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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
December 19, 2014

RESPONDENT DAVID J. MONTANINO'S POST HEARING MEMORANDUM

PRELIMINARY STATEMENT

I, Respondent David J. Montanino ("Montanino" or "me" or "I"), respectfully submit my Post-Hearing Memorandum. **From The Start,** the Securities and Exchange Commission ("The Commission") has not investigated this matter thoroughly enough, and has blatantly disregarded evidence in an effort to recoup their investment made into the investigation of American Private Equity ("APE"), TASK Capital Management ("TASK"), ARM Capital Management ("ARM"), American Private Fund ("APF"), Timothy Sullivan ("Sullivan"), and Anthony Klatch ("Klatch"). I was never the target of any of their investigations until after Sullivan's death.

Sullivan and Klatch launched ARM in 2008, and TASK in 2009. They managed both of those funds recklessly, and all investor capital was lost in a very short period of time.

APF launched in 2010, and was the third fund, in three years, that suffered the same fate, by the same set hands, using the same

investment strategy, as the two previous funds. I had no contact with Sullivan during the TASK or ARM period, and was not in any way complicit in the failure of APF.

I did not realize it at the time, but I have come to realize over time, that Sullivan was a con artist, and a fraud. He took advantage of people's trust, and exploited them for his own benefit. I was left penniless, and with no ability to work in the securities industry because I trusted Sullivan. Sullivan's investors lost money, and were put into unfortunate positions because they trusted Sullivan.

I was not the only employee that Sullivan exploited for his own personal benefit. I just happened to be the last one. (R91 P.1-6) shows how Sullivan took advantage of another one of his employee's before me. In that exhibit, the employee is soliciting his own parents to invest $1 Million into Sullivan/Klatch's second fund, TASK, even as he knew that their first fund went belly up.

I am ashamed that he was able to exploit me in the ways that he did, and I am remorseful that people got hurt. But I did not mislead, or knowingly help Sullivan mislead any investors, at any time. There is no evidence to the contrary.

Sullivan and Klatch defrauded people. They reaped huge financial benefits in the process. Klatch apparently had multiple homes, multiple exotic vehicles, boats, tens of thousands of dollars in cash, off shore bank accounts, and even a plane. Sullivan had expensive homes, an Aston Martin, an Audi, a classic convertible Cadillac, was a member of a yacht club, had an expensive baseball card collection displayed on his wall, and lived an overall lifestyle of excess.

I did not own a home, and did not live in excess by any definition. I earned roughly $87,000.00 over my entire 17-Month employment (R94). My personal wealth went negative as a result of working with Sullivan (R159). There are many distinctions between Sullivan, Klatch, and me. The Commission refuses to recognize them only for their own self-serving reasons.

Sullivan contacted me out of the blue, sometime in November 2009. Although I did not know it at the time, it was right after the

TASK fund blew up. I had no substantive contact with Sullivan for over four years before that phone call he made to me. He invited me over to his extravagant home in Brentwood, CA. He portrayed success. He said all the right things. He was goal-oriented and driven.

I wish now that I had never picked up his call, and then later accepted his offer to work for him in December 2009. It has ruined my life. Personal relationships have been lost, people got hurt, and my reputation has forever been shattered as a result of that decision.

Sullivan and I were not business partners. Any examination of banking and business records proves that. We were not friends. We had known each other for a long period of time, but we communicated very infrequently. I was close with Philip Redden. Sullivan and Redden were business partners, before Redden passed away.

If we were long-term business partners, the Commission could have called witnesses to verify that. They did not. If Sullivan and I were business partners in any capacity whatsoever in APE, APF, TASK or ARM, the Commission could have produced **one** document that stated we were. They could not.

Sullivan's company did invest in my company, but it was a one-way street. I did not share in the profits of APE. I did not share in the profits of any Sullivan controlled entity. Partnerships have partnership agreements. Partnerships have shared risks and shared profits. I was not Sullivan's partner.

The Commission's charge that Sullivan and I conducted a 6-Year fraud is outrageous. I had no communication with Sullivan from May 2005-November 2009. There have been no claims made that Calibourne was a fraudulent venture in 2005. APE funded Calibourne roughly $30,000.00 over a roughly five month period in early 2005.

I was never a control person by any legal or equitable standard at APF, ARM, TASK, APE, or any other Sullivan controlled Entity.

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.

THE COMMISSION KNOWS:

i. **I did not misappropriate capital.**
ii. **I was not compensated to take the Yoos' investment.**
iii. **I did not trade the APF account recklessly.**
iv. **I was misled by Sullivan.**
v. **I received below market compensation while working with Sullivan.**
vi. **Sullivan lost all of the capital in the APF account.**
vii. **Sullivan had a history of taking advantage of people.**
viii. **Sullivan misled his investors.**
ix. **Sullivan blew up three hedge funds.**
x. **Sullivan misappropriated capital.**
xi. **Sullivan lived in excess.**
xii. **Sullivan became** [redacted]
xiii. **Sullivan was the fraudulent one.**

That is why in their Order Instituting Proceedings ("OIP"), the Commission does not charge me with directly committing the acts that led to the loss of investor capital. Instead, they have chosen to try and lump me in with Sullivan, and attempt to assign vicarious liability onto me.

<u>IN EVERY INSTANCE WHERE THEY USE THE PHARASES "MONTANINO AND HIS PARTNER," OR MONTANINO'S PARTNER," THAT MEANS SULLIVAN</u>

OIP 8 "Montanino and his partner raised at least $485,000.00 for APE...and misappropriated nearly all of it."

No witness testified that they invested any capital as a result of my solicitation. Bill Pankey was the by far the single biggest investor in APE. (R178) Question 10. Did you invest any additional money due to Montanino's encouragement? Answer "No."

Sullivan raised all of the capital, and appropriated all of it.

OIP 13 "By then, Montanino's partner had already leveraged the investor's money by about 104 percent through risky margin transactions."

The Commission knows it was Sullivan trading the account on margin.

OIP 21 "The broker dealer shut down APF's account and wired the fund's last $143,897 to an empty APF bank account **controlled** by Montanino's partner."

If I were truly his partner, there would have been no bank account controlled only by Sullivan.

OIP 26 "Falsely claiming that her losses occurred after his partner **unilaterally** transferred her investment to an unrelated hedge fund."

OIP 36 "Instead, Montanino's partner used most of APE Investor B's money for personal benefit within weeks of obtaining it."

OIP 42 "Montanino's partner looted the rest of APE's assets for personal benefit, transferring tens of thousands of dollars to his checking account, withdrawing substantial amounts in cash, paying others having no apparent business relationship with APE, and otherwise spending investors' money on luxury rental homes costing $15,500 to $20,000.00 per month, luxury car payments, shopping sprees, and to make partial payments to existing investors."

OIP 43 " Montanino knew of his own misappropriations."

The Commission did not point to one specific misappropriation in their OIP, and failed to even broach the subject at the hearing.

THE COMMISSION WAS DISHONEST IN THE OIP

OIP 10 The Commission charges I "exploited a pre-existing relationship." They charge, "I approached the then-potential investor where she worked and asked her to invest in APE's newest fund."

Mrs. Yoo testified that I was at her place of business to get my dog treated, and that I did not approach her, and ask her to invest. She testified that she asked me for help with her investments, and her becoming a client was a "mutual agreement."

OIP 33 The Commission takes an excerpt from an email and pieces it together with other parts of the email in an attempt to portray a scenario wherein I was a partner of Sullivan's in raising capital for APE. The full email (DE 47) tells a very different story then the pieced together version the Commission included in their OIP. The "We all have to close" statement is referencing our recruiting efforts, not closing investor's as the Commission is attempting to lead the court to believe. "Troy needs to get a few more Elliot's" is referencing a new recruit. Elliot was an advisor at a bank. The context of the email was about Sullivan getting healthy, and us working together to develop a plan for success, not about approaching investors and closing them. Incidentally, the sentence "I have a lot of investors counting on me," is a quick look into how Sullivan would get people to believe in him. I believed Sullivan cared about his investors.

OIP 40 "In reality, Montanino's then-recent abysmal performance managing APF Investor A's money constituted his **only** actual investment management experience." **OIP 13** "Montanino failed to disclose that he had **no** actual experience managing client assets."

At the hearing, Sharon Jones testified that I managed her money for her, she paid me a fee for my service, and I did a very good job for her. That did not stop the Commission from charging I had no experience managing money. I am quite certain they never contacted even a single employer I worked for other than Fidelity before making that erroneous charge.

Based upon Mrs. Jones' testimony, and documents that she provided to the Commission in advance of the OIP being drafted, there can be no other conclusion drawn than that the Commission knew that they were fabricating those charges about me not having any investment management experience when they were made.

OIP 42 "Calibourne's bank records sow that APE provided only about $33,515.00, of which Montanino took $28,870.00 for himself."

That is false, they know it, and I proved it to be so at the hearing. APE funded Calibourne expenses directly and there is no basis for the Commission claiming otherwise, or for that matter, claiming that they were not aware of the funding APE was providing for Calibourne. (R129) proves they knew of the funding arrangement. Sarah Lindsay testified at the hearing. Additionally, I informed the Commission of the funding agreement in both my Wells Submissions, and they had all the banking records.

OIP 43 "Montanino knew of his own misappropriations and recklessly disregarded facts indicating his **partner** used APE's assets contrary to the firm's disclosures to investors...Montanino who controlled Calibourne's only bank account, knew that no real capitalization materialized and, thus, knew his **partner** used investor money contrary to the representations both he and his **partner** made to fund investors.

APE was funding Calibourne (R202). The Commission has chosen to ignore easy to understand documentary evidence so it can advance its fallacious theory.

OIP 41-43 are complete fabrications. As such, they deserve no consideration.

THE COMMISSION DID NOT PROVE THEIR CASE

The Commission never proved my version of the events relating to APF, Calibourne, and APE was not accurate. My account has been consistent from day one. My Wells Submission claims were made over two and a half years after Sullivan died, over three and a half years after the Yoos' invested, and were all made from memory.

As a result of the Commission not having a shred of actual proof that I was ever knowingly involved in any wrongdoing, they were left with no other option but to assail my character. They hoped that a whole series of unconnected dots would somehow magically get connected if they could prove that I was not forthcoming on a resume that I provided to a potential employer nearly ten years ago.

With a full time job, no legal background, no counsel, and never having cross-examined a witness in my life, I believe that I proved my innocence at the hearing, although not necessary. The Commission has the burden of proof, and even with daily transcripts that cost the American Taxpayer well over $20,000.00[1], two experienced attorney's to present their case, sometimes three other attorney's present in the courtroom to bounce ideas off, a paralegal, over three years of investigating, infinite resources, and an unlimited budget at their disposal, they could not meet their burden.

I proved the Commission was dishonest in their OIP, and fabricated charges against me. I exposed how under-investigated this case was. I proved the Commission instructed their own employee to analyze evidence inadequately. I proved that Susie Yoo was at the very least not forthcoming, and possibly outright dishonest. I proved my version of the events related to APE, APF, and Calibourne were

[1] All accounts of testimony in this memorandum are based solely on memory. Due to the excessive cost, I did not order the transcripts. I apologize for any mischaracterizations of testimony. I have done my best to recall the testimony as it was given.

the accurate one's. I proved my innocence. I was able to do so because the truth was on my side.

The Commission seeks to ban me from the securities industry for life, suffer all of the shame that would be associated with such an injunction, disgorge me of every dime I legitimately earned, and fine me hundreds of thousands of dollars that I do not possess, and likely never will, with no proof of any wrongdoing.

At the finish, the last question the Commission posed to me shows just how poorly their case was put together, and just how under-investigated it was when Ms. Krishnamurthy asked me if I ever planned on telling anyone that investors lost all of their capital investing with Timothy Sullivan in the past?

When I testified I did plan on telling potential investors, she looked at me with that same unprofessional face she had been flashing at me throughout my testimony, and said: "Really, you planned on telling people that." She rested their case and then I proceeded to very easily prove that I did plan on telling investors about Timothy Sullivan's past (R3 P. 26).

With over three and a half years of investigation, and a week spent at the hearing, the Commission never once proved that I misled any investor about any fact related to the purchase or sale of a security. They did not prove I aided or abetted Sullivan in committing fraud. They did not prove that I was negligent.

The Commission's claims should be denied in their entirety. They presented no material evidence sufficient to enable them to meet their burden. I have no direct liability because I did not cause any loss, misappropriate any money, violate any securities law, or otherwise engaged, in any unlawful conduct of any kind.

AMERICAN PRIVATE FUND TIMELINE

As evidenced by actual records and testimony, Timothy Sullivan, and his true partner Anthony Klatch, were responsible for all of the

losses within the APF account, just as they were responsible for the losses in the ARM and TASK accounts. There can be no doubt that $750,000.00 (Seven-hundred-Fifty-thousand) of the $808,000.000 (Eight-hundred Eight-thousand) of four investors capital that was invested into APF was lost after I was completely de-authorized from all communications on the account on April 13, 2010 (R57).

As put forth in both my Wells Submissions, my Pre-Hearing Memorandum, and in my testimony, Sullivan assured me I would be the manager of the fund. He allowed me to pick the initial positions as they were allocated on March 5, 2010. In an email string (R48, R49) between Sullivan and Lime Brokerage on March 5, 2010, the day the account was allocated, it shows Sullivan's initial intent to have a manager for the fund, but then changing his mind, and telling Lime Brokerage that he wanted to "hold off."

When the account was initially allocated on March 5, 2010, it was **diversified** into seven different positions, and the account increased in value by $13,654 as of March 12, 2010. I use the March 12, 2010 date because that is when Sullivan started changing the allocations in the account. That initial profit is exactly the scenario that I explained to Mrs. Yoo over four years ago, and the Commission charges I was dishonest about (**OIP 15**), what I put forth in my Wells Submissions, and what I testified to at the hearing. I was able to list the initial positions in the account in my Wells Submissions, without the benefit of any discovery.

Sullivan got greedy and decided that he wanted to take large risk in the account to generate large performance fees for his own selfish reasons. While he did authorize me on March 19, 2010, he made it clear that he was in charge, and all trades needed to be cleared with him in advance. Effectively, all that changed after I was authorized on the account was that I had the ability to access it. Other than when Sullivan sold out the remainder of the Citigroup position on April 6, 2010, there were no trades effectuated as a result of my input while I was authorized on the account.

It was on March 24, 2010 when I realized Sullivan and gone from aggressive to reckless. There was a margin call for $186,100 (DE 31). It was at that point that I knew that there could be no way that

call would not be affecting the Yoos'. I immediately instructed him either stop managing the account stupidly, or to return the Yoos' money to them. He refused to return their capital, and stated that he was holding them to the two-year lock up period (R3 P.10), and if I did not like it I could quit.

I applied so much pressure on Sullivan to redeem the Yoos' investment that he left the state and went to his home in Key Biscayne, FL. I traveled to Key Biscayne, FL on or about April 4, 2010 to try and convince Sullivan to redeem their investment to them. (R121) shows my presence in Key Biscayne, FL on April 6, 2010, the same day I convinced Sullivan to sign (R54).

At first I was successful (R53, R54) at convincing Sullivan redeem their investment. Not only did Sullivan agree to return their capital to them, but he also said he would allow me to manage the fund. As mentioned earlier, on April 6, 2010, he went so far as to liquidate the only position in the fund that was left from the previous month, thus bringing the account to an all cash position.

For an unknown reason to me at the time, Sullivan changed his mind and de-authorized me on the account on April 13, 2010. Through discovery, I now believe that decision was most likely driven by his dire financial position at the time. (R31) shows on May 3, 2010, that Sullivan instructed Lime Brokerage to transfer $50,000.00 out of the investment fund, and into the management company to pay for rent expense and his own salary. I was unaware of that request at the time, and only learned of it through discovery.

On the same day Sullivan de-authorized me, he immediately began buying penny stocks on margin and concentrated the entire fund into either one or two of those penny stocks. This was the same strategy referenced earlier that Sullivan and Klatch used in both ARM and TASK previously. Sullivan gave me no information about the positions in the account, or the value of that account after I was de-authorized. There is no evidence to the contrary.

After failing to get Sullivan to redeem the Yoos' investment to them, I realized that I needed to inform the Yoos' about what had transpired in the account. On April 13, 2010, Mrs. Yoo invited me out

to dinner (R55). That was only hours after I had been de-authorized on the account (R57). The decision I came to was that I would wait until that April 22, 2010 to tell her in person about the account.

I told Mrs. Yoo on April 22, 2010 that Sullivan had taken over the management of the account. Only one day before that meeting, Sullivan transferred the Yoos' $260,000 (R61) back to the Lime brokerage Account and started to trade it.

The Commission charges in **OIP 26**, that I "shirked my responsibility, falsely claiming that her losses occurred after his partner unilaterally transferred her investment to an unrelated hedge fund."

I told Mrs. Yoo that Sullivan wired the money out of the account, and after that, I never had any access to it again. That statement to Mrs. Yoo was truthful, and is backed up by documentary evidence. I did not "falsely" claim anything to her.

Sullivan transferred the money out of Lime on April 6, 2010 (R54). I was not authorized on the bank account the money was transferred to. **OIP 21** verifies the Commission knew that Sullivan "controlled" that account. Ms. Sacco testified at the hearing I was never authorized on any APE or APF bank account. I was de-authorized on the Lime Account on April 13, 2010 (R57). Sullivan transferred the money back into the Lime account on April 21, 2010 (R61).

Sullivan did in fact hire another manager for the fund, and the money was transferred out of the Lime Brokerage Account again. For some bizarre reason, Sullivan agreed to hire Klatch, and pay him $10,000.00-$15,000.00 a month to manage the account (R 62).

I visited to the Yoos' clinic for one reason and one reason only in early 2010. Dr. Yoo was my Vet, and my dog was sick. Mrs. Yoo testified that she had solicited me for help on her investments, and that she logged into her account and asked me to make changes for her. Mrs. Yoo also testified I had never solicited her for any investments.

APF STRUCTURE AND THE MARGIN CALLS

I testified that I had very little experience with margin outside of what was on the Series 7 Examination. I did not need vast amounts of experience to understand that just because an account has margin calls, it does not mean the account has lost value. Margin calls are a function of not enough equity in the account, nothing else.

The APF account did not go negative until March 30, 2010 (DE 14A P14-17). The Commission is aware of that. **OIP 14** "At minimum, the fund was rapidly losing **liquidity**." They chose their language carefully there, but what they charged is still incorrect. The account was losing equity, not liquidity, or value.

I knew something had to be done to protect the Yoos'. Sullivan had gotten very aggressive and started using margin on the account after he took over managing it. I became aware of that after I was authorized on the account. But during that short period of time while I was authorized on the account, the account was only in negative territory for a day or two in the month of March 2010. There was only one margin call in the month of April 2010, and it was for less than $3,000.00, because Sullivan stopped trading the account. As I stated, something needed to be done, but at least while I was authorized, the situation was not nearly as dire as the Commission has made it out to be. The situation became very dire after I was de-authorized.

Part of my decision on what the best course of action to take was influenced by the fact that the account was not losing value rapidly. It was actually profitable. And although I knew things had to change beginning on March 24, 2010, I felt that I had time to work on Sullivan, and I believed I could get him to return the Yoos' capital.

Additionally, due to the structure of the fund, Sullivan led me to believe the Yoos' would be shielded from much of the risk in the account. On roughly March 15, 2010, Sullivan told me he had raised additional capital. He told me that his investor was in a more aggressive share class than the Yoos' were, and as such, he would be exposed to the risk in the account.

While there was only one master account in the APF investment pool, there were five distinct share classes within the pool (A,B,C,D,E). It was a securitization model.

The individual share classes were allocated the profits and losses in a specific order. The more conservative share classes would be paid first, and have a lower cap on the gains in the account than the more aggressive share classes would, and the more aggressive share classes would be paid later, have a higher cap on the gains, and sustain losses in advance of the more conservative series of share classes. The structure would allow for huge differences in risk/reward characteristics in the fund based upon the series.

The Commission spent large chunks of time going over the offering memorandum for APF. They pointed out where it said the General Partner could use leverage and how the fund could take on risk over and over again.

I believed I would be managing the fund. I had no intention of using margin. In the event of things not working out between Sullivan and me, I never envisioned a scenario wherein he would refuse to return Yoos' capital.

Sullivan misled me, fired me, traded the account on margin, and lost all of the capital in the APF account. I did not mislead the Yoos', or lose one nickel trading their account.

WHEN I REALIZED THE ACCOUNT WAS BEING MANAGED RECKLESSLY I ACTED

I testified that once I knew that the Yoos' were being exposed to excessive risk I acted. As stated in my Pre-Hearing Memorandum, and as I testified to, I did not know exactly what to do. Sullivan was my only boss.

I had already told Sullivan to stop trading the account on margin beginning on roughly March 24, 2010 and he was not listening to me, and I believed he respected me.

I had no reason to believe that if the Yoos' demanded he stop that the outcome would have been any different. The Yoos' signed the subscription agreement and Sullivan was holding them to the contractual commitments inside of it, unless I could convince him to do otherwise. Their money was locked up for two years (R3 P.10 9.3(a)).

It was my belief that if I told the Yoos' to demand their money back, Sullivan would have said no, and it would have just made the situation worse. That was not only my belief, it actually happened. Mrs. Yoo and I have many disagreements about what went on in that account. We do not disagree that the Yoos' met with both Sullivan and me on May 26, 2010, and at that meeting they demanded their money back.

We disagree on what Sullivan's reaction to their demand was. Just as I had believed would be the case, Sullivan did not agree to return their money to them at that meeting. I specifically remember him telling them he was "not prepared" to return their investment to them. I remember it because it angered me, and shocked them. Mrs. Yoo testified that Sullivan agreed to return her money to them at that meeting. Her recollection is faulty.

If Sullivan had agreed to return their money at that meeting, there would have been a redemption form dated May 26, 2010. They would not have left that meeting without verification. They are astute business people. The meeting between all of us was at APE's office. It would have been very easy to have a redemption form filled out. There was no form dated May 26, 2010, because at that meeting there was no agreement made that he would be returning their investment.

The first time a redemption form was filled out was when I emailed it to Mrs. Yoo on June 30, 2010, (DE 40, DE 41) a full month after that meeting. I do not remember why it was dated June 6, 2010. I do know that at the time I sent it to them, I was not aware that all of their money had been lost. Sullivan told me very soon thereafter.

Just as I had previously believed would be the case, the Yoos' demanding their money back had no material impact on them receiving their money back.

Me telling the Yoos,' or not telling the Yoos' at the exact moment that Sullivan had taken over management of the account was not outcome determinant.

My strategy was to get Sullivan to redeem their investment. The Yoos' were friends of mine who I cared about. There was no financial benefit that I reaped for them investing, and none that I would have received in the future if they remained in the fund. There is no evidence to the contrary.

I was fired as manager, and de-authorized on the account. That fact is staring the Commission right in the face, but they choose to disregard it.

What the Commission has missed from Day 1 is that the easier path for me would have been to just tell the Yoos' Sullivan broke our agreement, and that he was managing their money. I tried to help them.

I made the best decision I could at the time. It was a judgment call that was made only with the Yoos' best interest in mind. With hindsight, of course it can be charged that this should have been done, or that could have been done, but what cannot be considered is that I did nothing (**OIP 14**).

THE OFFERING MEMORANDUM WAS PROVIDED

Mrs. Yoo has an obvious stake in the outcome of these proceedings. If I am found guilty, a large part of my disgorgement and restitution will be made directly to her, and she knows that. Mrs. Yoo testified that the reason she did not sue me was because she felt it was "good money after bad."

Sadly, Mrs. Yoo believes that I conspired with Sullivan to defraud her. She could not be more wrong. The Yoos' were taken advantage of, but not by me. Dr. Yoo removed cancer from my dog's foreleg. Dr.

Yoo generously met with me numerous times on weekends at his home when Munky needed treatment. In one instance, that was at 11:00 PM on a Saturday night. I will never forget he did that. I considered them to be friends of mine. Friendships are important to me. I would never take advantage of the Yoos'.

Everything I told Mrs. Yoo was the truth. I offered to meet with her attorney to help her recoup her lost investment from Sullivan. I strategized with her as to what the best approach would be to get Sullivan to return her money to her. I do not know why she has overlooked those actions and has come to the conclusion that I betrayed her. I could have cared less about Sullivan. We were not partners or friends, and he fired me. I cared very much for them.

For whatever reason, Mrs. Yoo's account of the events as they transpired is largely inaccurate. At the hearing, I believe I proved that to be the case.

I provided the Yoos' with the Offering Memorandum before they invested. They signed the subscription agreement, and the law is well established. People are free to sign legal documents without reading them, but the documents are binding whether read or not. I asked Dr. Yoo if he read the agreement. He said, "It's right here on my desk, I haven't read it and I'm not going to. Just don't lose my money." The Yoos' were of legal age and sound mind, and in no way lacked capacity. They were not tricked or coerced into signing the documents.

At any point, Mrs. Yoo or Dr. Yoo could have asked for something other than what she claims they were provided (R79, 80). They never did. Mrs. Yoo was big on "paper trails." In the first line in a letter to her attorney (R67) she makes that point. She never once asked for the memorandum either verbally or in writing after they invested until after they met with their attorney, and all of their capital had been lost. The story about the memorandum not being provided was devised between the Yoos' and their attorney.

The Yoos' invested $300,000.00 in Passionate Vet for an equity interest in a private business. Presumably, they were provided an offering memorandum. They considered another $300,000.00

investment into Passionate Pet. I know they were provided a memorandum for that because Dr. Yoo provided it to me to look over. The Yoos' are both familiar with what an offering memorandum is.

Mrs. Yoo is anything but an unsophisticated woman. She is highly educated and intelligent, and has run the financial aspects of their practices for a very long time. She speaks three languages that I am aware of. In addition to holding his DVM, Dr. Yoo has his MBA, and consults other Vet's on how to enhance the value of their practices. They are some of the most intelligent people I have ever met.

Mrs. Yoo has claimed that she never knew she was investing in a hedge fund. That is false. She will not admit she was provided the memorandum, but what cannot be disputed is that she was well aware of the terms placement fee, management fee, performance fee and lock-up period (R65, R67, R68), she was provided an Investor Presentation for APF, (R80) says American Private Fund, LP, and her husband has his MBA and invests in private entities.

The notion that I would show up at their clinic with Pages 12 and 13 of the subscription agreement, and that I would expect that they would even consider signing those two pages and transfer $299,000.00 to APF is absolutely preposterous. There was not a reason in the world not to bring out the agreement. They were friends. Mrs. Yoo approached me for help. They were going to invest. I was not compensated to take the investment. I gave them that memorandum.

(R81-R89) shows what they were accustomed to filling out with me before they had opened accounts in the past. (R80) says Subscription Agreement Signature Page right on the top, and page 12 on the bottom. She kept a copy of the pages and produced them to the Commission.

Mrs. Yoo testified at times she was a "10" on the nervous scale about her investment, but for five months she never once looked at pages 12 and 13, which she does not dispute she had in her possession, and asked for further verification of what she invested in.

She never asked for some sort of proof of what she signed when she met with Sullivan **at his office** and he told her right to her face that her money was locked up and he was "not prepared" to return it to her. She was not concerned with "rocking the boat," when she asked me multiple times for some sort of proof where her money was (R19, R25), but she never asked for proof of what she signed. She did not ask for it because she had it.

I have readily admitted to the Commission before the hearing, and then under oath at the hearing that when Mrs. Yoo and Dr. Yoo became clients, I only brought out the two pages for them to sign (R79, R80).

In retrospect, I wish I would have just printed out the entire 100 plus pages of the memorandum and brought it out with me for the second time. On the morning the Yoos' became clients, I was running late and I asked Sullivan if he had a memorandum that I could bring out with me for them to sign. He said he did not. He then said, "You don't have to bring the whole memorandum again, just bring the signature pages." He printed them out and gave them to me.

I relied on Sullivan's guidance. This was the first and only account I ever opened up with APF. Evidence that Sullivan would at times only provide signature pages to clients who were previously provided memorandum's can be found in (R177) in an email titled Signature pages for 100k Investment from Sullivan to Mr. Pankey on March 21, 2011.

As I testified to at the hearing, I am not even sure how the Yoo's provided one page filled out by me (R79) and one filled out by Sullivan (R80) to the Commission. I have no idea where the real document represented in (R80) that I filled out is.

MRS. YOOS' RECOLLECTION OF WHAT SHE WAS PROVIDED IS FAULTY

Mrs. Yoo claimed in her sworn statement (R68) number 6 that the first time she saw the name American Private Fund was when I brought the two page document in for her to sign.

As I stated to Mrs. Yoo while cross examining her at the hearing, in order for that statement she made to the CFTC to be correct, that would mean that I met with her on at least three occasions, probably more, before she became a client, and I provided her with nothing.

When I began to point out that her story was not adding up she backtracked and claimed the CFTC just typed up a statement and she signed it. That is a similar scenario to the one she is portraying about the offering memorandum. She claims I just brought out two pages of the subscription agreement and she signed it.

In (R201) Mrs. Yoo told the Commission that she only had (1) an American Private Fund Brochure titled Stock Market Outlook and Economic Analysis for 2010 and (2) the cover page to an American Private Equity brochure, the rest of which she was not able to locate.

At the hearing she testified that she was provided another brochure with my picture in it. My picture was not included in the Stock Market Outlook 2010, the Investor Presentation for APF, the Offering Memorandum for APF, or any American Private Equity document to my knowledge. I have no idea what document she is referencing.

I believe that the first document that had my picture in it was produced sometime after August 22, 2010. (R191) is a check to Greg Segal for the photography of my picture that was done in connection with the photo shoot for the Calibourne website. I informed Mrs. Yoo that all of her capital had been lost on July 15, 2010. The timeline suggests that Mrs. Yoo was not accurate about that brochure either.

When I asked Mrs. Yoo at the hearing what could have been in the subscription agreement that would cause her to not sign (R79 and R80), she did not answer. I asked Mrs. Yoo if she would have signed the subscription agreement even if the Offering Memorandum had been provided to her in advance and she said she would have. I then asked her why I would not provide it, and she said I don't know. I

asked her that series of questions not because I did not provide the memorandum, I asked her only to show that I had no reason not to provide it.

Mrs. Yoo claims that I never provided her anything other than the Stock Market Outlook, another brochure with my picture in it, and the two pages she signed when she became a client. That was not true.

In (DE 44), there was an excerpt from a paragraph that was pulled directly from (DE 116A P. 7) the Investor Presentation for American Private Funds. The paragraph containing "positive nonmarket correlated returns for its investors, emphasizing capital preservation, strict risk control, and low volatility," was taken directly from that presentation. That excerpt is located nowhere in the Stock Market Outlook, and to my knowledge only appears in the Investor Presentation for APF.

(DE 44) was drafted on the same day the Yoos' met with their attorney. (DE 42 P. 13) proves this when in a text message written to me by Mrs. Yoo at 9:16 AM on July 21, 2010 says, "We r meeting with arty @9:30. Will let u know if we need u." At the hearing, Mrs. Yoo stated she meant to write attorney, but mistyped it. So unless their attorney somehow acquired that brochure on the very same day he met with the Yoos,' and included an excerpt from it in his letter dated on that very same day, it had to be the Yoos' who provided it to him.

The attorney could not have found that brochure online. APF did not have a website, and APE's website was password protected. (DE 172 P. 94) verifies the password protection. When I asked Mrs. Yoo how her attorney got his hands on that brochure she said he must have done his own research. She did not say she gave it to him. It would be nearly impossible for that statement to be true.

Providing that brochure to their attorney had an unintended consequence that they did not take into account at the time. Her attorney having that brochure in his possession on that day discredits Mrs. Yoos' account of what she was provided with before she invested. It is the proverbial "smoking gun." I may not be able to prove I provided her the memorandum, but her lawyer having that

brochure proves that I provided her the Investor Presentation, and she claims otherwise.

That brochure is important for two primary reasons. First, it shows Mrs. Yoo has not been completely forthcoming. Second, that brochure is quite descriptive about APF's structure. In the disclaimer on Page 5, it states:

"This presentation is not an offering, or the solicitation of an offer to purchase a ***partnership*** *interest in the fund or any other security. Any such offer or solicitation will be made to qualified investors only by means of a* ***final offering confidential private placement memorandum."***

The Investor Presentation goes into great detail about the Securitization Model of the different share classes within the fund. So when Ms. Krishnamurthy, charged at the hearing, "You didn't tell Mrs. Yoo that Series A would get paid 6% before she would get paid did you?" I testified that I did tell her. At the very least this brochure shows the information was provided to her in writing before she invested. Just as I testified I planned on telling future investor's that Sullivan had lost all money from previous investor's, I told Susie Yoo about the structure of the fund.

MRS. YOOS' TIMELINES ARE FAULTY

Another big discrepancy that Mrs. Yoo and I have is centered on when I told her that Sullivan had de-authorized me, and that he was managing their account. I know I told her on April 22, 2010. She believes I did not tell her until sometime after May 19, 2010. I had no reason to hold off on telling her.

When I questioned Mrs. Yoo about if I were managing her account if **SHE would fully expect ME to know what funds I had invested in,** she testified that I would know. That is why (R25) is so telling. Mrs. Yoo asks me if "I had any idea how the money was invested? What funds and what positions? I did transfer the funds hoping that you watch the growth a bit more closer."

She knew I was not managing her assets when she wrote that email, and that is why she asked that question. That is not a question that is asked of your investment manager. And why would I not be watching her investment closer?

Mrs. Yoo strategically sent that email to create a "paper trail" because I had told her what transpired in the account only two weeks prior, and she wanted to make sure she was protected. That is why the "animal people" comment was inserted into the email as well.

Mrs. Yoo claims that we did not discuss any business on April 22, 2010 and that the meeting was only about me meeting her son Josh. Mrs. Yoo testified she was a "10" on the nervous scale about her investment on April 22, 2010, but claimed she never once brought up the account. It was only 9 days earlier that she was asking for an accounting of her portfolio (R55).

That evening may have been in part about me meeting her son Josh, but it was mostly about answers. She wanted me to provide them to her, and I was looking forward to giving them to her. It was on that evening after I told her that Sullivan had taken over management of the account, and it had lost roughly $40,000.00 in value that she said to me, "Please get our money back. We can lose $40,0000.00, we just can't lose the rest."

Mrs. Yoo claims that it was not until after she reviewed her May 19, 2010 statement that I only then told her that Sullivan was managing the account. Initially she claimed I did not tell her until we shared a 10 second elevator ride up to the 11th.Floor of the building on May 26, 2010. During that elevator ride she also initially claimed that I told her to "shake Sullivan hard" and that he might return her investment to her.

Upon my questioning, Mrs. Yoo said after she reviewed her May 19, 2010 statement that I told her to call Sullivan directly. When I asked her why I would tell her to call Sullivan directly if I were the manager of the fund, she had no answer. She had no answer because her timeline was inaccurate.

It was only after a series of more questions that Mrs. Yoo finally admitted that possibly her timing was off and I had told her before the May 26, 2010 meeting that Sullivan was managing the fund. She then conceded that it was sometime after May 19, 2010 but before May 26, 2010 that I told her. She was wrong about that as well.

The Commission has chosen to make the timing of when I told Mrs. Yoo that Sullivan had fired me to be an issue of great consequence. The truth is, whether it was April 22, 2010, as Mrs. Yoo believes, or if it was on May 26, 2010, as I believe, the timing was of little consequence. Sullivan was in charge of that account, and I began working on him beginning March 24, 2010 to return their investment.

During Questioning I asked Mrs. Yoo when I told her to "shake Sullivan hard," with hopes that he might repay her. She said it was right before or after the meeting on May 26, 2010.

I asked Mrs. Yoo if she was 100% certain beyond any doubt that I told her to "shake Sullivan hard" to solicit a payment from him on May 26, 2010, and she said yes.

I questioned Mrs. Yoo about **OIP 27** where it stated that "during a July 2010 "phone call" that he told her to seek a "Ponzi-like" payment from his "**partner**" and that it prompted her to obtain legal counsel. Me providing strategies for Mrs. Yoo to recoup her investment from my **"partner",** of course reinforces my contention that there was no partnership to begin with.

I pointed out this was clearly the same situation and asked Mrs. Yoo to clarify if it was on May 26, 2010 as she stated, or if it was on July 15, 2010, which is what **OIP 27** charged. Ultimately, she conceded that she now only "thought" it was on May 26, 2010. Only a few minutes prior she was 100% certain it was on May 26, 2010.

She was indeed wrong about that timing as well. I told her to "shake Sullivan hard" and he might repay her just as **OIP 27** states on July 15, 2010, only after I knew her money had been lost. Mrs. Yoos' timeline for when she claims I told her to "shake Sullivan hard" was almost two months off.

The Commission obtained that information about the timing from Mrs. Yoo, and then she changed her story.

OIP 27 IS A TRAVESTY

Mrs. Yoo claimed she never told the Commission that I told her that Sullivan would pay her from later investors money, meaning the Commission inserted that language in **OIP 27**. If Mrs. Yoos' testimony was accurate, then that charge was a disgraceful attempt by the Commission to portray a "Ponzi" scenario that did not exist.

When I pressed Mrs. Yoo if the reason she obtained legal counsel was because she thought it was a "Ponzi Scheme" or if it was because she in fact had lost all of her money, she testified it was because she lost her money that she obtained legal counsel. That is contrary to what **OIP 27** states.

Also in **OIP 27**, the Commission charged that I told Mrs. Yoo this information on a "phone call." Mrs. Yoo testified that I came out to her home and met with her and her husband at their kitchen table. I never told the Yoos' on an impersonal phone call that they had lost their money.

OIP 27 should serve as a template showing just how malicious the Commission's prosecution against me has been, and just how poorly put together their case was.

DR. YOO WAS A JOINT ACCOUNT HOLDER AND I HAD A SIGNIFICANT RELATIONSHIP WITH HIM

The Commission inaccurately charged that I had no relationship with Dr. Yoo. Ms. Krishnamurthy thought she posed a rhetorical question when she asked me, "You don't have Dr. Yoo's cell phone number do you?" If I was thinking clearly at the hearing I would have pulled out my cell phone and showed his phone number to the court.

The last 4 digits of his cell phone number were [redacted]. I have no idea if he still has that phone number, but in 2010, that was his cell number.

I accompanied Dr. Yoo down to Orange County, CA to help him research a private investment into Passionate Pet (R17). Dr. Yoo gave me the offering memorandum for Passionate Pet to look over. After I analyzed it for him, I advised against investing in the entity. That entity closed down within a year of that advice (R18).

Dr. Yoo was my Vet. I dined out with both he and his wife on at least five occasions. We talked about investments on many occasions.

EXAMPLES OF MORE FALSE CLAIMS MADE BY MRS. YOO

Mrs. Yoo claimed she could not get in touch with me but did not dispute that sometime around March 15, 2010, I spent the entire afternoon with her and Dr. Yoo visiting Passionate Pet. We spent many hours together on April 22, 2010.
There is not a single email or text that suggests Mrs. Yoo could not get in touch with me. Mrs. Yoo claiming she could not get in touch with me is a fallacy.

Also, Mrs. Yoo claimed in (R68) that I never returned emails but I would call her. In (R67) Mrs. Yoo claimed I was elusive from the get go, and preferred to talk on the phone as if he is avoiding the paper trail. (R69-R78) proves that she was asking me to call her quite often.

I NEVER WITHELD INFORMATION FROM MRS. YOO AS IS CHARGED

OIP 19 "Montanino did not email (or otherwise provide) it to his client until May 5, 2010-13 days after obtaining it from his **"partner."**

In my testimony I detailed how I provided Mrs. Yoo her initial contract note in very quick order after she alerted me that she did not have it. On Saturday, May 1, 2010, (R19) she asks me about proof of her investment being made. (R19-R25) detailed how quickly Mrs. Yoo was provided her contract note. In (DE 37), which was the contract

note I forwarded to Mrs. Yoo, it shows her address right on it. As I said in the email to Mrs. Yoo in (DE 37), I thought Columbus Avenue had must have messed up and not sent it. I had no reason to withhold it.

In (R22), Sullivan is asking Columbus Avenue in two separate emails on May 6, 2010 about getting the Yoos' their log in information to the account. He even asks them to be "descriptive so he could tell other investor's."

THE PLACEMENT FEE WAS CHARGED BY SULLIVAN WITHOUT MY KNOWLEDGE

I testified at the hearing in detail about how the placement fee was ultimately charged to the Yoos'. I did not charge it, and received none of it. Sullivan, without my knowledge, made the decision to charge them, only after he agreed to return the fee to them. (R27-R47) details from beginning to end how the placement fee was charged. In (R44) Sullivan requests the placement fee to be waived for the Yoos'. In (R47) he changed his mind again and said "No return for the Yoos."

MRS YOO IS VENGEFUL

In (R67), Mrs. Yoo stated, "I think they are both in this together." In (R65), she uses the term "supposedly his friend." She also states in (R65) "Looking back, it just sounds like a Ponzi Scheme."

Mrs. Yoo was wishing me a Happy New Year in (R76). She was wishing me best of luck with my terminally ill mother in (R77). In (R78) she was offering me her condolences and wrote, "I can't imagine what ur going through," after my mother had just passed away, and then asks me to get together some time.

(R67) was written to her attorney on December 10, 2010, before any of those seemingly friendly text messages were sent to me. In (DE 178A), Mrs. Yoo is conversing with the CFTC about me on April 14 2011, and they request she not tell me that they had spoken. Three days earlier she was offering me her condolences.

Mrs. Yoo is a very capable and highly intelligent woman. Anger has clouded her judgment. I believe that she is attempting to recoup her investment, and bring harm to me in the process.

THERE WAS NO MOTIVATION TO MISLEAD THE YOOS'

Ms. Krishnamurthy attempted to provide a motive for why I would mislead the Yoos', who I considered to be personal friends, when she questioned me about my compensation agreement with Sullivan. She referenced my testimony and stated that I believed Sullivan would "take care of me" if the hedge fund was profitable, and thus by managing the Yoos' money that I would have had an associated gain in the future. I testified I was content to manage the Yoos' money for free.

The Yoos' invested $299,000.00. Assuming I did a proficient job of managing the account, and the account increased in value by 10 percent, and there was a 10 percent performance assessed to the profits on the account, that would equate to a $2,900.00 performance fee over the course of a year. If the account dropped in value there would be no performance fee. That fee is no motive.

AMERICAN PRIVATE EQUITY

When the Commission presented (DE 181B P.2) at the hearing that showed Sullivan transferred nearly $343,000.00 to his personal account after Bill Pankey invested $500,000.00, I was immediately enraged. I was never aware of that.

Although, I am not sure what it proves. There could have been no question about what happened to all capital that Sullivan raised if the Commission had properly done their job and fully analyzed all transactions, but they **chose** not to. When I realized that Ms. Sacco

was only testifying to transactions in one direction, I asked her about a transfer on August 3, 2010 of $12,000.00 that was made from APE's bank account to Calibourne's. That was merely one transaction that stuck out to me, and I remembered it.

I asked her why there was no showing of the transfer of capital from Calibourne back to APE shortly after. She testified that she was only instructed to analyze transactions in one direction. She may have only been asked to analyze transactions in one direction but she was clearly aware of the transfer back. I asked her about the amount that was transferred back and she said she did not believe it was for the "full amount." (DE 18A) shows $11,500.00 being transferred back to APE from Calibourne on August 12, 2010.

When I asked her if she believed the exhibit was an accurate representation of all monies being transferred into and out of the accounts, she said no.

When I asked her if she knew what happened to the $343,000.00 after it was transferred to Sullivan's personal account, she said they did not analyze his personal bank records.

Just as that exhibit shows Sullivan transferring $343,000.00 to his own personal account, it also shows an additional $106,000.00 that was paid to service providers and employees of Calibourne Capital Management. The exhibit is merely a snapshot of one infusion of capital into APE for a one-month period of time. As such, it only tells part of the story.

Marketing Web Design	$39,000.00
Lawyers	$20,000.00
David Montanino	$17,000.00
Office Space	$16,147.00
Brandon Tafurt	$10,000.00
Troy Gordon	$3,000.00
David Evanson	$1,000.00
Total	**$106,000.00**

The exhibit only shows Brandon Tafurt being paid $10,000 on July 2, 2010, but fails to show his compensation of $10,000.00 on July 29,

2010 that was paid to him, or his other compensation of $10,000.00 on June 2, 2010, and his compensation of $10,000 on August 26, 2010 (R129).

The exhibit shows Troy Gordon only being compensated $3,000.00 during that period, but fails to show the other $29,000.00 he received in compensation as an employee of Calibourne paid by APE (R123).

The exhibit shows $17,000.00 being paid to me for my compensation but neglects to mention the other $54,000.00 I was paid for my services by APE (R113-R120).

The exhibit shows the $16,147 that was paid for office space that month but fails to show the other $52,000.00 that was paid during other months during the time period 07/2010-04/2011 (R147-R154).

The exhibit shows $39,000.00 paid to Cog 1, but never mentions the other $39,000.00 that was owed to them (R197).

The exhibit shows $20,000.00 for attorney, but fails to consider that there was another $78,902.00 that was owed to Benchmark Law for the production of the legal documents for Calibourne and APF II (R193, R194).

(R202) details that at least $410,124.00 was allocated by APE to finance Calibourne operations. There were other expenses for supplies, marketing, recruiting efforts, and other normal expenses that are not even included in that figure.

There could be no way for me to discern if Sullivan was misappropriating capital or not. APE had its own set of expenses and Sullivan was the only person who had access to any APE accounts and records. I asked Ms. Sacco if I ever had any signatory authority on any APE or APF account, and she said no. She was correct about that.

I was satisfied that considerable amounts of capital were being invested by APE into Calibourne operations as evidenced by (R202).

There were no agreed upon levels of financing between APE and Calibourne.

Assuming the Commission's evidence is accurate, and Sullivan transferred nearly $350,000.00 to his personal account for his own benefit, the fact that only $17,000.00 was transferred to me as compensation tells an undeniable story about the nature of our relationship. Sullivan's company invested in my company, but we were not partners.

Sullivan and I shared a vested interest in the success of Calibourne. Sullivan was an active investor. He would help with financing and recruiting, but I had all ultimate control over Calibourne decision-making.

If Sullivan misappropriated capital from his businesses, he did so for his own benefit and without my knowledge. I would have never knowingly helped Sullivan commit fraud.

<u>BILL PANKEY</u>

Mr. Pankey testified at the hearing that he knew that a percentage of his investment was going to pay salaries. (R1 P. 24) details that Sullivan had the power to pay all company expenses. Salaries of portfolio company employees are an expense. Earning Compensation as the founder of a portfolio company is the norm, not the exception.

It was Sullivan's duty to explain the financial commitments he was making to his clients. Mr. Pankey was familiar with that notion, as he was familiar with the PPM for APE itself. (R179) dated December 8, 2009 seems to suggest that Mr. Pankey asked for revisions to the Memorandum before he invested. Mr. Pankey understood that memorandum, as did his business attorney wife. Mr. Pankey testified that he did not recall ever requesting changes be made to the Memorandum. (R 179) tells a different story.

I had a very attenuated relationship with all of Sullivan's clients. They were not my clients, and while we had a shared interest in Calibourne's success, I had no fiduciary obligation to them. They

invested in APE. APE invested in my business. Sullivan was the only point of contact for any matters regarding APE, and his clients knew that. Mr. Pankey testified to how attenuated my relationship was with him. He testified that it was Sullivan he relied on exclusively.

I was never on a phone call with Mr. Pankey when he instructed Sullivan to use his $100,000 investment exclusively for payment to advisors. I only first learned of that verbal agreement they had in place when Mr. Pankey made me aware of it after Sullivan passed away. If there was an agreement in place, it was between Sullivan and his client, and it was Sullivan who decided not to honor it. Mr. Pankey was not my client, and I never at any point made any representations to him about how his capital would be allocated.

(DE 172 P. 63) shows email exchanges between Mr. Pankey and me. In the email on June 13, 2011, Mr. Pankey states that they made $100k investment for the purposes of acquiring such assets. Mr. Pankey never stated, as you know or used any other language that would suggest I was aware of that fact.

(R178) Question 10. Did you invest any additional money due to Montanino's encouragement? Answer "No."

(R178) Question 11. Did Montanino ever specifically ask you to invest money? Answer: "Montanino participated on conference calls with Sullivan."

I never asked Bill Pankey to invest any capital into APE. After Sullivan passed away, I asked him if he would consider an investment into Calibourne to keep it going, and he declined.

SULLIVAN'S DOWNFALL

Sometime in September 2010, Sullivan contracted [redacted]. He had a hard time coping with the pain. He told me that stress was making it worse (DE 47). It was roughly sometime in October 2010, that Sullivan told me he was prescribed [redacted]. At

first, I did not see any real changes in his behavior other than he seemed to be more relaxed.

What I did not realize at the time is that those pills would be his downfall. I first began to see a change in Sullivan's demeanor roughly a week or so before my mother told me she was diagnosed with [redacted] on November 11, 2010. After my mother broke the devastating news to me, I decided that I wanted to go to New York ("NY") and help my dad care for her in her final months.

I had a conversation with him about his use of [redacted] and he said he would have his doctor lighten the dosage. He told me that he had no idea that his work, and his demeanor were being affected. When I left for NY, roughly two weeks after that conversation, Sullivan seemed to be much more coherent and motivated, so I did not have a lot of concern about his health, or his ability to run APE. I just assumed his doctor gave him a more suitable dose of his medication.

I was in NY from roughly November 17, 2010 to April 1, 2011. During that time, I never saw Sullivan in person. I could not see what was physically happening to him.

The unforeseen circumstance of my mother being diagnosed with [redacted] and me making the decision to live in NY for that period of time put a hold on many of the operational tasks that were to be put in place otherwise. The situation was not ideal, but it was working.

Even with a situation that was not perfect, we accomplished a lot over that time-frame. Calibourne was approved as an RIA with a structure that was revolutionary in the industry. We were actively recruiting. The Calibourne website was produced. I wrote and oversaw production of a recruiting brochure for Calibourne, the APE Business Plan for Calibourne, the Stock Market Outlook and Economic Analysis for 2011, and the marketing brochure for APF II.

We had a signed Letter of Intent from our first advisor. I testified at the hearing that he signed a formal offer letter.[2] Sullivan was having success in recruiting.

I had no idea what the [redacted] had done to Sullivan until I returned to California and saw him in person. When I did see him, he looked like a completely different person then he did when I had left California only a few months prior. I was shocked at what had happened to him.

Roughly a week after I returned to California, Sullivan told me that Los Angeles was a bad place for him to be and he wanted to move to Florida, where he maintained a home. He assured me that he would get himself healthy and keep financing Calibourne as planned. He left for Florida on roughly April 15, 2011, and passed away at his home only two or three days later.

AFTER SULLIVAN'S DEATH

When Sullivan died suddenly in April 2011, I was left to pick up the pieces. I literally had no idea what to do about Calibourne, let alone APE. I knew there were going to be very complex issues to get worked out. APE owned half of Calibourne. APE was owned not only by Sullivan, but all of his investors. I only knew a few of the their names. I had no capital to pay my own expenses, let alone seek out legal advice. I had service providers demanding to be paid. I had investors calling me and wanting information. I had the Securities and Exchange Commission demanding information.

I had no knowledge of APE investments outside of Calibourne, and no access to financial accounts or records. I was never a signer on any APE accounts. Sullivan had moved to Florida only days prior, and cleaned out his entire office.

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[2] I testified at the hearing that Sanchez signed a formal offer letter. Upon reflection, I am not 100% certain that he did. What I am sure of is that he faxed over all of his client's sensitive data to start the transition process to Calibourne.

I had no capital and limited answers. Calibourne needed capital to move forward. Our first hire was waiting on his signing bonus to join the firm.

I did my best to provide as many answers as I could to Sullivan's investors. I was completely forthcoming. Jeff Tillem testified that I was the only person who would speak to him.

I reached out to roughly five of Sullivan's clients that I knew of and informed them of his death. They all inquired about what I was going to do with Calibourne. I advised them that I would need capital to proceed further, but I wanted to try and make it work. I asked three of those people if they would consider investing in Calibourne. Two declined, and one said he would invest a very small amount of money that he had available. I came to the conclusion that the person who said yes was not in a financial position to take on the risk, so I declined to take his investment and shut down Calibourne.

I did not at the time, nor do I now see anything wrong with asking Sullivan's investor's if they still wanted to support Calibourne. Without capital, Calibourne would surely shut down.

FIDELITY

The Commission brought in Anne Whatley to testify that she trusted me so much that she asked me to look over her own father's relationship with Fidelity. She rated me as a very good to excellent employee. She verified that my client base in the first two years of my employment at Fidelity very well could have been over $1 Billion, just as I stated in my biography (R15). When I asked her if she believed I could have been responsible for bringing in $150,000,00.00 to Fidelity, she said that would have been " a lot." (R 108-R111) verifies I was responsible for bringing in that amount to the firm. She verified that I conducted over 1700 investment consultations at Fidelity, conducted over 750 Portfolio Reviews and Retirement Income Plans, positioned roughly $40,000,000.00 into **Fidelity's Investment Management Service**, and positioned roughly $8,000,000.00 into

insurance products. She verified that I was awarded the Chairman's Award and was recognized for my Excellence in Action by the firm.

She testified that in my entire life that she was not aware of me ever defrauding anyone.

The Commission brought her in for two primary purposes. First, they believed she was going to testify that my client base was not $1 Billion at Fidelity, and she did not. Second, they believed she could assist in their attempt to provide a motive for why I would act in such a fraudulent manner, for such a small amount of compensation. Their motive would be that I was "forced" to work with Sullivan because of limited other options, and Whatley would verify that.

The Commission falsely charged that I was not able gain employment at Fidelity after I resigned in 2008. I testified that I believed I could have worked at Fidelity again if I had wanted to. First, even if their claim were accurate, which it is not, Fidelity is merely one company. The fact is, I chose not to pursue employment for a second time with Fidelity in 2010 because I wrongly believed that APE was a better long-term option for me. I was never a truly satisfied employee at any point during my tenure at Fidelity.

I never formally interviewed with Fidelity after I resigned in October 2008. There is no evidence to the contrary. I made mention of my possible interest in returning to work with Mrs. Whatley when I was socially visiting her and her husband in early April 2010. Mrs. Whatley is the manager of one branch in an organization that has hundreds of branches. Fidelity is one of the largest administrators of assets in the world. Mrs. Whatley does not speak for Fidelity.

Mrs. Whatley may have thought it would be best if I did not return to Fidelity for her own personal reasons, but Fidelity as an organization never arrived at that conclusion. My separation from service from Fidelity was classified as "voluntary." I was available for re-hire at Fidelity (DE 125 P. 8).

Fidelity never turned me down for employment, and there is no evidence to the contrary. The Commission brought in no one from Fidelity Human Resources to testify that I was unavailable for re-hire.

Documentary evidence proves the opposite. There was no reason in the world, and no document on the planet that would suggest that in 2010, that I would be precluded from working for any firm, for any reason.

When the Commission charges I could not work at Fidelity and as a result, I was "forced" to work with Sullivan, it is nothing more than a farce. Their claim is both unfounded and inaccurate, and shows just how far they have had to reach in an attempt to assign any sort of motive for why I would engage in the transgressions they are accusing me of.

I testified at the hearing that at some point the Commission would need to provide a motive for why I would act in such a fraudulent manner, and take advantage of personal friends.

It has been said, "If you take away the motive, you take away the sin." The Commission has failed to meet their burden of proof, and try as they might, they cannot provide any sort of coherent motive for why I would act in ways that they are accusing me of.

MY BIOGRAPHY (R15)

I testified at the hearing, that I believe my biography was largely accurate. There was one minor inaccuracy in it, and one instance where I possibly could have been clearer. I made a mistake and misrepresented the title of the Chairman's Award I won. I called it the Chairman's Circle of Excellence. That was the inaccuracy.

The Commission spent a large amount of time on one sentence in my bio. I claimed I provided investment management services for a client base that was in excess of $1 Billion. Whatley testified the first part of that statement could very well have been accurate. Therefore, the Commission can only reasonably charge that I could have been clearer about my job description.

When asked by the Commission about that statement, in (R102 8C) Fidelity Corporate did not say that my statement about "providing

investment management services" was inaccurate. Fidelity stated, "Mr. Montanino's statement "providing investment management services" is not as **clear**." Mr. Montanino did not manage customer's assets." Nor did I ever claim that I did. There is no evidence to the contrary.

The Commission has chosen to dissect the phrase "provided investment management services" in lieu of providing proof of fraud, aiding or abetting fraud, or negligence.

JEFF TILLEM

Mr. Tillem testified to having many interactions both on the phone and in person with Sullivan before he invested. I never spoke with Jeff Tillem before Sullivan passed away. Mr. Tillem verified that at the hearing. I never asked him to invest in APE or Calibourne. He was not my client.

The Commission failed miserably in an obvious attempt to make it seem as if I was this mysterious person on the other side of the phone who lied to Mr. Tillem about Calibourne's progress. Mr. Tillem said he knew that the person on the other side of the phone was in the same time zone as he was. I have no idea how he knew that, but I know I three time zones away in New York at the time, and I would have never represented that we had advisors already working for us when we did not. Mr. Tillem would have recognized my name if it were me on the phone. I ran Calibourne.

I have a pretty good idea who assisted Sullivan with that phone call. Our recruiter lived in California. I would never have stood for anyone misrepresenting any aspect about my company, as was done in that instance.

The Commission attempted to "make a mountain out of a molehill" regarding my pawning Sullivan's computer. Pawning a computer is not selling a computer. I was financially broken when Sullivan died.

There were not a lot of options available to me. The landlord gave me roughly a week to sign a new lease, or move out after Sullivan

died. I sold some of Sullivan's office furnishings, and threw out others. Sullivan's brother gave me authorization to do so.The only item I pawned from his office was his computer. I could have sold it and raised more money. If I wanted it to disappear I would have sold it, or destroyed it. I did neither. I pawned it because I needed money, and I wanted to preserve its existence in case the contents needed to be examined.

What is lost on the Commission is that I told them I pawned Sullivan's computer. I gave them the pawn ticket. If not for me, they would have never even known the computer was pawned. I told them exactly where it was, and what I had done with it. I always anticipated that I would pay the small interest expense on the computer and retrieve it at some point once I was working again.

SHARON JONES

Sharon Jones was a client of mine at Torrey Pines Securities almost ten years ago. She invested $25,000.00 in APE, and is the only person who ever invested in APE as a result of my recommendation. I believed it to be a suitable recommendation based upon her goals, and time horizon. She stated to me that she was comfortable taking more risk for more reward with a portion of her investments. She testified I told her APE had more risk than her other investments did. I was not compensated as a result of Mrs. Jones investing in APE. I was not a salesperson for APE. There is no evidence to the contrary.

I went over the associated risks and what my relationship with APE was. I never told her that I invested in APE. Mrs. Jones testified that I "led her to believe I was an investor," but could not provide a coherent explanation for why she held that belief. I asked her if I ever told her I invested in APE, and she said no.

I was not an employee of APE at the time she invested, or at any other time during 2005. Mrs. Jones testified that she received that information about me being employed by APE only second hand from Sullivan, years after the investment was made. She then testified that Sullivan was not a reliable source of information. At this point, I do not think anyone would object to that description of Sullivan.

The Commission investigated this matter for over three years. They could not locate a single document, or a person on the face of this planet to testify that I was an employee of APE in 2005.

Presumably, the Commission interviewed every single person that ever invested in APE. Sullivan raised many millions for APE over a five-year period, yet the Commission was only able to produce Mrs. Jones who invested $25,000.00 nearly ten years ago to say they invested in APE as a result of my encouragement.

The Commission does not charge me with misappropriating her capital, or any other fraudulent activity associated with her account. They charge me with telling Mrs. Jones I was an investor in APE when I was not, and that I was an employee of APE, and did not tell Mrs. Jones as much when she made her investment. Both charges are minor in scope, and false nonetheless. The interaction took place almost a decade ago.

The fact that Mrs. Jones was brought out all the way from California to testify speaks volumes about the Commission's claims against me.

UNSUBSTANTIATED MODELS

The Commission charges I used unsubstantiated hypothetical valuation models in the business plan I wrote (R15), but never brought in an expert witness to testify to that fact. They could have, they chose not to. Therefore, it is merely their opinion.

The plan called for APE investing $5 Million into Calibourne. APE raised $150,000.00 over the roughly three months after the plan was finished, and before Sullivan passed away.

OIP 29 "Montanino prepared provided a hypothetical valuation model having no rational relationship to APE's past investment results or purported present investment strategy.

OIP 31 "Did not support the hypothetical valuation model because neither Calibourne (and APE) nor Montanino had any experience recruiting or supervising investment professionals or successfully managing money."

I did not believe that APE's past investment performance would have a major impact on Calibourne's future success. There was no equivalence. Sullivan may have been a poor investment manager, but he was not managing Calibourne, I was (R9 P.5-6). APE was merely financing Calibourne. There can be no argument made that Sullivan was not a capable financer.

There was nothing "purported" about the present investment strategy as the Commission charges. APE was investing in Calibourne. Calibourne was an RIA. Fidelity and Schwab approved Calibourne to be on their platforms. We were actively recruiting. We were working hard to execute the plan.

I believed in my plan, and my own abilities. Bill Pankey, a highly successful business owner, testified that he believed in the plan for Calibourne. He did not testify that I ever misled him. He did not testify that he felt that the models were unsubstantiated. Mr. Pankey assessed the business idea and invested more money into it than he had ever invested into any other business idea in his entire life.

The plan was not misleading. Nowhere in the plan does it state that APE had successful business results in the past. Nowhere in the plan did it state that I had experience recruiting or supervising investment professionals, or that I successfully managed money. No witness testified that they were misled about my experience recruiting advisors. No witness testified that false claims were made about APE's prior successes.

The Commission is simply making their own determinations about what I "should" have believed about my own abilities. They have no legal basis for doing so. They are asking the court to substitute the Commission's business judgment for that of Mr. Pankey's, and other sophisticated and accredited investors.

The quote below was taken form the SEC.GOV website.

"The mission of the U.S. Securities and Exchange Commission is to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation... SEC's actions must be taken with an eye toward promoting the capital formation that is necessary to sustain economic growth."

Nowhere in their stated goals does it say that their role is to value businesses, or to assess future viability of business ideas.

If there were misrepresentations made to investors, then it would be fully within the scope of the Commission's stated goals to investigate the matter, and take whatever measures they saw fit to protect investors. Protecting investors is first on their list of stated goals.

The Commission cannot prove that my biography, or that the plan I wrote was materially inaccurate. At the hearing, they never attempted to prove the projections I made inside of the plan were unachievable or unsubstantiated.

Therefore, the Commissions charge that I used unsubstantiated hypothetical valuation models in the business plan deserves little or no consideration.

CONCLUSION

I have stated that the Commission failed to properly investigate, and disregarded evidence. I have stated that they were either woefully misinformed, or that they were intentionally being dishonest. I stated that they made unsupported assumptions, and asserted "facts" in direct contrast to readily available, easy-to understand documentary evidence. I stand by those statements.

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. My nexus to Sullivan was far too attenuated to impose any vicarious liability on me. There is no sustainable basis for a law-

based finding against me. The Commission did not meet their burden at the hearing.

For the foregoing reasons, all the claims against me should be denied in their entirety. Additionally, I believe the Commission should be ordered to recompense me my lost wages, and all expenses incurred in defending against its self-evidently frivolous charges.

Dated: December 19, 2014

Respectfully submitted,

David J. Montanino

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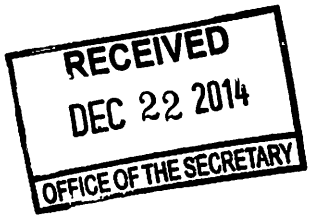

Administrative Proceeding
File NO 3-15943
In the Matter of David J. Montanino
December 19, 2014

Dear Secretary,
I have enclosed 4 hard copy Post Hearing Memorandums. Please let me know if you have any questions.

Thank you very much,

David Montanino