UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15820

In the Matter of	:	**RESPONDENTS SUPPLEMENTAL BRIEF IN OPPOSITION OF DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION**
Delsa U. Thomas and The D. Christopher Capital Management Group, LLC	:	
Respondents.	:	

Respondents Delsa U. Thomas ("Thomas") and The D. Christopher Capital Management Group, LLC ("DCCMG") (collectively, the "Respondents") file this Supplemental Briefing Response in Opposition to the Motion for Summary Disposition (the "Motion") filed by the Division of Enforcement of the United States Securities and Exchange Commission (the "Commission") as follows:

I.
INTRODUCTION

A September 15, 2014 pre-hearing conference call, and an order issued the following day directed Respondents to submit a supplemental briefing to the court. Since Respondents are representing themselves (pro se) in this matter, The Honorable Judge Elliot verbally explained and ordered that there were three factors that needed to be addressed and are the factors that he needed more information on to determined a ruling on the Commission's Motion for Summary Disposition. These factors were based on Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981). And to see Don Warner ReinHard, Exchange Act

Release No. 61506, 2010 SEC LEXIS 1010, at *14(Feb.4, 2010). It was made clear by the Court that the evidence presented in the Commission's Motion for Summary Disposition and by the Respondents Opposition Motion was insufficient. In addition, a Motion to Vacate the Default Judgment (See Exhibit A) has been filed with the District Court and a ruling to that Motion has not been rendered, is evidence that this Motion for Summary Disposition should be denied. Respondents will clearly show, that the Commission allegations of violation of Sections 203(f) and 203(e) of the Investment Advisers Act of 1940 ("Advisers Act"), by Respondents is without merit and their Motion for Summary Disposition must be denied.

II.
MATERIAL EVIDENCE IN OPPOSITION OF SUMMARY DISPOSITION

In support of their Response in Opposition to the Commission's motion, Respondents rely upon the following material evidences:

1. Motion to Vacate Default Judgment Exhibit A:*
2. Third Party Contract with Consultant and Third Party Monetizer Exhibit B and C:*
3. Subscription Agreement Signature Page. ("JSC") Exhibit D:*
4. Material Evidence that the $1,000,000.00 Invested by ("JSC") did not belong to James Scott Company. Exhibit E: *
5. Bank Record establishing purchase of U. S Treasury Notes. Exhibit F:*
6. Bank Record establishing receipt of collateral in the form of Certificates of Deposits. Exhibit G:*
7. General Partner's Investment Advisory Agreement and PPM. Exhibit H:*
8. KYC and Passport on The George Sargeant Group, KYC Passport and Company Formation and registration documents on Pro One AG. Exhibit I:*
9. Email correspondence between GSG and Pro One AG. Exhibit K *

10. Demand Letter #1 requesting return of funds. Exhibit L:*

11. Demand Letter #2 requesting return of funds. Exhibit M:*

12. Pro One (third party monetizer) Letter acknowledging failure of transaction. Exhibit N:*

13. Final written confirmation from Consultant of the transaction resolution. Exhibit O.*

14. Bank Statement confirming dates and establishing no Ponzi payments made. Exhibit P:*

15. Legal Order freezing DCCMG and Solomon Fund accounts. Exhibit Q.*

Note: Due to the size of the Exhibits displaying *, in support of the Brief, they will not be sent via electronic means but will be provided by hard copy via Federal Express delivery.

III.

ARGUMENT

Pursuant to the pre-hearing order issued September 16, 2014, pertaining to the first three points in the Steadman Analysis, the Respondents offer the following argument and exhibits:

A. The Respondents did not engage in misconduct and no scienter is evident.

There are few ways to determined anyone's state of mind or intentions apart from having a face to face interview or conversation with that person. While the Commission never had a conversation with Ms. Thomas pertaining to this matter, the Commission came to the conclusion and "determined" what Ms. Thomas' state of mind was during the alleged period of misconduct. **FACT:** Upon the Advice of then counsel, and only upon their advice, Ms. Thomas did not testify upon receiving a subpoena from the Commission. Unfortunately, following this advice, and not being made aware by counsel that this action would result in an "***automatic***" assumption of guilt, Ms. Thomas followed her then counsels' advice. However, Respondents disagree that just because Ms. Thomas was given terribly advice from an

inexperience group of lawyers, does not and should not be held as evidence or the sole basis of determining what Ms. Thomas' state of mind was at the alleged period of misconduct or at anytime. In fact, Respondents argue that the Court should infer that the Respondents state of mind was that of someone who had never been accused of misconduct and had no history or evidence of wrong doing at anytime in their professional financial career. Respondents argue that at no time did they act maliciously nor did they defraud investors.

1. Contractual Evidence establishing Third Party Transaction.

Exhibits B and C, clearly demonstrates that Respondents were officially in contract with two Third Party Firms in which remuneration was not only contractual and binding but a specific payment schedule was attached to support any payouts that Respondents would have to make to the participating investor(s). Respondents argue that the Commission's allegations of absent records are completely erroneous.

2. Investor James Scott Company ("JSC") i. e. James Van Nest made false statements to the Respondents. Respondents argue that Mr. Van Nest, in the initial interview with Respondents, when questioned about his understanding of becoming a Limited Partner with the Solomon Fund, L. P. and his company's qualification to be able to do business with a Hedge Fund, said the money he would be investing ***belong*** to "JSC" and he met the requirement. When attesting to the Solomon Fund's Subscription Agreement as to the legal owner of the funds, Mr. Van Nest signed his name in attestation. (See Exhibit E). This evidence is offered to establish Mr. Van Nest's propensity to make false statements. **FACT:** While Mr. Van Nest of the James Scott Company attested to the Solomon Fund, L. P. that his company was accredited

and the assets being transferred to the Fund belong to his Company, the truth is, the assets belong to a church who was a ***client*** of James Scott Company and the funds did not actually belong to his company. (See Exhibit E). While the Respondents do not deny that part of the terms within the transaction arranged and coordinated by Respondents on behalf of JSC and its membership, was terminology that stated upon receipt of their $1,000,000.00 into the Solomon Fund's Custodian's Master Account, there would be a purchase of United States short term Treasury Notes, (See Exhibit F), which is exactly what transpired. Respondents vehemently deny, disagree and argue that Mr. Van Nest was "promised" that the Notes would remained untouched on deposit and serve "only" as proof of funds for offshore trading and would return $7,500,000.00 in thirty-five days. **FACT:** Mr. James Van Nest solicited the Respondents through referral, ***specifically for the express and only purpose*** that the Respondents arrange and coordinate a "transaction" with a Third Party Consultant to an instrument provider and a Third Party Monetizer. At no time did Mr. Van Nest inquire about traditional investment management. The authority to exercise this service for clients is outline in the General Partner's Investment Advisory Agreement. (See Exhibit H, Subsection 2). Mr. Van Nest, when questioned about how he knew this type of business exist and was possible, he replied, ***"I have been working with a Private Equity Company for the past eight years and have been involved in these types of transactions off and on for twenty years. The Private Equity Company that I have done all my business with has closed because the owner died and his widow decided to close the business. I was referred to you because I was told that as a Hedge Fund you can arrange and/or coordinate a transaction for me."***

Respondents also vehemently deny, disagree and argue that Mr. Van Nest received no documents or other proof to corroborate the validity of the transaction. **FACT:** Mr. Van Nest attested to being an accredited and sophisticated investor. Mr. Van Nest knew and was fully aware that putting money into U. S. Treasury Notes and just letting it sit could not and would not produce a return of $7,500,000.00 in a period of thirty-five days in any investment account Hedge Fund or otherwise. The ***detailed truth*** is, Mr. Van Nest agreed to have four Certificates of Deposits (CD's) each valued at $250,000.00 for a total of One Million transferred to the Solomon Fund's master custodian account. (See Exhibit G) After receipt of the collateral, the CD's would be liquidated and the cash would then be used to purchase U. S. Treasury short term Notes. Short term Notes were used solely for the purpose of getting the highest Loan to Value on margin. Once the Treasuries were purchased and settled, the Treasuries would be leveraged. Mr. Van Nest knew and was made fully aware of the fact that ***CD's could not be leveraged on margin and in order to accomplish what he wanted to accomplish the collateral would have to be changed,*** because they are considered to be equivalent to cash assets. It was solely for the purpose of the leveraging of the deposited funds that the CD's were turned into U. S. Treasuries. No other reason. The sworn testimony given by Mr. Van Nest to the Commission, stating that he was "promised" that the funds would never be touched and only be use as proof of funds is simply false. Once the cash against the assets was made available, the cash would be immediately sent by the Solomon Fund, L. P. for participation in the offshore transaction that was coordinated and arrange by the General Partner. Mr. Van Nest was fully and completely aware, that the return of $7,500,000.00 was not

coming from an offer that was made by the Respondents, but that the return was coming from the Third Party Monetizer. Mr. Van Nest also fully knew that the General Partner (DCCMG) had only ***"coordinated and arranged"*** this transaction specifically at his request. Mr. Van Nest was fully aware and knew that the leveraged funds would be sent to the Consultant whose company would assist in getting a Bank Guarantee (BG) of which would then be lodged with the a Third Party Monetizer who would then leverage the actual guarantee by adding it to his existing pool of assets. The bank guarantee would have a lock up period of 12 months with the Monetizer. For the use of this Bank Guarantee, the Solomon Fund, would receive an initial cash advance, within 72 hours of receipt and authentication of the Bank Guarantee by the Monetizer's bank, in the amount of approximately four million dollars US, and within 30 days a subsequent disbursement in the amount of three million five hundred thousand dollars. (See Exhibit B and C). This full advance would be received from the Monetizer and be directly disbursed to the James Scott Company. These were the basic parameters of the transaction that was coordinated and arranged by the Respondents. The General Partner would receive compensation for coordinating and arranging the transaction, however, the initial advance disbursement from the Monetizer's, in its entirety, would belong to the James Scott Company. This is why Mr. Van Nest agreed to and signed the contract. In addition, extra funds were added to the transaction for participation on behalf of the fund. This then entitled the fund to participate and receive compensation from the Monetizer on a monthly basis. (See payout schedule listed in Exhibit C).

Mr. Van Nest fully knew and was completely aware of who the Third Party

companies were. The General Partner (DCCMG) conducted a full KYC, and due diligence on the Third Parties and their capabilities who were participating in the transaction. (See Exhibit I). This due diligence revealed no history, of criminal behavior or financial misconduct on the part of both Third Parties. Mr. Van Nest was given access to this information. Not only did Mr. Van Nest solicit the Respondents to coordinate and arrange the transaction, he fully knew (as an accredited and sophisticated investor) that 1 million dollars sitting in a custodian account in the form of United States Treasuries could not be used by any skill set of investment management by the Respondents to generate $7,500,000.00 million dollars, in thirty-five days. Mr. Van Nest knew and fully understood the details of where and how the return of $7,500,000.00 would come to pass. Mr. Van Nest knew and was fully aware the funds would be leveraged and would be sent offshore, he knew and fully understood that the $7,500,000.00 dollars was not an offer or a promise made to him by the Respondents, but that offer was made by the Monetizer who would be in receipt of the Bank Guarantee. **FACT**: Mr. Van Nest knew and was fully aware of the agreement he was entering in when he affixed his signature to that contract. Respondents never made a misleading "promise" to Mr. Van Nest or any other client. Mr. Van Nest solicited, fully understood the transaction, accepted the risks, and willingly participated in the transaction by signing the Agreement. The Respondents argue that given the truth of what actually transpired there was absolutely no intent to deceive or defraud Mr. Van Nest or any other client of the Respondents. In fact, the Respondents argue that they went above and beyond what is considered "ordinary care" to ensure Mr. Van Nest and the other clients who chose to participate in the

transaction was fully informed and fully aware of all aspects of the transaction that was arranged. The state of mind of the Respondents was no where near malicious, and there is clearly no scienter involved.

3. Respondents did not waste or misappropriate Investor Funds. The Commission alleged that they conducted a non public investigation of the Respondents and their business models. During that investigation, the Commission attempted to speak to several people associated with the Respondents. However, the Commission only **actually fully interviewed 3 people**, and attempted to speak to one of the third parties involved in the arrange transaction. Of the 3 people actually interviewed **1** was not a client of the Respondents, that person was actually a client of James Scott Company ***(the actual owner of the 1 million dollars),*** who had no intimate knowledge or relationship to the Respondents. Mr. James Van Nest and Mr. Jon Wilson, who was the Church Administrator for DFW New Beginnings Church. Although sworn testimony was taken from other people, who can attest and collaborate to Ms. Thomas' state of mind, the details of the transaction, or Ms. Thomas' character, or even public information concerning her years and track record as a financial professional, things that could have easily been found in an investigation, has never been mentioned. However, the Commission has repeatedly tried to paint a picture of Ms. Thomas as someone, that is the complete and total opposite of who Ms. Thomas actually is. Ms. Magee's, who is the Commission's Trial Counsel, Ms. Blair who is the Commission's investigator, and someone else, who had no knowledge, never spoken to Ms. Thomas prior to being asked to call the office of the Respondents and ***"pretend"*** to be a person soliciting information about the

Respondents, which, Respondents are sure resulted in nothing more than another manufactured attempt by the Commission to paint a portrait of someone with the personality and character traits that is completely opposite of who Ms. Thomas actually is. The Respondents argue that the Commission does have knowledge of the true character of the Respondents, however, the Commission is relying on the ***"opinions"*** of their ***"people".*** These opinions are not only bias, but weighted with an inconsistent portrayal of the actual facts.

4. Respondents did not lull investor(s). The Respondents vehemently disagree and deny that they "lull" investors with empty promises. **FACT:** What the Commission called "lulling" was actually the span of time spent by the Respondents vehemently trying to recover what was sent to the Third Parties involved in the transaction and the actual time that the Respondents were notified by both Third Parties in writing that the transaction was considered a failure. Between the actual failure of the transaction and the continued attempts by the Respondents to the Third parties to make good on their contractual obligations was a period of time of approximately 16 - 18 months. Exhibit K shows an email confirmation between the Third Parties acknowledging that the Monetizer defaulted on its obligations and what was owed to the Respondents. In addition, Exhibit L is the initial demand letter submitted to the Third Party Consultant, requesting help to retrieve the assets that were sent to them on behalf of the Solomon Fund and its membership. Exhibit M is the second demand letter sent to Third Party Consultant asking for help to retrieve assets. Exhibit N shows acknowledgment by Monetizer of the failed transaction. Exhibit O is the final resolution letter from Third Party Consultant. During the period of time when the

Respondents were working to retrieve the assets, the Respondents kept Mr. Van Nest and the other participants informed with the same full disclosure that they received from the beginning. In addition, when Respondents received final disposition of the failed transaction in writing, Respondents immediately informed the participants.

It has already been demonstrated by the Respondents that Mr. Van Nest has a propensity to make false statements, and it is the opinion of the Respondents that his character is questionable. What is absolute fact is, Mr. Van Nest solicited the Respondents to arrange this transaction; he was and has always been the primary investor that this transaction was coordinated and arranged for; (JSC) was the primary benefactor of the initial proceeds coming from the transaction; he was fully informed, fully aware of all faucets of the transaction, and he fully and willingly agreed to all parameters of the contract he signed.

B. Respondent's alleged misconduct was not egregious.

The Respondents, as authorized by the General Partner's Investment Advisory Agreement (Exhibit H subsection 2 and the PPM), had the authority to arrange and coordinate services for the Fund's benefit with Third Parties. This action cannot be deemed "misconduct". Although the Commission has tried to paint a portrait to make the Respondents appear to be malicious and deceitful in their business, with a heavy r emphasis of their own opinion of the facts. The truth is, their opinions and understanding of the facts is simply inconsistent with what the situation actually is and what actually transpired. A total of $1,039,000.00 was sent for participation in the transaction that was arranged and coordinated by the Respondents for the benefit of James Scott Company, and the Membership of the Solomon Fund, L.P. The

Respondents had in their possession legally binding Contracts (Exhibits B, and C) from two Third Parties participants, with ample remuneration and cash flows to meet any financial obligation it may have had to address. The Clients who ***chose*** to participate in the transaction were all fully aware and completely informed, especially Mr. James Van Nest. Each client acknowledged this full awareness and understanding by their signatures on each contract. Of the six clients who participated in the transaction, five are neither US Citizens nor do they domicile in the United States. In the Commission's non public investigation, they never spoke to any of the other participants in the transaction, however, the Commission has alleged that they were uninformed and unaware of the parameters governing the transaction for which they willingly committed to participate. **FACT:** The other clients were not uninformed or unaware of the transaction. They were fully aware and fully engaged. They fully understood how they would be compensated and from who and where that compensation was coming from. They were fully and completely aware, that the Respondents were not making claims for something that they would do in the United States, or some form of investment skill set that they would employ. Each of these accredited and sophisticated non US clients knew, understood and were fully aware that this type of transaction was not available through readily available vehicles, nor the mechanisms to facilitate the transaction was not available in the United States. Not only were they aware of these facts, they attested to their knowledge and awareness of these facts when they willingly signed their contracts. The Respondents never mislead clients nor attempted to deceive or defraud any of their clients as the Commission alleges. In fact, even after all this time, none of the Respondents clients

have ever filed a lawsuit or even filed a Compliant with any Agency against the Respondents. This is because each of the clients who participated in this transaction fully knew the risks and fully understood what they were doing. The Commission's opinions of the facts are grossly incorrect. The Commission allege that Ms. Thomas wasted investor funds and misappropriated investor monies for her own benefit. What the Commission alleges to be for "her own benefit" is the compensation Ms. Thomas received for coordination and arranging the transaction. What the Commission alleges to be wasted or misappropriate funds are the obligations of the General Partner to pay Third Parties for the work and services that they performed on behalf of the fund. These payments are authorized per (DCCMG) Investment Advisory Agreement (See Exhibit H). The Commission alleges that Respondents raised "more than $2,000,000.00 from investors whom she owed fiduciary obligations and then misused the money while lulling investors". The Respondents are formed and structured as a Hedge Fund. (See Exhibit H). Every accredited and sophisticated investor that is ***"allowed"*** by law to do business with a Hedge Fund understands that a greater measure of risk is associated with doing business with this type of entity. Because of the nature of the risks, investors have to ***qualify*** in order to work with a Hedge Fund. Unlike the rules that govern broker dealers and mutual funds, Hedge Funds fiduciary responsibilities are much less restrictive. The Commission alleges that Respondents were negligent in their fiduciary responsibilities, however, the Respondents argue that when it comes to fiduciary responsibilities that govern Hedge Funds, Respondents went above and beyond what would be the ***ordinary care*** and concern for accredited and sophisticated Hedge Fund Limited Partners. Each client participating in the

transaction, had full knowledge, awareness and disclosure. Traditionally, Investment Managers and Hedge Fund Managers have discretion over the allocation of assets under management and do not have to disclose the daily details of what and how those funds are being invested. And although this is true in the case of the Respondents, it was not the practice. Concerning the transaction that was arranged and coordinated by the Respondents, each participant was made fully aware, and had intimate knowledge of what they were participating in.

The Commission's Senior Counsel Rhonda Blair alleges that Respondents raised "at least $2.31 million dollars from at least six investors between October 2011 and May 2012. While a million came in from JSC, the gross overstatement of $505,000.00 came in from three Canadian investor. Ms Blair goes on to state that $420,000.00 came in from DFW New Beginnings Church, and $385,000.00 from Andorran Investor. She also stated, that Respondents returned $330,000.00 but she also grossly misstate that 90,000.00 was sent to American Capital Holdings for ***"unknown"*** reasons. **FACT**: The 90,000.00 was sent at the request of and with permission of Mr. Wilson. While in her declaration Ms. Blair acknowledges that Respondents full filled the contractual obligation to the James Scott Company with the purchase of the U. S. Treasury Notes, Ms. Blair's declaration of the actual Facts ends there. Exhibit P shows that Ms. Blair's interpretation of the actual facts is untrue. Blair's declaration states "Thomas used $209,000.00 **of the Treasury Notes loan** proceeds" to pay principal and "returns" to two Canadian Investors. **FACT:** The bank statement in Exhibit P shows, that the principal and returns alluded to was disbursed from the fund to Canada **prior** to James Scott Company's investment coming in. Ms. Blair also

declares that $149,000.00 was sent to investor's in Thomas's "earlier schemes". There were "no earlier schemes". Ms. Blair also declared that $70,000.00 was paid to intermediaries and was not disclosed. The Respondents argue that each contract signed by the participants in the transaction arranged and coordinated by the Respondents had full disclosure that compensation would be paid to any consultant or service provider. Ms. Blair continues to make inconsistent declarations, for example, "money sent to Canadian Consultant is unknown". (See Exhibit B and C). All participating clients knew where the funds were allocated to. In addition, Respondents have no direct or specific knowledge of what the Third Parties did with the funds sent for participation in the transaction other than what they had a contractual obligation to do. What Ms. Blair alleges as "personal use" was compensation paid to the General Partner which in turn Ms. Thomas received some compensation for arranging and coordinating the stated transaction. There is no mandate that required the General Partner to disclose its compensation for providing this type of transaction service to its membership, however, it was fully disclosed that the General Partner would receive compensation for the arranging and coordination of the transaction, James Scott Company would receive the initial advance in its entirety and the remaining participants would receive their compensation from the monthly disbursement received from the Third Party Monetizer. Everything was fully disclosed, this is why each participating member willingly agreed and signed their contracts.

1. Respondents did not engage in misconduct and the alleged misconduct it is not ongoing.

It is proven that the Solomon Fund and DCCMG accounts has been under Legal Order since March of 2013, (See Exhibit Q), and all the assets that were in the Custodian Master Account at the time of the issuing of the Court order are still there less the small monthly fees charged by the Custodian. Since the freezing of those assets, DCCMG and The Solomon Fund, L. P. has not received any new clients or clients' funds. Although DCCMG and Solomon Fund, L. P. reputation has been grossly maligned by the Commission's many allegations, the **FACT** is Respondents have not had a new client since the Commission published the compliant, and no new funds have been raised by the General Partner nor the Limited Partner. Again, the Commission's declaration of fact is misrepresented.

2. Respondents will not admit wrong doing when there was no wrong doing. While the Commission alleges wrong doing on the part of the Respondents, the evidences submitted with this brief is proof that what the Commission alleges in the compliant, the allegations and everything pertaining to this matter is filled with assumptions and conclusions that are misrepresented and unfounded. Respondents argue that there were no violations of the security laws on the part of the Respondents and that since there were none now or before the Commission's allegations, there will be none after the Default Judgment is Vacated and this Administrative Proceeding is dismissed. For all the evidence presented in support of the Respondents, in addition to a Motion to Vacate the Default Judgment on file, the Commission's Motion for Summary Disposition must be denied.

IV.
SUMMARY AND AUTHORITIES

The Respondents lacked the intent to deceive required for liability under Section 10(b) and Rule 10b-5.

As correctly set forth in the Commission's motion, the staff may try to prove that the Respondents had the specific intent to deceive to be held liable under Section 10(b) and Rule 10b-5. The Supreme Court has defined the level of required intent as "a mental state embracing intent to deceive, manipulate, or defraud." *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 n.12 (1976). Similarly, the intent requirement may be satisfied by the lesser but still onerous showing of recklessness, or "a highly unreasonable omission, involving not merely simple, or even inexcusable negligence, *but an extreme departure from the standards of ordinary care*, and which presents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it." *Sundstrand Corp. v. Sun Chemical Corp.*, 553 F.2d 1033, 1045 (7th Cir. 1977) (emphasis added).

First, there is no evidence that the Respondents acted willfully, that is, with the specific intent to deceive investors or potential investors. On the contrary instead, as set forth above, the Respondents went beyond what is considered normal disclosure, by fully disclosing all details, due diligence and Third Party participants of the transaction and fully informing the participants of what the Respondents role would be in the process and what responsibilities were and were not being handled by the Respondents and what was being done on behalf of the Company and its members. This is evidence by the participants' signatures on each participant's contract. There simply is no evidence that the Respondents possessed the specific intent to defraud anyone.

Second, the Commission's evidence fails to show that the Respondents acted recklessly. As described above and in the attached, the Respondents (1) informed clients that the transaction was being offered and managed by third parties. (2) fully disclosed all participants, contracts, and due diligence to clients. (3) ensured that each participant was fully aware of risks involved.

Further, recklessness requires that the allegedly fraudulent material omission or

misstatement "derive from something more egregious than even 'white heart/empty head' good faith." *Sundstrand*, 553 F.2d at 1045. The court elaborated on this intent requirement, holding that if the defendant:

> "... genuinely forgot to disclose information or [the information] never came to his mind," then he was not reckless in failing to disclose the information, even if the "proverbial 'reasonable man' would never have forgotten."

Id. at 1045 n.20.

The Respondents' actions are not consistent with the conduct found in *Sundstrand* to fall short of recklessness. In fact, the Respondents actions are more consistent with no reckless behavior whatsoever. This course of action simply does not support the finding of "something more egregious than even 'white heart/empty head' good faith" or the "highly unreasonable... extreme departure from the standards of ordinary care" that is necessary to prove recklessness.

This Court, in assessing a respondent's intent, must "look at an actor's actual state of mind at the time of the relevant conduct." *Alvin W. Gebhart, Jr. and Donna T. Gebhart*, SEC Admin. Proc. File No. 3-11953r (Nov. 14, 2008). The evidence here shows that the Respondents acted in good faith, and went beyond what is considered to be the standard of ordinary care. Accordingly, there is no evidence that the Respondents possessed the necessary intent to violate Section 10(b) or Rule 10b-5. The Commission's motion should therefore be denied.

The Court should take into account mitigating factors in determining whether the Respondents should be permanently barred from appearing before the Commission and otherwise sanctioned.

In determining whether genuine issues of material fact exist that preclude summary

disposition, the Commission recognizes that, "a respondent may present genuine issues with respect to facts that could mitigate misconduct." *John S. Brownson*, SEC Release No. 46,161, 77 SEC Docket 3097, 2002 WL 1438186, at *4 n.12 (2002), *aff'd, Brownson v. SEC*, 66 Fed. Appx. 687 (9th Cir. 2003). In doing so, the Commission considers a number of factors in determining appropriate sanctions. As described by the Fifth Circuit in *Steadman v. SEC*, such mitigating factors include:

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

603 F.2d 1126, 1140 (5th Cir. 1979) (*quoting SEC v. Blatt*, 583 F.2d 1325, 1334 n.29 (5th Cir. 1978)).

The *Steadman* court specifically noted that "[t]o say that past misconduct gives rise to an inference of future misconduct is not enough. What is required is a specific enumeration of the factors in [the respondent's] case that merit exclusion." *Steadman*, 603 F.2d at 1140.

Several genuine issues of material fact exist with respect to the above factors and, specifically, whether the sanctions the Commission seeks to impose on Respondents are appropriate or warranted. It is the Commission's burden of proving by a preponderance of the evidence that the penalties are appropriate. *Id.* at 1139 (holding preponderance of the evidence is the proper burden of proof in all SEC enforcement actions, including debarment cases). In view of the evidence in mitigation, discussed above, the Commission has failed to show that no lesser sanction than a permanent bar would satisfy the public interest and is justified under these facts.

Specifically, the court in *Steadman* noted that "It would be a gross abuse of discretion to bar an investment adviser from the industry on the basis of isolated negligent violations."

Steadman, 603 F.2d at 1141. Here, the uncontroverted evidence shows that the Respondents did not violate any of the securities laws that are alleged by the Commission. That what the Commission presented to the District Court as fact, in most case was not fact, but opinioned misrepresentations.

The Respondents' actions simply do not approach the level of egregiousness sufficient to justify the penalties requested by the Commission.

Furthermore, as the court in *Steadman* noted, "[t]he respondent's state of mind is highly relevant in determining the remedy to impose." *Steadman,* 603 F.2d at 1140. Further, there is no evidence of deliberate deception or fraud by the Respondents and, specifically, by Ms, Thomas.

Consequently, Respondents' mental state was far less than intentional or the result of any willfulness on their part. The Respondents' actions are inconsistent with the requirement of willful or reckless behavior necessary to establish scienter. Similarly, there is no evidence of any disciplinary or enforcement history concerning Ms. Thomas. The requested permanent bar, disgorgement and harsh civil penalty requested by the Commission, coupled with the damage to her reputation, would be far greater sanctions than necessary for future deterrence.

Moreover, there is no evidence that the Respondents will engage in similar conduct in the future. A basic tenant for issuance of injunctive relief is that there is a reasonable and substantial likelihood of future violations by the respondent if the conduct in question in not enjoined. *See, e.g., Steadman*, 603 F.2d at 1140 (noting that past misconduct is not sufficient to predict, and consequently to enjoin, future conduct); *SEC v. Conaway*, 697 F. Supp. 2d 733, 746 (E.D. Mich. 2010) ("The test for whether an injunction should be issued is 'whether the SEC [has] shown a reasonable and substantial likelihood that [the defendant], if not enjoined, would violate the securities laws in the future.'"); *see also SEC v. Pardue*, 367 F. Supp. 2d 773, 776 (E.D. Pa.

2005) (concluding that because no reasonable likelihood of future violation, no injunction would be issued).

Here, there is no such evidence that future violations are likely, much less of a reasonable and substantial likelihood as required. Instead, all known evidence, including more than eight years of professional investment management proves the opposite. Ms. Thomas' years of practice without any disciplinary history are the single and most probative predictor of the Respondents' future conduct.

V.

CONCLUSION

The allegations brought forth by the Commission are grossly misrepresented in the portrayal of what actually transpired in the Respondent's business. The evidence presented by the Respondents demonstrates that, 1. A single client requested a transaction type and model that the Respondents had the authority and the capacity to facilitate. 2. This portion of services to clients does not fall under the "traditional" investment model. 3. The services that were provided to the clients were that of coordination and arrangement. 4. This transaction was a single isolated transaction that intended to be beneficial for Mr. Van Nest, who initiated the request, and for the other clients who willingly participated and for the Fund. 5. The proper Know Your Customer (KYC) and due diligence were completed, the proper disclosures were made, the participating clients understood the risks and the roles that each client and the fund was undertaking and the contracts were executed and filed. What transpired next was, the Third Parties involved defaulted and the funds allocated to the transaction have not yet been recovered. The Commission in their presentation has tried to make it appear that the Respondents had prior knowledge that the Third Parties would default. This is completely untrue and the Respondents were victimized along with

their clients. There is no scienter demonstrated here, there is no egregious behavior or misconduct, and there is no other transaction. The Commission obtained a Default Judgment because of an improper service process of the Respondents not because the allegations brought forth from the Commission were accurate or true. For this reason, the Respondents have filed a Motion to Vacate the aforementioned judgment and is still awaiting a ruling from the District Court. It is for this reason and the aforementioned evidences and argument that the Commission's Motion for Summary Disposition of this matter be denied.

Signed this 18th Day of October 2014

Respectfully submitted,

DELSA THOMAS

By: */s/ Delsa Thomas*

Delsa Thomas
Delsa.Thomas@DCCMG.com

545 E. John Carpenter Freeway, Suite 300
Dallas, Texas 75062
(972) 719-9001 Telephone
(972) 719-9195 Facsimile

FOR RESPONDENTS
Delsa Thomas and
The D. Christopher Capital Management Group, LLC