INITIAL DECISION RELEASE NO. 748
ADMINISTRATIVE PROCEEDING
FILE NO. 3-15858

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

In the Matter of STANLEY JONATHAN FORTENBERRY (A/K/A S.J. FORTENBERRY, JOHN FORTENBERRY, AND JOHNNY FORTENBERRY)	INITIAL DECISON March 2, 2015

APPEARANCES: Stephan J. Schlegelmilch, Michael C. Baker, and Corey A. Schuster for the Division of Enforcement, Securities and Exchange Commission

Stanley Jonathan Fortenberry, *pro se*

SUMMARY

This Initial Decision finds that Respondent Stanley Jonathan Fortenberry willfully violated Section 17(a) of the Securities Act of 1933, Section 10(b) of the Exchange Act of 1934 and Rule 10b-5 thereunder, and Section 206(1), (2), and (4) of the Investment Advisers Act of 1940 and Rule 206(4)-8 thereunder (collectively, the antifraud provisions). The Initial Decision orders Fortenberry to cease-and-desist from further violations of these provisions and permanently bars him from the securities industry. Additionally, the Initial Decision orders Fortenberry to pay civil penalties totaling $900,000 and to disgorge $146,500 plus prejudgment interest.

I. INTRODUCTION

Relying on five provisions—Section 8A of the Securities Act, Section 21C of the Exchange Act, Section 203(f) and (k) of the Advisers Act, and Section 9(b) of the Investment Company Act of 1940—the Securities and Exchange Commission instituted this proceeding on April 28, 2014, with an Order Instituting Administrative and Cease-and-Desist Proceedings (OIP). The OIP alleges that Fortenberry violated the antifraud provisions.

I held a hearing in this matter in Dallas, Texas, over three days in October 2014. During the hearing, the Division of Enforcement called five witnesses, including Fortenberry. Aside

from himself, Fortenberry called no witnesses. I admitted sixty-one of the Division's exhibits and eleven of Fortenberry's exhibits.[1]

II. FINDINGS OF FACT

I base the following findings of fact and conclusions on the entire record and the demeanor of the witnesses who testified at the hearing, applying preponderance of the evidence as the standard of proof. *See Steadman v. SEC*, 450 U.S. 91, 100-04 (1981). All arguments and proposed findings and conclusions that are inconsistent with this decision are rejected.[2] I find the following facts to be true.

This case is about the collapse of Premier Investment Fund L.P. (Premier) and its investors' losses. Premier was run by Respondent Stanley Jonathan Fortenberry. Answer at 3. Fortenberry, who is forty-eight and lives in San Angelo, Texas, is a man of many names. *Id.* Apparently, he now goes by the name John. Tr. 199. In 2004, however, he entered into an agreed cease-and-desist order with the Texas State Securities Board, in which his name was listed as Stanley J. Fortenberry.[3] Div. Ex. 10. Stanley J. Fortenberry was also the name used by the Pennsylvania Securities Commission in 2004 when it ordered Fortenberry to stop selling unregistered securities in Pennsylvania while promising "100% return . . . within the first 12 months." Div. Ex. 9. Fortenberry's former counsel, John C. Nimmer, often referred to Fortenberry as SJ. *See* Div. Ex. 38 at 6509, 6514, 6520.[4]

A. Fortenberry solicits a loan for $170,000 from Dr. Allen Anderson

In 2009 and 2010, Fortenberry was associated with a company called Breadstreet.com that generated investor leads. Tr. 249-51. During that time, Breadstreet.com operated out of a

[1] Citations to the Division's exhibits and Fortenberry's exhibits are noted as "Div. Ex. ___," and "JF ___," respectively. Fortenberry's and the Division's posthearing briefs are noted as "Resp. Br. at ___" and "Div. Br. at ___," respectively. Citations to the Division's proposed findings of fact and conclusions of law are noted as "Div. Proposed Findings at ___."

[2] I reject Fortenberry's argument that the OIP was not timely filed due to the Division's failure to comply with the deadlines set forth in 15 U.S.C. § 78d-5. *See Montford & Co.*, Advisers Act Release No. 3829, 2014 SEC LEXIS 1529, *30-50 (May 2, 2014) (holding that 15 U.S.C. § 78d-5 does not create a statute of limitations or any right to dismissal of action due to noncompliance with its deadlines).

[3] In the cease-and-desist order, Fortenberry agreed that he failed to disclose certain risks associated with unregistered securities he offered and sold in Texas. Div. Ex. 10 at 2-3. He also agreed that he failed to disclose to investors his 1990 theft conviction and his bankruptcy filings in 1992 and 1993. *Id.* at 2.

[4] Many of the Division's exhibits are paginated with numbers reflecting their previous use in other contexts. Division Exhibit 38, for example, is paginated from HMC-E-006499 to HMC-E-006523. In this Initial Decision, when an exhibit is paginated in this manner, I will simply refer to the last four digits of the page in question.

building located at 221 South Abe Street, San Angelo, Texas (the South Abe Street building). Tr. 249, 750. Fortenberry owned this building. Tr. 249-50. Fortenberry earned $89,000 in 2009 for his work with Breadstreet.com, making him the highest or second highest paid employee or contractor affiliated with Breadstreet.com. Tr. 251. And his later-developed investment company, Premier, operated out of the same location as Breadstreet.com. Tr. 229-31, 249. It was thus the case that although Fortenberry attempted to distance himself from Breadstreet.com, *see* Tr. 250-51 ("I wasn't running the day-to-day operations. . . I was there basically as a cheer leader . . . [a]nd I would occasionally hold a meeting or something for them."), he was very much involved with that company.[5]

In any event, Fortenberry was experiencing financial difficulties in early 2010. Tr. 678. In January or February, he asked his friend, Dr. Allen Anderson, to loan him $170,000 in exchange for a lien on the South Abe Street building. Tr. 201, 342, 678. Dr. Anderson first met Fortenberry in 2008 or 2009. Tr. 676-77. Dr. Anderson graduated from medical school in 1966. Tr. 671. Although he was previously an avid outdoorsman, he has been slowed since 2005 by health issues and is now less ambulatory than in the past.[6] Tr. 672-73.

Dr. Anderson agreed to loan Fortenberry $170,000. Tr. 678. In February and March 2010, he gave Fortenberry two $10,000 checks, the first made out to John Fortenberry and the second made out to Private Business Investments. Tr. 679-81; Div. Exs. 14, 20. Private Business Investments was a division of Breadstreet.com. *See* Div. Ex. 26. Dr. Anderson made the second check out to Private Business Investments because Fortenberry asked him to do so. Tr. 681-85. In April 2010, Dr. Anderson entered into an agreement, purportedly with Private Business Investments, but signed by Fortenberry. Div. Ex. 26. In the agreement, Dr. Anderson agreed to "transfer" $150,000 to Private Business Investments in payments of $80,000 in April 2010, and $70,000 in May 2010. *Id*. In return, Dr. Anderson was to receive 2% of Private Business Investments' gross revenue and ownership of the South Abe Street building. *Id.* As contemplated in the agreement, Dr. Anderson issued checks to Private Business Investments for $80,000 and $70,000 in April and May 2010, respectively. Tr. 683-85; Div. Exs. 25, 26, 34.

For reasons that were not explained, Fortenberry did not transfer ownership of the South Abe Street building to Dr. Anderson. Instead, in June 2010, Fortenberry executed a "real estate lien note" in the amount of $170,000. Tr. 678, 685-86; Div. Ex. 43. In the note, Fortenberry

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[5] The reason behind Fortenberry's desire to distance himself from Breadstreet.com was not explored during the hearing in this matter. It appears that Fortenberry came to the Division's attention because the Division was investigating Breadstreet.com. *See* Declaration of Corey A. Schuster in Support of the Division of Enforcement's Memorandum in Opposition to Respondent's Motion for Summary Disposition (Schuster Declaration). During the Division's investigation of Breadstreet.com, Fortenberry refused to respond to the Division's subpoena and instead asserted that "[i]nformation relevant to the investigation is inherently incriminating." *See* Schuster Declaration, Ex. D at 2.

[6] Dr. Anderson testified that he suffers from various ailments. Tr. 673. The statement above that he has difficulty moving about is based on my personal observation of his movements to and from the witness chair.

gave Dr. Anderson a lien on the South Abe Street building. Tr. 678; Div. Ex. 43. The note reflected that Dr. Anderson had given Fortenberry an interest-free loan payable in three years. Tr. 678; Div. Ex. 43.

B. Fortenberry creates Premier to invest in Halsey Management Company

Meanwhile, in March 2010, Fortenberry heard a radio interview with Jim Halsey. Tr. 245-46. Mr. Halsey is well-known in the country music industry, having successfully managed and promoted artists for decades. *See* http://en.wikipedia.org/wiki/Jim_Halsey (last visited Feb. 5, 2015); Tr. 50-51. During the radio interview, Mr. Halsey invited investors to invest in a new venture he had conceived. Tr. 245.

Fortenberry soon e-mailed Mr. Halsey, saying "I bring investors and businesses together for profit-- including the entertainment industry. I am curious how private money may be able to profit from the music industry." Div. Ex. 19. Mr. Halsey responded and asked whether Fortenberry could "bring something to the table?" *Id*. Fortenberry replied:

> I represent the Nimmer Law Office[.][7] [W]e specialize in private funding for worthwhile endeavors. I would like to see some information on any projects you wish to get investor funds for. *We handle transactions ranging from one million up to twenty-five million*.

Id. (emphasis added).

As it turned out, the emphasized language was false. Fortenberry had never raised $1 million, let alone $25 million. Tr. 252-53, 593. He explained that he easily could have done so if Mr. Halsey owned property worth $25 million that he was willing to mortgage. Tr. 252-53. Unprompted during the hearing, Fortenberry defended his choice of words in the e-mail, offering that "it's not like lying." Tr. 593. Rather, he said was conveying his capability and interest in being involved with an investment involving that amount of money.[8] Tr. 593-94.

To the contrary, I find that Fortenberry's statement that "[w]e handle transactions ranging from one million up to twenty-five million," was calculated to convey the message that he and

[7] John C. Nimmer represented Fortenberry during the Division's investigation and continued to represent him until shortly before the scheduled hearing in this matter. *See Stanley Jonathan Fortenberry*, Admin. Proc. Rulings Release No. 1800, 2014 SEC LEXIS 3307 (Sept. 12, 2014).

[8] The best word I can think of to describe Fortenberry's explanation for his assertion in his e-mail is "silly." If a person owned property worth $25 million and was willing to mortgage it in order to raise money, he or she would not need Fortenberry. For that matter, why stop at $25 million? If Fortenberry merely intended to depend on the value of a person's property, why not use the figure of $100 million or $1 billion? But, of course, Mr. Halsey did not broadcast an appeal for help mortgaging his own property in order to raise money; he was looking for investors to invest *their* money. Fortenberry's explanation is thus silly.

Mr. Nimmer were serious investors because (1) they had experience raising up to $25 million; and (2) ventures involving less than $1 million were too small to warrant their involvement. It is thus apparent that both Fortenberry's testimony on this point and his e-mail were false; contrary to his testimony, he was "lying." As will become evident, this was but the first in a long list of false and misleading statements made by Fortenberry.

Mr. Halsey's son, Sherman Halsey, also worked in the country music industry. Div. Ex. 5 at 4-5. After his initial e-mail exchange with Jim Halsey, Fortenberry arranged to travel to Tulsa, Oklahoma, to meet with Jim and Sherman Halsey. *Id*. at 6-7. Fortenberry represented to the Halseys that he ran Premier and that through it, he raised capital for entertainment ventures. *Id*. The Halseys informed Fortenberry that they wished to create a new venture, eventually called Halsey Management Company, to raise "money to develop new projects, and new artists, and new businesses." *Id*. at 7-8; *see id*. at 10-11. Most of the Halseys' existing projects would not be included in Halsey Management. *See id*. at 7-8, 10-11. In order to help generate revenue for it, however, Sherman Halsey agreed to include within the venture sales of a Christmas DVD starring the Oak Ridge Boys. *Id*. at 8.

Within Halsey Management, Sherman Halsey planned to develop a website called Thundercloud 360. Div. Ex. 5 at 11-12. He envisioned this site as a "kind of broker" between musicians willing to "provide their services" and anyone wishing to use those services. *Id*. at 12. Sherman Halsey also hoped to develop an educational website called Starmaker360. *Id*. at 10.

Discussions with the Halseys culminated in a June 2010 agreement between Premier and Halsey Management Company, LLC. Div. Ex. 39. Consistent with the understanding Fortenberry conveyed that he could raise $3.5 million, *see* Div. 5 at 15, the agreement provided that Halsey Management would deliver up to 3.5 million units of membership interest in the company to Premier, at a cost of $1 per unit. Div. Ex. 39 at 6264-65. These 3.5 million units would represent 48% of the total "Units of Membership Interest in the Company." *Id*. at 6264.

The agreement also permitted the Halseys to engage in other ventures that were not part of Halsey Management. Div. Ex. 39 at 6271-72. It provided, however, that a number of "[l]ines of business . . . may be part of the Company as such may be developed by the Company," including the Billboard World Song Contest, "Online schooling" and other projects "*to be developed*," and new artist management. *Id*. at 6272 (emphasis added). Of relevance to this proceeding, the agreement contained a dilution provision that provided that twenty-four months after Premier recouped its entire investment plus 12% interest, Premier's ownership in Halsey Management would be reduced by half.[9] *Id*. at 6264-65. This provision is important because Fortenberry testified that it actually represented Sherman Halsey's guarantee that Premier would receive a 12% annual return. Tr. 544-46, 583.

At some point after the agreement was signed, it became apparent to Sherman Halsey that Fortenberry could not raise $3.5 million. Div. 5 at 15, 21. After one of the Halseys told Fortenberry that he needed to raise at least $1.5 million in order for their venture "to work,"

[9] The full text of this provision is reproduced as Exhibit A in the appendix attached to this Initial Decision.

Fortenberry committed to raising that amount of capital. Div. Ex. 5 at 21. In the end, however, Premier invested only $151,500 in Halsey Management. Div. 149 at 15, Ex. D.

C. Fortenberry convinces Dr. Anderson to invest in Premier

After Fortenberry and Sherman Halsey signed the agreement between Premier and Halsey Management, Fortenberry approached Dr. Anderson about investing in Premier. Tr. 690. Fortenberry told Dr. Anderson that Premier would invest in entertainment ventures in general and in projects involving Jim Halsey in particular. Tr. 690-91. For Dr. Anderson, knowing that Jim Halsey would be involved "legitimized" the venture and made it less "speculative." Tr. 692.

Fortenberry told Dr. Anderson that Fortenberry would manage Premier. Tr. 694-95. Fortenberry also led Dr. Anderson to believe that Fortenberry's compensation would consist solely of profit he received as an owner of Premier units. Tr. 695. Fortenberry omitted several other facts, however. He failed to mention his 2004 Pennsylvania Securities Commission cease-and-desist order. Tr. 42-43, 720; *see* Div. Ex. 9. Fortenberry also neglected to mention that he was the subject of a 2004 agreed cease-and-desist order issued by the Texas State Securities Board. Tr. 42-43, 720; *see* Div. Ex. 10. Had Dr. Anderson known about those orders, however, he would not have invested with Fortenberry. Tr. 720.

In August 2010, Dr. Anderson agreed to invest $100,000 in Premier. Tr. 695; *see* Div. Ex. 45 at 1; Div. Ex. 53 at 0039. He did so by committing to purchase partial units over a period of months, as outlined in a subscription agreement prepared by Mr. Nimmer at Fortenberry's direction. Tr. 234, 358, 695, 704; *see* Div. Ex. 45. The agreement stated that Fortenberry was Premier's general partner and described the proposed sale of up to 100 units of Premier for $100,000 per unit. Div. Ex. 45 at 1. According to the agreement, Fortenberry received 100 units for his preformation efforts. *Id*. In the agreement, Fortenberry affirmed that Premier would "use generally accepted accounting principles [(GAAP)] . . . in keeping its books and records." *Id*. He also affirmed that each limited partner would "have a capital account that included invested capital plus that partner's allocations of net income, minus that partner's allocation of net loss and share of distributions." *Id*. Fortenberry further committed to providing limited partners with profit and loss statements every year by January 31. *Id*. at 2-3.

Critically for this proceeding, the subscription agreement contained the following provision:

> a portion of the proceeds from the sale of Units of the Company, as well as profits from the Company's investments, *shall be allocated to reasonable administrative expenses in connection with the Unit offering and the day to day affairs of the Company, including but not limited to salaries—inclusive of the general partner*, office space, office equipment, travel, legal, accounting costs, and any other expense recognized by the Internal Revenue Code and regulations as a business deduction or credit.

Div. Ex. 45 at 2 (emphasis added).

As it turned out, however, Fortenberry never intended to do the things he committed to doing in the subscription agreement. He had no idea what it meant to use GAAP and no idea what a capital account is. Tr. 296, 589-90, 618-19. He also never prepared profit and loss statements or tax information for investors. Tr. 296-97, 299-300. In fact, when asked whether Premier kept a balance sheet or an income statement, Fortenberry said that he kept neither because doing so would not have been "typical of that type of organization at that stage." Tr. 296-97. Indeed, Fortenberry boldly announced that Premier kept no records other than bank account statements. Tr. 297. In his view, a bank statement was sufficient because "you could easily have an accountant within a few days prepare those statements or plug [the bank account information] into a piece of software and have a statement within a matter of minutes." Tr. 298-99. According to Fortenberry "[i]n today's world you plug in a piece of software like Quicken, and in about 20 minutes you have a statement that would have rivaled an accounting office of 20 men just 15 years ago." Tr. 299.

Relying on Fortenberry's false representations and unaware of his omissions, Dr. Anderson drafted a $35,000 check in August 2010, made out to Fortenberry rather than Premier. Tr. 363, 696-97; Div. Ex. 46 at 2375. On receiving the check, Fortenberry did not tell Dr. Anderson that he should have made the check out to Premier. Tr. 363. Instead, he simply "went with it." Tr. 363. Indeed, Fortenberry "went with it" such that he waited one week before he wired only $16,500, not the full $35,000, from his personal account to Halsey Management. *See* Div. Ex. 31 at 2436-37. He did not deposit any of the $35,000 into Premier's account. Tr. 363-64. Fortenberry was unsure what happened to the remaining $18,500 that he did not wire to Halsey Management. Tr. 363. He testified that he thought he "used some of the money right away. Just like . . . any businessman in [his] position with [his] background would probably do."[10] Tr. 363. In Fortenberry's opinion, it was reasonable for him to act in this manner. Tr. 364-65.

Subsequently, Dr. Anderson drafted checks made out to Premier in the following amounts on the following dates: $10,000 on September 10, 2010; $7,800 on October 26, 2010; $10,000 on November 22, 2010; $10,000 on December 10, 2010; $10,000 on January 10, 2011; $10,000 and $100 on February 14, 2011; $5,000 on March 8, 2011; and $100 on March 13, 2011. Div. Ex. 46 at 2993, 2997, 2999, 3001, 3005, 3007-08, 3010, 3012. The aggregate total of Dr. Anderson's payments was $98,000. Dr. Anderson understood and expected that all of his investment would be invested in Premier. Tr. 697-700. He did not expect that money to be used for Fortenberry's personal expenses. Tr. 701.

Because Dr. Anderson was investing over time, Fortenberry needed to create the appearance that Premier was investing Dr. Anderson's capital and was earning a profit. Fortenberry thus began sending Dr. Anderson a monthly series of letters and invoices in which he falsely represented that Premier was earning money. *See, e.g.*, Div. Ex. 69 at 0033. As discussed below, these statements and letters are notable because Fortenberry sent nothing similar to a separate investor who invested in whole units rather than partial units over time. The

[10] Fortenberry's bank statement shows that sizeable percentages of the money went to Mr. Nimmer, a mortgage company, child support, groceries, gasoline, hotel rooms, and plane tickets. *See* Div. Ex. 31 at 2437-40.

letters and invoices are also notable because most of what Fortenberry conveyed in them had no basis in fact and evidenced his intermingling of his personal finances and those of Premier.

On August 31, 2010, Fortenberry sent Dr. Anderson a letter, purportedly from Premier. Div. Ex. 53 at 0039. In the letter, he said the Fund's "first project is the Halsey Management Company LLC managing the Billboard World Song and Video Contest." *Id*. He additionally asserted that Premier had "recently added . . . Bongiovi Entertainment, Inc.," to its "portfolio." *Id*. In the letter, Fortenberry thanked Dr. Anderson for his commitment to purchase one unit in Premier and included a "subscription invoice for the purchase of 0.1 Limited Partnership Unit[s] in the amount of $10,000." *Id*.

As it turned out, when he sent this letter, Fortenberry knew that inclusion of the Billboard World Song was dependent on his raising $1.5 million. Div. Ex. 5 at 21. Inasmuch as he had not raised a tenth of that amount, he knew the Billboard World Song aspect of Halsey Management's venture was merely aspirational. Indeed, he would later say a different project was Premier's "first project." *See* Div. 69 at 0035. Additionally, contrary to what he said, Premier had not "recently added . . . Bongiovi Entertainment, Inc.," to its "portfolio." Indeed, Premier never invested in Bongiovi Entertainment at all. Tr. 238-39.

Dr. Anderson's September payment of $10,000 was credited to Premier's account on September 10, 2010. Div. Exs. 41 at 2935, 46 at 2992. Eleven days later, Fortenberry wired $3,000 out of Premier's account to Halsey Management. Div. Ex. 41 at 2936.

Beginning in November 2010 and continuing through April 2011, Fortenberry sent monthly letters to Dr. Anderson updating him on Premier's projects and summarizing his purported earnings for the month. Div. Exs. 69, 73, 79, 84, 89, 153. In the November 2010 letter to Dr. Anderson, Fortenberry announced that Premier would be "kicking off the first project from [its] portfolio on" November 25.[11] Div. Ex. 69 at 0033. The letter explained that the referenced first project was the intended release by Halsey Management of a DVD of "The Oak Ridge Boys Christmas Classic, 'An Inconvenient Christmas.'" *Id*. According to Fortenberry, approximately 100 million people "watched this Holiday Classic on television every year for the last eight years."[12] *Id*. On the basis of this assertion and others, Fortenberry stated that Premier believed that "this is the best time to re-invest investor earnings." *Id*. He thus proposed that Dr. Anderson re-invest his monthly "earnings for October in the amount of $550 (1% of $55,000)[13] plus [Dr. Anderson's] October earnings . . . regarding" the lien he held on the South Abe Street building "in the amount of $156 for a total of $706." *Id*. According to

[11] Recall that on August 31, 2010, Fortenberry said that Premier's "first project [was] the Halsey Management Company LLC managing the Billboard World Song and Video Contest." Div. Ex. 53 at 0039.

[12] As it turned out, the DVD sales did not generate any income. Tr. 384-85; Div. Ex. 5 at 8.

[13] Through October 2010, Dr. Anderson had invested $52,800, not $55,000. Div. Ex. 46 at 2375, 2993, 2997. Fortenberry appears to have miscalculated the amount of Dr. Anderson's investment in this and in subsequent letters.

Fortenberry, adding $706 to Dr. Anderson's monthly $10,000 investment would give Dr. Anderson 0.107 partnership units in Premier. *Id.* Fortenberry attached a subscription invoice to this effect to his letter. *Id.* at 0034.

Fortenberry also attached an "Important Investor Update" to the letter. Div. Ex. 69 at 0035-36. In the update, Fortenberry reiterated the information about Premier's projects and wrote:

> Investors already on board with Premier or coming on board prior to the 25th of November will reap the profits from what we anticipate to be a great Holiday Season! Additionally, investors participating with the Premier Investment Fund LP will enjoy being part of the Bongiovi Christmas film to be released in 2012, "The Littlest Christmas Tree" as well as the book that will be released in 2011. We realize this information is more than any person can completely absorb. This is why you can trust our team of experts to identify excellence in investing in the entertainment industry.

Id. at 0035. Not surprisingly, this document falsely led Dr. Anderson to believe that Premier had invested in the Bongiovi Christmas film. Tr. 709.

Division counsel asked Fortenberry about the calculation of the $550 earnings figure in the November 2010 letter in light of the fact Premier never earned any money. Tr. 378. Notwithstanding the fact that Fortenberry sent the letter from Premier, he testified that the $550 figure "was based on the $170,000 note and a separate agreement" he had with Dr. Anderson "for getting a percentage of the profits of whatever business . . . [they] were involved in." Tr. 378. In other words, Fortenberry claimed the letter had almost nothing to do with Premier.

Division counsel then asked for clarification of whether the letter conveyed that Dr. Anderson had earned $550 on his Premier investment. Tr. 379. Fortenberry responded that—despite the plain language of the letter—"obviously" it was not his "intent" to convey that Dr. Anderson had received a return on an investment. Tr. 379. Instead, the $55,000 pertained to some other, previously unnamed "earnings in one of the businesses." Tr. 379. Fortenberry then changed his testimony and identified the $550 as an interest payment on $55,000 that had been invested. Tr. 380. According to Fortenberry, it was "pretty clear" or "fairly clear" that he was referring to "interest earnings." Tr. 380-81.

Notwithstanding Fortenberry's testimony, what was clear is that Premier had earned no money. Tr. 239-40. The statement to Dr. Anderson that he had earned $550 on his investment was thus false. When he was later confronted with a subsequent letter showing $766.67 in earnings, Fortenberry said that he actually meant that Dr. Anderson had earned interest on "the note that was being created in part by virtue of this document evidencing that I am indebted to Mr. Anderson for that amount of money is part of the earnings." Tr. 792. When pressed on this, Fortenberry said he construed the subscription agreement as evidencing a loan. Tr. 793-94.

As a factual matter, I cannot credit Fortenberry's contradictory testimony regarding the meaning of the language in the monthly letters. Contrary to what he said during the hearing, it is plain that he intended to convey to Dr. Anderson that he had earned income on his investment and that his investment was profitable. And the reason Fortenberry did this was so that Dr. Anderson would continue to invest in Premier. Fortenberry thus showed a willingness to lie in the face of clear contrary facts and revealed that he had hopelessly co-mingled his personal and business affairs. This latter co-mingling would later also be shown through evidence that Fortenberry treated Premier's bank account as his own.

In December 2010, Fortenberry sent Dr. Anderson another Premier letter. Div. Ex. 73 at 0029. In this letter, he announced that Starmaker360.com, which he described as a project in which Premier was investing, would be "airing the Oak Ridge Boys Christmas Special this weekend." *Id*. Fortenberry also told Dr. Anderson that sales of the previously-mentioned Christmas DVD would be announced during the show. *Id*. According to Fortenberry's letter, the show would include a promotion of Starmaker360.com and a way for viewers to enter the Billboard World Song Contest. *Id*. As it turned out, the Starmaker website did not "go live" until 2013. Div. Ex. 5 at 23.

In the December letter, Fortenberry again asked Dr. Anderson to reinvest his monthly Premier earnings "for November in the amount of $657 (1% of $65,706) plus your November earnings" for the South Abe Street building lien "in the amount of $333.84 for a total of $990.84" in Premier. Div. Ex. 73 at 0029. This language convinced Dr. Anderson that his investment had earned $657. Tr. 711. During the hearing, however, Fortenberry insisted that rather than "earnings," "[a]nyone with an IQ above 90" would "know" he was referring in this letter to interest.[14] Tr. 387. According to Fortenberry, despite the fact that Premier had no "cash flow," he was "ethically" obligated to pay Dr. Anderson interest. Tr. 387.

Three days after Fortenberry deposited Dr. Anderson's $10,000 investment on December 13, 2010, he wired $5,000 to Halsey Management. Div. Exs. 41 at 2948, 46 at 3000. This would be Premier's last payment to Halsey Management. Tr. 785. Also in December 2010, Premier paid Mr. Nimmer $1,000 and Fortenberry made a $2,000 cash withdrawal from Premier's account. Div. Ex. 41 at 2948.

Fortenberry's pattern with Dr. Anderson continued. In January 2011, he sent Dr. Anderson a letter, purportedly from Premier, in which Fortenberry told Dr. Anderson that his "monthly Premier Investment Fund earnings for December are $766.97 (1% of $76,697)" and his December earnings for the South Abe Street building lien "are in the amount of $195.22 for a total of $962.19 earnings in December." Div. Ex. 79 at 0022. The letter also represented that "[s]tarting in February, we will start issuing a monthly statement showing accumulated earnings." Once again, Fortenberry's letter led Dr. Anderson to believe that his investment in Premier had earned money. Tr. 712. As in December, however, Premier had no actual earnings.

[14] Fortenberry had the unfortunate habit during the hearing of responding to Division counsel's questions with sarcasm, as if counsel was a bit slow, or by saying that it was obvious that language he used in written communications meant something other than what was conveyed by the plain words he used. *See* Section II.F, *infra* (discussing Fortenberry's credibility).

Tr. 391. Unlike the November and December letters, the January letter did not request that Dr. Anderson reinvest his earnings, but thanked him for his "gracious permission allowing us to defer payment of [his] earnings." Div. Ex. 79 at 0022.

In his February 2011 letter, Fortenberry told Dr. Anderson that his "monthly Premier Investment Fund earnings for January are $866.97 (1% of $86,697)" and his December earnings for the South Abe Street building lien "are in the amount of $213.35 for a total of $1,080.32 earnings in January." Div. Ex. 84 at 0017. Dr. Anderson understood the letter to convey to him that his investment in Premier had earned $866.97. Tr. 713-14. Inasmuch as he had a lien on the South Abe Street building, he did not understand what Fortenberry meant when he said Dr. Anderson had earnings on the lien. Tr. 713. He presumably also failed to understand the portion of the previous letters that referred to "earnings" on the South Abe Street building lien.

Fortenberry attached to the February 2011 letter a subscription invoice for $10,000 due on February 20, 2010, which indicated that on receipt of his next $10,000 payment, Dr. Anderson's holdings in Premier would increase to 0.9669 units. Div. Ex. 84 at 0018. According to an attached "Investment Statement," Dr. Anderson held 0.8669 units of Premier as of February 3, 2011. *Id*. at 0020. These units included the reinvestments of his October and November "earnings," which themselves included interest payments on Dr. Anderson's personal loan to Fortenberry. *Id*. The February letter did not ask Fortenberry to reinvest any additional earnings, but stated that the investment statement reflected his "deferred earnings."

As with the previous letters, the March 2011 letter contained misleading claims that Dr. Anderson had earnings on his investment. *See* Div. Ex. 89 at 0015. This time, Fortenberry said Dr. Anderson had earned "$966.97 (1% of $96,697)" on his Premier investment and $173.30 on his South Abe Street building lien, for a total of $1,140.27. *Id*. Again, Dr. Anderson understood the letter to convey to him that his investment in Premier had earned money. Tr. 718.

By the end of March 2011, Premier had a negative balance in its bank account. Tr. 400. Nonetheless, Fortenberry continued to send Dr. Anderson letters with invented figures. In April 2011, Fortenberry told Dr. Anderson that he had earned $1,016.97 on his Premier investment and $145.80 on the lien for a total of $1,162.77 in earnings. Div. Ex. 153 at 0012. Dr. Anderson understood the letter to convey to him that his investment in Premier had earned money. Tr. 718. According to the attached investment statement, Dr. Anderson held 1.0169 partnership units as of April 13, 2011. Div. Ex. 153 at 0013. Fortenberry testified that Dr. Anderson's earnings at that point were "not based on Premier [having] invest[ed] money. The[] earnings [were] based on the investment that Dr. Anderson [made] and a commitment to pay him interest on those earnings - - I mean, on that investment." Tr. 400.

Dr. Anderson's last investment was in March 2011. Div. Ex. 112 at 0002. After the April 2011 letter, Fortenberry continued to send Dr. Anderson statements on a quarterly basis reflecting his purported earnings on his Premier investment and his loan to Fortenberry. *See* Div. Exs. 112, 154-56. According to an investment statement issued in May 2012, Dr. Anderson had earned over $16,000. Div. Ex. 112 at 0009. At this time, Premier had no money, having not received any cash since Dr. Anderson's March 2011 investment. Tr. 406.

In October 2012, Dr. Anderson executed a "release of lien" on the South Abe Street building. Div. Ex. 114. The release contained an acknowledgement that he had been paid in full on his $170,000 loan. *Id*. In fact, however, Fortenberry had made no payments on the note. Tr. 688. According to Dr. Anderson, Fortenberry presented him the release and said that he "need[ed] money urgently because . . . taxes [were] due on the" building, and he needed the lien released in order to conclude an unspecified deal or transaction. Tr. 689. Dr. Anderson testified that he did not read the release carefully and did not realize he was stipulating that the loan had been paid. Tr. 688, 769. As of October 2014, Fortenberry had paid Dr. Anderson between $5,000 and $6,000 of the $170,000 Fortenberry owed him on the loan. Tr. 687.

D. Michael Nasti invests $200,000 in Premier

Around the same time Dr. Anderson started investing with Fortenberry, Chris Kelly, a contractor working for Breadstreet.com, phoned a man named Michael Nasti about investing with Premier. Tr. 48; Div. Ex. 3 at 45. Mr. Nasti is 52 years old and lives on Long Island. Tr. 46. He "own[s] a few businesses," including a building supply company and a realty company. Tr. 47.

After Mr. Nasti responded positively to Breadstreet.com's overtures, Fortenberry spoke with him. Tr. 48-50. Fortenberry told Mr. Nasti about a "great opportunity" to invest in a website that would allow musicians to share music with each other. Tr. 50. Mr. Nasti recalled that the website was either called Starmaker360 or Thudercloud. Tr. 50. He was impressed because the Halseys were involved in the venture. Tr. 50-51. Mr. Nasti understood that his investment would be directed toward Halsey Management "because there were so many little" projects under the Halsey umbrella. Tr. 51-52.

In order to verify the validity of what Fortenberry told him, Mr. Nasti arranged to visit Tulsa, Oklahoma, so that he could meet Fortenberry and the Halseys. Tr. 56-57. Prior to the trip, Fortenberry e-mailed Mr. Nasti a brochure about "Star Maker Central" (the Starmaker Brochure).[15] Tr. 67-68; *see* Div. Ex. 56 at 0183-88. Fortenberry created the Starmaker Brochure. Tr. 236, 276. The Halseys neither created nor approved its content. Div. Ex. 5 at 30.

In the brochure, Fortenberry expressed "confiden[ce] that [Star Maker Central] will achieve one million members" within two years and "average thirty dollars per month per member." Div. Ex. 56 at 0183. He further expressed that "[c]onsequently, Star Maker Central will be grossing thirty million dollars per month." *Id*. With costs running at less than $2 million per month, Fortenberry said he expected a profit of $28 million per month. *Id*. Fortenberry then promised prospective investors:

> If you invest now, *we will pay you twelve percent (12%) per annum*. Repayment of principle and interest will be paid back in three years, along with you keeping your equity stake in the holdings. Most importantly, our investors will receive twelve and

[15] The Starmaker Brochure is included as Exhibit B in the attached appendix.

> one half percent of twenty eight million dollars, which is three and one half million dollars divided by our one hundred investors. Thus, each investor will be paid thirty five thousand dollars per month for the rest of his or her life. Additionally, these holdings can be bequeathed to his or her heirs.

Id. (emphasis added). Later in the Starmaker Brochure, Fortenberry included a graphical display showing StarMakerCentral.com as the central component in an array of ventures, including: (1) Billboard World Song Contest; (2) Thundercast, providing online video and music streaming; (3) Sonicbids, a site that allowed artists to find venues; (4) Thundercloud, a site that allowed artists to transfer, compile, and sell their work; (5) Halseyjobs.com, a "music and video industry job site;" and (6) Halsey Institute, a venture identified with an "i" within an "h" (the h and i logo) which purported to be a "learning institute for . . . the music and entertainment industry." *Id.* at 0186; *see* Tr. 293-94 (Fortenberry affirming that he created the graphic and explaining the meaning of the h and i logo).

Most of what Fortenberry included in the Starmaker Brochure was unrealistically optimistic, false, or simply invented. For starters, after seeing the first paragraph, regarding one million members and gross revenue of $30 million per month, Sherman Halsey phoned Fortenberry and told him these figures were "not realistic." Div. 5 at 29. Fortenberry was also aware that in order for any of the Halsey Management "entities to work," he had to raise at least $1.5 million. *Id.* at 21.

As to the graphical display, Sherman Halsey explained that he had never heard of Halseyjobs.com or Thundercast. Div. Ex. 5 at 31. Indeed, he was derisive of the logo Fortenberry created for Thundercast and placed in the Starmaker Brochure. *Id*. And while Sonic Bids is "a major entity in the music business," the Halseys had no ownership interest in it. *Id.*

Prior to his investigative testimony in July 2013, Sherman Halsey had never seen the h and i logo purportedly related to the Halsey Institute.[16] Div. Ex. 5 at 31. He testified that it was not associated with Halsey Management or any Halsey company. *Id*. at 31-32. Fortenberry, by contrast, testified that the Halsey Institute related to classes "Jim Halsey formed . . . at [the] University of Oklahoma." Tr. 294. He also said that Jim Halsey authorized him to use the h and i logo. *Id*. The h and i logo, however, was plainly taken from the website for the Halsey Institute for Contemporary Art at the College of Charleston. *Compare* http://halsey.cofc.edu (last visited Feb. 4, 2015), *with* Div. Ex. 56 at 0186. The Halsey Institute for Contemporary Art is named for William Halsey, an artist and native of Charleston, South Carolina. *See* http://halsey.cofc.edu/about (last visited Feb. 4, 2015). Fortenberry's testimony that Jim Halsey authorized its use is thus false.

Having received the Starmaker Brochure, Mr. Nasti met with Fortenberry and the Halseys. Tr. 57, 67-68. After talking to the Halseys, he met privately with Fortenberry in a

[16] Sherman Halsey said that although Fortenberry previously sent him the Starmaker Brochure, he never got past the first paragraph before phoning Fortenberry. Div. Ex. 5 at 29, 32.

conference room the Halseys provided. Div. Ex. 5 at 16. For Mr. Nasti, the 12% guarantee described in the brochure was "everything." Tr. 59. Because Fortenberry had mentioned the possibility that Premier would invest in other ventures, Mr. Nasti wanted to ensure that his money went only to Halsey Management.[17] Tr. 59, 70-71. He thus insisted that Fortenberry write "this is the basis for investment by Mike Nasti in Premier Investment Fund" on the front of the Starmaker Brochure. Tr. 71; *see* Div. Ex. 56 at 0183. He then had Fortenberry sign the front page of the brochure and place his initials on each page of it.[18] Tr. 71; *see* Div. Ex. 56 at 0183-86, 0188.

During his meeting with Fortenberry in Tulsa, Mr. Nasti asked whether and how Fortenberry would be compensated. Tr. 60-61. Fortenberry said that his compensation would come in the form of an ownership interest in Premier and thus a percentage of Premier's profits; he did not mention receiving a salary. Tr. 60-61, 150, 155. Moving on, Fortenberry presented Mr. Nasti with a subscription agreement that was substantially similar to that which he presented the month before to Dr. Anderson, except that Mr. Nasti's agreement called for full payment of $100,000 at the time of purchase. Tr. 72, 358; *see* Div. 56 at 0189-0206. As with Dr. Anderson, Mr. Nasti's subscription agreement contained the false promise that Mr. Nasti would have a capital account and that Premier would use GAAP. Div. Ex. 56 at 0189. Fortenberry also falsely promised to inform Mr. Nasti by January 31 of each year of Premier's profits and losses. *Id*. at 0190. Mr. Nasti's subscription agreement contained a provision, like Dr. Anderson's, relating to "reasonable administrative expenses . . . including . . . salaries." *Id*.

On September 13, 2010, Mr. Nasti gave Fortenberry a check for $100,000. *See* Div. Ex. 55. Mr. Nasti made the check out to the Nimmer Trust Account because Fortenberry said that "until he had the investors all together," investment funds had to be deposited in Mr. Nimmer's trust account. Tr. 64-65. Just three days before, however, Dr. Anderson had given Fortenberry a $10,000 check made payable to Premier, *see* Div. Ex. 46 at 2993, which Fortenberry deposited into Premier's account the same day it was drafted, *see* Div. Ex. 41 at 2935. Indeed, Fortenberry opened Premier's banking account in June 2010. *See* Div. Ex. 41 at 2926.

As with Dr. Anderson, Fortenberry failed to mention to Mr. Nasti that he had been the subject of a 2004 Pennsylvania Securities Commission cease-and-desist order related to unregistered securities. Tr. 62; *see* Div. Ex. 9. Fortenberry also did not mention the Texas State Securities Board order. Tr. 63; *see* Div. Ex. 10. According to Mr. Nasti, he would not have invested in Premier had he known about these orders. Tr. 63.

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[17] Fortenberry had e-mailed Mr. Nasti about the possibility that Premier would invest in an animated children's program called the Littlest Christmas Tree. Div. Ex. 54 at 0003. According to Fortenberry's e-mail, the Littlest Christmas Tree would be produced by Tony Bongiovi, who was described as having produced over fifty gold and platinum records. *Id*. at 0007. According to Fortenberry, the Littlest Christmas Tree was "a seasonal, or perennial, property that will continue generating profits in perpetuity." *Id*.

[18] Fortenberry's initials do not appear on the fifth page of the Starmaker Brochure, which is the first page of a legal disclaimer, though his initials are on the second page of the disclaimer. Div. Ex. 56 at 0187-88.

Based on his conversations with Fortenberry, Mr. Nasti expected all of his $100,000 to be passed on to Halsey Management. Tr. 66. He did not expect Fortenberry to divert any portion of the money to any other use. Tr. 66, 147. Nonetheless, Mr. Nimmer retained $5,000 of the $100,000 Mr. Nasti invested in September 2010. Tr. 322. Although Mr. Nasti wrote his check on September 13, 2010, Mr. Nimmer did not transfer the remaining $95,000 into Premier's bank account until September 29, 2010. Div. Ex. 41 at 2935; Div. Ex. 55. On September 29, 2010, Fortenberry wired $52,000 to Halsey Management. Div. Ex. 41 at 2936. By the next day, September 30, 2010, Fortenberry had written and cashed three checks from the Premier bank account payable to himself or "petty cash" in the aggregate amount of $20,000. *See* Div. Ex. 42 at 3017-19.

Mr. Nasti purchased a second unit in Premier in November 2010. Tr. 82-84; Div. Ex. 68. After Premier received Mr. Nasti's second $100,000 payment, he received an e-mail containing a second subscription agreement. Tr. 84; Div. Ex. 70. Unbeknownst to Mr. Nasti, Fortenberry changed the second subscription agreement to specifically allow him "to invest in Bongiovi Entertainment, Inc[.], Halsey Management LLC, and other projects of comparable merit." Div. Ex. 70 at 0074; Tr. 85. The same day that Mr. Nasti wired his $100,000 to Premier's account, November 16, 2010, Fortenberry transferred $20,000 from Premier's account to his personal account. *See* Div. Exs. 41 at 2944, 42 at 3026. The next day, Fortenberry wired $70,000 to Halsey Management. Div. 41 at 2944.

Unlike with Dr. Anderson, Fortenberry never gave Mr. Nasti monthly statements or letters about how Premier was operating. Tr. 76-80. He also never provided tax records or statements about its investments. Tr. 76-80, 101. During the hearing, Fortenberry was asked why he supplied Dr. Anderson with statements showing that he had earnings when he had not done so with Mr. Nasti. Tr. 388. According to Fortenberry, he "commit[ed] to pay [Dr. Anderson] interest" because Dr. Anderson's subscription agreement included a 12% interest guarantee and Mr. Nasti's did not. Tr. 388-89, 400. He also explained that he "wasn't hanging out with Mr. Nasti on a regular basis." Tr. 799.

Of course, Fortenberry was mistaken. Fortenberry explicitly promised Mr. Nasti a 12% annual return in the Starmaker Brochure. Div. Ex. 56 at 0183; *see* Tr. 389. Dr. Anderson's agreement did not contain such a promise. Div. Ex. 45. Given the time period in question, it is apparent that Fortenberry was leading Dr. Anderson along by sending him monthly letters reflecting earnings on his investment because he wanted Dr. Anderson to continue giving him money. Because Mr. Nasti had already invested $200,000, there was no need to induce him with additional false representations that he was earning money on his investment. Dr. Anderson, however, was investing on a monthly basis. Fortenberry thus needed to extend his earnings charade in order to ensure that Dr. Anderson would continue to invest.

Mr. Nasti never received any of his $200,000 investment back from Fortenberry or Premier. Tr. 101. On September 21, 2012, Fortenberry left Mr. Nasti a voicemail saying that he would like to "work out some kind of long-term note at a reasonable interest rate" so that he can "get these amends made to [Mr. Nasti]." Tr. 97-99; Div. Exs. 113A, 113B. Not coincidentally, on September 20, 2012, the District Court for the District of Columbia denied Fortenberry's motion to dismiss the Division's subpoena enforcement action. *See* Minute Order, *SEC v.*

Fortenberry, No. 1:11-mc-0671 (D.D.C. Sept. 20, 2012).[19] The voicemail, left long after Fortenberry's last contact with Mr. Nasti, shows Fortenberry's consciousness of guilt.

E. The Division's investigation into Fortenberry's and Premier's bank accounts shows that Fortenberry failed to account for his use of funds from Premier's account

In August 2013, the Division sent Fortenberry's counsel a letter inviting counsel to file a Wells submission.[20] Div. Ex. 128. In preparation for filing that submission, Fortenberry hired an accountant, Christopher Odom, to prepare annual financial compilations for Premier. Tr. 450-51.

As an aside, preparation of a compilation does not entail the intense review and reconciliation one would expect with an audit. *See* Div. Ex. 149 at 12-13. The accountant who prepares a compilation would therefore not be expected to "independent[ly] test[] . . . the reliability of the underlying data." *Id*. at 12. Mr. Odom's compilations were thus simply reports of the transactions in Premier's bank account, Tr. 606-07, 610, 655, based on Fortenberry's explanation of the nature of expenditures listed on bank statements, Tr. 610. Mr. Odom did not audit compiled financial statements or look for errors. Tr. 607-08, 610, 656; Div. Ex. 132. Needless to say, even if Fortenberry had used this method of reporting to timely provide information to his investors, which he did not, it would not have been GAAP-compliant. Tr. 618; *see* Div. Ex. 149 at 13.

Aside from bank statements, Fortenberry did not keep financial records for Premier. Tr. 298-302. He obviously never disseminated financial reports to Dr. Anderson or Mr. Nasti. Tr. 304. In order to facilitate the preparation of Mr. Odom's compilations, Fortenberry annotated Premier's bank statements. Tr. 451. He placed a handwritten B next to what he indicated were business expenses and a handwritten P next to personal expenses. Tr. 451, 453; *see* Div. Ex. 78. Initially, Fortenberry testified that a P was used to indicate his salary. Tr. 455. Mr. Odom, however, testified that salary and management fees were considered business expenses. Tr. 614.

Mr. Odom's 2010 compilation for Premier listed as an asset $165,000 invested in Halsey Management and a note receivable from Fortenberry in the amount $208,000. Div. Ex. 129 at 0289. According to Mr. Odom, the $165,000 figure was calculated solely from Premier's bank

[19] Under 17 C.F.R. § 201.323, I take official notice of the district court's order.

[20] Under what is known as the Wells process, "Division staff, in its discretion, may advise a prospective defendant or respondent of the general nature of the investigation and violations contemplated by staff." *Montford & Co.*, 2014 SEC LEXIS 1529, at *32 n.60; *see Harding Advisory LLC*, Securities Act Release No. 9561, 2014 SEC LEXIS 938, at *30 n.35 (Mar. 14, 2014); 17 C.F.R. § 202.5(c). The Division's notice is called a Wells notification or Wells notice. The prospective defendant or respondent "may . . . submit a written statement to the Commission setting forth their interests and position in regard to the subject matter of the investigation." 17 C.F.R. § 202.5(c). This response is known as a Wells submission.

statements. Tr. 640. The figure was based on checks written on the account and B annotations made by Fortenberry. Tr. 665. Fortenberry told Mr. Odom that before Premier was created, Fortenberry received $208,000 from Dr. Anderson. Tr. 642; Div. Ex. 137. Fortenberry told Mr. Odom that Fortenberry and Dr. Anderson agreed to transfer that money to Premier. Tr. 642-43; Div. Ex. 137. Because no actual funds were transferred to Premier, the $208,000 was listed as a note receivable. Tr. 643; Div. Ex. 137. The compilation also listed as a liability of Premier a $170,000 note payable to Dr. Anderson. Div. Ex. 129 at 0289.

The 2010 compilation did not identify any salary paid in 2010. Tr. 485; Div. Ex. 129 at 0290. It did, however, identify $85,729.01 in distributions. Div. Ex. 129 at 0289. According to Fortenberry, no one but himself was entitled to distributions in 2010. Tr. 485. The figure of $85,729.01 thus necessarily reflected payments to him. *See* Tr. 649-50. Mr. Odom explained that the figure represented personal expenses taken out of Premier's account, as designated by Fortenberry on the bank statements. Tr. 647-48.

The 2010 compilation included $46,400 in capital contributions by Fortenberry. Div. Ex. 129 at 0289. Mr. Odom explained that this included $31,400 that was placed in the bank account and $15,000 that Fortenberry told Mr. Odom that Fortenberry had paid in legal fees. Tr. 649. Mr. Odom did not verify this latter figure and was not given documentary evidence to support it. Tr. 649, 652-53.

Mr. Odom's 2011 compilation continued to show a liability to Dr. Anderson in the amount of $170,000. Div. Ex. 130 at 0305. It also continued to show as assets of $165,000 invested in Halsey Management and a note receivable from Fortenberry in the amount $208,000. *Id*. Although Premier made no additional investments in 2011, the 2011 compilation reflected total distributions to Fortenberry of $110,232.91, or over $24,000 in addition to the distributions he received in 2010. *Id*.; *see* Tr. 487-88, 656-57.

Fortenberry used Mr. Odom's compilations to support his Wells submission. Tr. 454, 477; *see* Div. Ex. 135 at 0142-49. Even so, the hearing revealed that Fortenberry's annotations on the bank statements he gave Mr. Odom were hopelessly unreliable and ad hoc. *See* Tr. 586. Indeed, it is impossible to tell whether Fortenberry was simply making things up as he went along or, due to the passage of time, had no idea what many of his expenses were or how to classify them. In some instances, he could not remember, years after the fact, whether an expense was for personal or business purposes. Tr. 459; *see* Div. Ex. 78 at 0086. In other instances, he mislabeled expenses. For example, a $255 payment to a used car dealer and a payment to Netflix were labeled as business expenses. Tr. 460-62; *see* Div. Ex. 78 at 0089. Fortenberry also labeled overdraft fees as business expenses, because banking fees are tax deductible. Tr. 460-61; *see* Div. Ex. 78 at 0093. In short, the hearing made plain that Fortenberry treated Premier's account as his own personal account without regard to the need to justify expenditures.

In order to assess the reliability of Fortenberry's annotations, and more generally, the nature of Fortenberry's opinion as to what constitutes a legitimate business expense, Division counsel confronted Fortenberry about his annotations for checks written in late September

2010.[21] Tr. 424-35; *see* Div. Ex. 42 at 3015-19. On September 20, 2010, Fortenberry wrote a $2,000 check to "petty cash." Div. Ex. 42 at 3015. According to Fortenberry, he deposited this check into his personal bank account because he was in Nashville visiting Jim Halsey and was "stranded" without money. Tr. 425-26. He testified that he "was on business and it was legitimate." Tr. 425-26. Accordingly, Fortenberry annotated this withdrawal with a B. Div. Ex. 78 at 0130.

On September 29, 2010, Fortenberry wrote himself two checks. The first was a $14,000 check, purportedly issued as a "management fee." Div. Ex. 42 at 3018. The second was a $2,000 check made payable to petty cash. *Id.* at 3019. The memo line for this check said "John Fortenberry fee." *Id*. The next day, he wrote himself a $4,000 check, also purportedly as a management fee. *Id*. at 3017.

Fortenberry first testified that the two management fee checks were for salary, Tr. 429-30, and that salary would be annotated with a P, Tr. 455. The two checks, however, were labeled inconsistently; one was annotated with a P and one with a B. Div. Ex. 78 at 0130. When asked about this, Fortenberry said they should both have been labeled with a B because salary is a business expense. Tr. 462-63; *see* Tr. 464 ("if a business pays employees payroll or salaries, it's usually labeled a business expense"). On further questioning, Fortenberry backtracked and professed uncertainty as to how to label them. Tr. 465. For his part, Mr. Odom said he categorized these expenses as indicated by Fortenberry's annotations. Tr. 616.

Fortenberry also did not know what he purchased on September 13, 2010, at a business named Skinny's. Tr. 467; *see* Div. Ex. 78 at 0132. He nonetheless labeled that expense with a B. Div. Ex. 78 at 0132. Likewise, although he was sure he did not spend Premier funds on alcohol, he could not be sure what he purchased at Hollywood Liquors on September 27, 2010. Tr. 468; Div. Ex. 78 at 0132. As with other expenses of which he was uncertain, this one was annotated with a B. Div. Ex. 78 at 0132. Further questioning revealed that Fortenberry also listed the cost of airline tickets for family members as business expenses. *See* Tr. 471-72.

Toward the end of questioning about his annotations, Fortenberry was left to claim the annotations were "subject to further conversation" with Mr. Odom. Tr. 469. That "further conversation" never occurred, however, because Fortenberry never identified any errors to Mr. Odom. Tr. 619.

The Division's investigation also revealed more irregularities, including evidence that Fortenberry's connection to Breadstreet.com was closer than he claimed. For example, several of the initial payments to Halsey Management were sent from a Breadstreet.com account. *See* Div. Ex. 5 at 25-27. Additionally, Fortenberry paid "bonuses" from Premier's account to Breadstreet.com employees. On September 29, 2010, Fortenberry wrote David Kent, whom Fortenberry said managed the Breadstreet.com office, a $2,500 check with the word "bonus" written on the memo line. Tr. 426-27; Div. Ex. 42 at 3016. Fortenberry said this was a "finder's fee," but could not say what Mr. Kent found. Tr. 426-28. Instead, he vaguely said that "it would

[21] In order to illustrate Fortenberry's annotations, I have included a page from one of Premier's bank statements as Exhibit C in the appendix.

stand to reason that with a success that everybody is working on that a bonus would be a reasonable way of saying, hey, you're doing a great job." Tr. 427. Because Premier had no employees, Premier never earned any money, and Fortenberry was only successful in soliciting two investors, it is not clear what "success" it was that "everybody" was "working on." Tr. 229, 239. When asked whether he was authorized under the subscription agreement to give bonuses to nonemployees, Fortenberry non-responsively retorted that payments to contractors were "acceptable" under the tax code. Tr. 428.

Two other Breadstreet.com employees also received "bonus" checks from Premier's account on September 29, 2010. Tr. 436. Chris Kelly received $5,000 and Margarita Damianova received $2,500. Div. Ex. 42 at 3020-21. The three "bonus" checks to Breadstreet.com employees, totaling $10,000, show that Fortenberry not only co-mingled his personal and business finances, but that he co-mingled funds among his business interests.

The Division called Kevin M. Pierce to testify as an expert witness. *See* Tr. 777. Mr. Pierce also submitted an expert report. *See* Div. Ex. 149. Mr. Pierce is a certified fraud examiner and is certified in financial forensics. Tr. 780. Without contradiction, Mr. Pierce said that Premier's financial statements were not GAAP-compliant. Tr. 781. In his report, he explained that Premier's financial statements do not meet substantially all of the basic requirements of financial reporting under GAAP. Div. Ex. 149 at 9-11; *see id.* at 5 (stating that Premier's financial statements "omit[ted] a substantial amount of the statements and disclosures . . . required by GAAP"). Additionally, whereas "[f]inancial statements prepared in accordance with GAAP are required to use the accrual basis of accounting," the compilations Mr. Odom prepared used cash basis accounting. *Id.* at 9.

Mr. Pierce highlighted other problems, as well. Because Premier's financial statements were not prepared until 2013, they were not useful to investors in 2010 and 2011. Div. Ex. 149 at 13-14. Premier also had no accounting system. *Id.* at 14. And Fortenberry kept no documentation, such as receipts or invoices, which could be used to verify whether expenses were legitimate business expenses. *Id.* Further, Premier never filed tax returns. *Id.*

Based on his investigation, Mr. Pierce concluded that $500,900 was received from investors. Div. Ex. 149 at 15. This amount included $208,000 received by Fortenberry as a loan from Dr. Anderson. *Id.* at 14-15, Ex. C. Because Fortenberry failed to transfer these funds to Premier, Mr. Pierce could not "determine how the $208,000 . . . was ultimately expended." *Id.* at 17. Mr. Pierce concluded that although $151,500 was actually invested in Halsey Management, Fortenberry spent at least $317,000 on himself. Tr. 781; Div. Ex. 149 at 6, 15. Owing to an absence of records, Mr. Pierce could not account for the balance of approximately $32,000. Tr. 781; Div. Ex. 149 at 6. He calculated that the last day Premier invested money in Halsey Management was December 16, 2010. Tr. 785.

With respect to compensation, Mr. Pierce opined that "general partners of hedge funds often times charge a 2% management fee (2% of the fund's assets) as well as a performance fee for as much as 20% of the annual gains." Div. Ex. 149 at 17-18. Using these percentages as a model, Mr. Pierce calculated that "Fortenberry would have been entitled to a maximum fee of $3,030. *Id.* at 18.

By contrast, Fortenberry testified that he was entitled to a salary. Tr. 279-81. He believed that he should be paid between $150,000 and $200,000 per year. Tr. 439, 511-12. This belief was based on Fortenberry's internet research that revealed that "as a general rule a person that's in the early stage business like this will make" roughly that amount of money. Tr. 439, 511-12. Fortenberry never disclosed this to any investor. Tr. 439-40. And because he did not keep track of salary payments to himself or payments in lieu of salary, he had no way of knowing whether he had reached that figure. Tr. 587-88.

Indeed, Fortenberry did not pay taxes on the payments he made to himself or the money he paid out of Premier's account for his own expenses. Tr. 291-92. When confronted with this fact, he suggested that money he used for personal expenses might be considered a debt on which he would not owe taxes. Tr. 291. That testimony, of course, is contradicted by what Fortenberry told Mr. Odom and Fortenberry's own testimony that he was entitled to a salary, which he took.

F. Fortenberry was not credible

As the preceding discussion of the facts suggests, Fortenberry was not credible. Indeed, the record is replete with his outright false statements, many of which he attempted to explain through imaginative use of the English language seemingly inspired by Humpty Dumpty.[22]

A prime example of this concerned Bongiovi Entertainment. Recall that Premier never invested in Bongiovi Entertainment. Tr. 238-39. Yet Fortenberry variously described Bongiovi Entertainment to investors as Premier's "showcase investment," Div. Ex. 64 at 0353, an entity with which Premier was "partnering," Div. Ex. 82 at 0681, and part of Premier's "portfolio," Tr. 373, Div. Ex. 53 at 0039. Fortenberry thus intended to convey the false impression that Premier had invested in Bongiovi Entertainment and intended to continue to do so.

When he was questioned about his use of the term "showcase" in light of the fact that Premier had never invested with Mr. Bongiovi, Fortenberry said, "[w]ell, that's why we referred to it as our showcase. It is a showcase. It is not something that's invested in yet, according to my terminology, but it is something yet to be invested in. A showcase is an example." Tr. 267-68. But saying that something is a company's "showcase" investment means that one is saying that the investment is perhaps the most important venture in which the company is currently investing. It would not convey the impression the venture is merely an example of a venture in which the company might invest in the future.

With respect to the term "partnering," when asked how it could be that Premier was partnering with Bongiovi Entertainment in light of the fact Premier had not invested in Bongiovi, Fortenberry said he had met with Mr. Bongiovi and that "there was a lot happening." Tr. 334-36; *see* Tr. 591 (claiming that partnering was a "loose term" that meant "we had developed a

[22] Humpty Dumpty said: "When I use a word . . . it means just what I choose it to mean—neither more nor less.'" Lewis Carroll, Through the Looking-Glass and What Alice Found There, ch. 6 (1871).

relationship"). Whatever he meant by this explanation, it was apparent that Premier had not "partnered" with Bongiovi Entertainment.

Fortenberry's explanation of his statement that Bongiovi Entertainment had been added to Premier's portfolio was similarly nonsensical. He explained that "portfolio covers a broad range of things, but it certainly was an investment that upon the Halseys having such an interest in managing and providing music for it that we had added to our portfolio company." Tr. 373. In other words, according to Fortenberry, Bongiovi Entertainment was in Premier's "portfolio" because Premier or Halsey Management might invest in it in the future. For Fortenberry, therefore, Bongiovi Entertainment was in Premier's portfolio even though it was not in Premier's portfolio.

Division counsel asked Fortenberry whether he had paid Dr. Anderson anything on the note he had executed with Dr. Anderson. Tr. 349-50. Fortenberry denied that he had failed to pay Dr. Anderson any money on the note and said "[t]he money that was delivered to him in those quarterly statements on Premier investment letterhead was money paid based on this note." Tr. 349. Of course, the figures listed in the statements were invented and did not represent actual money.

Indeed, the record contains a host of instances in which Fortenberry simply lied or quibbled about semantics or inconsequential details. For example, he lied when he said Jim Halsey created the Halsey Institute and lied when he said Jim Halsey authorized him to use the h and i logo for the Halsey Institute. As discussed above, the institute did not exist and Fortenberry took the logo from the website for the Halsey Institute for Contemporary Art at the College of Charleston. He also lied when he said that he "obviously" did not intend to convey that Dr. Anderson had received returns on his Premier investment. Tr. 379. This was in fact precisely what he was trying to convey.

During the Division's investigation, Fortenberry refused to comply with the Division's subpoenas and forced the Division to go to district court to enforce its subpoenas. *See* Schuster Declaration at 2-4. According to Fortenberry, successfully delaying his investigative testimony for eighteen months, based on the argument that the *District of Columbia* lacked jurisdiction over him, did not show that he was uncooperative.[23] *See* Tr. 414-16; Schuster Declaration at 3. During the hearing, the Division presented a video showing Fortenberry soliciting investors in 2012 for a company called First Choice Energy Partners. Tr. 508; Div. Ex. 110. In the video, Fortenberry said that First Choice offers a "no dry holes guarantee." Tr. 510. In other words, as in 2004 and with Mr. Nasti, he was guaranteeing returns. When asked about this fact, Fortenberry said that he did not guarantee returns and instead, simply repeated what a subcontractor guaranteed. Tr. 509-10. This is not even specious. In the video, Fortenberry was First Choice's spokesman. *He* thus guaranteed returns.

Fortenberry's demeanor also suggested that he was not being truthful. He often resorted to the words "obviously" or "clearly" as if through bluster he hoped to cause the listener not to

[23] I take official notice, under 17 C.F.R. § 201.323, of the content of Fortenberry's motion to dismiss filed with the district court.

notice what had actually occurred, much like the Wizard of Oz when standing behind an opened curtain. *See* Tr. 364, 379, 380, 387-89, 431, 461, 464, 470, 483, 535-36. Pertinent examples of these statements include: (1) saying that Dr. Anderson "obviously" made his first Premier investment check out to Fortenberry "without being asked," Tr. 364; (2) saying that he "obviously" did not intend to convey in his monthly letters that Dr. Anderson had received returns on his Premier investment, Tr. 379; and (3) saying that Dr. Anderson's subscription agreement "clearly identified a 12 percent interest," Tr. 388-89. That these statements were often delivered sarcastically only added to the perception that Fortenberry was not telling the truth.

Fortenberry sometimes adopted a lecturing tone as if trying to convey the impression that he was so experienced in matters of finance and securities that the Division's attorneys were simply not intelligent enough to understand his business. He thus hoped to make his unlikely statements believable. The most egregious example of this concerned Fortenberry's December 2010 letter to Dr. Anderson in which he referred to Dr. Anderson's "Premier Investment Fund earnings for November in the amount of . . . 1%" of what Dr. Anderson had already invested. Div. Ex. 73 at 0029. Fortenberry told Division counsel that "[a]nyone with an IQ above 90" would "know" he was referring to interest, rather than investment earnings. Tr. 387; *see* Tr. 379-81 (testifying that when he referred to Premier Investment Fund earnings, he was referring to interest payments). Fortenberry's lecture about "today's world," in which bank statements and "software like Quicken" are sufficient to meet record-keeping requirements was in a similar vein. *See* Tr. 298-301.

Finally, I cannot ignore the fact Fortenberry admittedly failed to pay taxes on his earnings and, as discussed below, repeatedly committed fraud. These facts further support the determination that he is not credible. *See United States. v. Bustamante*, 45 F.3d 933, 946 (5th Cir. 1995) ("the failure to report income" is "relevant to the issue of honesty"); *cf. Alim v. Gonzales*, 446 F.3d 1239, 1255 (11th Cir. 2006) (holding that where a petitioner "committed multiple acts of fraud," substantial evidence supported an agency's adverse credibility determination).

III. ISSUE

The antifraud provisions prohibit frauds committed in connection with the offer, purchase, or sale of securities. Fortenberry made numerous material false statements and omissions in order to induce investments. Did Fortenberry violate the antifraud provisions?

IV. DISCUSSION AND CONCLUSIONS OF LAW

A. Antifraud liability

1. Legal Principles

Fortenberry is charged with violating the antifraud provisions of Securities Act Section 17(a), Exchange Act Section 10(b), and Rule 10b-5. Section 17(a) of the Securities Act provides that:

> It shall be unlawful for any person in the offer or sale of any securities . . . directly or indirectly
>
> (1) to employ any device, scheme, or artifice to defraud, or
> (2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
> (3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

15 U.S.C. § 77q(a). The terms "sale" and "offer" are "define[d] broadly," such that they "encompass the entire selling process." *United States v. Naftalin*, 441 U.S. 768, 773 (1979); *see* 15 U.S.C. § 77b(a)(3).

Section 10(b) of the Exchange Act makes it:

> unlawful for any person, directly or indirectly. . .
>
> . . . .
>
> (b) To use or employ, in connection with the purchase or sale of any security . . . any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

15 U.S.C. § 78j(b). Rule 10b-5 makes it:

> unlawful for any person, directly or indirectly . . .
>
> (a) To employ any device, scheme, or artifice to defraud,
> (b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or
> (c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person,
>
> in connection with the purchase or sale of any security.

17 C.F.R. § 240.10b-5. Together, "Section 10(b) and Rule 10b-5 prohibit fraudulent practices in connection with the purchase or sale of a security." *United States v. Bilzerian*, 926 F.2d 1285, 1297 (2d Cir. 1991).

To establish liability under Section 17(a)(1) of the Securities Act and Section 10(b) of the Exchange Act, the Division must show that Fortenberry "acted with scienter." *Gregory O. Trautman*, Exchange Act Release No. 61167, 2009 SEC LEXIS 4173, at *52 (Dec. 15, 2009); *see Aaron v. SEC*, 446 U.S. 680, 695-97 (1980). To establish a violation of Section 17(a)(2) and (3) of the Securities Act, the Division need only show negligence. *Aaron*, 446 U.S. at 696-97; *Trautman*, 2009 SEC LEXIS 4173, at *52.

"[T]he term 'scienter' refers to a mental state embracing intent to deceive, manipulate, or defraud." *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 n.12 (1976). The term "includes recklessness, defined in this context as 'an extreme departure from the standards of ordinary care . . . to the extent that the danger was either known to the [respondent] or so obvious that the [respondent] must have been aware of it.'" *Trautman*, 2009 SEC LEXIS 4173, at *61 (quoting *Makor Issues & Rights, Ltd. v. Tellabs Inc*., 513 F.3d 702, 704 (7th Cir. 2008)). "Scienter may be inferred from circumstantial evidence." *Brian A. Schmidt*, Exchange Act Release No. 45330, 2002 SEC LEXIS 3424, at *31 (Jan. 24, 2002) (relying on *Herman & MacLean v. Huddleston*, 459 U.S. 375, 390 n.30 (1983)).

In addition to establishing the requisite mental state, the Division must show that Fortenberry "engaged in fraudulent conduct, [and] that such conduct was in connection with the offer, sale, or purchase of securities. *Trautman*, 2009 SEC LEXIS 4173, at *52. To show that Fortenberry "engaged in fraudulent conduct," the Division must show that he:

> (1) made an untrue statement of material fact; (2) omitted a fact that made a prior statement misleading; or (3) committed a deceptive or manipulative act as part of a scheme to defraud.

Id. at *53. If one has a duty to speak, an omission of material fact is the equivalent of an untrue statement of material fact. *John J. Kenny*, Securities Act Release No. 8234, 2003 SEC LEXIS 1170, at *23 (May 14, 2003).

Fortenberry is also charged with violating Advisers Act Section 206(1), (2), and (4) and Rule 206(4)-8 thereunder. Subsections (1), (2), and (4) of Section 206 make it:

> unlawful for any investment adviser, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly--
>
> (1) to employ any device, scheme, or artifice to defraud any client or prospective client;
> (2) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client;
>
> . . .
>
> (4) to engage in any act, practice, or course of business which is fraudulent, deceptive, or manipulative. The Commission shall, for the purposes of this paragraph (4) by rules and regulations define, and prescribe means reasonably designed to prevent, such acts, practices, and courses of business as are fraudulent, deceptive, or manipulative.

15 U.S.C. § 80b-6(1), (2), (4). As with Section 17(a)(1) of the Securities Act and Section 10(b) of the Exchange Act, the Division must show that Fortenberry acted with scienter in order to establish a violation of subsection (1) of Section 206. *See Vernazza v. SEC*, 327 F.3d 851, 859-60 (9th Cir. 2003); *SEC v. Steadman*, 967 F.2d 636, 641 & n.3 (D.C. Cir. 1992). A showing of negligence, however, is sufficient to establish a violation of subsections (2) and (4). *Vernazza*, 327 F.3d at 859-60; *Steadman*, 967 F.2d at 643 n.5, 647.

Section "206 establishes 'federal fiduciary standards' to govern the conduct of investment advisers." *Transamerica Mortg. Advisors v. Lewis*, 444 U.S. 11, 17 (1979) (quoting *Santa Fe Indus. v. Green*, 430 U.S. 462, 471 n.11 (1977)). Investment advisers must therefore fully disclose all material facts and "employ reasonable care to avoid misleading [their] clients." *Montford & Co*., Investment Advisers Act Release No. 3829, 2014 SEC LEXIS 1529, at *50 (May 2, 2014).

Advisers Act Rule 206(4)-8 provides:

> (a) Prohibition. It shall constitute a fraudulent, deceptive, or manipulative act, practice, or course of business within the meaning of section 206(4) of the Act (15 U.S.C. 80b-6(4)) for any investment adviser to a pooled investment vehicle to:

> (1) Make any untrue statement of a material fact or to omit to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, to any investor or prospective investor in the pooled investment vehicle; or
> (2) Otherwise engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in the pooled investment vehicle.

17 C.F.R. § 276.206(4)-8.

2. Fortenberry made numerous false material statements and omitted material information in order to induce Dr. Anderson and Mr. Nasti to invest

Fortenberry lied, repeatedly, to Dr. Anderson and Mr. Nasti. He promised to do things he had no intention of doing. He reported news about Premier that was wholly invented. Fortenberry's lies were material and induced his victims to invest $298,000. Once he had his victim's money in his hands, Fortenberry proceeded to spend that money for his own personal expenses. Fortenberry's lies were made in connection with the offer, purchase, and sale of securities.

A. Fortenberry lied about his salary and failed to disclose how he intended to receive it

Before they invested, Fortenberry led Dr. Anderson and Mr. Nasti to believe that his compensation would consist solely of profit he received as an owner of Premier units when he actually intended to take a salary. Tr. 61, 695. When Mr. Nasti specifically asked how Fortenberry would be compensated, Fortenberry said that he would be compensated through profit based on his ownership of Premier units. Tr. 61. He did not say that he would also receive a salary. Tr. 76. And he never told either Mr. Nasti or Dr. Anderson that, based on what he had read on the internet, he felt entitled to a salary of up to $200,000. Tr. 439.

Fortenberry also omitted several material facts about how he intended to draw and account for his salary. Fortenberry did not pay himself a salary designated as such. Instead, he treated Premier's bank account in the same manner one might treat a personal account. He thus drew money directly out of Premier's account, effectively treating those withdrawals as payments in lieu of salary. Tr. 450; Div. Ex. 149 at 15-16. But Fortenberry kept no records, no receipts, and no invoices. Div. Ex. 149 at 16. As a result, he had no way of knowing whether his expenditures in lieu of salary had reached his salary limit or not. Tr. 587-88. Any reasonable investor would want to know that a fund's general partner intended to treat the fund's account like his own personal account.

It is true, as Fortenberry contended during the hearing, that the subscription agreements permitted him to take a reasonable salary. Div. Exs. 45 at 2, 56 at 0190, 70 at 0074. But these

provisions, which Fortenberry did not call to the attention of his victims, did not alter the fact that he had already told Dr. Anderson and Mr. Nasti that he would only be compensated in profit. In other words, they do not make true the material false statements he had already conveyed or eliminate the material omissions.

Moreover, even if the salary language in the subscription agreement could have remedied the existing lies, the subscription agreements only permitted "reasonable" salary expenses. *See* Div. Exs. 45 at 2, 56 at 0190, 70 at 0074. Almost by definition, however, Fortenberry's payments to himself were not reasonable. When he used money from Premier's account as if it were his own personal account, he treated payments to businesses such as Starbucks, Victorios Pizza, and Hollywood Liquors, as payments in lieu of salary. *See* Div. Ex. 41 at 2936. But by failing to keep records, receipts, or invoices, and by spending money directly out of Premier's account without regard for the propriety of his expenditures, Fortenberry made it impossible to determine whether his expenses were legitimate. As Division counsel demonstrated when he questioned Fortenberry about his after-the-fact annotations on Premier's bank statements, Fortenberry's annotations were unreliable. As a result, he had no "reasonable" salary expenses. Fortenberry thus made material misrepresentations and omissions about his salary.

B. *Fortenberry repeatedly lied to Dr. Anderson and Mr. Nasti in their subscription agreements*

Fortenberry told Dr. Anderson and Mr. Nasti in their subscription agreements that Premier would use GAAP "in keeping its books and records." Div. Exs. 45 at 1, 56 at 0189, 70 at 0073. This was false for two reasons. First, Fortenberry had no clue what complying with GAAP entailed. Tr. 589-90, 618-19. He thus did not intend to fulfill this promise.

Second, by saying that he would use GAAP "in keeping [Premier's] books and records," he demonstrated his understanding that investors would expect him to keep books and records. Yet, Fortenberry kept no books or records. Tr. 297; Div. Ex. 149 at 16. Indeed, during the hearing, he insisted that in order to run his investment company, he only needed to rely on account statements from Premier's bank. Tr. 297-98. There can be no doubt that if Mr. Nasti, Dr. Anderson, or any reasonable investor were told about this absurd perspective, they would not have invested with Premier. Indeed, it is likely any reasonable investor would laugh if told that Fortenberry planned to rely only on bank statements. Fortenberry's false statement that he would keep records, and his omission that he intended to keep no records other than bank statements, were thus both material.

Fortenberry also falsely said in the subscription agreements that investors would each have a capital account and would receive a profit and loss statement by January 31. Div. Ex. 45 at 1-3; Div. Ex. 56 at 0189-90; Div. Ex. 70 at 0073-74. Fortenberry, however, had no idea what a capital account was and never supplied a profit and loss statement. Tr. 296. Indeed, he opined—based on no evident experience whatsoever—that keeping a balance sheet or an income statement would not be typical for a company such as Premier. Tr. 296-97. But, saying you will do something you do not intend to do is a lie. *See United States ex rel. Grenadyor v. Ukrainian Village Pharmacy*, 772 F.3d 1102, 1105 (7th Cir. 2014) ("If you say 'I agree' [to abide by the Medicare laws] when you don't agree, you're making a false statement.").

Fortenberry also omitted from his communications with investors the fact that he was subject to cease-and-desist orders issued by Texas and Pennsylvania securities authorities.[24] Tr. 42-43, 62, 720; *see* Div. Exs. 9, 10. Although Fortenberry claims otherwise, because he controlled Premier, his securities disciplinary history is material. *Philip A. Lehman*, Exchange Act Release No. 54660, 2006 SEC LEXIS 2498, at *8 & n.12 (Oct. 27, 2006). In fact, neither Dr. Anderson nor Mr. Nasti would have invested with Fortenberry had they known about those orders.[25] Tr. 62-63, 720.

C. Fortenberry lied to Mr. Nasti in the Starmaker Brochure

Fortenberry induced Mr. Nasti to invest by e-mailing him the Starmaker Brochure in which Fortenberry promised Mr. Nasti a fantastic return. Tr. 58-59, 67-69; *see* Div. Ex. 56 at 0183-88. Fortenberry not only promised a 12% return, he also said that Starmaker would gross $30 million per month and "each investor will be paid thirty five thousand dollars per month for the rest of his or her life." Div. Ex. 56 at 0183. These promises were part of the basis for Mr. Nasti's investment. *See id.* Because the information Fortenberry conveyed regarding returns and profits would be relevant to any reasonable investor's decision to invest, this information was material. Promised returns of this nature, however, are "inherently misleading." *Philip A. Lehman*, 2006 SEC LEXIS 2498, at *8. Moreover, based on what Sherman Halsey told him, Fortenberry knew or should have known these figures were either inaccurate or unrealistically optimistic. Div. Ex. 5 at 29; *see id*. at 21 (stating that Fortenberry knew that for the Halsey Management "entities to work," he had to contribute at least $1.5 million).

Fortenberry also lied about the breadth of Premier's involvement with Halsey Management. In the Starmaker Brochure, he invented entities that did not exist in order to create a false impression. Specially, the graphical display he invented included Thundercast,

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[24] As discussed below, Fortenberry was an investment adviser. As a result, he was a fiduciary of his victims and thus had a duty to disclose material information. *Montford & Co*., 2014 SEC LEXIS 1529, at *50-51. As such, his omissions are actionable. I thus reject Fortenberry's suggestion that his victims are to blame for not researching his background, research that may have been futile in light of Fortenberry's use of different names. Resp. Br. at 11-12; *cf. Miller v. Thane Int'l., Inc*., 519 F.3d 879, 887 & n.2 (9th Cir. 2008) (holding, in an action under Securities Act Section 12(a)(2), 15 U.S.C. § 77*l*(a)(2), that the fact "truthful information is available elsewhere does not relieve a defendant from liability for misrepresentations in a given filing or statement"); *John P. Flannery*, Securities Act Release No. 9689, 2014 SEC LEXIS 4981, at *72-73 (Dec. 15, 2014) (addressing liability under Section 10(b), Rule 10b-5(b), and Section 17(a)(2) and holding that the public availability of accurate information does not relieve a respondent of liability for a misrepresentation).

[25] Because the test of materiality is objective, "'the reaction of individual investors is not determinative of materiality.'" *S.W. Hatfield, CPA*, Exchange Act Release No. 73763, 2014 SEC LEXIS 4691, at *23 (Dec. 5, 2014) (quoting *David Henry Disraeli*, Exchange Act Release No. 57027, 2007 SEC LEXIS 3015, at *23 (Dec. 21, 2007)). The subjective reactions of Dr. Anderson and Mr. Nasti are nonetheless informative and serve to confirm the evident materiality of Fortenberry's omissions.

Halseyjobs.com, and the Halsey Institute, none of which existed. Div. Ex. 5 at 31-32; *see* Div. Ex. 56 at 0186. Indeed, Fortenberry took the logo he used for the invented Halsey Institute from the website for the Halsey Institute for Contemporary Art at the College of Charleston. *Compare* http://halsey.cofc.edu/, *with* Div. Ex. 56 at 0186. Fortenberry also included Sonicbids in the graphical display, but the Halseys had no ownership interest in it. Div. Ex. 5 at 31.

Fortenberry claimed that the he did not lie about the 12% return because Sherman Halsey guaranteed him returns in the contract between Halsey Management and Premier. Tr. 544-46, 554, 583-84; *see* Div. Ex. 39 at 6264-65. Specifically, Fortenberry testified that the dilution provision represented a guaranteed return. I do not believe that Fortenberry thought the dilution provision provided a guarantee, however, because the provision's plain language says nothing about a guaranteed return. Div. Ex. 39 at 6264-65. And, Fortenberry never testified that he negotiated such a guarantee with Sherman Halsey. Further, Sherman Halsey told Fortenberry that the $30 million per month figure in the Starmaker Brochure, the apparent basis for the promised 12% return, was inaccurate. Div. Ex. 5 at 29.

Moreover, even if Fortenberry thought the dilution provision might be a guarantee that he would receive a 12% return, he was absurdly reckless in not verifying that understanding with Sherman Halsey or his counsel, Mr. Nimmer. And he was doubly reckless to purportedly rely on that previously unmentioned guarantee when promising a like return to Mr. Nasti.

D. Fortenberry repeatedly lied to Dr. Anderson in the letters and statements he mailed to Dr. Anderson

Fortenberry lied to Dr. Anderson in his August 31, 2010, letter, which falsely stated that Bongiovi Entertainment had been added to Premier's "portfolio." Div. Ex. 53 at 0039. Fortenberry continued to lie to Dr. Anderson in the monthly and quarterly statements he mailed to Dr. Anderson. In November 2010, he told Dr. Anderson that Dr. Anderson should reinvest his monthly earnings on his Premier investment. Div. Ex. 69 at 0033. As Fortenberry intended, this gave Dr. Anderson the impression that Premier was earning money when it had actually earned nothing. On the basis of this assertion and others, Fortenberry stated that Premier believed that "this is the best time to re-invest investor earnings." *Id*. Fortenberry also falsely gave Dr. Anderson the impression that Premier had invested in a Christmas film produced by Bongiovi Entertainment, when it had not, thus conveying a materially false impression of the depth and breadth of Premier's investments. Tr. 709; *see* Div. Ex. 69 at 0035.

Fortenberry then continued his charade for months, falsely trumpeting Dr. Anderson's earnings. Div. Exs. 73, 79, 84, 89, 112, 153-56. Not surprisingly, the language in these letters convinced Dr. Anderson that his investment had earned money. Tr. 710-15. These lies were material because they were designed to induce further investment. Any reasonable investor would want to know whether the capital he or she had already committed was earning returns.

3. Fortenberry violated the antifraud provisions of the Securities Act and the Exchange Act

As noted, in order to demonstrate liability under Sections 17(a) of the Securities Act and 10(b) of the Exchange Act, the Division must show that Fortenberry "engaged in fraudulent conduct, that such conduct was in connection with the offer, sale, or purchase of securities, and that he acted with scienter," or in the case of Section 17(a)(2) and (3), with negligence. *Trautman*, 2009 SEC LEXIS 4173, at *52. An untrue statement of material fact or omission of a fact that made a prior statement misleading suffices to demonstrate fraudulent conduct. *Id*. at *53. "A fact is material if there is a substantial likelihood that a reasonable investor would consider it important in determining how to act." *Philip A. Lehman*, 2006 SEC LEXIS 2498, at *9 n.11. The Division easily meets these requirements.

Fortenberry's false statements, detailed above, are legion.[26] He lied about his salary, complying with GAAP, creating capital accounts, keeping books and records, and preparing profit and loss statements. He falsely guaranteed Mr. Nasti returns and lied about the ventures with which Premier was involved. He lied to Dr. Anderson every time he mailed Dr. Anderson invoices with invented earnings. He failed to disclose how he intended to draw his salary. He failed to disclose his disciplinary history. All of these false statements and omissions were material because they are things that a reasonable investor would consider important before investing.

Fortenberry's statements and omissions were made in connection with the offer, purchase, and sale of securities, to wit, units of Premier. *See SEC v. Edwards*, 540 U.S. 389, 393 (2004) (a "security" includes "virtually any instrument that might be sold as an investment," "in whatever form they are made and by whatever name they are called" (internal quotation marks omitted)). Fortenberry carried out his scheme by using electronic and regular mail, which are instrumentalities of interstate commerce. *See United States v. Barlow*, 568 F.3d 215, 220 (5th Cir. 2009); *SEC v. Solucorp Indus., Ltd.*, 274 F.Supp.2d 379, 419 (S.D.N.Y. 2003).

Fortenberry also acted with scienter. Each of his false statements and omissions was intentional or so hopelessly reckless as to amount to the same thing. Fortenberry knew he invented the graphic in the Starmaker Brochure and, because it had no basis in fact, knew he could not guarantee Mr. Nasti a 12% return. He knew he had no intention of doing the things he promised to do in the subscription agreement—he did not even know what some of the things were. He knew Premier had no earnings, yet falsely told Dr. Anderson that he was earning money. And Fortenberry did that because he wanted Dr. Anderson to give him more money. Indeed, each of the misrepresentations and omissions identified above were part of a scheme to

[26] Fortenberry had authority over the content of each statement in the subscription agreements, monthly and quarterly letters to Dr. Anderson, and the Starmaker Brochure, and decided whether and how to communicate those statements. *See* Tr. 72, 234, 236, 276-77, 358, 376, 386, 390, 392, 395, 399, 404-06, 411-12, 704; Div. Exs. 69, 73, 79, 84, 112, 153-56. As a result, he was the "maker" of the false statements in the subscription agreements, monthly and quarterly letters to Dr. Anderson, and the Starmaker Brochure. *See Janus Capital Grp., Inc. v. First Derivative Traders*, 131 S. Ct. 2296, 2302 (2011).

defraud his investors by using deceit and manipulation to convince them to trust Fortenberry with their investments. Fortenberry thus violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Exchange Act Rule 10b-5.

4. Fortenberry violated Section 206 of the Advisers Act

At the threshold, Fortenberry claims the Advisers Act does not apply to him because he was not an investment advisor. Resp. Br. at 16. In this regard, an investment adviser is a "person who, for compensation, engages in the business of advising others . . . as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities." 15 U.S.C. § 80b-2(a)(11). Fortenberry falls within the terms of this definition.

First, as he testified, Fortenberry received compensation as Premier's general partner. Tr. 279. Second, Dr. Anderson and Mr. Nasti were Fortenberry's clients, whom he advised regarding investments in securities. It is true that ordinarily, a fund adviser's client is the fund, not the limited partners. *See Goldstein v. SEC*, 451 F.3d 873, 876 (D.C. Cir. 2006). If, however, the general partner's relationship with a limited partner is more akin to that of an investment adviser to a client, then the general partner will be regarded as an investment adviser to that limited partner. *See Goldenson v. Steffens*, 802 F. Supp. 2d 240, 267-68 (D. Me. 2011); *see also United States v. Lay*, 612 F.3d 440, 446-47 (6th Cir. 2010).

Here, Premier had only two investors and Premier served simply as a conduit for their investments. Fortenberry met individually with Dr. Anderson and Mr. Nasti. With respect to Dr. Anderson, Fortenberry co-mingled his personal and business finances in multiple letters and statements and relied on his personal relationship with Dr. Anderson to induce investment. With respect to Mr. Nasti, Fortenberry made specific promises as to how money would be invested, in accordance with Mr. Nasti's personal investment goals. Given these facts, Fortenberry's relationship with Dr. Anderson and Mr. Nasti evidenced an adviser-client relationship. Fortenberry was thus an investment adviser to Mr. Nasti and Dr. Anderson. *See Goldenson*, 802 F. Supp. 2d at 268. In consequence, the Advisers Act applies to Fortenberry. Because Fortenberry qualified as an investment adviser, he owed his clients a fiduciary duty, which he breached, to disclose material facts and use reasonable care to avoid misleading them. *See Montford & Co*., 2014 SEC LEXIS 1529, at *50.

The determination that Fortenberry is liable for violating Sections 17(a) and 10(b) largely resolves the question of his liability for violating Section 206. *See SEC v. Rana Research, Inc*., 8 F.3d 1358, 1363, n.4 (9th Cir. 1993) ("Section 206 parallels section 10(b) of the Exchange Act in prohibiting 'any act, practice, or course of business which is fraudulent, deceptive or manipulative.'"); *SEC v. Haligiannis*, 470 F. Supp. 2d 373, 383 (S.D.N.Y. 2007); *SEC v. Blavin*, 557 F. Supp. 1304, 1315 (D. Mich. 1983). As noted above, he used the means of interstate commerce and mail to carry out his scheme. He acted with scienter, and the conduct described above was fraudulent, deceptive, and involved repeated material misstatements and omissions. Fortenberry thus violated Advisers Act Section 206(1), (2), and (4) and Rule 206(4)-8 thereunder.

V. SANCTIONS

The Division requests a cease-and-desist order, a permanent collateral bar, disgorgement of $318,500, and civil monetary penalties totaling $1,500,000. Div. Br. at 38-44. As discussed below, Fortenberry is (1) ordered to cease-and-desist from committing or causing violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Section 206(1), (2), and (4) of the Advisers Act and Rule 206(4)-8 thereunder; (2) permanently barred from the industry; (3) ordered to disgorge $146,500; and (4) ordered to pay third-tier penalties totaling $900,000.

A. *Sanction Considerations*

In determining the appropriateness of any remedial sanction in this proceeding, I am guided by the public interest factors set forth in *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981); *see Gary M. Kornman*, Exchange Act Release No. 59403, 2009 SEC LEXIS 367, at *22 (Feb. 13, 2009), *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010). These factors include:

> the egregiousness of the respondent's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the respondent's assurances against future violations, the respondent's recognition of the wrongful nature of his or her conduct, and the likelihood that the respondent's occupation will present opportunities for future violations.

Kornman, 2009 SEC LEXIS 367, at *22. The Commission also considers the age of the violation and the degree of harm to investors and the marketplace resulting from the violation. *Ralph W. LeBlanc*, Exchange Act Release No. 48254, 2003 SEC LEXIS 1793, *26 (July 30, 2003). Additionally, in conjunction with other factors, the Commission considers the extent to which the sanction will have a deterrent effect. *Peter Siris*, Exchange Act Release No. 71068, 2013 SEC LEXIS 3924, *48 n.72 (Dec. 12, 2013), *pet. denied*, 773 F.3d 89 (D.C. Cir. 2014).

The "'inquiry into the appropriate sanction to protect the public interest is . . . flexible . . . and no one factor is dispositive.'" *Kornman*, 2009 SEC LEXIS 367 at *22 (quoting *David Henry Disraeli*, Exchange Act Release No. 57027, 2007 SEC LEXIS 3015, at *61 (Dec. 21, 2007), *pet. denied*, 33 F. App'x 334 (D.C. Cir. 2009)). The determination of what is in the public interest "extends . . . to the public-at-large," *Christopher A. Lowry*, Investment Company Act Release No. 2052, 2002 SEC LEXIS 2346, at *20 (Aug. 30, 2002), *aff'd*, 340 F.3d 501 (8th Cir. 2003), "the welfare of investors as a class[,] and . . . standards of conduct in the securities business generally," *Arthur Lipper Corp.*, Exchange Act Release No. 11773, 1975 SEC LEXIS 527, at *52 (Oct. 24, 1975), *penalty modified, pet. otherwise denied*, 547 F.2d 171 (2d Cir. 1976). In assessing an appropriate sanction, I may consider matters outside the scope of the OIP. *See Calais Res. Inc.*, Exchange Act Release No. 67312, 2012 SEC LEXIS 2023, at *29 n.40 (June 29, 2012).

Fortenberry's case involved repeated fraudulent conduct, making "a severe sanction" warranted. *Toby G. Scammell*, Advisers Act Release No. 3961, 2014 SEC LEXIS 4193, at *25 (Oct. 29, 2014) ("Fidelity to the public interest requires a severe sanction when a respondent's misconduct involves fraud because the securities business is one in which opportunities for dishonesty recur constantly." (internal quotation marks omitted)). Fortenberry's fraudulent conduct was recurrent; it permeated this case. In many ways, it would be easier to recount the people to whom he did not lie. He lied to Jim Halsey during their first communication. He lied to Mr. Nasti. He lied to Dr. Anderson nearly every chance he had. He lied when he testified.

Fortenberry's conduct reflects a high degree of scienter. He invented figures and entities in the Starmaker Brochure. He invented investment returns in monthly and quarterly statements he sent to Dr. Anderson. He promised in the subscription agreements to do things he had no intention of doing.

Fortenberry showed no recognition of the wrongful nature of his conduct. Indeed, he was indignant in blaming the Division's investigation for the collapse of Premier. Tr. 208, 304. To hear Fortenberry tell it, his complete failure to maintain records or account for expenditures was the Division's fault, Tr. 304, and his material false statements were irrelevant. This is particularly egregious because the Division's investigation began after Fortenberry failed to keep any records while freely spending from Premier's bank account.

Fortenberry's conduct is clearly likely to continue. During the hearing, the Division presented evidence that after Premier collapsed, Fortenberry attempted to solicit investors in an energy company using the same fraudulent lure he used with Mr. Nasti: guaranteed returns. *See* Div. Ex. 110.

Finally, Fortenberry has previously been sanctioned, but has failed to heed lessons from those sanctions. *See* Div. Exs. 9, 10. Of particular relevance, the Pennsylvania cease-and-desist order described how Fortenberry offered "projections of 100% return[s] . . . within . . . 12 months." Div. Ex. 9. That Fortenberry is a repeat offender shows all the more that a severe sanction is warranted.

B. Cease-and-desist order

Sections 8A of the Securities Act, 21C of the Exchange Act, and 203(k) of the Advisers Act authorize the Commission to issue a cease-and-desist order against a person who "is violating, has violated, or is about to violate" any provision of those Acts or rules thereunder. In deciding whether to issue a cease-and-desist order, I must consider: (1) whether future violations are reasonably likely; (2) the seriousness of the violations at issue; (3) whether the violations are isolated or recurrent; (4) Fortenberry's state of mind; (5) whether he recognizes the wrongful nature of his conduct; (6) the recency of the violations; (7) "whether the violations caused harm to investors or the marketplace"; (8) "whether [he] will have the opportunity to commit future violations"; and (9) the "remedial function [a] cease-and-desist order would serve in the overall context of any other sanctions sought in the same proceeding." *Gordon Brent Pierce*, Securities Act Release No. 9555, 2014 SEC LEXIS 4544, at *82-83 (Mar. 7, 2014); *KPMG Peat Marwick LLP*, Exchange Act Release No. 43862, 2001 SEC LEXIS 98, at *101 (Jan. 19, 2001), *recon.*

denied, Exchange Act Release No. 44050, 2001 SEC LEXIS 422 (Mar. 5, 2001), *pet. denied*, 289 F.3d 109 (D.C. Cir. 2002).

"Absent evidence to the contrary," a single past violation ordinarily suffices to establish a risk of future violations. *KPMG Peat Marwick LLP*, 2001 SEC LEXIS 98, at *102; *see id*. at 102-03 ("evidence showing that a respondent violated the law once probably also shows a risk of repetition that merits our ordering him to cease and desist"). The showing necessary to demonstrate the likelihood of future violations is "significantly less than that required for an injunction." *Id*. at *114.

Here, a cease-and-desist order is necessary and appropriate. Fortenberry committed repeated frauds and violated his position as a fiduciary. Fortenberry's actions cost his investors substantial amounts of money. He is also a repeat offender, having previously been sanctioned by Pennsylvania and Texas. Fortenberry's actions were intentional and he has shown no appreciation for the wrongfulness of his conduct. Although the violations occurred approximately three years ago, it is significant that Fortenberry has continued to solicit investors with dubious claims of guaranteed returns. *See* Div. Ex. 150 at 3; Div. Ex. 110. *But see* Tr. 509 (denying that he had guaranteed returns).

Although Fortenberry testified that he currently works for himself doing "nothing but sell[ing] Microsoft databases of leads," Tr. 493, his lack of credibility causes me to doubt this testimony. During the Division's examination of Fortenberry, he conceded that he provided leads to a company called Rancher's Exploration, Tr. 495, and that he "help[s]" run his son's business, Tr. 496. Indeed, Dr. Anderson testified that Fortenberry told him that Fortenberry was working for an oil company in Colorado. Tr. 721.

Fortenberry testified that his twenty-two year-old son Stephen, who resides at Fortenberry's address and who had been hospitalized for a period of time, runs a company called Wattenberg Energy Partners. Tr. 500, 503; *see* Div. Ex. 122. And Wattenberg's business address in Colorado is the same address used by Rancher's Exploration and a company called Energy Services. Tr. 502, 506. Additionally, as the Division showed, Fortenberry has been promoting investment in First Choice Energy Partners. In a video shown during the hearing, Fortenberry can be seen doing exactly what he did with Premier: luring investors with promises of guaranteed returns. *See* Div. Ex. 150 at 3; Div. Ex. 110. Fortenberry thus has the opportunity to continue to engage in fraudulent conduct.

Given the foregoing, I conclude that it is necessary and appropriate to order Fortenberry to cease and desist from committing or causing violations of Securities Act Section 17(a), Exchange Act Section 10(b) and Rule 10b-5 thereunder, and Advisers Act Section 206(1), (2), and (4) and Rule 206(4)-8 thereunder.

C. Collateral Bar

The Division requests a permanent industry-wide collateral bar against Fortenberry. Div. Br. at 39. Collateral bars are authorized by Section 203(f) of the Advisers Act. 15 U.S.C.

§ 80b-3(e)(5), (f). Additionally Section 9(b) of the Investment Company Act authorizes a bar from acting or serving in enumerated registered investment company roles. 15 U.S.C. § 80a-9.

In *Ross Mandell*, the Commission directed that before imposing an industry-wide bar, an administrative law judge must "review each case on its own facts to make findings regarding the respondent's fitness to participate in the industry in the barred capacities." Exchange Act Release No. 71668, 2014 SEC LEXIS 849, at *7-8 (Mar. 7, 2014) (internal quotation marks omitted). The administrative law judge's analysis "should be grounded in specific findings regarding the protective interests to be served by barring the respondent and the risk of future misconduct." *Id*. at 8 (internal quotation marks omitted).

At best, Fortenberry set up an investment company with no idea of how to competently fulfill his role as a managing general partner. At best, he honestly thought that, no matter his lack of experience, he was entitled to $200,000 simply by virtue of having a business card that labeled him as Premier's general partner. Even if Fortenberry actually believed his absurd statement that he did not need to keep records beyond bank accounts, he would be a menace because losing investors' money is the inevitable consequence of that belief. Even taking Fortenberry at his word, he is uniquely unqualified to remain in the industry.

Of course, Fortenberry was not credible. He was repeatedly dishonest, showed disregard for his investors' funds, and looted Premier for his own benefit. These facts show that Fortenberry lacks the fitness necessary to remain in the industry. *See Mark A. Feathers*, Exchange Act Release No. 73634, 2014 WL 6449870, at *3 (Nov. 18, 2014) ("His repeated dishonesty and callous disregard for the funds' investors combined with his contempt for, or at the very least his misunderstanding of, his responsibilities as a securities professional demonstrate his unfitness to remain in the securities industry in any capacity."). Additionally, Fortenberry's numerous violations raise an inference that he will engage in future violations. *Tzemach David Netzer Korem*, Exchange Act Release No. 70044, 2013 SEC LEXIS 2155, at *24 n.50 (July 26, 2013). Under the circumstances of this proceeding, I find that imposing a permanent collateral bar best comports with the statutes' remedial purpose and is in the public interest for the reasons discussed and the public interest factors weighed above.

D. Disgorgement

Section 8A(e) of the Securities Act, Section 21C(e) of the Exchange Act and Section 203(j) and (k)(5) of the Advisers Act permit the Commission to order disgorgement, including reasonable interest, in this proceeding. 15 U.S.C. §§ 77h-1(e), 78u-3(e), 80b-3(j), (k)(5). Disgorgement is equitable in nature and is intended to prevent unjust enrichment and to act as a deterrent. *SEC v. First City Fin. Corp*., 890 F.2d 1215, 1230 (D.C. Cir. 1989). A disgorgement order "need only be a reasonable approximation of profits causally connected to the violation." *Montford & Co*., 2014 SEC LEXIS 1529, at *94 (internal quotation marks omitted). At that point, "the burden shifts to the respondent to show that the amount of disgorgement is not a reasonable approximation." *Id*. It is thus the case that "[t]he risk of uncertainty in calculating disgorgement . . . fall[s] on the wrongdoer whose illegal conduct created that uncertainty." *Id*. (internal quotation marks omitted).

Mr. Nasti gave Fortenberry $200,000 and Dr. Anderson gave him $98,000, for a total of $298,000. Based on Mr. Pierce's investigation, we know that Premier invested $151,500 in Halsey Management. Subtracting $151,500 from $298,000, yields a total of $146,500 in unjust enrichment. According to the Division, however, I should add the $170,000 Fortenberry transferred from himself as a personal loan to Premier. Div. Br. at 41. This would result in a disgorgement total of $316,500.[27] *Id.*

I am not willing to go as far as the Division wishes. While it is true that Fortenberry transferred the $170,000 he owed Dr. Anderson, the Division did not tie that transfer or the initial loan to any fraudulent conduct in relation to the offer or sale of a security. I would thus subtract $170,000 from the proposed $316,500 for a total of $146,500.

In regard to this figure, the OIP alleged that Fortenberry induced $300,000 in investments and that he looted Premier of at least $148,500. OIP at 8,10. It did not address the $170,000 loan. Based on the allegations in the OIP, it would be inappropriate to include the $170,000 in the total, no matter how much it might appear apt to order Fortenberry to disgorge that amount as well. Accordingly, I order disgorgement in the amount of $146,500, plus prejudgment interest calculated from April 1, 2011, through the last day of the month preceding the month in which disgorgement is paid.[28] *See* 17 C.F.R. § 201.600(a). I will define the prejudgment interest rate in section seven of this Initial Decision. *See* 17 C.F.R. § 201.600(b).

E. Civil Penalties

Securities Act Section 8A(g) authorizes the Commission to impose civil monetary penalties against any person where such penalties are in the public interest and the person has violated certain provisions of the securities laws. *See* 15 U.S.C. § 77h-1(g). Exchange Act Section 21B(a)(2) and Advisers Act Section 203(i)(1)(B) apply in cases, such as this one, that

[27] The Division actually calculated that Fortenberry should disgorge $318,500. Div. Br. at 40. This figure was partly based on the contention that Dr. Anderson invested $100,000. *Id.* at 14, 40. In a post-hearing filing, however, the Division "submit[ted] that" the evidence "in this matter establish[es] that Dr. Anderson contributed at least $98,000 to Premier." *See* Division's Memorandum Regarding Dr. Allen Anderson's Investment at 3.

[28] With respect to Fortenberry's violations that induced Mr. Nasti's investments, Fortenberry met with Mr. Nasti in Tulsa, Oklahoma, on September 13, 2010. This was the date of Mr. Nasti's first $100,000 investment. Mr. Nasti made his second $100,000 investment in November 2010. With respect to Dr. Anderson, Fortenberry's violations were continuing until Dr. Anderson's final investment on March 13, 2011. Given the foregoing, for purposes of Rule 600, prejudgment interest should be calculated starting April 1, 2011, which is the first day of the month following Fortenberry's last violation. In the absence of a proposal breaking down the prejudgment interest amount by violation date, using the date of the last violation is most appropriate.

were instituted under Section 21C of the Exchange Act and Section 203(k) of the Advisers Act.[29] *See* 15 U.S.C. §§ 78u-2(a)(2), 80b-3(i)(1)(B). Under Sections 21B(a)(2)(A) and 203(i)(1)(B), a civil monetary penalty may be imposed based simply on the determination that a respondent has committed a violation. *See* 15 U.S.C. §§ 78u-2(a)(2)(A), 80b-3(i)(1)(B). The statutes set out a three-tiered system for determining the maximum civil penalty for each act or omission. 15 U.S.C. §§ 77h-1(g), 78u-2(b), 80b-3(i)(2). For the time period at issue, the maximum first, second, and third-tier penalty for each violation for a natural person is $7,500, $75,000 and $150,000, respectively. 15 U.S.C. §§ 77h-1(g), 78u-2(b), 80b-3(i); 17 C.F.R. § 201.1004 & Subpt. E, Table IV (adjusting the statutory amounts for inflation).

A maximum third-tier penalty is permitted if: (1) the violations involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and (2) such acts or omissions directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain to the person who committed the acts or omissions. 15 U.S.C. §§ 77h-1(g)(2)(C), 78u-2(b)(3), 80b-3(i)(2)(C). Second-tier penalties may be imposed if the misconduct involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement. 15 U.S.C. §§ 77h-1(g)(2)(B), 78u-2(b)(2), 80b-3(i)(2)(B). First-tier penalties may be imposed simply for each violation. 15 U.S.C. §§ 77h-1(g)(2)(A), 78u-2(b)(1), 80b-3(i)(2)(A). Although the tier determines the maximum penalty, "each case 'has its own particular facts and circumstances which determine the appropriate penalty to be imposed'" within the tier. *SEC v. Opulentica, LLC*, 479 F. Supp. 2d 319, 331 (S.D.N.Y. 2007) (quoting *SEC v. Moran*, 944 F. Supp. 286, 296-97 (S.D.N.Y. 1996)). I thus have discretion in determining the appropriate penalty within a given tier. *SEC v. Kern*, 425 F.3d 143, 153 (2d Cir. 2005); *S.W. Hatfield, CPA*, Exchange Act Release No. 73763, 2014 SEC LEXIS 4691, at *48 (Dec. 5, 2014).

Six factors may be considered in determining whether a penalty is in the public interest. These include: (1) whether the violation involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; (2) the resulting harm to other persons; (3) any unjust enrichment and prior restitution; (4) the respondent's prior regulatory record; (5) the need to deter the respondent and other persons; and (6) such other matters as justice may require. 15 U.S.C. §§ 77h-1(g), 78u-2(c), 80b-3(i)(3).

The statutory requirements for imposition of third-tier penalties are met in this case. Fortenberry's violations involved fraud, deceit, and manipulation and his conduct directly resulted in substantial losses to his investors and substantial pecuniary gain to Fortenberry. Consideration of the public interest factors likewise supports imposition of third-tier penalties. As noted, Fortenberry's conduct involved fraud, deceit, and manipulation. It resulted in substantial harm to Dr. Anderson and Mr. Nasti, who lost their investments and conversely resulted in substantial gain to Fortenberry.

[29] The Division also requests civil penalties under Section 9(d) of the Investment Company Act. Div. Br. at 42. Because this provision does not appear in the OIP, however, *see* OIP at 10-11, I do not consider it here.

Furthermore, this is not Fortenberry's first brush with regulatory authorities. As discussed, he has previously been sanctioned by securities authorities in Pennsylvania and Texas. Fortenberry has continued to solicit investors with promises of guaranteed returns, Div. Ex. 110, and he has refused to acknowledge any wrongdoing, choosing instead to blame the Division's investigation for the demise of Premier, *see* Tr. 208. Moreover, Fortenberry violated his fiduciary duty for his own benefit, to the harm of his victims.

A monetary penalty may be assessed for "each act or omission." 15 U.S.C. §§ 77h-1(g)(2)(C), 78u-2(b)(3), 80b-3(i)(2)(C). I find the following distinct acts or omissions relevant to this calculation: (1) false statements in Dr. Anderson's subscription agreement and omissions related to salary and record keeping; (2) false statements in Mr. Nasti's subscription agreement and omissions related to salary and record keeping; (3) false promises of returns in the Starmaker Brochure given to Mr. Nasti and false assertions of fact about investments in the same brochure; (4) false representation in the August 31, 2010, letter to Dr. Anderson that Bongiovi Entertainment was in Premier's portfolio; (5) false indication of returns in the November 2010 letter to Dr. Anderson with a false representation about Bongiovi Entertainment; (6) false indication of returns in the December 2010 invoice to Dr. Anderson; (7) false indication of returns in the January 2011 invoice to Dr. Anderson; (8) false indication of returns in the February 2011 invoice to Dr. Anderson; and (9) false indication of returns in the March 2011 invoice to Dr. Anderson.

As detailed above, Fortenberry made a host of other false statements. The nine sets of statements and omissions listed here, however, are those that were directly tied to investment decisions by Fortenberry's victims. While is it true that Fortenberry looted Premier and treated its bank account as his own, *see* Div. Br. at 44, I do not regard Fortenberry's behavior in respect to the bank account as a separate act or omission. Rather, I view this behavior as being part of the false statements and omissions concerning the subscription agreements. Fortenberry made various representations in the subscription agreements that were belied by his subsequent failure to maintain records and his personal spending out of Premier's bank account.

Bearing in mind that repeated fraudulent conduct warrants "a severe sanction," *Toby G. Scammell*, 2014 SEC LEXIS 4193 at *25, I note that each of the nine sets of false statements and material omissions reflect a high degree scienter and resulted in substantial harm to Fortenberry's victims. Moreover, Fortenberry has been sanctioned before but has continued to commit securities violations. I thus impose a civil penalty of $100,000 per set of false statements or omissions, resulting in a total civil monetary penalty of $900,000, which is approximately three times the amount Fortenberry fraudulently induced his investors to invest.

I find that this monetary penalty will serve the important interest of deterring Fortenberry from future securities violations. It will also serve as a general deterrent to others who seek to defraud potential investors.

VI. RECORD CERTIFICATION

Pursuant to Rule 351(b) of the Commission's Rules of Practice, 17 C.F.R. § 201.351(b), I certify that the record includes the items set forth in the Record Index issued by the Secretary of the Commission on February 12, 2015.

VII. ORDER

IT IS ORDERED that, pursuant to Section 8A of the Securities Act of 1933, Section 21C of the Securities Exchange Act of 1934, and Section 203(k) of the Investment Advisers Act of 1940, Respondent Stanley Jonathan Fortenberry shall CEASE AND DESIST from committing or causing any violations or future violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934, and Rule 10b-5 thereunder, and Section 206(1), (2), and (4) of the Investment Advisers Act of 1940, and Rule 206(4)-8 thereunder.

IT IS FURTHER ORDERED that, pursuant to Section 203(f) of the Investment Advisers Act of 1940, Stanley Jonathan Fortenberry is BARRED from associating with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

IT IS FURTHER ORDERED that, pursuant to Section 9(b) of the Investment Company Act of 1940, Stanley Jonathan Fortenberry is PERMANENTLY PROHIBITED from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter.

IT IS FURTHER ORDERED that, pursuant to Section 8A(g) of the Securities Act of 1933, Section 21B of the Securities Exchange Act of 1934, and Section 203(i) of the Investment Advisers Act of 1940, Stanley Jonathan Fortenberry shall PAY A CIVIL MONEY PENALTY in the amount of $900,000.

IT IS FURTHER ORDERED that, pursuant to Section 8A(e) of the Securities Act of 1933, Section 21C(e) of the Securities Exchange Act of 1934, and Section 203(j) and (k)(5) of the Investment Advisers Act of 1940, Stanley Jonathan Fortenberry shall DISGORGE $146,500, plus prejudgment interest. Prejudgment interest shall be calculated at the underpayment rate of interest established under Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. § 6621(a)(2), shall be compounded quarterly, and shall run from April 1, 2011, through the last day of the month preceding the month in which payment is made. 17 C.F.R. § 201.600.

Payment of disgorgement, prejudgment interest, and civil penalties shall be made no later than twenty-one days following the day this Initial Decision becomes final, unless the Commission directs otherwise. Payment shall be made in one of the following ways: (1) transmitted electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request; (2) direct payments from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or (3) by certified check, United States postal money order, bank cashier's check, wire transfer, or bank money order, payable to the

Securities and Exchange Commission. Any payment by certified check, United States postal money order, bank cashier's check, wire transfer, or bank money order shall include a cover letter identifying the Respondent and Administrative Proceeding No. 3-15858, and shall be delivered to: Enterprises Services Center, Accounts Receivable Branch, HQ Bldg., Room 181, AMZ-341, 6500 South MacArthur Bld., Oklahoma City, Oklahoma 73169. A copy of the cover letter and instrument of payment shall be sent to the Commission's Division of Enforcement, directed to the attention of counsel of record.

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule of Practice 360, 17 C.F.R. § 201.360. Pursuant to that Rule, a party may file a petition for review of this Initial Decision within twenty-one days after service of the Initial Decision. A party may also file a motion to correct a manifest error of fact within ten days of the Initial Decision, pursuant to Rule of Practice 111, 17 C.F.R. § 201.111. If a motion to correct a manifest error of fact is filed by a party, then that party shall have twenty-one days to file a petition for review from the date of the undersigned's order resolving such motion to correct a manifest error of fact. The Initial Decision will not become final until the Commission enters an order of finality. The Commission will enter an order of finality unless a party files a petition for review or motion to correct a manifest error of fact or the Commission determines on its own initiative to review the Initial Decision as to a party. If any of these events occur, the Initial Decision shall not become final as to that party.

_____
James E. Grimes
Administrative Law Judge

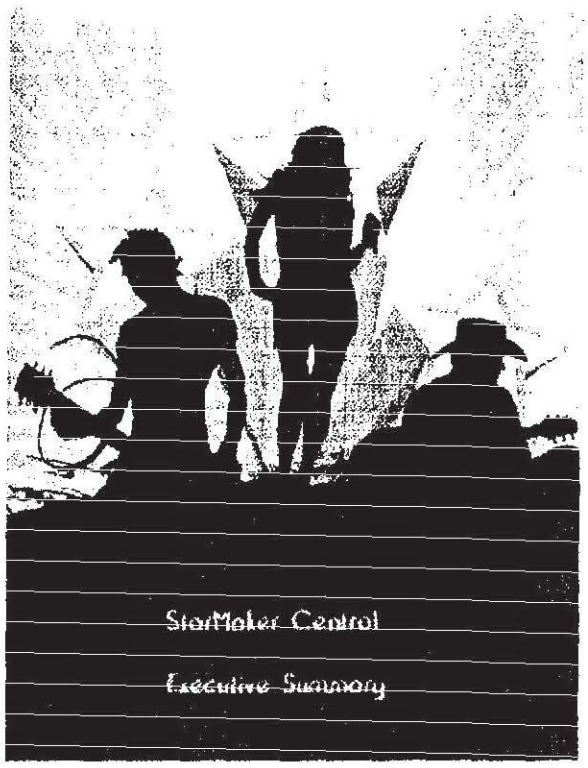
APPENDIX

Exhibit A

Paragraph 3 of Purchase and Sale Agreement between Premier and Halsey Management (Division Exhibit 39).

Units and Conversion upon Payout. The Units being purchased represent up to 3,500,000 Units if all of the Maximum Committed Units are purchased hereunder and up to 48% of the total Units of Membership Interest in the Company. The actual Units purchased may vary. The Units actually purchased by Premier hereunder are referred to herein as the "Premier Purchased Units." Upon Payout (as defined below), each Premier Purchased Unit shall automatically be converted to one half Unit without further action or consent being required. For example, if all 3,500,000 Units have been issued to Premier hereunder and Payout occurs, the 3,500,000 Units shall automatically be converted into 1,750,000 Units thus reducing the ownership of Premier by one half of its former amount of Units. For purposes hereof, "Payout" means that date after twenty four months from the date hereof upon which the Company has made distributions to Premier equal to the Purchase Price of such Units paid by Premier hereunder plus 12% per annum interest thereon calculated from the date of the purchase of such Unit(s).

Exhibit B



Star Maker Central will average thirty dollars per month per member. We are confident that we will achieve one million members by August 15, 2012. Consequently, Star Maker Central will be grossing thirty million dollars per month. We expect our cost, at that point, to remain under two million dollars monthly, leaving a profit of twenty eight million dollars monthly.

If you invest now, we will pay you twelve percent (12%) per annum. Repayment of principal and interest will be paid back in three years, along with you keeping your equity stake in the holdings. Most importantly, our investors will receive twelve and one half percent of twenty eight million dollars, which is three and one half million dollars divided by our one hundred investors. Thus, each investor will be paid thirty five thousand dollars per month for the rest of his or her life. Additionally, these holdings can be bequeathed to his or her heirs.

Star Maker Central, a website owned by Halsey Management LLC, is becoming the centralized point for songwriters, musicians, listeners and industry professionals to obtain all the resources needed to interact and gain exposure to virtually all the music industry resources and relationships. It begins with the Billboard World Song contest, which is soon to add video and guitar contests. This service is used to attract musicians from around the globe in twelve genres. See www.BillboardSongContest.com. Since The Billboard Contest is an extremely appealing feature that draws in new musicians and songwriters, it will also attract seasoned professionals, such as studio musicians and big name artists that will make certain services available. For example, many new or upcoming artists will want to hire studio quality talent or perhaps a well known name to create music with them or simply accompany them in a recording. There will also be courses, tutorials and workshops offered by qualified teachers, as well as famous names.

This is the basis for investment by Mike Nasti in Premier Investment Fund LP. John Fortunato

The reason all of this is slated to work so well is the fact that Billboard has been the industry leader in entertainment ratings and charts dating back to 1894. For the past 60 years, and in the current world, even the most famous musical artists desire, more than virtually anything else, to be "on the charts"; the Billboard charts that is. Moreover, Billboard is the provider of the rankings for the American Top 40 pop songs, along with the same credibility in all other genres. July 6, 2010 marked the 40th anniversary of the first airing of the American Top 40, which counts down the top 40 positions on the Billboard Hot 100. From 1970 to 1988, it was hosted by Casey Kasem. Ryan Seacreast hosts it now. Billboard has unparalleled credibility and a proven record of accomplishment in the entertainment industry.
So all music industry people, especially performers and songwriters want to be as close to Billboard as they can, as soon as possible in their careers. After all, Billboard's influence, in essence, says who's hot and who's not!

Billboard has partnered exclusively with our company, Halsey Management LLC, to manage and conduct the contest. There are many reasons we selected to partner with Billboard, a few of which were explained earlier. Billboard also has many reasons for teaming with us, but the fact that our company has been a dominant leader in music promotion and management since 1949 is of paramount importance. We will be the foremost point for fans and listeners alike, because we will have all the newest music. Our listeners will have all the best music long before it is heard elsewhere.
Star Maker Central will provide:

- The most prestigious song contest in the world, i.e. our partner (Billboard)
- Newest, latest artists can't be downloaded or listened to without our involvement
- Allows artists and industry professionals to distribute and promote music
- Job site for people wanting to work in music; audio engineers, roadies, agents, employees and music industry executives, just to name a few.
- Music community allows musicians to share in compiling, refining and composing music globally with amateurs, studio musicians and stars
- Music library downloads like iTunes®
- Halsey University is an institute for learning; many courses are accredited
- Promotion of artists; winners will get recording contracts
- Streaming radio like Pandora®
- Through our strategic partner, SonicBids.com, music venues around the globe will be seeking needed musical acts

For those who are not fully aware of the integration in the high tech world and music, the numbers may be hard to grasp, however, SoundCloud is an excellent example. SoundCloud gives artists an easy way to send and receive audio files, embed audio tracks for people to hear and allow others to remix their works. It also has a social network that allows musicians to track, communicate and collaborate with others. SoundCloud landed about $3.3 million in funding in late 2009. Since then, it has solidified its position as a leader in its category. The company tells Billboard it has grown from an early stage company to 1.2 million users in the last 12 months. The average monthly cost to use the system is roughly 12 dollars per member per month.

Another example of what's taking place in high tech-meets-music industry is Sonicbids. They allow promoters to find and book artists over the Internet. Additionally, we see top executives from high tech companies that have been gravitating to the online music scene. For example, Martin Kelleher, the new CFO and COO of SonicBids.com, is a former Monster.com CFO. Nitzan Achsaf is Sonicbids' new VP of product; he was the former product manager at Yahoo.

Table below illustrates how your monthly earnings are calculated. This is based on the formula of 1,000,000 users, developed over a 2-year period, at an average membership cost of $30 per member per month, generating a total of $30,000,000 monthly gross revenue. All numbers below are in United States Dollars (USD).

Star Maker Central Gross Monthly Revenue	**30,000,000**
Monthly Expenses	
Office	10,000
Programming	300,000
Web site hosting, bandwidth and support	250,000
Salaries	300,000
Contest Prizes	100,000
Licensing Fees	60,000
Internet Advertising	150,000
TV, Radio and Print Adv.	150,000
Promotion of Artists	300,000
Award Ceremonies	200,000
Travel	60,000
Incentives and Giveaways	50,000
Insurance	5,000
Legal & Accounting	50,000
Supplies	5,000
Utilities, Phones, Equipment Etc	5,000
Miscellaneous	5,000
Total Expenses	**(2,000,000)**
Star Maker Central Monthly Net Earnings	**28,000,000**
Premier Investment Fund LP (PIF) Monthly Net Earnings (owning 1/4 of Star Maker)	**7,000,000**
PIF Investors Monthly Earnings	**3,500,000**
Monthly Earnings per PIF unit	**$35,000**

$ 100,000.00

One unit purchased by Mike Nasta for a one unit price of $100,000.00

Online Streaming Music & Video

sonicbids

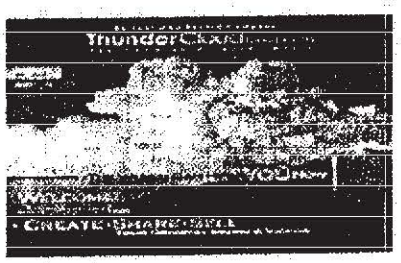
Billboard WORLD SONG CONTEST

Brings artists to the site to be contestants in the most prestigious forum for promoting music careers

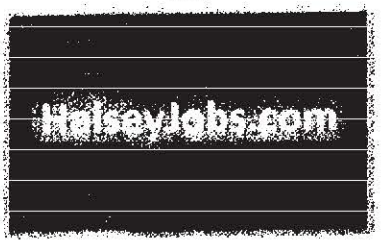
Offers the most robust method for musical acts to find venues needing performers

Learning institute for the vast array of needs in the music and entertainment industry

Acts can transfer, compile, compose, protect and sell their work



Music and video industry job site



Legal Disclaimer

*Participation in the Company's offering is strictly limited to US accredited investors as defined by SEC Reg. D Rule 501 (Note 1) having at least a 30 day substantive preexisting relationship with the Company or those in privity of contract with the Company; a limited number of accredited US institutional and SBIC accredited investors; Canadian accredited investors as defined by Section 1.1 of National Instrument 45-106 (Note 2); UK certified high net worth individuals (Note 3); European Union qualified investors as defined by Directive 2003/71/EC of the European Parliament and the Council (November 4, 2003-the "Directive"-Note 4); Australian sophisticated investors pursuant to Sec. 708(8)© of the Australian Corporations Act 2001, as amended (the "Act") and Section 6D.2.03 of the Australian Corporate Regulations 2001, as amended (Note 5); certain Swiss and Chinese investors having a substantive preexisting relationship with the Company or those in privity of contract with the Company pursuant to exemptions set forth in Circular 03/01 "Public Marketing" of the Swiss Federal Banking Commission of May 28, 2003 as amended or replaced from time to time and Chapter 2, Article 10 of the Securities Law of the People's Republic of China, as amended; and Japanese qualified institutional investors and a limited number of individuals (Note 6)-collectively "QUALIFIED INVESTORS". If you are not a qualified investor this communication is neither an offer to sell the Company's securities, nor the solicitation of an offer to buy the Company's securities, and you must leave this web-page immediately. You agree and understand that by clicking any home URL links in this communication or contacting us that you are thereby requesting Company information. If you are not a qualified investor, you are not authorized to request Company information. This communication, and the provision of Company disclosure and investment documents if further requested by you, may have been sent or provided to you on behalf of the Company by a paid qualified investor lead provider for informational purposes only, in which event even if you are a qualified investor this communication is neither an offer to sell the Company's securities, nor the solicitation of an offer to buy the Company's securities, but is provided merely for informational purposes. Any offer to sell the Company's securities, or solicitation of an offer to buy the Company's securities, may only be made by the Company or licensed brokers retained by the Company for such purpose. By requesting Company information you further consent to the Company contacting you about the offering within the next year, and will keep this promotion and the offering confidential meaning it may only be reviewed by you, your spouse, or financial advisor(s). Statements made in this communication and in the Company's disclosure and investment documents contain forward looking statements under the safe harbor provisions of the US Securities and Reform Act of 1995, which are subject to assumptions and factors identified and discussed in the Company's disclosure and investment documents, and the further terms and conditions of the Company's subscription agreement.

Note 1: A US accredited investor must satisfy at least one of the following: (A) A corporation, business trust, or partnership not formed for the specific purposes of acquiring the securities offered, with total assets in excess of $5,000,000; (B) Any trust, with total assets in excess of $5,000,000, not formed for the specific purpose of acquiring the securities offered, whose purpose is directed by a sophisticated person who has knowledge and experience in financial and business matters, such that he is capable of evaluating the merits and risks of the prospective investment; (C) An individual who: (i) is a director, executive officer or general partner of the issuer of the securities being offered or sold, or a director or executive officer of a general partner of that issuer; (ii) has an individual net worth, or joint net worth with that person's spouse, at the time of his purchase exceeding $1,000,000 – excluding his/her primary residence; or (iii) had an individual income in excess of $200,000 in each of the two most recent years or joint income with that person's spouse in excess of $300,000 in each of those years and has a reasonable expectation of reaching the same income in the current year; (D) Any entity in which all the equity owners are "accredited investors".

Note 2: Canadian accredited investors must satisfy at least one of the following: (A) An individual who, either alone or with a spouse, beneficially owns, directly or indirectly, financial assets having an aggregate realizable value that before taxes, but net of any related liabilities, exceeds $1,000,000 Canadian; (B) An individual whose net income before taxes exceeds $200,000 Canadian in each of the 2 most recent calendar years and who, in either case, reasonably expects to exceed that net income level in the current calendar year; (C) An individual who, either alone or with a spouse, has net assets of at least $5,000,000 Canadian.

Note 3: The content of this promotion has not been approved by an authorized person within the meaning of the UK Financial Services and Markets Act 2000 ("Act"). Reliance on this promotion for the purpose of engaging in any investment activity may expose an individual to a significant risk of losing all of the property or other assets invested. In the UK this promotion is exempt from the general restriction of Sect. 21 of the Act on the ground that it is made to a certified high net worth individual who during the last financial year (a) had an annual income of at least 100,000 pounds or more, or (b) excluding death benefits, insurance contracts, and

primary residence held assets of 250,000 pounds or more; and (c) has signed within the last twelve months a statement certifying the foregoing under Part 1 of Schedule 5 of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005. Any UK individual who is in any doubt about the investment to which the communication relates should consult an authorized person specializing in advising on investments of this kind.
Note 4: As of March 25, 2010 Member States of the EU include the following nations: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxemburg, Malta, The Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom. Individual EU qualified investors must have asked to be considered as such by their Member State, and granted this request. Individual EU qualified investors must also fit at least two of the following criteria: (1) Has carried out transactions of a significant size on securities markets at an average frequency of, at least, 10 per quarter over the previous four quarters; (2) Have a portfolio that exceeds 5 million Euros; (3) Works or has worked for at least one year in the financial sector in a professional position which requires knowledge of securities investments.
Note 5: Australian sophisticated investors must have assets of more than $2.5 million Australian or at least $250,000 Australian gross income for the last two years, and within the last six months have obtained a certificate by a qualified accountant (as defined in Sec. 88D of the Act and ASIC document PS154) verifying the foregoing.
Note 6: Pursuant to the Japanese Financial Instruments and Exchange Law ("FIEL"-revised April 1, 2008), only qualified institutional investors as defined in the FIEL are eligible to invest, and a limited number of individuals. With respect to individuals residing in Japan or Japanese citizens residing outside of Japan, this communication is neither an offer to sell the Company's securities, nor the solicitation of an offer to buy the Company's securities, but is being provided for informational purposes only after which you are authorized to request Company information. An offer to purchase the Company's securities may only be made after you contact the Company and have performed your due diligence as individual investors may only be obtained from no more than 49 individual offerees under the FIEL. Calculation toward the 49 individual offerees includes offerees inside Japan (whether Japanese residents or not), and Japanese residents outside of Japan. The FIEL also imposes holding and transfer requirements on any securities purchase.

Exhibit C

Withdrawals and Debits - Continued
Other Debits

Date Posted	Amount ($)	Description	Bank Reference
09/13	271.41	Capital One Des:Online Pmt ID:025439910215952 Indn:2363618656Fortenberry Co ID:9279744991 Ccd	902556003464534
09/14	193.45	Credit One Bank Des:Payment ID:0000021726856 Indn:Fortenberry,Stanley Co ID:xxxxx0213 Web	902557008122013
09/21	3,000.00	Wire Type:Wire Out Date:100921 Time:0851 Et Trn:2010092100101290 Service Ref:001846 Bnf:Halsey Management Company ID:6070087033 Bnf Bk:Wells Fargo Bank, N.A. ID:121000248 Pmt Det:51089474 Investment	903709210101290
09/21	25.00	Wire Transfer Fee	903709210125322
09/29	52,000.00	Wire Type:Wire Out Date:100929 Time:1613 Et Trn:2010092900300883 Service Ref:011985 Bnf:Halsey Management Company ID:6070087033 Bnf Bk:Wells Fargo Bank, N.A. ID:121000248 Pmt Det:51462092 Investment	903709290300883
09/29	25.00	Wire Transfer Fee	903709290170031
09/29	12.00	Wire Transfer Fee	903709290033574
09/30	13.00	Monthly Maintenance Fee	
Card Account # [redacted]			
09/09	94.53	CheckCard 0907 Heb Grocery #052	929909070285887
09/13	302.50	4560 Sherwood 09/11 #000104534 Withdrwl	946309110104534
09/13	202.50	5201 Knickerbo 09/12 #000208391 Withdrwl	946309120208391
09/13	49.13	CheckCard 0910 Town & Country 0130	929909101208779
09/13	41.76	Office Max 422 09/11 #000701759 Purchase	946309110701759
09/13	32.72	CheckCard 0912 Promart 5 00467118	929909122636662
09/13	12.67	CheckCard 0912 Skinny's 87	929909121648758
09/13	7.01	CheckCard 0912 Mcdonald's F17356	929909122783275
09/13	2.00	4560 Sherwood 09/11 #000104534 Withdrwl	946309110104534
09/13	2.00	5201 Knickerbo 09/12 #000208391 Withdrwl	946309120208391
09/14	35.63	Shell Service . 09/13 #000379482 Purchase	946309130379482
09/14	32.97	CheckCard 0913 Star Fuel Cent10042471	929909131947986
09/14	18.85	CheckCard 0912 Town & Country 0255	929909121191037
09/14	12.25	CheckCard 0912 Tulsa Daily Grill	929909120987273
09/15	164.84	CheckCard 0914 Crowne Plaza Of Tulsa	929909140500595
09/15	38.77	CheckCard 0915 Chevron 002070	946309150774234
09/15	8.87	CheckCard 0913 Promart 6 00467126	929909131615129
09/15	6.47	Town & Country 09/15 #000496071 Purchase	946309150496071
09/16	1,000.00	CheckCard 0915 Paypal *mike	929909150678448
09/16	1.95	CheckCard 0915 Pp*6593Code	929909151127898
09/20	436.40	CheckCard 0915 Southwestair52621252502	929909151861449
09/20	302.50	7410 Knicker B 09/19 #000201631 Withdrwl	946309190201631
09/20	281.39	Dillards - 073 09/20 #000328141 Purchase	946309200328141
09/20	55.21	CheckCard 0916 The Diner At Sealy Flat	929909160588333
09/20	29.77	Dillards - 073 09/20 #000221372 Purchase	946309200221372
09/20	2.00	7410 Knicker B 09/19 #000201631 Withdrwl	946309190201631
09/22	160.17	CheckCard 0921 Superior Services	929909211138444
09/23	28.24	CheckCard 0920 LA Feria	929909200694103
09/23	11.53	CheckCard 0922 Wok And Roll	929909221622696
09/27	138.57	CheckCard 0923 Mccormick & Schmick#18	929909230514790
09/27	75.24	CheckCard 0924 Hollywood LA Brea Mote	929909241324877
09/27	23.25	CheckCard 0924 Victorios Pizza & Itali	929909240688892
09/27	20.90	Josh's Valero 09/24 #000184038 Purchase	946309240184038
09/27	5.58	Hollywood Liqu 09/24 #000168833 Purchase	946309240168833
09/27	3.50	CheckCard 0923 Starbucks USA 00054478	929909230153353