UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15255

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

THE DIVISION OF ENFORCEMENT'S MEMORANDUM OF LAW IN OPPOSITION TO RESPONDENTS' MARCH 7, 2019 SUBMISSION

Todd D. Brody
Senior Trial Counsel
Securities and Exchange Commission
New York Regional Office
Brookfield Place
New York, NY 10281
Tel. (212) 336-0080
brodyt@sec.gov

Alix Biel
Senior Staff Attorney
Securities and Exchange Commission
New York Regional Office
Brookfield Place
New York, NY 10281-1022
Tel. (212) 336-0028
biela@sec.gov

Attorneys for the Division of Enforcement

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Statutes

Cases

Pursuant to the Commission's February 21, 2019 Order, the Division of Enforcement ("Division") submits this Memorandum of Law in Opposition to the March 7, 2019 submission filed by Respondents John Thomas Capital Management LLC d/b/a/ Patriot28 LLC ("JTCM") and George R. Jarkesy ("Jarkesy") (collectively "Respondents"). Respondents, in their recent submission, make two additional arguments why the Initial Decision in this matter should be overturned. First, they argue that the disgorgement ordered exceeds the amount that can be awarded in an administrative proceeding. Second, they argue that they are entitled to an offset based on amounts paid to investors after the Initial Decision was issued. Neither argument has any merit and both should be rejected by the Commission in their entirety.

I. There is no Statutory Limit on Disgorgement

Respondents assert that, after *Kokesh v. SEC*, 137 S.Ct. 1635 (2017), disgorgement cannot exceed the statutory limits on civil penalties. Notably, the Court in *Kokesh* did not discuss this issue at all. Nor have Respondents cited a single case where the Commission or any court expanded the *Kokesh* holding in such a fashion.[1]

Respondents' argument is, in fact, counter to the statutory authority granted to the Commission. Pursuant to Exchange Act Section 21B(e) (15 U.S.C. § 78u-2(e)), the Commission unquestionably has authority to order disgorgement *in addition to* civil penalties in administrative proceedings—regardless of whether disgorgement is a penalty or an equitable remedy. ("In any proceeding in which the Commission or the appropriate regulatory agency may impose a penalty under this section, the Commission or the appropriate regulatory agency may enter an order requiring accounting and disgorgement."). Civil penalties in administrative

[1] Courts have repeatedly denied the attempts of defendants to expand the holding of *Kokesh* to find that the remedy of disgorgement is unauthorized. *See, e.g.*, *SEC v. Camarco*, No. 17-cv-2027, 2018 U.S. Dist. LEXIS 212816 *5 (D. Colo. Dec. 18, 2018); *SEC v. Present*, 14-cv-14693, 2018 U.S. Dist. LEXIS 45056 (D. Mass. March 20, 2018); *United States v. RaPower-3, LLC*, 294 F. Supp.3d 1238, 1241-42 (D. Utah 2018); *FTC v. Credit Bureau Ctr., LLC*, 284 F. Supp.3d 907, 909 (N.D. Ill. 2018) and cases cited therein.

proceedings are separately authorized by Section 21B(a); the statute explicitly limits only those penalties, not disgorgement. 15 U.S.C. §§ 78u-2(a), 78u-2(b) (setting limits for penalties described in subsection (a)).

However, even assuming that a disgorgement award is limited by the statutory penalty amount (which the Division denies), the potential statutory penalty in this proceeding far exceeds the disgorgement and penalty actually awarded by the ALJ in the Initial Decision. The ALJ set the penalty amount in this case by multiplying the statutory penalty ($150,000) by three, stating that the events at issue would be "considered as three courses of action – the violations arising from the material misrepresentations and omissions relating to (1) the life settlement component of the Funds' investments; (2) the corporate investment component of the Funds' investments; and (3) Respondents' relationship with JTF/Belesis – resulting in three units of violation." (Initial Decision at p. 33). This was not the only option available to the ALJ to determine the amount of the penalty. The ALJ could have set the penalty by multiplying the statutory amount by the number of harmed investors. *See Gerasimowicz*, Initial Decision Rel. No. 496, 2013 SEC LEXIS 2019 *18 (July 12, 2013) (Foelak, ALJ) (penalties determined by multiplying the statutory third-tier penalty by the number of fund investors harmed by the conduct) (*citing Steven E. Muth*, 58 S.E.C. 770, 813 (2005) ("we believe that a civil money penalty based on the number of customers that [the respondent] defrauded . . . is appropriate."); *SEC v. Glantz*, 94 Civ. 5737, 2009 U.S. Dist. LEXIS 95350 *17 (S.D.N.Y. Oct. 13, 2009) (multiplying the penalty by the number of victims); *SEC v. Milan Capital Group, Inc.*, 00 Civ. 0108, 2001 U.S. Dist. LEXIS 11804 (S.D.N.Y. August 14, 2001) (multiplying the penalty by each of the 200 defrauded investors, resulting in a $10 million penalty); *SEC v. Kenton Capital Ltd.*, 69 F. Supp.2d 1, 17 & n.15 (D.D.C. 1998) (assessing a $1.2 million penalty calculated by "multiplying the maximum

third tier penalty for natural persons ($100,000) by the number of investors who actually sent money to [defendant] (12)"). Jarkesy testified that there were more than ninety investors in one of the funds and a document produced by Respondents and offered into evidence by the Division (but not admitted) shows that there were at least 103 investors harmed by the conduct. Thus, it would have been appropriate for the ALJ to issue a penalty equaling ninety times the statutory amount and up to 103 times the statutory amount.

Alternatively, the ALJ might have calculated the penalty by multiplying the statutory amount by the number of false statements. Because each monthly account statement starting in March 2009 was fraudulently inflated, it would have been appropriate to multiply the statutory penalty by the number of false account statements as well as the additional false and misleading marketing materials and periodic investor communications. *SEC v. Pentagon Capital Mgmt., PLC*, 725 F.3d 279, 288 n.7 (2d Cir. 2013) ("although we vacate the civil penalty award, we find no error in the district court's methodology for calculating the maximum penalty be counting each trade as a separate violation"); *SEC v. Coates*, 137 F. Supp.2d 413, 430 (S.D.N.Y. 2001) (multiplying the penalty amount by the number of violations); *Gualario & Co.*, LLC, Initial Decision Rel. No. 453, 2012 SEC LEXIS 497, *55-56 (Feb. 14, 2012) (multiplying the statutory penalty by three (representing the operation of the fund, and the sale of two notes). Consequently, the potential penalty that the ALJ could have ordered far exceeded the disgorgement and penalty amount she actually ordered. As such, even if disgorgement is limited by the statutory penalty amount, the disgorgement ordered in this case does not exceed that amount.

II. Respondents are not Entitled to an Offset

Alternatively, Respondents argue that they are entitled to an offset from the ordered disgorgement to reflect amounts paid to settle a shareholders' lawsuit. Respondents, however, have not met their burden to demonstrate that an offset is warranted. Moreover, even if an offset is warranted, only money that Respondents paid can be applied as a offset.

In this case, Respondents were ordered to pay disgorgement of $1,278,597, which represents the management fees Respondents received from the Funds. Initial Decision at 32. As described by the ALJ, this amount represents the "wrongfully obtained profits causally related to the proven wrongdoing." *Id*. at 15, 31. This amount did not represent the losses suffered by the Funds' investors or any other damage to the Funds. As the ALJ found, approximately $24 million was invested in the Funds by investors *Id*. at 12-13. While the ALJ did not quantify the amount of investor losses, she stated that there were "millions of dollars of losses incurred by the Funds' investors . . . ." *Id*. at 32.[2]

Respondents now argue that even if the Commission finds that it has authority to order disgorgement in addition to a penalty, the disgorgement amount must be reduced by $2,050,000, the settlement amount paid in a related investor action. This argument should be rejected. First, as Respondents admit, they only paid $500,000 to settle the investor action. The remainder of the settlement amount was paid by the Funds' auditors. (*See* Exs. A-B attached hereto). As

[2] As of the date of the hearing, it was impossible to ascertain the exact amount of investor losses as Jarkesy could not identify or value any asset held by the Funds, except for some shares of Radiant Oil, even though he claimed the Funds were still in existence. (Jarkesy, Tr. 1314:20-1315:4; 63:15-16). As described in the Division's Post-Hearing Reply Brief, "[t]he evidence is that the Funds' assets are negligible. Two companies that were once the Funds' largest holdings are worthless: Respondents wrote down the value of their holdings in Galaxy to zero in July 2011, and America West declared bankruptcy in February 2013. The Funds lack resources to pay auditors or insurance premiums – there have been no audited financial statements since 2010, and Respondents were forced to let the life settlement policies lapse because the Funds could not afford to pay the premiums. Except for some restricted shares of Radiant Oil (which Jarkesy refuses to sell in violation of the terms of the PPM and Limited Partnership Agreement), and a single insurance policy, the Funds have no marketable assets." Division's Post-Hearing Reply Br. at 34-35.

such, even if an offset were appropriate, a maximum of $500,000 would be allowable as an offset – not $2,050,000. *See Annable Turner & Co., Inc.*, Initial Decision Rel. No. 216, 2002 SEC LEXIS 3611 (Sept. 30, 2002) ("amounts paid by third parties to victims do not offset the amount of disgorgement").

Second, Respondents have not met their burden of demonstrating that an offset is warranted. *See Timbervest*, LLC, Advisers Act Rel. No. 4492, 2016 SEC LEXIS 3153 (Aug. 22, 2016). In particular, Respondents do not explain the basis for their $500,000 payment to the investors. If such payment was to reflect the management fees paid to Respondents – the basis for the disgorgement award in the initial decision – an offset might be warranted in order to avoid double payment. However, if the payment was to reimburse the investors for their investment loss, no offset would be warranted as that was not the basis for disgorgement.

Directly on point is the Commission's decision in *Montford & Co., Inc.*, Advisers Act Rel. No. 3829, 2014 SEC LEXIS 1529 (May 2, 2014). In that case, the Commission held that the respondents could not offset money that they paid "in restitution" to settle a civil suit. In so holding, the Commission stated that "[t]he record contains no information about the basis for this suit or the settlement amount. As a result, we cannot determine the merits of Respondents' offset claim. For example, if the alleged settlement payment constitutes reimbursement of advisory fees the client paid to Respondents during the time it was misled, such amounts would not warrant an offset because the disgorgement ordered does not include any advisory fees paid." *See also Calabro*, Exchange Act Rel. No. 75076, 2015 SEC LEXIS 2175, *182 (May 29, 2015) ("Calabro also fails to establish that any particular component of the settlement payment (to two customers) is attributable to disgorgement of his ill-gotten gains with respect to Williams."); *SEC v. Solow*, 554 F. Supp.2d 1356, 1364 (S.D. Fla. 2008) (court declines to offset arbitration award

against disgorgement where basis for arbitration award was not same basis as disgorgement calculation).

Respondents do not provide any explanation for $500,000 amount. The fact that the amount that they paid was significantly less than the management fees, however, indicates that the settlement amount was not based on the collected fees. Moreover, the Second Amended Petition in the investor action makes clear that the investors were seeking "damages" from Respondents. (Ex. C attached hereto at *e.g.,* ¶ 248 ("Due to the breaches of fiduciary duties by Defendants JTCM and Jarkesy, the Funds and their respective limited partners have been damaged. Plaintiff seeks all damages available under the law")). As such, it is reasonable to assume that the settlement amount was linked to the damage caused to the Funds. Disgorgement is not the same thing as damages. "Damages are '[m]oney claimed by, or ordered to be paid to, a person as compensation for loss or injury.'" *See, e.g.*, *Citadel Securities LLC*, Exchange Act Rel. No. 78340, 2016 SEC LEXIS 2464 (July 15, 2016). Disgorgement is designed to deprive defendants of the profits from their securities laws violations and is not necessarily compensatory. *Kokesh*, 137 S.Ct. at 1640, 1644.

Because Respondents have not met their burden to demonstrate that an offset is warranted, the Commission should not grant any offset. If the Commission believes, however, that disgorgement award needs to be modified to reflect the settlement in the investor action, the Respondents are not entitled to an offset for money paid by the Funds' auditors.

CONCLUSION

For the reasons set forth herein, the Division respectfully requests that the Commission deny all relief sought in Respondents' March 7, 2019 Submission.

Dated: March 21, 2019

Respectfully submitted,

/s/ Todd D. Brody
Todd D. Brody
Alix Biel
Attorneys for the Division of Enforcement
Securities and Exchange Commission
New York Regional Office
3 World Financial Center, 4th Floor
New York, NY 10281-1022
(212) 336-0080 (Brody)
brodyt@sec.gov
(212) 336-0028 (Biel)
biela@ sec.gov

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15255

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

CERTIFICATE OF SERVICE

I certify that on March 21, 2019, I caused to be served this DIVISION OF ENFORCEMENT'S Memorandum of Law in Opposition to Respondents' March 7, 2019 submission by United Parcel Service and/or email on the following:

Vanessa Countryman, Acting Secretary
Office of the Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E., Mail Stop 3628
Washington, D.C. 20549

Karen Cook
KAREN COOK PLLC
1717 McKinney Avenue
Dallas, TX 75202
Counsel for Respondents.

S. Michael McColloch
S. Michael McColloch, PLLC
1717 McKinney Avenue
Dallas, TX 75202
Counsel for Respondents

/s/ Todd D. Brody

CAUSE NO. 2013-54408

PAUL F. RODNEY, derivatively on behalf of PATRIOT BRIDGE AND OPPORTUNITY FUND LP I, and EDWIN DEBUS, derivatively on behalf of PATRIOT BRIDGE AND OPPORTUNITY FUND LP II, Plaintiffs, vs. JOHN THOMAS CAPITAL MANAGEMENT GROUP LLC, n/k/a PATRIOT28 LLC, GEORGE R. JARKESY JR., JOHN THOMAS FINANCIAL, INC., ANASTASIOS "TOMMY" BELESIS, ATB HOLDING LLC, MFR, P.C., also known as MFR GROUP, INC., DOEREN MAYHEW & CO., P.C., DOEREN MAYHEW TEXAS, PLLC, SOUTH PADRE VENTURES 2, LLC, successors to MFR, P.C., and JUAN PADILLA, Defendants, PATRIOT BRIDGE AND OPPORTUNITY FUND LP I, and PATRIOT BRIDGE AND OPPORTUNITY FUND LP II, as nominal Defendants.	IN THE DISTRICT COURT OF HARRIS COUNTY, TEXAS 189th JUDICIAL DISTRICT

NOTICE OF PROPOSED PARTIAL SETTLEMENT OF DERIVATIVE LITIGATION, HEARING THEREON, AND RIGHT TO APPEAR

TO: ALL LIMITED PARTNERS OF PATRIOT BRIDGE AND OPPORTUNITY FUND L.P. I (A/K/A THE JOHN THOMAS BRIDGE AND OPPORTUNITY FUND, L.P.) ("FUND I"), AND PATRIOT BRIDGE AND OPPORTUNITY FUND L.P. II (A/K/A OR JOHN THOMAS BRIDGE AND OPPORTUNITY FUND, L.P. II) ("FUND II") (COLLECTIVELY, THE "FUNDS")

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. THIS NOTICE RELATES TO A PROPOSED PARTIAL SETTLEMENT AND DISMISSAL OF LITIGATION AND CONTAINS IMPORTANT INFORMATION REGARDING YOUR RIGHTS. YOUR RIGHTS MAY BE AFFECTED BY THESE LEGAL PROCEEDINGS. IF THE COURT APPROVES THE SETTLEMENT, YOU WILL BE FOREVER BARRED FROM CONTESTING THE APPROVAL OF THE PROPOSED PARTIAL SETTLEMENT.

THE COURT HAS MADE NO FINDINGS OR DETERMINATIONS CONCERNING THE MERITS OF THE ACTION. THE RECITATION OF THE BACKGROUND AND CIRCUMSTANCES OF THE SETTLEMENT CONTAINED HEREIN DO NOT CONSTITUTE THE FINDINGS OF THE COURT. IT IS BASED ON REPRESENTATIONS MADE TO THE COURT BY COUNSEL FOR THE SETTLING PARTIES.

Notice is hereby provided to you of the proposed partial settlements (the "Settlements") in the above-captioned derivative lawsuit (the "Action"). This Notice is provided by order of the 189th Judicial District Court, for Harris County, Texas (the "Court"). It is not an expression of any opinion by the Court. It is to notify you of the terms of the proposed partial Settlements of the Action.

I. WHY YOU HAVE RECEIVED THIS NOTICE

1. This Notice provides information regarding the partial Settlement of the shareholder derivative Action. Plaintiffs Paul Rodney and Ed Debus have brought the Action derivatively on behalf of Fund I and Fund II ("Plaintiffs"). Plaintiffs and Defendant George R. Jarkesy, Jr. ("Jarkesy") and John Thomas Capital Management LLC (a/k/a Patriot28 LLC), and Defendant MFR Group, Inc., formerly known as MFR, P.C. ("MFR") (together, the "Settling Parties") have agreed upon terms to settle the Action and have signed written Stipulations of Settlements (the "Stipulations") setting forth those settlement terms. Unless otherwise set forth in this Notice, capitalized terms in this Notice shall have the same meaning as set forth in the Stipulations.

2. On December 4, 2015, at 9:00 a.m., the Court will hold a hearing (the "Settlement Hearing") in the District Court for Harris County, Texas, 189th Judicial District, 201 Caroline Street, Houston, Texas 77002 before the Honorable William Burke. The purpose of the Settlement Hearing is to determine whether: (i) the Settlements of the Action upon the terms and subject to the conditions set forth in the Stipulations are fair, reasonable, and adequate and should be approved by the Court, including $1,750,000 in cash plus interest in exchange for releases of the Funds' claims against Jarkesy and JTCM, and MFR; (ii) whether the Plaintiffs' proposed plan of allocation to the Limited Partners of the Settlement is fair, adequate and reasonable; (iii) the Action against Jarkesy and JTCM, and MFR should be dismissed with prejudice; and (iv) whether the Court should approve Plaintiffs' Counsel's motion for attorneys' fees and reimbursement of litigation expenses, and motion for award to Plaintiffs.

II. SUMMARY OF THE LITIGATION

3. This Action was filed on September 16, 2013, and on March 10, 2015, Plaintiffs filed the Second Amended Petition ("Petition"). The Petition alleges breach of fiduciary duty (Count I) and aiding and abetting breach of fiduciary duty (Count II), waste (Count III), professional negligence (Count IV), civil conspiracy (Count V), and breach of contract (Counts VI and VII) against various defendants.

4. After litigating their respective claims and/or defenses over the course of several years, counsel for the Settling Parties engaged in arm's-length negotiations concerning the terms and conditions of a potential resolution of the Action, including hotly contested mediation before a neutral mediator, Trey Bergman of Bergman ADR Group (the "Mediator"). Following the mediation and negotiations, Plaintiffs and Jarkesy and JTCM reached an agreement providing for the settlement of the Action as documented by Settlement Agreement dated July 20, 2015 ("Jarkesy Stipulation of Settlement"). Plaintiffs and MFR reached an agreement providing for the settlement of the Action as documented by Settlement Agreement dated July 24, 2015 ("MFR Stipulation of Settlement").

5. The Settling Parties recognize the time and expense that would be incurred by further litigation in the Action and the uncertainties inherent in such litigation and that the interests of the Settling Parties would best be served by a settlement of the Action. Plaintiffs and their counsel have preliminarily determined that the settlement of the Action, upon the terms outlined in the Stipulation and summarized herein, is fair, reasonable, adequate, and in the best interest of the Funds and its limited partners.

6. Each of the Settling Parties denies having committed any violation of law or breach of duty. Jarkesy and JTCM entered into the Jarkesy Stipulation of Settlement solely because they contend and believe that the settlement of the Action, as outlined in the Jarkesy Stipulation of Settlement, would eliminate the burden, risk, and expense of further litigation.

7. Similarly, MFR entered into the MFR Stipulation of Settlement solely because it contends and believes that the settlement of the Action, as outlined in the MFR Stipulation of Settlement, would eliminate the burden, risk, and expense of further litigation. There has been no admission or finding of facts or liability by or against any party, and nothing herein should be construed as such.

THE SUMMARY OF LITIGATION PROVIDED HEREIN DOES NOT CONSTITUTE FINDINGS OF THE COURT. IT IS BASED ON STATEMENTS OF THE SETTLING PARTIES AND SHOULD NOT BE UNDERSTOOD AS AN EXPRESSION OF ANY OPINION OF THE COURT AS TO THE MERITS OF ANY OF THE CLAIMS OR DEFENSES RAISED BY ANY OF THE SETTLING PARTIES. A COPY OF PLAINTIFFS' PLEADINGS IS PUBLICLY AVAILABLE IN THE COURT'S FILE.

III. SUMMARY OF THE SETTLEMENT

8. The principal terms, conditions, and other matters that are part of the Settlements, which are subject to approval by the Court, are summarized below. This summary should be read in conjunction with, and is qualified in its entirety by reference to, the text of the MFR Stipulation of Settlement and the Jarkesy Stipulation of Settlement, which have been filed with the Court and are available for your inspection as discussed below under the heading, "How to Obtain Additional Information." Capitalized terms used herein and not otherwise defined are deemed to have the same meaning ascribed to them in the Settlements.

9. In summary, as a result of the foregoing and the negotiations between counsel for the Settling Parties, the Settling Parties to the Action have agreed to separate Settlements, which will be effective only upon final approval by the Court. Pursuant to the Settlement, the Funds will receive $500,000 in cash in exchange for releases of claims against Jarkesy and JTCM. Further, Pursuant to the Settlement, the Funds will receive $1,250,000 in cash in exchange for releases of claims against MFR.

10. The MFR Stipulation of Settlement releases any and all claims, debts, demands, rights, causes of action or liabilities of every nature and description whatsoever (including, but not limited to, claims for damages, interest, attorneys' fees, expert or consulting fees, and any other costs, expenses, or liability whatsoever), whether based in law or equity, whether fixed or contingent, accrued or unaccrued, liquidated or unliquidated, matured or not matured, pursuant to federal, state, local, statutory or common law, or any other law, rule or regulation, including both known claims and Unknown Claims, that have been or could have been asserted in any forum by the Funds, or any of them, or the successors or assigns of any of them, against any of the Released Parties, which arise out of, are based on, or relate in any way to, directly or indirectly, any of the allegations, acts, transactions, facts, events, matters, occurrences, acts, representations or omissions involved, set forth, alleged or referred to, in the Petition, or which could have been alleged based upon the facts alleged in the Petition, and which arise out of, are based upon or are related in any way, directly or indirectly, to MFR's engagements by the Funds.

11. The Jarkesy Stipulation of Settlement releases any and all claims, debts, demands, rights, causes of action or liabilities of every nature and description whatsoever (including, but not limited to, claims for damages, interest, attorneys' fees, expert or consulting fees, and any other costs, expenses, or liability whatsoever), whether based in law or equity, whether fixed or contingent, accrued or unaccrued, liquidated or unliquidated, matured or not matured, pursuant to federal, state, local, statutory or common law, or any other law, rule or regulation, including both known claims and Unknown Claims, that have been or could have been asserted in any forum by the Funds, or any of them, or the successors or assigns of any of them, against any of the Released Parties, which arise out of, are based on, or relate in any way to, directly or indirectly, any of the allegations, acts, transactions, facts, events, matters, occurrences, acts, representations or omissions involved, set forth, alleged or referred to, in the Petition, or which could have been alleged based upon the facts alleged in the Petition, and which arise out of, are based upon or are related in any way, directly or indirectly, to claims alleged in the Petition against Jarkesy and JTCM by the Funds.

THE COURT HAS NOT DETERMINED THE MERITS OF ANY OF THE CLAIMS MADE BY THE PLAINTIFFS AGAINST, OR THE DEFENSES OF, JARKESY AND JTCM, OR MFR. THIS NOTICE DOES NOT IMPLY THAT THERE HAS BEEN OR WOULD BE ANY FINDING OF VIOLATION OF ANY LAW OR THAT RELIEF IN ANY FORM OR RECOVERY IN ANY AMOUNT COULD BE HAD IF THE ACTION WERE NOT SETTLED.

IV. PLAN OF ALLOCATION – WHAT CAN YOU EXPECT TO RECEIVE UNDER THE PROPOSED SETTLEMENT

12. The proposed Settlements calls for the creation of a "Settlement Fund" from the Cash Settlement Amount, totaling $1,750,000 in cash plus interest. The Settlement will not become effective unless it is approved by the Court. Subject to the Court's approval, a portion of the Settlement Fund will be used to pay Plaintiffs' Counsel's attorneys' fees and reasonable litigation expenses and an award to the Plaintiffs. A portion of the Settlement Fund will also be used to pay taxes due on interest earned by the Settlement Fund, if necessary, and any notice costs and claims administration expenses incurred in the Action. After these deductions from the Settlement Fund have been made, the amount remaining (the "Net Settlement Fund") will be distributed to the Limited Partners as described further below.

13. If you are a Limited Partner, your share of the Net Settlement Fund will depend on the value of your investments in the Funds, the particular Fund in which you invested, the amount of administrative costs, including costs of notice, and the amount awarded by the Court to Plaintiffs' Counsel for attorneys' fees, costs, and expenses, and to the Plaintiffs.

14. The Settlement Administrator will allocate the Net Settlement Fund to the Funds in the following proportions ("Fund Split Percentage"):

Fund	Fund Split Percentage
Fund I	76%
Fund II	24%
	100%

15. The Fund Split Percentage is based upon the Funds' pro rata distribution of shares of Radiant Oil and Gas, Inc. common stock in 2013 ("2013 Distribution"). Plaintiffs obtained data regarding the 2013 distribution from the Funds' independent administrator, Unkar Systems Inc.

16. After applying the Fund Split Percentage to the Net Settlement Fund, the Settlement Administrator will then allocate the Net Settlement Fund to the Limited Partners on a pro rata basis. Each Limited Partner's pro rata share of the Net Settlement Fund is based upon the 2013 Distribution. THERE IS NO NEED TO FILE A CLAIM FORM.

17. The Court has not made any finding that Jarkesy or JTCM, or MFR is liable to the Funds or that the Funds have suffered any compensable damages, nor has the Court made any finding that the payments allowed under this Plan of Allocation are an accurate measure of damages.

V. THE LAWYERS REPRESENTING THE FUNDS

18. Plaintiffs' Counsel (Kaplan Fox & Kilsheimer LLP and Gruber Hurst Elrod Johansen Hail Shank LLP) have expended considerable time litigating this action on a contingent fee basis, and have paid for the expenses of the litigation themselves. As is customary in this type of litigation, they did so with the expectation that if they were successful in recovering money for the Funds, they would receive attorneys' fees and be reimbursed for their litigation expenses from the Settlement Fund.

19. Plaintiffs will file a motion asking the Court to make a payment of attorneys' fees in an amount not to exceed 33⅓% of the Net Settlement Fund, and for reimbursement of their already paid or incurred litigation expenses not to exceed $275,000. The Court may award less than these amounts. Any amounts awarded by the Court will come out of the Settlement Fund.

20. Plaintiffs' Counsel also intends to ask the Court to grant the Plaintiffs up to $10,000 each. These requests are in the range of fees and awards granted to counsel and plaintiffs, respectively, in other cases of this type. The Court may award less than these amounts. Any amounts awarded by the Court will come out of the Settlement Fund.

VI. THE SETTLEMENT HEARING

21. The Court will hold a Settlement Hearing on December 4, 2015, at 9:00 a.m. before the Honorable William Burke, District Court of Harris County, Texas, 189th Judicial District, 201 Caroline, Houston, Texas 77002, for the purpose of determining whether: (i) the Settlement of the Action upon the terms and subject to the conditions set forth in the Stipulation is fair, reasonable, and adequate and should be approved by the Court, including $1,750,000 in cash plus interest in exchange for releases of claims against Jarkesy and JTCM, and MFR; (ii) the Plaintiffs' proposed plan of allocation of the Settlement is fair, adequate and reasonable; (iii) the Action against Jarkesy and JTCM, and MFR should be dismissed with prejudice; and (iv) the Court should approve Plaintiffs' Counsel's motion for attorneys' fees and reimbursement of litigation expenses, and award to Plaintiffs.

VII. RIGHT TO APPEAR AT THE SETTLEMENT HEARING

22. Any Limited Partner of the Funds may, but is not required to, appear in person at the Settlement Hearing. If you want to be heard at the Settlement Hearing, then you must first comply with the procedures for objecting, which are set forth below. The Court has the right to change the hearing dates or times without further notice. Thus, if you are planning to attend the Settlement Hearing, you should confirm the date and time before going to the Court.

VIII. RIGHT TO OBJECT AT THE SETTLEMENT HEARING AND PROCEDURES FOR DOING SO

23. Pursuant to the Court's Preliminary Approval Order, Plaintiffs' Counsel will file papers in support of the Settlements, and in support of Plaintiffs' Counsel's motion for attorneys' fees and reimbursement of litigation expenses, and award to Plaintiffs, on or before November 4, 2015, and any reply shall be filed on or before November 27, 2015.

24. Any Limited Partner of the Funds may object and/or appear and show cause, if he, she, or it has any concern why the Settlements should not be approved as fair, reasonable, and adequate, or why the Plaintiffs' proposed plan of allocation of the Settlements is fair, adequate and reasonable, or why the Court should approve Plaintiffs' Counsel's motion for attorneys' fees and reimbursement of litigation expenses, and for award to Plaintiffs, or why other provision(s) of the Settlement contemplated by the Stipulation should or should not be approved; ***provided however***, unless otherwise ordered by the Court, no Limited Partner of the Funds shall be heard unless ***on or before twenty-one (21) calendar days prior to the Settlement Hearing*** (November 13, 2015) that Limited Partner of the Funds has: (1) filed with the Clerk of the Court a written objection to the settlement setting forth: (a) such person's name, legal address, and telephone number; (b) a detailed statement of each objection being made and the grounds for each objection; (c) proof of ownership of any limited partner interest in the Funds, including the amount of any investment and the date of purchase; and (d) any documentation in support of such objection; and (2) if a Limited Partner of the Funds intends to appear and requests to be heard at the Settlement Hearing, such Limited Partner must have, in addition to the requirements of (1) above, filed with the Clerk of the Court: (a) a written notice of such Limited Partner's intention to appear; (b) a statement that indicates the basis for such appearance; (c) the identities of any witnesses the Limited Partner intends to call at the Settlement Hearing and a statement as to the subject of their testimony; and (d) copies of any papers such person intends to attempt to introduce before the Court. If a Limited Partner of the Funds files a written objection and/or written notice of intent to appear, such Limited Partner must also simultaneously serve copies of such notice, proof, statement, and documentation, together with copies of any other papers or briefs such Limited Partner files with the Court (either by hand delivery or by first class mail) upon each of the following:

Clerk of the Court
189th District Court
201 Caroline, Houston, Texas 77002

25. On or before the same date, such person shall also serve a copy of such notice by hand or by first class mail, postage pre-paid, on all counsel of record, at the following addresses:

KAPLAN FOX & KILSHEIMER LLP
Jeffrey P. Campisi
850 Third Avenue
14th Floor
New York, NY 10022

Attorneys for Paul F. Rodney and Edwin Debus derivatively on behalf of the Funds

EDISON, MCDOWELL & HETHERINGTON LLP
Andrew Edison
3200 Southwest Freeway
Ste. 2100
Houston, Texas 77027

Counsel for Defendants Jarkesy and JTCM

FORREST MCELROY, PC
Frank L. McElroy
One Greenway Plaza, Suite 1003
Houston, TX 77046

Counsel for Defendant MFR Group, Inc.

26. The Court may not consider any objection that is not timely filed with the Court or not timely delivered to the above-listed counsel for the Settling Parties. Any Limited Partner of the Funds who does not make his, her, or its objection in the manner provided herein shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the Settlements as set forth in the Stipulations, unless otherwise ordered by the Court, but shall otherwise be bound by the Judgment to be entered and the releases to be given.

IX. HOW TO OBTAIN ADDITIONAL INFORMATION

27. This Notice summarizes the Settlements. It is not a complete statement of the events underlying or surrounding the Action or the Settlements. Although the Settling Parties believe that the descriptions about the Settlements that are contained in the Notice is accurate in all material respects, in the event of any inconsistencies between the descriptions in the Notice and the Settlements, the Settlements will control.

28. You may inspect the Settlements and other papers filed in the Action at the Harris County District Clerk's office. However, you must appear in person to inspect these documents. The Clerk's office cannot mail copies to you. Further, Plaintiffs' Counsel shall, at the time Notice is mailed to the Limited Partners, post the copies of the Notice and Stipulations with Exhibits on its website: http://www.kaplanfox.com/practiceareas/securitieslitigation/cases/932-johnthomas.html. You may refer to this website for the complete copies of these documents. You may contact Plaintiffs' counsel by phone at 1-800-290-1952.

29. Further, you may contact the Settlement Administrator by mail at *Rodney v. John Thomas Capital Management* Settlement, KCC Class Action Services, P.O. Box 40008, College Station, TX 77842-4008 or by email at PatriotBridgeSettlement@kccllc.com.

30. PLEASE DO NOT CALL, WRITE, OR OTHERWISE DIRECT QUESTIONS TO EITHER THE COURT OR THE CLERK'S OFFICE. Any questions you have about matters in this Notice should be directed by telephone or in writing to Plaintiffs' Counsel, Kaplan Fox & Kilsheimer LLP (Jeffrey P. Campisi, Esq.) at the phone number and/or address set forth above.

BY ORDER OF THE 189th JUDICIAL DISTRICT COURT
HARRIS COUNTY, TEXAS

CAUSE NO. 2013-54408

PAUL F. RODNEY, derivatively on behalf of PATRIOT BRIDGE AND OPPORTUNITY FUND LP I, and EDWIN DEBUS, derivatively on behalf of PATRIOT BRIDGE AND OPPORTUNITY FUND LP II, Plaintiffs, vs. JOHN THOMAS CAPITAL MANAGEMENT GROUP LLC, n/k/a PATRIOT28 LLC, GEORGE R. JARKESY JR., JOHN THOMAS FINANCIAL, INC., ANASTASIOS "TOMMY" BELESIS, ATB HOLDING LLC, MFR, P.C., also known as MFR GROUP, INC., DOEREN MAYHEW & CO., P.C., DOEREN MAYHEW TEXAS, PLLC, SOUTH PADRE VENTURES 2, LLC, successors to MFR, P.C., and JUAN PADILLA, Defendants, PATRIOT BRIDGE AND OPPORTUNITY FUND LP I, and PATRIOT BRIDGE AND OPPORTUNITY FUND LP II, as nominal Defendants.	IN THE DISTRICT COURT OF HARRIS COUNTY, TEXAS 189th JUDICIAL DISTRICT

NOTICE OF PENDENCY AND SETTLMENT OF DERIVATIVE LITIGATION HEARING THEREON, AND RIGHT TO APPEAR

TO: ALL LIMITED PARTNERS OF PATRIOT BRIDGE AND OPPORTUNITY FUND L.P. II (A/K/A THE JOHN THOMAS BRIDGE AND OPPORTUNITY FUND, L.P. II) ("FUND II")

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT AND DISMISSAL OF LITIGATION AND CONTAINS IMPORTANT INFORMATION REGARDING YOUR RIGHTS. YOUR RIGHTS MAY BE AFFECTED BY THESE LEGAL PROCEEDINGS. IF THE COURT APPROVES DISMISSAL, YOU WILL BE FOREVER BARRED FROM CONTESTING THE APPROVAL OF THE PROPOSED PARTIAL SETTLEMENT.

THE COURT HAS MADE NO FINDINGS OR DETERMINATIONS CONCERNING THE MERITS OF THE ACTION. THE RECITATION OF THE BACKGROUND AND CIRCUMSTANCES OF THE DISMISSAL CONTAINED HEREIN DO NOT CONSTITUTE THE FINDINGS OF THE COURT. IT IS BASED ON REPRESENTATIONS MADE TO THE COURT BY COUNSEL FOR THE SETTLING PARTIES.

Notice is hereby provided to you of the proposed settlement and dismissal (the "Settlement") in the above-captioned derivative lawsuit (the "Action"). This Notice is provided by order of the 189th Judicial District Court, for Harris County, Texas (the "Court"). It is not an expression of any opinion by the Court. It is to notify you of the terms of the proposed Settlement and Dismissal of the Action.

I. WHY YOU HAVE RECEIVED THIS NOTICE

This Notice provides information regarding the Settlement of a shareholder derivative Action. Plaintiff Ed Debus ("Plaintiff") has brought the Action derivatively on behalf of Fund II. Plaintiff and Defendants and

John Thomas Financial, Inc. ("JTF"), Anastasios "Tommy" Belesis ("Belesis"), ATB Holding LLC ("ATB") (together, the "Settling Parties") have agreed upon terms to settle the Action and have signed written Stipulation of Settlement (the "Stipulation") setting forth those settlement terms.

On April 22, 2016, at 11 a.m., the Court will hold a hearing (the "Settlement Hearing") in the District Court for Harris County, Texas, 189th Judicial District, 201 Caroline Street, Houston, Texas 77002 before the Honorable William Burke. The purpose of the Settlement Hearing is to determine whether: (i) the Settlement of the Action upon the terms and subject to the conditions set forth in the Stipulation are fair, reasonable, and adequate and should be approved by the Court, including $300,000 in cash plus interest in exchange for releases of the Fund II's claims against JTF, Belesis, ATB; (ii) whether the Plaintiff's proposed plan of allocation to the Limited Partners of Fund II of the Settlement is fair, adequate and reasonable; (iii) the Action against JTF, Belesis, ATB should be dismissed with prejudice; and (iv) whether the Court should approve Plaintiff's Counsel's motion for attorneys' fees and reimbursement of litigation expenses, and any motion for an incentive award to Plaintiff.

II. SUMMARY OF THE LITIGATION

This Action was filed on September 16, 2013, and on March 10, 2015, Plaintiff's filed the Second Amended Petition ("Petition"). The Petition alleges breach of fiduciary duty (Count I) and aiding and abetting breach of fiduciary duty (Count II), waste (Count III), professional negligence (Count IV), civil conspiracy (Count V), and breach of contract (Counts VI and VII) against various defendants.

After litigating their respective claims and/or defenses over the course of several years, counsel for the Settling Parties engaged in arm's-length negotiations concerning the terms and conditions of a potential resolution of the Action, including hotly contested mediation before a neutral mediator, Trey Bergman of Bergman ADR Group (the "Mediator"). Following the mediation and further negotiations, Plaintiff and JTF, Belesis, ATB reached an agreement providing for the settlement of the Action as documented by the Settlement Agreement dated October 1, 2015 ("Stipulation of Settlement").

The Settling Parties recognize the time and expense that would be incurred by further litigation in the Action and the uncertainties inherent in such litigation and that the interests of the Settling Parties would best be served by a settlement of the Action. Plaintiff and his counsel have preliminarily determined that the settlement of the Action, upon the terms outlined in the Stipulation and summarized herein, is fair, reasonable, adequate, and in the best interest of Fund II and its limited partners.

Each of the Settling Parties denies having committed any violation of law or breach of duty. JTF, Belesis, ATB entered into the Stipulation of Settlement solely because they contend and believe that the settlement of the Action, as outlined in the Stipulation of Settlement, would eliminate the burden, risk, and expense of further litigation.

THE SUMMARY OF LITIGATION PROVIDED HEREIN DOES NOT CONSTITUTE FINDINGS OF THE COURT. IT IS BASED ON STATEMENTS OF THE SETTLING PARTIES AND SHOULD NOT BE UNDERSTOOD AS AN EXPRESSION OF ANY OPINION OF THE COURT AS TO THE MERITS OF ANY OF THE CLAIMS OR DEFENSES RAISED BY ANY OF THE SETTLING PARTIES. A COPY OF PLAINTIFF'S PLEADINGS IS PUBLICLY AVAILABLE IN THE COURT'S FILE.

III. SUMMARY OF THE SETTLEMENT

The principal terms, conditions, and other matters that are part of the Settlement, which are subject to approval by the Court, are summarized below. This summary should be read in conjunction with, and is qualified in its entirety by reference to, the text of the Stipulation of Settlement, which are available for your inspection as discussed below under the heading, "How to Obtain Additional Information." Capitalized terms used herein and not otherwise defined are deemed to have the same meaning ascribed to them in the Stipulation of Settlement.

In summary, as a result of the foregoing and the negotiations between counsel for the Settling Parties, the Settling Parties to the Action have agreed to the Settlement, which will be effective only upon final approval by the Court. Pursuant to the Settlement, Fund II will receive $300,000 in cash to be paid on or before October 15, 2016 in exchange for releases of claims against JTF, Belesis, ATB. The payment is secured by a Judgment by Confession signed and sworn to by Mr. Belesis.

The Stipulation of Settlement releases any and all claims, debts, demands, rights, causes of action or liabilities of every nature and description whatsoever (including, but not limited to, claims for damages, interest, attorneys' fees, expert or consulting fees, and any other costs, expenses, or liability whatsoever), whether based in law or equity, whether fixed or contingent, accrued or unaccrued, liquidated or unliquidated, matured or not matured, pursuant to federal, state, local, statutory or common law, or any other law, rule or regulation, including both known claims and Unknown Claims, that have been or could have been asserted in any forum by Fund II, or any of them, or the successors or assigns of any of them, against any of the Released Party, which arise out of, are based on, or relate in any way to, directly or indirectly, any of the allegations, acts, transactions, facts, events, matters, occurrences, acts, representations or omissions involved, set forth, alleged or referred to, in the Petition, or which could have been alleged based upon the facts alleged in the Petition, and which arise out of, are based upon or are related in any way, directly or

indirectly, to claims alleged in the Petition against Belesis, JTF or ATB by Fund II.

THE COURT HAS NOT DETERMINED THE MERITS OF ANY OF THE CLAIMS MADE BY THE PLAINTIFF AGAINST, OR THE DEFENSES OF, JTF, BELESIS, OR ATB. THIS NOTICE DOES NOT IMPLY THAT THERE HAS BEEN OR WOULD BE ANY FINDING OF VIOLATION OF ANY LAW OR THAT RELIEF IN ANY FORM OR RECOVERY IN ANY AMOUNT COULD BE HAD IF THE ACTION WERE NOT SETTLED.

IV. PLAN OF ALLOCATION – WHAT CAN YOU EXPECT TO RECEIVE UNDER THE PROPOSED SETTLEMENT

The proposed Settlement calls for the creation of a "Settlement Fund" from the Cash Settlement Amount, totaling $300,000 in cash plus interest earned by the Settlement Fund. The Settlement Amount will be paid on or before October 15, 2016.

The Settlement will not become effective unless it is approved by the Court. Subject to the Court's approval, a portion of the Settlement Fund will be used to pay Plaintiff's Counsel's attorneys' fees and reasonable litigation expenses and an award to the Plaintiff. A portion of the Settlement Fund will also be used to pay taxes due on interest earned by the Settlement Fund, if necessary, and any notice costs and claims administration expenses incurred in the Action. After these deductions from the Settlement Fund have been made, the amount remaining (the "Net Settlement Fund") will be distributed to the Limited Partners as described further below.

If you are a Limited Partner, your share of the Net Settlement Fund will depend on the value of your investment in Fund II, the amount of administrative costs, including costs of notice, and the amount awarded by the Court to Plaintiff's Counsel for attorneys' fees, costs, and expenses, and to the Plaintiff.

The Settlement Administrator will distribute the Net Settlement Fund on a pro rata basis that is based upon Fund II's distribution of shares of Radiant Oil and Gas, Inc. common stock in 2013 ("2013 Distribution"). Plaintiff's Counsel obtained data regarding the 2013 Distribution from Fund II's independent administrator, Unkar Systems Inc.

The Court has not made any finding that Belesis, ATB or JTF is liable to Fund II or that Fund II has suffered any compensable damages, nor has the Court made any finding that the payments allowed under this Plan of Allocation are an accurate measure of damages.

V. THE LAWYERS REPRESENTING FUND II

Plaintiff's Counsel (Kaplan Fox & Kilsheimer LLP and Gruber Hurst Elrod Johansen Hail Shank LLP) have expended considerable time litigating this action on a contingent fee basis, and have paid for the expenses of the litigation themselves. As is customary in this type of litigation, they did so with the expectation that if they were successful in recovering money for Fund II, they would receive attorneys' fees and be reimbursed for their litigation expenses from the Settlement Fund.

Plaintiff's will file a motion asking the Court to make a payment of attorneys' fees in an amount not to exceed 33⅓% of the Net Settlement Fund, and for reimbursement of their already paid or incurred litigation expenses not to exceed $25,000. The Court may award less than these amounts. Any amounts awarded by the Court will come out of the Settlement Fund.

Plaintiffs' Counsel also intends to ask the Court to grant the Plaintiff of up to $5,000. This requests is in the range of fees and awards granted to counsel and plaintiffs, respectively, in other cases of this type. The Court may award less than these amounts. Any amounts awarded by the Court will come out of the Settlement Fund.

VI. THE SETTLEMENT HEARING

The Court will hold a Settlement Hearing on April 22, 2016, at 11 a.m. before the Honorable William Burke, District Court of Harris County, Texas, 189th Judicial District, 201 Caroline, Houston, Texas 77002, for the purpose of determining whether: (i) the Settlement of the Action upon the terms and subject to the conditions set forth in the Stipulation is fair, reasonable, and adequate and should be approved by the Court, including $300,000 in cash plus interest earned by the Settlement Fund in exchange for releases of claims against JTF, Belesis and ATB; (ii) whether the Plaintiff's proposed plan of allocation of the Settlement is fair, adequate and reasonable; (iii) the Action against JTF, Belesis and ATB should be dismissed with prejudice; and (iv) whether the Court should approve Plaintiff's Counsel's motion for attorneys' fees and reimbursement of litigation expenses, and award to Plaintiff.

VII. RIGHT TO APPEAR AT THE SETTLEMENT HEARING

Any Limited Partner of Fund II may, but is not required to, appear in person at the Settlement Hearing. If you want to be heard at the Settlement Hearing, then you must first comply with the procedures for objecting, which are set forth below. The Court has the right to change the hearing dates or times without further notice. Thus, if you are planning to attend the Settlement Hearing, you should confirm the date and time before going to the Court.

VIII. RIGHT TO OBJECT AT THE SETTLEMENT HEARING AND PROCEDURES FOR DOING SO

Pursuant to the Court's Preliminary Approval Order, Plaintiffs' Counsel will file papers in support of the Settlements, and in support of Plaintiff's Counsel's motion for attorneys' fees and reimbursement of litigation expenses, and award to Plaintiffs, on or before March 23, 2016, and any reply shall be filed on or before April 15, 2016.

Any Limited Partner of Fund II may object and/or appear and show cause, if he, she, or it has any concern why the Settlement should not be approved as fair, reasonable, and adequate, or why the Plaintiff's proposed plan of allocation of the Settlement is fair, adequate and reasonable, or why the Court should approve Plaintiff's Counsel's motion for attorneys' fees and reimbursement of litigation expenses, and for award to Plaintiff, or why other provision(s) of the Settlement contemplated by the Stipulation should or should not be approved; ***provided however***, unless otherwise ordered by the Court, no Limited Partner of Fund II shall be heard unless ***on or before 21 calendar days prior to the Settlement Hearing*** or April 1, 2016 that Limited Partner of Fund II has: (1) filed with the Clerk of the Court a written objection to the settlement setting forth: (a) such person's name, legal address, and telephone number; (b) a detailed statement of each objection being made and the grounds for each objection; (c) proof of ownership of any limited partner interest in Fund II, including the amount of any investment and the date of purchase; and (e) any documentation in support of such objection; and (2) if a Limited Partner of Fund II intends to appear and requests to be heard at the Settlement Hearing, such Limited Partner must have, in addition to the requirements of (1) above, filed with the Clerk of the Court: (a) a written notice of such Limited Partner's intention to appear; (b) a statement that indicates the basis for such appearance; (c) the identities of any witnesses the Limited Partner intends to call at the Settlement Hearing and a statement as to the subject of their testimony; and (d) copies of any papers such person intends to attempt to introduce before the Court. If a Limited Partner of Fund II files a written objection and/or written notice of intent to appear, such Limited Partner must also simultaneously serve copies of such notice, proof, statement, and documentation, together with copies of any other papers or briefs such Limited Partner files with the Court (either by hand delivery or by first class mail) upon each of the following:

Clerk of the Court
189th District Court
201 Caroline,
Houston, Texas 77002

On or before the same date, such person shall also serve a copy of such notice by hand or by first class mail, postage pre-paid, on all counsel of record, at the following addresses:

Kaplan Fox & Kilsheimer LLP
Jeffrey P. Campisi
850 Third Avenue
14th Floor
New York, NY 10022
Attorneys for Edwin Debus derivatively on behalf of Fund II

Troy Tindal, Esq.
Tindal Law Firm
17225 El Camino Real, Suite 190
Houston, Texas 77058
Counsel for Defendants JTF, Belesis and ATB

The Court may not consider any objection that is not timely filed with the Court or not timely delivered to the above-listed counsel for the Settling Parties. Any Limited Partner of Fund II who does not make his, her, or its objection in the manner provided herein shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the Settlement as set forth in the Stipulation, unless otherwise ordered by the Court, but shall otherwise be bound by the Judgment to be entered and the releases to be given.

IX. HOW TO OBTAIN ADDITIONAL INFORMATION

This Notice summarizes the Settlement. It is not a complete statement of the events underlying or surrounding the Action or the Settlement. Although the Settling Parties believe that the descriptions about the Settlement that are contained in the Notice is accurate in all material respects, in the event of any inconsistencies between the descriptions in the Notice and the Stipulation of Settlement, the Stipulation of Settlement will control.

You may inspect the filings in the Action at the Harris County District Clerk's office. However, you must appear in person to inspect these documents. The Clerk's office cannot mail copies to you. Further, Plaintiffs' Counsel shall, at the time Notice is mailed to the Limited Partners, post the copies of the Notice and Stipulation with Exhibits on its website: www.kaplanfox.com. You may refer to this website for the complete copies of these documents.

PLEASE DO NOT CALL, WRITE, OR OTHERWISE DIRECT QUESTIONS TO EITHER THE COURT OR THE CLERK'S OFFICE. Any questions you have about matters in this Notice should be directed by telephone or in writing to Plaintiff's Counsel, Kaplan Fox & Kilsheimer LLP (Jeffrey P. Campisi, Esq.) at the address set forth above, or at 1-800-290-1952, or (212) 687-1980.

BY ORDER OF THE 189th JUDICIAL DISTRICT COURT, HARRIS COUNTY, TEXAS

3/10/2015 5:44:58 PM
Chris Daniel - District Clerk Harris County
Envelope No. 4447650
By: Bonisha Evans
Filed: 3/10/2015 5:44:58 PM

CAUSE NO. 2013-54408

PAUL F. RODNEY, derivatively on behalf of PATRIOT BRIDGE AND OPPORTUNITY FUND LP I, and EDWIN DEBUS, derivatively on behalf of PATRIOT BRIDGE AND OPPORTUNITY FUND LP II, Plaintiffs, vs. JOHN THOMAS CAPITAL MANAGEMENT GROUP LLC, n/k/a PATRIOT28 LLC, GEORGE R. JARKESY JR., JOHN THOMAS FINANCIAL, INC., ANASTASIOS "TOMMY" BELESIS, ATB HOLDING LLC, MFR, P.C., also known as MFR GROUP, INC., DOEREN MAYHEW & CO., P.C., DOEREN MAYHEW TEXAS, PLLC, SOUTH PADRE VENTURES 2, LLC, successors to MFR, P.C., and JUAN PADILLIA, Defendants, PATRIOT BRIDGE AND OPPORTUNITY FUND LP I, and PATRIOT BRIDGE AND OPPORTUNITY FUND LP II, as nominal Defendants.	IN THE DISTRICT COURT OF HARRIS COUNTY, TEXAS 189th JUDICIAL DISTRICT

PLAINTIFFS' SECOND AMENDED PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW PAUL F. RODNEY and EDWIN DEBUS ("Plaintiffs"), by their attorneys, on behalf of Patriot Bridge and Opportunity Fund LP I ("Fund I") and Patriot Bridge and Opportunity Fund LP II ("Fund II") (collectively, the "Funds"), who files this

Second Amended Petition against JOHN THOMAS CAPITAL MANAGEMENT GROUP LLC, n/k/a PATRIOT28 LLC ("JTCM"), GEORGE R. JARKESY JR. ("Jarkesy"), JOHN THOMAS FINANCIAL, INC. ("JTF"), ANASTASIOS "TOMMY" BELESIS ("Belesis"), ATB HOLDING LLC ("ATB Holding"), MFR, P.C. ("MFR"), also known as MFR Group, Inc., DOEREN MAYHEW & CO., P.C. ("Doeren Mayhew"), DOEREN MAYHEW TEXAS, PLLC("DM Texas"), SOUTH PADRE VENTURES 2, LLC ("South Padre"), and JUAN PADILLA ("Padilla") and in support would respectfully show the following:

I. DISCOVERY CONTROL PLAN

1. Plaintiffs intend to conduct discovery under Level 2 of Texas Rule of Civil Procedure 190.3.

II. PARTIES

2. Paul Rodney is an individual and resident of Harris County, Texas. Plaintiff Rodney alleges the following based upon the investigation of plaintiffs' counsel, except as to allegations specifically pertaining to Mr. Rodney, which are based on personal knowledge. Mr. Rodney has continuously been a limited partner of Fund I since July 28, 2007. Mr. Rodney only alleges claims in this action against Defendants JTCM, Jarkesy, MFR, Doeren Mayhew, DM Texas, South Padre, and Padilla.

3. Plaintiff Edwin Debus is an individual and resident of Suffolk County, New York. Mr. Debus alleges the following based upon the investigation of plaintiffs' counsel, except as to allegations specifically pertaining to Mr. Debus, which are based on personal knowledge. Mr. Debus has continuously been a limited partner of Fund II since January 26, 2010.

4. The investigation of Plaintiffs' counsel included, among other things, a review of the pleadings, testimony and documents from the U.S. Securities and Exchange Commission's ("SEC") Administrative Proceeding (File No. 3-15255) (the "SEC Action"); public documents in related matters involving certain defendants and other publicly available data and information, an inspection of the books and records of Fund I, and documents and deposition testimony in this action.

5. The Funds are Delaware limited partnerships and during the Relevant Period ("July 28, 2007 through the Present") they had offices at 3 Riverway, Suite 1800, Houston, Texas, as well as at 800 Town and Country, Suite 300, Houston, Texas 77056. The Funds are named as nominal defendants. Before September 2011, the Funds were named the John Thomas Bridge and Opportunity Fund LP, I, and the John Thomas Bridge and Opportunity Fund, LP II.

6. Defendant JTCM is an unregistered investment adviser that serves as the general partner of the Funds. It is based in Houston, Texas and during the Relevant Period had offices at 3 Riverway, Suite 1800, Houston, Texas, as well as at 800 Town and Country, Suite 300, Houston, Texas 77056. On December 1, 2011, JTCM changed its name to Patriot28. JTCM has appeared herein.

7. Defendant Jarkesy, resides at [redacted], Tomball, Texas, [redacted]. During the Relevant Period, Jarkesy was the manager of JTCM. In that capacity, Jarkesy purportedly controlled all operations and activities of JTCM and the Funds. Jarkesy has appeared herein.

8. Defendant Belesis, is a resident of New York, New York. Belesis is the founder and chief executive officer of JTF, which is based in New York. Until late 2011,

JTF was the primary placement agent for the Funds, and was one of several broker-dealers that executed equity trade orders for the Funds. Belesis resides at [redacted], Apt. [redacted], New York, New York [redacted]. Belesis has appeared herein.

9. Defendant JTF is a broker-dealer registered with the SEC and a member of FINRA. According to FINRA, JTF is registered with the State of Texas. During the Relevant Period, approximately 125 registered representatives were associated with the JTF. JTF is wholly owned by Defendant ATB Holding LLC, which is controlled by Belesis. JTF purportedly offered brokerage and investment services, investment banking services and private wealth management. Defendant JTF has appeared herein.

10. Defendant ATB Holding is owned and controlled solely by Defendant Belesis and is the alter ego of Defendants JTF and Belesis.

11. During the Relevant Period, Belesis, JTF and ATB operated from the same offices located at 14 Wall Street, 23rd Floor, New York, New York 10005.

12. Defendant MFR purportedly provided accounting services to the Funds during the Relevant Period. MFR has offices at One Riverway, Suite 1900, Houston, Texas 77056. MFR audited Fund I's financial statements for the years ended December 31, 2008 through 2010, and prepared certain Fund I's tax returns to the Internal Revenue Service for 2007 through 2010, which included, among other things, analyses of partners' capital account and analyses of Fund I's investment gains and losses. MFR audited Fund II's financial statements for the year ended December 31, 2010. According to filings with the Office of Secretary of State of Texas, on November 20, 2012, MFR changed its name to MFR Group, Inc. MFR has appeared herein.

13. Doeren Mayhew & Co., P.C., is a Troy, Michigan-based certified public accounting and advisory firm with locations in Troy, Michigan and Houston, Texas. On December 3, 2012, Doeren Mayhew merged with MFR. The merged entity operates under the Doeren Mayhew name. According to a Doeren Mayhew press release, as a result of the merger, MFR's partners and associates will become Doeren Mayhew employees, while co-founders Roland Rodriguez and Gasper Mir will continue involvement as Doeren Mayhew advisory board members, providing strategic guidance. According to the press release, both Rodriguez and Mir will also continue to own and manage MFR, P.C.-affiliated entities MFR Solutions and MFR Healthcare Solutions.

14. Doeren Mayhew is named as successor in liability to MFR and has assumed liabilities for MFR's conduct alleged herein. Doeren Mayhew has appeared herein.

15. DM Texas is a Texas professional limited liability company. DM Texas engages in business in the State of Texas, and is a Defendant in this proceeding arising out of business done in the State of Texas. DM Texas may be served through its registered agent for the service of process, Timothy R. Moore, at One Riverway, Suite 1200, Houston, Texas 77056, or wherever he may be found.

16. DM Texas is named as successor in liability to MFR and has assumed liabilities for MFR's conduct alleged herein.

17. South Padre is a Texas limited liability company. South Padre engages in business in the State of Texas, and is a Defendant in this proceeding arising out of business done in the State of Texas. South Padre may be served through its registered agent for the service of process, Timothy R. Moore, at One Riverway, Suite 1200, Houston, Texas 77056, or wherever he may be found.

18. South Padre Mayhew is named as successor in liability to MFR and has assumed liabilities for MFR's conduct alleged herein.

19. Padilla is a resident of Texas. He was an employee of MFR and is currently an employee of Doeren Mayhew. Padilla has appeared herein.

III. VENUE AND JURISDICTION

20. Venue is proper in Harris County pursuant to Section 12.5 the Limited Partnership Agreement ("LPA") of Fund I.

21. Further, venue is proper under Texas Civil Practice and Remedies Code Section 15.002(a) because all or a substantial part of the events or omissions giving rise to the claims occurred or are occurring in Harris County, Texas.

22. This Court has personal jurisdiction over JTCM because it maintains its principal place of business in Texas, engages in systematic contacts with the State of Texas, and has purposefully availed itself of the privilege of conducting activities in Texas.

23. The Court has personal jurisdiction over Jarkesy because he is a Texas resident, engages in systematic contacts with the State of Texas, and has purposefully availed himself of the privilege of conducting activities in the State of Texas.

24. The court has personal jurisdiction over MFR and Doeren Mayhew, DM Texas, and South Padre because during the Relevant Period each maintained an office in Houston, Texas, engaged in systematic contacts with the State of Texas, and purposefully availed themselves of the privilege of conducting activities in the State of Texas.

25. Further, this Court has personal jurisdiction over Defendants Belesis, ATB and JTF pursuant to Tex. Civ. Prac. & Rem. Code Section 17.042 because they conducted business and committed tortious acts within the State of Texas as alleged herein, and also because each

engages in continuous and systematic contacts with the State of Texas, and has purposefully availed itself/himself of the privilege of conducting activities in Texas. Defendant ATB is the parent company of Defendant JTF and is Defendant Belesis's alter ego. In July 2007, Christos Kalatoudis, a New York-based JTF broker solicited Mr. Rodney in Texas to invest in Fund I using the means and instrumentalities of interstate commerce, including the telephone.

26. The Court has personal jurisdiction over Padilla because he is a Texas resident, engages in systematic contacts with the State of Texas, and has purposefully availed himself of the privilege of conducting activities in the State of Texas.

27. This Court has subject matter jurisdiction of this cause because the damages to the Funds exceed minimal jurisdictional limits of this Court.

IV. FACTS

28. This Action alleges breach of fiduciary duty and aiding and abetting breach of fiduciary duty, breach of contract, civil conspiracy, and professional negligence.

29. Jarkesy individually, as the managing member of the Funds' general partner JTCM, and JTCM, the general partner of the Funds, owed fiduciary duties to the limited partners of the Funds. Jarkesy and JTCM intentionally, willfully or with at least gross negligence, elevated the interests of JTF, Belesis and ATB Holding over those of the Funds by steering millions of dollars in bloated fees to the broker-dealer, violating their duty of loyalty owed to the Funds' limited partners. Defendants JTF, ATB Holding, Belesis, Padilla and MFR aided and abetted such breaches of fiduciary duty. Further, Jarkesy and JTCM breached their agreement with the limited partners by ignoring the investments guidelines that governed the Funds. Defendant MFR breached its agreements with the Funds, and

Defendants MFR and Padilla committed professional negligence in connection with their audits of certain of the Funds' financial statements.

30. As alleged in further detail below, Jarkesy and JTCM breach their fiduciary duties by: i) recording arbitrary valuations without any reasonable basis for certain of the Funds' largest holdings, thus causing the Funds' performance figures to materially overstated and materially false and misleading; ii) failing to disclosure to the Funds' limited partners JTCM's and Jarkesy's repeated favoring of the pecuniary interests of Belesis, ATB Holding and JTF; and iii) misrepresenting the value of the limited partners' respective capital accounts, and thereby artificially inflating JTCM's and Jarkesy's management fees and expenses.

31. While they shared the same brand name, JTCM (the adviser) purported to be wholly independent of JTF (the placement agent).

32. Notwithstanding representations that he was "responsible for all of the investment decisions" of the Funds, Jarkesy, in breach of his fiduciary duties, capitulated to Belesis' aggressive demands regarding certain investment decisions. JTCM's purported independence from JTF was a sham designed to enrich Belesis at the expense of the Funds, and to insulate him from future accusations of wrongdoing.

33. In addition to capitulating to Belesis' demands regarding certain of the Funds activities, Jarkesy and JTCM abandoned their fiduciary duty to the Funds by negotiating arrangements whereby borrowing companies would divert large fees to JTF and Belesis using proceeds received from the Funds. For example, in connection with certain bridge loans made by Fund I, Belesis (acting through JTF) received hundreds of thousands of dollars in "fees" for providing little or no services.

34. Jarkesy and JTCM placed the interests of Belesis and JTF above the interests of the Funds, thereby violating the fiduciary duty that they owed to the Funds. For example, after being berated by Belesis for not delivering enough fees, Jarkesy promised him in an email in late 2009, "*We will never retreat we will never surrender and we will always try to get you as much [fees] as possible, Everytime [sic] without exception!"*

35. In December 2013, Defendant Belesis settled claims alleged against him in the SEC Action and, among other things, Belesis agreed to be banned from the securities industry. *See John Thomas CEO Belesis Agrees to Ban in Deal with SEC*, BLOOMBERG NEWS, Dec. 6, 2013.

36. The Annual Financial Statements JTCM provided to investors, which included MFR's audit reports, stated that JTCM "records its investments at fair value" and had adopted Financial Accounting Standard 157 for purposes of valuation of the Funds' holdings, although JTCM has no records of its pricing analysis to support its valuation.

37. Jarkesy, as the manager of JTCM, was responsible for ensuring that the values assigned to the Funds' investments were consistent with representations in the LPAs.

38. JTF had several roles relating to the Funds, although JTF and JTCM purported to be wholly independent. JTF served as the primary placement agent for solicitation of investments in the Funds; it served as the investment bank for some of the companies that received bridge loans from the Funds; and it acted as the broker for many of the Funds' equity trades. To date, JTF has received millions of dollars in fees related to the Funds.

39. At the end of 2011, Jarkesy valued Fund I at approximately $18 million to $20 million and Fund II at approximately $10 million. For the year ended December 31,

2010, MFR reported Fund I's "total return since inception" was twenty-four percent. According to Jarkesy's testimony in the SEC Action, the Funds' limited partner interests today are almost worthless. (Jarkesy Tr. 63:15-16).[1]

40. Under the applicable LPAs, Jarkesy earns an incentive fee only after investors earn a nine percent return. After that, he earns a twenty percent incentive fee on any profits above the first nine percent. In addition, he earns a two percent management fee to cover operational costs of the Funds, including his own expenses, such as travel.

A. Background on the Funds

41. Jarkesy and JTCM launched Fund I in 2007 and Fund II in 2009. Since September 2011, the Funds have been known as Patriot Bridge and Opportunity Fund LP I and LP II and since December 2011, JTCM has been known as Patriot28 LLC.

42. Jarkesy created JTCM as an unregistered investment adviser in 2007 to serve as the adviser to Fund I.

43. In 2009, Jarkesy and JTCM formed a twin fund: Fund II. With the termination of Fund I scheduled for 2012, Fund II was formed in order to hold certain longer-term investments, including life settlement policies that had not matured. Initially, Fund II was structured to solicit foreign investors, but when none bought shares, JTCM opened Fund II to domestic investors.

44. The Funds purported to invest in three asset classes: bridge loans to start-up companies; equity investments, principally in microcap companies; and life settlement policies.

[1] Citations to "Tr. __" refer to transcripts of testimony in the SEC Action.

45. The Funds' assets under management reportedly peaked at approximately $30 million at the end of 2011. However, as alleged below, Jarkesy and JTCM wrongfully inflated the value of the Funds' assets under management.

B. Jarkesy's Baseless Valuation of Fund Holdings

46. Limited partners in the Funds received monthly statements indicating the value of their shares and gains or losses compared with previous time periods. Investors' monthly statements did not identify the Funds' holdings or the values of each of the Funds' positions, however the value of each limited partners' account was derived from a portion of the Funds' overall values.

47. Jarkesy and JTCM misrepresented the value of limited partners' investments in the Funds, which were based on an arbitrary and *ad hoc* methodology that differed from disclosures in the LPAs. As alleged more fully herein, Jarkesy's and JTCM's misrepresentations included incorrect valuations of the Funds' equity positions in certain companies, incorrect valuations of the Funds' short-term notes provided to other companies, and overstating the value of at least two of the Funds' life settlement policies.

48. JTCM's internal monthly holdings reports identified the Funds' holdings and the values of each position. The holdings reports served as the basis for the limited partners' interests, which JTCM reported to the Funds' investors on monthly statements. In addition, JTCM used the internal holdings reports to establish the Funds' performance, which was shared with existing and prospective limited partners. Finally, the net asset values of the Funds were the basis for calculating Jarkesy's management and incentive fees, which were deducted from the Funds and reduced the value of the limited partners' accounts.

49. For certain of the Funds' holdings, Jarkesy arbitrarily inflated valuations, causing his management and incentive fees, and the valuation of investors' accounts, to be materially overstated.

C. Galaxy Media

50. Galaxy Media and Marketing Corp. ("Galaxy Media") was formed in April 2010 when Amber-Ready, Inc. ("Amber-Ready"), a company in which the Funds had invested, merged with CK 41 Direct Inc. (DX-314 at 5.)

51. JTF and Belesis had a long-standing relationship with Amber-Ready. JTF had raised substantial amounts of capital for Galaxy through numerous private placements.

52. Jarkesy and JTCM first invested the Funds in Amber-Ready in 2009, when Fund I extended a bridge loan to the company. That loan was repaid, and another one was made at the end of the year. From that point on, neither of the Funds' loans to Amber-Ready was repaid; instead, the Funds received allotments of penalty shares of Amber-Ready and then Galaxy Media after the merger.

53. Documents sent to Jarkesy and JTCM demonstrate that they were keenly aware of Galaxy's precarious financial situation, and had been since before the Galaxy was formed.

54. In March 2010, in connection with the combination of Amber Ready and CK-41 and the creation of Galaxy, Belesis told Jarkesy in an email that all money raised needed to go to Amber Ready or it would go out of business. (DX-514 at 1.) Belesis wrote, "Amber has no more money." (*Id.*)

55. In September 2010, Gary Savage ("Savage"), the chief executive officer of Galaxy, sent Jarkesy projections for Galaxy's revenue based upon sales of PurEffect, an acne

treatment and the company's only product. The cover email described $550,000 of urgently needed funds: the money needed to be wired into various accounts by September 30, 2010, Savage wrote, and "there is no going past these dates." (DX-652 at 1 (6:32pm email, pph 2).) Savage's projections noted that additional cash infusions totaling more than $1 million were required in October and November 2010, and that an additional $5 million was required in January 2011. (*Id.*) Thus, in order to realize the approximately $8.5 million in gross profits Savage projected for 2011, more than $6.5 million was required in the short term just to get the project off the ground. (*Id.*)

56. In October 2010, Savage again wrote to Jarkesy (and others) about Galaxy's poor financial situation, which included: Galaxy's eviction within the week by the Westchester Sherriff and Marshalls, due to non-payment of rent; cancellation of Galaxy's insurance for directors and officers due to non-payment of premiums; and an impaired launch of PurEffect due to non-payment of some of Galaxy's vendors. (DX-518A.)

57. In October 2010, Jarkesy received Galaxy's financial statements, which corroborated Savage's concerns. The financials showed that from mid-2005 through mid-2010, Amber Ready and CK-41 together had total revenues of $45,198 and net losses of more than $18 million. (DX-661 at 3.) Galaxy's financial statements described more than $36 million of liabilities with only approximately $5.6 million of assets. (*Id.* at 2.) The notes to Galaxy's financials provided that the statements had been prepared on a "going concern basis" and stated that "[t]he Company's continued existence is dependent upon its ability to resolve its liquidity problems, principally be (sic) obtaining equity and or debt financing. The Company's current operations are not an adequate source of cash to fund future operations. In

the event that it is unable to obtain debt or equity financing, it may have to cease or curtail operations." (DX-661 at 8, pphs 6-7.)

58. In November 2010, Savage wrote to Jarkesy (and others) stating that the company was "without any money to operate" and that the launch of PurEffect could not take place as planned. (DX-521 at 2, pph 3.) Savage also complained that Belesis had promised that Galaxy's law firm would be paid, knowing that Galaxy had no money to make such payments on its own. Savage concluded that "unless we receive funds shortly from some source I will have no course but to take action to protect myself, the board of directors, and the companies' employees." (*Id*.)

59. An amended Form S-1 Registration Statement for Galaxy, filed with the Commission on February 11, 2011, provided extensive detail about Galaxy's financial condition, stating:

> We have incurred losses since our inception. For the years ended December 31, 2009 and 2008 we generated revenues of $13,272 and $716, respectively, and -incurred net losses of $75,808,771 and $9,835,053, respectively. At December 31, 2009, we had a working capital deficit of $12,853,708 and an accumulated deficit of $88,664,410. These factors raise substantial doubt about our ability to continue as a going concern . . . . To continue our operations and fully carry out our business plans for the next 12 months, we need to raise additional capital (up to $8,000,000) for which we currently do not have any contracts or commitments for additional funding.

(DX-314 at 5, pph 5.)

60. The Form S-1 noted that the net tangible book value per share (which represented net tangible assets divided by shares outstanding) was negative $0.80. *(Id.* at 12.)

61. Savage testified at the hearing in the SEC Action about his discussions with Jarkesy concerning Galaxy's financial condition. They discussed Galaxy's lack of liquidity

both before and after the merger. (Savage Tr. at 1592:2-8.) Savage told Jarkesy "almost every day" that Galaxy could not do the test run for its product, PurEffect, because it did not have the money it needed. *(Id.* at 1594:25-1595:6.) At no point during Savage's tenure as chief executive officer did Galaxy have sufficient funds to pay its operating expenses. *(Id.* at 1600:2-6.) All along, Savage had conversations with Jarkesy concerning the value of Galaxy's shares, telling Jarkesy that the shares weren't worth anything because the company had no real assets and no funding. *(Id.* at 1649:8-21.)

62. Defendants Jarkesy and JTCM arbitrarily and inconsistently valued the shares without any reasonable basis. The following chart reflects how Defendants Jarkesy and JTCM valued the Amber/Galaxy stock on a month-by-month basis from December 2009 through February 2011, and shows the disconnect between Galaxy's share activity and Defendants Jarkesy and JTCM's valuation.

Month	**Amber/Galaxy Stock Activity**[2]	**Shares Owned Fund 1**	**Value**
12/2009		27,251,316[3]	$0.35
112010		27,251,316	$0.35
2/2010		35,247,249	$0.30
3/2010		28,096,386	$0.30
4/2010	1:12 reverse split	28,098,386	$0.30
5/2010		28,098,386	$0.30
6/2010		2,341,366	$0.30
7/2010		2,341,366	$3.30
8/2010		2,341,366	$3.30
9/2010		11,223,465	$1.00
10/2010	Issued 19,350,492 shares	11,223,465	$0.80
11/2010	Issued 5,475,000 shares	11,223,465	$0.80
12/2010		11,223,465	$0.10

[2] The information in this column comes from Galaxy's Amended Form S-1 Registration Statement dated February 11, 2011. (DX-314.)

[3] The number for December 2009 and January 2010 includes 3.2 million shares of Amber Alert Safety Centers stock and 24,051,316 shares of Amber Ready Inc. restricted stock. (DX-301.)

112011	Issued 15,197,871 shares	14,286,669	$0.10
2/2011		14,286,669	$0.10

63. Between April 2010 and January 2011, Defendants Jarkesy and JTCM improperly recorded valuations in the Funds' holdings of Galaxy. In April 2010, Galaxy effectuated and reported a 1:12 reverse stock split. (DX-314 at 4.) This stock split, however, was not reflected on Fund I's holding pages until June 2010, when Defendants Jarkesy and JTCM reduced the Fund's holdings from more than 28 million shares to approximately 2.3 million. (DX-301 at JTBOF 19148.) Moreover, Defendants Jarkesy and JTCM did not reflect the price change resulting from that anti-dilutive action on the holding pages until July 2010. *(Id.* at JTBOF 19145.)

64. In October 2010, Galaxy issued more than 19 million shares to certain note holders as a penalty for Galaxy's failure to complete its Form S-1 registration statement on a timely basis. (DX-314 at 155.) Defendants Jarkesy and JTCM reported this increase a month early and, without any reasonable basis, gave themselves the extra shares in September. (DX-301 at JTBOF 19139.)

65. In November 2010, Galaxy issued approximately 5.5 million shares to its chief executive officer and its board of directors. (DX-314 at 156.) This was a dilutive act that reduced the Funds' ownership of the company, but Defendants Jarkesy and JTCM did not correspondingly reduce the price of the shares in the Funds. (DX-301 at JTBOF 19133.)

66. Again, in January 2011, Galaxy issued more than 15 million shares to certain note holders as penalty shares for its failure to complete the Form S-1 registration

statement on a timely basis. (DX-314 at 156.) Yet again, Defendants Jarkesy and JTCM did not reduce the value of the Funds' position. (DX-301 at JTBOF 19127.)

67. Defendants Jarkesy and JTCM also loaned significant amounts of the Funds' money to Galaxy, which was memorialized in debentures and promissory notes. (DX-316 at 20-21.) None of the promissory notes issued after November 2010 was secured, violating Defendants Jarkesy and JTCM representations that the bridge loans would be "collateralized." (*See* DX-260; DX-248.) Moreover, Galaxy was in default on a number of other loans from the Funds. (DX-316 at 21.)

68. Notwithstanding the company's poor financial condition or the fact that notes were in default, Defendants Jarkesy and JTCM continued to value these loans at par until July 2011. (DX-301, *compare* JTOBF 19108 *with* JTBOF 19112.)

69. By July 2011, Jarkesy wrote off the Funds' investment in Galaxy Media.

70. Jarkesy's valuations of Galaxy Media shares were arbitrary and inconsistent with Jarkesy's obligation to use his discretion to make reasonable valuation determinations as disclosed in the LPAs, and resulted in the recording of unreasonable and unsupported valuations on JTCM's monthly holdings reports. The inflated valuations on the monthly holdings lists served as the basis for valuing shareholders' individual positions in the Funds, which were reported to them on monthly statements. Performance results for the Funds, and management and incentive fees for the adviser and manager, also were derived from the baseless and unreasonable values Jarkesy recorded on the monthly holdings lists.

D. Radiant Oil & Gas: Jarkesy Hired Promoters to Boost the Share Price

71. In 1996, Jarkesy personally invested in a publicly traded shell company ("G/O Business Solutions" or "GOBS")) that, after a later merger, would become Radiant Oil & Gas. Jarkesy was chairman of the board of directors of the shell; in 2007, when he formed JTCM and the Funds, he stepped down as chairman but remained a director.

72. Jarkesy and JTCM invested approximately $200,000 of the Funds' money in GOBS, and the Funds became the shell company's controlling shareholders. GOBS merged with a small, private oil and gas company in the summer of 2010 to form Radiant Oil & Gas, a microcap oil and gas exploration company. The Funds owned approximately twenty-five percent of Radiant Oil & Gas's unrestricted stock after the merger, which Jarkesy valued by reference to its publicly quoted share price. At the time, public trading of Radiant Oil & Gas's shares in the over the counter market had only recently commenced and was extremely thin.

73. Between November and December 2010, Radiant Oil & Gas's share price jumped from $1 to $4. Accordingly, Jarkesy revalued the position on JTCM's monthly holdings reports, causing a material improvement in the Funds' performance. The beneficial spike in Radiant Oil & Gas's stock price did not, however, correlate to any disclosed corporate event.

74. On December 17, 2010, for the first time in more than fifteen months, there was a public sale of the shares of Radiant. This transaction of a 250 shares brought the stock price up to $4.00 per share. (DX-111 at 4.) From December 17, 2010 until the end of 2010, the stock traded on four additional days with a total volume of 3,300 shares, ending the year at $4.00 per share. (*Id.*) Using that share price, Jarkesy and JTCM's valuation of Fund I's Radiant position reflected an unrealized gain at year-end of nearly $7 million, which

represented more than a $5 million gain from the previous month. (DX-301 at JTBOF 19130, 19133.) Fund I's financial statements for year-end 2010 claim that the "fair value" of the equity position in Radiant was $6,936,996. (DX-317 at schedule of investments.)

75. Likewise, Fund II's financial statements for year-end 2010 claim that the "fair value" of the equity position in Radiant was $1,746,320. (DX- 318 at schedule of investments.)

76. In fact, the dramatic increase in the price was the result of a promotional campaign Respondents financed from Fund II. In December 2010, Respondents used Fund II's money to hire MEC Promotions to run a promotional campaign for Radiant. (DX-306c at 2.)

77. Defendants Jarkesy and JTCM knew that the fair value of Radiant's stock was not $4.00. They knew that the reason why the stock price had increased so dramatically to $4.00 was the promotion run by MEC Promotions for which Fund II its investors had paid. (DX-306c.)

78. In addition to its position in Radiant common stock, Fund II also owned 125,000 warrants to purchase shares of Radiant. (*E.g.*, DX-303 at JTBOF 19288.) (Warrants resemble options but are issued by the issuer instead of being an instrument issued by a stock exchange or a market participant.)

79. In February 2011, in connection with the issuance of the monthly financial statements for January, the Funds' administrator requested information about the value of the warrants. (DX-333.) Jarkesy and JTCM informed the administrator that the value should be $6.92 per warrant. (*Id.*) When the administrator questioned this valuation, stating that the warrants had last been priced in August 2010 at $0.12, JTCM's controller responded:

"I know the stock price was crazy in Jan for ROGI [Radiant]. Checked with George [Jarkesy] and he said to run with it at $6.92." (*Id.*)

80. At January's end, however, the price of the stock had fallen to $2.25. (DX-111.) As such, there was no reasonable basis for the $6.92 warrant price. (*See id.*)

E. <u>America West Resources</u>

1. Jarkesy and JTCM failed to write down the value of notes in default

81. In December 2007 Jarkesy and JTCM purchased 16 million shares in Fund I of Reddi Brake Supply Corp. ("Reddi Brake"), a predecessor company to America West, for $400,000 (DX-627 at 1; DX-301 at 19258.) On that same date, Jarkesy purchased for his personal account 4 million shares of Reddi Brake for $100,000. (DX-627 at 1.) Shortly thereafter, Reddi Brake changed its name to America West. (DX-625 at 2.)

82. As Jarkesy described in an April 2008 newsletter to investors, Fund I owned approximately sixteen percent of America West. (DX-215 at 1.)

83. As part of the investments in December 2007, Jarkesy joined the board of directors and "became a very active member of management [of America West] from that point forward until his resignation." (DX-310 at 36; Walker Tr. at 626:9-14.) Also joining the board of directors with Jarkesy was Brian Rodriguez ("Rodriguez"), who became America West's chief financial officer. (DX-310 at 38.) Rodriguez and Jarkesy previously had worked together at an internally managed fund called SH Celera Capital Corp., where Jarkesy was the president and chief operating officer and Rodriguez was the chief financial officer. (DX-310 at 36-38.) Furthermore, Rodriguez was Jarkesy's partner in a company called Marathon Advisors LLC ("Marathon") (DX-625 at 11.)

84. In December 2007, at the same time Jarkesy and Rodriguez joined America West's board, America West hired Marathon and, in addition to paying Rodriguez's salary, issued 1.5 million shares to Marathon. (DX-627.) In addition to purchasing America West common stock, Jarkesy and JTCM loaned Fund I's money to America West. In March 2008 they loaned $50,000 and three months later, in June 2008, they loaned an additional $200,000 of Fund I's money. (DX-301 at JTBOF 19247, JTBOF 19235.)

85. By the end of 2008, Fund I had eight notes from America West totaling $925,000. (*Id.* at JTBOF 19211.) In connection with these loans, Fund I received additional shares of the company. America West paid off these loans in January 2009. (DX-203 at 13-14; DX-301 at JTBOF 19207.)

86. In 2009, Respondents loaned more money from Fund I to America West. In May 2009 they loaned $805,000 from the Fund (DX-311 at F-15), and in November 2009 they extended two more notes totaling $210,000 (DX-301 at JTBOF 19170). In December 2009, Respondents loaned additional money and America West's debt to Fund I was consolidated into a single note for $1,330,000. *(Id.* at JTBOF 19167.) By the close of 2009, all of these loans were in default. (DX-311 at F15-16.)

87. Notwithstanding the fact that America West had defaulted on more than a million dollars of loans in 2009, Jarkesy continued to lend Fund I's money to America West throughout 2010. As of year-end 2010, Fund I owned twelve America West notes totaling $1,725,500. (DX-301 at JTBOF 19131.) Many of these new notes were also in default; the notes had matured in October 2010 but had not been repaid as of December 2010. (*Id.*)

88. Additionally, and despite America West's growing debt to Fund I, Jarkesy loaned money from Fund II to America West. As of year-end 2010, Fund II owned seventeen notes totaling nearly $1.4 million. (DX-303 at JTBOF 19287.) Fourteen of these notes also were in default as the notes had matured between October and December 2010 and had not been repaid as of December 2010. (*Id.*)

89. As described in America West's Form 10-K filed with the Commission, "between February and December 2010, two entities [Funds I and II] controlled by a director of America West [Jarkesy] loaned the Company an aggregate of $1,567,885. The loans are **unsecured,** bear interest at 10% per annum and mature between March 15, 2010 and March 31, 2010." (DX-311 at F-16, emphasis added.) Jarkesy and JTCM's loans of Fund money to America West on an unsecured basis violated their assurances that bridge loans would be "collateralized." *(See* DX-260; DX-248.) The vast majority of these loans were not repaid. (Walker Tr. at 633:13-18.) Rather, in June 2011, much of the debt was converted into equity and America West issued nearly 13 million shares of common stock to the holders of the promissory notes. (DX-346 at 30, pph 13; Walker Tr. at 633:19-25.)

90. As a member of America West's board of directors and an active member of management, Jarkesy was well aware that Ameica West was in default on its loan obligations to the Funds. Indeed, he signed the Form 10-K that discussed the default. (DX-311 at 50.) Based on his active role in management, Jarkesy was on notice that America West could not repay these notes. (*See id.*) Even though America West was in default on virtually all of the loans as of December 21, 2010, including the unsecured loans, Respondents did not write down the value of any of the notes. (DX-301 at JTBOF 19131; DX-303 at JTBOF 19287.)

91. In auditing the Funds, MFR did not review the public filings of America West to determine whether America West was in default.

92. Instead, the auditors relied on Jarkesy to tell them if any of the notes were impaired. (Padilla Tr. at 1047:6-1048:8, 1159:6-10.)

2. Jarkesy and JTCM valued America West common stock based on inflated prices

93. On December 31, 2010, the stock price of America West closed at $1.95. (DX-110 at 1.) This represented a significant increase in America West's stock price from October 19, 2010, when the closing price was $0.96 per share. (*Id.* at 3.) Jarkesy should not have taken advantage of the higher price at the end of the year because he knew it to be a temporary boost that he orchestrated by loaning money from the Funds to America West to finance a stock promotion campaign.

94. In 2010, Jarkesy participated in a series of deceptive efforts to boost America West's share price. In July 2010, Jarkesy was interviewed by an individual named Mike Norman ("Norman") that was published on the hardassetsinvestor.com website in a two-part series. In the first part of the interview, Jarkesy, who was identified as a director of America West, stated, "the outlook for coal is very bullish," and investors would see coal prices "increasing substantially" over the next five to ten years. Norman enthusiastically repeated Jarkesy's statements. (*See* DX-251 at pphs 3-4.) In the second part of the interview, Jarkesy stated, "[i]n about two to three years you're going to see a drastic increase- triple, quadruple- in coal pricing." Norman again repeated Jarkesy's statements. (DX-252 at pph 4.) At no time in either part of the interview did Jarkesy disclose that he was the general partner of the Funds, America West's largest investor. And at no point during either part of the interview did Norman or Jarkesy disclose that Norman was not an independent voice

discussing the future of coal. *See* DX-251; DX-252.) Rather, Norman was the chief market economist for Defendant JTF --the investment banker for America West and the placement agent for the Funds. (DX-253.) Jarkesy knew that Norman worked for JTF. (DX-630.)

95. America West issued a press release about Jarkesy's interview with Norman. The press release and a link to the interview were sent immediately to investors of both Funds, as Jarkesy instructed. (DX-628 at AM_SEC00006786; DX-250.) Again, Jarkesy failed to disclose to investors that Norman was an employee of Defendant JTF and, therefore, not independent. (*See id.*) In September 2010, Jarkesy sent a link to the interviews to all of his Twitter followers. (DX-629.) Yet again, Jarkesy failed to disclose Norman's relationship to Defendant JTF or his lack of independence. *(See id.).*

96. In addition to the Norman interviews, Jarkesy sought to boost America West's share price by using money from Fund II to finance purported news articles touting America West's business. (DX-309 at JTBOF 06837 (*e.g.,* payments to Ron Irwin and Venture. Research).) There is no evidence that Jarkesy disclosed to Fund II investors that he used their Fund's assets for promotional purposes.

97. Two promotional articles Fund II financed by loaning money to America West were by Ron Irwin, a journalist, whose reports about America West were published on the Exarniner.com website in August and early September 2010. (DX-254; DX-255.) The September article described Jarkesy's interview with Norman and focused on Jarkesy's comments about how the price of coal would spike over the next several years. As Irwin wrote: "contemplate what can happen should you own a commodity source for a commodity whose global demand is growing at rate of three to four hundred percent. Take a wild guess on how that will impact the price." (DX-255 at 5, pph 1.)

98. Jarkesy also used money from Fund II in August 2009 to pay a consulting firm, Venture Research LLC ("Venture Research"), for a favorable report on America West. Not surprisingly, this paid consultant issued a report on September 13, 2010 with a "buy" recommendation. (*See* DX-239.) The report opined that America West was "grossly undervalued at current prices" and explained that in making its determination, an "important factor is the commitment of the lead investors to fund the Company through this transition stage and to realize their shared vision." (*Id.* at 20.) Venture Research described itself as "an independent research and consulting firm". (*Id.* at 25.) Neither the report nor Jarkesy disclosed that the Respondents already had paid $5,000 of Fund II's money to America West to pay Venture Research for the report. (*See* DX-309 at JTBOF 06837.)

99. Jarkesy caused Spectrum, the administrator for the Funds, to send the Venture Research report to the Funds' investors without disclosing to the administrator (or to the investors) that Fund II loaned the money to America West so the company could pay for the favorable report. The cover email attaching the report simply states "please see attached research report on America West Resources; one of our largest holding companies in the Fund." (DX-239.) Jarkesy also sent the report directly to JTF brokers for distribution to investors, again without disclosing the relationship among Venture Research, America West or Fund II. (DX-616.) Referring to America West by its ticker symbol, AWSR, Jarkesy wrote in his cover email, "I think this is a great report explaining the past and where AWSR is Sep 2010."

100. Coffey, the registered representative at JTF who testified at a hearing in the SEC Action, said that he had he known America West had paid for the report, he would have thrown it away immediately. (Coffey Tr. at 1859:7-16.)

101. Finally, Jarkesy introduced America West to three companies- MEC Promotions, Uptick Capital, and Park Avenue Consulting Group- in order to launch a stock promotion campaign. (Cowell Tr. at 885:10-15.) It was Jarkesy's idea to hire these public relations and promotional firms, and the America West "relied heavily on Jarkesy's experience in this area. He spearheaded our efforts in that regard." (Walker Tr. at 629:22-630:3.)

102. Defendants Jarkesy and JTCM used the Funds' money to pay for the America West promotion; Jarkesy transferred the money directly from the Fund I's bank account to the promoters. Jarkesy used Fund money to pay MEC Promotions $10,000 in October 2010 (DX-306 at 2), $50,000 in December 2010, (DX-308 at 2), and $15,000 in January 2011 (DX-306d at 1; DX-307A at 2). Jarkesy used Fund money to pay Uptick Capital $7,500 each in November and December 2010 (DX-307 at 2; DX-308 at 2) and $5,000 in January 2011 (DX-306D at 2.) Jarkesy used Fund money to pay Park Avenue $5,000 in September 2010 (DX-306B at 2) and another $5,000 in January 2011. (DX-306D at 2.)

103. In addition to the payments Jarkesy made from the Funds' bank accounts to the promotional firms, America West issued 25,000 shares to Park Avenue, 30,000 shares to Uptick, and 150,000 shares to MEC Promotions. (DX-311 at 30-31.)

104. Matthew Cowell ("Cowell"), a founder of MEC Promotions, testified in the SEC Action that during the time his firm was engaged by America West, it sent emails to its subscribers containing public information that it found about America West, and also posted that information on its website. (Cowell Tr. at 886:9-21.) In addition, to its own subscribers, MEC Promotions subcontracted work out to "a lot" of other promoters who would send the same information to their own subscribers, Cowell said. *(Id.* at 887:6-16.) MEC Promotions

also owned websites called "pennyprofilers.com," "Dancing with the Bulls," and "Kaboom Stocks" where it promoted small companies that paid for their information to be posted on the site. *(Id.* at 873:18-874:21). The fact that the largest payment to MEC Promotions relating to America West was in December 2010 indicated to Cowell it was then that most of the promotional activity occurred. *(Id.* at 890:17-23.)

105. America West's share price rose to $1.95 by the end of the 2010. (DX-110.) As the architect of America West's promotional campaign that started in the summer of 2010, Jarkesy was well-aware that the year-end stock price reflected the promotion efforts financed by Funds, including the email blasts that were sent by MEC Promotions and its subcontractors in December 2010. Despite knowing of the temporary and artificial spike in America West's share price, Jarkesy valued the shares on December 31, 2010 based on the inflated stock price. (DX-110; DX-301 at JTBOF 19130.)

F. Life Settlement Policies

106. Jarkesy and JTCM represented that 50% of limited partners' money would be invested in life insurance policies. (DX-206, at 30; DX-211, at 5; DX-214, at 2). Jarkesy and JTCM further represented that they would acquire life insurance policies with a fact value of 117% or more of the aggregate capital commitments. (DX-206, at 2; DX-261, at 1, 10; DX-215, at 2; DX-260, at 2; DX-217 at 1; DX-637, at 2; DX-221 ("For a return of capital, we segregate half of the Fund's investment in life settlement policies . . . .") (emphasis in original); DX-259 (same); DX-248 (same)). Arthur Coffey, an employee of Defendant JTF, testified at a hearing in the SEC Action that the insurance was viewed and spoken of as a hedge to be able to protect the principal:

> Q. So the intention of the insurance was to protect the principal that people had invested?

A. It was viewed and spoken of as a hedge to be able to protect the principal.

Q. Okay. And this information of the 117 or 150 percent did that come from Mr. Jarkesy?

A. Yes.

(SEC Tr. at 1828:3-11).

107. Jarkesy repeatedly represented that that half of the money invested in the Fund would be invested in life settlement policies. In an email to the accountants who handled the Funds' taxes, Jarkesy wrote: "[y]ou are correct that half of the capital contributions are to purchase and service LSP [life settlement policies]." (DX-605 (email of Mar. 12, 2008 at I 2:35pm).) In a podcast interview following the issuance of the December 31, 2008 financial statements, Jarkesy was asked what the Fund would do if an investor contributed one dollar. Jarkesy responded that "50 percent of that goes into life settlements. Approximately 30 percent of the life settlement portfolio buys a dollar's worth at face, and 70 percent of the life settlement portion is set aside to pay premiums through the life expectancy." (DX-203 at 22:2-6, emphasis added.)

108. During a podcast, Jarkesy also stated that "our charter requires that we have 117% of the value of our investor cash in face value life settlement policies. We do this not to make money. We do it because at the end of the fund, we want our investors to have some assurance that they get their money back. And will like life settlements for doing this." (*Id.* at 3:2-7, emphasis added).Jarkesy and JTCM spent only $3,865,309 of Fund I's money on life settlement policies (including purchase price and premiums) through December 31, 2010. (DX-317 at Note 3 to the financial statements.)

109. Jarkesy and JTCM failed to comply with the requirements set forth in Paragraphs 100-102.

110. The Funds raised more than $24 million in aggregate capital contributions, and thus would have been required to commit $12 million toward life settlement policies had they abided by Jarkesy's representations and statements in marketing materials he drafted. (DX-317 at Note 9; DX-318 at JTBOF 06311). Had Jarkesy set aside the approximately $8.135 million that they represented they would, there would have been sufficient funds to pay the premiums for all of the policies purchased. Jarkesy could not answer what happened to this money. (Jarkesy Tr. at 2617:17-2618:2.) The money was not set aside to pay premiums, as the majority of the policies lapsed for nonpayment of premiums. (*See e.g.* DX-418; DX-404.) Jarkesy testified that two of the insureds died and that the Fund still owns one of the policies. (Jarkesy Tr. at 250:21-252:4). The remaining 10 policies lapsed. (*See e.g.* DX-418; DX-404.)

111. In addition, there were long periods of time in 2008 when Jarkesy and JTCM failed to acquire and maintain policies with a total face value of 117% of the investors' capital contributions in the Funds. As of December 31, 2008, Fund I had approximately $16.62 million of investor capital (DX-315 at Note 7.) Therefore as of that date, Jarkesy and JTCM were required by their charter and their own representations to have purchased policies with face value of approximately $19.4 million. Yet Fund I had purchased policies with face value of only $13 million, more than $6 million shy of the promised amount. (DX-405.)

112. Similarly, in 2009, Jarkesy and JTCM fell short of the insurance coverage they promised investors. As of December 31, 2009, Fund I had received capital commitments amounting to $18,358,002. (DX-316 at Note 10.) And as of that same date, Fund II had received capital commitments of more than $800,000. (DX-249.) With total investor capital of

approximately $19.158 million by year-end 2009, Jarkesy and JTCM were required to purchase insurance policies for the Funds with face value of more than $22.4 million. However, the Funds owned policies with face value of only $21.5 million. (DX-405.)

113. Because Jarkesy and JTCM did not purchase any additional policies after May 2009 but continued to raise capital through at least 2010, the Funds were not in compliance with the 117% requirement at any time from December 31, 2009 forward. By December 31, 2010, Fund I had capital commitments of $20,112,852 (DX-317 at Note 9), and Fund II had capital commitments of $4,083,209 (DX-318 at JTBOF 0631 1).

114. With combined capital commitments of $24,196,061, Respondents were required by their own representations of 117% coverage to purchase insurance policies for the Funds with face value of $28,309,391. However, the Funds had policies with face values amounting only to $21.5 million. (DX-405.) During this time, Respondents continued to falsely represent that they had 117% face value. (DX-221; DX-248.)

115. Jarkesy and JTCM, with the knowing participation of MFR, overstated the value of Fund I's insurance policies.

116. For Fund I's 2010 audit, an issue arose concerning the valuations for several of Fund I's insurance policies when one of the insurance carriers sued to have the policies voided.

117. On April 16, 2010, Ohio National Life Assurance Corp. ("Ohio National") filed suit in the United States District Court for the Northern District of Illinois (10cv2386) seeking a declaration that the Shirlee Davis policy was void. (DX-337.)

118. The lawsuit alleged that the defendants-Paul Morady, Movash Morady, an independent insurance broker with American Pacific General Agency Inc. and APG Insurance Services, and attorney Douglas W. Davis ("Davis"), obtained life insurance policies through false

statements with the intention of selling those policies to third parties. (*Id.*) Christiana Trust, which held Fund I's Master Trust, was named as a defendant and received notice of the suit on April 20, 2010. (*Id*.)

119. In addition, Ohio National informed Christiana Trust that the owner and beneficiary change for this policy was being returned "unrecorded." (*Id.*)

120. Ohio National subsequently filed another lawsuit concerning the Joseph Griffin policy that contained similar allegations.

121. The two lawsuits had implications for the Funds not only relating to those two policies, but also to several of the other policies.

122. As with the policies at issue in the lawsuits, Jarkesy and JTCM had purchased other policies in 2007 and 2008 from defendant Paul Moraday, and the purchase agreements for those policies listed defendant Davis as the trustee for many of the insureds individuals' life insurance trusts. (*See, e.g*. DX-462; DX-466; DX-470).

123. In August 2010, Jarkesy wrote down the values of each of the David and Griffin policies to $100,000. (DX-404 at JTBOF 10693.) Jarkesy did not, however, write down the value of any of the other policies involving Paul Morady or Davis, notwithstanding the risk that many of those other policies would be voided due to fraud. (*See* DX-404.)

124. In connection with audit for the year ended December 31, 2010, Linda Ortiz ("Ortiz"), JTCM's Corporate Controller, informed MFR that based on the ongoing litigation, the values for the policies were written down to $100,000. (DX-337 at planning questionnaire.) Ortiz provided MFR with the Complaint for Declaratory Judgment, Damaged and Equitable Relief filed by Ohio National. (DX-337.)

125. Notwithstanding the risks that the Griffen and Davis policies were void due to fraud and were therefore worthless, MFR wrote the valuations back up. MFR informed Ortiz that because the court documents did not provide any basis for the exact write-down amount, and because the sole basis for the write-down was Jarkesy's own valuation (as opposed to a third-party valuation), the auditors were planning on writing the policies back up to the amortization schedule value. (DX-487.)

126. In March 2011, the policies were written back up to the value in the schedule. (DX-479 at JBTOF 20120.) This resulted in a material overstatement of Fund I's transferable life insurance policies recorded in Fund I's Statement of Assets and Liabilities as of December 31, 2010.

G. The Undisclosed Role of Belesis and JTF in Fund Operations

127. JTCM – acting through Jarkesy, its manager – represented that it was solely responsible for managing the Funds. The only disclosed connection between JTF and JTCM was JTF's role as placement agent and potential broker-dealer for the Funds' securities transactions. There was no disclosure that JTF or Belesis would become involved in JTCM's and the Funds' investment activities.

128. To underscore the independence of JTCM and JTF, JTCM's website included a disclaimer indicating that other than using JTF as a placement agent, JTCM had no business relationship with JTF.

129. Belesis, JTF and ATB were aware of the disclaimer distancing JTCM from JTF because Belesis used it as a model in an unrelated business venture.

130. In reality, Belesis frequently sought to intervene in the Funds' business decisions. In fact, the Fund copied Belesis as well as JTF's Chief Compliance Officer Castellano and other JTF employees on certain monthly account statements to investors.

131. As leverage, Belesis conveyed to Jarkesy – often in a profane and belligerent manner – that the millions of dollars invested into the Funds by JTF customers required Jarkesy to follow Belesis' instructions.

132. In light of his improper meddling in the Funds' business, Belesis separately indicated to registered representatives at JTF that the independence of JTCM and JTF on paper would be a helpful fact in the event anything improper happened with respect to the Funds.

133. For example, Belesis – sometimes, but not always, in collaboration with Jarkesy – periodically guided how the Funds' money would be invested in Galaxy Media. Galaxy Media's chief executive officer requested that Belesis allocate Fund money to pay operating costs, including rent, payroll and payments to Galaxy Media's service providers. The Funds' bank records show debits to pay certain Galaxy Media expenses.

134. In some cases, Belesis' decisions regarding Galaxy Media, one of the Funds' largest holdings, overrode the decisions of Galaxy Media's corporate officers, who implored him to handle Galaxy Media's affairs differently. As one example, Galaxy Media officers were displeased with Belesis' choice of chief financial officer for the company, who they thought required too high a salary.

135. As another example, Galaxy Media's officers complained that Belesis prematurely completed a stock purchase agreement that they had wanted to revise. However, Galaxy Media's officers had no choice but to accept Belesis' decisions about their

company because of Belesis' influence over when, how and if money would flow to Galaxy Media from the Funds, the company's main source of capital.

136. Belesis also supplanted Jarkesy as the decision maker for JTCM in connection with certain of the Funds' investments in Radiant Oil & Gas. Indeed, Belesis' role was clear when the Funds extended a bridge loan to Radiant Oil & Gas and the proceeds were delayed in arriving at the company. The company president and chief executive officer addressed Belesis – not Jarkesy, the supposed exclusive manager of the Funds – about the delay, and Belesis reassured him, *"You will have it, smoke a nice cigar."*

137. Numerous emails reflect Jarkesy's subservience to Belesis and efforts to please him by offering him benefits from the Funds' investment activities, including cash, fees and securities.

H. The Undisclosed Business Relationship between JTCM and JTF

138. In addition to the undisclosed influence Belesis exerted over the Funds' operations, JTCM and Jarkesy, despite publicly professing their independence from JTF, were in fact actively seeking to generate revenue for JTF and Belesis. For example, in March 2009, a JTCM employee wrote to Belesis:

> George [Jarkesy] and I have worked hard over the past month creating a backlog of potential clients for JTF and JTCM....We now have two or three that could be JTF clients in a matter of weeks with tens of thousands of dollars in monthly fees not to mention [another business transaction] already in the bag....
>
> The failure of your staff to execute payment on our contract has put a stop to our progress. . . . I still have high hopes for the potential of this liaison between JTF, JTCM ... and myself. Based upon your email below I estimate that you feel same. George, I know is optimistic of the potential that this relationship holds....

(DX 632).

139. In March 2009, the director of a company that JTCM and Jarkesy had steered to JTF asked to meet with Belesis before paying for JTF's services. In response, Belesis erupted at Jarkesy: "*GEORGE WHAT KIND OF BULL[...]T IS THIS"*.

140. Jarkesy's reply indicates his allegiance to Belesis: "*I just told him to send the stock and money, sign the document or get lost*," he wrote. "*I think this will get done today. Nobody gets access to Tommy [Belesis] until they make us money!!!!!"*

I. Jarkesy and JTCM Diverted the Funds' Money to Enrich Belesis and JTF

141. Jarkesy and JTCM had various relationships with JTF and Belesis. First, JTF initially served as the chief placement agent and raised capital for the Funds. (RX-138 at 35:13-25). Second, JTF provided brokerage services for the Funds' securities transactions. (Jarkesy Tr. at 2634:3-7.) Third, JTF recommended to Jarkesy that the Funds provide bridge loans to certain companies. (RX-138 at 253:4-9 ("if [JTF] came across an opportunity that it believes would warrant the bridge fund having an opportunity to make a bridge loan, would do well for the [fund], [JTF] would refer that client to the [fund]"); DX-644.) Fourth, JTF served as investment banker to several of the Funds' portfolio companies, including three of the Funds' largest holdings: America West, Amber Ready/Galaxy, and Radiant Oil. (Tr. passim.)

142. As a result of these various arrangements, JTF earned millions of dollars in fees and commissions. In DX-505, the evidence indicates that JTF received $2,446,861.49 in placement fees for selling interests in the Funds, which is consistent with a 10 percent commission on total investments in the Funds of more than $24 million.

143. In DX-506, the evidence indicates that JTF received approximately $4.93 million in fees and commissions from investment banking and consulting agreements with the

Funds' portfolio companies. This figure does not include shares or warrants JTF also received from those portfolio companies.

144. The PPM stated that JTF "has been designated the selling agent for the Limited Partnership Interests, as well as one of the prime brokers for the Partnership. As such, [JTF] will earn commissions on the sale of Limited Partnership interests. In addition, [JTF] could earn brokerage and other fees (including soft dollars) from other investments purchased or sold through it." (DX-206 at 41.) JTCM's website also made representations about the relationship between the management company and the Funds and JTF:

> John Thomas Bridge and Opportunity Fund is not affiliated with John Thomas Financial. John Thomas Financial is a New York based Broker Dealer that is acting as a selling agent for the fund. No other relationship between the parties should be construed including that of owning, managing, directing or making any decisions for the fund. The fund operates pursuant to its board of directors and the fund's manager Mr. George Jarkesy.

(DX-502.)

145. Notwithstanding these disclosures, Jarkesy often acted in the interests of JTF and Belesis and promoted their interests over the interests of the Funds and their investors. This included maximizing JTF's and Belesis's fees (or failing to limit JTF's fees) even though Fund interests were better served by keeping JTF's fees as low as possible. (DX-122 at 298:19-24.)

146. Jarkesy was motivated to find additional compensation for JTF and Belesis under threat that if he didn't, JTF would stop selling interests in the Funds. (*See* DX-631 ("our relationship based on your actions is slowly coming to an end, you better f-****g take care of this today or it's over"); DX-643 ("per Tommy [Belesis] upon further notice here will no longer be any funds from John Thomas Financial clients into the bridge fund").)

147. Jarkesy's commitment to enriching JTF and Belesis enrichment is demonstrated in a March 2010 email from Jarkesy to Belesis, in which Jarkesy boasts to Belesis, "we are all

going to make so much f*****g money this year, the clients of John Thomas are going to have a banner year. Write yourself a check and get ready to cash it for $45 million." (DX-509.)

148. Jarkesy negotiated fees for JTF that JTF received in connection with bridge loans the Funds extended to small companies for which JTF served as investment banker. (RX 138 at 256:22-257:5.)

149. Moreover, Jarkesy took an active role in helping build JTF's investment banking business, including recommending JTF's services to the Funds' portfolio companies- despite the disclaimer on JTCM's website that it was independent from JTF. (*See* DX-502.)

150. Starting in February 2009, Jarkesy endeavored to develop investment banking clients for JTF with the help of Merrill Willgrubs ("Willgrubs"), a JTCM employee or consultant who worked with Jarkesy from JTCM's Houston, Texas office. (DX-632; RX-138 at 151:2-7.) One such company Jarkesy and Willgrubs approached was EnterConnect, a Fund I portfolio company. (DX-632.)

151. Jarkesy struggled to please Belesis in developing JTF's investment banking business. In February 2009, Willgrubs sent a draft engagement letter for EnterConnect to JTF's attorney and Jarkesy offered that potential investment banking relationship should be non-exclusive, "eat what you kill." (DX-645.) When Belesis requested to see a copy of the agreement, Willgrubs responded that "George [Jarkesy] is reviewing." (DX-507.) But when he finally got a copy of the document, Belesis complained that "this is not what I said to do." (*Id.*) "Then I misunderstood," Jarkesy replied. "I thought that you wanted a commission and your warrants." (*Id.*) Belesis pointed out that the agreement also included "consulting fees and other stuff," but Jarkesy promised to do better, stating: "Did you read carefully? It was very soft! We

will never retreat we will never surrender and we will always try to get you as much as possible. Every time without exception." (*Id.*)

152. Jarkesy continued negotiating the contract with EnterConnect through March 2009, including working with the company to finalize the investment banking agreement with JTF. (DX-631.) When a director of EnterConnect wanted to speak directly with Belesis, Jarkesy informed him that only he, Jarkesy, would be available to finalize the deal. (DX-646.) Belesis erupted when he heard the director wanted to speak with directly him, but Jarkesy assured Beleis, "I just told him to send the stock and money, sign the document or get lost, I think that this will get done today. Nobody gets access to Tommy until they make us money!!!!!" (DX-631.)

153. Jarkesy also negotiated with Hankings, a Chinese company and potential JTF investment banking and consulting client. (DX-524.) Once again, under the terms that Jarkesy-not Belesis or anyone else at JTF -was working to arrange, JTF was to receive $250,000 retainer, a scaling fee for mergers and acquisitions close, a thirteen percent commission on any equity financing that might be done in the future, and one percent of Hankings' equity when the company went public. (*Id.*) Meanwhile, during these negotiations that would have enriched JTF, JTCM's website disclaimed any relationship with JTF other than placement services and trade execution. (*See* DX-502.)

J. Jarkesy Breached his Fiduciary Duty to the Funds by Negotiating or Approving Investment Banking Agreements that were to the Funds' Detriment

154. Jarkesy, a director of America West, introduced the company to JTF. (Walker Tr. at 637:21-638:15.) In October 2008, Jarkesy, on behalf of America West, "basically negotiated the terms of [an exclusive investment banking] agreement directly with Mr. Belesis,"

according to Alexander Walker ("Walker"), another America West director who testified at the hearing in the SEC Action. (*Id.* at 642:3-6.) Under the terms of the agreement, which related to America West's sale of America West common stock, JTF was to receive a commission of thirteen percent on all funds raised in the sale, plus warrants to purchase 15 million shares at $0.01 per share. (DX-348 at 11 of 28; Walker Tr. at 638:17-25; America West Form 10-K for year ended December 31, 2009.) In addition, the agreement Jarkesy negotiated with JTF also required America West to use JTF for other services, including insurance, consulting, and brokerage services for some of the officers of the company. (Walker Tr. at 639:2-17.) From 2008 through 2011, when JTF provided services to America West, Walker testified that the fees Jarkesy had negotiated were high and included a lot of "add-ons." (*Id*. at 641:9-15). Jarkesy made no effort to negotiate lower fees (DX-122 at 298:19-299:5), nor did he negotiate a non-exclusive agreement, as he had for other companies, which left America West no alternative but to pay JTF's high fees (*see* DX-645.)

155. Belesis also threatened to withhold money that JTF had raised in a private placement unless he received 10 million additional shares of America West owned by Walker. (Walker Tr. at 648:5-649:2.) When Walker complained to Jarkesy, Jarkesy replied: "It is what it is." (*Id.* at 649:12-16.) Ultimately, the company stepped in and issued more shares to JTF, which diluted the value of the outstanding shares- including those held by the Funds. (*Id.* at 650:18-651:11.)

156. Correspondence between Jarkesy and Belesis indicates that Jarkesy sought to maximize the fees America West paid to JTF, to the detriment of America West, and in breach of Jarkesy's duty to the Funds, which were invested in the company Jarkesy was harming. In May 2009, Jarkesy wrote Belesis with respect to a $5.4 million round of financing, "I think that we

can make JTF the hero by getting the company to reprice the warrants at $0.05 cents." (DX-511.) Jarkesy noted that this would "generate $90,000 in commissions [for JTF] plus maybe you could get 3 months of IB fees paid at closing." (*Id*.)

157. Disappointed with JTF's services, America West fired the firm at least twice. (DX 122 at 152:25-153:4.) Jarkesy and Belesis fought incessantly (DX-122 at 135:15-16), and "butted heads" over Belesis' failure to raise the money that he promised, (*id.* at 143:10-17). Jarkesy used America West and the Funds to generate fees for JTF, even when JTF did nothing to earn those fees.

158. For example, effective July 14, 2011, the Funds converted $500,000 of America West debt into equity, yielding a commission to JTF of $65,000. (DX-312.) Belesis confirmed that JTF did nothing for the fee; JTF received the fee because Jarkesy negotiated it. (RX-138 at 272:6-15.)

159. JTF also received commissions for money that the Funds invested in America West, despite having no involvement in the transaction. (DX-638.) Jarkesy admitted that JTF was paid commissions on some loans that Jarkesy negotiated directly with America West without any involvement from JTF. (Jarkesy, Tr. 2190:18-2191:2).

160. In addition to the tribute Jarkesy paid JTF by negotiating high fees from America West, Jarkesy was a director of Radiant in August 2010 when it entered into an investment banking agreement under terms that heavily favored JTF. Jarkesy introduced Radiant to JTF. (Jarkesy, Tr. 2217:24-2218:2). Under the terms of the agreement, JTF would be the placement agent for a series of Radiant private offerings up to $14,500,000 on a best-efforts basis. (DX-310 at 32.) Remarkably, the terms included Radiant issuing JTF three million shares of its stock in consideration to JTF for entering into the agreement. The issuance immediately

gave JTF control of nearly a quarter of Radiant's shares and made JTF the second largest shareholder- even larger than the Funds. (DX-310 at 41.) The issuance of these shares, and the disproportionate position it provided JTF, prompted Radiant to warn in its public filing that it "may be considered an overhang on the market and could depress any market that may develop for the Company common stock as well as the offering price of our equity securities in subsequent financings." (DX-310 at 19.)

161. In addition to the immediate issuance of 3 million shares of Radiant, the investment banking agreement Jarkesy negotiated provided that JTF would receive thirteen percent of the gross proceeds of any equity offerings and a sliding percentage of all money raised in debt offerings. Moreover, it provided that JTF would receive two percent of the cash proceeds of any additional financing that Radiant might obtain from Macquarie Bank- the same bank that had been providing Radiant financing since at least September 2006. (DX-310 at 32, 30.)

162. As the general partner of the Funds, and a director of Radiant, one of the Funds' portfolio companies, Jarkesy breached his fiduciary duty by allowing Radiant to agree to such unfavorable terms with JTF. (*See* DX-310; DX-206; DX-210.) The investment banking agreement Jarkesy negotiated was to Radiant's detriment, and thus to the detriment of the Funds, which were one of Radiant's largest shareholders. (*See id.*) Yet, as with the America West negotiations, Jarkesy used his position as a director of Radiant and manager of the Funds to enrich JTF and Belesis in breach of his fiduciary duty. (*See id.*)

163. Jarkesy was also involved in the negotiations of the investment banking agreement between Galaxy and JTF following the merger, pursuant to which JTF was going to receive 1% of Galaxy's gross revenues. (DX-660).

K. Contrary to What He Told Investors, Jarkesy Delegated Authority to Belesis

164. Walker, the America West director who testified at the hearing in the SEC Action, was shocked to learn in 2012 that contrary to previous representations, Jarkesy's and JTCM's independence from JTF was in doubt, and that Jarkesy and JTF were "tied at the hip." (Walker Tr. at 657:8-14, 658:5-21.)

165. For years prior to that, America West had represented in its filings with the Commission, in reliance on Respondents' representations, that JTF and the Funds were not affiliates of each other and that JTF had no direct or indirect ownership or management interest in the Funds. (DX-311 at 46.) However, in late 2011 and early 2012, America West discovered its disclosure was inaccurate. At the time, America West determined it would be forced to suspend payments to royalty holders, including Fund I, due to liquidity issues. (Walker Tr. at 655:4-20.) During a conference call to discuss the royalty payments, Walker testified that he expressed concern that Jarkesy was not on the call to represent Fund I's interest. (*Id*. at 656:10-657:7.) A representative from JTF who was on the call told him, "don't worry. I talked to [Jarkesy] about it over the weekend. We are partners with him on the investment in America West and other investments and ... we are tied at the hip at this." (*Id*. at 657:8-14.)

166. Walker testified at the SEC hearing that he was shocked and concerned about this statement because this was the first time that someone had mentioned a partnership or other integral relationship between the Funds and JTF. (Walker Tr. at 658:5-21.) Moreover, Walker and America West had relied on Jarkesy to "play point on our relationship with [JTF] and to protect the interests of the company;" with the new understanding of JTF and Jarkesy's relationship, he testified that he understood there might be a conflict of interest. (*Id.* at 660:4-12.) Jarkesy, who as a director of America West had signed the company's filings with the Commission discussing JTF and the Funds' independence, dismissed Walker's concerns. (*Id*. at

661:14-17; DX-311 at 50.) But Walker made sure America West disclosed the new information in its Form 10-K that year: "In 2012, we also have been informed that certain affiliates of [JTF] may have a direct or indirect ownership interest in [Fund I or Fund II]. We have no information as to when such a relationship, if it exists, was created." (DX-346 at 48.)

167. The undisclosed relationship between JTF and Respondents also was evident in Belesis' control over the Funds' investment in Galaxy. Savage, Galaxy's former chief financial officer, testified at the hearing in the SEC Action that "everything that we did financially was always a discussion or many discussions between Mr. Jarkesy and Mr. Belesis" and Galaxy personnel observed that Jarkesy and Belesis worked together controlling the company. (Savage Tr. at 1567:14-1568:6.)

168. Belesis told Savage that Belesis would be making decisions for the company, along with Jarkesy, and that Belesis could convince Jarkesy to do anything. (*Id*. at 1577:8-24.) Belesis' decisions included re-routing funding from Galaxy's marketing to the Amber Ready part of the business. (*Id*. at 1565:11-1566:20.) Belesis and Jarkesy decided together to install a chief financial officer at Galaxy over Savage's objections. (*Id*. at 1572:6-16, 1574:5-1575:15; DX-516.) Belesis also removed certain directors from Galaxy's board, with Jarkesy's approval. (Id. at 1578:10-24.) Savage testified that Belesis promised him that the Funds would pay for Galaxy's operational expenses, and when the payments were not made, Belesis called Jarkesy repeatedly to make sure the funding came through. (*Id*. at 1582:16-1583:13.)

169. Far from being independent of Belesis, Jarkesy took instructions from Belesis as to whether, when, and how to fund Amber Ready and Galaxy. For example, on December 17, 2009, Frank DelVecchio, Amber's chief executive officer, wrote to Belesis and Jarkesy, concerned that Amber would be unable to meet its payroll obligations the next day. (DX-513.)

170. In response to inquiries about the company obtaining a bridge loan from the Funds, Belesis told Jarkesy "get frank the bridge ASAP." (DX-513.) The next day, the Funds bought $40,000 worth of stock in the company. (DX-314 at 15.)

171. Belesis' influence continued after Amber became part of Galaxy in 2010. In October 2010, Belesis instructed Jarkesy to send money to Galaxy to pay essential expenses, and Plumb, Galaxy's chief financial officer, instructed Villa, Jarkesy's assistant, that Belesis wanted Fund money to be wired to a Galaxy consultant. (DX-518, DX-520.) Belesis followed up, sending several emails to Villa and Jarkesy demanding that the wires be sent. (DX-639.) "George what are you doing. Give Patty the okay," Belesis wrote to Jarkesy. (*Id*.) Villa, in turn wrote to Jarkesy: "Money needs to go now. Tommy is all over me!" (*Id*.) A few weeks later, Belesis promised Galaxy's attorney that he would be paid $49,000 from the Funds for work done on Galaxy's registration statement. (DX-521.) Jarkesy confirmed that the attorney would receive the wire, and wired the money within a few days. (DX-664.)

L. Jarkesy Continues to Materially Misrepresent the Funds' Largest Positions.

172. In June 2011, the SEC staff sent the first of several investigative subpoenas to the Funds and JTCM. (DX-617.) The first subpoena requested documents sufficient to identify all assets of the Funds for each month and "all documents concerning valuation" of certain assets of the Funds, including America West, Amber/Galaxy and Radiant. (*Id*.) Shortly after receiving the subpoenas, in August 2011, Jarkesy sent a letter to the investors that contained various misrepresentations about portfolio companies. (DX-240.)

173. In Jarkesy's letter to investors of August 2011, he noted the volatility and the wild swings in the Funds' values and "highlight[ed] a few things for you to consider about your ownership in the John Thomas Bridge and Opportunity Fund, 1 and 2." (DX-240.) He wrote

that the Funds had a "very large position" in America West and that the swing in its stock price during the year from $2.80 to $0.50 was "the main cause of the large movements in your monthly statements." Jarkesy noted, however, that America West had just reported three consecutive quarters of revenue growth and stated his belief that "the underlying assets of the company are valuable and will be more so in an inflationary environment." (*Id*.)

174. Yet, Jarkesy left out material information in the letter to the investors, including that America West: 1) had recently disclosed that it had defaulted on loan obligations; 2) lacked sufficient cash flows to meet obligations; 3) was issued a going concern opinion by its auditors; 4) had an eighty-five percent increase in net losses in fiscal year 2010; and 5) had determined its internal controls were inadequate to ensure the accuracy of its financial statements. (DX-311.) None of these developments was in Jarkesy's letter. (*See* DX-240.)

175. Jarkesy's August 2011 letter further noted that the Funds had just made their first distribution of proceeds from a life settlement policy, which paid a benefit upon the death of one of the insureds. (DX-240.) Jarkesy wrote that "we are adding more policies in the portfolio (we make offers regularly)." (*Id*.) Jarkesy did not disclose, however, that the Fund had not added a new life settlement policy to the portfolio in more than two years. Moreover, while Jarkesy's letter noted that the Fund owned policies that had been issued by Ohio National, he failed to disclose that Ohio National had sued to invalidate several of these policies.

176. Regarding the Funds' investment in Radiant, Jarkesy wrote to investors that he "believe[d] this company has valuable assets, strong management and if it can raise additional capital, they will be successful at growing this company by the drill bit and through acquisition." (DX-240, emphasis added.)

177. However, Jarkesy failed to disclose to Fund investors that Radiant had failed to timely file its Form 10-K for the year ending December 31, 2010 (DX-349); that the company had failed to timely file its Form 10-Q for the quarter ended March 31, 2011 (DX-350); or that its stock had been delisted from the OTCBB due to the late filings (DX-351). Jarkesy also omitted from his letter to Fund investors that when Radiant filed its Form 10-K, it disclosed that there were pervasive control deficiencies in the company's financial reporting disclosure controls, resulting "in a reasonable possibility that material misstatements of the financial statements will not be prevented or detected ...." (DX-310 at 35.)

M. Respondents Failed to Wind Up the Fund on Time

178. Jareksy designed Fund I to wind up by September 2012. (DX-234.) Quarterly reviews Jareksy sent to investors made clear that the Fund would continue for twenty quarters, or five years after commencing operations in the summer of2007. (DX-214 at AM_SEC00007177 ("[o]ur first of twenty quarters together as partners has come and gone"); DX-215 at AM_SEC00012288 ("[o]ur second of twenty of quarters together as partners has come and gone").

179. In March 2012, Jarkesy wrote to Fund I investors that "it is my intention to wrap up the Fund in accordance with the partnership agreements as quickly as possible this year, thereby reducing the need for our Fund to continue to incur full operational expenses." (DX-234.) Jarkesy represented in his letter that JTCM was in the process of gathering updated medical information about the insureds whose policies were in the life settlement portfolio, and was "in the process of obtaining bids on policies" and "working on collecting loans that were outstanding and liquidating positions that we have on our books." (*Id*.) Jarkesy further informed investors that he had resigned from America West's board of directors so he could liquidate or distribute

shares. (*Id*.) Jarkesy told the Fund investors that all assets would be distributed in 2012 except for the life settlement policies, the cash to pay the premiums on the life settlement policies, royalties for America West, and some legal claims. (*Id*.) Finally, Jarkesy wrote that Respondents would distribute K-1 and audited financial statements. (*Id*.)

180. In 2013, a year after describing how he would wind up Fund I in 2012, Jarkesy sent an email to the investors in Fund I advising that "pursuant to Section 11.1 of the Amended and Restated Agreement of Limited Partnership ... [JTCM] hereby elects to dissolve the partnership" effective March 13, 2013. (DX-242.) Upon dissolving the partnership, the Limited Partnership Agreement required that the Respondents "use all commercially reasonable efforts to sell all of the Partnership's assets in an orderly manner." (DX-206 at 31.)

181. Despite Jarkesy's promise to wind up Fund I in 2012, and despite Respondents' dissolution of the partnership in 2013, Jarkesy and JTCM still have not distributed the assets of the Funds to the investors, in violation of the Limited Partnership Agreement. (*See* DX-203 at 31.) The only asset that has been distributed are some shares of Radiant that have a restricted legend. (*E.g.*,DX-247.) Jarkesy testified, however, that he has not even distributed all of the shares of Radiant; he is holding some back, hoping for a better price. (Jarkesy, Tr. 1314:20-1315:4). Other than the few remaining shares of Radiant, and a single life settlement policy, Jarkesy could not identify or value any other asset held by the Funds. (Jarkesy, Tr. 63:15-16).

N. Jarkesy and JTCM Earned Significant Fees

182. Jarkesy and JTCM received approximately $1.3 million in fees for managing the Funds. The figure includes $337,336 for 2007-2008 (DX-315 at F7); $363,695 for 2009 (DX-316 at F8); $509,348 from Fund I for 2010 (DX-317 at JTBOF 06292); and $68,897 from Fund

II for 2009-2010 (DX-318 at JTBOF 06304). Jarkesy and JTCM also received $260,000 in incentive fees from Fund 2.

O. MFR's and Padilla's Wrongful Conduct

183. The breach of fiduciary duties alleged above could not have occurred without the substantial participation of MFR.

184. As alleged below, the financial statements issued by Fund I for the year ended December 31, 2010 and 2009, and issued by Fund II for the year ended December 31, 2010 were materially false and misleading when issued because the financial statements failed to comply with accounting principles generally accepted in the United States ("GAAP"), causing those financial statements to materially overstate the Fund's assets, partners' capital and results of operations.

185. GAAP are those authoritative principles and standards recognized by the Financial Accounting Standards Board ("FASB") to be applied in the preparation of financial statements issued in conformity with GAAP.

186. Under FASB Statement of Financial Accounting Concepts 1: Objectives of Financial Reporting by Business Enterprises, financial reporting

a. (i) should provide information that is useful to present and potential investors and creditors and other users in making rational investment, credit, and similar decisions. The information should be comprehensive to those who have a reasonable understanding of business and economic activities and are willing to study the information with reasonable diligence;

b. (ii) should provide information to help present and potential investors and creditors and other users in assessing the amounts, timing, and uncertainty of prospective cash receipts from dividends or interest and the proceeds from the sale, redemption, or maturity of securities or loans. Since investors' and creditors' cash flows are related to enterprise cash flows, financial reporting should provide information to help investors, creditors, and others assess the amounts, timing, and uncertainty of prospective net cash flows to the related enterprise; and

c. (iii) should provide information about the economic resources of an enterprise, the claims to those resources (obligations of the enterprise to transfer resources to other entities and owners' equity), and the effects of transactions, events, and circumstances that change its resources and claims to those resources.

187. Specifically, Fund I's and Fund II's Statement of Assets and Liabilities and Schedule of Investments for 2009 and 2010 materially overstated the reported values of, among others, the common stock of American West Resources, Inc., Radiant Oil & Gas, Inc., Sahara Media Holdings, Inc., transferable insurance policies, and promissory notes, thereby materially overstating the Funds results of operations and partners' capital.

188. For example, Fund I's 2010 financial statements represented that:

> The Partnership records its investments at fair value. Investments in interest-bearing and equity securities are recorded at fair value as determined in good faith by the General Partner in a manner consistent with the Partnership's written guidelines in the Limited Partnership Agreement.
>
> The Partnership has investments in life insurance policies at December 31, 2008, 2009 and 2010. The values have been estimated by the General Partner using a life expectancy model (Milliman) to determine the fair market value in the absence of readily ascertainable market values. Because of the inherent uncertainty of valuation, the estimated values may differ from the values that would have been used had a ready market existed for the securities and differences could be material.
>
> The Partnership has investments in promissory note at December 31, 2008, 2009 and 2010. The values are recorded at fair value in accordance with the terms of the contract agreement.

189. A nonregistered investment company, such as the Funds, were required by GAAP to categorize and disclose the following for its investments:

a. Categorize investments by all of the following:
   1. Type (such common stocks, preferred stocks, convertible securities, fixed-income securities, government securities, options purchased, options written, warrants, futures, loan participations, short sales, other investment companies, and so forth).
   2. Country of geographic region, except for derivative instruments for which the underlying is not a security.
   3. Industry, except for derivative instruments for which the underlying is not a security.

4. For derivative instruments for which the underlying is not a security, by broad category of underlying (for example, grains and feeds, fibers and textiles, foreign currency, or equity indexes) in place of categories.

b. Report the percent of net assets that each such category represents and the total value and cost for each category.

c. Disclose the name, shares or principal amount, value, and type of both of the following:
   1. Each investment (including short sales) constituting more than 5 percent of net assets, except for derivative instruments (see (3) and (f)). In applying the 5-percent test, total long and total short positions in any one issuer should be considered separately.
   2. All investments in any one issuer aggregating more than 5 percent of net assets, except for derivative instruments (see (e) and (f). In applying the 5-percent test, total long and total short positions in any one issuer shall be considered separately.

d. Aggregate other investments (each of which is 5 percent or less of net assets) without specifically identifying the issuers of such investments, and categorize them in accordance with the guidance in (a). In applying the 5-percent test, total long and total short positions in any one issuer shall be considered separately…

e. Provide both of the following additional qualitative descriptions for each investment in another nonregistered investment partnership whose fair value constitutes more than 5 percent of net assets:
   1. The investment objective
   2. Restrictions on redemption (that is, liquidity provisions).

190. Furthermore, an investment company, such as the Funds, must disclose all of the following:

a. Either in the body of the financial statements or in the accompanying notes, the fair value of financial instruments for which it is practicable to estimate that value.

b. The method(s) and significant assumptions used to estimate the fair value of financial instruments consistent with the requirements of paragraph 820-10-50-2(bbb) except that a reporting entity is not required to provide the quantitative disclosures about significant unobservable inputs used in fair value measurements categorized within Level 3 of the fair value hierarchy required by that paragraph.

c. A description of the changes in the method(s) and significant assumptions used to estimate the fair value of the financial instruments, if any, during the period.

d. The level of the fair value hierarchy within which the fair value measurements are categorized in their entirety (Level 1, 2, or 3).

191. Of particular importance in the financial statements of an investment company is the application and disclosure of the fair value hierarchy known as Level 1, 2, or 3 under GAAP. As established by the issuance of SFAS No. 157, [4] which required the Funds to adjust the

[4] Level 1 inputs are quoted prices (unadjusted) in active markets for identical assets or liabilities that the reporting entity has the ability to access at the measurement date. An active market for the asset or liability is a market in which transactions for the asset or liability occur with sufficient frequency and volume to provide pricing information on an ongoing basis. A quoted price in an active market provides the most reliable evidence of fair value and shall be used to measure fair value whenever available,…In some situations, a quoted price in an active market might not represent fair value at the measurement date. That might be the case if, for example, significant events (principal-to-principal transactions, brokered trades, or announcements) occur after the close of market but before the measurement date…

Level 2 inputs are inputs other than quoted prices included with Level 1 that are observable for the asset or liability, either directly or indirectly… Level 2 inputs include the following: a. Quoted prices for similar assets or liabilities in active markets. b. Quoted prices for identical or similar assets or liabilities in markets that are not active. c. Inputs other than quoted prices that are observable for the asset or liability (for example, interest rates and yield curves observable at commonly quoted intervals, volatilities, prepayment speeds, loss severities, credit risks, and default rates). d. Inputs that are derived principally from or corroborated by observable market data by correlation or other means (market-corroborated inputs). Adjustments to Level 2 inputs will vary depending on factors specific to the asset or liability…An adjustment that is significant to the fair value measurement in its entirety might render the measurement a Level 3 measurement, depending on the level in the fair value hierarchy within which the inputs used to determine the adjustment fall. The reporting entity should evaluate the following factors to determine whether there has been a significant decrease in the volume and level of activity for the asset or liability when compared with normal market activity for the asset or liability (or similar assets or liabilities). The factors include, but are not limited to: a. There are few recent transactions. b. Price quotations are not based on current information. c. Price quotations vary substantially either over time or among market makers (for example, some brokered markets). d. Indexes that previously were highly correlated with the fair values of the asset or liability are demonstrably uncorrelated with recent indications of fair value for that asset or liability. e. There is a significant increase in implied liquidity risk premiums, yields, or performance indicators (such as delinquency rates or loss severities) for observed transactions or quoted prices when compared with the reporting entity's estimate of expected cash flows, considering all available market data about credit and other nonperformance risk for the asset or liability. f. There is a wide bid-ask spread or significant increase in the bid-ask spread. g. There is a significant decline or absence of a market for new issuances (that is, a primary market) for the asset or liability or similar assets or liabilities. h. Little information is released publicly (for example, a principal-to-principal market). The reporting entity shall evaluate the significance and relevance of the factors to determine whether, based on the weight of the evidence, there has been a significant decrease in the volume and level of activity for the asset or liability. If the reporting entity concludes there has been a significant decrease in the volume and level of activity for the asset or liability in relation to normal market activity for the asset or liability (or similar assets or liabilities), transactions or quoted prices may not be determinative of fair value (for example, there may be increased instances of transactions or quoted prices may be necessary to estimate fair value in accordance with this Statement. Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction (that is, not a forced liquidation or distressed sale) between market participants at the measurement date under current market conditions…

Circumstances that may indicate that a transaction is not orderly include, but are not limited to: a. There was not adequate exposure to the market for a period before the measurement date to allow for marketing activities that are usual and customary for transactions involving such assets or liabilities under current market conditions. b. There

purported quoted market price for the thinly traded inactive common stocks to reflect estimated fair value considering all the facts and circumstances known to defendants. Fair value is the price that would be received by the Funds to sell the assets.

192. The December 31, 2009 and 2010 financial statements contained an unqualified opinion from Fund I's auditor, Defendant MFR. MFR provided an unqualified opinion for Fund II's financial statements for the year ended December 31, 2010.

193. For each year MFR represented that it had audited the financial statements of the Fund in accordance GAAS with auditing standards generally accepted in the United States of America ("GAAS") and that in MFR's opinion the financial statements at each date presented fairly, in all material respects, the financial position and results of operations of the Fund in conformity with accounting principles generally accepted in the United States of America.

---

was a usual and customary marketing period, but the seller marketed the asset or liability to a single market participant. c. The seller is in near bankruptcy or receivership (that is, distressed), or the seller was required to sell to meet regulatory or legal requirements (that is, forced). d. The transaction price is an outlier when compared with other recent transactions for the same or similar asset or liability. The reporting entity shall evaluate the circumstances to determine whether the transaction is orderly based on the weight of the evidence …

Regardless of the valuation technique(s) used, the reporting entity shall include appropriate risk adjustments. However, when there has been a significant decrease in the volume or level of activity for the asset or liability, the reporting entity should evaluate whether those quoted prices are based on current information that reflects orderly transactions or a valuation technique that reflects market participant assumptions (including assumptions about risks). In weighting a quoted price as an input to fair value measurement, the reporting entity should place less weight (when compared with other indications of fair value that are based on transactions) on quotes that do not reflect the result of transactions.

Level 3 inputs are unobservable inputs for the asset or liability. Unobservable inputs shall be used to measure fair value to the extent that relevant observable inputs are not available, thereby allowing for situations in which there is little, if any, market activity for the asset or liability at the measurement date. However, the fair value measurement objective remains the same, that is, an exit price from the perspective of a market participant that holds the asset or owed the liability. Therefore, unobservable inputs shall reflect the reporting entity's own assumptions about the assumptions that market participants would use in pricing the asset or liability (including assumptions about risk). Unobservable inputs shall be developed based on the best information available in the circumstances, which might include the reporting entity's own data.

194. These representations were materially false and misleading for the reasons set forth herein. MFR and Padilla recklessly failed to perform its audits of the Fund in accordance with GAAS and knew or recklessly ignored red flags for the following reasons:

(a) MFR failed to exercise due professional care in the performance of its audits [AU §230]. [5]

(b) MFR failed to perform its audit procedures with a consideration of audit risk for material account balances and transactions related to investments. [AU§312].

(c) MFR failed to obtain the necessary information and perform the audit to identify the risks of material misstatement due to fraud. [AU §316].

(d) MFR failed to obtain sufficient appropriate audit evidence to provide reasonable assurance that fair value measurements and disclosures are in conformity with GAAP. [AU §328].

(e) Failed to identify and properly disclose related parties that were known to MFR or were recklessly disregarded by MFR. [AU §334].

---

[5] Due professional care requires the auditor exercise *professional skepticism.* Professional skepticism is an attitude that includes a questioning mind and a critical assessment of audit evidence. The auditor uses the knowledge, skill, and ability called for by the profession of public accounting to diligently perform, in good faith and with integrity, the gathering and objective evaluation of evidence.

Gathering and objectively evaluating audit evidence requires the auditor to consider the competency and sufficiency of the evidence. Since evidence is gathered and evaluated throughout the audit, professional skepticism should be exercised throughout the audit process.

While exercising due professional care, the auditor must plan and perform the audit to obtain sufficient appropriate audit evidence so that audit risk will be limited to a low level that is, in his or her professional judgment, appropriate for expressing an opinion on the financial statements. The high, but no absolute level of assurance that is intended to be obtained by the auditor is expressed in the auditor's report as obtaining reasonable assurance about whether the financial statements are free of material misstatement (whether caused by error or fraud). Absolute assurance is not attainable because of the nature of audit evidence and the characteristics of fraud. Therefore, an audit conducted in accordance with generally accepted auditing standards may not detect a material misstatement.

The independent auditor's objective is to obtain sufficient appropriate audit evidence to provide him or her with reasonable basis for forming an opinion. The nature of most evidence derives, in part, from the concept of selective testing of the data being audited, which involves judgment regarding both the areas to be tested and the nature, timing, and extent of the tests to be performed.

(f) Failed to utilize a specialist to evaluate the life insurance policy valuation as the auditor's education and experience did not have the expertise to perform and/or evaluate such valuations. [AU §336].

(g) MFR failed to understand the Funds and their environment and assessing the risks of material misstatement. [AU § 314]. The audit of a company's investment accounts is a significant portion of the overall audit because of the relative significance of those accounts and related income accounts. As set forth in the AICPA Audit and Accounting Guide for Investment Companies: The principal objectives in auditing the investment accounts are to provide reasonable assurance of the following:

(I) The investment company has ownership of, and accounting control over, all its portfolio investments.

(II) All transactions are authorized and recorded in the accounting records in the proper account, amount and period.

(III) Portfolio investments are valued properly, and their costs are recorded properly.

(IV) Income from investments and realized gains and losses from securities transactions are accounted for properly.

(V) Investments are free of liens, pledges, or other security interests, or if not, such matters are identified properly and disclosed in the financial statements

195. Defendant Juan Padilla was the partner in charge of MFR's audits of Fund I for the years ended December 31, 2008, 2009 and 2010, and audit for Fund II from inception through December 31, 2010.

196. Mr. Padilla had no experience auditing hedge funds. May 22, 2012 SEC Tr. at 31:23-25.

197. By way of example, MFR knew or should have known that as a public company America West files forms 10-K and 10-Q with the SEC.

198. As of December 31, 2008 approximately 33% of Fund I's assets were invested in America West securities and as of December 31, 2010, approximately 25% of Fund I's assets were invested in America West securities.

199. On April 15, 2011 before the issuance of the Fund's 2010 financial statements and before MFR's audit report, America West filed its SEC Form 10-K for the year ended December 31, 2010.

200. America West's independent auditor's report therein was qualified as to the fact that there existed substantial doubt about America West's ability to continue as a going concern.

201. The financial statements of America West reported a shareholders' deficit of $9.1 million with assets of $23.5 million, and a net loss for the year of $16.1 million.

202. America West disclosed "the market for our common stock on the OTC Bulletin Board is limited, sporadic and highly volatile."

203. America West had in excess of 40 million shares issued and its trading volume in late 2010 was approximately 10,000 shares per week.

204. America West disclosed in its Form 10-K that its market value of the voting stock held by non-affiliates was $23.8 million.

205. On March 31, 2011 Fund I had to convert $3.0 million of its debt in exchange for 3 million shares of common stock because America West could not pay off the matured debt.

206. A material amount of the Funds' investment in America West was "restricted" stock which would significantly reduce its fair value and preclude it from being valued the same as unrestricted common stock. Defendant Padilla testified that he could not think of a scenario where free-trading stock would be valued the same as restricted stock:

> Q Does it make - I mean getting away from the piece of paper, does it make sense to you that a stock that is restricted is valued the same as a stock that's free trading?
>
> A I guess looking at it now, I would have to go back and look at all the flags and why we went that way.
>
> Q Well, I mean even if you didn't know, just any stock, does it make sense that a free trading - is there a scenario you could think of where a free trading stock would have the same value as one that's restricted?
>
> A I can't think of a scenario.

May 22, 2012 SEC Tr. at 85:20-86:04.

207. However, that is exactly what Defendants Padilla and MFR did. Most of Fund I's investment in America West was "restricted" stock which would significantly reduce its fair value and preclude it from being valued the same as unrestricted common stock.

208. MFR, ignoring red flags and/or failing to exercise professional skepticism, allowed the Fund I to report that its investment in America West had a fair value of over $7.0 million. MFR allowed Fund II to report that its investment in America West was worth approximately $2.6 million. In truth, the Funds' investments in American West securities were nearly worthless.

209. Furthermore, in violation of GAAP, JTCM and Jarkesy failed to disclose in Fund I's December 31, 2010 financial statements that at March 31, 2011 it converted most if not all of the outstanding delinquent note receivable from America West into common stock.

210. Defendant Padilla testified that he knew Defendant Jarkesy was a board member of America West, and that the LPA provided Defendant Jarkesy discretion in valuing the Funds' assets, but he failed to check America West's SEC filings in connection with MFR's audit:

> Q But you were aware that he had a role in America West?
>
> A We were aware of it.
>
> Q And that didn't cause you in some way to question the valuations of these short term funds?
>
> A He was a board member, no. . . .
>
> Q Do you recall reviewing public filings of America West in your audit process?
>
> A No, we did not review public filings. We looked at what the fund managers [sic] and then tested it to the program.
>
> Q So if it was disclosed in a public filing that America West had defaulted on one or more of these loans, you wouldn't have picked that up in the process?
>
> A No, because we didn't review the 10K . . . .
>
> Q Is there a reason you didn't review the company's public filings?
>
> A We didn't think it was necessary as part of our audit.

May 22, 2012 SEC Tr. at 83:1-84:13.

211. Had MFR and Padilla conducted the audit of the Funds in accordance with GAAS and reviewed America West's 2010 10-K, they would have observed that with respect to certain Notes that the Funds reported as valuable assets, America West had defaulted:

> Q I understand you say that you didn't look at the 10K's. Let me show you what was marked as Exhibit 34, which is the 10K for America West for the period ended 12/31/2010. Let me direct you to page F15.
>
> A Okay.
>
> Q Do you see under note 9, related party transactions?

A Yes, ma'am.

Q There's the discussion of an $805,000 loan that the company took out. . . . Do you see where it says that America West defaulted on that loan? The loan is "As of December 31, 2009, America West defaulted on this loan." . . . .

Q Does it appear to you that in its holding statement of December 31st, 2010, the fund is listing an $805,000 loan that the company reports it had defaulted on?

A. That's what it appears to, yes.

Q But that's not something that MFR looked at during the course of its audit?

A No, we did not look at the 10K.

May 22, 2012 SEC Tr. at 88:3-89:5.

212. Padilla further testified had he known that America West defaulted on the loan, that would have changed the valuation of this asset on the loan balance sheet. May 22, 2012 SEC Tr. at 90:8-14.

213. As to Radiant Oil another publicly-held company which filed its SEC Form 10-K for 2010 on April 15, 2011 prior to the issuance of MFR's audit report on the financial statements of the Fund on April 27, 2011, Radiant Oil's financial statements were qualified because as of December 31, 2010 "the Company has recurring losses from operations and has a working capital deficit. These factors raise substantial doubt about its ability to continue as a going concern." Radiant reported a shareholders' deficit at December 31, 2010 of $3.35 million with total assets of only $3.75 million; and a working capital deficit of $5.78 million.

214. At December 31, 2010 Fund I reported a fair value of $6.9 million for Radiant, which since the Fund owned 17% of Radiant would equate to a market value of Radiant in excess of $40 million. Radiant Oil's trading volume at December 31, 2010 was based on 800

shares being traded in almost two months. In fact, Radiant's SEC Form 10-K disclosed that "the market for our common stock on the OTCBB is limited, sporadic and highly volatile."

215. At the time MFR issued its audit report on the Fund Radiant stock was trading 200 to 300 shares per month.

216. That is not an active market that provided MFR a reasonable basis for allowing the Fund to report a value of $6.9 million for Radiant.

217. Radiant disclosed that there "is no public market for our common stock, and there can be no assurance that any public market will develop in the foreseeable future. Transfer of our common stock may also be restricted under the securities regulations and laws promulgated by various states and foreign jurisdictions, commonly referred to as "Blue Sky" laws. Absent compliance with such individual state laws, our common stock may not be traded in such jurisdictions. Because the securities registered hereunder have not been registered for resale under the Blue Sky laws of any state, the holders of such shares and persons who desire to purchase them in any trading market that might develop in the future, should be aware that there may be significant state Blue Sky law restrictions upon the ability of investors to sell the securities and of purchasers to purchase the securities. These restrictions prohibit the secondary trading of our common stock."

218. Additionally, within Radiant's SEC Form 10-K, Radiant valued its common stock at $1.00 per share, which at most equates to a value of the shares owned by the Fund of $2.2 million not $6.9 million.

219. Defendant Padilla testified that he knew Radiant Oil was a thinly traded micro-cap stock (May 22, 2012 SEC Tr. at 98:4-7) and was aware of facts that put him on notice that

Defendant Jarkesy was arbitrarily valuing the Funds' holdings of Radiant Oil common stock and warrants.

220. Defendant Padilla was aware that in September 2010, Jarkesy valued Radiant Oil shares in Fund 1 at $0.22 per share, and valued Radiant Oil shares at $1 per share in Fund II, and further testified that such valuations were baseless:

> Q. Do you have any idea how you could sell shares from one fund to the other at 22 cents and then value them at $1 once they arrived in the second fund?
>
> A You couldn't.
>
> Q Why not? . . . .
>
> A Well, you can't have the same value for one fund at the same - for the same company at the same time, the same date.
>
> Q Because it's inappropriate in your view to value the same security consistently between two funds, correct?
>
> A Correct.

May 22, 2012 SEC tr. at 92:13-24.

221. Knowing that Jarkesy used different valuations for the same stock, and that Radiant Oil was a thinly traded micro-cap stock, Defendants MFR and Padilla nevertheless determined that Defendant Jarkesy properly valued Radiant Oil stock at $4 per share:

> Q And at the end of the year do you recall any discussion or controversy over the value of the Radiant position?
>
> A No, I think they were valued at the same price on both funds. I can't remember if - I can't remember on Fund what they were valued, but I'm pretty sure it was the same value.
>
> Q Radiant was at the time a rather thinly traded micro cap stock, is that your understanding?
>
> A I believe that's the way we recorded it.

Q So when your team went to Yahoo or Bloomberg to verify the price as of year end and saw $4 . . . . Did that generate any discussion internally, that being the rather high share price for a thinly traded penny stock?

A. I don't recall having that discussion specifically and I don't recall when was the last time it was traded. I thought we had documented when the last trade happened.

Q I understand that your job was mechanically to look at the share price from an objective source, I understand that, but if you look at the trading price history of the stock, let's face it at a few months it goes from basically nothing, sub penny or penny range to $4. Do you have any insider knowledge into how that happened?

A No, I don't.

Q Was that ever a concern to you the steep rise in the trading price of the security?

A No, we didn't remember having a discussion around that.

Q Do you recall reading public filings of Radiant?

A No, we did not review any public filings for any of the public companies.

May 22, 2012 SEC tr. at 97:12-99:7.

222. As of December 31, 2010, 25% of Fund I's assets were invested in Radiant Oil. As of December 31, 2010, 21% of Fund II's assets were invested in Radiant Oil. Also at that time, Defendant Jarkesy was a director of Radiant, a position he held since August 2010. Previously Defendant Jarkesy served as chairman of the board and chief executive officer of Radiant Oil from August 15, 2006 through June 15, 2007.

223. Defendant Padilla did not review Radiant Oil's SEC filings:

Q Do you recall reading any public filings of Radiant?

A. No, we did not review any public filings for any of the public companies.

May 22, 2012 SEC Tr. at 99:4-7.

224. Defendant Padilla testified that he was unaware that Jarkesy was a director or Radiant Oil. May 22, 2012 SEC Tr. at 82:6-8. Had Mr. Padilla reviewed Radiant Oil's 10-K for the year ended December 31, 2010, he would have known that Defendant Jarkesy was a director of Radiant Oil.

225. Both the SEC forms 10-K for America West and Radiant disclosed that Fund I was a related party. Yet in the Funds financial statements there was no such disclosure.

226. MFR knew of, or recklessly ignored, the information available regarding the financial condition both America West and Radiant Oil. Similarly, MFR knew or recklessly ignored the negative financial condition of Galaxy, alleged above.

227. Defendants MFR and Padilla should have utilized a specialist to evaluate the life insurance policy valuation of the Funds because MFR and Padilla's they did not have expertise to perform and/or evaluate such valuations.

228. Accordingly, MFR should have but failed to utilize any professional skepticism in performing the audit of the Funds. Given MFR's departures from GAAS and its knowing or reckless disregard of red flags, MFR essentially performed no audit at all of the financial statements of Fund I as of and for the years ended December 31, 2009 and 2010, and essentially performed no audit at all of the financial statements of Fund II as of and for the year ended December 31, 2010.

229. For the reasons set forth above, the financial statements issued by Fund I as of and for the years ended December 31, 2009 and 2010, and Fund II for the year ended December 31, 2010 failed to comply with GAAP and GAAS because they overstated the Funds' assets, partners' capital and results of operations, specifically, the Funds' Statement of Assets and Liabilities and Schedule of Investments materially overstated the reported values of, among

others, common stock, transferable insurance policies, and promissory notes, thereby materially overstating the Funds' results of operations and partners' capital, and further, the financial statements failed to disclose related party transactions.

V. DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS

230. Plaintiffs repeat and reallege the allegations above as if set forth fully in this section.

231. Plaintiffs bring this action derivatively in the right and for the benefit of the Funds to redress injuries suffered, as a direct and proximate result of the breaches of fiduciary duties and the aiding and abetting of breaches of fiduciary duties alleged herein.

232. Plaintiffs will fairly and adequately protect the interests of the Funds and their respective limited partners and has retained counsel competent and experienced in derivative litigation.

233. Mr. Rodney has been a limited partner of Fund I since 2007.

234. Mr. Debus has been a limited partner of Fund II since 2010.

235. Plaintiffs will continue to vigorously and conscientiously litigate this action and fulfill their responsibilities in representing the Funds' interests.

236. Because of the facts alleged in this complaint, under the laws of Delaware, a pre-suit demand on the Funds' general partner JTMC, which is managed by Jarkesy, to bring this action is excused because such a demand would have been a futile and useless act.

237. The Funds' general partner is JTMC, whose sole managing member is Defendant Jarkesy. For the reasons alleged herein, Jarksey was not disinterested or independent. Because Jarkesy is not independent or disinterested, demand is futile and thus excused for all claims.

238. Jarkesy's conduct is such that board approval cannot meet the test of business judgment, and a substantial likelihood of his liability exists.

239. JTMC is controlled by Jarkesy and JTMC is beholden to him.

240. JTMC and Jarkesy face a substantial likelihood of personal liability arising from their breaches of fiduciary duties and waste of assets.

241. JTMC and Jarkesy exhibited a systematic failure to fulfill their fiduciary duties, which could not have been an exercise of good faith business judgment and amounted to bad faith, intentional or willful conduct, and gross negligence and/or recklessness.

242. Jarkesy faces substantial personal liability because of his failure to put in place or enforce appropriate controls necessary to assure that all actions were in the best interest of the Funds.

243. Additionally, Jarkesy and JTCM are and will continue to be, subjected to investigations and lawsuits for the actions alleged herein by the SEC.

244. For these reasons, JTCM and Jarkesy's ability to validly exercise their business judgment is impaired and they are incapable of reaching an independent decision as to whether to accept a demand by Plaintiffs to pursue claims on behalf of the Funds against themselves.

COUNT I

Breach of Fiduciary Duties
Against JTCM and Jarkesy

245. Plaintiffs repeat and reallege the allegations above as if set forth fully herein.

246. Defendants JTCM and Jarkesy were fiduciaries to the Funds and their respective limited partners.

247. Defendants JTCM and Jarkesy have violated their fiduciary duties of care, loyalty, and candor owed to the Funds and their respective limited partners by the acts and conduct alleged herein, and acted each intentionally, willfully or with at least gross negligence.

248. Due to the breaches of fiduciary duties by Defendants JTCM and Jarkesy, the Funds and their respective limited partners have been damaged. Plaintiffs seeks all damages available under the law.

COUNT II

Aiding and abetting Breach of Fiduciary Duties Against JTF, ATB, Belesis, MFR, Padilla and Doeren Mayhew, DM Texas, and South Padre

249. Plaintiffs repeat and reallege the allegations above as if set forth fully herein.

250. Plaintiff Debus alleges this claim against Defendants JTF, ATB, Belesis, MFR, Padilla and Doeren Mayhew, DM Texas, and South Padre. Plaintiff Rodney alleges this claim against Defendants MFR, Padilla, Doeren Mayhew, DM Texas, and South Padre.

251. As alleged above, Defendants JTCM and Jarkesy breached their fiduciary duties to the Funds. JTF, Belesis, ATB, Padilla and MFR colluded or aided and abetted the breaches of fiduciary duties alleged above, and were active and knowing participants in such breaches of fiduciary duties.

252. Such breaches of fiduciary duties could not and would not have occurred but for the conduct of Defendants JTF, Belesis, ATB, Padilla and MFR who, therefore, aided and abetted such breaches of fiduciary duties.

253. Belesis, and therefore JTF and ATB, was an active and knowing participant in JTCM's and Jarkesy's breaches of fiduciary duties. For example, Belesis as well as other JTF

employees and officers, monitored the performance of the Funds and received copies of account statements transmitted to limited partners.

254. As set forth above, MFR knew that its audits were on behalf of the limited partners of the Funds. MFR and Padilla ignored red flags and failed to exercise professional skepticism, among other violations of GAAS, in issuing clean audit opinions for Fund I for 2009 and 2010, and a clean audit opinion for Fund II for 2010. MFR's false audit opinions allowed Jarkesy, Belesis, JTF to reap unwarranted fees and concealed the truth about the Funds' financial condition.

255. Jarkesy's and JTCM's breaches of fiduciary duties to the Funds' partners could not and would not have occurred or continued but for the conduct of MFR and Padilla, and Belesis, JTF and ATB Holding.

256. Due to the unlawful acts of Defendants JTF, Belesis, ATB and MFR, the Funds have been damaged.

257. Defendants are jointly and severally liable. Plaintiffs seeks all damages available under the law.

COUNT III

Against the JTCM and Jarkesy for Waste

258. Plaintiffs repeat and reallege the allegations above as if set forth fully herein.

259. As alleged above, JTCM's and Jarkesy's excessive fees and payments to Jarkesy, Belesis and JTF constitute a waste of the Funds' assets.

260. The facts alleged above raise a reasonable doubt as to whether the fees and transactions were so one-sided as to be beyond the outer limit of JTCM and Jarkesy's discretion. Because of the JTCM and Jarkesy's waste of partnership assets, they are liable to the Funds.

Plaintiffs seeks all damages available under the law.

COUNT IV

Against MFR and Juan Padilla for Professional Negligence

261. Plaintiffs repeat and reallege the allegations above as if set forth fully herein.

262. Defendants MFR and Padillia owed the Funds, their clients, a common law duty to exercise reasonable care. Their duty to the Funds is as a result of the contract for professional services.

263. This duty of reasonable care requires the accountant to exercise the degree of care, skill, and competence that reasonable members of the profession would exercise under similar circumstances.

264. As set forth above, Defendants MFR and Padilla breached that duty by failing to comply with recognized industry standards in connection with the audits of Fund I for the years ended December 31, 2009, and 2010, the audit of Fund II for the year ended December 31, 2010.

265. Defendants MFR's and Padilla's breach was an actual cause of injury to the Funds, and in fact caused actual injury to the Funds. Plaintiffs seeks all damages available under the law.

COUNT V

Against all Defendants for Civil Conspiracy

266. Plaintiffs repeat and reallege the allegations above as if set forth fully herein.

267. Plaintiff Debus alleges this claim against all Defendants. Plaintiff Rodney alleges this claim against Defendants JTCM, Jarkesy, MFR, Padilla, Doeren Mayhew, DM Texas, and South Padre.

268. Defendants engaged in a civil conspiracy through their combination.

269. The object of the combination was to accomplish an unlawful purpose, or a lawful purpose by unlawful means.

270. Defendants had a meeting of the minds on the object and/or course of action.

271. One or more of the members committed an unlawful, overt act to further the object and/or course of action. Namely, Defendants Jarkesy and JTCM breached their fiduciary duty, and were aided and abetted by Defendants Belesis, JTCM, ATB Holding, MFR and Padilla.

272. As a proximate result of these wrongful acts, Plaintiffs suffered injury in an amount exceeding the jurisdictional minimum of this Court. In addition, Defendants committed the foregoing acts with the kind of willfulness, wantonness, and/or malice for which the law allows the imposition of exemplary damages, for which Plaintiffs sue.

273. Plaintiffs are entitled to their money damages, exemplary damages, pre and post-judgment interest, and costs.

274. Defendants are jointly and severally liable. Plaintiffs seeks all damages available under the law.

COUNT VI

Against MFR for Breach of Contract

275. Plaintiffs repeat and reallege the allegations above as if set forth fully herein.

276. MFR's engagement letters for Fund I for the years ended December 31, 2009 and 2010, and the engagement letter for Fund II for the year ended December 31, 2010 promised that "[t]he objective of our audit is the expression of an opinion about whether your financial statements are fairly presented, in all material respects, in conformity with U.S. generally accepted accounting principles. Our audit will be conducted in accordance with auditing

standards generally accepted in the United States of America.

277. As set forth above, MFR's audits were not in conformity with GAAP and GAAS.

278. MFR's breaches of contract caused damage to the Funds. Plaintiffs seeks all damages available under the law. Additionally, Plaintiffs are entitled to and seek recovery of their reasonable attorneys' fees and expenses expended in prosecuting this claim through trial and any appeals.

COUNT VII

Against Jarkesy and JTCM for Breach of Contract

279. Plaintiffs repeat and reallege the allegations above as if set forth fully herein.

280. The June 1, 2007 PPM promised limited partners in Fund I that the "total investment of the Partnership in any one company at any one time will not exceed 5% of the aggregate Capital Commitments.

281. In breach of the PPM, as of December 31, 2008, 33% of Fund I was invested in America West common stock, 9% was invested in Sahara Media Holdings, Inc. common stock and 9% was invested in Sahara Media Holdings, Inc. restricted common stock.

282. In breach of the PPM, as of December 31, 2009, 12% of Fund I was invested in Amber Alert Safety Centers, Inc. common stock, 25% in Amber Ready Inc. restricted common stock, 9% in America West common stock, and 10% was invested in America West restricted common stock.

283. In breach of the PPM, as of December 31, 2010, 10% of Fund I was invested in America West common stock, 16% was invested in America West restricted common stock, and 25% in Radiant Oil.

284. As set forth above, JTCM and Jarkesy promised to acquire life insurance

policies with a fact value of 117% or more of the aggregate capital commitments.

285. As set forth above, JTCM and Jarkesy failed to do so in breach of their promise.

286. Defendants' breaches of contract caused damage to Fund I. Plaintiffs seeks all damages available under the law. Additionally, Plaintiffs are entitled to and seek recovery of their reasonable attorneys' fees and expenses expended in prosecuting this claim through trial and any appeals.

JURY TRIAL DEMANDED

287. Plaintiffs have demanded a jury trial and have tendered the fee.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that Doeren Mayhew Texas, PLLC and South Padre Ventures 2, LLC be cited to appear and answer herein, and for the Court to award Plaintiffs the following relief:

A. Determining that this action is a proper derivative action maintainable under law and demand is excused;

B. Awarding against all Defendants and in favor of Funds the damages sustained by the Company as a result of the alleged breaches of fiduciary duties, aiding and abetting of such breaches, breaches of contract, professional negligence, and civil conspiracy;

C. Awarding the Funds restitution from Defendants and ordering disgorgement of all profits, benefits, and other compensation obtained by the Defendants;

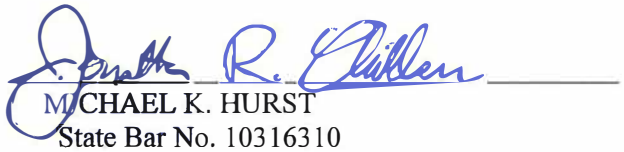
D. Directing the Funds to take all necessary actions to reform and improve its governance and internal procedures, to comply with the Company's existing governance obligations and all applicable laws, including the removal of Jarkesy and JTCM as general partner, and to protect the Funds from a recurrence of the damaging events described herein;

E. Awarding to Plaintiffs the costs and disbursements of the action, including reasonable attorneys' fees, accountants' and experts' fees, costs, and expenses; and

F. Granting such other and further relief as the Court deems just and proper.

Dated: March 10, 2015

GRUBER HURST JOHANSEN HAIL SHANK LLP

By: 

MICHAEL K. HURST
State Bar No. 10316310
mhurst@ghjhlaw.com
JONATHAN R. CHILDERS
State Bar No. 24050411
jchilders@ghjhlaw.com
MICHAEL T.E. KALIS
State Bar No. 24092606
mkalis@ghjhlaw.com

1445 Ross Avenue, Suite 2500
Dallas, Texas 75202
Telephone No. (214) 855-6800
Facsimile No. (214) 855-6808

KAPLAN FOX & KILSHEIMER LLP
Jeffrey P. Campisi (admitted pro hac vice)
850 Third Avenue
New York, NY 10022
Telephone No. (212) 687-1980
Facsimile No. (212) 687-7714
jcampisi@kaplanfox.com

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

The undersigned certifies that on this 10th day of March, 2017, a true and correct copy of the foregoing document was served on the following counsel of record as indicated:

Via ECF and E-Mail
Frank L. McElroy, Esq.
Adaeze J. Ugwu, Esq.
Hope K. Everett, Esq.
FORREST LAW GROUP, P.C.
One Greenway Plaza, Suite 1003
Houston, Texas 77046
frank@forrestlawgroup.com

Counsel for Defendant MFR, P.C. and Defendant Doeren Mayhew & Co., P.C.

Via ECF and E-Mail
Andrew M. Edison
EDISON, MCDOWELL & HETHERINGTON LLP
Phoenix Tower
3200 Southwest Freeway, Suite 2100
Houston, Texas 77027
andrew.edison@emhllp.com

Counsel for Defendant George R. Jarkesy and Patriot28

Via ECF and E-Mail
Troy Tindal
TINDAL LAW FIRM
17225 El Camino Real, Suite 190
Houston, Texas 77058
troy@tindallawfirm.com

Counsel for Defendant Anastasios "Tommy" Belesis, ATB Holding LLC and John Thomas Financial, Inc.

Via ECF and E-Mail
Glenn R. Lemay
Joseph W. DiCecco
Gordon & Rees LLP
1900 West Loop South
Suite 1000
Houston, Texas 77027
glemay@gordonrees.com
jdicecco@gordonrees.com
Counsel for Doeren Mayhew & Co., P.C.

Jonathan R. Childers