

# Cooley Secures Complete Dismissal of Securities Enforcement Action for Accelerated Assets

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Cooley litigators secured a win on behalf of Accelerated Assets, an investment firm that is focused on the acquisition, development, sale and financing of timeshare assets, and two other entities, SS Purchco and Pahrump Valley Real Estate, obtaining a complete dismissal of all claims against the companies in the San Diego County Superior Court. Cooley lawyers Michael Tu, Claire Olin, Alexander Miller and Jamie Robertson led the winning effort.

## Background

The dismissal with prejudice of all claims against the companies and walkaway by the state was particularly significant because the state was successful only a year earlier in obtaining a preliminary injunction from the California Superior Court in San Diego against the companies when they were represented by other counsel. A preliminary injunction under California law may only be ordered when a showing has been made by the moving party of a reasonable probability of success on the merits of the claims. That preliminary injunction, indicating the Superior Court's belief that the state had established a reasonable probability of success on the merits of its claims against the companies, was granted by the court based upon allegations and purported evidence of wrongdoing put forward by the state based on its investigation. The lawsuit by the state was an enforcement action, alleging claims for securities fraud, aiding-and-abetting, and the sale of unqualified non-exempt securities, under California's Corporations Code 25110 and 25401 and seeking penalties of \$150 million.

At the end of last year, the companies changed their litigation counsel. The Cooley team, led by Michael, employed an effective defense strategy that included pursuing cross-claims on behalf of the companies over the opposition of the state, and successfully defeating a highly contested sanctions and contempt motion by the state regarding alleged violations of the preliminary injunction order. At the court's Order to Show Cause hearing on the state's motion for contempt sanctions against the companies, the Cooley team conducted a cross-examination of the state's primary witness and successfully got that witness' testimony and supporting evidence excluded, resulting in a dismissal of the Order to Show Cause. The team also pursued a strategy of seeking permission to assert cross-claims that was vigorously opposed by the state.

## The Dismissal

Based upon the litigation developments and the lack of evidentiary support for the claims against the companies as established during discovery and motion proceedings in the case over the past year, the state agreed to dismiss with prejudice all claims against the companies and the companies were allowed to preserve all claims and cross-claims they have against the other defendants. The previously obtained preliminary injunction against the companies has also been dissolved by the Superior Court. There is no payment of any kind or other consideration other than an agreement that both sides will bear their own legal fees and costs.

## Contributors



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