Plaintiff's property.
22. The Two Year Transfers were made by the Plaintiff with actual intent to hinder or delay or defraud its creditors insofar as the services to be provided in exchange for such transfers would perpetuate a Ponzi scheme.
23. The Two Year Transfers were made to or for the benefit of Claimant.
24. As a result of the foregoing, the Plaintiff is entitled to judgment pursuant to Bankruptcy Code sections 548(a), 550(a), and 551: (a) avoiding the Two Year Transfers free and clear of any claimed interest of Claimant, (b) directing that the Two Year Transfers be set aside, and (c) recovering such Two Year Transfers or the value thereof from Claimant for the benefit of the estate of the Plaintiff.

**THIRD CLAIM FOR RELIEF**

**Avoidance and Recovery of Constructive Fraudulent Transfers – Bankruptcy Code**

25. Plaintiff realleges and incorporates herein Paragraphs 1 through 12, as if fully set forth herein.

26. The Two Year Transfers constituted transfers of the Plaintiff's property.

27. The Two Year Transfers were made by the Plaintiff for less than reasonably equivalent value at a time when the Plaintiff (i) was insolvent; and/or (ii) was engaged or about to engage in business or a transaction for which any capital remaining with the Plaintiff was an unreasonably small capital; and/or (iii) intended to incur, or believed that Plaintiff would incur, debts beyond its ability to pay as such debts matured.

28. The Two Year Transfers were made to or for the benefit of Claimant.

29. As a result of the foregoing, the Plaintiff is entitled to judgment pursuant to Bankruptcy Code sections 548(a), 550(a), and 551: (a) avoiding the Two Year Transfers free and clear of any claimed interest of Claimant, (b) directing that the Two Year Transfers be set aside, and (c) recovering such Two Year Transfers or the value thereof from Claimant for the benefit of the estate of the Plaintiff.

**FOURTH CLAIM FOR RELIEF**

**Avoidance and Recovery of Actual Intent Voidable Transactions – State Law**

30. Plaintiff realleges and incorporates herein Paragraphs 1 through 13, as if fully set forth herein.

31. The Four Year Transfers constituted transfers of the Plaintiff's property.

32. The Four Year Transfers were made by the Plaintiff with actual intent to hinder or delay or defraud its creditors insofar as the services to be provided in exchange for such transfers would perpetuate a Ponzi scheme.

33. The Four Year Transfers were made to or for the benefit of Claimant.

34. Plaintiff that made one or more of the Four Year Transfers has at least one creditor with an allowable unsecured claim for liabilities, which claim remained unsatisfied as of the Petition Date.

35. The Four Year Transfers are avoidable under applicable law – California Civil Code section 3439.04(a)(1) and/or comparable provisions of law in other jurisdictions that have adopted the Uniform Voidable Transactions Act, the Uniform Fraudulent Transfer Act or the Uniform Fraudulent Conveyance Act – by a creditor holding an allowed unsecured claim and thus by the Plaintiff pursuant to Bankruptcy Code section 544(b).

36. As a result of the foregoing, the Plaintiff is entitled to judgment pursuant to Bankruptcy Code sections 544(b), 550(a), and 551: (a) avoiding the Four Year Transfers free and clear of any claimed interest of Claimant, (b) directing that the Four Year Transfers be set aside, and (c) recovering such Four Year Transfers or the value thereof from Claimant for the benefit of the estate of the Plaintiff.

#### **FIFTH CLAIM FOR RELIEF**

##### **Avoidance and Recovery of Constructive Voidable Transactions – State Law**

37. Plaintiff realleges and incorporates herein Paragraphs 1 through 13, as if fully set forth herein.

38. The Four Year Transfers constituted transfers of the Plaintiff's property.

39. The Four Year Transfers were made by the Plaintiff for less than reasonably equivalent value at a time when the Plaintiff (i) was insolvent; and/or (ii) was engaged or was about to engage in business or a transaction for which any capital remaining with the Plaintiff was an unreasonably small capital; and/or (iii) intended to incur, or believed that it would incur, debts beyond its ability to pay as such debts matured.

40. The Four Year Transfers were made to or for the benefit of Claimant.

41. At the times of, and/or subsequent to, each of the Four Year Transfers, each Plaintiff that made one or more of the Four Year Transfers has at least one creditor with an allowable unsecured claim for liabilities, which claim remained unsatisfied as of the Petition Date.

42. The Four Year Transfers are avoidable under applicable law – California Civil Code section 3439.04(a)(2) and/or comparable provisions of law in other jurisdictions that have adopted the Uniform Voidable Transactions Act, the Uniform Fraudulent Transfer Act or the Uniform Fraudulent Conveyance Act – by a creditor holding an allowed unsecured claim and thus by the Plaintiff pursuant to Bankruptcy Code section 544(b).

43. As a result of the foregoing, the Plaintiff is entitled to judgment pursuant to Bankruptcy Code sections 544(b), 550(a), and 551: (a) avoiding the Four Year Transfers free and clear of any claimed interest of Claimant, (b) directing that the Four Year Transfers be set aside, and (c) recovering such Four Year Transfers or the value thereof from Claimant for the benefit of the estate of the Plaintiff.

**SIXTH CLAIM FOR RELIEF**

**Equitable Subordination of Claims**

44. The Plaintiff realleges and incorporates herein Paragraphs 1 through 11, as if fully set forth herein.

45. By providing services that helped perpetuate a Ponzi scheme, Claimant engaged in inequitable conduct.

46. Claimant's inequitable conduct has resulted in injury to the Debtors' estates and their other creditors and/or has conferred an unfair advantage on Claimant.

47. Principles of equitable subordination require that any claims asserted by Claimant be equitably subordinated to all other claims against the Debtors.

48. Equitable subordination as requested herein is consistent with the provisions and purposes of the Bankruptcy Code.

49. As a result of the foregoing, the Plaintiff is entitled to judgment pursuant to Bankruptcy Code section 510(c) equitably subordinating any and all claims that Claimant may assert against any of the Debtors, whatever the origin of those claims, including, without limitation, any claims that may be asserted under Bankruptcy Code section 502(h), to all other claims against the Debtors.

**PRAYER FOR RELIEF**

WHEREFORE, by reason of the foregoing, Plaintiff requests that the Court enter judgment:

(1) On the first claim for relief, sustaining the objection to the Claim, decreeing that Claimant take nothing thereon, and directing the Claims' Agent to strike Claim No. 599 from the official Claims Register;

(2) On the second and third claims for relief, (a) avoiding the Two Year Transfers free and clear of any claimed interest of Claimant, (b)

directing that the Two Year Transfers be set aside, and (c) ordering Claimant to pay to the Plaintiff \$44,750.00;

(3) On the fourth and fifth claims for relief, (a) avoiding the Four Year Transfers free and clear of any claimed interest of Claimant, (b) directing that the Four Year Transfers be set aside, and (c) ordering Claimant to pay to the Plaintiff \$44,750.00;

(4) On the sixth claim for relief, equitably subordinating any and all claims that Claimant may assert against any of the Debtors, whatever the origin of those claims, including, without limitation, any claims that may be asserted under Bankruptcy Code section 502(h), to all other claims against the Debtors; and

(5) On all claims for relief, awarding the Plaintiff prejudgment interest as permitted by law, costs of suit, and such other and further relief as is just and proper.

Dated: September 14, 2018  
Wilmington, Delaware

/s/ Michael S. Neiburg  
YOUNG CONAWAY STARGATT & TAYLOR, LLP  
Sean M. Beach (No. 4070)  
Edmon L. Morton (No. 3856)  
Michael S. Neiburg (No. 5275)  
Ian J. Bambrick (No. 5455)  
Rodney Square, 1000 North King Street  
Wilmington, Delaware 19801  
Tel: (302) 571-6600  
Fax: (302) 571-1253

-and-

KLEE, TUCHIN, BOGDANOFF & STERN LLP  
Kenneth N. Klee (*pro hac vice*)  
Michael L. Tuchin (*pro hac vice*)  
David A. Fidler (*pro hac vice*)  
Jonathan M. Weiss (*pro hac vice*)  
1999 Avenue of the Stars, 39th Floor  
Los Angeles, California 90067

*Counsel to the Debtors and Debtors in Possession*

**EXHIBIT 1**

Exhibit 1

Two Year Transfers  
Donald G. Durr

<u>Transferor</u>	<u>Petition Date</u>	<u>Clear Date</u>	<u>Ck. No.</u>	<u>Name</u>	<u>Amount</u>
WOODBRIIDGE GROUP OF COMPANIES, LLC	12/04/17	07/29/16	7432	DONALD G DURR	\$5,000.00
WOODBRIIDGE GROUP OF COMPANIES, LLC	12/04/17	09/28/16	8316	DONALD G DURR	750.00
WOODBRIIDGE GROUP OF COMPANIES, LLC	12/04/17	04/10/17	19560	DONALD G DURR	24,000.00
WOODBRIIDGE GROUP OF COMPANIES, LLC	12/04/17	04/10/17	19559	DONALD G DURR	15,000.00
					<u>\$44,750.00</u>

**EXHIBIT 2**

Exhibit 2

Four Year Transfers  
Donald G. Durr

<u>Transferor</u>	<u>Petition Date</u>	<u>Clear Date</u>	<u>Ck. No.</u>	<u>Name</u>	<u>Amount</u>
WOODBRIIDGE GROUP OF COMPANIES, LLC	12/04/17	07/29/16	7432	DONALD G DURR	\$5,000.00
WOODBRIIDGE GROUP OF COMPANIES, LLC	12/04/17	09/28/16	8316	DONALD G DURR	750.00
WOODBRIIDGE GROUP OF COMPANIES, LLC	12/04/17	04/10/17	19560	DONALD G DURR	24,000.00
WOODBRIIDGE GROUP OF COMPANIES, LLC	12/04/17	04/10/17	19559	DONALD G DURR	15,000.00
					<u>\$44,750.00</u>