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

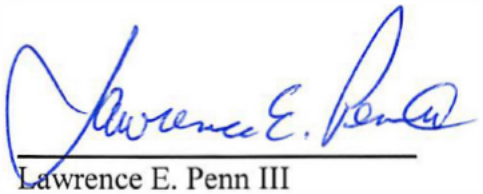
In the Matter of **LAWRENCE E. PENN, III, *Pro Se*** **Respondent.**	**OPPOSITION TO MOTION FOR SUMMARY DISPOSITION**

OPPOSITION TO MOTION FOR SUMMARY DISPOSITION OF RESPONDENT LAWRENCE E. PENN III

Pursuant to the 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 respectfully submits this opposition to the motion for summary disposition and motion to stay the proceedings until the parallel criminal appeals process and civil process are complete. Summary disposition by the Commission is not in the public interest and any bar or action would be a continued violation of Lawrence E. Penn III's civil rights under the U.S. and New York Constitution as well as a violation of 42 U.S.C. § 1983 and 18 U.S.C. §§ 241 and 242. The Respondent respectfully requests that the Commission denies the motion for summary disposition and deny any bar of 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. 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 include definitive statements of specified matters of fact or law to be considered.

In support of this motion, the Respondent relies upon the accompanying memorandum of law and respectfully requests that the Commission considers the matters of facts and law and denies any motion for summary disposition. Additionally, the Respondent requests a stay of proceedings in this matter until the parallel criminal appeals process and civil process are final.

Dated: February 23, 2018
New York, NY



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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.

OPPOSITION TO MOTION FOR SUMMARY DISPOSITION

MEMORANDUM OF LAW IN SUPPORT OF RESPONDENT OPPOSITION TO THE MOTION FOR SUMMARY DISPOSITION

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Lawrence E. Penn III ("Mr. Penn" or "Respondent"), responds and incorporates his answer pursuant to the Rules of Practice of the U.S. Securities and Exchange Commission (the "Commission") dated September 2016, specifically Rule 220 and the Prehearing Order dated December 18, 2017. The Respondent respectfully submits this opposition to the motion for summary disposition and motion to stay the proceedings until the parallel criminal appeals process and civil process are complete. Summary disposition by the Commission is not in the public interest and any bar or action would be a continued violation of Mr. Penn's civil rights under the U.S. Constitution and New York Constitution as well as a violation of 42 U.S.C. § 1983 and 18 U.S.C. §§ 241 and 242. The Respondent respectfully requests that the Commission to deny the motion for summary disposition by the Division of Enforcement (the "Division") and deny any bar the Respondent from associating with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

QUESTIONS PRESENTED

1. Is the SEC Commission permitted to rely on a criminal conviction in conflict with the law in issuing a summary disposition?

2. Is the SEC Commission permitted to rely on a Civil Summary Judgement that relies on an unlawful criminal conviction in issuing a summary disposition?

INTRODUCTION

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." There are material issues of fact and law that are being litigated which bar summary disposition by rule, law, and the U.S. Constitution.

The Division (the "SEC") and its members in concert with the Manhattan District Attorney ("MDA") have abused the enforcement and judicial process, acted under the color of state law, and violated Mr. Penn's immunities and privileges guaranteed under the U.S. Constitution. The SEC Complaint with false statements from the SEC New York Office was produced and relied upon by the MDA which intervened on or about May of 2014 in the parallel civil matter, *SEC v. Penn*, et al, 14 Civ 0581. The Complaint was the basis of an unlawful indictment which charged Grand Larceny 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 (1990), that a "general partner in limited partnership *cannot be found guilty of larceny* for misappropriating partnership funds" see Exhibit A. This ruling was based on long-standing New York statutory law that prohibits joint and common owners from being charged or convicted of larceny. The Divisions' entire basis for this summary disposition and the summary judgment in the parallel civil action is based on the fruit of a poisonous and unlawful indictment and conviction engineered in concert with members of the New York MDA. The state-level indictment was directly caused by the actions of members of the SEC in concert with the MDA 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 $2.5 million at arraignment. The excessive bail, based on the unlawful indictment, resulted in a loss of liberty, abuse of process, interference with a partnership as well as a U.S. Constitution and New York State Constitution due process violation, violation of equal protection of the laws, and the personal injury. The Division and officers of the Court ignored

well-established law knowing Mr. Penn was a joint and common owner of the rights to distributions from the partnership acquired with his capital contributions. Additionally, Mr. Penn was the 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 joint and common owner and acted in capacity of the General Partner with rights to possess. As such, the Commission is prohibited from extending the civil rights violations and constitutional deprivations of Mr. Penn's life, liberty or property by relying on the results of an unlawful New York State criminal action and civil summary judgment based on the conviction in conflict with New York State law and the U.S. Constitution.

FACTUAL BACKGROUND

Mr. Penn Successful Career in The Camelot Group

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. His responsibilities at the firm extended to all areas and functions of the business to include 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 the contractual key man with the rights to possess and use the capital as well as a joint and common owner of the Fund with rights to distributions based on his capital investment.

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. Mr. Penn 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. Mr. Penn as a joint and common 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.

Members of the New York Office if the SEC constructed a Complaint with false statements and submitted it to the US District Court in the Southern District of New York. The Complaint stated the following specifically, "...representing that Penn received a master's degree from UMUC Europe when he did not." (See Exhibit B - SEC Complaint). 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." (See Exhibit B - SEC Complaint). This is a false statement because there is no redemption clause in the LPA that governed the Partnership (typically a hedge fund term) when Mr. Penn was the General Partner and no investor requested a redemption.

The Division Violated The Rights Of Mr. Penn Under The Constitution Of The United States Working In Concert With The MDA In The Construction Of An Unlawful Charge.

Members of the Division worked in concert with the MDA, with gross negligence, malice, outside the scope of their duties, under the color of state law, in violation of New York

State law, the U.S. and New York Constitution. Members of the Division constructed a Complaint with false statements, passed it to members of the MDA. The MDA who relied on Complaint and intervened into a parallel civil action in May of 2014 (See Exhibit C), *SEC v. Penn*, Document 46 and 51. The Complaint was used to construct an unlawful Indictment (*SEC v. Penn*, Document 122, Exhibit 5) which charged Grand Larceny and offenses that relied on the larceny count in direct violation of statutory law interpreted by common law and decided by the Court of Appeals of New York (the highest court in New York State). The Court of Appeal of New York ruled over 25 years ago in *People v. Zinke*, 556 N.Y.S.2d 11 (1990), that a "general partner in limited partnership cannot be found guilty of larceny for misappropriating partnership funds" (See Exhibit A).

The indictment with a Grand Larceny charge had no basis in law, was used to justify an arrest warrant and bail of $2.5 million at arraignment as evidenced by the Hearings Minutes (See Exhibit D). 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. 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" *Zahrey v. Coffey*, 221 F.3d 342 (2nd Circuit 2000). This due process violation by an officer of the Federal Court resulted in the coercion of Mr. Penn to signing an Injunction, Temporary Restraining Order (TRO) and Asset Freeze against his will while confined. Additionally, the due process violation enabled selected officers of the State Criminal Court to coerce a plea in conflict with law over a 14-month period of detention.

The unlawful indictment resulted in an excessive bail and a "deprivation of Mr. Penn's liberty interest." *Zahrey v. Coffey*, 221 F.3d 342. "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 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 (1982).

Mr. Penn acted as and was the 100% owner of the General Partner, Camelot Acquisitions: Secondary Opportunities G.P., L.L.C. ("CASO GP"), and Investment Manager, Camelot Acquisitions: Secondary Opportunities Management, L.L.C. ("CASO MGT") of Camelot Acquisitions: Secondary Opportunities, L.P. ("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 joint and common owner of the general partner in a limited partnership. For clarity, the members of the MDA unlawfully indicted Mr. Penn, under the influence of members of the Division, a joint and common owner through the general partner in limited partnership which is unlawful by New York statutory law. The attorneys from MDA 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 initiated prosecution with the unlawful charge based on "misappropriating assets." The construction and presentation of fraudulent indictment in a New York State court of law is 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).

Polly Greenberg, Assistant District Attorney of the MDA 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. 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" (See Exhibit C), filed May 20, 2014, *SEC v. Penn et al.*, 14 Civ. 0581 (VEC).

Actions by members of the Division led to loss of liberty interest and due process violation which caused actual injury in violation of a rights of Mr. Penn under the Constitution of the United States.

On June 2, 2014, in a letter to Judge Valerie E. Caproni of S.D.N.Y, the MDA in concert with the SEC further presented that 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 Mr. Penn" and stated 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." Page 3 of the letter outlining "Plaintiff's Interests" referred to how "the SEC" would "conserve resources by postponing document discovery" and 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 was a defamatory statement (libel) as established in *Penn Warranty Corp. v. DiGiovanni*, 810 N.Y.S.2d 807 (2005).

Member of the SEC in concert with 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 Mr. Penn pled or is 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 Mr. Penn and the Court." This statement along with the letter, likely induced Judge Caproni to grant the stay of discovery (See Exhibit C), 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." Mr. Penn's 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.

Mr. Penn was coerced to plea without allocution by answering "yes" to two questions in conflict with the statutory law and should not have been found guilty of larceny. On April 20, 2015, Mr. Penn signed an unlawful 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 with New York statutory law as clearly interpreted by the New York State Court of Appeals in *People v. Zinke*. There very fact the Mr. Penn was required to forfeit his ownership is evidence that he was a joint and common owner and should have never been charged with larceny. The courts are judicially estopped from denying that Mr. Penn was a joint and common owner and therefore should have never been charged or convicted of larceny. In the parallel civil matter, Judge Caproni's order confirms Mr. Penn's joint and common ownership in her order which states, "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" (See Exhibit E). The Court then relies on the unlawful conviction in

face of the fact that as a joint and common owner, it was unlawful to charge or convict him in the first place.

For over 14 months Mr. Penn 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."

Mr. Penn 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 Division resulted in Defamation, Abuse of Process, Malicious Prosecution, and Interference with a Partnership in order for the SEC to extract an advantage in civil court.

LEGAL ARGUMENT

Summary Disposition Is Inappropriate And In Violation Of Mr. Penn's Rights Under The Constitution of the United States While The Criminal And Civil Actions Are In Question.

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 not been fully litigated and determined in the Criminal Action and the Civil Action. The 2nd Circuit has already determined that the *SEC v. Penn* is not deemed a case with a final judgment and is premature for appeal (See Exhibit F).

Mr. Penn Has Appealed His Criminal Conviction And The Facts And Law Have Not Been Fully Litigated In The Criminal Matter Or The Parallel Civil Case.

Mr. Penn in conjunction with *Pro Bono* counsel Perkins Coie, Mr. Penn moved to vacate the judgment of conviction at the trial court level. Judge Ward, in violation with Mr. Penn's U.S. and New York Constitutional rights denied the motion to vacate in direct conflict with U.S. Supreme Court law. In *Blackledge v. Perry*, 417 U.S. 21 (1974), and *Menna v. New York*, 423 U.S. 61 (1975), the Supreme Court held that a defendant who pleads guilty can still raise on appeal any constitutional claim based on the law. Here Mr. Penn raised a constitutional claim based on the Fourteenth Amendment which extends the privileges of citizenship to African Americans and forbids the states from abridging the privileges or immunities of citizens of the United States. It also forbids the states from depriving any person of life, liberty, or property without due process of law, or of denying any person the equal protection of the laws. Article VI of the Federal Constitution declares the following: "This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges, in every state, shall be bound thereby, anything in the constitution and laws of any state to the contrary notwithstanding."

Mr. Penn in conjunction with *Pro Bono* counsel Perkins Coie, Mr. Penn moved to appeal both the motion to vacate the judgment and combined it with a direct appeal of the conviction at the New York Supreme Court Appellate Division First Department. In violation with Mr. Penn's U.S. and New York Constitutional rights, the appeal was denied in direct conflict with U.S.

Supreme Court law because the Appellate Division First Department defied U.S. Supreme Court law pursuant to the *Blackledge/Menna* doctrine. Reversing its' own decision made by its own Judge, the Appellate Division First Department affirmed the unlawful conviction on the grounds that "by pleading guilty, Mr. Penn automatically forfeited appellate review" (See Exhibit H). Judge Karla Moskowtiz, a Justice of the Appellate Division, First Judicial Department, certified that in the appeal proceedings there were "questions of law or fact are involved which ought to be reviewed" on or about December 8, 2016 (See Exhibit G). The questions of law or fact have extended to both the parallel civil case and this SEC Commission hearing because the unlawful conviction remains the basis for the summary judgment.

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….

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."

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."

The SEC acted in concert with the MDA, under the color of state law and in violation of state law in order to strip the Mr. Penn of his rights secured under the United States Constitution thereby seeking advantages in this civil action. The SEC'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.

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.

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 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 Mr. Penn's reputation and was the proximate cause of the tangible and material state-imposed burden, 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 Mr. Penn's liberty satisfying both requirements of the stigma-plus claim. "[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 Mr. Penn.

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.*).

"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).

"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).

Mr. Penn has summarily denied the allegations and was not provided adequate time to provide an amended answer to the SEC complaint. The case law provided in the by the SEC motion does not consist of one case that involves a general partner in limited partnership or partnership law. There was no jury trial during the criminal matter or the civil matter in which this summary disposition relies on and the facts and law are far from litigated. The reliance on unlawful plea in conflict with the law and a flawed civil case that relies on an unlawful conviction is an outrage to the rule of law and the U.S. Constitution.

CONCLUSION

Given the existence of a criminal conviction in conflict with immunities and privileges extended under the law and a summary judgement based on the unlawful conviction, summary disposition by the Commission is not in the public interest and any bar or action would be a continued violation of Mr. Penn's civil rights under the U.S. and New York Constitution as well as a violation of 42 U.S.C. § 1983 and 18 U.S.C. §§ 241 and 242. The Respondent respectfully requests that the Commission to deny the motion for summary disposition by the Division of Enforcement (the "Division") and deny any bar the Respondent from associating with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization. Additionally, the Respondent requests the Commission's grant the motion to stay the proceedings until the parallel criminal appeals process and civil process are complete.

Dated: February 23, 2018
New York, New York

Respectfully Submitted,

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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 February 23, 2018, I caused true a correct copy of the following document:

OPPOSITION TO SUMMARY DISPOSITION

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

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Dated: February 23, 2018
New York, NY

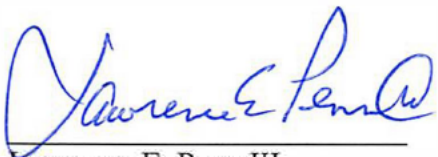

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EXHIBIT A

76 N.Y.2d 8, 555 N.E.2d 263, 556 N.Y.S.2d 11

The People of the State of New York, Respondent,
v.
Philip Walker Zinke, Appellant.

Court of Appeals of New York
98
Argued March 23, 1990;
decided May 3, 1990

CITE TITLE AS: People v Zinke

SUMMARY

Appeal, by permission of an Associate Judge of the Court of Appeals, from an order of the Appellate Division of the Supreme Court in the First Judicial Department, entered May 30, 1989, which, insofar as appealed from, affirmed a judgment of the Supreme Court (Edward J. McLaughlin, J.), rendered in New York County upon a verdict convicting defendant of two counts of grand larceny in the second degree. *(See,* 137 Misc 2d 463.)

People v Zinke, 147 AD2d 106, reversed.

HEADNOTES

Crimes
Larceny
Misappropriation of Limited Partnership Assets by General Partner

([1]) The general partner in a limited partnership cannot be found guilty of larceny for misappropriating partnership funds. Larceny is committed when one wrongfully takes, obtains or withholds "property from an owner thereof" with intent to deprive the owner of it, or appropriate it to oneself or another (Penal Law § 155.05 [1]). "Owner" is defined in Penal Law § 155.00 (5) as one "who has a right to possession [of the property taken] superior to that of the taker, obtainer

or withholder." However, "[a] joint or common owner of property shall not be deemed to have a right of possession thereto superior to that of any other joint or common owner thereof." (Penal Law § 155.00 [5].) Accordingly, since partners under the Partnership Law are "co-owners" of firm property, a general partner in a limited partnership cannot be charged with larceny for misappropriating partnership funds. Moreover, neither Partnership Law § 51 (2) (a) nor the limited partnership form is cause for departing from the rule that a partner cannot be convicted of larceny for the misappropriation of partnership assets.

TOTAL CLIENT SERVICE LIBRARY REFERENCES

Am Jur 2d, Larceny, § 84.

CLS, Partnership Law § 51 (2) (a); Penal Law § 155.00 (5); § 155.05 (1).

NY Jur 2d, Criminal Law, §§553, 668.

ANNOTATION REFERENCES

Embezzlement, larceny, false pretenses, or allied criminal fraud by a partner. 82 ALR3d 822. ***9**

POINTS OF COUNSEL

Barry D. Leiwant and *Philip L. Weinstein* for appellant.
Pursuant to the Penal Law, appellant, the general partner of the Stonehenge Investment Notes 1, Ltd. partnership, could not be charged with larceny for taking, obtaining or withholding property from Stonehenge because he was a "joint or common owner" of that property. (*Holmes v Gilman*, 138 NY 369; *People v Hart*, 114 App Div 9; *People v O'Brien*, 102 Misc 2d 246; *People v Dye*, 134 Misc 689; *People ex rel. Murphy v Crane*, 80 App Div 202; *People v Foster*, 73 NY2d 596; *People v Jennings*, 69 NY2d 103; *People v Valenza*, 60 NY2d 363; *People v Keeffe*, 50 NY2d 149; *People v Yannett*, 49 NY2d 296.)
Robert M. Morgenthau, District Attorney (*Lisa Feiner* and *Mark Dwyer* of counsel), for respondent.
Defendant, the general partner of a limited partnership, was not a joint or common owner of partnership property; he therefore could be prosecuted for larceny for stealing partnership property. (*People v Dolkart*, 60 AD2d 238; *Meinhard v Salmon*, 249 NY 458; *Streeter v Schultz*, 45 Hun 406, 127 NY 652; *People v Garland*,

69 NY2d 144; *Riviera Congress Assocs. v Yassky*, 25 AD2d 291; *Matter of United States v Silverstein*, 314 F2d 789; *Fifth Ave. Bank v Colgate*, 120 NY 381; *Lichtyger v Franchard Corp.*, 18 NY2d 528; *People v Barnes*, 158 App Div 712; *People v Herbert*, 162 Misc 817.)

OPINION OF THE COURT

Kaye, J.

The single question before us is whether the general partner in a limited partnership can be found guilty of larceny for misappropriating partnership funds. As a matter of statutory interpretation, we answer that question in the negative, leaving the subject of partnership defalcations to be addressed by any other penal provisions that may be applicable, or by civil litigation, or (if deemed appropriate) by legislative reform.

Defendant, an investment adviser for small pension and profit-sharing funds, was the sole general partner in Stonehenge Investment Notes 1, Ltd., a limited partnership; defendant himself was a significant investor in the firm. In January 1987, after the limited partners and their insurers exhausted their efforts to recoup the funds defendant had allegedly embezzled, defendant was indicted for two counts of grand larceny in the second degree. Specifically, the indictment accused defendant of stealing $1,050,000 from the partnership ***10** by writing two checks on its money market account--one for $250,000 in April 1984, the other for $800,000 three months later. Defendant, who had authority under the partnership agreement to borrow firm funds, claimed that these were partnership investments.

At trial, upon the close of the People's case, defendant moved to dismiss the indictment on the ground that, as a general partner, he was a "joint or common" owner of the partnership's property and, thus, under the Penal Law could not be prosecuted for larceny even if he had misappropriated partnership property. The court reserved decision and submitted the case to the jury, which convicted defendant of both counts of the indictment. After the verdict, Supreme Court denied defendant's motion to dismiss, and the Appellate Division affirmed the conviction, concluding that the general partner in a limited partnership could be prosecuted for larceny for stealing partnership property. We now reverse.

Larceny is committed when one wrongfully takes, obtains or withholds "property from an owner thereof" with intent to deprive the owner of it, or appropriate it to oneself or another (Penal Law § 155.05 [1]). "Owner" is defined in Penal Law § 155.00 (5) as one "who has a right to possession [of the property taken] superior

to that of the taker, obtainer or withholder." This broad definition is immediately qualified by the declaration that "[a] joint or common owner of property shall not be deemed to have a right of possession thereto superior to that of any other joint or common owner thereof." (Penal Law § 155.00 [5].)

In that partners under the Partnership Law are "co-owners" of firm property *(see,* Partnership Law §§ 10, 51 [1]), defendant contends that he cannot be charged with having committed larceny as against his limited partners, because all of the partners have an equal right of ownership. The People respond that, under Partnership Law § 51 (2) (a), partners lose their status as joint owners when they divert firm property to their own purposes. Alternatively, the People contend that defendant's conviction should be sustained because his position as a general partner in a limited partnership is more akin to that of corporate officers and directors, who do commit larceny when they embezzle firm assets, than it is to general partners in other partnerships.

A useful backdrop against which to consider this issue is the historical evolution of the common-law concept of "owner" ***11** into its modern statutory form. As with other aspects of larceny, "a proper interpretation of the past can assist us in understanding the technical rules of the crime." (Fletcher, *The Metamorphosis of Larceny,* 89 Harv L Rev 469, 474 [1976]; *People v Olivo,* 52 NY2d 309, 315.)

At common law, no less than today, the requirement that the victim of a theft be an "owner" of the stolen property was an indispensable element of the crime of larceny. The idea behind this requirement was that the property alleged to be stolen had to "belong" to a party other than the accused *(see,* 2 LaFave & Scott, Substantive Criminal Law § 8.4 [c], at 355 [1986]; *cf., Ward v People,* 6 Hill 144 [1843] [thief in possession of property that he stole deemed to be its owner where same property was stolen from him]). If the defendant was the owner of the property and entitled to possession at the time of the taking, there could be no larceny. From this principle emerged the rule that if property was owned by two or more persons, none of the owners could commit larceny from the others. In the words of Lord Hale: "Regularly a man cannot commit felony of the goods, wherein he hath a property." (Hale, History of Pleas of the Crown, at 513 [1683].)

Consistent with this principle was the common-law view that a partner could not be convicted of larceny for the misappropriation of partnership assets; because each partner held title to an undivided interest in the partnership, the theory was that partners could not misappropriate what was already theirs. This view has been widely recognized throughout the common-law world.[*] Even as States began

codifying larceny, the common-law rule continued to flourish. In the absence of a legislative expression to the contrary, courts have ordinarily held that a partner cannot be guilty of larceny for misappropriating firm property, with any such defalcations left for resolution in the civil arena *(see,* Annotation, *Embezzlement, Larceny, False Pretenses, or Allied Criminal Fraud by a Partner,* 82 ALR3d 822 [collecting cases]).

Such has been the history of the law in this State: it is surely no accident that the People cite no reported New York case where a partner has been convicted of larceny for taking partnership property. Since 1881, larceny has been defined by *12 statute in terms of a wrongful taking or withholding from the possession ofe the "owner" or "true owner" *(compare,* Penal Code § 528 [1] [1881], *with* formere Penal Law § 1290 [1942]; and present Penal Law § 155.00 [5]; § 155.05 [1]). Fore more than 80 years the Legislature made no effort to define these terms. As in othere States, the courts ofthis State consistently regarded the common-law definition ofe owner as controlling, concluding that partners could not be prosecuted for stealinge firm property *(e.g., Holmes v Gilman,* 138 NY 369, 377 [1893]; *People v Hart,* 114e App Div 9, 13; *People v Dudley,* 97 NYS2d 358, 359-360; *People v Dye,* 134 Misce 689, 692; *see also, People ex rel. Murphy v Crane,* 80 App Div 202, 205; *People v Herbert,* 162 Misc 817, 818-819).e

In 1965, the Legislature put to rest all possible doubt on this score. The Model Penal Code, completed in 1962, had rejected the common-law view by defining larceny as stealing "property of another," which was in turn defined as property "in which any person other than the actor has an interest * * * regardless of the fact that the actor also has an interest in the property." (Model Penal Code § 223.0 [7].) The purpose of this provision was to permit "a person ordinarily considered the owner of property * * * [to] be convicted of theft * * * Thus, a partner may be convicted of theft of partnership property." (Model Penal Code § 223.2, revised comment, at 169 [1980].) In enacting the present Penal Law in 1965, however, the New York Legislature chose to reject the Model Penal Code approach and instead codified its own existing rule. This choice was made clear when the Legislature set forth the common-law rule, in so many words, in Penal Law § 155.00 (5): "[a] joint or common owner of property shall not be deemed to have a right of possession thereto superior to that of any other joint or common owner thereof."

As noted in the contemporary Practice Commentary by Judges Denzer and McQuillan--members of the Commission that drafted article 155--the purpose of this provision was to continue in force what "has long been the law of New York" that "a partner who appropriates partnership property is not guilty ofarceny from

his co-partners." (Denzer & McQuillan, Practice Commentary, McKinney's Conse Laws of NY, Book 39, Penal Law § 155.00, at 410 [1967].) This court has previously relied upon these very Commentaries as a reliable source for ascertaining the legislative intent underlying Penal Law article 155 *(see, e.g., People v Alamo,* 34 NY2d 453, 459; *People v Eboli,* 34 NY2d 281, 285-286), and their conclusion as to the ***13** meaning of "owner" is consistent with all other available legislative history *(see generally,* Staff Notes of Temporary State Commission on Revision of Penal Law and Criminal Code, Proposed New York Penal Law, McKinney's Spec Pamph, at 351 [1964] [Penal Law § 155.00 generally designed to clarify definition of larceny; no indication intent was to expand or limit then-existing definition of "owner"]; Fourth Interim Report, Temporary State Commission on Revision of the Penal Law and Criminal Code, 1965 NY Legis Doc No. 25, at 38 [Feb. 1, 1965] ["nothing * * * new (in) broad definition of larceny" contained in Penal Law § 155.05 (1)]).

A decision not to extend the larceny statute to partnership disputes--commonly litigated in civil courts--is, moreover, consistent with the Legislature's reluctance to elevate civil wrongs to the level of criminal larceny *(see,* Third Interim Report, Temporary State Commission on Revision of the Penal Law and Criminal Code, 1964 Legis Doc No. 14, at 25 [Feb. 1, 1964]). In particular, the Legislature was concerned both about the effects of criminalizing conduct arising out of legitimate business activities--where there can often be close questions as to intent--and the effects of offering defeated litigants in civil suits the opportunity to seek retaliation by criminal actions *(People v Foster,* 73 NY2d 596, 603-604). Allowing larceny prosecutions against partners is, of course, contrary to those legislative concerns.

Thus, it is clear that, in New York, partners cannot be charged with larceny for misappropriating firm assets. Indeed, while not alone in this view, New York is widely recognized as a prime example of a State that has enacted in statutory form the common-law rule that a partner "could not steal partnership property." (Model Penal Code § 223.2, revised comment, at 169, n 15; LaFave & Scott, *op. cit.,* § 8.4 [c], at 355, n 38.) Since 1965, "[s]everal states have followed the lead of New York on this point in recent enactments and proposals" (Model Penal Code § 223.2, revised comment, at 170, n 15 [citing statutes of Ariz, Conn, Ore, Tex, Ill]), and many other State courts have continued to follow or have recently adopted the New York rule *(see, e.g, People v Clayton,* 728 P2d 723 [Colo]; *Burroughs v State,* 406 So 2d 814 [Miss]; *Patterson v Bogan,* 261 SC 87, 198 SE2d 586; *State v Brown,* 81 NC App 281, 343 SE2d 553; *State v Birch,* 36 Wash App 405, 675 P2d 246; *Hudson v State,* 408 So 2d 224 [Fla App]).

Against this backdrop, the People's arguments for criminal liability must fail. ***14**

The gist of the People's first contention is that, under Partnership Law § 51 (2) (a), partners who divert firm property lose their right to possess that property and thus may no longer be deemed "owners" for purposes of the larceny statute *(see also,* Partnership Law § 98 [1] [d]). This argument, however, is laid to rest by the words and history of Penal Law § 155.00 (5). The qualifying language of Penal Law § 155.00 (5)--enacted long after Partnership Law § 51 (2) (a)--directly contradictse the People's position. The argument is even flawed as a matter of partnership law.e While a partner has no right to possess or use partnership property except fore partnership purposes, it does not follow that partners who misappropriate the firme assets cease to be "owners" of that property. Despite a wrongful taking, a dishoneste partner may still retain an ownership interest as a "tenant in partnership," untile the partnership winds up *(see, Kraus v Kraus,* 250 NY 63, 67 [Cardozo, Ch.e J.]; *see generally,* Report of ABA Uniform Partnership Revision Subcommittee,e *Should the Uniform Partnership Act Be Revised,* 43 Bus Law 121, 154 [1987]e [recommending that Uniform Partnership Act "be revised to the extent necessarye to make it clear that a partner who misappropriates partnership property is guiltye of embezzlement"]).e

Nor are we persuaded by the People's second argument--that the well-entrenched rule applying generally to partnerships should be disregarded for general partners of limited partnerships because their position is analogous to that of corporate managers. To be sure, analogies can be drawn between a general partner in a limited partnership and a corporate officer or director. Both, for example, stand in a fiduciary relation to limited partners or shareholders, who do not manage and control the business, and consequently they may have heightened civil responsibilities *(see, Birnbaum v Birnbaum,* 73 NY2d 461, 465; *Lichtyger v Franchard Corp.,* 18 NY2d 528, 536-537). But for present purposes the essential differences between a general partner in a limited partnership and a corporate manager are far more compelling than any similarities.

Most significantly, limited partnerships and corporations are distinctly different organizational forms in the law of New York. Limited partnerships are governed by the Partnership Law--as they have been since the inception of the Partnership Law--and corporations are governed by the Business Corporation Law, a fact that has pervasive legal and financial ***15** significance. Apart from the inclusion of limited partnerships within the Partnership Law, the statute itself at several points specifically fortifies the blood relationship between the two types of partnership. For example, section 10 (2) states that the Partnership Law "shall apply to limited

partnerships except in so far as the statutes relating to such partnerships are inconsistent herewith"; section 98 (1) provides that a "general partner shall have all the rights and powers and be subject to all the restrictions and liabilities of a partner in partnership without limited partners," with enumerated exceptions (*see,* Reuschlein & Gregory, Agency and Partnership § 264, at 436-437 [1979]). In short, under the law, "limited and general partnerships are identical forms of doing business." (*Executive House Realty v Hagen,* 108 Misc 2d 986, 991.)

Many additional distinctions can be drawn between corporations and limited partnerships: unlike corporations, limited partnerships (like all partnerships) have informal agreements among the partners as their basic documents of governance; and the general partner in even a limited partnership, unlike a corporate manager, risks unlimited personal liability in the conduct of firm business (Partnership Law §§ 26, 98 [1]). However, it is unimportant for the resolution of this appeal to define further distinctions, or indeed to establish *any* substantive law about corporations or partnerships. The important point is that limited partnerships are *partnerships* in the eyes of the law of this State, and as such they come within the rule that partners cannot be guilty of larceny when they steal from them.

We therefore disagree with the People that either Partnership Law § 51 (2) (a) or the limited partnership form are cause for departing from our longstanding rule. While the People urge that, for deterrence purposes, the rule should be otherwise--especially for limited partnerships--that is a matter of legislative policy, not a matter for the courts, who are bound not to extend criminal responsibility beyond the fair reach of the statutes.

Accordingly, the order of the Appellate Division should be reversed and the indictment dismissed.

Chief Judge Wachtler and Judges Simons, Alexander, Titone, Hancock, Jr., and Bellacosa concur.

Order reversed, etc. ***16**

Footnotes

* *See, e.g.,* Bromberg & Ribstein, Partnership § 3.05 (b), at 50-51 (1988); 2 LaFave & Scott, Substantive Criminal Law § 8.4 (c), at 355 (1986); 3 Wharton's Criminal Law § 393, at 392 (Torcia 14th ed 1980); Lindley, Partnership, at 548 (10th ed 1935) (English common law).

EXHIBIT B

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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.e CGI has engaged in, and unless enjoined, will continue to engage, directly ore 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.e Defendants should be permanently enjoined from violating the provisions of thee 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.e The Court has subject matter jurisdiction over this action pursuant to Sectionse 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.e Venue is proper in the Southern District of New York pursuant to Section 27 ofe 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.i **CGI** is a Delaware limited liability company, with its principal place of businessi 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.i **Big House** is a Delaware limited liability company, incorporated in 2003, wholly-owned and controlled by Ewers.

OTHER RELEVANT ENTITIES

22.i **Camelot LP**, CASO Management's flagship fund, had approximately $120i 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.i **TCGI Capital Group LLC ("TCGI")** is a Delaware limited liability companyi owned and controlled by Penn. TCGI is based in New York, New York.

FACTS

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

24.i Established in 2007 and first funded in 2010, Camelot LP is a private equity fundi 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.i The Fund's stated investment strategy was to invest in companies that were in thei 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.e When Audit Firm approached Ewers for Ssecurion work product during a July 19,e 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.e In an interview with Audit Firm representatives on July 16, 2013, Penn showede 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.e In addition, Ssecurion kept almost none of the fees it received for its purportedlye 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.e Ssecurion Round-Tripped Most of the Money it Received from Camelote LP to CGI.e

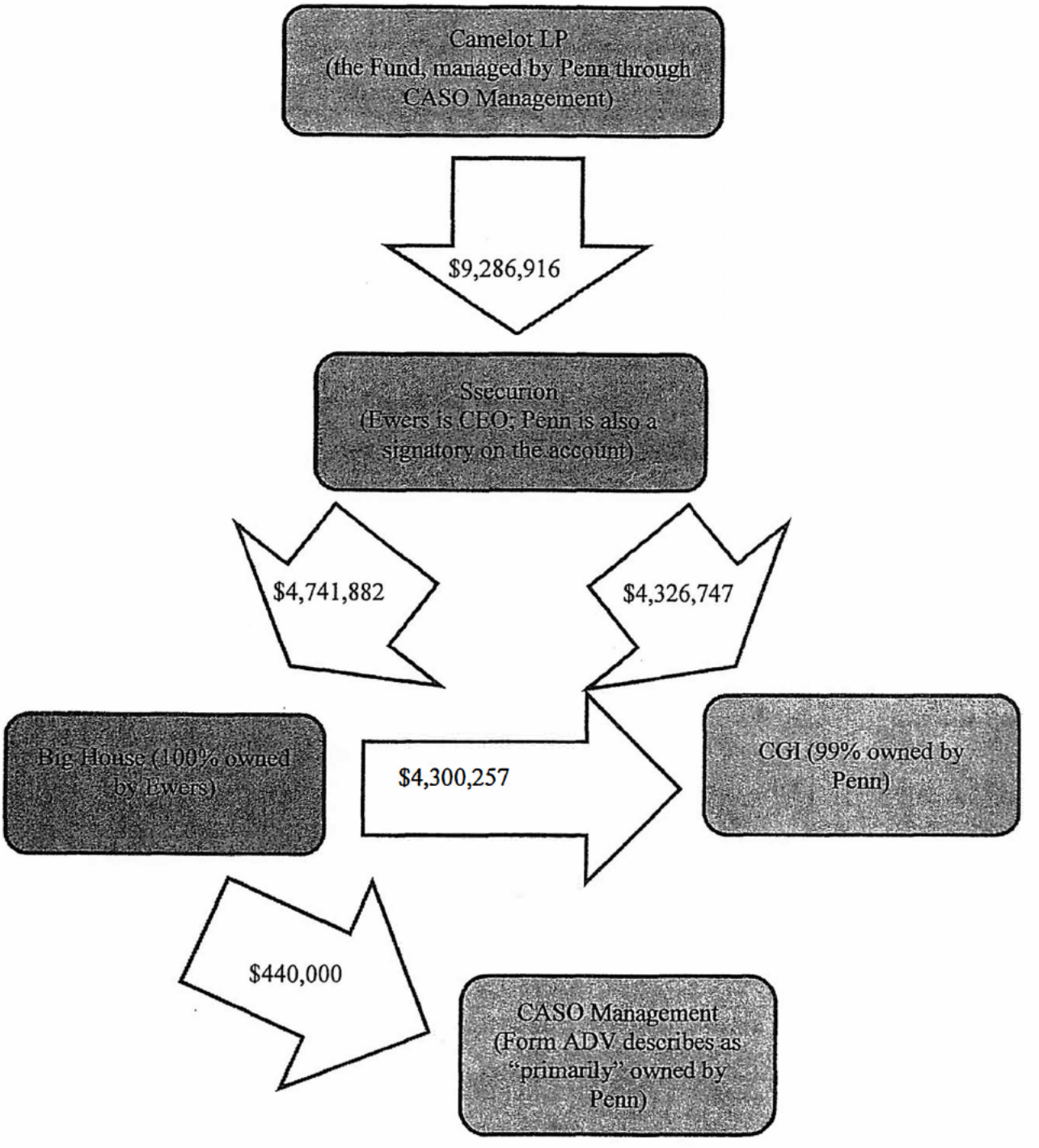
38.e Ssecurion retained only a tiny fraction of the fees that were being paid to it fore purported due diligence services, and returned the vast majority of the fees paid to it from

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.e Penn used his laptop and a projection screen to show Audit Firm files on thee 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 Ssecurion, and many appeared to be generic reports freely accessible from the internet.

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

49.e On July 19, 2013, Audit Firm met with Ewers at a Regus Business Center officee 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.e When asked about the recent changes to the Ssecurion website, Ewers claimede that an unspecified third party had made them, and that he had not reviewed the changes.

D.eCASO Management's Non-Compliance With the Commission'se Examinatione

51.e When it was unable to obtain satisfactory evidence that the purported "duee 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.e By reason of the foregoing, CASO Management and Penn, directly or indirectly,e 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.e Paragraphs 1 through 59 are realleged and reincorporated by reference as if fullye set forth herein.

61.e By engaging in the acts and conduct described in this Complaint, Ssecurion,e 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.e By reason of the foregoing, Ssecurion, Ewers, and CGI have violated and unlesse 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.e Paragraphs 1 through 62 are realleged and reincorporated by reference as if fullye set forth herein.

64.e By engaging in the acts and conduct described in this Complaint, at all relevante 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.e By reason of the foregoing, Ssecurion, Ewers, and CGI have violated and unlesse 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.e Paragraphs 1 through 71 are realleged and reincorporated by reference as if fullye set forth herein.

73.e By engaging in the acts and conduct described in this Complaint, CASOe 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.e CASO Management and Penn, while acting as investment advisers to Camelote 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.

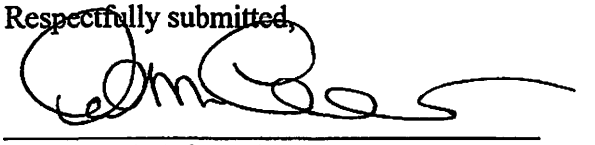
Ordering CASO Management and Penn to pay civil money penalties pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] and Section 209(e) x of the Advisers Act [15 U.S.C. § 80b-9]; and ordering Ewers, Ssecurion, and CGI to pay civil money penalties pursuant to Section 21(d)(3) of the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



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May 19, 2014

Filed Electronically on ECF

Honorable Valerie E. Caproni
United States District Court
Southern District of New York
Thurgood Marshall United States Courthouse
40 Foley Square, Courtroom 443
New York, NY 10007

Re: SEC v. Lawrence E. Penn, III, Michael St. Altura Ewers, et al.
Case No. 14 Civ. 00581 (VEC)

Your Honor:

I am an Assistant District Attorney, of counsel to Cyrus R. Vance, Jr., District Attorney, New York County (the "District Attorney"). Pending before the Court is the above-referenced matter (the "civil case"). In that case, the Securities and Exchange Commission (the "SEC") alleges, among other things, that the above-referenced defendants (collectively the "Defendants"), violated sections of the Securities and Exchange Act of 1934 and the Investment Advisers Act of 1940 by misappropriating over $9 million from a private equity fund, Camelot Acquisitions: Secondary Opportunities, L.P. (the "Fund") between 2010 and 2013, spending the money on impermissible expenditures, and misleading the fund's auditor.

In parallel, a New York County Grand Jury has charged Lawrence E. Penn, III ("Penn") and Altura St. Michael Ewers ("Ewers") with various felonies, including Grand Larceny in the First Degree, New York State Penal Law §155.42, pursuant to New York County Indictment Number 00073/2014 (the "Indictment")[1].

[1] The Indictment, a copy of which is attached as Exhibit A, charges the defendants with one count of Grand Larceny in the First Degree, New York P. L. 155.42, one count of Money Laundering in the First Degree, New York P. L. §470.20(1)(b)(iii)(A) and (iii), and thirty counts of Falsifying Business Records in the First Degree, P. L. §175.10.

Motion to Intervene

The District Attorney respectfully requests to intervene in the civil case, pursuant to Rule 24 of the Federal Rules of Civil Procedure, for the limited purpose of obtaining a stay of discovery pending the resolution of the criminal case.[2] "[C]ourts in this [Second] Circuit have routinely allowed federal or state prosecutors to intervene in civil litigation in order to seek a stay of discovery." SEC v. Treadway, No. 04 Civ. 3464, 2005 U.S. Dist. LEXIS 4951, at *5 (S.D.N.Y. March 30, 2005) (granting the Office of the New York State Attorney General's motion to intervene in a parallel civil proceeding with potentially common factual and legal issues). It is in fact "well-established that the government may intervene in a federal civil action to stay discovery when there is a parallel criminal proceeding, which is anticipated or already underway, that involves common questions of law or fact." Rosenthal v. Giuliani, No. 98 Civ. 8408, 2001 U.S. Dist. LEXIS 1207, at *4 (S.D.N.Y. February 6, 2001) (granting the New York County District Attorney's motion to intervene in a parallel civil matter after many of the civil defendants were indicted by a New York County Grand Jury). See also SEC v. Kozlowski, No. 02 Civ. 7312, 2003 U.S. Dist. LEXIS 6261 (S.D.N.Y. April 15, 2003) (similarly granting intervention and a stay of discovery requested by the state prosecutor post-indictment, during motion practice of the criminal matter).

Intervention should be permitted here, as the civil proceeding and the criminal indictment involve common questions of law and fact. Both proceedings arise out of conduct regarding the misappropriation of the same capital from the private equity fund described above. Penn and Ewers are also defendants in both actions and the remaining civil defendants are entities controlled by Penn and Ewers. The criminal proceeding is currently in a state of motion practice. Intervention is appropriate here, where the District Attorney is currently prosecuting a parallel criminal case with common factual and legal issues.

Stay of Discovery

The District Attorney respectfully requests a stay of discovery in the civil case pending the resolution of the criminal matter. The United States Court of Appeals for the Second Circuit has utilized a six-factor analysis in considering whether to grant an application for a stay. These six factors include:

> (1)ethe extent to which the issues in the criminal case overlap with those presented in thee civil case; (2) the status of the case, including whether the defendants have been indicted;e (3)ethe private interests of the plaintiffs in proceeding expeditiously weighed against thee prejudice to the plaintiffs caused by the delay; (4) the private interests of and burden one the defendants; (5) the interest of the courts; and (6) the public interest.e

[2] The District Attorney seeks this application by letter to the Court instead of formal motion papers after consultation with Court personnel, however, the District Attorney is prepared to file a more detailed submission should the Court deem it necessary.

Louis Vuitton Malletier S.A. v. LY USA, Inc., 676 F.3d 83, 99 (2d Cir. 2012). In the instant matter, all six factors favor granting a stay of discovery.

The factual and legal aspects in the civil case materially overlap with those involved in the criminal case. Allegations of defendants Penn and Ewers' misappropriation of millions of dollars from the Fund and misleading of the Fund's auditor are the grounds for both the civil and criminal matter.

The status of the criminal case also weighs in favor of granting a stay of discovery. Defendants Penn and Ewers are both indicted in the criminal case. Therefore, the prosecution is not "a remote or purely hypothetical possibility," but an actual proceeding. Louis Vuitton, 676 F.3d at 100, n.14.

Further, neither the SEC nor the Defendants will be prejudiced or burdened by the delay. In the criminal matter, prior to trial, defendants will be provided with discovery materials pursuant to New York Criminal Procedure Law Article § 240, consisting of all trial exhibits, including but not limited to bank records from multiple bank accounts, Fund financial records, and documents provided by witnesses, including correspondence and executed agreements. Defendants will also have access to materials recovered pursuant to a search warrant of Camelot Group International, LLC and Camelot Acquisitions Secondary Opportunities Management, LLC offices. Moreover, if the criminal matter results in hearings and/or trial, transcripts of witness testimony will be available to the parties, which may ease civil discovery. See Giuliani, 2001 U.S. Dist. LEXIS 1207 at *6. Also, the indicted criminal matter is subject to speedy trial time constraints, ensuring an efficient timeline.

With parallel criminal and civil proceedings, there is also the concern that the defendant will be forced to choose between an adverse inference in the civil proceeding by invoking his Fifth Amendment privilege against self-incrimination and the introduction of his civil admissions into evidence in the criminal matter. See Louis Vuitton, 676 F.3d at 97-98. A stay of discovery in the civil matter would protect the defendants from this dilemma.

Additionally, the District Attorney anticipates that the SEC and defendant Penn will consent to the stay sought by the District Attorney. Defendant Ewers is not represented by counsel in the civil case, thus the District Attorney has been unable to assess his position regarding the stay.

Lastly, public interest and judicial economy also favor the granting of a stay of discovery. The indicted criminal case is in a pretrial motion posture. As such, discovery materials relevant to both the civil and criminal matter will be provided to the defendants in the criminal matter. Resolution of the criminal matter will streamline discovery in the civil matter and likely resolve many of the same issues in the civil matter, promoting a more efficient use of judicial resources. Further, the public interest of protecting investors and enforcing securities law is advanced in both the civil and criminal proceedings, thus the interest at stake in the civil matter is not being "indefinitely deferred." Louis Vuitton, 676 F.3d at 101, citing Volmar Dist., Inc. v. New York Post Co., Inc., 152 F.R.D. 36 (S.D.N.Y. 1993).

The District Attorney therefore seeks an Order permitting limited intervention and a stay of discovery in the civil case and such other and further relief as the Court deems just and proper.

Respectfully submitted,

Cyrus R. Vance, Jr.
District Attorney
New York County

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BY ECF

The Honorable Valerie E. Caproni
Thurgood Marshall
United States Courthouse
40 Foley Square
New York, NY 10007

Re: SEC v. Penn, et al., No. 14 Civ. 0581 (VEC)

Dear Judge Caproni:

We write on behalf of Plaintiff Securities and Exchange Commission ("SEC"), as suggested by the Court at the hearing on May 21, 2014, to present our position on the application of the office of the District Attorney for New York County ("District Attorney") for a stay of discovery in this action pending the outcome of a pending criminal proceeding against Defendants Lawrence E. Penn III and Altura St. Michael Ewers (collectively, "Defendants"). The SEC consents to the requested stay of discovery, and it believes that a full, rather than partial, stay is appropriate in this case.

The SEC's Complaint alleges that the Defendants, together with entities they control, participated in a scheme to misappropriate over $9 million from a private equity fund, Camelot Acquisitions Secondary Opportunities L.P., ("Camelot LP") that Defendant Penn managed. Defendant Penn paid over $9 million, which he accounted for as "due diligence expenses," to Defendant Ssecurion LLC, an entity controlled by Defendant Ewers. (Cmpt. ¶ 2.)

Upon receiving over $9 million from the private equity fund, entities controlled by Defendant Ewers immediately routed over 97% of that money to entities controlled by Penn. (Cmpt. ¶ 37.) Ewers provided documentation to the fund's auditors in which he falsely claimed that Ssecurion had been in business for over fifteen years. (Cmpt. ¶ 33.) He also made false statements to the auditors at a meeting in July 2013. (Cmpt. ¶ 49.)

The SEC's Complaint alleges further that Defendants Penn and Camelot Acquisitions Secondary Opportunities Management LLC (Camelot LP's adviser) failed to produce required books and records in response to requests from the SEC's examination staff, and that they filed a false Form ADV with the SEC. (Cmpt. ¶¶ 51-55).

Although the criminal indictment does not charge the Defendants with securities fraud, the underlying conduct – as well as the evidence that would be required to prove that conduct – is

substantially equivalent to that alleged as the basis of liability in the civil complaint. The criminal indictment accuses the Defendants of taking over $1 million from Camelot LP (Count 1) – the same actions underlying the securities fraud allegations of the Complaint. The Indictment further charges the Defendants with money laundering (Count 2) and with falsifying invoices relating to the services purportedly provided by Defendant Ewers' entities to Camelot LP (Counts 3-32).

The key issues in both the criminal and civil cases will be whether and for what purposes the money was misappropriated, and whether each defendant had the requisite scienter. On the first point, the defendants will have ample opportunity in the criminal case to scrutinize the relevant bank records and challenge the accuracy of the government's interpretation of those records. On the latter points, the most relevant evidence will likely be the testimony of Defendants Penn and Ewers – evidence that, as set forth below, Defendants are unlikely to be able or willing to provide to the SEC during the pendency of the criminal action.

"A district court may stay civil proceedings when related criminal proceedings are imminent or pending, and it will sometimes be prudential to do so." *Louis Vuitton Malletier S.A. v. LY USA, Inc.*, 676 F.3d 83, 98 (2d Cir. 2012). District courts balance the following factors in deciding whether to stay a civil case:

1) the extent to which the issues in the criminal case overlap with those presented in the civil case;
2) the status of the case, including whether the defendants have been indicted;
3) the private interests of the plaintiffs in proceeding expeditiously weighed against the prejudice to plaintiffs caused by the delay;
4) the private interests of and burden on the defendants;
5) the interests of the courts; and
6) the public interest.

Id. Because of the substantial overlap between the criminal charges and the allegations of the SEC's Complaint, all of these factors weigh in favor of a complete state of discovery.

1. <u>Overlap of Issues</u>

This factor favors a stay because the District Attorney's indictment and the SEC's complaint charge the same defendants for the same fundamental misconduct, albeit under different statutory schemes. Once the key issues in the criminal case have been decided, the need for discovery in the civil action may be substantially reduced, or even completely eliminated.

Although the Complaint alleges violations of the Investment Advisers Act of 1940 that are not in the criminal indictment, those violations are limited in scope and should not require extensive discovery. They involve the failure of Defendant Penn and the advisory firm he controlled to maintain and produce required records, and the filing of Defendant Penn and his firm of a false Form ADV. Most of the records relevant to these allegations are in the files of Penn's own advisory firm. These allegations do not apply at all to Defendant Ewers.

2. Status of the Case

This factor also favors a stay. The criminal proceeding is well underway, with motion practice ongoing and a trial expected this year if the matter is not otherwise resolved. The fact that an indictment has been filed, and that a resolution of the criminal case can be expected within a reasonable period of time, militates strongly in favor of a complete stay.

"A stay of a civil case is most appropriate where a party to the civil case has already been indicted for the same conduct for two reasons": (1) "the likelihood that a defendant may make incriminating statements is greatest after an indictment has issued"; and (2) "the prejudice to the plaintiffs in the civil case is reduced since the criminal case will likely be quickly resolved due to Speedy Trial Act considerations." *Trustees of the Plumbers and Pipefitters Nat'l Pension Fund v. Transworld Mech., Inc.*, 886 F.Supp. 1134, 1139-40 (S.D.N.Y. 1995) (granting stay in May, where individual defendants and some entity defendants had already been indicted, noting that a resolution by the end of the year "would not unreasonably prolong this case").

3. Plaintiff's Interests

The SEC's interests favor the requested stay, especially since it is likely that the burden of document discovery will fall far more heavily on the SEC. While the SEC has an interest in expeditiously obtaining relief, allowing the Defendants to proceed with the defense of the criminal action, without the distraction of simultaneously litigating this action, is likely to lead to the most expeditious resolution of both.[1] In addition, a stay would allow the SEC to conserve resources by postponing document discovery until a time when the parties may be able to substantially limit its scope.

The Complaint and the criminal indictment each relate to the same basic scheme – the theft and misappropriation of money from Camelot LP based on a pretense that the funds were being paid in exchange for due diligence services. The key documents relevant to this scheme include bank records reflecting the flow of funds among the entities, documents provided by the entities to Camelot LP's auditors, and internal fund documents reflecting the purported purpose of the payments. We expect that the Defendants will receive all of these documents in criminal discovery and therefore will have ample opportunity to review them and prepare their defense to these allegations prior to the criminal trial.

While the criminal case is pending, Defendants Penn and Ewers likely will be unwilling to provide to the SEC the discovery it most needs – their own account of what they did, why they did it, and what they knew. Moreover, the defendants may be reluctant even to produce documents to the SEC while the criminal case is pending. Both are incarcerated, which will make it logistically

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[1] Allowing the Defendants to simultaneously obtain documents from the SEC while the criminal case is pending is unlikely to advance the cause of expediting relief for the SEC, because any time the Defendants take to seek and review discovery in the civil case is likely to delay their readiness for their criminal trial on the basic scheme. If discovery proceeds, the Defendants will need to review the productions it receives (from both the SEC and third parties) for completeness and litigate any apparent deficiencies, which will distract them from their criminal defense.

challenging for them to respond to document requests. Even if they are able to respond, they may assert the so-called "act of production" Fifth Amendment objection to producing documents. *See Fisher v. United States*, 425 U.S. 391 (1976) (recognizing that the "act of producing evidence in response to a subpoena" may implicate the Fifth Amendment privilege by conceding the existence of the documents, their possession or control by the producing individual, and the individual's belief that "the papers are those described in the subpoena"). For these reasons, any document discovery while the criminal case is pending would likely be entirely one-sided – from the SEC to the Defendants.

As for the SEC's ability to obtain discovery from third parties, allowing discovery to proceed does not advance the expeditious resolution of this matter because the documents and testimony of the Defendants are critical to the SEC's ability to seek documents from third parties to confirm or refute the Defendants' statements. The SEC expects to conduct very little third-party discovery before taking the depositions of the Defendants. Once the Defendants testify, however, it may need to issue subpoenas for both documents and testimony to third parties in order to test the accuracy of any factual assertions made in the Defendants' depositions. The SEC therefore expects that, if there is anything remaining to litigate after the conclusion of the criminal action, it will need to reopen document discovery at that point, to obtain any withheld documents from the Defendants and to issue additional document requests to third parties.

In addition, if discovery proceeds now, the SEC may need to litigate with the Defendants over documents that are not produced due to logistical challenges or alleged Fifth Amendment concerns; such litigation would be unnecessary if discovery were delayed until these issues are obviated by the resolution of the criminal case.

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 factor supports staying all discovery as to all defendants – not just the individual defendants named in the indictment – because the named defendants are the "central figures" in the alleged conspiracy, and their testimony will be critical to discovery in this case. All of the entity defendants were controlled by Penn or Ewers. Accordingly, any document discovery taken now might lead to "duplication of effort and waste of resources," because the SEC would likely need to issue additional document subpoenas based on facts discovered in their testimony. *See SEC v. Downe*, 1993 WL 22126 at *14, 1993 U.S.Dist. LEXIS 753 at *51 (S.D.N.Y. Jan. 26, 1993) (granting complete rather than partial stay because insider trading allegations involved "central figure" and "partial stay would likely result in additional expenses for the parties without expediting the discovery process"); *Volmar Distributors, Inc. v. New York Post Co., Inc.*, 152 F.R.D. 36, (S.D.N.Y. 1993) (granting stay at request of corporate defendants where their officers were subject to a criminal proceeding, noting that the stay was more efficient because the central issue in the case was whether the indicted individuals "engineered a conspiracy"); *see also Trustees*, 886 F.Supp. at 1139 ("To avoid duplication of discovery efforts, the case will also be

stayed as to the corporate defendants until the Criminal Case is resolved with respect to the" charged individuals).

4. Defendants' Interests

Courts recognize the concern that a defendant might "face[] the choice of being prejudiced in the civil litigation if he asserts his Fifth Amendment rights or prejudiced in the criminal litigation if those rights are waived." *See, e.g., SEC v. Boock*, No. 09 Civ. 8261, 2010 WL 2398918, at *1 (S.D.N.Y. June 15, 2010). Even if the Court limits discovery to document discovery, the Defendants are likely to raise Fifth Amendment "act of production" defenses to producing documents, thereby impeding the efficiency and effectiveness of the discovery process. A stay would eliminate the need for the Defendants to raise such arguments, for the SEC to dispute them, and for the Court to decide them.

Although there may be a limited category of documents that the Defendants would receive from the SEC sooner if document discovery were allowed to proceed, their interest in receiving these documents approximately six months sooner is not significant. *See SEC v. Chestman*, 861 F.2d 49, 50 (2d Cir. 1988) (no prejudice to defendants from stay because "appropriate opportunities for discovery can be allowed when the stay is lifted"); *see also SEC v. One or More Unknown Purchasers of Sec. of Global Indus.*, No. 11 Civ. 6500, 2012 WL 5505738, at *3-4 (S.D.N.Y. Nov. 9, 2012) (granting stay in SEC case notwithstanding defendant's opposition, where criminal investigation was likely to be concluded within six months); *Trustees*, 886 F.Supp. at 1140 (granting stay in May where resolution of parallel criminal case expected by the end of the year). Because the most important documents will be produced to the Defendants by the government in the criminal action, the Defendants have no significant interest in obtaining document discovery in this action now, rather than in six months (or fewer) when the criminal case is likely to be resolved.

5. The Court's Interests

The requested stay promotes the Court's interests in efficiency. Resolution of the criminal case may resolve the most significant issues in this civil action or lead to a settlement of all issues in this action. Such a result would obviate the need for the Court to decide the discovery disputes that may arise. *See SEC v. Gordon*, 822 F. Supp. 2d 1144, 1151 (N.D. Okla. 2011) (noting Court's previous decision, over defendant's objection, that "staying the civil case 'would avoid a duplication of efforts and a waste of judicial time and resources'"). Additionally, a stay avoids the risk of inconsistent rulings in the two proceedings. *See, e.g., SEC v. Rajaratnam*, 622 F.3d 159, 186 (2d Cir. 2010) (reversing discovery ruling, noting that "[t]he more prudent course may . . . have been to adjourn the civil trial until after the criminal trial").

6. The Public Interest

While the public also has an interest in speedy resolution of a SEC action, it is far from clear that allowing document discovery to proceed in this action would lead to a faster resolution. Once the criminal case is resolved, one of two scenarios is likely to materialize: 1) if a defendant

has been convicted or has pled guilty, the scope of the civil case will be significantly narrowed (and the likelihood of settlement much greater) because the key issues of that defendant's participation in, and knowledge of, the scheme will have been decided in the criminal case; or 2) discovery in the civil case will be greatly simplified because both the logistical issue of the defendant's imprisonment, and the constitutional issue of his Fifth Amendment rights, will be eliminated. In addition, as a result of the information learned through the criminal discovery process and trial, the defendant may be able to conduct more focused discovery in the civil case. Staying discovery until one of these conditions is present will therefore greatly streamline and simplify the discovery process, without significantly delaying it.

In addition, the likely duplication and inefficiency in the discovery process, including document discovery, together with the likely litigation over discovery disputes, suggests that the public interest is best served by a complete stay. The stay would allow the SEC to devote its limited resources to investigating and litigating other securities violations, which would advance the public's interest, rather than to issuing requests for documents that may become irrelevant in light of the Defendants' later testimony, and to unnecessary litigation over the scope and timing of discovery.

* * *

For the foregoing reasons, the SEC consents to the complete stay of discovery requested by the District Attorney.

Respectfully submitted,

Howard Fischer/KAW

Howard A. Fischer
Senior Trial Counsel

cc: Altura S. Ewers (by UPS and certified mail)
Mona Benach, Esq. (by electronic mail)

The District Attorney's motion to intervene for the purpose of seeking a discovery stay is GRANTED given the common factual and legal issues shared between this case and the parallel criminal proceedings. SEC v. Treadway, No. 04-CV-3464, 2005 WL 713826, at *2 (S.D.N.Y. Mar. 30, 2005). Given the SEC's consent and the lack of an objection from Defendants, all discovery is STAYED pending resolution of the parallel criminal action for substantially the same reasons stated in the SEC's and the District Attorney's papers. The SEC shall notify the Court within one week of the conclusion of the criminal case. The SEC shall also provide a status report on September 10, 2014 and every three months thereafter until the criminal case's conclusion.

SO ORDERED.

Valerie Caproni

HON. VALERIE CAPRONI
UNITED STATES DISTRICT JUDGE
Date: 6/11/2014

EXHIBIT D

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK - CRIMINAL TERM - PART: 71

- X

THE PEOPLE OF THE STATE OF NEW YORK, Indict. No. 0073/2014

-against-

LAWRENCE PENN,

DEFENDANT.

CALENDAR CALL

- X

100 Centre Street
New York, New York 10013
February 10, 2014

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.
DISTRICT ATTORNEY, NEW YORK COUNTY
One Hogan Place
New York, New York 10013
BY: ARTIE MCCONNELL, ESQ.
Assistant District Attorney

BRAFMAN & ASSOCIATES, P.C.
767 Third Avenue, 26th Floor
New York, New York 10017
BY: BENJAMIN BRAFMAN, ESQ.
JOSHIA KIRSHNER, ESQ.
Attorneys for the Defendant

THE CLERK: This is Number 80, indictment 73 of 2014, Lawrence Penn III.

MR. MCCONNELL: I think counsel stepped outside. Let me go grab him.

MR. BRAFMAN: Benjamin Brafman and Josh Kirshner. Good morning.

MR. MCCONNELL: Artie McConnell for the People.

THE COURT: What are the People filing and serving with regard to Mr. Penn?

MR. MCCONNELL: Judge, I'm filing with the Court and I've already served on defense counsel a copy of the indictment, notice of immigration consequences, a certificate of readiness and a statement of facts.

I'm handing that up to the Court now.

MR. BRAFMAN: I acknowledge receipt of those materials, your Honor.

THE CLERK: Lawrence Penn, the Grand Jury of New York County has filed indictment 73 of 2014 charging you with the crime of grand larceny in the first degree and other related charges.

How do you plead to those charges?

THE DEFENDANT: Not guilty.

MR. MCCONNELL: May I be heard on bail?

THE COURT: Sure.

MR. MCCONNELL: Your Honor, we are requesting

$5 million cash or fully secured bond with a 72-hour surety review and as a condition of any bail that the Court may set, we would also request that the defendant be required to surrender his passport.

Briefly, Judge, I have filed a statement of fact. The defendant is charged with stealing and laundering over $9 million in investor funds from a private equity fund that he controlled. The name of the fund was Camelot Acquisitions Secondary Opportunity LP.

Specifically beginning in 2010, the defendant, Mr. Penn, began soliciting investors including a public pension fund and eventually secured approximately $120 million in capital contributions.

Shortly thereafter and while the defendant continued to solicit additional investments for the fund, he began misappropriating money from the funds account into a shell company that was controlled by the defendant and the codefendant yet to be arraigned, Mr. Yures (phonetic). These transfers were based on the false pretense of being payment for due diligence services provided by Mr. Yures.

Between October of 2010 and July of 2013, the defendant misappropriated over $9 million from the funds account to the secondary account in the name of a company called Securian which was a little more than a shell. That $9 million was laundered by both of the defendants through

a network of companies, entities and accounts that were under their control and often offered the transfer of funds account into the shell company would be followed by a withdrawal either the same day or the following day.

The defendant used these funds for his own expenses including credit card payments, cash withdrawals and to buy a car and in order to cover up their scheme, both defendants repeatedly made false statements to auditors and generated and presented dozens of false documents and invoices to both auditors and investors.

So those are, in brief, the facts of the case, your Honor, and as a result, the defendant was charged with two B felonies, grand larceny in the first degree, money laundering in the first degree as well as 30 counts of filing false business records in the first degree.

While we have had discussions with counsel about a possible bail package, what the defense has proposed is simply not sufficient to mitigate the defendant's substantial risk of flight in light of the seriousness of the case, the potential sentence exposure of the defendant as well as his means and opportunity to flee.

Specifically, we believe an account under his name has roughly $2 million in it and while the defendant's assets have been frozen by the SEC, there is undoubtedly going to be litigation on that issue and it is unclear what

the ultimate outcome of the temporary restraining order on those funds will be.

More generally, Judge, the temporary restraining order on Mr. Penn's assets and funds only applies to assets and money that are identifiable to him.

We do not know simply what is outside the scope of the restraining order and notably, about $700,000 has been depleted from the funds account within the last two months.

The defendant also frequently travels abroad and he appears to have contacts throughout Europe and the Middle East and while it is true that Mr. Penn did return home from abroad after the SEC had initiated an action against him and had frozen his accounts, it is one thing to come back into the jurisdiction believing you are facing regulatory action by the SEC and it is entirely another thing to be facing mandatory jail time on a B felony charges that you've been indicted for and as a result, the incentive for Mr. Penn to flee now is much stronger than it was when he made the decision to return to the U.S.

So given these factors, your Honor, the severity of the charges against him, the upon sentence exposure and his means and opportunity to flee, we are requesting that a $5 million cash or fully secured bond alternative be granted by the Court with a 72-hour surety review and surrender of the defendant's passport.

MR. BRAFMAN: May I be heard?

THE COURT: Sure.

MR. BRAFMAN: Your Honor, although Mr. McConnell and I have had discussions over the last week to ten days, not everything that I think he has said is entirely accurate. Maybe through no fault of his own, many of these discussions were also held with his colleague, Assistant District Attorney Chevon Walker.

Several weeks ago, I was brought into this case by Patricia Peileggi, P-E-I-L-E-G-G-I. That it was clear, according to Ms. Peileggi, that based on the SEC filings in which they, in fact, note they are cooperating with the Manhattan District Attorney's office, it was clear to her that the criminal case was coming.

They contacted me, they asked me to come into the case. Indeed, my fees were paid by funds she had in her firm because the SEC had frozen all of the other assets that Mr. Penn had.

I spoke with Mr. Penn by telephone. He was in France at the time on business. I told him he had to return. I told him once I was retained, I would call the Manhattan District Attorney's office and hope to arrange for a voluntary surrender but he had to return and if he was detained at the airport, not to answer any questions, simply notify me.

He came back immediately. In fact, he advanced his flight.

I told him in that conversation, I represent to you that given the nature of the allegations of the SEC claim, if he came back, it was likely he would face mandatory state prison if convicted on a charge because more than $1 million is a Class B felony.

I explained that to him. He expedited his return.

When he returned, he met with me with several other lawyers handling this case for a long time.

I then opened negotiations with the District Attorney's office. They told me that they were not going to consent to the bail package which I'll put on the record in a moment and I explained to them that I would hope they could accommodate us with a voluntary surrender.

They did. They called me yesterday and told me he's going to be indicted. The indictment was sealed but he had to come in this morning.

He came in this morning knowing he might not walk out of the building. He's a West Point graduate. He has no criminal record and all of his assets have been frozen.

I didn't come here to try the case today but a lot of money was raised by Mr. Penn for this fund. It remains in custody of a third party escrow agent so it is not a Ponzi scheme.

There are assets of the fund. The money that has been taken out, allegedly, by Mr. Penn, through this company, they allege in the indictment. A lot of that money went to promote additional investment in the fund because once they lost the major contract, in order to secure the fund and continue its viability, additional investors had to come in.

We are prepared to continue to discuss this matter with the District Attorney's office.

We have proposed the following bail package which quite frankly, Judge, is the product of five days of work and it is the only assets that are available.

Mr. Judelson in the courtroom today is prepared to file a $500,000 fully secured cash bond that he is responsible for. The security he has accepted is the equity in the defendant's parent's home and their retirement account that Mr. Judelson has accepted as security.

In addition, Mr. Penn would be prepared to also sign a $5 million bond to the extent that they believe he has assets. If he fails to return, he would then be responsible for the four and a half million dollars or $5 million that would remain on the bond.

In addition, Mr. Judelson is prepared to fit him with an ankle bracelet. A procedure I know the Court is

familiar with that would prohibit him from leaving Manhattan and not go to any other borough absent permission in advance of the Court.

By coming back from Europe knowing, I submit to you, that he was facing certain criminal prosecution, by coming here today, he was not a risk of flight yesterday and today, suddenly he's a major risk of flight and yesterday he had his passport and now I have his passport which I'm prepared to turn over to the District Attorney's office or to anyone else the Court directs me to.

It is his only passport. He's a citizen of the United States and he has no prior criminal record.

This is a very complicated case that may involve the review of thousands and thousands of records. Some on electronic format. Some on hard copy.

It is inconceivable to develop this client relationship if he is remanded and I don't think he should be remanded because we have a significant bail package.

He is no risk of flight in my judgment because he came here when he knew he might not be walking out of the building.

That, I think, suggests to the Court he's going to deal with this responsibly one way or the other; either by defending the case on the merits or working out some type of resolution.

I ask the Court to accept the bond that we propose.

I also represent to you that despite five days of looking by several law firms including his SEC lawyers who were led by Leslie Caldwell and also former Prosecutor Peileggi.

There are no additional assets and the SEC has been looking for weeks and they have frozen whatever there is.

To the extent that there are additional assets, he doesn't have access to them and he doesn't have any additional assets because we went through great pains to get the security that he needed to satisfy Mr. Judelson involving his elderly parents.

This is their home. He would not do anything that would cause them to forfeit their home and I think by his actions in the past couple of weeks, by coming back to the United States when he was already in Europe and could have stayed there, not as a fugitive because he wasn't under indictment, by coming here today knowing they would not agree to bail, I think he has represented to the Court a good faith reason why your Honor should accept our bail package with the added obvious direction that the passport be surrendered, which I have, and also Mr. Judelson who is in court will fit him with an electronic bracelet before he

leaves the building.

MR. MCCONNELL: Can I respond briefly?

THE COURT: I'm going to set bail in the amount of two and a half million dollars cash with a fully secured bond with a 72-hour security, an ankle bracelet and passport surrender, in light of what the People have told me with regard to the $2 million account that was frozen by the SEC.

That having been said, do you want me to set a motion schedule?

MR. BRAFMAN: Can I understand?

THE COURT: Two and a half million dollars cash or two and a half million dollars fully secured bond with a 72-hour surety, ankle bracelet, surrender passport.

MR. BRAFMAN: Can I address one other issue since the defendant is not going to be released today?

He [redacted] He [redacted] [redacted]. I ask the Court it be permitted to be given to corrections. I guess whatever they need to do to get it to him tonight, they will figure out how to do it.

THE COURT: I'll make a note for [redacted] as well. I don't know if they are going to take the device. I understand the issue. We can see.

Do you want me to set a motion schedule?

MR. BRAFMAN: Yes.

Is there any way your Honor, at least until we fix the medical issue, if your Honor can ask corrections to keep him at White Street?

THE COURT: I wish I could. I have no power. I'll make the request that he stay at White Street but I have no power with the Department of Corrections.

Sir, if you make bail, you have to be back in court on dates that I or other Judges tell you.

If you are not in court and it is determined you are not in the hospital or in jail, any bail you post you lose and this grand larceny case will proceed without you which means you can be tried and if you are convicted, sentenced without ever coming back to court and on top of that, you face a whole new set of charges of bail jumping. Do you understand?

THE DEFENDANT: Yes, ma'am.

THE COURT: How much time do you want for defense motions?

MR. BRAFMAN: Can we have a date in early April, Judge?

THE COURT: Sure. That will not be an appearance date. Just a filing date.

Do you want to say April 4th or 11th to file?

MR. BRAFMAN: The 11th.

THE COURT: April 11 for defense motions.

People's response, two or three weeks?

MR. MCCONNELL: Three weeks.

THE COURT: People's response on May 5th -- May 2nd and back down for decision, May 19.

MR. BRAFMAN: Thank you.

THE COURT: So we will see the parties back here on May 19.

MR. MCCONNELL: Thank you, Judge.

C E R T I F I C A T E

I, GERRI SELTZER, a Senior Court Reporter of the State of New York, do hereby certify that the foregoing is a true and accurate transcript of my stenographic notes.

GERRI SELTZER
SENIOR COURT REPORTER

EXHIBIT E

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

EXHIBIT F

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES SECURITIES AND EXCHANGE COMMISSION, Plaintiff-Appellee	)	**STIPULATION**
v.	)	Case No. 17-191
LAWRENCE E. PENN, Defendant-Appellant	)	

It appears that the above-captioned appeal is premature in that some claims remain pending in district court and no Fed. R. Civ. P. 54(b) certification has issued.

The undersigned pro se appellant Lawrence E. Penn and counsel for appellee the Securities and Exchange Commission stipulate that the above-captioned case is withdrawn with prejudice without costs or fees pursuant to FRAP 42(b). This stipulation shall not preclude an appeal from a final judgment or an otherwise appealable order.

Dated: March 4, 2017.

s/ Lawrence E. Penn III
Pro Se Appellant
[redacted]
New York, NY [redacted]
Phone: [redacted]

s/ Jeffrey A. Berger
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100 F Street, N.E.
Washington, DC 20549
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EXHIBIT G

SUPREME COURT OF NEW YORK
COUNTY OF NEW YORK - CRIMINAL TERM - PART 71 PT. 71 JAN 10 2017

THE PEOPLE OF THE STATE OF NEW YORK,

Indictment No. 0073/14

-against-

NOTICE OF ENTRY

LAWRENCE E. PENN III,

Defendant.

PLEASE TAKE NOTICE that annexed hereto is a true and correct copy of a certificate granting leave to appeal was duly entered with the Appellate Division: First Judicial Department of the State of New York, on January 3, 2017.

Dated: New York, New York
January 10, 2017

PERKINS COIE LLP

By: Jalina J. Hudson, Esq.

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Fax: 212.399.8056

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : FIRST JUDICIAL DEPARTMENT

BEFORE: Hon. KARLA MOSKOWITZ
Justice of the Appellate Division

The People of the State of New York,

M-3975
Ind. No. 0073/14

-against-

CERTIFICATE
GRANTING LEAVE

Lawrence E. Penn III,

Defendant.

I, Karla Moskowitz, a Justice of the Appellate Division, First Judicial Department, do hereby certify that in the proceedings herein questions of law or fact are involved which ought to be reviewed by the Appellate Division, First Judicial Department, and, pursuant to Section 460.15 of the Criminal Procedure Law, permission is hereby granted to the above-named defendant to appeal to the Appellate Division, First Judicial Department, from the order of the Supreme Court, Bronx County, entered on or about July 11, 2016.[1]

Dated: December 8, 2016
New York, New York

Hon. Karla Moskowitz
Associate Justice

ENTERED JAN 03 2017

NOTICE: Within 15 days from the date hereon, an appeal must be taken, and this certificate must be filed with the notice of appeal. An appeal is taken by filing, in the Clerk's office of the criminal court in which the order sought to be appealed was rendered, a written notice in duplicate that appellant appeals to the Appellate Division, First Judicial Department (Section 460.10, subd. 4, CPL), together with proof that another copy of the notice of appeal has been served upon opposing counsel. The appeal (or consolidated appeals; see footnote) must be argued within 120 days from the date of the notice of appeal, unless the time to perfect the appeal(s) is enlarged by the court or a justice thereof.

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[1] In the event defendant has an existing (direct) appeal from a judgment, such appeal shall be consolidated with the appeal from the aforesaid order; and any poor person relief granted with respect to the appeal from the judgment shall be extended to cover the appeals so consolidated.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK - CRIMINAL TERM - PART 71

THE PEOPLE OF THE STATE OF NEW YORK, Plaintiffs, -against- LAWRENCE E. PENN III, Defendant.	Indictment No. 0073/2014 **AFFIDAVIT OF SERVICE**

STATE OF NEW YORK)
: ss:
COUNTY OF NEW YORK)

I, NELSON VARGAS, being duly sworn, deposes and says:

1. I am not a party to this action, am over 18 years of age, and reside in Queens County, New York.

2. On January 10, 2017, I served a true and correct copy of the **NOTICE OF ENTRY OF CERTIFICATE GRANTING LEAVE TO APPEAL** on the following via United States First Class Mail:

Cyrus R. Vance Jr.
Manhattan District Attorney
One Hogan Place
New York, NY 10013
Attorney for Plaintiffs

by depositing a true copy thereof, enclosed in postpaid, properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within New York State at the address designated above for said purpose.

Nelson Vargas

NELSON VARGAS

Sworn to before me this
10th day of January 2017

Notary Public

SARAH HOWLAND
Notary Public, State of New York
No. 01HO6216819
Qualified in New York County
Term Expires April 8, 2018

EXHIBIT H

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

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

Ind. 73/14

-against-

Lawrence E. Penn III,
Defendant-Appellant.

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