UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

DENNIS S. HERULA, MARY LEE CAPALBO (AKA MARY LEE CAPALBO HERULA), MARTIN D. FIFE, FAROUK A. KHAN, SEAVIEW DEVELOPMENT AND HOLDINGS, LTD., MICHAEL A. CLARKE, ROBERT M. WACHTEL, JOHAN C. HERTZOG, and, CHARLES W. SULLIVAN,

Defendants,

-and-

DAVID L. ULLOM,

Relief Defendant.

C.A. 02 154 ML

Case No.

AMENDED COMPLAINT

Plaintiff Securities and Exchange Commission ("Commission"), for its Complaint, alleges the following against defendants Dennis S. Herula ("Herula), Mary Lee Capalbo (a/k/a Mary Lee Herula) ("Capalbo"), Martin D. Fife ("Fife"), Farouk A. Khan ("Khan"), Seaview Development and Holdings, Ltd. ("Seaview"), Michael A. Clarke ("Clarke"), Robert M. Wachtel ("Wachtel"), Johan C. Hertzog ("Hertzog") and Charles W. Sullivan ("Sullivan"), and against relief defendant David L. Ullom ("Ullom"), named solely for purposes of equity relief:

SUMMARY

1. This matter involves a fraudulent offering of securities in connection with a sham "trading program" operated by Brite Business Corporation and others. The scheme, initiated by British citizen Clarke, raised at least $52 million from investors between 1999 and 2001, over $20 million of which has not been returned to investors. Certain of the defendants continue operating this scheme and defrauding investors.

2. There was a wholly fictitious aspect to the scheme, which was variously described to investors as a "leveraged" or "high yield" trading program with features typical of prime bank-type investment frauds. Several other people helped Clarke carry out his scheme, including Hertzog, Fife, Sullivan, and Wachtel. Clarke and others promised investors exorbitant returns (such as a nearly 300% return in twelve banking days) through a high yield trading program purportedly operated by Fife. These representations were false because such high yield trading programs do not exist, and Clarke and Fife misappropriated, transferred or lost approximately $13 million in investor funds.

3. After Brite Business ceased operations in 2000 and continuing in 2001, Fife (through his entity, Seaview), Sullivan, Khan, Herula, and Capalbo continued deceiving investors concerning the Fife "trading program." Herula and Capalbo also misappropriated an additional $8 million in investor funds in 2000 and 2001.

4. Relief defendant Ullom received approximately $190,000 in Brite Business investor funds to which he has no legitimate claim.

5. Accordingly, the Commission seeks (i) entry of a permanent injunction prohibiting the defendants from further violations of the relevant provisions of the federal securities laws; (ii)

disgorgement of defendants' and the relief defendant's ill-gotten gains and unjust enrichment, plus prejudgment interest; and (iii) the imposition of a civil monetary penalty against each defendant due to the egregious nature of their violations. In addition, because of the ongoing nature of the fraud and the danger that investor funds will be further dissipated, the Commission seeks: (a) a temporary restraining order against defendants Fife, Khan, Seaview, Sullivan, Herula, and Capalbo to prohibit them from continuing to violate the relevant provisions of the federal securities laws; (b) an order requiring all defendants and the relief defendant to submit an accounting of investor funds and other assets in their possession; (c) a freeze, including attachment of real property, of: (i) all assets held for the direct or indirect benefit, or subject to the direct or indirect control, of the defendants; and (ii) funds and assets equal to the amount of investor funds received by the defendants and the relief defendant; (d) a schedule for expedited discovery; (e) an order requiring the repatriation of all assets abroad which were obtained or derived from the violative securities transactions, and an order prohibiting the defendants from continuing to accept or deposit additional investor funds; and (f) an order prohibiting the alteration or destruction of relevant documents

JURISDICTION AND VENUE

6. The Commission seeks a permanent injunction and disgorgement pursuant to Section 20(b) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §77t(b)], Section 21(d)(1) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §78u(d)(1)], and Section 209(d) of the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. §80b-9(d)]. The Commission seeks the imposition of a civil monetary penalty 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)].

7. This Court has jurisdiction over this action pursuant to Sections 20(d) and 22(a) of the Securities Act [15 U.S.C. §§77t(d), 77v(a)], Sections 21(d), 21(e) and 27 of the Exchange Act [15 U.S.C. §§78u(d), 78u(e), 78aa], and Sections 209(3) and 214 of the Advisers Act [15 U.S.C. §80b-9(d), 80b-14]. Venue is proper in this District because a significant amount of the defendants wrongful conduct occurred or was centered here.

8. In connection with the conduct described in this Complaint, Herula, Capalbo, Fife, Khan, Seaview, Clarke, Wachtel, Hertzog and Sullivan directly or indirectly made use of the mails or the means or instruments of transportation or communication in interstate commerce.

DEFENDANTS

9. **Herula**, age 54, maintains residences in Warwick and Westerly, Rhode Island, and Tiburon, California. He was a registered representative at the Cranston, Rhode Island, branch of Raymond James Financial Services, Inc. ("Raymond James"), a stock brokerage firm, from August 1999 until his termination in January 2001. Herula is the sole officer of Legacy 2000 Associates, Inc., a California corporation which is registered with the state of California as an investment advisor, but is not registered with the Commission in any capacity. Herula incorporated an entity with a similar name in Rhode Island, but it is not registered as an investment adviser with either the State of Rhode Island or the Commission. Herula is currently qualified (but not registered) as a general securities representative and as a general securities sales supervisor.

10. **Capalbo**, age 50, is married to Herula and maintains residences in Warwick and Westerly, Rhode Island, and Tiburon, California. Capalbo is an attorney who is currently a member in

good standing of the Rhode Island Bar.

11. **Fife**, age 75, is a resident of New York, New York. Fife was the president of Brite Business, and was chiefly responsible for managing Brite Business investor funds as part of his trading program. Fife currently is running his trading program through his separate entity, Seaview. Fife is currently a director of several investment companies operated by Dreyfus Corporation, and also serves as a director of two publicly-traded companies that do not appear to have any connection to the fraudulent scheme.

12. **Khan**, age 55, is a resident of Hillsborough, New Jersey. He is Fife's partner at Seaview.

13. **Seaview** was incorporated in Delaware in July 2000, and has its principal place of business at Fife's home address in New York City. Fife currently uses Seaview to operate his trading program.

14. **Clarke**, age unknown, is a citizen and resident of England who held himself out as an officer of Brite Business. Clarke's current whereabouts and activities are unknown.

15. **Wachtel**, age unknown, most recently resided in California. He held himself out as a representative of Brite Business. Wachtel's current whereabouts and activities are unknown.

16. **Hertzog**, age 49, is a resident of Miami Beach, Florida. He was an officer of Brite Business and acted as an intermediary between Clarke and Fife.

17. **Sullivan**, age 59, is a resident of New York, New York. He was the general counsel and vice president of Brite Business. Sullivan is a non-practicing attorney.

RELIEF DEFENDANT

18. **Ullom**, age 64, is a resident of Greene, Rhode Island, and is employed as the branch office manager of the Raymond James office in Cranston, Rhode Island. Ullom is currently registered with Raymond James as a general securities representative, general securities principal, municipal securities principal, financial and operations principal, and registered options principal.

RELATED PARTIES

19. **Brite Business S.A.** was a British Virgins Islands corporation established by Clarke in 1997. Brite Business S.A. has not been an active corporation since July 1999.

20. **Brite Business Corporation,** now defunct, was incorporated in April 1999 in Delaware, and had its principal place of business in New York City. Brite Business was dissolved by the State of Delaware in March 2001.

21. **Raymond James Financial Services, Inc.,** is a broker-dealer that has been registered with the Commission pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act"). Raymond James is headquartered in St. Petersburg, Florida.

STATEMENT OF FACTS

Misrepresentations to Brite Business Investors and Loss of Investor Funds

22. Clarke began soliciting investors through Brite Business S.A., a British Virgin Islands company, in 1999. During the same time period, Clarke asked his acquaintance, Hertzog, to introduce him to someone in the United States who could help Clarke establish accounts at U.S. financial institutions and operate a trading program out of those accounts. Hertzog introduced Clarke to his acquaintance, Fife, and, by the spring of 1999, Fife had agreed to become involved with managing and

investing Brite Business funds. In April 1999, Hertzog arranged for another acquaintance of his, Sullivan, to incorporate Brite Business in Delaware, with its principal place of business in New York.

23. During 1999 and 2000, Clarke raised approximately $51.75 million from at least five investors, first under the auspices of Brite Business S.A, and later through Brite Business Corporation. The five known investors, and the amounts they invested, were (1) William Britt, a U.S. citizen who invested through his entity, Beehive International LLC ($10 million); (2) Four Star Financial Services, LLC, a U.S. entity that appears to have clients of its own whose funds it invests ($11.75 million); (3) Robert Burr, a U.S. citizen who invested through his entity, Trigon Capital ($10 million); (4) Al Bloushi, an individual from the United Arab Emirates ($7.5 million); and (5) Robert Fitzhenry, a Canadian citizen who invested through his entity, Rheaume Holdings. Ltd., a British Virgin Islands entity ($12.5 million).

24. The agreements Clarke entered into with these investors promised astronomical returns and characterizations of investment programs typical of prime bank investment schemes to defraud. For example, in early 1999, investor Al Bloushi was approached by Clarke, who made contact with him through some contacts in the United Arab Emirates. Clarke told Al Bloushi that Brite Business was a "high yield program" that was fully secured by the U.S. Treasury. A written contract with Al Bloushi, signed by Clarke in May 1999, promised that a $7.5 million investment would be "leveraged" to $50 million and would then generate a $20 million profit in the first twelve banking days, $20 million more in the second twelve banking days, and $40 million each subsequent month. This contract also contained terminology typical of prime bank scams, such as that the agreement conformed to the requirements of the U.S. Federal Reserve and the U.S. Treasury, and that it involved an "issuing bank" that was a European "AA" or better bank. All of these representations were false.

25. Hertzog also played a key role in the Al Bloushi investment, contacting and corresponding with Al Bloushi concerning his investment and the trading program. For example, in November 1999, Hertzog sent an email to Al Bloushi, with a copy to Clarke, providing a status update on the "leverage" program, and stating that they were close to concluding a transaction that would allow them to begin trading under the program. Hertzog stated that "we shall honor our commitment for Fifty ($50,000,000 USD) Million Dollars," a number that corresponds to the "leveraging" figure cited in the written contract with Al Bloushi.

26. During his contacts and correspondence with Al Bloushi and others, Hertzog held himself out in a number of different capacities involving Brite Business, including director, chairman, and CEO. Sullivan identified Brite Business as a company established to do project financing for Hertzog and identified Hertzog as the key person who directed Brite Business' activities. Fife, who knew Hertzog as the founder and sole owner of Brite Business, received investor funds from Hertzog as well as instructions as to how to handle investor funds.

27. Hertzog received a total of approximately $1.29 million of investor funds from Sullivan's entity, Commonwealth Management Associates, Inc., which acted as custodian and dispersing agent for certain Brite Business funds.

28. Wachtel, who held himself out as the U.S. representative of Brite Business, solicited Brite Business investor Rheaume. In early 2000, Wachtel described to Robert Curl, Rheaume's money manager, an investment opportunity involving a "credit enhancement program" run by Brite Business that would generate a guaranteed return on investment. In March 2000, Rheaume executed an agreement with Brite Business that was signed by Clarke as its vice president and by Wachtel as the

"USA Mandated Representative" of Brite Business. The contract stated that Brite Business would "attempt to pay benefits on a best efforts basis at a minimum average over a 90 day period of 10% per week of the amount invested." Rheaume was assured that its funds would not be at risk. Those representations were false, as Rheaume's funds have been, in various respects, lost and misappropriated by individuals associated with Brite Business and the trading program. At some point during the calendar year 2000, records relating to Brite Business reflect that Wachtel received approximately $155,000 in Brite Business investor funds

29. Fife, who held himself out as the president of Brite Business, the administrator of the funds invested, and the individual who would invest the funds and generate a return for investors through a special "trading program" he developed, also made misrepresentations directly to investor Rheaume. Fife told Rheaume's money manager, Curl, that he would generate returns on funds invested by trading T-bills. In a letter to Rheaume in May 2000, Fife stated that his responsibilities with Brite Business included ensuring the "safety, security, and auditing of our client funds" and that the investor's funds were "absolutely . . . safe, secure, unencumbered, will not be invested without your authorization, can not be moved or withdrawn without your approval." Fife further represented to Rheaume that he had been "successful for the past 6 months doing the same placement of funds," and that the funds "are safeguarded so there is no risk of loss." In fact, by the time he wrote this letter, Fife had not been successful in his trading program. He had already lost a significant amount of investor funds by purchasing T-bills on margin. Fife also had not erected safeguards to ensure that Rheaume's funds were at no risk of loss.

30. During the time Fife was managing Brite Business investor funds, he was aware that

Clarke was making promises of astronomical sums in investment returns to investors, and using representations typical of a "prime bank" scheme to defraud. With awareness of these promises by Clarke, Fife continued acting for Brite Business and conducting his T-bill "trading program" through Brite Business using investor funds obtained by Clarke. Also, in various documents that Fife later sent to Herula and Capalbo, Fife described his trading program using terminology typical of prime bank investment schemes to defraud, such as that his trading program was a "Federal Reserve access trading program" and describing himself as a "Federal Reserve Access holder."

31. Three of the five known investors with whom Clarke entered into agreements were based in the United States. Their funds, plus the funds of the two foreign investors, were held in the U.S., largely in a brokerage account at Raymond James. Of the five known investors, three appear to have gotten back most or all of the principal they invested. The Al Bloushi and Rheaume investment funds, however, totaling approximately $20 million, were dissipated by Fife and/or misappropriated by Herula and Capalbo.

Fife's Management and Dissipation of Investor Funds

32. Of the approximately $51.75 million raised from investors, approximately $44.5 million was placed under Fife's control, purportedly for Fife's unsuccessful T-bill "trading program." Fife developed a trading program, initially through the Brite Business entities and later (after the dissolution of Brite Business Corporation in 2000) through his own separate entity, Seaview. Fife described the trading program as involving the pooling of investor funds and leveraging the funds by, for example, purchasing T-bills on margin, to enhance Brite Business's balance sheet in order to qualify for project financing involving, for example, Third World development projects such as housing development and

fisheries projects. Fife referred to this trading program as a "balance sheet enhancement" or "credit enhancement" program. Fife's stated goal was to use Brite Business funds as collateral to borrow a larger amount for some period of time so that Brite Business' (and later Seaview's) balance sheet would be in excess of $50 million. In theory, once financing was secured for particular projects, funds would be returned to investors, and investors would realize a return from the profits generated by the projects. Fife would also receive compensation for generating investor returns. Neither Fife nor any of the individuals soliciting funds for his trading program appear to have provided potential investors with the above detailed description of the Fife trading program. Rather, investors were generally told Fife's trading program involved "leveraging" or "credit enhancement," that it would generate extraordinary returns in a relatively short period of time, and that there was no risk to the investors' funds.

33. Fife's trading program never progressed beyond the theoretical stage and, as a result, was wholly unsuccessful. Among other things, Fife lost a great deal of investor funds through interest payments by purchasing T-bills on margin, and he never obtained bank financing for any of his projects.

34. In October 1999, Fife established a brokerage account at a Raymond James branch office in Rhode Island in the name of Brite Business. Fife was the signatory on this account, and therefore controlled Brite Business funds held at Raymond James. Herula, an acquaintance of Fife's, was the designated registered representative at Raymond James for the Brite Business account. In March 2000, Fife, Herula, and Herula's wife, Capalbo, an attorney, established a separate brokerage account at Raymond James called the "Mary Lee Capalbo Esq. Special Client Account." Fife authorized the transfer of millions of dollars out of the Brite Business account at Raymond James and into the Capalbo account, purportedly as part of his trading program.

35. Of the approximately $44.5 million of investor funds placed under Fife's control, approximately $27.2 million was returned to three investors who demanded their money back early on in the scheme. Most of the remaining funds were lost by Fife through bad investments, given away by Fife to his associates, or misappropriated by Herula and Capalbo; specifically: (1) approximately $8 million was misappropriated by Herula and Capalbo after the funds were moved to their control under the Capalbo account at Rayond James; (2) $4.245 million was lost by Fife to individuals who purportedly were going to assist Fife with his trading program; (3) $1.789 was taken as "loans" by Fife ($1.244 million), Khan ($195,000) and Sullivan ($350,000); and (4) $1.7 million was lost by Fife when he purchased T-bills on margin as part of trading program. None of the monies received as "loans" by Fife, Khan or Sullivan have been repaid.

36. During 1999 and 2000, Capalbo and/or Herula transferred approximately $190,000 in Brite Business investor funds to Ullom, Herula's branch manager at Raymond James. Ullom and Herula had entered into a written agreement whereby they would split fees generated by Herula related to his activities as a broker. Ullom claimed that this agreement was later orally amended to include splitting fees for non-securities related activities concerning such things as Herula's attempts to help Brite Business to set up the Fife trading program. According to Ullom, the $190,000 he received was his share of Herula's non-securities related fees from Brite Business. Ullom performed no services in return for these fees. The fees were paid from investor funds.

37. On two occasions during 2000, Fife used Brite Business investor funds to buy T-bills in attempts to facilitate his "balance sheet" or "credit enhancement program." On one such occasion, he purchased the T-bills on margin to reflect a gross balance in the amount of 10 times the equity of the T-

bills. However, he was unsuccessful in obtaining project financing and lost $1,698,378 of investor funds to margin interest. Sullivan, who incorporated Brite Business and was its general counsel, assisted and supported Fife in establishing his trading program at Raymond James. For example, in November 1999, when Raymond James questioned the idea of enhancing Brite Business's balance sheet by purchasing T-bills on margin through Fife's trading program in an attempt to acquire bank financing, Sullivan, as general counsel and secretary of Brite Business, sent a letter to Raymond James defending the legitimacy of the program.

Fife, Herula, Capalbo, Sullivan, and Khan Continued Misleading Investors During 2001 and 2002, After the Dissolution of Brite Business

38. In mid-2000, Fife began to move his purported trading program from Brite Business to his own entity, Seaview, and he closed the Brite Business account at Raymond James. Throughout 2001, Herula and Fife had an arrangement pursuant to which Herula would raise funds for Seaview. During the same period, Herula, and Fife's partner at Seaview, Farouk Khan, made prime bank-type misrepresentations to potential investors in the Fife trading program. In addition, Fife, Herula, Capalbo, and Sullivan have made ongoing lulling statements and misrepresentations to investors, some as recently as March 2002, concerning the status of their funds.

1. Herula Made Misrepresentations to Investor Monlezun

39. In or about November 2000, Malcolm Monlezun invested $1,000,000 with Herula, who at the time was a registered representative of Raymond James. Monlezun's investment was in a money market fund at Raymond James and originally had nothing to do with Brite Business, Seaview or Fife. In or around February 2001, Herula made several false prime bank-type statements to convince

Monlezun to invest in the Fife trading program, including that the funds would be invested in a "European trading program" that involved trading in medium term notes at a European bank. Herula also told Monlezun that the "European trading program" would earn a guaranteed return of 10% per month, and that it could earn as high as 20-30% return per month. Herula told Monlezun that, in order for his investment to be in the "European trading program," the funds needed to be transferred to an escrow account controlled by Capalbo at Charles Schwab, where they could be pooled with other investor funds. Monlezun agreed to invest in the European trading program described by Herula.

2. Khan Made Misrepresentations to Investor Al Bloushi

40. In December 2001, Fife's partner at Seaview, Khan, attempted to convince Al Bloushi, one of the Brite Business investors, to invest additional funds in a trading program. Athough Khan apparently did not specify that the trading program was under the auspices of Fife or Seaview, Khan is Fife's partner at Seaview, and the trading program he described to Al Bloushi is similar to the trading program described by Fife and others as the program run by Fife. Khan's written proposal to Al Bloushi contained the following false prime bank-type misrepresentations:

- the funds would be invested with "a 'AA' rated West European Bank with a guaranteed return of 7% per year," with "0% Risk Tolerance to the Customers [sic] Principal."
- on top of the guaranteed 7% annual return, the investor would receive a "reward" for holding the investment to the maturity date (one year and one day). On a $100 million investment, the investor would receive a 20% return on the 30th day of the "Trading Cycle," and over the following 11 months would receive an additional 80% return in

four installments of 20% each.

3. Fife, Herula, and Capalbo Have Made Ongoing Misrepresentations Concerning the Status of Investor Funds

41. From late 2000 through at least February 2002, Fife, Herula, and Capalbo have made a series of false and misleading statements to Robert Curl, the money manager for Brite Business investor Rheaume, to convince him that Rheaume's investment was still safe. First, Fife told Curl during 2000 that Raymond James would not release the Rheaume funds because it was concerned about large sums of money going into and out of accounts in such a short period of time. According to Curl, in December 2000, Fife told Curl that he had transferred the $12.5 million plus accrued interest to a special client account at Charles Schwab under attorney Mary Lee Capalbo's name. Fife represented that this was a money market account with securities holdings. Fife told Curl that he did this to facilitate the swift return of Rheaume's funds to Curl. In fact, the $12.5 million in Rheaume funds initially held in the Brite Business account at Raymond James were never moved to the Capalbo account at Charles Schwab because, by this time, there were no Brite Business investor funds left at Raymond James. As explained above, the funds were dissipated by Fife or misappropriated by Herula and Capalbo.

42. Throughout 2001, Fife, Herula, and Capalbo sent Curl forged Charles Schwab account statements showing a balance of upwards of $59 million in the Capalbo account at Charles Schwab. They told him numerous times that $12.5 million of that amount (plus accrued interest) was Rheaume's investment funds, that the funds were now pooled with other investor funds in the Capalbo account at Charles Schwab, and that they were to be transferred to Fife's trading program at Seaview. In fact, there was never a balance a balance anywhere near $59 million in the Capalbo account at Charles

Schwab, and the Rheaume funds were never held there.

43. Herula made representations to Curl over the last year that the Rheaume funds could not be released from the Capalbo account at Charles Schwab because the account had been frozen by the NASD, purportedly because millions of dollars were being "parked" in the account with no securities transactions taking place. Herula provided Curl with a purported letter from a Charles Schwab representative confirming the NASD freeze. In fact, the Capalbo account at Charles Schwab was never frozen by the NASD. Herula admitted that he created false documents on Charles Schwab stationary stating that the account was frozen. According to Herula, he concocted the NASD freeze story at the direction of Fife. Fife himself has repeated this NASD freeze story directly to Curl numerous times in the past year in response to Curl's requests for the return of the Rheaume funds, most recently in February 2002.

4. Herula and Capalbo Lulled Investor Monlezun

44. Throughout 2001 and early 2002, Herula made misrepresentations to investor Monlezun concerning the status of his funds. Among other things, Herula falsely represented to Monlezun on several occasions during the last year that the $1,000,000 investment was still sitting in the Capalbo account at Charles Schwab, and that there has been a total of $100 million in that account during the last year. In reality, as with the Rheaume funds, Monlezun's funds were never moved to the Capalbo account at Charles Schwab. Rather, Herula and Capalbo used $500,000 of Monlezun's money to pay one of the original Brite Business investors, and Herula and Capalbo then spent at least $400,000.

45. Herula continued his lulling statements to Monlezun through at least February 2002. In

February 2002, Herula told Monlezun he was in London, England, and still working on completing the trading program, after which he could return investor funds. In fact, Herula was not in London at that time, but rather was in the United States, without any indication that he legitimately was working on an investment program involving Monlezun's invested funds. Likewise, on February 15, 2002, Herula sent Monlezun an email stating that he was returning to the United States to work out the the return of Monlezun's funds. In fact, Herula was already in the U.S. and, except as equity in the value of property misappropriated by Herula and Capalbo, there is no indication that Monlezun's invested funds were anywhere such that they could be returned to him.

46. On a number of occasions during the last year, Monlezun attempted to contact Capalbo to request the return of his funds. In or about August 2001, Monlezun specifically stated in a voicemail message left for Capalbo at her law office that he needed her to send a statement as to the balance of his funds held in her account. Monlezun also regularly emailed Herula requesting that Herula update him on the status of his investment and let him know when he was going to receive "distributions" relating to the monthly interest payments that he had been promised. During at least December 2001 Capalbo monitored e-mails sent to Herula by Monlezun and, at Herula's instruction and under Herula's name, she sent at least two emails to Monlezun in response to his inquiries about his investment.

5. Sullivan Lulled Investor Al Bloushi

47. Between September 1999 and March 2002, Sullivan, the general counsel for Brite Business, sent numerous letters to Brite Business investor Al Bloushi concerning his investment in the Fife trading program. Many of the letters contain misrepresentations concerning when Al Bloushi would receive his money and the returns he could expect to receive. For example, in June 2001,

Sullivan promised Al Bloushi that "your return on funds . . . will yield profits of significant magnitude, in excess of a conventional return the market would have afforded to you over the same period. In addition to the return of your principal and your profit you will receive a 20% additional bonus on the profit you would otherwise have received for your long patience. . . . The profits will be distributed on a near term basis i.e. within the next 60 to 90 days."

48. On December 12, 2001, the same day that members of the Commission staff first made contact with Al Bloushi to discuss his experience with Brite Business, Sullivan sent a letter to Al Bloushi's representative, apparently in an effort to get Al Bloushi not to cooperate with the staff's investigation. The letter stated, "Hertzog has advised that the following is the schedule: 25% of your profit will be paid on December 31, 2001, 25% on January 18, 2002, 25% on January 31, 2002 and the balance of your profit plus the return of your capital on February 28, 2002. . . Our securities laws exempt from registration private placements with sophisticated investors. The Brite transaction, as I had been advised by Messrs. Hertzog and Clarke, was a private placement and the most honorable Sheik Al Bloushi is certainly a sophisticated investor. SEC Enforcement proceedings can only proceed if there is a complaint and documentary support for it." The representations about the imminent payments to be made to Al Bloushi were false.

Herula and Capalbo Misappropriated Investor Funds

49. More than $15 million in Brite Business investor funds were moved from the Brite Business account at Raymond James to the Capalbo account at Raymond James during 2000, and up to $8 million of this was subsequently transferred to a separate Capalbo account at Citizens Bank. Thereafter, Herula and Capalbo converted most or all of these Brite Business investor funds for their

own personal use. Herula and Capalbo also misappropriated at least half of the $1 million Monlezun investment discussed above.

50. The Commission is informed and believes that Herula and Capalbo have spent at least $6 million in the last two years, almost entirely from misappropriated investors' funds. Among other things, Herula and Capalbo own a previously-purchased home in Warwick, Rhode Island and purchased another home in Westerly, Rhode Island for $625,000 in April 2000. In April 2000, $800,000 was transferred out of a bank account in Capalbo's name at Citizens Bank to purchase the Westerly home. Herula and Capalbo purchased a third home in Tiburon, California for approximately $4 million in August 2000. They still own all three of these residences, and have purchased numerous expensive items during the past year, including antiques and artwork. Since investor funds were transferred into the account at Raymond James bearing Capalbo's name, which was under the control of Herula and Capalbo, Herula and Capalbo have made cash transactions of approximately $1.1 million in either cash withdrawals or purchases of furs, jewelry, art, antiques, home decor and for payments to credit card companies and contractors.

51. The Commission is informed and believes that Herula and Capalbo, with the assistance of Fife, have made additional recent attempts to dissipate assets or move assets offshore. In late November 2001, Herula and Capalbo traveled to Bermuda where they attempted to open a bank account with the stated intention of transferring $10 million into the account. Herula and Capalbo were arrested by Bermuda police in December 2001 after purportedly submitting false documents to a Bermuda bank in connection with their attempt to open an account. As part of an anti-money laundering initiative, Bermuda banks perform due diligence background checks on individuals

attempting to open accounts and transfer large amounts of money. During this routine background check, Herula provided the bank with certain forged documents concerning other financial accounts in his name. Fife knowingly provided documents to Herula to assist him in opening the Bermuda bank account, and Fife also was aware that the documents contained misrepresentations about the amount of fees Herula had earned in recent years and the amount of funds he had under management.

FIRST CLAIM FOR RELIEF
(Violations of Section 10(b) of the Exchange Act and Rule 10b-5
by Herula, Capalbo, Fife, Khan, Seaview, Clarke, Wachtel and Hertzog)

52. The Commission repeats and incorporates by reference the allegations in paragraphs 1-51 of the Complaint as if set forth fully herein.

53. Defendants Herula, Capalbo, Fife, Khan, Seaview, Clarke, Wachtel, and Hertzog, by reason of the foregoing, directly or indirectly, acting intentionally, knowingly or recklessly, by use of the means or instrumentalities of interstate commerce or of the mails, in connection with the purchase or sale of securities: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material fact or omitted to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices or courses of business which operated as a fraud or deceit upon certain persons.

54. As a result, Herula, Capalbo, Fife, Khan, Seaview, Clarke, Wachtel, and Hertzog have violated and, unless enjoined, will continue to violate the provisions 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 their violations involved fraud, deceit, or deliberate or reckless disregard of regulatory requirements and resulted in substantial losses or significant risk of substantial losses to other persons, within the meaning of Section

21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)].

SECOND CLAIM FOR RELIEF
(Aiding and Abetting Herula, Fife, Khan, Seaview, Clarke, Wachtel and Hertzog's Violations of Section 10(b) of the Exchange Act and Rule 10b-5 by Capalbo and Sullivan)

55. The Commission repeats and incorporates by reference the allegations in paragraphs 1-54 of the Complaint as if set forth fully herein.

56. By reason of the foregoing, Capalbo and Sullivan substantially participated, and provided knowing and substantial assistance, to one or more of the materially misleading representations made to investors by Herula, Fife, Khan, Seaview, Clarke, Wachtel and Hertzog in connection with the purchase or sale of securities, and they knew or were reckless in not knowing that the representations made by Herula, Fife, Khan, Seaview, Clarke, Wachtel and Hertzog to investors were materially misleading.

57. As a result, Capalbo and Sullivan each have aided and abetted Herula, Fife, Khan, Seaview, Clarke, Wachtel and Hertzog's violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and, unless enjoined, will continue to violate said provisions.

THIRD CLAIM FOR RELIEF
(Violations of Section17(a) of the Securities Act by Herula, Capalbo, Fife, Khan, Seaview, Clarke, Wachtel and Hertzog)

58. The Commission repeats and incorporates by reference the allegations in paragraphs 1-57 of the Complaint as if set forth fully herein.

59. Defendants Herula, Capalbo, Fife, Khan, Seaview, Clarke, Wachtel and Hertzog directly and indirectly, acting intentionally, knowingly or recklessly, in the offer or sale of securities by the use of the means or instruments of transportation or communication in interstate commerce or by the

use of the mails: (a) have employed or are employing devices, schemes or artifices to defraud; (b) have obtained or are obtaining money or property by means of untrue statements of material fact or omissions 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) have engaged or are engaging in transactions, practices or courses of business which operate as a fraud or deceit upon purchasers of the securities.

60. As a result, Herula, Capalbo, Fife, Khan, Seaview, Clarke, Wachtel and Hertzog have violated and, unless enjoined, will continue to violate the provisions of Section 17(a) of the Securities Act [15 U.S.C. §77q(a)] and their violations have involved fraud, deceit or deliberate or reckless disregard of regulatory requirements and have resulted in substantial losses or significant risk of substantial losses to other persons, within the meaning of Section 20(d) of the Securities Act [15 U.S.C. §77t(d)].

FOURTH CLAIM FOR RELIEF
(Aiding and Abetting Herula, Fife, Khan, Seaview, Clarke, Wachtel and Hertzog's Violations of Section 17(a) of the Securities Act by Capalbo and Sullivan)

61. The Commission repeats and incorporates by reference the allegations in paragraphs 1-60 of the Complaint as if set forth fully herein.

62. By reason of the foregoing, Capalbo and Sullivan substantially participated, and provided knowing and substantial assistance, to one or more of the materially misleading representations made to investors by Herula, Fife, Khan, Seaview, Clarke, Wachtel and Hertzog in the offer or sale of securities, and they knew or were reckless in not knowing that the representations made by Herula, Fife, Khan, Seaview, Clarke, Wachtel and Hertzog to investors were materially misleading.

63. As a result, Capalbo and Sullivan each have aided and abetted Herula, Fife, Khan, Seaview, Clarke, Wachtel and Hertzog's violations of Section17(a) of the Securities Act and, unless enjoined, will continue to violate said provisions.

FIFTH CLAIM FOR RELIEF
(Violation of Sections 206(1) and 206(2) of the Advisers Act by Fife)

64. The Commission repeats and incorporates by reference the allegations in paragraphs 1-63 of the Complaint as if set forth fully herein.

65. Fife was an "investment adviser" within the meaning of Section 202(a)(11) of the Advisers Act [15 U.S.C. §80b-2(a)(11)].

66. Fife, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, acting intentionally, knowingly or recklessly: (i) has employed or is employing devices, schemes, or artifices to defraud; or (b) has engaged or is engaging in transactions, practices, or courses of business which operate as a fraud or deceit upon a client or prospective client.

67. As a result, Fife has 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), (2)].

68. Fife's violations of Sections 206(1) and 206(2) of the Advisers Act have involved fraud, deceit or deliberate or reckless disregard of regulatory requirements and have resulted in substantial losses or significant risk of substantial losses to other persons, within the meaning of Section 209(e) of the Advisers Act [15 U.S.C. §80b-9(e)].

SIXTH CLAIM FOR RELIEF
(Claim Against the Relief Defendant As Custodian of Investor Funds)

69. The Commission repeats and incorporates by reference the allegations in paragraphs 1-68 of the Complaint as if set forth fully herein.

70. As set forth in paragraph 36 of this Complaint, relief defendant Ullom has received funds and property from one or more of the defendants, which are the proceeds, or are traceable to the proceeds, of the unlawful activities of defendants, as alleged in paragraphs 1 through 68, above.

71. Relief defendant Ullom has obtained the funds and property alleged above as part of and in furtherance of the securities violations alleged in paragraphs 1 through 68, above, and under the circumstances in which it is not just, equitable or conscionable for him to retain the funds and property. As a consequence, relief defendant Ullom has been unjustly enriched.

PRAYER FOR RELIEF

WHEREFORE, the Commission requests that this Court:

A. Enter a temporary restraining order, order freezing assets and order for other equitable relief in the form submitted with the Commission's motion for such relief and, upon further motion, enter a comparable preliminary injunction, order freezing assets and order for other equitable relief;

B. Enter a permanent injunction restraining Herula, Capalbo, Fife, Khan, Seaview, Clarke, Wachtel, Hertzog and Sullivan and each of their agents, servants, employees and attorneys and those persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, including facsimile transmission or overnight delivery service, from directly or indirectly engaging in the conduct described above, or in conduct of similar purport and

effect, in violation of:

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

2. 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];

C. Enter a permanent injunction restraining Fife, and each of his agents, servants, employees and attorneys and those persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, including facsimile transmission or overnight delivery service, from directly or indirectly engaging in the conduct described above, or in conduct of similar purport and effect, in violation of Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §80b-6(1), (2)];

D. Require Herula, Capalbo, Fife, Khan, Seaview, Clarke, Wachtel, Hertzog and Sullivan to disgorge ill-gotten gains, plus pre-judgment interest, with said monies to be distributed in accordance with a plan of distribution to be ordered by the Court, and require relief defendant Ullom to disgorge an amount equal to the illegally obtained investors funds he received from the Defendants, plus prejudgment interest on that amount;

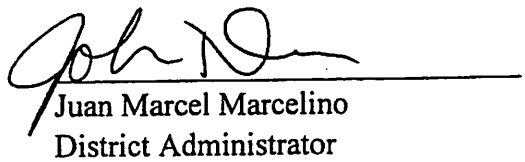
E. Order Herula, Capalbo, Fife, Khan, Seaview, Clarke, Wachtel, Hertzog and Sullivan to pay an appropriate civil monetary penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. §77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)], and Order Fife to pay an appropriate civil monetary penalty pursuant to Section 209(e) of the Advisers Act [15 U.S.C. §80b-9(e)];

F. Retain jurisdiction over this action to implement and carry out the terms of all orders

and decrees that may be entered; and

G. Award such other and further relief as the Court deems just and proper.

Respectfully submitted,



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