

1 MARC J. FAGEL (Cal. Bar No. 154425)
MICHAEL S. DICKE (Cal. Bar No. 158187)
2 dickem@sec.gov
SHEILA E. O'CALLAGHAN (Cal. Bar No. 131032)
3 ocallaghans@sec.gov
ROBERT S. LEACH (Cal. Bar No. 196191)
4 leachr@sec.gov
ROBERT J. DURHAM (Admitted to the New York Bar)
5 durhamr@sec.gov

6 Attorneys for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
7 44 Montgomery Street, Suite 2800
San Francisco, California 94104
8 Telephone: (415) 705-2500
Facsimile: (415) 705-2501
9

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

13
14 SECURITIES AND EXCHANGE COMMISSION,

15 Plaintiff,

16 vs.

17 GLR CAPITAL MANAGEMENT, LLC, GLR
18 ADVISORS, LLC, GERINGER, LUCK & RODE LLC,
and JOHN A. GERINGER

19 Defendants,

20 and

21 GLR GROWTH FUND, L.P.,

22 Relief Defendant.
23

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

25 **SUMMARY OF THE ACTION**

26 1. Since at least 2005, John A. Geringer has raised in excess of \$60 million from
27 investors by misrepresenting the performance and strategy of a private investment fund, the GLR
28

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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HRL

CV 12 2663

Case No.

COMPLAINT

1 Growth Fund, L.P. (the "Fund"), based in Scotts Valley, California. Geringer used false and
2 misleading marketing materials claiming that the Fund has returned between 17-25 percent in every
3 year of its operation by investing in investments tied to well-known stock indices such as the S&P
4 500, NASDAQ, and Dow Jones, as well as in oil, natural gas, and technology-related companies. In
5 fact, the vast majority of money raised went to two illiquid private companies, to pay back other
6 investors, and to three entities Geringer controlled. To the extent Geringer engaged in actual
7 securities trading, far from generating high annual returns, he consistently lost money.

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

12 3. Geringer and three entities he controlled, GLR Capital Management, LLC ("GLR
13 Capital"), GLR Advisors, LLC ("GLR Advisors"), and Geringer, Luck & Rode LLC ("GLR LLC"),
14 violated numerous provisions of the federal securities laws, including the antifraud statutes, by
15 engaging in a scheme to defraud and making materially false and misleading statements in the offer
16 or sale and in connection with the purchase or sale of securities, and by making unlawful
17 representations that the Commission had passed on the merits of securities. Geringer and GLR
18 Advisors, an investment adviser controlled by Geringer, also defrauded their advisory client, the
19 Fund, and the Fund's investors.

20 4. The Commission seeks to enjoin Geringer, GLR Capital, GLR Advisors, and GLR
21 LLC from further conduct that violates the securities laws, disgorgement from them of ill-gotten
22 gains, and payment of civil money penalties, as well as preliminary relief to protect investors. The
23 Commission further seeks disgorgement of ill-gotten gains held by the Fund, a relief defendant in this
24 action.

25 JURISDICTION

26 5. The Commission brings this action pursuant to Section 20(b) of the Securities Act of
27 1933 ("Securities Act"), 15 U.S.C. § 77t(b), Sections 21(d) and 21(e) of the Securities Exchange Act
28 of 1934 ("Exchange Act"), 15 U.S.C. §§ 78u(d) and 78u(e), and Sections 209 and 214 of the

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

7 6. Venue in this District is proper pursuant to Section 22 of the Securities Act, 15 U.S.C.
8 § 77v, Section 27 of the Exchange Act, 15 U.S.C. § 78aa, and Section 214 of the Advisers Act, 15
9 U.S.C. § 80b-14, because a substantial portion of the conduct alleged in this complaint occurred
10 within the Northern District of California. Defendant Geringer resides in the District and Defendants
11 GLR Capital, GLR Advisors, and GLR LLC, as well as the Fund, all maintain an office in the
12 District.

13 DEFENDANTS

14 7. Defendant John Arnold Geringer, age 47, resides in Scotts Valley, California. At the
15 time of the conduct described in this Complaint, Geringer acted as an investment adviser by, among
16 other things, receiving financial compensation (through GLR Advisors) for investing the Fund’s
17 assets in securities. Geringer is the sole member of GLR Advisors, and was a member of GLR
18 Capital and GLR LLC during the relevant period. He has held Series 6, 63, and 65 securities licenses
19 but has never been registered with the Commission.

20 8. Defendant GLR Capital Management, LLC (“GLR Capital”) is a California limited
21 liability company based in Scotts Valley, California. GLR Capital is the Fund’s general partner, with
22 control over the Fund’s affairs. Geringer and two business partners were the members of GLR
23 Capital during the relevant period. GLR Capital has never been registered with the Commission.

24 9. Defendant GLR Advisors, LLC (“GLR Advisors”) is a California limited liability
25 company based in Scotts Valley, California. GLR Advisors acted as an investment adviser to the
26 Fund at the time of the conduct described in this Complaint. Since 2003, GLR Advisors has been
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1 registered with the State of California as an investment adviser, but has never been registered with the
2 Commission.

3 10. Defendant Geringer, Luck & Rode LLC (“GLR LLC”) was a California limited
4 liability company based in Scotts Valley, California during the relevant period. Geringer and the
5 same two business partners were the members of GLR Capital. Fund marketing materials describe
6 GLR LLC as a company that provides investment, insurance and tax-consultation services. GLR
7 LLC has never been registered with the Commission.

8 **RELIEF DEFENDANT**

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

14 **FACTUAL ALLEGATIONS**

15 **Geringer, GLR Capital, and GLR LLC Used False and Misleading Marketing Materials**
16 **to Raise in Excess of \$60 Million From Investors**

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

24 13. Between February 2005 and April 2011, the Fund paid at least \$6 million to GLR
25 Capital, which transferred approximately \$3 million to GLR Advisors (which Geringer controlled as
26 its sole member) and approximately \$1 million to GLR LLC. Separately, the Fund transferred at
27 least \$60,000 to GLR LLC, \$21,000 to GLR Advisors, and \$15,000 to Geringer.

1
2 14. The marketing materials Geringer created and distributed to investors suggested that
3 the Fund was able to achieve steady annual returns of between 17 and 25 percent from 2001 to 2011
4 (including nearly 24 percent in 2008, the year the S&P 500 Index lost 38.5 percent). The marketing
5 materials claimed the Fund was investing the vast majority of its assets – 75 percent – in publicly
6 traded securities, options, and commodities. In fact, as described below, the Fund’s trading strategy
7 produced consistently negative returns. Moreover, since mid-2009 the Fund did not invest in
8 publicly traded securities at all but instead invested heavily in illiquid investments in two private,
9 startup technology companies.

10 15. Between 2009 and 2012, Geringer, GLR Capital, and GLR LLC provided investors
11 with a packet of marketing materials Geringer created, which contained a number of false and
12 misleading statements. Although the Fund was started in 2003, one page of the marketing materials
13 titled “GLR Growth Fund Performance History” claimed the Fund achieved 25 percent returns in
14 2001 and 2002, before the Fund even existed.

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

22 17. In the marketing materials was another document, titled “GLR Growth Fund
23 Investment Policies,” purporting to describe the trading strategy in greater detail. The information
24 provided was meant to convey an investment policy under which the Fund invested in liquid
25 securities that had high trading volumes. It also emphasized diversification within the trading
26 strategy.

27 18. Thus, the marketing materials claimed that the Fund invested 75 percent of its assets in
28 a securities, options, and commodities trading strategy that helped produce the 17-25 percent annual

1 returns. In fact, the Fund's trading produced negative returns in every year from 2005 to 2009. This
2 included a 33 percent decline in 2008 and a 92 percent decline in 2009, when calculated by a standard
3 spreadsheet software program as the annualized internal rate of return considering the cash flows in
4 and out of the trading portfolio.

5 19. Moreover, since at least 2007, substantially less than 75 percent of the Fund's assets
6 were even invested in the trading strategy, and by mid 2009, the Fund was no longer trading at all.
7 For example, at the end of 2007, there was a balance of \$60,725 in the Fund's brokerage accounts.
8 That amount was only 0.3 percent of the Fund's total assets as reported on the Fund's internal
9 balance sheet.

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

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

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

24 23. Geringer's document falsification did not stop there. He also created false brokerage
25 account statements showing the Fund had over \$100 million in a brokerage account that actually had
26 a balance of less than \$8,000. Geringer kept these false brokerage statements on hand at his office in
27 case any investors started asking about the Fund.
28

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

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

16 26. Geringer, GLR Capital, and GLR LLC knew, or were reckless in not knowing, that the
17 Fund marketing materials and periodic account statements they created and distributed, and the
18 statements they made in emails to investors and prospective investors, were false and misleading.
19 They further knew, or were reckless in not knowing, that the falsified brokerage records Geringer
20 created would be used to prepare the Schedule K-1s that were provided to investors.

21 **Geringer, GLR Capital, GLR LLC, and GLR Advisors Distributed False and**
22 **Misleading Account Statements to Fund Investors, and Geringer and GLR Advisors**
23 **Misused Fund Assets**

24 27. The periodic account statements Geringer prepared and mailed to investors purported
25 to show how their investments in the Fund had grown, furthering the illusion of profitability. The
26 account statements listed the investor’s initial investment, a deduction for the management fee, and
27 the addition of the “contract income” purportedly earned by the investor, totaling a purported “Total
28 Cash Balance.” Without disclosing that the securities trading generated significant negative returns,

1 Geringer calculated the purported “contract income” based on his estimate of the unrealized value of
2 the Fund’s illiquid, private-company investments. Geringer calculated “contract income” in this way
3 despite provisions in the Fund’s limited partnership agreement calling for each investor’s interest in
4 the Fund to be calculated based on the actual, realized gains and losses of the Fund’s investments.

5 28. When certain investors withdrew their investments from the Fund, they received the
6 “Total Cash Balance” calculated by Geringer, rather than the actual capital account balance as called
7 for in the limited partnership agreement. Geringer thus used Fund assets to pay withdrawing
8 investors more than they were entitled to receive, hiding the Fund’s losses. In addition, more recent
9 investors, and those who remained in the Fund, faced a risk that there would be insufficient assets to
10 fund their eventual withdrawals.

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

14 30. Geringer, GLR Capital, GLR LLC, and GLR Advisors knew, or were reckless in not
15 knowing, that the account statements they created and distributed to investors were false and
16 misleading. In addition, Geringer and GLR Advisors knew, or were reckless in not knowing, that
17 they paid withdrawing investors more than they were entitled to receive.

18 31. At all times relevant to the facts alleged in this Complaint, Defendants GLR Capital,
19 GLR Advisors, and GLR LLC acted by and through Geringer.

20
21 **FIRST CLAIM FOR RELIEF**

22 **(Violations of Section 17(a) of the Securities Act by All**
23 **Defendants)**

24 32. Paragraph numbers 1 through 31 are re-alleged and incorporated herein by reference.

25 33. Defendants Geringer, GLR Capital, GLR Advisors, and GLR LLC have, by engaging
26 in the conduct set forth above, directly or indirectly, in the offer or sale of securities, by the use of
27 means or instruments of transportation or communication in interstate commerce, or of the mails: (a)
28 with scienter, employed devices, schemes, or artifices to defraud; (b) obtained money or property by

1 means of untrue statements of material fact or by omitting to state material facts necessary in order to
2 make statements made, in the light of the circumstances under which they were made, not
3 misleading; and (c) engaged in transactions, practices, or courses of business which operated or
4 would operate as a fraud or deceit upon the purchasers of such securities.

5 34. By reason of the foregoing, Defendants Geringer, GLR Capital, GLR Advisors, and
6 GLR LLC have directly or indirectly violated Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a),
7 and unless enjoined will continue to violate this provision.

8 **SECOND CLAIM FOR RELIEF**

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

11 35. Paragraph numbers 1 through 31 are re-alleged and incorporated herein by reference.

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

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

24 38. In the alternative, Defendant Geringer knowingly or recklessly provided substantial
25 assistance to GLR Capital, GLR LLC, and/or other persons' violations of Section 10(b) of the
26 Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5(b), 17 C.F.R. § 240.10b-5(b), and therefore is
27 liable as an aider and abettor pursuant to Section 20(e) of the Exchange Act, 15 U.S.C. § 78t(e).

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THIRD CLAIM FOR RELIEF

(Violations of Sections 206(1) and 206(2) of the Advisers Act by All Defendants)

39. Paragraph numbers 1 through 31 are re-alleged and incorporated herein by reference.

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

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

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

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

44. Defendants GLR Capital and GLR LLC knowingly provided substantial assistance to Geringer, GLR Advisors, and/or other persons' violations of Sections 206(1) and 206(2) of the Advisers Act, 15 U.S.C. §§ 80b-6(1) and (2), and therefore are liable as aiders and abettors pursuant to Section 209(d) of the Advisers Act, 15 U.S.C. § 80b-9(d).

FOURTH CLAIM FOR RELIEF

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

45. Paragraph numbers 1 through 31 are re-alleged and incorporated herein by reference.

1 53. By reason of the foregoing, Defendants Geringer, GLR Capital, GLR Advisors, and
2 GLR LLC have violated Section 26 of the Exchange Act, 15 U.S.C. § 78z, and unless restrained and
3 enjoined will continue to violate this provision.

4 54. In the alternative, Defendant Geringer knowingly or recklessly provided substantial
5 assistance to Defendants GLR Capital, GLR LLC, and/or other persons' violations of Section 26 of
6 the Exchange Act, 15 U.S.C. § 78z, and therefore is liable as an aider and abettor pursuant to Section
7 20(e) of the Exchange Act, 15 U.S.C. § 78t(e).

8 **PRAYER FOR RELIEF**

9 WHEREFORE, the Commission respectfully requests that the Court:

10 I.

11 Enjoin Defendants Geringer, GLR Capital, GLR Advisors, and GLR LLC preliminarily and
12 permanently from directly or indirectly violating Section 17(a) of the Securities Act, 15 U.S.C.
13 § 77q(a), Sections 10(b) and 26 of the Exchange Act, 15 U.S.C. § 78j(b) and 78z, and Rule 10b-5
14 thereunder, 17 C.F.R. § 240.10b-5, and Sections 206(1), 206(2), and 206(4) of the Advisers Act, 15
15 U.S.C. §§ 80b-6(1), 80b-6(2), and 80b-6(4), and Rule 206(4)-8 thereunder, 17 C.F.R. § 275.206(4)-8.

16 II.

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

20 III.

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

23 IV.

24 Enter an order requiring Defendants to pay civil penalties pursuant to Section 20(d) of the
25 Securities Act, 15 U.S.C. § 77t(d), Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d), and
26 Section 209(3) of the Advisers Act, 15 U.S.C. § 80b-9(e).

V.

Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

VI.

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

Dated: May 24, 2012

Respectfully submitted,



Robert J. Durham
Attorney for Plaintiff
SECURITIES AND EXCHANGE COMMISSION