UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,	
Plaintiff,	
v.	**Case No.:**
VINEET KALUCHA, GEORGE PALATHINKAL, AND APHELION FUND MANAGEMENT, LLC	**ECF Case**
	Jury Trial Demanded
Defendants.	

COMPLAINT

1. Plaintiff, the United States Securities and Exchange Commission ("SEC" or "Commission"), brings this emergency enforcement action against defendants Vineet Kalucha ("Kalucha"), George Palathinkal ("Palathinkal"), and Aphelion Fund Management LLC ("Aphelion Management"), an investment adviser located in New York City, and alleges for its complaint against them as follows:

2. Aphelion Management serves as the investment adviser and general partner for two unregistered hedge funds, Aphelion US Fund LP ("Aphelion US Fund") and Aphelion Offshore Fund Ltd. ("Aphelion Offshore Fund"), which will be collectively referred to herein as the "Aphelion Funds" or "Funds." As of February 2014, Aphelion Management had nearly $8 million in assets under management, contributed by approximately nine investors.

3. Since 2009, Kalucha has been managing investor funds through various investment vehicles using a proprietary investment model that he developed.

4. In 2012, Kalucha formed Aphelion Management, and in 2013, Kalucha and Palathinkal launched the Aphelion Funds. Kalucha serves as the majority owner, managing partner, and Chief Investment Officer for Aphelion Management. Palathinkal serves as a general partner and Chief Financial Officer for the firm.

5. In late 2013, Kalucha altered the report of an outside audit firm that Aphelion Management had engaged to review the performance of an investment account managed by Kalucha. Among other things, Kalucha altered the audit firm's report so that the report showed positive investment performance for the account, when in fact the actual report from the audit firm showed negative performance. Palathinkal became aware of Kalucha's alteration soon after it occurred. After Palathinkal learned about the alteration, Kalucha, Palathinkal, and Aphelion Management distributed to prospective investors in the Aphelion Funds false performance statistics different from the actual performance statistics in the audit firm's report. Kalucha also fabricated emails purportedly from the audit firm and sent the fabricated emails to an employee of Aphelion Management.

6. Additionally, Kalucha has misused, and continues to misuse, investor funds invested into Aphelion Management itself. As of March 2014, Aphelion Management has raised approximately $1.5 million invested into Aphelion Management, contributed by approximately seven investors. Kalucha and Palathinkal represented that funds invested into Aphelion Management would be used for the firm's operating expenses. Instead, Kalucha has misused a substantial portion of the proceeds for his

personal benefit, including for his luxury car payments and for payment of a personal court judgment and settlements unrelated to Aphelion Management or the Aphelion Funds.

7. Kalucha and Palathinkal also have lied to prospective investors about the amount of Aphelion Management's assets under management. While Kalucha and Palathinkal told investors at various points in 2013 that Aphelion Management had $15 million in assets under management or more, in fact Aphelion Management never had more than $5 million in assets under management at any point in 2013.

8. Through the activities alleged in this Complaint, the Defendants, directly or indirectly, have engaged in transactions, acts, practices or courses of business which constitute violations of Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)] and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] promulgated thereunder.

9. Additionally, Kalucha and Aphelion Management, directly or indirectly, have engaged in transactions, acts, practices, and courses of business which constitute violations of Sections 206(1), 206(2) and 206(4) of the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. § 80b-6(1), 80b-6(2) and 80b-6(4)], and Rule 206(4)-8 promulgated thereunder [17 C.F.R. 275.206(4)-8], and Palathinkal aided and abetted Aphelion Management's violations of these provisions.

10. The SEC brings this action to restrain and enjoin such transactions, acts, practices and courses of business pursuant to Sections 21(d) and 20(e) of the Exchange

Act [15 U.S.C. § 78u(d) and § 78aa], Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)], and Section 209(d) of the Advisers Act [15 U.S.C. § 80b-9(d)].

11. The SEC seeks permanent injunctive relief against the Defendants to enjoin them from future violations of the federal securities laws, disgorgement of the Defendants' ill-gotten gains plus prejudgment interest thereon, and the imposition of civil penalties against the Defendants.

12. The SEC brings this action on an emergency basis to stop the Defendants from raising additional money from investors based on false and misleading representations, to stop Kalucha from taking amounts from Aphelion Management to pay for his personal needs and expenses, to protect and preserve whatever assets remain in Aphelion Management and the Aphelion Funds, to ensure the orderly liquidation of these entities, and to ensure the equitable distribution of the assets of Aphelion Management and the Aphelion Funds to investors.

13. Notwithstanding their blatant violations of the federal securities laws, Kalucha and Palathinkal remain in control of Aphelion Management and the Aphelion Funds, while Aphelion Management's sole other employee besides Kalucha and Palathinkal departed in recent months.

14. The emergency relief sought includes: (a) temporary and preliminary injunctive relief; and (b) the entry of an asset freeze over Aphelion Management's and the Aphelion Funds' assets until a resolution is reached over how to distribute these entities' remaining assets to investors.

JURISDICTION AND VENUE

15. The Commission brings this action pursuant to the authority conferred by Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)], Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)] and Section 209(d) of the Advisers Act [15 U.S.C. § 80b-9(d)], seeking to restrain and enjoin permanently the Defendants from engaging in the acts, practices, transactions and courses of business alleged herein, and for such other equitable relief as may be appropriate or necessary for the benefit of investors.

16. The Commission also seeks a final judgment ordering the Defendants to disgorge their ill-gotten gains and pay prejudgment interest thereon, and ordering the Defendants to pay civil money penalties pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], and Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)].

17. This Court has jurisdiction over this action, and venue lies in this District, pursuant to Sections 20(d) and 22(a) of the Securities Act [15 U.S.C. §§ 77t(d) and 77v(a)], Sections 21(d) and 27 of the Exchange Act [15 U.S.C. §§78u(d) and 78aa], and Section 214 of the Advisers Act [15 U.S.C. § 80b-14]. The Defendants, directly or indirectly, singly or in concert, have made use of the means or instruments of transportation or communication in, and the means or instrumentalities of, interstate commerce, or of the mails, in connection with the transactions, acts, practices, and courses of business alleged herein. Some of these transactions, acts, practices and courses of business occurred in the Southern District of New York, where each of the Defendants transacted business during the relevant period and where certain investors in the Aphelion Funds and Aphelion Fund Management reside. Defendant Palathinkal

maintains a residence in this district, and Aphelion Management's offices currently are also located within this district.

18. Defendants have, directly and indirectly, made, and are making, use of the mails, and of the means and instrumentalities of interstate commerce, in connection with the transactions, acts, practices and courses of business alleged in this Complaint.

19. There is a reasonable likelihood that Defendants will, unless enjoined, continue to engage in the transactions, acts, practices and courses of business set forth in this Complaint, and transactions, acts, practices and courses of business of similar purport and object.

THE DEFENDANTS

20. **Vineet Kalucha**, age 49, resides in Washington, D.C. Kalucha is the founder, managing partner, and Chief Investment Officer of Aphelion Management.

21. **George Palathinkal**, age 53, resides in New York, New York and Singapore. Palathinkal is a general partner and the Chief Financial Officer of Aphelion Management.

22. **Aphelion Fund Management LLC** is a limited liability company organized under the laws of Delaware. Its principal place of business has been located in New York, New York since approximately November 2013, prior to which it was located in Virginia. Since 2013, it has been the investment adviser and general partner of the private investment funds Aphelion US Fund LP and Aphelion Offshore Fund Ltd. In 2013, it also became the investment adviser for a new separately managed account.

OTHER PARTIES

23. **Aphelion US Fund LP** is a Delaware limited partnership formed in 2013.

It is a hedge fund marketed to individual and institutional investors.

24. **Aphelion Offshore Fund Ltd.** is a Cayman Islands limited partnership formed in 2013. It is a hedge fund marketed to individual and institutional investors.

FACTS

A. Kalucha and Palathinkal Start the Aphelion Funds

25. Prior to 2009, Kalucha developed an investment model utilizing proprietary statistical and probability based trend-following strategies. From 2009 through mid-2013, Kalucha employed his investment model in managing individual investment accounts and in managing a hedge fund which closed prior to the formation of the Aphelion Funds.

26. In 2013, Kalucha, Palathinkal, and Aphelion Management began soliciting new investors to invest in the Aphelion Funds. The Funds begin trading on Kalucha's investment model in July 2013. Additionally, beginning in approximately September 2013, Aphelion Management began managing a new separately managed account.

27. In approximately November 2013, Kalucha and Palathinkal moved the offices of Aphelion Management to New York, New York, from suburban Washington D.C. Kalucha regularly travels to and conducts the business of Aphelion Management in New York City.

28. During the period May 2013 through the present, Kalucha, Palathinkal, and Aphelion Management have raised nearly $8 million from approximately eight different investors for investments into the Aphelion Funds, and, in one case, for an investment into a separate account managed by Aphelion Management. Among other things, in approximately February 2014, Kalucha, Palathinkal and Aphelion Management raised $3

million from a single investor for an investment in the Aphelion US Fund.

29. Kalucha and Aphelion Management created various marketing materials to solicit new investors in the Aphelion Funds and to update existing investors on the purported performance of their investment. These marketing materials include a marketing brochure and so-called monthly "tear sheets," which purport to contain current and historical performance statistics for the Aphelion Funds and for other investment vehicles which implemented Kalucha's investment model prior to the formation of the Aphelion Funds. Palathinkal reviews and approves all marketing materials before Aphelion Management distributes them to investors. Palathinkal has personally distributed the marketing materials to some investors and has served as the primary point of contact for some investors.

B. Kalucha Alters an Audit Firm's Report

30. In approximately August 2013, Aphelion Management engaged Audit Firm A, a major accounting firm, to perform a review of the investment performance statistics for an investment account owned by Client 1, who was a client of Kalucha's. Kalucha managed Client 1's investment account using the same proprietary investment model that he employs at Aphelion Management. Audit Firm A agreed to perform a review of the investment performance of Client 1's account during the period April 2012 through June 2013.

31. In approximately September 2013, Audit Firm A completed its review of the investment performance statistics for Client 1's investment account for the period April 2012 through June 2013. In late September 2013, Audit Firm A provided Aphelion Management and Kalucha with its review report for the performance statistics for Client's

1's investment account.

32. Audit Firm A's review report showed that during the period April 2012 through June 2013, the cumulative return for Client 1's investment account was negative 3.08%, net of fees, or negative 0.66% before fees. This meant that during the period April 2012 through June 2013, Kalucha's investment model had produced a negative 3.08% return, net of fees, or negative 0.66% before fees.

33. Shortly after receiving Audit Firm A's review report, Kalucha fraudulently altered the report.

34. First, Kalucha altered Audit Firm A's review report so that the report covered the period January 2012 through June 2013, instead of the actual April 2012 through June 2013 period covered by the actual report.

35. Second, Kalucha altered the report so that the report showed a positive cumulative return of over 30%, net of fees, for the investment account during the period January 2012 through June 2013, versus the negative 3.08% return, net of fees, reflected on the actual report, for the period April 2012 through June 2013. Kalucha altered the performance statistics by changing the monthly net of fees returns in the actual report for each month during the period April 2012 through June 2013, as well as adding purportedly positive monthly net of fees returns in the report for January 2012 through March 2012, a period not covered by the actual report. The following table reflects Kalucha's alterations to the performance statistics in Audit Firm A's review report:

Date	Actual Report from Audit Firm	Altered Report of Audit Firm
	Monthly Net of Fees Return %	Monthly Net of Fees Return %
January 31, 2012	N/A	10.59%
February 28, 2012	N/A	4.46%
March 31, 2012	N/A	3.44%
April 30, 2012	0.26%	0.78%
May 31, 2012	(15.02)%	(13.01)%
June 30, 2012	3.55%	3.36%
July 31, 2012	(1.70)%	(1.21)%
August 31, 2012	1.41%	2.59%
September 30, 2012	(1.70)%	2.08%
October 31, 2012	(5.71)%	(3.42)%
November 30, 2012	2.56%	3.97%
December 31, 2012	3.33%	0.46%
January 31, 2013	4.41%	3.17%
February 28, 2013	(3.43)%	2.34%
March 31, 2013	2.43%	1.61%
April 30, 2013	5.46%	5.98%
May 31, 2013	5.47%	4.34%
June 30, 2013	(2.34)%	0.87%

36. Third, Kalucha altered the report so that the report stated that Kalucha separately managed another eighteen accounts for different investors. This statement was false and was not in the actual report from the audit firm.

C. The Defendants Provide Investors with the Altered Audit Firm Report and With False 2012 and 2013 Performance Statistics

37. After altering the performance statistics in the audit firm's report, Kalucha, in September 2013, emailed the altered report to an Aphelion Management employee ("Employee A"), while knowing, or being reckless in not knowing, that Employee A would provide the altered report and the false performance statistics therein to prospective investors.

38. When Kalucha sent the altered report to Employee A in September 2013, he

attached it to a fabricated email from Audit Firm A. The fabricated email was Kalucha's alteration of an email previously sent by Audit Firm A. Kalucha fabricated an email to appear that it was from the engagement partner from Audit Firm A. The fabricated email stated in pertinent part: "Vineet, I sincerely apologize for the delay, the review department got caught up in couple of other matters on Friday. I have assurances from their senior partner that it will be issued this afternoon." The engagement partner from Audit Firm A did not write this email. Instead, Kalucha took a prior email from the engagement partner, changed the content and date of it, and forwarded the fabricated email to Employee A.

39. Subsequent to receiving the fabricated email and altered review report from Kalucha, Employee A provided the report to several prospective investors without knowing that Kalucha had altered the report. At least one of these individuals subsequently invested in the Aphelion Funds based in part on the false performance statistics in the report.

40. Additionally, beginning in September 2013, Kalucha incorporated the false performance statistics from the altered report into Aphelion Management's marketing materials. Kalucha then distributed, or caused Aphelion Management to distribute, these marketing materials with false performance statistics for Kalucha's investment model. Several individuals invested in the Aphelion Funds based in part on the false performance statistics in Aphelion Management's marketing materials.

41. In October 2013, Audit Firm A became aware that Kalucha had sent an altered review report from the audit firm to prospective investors. Upon learning of Kalucha's alteration, the audit firm wrote a letter to Kalucha and demanded, among other things,

that Kalucha cease and desist from any further distribution of any reports by Audit Firm A, identify all recipients of the altered report, notify all recipients of the altered report that the report was incorrect and could not be relied upon, and certify to Audit Firm A that Kalucha had completed these actions. Palathinkal received the letter in October 2013 and forwarded it by email to Kalucha.

42. Simultaneously, in October 2013, due to Kalucha's alteration of Audit Firm A's report, Audit Firm A sent another letter to Kalucha in which Audit Firm A withdrew from its engagement by Aphelion Management and withdrew its opinion on the performance statistics for Client 1's investment account. Palathinkal received this letter in October 2013 and forwarded this letter to Kalucha.

43. In late October 2013, Kalucha responded to Audit Firm A's cease-and-desist letter and falsely certified, among other things, that he had notified all recipients of the altered review report that the report was incorrect and could not be relied upon. In fact, Kalucha had not so notified the recipients of the altered report.

44. Despite Audit Firm A's October 2013 cease-and-desist demand and withdrawal of its opinion, Kalucha, Palathinkal, and Aphelion continued to use false performance statistics for the time period covered by Audit Firm A's report. Kalucha, Palathinkal, and Aphelion Management used false performance statistics for the period April 2012 through June 2013 in the Fund's marketing materials during October 2013 and November 2013.

45. In December 2013, Kalucha fabricated an email, purportedly from an accounting manager at Audit Firm A, which purported to attach another review report from Audit Firm A. In fact, as noted above, Audit Firm A had resigned in October 2013,

and the fabricated email attached another altered review report by Kalucha. Kalucha then forwarded the fabricated email and the altered review report to Employee A.

46. The fabricated email that Kalucha sent to Employee A in December 2013 was Kalucha's alteration of an email previously sent by Audit Firm A. Kalucha fabricated an email to appear that it was from the manager from Audit Firm A. The fabricated email stated in pertinent part: "Sorry I got tied up yesterday and could not get back to you. I am awaiting final confirmation from Mike this morning and will email the report as soon as I hear from him." The manager from Audit Firm A did not write this email. Instead, Kalucha took a prior email from the manager, changed the content and date of it, and forwarded the fabricated email to Employee A.

47. In the altered review report that Kalucha sent to Employee A in December 2013, attached to the fabricated email, Kalucha altered the performance statistics for the investment account of Client 1 in the same manner as Kalucha had done when he initially altered the report in September 2013. Additionally, Kalucha altered the report so that the report stated that Audit Firm A had independently obtained account statements for Client 1's investment account. This statement was false and was not in the actual report.

48. Subsequent to receiving the altered report from Kalucha in December 2013, Employee A provided the report to a prospective investor without knowing that Kalucha again had altered the report, just as Kalucha had done in September 2013.

49. The prospective investor then forwarded the report to Audit Firm A and asked Audit Firm A for confirmation that Audit Firm A had in fact authored the report. Audit Firm A responded in an email that the report was incorrect. The prospective investor then forwarded Audit Firm A's email to Employee A, who then confronted Kalucha.

50. In late December 2013, after being confronted by Employee A about Audit Firm A's repudiation of the altered report, Kalucha, Palathinkal, and Aphelion Management stopped using false performance statistics for the period April 2012 through June 2013 in new marketing materials and instead began using the actual performance statistics reflected in Audit Firm A's now-withdrawn review report.

51. However, Kalucha, Palathinkal, and Aphelion Management falsely and/or misleadingly told investors that Aphelion Management was revising its reported historical performance statistics because it was taking a "more conservative approach" to calculating the statistics. But the real reason for the revision was Audit Firm A's repudiation of the false statistics and the discovery of the false statistics by Employee A.

52. Kalucha, Palathinkal, and Aphelion Management did not tell investors or prospective investors in the Aphelion Funds that Audit Firm A had withdrawn its opinion and resigned. Instead, Kalucha falsely told investors that Aphelion Management was changing audit firms because Audit Firm A's fees were too high. For example, in a January 2014 email to a prospective investor, Kalucha misleadingly wrote: "As I mentioned in my previous email, due to higher costs (nearly 40%) we are not going with [Audit Firm A] as auditors."

53. After Audit Firm A had withdrawn its opinion and resigned, Kalucha continued to tell investors falsely that the returns reported by Aphelion Management for the April 2012 through June 2013 period were attested to by outside auditors, when in fact there was no such attestation in light of Audit Firm A's withdrawal of its opinion.

54. Moreover, in a marketing material called a due diligence questionnaire, Kalucha, Palathinkal, and Aphelion Management falsely and/or misleadingly represented

that no auditor had ever requested a material restatement of Aphelion Management's performance results. In fact, Audit Firm A had effectively required a restatement when it demanded that Kalucha inform investors that the altered report he had distributed with false performance statistics was incorrect.

D. The Defendants Provide Investors With False or Misleading 2011 Performance Statistics

55. Prior to forming Aphelion Management and the Aphelion Funds, Kalucha had employed his investment model for hedge funds managed by Coriolis Management LLC ("Coriolis"), a hedge fund manager which Kalucha founded and co-managed. The funds managed by Coriolis (the "Coriolis Funds") used the same investment model created by Kalucha that the Aphelion Funds employ.

56. In approximately early 2011, Kalucha's investment model began to perform poorly. In approximately August 2011, as a result of the poor performance of Kalucha's investment model, the management of Coriolis, including Kalucha, decided to cease operations of the Coriolis Funds.

57. In August 2011, as part of the winding down of Coriolis, the Coriolis Funds sold the securities that Kalucha had purchased for the Coriolis Funds, and the Coriolis Funds suffered significant losses, on top of the losses the Coriolis Funds had experienced earlier in 2011.

58. Kalucha has included performance statistics for the Coriolis Funds in Aphelion Management's marketing materials up through July 2011, a point at which the marketing materials falsely claim the Coriolis Funds were liquidated. In fact, the Coriolis Funds did not shut down until August 2011.

59. Instead of including the actual negative performance statistics from August 2011 for the Corliolis Funds, Aphelion Management's marketing materials provide purported positive performance statistics for that month from separately managed accounts. By omitting the actual performance statistics of the Coriolis Funds for August 2011 and substituting purported performance statistics for separately managed accounts instead, Aphelion Management's marketing materials distort the actual 2011 performance of Kalucha's investment model. While Aphelion Management's marketing materials report that Kalucha's investment model produced a 49.04% positive return in 2011, the actual performance of the investment model for the Coriolis Funds in 2011 produced a negative 20% return for those investments.

60. By providing performance statistics for the Coriolis Funds up through July 2011 but omitting the performance statistics for August 2011, the month of worst performance, the 2011 performance statistics in Aphelion Management's marketing materials are materially misleading.

61. Kalucha, Palathinkal, and Aphelion Management continue to distribute marketing materials that misleadingly omit the sharply negative actual audited performance statistics for the Coriolis Funds for August 2011 and substitute purported positive returns instead.

E. The Defendants Misstate Aphelion Management's Assets Under Management

62. In addition to reporting false and/or misleading historical performance statistics for Kalucha's investment model, Kalucha, Palathinkal, and Aphelion Management have misstated the firm's assets under management, commonly referred to

as the "AUM."

63. Kalucha, Palathinkal, and Aphelion Management made misrepresentations about the firm's AUM both to prospective investors in the Aphelion Funds and to prospective investors in Aphelion Management itself.

64. Between July 2013, when the Aphelion Funds began trading, and December 2013, Aphelion Management had no more than $5 million under its management at any point.

65. However, during this period, Kalucha, Palathinkal, and Aphelion Management inflated the firm's assets under management in representations to investors and prospective investors in the Aphelion Funds.

66. For example, in response to the written question from a prospective investor, "What is the AUM in the funds?", Kalucha falsely responded in a November 2013 email that the AUM was $18 million, split between the Aphelion Funds and one managed account, when in fact Aphelion Management's AUM at the time was less than $5 million.

67. Similarly, in a December 2013 email to a prospective investor in Aphelion Management, Palathinkal falsely stated that Aphelion Management's assets under management were $15 million, more than triple the amount of the firm's actual assets under management at the time.

F. Kalucha Misrepresents the U.S. Department of Labor's Suit Against Him

68. As noted above, among the Aphelion Management marketing materials created by Kalucha was a "due diligence questionnaire," in which Kalucha posed various common questions about the firm and provided answers to those questions. Kalucha

provided the due diligence questionnaire to prospective investors in the Aphelion Funds.

69. The due diligence questionnaire included a section on "Legal Proceedings." Under the "Legal Proceedings" section, the questionnaire contained a question asking whether there had been any criminal or administrative proceedings against the firm or its principals or whether there had been any civil proceedings against the firm or its principals that resulted in an adverse disposition.

70. In response to this question, Kalucha answered "None," and then added a lengthy, materially misleading explanation of a civil proceeding in which he was involved.

71. Although Kalucha did not identify the civil proceeding by name, the proceeding Kalucha misleadingly described in the due diligence questionnaire was a civil proceeding brought against Kalucha by the U.S. Department of Labor in United States District Court for the District of Columbia, entitled *Harris v. Kalucha*, Case No. 13-0038.

72. In the *Harris* case, the Department of Labor alleged, among other things, that Kalucha was the trustee of a retirement plan for employees of a company and that Kalucha improperly failed to segregate plan assets from the general assets of the company and failed to ensure that plan asserts were remitted to and collected by the plan.

73. In May 2013, the Court in the *Harris* case entered a Consent Judgment against Kalucha, in which, among other things, the Court permanently enjoined Kalucha from serving as a trustee, fiduciary, advisor, or administrator to any employee benefit plan subject to the Employee Retirement Income Security Act of 1974 ("ERISA"), which includes pension plans, 401(k) plans, and other types of retirement plans.

74. By virtue of the Consent Judgment in the *Harris* case, Kalucha and Aphelion

Management are prohibited from acting as investment advisers to many types of common retirement plans, which often invest in hedge funds.

75. In the due diligence questionnaire, Kalucha described the dispute underlying the *Harris* case without naming it and misleadingly described it as a suit brought by him against a finance company which ended in a settlement with the Department of Labor over obligations to a pension plan even though Kalucha was "not legally responsible for these obligations." This description was materially false or misleading because Kalucha answered "None" as to whether there were any administrative proceedings or civil proceedings with an adverse disposition against him or the firm, when in fact the *Harris* case was such a proceeding. Further, the description was misleading because Kalucha omitted to state that the Department of Labor had sued him and accused him of breaching his fiduciary duties, and omitted to state that the Court in *Harris* had permanently enjoined him from serving as an investment adviser to any retirement plan covered by ERISA.

76. Kalucha also provided a false description of the *Harris* case to Employee A, while knowing, or being reckless in not knowing, that Employee A would provide the false description to prospective investors. Kalucha falsely told Employee A that notwithstanding the case, the Department of Labor was "not holding me liable for anything" and that some sort of "clearance letter" existed to that effect. In fact, the Department of Labor had held Kalucha liable by suing him and seeking that he be barred from serving an investment adviser to any ERISA plan, and no "clearance letter" ever existed.

77. Subsequent to receiving the false description of the *Harris* case from Kalucha,

Employee A provided the description to a prospective investor without knowing that the description was false.

G. Kalucha Misuses Aphelion Management Investor Funds

78. As noted above, in addition to soliciting investors in the Aphelion Funds, Kalucha and Palathinkal also solicited individuals to invest in Aphelion Management itself.

79. Kalucha and Palathinkal provided prospective investors in Aphelion Management with a term sheet ("Term Sheet") which described the terms of the offering for an investment into Aphelion Management.

80. According to the Term Sheet, Aphelion Management offered units in Aphelion Management for $100,000 per unit. After investing in units of Aphelion Management, investors would get their investment returned to them in two years, plus interest at a rate of 10% annually. Additionally, depending on the terms of the specific offer, investors would get either a 0.5% or 1.0% ownership interest in Aphelion Management, entitling the investors to a share of future profits of the firm.

81. The Term Sheet included a section entitled, "Use of Proceeds," which stated: "The proceeds will be used to fund operating costs and working capital requirements needs of Aphelion. These costs will include costs relating to day to day operating expenses, registration costs, license fee, insurance costs, marketing costs related to, promotion and administration, of the Aphelion Funds."

82. In email correspondence with prospective investors, Palathinkal similarly represented that investor funds in Aphelion Management would be used for the firm's operating expenses.

83. During the approximate period December 2012 through March 2014, Kalucha, Palathinkal, and Aphelion Management have raised approximately $1.5 million from approximately seven different investors for investments into Aphelion Management using the Term Sheet and other materials which described how investor proceeds would be used.

84. Instead of using investor proceeds into Aphelion Management exclusively for the firm's operating expenses, Kalucha has misused, and continues to misuse, investor funds for his own personal benefit. Kalucha has withdrawn investor proceeds into Aphelion Management for, among other things, settlement of a foreclosure action involving Kalucha's personal residence, settlement of a breach of contract action filed against Kalucha in his personal capacity, down payment of a luxury BMW sedan, and payment for personal tax and accounting services for Kalucha. Palathinkal has approved all of Kalucha's withdrawals from Aphelion Management before Kalucha took the withdrawals.

85. Of the approximate $1.185 million raised from investors for investments into Aphelion Management through 2013, Kalucha used approximately $489,000, or 41% of the amount raised from investors in Aphelion Management during 2013, for his own personal benefit.

86. Although Kalucha has told the Commission staff that all amounts taken by him from Aphelion Management for payment of personal expenses are simply borrowings under a loan agreement between him and the firm, Kalucha did not disclose any loan agreement to investors in Aphelion Management before they invested. Instead, Kalucha, Palathinkal, and Aphelion Management represented that money raised from

investors in Aphelion Management would be used for the firm's operating expenses. Further, Aphelion Management's operating agreement, which Aphelion Management provided to prospective investors, stated that Kalucha's compensation for 2013 would be capped at a salary of $14,583 per month, which equals $175,000 annually. However, during 2013, Kalucha not only took his monthly salary, but additionally he took approximately $326,000 from Aphelion Management for payment of his personal expenses and needs.

COUNT I

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

(All Defendants)

87. The SEC realleges and incorporates by reference each and every allegation set forth above.

88. By virtue of the conduct alleged herein, Kalucha, Palathinkal, and Aphelion Management, directly or indirectly, singly or in concert with others, by use of the means or instrumentality of interstate commerce, or by the use of the mails, or of the facilities of a national securities exchange, in connection with the purchase or sale of securities, knowingly or recklessly, have: (a) employed devices, schemes and artifices to defraud; (b) made untrue statements of material facts and omitted to state material facts necessary in order to make statements made, in the light of the circumstances under which they were made, not misleading; and/or (c) engaged in acts, practices and courses of business which operated or would have operated as a fraud or deceit upon purchasers of securities and upon other persons.

89. Kalucha, Palathinkal, and Aphelion Management knew or were reckless in not knowing of the activities described herein.

90. By reason of the foregoing, Kalucha, Palathinkal, and Aphelion Management each violated, and unless enjoined will likely again violate, Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule lOb-5 thereunder [17 C.F.R. § 240.10b-5].

COUNT II

Violations of Section 17(a)(1), (2) and (3) of the Securities Act [15 U.S.C. § 77q(a)(1), (2) and (3)]

(All Defendants)

91. The SEC realleges and incorporates by reference each and every allegation set forth above.

92. Kalucha, Palathinkal, and Aphelion Management, directly or indirectly, singly or in concert with others, in the offer and sale of securities, by use of the means and instruments of transportation and communication in interstate commerce and by use of the mails, knowingly or recklessly, have: (a) employed devices, schemes or artifices to defraud; (b) obtained money or property by means of untrue statements of material fact or omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and/or (c) engaged in transactions, practices or courses of business which operate or would operate as a fraud or deceit upon the purchaser.

93. Kalucha, Palathinkal, and Aphelion Management knew or were reckless in not knowing of the activities described herein.

94. By reason of the foregoing, Kalucha, Palathinkal, and Aphelion Management have each violated, and unless enjoined will likely again violate, Sections 17(a)(1), 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. § 77q(a)(1), § 77q(a)(2) and § 77q(a)(3)].

COUNT III

Violations of Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and 80b-6(2)]

(Kalucha and Aphelion Management)

95. The SEC realleges and incorporates by reference each and every allegation set forth above.

96. Kalucha and Aphelion Management, directly or indirectly, knowingly or recklessly, by use of the mails or any means or instrumentality of interstate commerce, while acting as investment advisers within the meaning of Section 202(11) of the Advisers Act [15 U.S.C. § 80b-2(11)], have: (a) employed devices, schemes, and artifices to defraud a client or prospective client; and/or (b) engaged in transactions, practices, or courses of business which operate as a fraud or deceit upon a client or prospective client. As a result, Kalucha and Aphelion Management violated Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(l) and 80b-6(2)].

97. Kalucha and Aphelion Management knew or were reckless in not knowing of the activities described herein constituting violations of Sections 206(1) and 206(2) of the Advisers Act.

98. By reason of the foregoing, Kalucha and Aphelion Management have each violated, and unless enjoined will likely again violate, Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

COUNT IV

Aiding and Abetting Violations of Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and 80b-6(2)]

(Palathinkal)

99. The SEC realleges and incorporates by reference each and every allegation set forth above.

100. By reason of the foregoing and pursuant to Section 209(d) of the Advisers Act [15 U.S.C. § 80b-9(d)], Palathinkal aided and abetted, and is therefore liable for, the primary violations committed by Aphelion Management and Kalucha of Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and 80b-6(2)], because Palathinkal knowingly or recklessly provided substantial assistance to such persons' violations of Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and 80b-6(2)]. Unless enjoined, Palathinkal will likely again aid and abet violations of Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

COUNT V

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]

(Kalucha and Aphelion Management)

101. The SEC realleges and incorporates by reference each and every allegation set forth above.

102. Kalucha and Aphelion Management, singly or in concert with others, directly or indirectly, by use of the mails or any means or instrumentality of interstate commerce, while acting as investment advisers to pooled investment vehicles within the meaning of Section 202(11) of the Advisers Act [15 U.S.C. § 80b-2(11)], made untrue statements of material fact or omitted to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading, to an investor or prospective investor in a pooled investment vehicle or otherwise engaged in acts, practices, or courses of business that are fraudulent, deceptive or manipulative with respect to an investor or prospective investor in a pooled investment vehicle.

103. By reason of the foregoing, Kalucha and Aphelion Management have directly or indirectly violated, and unless enjoined will likely again violate, Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8].

COUNT VI

Aiding and Abetting 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]

(Palathinkal)

104. The SEC realleges and incorporates by reference each and every allegation set forth above.

105. By reason of the foregoing and pursuant to Section 209(d) of the Advisers Act [15 U.S.C. § 80b-9(d)], Palathinkal aided and abetted, and is therefore liable for, the primary violations committed by Aphelion Management of Section 206(4) of the

Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8], because Palathinkal knowingly or recklessly provided substantial assistance to such entity's violations of Section 206(4) Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8]. Unless enjoined, Palathinkal will likely again aid and abet violations of Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8].

RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that the Court:

I.
(Declaratory Judgment)

Issue findings of fact and conclusions of law that Defendants committed the violations charged and alleged herein and enter judgment against each of them.

II.
(Injunctive Relief)

Grant an Order of Permanent Injunction, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, permanently restraining and enjoining Defendants, their officers, agents, servants, employees, attorneys and those persons in active concert or participation with them who receive actual notice of the Order, by personal service or otherwise, and each of them from, directly or indirectly, engaging in the transactions, acts, practices or courses of business described above, or in conduct of similar purport and object, in violation of Section 17(a) of the Securities Act [15 U.S.C. § 77o(a)]; Section 10(b) of the Exchange Act [15 U.S.C. § 78j] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder; and Sections 206(1), 206(2) and 206(4) of the 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].

III.
[Interim Relief]

Grant appropriate additional emergency interim relief, consistent, with Rule 65(d) of the Federal Rules of Civil Procedures, to protect the Aphelion Funds' and Aphelion Management's investors, including: (i) a Temporary Restraining Order and Order of Preliminary Injunction against Defendants restraining and enjoining them as set forth above in Section II of the Relief Requested; (ii) an Order freezing the assets of the Aphelion Funds and Aphelion Management; (iv) an Order requiring the Defendants to provide expedited accountings and discovery, as requested by the SEC; and (v) other ancillary emergency interim relief as is set forth in the SEC's Emergency Motion for a Temporary Restraining Order, Asset Freeze, and Other Ancillary Relief filed contemporaneously with this complaint.

IV.
[Disgorgement of Ill-Gotten Gains]

Issue an Order requiring the Defendants to disgorge the ill-gotten gains that they received as a result of their wrongful conduct (including any losses they avoided by virtue of their unlawful conduct), including prejudgment interest.

V.
[Civil Penalties]

Issue an Order imposing appropriate civil penalties upon the Defendants pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], 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. § 80b-9(e)].

VI.
[Retention of Equitable Jurisdiction]

Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

VII.
[Other Relief]

Grant such orders for further relief the Court deems appropriate.

JURY DEMAND

Pursuant to Rule 39 of the Federal Rules of Civil Procedure, the SEC demands that this case be tried before a jury.

Respectfully submitted,

Eric P. Phillips

Eric M. Phillips (pro hac pending)
David F. Benson (pro hac pending)
Frank D. Goldman,
Attorneys for Plaintiff
Securities and Exchange Commission
175 W. Jackson Blvd., Suite 900
Chicago, IL 60604
Telephone: (312) 353-7390
Facsimile: (312) 353-7398

Dated: May 5, 2014