UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-18288

In the Matter of

LAWRENCE E. PENN, III,

Respondent.

DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION AGAINST RESPONDENT LAWRENCE E. PENN, III

The Division of Enforcement hereby moves for summary disposition pursuant to Rule 250 of the Securities and Exchange Commission's Rules of Practice [17 C.F.R. § 201.250]. The Division respectfully submits that summary disposition is appropriate and that the Court should resolve this proceeding in favor of the Division by finding that it is in the public interest to permanently bar respondent Lawrence E. Penn, III from associating with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization. In support of this Motion, the Division relies upon the accompanying memorandum of law and the Declaration of Karen E. Willenken. The Division respectfully requests that the Court grant this motion.

Dated: New York, New York
November 27, 2018

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Certificate of Service

I hereby certify that I served (1) the Division of Enforcement's Motion for Summary Disposition Against Respondent and Supporting Memorandum of Law, dated November 27, 2018 (the "Motion"); and (2) the Declaration of Karen E. Willenken, dated November 27, 2018, and all exhibits attached thereto on this 27th day of November, 2018, on the below parties by the means indicated:

Lawrence E. Penn, III
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(By Email and UPS)

Brent Fields, Secretary
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The Honorable James E. Grimes
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Karen Willenken

Karen E. Willenken
Senior Counsel

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-18288

In the Matter of

LAWRENCE E. PENN, III,

Respondent.

MEMORANDUM OF LAW IN SUPPORT OF THE DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION

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The Division of Enforcement ("Division") moves, pursuant to Rule 250 of the Securities and Exchange Commission's ("Commission") Rules of Practice, for summary disposition on the claims in the Order Instituting Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940 and Notice of Hearing, instituted on November 20, 2017 ("OIP," Ex. 1[1]), against Respondent Lawrence E. Penn, III ("Penn" or "Respondent"), and respectfully seeks the relief further set out below.

INTRODUCTION

In March 2015, Respondent pled guilty, in New York Supreme Court, to one count of grand larceny in the first degree and one count of falsification of business records. (Ex. 4). Respondent's conviction arose from his misappropriation, by submitting false invoices for purported due diligence services never actually provided, of over $9 million from a private equity fund he advised. Evidencing the egregiousness of his conduct, the Court in that case (the "Criminal Case") sentenced Penn to serve two to six years in prison and to pay restitution of $8,362,974. (Ex. 6 at 1).

In a related civil action filed by the Commission in the Southern District of New York (14 Civ. 0581, the "Civil Action"), Penn was found to have violated Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 promulgated thereunder ("Rule 10b-5"), Sections 206(1) and (2) of the Investment Advisers Act of 1940 ("Advisers Act"), and Section 204 of the Advisers Act and Rule 204-2 thereunder (collectively, the "Anti-Fraud Provisions"). (Ex. 12 (Order of Dec. 22, 2016 granting summary judgment ("SJ Order") at 12-15). He was permanently enjoined from further violations of the Anti-Fraud Provisions (Ex.

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[1] All exhibits referenced in this memorandum of law are attached to the Declaration of Karen E. Willenken, dated November 27, 2018, and filed herewith.

13 (Order of Aug. 22, 2017 imposing injunction ("Inj. Order")) at 5) and subsequently was ordered to pay disgorgement of $9,286,916.65, prejudgment interest of $1,878,064.28, and a civil penalty of $9,286,916.65 (Exs. 14, 15 (Order of Sept. 14, 2018 and Final Judgment dated Oct. 1, 2018)).

The purpose of this proceeding is to determine what remedies, if any, are warranted based on the established facts of Penn's criminal conviction and permanent injunction from further violations of the securities laws. On November 7, 2018, Penn filed an amended Answer to the OIP in which he denies the Division's allegations that the conviction and permanent injunction have occurred. He also asserts various affirmative defenses, which make clear that his claim is not that he was never convicted or enjoined, but that the outcomes of these proceedings were somehow invalid—claims that constitute an impermissible collateral attack. Because the accuracy of the OIP's relevant allegations is proven by documentary evidence, of which official notice may be taken, and because none of Penn's purported affirmative defenses raises a material issue of fact, an evidentiary hearing is not necessary here.

Based on Penn's conviction, the civil injunction against him, and the other documents in the record, it is apparent that summary disposition is appropriate and that Respondent Penn should be permanently barred from associating with any broker, dealer, investment advisor, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

BACKGROUND AND PROCEDURAL HISTORY

A. Respondent's Involvement in the Securities Industry

In his career in finance, Penn has worked for the New York State Common Retirement Fund, for JP Morgan Securities, Inc., and Lazard Freres & Co. LLC. He obtained a Series 7

license in 2001. (Ex. 20). Respondent has claimed that he managed more than $500 million of committed capital while acting as a Portfolio Manager in the Private Equity Group of JP Morgan. (Ex. 21).

From 2010 through 2013, Respondent owned and controlled entities Camelot Acquisitions Secondary Opportunities Management LLC ("CASO Management") and Camelot Group International LLC ("CGI"). Penn owned approximately 99% of each of these entities. (Ex. 10 (Answer in the Civil Action, dated April 8, 2016 ("Civ. Ans.") at Counterclaims ¶ 4)). CASO Management was a registered investment adviser, and CGI was "an affiliate." (*Id.* at ¶¶ 2, 4, 16).

As Managing Member and Managing Director of CASO Management, Respondent had primary responsibility for all business decisions made on behalf of Camelot Acquisitions Secondary Opportunities L.P. (the "Fund"). (*Id.* at ¶ 17). As Managing Member and Managing Director of the Fund's General Partner, Camelot Acquisitions Secondary Opportunities GP, LLC, Respondent also had primary responsibility for all investment decisions made on behalf of the Fund. (*Id.*).

CASO Management registered with the Commission as an investment adviser on September 14, 2012. (Ex. 22). Its registration was cancelled by the Commission on January 8, 2016. (Ex. 23).

In the Civil Action, the Court found that Penn was acting as an investment adviser when he carried out his scheme to defraud the Fund. (Ex. 12 (SJ Order) at 14).

B. <u>The Scheme and the Attempted Cover-Up</u>

As alleged in the Commission's Complaint, and later documented in declarations submitted to the Court in the Civil Action, between 2010 and 2013 Respondent and his co-defendant, Altura St. Michael Ewers ("Ewers"), manufactured false invoices for purported due

diligence services that were never provided to the Fund. (Ex. 9 at ¶ 2). The purported service provider, Ssecurion LLC ("Ssecurion"), an entity controlled by Ewers, received payments from the Fund in satisfaction of these fraudulent invoices. (*Id.*). Respondent directed that most of the proceeds of the false invoices then be transferred to CASO Management and CGI, his wholly-controlled entities. (*Id.* at ¶ 3).

Respondent filed an Answer in the Civil Action in which he admitted most of the facts alleged by the Commission, but argued that this conduct did not violate the securities laws. Specifically, he admitted that "approximately all of the $9.3 million was sent from the Fund to CASO Management or CGI through Ssecurion" (Ex. 10 (Civ. Ans.) at 3d Aff. Def.), and he admitted that the bulk of the $9.3 million—all but a few hundred thousand dollars—had been kicked back to CASO Management and CGI. And he did not allege that actual due diligence services had been rendered in exchange for these payments; rather, he claimed that these payments were "advances on management fees" without pointing to any provision of the Fund's organizational agreements that could have authorized such "advances." (*Id.* at 1st Aff. Def.).

In finding Respondent liable and enjoining him from further violations of the Anti-Fraud Provisions, the Court in the Civil Action made the following relevant findings:

- That Respondent pleaded guilty, in the Criminal Action, to having "stolen" money from the Fund. (Ex. 13 (Inj. Order) at 4).
- That Respondent had "admitted that he diverted $9.3 million from the Fund to other entities under his control via Ssecurion and used that money to pay rent and salary expenses, and that those transfers/payments were not appropriately characterized in the books and records of the Fund."[2] (Ex. 12 (SJ Order) at 3-4 and nn. 3, 9).

[2] As set forth in the Commission's moving papers in the Civil Action, using the misappropriated funds to pay rent and salary was improper because those were general expenses of the investment adviser that, under the Fund's Limited Partnership Agreement, should have been paid from the annual management fee.

- That Penn "created a sham investigations company—complete with a fake website—which he used to divert approximately $9 million in investor funds." (Ex. 13 (Inj. Order) at 4).

- That "[r]outing the money to CASO Management and CGI through Ssecurion served no legitimate purpose and was an obvious attempt to shield Penn's theft from the Fund's auditors and participants." (Ex. 12 (SJ Order) at 11, citing cases holding that routing transactions through an intermediary is "inherently deceptive").

- That the scheme "involved substantial planning and concealment." (Ex. 13 (Inj. Order) at 4).

- That Respondent's illegal conduct was "repeated" because it included 80 improper transfers over three years. (Ex. 13 (Inj. Order) at 4).

- That Respondent "was acting as an investment adviser" when he engaged in this conduct. (Ex. 13 (Inj. Order) at 14).

- That, when questioned by the auditors, Penn "provided them with fake work-product and ultimately fired" them. (Ex. 13 (Inj. Order) at 4).

- That there were no assurances against future violations because "Penn refuses to admit to this Court that what he did was wrong and he has expressed no remorse." (Ex. 13 (Inj. Order) at 4).

C. Penn's Continued Denial of Responsibility for His Misconduct

Any suggestion that Penn accepted responsibility by pleading guilty in the Criminal Action is undermined by the fact that, since his release from prison, Penn has spent all of his time vigorously attacking the criminal conviction, litigating the Civil Action, and contesting his liability in a related arbitration.

1. Penn's Meritless Challenge to His Criminal Conviction

Almost a year after entering his guilty plea in the Criminal Action, Respondent moved to vacate his conviction, arguing that it was legally impossible for him to commit "larceny" against the Fund. (*See* Ex. 7 (June 10, 2016 Order on Motion to Vacate) at 1). Penn's challenge to his conviction for grand larceny cited *People v. Zinke*, 76 N.Y.2d 8 (1990), which held that a partner's conviction for grand larceny was invalid because, under New York law, each partner in

a partnership has equal claim to all of the partnership's property. That case involved an individual who, while acting (directly, and not through any entity) as the general partner of a partnership, took some of its assets. Under New York state law, larceny involves the taking of property *in which one does not have a property interest* from one who does. In his motion to vacate his conviction, Penn argued that, because he was the general partner for the Fund, it was impossible for him to commit grand larceny.

Penn's petition overlooked two critical facts: first, that the Fund's general partner was an entity he owned—he himself had no direct, personal interest in the Fund's property; and second, that he directed that the Fund's money be transferred to two *other* entities under his control—neither of which was a partner in the Fund. Despite the fact that Penn had voluntarily pled guilty, and despite the fact that *Zinke* clearly is distinguishable from Penn's situation, Penn appealed his criminal conviction at every level of the New York state courts.

First, he moved in the Supreme Court to vacate the conviction. The judge who had presided over his case denied the motion on the grounds that Penn had provided neither the required affidavit from counsel to support his claim of ineffective assistance, nor an explanation for his inability to provide one. (Ex. 7). The court also addressed the merits of Penn's argument, stating:

> The defendant's argument that defense counsel should have argued that larceny was inapplicable, is also without merit. The People have provided sufficient information to establish that the defendant did not serve as a partner, either general or limited, of the fund at the time of the theft. Therefore, the defendant's reliance on *People v. Zinke*, 76 NY2d 8 (1990), is misplaced.

(*Id.*).

Penn appealed to the Appellate Division, which denied his appeal on the ground that Penn's voluntary guilty plea forfeited his right to appellate review of his argument about the

applicability of *Zinke*. As to the merits of the argument, the Court stated that "[T]he record before us establishes that, unlike the situation in *People v Zinke* (76 NY2d 8 [1990]), defendant adopted a form of business organization whereby he held no ownership interest in the stolen money at the time of the theft." (Ex. 8).

Ignoring the sound reasoning of *two* lower courts, Penn petitioned the New York Court of Appeals for leave to appeal, which was denied on January 31, 2018, with reconsideration denied on May 30, 2018. *People v. Penn*, 101 N.E.3d 392 (N.Y. 2018); *People v. Penn*, 103 N.E.3d 1254 (N.Y. 2018).

Although Penn has now fully exhausted his appeals in New York state courts, which have made clear that his *Zinke* argument lacks merit, he continues to assert in other proceedings that he should escape the consequences of his misconduct because his criminal conviction was invalid under *Zinke*. On October 18, 2018, Penn filed a motion in the Civil Action for relief from judgment under Rule 60(b) of the Federal Rules of Civil Procedure, based largely on an argument that summary judgment was inappropriate because his was not in accordance with the *Zinke* decision. (Ex. 16). In addition, his Answer in this proceeding raises affirmative defenses of "unclean hands," "fraud," "equitable estoppel," "illegality," and "false claims." (Ex. 3 at 3-5) Penn claims that "SEC Enforcement conspired with members of the Manhattan District Attorney and the federal district court by acting under the color of state law to secure a conviction in conflict with law [that was] used to secure an unlawful summary judgment." (*Id.* at 3). Penn continues to assert his meritless *Zinke* argument yet again, in this proceeding, despite having been told by multiple New York state courts that it lacks merit.

2. Penn's Inconsistent Justifications for His Conduct

In his answer in his Civil Case, Penn conceded that the almost $9.3 million of payments to Ssecurion were not payments for due diligence services, claiming that they were instead "advances on management fees." (Ex. 10 (Civ. Ans.) at 17, 3rd Aff. Def.). In his response to the Commission's motion for summary judgment, Penn continued to make this argument, claiming that all payments made were "management fees" that he could spend as he pleased, and pointing out that "advances" were not precluded by the Fund's partnership agreement. (Ex. 11 at 14-16).

Subsequently, the Fund filed suit against Penn, seeking the return of the $9.3 million he had misappropriated, as well as the approximately $6 million in management fees Penn charged while engaging in his disloyal conduct. The lawsuit was submitted to arbitration (American Arbitration Association Case No. 01-17-0000-6981, the "Arbitration"), and a hearing was conducted from April 20, 2018 through May 1, 2018. In that hearing, Penn claimed that his co-conspirator had, in fact, provided due diligence services (Ex. 17 (Transcript of Arbitration Hearing ("Arb. Tr.") on April 10, 2018 at 54:23–57:13))—despite the fact that in the Civil Action, he had claimed the payments were "advances" on management fees.[3]

3. Penn's Attempts to Blame Others

Not only has he refused to accept responsibility, but Penn repeatedly has pointed the finger of blame at others. Although he pled guilty to the criminal charges against him on the advice of highly regarded and experienced criminal counsel, Penn later claimed that his criminal counsel was ineffective for letting him plead guilty instead of arguing that he was not guilty of grand larceny under the *Zinke* decision.

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[3] Penn's claims in the arbitration proceeding are especially ludicrous because his co-conspirator, Altura S. Ewers, had pled guilty to criminal charges for his role in the conspiracy and had filed an affidavit in which he admitted that he had not provided any due diligence services. (*See* Ex. 5).

Penn also attempted, in the Civil Action, to file counterclaims against individual employees of both the Commission and the District Attorney's office, alleging that they had conspired with one another to bring charges against him, despite knowing that *Zinke* precluded his liability for grand larceny. (Ex. 10 (Civ. Ans. at 24). Remarkably, Penn makes the same argument in his Answer in this proceeding, accusing the Division of "unclean hands" even after the New York courts at every level have held that *Zinke* did not apply to Penn's conduct. (Ex. 3 (OIP Answer) at 3-4).

4. Penn's Failure to Make Restitution

Penn has made no effort to right the wrongs he has committed. His criminal plea deal provides that he is only required to pay restitution if he has an income. Penn has not seriously attempted to find a job and has not had any income since leaving prison. (Ex. 18 (Penn Depo. at 61:1–62:23) (Penn called "maybe one or two" headhunters before giving up on finding a job); 63:2–6 (Penn has had no income)). When asked during the Arbitration whether he ever intended to get a job, Penn responded that the continuation of his spurious litigation with the Commission and the Fund somehow prevented him from earning any income to pay back defrauded investors. (Ex. 19 (Arb. Tr.) on April 13, 2018 at 1315:1–4 ("Can't get a job because I have these legal cases that I intend to fight to the end.")).

Pursuant to the Final Judgment in the Civil Action, Penn was ordered to pay disgorgement, prejudgment interest, and a civil penalty within 14 days after entry of the judgment. (Ex. 15 (Final Judgment) at 4-6). To date, Penn has not made any payments pursuant to the judgment, nor has he provided any indication of when he might make such payments. (Willenken Decl. at ¶ 16).

5. Penn's Lack of Remorse

As the district court observed in its order determining the amount of disgorgement and penalty to be assessed against Penn in the Civil Action, Penn has demonstrated a "complete lack of remorse," insisting that "this proceeding is part of a conspiracy among the District Attorney, the SEC, and the Fund's current managers to steal the Fund from him. . . ." (Ex. 14 (Sept. 14, 2018 Order) at 13).

Penn was asked directly in the Arbitration: "Isn't it right, you are unremorseful to conduct to which you pled guilty, right?" Tellingly, he refused to answer: "That, after all this, doesn't even warrant an answer." (Ex. 19 (Arb. Tr.) at 1346:25–1347:11).

D. The Follow-On Administrative Proceeding

On November 20, 2017, the Commission instituted this follow-on proceeding pursuant to Section 203(f) of the Advisers Act. The OIP requires the Administrative Law Judge to determine whether the OIP's allegations against the Respondent are true and what remedial action is appropriate in the public interest against him pursuant to Section 203(f) of the Advisers Act. (Ex. 1 at III). Respondent has been served with the OIP. (Ex. 2.) Penn initially answered the OIP on January 2, 2018.

An initial decision was issued by Administrative Law Judge Carol Fox Foelak on June 20, 2018. The next day. the Supreme Court issued its decision in *Lucia v. SEC*, 585 U.S. ___ (June 21, 2018), which called into question the process by which administrative law judges had been appointed. The Commission subsequently re-appointed its administrative law judges, and ordered that certain respondents, including Penn, be provided with an opportunity to have their matters heard before a new administrative law judge. *See* IA Rel. No. 4993 (Aug. 21, 2018). Consistent with that order, this matter was reassigned to this Court on September 12, 2018 (Rel.

No. AP-5955). A pre-hearing conference was held on October 24, 2018, and on October 26, 2018, a scheduling order was entered. (Rel. No. AP-6260). Pursuant to that Order, Penn filed his amended answer (the "OIP Answer")[4] on November 7, 2018.[5] (Ex. 3).

In his Answer, Penn admitted that, from March 2010 through October 2013, he was the managing director of CASO Management.[6] (*Id.* at 2). Penn denied: (i) that he had been enjoined pursuant to the judgment entered in the Civil Action on August 22, 2017, and (ii) that he had pled guilty in the Criminal Action, was ordered to pay restitution and was sentenced to a term of imprisonment. (*Id.* at 2-3). He also raised five affirmative defenses, all but one of which appears to rest on the purported invalidity of his criminal conviction. (*See id* at 3-5).

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4 Although Penn titled his November 7, 2018 filing an "Answer and Motion for More Definitive Statement," it is unclear whether he actually is requesting one. Under the caption "reservation of rights," he "reserves all rights . . . to motion for more definitive statement. . . ." (Ex. 3 at 1). On the next page, under the caption "Motion for More Definitive Statement," he requests, pursuant to the Commission's Rules of Practice, "specifically Rule 220(e)," "to enter a motion with a definitive statement of specified matters of fact or law to be considered." (Ex. 3 at 2). It appears that Penn intended to reference Rule 220(d), which provides that a "party may file with an answer a motion for a more definite statement of specified matters of fact or law to be considered or determined." The Rule goes on to state, however, that the "motion shall state the respects in which, and the reasons why, each such matter of fact or law should be required to be made more definite." As Penn's OIP Answer fails to do so, it should not be construed as a motion for a more definite statement or, if it is construed as one, the motion must be denied.

5 In contravention of the parties' agreement, as reflected in the Order of October 26, 2018, Penn served the Division by U.S. postal service, and not by electronic mail. Accordingly, the Division first received Penn's amended Answer on November 13, 2018.

Penn's certificate of service failed to comply with the requirements of Rule 151(d) of the Commission's Rules of Practice, in that it did not: a) specify whether he had served the Division by mail or by electronic mail; or b) explain why he used a different method of service (mail only) for the Division than he used for filing with the Office of the Secretary (mail plus electronic mail).

6 Penn further denied that CASO Management was a registered investment adviser from March 2010 through October 2013. The OIP did not explicitly allege that CASO Management had been registered for that period, but rather that Penn had been managing director during that time. The OIP alleged that CASO Management was a registered investment adviser. The period during which CASO Management was a registered investment adviser was from September 2012 through January 2016. Penn's denial of the allegation in the OIP appears to be directed at how the OIP was drafted, rather than at any relevant fact. In his answer to the civil complaint, Penn admitted that CASO Management was an investment adviser under Penn's control.

LEGAL ARGUMENT

A. Summary Disposition Is Appropriate In This Proceeding.

Rule 250(a) of the Commission's Rules of Practice permits the Division, with leave of the hearing officer, to move for summary disposition of any of the OIP's allegations. Rule 250(b) provides for summary disposition if there is "no genuine issue with regard to any material fact and the party making the motion is entitled to a summary disposition as a matter of law." Summary disposition is particularly appropriate here as the underlying facts at issue have already been litigated and determined in the Criminal Action and the Civil Action, and the sole issue for determination "concerns the appropriate sanction." *In the Matter of Toby G. Scammell*, IA Rel. No. 3961, 2014 WL 5493265, at *3 n.17 (Comm. Op. Oct. 29, 2014) ("We have repeatedly upheld the use of summary disposition in circumstances where a respondent has been enjoined or convicted and the sole determination concerns the appropriate sanction").

Although Penn denies the allegations of the OIP, each element necessary to dispose of this case is proven by documents of which official notice may be taken pursuant to 17 C.F.R. § 201.323, including Financial Industry Regulatory Authority, Inc. ("FINRA") records, the Commission's public official records, and the documents and court orders filed in *SEC v. Penn* and *People v. Penn*. *See, e.g., Joseph S. Amundsen*, Exch. Act Rel. No. 69406, 106 S.E.C. Docket 366, at *1 n.1 (Apr. 18, 2013), *pet. denied*, 575 F. App'x 1 (D.C. Cir. 2014) (FINRA records); *Charles F. Lewis*, Exch. Act Rel. No. 60025, at *1 n.1, 95 S.E.C. Docket 2703 (June 2, 2009) (documents filed in civil and criminal court cases).

B. A Permanent Bar Is Warranted.

Advisers Act Sections 203(e)-(f) provide that the Commission may bar from association with various securities-related industries: (1) a respondent who at the time of the alleged

misconduct was associated with an investment adviser (§ 203(f)); (2) if such bar is in the public interest (*Id.*); and (3) respondent has, *inter alia*, (a) been convicted, "within ten years of the commencement of the proceedings under this subsection" (*Id.*) of "any felony or misdemeanor . . . which the Commission finds" (§ 203(e)(2)) "involves the larceny, theft . . . fraudulent concealment . . . or misappropriation of funds . . . " (§ 203(e)(2)(C)); or (b) been enjoined from any action, conduct, or practice (§ 203(f)) in connection with the purchase or sale of any security (§ 203(e)(4)).[7]

Respondent's criminal conviction for larceny establishes one basis for relief.[8] The Court's issuance in the Civil Action of an injunction against Penn prohibiting future violations of the Anti-Fraud Provisions establishes an additional, independent basis for relief. Moreover, facts determined in the two prior proceedings demonstrate that an unqualified collateral bar is in the public interest.

In determining whether a particular sanction is in the public interest, the Commission considers six factors: (1) the egregiousness of Respondent's actions; (2) the isolated or recurrent nature of the infractions; (3) the degree of scienter involved; (4) Respondent's recognition of the wrongful nature of his conduct; (5) the sincerity of the Respondent's assurances against future violations; and (6) the likelihood that Respondent's occupation will present opportunities for future violations. *See In the Matter of Edgar R. Page and PageOne Financial Inc.*, IA Rel. No.

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7 Because Penn's injunction, conviction, and most of his underlying conduct occurred after July 22, 2010, the effective date of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Penn can be barred from all securities-related industries—not just those with which he was associated at the time of his conduct.

8 It is of no moment that the crime of which he was convicted did not, on the face of the indictment, involve securities or the investment advisory business. The Commission "has long barred individuals based on convictions involving dishonesty that are not even securities-related." *In the Matter of Toby G. Scammell*, ID Rel. No. 516, 2013 WL 5960707, at *4 (Nov. 7, 2013), *aff'd at* IA Rel. No. 3961, 2014 WL 5493265 (Comm. Op. Oct. 29, 2014), *citing Kornman v. SEC*, 592 F.3d 173, 180 (D.C. Cir. 2010).

4400, 2016 WL 3030845, at *5 (Comm. Op. May 27, 2016). The inquiry is "flexible, and no one factor is dispositive." *Id.* However, Respondent—who has been convicted of multiple crimes—faces an extremely high bar to remaining in the industry. It is well established that "[a]bsent extraordinary mitigating circumstances" a conviction for offenses involving fraud necessitates a bar. *In the Matter of Eric S. Butler*, ID Rel. No. 413, 2011 WL 174245, at *3 (Jan. 19), *aff'd*, Exch. Act Rel. No. 3262, 2011 WL 3792730 (Aug. 26, 2011); *see also In the Matter of Gilles T. de Charsonville*, ID Rel. No. 996, 2016 WL 1328931, at *4 (Apr. 5, 2016) ("The public interest requires a severe sanction when a respondent's past misconduct involves fraud because opportunities for dishonesty recur constantly in the securities business."). So it is here, where all six factors require a full associational bar against Respondent.

Even if Respondent's criminal conviction for grand larceny were not considered to have involved fraud, the injunction in the Civil Action would itself be sufficient to establish a presumption in favor of barring the Respondent. "[O]rdinarily, and in the absence of evidence to the contrary, it will be in the public interest to revoke the registration of, or suspend or bar from participation in the securities industry a respondent who is enjoined from violating the antifraud provisions." *Marshall E. Melton*, IA Rel. No. 2151, 2003 WL 21729839, at *9 (July 25, 2003).

The facts of this case, as established by Respondent's plea in the Criminal Action and by the findings of the Court in the Civil Action, demonstrate that each of the factors considered by the Commission weighs in favor of imposing all applicable bars against Respondent.

1. The Conduct at Issue Was Egregious

The Court in the Civil Action found that Penn's conduct was egregious. In particular, the Court noted that Respondent had "created a sham investigations company—complete with a fake website—which he used to divert approximately $9 million in investor funds." (Ex. 13 (Inj.

Order) at 4). The amount of restitution ordered in the Criminal Action, $8,362,974 (Ex. 6), and the penalty ordered in the Civil Action, over $9 million (Exs. 14-15), further demonstrates the egregiousness of Respondent's conduct. *See, e.g.*, *Frank L. Constantino*, ID Rel. No. 414, 2011 WL 1341151, at *5 (Apr. 8, 2011) (degree of harm caused is "at least minimally quantified by the $2.5 million that the court ordered in restitution"); *Richard P. Callipari*, ID Rel. No. 237, 2003 WL 22250402, at *5 (Sept. 30, 2003) (causing losses of approximately $428,000 was egregious).

2. The Conduct Was Recurrent

Respondent's illegal conduct was "repeated" because it included 80 improper transfers over three years. (Ex. 13 (Inj. Order) at 4). Commission precedent establishes such conduct as recurrent, rather than isolated in nature. *See Stephen L. Kirkland*, ID Rel. No. 875, 2015 WL 5139109, at *6 (Sept. 2, 2015); (misconduct over two years and involving ten investors recurrent); *Gordon Brent Pierce*, Sec. Act Rel. No. 9555, 2014 WL 896757, at *23 (Mar. 7, 2014) (misconduct over eight months "recurrent and long-lasting"); *Richard J. Daniello*, Exch. Act Rel. No. 27049, 1989 WL 991994, at *4 (July 21, 1989) (four months of misappropriating employer's funds was not isolated); *Callipari*, 2003 WL 22250402, at *5 (a scheme lasting several weeks constituted "recurring and egregious" behavior).

3. The Conduct Involved a High Degree of Scienter

Courts have recognized that misconduct involving fraud, like that at issue here, indicates a "high degree of scienter." *Adam Harrington*, ID Rel. No. 484, 2013 WL 1655690, at *4 (Apr. 7, 2013); *Alan Brian Baiocchi*, ID Rel. No. 382, 2009 WL 2030524, at *3 (July 14, 2009); *Callipari*, ID Rel. No. 237, 2003 WL 22250402, at *5 (Sept. 30, 2003).

Moreover, the Court in the Civil Action found that the scheme "involved substantial planning and concealment" (Ex. 13 (Inj. Order) at 4), and that "[r]outing the money to CASO Management and CGI through Ssecurion served no legitimate purpose and was an obvious attempt to shield Penn's theft from the Fund's auditors and participants." (Ex. 12 (SJ Order) at 11, citing cases holding that routing transactions through an intermediary is "inherently deceptive."). These findings establish not only that Penn defrauded his investors, but also that he attempted to mislead the Fund's auditors and otherwise conceal his misconduct.

4. Respondent Has Not Acknowledged the Wrongful Nature of His Conduct

At no point has Penn recognized the wrongful nature of his conduct. Indeed, Penn vigorously litigated the Civil Action—after having pled guilty in the Criminal Case—without raising any serious factual issues, essentially asserting that his conduct did not violate the securities laws because he hadn't intended to hurt his investors by stealing from them. (Ex. 10 (Civ. Ans.) at ¶ 1 (Penn "den[ied] to the best of his knowledge disadvantaging investors by elevating [his] interests over the investors or the Fund"); and ¶ 2 (Penn "den[ied] to the best of his knowledge and memory misappropriating moneys as defined as 'intentional use of the property or funds in order to injure investors' and admit[ted] transferring money to CGI in a manner that did not characterize the use of the fund money appropriately from late 2010 to October 2013" (quotation in original))). Further, in his Answer to the OIP, Penn refused to admit either that he was enjoined in the Civil Action or that he pled guilty in the Criminal Action. (Ex. 3 at 3-4.)

In addition, as discussed above, since being charged in this matter, Penn has lashed out at everyone involved—whether acting for or against him—claiming that they contributed in some way to his misfortunes. He has claimed that the SEC conspired with the DA's office, inducing it

to charge him, and blamed his criminal counsel for encouraging him to plead guilty. At no point has Penn accepted responsibility for the consequences of his own actions.

The "absence of recognition by [a respondent] of the wrongful nature of his conduct" favors a permanent bar. *Jonathan D. Davey, CPA*, ID Rel. No. 959, 2016 WL 537549, at *3 (Feb. 11, 2016) (granting permanent bar on motion for summary disposition in follow-on proceeding to criminal conviction); *Siming Yang*, ID Rel. No. 788, 2015 WL 2088468, at *4 (May 6, 2015) (noting, as part of grant of summary disposition and imposing of permanent bar in follow-on proceeding to civil injunction, that, "[c]onsistent with a vigorous defense of the charges, [respondent] ha[d] not recognized the wrongful nature of his conduct") *Steadman v. SEC*, 603 F.2d 1126 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91, *rehearing denied*, 451 U.S. 933 (1981).

5. Respondent Has Not Offered Assurances Against Future Violations

Respondent has presented no assurances that he would not seize another opportunity to prey upon clients, if it were to present itself. To the contrary, rather than fully acknowledging his wrongful conduct, he has appealed his criminal conviction, contested the Civil Action and contested claims by the Fund in a private arbitration—in each case, arguing that his conduct was blameless. His failure to acknowledge the wrongfulness of his conduct, together with the high degree of scienter of his crimes and his efforts to mislead the Fund's auditors, cast into doubt any assurances he may provide that he will refrain from further violations. *See, e.g., In the Matter of Toby G. Scammell*, Rel. No. 3961, 2014 WL 5493265, at *6 (Comm. Op. Oct. 29, 2014) (rejecting assurances where conduct involved high degree of scienter and acts of concealment, together with only partial acknowledgement of his wrongdoing).

Penn has expressed no remorse. (Ex. 13 (Inj. Order) at 4). Confronted with similar behavior in the recent past, the Commission found that there was "no recognition of wrongful conduct nor meaningful assurance against future violations." *In the Matter of Shervin Neman & Neman Fin., Inc.*, ID Rel. No. 1227, 2017 WL 5589224, at *8 (Nov. 20, 2017).

6. Respondent's Occupation Presents Opportunities For Future Violations

While Penn is not currently working in the securities industry, his cavalier attitude regarding his past misconduct suggests that he would choose to work in the securities industry again, if the opportunity presented itself, and once again be in a position to harm investors. The mere fact that Respondent is not currently employed in the securities industry is not relevant, as "if he were to reenter the securities industry, his occupation would present the opportunity for future violations." *In The Matter of Michael Robert Balboa*, ID Rel. No. 747, 2015 WL 847168, at *5 (Feb. 27, 2015); *see also Neman*, 2017 WL 5589224, at *8; *In the Matter of Glenn M. Barikmo*, ID Rel. No. 436, 2011 WL 4889086, at *5 (Oct. 13, 2011). Thus, the full range of bars should be imposed against Respondent.

C. Penn's Claims of Government Misconduct Lack Merit and Are Irrelevant

Penn's OIP Answer alleges affirmative defenses of "unclean hands," "fraud," "equitable estoppel," "illegality" and "false claims." (Ex. 3 at 3-5). Most of these purported affirmative defenses[9] rely on the assertion that the Division conspired with members of the Manhattan District Attorney's office (and perhaps even with the district court) to "secure a conviction in

[9] The affirmative defense of "fraud" does not appear to rely upon the purported conspiracy, but instead alleges that the Complaint in the Civil Action "used false statement and plead in conflict with Rule 9(b) of the Federal Rules of Civil Procedure." Whether the Complaint complied with Rule 9(b) is an issue that should have been raised, if at all, in a motion before the district court; it has no relevance to this proceeding. Similarly, if false statements in the Complaint somehow tainted the result in the Civil Action, that issue must be addressed in the federal courts, not through a collateral attack here.

conflict with law." It appears, therefore, that Penn intends to assert his meritless *Zinke* argument yet again, in this proceeding, despite having been told by multiple state courts that it lacks merit.

Even if Penn's argument had merit, however, it would be irrelevant because Penn cannot collaterally attack his criminal conviction in this forum. *See, e.g., Ira William Scott*, IA Rel. No. 1752, 1998 WL 611726, at *3 (Sept. 15, 1998) (Comm'n opinion) (citing previous orders). Nor does the Commission permit a respondent to relitigate issues that were addressed in a previous civil proceeding against the respondent, whether resolved by consent, by summary judgment, or after a trial. *See, e.g., John Francis D'Acquisto*, IA Rel. No. 1696, 1998 WL 40225, at *2 & n. 9 (Jan. 21, 1998) (citing cases) ("The doctrine of collateral estoppel and our case law [] preclude D'Acquisto from contesting the injunctive action here.").

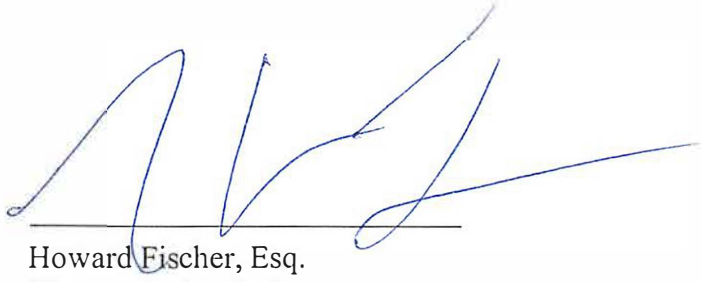
Penn now alleges that the district court in the Civil Action was part of the purported conspiracy with the Commission and the District Attorney's office. (*See* Ex. 3 at 3). He has moved for relief from the final judgment, and he likely will appeal the final judgment if and when the district court rejects his baseless motion. None of these facts, however, precludes summary disposition in this proceeding, for two reasons. First, Penn's criminal conviction—as to which Penn has unsuccessfully exhausted his appeals—provides an independent basis for the relief sought by the Division. Second, in the unlikely event that Penn obtains *vacatur* of the judgment in the Civil Action, he may petition the Commission to vacate any sanctions ordered in this proceeding (or to dismiss the proceeding, if it is still pending). *See, e.g., Richard L. Goble*, Exch. Act Rel. No. 68651, 2013 WL 150557 (Jan. 14, 2013) (dismissing follow-on administrative proceeding after court of appeals, while petition for review was pending before Commission, vacated injunction that was basis for OIP); *Kenneth E. Mahaffy, Jr.*, Exch. Act Rel. No. 68462, 2012 WL 6608201 (Dec. 18, 2012) (vacating bar issued in follow-on administrative

proceeding where court of appeals, after Commission had issued bar order, vacated criminal conviction that was basis for proceeding).

CONCLUSION

Based upon his criminal conviction and the injunction entered against him, and pursuant to the public interest, Respondent Lawrence E. Penn, III should be permanently barred from associating with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

Dated: New York, NY
November 27, 2018



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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-18288

In the Matter of

LAWRENCE E. PENN, III,

Respondent.

DECLARATION OF KAREN E. WILLENKEN

I, Karen E. Willenken, hereby declare as follows:

1. I am a member of the Bar of the State of New York and am employed as Senior Counsel in the Enforcement Division (the "Division") at the New York Regional Office of the Securities and Exchange Commission (the "Commission"). I submit this declaration in support of the Division's Motion for Summary Disposition Against Respondent Lawrence E. Penn III.

Administrative Proceeding Against Lawrence E. Penn III

2. Attached hereto as Exhibit 1 is a true and correct copy of the Order Instituting Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940 and Notice of Hearing ("OIP"), instituted on November 20, 2017.

3. Attached hereto as Exhibit 2 is a true and correct copy of proof of service of the Commission's OIP, on or about November 29, 2017.

4. Attached hereto as Exhibit 3 is a true and correct copy of the amended Answer, dated November 7, 2018, filed by Penn in this proceeding.

Criminal Action Against Lawrence E. Penn III

5. Attached hereto as Exhibit 4 is a true and correct copy of the transcript of Penn's plea in his criminal case, *People v. Penn*, dated March 16, 2015.

6. Attached hereto as Exhibit 5 is the Affidavit of Confession of Judgment of Altura S. Ewers, which was executed on March 16, 2015, in connection with the state criminal proceeding against Penn and Ewers.

7. Attached hereto as Exhibit 6 is a true and correct copy of the Certificate of Conviction for Penn's criminal conviction, dated April 20, 2015, in *People v. Penn*, No. 00073-14 (N.Y. Sup. Ct.).

8. Attached hereto as Exhibit 7 is a true and correct copy of the Decision and Order, dated June 10, 2016, of the Supreme Court of the State of New York, Laura A. Ward, J., denying Penn's motion to vacate his guilty plea in his criminal case.

9. Attached hereto as Exhibit 8 is a true and correct copy of a Decision and Order of the Supreme Court, Appellate Division, First Department, of the State of New York, dated September 26, 2017, unanimously affirming (i) the judgment convicting Penn upon his plea of guilty, and (ii) the judgment denying Penn's motion to vacate the judgment.

Civil District Court Action Against Lawrence E. Penn III

10. Attached hereto as Exhibit 9 is a true and correct copy of the Commission's complaint filed in the matter of *SEC v. Penn, et al.*, 14 Civ. 581 (S.D.N.Y.) (VEC) (the "Civil Action"), dated January 30, 2014.

11. Attached hereto as Exhibit 10 is a true and correct copy of Penn's third amended answer to the Commission's civil complaint, filed in the Civil Action on April 8, 2016.

12. Attached hereto as Exhibit 11 is a true and correct copy of a memorandum of law, filed by Penn in the Civil Action on August 15, 2016, opposing the Commission's motion for summary judgment or judgment on the pleadings.

13. Attached hereto as Exhibit 12 is a true and correct copy of a Memorandum Opinion & Order issued in the Civil Action, dated December 22, 2016, granting the Commission summary judgment with respect to its claims under Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and Sections 204, 206(1) and 206(2) of the Investment Advisers Act of 1940 and Rule 204-2 thereunder.

14. Attached hereto as Exhibit 13 is a true and correct copy of the Opinion and Order issued in the Civil Action, dated August 22, 2017, permanently enjoining Penn from further violations of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and Sections 204, 206(1) and 206(2) of the Investment Advisers Act of 1940 and Rule 204-2 thereunder.

15. Attached hereto as Exhibit 14 is a true and correct copy of an Opinion and Order issued in the Civil Action dated September 14, 2018.

16. Attached hereto as Exhibit 15 is a true and correct copy of the Final Judgment issued in the Civil Action, dated October 1, 2018, pursuant to which Penn was ordered to pay disgorgement of $9,286,916.65, prejudgment interest of $1,878,064.28, and a civil penalty of $9,286,916.65. The Final Judgment specified that payment should be made within fourteen days of entry. To date, the Commission has not received any payments, nor has it received any correspondence indicating whether or when Penn intends to make payment.

17. Attached hereto as Exhibit 16 is a true and correct copy of a document titled "Rule 60(b) Motion for Relief from Judgment and Order" filed by Penn in the Civil Action on October 9, 2018.

18. Attached hereto as Exhibit 17 is an excerpt from the transcript of Penn's testimony on April 10, 2018, in an arbitration (American Arbitration Association Case No. 01-17-0000-6981, the "Arbitration") between Penn and CM Growth Capital Partners, L.P.[1]

19. Attached hereto as Exhibit 18 is an excerpt from the transcript of Penn's deposition testimony in the Civil Action on November 28, 2017.

20. Attached hereto as Exhibit 19 are excerpts from the transcript of Penn's testimony on April 13, 2018, in the Arbitration.

21. Attached hereto as Exhibit 20 is a true and correct copy of Penn's Form U4, filed November 1, 2004, accessed, downloaded, and printed from FINRA's WebCRD site by a member of the Commission staff on January 8, 2018.

22. Attached hereto as Exhibit 21 is a true and correct copy of a page that appears to have been printed from the website of Camelot Acquisitions Secondary Opportunities Management LLC ("CASO Management") showing the biographies of team members, dated August 2, 2013. The page was produced to the Commission by an investor on March 13, 2014.

23. Attached hereto as Exhibit 22 is a true and correct copy of a page from the IARD website, showing the date of CASO Management's registration as an investment adviser. The website page was accessed and saved by a member of the Commission staff on January 8, 2014.

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[1] CM Growth Capital Partners, L.P. was formerly known as Camelot Secondary Acquisitions Opportunities, L.P. and is the entity from which Penn was found by the District Court to have misappropriated almost $9.3 million from 2010 through 2013.

24. Attached hereto as Exhibit 23 is a true and correct copy of the Commission's *Order Cancelling Registrations of Certain Investment Advisers Pursuant to Section 203(h) of the Investment Advisers Act of 1940*, Inv. Adv. Act Rel. No. 4308, dated January 8, 2016, which cancelled the registration of CASO Management.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed: November 27, 2018
New York, New York

Karen E. Willenken

INDEX OF EXHIBITS

Exh. No.	Date	Description
1	2017.11.20	Order Instituting Proceedings against Lawrence E. Penn III
2	2017.11.29	Signed receipt of mailing of OIP
3	2018.11.07	Amended Answer to Order Instituting Proceedings
4	2015.03.16	Penn Plea Minutes
5	2015.03.16	Ewers Confession of Judgment
6	2015.04.02	Penn Certificate of Conviction
7	2016.06.10	Denial of 440.10 Motion to Vacate
8	2017.09.26	App. Div. Decision on Appeal
9	2014.01.30	SEC Complaint *(Civil Action DE 1)*
10	2016.04.08	Third amended Answer of Lawrence Penn to Complaint *(Civil Action DE 134)*
11	2016.08.15	Penn Memo of Law in Resp. to SEC Mot. for Judgment on the Pleadings *(Civil Action DE 161)*
12	2016.12.21	Opinion and Order granting SEC Motion for Summary Judgment *(Civil Action DE 168)*
13	2017.08.22	Opinion and Order re Prelim. Inj., Disgorg. *(Civil Action DE 198)*
14	2018.09.14	Opinion and Order re Amount of Disgorgement and Penalty *(Civil Action DE 297)*
15	2018.10.01	Final Judgment as to Penn *(Civil Action DE 300)*
16	2018.10.09	Memo of Law in Support of Motion to Vacate *(Civil Action DE 303)*
17	2018.04.10	Excerpt of Penn Arbitration Testimony
18	2017.11.28	Excerpt of Penn Deposition Testimony
19	2018.04.13	Excerpt of Penn Arbitration Testimony
20	2004.11.01	Penn U4
21	2013.08.02	Team Biographies page from website *(KRS0003504)*
22	2012.09.14	Screenshot reflecting date of CASO Management registration
23	2016.01.08	Commission's Order Cancelling Registrations of Certain Investment Advisers *(IA Rel. No. 4308)*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4811 / November 20, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-18288

In the Matter of **LAWRENCE E. PENN, III** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940 AND NOTICE OF HEARING**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Lawrence E. Penn, III ("Respondent" or "Penn").

II.

After an investigation, the Division of Enforcement alleges that:

A.e RESPONDENTe

1.e From at least March 2010 through October 2013, Respondent was thee managing director of Camelot Acquisitions Secondary Opportunities Management, LLC, an investment adviser registered with the Commission. Respondent, 47 years old, is a resident of New York, New York.

B.e ENTRY OF THE INJUNCTION/RESPONDENT'S CRIMINAL CONVICTIONe

2.e On August 22, 2017, a final judgment was entered against Penn,e permanently enjoining him from future violations of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act, in the

civil action entitled Securities and Exchange Commission v. Penn, et al., Civil Action Number 1:14-CV-0581, in the United States District Court for the Southern District of New York

3.e The Commission's complaint alleged that, between March 2010 ande October 2013, Penn engaged in a fraudulent scheme to misappropriate approximately $9 million from a private equity fund in order to provide additional assets to Penn to spend on his business and personal expenditures.

4.e On March 16, 2015, Penn pled guilty to Grand Larceny in the First Degreee in violation of New York Penal Law § 155.42 and Falsifying Business Records in the First Degree in violation of New York Penal Law § 1175.10 before the Supreme Court of the State of New York, County of New York: Part 42 in The People of the State of New York vs. Lawrence E. Penn, III, Indictment No. 00073-14. On April 20, 2015, Penn was ordered to pay restitution in the amount of $8,362,974 and was sentenced to a prison term of two to six years.

5. The counts of the criminal information to which Penn pleaded guiltye alleged, among other things, that Penn stole over $1 million from a private equity fund in the same scheme underlying the Commission's complaint described in Paragraph 3 above.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative proceedings be instituted to determine:

A.e Whether the allegations set forth in Section II hereof are true and, in connectione therewith, to afford Respondent an opportunity to establish any defenses to such allegations; and

B.e What, if any, remedial action is appropriate in the public interest against Respondente pursuant to Section 203(f) of the Advisers Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

elf Respondent fails to file the directed answer, or fails to appear at a hearing after being dulye notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as

provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.o

This Order shall be served forthwith upon Respondent as provided for in the Commission's Rules of Practice.

IT IS FURTHER ORDERED that, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice, 17 C.F.R. § 201.360(a)(2), the Administrative Law Judge shall issue an initial decision no later than 75 days from the occurrence of one of the following events: (A) The completion of post-hearing briefing in a proceeding where the hearing has been completed; (B) Where the hearing officer has determined that no hearing is necessary, upon completion of briefing on a motion pursuant to Rule 250 of the Commission's Rules of Practice, 17 C.F.R. § 201.250; or (C) The determination by the hearing officer that a party is deemed to be in default under Rule 155 of the Commission's Rules of Practice, 17 C.F.R. § 201.155 and no hearing is necessary.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

For the Commission, by its Secretary, pursuant to delegated authority.

Brent J. Fields
Secretary

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SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. Lawrence E. Penn, III
[redacted]
New York, NY [redacted]

3- 18288

8044082-018

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X [signature]

☐ Agent
☐ Addressee

B. Received by (Printed Name) Lawrence Penn

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

NOV 29 2017

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um Receipt for Merchandise
.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. 7015 3430 0000 9276 4728

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

ADMINISTRATIVE PROCEEDING
SECURITIES AND EXCHANGE COMMISSION
File No. 3-18288 – James E. Grimes, ALJ

In the Matter of **LAWRENCE E. PENN, III** **Respondent.**	**AMENDED ANSWER**

ANSWER AND MOTION FOR MORE DEFINITIVE STATEMENT OF RESPONDENT LAWRENCE E. PENN III

Pursuant to Rules of Practice of the U.S. Securities and Exchange Commission dated September 2016, specifically Rule 220 and the Order Following Prehearing Conference dated October 26, 2018, the Respondent responses to each allegation contained in the Complaint are below. Moreover, anything admitted or denied is only to the best of the Respondent's knowledge of the law, memory as to the facts, and as to any conclusions, characterizations, implications, innuendos, or speculation contained made by the SEC in this matter or in the Order instituting Administrative Proceedings (OIP) as a whole. In addition, Respondent specifically, denies any allegations contained in defined terms, ambiguous terms, actions that were a result of an unlawful criminal charge outlined in the OIP or unnumbered paragraphs in the OIP. This General Response is incorporated, to the extent appropriate, into each numbered paragraph of this Answer.

RESERVATION OF ALL RIGHTS BY RESPONDENT

Pursuant to Rules of Practice of the U.S. Securities and Exchange Commission dated September 2016, specifically Rule 220(e), the Respondent reserves all rights to amend this answer at any time and to motion for more definitive statement of specified matters of fact or law to be considered or determined.

MOTION FOR MORE DEFINITIVE STATEMENT BY RESPONDENT

Pursuant to Rules of Practice of the U.S. Securities and Exchange Commission dated September 2016, specifically Rule 220(e), the Respondent requests to enter a motion with a definitive statement of specified matters of fact or law to be considered.

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Lawrence E. Penn, III ("Respondent" or "Penn").

SUMMARY OF ALLEGATIONS

II.

ANSWER TO PARAGRAPH II(A)(1): Respondent denies that from at least March 2010 through October 2013 Camelot Acquisitions Secondary Opportunities Management, LLC was an investment adviser registered with the Commission. Respondent admits that he is 47 years old. Respondent admits that from at least March 2010 through October 2013 he was a resident of New York, New York. Respondent admits that from at least March 2010 through October 2013, he was the managing director of Camelot Acquisitions Secondary Opportunities Management, LLC.

ANSWER TO PARAGRAPH II(B)(2): Respondent denies allegations contained in paragraph II(B)(2).

ANSWER TO PARAGRAPH II(B)(3): Respondent denies allegations contained in paragraph II(B)(3).

ANSWER TO PARAGRAPH II(B)(4): Respondent denies allegations contained in paragraph II(B)(4).

ANSWER TO PARAGRAPH B(5): Respondent denies allegations contained in paragraph II(B)(5) above.

AFFIRMATIVE DEFENSES

AS AND FOR A FIRST AFFIRMATIVE DEFENSE
Unclean Hands

1. The Record shows that the SEC Enforcement conspired with members of the Manhattan District Attorney and the federal district court by acting under the color of state law to secure a conviction in conflict with law and in violation of the Due Process and Equal Protection clauses of the U.S. Constitution. The unlawful conviction is the predicate used to secure an unlawful summary judgment. The SEC has so abused its powers in the conduct of the investigation and process that a dismissal of this action is warranted. Based on the record, the facts and law remain in dispute and a decision by the Commission should be rendered only after the underlying criminal matter is heard on the merits. Reliance on a plea to alleged actions that do not legally constitute a predicate conviction is constitutionally void. Courts and Administrative Agencies have permitted equitable defenses to be raised against the government, they have required that the agency's misconduct be egregious and the resulting prejudice to the defendant rise to a constitutional level. The Commission should conclude that any decision would be better addressed in a concrete factual and legal setting.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE
Fraud

2. The Record shows that the SEC Enforcement Complaint in the federal district court action used false statement and plead in conflict with Rule 9(b) of the Federal Rules of Civil Procedure.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE
Equitable Estoppel

3. The Record shows that the SEC Enforcement conspired with members of the Manhattan District Attorney and the federal district court by acting under the color of state law to secure a conviction in conflict with law and in violation of the Due Process and Equal Protection clauses of the U.S. Constitution. The SEC Enforcement member's actions constitute misconduct, they were aware of the relevant facts and law, the federal district court relied on their actions and the injury to the Respondent has been substantial.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE
Illegality

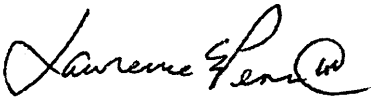
4. The Record shows that the SEC Enforcement conspired with members of the Manhattan District Attorney and the federal district court by acting under the color of state law to secure a conviction in conflict with law and in violation of the Due Process and Equal Protection clauses of the U.S. Constitution. The unlawful conviction is the predicate used to secure an unlawful summary judgment. The SEC has so abused its powers in the conduct of the investigation and process that a dismissal of this action is warranted. In the context of this securities law violation claim there remains material dispute on the facts and law regarding the Respondent's alleged actions and what they constitute. The Securities and Exchange Commission Enforcement has not proved that the Respondent acted with scienter and has not proven that the Respondent at a minimum acted with knowledge about the illegality of his actions. Scienter may only be proven

by demonstrating an intentional deception, manipulation or fraudulent scheme. There remains a material dispute over the facts and law regarding this matter.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE
False Claims

5. The Record shows that the SEC Enforcement conspired with members of the Manhattan District Attorney and the federal district court by acting under the color of state law to secure a conviction in conflict with law and in violation of the Due Process and Equal Protection clauses of the U.S. Constitution. The SEC Enforcement member's actions constitute misconduct and false claims that have not been proven. There remains a material dispute over the facts and law regarding this matter.

Dated: November 7, 2018
New York, NY



Lawrence E. Penn III, *Pro Se*
Respondent
[redacted]
New York, NY [redacted]
Email: [redacted]gmail.com

cc: Howard Fischer
Securities and Exchange Commission
New York Regional Office, Brookfield Place
200 Vesey Street, Suite 400
New York, NY 10281-1022
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Commission's Secretary
100 F Street NE, Mail Stop 1090
Washington, D.C. 20549
Tel: (202) 551-6030
Fax: (703) 813-9793
Email: alj@sec.gov

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served by U.S. Priority mail and/or email.

Howard Fischer Securities and Exchange Commission New York Regional Office, Brookfield Place 200 Vesey Street, Suite 400 New York, NY 10281-1022 Tel: (212) 336-0589 Fax: (703) 813-9490 Email: FischerH@sec.gov	Commission's Secretary 100 F Street NE, Mail Stop 1090 Washington, D.C. 20549 Tel: (202) 551-6030 Fax: (703) 813-9793 Email: alj@sec.gov

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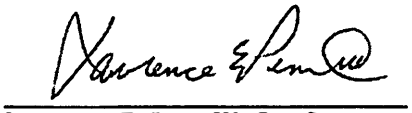
By: 

Lawrence E. Penn III, *Pro Se*
Respondent
[redacted]
New York, New York [redacted]
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Transaction Date/Time: 11/07/2018 06:07 PM CST

Priority Mail®
Flat Rate Envelope
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SUPREME COURT: NEW YORK COUNTY
TRIAL TERM: PART 71
----------X
THE PEOPLE OF THE STATE OF NEW YORK

IND.#:
0073-14

-against-

CHARGE:
LAWRENCE PENN III, GLAR. 1

PROCEEDINGS:
Defendant. PLEA
----------X

100 Centre Street
New York, New York 10013

March 16, 2015

B E F O R E: HONORABLE LAURA A. WARD
Justice of the Supreme Court

A P P E A R A N C E S:

FOR THE PEOPLE:

CYRUS R. VANCE, JR., ESQ.
New York County District Attorney
One Hogan Place
New York, New York 10013
BY: CHEVON WALKER, ESQ.
Assistant District Attorney

FOR THE DEFENDANT:

BRAFMAN & ASSOCIATES, P.C.
767 Third Avenue
26th Floor
New York, NY 10017
BY: BENJAMIN BRAFMAN, ESQ.
ANDREA ZELLAN, ESQ.

THE CLERK: Calendar number 12, Lawrence Penn III.

THE COURT: Appearances, please.

MS. WALKER: For the People, Chevon Walker, C-H-E-V-O-N, W-A-L-K-E-R.i

MR. BRAFMAN: For Mr. Penn, Benjamin Brafman and Andrea Zellin, 767 Third Avenue, New York City.

THE COURT: So today it's on for possible disposition or defense motions, and based on a conversation at the bench, I gather we do have a disposition.

MR. BRAFMAN: Yes, your Honor.

Most respectfully, Mr. Lawrence Penn the third has authorized me to withdraw his previously entered plea of not guilty, and enter a plea of guilty to the crimes of grand larceny in the first degree under count one of the indictment, and the crime of falsifying business records under count three of the indictment, in full satisfaction of the indictment, with a promise from the Court that the sentence will be two to six years in prison, and that there will be a restitution of $8.3 million signed prior to sentence, a restitution order, and he would forfeit his rights and interest in CM Growth Capital Partners LP, formerly known as Camelot Acquisitions Secondary Opportunities LP.

THE COURT: Is that your understanding as well?

MS. WALKER: Yes, it is, your Honor.

The People's recommendation in this case is four to 12 years in jail with restitution and relinquishment of his interest in the fund.

We understand that the Court after much consideration, has offered the defendant restitution with relinquishment, and we understand that the defendant would plead guilty to count one, grand larceny in the first degree, and the third count of falsifying business records.

Additionally, Judge, and I have spoken to counsel about this, we will ask that the defendant be required to relinquish his company's interest in the fund prior to sentence, and we've been in discussions about him actually effectuating that prior to sentence.

THE COURT: Is that your understanding too, Mr. Brafman?

MR. BRAFMAN: Yes. We will execute the necessary documents prior to sentencing.

THE COURT: May I have a copy of the indictment please and would you please uncuff Mr. Penn.

I want to thank the parties with regard to this. I know that we had multiple meetings discussing this matter, and a lot of information was given to the Court, and the Court based its decision on all the information that was provided both by the People and by the defense.

So, Mr. Penn, would you raise your right hand

please, sir.

THE DEFENDANT: Should I stand?

THE COURT: You can sit. It's okay.

Just raise your right hand.

Do you swear or affirm that the statements you're about to give this Court are the truth, the whole truth, and nothing but the truth?

THE DEFENDANT: Yes, your Honor.

THE COURT: You may put your hand down, sir.

I'd like you to stop me if you have any question about anything I say to you today or anything that I ask of you because it's very important that you understand everything, okay?

THE DEFENDANT: Yes, your Honor.

THE COURT: Your attorney has informed me you are pleading guilty. Have been satisfied with the representation that they have given you?

THE DEFENDANT: Yes, your Honor.

THE COURT: Have you had enough time to discuss this plea and sentence with them?

THE DEFENDANT: Yes, your Honor.

THE COURT: Are you today, sir, under the influence of any drugs, medication or alcohol that affects your ability to understand what is happening?

THE DEFENDANT: No, your Honor.

THE COURT: By entering these pleas, you give up your right to remain silent, your right to a trial, your right to have People prove their case against you beyond a reasonable doubt, your right to confront witnesses, and if you want to put witnesses on on your own behalf, and your right to make motions to suppress evidence and raise certain affirmative defenses.

THE DEFENDANT: Yes.

THE COURT: Do you understand all of the rights you give up by your plea?

THE DEFENDANT: Yes, your Honor.

THE COURT: Anybody forcing you to give up those rights?

THE DEFENDANT: No, your Honor.

THE COURT: Anybody promise you anything other than the sentence of two to six years in jail, that you would sign a restitution order in the amount of $8.3 million, and forfeit your interests in various entities. Any other promises made to you?

THE DEFENDANT: No, your Honor.

THE COURT: Now, although we've agreed what your sentence will be, and you have gotten credit for the time that you have done and the time you're going to do, I cannot sentence you today for two reasons:

First, I need a presentence report that's prepared

by the Department of Probation. They will interview you, ask you a series of questions including, are you guilty of these charges. If you're unable to admit your guilt in the preparation of the report, you should not be pleading guilty here today. And second, you need time to relinquish your interest in various entities prior to sentence, okay.

Do you have any questions?

THE DEFENDANT: Yes, your Honor.

Various entities? The entity is the fund.

THE COURT: Right.

THE DEFENDANT: So it's one entity.

MR. BRAFMAN: That's correct.

THE COURT: Any other questions, sir?

THE DEFENDANT: No, your Honor.

THE COURT: Now, based on what I know about the defendant, I don't think there is any Padilla issue here.

MR. BRAFMAN: There is not, Judge.

THE COURT: So, sir, today you're pleading guilty to count one of the indictment which is grand larceny in the first degree in violation of Penal Law Section 155.42, and it is alleged that you, along with St. Michael Ewers, in the County of New York, from October 20 of 2010 to July 12 of 2013, stole property from Camelot Acquisitions Secondary Opportunities LLP, and the value of the property exceeded $1 million, is that a true statement, sir?

THE DEFENDANT: Yes, your Honor.

THE COURT: Count three charges you with falsifying business records in the first degree in violation of Penal Law Section 175.10, and it is alleged that you, along with your co-defendant, on or about July 7 of 2013, with intent to defraud, including an intent to commit another crime and to aid and conceal the commission thereof, made and caused the false entry, that being a 210 or 211 Schedule Invoices in the business records of Camelot Acquisitions Secondary Opportunities LP; is that a true statement, sir?

THE DEFENDANT: Yes, your Honor.

THE COURT: I gather, based on what you have in front of you, you have a statement you wish to read?

THE DEFENDANT: No.

MR. BRAFMAN: Only if your Honor requires it to complete the allocution.

THE COURT: Do the People require anything in addition?

MS. WALKER: I just want to correct the record with regard to count one.

It is Camelot Acquisitions Secondary Opportunities LP, and I believe the Court just accidentally said LLP, which would be a different entity.

MR. BRAFMAN: That's correct.

MS. WALKER: For the record, the restitution amount is $8,362,973.89. I just want to make that clear.

MR. BRAFMAN: Judge, can I just indicate that the plea covers the period 2010 through 2011 as alleged in count three of the indictment; and also the period covered from 2010 to 2013, the period covered in count one of the indictment.

I just want to add, your Honor, this Court has extended substantial amount of effort in bringing this plea about. Several meetings allowed for defense to provide several written submissions, and as a consequence, the plea offer that your Honor has approved is substantially less onerous than what the People have recommended, and I think to your Honor's credit, it's the appropriate disposition in this case, and I want to thank you for the time you have devoted to trying to get as fair a resolution as we could all have hoped for under these difficult facts. So thank you very much.

THE COURT: Well, obviously based on all the information that was provided to the Court.

Inevitably, when you have plea discussions, both sides want different things, and usually what happens is the correct decision is somewhere in the middle.

MR. BRAFMAN: Well, you have done that, and I just want to express the defendant's appreciation.

THE COURT: So would you please arraign the defendant for me, please.

THE CLERK: Lawrence Penn, in the presence of your attorney, do you now withdraw your previously entered plea of not guilty, and do you now plead guilty to the crime of grand larceny in the first degree, the first count of the indictment, and falsifying business records in the first degree, the third count of the indictment to satisfy and cover indictment number 73 of 2014; is that your plea, sir, guilty?

THE DEFENDANT: Yes.

THE COURT: So how much time, Mr. Brafman, do you think you will need in order to relinquish the interest?

MR. BRAFMAN: Your Honor, we're relying on the work products of other firms who are trying to do the paperwork in terms of the forfeiture. So since he is remanded, if the Court could give us the week of April 20 for sentencing on a morning convenient to your Honor.

THE COURT: That's fine with the Court if that's enough time for you.

MR. BRAFMAN: I think we can get it done by then.

THE COURT: That's okay for the People?

MS. WALKER: That's fine, Judge.

THE COURT: We could do April 20 if that works.

MR. BRAFMAN: That's fine.

THE COURT: So April 20 back here for I and S and sentence.

The defendant is remanded. We will see you on that date, Mr. Penn.

CERTIFIED TO BE
TRUE AND CORRECT

SATI SINGH, RPR
SENIOR COURT REPORTER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 71

THE PEOPLE OF THE STATE OF NEW YORK -against- ALTURA ST. MICHAEL EWERS, Defendant.	AFFIDAVIT OF CONFESSION OF JUDGMENT Ind. No. 00073/2014

ALTURA ST. MICHAEL EWERS, being duly sworn, deposes and says:

1.a I am the above-named defendant and currently reside at 1255 Taylor Street,a San Francisco, California 94108.

2.a In connection with the resolution of the above-captioned criminal action, anda as a term of my guilty plea before the Honorable Laura Ward on December 18, 2014, I confess judgment in favor of CM Growth Capital Partners, L.P., formerly known as Camelot Acquisitions Secondary Opportunities, L.P., in the amount of $319,137.39. This amount arises from the conduct to which I havc pleaded guilty in the above-captioned criminal matter.

3.a I hereby authorize and consent to the entry of such judgment against mc in anya state or federal court, including, but not limited to, those state and federal courts located in New York and California. I agree to accept service of process related to this matter by regular United States mail at any location where I may reside, including

the above address, as well as any court in any foreign jurisdiction where my assets may be found.

4.e The aforesaid confession of judgment is for a debt now justly due and owing toe CM Growth Capital Partners, L.P., formerly known as Camelot Acquisitions Secondary Opportunities, L.P., arising from the following facts: In October 2010, I opened a bank account with co-defendant LAWRENCE PENN ("PENN") for my company, Ssecurion, LLC. From October 2010 through July 2013, PENN and I used the Ssecurion, LLC bank account to deposit over $9 million taken from CM Growth Capital Partners, L.P., a fund PENN was managing at the time. I represented to CM Growth Capital Partners, L.P.'s independent auditor that the $9 million was payment for due diligence fees that Ssecurion performed, when in fact, Ssecurion had performed no such services for CM Growth Capital Partners, L.P. I also represented to CM Growth Capital Partners, L.P.'s independent auditor that Ssecurion invoices billing CM Growth Capital Partners, L.P. were valid invoices for work done when, in fact, the invoices were not valid. After the $9 million taken from CM Growth Capital Partners, L.P., the stolen funds, were placed in the Ssecurion, LLC bank account, I transferred the stolen funds to various accounts, including a bank account for PENN's company, Camelot Group International, LLC and a bank account for another company belonging to me, A Big House Film and Photography Studio, LLC ("A Big House"). I had sole control of the bank account in the name of A Big House. I transferred most of the stolen funds that I deposited in the A Big House

account to a bank account for Camelot Group International, LLC. However, I spent $319,137.39 of those stolen funds on various personal and other expenses. I engaged in the above-described conduct without the permission or authority of CM Growth Capital Partners, L.P., formerly known as Camelot Acquisitions Secondary Opportunities, L.P.

5. Accordingly, I hereby confess and authorize the entry of judgment against me in favor of CM Growth Capital Partners, L.P. in the amount of $319,137.39, finally and irrevocably. I am confessing and authorizing the aforesaid confession of judgment as part of the sentence being imposed against me in the above-captioned criminal proceeding, Indictment no. 00073/2014.

Altura St. Michael Ewers
Defendant

David Krauss, Esq.
Attorney for Defendant

Sworn to before me this
16th day of March 2015

HON. LAURA A. WARD
J.S.C. 71 MAR 16 2015

Justice of the Supreme Court

SUPREME COURT OF THE STATE OF NEW YORK NO FEE
NEW YORK COUNTY
100 CENTRE STREET
NEW YORK, NY 10013

CERTIFICATE OF DISPOSITION INDICTMENT

DATE: 03/07/2017

CERTIFICATE OF DISPOSITION NUMBER: 50882

PEOPLE OF THE STATE OF NEW YORK
VS.

PENNIII,LAWRENCE E

DEFENDANT

CASE NUMBER:	00073-2014
LOWER COURT NUMBER(S):	
DATE OF ARREST:	02/10/2014
ARREST #:	M14612193
NYSID #:	12573192K
DATE OF BIRTH:	03/10/1970
DATE FILED:	02/07/2014

I HEREBY CERTIFY THAT IT APPEARS FROM AN EXAMINATION OF THE RECORDS ON FILE IN THIS OFFICE THAT ON 03/16/2015 THE ABOVE NAMED DEFENDANT WAS CONVICTED OF THE CRIME(S) BELOW BEFORE JUSTICE WARD,L THEN A JUSTICE OF THIS COURT.

GRAND LARCENY 1st DEGREE PL 155.42 00 BF
FALSIFYING BUSINESS RECORDS 1st DEGREE PL 175.10 00 EF

THAT ON 04/20/2015, UPON THE AFORESAID CONVICTION BY PLEA THE HONORABLE WARD,L THEN A JUDGE OF THIS COURT, SENTENCED THE DEFENDANT TO

GRAND LARCENY 1st DEGREE PL 155.42 00 BF
IMPRISONMENT = 2 YEAR(S) TO 6 YEAR(S)

FALSIFYING BUSINESS RECORDS 1st DEGREE PL 175.10 00 EF
IMPRISONMENT = 2 YEAR(S) TO 6 YEAR(S)

RESTITUTION = $8,362,974
CVAF = $25 (PAID)
DNA = $50 (PAID)
SURCHARGE = $300 (PAID)

IN WITNESS WHEREOF,I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL ON THIS DATE 03/07/2017.

COURT CLERK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 71

----------x

THE PEOPLE OF THE STATE OF NEW YORK

DECISION AND ORDER
IND. # 73/14

- against -

LAWRENCE PENN,

Defendant.

----------x

Laura A. Ward, J.:

The defendant filed a *pro se* motion pursuant to Criminal Procedure Law ("CPL") §§ 440.10(1)(b), 1(f), and (1)(h), to vacate the judgement in the above captioned case. The defendant alleges that the defendant's guilty plea was the product of duress, misrepresentation, fraud, and ineffective assistance of counsel. The defendant then obtained counsel who did not adopt the defendant's motions and filed a separate CPL § 440.10 motion, alleging that the defendant's plea was the result of ineffective assistance of counsel. For the reasons stated bellow the defendant's motion is denied.

The defendant was indicted on one count of Grand Larceny in the First Degree, in violation of Penal Law ("PL") § 155.42, one count of Money Laundering in the First Degree, in violation of Penal Law § 470.20(1)(b)(ii)(a), and 30 counts of Falsifying Business Records in the First Degree, in violation of PL § 175.10. On March 16, 2015, the defendant entered a plea of guilty to one count of Grand Larceny in the First Degree, in violation of Penal Law § 155.32, and one count of Falsifying Business Records in the First Degree, in violation of PL § 175.10. In exchange for his plea, the defendant was sentenced to two-to-six years of incarceration and forfeiture of his rights and interest in CM Growth Capital Partnerships LP. In addition, the defendant signed a restitution order in the amount of $8,362,973.89.

The defendant argues that he failed to received effective assistance of counsel because plea counsel failed to develop or inform the defendant of viable objections to the charges against the defendant. Some of the alleged failures include defense counsel's choice not to raise the issue of whether a charge of larceny was applicable to the general partner of a limited partnership and the lack of motions filed on behalf of the defendant.

The defendant has failed to provide necessary documentation of the defendant's claims. In *People v. Morales,* 58 N.Y.2d 1008, 1009 (1983), the Court upheld the trial court's denial of a motion, made pursuant to Criminal Procedure Law ("CPL") § 440.10, without a hearing. The Court stated that denial of the defendant's motion without a hearing was not error, in view of the fact that defendant's motion papers did not include an affidavit from plea counsel, nor an explanation as to the defendant's failure to submit plea counsel's affidavit. The Appellate Division, First Department, has consistently approved summary denial of a CPL § 440.10

motion, which raises an ineffective assistance claim, when the motion contains neither an affidavit from the defendant's trial counsel, nor an explanation as to the defendant's failure to submit an affidavit from counsel. *People v. Stewart*, 295 A.D.2d 249, 249-50, *lv. denied*, 98 N.Y.2d 696 (2002); *People v. Johnson*, 292 A.D.2d 284, *lv. denied*, 98 N.Y.2d 698 (2002); *People v. Chen*, 293 A.D.2d 362, 363, *lv. denied*, 98 N.Y.2d 696 (2002).

Even if the defendant were to provide the court with proper documentation, the defendant's motion would be denied. The defendant in his own papers admits that he availed himself of a favorable disposition. The record establishes that defendant's plea counsel spent many hours meeting with both the prosecutors and the court in order to obtain the promised plea. Plea counsel also provided the court with extensive documentation including a voluminous pre-sentencing memo. The defendant's argument that plea counsel failed to file necessary motions such as a request for the court inspect the grand jury minutes, is without merit. This court on July 28, 2014, rendered a decision finding the minutes sufficient after inspection.

The defendant's argument that defense counsel should have argued that larceny was inapplicable, is also without merit. The People have provided sufficient information to establish that the defendant did not serve as a partner, either general or limited, of the fund at the time of the theft. Therefore, the defendant's reliance on *People v. Zinke,* 76 NY2d 8 (1990), is misplaced.

The foregoing is the decision and order of the court.

Dated: New York, New York
June 10, 2016

Laura A. Ward
Acting Justice Supreme Court

Sweeny, J.P., Renwick, Kapnick, Kern, Moulton, JJ.

4485-
4486 The People of the State of New York,
Respondent,

-against-

Lawrence E. Penn III,
Defendant-Appellant.

Ind. 73/14

Perkins Coie LLP, New York (Jalina J. Hudson of counsel), for appellant.

Cyrus R. Vance, Jr., District Attorney, New York (Lee M. Pollack of counsel), for respondent.

Judgment, Supreme Court, New York County (Laura A. Ward, J.), rendered April 21, 2015, convicting defendant, upon his plea of guilty, of grand larceny in the first degree and falsifying business records in the first degree, and sentencing him to concurrent terms of two to six years, and order, same court and Justice, entered on or about July 11, 2016, which denied defendant's CPL 440.10 motion to vacate the judgment, unanimously affirmed.

By pleading guilty, defendant automatically forfeited appellate review of his claim that he was an owner of the stolen property and thus could not be guilty of larceny (*see People v Plunkett*, 19 NY3d 400 [2010]; *see also People v Levin*, 57 NY2d 1008 [1982]; *People v Mendez*, 25 AD3d 346 [1st Dept 2006]). In

any event, the record before us establishes that, unlike the situation in *People v Zinke* (76 NY2d 8 [1990]), defendant adopted a form of business organization whereby he held no ownership interest in the stolen money at the time of the theft.

Defendant received effective assistance of counsel (*see People v Benevento*, 91 NY2d 708, 713-714 [1998]; *People v Ford*, 86 NY2d 397, 404 [1995]; *see also Strickland v Washington*, 466 US 668 [1984]). As indicated, it would have been unavailing for counsel to litigate the issue of whether defendant was an owner of the stolen property. Defendant's remaining claims of ineffective assistance are without merit.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: SEPTEMBER 26, 2017

CLERK

JUDGE BUCHWALD

14 CV 581

Counsel of Record:
Andrew M. Calamari
Amelia Cottrell
Michael Osnato
Howard Fischer
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Brookfield Place, 200 Vesey Street, Suite 400
New York, New York 10281-1022
(212) 336-0589 (Fischer)
Email: FischerH@SEC.gov

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

LAWRENCE E. PENN, III, MICHAEL ST. ALTURA EWERS, CAMELOT ACQUISITIONS SECONDARY OPPORTUNITIES MANAGEMENT, LLC, THE CAMELOT GROUP INTERNATIONAL, LLC and SSECURION LLC,

Defendants,

- AND -

A BIGHOUSE PHOTOGRAPHY AND FILM STUDIO LLC,

Relief Defendant.

14 Civ. _____ ( )
ECF CASE

COMPLAINT

Plaintiff Securities and Exchange Commission (the "Commission"), for its complaint against Defendants Camelot Acquisitions Secondary Opportunities Management, LLC ("CASO

Management"), Lawrence E. Penn, III ("Penn"), Ssecurion LLC ("Ssecurion"), Michael St. Altura Ewers ("Ewers"), and The Camelot Group International, LLC ("CGI") (collectively, the "Defendants"), and Relief Defendant A Bighouse Photography and Film Studio LLC ("Big House" or the "Relief Defendant"), alleges as follows:

SUMMARY OF ALLEGATIONS

1.e In breach of their fiduciary duties, Penn and CASO Management engaged in ae fraudulent scheme to misappropriate fund assets, disadvantaging investors and elevating Penn's and CASO Management's interest above the interests of the fund they advised. Ewers, Ssecurion, and CGI aided and abetted this fraudulent scheme.

2.e Penn and CASO Management, a registered investment adviser under Penn'se control, aided and abetted by Ewers, Ssecurion, and CGI, engaged in a fraudulent scheme to misappropriate approximately $9.3 million from a private equity fund Penn and CASO Management controlled in order to provide additional assets to Penn to spend on his business and personal expenditures. Penn diverted $9.3 million from the fund during a period when CASO Management had precluded investors in the fund from redeeming their interests. Penn and CASO Management misappropriated the moneys by directing the fund to pay purported "due diligence" expenses from March 2010 through October 2013 to Ssecurion, an entity run by their confederate in the scheme, Ewers.

3.e Ssecurion was not a bona fide company and provided few if any due diligencee services to the fund. Instead, Ssecurion acted as a front for Penn to siphon money from the fund and route it back to CASO Management or to CGI, an unregistered entity adviser under Penn's control. Ssecurion routed almost all of the almost $9.3 million it received back to CASO

Management or to CGI, in some cases interposing another Ewers-owned entity, Big House, as an intermediary in the round-trip transactions.

4.e Once the money was diverted from the fund, it was commingled withe management fees that were paid by the fund to CASO Management, and forwarded on to CGI. CGI used the commingled funds to pay overhead expenses, such as rent and salary, which were not permissible fund expenses under the fund's governing document, the Amended and Restated Limited Partnership Agreement of Camelot Acquisitions Secondary Opportunities, L.P., dated February 5, 2010, and as amended December 27, 2011 (the "LPA"). CGI also used the commingled funds to market the fund, to pay "finders" who brought in the fund's investors, and to establish a global presence for CGI. The sham payments of approximately $9.3 million allowed Penn to spend far more on these types of expenses than the fund's investors had anticipated or authorized, renting luxurious office space and otherwise presenting an image of a fully operational international business.

5. In addition, Penn and Ewers actively sought to mislead the fund's auditors ande administrators concerning the due diligence payments. In 2013, when the firm's auditors and administrators requested backup documentation for the payments to Ssecurion over the previous three fiscal years, Penn and Ewers forged purported work product corresponding to the invoices and lied to the auditors to cover their tracks.

VIOLATIONS

6.e By virtue of the conduct alleged herein, certain of the Defendants have violatede Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)], and Rule 10b-5(a) and (c) thereunder [17 C.F.R. § 240.10b-5(a) and (c)]; and Sections 204, 206(1), 206(2), and 207 of the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. §§ 80b-4, 80b-6(1), (2), and 80b-7], and Rule 204-2 thereunder [17 C.F.R. §§275.204-2].

7.n CASO Management has engaged in, and unless enjoined, will continue to engage,n directly or indirectly, in transactions, acts, practices, and courses of business that constitute violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5(a) and (c) thereunder [17 C.F.R. § 240.10b-5(a) and (c)]; and Sections 204, 206(1), 206(2), and 207 of the Advisers Act [15 U.S.C. §§ 80b-4, 80b-6(1),(2), and 80b-7], and Rule 204-2 thereunder [17 C.F.R. §§275.204-2].n

8.n Penn has engaged in, and unless enjoined, will continue to engage, directly orn indirectly, in transactions, acts, practices, and courses of business that constitute violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5(a) and (c) thereunder [17 C.F.R. § 240.10b-5(a) and (c)]; and Sections 204, 206(1), 206(2), and 207 of the Advisers Act [15 U.S.C. §§ 80b-4, 80b-6(1), (2), and 80b-7], and Rule 204-2 thereunder [17 C.F.R. §§275.204-2].n

9.n Ssecurion has engaged in, and unless enjoined, will continue to engage, directlyn or indirectly, in transactions, acts, practices, and courses of business that aided and abetted CASO Management and Penn's violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5(a) and (c) thereunder [17 C.F.R. § 240.10b-5(a) and (c)]; and Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b, 80b-6(1) and (2)].

10.n Ewers has engaged in, and unless enjoined, will continue to engage, directly orn indirectly, in transactions, acts, practices, and courses of business that aided and abetted CASO Management and Penn's violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5(a) and (c) thereunder [17 C.F.R. § 240.10b-5(a) and (c)]; and Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b, 80b-6(1) and (2)].

11.e CGI has engaged in, and unless enjoined, will continue to engage, directly ore indirectly, in transactions, acts, practices, and courses of business that aided and abetted CASO Managemcnt and Penn's violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5(a) and (c) thereunder [17 C.F.R. § 240.10b-5(a) and (c)]; and Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b, 80b-6(1) and (2)].

12.e Defendants should be permanently enjoined from violating the provisions of thee securities laws described above. Defendants should also be ordered to disgorge any ill-gotten gains or benefits derived as a result of their violations, whether realized, unrealized or received, and prejudgment interest thereon, and ordered to pay appropriate civil monetary penalties. Furthermore, the relief defendant should be ordered to disgorge any ill-gotten gains or benefits obtained as a result of the violations set forth herein. In addition, Ewers and Ssecurion should be permanently enjoined from accepting compensation from any private equity fund, other than as part of a class of investors receiving returns on a pro rata basis, for services provided or purportedly provided to such fund. The Court should also order any other just and appropriate relief.

JURISDICTION AND VENUE

13.e The Court has subject matter jurisdiction over this action pursuant to Sections e 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d) and 78u(e)], and Sections 209 and 214 of the Advisers Act [15 U.S.C. §§ 80b-9 and 80b-14].

14.e Venue is proper in the Southern District of New York pursuant to Section 27 ofe the Exchange Act [15 U.S.C. § 78aa], and Section 214 of the Advisers Act [15 U.S.C. §§ 80b-14]. CASO Management, Penn, and CGI maintained their principal offices in New York, New York at all relevant times, and certain of the acts, transactions, practices, and courses of business alleged herein took place in the Southern District of New York.

15.e Defendants, directly or indirectly, singly or in concert, have made use of thee means or instrumentalities of transportation or communication in, or the instrumentalities of, interstate commerce, or of the mails and wires, in connection with the transactions, acts, practices, and courses of business alleged herein.

DEFENDANTS

16.e **CASO Management** is a Delaware limited liability company owned ande controlled by Penn. CASO Management is based in New York, New York and became registered with the Commission on September 14, 2012. CASO Management, directly or indirectly, is the investment adviser to Camelot Acquisitions Secondary Opportunities, LP ("Camelot LP" or the "Fund"), as well as CASO Co-Invest-A LLC, a Delaware limited liability company containing approximately $25 million in assets.

17.e **Penn**, age 43, lives in New York and is Managing Member and Managinge Director of CASO Management. Penn, who represented to investors that he had served in the U.S. Army, started CASO Management in 2007 after having worked for several well-known investment banking firms. Under Penn's control, CASO Management's assets under management peaked at approximately $145 million in 2013. Penn has primary responsibility for all investment and business decisions made on behalf of CASO Management and CASO Management-managed funds.

18.e **Ssecurion** is a Delaware limited liability company owned and controlled bye Ewers.

19.e **Ewers**, age 42, lives in the San Francisco area and is Managing Partner ofe Ssecurion. He also previously served in the U.S. Army.

20.e **CGI** is a Delaware limited liability company, with its principal place of businesse in New York, NY. CGI is owned 99% by Penn and 1% by his father, and it appears to function as a parent organization of CASO Management.

RELIEF DEFENDANT

21.e **Big House** is a Delaware limited liability company, incorporated in 2003, wholly-owned and controlled by Ewers.

OTHER RELEVANT ENTITIES

22.e **Camelot LP**, CASO Management's flagship fund, had approximately $120e million in assets in the summer of 2013. Camelot LP consists of capital contributions from investors and a feeder fund Camelot Acquisitions Secondary Opportunities Offshore, LP ("Camelot Offshore"), a Cayman Islands company.

23.e **TCGI Capital Group LLC ("TCGI")** is a Delaware limited liability companye owned and controlled by Penn. TCGI is based in New York, New York.

FACTS

I.e The Camelot Private Equity Fund and Its Purported Due Diligence Expenses

24.e Established in 2007 and first funded in 2010, Camelot LP is a private equity funde started by, among others, Managing Director Penn. CASO Management, registered with the Commission as an investment adviser effective September 14, 2012, was the official investment adviser for the Fund. Penn has been Managing Director of the registered investment adviser since its inception.

25.e The Fund's stated investment strategy was to invest in companies that were in thee late stages of raising private equity, and would shortly attempt a public offering. The Funds' investors include public pension funds, high net worth individuals, and overseas institutions.

26.e Investors did not immediately put up all of the capital they committed; instead,e the Fund made capital calls from time to time as needed to fund investments in portfolioe companies or to pay Fund expenses (including management fees, which ranged from 1.5% to 2%e of each investors committed capital annually, depending on the terms of any applicable sidee letters).e

27.e From late 2010 through the end of 2012, the Fund called 99.5% of the committede capital of approximately $120 million and had invested in six portfolio companies. In 2012, feeder fund Camelot Offshore contributed an additional $45,450,000 to the Fund. In 2013, the Fund took in another $2.5 million in new capital commitments, plus $2 million in loans from existing investors.

28.e In connection with each investment, the Fund would record certain purportede transaction-related expenses. With the approval of the Fund's auditors ("Audit Firm"), which was granted based on CASO Management's representations that the expenses related to the investments, the expenses relating to completed acquisitions of interests in portfolio companies were capitalized – in other words, they were added to the cost basis for the investment to which they related and were not expensed in the current period.

29.e By far the most significant purportedly investment-related expenses incurred bye the Fund were characterized as payments for "due diligence" performed by Ssecurion, concerning the management and prospects of the Fund's proposed investments in portfolio companies. The Fund did not pay due diligence expenses to any other person or entity. The total amount of the purported due diligence expenses from 2010 through October 2013 was almost $9.3 million.

30.e Although these "due diligencc" expenses were specifically identified in thee Fund's general ledger, and although invoices for these purported expenses were provided to both the Fund's administrators and to Audit Firm, none of the documents provided to investors ever disclosed these due diligence-related payments.

A. The Purported Due Diligence Payments Were a Sham.

31.e Audit Firm completed its audits of the Fund's financial statements for 2010 ande 2011. In connection with those audits, it relied on letters and other documents it received from Ewers, which were signed in Ewers' capacity as "Managing Partner" of Ssecurion.

32.e Ewers had a relationship with Penn that predated the Fund's retention ofe Ssecurion as its purported third-party due diligence provider. The two men met at a function for the University of Maryland University College ("UMUC") European campus (which Penn briefly attended) in the 1990s. When the Ssecurion bank account was opened in October 2010, both Ewers and Penn were signatories. None of these facts was disclosed to Audit Firm in connection with the 2010 and 2011 audits.

33.e At Audit Firm's request in connection with the 2010 and 2011 audits, Ewers sente letters to Audit Firm on April 27, 2011 and April 9, 2012, each of which represented that Ssecurion had "helped clients make high-risk, high-value decisions for over 15 years." The first letter attached a presentation that purported to summarize both Ssecurion's capabilities and the work performed for the Fund during the 2010 audit period.

34.e Audit Firm became suspicious about the bona fides of the purported due diligencee payments to Ssecurion while auditing the Fund's 2012 financials in the spring of 2013. Audit Firm then requested additional documentation of not only the 2012 due diligence payments, but the prior years' payments.

35.e When Audit Firm approached Ewers for Ssecurion work product during a July 19,e 2013 in-person meeting with Ewers, Ewers said the Fund should already have them and that he could not produce them because it would violate the service contract between Ssecurion and the Fund. Penn and Ewers told Audit Firm conflicting stories in July 2013 interviews, about where the reports were located and how they were accessed. No copies of reports (even in redacted form) were ever produced to Audit Firm.

36.e In an interview with Audit Firm representatives on July 16, 2013, Penn showede them what he claimed were the electronic due diligence folders for each investment. He opened a number of electronic files and discussed how the files, which purportedly had been obtained from or provided by Ewers, assisted the due diligence. The content of the files, however, did not suggest that they had been created by Ewers; they appeared to be generic information easily obtained from the internet and/or the portfolio company. Audit Firm was never provided with credible evidence of significant work performed by Ssecurion.

37. In addition, Ssecurion kept almost none of the fees it received for its purportedly extensive work assisting the Fund in evaluating potential investments. Bank records reflect that from March 2010 through October 31, 2013, Ssecurion received a total of $9,286,916.65 from bank accounts maintained in the name of Camelot LP. All of these amounts were paid under cover of invoices purporting to correspond to due-diligence related work. Of this amount, $9,067,004 (97.6%) was then re-directed in various round-trip transactions, either directly or indirectly (through Big House, another Ewers-owned entity) to CGI or CASO Management.

B. Ssecurion Round-Tripped Most of the Money it Received from Camelot LP to CGI.

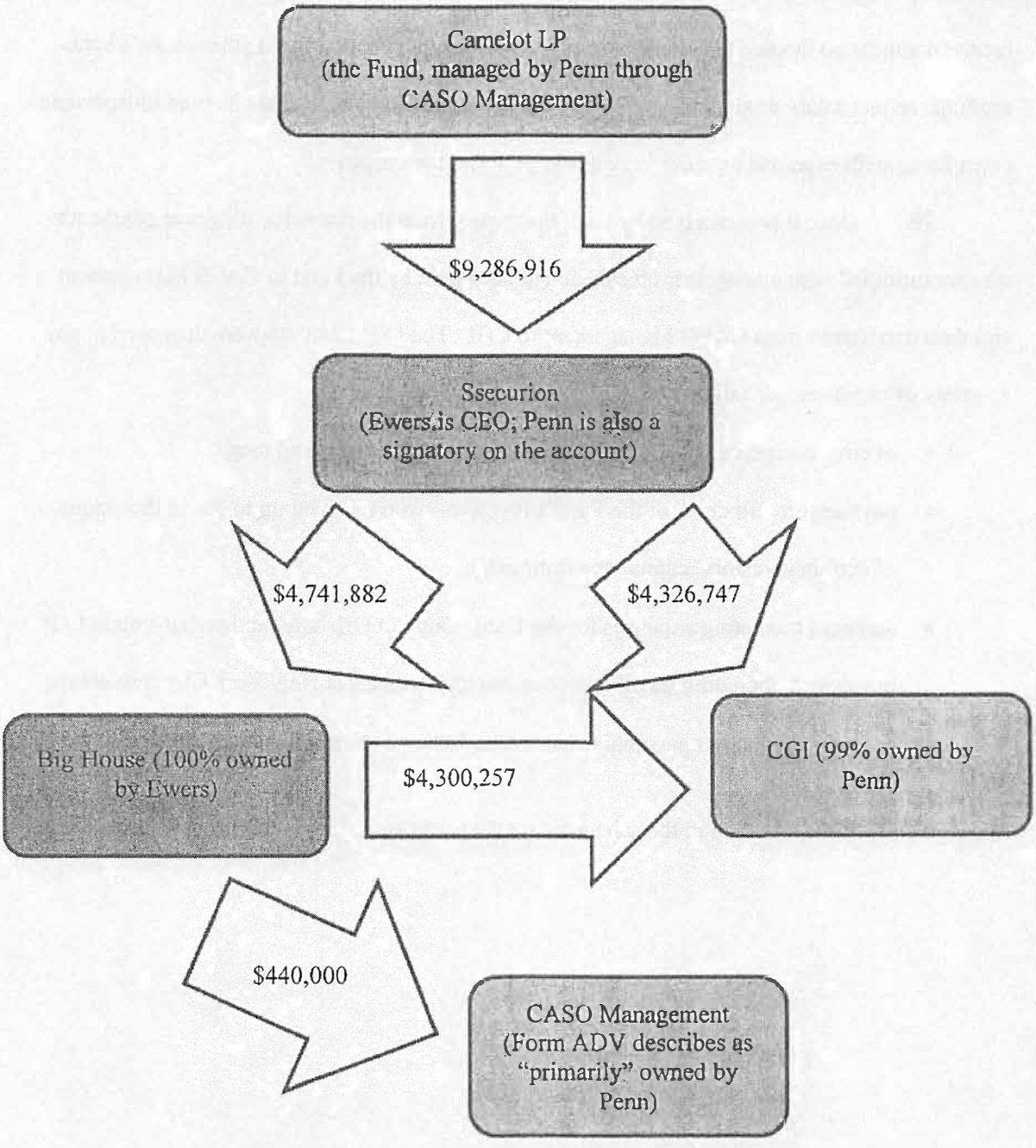
38.e Ssecurion retained only a tiny fraction of the fees that were being paid to it fore purported due diligence services, and returned the vast majority of the fees paid to it from

Camelot LP to Penn's entity, CGI. The Ssecurion and Big House bank account records do not reflect expenses or any other activity consistent with a legitimate due diligence firm. Ssecurion received almost no income that could relate to work for other clients, and neither entity's bank accounts reflect salary or similar expenses consistent with Ewers' claim that he used independent consultants with expertise on specific issues to perform due diligence.

39. Once it was received by CGI, the money from the sham due diligence payments was commingled with management fees that had been paid by the Fund to CASO Management and then transferred from CASO Management to CGI. The CGI accounts were then used to pay a variety of expenses, including:

- overhead expenses of CASO Management, such as salary and rent;
- payments to "finders" of the Fund's investors (who received up to 3% of the amount of certain investors' capital commitments);
- apparent marketing expenses for the Fund, Camelot Offshore, and perhaps other CGI businesses, including travel expenses and lavish meals at New York City restaurants;
- occasional apparent personal expenses, including dry-cleaning and groceries.

The flow of funds is reflected in the schematic on the next page:



Total transferred indirectly from Camelot LP to CGI or CASO Management: **$9,067,004 (97.6%)**

C. Penn and Ewers Tried to Conceal the True Nature of Sham Due Diligence Expenses.

40.e After becoming suspicious about the due diligence payments Camelot LP paid to Ssecurion from 2010-2013, Audit Firm attempted to obtain documentation and explanations that would support the legitimacy of the payments.

Chronology of Penn and Ewer's Cover-Up to Conceal Fraud from Audit Firm

41.e On July 3, 2013, Audit Firm met with Penn and requested an explanation and/ore documentation of the work underlying a number of specific Ssecurion invoices. Penn's responses were vague and unsatisfactory; he claimed that he could not access the work product and suggested that Audit Firm meet with Ewers.

42.e When asked about his relationship with Ewers, Penn implied that they had ane arm's-length relationship and had not worked together before Ssecurion was hired to provide due diligence services; he said he had chosen the firm based on recommendations from others and its reputation in the industry.

43.e Audit Firm pointed out to Penn that the Ssecurion website appeared to offer littlee substantive information about the nature of its business.

44.e On July 8, 2013, Audit Firm staff noticed that the Ssecurion website, which Audite Firm had criticized in its July 3, 2013 meeting with Penn, had been updated. They noted that the content of some pages was now almost identical to that of a website for a legitimate investigative company and that the testimonials also were now very similar to another company's site.

45. On July 8, 2013, at 5:44 p.m., Penn abruptly canceled the meeting scheduled fore the next day and fired Audit Firm, providing no explanation for his actions.

46.e On July 16, 2013, after Audit Firm informed him that it still needed to obtaine information from him concerning the legitimacy of the 2010 and 2011 due diligence payments or

it would have to declare that the earlier financial statements could not be relied upon, Penn agreed to meet with Audit Firm again.

47.e Penn used his laptop and a projection screen to show Audit Firm files on thee Camelot servers that he claimed were the due diligence folders for each investment. Penn identified only a few documents that he could say had been provided by Ssecurion; none of them had any branding or other indication that it had been prepared by Ssccurion, and many appeared to be generic reports freely accessible from the internet.

48.e When confronted by evidence of his relationship with Ewers, Penn admitted thate the two had met at a UMUC event in the 1990s.

49.e On July 19, 2013, Audit Firm met with Ewers at a Regus Business Center officee in San Francisco, which had no logos or other indications that Ssecurion had a permanent office there. Ewers refused to disclose details of his work, but he claimed to perform his work through independent contractors, saying he had "100 assets in the field;" many of whom were allegedly former law enforcement personnel.

50.e When asked about the recent changes to the Ssecurion website, Ewers claimede that an unspecified third party had made them, and that he had not reviewed the changes.

D.eCASO Management's Non-Compliance With the Commission'se Examinatione

51.e When it was unable to obtain satisfactory evidence that the purported "duee diligence" payments were legitimate, Audit Firm reported the matter to the Commission, which initiated a for-cause examination by the Investment Adviser/Investment Company section of OCIE ("Exam Staff") on August 15, 2013. In the course of that examination, CASO Management failed to produce required books and records. In addition, Penn repeatedly

promised to meet with Exam Staff but then failed to show up for several meetings, each time without providing notice or an explanation.

52.e CASO Management failed to provide the Exam Staff with Camelot LP's balancee sheet, trial balance, cash receipts and disbursements journal, income statement, and cash flow statements as of the end of its most recent fiscal year and the most current year to date. In addition, CASO Management failed to provide the Exam Staff with e-mails or other correspondence as required by Rule 204-2(a)(7) of the Advisers Act. The Exam Staff was promised, in writing, on September 13, 2013, that an eData vendor would be retained to assist in identifying the electronic communications that were responsive to the Exam Staff's request and that a proposed production schedule was forthcoming, but the Exam Staff was never provided with such a schedule.

53.e Penn avoided the Camelot offices when the Exam Staff was on-site ande repeatedly failed to appear for scheduled meetings with them. After the first such meeting was arranged, and although the Exam Staff was told that Penn would make himself available, he never showed up. The second was arranged with Penn's personal counsel, was scheduled a week in advance, and was then put off by ten days to September 27, 2013 because of a purported family emergency of Penn's. Penn's counsel appeared at the Commission's office for the delayed scheduled meeting and was surprised to find that Penn was not present; he stated that Penn had confirmed the previous evening that he would attend. Penn's counsel was unable to reach him that morning. The Exam Staff was unable to meet with Penn.

54.e As a result of its inability to obtain required records and meet with Penn, thee Exam Staff was unable to complete its examination.

E.e Penn and CASO Management's Filing of a False Form ADVe

55.e On August 14, 2013, Penn signed and filed a Form ADV with the Commissione containing material misstatements, including (1) representing that CASO Management had $175 million in assets under management when, in fact, it managed at most $150 million (its committed capital) and probably less than $131 million (the value ascribed to its advisory funds' assets at the end of 2012, plus the approximately $5 million in 2013 capital commitments and loans it received); and (2) representing that Penn received a master's degree from UMUC Europe when he did not.

FIRST CLAIM FOR RELIEF
Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder
(Against CASO Management and Penn)

56.e Paragraphs 1 through 55 are realleged and reincorporated by reference as if fully set forth herein.

57.e By engaging in the acts and conduct described in this Complaint, CASOe Management and Penn directly or indirectly, singly or in concert, by use of the means or instruments of transportation or communication in interstate commerce, or of the mails, or of the facilities of a national securities exchange, in connection with the purchase or sale of securities, have:

a.e Employed devices, schemes, and artifices to defraud;e

b.e Made untrue statements of material fact, or have omitted to state materiale facts necessary in order to make the statements made, in light of thee circumstances under which they were made, not misleading; ande

c.e Engaged in transactions, acts, practices, and courses of business whiche operated as a fraud or deceit upon purchasers of securities.e

58.e CASO Management and Penn engaged in the above conduct knowingly ore recklessly.

59.e By reason of the foregoing, CASO Management and Penn, directly or indirectly,e singly or in concert, have violated and unless enjoined will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

SECOND CLAIM FOR RELIEF
Aiding and Abetting Violations of Section 10(b) of the Exchange Act and Rule 10b-5
(Against Ssecurion, Ewers, and CGI)

60.e Paragraphs 1 through 59 are realleged and reincorporated by reference as if fullye set forth herein.

61.e By engaging in the acts and conduct described in this Complaint, Ssecurion,e Ewers, and CGI knowingly provided substantial assistance to CASO Management and Penn's violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], and thereby are liable under those provisions as aiders and abettors, pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)].

62.e By reason of the foregoing, Ssecurion, Ewers, and CGI have violated and unlesse enjoined will continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

THIRD CLAIM FOR RELIEF
Violations of Sections 206(1) and 206(2) of the Advisers Act
(Against CASO Management and Penn)

63.e Paragraphs 1 through 62 are realleged and reincorporated by reference as if fullye set forth herein.

64. By engaging in the acts and conduct described in this Complaint, at all relevant times CASO Management and Penn were acting as investment advisers to Camelot LP within the meaning of Section 202(11) of the Advisers Act [15 U.S.C. § 80b-2(11)].

65.e CASO Management and Penn, directly or indirectly, singularly or in concert, bye use of the mails or means and instrumentalities of interstate commerce, while acting as investment advisers: (a) with scienter employed devices, schemes, or artifices to defraud any client or prospective client; and/or (b) engaged in transactions, practices, or courses of business which operated as a fraud or deceit upon any client or prospective client.

66.e As investment advisers to Camelot LP, CASO Management and Penn owede Camelot LP fiduciary duties of utmost good faith, fidelity, and care to make full and fair disclosure to them of all material facts concerning Camelot LP – including any conflicts or potential conflicts of interests – as well as the duty to act in Camelot LP's best interests, and not to act in their own interests to the detriment of Camelot LP.

67.e CASO Management and Penn breached their fiduciary duties to Camelot LP,e engaged in fraudulent conduct and engaged in a scheme to violate Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1), (2)] as set forth above, and in particular, by, *inter alia*, misappropriating approximately $9.3 million from Camelot LP, as described above.

68. By reason of the activities described herein, CASO Management and Penne violated Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1), (2)].

FOURTH CLAIM FOR RELIEF
Aiding and Abetting Violations of Sections 206(1) and 206(2) of the Advisers Act
(Against Ssecurion, Ewers, and CGI)

69.e Paragraphs 1 through 68 are realleged and reincorporated by reference as if fullye set forth herein.

70.e By engaging in the acts and conduct described in this Complaint, Ssecurion,e Ewers, and CGI knowingly provided substantial assistance to CASO Management and Penn's violations of Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1), (2)], and

thereby are liable under those provisions as aiders and abettors, pursuant to Section 209(f) of the Advisers Act [15 U.S.C. § 80b-209(f)].

71.o By reason of the foregoing, Ssecurion, Ewers, and CGI have violated and unless enjoined will continue to violate, Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and (2)].

FIFTH CLAIM FOR RELIEF
Violations of Section 204 of the Advisers Act and Rule 204-2 Thereunder
(Against CASO Management and Penn)

72.o Paragraphs 1 through 71 are realleged and reincorporated by reference as if fullyo set forth herein.

73.o By engaging in the acts and conduct described in this Complaint, CASOo Management and Penn directly or indirectly, singly or in concert, by use of the means or instruments of transportation or communication in interstate commerce, or of the mails, or of the facilities of a national securities exchange, has not made and kept for prescribed periods such records as the Commission, by rule, has prescribed as necessary or appropriate in the public interest or for the protection of investors.

74. CASO Management and Penn, while acting as investment advisers to Camelot LP, did not make and keep true, accurate and current certain records of its investment advisory business, including, but not limited to: (1) a journal or journals, including cash receipts and disbursements, records, and any other records of original entry forming the basis of entries in any ledger; (2) general and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income, and expense accounts; (3) originals of all written communications received and copies of all written communications sent by such investment adviser relating to any recommendation made or proposed to be made and any advice given or proposed to be

given; and (4) arrangement and indexing of electronic books and records in a way that permits easy location, access, and retrieval of any particular record.

75.e By reason of the foregoing, CASO Management and Penn violated Section 204 ofe the Advisers Act [15 U.S.C. § 80b-4] and Rule 204-2 thereunder [17 C.F.R. § 275.204-2].

SIXTH CLAIM FOR RELIEF
Violations of Section 207 of the Advisers Act
(Against CASO Management and Penn)

76.e Paragraphs 1 through 75 are realleged and reincorporated by reference as if fullye set forth herein.

77.e By engaging in the acts and conduct described in this Complaint, CASOe Management and Penn willfully made untrue statements of material facts in registration applications filed with the Commission, and willfully omitted to report material facts, which are required to be stated therein.

78.e By reason of the foregoing, CASO Management and Penn violated Section 207 ofe the Advisers Act [15 U.S.C. § 80b-7].

SEVENTH CLAIM FOR RELIEF
Unjust Enrichment
(Against Relief Defendant Big House)

79.e Paragraphs 1 through 78 are realleged and reincorporated by reference as if fullye set forth herein.

80.e Relief Defendant Big House obtained proceeds of the fraudulent scheme allegede above under circumstances in which it is not just, equitable, or conscionable for the Relief Defendant to retain these ill-gotten gains. Relief Defendant has no legitimate claim to these funds. Relief Defendant has therefore been unjustly enriched.

81.o By reason of the foregoing, Relief Defendant should disgorge its ill-gotten gains,o plus prejudgment interest thereon.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests a Final Judgment:

I.

Permanently enjoining CASO Management and Penn, their agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from future violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], and Sections 204, 206(1), 206(2), and 207 of the Advisers Act [15 U.S.C. §§ 80b-4, 80b-6(1), (2), and 80b-7], and Rule 204-2 thereunder [17 C.F.R. §275.204-2].

II.

Permanently enjoining Ewers, Ssecurion, and CGI, their agents, servants, employees and attorneys and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from violating and aiding and abetting violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], and Sections 206(1) and 206(2) of the Advisers Act.

III.

Ordering CASO Management and Penn, on a joint and several basis, and Ssecurion, Ewers, and CGI to disgorge any ill-gotten gains received from their violative conduct alleged in this complaint, and to pay prejudgment interest thereon.

IV.

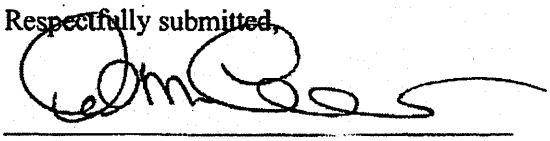
Ordering CASO Management and Penn to pay civil money penalties pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] and Section 209(e) x of the Advisers Act [15 U.S.C. § 80b-9]; and ordering Ewers, Ssecurion, and CGI to pay civil money penalties pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] and Section 209(e) of the Advisers Act [15 U.S.C. § 80-9(e)].

V.

Granting such other and further relief as the Court may deem just and proper.

Dated: New York, New York
January 30, 2014

Respectfully submitted,



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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION **Plaintiff,** **v.** **LAWRENCE E. PENN, III, CAMELOT ACQUISITIONS SECONDARY OPPORTUNITIES MANAGEMENT LLC, THE CAMELOT GROUP INTERNATIONAL, LLC** **Defendant**	**14 Civ. 0581 (VEC)** **AMENDED ANSWER AND COUNTERCLAIMS OF DEFENDANTS** **AS APRIL 8, 2016 BY ORDER**

ANSWER OF DEFENDANT(s) LAWRENCE E. PENN III, CAMELOT ACQUISITIONS SECONDARY OPPORTUNITIES MANAGEMENT LLC, AND THE CAMELOT GROUP INTERNATIONAL, LLC

In response to the allegations contained in the Complaint, Defendants deny to the best of his knowledge disadvantaging investors by elevating their interests over the investors or the Fund. Defendant denies precluding investors from redeeming their interests in the Fund. Defendant denies defrauding defined as the "intent to injure" acting in a manner to injure investors and preserves all rights in this answer.

GENERAL RESPONSE

Defendant responses to each allegation contained in the Complaint are below. Moreover, anything admitted or denied is only to the best of the Defendants knowledge and memory as to the facts and as to any conclusions, characterizations, implications, innuendos, or speculation contained in herein or in the Complaint as a whole. In addition, Defendant specifically, denies any allegations contained in defined terms, ambiguous terms or unnumbered paragraphs in the

Complaint. This General Response is incorporated, to the extent appropriate, into each numbered paragraph of this Answer.

SUMMARY OF ALLEGATIONS

1. Defendant denies knowledge or information sufficient to form a belief as to the truth of some of the allegations in Paragraph 1 of the Complaint. Defendant denies to the best of his knowledge disadvantaging investors by elevating their interests over the investors or the Fund and denies that CGI aided and abetted in disadvantaging investors.
2. Defendant admits that Penn and CASO Management were registered investment advisers under Penn's control. Defendants deny to the best of his knowledge disadvantaging investors by elevating his interests over the investors or the Fund and has no basis in fact given the Partnership Agreement. Defendant admits diverting money from the fund which is part of investing. Defendant denies precluding investors from redeeming their interests in the Fund. Defendant denies to the best of his knowledge and memory misappropriating moneys as defined as "intentional use of the property or funds in order to injure investors" and admits transferring money to CGI in a manner that did not characterize the use of the fund money appropriately from late 2010 to October 2013.
3. Defendant admits that CGI was an unregistered entity and denies knowledge or information sufficient to form a belief as to the truth of some of the allegations in Paragraph 3 of the Complaint. Defendant admits that approximately all of the $9.3 million was sent from the Fund to CASO Management or CGI.
4. Defendant admits that money was sent from the fund through CASO Management, and forwarded to CGI which was an affiliate. Defendant admits that CGI paid overhead expenses to include rent, salaries, finders, and other expenses. Defendant denies knowledge or information sufficient to form a belief as to the truth of whether investors

anticipated with regard to the use of management fees once paid or advanced. Defendant denies renting "luxurious" office space which was approximately 2000 square feet and modest at best that fit 6-8 people. Defendant admits that investors were international in nature.

5. Defendant admits that the accounting should have accurately described the use of capital for auditors and administrators. Defendant denies knowledge or information sufficient to form a belief as to the truth of some of the allegations in Paragraph 5 of the Complaint

VIOLATIONS

6. Defendant denies knowledge or information sufficient to form a belief as to the truth of some of the allegations in Paragraph 6 of the Complaint. Specifically, if actions regarding management fees are material to securities since the money was designated to be used as management fees. Defendant admits to violations of Sections 204 of the Investment Advisers Act. Defendant admits to violations of Rule 204-2 of 17 CFR 275.204-2. Defendant denies violations of Section 206(1)(2), and Section 207 of the Investment Advisers Act.
7. Defendant denies allegations contained in Paragraph 7.
8. Defendant denies allegations contained in Paragraph 8.
9. Defendant denies allegations contained in Paragraph 9.
10. Defendant denies allegations contained in Paragraph 10.
11. Defendant denies allegations contained in Paragraph 11.
12. Defendant denies each and every allegation contained in Paragraph 12.

RESPONSE TO
JURISDICTION AND VENUE

13. The allegations contained in Paragraph 13 of the Complaint state legal conclusions as to which no response is required. Defendant denies knowledge or information sufficient to form a belief as to the truth of some of the allegations in Paragraph 13 of the Complaint.

14. The allegations contained in Paragraph 14 of the Complaint state legal conclusions as to which no response is required. Defendant denies knowledge or information sufficient to form a belief as to the truth of some of the allegations in Paragraph 14 of the Complaint. Defendant admits that his principal offices were in New York, New York.

15. Defendant denies knowledge or information sufficient to form a belief as to the truth of some of the allegations in Paragraph 15 of the Complaint.

RESPONSE TO
DEFENDANTS

16. With respect to the allegations contained in paragraph 16 of the Complaint, Defendant admits that he registered with the Commission and that Camelot Acquisitions Secondary Opportunities Management, LLC was the investment adviser to Camelot Acquisitions Secondary Opportunities, LP ("Camelot LP" or the "Fund"), as well as CASO Co-Invest A LLC, a Delaware limited liability company containing approximately $20-25 million.

17. With respect to the allegations contained in paragraph 17 of the Complaint, Defendant admits that he was 43 at the time, lives in New York, served honorably in the Army, and worked for well-known investment banking firms. Defendant admits that based the assessment on value of the assets or assets under his control/management peaked at approximately $140 to 180 million in 2013. Defendant admits that he had primary responsibility for all business decisions as Managing Member and Managing Director of

Camelot Acquisitions Secondary Opportunities Management, LLC and all investment decisions as Managing Member and Managing Director of Camelot Acquisitions Secondary Opportunities GP, LLC.

18. With respect to allegations contained in paragraph 18 of the Complaint, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 18 of the Complaint.

19. With respect to allegations contained in paragraph 19 of the Complaint, Defendant denies knowledge or information sufficient to form a belief as to the truth of some of the allegations in Paragraph 19 of the Complaint.

20. With respect to allegations contained in paragraph 20 of the Compliant, Defendant admits knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 20 of the Complaint.

RESPONSE TO
RELIEF DEFENDANT

21. With respect to allegations contained in paragraph 21 of the Compliant, Defendant denies knowledge or information sufficient to form a belief as to the truth of some of the allegations in Paragraph 21 of the Complaint.

RESPONSE TO
OTHER RELEVANT ENTITIES

22. With respect to allegations contained in paragraph 22 of the Compliant, Defendant admits knowledge or information sufficient to form a belief as to the truth of some of the allegations in Paragraph 22 of the Complaint.

23. With respect to allegations contained in paragraph 23 of the Compliant, Defendant admits knowledge or information sufficient to form a belief as to the truth of some of the allegations in Paragraph 23 of the Complaint. Defendant denies that TCGI Capital Group

LLC ("TCGI") has any relevance to this matter as evidenced by the May 21, 2014 hearing minutes.

RESPONSE TO
FACTS

24. With respect to allegations contained in paragraph 24 of the Compliant, Defendant admits knowledge or information sufficient to form a belief as to the truth of some of the allegations in Paragraph 24 of the Complaint.
25. With respect to allegations contained in paragraph 25 of the Compliant, Defendant denies knowledge or information sufficient to form a belief as to the truth of some of the allegations in Paragraph 25 of the Complaint. Defendant denies the accuracy of the Plaintiff's description of the stated investment strategy particularly given he has never spoken to the Plaintiff and the Plaintiff is not a partner in the Partnership.
26. With respect to allegations contained in paragraph 26 of the Compliant, Defendant admits knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 26 of the Complaint.
27. With respect to allegations contained in paragraph 27 of the Compliant, Defendant admits knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 27 of the Complaint.
28. With respect to allegations contained in paragraph 28 of the Compliant, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 28 of the Complaint.
29. With respect to allegations contained in paragraph 29 of the Compliant, Defendant denies knowledge or information sufficient to form a belief as to the truth of some of the allegations in Paragraph 29 of the Complaint.

30. With respect to allegations contained in paragraph 30 of the Compliant, Defendant denies knowledge or information sufficient to form a belief as to the truth of some of the allegations in Paragraph 30 of the Complaint.

RESPONSE TO
A. The Purported Due Diligence Payments Were a Sham.

31. With respect to allegations contained in paragraph 31 of the Compliant, Defendant denies knowledge or information sufficient to form a belief as to the truth of some of the allegations in Paragraph 31 of the Complaint.

32. With respect to allegations contained in paragraph 32 of the Compliant, Defendant denies knowledge or information sufficient to form a belief as to the truth of some of the allegations in Paragraph 32 of the Complaint.

33. With respect to allegations contained in paragraph 33 of the Compliant, Defendant admits knowledge or information sufficient to form a belief as to the truth of some of the allegations in Paragraph 33 of the Complaint.

34. With respect to allegations contained in paragraph 34 of the Compliant, Defendant denies knowledge or information sufficient to form a belief as to the truth of some of the allegations in Paragraph 34 of the Complaint.

35. With respect to allegations contained in paragraph 35 of the Compliant, Defendant denies knowledge or information sufficient to form a belief as to the truth of some of the allegations in Paragraph 35 of the Complaint.

36. With respect to allegations contained in paragraph 36 of the Compliant, Defendant denies knowledge or information sufficient to form a belief as to the truth of some of the allegations in Paragraph 36 of the Complaint.

37. With respect to allegations contained in paragraph 37 of the Compliant, Defendant to the best of his memory admits knowledge or information sufficient to form a belief as to the truth of some of the allegations in Paragraph 37 of the Complaint.

RESPONSE TO

B. Ssecurion Round-Tripped Most of the Money it Received from Camelot LP to CGI.

38. With respect to allegations contained in paragraph 38 of the Compliant, Defendant denies knowledge or information sufficient to form a belief as to the truth of some of the allegations in Paragraph 38 of the Complaint.

39. With respect to allegations contained in paragraph 39 of the Compliant, Defendant admits knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 39 of the Complaint.

RESPONSE TO

C. Penn and Ewers Tried to Conceal the True Nature of Sham Due Diligence Expenses.

40. With respect to allegations contained in paragraph 40 of the Compliant, Defendant admits knowledge or information sufficient to form a belief as to the truth of some of the allegations in Paragraph 40 of the Complaint.

41. With respect to allegations contained in paragraph 41 of the Compliant, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 41 of the Complaint.

42. With respect to allegations contained in paragraph 42 of the Compliant, to the best of his memory, the Defendant denies knowledge or information sufficient to form a belief as to the truth of some of the allegations in Paragraph 42 of the Complaint.

43. With respect to allegations contained in paragraph 43 of the Compliant, to the best of his memory, the Defendant admits knowledge or information sufficient to form a belief as to the truth of some of the allegations in Paragraph 43 of the Complaint.

44. With respect to allegations contained in paragraph 44 of the Compliant, to the best of his memory, the Defendant admits knowledge or information sufficient to form a belief as to the truth of some of the allegations in Paragraph 44 of the Complaint.

45. With respect to allegations contained in paragraph 45 of the Compliant, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 45 of the Complaint.

46. With respect to allegations contained in paragraph 46 of the Compliant, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 46 of the Complaint.

47. With respect to allegations contained in paragraph 47 of the Compliant, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 47 of the Complaint.

48. With respect to allegations contained in paragraph 48 of the Compliant, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 48 of the Complaint.

49. With respect to allegations contained in paragraph 49 of the Compliant, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 49 of the Complaint.

50. With respect to allegations contained in paragraph 50 of the Compliant, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 50 of the Complaint.

RESPONSE TO

D. CASO Management's Non-Compliance With the Commission's Examination.

51. With respect to allegations contained in paragraph 51 of the Compliant, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 51 of the Complaint.

52. With respect to allegations contained in paragraph 52 of the Compliant, Defendant admits knowledge or information sufficient to form a belief as to the truth of some of the allegations in Paragraph 52 of the Complaint.

53. With respect to allegations contained in paragraph 53 of the Compliant, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 53 of the Complaint. Plaintiff omits that for most of the examination Mr. Jeffrey Westfield who worked with the Defendant was there to provide the SEC with requested information and that except for books and records of the Investment Manager most of the items were provided. Additionally, Defendant that he had hired a consultant to prepare the firm by getting custody in order and other items necessary to become an Registered Investment Adviser.

54. With respect to allegations contained in paragraph 54 of the Compliant, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 54 of the Complaint.

55. With respect to allegations contained in paragraph 55 of the Compliant, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 55 of the Complaint. Plaintiff's representation of Defendant's education is false as evidenced by the case Document 122, Exhibit 2 on the PACERs system.

RESPONSE TO
FIRST CLAIM FOR RELIEF
Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder

56. In response to Paragraph 56 of the Complaint, Defendant repeats and incorporates as if fully set forth herein each and every response to the allegations contained in Paragraph 1-56.

57. With respect to allegations contained in paragraph 57 of the Compliant, Defendant denies the allegations in Paragraph 57(a)(b)(c) of the Complaint.

58. With respect to allegations contained in paragraph 58 of the Compliant, Defendant denies knowledge or information sufficient to form a belief as to the truth of some the allegations in Paragraph 58 of the Complaint.

59. With respect to allegations contained in paragraph 59 of the Compliant, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 59 of the Complaint. Defendant did not to the best of his knowledge, use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered by use of a manipulative or deceptive device.

RESPONSE TO
SECOND CLAIM FOR RELIEF
Aiding and Abetting Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder

60. In response to Paragraph 60 of the Complaint, Defendant repeats and incorporates as if fully set forth herein each and every response to the allegations contained in Paragraphs 1-60.

61. With respect to allegations contained in paragraph 61 of the Compliant, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 61 of the Complaint.

62. With respect to allegations contained in paragraph 62 of the Compliant, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 62 of the Complaint.

RESPONSE TO
THIRD CLAIM FOR RELIEF
Violations of Section 206(1) and 206(2) of the Advisers Act

63. In response to Paragraph 63 of the Complaint, Defendant repeats and incorporates as if fully set forth herein each and every response to the allegations contained in Paragraphs 1-62.

64. With respect to allegations contained in paragraph 64 of the Compliant, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 64 of the Complaint. To the best of the Defendants knowledge, CASO Management was the Investment Adviser to the General Partner, Camelot Acquisition Secondary Opportunities GP, LLC which made all investments on behalf of CASO, LP the Fund.

65. With respect to allegations contained in paragraph 65 of the Compliant, Defendant denies knowledge or information sufficient to form a belief as to some of the general statements made in Paragraph 65 of the Complaint.

66. With respect to allegations contained in paragraph 66 of the Compliant, Defendant admits knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 66 of the Complaint.

67. With respect to allegations contained in paragraph 67 of the Compliant, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 67 of the Complaint.

68. With respect to allegations contained in paragraph 67 of the Compliant, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 68 of the Complaint.

RESPONSE TO
FOURTH CLAIM FOR RELIEF
Aiding and Abetting Violations of Section 206(1) and 206(2) of the Advisers Act

69. In response to Paragraph 68 of the Complaint, Defendant repeats and incorporates as if fully set forth herein each and every response to the allegations contained in Paragraphs 1-68.

70. With respect to allegations contained in paragraph 70 of the Compliant, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 70 of the Complaint.

71. With respect to allegations contained in paragraph 71 of the Compliant, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 71 of the Complaint.

RESPONSE TO
FIFTH CLAIM FOR RELIEF
Violations of Section 204 of the Advisers Act and 204-2 Thereunder

72. In response to Paragraph 72 of the Complaint, Defendant repeats and incorporates as if fully set forth herein each and every response to the allegations contained in Paragraphs 1-71.

73. With respect to allegations contained in paragraph 73 of the Complaint, Defendant admits to the best of his knowledge and memory that records were not prepared for the Investment Adviser Camelot Acquisition Secondary Opportunities Management, LLC as alleged in paragraph 73.

74. With respect to allegations contained in paragraph 74 of the Complaint, Defendant admits to the best of his knowledge and memory that records were not prepared for the Investment Adviser Camelot Acquisition Secondary Opportunities Management, LLC as it relates to subsection (1), (2), (3), and (4) of allegations in Paragraph 74 of the Complaint.

75. With respect to allegations contained in paragraph 75 of the Complaint, Defendant admits to the best of his knowledge and memory that records were not prepared for the Investment Adviser Camelot Acquisition Secondary Opportunities Management, LLC as it relates to allegations in Paragraph 75 of the Complaint.

RESPONSE TO
SIXTH CLAIM FOR RELIEF
Violations of Section 207 of the Advisers Act

76. With response to Paragraph 76 of the Complaint, Defendant repeats and incorporates as if fully set forth herein each and every response to the allegations contained in Paragraphs 1-75.

77. With respect to allegations contained in paragraph 77 of the Complaint, Defendant denies the allegations in paragraph 77 of the Complaint.

78. With respect to allegations contained in paragraph 78 of the Complaint, Defendant denies the allegations in paragraph 78 of the Complaint.

RESPONSE TO
SEVENTH CLAIM FOR RELIEF
Unjust Enrichment

79. With response to Paragraph 79 of the Complaint, Defendant repeats and incorporates as if fully set forth herein each and every response to the allegations contained in Paragraphs 1-78.

80. With respect to allegations contained in paragraph 80 of the Complaint, Defendant denies the allegations in paragraph 80 of the Complaint. The Relief Defendant did contribute value to the General Partner by making introductions and recommendations on behalf of the General Partner. His actions likely contributed significant value to the largest asset in the Fund.

81. With respect to allegations contained in paragraph 81 of the Complaint, Defendant should not be disgorged based on his response in the letter sent February 26, 2016, Document 122 with Exhibits on PACERs. Among other facts, Defendant made all of the investments in the Partnership.

RESPONSE TO
PRAYER FOR RELIEF

I.

Defendant denies there is need for enjoining CASO Management and Penn, their agents, servants, employees, and attorneys of any violations present or future. CASO Management was not the General Partner, the Defendant acted in the capacity through Camelot Acquisition Secondary Opportunities GP, LLC, as the General Partner of the Fund.

II.

Defendant denies there is need for enjoining CGI, their agents, servants, employees, and attorneys of any violations present or future. CGI was not the General Partner, the Defendant acted in the capacity through Camelot Acquisition Secondary Opportunities GP, LLC, as the General Partner.

III.

Defendant denies there is need for enjoining CASO Management and Penn, on a joint and several basis, and Ssecurion, Ewers, and CGI because there are no ill-gotten gains as defined as "benefits obtained in an evil manner." CASO Management was not the General Partner, the Defendant acted in the capacity through Camelot Acquisition Secondary Opportunities GP, LLC, as the General Partner of the Fund and had authorizations in that capacity in accordance with the Limited Partnership Agreement.

IV.

Defendant to the best of his knowledge denies Plaintiff is entitled to a judgement or any other relief as requested in the Prayer for Relief section IV of the Complaint based on their actions as stated in Document 122 with Exhibits on PACERs and law as established in 15 U.S.C.A. 78u.

FIRST AFFIRMATIVE DEFENSE

The Complaint, to the best of the Defendant's knowledge contains false statements which have prejudiced the Defendant in parallel matters which have resulted in Constitutional injury to the Defendant. Defendant admits diverting money from the Fund in order to make investments, pay expenses, and advance management fees in accordance with the contractual intent and latitude as established by the Partnership agreement of the Fund. Based on $123 million in committed capital approximately $105 million was spent on investments and the balance was

spent on management fees and other expenses which met the contractual intent of the Partnership. With regard to the first claim for relief alleging violations of Section 10(b) of the Exchange Act and Rule 10b-5, does not meet the "in connection with" requirements or associated elements as required by common law. Therefore must be dismissed due to failure to state a claim, illegality as well as unclean hands (outlined in the counterclaims section of this answer).

SECOND AFFIRMATIVE DEFENSE

Defendant denies to the best of his knowledge and memory misappropriating moneys as defined as "intentional use of the property or funds in order to injure investors" and admits transferring money to CGI from late 2010 to October 2013. However, the purpose of the Fund was to divert money to investments which was the contractual intent of the Partnership. With regard to the second claim for relief alleging aiding and abetting violations of Section 10(b) of the Exchange Act and Rule 10b-5, does not meet the "in connection with" requirements or associated elements as required by common law. Therefore must be dismissed due to failure to state a claim, illegality as well as unclean hands (outlined in the counterclaims section of this answer).

THIRD AFFIRMATIVE DEFENSE

Defendant admits that approximately all of the $9.3 million was sent from the Fund to CASO Management or CGI through Ssecurion in order to advance management fees in accordance with Section 6.2 of the Limited Partnership Agreement which states the General Partner has the right to "modify any obligations of the Partnership" based on the understanding that management fees are an obligation of the Partnership. With regard to the third claim for relief alleging violations of Sections 201(1) and 206(2) of the Advisers Act, there was and is no injury, economic harm, loss, act to defraud, materiality or other necessary elements to meet the

standards required to award relief for this claim as required by common law. Therefore must be dismissed due to failure to state a claim, illegality as well as unclean hands (outlined in the counterclaims section of this answer).

FOURTH AFFIRMATIVE DEFENSE

Defendant admits that CGI paid overhead expenses to include rent and salary from management fees sent to it by CASO Management and advances on management fees sent to CGI an affiliate of the General Partner ascribed the quality or essence of an Investment Manager along with CASO Management in accordance with page 6 of the Partnership Agreement. The use of management fees to the best of the Defendant's knowledge, are at the owners' discretion to include overhead expenses, finders, salaries, rent, and commitments by General Partners to the Fund which is standard industry practice. Once sent to the Investment Manager or affiliate ascribed the quality or essence of an Investment Manager like CGI. The management fee is an expense but also an obligation of the Fund and can be used at the Investment Manager's discretion once paid or advanced. With regard to the fourth claim for relief alleging aiding and abetting violations of Sections 206(1) and 206(2) of the Advisers Act, there was or is no injury, economic harm, loss, act to defraud, materiality or other necessary elements to meet the standards required to award relief for this claim as required by common law. Therefore must be dismissed due to failure to state a claim, illegality as well as unclean hands (outlined in the counterclaims section of this answer).

FIFTH AFFIRMATIVE DEFENSE

With regards to the fifth claim for relief alleging violations of Section 204 of the Advisers Act and Rule 204-2 thereunder, the Plaintiff's breach of duty in the parallel criminal case resulted in Prevention of Performance due to unclean hands (outlined in the counterclaims section of this answer).

SIXTH AFFIRMATIVE DEFENSE

Defendant admits that it was not material based on common law as stated that, In Rule 10b-5 affirmative misrepresentation cases, reliance remains essential element of Plaintiff's case, even if Plaintiff establishes materiality of misrepresentation. "To fulfill materiality requirement for securities fraud, there must be substantial likelihood that disclosure of omitted fact would have been viewed by reasonable investor as having significantly altered the total mix of information made available." Sable v. Southmark/Envicon Capital Corp., 819 F. Supp. 324, S.D.N.Y. 1993). On April 7, 2012, approximately two months after the Complaint was issuede the investors voted to stay in the Fund created, raised, invested, and managed by the Defendant. The Defendants actions as viewed by reasonable investors of the fund did not alter the total mix of information made available in a manner that changed their willingness to stay in the Fund. To the best of the Defendant's knowledge fraud is a deliberate deception to secure unfair or unlawful gain, or to deprive a victim of a legal right. The investors are still in the fund, no unfair or unlawful gain occurred and there are no victims of loss. By law, the Defendants actions cannot be characterized as a Larceny as decided by People v. Zinke, 76 N.Y.2d 8, 556 N.Y.S.2d 11 or Unjust Enrichment which by common law requires (1) that the defendant benefitted, (2) at the plaintiff's expense, and (3) that equity and good conscience require restitution. These elements are not met because the Defendant did not benefit at the expense of the Partners of the Fund or Plaintiff (in this case the SEC) or in the parallel case. The partners in the Fund, to include the Defendant as General Partner, had an expectation that based on the committed and invested capital of approximately $123 million, 80% to 85% would be invested in securities in the Fund which it was all by Defendant. The partners to include the Defendant as General Partner, had an expectation that the balance of the committed and invested capital of the Fund (approximately $18 to $20 million) would go to management fees however characterized. The

management fees in this fund are part of the commitment and allocated to the General Partner through the Investment Manager entities. Equity and good conscience dictates that the General Partner who established the Fund, raised the capital over a 6 year period of time, made all the investments should be allowed to operate under the contractual intent of the Limited Partnership Agreement including but not limited to Sections 6.2 and Section 7.6.

The Plaintiff falsely stated that the Defendant of violating the Investment Advisers Act of 1940 Sections 207 by including false statements regarding the Defendants education in order to establish that he "willfully to [made] any untrue statement of a material fact in any registration application." This is caused a material prejudice to the Defendant which has ramifications due to the power of a federal agency's agents and attorneys. With regard to the Investment Advisers Act of 1940 Sections 206(1)(2), It shall be unlawful for any investment adviser by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly **(1)** to employ any device, scheme, or artifice to defraud any client or prospective client; **(2)** to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client. The Defendant did not intend to defraud which suggests actual injury. There is no injury in this case except to the Defendant based on false statements and unlawful charges in the parallel case. When fraud occurs in the Courts it is more dangerous and material to the fabric of justice than any other action associated with this case or the parallel criminal matter. The Plaintiff's actions are equally if not more harmful than any action of the Defendant in this civil and parallel state-level court. Again, with regard to the second claim for relief alleging aiding and abetting violations of Section 10(b) of the Exchange Act and Rule 10b-5, does not meet the "in connection with" requirements or associated elements as required by common law. Therefore must be dismissed due to failure to state a claim, illegality as well as unclean hands (outlined in the counterclaims section of this answer).

SEVENTH AFFIRMATIVE DEFENSE

Actions by the Defendant were made during a fixed period of time and had no material affect nor caused harm or injury. The Plaintiff has no basis to say that any Defendant "will continue to engage" in the alleged violations. Actions by the Defendant were made to appear to seek harm due to Plaintiff's representation of Defendant's education which is false and meant to deceive and mislead as evidenced by the case Document 122, Exhibit 2 on the PACERs system. By lying about a Defendant's education, the Plaintiff uses a manipulative and deceptive device in order to injure the Defendant by prejudice in this Court and characterize him in a manner that is false. Lying about a Defendant's education is particularly injurious because of its material effect on the ADV. The Defendant actions were not meant to cause harm or injury as evidenced by the actions of the partners in the Fund. With regard to the sixth claim for relief alleging violations of Sections 207 of the Advisers Act, the statements are false and do not meet the standards required to award relief for this claim as required by law. Therefore must be dismissed due to failure to state a valid claim or cause of action based on valid facts elements, illegality as well as unclean hands (outlined in the counterclaims section of this answer).

EIGTH AFFIRMATIVE DEFENSE

Actions by the Defendant regarding this matter had no relevance or relationship to TCGI Capital Group LLC ("TCGI") as established in the May 21, 2014 hearing minutes and as such, the Plaintiff has interfered with the potential business relationships of the Defendant Lawrence E. Penn III.

NINTH AFFIRMATIVE DEFENSE

Actions by the Defendant were made during a fixed period of time and had no material affect nor caused harm or injury. CASO Management was the Investment Adviser to the General Partner, Camelot Acquisition Secondary Opportunities GP, LLC which made all

investments on behalf of CASO, LP the Fund. The Fund does not make the investments the General Partner makes the investments. The Defendant was acting as Investment Adviser to General Partner (himself) not CASO, LP the Fund as evidence by Exhibit 1. The Plaintiff appears to have a material misunderstanding as to how a private fund operates based on the absence of the Limited Partnership Agreement in this case for over 2 years.

TENTH AFFIRMATIVE DEFENSE

Actions by the Defendant were made during a fixed period of time and had no material affect nor caused harm or injury. CASO Management was the Investment Adviser to the General Partner, Camelot Acquisition Secondary Opportunities GP, LLC which made all the decisions and had the right to pay consultants, finders, and those who added value like Mr. Ewers. The Plaintiff has no basis to say that any Defendants "will continue to engage" in violations based on actions like the Fund which are temporary in nature. With regard to the seventh claim for relief alleging Unjust Enrichment, this claim has no merit and there is no unjust enrichment. The law as established by *People v. Zinke*, clearly prohibits grand larceny charges which eliminates unjust enrichment and pecuniary gain. There is no basis to award relief for this claim as required by law or fact. Therefore, this claim must be dismissed due to failure to state a valid claim or cause of action based on valid facts elements, illegality as well as unclean hands (outlined in the counterclaims section of this answer).

COUNTERCLAIMS OF LAWRENCE E. PENN III, CAMELOT ACQUISITIONS SECONDARY OPPORTUNITIES MANAGEMENT LLC, THE CAMELOT GROUP INTERNATIONAL, LLC

As and for their Counterclaims against Plaintiffs Securities and Exchange Commission (the, "SEC"), Andrew M. Calamari, Amelia Cottrell, Michael Osnato, Howard Fischer, Katherine Bromberg, Karen Willenken and Polly Greenberg (collectively, the "Counterclaim Defendants"), Lawrence E. Penn III, Camelot Acquisitions Secondary Opportunities Management LLC, The Camelot Group International, LLC (collectively, the "Counterclaim Plaintiffs") allege, upon knowledge as to their own acts and upon information and belief as to the acts of others, as follows:

PRELIMINARY STATEMENT AND NATURE OF THE ACTION

1. This is an action against staff members in the New York Office of the Plaintiff, the SEC for federal and state constitutional violations and tortious conduct committed under the color of state law and in violation of state law. Defendant Lawrence E. Penn III has brought Counterclaims against Plaintiffs that seek to prevent Plaintiffs from abusing the judicial process, interference, acting under the color of state law, violating state law, and U.S. Constitution violations. The complaint with false statements from the SEC New York Office was produced and relied upon by the Manhattan District Attorney (the "MDA") which intervened in May of 2014 (PACERs, *SEC v. Penn*, et al, 14 Civ 0581, PACERs Document 51) and used the Complaint to construct an accusatory instrument called a "True Bill" Indictment which charged Grand Larceny was charged in direct violation of statutory and common law as decided by the Court of Appeals of New York (the highest court in New York State) which ruled over 25 years ago in *People v. Zinke*, 556 N.Y.S.2d 11, 76 N.W.2d 8 (1990), that a "general partner in limited partnership cannot be found guilty of larceny for misappropriating partnership funds."

2. The state-level indictment was directly caused by the actions of members of the SEC in concert with the Manhattan District Attorney Chief of Major Economic Crime Bureau. The Grand Larceny charge had no basis in law, was used to justify an arrest warrant and an excessive bail of $5 million which was reduced to $2.5 million at arraignment as evidenced by the Hearings Minutes. The excessive bail, based on the unlawful indictment, resulted in a loss of liberty, abuse of process, interference as well as a U.S. Constitution and New York State Constitution due process violation and personal injury.

3. Officers of the Court ignored well-established and clear law as evidenced by their detailed memorandum of law dated January 30, 2014 and the Limited Partnership Agreement (the "LPA") in which established authorization as Managing Member of the General Partner, Camelot Acquisitions: Secondary Opportunities G.P., L.L.C. in which he acted. All documentation confirms that Mr. Penn was the General Partner and acted in that capacity.

PARTIES

4. Plaintiff Lawrence E. Penn III, is a former military officer who served honorably in the U.S. Army after graduation from the United States Military Academy at West Point. Mr. Penn has approximately 15 years of executive experience in private equity, mergers and acquisitions, and community leadership. Mr. Penn was the Founder and approximately 99% owner of The Camelot Group International, LLC, Camelot Acquisitions Secondary Opportunities Management, LLC, Camelot Acquisitions Secondary Opportunities GP, LLC, collectively which managed Camelot Acquisitions Secondary Opportunities, LP (the "Fund") one of the leading African-American-owned private equity investment firms in New York. Mr. Penn was employed or self-employed on a full-time basis from 1999 until February 10, 2014 when, solely as a consequence of the plaintiff's actions, his employment was ended due to detention. He was coerced and defrauded out of his ownership interests, denied due process and defamed by

charging him with a crime in violation of state law resulting in violations including but not limited to interference, abuse of process and personal injury.

5.e Upon information and belief Plaintiff(s) the Securities and Exchange Commissione and members as outlined below in the office located in New York, at Brookfield Place, 200 Vesey Street, Suite 400, New York, NY 10281-1022.

6.e Upon information and belief Plaintiff(s) jointly and severally in her official ande personal capacity, Amelia Cottrell was Of Counsel and Former SEC Associate Director at the Securities and Exchange Commission office located in New York, at Brookfield Place, 200 Vesey Street, Suite 400, New York, NY 10281-1022. Presently, Ms. Amelia Cottrell is a partner at Willkie Farr & Gallagher LLP, located at 787 Seventh Avenue, New York, NY 10019-6099.

7.e Upon information and belief Plaintiff(s) jointly and severally in his official ande personal capacity, Michael J. Osnato was Of Counsel and Chief of Enforcement Division's Complex Financial Instruments Unit at the Securities and Exchange Commission office located in New York, at Brookfield Place, 200 Vesey Street, Suite 400, New York, NY 10281-1022.

8.e Upon information and belief Plaintiff(s) jointly and severally in his official ande personal capacity, Howard Fischer is Senior Trial Counsel and Attorney of the Securities and Exchange Commission located in New York, at Brookfield Place, 200 Vesey Street, Suite 400, New York, NY 10281-1022.

9.e Upon information and belief Plaintiff(s) jointly and severally in her official ande personal capacity, Karen E. Willenken is Of Counsel at the Securities and Exchange Commission office located in New York, at Brookfield Place, 200 Vesey Street, Suite 400, New York, NY 10281-1022.

10.e Upon information and belief Plaintiff(s) jointly and severally in her official ande personal capacity, Katherine S. Bromberg is Of Counsel at the Securities and Exchange

Commission office located in New York, at Brookfield Place, 200 Vesey Street, Suite 400, New York, NY 10281-1022.

11. Upon information and belief Plaintiff(s) jointly and severally in his official and personal capacity, James D'Avino is an investigator at the Securities and Exchange Commission office located in New York, at Brookfield Place, 200 Vesey Street, Suite 400, New York, NY 10281-1022.

12. City of New York is a municipal corporation that oversees the Manhattan District Attorney and associated organizations.

13. Upon information and belief Plaintiff(s) jointly and severally in her official and personal capacity, Artie McConnell was an Assistant District Attorney under Supervision of the Manhattan District Attorney located at One Hogan Place, New York, NY 10013-4311. Presently, Mr. McConnell is an Assistant United States Attorney located in Brooklyn, New York.

14. Upon information and belief Plaintiff(s) jointly and severally in her official and personal capacity, Polly Greenberg was the Chief of the Manhattan District Attorney Major Economic Crime Bureau located at One Hogan Place, New York, NY 10013-4311. Presently, Ms. Greenberg is a Managing Director at Duff & Phelps located in New York at 55 E 52nd Street, New York, NY 10055.

SUBJECT MATTER JURISDICTION AND VENUE

15. This Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331 over claims arising under 42 U.S.C. §§ 1981 and 1983 as well as actions brought pursuant to *Bivens v. Six Unknown Agents of the Federal Bureau of Narcotics*, 403 U.S. 338 (1971).

16. This Court has supplemental jurisdiction over Plaintiff(s) claims pursuant to 28 U.S.C. §1367, as the actions form part of the same case or controversy as the federal question claims asserted by Plaintiffs/Counterclaim Defendants.

17. Venue proper in this District under 28 U.S.C. §1391(a) because claims arose here, Defendant Lawrence E. Penn III resides here, Plaintiff(s) conduct was here or conducted their business here, and as a substantial part of the events giving rise to the claims herein occurred in the Southern District of New York and at the time of commencement of this action, at least one of the Plaintiff(s) is subject to personal jurisdiction in this Court.

FACTUAL BACKGROUND

Mr. Penn Successful Career in The Camelot Group

18. Mr. Penn was the sole Founder of The Camelot Group and built a Fund complex similar to other private equity, venture capital, and hedge fund entrepreneurs. Several leaders of the industry backed the Fund and worked with Mr. Penn in order to help him develop his firm. His responsibilities at the firm extended to all areas and functions of the business: raising capital, maintaining investor relations, sourcing deals, structuring transactions, overseeing the portfolio companies, including Board of Director and Board Observer seats on Fund owned companies, developing business and marketing, managing vendors and suppliers, creating and maintaining public interest activities and performing general executive/management responsibilities within the firm. Mr. Penn was at all times a key man in the firm and the Fund.

19. Since inception, The Camelot Group was involved in transactions and fund development where Mr. Penn was the driving force in all fund raising and in the most recent Fund raised $123 million in capital commitments and invested $105 million. He led all of the investments in six portfolio companies and worked closely with the management teams in order

to help create value for the firm and the Fund. As of June 30, 2013, the Fund had a positive and growing internal rate of return based on the Fund assets and valuation.

20.e Mr. Penn as the owner was entitled to receive all the management fees, carriede interest in portfolio companies' investments; and distributions in profits from all of the Camelot Group affiliates.

21.e Members of the New York Office if the SEC constructed a Complaint with falsee statements and submitted it to this Court. Specifically, "...representing that Penn received a master's degree from UMUC Europe when he did not." (SEC Complaint, Document 1, page 16, paragraph 55). This is false statement because Mr. Penn did receive 2 master degrees from a program which at the time was called "University of Maryland European Division" which offered graduate degrees from University of Maryland System (UMS) programs as evidenced by the degrees (Document 122, Exhibit 2). Additionally, the Complaint stated, "CASO Management had precluded investors in the fund from redeeming their interests." (SEC Complaint, Document 1, page 2, paragraph 2). This is a false statement because there is not a redemption clause in the LPA that governed the Partnership when Mr. Penn was the General Partner. There was a Transfer clause in Section 7 of the Agreement as evidenced by (Document 122, Exhibit 3, pages 50-51) and in my capacity as General Partner in the Limited Partnership, Mr. Penn approved a transfer on May 4, 2011 as evidenced by (Document 122, Exhibit 4).

Plaintiff(s) violated a right of the Defendant under the Constitution of the United States.

22.e Plaintiff(s) worked in concert, with gross negligence, malice, outside the scope ofe their duties, under the color of state law, in violation of state law, the U.S. Constitution and the New York Constitution by constructing a Complaint with false statements in January 2014 and relying upon that Complaint to intervene into this parallel civil action in May of 2014 as evidenced by PACERs Document 46 and 51. The Complaint was used to construct an

accusatory instrument called a "True Bill" Indictment (Document 122, Exhibit 5) which charged Grand Larceny and associated offenses in direct violation of statutory interpreted by common law as decided by the Court of Appeals of New York (the highest court in New York State) which ruled over 25 years ago in *People v. Zinke*, 556 N.Y.S.2d 11, 76 N.W.2d 8 (1990), that a "general partner in limited partnership cannot be found guilty of larceny for misappropriating partnership funds." (Document 122, Exhibit 9). Additionally, Plaintiff(s) clearly acted outside of the New York State Legislative intent as outlined by *People v. Zinke.*

23. The indictment with a Grand Larceny charge had no basis in law, was used to justify an arrest warrant and an excessive bail of $5 million which was reduced to $2.5 million at arraignment as evidenced by the Hearings Minutes (Document 122, Exhibit 10). The excessive bail, based on the unlawful indictment, resulted in a loss of liberty which caused a U.S. Constitution and New York State Constitution due process violation and injury as established in *Zahrey v. Coffey*, 221 F.3d 342, U.S. Court of Appeals 2nd Circuit (2000) which held that the "right not to be deprived of liberty as a result of the fabrication of evidence by a government officer acting in an investigating capacity is a constitutional right." This due process violation minimized time with counsel, created duress, and enabled an officer of the Federal Court to coerce Mr. Penn into signing an Injunction, Temporary Restraining Order (TRO) and Asset Freeze. Additionally, the due process violation enabled selected officers of the State Criminal Court to coerce a plea over a 14 month period of detention.

24. Defendant Lawrence E. Penn III, acted in the capacity of the sole general partner in the limited partnership, established the Fund, raised all of the capital, and made all of the investments in the Fund. Petitioner asserts that on February 7, 2014, a defective, unlawful accusatory instrument (called a "True Bill") as evidenced by the certified Indictment dated February 7, 2014, as well as a warrant ordered with questionable to no legal basis, as indicated

on the New York State Unified Court System "WebCrims" page printed on February 6, 2015. Without a charge of Grand Larceny the loss of liberty due to this high bail would have been unlikely.

25. Defendant asserts that the unlawful indictment resulted in an excessive bail and a "deprivation of his liberty interest." *Zahrey v. Coffey*, 221 F.3d 342, U.S. Court of Appeals 2nd Circuit (2000). "The right not to be deprived of liberty as a result of the fabrication of evidence by a government officer acting in an investigating capacity is a constitutional right, for purposes of precluding qualified immunity, provided that the deprivation of liberty...can be shown to the result of...fabrication of evidence." The accusatory instrument was the "precipitating cause" of the excessive bail and subsequent detention which any reasonable person or lawyer would anticipate and caused the due process violation and "were the direct and proximate cause of"...the "wrongful and malicious prosecution." *Zahrey v Coffey*. "Qualified immunity protects a public official from liability for conduct that 'does not violate clearly established statutory or constitutional rights which a reasonable person would have known.'" *Harlow v Fitzgerald*, 457 U.S. 800, 818, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982).

26. Defendant asserts that he, Lawrence E. Penn III, was the General Partner (Camelot Acquisitions: Secondary Opportunities G.P., L.L.C. - aka "CASO GP"), and Investment Manager (Camelot Acquisitions: Secondary Opportunities Management, L.L.C. - aka "CASO MGT") of Camelot Acquisitions: Secondary Opportunities, L.P. - aka "CASO LP" or the "Fund" was unlawfully indicted and convicted in violation of McKinney's Penal Law §§ 155.00, subd. 5, 155.05, subd. 1; McKinney's Partnership Law §§ 10, 51, subds. 1, 2(a). Mr. Penn was a general partner in a limited partnership. For clarity, the members of the Manhattan District Attorney's office likely compromised the law by unlawfully indicting, and convicting a general

partner of a limited partnership which is illegal by statutory law that is 50 years old and common law interpreted and established *People v. Zinke* (1990) that is 25 years old in New York State.

27. Defendant asserts that in accordance in 15 U.S.C.A. 78u-3, "the Commission may bring action in United States District Court to seek, and the Court shall have jurisdiction to impose, upon a proper showing, a civil penalty: and is a self-regulatory agency that has responsibility for "records (as so defined) of such investment advisers" in this case the registered investment adviser was "Camelot Acquisitions Secondary Opportunities Management, L.L.C" (CASO MGT, LLC). Additionally, the Commission shall "conduct" periodic inspections of the records of private funds maintained by an investment adviser"..."for the protection of investors..." in accordance with 15 U.S.C.A. § 80b-4(b)(6)(A)(i)(ii).

28. Defendant asserts that he was also an investor in the Fund and the members of the Securities and Exchange Commission (the "SEC") had a responsibility to protect him as an investor as well as an oversight function over the Investment Manager and regulated entity CASO MGT, LLC.

29. Defendant asserts that he was not notified of a Grand Jury which allegedly convened on February 7, 2014, as indicated on the New York State Unified Court System "WebCrim" page (printed on February 6, 2015) at which time he never knowingly waived Grand Jury rights in accordance with McKinney's C.P.L. § 190.50(5)(a) and was denied "notice of grand jury proceedings" *People v. Empey*, 662 N.Y.S.2d 152 (1997), *People v. Ellison*, 119 A.D. 3d 602 (2014).

30. Defendant asserts that he attended hearings from February 2014 to February 2015 which were adjourned with little progress that included several "side-bar" discussions that he

was not a party to where he "had a fundamental right to be present during the discussion." *People v. Antommarchi*, 590 N.Y.S. 2d 33 (1992).

31. Defendant asserts that Assistant District Attorney ("ADA") Artie McConnell (as evidenced by Hearing Minutes from Feb. 10, 2015) and ADA Chevon Walker likely under the supervision of the ADA Polly Greenberg were the attorneys that acted in their investigatory roles from the issuance of the Complaint by the SEC on January 30, 2014 up until February 10, 2014 at which time ADA McConnell on behalf of the Manhattan District Attorney, Cyrus R. Vance Jr. formally initiated prosecution with the unlawful charge based on "misappropriating assets." "Normally, prosecutorial investigation will have been completed prior to the filing of the accusatory instrument" *Michigan v. Harey*, 110 S.Ct. 1176, 494 U.S. 344 (1990). On February 10, 2014, as evidenced by Feb. 10, 2014, hearing minutes, the arraignment commenced and an indictment was presented to the Court likely in violation of McKinney's Civil Service Law § 62, which requires that they "will support the constitution of the United States, and the constitution of the state of New York" and "faithfully discharge the duties of the position." The construction and presentation of fraudulent indictment in a New York State court of law would likely be a violation of law as well as other material statutes. "Only the rare types of error--in general one that "'infect[s] the entire trail process'" and "'necessarily renders[s] [it] fundamentally unfair'"--requires automatic reversal. *Glebe v. Frost*, 135 S.Ct. 429 (2014).

32. Defendant asserts that Polly Greenberg, Assistant District Attorney of the Manhattan District Attorney's office wrote a letter on May 19, 2014 to Judge (Honorable) Valerie E. Caproni, the United States District Court (U.S.D.C.), Southern District of New York (S.D.N.Y.), assigned to the *SEC v. Penn, et. al.* 14 Civ. 0581, the SEC's Civil Case against Mr. Penn, that included the "New York County Indictment Number 73/2014 (the "Indictment") that

charged Mr. Penn "with various felonies, including Grand Larceny in the First Degree" acting in her official capacity on behalf of the District Attorney of the County of New York. Petitioner further asserts that ADA Polly Greenberg requested to intervene in the civil case pursuant to the Rule 24 of the Federal Rules of Civil Procedure, for the purpose of obtaining a stay of discovery pending the resolution of the criminal case" as evidenced by Document 46, filed May 20, 2014 on the PACERs system under *SEC v. Penn et al.*, 14 Civ. 0581 (VEC).

Actions of by Plaintiffs led to defamation, loss of liberty interest, and due process violation which caused actual injury and violation of a right of the Defendant under the Constitution of the United States.

33. Defendant asserts that Polly Greenberg wrote a letter on June 2, 2014 to Judge Valerie E. Caproni of S.D.N.Y, to further present their "position on the application of the office of District Attorney for New York County" for a "stay of discovery in this action pending the outcome of a pending criminal proceeding against Defendant Lawrence E. Penn III" and states that the "The SEC consents to the requested stay of discovery and it believes that a full, rather than partial, stay is appropriate in this case." Petitioner further asserts that on page 3 of the letter outlining "Plaintiff's Interests" and referred to how "the SEC" would "conserve resources by postponing document discovery" and likely prejudiced Mr. Penn in the criminal process by referring to "the same basic scheme" as "the theft" prior to the end of the criminal case which is likely a defamatory statement (libel) as established by case law in *Penn Warranty Corp. v. DiGiovanni*, 10 Misc.3d 810 N.Y.S.2d 807 (2005). "The elements of libel are: (1) a false and defamatory statement of fact; (2) regarding [in this case Mr. Penn]; (3) which are published to a third party; and (4) which result in injury to" [in this case Mr. Penn] and McKinney's General Construction Law § 37-a (Personal Injury) at the New York State level statutory law and likely federal common-law.

34. Defendant asserts that Polly Greenberg took action to convince Judge Valerie E. Caproni by stating in a letter dated June 2, 2014 on page 4; "Finally, and perhaps most importantly, if the Defendants plead or are found guilty, document discovery in the SEC case may become unnecessary, or may be limited to a few discrete issues. Postponing document discovery therefore would conserve the SEC's limited resources, as well as those of the Defendants and the Court." This statement along with the letter, likely induced Judge Caproni to grant the stay of discovery as evidenced by Document 51 on the PACERS system, filed on June 11, 2014. Judge Caproni granted the motion given "the common factual and legal issues shared between the case (SEC civil case) and the parallel criminal proceedings." Petitioner further asserts that excessive bail resulted in detention at the Manhattan Detention Center sacrificing his liberty interest and created a due process violation hindering the ability to defend himself by accessing the law and key documents to easily prove that the larceny and related criminal charges had no basis in law.

35. Defendant asserts that between February 10, 2014 and March 16, 2015, he went to court appearances where calendar days were on a Monday and Mr. Penn's defense counsel assured Judge Ward that a resolution would happen at the 2-6 year range.

36. Defendant asserts that on March 16, 2015, he was brought to the courtroom associated with New York Supreme Court – Criminal Term, Part 71 as evidenced by The New York State Unified Court System (online) "WebCrim" page printed on Feb. 6, 2015. The Court appearances induced duress and extracted a plea of Grand Larceny which enabled restitution with 5% interest, likely setting up the potential unjust enrichment of the Court appointed collection agency and allowed for an unlawful forfeiture of Mr. Penn's interest in the Fund that he created from inception.

37. Defendant asserts that he made all the investments in the Fund, met the contractual intent of the Limited Partnership Agreement which was to invest approximately 80-85% (about $98 to $105 million) of the committed capital of approximately $123 million and used the balance for management fees during the life of the Fund. Petitioner asserts that Management Fees are an obligation of the Fund and that in accordance with Section 6.2(c) the General Partner had the right to "extend or modify any obligations of the Partnership." The Partnership was deemed fully invested before a complaint was issued and no complaining witness corroborated a Grand Larceny charge to his knowledge as required by common law.

38. Defendant asserts that he was coerced to answer "yes" at the threat of a longer sentence of incarceration if the plea deal was not executed. On April 20, 2015, Mr. Penn signed a forfeiture agreement that required him to give up his interest in the Fund for zero (0) dollars and pay a restitution based on an unlawful top charge of Grand Larceny in violation of a longstanding rule of primary statutory and common law which is binding law established by the highest Court in New York State, the Court of Appeals based on *People v. Zinke*, supra (1990), a precedent case that originated in the same court, the Supreme Court of New York County Part 74, the trial court for *People v. Zinke*, supra.

39. Defendant asserts that on March 16, 2015, on the date of the plea, while in the bullpen, Mr. Penn was informed that his co-Defendant was attacked at Riker's Island indicating to Mr. Penn that his co-Defendant was under duress and tried to take back an earlier plea allocution which may have been denied by Judge Ward shortly after Mr. Penn's plea on the same day as evidenced by Document 71 on the PACERs system dated February 24, 2015.

40. Defendant asserts that his plea was likely coerced by fraudulent means which include an improper accusatory instrument, the use of duress over a year strictly defined as

confinement and the threat of more confinement. "Strictly, the physical confinement of a person or the detention of a contracting party's property. In the field of torts, duress is considered a species of fraud in which compulsion takes the place of deceit in causing injury." (Black's Law Dictionary, 9th Edition). "Duress consists in actual or threatened violence or imprisonment, the subject of it must be the contracting party himself, or his wife, parent or child, and it must be inflicted or threatened by the other party to the contract, or else by one acting with his knowledge and for his advantage." (William R. Anson, Principles of the Law of Contract 261-262, Arthur L. Corbin ed., 3d Am. ed. 1919). "Today the general rule is that any wrongful act or threat which overcomes the free will of a party constitutes duress." (Black's Law, 9th Edition, pgs. 578, 579). Petitioner further asserts that his duress was also based on the potential physical harm similar to his co-Defendant Mr. Ewers based on notorious conditions of both Manhattan Detention Center (MDC) aka the "Tombs" and Riker's Island.

41. Defendant asserts that over the approximately 14 months he was strip searched or required to squat and expose his private parts after every non-legal visit and multiple times per month when his living area was "tossed" and at times where his documents were discarded. There were actions that could be described as violent in MDC and Riker's Island that created a tense environment which can be described as an atmosphere of duress. Mr. Penn was housed in a medium security house for most of his city jail time even though he had never been in contact with the criminal justice system in his entire life up until that point, had served honorably as an Officer in the US Army after graduation from West Point as well as serve his community in a manner that "clearly has touched a number of lives."

42. Defendant asserts that he was charged in violation of established New York State law, given excessive bail, detained which resulted in loss of liberty and based on that loss of

liberty was stripped of his due process rights guaranteed under the U.S. Constitution and the New York State Constitution. Actions by the Plaintiff(s) resulted in Defamation, Abuse of Process, Malicious Prosecution, and Interference.

DAMAGES

As a direct and proximate result of the unlawful actions of the Plaintiffs and Counterclaim Defendants SEC, City of New York, Amelia Cottrell, Michael J. Osnato, Howard Fischer, Karen E. Willenken, Katherine S. Bromberg, James D'Avino, Polly Greenberg, and Artie McConnell. The Defendant suffered and continues to suffer substantial injuries and damages, including but not limited to:

a. Loss of his business, which includes his interest in the Fund that he created and is still in operation due to the investments he made;

b. Costs associated with shutting down of his business operations;

c. Loss of income, including both Mr. Penn's share of the net profits as wells as additional investment income;

d. Loss of future income and opportunities;

e. Loss of business reputation, the value of brand of this business, which is a registered trademark internationally;

f. Loss of associated relationships and ongoing investment opportunities;

g. Legal fees, fines, credit, and expenses incurred to include legal fees.

AS AND FOR A CAUSE OF ACTION AND FIRST CLAIM FOR RELIEF PURSUANT TO 42 U.S.C.A. § 1983 (DUE PROCESS) AND "STIGMA-PLUS"
(Against SEC, City of New York, Amelia Cottrell, Michael J. Osnato, Howard Fischer, Karen E. Willenken, Katherine S. Bromberg, James D'Avino, Polly Greenberg, Artie McConnell)

43.e Defendant repeats and realleges the allegations of each of the precedinge paragraphs.

42 U.S.C.A. § 1983 provides in part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state...subjects or causes to be subjected, any citizen of the United States...to the deprivation of any rights, privileges, or immunities secured by the constitution and laws, shall be liable to the party injured in an action of law, suit or equity....

44.e The 14th Amendment of the United States Constitution provides in the Duee Process & Equal Protection of the laws clauses:

> "...nor shall any State deprive any person ofdife, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

45.e Article 1 § 6 of the New York State Constitution provides in the Due Processe clause

> "...No person shall be deprived any person of life, liberty, or property withoute due process of law."e

46.e Plaintiff(s) acted in concert, under the color of state law and in violation of statee law in order to strip the Defendant of his civil rights secured under the United States Constitution thereby seeking advantages in this civil action and caused injury to the Defendant. The Plaintiff(s) actions chilled and interfered with Mr. Penn's constitutional rights of due process depriving him of his chosen profession, his employment and his business interests.

47. The Second Circuit has recognized, in the context of a "procedural" due process claim that there is a "right not to be deprived of liberty as a result of the fabrication of evidence by a government officer acting in an investigating capacity." Zahrey v. Coffey, 221 F.3d 342,

349 (2d Cir. 2000); see also Ricciuti v. N.Y.C. Transit Auth., 124 F.3d 123, 130 (2d Cir. 1997) ("When a police officer creates false information likely to influence a jury's decision and forwards that information to prosecutors, he violates the accused's constitutional right to a fair trial, and the harm occasioned by such an unconscionable action is redressable in an action for damages."). The non-Supervisor Plaintiffs fabricated evidence in the Complaint and these manufactured-evidence claims led to the deprivation of liberty and deprivation of property.

48. Supreme Court precedent separately categorizes the protections afforded by the Due Process Clause as "procedural due process" (i.e., "a denial of fundamental procedural fairness") and "substantive due process" (i.e., "the exercise of power without any reasonable justification in the service of a legitimate governmental objective"). *Cty. of Sacramento*, 523 U.S. at 845-46. Defendant alleges both procedural due process and substantive due process violations. Specifically, the Defendant was deprived of: (1) his business and reputation (a property/liberty hybrid), and tangible property in the form of his interest in the Fund, reputation and business. The "[l]oss of one's reputation can . . . invoke the protections of the Due Process Clause if that loss is coupled with the deprivation of a more tangible interest, such as government employment." *Patterson v. City of Utica*, 370 F.3d 322, 329-30 (2d Cir. 2004). Such claims are commonly referred to as "stigma-plus" claims. *Patterson*, 370 F.3d at 330. The Defendant alleges: "(1) the utterance of a statement about [him] that is injurious to [his] reputation, that is capable of being proved false and he or she claims is false; and (2) some tangible and material state-imposed burden . . . in addition to the stigmatizing statement." *Velez v. Levy*, 401 F.3d 75, 87 (2d Cir. 2005) (internal quotation marks omitted); accord *Segal v. City of N.Y.*, 459 F.3d 207, 212 (2d Cir. 2006). "The defamatory statement must be sufficiently public to create or threaten a stigma." *Velez*, 401 F.3d at 87. The second prong—the "plus"—"must be a specific and adverse action clearly restricting the plaintiff's liberty." *Velez*, 401 F.3d at 87-88. While the "plus"

alleged is often termination of employment, it also applies to "termination of some other legal right or status." *White Plains Towing Corp. v. Patterson*, 991 F.2d 1049, 1063 (2d Cir. 1993) (citation, quotations and brackets omitted). The unlawful Grand Larceny and associated charges led to the unlawful "perp walk" as stated in the sixth claim for relief and resulted in the utterance of a statement regarding the unlawful charges that injured the Defendant's reputation and was the proximate cause of the tangible and material state-imposed burden, in this instance incarceration, which led to the loss of his position of General Partner in the Limited Partnership. The defamatory statement was public and created as well as threatened a stigma. The incarceration clearly restricted the Defendant's liberty satisfying both requirements of the stigma-plus claim.

49. "[F]or executive action to violate substantive due process, it must be so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience." *Bolmer v. Oliveira*, 594 F.3d 134, 142 (2d Cir. 2010) (quotations and citation omitted); see also *Johnson v. Newburgh Enlarged Sch. Dist.*, 239 F.3d 246, 252 (2d Cir. 2001) ("[M]alicious and sadistic abuses of government power that are intended only to oppress or to cause injury and serve no legitimate government purpose unquestionably shock the conscience. Such acts by their very nature offend our fundamental democratic notions of fair play, ordered liberty and human decency.") "The protections of substantive due process have for the most part been accorded to matters relating to marriage, family, procreation, and the right to bodily integrity." *Albright v. Oliver*, 510 U.S. 266, 273 (1994). In determining whether conduct is "conscience shocking" in the context of a qualified immunity defense on the pleadings, courts analyze whether the "conduct [was] (1) maliciously and sadistically employed in the absence of a discernible government interest and (2) of a kind likely to produce substantial injury." *Johnson v. Newburgh Enlarged Sch. Dist.*, 239 F.3d 246, 252 (2d Cir. 2001). The unlawful Grand Larceny and associated charges were maliciously and sadistically employed because government officials

went out of their way to break the law in charging which produced substantial injury to the Defendant.

50. Defendant has sustained both economic and non-economic losses as a result of the actions of Plaintiff(s) and demands actual, compensatory and punitive damages in an amount to be determined at trial plus costs, expenses and any applicable fees pursuant to 42 U.S.C.A. § 1988(a)(b)(c).

AS AND FOR A CAUSE OF ACTION AND SECOND CLAIM FOR RELIEF PURSUANT TO 42 U.S.C.A. § 1983 (EQUAL PROTECTION OF LAWS)
(Against SEC, City of New York, Amelia Cottrell, Michael J. Osnato, Howard Fischer, Karen E. Willenken, Katherine S. Bromberg, James D'Avino, Polly Greenberg, Artie McConnell)

51. Defendant repeats and realleges the allegations set forth in Paragraphs 1 through 50 of his Counterclaim as if fully set forth herein.

52. The 14th Amendment to the United States Constitution provides in the Due Process & Equal Protection of the laws clauses:

> "...nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

53. Article 1 § 11 of the New York State Constitution provides in the Equal Protection of the laws clause:

> "No person shall be denied the equal protection of the laws of this state or any subdivision thereof...

54. Plaintiff(s) motivated by malice and the ability to detain based on a state level charge in violation of clearly established law deprived Mr. Penn of the constitutionally-protected right of equal protection of the laws, specifically, the laws outlined in paragraph 1 of this Counterclaim.

55. Defendant has sustained both economic and non-economic losses as a result of thee actions of Plaintiff(s) and demands actual, compensatory and punitive damages in an amount to be determined at trial plus costs, expenses and attorneys' fees any applicable fees pursuant to 42 U.S.C.A. § 1988(a)(b)(c).

AS AND FOR A CAUSE OF ACTION AND THIRD CLAIM FOR RELIEF
TORTIOUS INTERFERENCE WITH A CONTRACT AND PARTNERSHIP
(Against SEC, City of New York, Amelia Cottrell, Michael J. Osnato, Howard Fischer, Karen E. Willenken, Katherine S. Bromberg, James D'Avino, Polly Greenberg, Artie McConnell)

56.e Defendant repeats and realleges the allegations set forth in Paragraphs 1 throughe 55 of his Counterclaim as if fully set forth herein.

57.e Defendant's ownership in related entities and partnership relationships with thee Fund were set forth in several agreements, to include the Fund Agreement.

58.e Plaintiff(s) knew that Defendant was the founder and general partner in the Funde and actions were taken to go far beyond the Fund Partnership Agreement and proximately caused the coerced termination of his participation the partnership of Fund and damaged him and Defendant has sustained and is continuing to sustain both economic and non-economic damages that must be remedied through issuance of a permanent injunction and in the amount of actual, compensatory and punitive damages in an amount to be determined at trial.

AS AND FOR A CAUSE OF ACTION AND FOURTH CLAIM FOR RELIEF
TORTIOUS INTERFERENCE WITH BUSINESS RELATIONS
(Against SEC, City of New York, Amelia Cottrell, Michael J. Osnato, Howard Fischer, Karen E. Willenken, Katherine S. Bromberg, James D'Avino, Polly Greenberg, Artie McConnell)

59.e Defendant repeats and realleges the allegations set forth in Paragraphs 1 throughe 58 of his Counterclaim as if fully set forth herein.

60.e Plaintiff(s) knew that Defendant was the founder and general partner in the Funde and as such, Defendant would benefit from and participate as a partner in the success of the Fund

as well as his ability to generate and obtain new business, employment, and partnership opportunities with several investors and institutions who are in the Fund.

61. Plaintiff(s) by using wrongful means, intentionally and deliberately interfered with Mr. Penn's prospective participation in the Fund by insisting on an excessive fines and cruel and unusual punishment for a charge that was unlawful from the beginning.

62. Defendant has sustained and is continuing to sustain both economic and non-economic damages from lost prospective business relations that must be remedied through issuance of a permanent injunction and in the amount of actual, compensatory and punitive damages in an amount to be determined at trial.

AS AND FOR A CAUSE OF ACTION AND FIFTH CLAIM FOR RELIEF
ABUSE OF PROCESS, FALSE IMPRISONMENT AND MALICIOUS PROSECUTION
(Against SEC, City of New York, Amelia Cottrell, Michael J. Osnato, Howard Fischer, Karen E. Willenken, Katherine S. Bromberg, James D'Avino, Polly Greenberg, Artie McConnell)

63. Defendant repeats and realleges the allegations set forth in Paragraphs 1 through 62 of his Counterclaim as if fully set forth herein.

64. Plaintiff(s) acted with an ulterior motive and malice underlying the use of process, and with the use of the legal process not proper in the regular prosecution in the parallel criminal case. Plaintiff(s) acted in order to gain an economic advantage in both the criminal and civil case by use of the unlawful Grand Larceny and associated charge(s).

65. Plaintiff(s) most of which are barred attorneys knew or should have known the law which is longstanding in nature and knew the existence of the Limited Partnership Agreement common in the asset management industry.

66. Defendant has sustained and is continuing to sustain both economic and non-economic damages that must be remedied through issuance of a permanent injunction and in the amount of actual, compensatory and punitive damages in an amount to be determined at trial.

AS AND FOR A CAUSE OF ACTION AND SIXTH CLAIM FOR RELIEF
DEFAMATION
(Against SEC, City of New York, Amelia Cottrell, Michael J. Osnato, Howard Fischer, Karen E. Willenken, Katherine S. Bromberg, James D'Avino, Polly Greenberg, Artie McConnell)

67. Defendant repeats and realleges the allegations set forth in Paragraphs 1 through 66 of his Counterclaim as if fully set forth herein.

68. Plaintiff(s) knew that charging Grand Larceny in conflict with New York State law and communicating the validity of that charge, is a false statement that harms the reputation of an individual and constitutes defamation and resulted in permanent damage to the Defendant.

69. Plaintiff(s) knew or should have known that the Defendant actually earned master's degrees from UMUC Europe through cursory investigation and had no basis in falsely and maliciously communicating, "...representing that Penn received a master's degree from UMUC Europe when he did not." When barred lawyers, officers, and members of a government agency issue false statements about the validity of educational credentials of the Defendant or any citizen, those actions will result in irreparable damages to any professional, particularly in the asset management, legal, and professional services industries. These injuries are enhanced when they communicated to a concurrent state-level jurisdiction who rely on the Complaint and use it to construct a criminal indictment with charges in conflict with state law.

70. In *Lauro v. Charles*, 219 F.3d 202, 203 (2d Cir. 2000), the Second Circuit held that the Fourth Amendment forbids the police from making a suspect perform a staged "perp walk" for the press if the walk serves no other law enforcement purposes and in cases in which the perp walk is "staged...at the request of the press, for no reason other than to allow him to be photographed." In this case, the Defendant was unlawfully charged from the start, the members of the Manhattan DA and the SEC, as the "statutory guardian" of the nation's financial markets, knew or should have known this basic financial concept.

71.e Defendant has sustained and is continuing to sustain both economic and non-economic damages that must be remedied through issuance of a permanent injunction and in the amount of actual, compensatory and punitive damages in an amount to be determined at trial.

AS AND FOR A CAUSE OF ACTION AND SEVENTH CLAIM FOR RELIEF
SUPERVISORY LIABILITY AND FAILURE TO INTERCEDE
(Against SEC, City of New York, Amelia Cottrell, Michael J. Osnato, Howard Fischer, Polly Greenberg)

72.e Defendant repeats and realleges the allegations set forth in Paragraphs 1 throughe 71 of his Counterclaim as if fully set forth herein.

73.e Defendant seeks compensatory and punitive damages pursuant to *Bivens v. Six Unknown Agents of the Federa Bureau of Narcotics*, 403 U.S. 338 (1971) due to failure to intercede, supervisory actions and omissions allowing fabricated evidence in the Complaint, unlawful charges which led to an excessive bail, loss of liberty interest, a due process violation, and the proximate cause of the forseeable damages.

74.e As the "statutory guardian" of the nation's financial markets, the SEC is imbuede with powers to protect the investing public to include Mr. Penn who was in investor. It can halt securities trades and seek to freeze-through its representations to a court-the assets of any institution. However, the SEC's canon of ethics cautions: "The power to investigate carries with it the power to defame and destroy." 17 C.F.R. § 200.66. As stated by Judge William H. Pauley III, District Judge SDNY, "...judges rely on the SEC to deploy those powers conscientiously and provide accurate assessments regarding the evidence collected in their investigations. In that way, the integrity of the regulatory regime is preserved" (*SEC v. Caledonian Bank LTD., et al.*, 15-cv-00894). This case reveals the dire consequences that flow when the SEC fails to live up toe its mandate and litigants yield to the Government's onslaught. "During an ex parte proceeding to freeze assets, where the adversary process is not in play, the SEC has an obligation to timely

alert the court to foreseeable collateral damage. By overstating its case, the SEC can do great harm and undermine the public's confidence in the administration of justice" (*SEC v. Caledonian Bank LTD., et al.).* This case demonstrates, these concerns are not hypothetical because Mr. Penn lost his business, assets and reputation due to the overreaching activities, false statements, and lack of supervision by the SEC and members of the Manhattan District Attorney. "Moreover, it is in the public interest for the SEC-exercising its power fairly and its resources efficiently-to follow where its plausible allegations lead" (*SEC v. Caledonian Bank LTD., et al.*).

75. This is a counterclaim against government officials, the Court should apply the doctrine of qualified immunity. "[Q]ualified immunity protects government officials from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (citation and internal quotations omitted). The statutory law as outlined in *People v. Zinke* (1990) is clearly established based on a 50 year old statute that is central to the financial markets. "A defendant is entitled to qualified immunity at the pleading stage if he can establish (1) that the complaint fails to plausibly plead that the defendant personally violated the plaintiff's constitutional rights, or (2) that the right was not clearly established at the time in question." *Turkmen v. Hasty*, 789 F.3d 218, 246 (2d Cir. 2015). However, Plaintiffs must overcome "a formidable hurdle" when raising qualified immunity at the pleadings stage. Field Day, LLC v. County of Suffolk, 463 F.3d 167, 191-92 (2d Cir. 2006); see also Schiller v. City of New York, No. 04-cv- 7922, 2009 WL 497580, at *7 (S.D.N.Y. Feb. 27, 2009) ("[C]ourts are reluctant to find that defendants are entitled to qualified immunity at the initial stages of the pleadings.")

76. "[P]robable cause to search is demonstrated where the totality of circumstances indicates a 'fair probability that contraband or evidence of a crime will be found in a particular

place.'" *United States v. Clark*, 638 F.3d 89, 94 (2d Cir. 2011) (internal citation omitted). Accordingly, a nexus must exist between the items sought and the particular place to be searched. See *Clark*, 638 F.3d at 94. To challenge the finding of probable cause underlying a search warrant must plead: (1) that government agents knowingly and deliberately, or with a reckless disregard of the truth, made false statements or material omissions in a warrant application; and (2) "that such statements or omissions were necessary to the finding of probable cause." *Velardi v. Walsh*, 40 F.3d 569, 573 (2d Cir. 1994). Plaintiffs clearly omitted the law, the Partnership Agreement, and made material and reckless false statements pertaining to Mr. Penn's education which corresponded to their baseless claims of Unjust Enrichment as well as falsifying his ADV.

77. "It is widely recognized that all law enforcement officials have an affirmative duty to intervene to protect the constitutional rights of citizens from infringement by other law enforcement officers in their presence. . . . In order for liability to attach, there must have been a realistic opportunity to intervene to prevent the harm from occurring." *Anderson v. Branen*, 17 F.3d 552, 557 (2d Cir. 1994). In this counterclaim, "the failure to intercede was a proximate cause of the harm." *Bah v. City of New York*, No. 13-cv-6690 (PKC), 2014 WL 1760063, at *7 (S.D.N.Y. May 1, 2014); accord *O'Neill v. Krzeminski*, 839 F.2d 9, 11 (2d Cir. 1988). The Plaintiffs in concert took an active role in shaping the Complaint thereby incurring direct liability for violating the Defendant's constitutional rights. "While all lawyers owe a duty of honesty and candor to the Court, this obligation lies most heavily upon [prosecutors] who are not merely partisan advocates, but public officials charged with administering justice honestly, fairly, and impartially" *Morales v. Portuondo*, 165 F. Supp. 2d 601, 612 (S.D.N.Y. 2001).

78. "An officer who fails to intercede is liable for the preventable harm caused by the actions of the other officers where that officer observes or has reason to know . . . that any constitutional violation has been committed by a law enforcement official." *Anderson*, 17 F.3d at 557. The SEC should have interceded during the charging phase considering the accusatory instrument was used by Polly Greenberg to intervene in this very civil action. Their failure to intercede make them liable for any damages because courts have recognized a constitutional obligation to protect an individual when a "governmental entity itself has created or increased the danger to the individual." *Ying Jing Gan v. City of New York*, 996 F.2d 522, 533 (2d Cir. 1993). In this counter claim each Plaintiff, through the official's own individual actions, violated Plaintiffs' constitutional rights and should be held personally liable for the alleged constitutional tort. The Supervisory Plaintiffs were involved with the false or misleading information in the Complaint before it was submitted to this Court.

DEMAND FOR JURY TRIAL

Defendant requests trial by jury of all issues set forth in this Answer.

WHEREFORE, Defendant respectfully request judgement against Plaintiff(s) as follows:

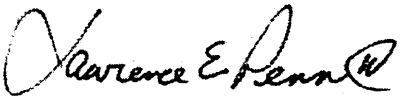
A. That a preliminary and permanent injunction be entered against Plaintiff(s), their agents, servants, representatives, officers, directors, affiliates, subsidiaries, employees, successors, and assigns, and all persons or entities acting in concert or participation with them, enjoining them from (1) improperly interfering with Defendant's contract and partnership, business relationships, by specifically barring them from actions under the color of state law, in violation of state law, in violation of the U.S. Constitution, or in violation of the New York State Constitution and all associated civil rights;

B. That the Defendant be awarded damages in an amount to be determined at trial, but no less than $100 million, together with actual, compensatory, punitive damages as well as any applicable fees pursuant to 42 U.S.C.A. § 1988(a)(b)(c).;

C. That the Defendant be awarded such other and further relief as the Court deems just and proper.

Dated: April 8, 2016
New York, New York

Respectfully Submitted,



Lawrence E. Penn III, Pro Se
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[redacted]940
[redacted]@gmail.com

Filed Electronically

CERTIFICATE OF SERVICE

I hereby certify that on April 8, 2016, I electronically filed the foregoing with the Clerk of the District Court using the CM/ECF system.

s/ Lawrence E. Penn III
Lawrence E. Penn III, Pro Se

Counsel of Record:
Lawrence E. Penn III, pro se

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION **Plaintiff,** **v.** **LAWRENCE E. PENN, III, CAMELOT ACQUISITIONS SECONDARY OPPORTUNITIES MANAGEMENT LLC, THE CAMELOT GROUP INTERNATIONAL, LLC** **Defendant**	**14 Civ. 0581 (VEC)** **ECFCASE**

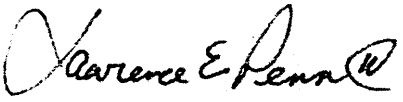
DEFENDANT'S MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT OPPOSITION TO PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS OR, IN THE ALTERNATIVE, FOR PARTIAL SUMMARY JUDGMENT, AND TO DISMISS DEFENDANT PENN'S COUNTERCLAIMSFOR SUMMARY JUDGMENT

Defendant Lawrence E. Penn III ("Mr. Penn"), respectfully requests that the Court deny Plaintiff's Motion for Summary Judgment on the basis that a genuine issue of material fact exists, and Defendants are not entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). In support of Defendant's Opposition, the Court is respectfully referred to the accompanying Documents and Declarations from the state case and other items included in the Exhibits, with exhibits attached thereto; Defendant's Response to Plaintiff's Statement of Undisputed Material Facts pursuant to Local Civil Rule 56.1 (the "56.1 Statement") in support of its Motion for Judgement on the Pleadings or, in the alternative, for partial Summary Judgement, against

Defendant Lawrence E. Penn III, and to Dismiss Counterclaims against the SEC and six of its current and former employees, and Defendant's Memorandum of Law in Opposition to Plaintiff's Motion for Summary Judgment which responds to numbered paragraphs of Plaintiff's 56.1 Statement:

Dated: August 15, 2016
New York, New York

Respectfully Submitted,



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Pursuant to Fed. R. Civ. Proc. 12(b) and Fed. R. Civ. Proc. 12(c) and Fed. R. Civ. Proc. 56, Defendant Mr. Penn respectfully submits this memorandum of law in support of his opposition to the Plaintiff's ("SEC") motion for judgment on the pleadings or, in the alternative, for partial summary judgment, against Defendant Lawrence E. Penn ("Penn"), and to dismiss Penn's counterclaims against the SEC and six of its current and former employees.

PRELIMINARY STATEMENT

Questions of fact regarding the investors interpretation and expectations of the Limited Partnership are in dispute. The nature of a Limited Partnership Agreement and the interpretations of key sections are in dispute. The latitude and use of capital in this Limited Partnership are in dispute as to what the Management Fee allocation is and to what extend it can be modified. The materiality of the use of the Management Fee allocation is in dispute along with whether committed capital can be deemed a "kick-back" when it is ultimately to be used for management fees (an authorized expense). The interpretation of other items to include case law, partnership law, and they relate to securities violations are in dispute. The criminal charges and conviction in which the SEC relies on for collateral estoppel and any disgorgement or civil penalty is in dispute. The plain language of the Partnership Agreement shows that Mr. Penn's legitimate investment activities are the source of the distributions outlined in Section 5.1 or the LPA. Management fees can be used at the discretion of the General Partner who provides the service of investing the proper proportion of the committed capital in the Fund. Mr. Penn invested ~$105 million of the ~$123 million, in the proper amount of the Fund in proportion to the capital allocated for management fees. Judicial notice of material facts is not based on

material facts but allegations. Using the Complaint as an affidavit lacking sworn statements and depositions is inherently unfair.

On January 31, 2014, the SEC filed its complaint in this action (the "Complaint") against, among other defendants and relief defendants, Defendants Lawrence E. Penn III, Camelot Acquisitions Secondary Opportunities Management LLC ("CASO Management"), Camelot Group International, LLC ("CGI") and collectively with Penn and CGI, ("the Penn Defendants"). Shortly thereafter, criminal charges were filed against Penn in New York state court, alleging grand larceny, money laundering and falsifying business records. Throughout these civil proceedings, the SEC has consistently relied on the pleadings associated with parallel criminal case in New York state court, alleging grand larceny, money laundering and falsifying business records. The legitimacy of the criminal case has been and is currently in dispute due to the strong likelihood that Mr. Penn should have never been charged with Grand Larceny thereby making the entire criminal indictment unlawful. The strong likelihood that the criminal indictment was unlawful based on the long established common law clearly interpreted by *People v. Zinke*, 556 N.Y.S.2d 11, 76 N.W.2d 8 (1990) suggests that there was no probable cause to arrest and charge Mr. Penn for Grand Larceny or the lesser included offenses. Additionally, the *People v. Zinke* clearly states that Mr. Penn "cannot be charged with larceny."

On February 25, 2016, Mr. Penn filed a Pro Se motion to vacate the judgment of conviction in accordance with McKinney's Consolidated Laws of NY Annotated CPL 440.10 (PACERs 1:14-cv-0581, Document #122). On April 25, 2016, attorneys Keith Miller and Jalina Hudson of Perkins Coie LLP commenced representation of Mr. Penn after filing a Notice of Appearance "asking to have an opportunity to supplement" Mr. Penn's Pro Se 440.10 motion to vacate the judgment of conviction (New York State Supreme Court Minutes of Calendar Call

dated April 25, 2016). On May 13, Perkins Coie, LLP submitted their supplement in support of the Pro Se 440.10 motion file by Mr. Penn. On May 31, 2016, the First Judicial Department of the New York State Supreme Court Appellate Division deemed Mr. Penn, the Defendant-Appellant Notice of Appeal "timely filed" allowing for a Direct Appeal. On or about June 13, 2016, the New York State Supreme Court Judge Laura Ward set July 11, 2016 as the date the Court would render its decision on the motion (New York State Supreme Court Minutes of Calendar Call dated June 13, 2016). An unsigned Decision and Order was initially received by email and Notice of Entry of the Decision and Order was served on Perkins Coie, LLP, counsel for Mr. Penn's 440.10 and appellant actions.

In addition to the strong likelihood that The New York State Supreme Court charges and conviction were unlawful and therefore unconstitutional. Documents from the New York State Supreme Court's Trial Record illustrate constitutionally questionable machinations in which a Federal District Court cannot rely. On December 18, 2014, Mr. Ewers, the co-Defendant in the parallel criminal matter, entered a plea after the Court stated that "he can't plead until Mr. Penn decides to plea" (Exhibit 5). Within one month after entering the plea, on January 23, 2015, Mr. Ewers through his attorney submitted a Motion to Withdraw the Plea demonstrating that his plea was likely entered involuntary. Specifically, Mr. Ewers through counsel moved "to withdraw his plea for the following reasons: 1) The defendant has asserted that he did not enter into this plea voluntarily, as he was unduly influenced by the prison conditions and the lack of medical attention that he was experiencing at Rikers Island at the time he took the plea. Mr. Ewers was severely beaten by another inmate a few weeks prior to the plea. He had been constantly threatened by this inmate, had not received adequate medical attention or protection from corrections officials and took the plea for safety reasons in order to withdraw his plea for the

following reasons: 1) The defendant has asserted that he *did not enter into this plea voluntarily*, as he was *unduly influenced by the prison conditions* and the lack of [redacted] that he was experiencing at [redacted] at the time he took the plea. Mr. Ewers was severely beaten by another inmate a few weeks prior to the plea. He had been constantly threatened by this inmate, had not received adequate medical attention or protection from corrections officials and took the plea for safety reasons in order to escape the harsh conditions he encountered during his incarceration at [redacted]..." On March 16, 2015, Mr. Penn entered a plea with questionable sufficiency after being informed of Mr. Ewers injuries while in the holding cell just before his hearing and immediately after, Mr. Ewers Motion to Withdraw his plea was denied by the Court. On April 20, 2015, adding insult to constitutional injury, Mr. Penn was sentenced in direct violation with Penal Law § 70.00(2)(e) and was brought to the Court's attention pursuant to Correction Law § 601-a by New York State Department of Corrections and Community Supervision (NYS DOCCS).

On April 1, 2016, Mr. Penn attended a case conference where he communicated that he "would like to amend this answer" and that he was not "a lawyer" and "pro se" and did not have "documentation and information...needed." In the April 6, 2016 Answer Penn clearly denies facts sufficient to prove the elements of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 promulgated thereunder ("Rule 10b-5"), as well as Section 206(1) of the Investment Advisers Act of 1940 ("Advisers Act") and Section 206(2) of the Investment Advisers Act of 1940 ("Advisers Act"). Additionally, Mr. Penn "denies any allegations contained in defined terms, ambiguous terms or unnumbered paragraphs in the Complaint" and "the facts and as to any conclusions, characterizations, implications, innuendos, or speculation contained in herein or in the Complaint as a whole." "A document filed Pro Se is

to be liberally construed . . . however in artfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers" as established by the Supreme Court in *Erickson v. Pardus*, 127 S.Ct. 2197, 551 U.S. 89 (2007). As such, the claims are genuinely disputed. The SEC is not entitled to judgment on the pleadings with respect to its claims against Penn under Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, Section 204 of the Investment Advisers Act of 1940, 206(1) and (2) or Section 207 of the Investment Advisers Act of 1940. In the interest of justice, fairness, and judicial economy, the SEC should not be entitled to partial summary judgment based on the collateral estoppel effect of Penn's criminal conviction because there is not a final outcome and a record that lacks sworn evidence outside of the allegations. There is a strong likelihood that the entire indictment and conviction will fail prohibiting the use of the criminal outcome for civil proceeding under the *Wong Sun* doctrine of fruit of the poison tree established by the US Supreme Court decision *Wong Sun v. United States*, 371 U.S. 471 (1963). Judicial notice of material facts is not based on material facts but allegations. Using the Complaint as an affidavit lacking sworn statements and depositions is inherently unfair. The facts relevant to the motion for partial summary judgment are set forth in the SEC's Rule 56.1 Statement are in genuine dispute.

RESPONSE TO STATEMENT OF FACTS

I. Penn, Acting Through CASO Management and CGI, did not explicitly admit Diverted $9.3 Million from a Fund He Advised

Mr. Penn did not explicitly admit this and merely described the diverting money as investing which is exactly what he did with the committed capital by "investing" approximately $105 million of the $123 million of committed capital in proper proportion to the capital allocated to the expense and management fee pool.

A. Penn and CASO Management Caused the Fund to Pay $9.3 Million to CASO Management and CGI along with other money

Mr. Penn Answer admits that "approximately all of the $9.3 million was sent from the Fund to CASO Management or CGI." This was not precluded by the investment agreement.

Mr. Penn Controlled the Entities Involved

Penn admits he owned CASO Management (Defendant), CGI (Defendant) and Camelot Acquisitions Secondary Opportunities GP, LLC ("CASO GP"). He owned approximately 99% of each of these entities. Mr. Penn admits he "had primary responsibility for all business decisions as Managing Member and Managing Director of CASO Management and all investment decisions as Managing Member and Managing Director of" CASO GP. "CASO Management was a registered investment adviser under Penn's control," and CGI was "an affiliate" which paid expenses for the Fund and supported the Management team which sole function was to manage the Fund in conjunction with CASO GP an CASO Management.

Once Received By CGI, the Money Was Used to Pay
Overhead, Expenses Such as Rent and Salaries

Paragraph 3 of the Complaint alleges that "Ssecurion acted as a front for Penn to siphon money from the fund and route it back to CASO Management or to CGI, an unregistered entity adviser under Penn's control." In paragraph 4, the Complaint alleges that the diverted funds were "commingled with management fees that were paid by the fund to CASO Management, and forwarded on to CGI. CGI used the commingled funds to pay overhead expenses, such as rent and salary, which were permissible fund expenses under the fund's governing document . . . "In his Answer, Penn admits that the $9.3 million of capital were sent to CASO Management and CGI, and that CGI paid "overhead expenses to include rent, salaries, finders, and other

expenses." Nothing explicitly precluded the capital being used by an affiliate of CASO GP and CASO Management.

B. Penn does not admit Mischaracterizing the Use of the Fund's Money with Its Auditors and Administrators

Penn did not admit to having diverted money from the Fund to CASO Management and CGI in a harmful manner and only "admits transferring money to CGI in a manner that did not characterize the use of the fund money appropriately" and that "the accounting should have accurately described the use of capital for auditors and administrators." These are simply statements but not beyond an error. There is no evidence of scienter or materiality on the record of this case nor sworn statements on which the foundation of the Complaint stands.

II. Mr. Penn, provided responses that clearly deny items and his responses should be construed liberally

Mr. Penn's colleague provided information to the SEC and there is no evidence suggesting that he evaded the Plaintiff's examiners. To the extent that Mr. Penn was informed by his colleague to the best of his memory, documents were provided to examiners with explanations and his colleague who met and communicated with the Plaintiff's examiners a number of times. Mr. Penn has no memory of discussions about websites with anyone from the Administrators or Auditors and clearly denies most of the items in the Answer in a manner to be expected of Pro Se litigant.

III. Mr. Penn's colleague provided responses and documents during the SEC's Examination

Mr. Penn's colleague provided information to the SEC and there is no evidence suggesting that he evaded the SEC's examiners. To the extent that Mr. Penn was informed by his colleague to the best of his memory, documents were provided to examiners with explanations and his colleague who met and communicated with the Plaintiff's examiners. There

is nothing abnormal for a person acting in the role of a Compliance officer to be the lead person providing documents to an Examiner.

IV. Mr. Penn's plea cannot be relied upon because he should have never been charged or convicted and presently the conviction is being appealed.

The plain language of New York's larceny statute dictates that Mr. Penn should not have been charged with larceny. The Court of Appeals has long-held that disputes, such as this, concerning the management of money and investments should be resolved in civil court rather than criminal proceedings. In the seminal case, *People v. Zinke*, the New York Court of Appeals reaffirmed the principle that joint and common owners are not guilty of larceny by holding that the general partner of a limited partnership cannot be convicted of larceny. The basic concept behind this well-settled rule is that people cannot "steal" from themselves if they are a joint and common owner of the property in dispute.

On January 30, 2014, the United States Securities and Exchange Commission (the "SEC") filed a civil complaint in federal court alleging that Mr. Penn and others violated certain federal securities laws. Shortly thereafter, on February 7, 2014, Mr. Penn was indicted under New York State law for Grand Larceny in the First Degree, Money Laundering in the First Degree, and Falsifying Business Records in the First Degree. The property alleged to have been stolen, is money from a private equity fund, Camelot Acquisitions: Secondary Opportunities, L.P. (the "Fund," the "Partnership," or "CASO L.P."), which was created, controlled, and partially owned by Mr. Penn until after the time of his arrest and conviction in this case. It is well established that a "Defendant's guilty plea to nonexistent crime...was a jurisdictional defect which rendered the plea a nullity" *People v. Lopez*, 846 N.Y.S.2d 164, 45 A.D.3d 493 (N.Y.A.D. 1st Dept. 2007).

ARGUMENT

I. Summary Judgement Standard

Summary judgment is warranted when no genuine dispute of material fact exists and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). A material fact dispute is "'genuine' if 'the evidence is such that a reasonable jury could return a verdict for the nonmoving party.'" *George v. Leavitt*, 407 F.3d 405, 410 (D.C. Cir. 2005) (quoting Anderson, 477 U.S. at 248). Thus, in considering a motion for summary judgment, the court must view the evidence "in the light most favorable to the nonmoving party." *Id.*

A. The SEC is relying on the legitimacy of the New York State Supreme Court Criminal indictment and conviction which is clearly not final

It is clear by the brevity of the New York State Prosecutors Statement of Facts that their reliance on the Plaintiff's Complaint is the basis of the criminal indictment. The SEC is operating under the color of New York State law using the mantle of one of the most powerful Federal government agencies in order to secure a criminal conviction and gain an advantage in a civil case. At this time there is no final judgment in the criminal case which is being directly appealed which means that the facts associated with this civil case are under genuine dispute in part because the criminal outcome is in question. Absent the criminal conviction, a reasonable jury could return a verdict in favor of the Defendant without a criminal conviction. The gravity of this appeal brings rise to constitutional issues that cannot be ignored by a Federal District Court. "The accusatory instrument is the basis of the court's jurisdiction, and accordingly, if the instrument is not legally sufficient, the court has no authority at all to proceed with the arraignment." *Dyno v. Hillis*, 712 N.Y.S.2d 182, 274 A.D.2d 908 (N.Y.A.D. 3rd Dept. 2000).

The SEC should not be awarded Summary Judgment under Fed. R. Civ. Proc. 12(c) in part because the heart of his case is based on what is likely unlawful charges influenced by the SEC in a concurrent State jurisdiction.

B. The Court May Take Judicial Notice of the lack of Facts to include the strong likelihood that the criminal conviction will be dismissed

The SEC refers to case law that the Court may consider "the complaint, the answer, any written documents attached to them, and any matter of which the court can take judicial notice for the factual background of the case." *L-7 Designs, Inc. v. Old Navy, LLC*, 647 F.3d 419, 422 (2d Cir. 2011) (citing *Roberts v. Babkiewicz*, 582 F.3d 418, 419 (2d Cir. 2009)). Here, in addition to the pleadings, the Court may consider: (1) the Limited Partnership Agreement ("LPA"), which Penn has referenced in his Answer; (2) the guilty pleas by Penn and his codefendant, Ewers, in the parallel criminal action, and related filings; and (3) facts in the public record concerning the reactions of the Fund's limited partners. The Court should consider the Limited Partnership Agreement, applicable law associated with the Grand Larceny statutes, Partnership law, the legitimacy of the criminal indictment and conviction. The Limited Partnership agreement is to be interpreted by the understanding of the parties that entered into the agreement. The Court should not take judicial notice of facts in the public record concerning the reactions of the Fund's limited partners based on charges that are likely unlawful. The use of illegitimate criminal charge and conviction. In light of the Limited Partnership Agreement at the time of removal of the General Partner, the Limited Partners who voted for removal breached the agreement pursuant to 7.6(b) of the LPA. It is important to note that many of the Limited Partners (some who are General Partners in their own Funds) did not vote likely due to the seriousness of a Limited Partner acting in a management capacity. Mr. Penn did not knowingly, willingly, or voluntarily executed any documents because he was incarcerated and under threat

of dangerous conditions while involuntary loss of liberty. Both Mr. Penn and his co-Defendant did not want to plea as evidenced by the records of the New York Supreme Court. Mr. Penn is appealing the entire conviction and Mr. Ewers entered a Motion to Withdraw his plea but was denied by the Court.

C. The Limited Partnership Agreement itself is evidence that a Grand Larceny charge was unlawful

The Limited Partnership Agreement (PACERs 1:14-cv-0581, Document #122, Exhibit 3) is a temporary vehicle specifically designed to take committed capital which is accepted by the General Partner pursuant to Section 3.1, use part of that committed capital to purchase securities or "Temporarily invest" pursuant to Section 2.3, and use the balance to pay expenses and management fees given the authority of the General Partner pursuant to Section 6 of the LPA. Mr. Penn was the founder and creator of the entire Limited Partnership complex, raised all the capital, accepted all capital commitments, made all the investments, and established custody for those investments. As the General Partner, Mr. Penn made the correct proportions of investments in relation to expenses and management fees. The distributions from the investments are meant to pay back the committed capital which includes investments, management fees, and expenses. New York law is clear and states, "mens rea element is not satisfied by an intent to temporarily use property" *People v. Jennings*, 69 NY2d 103,118 (1986). Furthermore, "the mens rea element of larceny is not satisfied by an intent temporarily to use property without the owner's permission, or even an intent to appropriate outright the benefits of the property's short-term use" ... "An individual who temporarily invests another's money and thereby gains interest or profit cannot be deemed guilty of larceny for appropriating that interest or profit. Criminal liability cannot be extended beyond the fair scope of the statutory mandate. N.Y. Penal Law § 155.00 must be read to apply only to a taking of the property itself and not to a

permanent taking of what is, in essence, only the economic value of its use during the short time the property has been withheld" *People v. Jennings.* The common law outlined in the paragraph above along with *People v. Zinke* is clear evidence that there should have never been a criminal charge levied against Mr. Penn.

D. The parallel criminal matter plea allocution and Judge's participation in the plea negotiations raises doubts as to the legitimacy and voluntariness of the plea

On January 7, 2015, the hearing minutes of the criminal case clearly illustrate the pressure after a year in jail "what the Court would be willing to do" and "the *Court's* time and consideration in making that offer to Mr. Penn." At no point is the law discussed in any hearing up to the point of conviction. On March 16, 2015, the hearing minutes clearly show a lack of recitation of the facts underlying the crime, simply two answers of "Yes, your Honor." There was no discussion of exactly how much was allegedly "stolen" or appropriated with the "intent to permanently" deprive in the context of a General Partner in a Limited Partnership. Given the fact that investments, entirely made by Mr. Penn, were meant to be distributed until all of the committed capital is returned pursuant to Section 5.1(a)(i) of the LPA, Mr. Penn's intent are imbedded in his actions. Specifically, Mr. Penn's actions in investing the capital are the sole source of the return of capital and any profits thereafter. The criminal outcome is clearly questionable in light of the fact that "it is surely no accident that the People cite no reported New York case where a partner has been convicted of larceny for taking partnership property" *People v. Zinke.* "In that rare case, however, where the defendant's recitation of the facts underlying the crime pleaded to clearly casts significant doubt upon the defendant's guilt or otherwise calls into question the voluntariness of the plea," and "defendant's factual recitation negates an essential element of the crime pleaded to, the court may not accept the plea without making further

inquiry to ensure that defendant understands the nature of the charge and that the plea is intelligently entered" *People v. Lopez*, 71 N.Y.2d 662, 666 (1988) quoting *People v. Beasley*, 25 N.Y.2d 483.

E.e The LPA gave Mr. Penn broad authority and there is no evidence that thee SEC is a party to the Limited Partnership Agreemente

As the sole owner of both CASO G.P. and CASO Management (collectively, the "CASO Entities"), Mr. Penn was given broad discretion and authority over the Fund, and he was entitled to receive the management fees and distributions in profits from the Fund. *See* Agreement for CASO Management dated February 5, 2010; and the Amended and Restated Limited Partnership Agreement dated February 5, 2010 ("the Partnership Agreement" or "LPA"), (PACERs 1:14-cv-0581, Document #122, Exhibit 3). In particular, Section 6.2 of the Partnership Agreement provides, in part, as follows:

> 6.2 **Management by the General Partner.**
>
> Subject to the provisions of this Agreement, and in accordance with the purpose of the Partnership as set forth in Section 2.3, the General Partner shall have the exclusive power and authority to perform acts associated with the management and control of the Partnership and its business including the power and authority to:
>
> (a)eReceive, buy, sell, exchange, trade and otherwise deal in ande with Securities and other property of the Partnership;e
>
> (c) Borrow money or property on behalf of the Partnershipe encumber Partnership property for the purpose of obtaininge financing for the Partnership's business, and extend or modify anye obligations of the Partnership;
>
> (g) Cause the Partnership to enter into, make and perform upon such contracts, agreements and other undertakings, and to do such other acts. as it may deem necessary or advisable for, or as may be incidental to, the conduct of the business of the Partnership, including contracts, agreements, undertakings and transactions

> with a Partner or Person related to a Partner; provided, however, that transactions with a Partner or Person related to a Partner for the account of the Partnership shall be on terms determined by the General Partner in good faith to be no less favorable to the Partnership than are generally afforded to unrelated third parties in comparable transactions;
>
> (h) Cause the Partnership to invest in, or enter into, hedging arrangements designed to reduce or eliminate the risk of changes in the value of one or more Portfolio Securities;
>
> (i) Open, conduct business regarding, draw checks or other payment orders upon, and close cash, checking, custodial or similar accounts with banks or brokers on behalf of the Partnership and pay the customary fees and charges applicable to transactions in respect of all such accounts; and
>
> (j) Assume and exercise all of the authority, rights and powers of a general partner under the laws of the State of Delaware.

Accordingly, pursuant to the Partnership Agreement, each of the limited partners of the Fund was aware that Mr. Penn, as the sole owner and Managing Member of CASO G.P and CASO Management, had broad authority and discretion over the Fund's assets. The Management Fees are clearly an obligation of the Fund and Section 6.2 of the Limited Partnership Agreement which states the General Partner has the right to 'modify any obligations of the Partnership' and did not preclude advances or even "borrow" or "encumber" Partnership Property.

Management Fees can be used at the General Partners discretion

Management Fees, an obligation and allocation based on the term *and* management fee schedule, can be used at the complete discretion of the General Partner and is not deemed a "transaction" pursuant to Sections 6.4 of the Partnership Agreement. The management fee allocation/obligation is meant to be returned by the proceeds of the invested capital. Management Fees are simply an expense which is an obligation of the Fund and common law

clearly illustrates this in *Broome v. ML Media Opportunity Partners, LP*, 273 AD2d 63 (2000) where it states that "a group of limited partners in a Delaware public limited partnership, lack standing, under both New York and Delaware law, to assert ... claims for breach of contract and breach of fiduciary duty against the partnership, the general partner and the entities controlling the general partner, for the wrongful deferral of management fees and payment of such fees out of the proceeds of the sale of partnership assets, since the claims are derivative in nature, in that they allege no more than the mismanagement and diversion of assets, and do not implicate any injury to ... to the partnership (*see, Kramer v. Western Pac. Idus.*, 546 A2d 348, 354 [Del]; *Strain v. Goldberg*, 74 AD 2d 360, 369-370). This coupled with the fact that the plain language of the Partnership Agreement shows that Mr. Penn's legitimate investment activities are the source of the distributions outlined in Section 5.1 or the LPA. In short, Management fees can be used at the discretion of the General Partner who provides the service of investing the proper proportion of the committed capital in the Fund. Mr. Penn invested ~$105 million of the ~$123 million, in the proper amount of the Fund in proportion to the capital allocated for management fees.

Management Fees are an expense authorized by the Limited Partnership Agreement and management fees in turn can be used at the General Partners discretion

In accordance with 6.7(b)(x) the Management Fee is clearly an expense authorized by the Limited Partnership and should be read in conjunction with the Term of the Partnership outlined in Section 2.2 and Section 5.1(a)(i) in understanding the contractual intent of the Agreement. The use of Fund Assets, specifically Management Fees, is deceptively used by the SEC as to "Line Management Pockets" when across the industry Management Fees are typically spent for employee compensation, expenses, office space and other items at the discretion of Mr. Penn in his capacity as General Partner. Additionally, these payments are not deemed a transaction

simply a payment in the spirit of the Limited Partnership Agreement which in no way can be interpreted by the Plaintiff who is a not a party to the agreement. The Plaintiff refers to *SEC v. Chiase*, 2011 regarding this point but this case involves a broker dealer not a General Partner in Limited Partnership and is not even comparable common law regarding the use of assets. The SEC states "Additionally, as fiduciaries, investment advisers should execute client transactions favorably for the client and avoid improper self-dealing. *See, e.g., SEC v. Moran*, 922 F. Supp. 867, 898 (S.D.N.Y. 1996). However, this case involves brokers who typically do not have broad authority or co-ownership as a General Partner in Limited Partnership. A General Partners payment of Management Fees, a Fund Asset cannot be considered "self-dealing" because it is authorized in the Limited Partnership Agreement. Management Fees are for personal use by members of the management team in the discretion of the General Partner because employee compensation is ultimately a subset of Management Fees, a fact clearly understood by the Private Equity, Venture Capital and Hedge Fund industry. The SEC uses common law that has no relation to nature of the relationship outlined in a General Partner in Limited Partnership. The use of Management Fees to compensate, reimburse and provide resources employees and use at the General Partner's discretion ultimately benefits the Fund because employees, consultants, advisors all assist in the management and "benefit of the Fund" pursuant to *SEC v. Mannion*, 789 F. Supp.2d 1321, 1341 (N.D. Ga. June 2, 2011).

F. The standards for Materiality and Scienter have not been met and any errors by the General Partner were not Material

The SEC has not even established that Mr. Penn misappropriated the Fund's Capital given that the allocation of committed capital and use of committed capital were within the intent of the Partnership Agreement. There was and is no injury, economic harm, loss, act to defraud, or other necessary elements materiality to meet the standards required to award relief for this

claim as required by common law. Therefore, must be dismissed due to failure to state a claim, illegality as well as unclean hands in the use a criminal conviction. "To fulfill materiality requirement for securities fraud, there must be substantial likelihood that disclosure of omitted fact would have been viewed by reasonable investor as having significantly altered the total mix of information made available." *Sable v. Southmark/Envicon Capital Corp.*, 819 F. Supp. 324, (S.D.N.Y. 1993). On April 7, 2012, approximately two months after the Complaint was issued the investors voted to stay in the Fund created, raised, invested, and managed by the Defendant. The Defendants actions as viewed by reasonable investors of the fund did not alter the total mix of information made available in a manner that changed their willingness to stay in the Fund. The SEC incorrectly uses outdated common law regarding materiality by referring to *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976), *SEC v. Research Automation Corp.*, 585 F.2d 31, 35 (2d Cir. 1978); *SEC v. Constantin*, 939 F. Supp. 2d 288, 306 (S.D.N.Y. 2013), *Steadman v. SEC*, 603 F.2d 1126, 1130 (5th Cir.1979), *aff'd on other grounds*, 450 U.S. 91 (1981), *Basic, Inc. v. Levinson*, 485 U.S. 224 at 231-232 (1988), *Operating Local 649 Annuity Trust Fund v. Smith Barney Fund Mgmt. LLC*, 595 F.3d 86, 93 (2d Cir. 2010), and *Arthur Lipper Corp. v. SEC*, 547 F.2d 171, 178 (2d Cir. 1977), in which no case involves a General Partner in Limited Partnership with broad authority. The SEC completely ignores the relevant common law established by the Supreme Court case *Matrixx Initiatives, Inc. v. Siracusano*, 563 U.S. 27 (2011) which requires a "total mix standard" that proves (1) a material misrepresentation or omission by the defendant; (2) scienter; (3) a connection between the misrepresentation or omission and the purchase or sale of a security; (4) reliance upon the misrepresentation or omission; (5) economic loss; and (6) loss causation. These factors have not been met because all six elements of the total mix standard have not been met to include the loss requirement, which

pursuant to *Anderson v. Weinroth*, 48 AD 3d 121 (2007) and *Sohon v. Rubin*, 282 A.D. 691 (1953) states that even "If one partner . . . uses partnership property . . . he cannot be sued by the other partner for damages . . . where there has been no settlement of the partnership affairs or total destruction of the property, because each partner theoretically is entitled to the possession of the firm property, so that possession in either is not wrongful" (*Belanger* v. *Dana*, 52 Hun, 39, 42; *Hollister Simonson*, 36 App. Div. 63; *Cary* v. *Williams*, 8 N.Y. Super. Ct. 667). To the best of the Defendant's knowledge fraud is a deliberate deception to secure unfair or unlawful gain, or to deprive a victim of a legal right. The investors are still in the fund, no unfair or unlawful gain occurred and there are no victims of actual loss because all of the capital was invested in the proper proportion to the expenses allocation of the committed capital.

By law, the Defendants actions cannot be characterized as a Larceny as decided by *People v. Zinke*, or Unjust Enrichment which by common law requires (1) that the defendant benefitted, (2) at the plaintiff's expense, and (3) that equity and good conscience require restitution. These elements are not met because the Defendant did not benefit at the expense of the Partners of the Fund or Plaintiff (in this case the SEC) or in the parallel case. The partners in the Fund, to include the Defendant as General Partner, had an expectation that based on the committed and invested capital of approximately $123 million, 80% to 85% would be invested in securities in the Fund which it was by the Defendant given the Management Fee (Section 6) and Term (Section 2.2). The partners, to include the Defendant as General Partner, had an expectation that the balance of the committed and invested capital of the Fund (approximately $18 to $20 million) would go to management fees. The management fees in this fund are part of the commitment and allocated to the General Partner through the Investment Manager entities. Equity and good conscience dictates that the General Partner who established the Fund, raised

the capital over a 6-year period of time, made all the investments should be allowed to operate under the contractual intent of the Limited Partnership Agreement including but not limited to Sections 6.2 and Section 7.6. The SEC incorrectly misuses common law by referring to *Szulik v. Tagliaferri*, 966 F. Supp. 2d 339 (S.D.N.Y. 2013) regarding an investment adviser involved in a kick-backs where the parties were not structured as a General Partner in Limited Partnership. Mr. Penn used a portion of committed capital in a Fund in which he was a co-owner and had an allocation to Management Fees (based on Section 2.2 read in conjunction with Section 6 of the Partnership Agreement) that were used or to be used to support the Management Team. Mr. Penn used the committed capital and kept the proper proportion of investments to expenses given the Limited Partnership Agreement.

G. The Court should deem allegations not specifically admitted denied given the fact that Mr. Penn is not an attorney and the common law standard

Mr. Penn clearly "denies any allegations contained in defined terms, ambiguous terms or unnumbered paragraphs in the Complaint" and "the facts and as to any conclusions, characterizations, implications, innuendos, or speculation contained in herein or in the Complaint as a whole." "A document filed Pro Se is to be liberally construed, and a pro se complaint, however in artfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers" as established by the Supreme Court in *Erickson v. Pardus*, 127 S.Ct. 2197, 551 U.S. 89 (2007). Therefore, the allegations should be deemed denied of paragraphs 32, 36, 41, 42, 45, 46, 47, 48 and 53. Given the foregoing, no statement can be interpreted as an admission that would establish that Mr. Penn Violated Section 10(b) of the Exchange Act and Rule 10b-5. As such the claims are genuinely disputed. The Plaintiff's use of common law as established by *SEC v. Credit Bancorp, Ltd.*, 738 F. Supp. 2d 376, 384 (S.D.N.Y. 2010) (fraudulent scheme in which high-ranking employees of a brokerage firm concealed their

placement of investor funds in different accounts than they represented to investors they would place the funds) and *SEC v. Constantin*, 939 F. Supp. 2d 288 (S.D.N.Y. 2013) (scheme liability attached to defendant broker-dealers for fraudulent conduct including using investors' funds differently than advised, exaggerating international presence, and exaggerating educational and professional achievements). The use of the foregoing common law is misguided and inapplicable to this case because they refer to broker dealers not General Partners in Limited Partnership and Mr. Penn did not exaggerate international presence, educational or professional achievements. Moreover, the SEC misrepresents Mr. Penn's education in the Complaint in order to enhance the appearance of blatant deceptiveness.

H. There is no proof that Mr. Penn had the Requisite Mental State to Violate the Advisers Act or Rule 10b-5

There are not sufficient facts on the record to prove Mr. Penn had the scienter legally required for violations of the securities laws. There was not an "extreme departure from standards of ordinary care, which presents a danger of misleading buyers or sellers" *Moran*, 922 F. Supp. at 897 (*citing SEC v. Steadman*, 967 F.2d 636, 641-42 (D.C. Cir.1992)) because the investments were accurately disclosed and kept in proper custody due to Mr. Penn's actions. The investments are the most material aspect of a Private Equity Fund much more than the expenses which are expected to be used in exchange for the efforts of the General Partner and is management team in making the investments. These investments are designed to return 100% of the committed capital pursuant to Section 5.1(a)(i) of the Limited Partnership Agreement. Again, any guilty plea to an unlawful charge in conflict to the law given the use of incarceration and loss of liberty is a miscarriage of justice and a denial of constitutional rights.

II. The Court should deny the Plaintiff's Motion for Summary Judgement given the strong likelihood of an illegitimate basis of the Collateral Estoppel

A.e The Standard for Summary Judgement Under Fed. R. Civ. P. 56(a) has note been mete

Summary judgment is warranted when no genuine dispute of material fact exists and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). A material fact dispute is "'genuine' if 'the evidence is such that a reasonable jury could return a verdict for the nonmoving party.'" *George v. Leavitt*, 407 F.3d 405, 410 (D.C. Cir. 2005) (quoting Anderson, 477 U.S. at 248). Thus, in considering a motion for summary judgment, the court must view the evidence "in the light most favorable to the nonmoving party." *Id.* In this response Mr. Penn has "come forward with specific facts showing that there is a *genuine issue for trial.*" *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986). A fact is material if it "might affect the outcome of the suit under the governing law." *Id.* In deciding the SEC's motion, the court must draw all "justifiable inferences" in Defendants' favor *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). The criminal conviction, among other issues stated in this response, is central to the SEC's argument for Summary Judgement and no partial or full Summary Judgment should be given as long as there is no final outcome in the parallel criminal matter.

B.e The Mr. Penn's Plea cannot be relied upon as Collateral Estoppel thate Establish alleged violations of Advisers Act 206(1) and (2), Exchange Acte Section 10(b) and Rule 10b-5 and presently the conviction is being appealed.e

Collateral estoppel is appropriate when (1) the issues in both proceedings are identical; (2)ethe issue in the prior proceeding was actually litigated and actually decided; (3) there was ae full and fair opportunity for litigation in the prior proceeding; and (4) the issue previously litigated was necessary to the judgment. *Gelb v. Royal Globe Ins. Co.*, 798 F.2d 38, 44 (2d Cir.

1986). Where, as here, a motion for partial summary judgment is based on a defendant's prior criminal conviction, the facts underlying the conviction may be given preclusive effect. *SEC v. Freeman*, 290 F. Supp. 2d 401, 404-405 (S.D.N.Y. 2003). It is clear that in the prior proceeding there are serious questions regarding the full and fair opportunity for litigation and the prior proceeding has not been actually fully litigated and decided. The issues litigated are necessary to be decided in order to render a judgement. The factual allegations were not established and are in the process of being litigated. The Plaintiff's use of case law out of the New York State Supreme Court Appellate Division 3rd Department is hardly persuasive given Mr. Penn's appeal can only be handled by New York State Supreme Court Appellate Division 1st Department. The common law that does apply is from the New York State Court of Appeals in *People v. Jennings* stated above in I.C. of this memorandum emphasizes "permanent" deprivation of value. On page 28 of the Plaintiff's Motion, they again lie by writing, 'Penn's admitted "intent to deprive the owner of the property permanently" suffices to establish his intent to misappropriate the assets" when Mr. Penn never made that statement. Accordingly, the Court should not grant the SEC Summary Judgment in any form.

Given that Mr. Penn's likely "plea to nonexistent crime" *People v. Lopez*, 846 N.Y.S.2d 164, 45 A.D.3d 493 (N.Y.A.D. 1st Dept. 2007) that was charged in direct violation with New York State law as established by *People v. Zinke*. The use of an illegitimate criminal charge and conviction, the basis of the Collateral Estoppel is unlawful. Both the Unclean Hands doctrine as well as the *Wong Sun* doctrine have long established the use of "fruit of the poisonous tree" in the judicial proceedings. The sensational language in the Plaintiff's document serve to deceive, misdirect and lie about the intent and mindset of the Defendant. The SEC patently lies about Defendant's educational background as support for the alleged violation Section 207 of the

Investment Advisers Act of 1940 in an effort to throw as much mud against the wall. The likely unlawful charge, conviction, coupled with false statements and an effort to interpret a contract between parties is indicative of the Plaintiff's action. It is important to note the the Plaintiff's Complaint is the backbone of the criminal charge which led to excessive bail, based on the an unlawful indictment, which likely resulted in a loss of liberty which caused a U.S. Constitution and New York State Constitution due process violation and injury as established in ***Zahrey v. Coffey***, 221 F.3d 342, U.S. Court of Appeals 2nd Circuit (2000) which held that the "right not to be deprived of liberty as a result of the fabrication of evidence by a government officer acting in an investigating capacity is a constitutional right." Any false statement in a Complaint, particularly wreckless should be taken into consideration regarding common law as stated in this paragraph.

This Court has concluded in Judge William H. Pauley III Opinion, that "As the "statutory guardian"[1] of the nation's financial markets, the SEC is imbued with enormous powers to protect the investing public. It can halt securities trades and seek to freeze-through its representations to a court-the assets of any institution. However, the SEC's canon of ethics cautions: "The power to investigate carries with it the power to defame and destroy." 17 C.F.R. § 200.66. Judges rely on the SEC to deploy those powers conscientiously and provide accurate assessments regarding the evidence collected in their investigations. In that way, the integrity of the regulatory regime is preserved. This case reveals the dire consequences that flow when the SEC fails to live up, to its mandate and litigants yield to the Government's onslaught....the SEC has an obligation to timely alert the court to foreseeable collateral damage. By overstating its case, the SEC can do great harm and undermine the public's confidence in the administration of justice. And that

[1] *SEC v. Management Dynamics, Inc.*, 515 F.2d 801, 802 (2d Cir. 1975).

damage can be compounded when financial institutions, anxious to appease a regulator, submit to unconscionable terms and permit their depositors' assets to be held hostage without seeking immediate relief from a court. As this case demonstrates, these concerns are not hypothetical." *SEC v. Caledonian Bank LTD., et al.*, 15-cv-894 (2015).

C. The Pro Se Answer does not establish that Mr. Penn Violated Sections 206(1), Sections 206(2) of the Investment Advisers Act, Section 10(b) of the Exchange Act or Rule 10b-5

It is not clear that the SEC has even established that Mr. Penn misappropriated the Fund's Capital given that the allocation of committed capital and use of committed were well within his intent of the Partnership Agreement. Again, Mr. Penn established the Fund, raised the capital, made all of the investments and met the contractual intent of the Partnership. The SEC uses common law most of which does not apply to a General Partner in Limited Partnership giving the impression that Mr. Penn was "self-dealing" when the capital was used to support the management of the Fund. The SEC uses words like "kick-back" to give the impression of a bribe or inducement which is not applicable to this matter. The SEC states that the Partners "ousted" Mr. Penn when at the time the removal of the General Partner was a breach of the Partnership Agreement pursuant to 7.6(b), based on what is now likely an unlawful charge. There is no provision in the Partnership Agreement that allows for the Partners to "oust," specifically to deprive (someone) of or exclude (someone) from possession of something in this case depriving Mr. Penn of his interest in the Fund. The Partnership Agreement clearly states that even if the General Partner was removed, "Following the removal of the General Partner under this Section 7.6, or the occurrence of any other event that otherwise terminates the General Partner's status as a constituent general partner of the Partnership under the Act, the General Partner's share of allocations and distributions under Sections 4 and 5 shall be reduced by fifty

percent (50%), but its Partnership interest shall otherwise be that of a Limited Partner;" (PACERs 1:14-cv-0581, Document #122, Exhibit 3, Section 7.6(c)). There are no actions on the record of this Court which "has independent probative value of scienter." *SEC v. Musella*, 748 F. Supp. 1028, 1040 (S.D.N.Y. 1989) (citations omitted).

III. Mr. Penn's Counterclaims Should not be dismissed given the Constitutional issues that are required to be handle in the jurisdiction of Federal District Court as established by common law

Mr. Penn's counterclaims include constitutional issues that arise out of the likely unjust conviction under the color state law and this Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331 over claims arising under 42 U.S.C. §§ 1981 and 1983 as well as actions brought pursuant to *Bivens v. Six Unknown Agents of the Federal Bureau of Narcotics*, 403 U.S. 338 (1971). It is clear that former NYDA employees Polly Greenberg, Artie McConnell, and Chevon Walker (currently employed by the SEC) would be subject to violations under 42 U.S.C. § 1983, Fed. R. Civ. Proc. 19 and Fed. R. Civ. Proc. 20.

CONCLUSION

For the foregoing reasons, and failure to sustain their burden to demonstrate the Summary Judgement Standard, the Defendant Mr. Penn respectfully requests that the Court deny the Plaintiff's motion for judgment on the pleadings or, in the alternative, for summary judgment, against Defendant Lawrence E. Penn III. Furthermore, the Defendant requests the Court to (1) deny the Plaintiff's motion, (2) Stay the proceedings until the conclusion of the Appeal of the New York State criminal conviction in the interest of justice and fairness.

CERTIFICATE OF SERVICE

I hereby certify that on August 15, 2016, I electronically filed the foregoing with the Clerk of the District Court using the CM/ECF system.

s/ Lawrence E. Penn III
Lawrence E. Penn III

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,	:	
Plaintiff,	:	14-CV-0581 (VEC)
-against-	:	MEMORANDUM OPINION & ORDER
LAWRENCE E. PENN, III, ET AL.,	:	
Defendants,	:	
-and-	:	
A BIG HOUSE FILM AND PHOTOGRAPHY STUDIO, LLC,	:	
Relief Defendant.	:	

VALERIE CAPRONI, United States District Judge:

The Securities and Exchange Commission ("SEC") filed this action against Defendant Lawrence E. Penn, III ("Penn") alleging that Penn misappropriated approximately $9 million from a hedge fund he managed. The SEC alleges violations of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78j(b), and Rule 10b-5(a) and (c) thereunder, 17 C.F.R. § 240.10b-5; and Sections 204, 206(1), 206(2), and 207 of the Investment Advisers Act of 1940 (the "40 Act"), 15 U.S.C. §§ 80b-4, 80b-6(1), 80b-6(2), and 80b-7, and Rule 204-2 thereunder, 17 C.F.R. §§ 275.204-2. Penn pled guilty in New York state court to one count of grand larceny and one count of falsifying business records after being charged criminally in connection with the same scheme as underlies the SEC's complaint. Penn has asserted various common law torts and a violation of 42 U.S.C. § 1983 as counterclaims against the SEC.

Before the Court is the SEC's motion for judgment on the pleadings with respect to its claims under Section 10(b), Rule 10b-5 of the Exchange Act and Sections 204, 206(1), 206(2) and Rule 204-2 of the 40 Act. In the alternative, the SEC moves for partial summary judgment on each of these claims except those under Section 204 and Rule 204-2 of the 40 Act. The SEC also moves to dismiss Penn's counterclaims.

For the reasons set forth below, the Court converts the SEC's motion for judgment on the pleadings to a motion for summary judgment and GRANTS that motion in its entirety. The Court further DISMISSES Penn's counterclaims without prejudice. The SEC's remaining claim under Section 207 of the 40 Act is unresolved by this Opinion.

BACKGROUND[1]

1. The SEC Complaint and Related State Criminal Proceedings

From its inception in 2007 to approximately February 2014, Penn managed a private equity fund called Camelot Acquisitions Secondary Opportunities LP (the "Fund"). Willenken Dec. Ex. E at 1. According to the SEC's Complaint, Penn misappropriated over $9 million from the Fund through a series of purported "due diligence" payments to an entity called Ssecurion LLC ("Ssecurion") that was controlled by Penn's co-conspirator. Compl. (Dkt. 151-1) at ¶ 2. Monies paid to Ssecurion were transferred to Penn and used for his personal and business

[1] The Court's account of the record is based on the uncontroverted facts in the SEC's Rule 56.1 Statement ("Pl. 56.1 Stmt.") (Dkt. 152) and the supporting declaration filed by Karen E. Willenken ("Willenken Dec.") (Dkt. 151). Penn was informed by the SEC of his opportunity to submit a Rule 56.1 Statement, and he chose not to do so. Penn did file an amended answer, in which he disputes some, though not all, of the SEC's allegations. Dkt. 129. As the SEC notes, many of Penn's denials are facially incredible. Nonetheless, recognizing that Penn is proceeding *pro se*, the Court looks only to the uncontroverted and admitted allegations in the SEC's Rule 56.1 Statement. Where the Court can find no genuine objection by Penn and no contradiction in the record, it relies on the SEC's submissions. *See* S.D.N.Y. Local Rule 56.1(c) ("[M]aterial facts set forth in the statement required to be served by the moving party will be deemed to be admitted for purposes of the motion unless specifically controverted by a correspondingly numbered paragraph in the statement required to be served by the opposing party."); *Smith v. City of New York*, No. 12-CV-4892 (JPO), 2014 WL 5324323, at *1 n.1 (S.D.N.Y. Oct. 20, 2014) (granting summary judgment against a prose litigant where the court's independent review of the record did not contradict the moving party's Rule 56.1 statement).

expenses. Compl. ¶¶ 2, 4. Based on the same facts as underlie the SEC's Complaint, Penn was indicted in state court for grand larceny, money laundering, and falsifying business records. Pl. 56.1 Stmt. ¶ 3. Given the substantial overlap between the legal and factual issues in the SEC's civil case and the state criminal case, on June 11, 2014, the Court granted the SEC's motion to stay all discovery pending the outcome of Penn's criminal case. Dkt. 51. On March 16, 2015, Penn pled guilty to one count of grand larceny in the first degree and one count of falsifying business records in the first degree.[2] Pl. 56.1 Stmt. ¶ 6.

2. The Amended Answer and Allocution

As a part of his guilty plea allocution, Penn admitted that he made a false entry in ae schedule of invoices in the Fund's business records "with the intent to defraud, including an intent to commit another crime[.]" Pl. 56.1 Stmt. ¶ 9; Willenken Dec. Ex. G (plea allocution) at 7:2-12. Penn also admitted that he stole in excess of $1 million from the Fund. Pl. 56.1 Stmt. ¶ 8.c; Willenken Dec. Ex. G at 6:18-7:1.e

In addition to those admissions, Penn filed an amended answer to the SEC's Complaint. Dkt. 129. In his amended answer, Penn admitted that he "sent" $9.3 million from the Fund to two Penn-controlled entities, Camelot Acquisitions Secondary Opportunities Management LLC ("CASO Management") and Camelot Group International LLC ("CGI"), and that he did so through Ssecurion. Pl. 56.1 Stmt. ¶ 18 (citing Am. Answer ¶ 3, 3d Aff. Def.). According to Penn, CGI used the money to pay overhead expenses including rent and salary. *Id.* ¶ 19 (citing Am. Answer ¶¶ 3-4). Penn also admits mischaracterizing the use of Fund money, *id.* ¶ 20 (citing Am. Answer ¶ 2), and he forthrightly admits liability for violations of Section 204 of the 40 Act and Rule 204-2 thereunder, *id.* ¶ 22 (citing Am. Answer ¶ 6).

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[2] Despite his guilty plea, Penn appealed his conviction. Penn's appeal remains pending. *See People v. Penn*, 2016 NY Slip Op 74993(U), 2016 WL 3045475 (1st Dep't 2016); Def. Opp. (Dkt. 161) at 3.

But Penn has responded imprecisely and ambiguously to other facts regarding the details of the scheme alleged in the Complaint, particularly allegations related to the connection between Penn's scheme and the misstatements in the Fund's records. For example, Penn denies knowledge or information sufficient to form a belief as to the truth of "some of the allegations in Paragraph 29 of the Complaint." Am. Answer ¶ 29. It is in that paragraph that the SEC alleges that the transfers to Ssecurion were characterized as "due diligence" payments and that the purported due diligence payments from 2010 through October 2013 total almost $9.3 million—the same amount Penn admits he "diverted." *Compare* Comp. ¶ 29, *and* Am. Answer ¶ 3, 3d Aff. Def. Penn also denied knowledge adequate to form a belief as to some, but not all, of the SEC's allegations that the Ssecurion invoices for "due diligence" expenses were included in the Fund's records—the same records Penn admits were inaccurate in some unspecified way—and that he created purported work product to correspond to those invoices in response to an investigation by the Fund's auditors.[3] *Compare* Compl. ¶¶ 5, 30, 37 *and* Am. Answer ¶¶ 5, 30, 37. These ambiguous denials do not comply with the minimum requirements under Rule 8, even accounting for Penn's *pro se* status, because Penn denied knowledge adequate to form a belief only as to *some* of the SEC's allegations.[4] By failing to specify what portions of the SEC's allegations were beyond his knowledge and by failing to specifically deny the allegations that

[3] Penn's guilty plea allocution does not include details as to the nature of the false entries he admitted to making in the Fund's business records. The SEC's motion implicitly assumes that the false entries to which Penn admitted are the false entries relating to "due diligence" payments to Ssecurion. Penn has not contested that assumption or argued that he admitted to falsifying some other, unrelated entries in the Fund's business records, and he has admitted that the transfers through Ssecurion were in fact mischaracterized. Am. Answer ¶¶ 2-4. As explained above, the Court finds that he has effectively admitted that the false entries in the Fund's records are the same as the false records reflecting "due diligence" payments to Ssecurion. Am. Answer ¶¶ 5, 30, 37.

[4] Penn's admissions are similarly oddly worded. Specifically, Penn frequently answers with the phrase: "Defendant admits knowledge or information sufficient to form a belief as to the truth of the allegations in" particular paragraphs of the Complaint. *See, e.g.*, Am. Answer ¶¶ 20, 22. The Court understands that answer to constitute an admission of the allegation.

were within his knowledge, Penn has left the Court guessing. Given the inappropriate and ambiguous nature of these responses, the Court deems the SEC's allegations in paragraphs 5, 29, 30, and 37 of the Complaint to have been admitted. *See* Fed. R. Civ. P. 8(b); *Dawkins v. Williams*, 511 F. Supp. 2d 248, 270-71 (N.D.N.Y. 2007) (deeming admitted allegations which defendant improperly denied in his answer).

3. The Instant Motion

The SEC's motion is based on Penn's admissions in his guilty plea allocution and in his amended answer. Because many of Penn's responses do not comply with the basic requirements of Rule 8(b), the SEC contends that the Complaint is essentially uncontroverted with respect to its Exchange Act and 40 Act claims, with the exception of its claim pursuant to Section 207 of the 40 Act. Pl.'s Mem. (Dkt. 150) at 2. Alternatively, the SEC argues that it is entitled to summary judgment on its fraud claims under the Exchange Act and Section 206 of the 40 Act because Penn is collaterally estopped from relitigating the facts of the scheme to which he pled guilty in state court. *Id.* at 26-28. Finally, the SEC seeks dismissal of Penn's counterclaims as improperly consolidated with its enforcement action. *Id.* at 28-29.

In connection with its motion, the SEC served on Penn a Notice to Pro Se Litigant in the form provided by Local Rule 12.1. Dkts. 153, 154. The SEC's notice alerted Penn to the possibility that the Court would treat the SEC's motion as a motion for summary judgment and that he was required by Rule 56(e) to provide admissible evidence to counter the SEC's submissions. *See* Dkt. 154 at ¶¶ 2-3. This constituted sufficient notice that the SEC's motion for judgment on the pleadings might be converted to a motion for summary judgment.[5] *See*

[5] The SEC also provided adequate notice to Penn by moving for summary judgment in the alternative and sending Penn a Local Rule 56.2 Notice, informing him of his obligation to respond to the SEC's Rule 56.1 Statement with a statement, affidavits or other evidence of his own. *See* Dkts. 153, 155; *see also Nat. Ass'n of Pharm. Mfrs., Inc. v. Ayerst Labs.*, 850 F.2d 904, 911 (2d Cir. 1988) (noting that moving to dismiss or, in the

Loccenitt v. City of New York, No. 10-CV-8319 (JPO), 2012 WL 5278553, at *3 (S.D.N.Y. Oct. 22, 2012) (holding that a Local Rule 12.1 Notice to Pro Se Litigant provides adequate notice of potential conversion to a motion for summary judgment).

DISCUSSION

1. Summary Judgment Conversion and Standard

Because the SEC has presented matters outside the pleadings and properly noticed Penn, the Court converts its motion for judgment on the pleadings to one for summary judgment. *See Hernandez v. Coffey*, 582 F.3d 303, 307 (2d Cir. 2009) ("If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56." (quoting Fed. R. Civ. P. 12(d)). Summary judgment is appropriate when "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). "Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial." *Scott v. Harris*, 550 U.S. 372, 380 (2007) (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)). "The Court must 'construe the facts in the light most favorable to the non-moving party and must resolve all ambiguities and draw all reasonable inferences against the movant.'" *Pandora Media, Inc. v. Am. Soc'y of Composers, Authors and Publishers*, 785 F.3d 73, 77 (2d Cir. 2015) (*per curiam*) (quoting *Beyer v. Cnty. of Nassau*, 524 F.3d 160, 163 (2d Cir. 2008)). Nevertheless, "to defeat summary judgment, 'a nonmoving party must offer some hard evidence showing that its version of the events is not

alternative, for summary judgment, provides adequate notice that the motion will be converted to one for summary judgment). Therefore, Penn had ample notice of the risk that the SEC's motion would be treated as a motion for summary judgment.

wholly fanciful.'" *Chabad Lubavitch of Litchfield Cnty., Inc. v. Litchfield Historic Dist. Comm'n*, 768 F.3d 183, 197 n.10 (2d Cir. 2014) (quoting *Jeffreys v. City of New York*, 426 F.3d 549, 554 (2d Cir. 2005)).

When a party moves for summary judgment against a *pro se* litigant, courts afford the non-moving party "special solicitude." *Tracy v. Freshwater*, 623 F.3d 90, 101 (2d Cir. 2010). District courts must read a *pro se* litigant's "pleadings liberally and interpret them to raise the strongest arguments that they suggest." *Jorgensen v. Epic/Sony Records*, 351 F.3d 46, 50 (2d Cir. 2003) (quotation marks and citations omitted). Courts "are less demanding of [*pro se*] litigants generally, particularly where motions for summary judgment are concerned." *Jackson v. Fed. Express*, 766 F.3d 189, 195 (2d Cir. 2014). This lower standard for pro se litigants does not, however, "relieve [the *pro se* litigant] of his duty to meet the requirements necessary to defeat a motion for summary judgment." *Jorgensen*, 351 F.3d at 50 (quotation marks and citations omitted).

2. Effect of Penn's Statements in his Allocution and Amended Answer

Penn is collaterally estopped from challenging the facts underlying his criminal convictions. State law determines the preclusive effect of Penn's convictions. 28 U.S.C. § 1738; *see Marrese v. Am. Acad. of Orthopaedic Surgeons*, 470 U.S. 373, 380 (1985) ("The preclusive effect of a state court judgment in a subsequent federal lawsuit generally is determined by the full faith and credit statute . . . . This statute directs a federal court to refer to the preclusion law of the State in which judgment was rendered."). Under New York law, a conviction— whether based on a trial or a guilty plea— is "conclusive proof of the underlying facts upon which it rests and the defendant is estopped from relitigating those facts in any future proceeding." *In re Cumberland Pharmacy, Inc. v. Blum*, 415 N.Y.S.2d 898 (2d Dep't 1979) (citing *S.T. Grand, Inc.*

v. City of New York, 32 N.Y.2d 300, 304-305 (1973)); *see Hooks v. Middlebrooks*, 472 N.Y.S.2d 54 (4th Dep't 1984) (no distinction for purposes of collateral estoppel between guilty plea and conviction at trial). The fact that Penn has an appeal pending from his criminal convictions does not affect the collateral estoppel analysis. *DiSorbo v. Hoy*, 343 F.3d 172, 183 (2d Cir. 2003) (citing *In re Amica Mut. Ins. Co.*, 445 N.Y.S.2d 820 (2d Dep't 1981) ("The rule in New York, unlike that in other jurisdictions, is that the mere pendency of an appeal does not prevent the use of the challenged judgment as the basis of collaterally estopping a party to that judgment in a second proceeding" (collecting cases)).

In determining what facts underlie a guilty plea, Courts in this district look at the facts the defendant admitted during his plea allocution. *See Kaplan v. S.A.C. Capital Advisors, L.P.*, 104 F. Supp. 3d 384, 389 (S.D.N.Y. 2015) ("When a defendant pleads guilty and allocutes to criminal conduct, it is only that specific conduct which the guilty plea incorporates.") (collecting cases).[6] Nevertheless, as a part of his plea allocution, Penn admitted that he made a false entry of "210 or 211 Schedule Invoices" in the business records of the Fund and did so with "intent to defraud, including an intent to commit another crime[.]" Pl. 56.1 Stmt. ¶ 9; Willenken Dec. Ex. G at 7:2-12. Penn also admitted that he "stole property from [the Fund], and that the value of the

[6] The Court notes that New York law does not clearly reach this conclusion. Although the contents of a plea allocution are certainly considered for the purposes of collateral estoppel, *see Buggie v. Cutler*, 636 N.Y.S.2d 357 (2d Dep't 1995), New York courts have not addressed whether other facts may also be viewed as underlying a guilty plea. *See Merchants Mut. Ins., Co. v Arzillo*, 472 N.Y.S.2d 97 (2d Dep't 1984) (collecting a number of cases for the proposition that "a guilty plea precludes relitigation in a subsequent civil action of all issues necessarily determined by the conviction," without further explication). Although the SEC looks in part to the Statement of Facts contained in Penn's indictment (Pl. Mem. at 27), the Court declines to do so in light of persuasive authority from this district. *See Kaplan*, 104 F. Supp. 3d at 389-90 ("[A]n indictment is simply an allegation—a charge by the Government," and is therefore not incorporated into a guilty plea.).

property exceeded $1 million." Pl. 56.1 Stmt. ¶ 8.c; Willenken Dec. Ex. G at 6:18-7:1. These facts form the basis of Penn's guilty plea, and Penn is precluded from relitigating them.[7]

Penn is also bound by the admissions in his amended answer. *Gibbs ex rel. Gibbs v. Cigna Corp.*, 440 F.3d 571, 578 (2d Cir. 2006) ("Facts admitted in an answer, as in any pleading, are judicial admissions that bind the defendant throughout this litigation."); *see also Bank of Am., N.A. v. Farley*, No. 00-CV-9346 (DC), 2002 WL 5586, at *6 (S.D.N.Y. Jan. 2, 2002) (treating defendant's initial answer as conclusive at summary judgment). Thus, Penn has admitted that he diverted $9.3 million from the Fund to other entities under his control via Ssecurion and used that money to pay rent and salary expenses, and that those transfers/payments were not appropriately characterized in the books and records of the Fund. Pl. 56.1 Stmt. ¶¶ 13-14, 18-20 (citing Am. Answer ¶¶ 2-6; 3d Aff. Def.). Penn has also admitted that the false entries in the Fund's business records related to invoices from Ssecurion. Pl. 56.1 Stmt. ¶ 9; Answer ¶¶ 5, 30, 37. Furthermore, Penn has also admitted that he violated Section 204 of the 40 Act and Rule 204-2 thereunder. Pl. 56.1 Stmt. ¶ 22; Am. Answer ¶ 6.

3. Liability

These facts, admitted by Penn in his amended answer and plea allocution, establish that there are no material questions of fact and that the SEC is entitled to summary judgment on its claims pursuant to the Exchange Act and Sections 204, 206(1), 206(2) and Rule 204-2 of the 40 Act. *See SEC v. Amerindo Inv. Advisors, Inc.*, No. 05-CV-5231 (RJS), 2013 WL 1385013, at*4-9 (S.D.N.Y. Mar. 11, 2013) (using collateral estoppel as to certain elements and demonstrating

[7] The SEC's use of collateral estoppel in this case has been hampered by the fact that the presiding judge who took Penn's guilty plea allowed him to simply confirm that the charge, as stated in the indictment, was true. *See* Willenken Dec. Ex. G at 6-7 ("[The Court:] count one . . . allege[s] that you . . . stole property from Camelot Acquisitions Secondary Opportunities LLP, and the value of the property exceeded $1 million, is that a true statement, sir? [Penn:] Yes, your Honor."). Ideally, the defendant should provide a factual recitation of what he did that makes him guilty as part of any guilty plea.

that there is no genuine dispute of material fact as to other elements to resolve a motion for summary judgment).

A. Exchange Act Section 10(b) and Rule 10b-5

Section 10(b) of the Exchange Act provides that "[i]t shall be unlawful for any person ... to use or employ, in connection with the purchase or sale of any security registered on a national securities exchange ... any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the [SEC] may prescribe . . . ." 15 U.S.C. § 78j(b). Rule 10b-5 provides, in relevant part, as follows:

> It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or the mails or of any facility of any national securities exchange,
>
> > (a) To employ any device, scheme, or artifice to defraud, [or]
> > (b) . . .
> > (c) To engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person,
>
> in connection with the purchase or sale of any security.

17 C.F.R. § 240.10b-5.

To make out a claim under sections (a) and (c) of Rule 10b-5, the SEC must prove that the defendant, in connection with the purchase or sale of a security, (1) engaged in a manipulative or deceptive act, (2) in furtherance of an alleged scheme to defraud, and (3) acted with scienter. *SEC v. Simpson Capital Mgmt., Inc.*, 586 F. Supp. 2d 196, 201 (S.D.N.Y. 2008) (quoting *In re Global Crossing, Ltd., Sec. Litig.*, 322 F. Supp. 2d 319, 336 (S.D.N.Y. 2004) (citing *SEC v. U.S. Envtl., Inc.*, 155 F.3d 107, 112 (2d Cir.1998))). Unlike a private plaintiff, the SEC need not prove reliance. *See SEC v. North Am. Research & Dev. Corp.*, 424 F.2d 63, 84 (2d Cir. 1970) ("reliance is immaterial because it is not an element of fraudulent representation under Rule 10b-5 in the context of an SEC proceeding . . .").

With respect to the first element, the SEC needs to show that what occurred was an "inherently deceptive act" and not just a misleading statement. *SEC v. Kelly*, 817 F. Supp. 2d 340, 344 (S.D.N.Y. 2011) (distinguishing misstatement and "scheme" liability). Conduct that is deceptive only because of a subsequent material misstatement may be actionable under Section 10b-5(b) but cannot be shoehorned into a claim for scheme liability under Section 10b-5(a) and (c). *SEC v. Garber*, 959 F. Supp. 2d 374, 381 & n.47 (S.D.N.Y. 2013) (explaining that *Kelly* did not involve "scheme liability" because the conduct was only deceptive by virtue of subsequent misrepresentations); *but see In re John P. Flattery & James D. Hopkins*, SEC Release No. 3981, at *14 (Dec. 15, 2014) (rejecting *Kelly* and suggesting that misstatements are actionable under subsection (a) and (c) of Rule 10b-5), *vacated by SEC v. Kelly*, 810 F.3d 1 (1st Cir. 2015)). With respect to the third element, scienter requires proof that the defendant acted with "a mental state embracing intent to deceive, manipulate, or defraud." *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 & n.12 (1976).

Penn admitted that he diverted $9.3 million from the Fund to other entities under his control. Pl. 56.1 Stmt. ¶¶ 18-20; Am. Answer ¶¶ 2-4, 3d Aff. Def. He admits the money was diverted through Ssecurion and that he falsified a schedule of invoices from Ssecurion in the Fund's records. Pl. 56.1 Stmt. ¶ 9, 18; Am. Answer ¶¶ 5, 30, 37. He also admits that he "stole" over $1 million from the Fund through this scheme, implicitly acknowledging that he took property that he knew did not belong to him. Pl. 56.1 Stmt. ¶ 8; Willenken Dec. Ex. G at 6:18-7:1. By disguising the ultimate recipient of the funds through sham transactions, Penn engaged in an inherently deceptive act. Routing the money to CASO Management and CGI through Ssecurion served no legitimate purpose and was an obvious attempt to shield Penn's theft from the Fund's auditors and participants. *See SEC v. Lee*, 720 F. Supp. 2d 305, 334 (S.D.N.Y. 2010);

see also SEC v. Credit Bancorp, Ltd., 738 F. Supp. 2d 376, 384 (S.D.N.Y. 2010) (transferring shares through an intermediary is inherently deceptive); *In re Smith Barney Transfer Agent Litig.*, 884 F. Supp. 2d 152, 161 (S.D.N.Y. 2012) (finding that creation and use of an intermediary entity to conceal the identity of a transaction's beneficiary is inherently deceptive). These deceptive acts are sufficient to establish the first element of liability under Rule 10b-5(a) and (c). There does not appear to be any dispute that these acts were in furtherance of Penn's fraudulent scheme, satisfying the second element of liability. And, finally, Penn's admissions satisfy Rule 10b-5's scienter requirement. Penn admitted in his allocution to stealing more than $1 million from the Fund, Pl. 56.1 Stmt. ¶ 8; Willenken Dec. Ex. G at 6:18-7:1, and to falsifying a schedule of invoices in the Fund's records "with the intent to defraud, including an intent to commit another crime and to aid and conceal the commission thereof[,]" Pl. 56.1 Stmt. ¶ 9; Willenken Dec. Ex. G at 7:2-12.

Because Penn's admissions in his amended answer and during his state guilty pleas are sufficient to establish liability under Section 10(b) and Rule 10b-5, there is no genuine dispute of material fact with respect to these claims.[8]

B. Sections 206(1) and 206(2) of the 40 Act

Section 206(1) and 206(2) of the 40 Act set "'federal fiduciary standards' to govern the conduct of investment advisers" and impose "enforceable fiduciary obligations" on those advisers. *Transamerica Mortg. Advisors, Inc. v. Lewis* (*TAMA*), 444 U.S. 11, 17 (1979) (quoting

[8] Although the Court need not reach Penn's factual arguments with respect to materiality and scienter, they are unavailing. Penn now argues that the investors and partners in his fund fully expected him to extract management fees, and that therefore his conduct was neither material nor deliberately misleading because it was consistent with investor and partnership expectations. Def. Opp. at 16-19, 20. These arguments are particularly untenable in light of the fact that his Fund has brought a civil suit against him in New York Supreme Court for, *inter alia*, breach of fiduciary duty, fraud, and conversion, Pl. 56.1 Stmt. ¶ 56; Willenken Dec. Ex. K, and his admission, under oath, that he stole money from the Fund, Willenken Dec. Ex. G at 6:18-7:1, 7:2-12.

Santa Fe Indus. v. Green, 430 U.S. 462, 471 n.11 (1977)). An investment adviser has a duty to subordinate its own interests to those of fund investors. *See SEC v. Moran*, 922 F. Supp. 867, 8996 (S.D.N.Y. 1996). In particular, an investment adviser is prohibited from using a "device, scheme, or artifice to defraud" clients, 15 U.S.C. § 80b–6(1), or from conducting a "transaction, practice, or course of business which operates as a fraud or deceit upon any client," *id.* at §80b–6(2). Section 206's bar on schemes and artifices to defraud also prohibits non-disclosure of material information by an investment adviser. *See In re Reserve Fund Sec. and Derivative Litig.*, 09-CV-4346 (PGG), 2012 WL 12354233, at *2 (S.D.N.Y. Oct. 3, 2012) (holding that Section 206 prohibits material non-disclosure and citing *Moran*, 922 F. Supp. at 896); *SEC v. Bolla*, 401 F. Supp. 2d 43, 66-68 (D.D.C. 2005) (recognizing that in the context of a fiduciary relationship non-disclosure and misstatements can be a scheme or artifice to defraud and holding defendant liable on misstatement theory under Section 206(1)); *cf. SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 198 (1963) (Section 206 prohibits material nondisclosure because it is a "variety of fraud or deceit").

The elements of a claim under Section 206 are similar to the elements of a claim under Rule 10b-5, *see TAMA*, 444 U.S. at 25 n.1 (White, J. dissenting) ("The provisions of [Section 206] are substantially similar to § 10(b)"), and identical to a claim under Section 17(a) of thee Securities Act, *see SEC v. Pimco Advisors Fund Mgmt., LLC*, 341 F. Supp. 2d 454, 470 (S.D.N.Y. 2004) ("The provisions of Sections 206(1) and 206(2) have been interpreted as substantively indistinguishable from Section 17(a) of the Securities Act, except that Section 206(1) requires proof of fraudulent intent, while Section 206(2) simply requires proof of negligence ."). Thus, "facts showing a violation of Sections 10(b) or 17(a) by an investment advisor will also support a showing of a Section 206 violation." *SEC v. Berger*, 244 F. Supp. 2d

180, 192 (S.D.N.Y. 2001) (citing *SEC v. Rana Research, Inc.*, 8 F.3d 1358, 1363 n.4 (9th Cir. 1993)).

Penn's admitted scheme to defraud establishes each of the elements of a claim under Sections 206(1) and (2). There is no dispute that Penn was acting as an investment adviser as defined by the 40 Act, and he has admitted to managing the Fund. *See Abrahamson v. Fleschner*, 568 F.2d 862, 870 (2d Cir. 1977) ("[P]ersons who manage[ ] the funds of others for compensation are 'investment advisers' within the meaning of the statute."). Penn also admitted that he diverted $9.3 million from the Fund to pay business expenses through Ssecurion. That scheme was inherently deceptive. *See Lee*, 720 F. Supp. 2d at 334. Penn's scheme also satisfies the scienter requirement as applied to Rule 206. *See Steadman v. SEC*, 603 F.2d 1126, 1134 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981) (assessing scienter for the purposes of the 40 Act under the same standard as a Section 17(a) claim); *See Moran*, 922 F. Supp. at 896 (applying Exchange Act scienter requirement to a 40 Act Section 206(1) claim).

Penn's failure to disclose his scheme to the Fund's participants and attempts to obscure the facts from the Fund's auditors are also actionable under Section 206. Penn admitted that the Fund's records improperly characterized the use of the money paid to Ssecurion and, as a part of that scheme, he falsified a schedule of invoices in the Fund's records. Pl. 56.1 Stmt. ¶¶ 8-9, 13-14, 18-20; Am. Answer ¶¶ 2-3, 5-6, 3d Aff. Def., 4th Aff. Def.; Willenken Dec. Ex. G at 6:18-7:12. Penn's non-disclosure and outright misstatements breached his duties to the Fund. *See In re Reserve Fund Sec. and Derivative Litig.*, 2012 WL 12354233, at *2. Additionally, diversion and misappropriation of funds by an adviser are necessarily material. *See Operating Local 649 Annuity Tr. Fund v. Smith Barney Fund Mgmt. LLC,* 595 F.3d 86, 93 (2d Cir. 2010) ("[a]ny rational mutual fund investor would be highly leery of dealing with a fiduciary . . . who, in

violation of the law, lined [its] pockets at the expense of investors . . .").[9] Penn's scienter with respect to the misstatements is established by his admissions that he acted with "intent to defraud," Willenken Dec. Ex. G at 7:2-12, and "stole" over $1 million from the Fund, *id.* at 6:18-7:1; *see also Ernst*, 425 U.S. at 193 & n.12. The Court finds that there is no dispute of material fact, and Penn is liable under Sections 206(1) and 206(2) of the 40 Act.

C. Section 204 and Rule 204-2 of the 40 Act

Penn's opposition papers contend—without argument—that the SEC is not entitled to judgment on these claims. Def. Opp. at 5. But, as discussed above, Penn's express admission of liability for violations of Section 204 and Rule 204-2 in his answer to the SEC's complaint is conclusive for purposes of summary judgment. Am. Answer ¶ 6; *see Gibbs ex rel. Gibbs*, 440 F.3d at 578. There is, therefore, no genuine dispute of material fact with respect to Penn's liability on these claims.

4. Penn's Counterclaims against the SEC

Penn's counterclaims cannot be consolidated with the SEC's action for equitable relief because the SEC has not consented. 15 U.S.C. § 78u(g); *see SEC v. McCaskey*, 56 F. Supp. 2d 323, 325 (S.D.N.Y. 1999) ("[Section 21(g)] has routinely been employed to dismiss third-party complaints and counterclaims because such additional claims protract litigation." (internal citations omitted)); *SEC v. Better Life Club of Am., Inc.*, 995 F. Supp. 167, 180 (D.D.C. 1998). Penn's counterclaims must, therefore, be dismissed.

[9] The Court assumes, without deciding, that because Rule 206 borrows from Rule 10b-5, a Section 206 claim based on a misstatement or non-disclosure (rather than a scheme) requires evidence of materiality just as a misstatement must be material to be actionable under Rule 10b-5(b). *See Steadman*, 603 F.2d at 1130 (applying Exchange Act materiality standard under the 40 Act). Materiality is straightforward in this case as "any investor, without regard for the degree of sophistication, would find it material that invested funds were not used for their stated purpose." *SEC v. Morriss*, No. 12-CV-80 (CEJ), 2012 WL 6822346, at *11 (E.D. Mo. Sept. 21, 2012).

CONCLUSION

For the forgoing reasons, Plaintiff's motion for summary judgment is GRANTED in its entirety, and Defendant's counterclaims are DISMISSED without prejudice. The SEC's claims under Section 207 of the 40 Act remain outstanding. The parties are ordered to notify the Court not later than **January 6, 2017**, whether either needs any discovery with respect to the SEC's Section 207 claim.

Because the parties did not provide any briefing on the appropriate remedies in this case, the Court directs the parties to submit briefs regarding this issue. The SEC's brief must be filed on or before **January 6, 2017**; Penn's response shall be filed on or before **January 27, 2017**; and the SEC's reply shall be filed on or before **February 6, 2017**.

SO ORDERED.

Date: December 21, 2016
New York, New York

VALERIE CAPRONI
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,	:	
Plaintiff,	:	14-CV-581 (VEC)e
-against-	:	OPINION & ORDER
LAWRENCE E. PENN, III, ET AL.,	:	
Defendants,	:	
-and-	:	
A BIG HOUSE FILM AND PHOTOGRAPHY STUDIO, LLC,	:	
Relief Defendant.	:	

VALERIE CAPRONI, United States District Judge:

Defendant Lawrence E. Penn, III ("Penn") was charged in New York state court in 2014 with misappropriating approximately $9 million from an investment fund that he controlled. Penn pleaded guilty to one count of grand larceny and one count of falsifying business records. This is a parallel civil enforcement proceeding. The SEC alleges that Penn's scheme violated Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. § 78j(b); Rule 10b-5(a) and (c) thereunder, 17 C.F.R. § 240.10b-5; and Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 (the "40 Act"), 15 U.S.C. §§ 80b-6(1), 80b-6(2). On December 21, 2016, the Court granted the SEC's motion for summary judgment as to liability. Bifurcating the proceedings, the Court directed the parties to separately brief the SEC's remedies. The SEC has moved to permanently enjoin Penn from further violations of the securities laws; for disgorgement of the proceeds of his scheme; and for imposition of a civil

monetary penalty. For the reasons that follow, the Court GRANTS the SEC's motion to enjoin Penn from further violations of the securities laws and DENIES its motion for disgorgement and penalties because there is a material dispute of fact that requires an evidentiary hearing.

BACKGROUND

The facts of Penn's scheme and the history of these proceedings is set out more fully in the Court's Memorandum Opinion and Order granting the SEC's motion for summary judgment. *See* Opinion and Order dated Dec. 21, 2016 (Dkt. 168) ("Op."). In brief, from approximately 2007 to February 2014 Penn was the general partner of Camelot Acquisitions Secondary Opportunities, LP (the "Fund"), a private equity fund. Op. at 2. Between 2010 and 2013, Penn diverted $9,286,916.65 from the Fund through a series of fictitious invoices for "due diligence." Op. at 2. The invoices were from Ssecurion, LLC ("Ssecurion"), a company set up by Penn and an accomplice. Op. at 2. Ssecurion transferred the lion's share of the funds to other entities controlled by Penn, Camelot Acquisitions Secondary Opportunities Management, LLC and Camelot Group International, LLC. Op. at 3. According to the SEC – and not contested by Penn -- over the course of the scheme, the Fund made 80 transfers to Ssecurion in respect of 32 false invoices. *See* Declaration of James R. D'Avino ("D'Avino Decl.") (Dkt. 179) ¶¶ 10-13.

Penn was arrested by New York City authorities, and, on March 16, 2015, he pleaded guilty to one count of first degree grand larceny and one count of falsifying records in the first degree. Op. at 3. As a condition of his plea, Penn was ordered to make restitution in the amount of $8,362,973.89[1] and to forfeit his interest in the Fund, which primarily consisted of his right to "carried interest" or a percentage of the Fund's profits. *See* Opp'n (Dkt. 185) Exs. 2, 3.

[1] The discrepancy between the amount diverted by Penn ($9,286,916.65) and the state court's restitution order ($8,362,973.89) is based on that court's finding that approximately $1 million of the diverted funds were used for the benefit of the Fund.

Pursuant to the state court's order, Penn is required to pay a graduated amount of his annual gross income from 5% of any income below $20,000 to 25% of any income above $350,000 in restitution. Opp'n Ex. 2 ¶ 2. The parties dispute the value of Penn's forfeited interest in the Fund. According to an analysis submitted by Penn to the New York County District Attorney's office, as of July 31, 2014, Penn's carried interest in the Fund's profits was worth approximately $18.5 million. Opp'n Ex. 5. The SEC contends that this estimate is overly rosy, based on speculative and out-of-date assumptions about the Fund's performance, and does not account for provisions of the Fund's partnership agreement which required Penn to forfeit half his interest in the Fund upon being removed as the Fund's general partner. Reply Mem. (Dkt 188) at 7.

These proceedings were stayed pending resolution of Penn's criminal case. As noted above, on December 21, 2016, the Court granted the SEC's motion for summary judgment, and directed the parties to brief the appropriate remedies.

DISCUSSION

The SEC seeks three forms of relief: a permanent injunction pursuant to Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3), and Section 209(d) of the 40 Act, 15 U.S.C. §80(b)-9(d), to prohibit Penn from any future violations of the securities laws, Mem. (Dkt. 178) at 4; disgorgement in the amount of $9,286,916.65, the alleged amount of Penn's ill-gotten gains, Mem. at 7; and civil monetary penalties, Mem. at 9.

1. Injunctive Relief

"A permanent injunction is appropriate where there has been a violation of the federale securities laws and there is a reasonable likelihood of future violations." *SEC v. Haligiannis*, 470 F. Supp. 2d 373, 383 (S.D.N.Y. 2007). In determining whether to enter a permanent injunction, the Court considers four factors: "(1) the egregiousness of the violation; (2) the

degree of scienter; (3) the isolated or repeated nature of the violations; and (4) the sincerity of defendant's assurances against future violations." *SEC v. Elliott*, No. 09-CV-7594 (RJH), 2011 WL 3586454, at *10 (S.D.N.Y. Aug. 11, 2011) (quoting *Haligiannis*, 470 F. Supp. 2d at 389 n.9). Especially relevant is whether the defendant admits wrongdoing, because a defendant'se refusal to do so makes "it rather dubious that [the defendant] [is] likely to avoid such violations of the securities laws in the future in the absence of an injunction." *SEC v. First Jersey Secs., Inc.*, 101 F.3d 1450, 1477 (2d Cir. 1996) (quoting *SEC v. Lorin*, 76 F.3d 458, 461 (2d Cir. 1996) (per curiam)).

Each factor weighs in favor ofan injunction in this case. Penn's conduct was egregious. Together with a co-conspirator, he created a sham investigations company – complete with a fake website – which he used to divert approximately $9 million in investor funds. Op. at 3; Compl. (Dkt. 1) ¶ 44. When the Fund's auditors at Deloitte & Touche LLP ("Deloitte") raised questions about the payments, Penn provided them with fake work-product and ultimately fired Deloitte. Op. at 4; Compl. ¶¶ 5, 40-45. Penn's scheme involved a high degree of scienter. Penn admitted in state court that he "stole" more than $1 million from the Fund, Op. at 12, and his theft involved substantial planning and concealment. With respect to the third factor, Penn's scheme involved repeated misconduct. Over the course of three years, Penn submitted 32 false invoices, resulting in 80 improper transfers. *See SEC v. Zwick*, No. 03-CV-2742 (JGK), 2007 WL 831812, at *21 (S.D.N.Y. Mar. 16, 2007) (concluding that twenty fraudulent trades over a 16-month period qualified as systematic wrongdoing and citing similar cases). Finally, despitee his state court guilty plea, Penn refuses to admit to this Court that what he did was wrong and he has expressed no remorse. *See SEC v. Contorinis*, 743 F.3d 296, 308 (2d Cir. 2014) ("We furthermore observe that Contorinis continues to deny having engaged in insider trading,

suggesting a lack of remorse and supporting further measures to deter future wrongdoing of a like type.") (internal citations omitted); Opp'n at 5 (characterizing the theft as "alleged"), 9-10 (arguing that Penn's conduct involved mere early payment of management fees).

The Court has considered Penn's argument that the collateral consequences of his conviction make it unlikely that he will be able to commit securities fraud in the future. *See SEC v.eJohnson*, No. 03-CV-177 (JFK), 2006 WL 2053379, at *7 (S.D.N.Y. July 24, 2006)e (recognizing that the adverse impact of a conviction is evidence that a defendant is unlikely to violate securities laws in the future). Even assuming that the notoriety and financial penalties associated with Penn's conviction make it less likely that he will be able to defraud investors in the future, Penn has not disavowed an intent to work in the securities industry in the future and, in any event, employment in finance and access to substantial capital are not prerequisites to securities fraud. *See SEC v. Payton*, No. 16-CV-4644 (JSR), 2016 WL 3023151, at *5 (S.D.N.Y. May 16, 2016). Moreover, despite admitting that he stole from the fund, Penn has appealed his state conviction. If Penn's conviction is reversed he may find it easier to re-enter the securities industry.

The SEC's motion for a permanent injunction is granted.

2. Disgorgement

"Once the district court has found federal securities law violations, it has broad equitablee power to fashion appropriate remedies, including ordering that culpable defendants disgorge their profits." *First Jersey Sec. Inc.*, 101 F.3d at 1474. Disgorgement is intended to return the defendant to the status quo before his fraud, and it may not exceed the defendant's unlawful gains. *See Contorinis*, 743 F.3d at 301. A burden-shifting framework applies: the SEC is required to present "a reasonable approximation of the profits causally related to the fraud;" if it

does, then the burden shifts to the defendant to show that the SEC's approximation is not correct. *SEC v. Tourre*, 4 F. Supp. 3d 579, 589 (S.D.N.Y. 2014) (quoting *SEC v. Razmilovic*, 738 F.3d 14, 31 (2d Cir. 2013)).

The SEC has satisfied its initial burden of demonstrating the "approximate" value of Penn's unlawful gains. *See SEC v. Opulentica, LLC*, 479 F. Supp. 2d 319, 330 (S.D.N.Y. 2007). The D'Avino Declaration details the illicit payments made by the Fund to Ssecurion. *See* D'Avino Decl. ¶¶ 10-13. According to the D'Avino Declaration – and not disputed by Penn – from October 2010 through July 2013, the Fund made 80 wire transfers to Ssecurion totaling $9,286,916.65. D'Avino Decl. ¶¶ 11-13. Entities controlled by Penn actually received $9,067,004 in stolen funds. Mem. at 2 n.2. There is no evidence that Ssecurion provided any legitimate services to the Fund.

Penn argues that any disgorgement award must be offset by the amount of restitution that he has paid, or will pay, to the Fund and its investors, and the value of his forfeited interest in the Fund. Penn is not required to disgorge amounts that he has already repaid.[2] Disgorgement is intended to force the defendant to give up the proceeds of his or her fraud – not to punish wrongdoing. *See SEC v. Palmisano*, 135 F.3d 860, 863 (2d Cir. 1998); *Contorinis*, 743 F.3d at 301. Although the SEC acknowledges this general point, it disputes Penn's valuation of his forfeited interest in the Fund. Reply Mem. at 7 & n.2. Relying on a valuation from July 2014, Penn argues that his forfeited interest in the Fund is worth between $18 and $20 million. *See* Opp'n at 4-6, Ex. 3. According to the SEC, Penn's valuation is unreliable and inaccurate: it is based on outdated information and overly optimistic projections of the Fund's performance; it does not account for expenses that are required to be deducted from the general partner's carried

[2] It is unclear whether Penn has paid any restitution to the Fund. To the extent he does so in the future, it is appropriate to offset these payments against his disgorgement obligation.

interest or for Penn's contractual obligation to forfeit half his interest in the Fund upon being removed for cause from the Fund's general partnership. *See* Reply Mem. at 7.

The parties' dispute over the value of Penn's forfeited interest in the Fund is a material dispute of fact. Notwithstanding the SEC's objections to Penn's methodology, it appears that the SEC does not dispute that Penn's carried interest in the Fund has some notional value that could offset his disgorgement obligation. But the SEC has not provided an alternative valuation – it is apparently content to point out the flaws in Penn's methodology without presenting evidence that would allow the Court to resolve the ultimate issue. Under the circumstances, an evidentiary hearing is necessary to resolve the factual question of the value of Penn's forfeited carried interest in the Fund. *See SEC v. Elliot*, 2011 WL 3586454, at *15 (concluding that there were material factual disputes relative to the defendant's scienter and denying the SEC judgment on penalties and disgorgement); *Analytical Surveys, Inc. v. Tonga Partners, L.P.*, No. 06-CV-2692 (KMW), 2008 WL 4443828, at *16 (S.D.N.Y. Sept. 29, 2008) (finding material factual disputes concerning the value of interest to be disgorged); *see also SEC v. One or More Unknown Traders in the Common Stock of Certain Issuers*, 853 F. Supp. 2d 79, 86 (D.D.C. 2012) (denying judgment to the SEC because of material dispute as to whether funds were proceeds of wrongdoing). The SEC's motion for disgorgement is denied, pending an evidentiary hearing.[3]

3. Civil Monetary Penalties

The Exchange Act and the 40 Act authorize the Court to impose a civil monetary penalty of up to the "gross amount of pecuniary gain to [the] defendant as a result of the violation [of the securities laws]" or a "tiered" penalty per violation. *See* 15 U.S.C. § 78u(d)(3). A "tier three"

[3] To the extent the SEC is entitled to disgorgement, it is also entitled to prejudgment interest. Awarding prejudgment interest ensures that a defendant does not benefit from the time-value and use of the proceeds of his wrongdoing. *See Contorinis*, 743 F.3d at 308. For purposes of calculating prejudgment interest, the Court adopts as appropriate the Internal Revenue Service's underpayment rate. *See First Jersey Secs., Inc.*, 101 F.3d at 1476-77.

penalty of $150,000 or $160,000 per violation is authorized when, as is the case here, the violation involves "fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement" and results in a "substantial loss[]" or a "significant risk" thereof. *See id.* at § 78u(d)(3)(B)(iii); Adjustments to Civil Monetary Penalty Amounts, Exchange Act Release No. 34-79749, Investment Advisers Act Release No. IA-4599, Investment Company Act Release No.e IC-32414, 82 Fed. Reg. 5367-01, 5371-72 (Jan. 18, 2017) (to be codified at 17 C.F.R. pt. 201). To determine the appropriate penalty, the Court considers: "(1) the egregiousness of the defendant's conduct; (2) the degree of the defendant's scienter; (3) whether the defendant's conduct created substantial losses or the risk of substantial losses to other persons; (4) whether the defendant's conduct was isolated or recurrent; and (5) whether the penalty should be reduced due to the defendant's demonstrated current and future financial condition." *Haligiannis*, 470 F. Supp. 2d at 386.

The SEC's motion for civil penalties is denied, pending resolution of the parties' dispute over the proper amount of Penn's disgorgement obligation. Penn's conduct was egregious, involved a high degree of scienter, and was recurrent. But Penn has not provided the Court with any information regarding his current or expected financial condition. Penn's disgorgement obligation, if any, may also bear on his ability to pay a fine. Assuming, as appears likely, Penn has limited means, a reduced penalty may be appropriate. *See e.g.*, *Opulentica, LLC*, 479 F. Supp. 2d at 331-32 (assessing reduced penalty in light of defendant's disgorgement obligation and financial condition); *SEC v. Balboa*, No. 11-CV-8731 (PAC), 2015 WL 4092328, at *5 (S.D.N.Y. July 6, 2015) (same); *SEC v. Kapur*, No. 11-CV-8094 (PAE), 2012 WL 5964389, at *7 (S.D.N.Y. Nov. 29, 2012) (same). The parties will be directed to address Penn's financiale status concurrently with his disgorgement obligation.

CONCLUSION

The SEC's motion for a permanent injunction is GRANTED. The SEC's motions for disgorgement and for civil monetary penalties are DENIED, pending an evidentiary hearing on the value of Penn's forfeited interest in the Fund and Penn's financial status.

By **September 5, 2017**, the parties are directed to propose a schedule for an evidentiary hearing to resolve the parties' dispute over the value of Penn's forfeited property. The Court strongly encourages the parties to consider whether this issue may be resolved consensually without the need for a hearing. For instance, depending on the method by which carried interest is paid, it may be possible to craft a disgorgement order that provides for subsequent adjustments in Penn's disgorgement obligation based on the Fund's future realized profits on account of Penn's forfeited interest. The parties should also inform the Court of their respective positions on Penn's current and expected employment and financial status.

SO ORDERED.

Date: August 22, 2017
New York, New York

VALERIE CAPRONI
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

LAWRENCE E. PENN, III, MICHAEL ST. ALTURA EWERS, CAMELOT ACQUISITIONS SECONDARY OPPORTUNITIES MANAGEMENT LLC, THE CAMELOT GROUP INTERNATIONAL, LLC, and SSECURION LLC,

Defendants,

- and -

A BIGHOUSE PHOTOGRAPHY AND FILM STUDIO LLC,

Relief Defendant.

14-CV-581 (VEC)

ORDER

VALERIE CAPRONI, United States District Judge:

This represents the end of an SEC enforcement action begun in early 2014. The Defendant, Lawrence Penn, III, was arrested by New York state authorities and charged with stealing approximately $9 million from a private-equity fund that he managed. Penn pleaded guilty to one count of first-degree grand larceny and one count of falsifying records and was sentenced to prison. Parallel to the state prosecution, the SEC filed this action, alleging that Penn violated Section 10(b) of the Exchange Act, Rule 10b-5 promulgated thereunder, and Sections 204, 206, and 207 of the Investment Advisers Act, and Rule 204-2 promulgated thereunder. On December 21, 2016, the Court granted the SEC partial summary judgment, and on August 22, 2017, the Court permanently enjoined Penn from further violations of the

securities laws. Before the Court is the SEC's motion to require Penn to disgorge his ill-gotten gains and to impose civil monetary penalties.

BACKGROUND

The Court assumes familiarity with the Court's prior opinions in this case, dated December 21, 2016, Dkt. 168, and August 22, 2017, Dkt. 198. From 2007 to approximately February 2014, Penn managed a registered private equity fund called Camelot Acquisitions Secondary Opportunities LP or the "Fund." In early 2014, the Fund's auditors discovered that Penn had misappropriated approximately $9.3 million from the Fund. Penn and an accomplice had used Ssecurion, LLC, a sham corporation, to send the Fund phony invoices for "due diligence" services. Ssecurion forwarded most of the proceeds to other entities controlled by Penn. Much of the money appears to be unaccounted for.

On March 16, 2015, Penn pleaded guilty in New York Supreme Court to one count of first-degree grand larceny and one count of falsifying business records in the first degree. Penn was ordered to make restitution in the amount of $8,362,973.89 and to forfeit his interest in the Fund, which consisted principally of his right to a percentage of the Fund's profits—what is known as "carried interest" or "carry." To date, Penn has paid no restitution. Moreover, Penn has expressed no remorse for his conduct and, despite his guilty plea, continues to profess his innocence. Despite the overwhelming evidence of his guilt, Penn asserts that he is the victim of a conspiracy among the New York District Attorney's Office, the SEC, and the current managers of the Fund to seize unlawfully control of his interest in the Fund. And, even though he pleaded guilty, Penn filed an unsuccessful appeal of his conviction. *See People v. Penn*, 153 A.D. 3d 1171 (1st Dep't 2017), *leave to appeal denied*, 30 N.Y.3d 1107 (N.Y. Jan. 31. 2018).

On December 21, 2016, the Court granted the SEC's motion for summary judgment in respect of its claims under Section 10(b), Rule 10b-5, and Sections 204 and 206 of the Investment Advisers Act. On August 22, 2017, the Court granted the SEC's motion to permanently enjoin Penn from further violations of the securities laws and denied without prejudice the SEC's motion to impose disgorgement and civil monetary penalties. As the Court explained in the August 22, 2017 order, the SEC has carried its burden to establish liability and to demonstrate the "approximate" value of Penn's unlawful gains. According to a declaration from James R. D'Avino, entities controlled by Penn received $9,067,004.00 in proceeds from the Ssecurion scheme. But the Court denied the SEC's motion with respect to disgorgement and penalties without prejudice because there was a dispute of fact whether Penn is entitled to offset the value of his forfeited interest in the Fund against the amount of his ill-gotten gains.

After approximately a year of discovery and delays,[1] the Court set a hearing for the morning of August 20, 2018, so that Penn, by then appearing pro se, could present evidence regarding the value of his forfeited interest in the Fund. Dkt. 278. The parties filed a joint pre-trial order on May 16, 2018, in which Penn identified three witnesses he intended to call at the hearing: himself; Mr. Woody Victor, a proposed expert on valuation; and Mr. Thomas Morgan, an investor in the Fund. Dkt. 273 at 4. On August 14, 2018, Penn requested an adjournment of the August 20, 2018 evidentiary hearing on the grounds that the SEC had produced additional documents that required his review. *See* Dkt. 283. As the SEC explained in response, the additional documents were few in number and had largely been produced previously. *See* Dkt. 284. The Court denied the adjournment request. Dkt. 286. On August 16, 2018, the Court held

[1] Penn disregarded several court-imposed deadlines in discovery. *See, e.g.*, Dkt. 222.

a final pre-trial conference at which Penn represented to the Court that he would call the same three witnesses. August 16, 2018 Tr. (Dkt. 291) at 33-34. Penn reiterated his request for an adjournment of the evidentiary hearing, and the Court again denied his request. August 16, 2018 Tr. at 33.

Penn did not appear on August 20, 2018. Minutes before the hearing was to begin, he called Chambers and informed the Court that he was ill.[2] Although asked to remain on the line so that staff could consult with the Undersigned, Penn failed to do so. Subsequent attempts to reach him by telephone were unsuccessful. Later that day, the Court entered an order, requiring Penn to show cause why the Court "should not declare him in default in light of his failure to appear for the August 20, 2018 evidentiary hearing." Dkt. 287 at 2. On August 24, 2018, Penn responded as follows:

> I write this letter to respond to the order to show cause. I respectfully informed the Court through Judge's Chambers before the Evidentiary [sic] hearing that I was ill.

Dkt. 288. Although Penn's terse letter provided no credible explanation for his absence, the Court nonetheless provided him an opportunity to explain his conduct. The Court ordered as follows:

> Mr. Penn and the SEC must appear for a status conference with the Court at 11:00 a.m. on August 30, 2018. Mr. Penn must bring with him any information to corroborate the nature of his illness, when he became ill, and what medical treatment he received and from whom. Mr. Penn is forewarned that failure to appear on August 30, 2018, will be grounds for the Court to enter judgment against him.

Dkt. 290.

Penn did not appear for the August 30, 2018 conference. In lieu of appearing as ordered, Penn filed a response, 25 minutes before the hearing, in which he explained that there was no

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[2] Messrs. Victor and Morgan also did not appear for the August 20, 2018 hearing, which suggests either Penn provided them with advance notice he did not intend to appear or Penn never intended to call them as witnesses.

evidence of his illness because he treated it with "over the counter medicine" and requested an adjournment of the August 30, 2018, conference because of his "inability to arrange travel on short notice." Dkt. 293. Penn, who lists his address as a condominium in midtown Manhattan, did not explain why he was unable to travel to the courthouse downtown or why he waited six days from the date of the Court's order, until moments before the hearing, to request an adjournment. The Court denied Penn's request for an adjournment orally at a status conference attended only by the SEC on August 30, 2018. *See* Dkt. 295; *see also* Dkt. 294.

In light of Penn's failure to appear and his disregard of Court orders, the Court finds that he has knowingly and intentionally waived the opportunity to present evidence. *See Allied Int'l Union v. Tristar Patrol Servs., Inc.*, No. 06 -CV15515 (LAP), 2007 WL 2845227, at *4 (S.D.N.Y. Sept. 26, 2007) (concluding that respondent's failure to appear at hearing amounted to waiver of its defenses and collecting cases). Penn failed to appear at the August 20, 2018 hearing after the Court denied his request for an adjournment on multiple occasions, and after he represented repeatedly to the Court (and the SEC) that he would call three witnesses.[3] Penn failed to appear for the August 30, 2018 conference, which itself was scheduled to address his non-appearance, after being advised clearly by the Court of the potential consequences should he fail to appear as directed.[4]

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[3] Penn's representation that he intended to call Mr. Victor caused the SEC to waste significant resources deposing Mr. Victor and preparing for the evidentiary hearing and delayed these proceedings by approximately a year.

[4] The same conduct would also be grounds for the Court to impose sanctions pursuant to Rule 16(f). In determining whether sanctions are appropriate, courts ordinarily consider: (1) the willfulness of the conduct, (2) the efficacy of lesser sanctions, (3) the duration of the non-compliance, and (4) whether the litigant was warned of the consequences of non-compliance. *See Agiwal v. Mid Island Mort. Corp.*, 555 F.3d 298, 302-03 (2d Cir. 2009) (per curiam). Penn's excuses for his failure to appear are not credible and appear intended to delay these proceedings. It defies belief that Penn could have become so ill on the eve of the August 20, 2018, hearing that he could not appear in Court but that he could treat his acute, sudden-onset illness with over-the-counter medication. The fact that Penn's witnesses were not in Court on August 20, 2018, also suggests that they had advance notice Penn would not appear, despite Penn's claim that he became sick the night before the hearing and despite the fact that he did not

Having given Penn ample opportunity to provide evidence and Penn having failed to take advantage of those opportunities, the Court will determine the value of his forfeited interest in the Fund on the record before it.[5]

DISCUSSION

"Once the district court has found federal securities law violations, it has broad equitable power to fashion appropriate remedies, including ordering that culpable defendants disgorge their profits." *SEC v. First Jersey Sec. Inc.*, 101 F.3d 1450, 1474 (2d Cir. 1996). A burden-shifting framework applies: first, the SEC is required to present a reasonable approximation of the profits related to the fraud. If it does so, the burden shifts to the defendant to show the SEC's estimate is incorrect. *SEC v. Tourre*, 4 F. Supp. 3d 579, 589 (S.D.N.Y. 2014). As the Court concluded in the August 22, 2017 order, the SEC has satisfied its burden of establishing the approximate value of Penn's ill-gotten gains: they are $9,286,916.65.

Penn has not satisfied his burden of presenting evidence to show that the SEC's estimate is incorrect.[6] Penn has argued that the SEC's estimate of his gains is incorrect because it does

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notify his adversary or the Court until moments before the hearing. Additionally, Penn was warned of the possible consequences of failing to appear at the August 30, 2018 conference, and nonetheless provided no credible explanation for failing to attend or for waiting until moments before the conference to request an adjournment. Penn's late-in-the-game requests for an adjournment appear calculated to delay these proceedings as long as possible. Given the advanced stage of these proceedings, finding that Penn has waived his opportunity to present witnesses appears to the Court to be the least severe sanction available. As explained below, the Court will nonetheless consider the documentary evidence submitted by Penn, including the report from his proposed expert.

5 The Court has considered and rejected the possibility of setting yet another date for the evidentiary hearing. While prose litigants are entitled to substantial latitude, pro se litigants, no more than counselled litigants, are not permitted to disregard flagrantly Court orders and rules. *See McDonald v. Head Criminal Court Supervisor*, 850 F.2d 121, 124 (2d Cir. 1988) ("[A]ll litigants, including proses, have an obligation to comply with court orders.e When they flout that obligation they, like all litigants, must suffer the consequences of their actions."). Under thise Court's Individual Practices, requests for an adjournment must be filed not less than 48-hours in advance. Moree important, the Court has no confidence that setting a new schedule would do anything other than waste more Courte time and the time of the SEC attorneys, who have prepared for a hearing on two occasions already.e

6 The Court assumes a preponderance of the evidence standard would apply. Because Penn has not provided any competent evidence, as the Court explains below, the Court would reach the same conclusion regardless of the evidentiary standard applied.

not account for the value of the interest in the Fund that he forfeited, but he has failed to establish the value of that interest.[7] Penn waived his opportunity to present witnesses by twice failing to appear. The documentary evidence he provided consists of an expert report prepared by Woody Victor and an affidavit from Thomas Morgan, an investor in the Fund.[8] For the reasons the Court explains below, the Victor report is unreliable and cannot be credited by the Court.

Until his removal in February 2014, Penn controlled the Fund through Camelot Acquisitions Secondary Opportunities GP, LLC ("CASO GP"). CASO GP was the general partner of the Fund and was entitled to carried interest under the Fund's Limited Partnership Agreement or "LPA." Pursuant to Section 5 of the LPA, CASO GP was entitled to 15% of the Fund's return on investments, after management fees and expenses and net of unrealized losses. Declaration of Howard Fischer (Dkt. 203) Ex. 3 (the "LPA") at §5.1(a)(ii). CASO GP was entitled to 20% of the Fund's returns once the cumulative distributions to the limited partners exceeded 150% of the Fund's initial capital investment (plus fees, expenses, and unrealized losses). LPA §5.1(a)(iii). Because CASO GP was removed from the general partnership for "cause," pursuant to Section 7.6(c) of the LPA, its carried interest in the fund's distributions was reduced by 50%. LPA §7.6. Thus, in essence, Penn forfeited a contractual right to 7.5% of the

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[7] Penn also maintained, as he has throughout these proceedings, that the $9.2 million he admitted to stealing does not represent ill-gotten gains because he was entitled to the funds under New York law. Dkt. 293. The First Department, Appellate Division, has rejected Penn's argument, and the Court of Appeals denied Penn's petition for leave to appeal. Moreover, whether Penn was entitled to the funds under New York law is irrelevant to whether his conduct violated the federal securities laws, as this Court concluded in December 2016.

[8] On August 30, 2018, Penn submitted an affidavit from Mr. Morgan. *See* Dkt. 293-1 (Morgan Aff.). According to Mr. Morgan, "the Partnership was valued at approximately $232 to $250 million in a profitable state" shortly after Penn's removal from the general partnership. Morgan Aff. ¶ 14. Mr. Morgan appears to be relying on Victor's previous valuation, which was prepared in connection with Penn's state criminal prosecution. For the reasons discussed below, Victor's valuation is unreliable. Mr. Morgan has otherwise provided no basis for his opinion (nor has Penn moved to qualify him as an expert on valuation) and the remainder of his affidavit is irrelevant to the issues before the Court.

Fund's future returns in excess of the Fund's initial capital investment ($123,703,703.00) plus expenses, fees, and debt, and 10% of the Fund's future returns in excess of 150% of the Fund's initial capital investment plus expenses, fees, and debt (approximately $180,000,000.00). Whether this contractual right had any value depends on the value of the Fund's underlying investments at the time it was forfeited.

The primary evidence provided by Penn that is relevant to the value of the Fund's investments is a valuation prepared by Victor, as of November 30, 2014, that appears to be a copy-and-paste of a previous valuation prepared in connection with the state criminal case. It appears Victor did nothing to update the report before submission to this Court to account for any changes in value between November 30, 2014, and April 2015, when Penn forfeited his interest in the Fund. The report purports to show that the Fund was worth approximately $200 million in November 2014. As the SEC has argued persuasively, Victor is not qualified and his valuation is riddled with methodological errors and inexplicable inferences that render it unreliable.[9] Victor has limited relevant experience: as far as the Court has been made aware, he has never been qualified as an expert on valuation. *See* Pl.'s Mem. (Dkt. 264) at 9. Victor also has not published any articles on any relevant topic. His relevant experience appears to be limited to a part-time position as a director with an investment fund called Carthage Capital that has less than $2 million under management. *See* Declaration of Howard Fischer (Dkt. 263) Ex. 4

[9] The SEC previously moved to exclude Victor from testifying. *See* Dkt. 262. The Court gave Penn the benefit of the doubt and denied the motion without prejudice on the assumption that the Court would be better able to assess Victor's qualifications and the reliability *vel non* of his methodology and data in person at the August 20, 2018 hearing. As is evident from the Court's discussion above, this was a generous assumption. It was Penn's burden to establish the admissibility of Victor's report and testimony. Because Penn has waived his right to present Victor's live testimony at a hearing, the Court considers the admissibility and probative value of Victor's evidence on the papers. As the Court's discussion above makes clear, Victor has no experience as an expert on valuation and limited relevant practical experience, and his report lacks any discernable methodology. The court assumes Penn's interest should be valued as of the date of forfeiture. The SEC disputes this assumption, but that is the date most favorable to Penn.

(Victor Tr.) at 156-160. Victor has never been responsible for valuing non-public companies such as the Fund's portfolio companies. *See* Victor Tr. at 94.

Assuming Victor could be qualified as an expert, which the Court doubts, he made numerous methodological errors and drew mistaken assumptions, which collectively render his opinion unreliable. As became clear at Victor's deposition, his valuation of each of the Fund's portfolio companies was based primarily on the Fund's unaudited 2013 financial statements. *See* Expert Report of Woody Victor (Dkt. 263-6) ("Victor Report") Tab B at 3; Victor Tr. at 242-43. From there, it appears Victor applied no discernable methodology. Of the Fund's six investments, Victor assumed that three were worth the same amount as when the Fund valued them in 2013. With respect to one company, Branders, this assumption was incorrect. Branders was sold in early 2014, before Victor produced his valuation, and the Fund's interest was expected to be worth approximately $300,000—nearly $6 million less than Victor estimated. *See* Victor Tr. at 199-201. The Court has otherwise been provided with no explanation of why it was appropriate to assume that the value of these companies did not change between September 30, 2013, and Penn's forfeiture of his interest in the Fund in April 2015.

Victor assigned inflated values to two of the Fund's remaining investments.[10] Victor concluded that the Fund's most valuable holding, MetricStream, was worth approximately $1 billion, *see* Victor MetricStream Valuation (Dkt. 263-7) at 9, a three-fold increase over the Fund's September 30, 2013, valuation. *See* Pl.'s Mem. at 20. To reach this conclusion, Victor modified the weight assigned to each component of the Fund's valuations and the component valuations themselves. Victor MetricStream Valuation at 9. He increased to 80% the weight of the "comparable companies" component of the MetricStream valuation. Victor MetricStream

[10] The Fund's sixth portfolio company, Fisker Automotive, declared bankruptcy and was worth nothing.

Valuation at 9. Victor then selected as "comparable companies" multi-billion dollar established public companies such as Salesforce, Fireeye, Oracle, and SAP to calculate a price to revenue multiple to apply to MetricStream. Victor MetricStream Valuation at 14-16. Applying that multiple to projected revenues from 2014, Victor arrived at a valuation of MetricStream of $1.2 billion. Victor has not explained why it was reasonable to assume the market would apply a similar multiple to a non-public, early stage venture like MetricStream or why the same multiple would apply to the revenue *projections* of an early stage company with a limited track record. The revenue projections used by Victor assume without justification that MetricStream's revenues would grow by 51% in 2014 and by another 70% in 2015.[11] Moreover, Victor's valuation does not account for the fact that MetricStream raised capital in August 2014 at an implied enterprise value of $258 million, which is approximately 25% of what Victor assumed MetricStream to be worth. *See* Fischer Declr. Ex. 16 at 8. Because the Fund did not participate in this financing, its stake in MetricStream was diluted down from 19.1% to 16.1%. Victor disregarded this transaction even though it was included in the materials provided to him and even though it provides real data for how the market valued MetricStream less than a year before Penn forfeited his interest in the Fund.

Victor's flawed valuations of MetricStream, which accounts for approximately 80% of the Fund's purported value, along with his seemingly arbitrary assumption that three of the Fund's four other investments were worth the same in April 2015 as they were in September

[11] Victor used similarly aggressive revenue projections to value the Fund's stake in Bloom Energy, assuming, without explanation, that revenue would double in 2013 and increase by nearly 50% in 2014 and 2015. It appears likely that Victor used estimates for 2013 and 2014 revenue, rather than actual revenue, which should have been available, because he relied on his prior November 2014 valuation and did not update the information.

2013, renders his report unreliable.[12] Penn provided no other evidence to substantiate the value of his forfeited interest in the Fund. Because Penn has not satisfied his burden of proof relative to the value of his forfeited interest, Penn will be required to disgorge the full amount of his ill-gotten gains. The Court has previously held that the SEC is entitled to prejudgment interest at the IRS underpayment rate.

In addition to authorizing disgorgement, the Exchange Act and Investment Advisers Act authorize the Court to impose a civil monetary penalty. The Court may impose a penalty of up to the "gross amount of pecuniary gain to [the] defendant" or a "tiered" penalty per violation of $150,000 or $160,000, depending on the date of the violation. 15 U.S.C. § 78u(d)(3); *see also SEC v. Credit Bancorp, Ltd.*, No. 99-CV-11395 (RWS), 2002 WL 31422602, at * 3 (S.D.N.Y. Oct. 29, 2002). To determine the appropriate penalty, the Court considers: "(1) the egregiousness of the defendant's conduct; (2) the degree of the defendant's scienter; (3) whether the defendant's conduct created substantial losses or the risk of substantial losses to other persons; (4) whether the defendant's conduct was isolated or recurrent; and (5) whether the penalty should be reduced due to the defendant's demonstrated current and future financial condition." *SEC v. Haligiannis*, 470 F. Supp. 2d 373, 386 (S.D.N.Y. 2007). The defendant bears the burden of establishing that his financial circumstances warrant a reduction in penalties. *See SEC v. Amerindo Inv. Advisors Inc.*, No. 05–CV-523 (RJS) 2014 WL 2112032, at * 13 (S.D.N.Y. May 6, 2014).

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[12] Even were the Court to value MetricStream at the implied enterprise value of the August 2014 financing, the overall value of the Fund would still be well below the minimum valuation necessary for Penn's forfeited interest to have had any value. Assuming the MetricStream investment was worth approximately $41.2 million, the total value of the Fund was far below the approximately $123 million in invested capital, not including fees, expenses, and debt assumed by the Fund. All of those funds would have to be repaid before Penn could hope to see a return from his carried interest.

The Court has found previously that Penn's conduct was egregious, involved a high degree of scienter, and was recurrent. Penn's scheme caused approximately $9 million in losses to his investors—individuals and institutions who trusted Penn with their money and to whom he owed a fiduciary duty. Penn has presented no evidence from which the Court could find that his financial circumstances warrant a reduction in penalties. From 2010 to 2013, Penn was paid approximately $6 million by the Fund. He received another $9 million in ill-gotten gains, approximately $8 million of which is unaccounted for. This money was transferred to entities controlled by Penn and never recovered. Although Penn reported to the Internal Revenue Service that he had no income in 2016, the Court has been presented with no evidence that he made any effort to secure employment since his release from prison.[13] Penn Dep. Tr. (Pl.'s Ex P-14) at 61-62. Assuming those returns were accurate, Penn has not provided any information regarding assets he may possess that would not show up on his 2016 tax return, such as equity investments from which he derives no income. He has essentially refused to provide any additional evidence regarding his financial circumstances. *See SEC v. Rabinovich & Associates, LP*, No. 07–CV-10547 (GEL) 2008 WL 4937360, at *6 (S.D.N.Y Nov. 18 2008) (noting defendant's failure to provide an accounting as ordered by the Court in concluding that defendant's civil penalty should not be mitigated by his financial hardship). Under the circumstances, the Court finds Penn's claim to be indigent not to be credible.

Although the Court has discretion to impose a fine of up to $150,000 or $160,000 per violation, the Court finds that it is appropriate to impose a penalty of the amount of Penn's ill-

[13] He has apparently spent his time embroiled in litigation and arbitration (including this case) against the victims of his fraud and taking a correspondence course in becoming a paralegal from the Blackstone Career Institute. Penn Tr. at 61. Penn's deposition transcript was designated to be admitted at the August 20, 2018 hearing by the SEC. The hearing never took place. Nonetheless, because this information is beneficial to Penn, the court has considered it.

gotten gains or $9,286,916.65. Were the Court to treat each improper transfer from the Fund to Ssecurion as a separate violation, the amount of the fine could be higher. But doing so would disaggregate a continuous course of fraudulent conduct and would bear little connection to the factors the Court must consider in determining the amount of the fine under *Haligiannis*. Put another way, it was one scheme to defraud, not many.

The Court finds that it is more appropriate to impose a fine based on the amount Penn stole from his investors. That method more accurately reflects the egregiousness of Penn's conduct and the losses he caused. Penn not only diverted money from the Fund and thus ultimately from his investors, but he did so through a series of sham transactions. As egregious, when the Fund's auditor detected the unlawful transactions, Penn forged documents in an attempt to conceal his fraud. Most of the money Penn stole has never been recovered. Penn's complete lack of remorse – he insists this proceeding is a part of a conspiracy among the District Attorney, the SEC, and the Fund's current managers to steal the Fund from him – and the high degree of scienter involved in his scheme also support imposing a significant fine. *See SEC v. Alternative Green Technologies, Inc.*, No. 11–CV-9056 (SAS) 2014 WL 7146032, at *4 (S.D.N.Y. Dec. 15, 2014).

CONCLUSION

The SEC's motion for disgorgement and civil monetary penalties is GRANTED. Penn is ordered to disgorge his ill-gotten gains in the amount of $9,286,916.65 plus interest. The Court imposes a civil monetary penalty in the same amount. The SEC is directed to provide a proposed form of judgment, including a revised damages and penalties calculation consistent with the Court's findings by **September 21, 2018.**

SO ORDERED.

Dated: September 10, 2018
New York, NY

VALERIE CAPRONI
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

LAWRENCE E. PENN, III, et al.,

Defendants,

- AND -

A BIGHOUSE PHOTOGRAPHY AND FILM STUDIO LLC,

Relief Defendant.

14 Civ. 0581 (VEC)
ECF CASE

FINAL JUDGMENT AS TO DEFENDANT LAWRENCE E. PENN III

WHEREAS on January 30, 2014, Plaintiff Securities and Exchange Commission (the "Commission") commenced this action by filing a Complaint, Order to Show Cause, and supporting papers, including a memorandum of law, declarations, and exhibits, for its emergency application for a temporary restraining order, preliminary injunction, asset freeze and other relief;

WHEREAS the same day, the Court entered an Order to Show Cause, Temporary Restraining Order, and Order Freezing Assets and Granting Other Relief (the "January 30 Order," Docket Entry 2);

WHEREAS the Court entered an Order Imposing Preliminary Injunction and Other Relief Against Defendants Lawrence E. Penn III ("Penn"), Camelot Acquisitions Secondary Opportunities Management LLC ("CASO Management"), and The Camelot Group International, LLC (collectively, the "Camelot Defendants") on July 11, 2014 (the "July 11 Order," Docket

Entry 56) that, among other things, froze the defendants' assets pending the final disposition of this action;

WHEREAS Defendant Penn entered a general appearance;

WHEREAS on December 22, 2016, the Court granted the Commission's motion for summary judgment against Defendant Penn (Docket Entry 168);

WHEREAS on August 22, 2017, the Court permanently enjoined Defendant Penn from future violations of the securities laws (Docket Entry 198);

WHEREAS on January 23, 2018, the Court ordered that this case would remain stayed as to the Camelot Defendants pending the conclusion of the proceedings relative to Defendant Penn (Docket Entry 243); and

WHEREAS on September 14, 2018, the Court ordered that Defendant Penn was liable for disgorgement of $9,286,916.65, plus prejudgment interest at the IRS underpayment rate, and that he must pay a civil penalty of $9,286,916.65 (Docket Entry 297):

I.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant Penn is permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

(a) to employ any device, scheme, or artifice to defraud;

(b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

(c)e to engage in any act, practice, or course of business which operates or woulde operate as a fraud or deceit upon any person.e

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant Penn's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant Penn or with anyone described in (a).

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Penn is permanently restrained and enjoined from violating, directly or indirectly, Section 204 of the Investment Advisers Act of 1940 (the "Advisers Act") [15 U.S.C. § 80b-4] and Rule 204-2 promulgated thereunder [17 C.F.R. § 275.204-2] by, while acting as an investment adviser who makes use of the mails or any means or instrumentality of interstate commerce in connection with its business as an investment adviser (other than one specifically exempt from registration under the Advisers Act), failing to make, keep, maintain on its premises, and provide to the Commission such records and reports as the Commission by rule may prescribe as necessary or appropriate in the public interest or for the protection of investors.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant Penn's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant Penn or with anyone described in (a).

III.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant Penn is permanently restrained and enjoined from violating, directly or indirectly, Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1), (2)] by, while acting as an investment adviser, using the mails or any means or instrumentality of interstate commerce:

(a)e to employ any device, scheme or artifice to defraud any client or prospectivee client; ore

(b)e to engage in any transaction, practice or course of business which operates as ae fraud or deceit upon any client or prospective client.e

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant Penn's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant Penn or with anyone described in (a).

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Penn is liable for disgorgement of $9,286,916.65, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of $1,878,064.28, for a total of $11,164,980.93. Defendant Penn shall satisfy this obligation by paying $11,164,980.93 to the Securities and Exchange Commission within 14 days after entry of this Final Judgment.

Defendant Penn may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm. Defendant Penn may also pay by certified check,

bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

Enterprise Services Center
Accounts Receivable Branch
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; Lawrence E. Penn III as a defendant in this action; and specifying that payment is made pursuant to this Final Judgment.

Defendant Penn shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment, Defendant Penn relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Defendant Penn.

The Commission shall hold the funds (collectively, the "Fund") and may propose a plan to distribute the Fund subject to the Court's approval. The Court shall retain jurisdiction over the administration of any distribution of the Fund. If the Commission staff determines that the Fund will not be distributed, the Commission shall send the funds paid pursuant to this Final Judgment to the United States Treasury.

The Commission may enforce the Court's judgment for disgorgement and prejudgment interest by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after 14 days following entry of this Final Judgment. Defendant Penn shall pay post-judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Penn shall pay a civil penalty in the amount of $9,286,916.65 to the Securities and Exchange

Commission pursuant to Section 21(d) of the Exchange Act and Section 209(e) of the Advisers Act. Defendant Penn shall make this payment within 14 days after entry of this Final Judgment.

Defendant Penn may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm. Defendant Penn may also pay by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

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and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; Lawrence E. Penn III as a defendant in this action; and specifying that payment is made pursuant to this Final Judgment.

Defendant Penn shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment, Defendant Penn relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Defendant Penn. The Commission shall send the funds paid pursuant to this Final Judgment to the United States Treasury. Defendant Penn shall pay post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961.

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the asset freeze established in the January 30 Order and the July 11 Order shall remain in effect until the final disposition of this action as to the Camelot Defendants.

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant Penn under this Final Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Defendant Penn of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

VIII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

IX.

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

Dated: October 1, 2018

UNITED STATES DISTRICT JUDGE

U.S.D.C. Southern District of New York Case No. 14-cv-0581

United States District Court
for the
Southern District of New York

SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

– against –

LAWRENCE E. PENN, III, et al.,

Defendant(s).

MEMORANDUM OF LAW IN SUPPORT OF RULE 60(b) MOTION FOR RELIEF

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Defendant

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

- v. -

LAWRENCE E. PENN, III, et al.,

Defendant(s).

ECF CASE

MEMORANDUM OF LAW IN SUPPORT OF RULE 60(b) MOTION FOR RELIEF FROM FINAL JUDGMENT AND ORDER

CASE NO.: 14-cv-0581 (VEC)

MEMORANDUM OF LAW IN SUPPORT OF RULE 60(b) MOTION FOR RELIEF FROM ORDER

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PRELIMINARY STATEMENT

I, Lawrence E. Penn III (the "Defendant"), respectfully submit this memorandum of law in support of this Rule 60(b) Motion for Relief from Final Judgment and Order dated October 1, 2018. *See* Docket Document #300. The Court should vacate and set aside of the judgment and in the alternative, stayed until the appeal of the criminal conviction is *heard on the merits* by the appropriate New York State Supreme Appellate Division or Court of Appeals of the State of New York. Specifically, Defendant moves this Court pursuant to Federal Rules of Civil Procedure Rule 60(b) on the grounds outlined in Rule 60(b)(1), 60(b)(3) and 60(b)(6). Defendant attaches exhibits to this Rule 60(b) relief from the Final Judgment and Order. This is not a frivolous petition and not meant to harass, annoy or disturb and is filed with merit based on long-standing federal law. Additionally, the action has clear supporting legal arguments, factual basis and falls within the jurisdiction of this Court based on federal law. Defendant asserts that the Plaintiff's colluded with members of the Manhattan District Attorney and the State of New York in order to secure a predicate criminal conviction under the color of law to be used as collateral estoppel in this civil matter. Defendant asserts that the Court as a result, of inadvertence (grounds outlined in Rule 60(b)(1)), misconduct of the Plaintiff (grounds outlined in Rule 60(b)(3)) and actions in conspiracy to act under the color of law (grounds outlined in Rule 60(b)(6)) in influencing members of the Manhattan District Attorney's office requires relief from Final Judgment and Order.

U.S. Supreme Court precedent which explicitly recognizes that a guilty plea does not bar a claim "where the claim implicates the very power of the State to prosecute." *See Blackledge v. Perry*, 417 U.S. 21, 30 (1974)). The U.S. Supreme Court explicitly reaffirmed the *Blackledge-Menna* doctrine basic teaching that "'a plea of guilty to a charge does not waive a claim that --- judged on its face—the charge is one which the State may not constitutionally prosecute.'" *See United States v. Broce*, 488 U.S. 563, 575 (1989) (quoting *Menna v. New York*, 423 U.S. 61, at 63, n.

2 (1975)). Both rulings held that a defendant who pleads guilty can appeal any constitutional claims. The U.S. Supreme Court opinion cites both state and federal cases and refers to the "view of the nature of a guilty plea" expressed by "federal and state courts throughout the 19th and 20th centuries." The U.S. Supreme Court opinion is not limited to challenging the constitutionality of the underlying statute, ***but also due process claims***, in addition, Court held that a defendant "may pursue his constitutional claims on direct appeal." *Id.* at 11. (*emphasis added*).

Defendant is seeking relief from the Final Judgment and Order to include the vacation and setting aside of the Final Judgment and Order and in the alternative, a stay until the appeal of the criminal conviction is *heard on the merits* by the appropriate New York State Supreme Appellate Division or Court of Appeals of the State of New York. The ***right to have his appeal heard on the merits*** by the Court of Appeals of the State of New York based on U.S. Supreme Court precedent because the appeal ***implicates the very power of the State to convict.*** U.S. Supreme Court held that a defendant "may pursue his constitutional claims on direct appeal" in this case, at the Court of Appeals of the State of New York, particularly where the claim implicates "the very power of the State" to prosecute the Defendant. *See Blackledge v. Perry,* 417 U.S. 21 (1974). Defendant's claim implicates New York State's power to constitutionally prosecute given that he was a joint and common beneficial owner of rights to receive distributions from a limited partnership. Additionally, the Court of Appeals of the State of New York clearly interpreted the larceny exemption for joint or common beneficial owners of rights to distributions in limited partnerships. *See People v. Zinke,* 76 N.Y.2d 8 (1990). Where the appellate claim implicates "the very power of the State" to prosecute, a guilty plea cannot bar it.

The required elements of due process are those that "minimize substantively unfair or mistaken deprivations" by enabling persons to contest the basis upon which a state proposes to deprive them of protected interests. The core of these requirements is a *hearing* before an impartial

tribunal. "Some form of hearing is required before an individual is finally deprived of a property [or liberty] interest." *See Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). "Parties whose rights are to be affected are entitled to be heard." (quoting *Baldwin v. Hale*, 68 U.S. (1 Wall.) 223, 233 (1863)).

FACTUAL BACKGROUND

I. THE INDICTMENT, CONVICTION AND APPEALS PROCESS

On January 30, 2014, a Complaint was filed by the Plaintiff alleging that Defendant ande others violated certain civil securities laws. *See* Docket Document #1 of this case. The Complaint written by members of the Plaintiff, contained false statements and was forwarded to members of the Manhattan District Attorney. The Complaint was used by the Plaintiff to influence members of the Manhattan District Attorney and specifically pushed for larceny charge. Plaintiff influenced the members of the Manhattan District Attorney's office to enter the case as evidence by Docket Document No. #46, #48, and $51 in effect endorsing the larceny charge under the color of state law. Within in days of the filing of the Plaintiff Complaint, on or about February 10, 2014, Defendant was indicted under the color of New York State law for Grand Larceny in the First Degree, Money Laundering in the First Degree, and Falsifying Business Records in the First Degree[1] at the behest of the Plaintiff in this matter. On February 10, 2014, Defendant, at his attorney's advice, voluntarily surrendered at the New York County District Attorney's Office. *See* Defendant Penn Declaration. The result of the Complaint and indictment in the parallel criminal matter, Defendant lost use of his insurance policy to pay for civil attorneys.

After spending over a year in pre-trial custody, on March 16, 2015 as part of a plea agreement, Defendant was coerced under the color of law to plead guilty to Grand Larceny in the First Degree and Falsifying Business Records in the First Degree. On April 20, 2015, Defendant was

sentenced to two to six years imprisonment on each count,[2] to be served concurrently.[3] Significantly, as a requirement of the plea, Defendant was required to *forfeit his beneficial ownership interest in the right to receive distributions in the Partnership* he created and pay a restitution of $8.3 million. *See* Forfeiture Statement filed on April 20, 2015 attached here as Exhibit A to Defendant Penn Declaration. After the trial court made the plea offer contingent upon relinquishment of Defendant's ownership interest in the Partnership, defense counsel at the time and the trial court had off-the-record conversations concerning Defendant's ability to retain his interest in the Partnership.

On or about February 25, 2016 within days of being released on Parole, Defendant filed a Pro Se motion pursuant to N.Y. C.P.L. § 440.10. After filing his *Pro Se* motion, Defendant *Pro Bono* filed a supplemental memorandum of law in support of his 440.10 motion to vacate his conviction in the parallel criminal action. Defendant's *Pro Bono* appeal counsel confirmed for the motion court that Defendant relied on *Pro Bono* appeal counsel's supplemental memorandum of law in support of vacating his conviction. *Id.* On or about August 8, 2016, *Pro Se* Defendant was given only one week to Answer the Complaint. Unknowingly, unintelligently, and unwillingly, followed the order of the Court and answered the Complaint. Soon thereafter, Defendant commenced legal education in order to understand what was happening in the case. On or about July 11, 2016, *without a hearing on the merits*, the motion court denied Defendant's N.Y. C.P.L. § 440.10 Motion. *See* Exhibit B to Defendant Penn Declaration. The decision to deny the N.Y. C.P.L. § 440.10 Motion made no mention of Defendant forfeiting his right to challenge his conviction through a N.Y. C.P.L. § 440.10

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[1] It is important to note that Money Laundering in the First Degree, and Falsifying Business Records in the First Degree rely completely on the top count of Larceny and without the Larceny charge there could be no felony indictment by New York law.

[2] Although Falsifying Business Records in the First Degree has a maximum indeterminate sentence of four years, defense counsel did not object to the impermissible sentence of two to six years imposed on Mr. Penn for that charge. N.Y. Penal Law § 70.00(2)(e). The New York State Department of Corrections rectified the sentencing error through a letter to the trial court dated July 13, 2015.

Motion, and thus, the question of whether Defendant forfeited that right to appeal because of his guilty plea was never considered by the N.Y. C.P.L. § 440.10 Motion Court.

On August 11, 2016, Defendant, through his *Pro Bono* appeal counsel, sought leave from the New York State Supreme Court Appellate Division, First Department to appeal the denial of the N.Y. C.P.L. § 440.10 Motion. In the event leave was granted, Defendant also sought permission to combine his direct appeal with the appeal of the 440.10 Motion. On January 3, 2017, Judge Karla Moskowitz granted Defendant's application for leave to appeal the denial of the 440.10 Motion. Notably, when granting leave to appeal Defendant's 440.10 Motion, Judge Moskowitz *certified* that "questions of law or fact are involved which ought to be reviewed." *See* Exhibit C to Defendant Penn Declaration. Judge Moskowitz also granted Defendant permission to consolidate his direct appeal with the appeal of the denial of the N.Y. C.P.L. § 440.10 Motion. On September 26, 2017, the New York State Supreme Court Appellate Division, First Department affirmed the denial of the 440.10 Motion and direct appeal by stating that "by pleading guilty, defendant automatically forfeited appellate review" in conflict with Judge Moskowitz's *certification* granting leave to appeal to the Appellate Division, First Department and without a *hearing on the merits in a meaningful manner*. *See* Appellate Division, First Department Decision and Order, attached as Exhibit D to Defendant Penn Declaration.

On October 24, 2017, Defendant, through his *Pro Bono* appeal counsel, sought leave from the Court of Appeals of the State of New York pursuant to Criminal Procedure Law § 460.20 (N.Y. C.P.L. § 460.20) to appeal from the order of the New York State Supreme Court Appellate Division,e First Department, entered on or about September 26, 2017. On January 31, 2018, the application for leave to the Court of Appeals of New York State was denied *without explanation or hearing on the*

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[3] Mr. Penn was released from prison and placed under parole supervision on February 10, 2016 and was released from parole supervision on merit on February 10, 2017.

merits. *See* Denial of Leave Application, attached as Exhibit E to Defendant Penn Declaration. Defendant, through his *Pro Bono* appeal counsel, sought Request for Reconsideration of Leave Application from the Court of Appeals of the State of New York on March 2, 2018.

On May 30, 2018, the Request for Reconsideration of the application for leave to the Court of Appeals of New York State was denied again *without explanation or hearing*. *See* Denial Request for Reconsideration of Leave Application, attached as Exhibit F to Defendant Penn Declaration. To date, the U.S. Supreme Court's common law precedent *Blackledge-Menna* doctrine, and the Court of Appeals of the State of New York's common law precedent *People v. Zinke* (1990) have not been heard on the merits in error and conflict with the Due Process and Equal Protection clause under the V and XIV Amendments of the U.S. Constitution. Through the appeals process, Defendant and his *Pro Bono* Appeal counsel asserted that the indictment and conviction were unlawful, remain unlawful and *implicate the power of the state to convict*.

II. LARCENY EXEMPTION FOR JOINT OR COMMON BENEFICIAL OWNERS OF RIGHTS TO DISTRIBUTIONS IN PARTNERSHIPS

The Court of Appeals of the State of New York clearly interpreted the larceny statute and held in *People v. Zinke,* 76 N.Y.2d 8, 9 (1990) that a joint or common owner cannot be charged or convicted of larceny. *See* N.Y. Penal Law § 155.00(5). The "larceny exception" is rooted in the principle that a joint or common owner cannot "steal" from themselves, as co-owners have an equal right to possession. *See Zinke,* 76 N.Y.2d at 13 (*noting* that "the purpose of this provision was to continue in force what has long been the law of New York that a partner or [joint or common owner] who appropriates partnership property is not guilty of larceny from his co-partners"). In *Zinke*, the single question in front of the Court of Appeals of the State of New York was whether a joint or common owner, tenant in partnership or partner in limited partnership could be found guilty of larceny. "As a matter of statutory interpretation" the Court answered that question "in the negative"

leaving the "subject of partnership defalcations to be addressed "by any other penal provision" [outside ofdarceny]. *See Zinke,* 76 N.Y.2d at 8, 9 (1990).

For clarity, the Court of Appeals of the State of New York in *Zinke* (1990), specifically *took away the power of the State to prosecute larceny* [forbids a larceny prosecution] for joint or common beneficial owners of the rights to distributions in limited partnerships or associated with a partnership. **Defendant's conviction is the only larceny conviction maintained by plea or following a trial of a joint or common beneficial owner of rights to distributions in a limited partnership on record in New York State history in conflict with law.** The trial court and the Appellate Division First Department both refused to *hear the merits of the claim even though it implicated the power of the state to convict* stating, the guilty plea forfeited Defendant's right to appeal.

III. THE PLEA DEAL: RIGHTS TO APPEAL NOT FORFEITED UNDER U.S. SUPREME COURT PRECEDENT

The U.S. Supreme Court's common law precedents confirmed over 150 years of decisions that guilty pleas do not bar a criminal defendant from challenging a conviction and dictates a reversal and remand to the Court of Appeals in situations similar to this case. The U.S. Supreme Court recognized that a guilty plea does not bar a claim "where the claim implicates the very power of the State to prosecute." *See Class v. U.S.* 138 S. Ct. 798 (2018) (quoting *Blackledge v. Perry,* 417 U.S. 21, 30 (1974)). The U.S. Supreme Court explicitly reaffirmed the *Blackledge-Menna* doctrine basic teaching that "'a plea of guilty to a charge does not waive a claim that ---judged on its face—the charge is one which the State may not constitutionally prosecute.'" *See Unites States v. Broce,* 488 U.S. 563, 575 (1989) (quoting *Menna v. New York,* 423 U.S. 61, at 63, n. 2 (1975)). Both rulings held that a defendant who pleads guilty can appeal any constitutional claims.

The U.S. Supreme Court opinion cites both state and federal cases and refers to the "view of the nature of a guilty plea" expressed by "federal and state courts throughout the 19th and 20th centuries." The U.S. Supreme Court opinion is not limited to challenging the constitutionality of the underlying statute, but also due process claims, in addition, Court held that a defendant "may pursue his constitutional claims on direct appeal." *Id.* at 11. (*emphasis added*). Following the Supreme Court holding in *Class*, Defendant requested reconsideration of leave to appeal to the Court of Appeals of New York State and his request was again denied *without explanation or hearing*. *See* Denial Request for Reconsideration of Leave Application, attached as Exhibit F to Defendant Penn Declaration. Motions on federal statutory grounds have been issued the relevant state courts requesting relief based on U.S. Constitutional guarantees and U.S. Supreme Court precedents.

IV.e KNOWLEDGEABLE AND EXPERIENCED INVESTOR IN THEe PARTNERSHIP CONFIRM "NO ILL-GOTTEN GAINS"e

The record of this case shows that the most experienced member of the partnership's Limitede Partner Advisory Board, Mr. Thomas Morgan has confirmed that, First, he is "not a victim and finds it impossible that Mr. Penn committed a larceny in money and interests in a partnership that was part his as a joint and common beneficial owner to the rights to distribution in the partnership." Second, he "did not participate in a Grand Jury and am not aware of any other joint and common owner, partner, tenant in partnership or investor in the Partnership who participated in a Grand Jury associated with the Indictment." Third, "shortly after the removal of Mr. Penn, the Partnership was valued at approximately $232 to $250 million in a profitable state due to Mr. Penn's effort." Fourth, he is "familiar with the valuation completed as part of the criminal process and agree with valuation of approximately $232 to $250 million." Fifth, he "was aware of Mr. Penn's academic credentials to include that he had received 2 master's degrees from UMUC Europe in addition to a MBA from Columbia University. The statements made [by the Plaintiff] in [Complaint] regarding Mr. Penn's

education are false. Sixth, he is "not aware that Mr. Penn precluded investors in the Partnership from redeeming their interests and can confirm that there is no redemption clause in the LPA" and "the statements made in parallel civil [Complaint] regarding redeeming of interests in the Partnership are false." Seventh, the "$9.2 million were not ill-gotten gains and was to be used by Mr. Penn at his discretion." Finally, he "support a suspension and stay of the forfeiture, restitution and assessments."

A. Pursuant to federal statutory law district courts have original jurisdiction in all civil actions arising under federal law including U.S. Constitution provisions, Acts of Congress, or federal common law provisions.

This motion arises under the U.S. Constitution or laws of the United States. "The judicial power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish....The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority..." *See* U.S. Constitution, Article III. § 2. The Constitution "authorizes Congress . . . to determine the scope of federal courts' jurisdiction within constitutional limits." *See Hertz Corp. v. Friend*, 130 S.Ct. 1181 (2010) (reversing district court's finding that jurisdiction was lacking). Congress vests federal district courts with jurisdiction over cases involving federal law. "The district courts shall have jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.ö *See* 28 U.S.C. § 1331. "The power of the inferior federal courts is limited to those subjects encompassed within a statutory grant of jurisdiction." *See Achtman v. Kirby, McInerny & Squire, LLP*, 464 F.3d 328 (2d Cir. 2006) (citations and internal quotation omitted). This civil action arises under specific constitutional provisions as stated above and the Defendant affirmatively alleges facts in support of his claims within this memorandum of law. "Federal common law as articulated in rules that are fashioned by court decisions are 'laws' as that term is used in § 1331." *See Nat'l Fatmers Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. 845, 850 (1985) (jurisdiction upheld).

B. U.S. Supreme Court has interpreted that federal courts have jurisdiction where the Defendant's complaint raises issues under federal law.

Defendant's Motion for Relief is based upon U.S. Constitutional provisions. "A suit arises under the Constitution and laws of the United States only when the Defendant's statement of his cause of action shows that it is based upon those laws or that Constitution." *See Beneficial Nat'l Bank v. Anderson*, 539 U.S. 1, 6 (2003) (jurisdiction upheld). "The court, in determining whether the case arises under federal law, will look only to the claim itself and ignore any extraneous material." *See* 13D Wright & Miller § 3566, pp. 262, 267–72. The Supreme Court has also recognized that a case will arise under federal law in "certain . . . state-law claims that implicate significant federal issues." *See Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 312 (2005). The U.S. Supreme Court has stated numerous times that the absence of some form of corrective process when the convicted defendant alleges a federal constitutional violation contravenes the Fourteenth Amendment, and the Court has held that to burden this process, such as by limiting the right to petition for [relief pursuant to law], is to deny the convicted defendant his constitutional rights. *See Moore v. Dempsey*, 261 U.S. 86, 90, 91 (1923); *Mooney v. Holohan*, 294 U.S. 103, 113 (1935); *New York ex rel. Whitman v. Wilson*, 318 U.S. 688, 690 (1943); *Young v. Ragan*, 337 U.S. 235, 238–39 (1949); *White v. Ragen*, 324 U.S. 760 (1945).

C. Federal District court will have jurisdiction over a Defendant's that turns on an issue of federal law even if the Defendant did not explicitly plead the federal issue

Defendant's liberty and joint and common beneficial rights to distributions from the limited partnership he created were compromised in conflict with New York State law as clearly interpreted by the Court of Appeal of New York. Defendant was not afforded his U.S. Constitutional rights to be *heard on the merits in a meaningful manner by the state courts* which created the law that immunes joint or common beneficial owners in distributions from limited partnerships. Furthermore,

Defendant's plea did not forfeit this right given U.S. Supreme Court precedents which supersede and impair any State Court law. Specifically, where the appellate claim implicates "the very power of the State" to prosecute, a guilty plea cannot bar it. The required elements of due process are those that "minimize substantively unfair or mistaken deprivations" by enabling persons to contest the basis upon which a state proposes to deprive them of protected interests. The core of these requirements is a *hearing* before an impartial tribunal. "Some form of hearing is required before an individual is finally deprived of a property [or liberty] interest." *See Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). "Parties whose rights are to be affected are entitled to be heard." (quoting *Baldwin v. Hale*, 68 U.S. (1 Wall.) 223, 233 (1863)). The XIV Amendment requires the provision of due process when an interest in one's "life, liberty or property" is threatened. "The requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property. When protected interests are implicated, *the right to a hearing is paramount*." *See Morrissey v. Brewer*, 408 U.S. 471, 481 (1982).

LEGAL STANDARDS OF REVIEW

I. RULE 60(b) MOTION

A party may make a "motion for relief from the judgment" under Federal Rule of Civil Procedure 60(b) ("Rule 60(b)"). *See Hodge ex rel. Skiff v. Hodge*, 269 F.3d 155, 158 (2d Cir. 2001). Rule 60(b) provides that "the court may relieve a party or a party's legal representative from a final judgment, order or proceeding" because of "mistake, inadvertence, surprise, or excusable neglect." *See* Federal Rules of Civil Procedure Rule 60(b)(1). Rule 60(b) "encompass[es] judicial mistake in applying the appropriate law." *See Badian*, 2005 U.S. Dist. LEXIS 8395, 2005 WL 1083807 (*quoting Oliver v. Home Indemnity Co.*, 470 F.2d 329, 330 (5th Cir. 1972)). "Relief is also appropriate where a court may have overlooked certain parties' arguments or evidence in the record."

Id. A Rule 60(b) motion "should be broadly construed to do substantial justice, yet final judgments should not be lightly reopened." *See Nemaizer v. Baker*, 793 F.2d 58, 61 (2d Cir. 1986) (citations and quotations omitted).

Rule 60(b) sets forth the grounds on which a court may grant relief from a final judgment or order. *See Nemaizer v. Baker*, 793 F.2d 58, 61 (2d Cir. 1986). It provides in pertinent part that: On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence . . .; (3) fraud . . ., misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged . . .; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken. *See Chiulli v. IRS*, 2006 U.S. Dist. LEXIS 76778, 98 A.F.T.R.2d (RIA) 2006-7450. "Rule 60(b) was intended to preserve the delicate balance between the sanctity of final judgments and the incessant command of the court's conscience that justice be done in light of all the facts." *See Smalls v. United States*, 374 U.S. App. D.C. 63, 471 F.3d 186, 191 (D.C. Cir. 2006) (internal quotation marks and citation omitted). Moreover, "to obtain Rule 60(b) relief, the movant must give the [court] reason to believe that vacating the judgment will not be an empty exercise or a futile gesture." *See Norman v. United States*, 373 U.S. App. D.C. 312, 467 F.3d 773, 775 (D.C. Cir. 2006) (internal quotation marks and citation omitted).

II. RULE 60(b)(1) STANDARD OF REVIEW

Rule 60(b)(1) provides that on motion and upon such terms as are just, the court may relievee a party from a final judgment for mistake, inadvertence, surprise, or excusable neglect. Such motions must be filed no later than one year after the entry of judgment. *See* Federal Rules of Civil

Procedure Rule 60(b). The Second Circuit has approved the use of subsection (1) "to correct a district court's mistake of law or fact." *See Chiulli v. IRS*, 2006 U.S. Dist. LEXIS 76778, 98 A.F.T.R.2d (RIA) 2006-7450; (*quoting, Gey Assocs. Gen. P'ship v. 310 Assocs. (In re 310 Assocs.)*, 346 F.3d 31, 34 (2d Cir. 2003)); *citing (Schildhaus v. Moe*, 335 F.2d 529, 531 (2d Cir. 1964) and *Tarkington v. United States Lines Co.*, 222 F.2d 358 (2d Cir. 1955)). Rule 60(b)(1) allows a court to relieve a party "from a final judgment, order, or proceeding" because of "mistake, inadvertence, surprise, or excusable neglect." Federal Rules of Civil Procedure Rule 60(b)(1); *See Kotlicky v. U.S. Fid. & Guar. Co.*, 817 F.2d 6, 9 (2d Cir. 1987). Rule 60(b)(1) provides that on motion and upon such terms as are just, the court may relieve a party from a final judgment or order for mistake, inadvertence, surprise, or excusable neglect. Motions must be filed no later than one year after the entry of judgment. *See* Rule 60(b).

III. RULE 60(b)(3) STANDARD OF REVIEW

Rule 60(b)(3) provides that the court, on motion and such terms as are just, may relieve a party from a final judgment for any reason, other than those articulated in subsections 1-2 and 4-6, that justifies relief from the operation of the judgment. "In order to establish entitlement to relief based on Rule 60(b)(3) movant must provide "clear and convincing evidence of material misrepresentations" or fraud. *See United States v. International Bhd. of Teamsters*, 1999 U.S. Dist. LEXIS 13236, 162 L.R.R.M. 2984, 139 Lab. Cas. (CCH) P10, 523 quoting, *Fleming v. New York Univ.*, 865 F.2d 478, 484 (2d Cir. 1989) (citations omitted). If a movant demonstrates that justice favors vacating the judgment or order, then Rule 60(b)(3) gives a court discretion to take such action. *Id* at 64-65. A Rule 60(b)(3) motion must be made "not more than one year after the judgment" in issue has become final. *See* Rule 60(b).

IV. RULE 60(b)(6) STANDARD OF REVIEW

Rule 60(b)(6) provides that the court, on motion and such terms as are just, may relieve a party from a final judgment for any reason, other than those articulated in subsections 1-5, that justifies relief from the operation of the judgment. In evaluating a Rule 60(b)(6) motion, the court must balance the interest of justice in granting the motion against the interest of finality of judgment. *See Socialist Republic of Romania v. Wildenstein & Co. Inc.*, 147 F.R.D. 62, 64 (S.D.N.Y. March 11, 2003). If a movant demonstrates that justice favors vacating the judgment or order, then Rule 60(b)(6) gives a court discretion to take such action. *Id* at 64-65. A Rule 60(b)(6) motion must be made within a "reasonable time" after the judgment in issue has become final. *See* Rule 60(b)(6).

V. SHOWING OF EXCEPTIONAL CIRCUMSTANCES

Motions made pursuant to Rule 60(b) are "addressed to the sound discretion of the district court and are generally granted upon a showing of exceptional circumstances." *See Mendell v. Gollust,* 909 F.2d 724, 731 (2d Cir. 1990), (*citing Nemaizer v. Baker, supra,* 793 F.2d at 61; *Jones v. United States,* 2006 U.S. Dist. LEXIS 23398 (E.D.N.Y. April 6, 2006)). The Second Circuit requires that a Rule 60(b) motion be supported by evidence that is highly convincing, that the movant show good cause for the failure to act sooner, and that no undue hardship result to the other parties. *See Greenberg v. Chrust,* 2004 U.S. Dist. LEXIS 4745 (S.D.N.Y. 2004), *citing Kotlicky v. United States Fidelity & Guar. Co.,* 817 F.2d 6, 9 (2d Cir. 1987).

ARGUMENT

Here, the Rule 60(b) Motion was made well within a reasonable time by law. Generally, a Rule 60(b) Motion must satisfy the Second Circuit's three-prong test:

> First, the moving party must present convincing evidence that it is entitled to relief. Second, the moving party must show good cause for failing to act sooner. Finally, the moving party must show that granting the motion will not impose any undue hardship on the other party.

Skinner v. Chapman, 680 F. Supp. 2d 470, 478-79 (W.D.N.Y. 2010) *aff'd*, 412 F. App'x 387 (2d Cir. 2011) (citations omitted). These criteria can be readily met and the basis for subject matter jurisdiction has been met based on the clarification of facts and law. First, the Defendant's basis that this Court has subject-matter jurisdiction and the Defendant is entitled to and seeks relief by having his case *heard on the merits* by the Court of Appeals of the State of New York based on U.S. Supreme Court precedent (federal common law) which explicitly recognizes that a guilty plea does not bar a claim "where the claim implicates the very power of the State to prosecute." *See Blackledge v. Perry,* 417 U.S. 21, 30 (1974)). The U.S. Supreme Court explicitly reaffirmed the *Blackledge-Menna* doctrine basic teaching that "'a plea of guilty to a charge does not waive a claim that ---judged on its face—the charge is one which the State may not constitutionally prosecute.'" *See United States v. Broce*, 488 U.S. 563, 575 (1989) (quoting *Menna v. New York*, 423 U.S. 61, at 63, n. 2 (1975)). As stated on page of this memorandum, both rulings held that a defendant who pleads guilty can appeal any constitutional claims. The U.S. Supreme Court opinion is not limited to challenging the constitutionality of the underlying statute, ***but also due process claims.*** Second, the Defendant's has moved timely well within the standards outlined by law under Rule 60(b). Third, granting the motion will not impose any undue hardship because the Plaintiff, New York State and its legal representatives have an obligation to uphold federal laws and rights under the U.S. Constitution and U.S. Supreme Court precedents. Deprivation rights under to the color of law (state or federal) is a violation of federal law under 18 U.S.C. § 242. The Defendant's right to have his case heard on the merits when his claim implicates the power of the state to convict is well settled based on U.S. Supreme Court precedents and federal law.

I. RULE 60(b) MOTION IS TIMELY

This Rule 60(b) motion made on the ground of subsections (1), (3) and (6) have beene submitted approximately 10 days after the Final Judgment and Order dated October 1, 2018. It is well settled that the "motion shall be made within a reasonable time, and for reasons [pursuant to subsections] (1) not more than one year after the judgment, order or proceeding was entered or taken." *See Chiulli v. IRS, 2006 U.S. Dist. LEXIS 76778.*

II. RULE 60(b)(1) RELIEF IS APPROPRIATE

The Second Circuit has noted that "the language of the current Rule 60(b)(1) is broad enoughe to encompass errors by the court." *See Tray-Wrap, Inc. v. Meyer*, 1992 U.S. Dist. LEXIS 3862, *3, 1992 WL 73382 (*quoting Matter of Emergency Beacon Corp.*, 666 F.2d 754, 759 (2d Cir. 1981)). Relief under Rule 60(b)(1) is appropriate due to mistake in light of inadvertence by the Court. *See Chanofsky v. Chase Manhattan Corporation,* 530 F.2d 470 (2d Cir. 1976) (rule 60(b)(1) relief due to mistake was appropriate in light of misunderstanding by the court). *See In re Schwartz & Meyers*, 64 B.R. 948, 957, 1986 Bankr. LEXIS 5312, *28-29, 14 Bankr. Ct. Dec. 1205.e

Defendant seeks a relief from this Court with respect to the right to have underlying criminal conviction (which is the predicate for this civil judgment) to be *heard on the merits in a meaningful manner* by the appropriate state court based on U.S. Supreme Court precedent. U.S. Supreme Court federal common law held that a defendant "may pursue his constitutional claims on direct appeal" in this case, by the appropriate state court, particularly where the claim implicates "the very power of the State" to prosecute the defendant. Defendant's claim implicates New York State's power to constitutionally prosecute given that he was a joint and common beneficial owner of rights to receive distributions from a limited partnership. Additionally, the Court of Appeals of the State of New

York clearly interpreted the larceny exemption for joint or common beneficial owners of rights to distributions in limited partnerships. *See People v. Zinke,* 76 N.Y.2d 8 (1990).

U.S. Supreme Court precedent which explicitly recognizes that a guilty plea does not bar a claim "where the claim implicates the very power of the State to prosecute." *See Class v. U.S.* 138 S. Ct. 798 (2018) (quoting *Blackledge v. Perry,* 417 U.S. 21, 30 (1974)). The U.S. Supreme Court explicitly reaffirmed the *Blackledge-Menna* doctrine basic teaching that "'a plea of guilty to a charge does not waive a claim that ---judged on its face—the charge is one which the State may not constitutionally prosecute.'" *See United States v. Broce,* 488 U.S. 563, 575 (1989) (quoting *Menna v. New York,* 423 U.S. 61, at 63, n. 2 (1975)). Both rulings held that a defendant who pleads guilty can appeal any constitutional claims. The U.S. Supreme Court opinion cites both state and federal cases and refers to the "view of the nature of a guilty plea" expressed by "federal and state courts throughout the 19th and 20th centuries." The U.S. Supreme Court opinion is not limited to challenging the constitutionality of the underlying statute, but also due process claims, in addition, Court held that a defendant "may pursue his constitutional claims on direct appeal." *Id.* at 11. (*emphasis added*).

III. RULE 60(b)(3) RELIEF IS APPROPRIATE

The clear and convincing evidence which include facts, documents in the record, and law clearly show that threshold requirements have been met for Relief under Rule 60(b)(3) and permits "courts established by Act of Congress" to issue "all [motions] necessary or appropriate in aid of their respective jurisdictions." *See* Rule 60(b)(3). The facts demonstrate that in this case (1) "there are circumstances compelling such action to achieve justice," (2) "sound reasons exist for failure to seek appropriate earlier relief," and (3) that Defendant "continues to suffer legal consequences from his conviction that may be remedied by granting of the [relief]." *See Foont v. United States,* 93 F.3d

76, 79 (2d Cir. 1996). In this case there are: (1) circumstances compelling such action to achieve justice because of clear and convincing evidence of violation of Due Process, (2) there is no statute of limitations for relief, and the record shows "sound reasons exist for failure to seek appropriate earlier relief," which in this case the statutory requirements of Rule 60(b), and (3) the Defendant continues to suffer legal consequences, as discussed below from his deprivation of rights under the Due Process and other Constitutional guarantees that may be remedied by granting Relief under Rule 60(b)(3).

The bedrock principle that trial must precede judgment is, of course, applied to civil and criminal cases alike. *See, e.g., Cole v. Arkansas*, 333 U.S. 196, 201 (1948) ("No principle of procedural due process is more clearly established than that notice of the specific charge, and a chance to be heard in a trial of the issues raised by that charge, if desired, are among the constitutional rights of every accused in a criminal proceeding in all courts, state or federal."); But in civil and administrative matters, this doctrine is also logically extended to every stage of the litigation process as a matter of due process. The U.S. Supreme Court finds that the critical evidence that Defendant must allege in order to make the necessary showing of a due process violation, that is, a departure from the proper administration of justice, is either that "the government made affirmative misrepresentations or conducted a civil investigation solely for purposes of advancing a criminal case." *See United States v. Avery*, 2016 U.S. Dist. LEXIS 36380, *13 quoting, Stringer, 535 F.3d at 937.e Here Defendant specifically states that the Plaintiff acted under the color of law in order toe advance a criminal case in order to extract a civil outcome.

Assuming the existence of a protectible property or liberty interest, the U.S. Supreme Court has required a balancing of a number of factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the

Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *See, Parham v. J.R.*, 442 U.S. 584, 587, 99 S. Ct. 2493, 2496, 61 L. Ed. 2d 101, 109, 1979 U.S. LEXIS 130, *1 *quoting, Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). Here, all factors are met to include the Defendants liberty and property interest, the risk of erroneous deprivation of those interests under the color of law and the Government's interest in upholding the immunities and privileges guaranteed by the U.S. Constitution and U.S. Supreme Court precedents. A Summary Judgment that relies in whole or in part on a conviction in conflict with law (under the color of law) achieved by use of sacrificing Due Process is constitutionally void. For these reasons, relief under Rule 60(b)(3) is appropriate.

IV. RULE 60(b)(6) RELIEF IS APPROPRIATE: EXCEPTIONAL CIRCUMSTANCES EXIST BASED ON THE U.S. CONSTITUTION AND SUPREME COURT PRECEDENTS

Defendant seek relief under Federal Rule of Civil Procedure 60(b)(6), which provides that ae court "may relieve a party or its legal representative from a final judgment, order, or proceeding" for "any other reason that justifies relief." Fed. R. Civ. P. 60(b)(6). Specifically:

> As [Rule 60](b)(6) applies only when no other subsection is available, grounds for relief may not be mistake, inadvertence, surprise or excusable neglect." *Nemaizer,* 793 F.2d at 63. Rule 60(b)(6) "confers broad discretion on the trial court to grant relief when appropriate to accomplish justice; it constitutes a grand reservoir of equitable power to do justice in a particular case." *Matarese,* 801 F.2d at 106 (quoting *Int'l Controls Corp. v. Vesco,* 556 F.2d 665, 668 n. 2 (2d Cir. 1977); *Radack v. Norwegian Am. Line Agency, Inc.,* 318 F.2d 538, 542 (2d Cir. 1963)) (internale quotation marks omitted) (citations omitted).e

Prince of Peace Enterprises, Inc. v. Top Quality Food Mkt., LLC, No. 07-CV-0349 LAP FM, 2012 WL 4471267 (S.D.N.Y. Sept. 21, 2012). The district court must seek "a balance between serving the ends of justice and preserving the finality of judgments." *Nemaizer*, 793 F.2d at 61. To successfully assert relief under Rule 60(b)(6), "extraordinary circumstances" must be shown to justify reopening

the final judgment. *See Winslow v. Portuondo*, 599 F. Supp. 2d 337, 341 (E.D.N.Y. 2009) (vacating a 2003 judgment in 2009). The Second Circuit has held, Rule 60(b)(6) is "properly invoked where there are extraordinary circumstances or where the judgment may work an extreme and undue hardship." *See DeWeerth v. Baldinger,* 38 F.3d 1266, 1272 (2d Cir. 1994) (internal citation omitted).

Here, Defendant filed a Rule 60(b) seeking relief from Final Judgment and Order deprivation of rights under the U.S. Constitution (Due Process) with respect to the ***right to have his appeal heard on the merits*** by the appropriate New York State court based on U.S. Supreme Court precedent because the appeal ***implicates the very power of the State to convict.*** U.S. Supreme Court (federal common law) held that a defendant "may pursue his constitutional claims on direct appeal" in this case, at the Court of Appeals of the State of New York, particularly where the claim implicates "the very power of the State" to prosecute the defendant. *See Blackledge v. Perry,* 417 U.S. 21 (1974). Defendant's claim implicates New York State's power to constitutionally prosecute given that I was a joint and common beneficial owner of rights to receive distributions from a limited partnership. Additionally, the appropriate New York State court clearly interpreted the larceny exemption for joint or common beneficial owners of rights to distributions in limited partnerships. *See People v. Zinke,* 76 N.Y.2d 8 (1990). Without such relief, the Defendant continue to suffer the deprivation of rights under the U.S. Constitution (Due Process) and will continue to suffer undue hardship to include many factors.

Prior to the charge and conviction, Defendant, a West Point graduate, who honorably served as an Army officer, earned 3 master's degrees, and had a distinguished career in the financial services industry. The Petitioner currently suffers because a felony conviction by New York State law is deemed a disability. A disability by New York State law is more than a concrete threat because it is a permanent legal state of being, a continuing legal consequences by law and requires a certificate of relief pursuant to N.Y. Correction Law § 700-706. "To meet the burden of

demonstrating that he suffers from a continuing legal consequence, a petitioner must at least point to a concrete threat that an erroneous conviction's lingering disabilities will cause serious harm. . ..[I]t is not enough to raise purely speculative harms." *See Agrawal v. United States,* 2017 U.S. Dist. LEXIS 121909, *quoting Fleming v. United States*, 146 F.3d 91 (2d Cir. 1998) (alterations in original; inner quotation marks and citation omitted). Defendant has specific legal consequences by New York State law because he was charged in conflict with New York State law for conduct that is not criminal and as a result was required to forfeit his interest and right to receive distributions from the Partnership. This is a specific constitutional consequence because it is a loss of interest by way of a conviction in conflict with New York law. *See Zinke.* Other specific constitutional consequences and disabilities include a tax levied based purely on a guilty plea, the inability to serve on a jury, and federal bar on possessing a firearm.

Additionally, pursuant to Section 7.6(b) of the Partnership agreement, Defendant was removed as General Partner and his interest and right to receive distributions from the partnership was reduced by 50% because of the indictment. Finally, these legal and contractual actions are specific continuing legal consequences warranting relief. *See Fleming v. United States,* 146 F.3d 90-91 (2d Cir. 1998). Several proceedings now pending are relying on the conviction in conflict with law exacerbating the disabilities and prejudicing Defendant in parallel proceedings to include Tax Appeals and a parallel New York State civil arbitration initiated purely to obtain a "back-up judgment" (in conflict with res judicata and Delaware Law) in case Defendant's appeal process results in the dismissal of the original indictment.

In addition to the specific collateral consequences of a criminal conviction, the *Counsel of State Governments, National Inventory of the Collateral Consequences of Conviction* outlines legal and regulatory sanctions and restrictions that limit or prohibit people with criminal records from accessing employment, occupational licensing, housing, voting, education, and other opportunities.

There are thousands of specific collateral consequences that affect Defendant throughout the continental United States and at the Federal level and dozens in New York State.[4] The wide-ranging extent of civil disabilities triggered by criminal conviction is receiving increased scrutiny in the legal literature, and rightly so. *See, e.g.*, A.B.A. Standards for Criminal Justice, Collateral Sanctions and Discretionary Disqualification of Convicted Persons (3d ed. 2004); Michael Pinard & Anthony C. Thompson, *Offender Reentry and the Collateral Consequences of Criminal Convictions: An Introduction*, 30 N.Y.U. Rev. L. & Soc. Change 585 (2006); *See* Margaret Colgate Love, *Starting Over with a Clean Slate: In Praise of a Forgotten Section of the Model Penal Code*, 30 Fordham Urb. L. J. 1704 (2003); Nora Demleitner, *Preventing Internal Exile: The Need for Restrictions on Collateral Consequences*, 11 Stan. L. & Pol'y Rev. 153 (1999). There are specific disabilities, fines, forfeitures, restitution, and collateral consequences on the record. In addition to those mentioned above, Defendant is ineligible for various government assistance, employment and licensure in his profession at the federal and state level. The specific disabilities include: a tax fines, a forfeiture of his interest, a restitution payment, Stigma-plus and collateral consequences outlined on the record. These disabilities strongly show a potential miscarriage of justice and violations of Due Process, Equal Protection and excessive fines under the Eighth Amendment of the U.S. Constitution.

A crushing injury Defendant continues to suffer is found in the Stigma-plus doctrine is a principle that enables a petitioner, to seek relief for government defamation under federal constitutional law. Defamation by a government official, is actionable as a civil-rights violation only if the victim suffers some loss of property interest. The Supreme Court affirmed, "in even more explicit terms, where a person's good name, reputation, honor, or integrity is at stake because of what

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[4] The National Inventory of Collateral Consequences of Conviction is supported by a grant from the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of the Justice. This project was initially supported

the government is doing to him, notice and an opportunity to be heard are essential." *See* Eric J. Mitnick, *Procedural Due Process and Reputational Harm: Liberty as Self-Invention*, University of California, Davis Vol. 43:79 (2009); *See also Wisconsin v. Constantineau*, 400 U.S. 433, 435 at 437 (1971). To prevail on this doctrine, petitioner must plead (1) the utterance of a statement sufficiently derogatory to injure his or her reputation, that is capable of being proved false, and that he or she claims is false, and (2) a material state-imposed burden or state-imposed alteration of the petitioner's status or rights. *See Spinale v. USDA*, 621 F. Supp. 2d 112 (S.D.N.Y. 2009). Reputational injury in the criminal context triggers due process protection because the stigma created by a charge of criminal wrongdoing runs more deeply and has broader consequences than does the broadly shared risk of the same form of harm in employment and other universal contexts. *See*, Barbara Armacost, *Race and Reputation: The Real Legacy of* Paul v. Davis, 85 VA. L. REV. 569, 575 at 622 (1999).

The Stigma portion of the Stigma-plus doctrine occurred at the very beginning when Defendant was charged with larceny in conflict with New York State common law clearly established and interpreted by the Court of Appeals of the State of New York in *People v. Zinke* (1990). First, Defendant was a joint or common owner as clearly established on the record, making it prohibitive to charge him with larceny, money laundering, and falsifying business records in the first degree. Second, on the day of indictment, Defendant's defense counsel's statement on the record in conflict with law, was sufficiently derogatory to injure, and capable of being proved false and unlawful. Finally, the Court allowed a media coverage request using "still photography" throughout the proceeding and allowed the dissemination of "photographs or videotape to all accredited media outlets present at the time" of the proceedings, enhancing the very stigma portion of the Stigma-plus doctrine. *See* Media Request and Coverage attached as Exhibit H to Defendant Penn Declaration.

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by Award No.2009-IJ-CX-0102 awarded by the National Institute of Justice, Office of Justice Programs, U.S.

A petitioner must show that the government has stigmatized him by making a statement about him which he claims is false, that is capable of being proven true or false and that is sufficiently derogatory to injure his or her reputation. The petitioner must show a "plus" factor, that the government has imposed a tangible and material burden on the petitioner that alters his or her legal status, that only the government could impose. This "plus" factor of the Stigma-plus doctrine mentioned in above, shows that Defendant currently suffers because a felony conviction by New York State law is deemed a disability and requires a Certificate of Relief from Disabilities pursuant to N.Y. Correction Law § 700-706. A disability by New York State law is more than a concrete threat because it is a permanent legal state of being and a continuing legal consequence by law. The specific constitutional consequence is due to the loss of interest by way of a conviction in conflict with New York law.

"Substantive due process standards are violated only by conduct that is so outrageously arbitrary as to constitute a gross abuse of governmental authority." *See Natale v. Town of Ridgefield,* 170 F.3d 258, 263 (2d Cir.1999) (citations omitted). As a result, the state may act in a way that damages an individual's public standing without first offering the individual *a hearing or other opportunity to contest the state's charge.* "An arrest or charge is a 'public act' that brands the subject as a criminal in the eyes of others; it has the potential to 'disrupt his employment, drain his financial resources, curtail his associations, subject him to public obloquy, and create anxiety in him, his family, and his friends.'" *See*, Barbara Armacost, *Race and Reputation: The Real Legacy of* Paul v. Davis, 85 VA. L. REV. 569, 575 at 622 (1999). Here, the actions of the courts of New York State damaged Defendant's public standing without first offering the individual a hearing or other opportunity to contest the legality of state's charge. The state-caused stigmatic harm brings rise to a

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Department of Justice and by the ABA Criminal Justice Section. See https://niccc.csgjusticecenter.org/

constitutional right to procedural due process. District courts should grant a Relief from Final Judgment and Order pursuant to Rule 60(b) where a defendant "continues to suffer legal consequences from his conviction that may be remedied," the third prong of the Relief from Final Judgment and Order pursuant to Rule 60(b). Relief is required under the U.S. Supreme Court's *Blackledge-Menna* doctrine both of which supersede and undermine any New York State precedent.

CONCLUSION

For the foregoing reasons, Defendant respectfully requests that this Court grant their Rule 60(b) motion for relief. Furthermore, Defendant requests the Court to consider, (1) preserving Defendant's rights under the V and XIV Amendments of the U.S. Constitution by vacate and set aside of the judgment and in the alternative, stayed until the appeal of the criminal conviction is *heard on the merits* by the appropriate New York State Supreme Appellate Division or Court of Appeals of the State of New York (See Exhibit I, Draft Order pursuant to this Rule 60(b) Motion for Relief), (2) to issue a stay on civil proceedings which rely in whole or in part on the underlying conviction in *People v. Penn* 73/2014 until the end of the appeal process; and (3) to grant such other and further relief as the Court deems just and proper.

Date: New York, New York
October 9, 2018

Respectfully submitted,

By: Lawrence E Penn III

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served on the Plaintiffs by ECF.

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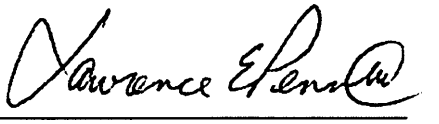
Date: New York, New York
October 9, 2018

By: 

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AMERICAN ARBITRATION ASSOCIATION
CASE NO. 01-17-0000-6981

CM GROWTH CAPITAL PARTNERS, L.P.,
Claimant,
vs.
LAWRENCE E. PENN, III, et al.,
Respondents.

BEFORE: CAROL M. LUTTATI, Chairperson

Tuesday, April 10, 2018
New York, New York
10:00 a.m.

Reported by:
Joan Ferrara, RPR, RMR, CRR
Job No. 27691

AMERICAN ARBITRATION ASSOCIATION

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Job No. 27691

Page 2

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- and -

(Continued)

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A P P E A R A N C E S: (Continued)

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ALSO PRESENT:

Lawrence E. Penn, III
Chelsea Goulet
Christine Stygar
Cyril Tyson
Ken Latz
Ken Garnett

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THE ARBITRATOR: Good morning, everyone. I'm Carol Luttati.
We are here today for the case of CM Growth Capital Partners, LP against Lawrence Penn, III; Camelot Acquisitions Secondary Opportunities Management, LLC, which for the sake of brevity I think we'll call CASO Management for now –
MR. KEATS: That's fine.
THE ARBITRATOR: The Camelot Group International, LLC, referred to as CGI; and Camelot Acquisitions Second Opportunities GP, LLC, which I may refer to them just as CASO GP or the GP.
This is Case Number 01-17-0000-6981.
Today is Tuesday, April the 10th, at 10:00.
Okay. I have a list of people who have been involved in this case, and I just kind of wanted to familiarize myself with who is who.

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Proceedings
So I take it on my left is everybody from Claimant?
MR. KEATS: Correct.
THE ARBITRATOR: Okay. Do I have here Michael Keats -- that's you, okay.
Francis Healy.
MR. HEALY: Right here.
THE ARBITRATOR: That's you.
Chelsea Goulet?
Boy, I'm three or three.
Deana Stein?
MR. KEATS: No. I think she is still on maternity leave.
THE ARBITRATOR: So she will not be with us.
Who is the lady over there?
MS. STYGAR: I'm Christine Stygar, and I'm a paralegal.
MR. KEATS: This is Cyril Tyson.
THE ARBITRATOR: And Mr. Tyson is?
MR. KEATS: Our technology guru. He's going to help us with the

MR. KEATS: Please don't interrupt your own witness while he is answering, Mr. Orr.

THE ARBITRATOR: Make an objection. Don't instruct your client.

BY MR. KEATS:

Q. You agreed to make restitutione in the amount of $8.3 million, correct?

A. Yes.

Q. Okay.

And that number bears a surprising relationship to the amount of money that you were accused of stealing, which was $9.3 million, correct?

A. I wouldn't know how to characterize that relationship.

Q. Okay.

So sitting here today, let me just ask this, I might as well, are you denying you stole $9.3 million from the fund?

A. I'm affirming that I pled toe grand larceny.

Q. So, sir, you're not answering mye question, though. Are you denying you stole 9.3 million from the fund, yes or no? It's a yes or no question.

A. I would not characterize it ase stealing 9.3 million, no.

Q. Okay. I'll ask the unusuale question. What would you characterize it as?

A. An accounting error.e Accounting.

Q. That's some accounting error.

This wasn't some, you recognized revenues when you should have. You created false invoices and paid them and the money was round-tripped back to your pocket, right?

A. No.

Q. That's fraud, correct?

A. No.e

Q. Disappoint, Mr. Penn.e

Let's look at his answer.

Mr. Penn, this is the Amended Answer and Counterclaim of Defendants that

you filed in the SEC proceeding, correct?

A. Yes.e

Q. And if you turn to page 49,e that's your signature, correct?

A. Yes.e

Q. Take a look at paragraph 3.e Look at the last sentence in that paragraph:

"Defendant admits that approximately all of the $9.3 million was sent from the fund to CASO Management or CGI."

Do you see that? Was that a true statement when you wrote it?

A. When I wrote this, this is a pro se answer. I meant to deny every one of these allegations. I asked to change this. Didn't have the opportunity to do it, except for once. I had no attorney at the time. Still pro se in Federal District Court.

Q. So you were lying then when you wrote this to the Court?

A. No. I asked to change thee

answer.

Q. And the Court denied thate motion, correct?

A.e I believe so.e

Q. So this was deemed to be youre answer, which you wrote, correct?

A.e Again, it was a pro se answer.e I meant to deny every one of these.

Q. I bet you did. I bet you did.e

Why would you write that you moved $9.3 million out of the fund if, in fact, you didn't do it?

A. To take responsibility for anye payments to Ssecurion for due diligence.

Q. Why would you takee responsibility for payments to Ssecurion for due diligence?

A.e Take responsibility for alle actions in the fund to include starting the fund and making investments and paying for expenses.

Q. Ssecurion didn't provide any duee diligence services to the fund, correct?

A.e That's not my understanding.e

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Penn - Direct/Keats

Q. I don't understand. You eithere know or you don't know. What do you mean, it's not your understanding?
MR. ORR: I'll object. He's answered the question.
MR. KEATS: Withdrawn.
Withdrawn.
BY MR. KEATS:
Q. Are you testifying thate Ssecurion provided due diligence services to the fund?
A. Yes. Mr. Ewers said he did.e
THE ARBITRATOR: You'll let mee know as you go through documents if you're offering them, if you're moving them into evidence, if you're objecting.
MR. KEATS: By the way, why don't we clean that up then. On this document, why don't we -- I will move to have that answer of Mr. Penn admitted into evidence.
THE ARBITRATOR: Okay. Mr. Orr?
MR. ORR: That's fine.

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Penn - Direct/Keats

THE ARBITRATOR: Okay. So it's in evidence.
MR. KEATS: So we have pre-marked the next exhibit as Claimant's Exhibit 31.
BY MR. KEATS:
Q. Mr. Penn, have you seen thise document before?
A. Yes.
Q. Altura Ewers, did he go by thee name Al Ewers, by any chance?
A. Yes.
Q. When you would speak to him,e would you call him Al Ewers, or Al?
A. Mr. Ewers, Al, sure.e
Q.e And Mr. Ewers was ae long-standing acquaintance of yours, correct?
A. I met him in Germany, when I was in the military. We had a class, graduate class.
Q. And what year was that, roughly?e
A. Over 20 years ago.e
Q.e So fair to say you've known hime

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Penn - Direct/Keats

over a long period of time, correct?
A. Yes.e
Q.e Mr. Ewers lived in San Franciscoe at this time?
A. No. I believe he was in Germanye and then he moved to San Francisco sometime in the late '90s.
Q. Okay.
At the time of -- at the time ofe his working for Ssecurion, he was in San Francisco, right?
A. Yes.e
Q. Okay.e
Now, you said -- I don't want toe mischaracterize your testimony -- you said Mr. Ewers had said he had provided due diligence services to the fund, right?
A. Yes.e
Q.e So I want to draw your attentione to paragraph 4, and you'll see there is a sentence that says:
"I represented to CM Growth Capital Partner LP's independent auditor that the $9 million was payment for due

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Penn - Direct/Keats

diligence fees that Ssecurion performed when, in fact, Ssecurion had performed no such services to CM Growth Capital Partners LP.ë
Do you see that?
A. Yes.e
Q. And, in fact, you know hee performed no due diligence services for the fund, correct?
A. No. That was not how it wase characterized to me, and I don't -- I don't understand why he would write this.
Q. Do you think he was lying?
A. I think he was under duress. He was almost killed in Rikers and he asked to take back his plea. So three weeks after he was almost killed in Rikers, almost beat to death in a gang house, on December 18th, he pled. And then January 23rd, he motioned to take back his plea and they wouldn't let him. So he's almost permanently disabled for this.
Q.e And whose fault is that,e Mr. Penn? Isn't it you who drew him into

In The Matter Of:

Securities and Exchange Commission v.
Lawrence E. Penn, III, et al.

Lawrence E. Penn, III
November 28, 2017

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Original File 32647Penn.txt
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,	)	
Plaintiff,	)	CASE NO.
v.	)	14-Civ.581(VEC)
LAWRENCE E. PENN, III, MICHAEL ST. ALTURA EWERS, CAMELOT ACQUISITIONS SECONDARY OPPORTUNITIES MANAGEMENT, LLC, THE CAMELOT GROUP INTERNATIONAL, LLC and SSECURION LLC,	)	
Defendants,	)	
and	)	
A BIGHOUSE PHOTOGRAPHY AND FILM STUDIO LLC,	)	
Relief Defendant.	)	

VIDEOTAPED DEPOSITION OF LAWRENCE E. PENN, III
TUESDAY, NOVEMBER 28, 2017
BEHMKE REPORTING AND VIDEO SERVICES, INC.
BY: DARBY GINSBERG, RPR
160 SPEAR STREET, SUITE 300
SAN FRANCISCO, CALIFORNIA 94015
(415) 597-5600

Videotaped deposition of LAWRENCE E. PENN, III, taken on behalf of the Plaintiff, at the office of United States Securities and Exchange Commission, 200 Vesey Street, Suite 400, New York, New York, commencing at 9:49 A.M., on TUESDAY, NOVEMBER 28, 2017, before Darby Ginsberg, Registered Professional Reporter, pursuant to Notice.

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ALSO PRESENT:
CHRIS MARTIN, VIDEOGRAPHER

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Mr. Orr about this case?
MS. ALPERSTEIN: Can we clarify the capacity in which the question is being asked?
MR. FISCHER: Again, I don't want to ask about anything privileged. So you know, to the extent that it involves legal advice, I don't want the answer to that question. So let me just rephrase it.
BY MR. FISCHER:
Q. When was the first time you met with Mr. Orr?e
MS. ALPERSTEIN: Again, this is on behalf of thee entities, correct?
BY MR. FISCHER:
Q. In any capacity. What was the first timee you met with Mr. Orr?
A.e Months ago, months ago. I don't remember.e Maybe – I am not sure if it was last year or early this year.
Q.e Uh-huh. And how many times have you met withe him?
A.e Oh, I have no idea.e
Q. More than ten? More than 20?e
A.e More than eight.e
Q.e More than ten?e
A.e I don't know.e
Q. But you know it's more than eight?e

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A. I think so.e
Q. How do you know Mr. Orr?e
A. A friend introduced me, recommended – ore recommended him.
Q.e What's the name of that friend?e
A.e Anthony.e
Q. Anthony?e
A. Bailey.e
Q. And how do you know Mr. Bailey?e
A. Just an old friend from years ago, like tene years ago.
Q.e Is there a joint defense agreement between youe and Mr. Orr?
A. I have no idea what a joint defense is.e
Q. That's a good answer to the question.e
I would like to ask you a couple of questionse about your current liabilities. Do you owe anyone any money?
A.e Yes.e
Q.e Who do you owe money to?e
A.e There's a credit card out there called Merricke Bank, which I think is a Discovery 5,000 or 2,000, whatever. I don't know exactly, and then the State of New York Tax Department for 1.5 million, which is in question.

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Q.e So the -- you say you owe a credit card 2 toe 5,000, somewhere between that?e
A. Yes. Like I think it's $5,000.e
Q. Okay. And what is that for?e
A. A credit card that I haven't paid. It's beene around for years.e
Q.e And what expenses were paid with that credite card?e
A.e I don't remember.e
Q.e Living expenses? Entertainment?e
A.e Maybe food. Maybe –
MR. ORR: If you want to establish when, when thate debt was accumulated?
THE WITNESS: I don't know. I haven't used it in four, five years so I don't remember all the expenses, but maybe Fresh Direct or food or --
MS. ALPERSTEIN: If you don't actually remember, please don't speculate.
BY MR. FISCHER:
Q.e So this is a historic debt from before you weree incarcerated?e
A. Yes.e
Q. Do you owe any lawyers any money?e
A. No.e
Q.e Now, the 1.5 million that you owed from youre

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taxes, what is that in reference to?
A. It's assessment based on a plea.
Q. So is that part of the criminal proceeding?e
A.e I am not sure if it's part of it, but it's – Ie guess maybe a word to – that can be described ase parallel to it. I don't know how it came about exactly,e but –
Q.e Are you paying Ms. Alperstein for being heree today?e
A.e I am not paying her. No.e
Q. Who is paying her?e
A. A friend of mine.e
Q.e Who is this friend?e
A.e Anthony.e
Q. This is Mr. Bailey?e
A.e No. Anthony Buffa, a friend.e
Q.e How do you spell that last name?e
A. B-U-F-F-A.
Q. And how do you know Mr. Buffa?e
A. He is a friend from 14, maybe 15 years ago.e
Q.e Do you currently have a job?e
A. No.e
Q. Since you left prison, have you had anye employment?e
A.e No.e

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Q. Have you made – have you earned any incomee since the prison?
A.e No.e
Q. Whyenot?e
A.e Because I am a student.e
Q. Where are you a student?e
A.e At Blackstone Career Institute. I am taking ae paralegal program. It's a two-year program.
Q.e And have you been taking that since you lefte prison?
A.e Yes.e
Q.e And is that a full-time program?e
A. It takes a lot of time. I am not sure if Ie would describe it as full time, but it takes a lot of time.
Q.e And where is that located?e
A.e It's a correspondence course.e
Q.e Okay.e
A.e So –
Q. And how many classes do you take at a time?e
A.e It's not classes. It's mostly just a syllabuse that requires you to read books on various legal topics from civil procedure, real property, criminal procedure, legal writing, legal research, a lot of topics.
Q.e Have you looked for work since you have lefte

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prison?
A.e I called a couple of headhunters; don'te remember who they were, and they just mentioned given what you are going through, don't expect to get any job.
Q.e And what fields were these headhunters in?e
A.e In just generally in business and –
Q.e And were they in finance? Were they in care rental? I mean –
A.e I'd just say business in general.e
Q.e Okay. Do you remember which headhunters?e
(Cross-talk)e
THE WITNESS: No, I don't.e
(Reporter clarification.)e
MR. FISCHER: My apologies.e
THE REPORTER: What was the last question?e
Q. Let me just – so sitting here today, you don'te remember what businesses those headhunters were in?
A.e Just general business.e
Q.e Do you remember the names of any of thosee headhunters?
A.e No.e
Q.e Do you remember how many you approached?e
A.e Made a phone call to maybe one or two of them.e
Q. And do you remember when this was?e
A. Maybe a year and a half ago when I first camee

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out.
Q. Okay. And have you had any income since youe left prison?e
MS. ALPERSTEIN: Objection. Asked and answered. You can answer again.
THE WITNESS: No.
BY MR. FISCHER:
Q.e Are you currently involved in any litigation ine which it's possible that you may get some money?e
A.e I am not – I don't expect any possibilities,e but I am currently involved in litigation.e
Q.e What litigation besides this litigation righte here? I know all about that.e
MS. ALPERSTEIN: No expectation of getting any money out of this one, I don't think.
THE WITNESS: The criminal appeal, the -- there is an arbitration. I am not sure if there is money -- there is money expectation there, but there is counterclaims on both -- on those claims on both sides. So --
BY MR. FISCHER:
Q.e So start with the criminal appeal.e
Do you have an expectation that you may obtaine money as a result of the criminal appeal?
A.e I am –

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MS. ALPERSTEIN: Objection.
THE WITNESS: I am not sure how that works. I just know I am appealing. So –
BY MR. FISCHER:
Q.e Okay. But are you – do you know, sitting heree today, whether you are asking for any kind ofe compensation in connection with that criminal appeal?e
A.e No, I am not.e
Q.e Okay. Let's focus on the arbitration.e
Are you referring to an arbitration between youe and the successor management to the fund?
A.e No. I am referring to an arbitration betweene me and the fund.e
Q.e And who is – who is representing the fund, doe you know?e
A.e I believe it's Stroock & Stroock.e
Q.e And you said you have expectations you mighte receive some money as a result of that?e
MS. ALPERSTEIN: Objection.
THE WITNESS: I –
MS. ALPERSTEIN: Maybe you could frame it instead of an expectation, whether he is seeking damages.
BY MR. FISCHER:
Q.e Are you seeking damages as a result ine connection with an arbitration?e

AMERICAN ARBITRATION ASSOCIATION
CASE NO. 01-17-0000-6981

CM GROWTH CAPITAL PARTNERS, L.P.,
Claimant,
vs. Volume IV
LAWRENCE E. PENN, III, et al.,
Respondents.

BEFORE: CAROL M. LUTTATI, Chairperson

Friday, April 13, 2018
New York, New York
9:37 a.m.

Reported by:
Joan Ferrara, RPR, RMR, CRR
Job No. 27694

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Job No. 27694

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- and -

(Continued)

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ALSO PRESENT:
Lawrence E. Penn, IIIn
Chelsea Goulet
Nicole Fiore
Cyril Tyson
Ken Latz
Ken Garnett

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Garnett - Direct/Healy

THE ARBITRATOR: Good morning, everyone. Day four. Friday, April 13th.

I trust that we're going to begin now with Mr. Garnett.

KENNETH GARNETT,
called as a witness, having been duly sworn by a Notary Public, was examined and testified as follows:

DIRECT EXAMINATION BY
MR. HEALY:

Q. Good morning, Mr. Garnett.e
A. Good morning.e
Q. Can you again state your fulle name for the record.
A. Kenneth A. Garnett.e
Q. And can you tell me who youre current employer is?
A. Conway & MacKenzie.e
Q. Specific group in Conwaye MacKenzie?
A. I work in the private fundse services practice.
Q. Same group as Mr. Latz?e

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Garnett - Direct/Healy

A. Yes.e
Q. Can you please describe youre educational background, starting with your college?
A. Sure. I have an economicse degree from Davidson College. While at Davidson, spent some time with the London School of Economics.
So Davidson College, I have an ad undergraduate degree in economics.e Spent some time at the London School ofe Economics while I was there.e
Then I have an MBA from thee Stern School of Business at NYU.e
Q. Okay.e
Do you also have any certifications as well?
A. Yes, I'm a certified publice accountant.
Q. Is that active or inactive?e
A. Inactive.e
Qe But have you ever worked as ae certified public accountant?e
A. Yes.e

get a picture of what life is like today.
A. I mean, out of control. It is beyond, in my mind -- I'm not a lawyer -- it's beyond anything legal, practical, anything. It's like what are we doing here, you know. Okay, I pled, you know. Whatever. I told them I will not allocute. I'll answer two questions, yes, and that's it, and it's on you, lawyer, because I don't see how this is possible under the law.
Q. I understand, but I don't --
A. But, you know, you plea and you become permanently disabled, by law, in this country, by state law. So the only thing I can do right now is be a lawyer. That's only thing I can do. There are 49,000 collateral consequences, 30 under the lawsuit statute in New York State.
So this layering of the SEC, false statements in the Complaint, asset freeze, I couldn't even address because you're away, assets freeze broader than your account base going to accounts that

are 15 years old having nothing to do with the matter, some of those accounts these guys are wasting limited partner money on going to frozen accounts that you can't get money out.
Q. I understand.
A. It's just a waste of time. And so you have to suffer with that. You lose your, you know, forfeit your interest. And a document put in front of me, I was like Proskauer did this, really?
Q. I understand. But I want you to --
A. So I forfeit my interest as partner -- you know, it's the requirement. Plea deal, you know, going January 7th, January 23rd, the same day they were voting on my Co-D's motion to withdraw his plea, February 23rd, and then you're realizing, okay, I'm getting manipulated here. And they make it pretty clear to you.
And so things, you know, you forfeit. Then 8.32, a million dollars

plus 5 percent -- so 8.7 -- of money that you don't have, and you probably would never have if you can't work.
And so then you go -- you know, once you plea, you get literally put in the nicer part of the jail -- thank you -- and then three weeks later you head to Rikers 4 building and you literally can't wait to get upstate because it's so bad in the city jails.
I was fortunate enough to go to Watertown, the ex-Air Force base, and I was at -- CMC tagged, closely monitored case. You've got to watch this one.
And so I went up Watertown. If you don't have a GED, there's a whole bunch of things to do, but there's nothing for me to do because I have all this education, and then I got, I went to work in the prison.
So the prison system doesn't care about your plea deal or the restitution payment. They'll just say, listen, if you have any restitution, we're

taking half of it. You know, life in state prison is horrible. And so you kind of fit in there. The food is horrible. It's incredibly dangerous for no reason. And so -- and then you have to get your parents to send you supplementary food to literally survive. My parents came up there and visited me. I asked for Mona to come visit me. She would not. The SEC commented on how bad that was themselves. And I'm like what's going on here.
And so you know, that was June. Getting ready for parole and got letters from all over the country from people. I got parole, November 1st, they said, you know, why don't you get certified, there is nothing for you to do up here. And I got certified through DOCS and then started figuring stuff out real quick.
Q. I just want to focus financially, where do you fare today?
A. I'm basically bankrupt, but I can't afford to go bankrupt. [redacted]

my parents send me, period. Can't get a job because I have these legal cases that I intend to fight to the end. And you just survive. So I'm focused on these cases. I can't afford attorneys, although some loved ones have picked up tabs here and there. And you're just trying to get through these things.

When I got out February 10th, you know, I thought, yeah, just have to start rebuilding my life. Obviously, I started the parallel process to kind of get that going through the strong legal advice and that's been running concurrently with this.

Q. Sure, sure.

But when I say, I'm just trying to get a picture for everyone here as to finance. You mentioned the judgment that you had from the criminal case. Is there anything else?

A. It's a requirement. So these guys have -- New York State Supreme Court enforcing their judgment. No law firm can

do better. I have to report to them. If I don't report, it's criminal contempt. If I don't hand in my monthly, I don't have any money or a job, it's criminal contempt. Not civil, criminal.

So I do that, you know. And so there's nothing -- I don't have a car, a house, there's no offshore accounts, legacy accounts -- there's nothing.

So you know, loved ones are helpful. My parents paid for a two-year program, which was nice, I'm a student, if you will, but it's coming to an end, and literally preparing to apply to law school. So that's it. I really have nothing. [redacted]

Q. Okay.

And so you mentioned that judgment. Are there any other judgments or payments associated?

A. So when the DA got the plea, they sent something to the Tax Department

and the Tax Department created a loss based on no documentation and said you owe $1.5 million. Based on what?

Q. Okay.

A. And so that's a tax lien. So we have loss of the forfeiture. You have 8.32, you have a tax lien, you have an asset freeze, and now you've got this.

Q. Okay.

But you're not getting any money back from the asset freeze, correct?

A. No. I mean, so what happens is that, you know, at the end of the SEC action, they sweep the accounts. There's about maybe $170,000 in the accounts. And they're sweeping the accounts, which I'm asking the SEC, give it back to the fund. Until something changes, okay. Sweep it and give it back to the fund.

But the SEC is going to send it to Treasury. That's the fund's money. So I'm saying listen, okay, I lost, got it. Give it to the fund. You know, give it to my people, you know.

But no, it's like another step of someone taking advantage of the system to hurt them -- the SEC's responsibility is to protect investors and they're taking the money. I'm here trying to say, okay, summary judgment, you win, just -- all I ask, give them the money, give the fund the money. And it's like no, we want it for Treasury. I mean, give me a break.

And so no money coming back from me from the asset freeze. Legacy accounts, I'm talking investments back to 2005-06 are caught up in this thing. So, you know, like I said, you know, what are we doing here?

Q. Sure, sure.

So what is your plan if you do receive an award here from this proceeding?

A. To follow the agreement. Criminal contempt. So literally, they get an award -- if we were to get an award, insurance kicks in, pays them -- pays them through me because if the money comes to

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Penn - Cross/Keats

this is hey, let's get a second bite at the apple and let's go over some more of our claim. That's not what we're doing here.

THE ARBITRATOR: I agree with what you've said. However, I'm going to let him have his question.

MR. KEATS: Thank you.

BY MR. KEATS:

Q. Do you want me to repeat the question?

THE ARBITRATOR: Because I'm not going to not hear everybody's case and everybody's evidence.

MR. ORR: I know, but we have to have rules, I mean.

THE ARBITRATOR: I'm the judge. I will take everything, you know, into consideration.

Q. I'll repeat my question.e

You testified you can't take someone's stuff. Isn't that precisely what you did to the fund?

A.e No. I used the capital to paye

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Penn - Cross/Keats

expenses, most of which was due diligence, supported a team, supported these investments. I invested the proper amount of this fund in the funds in place and the people still have their stuff, which is rights to distributions. That's what we all bought. We bought rights to distributions by putting money in the fund. So I didn't take their rights to distribution.

Q. You took the fund's $9.3 million, right?

MR. ORR: Okay. This is why I'm going to keep objecting.

MR. KEATS: I'm trying to understand --

THE ARBITRATOR: Hold on.

MR. KEATS: I'm trying to understand what he meant by you can't take someone's stuff.

THE ARBITRATOR: Yeah, and he did say that in his answer.

MR. ORR: But that's not what we're talking about, your Honor.

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Penn - Cross/Keatse

THE ARBITRATOR: But he'se following up on part of what his testimony was.

MR. ORR: I strongly object. So the longer he goes on the bigger of a problem we're going to have.

THE ARBITRATOR: Okay.

A.e I wouldn't characterize it thate way. When I said that, I meant my interest. Stuff. My interest.

Q. So it's okay -- it's bad if someone takes your stuff, but it's okay if you could take other people's stuff, that's your testimony?

A. Partnership. Partnership.e Partnership. It's partnership. They give you rights to certain capital and latitude to spend it. We can disagree about that. You can't take someone's interest. You can't just take it.

Q. Your testimony is it's bad fore someone to take your stuff, your interest, but it's okay for you to take in the cash from the fund, right?

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Penn - Cross/Keats

MR. ORR: Object.

BY MR. KEATS:

Q. That's what you're saying,e right?

A.e No.e

Q. So the answer to my question is that you did take someone's stuff and you understand that's what you did?

A. That's not what I did. Stope answering the questions.

THE ARBITRATOR: Hold up. Stop. Stop. Stop. Counsel is not to address each other. Where are you going with this?

MR. KEATS: I'm entitled to explore his answer, which I think underscores he understands what it means to steal and he has utterly refused to acknowledge his conduct in this case which he pled to. And I'm establishing, I think I've already done it, he's completely unremorseful.

BY MR. KEATS:

Q. Isn't that right, you aree

unremorseful for conduct to which you pled guilty, right?

A. That, after all this, doesn'te even warrant an answer.

Q. You have to answer my question.e

A. That's my answer. That'se ridiculous.

Q. No, it is not.e

A. That's my answer. It'se ridiculous.

THE ARBITRATOR: Don't argue with him.

MR. KEATS: I think I have my answer.

THE ARBITRATOR: Move on. Move on.

MR. KEATS: Yes. Okay.

BY MR. KEATS:

Q. You referred to -- I apologize for the name, Shellye Archambeau, right?

A.e Shellye.e

Q.e And you said some very nicee things about her, right?

A.e True.e

Q.e And you think very highly ofe her, right?

A. She's a great executive.e

Q. Is she a friend of yours?e

A. I would hope that all the CEOse were friends of mine.

Q. That's fair.

A. She's a professional colleague,e and I respect her.

Q.e And do you remember that youe supposedly allowed due diligence to take place which included a private investigator who followed her for four weeks?

A. Absolutely, and that's because she is the largest asset in this. Very important. Critical.

Q. And what did you find out about her in that four weeks, supposed four-week investigation?

A. Found out the time that she spent on other boards. One of the agreements that we had, I told her, you know, one Fortune 500 board, preferably

not two. We need as much time here -- I need you as much time as CEO, we need to build the sales team. She comes from a sales background, so she's a sales background CEO. 10 years' difference. She's 10 years older than I am. I'm on the board. And I have to protect that investment and I needed her to be not just a sales CEO, but a CEO who builds a sales team.

And so one of the issues with the company that myself and where Goldman came on, listen, we need to get Oracle styled sales team and we need to go find those people and we need her to be there to hire them. She's an excellent sales executive. But when you're CEO, you're no longer sales executive, you have to start hiring great salespeople and build that team.

That was one of the -- I'm not going to say holes -- but that's one of things how you take a company from 50 million to 200 million. And so, you know,

we wanted to know how much time she was spending on her outside activities. You're on the board of, I think it was Lehman, and Verizon. So I was the one who introduced her to Vernon Jordan who got on the board of Verizon. I helped her get two board seats. That was very important for the company. You have a big executive on Verizon Fortune 25 company. I helped her get on that board.

I said, okay, I did that for you. I need you to stay here. So yeah, we wanted to make sure we had a certain amount of time on those boards and we made sure that was happening and that if there was a question, we would have said, listen, do we need a CEO. But my thoughts, she was a great representative and I think she grew the company over my tenure from double to maybe half the revenue.

Q. You said you built a due diligence organization at your parent company CGI, right?

TCGI CAPITAL GROUP, LLC(131839) **Rev. Form U4 (06/2003)**

Individual Name: PENN, LAWRENCE EDWARD (3080265) U4 Amendment - Filing ID: 14364186

Filing Date: 11/01/2004

FORM U4
UNIFORM APPLICATION FOR SECURITIES INDUSTRY REGISTRATION OR TRANSFER

1. GENERAL INFORMATION

First Name:	Middle Name:	Last Name:	Suffix:
LAWRENCE	EDWARD	PENN	
Firm CRD #:	*Firm* Name:	Employment Date (MM/DD/YYYY):	CRD Branch #:
131839	TCGI CAPITAL GROUP, LLC	05/19/2004	
Firm Billing Code:	*Individual CRD #:*	Individual SSN:	
	3080265	XXX-XX-XXXX	
Office of Employment Address Street 1:		Office of Employment Address Street 2:	
45 ROCKEFELLER PLAZA SUITE 2000			
City:	State:	Country:	Postal Code:
NEW YORK	New York	USA	10111

Private Residence Check Box:

If the Office of Employment address is a private residence, check this box. ☐

2. FINGERPRINT INFORMATION

Electronic Filing Representation

- (●) By selecting this option, I represent that I am submitting, have submitted, or promptly will submit to the appropriate *SRO* a fingerprint card as required under applicable *SRO* rules; or

  Fingerprint card barcode
- ( ) By selecting this option, I represent that I have been employed continuously by the *filing firm* since the last submission of a fingerprint card to CRD and am not required to resubmit a fingerprint card at this time; or,
- ( ) By selecting this option, I represent that I have been employed continuously by the *filing firm* and my fingerprints have been processed by an *SRO* other than NASD. I am submitting, have submitted, ore promptly will submit the processed results for posting to CRD.e

Exceptions to the Fingerprint Requirement

- ( ) By selecting one or more of the following two options, I affirm that I am exempt from the federal fingerprint requirement because I/*filing firm* currently satisfy(les) the requirements of at least one ofe the permissive exemptions indicated below pursuant to Rule 17f-2 under the Securities Exchange Act of 1934, including any notice or application requirements specified therein:
  - ☐ Rule 17f-2(a)(1)(I)e
  - ☐ Rule 17f-2(a)(1)(iii)e

Investment Adviser Representative Only Applicants

- ( ) I affirm that I am applying only as an investment adviser representative and that I am not also applying or have not also applied with this *firm* to become a broker-dealer representative. If this radio button/box is selected, continue below.
  - ( ) I am applying for registration only in *jurisdictions* that do not have fingerprint card filinge requirements, or
  - ( )

I am applying for registration in *jurisdictions* that have fingerprint card filing requirements and I am submitting, have submitted, or promptly will submit the appropriate fingerprint card directly to the *jurisdictions* for processing pursuant to applicable *jurisdiction* rules.

3. REGISTRATIONS WITH UNAFFILIATED FIRMS

Some *jurisdictions* prohibit "dual registration," which occurs when an individual chooses to maintain a concurrent registration as a representative/agent with two or more *firms* (either BD or IA *firms*) that are not affiliated. *Jurisdictions* that prohibit dual registration would not, for example, permit a broker-dealer agent working with brokerage *firm* A to maintain a registration with brokerage *firm* B if *firms* A and B are not owned or controlled by a common parent. Before seeking a dual registration status, you should consult the applicable rules or statutes of the *jurisdictions* with which you seek registration for prohibitions on dual registrations or any liability provisions.

Please indicate whether the individual will maintain a "dual registration" status by answering the questions in this section. (Note: An individual should answer 'yes' only if the individual is currently registered and is seeking registration with a *firm* (either BD or IA) that is not affiliated with the individual's current employing *firm*. If this is an initial application, an individual must answer 'no' to these questions; a "dual registration" may be initiated only after an initial registration has been established).

Answer "yes" or "no" to the following questions:	Yes	No
A. Will *applicant* maintain registration with a broker-dealer that is not *affiliated* with the *filing firm*? If you answer "yes," list the *firm*(s) in Section 12 (Employment History).	○	◉
B. Will *applicant* maintain registration with an investment adviser that is not *affiliated* with the *filing firm*? If you answer "yes," list the *firm*(s) in Section 12 (Employment History).	○	◉

4. SRO REGISTRATIONS

Check appropriate *SRO* Registration requests.
Qualifying examinations will be automatically scheduled if needed. If you are only scheduling or re-scheduling an exam, skip this section and complete Section 7 (EXAMINATION REQUESTS).

REGISTRATION CATEGORY	NASD	NYSE	AMEX	BSE	NSX	PCX	CBOE	CHX	PHLX	ISE
OP - Registered Options Principal (S4)	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
IR - Investment Company and Variable Contracts Products Rep. (S6)	☐	☐	☐		☐					
GS - Full Registration/General Securities Representative (S7)	☑	☐	☐	☐	☐	☐	☐	☐	☐	☐
TR - Securities Trader (S7)		☐	☐		☐					
TS - Trading Supervisor (S7)		☐	☐		☐					
SU - General Securities Sales Supervisor (S9 and S10)	☐			☐	☐	☐	☐	☐	☐	
BM - Branch Office Manager (S9 and S10)		☐	☐							
SM - Securities Manager (S12)		☐								
AR - Assistant Representative/Order Processing (S11)	☐				☐			☐		
REGISTRATION CATEGORY	**NASD**	**NYSE**	**AMEX**	**BSE**	**NSX**	**PCX**	**CBOE**	**CHX**	**PHLX**	**ISE**
IE - United Kingdom - Limited General Securities Registered Representative (S17)	☐	☐	☐			☐	☐		☐	
DR - Direct Participation Program Representative (S22)	☐	☐	☐		☐			☐		
GP - General Securities Principal (S24)	☑		☐	☐	☐			☐		

IP - Investment Company and Variable Contracts Products Principal (S26)	☐		☐		☐					
FA - Foreign Associate	☐									
FN - Financial and Operations Principal (S27)	☐		☐	☐	☐		☐	☐		
FI - Introducing Broker-Dealer/Financial and Operations Principal (S28)	☐				☐			☐		
RS - Research Analyst (S86, S87)	☐	☐								
RP - Research Principal	☐									
DP - Direct Participation Program Principal (S39)	☐		☐		☐			☐		
OR - Options Representative (S42)	☐			☐				☐		
REGISTRATION CATEGORY	**NASD**	**NYSE**	**AMEX**	**BSE**	**NSX**	**PCX**	**CBOE**	**CHX**	**PHLX**	**ISE**
MR - Municipal Securities Representative (S52)	☐	☐	☐		☐			☐		
MP - Municipal Securities Principal (S53)	☐		☐		☐			☐		
CS - Corporate Securities Representative (S62)	☐		☐		☐			☐		
RG - Government Securities Representative (S72)	☐									
PG - Government Securities Principal (S73)	☐									
SA - Supervisory Analyst (S16)	☐	☐	☐							
PR - Limited Representative - Private Securities Offerings (S82)	☐		☐							
CD - Canada-Limited General Securities Registered Representative (S37)	☐	☐	☐			☐	☐			
CN - Canada-Limited General Securities Registered Representative (S38)	☐	☐	☐			☐	☐			
REGISTRATION CATEGORY	**NASD**	**NYSE**	**AMEX**	**BSE**	**NSX**	**PCX**	**CBOE**	**CHX**	**PHLX**	**ISE**
ET - Equity Trader (S55)	☐		☐		☐					
AM - Allied Member		☐	☐							
AP - Approved Person		☐	☐							
LE - Securities Lending Representative		☐	☐							
LS - Securities Lending Supervisor		☐	☐							
ME - Member Exchange		☐	☐	☐	☐					
FE - Floor Employee		☐	☐	☐	☐					
OF - Officer		☐	☐		☐					
CO - Compliance Official (S14)		☐								
REGISTRATION CATEGORY	**NASD**	**NYSE**	**AMEX**	**BSE**	**NSX**	**PCX**	**CBOE**	**CHX**	**PHLX**	**ISE**
CF - Compliance Official Specialist (S14A)		☐								
PM - Floor Member Conducting Public Business		☐	☐							
PC - Floor Clerk Conducting Public Business		☐	☐							
SC - Specialist Clerk (S21)		☐	☐							
TA - Trading Assistant (S25)		☐								
SF - Single Stock Futures (S43)	☐									
FP - Municipal Fund (S51)	☐									
IF - In-Firm Delivery Proctor	☐	☐								
MM - Market Maker						☐				

REGISTRATION CATEGORY	NASD	NYSE	AMEX	BSE	NSX	PCX	CBOE	CHX	PHLX	ISE
FB - Floor Broker						☐				
MB - Market Maker acting as Floor Broker						☐				
Other _____ (Paper Form Only)										

5. JURISDICTION REGISTRATION

Check appropriate *jurisdiction(s)* for broker-dealer agent (AG) and/or investment adviser representative (RA) registration requests.

JURISDICTION	AG	RA	JURISDICTION	AG	RA	JURISDICTION	AG	RA	JURISDICTION	AG	RA
Alabama	☐	☐	Illinois	☐	☐	Montana	☐	☐	Puerto Rico	☐	☐
Alaska	☐	☐	Indiana	☐	☐	Nebraska	☐	☐	Rhode Island	☐	☐
Arizona	☐	☐	Iowa	☐	☐	Nevada	☐	☐	South Carolina	☐	☐
Arkansas	☐	☐	Kansas	☐	☐	New Hampshire	☐	☐	South Dakota	☐	☐
California	☐	☐	Kentucky	☐	☐	New Jersey	☐	☐	Tennessee	☐	☐
Colorado	☐	☐	Louisiana	☐	☐	New Mexico	☐	☐	Texas	☐	☐
Connecticut	☐	☐	Maine	☐	☐	New York	☑	☐	Utah	☐	☐
Delaware	☐	☐	Maryland	☐	☐	North Carolina	☐	☐	Vermont	☐	☐
District of Columbia	☐	☐	Massachusetts	☐	☐	North Dakota	☐	☐	Virginia	☐	☐
Florida	☐	☐	Michigan	☐	☐	Ohio	☐	☐	Washington	☐	☐
Georgia	☐	☐	Minnesota	☐	☐	Oklahoma	☐	☐	West Virginia	☐	☐
Hawaii	☐	☐	Mississippi	☐	☐	Oregon	☐	☐	Wisconsin	☐	☐
Idaho	☐	☐	Missouri	☐	☐	Pennsylvania	☐	☐	Wyoming	☐	☐

AGENT OF THE ISSUER REGISTRATION (AI) ☐ **Indicate 2 letter *jurisdiction* code (s):**_____

6. REGISTRATION REQUESTS WITH AFFILIATED FIRMS

Will *applicant* maintain registration with *firm*(s) under common ownership or control with the *filing firm*? If "yes", fill in the details to indicate a request for registration with additional *firm*(s).

○ **Yes** ◉ **No**

No Information Filed

7. EXAMINATION REQUESTS

Scheduling or Rescheduling Examinations Complete this section only if you are scheduling or rescheduling an examination or continuing education session. Do not select the Series 63 (S63) or Series 65 (S65) examinations in this section if you have completed Section 5 (JURISDICTION REGISTRATION) and have selected registration in a *jurisdiction*. If you have completed Section 5 (JURISDICTION REGISTRATION), and requested an AG registration in a *jurisdiction* that requires that you pass the S63 examination, an S63 examination will be automatically scheduled for you upon submission of this Form U4. If you have completed Section 5 (JURISDICTION REGISTRATION), and requested an RA registration in a

jurisdiction that requires that you pass the S65 examination, an S65 examination will be automatically scheduled for you upon submission of this Form U4.

☐ S3	☐ S11	☐ S22	☐ S32	☐ S46	☐ S66
☐ S4	☐ S12	☐ S23	☐ S33	☐ S51	☐ S72
☐ S5	☐ S14	☐ S24	☐ S37	☐ S52	☐ S73
☐ S6	☐ S14A	☐ S25	☐ S38	☐ S53	☐ S82
☐ S7	☐ S15	☐ S26	☐ S39	☐ S55	☐ S86
☐ S7A	☐ S16	☐ S27	☐ S42	☑ S62	☐ S87
☐ S9	☐ S17	☐ S28	☐ S43	☐ S63	☐ S101
☐ S10	☐ S21	☐ S30	☐ S44	☐ S65	☐ S106
		☐ S31	☐ S45		☐ S201

Other _____ (Paper Form Only)

OPTIONAL: Foreign Exam City _____

Date (MM/DD/YYYY) _____

8. PROFESSIONAL DESIGNATIONS

Select each designation you currently maintain.

☐ **Certified Financial Planner**

☐ **Chartered Financial Consultant (ChFC)**

☐ **Personal Financial Specialist (PFS)**

☐ **Chartered Financial Analyst (CFA)**

☐ **Chartered Investment Counselor (CIC)**

9. IDENTIFYING INFORMATION/NAME CHANGE

First Name: LAWRENCE	**Middle Name:** EDWARD	**Last Name:** PENN
Suffix:	**Date of Birth** [redacted]	
State/Province of Birth MARYLAND	[redacted] **Birth** USA	**Sex** ◉ Male ○ Female
Height (ft) 6	**Height (in)** 0	[redacted] **ight (lbs)**
Hair Color Black	[redacted] **olor**	

10. OTHER NAMES

Enter all other names that you have used or are using, or by which you are known or have been known, other than your legal name, since the age of 18. This field should include, for example, nicknames, aliases, and names used before or after marriage.

First Name	Middle Name	Last Name	Suffix
LAWRENCE	EDWARD	PENN	

LAWRENCE	EDWARDE	PENN	III

11.RESIDENTIAL HISTORYE

Starting with the current address, give all addresses for the past 5 years. Report changes as they occur.

From	To	Street	City	State	Country	Postal Code
02/1999	PRESENT	[redacted] COSMEPOLITAN - APT [redacted]	NEW YORK	NY	USA	[redacted]
05/1997	02/1999	[redacted] APT [redacted]	NEW YORK	NY	UNITED STATES	[redacted]
05/1992	05/1997	[redacted]	BALTIMORE	MD	UNITED STATES	[redacted]

12.EMPLOYMENT HISTORYE

Provide complete employment history for the past 10 years. Include the *firm*(s) noted in Section 1 (GENERAL INFORMATION) and Section 6 (REGISTRATION REQUESTS WITH AFFILIATED FIRMS). Include all *firm*(s) from Section 3 (REGISTRATION WITH UNAFFILIATED FIRMS). Account for all time including full and part-time employments, self-employment, military service, and homemaking. Also include statuses such as unemployed, full-time education, extended travel, or other similar statuses. Report changes as they occur.

From	To	Name of *Firm* or Company	*Investment-Related* business?	City	State	Country	Position
08/2003	PRESENT	TCGI CAPITAL GROUP, LLC	◉ Yes ○ No	NEW YORK	NY	USA	MANAGING MEMBER
11/2001	PRESENT	THE CAMELOT GROUP LLC	○ Yes ◉ No	NEW YORK	NY	USA	MANAGING MEMBER
09/2000	11/2001	LAZARD FRERES & CO. LLC	◉ YesE ○ No	NEW YORK	NY	USA	ASSOCIATE
04/2000	08/2000	IOSOTA	○ Yes ◉ No	MINNEAPOLIS	MN	USA	BUSINESS DEVELOPER
05/2000	08/2000	SELF-EMPLOYEDE	◉ Yes ○ No	NEW YORK	NY	USA	CONSULTANT
03/1999	04/2000	J.P. MORGAN SECURITIES INC.	◉ Yes ○ No	NEW YORK	NY	USA	PORTFOLIO MANAGER
08/1997	02/1999	COLUMBIA UNIVERSITY	○EYesE ◉ No	NEW YORK	NY		STUDENT - STUDENT
05/1998	12/1998	NY STATE	○ Yes ◉ No	NEW YORK	NY	USA	PART-TIME ASSOCIATE
05/1992	04/1997	US ARMY	○ Yes ◉ No	KITZINGEN		GERMANY	OTHER - CAPTAIN (ARMY OFFICER)
05/1988	05/1992	UNITED STATES MILITARY ACADEMY	○ Yes ◉ No	WEST POINT	NY		STUDENT - STUDENT
07/1988	05/1992	US MILITARY ACADEMY	○ Yes ◉ No	WEST POINT	NY	USA	CADET

13.OTHER BUSINESSE

Are you currently engaged in any other business either as a proprietor, partner, officer, director, employee, trustee, agent or otherwise? (Please exclude non *investment-related* activity that is exclusively charitable, civic, religious or fraternal and is recognized as tax exempt.) If YES, please provide the following details: the name of the other business, whether the business is *investment-related*, the address of the other business, the nature of the other business, your position, title, or relationship with the other business, the start date of your relationship, the approximate number of hours/month you devote to the other business, the number of hours you devote to the other business during securities trading hours, and briefly describe your duties relating to the other business.

○ Yes ◉ No

14. DISCLOSURE QUESTIONS

IF THE ANSWER TO ANY OF THE FOLLOWING QUESTIONS IS 'YES', COMPLETE DETAILS OF ALL EVENTS OR PROCEEDINGS ON APPROPRIATE DRP(S)

REFER TO THE EXPLANATION OF TERMS SECTION OF FORM U4 INSTRUCTIONS FOR EXPLANATIONS OF ITALICIZED TERMS.

Criminal Disclosure

	YES	NO
14A. (1) Have you ever:		
(a) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign, or military court to any *felony?*	—	—
(b) been *charged* with any *felony?*	—	—
(2) Based upon activities that occurred while you exercised *control* over it, has an organization ever:		
(a) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic or foreign court to any *felony*?	—	—
(b) been *charged* with any *felony?*	—	—
14B. (1) Have you ever:		
(a) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign or military court to a *misdemeanor involving:* investments or an *investment-related* business or any fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses?	—	—
(b) been *charged* with a *misdemeanor* specified in 14B(1)(a)?	—	—
(2) Based upon activities that occurred while you exercised *control* over it, has an organization ever:		
(a) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic or foreign court to a *misdemeanor* specified in 14B(1)(a)?	—	—
(b) been *charged* with a *misdemeanor* specified in 14B(1)(a)?	—	—

Regulatory Action Disclosure

	YES	NO
14C. Has the U.S. Securities and Exchange Commission or the Commodity Futures Trading Commission ever:		
(1) *found* you to have made a false statement or omission?	—	—
(2) *found* you to have been *involved* in a violation of its regulations or statutes?	—	—
(3) *found* you to have been a cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted?	—	—
(4) entered an *order* against you in connection with *investment-related* activity?		

(5) imposed a civil money penalty on you, or *ordered* you to cease and desist from any activity?

14D(1) Has any other Federal regulatory agency or any state regulatory agency or *foreign financial regulatory authority* ever:

(a) *found* you to have made a false statement or omission or been dishonest, unfair or unethical?

(b) *found* you to have been *involved* in a violation of *investment-related* regulation(s) or statute(s)?

(c) *found* you to have been a cause of an *investment-related* business having its authorization to do business denied, suspended, revoked or restricted?

(d) entered an *order* against you in connection with an *investment-related* activity?

(e) denied, suspended, or revoked your registration or license or otherwise, by *order*, prevented you from associating with an *investment-related* business or restricted your activities?

14D(2) Have you been subject to any *final order* of a state securities commission (or any agency or officer performing like functions), state authority that supervises or examines banks, savings associations, or credit unions, state insurance commission (or any agency or office performing like functions), an appropriate *federal banking agency*, or the National Credit Union Administration, that:

(a) bars you from association with an entity regulated by such commission, authority, agency, or officer, or from engaging in the business of securities, insurance, banking, savings association activities, or credit union activities; or

(b) constitutes a *final order* based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct?

14E. Has any *self-regulatory organization* or commodities exchange ever:

(1) *found* you to have made a false statement or omission?

(2) *found* you to have been *involved* in a violation of its rules (other than a violation designated as a *"minor rule violation"* under a plan approved by the U.S. Securities and Exchange Commission)?

(3) *found* you to have been the cause of an *investment-related* business having its authorization to do business denied, suspended, revoked or restricted?

(4) disciplined you by expelling or suspending you from membership, barring or suspending your association with its members, or restricting your activities?

14F. Have you ever had an authorization to act as an attorney, accountant or federal contractor that was revoked or suspended?

14G. Have you been notified, in writing, that you are now the subject of any:

(1) regulatory complaint or *proceeding* that could result in a "yes" answer to any part of 14C, D or E? *(If yes, complete the Regulatory Action Disclosure Reporting Page.)*

(2) *investigation* that could result in a "yes" answer to any part of 14A, B, C, D or E? *(If yes, complete the Investigation Disclosure Reporting Page.)*

Civil Judicial Disclosure

14H. (1) Has any domestic or foreign court ever: **YES NO**

(a) *enjoined* you in connection with any *investment-related* activity?

(b) *found* that you were *involved* in a violation of any *investment-related* statute(s) or regulation(s)?

(c) dismissed, pursuant to a settlement agreement, an *investment-related* civil action brought against you by a state or *foreign financial regulatory authority*?

(2) Are you named in any pending *investment-related* civil action that could result in a "yes" answer to any part of 14H(1)? — —

Customer Complaint/Arbitration/Civil Litigation Disclosure

	YES	NO
14I. (1) Have you ever been named as a respondent/defendant in an *investment-related*, consumer-initiated arbitration or civil litigation which alleged that you were *involved* in one or more *sales practice violations* and which:		
(a) is still pending, or;	—	—
(b) resulted in an arbitration award or civil judgment against you, regardless of amount, or;	—	—
(c) was settled for an amount of $10,000 or more?	—	—
(2) Have you ever been the subject of an *investment-related*, consumer-initiated complaint, not otherwise reported under question 14I(1) above, which alleged that you were *involved* in one or more *sales practice violations*, and which complaint was settled for an amount of $10,000 or more?	—	—
(3) Within the past twenty four (24) months, have you been the subject of an *investment-related*, consumer-initiated, written complaint, not otherwise reported under question 14I(1) or (2) above, which:		
(a) alleged that you were *involved* in one or more *sales practice violations* and contained a claim for compensatory damages of $5,000 or more (if no damage amount is alleged, the complaint must be reported unless the firm has made a good faith determination that the damages from the alleged conduct would be less than $5,000), or;	—	—
(b) alleged that you were *involved* in forgery, theft, misappropriation or conversion of funds or securities?	—	—

Termination Disclosure

	YES	NO
14J. Have you ever voluntarily *resigned*, been discharged or permitted to *resign* after allegations were made that accused you of:		
(1) violating *investment-related* statutes, regulations, rules, or industry standards of conduct?	—	—
(2) fraud or the wrongful taking of property?	—	—
(3) failure to supervise in connection with *investment-related* statutes, regulations, rules or industry standards of conduct?	—	—

Financial Disclosure

	YES	NO
14K. Within the past 10 years:		
(1) have you made a compromise with creditors, filed a bankruptcy petition or been the subject of an involuntary bankruptcy petition?	—	—
(2) based upon events that occurred while you exercised *control* over it, has an organization made a compromise with creditors, filed a bankruptcy petition or been the subject of an involuntary bankruptcy petition?	—	—
(3) based upon events that occurred while you exercised *control* over it, has a broker or dealer been the subject of an involuntary bankruptcy petition, or had a trustee appointed, or had a direct payment procedure initiated under the Securities Investor Protection Act?	—	—
14L. Has a bonding company ever denied, paid out on, or revoked a bond for you?	—	—
14M. Do you have any unsatisfied judgments or liens against you?	—	—

15. SIGNATURE SECTION

Please Read Carefully

All signatures required on this Form U4 filing must be made in this section.

A "signature" includes a manual signature or an electronically transmitted equivalent. For purposes of an electronic form filing, a signature is effected by typing a name in the designated signature field. By typing a name in this field, the signatory acknowledges and represents that the entry constitutes in every way, use, or aspect, his or her legally binding signature.

15A INDIVIDUAL/APPLICANT'S ACKNOWLEDGMENT AND CONSENT
This section must be completed on all initial or Temporary Registration form filings.

15B FIRM/APPROPRIATE SIGNATORY REPRESENTATIONS
This section must be completed on all initial or Temporary Registration form filings.

15C TEMPORARY REGISTRATION ACKNOWLEDGMENT
This section must be completed on Temporary Registration form filings to be able to receive Temporary Registration.

15D INDIVIDUAL/APPLICANT'S AMENDMENT ACKNOWLEDGMENT AND CONSENT
This section must be completed on any amendment filing that amends any information in Section 14 (Disclosure Questions) or any Disclosure Reporting Page (DRP).

15E FIRM/APPROPRIATE SIGNATORY AMENDMENT REPRESENTATIONS
This section must be completed on all amendment form filings.

15F FIRM/APPROPRIATE SIGNATORY CONCURRENCE
This section must be completed to concur with a U4 filing made by another *firm* (IA/BD) on behalf of an individual that is also registered with that other *firm* (IA/BD).

15C. TEMPORARY REGISTRATION ACKNOWLEDGMENT

If an *applicant* has been registered in a *jurisdiction* or *self regulatory organization (SRO)* in the 30 days prior to the date an application for registration is filed with the Central Registration Depository or Investment Adviser Registration Depository, he or she may qualify for a Temporary Registration to conduct securities business in that *jurisdiction* or *SRO* if this acknowledgment is executed and filed with the Form U4 at the *applicant*'s *firm*.

This acknowledgment must be signed only if the *applicant* intends to apply for a Temporary Registration while the application for registration is under review.

I request a Temporary Registration in each *jurisdiction* and/or *SRO* requested on this Form U4, while my registration with the *jurisdiction*(s) and/or *SRO*(s) requested is under review;

I am requesting a Temporary Registration with the *firm* filing on my behalf for the *jurisdiction*(s) and/or *SRO*(s) noted in Section 4 (SRO REGISTRATION) and/or Section 5 (JURISDICTION REGISTRATION) of this Form U4;

I understand that I may request a Temporary Registration only in those *jurisdiction*(s) and/or *SRO*(s) in which I have been registered with my prior *firm* within the previous 30 days;

I understand that I may not engage in any securities activities requiring registration in a *jurisdiction* and/or *SRO* until I have received notice from the CRD or IARD that I have been granted a Temporary Registration in that *jurisdiction* and/or *SRO*;

I agree that until the Temporary Registration has been replaced by a registration, any *jurisdiction* and/or *SRO* in which I have applied for registration may withdraw the Temporary Registration;

If a *jurisdiction* or *SRO* withdraws my Temporary Registration, my application will then be held pending in that *jurisdiction* and/or *SRO* until its review is complete and the registration is granted or denied, or the application is withdrawn;

I understand and agree that, in the event my Temporary Registration is withdrawn by a *jurisdiction* and/or *SRO*, I must immediately cease any securities activities requiring a registration in that *jurisdiction* and/or *SRO* until it grants my registration;

I understand that by executing this Acknowledgment I am agreeing not to challenge the withdrawal of a Temporary Registration; however, I do not waive any right I may have in any *jurisdiction* and/or *SRO* with respect to any decision by that *jurisdiction* and/or *SRO* to deny my application for registration.

Date (MM/DD/YYYY)	**Signature of *Applicant***
10/29/2004	LAWRENCE EDWARD PENN
	Printed Name _____

15D. AMENDMENT INDIVIDUAL/APPLICANT'S ACKNOWLEDGMENT AND CONSENT

Date (MM/DD/YYYY)	**Signature of *Applicant***
10/29/2004	LAWRENCE EDWARD PENN
	Printed Name _____

15E. FIRM/APPROPRIATE SIGNATORY AMENDMENT REPRESENTATIONS

Date (MM/DD/YYYY)	**Signature of *Appropriate Signatory***
10/29/2004	LAWRENCE EDWARD PENN
	Printed Name _____

CRIMINAL DRP

No Information Filed

REGULATORY ACTION DRP

No Information Filed

CIVIL JUDICIAL DRP

No Information Filed

CUSTOMER COMPLAINT/ARBITRATION/CIVIL LITIGATION DRP

No Information Filed

TERMINATION DRP

No Information Filed

INVESTIGATION DRP

No Information Filed

BANKRUPTCY/SIPC/COMPROMISE WITH CREDITORS DRP

No Information Filed

BOND DRP

No Information Filed

JUDGMENT LIEN DRP

No Information Filed

TEAM BIOGRAPHIES

LAWRENCE E. PENN III, *Managing Director*

Mr. Penn, a military officer turned financier, was previously an Investment Banker at Lazard and a Portfolio Manager in the Private Equity Group of JP Morgan where he managed in excess of $500 million in committed and invested capital and served on the Advisory Boards of several private equity groups. Prior to joining JP Morgan, he worked in the Equities Division of JP Morgan Securities, Inc. He has also worked in the Alternative Asset Investment Division of the New York State Common Retirement Fund where he had responsibilities for analyzing and conducting due diligence on investments. Mr. Penn served as a Captain in the U.S. Army where he led logistics operations in Europe and managed one of the largest military communities in the United States Army European Command. He was awarded the Army Achievement Medal, the Army Commendation Medal, the United States Army General Douglas MacArthur Leadership Award (USAREUR), and the United States Army V Corps Distinguished Leader Award.

He earned a BS in Systems Engineering from the United States Military Academy at West Point, and MA in International Business and a MS in Management Information Systems from the University of Maryland European Division. Mr. Penn earned his MBA from Columbia University Graduate School of Business. Presently, he serves as a Member and Sponsor for several charities and foundations to include Save the Children, the Morgan Library, The Council on Foreign Relations, The Council on Urban Professionals, Votevets.org, Foreign Policy Association and the Museum of Modern Art.

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A. OLIVER WELSCH-LEHMANN, *Managing Director*

Mr. Welsch-Lehmann has sourced, monitored, and analyzed Private Equity and Secondary Market Transactions for clients in the United States and Europe. Previously, he was a Vice President at Ambac Corporation where he managed transactions and portfolios for large industrial corporations in the Utilities and Energy industries. Prior to this position, he was Investment Banker at Commerzbank for six years where he structured project and acquisition financing transactions for large Industrial and Power companies in the U.S. and in Europe. Before joining Commerzbank, Mr. Welsch-Lehmann spent over three years in various positions at Siemens AG in Germany. Mr. Welsch-Lehmann is an active member of the German-American Chamber of Commerce, the German Business Roundtable of New York, The Foreign Policy Association as well as The Royal Institute of International Affairs-Chatham House in London.

Mr. Welsch-Lehmann earned a BA in Finance and Accounting from FH Frankfurt in Frankfurt, Germany, an associate degree from the European Business School in Wiesbaden, Germany and a MBA in Finance from James Madison University.

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JEFFREY L. WESTFIELD, *Director*

Before joining The Camelot Group, Mr. Westfield worked in the Investment Banking Division of Morgan Stanley & Co., where he was involved in the completion of numerous mergers and acquisitions and acquisition-related financing transactions. Mr. Westfield assisted in the execution of billions of dollars in merger and acquisitions, financings, restructuring, and corporate finance transactions across a variety of industries in the United States and Western Europe. He has executed over $9.5 billion in secondary transactions over his career. Mr. Westfield previously served as distinguished and decorated military officer in the US Army, receiving numerous awards for performance and achievement. He served in a variety of capacities as a combat arms officer in USAREUR (United States Army Europe) and the US Army in the United States.

Mr. Westfield received his Master of Business Administration from Columbia Business School and his Bachelor of Science from the U.S. Military Academy at West Point.

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MICHAEL S. KESTER, *Director*

In the over 10 years he has been with the firm Mr. Kester has worked on transactions totaling in excess of $4.5 Billion. He has been responsible for sourcing, structuring, and executing secondary transactions as wellas constructing and maintaining the MIS and IT systems that have made The Camelot Group unique. Prior to The Camelot Group International he worked as a business analyst for a division of Westinghouse Electric Co.lBefore entering the corporatel world, Mr. Kester was a professional chef.

He holds an degree in culinary arts from the Culinary Institute of America, and has earned a BS in Computer Science (Cum Laude) from Columbia University in the City of New York. Mr. Kester is a member of Mensa and when time permits volunteers at local charities. Past commitments have included New York Cares and East Harlem Tutorial Program.

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PUTRA L. BRIDGE, *Associate*

Prior to joining the team, Ms. Bridge worked for Deutsche Bank as an analyst in Equity Capital Markets. She covered numerous sectors including Technology, Healthcare, Media, Consumer, and Real Estate, Gaming and Lodging (REGAL). She participated in 29 IPOs and follow-on offerings raising more than $5.1 billion for companies. Prior to Deutsche Bank, she held positions with Citigroup in their Sales and Trading division, and with The Camelot Group where she assisted in due diligence and the transfer of limited partner interests in private equity funds and purchases of portfolios of direct investments. She has assisted in the execution inlover $1.5 billion of secondary transactions.

After being honorably discharged from West Point due to injury, Ms. Bridge continued her education at the Universitylof Virginia where she earned a B.A. in Economics with a concentration in Finance, and a Minor in Mathematics. During her educational era, she made the Dean's List, was chosen for the West Point Leadership Award, and received the Wendy's Heisman Athletic Scholar Award. After graduating early from UVA, she spent four months volunteering in Thailand in the wake of the 2004 tsunami.

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PARSRAM DHANRAJ, *Associate*

Beforeljoining The Camelot Group, Mr. Dhanraj waslan investment professional at The Tokarz Group Advisers, a $500 million private equity fund. Mr. Dhanraj provided investment screening, deal sourcing, valuation of investment securities, and structuring investment transactions across various industries. Prior to that, Mr. Dhanraj was a credit analyst at Moody's Investors Service. He has covered banks, finance companies, and other specialty finance credits on the Financial Institutions Groupl ranging in size from $500 million to $650 billion. l Mr. Dhanraj has also analyzed collateralized debt obligations and collateralized loan obligations (CDOs/CLOs) on the Structured Finance team ranging in size from $200 million to $1 billion. Earlier, he has worked on the States/High Profile Ratings team on the Public Finance Group, where he developed a quantitative scorecard to provide municipal and state ratings.

Mr. Dhanraj received his Master of Business Administration from the Johnson School at Cornell University and his Bachelor of Science from the Carroll School of Management at Boston College.

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PARNELL J. CLITUS, *Director*

Mr. Clitus was previously head of fundraising for Syzygy Therapeutics from September 2010 to September 2011 where he marketed a healthcare private equity fund to global institutional investors. Prior to joining Syzygy, he worked in the business development group of Capital Dynamics from September 2005 to September 2010 where he was responsible for sourcing secondary transactions, structured solutions (portfolio re-financings, securitizations, structured investment vehicles), and global fundraising. Prior to CapitalIDynamics, Mr. Clitus worked for Paul Capital Partners from August 2002 to September 2005 where he was part of the investor relations team. He has also worked at Donaldson, Lufkin & Jenrette from February 1996 to January 2001 where he reported directly to the global head of business development and marketed alternative investment strategies to investors.

He earned a BA from the University of Pennsylvania in 1996.

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JON M. MCCARRY, *Director of Business Development APAC*

Mr. McCarry has invested in Private Equity and sourced deals and capital over ten years. He joined The Camelot Group International, LLC, in 2009 and is responsible for sourcing investment opportunities and capital throughout the Asia Pacific Region. Prior to joining The Camelot Group he was a Senior Group Internal Auditor at Nestlé where he conducted operational and financial audits across three continents and ten countries. Prior to this position, he was a Technical Advisor to a Hong Kong HNW family office where he managed a USD 50 M venture portfolio of U.S. and Chinese technology companies. During this time he was a board member of two companies and a board observer of two others. Mr. McCarry is an active member of the American Chamber of Commerce in Japan and sits on the Foreign Direct Investment and Banking & Finance committees.

Mr. McCarry earned a BS in Engineering and Physics from the University of North Texas, U.S.A., an International MBA from Vlerick Management School in Belgium, and completed the Private Equity Programme in China sponsored by Oxford University and Peking University.

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JONAS SCHAEFER, *Director of Business Development*

Mr. Schaefer joined The Camelot Group in May, 2012. He is currently serving in a Business Development and Introductory function, with an emphasis on the U.S. West Coast. Prior to joining The Camelot Group, he was with Diamond Edge Capital Partners, a boutique third-party marketing firm based in Newn York. At DECP, he worked with private equity groups raising assets. He raised in excess of U.S. $100 million while at DECP. Prior to Diamond Edge Capital, he worked with the World Pension Forum, a conference organizing business focused on bringing institutional investors and asset managers together. He served in a conference development function.

He earned a BA with an emphasis on the Dramatic Arts from the University of California, at Davis. Mr. Schaefer earned his MBA with a concentration in Finance from Golden Gate University. He is presently active in mental health causes.

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GREGORY P. AGIUS, *Director of Business Development*

Mr. Agius is the former Director of the World Trade Center in Geneva, Switzerland where he managed 25,000 square meters of business center office space with over 150 clients and served as the head of relationship management, marketing, membershipprogram, and the investment advisory arm. Prior to joining the World Trade Center Geneva, he worked in the Incident Management Division of Interoute Inc., one of Europe's most predominant telecommunications firms. He also worked in the Strategic Planning and Corporate Strategy Division of the International Telecommunications Union where he was a main point of contact for CEOs, Diplomats, and Heads of State for the ITU World Summit on the Information Society. Mr. Agius started his career in the Private Sector Fundraising Unit of the United Nations High Commissioner for Refugees where he was immersed in raising capital and worked on large-scale projects with numerous high-profile donors and foundations worldwide.

Mr. Agius earned a BA in International Relations with minor degrees is Psychology and Computer Science from Webster University in Geneva, Switzerland. Mr. Agius earned his MBA in Finance and Entrepreneurship from The Malcolm Baldrige School of Business at Post University. Presently, he is a Member of the British Swiss Chamber of Commerce as well as The Project Management Institute.

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REGISTRATION/REPORTING STATUS

OMB: 3235-0049

Primary Business Name: CAMELOT ACQUISITION SECONDARY OPPORTUNITIES MANAGEMENT, LLC	IARD/CRD Number: 160992

Registration Status

SEC/Jurisdiction	Registration Status	Effective Date
SEC	Approved	09/14/2012

Notice Filings

Investment adviser firms registered with the SEC may be required to provide to state securities authorities a copy of their Form ADV and any accompanying amendments filed with the SEC. These filings are called *"notice filings"*. Below are the states with which the firm you selected makes its notice filings. Also listed is the date the firm first became notice filed or registered in each state.

Not Currently Notice Filed

Exempt Reporting Advisers

Exempt Reporting Advisers are investment adviser firms that are not required to register as investment advisers because they meet registration exemptions under sections 203(l) and 203(m) of the Advisers Act of 1940. These advisers are required to submit reports to the SEC or jurisdictions. These reports are filed using Form ADV, but do not include all items contained in Form ADV that a registered adviser must complete. Below are the regulators with which a report is filed.

Not Currently an Exempt Reporting Adviser

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4308; January 8, 2016

ORDER CANCELLING REGISTRATIONS OF CERTAIN INVESTMENT ADVISERS PURSUANT TO SECTION 203(h) OF THE INVESTMENT ADVISERS ACT OF 1940

The investment advisers whose names appear in the attached Appendix, hereinafter referred to as the registrants, being registered as investment advisers pursuant to section 203 of the Investment Advisers Act of 1940; and

On December 2, 2015, a notice of intention to cancel registrations of certain investment advisers, including the registrants, was issued (Investment Advisers Act Release No. 4285). The notice gave interested persons an opportunity to request a hearing and stated that an order cancelling the registrations would be issued unless a hearing was ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The Commission having found that the registrants are no longer in existence, are not engaged in business as investment advisers, or are prohibited from registering as investment advisers under section 203A of the Investment Advisers Act of 1940; accordingly

IT IS ORDERED, pursuant to section 203(h) of the Investment Advisers Act of 1940, that the registration of each of the said registrants be, and hereby is, cancelled.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Brent J. Fields
Secretary

APPENDIX:

801-72059	SOLOMON HENDRIX & CO.
801-9488	MAURY WADE & COMPANY
801-71810	BISHOP ASSET MANAGEMENT, LLC
801-69144	SAFE HAVEN ADVISORS, INC.
801-70781	WANGER OMNIWEALTH, LLC
801-70401	MIDWEST MORTGAGE ANALYTICS
801-70533	ALPHAMETRIX, LLC
801-71189	MORGAN FINCH, LLC
801-77520	ACCESS STRATEGIC ADVISORY GROUP, LLC
801-66662	ARNOTT CAPITAL PTY LTD
801-71208	KPDN INC.
801-69648	FUTURE VALUE CONSULTANTS LIMITED
801-65517	FGS CAPITAL LLP
801-71188	CENTINELA CAPITAL PARTNERS, LLC
801-72117	MAP ALTERNATIVE ASSET MANAGEMENT COMPANY, LLC
801-69898	INSIGHT ONSITE STRATEGIC MANAGEMENT LLC
801-77747	NEW SOURCE MEDIA ADVISOR, LLC
801-70916	CMA ADVISORY GROUP, LLC
801-78409	CASICO, LLC
801-78848	RCG PARTNERS
801-72000	STAMBOULI MANAGEMENT CORP.
801-71089	OPTIMIZE CAPITAL
801-71439	BATTENKILL CAPITAL MANAGEMENT, INC.
801-78049	EXCALIBUR MANAGEMENT, LLC
801-61973	MEDITRON ASSET MANAGEMENT, LLC
801-77143	CAMELOT ACQUISITION SECONDARY OPPORTUNITIES MANAGEMENT, LLC
801-63963	HARPER ASSOCIATES, LLC
801-28490	FX CONCEPTS, LLC
801-76567	CUSTOM FINANCIAL SERVICES, LLC
801-8984	VALLEY FORGE MANAGEMENT CORP
801-70460	PAUL-ELLIS INVESTMENT ASSOCIATES
801-77931	YORKSHIRE CAPITAL MANAGEMENT LLC
801-77496	WILLIAMS CAPITAL STRATEGIES LLC
801-72743	NICHOLS CONSULTING
801-62524	PURCELL ADVISORY SERVICES, LLC
801-72299	VASQUEZ & CO.

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
NEW YORK REGIONAL OFFICE
BROOKFIELD PLACE, 200 VESEY STREET, SUITE 400
NEW YORK, NEW YORK 10281-1022

WRITER'S DIRECT DIAL LINE
(212) 336-0589

November 27, 2018

Via UPS Overnight Delivery

Brent Fields, Secretary
Office of the Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Mail Stop 1090
Washington D.C. 20549

Re: **In the Matter of Lawrence E. Penn, III,**
Admin. Proc. File No. 3-18288

Dear Mr. Fields:

Please find enclosed an original and three copies of (1) the Division of Enforcement's Motion for Summary Disposition Against Respondent and Supporting Memorandum of Law, dated November 27, 2018 (the "Motion"); and (2) the Declaration of Karen E. Willenken, dated November 27, 2018, and all exhibits attached thereto.

Respectfully submitted,

Howard A. Fischer
Senior Trial Counsel

cc: Hon. James E. Grimes (by UPS and Email)
Lawrence E. Penn (by UPS and Email)