

1 MARC J. FAGEL (Cal. Bar No. 154425)
SHEILA E. O'CALLAGHAN (Cal. Bar No. 131032)
2 ocallaghans@sec.gov
ROBERT J. DURHAM (Admitted to the New York Bar)
3 durhamr@sec.gov

4 Attorneys for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
5 44 Montgomery Street, Suite 2800
San Francisco, California 94104
6 Telephone: (415) 705-2500
Facsimile: (415) 705-2501
7
8

9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**
11 **SAN JOSE DIVISION**

12
13 SECURITIES AND EXCHANGE COMMISSION,

Case No. 12-CV-2663 (LHK)

14 Plaintiff,

15 vs.

16 GLR CAPITAL MANAGEMENT, LLC, GLR
ADVISORS, LLC, JOHN A. GERINGER,
17 CHRISTOPHER A. LUCK, and KEITH E. RODE

AMENDED COMPLAINT

18 Defendants,

19 and

20 GLR GROWTH FUND, L.P.,

21 Relief Defendant.
22

23 Plaintiff Securities and Exchange Commission ("Commission") alleges:

24 **SUMMARY OF THE ACTION**

25 1. Since at least 2005, John A. Geringer has raised in excess of \$60 million from
26 investors by misrepresenting the performance and strategy of a private investment fund, the GLR
27 Growth Fund, L.P. (the "Fund"), based in Scotts Valley, California. Geringer used false and
28 misleading marketing materials claiming that the Fund has returned between 17-25 percent in every

1 year of its operation by investing in investments tied to well-known stock indices such as the S&P
2 500, NASDAQ, and Dow Jones, as well as in oil, natural gas, and technology-related companies. In
3 fact, the vast majority of money raised went to two illiquid private companies, to pay back other
4 investors, and to three entities Geringer controlled. To the extent Geringer engaged in actual
5 securities trading, far from generating high annual returns, he consistently lost money.

6 2. To conceal the fraud, Geringer falsified the Fund's brokerage account records, and this
7 information was provided to investors. Moreover, of the money raised from investors, millions was
8 used to pay back earlier investors, giving the false appearance of profitability, as in a Ponzi scheme.

9 3. Geringer's business partners, Christopher A. Luck and Keith E. Rode, were aware of
10 Geringer's misrepresentations, namely that Geringer had not been achieving returns of more than
11 17% by investing most of the Fund's assets in the stock market, and that most of the Fund's assets
12 were invested in the two private companies. Luck and Rode knew that Geringer had supplied false
13 brokerage records which Rode had used to prepare the Fund's tax returns. Nevertheless, Luck
14 solicited new investors by touting Geringer's trading ability and Rode induced investors to rollover
15 their investments and to add to their investments by distributing false account statements.

16 4. Geringer, Luck, and Rode were the three members of GLR Capital Management, LLC
17 ("GLR Capital") and Geringer, Luck & Rode LLC ("GLR LLC"). Geringer, Luck, Rode, GLR
18 Capital, GLR Advisors, LLC ("GLR Advisors") (an entity owned by Geringer), and GLR LLC,
19 violated numerous provisions of the federal securities laws, including the antifraud statutes, by
20 engaging in a scheme to defraud and making materially false and misleading statements in the offer
21 or sale and in connection with the purchase or sale of securities. Geringer, Rode, GLR Capital, GLR
22 Advisors, and GLR LLC also made unlawful representations that the Commission had passed on the
23 merits of securities. Geringer and GLR Advisors, an investment adviser controlled by Geringer, also
24 defrauded their advisory client, the Fund, and the Fund's investors.

25 5. The Commission seeks to enjoin Geringer, Luck, Rode, GLR Capital, and GLR
26 Advisors from further conduct that violates the securities laws, disgorgement from them of ill-gotten
27 gains, and payment of civil money penalties. The Commission further seeks disgorgement of ill-
28 gotten gains held by the Fund, a relief defendant in this action.

JURISDICTION

1
2 6. The Commission brings this action pursuant to Section 20(b) of the Securities Act of
3 1933 (“Securities Act”), 15 U.S.C. § 77t(b), Sections 21(d) and 21(e) of the Securities Exchange Act
4 of 1934 (“Exchange Act”), 15 U.S.C. §§ 78u(d) and 78u(e), and Sections 209 and 214 of the
5 Investment Advisers Act of 1940 (“Advisers Act”), 15 U.S.C. §§ 80b-9 and 80b-14. This Court has
6 jurisdiction over this action pursuant to Section 22(a) of the Securities Act, 15 U.S.C. § 77v(a),
7 Sections 21(d)(3), 21(e), and 27 of the Exchange Act, 15 U.S.C. §§ 78u(d)(3), 78u(e), and 78aa, and
8 Sections 209 and 214 of the Advisers Act, 15 U.S.C. §§ 80b-9 and 80b-14. Defendants, directly or
9 indirectly, have made use of the means and instrumentalities of interstate commerce or of the mails in
10 connection with the acts, transactions, practices, and courses of business alleged in this Amended
11 Complaint.

12 7. Venue in this District is proper pursuant to Section 22 of the Securities Act, 15 U.S.C.
13 § 77v, Section 27 of the Exchange Act, 15 U.S.C. § 78aa, and Section 214 of the Advisers Act, 15
14 U.S.C. § 80b-14, because a substantial portion of the conduct alleged in this Amended Complaint
15 occurred within the Northern District of California. Defendants Geringer and Luck reside in the
16 District and Defendants GLR Capital and GLR Advisors, as well as the Fund, all maintained an
17 office in the District during the time of the conduct described in this Amended Complaint.

DEFENDANTS

18
19 8. Defendant John Arnold Geringer, age 48, resides in Scotts Valley, California. At the
20 time of the conduct described in this Amended Complaint, Geringer acted as an investment adviser
21 by, among other things, receiving financial compensation (through GLR Advisors) for investing the
22 Fund’s assets in securities. Geringer is the sole member of GLR Advisors, and was a member of
23 GLR Capital and GLR LLC during the relevant period. He has held Series 6, 63, and 65 securities
24 licenses but has never been registered with the Commission.

25 9. Defendant Christopher Anthony Luck, age 56, resides in Scotts Valley, California. At
26 the time of the conduct described in this Amended Complaint, Luck served as a director of two of the
27 private companies in which the Fund invested and was a member of GLR Capital and GLR LLC.
28

1 10. Defendant Keith Everts Rode, age 45, resides in Franklin, Wisconsin. He is a
2 Certified Public Accountant (CPA) licensed in California and Wisconsin. At the time of the conduct
3 described in this Amended Complaint, Rode served as a director of two of the private companies in
4 which the Fund invested, was a partner in an accounting firm in Racine, Wisconsin, and was a
5 member of GLR Capital and GLR LLC.

6 11. Defendant GLR Capital Management, LLC (“GLR Capital”) is a California limited
7 liability company based in Scotts Valley, California. GLR Capital is the Fund’s general partner, with
8 control over the Fund’s affairs. Geringer, Luck, and Rode were the members of GLR Capital during
9 the relevant period. GLR Capital has never been registered with the Commission.

10 12. Defendant GLR Advisors, LLC (“GLR Advisors”) is a California limited liability
11 company based in Scotts Valley, California. GLR Advisors acted as an investment adviser to the
12 Fund at the time of the conduct described in this Amended Complaint. Since 2003, GLR Advisors
13 has been registered with the State of California as an investment adviser, but has never been
14 registered with the Commission.

15 **RELIEF DEFENDANT**

16 13. GLR Growth Fund, L.P. is named as a defendant in this action solely for the purpose
17 of ensuring complete relief. The Fund is a California limited partnership formed in 2003 and based
18 in Scotts Valley, California. The Fund’s limited partnership agreement provides that GLR Capital,
19 the Fund’s general partner, has control over the Fund’s affairs while the limited partners (i.e.,
20 investors) play no role in the business of the Fund.

21 **RELATED ENTITY**

22 14. Geringer, Luck & Rode LLC (“GLR LLC”) was a California limited liability company
23 based in Scotts Valley, California during the relevant period. Geringer, Luck, and Rode were the
24 members of GLR Capital. Fund marketing materials describe GLR LLC as a company that provides
25 investment, insurance and tax-consultation services. GLR LLC has never been registered with the
26 Commission.

FACTUAL ALLEGATIONS**Geringer, Luck, Rode, GLR Capital, GLR Advisors, and GLR LLC Used False and Misleading Marketing Materials and Account Statements to Raise in Excess of \$60 Million From Investors**

15. Geringer, Luck, and Rode formed the Fund in 2003. Geringer managed the Fund's trading accounts and made decisions about the Fund's investments in publicly traded securities. Luck identified private company investments for the Fund. Rode kept the Fund's accounting records, prepared its tax returns and IRS Schedules K-1, and prepared and distributed account statements to Fund investors.

16. Starting no later than 2005 and continuing through at least February 2012, Geringer raised over \$60 million for the Fund. Although investors were from several states, most were from the Santa Cruz, California area. According to the Fund's limited partnership agreement, investments were made for one-year periods, at the end of which investors could request to withdraw from the Fund. Investor money was deposited into the Fund's bank account and investors were charged a 4% management fee. Investors could also rollover their investment for a new one-year period, which certain investors did.

17. Between February 2005 and April 2011, the Fund paid at least \$11 million to GLR Capital, which transferred approximately \$3 million to GLR Advisors (which Geringer controlled as its sole member), approximately \$3.5 million to Luck, approximately \$2.5 million to Rode, and approximately \$1 million to GLR LLC. Separately, the Fund transferred at least \$60,000 to GLR LLC, \$21,000 to GLR Advisors, \$15,000 to Geringer, \$230,000 to Luck, and \$8,000 to Rode.

18. The marketing materials Geringer created and distributed to investors suggested that the Fund was able to achieve steady annual returns of between 17 and 25 percent from 2001 to 2011 (including nearly 24 percent in 2008, the year the S&P 500 Index lost 38.5 percent). The marketing materials claimed the Fund was investing the vast majority of its assets – 75 percent – in publicly traded securities, options, and commodities. In fact, as described below, the Fund's trading strategy produced consistently negative returns. Moreover, since mid-2009 the Fund did not invest in publicly traded securities at all but instead invested heavily in illiquid investments in two private, startup technology companies. Between 2009 and 2012, Geringer, Luck, GLR Capital, GLR LLC,

1 and GLR Advisors provided investors with a packet of marketing materials Geringer created, which
2 contained a number of false and misleading statements. Although the Fund was started in 2003, one
3 page of the marketing materials titled “GLR Growth Fund Performance History” claimed the Fund
4 achieved 25 percent returns in 2001 and 2002, before the Fund even existed.

5 19. Another page of the marketing materials, titled “GLR Growth Fund Asset
6 Allocations,” misrepresented the diversification of the Fund’s portfolio, claiming that in 2009, 2010,
7 and 2011, 75 percent of the Fund’s assets were invested in securities tied to major stock indices. It
8 further claimed specific allocations within the trading strategy, such as investing 20 percent of the
9 Fund’s assets in the S&P 500 Index. This page also stated that only 25 percent of the Fund’s assets
10 were in “Direct Company Investments,” which could include public and private companies in the oil,
11 natural gas, and technology sectors.

12 20. In the marketing materials was another document, titled “GLR Growth Fund
13 Investment Policies,” purporting to describe the trading strategy in greater detail. The information
14 provided was meant to convey an investment policy under which the Fund invested in liquid
15 securities that had high trading volumes. It also emphasized diversification within the trading
16 strategy.

17 21. Thus, the marketing materials claimed that the Fund invested 75 percent of its assets in
18 a securities, options, and commodities trading strategy that helped produce the 17-25 percent annual
19 returns. In fact, the Fund’s trading produced negative returns in every year from 2005 to 2009. This
20 included a 33 percent decline in 2008 and a 92 percent decline in 2009, when calculated by a standard
21 spreadsheet software program as the annualized internal rate of return considering the cash flows in
22 and out of the trading portfolio.

23 22. Moreover, since at least 2007, substantially less than 75 percent of the Fund’s assets
24 were even invested in the trading strategy, and by mid-2009, the Fund was no longer trading at all.
25 For example, at the end of 2007, there was a balance of \$60,725 in the Fund’s brokerage accounts.
26 That amount was only 0.3 percent of the Fund’s total assets as reported on the Fund’s internal
27 balance sheet.

28

1 23. Instead, more and more of the Fund's money was being invested in the two private
2 startup companies. Through December 2011, the Fund had invested at least \$29 million in the two
3 companies. Despite this concentration of the Fund's assets in the two private companies, Geringer
4 told a potential investor in a February 2012 email: "We are very diverse in our investments."

5 24. Instead of disclosing to investors these negative returns during this period, Geringer
6 falsified documents in order to make it appear that his trading in the Fund's brokerage accounts was
7 successful. The false documents Geringer created were used to prepare the Fund's tax returns,
8 including IRS Schedules K-1 (Partner's Share of Income, Etc.). The K-1s were mailed to investors
9 on GLR LLC and GLR Capital letterhead.

10 25. For example, Geringer created a false year-end account summary for 2008 purporting
11 to show that the Fund had \$18.5 million in a brokerage account; in fact, the account balance was
12 under \$1.4 million. The Fund's tax returns, which Rode prepared, that were based on the falsified
13 brokerage records reported fictitious net short-term capital gains, which flowed through to the K-1s
14 provided to investors.

15 26. Geringer's document falsification did not stop there. He also created false brokerage
16 account statements showing the Fund had over \$100 million in a brokerage account that actually had
17 a balance of less than \$8,000. Geringer kept these false brokerage statements on hand at his office in
18 case any investors started asking about the Fund.

19 27. The marketing materials also contained a document titled "GLR Growth Fund" stating
20 "The Partnership will send all Partners after the end of each Calendar Year financial statements
21 audited by the Partnership's independent accountants." In fact, the Fund had no independent
22 accountant and no such audit was ever performed. After one investor requested a copy of the Fund's
23 audited financial statements in 2011, Geringer lied to the investor, telling him in an email that "[w]e
24 were advised by our counsel to hold off on any audited financial statements until" the 2010 Dodd-
25 Frank Wall Street Reform and Consumer Protection Act was fully implemented. Geringer, in fact,
26 never received any such legal advice.

27 28. In a conversation in or around April 2009, Geringer told Luck and Rode that the
28 information he had been providing them about the balances in the Fund's trading accounts was false

1 and that the trading accounts had less money in them than Luck and Rode had been led to believe. In
2 fact, Geringer's trading on behalf of the Fund lost money. At the time, a Fund investor had requested
3 the return of her approximately \$12 million investment, and Geringer told Luck and Rode that the
4 Fund did not have enough in the trading accounts to satisfy the request. Neither Luck nor Rode
5 informed investors of what Geringer had told them. In fact, after Geringer told them he had been
6 lying about the trading account balances, Luck solicited new investors to the Fund and Rode prepared
7 and mailed misleading account statements to investors.

8 29. After the April 2009 conversation, Luck solicited new investors to the Fund by
9 participating in at least one meeting with Geringer and a potential investor (who later invested in the
10 Fund) at which they discussed Geringer's trading strategy and the asset-allocation and performance
11 history portions of the Fund's marketing materials. These materials included the false representations
12 that the Fund produced 17-25 percent annual returns by investing 75 percent of its assets in the stock
13 market. Luck also provided at least one potential investor with the Fund's false marketing materials
14 and reviewed them with the investor, who later invested in the Fund. Luck told the investor more
15 than once words to the effect that Geringer had had a good day trading in the stock market, and the
16 investor subsequently invested additional amounts in the Fund. To another potential investor, Luck
17 touted Geringer's trading ability and encouraged him to talk to Geringer about investing in the Fund,
18 which he eventually did and thereafter invested in the Fund.

19 30. Furthermore, periodic account statements that Geringer and Rode prepared and mailed
20 to investors falsely claimed "MEMBER NASD AND SEC APPROVED." The account statements,
21 which were on GLR Capital and GLR LLC letterhead and sometimes listed "Your Financial Advisor:
22 John A. Geringer, RIA" (short for "registered investment adviser"), contained this statement even
23 though the Commission never "approved" the Fund or investments in the Fund, and neither GLR
24 Capital, GLR Advisors, GLR LLC, nor the Fund was a member of the NASD (now known as the
25 Financial Industry Regulatory Authority, or FINRA).

26 31. Geringer, GLR Capital, GLR LLC, and GLR Advisors knew, or were reckless in not
27 knowing, that the Fund marketing materials and periodic account statements they created and
28 distributed were false and misleading. Geringer, GLR Capital, and GLR LLC knew, or were reckless

1 in not knowing, that the statements they made in emails to investors and prospective investors were
2 false and misleading. They further knew, or were reckless in not knowing, that the falsified
3 brokerage records Geringer created would be used to prepare the Schedule K-1s that were provided to
4 investors.

5 32. Luck knew, or was reckless in not knowing, that the Fund marketing materials and
6 statements he made and others made to investors and prospective investors were false and
7 misleading.

8 **Geringer, Rode, GLR Capital, GLR LLC, and GLR Advisors Distributed False and**
9 **Misleading Account Statements to Fund Investors, and Geringer and GLR Advisors**
10 **Misused Fund Assets**

11 33. The periodic account statements Geringer and Rode prepared and mailed to investors
12 purported to show how their investments in the Fund had grown, furthering the illusion of
13 profitability. The account statements listed the investor's initial investment, a deduction for the
14 management fee, and the addition of the "contract income" purportedly earned by the investor,
15 totaling a purported "Total Cash Balance." Without disclosing that the securities trading generated
16 significant negative returns, Geringer calculated the purported "contract income" based on his
17 estimate of the unrealized value of the Fund's illiquid, private-company investments. Geringer
18 calculated "contract income" in this way despite provisions in the Fund's limited partnership
19 agreement calling for each investor's interest in the Fund to be calculated based on the actual,
20 realized gains and losses of the Fund's investments.

21 34. Rode knew that the Fund was almost entirely invested in private companies and that
22 these were illiquid, non-income producing investments. Nevertheless, he prepared and mailed to
23 investors account statements that listed purported "contract income" and a purported "Total Cash
24 Balance" that was inflated by this phantom "contract income."

25 35. When certain investors withdrew their investments from the Fund, they received the
26 "Total Cash Balance" calculated by Geringer, rather than the actual capital account balance as called
27 for in the limited partnership agreement. Geringer thus used Fund assets to pay withdrawing
28 investors more than they were entitled to receive, hiding the Fund's losses. In addition, more recent

1 investors, and those who remained in the Fund, faced a risk that there would be insufficient assets to
2 fund their eventual withdrawals.

3 36. The Fund was not paying investors back with profits from its trading strategy.
4 Instead, money raised from investors was used to pay back withdrawing investors, creating the false
5 appearance that the Fund was profitable, as in a Ponzi scheme.

6 37. Geringer, Rode, GLR Capital, GLR LLC, and GLR Advisors knew, or were reckless
7 in not knowing, that the account statements they created and distributed to investors were false and
8 misleading. In addition, Geringer and GLR Advisors knew, or were reckless in not knowing, that
9 they paid withdrawing investors more than they were entitled to receive.

10 38. At all times relevant to the facts alleged in this Amended Complaint, Defendant GLR
11 Capital acted by and through Geringer, Luck, and Rode. Additionally, GLR Advisors acted by and
12 through Geringer.

13 **FIRST CLAIM FOR RELIEF**

14 **(Violations of Section 17(a) of the Securities Act by All**
15 **Defendants)**

16 39. Paragraph numbers 1 through 38 are re-alleged and incorporated herein by reference.

17 40. Defendants Geringer, GLR Capital, GLR Advisors, Luck, and Rode have, by engaging
18 in the conduct set forth above, directly or indirectly, in the offer or sale of securities, by the use of
19 means or instruments of transportation or communication in interstate commerce, or of the mails: (a)
20 with scienter, employed devices, schemes, or artifices to defraud; (b) obtained money or property by
21 means of untrue statements of material fact or by omitting to state material facts necessary in order to
22 make statements made, in the light of the circumstances under which they were made, not
23 misleading; and (c) engaged in transactions, practices, or courses of business which operated or
24 would operate as a fraud or deceit upon the purchasers of such securities.

25 41. By reason of the foregoing, Defendants Geringer, GLR Capital, GLR Advisors, Luck,
26 and Rode have directly or indirectly violated Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a),
27 and unless enjoined will continue to violate this provision.
28

1 42. Alternatively, Defendants Luck and Rode knowingly or recklessly provided
 2 substantial assistance to Geringer, GLR Capital, and/or other persons' violations of Section 17(a) of
 3 the Securities Act, 15 U.S.C. § 77q(a), and therefore are liable as aiders and abettors pursuant to
 4 Section 15(b) of the Securities Act, 15 U.S.C. § 77o(b).

5 **SECOND CLAIM FOR RELIEF**

6 **(Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder
 7 by All Defendants)**

8 43. Paragraph numbers 1 through 38 are re-alleged and incorporated herein by reference.

9 44. Defendants Geringer, GLR Capital, GLR Advisors, Luck, and Rode by engaging in
 10 the conduct set forth above, directly or indirectly, by use of means or instrumentalities of interstate
 11 commerce, or of the mails, or of a facility of a national security exchange, with scienter: (a)
 12 employed devices, schemes, or artifices to defraud; (b) made untrue statements of material fact or
 13 omitted to state material facts necessary in order to make the statements made, in light of the
 14 circumstances under which they were made, not misleading; and (c) engaged in acts, practices, or
 15 courses of business which operated or would operate as a fraud or deceit upon other persons, in
 16 connection with the purchase or sale of securities.

17 45. By reason of the foregoing, Defendants Geringer, GLR Capital, GLR Advisors, Luck,
 18 and Rode have directly or indirectly violated Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b),
 19 and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5, and unless restrained and enjoined will continue
 20 to violate these provisions.

21 46. Alternatively, Defendants Geringer, Luck, and Rode knowingly or recklessly provided
 22 substantial assistance to GLR Capital, GLR LLC, and/or other persons' violations of Section 10(b) of
 23 the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5(b), 17 C.F.R. § 240.10b-5(b), and therefore are
 24 liable as aiders and abettors pursuant to Section 20(e) of the Exchange Act, 15 U.S.C. § 78t(e).

25 **THIRD CLAIM FOR RELIEF**

26 **(Violations of Sections 206(1) and 206(2) of the Advisers Act by
 27 Geringer, GLR Advisors, and GLR Capital)**

28 47. Paragraph numbers 1 through 38 are re-alleged and incorporated herein by reference.

1 48. Defendants Geringer and GLR Advisors, by engaging in the conduct set forth above,
2 directly or indirectly, through use of the mails or the means or instrumentalities of interstate
3 commerce, and while engaged in the business of advising others for compensation as to the
4 advisability of investing in, purchasing, or selling securities, with scienter, employed devices,
5 schemes, or artifices to defraud.

6 49. By reason of the foregoing, Defendants Geringer and GLR Advisors violated, and
7 unless restrained and enjoined will continue to violate, Section 206(1) of the Advisers Act, 15 U.S.C.
8 § 80b-6(1).

9 50. Defendants Geringer and GLR Advisors, by engaging in the conduct set forth above,
10 directly or indirectly, through use of the mails or the means or instrumentalities of interstate
11 commerce, and while engaged in the business of advising others for compensation as to the
12 advisability of investing in, purchasing, or selling securities, engaged in acts, practices, or courses of
13 business which operated or would operate as a fraud or deceit upon clients or prospective clients.

14 51. By reason of the foregoing, Defendants Geringer and GLR Advisors violated, and
15 unless restrained and enjoined will continue to violate, Section 206(2) of the Advisers Act, 15 U.S.C.
16 § 80b-6(2).

17 52. Defendant GLR Capital knowingly provided substantial assistance to Geringer, GLR
18 Advisors, and/or other persons' violations of Sections 206(1) and 206(2) of the Advisers Act, 15
19 U.S.C. §§ 80b-6(1) and (2), and therefore is liable as an aider and abettor pursuant to Section 209(d)
20 of the Advisers Act, 15 U.S.C. § 80b-9(d).

21 **FOURTH CLAIM FOR RELIEF**

22 **(Violations of Section 206(4) of the Advisers Act**
23 **and Rule 206(4)-8 Thereunder by All Defendants)**

24 53. Paragraph numbers 1 through 38 are re-alleged and incorporated herein by reference.

25 54. At all relevant times, Defendants Geringer and GLR Advisors each acted as
26 investment advisers, as defined by Section 202(a)(11) of the Advisers Act, 15 U.S.C. § 80b-2(a)(11),
27 to the Fund.

28 55. At all relevant times, the Fund operated as a pooled investment vehicle, as defined by

1 Rule 206(4)-8(b) under the Advisers Act, 17 C.F.R. § 275.206(4)-8(b).

2 56. Defendants Geringer and GLR Advisors, by engaging in the acts and conduct alleged
3 above, while acting as investment advisers to a pooled investment vehicle, by use of the means and
4 instrumentalities of interstate commerce and of the mails, made untrue statements of a material fact
5 or omitted to state a material fact necessary to make the statements made, in the light of the
6 circumstances under which they were made, not misleading, to any investor or prospective investor in
7 the Fund, and otherwise engaged in acts, practices or courses of business that were fraudulent,
8 deceptive, or manipulative with respect to any investor or prospective investor in the Fund.

9 57. By reason of the foregoing, Defendants Geringer and GLR Advisors violated, and
10 unless enjoined will continue to violate, Section 206(4) of the Advisers Act, 15 U.S.C. § 80b-6(4),
11 and Rule 206(4)-8 thereunder, 17 C.F.R. § 275.206(4)-8.

12 58. Defendants Luck, Rode, and GLR Capital knowingly provided substantial assistance
13 to Geringer, GLR Advisors, and/or other persons' violations of Section 206(4) of the Advisers Act,
14 15 U.S.C. § 80b-6(4), and Rule 206(4)-8 thereunder, 17 C.F.R. § 275.206(4)-8, and therefore are
15 liable as aiders and abettors pursuant to Section 209(d) of the Advisers Act, 15 U.S.C. § 80b-9(d).

16 **FIFTH CLAIM FOR RELIEF**

17 **(Violations of Section 26 of the Exchange Act by Geringer, GLR Capital, GLR Advisors,
18 and Rode)**

19 59. Paragraph numbers 1 through 38 are re-alleged and incorporated herein by reference.

20 60. Defendants Geringer, Rode, GLR Capital, and GLR Advisors by engaging in the
21 conduct set forth above, made, or caused to be made, to any prospective purchaser or seller of a
22 security any representation that the Commission has passed on the merits of, or given approval to,
23 any security or transaction or transactions therein.

24 61. By reason of the foregoing, Defendants Geringer, Rode, GLR Capital, and GLR
25 Advisors, have violated Section 26 of the Exchange Act, 15 U.S.C. § 78z, and unless restrained and
26 enjoined will continue to violate this provision.

27 62. Alternatively, Defendant Geringer knowingly or recklessly provided substantial
28 assistance to GLR LLC and Defendant GLR Capital and/or other persons' violations of Section 26 of

1 the Exchange Act, 15 U.S.C. § 78z, and therefore is liable as an aider and abettor pursuant to Section
2 20(e) of the Exchange Act, 15 U.S.C. § 78t(e).

3 **PRAYER FOR RELIEF**

4 WHEREFORE, the Commission respectfully requests that the Court:

5 I.

6 Enjoin Defendants Geringer, GLR Capital, and GLR Advisors preliminarily and permanently
7 from directly or indirectly violating Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a),
8 Sections 10(b) and 26 of the Exchange Act, 15 U.S.C. § 78j(b) and 78z, and Rule 10b-5 thereunder,
9 17 C.F.R. § 240.10b-5, and Sections 206(1), 206(2), and 206(4) of the Advisers Act, 15 U.S.C.
10 §§ 80b-6(1), 80b-6(2), and 80b-6(4), and Rule 206(4)-8 thereunder, 17 C.F.R. § 275.206(4)-8.

11 II.

12 Enjoin Defendants Luck and Rode permanently from directly or indirectly violating
13 Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), Section 10(b) of the Exchange Act, 15 U.S.C.
14 § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5, and Section 206(4) of the Advisers Act,
15 15 U.S.C. § 80b-6(4), and Rule 206(4)-8 thereunder, 17 C.F.R. § 275.206(4)-8; and further enjoin
16 defendant Rode permanently from directly or indirectly violating Section 26 of the Exchange Act, 15
17 U.S.C. §78z.

18 III.

19 Enter an order freezing all monies and assets in all accounts at banks holding accounts in the
20 name or for the benefit of the Relief Defendant and requiring that all banks holding such accounts not
21 permit transactions in such accounts without further order of the Court.

22 IV.

23 Enter an order requiring Defendants and the Relief Defendant to disgorge their ill-gotten gains
24 according to proof, plus prejudgment interest thereon.

25 V.

26 Enter an order requiring Defendants to pay civil penalties pursuant to Section 20(d) of the
27 Securities Act, 15 U.S.C. § 77t(d), Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d), and
28 Section 209(e) of the Advisers Act, 15 U.S.C. § 80b-9(e).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VI.

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.

Grant such other and further relief as this Court may determine to be just, equitable, and necessary.

Dated December 21, 2012

Respectfully submitted,

/s/ Robert J. Durham
Robert J. Durham
Attorney for Plaintiff
SECURITIES AND EXCHANGE COMMISSION