HARD COPY

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-18288

In the Matter of

LAWRENCE E. PENN, III,

Respondent.

DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION AGAINST RESPONDENT LAWRENCE E. PENN, III

The Division of Enforcement hereby moves for summary disposition pursuant to Rule 250 of the Securities and Exchange Commission's Rules of Practice [17 C.F.R. § 201.250]. The Division respectfully submits that summary disposition is appropriate and that the Court should resolve this proceeding in favor of the Division by finding that it is in the public interest to permanently bar respondent Lawrence E. Penn, III from associating with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

In support of this Motion, the Division relies upon the accompanying memorandum of law and the Declaration of Karen E. Willenken. The Division respectfully requests that the Court grant this motion.

Dated: New York, New York
January 10, 2018

Howard Fischer, Esq.
New York Regional Office
Securities and Exchange Commission
200 Vesey Street, Suite 400
New York, NY 10281
Tel.: (212) 336-0589
FischerH@SEC.gov
WillenkenK@SEC.gov

Attorneys for the Division of Enforcement

HARD COPY

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-18288

In the Matter of

LAWRENCE E. PENN, III,

Respondent.

MEMORANDUM OF LAW IN SUPPORT OF THE DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION

Howard Fischer, Esq.
Thomas P. Smith, Esq.
Karen E. Willenken, Esq.
Katherine S. Bromberg, Esq.
New York Regional Office
Securities and Exchange Commission
200 Vesey Street, Suite 400
New York, NY 10281
Tel.: (212) 336-0589
FischerH@SEC.gov

Attorneys for the Division of Enforcement

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Court Cases

Commission Opinions and Decisions

Statutes and Rules

Commission Rules of Practice

The Division of Enforcement ("Division") moves, pursuant to Rule 250 of the Securities and Exchange Commission's ("Commission") Rules of Practice, for summary disposition on the claims in the Order Instituting Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940 and Notice of Hearing, instituted on November 20, 2017 ("OIP," Ex. 1[1]), against Respondent Lawrence E. Penn, III ("Penn" or "Respondent"), and respectfully seeks the relief further set out below.

INTRODUCTION

In March 2015, Respondent pled guilty, in New York Supreme Court, to one count of grand larceny in the first degree and one count of falsification of business records. Respondent's conviction arose from his misappropriation, by submitting false invoices for purported due diligence services never actually provided, of over $9 million from a private equity fund he advised. Evidencing the egregiousness of his conduct, the Court in the Criminal Case sentenced Penn to serve two to six years in prison and to pay restitution of $8,362,974. (Ex. 2 at 1). On December 21, 2016, in a related civil action filed by the Commission in the Southern District of New York (the "Civil Action"), Penn was found to have violated Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 promulgated thereunder ("Rule 10b-5"), Sections 206(1) and (2) of the Investment Advisers Act of 1940 ("Advisers Act"), and Section 204 of the Advisers Act and Rule 204-2 thereunder (collectively, the "Anti-Fraud Provisions"). (Ex. 3, Order granting Commission summary judgment ("SJ Order") at 12-15). On August 22, 2017, Penn was enjoined from further violations of the Anti-Fraud Provisions. (Ex. 4, Order imposing injunction ("Inj. Order") at 4-5).

---

[1] All exhibits in this memorandum of law are attached to the Declaration of Karen E. Willenken, dated January 10, 2018, and filed herewith.

Based on Penn's conviction, the civil injunction against him, and the other documents in the record, it is apparent that Respondent Penn should also be permanently barred from associating with any broker, dealer, investment advisor, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

BACKGROUND AND PROCEDURAL HISTORY

A. Respondent's Involvement in the Securities Industry

In his career in finance, Penn has worked for the New York State Common Retirement Fund, for JP Morgan Securities, Inc., and Lazard Freres & Co. LLC. He obtained a Series 7 license, in 2001. (Ex. 5). Respondent has claimed that he managed more than $500 million of committed capital while acting as a Portfolio Manager in the Private Equity Group of JP Morgan. (Ex. 6).

From 2010 through 2013, Respondent owned and controlled entities Camelot Acquisitions Secondary Opportunities Management LLC ("CASO Management") and Camelot Group International LLC ("CGI"). Penn owned approximately 99% of each of these entities. (Ex. 7, Penn's Answer in the Civil Action, dated April 8, 2016 ("Ans.") at Counterclaims ¶ 4). CASO Management was a registered investment adviser, and CGI was "an affiliate." (*Id.* at ¶¶ 2, 4, 16).

As Managing Member and Managing Director of CASO Management, Respondent had primary responsibility for all business decisions made on behalf of Camelot Acquisitions Secondary Opportunities L.P. (the "Fund"). (*Id.* at ¶ 17). As Managing Member and Managing Director of the Fund's General Partner, Camelot Acquisitions Secondary Opportunities GP, LLC, Respondent also had primary responsibility for all investment decisions made on behalf of the Fund. (*Id.*).

CASO Management registered with the Commission as an investment adviser on September 14, 2012. (Ex. 8). Its registration was cancelled by the Commission on January 8, 2016. (Ex. 9).

In the Civil Action, the Court found that Penn was acting as an investment adviser when he carried out his scheme to defraud the Fund. (Ex. 3, SJ Order at 14).

B. The Scheme and the Attempted Cover-Up

As alleged in the Commission's Complaint, and later documented in declarations submitted to the Court in the Civil Action, between 2010 and 2013 Respondent and his co-defendant, Altura St. Michael Ewers ("Ewers"), manufactured false invoices for purported due diligence services that were never provided to the Fund. (Ex. 10 at ¶ 2). The purported service provider, Ssecurion LLC ("Ssecurion"), an entity controlled by Ewers, received payments from the Fund in satisfaction of these fraudulent invoices. (*Id.*). Respondent directed that most of the proceeds of the false invoices then be transferred to CASO Management and CGI, his wholly-controlled entities. (*Id.* at ¶ 3).

In finding Respondent liable and enjoining him from further violations of the Anti-Fraud Provisions, the Court in the Civil Action made the following relevant findings:

- That Respondent pleaded guilty, in the Criminal Action, to having "stolen" money from the Fund. (Ex. 4, Inj. Order at 4).
- That Respondent had "admitted that he diverted $9.3 million from the Fund to other entities under his control via Ssecurion and used that money to pay rent and salary expenses, and that those transfers/payments were not appropriately characterized in the books and records of the Fund."[2] (Ex. 3, SJ Order at 3-4 and n. 3, 9).

[2] As set forth in the Commission's moving papers in the Civil Action, using the misappropriated funds to pay rent and salary was improper because those were general expenses of the investment adviser that, under the Fund's Limited Partnership Agreement, should have been paid from the annual management fee.

- That Penn "created a sham investigations company – complete with a fake website – which he used to divert approximately $9 million in investor funds." (Ex. 4, Inj. Order at 4).

- That "[r]outing the money to CASO Management and CGI through Ssecurion served no legitimate purpose and was an obvious attempt to shield Penn's theft from the Fund's auditors and participants." (Ex. 3, SJ Order at 11, citing cases holding that routing transactions through an intermediary is "inherently deceptive").

- That the scheme "involved substantial planning and concealment." (Ex. 4, Inj. Order at 4).

- That Respondent's illegal conduct was "repeated" because it included 80 improper transfers over three years. (Ex. 4, Inj. Order at 4).

- That Respondent "was acting as an investment adviser" when he engaged in this conduct. (Ex. 4, Inj. Order at 14).

- That, when questioned by the auditors, Penn "provided them with fake work-product and ultimately fired" them. (Ex. 4, Inj. Order at 4).

- That there were no assurances against future violations because "Penn refuses to admit to this Court that what he did was wrong and he has expressed no remorse." (Ex. 4, Inj. Order at 4).

C. Penn's Continued Denial of Responsibility for His Misconduct

Almost a year after entering his guilty plea in the Criminal Action, Respondent moved to vacate his conviction, arguing that it was legally impossible for him to commit "larceny" against the Fund.[3] (Ex. 11 at 1).

Respondent then filed an Answer in the Civil Action in which he admitted most of the facts alleged by the Commission, but argued that this conduct did not violate the securities laws. Specifically, he admitted that "approximately all of the $9.3 million was sent from the Fund to

---

[3] Penn's challenge to his conviction for grand larceny cited *People v. Zinke*, 76 N.Y.2d 8 (1990), which held that a partner's conviction for grand larceny was invalid because, under New York law, each partner in a partnership has equal claim to all of the partnership's property. That case involved an individual who, while acting as the general partner of a partnership, took some of its assets. Under New York state law, larceny involves the taking of property *in which one does not have a property interest* from one who does. As the trial court and the Appellate Division ultimately recognized, Penn's case was distinguishable because he was not the general partner of the Fund – rather, the general partner of the Fund was an entity he controlled. (Ex. 12).

CASO Management or CGI through Ssecurion" (Ex. 7, Ans. at 3d Aff. Def.), and admitted that the bulk of the $9.3 million – all but a few hundred thousand dollars – had been kicked back to CASO Management and CGI. And he did not allege that actual due diligence services had been rendered in exchange for these payments; rather, he claimed that these payments were "advances on management fees" without pointing to any provision of the Fund's organizational agreements that could have authorized such advances. (Ex. 7, Ans. at 1st Aff. Def.).

Penn's motion to vacate his criminal conviction was rejected by the trial judge on July 11, 2016. (Ex. 11). Penn then appealed his conviction to the Appellate Division of the New York Supreme Court, which, on September 26, 2017, summarily rejected his appeal. (Ex. 12). In its two-page decision, the Appellate Division noted that Penn had pled guilty, forfeiting his right to appellate review of his claim. (*Id.* at 1). The Appellate Division also stated that it "would have been unavailing" for Penn to have made his argument of legal impossibility below. (*Id.* at 2).

D. The Follow-On Administrative Proceeding

On November 20, 2017, the Commission instituted this follow-on proceeding pursuant to Section 203(f) of the Advisers Act. The OIP requires the Administrative Law Judge to determine whether the OIP's allegations against the Respondent are true and what remedial action is appropriate in the public interest against him pursuant to Section 203(f) of the Advisers Act. (Ex. 1 at III). Respondent has been served with the OIP (Ex. 13), and appeared at a telephonic pre-hearing conference on December 18, 2017, after which an order issued setting a schedule for Penn to answer the OIP and for the Division to move for summary disposition. (Ex. 14, at 1). Penn answered the OIP on January 2, 2018. (Ex. 15). In his answer, Penn admitted that, from March 2010 through October 2013, he was the managing director of CASO

Management.[4] *Id.*. In the answer, Penn also (i) denied that he had been enjoined pursuant to the judgment entered in the Civil Action on August 22, 2017, and (ii) denied that he had pled guilty in the Criminal Action, was ordered to pay restitution and was sentenced to a term of imprisonment.[5] *Id.*.

LEGAL ARGUMENT

A. Summary Disposition Is Appropriate In This Proceeding.

Rule 250(a) of the Commission's Rules of Practice permits the Division, with leave of the hearing officer, to move for summary disposition of any of the OIP's allegations. Rule 250(b) provides for summary disposition if there is "no genuine issue with regard to any material fact and the party making the motion is entitled to a summary disposition as a matter of law." Summary disposition is particularly appropriate here as the underlying facts at issue have already been litigated and determined in the Criminal Action and the Civil Action, and the sole issue for determination "concerns the appropriate sanction." *In the Matter of Toby G. Scammell*, IA Rel. No. 3961, 2014 WL 5493265, at *3 n.17 (Comm. Op. Oct. 29, 2014) ("We have repeatedly upheld the use of summary disposition in circumstances where a respondent has been enjoined or convicted and the sole determination concerns the appropriate sanction").

---

[4] Penn further denied that CASO Management was a registered investment adviser from March 2010 through October 2013. The OIP did not explicitly allege this; the OIP alleged that CASO Management was a registered investment adviser. As noted above, the period during which CASO Management was a registered investment adviser was from September 2012 through January 2016. Penn's denial of the allegation in the OIP appears to be the directed at how the OIP was drafted. In his answer to the civil complaint, Penn admitted that CASO Management was an investment adviser under Penn's control.

[5] With regard to the criminal sanctions levied against him, Penn's answer, in apparent reference to his so-far fruitless appeals, states that he "denies knowledge and information sufficient to admit or deny the lawfulness or whether the allegations contained in [the relevant paragraph of the OIP] are to be deemed void."

B. A Permanent Bar Is Warranted.

Advisers Act Sections 203(e)-(f) provide that the Commission may bar from association with various securities-related industries: (1) a respondent who at the time of the alleged misconduct was associated with an investment adviser (§ 203(f)); (2) if such bar is in the public interest (*Id.*); and (3) respondent has, *inter alia*, (a) been convicted, "within ten years of the commencement of the proceedings under this subsection" (*Id.*) of "any felony or misdemeanor . . . which the Commission finds" (§ 203(e)) "involves the larceny, theft . . . fraudulent concealment . . . or misappropriation of funds . . . ." (§ 203(e)(2)(C)); or (b) is permanently or temporarily enjoined by order, judgment or decree of any court of competent jurisdiction . . . from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security." (§ 203(e)(4)).

Respondent's criminal conviction for larceny establishes one basis for relief.[6] The Civil Court's issuance of an injunction against Penn prohibiting future violations of the Anti-Fraud Provisions establishes an additional, independent basis for relief. Moreover, facts determined in the two prior proceedings demonstrate that an unqualified collateral bar is in the public interest.

In determining whether a particular sanction is in the public interest, the Commission considers six factors: (1) the egregiousness of Respondent's actions; (2) the isolated or recurrent nature of the infractions; (3) the degree of scienter involved; (4) Respondent's recognition of the wrongful nature of his conduct; (5) the sincerity of the Respondent's assurances against future violations and (6) the likelihood that Respondent's occupation will present opportunities for

---

[6] It is of no moment that the crime of which he was convicted did not, on the face of the indictment, involve securities or the investment advisory business. The Commission "has long barred individuals based on convictions involving dishonesty that are not even securities-related." *In the Matter of Toby G. Scammell*, ID Rel. No. 516, 2013 WL 5960707, at *4 (Nov. 7, 2013), *aff'd at* IA Rel. No. 3961, 2014 WL 5493265 (Comm. Op. Oct. 29, 2014), *citing Kornman v. SEC*, 592 F.3d 173, 180 (D.C. Cir. 2010).

future violations. *See In the Matter of Edgar R. Page and PageOne Financial Inc.*, IA Rel. No. 4400, 2016 WL 3030845, at *5 (Comm. Op. May 27, 2016). The inquiry is "flexible, and no one factor is dispositive." *Id.* However, Respondent—who has been convicted of multiple crimes—faces an extremely high bar to remaining in the industry. It is well established that "[a]bsent extraordinary mitigating circumstances" a conviction for offenses involving fraud necessitates a bar. *In the Matter of Eric S. Butler*, ID Rel. No. 413, 2011 WL 174245, at *3 (Jan. 19), *aff'd*, Exch. Act Rel. No. 3262, 2011 WL 3792730 (Aug. 26, 2011); *see also In the Matter of Gilles T. de Charsonville*, ID Rel. No. 996, 2016 WL 1328931, at *4 (Apr. 5, 2016) ("The public interest requires a severe sanction when a respondent's past misconduct involves fraud because opportunities for dishonesty recur constantly in the securities business."). So it is here, where all six factors require a full associational bar against Respondent.

Even if Respondent's criminal conviction for grand larceny were not considered to have involved fraud, the injunction in the Civil Action would itself be sufficient to establish a presumption in favor of barring the Respondent. "[O]rdinarily, and in the absence of evidence to the contrary, it will be in the public interest to revoke the registration of, or suspend or bar from participation in the securities industry a respondent who is enjoined from violating the antifraud provisions." *Marshall E. Melton*, IA Rel. No. 2151, 2003 WL 21729839, at *9 (July 25, 2003).

The facts of this case, as established by Respondent's plea in the Criminal Action and by the findings of the Court in the Civil Action, demonstrate that each of the factors considered by the Commission weighs in favor of imposing all applicable bars against Respondent.

1. The Conduct At Issue Was Egregious

The Court in the Civil Action found that Penn's conduct was egregious. In particular, the Court noted that Respondent had "created a sham investigations company – complete with a fake

website – which he used to divert approximately $9 million in investor funds." (Ex. 4, Inj. Order at 4). The amount of restitution ordered in the Criminal Action, $8,362,974 (Ex. 16 at 2, line 19), further demonstrates the egregiousness of Respondent's conduct. *See, e.g., Frank L. Constantino*, ID Rel. No. 414, 2011 WL 1341151, at *5 (Apr. 8, 2011) (degree of harm caused is "at least minimally quantified by the $2.5 million that the court ordered in restitution"); *Richard P. Callipari*, ID Rel. No. 237, 2003 WL 22250402, at *5 (Sept. 30, 2003) (causing losses of approximately $428,000 was egregious).

2. The Conduct Was Recurrent

Respondent's illegal conduct was "repeated" because it included 80 improper transfers over three years. (Ex. 4, Inj. Order at 4). Commission precedent establishes such conduct as recurrent, rather than isolated in nature. *See Stephen L. Kirkland*, ID Rel. No. 875, 2015 WL 5139109, at *6 (Sept. 2, 2015); (misconduct over two years and involving ten investors recurrent); *Gordon Brent Pierce*, Sec. Act Rel. No. 9555, 2014 WL 896757, at *23 (Mar. 7, 2014) (misconduct over eight months "recurrent and long-lasting"); *Richard J. Daniello*, Exch. Act Rel. No. 27049, 1989 WL 991994, at *4 (July 21, 1989) (four months of misappropriating employer's funds was not isolated); *Callipari*, 2003 WL 22250402, at *5 (a scheme lasting several weeks constituted "recurring and egregious" behavior).

3. The Conduct Involved a High Degree of Scienter

Courts have recognized that misconduct involving fraud, like that at issue here, indicates a "high degree of scienter." *Adam Harrington*, ID Rel. No. 484, 2013 WL 1655690, at *4 (Apr. 7, 2013); *Alan Brian Baiocchi*, ID Rel. No. 382, 2009 WL 2030524, at *3 (July 14, 2009); *Callipari*, ID Rel. No. 237, 2003 WL 22250402, at *5 (Sept. 30, 2003).

Moreover, the Court in the Civil Action found that scheme "involved substantial planning and concealment" (Ex. 4, Inj. Order at 4), and that "[r]outing the money to CASO Management and CGI through Ssecurion served no legitimate purpose and was an obvious attempt to shield Penn's theft from the Fund's auditors and participants." (Ex. 3, SJ Order at 11, citing cases holding that routing transactions through an intermediary is "inherently deceptive."). These findings establish not only that Penn defrauded his investors, but that he also attempted to mislead the Fund's auditors and otherwise conceal his misconduct.

4. Respondent Has Not Acknowledged the Wrongful Nature of His Conduct

At no point has Penn recognized the wrongful nature of his conduct. Indeed, Penn vigorously litigated the Civil Action without raising any serious factual issues, essentially asserting that his conduct did not violate the securities laws because he didn't intend to hurt his investors by stealing from them. (Ex. 7, Ans. at ¶ 1, Penn "den[ied] to the best of his knowledge disadvantaging investors by elevating [his] interests over the investors or the Fund"; and Ans. at ¶ 2, Penn "den[ied] to the best of his knowledge and memory misappropriating moneys as defined as 'intentional use of the property or funds in order to injure investors' and admit[ted] transferring money to CGI in a manner that did not characterize the use of the fund money appropriately from late 2010 to October 2013" (quotation in original)). Further, in his answer to the OIP, Penn refused to admit either that he was enjoined in the Civil Action or that he pled guilty in the Criminal Action. (Ex. 15.)

The "absence of recognition by [a respondent] of the wrongful nature of his conduct" favors a permanent bar. *Jonathan D. Davey, CPA*, ID Rel. No. 959, 2016 WL 537549, at *3 (Feb. 11, 2016) (granting permanent bar on motion for summary disposition in follow-on proceeding to criminal conviction); *Siming Yang*, ID Rel. No. 788, 2015 WL 2088468, at *4

(May 6, 2015) (noting, as part of grant of summary disposition and imposing of permanent bar in follow-on proceeding to civil injunction, that, "[c]onsistent with a vigorous defense of the charges, [respondent] ha[d] not recognized the wrongful nature of his conduct").

5. Respondent Has Not Offered Sincere Assurances Against Future Violations

Respondent has presented no assurances that he would not seize another opportunity to prey upon clients, if it were to present itself. To the contrary, rather than fully acknowledging his wrongful conduct, he has appealed his criminal conviction and contested the Civil Action. His failure to acknowledge the wrongfulness of his conduct, together with the high degree of scienter of his crimes and his efforts to mislead the Fund's auditors, cast into doubt any assurances he may provide that he will refrain from further violations. *See, e.g., In the Matter of Toby G. Scammell*, Release No. 3961, 2014 WL 5493265, at *6 (Comm. Op. Oct. 29, 2014) (rejecting assurances where conduct involved high degree of scienter and acts of concealment, together with only partial acknowledgement of his wrongdoing).

Penn has expressed no remorse. (Ex. 4, Inj. Order at p. 4). Confronted with similar behavior in the recent past, the Commission found that there was "no recognition of wrongful conduct nor meaningful assurance against future violations." *In the Matter of Shervin Neman & Neman Fin., Inc.*, ID Rel. No. 1227, 2017 WL 5589224, at *8 (Nov. 20, 2017).

6. Respondent's Occupation Presents Opportunities For Future Violations

While Penn is not currently working in the securities industry, his cavalier attitude regarding his past misconduct suggests that he would choose to work in the securities industry again, if the opportunity presented itself, and once again be in a position to harm investors. The mere fact that Respondent is not currently employed in the securities industry is not relevant, as "if he were to reenter the securities industry, his occupation would present the opportunity for

future violations." *In The Matter of Michael Robert Balboa*, ID Rel. No. 747, 2015 WL 847168, at *5 (Feb. 27, 2015); *see also Neman*, 2017 WL 5589224, at *8; *In the Matter of Glenn M. Barikmo*, ID Rel. No. 436, 2011 WL 4889086, at *5 (Oct. 13, 2011). Thus, the full range of bars should be imposed against Respondent.

CONCLUSION

Based upon his criminal conviction and the injunction entered against him, and pursuant to the public interest, bars should be entered as against Respondent Lawrence E. Penn, III permanently barring him from associating with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

Dated: New York, NY
January 10, 2018

Howard Fischer, Esq.
Thomas P. Smith, Esq.
Karen E. Willenken, Esq.
Katherine S. Bromberg, Esq.
New York Regional Office
Securities and Exchange Commission
200 Vesey Street, Suite 400
New York, NY 10281
Tel.: (212) 336-0589
FischerH@SEC.gov

Attorneys for the Division of Enforcement

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-18288

In the Matter of

LAWRENCE E. PENN, III,

Respondent.

Certificate of Service

I hereby certify that I served (1) the Division of Enforcement's Motion for Summary Disposition Against Respondent and Supporting Memorandum of Law, dated January 10, 2018 (the "Motion"); and (2) the Declaration of Karen E. Willenken, dated January 10, 2018, and all exhibits attached thereto on this 10th day of January, 2018, on the below parties by the means indicated:

Lawrence E. Penn, III
[redacted]
New York, NY [redacted]
[redacted]l.com
(By Email and UPS)

Brent Fields, Secretary
Office of the Secretary
U.S. Securities and Exchange Commission
100 F. Street, N.E.
Washington, D.C. 20549-2557
(By Fax and UPS (original and three copies))

The Honorable Carol Fox Foelak
Administrative Law Judge
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-2557
(By Email and UPS)

Howard A. Fischer
Senior Trial Counsel

HARD COPY

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-18288

In the Matter of

LAWRENCE E. PENN, III,

Respondent.

DECLARATION OF KAREN E. WILLENKEN

I, Karen E. Willenken, hereby declare as follows:

1. I am a member of the Bar of the State of New York and am employed as Senior Counsel in the Enforcement Division (the "Division") at the New York Regional Office of the Securities and Exchange Commission (the "Commission"). I submit this declaration in support of the Division's Motion for Summary Disposition Against Respondent Lawrence E. Penn, III.

2. Attached hereto as Exhibit 1 is a true and correct copy of the Order Instituting Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940 and Notice of Hearing ("OIP"), instituted on November 20, 2017.

3. Attached hereto as Exhibit 2 is a true and correct copy of the Certificate of Conviction for Penn's criminal conviction, dated April 20, 2015, in *People v. Penn*, No. 00073-14 (N.Y. Sup. Ct.).

4. Attached hereto as Exhibit 3 is a true and correct copy of aMemorandum Opinion & Order dated December 21, 2016, issued in *SEC v. Penn, et al.*, 14 Civ. 581 (S.D.N.Y.) (VEC) (the "Civil Action"), granting the Commission summary judgment with respect to its claims

under Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and Sections 204, 206(1) and 206(2) of the Investment Company Act of 1940 and Rule 204-2 thereunder.

5. Attached hereto as Exhibit 4 is a true and correct copy of the Opinion & Order issued in the Civil Action, dated August 22, 2017, permanently enjoining Penn from further violations of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and Sections 204, 206(1) and 206(2) of the Investment Company Act of 1940 and Rule 204-2 thereunder.

6. Attached hereto as Exhibit 5 is a true and correct copy of Penn's Form U4, filed November 1, 2004, accessed, downloaded, and printed from FINRA's WebCRD site by a member of the Commission staff on January 8, 2018.

7. Attached hereto as Exhibit 6 is a true and correct copy of a page that appears to have been printed from the website of Camelot Acquisitions Secondary Opportunities Management LLC ("CASO Management") showing the biographies of team members, dated August 2, 2013. The page was produced to the Commission by an investor on March 13, 2014.

8. Attached hereto as Exhibit 7 is a true and correct copy of Penn's third amended answer to the Commission's civil complaint, filed in the Civil Action on April 8, 2016.

9. Attached hereto as Exhibit 8 is a true and correct copy of page from the IARD website, showing the date of CASO Management's registration as an investment adviser. The website page was accessed and saved by a member of the Commission staff on January 8, 2014.

10. Attached hereto as Exhibit 9 is a true and correct copy of the Commission's *Order Cancelling Registrations of Certain Investment Advisers Pursuant to Section 203(h) of the*

Investment Advisers Act of 1940, Inv. Adv. Act Rel. No. 4308, dated January 8, 2016, which cancelled the registration CASO Management.

11. Attached hereto as Exhibit 10 is a true and correct copy of the Commission's complaint filed in the Civil Action, dated January 30, 2014.

12. Attached hereto as Exhibit 11 is a true and correct copy of the Decision and Order, dated June 10, 2016, of the Supreme Court of the State of New York, Laura A. Ward, *J.*, denying Penn's motion to vacate his guilty plea in his criminal case.

13. Attached hereto as Exhibit 12 is a true and correct copy of a Decision and Order of the Supreme Court, Appellate Division, First Department, of the State of New York, dated September 26, 2017, unanimously affirming (i) the judgment convicting Penn upon his plea of guilty, and (ii) the judgment denying Penn's motion to vacate the judgment.

14. Attached hereto as Exhibit 13 is a true and correct copy of proof of service of the Commission's OIP, on or about November 29, 2017.

15. Attached hereto as Exhibit 14 is a true and correct copy of the Prehearing Order, dated December 18, 2017, in this matter. The Prehearing Order noted that Penn appeared at the prehearing conference held that day, and set down a schedule for Penn to answer the OIP, and the briefing schedule for a motion for summary disposition.

16. Attached hereto as Exhibit 15 is a true and correct copy of Penn's answer to the OIP, dated January 2, 2018.

17. Attached hereto as Exhibit 16 is a true and correct copy of the transcript of Penn's plea in his criminal case, *People v. Penn*, dated March 16, 2015.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed: January 10, 2018
New York, New York

Karen E. Willenken

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4811 / November 20, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-18288

In the Matter of **LAWRENCE E. PENN, III** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940 AND NOTICE OF HEARING**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Lawrence E. Penn, III ("Respondent" or "Penn").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. From at least March 2010 through October 2013, Respondent was the managing director of Camelot Acquisitions Secondary Opportunities Management, LLC, an investment adviser registered with the Commission. Respondent, 47 years old, is a resident of New York, New York.

B. ENTRY OF THE INJUNCTION/RESPONDENT'S CRIMINAL CONVICTION

2. On August 22, 2017, a final judgment was entered against Penn, permanently enjoining him from future violations of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act, in the

civil action entitled Securities and Exchange Commission v. Penn, et al., Civil Action Number 1:14-CV-0581, in the United States District Court for the Southern District of New York

3. The Commission's complaint alleged that, between March 2010 and October 2013, Penn engaged in a fraudulent scheme to misappropriate approximately $9 million from a private equity fund in order to provide additional assets to Penn to spend on his business and personal expenditures.

4. On March 16, 2015, Penn pled guilty to Grand Larceny in the First Degree in violation of New York Penal Law § 155.42 and Falsifying Business Records in the First Degree in violation of New York Penal Law § 1175.10 before the Supreme Court of the State of New York, County of New York: Part 42 in The People of the State of New York vs. Lawrence E. Penn, III, Indictment No. 00073-14. On April 20, 2015, Penn was ordered to pay restitution in the amount of $8,362,974 and was sentenced to a prison term of two to six years.

5. The counts of the criminal information to which Penn pleaded guilty alleged, among other things, that Penn stole over $1 million from a private equity fund in the same scheme underlying the Commission's complaint described in Paragraph 3 above.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations; and

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 203(f) of the Advisers Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as

provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondent as provided for in the Commission's Rules of Practice.

IT IS FURTHER ORDERED that, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice, 17 C.F.R. § 201.360(a)(2), the Administrative Law Judge shall issue an initial decision no later than 75 days from the occurrence of one of the following events: (A) The completion of post-hearing briefing in a proceeding where the hearing has been completed; (B) Where the hearing officer has determined that no hearing is necessary, upon completion of briefing on a motion pursuant to Rule 250 of the Commission's Rules of Practice, 17 C.F.R. § 201.250; or (C) The determination by the hearing officer that a party is deemed to be in default under Rule 155 of the Commission's Rules of Practice, 17 C.F.R. § 201.155 and no hearing is necessary.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

For the Commission, by its Secretary, pursuant to delegated authority.

Brent J. Fields
Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4811 / November 20, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-18288

In the Matter of **LAWRENCE E. PENN, III** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940 AND NOTICE OF HEARING**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Lawrence E. Penn, III ("Respondent" or "Penn").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. From at least March 2010 through October 2013, Respondent was the managing director of Camelot Acquisitions Secondary Opportunities Management, LLC, an investment adviser registered with the Commission. Respondent, 47 years old, is a resident of New York, New York.

B. ENTRY OF THE INJUNCTION/RESPONDENT'S CRIMINAL CONVICTION

2. On August 22, 2017, a final judgment was entered against Penn, permanently enjoining him from future violations of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act, in the

civil action entitled Securities and Exchange Commission v. Penn, et al., Civil Action Number 1:14-CV-0581, in the United States District Court for the Southern District of New York

3. The Commission's complaint alleged that, between March 2010 and October 2013, Penn engaged in a fraudulent scheme to misappropriate approximately $9 million from a private equity fund in order to provide additional assets to Penn to spend on his business and personal expenditures.

4. On March 16, 2015, Penn pled guilty to Grand Larceny in the First Degree in violation of New York Penal Law § 155.42 and Falsifying Business Records in the First Degree in violation of New York Penal Law § 1175.10 before the Supreme Court of the State of New York, County of New York: Part 42 in The People of the State of New York vs. Lawrence E. Penn, III, Indictment No. 00073-14. On April 20, 2015, Penn was ordered to pay restitution in the amount of $8,362,974 and was sentenced to a prison term of two to six years.

5. The counts of the criminal information to which Penn pleaded guilty alleged, among other things, that Penn stole over $1 million from a private equity fund in the same scheme underlying the Commission's complaint described in Paragraph 3 above.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations; and

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 203(f) of the Advisers Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as

provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondent as provided for in the Commission's Rules of Practice.

IT IS FURTHER ORDERED that, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice, 17 C.F.R. § 201.360(a)(2), the Administrative Law Judge shall issue an initial decision no later than 75 days from the occurrence of one of the following events: (A) The completion of post-hearing briefing in a proceeding where the hearing has been completed; (B) Where the hearing officer has determined that no hearing is necessary, upon completion of briefing on a motion pursuant to Rule 250 of the Commission's Rules of Practice, 17 C.F.R. § 201.250; or (C) The determination by the hearing officer that a party is deemed to be in default under Rule 155 of the Commission's Rules of Practice, 17 C.F.R. § 201.155 and no hearing is necessary.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

For the Commission, by its Secretary, pursuant to delegated authority.

Brent J. Fields
Secretary

SUPREME COURT OF THE STATE OF NEW YORK NO FEE
NEW YORK COUNTY
100 CENTRE STREET
NEW YORK, NY 10013

CERTIFICATE OF DISPOSITION INDICTMENT

DATE: 03/07/2017

CERTIFICATE OF DISPOSITION NUMBER: 50882

PEOPLE OF THE STATE OF NEW YORK
VS.

PENNIII,LAWRENCE E

DEFENDANT

CASE NUMBER: 00073-2014
LOWER COURT NUMBER(S):
DATE OF ARREST: 02/10/2014
ARREST #: M14612193
NYSID #: 12573192K
DATE OF BIRTH: [redacted]
DATE FILED: 02/07/2014

I HEREBY CERTIFY THAT IT APPEARS FROM AN EXAMINATION OF THE RECORDS ON FILE IN THIS OFFICE THAT ON 03/16/2015 THE ABOVE NAMED DEFENDANT WAS CONVICTED OF THE CRIME(S) BELOW BEFORE JUSTICE WARD,L THEN A JUSTICE OF THIS COURT.

GRAND LARCENY 1st DEGREE PL 155.42 00 BF
FALSIFYING BUSINESS RECORDS 1st DEGREE PL 175.10 00 EF

THAT ON 04/20/2015, UPON THE AFORESAID CONVICTION BY PLEA THE HONORABLE WARD,L THEN A JUDGE OF THIS COURT, SENTENCED THE DEFENDANT TO

GRAND LARCENY 1st DEGREE PL 155.42 00 BF
IMPRISONMENT = 2 YEAR(S) TO 6 YEAR(S)

FALSIFYING BUSINESS RECORDS 1st DEGREE PL 175.10 00 EF
IMPRISONMENT = 2 YEAR(S) TO 6 YEAR(S)

RESTITUTION = $8,362,974
CVAF = $25 (PAID)
DNA = $50 (PAID)
SURCHARGE = $300 (PAID)

IN WITNESS WHEREOF,I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL ON THIS DATE 03/07/2017.

COURT CLERK

SUPREME COURT OF THE STATE OF NEW YORK NO FEE
NEW YORK COUNTY
100 CENTRE STREET
NEW YORK, NY 10013

CERTIFICATE OF DISPOSITION INDICTMENT

DATE: 03/07/ 2017

CERTIFICATE OF DISPOSITION NUMBER: 50883

PEOPLE OF THE STATE OF NEW YORK
VS.

STMICHAELEWERS,ALTURA
DEFENDANT

CASE NUMBER: 00073-2014
LOWER COURT NUMBER(S):
DATE OF ARREST: 02/20/2014
ARREST #: M14615561
NYSID #: 12584060Z
DATE OF BIRTH: [redacted]
DATE FILED: 02/07/2014

I HEREBY CERTIFY THAT IT APPEARS FROM AN EXAMINATION OF THE RECORDS ON FILE IN THIS OFFICE THAT ON 12/18/2014 THE ABOVE NAMED DEFENDANT WAS CONVICTED OF THE CRIME(S) BELOW BEFORE JUSTICE WARD,L THEN A JUSTICE OF THIS COURT.

GRAND LARCENY 1st DEGREE PL 155.42 00 BF
MONEY LAUNDERING 1st DEGREE PL 470.20 01 BF
FALSIFYING BUSINESS RECORDS 1st DEGREE PL 175.10 00 EF

THAT ON 03/16/2015, UPON THE AFORESAID CONVICTION BY PLEA THE HONORABLE WARD,L THEN A JUDGE OF THIS COURT, SENTENCED THE DEFENDANT TO

GRAND LARCENY 1st DEGREE PL 155.42 00 BF
IMPRISONMENT = 1 YEAR(S) TO 3 YEAR(S)

MONEY LAUNDERING 1st DEGREE PL 470.20 01 BF
IMPRISONMENT = 1 YEAR(S) TO 3 YEAR(S)

FALSIFYING BUSINESS RECORDS 1st DEGREE PL 175.10 00 EF
IMPRISONMENT = 1 YEAR(S) TO 3 YEAR(S)

CVAF = $25 (PAID)
DNA = $50 (NOT PAID)
SURCHARGEO= $300 (PARTIAL PAYMENTO= $27)

IN WITNESS WHEREOF,I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL ON THIS DATE 03/07/2017.

COURT CLERK

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,	:	
Plaintiff,	:	14-CV-0581 (VEC)
-against-	:	MEMORANDUM OPINION & ORDER
LAWRENCE E. PENN, III, ET AL.,	:	
Defendants,	:	
-and-	:	
A BIG HOUSE FILM AND PHOTOGRAPHY STUDIO, LLC,	:	
Relief Defendant.	:	

VALERIE CAPRONI, United States District Judge:

The Securities and Exchange Commission ("SEC") filed this action against Defendant Lawrence E. Penn, III ("Penn") alleging that Penn misappropriated approximately $9 million from a hedge fund he managed. The SEC alleges violations of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78j(b), and Rule 10b-5(a) and (c) thereunder, 17 C.F.R. § 240.10b-5; and Sections 204, 206(1), 206(2), and 207 of the Investment Advisers Act of 1940 (the "40 Act"), 15 U.S.C. §§ 80b-4, 80b-6(1), 80b-6(2), and 80b-7, and Rule 204-2 thereunder, 17 C.F.R. §§ 275.204-2. Penn pled guilty in New York state court to one count of grand larceny and one count of falsifying business records after being charged criminally in connection with the same scheme as underlies the SEC's complaint. Penn has asserted various common law torts and a violation of 42 U.S.C. § 1983 as counterclaims against the SEC.

Before the Court is the SEC's motion for judgment on the pleadings with respect to its claims under Section 10(b), Rule 10b-5 of the Exchange Act and Sections 204, 206(1), 206(2) and Rule 204-2 of the 40 Act. In the alternative, the SEC moves for partial summary judgment on each of these claims except those under Section 204 and Rule 204-2 of the 40 Act. The SEC also moves to dismiss Penn's counterclaims.

For the reasons set forth below, the Court converts the SEC's motion for judgment on the pleadings to a motion for summary judgment and GRANTS that motion in its entirety. The Court further DISMISSES Penn's counterclaims without prejudice. The SEC's remaining claim under Section 207 of the 40 Act is unresolved by this Opinion.

BACKGROUND[1]

1. The SEC Complaint and Related State Criminal Proceedings

From its inception in 2007 to approximately February 2014, Penn managed a private equity fund called Camelot Acquisitions Secondary Opportunities LP (the "Fund"). Willenken Dec. Ex. E at 1. According to the SEC's Complaint, Penn misappropriated over $9 million from the Fund through a series of purported "due diligence" payments to an entity called Ssecurion LLC ("Ssecurion") that was controlled by Penn's co-conspirator. Compl. (Dkt. 151-1) at ¶ 2. Monies paid to Ssecurion were transferred to Penn and used for his personal and business

[1] The Court's account of the record is based on the uncontroverted facts in the SEC's Rule 56.1 Statement ("Pl. 56.1 Stmt.") (Dkt. 152) and the supporting declaration filed by Karen E. Willenken ("Willenken Dec.") (Dkt. 151). Penn was informed by the SEC of his opportunity to submit a Rule 56.1 Statement, and he chose not to do so. Penn did file an amended answer, in which he disputes some, though not all, of the SEC's allegations. Dkt. 129. As the SEC notes, many of Penn's denials are facially incredible. Nonetheless, recognizing that Penn is proceeding *pro se*, the Court looks only to the uncontroverted and admitted allegations in the SEC's Rule 56.1 Statement. Where the Court can find no genuine objection by Penn and no contradiction in the record, it relies on the SEC's submissions. *See* S.D.N.Y. Local Rule 56.1(c) ("[M]aterial facts set forth in the statement required to be served by the moving party will be deemed to be admitted for purposes of the motion unless specifically controverted by a correspondingly numbered paragraph in the statement required to be served by the opposing party."); *Smith v. City of New York*, No. 12-CV-4892 (JPO), 2014 WL 5324323, at *1 n.1 (S.D.N.Y. Oct. 20, 2014) (granting summary judgment against a pro se litigant where the court's independent review of the record did not contradict the moving party's Rule 56.1 statement).

expenses. Compl. ¶¶ 2, 4. Based on the same facts as underlie the SEC's Complaint, Penn was indicted in state court for grand larceny, money laundering, and falsifying business records. Pl. 56.1 Stmt. ¶ 3. Given the substantial overlap between the legal and factual issues in the SEC's civil case and the state criminal case, on June 11, 2014, the Court granted the SEC's motion to stay all discovery pending the outcome of Penn's criminal case. Dkt. 51. On March 16, 2015, Penn pled guilty to one count of grand larceny in the first degree and one count of falsifying business records in the first degree.[2] Pl. 56.1 Stmt. ¶ 6.

2. The Amended Answer and Allocution

As a part of his guilty plea allocution, Penn admitted that he made a false entry in a schedule of invoices in the Fund's business records "with the intent to defraud, including an intent to commit another crime[.]" Pl. 56.1 Stmt. ¶ 9; Willenken Dec. Ex. G (plea allocution) at 7:2-12. Penn also admitted that he stole in excess of $1 million from the Fund. Pl. 56.1 Stmt. ¶ 8.c; Willenken Dec. Ex. G at 6:18-7:1.

In addition to those admissions, Penn filed an amended answer to the SEC's Complaint. Dkt. 129. In his amended answer, Penn admitted that he "sent" $9.3 million from the Fund to two Penn-controlled entities, Camelot Acquisitions Secondary Opportunities Management LLC ("CASO Management") and Camelot Group International LLC ("CGI"), and that he did so through Ssecurion. Pl. 56.1 Stmt. ¶ 18 (citing Am. Answer ¶ 3, 3d Aff. Def.). According to Penn, CGI used the money to pay overhead expenses including rent and salary. *Id.* ¶ 19 (citing Am. Answer ¶¶ 3-4). Penn also admits mischaracterizing the use of Fund money, *id.* ¶ 20 (citing Am. Answer ¶ 2), and he forthrightly admits liability for violations of Section 204 of the 40 Act and Rule 204-2 thereunder, *id.* ¶ 22 (citing Am. Answer ¶ 6).

---

[2] Despite his guilty plea, Penn appealed his conviction. Penn's appeal remains pending. *See People v. Penn*, 2016 NY Slip Op 74993(U), 2016 WL 3045475 (1st Dep't 2016); Def. Opp. (Dkt. 161) at 3.

But Penn has responded imprecisely and ambiguously to other facts regarding the details of the scheme alleged in the Complaint, particularly allegations related to the connection between Penn's scheme and the misstatements in the Fund's records. For example, Penn denies knowledge or information sufficient to form a belief as to the truth of "some of the allegations in Paragraph 29 of the Complaint." Am. Answer ¶ 29. It is in that paragraph that the SEC alleges that the transfers to Ssecurion were characterized as "due diligence" payments and that the purported due diligence payments from 2010 through October 2013 total almost $9.3 million—the same amount Penn admits he "diverted." *Compare* Comp. ¶ 29, *and* Am. Answer ¶ 3, 3d Aff. Def. Penn also denied knowledge adequate to form a belief as to some, but not all, of the SEC's allegations that the Ssecurion invoices for "due diligence" expenses were included in the Fund's records—the same records Penn admits were inaccurate in some unspecified way—and that he created purported work product to correspond to those invoices in response to an investigation by the Fund's auditors.[3] *Compare* Compl. ¶¶ 5, 30, 37 *and* Am. Answer ¶¶ 5, 30, 37. These ambiguous denials do not comply with the minimum requirements under Rule 8, even accounting for Penn's *pro se* status, because Penn denied knowledge adequate to form a belief only as to *some* of the SEC's allegations.[4] By failing to specify what portions of the SEC's allegations were beyond his knowledge and by failing to specifically deny the allegations that

---

[3] Penn's guilty plea allocution does not include details as to the nature of the false entries he admitted to making in the Fund's business records. The SEC's motion implicitly assumes that the false entries to which Penn admitted are the false entries relating to "due diligence" payments to Ssecurion. Penn has not contested that assumption or argued that he admitted to falsifying some other, unrelated entries in the Fund's business records, and he has admitted that the transfers through Ssecurion were in fact mischaracterized. Am. Answer ¶¶ 2-4. As explained above, the Court finds that he has effectively admitted that the false entries in the Fund's records are the same as the false records reflecting "due diligence" payments to Ssecurion. Am. Answer ¶¶ 5, 30, 37.

[4] Penn's admissions are similarly oddly worded. Specifically, Penn frequently answers with the phrase: "Defendant admits knowledge or information sufficient to form a belief as to the truth of the allegations in" particular paragraphs of the Complaint. *See, e.g.*, Am. Answer ¶¶ 20, 22. The Court understands that answer to constitute an admission of the allegation.

were within his knowledge, Penn has left the Court guessing. Given the inappropriate and ambiguous nature of these responses, the Court deems the SEC's allegations in paragraphs 5, 29, 30, and 37 of the Complaint to have been admitted. *See* Fed. R. Civ. P. 8(b); *Dawkins v. Williams*, 511 F. Supp. 2d 248, 270-71 (N.D.N.Y. 2007) (deeming admitted allegations which defendant improperly denied in his answer).

3. The Instant Motion

The SEC's motion is based on Penn's admissions in his guilty plea allocution and in his amended answer. Because many of Penn's responses do not comply with the basic requirements of Rule 8(b), the SEC contends that the Complaint is essentially uncontroverted with respect to its Exchange Act and 40 Act claims, with the exception of its claim pursuant to Section 207 of the 40 Act. Pl.'s Mem. (Dkt. 150) at 2. Alternatively, the SEC argues that it is entitled to summary judgment on its fraud claims under the Exchange Act and Section 206 of the 40 Act because Penn is collaterally estopped from relitigating the facts of the scheme to which he pled guilty in state court. *Id.* at 26-28. Finally, the SEC seeks dismissal of Penn's counterclaims as improperly consolidated with its enforcement action. *Id.* at 28-29.

In connection with its motion, the SEC served on Penn a Notice to Pro Se Litigant in the form provided by Local Rule 12.1. Dkts. 153, 154. The SEC's notice alerted Penn to the possibility that the Court would treat the SEC's motion as a motion for summary judgment and that he was required by Rule 56(e) to provide admissible evidence to counter the SEC's submissions. *See* Dkt. 154 at ¶¶ 2-3. This constituted sufficient notice that the SEC's motion for judgment on the pleadings might be converted to a motion for summary judgment.[5] *See*

[5] The SEC also provided adequate notice to Penn by moving for summary judgment in the alternative and sending Penn a Local Rule 56.2 Notice, informing him of his obligation to respond to the SEC's Rule 56.1 Statement with a statement, affidavits or other evidence of his own. *See* Dkts. 153, 155; *see also Nat. Ass'n of Pharm. Mfrs., Inc. v. Ayerst Labs.*, 850 F.2d 904, 911 (2d Cir. 1988) (noting that moving to dismiss or, in the

Loccenitt v. City of New York, No. 10-CV-8319 (JPO), 2012 WL 5278553, at *3 (S.D.N.Y. Oct. 22, 2012) (holding that a Local Rule 12.1 Notice to Pro Se Litigant provides adequate notice of potential conversion to a motion for summary judgment).

DISCUSSION

1. Summary Judgment Conversion and Standard

Because the SEC has presented matters outside the pleadings and properly noticed Penn, the Court converts its motion for judgment on the pleadings to one for summary judgment. *See Hernandez v. Coffey*, 582 F.3d 303, 307 (2d Cir. 2009) ("If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56." (quoting Fed. R. Civ. P. 12(d)). Summary judgment is appropriate when "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). "Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial." *Scott v. Harris*, 550 U.S. 372, 380 (2007) (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)). "The Court must 'construe the facts in the light most favorable to the non-moving party and must resolve all ambiguities and draw all reasonable inferences against the movant.'" *Pandora Media, Inc. v. Am. Soc'y of Composers, Authors and Publishers*, 785 F.3d 73, 77 (2d Cir. 2015) (*per curiam*) (quoting *Beyer v. Cnty. of Nassau*, 524 F.3d 160, 163 (2d Cir. 2008)). Nevertheless, "to defeat summary judgment, 'a nonmoving party must offer some hard evidence showing that its version of the events is not

---

alternative, for summary judgment, provides adequate notice that the motion will be converted to one for summary judgment). Therefore, Penn had ample notice of the risk that the SEC's motion would be treated as a motion for summary judgment.

wholly fanciful.'" *Chabad Lubavitch of Litchfield Cnty., Inc. v. Litchfield Historic Dist. Comm'n*, 768 F.3d 183, 197 n.10 (2d Cir. 2014) (quoting *Jeffreys v. City of New York*, 426 F.3d 549, 554 (2d Cir. 2005)).

When a party moves for summary judgment against a *pro se* litigant, courts afford the non-moving party "special solicitude." *Tracy v. Freshwater*, 623 F.3d 90, 101 (2d Cir. 2010). District courts must read a *pro se* litigant's "pleadings liberally and interpret them to raise the strongest arguments that they suggest." *Jorgensen v. Epic/Sony Records*, 351 F.3d 46, 50 (2d Cir. 2003) (quotation marks and citations omitted). Courts "are less demanding of [*pro se*] litigants generally, particularly where motions for summary judgment are concerned." *Jackson v. Fed. Express*, 766 F.3d 189, 195 (2d Cir. 2014). This lower standard for pro se litigants does not, however, "relieve [the *pro se* litigant] of his duty to meet the requirements necessary to defeat a motion for summary judgment." *Jorgensen*, 351 F.3d at 50 (quotation marks and citations omitted).

2. Effect of Penn's Statements in his Allocution and Amended Answer

Penn is collaterally estopped from challenging the facts underlying his criminal convictions. State law determines the preclusive effect of Penn's convictions. 28 U.S.C. § 1738; *see Marrese v. Am. Acad. of Orthopaedic Surgeons,* 470 U.S. 373, 380 (1985) ("The preclusive effect of a state court judgment in a subsequent federal lawsuit generally is determined by the full faith and credit statute . . . . This statute directs a federal court to refer to the preclusion law of the State in which judgment was rendered."). Under New York law, a conviction— whether based on a trial or a guilty plea— is "conclusive proof of the underlying facts upon which it rests and the defendant is estopped from relitigating those facts in any future proceeding." *In re Cumberland Pharmacy, Inc. v. Blum*, 415 N.Y.S.2d 898 (2d Dep't 1979) (citing *S.T. Grand, Inc.*

v. City of New York, 32 N.Y.2d 300, 304-305 (1973)); *see Hooks v. Middlebrooks*, 472 N.Y.S.2d 54 (4th Dep't 1984) (no distinction for purposes of collateral estoppel between guilty plea and conviction at trial). The fact that Penn has an appeal pending from his criminal convictions does not affect the collateral estoppel analysis. *DiSorbo v. Hoy*, 343 F.3d 172, 183 (2d Cir. 2003) (citing *In re Amica Mut. Ins. Co.*, 445 N.Y.S.2d 820 (2d Dep't 1981) ("The rule in New York, unlike that in other jurisdictions, is that the mere pendency of an appeal does not prevent the use of the challenged judgment as the basis of collaterally estopping a party to that judgment in a second proceeding" (collecting cases)).

In determining what facts underlie a guilty plea, Courts in this district look at the facts the defendant admitted during his plea allocution. *See Kaplan v. S.A.C. Capital Advisors, L.P.*, 104 F. Supp. 3d 384, 389 (S.D.N.Y. 2015) ("When a defendant pleads guilty and allocutes to criminal conduct, it is only that specific conduct which the guilty plea incorporates.") (collecting cases).[6] Nevertheless, as a part of his plea allocution, Penn admitted that he made a false entry of "210 or 211 Schedule Invoices" in the business records of the Fund and did so with "intent to defraud, including an intent to commit another crime[.]" Pl. 56.1 Stmt. ¶ 9; Willenken Dec. Ex. G at 7:2-12. Penn also admitted that he "stole property from [the Fund], and that the value of the

[6] The Court notes that New York law does not clearly reach this conclusion. Although the contents of a plea allocution are certainly considered for the purposes of collateral estoppel, *see Buggie v. Cutler*, 636 N.Y.S.2d 357 (2d Dep't 1995), New York courts have not addressed whether other facts may also be viewed as underlying a guilty plea. *See Merchants Mut. Ins., Co. v Arzillo*, 472 N.Y.S.2d 97 (2d Dep't 1984) (collecting a number of cases for the proposition that "a guilty plea precludes relitigation in a subsequent civil action of all issues necessarily determined by the conviction," without further explication). Although the SEC looks in part to the Statement of Facts contained in Penn's indictment (Pl. Mem. at 27), the Court declines to do so in light of persuasive authority from this district. *See Kaplan*, 104 F. Supp. 3d at 389-90 ("[A]n indictment is simply an allegation—a charge by the Government," and is therefore not incorporated into a guilty plea.).

property exceeded $1 million." Pl. 56.1 Stmt. ¶ 8.c; Willenken Dec. Ex. G at 6:18-7:1. These facts form the basis of Penn's guilty plea, and Penn is precluded from relitigating them.[7]

Penn is also bound by the admissions in his amended answer. *Gibbs ex rel. Gibbs v. Cigna Corp.*, 440 F.3d 571, 578 (2d Cir. 2006) ("Facts admitted in an answer, as in any pleading, are judicial admissions that bind the defendant throughout this litigation."); *see also Bank of Am., N.A. v. Farley*, No. 00-CV-9346 (DC), 2002 WL 5586, at *6 (S.D.N.Y. Jan. 2, 2002) (treating defendant's initial answer as conclusive at summary judgment). Thus, Penn has admitted that he diverted $9.3 million from the Fund to other entities under his control via Ssecurion and used that money to pay rent and salary expenses, and that those transfers/payments were not appropriately characterized in the books and records of the Fund. Pl. 56.1 Stmt. ¶¶ 13-14, 18-20 (citing Am. Answer ¶¶ 2-6; 3d Aff. Def.). Penn has also admitted that the false entries in the Fund's business records related to invoices from Ssecurion. Pl. 56.1 Stmt. ¶ 9; Answer ¶¶ 5, 30, 37. Furthermore, Penn has also admitted that he violated Section 204 of the 40 Act and Rule 204-2 thereunder. Pl. 56.1 Stmt. ¶ 22; Am. Answer ¶ 6.

3. Liability

These facts, admitted by Penn in his amended answer and plea allocution, establish that there are no material questions of fact and that the SEC is entitled to summary judgment on its claims pursuant to the Exchange Act and Sections 204, 206(1), 206(2) and Rule 204-2 of the 40 Act. *See SEC v. Amerindo Inv. Advisors, Inc.*, No. 05-CV-5231 (RJS), 2013 WL 1385013, at*4-9 (S.D.N.Y. Mar. 11, 2013) (using collateral estoppel as to certain elements and demonstrating

---

[7] The SEC's use of collateral estoppel in this case has been hampered by the fact that the presiding judge who took Penn's guilty plea allowed him to simply confirm that the charge, as stated in the indictment, was true. *See* Willenken Dec. Ex. G at 6-7 ("[The Court:] count one . . . allege[s] that you . . . stole property from Camelot Acquisitions Secondary Opportunities LLP, and the value of the property exceeded $1 million, is that a true statement, sir? [Penn:] Yes, your Honor."). Ideally, the defendant should provide a factual recitation of what he did that makes him guilty as part of any guilty plea.

that there is no genuine dispute of material fact as to other elements to resolve a motion for summary judgment).

A. Exchange Act Section 10(b) and Rule 10b-5

Section 10(b) of the Exchange Act provides that "[i]t shall be unlawful for any person ... to use or employ, in connection with the purchase or sale of any security registered on a national securities exchange ... any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the [SEC] may prescribe . . . ." 15 U.S.C. § 78j(b). Rule 10b-5 provides, in relevant part, as follows:

> It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or the mails or of any facility of any national securities exchange,
>
> > (a) To employ any device, scheme, or artifice to defraud, [or]
> > (b) . . .
> > (c) To engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person,
>
> in connection with the purchase or sale of any security.

17 C.F.R. § 240.10b-5.

To make out a claim under sections (a) and (c) of Rule 10b-5, the SEC must prove that the defendant, in connection with the purchase or sale of a security, (1) engaged in a manipulative or deceptive act, (2) in furtherance of an alleged scheme to defraud, and (3) acted with scienter. *SEC v. Simpson Capital Mgmt., Inc.*, 586 F. Supp. 2d 196, 201 (S.D.N.Y. 2008) (quoting *In re Global Crossing, Ltd., Sec. Litig.*, 322 F. Supp. 2d 319, 336 (S.D.N.Y. 2004) (citing *SEC v. U.S. Envtl., Inc.*, 155 F.3d 107, 112 (2d Cir.1998))). Unlike a private plaintiff, the SEC need not prove reliance. *See SEC v. North Am. Research & Dev. Corp.*, 424 F.2d 63, 84 (2d Cir. 1970) ("reliance is immaterial because it is not an element of fraudulent representation under Rule 10b-5 in the context of an SEC proceeding . . .").

With respect to the first element, the SEC needs to show that what occurred was an "inherently deceptive act" and not just a misleading statement. *SEC v. Kelly*, 817 F. Supp. 2d 340, 344 (S.D.N.Y. 2011) (distinguishing misstatement and "scheme" liability). Conduct that is deceptive only because of a subsequent material misstatement may be actionable under Section 10b-5(b) but cannot be shoehorned into a claim for scheme liability under Section 10b-5(a) and (c). *SEC v. Garber*, 959 F. Supp. 2d 374, 381 & n.47 (S.D.N.Y. 2013) (explaining that *Kelly* did not involve "scheme liability" because the conduct was only deceptive by virtue of subsequent misrepresentations); *but see In re John P. Flattery & James D. Hopkins*, SEC Release No. 3981, at *14 (Dec. 15, 2014) (rejecting *Kelly* and suggesting that misstatements are actionable under subsection (a) and (c) of Rule 10b-5), *vacated by SEC v. Kelly*, 810 F.3d 1 (1st Cir. 2015)). With respect to the third element, scienter requires proof that the defendant acted with "a mental state embracing intent to deceive, manipulate, or defraud." *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 & n.12 (1976).

Penn admitted that he diverted $9.3 million from the Fund to other entities under his control. Pl. 56.1 Stmt. ¶¶ 18-20; Am. Answer ¶¶ 2-4, 3d Aff. Def. He admits the money was diverted through Ssecurion and that he falsified a schedule of invoices from Ssecurion in the Fund's records. Pl. 56.1 Stmt. ¶ 9, 18; Am. Answer ¶¶ 5, 30, 37. He also admits that he "stole" over $1 million from the Fund through this scheme, implicitly acknowledging that he took property that he knew did not belong to him. Pl. 56.1 Stmt. ¶ 8; Willenken Dec. Ex. G at 6:18-7:1. By disguising the ultimate recipient of the funds through sham transactions, Penn engaged in an inherently deceptive act. Routing the money to CASO Management and CGI through Ssecurion served no legitimate purpose and was an obvious attempt to shield Penn's theft from the Fund's auditors and participants. *See SEC v. Lee*, 720 F. Supp. 2d 305, 334 (S.D.N.Y. 2010);

see also SEC v. Credit Bancorp, Ltd., 738 F. Supp. 2d 376, 384 (S.D.N.Y. 2010) (transferring shares through an intermediary is inherently deceptive); *In re Smith Barney Transfer Agent Litig.*, 884 F. Supp. 2d 152, 161 (S.D.N.Y. 2012) (finding that creation and use of an intermediary entity to conceal the identity of a transaction's beneficiary is inherently deceptive). These deceptive acts are sufficient to establish the first element of liability under Rule 10b-5(a) and (c). There does not appear to be any dispute that these acts were in furtherance of Penn's fraudulent scheme, satisfying the second element of liability. And, finally, Penn's admissions satisfy Rule 10b-5's scienter requirement. Penn admitted in his allocution to stealing more than $1 million from the Fund, Pl. 56.1 Stmt. ¶ 8; Willenken Dec. Ex. G at 6:18-7:1, and to falsifying a schedule of invoices in the Fund's records "with the intent to defraud, including an intent to commit another crime and to aid and conceal the commission thereof[,]" Pl. 56.1 Stmt. ¶ 9; Willenken Dec. Ex. G at 7:2-12.

Because Penn's admissions in his amended answer and during his state guilty pleas are sufficient to establish liability under Section 10(b) and Rule 10b-5, there is no genuine dispute of material fact with respect to these claims.[8]

B. Sections 206(1) and 206(2) of the 40 Act

Section 206(1) and 206(2) of the 40 Act set "'federal fiduciary standards' to govern the conduct of investment advisers" and impose "enforceable fiduciary obligations" on those advisers. *Transamerica Mortg. Advisors, Inc. v. Lewis* (*TAMA*), 444 U.S. 11, 17 (1979) (quoting

[8] Although the Court need not reach Penn's factual arguments with respect to materiality and scienter, they are unavailing. Penn now argues that the investors and partners in his fund fully expected him to extract management fees, and that therefore his conduct was neither material nor deliberately misleading because it was consistent with investor and partnership expectations. Def. Opp. at 16-19, 20. These arguments are particularly untenable in light of the fact that his Fund has brought a civil suit against him in New York Supreme Court for, *inter alia*, breach of fiduciary duty, fraud, and conversion, Pl. 56.1 Stmt. ¶ 56; Willenken Dec. Ex. K, and his admission, under oath, that he stole money from the Fund, Willenken Dec. Ex. G at 6:18-7:1, 7:2-12.

Santa Fe Indus. v. Green, 430 U.S. 462, 471 n.11 (1977)). An investment adviser has a duty to subordinate its own interests to those of fund investors. *See SEC v. Moran*, 922 F. Supp. 867, 8996 (S.D.N.Y. 1996). In particular, an investment adviser is prohibited from using a "device, scheme, or artifice to defraud" clients, 15 U.S.C. § 80b–6(1), or from conducting a "transaction, practice, or course of business which operates as a fraud or deceit upon any client," *id.* at §80b 6(2). Section 206's bar on schemes and artifices to defraud also prohibits non-disclosure of material information by an investment adviser. *See In re Reserve Fund Sec. and Derivative Litig.*, 09-CV-4346 (PGG), 2012 WL 12354233, at *2 (S.D.N.Y. Oct. 3, 2012) (holding that Section 206 prohibits material non-disclosure and citing *Moran*, 922 F. Supp. at 896); *SEC v. Bolla*, 401 F. Supp. 2d 43, 66-68 (D.D.C. 2005) (recognizing that in the context of a fiduciary relationship non-disclosure and misstatements can be a scheme or artifice to defraud and holding defendant liable on misstatement theory under Section 206(1)); *cf. SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 198 (1963) (Section 206 prohibits material nondisclosure because it is a "variety of fraud or deceit").

The elements of a claim under Section 206 are similar to the elements of a claim under Rule 10b-5, *see TAMA*, 444 U.S. at 25 n.1 (White, J. dissenting) ("The provisions of [Section 206] are substantially similar to § 10(b)"), and identical to a claim under Section 17(a) of the Securities Act, *see SEC v. Pimco Advisors Fund Mgmt., LLC*, 341 F. Supp. 2d 454, 470 (S.D.N.Y. 2004) ("The provisions of Sections 206(1) and 206(2) have been interpreted as substantively indistinguishable from Section 17(a) of the Securities Act, except that Section 206(1) requires proof of fraudulent intent, while Section 206(2) simply requires proof of negligence ."). Thus, "facts showing a violation of Sections 10(b) or 17(a) by an investment advisor will also support a showing of a Section 206 violation." *SEC v. Berger*, 244 F. Supp. 2d

180, 192 (S.D.N.Y. 2001) (citing *SEC v. Rana Research, Inc.*, 8 F.3d 1358, 1363 n.4 (9th Cir. 1993)).

Penn's admitted scheme to defraud establishes each of the elements of a claim under Sections 206(1) and (2). There is no dispute that Penn was acting as an investment adviser as defined by the 40 Act, and he has admitted to managing the Fund. *See Abrahamson v. Fleschner*, 568 F.2d 862, 870 (2d Cir. 1977) ("[P]ersons who manage[ ] the funds of others for compensation are 'investment advisers' within the meaning of the statute."). Penn also admitted that he diverted $9.3 million from the Fund to pay business expenses through Ssecurion. That scheme was inherently deceptive. *See Lee*, 720 F. Supp. 2d at 334. Penn's scheme also satisfies the scienter requirement as applied to Rule 206. *See Steadman v. SEC*, 603 F.2d 1126, 1134 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981) (assessing scienter for the purposes of the 40 Act under the same standard as a Section 17(a) claim); *See Moran*, 922 F. Supp. at 896 (applying Exchange Act scienter requirement to a 40 Act Section 206(1) claim).

Penn's failure to disclose his scheme to the Fund's participants and attempts to obscure the facts from the Fund's auditors are also actionable under Section 206. Penn admitted that the Fund's records improperly characterized the use of the money paid to Ssecurion and, as a part of that scheme, he falsified a schedule of invoices in the Fund's records. Pl. 56.1 Stmt. ¶¶ 8-9, 13-14; 18-20; Am. Answer ¶¶ 2-3, 5-6, 3d Aff. Def., 4th Aff. Def.; Willenken Dec. Ex. G at 6:18-7:12. Penn's non-disclosure and outright misstatements breached his duties to the Fund. *See In re Reserve Fund Sec. and Derivative Litig.*, 2012 WL 12354233, at *2. Additionally, diversion and misappropriation of funds by an adviser are necessarily material. *See Operating Local 649 Annuity Tr. Fund v. Smith Barney Fund Mgmt. LLC,* 595 F.3d 86, 93 (2d Cir. 2010) ("[a]ny rational mutual fund investor would be highly leery of dealing with a fiduciary . . . who, in

violation of the law, lined [its] pockets at the expense of investors . . ."). [9] Penn's scienter with respect to the misstatements is established by his admissions that he acted with "intent to defraud," Willenken Dec. Ex. G at 7:2-12, and "stole" over $1 million from the Fund, *id.* at 6:18-7:1; *see also Ernst*, 425 U.S. at 193 & n.12. The Court finds that there is no dispute of material fact, and Penn is liable under Sections 206(1) and 206(2) of the 40 Act.

C. Section 204 and Rule 204-2 of the 40 Act

Penn's opposition papers contend—without argument—that the SEC is not entitled to judgment on these claims. Def. Opp. at 5. But, as discussed above, Penn's express admission of liability for violations of Section 204 and Rule 204-2 in his answer to the SEC's complaint is conclusive for purposes of summary judgment. Am. Answer ¶ 6; *see Gibbs ex rel. Gibbs*, 440 F.3d at 578. There is, therefore, no genuine dispute of material fact with respect to Penn's liability on these claims.

4. Penn's Counterclaims against the SEC

Penn's counterclaims cannot be consolidated with the SEC's action for equitable relief because the SEC has not consented. 15 U.S.C. § 78u(g); *see SEC v. McCaskey*, 56 F. Supp. 2d 323, 325 (S.D.N.Y. 1999) ("[Section 21(g)] has routinely been employed to dismiss third-party complaints and counterclaims because such additional claims protract litigation." (internal citations omitted)); *SEC v. Better Life Club of Am., Inc.*, 995 F. Supp. 167, 180 (D.D.C. 1998). Penn's counterclaims must, therefore, be dismissed.

[9] The Court assumes, without deciding, that because Rule 206 borrows from Rule 10b-5, a Section 206 claim based on a misstatement or non-disclosure (rather than a scheme) requires evidence of materiality just as a misstatement must be material to be actionable under Rule 10b-5(b). *See Steadman*, 603 F.2d at 1130 (applying Exchange Act materiality standard under the 40 Act). Materiality is straightforward in this case as "any investor, without regard for the degree of sophistication, would find it material that invested funds were not used for their stated purpose." *SEC v. Morriss*, No. 12-CV-80 (CEJ), 2012 WL 6822346, at *11 (E.D. Mo. Sept. 21, 2012).

CONCLUSION

For the forgoing reasons, Plaintiff's motion for summary judgment is GRANTED in its entirety, and Defendant's counterclaims are DISMISSED without prejudice. The SEC's claims under Section 207 of the 40 Act remain outstanding. The parties are ordered to notify the Court not later than **January 6, 2017**, whether either needs any discovery with respect to the SEC's Section 207 claim.

Because the parties did not provide any briefing on the appropriate remedies in this case, the Court directs the parties to submit briefs regarding this issue. The SEC's brief must be filed on or before **January 6, 2017**; Penn's response shall be filed on or before **January 27, 2017**; and the SEC's reply shall be filed on or before **February 6, 2017**.

SO ORDERED.

Date: December 21, 2016
New York, New York

Valerie Caproni

VALERIE CAPRONI
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,	:	
Plaintiff,	:	14-CV-581 (VEC)
-against-	:	OPINION & ORDER
LAWRENCE E. PENN, III, ET AL.,	:	
Defendants,	:	
-and-	:	
A BIG HOUSE FILM AND PHOTOGRAPHY STUDIO, LLC,	:	
Relief Defendant.	:	

VALERIE CAPRONI, United States District Judge:

Defendant Lawrence E. Penn, III ("Penn") was charged in New York state court in 2014 with misappropriating approximately $9 million from an investment fund that he controlled. Penn pleaded guilty to one count of grand larceny and one count of falsifying business records. This is a parallel civil enforcement proceeding. The SEC alleges that Penn's scheme violated Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. § 78j(b); Rule 10b-5(a) and (c) thereunder, 17 C.F.R. § 240.10b-5; and Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 (the "40 Act"), 15 U.S.C. §§ 80b-6(1), 80b-6(2). On December 21, 2016, the Court granted the SEC's motion for summary judgment as to liability. Bifurcating the proceedings, the Court directed the parties to separately brief the SEC's remedies. The SEC has moved to permanently enjoin Penn from further violations of the securities laws; for disgorgement of the proceeds of his scheme; and for imposition of a civil

monetary penalty. For the reasons that follow, the Court GRANTS the SEC's motion to enjoin Penn from further violations of the securities laws and DENIES its motion for disgorgement and penalties because there is a material dispute of fact that requires an evidentiary hearing.

BACKGROUND

The facts of Penn's scheme and the history of these proceedings is set out more fully in the Court's Memorandum Opinion and Order granting the SEC's motion for summary judgment. *See* Opinion and Order dated Dec. 21, 2016 (Dkt. 168) ("Op."). In brief, from approximately 2007 to February 2014 Penn was the general partner of Camelot Acquisitions Secondary Opportunities, LP (the "Fund"), a private equity fund. Op. at 2. Between 2010 and 2013, Penn diverted $9,286,916.65 from the Fund through a series of fictitious invoices for "due diligence." Op. at 2. The invoices were from Ssecurion, LLC ("Ssecurion"), a company set up by Penn and an accomplice. Op. at 2. Ssecurion transferred the lion's share of the funds to other entities controlled by Penn, Camelot Acquisitions Secondary Opportunities Management, LLC and Camelot Group International, LLC. Op. at 3. According to the SEC – and not contested by Penn -- over the course of the scheme, the Fund made 80 transfers to Ssecurion in respect of 32 false invoices. *See* Declaration of James R. D'Avino ("D'Avino Decl.") (Dkt. 179) ¶¶ 10-13.

Penn was arrested by New York City authorities, and, on March 16, 2015, he pleaded guilty to one count of first degree grand larceny and one count of falsifying records in the first degree. Op. at 3. As a condition of his plea, Penn was ordered to make restitution in the amount of $8,362,973.89[1] and to forfeit his interest in the Fund, which primarily consisted of his right to "carried interest" or a percentage of the Fund's profits. *See* Opp'n (Dkt. 185) Exs. 2, 3.

[1] The discrepancy between the amount diverted by Penn ($9,286,916.65) and the state court's restitution order ($8,362,973.89) is based on that court's finding that approximately $1 million of the diverted funds were used for the benefit of the Fund.

Pursuant to the state court's order, Penn is required to pay a graduated amount of his annual gross income from 5% of any income below $20,000 to 25% of any income above $350,000 in restitution. Opp'n Ex. 2 ¶ 2. The parties dispute the value of Penn's forfeited interest in the Fund. According to an analysis submitted by Penn to the New York County District Attorney's office, as of July 31, 2014, Penn's carried interest in the Fund's profits was worth approximately $18.5 million. Opp'n Ex. 5. The SEC contends that this estimate is overly rosy, based on speculative and out-of-date assumptions about the Fund's performance, and does not account for provisions of the Fund's partnership agreement which required Penn to forfeit half his interest in the Fund upon being removed as the Fund's general partner. Reply Mem. (Dkt 188) at 7.

These proceedings were stayed pending resolution of Penn's criminal case. As noted above, on December 21, 2016, the Court granted the SEC's motion for summary judgment, and directed the parties to brief the appropriate remedies.

DISCUSSION

The SEC seeks three forms of relief: a permanent injunction pursuant to Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3), and Section 209(d) of the 40 Act, 15 U.S.C. § 80(b)-9(d), to prohibit Penn from any future violations of the securities laws, Mem. (Dkt. 178) at 4; disgorgement in the amount of $9,286,916.65, the alleged amount of Penn's ill-gotten gains, Mem. at 7; and civil monetary penalties, Mem. at 9.

1. Injunctive Relief

"A permanent injunction is appropriate where there has been a violation of the federal securities laws and there is a reasonable likelihood of future violations." *SEC v. Haligiannis*, 470 F. Supp. 2d 373, 383 (S.D.N.Y. 2007). In determining whether to enter a permanent injunction, the Court considers four factors: "(1) the egregiousness of the violation; (2) the

degree of scienter; (3) the isolated or repeated nature of the violations; and (4) the sincerity of defendant's assurances against future violations." *SEC v. Elliott*, No. 09-CV-7594 (RJH), 2011 WL 3586454, at *10 (S.D.N.Y. Aug. 11, 2011) (quoting *Haligiannis*, 470 F. Supp. 2d at 389 n.9). Especially relevant is whether the defendant admits wrongdoing, because a defendant's refusal to do so makes "it rather dubious that [the defendant] [is] likely to avoid such violations of the securities laws in the future in the absence of an injunction." *SEC v. First Jersey Secs., Inc.*, 101 F.3d 1450, 1477 (2d Cir. 1996) (quoting *SEC v. Lorin*, 76 F.3d 458, 461 (2d Cir. 1996) (per curiam)).

Each factor weighs in favor of an injunction in this case. Penn's conduct was egregious. Together with a co-conspirator, he created a sham investigations company complete with a fake website which he used to divert approximately $9 million in investor funds. Op. at 3; Compl. (Dkt. 1) ¶ 44. When the Fund's auditors at Deloitte & Touche LLP ("Deloitte") raised questions about the payments, Penn provided them with fake work-product and ultimately fired Deloitte. Op. at 4; Compl. ¶¶ 5, 40-45. Penn's scheme involved a high degree of scienter. Penn admitted in state court that he "stole" more than $1 million from the Fund, Op. at 12, and his theft involved substantial planning and concealment. With respect to the third factor, Penn's scheme involved repeated misconduct. Over the course of three years, Penn submitted 32 false invoices, resulting in 80 improper transfers. *See SEC v. Zwick*, No. 03-CV-2742 (JGK), 2007 WL 831812, at *21 (S.D.N.Y. Mar. 16, 2007) (concluding that twenty fraudulent trades over a 16-month period qualified as systematic wrongdoing and citing similar cases). Finally, despite his state court guilty plea, Penn refuses to admit to this Court that what he did was wrong and he has expressed no remorse. *See SEC v. Contorinis*, 743 F.3d 296, 308 (2d Cir. 2014) ("We furthermore observe that Contorinis continues to deny having engaged in insider trading,

suggesting a lack of remorse and supporting further measures to deter future wrongdoing of a like type.") (internal citations omitted); Opp'n at 5 (characterizing the theft as "alleged"), 9-10 (arguing that Penn's conduct involved mere early payment of management fees).

The Court has considered Penn's argument that the collateral consequences of his conviction make it unlikely that he will be able to commit securities fraud in the future. *See SEC v. Johnson*, No. 03-CV-177 (JFK), 2006 WL 2053379, at *7 (S.D.N.Y. July 24, 2006) (recognizing that the adverse impact of a conviction is evidence that a defendant is unlikely to violate securities laws in the future). Even assuming that the notoriety and financial penalties associated with Penn's conviction make it less likely that he will be able to defraud investors in the future, Penn has not disavowed an intent to work in the securities industry in the future and, in any event, employment in finance and access to substantial capital are not prerequisites to securities fraud. *See SEC v. Payton*, No. 16-CV-4644 (JSR), 2016 WL 3023151, at *5 (S.D.N.Y. May 16, 2016). Moreover, despite admitting that he stole from the fund, Penn has appealed his state conviction. If Penn's conviction is reversed he may find it easier to re-enter the securities industry.

The SEC's motion for a permanent injunction is granted.

2. Disgorgement

"Once the district court has found federal securities law violations, it has broad equitable power to fashion appropriate remedies, including ordering that culpable defendants disgorge their profits." *First Jersey Sec. Inc.*, 101 F.3d at 1474. Disgorgement is intended to return the defendant to the status quo before his fraud, and it may not exceed the defendant's unlawful gains. *See Contorinis*, 743 F.3d at 301. A burden-shifting framework applies: the SEC is required to present "a reasonable approximation of the profits causally related to the fraud;" if it

does, then the burden shifts to the defendant to show that the SEC's approximation is not correct. *SEC v. Tourre*, 4 F. Supp. 3d 579, 589 (S.D.N.Y. 2014) (quoting *SEC v. Razmilovic*, 738 F.3d 14, 31 (2d Cir. 2013)).

The SEC has satisfied its initial burden of demonstrating the "approximate" value of Penn's unlawful gains. *See SEC v. Opulentica, LLC*, 479 F. Supp. 2d 319, 330 (S.D.N.Y. 2007). The D'Avino Declaration details the illicit payments made by the Fund to Ssecurion. *See* D'Avino Decl. ¶¶ 10-13. According to the D'Avino Declaration and not disputed by Penn – from October 2010 through July 2013, the Fund made 80 wire transfers to Ssecurion totaling $9,286,916.65. D'Avino Decl. ¶¶ 11-13. Entities controlled by Penn actually received $9,067,004 in stolen funds. Mem. at 2 n.2. There is no evidence that Ssecurion provided any legitimate services to the Fund.

Penn argues that any disgorgement award must be offset by the amount of restitution that he has paid, or will pay, to the Fund and its investors, and the value of his forfeited interest in the Fund. Penn is not required to disgorge amounts that he has already repaid.[2] Disgorgement is intended to force the defendant to give up the proceeds of his or her fraud – not to punish wrongdoing. *See SEC v. Palmisano*, 135 F.3d 860, 863 (2d Cir. 1998); *Contorinis*, 743 F.3d at 301. Although the SEC acknowledges this general point, it disputes Penn's valuation of his forfeited interest in the Fund. Reply Mem. at 7 & n.2. Relying on a valuation from July 2014, Penn argues that his forfeited interest in the Fund is worth between $18 and $20 million. *See* Opp'n at 4-6, Ex. 3. According to the SEC, Penn's valuation is unreliable and inaccurate: it is based on outdated information and overly optimistic projections of the Fund's performance; it does not account for expenses that are required to be deducted from the general partner's carried

[2] It is unclear whether Penn has paid any restitution to the Fund. To the extent he does so in the future, it is appropriate to offset these payments against his disgorgement obligation.

interest or for Penn's contractual obligation to forfeit half his interest in the Fund upon being removed for cause from the Fund's general partnership. *See* Reply Mem. at 7.

The parties' dispute over the value of Penn's forfeited interest in the Fund is a material dispute of fact. Notwithstanding the SEC's objections to Penn's methodology, it appears that the SEC does not dispute that Penn's carried interest in the Fund has some notional value that could offset his disgorgement obligation. But the SEC has not provided an alternative valuation it is apparently content to point out the flaws in Penn's methodology without presenting evidence that would allow the Court to resolve the ultimate issue. Under the circumstances, an evidentiary hearing is necessary to resolve the factual question of the value of Penn's forfeited carried interest in the Fund. *See SEC v. Elliot*, 2011 WL 3586454, at *15 (concluding that there were material factual disputes relative to the defendant's scienter and denying the SEC judgment on penalties and disgorgement); *Analytical Surveys, Inc. v. Tonga Partners, L.P.*, No. 06-CV-2692 (KMW), 2008 WL 4443828, at *16 (S.D.N.Y. Sept. 29, 2008) (finding material factual disputes concerning the value of interest to be disgorged); *see also SEC v. One or More Unknown Traders in the Common Stock of Certain Issuers*, 853 F. Supp. 2d 79, 86 (D.D.C. 2012) (denying judgment to the SEC because of material dispute as to whether funds were proceeds of wrongdoing). The SEC's motion for disgorgement is denied, pending an evidentiary hearing.[3]

3. Civil Monetary Penalties

The Exchange Act and the 40 Act authorize the Court to impose a civil monetary penalty of up to the "gross amount of pecuniary gain to [the] defendant as a result of the violation [of the securities laws]" or a "tiered" penalty per violation. *See* 15 U.S.C. § 78u(d)(3). A "tier three"

[3] To the extent the SEC is entitled to disgorgement, it is also entitled to prejudgment interest. Awarding prejudgment interest ensures that a defendant does not benefit from the time-value and use of the proceeds of his wrongdoing. *See Contorinis*, 743 F.3d at 308. For purposes of calculating prejudgment interest, the Court adopts as appropriate the Internal Revenue Service's underpayment rate. *See First Jersey Secs., Inc.*, 101 F.3d at 1476-77.

penalty of $150,000 or $160,000 per violation is authorized when, as is the case here, the violation involves "fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement" and results in a "substantial loss[]" or a "significant risk" thereof. *See id.* at § 78u(d)(3)(B)(iii); Adjustments to Civil Monetary Penalty Amounts, Exchange Act Release No. 34-79749, Investment Advisers Act Release No. IA-4599, Investment Company Act Release No. IC-32414, 82 Fed. Reg. 5367-01, 5371-72 (Jan. 18, 2017) (to be codified at 17 C.F.R. pt. 201). To determine the appropriate penalty, the Court considers: "(1) the egregiousness of the defendant's conduct; (2) the degree of the defendant's scienter; (3) whether the defendant's conduct created substantial losses or the risk of substantial losses to other persons; (4) whether the defendant's conduct was isolated or recurrent; and (5) whether the penalty should be reduced due to the defendant's demonstrated current and future financial condition." *Haligiannis*, 470 F. Supp. 2d at 386.

The SEC's motion for civil penalties is denied, pending resolution of the parties' dispute over the proper amount of Penn's disgorgement obligation. Penn's conduct was egregious, involved a high degree of scienter, and was recurrent. But Penn has not provided the Court with any information regarding his current or expected financial condition. Penn's disgorgement obligation, if any, may also bear on his ability to pay a fine. Assuming, as appears likely, Penn has limited means, a reduced penalty may be appropriate. *See e.g.*, *Opulentica, LLC*, 479 F. Supp. 2d at 331-32 (assessing reduced penalty in light of defendant's disgorgement obligation and financial condition); *SEC v. Balboa*, No. 11-CV-8731 (PAC), 2015 WL 4092328, at *5 (S.D.N.Y. July 6, 2015) (same); *SEC v. Kapur*, No. 11-CV-8094 (PAE), 2012 WL 5964389, at *7 (S.D.N.Y. Nov. 29, 2012) (same). The parties will be directed to address Penn's financial status concurrently with his disgorgement obligation.

CONCLUSION

The SEC's motion for a permanent injunction is GRANTED. The SEC's motions for disgorgement and for civil monetary penalties are DENIED, pending an evidentiary hearing on the value of Penn's forfeited interest in the Fund and Penn's financial status.

By **September 5, 2017**, the parties are directed to propose a schedule for an evidentiary hearing to resolve the parties' dispute over the value of Penn's forfeited property. The Court strongly encourages the parties to consider whether this issue may be resolved consensually without the need for a hearing. For instance, depending on the method by which carried interest is paid, it may be possible to craft a disgorgement order that provides for subsequent adjustments in Penn's disgorgement obligation based on the Fund's future realized profits on account of Penn's forfeited interest. The parties should also inform the Court of their respective positions on Penn's current and expected employment and financial status.

SO ORDERED.

Date: August 22, 2017
New York, New York

VALERIE CAPRONI
United States District Judge

TCGI CAPITAL GROUP, LLC(131839) **Rev. Form U4 (06/2003)**

Individual Name: PENN, LAWRENCE EDWARD ([redacted]) **U4 Amendment - Filing ID: 14364186**

Filing Date: 11/01/2004

FORM U4
UNIFORM APPLICATION FOR SECURITIES INDUSTRY REGISTRATION OR TRANSFER

1. GENERAL INFORMATION

First Name:	Middle Name:	Last Name:	Suffix:
LAWRENCE	EDWARD	PENN	
***Firm* CRD #:**	***Firm* Name:**	**Employment Date (MM/DD/YYYY):**	**CRD Branch #:**
131839	TCGI CAPITAL GROUP, LLC	05/19/2004	
***Firm* Billing Code:**	***Individual CRD #:***	**Individual SSN:**	
	3080265	xxx xx-xxxx	

Office of Employment Address Street 1: 45 ROCKEFELLER PLAZA SUITE 2000

Office of Employment Address Street 2:

City:	State:	Country:	Postal Code:
NEW YORK	New York	USA	10111

Private Residence Check Box:

If the Office of Employment address is a private residence, check this box. ☐

2. FINGERPRINT INFORMATION

Electronic Filing Representation

- (●) By selecting this option, I represent that I am submitting, have submitted, or promptly will submit to the appropriate *SRO* a fingerprint card as required under applicable *SRO* rules; or

  Fingerprint card barcode
- ( ) By selecting this option, I represent that I have been employed continuously by the *filing firm* since the last submission of a fingerprint card to CRD and am not required to resubmit a fingerprint card at this time; or,
- ( ) By selecting this option, I represent that I have been employed continuously by the *filing firm* and my fingerprints have been processed by an *SRO* other than NASD. I am submitting, have submitted, or promptly will submit the processed results for posting to CRD.

Exceptions to the Fingerprint Requirement

- ( ) By selecting one or more of the following two options, I affirm that I am exempt from the federal fingerprint requirement because I/*filing firm* currently satisfy(ies) the requirements of at least one of the permissive exemptions indicated below pursuant to Rule 17f-2 under the Securities Exchange Act of 1934, including any notice or application requirements specified therein:
  - ☐ Rule 17f-2(a)(1)(i)
  - ☐ Rule 17f-2(a)(1)(iii)

Investment Adviser Representative Only Applicants

- ( ) I affirm that I am applying only as an investment adviser representative and that I am not also applying or have not also applied with this *firm* to become a broker dealer representative. If this radio button/box is selected, continue below.
  - ( ) I am applying for registration only in *jurisdictions* that do not have fingerprint card filing requirements, or
  - ( )

I am applying for registration in *jurisdictions* that have fingerprint card filing requirements and I am submitting, have submitted, or promptly will submit the appropriate fingerprint card directly to the *jurisdictions* for processing pursuant to applicable *jurisdiction* rules.

3. REGISTRATIONS WITH UNAFFILIATED FIRMS

Some *jurisdictions* prohibit "dual registration," which occurs when an individual chooses to maintain a concurrent registration as a representative/agent with two or more *firms* (either BD or IA *firms*) that are not affiliated. *Jurisdictions* that prohibit dual registration would not, for example, permit a broker-dealer agent working with brokerage *firm* A to maintain a registration with brokerage *firm* B if *firms* A and B are not owned or controlled by a common parent. Before seeking a dual registration status, you should consult the applicable rules or statutes of the *jurisdictions* with which you seek registration for prohibitions on dual registrations or any liability provisions.

Please indicate whether the individual will maintain a "dual registration" status by answering the questions in this section. (Note: An individual should answer 'yes' only if the individual is currently registered and is seeking registration with a *firm* (either BD or IA) that is not affiliated with the individual's current employing *firm*. If this is an initial application, an individual must answer 'no' to these questions; a "dual registration" may be initiated only after an initial registration has been established).

Answer "yes" or "no" to the following questions:	Yes	No
A. Will *applicant* maintain registration with a broker-dealer that is not *affiliated* with the *filing firm*? If you answer "yes," list the *firm*(s) in Section 12 (Employment History).	○	◉
B. Will *applicant* maintain registration with an investment adviser that is not *affiliated* with the *filing firm*? If you answer "yes," list the *firm*(s) in Section 12 (Employment History).	○	◉

4. SRO REGISTRATIONS

Check appropriate *SRO* Registration requests.
Qualifying examinations will be automatically scheduled if needed. If you are only scheduling or re-scheduling an exam, skip this section and complete Section 7 (EXAMINATION REQUESTS).

REGISTRATION CATEGORY	NASD	NYSE	AMEX	BSE	NSX	PCX	CBOE	CHX	PHLX	ISE
OP - Registered Options Principal (S4)	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐
IR - Investment Company and Variable Contracts Products Rep. (S6)	☐	☐	☐		☐					
GS - Full Registration/General Securities Representative (S7)	☑	☐	☐	☐	☐	☐	☐	☐	☐	☐
TR - Securities Trader (S7)		☐	☐		☐					
TS - Trading Supervisor (S7)		☐	☐		☐					
SU - General Securities Sales Supervisor (S9 and S10)	☐			☐	☐	☐	☐	☐	☐	
BM - Branch Office Manager (S9 and S10)		☐	☐							
SM - Securities Manager (S12)		☐								
AR - Assistant Representative/Order Processing (S11)	☐				☐			☐		

REGISTRATION CATEGORY	NASD	NYSE	AMEX	BSE	NSX	PCX	CBOE	CHX	PHLX	ISE
IE - United Kingdom - Limited General Securities Registered Representative (S17)	☐	☐	☐			☐	☐		☐	
DR - Direct Participation Program Representative (S22)	☐	☐	☐		☐			☐		
GP - General Securities Principal (S24)	☑		☐	☐	☐			☐		

IP - Investment Company and Variable Contracts Products Principal (S26)	☐		☐		☐				
FA - Foreign Associate	☐								
FN - Financial and Operations Principal (S27)	☐		☐	☐	☐		☐	☐	
FI - Introducing Broker-Dealer/Financial and Operations Principal (S28)	☐				☐			☐	
RS - Research Analyst (S86, S87)	☐	☐							
RP - Research Principal	☐								
DP - Direct Participation Program Principal (S39)	☐		☐		☐			☐	
OR - Options Representative (S42)	☐			☐				☐	
REGISTRATION CATEGORY	**NASD**	**NYSE**	**AMEX**	**BSE**	**NSX**	**PCX**	**CBOE**	**CHX**	**PHLX** **ISE**
MR - Municipal Securities Representative (S52)	☐	☐	☐		☐			☐	
MP - Municipal Securities Principal (S53)	☐		☐		☐			☐	
CS - Corporate Securities Representative (S62)	☐		☐		☐			☐	
RG - Government Securities Representative (S72)	☐								
PG - Government Securities Principal (S73)	☐								
SA - Supervisory Analyst (S16)	☐	☐	☐						
PR - Limited Representative - Private Securities Offerings (S82)	☐		☐						
CD - Canada-Limited General Securities Registered Representative (S37)	☐	☐	☐			☐	☐		
CN - Canada-Limited General Securities Registered Representative (S38)	☐	☐	☐			☐	☐		
REGISTRATION CATEGORY	**NASD**	**NYSE**	**AMEX**	**BSE**	**NSX**	**PCX**	**CBOE**	**CHX**	**PHLX** **ISE**
ET - Equity Trader (S55)	☐		☐		☐				
AM - Allied Member		☐	☐						
AP - Approved Person		☐	☐						
LE - Securities Lending Representative		☐	☐						
LS - Securities Lending Supervisor		☐	☐						
ME - Member Exchange		☐	☐	☐	☐				
FE - Floor Employee		☐	☐	☐	☐				
OF - Officer		☐	☐		☐				
CO - Compliance Official (S14)		☐							
REGISTRATION CATEGORY	**NASD**	**NYSE**	**AMEX**	**BSE**	**NSX**	**PCX**	**CBOE**	**CHX**	**PHLX** **ISE**
CF - Compliance Official Specialist (S14A)		☐							
PM - Floor Member Conducting Public Business		☐	☐						
PC - Floor Clerk Conducting Public Business		☐	☐						
SC - Specialist Clerk (S21)		☐	☐						
TA - Trading Assistant (S25)		☐							
SF - Single Stock Futures (S43)	☐								
FP - Municipal Fund (S51)	☐								
IF - In-Firm Delivery Proctor	☐	☐							
MM - Market Maker						☐			

REGISTRATION CATEGORY	NASD NYSE AMEX BSE NSX PCX CBOE CHX PHLX ISE
FB - Floor Broker	☐
MB - Market Maker acting as Floor Broker	☐

Other _____ (Paper Form Only)

5. JURISDICTION REGISTRATION

Check appropriate *jurisdiction(s)* for broker-dealer agent (AG) and/or investment adviser representative (RA) registration requests.

JURISDICTION	AG	RA	JURISDICTION	AG	RA	JURISDICTION	AG	RA	JURISDICTION	AG	RA
Alabama	☐	☐	Illinois	☐	☐	Montana	☐	☐	Puerto Rico	☐	☐
Alaska	☐	☐	Indiana	☐	☐	Nebraska	☐	☐	Rhode Island	☐	☐
Arizona	☐	☐	Iowa	☐	☐	Nevada	☐	☐	South Carolina	☐	☐
Arkansas	☐	☐	Kansas	☐	☐	New Hampshire	☐	☐	South Dakota	☐	☐
California	☐	☐	Kentucky	☐	☐	New Jersey	☐	☐	Tennessee	☐	☐
Colorado	☐	☐	Louisiana	☐	☐	New Mexico	☐	☐	Texas	☐	☐
Connecticut	☐	☐	Maine	☐	☐	New York	☑	☐	Utah	☐	☐
Delaware	☐	☐	Maryland	☐	☐	North Carolina	☐	☐	Vermont	☐	☐
District of Columbia	☐	☐	Massachusetts	☐	☐	North Dakota	☐	☐	Virginia	☐	☐
Florida	☐	☐	Michigan	☐	☐	Ohio	☐	☐	Washington	☐	☐
Georgia	☐	☐	Minnesota	☐	☐	Oklahoma	☐	☐	West Virginia	☐	☐
Hawaii	☐	☐	Mississippi	☐	☐	Oregon	☐	☐	Wisconsin	☐	☐
Idaho	☐	☐	Missouri	☐	☐	Pennsylvania	☐	☐	Wyoming	☐	☐

AGENT OF THE ISSUER REGISTRATION (AI) ☐ **Indicate 2 letter *jurisdiction* code (s):**_____

6. REGISTRATION REQUESTS WITH AFFILIATED FIRMS

Will *applicant* maintain registration with *firm*(s) under common ownership or control with the *filing firm*? If "yes", fill in the details to indicate a request for registration with additional *firm*(s).

○ **Yes** ◉ **No**

No Information Filed

7. EXAMINATION REQUESTS

Scheduling or Rescheduling Examinations Complete this section only if you are scheduling or rescheduling an examination or continuing education session. Do not select the Series 63 (S63) or Series 65 (S65) examinations in this section if you have completed Section 5 (JURISDICTION REGISTRATION) and have selected registration in a *jurisdiction*. If you have completed Section 5 (JURISDICTION REGISTRATION), and requested an AG registration in a *jurisdiction* that requires that you pass the S63 examination, an S63 examination will be automatically scheduled for you upon submission of this Form U4. If you have completed Section 5 (JURISDICTION REGISTRATION), and requested an RA registration in a

jurisdiction that requires that you pass the S65 examination, an S65 examination will be automatically scheduled for you upon submission of this Form U4.

☐ S3	☐ S11	☐ S22	☐ S32	☐ S46	☐ S66
☐ S4	☐ S12	☐ S23	☐ S33	☐ S51	☐ S72
☐ S5	☐ S14	☐ S24	☐ S37	☐ S52	☐ S73
☐ S6	☐ S14A	☐ S25	☐ S38	☐ S53	☐ S82
☐ S7	☐ S15	☐ S26	☐ S39	☐ S55	☐ S86
☐ S7A	☐ S16	☐ S27	☐ S42	☑ S62	☐ S87
☐ S9	☐ S17	☐ S28	☐ S43	☐ S63	☐ S101
☐ S10	☐ S21	☐ S30	☐ S44	☐ S65	☐ S106
		☐ S31	☐ S45		☐ S201

Other _____ (Paper Form Only)

OPTIONAL: Foreign Exam City Date (MM/DD/YYYY) _____

_____

8. PROFESSIONAL DESIGNATIONS

Select each designation you currently maintain.

☐ **Certified Financial Planner**

☐ **Chartered Financial Consultant (ChFC)**

☐ **Personal Financial Specialist (PFS)**

☐ **Chartered Financial Analyst (CFA)**

☐ **Chartered Investment Counselor (CIC)**

9. IDENTIFYING INFORMATION/NAME CHANGE

First Name: LAWRENCE	**Middle Name:** EDWARD	**Last Name:** PENN
Suffix:	**Date of Birth (MM/DD/YYYY)** [redacted]	
State/Province of Birth MARYLAND	**Country of Birth** USA	**Sex** ◉ Male ○ Female
Height (ft) 6	**Height (in)** 0	**Weight (lbs)** 200
Hair Color Black	**Eye Color** Brown	

10. OTHER NAMES

Enter all other names that you have used or are using, or by which you are known or have been known, other than your legal name, since the age of 18. This field should include, for example, nicknames, aliases, and names used before or after marriage.

First Name	Middle Name	Last Name	Suffix
LAWRENCE	EDWARD	PENN	

LAWRENCE EDWARD PENN III

11. RESIDENTIAL HISTORY

Starting with the current address, give all addresses for the past 5 years. Report changes as they occur.

From	To	Street	City	State	Country	Postal Code
02/1999	PRESENT	[redacted], COSMEPOLITAN - APT [redacted]	NEW YORK	NY	USA	[redacted]
05/1997	02/1999	[redacted] APT [redacted]	NEW YORK	NY	UNITED STATES	[redacted]
05/1992	05/1997	[redacted]	BALTIMORE	MD	UNITED STATES	[redacted]

12. EMPLOYMENT HISTORY

Provide complete employment history for the past 10 years. Include the *firm*(s) noted in Section 1 (GENERAL INFORMATION) and Section 6 (REGISTRATION REQUESTS WITH AFFILIATED FIRMS). Include all *firm*(s) from Section 3 (REGISTRATION WITH UNAFFILIATED FIRMS). Account for all time including full and part-time employments, self-employment, military service, and homemaking. Also include statuses such as unemployed, full-time education, extended travel, or other similar statuses.
Report changes as they occur.

From	To	Name of *Firm* or Company	*Investment-Related* business?	City	State	Country	Position
08/2003	PRESENT	TCGI CAPITAL GROUP, LLC	(•) Yes ( ) No	NEW YORK	NY	USA	MANAGING MEMBER
11/2001	PRESENT	THE CAMELOT GROUP LLC	( ) Yes (•) No	NEW YORK	NY	USA	MANAGING MEMBER
09/2000	11/2001	LAZARD FRERES & CO. LLC	(•) Yes ( ) No	NEW YORK	NY	USA	ASSOCIATE
04/2000	08/2000	IOSOTA	( ) Yes (•) No	MINNEAPOLIS	MN	USA	BUSINESS DEVELOPER
05/2000	08/2000	SELF-EMPLOYED	(•) Yes ( ) No	NEW YORK	NY	USA	CONSULTANT
03/1999	04/2000	J.P. MORGAN SECURITIES INC.	(•) Yes ( ) No	NEW YORK	NY	USA	PORTFOLIO MANAGER
08/1997	02/1999	COLUMBIA UNIVERSITY	( ) Yes (•) No	NEW YORK	NY		STUDENT - STUDENT
05/1998	12/1998	NY STATE	( ) Yes (•) No	NEW YORK	NY	USA	PART-TIME ASSOCIATE
05/1992	04/1997	US ARMY	( ) Yes (•) No	KITZINGEN		GERMANY	OTHER - CAPTAIN (ARMY OFFICER)
05/1988	05/1992	UNITED STATES MILITARY ACADEMY	( ) Yes (•) No	WEST POINT	NY		STUDENT - STUDENT
07/1988	05/1992	US MILITARY ACADEMY	( ) Yes (•) No	WEST POINT	NY	USA	CADET

13. OTHER BUSINESS

Are you currently engaged in any other business either as a proprietor, partner, officer, director, employee, trustee, agent or otherwise? (Please exclude non *investment-related* activity that is exclusively charitable, civic, religious or fraternal and is recognized as tax exempt.) If YES, please provide the following details: the name of the other business, whether the business is *investment-related*, the address of the other business, the nature of the other business, your position, title, or relationship with the other business, the start date of your relationship, the approximate number of hours/month you devote to the other business, the number of hours you devote to the other business during securities trading hours, and briefly describe your duties relating to the other business.

○ Yes ◉ No

14. DISCLOSURE QUESTIONS

IF THE ANSWER TO ANY OF THE FOLLOWING QUESTIONS IS 'YES', COMPLETE DETAILS OF ALL EVENTS OR PROCEEDINGS ON APPROPRIATE DRP(S)

REFER TO THE EXPLANATION OF TERMS SECTION OF FORM U4 INSTRUCTIONS FOR EXPLANATIONS OF ITALICIZED TERMS.

Criminal Disclosure

	YES	NO
14A. (1) Have you ever:		
(a) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign, or military court to any *felony?*	○	○
(b) been *charged* with any *felony?*	○	○
(2) Based upon activities that occurred while you exercised *control* over it, has an organization ever:		
(a) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic or foreign court to any *felony*?	○	○
(b) been *charged* with any *felony?*	○	○
14B. (1) Have you ever:		
(a) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign or military court to a *misdemeanor involving:* investments or an *investment-related* business or any fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses?	○	○
(b) been *charged* with a *misdemeanor* specified in 14B(1)(a)?	○	○
(2) Based upon activities that occurred while you exercised *control* over it, has an organization ever:		
(a) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic or foreign court to a *misdemeanor* specified in 14B(1)(a)?	○	○
(b) been *charged* with a *misdemeanor* specified in 14B(1)(a)?	○	○

Regulatory Action Disclosure

	YES	NO
14C. Has the U.S. Securities and Exchange Commission or the Commodity Futures Trading Commission ever:		
(1) *found* you to have made a false statement or omission?	○	○
(2) *found* you to have been *involved* in a violation of its regulations or statutes?	○	○
(3) *found* you to have been a cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted?	○	○
(4) entered an *order* against you in connection with *investment-related* activity?		

(5) imposed a civil money penalty on you, or *ordered* you to cease and desist from any activity?

14D(1) Has any other Federal regulatory agency or any state regulatory agency or *foreign financial regulatory authority* ever:

(a) *found* you to have made a false statement or omission or been dishonest, unfair or unethical?

(b) *found* you to have been *involved* in a violation of *investment-related* regulation(s) or statute(s)?

(c) *found* you to have been a cause of an *investment-related* business having its authorization to do business denied, suspended, revoked or restricted?

(d) entered an *order* against you in connection with an *investment-related* activity?

(e) denied, suspended, or revoked your registration or license or otherwise, by *order*, prevented you from associating with an *investment-related* business or restricted your activities?

14D(2) Have you been subject to any *final order* of a state securities commission (or any agency or officer performing like functions), state authority that supervises or examines banks, savings associations, or credit unions, state insurance commission (or any agency or office performing like functions), an appropriate *federal banking agency*, or the National Credit Union Administration, that:

(a) bars you from association with an entity regulated by such commission, authority, agency, or officer, or from engaging in the business of securities, insurance, banking, savings association activities, or credit union activities; or

(b) constitutes a *final order* based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct?

14E. Has any *self-regulatory organization* or commodities exchange ever:

(1) *found* you to have made a false statement or omission?

(2) *found* you to have been *involved* in a violation of its rules (other than a violation designated as a *"minor rule violation"* under a plan approved by the U.S. Securities and Exchange Commission)?

(3) *found* you to have been the cause of an *investment-related* business having its authorization to do business denied, suspended, revoked or restricted?

(4) disciplined you by expelling or suspending you from membership, barring or suspending your association with its members, or restricting your activities?

14F. Have you ever had an authorization to act as an attorney, accountant or federal contractor that was revoked or suspended?

14G. Have you been notified, in writing, that you are now the subject of any:

(1) regulatory complaint or *proceeding* that could result in a "yes" answer to any part of 14C, D or E? *(If yes, complete the Regulatory Action Disclosure Reporting Page.)*

(2) *investigation* that could result in a "yes" answer to any part of 14A, B, C, D or E? *(If yes, complete the Investigation Disclosure Reporting Page.)*

Civil Judicial Disclosure

14H. (1) Has any domestic or foreign court ever: **YES NO**

(a) *enjoined* you in connection with any *investment-related* activity?

(b) *found* that you were *involved* in a violation of any *investment-related* statute(s) or regulation(s)?

(c) dismissed, pursuant to a settlement agreement, an *investment-related* civil action brought against you by a state or *foreign financial regulatory authority*?

(2) Are you named in any pending *investment-related* civil action that could result in a "yes" answer to any part of 14H(1)?

Customer Complaint/Arbitration/Civil Litigation Disclosure

	YES	NO
14I. (1) Have you ever been named as a respondent/defendant in an *investment-related*, consumer-initiated arbitration or civil litigation which alleged that you were *involved* in one or more *sales practice violations* and which:		
(a) is still pending, or;		
(b) resulted in an arbitration award or civil judgment against you, regardless of amount, or;		
(c) was settled for an amount of $10,000 or more?		
(2) Have you ever been the subject of an *investment-related*, consumer-initiated complaint, not otherwise reported under question 14I(1) above, which alleged that you were *involved* in one or more *sales practice violations*, and which complaint was settled for an amount of $10,000 or more?		
(3) Within the past twenty four (24) months, have you been the subject of an *investment-related*, consumer-initiated, written complaint, not otherwise reported under question 14I(1) or (2) above, which:		
(a) alleged that you were *involved* in one or more *sales practice violations* and contained a claim for compensatory damages of $5,000 or more (if no damage amount is alleged, the complaint must be reported unless the firm has made a good faith determination that the damages from the alleged conduct would be less than $5,000), or;		
(b) alleged that you were *involved* in forgery, theft, misappropriation or conversion of funds or securities?		

Termination Disclosure

	YES	NO
14J. Have you ever voluntarily *resigned*, been discharged or permitted to *resign* after allegations were made that accused you of:		
(1) violating *investment-related* statutes, regulations, rules, or industry standards of conduct?		
(2) fraud or the wrongful taking of property?		
(3) failure to supervise in connection with *investment-related* statutes, regulations, rules or industry standards of conduct?		

Financial Disclosure

	YES	NO
14K. Within the past 10 years:		
(1) have you made a compromise with creditors, filed a bankruptcy petition or been the subject of an involuntary bankruptcy petition?		
(2) based upon events that occurred while you exercised *control* over it, has an organization made a compromise with creditors, filed a bankruptcy petition or been the subject of an involuntary bankruptcy petition?		
(3) based upon events that occurred while you exercised *control* over it, has a broker or dealer been the subject of an involuntary bankruptcy petition, or had a trustee appointed, or had a direct payment procedure initiated under the Securities Investor Protection Act?		
14L. Has a bonding company ever denied, paid out on, or revoked a bond for you?		
14M. Do you have any unsatisfied judgments or liens against you?		

15. SIGNATURE SECTION

Please Read Carefully

All signatures required on this Form U4 filing must be made in this section.

A "signature" includes a manual signature or an electronically transmitted equivalent. For purposes of an electronic form filing, a signature is effected by typing a name in the designated signature field. By typing a name in this field, the signatory acknowledges and represents that the entry constitutes in every way, use, or aspect, his or her legally binding signature.

15A INDIVIDUAL/APPLICANT'S ACKNOWLEDGMENT AND CONSENT
This section must be completed on all initial or Temporary Registration form filings.

15B FIRM/APPROPRIATE SIGNATORY REPRESENTATIONS
This section must be completed on all initial or Temporary Registration form filings.

15C TEMPORARY REGISTRATION ACKNOWLEDGMENT
This section must be completed on Temporary Registration form filings to be able to receive Temporary Registration.

15D INDIVIDUAL/APPLICANT'S AMENDMENT ACKNOWLEDGMENT AND CONSENT
This section must be completed on any amendment filing that amends any information in Section 14 (Disclosure Questions) or any Disclosure Reporting Page (DRP).

15E FIRM/APPROPRIATE SIGNATORY AMENDMENT REPRESENTATIONS
This section must be completed on all amendment form filings.

15F FIRM/APPROPRIATE SIGNATORY CONCURRENCE
This section must be completed to concur with a U4 filing made by another *firm* (IA/BD) on behalf of an individual that is also registered with that other *firm* (IA/BD).

15C. TEMPORARY REGISTRATION ACKNOWLEDGMENT

If an *applicant* has been registered in a *jurisdiction* or *self regulatory organization (SRO)* in the 30 days prior to the date an application for registration is filed with the Central Registration Depository or Investment Adviser Registration Depository, he or she may qualify for a Temporary Registration to conduct securities business in that *jurisdiction* or *SRO* if this acknowledgment is executed and filed with the Form U4 at the *applicant*'s *firm*.

This acknowledgment must be signed only if the *applicant* intends to apply for a Temporary Registration while the application for registration is under review.

I request a Temporary Registration in each *jurisdiction* and/or *SRO* requested on this Form U4, while my registration with the *jurisdiction*(s) and/or *SRO*(s) requested is under review;

I am requesting a Temporary Registration with the *firm* filing on my behalf for the *jurisdiction*(s) and/or *SRO*(s) noted in Section 4 (SRO REGISTRATION) and/or Section 5 (JURISDICTION REGISTRATION) of this Form U4;

I understand that I may request a Temporary Registration only in those *jurisdiction*(s) and/or *SRO*(s) in which I have been registered with my prior *firm* within the previous 30 days;

I understand that I may not engage in any securities activities requiring registration in a *jurisdiction* and/or *SRO* until I have received notice from the CRD or IARD that I have been granted a Temporary Registration in that *jurisdiction* and/or *SRO*;

I agree that until the Temporary Registration has been replaced by a registration, any *jurisdiction* and/or *SRO* in which I have applied for registration may withdraw the Temporary Registration;

If a *jurisdiction* or *SRO* withdraws my Temporary Registration, my application will then be held pending in that *jurisdiction* and/or *SRO* until its review is complete and the registration is granted or denied, or the application is withdrawn;

I understand and agree that, in the event my Temporary Registration is withdrawn by a *jurisdiction* and/or *SRO*, I must immediately cease any securities activities requiring a registration in that *jurisdiction* and/or *SRO* until it grants my registration;

I understand that by executing this Acknowledgment I am agreeing not to challenge the withdrawal of a Temporary Registration; however, I do not waive any right I may have in any *jurisdiction* and/or *SRO* with respect to any decision by that *jurisdiction* and/or *SRO* to deny my application for registration.

Date (MM/DD/YYYY)	**Signature of *Applicant***
10/29/2004	LAWRENCE EDWARD PENN
	Printed Name _____

15D. AMENDMENT INDIVIDUAL/APPLICANT'S ACKNOWLEDGMENT AND CONSENT

Date (MM/DD/YYYY)	**Signature of *Applicant***
10/29/2004	LAWRENCE EDWARD PENN
	Printed Name _____

15E. FIRM/APPROPRIATE SIGNATORY AMENDMENT REPRESENTATIONS

Date (MM/DD/YYYY)	**Signature of *Appropriate Signatory***
10/29/2004	LAWRENCE EDWARD PENN
	Printed Name _____

CRIMINAL DRP

No Information Filed

REGULATORY ACTION DRP

No Information Filed

CIVIL JUDICIAL DRP

No Information Filed

CUSTOMER COMPLAINT/ARBITRATION/CIVIL LITIGATION DRP

No Information Filed

TERMINATION DRP

No Information Filed

INVESTIGATION DRP

No Information Filed

BANKRUPTCY/SIPC/COMPROMISE WITH CREDITORS DRP

No Information Filed

BOND DRP

No Information Filed

JUDGMENT LIEN DRP

No Information Filed

TEAM BIOGRAPHIES

LAWRENCE E. PENN III, *Managing Director*

Mr. Penn, a military officer turned financier, was previously an Investment Banker at Lazard and a Portfolio Manager in the Private Equity Group of JP Morgan where he managed in excess of $500 million in committed and invested capital and served on the Advisory Boards of several private equity groups. Prior to joining JP Morgan, he worked in the Equities Division of JP Morgan Securities, Inc. He has also worked in the Alternative Asset Investment Division of the New York State Common Retirement Fund where he had responsibilities for analyzing and conducting due diligence on investments. Mr. Penn served as a Captain in the U.S. Army where he led logistics operations in Europe and managed one of the largest military communities in the United States Army European Command. He was awarded the Army Achievement Medal, the Army Commendation Medal, the United States Army General Douglas MacArthur Leadership Award (USAREUR), and the United States Army V Corps Distinguished Leader Award.

He earned a BS in Systems Engineering from the United States Military Academy at West Point, and MA in International Business and a MS in Management Information Systems from the University of Maryland European Division. Mr. Penn earned his MBA from Columbia University Graduate School of Business. Presently, he serves as a Member and Sponsor for several charities and foundations to include Save the Children, the Morgan Library, The Council on Foreign Relations, The Council on Urban Professionals, Votevets.org, Foreign Policy Association and the Museum of Modern Art.

[back to top]

A. OLIVER WELSCH-LEHMANN, *Managing Director*

Mr. Welsch Lehmann has sourced, monitored, and analyzed Private Equity and Secondary Market Transactions for clients in the United States and Europe. Previously, he was a Vice President at Ambac Corporation where he managed transactions and portfolios for large industrial corporations in the Utilities and Energy industries. Prior to this position, he was Investment Banker at Commerzbank for six years where he structured project and acquisition financing transactions for large Industrial and Power companies in the U.S. and in Europe. Before joining Commerzbank, Mr. Welsch-Lehmann spent over three years in various positions at Siemens AG in Germany. Mr. Welsch-Lehmann is an active member of the German-American Chamber of Commerce, the German Business Roundtable of New York, The Foreign Policy Association as well as The Royal Institute of International Affairs Chatham House in London.

Mr. Welsch-Lehmann earned a BA in Finance and Accounting from FH Frankfurt in Frankfurt, Germany, an associate degree from the European Business School in Wiesbaden, Germany and a MBA in Finance from James Madison University.

[back to top]

JEFFREY L. WESTFIELD, *Director*

Before joining The Camelot Group, Mr. Westfield worked in the Investment Banking Division of Morgan Stanley & Co., where he was involved in the completion of numerous mergers and acquisitions and acquisition-related financing transactions. Mr. Westfield assisted in the execution of billions of dollars in merger and acquisitions, financings, restructuring, and corporate finance transactions across a variety of industries in the United States and Western Europe. He has executed over $3.5 billion in secondary transactions over his career. Mr. Westfield previously served as distinguished and decorated military officer in the US Army, receiving numerous awards for performance and achievement. He served in a variety of capacities as a combat arms officer in USAREUR (United States Army Europe) and the US Army in the United States.

Mr. Westfield received his Master of Business Administration from Columbia Business School and his Bachelor of Science from the U.S. Military Academy at West Point.

[back to top]

MICHAEL S. KESTER, *Director*

In the over 10 years he has been with the firm Mr. Kester has worked on transactions totaling in excess of $4.5 Billion. He has been responsible for sourcing, structuring, and executing secondary transactions as well as constructing and maintaining the MIS and IT systems that have made The Camelot Group unique. Prior to The Camelot Group International he worked as a business analyst for a division of Westinghouse Electric Co. Before entering the corporate world, Mr. Kester was a professional chef.

He holds an degree in culinary arts from the Culinary Institute of America, and has earned a BS in Computer Science (Cum Laude) from Columbia University in the City of New York. Mr. Kester is a member of Mensa and when time permits volunteers at local charities. Past commitments have included New York Cares and East Harlem Tutorial Program.

[back to top]

PUTRA L. BRIDGE, *Associate*

Prior to joining the team, Ms. Bridge worked for Deutsche Bank as an analyst in Equity Capital Markets. She covered numerous sectors including Technology, Healthcare, Media, Consumer, and Real Estate, Gaming and Lodging (REGAL). She participated in 29 IPOs and follow-on offerings raising more than $5.1 billion for companies. Prior to Deutsche Bank, she held positions with Citigroup in their Sales and Trading division, and with The Camelot Group where she assisted in due diligence and the transfer of limited partner interests in private equity funds and purchases of portfolios of direct investments. She has assisted in the execution in over $1.5 billion of secondary transactions.

After being honorably discharged from West Point due to injury, Ms. Bridge continued her education at the University of Virginia where she earned a B.A. in Economics with a concentration in Finance, and a Minor in Mathematics. During her educational era, she made the Dean's List, was chosen for the West Point Leadership Award, and received the Wendy's Heisman Athletic Scholar Award. After graduating early from UVA, she spent four months volunteering in Thailand in the wake of the 2004 tsunami.

[back to top]

PARSRAM DHANRAJ, *Associate*

Before joining The Camelot Group, Mr. Dhanraj was an investment professional at The Tokarz Group Advisers, a $500 million private equity fund. Mr. Dhanraj provided investment screening, deal sourcing, valuation of investment securities, and structuring investment transactions across various industries. Prior to that, Mr. Dhanraj was a credit analyst at Moody's Investors Service. He has covered banks, finance companies, and other specialty finance credits on the Financial Institutions Group ranging in size from $500 million to $650 billion. Mr. Dhanraj has also analyzed collateralized debt obligations and collateralized loan obligations (CDOs/CLOs) on the Structured Finance team ranging in size from $200 million to $1 billion. Earlier, he has worked on the States/High Profile Ratings team on the Public Finance Group, where he developed a quantitative scorecard to provide municipal and state ratings.

Mr. Dhanraj received his Master of Business Administration from the Johnson School at Cornell University and his Bachelor of Science from the Carroll School of Management at Boston College.

[back to top]

PARNELL J. CLITUS, *Director*

Mr. Clitus was previously head of fundraising for Syzygy Therapeutics from September 2010 to September 2011 where he marketed a healthcare private equity fund to global institutional investors. Prior to joining Syzygy, he worked in the business development group of Capital Dynamics from September 2005 to September 2010 where he was responsible for sourcing secondary transactions, structured solutions (portfolio re-financings, securitizations, structured investment vehicles), and global fundraising. Prior to Capital Dynamics, Mr. Clitus worked for Paul Capital Partners from August 2002 to September 2005 where he was part of the investor relations team. He has also worked at Donaldson, Lufkin & Jenrette from February 1996 to January 2001 where he reported directly to the global head of business development and marketed alternative investment strategies to investors.

He earned a BA from the University of Pennsylvania in 1996.

[back to top]

JON M. MCCARRY, *Director of Business Development APAC*

Mr. McCarry has invested in Private Equity and sourced deals and capital over ten years. He joined The Camelot Group International, LLC, in 2009 and is responsible for sourcing investment opportunities and capital throughout the Asia Pacific Region. Prior to joining The Camelot Group he was a Senior Group Internal Auditor at Nestlé where he conducted operational and financial audits across three continents and ten countries. Prior to this position, he was a Technical Advisor to a Hong Kong HNW family office where he managed a USD 50 M venture portfolio of U.S. and Chinese technology companies. During this time he was a board member of two companies and a board observer of two others. Mr. McCarry is an active member of the American Chamber of Commerce in Japan and sits on the Foreign Direct Investment and Banking & Finance committees.

Mr. McCarry earned a BS in Engineering and Physics from the University of North Texas, U.S.A., an International MBA from Vlerick Management School in Belgium, and completed the Private Equity Programme in China sponsored by Oxford University and Peking University.

[back to top]

JONAS SCHAEFER, *Director of Business Development*

Mr. Schaefer joined The Camelot Group in May, 2012. He is currently serving in a Business Development and Introductory function, with an emphasis on the U.S. West Coast. Prior to joining The Camelot Group, he was with Diamond Edge Capital Partners, a boutique third party marketing firm based in New York. At DECP, he worked with private equity groups raising assets. He raised in excess of U.S. $100 million while at DECP. Prior to Diamond Edge Capital, he worked with the World Pension Forum, a conference organizing business focused on bringing institutional investors and asset managers together. He served in a conference development function.

He earned a BA with an emphasis on the Dramatic Arts from the University of California, at Davis. Mr. Schaefer earned his MBA with a concentration in Finance from Golden Gate University. He is presently active in mental health causes.

[back to top]

GREGORY P. AGIUS, *Director of Business Development*

Mr. Agius is the former Director of the World Trade Center in Geneva, Switzerland where he managed 25,000 square meters of business center office space with over 150 clients and served as the head of relationship management, marketing, membership program, and the investment advisory arm. Prior to joining the World Trade Center Geneva, he worked in the Incident Management Division of Interoute Inc., one of Europe's most predominant telecommunications firms. He also worked in the Strategic Planning and Corporate Strategy Division of the International Telecommunications Union where he was a main point of contact for CEOs, Diplomats, and Heads of State for the ITU World Summit on the Information Society. Mr. Agius started his career in the Private Sector Fundraising Unit of the United Nations High Commissioner for Refugees where he was immersed in raising capital and worked on large-scale projects with numerous high-profile donors and foundations worldwide.

Mr. Agius earned a BA in International Relations with minor degrees is Psychology and Computer Science from Webster University in Geneva, Switzerland. Mr. Agius earned his MBA in Finance and Entrepreneurship from The Malcolm Baldrige School of Business at Post University. Presently, he is a Member of the British Swiss Chamber of Commerce as well as The Project Management Institute.

[back to top]

Counsel of Record:
Lawrence E. Penn III, pro se

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION **Plaintiff,** **v.** **LAWRENCE E. PENN, III, CAMELOT ACQUISITIONS SECONDARY OPPORTUNITIES MANAGEMENT LLC, THE CAMELOT GROUP INTERNATIONAL, LLC** **Defendant**	**14 Civ. 0581 (VEC)** **AMENDED ANSWER AND COUNTERCLAIMS OF DEFENDANTS** **AS APRIL 8, 2016 BY ORDER**

ANSWER OF DEFENDANT(s) LAWRENCE E. PENN III, CAMELOT ACQUISITIONS SECONDARY OPPORTUNITIES MANAGEMENT LLC, AND THE CAMELOT GROUP INTERNATIONAL, LLC

In response to the allegations contained in the Complaint, Defendants deny to the best of his knowledge disadvantaging investors by elevating their interests over the investors or the Fund. Defendant denies precluding investors from redeeming their interests in the Fund. Defendant denies defrauding defined as the "intent to injure" acting in a manner to injure investors and preserves all rights in this answer.

GENERAL RESPONSE

Defendant responses to each allegation contained in the Complaint are below. Moreover, anything admitted or denied is only to the best of the Defendants knowledge and memory as to the facts and as to any conclusions, characterizations, implications, innuendos, or speculation contained in herein or in the Complaint as a whole. In addition, Defendant specifically, denies any allegations contained in defined terms, ambiguous terms or unnumbered paragraphs in the

Complaint. This General Response is incorporated, to the extent appropriate, into each numbered paragraph of this Answer.

SUMMARY OF ALLEGATIONS

1. Defendant denies knowledge or information sufficient to form a belief as to the truth of some of the allegations in Paragraph 1 of the Complaint. Defendant denies to the best of his knowledge disadvantaging investors by elevating their interests over the investors or the Fund and denies that CGI aided and abetted in disadvantaging investors.
2. Defendant admits that Penn and CASO Management were registered investment advisers under Penn's control. Defendants deny to the best of his knowledge disadvantaging investors by elevating his interests over the investors or the Fund and has no basis in fact given the Partnership Agreement. Defendant admits diverting money from the fund which is part of investing. Defendant denies precluding investors from redeeming their interests in the Fund. Defendant denies to the best of his knowledge and memory misappropriating moneys as defined as "intentional use of the property or funds in order to injure investors" and admits transferring money to CGI in a manner that did not characterize the use of the fund money appropriately from late 2010 to October 2013.
3. Defendant admits that CGI was an unregistered entity and denies knowledge or information sufficient to form a belief as to the truth of some of the allegations in Paragraph 3 of the Complaint. Defendant admits that approximately all of the $9.3 million was sent from the Fund to CASO Management or CGI.
4. Defendant admits that money was sent from the fund through CASO Management, and forwarded to CGI which was an affiliate. Defendant admits that CGI paid overhead expenses to include rent, salaries, finders, and other expenses. Defendant denies knowledge or information sufficient to form a belief as to the truth of whether investors

anticipated with regard to the use of management fees once paid or advanced. Defendant denies renting "luxurious" office space which was approximately 2000 square feet and modest at best that fit 6-8 people. Defendant admits that investors were international in nature.

5. Defendant admits that the accounting should have accurately described the use of capital for auditors and administrators. Defendant denies knowledge or information sufficient to form a belief as to the truth of some of the allegations in Paragraph 5 of the Complaint

VIOLATIONS

6. Defendant denies knowledge or information sufficient to form a belief as to the truth of some of the allegations in Paragraph 6 of the Complaint. Specifically, if actions regarding management fees are material to securities since the money was designated to be used as management fees. Defendant admits to violations of Sections 204 of the Investment Advisers Act. Defendant admits to violations of Rule 204-2 of 17 CFR 275.204-2. Defendant denies violations of Section 206(1)(2), and Section 207 of the Investment Advisers Act.
7. Defendant denies allegations contained in Paragraph 7.
8. Defendant denies allegations contained in Paragraph 8.
9. Defendant denies allegations contained in Paragraph 9.
10. Defendant denies allegations contained in Paragraph 10.
11. Defendant denies allegations contained in Paragraph 11.
12. Defendant denies each and every allegation contained in Paragraph 12.

RESPONSE TO
JURISDICTION AND VENUE

13. The allegations contained in Paragraph 13 of the Complaint state legal conclusions as to which no response is required. Defendant denies knowledge or information sufficient to form a belief as to the truth of some of the allegations in Paragraph 13 of the Complaint.

14. The allegations contained in Paragraph 14 of the Complaint state legal conclusions as to which no response is required. Defendant denies knowledge or information sufficient to form a belief as to the truth of some of the allegations in Paragraph 14 of the Complaint. Defendant admits that his principal offices were in New York, New York.

15. Defendant denies knowledge or information sufficient to form a belief as to the truth of some of the allegations in Paragraph 15 of the Complaint.

RESPONSE TO
DEFENDANTS

16. With respect to the allegations contained in paragraph 16 of the Complaint, Defendant admits that he registered with the Commission and that Camelot Acquisitions Secondary Opportunities Management, LLC was the investment adviser to Camelot Acquisitions Secondary Opportunities, LP ("Camelot LP" or the "Fund"), as well as CASO Co-Invest A LLC, a Delaware limited liability company containing approximately $20-25 million.

17. With respect to the allegations contained in paragraph 17 of the Complaint, Defendant admits that he was 43 at the time, lives in New York, served honorably in the Army, and worked for well-known investment banking firms. Defendant admits that based the assessment on value of the assets or assets under his control/management peaked at approximately $140 to 180 million in 2013. Defendant admits that he had primary responsibility for all business decisions as Managing Member and Managing Director of

Camelot Acquisitions Secondary Opportunities Management, LLC and all investment decisions as Managing Member and Managing Director of Camelot Acquisitions Secondary Opportunities GP, LLC.

18. With respect to allegations contained in paragraph 18 of the Complaint, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 18 of the Complaint.

19. With respect to allegations contained in paragraph 19 of the Complaint, Defendant denies knowledge or information sufficient to form a belief as to the truth of some of the allegations in Paragraph 19 of the Complaint.

20. With respect to allegations contained in paragraph 20 of the Compliant, Defendant admits knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 20 of the Complaint.

RESPONSE TO
RELIEF DEFENDANT

21. With respect to allegations contained in paragraph 21 of the Compliant, Defendant denies knowledge or information sufficient to form a belief as to the truth of some of the allegations in Paragraph 21 of the Complaint.

RESPONSE TO
OTHER RELEVANT ENTITIES

22. With respect to allegations contained in paragraph 22 of the Compliant, Defendant admits knowledge or information sufficient to form a belief as to the truth of some of the allegations in Paragraph 22 of the Complaint.

23. With respect to allegations contained in paragraph 23 of the Compliant, Defendant admits knowledge or information sufficient to form a belief as to the truth of some of the allegations in Paragraph 23 of the Complaint. Defendant denies that TCGI Capital Group

LLC ("TCGI") has any relevance to this matter as evidenced by the May 21, 2014 hearing minutes.

RESPONSE TO
FACTS

24. With respect to allegations contained in paragraph 24 of the Compliant, Defendant admits knowledge or information sufficient to form a belief as to the truth of some of the allegations in Paragraph 24 of the Complaint.

25. With respect to allegations contained in paragraph 25 of the Compliant, Defendant denies knowledge or information sufficient to form a belief as to the truth of some of the allegations in Paragraph 25 of the Complaint. Defendant denies the accuracy of the Plaintiff's description of the stated investment strategy particularly given he has never spoken to the Plaintiff and the Plaintiff is not a partner in the Partnership.

26. With respect to allegations contained in paragraph 26 of the Compliant, Defendant admits knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 26 of the Complaint.

27. With respect to allegations contained in paragraph 27 of the Compliant, Defendant admits knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 27 of the Complaint.

28. With respect to allegations contained in paragraph 28 of the Compliant, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 28 of the Complaint.

29. With respect to allegations contained in paragraph 29 of the Compliant, Defendant denies knowledge or information sufficient to form a belief as to the truth of some of the allegations in Paragraph 29 of the Complaint.

30. With respect to allegations contained in paragraph 30 of the Compliant, Defendant denies knowledge or information sufficient to form a belief as to the truth of some of the allegations in Paragraph 30 of the Complaint.

RESPONSE TO
A. The Purported Due Diligence Payments Were a Sham.

31. With respect to allegations contained in paragraph 31 of the Compliant, Defendant denies knowledge or information sufficient to form a belief as to the truth of some of the allegations in Paragraph 31 of the Complaint.

32. With respect to allegations contained in paragraph 32 of the Compliant, Defendant denies knowledge or information sufficient to form a belief as to the truth of some of the allegations in Paragraph 32 of the Complaint.

33. With respect to allegations contained in paragraph 33 of the Compliant, Defendant admits knowledge or information sufficient to form a belief as to the truth of some of the allegations in Paragraph 33 of the Complaint.

34. With respect to allegations contained in paragraph 34 of the Compliant, Defendant denies knowledge or information sufficient to form a belief as to the truth of some of the allegations in Paragraph 34 of the Complaint.

35. With respect to allegations contained in paragraph 35 of the Compliant, Defendant denies knowledge or information sufficient to form a belief as to the truth of some of the allegations in Paragraph 35 of the Complaint.

36. With respect to allegations contained in paragraph 36 of the Compliant, Defendant denies knowledge or information sufficient to form a belief as to the truth of some of the allegations in Paragraph 36 of the Complaint.

37. With respect to allegations contained in paragraph 37 of the Compliant, Defendant to the best of his memory admits knowledge or information sufficient to form a belief as to the truth of some of the allegations in Paragraph 37 of the Complaint.

RESPONSE TO

B. Ssecurion Round-Tripped Most of the Money it Received from Camelot LP to CGI.

38. With respect to allegations contained in paragraph 38 of the Compliant, Defendant denies knowledge or information sufficient to form a belief as to the truth of some of the allegations in Paragraph 38 of the Complaint.

39. With respect to allegations contained in paragraph 39 of the Compliant, Defendant admits knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 39 of the Complaint.

RESPONSE TO

C. Penn and Ewers Tried to Conceal the True Nature of Sham Due Diligence Expenses.

40. With respect to allegations contained in paragraph 40 of the Compliant, Defendant admits knowledge or information sufficient to form a belief as to the truth of some of the allegations in Paragraph 40 of the Complaint.

41. With respect to allegations contained in paragraph 41 of the Compliant, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 41 of the Complaint.

42. With respect to allegations contained in paragraph 42 of the Compliant, to the best of his memory, the Defendant denies knowledge or information sufficient to form a belief as to the truth of some of the allegations in Paragraph 42 of the Complaint.

43. With respect to allegations contained in paragraph 43 of the Compliant, to the best of his memory, the Defendant admits knowledge or information sufficient to form a belief as to the truth of some of the allegations in Paragraph 43 of the Complaint.

44. With respect to allegations contained in paragraph 44 of the Compliant, to the best of his memory, the Defendant admits knowledge or information sufficient to form a belief as to the truth of some of the allegations in Paragraph 44 of the Complaint.

45. With respect to allegations contained in paragraph 45 of the Compliant, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 45 of the Complaint.

46. With respect to allegations contained in paragraph 46 of the Compliant, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 46 of the Complaint.

47. With respect to allegations contained in paragraph 47 of the Compliant, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 47 of the Complaint.

48. With respect to allegations contained in paragraph 48 of the Compliant, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 48 of the Complaint.

49. With respect to allegations contained in paragraph 49 of the Compliant, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 49 of the Complaint.

50. With respect to allegations contained in paragraph 50 of the Compliant, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 50 of the Complaint.

RESPONSE TO
D. CASO Management's Non-Compliance With the Commission's Examination.

51. With respect to allegations contained in paragraph 51 of the Compliant, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 51 of the Complaint.

52. With respect to allegations contained in paragraph 52 of the Compliant, Defendant admits knowledge or information sufficient to form a belief as to the truth of some of the allegations in Paragraph 52 of the Complaint.

53. With respect to allegations contained in paragraph 53 of the Compliant, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 53 of the Complaint. Plaintiff omits that for most of the examination Mr. Jeffrey Westfield who worked with the Defendant was there to provide the SEC with requested information and that except for books and records of the Investment Manager most of the items were provided. Additionally, Defendant that he had hired a consultant to prepare the firm by getting custody in order and other items necessary to become an Registered Investment Adviser.

54. With respect to allegations contained in paragraph 54 of the Compliant, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 54 of the Complaint.

55. With respect to allegations contained in paragraph 55 of the Compliant, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 55 of the Complaint. Plaintiff's representation of Defendant's education is false as evidenced by the case Document 122, Exhibit 2 on the PACERs system.

RESPONSE TO
FIRST CLAIM FOR RELIEF
Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder

56. In response to Paragraph 56 of the Complaint, Defendant repeats and incorporates as if fully set forth herein each and every response to the allegations contained in Paragraph 1-56.

57. With respect to allegations contained in paragraph 57 of the Compliant, Defendant denies the allegations in Paragraph 57(a)(b)(c) of the Complaint.

58. With respect to allegations contained in paragraph 58 of the Compliant, Defendant denies knowledge or information sufficient to form a belief as to the truth of some the allegations in Paragraph 58 of the Complaint.

59. With respect to allegations contained in paragraph 59 of the Compliant, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 59 of the Complaint. Defendant did not to the best of his knowledge, use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered by use of a manipulative or deceptive device.

RESPONSE TO
SECOND CLAIM FOR RELIEF
Aiding and Abetting Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder

60. In response to Paragraph 60 of the Complaint, Defendant repeats and incorporates as if fully set forth herein each and every response to the allegations contained in Paragraphs 1-60.

61. With respect to allegations contained in paragraph 61 of the Compliant, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 61 of the Complaint.

62. With respect to allegations contained in paragraph 62 of the Compliant, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 62 of the Complaint.

RESPONSE TO
THIRD CLAIM FOR RELIEF
Violations of Section 206(1) and 206(2) of the Advisers Act

63. In response to Paragraph 63 of the Complaint, Defendant repeats and incorporates as if fully set forth herein each and every response to the allegations contained in Paragraphs 1-62.

64. With respect to allegations contained in paragraph 64 of the Compliant, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 64 of the Complaint. To the best of the Defendants knowledge, CASO Management was the Investment Adviser to the General Partner, Camelot Acquisition Secondary Opportunities GP, LLC which made all investments on behalf of CASO, LP the Fund.

65. With respect to allegations contained in paragraph 65 of the Compliant, Defendant denies knowledge or information sufficient to form a belief as to some of the general statements made in Paragraph 65 of the Complaint.

66. With respect to allegations contained in paragraph 66 of the Compliant, Defendant admits knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 66 of the Complaint.

67. With respect to allegations contained in paragraph 67 of the Compliant, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 67 of the Complaint.

68. With respect to allegations contained in paragraph 67 of the Compliant, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 68 of the Complaint.

RESPONSE TO
FOURTH CLAIM FOR RELIEF
Aiding and Abetting Violations of Section 206(1) and 206(2) of the Advisers Act

69. In response to Paragraph 68 of the Complaint, Defendant repeats and incorporates as if fully set forth herein each and every response to the allegations contained in Paragraphs 1 68.

70. With respect to allegations contained in paragraph 70 of the Compliant, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 70 of the Complaint.

71. With respect to allegations contained in paragraph 71 of the Compliant, Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 71 of the Complaint.

RESPONSE TO
FIFTH CLAIM FOR RELIEF
Violations of Section 204 of the Advisers Act and 204-2 Thereunder

72. In response to Paragraph 72 of the Complaint, Defendant repeats and incorporates as if fully set forth herein each and every response to the allegations contained in Paragraphs 1-71.

73. With respect to allegations contained in paragraph 73 of the Complaint, Defendant admits to the best of his knowledge and memory that records were not prepared for the Investment Adviser Camelot Acquisition Secondary Opportunities Management, LLC as alleged in paragraph 73.

74. With respect to allegations contained in paragraph 74 of the Complaint, Defendant admits to the best of his knowledge and memory that records were not prepared for the Investment Adviser Camelot Acquisition Secondary Opportunities Management, LLC as it relates to subsection (1), (2), (3), and (4) of allegations in Paragraph 74 of the Complaint.

75. With respect to allegations contained in paragraph 75 of the Complaint, Defendant admits to the best of his knowledge and memory that records were not prepared for the Investment Adviser Camelot Acquisition Secondary Opportunities Management, LLC as it relates to allegations in Paragraph 75 of the Complaint.

RESPONSE TO
SIXTH CLAIM FOR RELIEF
Violations of Section 207 of the Advisers Act

76. With response to Paragraph 76 of the Complaint, Defendant repeats and incorporates as if fully set forth herein each and every response to the allegations contained in Paragraphs 1-75.

77. With respect to allegations contained in paragraph 77 of the Complaint, Defendant denies the allegations in paragraph 77 of the Complaint.

78. With respect to allegations contained in paragraph 78 of the Complaint, Defendant denies the allegations in paragraph 78 of the Complaint.

RESPONSE TO
SEVENTH CLAIM FOR RELIEF
Unjust Enrichment

79. With response to Paragraph 79 of the Complaint, Defendant repeats and incorporates as if fully set forth herein each and every response to the allegations contained in Paragraphs 1-78.

80. With respect to allegations contained in paragraph 80 of the Complaint, Defendant denies the allegations in paragraph 80 of the Complaint. The Relief Defendant did contribute value to the General Partner by making introductions and recommendations on behalf of the General Partner. His actions likely contributed significant value to the largest asset in the Fund.

81. With respect to allegations contained in paragraph 81 of the Complaint, Defendant should not be disgorged based on his response in the letter sent February 26, 2016, Document 122 with Exhibits on PACERs. Among other facts, Defendant made all of the investments in the Partnership.

RESPONSE TO
PRAYER FOR RELIEF

I.

Defendant denies there is need for enjoining CASO Management and Penn, their agents, servants, employees, and attorneys of any violations present or future. CASO Management was not the General Partner, the Defendant acted in the capacity through Camelot Acquisition Secondary Opportunities GP, LLC, as the General Partner of the Fund.

II.

Defendant denies there is need for enjoining CGI, their agents, servants, employees, and attorneys of any violations present or future. CGI was not the General Partner, the Defendant acted in the capacity through Camelot Acquisition Secondary Opportunities GP, LLC, as the General Partner.

III.

Defendant denies there is need for enjoining CASO Management and Penn, on a joint and several basis, and Ssecurion, Ewers, and CGI because there are no ill-gotten gains as defined as "benefits obtained in an evil manner." CASO Management was not the General Partner, the Defendant acted in the capacity through Camelot Acquisition Secondary Opportunities GP, LLC, as the General Partner of the Fund and had authorizations in that capacity in accordance with the Limited Partnership Agreement.

IV.

Defendant to the best of his knowledge denies Plaintiff is entitled to a judgement or any other relief as requested in the Prayer for Relief section IV of the Complaint based on their actions as stated in Document 122 with Exhibits on PACERs and law as established in 15 U.S.C.A. 78u.

FIRST AFFIRMATIVE DEFENSE

The Complaint, to the best of the Defendant's knowledge contains false statements which have prejudiced the Defendant in parallel matters which have resulted in Constitutional injury to the Defendant. Defendant admits diverting money from the Fund in order to make investments, pay expenses, and advance management fees in accordance with the contractual intent and latitude as established by the Partnership agreement of the Fund. Based on $123 million in committed capital approximately $105 million was spent on investments and the balance was

spent on management fees and other expenses which met the contractual intent of the Partnership. With regard to the first claim for relief alleging violations of Section 10(b) of the Exchange Act and Rule 10b-5, does not meet the "in connection with" requirements or associated elements as required by common law. Therefore must be dismissed due to failure to state a claim, illegality as well as unclean hands (outlined in the counterclaims section of this answer).

SECOND AFFIRMATIVE DEFENSE

Defendant denies to the best of his knowledge and memory misappropriating moneys as defined as "intentional use of the property or funds in order to injure investors" and admits transferring money to CGI from late 2010 to October 2013. However, the purpose of the Fund was to divert money to investments which was the contractual intent of the Partnership. With regard to the second claim for relief alleging aiding and abetting violations of Section 10(b) of the Exchange Act and Rule 10b-5, does not meet the "in connection with" requirements or associated elements as required by common law. Therefore must be dismissed due to failure to state a claim, illegality as well as unclean hands (outlined in the counterclaims section of this answer).

THIRD AFFIRMATIVE DEFENSE

Defendant admits that approximately all of the $9.3 million was sent from the Fund to CASO Management or CGI through Ssecurion in order to advance management fees in accordance with Section 6.2 of the Limited Partnership Agreement which states the General Partner has the right to "modify any obligations of the Partnership" based on the understanding that management fees are an obligation of the Partnership. With regard to the third claim for relief alleging violations of Sections 201(1) and 206(2) of the Advisers Act, there was and is no injury, economic harm, loss, act to defraud, materiality or other necessary elements to meet the

standards required to award relief for this claim as required by common law. Therefore must be dismissed due to failure to state a claim, illegality as well as unclean hands (outlined in the counterclaims section of this answer).

FOURTH AFFIRMATIVE DEFENSE

Defendant admits that CGI paid overhead expenses to include rent and salary from management fees sent to it by CASO Management and advances on management fees sent to CGI an affiliate of the General Partner ascribed the quality or essence of an Investment Manager along with CASO Management in accordance with page 6 of the Partnership Agreement. The use of management fees to the best of the Defendant's knowledge, are at the owners' discretion to include overhead expenses, finders, salaries, rent, and commitments by General Partners to the Fund which is standard industry practice. Once sent to the Investment Manager or affiliate ascribed the quality or essence of an Investment Manager like CGI. The management fee is an expense but also an obligation of the Fund and can be used at the Investment Manager's discretion once paid or advanced. With regard to the fourth claim for relief alleging aiding and abetting violations of Sections 206(1) and 206(2) of the Advisers Act, there was or is no injury, economic harm, loss, act to defraud, materiality or other necessary elements to meet the standards required to award relief for this claim as required by common law. Therefore must be dismissed due to failure to state a claim, illegality as well as unclean hands (outlined in the counterclaims section of this answer).

FIFTH AFFIRMATIVE DEFENSE

With regards to the fifth claim for relief alleging violations of Section 204 of the Advisers Act and Rule 204-2 thereunder, the Plaintiff's breach of duty in the parallel criminal case resulted in Prevention of Performance due to unclean hands (outlined in the counterclaims section of this answer).

SIXTH AFFIRMATIVE DEFENSE

Defendant admits that it was not material based on common law as stated that, In Rule 10b-5 affirmative misrepresentation cases, reliance remains essential element of Plaintiff's case, even if Plaintiff establishes materiality of misrepresentation. "To fulfill materiality requirement for securities fraud, there must be substantial likelihood that disclosure of omitted fact would have been viewed by reasonable investor as having significantly altered the total mix of information made available." Sable v. Southmark/Envicon Capital Corp., 819 F. Supp. 324, S.D.N.Y. 1993). On April 7, 2012, approximately two months after the Complaint was issued the investors voted to stay in the Fund created, raised, invested, and managed by the Defendant. The Defendants actions as viewed by reasonable investors of the fund did not alter the total mix of information made available in a manner that changed their willingness to stay in the Fund. To the best of the Defendant's knowledge fraud is a deliberate deception to secure unfair or unlawful gain, or to deprive a victim of a legal right. The investors are still in the fund, no unfair or unlawful gain occurred and there are no victims of loss. By law, the Defendants actions cannot be characterized as a Larceny as decided by People v. Zinke, 76 N.Y.2d 8, 556 N.Y.S.2d 11 or Unjust Enrichment which by common law requires (1) that the defendant benefitted, (2) at the plaintiff's expense, and (3) that equity and good conscience require restitution. These elements are not met because the Defendant did not benefit at the expense of the Partners of the Fund or Plaintiff (in this case the SEC) or in the parallel case. The partners in the Fund, to include the Defendant as General Partner, had an expectation that based on the committed and invested capital of approximately $123 million, 80% to 85% would be invested in securities in the Fund which it was all by Defendant. The partners to include the Defendant as General Partner, had an expectation that the balance of the committed and invested capital of the Fund (approximately $18 to $20 million) would go to management fees however characterized. The

management fees in this fund are part of the commitment and allocated to the General Partner through the Investment Manager entities. Equity and good conscience dictates that the General Partner who established the Fund, raised the capital over a 6 year period of time, made all the investments should be allowed to operate under the contractual intent of the Limited Partnership Agreement including but not limited to Sections 6.2 and Section 7.6.

The Plaintiff falsely stated that the Defendant of violating the Investment Advisers Act of 1940 Sections 207 by including false statements regarding the Defendants education in order to establish that he "willfully to [made] any untrue statement of a material fact in any registration application." This is caused a material prejudice to the Defendant which has ramifications due to the power of a federal agency's agents and attorneys. With regard to the Investment Advisers Act of 1940 Sections 206(1)(2), It shall be unlawful for any investment adviser by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly **(1)** to employ any device, scheme, or artifice to defraud any client or prospective client; **(2)** to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client. The Defendant did not intend to defraud which suggests actual injury. There is no injury in this case except to the Defendant based on false statements and unlawful charges in the parallel case. When fraud occurs in the Courts it is more dangerous and material to the fabric of justice than any other action associated with this case or the parallel criminal matter. The Plaintiff's actions are equally if not more harmful than any action of the Defendant in this civil and parallel state-level court. Again, with regard to the second claim for relief alleging aiding and abetting violations of Section 10(b) of the Exchange Act and Rule 10b-5, does not meet the "in connection with" requirements or associated elements as required by common law. Therefore must be dismissed due to failure to state a claim, illegality as well as unclean hands (outlined in the counterclaims section of this answer).

SEVENTH AFFIRMATIVE DEFENSE

Actions by the Defendant were made during a fixed period of time and had no material affect nor caused harm or injury. The Plaintiff has no basis to say that any Defendant "will continue to engage" in the alleged violations. Actions by the Defendant were made to appear to seek harm due to Plaintiff's representation of Defendant's education which is false and meant to deceive and mislead as evidenced by the case Document 122, Exhibit 2 on the PACERs system. By lying about a Defendant's education, the Plaintiff uses a manipulative and deceptive device in order to injure the Defendant by prejudice in this Court and characterize him in a manner that is false. Lying about a Defendant's education is particularly injurious because of its material effect on the ADV. The Defendant actions were not meant to cause harm or injury as evidenced by the actions of the partners in the Fund. With regard to the sixth claim for relief alleging violations of Sections 207 of the Advisers Act, the statements are false and do not meet the standards required to award relief for this claim as required by law. Therefore must be dismissed due to failure to state a valid claim or cause of action based on valid facts elements, illegality as well as unclean hands (outlined in the counterclaims section of this answer).

EIGTH AFFIRMATIVE DEFENSE

Actions by the Defendant regarding this matter had no relevance or relationship to TCGI Capital Group LLC ("TCGI") as established in the May 21, 2014 hearing minutes and as such, the Plaintiff has interfered with the potential business relationships of the Defendant Lawrence E. Penn III.

NINTH AFFIRMATIVE DEFENSE

Actions by the Defendant were made during a fixed period of time and had no material affect nor caused harm or injury. CASO Management was the Investment Adviser to the General Partner, Camelot Acquisition Secondary Opportunities GP, LLC which made all

investments on behalf of CASO, LP the Fund. The Fund does not make the investments the General Partner makes the investments. The Defendant was acting as Investment Adviser to General Partner (himself) not CASO, LP the Fund as evidence by Exhibit 1. The Plaintiff appears to have a material misunderstanding as to how a private fund operates based on the absence of the Limited Partnership Agreement in this case for over 2 years.

TENTH AFFIRMATIVE DEFENSE

Actions by the Defendant were made during a fixed period of time and had no material affect nor caused harm or injury. CASO Management was the Investment Adviser to the General Partner, Camelot Acquisition Secondary Opportunities GP, LLC which made all the decisions and had the right to pay consultants, finders, and those who added value like Mr. Ewers. The Plaintiff has no basis to say that any Defendants "will continue to engage" in violations based on actions like the Fund which are temporary in nature. With regard to the seventh claim for relief alleging Unjust Enrichment, this claim has no merit and there is no unjust enrichment. The law as established by *People v. Zinke*, clearly prohibits grand larceny charges which eliminates unjust enrichment and pecuniary gain. There is no basis to award relief for this claim as required by law or fact. Therefore, this claim must be dismissed due to failure to state a valid claim or cause of action based on valid facts elements, illegality as well as unclean hands (outlined in the counterclaims section of this answer).

COUNTERCLAIMS OF LAWRENCE E. PENN III, CAMELOT ACQUISITIONS SECONDARY OPPORTUNITIES MANAGEMENT LLC, THE CAMELOT GROUP INTERNATIONAL, LLC

As and for their Counterclaims against Plaintiffs Securities and Exchange Commission (the, "SEC"), Andrew M. Calamari, Amelia Cottrell, Michael Osnato, Howard Fischer, Katherine Bromberg, Karen Willenken and Polly Greenberg (collectively, the "Counterclaim Defendants"), Lawrence E. Penn III, Camelot Acquisitions Secondary Opportunities Management LLC, The Camelot Group International, LLC (collectively, the "Counterclaim Plaintiffs") allege, upon knowledge as to their own acts and upon information and belief as to the acts of others, as follows:

PRELIMINARY STATEMENT AND NATURE OF THE ACTION

1. This is an action against staff members in the New York Office of the Plaintiff, the SEC for federal and state constitutional violations and tortious conduct committed under the color of state law and in violation of state law. Defendant Lawrence E. Penn III has brought Counterclaims against Plaintiffs that seek to prevent Plaintiffs from abusing the judicial process, interference, acting under the color of state law, violating state law, and U.S. Constitution violations. The complaint with false statements from the SEC New York Office was produced and relied upon by the Manhattan District Attorney (the "MDA") which intervened in May of 2014 (PACERs, *SEC v. Penn*, et al, 14 Civ 0581, PACERs Document 51) and used the Complaint to construct an accusatory instrument called a "True Bill" Indictment which charged Grand Larceny was charged in direct violation of statutory and common law as decided by the Court of Appeals of New York (the highest court in New York State) which ruled over 25 years ago in *People v. Zinke*, 556 N.Y.S.2d 11, 76 N.W.2d 8 (1990), that a "general partner in limited partnership cannot be found guilty of larceny for misappropriating partnership funds."

2. The state-level indictment was directly caused by the actions of members of the SEC in concert with the Manhattan District Attorney Chief of Major Economic Crime Bureau. The Grand Larceny charge had no basis in law, was used to justify an arrest warrant and an excessive bail of $5 million which was reduced to $2.5 million at arraignment as evidenced by the Hearings Minutes. The excessive bail, based on the unlawful indictment, resulted in a loss of liberty, abuse of process, interference as well as a U.S. Constitution and New York State Constitution due process violation and personal injury.

3. Officers of the Court ignored well-established and clear law as evidenced by their detailed memorandum of law dated January 30, 2014 and the Limited Partnership Agreement (the "LPA") in which established authorization as Managing Member of the General Partner, Camelot Acquisitions: Secondary Opportunities G.P., L.L.C. in which he acted. All documentation confirms that Mr. Penn was the General Partner and acted in that capacity.

PARTIES

4. Plaintiff Lawrence E. Penn III, is a former military officer who served honorably in the U.S. Army after graduation from the United States Military Academy at West Point. Mr. Penn has approximately 15 years of executive experience in private equity, mergers and acquisitions, and community leadership. Mr. Penn was the Founder and approximately 99% owner of The Camelot Group International, LLC, Camelot Acquisitions Secondary Opportunities Management, LLC, Camelot Acquisitions Secondary Opportunities GP, LLC, collectively which managed Camelot Acquisitions Secondary Opportunities, LP (the "Fund") one of the leading African-American-owned private equity investment firms in New York. Mr. Penn was employed or self-employed on a full-time basis from 1999 until February 10, 2014 when, solely as a consequence of the plaintiff's actions, his employment was ended due to detention. He was coerced and defrauded out of his ownership interests, denied due process and defamed by

charging him with a crime in violation of state law resulting in violations including but not limited to interference, abuse of process and personal injury.

5. Upon information and belief Plaintiff(s) the Securities and Exchange Commission and members as outlined below in the office located in New York, at Brookfield Place, 200 Vesey Street, Suite 400, New York, NY 10281-1022.

6. Upon information and belief Plaintiff(s) jointly and severally in her official and personal capacity, Amelia Cottrell was Of Counsel and Former SEC Associate Director at the Securities and Exchange Commission office located in New York, at Brookfield Place, 200 Vesey Street, Suite 400, New York, NY 10281-1022. Presently, Ms. Amelia Cottrell is a partner at Willkie Farr & Gallagher LLP, located at 787 Seventh Avenue, New York, NY 10019-6099.

7. Upon information and belief Plaintiff(s) jointly and severally in his official and personal capacity, Michael J. Osnato was Of Counsel and Chief of Enforcement Division's Complex Financial Instruments Unit at the Securities and Exchange Commission office located in New York, at Brookfield Place, 200 Vesey Street, Suite 400, New York, NY 10281-1022.

8. Upon information and belief Plaintiff(s) jointly and severally in his official and personal capacity, Howard Fischer is Senior Trial Counsel and Attorney of the Securities and Exchange Commission located in New York, at Brookfield Place, 200 Vesey Street, Suite 400, New York, NY 10281-1022.

9. Upon information and belief Plaintiff(s) jointly and severally in her official and personal capacity, Karen E. Willenken is Of Counsel at the Securities and Exchange Commission office located in New York, at Brookfield Place, 200 Vesey Street, Suite 400, New York, NY 10281-1022.

10. Upon information and belief Plaintiff(s) jointly and severally in her official and personal capacity, Katherine S. Bromberg is Of Counsel at the Securities and Exchange

Commission office located in New York, at Brookfield Place, 200 Vesey Street, Suite 400, New York, NY 10281-1022.

11. Upon information and belief Plaintiff(s) jointly and severally in his official and personal capacity, James D'Avino is an investigator at the Securities and Exchange Commission office located in New York, at Brookfield Place, 200 Vesey Street, Suite 400, New York, NY 10281-1022.

12. City of New York is a municipal corporation that oversees the Manhattan District Attorney and associated organizations.

13. Upon information and belief Plaintiff(s) jointly and severally in her official and personal capacity, Artie McConnell was an Assistant District Attorney under Supervision of the Manhattan District Attorney located at One Hogan Place, New York, NY 10013-4311. Presently, Mr. McConnell is an Assistant United States Attorney located in Brooklyn, New York.

14. Upon information and belief Plaintiff(s) jointly and severally in her official and personal capacity, Polly Greenberg was the Chief of the Manhattan District Attorney Major Economic Crime Bureau located at One Hogan Place, New York, NY 10013-4311. Presently, Ms. Greenberg is a Managing Director at Duff & Phelps located in New York at 55 E 52nd Street, New York, NY 10055.

SUBJECT MATTER JURISDICTION AND VENUE

15. This Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331 over claims arising under 42 U.S.C. §§ 1981 and 1983 as well as actions brought pursuant to *Bivens v. Six Unknown Agents of the Federal Bureau of Narcotics*, 403 U.S. 338 (1971).

16. This Court has supplemental jurisdiction over Plaintiff(s) claims pursuant to 28 U.S.C. §1367, as the actions form part of the same case or controversy as the federal question claims asserted by Plaintiffs/Counterclaim Defendants.

17. Venue proper in this District under 28 U.S.C. §1391(a) because claims arose here, Defendant Lawrence E. Penn III resides here, Plaintiff(s) conduct was here or conducted their business here, and as a substantial part of the events giving rise to the claims herein occurred in the Southern District of New York and at the time of commencement of this action, at least one of the Plaintiff(s) is subject to personal jurisdiction in this Court.

FACTUAL BACKGROUND

Mr. Penn Successful Career in The Camelot Group

18. Mr. Penn was the sole Founder of The Camelot Group and built a Fund complex similar to other private equity, venture capital, and hedge fund entrepreneurs. Several leaders of the industry backed the Fund and worked with Mr. Penn in order to help him develop his firm. His responsibilities at the firm extended to all areas and functions of the business: raising capital, maintaining investor relations, sourcing deals, structuring transactions, overseeing the portfolio companies, including Board of Director and Board Observer seats on Fund owned companies, developing business and marketing, managing vendors and suppliers, creating and maintaining public interest activities and performing general executive/management responsibilities within the firm. Mr. Penn was at all times a key man in the firm and the Fund.

19. Since inception, The Camelot Group was involved in transactions and fund development where Mr. Penn was the driving force in all fund raising and in the most recent Fund raised $123 million in capital commitments and invested $105 million. He led all of the investments in six portfolio companies and worked closely with the management teams in order

to help create value for the firm and the Fund. As of June 30, 2013, the Fund had a positive and growing internal rate of return based on the Fund assets and valuation.

20. Mr. Penn as the owner was entitled to receive all the management fees, carried interest in portfolio companies' investments; and distributions in profits from all of the Camelot Group affiliates.

21. Members of the New York Office if the SEC constructed a Complaint with false statements and submitted it to this Court. Specifically, "...representing that Penn received a master's degree from UMUC Europe when he did not." (SEC Complaint, Document 1, page 16, paragraph 55). This is false statement because Mr. Penn did receive 2 master degrees from a program which at the time was called "University of Maryland European Division" which offered graduate degrees from University of Maryland System (UMS) programs as evidenced by the degrees (Document 122, Exhibit 2). Additionally, the Complaint stated, "CASO Management had precluded investors in the fund from redeeming their interests." (SEC Complaint, Document 1, page 2, paragraph 2). This is a false statement because there is not a redemption clause in the LPA that governed the Partnership when Mr. Penn was the General Partner. There was a Transfer clause in Section 7 of the Agreement as evidenced by (Document 122, Exhibit 3, pages 50-51) and in my capacity as General Partner in the Limited Partnership, Mr. Penn approved a transfer on May 4, 2011 as evidenced by (Document 122, Exhibit 4).

Plaintiff(s) violated a right of the Defendant under the Constitution of the United States.

22. Plaintiff(s) worked in concert, with gross negligence, malice, outside the scope of their duties, under the color of state law, in violation of state law, the U.S. Constitution and the New York Constitution by constructing a Complaint with false statements in January 2014 and relying upon that Complaint to intervene into this parallel civil action in May of 2014 as evidenced by PACERs Document 46 and 51. The Complaint was used to construct an

accusatory instrument called a "True Bill" Indictment (Document 122, Exhibit 5) which charged Grand Larceny and associated offenses in direct violation of statutory interpreted by common law as decided by the Court of Appeals of New York (the highest court in New York State) which ruled over 25 years ago in *People v. Zinke*, 556 N.Y.S.2d 11, 76 N.W.2d 8 (1990), that a "general partner in limited partnership cannot be found guilty of larceny for misappropriating partnership funds." (Document 122, Exhibit 9). Additionally, Plaintiff(s) clearly acted outside of the New York State Legislative intent as outlined by *People v. Zinke*.

23. The indictment with a Grand Larceny charge had no basis in law, was used to justify an arrest warrant and an excessive bail of $5 million which was reduced to $2.5 million at arraignment as evidenced by the Hearings Minutes (Document 122, Exhibit 10). The excessive bail, based on the unlawful indictment, resulted in a loss of liberty which caused a U.S. Constitution and New York State Constitution due process violation and injury as established in *Zahrey v. Coffey*, 221 F.3d 342, U.S. Court of Appeals 2nd Circuit (2000) which held that the "right not to be deprived of liberty as a result of the fabrication of evidence by a government officer acting in an investigating capacity is a constitutional right." This due process violation minimized time with counsel, created duress, and enabled an officer of the Federal Court to coerce Mr. Penn into signing an Injunction, Temporary Restraining Order (TRO) and Asset Freeze. Additionally, the due process violation enabled selected officers of the State Criminal Court to coerce a plea over a 14 month period of detention.

24. Defendant Lawrence E. Penn III, acted in the capacity of the sole general partner in the limited partnership, established the Fund, raised all of the capital, and made all of the investments in the Fund. Petitioner asserts that on February 7, 2014, a defective, unlawful accusatory instrument (called a "True Bill") as evidenced by the certified Indictment dated February 7, 2014, as well as a warrant ordered with questionable to no legal basis, as indicated

on the New York State Unified Court System "WebCrims" page printed on February 6, 2015. Without a charge of Grand Larceny the loss of liberty due to this high bail would have been unlikely.

25. Defendant asserts that the unlawful indictment resulted in an excessive bail and a "deprivation of his liberty interest." *Zahrey v. Coffey*, 221 F.3d 342, U.S. Court of Appeals 2nd Circuit (2000). "The right not to be deprived of liberty as a result of the fabrication of evidence by a government officer acting in an investigating capacity is a constitutional right, for purposes of precluding qualified immunity, provided that the deprivation of liberty…can be shown to the result of…fabrication of evidence." The accusatory instrument was the "precipitating cause" of the excessive bail and subsequent detention which any reasonable person or lawyer would anticipate and caused the due process violation and "were the direct and proximate cause of"…the "wrongful and malicious prosecution." *Zahrey v Coffey*. "Qualified immunity protects a public official from liability for conduct that 'does not violate clearly established statutory or constitutional rights which a reasonable person would have known.'" *Harlow v Fitzgerald*, 457 U.S. 800, 818, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982).

26. Defendant asserts that he, Lawrence E. Penn III, was the General Partner (Camelot Acquisitions: Secondary Opportunities G.P., L.L.C. - aka "CASO GP"), and Investment Manager (Camelot Acquisitions: Secondary Opportunities Management, L.L.C. - aka "CASO MGT") of Camelot Acquisitions: Secondary Opportunities, L.P. - aka "CASO LP" or the "Fund" was unlawfully indicted and convicted in violation of McKinney's Penal Law §§ 155.00, subd. 5, 155.05, subd. 1; McKinney's Partnership Law §§ 10, 51, subds. 1, 2(a). Mr. Penn was a general partner in a limited partnership. For clarity, the members of the Manhattan District Attorney's office likely compromised the law by unlawfully indicting, and convicting a general

partner of a limited partnership which is illegal by statutory law that is 50 years old and common law interpreted and established *People v. Zinke* (1990) that is 25 years old in New York State.

27. Defendant asserts that in accordance in 15 U.S.C.A. 78u-3, "the Commission may bring action in United States District Court to seek, and the Court shall have jurisdiction to impose, upon a proper showing, a civil penalty: and is a self-regulatory agency that has responsibility for "records (as so defined) of such investment advisers" in this case the registered investment adviser was "Camelot Acquisitions Secondary Opportunities Management, L.L.C" (CASO MGT, LLC). Additionally, the Commission shall "conduct" periodic inspections of the records of private funds maintained by an investment adviser"..."for the protection of investors..." in accordance with 15 U.S.C.A. § 80b-4(b)(6)(A)(i)(ii).

28. Defendant asserts that he was also an investor in the Fund and the members of the Securities and Exchange Commission (the "SEC") had a responsibility to protect him as an investor as well as an oversight function over the Investment Manager and regulated entity CASO MGT, LLC.

29. Defendant asserts that he was not notified of a Grand Jury which allegedly convened on February 7, 2014, as indicated on the New York State Unified Court System "WebCrim" page (printed on February 6, 2015) at which time he never knowingly waived Grand Jury rights in accordance with McKinney's C.P.L. § 190.50(5)(a) and was denied "notice of grand jury proceedings" *People v. Empey*, 662 N.Y.S.2d 152 (1997), *People v. Ellison*, 119 A.D. 3d 602 (2014).

30. Defendant asserts that he attended hearings from February 2014 to February 2015 which were adjourned with little progress that included several "side-bar" discussions that he

was not a party to where he "had a fundamental right to be present during the discussion." *People v. Antommarchi*, 590 N.Y.S. 2d 33 (1992).

31. Defendant asserts that Assistant District Attorney ("ADA") Artie McConnell (as evidenced by Hearing Minutes from Feb. 10, 2015) and ADA Chevon Walker likely under the supervision of the ADA Polly Greenberg were the attorneys that acted in their investigatory roles from the issuance of the Complaint by the SEC on January 30, 2014 up until February 10, 2014 at which time ADA McConnell on behalf of the Manhattan District Attorney, Cyrus R. Vance Jr. formally initiated prosecution with the unlawful charge based on "misappropriating assets." "Normally, prosecutorial investigation will have been completed prior to the filing of the accusatory instrument" *Michigan v. Harey*, 110 S.Ct. 1176, 494 U.S. 344 (1990). On February 10, 2014, as evidenced by Feb. 10, 2014, hearing minutes, the arraignment commenced and an indictment was presented to the Court likely in violation of McKinney's Civil Service Law § 62, which requires that they "will support the constitution of the United States, and the constitution of the state of New York" and "faithfully discharge the duties of the position." The construction and presentation of fraudulent indictment in a New York State court of law would likely be a violation of law as well as other material statutes. "Only the rare types of error--in general one that "'infect[s] the entire trail process'" and "'necessarily renders[s] [it] fundamentally unfair'"--requires automatic reversal. *Glebe v. Frost*, 135 S.Ct. 429 (2014).

32. Defendant asserts that Polly Greenberg, Assistant District Attorney of the Manhattan District Attorney's office wrote a letter on May 19, 2014 to Judge (Honorable) Valerie E. Caproni, the United States District Court (U.S.D.C.), Southern District of New York (S.D.N.Y.), assigned to the *SEC v. Penn, et. al.* 14 Civ. 0581, the SEC's Civil Case against Mr. Penn, that included the "New York County Indictment Number 73/2014 (the "Indictment") that

charged Mr. Penn "with various felonies, including Grand Larceny in the First Degree" acting in her official capacity on behalf of the District Attorney of the County of New York. Petitioner further asserts that ADA Polly Greenberg requested to intervene in the civil case pursuant to the Rule 24 of the Federal Rules of Civil Procedure, for the purpose of obtaining a stay of discovery pending the resolution of the criminal case" as evidenced by Document 46, filed May 20, 2014 on the PACERs system under *SEC v. Penn et al.*, 14 Civ. 0581 (VEC).

Actions of by Plaintiffs led to defamation, loss of liberty interest, and due process violation which caused actual injury and violation of a right of the Defendant under the Constitution of the United States.

33. Defendant asserts that Polly Greenberg wrote a letter on June 2, 2014 to Judge Valerie E. Caproni of S.D.N.Y, to further present their "position on the application of the office of District Attorney for New York County" for a "stay of discovery in this action pending the outcome of a pending criminal proceeding against Defendant Lawrence E. Penn III" and states that the "The SEC consents to the requested stay of discovery and it believes that a full, rather than partial, stay is appropriate in this case." Petitioner further asserts that on page 3 of the letter outlining "Plaintiff's Interests" and referred to how "the SEC" would "conserve resources by postponing document discovery" and likely prejudiced Mr. Penn in the criminal process by referring to "the same basic scheme" as "the theft" prior to the end of the criminal case which is likely a defamatory statement (libel) as established by case law in *Penn Warranty Corp. v. DiGiovanni*, 10 Misc.3d 810 N.Y.S.2d 807 (2005). "The elements of libel are: (1) a false and defamatory statement of fact; (2) regarding [in this case Mr. Penn]; (3) which are published to a third party; and (4) which result in injury to" [in this case Mr. Penn] and McKinney's General Construction Law § 37-a (Personal Injury) at the New York State level statutory law and likely federal common-law.

34. Defendant asserts that Polly Greenberg took action to convince Judge Valerie E. Caproni by stating in a letter dated June 2, 2014 on page 4; "Finally, and perhaps most importantly, if the Defendants plead or are found guilty, document discovery in the SEC case may become unnecessary, or may be limited to a few discrete issues. Postponing document discovery therefore would conserve the SEC's limited resources, as well as those of the Defendants and the Court." This statement along with the letter, likely induced Judge Caproni to grant the stay of discovery as evidenced by Document 51 on the PACERS system, filed on June 11, 2014. Judge Caproni granted the motion given "the common factual and legal issues shared between the case (SEC civil case) and the parallel criminal proceedings." Petitioner further asserts that excessive bail resulted in detention at the Manhattan Detention Center sacrificing his liberty interest and created a due process violation hindering the ability to defend himself by accessing the law and key documents to easily prove that the larceny and related criminal charges had no basis in law.

35. Defendant asserts that between February 10, 2014 and March 16, 2015, he went to court appearances where calendar days were on a Monday and Mr. Penn's defense counsel assured Judge Ward that a resolution would happen at the 2-6 year range.

36. Defendant asserts that on March 16, 2015, he was brought to the courtroom associated with New York Supreme Court – Criminal Term, Part 71 as evidenced by The New York State Unified Court System (online) "WebCrim" page printed on Feb. 6, 2015. The Court appearances induced duress and extracted a plea of Grand Larceny which enabled restitution with 5% interest, likely setting up the potential unjust enrichment of the Court appointed collection agency and allowed for an unlawful forfeiture of Mr. Penn's interest in the Fund that he created from inception.

37. Defendant asserts that he made all the investments in the Fund, met the contractual intent of the Limited Partnership Agreement which was to invest approximately 80-85% (about $98 to $105 million) of the committed capital of approximately $123 million and used the balance for management fees during the life of the Fund. Petitioner asserts that Management Fees are an obligation of the Fund and that in accordance with Section 6.2(c) the General Partner had the right to "extend or modify any obligations of the Partnership." The Partnership was deemed fully invested before a complaint was issued and no complaining witness corroborated a Grand Larceny charge to his knowledge as required by common law.

38. Defendant asserts that he was coerced to answer "yes" at the threat of a longer sentence of incarceration if the plea deal was not executed. On April 20, 2015, Mr. Penn signed a forfeiture agreement that required him to give up his interest in the Fund for zero (0) dollars and pay a restitution based on an unlawful top charge of Grand Larceny in violation of a longstanding rule of primary statutory and common law which is binding law established by the highest Court in New York State, the Court of Appeals based on *People v. Zinke*, supra (1990), a precedent case that originated in the same court, the Supreme Court of New York County Part 74, the trial court for *People v. Zinke*, supra.

39. Defendant asserts that on March 16, 2015, on the date of the plea, while in the bullpen, Mr. Penn was informed that his co-Defendant was attacked at Riker's Island indicating to Mr. Penn that his co-Defendant was under duress and tried to take back an earlier plea allocution which may have been denied by Judge Ward shortly after Mr. Penn's plea on the same day as evidenced by Document 71 on the PACERs system dated February 24, 2015.

40. Defendant asserts that his plea was likely coerced by fraudulent means which include an improper accusatory instrument, the use of duress over a year strictly defined as

confinement and the threat of more confinement. "Strictly, the physical confinement of a person or the detention of a contracting party's property. In the field of torts, duress is considered a species of fraud in which compulsion takes the place of deceit in causing injury." (Black's Law Dictionary, 9th Edition). "Duress consists in actual or threatened violence or imprisonment, the subject of it must be the contracting party himself, or his wife, parent or child, and it must be inflicted or threatened by the other party to the contract, or else by one acting with his knowledge and for his advantage." (William R. Anson, Principles of the Law of Contract 261-262, Arthur L. Corbin ed., 3d Am. ed. 1919). "Today the general rule is that any wrongful act or threat which overcomes the free will of a party constitutes duress." (Black's Law, 9th Edition, pgs. 578, 579). Petitioner further asserts that his duress was also based on the potential physical harm similar to his co-Defendant Mr. Ewers based on notorious conditions of both Manhattan Detention Center (MDC) aka the "Tombs" and Riker's Island.

41. Defendant asserts that over the approximately 14 months he was strip searched or required to squat and expose his private parts after every non-legal visit and multiple times per month when his living area was "tossed" and at times where his documents were discarded. There were actions that could be described as violent in MDC and Riker's Island that created a tense environment which can be described as an atmosphere of duress. Mr. Penn was housed in a medium security house for most of his city jail time even though he had never been in contact with the criminal justice system in his entire life up until that point, had served honorably as an Officer in the US Army after graduation from West Point as well as serve his community in a manner that "clearly has touched a number of lives."

42. Defendant asserts that he was charged in violation of established New York State law, given excessive bail, detained which resulted in loss of liberty and based on that loss of

liberty was stripped of his due process rights guaranteed under the U.S. Constitution and the New York State Constitution. Actions by the Plaintiff(s) resulted in Defamation, Abuse of Process, Malicious Prosecution, and Interference.

DAMAGES

As a direct and proximate result of the unlawful actions of the Plaintiffs and Counterclaim Defendants SEC, City of New York, Amelia Cottrell, Michael J. Osnato, Howard Fischer, Karen E. Willenken, Katherine S. Bromberg, James D'Avino, Polly Greenberg, and Artie McConnell. The Defendant suffered and continues to suffer substantial injuries and damages, including but not limited to:

a. Loss of his business, which includes his interest in the Fund that he created and is still in operation due to the investments he made;

b. Costs associated with shutting down of his business operations;

c. Loss of income, including both Mr. Penn's share of the net profits as wells as additional investment income;

d. Loss of future income and opportunities;

e. Loss of business reputation, the value of brand of this business, which is a registered trademark internationally;

f. Loss of associated relationships and ongoing investment opportunities;

g. Legal fees, fines, credit, and expenses incurred to include legal fees.

AS AND FOR A CAUSE OF ACTION AND FIRST CLAIM FOR RELIEF
PURSUANT TO 42 U.S.C.A. § 1983 (DUE PROCESS) AND "STIGMA-PLUS"
(Against SEC, City of New York, Amelia Cottrell, Michael J. Osnato, Howard Fischer, Karen E. Willenken, Katherine S. Bromberg, James D'Avino, Polly Greenberg, Artie McConnell)

43. Defendant repeats and realleges the allegations of each of the preceding paragraphs.

42 U.S.C.A. § 1983 provides in part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state...subjects or causes to be subjected, any citizen of the United States...to the deprivation of any rights, privileges, or immunities secured by the constitution and laws, shall be liable to the party injured in an action of law, suit or equity....

44. The 14th Amendment of the United States Constitution provides in the Due Process & Equal Protection of the laws clauses:

> "...nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

45. Article 1 § 6 of the New York State Constitution provides in the Due Process clause

> "...No person shall be deprived any person of life, liberty, or property without due process of law."

46. Plaintiff(s) acted in concert, under the color of state law and in violation of state law in order to strip the Defendant of his civil rights secured under the United States Constitution thereby seeking advantages in this civil action and caused injury to the Defendant. The Plaintiff(s) actions chilled and interfered with Mr. Penn's constitutional rights of due process depriving him of his chosen profession, his employment and his business interests.

47. The Second Circuit has recognized, in the context of a "procedural" due process claim that there is a "right not to be deprived of liberty as a result of the fabrication of evidence by a government officer acting in an investigating capacity." Zahrey v. Coffey, 221 F.3d 342,

349 (2d Cir. 2000); see also Ricciuti v. N.Y.C. Transit Auth., 124 F.3d 123, 130 (2d Cir. 1997) ("When a police officer creates false information likely to influence a jury's decision and forwards that information to prosecutors, he violates the accused's constitutional right to a fair trial, and the harm occasioned by such an unconscionable action is redressable in an action for damages."). The non-Supervisor Plaintiffs fabricated evidence in the Complaint and these manufactured-evidence claims led to the deprivation of liberty and deprivation of property.

48. Supreme Court precedent separately categorizes the protections afforded by the Due Process Clause as "procedural due process" (i.e., "a denial of fundamental procedural fairness") and "substantive due process" (i.e., "the exercise of power without any reasonable justification in the service of a legitimate governmental objective"). *Cty. of Sacramento*, 523 U.S. at 845-46. Defendant alleges both procedural due process and substantive due process violations. Specifically, the Defendant was deprived of: (1) his business and reputation (a property/liberty hybrid), and tangible property in the form of his interest in the Fund, reputation and business. The "[l]oss of one's reputation can . . . invoke the protections of the Due Process Clause if that loss is coupled with the deprivation of a more tangible interest, such as government employment." *Patterson v. City of Utica*, 370 F.3d 322, 329-30 (2d Cir. 2004). Such claims are commonly referred to as "stigma-plus" claims. *Patterson*, 370 F.3d at 330. The Defendant alleges: "(1) the utterance of a statement about [him] that is injurious to [his] reputation, that is capable of being proved false and he or she claims is false; and (2) some tangible and material state-imposed burden . . . in addition to the stigmatizing statement." *Velez v. Levy*, 401 F.3d 75, 87 (2d Cir. 2005) (internal quotation marks omitted); accord *Segal v. City of N.Y.*, 459 F.3d 207, 212 (2d Cir. 2006). "The defamatory statement must be sufficiently public to create or threaten a stigma." *Velez*, 401 F.3d at 87. The second prong—the "plus"—"must be a specific and adverse action clearly restricting the plaintiff's liberty." *Velez*, 401 F.3d at 87-88. While the "plus"

alleged is often termination of employment, it also applies to "termination of some other legal right or status." *White Plains Towing Corp. v. Patterson*, 991 F.2d 1049, 1063 (2d Cir. 1993) (citation, quotations and brackets omitted). The unlawful Grand Larceny and associated charges led to the unlawful "perp walk" as stated in the sixth claim for relief and resulted in the utterance of a statement regarding the unlawful charges that injured the Defendant's reputation and was the proximate cause of the tangible and material state-imposed burden, in this instance incarceration, which led to the loss of his position of General Partner in the Limited Partnership. The defamatory statement was public and created as well as threatened a stigma. The incarceration clearly restricted the Defendant's liberty satisfying both requirements of the stigma-plus claim.

49. "[F]or executive action to violate substantive due process, it must be so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience." *Bolmer v. Oliveira*, 594 F.3d 134, 142 (2d Cir. 2010) (quotations and citation omitted); see also *Johnson v. Newburgh Enlarged Sch. Dist.*, 239 F.3d 246, 252 (2d Cir. 2001) ("[M]alicious and sadistic abuses of government power that are intended only to oppress or to cause injury and serve no legitimate government purpose unquestionably shock the conscience. Such acts by their very nature offend our fundamental democratic notions of fair play, ordered liberty and human decency.") "The protections of substantive due process have for the most part been accorded to matters relating to marriage, family, procreation, and the right to bodily integrity." *Albright v. Oliver*, 510 U.S. 266, 273 (1994). In determining whether conduct is "conscience shocking" in the context of a qualified immunity defense on the pleadings, courts analyze whether the "conduct [was] (1) maliciously and sadistically employed in the absence of a discernible government interest and (2) of a kind likely to produce substantial injury." *Johnson v. Newburgh Enlarged Sch. Dist.*, 239 F.3d 246, 252 (2d Cir. 2001). The unlawful Grand Larceny and associated charges were maliciously and sadistically employed because government officials

went out of their way to break the law in charging which produced substantial injury to the Defendant.

50. Defendant has sustained both economic and non-economic losses as a result of the actions of Plaintiff(s) and demands actual, compensatory and punitive damages in an amount to be determined at trial plus costs, expenses and any applicable fees pursuant to 42 U.S.C.A. § 1988(a)(b)(c).

AS AND FOR A CAUSE OF ACTION AND SECOND CLAIM FOR RELIEF PURSUANT TO 42 U.S.C.A. § 1983 (EQUAL PROTECTION OF LAWS)
(Against SEC, City of New York, Amelia Cottrell, Michael J. Osnato, Howard Fischer, Karen E. Willenken, Katherine S. Bromberg, James D'Avino, Polly Greenberg, Artie McConnell)

51. Defendant repeats and realleges the allegations set forth in Paragraphs 1 through 50 of his Counterclaim as if fully set forth herein.

52. The 14th Amendment to the United States Constitution provides in the Due Process & Equal Protection of the laws clauses:

> "...nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

53. Article 1 § 11 of the New York State Constitution provides in the Equal Protection of the laws clause:

> "No person shall be denied the equal protection of the laws of this state or any subdivision thereof...

54. Plaintiff(s) motivated by malice and the ability to detain based on a state level charge in violation of clearly established law deprived Mr. Penn of the constitutionally-protected right of equal protection of the laws, specifically, the laws outlined in paragraph 1 of this Counterclaim.

55. Defendant has sustained both economic and non-economic losses as a result of the actions of Plaintiff(s) and demands actual, compensatory and punitive damages in an amount to be determined at trial plus costs, expenses and attorneys' fees any applicable fees pursuant to 42 U.S.C.A. § 1988(a)(b)(c).

AS AND FOR A CAUSE OF ACTION AND THIRD CLAIM FOR RELIEF
TORTIOUS INTERFERENCE WITH A CONTRACT AND PARTNERSHIP
(Against SEC, City of New York, Amelia Cottrell, Michael J. Osnato, Howard Fischer, Karen E. Willenken, Katherine S. Bromberg, James D'Avino, Polly Greenberg, Artie McConnell)

56. Defendant repeats and realleges the allegations set forth in Paragraphs 1 through 55 of his Counterclaim as if fully set forth herein.

57. Defendant's ownership in related entities and partnership relationships with the Fund were set forth in several agreements, to include the Fund Agreement.

58. Plaintiff(s) knew that Defendant was the founder and general partner in the Fund and actions were taken to go far beyond the Fund Partnership Agreement and proximately caused the coerced termination of his participation the partnership of Fund and damaged him and Defendant has sustained and is continuing to sustain both economic and non-economic damages that must be remedied through issuance of a permanent injunction and in the amount of actual, compensatory and punitive damages in an amount to be determined at trial.

AS AND FOR A CAUSE OF ACTION AND FOURTH CLAIM FOR RELIEF
TORTIOUS INTERFERENCE WITH BUSINESS RELATIONS
(Against SEC, City of New York, Amelia Cottrell, Michael J. Osnato, Howard Fischer, Karen E. Willenken, Katherine S. Bromberg, James D'Avino, Polly Greenberg, Artie McConnell)

59. Defendant repeats and realleges the allegations set forth in Paragraphs 1 through 58 of his Counterclaim as if fully set forth herein.

60. Plaintiff(s) knew that Defendant was the founder and general partner in the Fund and as such, Defendant would benefit from and participate as a partner in the success of the Fund

as well as his ability to generate and obtain new business, employment, and partnership opportunities with several investors and institutions who are in the Fund.

61. Plaintiff(s) by using wrongful means, intentionally and deliberately interfered with Mr. Penn's prospective participation in the Fund by insisting on an excessive fines and cruel and unusual punishment for a charge that was unlawful from the beginning.

62. Defendant has sustained and is continuing to sustain both economic and non-economic damages from lost prospective business relations that must be remedied through issuance of a permanent injunction and in the amount of actual, compensatory and punitive damages in an amount to be determined at trial.

AS AND FOR A CAUSE OF ACTION AND FIFTH CLAIM FOR RELIEF
ABUSE OF PROCESS, FALSE IMPRISONMENT AND MALICIOUS PROSECUTION
(Against SEC, City of New York, Amelia Cottrell, Michael J. Osnato, Howard Fischer, Karen E. Willenken, Katherine S. Bromberg, James D'Avino, Polly Greenberg, Artie McConnell)

63. Defendant repeats and realleges the allegations set forth in Paragraphs 1 through 62 of his Counterclaim as if fully set forth herein.

64. Plaintiff(s) acted with an ulterior motive and malice underlying the use of process, and with the use of the legal process not proper in the regular prosecution in the parallel criminal case. Plaintiff(s) acted in order to gain an economic advantage in both the criminal and civil case by use of the unlawful Grand Larceny and associated charge(s).

65. Plaintiff(s) most of which are barred attorneys knew or should have known the law which is longstanding in nature and knew the existence of the Limited Partnership Agreement common in the asset management industry.

66. Defendant has sustained and is continuing to sustain both economic and non-economic damages that must be remedied through issuance of a permanent injunction and in the amount of actual, compensatory and punitive damages in an amount to be determined at trial.

AS AND FOR A CAUSE OF ACTION AND SIXTH CLAIM FOR RELIEF
DEFAMATION
(Against SEC, City of New York, Amelia Cottrell, Michael J. Osnato, Howard Fischer, Karen E. Willenken, Katherine S. Bromberg, James D'Avino, Polly Greenberg, Artie McConnell)

67. Defendant repeats and realleges the allegations set forth in Paragraphs 1 through 66 of his Counterclaim as if fully set forth herein.

68. Plaintiff(s) knew that charging Grand Larceny in conflict with New York State law and communicating the validity of that charge, is a false statement that harms the reputation of an individual and constitutes defamation and resulted in permanent damage to the Defendant.

69. Plaintiff(s) knew or should have known that the Defendant actually earned master's degrees from UMUC Europe through cursory investigation and had no basis in falsely and maliciously communicating, "...representing that Penn received a master's degree from UMUC Europe when he did not." When barred lawyers, officers, and members of a government agency issue false statements about the validity of educational credentials of the Defendant or any citizen, those actions will result in irreparable damages to any professional, particularly in the asset management, legal, and professional services industries. These injuries are enhanced when they communicated to a concurrent state-level jurisdiction who rely on the Complaint and use it to construct a criminal indictment with charges in conflict with state law.

70. In *Lauro v. Charles*, 219 F.3d 202, 203 (2d Cir. 2000), the Second Circuit held that the Fourth Amendment forbids the police from making a suspect perform a staged "perp walk" for the press if the walk serves no other law enforcement purposes and in cases in which the perp walk is "staged...at the request of the press, for no reason other than to allow him to be photographed." In this case, the Defendant was unlawfully charged from the start, the members of the Manhattan DA and the SEC, as the "statutory guardian" of the nation's financial markets, knew or should have known this basic financial concept.

71. Defendant has sustained and is continuing to sustain both economic and non-economic damages that must be remedied through issuance of a permanent injunction and in the amount of actual, compensatory and punitive damages in an amount to be determined at trial.

AS AND FOR A CAUSE OF ACTION AND SEVENTH CLAIM FOR RELIEF
SUPERVISORY LIABILITY AND FAILURE TO INTERCEDE
(Against SEC, City of New York, Amelia Cottrell, Michael J. Osnato, Howard Fischer, Polly Greenberg)

72. Defendant repeats and realleges the allegations set forth in Paragraphs 1 through 71 of his Counterclaim as if fully set forth herein.

73. Defendant seeks compensatory and punitive damages pursuant to *Bivens v. Six Unknown Agents of the Federa Bureau of Narcotics*, 403 U.S. 338 (1971) due to failure to intercede, supervisory actions and omissions allowing fabricated evidence in the Complaint, unlawful charges which led to an excessive bail, loss of liberty interest, a due process violation, and the proximate cause of the forseeable damages.

74. As the "statutory guardian" of the nation's financial markets, the SEC is imbued with powers to protect the investing public to include Mr. Penn who was in investor. It can halt securities trades and seek to freeze-through its representations to a court-the assets of any institution. However, the SEC's canon of ethics cautions: "The power to investigate carries with it the power to defame and destroy." 17 C.F.R. § 200.66. As stated by Judge William H. Pauley III, District Judge SDNY, "...judges rely on the SEC to deploy those powers conscientiously and provide accurate assessments regarding the evidence collected in their investigations. In that way, the integrity of the regulatory regime is preserved" (*SEC v. Caledonian Bank LTD., et al.*, 15-cv-00894). This case reveals the dire consequences that flow when the SEC fails to live up to its mandate and litigants yield to the Government's onslaught. "During an ex parte proceeding to freeze assets, where the adversary process is not in play, the SEC has an obligation to timely

alert the court to foreseeable collateral damage. By overstating its case, the SEC can do great harm and undermine the public's confidence in the administration of justice" (*SEC v. Caledonian Bank LTD., et al.).* This case demonstrates, these concerns are not hypothetical because Mr. Penn lost his business, assets and reputation due to the overreaching activities, false statements, and lack of supervision by the SEC and members of the Manhattan District Attorney. "Moreover, it is in the public interest for the SEC-exercising its power fairly and its resources efficiently-to follow where its plausible allegations lead" (*SEC v. Caledonian Bank LTD., et al.*).

75. This is a counterclaim against government officials, the Court should apply the doctrine of qualified immunity. "[Q]ualified immunity protects government officials from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (citation and internal quotations omitted). The statutory law as outlined in *People v. Zinke* (1990) is clearly established based on a 50 year old statute that is central to the financial markets. "A defendant is entitled to qualified immunity at the pleading stage if he can establish (1) that the complaint fails to plausibly plead that the defendant personally violated the plaintiff's constitutional rights, or (2) that the right was not clearly established at the time in question." *Turkmen v. Hasty*, 789 F.3d 218, 246 (2d Cir. 2015). However, Plaintiffs must overcome "a formidable hurdle" when raising qualified immunity at the pleadings stage. Field Day, LLC v. County of Suffolk, 463 F.3d 167, 191-92 (2d Cir. 2006); see also Schiller v. City of New York, No. 04-cv- 7922, 2009 WL 497580, at *7 (S.D.N.Y. Feb. 27, 2009) ("[C]ourts are reluctant to find that defendants are entitled to qualified immunity at the initial stages of the pleadings.")

76. "[P]robable cause to search is demonstrated where the totality of circumstances indicates a 'fair probability that contraband or evidence of a crime will be found in a particular

place.'" *United States v. Clark*, 638 F.3d 89, 94 (2d Cir. 2011) (internal citation omitted). Accordingly, a nexus must exist between the items sought and the particular place to be searched. See *Clark*, 638 F.3d at 94. To challenge the finding of probable cause underlying a search warrant must plead: (1) that government agents knowingly and deliberately, or with a reckless disregard of the truth, made false statements or material omissions in a warrant application; and (2) "that such statements or omissions were necessary to the finding of probable cause." *Velardi v. Walsh*, 40 F.3d 569, 573 (2d Cir. 1994). Plaintiffs clearly omitted the law, the Partnership Agreement, and made material and reckless false statements pertaining to Mr. Penn's education which corresponded to their baseless claims of Unjust Enrichment as well as falsifying his ADV.

77. "It is widely recognized that all law enforcement officials have an affirmative duty to intervene to protect the constitutional rights of citizens from infringement by other law enforcement officers in their presence. . . . In order for liability to attach, there must have been a realistic opportunity to intervene to prevent the harm from occurring." *Anderson v. Branen*, 17 F.3d 552, 557 (2d Cir. 1994). In this counterclaim, "the failure to intercede was a proximate cause of the harm." *Bah v. City of New York*, No. 13-cv-6690 (PKC), 2014 WL 1760063, at *7 (S.D.N.Y. May 1, 2014); accord *O'Neill v. Krzeminski*, 839 F.2d 9, 11 (2d Cir. 1988). The Plaintiffs in concert took an active role in shaping the Complaint thereby incurring direct liability for violating the Defendant's constitutional rights. "While all lawyers owe a duty of honesty and candor to the Court, this obligation lies most heavily upon [prosecutors] who are not merely partisan advocates, but public officials charged with administering justice honestly, fairly, and impartially" *Morales v. Portuondo*, 165 F. Supp. 2d 601, 612 (S.D.N.Y. 2001).

78. "An officer who fails to intercede is liable for the preventable harm caused by the actions of the other officers where that officer observes or has reason to know . . . that any constitutional violation has been committed by a law enforcement official." *Anderson*, 17 F.3d at 557. The SEC should have interceded during the charging phase considering the accusatory instrument was used by Polly Greenberg to intervene in this very civil action. Their failure to intercede make them liable for any damages because courts have recognized a constitutional obligation to protect an individual when a "governmental entity itself has created or increased the danger to the individual." *Ying Jing Gan v. City of New York*, 996 F.2d 522, 533 (2d Cir. 1993). In this counter claim each Plaintiff, through the official's own individual actions, violated Plaintiffs' constitutional rights and should be held personally liable for the alleged constitutional tort. The Supervisory Plaintiffs were involved with the false or misleading information in the Complaint before it was submitted to this Court.

DEMAND FOR JURY TRIAL

Defendant requests trial by jury of all issues set forth in this Answer.

WHEREFORE, Defendant respectfully request judgement against Plaintiff(s) as follows:

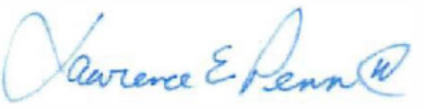
A. That a preliminary and permanent injunction be entered against Plaintiff(s), their agents, servants, representatives, officers, directors, affiliates, subsidiaries, employees, successors, and assigns, and all persons or entities acting in concert or participation with them, enjoining them from (1) improperly interfering with Defendant's contract and partnership, business relationships, by specifically barring them from actions under the color of state law, in violation of state law, in violation of the U.S. Constitution, or in violation of the New York State Constitution and all associated civil rights;

B. That the Defendant be awarded damages in an amount to be determined at trial, but no less than $100 million, together with actual, compensatory, punitive damages as well as any applicable fees pursuant to 42 U.S.C.A. § 1988(a)(b)(c).;

C. That the Defendant be awarded such other and further relief as the Court deems just and proper.

Dated: April 8, 2016
New York, New York

Respectfully Submitted,



Lawrence E. Penn III, Pro Se
[redacted]
New York, NY [redacted]
[redacted]
[redacted]@gmail.com

Filed Electronically

CERTIFICATE OF SERVICE

I hereby certify that on April 8, 2016, I electronically filed the foregoing with the Clerk of the District Court using the CM/ECF system.

s/ Lawrence E. Penn III
Lawrence E. Penn III, Pro Se

REGISTRATION/REPORTING STATUS

OMB: 3235-0049

Primary Business Name: CAMELOT ACQUISITION SECONDARY OPPORTUNITIES MANAGEMENT, LLC	IARD/CRD Number: 160992

Registration Status

SEC/Jurisdiction	Registration Status	Effective Date
SEC	Approved	09/14/2012

Notice Filings

Investment adviser firms registered with the SEC may be required to provide to state securities authorities a copy of their Form ADV and any accompanying amendments filed with the SEC. These filings are called *"notice filings"*. Below are the states with which the firm you selected makes its notice filings. Also listed is the date the firm first became notice filed or registered in each state.

Not Currently Notice Filed

Exempt Reporting Advisers

Exempt Reporting Advisers are investment adviser firms that are not required to register as investment advisers because they meet registration exemptions under sections 203(l) and 203(m) of the Advisers Act of 1940. These advisers are required to submit reports to the SEC or jurisdictions. These reports are filed using Form ADV, but do not include all items contained in Form ADV that a registered adviser must complete. Below are the regulators with which a report is filed.

Not Currently an Exempt Reporting Adviser

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4308; January 8, 2016

ORDER CANCELLING REGISTRATIONS OF CERTAIN INVESTMENT ADVISERS PURSUANT TO SECTION 203(h) OF THE INVESTMENT ADVISERS ACT OF 1940

The investment advisers whose names appear in the attached Appendix, hereinafter referred to as the registrants, being registered as investment advisers pursuant to section 203 of the Investment Advisers Act of 1940; and

On December 2, 2015, a notice of intention to cancel registrations of certain investment advisers, including the registrants, was issued (Investment Advisers Act Release No. 4285). The notice gave interested persons an opportunity to request a hearing and stated that an order cancelling the registrations would be issued unless a hearing was ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The Commission having found that the registrants are no longer in existence, are not engaged in business as investment advisers, or are prohibited from registering as investment advisers under section 203A of the Investment Advisers Act of 1940; accordingly

IT IS ORDERED, pursuant to section 203(h) of the Investment Advisers Act of 1940, that the registration of each of the said registrants be, and hereby is, cancelled.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Brent J. Fields
Secretary

APPENDIX:

801-72059	SOLOMON HENDRIX & CO.
801-9488	MAURY WADE & COMPANY
801-71810	BISHOP ASSET MANAGEMENT, LLC
801-69144	SAFE HAVEN ADVISORS, INC.
801-70781	WANGER OMNIWEALTH, LLC
801-70401	MIDWEST MORTGAGE ANALYTICS
801-70533	ALPHAMETRIX, LLC
801-71189	MORGAN FINCH, LLC
801-77520	ACCESS STRATEGIC ADVISORY GROUP, LLC
801-66662	ARNOTT CAPITAL PTY LTD
801-71208	KPDN INC.
801-69648	FUTURE VALUE CONSULTANTS LIMITED
801-65517	FGS CAPITAL LLP
801-71188	CENTINELA CAPITAL PARTNERS, LLC
801-72117	MAP ALTERNATIVE ASSET MANAGEMENT COMPANY, LLC
801-69898	INSIGHT ONSITE STRATEGIC MANAGEMENT LLC
801-77747	NEW SOURCE MEDIA ADVISOR, LLC
801-70916	CMA ADVISORY GROUP, LLC
801-78409	CASICO, LLC
801-78848	RCG PARTNERS
801-72000	STAMBOULI MANAGEMENT CORP.
801-71089	OPTIMIZE CAPITAL
801-71439	BATTENKILL CAPITAL MANAGEMENT, INC.
801-78049	EXCALIBUR MANAGEMENT, LLC
801-61973	MEDITRON ASSET MANAGEMENT, LLC
801-77143	CAMELOT ACQUISITION SECONDARY OPPORTUNITIES MANAGEMENT, LLC
801-63963	HARPER ASSOCIATES, LLC
801-28490	FX CONCEPTS, LLC
801-76567	CUSTOM FINANCIAL SERVICES, LLC
801-8984	VALLEY FORGE MANAGEMENT CORP
801-70460	PAUL-ELLIS INVESTMENT ASSOCIATES
801-77931	YORKSHIRE CAPITAL MANAGEMENT LLC
801-77496	WILLIAMS CAPITAL STRATEGIES LLC
801-72743	NICHOLS CONSULTING
801-62524	PURCELL ADVISORY SERVICES, LLC
801-72299	VASQUEZ & CO.

JUDGE BUCHWALD

14 CV 581

Counsel of Record:
Andrew M. Calamari
Amelia Cottrell
Michael Osnato
Howard Fischer
Katherine Bromberg
Karen Willenken
Attorneys for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
New York Regional Office
Brookfield Place, 200 Vesey Street, Suite 400
New York, New York 10281-1022
(212) 336-0589 (Fischer)
Email: FischerH@SEC.gov

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

LAWRENCE E. PENN, III, MICHAEL ST. ALTURA EWERS, CAMELOT ACQUISITIONS SECONDARY OPPORTUNITIES MANAGEMENT, LLC, THE CAMELOT GROUP INTERNATIONAL, LLC and SSECURION LLC,

Defendants,

- AND -

A BIGHOUSE PHOTOGRAPHY AND FILM STUDIO LLC,

Relief Defendant.

14 Civ. ____ ( )
ECF CASE

COMPLAINT

Plaintiff Securities and Exchange Commission (the "Commission"), for its complaint against Defendants Camelot Acquisitions Secondary Opportunities Management, LLC ("CASO

Management"), Lawrence E. Penn, III ("Penn"), Ssecurion LLC ("Ssecurion"), Michael St. Altura Ewers ("Ewers"), and The Camelot Group International, LLC ("CGI") (collectively, the "Defendants"), and Relief Defendant A Bighouse Photography and Film Studio LLC ("Big House" or the "Relief Defendant"), alleges as follows:

SUMMARY OF ALLEGATIONS

1. In breach of their fiduciary duties, Penn and CASO Management engaged in a fraudulent scheme to misappropriate fund assets, disadvantaging investors and elevating Penn's and CASO Management's interest above the interests of the fund they advised. Ewers, Ssecurion, and CGI aided and abetted this fraudulent scheme.

2. Penn and CASO Management, a registered investment adviser under Penn's control, aided and abetted by Ewers, Ssecurion, and CGI, engaged in a fraudulent scheme to misappropriate approximately $9.3 million from a private equity fund Penn and CASO Management controlled in order to provide additional assets to Penn to spend on his business and personal expenditures. Penn diverted $9.3 million from the fund during a period when CASO Management had precluded investors in the fund from redeeming their interests. Penn and CASO Management misappropriated the moneys by directing the fund to pay purported "due diligence" expenses from March 2010 through October 2013 to Ssecurion, an entity run by their confederate in the scheme, Ewers.

3. Ssecurion was not a bona fide company and provided few if any due diligence services to the fund. Instead, Ssecurion acted as a front for Penn to siphon money from the fund and route it back to CASO Management or to CGI, an unregistered entity adviser under Penn's control. Ssecurion routed almost all of the almost $9.3 million it received back to CASO

Management or to CGI, in some cases interposing another Ewers-owned entity, Big House, as an intermediary in the round-trip transactions.

4. Once the money was diverted from the fund, it was commingled with management fees that were paid by the fund to CASO Management, and forwarded on to CGI. CGI used the commingled funds to pay overhead expenses, such as rent and salary, which were not permissible fund expenses under the fund's governing document, the Amended and Restated Limited Partnership Agreement of Camelot Acquisitions Secondary Opportunities, L.P., dated February 5, 2010, and as amended December 27, 2011 (the "LPA"). CGI also used the commingled funds to market the fund, to pay "finders" who brought in the fund's investors, and to establish a global presence for CGI. The sham payments of approximately $9.3 million allowed Penn to spend far more on these types of expenses than the fund's investors had anticipated or authorized, renting luxurious office space and otherwise presenting an image of a fully operational international business.

5. In addition, Penn and Ewers actively sought to mislead the fund's auditors and administrators concerning the due diligence payments. In 2013, when the firm's auditors and administrators requested backup documentation for the payments to Ssecurion over the previous three fiscal years, Penn and Ewers forged purported work product corresponding to the invoices and lied to the auditors to cover their tracks.

VIOLATIONS

6. By virtue of the conduct alleged herein, certain of the Defendants have violated Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)], and Rule 10b-5(a) and (c) thereunder [17 C.F.R. § 240.10b-5(a) and (c)]; and Sections 204, 206(1), 206(2), and 207 of the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. §§ 80b-4, 80b-6(1), (2), and 80b-7], and Rule 204-2 thereunder [17 C.F.R. §§275.204-2].

7. CASO Management has engaged in, and unless enjoined, will continue to engage, directly or indirectly, in transactions, acts, practices, and courses of business that constitute violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5(a) and (c) thereunder [17 C.F.R. § 240.10b-5(a) and (c)]; and Sections 204, 206(1), 206(2), and 207 of the Advisers Act [15 U.S.C. §§ 80b-4, 80b-6(1),(2), and 80b-7], and Rule 204-2 thereunder [17 C.F.R. §§275.204-2].

8. Penn has engaged in, and unless enjoined, will continue to engage, directly or indirectly, in transactions, acts, practices, and courses of business that constitute violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5(a) and (c) thereunder [17 C.F.R. § 240.10b-5(a) and (c)]; and Sections 204, 206(1), 206(2), and 207 of the Advisers Act [15 U.S.C. §§ 80b-4, 80b-6(1), (2), and 80b-7], and Rule 204-2 thereunder [17 C.F.R. §§275.204-2].

9. Ssecurion has engaged in, and unless enjoined, will continue to engage, directly or indirectly, in transactions, acts, practices, and courses of business that aided and abetted CASO Management and Penn's violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5(a) and (c) thereunder [17 C.F.R. § 240.10b-5(a) and (c)]; and Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b, 80b-6(1) and (2)].

10. Ewers has engaged in, and unless enjoined, will continue to engage, directly or indirectly, in transactions, acts, practices, and courses of business that aided and abetted CASO Management and Penn's violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5(a) and (c) thereunder [17 C.F.R. § 240.10b-5(a) and (c)]; and Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b, 80b-6(1) and (2)].

11. CGI has engaged in, and unless enjoined, will continue to engage, directly or indirectly, in transactions, acts, practices, and courses of business that aided and abetted CASO Management and Penn's violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5(a) and (c) thereunder [17 C.F.R. § 240.10b-5(a) and (c)]; and Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b, 80b-6(1) and (2)].

12. Defendants should be permanently enjoined from violating the provisions of the securities laws described above. Defendants should also be ordered to disgorge any ill-gotten gains or benefits derived as a result of their violations, whether realized, unrealized or received, and prejudgment interest thereon, and ordered to pay appropriate civil monetary penalties. Furthermore, the relief defendant should be ordered to disgorge any ill-gotten gains or benefits obtained as a result of the violations set forth herein. In addition, Ewers and Ssecurion should be permanently enjoined from accepting compensation from any private equity fund, other than as part of a class of investors receiving returns on a pro rata basis, for services provided or purportedly provided to such fund. The Court should also order any other just and appropriate relief.

JURISDICTION AND VENUE

13. The Court has subject matter jurisdiction over this action pursuant to Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d) and 78u(e)], and Sections 209 and 214 of the Advisers Act [15 U.S.C. §§ 80b-9 and 80b-14].

14. Venue is proper in the Southern District of New York pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa], and Section 214 of the Advisers Act [15 U.S.C. §§ 80b-14]. CASO Management, Penn, and CGI maintained their principal offices in New York, New York at all relevant times, and certain of the acts, transactions, practices, and courses of business alleged herein took place in the Southern District of New York.

15. Defendants, directly or indirectly, singly or in concert, have made use of the means or instrumentalities of transportation or communication in, or the instrumentalities of, interstate commerce, or of the mails and wires, in connection with the transactions, acts, practices, and courses of business alleged herein.

DEFENDANTS

16. **CASO Management** is a Delaware limited liability company owned and controlled by Penn. CASO Management is based in New York, New York and became registered with the Commission on September 14, 2012. CASO Management, directly or indirectly, is the investment adviser to Camelot Acquisitions Secondary Opportunities, LP ("Camelot LP" or the "Fund"), as well as CASO Co-Invest-A LLC, a Delaware limited liability company containing approximately $25 million in assets.

17. **Penn**, age 43, lives in New York and is Managing Member and Managing Director of CASO Management. Penn, who represented to investors that he had served in the U.S. Army, started CASO Management in 2007 after having worked for several well-known investment banking firms. Under Penn's control, CASO Management's assets under management peaked at approximately $145 million in 2013. Penn has primary responsibility for all investment and business decisions made on behalf of CASO Management and CASO Management-managed funds.

18. **Ssecurion** is a Delaware limited liability company owned and controlled by Ewers.

19. **Ewers**, age 42, lives in the San Francisco area and is Managing Partner of Ssecurion. He also previously served in the U.S. Army.

20. **CGI** is a Delaware limited liability company, with its principal place of business in New York, NY. CGI is owned 99% by Penn and 1% by his father, and it appears to function as a parent organization of CASO Management.

RELIEF DEFENDANT

21. **Big House** is a Delaware limited liability company, incorporated in 2003, wholly-owned and controlled by Ewers.

OTHER RELEVANT ENTITIES

22. **Camelot LP**, CASO Management's flagship fund, had approximately $120 million in assets in the summer of 2013. Camelot LP consists of capital contributions from investors and a feeder fund Camelot Acquisitions Secondary Opportunities Offshore, LP ("Camelot Offshore"), a Cayman Islands company.

23. **TCGI Capital Group LLC ("TCGI")** is a Delaware limited liability company owned and controlled by Penn. TCGI is based in New York, New York.

FACTS

I. The Camelot Private Equity Fund and Its Purported Due Diligence Expenses

24. Established in 2007 and first funded in 2010, Camelot LP is a private equity fund started by, among others, Managing Director Penn. CASO Management, registered with the Commission as an investment adviser effective September 14, 2012, was the official investment adviser for the Fund. Penn has been Managing Director of the registered investment adviser since its inception.

25. The Fund's stated investment strategy was to invest in companies that were in the late stages of raising private equity, and would shortly attempt a public offering. The Funds' investors include public pension funds, high net worth individuals, and overseas institutions.

26. Investors did not immediately put up all of the capital they committed; instead, the Fund made capital calls from time to time as needed to fund investments in portfolio companies or to pay Fund expenses (including management fees, which ranged from 1.5% to 2% of each investors committed capital annually, depending on the terms of any applicable side letters).

27. From late 2010 through the end of 2012, the Fund called 99.5% of the committed capital of approximately $120 million and had invested in six portfolio companies. In 2012, feeder fund Camelot Offshore contributed an additional $45,450,000 to the Fund. In 2013, the Fund took in another $2.5 million in new capital commitments, plus $2 million in loans from existing investors.

28. In connection with each investment, the Fund would record certain purported transaction-related expenses. With the approval of the Fund's auditors ("Audit Firm"), which was granted based on CASO Management's representations that the expenses related to the investments, the expenses relating to completed acquisitions of interests in portfolio companies were capitalized – in other words, they were added to the cost basis for the investment to which they related and were not expensed in the current period.

29. By far the most significant purportedly investment-related expenses incurred by the Fund were characterized as payments for "due diligence" performed by Ssecurion, concerning the management and prospects of the Fund's proposed investments in portfolio companies. The Fund did not pay due diligence expenses to any other person or entity. The total amount of the purported due diligence expenses from 2010 through October 2013 was almost $9.3 million.

30. Although these "due diligence" expenses were specifically identified in the Fund's general ledger, and although invoices for these purported expenses were provided to both the Fund's administrators and to Audit Firm, none of the documents provided to investors ever disclosed these due diligence-related payments.

A. The Purported Due Diligence Payments Were a Sham.

31. Audit Firm completed its audits of the Fund's financial statements for 2010 and 2011. In connection with those audits, it relied on letters and other documents it received from Ewers, which were signed in Ewers' capacity as "Managing Partner" of Ssecurion.

32. Ewers had a relationship with Penn that predated the Fund's retention of Ssecurion as its purported third-party due diligence provider. The two men met at a function for the University of Maryland University College ("UMUC") European campus (which Penn briefly attended) in the 1990s. When the Ssecurion bank account was opened in October 2010, both Ewers and Penn were signatories. None of these facts was disclosed to Audit Firm in connection with the 2010 and 2011 audits.

33. At Audit Firm's request in connection with the 2010 and 2011 audits, Ewers sent letters to Audit Firm on April 27, 2011 and April 9, 2012, each of which represented that Ssecurion had "helped clients make high-risk, high-value decisions for over 15 years." The first letter attached a presentation that purported to summarize both Ssecurion's capabilities and the work performed for the Fund during the 2010 audit period.

34. Audit Firm became suspicious about the bona fides of the purported due diligence payments to Ssecurion while auditing the Fund's 2012 financials in the spring of 2013. Audit Firm then requested additional documentation of not only the 2012 due diligence payments, but the prior years' payments.

35. When Audit Firm approached Ewers for Ssecurion work product during a July 19, 2013 in-person meeting with Ewers, Ewers said the Fund should already have them and that he could not produce them because it would violate the service contract between Ssecurion and the Fund. Penn and Ewers told Audit Firm conflicting stories in July 2013 interviews, about where the reports were located and how they were accessed. No copies of reports (even in redacted form) were ever produced to Audit Firm.

36. In an interview with Audit Firm representatives on July 16, 2013, Penn showed them what he claimed were the electronic due diligence folders for each investment. He opened a number of electronic files and discussed how the files, which purportedly had been obtained from or provided by Ewers, assisted the due diligence. The content of the files, however, did not suggest that they had been created by Ewers; they appeared to be generic information easily obtained from the internet and/or the portfolio company. Audit Firm was never provided with credible evidence of significant work performed by Ssecurion.

37. In addition, Ssecurion kept almost none of the fees it received for its purportedly extensive work assisting the Fund in evaluating potential investments. Bank records reflect that from March 2010 through October 31, 2013, Ssecurion received a total of $9,286,916.65 from bank accounts maintained in the name of Camelot LP. All of these amounts were paid under cover of invoices purporting to correspond to due-diligence related work. Of this amount, $9,067,004 (97.6%) was then re-directed in various round-trip transactions, either directly or indirectly (through Big House, another Ewers-owned entity) to CGI or CASO Management.

B. Ssecurion Round-Tripped Most of the Money it Received from Camelot LP to CGI.

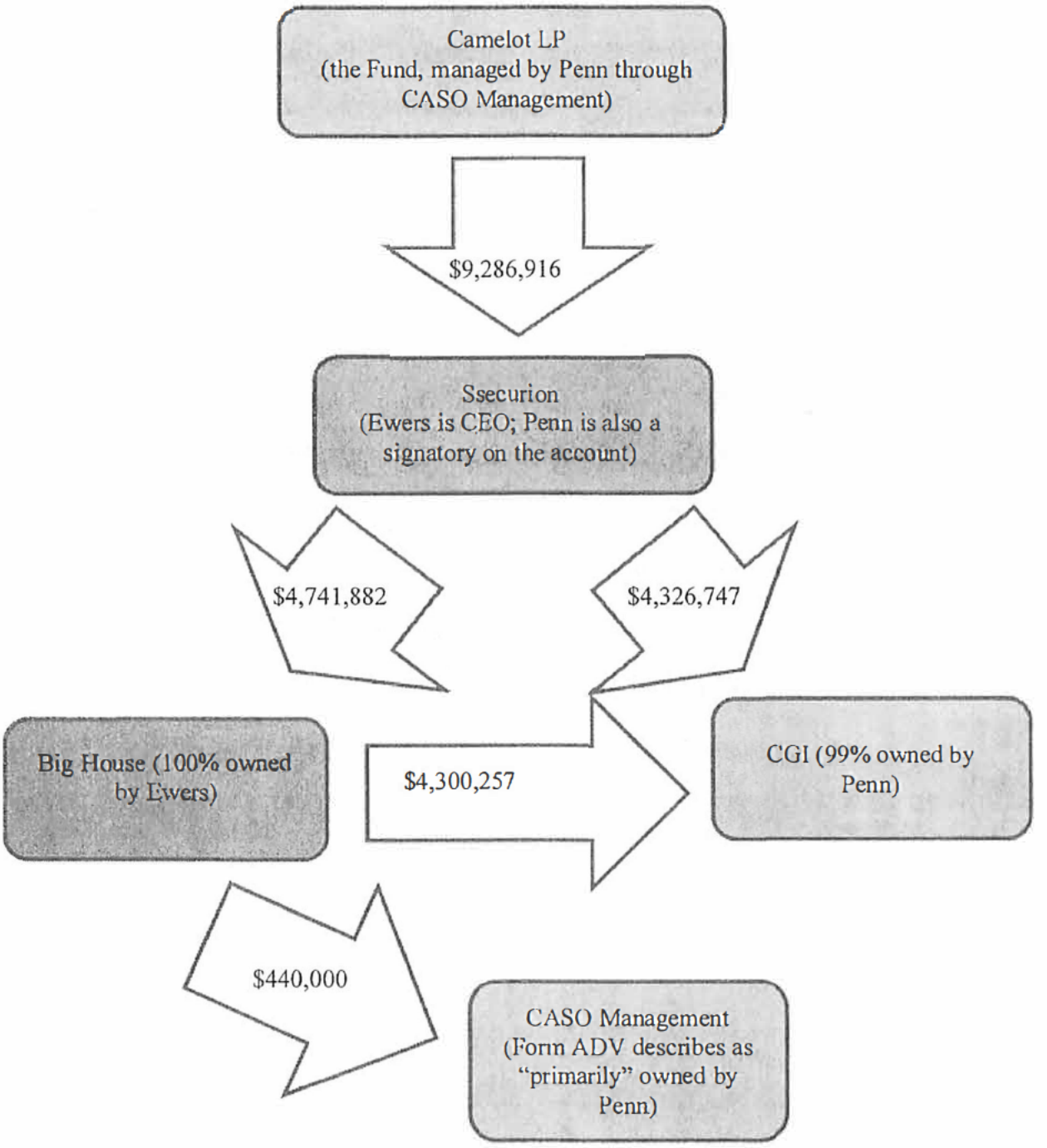
38. Ssecurion retained only a tiny fraction of the fees that were being paid to it for purported due diligence services, and returned the vast majority of the fees paid to it from

Camelot LP to Penn's entity, CGI. The Ssecurion and Big House bank account records do not reflect expenses or any other activity consistent with a legitimate due diligence firm. Ssecurion received almost no income that could relate to work for other clients, and neither entity's bank accounts reflect salary or similar expenses consistent with Ewers' claim that he used independent consultants with expertise on specific issues to perform due diligence.

39. Once it was received by CGI, the money from the sham due diligence payments was commingled with management fees that had been paid by the Fund to CASO Management and then transferred from CASO Management to CGI. The CGI accounts were then used to pay a variety of expenses, including:

- overhead expenses of CASO Management, such as salary and rent;
- payments to "finders" of the Fund's investors (who received up to 3% of the amount of certain investors' capital commitments);
- apparent marketing expenses for the Fund, Camelot Offshore, and perhaps other CGI businesses, including travel expenses and lavish meals at New York City restaurants;
- occasional apparent personal expenses, including dry-cleaning and groceries.

The flow of funds is reflected in the schematic on the next page:



Total transferred indirectly from Camelot LP to CGI or CASO Management: **$9,067,004 (97.6%)**

C. Penn and Ewers Tried to Conceal the True Nature of Sham Due Diligence Expenses.

40. After becoming suspicious about the due diligence payments Camelot LP paid to Ssecurion from 2010-2013, Audit Firm attempted to obtain documentation and explanations that would support the legitimacy of the payments.

Chronology of Penn and Ewer's Cover-Up to Conceal Fraud from Audit Firm

41. On July 3, 2013, Audit Firm met with Penn and requested an explanation and/or documentation of the work underlying a number of specific Ssecurion invoices. Penn's responses were vague and unsatisfactory; he claimed that he could not access the work product and suggested that Audit Firm meet with Ewers.

42. When asked about his relationship with Ewers, Penn implied that they had an arm's-length relationship and had not worked together before Ssecurion was hired to provide due diligence services; he said he had chosen the firm based on recommendations from others and its reputation in the industry.

43. Audit Firm pointed out to Penn that the Ssecurion website appeared to offer little substantive information about the nature of its business.

44. On July 8, 2013, Audit Firm staff noticed that the Ssecurion website, which Audit Firm had criticized in its July 3, 2013 meeting with Penn, had been updated. They noted that the content of some pages was now almost identical to that of a website for a legitimate investigative company and that the testimonials also were now very similar to another company's site.

45. On July 8, 2013, at 5:44 p.m., Penn abruptly canceled the meeting scheduled for the next day and fired Audit Firm, providing no explanation for his actions.

46. On July 16, 2013, after Audit Firm informed him that it still needed to obtain information from him concerning the legitimacy of the 2010 and 2011 due diligence payments or

it would have to declare that the earlier financial statements could not be relied upon, Penn agreed to meet with Audit Firm again.

47. Penn used his laptop and a projection screen to show Audit Firm files on the Camelot servers that he claimed were the due diligence folders for each investment. Penn identified only a few documents that he could say had been provided by Ssecurion; none of them had any branding or other indication that it had been prepared by Ssccurion, and many appeared to be generic reports freely accessible from the internet.

48. When confronted by evidence of his relationship with Ewers, Penn admitted that the two had met at a UMUC event in the 1990s.

49. On July 19, 2013, Audit Firm met with Ewers at a Regus Business Center office in San Francisco, which had no logos or other indications that Ssecurion had a permanent office there. Ewers refused to disclose details of his work, but he claimed to perform his work through independent contractors, saying he had "100 assets in the field;" many of whom were allegedly former law enforcement personnel.

50. When asked about the recent changes to the Ssecurion website, Ewers claimed that an unspecified third party had made them, and that he had not reviewed the changes.

D. CASO Management's Non-Compliance With the Commission's Examination

51. When it was unable to obtain satisfactory evidence that the purported "due diligence" payments were legitimate, Audit Firm reported the matter to the Commission, which initiated a for-cause examination by the Investment Adviser/Investment Company section of OCIE ("Exam Staff") on August 15, 2013. In the course of that examination, CASO Management failed to produce required books and records. In addition, Penn repeatedly

promised to meet with Exam Staff but then failed to show up for several meetings, each time without providing notice or an explanation.

52. CASO Management failed to provide the Exam Staff with Camelot LP's balance sheet, trial balance, cash receipts and disbursements journal, income statement, and cash flow statements as of the end of its most recent fiscal year and the most current year to date. In addition, CASO Management failed to provide the Exam Staff with e-mails or other correspondence as required by Rule 204-2(a)(7) of the Advisers Act. The Exam Staff was promised, in writing, on September 13, 2013, that an eData vendor would be retained to assist in identifying the electronic communications that were responsive to the Exam Staff's request and that a proposed production schedule was forthcoming, but the Exam Staff was never provided with such a schedule.

53. Penn avoided the Camelot offices when the Exam Staff was on-site and repeatedly failed to appear for scheduled meetings with them. After the first such meeting was arranged, and although the Exam Staff was told that Penn would make himself available, he never showed up. The second was arranged with Penn's personal counsel, was scheduled a week in advance, and was then put off by ten days to September 27, 2013 because of a purported family emergency of Penn's. Penn's counsel appeared at the Commission's office for the delayed scheduled meeting and was surprised to find that Penn was not present; he stated that Penn had confirmed the previous evening that he would attend. Penn's counsel was unable to reach him that morning. The Exam Staff was unable to meet with Penn.

54. As a result of its inability to obtain required records and meet with Penn, the Exam Staff was unable to complete its examination.

E. Penn and CASO Management's Filing of a False Form ADV

55. On August 14, 2013, Penn signed and filed a Form ADV with the Commission containing material misstatements, including (1) representing that CASO Management had $175 million in assets under management when, in fact, it managed at most $150 million (its committed capital) and probably less than $131 million (the value ascribed to its advisory funds' assets at the end of 2012, plus the approximately $5 million in 2013 capital commitments and loans it received); and (2) representing that Penn received a master's degree from UMUC Europe when he did not.

FIRST CLAIM FOR RELIEF
Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder
(Against CASO Management and Penn)

56. Paragraphs 1 through 55 are realleged and reincorporated by reference as if fully set forth herein.

57. By engaging in the acts and conduct described in this Complaint, CASO Management and Penn directly or indirectly, singly or in concert, by use of the means or instruments of transportation or communication in interstate commerce, or of the mails, or of the facilities of a national securities exchange, in connection with the purchase or sale of securities, have:

a. Employed devices, schemes, and artifices to defraud;

b. Made untrue statements of material fact, or have omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and

c. Engaged in transactions, acts, practices, and courses of business which operated as a fraud or deceit upon purchasers of securities.

58. CASO Management and Penn engaged in the above conduct knowingly or recklessly.

59. By reason of the foregoing, CASO Management and Penn, directly or indirectly, singly or in concert, have violated and unless enjoined will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

SECOND CLAIM FOR RELIEF
Aiding and Abetting Violations of Section 10(b) of the Exchange Act and Rule 10b-5
(Against Ssecurion, Ewers, and CGI)

60. Paragraphs 1 through 59 are realleged and reincorporated by reference as if fully set forth herein.

61. By engaging in the acts and conduct described in this Complaint, Ssecurion, Ewers, and CGI knowingly provided substantial assistance to CASO Management and Penn's violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], and thereby are liable under those provisions as aiders and abettors, pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)].

62. By reason of the foregoing, Ssecurion, Ewers, and CGI have violated and unless enjoined will continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

THIRD CLAIM FOR RELIEF
Violations of Sections 206(1) and 206(2) of the Advisers Act
(Against CASO Management and Penn)

63. Paragraphs 1 through 62 are realleged and reincorporated by reference as if fully set forth herein.

64. By engaging in the acts and conduct described in this Complaint, at all relevant times CASO Management and Penn were acting as investment advisers to Camelot LP within the meaning of Section 202(11) of the Advisers Act [15 U.S.C. § 80b-2(11)].

65. CASO Management and Penn, directly or indirectly, singularly or in concert, by use of the mails or means and instrumentalities of interstate commerce, while acting as investment advisers: (a) with scienter employed devices, schemes, or artifices to defraud any client or prospective client; and/or (b) engaged in transactions, practices, or courses of business which operated as a fraud or deceit upon any client or prospective client.

66. As investment advisers to Camelot LP, CASO Management and Penn owed Camelot LP fiduciary duties of utmost good faith, fidelity, and care to make full and fair disclosure to them of all material facts concerning Camelot LP – including any conflicts or potential conflicts of interests – as well as the duty to act in Camelot LP's best interests, and not to act in their own interests to the detriment of Camelot LP.

67. CASO Management and Penn breached their fiduciary duties to Camelot LP, engaged in fraudulent conduct and engaged in a scheme to violate Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1), (2)] as set forth above, and in particular, by, *inter alia*, misappropriating approximately $9.3 million from Camelot LP, as described above.

68. By reason of the activities described herein, CASO Management and Penn violated Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1), (2)].

FOURTH CLAIM FOR RELIEF
Aiding and Abetting Violations of Sections 206(1) and 206(2) of the Advisers Act
(Against Ssecurion, Ewers, and CGI)

69. Paragraphs 1 through 68 are realleged and reincorporated by reference as if fully set forth herein.

70. By engaging in the acts and conduct described in this Complaint, Ssecurion, Ewers, and CGI knowingly provided substantial assistance to CASO Management and Penn's violations of Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1), (2)], and

thereby are liable under those provisions as aiders and abettors, pursuant to Section 209(f) of the Advisers Act [15 U.S.C. § 80b-209(f)].

71. By reason of the foregoing, Ssecurion, Ewers, and CGI have violated and unless enjoined will continue to violate, Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and (2)].

FIFTH CLAIM FOR RELIEF
Violations of Section 204 of the Advisers Act and Rule 204-2 Thereunder
(Against CASO Management and Penn)

72. Paragraphs 1 through 71 are realleged and reincorporated by reference as if fully set forth herein.

73. By engaging in the acts and conduct described in this Complaint, CASO Management and Penn directly or indirectly, singly or in concert, by use of the means or instruments of transportation or communication in interstate commerce, or of the mails, or of the facilities of a national securities exchange, has not made and kept for prescribed periods such records as the Commission, by rule, has prescribed as necessary or appropriate in the public interest or for the protection of investors.

74. CASO Management and Penn, while acting as investment advisers to Camelot LP, did not make and keep true, accurate and current certain records of its investment advisory business, including, but not limited to: (1) a journal or journals, including cash receipts and disbursements, records, and any other records of original entry forming the basis of entries in any ledger; (2) general and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income, and expense accounts; (3) originals of all written communications received and copies of all written communications sent by such investment adviser relating to any recommendation made or proposed to be made and any advice given or proposed to be

given; and (4) arrangement and indexing of electronic books and records in a way that permits easy location, access, and retrieval of any particular record.

75. By reason of the foregoing, CASO Management and Penn violated Section 204 of the Advisers Act [15 U.S.C. § 80b-4] and Rule 204-2 thereunder [17 C.F.R. § 275.204-2].

SIXTH CLAIM FOR RELIEF
Violations of Section 207 of the Advisers Act
(Against CASO Management and Penn)

76. Paragraphs 1 through 75 are realleged and reincorporated by reference as if fully set forth herein.

77. By engaging in the acts and conduct described in this Complaint, CASO Management and Penn willfully made untrue statements of material facts in registration applications filed with the Commission, and willfully omitted to report material facts, which are required to be stated therein.

78. By reason of the foregoing, CASO Management and Penn violated Section 207 of the Advisers Act [15 U.S.C. § 80b-7].

SEVENTH CLAIM FOR RELIEF
Unjust Enrichment
(Against Relief Defendant Big House)

79. Paragraphs 1 through 78 are realleged and reincorporated by reference as if fully set forth herein.

80. Relief Defendant Big House obtained proceeds of the fraudulent scheme alleged above under circumstances in which it is not just, equitable, or conscionable for the Relief Defendant to retain these ill-gotten gains. Relief Defendant has no legitimate claim to these funds. Relief Defendant has therefore been unjustly enriched.

81. By reason of the foregoing, Relief Defendant should disgorge its ill-gotten gains, plus prejudgment interest thereon.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests a Final Judgment:

I.

Permanently enjoining CASO Management and Penn, their agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from future violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], and Sections 204, 206(1), 206(2), and 207 of the Advisers Act [15 U.S.C. §§ 80b-4, 80b-6(1), (2), and 80b-7], and Rule 204-2 thereunder [17 C.F.R. §275.204-2].

II.

Permanently enjoining Ewers, Ssecurion, and CGI, their agents, servants, employees and attorneys and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from violating and aiding and abetting violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], and Sections 206(1) and 206(2) of the Advisers Act.

III.

Ordering CASO Management and Penn, on a joint and several basis, and Ssecurion, Ewers, and CGI to disgorge any ill-gotten gains received from their violative conduct alleged in this complaint, and to pay prejudgment interest thereon.

IV.

Ordering CASO Management and Penn to pay civil money penalties pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] and Section 209(e) x of the Advisers Act [15 U.S.C. § 80b-9]; and ordering Ewers, Ssecurion, and CGI to pay civil money penalties pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] and Section 209(e) of the Advisers Act [15 U.S.C. § 80-9(e)].

V.

Granting such other and further relief as the Court may deem just and proper.

Dated: New York, New York
January 30, 2014

Respectfully submitted,

Andrew M. Calamari
Regional Director
Howard A. Fischer
Senior Trial Counsel
Attorneys for the Plaintiff
SECURITIES AND EXCHANGE COMMISSION
Brookfield Place, 200 Vesey St, Ste. 400
New York, New York 10281-1022
Telephone: (212) 336-0589 (Howard Fischer)
Email: FischerH@SEC.gov

Of Counsel:
Amelia Cottrell
Michael J. Osnato
Karen E. Willenken
Katherine S. Bromberg

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 71

----------x

THE PEOPLE OF THE STATE OF NEW YORK

DECISION AND ORDER
IND. # 73/14

- against -

LAWRENCE PENN,

Defendant.

----------x

Laura A. Ward, J.:

The defendant filed a *pro se* motion pursuant to Criminal Procedure Law ("CPL") §§ 440.10(1)(b), 1(f), and (1)(h), to vacate the judgement in the above captioned case. The defendant alleges that the defendant's guilty plea was the product of duress, misrepresentation, fraud, and ineffective assistance of counsel. The defendant then obtained counsel who did not adopt the defendant's motions and filed a separate CPL § 440.10 motion, alleging that the defendant's plea was the result of ineffective assistance of counsel. For the reasons stated bellow the defendant's motion is denied.

The defendant was indicted on one count of Grand Larceny in the First Degree, in violation of Penal Law ("PL") § 155.42, one count of Money Laundering in the First Degree, in violation of Penal Law § 470.20(1)(b)(ii)(a), and 30 counts of Falsifying Business Records in the First Degree, in violation of PL § 175.10. On March 16, 2015, the defendant entered a plea of guilty to one count of Grand Larceny in the First Degree, in violation of Penal Law § 155.32, and one count of Falsifying Business Records in the First Degree, in violation of PL § 175.10. In exchange for his plea, the defendant was sentenced to two-to-six years of incarceration and forfeiture of his rights and interest in CM Growth Capital Partnerships LP. In addition, the defendant signed a restitution order in the amount of $8,362,973.89.

The defendant argues that he failed to received effective assistance of counsel because plea counsel failed to develop or inform the defendant of viable objections to the charges against the defendant. Some of the alleged failures include defense counsel's choice not to raise the issue of whether a charge of larceny was applicable to the general partner of a limited partnership and the lack of motions filed on behalf of the defendant.

The defendant has failed to provide necessary documentation of the defendant's claims. In *People v. Morales,* 58 N.Y.2d 1008, 1009 (1983), the Court upheld the trial court's denial of a motion, made pursuant to Criminal Procedure Law ("CPL") § 440.10, without a hearing. The Court stated that denial of the defendant's motion without a hearing was not error, in view of the fact that defendant's motion papers did not include an affidavit from plea counsel, nor an explanation as to the defendant's failure to submit plea counsel's affidavit. The Appellate Division, First Department, has consistently approved summary denial of a CPL § 440.10

motion, which raises an ineffective assistance claim, when the motion contains neither an affidavit from the defendant's trial counsel, nor an explanation as to the defendant's failure to submit an affidavit from counsel. *People v. Stewart*, 295 A.D.2d 249, 249-50, *lv. denied*, 98 N.Y.2d 696 (2002); *People v. Johnson*, 292 A.D.2d 284, *lv. denied*, 98 N.Y.2d 698 (2002); *People v. Chen*, 293 A.D.2d 362, 363, *lv. denied*, 98 N.Y.2d 696 (2002).

Even if the defendant were to provide the court with proper documentation, the defendant's motion would be denied. The defendant in his own papers admits that he availed himself of a favorable disposition. The record establishes that defendant's plea counsel spent many hours meeting with both the prosecutors and the court in order to obtain the promised plea. Plea counsel also provided the court with extensive documentation including a voluminous pre-sentencing memo. The defendant's argument that plea counsel failed to file necessary motions such as a request for the court inspect the grand jury minutes, is without merit. This court on July 28, 2014, rendered a decision finding the minutes sufficient after inspection.

The defendant's argument that defense counsel should have argued that larceny was inapplicable, is also without merit. The People have provided sufficient information to establish that the defendant did not serve as a partner, either general or limited, of the fund at the time of the theft. Therefore, the defendant's reliance on *People v. Zinke*, 76 NY2d 8 (1990), is misplaced.

The foregoing is the decision and order of the court.

Dated: New York, New York
June 10, 2016

Laura A. Ward
Acting Justice Supreme Court

Sweeny, J.P., Renwick, Kapnick, Kern, Moulton, JJ.

4485-
4486 The People of the State of New York,
Respondent,

-against-

Lawrence E. Penn III,
Defendant-Appellant.

Ind. 73/14

Perkins Coie LLP, New York (Jalina J. Hudson of counsel), for appellant.

Cyrus R. Vance, Jr., District Attorney, New York (Lee M. Pollack of counsel), for respondent.

Judgment, Supreme Court, New York County (Laura A. Ward, J.), rendered April 21, 2015, convicting defendant, upon his plea of guilty, of grand larceny in the first degree and falsifying business records in the first degree, and sentencing him to concurrent terms of two to six years, and order, same court and Justice, entered on or about July 11, 2016, which denied defendant's CPL 440.10 motion to vacate the judgment, unanimously affirmed.

By pleading guilty, defendant automatically forfeited appellate review of his claim that he was an owner of the stolen property and thus could not be guilty of larceny (*see People v Plunkett*, 19 NY3d 400 [2010]; *see also People v Levin*, 57 NY2d 1008 [1982]; *People v Mendez*, 25 AD3d 346 [1st Dept 2006]). In

any event, the record before us establishes that, unlike the situation in *People v Zinke* (76 NY2d 8 [1990]), defendant adopted a form of business organization whereby he held no ownership interest in the stolen money at the time of the theft.

Defendant received effective assistance of counsel (*see People v Benevento*, 91 NY2d 708, 713-714 [1998]; *People v Ford*, 86 NY2d 397, 404 [1995]; *see also Strickland v Washington*, 466 US 668 [1984]). As indicated, it would have been unavailing for counsel to litigate the issue of whether defendant was an owner of the stolen property. Defendant's remaining claims of ineffective assistance are without merit.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

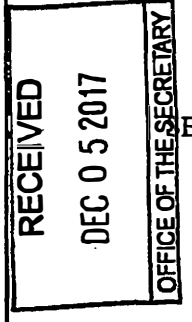
ENTERED: SEPTEMBER 26, 2017

CLERK

UNITED STATES POSTAL SERVICE

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •



SECURITIES AND EXCHANGE COMMISSION
100 F. Street, N.E.
Washington, D.C. 20549-1090

SENDER: *COMPLETE THIS SECTION*

- Complete items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. Lawrence E. Penn, III
145 East 48th Street
New York, NY 10017

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from Item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3- 18288

NOV 2017

ress Mail
:urn Receipt for Merchandise
).D.

8044082-01P

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. 7015 3430 0000 9276 4728

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
NEW YORK REGIONAL OFFICE
BROOKFIELD PLACE, 200 VESEY STREET, SUITE 400
NEW YORK, NEW YORK 10281-1022

WRITER'S DIRECT DIAL LINE
(212) 336-0589

January 10, 2018

Via UPS Overnight Deliver and Fax (202-772-9324)

Brent Fields, Secretary
Office of the Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Mail Stop 1090
Washington D.C. 20549

Re: In the Matter of Lawrence E. Penn, III,
Admin. Proc. File No. 3-18288

Dear Mr. Fields:

Please find enclosed an original and three copies of (1) the Division of Enforcement's Motion for Summary Disposition Against Respondent and Supporting Memorandum of Law, dated January 10, 2018 (the "Motion"); and (2) the Declaration of Karen E. Willenken, dated January 10, 2018, and all exhibits attached thereto. A copy has also been sent to the Office of the Secretary by facsimile.

Respectfully submitted,

Howard A. Fischer
Senior Trial Counsel

cc: Hon. Carol Fox Foelak (by UPS and Email)
Lawrence E. Penn (by UPS and Email)

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 5397/December 18, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-18288

In the Matter of	:	
	:	
LAWRENCE E. PENN, III	:	PREHEARING ORDER

The Securities and Exchange Commission instituted this proceeding with an Order Instituting Proceedings (OIP) on November 20, 2017, pursuant to Section 203(f) of the Investment Advisers Act of 1940. The proceeding is a follow-on proceeding based on Respondent Penn's injunction against violating the antifraud provisions of the federal securities laws in *SEC v. Penn*, No. 1:14-cv-0581 (S.D.N.Y. Aug. 22, 2017), and conviction of grand larceny and falsifying business records in violation of New York State law in *People v. Penn*, No. 00073-14 (N.Y. Sup. Ct.). A prehearing conference was held today. Howard Fischer and Katherine Bromberg, Esqs., appeared on behalf of the Division of Enforcement, and Respondent Penn appeared *pro se*.

Respondent Penn will file an Answer to the OIP by January 2, 2018. The Division will file a motion for summary disposition pursuant to 17 C.F.R. § 201.250(b). Taking into account Respondent Penn's other commitments, and consistent with 17 C.F.R. § 201.161, the due dates for the motion, opposition, and reply will be January 10, February 23, and March 9, 2018, respectively.

IT IS SO ORDERED.

/S/ Carol Fox Foelak
Carol Fox Foelak
Administrative Law Judge

Lawrence E. Penn III
145 East 48th Street
Suite 8B
New York, NY 10017
Mobile: +1-917-582-8940
Fax: +1-212-937-2362

Fax

TO:	Securities & Exchange Commission Commission's Secretary Carol Fox Foelak, ALJ	FROM:	Lawrence E. Penn III
FAX:	+1-703-813-9793	PAGES:	5 including cover
PHONE:	+1-202-551-6030	DATE:	January 2, 2018
RE:	File No. 3-18288	CC:	SEC – New York – Howard Fischer

[X] Urgent [ ] For Review [ ] Please Comment [X] Please Reply [ ] Please Recycle

ADMINISTRATIVE PROCEEDING
SECURITIES AND EXCHANGE COMMISSION
File No. 3-18288 – Carol Fox Foelak, ALJ

In the Matter of

LAWRENCE E. PENN, III, *Pro Se*

Respondent.

ADMINISTRATIVE PROCEEDING
SECURITIES AND EXCHANGE COMMISSION
File No. 3-18288 – Carol Fox Foelak, ALJ

In the Matter of **LAWRENCE E. PENN, III, *Pro Se*** **Respondent.**	**ANSWER**

ANSWER AND MOTION FOR MORE DEFINITIVE STATEMENT OF RESPONDENT LAWRENCE E. PENN III

Pursuant to Rules of Practice of the U.S. Securities and Exchange Commission dated September 2016, specifically Rule 220 and the Prehearing Order dated December 18, 2017, the Respondent responses to each allegation contained in the Complaint are below. Moreover, anything admitted or denied is only to the best of the Respondent's knowledge of the law and memory as to the facts, and as to any conclusions, characterizations, implications, innuendos, or speculation contained herein or in the Order instituting Administrative Proceedings (OIP) as a whole. In addition, Respondent specifically, denies any allegations contained in defined terms, ambiguous terms, actions that were a result of an unlawful criminal charge outlined in the OIP or unnumbered paragraphs in the OIP. This General Response is incorporated, to the extent appropriate, into each numbered paragraph of this Answer.

RESERVATION OF ALL RIGHTS BY RESPONDENT

Pursuant to Rules of Practice of the U.S. Securities and Exchange Commission dated September 2016, specifically Rule 220(e), the Respondent reserves all rights to amend this answer at any time and to motion for more definitive statement of specified matters of fact or law to be considered or determined.

MOTION FOR MORE DEFINITIVE STATEMENT BY RESPONDENT

Pursuant to Rules of Practice of the U.S. Securities and Exchange Commission dated September 2016, specifically Rule 220(e), the Respondent

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Lawrence E. Penn, III ("Respondent" or "Penn").

SUMMARY OF ALLEGATIONS

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. From at least March 2010 through October 2013, Respondent was the managing director of Camelot Acquisitions Secondary Opportunities Management, LLC, an investment adviser registered with the Commission. Respondent, 47 years old, is a resident of New York, New York.

ANSWER TO PARAGRAPH II(A)(1): Respondent denies that from at least March 2010 through October 2013 Camelot Acquisitions Secondary Opportunities Management, LLC was an investment adviser registered with the Commission. Respondent admits that he is 47 years old. Respondent admits that from at least March 2010 through October 2013 he was a resident of New York, New York. Respondent admits that from at least March 2010 through October 2013, he was the managing director of Camelot Acquisitions Secondary Opportunities Management, LLC.

B. ENTRY OF THE INJUNCTION/RESPONDENT'S CRIMINAL CONVICTION

2. On August 22, 2017, a final judgment was entered against Penn, permanently enjoining him from future violations of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act, in the civil action entitled Securities and Exchange Commission v. Penn, et al., Civil Action Number 1:14-CV-0581, in the United States District Court for the Southern District of New York.

ANSWER TO PARAGRAPH II(B)(2): Deny.

3. The Commission's complaint alleged that, between March 2010 and October 2013, Penn engaged in a fraudulent scheme to misappropriate approximately $9 million from a private equity fund in order to provide additional assets to Penn to spend on his business and personal expenditures.

ANSWER TO PARAGRAPH II(B)(3): Deny.

4. On March 16, 2015, Penn pled guilty to Grand Larceny in the First Degree in violation of New York Penal Law § 155.42 and Falsifying Business Records in the First Degree in violation of New York Penal Law § 1175.10 before the Supreme Court of the State of New York, County of New York: Part 42 in The People of the State of New York vs. Lawrence E. Penn, III, Indictment No. 00073-14. On April 20, 2015, Penn was ordered to pay restitution in the amount of $8,362,974 and was sentenced to a prison term of two to six years.

ANSWER TO PARAGRAPH II(B)(4): Respondent denies allegations contained in paragraph II(B)(4) above. Respondent denies knowledge and information sufficient to admit or deny the lawfulness or whether the allegations contained in paragraph II(B)(4) are to be deemed void.

5. The counts of the criminal information to which Penn pleaded guilty alleged, among other things, that Penn stole over $1 million from a private equity fund in the same scheme underlying the Commission's complaint described in Paragraph 3 above.

ANSWER TO PARAGRAPH B(5): Deny.

AFFIRMATIVE DEFENSES

AS AND FOR A FIRST AFFIRMATIVE DEFENSE
Unclean Hands

1. The SEC has operated with Unclean Hands.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE
Lack of Personal Jurisdiction

2. The SEC lacks personal jurisdiction over this Respondent.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE
Failure to meet the elements

3. The SEC failed to prove the elements of the allegation

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

4. SEC's allegations are not the result of acts or omissions proximately caused by the Respondent.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE
Unconstitutional Actions

5. Respondent alleges that the granting of the SEC's demands are unconstitutional and the actions of the SEC should bar any ban.

Dated: January 2, 2018
New York, NY

Lawrence E. Penn III
Pro Se Respondent
145 East 48th Street, Suite 8B
New York, NY 10017
Email: [redacted]@gmail.com
Fax: +1-212-937-2362

cc: Howard Fischer
Securities and Exchange Commission
New York Regional Office, Brookfield Place
200 Vesey Street, Suite 400
New York, NY 10281-1022
Tel: (212) 336-0589
Fax: (703) 813-9490
Email: FischerH@sec.gov

Commission's Secretary
100 F Street NE, Mail Stop 1090
Washington, D.C. 20549
Tel: (202) 551-6030
Fax: (703) 813-9793
E-Mail: alj@sec.gov

ADMINISTRATIVE PROCEEDING
SECURITIES AND EXCHANGE COMMISSION
File No. 3-18288 – Carol Fox Foelak, ALJ

In the Matter of

LAWRENCE E. PENN, III, *Pro Se*

Respondent.

CERTIFICATE OF SERVICE

I, Lawrence E. Penn III, certify that on January 2, 2018, I caused true a correct copy of the following document:

ANSWER

to be served by email, fax or U.S. Mail on the following:

1. Howard Fischer
   SECURITIES AND EXCHANGE COMMISSION
   New York Regional Office, Brookfield Place
   200 Vesey Street, Suite 400
   New York, NY 10281-1022
   Email: FischerH@sec.gov

2. Commission's Secretary
   100 F Street NE, Mail Stop 1090
   Washington, D.C. 20549
   Fax: (703) 813-9793
   E-Mail: alj@sec.gov

Dated: January 2, 2018
New York, NY

Lawrence E. Penn III
Pro Se Respondent
145 East 48th Street, Suite 8B
New York, NY 10017
Email: [redacted]@gmail.com

SUPREME COURT: NEW YORK COUNTY
TRIAL TERM: PART 71

----------X

THE PEOPLE OF THE STATE OF NEW YORK

IND.#:
0073-14

-against-

CHARGE:
LAWRENCE PENN III, GLAR. 1

PROCEEDINGS:
Defendant. PLEA

----------X

100 Centre Street
New York, New York 10013

March 16, 2015

B E F O R E: HONORABLE LAURA A. WARD
Justice of the Supreme Court

A P P E A R A N C E S:

FOR THE PEOPLE:

CYRUS R. VANCE, JR., ESQ.
New York County District Attorney
One Hogan Place
New York, New York 10013
BY: CHEVON WALKER, ESQ.
Assistant District Attorney

FOR THE DEFENDANT:

BRAFMAN & ASSOCIATES, P.C.
767 Third Avenue
26th Floor
New York, NY 10017
BY: BENJAMIN BRAFMAN, ESQ.
ANDREA ZELLAN, ESQ.

THE CLERK: Calendar number 12, Lawrence Penn III.

THE COURT: Appearances, please.

MS. WALKER: For the People, Chevon Walker, C-H-E-V-O-N, W-A-L-K-E-R.

MR. BRAFMAN: For Mr. Penn, Benjamin Brafman and Andrea Zellin, 767 Third Avenue, New York City.

THE COURT: So today it's on for possible disposition or defense motions, and based on a conversation at the bench, I gather we do have a disposition.

MR. BRAFMAN: Yes, your Honor.

Most respectfully, Mr. Lawrence Penn the third has authorized me to withdraw his previously entered plea of not guilty, and enter a plea of guilty to the crimes of grand larceny in the first degree under count one of the indictment, and the crime of falsifying business records under count three of the indictment, in full satisfaction of the indictment, with a promise from the Court that the sentence will be two to six years in prison, and that there will be a restitution of $8.3 million signed prior to sentence, a restitution order, and he would forfeit his rights and interest in CM Growth Capital Partners LP, formerly known as Camelot Acquisitions Secondary Opportunities LP.

THE COURT: Is that your understanding as well?

MS. WALKER: Yes, it is, your Honor.

The People's recommendation in this case is four to 12 years in jail with restitution and relinquishment of his interest in the fund.

We understand that the Court after much consideration, has offered the defendant restitution with relinquishment, and we understand that the defendant would plead guilty to count one, grand larceny in the first degree, and the third count of falsifying business records.

Additionally, Judge, and I have spoken to counsel about this, we will ask that the defendant be required to relinquish his company's interest in the fund prior to sentence, and we've been in discussions about him actually effectuating that prior to sentence.

THE COURT: Is that your understanding too, Mr. Brafman?

MR. BRAFMAN: Yes. We will execute the necessary documents prior to sentencing.

THE COURT: May I have a copy of the indictment please and would you please uncuff Mr. Penn.

I want to thank the parties with regard to this. I know that we had multiple meetings discussing this matter, and a lot of information was given to the Court, and the Court based its decision on all the information that was provided both by the People and by the defense.

So, Mr. Penn, would you raise your right hand

please, sir.

THE DEFENDANT: Should I stand?

THE COURT: You can sit. It's okay.

Just raise your right hand.

Do you swear or affirm that the statements you're about to give this Court are the truth, the whole truth, and nothing but the truth?

THE DEFENDANT: Yes, your Honor.

THE COURT: You may put your hand down, sir.

I'd like you to stop me if you have any question about anything I say to you today or anything that I ask of you because it's very important that you understand everything, okay?

THE DEFENDANT: Yes, your Honor.

THE COURT: Your attorney has informed me you are pleading guilty. Have been satisfied with the representation that they have given you?

THE DEFENDANT: Yes, your Honor.

THE COURT: Have you had enough time to discuss this plea and sentence with them?

THE DEFENDANT: Yes, your Honor.

THE COURT: Are you today, sir, under the influence of any drugs, medication or alcohol that affects your ability to understand what is happening?

THE DEFENDANT: No, your Honor.

THE COURT: By entering these pleas, you give up your right to remain silent, your right to a trial, your right to have People prove their case against you beyond a reasonable doubt, your right to confront witnesses, and if you want to put witnesses on on your own behalf, and your right to make motions to suppress evidence and raise certain affirmative defenses.

THE DEFENDANT: Yes.

THE COURT: Do you understand all of the rights you give up by your plea?

THE DEFENDANT: Yes, your Honor.

THE COURT: Anybody forcing you to give up those rights?

THE DEFENDANT: No, your Honor.

THE COURT: Anybody promise you anything other than the sentence of two to six years in jail, that you would sign a restitution order in the amount of $8.3 million, and forfeit your interests in various entities. Any other promises made to you?

THE DEFENDANT: No, your Honor.

THE COURT: Now, although we've agreed what your sentence will be, and you have gotten credit for the time that you have done and the time you're going to do, I cannot sentence you today for two reasons:

First, I need a presentence report that's prepared

by the Department of Probation. They will interview you, ask you a series of questions including, are you guilty of these charges. If you're unable to admit your guilt in the preparation of the report, you should not be pleading guilty here today. And second, you need time to relinquish your interest in various entities prior to sentence, okay.

Do you have any questions?

THE DEFENDANT: Yes, your Honor.

Various entities? The entity is the fund.

THE COURT: Right.

THE DEFENDANT: So it's one entity.

MR. BRAFMAN: That's correct.

THE COURT: Any other questions, sir?

THE DEFENDANT: No, your Honor.

THE COURT: Now, based on what I know about the defendant, I don't think there is any Padilla issue here.

MR. BRAFMAN: There is not, Judge.

THE COURT: So, sir, today you're pleading guilty to count one of the indictment which is grand larceny in the first degree in violation of Penal Law Section 155.42, and it is alleged that you, along with St. Michael Ewers, in the County of New York, from October 20 of 2010 to July 12 of 2013, stole property from Camelot Acquisitions Secondary Opportunities LLP, and the value of the property exceeded $1 million, is that a true statement, sir?

THE DEFENDANT: Yes, your Honor.

THE COURT: Count three charges you with falsifying business records in the first degree in violation of Penal Law Section 175.10, and it is alleged that you, along with your co-defendant, on or about July 7 of 2013, with intent to defraud, including an intent to commit another crime and to aid and conceal the commission thereof, made and caused the false entry, that being a 210 or 211 Schedule Invoices in the business records of Camelot Acquisitions Secondary Opportunities LP; is that a true statement, sir?

THE DEFENDANT: Yes, your Honor.

THE COURT: I gather, based on what you have in front of you, you have a statement you wish to read?

THE DEFENDANT: No.

MR. BRAFMAN: Only if your Honor requires it to complete the allocution.

THE COURT: Do the People require anything in addition?

MS. WALKER: I just want to correct the record with regard to count one.

It is Camelot Acquisitions Secondary Opportunities LP, and I believe the Court just accidentally said LLP, which would be a different entity.

MR. BRAFMAN: That's correct.

MS. WALKER: For the record, the restitution amount is $8,362,973.89t I just want to make that clear.

MR. BRAFMAN: Judge, can I just indicate that the plea covers the period 2010 through 2011 as alleged in count three of the indictment; and also the period covered from 2010 to 2013, the period covered in count one of the indictment.

I just want to add, your Honor, this Court has extended substantial amount of effort in bringing this plea about. Several meetings allowed for defense to provide several written submissions, and as a consequence, the plea offer that your Honor has approved is substantially less onerous than what the People have recommended, and I think to your Honor's credit, it's the appropriate disposition in this case, and I want to thank you for the time you have devoted to trying to get as fair a resolution as we could all have hoped for under these difficult facts. So thank you very much.

THE COURT: Well, obviously based on all the information that was provided to the Court.

Inevitably, when you have plea discussions, both sides want different things, and usually what happens is the correct decision is somewhere in the middle.

MR. BRAFMAN: Well, you have done that, and I just want to express the defendant's appreciation.

THE COURT: So would you please arraign the defendant for me, please.

THE CLERK: Lawrence Penn, in the presence of your attorney, do you now withdraw your previously entered plea of not guilty, and do you now plead guilty to the crime of grand larceny in the first degree, the first count of the indictment, and falsifying business records in the first degree, the third count of the indictment to satisfy and cover indictment number 73 of 2014; is that your plea, sir, guilty?

THE DEFENDANT: Yes.

THE COURT: So how much time, Mr. Brafman, do you think you will need in order to relinquish the interest?

MR. BRAFMAN: Your Honor, we're relying on the work products of other firms who are trying to do the paperwork in terms of the forfeiture. So since he is remanded, if the Court could give us the week of April 20 for sentencing on a morning convenient to your Honor.

THE COURT: That's fine with the Court if that's enough time for you.

MR. BRAFMAN: I think we can get it done by then.

THE COURT: That's okay for the People?

MS. WALKER: That's fine, Judge.

THE COURT: We could do April 20 if that works.

MR. BRAFMAN: That's fine.

THE COURT: So April 20 back here for I and S and sentence.

The defendant is remanded. We will see you on that date, Mr. Penn.

CERTIFIED TO BE
TRUE AND CORRECT

SATI SINGH, RPR
SENIOR COURT REPORTER