ORIGINAL

DAVID J. MONTANINO
Redacted

Before the Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Administrative Proceeding
File NO 3-15943
In the Matter of David J. Montanino
October 17, 2014

RESPONDENT DAVID J. MONTANINO'S PRE-HEARING BRIEF

PRELIMINARY STATEMENT

I, Respondent David J. Montanino ("Montanino" or "me" or "I"), respectfully submit my pre-hearing memorandum. The Securities and Exchange Commission (the "Commission") has demonstrably ignored or intentionally mischaracterized evidence, as detailed below, and as a result will be unable to meet its burden of proof at the evidentiary hearing of this matter. Its assertions against me should be rejected in their entirety.

The Commission has transparently brought this claim against me only because (i) the true target of its costly investigation - Timothy Sullivan (Sullivan) – died unexpectedly in April 2011, and (ii) Sullivan's partner, Anthony Klatch (Klatch) is in a federal prison.

I have forthrightly in my Wells submissions explained the events as they relate to me, most of which are evidenced by documents, actual records, largely ignored by the Commission. The Commission, apparently frustrated by the death of Sullivan and the imprisonment of Klatch, has continued to press its supposed claims against me. But the evidence reveals that I was materially disconnected from the culpable conduct at issue, and hence (i) there is no sustainable basis for a law-based finding against me, and (ii) there is no material evidence in existence sufficient to enable the Commission to meet its burden.

Justice Potter Stewart once said: "Ethics is knowing the difference between what you have a right to do and what is right to do." While the Commission certainly has a right to pursue this claim, any intellectually honest evaluation of the documentary evidence makes clear that it is not right to do so.

For all the reasons set forth in this memorandum, not only should the claims be denied in their entirety, but the Commission should reimburse me for all my expenses, including my reasonable attorneys' fees, and lost wages incurred thus far.

BACKGROUND

Sullivan operated certain hedge funds out of California, and used Klatch as his trader. The funds were known as American Private Fund I ("APF"), and Task Capital Management ("TASK"). I was never an owner, partner, principal, shareholder, director, or control person of APF I or TASK. The Commission is aware that it has no evidence to the contrary. Sullivan also operated American Private Equity ("APE") out of California. I was never an owner, partner, principal, shareholder, director, or control person of APE. After three plus years of investigating, and an evidentiary hearing that will last a week, those facts will never change, as much as the Commission might want them to. They could investigate for another 25 years, and the same conclusion would be formed.

Sullivan's methods of operation within the hedge funds that he alone, or with his partner Klatch operated, it would appear, were to solicit investments from wealthy people pursuant to offering documents prepared by a California law firm called Benchmark Law Group ("Benchmark"). Once he obtained the money from investors, Klatch would recklessly trade it, hoping to hit home-runs, making outsized bets and essentially losing all the money each time.

In order to attract investors, Sullivan would seek out, and sometimes obtain, a willingness from prestigious individuals to be on his letterhead as a "director" or some similar title. Often Sullivan would add names without express permission. I identified two law firms - Alston & Bird and Rosner & Napierala – in my Wells Submission in April, 2014 (copy annexed for convenience as Exhibit A)[1] that complained to Sullivan about such conduct. I provided addresses to the Commission of these law firms. Following this pattern, Sullivan falsely held me out as having some sort of executive position in his organization.

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[1] The Wells Submission was based largely on my memory. This submission is based largely on documentary evidence obtained during discovery. To the extent there is any seeming or actual discrepancy between the facts asserted in the Wells Submission and this memorandum, this memorandum controls.

I was never a control person by any legal or equitable standard at APF I, TASK, or APE.

1. I was never a shareholder, limited partner, general partner, principal or founder of any of those entities.

2. I never had the ability to hire or fire personnel at any of those entities.

3. I was not on the board of directors, never attended a directors' meeting, do not appear in any minutes or other records as having done so, at any of those entities; and

4. At no time did I have any signatory authority over any bank account at any of those entities.

Sullivan formally authorized me to trade and access the APF I brokerage account on March 19, 2010, and then unceremoniously fired me, and cut me off from all communications, and any ability I previously had to access the brokerage account that held the Yoos' capital on April 13, 2010.

For a very brief time – 24-total days-as detailed below, I held formal trading authority at APF I, overseen by Sullivan, in one account for one of Sullivan's investors, during which brief time my transactions created a profit for those customers, Henry and Susie Yoo (the "Yoos"). I introduced the Yoos' to APF I, but there can be no doubt they were clients of APF I, which was owned and operated by APE, which was owned and operated by Strathclyde, which was owned and operated by Timothy Sullivan.

During the entire 12 days of April while I was authorized on the account, there was only one transaction that was conducted in the account. That was a liquidating transaction of 199,000 shares of Citigroup on April 6, 2010. The Citigroup position was originally purchased by Sullivan sometime around March 15, 2010.

So in essence, there were 9 days of trading (March 19, 22-26, 29-31) that I was authorized on that account when Sullivan put the Yoos' money at risk. The Commission will use dates and margin and risk call emails to make it seem as if there was a lot of time that went on where I took no action to protect the Yoos' ***It will always be 9 trading days, wherein Sullivan enacted reckless trades where there was a total loss of capital of roughly $60,000.00 in the account, of which roughly $40,000.00 was the Yoos'***

The Commission makes the assumption that I should have known what to do when Sullivan kicked me out and started to put the Yoos' money at risk. The truth is, I didn't know what to do. Sullivan was my boss, who owned and operated

the fund. When he took over, I was left with few options. At any point, Sullivan could have fired me, and then I would have had no ability at all to protect the Yoos'.

The Commission is merely second guessing the steps I took to protect the Yoos' with the benefit of hindsight. I had never been put in a position like Sullivan put me in with respect to APF I, and I didn't know what to do. There was no infrastructure, no chain of command, and no one to ask what I should do. APF I was Sullivan, and he was telling me what to do.

At the time, the best course of action I could come up with was to apply pressure on Sullivan to redeem their investment. I applied so much pressure that he fired me, and that made things worse. Once I was fired, within hours, Sullivan went completely nuts in the account. The APF I debacle isn't now, and wasn't then, a black and white scenario. I cared about the Yoos', and did everything I could think of to protect them. I was just up against someone who was in a position of more power than I was, and ultimately he wielded that power.

Sullivan completely kicked me out of all fund communications and activities on April 13, 2010, and subsequently proceeded to lose all of the Yoos' money. Interestingly, in their OIP, the Commission never charges I failed to protect the other investor in the fund during the time I was authorized on the account. It was only the Yoos' who I happened to care deeply about, and who I did my best to protect, that ironically the Commission charges I failed to protect. All of this information is known to the Commission.

I operated an entity called Calibourne Capital Management, LLC ("Calibourne"). Neither I nor Calibourne were "issuers" of any of the investments in which any of Sullivan / Klatch clients invested.

In short, my nexus to Sullivan was far too attenuated to impose any vicarious liability on me. I have no direct liability because I did not cause any loss, misappropriate any money, violate any securities law, or otherwise engaged, knowingly or unknowingly, in unlawful conduct of any description.

I have not been engaged in the securities business for the past three years.

TASK and AMERICAN PRIVATE FUND

It was only when my former attorney made me aware that Klatch was arrested, and pointed me to the charging documents online that I realized the extent of what Klatch, and possibly Sullivan may have done in connection with their various enterprises. I was as deceived by them as anyone.

Klatch is in prison for investment fraud conducted with Sullivan in TASK.

Klatch made irresponsible, large one-way bets that resulted in a total loss of all monies invested in TASK. The TASK debacle – its formation, existence and collapse – took place in a period when I had no communication with Sullivan of any kind.

Sullivan proceeded to raise new capital for a different fund, APF I, and he and Klatch promptly lost over $808,000.00 (Eight-hundred-Eight thousand dollars), belonging to four investors. In its Order Instituting Proceedings ("OIP"), the Commission only mentions one investor, the Yoos, and mysteriously ignores the other three investors and the $508,000.00 that Sullivan solicited all by himself for APF I. As the Commission is aware, I had zero input into any of Sullivan and Klatch's trading strategies. It has no evidence to the contrary.

The "strategy" employed by Sullivan and Klatch involved making huge bets with other people's money in an attempt to generate returns and collect performance fees. It was this recklessness that caused both TASK and APF to collapse.

The Commission is also aware that it has no evidence tying me, as a cause, to any loss. I had no connection to TASK of any nature at all, and my supposed connection to APF I was so attenuated vis-à-vis trading, strategies, decision making, or risk profiles, that there is no legal or equitable ground to hold me liable. Sullivan and Klatch simply did the same thing in APF I that they did in TASK. They followed a pattern of their own making, a pattern created independently from me. There is no evidence to the contrary.

In fact, within the extremely narrow time-frame where Sullivan allowed my input into an investment strategy for the Yoos, I generated positive returns, as the evidence, ignored by the Commission, will plainly show. I am here as an afterthought, a consolation prize, of the Commission.

First, I was never questioned by any prosecutorial agency in connection with Klatch's indictment, a reflection of my remote, non-culpable nexus to the events at issue. Second, even though Sullivan was being investigated by the Commission, the CFTC, and presumably the DOJ in 2010, I was similarly never even contacted by any of them, not even for background purposes. It was plain to every investigative agency, including the Commission, that I had no culpable role in any alleged fraud or misconduct.

However, *after* Sullivan died unexpectedly in Florida on April 19, 2011, and *after* Klatch was federally indicted, the Commission realized it had spent taxpayer dollars for naught and sought some way to show something, anything, for its efforts.

As the evidence shows, I was stripped of the little authorization I had by Sullivan from all communications and all access to the APF I account on April 13,

2010, as shown in an email from Sullivan to Lime Brokerage on that date, instructing Lime to de-authorize me because I was "no longer working with the fund." **On the same day that I "was no longer working with the fund" Sullivan became "no longer" interested in buying stocks with a share price over $1 per share.** On April 13, 2010, Sullivan began to buy huge blocks of penny stocks. There can be no argument made by the Commission that it was a coincidence.

I was unceremoniously kicked out only 40 days after the account was opened. All but roughly $60,000.00 of the $808,000.00 invested into APF I was lost after April 13, 2010. The Commission already knows this.

TIMELINE FOR APF

The APF account began trading on March 5, 2010. I accepted the Yoos' investment and assured them I would be managing their account. While the paperwork had not been formalized authorizing me on the account, Sullivan expressly assured me he would name me as manager of the fund. I had no reason not to believe him. Sullivan permitted me to choose the initial allocations in the Yoos' account when it was invested on March 5, 2010.

An email exchange between Sullivan and a Lime Brokerage employee verifies his initial intent to not personally manage that account, but to rather to have a manager in charge of managing it. In an email exchange between Sullivan and Lime Brokerage on March 5, 2010, the day the account began trading, Joel Radvanyi of Lime Brokerage asked Sullivan to: "Please put your manager in touch with me." In another email to Sullivan on that day, Radvanyi said: "I will need to speak to the manager to get vital info to get this started." Sullivan replied: "Hi Joel, I am going to wait on this. Thank you." Telling me that I would be the manager of APF I, and then deciding to "hold off" on naming me as manager, was the ***first time*** (that I know of) Sullivan changed his mind with respect to fund operations.

Listed below are a list of the initial positions that I selected and their price movements. I selected the positions on March 5, 2010. Sullivan began to change the account allocations significantly on March 15, 2010. Therefore, I have used the last trading day before that which was Friday March 12, 2010, for comparison purposes.

		03/05/10	**03/12/10**	**Change**
a.	2000 shares of ACXM	@ $18.52	$17.98	$1,079
b.	1000 shares of CCME	@ $12.10	$11.56	$540
c.	18500 shares of C	@ $ 3.44	$3.97	$9,250
d.	35000 shares of ETFC	@ $ 1.63	$1.65	$700
e.	3800 shares of UYG	@ $ 5.91	$6.44	$2,014
f.	2000 shares of SU	@ $30.18	$31.20	$2,032
g.	1100 shares of EEM	@ $40.21	$41.37	$1276

Total Profit $13,654.00

The first changes to the initial allocations in the account happened only six days later on March 11, 2010. Sullivan told me he had raised a "significant amount of capital" for the fund and that he was allocating that capital. On that day he purchased an additional 30,000 shares of C, although the money had not been transferred to the account at that time. I believed at the time Sullivan was merely allocating that capital. With discovery, I now understand that trade must have been placed on margin, and was the first margin purchase in the account. I was not yet authorized on the account. As a prerequisite for this client investing with APF, Sullivan told me he assured this client that Sullivan would be managing the money, as he was not comfortable with anyone managing it but Sullivan.

It was on March 15, 2010 one day in advance of when Sullivan's new client's money hit the account when Sullivan began to significantly alter the initial positions in the account. I had not informed the Yoos about the risks of margin simply because I never intended to use margin. So when the Commission charges that I failed to disclose the risks of margin, it might as well also say I failed to disclose the risks of natural gas derivatives trading or the risks of interstellar space flight. The Commission has essentially made a generic "make-weight" claim unrelated to my conduct. I simply never traded on margin. There is no evidence to the contrary, and the Commission cannot meet its burden.

Through discovery, over the Commission's objections, I have had the opportunity, as has the Commission, to examine the Lime Brokerage account records.

On March 15, 16 and 17, 2010 Sullivan purchased an additional 182,000 shares of C at prices ranging from $3.58 to $4.22. Sullivan also sold, without input from me the 2,000 ACXM, 1000 CCME, and 1,100 EEM that I had originally selected. All of those trades were transacted before I was authorized on the account. I kept pressure on Sullivan to authorize me on the account, and finally on roughly March 17, 2010 he agreed to formally name me as authorized on the account. I officially was authorized on the account on March 19, 2010. That did not mean that Sullivan was de-authorized, he maintained full trading authority on the account.

Up until March 19, 2010, when Sullivan made it clear that he would have final say on all trades, and that every trade I proposed had to be first cleared with him, Sullivan and I had a cordial relationship. When I confronted Sullivan about the leverage in the account he said: "Don't worry, your clients are protected. It is the new client that is exposed to the risk, and he is comfortable with it."

It was not until Sullivan's trading activity a few days later on March 23 and 24, 2010, when I realized he was being completely reckless in the account, and I knew it was going to be affecting the Yoos. On March 23, Sullivan purchased

20,000 shares of PALM @ $4.94 and the next day he purchased 40,000 shares @ $4.59. He then sold all 60,000 shares losing roughly $36,000.00 in capital in the fund. That is when I began to apply relentless pressure on Sullivan to redeem the Yoos' investment. I said to him something similar to, "If you want to manage this account stupidly, do it on your own. Sell out the Yoos' account and then you can do what you like." He refused, citing the 2-year lock-up period on the investment saying: "I'm not prepared to waive it. If you don't like how I'm managing the account, you can quit."

At that point, just 19 days in, I was very aware that Sullivan essentially had pushed me out of that account. My only goal from that point forward was to protect the Yoos as best I could. But it got worse. On March 30, 2010, Sullivan purchased 399,000 shares of C @ $4.38 and sold 330,000 of them @ $4.33 on that very same day.

I began to apply even more pressure on Sullivan. My pressure was so intense, that Sullivan left for Florida within days of the quarter ending. Him leaving the state did not deter me from pressuring him to redeem the Yoos investment back to them. I flew to Florida on Sunday April 4, 2010 at my own expense and kept the pressure on him to return the Yoos' investment. I spent 6 days with Sullivan in Florida. By the second day, I had convinced him to redeem the Yoos' investment. We actually wound up having a great time together in Florida. Sullivan had a lot of charm, and he had an uncanny ability make himself likeable when he wanted to.

I was physically with Sullivan at a UPS-type store on April 6, 2010 in Key Biscayne, Florida on the first day that funds were available to transfer out of the account, when he faxed out instructions to Lime Brokerage to wire $260,749.00 out of the account into an APE escrow account at JP Morgan Chase. My personal bank records that will be introduced into evidence at the hearing will verify my presence in Key Biscayne, FL on April 6, 2010. That is exactly what I told the Yoos' over 3 years ago, and what I have told the Commission for the last two years. They have both dismissed my version of the events. At the hearing, it will be proven that I was telling the truth.

That trip I took to Florida was initially very successful. Not only did Sullivan agree to transfer the money back to the Yoos, he also sold the remaining 199,000 shares of C on the same day he requested the wire, and offered his version of a mea culpa to me. Sullivan agreed to allow me to make all of the investment decisions in that fund, and said he would focus solely on raising capital for the it, which was our initial agreement. He said to something similar to "I'm good at raising money, I'm not a good manager, you will do a good job, I'm confident in you."

There can be no question that $260,749.00 was to redeem the Yoos' investment for two reasons. First, Sullivan emailed Lime Brokerage stating that

the reason for the wire request was for a "client's redemption." Second, there were only two investors in the fund at the time. The Yoos, who had $260,749.00 left in their account, and Sullivan's other client, Steven Carter, who had roughly $165,000.00 left of the initial $185,000.00 he invested only 3 weeks prior.

When I left Florida on Saturday April 10, 2010, with the wire completed, it was my understanding that the capital had to be calculated by Columbus Avenue for performance reporting, and then the Yoos would have had their investment redeemed to them. When I telephoned Sullivan on Tuesday April 13, 2010, to ask him when the money would be transferred back to the Yoos, he told me he had once again changed his mind, and decided he would not be redeeming their investment. This was now the ***second time*** Sullivan changed his mind about fund operations. I reminded him of everything we had agreed upon in Florida. He got very angry and said: "That's my decision, don't question it." I lost my temper and said something physically threatening to him. He said: "You're fired" and hung up. He immediately emailed Lime Brokerage and de-authorized me from the account.

In an email, on that same day the Yoos asked me if I wanted to have dinner with them soon. This was another scenario that isn't just black and white. I could have told Mrs. Yoo right then that I was fired from the account. I made a decision that I would work on Sullivan, and if by the following Thursday if I couldn't convince Sullivan to change his mind, I would tell them what had transpired over that dinner. On the following Thursday April 22, 2010, over that dinner I reported what had happened in the account. I told them Sullivan had fired me and was managing the account. I told them to the best of my knowledge their account had lost roughly $40,000.00 in value. It was at that dinner that Mrs. Yoo said to me: "Please get our money back, we can lose $40,000.00, we just can't lose the rest." I assured them both I would do everything I could to get their money back to them. The Commission erroneously alleges I waited until late May to tell the Yoos' I was not managing the account. I will prove that allegation to be false.

Discovery reveals that on April 13, 2010, Sullivan without any input from me, started to go completely crazy in the account. Now for the ***third time***, Sullivan changed his mind and decided again that he would be managing the fund. He immediately purchased 97,257 shares of a penny stock bank PRWT @ $0.71 per share. On April 14 he purchased another 130,810 shares @ $0.71. On April 21, 2010 he transferred $260,000.00 back to the brokerage account from the APE escrow account. That was the Yoos' money. Sullivan functionally stole it. That style of trading is exactly what he and Klatch did in the TASK account.

On April 26, 2010, Sullivan purchased 250,000.00 shares of PRWT @ $0.98. On April 28, Sullivan purchased 207,428 shares of PRWT @ $1.07. Sullivan, obviously emboldened by the slight price rise in PRWT, made an even more reckless move, if that was even possible, when he purchased 1.2 million

shares of FBC @ $0.85 per share. From that point forward the account was doomed. All but roughly $145,000.00 was lost before the brokerage firm shut down the account. Sullivan opened another brokerage account and transferred the remaining capital to it. Sullivan paid Klatch $10,000.00 from investor funds to manage the account. Klatch proceeded to very quickly lose the remainder of the capital in the account. So Klatch made $10,000.00 to manage the fund horribly for two weeks. The scenario that Sullivan and Klatch concocted should be obvious to all. Sullivan and Klatch essentially stole tens of thousands of dollars out of that account and managed client accounts with no regard for them as people. I never received one nickel of funds from that account, nor did I lose one nickel trading it. I had no idea Klatch was paid $10,000.00 out of that account, and that Sullivan was pulling tens of thousand of dollars out of it for other expenses until I was able to access the records through discovery. I am outraged by their actions.

The evidence, so far ignored by the Commission, will prove that Sullivan/Klatch lost at least $260,749.00 of the Yoos' initial $299,000.00 investment, and in total $750,000.00 of the $808,000.00 of investor funds in that account *after* April 13, 2010. The evidence will further show that Sullivan lost the remaining $58,000.00 invested plus the $13,654.00 in profits (from my transactions) as of close of trading on March 12, 2010. That profit is the same profit I described to the Yoos that I generated before Sullivan took over. The Commission asserts, and the Yoos believe, that I was dishonest about that statement. The documents show the Commission to be dishonest in the representation and the Yoos gullible in believing it.

The sad truth is, it really doesn't even matter for the Yoos if there was a profit generated in the account in the beginning or not. All of their capital is lost, and will never be retrieved. This is all about the Commission trying to make their OIP stick. Having a discourse about a profit being generated in the account before all of the money was lost will be a back and forth at the hearing with truly much to do about nothing. It would be similar to a boxer who managed to win the first round of a 12 round fight, and then go on to lose the next 11 rounds and brag that he won the first round.

The Yoos' lost $300,000.00, and since the Commission can't charge me with losing it, they made a decision to charge me with lying about an initial profit that was generated in the account. They have picked this childish "he said, she said" fight, now they have it. The Commission will never be able to fully prove that I didn't pick those allocations, and I will never be able to fully prove that I did. There were only two people who were there, and one of them is now deceased. But when we examine the initial trading in that account, there is certainly a more plausible scenario that avails itself. The Commission is basing their entire charge on the fact that I didn't have formal trading authority when the account was opened, without even so much as one email or witness testifying to the verify their claim.

The statement in question that I made to Mrs. Yoo was in reference to a profit of roughly $13,654 that was generated in the account roughly the first couple of weeks into trading. I stated in my Wells Submissions without the benefit of discovery that I believed the account had risen in value to roughly $320,000.00. I was close with my estimate, and that based solely on my memory years later. The Lime Brokerage Statements will verify that profit was indeed generated. So what we will be arguing about is who generated that profit, not if the profit existed. The Commission charges I did not have formal trading authority in the account, so I could not have been responsible for the profit. I assert that I picked the initial allocations. So let's get to the truth.

First, I had no reason to lie to the Yoos' about who would be managing the account.

Additionally, I knew what the initial positions were in the account and listed them to the Commission in my Wells Submission dated November 11, 2013. I listed the stock ticker symbols and the allocations of those positions almost to a tee nearly to four years after they were selected, even though they were only allocated that way for 10 days or so. I still knew what the positions were almost four years later because I kept a record of it. I was proud to be managing a fund, or so I thought.

I provided that information to the Commission without having the benefit of the Lime Brokerage Statements I retrieved only during discovery. Those are the statements I had to fight so hard to get in my possession. The Commission refused to help me locate them in their investigative file, then objected to me asking the court to subpoena them. It is clear to me why they did not want me to have them.

Juxtapose that knowledge of the initial positions with clear evidence that shows Sullivan's propensity for only holding one stock in a portfolio, and it becomes clear that I picked those initial positions, and I generated that profit. If Sullivan had selected seven positions in an account, it would have been the only time that he had ever done so. Paradoxically, why would I even feel it necessary to make a statement like that to a friend who had just lost $300,000.00 if it were not true? I was merely explaining to her to the best of my knowledge how the money was lost. I had so little information to provide to her about the account, and I could only provide what I knew. I certainly was not attempting to promote my stock-picking prowess at a time when she was devastated. The fact that the Commission charges me with that disgusts me.

Whether there was an initial profit in the account or not is so insignificant, and shows just how far the Commission is stretching in their OIP to bring sanctions against anyone. That being said, if this hearing is ultimately about truth, it matters.

To its credit, the Commission nowhere charges that I ever mismanaged the APF I account. It does not claim I lost capital. The Commission uses phrases like Montanino's partner and Montanino's client. The Commission is being dishonest when they refer to Sullivan as my "partner" in APF I, and they must be aware of it.

There is never a mention of my name in any legal document related to APF I. Sullivan's name was indeed all over the APF I documents. Those documents include: APF I LLC Agreement, APF I Limited Partnership Agreement, APF I Offering Circular, and the APF I Subscription Agreement. The Commission has provided me with some three or four thousand pages of exhibits, and in not one of them anywhere does it name me as having any operational control of APF I. Therefore, when they use the word "partner", they are doing so knowing it is not true. A partnership entails having shared risks and shared profits. Sullivan and I had neither in APF I.

The Commission will use the word "partner" for thematic purposes at the hearing. Even a non-lawyer can see that clear as day. It is a false theme and should be rejected in its entirety. If the Commission would like to refer to Sullivan as my partner in Calibourne, they should fee free to do so. APE owned 50% of Calibourne and I owned the other 50%. The documents are crystal clear as to who ran APF I. APE owned 100% of APF I. ***When the Commission refers to Sullivan as my "partner" in APF I in their OIP, it should be considered libelous, and when they refer to me as his "partner" in APF I at the hearing, it should be considered slanderous.***

In the OIP, charge 15, The Commission plays with words and uses such phrases as "Montanino's Partner had already exposed her investment to substantial risks that Montanino took no steps to cure or disclose." It is of course true that Sullivan had exposed the Yoos intolerable risks. But the Commission knows that Sullivan was my boss, not my partner. Sullivan alone ran APF I.

With a scenario like that, the only "cure" would have been to convince Sullivan to redeem their investment back to them, which evidence will clearly show I went to extreme lengths to have done. I tried, but ultimately failed. Redemption of investment would have been the only "cure" that would have had any efficacy for the Yoos'. Simply telling Sullivan to stop trading the account was attempted, it did not work. Bosses tell employees what to do in this world, not the other way around. I was an employee of APE and Sullivan was the boss, plain and simple.

As a side note, the Commission charges that I did not disclose to the Yoos that I had no actual experience managing money. They make that charge apparently assuming the Yoos' couldn't make a judgment for themselves if I was capable of managing their money for them or not. They

had known me for four years, and I advised them on their accounts at Fidelity. The Yoos' who are both extremely intelligent and had been investing for over 20 years, were competent enough to make that decision on their own. Dr. Yoo has earned an MBA from a top business school.

Interestingly, the Commission has indicated that they will be calling Sharon Jones to testify at the hearing. Amongst other things, if truthful, I believe that Ms. Jones will testify that I managed money for her, charged her a fee for the service, and did a professional job for her. In fact, she wrote a letter that I will introduce as evidence at the hearing complementing me about how well I had done for her. This letter was mailed to me after Ms. Jones tracked me down to manage her money for her for a second time. So the Commission charges I had no experience managing money, but they indicate they will call someone to testify who I managed money for? If these proceedings were not so serious, I would find that to be funny.

SOME DEMONSTRABLY FALSE ALLEGATIONS AGAINST ME

The Yoos believe I lied about a $30,000.00 placement fee charged to their account. I have repeatedly contended both to the Yoos, and to the Commission that to the best of my knowledge it was never charged. With discovery, I now have all the information about that fee that I lacked in the past.

To my knowledge, the Commission never requested any electronic communications between Columbus Avenue and Sullivan. If they did request those documents, they did a poor job of examining them. I not only requested those documents, I examined them thoroughly.

Had the Commission taken time to properly investigate, it would know that those statements show that when the account was originally opened, there was $299,000.00 invested. The management fee was 0%, and the performance fee was 10%. There is no showing of any placement fee being charged. The documents reflect the exact scenario I described to the Yoos, and to the Commission.

There are two Columbus Avenue documents (one dated March 5, 2010 and the other dated March 19, 2010) that verify that. There was no placement fee charged when the account was opened. That is a fact. The Commission could have cross-referenced those statements, with the Lime Brokerage statements to verify but it failed to do so. The Lime Statements show $299,000.00, ***not*** $269,000.00, deposited into the brokerage account, and then allocated to equity positions. Even Sullivan clearly instructs Columbus Avenue to transfer $299,000.00 to Lime Brokerage, and states in an email to them dated March 2, 2010 there is to be no management fee and a 10% performance fee.

If it had wanted to, the Commission could have easily discovered that the placement fee was charged on the account ***only after*** I was de-authorized at Sullivan's instruction, and thus without my knowledge. The first time the fee appeared was on the May 19, 2010 statement, not the two initial contract notes in March that were generated, while I was authorized. Precisely because the Commission failed to properly investigate and failed to properly analyze documents (among other reasons) it will now be unable to meet its burden of proof.

On May 3, 2010 Sullivan raised an additional $200,000.00 from another investor, Bertram Witham. Sullivan initially asked Columbus Avenue in an email to send $200,000.00 to the brokerage account. Soon thereafter, Sullivan changed his mind for what is now the ***fourth time*** and instead of sending $200,000.00 to the brokerage account, Sullivan asked Columbus Avenue to instead send only $150,000.00 to the brokerage account, and send the other $50,000.00 to APF I, LP. Sullivan made the decision to misappropriate that capital on his own, again without my knowledge. The explanation Sullivan gave to Columbus Avenue for the $50,000.00 transfer out of the brokerage account was that it was for rent expense of $44,000.00, and salary for Sullivan of $6,000.00. On May 3, before executing Sullivan's request, Columbus Avenue asked for invoices to prove the rent expense. Again on May 3, Sullivan emailed out statements from Carr Workplaces, which was the firm he paid rent to for his office space, but the request to wire the $50,000.00 was turned down by Columbus Avenue because Sullivan provided them with rent statements that pre-dated the fund being operational. On May 4, Columbus Avenue instructed Sullivan that the fund could only pay for expenses incurred since the inception of the fund. So apparently Sullivan came up with another scenario. He instructed Columbus Avenue in an email on May 4, 2010 to break down the $50,000.00 as follows: $27,140.67 rent, and $22,859.33 "***placement fee***."

This prompted Columbus Avenue to send an email to Sullivan dated May 11, 2010 that stated, "Since we have started paying out against the fees and that nothing has been stated otherwise, we have treated all of the subscriptions as subject to the fee." ***And there it is.*** Sullivan started pulling money out of the account, and the only way for Columbus Avenue to reconcile that was by charging clients a placement fee. The Yoos were thus assessed a fee exclusively pursuant to Sullivan's machinations, somewhere around May 11, 2010 a full ***one month after I was de-authorized from the account.*** Though not difficult to get to, the Commission managed to fail anyway. This leaves the Commission to pursue a demonstrably false allegation against me. There is no contrary evidence.

Furthermore, on May 21, 2010 Sullivan received an email from Columbus Avenue stating that Mrs. Yoo had called to ask why the contribution amount on her statement did not match her actual contribution. Mrs. Yoo had viewed her first statement dated May 19, 2010 online. She also called me and protested. I

was furious and confronted Sullivan and demand he reverse the "placement fee". This is when Sullivan told me that they were "never supposed to be charged a fee", and I heard him call Columbus Avenue and ask them to reverse it. On May 25, 2010, Sullivan sent Columbus Avenue an email asking them to waive the placement fee for the Yoos.

On May 26, 2010, I went to APE's office and met with the Yoos and Sullivan. I did not tell the Yoos that I had any ability to return their investment to them as Mrs. Yoo has stated. They knew Sullivan was in complete control. I did tell them that the placement fee would be returned to them, reflecting my genuine belief at that time because on May 25, 2010 the day before the meeting, Sullivan instructed Columbus Avenue to do so and assured me it would be done.

On July 22, 2010, Columbus Avenue sent Sullivan an email asking, "Although a technicality at this point, did you agree to return the placement fee to the Yoos?" Sullivan responded on July 22, 2010, "No return for the Yoos." That was now the ***fifth*** instance (that I know of) where Sullivan initially agreed to something and then ultimately changed his mind and did something else.

REGARDING APE AND SUPPOSED MISAPPROPRIATION

It may or may not be true that Sullivan misappropriated and looted his clients' funds in APE, but just as in APF, if he did, he did so for his own benefit and without my knowledge.

I claim no skills in forensic accounting, but I have poured over the financial statements that were provided to me by Katz Fram, who were the accountants for APE, and it appears as if all expenses and all movements of capital into and out of APE accounts were documented. Expenses were clearly laid out, and salaries were reported. Indeed Sullivan had an outstanding loan to APE of over $300,000.00 and he seemed to have been reporting income of at least $200,000.00 per year. The value of his clients investments were marked lower, not higher as would be done in a "Ponzi" situation. Sullivan clearly was telling his clients that they were losing money. American Private Equity was not a "Ponzi" operation by any definition.

The Commission can recklessly assert that "Montanino along with his business partner Sullivan" "looted" investor funds, but it cannot prove I "looted", or knowingly helped Sullivan "loot" one nickel of APE funds, simply because I did no such thing.

Based on my research, it is doubtful the Commission can even prove its APE case against Sullivan, much less anyone else.

Just as labeling me as Sullivan's "business partner" in APF I was false and misleading, it is equally as so with respect to APE. There was no partnership

agreement. I had no control or say in any of APE's accounts, and was not remotely a principal of any sort. The Commission is essentially name-calling hoping to somehow bind me to Sullivan. It should be clear to everyone that Sullivan was a control freak who would never have let me, or anyone else for that matter, control any part of APE. I had no ability to appropriate funds, much less misappropriate them. There is no evidence to the contrary and the Commission is unable to meet its burden.

I worked for Sullivan and APE at below market compensation. The Commission claims my often times meager earnings were "misappropriations." To be clear, I purchased no cars, boats, homes, expensive clothes, incurred no large bar tabs, or went on spending sprees of any kind. In the entire 17-Month time frame that I worked with Sullivan from December 2009 to April 2011, I earned roughly $87,000.00 in total compensation, or $ 61,000.00 annualized, while living in Los Angeles, one of the highest cost of living areas in the entire country.

From December 2009, through July 2010, the period in which the Commission charges I took a position as a "Senior Managing Director" with APE, I earned roughly $17,500.00 in total compensation, or around $700.00 per week. At no point did Sullivan offer me health insurance, a 401k plan, a profit sharing plan or any other type of benefit in connection with being an employee of APE. Factoring in the absence of benefits, I could have made a comparable wage working as an unskilled laborer. The Commission's charge that I "looted" APE funds is a pitifully transparent reflection of its lack of a claim.

My company, Calibourne, was legitimate, and was financed significantly by APE.

It bears repeating that at no point, not ever, was I in any position of control at APE or any other Sullivan controlled entity, and the Commission cannot meet its burden otherwise. As with all of Sullivan's entities, I never had the ability to access any APE Funds, enter into contracts on behalf of APE, hire or fire APE employees, sign any checks, or have any input with respect to how Sullivan appropriated any funds.

The Commission will offer 3 brochures that Sullivan produced that falsely name me as a Senior Managing Director. I will introduce as evidence a stock market outlook that I produced in early 2010 for APF, which in it lists my title as "investor relations." I will produce a copy of my business card that I presented to the Yoos' that simply said American Private Equity.

When I realized Sullivan had produced those materials naming me as a Senior Managing Director, I instructed him not to send them out unless he actually planned on promoting me to that title, and compensating me in a commensurate way. I would have been overjoyed at the time if he accepted that

offer, and gave me a raise, but he did not.

I notified the Commission in my Wells Submission of two other instances in the past where individuals sent legal action letters to Sullivan demanding he stop misrepresenting their connections to his firm in the APE materials. The Commission has either failed to contact the law firms I identified or has chosen to bury the confirming information.

The Commission has thus far failed to produce and at no point will be able to produce an employment contract, stock option plan, bank document, commensurate compensation, LLC Agreement, or anything else that would point to me actually being a Senior Managing Director of APE, or for that matter, anyone of any consequence at all. I was just the last of a group of people who had built good reputations, with solid credentials that Sullivan exploited in materials that he produced.

My legitimately earned and fully deserved compensation, was not "looting" by any definition. My skill set would have commanded a wage of at least twice as much at other firms. This aspect represents regulatory overreaching at its worst.

In lieu of proving that I actually misappropriated funds, which it cannot do, the Commission will be forced to attempt to prove that I conspired with Sullivan, or aided and abetted him in the process of his alleged frauds. Merely knowing someone or working with someone, however is not sufficient, and no evidence exists to show anything else.

ANOTHER EXAMPLE OF A DEMONSTRABLY FALSE ALLEGATION

In OIP paragraph 42 the Commission states: "During this time, investors sent about $485,000.00 by wire or check to the APE escrow account. Calibourne's records show that APE provided only $33,515.00 of which Montanino took $28,870.00 for himself, even though APE had compensated Montanino tens of thousands of dollars directly from its own account."

That $33,515.00 and the "tens of thousands" of other compensation amounted to roughly $71,000.00 in compensation over a 10- month time frame (7/2010-04/2011), which I have already broken down earlier. I have attempted on numerous occasions to alert the Commission to the fact that the $33,515.00 and the "tens of thousands" of other compensation was my salary, and that Sullivan and APE funded Calibourne expenses directly, without ever transferring capital to Calibourne's account. That is how Sullivan preferred to do it, and was his right to do so. For what has now become an apparent reason to me, the Commission just will not recognize the situation for what it was. They would rather charge that "I knew of my own misappropriations or I diverted capital for my own benefit."

In three years of investigating, the Commission has failed to uncover one shred of evidence that proves I was in any way complicit with Sullivan in committing fraud.

It has not uncovered any evidence, because there is none.

In lieu of proof, the Commission has been forced to fabricate this scenario wherein APE did not fund Calibourne, because only $4,645.00 made its way from APE's bank account to Calibourne's.

The Commission knows APE was financing Calibourne expenses directly. There were only two bank accounts, and checks written by Sullivan from APE's bank account directly to employees and service providers for services provided for Calibourne. They have someone assigned to this investigation whose sole purpose was to track all capital into and out of all of the entities they are investigating.

Any scenario that the Commission portrays where APE did not fund Calibourne would be a charade. The Commission is stuck in the position to prove I was complicit with Sullivan, it either has to prove I directly committed fraud or *knew* Sullivan was a fraud (I did neither), which it clearly cannot do, or it would have to show that APE did not fund Calibourne, thus proving by way of that alleged non act that I must have known, or should have been able to deduce that Sullivan was a fraud. The prospect of having the burden of proof and having none to speak of is what is staring the Commission right in the face. That is why the $4645 scenario had to be hatched.

In addition to the $71,000.00 in earned compensation that I received as the founder of a portfolio company of APE from July 2010 through April 2011, there were the *bona fide* salaries of Troy Gordon and Brandon Tafurt, which amounted to another $70,000.00 or so. Tafurt indicated to Commission that he would send them his banking records that reflected what his compensation was. To my knowledge, for a reason not known to me, that exchange appears to have never taken place. Between the three of us we were compensated roughly $140,000.00. That will not even include the salary that Sullivan was entitled to earn, which according to my research seemed to be $200,000.00 per year.

The Commission will claim they conducted a through investigation, although they somehow neglected to take the testimony of the only two employees (other than myself) who actually worked at Calibourne full time.

In addition to the salaries that needed to be paid, the attorneys that drafted the legal formation documents for Calibourne and APF II needed to be

compensated. Sullivan's law firm, Benchmark, worked on the Calibourne documents, and also worked on getting Calibourne approved with the State of California as an RIA. Benchmark worked on iteration after iteration with the State of California for 7 months to finally get Calibourne approved.

There was an LLC Agreement drafted for both Calibourne and APF II. ADV documents were prepared. The schedule F was prepared. The Calibourne client agreement was drafted. The investment management agreement between Calibourne and APF II was drafted. The total bill for Calibourne and APF II was just under $80,000.00. I will produce the invoices at the hearing. Taking only into the bona fide salaries and bona fide legal expenses, APE capitalized Calibourne roughly $220,000.00.

It does not stop there. The web site development company that constructed the Calibourne website needed to be compensated. The website bill was in excess of $100,000.00. I will produce that invoice at the hearing. The photographer that photographed for the site needed to be compensated. He earned roughly $8,000.00. The models for the website photography needed to be compensated. They earned roughly $2,000.00. The site location where the photo shoot for the website took place needed to be compensated. That site was $3,000.00. The financial writer who helped me write Calibourne's materials needed to be compensated. He earned roughly $10,000.00. His cashed checks were in the investigative file along with his emails and invoices. The graphic designer who designed the materials needed to be compensated. ***That graphic designer even stated to the Commission she was compensated roughly $7 - 8,000.00.*** The rent where APE and Calibourne had office space needed to be paid. Over the time-frame 07/2010-04/2011 Sullivan paid over $70,000.00 in rent expense. In total, those expenses just listed amounted to roughly an additional $200,000.00. That is now $420,000.00 that I am prepared to testify was allocated to Calibourne operations via APE.

We will not be debating and arguing at the hearing over nickels and dimes. I will not be testifying that APE funded Calibourne $10,000.00 or $25,000.00, or even $4645.00. With documentary evidence I will prove APE funded Calibourne over $420,000.00. The Commission is claiming APE funded Caliboune $4645. I told all of this to the Commission in my Wells Submissions. They chose to ignore it. In fact, now with the benefit of discovery, the numbers I represented to the Commission are actually considerably lower than I understand them to be now.

OIP charges 34-43 should be seen for what they are. They are quite literally a bad joke.

The Commission is charging me with fraud under extremely false pretenses, and they are attempting to do harm to my family and me. Their practices should be thoroughly examined after this hearing, and people should

lose their jobs. The Commission is either woefully uniformed or they are intentionally being dishonest. Either way, there is no excuse for it.

THE EXPENSES WERE REAL AND THEY COUNT

The Commission will not be able to support its bizarre contention that those expenses somehow "do not count", enabling it to deflect the dictates of logic and claim that APE only funded Calibourne for $4,645.00. The Commission of course is ignoring grade-school arithmetic because it would not otherwise be able to press its fallacious theory: I must have known that Sullivan was a fraud because APE was not funding Calibourne as it was supposed to do. But APE *was* funding Calibourne and I had no clue that Sullivan was a fraud.[2]

There was never any assurance given to me, or to any investor to my knowledge, that Sullivan would fund or attempt to fund Calibourne with 100% of the capital he raised for APE. The proposition itself is absurd on its face. Plainly, if Sullivan were to fund Calibourne with 100% of the money he raised for APE, there would be no APE and no way for APE to fund Calibourne in the future. The sheer fiscal impossibility of the scenario created by this proposition (*i.e.*, that APE used 100% of its raised monies to fund Calibourne) seems to be lost on the Commission. APE obviously had its own expenses for salaries, attorneys, accountants, rent, marketing, and the ordinary mundane costs for goods and services incurred by every business in order to operate. I will provide a list of them as provided to me by Katz Fram, APE's accountant.

The Commission has thus far failed, and every indication is that it will also fail at the hearing, to rationally assign an "acceptable" figure or percentage of APE monies that "should have been" used to infuse capital into Calibourne. As such, the Commission will be forced to ask the ALJ to substitute the Commission's "business judgment" for that of Sullivan's. And while the Commission may be able to demonstrate that Sullivan was some kind of fraudster, it will not be able to demonstrate that Sullivan was a fool.

The giant leap made by the Commission – in defiance of logic and basic business sense – that I should have been able to conclude that Sullivan was a fraud based on the supposed percentages of APE money he invested in Calibourne, is unavailing. The Commission's persistent effort to fit octagonal pegs into triangular holes is a testament to the malicious and unsupported claims it here brings for no reason other than to get some return on its investigative investment into the deceased Timothy Sullivan.

BACKGROUND ON VALUATION MODELS

Regarding my use of valuation models, common throughout the industry, it

[2] I recognize this may be either an admission of my own gullibility or a testament to Sullivan's skill as a fraudster. Either way, I truly had no clue.

is impossible to assess if they were accurate, because the capital needed to help execute Calibourne's business plan never materialized.

For timeline context, there were roughly 3 or 4 months between the time my models were completed and Sullivan's death. As stated in the business plan, $5 million was the targeted asset raise, not $100,000.00 (the amount actually raised by Sullivan for APE before he died). The Commission fails to recognize that Sullivan's death, and the concomitant failure to raise the necessary amount of capital caused Calibourne to fail, not any "unsubstantiated hypothetical valuation models."

The models were expressly described as "hypothetical," but the disclaimer on page 36 warns: "Company investors may experience results that differ materially from the returns shown. Although company management believes the comparable valuations are accurate, there can be no assurance that the above referenced examples will be valid in the future. **These charts should not be used as an indication of how the company will perform**."

It is quite standard fare for business plans to attempt to value the business in the future if the plan is executed successfully. There needs to be some sort of an investment thesis in order for potential investors to fully assess the investment. The business plan at issue made no outlandish claims. Rather, it asserted that if APE raised $5 million, that capital could be used to recruit advisors away from other companies and bring them onto the Calibourne platform. This was true.

If Calibourne, after being adequately funded, then executed its plan, the exit strategy considered a potential sale price, three years later, of $35 million - $50 million. Our research indicated that an investment company that had $350 million in assets under management, with $87 million of that invested in a hedge fund, could sell itself for 10-15% of Assets under Management ("AUM"). A huge difference from a fee only based business, which might only be worth 1-3% of AUM. Adding the $87,000,000.00 in higher margin and longer duration hedge fund assets is what makes a firm much more attractive, and as such, a much higher valued asset. Our research showed an RIA was worth roughly 5 times as much with the hedge fund assets in place. A detailed breakdown was included in the business plan. Our model was simple:

1. Raise the capital to buy the assets. Assets could either be directly purchased from advisors looking to sell their practices, or through our internal recruiting efforts. We preferred to recruit advisors.
2. Enhance the value of the acquired assets by transitioning 25% of them into APF II.
3. Sell the enhanced value assets a few years later.

It was not by any stretch "far-fetched". Calibourne believed that acquiring

$300-$400 million in advisory practice assets with $5 million in capital really would not be that difficult to do. In fact, it could be done almost immediately if we just wanted to purchase practices. At the hearing, I will show just how easy it would have been to acquire that aggregate amount of assets if the capital raise were completed.

It should be noted that if I didn't do a proficient enough job managing the fund, at any time I could remove myself. With significant assets in the fund, finding another manager in 2011 would have been rather simple to do. There were hundreds of competent managers displaced during the financial crisis. In the Investment Management Agreement between AFF II and Calibourne Capital Management, it clearly states, "David Montanino would be the "***initial portfolio manager.***"

Their rank assertion that I had never managed an investment firm in the past so I could not reasonably conclude that I could manage a successful one in the future is both assuming and faulty. I was not attempting to start an aerospace company with a skill set learned in the agricultural industry. I was attempting to start a company in a field that I had spent a considerable amount of time in, at some of leading players in the space. I worked and learned at one of the biggest financial services company's in the world, and served as a Vice President for one of the largest and most well respected independent money managers in the world.

I conducted over 1700 investment consultations at Fidelity, conducted over 750 Portfolio Reviews and Retirement Income Plans, was credited with bringing in $150,000,00.00 in Net Flows to the firm, positioned roughly $40,000,000.00 into Fidelity's professionally managed service (PAS), and positioned roughly $8,000,000.00 into insurance products. I was awarded the Chairman's Award and was recognized for my Excellence in Action by the firm. That is who I am. I am not the unskilled customer relationship manager the Commission will attempt, but no doubt fail to make me out to be.

It is equally not good enough to assume that because I had not managed a hedge fund in the past that I could not do so in the future. I spent years and years educating myself on the markets. While my tenure wasn't long, I learned portfolio management techniques and how to manage properly around a benchmark from Ken Fisher, at Fisher Investments. He is one of the world's leading market forecasters. I was trained in traditional asset allocation strategies at Fidelity Investments. I started my career in 1995 working in the investment banking space at the Boston Group. I worked on securing private financing for BJ's Chicago Pizza and Brewery in roughly 1996, which ultimately helped them go public when they had but two locations. They are now a highly successful company nearly twenty years later. That is how long I have been around the securities industry.

I am quite certain I was in the securities industry managing client assets, while the women prosecuting this case at the Commission were not even out of high school. The Commission will charge I never managed money without ever interviewing anyone from any of the brokerage firms that I worked at beginning in 1995. That shows how little my background was investigated by the Commission, before they brought these charges against me.

The Commission has no basis to charge much of what they have because they have not investigated nearly enough to do so. I am quite certain if I had a negatively marked up U4, they would not be charging I had no experience managing money. The fact that my record is so clean is apparently what the Commission is basing my lack of experience on. I published stock market outlooks for APF and Calibourne. Let those be examined to judge my market knowledge.

In the projections I prepared in the business plan, I gave three relevant outcomes. One example showed cash flow analysis given a net performance of 0% in the hedge fund. Another example was given with an associated 10% return in the fund. Finally, a third example was given with a 20% return. So even if the Commission were correct with their false assumption that I could not have managed a hedge fund proficiently (with nothing to base that on), that would have been accounted for in the plan. There was no attempt to mislead anyone in that business plan, ever.

IT WAS WORKING

Exhaustive research was conducted into the market before the business plan was drafted. Our first prospective hire was Carlos Sanchez. In Sanchez's letter of Intent to join Calibourne, he stated would transfer $25-$30 million in investor assets to the Calibourne platform. We promised to pay him $45,000.00 as a signing bonus. With signing that one advisor we would have achieved roughly 10% of our goal ($300-$400 million) for an outlay of only $45,000.00. That means we would have paid to 2/10 of 1% for those assets. We had targeted assets would cost us between 1-3%. At those levels, if APE did raise $5 million for Calibourne, we would have been able to acquire over 100 advisors and $2.5 billion in assets. Said another way, if those numbers held, APE would only have had to raise $450,000.00 to acquire the amount targeted in the plan. Acquiring the first new employee is always the hardest, and we were successful in landing a great first hire. Indeed he had offers from at least 3 other huge firms on the table, and he chose Calibourne.

Sanchez went so far as to fax over all of his clients' sensitive data to start the process of transferring his clients' assets over. He was joining the firm. Unfortunately, Sullivan's life was starting to spin out of control, and he died before we could formalize the deal with Sanchez. Troy Gordon (who the Commission failed to take the testimony of) will testify to that at the hearing.

As further evidence that not only was APE funding Calibourne, but also that we were succeeding, I list some of our accomplishments, achieved in only 10 short months of operation:

1. Legally formed Calibourne Capital Management.
2. Legally formed American Private Fund II.
3. Built verifiable track record through 3 accurate Stock Market Outlooks and model portfolio with amazing performance on Tickerspy.
4. Put together a team to recruit advisors to Calibourne. We personally visited hundreds of banks throughout the State of California with the goal being to recruit disenfranchised advisors who sought to work independently.
5. Signed Carlos Sanchez who was slated to begin working with the firm. Sanchez was a nearly 20 year industry veteran with gross annual revenue of $525,000.00 and $25-$30 million in transferrable assets to Calibourne.
6. Secured the two best custodians in the business (Fidelity and Schwab) to custody our clients and advisors assets even though we were a start up business.
7. Produced Calibourne Advantage recruiting brochure for advisors.
8. Produced Credit Crisis brochure.
9. Produced APF II investor brochure.
10. Produced APE business plan for success brochure.
11. Developed world class website for Calibourne.
12. Got Calibourne approved by the State of California as an RIA with a structure that was completely revolutionary in the industry.

THE BUSINESS PLAN DIDN'T HELP RAISE SIGNIFICANT CAPITAL

In the OIP, the Commission attempts to make it seem as if I created this business plan and used it to deceive potential investors out of large sums of money, when in fact, as the Commission itself knows, Sullivan disseminated it to some of his existing clients, and one of his clients who had already invested $600,000.00 with Sullivan over the previous year and a half was the one who invested the $100,000.00. Neither I, nor the Commission knows if that business plan was the reason that Sullivan client decided to invest another $100,000.00 into APE, or if he was just seduced by Sullivan. I counted roughly ***twenty*** emails from Sullivan to this investor from December to March. Knowing Sullivan, he probably made ***scores*** of phone calls as well. I believe the business plan was attached in ***one*** of them. That client will testify at the hearing, perhaps we will see what truly convinced him to invest.

WE CREATED A REVOLUTIONARY MODEL FOR ADVISORS

The platform that we created for advisors to come over was revolutionary. We were providing advisors an opportunity to go independent. Many advisors yearn to go independent due to the higher payouts and the freedom afforded by actually running their own business. Unfortunately, often times they are swayed away from the idea of independence due to all of the uncertainty, and the associated costs with making the transition.

A typical payout split for an advisor working at a bank would be 45% payable to the advisor and 55% retained by the bank. An independent advisor typically retains 90% of the investment management fees generated in the accounts they manage. With the higher payouts, come higher expenses. When an advisor goes independent, that advisor is now responsible for the costs that are associated with running that business. They would now have to pay rent, compliance, E & O insurance, ETC. The two biggest players in the independent space are Lensco Private Ledger ("LPL") and Raymond James.

The plan was for a Calibourne advisor to have a turn-key solution offered to him. We would have offered him an opportunity to go independent without many of the transitional risks associated with the move. Calibourne would provide office space for the advisor. Calibourne would provide the compliance infrastructure. His clients would not have to open an account at LPL or Raymond James, where there was very little if any branch network. A Calibourne advisor's client could choose between either having the assets held in custody at Fidelity or Schwab, both of which have extensive branch networks. Our research showed that over 70% of investors already had either a Fidelity or Schwab account of some variety. That familiarity with the custodian would make it easier for an advisor to transition clients. The client would feel empowered having their assets held at one of those two custodians, thus making them more comfortable to transfer additional assets over. At any point, they could walk into a Fidelity or Schwab branch and conduct whatever business they needed to do. Additionally, we were working on having APF II held directly on the Fidelity platform. Investors would have been able to pull up all of their accounts with a single log in.

Calibourne was able to provide all those enhanced services to advisors, and provide the advisor an up-front signing bonus. None of our competitors were offering up front bonuses. Our offer would have been far and away the most compelling one in the business.

Calibourne was able to provide far more to potential hires than any other company because we figured out another way to monetize assets in a way that wasn't being done in the independent RIA space. Our profit center was not derived from the split we received on an advisors billable account management

services. Calibourne's profit center was its hedge fund, APF II.

Against long odds, Calibourne received approval to not only charge a fee for managing assets, but in addition we were approved to offer our own proprietary hedge fund to our clients. This to my knowledge had never been accomplished before with the structure we had in place. That is why it took over 7 months to get approved as an advisor in California. Typically advisors are approved in 30-60 days. While there are few other firms that were able to offer their own proprietary hedge funds to their clientele, none of them had the compensation structure in place for their advisors that would incent them to offer that investment vehicle to their clients like we had.

WE COULD INCENTIVIZE OUR ADVISORS TO POSITION APF II

A Calibourne advisor had the ability to not only recommend our hedge fund to their clients, but when they did, they would reap the following benefits:

1. The advisor would be compensated up front to do so. Normally an RIA would bill a yearly fee of roughly 1% for their services to their clients. When recommending APF II, they would be compensated 5% up-front payable from the placement fee charged by the fund. This up-front compensation would be comparable to selling a mutual fund with a front-end sales load.
2. The Calibourne advisor would still receive the yearly 1% fee that he would have received for managing the assets, only now he didn't have to manage them. APF II charged a 2% annual management fee, and the advisor would retain 50% of it. Calibourne would retain the other 50%, or 1%.
3. The Calibourne advisor would in a way be able to participate in the profits of their client accounts. We had a structure in place wherein the advisor would be compensated a certain percentage of the profits derived from the performance fees charged to their client accounts. APF II charged a 20% performance fee on the profits of the fund. We were approved to compensate our advisors a percentage of that fee.

Whether the Commission agrees with the model, or if they believe it was not attainable is irrelevant. What we had put in place was a revolutionary idea with a well thought out game plan for success. Our goal was to work extremely hard to locate the **right** advisors looking to go independent (which we were doing), and provide them an offer that was more compelling than any other offer in the industry (which I believe we did). That is how we landed a nearly 20-Year industry veteran with a significant client base as our first hire. We would have landed many more Sanchez's if Sullivan didn't lose control of his life.

So by making its blanket assertion, based on no testable facts or evidence, the Commission is simply advancing an opinion that the models were

unsubstantiated. The Commission's lead investigator has never valued a company in her career. The Commission has failed to designate an expert witness to testify about this opinion. My opinion, about which I am prepared to testify, is that the models were attainable.

Notwithstanding that I attempted to make every document I helped author as accurate as I could, I had no duty to verify that any document that APE distributed to its investors or potential investors was compliant, achievable or anything else for that matter. I had zero operational control at APE. I was not even an APE employee when the document referencing the models was authored. Sullivan was the chief compliance officer of APE and the sole control person at APE. It was Sullivan's duty to make sure documents were compliant before he sent them out to his investors. I merely produced them to the best of my abilities based on my vision for the business. With that, I still believe all documents produced by me were both compliant and substantiated.

EXAMPLE OF ERRONEOUS COMMISSION ALLEGATION AGAINST ME PERTAINING TO THE USE OF UNSUBSTANTIATED HYPOTHETICAL VALUATION MODELS

The Commission blithely asserts that I stated in the APE business plan that ***APE would manage*** $300-$400 million through Calibourne. In the paragraph two in the summary portion of the OIP, amongst many other mistruths, the Commission charges, "Through Calibourne, APE would manage $300-400 million within one year." Just like in the many other areas of this OIP where the Commission has made false claims about me, it has either misrepresented, or has failed to take the time to fully understand the facts. In either instance, it is shameful.

But the business plan nowhere states that APE would manage $300-$400 million through Calibourne. In fact, I never claimed APE would manage one nickel. So the Commission is premising its allegations on demonstrable falsehoods.

If the Commission had properly investigated, it would have read the business plan, the Schedule F for Calibourne, the LLC Agreement for Calibourne, and the Offering Circular for APF II. The Commission would then have known that APE had zero ability to manage any Calibourne assets, or have any input whatsoever into managing Calibourne's operations. As such, the fact that APE may have had limited prior success in starting companies and managing them, would be of little consequence to me because APE would have no ability to manage Calibourne.

The Commission assertion, therefore, that I knew APE had failed ventures

in the past, is a red herring and totally not relevant, even if true. The fact that American Private Equity was an investor in APF II was not only disclosed in the offering circular for that entity, but there was a paragraph that stated that American Private Equity had been involved in ventures in the past, where all of the capital was lost. Thus proving again, there was no intent to mislead or deceive in any materials that I was connected to.

APE was merely a vehicle that was to provide capital to Calibourne. Sullivan helped in that regard, and helped to recruit advisors, but he had no say in how I ran Calibourne. I also made certain that Sullivan would have no ability to manage Calibourne or APF II before I went into business with him in July 2010. If the Commission actually took the time to examine how the agreement for APF I, and the agreement for APF II differed, they might not be as bold with their charges. Where Sullivan controlled all activities with respect to the management of APF I, I controlled all decision making in both APF II and Calibourne.

BACKGROUND ON MY EMPLOYMENT AT FIDELITY

I did not misrepresent my employment background at Fidelity. I did misremember the title of an award I received. I somehow remembered "Chairman's Circle of Excellence Award", though the actual title was "Chairman's Club Award". I have the proof I received that award.

I reported my history at Fidelity as follows in the business plan:

1. "David was recruited as part of a team to open that new and high profile investor center in Santa Monica, CA."

2. "David was tasked with developing financial planning strategies and providing investment management services for a client base with over $1 Billion in Assets under Management. "

Fidelity, responding to the Commission's inquiry said:

"While ***the dollar amount may be an accurate aggregate figure*** reflecting the assets held by Mr. Montanino's clients, the Firm is unable to verify, given the amount of time that has passed and the fact that the dollar amount would have changed over Mr. Montanino's three years with the firm. The ***description of developing financial planning strategies appears in line*** with the FPC job description. Mr. Montanino's statement providing investment management services is not as clear. Mr. Montanino did not manage customer's assets."

I never claimed that I managed customer's assets.

Providing investment management services is what I did when I helped

clients select which investment managers would be appropriate for what their goals were. In Portfolio Advisory Services alone, I was credited with positioning roughly $40 million of that discretionary and fee based investment management service to my clientele.

I stated that "I conducted over a thousand portfolio reviews and complex retirement income plans." Fidelity did not dispute that. Although, according to Fidelity records obtained via my subpoena, that number was more like 750, portfolio reviews and retirement income plans, but that did not take fully into account the 1700 investment consultations I conducted over my three-year tenure. Thus, my remembered estimates were not materially different from the substantiating records.

I also stated: "For his accomplishments he was awarded the prestigious Chairman's Circle of Excellence Award and was Recognized for his Excellence in Action, for assisting the firm in completing market and client research which ultimately changed relationship model that Fidelity maintained with some of its most valuable clients. " In another bio, I claimed that "I was selected as one of 20 advisors nationally to participate in a new management program that ultimately changed the way Fidelity managed their large affluent client base."

Fidelity reported:

"Mr. Montanino participated in a pilot program where he was assigned clients, and he was asked to build relationships with those customers through guidance interactions."

This was downplaying my role as evidenced by my manager's assessment of my contributions to the pilot program and the program itself when I was awarded the "Excellence in Action" Award that I asserted in my bio. Winning that award was another assertion that I made that was accurate.

According to my manager Ms. Whatley: "Their objective is to determine the most effective methods to engage our mass affluent clients and increase profitability of those households. Additionally, he's [Montanino] been recognized by the National Pilot Leadership Team for providing well thought out and impactful feedback as decisions are made to refine processes prior to national launch. This is a key priority for the firm and his efforts are a big part of how we will bring Fidelity to the top of competitors in dealing with our target client households. The production results he has achieved over the past quarter have been especially fantastic-given the context of obtaining them within the pilot. Here are the highlights $11.2 Million in Net Flows, $6.3 Million in PAS (145%) $1.5 Million in FILI (168%), $2.1 Million in Funds, $1.7 Million in Fixed Income. He was ranked #2 out of 20 on the National DFPC scorecard."

I asserted in my bio that "I was credited with bringing in over $200 million

in additional assets to the firm."

Fidelity stated: "The Firm is unable to confirm an exact dollar amount, Fidelity's records reflect approximately $137,350,000 attributable to Mr. Montanino over his 3 years with the firm." Information provided since that statement by Fidelity shows $150,000,000 attributable to me.

All of the foregoing highlights out how fundamentally disingenuous the Commission is being here. On the one hand, in order to make me seem more important than I was, it attempts to hammer that I was a "Senior Managing Director" of APE earning $700.00 per week with no health insurance. On the other hand the Commission seeks to downplay my role as a mere "Customer Relationship Representative" at Fidelity Investments, where I was earning over $120,000.00 per year, with a pension, matching 401k plan, Profit Sharing Plan, and full benefits package.

CONCLUSION

The Commission has failed to properly investigate. Based on its failures, the Commission has made unsupported assumptions, asserted "facts" flatly controverted by readily available, easy-to understand documentary evidence. It has apparently abandoned its responsibilities in order to show something for its investigation into a man who inconveniently for them died suddenly, and his partner, who is imprisoned.

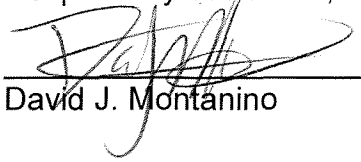
My connection to Sullivan is far too attenuated to impose any liability on me. I believe I have been twice victimized – first by Sullivan and now by the Commission. Sullivan perhaps did not know better, or could not help himself – it may have been in his nature. But he Commission should be held to a higher standard; it has no excuses.

For the foregoing reasons, not only should all the claims against me be dismissed or denied, but the Commission should be ordered to recompense me for all my expenses incurred in defending against its self-evidently frivolous charges. I will present a detailed breakdown evidencing my damages at he hearing.

Thank you very much Judge Grimes for reading all thirty pages of this. It was much longer than I would have liked it to be.

Dated: October 17, 2014

Respectfully submitted,



David J. Montanino

EXHIBIT A

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Monday, November 11, 2013

Danielle Sallah, Esq.
Senior Attorney
SEC Enforcement Division
3 World Financial Center,
New York, New York 10281

Re: In the Matter of TASK Capital Management

Dear Ms. Sallah:

I represent David J. Montanino (Montanino), and submit this letter in response to your "Wells Notice", forwarded to me in the form of correspondence dated October 28, 2013.

In your letter you refer to possible claims arising from alleged violations of The Investment Company Act of 1940 (the Act) §§ 206(1), 206(2) and 206(4) as well as "Rule 206(4)-8 thereunder".

For the reasons we very briefly set forth below, the Commission will not be able to meet its burden to prove that my client violated, either in his individual capacity or in his capacity as a principal of Calibourne Capital Management, LLC (Calibourne) any of the cited statutes.

As detailed in my settlement communication of July 25, 2013, Montanino had no operational authority at American Private Equity, LLC (APE) or at any American Private Fund (APF)[1], each of which were exclusively controlled by Timothy Sullivan (Sullivan).

We understand that Sullivan is dead, possibly from suicide. If any violations were committed by Sullivan, the person with whom he committed them, Anthony Klatch (Klatch), is in prison.

[1] There was a second APF (known as APF2) that granted Montanino operational authority, but that second APF never became operational.

DE 1

SECTION 206 (1) OF THE ACT

Section 206 (1) provides:

> It shall be 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.

Montanino's company, Calibourne, had no clients. To the extent that Montanino personally made anyone aware of the existence of Sullivan's APE and APF projects, Montanino communicated with only one potential client that ultimately invested, which communication was in person, and nothing in Montanino's communication was false or misleading.[2]

SECTION 206 (2) OF THE ACT

Section 206 (2) provides:

> (2) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client;

Montanino's company, Calibourne, had no clients. To the extent that Montanino made anyone aware of the existence of Sullivan's APE and APF projects, Montanino did not engage in any fraudulent transaction. In fact, for the extremely limited time that Sullivan permitted Montanino to effectuate trades for an APE / APF client, the transactions were suitable and profitable, as brokerage records will reveal on discovery.

SECTION 206 (4) OF THE ACT

Section 206 (4) provides:

> (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,

[2] Montanino did later have conversations with some of Sullivan's actual clients, those who had *already* invested with Sullivan based on Sullivan's solicitation. To the extent Montanino may have spoken to potential Sullivan clients, none, to the best of Montanino's knowledge, other than as expressly identified in this submission, invested money with Sullivan. At Sullivan's request, Montanino was asked to describe Calibourne to Sullivan's existing clients.

practices, and courses of business as are fraudulent, deceptive, or manipulative.

Montanino's company, Calibourne, had no clients. To the extent that Montanino made anyone aware of the existence of Sullivan's APE and APF projects, Montanino did not engage in any fraudulent transaction. In fact, for the extremely limited time that Sullivan permitted Montanino to effectuate trades for an APE / APF client, the transactions were suitable and profitable, as brokerage records will reveal on discovery.

RULE 206(4)-8

Rule 206(4)-8 provides:

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 for any investment adviser to a pooled investment vehicle to:

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

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.

Definition. For purposes of this section "pooled investment vehicle" means any investment company as defined in section 3(a) of the Investment Company Act of 1940 or any company that would be an investment company under section 3(a) of that Act but for the exclusion provided from that definition by either section 3(c)(1) or section 3(c)(7) of that Act .

Montanino's company, Calibourne, had no clients. To the extent that Montanino made anyone aware of the existence of Sullivan's APE and APF projects, Montanino did not engage in any fraudulent transaction. In fact, for the extremely limited time that Sullivan permitted Montanino to suggest trades for an APE / APF client, the transactions were suitable and profitable, as brokerage records will reveal on discovery.

SUMMARY

Montanino did not knowingly conduct or participate in any unlawful or fraudulent scheme with Sullivan or with anyone else or by himself. If Sullivan violated any statutes, regulations, rules or industry customs, Sullivan did so without the knowledge of Montanino. No evidence exists to demonstrate that Montanino believed that Sullivan, APE and APF were not legitimate. Similarly, the Commission has no evidence that would show that Montanino knew that Sullivan was perpetrating a fraud[3].

Montanino's contact with past or future APF or APE clients / potential clients was far too attenuated to allow Sullivan's "customers" to reasonably rely on Montanino or establish any duty or obligation from Montanino to Sullivan's customers. Montanino had three conversations with one actual investor in Sullivan's deals (Henry and Suzanna Yoo)[4].

Montanino assumes, for purposes of this submission, that the Commission's evidence will show that Sullivan was the primary, if not the sole sales person and point of contact for clients of APE. While there were certain conflicts between Montanino and Sullivan, detailed below, Montanino did not learn of Sullivan's alleged malfeasance until after Sullivan's death and until allegations of Sullivan's conduct were made public in connection with the criminal prosecution of Klatch, a trader hired exclusively, and with zero input from Montanino, by Sullivan for APE. Klatch evidently made severe wrong-way bets and lost all the capital invested in Sullivan's fund. The Commission has no evidence tying Montanino in any material way to Klatch.

RESPONDENT

Montanino, in his former career as an investment professional, never had a customer complaint, despite having managed hundreds of millions of dollars at premier firms such as Fidelity, over the years.

Upon information and belief, Sullivan engaged Calibourne in order to take advantage of and flaunt Montanino's stellar reputation to potential investors in Sullivan's funds.

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[3] Montanino has come to learn that Sullivan's trader, Anthony Klatch, has either pleaded guilty to, or was convicted of, participating with Sullivan in certain fraudulent conduct, and is now serving time for those alleged crimes. Notwithstanding the presumably thorough federal investigation that led to Klatch's indictment, no charges of any kind were brought against Montanino, and in fact, Montanino was not even subpoenaed in connection with that indictment.

[4] The Yoos are a married couple and are treated in this submission as a single investor.

Montanino has been out of the investment industry for several years. He is currently employed by D&L Transport (a freight brokerage company) as a logistics broker – matching trucks with clients who have manufactured goods to transport.

BACKGROUND

Sullivan exclusively controlled and operated APE independently of Montanino at all times. Montanino was never a principal or control person of APE. Montanino, unaware of any fraudulent intent on the part of Sullivan, introduced only one actual investor - the Yoos – to Sullivan. Because Sullivan maintained exclusive and sole control, Montanino could not sign checks[5] and thus had no physical ability to "misappropriate" any money from anyone. No contrary evidence exists.

Montanino's primary effort while engaged with APE, and later Calibourne, was focused on building a business model for APF and Calibourne that would enable long-term success. Montanino wrote and produced stock market outlooks and marketing documents for use by APF, APE and Calibourne to be used in connection with offering materials prepared by an experienced transactional lawyer engaged by Sullivan, one Amit Singh, Esq. (Singh). Sometime between January and March, 2010 Montanino wrote and designed a 20-page Stock Market Outlook and Economic Analysis Report for 2010.

Between March and September 2010 Montanino designed and authored:

(i) an informational brochure about the causes of the credit crisis of 2007,
(ii) a recruiting brochure for Calibourne,
(iii) a third quarter updated brochure for the Stock Market Outlook and Economic Analysis for 2010, and
(iv) all the text for the Calibourne website (over 40 distinct pages).

Between November 2010 and March 2011, Montanino lived in New York State at his parents' home during his mother's losing battle with cancer. While dealing with this family crisis, Montanino produced:

(i) a comprehensive 35-page Stock Market Outlook and Economic Analysis for 2011,
(ii) a detailed 40-page APE business plan brochure that described how he believed , based on what Sullivan told him, APE would be investing in Calibourne, and
(iii) a13-page investor presentation for APF.

[5] No signature card for Montanino was ever provided to the bank Sullivan used.

In addition to the production of those documents, Montanino oversaw two employees in their efforts to recruit competent financial advisors to Calibourne. But there is no evidence that Montanino materially participated with Sullivan (or Klatch) in any unlawful processes, because:

(i) Montanino never misrepresented assets under management;
(ii) Montanino never misrepresented liquidity aspects of any investments he may have proposed;
(iii) Montanino never misrepresented risks associated with any investments he may have proposed;
(iv) Montanino never covered up losses.

No contrary evidence exists, and thus the Commission has none.

If the Commission can prove its allegations against Sullivan, then it becomes clear that Montanino was deceived, lied to and misled by Sullivan. Montanino was hired to manage APF in a manner that was consistent with what Montanino described to the sole investor, the Yoos, he introduced. Shortly after the Yoos reviewed and executed the investment materials and elected to invest, Sullivan ***fired*** Montanino as nominal manager of APF, utterly excluded Montanino and and took complete control of the investments and finances of APF, as detailed below.

Sullivan (and perhaps Klatch) changed the investment structure that APF was supposed to adhere to, and evidently managed the fund in a way that was contrary to Montanino's understanding.

Around the end of the second quarter 2010, Sullivan informed Montanino of unspecified "significant" losses in the fund and blamed Klatch. Sullivan said that Klatch took advantage of Sullivan. Montanino was unable to verify whether it was Klatch or Sullivan who made the trades because Montanino had no access to the accounts. When Montanino pressed Sullivan about what "significant" meant, Sullivan said "It's really bad, it might be worthless at this point for all I know."

Montanino never would have introduced the Yoos, whom he regarded as personal friends, to Sullivan, if Montanino had any knowledge of Sullivan's future intentions to terminate Montanino as a manager of the fund.

Montanino never profited from any transactions in APF.

MONTANINO ENGAGED IN NO UNLAWFUL CONDUCT

Montanino did not knowingly, willfully or otherwise engage in any unlawful conduct related to APF, APE or Calibourne.

For three years, from around October 2005 through October 2008, the Yoos' kept Montanino as their financial advisor at Fidelity Investments. In January 2010, Montanino visited the office of Henry Yoo, a veterinarian, to get Montanino's Boston terrier (Minky) treated for a serious bacterial infection.

While there, Susie Yoo asked Montanino what he had been doing since leaving Fidelity. Montanino responded that he had started working with a company called APE and that he was being given the opportunity to manage an investment fund, APF. Susie then initiated a conversation about management of the Yoos' assets. This entire interaction took place in person.

Susie told Montanino that she was no longer happy with Fidelity. She asked Montanino if he could manage their money at APF. Montanino never solicited their investment. Susie said to Montanino, "I would rather you manage this money for us, I trust you more." Montanino said he would manage the account without any placement fee and with no management fees because she was a friend. Not only was that Montanino's intention, but, upon information and belief, the APF documents specified that fees could be waived at any time for any investor. This entire interaction took place in person.

Montanino met with the Yoos at their office at least three times from January 2010 to mid-February 2010, primarily in connection with Minky's treatment schedule. Because of Susie Yoo's inquiry, Montanino brought all fund paperwork on the first of his scheduled appointments (his second visit), including not only his stock market analysis, but also the PPM for APF, along with the entire subscription agreement for APF. Montanino physically handed these documents to the Yoos; he did not mail them or transmit them over any wires.

During this visit, Susie asked Montanino to log into her Fidelity account and make any changes he thought would be good for the portfolio. Montanino declined, but explained to Susie what to do. She had to call Fidelity to liquidate a variable annuity that was in the portfolio. Susie did this while Montanino was in the office. Montanino advised Susie to move her existing portfolio more to a bond allocation from stock, because the account he erroneously thought he was going to manage would be 100% stocks.

Combining the Fidelity account and the $300,000.00 Susie asked Montanino to manage at APF, the combined asset allocation would have been around 50% stocks and 50% bonds, which is where the Yoos wanted to be, and a moderate to balanced overall asset allocation. During the next visit to the Yoos, Montanino, having previously provided the complete PPM, brought only the new account paperwork provided to him by Sullivan. Sullivan was aware that Montanino had previously provided the PPM and Subscription Agreement. This paperwork too was hand carried and not sent by mail or over any wires.

Montanino, again in person and not over the telephone, specifically asked Henry Yoo if he had read the subscription agreement and the PPM for APF. Henry said, "It's on my desk but I haven't read it. I'm not going to read it, I trust you. Just don't lose my money, ok." Montanino asked Henry if he had any questions and Henry said: "No, just don't lose my money."

Montanino specifically told Susie Yoo that APF was a new fund and that she and Henry were the first investors in it.

Montanino fully believed, and therefore assured Susie Yoo, in person, he would manage her money. That was always his intention. Though Montanino never had access to any APE or APF bank accounts, he did not need such access to obtain formal trading authority within the investment pool. And even though Montanino did not have formal trading authority until March 19, 2010, Sullivan had told Montanino that Montanino would be the manager of the fund. The fund paperwork prepared by Sullivan's lawyer, Singh, had not been fully completed to reflect Montanino as the fund manager at the time the Yoos' invested.

Even though Montanino never had access to any APE or APF bank accounts and even though Montanino did not have formal trading authority in APF until March 19, 2010, Sullivan allowed Montanino to suggest the allocations and positions in the Yoos' account. Montanino selected 7 stocks for the portfolio. These stocks bore ticker symbols SU, C, ETFC, ACXM, CCME, EEM, and UYG. Montanino recommended that Sullivan to purchase them in the following amounts:

(i) 2000 SU @ $30.17,
(ii) 17,500 C @ $3.43,
(iii) 56,700 ETFC @ $1.62,
(iv) 2,000 ACXM @ $18.50,
(v) 1,000 CCME @ $12.09,
(vi) 1,100 EEM @ $40.20, and
(vii) 3,800 UYG @ $5.90.

The total investment was over $292,000.00. There was apparently a clerical error made by Columbus Avenue when calculating the value of the Yoos' investment at roughly $265,000.00.

Montanino never charged a placement fee to the Yoos; he had no ability to do so. Montanino never received a placement fee from the Yoos' account. Montanino recollects that the Yoos' account, while he directed it, increased in value to $320,000.00, and was thus profitable. There was no margin balance on the account to Montanino's knowledge. Montanino helped to manage that

account for at most 25 days - from the beginning of March 2010, until around March 25, 2010, when Sullivan relieved Montanino of his duties as portfolio manager. In that 25 day window, Montanino had *formal* authority to act for only 6 (six) days. After Sullivan stripped Montanino of all connection to the Yoos' account, and evidently handed it to Klatch, the account declined.

Sullivan told Montanino that it explicitly stated in the APF documents drafted by Singh that the fund manager could relieve the portfolio manager of duties at any point and that was what Sullivan had chosen to do. Sullivan took over all management of the Yoos' account (and all other funds in APF).

Sullivan threatened Montanino, telling him that if Montanino even attempted to make changes in the account, Sullivan would "report" Montanino for unauthorized trading. Separating Montanino from the funds even further, Sullivan told Montanino he was hiring someone else who was more qualified to manage the account because (i) Sullivan had raised quite a bit more capital that would be invested in the fund, and (ii) Sullivan was not comfortable with Montanino managing it.

From that point forward, Montanino never again had access to any of the APF (or any other Sullivan related) accounts, or to any information about them. Sullivan dictated a situation whereby Montanino had:

(i) NO access to any APF, APE or other Sullivan/Klatch related accounts;
(ii) NO access to information about the status of such accounts;
(iii) NO power to deposit, withdraw or transfer funds from such accounts;
(iv) NO power to impose or cancel fees in such accounts;
(v) NO power to break the 2-year lock-[6]up on such accounts claimed by Sullivan;
(vi) NO success in his efforts to persuade Sullivan to return the Yoos' money, even after counter-threatening Sullivan that Montanino would assist the Yoos in any legal effort to compel Sullivan to return their money, and offered to meet their lawyer to share information.

There is no evidence to the contrary.

In mid-July, 2010, Montanino told the Yoos that their investment had been lost, two weeks after he first learned of it. Montanino did not want to ruin the Yoos' vacation to Korea that the Yoos had been planning for over a year. Montanino personally met with the Yoos and apologized for the delay. Susie Yoo was not happy and told Montanino he should have told her right away.

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[6] Sullivan agreed to waive the two year lock-up after all the money was lost, a Pyrrhic victory for Montanino on behalf of the Yoos.

MONTANINO'S ASSOCIATION WITH SULLIVAN

For approximately 16 months, ending in April 2011 Montanino was arguably in business with Sullivan and APE.

The following facts cannot be refuted with evidence because no such evidence exists:

(i) Montanino was never a partner in APE[7].
(ii) Montanino never had any control of APE investment funds or bank accounts.
(iii) Montanino had no ability to hire or fire APE employees.
(iv) Montanino had no ability to enter into contracts on behalf of APE.
(v) Montanino never made any business decisions for APE.
(vi) Montanino was never an officer or director of APE.

Montanino wanted to start an RIA and recruit financial advisors from other firms to work at soon to be formed Calibourne. Montanino believed (evidently erroneously) Sullivan owned up to his mistakes and had learned from them. Montanino believed (evidently erroneously) Sullivan was a gifted financial mind that if given the right situation would be highly successful in his ventures. As too did many of Sullivan's sophisticated investors.

Sullivan agreed to fund Calibourne. While monies were not directly transferred to Calibourne, APE invested, upon information and belief, around $300,000.00 in Calibourne operations, which Sullivan paid directly from APE funds for all Calibourne expenses, including the formation of APF 2 and Calibourne. Sullivan told Montanino each entity cost around $50,000.00 to get up and running. The legal fees of Amit Singh, Esq., Sullivan's lawyer, were paid by APE for the development of the relevant legal documents. In addition, Montanino hired two employees to work for Calibourne, Troy Gordon and Brandon Tafurt, who each received approximately $40,000.00 from APE as compensation to recruit advisors to Calibourne.

There was a Calibourne website that was created for which APE paid in excess of $100,000.00. There was a professional photo shoot done on the

[7] Montanino is aware that a marketing brochure created by Sullivan falsely names Montanino as a senior managing director of APE. Sullivan's representation in this regard was made without Montanino's input or authorization, and was false when made. Montanino expressly instructed Sullivan not to distribute any documents describing Montanino as Senior Managing Director, because it was false. Upon information and belief, Sullivan did this to others, and those who were not in business with Sullivan sent "cease and desist" letters for such unauthorized use of their names. Montanino told Sullivan in person to cease and desist.

premises of the Twin Towers and the CAA building in Century City, California for the website. There were expenses for graphic designers, financial writers, and various other professional services that were provided for Calibourne by APE. In addition, there was Montanino's compensation of roughly $40,000.00 during the Calibourne period, and $20,000.00 before that. APE provided office space for Calibourne that was roughly $2,500.00 per month. These expenses reflect that APE invested over $300,000.00 in Calibourne operations.

Apart from the small monies paid to Montanino from APE for his salary, Montanino never received any significant compensation from APE. Specifically, over his entire 16-month "employment" with Sullivan and APE, Montanino received a meager $60,000.00 in total compensation (averaging out to $3,750.00 per month), a fraction of the compensation Montanino had received at Fidelity Investments and an amount barely sufficient to live on.

Montanino prepared a marketing document for APE, believing its contents to be accurate and proper. Montanino had no control over modifications Sullivan may have made or what Sullivan disseminated to his investors and potential investors. Sullivan had complete control over APE. Sullivan was the chief compliance officer of APE, and it was his decision to disseminate or not disseminate Montanino's business projections. The Commission has no evidence to the contrary because none exists.

In late 2009, Montanino was approached by Sullivan. Sullivan told Montanino that APE had started 2 hedge funds during 2005-2009, that they were highly profitable and reaped huge benefits for the firm. Montanino had visited Sullivan at Sullivan's house in Brentwood, California, which was quite extravagant. Hence, Montanino believed Sullivan had been successful.

APF collapsed in 2 months. Montanino believed that if he were at the helm of Calibourne and APF 2, the outcome would be different, that he would be successful. Montanino turned down offers to re-enter the financial services industry with his previous employer that would have paid him substantially more than the $60,000.00 he made with Sullivan.

Montanino believed in his abilities and his past experience and was thus reasonable in believing he could make Calibourne succeed. Montanino had worked at some of the largest and most prestigious money management firms in the world. For example, Montanino was tasked with managing a book of over $400 million in client assets at Fidelity Investments and was selected as one of 20 advisors nationally to participate in a new management program that ultimately changed the way Fidelity managed their large affluent client base. Montanino was assigned a book of over 300 high net worth clients. While at Fidelity, Montanino was credited with bringing in over $200 million in additional assets to the firm.

Montanino excelled in positioning managed account programs, insurance, and financial planning strategies and even won a prestigious award for his successes. Montanino personally conducted over 1,000 portfolio reviews for customers and hundreds of complex retirement income plans. Montanino believed that knowledge base along with what he learned in other places like Fisher Investments uniquely qualified him to be able to understand the challenges financial advisors faced, and could provide them with a better alternative than what was currently available to them.

Sullivan basically duped Montanino into believing that Sullivan cared deeply for his investors. No investor Montanino ever spoke with was misled about any aspect of the business plan for Calibourne.

Montanino had no idea at any time of Sullivan's alleged misdeeds, and only first learned of them in connection with these proceedings. The Commission has no contrary evidence.

Based on the forgoing detailed factual recitation, for which no adequate contrary evidence exists, and for which supporting evidence likely exists (though subpoenas may be needed to obtain it from the brokerage firm and others) it is clear that Montanino never engaged in any willful or other misconduct and there is no reasonable evidentiary basis to suggest otherwise.

CONCLUSION

None of Montanino's conduct ever violated any of the statutes or rules cited above. In the absence of sufficient evidence to the contrary, as here, the Commission will not be able to meet its burden of proof as to Montanino and consequently it should proceed no further.

Mr. Montanino expressly reserves all rights and waives none, including the right to amend, alter, augment, reduce or change the statements set forth in this submission.

Very truly yours,

Lawrence R. Gelber

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