

2. Specifically, West Mountain directed two funds that it managed, West Mountain Partners, LP (“WMP”) and West Mountain Ltd. (“WM Ltd.”) (collectively the “West Mountain Funds”), to make direct investments into subsidiaries of two privately held companies, one of which was striving to manufacture aircraft (the “Aircraft Company”) and another striving to develop petroleum emulsification products (the “Petroleum Company”). As was prearranged, those investments were immediately converted into shares of the respective parent companies.

3. At the time, the Aircraft Company and the Petroleum Company had minimal revenues, very limited operations, and a minimal number of employees.

4. Nevertheless, Defendants recorded in the financial records for WMP and WM, Ltd. a collective unrealized gain of \$18.6 million based on the conversion, thereby allowing Defendants to collect approximately \$900,000 in advisory and performance fees.

5. In valuing the unrealized gains, Defendants purportedly relied on independent valuations by a third party. Yet, by January 2017, Defendants knew that those valuations, which relied on wildly optimistic assumptions proffered by the Aircraft Company and Petroleum Company, expressly cautioned that they

“should not be regarded as an independent valuation” and did not “constitute an opinion of value.”

6. In 2017, West Mountain’s auditors advised Defendants that the valuation methodology used to calculate the unrealized gains was unreasonable and inappropriate.

7. Even after seeing the disclaimer in the valuation reports, and hearing from the auditors, Defendants continued to (1) tell fund investors that a third party had conducted an independent valuation of the Aircraft and Petroleum Companies and (2) charge fees based in part on these valuations.

8. In 2017, Defendants also misrepresented that the Petroleum Company was actively negotiating with a nationally known petroleum company to assist that company’s refinery with its desulfurization process, suggesting that the anticipated agreement would result in massive gains for the Petroleum Company and its investors.

9. In fact, Defendants knew or were reckless in not knowing that such negotiations never existed.

10. As a result of their conduct, Defendants violated Sections 206(1), 206(2), and 206(4) of the Investment Advisers Act of 1940 (“Advisers Act”) [15

U.S.C. §§ 80b-6(1), (2) and (4)] and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8].

JURISDICTION AND VENUE

11. This Court has jurisdiction over this action pursuant to Section 214 of the Investment Advisers Act of 1940 (“Advisers Act”) [15 U.S.C. § 80b-14].

12. The Defendants, directly or indirectly, made use of the mails or means and instrumentalities of interstate commerce in connection with the acts, practices and courses of business alleged herein, certain of which occurred within the Northern District of Georgia.

13. Venue in this district is proper under Section 214 of the Advisers Act [15 U.S.C. § 80b-14] because defendants reside in and transact business in this district and certain of the acts, practices, transactions and courses of business constituting the violations alleged herein occurred within the Northern District of Georgia.

THE DEFENDANTS

14. **Paul Alar** resides in Atlanta, Georgia. He is the sole owner, member, principal, employee, and managing director of West Mountain, LLC.

15. **West Mountain, LLC** is a Delaware limited liability company with its primary place of business in Atlanta, Georgia. During the events described

herein, Alar operated through West Mountain in rendering investment advice to the two investment funds described below.

OTHER RELEVANT ENTITIES

16. West Mountain Partners, LP is a pooled investment vehicle structured as a Delaware limited partnership. WM Partner's primary place of business in Atlanta, Georgia. During the events described herein, it had approximately 60 investors.

17. West Mountain Ltd. is a pooled investment vehicle structured as a British Virgin Islands company listing offices in Road Town, Tortola, BVI. During the events described herein, it had approximately 41 investors.

18. The Aircraft Company is a privately-held, Salt Lake City, Utah-based corporation that, since at least 1990, has purportedly sought to develop and commercialize several lines of gyrocopter and gyrodyne aircraft.

19. The Petroleum Company is a privately-held, Reno, Nevada-based corporation that has purportedly sought to develop several fuel treatment technologies, including a low cost method of reducing sulfur content in fuels.

FACTS

Background of West Mountain LLC and the West Mountain Funds

20. Since 2002, West Mountain has operated as an investment adviser.
21. During the time of the conduct at issue, Alar was West Mountain's sole owner, member, and the only person with authority to act on behalf of West Mountain.
22. During the time of the conduct at issue, Alar controlled West Mountain's bank accounts.
23. During the time of the conduct at issue, Alar made all investment decisions made on behalf of West Mountain for the West Mountain Funds.
24. West Mountain and Alar received two forms of compensation for managing the West Mountain Funds: a management fee and a performance fee (also referred to as incentive allocation). Both of these fees were, at least in part, tied to the value of the assets held by those funds. Thus, when the value of the assets held by the West Mountain Funds increased, the fees to which West Mountain and Alar were entitled also increased.

**The West Mountain Funds Invest in
the Aircraft and Petroleum Companies**

25. Prior to 2016, West Mountain and Alar operated the West Mountain Funds as a “fund of funds”, meaning that the West Mountain Funds invested in other funds.

26. In 2016, however, West Mountain and Alar changed course and directed the West Mountain Funds to make direct investments, totaling \$7.3 million, into newly created subsidiaries of the Aircraft Company (\$5.3 million by WMP) and the Petroleum Company (\$1.7 million by WMP and \$300,000 by WM, Ltd.).

27. As was prearranged before the investments in the subsidiaries were completed, West Mountain and Alar promptly converted these investments into shares of the respective parent companies.

28. In January 2017, after the investments in the subsidiaries had been converted to direct investments in the Aircraft and Petroleum Companies, Alar was appointed to the board of directors of both companies.

29. At the direction of Alar and West Mountain, WMP recorded in its financial records a \$10.6 million unrealized gain from the conversion of its investment into shares of the Aircraft Company, and a \$6.8 million unrealized gain

as a result of the conversion of its investment into shares of the Petroleum Company.

30. At the direction of Alar and West Mountain, WM, Ltd. recorded in its financial records a \$1.2 million unrealized gain from the conversion of its investment into shares of the Petroleum Company.

31. Post-conversion, the direct investments in the Aircraft and Petroleum Companies accounted for approximately 44 percent of WMP's total assets and 22 percent of WM Ltd.'s total assets.

32. As a result of recording these unrealized gains, West Mountain and Alar claimed to have earned an additional \$1.1 million in performance fees from the West Mountain Funds, and collected approximately \$570,000 of such fees in January 2017.

33. As a result of recording the unrealized gains, West Mountain and Alar also collected approximately \$330,000 of additional management fees.

34. By the time WMP and WM, Ltd. recorded the unrealized gains relating to their investment in the Petroleum Company, the debt holder for that company or its predecessors had foreclosed on that company's assets and the company had virtually no revenues, operations or employees.

35. By the time WMP and WM, Ltd. recorded the unrealized gains relating to their investment in the Aircraft Company, that company had failed to get the Federal Aviation Administration to certify its gyrocopter design and had ceased selling its home-built aircraft kits and had virtually no revenues, operations or employees.

Defendants' Purported Reliance on Independent Third Party Valuations

36. In determining the amount of unrealized gains reported by the West Mountain Funds, West Mountain and Alar supposedly relied on valuation reports that a third party prepared in January and February 2014.

37. These third party valuations, which were scenario analyses conducted for internal purposes only, calculated the potential value of the Aircraft Company and Petroleum Company based on cash flow projections provided by those companies that rested on many wildly optimistic or dubious assumptions, which are summarized below.

38. Unlike actual independent valuations, however, the third party did not test the validity or reasonableness of the assumptions used in the reports.

39. Since the third party did nothing to verify the reasonableness or accuracy of the assumptions, both valuation reports cautioned "to avoid possible confusion, we wish to highlight that the findings of this report cannot and should

be not be regarded as an independent valuation.” Each report further stated that “this exercise is not intended to form, and does not constitute a formal opinion of value.” The third party noted in each report that it had not “performed legal authentication of the certificates provided nor verified the information and assumptions supplied to [it].”

40. Alar received and read the third party reports sometime in January 2017.

41. After that date, Alar and West Mountain, knew that the third party had not conducted an independent valuation of the Aircraft and Petroleum Companies.

42. However, in an investor update on October 16, 2017, and in a separate investor update on January 25, 2018, and also in an in-person meeting on September 22, 2017, Alar and West Mountain represented to fund investors that a third party had conducted independent, third-party valuations of the Aircraft and Petroleum Companies.

43. Alar also knew that many of the assumptions relied upon by the third party had failed to materialize or were not realistic.

44. For example, the valuation report for the Aircraft Company assumed the success of a proposed joint-venture in China that involved allotments of more

than \$7 billion in coal. However, Alar knew that the joint venture had been terminated in June 2014.

45. The valuation report for the Aircraft Company also assumed the development and certification of commercial aircraft and the successful sale of thousands of the newly designed aircraft around the world and to the United States' military within 20 years.

46. But this assumption, which was estimated to cost hundreds of millions of dollars, was predicated in part on the Aircraft Company obtaining more than \$180 million in financing in addition to the successful realization of the coal allotments.

47. Alar, as a director of the Aircraft Company with access to its financial records, knew or should have known at the time of the 2017 and 2018 investor updates that the Aircraft Company had not been able to obtain the financing.

48. Likewise, in the report for the Petroleum Company, the third party assumed the successful development and launch of fuel products to be distributed by as-of-yet unknown partners in countries around the globe over an 11 year period. However, as of January 2017, none of the partnerships had been developed or fuel products sold.

49. Although investors asked Alar for the third party reports, he refused to provide them, forcing investors to rely upon his representations about what the reports said.

50. In June and July 2017, West Mountain's independent audit firm issued disclaimed opinions to the West Mountain Funds due to the valuation of the direct investments in the Aircraft Company and Petroleum Company in their 2016 financial statements.

51. The auditor indicated that it had evaluated the procedures established by West Mountain to estimate the fair values of the direct investments and believed they were unreasonable.

52. The auditor subsequently issued letters to West Mountain and Alar stating that the valuation approach was not appropriate, was inconsistent with U.S. Generally Accepted Accounting Principles, and represented a material weakness in the funds' internal controls.

53. Although Alar and West Mountain knew by January 2017 that the third party report was not truly an independent valuation and knew by June 2017 that West Mountain's auditors had determined that the valuation methodology was not appropriate, Alar and West Mountain continued throughout 2017 and into 2018

to collect fees based in part on the inflated values of the Aircraft and Petroleum Companies.

54. The increased fees that Alar collected and continued to collect on the unreasonable valuation of the funds enabled him to meet his increased personal expenses.

55. Specifically, around this time, Alar faced an increase of several thousand dollars per month in his personal expenses, due largely to alimony that that he would be required to pay in connection with the dissolution of his marriage.

56. The amount that Alar needed in order to meet those ongoing monthly payments to his ex-wife was approximately the same as the amount by which his fees increased after the conversion transaction.

Additional Misrepresentations about the Petroleum Company

57. On October 20, 2016, Alar and West Mountain told the West Mountain Funds that commercialization of the Aircraft and Petroleum Companies would be an important milestone for both companies and result in significant increases in valuations and paths to liquidity.

58. On April 18, 2017, Alar represented to investors that commercialization of both companies' technology was "imminent."

59. To support the claim of imminent commercialization of the Petroleum Company's technology, on July 13, 2017, Alar issued a quarterly update to investors stating that negotiations between the Petroleum Company and Marathon Oil Corporation ("Marathon"), a nationally known petroleum and natural gas exploration and production company, were in "full swing."

60. In that update, Alar represented that one of Marathon's refineries was at full capacity and was looking to the Petroleum Company to provide desulfurization services. Alar stated that there was an expectation of completing the discussions and testing in August or September 2017.

61. None of that was true and Alar had no basis for making these statements.

62. In September 2017, Alar made additional representations in communications to fund investors that suggested a deal with Marathon was imminent. Specifically, he told investors that Marathon had explained what the next steps in the negotiation would be, including additional testing and review, that a contract with Marathon would be a "bankable event" and that the deal could be used for additional financing.

63. Alar had no basis for making these statements, as, at the time, there were no ongoing negotiations between Marathon and the Petroleum Company.

64. In fact, in the summer of 2017, the Petroleum Company had approached a Marathon refinery and been told that the refinery was not interested in the Petroleum Company's proposal.

65. As result of these misrepresentations, investors were deprived of material information with which to make investment decisions and continued to pay inflated performance and management fees.

COUNT I – FRAUD

**Violations of Section 206(1) of the Advisers Act
[15 U.S.C. § 80b-6(1)]**

(Both Defendants)

66. Paragraphs 1 through 65 are hereby re-alleged and are incorporated herein by reference.

67. Defendants West Mountain and Alar, acting as investment advisers, by use of the mails or means or instrumentalities of interstate commerce, directly and indirectly employed devices, schemes, and artifices to defraud clients and prospective clients, all as more particularly described above.

68. Defendants West Mountain and Alar knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to

defraud. In engaging in such conduct, Defendants acted with scienter, that is, with intent to deceive, manipulate or defraud or with a severely reckless disregard for the truth.

69. By reason thereof, Defendants West Mountain and Alar violated and, unless enjoined, will continue to violate Section 206(1) of the Advisers Act [15 U.S.C. § 80b-6(1)].

COUNT II – FRAUD

**Violations of Sections 206(2) of the Advisers Act
[15 U.S.C. § 80b-6(2)]**

(Both Defendants)

70. Paragraphs 1 through 65 are hereby re-alleged and are incorporated herein by reference.

71. Defendants West Mountain and Alar, acting as investment advisers, by use of the mails or means or instrumentalities of interstate commerce, directly and indirectly engaged in transactions, practices, and courses of business which operated as a fraud and deceit upon clients and prospective clients, all as more particularly described above.

72. By reason thereof, Defendants West Mountain and Alar violated and, unless enjoined, will continue to violate Section 206(2) of the Advisers Act [15 U.S.C. § 80b-6(2)].

COUNT III – FRAUD

**Violations of Section 206(4) of the Advisers Act and Rule 206(4)-8 Thereunder
[15 U.S.C. § 80b-6(4) and 17 C.F.R. § 275.206(4)-8]**

(Both Defendants)

73. Paragraphs 1 through 65 are hereby re-alleged and are incorporated herein by reference.

74. By engaging in the conduct described above, Defendants West Mountain and Paul Alar, while acting as investment adviser to a pooled investment vehicle, by use of the means and instrumentalities of interstate commerce and of the mails,

a. made untrue statements of material fact and omitted to state material facts necessary to make statements made, in the light of the circumstances under which they were made, not misleading, to investors and prospective investors in the pooled investment vehicles; and

b. engaged in acts, practices, and courses of business that were fraudulent, deceptive, and manipulative with respect to investors and prospective investors in pooled investment vehicles, as more particularly described above.

75. By reason thereof, Defendants West Mountain and Paul Alar violated and, unless enjoined, will continue to violate Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder [15 U.S.C. § 80b-6(4) and 17 C.F.R. § 275.206(4)-8].

PRAYER FOR RELIEF

WHEREFORE, Plaintiff SEC respectfully prays for:

I.

Findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, finding that Defendants committed the violations alleged.

II.

A permanent injunction enjoining Defendants, their agents, servants, employees, and attorneys from violating, directly or indirectly, Sections 206(1), (2), and (4) of the Advisers Act and Rule 206(4)-8 thereunder.

III.

An order requiring the disgorgement by Defendants of all ill-gotten gains, with prejudgment interest, to affect the remedial purposes of the federal securities laws.

IV.

An order pursuant to Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)] imposing civil penalties against Defendants.

V.

Such other and further relief as this Court may deem just, equitable, and appropriate in connection with the enforcement of the federal securities laws and for the protection of investors.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, the Commission demands trial by jury in this action of all issues so triable.

Dated: July 18, 2019

Respectfully submitted,

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