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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of :
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 :
JOHN THOMAS CAPITAL MANAGMENT :
GROUP LLC d/b/a PATRIOT28 LLC, :
GEORGE R. JARKESY, JR., :
JOHN THOMAS FINANCIAL, INC., and :
ANASTASIOS "TOMMY" BELESIS, :
 :
Respondents. :
_____ :

File No. 3-15255

PETITION FOR REVIEW

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Dated: November 6, 2014

*Counsel for: John Thomas Capital Management Group d/b/a Patriot28 LLC
and George Jarkesy, Jr.*

Respondents John Thomas Capital Management LLC d/b/a Patriot28 LLC (“JTCM”) and George R. Jarkesy, Jr. (“Jarkesy”) (collectively, “Respondents”), submit this Petition for Review of Initial Decision No. 693, dated October 17, 2014 (“Initial Decision”), based upon the following:

STANDARD FOR PETITION

Respondents may file a Petition for Review in a proceeding in which an initial decision is made by a hearing officer.” SEC Rules of Practice, 17 C.F.R. § 201.410(a) (2004). The petition for review “shall set forth the specific findings and conclusions of the initial decision as to which exception is taken, together with the supporting reasons for exception. Supporting reasons may be stated in summary form.” *Id.* at § 201.410(b). The Commission exercises discretionary review considering whether “(i) a prejudicial error was committed in the conduct of the proceeding; or (ii) the decision embodies: (A) a finding or conclusion of material fact that is clearly erroneous; or (B) a conclusion of law that is erroneous; or (C) an exercise of discretion of law or policy that is important and that the Commission should review.” *Id.* at § 201.411(b)(2). On the appeal of an Initial Decision, the Commission “performs a de novo review and can affirm, reverse, modify, set aside, or remand for further proceedings.” *Office of Administrative Law Judges, About the Office, SEC, http://www.sec.gov/alj#.VFhqE_nF98E* (last visited Nov. 3, 2014).

POINTS OF ERROR

The Commission should reverse the Initial Decision in its entirety, because: a) the administrative proceeding is void, b) the administrative proceeding was conducted in a manner that unfairly denied Respondents their constitutional rights, c) the hearing officer

made numerous fatally-flawed evidentiary decisions, findings of fact and conclusions of law, and d) the remedies are not supported by evidence, are disproportionate and unfair.

1. The Proceeding is Void and the Hearing Officer Erred in Concluding That the Commission had Not Invalidated the Proceedings in Violation of Respondents' Due Process Rights by Prejudging the Division's Allegations, Stripping from the Proceedings the Appearance of Fairness.

This administrative proceeding is void as a result of the Commissioners' prejudgment of the Division's allegations in an order and press release published by the Commission on December 5, 2013, which order and press release made numerous findings of fact and conclusions of law against Respondents without considering any evidence and prior to the hearing on the merits of the Division's allegations. The conclusion of the Administrative Law Judge ("ALJ") that the Commission did not demonstrate prejudgment bias against Respondents is prejudicial error and clearly erroneous. *See* Initial Decision at 3-5.

The ALJ mischaracterized Respondents' argument, and ignored remarkably-uniform *binding* case authority that establishes that federal commission adjudicatory proceedings are wholly invalidated where these factors are present: a) one or more commissioners issue a statement commenting on the case and indicating that the accused individual or entity is in fact culpable; b) the statement is made prior to the commission hearing or final decision; and c) the accused individual or entity preserves the bias/prejudgment complaint by addressing the issue with the commission prior to final disposition. In this case the Commission issued its findings and conclusions on December 5, 2013, some two months prior to the commencement of the evidentiary hearing before the ALJ, reciting nearly verbatim most of the Division's unproven allegations in the OIP *as established facts*. For some reason the Commission also entered

a legal conclusion of a specific statutory violation committed by the Plaintiffs. (Specifically, the Commissioners found Respondents had indeed violated Section 206(2) of the Advisers Act.) Of course, the Initial Decision adheres to the Commission's prior findings and conclusions. Respondents having been found culpable months before the evidentiary hearing, the proceedings lacked the necessary "appearance of fairness" required under the Due Process Clause of the Fifth Amendment, requiring their nullification entirely. See *Cinderella Career & Finishing Schools, Inc. v. FTC.*, 425 F.2d 583, 590 (D.C. Cir. 1970); *Texaco, Inc. v. FTC.*, 336 F.2d 754 (D.C. Cir. 1964), *vacated on other grounds*, 381 U.S. 739, 759 (1965). See also, *Antoniou v. S.E.C.*, 877 F.2d 721, 726 (8th Cir. 1989), 494 U.S. 1004 (1990).

The Commission's pre-hearing verdict requires recusal of the Commissioners and nullifies the AP proceedings against Plaintiffs. Because there is now no Commission eligible to oversee and review the findings of the ALJ, and thus no legally-valid final Commission order from which to appeal to a circuit court, the entire administrative adjudicatory structure fashioned by Congress in the APA has been effectively legally annihilated. This requires dismissal of the AP proceedings against Respondents. The ALJ rejected Plaintiffs' motion for recusal and dismissal on these grounds, in the face of the controlling authorities cited above, as "frivolous" and "baseless," a decision that the Commission affirmed on January 28, 2014, in its Order Denying Petition for Interlocutory Review.

It is dispositive that these findings, exclusively against Respondents, were *not* the product of an admission or stipulation of the settling co-respondents, but were separate

statements solely reflecting the opinions of the Commissioners, well in advance of the evidentiary hearing. This administrative proceeding is void.

2. The Administrative Proceeding is Void Because the Commission's Exercise of Unguided Discretion in Selecting the Administrative Forum Was an Improper Use of Delegated Legislative Authority in Violation of the Separation of Powers Doctrine.

This administrative proceeding is void as a result of the Commission's exercise of unguided discretion in selecting the administrative forum over federal district court, which was an improper use of delegated authority under the Separation of Powers Doctrine. The ALJ's conclusion that the exercise of unguided, standardless discretion in choosing the administrative forum over federal district court for the Respondents was not a violation of the Separation of Powers Doctrine is clearly erroneous. *See* Initial Decision at 4 n. 5; Tr. 2348-57. To justify the power vested in Congress to designate certain categories of government claims for litigation exclusively in an administrative forum, the Supreme Court has deferred to the legislative branch and its judgment that the specialized expertise of regulatory agencies was necessary for the administration of the modern bureaucratic state. *See Granfinanciera, S.A., v. Nordberg*, 109 S.Ct. 2782 (1989); *Atlas Roofing Co. v. Occupational Safety & Health Review Commission*, 97 S. Ct. 1261 (1977). But central to the Court's entrusting this circumscribed constitutional-deprivation power to the legislative branch are two underlying premises that Congress disregarded through its piecemeal additions to the SEC's administrative enforcement authority: a) Congress's relegation of such classes of disputes to administrative adjudication is to be "exclusive" *Free Enterprise, supra*, 130 S.Ct. at 3150; *Whitney Nat'l Bank in Jefferson Parish v. Bank of New Orleans & Trust Co.*, 85 S. Ct. 551, 557 (1965), and b) the matters consigned to administrative adjudication involve "issues of fact not within the

conventional experience of judges or cases requiring the exercise of administrative discretion.” *Whitney Nat’l Bank, supra*, 85 S.Ct. at 558. Neither of those premises applies to the power Congress has now vested in the SEC to bring enforce actions against ordinary citizens with the authority to levy ruinous penalties and lifetime securities-industry and officer-and-director bars. The Commission’s authority is not exclusive, nor is the agency better equipped than federal courts to adjudicate securities fraud allegations—which federal courts have been doing since 1933.

Moreover, the Supreme Court has never allowed this unique legislative prerogative—the constitutional power to relegate certain classes of controversies to non-Seventh Amendment treatment—to be delegated yet again by Congress to the executive branch, much less to the very agency filing the enforcement action. The agency “power creep” afforded by haphazard legislative amendments has vested the SEC with what the Supreme Court characterizes as a uniquely legislative function that includes the unbridled and unguided power to decide who gets a Seventh Amendment right and when they get it.

This statutory scheme is unconstitutional, and the Commission’s exercise of delegated legislative authority to deprive Respondents of Fifth and Seventh Amendment rights—an exercise guided by no intelligible legislative principles—is therefore void.

3. The Hearing Officer Erred in Determining that Respondents’ Rights to Equal Protection Under the Law Were Not Violated.

The ALJ’s conclusion that Respondents were not deprived of their constitutional rights to equal protection under law is clearly erroneous and prejudicial error. By charging Respondents in an administrative proceeding instead of federal court, the Commission has treated Respondents differently—to their detriment—from others similarly situated. This different treatment has forced Respondents to defend themselves

in the truncated administrative proceeding with an extremely high volume of evidence, virtually no discovery, no protection of the Federal Rules of Civil Procedure, no counterclaims, no Federal Rules of Evidence (or any discernible standard governing the admission of evidence), no jury, and no Article III judge, when others in the same situation have been afforded all of those protections in federal court. The Commission's *ad hoc* decision to pursue the enforcement action against Respondents in an administrative proceeding contravened Respondents' equal protection rights in two ways:

(a) Deprivation of Fundamental Right to Jury Trial

First, the Commission's arbitrary decision constituted invidious discrimination against Respondents, in violation of their rights to equal protection under the law, by depriving Respondents of a fundamental right—their right to jury trial as guaranteed by the Seventh Amendment—subjecting the discrimination to strict scrutiny analysis. The Seventh Amendment provides that

In suits at Common Law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

Despite much scholarly criticism the Supreme Court has long permitted Congress to designate certain categories of government claims for litigation exclusively in an administrative forum, where the expertise of a regulatory agency with specialized, esoteric expertise and knowledge of a particular industry is deemed an acceptable justification for keeping these cases out of Article III courts, effectively eliminating the citizen's Seventh Amendment rights. See *Granfinanciera, S.A. v. Nordberg*, 109 S.Ct. 2782 (1989); *Atlas Roofing Co. v. Occupational Safety & Health Review Comm'n*, 97 S.Ct. 1261 (1977); *NLRB v. Jones & Laughlin Steel Corp.*, 57 S.Ct. 615 (1937). But the

Seventh Amendment applies with full vigor to securities fraud enforcement actions in Article III courts where the SEC seeks monetary penalties.

The Seventh Amendment should be recognized as a fundamental right, at least for purposes of equal protection analysis under the Fifth Amendment due process clause. While the Equal Protection Clause of the Fourteenth Amendment by its terms applies exclusively to the states, the Supreme Court has found a comparable equal protection component applying to the federal government in the Fifth Amendment's Due Process Clause. *See, e.g., Bolling v. Sharpe*, 347 U.S. 497 (1954). It is clear that "[t]he [Seventh Amendment] right to trial by jury 'is of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right to a jury should be scrutinized with the utmost care.'" *Chauffeurs, Teamsters & Helpers, Local No. 391 v. Terry*, 494 U.S. 558, 565 110 S.Ct. 1339, 1344-45 (1990) (quoting *Dimick v. Schiedt*, 293 U.S. 474, 486 (1935)). Even so, the Seventh Amendment's status as a "fundamental" right has yet to be established under modern Fourteenth Amendment equal protection jurisprudence, the Court having last considered the issue in 1931, at a time well before the Court had even established the contemporary mode of analysis for equal protection incorporation. The controlling standard for such incorporation is whether the right in question is "fundamental." *See, e.g., Duncan v. Louisiana*, 391 U.S. 145, 149 (1968). The Seventh Amendment should be recognized as a fundamental right the deprivation of which is subject to strict scrutiny. Under this standard, the Commission's decision to cast Respondents into the instant administrative proceeding violated Respondents' equal protection rights, requiring dismissal of these proceedings.

(b) **Class of One**

Second, by intentionally, arbitrarily and malevolently casting Respondents into the administrative process, effectively stripping Respondents of most of the due process rights they would enjoy in district court, their jury trial rights, and all of the procedural protections of the federal rules of evidence and procedure, while selecting federal court to pursue identical statutory claims against other similarly-situated defendants, the Commission has contravened Respondents' equal protection rights guaranteed by the Due Process Clause of the Fifth Amendment, pursuant to the equal protection "class of one" doctrine. Respondents have been placed into a forum where statistical analysis reveals that virtually *no* similarly-situated respondents are successful, instead of the courtroom, where the SEC enjoys a much more modest success rate. The adverse effect is palpable.

Respondents have identified a number of similarly-situated parties—individuals and entities charged with precisely the same securities fraud violations, under the *same sections* of the Securities Act of 1933, the Securities Exchange Act of 1934, and the Investment Advisers Act of 1940—who were likewise not registered with the SEC and who could have been charged by OIP and thrust into the administrative process, but who were, instead, allowed to defend themselves in federal court. These similarly-situated parties—called "comparators" in equal protection parlance—are easily identified from public records, and nine such parties are identified for Commission review, listed in Appendix A. These much more fortunate defendants are identical to Respondents in all material respects.

4. **The Hearing Officer Erroneously Concluded that *Ex Parte* Communications Between the Division of Enforcement and the Commission Did Not Occur and Thus Did Not Violate Respondents' Due Process Rights.**

The ALJ erroneously concluded that the *ex parte* communications between members of the Division of Enforcement and the Commission in this proceeding were permissible and, thus, did not violate Respondents' due process rights. The authority relied upon for this conclusion is inapposite and inconsistent with the Administrative Procedures Act ("APA"), the Commission's Rules of Practice and the Order Instituting Proceedings ("OIP") in this case.

Persons involved in the investigation and prosecution of the administrative proceeding also participated in the settlement discussions related to the co-respondents and recommendation of the settlement to the Commission. This participation and recommendation constitutes improper *ex parte* communications.

The OIP issued by the Commission in this case states:

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice.

Respondents did not provide a waiver, did not receive notice, and were not permitted to participate or be heard in connection with the Commission's decision to settle with the settled co-respondents or its additional decision to enter findings and conclusions independently against Respondents. The communications between the Division staff and the Commission in resolving the claims as to the settled respondents without first procuring a waiver or giving notice and an opportunity to be heard by Respondents, violates the Commission's own admonition in the OIP, as well as the SEC's Rules of Practice and the Administrative Procedure Act ("APA").

The due process principles underpinning the proscriptions against *ex parte* input from Division staff have been applied to nullify proceedings *even in exchange tribunals*—to which the stricter standards of the APA do not apply. For example, in *Laken, et al., v. Chicago Mercantile Exchange*, CFTC No. 88-E-2 (1990), compliance staff representatives presented the case to the exchange adjudicators in a floor broker's disciplinary proceeding without the presence of the broker, and the Commodity Futures Trading Commission forcefully struck down the resulting sanctions. The CFTC acknowledged that “exchange proceedings are not subject to the strict separation of functions requirement applicable to Commission adjudications under the Administrative Procedure Act,” see *In re First Commodity Corporation of Boston*, 33,802 (CFTC 1987), wherein the Commission noted that

. . . Respondents in exchange disciplinary proceedings are, however, entitled to a fair trial in a fair tribunal. *Cf. In re Murchison*, 349 U.S. 133, 136 (1955). To be deemed fair, an exchange tribunal's actions must not only be free from actual bias, they must also be free from the appearance of bias. *Cf. Antoniu v. Securities and Exchange Commission*, 877 F.2d 721, 725–26 (8th Cir.1989) Generally, the test for an appearance of partiality is whether an objective, disinterested observer, fully informed of the facts, would entertain a significant doubt as to the fairness of the proceedings. *Id.*; *Pepsico, Inc. v. McMillen*, 764 F.2d 458, 460 (7th Cir.1985). When senior representatives of an exchange's Compliance Staff who played a substantive role in developing or presenting compliance's case are granted access to decision-making sessions of exchange adjudicators which are closed to respondent's representatives, an appearance of bias sufficient to offend fundamental fairness arises without regard to the precise role played by Compliance's representatives.

The Commission in *First Commodity* nullified the disciplinary decision, observing that the Exchange's claim that the involvement of the compliance staff in the adjudicatory recommendations was ministerial—not substantive—“would strain the credulity of the most trusting observer.”

In this case, the improper *ex parte* communications of the Division had exactly the impact that the language in the OIP was intended to prevent. Any claim that the Commission's extensive "findings" of fact against the Respondents were divined independently by the Commissioners without the benefit of input from the members of the Division working on the investigation and prosecution of the case, would strain the credulity of the most trusting observer. The settling co-respondents neither admitted nor denied any of the factual conclusions in the order approving their settlement. Thus the Commission either gleaned these facts from an illegal *ex parte* presentation by the Division or simply conjured up the findings against Respondents out of thin air. Either prospect runs afoul of even the most rudimentary demands of due process and of the Commission's own rules.

The Division's participation in the Commission's findings against Respondents is a plain violation of the Commission's *very own Rules of Practice* and transgresses yet another fundamental precept of due process. The Supreme Court has long held that rules promulgated by a federal agency that regulate the rights and interests of others are controlling upon the agency and must be followed by the agency. *Columbia Broad. Sys., Inc. v. United States*, 316 U.S. 407, 422, 62 S.Ct. 1194, 86 L.Ed. 1563 (1942); *see also, United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 74 S.Ct. 499, 98 L.Ed. 681 (1954). As the Second Circuit explained in *Montilla v. INS*, 926 F.2d 162, 169 (2d Cir.1991), "[t]he notion of fair play animating [the Fifth Amendment] precludes an agency from promulgating a regulation affecting individual liberty or interest, which the rule-maker may then with impunity ignore or disregard as it sees fit."

Section 554 of the APA states that, “This section applies, according to the provisions thereof, in every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing....” 5 U.S.C. § 554(a). The agency’s authority to enter into settlements provides, “The agency, with like effect as in the case of other orders, and in its sound discretion, may issue a declaratory order to terminate a controversy or remove uncertainty.” 5 U.S.C. § 554(e).

Undoubtedly, the Division staff obtained a waiver from the settling co-respondents upon submission of the Division-drafted offer of settlement, as is required. Had *Respondents* made a written offer of settlement, they would have been required to give a prejudgment waiver before the Division of Enforcement staff engaged in communications with the Commission and its staff. Respondents gave no prejudgment waiver—nor was one requested—for the settlement communications regarding the *co-respondents* that resulted in entry of the December 5, 2013 order and press release in which the Commission made and published numerous adverse findings of fact and conclusions of law against Respondents.

5. The Hearing Officer Erroneously Concluded that Respondents’ Due Process Rights Were Not Violated Under the Doctrine of *Brady v. Maryland*.

The ALJ’s conclusion that Respondents’ constitutional right of due process was not abridged for failure of the Division to comply with its *Brady* obligations is clearly erroneous and prejudicial error. *See* Initial Decision at 5-6. The Division prevented Respondents from accessing the relevant evidence by effectively hiding it in a 700 gb “document dump” and providing no effective means of identifying the contents. Producing millions of documents incapable of being searched reliably is no better than refusing to produce documents at all. Federal courts thus routinely hold that

large, haphazard document productions violate the Federal Rules of Civil Procedure. See, e.g., *Residential Contractors, LLC v. Ace Prop. & Cas. Ins. Co.*, No. 2:05-cv-01318-BES-GWF, 2006 U.S. Dist. LEXIS 36943, at *7 (D.Nev. 2006) (“The Court does not endorse a method of document production that merely gives the requesting party access to a ‘document dump,’ with an instruction to ‘go fish’”); *Mizner Grand Condo. Ass’n v. Travelers Prop. Cas. Co. of Am.*, 270 F.R.D. 698, 700-01 (S.D. Fla. 2010) (granting defendants’ motion to compel after plaintiff offered for inspection approximately 10,000 unsegregated and uncategorized documents that essentially required defendants to “examine and sort through each individual file folder.”). The Division has been admonished in the past for using such tactics. In *SEC v. Collins & Aikman Corp.*, 256 F.R.D. 403, 413 (S.D.N.Y.2009), the court required the SEC to produce 175 file folders created by its litigation attorneys. In reasoning applicable here, the court stated, “While the responsive documents exist somewhere in the ten million pages produced by the SEC, the production does not respond to the straightforward request to identify documents that support the allegations in the Complaint, documents [defendant] clearly must review to prepare his defense.” *Id.* at 410.

In addition, the ALJ erroneously: a) concluded that Respondents’ requests for interview notes were unfounded because she reviewed *some* of the interview notes and *the particular ones* that she reviewed contained no *Brady* material, See Initial Decision at 5, and b) failed to review, *in camera*, all documents that are privileged, but may contain *Brady* material. The ALJ further refused Respondents’ request to at least place copies of these documents under seal in the record as evidence for an appeal. Because

the SEC adopted *Brady*, it is obligated to follow that case and its progeny. As the SEC recognized in *In the Matter of optionsXpress, Inc. et al.*, SEC Release No. 9466, AP File No. 3-14848 (October 16, 2013), a judicial officer's *Brady* obligation encompasses the *Pennsylvania v. Ritchie* duty to review, *in camera*, documents the government claims are privileged but may contain *Brady* material. The SEC's *Brady/Ritchie* obligation was specifically brought to the ALJ's attention, but she refused to review the notes *in camera* or make them part of the AP record.

Furthermore, the ALJ compounded the error by eliminating any possibility of Commission or appellate review of documentation in the custody of the Division that contained *Brady* material. Because the ALJ refused to follow *Brady* and *Ritchie*, Respondents not only were forced to the hearing without the *Brady* material that was almost certainly in the Division's possession, but also will have no meaningful Commission or judicial review of the erroneous decision because the *Brady* notes are not in the record, and Respondents will therefore be unable to demonstrate the materiality of the denied evidence.

6. Respondents' Rights to Due Process Were Violated Because of Respondents' Inability to Assert Counterclaims for Constitutional Violations and Respondents' Inability to Develop an Evidentiary Record of Such Violations in an Administrative Proceeding.

Commission administrative proceedings do not permit assertion of counter claims for violations of respondent's constitutional rights, nor are respondents permitted to conduct discovery or present evidence to develop a record of such violations in administrative proceedings. *See generally* SEC Rules of Practice. Respondents sought to issue a subpoena for documents related to the *ex parte* communications between the

Division staff and the Commission and its staff, but the ALJ refused to permit Respondents to engage in discovery to develop an evidentiary record. *See Record Index February 13, 2014.* Moreover, objections based upon constitutional violations were dismissed during the course of the hearing on the merits.

7. Respondents' Rights to Due Process Were Violated Because the Truncated Duration of an Administrative Proceeding Did Not Afford Respondents Sufficient Time to Prepare Their Defense.

The Administrative Procedure Act ("APA"), 5 U.S.C. § 551 et seq., under which the SEC Rules of Practice are promulgated, requires as a matter of fundamental fairness and just adjudication that parties must be "timely" informed of "the matters of fact and law asserted." 5 U.S.C. § 554(b). "Just determinates" are prescribed by the SEC in administrative proceedings. 17 C.F.R. § 201.103(a). An inadequate opportunity to discover the relevant facts upon which the proceeding will be decided, given insufficient time to diligently pore through millions of pages of unorganized documents, deprives the respondent of rudimentary due process and his right to meaningful and effective confrontation of witnesses. *See Davis v. Alaska*, 415 U.S. 308 (1974). These principles are relevant to the fundamental fairness of administrative proceedings where a respondent may be fined or otherwise sanctioned. *See Locurto v. Giuliani*, 447 F. 3d 159 (2d Cir. 2006) (party in hearing before administrative law judge does not receive "a full and fair opportunity to litigate" where he was "denied adequate discovery" on the relevant issues.) Respondents were materially harmed by this inability to prepare in the conduct of the administrative hearing, and informed the ALJ that they were not adequately prepared to cross examine the Division's witnesses and to present their defensive evidence. Forcing Respondents to an adversarial evidentiary hearing with the

opportunity to only review a miniscule percentage of the evidence that supported the issuance of the OIP is manifestly unfair and violates Respondents' rights to due process.

8. The Hearing Officer Erroneously Imposed Dodd-Frank Remedies Retroactively.

The Initial Decision erroneously imposes a monetary penalty on Respondents for conduct that pre-dates the effective date of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank") in violation of the well-established rule that a statute will be presumed not to impose penalties retroactively unless it expressly so states. *See Landgraf v. USI Film Prods.*, 511 U.S. 244 (1994). The ALJ's reliance on the theory of a "continuing course of conduct" is unsupported and inconsistent with applicable law.

9. The Hearing Officer Made Evidentiary Rulings, Findings of Fact and Conclusions of Law That are Clearly Erroneous and Constitute Prejudicial Error.

(a) Erroneous Evidentiary Decisions

The ALJ made erroneous, inconsistent and unfair evidentiary rulings for the Division and against Respondents, including regarding the admission of affidavits, documents and hearsay. For example, the ALJ admitted numerous "business-records affidavits," over the objection of Respondents, that were defective on their face and where there was no evidence or representation that the affiant was unavailable for live testimony. Hearing Transcript at 2065, 2092, 2236, 2320, 2327, 2070. The ALJ thereby admitted into evidence the hundreds of pages of material documents that accompanied the defective business-records affidavits. Hearing Transcript at 2065 (DX-486), 2255 (DX-511), 2277 (DX-628), 2279 (DX-630), 2320 (DX-507, 508, 509, 512, 513, 514, 518,

520, 522, 523, 524, 631, and 632), 2333 (DX-249), 2336 (DX-479), 3005 (DX-647). These rulings permitted unreliable evidence to become a part of the record. These unauthenticated documents, which had no sponsor to explain their origin or the meaning of their content, served as the basis for many of the ALJ's erroneous findings of facts. The admission of the "business records affidavits" and the documents they purported to authenticate was clearly erroneous.

The ALJ excluded a legally-sufficient affidavit offered by Respondents where there was evidence—as admitted by the Division staff—that the witness was unavailable to testify. Hearing Transcript at 2821-22; 3029-3045. The evidence from the witness was material and the exclusion of the affidavit is clearly erroneous.

As noted above, the ALJ refused to issue a subpoena upon Respondents' request after commencement of the hearing to obtain documents to develop an evidentiary record related to the prejudgment and improper *ex parte* communications discussed above. Hearing Transcript at 2357-2360.

The ALJ permitted the Division to issue a subpoena after the commencement of the hearing, and approximately half-way through the hearing, to call a witness—over the objection of Respondents—who had not been previously known to Respondents or appeared on any pre-hearing witness list. Hearing Transcript at 1546. Respondent did not have the ability to adequately prepare for cross examination of the witness, nor to search the 700 g.b. hard-drive for any documents related to the witness.

These evidentiary rulings were clearly erroneous and prejudicial to Respondents.

(b) Erroneous Factual Findings

The ALJ made numerous erroneous and unsupported findings of fact, especially based upon the unreliable and unauthenticated documents admitted into evidence, including the following:

The ALJ erroneously concluded that an undisclosed relationship exists between Respondents and the settled respondents, John Thomas Financial ("JTF") and Anastasios Belesis ("Belesis"). Initial Decision 16. This finding is not supported by credible evidence and ignores contradictory evidence.

The ALJ erroneously concluded that the selection of the name for John Thomas Financial was serendipitous. Initial Decision 9. This finding mischaracterizes the evidence and ignores contradictory evidence.

The ALJ erroneously concluded that Belesis and Jarquesy became acquainted in 2003. ALJ further erroneously concluded in a footnote that Jarquesy denied that date but did not provide an alternate date. Initial Decision 8. This finding mischaracterizes the evidence and ignores contradictory evidence.

The ALJ erroneously concluded that Belesis reinforced his position in the relationship through threats to stop selling interests in Jarquesy's Funds. Initial Decision 10. This finding mischaracterizes the evidence and ignores contradictory evidence.

The ALJ erroneously concluded that Jarquesy testified in an evasive manner that did not provide any assurances of the reliability of his testimony, and that no weight has been placed on his testimony as to facts that are disputed or not corroborated by credible evidence elsewhere in the record. The ALJ further cited several examples of questions and answers to support this conclusion. Initial Decision 10. These findings mischaracterize Jarquesy's testimony.

The ALJ erroneously concluded that while Jarquesy evaded a large portion of the Division's questions, his recollection markedly improved when questioned by his own counsel. Initial Decision 11. This finding mischaracterizes Jarquesy's testimony.

The ALJ erroneously concluded that some of the representations in the marketing materials may have been accurate when the documents were first used became inaccurate and were not corrected. The ALJ further erroneously states that Respondents argue that the Division did not prove that the private placement memoranda were used without alteration throughout the time at issue. However, Respondents, who are in the best position to know of any successor PPM amendments, did not offer evidence of any changes. The ALJ further erroneously found that the private placement memoranda were used without further amendments in selling interests in the Funds during the time in issue. Initial

Decision 11. This erroneous finding mischaracterizes the evidence, Respondents' legal obligations and the standard of proof in the administrative proceeding.

The ALJ erroneously concluded that investors might be able to redeem their investments, but upon potential payment of a penalty. Initial Decision 12. This conclusion mischaracterizes the evidence, rely on unreliable evidence and ignores contradictory evidence.

The ALJ erroneously concluded that investor Robert Fulhardt believed that the Fund has a September 2012 maturity date, and investor Steve Benkovsky also believed that the fund had a five-year duration that would end in 2012. Initial Decision 12. These findings mischaracterize the evidence, rely on unreliable evidence and ignore contradictory evidence.

The ALJ erroneously concluded that in a podcast sent to investors on May 21, 2009, Jarkesy explained that uses of investment capital by percentages. Initial Decision 13. This conclusion mischaracterizes the evidence, rely on unreliable evidence and ignores contradictory evidence.

The ALJ erroneously concluded that remaining portion of funds after life insurance policies were bought was to go to medium term debt and equity in business enterprises. Initial Decision 13. These findings mischaracterize the evidence, rely on unreliable evidence and ignore material other evidence.

The ALJ erroneously concluded that the PPM for Fund II did not provide such numerical details. However, marketing materials for Fund II represented that about half of the Fund II's investment would be in insurance policies amounting to at least 117% of capital commitments with additional funds to secure payment of premiums with the other half in corporate investments. Initial Decision 14. This finding mischaracterizes the evidence, rely on unreliable evidence and ignores contradictory evidence.

The ALJ erroneously concluded that contrary to the representations in the Funds' PPMs and financial statements that JTCM set the valuations for the Funds' positions, Jarkesy disclaimed responsibility for this, indicating that AlphaMetrix valued the Funds' positions. The ALJ made additional erroneous conclusions regarding who participated in valuing assets and how assets were valued. Initial Decision 15. These findings mischaracterize the evidence, rely on unreliable evidence and ignore material other evidence.

The ALJ made erroneous conclusions regarding the role of KPMG and Deutsche Bank and the representations about them to investor. Initial Decision 15. These findings mischaracterize the evidence, rely on unreliable evidence and ignore material other evidence.

The ALJ erroneously concluded that some statements in the PPM may have been accurate when made, became inaccurate and remained uncorrected. Initial Decision 11. These findings mischaracterize the evidence and mischaracterize the law and duties applicable to Respondents.

The ALJ erroneously concluded that in a podcast sent to investors Jarquesy said 50% of Fund I would go to insurance policies. 30% of the 50% would be used to buy policies and remaining 70% of the 50% would be used to pay premiums. Initial Decision 13. These findings mischaracterize the evidence, rely on unreliable evidence and ignore material other evidence.

The ALJ erroneously concluded that Fund II marketing materials said 50% to life policies amounting to face value of at least 117% face value. Initial Decision 14. These findings mischaracterize the evidence, rely on unreliable evidence and ignore material other evidence.

The ALJ erroneously concluded that Financial Statements represented valued according to FAS 157. Initial Decision 14. These findings mischaracterize the evidence, rely on unreliable evidence and ignore material other evidence.

The ALJ erroneously concluded that life insurance policy values estimated by JTCM using a life expectancy model. Initial Decision 14. These findings mischaracterize the evidence, rely on unreliable evidence and ignore material other evidence.

The ALJ erroneously concluded that valuation of each asset listed on holdings pages of monthly investor statements. Initial Decision 14. These findings mischaracterize the evidence, rely on unreliable evidence and ignore material other evidence.

The ALJ erroneously concluded that contrary to the representations in the Funds' PPMs and financial statements that JTCM set the valuations for the Funds' positions, Jarquesy disclaimed responsibility for this, indicating that Alphamatrix valued the Funds' positions. Initial Decision 14. These findings mischaracterize the evidence, rely on unreliable evidence and ignore material other evidence.

The ALJ erroneously concluded that Alphamatrix did not value the funds. Initial Decision 14. These findings mischaracterize the evidence, rely on unreliable evidence and ignore material other evidence.

The ALJ erroneously concluded that any question concerning valuation would go to Jarquesy (through subordinates at times) and Jarquesy had the final word setting valuations, even if unreasonable. Initial Decision 15. These findings

mischaracterize the evidence, rely on unreliable evidence and ignore material other evidence.

The ALJ erroneously concluded that JTCM approved all statements – holdings, profit and loss, financial statements, and investor statements. Initial Decision 15. These findings mischaracterize the evidence, rely on unreliable evidence and ignore material other evidence.

The ALJ erroneously concluded that investor updates/marketing materials indicated KPMG auditor of Fund I from 2008-2010 and both Funds throughout 2010. Initial Decision 15. These findings mischaracterize the evidence, rely on unreliable evidence and ignore material other evidence.

The ALJ erroneously concluded that Deutsche Bank was never the Funds' prime broker. Initial Decision 15. These findings mischaracterize the evidence, rely on unreliable evidence and ignore material other evidence.

The ALJ erroneously concluded that JTF rep told Am. West people he could speak for Jarkey because JTF and Jarkey were partners and are "tied at the hip." Initial Decision 16. These findings mischaracterize the evidence, rely on unreliable evidence and ignore material other evidence.

The ALJ erroneously concluded that on December 12, 2009 Belesis ordered Jarkey to deliver funds and on December 18 Fund I bought \$30,000 in Galaxy stock and Fund II bought \$10,000 in Galaxy stock. Initial Decision 17. These findings mischaracterize the evidence, rely on unreliable evidence and ignore material other evidence.

The ALJ erroneously concluded that inconsistent with PPM, Fund II bought no life insurance policies. Initial Decision 22. These findings mischaracterize the evidence, rely on unreliable evidence and ignore material other evidence.

The ALJ erroneously concluded that Fund I did not meet 117% obligation in 2008. Initial Decision 22. These findings mischaracterize the evidence, rely on unreliable evidence and ignore material other evidence.

The ALJ erroneously concluded that Fund I did meet obligations in 2009. Initial Decision 23. These findings mischaracterize the evidence, rely on unreliable evidence and ignore material other evidence.

The ALJ erroneously concluded that Fund I did not meet 117% obligation in 2010. Initial Decision 23. These findings mischaracterize the evidence, rely on unreliable evidence and ignore material other evidence.

The ALJ erroneously concluded that Respondents did not spend the amount pledged on insurance policies/premiums; nor put the policies in the master trust in a timely fashion as promised in the PPM and marketing materials. Initial Decision 23. These findings mischaracterize the evidence, rely on unreliable evidence and ignore material other evidence.

The ALJ erroneously concluded that Respondent purchased policies at 15% rate, but valued at 12% rate. Initial Decision 24. These findings mischaracterize the evidence, rely on unreliable evidence and ignore material other evidence.

The ALJ erroneously concluded that Respondent immediately wrote up the value of policies in contravention of FASB Staff Position 85-4-1. Initial Decision 24. These findings mischaracterize the evidence, rely on unreliable evidence and ignore material other evidence.

The ALJ erroneously concluded that Jarquesy represented to investors that Fund I continued to purchase insurance policies in an August 2010 letter to investors which was a misrepresentation because Fund 1 never acquired a policy after 2009 year end. Initial Decision 24. These findings mischaracterize the evidence, rely on unreliable evidence and ignore material other evidence.

The ALJ erroneously concluded that Respondents represented the insurance policies as a conservative hedge but took no steps to reduce risk. Did not invest in a large number of policies as required to reduce risk. Initial Decision 24. These findings mischaracterize the evidence, rely on unreliable evidence and ignore material other evidence.

The ALJ erroneously concluded that Respondents never told investors and potential investors that the strategy from the PPM changed. Initial Decision 28. These findings mischaracterize the evidence, rely on unreliable evidence, ignore material other evidence, and mischaracterize the law and duties applicable to Respondents.

The ALJ erroneously concluded that contrary to the representations in the Funds' PPMs and financial statements that JTCM set the valuations for the Funds' positions, Jarquesy disclaimed responsibility for this, indicating that Alphamatrix valued the Funds' positions. Initial Decision 15. These findings mischaracterize the evidence, rely on unreliable evidence and ignore material other evidence.

The ALJ erroneously concluded that Alphamatrix did not value the funds. Initial Decision 15. These findings mischaracterize the evidence, rely on unreliable evidence and ignore material other evidence.

The ALJ erroneously concluded that Jarquesy insisted on valuing America West restricted stock at the same value as free-trading stock. Initial Decision 15. These findings mischaracterize the evidence, rely on unreliable evidence and ignore material other evidence.

The ALJ erroneously concluded that JTCM approved all statements – holdings, profit and loss, financial statements, and investor statements. Initial Decision 15. These findings mischaracterize the evidence, rely on unreliable evidence and ignore material other evidence.

The ALJ erroneously concluded that Investor updates/marketing materials indicated KPMG auditor of Fund I from 2008-2010 and both Funds throughout 2010. Initial Decision 15. These findings mischaracterize the evidence, rely on unreliable evidence and ignore material other evidence.

The ALJ erroneously concluded that Respondents did not advise auditors of impairment of the notes. Initial Decision 17. These findings mischaracterize the evidence, rely on unreliable evidence and ignore material other evidence.

The ALJ erroneously concluded that Jarquesy spoke highly of Am. West in podcast that did not reflect the true condition of America West. Initial Decision 17. These findings mischaracterize the evidence, rely on unreliable evidence and ignore material other evidence.

The ALJ erroneously concluded that Jarquesy sent optimistic “Research Report” to investors in September 2010 and issued a press release regarding America West that did not reflect true financial condition of the company. Initial Decision 17. These findings mischaracterize the evidence, rely on unreliable evidence and ignore material other evidence.

The ALJ erroneously concluded that Alphametrix relied on Jarquesy for valuation of Galaxy because it was not publicly traded. Initial Decision 18. These findings mischaracterize the evidence, rely on unreliable evidence and ignore material other evidence.

The ALJ erroneously concluded that from 2009 – 2011 Jarquesy valued shares wildly. Initial Decision 18. These findings mischaracterize the evidence, rely on unreliable evidence and ignore material other evidence.

The ALJ erroneously concluded that changes in price did not coordinate with events occurring inside Galaxy. Initial Decision 18. These findings mischaracterize the evidence, rely on unreliable evidence and ignore material other evidence.

The ALJ erroneously concluded that together Jarquesy and Belesis exerted control over Galaxy. Initial Decision 18. These findings mischaracterize the evidence, rely on unreliable evidence and ignore material other evidence.

The ALJ erroneously concluded that Fund I sold 300,000 shares of Radiant to Fund II in Aug. 2010 with a cost of \$0.23 per share. Respondents increased the valuation of those shares the same month to \$1.00 per share causing Fund I's unrealized profits to rise. Initial Decision 19. These findings mischaracterize the evidence, rely on unreliable evidence and ignore material other evidence.

The ALJ erroneously concluded that in December 2010 Radiant stock traded for the first time in 15 months at \$4.00 per share coinciding with a marketing campaign. Initial Decision 19. These findings mischaracterize the evidence, rely on unreliable evidence and ignore material other evidence.

The ALJ erroneously concluded that Jarquesy valued certain warrants in Radiant at \$6.92 though they were previously valued at \$0.12 four months earlier. Initial Decision 19. These findings mischaracterize the evidence, rely on unreliable evidence and ignore material other evidence.

The ALJ erroneously concluded that Jarquesy sent stock certificates of Radiant to certain fund investors on October 23, 2014 with a letter stating the Radiant shares were valued at least \$2.00 per share. The closing price on Yahoo! Was \$1.04 on Yahoo! Finance with no activity from October 24, 2013 through January 2, 2014. Initial Decision 20. These findings mischaracterize the evidence, rely on unreliable evidence and ignore material other evidence.

The ALJ erroneously concluded that Jarquesy initiated a promotional campaign in the fourth quarter of 2010 for America West stock. This caused the stock price to go up to \$1.95 per share in December 2010. Subsequently on the financial statements, Jarquesy valued the stock at \$1.95 per share. ID, p. 20.

The ALJ erroneously concluded that Jarquesy initiated a promotional campaign for Radiant as well resulting in the share price going up to \$4.00 per share in December 2010, resulting in very large gains reported on the year-end financial statements of the Funds. Initial Decision 20. These findings mischaracterize the evidence, rely on unreliable evidence and ignore material other evidence.

The ALJ erroneously concluded that Fund I capped the aggregate capital commitments in any 1 company at 5%. Initial Decision 21. These findings mischaracterize the evidence, rely on unreliable evidence and ignore material other evidence.

The ALJ erroneously concluded that marketing materials repeated the 5% limitation. Initial Decision 21. These findings mischaracterize the evidence, rely on unreliable evidence and ignore material other evidence.

The ALJ erroneously concluded that Fund I did not meet the cap in 2007, 2008, 2009, or 2010. Initial Decision 21. These findings mischaracterize the evidence, rely on unreliable evidence and ignore material other evidence.

The ALJ erroneously concluded that Respondents never investors and potential investors that the strategy from the PPM changed. Initial Decision 28. These findings mischaracterize the evidence, rely on unreliable evidence and ignore material other evidence.

The ALJ erroneously concluded that Belesis' input into decisions concerning portfolio companies and receipt of fees from such companies directly affected investors and losses. Initial Decision 29. These findings mischaracterize the evidence, rely on unreliable evidence and ignore material other evidence.

(c) Erroneous Legal Findings

The ALJ erroneously concluded that Respondents violated the antifraud provisions in Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Exchange Act of 1934 and Rule 10b-5 thereunder, and aided and abetted violations by the Funds of the same statutes. Initial Decision 24, 28, 29. There is insufficient evidence to support this conclusion, the findings of fact supporting this conclusion mischaracterize the evidence, and the ALJ ignored substantial evidence that contradicts this conclusion.

The ALJ erroneously concluded that Respondents violated the antifraud provisions in Sections 206(1), (2) and (4) of the Investment Advisors Act of 1940 and Rule 206(4)-8 thereunder, and aided and abetted violations by the Funds of the same statutes. Initial Decision 24, 28, 29. There is insufficient evidence to support these findings, the findings of fact supporting this conclusion mischaracterize the evidence, and the ALJ ignored substantial contrary evidence in the record.

The ALJ erroneously concluded that Respondents argue that the representations were not false when made and that the PPM gave JTCM discretion to change the investment strategy of the Fund. Yet Respondents never informed investors and potential investors of such changes. Initial Decision 28. These findings mischaracterize the evidence, mischaracterize the duties imposed upon Respondents, and ignore substantial contrary evidence in the record.

The ALJ erroneously concluded that Respondents may not rely upon advice of counsel as a defense because Respondents do not claim that they consulted counsel before undertaking the actions. Initial Decision 28. There is insufficient evidence to support these findings and the ALJ ignores substantial contrary evidence in the record.

The ALJ erroneously concluded that Respondents misrepresented or failed to disclose the true relationship between Respondents and the settled co-respondents, and that such misrepresentation or omission was material. Initial Decision 29. There is insufficient evidence to support these findings, and the ALJ ignores substantial contrary evidence in the record.

The ALJ's finding of *scienter* is erroneous in that there is insufficient evidence to show that Respondents knew the representations in the offering materials to be false at the time they were made—or that they were false at all at the time they were made—and the ALJ erroneously concluded that Respondents had a duty to correct prior statements, but offers no legal support for this conclusion. Initial Decision 11.

10. The Hearing Officer Erred in Imposing Remedies Against Respondents that are Unsupported, Disproportionate, and Contrary to Public Policy

In light of the other defects to this administrative proceeding, including constitutional violations and numerous erroneous evidentiary rulings, findings of fact and

conclusions of law, the sanctions ordered by the ALJ are: a) unsupported by the evidence, b) disproportionate in light of the allegations against and sanctions levied on the settled co-respondents, and c) contrary to public policy. All of the sanctions should be reversed.

The disgorgement amount is not supported by evidence in the record. Moreover, the sanctions ordered against Respondents is disproportionate compared to the sanctions levied upon settled co-respondents JTF and Belesis. According to the OIP, the evidence adduced at the hearing, and the findings in the Initial Decision, JTF—a registered broker-dealer—and Belesis—a registered representative—played prominent roles in the transactions involving the Funds, including serving as placement agent offering and selling investments in the Funds, executing securities transactions for the Funds and serving as investment bank to certain of the companies in which the Fund had invested. According to the ALJ's findings, JTF's representatives made misrepresentation in connection with offering and selling investments in the Funds. Moreover, JTF and Belesis made five (5) times more money than Respondents allegedly made. In spite of these significant facts, JTF and Belesis received:

- 1 year securities-industry suspension
- disgorgement and penalty of 17% of the total \$6 million they received
- a lesser charge to a non-scienter fraud statute (which is supposedly contrary to Division policy)

For roughly equal conduct, Respondents received:

- Lifetime securities-industry bar (even though neither was required to register)
- Lifetime officer-and-director bar (even though no violations were alleged as officer or director of a public company)
- disgorgement and penalty of 135% of the total 1.3 million they allegedly received
- violations of all statutes charged in OIP
- cease-and-desist order

By any standard, the sanctions to Respondents are inconsistent and inequitable.

CONCLUSION

For the foregoing reasons, Respondents request review of the Initial Decision.

Respectfully Submitted,

By: 

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Counsel for John Thomas Capital
Management Group d/b/a Patriot28
LLC and George Jarkesy, Jr.

Appendix A

SIMILARLY SITUATED DEFENDANTS CHARGED BY SEC

Lead Defendant	SEC Link	File Date	Violations Alleged	Forum
Velten, Brian K. Civ. Act. No. 1:13-cv-23477	1	09-27-13	§ 17(a) '33 § 10(b) '34 § 206(1), (2) '40	S.D. Fla
Kirkland, Stephen Civ. Act. No. 1:13-cv-3150	2	09-23-13	§ 10(b) '34 § 206(1), (2) '40	N.D. Ga.
Hansen, Randal Kent Civ. Act. No. 13-cv-01403	3	03-01-13	§ 17(a) '33 § 10(b), 15(a) '34 § 206(1), (2), (4) '40	S.D.N.Y.
Ng, Walter Civ. Act. No. C-13 0895	4	02-28-13	§ 17(a) '33 § 10(b) '34 § 206(1), (2) '40	N.D. Cal.
New Stream Capital, LLC Civ. Act. No. 3:13-cv-264	5	02-26-13	§ 17(a) '33 § 10(b) '34 § 206(1), (2), (4) '40	D. Conn.
Thomas, Delsa U. Civ. Act. No. 3:13-cv-00739	6	02-15-13	§ 17(a) '33 § 10(b) '34 § 203A, 206(1), (2), (4) '40	N.D. Tex.
Yorkville Advisors Civ. Act. No. 12-cv-7728	7	10-17-12	§ 17(a) '33 § 10(b) '34 § 206(1), (2), (4) '40	S.D.N.Y.
Deer Hill Financial Group Civ. Act. No. 12-01317	8	09-13-12	§ 17(a) '33 § 10(b), 15(a) '34 § 206(1), (2) '40	D. Conn.
Gomez, Jorge Civ. Act. No. 1:12-cv-21962	9	05-29-12	§ 10(b), 15(a) '34 § 206(1), (2) '40	S.D. Fla.

Legend:

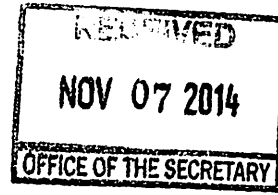
Bold statutory sections in Violations Alleged column are identical to charges against Plaintiffs.

'33: Securities Act of 1933

'34: Securities Exchange Act of 1934

'40: Investment Advisers Act of 1940

1. (Velton)
www.sec.gov/litigation/litreleases/2013/lr22821.htm
2. (Kirkland)
www.sec.gov/litigation/litreleases/2013/lr22808.htm
3. (Hansen)
www.sec.gov/litigation/litreleases/2013/lr22631.htm
4. (Ng)
www.sec.gov/litigation/litreleases/2013/lr22628.htm
5. (New Stream Capital)
www.sec.gov/litigation/litreleases/2013/lr22625.htm
6. (Thomas)
www.sec.gov/litigation/litreleases/2013/lr22618.htm
7. (Yorkville)
www.sec.gov/litigation/litreleases/2012/lr22510.htm
8. (Deer Hill Financial Group)
www.sec.gov/litigation/litreleases/2012/lr22479.htm
9. (Gomez)
www.sec.gov/litigation/litreleases/2012/lr22376.htm



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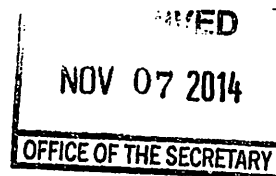
FAX

To: Elizabeth M. Murphy **Fax:** 202.772.9324

From: Karen Cook **Pages:** 33

Date: 11.7.14 **Re:** File No. 3-15255

Comments:



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November 7, 2014

VIA FACSIMILE AND HAND DELIVERY

Ms. Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100F Street, NE
Washington, DC 20549-1090
Facsimile 202.772.9324

RE: *John Thomas Capital Management Group LLC d/b/a Patriot28 LLC, et al,*
File No. 3-15255

Petition for Review

Dear Ms. Murphy:

As counsel for respondents George R. Jarkesy, Jr. and Patriot28, LLC, pursuant to Securities and Exchange Commission's Rule of Practice 410, I hereby submit with this letter a Petition for Review of Initial Decision in the above-captioned matter. Any questions concerning this matter can be directed to me at the contact information above.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "K. Cook", written over a horizontal line.

Karen Cook