

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

Case No. 12-257

v.

LARRY A. GOLDSTONE,

CLARENCE G. SIMMONS, III, and

JANE E. STARRETT,

Defendants.

COMPLAINT

Plaintiff, the United States Securities and Exchange Commission (“SEC” or “Commission”), alleges as follows:

I. SUMMARY

1. This SEC enforcement action involves fraudulent misrepresentations and omissions about Thornburg Mortgage Inc.’s (“Thornburg”) financial condition, margin call activity, and liquidity by Thornburg’s chief executive officer, Larry A. Goldstone, chief financial officer, Clarence G. Simmons, III, and chief accounting officer, Jane E. Starrett.

2. Thornburg was a publicly-traded single-family mortgage lender and the nation’s second-largest independent mortgage company after Countrywide Financial Corporation.

3. In the weeks leading to the filing of Thornburg's 2007 Form 10-K, Thornburg was in serious financial difficulty. During that time, Thornburg, which obtained financing through "repo" agreements that subjected Thornburg to margin calls if the value of certain of its securities fell below certain thresholds, received more than \$300 million in margin calls that severely drained its liquidity. In fact, Thornburg was late in meeting the margin calls from at least three lenders and had received a reservation of rights letter from one of these lenders confirming that Thornburg was in violation of its lending agreement and could be declared in default at any time. Such a default, in turn, would have triggered cross-defaults with Thornburg's other lenders and led to the seizure of Thornburg's adjustable rate mortgage ("ARM") securities serving as collateral for its loans. (The foregoing securitized ARMs, or tranches thereof, which were originated by third parties and then purchased and held by Thornburg, are referred to herein as Thornburg's "ARM Securities.")

4. Disclosing the truth -- the extent of Thornburg's liquidity crisis and exposure to default and cross-default notices would have (1) undermined the company's imminent plans to raise additional cash and thereby alleviate its liquidity crisis and (2) led the company's outside auditor to question Thornburg's conclusion that over \$400 million in market value losses associated with its ARM Securities were temporary and therefore did not need to be recognized in the company's income statement. In an effort to avoid these consequences, Goldstone, Simmons, and Starrett failed to disclose to Thornburg's auditor and the investing public that Thornburg had violated its lending agreements, received a reservation of rights letter, and was required to sell certain portions of its securitized ARM loans to meet margin calls.

5. Instead, Goldstone, Simmons, and Starrett misrepresented to Thornburg's auditor and the investing public, through Thornburg's annual report, and/or engaged in a scheme to deceive Thornburg's auditor and the investing public to believe, that Thornburg had successfully met all margin calls and that the company was not required to sell any assets to meet its margin calls. Further, the Defendants misrepresented to Thornburg's auditor that Thornburg had not experienced any noncompliance issues with its contractual obligations.

6. Keeping the extent of its margin call crisis quiet, and relying on the cooperation and forbearance of its lenders, Thornburg was able to make the final payment on its margin calls approximately 12 hours before filing its Form 10-K on February 28, 2008. With its temporary reprieve from outstanding margin calls and news on February 27th that a large European hedge fund holding substantial mortgage backed securities ("MBS") like Thornburg's ARM Securities was about to collapse (news that Goldstone and Simmons knew made additional margin calls likely), Thornburg filed its Form 10-K at 4 a.m. local time.

7. The Form 10-K, which was drafted, reviewed, and approved by Goldstone, Simmons, and Starrett, and signed and certified by Goldstone and Simmons, falsely and/or misleadingly represented that Thornburg had successfully met, and was not required to sell any assets to meet, its margin calls.

8. The Form 10-K also falsely represented that Thornburg had the intent and ability to hold its ARM Securities until their value recovered in the market, a representation that was directly contradicted by Thornburg's severe liquidity crisis and exposure to declarations of default by lenders who then could have seized the company's

ARM Securities collateral. Based on this misrepresentation, the income statement accompanying Thornburg's Form 10-K improperly failed to recognize approximately \$428 million in losses associated with the company's ARM Securities.

9. Within approximately two hours of filing its 2007 Form 10-K on February 28th, Thornburg received additional margin calls, margin calls that exceeded its available liquidity by 8 a.m. As a result of these margin calls, Thornburg filed a Form 8-K on March 3, 2008 announcing that it could not meet the margin calls and had received a notice of default.

10. In a February 28, 2008 e-mail responding to Goldstone about the drop in Thornburg's stock price following the filing of the 10-K, Simmons implicitly acknowledged misleading the investing public when he wrote: "I guess the recent development section did not go over well. *If they only knew.*" (Emphasis added).

11. On March 7th, Thornburg filed another Form 8-K announcing that it would restate its Form 10-K. That restatement occurred on March 11th and reflected a previously unrecognized income statement loss of approximately \$428 million for Thornburg's ARM Securities (given that Thornburg did not have the intent or ability to hold these assets to maturity or recovery), a fourth quarter loss instead of the previously reported profit, and a qualification that Thornburg might not be able to continue as a going concern.

12. Given the critical facts and circumstances of which Goldstone, Simmons, and Starrett were aware but either misrepresented or failed to disclose to Thornburg's outside auditor, they knew, or were reckless in not knowing, that Thornburg did not have the intent or ability to hold its ARM Securities until maturity or until their value

recovered in the market. Based on clear accounting guidance that Starrett provided to Goldstone and Simmons, the Defendants also knew, or were reckless in not knowing, that, under these circumstances, the company was required to recognize an impairment in excess of \$400 million for these assets on its income statement, and that such an impairment would have resulted in a loss, rather than a profit, for the fourth quarter of 2007.

13. As a result of the foregoing, the Defendants materially misrepresented, or aided and abetted the material misrepresentation of, Thornburg's financial condition in the financial statements contained in its Form 10-K.

14. As a result of the conduct described herein, Goldstone, Simmons, and Starrett have violated, or aided and abetted the violation of, and, unless restrained and enjoined, will continue to violate or aid and abet the violation of, Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §77q(a)] and Sections 10(b), 13(a), 13(b)(2), and 13(b)(5) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78j(b), 78m(a), 78m(b)(2), and 78m(b)(5)] and Rules 10b-5, 12b-20, 13a-1, 13b2-1, and 13b2-2 thereunder [17 C.F.R. §§ 240.10b-5, 240.12b-20, 240.13a-1, 240.13b2-1, and 240.13b2-2], and Goldstone and Simmons have also violated and, unless restrained and enjoined, will continue to violate Rule 13a-14 of the Exchange Act [17 C.F.R. § 240.13a-14]. In the alternative, Goldstone and Simmons are also liable as control persons under Section 20(a) of the Exchange Act [15 U.S.C. § 78t] for Thornburg's violation of Sections 10(b), 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 10b-5, 12b-20, and 13a-1 thereunder.

II. JURISDICTION AND VENUE

15. The Court has jurisdiction pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d)-(e) and 78aa]. The Defendants, directly or indirectly, made use of the means or instruments of transportation or communication in interstate commerce, the means and instrumentalities of interstate commerce, or of the mails, in connection with the acts, practices, and courses of business set forth in this Complaint.

16. Venue lies in this judicial district pursuant to 15 U.S.C. §§ 77u (a) and 78aa and 28 U.S.C. § 1391(b)(2). The Defendants reside in this district, the violations occurred in this district, and defrauded investors reside in this district.

III. DEFENDANTS

17. **Larry A. Goldstone** is a resident of Santa Fe, New Mexico. During the relevant period, Goldstone was Thornburg's president, chief executive officer ("CEO"), and a director, and signed and certified Thornburg's periodic filings with the Commission. As president, CEO, and a director of Thornburg, Goldstone exercised control over the management, general operations, and policies of Thornburg, as well as the specific activities upon which Thornburg's violations are based

18. **Clarence G. Simmons, III** is a resident of Santa Fe, New Mexico. During the relevant period, Simmons was Thornburg's senior executive vice-president, chief financial officer ("CFO"), and a director, and signed and certified Thornburg's periodic filings with the Commission. As senior executive vice president, CFO, and a director of Thornburg, Simmons exercised control over the management, general

operations, and policies of Thornburg, as well as the specific activities upon which Thornburg's violations are based

19. **Jane E. Starrett** is a resident of Santa Fe, New Mexico. During the relevant period, Starrett was Thornburg's chief accounting officer ("CAO"). As CAO, Starrett was responsible for Thornburg's financial reporting and served as the principal contact with Thornburg's outside auditor. Starrett became a certified public accountant in 1976, but her license has been inactive since 1989.

IV. FACTS

A. Factual Background

20. Thornburg was founded in 1993 and headquartered in Santa Fe, New Mexico. At all times relevant to this matter, Thornburg's shares were traded on the New York Stock Exchange.

21. In addition to its lending business, which focused on "jumbo" and "super-jumbo" ARMs, Thornburg, as part of its business, purchased and held ARM Securities originated by third parties. Thornburg itself also securitized ARM loans that it originated or acquired from third parties (the "Securitized ARM Loans").

22. Being a real estate investment trust, Thornburg was unable to retain most of its earnings because it was required to pay out earnings as dividends. Thus, to finance its mortgage business and investment-related activities, Thornburg needed constant access to financing, which included money borrowed from various lenders pursuant to reverse repurchase ("repo") agreements. Thornburg's repo agreements typically consisted of a simultaneous sale of pledged securities to a lender at an agreed price in return for Thornburg's agreement to repurchase the same securities at a future date (the

maturity date) at a higher price. The repo agreements required Thornburg to maintain a degree of liquidity and subjected Thornburg to margin calls if the value of its ARM Securities serving as collateral for its loans fell below designated thresholds.

23. In the event Thornburg received a margin call from a lender, it was generally required to pay cash to reduce its loan amount or pledge additional collateral to the lender either the same day or the day following the margin call, depending on when the margin call was received.

24. Thornburg's failure to meet a margin call on a timely basis constituted a violation of its lending agreement and enabled the lender to declare an event of default, which, in turn, would trigger cross-defaults with Thornburg's other lenders. In the event of a default, Thornburg's lenders under the repo agreements had the right to seize and sell the ARM Securities serving as collateral for their loans.

B. Thornburg Begins to Experience Unprecedented Levels of Margin Calls in August 2007

25. Although Thornburg received margin calls from its lenders in the normal course of its business due to fluctuations in the value of its ARM Securities being used as collateral, in early August 2007, Thornburg received an unprecedented level of margin calls as a result of extraordinary disruptions in the housing and financial markets and a sudden decline in MBS prices.

26. In response to receiving approximately \$2 billion in margin calls in August, Thornburg, among other actions, sold nearly \$22 billion of its MBS (\$5.5 billion of which was actually sold by Thornburg's lenders following its defaults on its repo agreements) at an estimated loss of \$1.1 billion and decided to forego declaring a common stock dividend for the third quarter. At this time, Thornburg's board of

directors noted in the company's Form 10-Q for the quarter that "there were continued serious concerns and uncertainty regarding the ongoing availability of financing for mortgage assets in the fourth quarter given the substantial likelihood of continued rating agency downgrades of MBS, and the still fragile state of the financial markets."

27. In fact, Thornburg continued to experience margin call issues during the fourth quarter, paying approximately \$360 million in margin calls during November and December of 2007.

C. Thornburg's Financial Condition Continues to Deteriorate in Early 2008, Leading to the Violation of its Lending Agreements in the Two-Week Period Before Filing its 2007 Form 10-K

28. From January through the middle of February 2008, Thornburg's financial condition and liquidity continued to deteriorate as a result of ongoing turmoil in the financial and mortgage markets and additional declines in MBS prices. During this time, Thornburg received and met approximately \$650 million in newly issued margin calls from its lenders.

29. As a result of its severely compromised liquidity caused by the latest wave of margin calls, Thornburg was not in a position to timely meet the more than \$300 million in margin calls it received in the final two weeks of February 2008, just prior to filing its 2007 Form 10-K. Consequently, Thornburg was late in meeting margin calls under, and thereby violated, its lending agreements with at least three lenders: Credit Suisse First Boston ("CSFB"), Greenwich Capital Markets, Inc. ("Greenwich"), and Citigroup Global Markets Limited ("Citigroup").

30. Unwilling to disclose these late payments or the severity of the company's liquidity crisis, Goldstone, Simmons, and Starrett scrambled to satisfy all outstanding

margin calls before filing Thornburg's Form 10-K, thereby avoiding full disclosure with respect to these margin calls. As reflected in a February 22, 2008 email from Goldstone and copied to Simmons and Starrett:

We don't want to disclose our current circumstance until it is resolved. Our goal for resolution i[s] the filing of our 10-K. How we disclose this issue and what we say will depend on where we are next week when we need to file. But, our plan is to say that we had margin calls and all have been met.

31. After discussing strategies that would allow Thornburg "to keep [its] current situation quiet while we deal with it," Goldstone's February 22nd email continues:

Hopefully our disclosure will be a simple one, meaning all margin calls have been met.

32. In fact, after keeping Thornburg's margin call situation quiet and representing in Thornburg's Form 10-K that the company had "successfully" met all margin calls, the Defendants then planned to quickly raise substantial cash in the days following the Form 10-K filing so as to have sufficient liquidity to meet future margin calls, without disclosing the company's delayed margin call payments. However, as set forth below, the Defendants' plan was derailed within a few hours of filing the company's Form 10-K when Thornburg again received a wave of margin calls that it could not meet.

33. While each of the late payments identified in Paragraph 29 was significant and could have triggered default and cross-default notices from Thornburg's lenders, Thornburg's most significant loan agreement violation occurred with Citigroup, which issued a \$196 million margin call to Thornburg on February 21, 2008.

34. Following Thornburg's inability to meet Citigroup's margin call on the day issued, Citigroup sent a letter to Goldstone, Simmons, and Thornburg's treasurer on

February 21st confirming that Thornburg had breached the parties' lending agreement and that Citigroup reserved the right to declare Thornburg in default (the "Citigroup Letter"). The Citigroup Letter, which was the first reservation of rights letter Goldstone recalls receiving from a lender, also made clear that Citigroup, by not immediately exercising its rights under its repo agreement with Thornburg, was not waiving its right to declare Thornburg in default or amending the underlying loan agreement.

35. Relying on Citigroup's forbearance and executing its plan to pay all outstanding margin calls before filing its Form 10-K, Thornburg paid the Citigroup margin call over the course of seven days, making a final payment of \$75 million on February 27th, approximately 12 hours before filing its Form 10-K.

36. Thornburg was required to sell certain portions of its Securitized ARM Loans, the interest only portions (the "I/O Strip Transactions"), in order to generate sufficient cash to meet its margin calls during the final week of February. This is significant because it further depleted Thornburg's liquidity to meet margin calls and called into question its intent or ability to hold its ARM Securities to maturity.

37. Although the I/O Strip Transactions were accounted for in Thornburg's financial statements as the issuance of secured debt, the transactions were in form the sale of I/O strips and have been characterized as "sales" by each of the Defendants. For example, in addition to referring to the I/O Strip Transactions as "sales" at the time of the transactions, Goldstone and Simmons have recently acknowledged that "[t]o meet certain of its margin calls, TMA [Thornburg] sold IO strips for a gain" and Starrett has similarly acknowledged that Thornburg "sold IO securities to satisfy margin calls."

38. While scrambling to make their final payment on the outstanding Citigroup margin call on February 27th so they could claim in Thornburg's Form 10-K the following morning to have successfully met all margin calls, Goldstone and Simmons learned on February 27th that a large European hedge fund with substantial MBS holdings similar to Thornburg's ARM Securities was collapsing that afternoon. Anticipating that the collapse would negatively impact the price of Thornburg's own ARM Securities, Goldstone sent an email to Simmons on February 27th stating:

Also, you should know that a large Alt-A hedge fund in Europe is blowing up this afternoon. UBS credit just mentioned it to me. They got hit with 20 point haircuts on Alt-A AAA's overnight. I think we will get this a little more gradually, but we should be ready for it.

39. Similarly concerned about the negative impact the hedge fund collapse would have on the value of Thornburg's ARM Securities serving as collateral for its loans and the prospect of additional margin calls, which, like a "haircut," require a borrower to advance additional collateral or cash to protect a lender's interests, Simmons sent an email to Goldstone and others on February 27th stating:

This makes it even more critical to be done with Citi today so we can get the K filed.

40. Later that day, Simmons also sent an email to Starrett saying:

I gave [Thornburg's SEC reporting manager] a 6:00 AM Thursday deadline to file the K. I do not want there to be any issues based on Thursday activity.

D. Within Hours of Filing its Form 10-K, Thornburg Is Hit With a Wave of Margin Calls it Cannot Meet

41. Just 12 hours after making its final payment on its outstanding margin call from Citigroup, Thornburg filed its 2007 Form 10-K at 4 a.m. local time on February 28, 2008. By 6 a.m., Thornburg began to receive additional margin calls from its lenders,

margin calls that exceeded \$100 million and its available liquidity by 7:30 a.m., and exceeded \$200 million by the following morning. In addition, Thornburg received a default notice from one of its lenders, JPMorgan Chase Bank, N.A. (“JP Morgan”), during the evening of February 28th for an unpaid margin call JP Morgan had issued to Thornburg earlier that day.

42. Two business days after filing its Form 10-K, Thornburg filed a Form 8-K on March 3, 2008, announcing that it had incurred an additional \$270 million in margin calls since February 27th, and that it did not have sufficient liquidity to satisfy the substantial majority of them. Thornburg further disclosed that it had received a notice of default from one of its lenders relating to the margin calls.

43. Following the filing of its Form 8-K on March 3rd, Thornburg’s stock price plummeted by over half.

44. On March 5, 2008, Thornburg filed a second Form 8-K disclosing that the lender that had issued a notice of default was exercising its rights to the securities serving as collateral under its repo agreement due to Thornburg’s failure to make its \$28 million margin call. Thornburg also stated in the Form 8-K that the lender’s actions triggered cross-defaults in all of Thornburg’s repo agreements and secured loan agreements with other lenders.

45. Shortly thereafter, Wall Street analysts began to question whether Thornburg would go bankrupt and at least one ratings agency downgraded Thornburg’s unsecured debt rating to Ca, one of the lowest categories of “junk.”

46. On March 7, 2008, Thornburg filed a Form 8-K stating that it had incurred over \$1.77 billion in margin calls since December 31, 2007, and that it did not have

enough cash to cover \$610 million of outstanding margin calls. Moreover, Thornburg declared that it would be restating its 2007 financials to recognize an impairment charge of \$427.8 million in unrealized losses associated with its ARM Securities and that there was substantial doubt about Thornburg's ability to continue as a going concern without significant restructuring and the addition of new capital.

47. By the time Thornburg filed its amended 2007 Form 10-K and restated financial statements on March 11th, which included a going concern qualification and an impairment charge of \$427.8 million on its income statement for losses associated with its ARM Securities given that it did not have the intent or ability to hold these securities until maturity or until their value recovered in the market, its stock price had collapsed by over 90 percent from the closing price on February 28th.

48. Following the events that unfolded after Thornburg filed its 2007 Form 10-K, Thornburg never fully recovered and filed for Chapter 11 bankruptcy relief on May 1, 2009.

E. In the Two Weeks Leading to the Filing of Thornburg's 2007 Form 10-K and in the Form 10-K Itself, Goldstone, Simmons, and Starrett Misrepresented and Failed to Disclose Material Information Concerning Thornburg's Financial Condition and Margin Call Activity to the Company's Auditor and the Investing Public

49. In connection with Thornburg's 2007 year-end audit, Thornburg was required to analyze, and its auditor was required to review the company's analysis of, whether it had the intent and ability to hold its ARM Securities to maturity or until their value recovered in the market. In the event Thornburg determined that it had the intent and ability to hold its ARM Securities to maturity or recovery, the losses associated with

those securities were deemed to be temporary and only needed to be reflected on the company's balance sheet.

50. In the event Thornburg determined that it did not have the intent and ability to hold its ARM Securities to maturity or recovery, the losses associated with those securities were deemed to be other than temporary and needed to be reflected in the company's income statement as well as its balance sheet. *See* Statement of Financial Accounting Standards No. 115 ("SFAS 115"). The foregoing analysis is referred to herein as an other-than-temporary impairment ("OTTI") analysis.

51. Notwithstanding Thornburg's precarious financial condition, violation of lending agreements and reliance on its lenders' forbearance, and use of the I/O Strip Transactions to make late margin call payments during the two weeks leading to the filing of the company's Form 10-K, information that was critical to a proper OTTI analysis and should have led the Defendants to conclude that the losses associated with Thornburg's ARM Securities were other than temporary and needed to be recognized on the company's income statement, Goldstone, Simmons, and Starrett failed to properly consider this information in connection with their OTTI analysis of Thornburg's ARM Securities and misrepresented and/or failed to disclose this information to Thornburg's outside auditor.

52. At the time, each of the Defendants knew, or was reckless in not knowing, that the foregoing information (1) was material to a proper OTTI analysis of Thornburg's ARM Securities; and (2) would have led the company's auditor to question Thornburg's conclusion that it had the intent and ability to hold its ARM Securities until their value

recovered or until maturity and therefore did not need to recognize the losses associated with these securities on its income statement.

53. Essentially echoing the plan set forth in Goldstone's email three days earlier not to disclose the margin call situation until it was resolved so Thornburg could claim it "had margin calls and all have been met," Starrett confirmed in a February 25, 2008 email to Goldstone and Simmons that:

"We have purposely not told [the auditors] about the margin calls so that we don't escalate an issue which we believe will be put to rest by the time they have to issue their opinion." (Emphasis added).

54. Elaborating on the accounting ramifications of selling assets to meet margin calls, Starrett explained the essence of an OTTI analysis to Goldstone and Simmons in the same email:

In short, selling some assets is substantially the same as selling all assets because the only reason we don't have to recognize the impairments on all assets with negative marks in income now is that we represent we have the intent and ability to hold the assets to maturity. Selling some assets calls into question our intent and having to sell them to meet margin calls or reduce exposure, calls into question our ability to hold them.

55. Confirming his understanding, Goldstone responded to Starrett's February 25th email by stating: "Got it. Understand it. Thanks."

56. In fact, Starrett's explanation of an OTTI analysis to Goldstone and Simmons accurately characterized the OTTI analysis (*i.e.*, whether Thornburg had the intent and ability to hold its ARM Securities to maturity or recovery) required for Thornburg's ARM Securities under SFAS 115, the relevant accounting standard for Thornburg's ARM Securities.

57. Carrying out their plan to conceal the true state of Thornburg's margin call situation from its auditor and the investing public, Goldstone, Simmons, and Starrett each

signed Thornburg's February 27, 2008 management representation letter to Thornburg's auditor in which they falsely represented that: (1) Thornburg had complied with all aspects of its contractual agreements that would have a material effect on its consolidated financial statements in the event of noncompliance; (2) Thornburg had the intent and ability to hold its impaired securities for a sufficient period of time to allow for their recovery in market value; (3) there had been no subsequent events requiring adjustment to or disclosure in the company's financial statements; and (4) Thornburg's financial statements disclosed all of the matters of which they were aware that were relevant to Thornburg's ability to continue as a going concern.

58. In addition, when the three Defendants were asked by Thornburg's outside audit manager on or about February 27th whether there were any contractual breaches or noncompliance issues with Thornburg, Goldstone, Simmons, and Starrett each misrepresented and/or failed to disclose Thornburg's violation of its lending agreements.

59. In addition to making misrepresentations to Thornburg's outside auditor concerning, and failing to disclose, Thornburg's violation of its lending agreements, Goldstone, Simmons, and Starrett collectively drafted, reviewed, and approved, and Goldstone and Simmons signed and certified, the company's Form 10-K which falsely represented that Thornburg "successfully continue[d] to meet all margin calls."

60. While representing that Thornburg had complied with its lending agreements and successfully continued to meet all margin calls, Goldstone, Simmons, and Starrett each knew, or was reckless in not knowing, that Thornburg was late in making margin call payments under its lending agreements. For example, on or about February 21, 2008, both Goldstone and Simmons received the Citigroup Letter in which

Citigroup advised them that Thornburg was in violation of its lending agreement and subject to being declared in default.

61. In addition, emails circulated among Goldstone, Simmons, and Starrett during the final two weeks of February 2008 reflected that Thornburg was (1) late in meeting margin calls from its lenders, (2) relying on the cooperation and forbearance of its lenders, and (3) entering into payment plans with its lenders. For example, on February 21st, Goldstone circulated an email to Simmons, Starrett, and others advising them that, although Thornburg had received two large margin calls it was able to successfully satisfy, the company had received a third margin call for \$200 million from Citigroup for which Goldstone had to negotiate a “payment plan with Citi in order to satisfy the call by the end of [the following] week[.]”

62. Similarly, in a February 22, 2008 email, Goldstone advised Simmons and Starrett that Thornburg had received approximately \$350 million in margin calls over the last five business days, had paid approximately \$100 million of the margin calls, and had “plans to satisfy the rest over the next week.”

63. Referencing Thornburg’s late margin call payments to CSFB, Goldstone’s February 22nd email also advised Simmons and Starrett:

We had negotiated some additional [borrowing] capacity with Credit Suisse a few weeks ago, but they pulled back on that commitment when we had margin issues with them.

64. Similarly, on February 21, 2008, a senior vice-president from Thornburg’s structured finance group advised Goldstone, Simmons, and Starrett that, in connection with Thornburg’s anticipated capital raise::

CFBSB is willing to withdraw from the underwriting group since *they realize their attorneys will probably not agree to anything short of*

disclosing the delay in meeting their margin call earlier this week.
(Emphasis added)

65. In addition to misrepresenting that Thornburg had successfully met all margin calls, Thornburg's Form 10-K, which had been drafted, reviewed, and approved by each of the Defendants, and signed and certified by Goldstone and Simmons, represented that the company did not sell any assets to meet margin calls, a representation that was misleading without additional disclosure that the I/O Strip Transactions, which were in form sales, were undertaken to meet margin calls. In addition to misleading investors about the severity of Thornburg's liquidity crisis, the foregoing statement perpetuated the related misrepresentation that had previously been made by Simmons to Thornburg's outside auditor when he verbally advised the audit partner in the days leading to the filing of the company's Form 10-K that the I/O Strip Transactions were undertaken to take advantage of opportune pricing rather than to meet margin calls.

66. At the time the Defendants represented that Thornburg had not sold any assets to meet margin calls, Goldstone, Simmons, and Starrett each knew, or were reckless in not knowing, that Thornburg had, in fact, entered into the I/O Strip Transactions and transferred its interests in the I/O strips to pay its margin calls. For example, Goldstone advised Simmons and Starrett in a February 21, 2008 email that Thornburg planned to meet the Citigroup margin call by "[h]aving Citi sell a \$110 million Interest Only security that may generate \$20 to \$25 million." Goldstone's email continued: "We may undertake additional asset sales depending on how market conditions evolve over the next few weeks[.]"

67. On February 22, 2008, Goldstone sent another email to Simmons, Starrett, and others at Thornburg to update them on the company's margin call payments and

advise them that, among other strategies to generate liquidity to meet margin calls, “Citi sold two of [Thornburg’s] IO securities as well for a gain of approximately \$25 million and net proceeds to Citi of \$10 million.” Goldstone further advised Simmons and Starrett that Thornburg was “planning to sell two of [its] TMA securities” to meet margin calls and that, unlike the company’s planned securitization, the asset sale would “allow[] us to keep our current situation quiet while we deal with it.”

68. Similarly, on February 25, 2008, Goldstone sent an email to Simmons, Starrett, and others at Thornburg advising them that Thornburg was “moving towards resolving [its] margin call issues,” and, among other strategies for paying its outstanding margin calls, had “sold some additional IO securities[.]”

69. At the time the Defendants misleadingly stated that Thornburg had not sold any assets to meet its margin calls, Goldstone, Simmons, and Starrett knew, or were reckless in not knowing, that the I/O Strip Transactions, which were in form sales and contemporaneously referred to as sales by the Defendants and which further reduced the company’s available liquidity to meet future margin calls, were significant to the company’s OTTI analysis of its ARM Securities, particularly given the severe liquidity crisis in which Thornburg found itself during the final two weeks of February 2008.

70. As reflected in Starrett’s February 25th email to Goldstone and Simmons (*see* ¶¶ 50-51), the Defendants knew that “selling some assets call[ed] into question [Thornburg’s] intent and having to sell them to meet margin calls or reduce exposure, call[ed] into question [the company’s] ability to hold them.” As reflected in Starrett’s email, the Defendants also knew that Thornburg was required to “recognize the impairments on all assets with negative marks in income” in the event it could not

represent that it had the intent and ability to hold its ARM Securities until maturity or until their value recovered.

71. Given the circumstances of the I/O Strip Transactions, which were in form the sale of assets similar to Thornburg's ARM Securities to meet margin calls, and which further reduced Thornburg's already severely compromised liquidity to meet future margin calls, each Defendant knew, or was reckless in not knowing, that these transactions were significant to, and should have been considered in connection with, their OTTI analysis of Thornburg's ARM Securities. The Defendants also knew, or were reckless in not knowing, that the circumstances of the I/O Strip Transactions were important information that the company's auditor needed to know in order to be able to properly review the company's OTTI conclusions regarding its ARM Securities.

72. Like its Form 10-K, Thornburg's year-end going concern analysis, which was reviewed and approved by Simmons and Starrett, addressed and circulated to Goldstone, and provided to Thornburg's outside auditor on February 20, 2008, repeatedly represented that Thornburg successfully continued to meet all margin calls and returned to profitability in the fourth quarter. Given Thornburg's failure to meet a margin call issued by CSFB the previous day, as well as its failure to meet the margin calls issued by Citigroup and Greenwich the following day, facts of which the Defendants were aware, Goldstone, Simmons, and Starrett knew, or were reckless in not knowing, that the going concern analysis provided to Thornburg's outside auditor was materially false and misleading.

73. Each of the Defendants also knew, or was reckless in not knowing, that, contrary to their representations in the going concern analysis that Thornburg had

“returned to profitability in the fourth quarter,” Thornburg would not have returned to profitability in the fourth quarter had they properly conducted, or provided Thornburg’s outside auditor with complete and accurate information with which to review, the OTTI analysis of Thornburg’s ARM Securities.

74. Moreover, the going concern analysis contained the following additional misrepresentations again reflecting that the Defendants knew, or were reckless in not knowing, the relevant criteria for an OTTI analysis:

As the Company has the ability and intent to hold its Purchased ARM assets until recovery, losses are not considered to be other than temporary impairments. The basis for the Company’s ability to hold these securities is predicated on its on-going profitability, liquidity position and ability to continue to make margin calls[.]

75. Similarly, Thornburg, through Goldstone, Simmons, and Starrett, misrepresented in its Form 10-K that the losses associated with its ARM Securities were “not reflective of credit deterioration and because we have the ability and intent to hold the Purchased ARM Assets until recovery, the losses are not other-than-temporary impairments.”

76. In addition to the foregoing misrepresentations and omissions, neither Goldstone nor Simmons informed Thornburg’s outside auditor about the impending collapse of the large European hedge fund holding substantial MBS similar to Thornburg’s ARM Securities, an event they became aware of on February 27, 2008 and that they knew, or were reckless in not knowing, would likely further depress the price of Thornburg’s ARM Securities and trigger additional margin calls. (*See* ¶¶ 38-40 above).

77. In fact, at or about the time Simmons learned of the hedge fund collapse, he had just advised the audit partner from Thornburg’s outside auditor that he believed

the MBS market had reached its lowest point and MBS prices were not likely to deteriorate further. Upon learning on February 27th that MBS prices were likely to deteriorate further, Simmons improperly failed to update what had become a misleading statement to Thornburg's outside auditor.

78. The information that Goldstone and Simmons withheld from Thornburg's outside auditor concerning the imminent collapse of the large European hedge fund was material information that should have been provided to the auditor to allow it to properly review Thornburg's OTTI analysis of its ARM Securities.

79. As a result of the Defendants' material misrepresentations and omissions to Thornburg's outside auditor, the auditor did not have critical information to evaluate Thornburg's OTTI analysis of its ARM Securities and to determine whether Thornburg had the intent and ability to hold those securities until maturity or until their value recovered in the market. Specifically, Goldstone, Simmons, and Starrett misrepresented and/or concealed the fact that, during the two-week period before filing its Form 10-K, Thornburg (1) was in violation of its lending agreements (and therefore at risk of having its ARM Securities collateral seized and sold by lenders) and (2) was required to enter into the I/O Strip Transactions in order to meet margin calls.

80. In addition, Goldstone and Simmons failed to disclose: (1) that Thornburg had received the Citigroup Letter; and (2) the imminent collapse of a large hedge fund with substantial MBS holdings like Thornburg's ARM Securities, an event that rendered Simmons's prior representations to Thornburg's outside auditor about the stabilization of the MBS market false and misleading.

81. Given the financial decline of Thornburg beginning in August 2007, when it received substantial margin calls it could not meet, continuing in the fourth quarter of 2007 when it paid approximately \$360 million in margin calls during November and December, and reaching crisis proportions again in the first two months of 2008 when it received nearly one billion dollars in margin calls and began violating lending agreements and entering into the I/O Strip Transactions to meet margin calls on a delayed basis, the margin call events that the Defendants misrepresented or failed to disclose to Thornburg's outside auditor during the two-week period leading to the filing of Thornburg's Form 10-K were a continuation of a condition that existed as of Thornburg's fiscal year end.

82. Because the margin call events during the final two weeks of February 2008 were a continuation of a condition that existed as of Thornburg's December 31, 2007 balance sheet date, they were a Type 1 subsequent event for accounting purposes (see Public Company Accounting Oversight Board Interim Standard – AU Section 560, ¶ .03) and should have been considered in evaluating the company's financial condition as of December 31, 2007.

83. Had the Defendants provided Thornburg's outside auditor with accurate and complete information about Thornburg's margin call situation during the two-week period leading to the filing of Thornburg's 2007 Form 10-K, Thornburg's outside auditor would have disagreed with the company's OTTI conclusion (*i.e.*, that Thornburg had the intent and ability to hold its ARM Securities until recovery), and failure to recognize almost \$428 million in losses associated with its ARM Securities on its income statement.

84. Given the critical information of which Goldstone, Simmons, and Starrett were aware but misrepresented to, or concealed from, Thornburg's outside auditor (including Thornburg's severe liquidity crisis and likely exposure to additional margin calls, violation of lending agreements subjecting the company to potential declarations of default and forfeiture of collateralized ARM Securities, and use of the I/O Strip Transactions to meet margin calls), the Defendants knew, or were reckless in not knowing, that Thornburg did not have the intent or ability to hold its ARM Securities until maturity or until their value recovered in the market.

85. As reflected in Starrett's February 25, 2008 email to Goldstone and Simmons (*see* ¶53), each of the Defendants also knew, or was reckless in not knowing, that this meant Thornburg was required to recognize more than \$400 million in losses associated with its ARM Securities on its income statement. Defendants knew of these losses associated with Thornburg's ARM Securities because they were reflected on the company's balance sheet.

86. Nevertheless, the Defendants drafted, reviewed, and approved, and Goldstone and Simmons signed and certified as accurate, Thornburg's 2007 Form 10-K that incorporated an income statement that did not reflect these material losses. In fact, had these losses been properly accounted for by the Defendants, with certain adjustments made for Thornburg's overpayment of management fees tied to its overstated financial performance, Thornburg's fourth quarter net income would have been approximately \$422 million less than reported in its Form 10-K.

87. Accordingly, as a result of the Defendants' misconduct, Thornburg, through Goldstone, Simmons, and Starrett, materially misrepresented its financial

condition by reporting quarterly net income of \$65 million rather than a quarterly net loss of approximately \$357 million, and quarterly earnings per share of approximately \$0.34 instead of quarterly losses per share of \$2.86.

88. For the year ended 2007, the Defendants' failure to recognize the losses associated with Thornburg's ARM Securities on the company's income statement resulted in reporting annual net losses of approximately \$875 million instead of approximately \$1.3 billion, and losses per share of \$7.48 instead of \$10.94.

89. Thornburg's materially false Form 10-K and accompanying financial statements were also incorporated into the company's active Form S-3 ASR registration statement, relating to Thornburg's dividend reinvestment and stock purchase plan, which was signed by Goldstone and Simmons and had been filed with the Commission on December 10, 2007.

90. Given her position as Thornburg's CAO and her direct participation in materially misrepresenting the company's financial condition, Starrett knew or reasonably could have anticipated that Thornburg's false Form 10-K and accompanying financial statements would be incorporated into Thornburg's pending registration statements.

F. In the Days Following the Filing of Thornburg's Form 10-K, Goldstone and Simmons Continued to Deceive Thornburg's Outside Auditor and the Investing Public and Implicitly Acknowledged that the Form 10-K Did Not Fully and Accurately Reflect Thornburg's Financial Condition

91. Soon after Thornburg filed its Form 10-K on February 28, 2008, the company's stock price dropped significantly, a drop which Simmons attributed at the time to the company's negative disclosures in the recent developments section of its Form 10-K.

92. Simmons conceded, however, that if the truth relating to Thornburg's financial position had been disclosed, the drop would have been far worse. Commenting on the early trading drop in the company's stock price and reflecting on the critical information that was withheld from Thornburg's outside auditor and the investing public, Simmons sent an early morning email to Goldstone on February 28th stating: "I guess the recent development section did not go over well. *If they only knew.*" (Emphasis added).

93. In addition to implicitly acknowledging that Thornburg's Form 10-K did not fully and accurately disclose the company's financial condition, in the hours and days following the Form 10-K filing Goldstone and Simmons continued to project a materially false image of Thornburg's financial condition and to perpetuate the materially false image they had presented in the Form 10-K.

94. For example, although Thornburg began to receive a new wave of margin calls early on February 28th, Goldstone instructed Thornburg's investor relations group in an early morning email to "try to calm the panic" and to advise investors that day that "[a]ll margin calls met," "[l]enders are fine," and "[w]e still have sufficient operating cash[.]"

95. At the time he instructed the investor relations group to communicate that message to investors, Goldstone knew, or was reckless in not knowing, that the message was misleading because Thornburg had been in violation of its lending agreements the prior week. Further, the message clearly became false within approximately one hour of his instructions, when the escalating margin calls issued to Thornburg, including one for more than \$60 million issued by UBS AG that Goldstone became aware of at or about the time it was issued, exceeded its available liquidity. In fact, in an early morning email

sent to Thornburg's board of directors on February 28th, Goldstone had estimated that Thornburg's available cash was approximately \$40 million.

96. Following Goldstone's instructions, Thornburg's investor relations group communicated with numerous investors on February 28th and reported back to Goldstone, Simmons, and Starrett in an email at the end of the day, confirming that the "top messages [they] reinforced in the market" were:

We have met all margin calls to date, and we expect to continue to do so.
We have sufficient operating cash, and we don't expect to sell assets to meet margin calls.
We returned to profitability during the fourth quarter despite a tough market.

97. Notwithstanding Goldstone's assurances to investors, through the investor relations group, that Thornburg had sufficient operating cash, Goldstone knew, or was reckless in not knowing, that Thornburg did not have sufficient operating cash or other available liquidity to satisfy the margin calls it received on February 28th. Accordingly, by the end of the day on February 28, 2008, Thornburg defaulted on a margin call for approximately \$28 million issued by JPMorgan.

98. Moreover, knowing that Thornburg had received margin calls during the morning of February 28th that exceeded its available liquidity, Goldstone nevertheless appeared on a CNBC Street Signs television interview later that afternoon and represented that: (1) he did not believe Thornburg would have to sell assets; (2) Thornburg had "met all of [its] lending requirements;" and (3) "we have liquidity and cash available to continue to support the portfolio." Given that Thornburg did not have liquidity and cash available to meet the margin calls it received earlier that day, a fact Goldstone knew or was reckless in not knowing, Goldstone continued to misrepresent the financial condition of Thornburg during his CNBC interview.

99. In the days following the filing of Thornburg's Form 10-K, Goldstone and Simmons also perpetuated the materially false financial condition they reported in the Form 10-K by continuing to conceal the Citigroup Letter from Thornburg's outside auditor as it was contemplating the need for a potential restatement of Thornburg's financial statements and reevaluating the validity of the audit opinion it had issued for Thornburg's 2007 Form 10-K.

100. In fact, on March 4, 2008, in connection with reevaluating whether its audit opinion could be relied on, Thornburg's outside auditor sent an email to Goldstone, Simmons, Starrett, and an individual from Thornburg's Capital Markets Group specifically requesting, among other items, all correspondence between Thornburg and its lenders during the two-week period leading to the company's filing of its Form 10-K on February 28th.

101. Although Goldstone and Simmons were the only two recipients of the auditor's request who were aware of the Citigroup Letter, they failed to provide, or to ensure that others at Thornburg provided, this critical letter to Thornburg's outside auditor. Accordingly, Thornburg's auditor never became aware of the Citigroup Letter during the course of its restatement work.

102. In response to its auditor's March 4th request for information, Thornburg also provided an analysis to the audit firm that was reviewed and approved by Simmons, explaining why the mortgage market collapse and margin calls received by Thornburg on February 28, 2008 were part of "an unforeseeable catastrophic decline in mortgage market valuations."

103. Attempting to support Thornburg's year-end OTTI conclusion that it had the intent and ability to hold its ARM Securities until maturity or until their value recovered, and therefore did not need to recognize the losses associated with these securities on its income statement, the analysis represented that Thornburg's management could not have anticipated the margin calls issued to Thornburg on February 28th, stating:

Due to a number of factors including *the unexpected collapse of a major hedge fund in Europe* the mortgage market gapped significantly wider. . . No one in the market could have foreseen the sudden decline in mortgage valuations. (Emphasis added).

104. Contrary to the representations in the analysis reviewed and approved by Simmons and provided to Thornburg's outside auditor, Simmons became aware on February 27th that a large European hedge fund with substantial MBS holdings like Thornburg's ARM Securities was collapsing, and understood that this event was likely to have a negative impact on the price of Thornburg's ARM Securities. (See ¶¶ 38-40).

105. Accordingly, in an attempt to defend Thornburg's improper OTTI analysis and failure to recognize the losses associated with its ARM Securities on its income statement, Simmons continued to deceive the company's auditor during its restatement work by attributing Thornburg's February 28th margin calls to "unforeseeable" circumstances and an "unexpected" event of which he was aware on February 27th, the day before Thornburg filed its Form 10-K.

V. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Fraud: Section 10(b) of the Exchange Act and Rule 10b-5 [15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5]

(All Defendants)

106. Paragraphs 1 through 105 are hereby realleged and incorporated by reference.

107. By engaging in the conduct described above, Goldstone, Simmons, and Starrett, directly or indirectly, acting with scienter, by use of the means or instrumentalities of interstate commerce, or of the mails, or of a facility of a national securities exchange, in connection with the purchase or sale of a security: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material fact or 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; or (c) engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon another person.

108. By reason of the foregoing, Goldstone, Starrett, and Simmons each violated, and, unless restrained and enjoined, will continue to violate Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

SECOND CLAIM FOR RELIEF

Fraud -- Control Person Liability under Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)] for Thornburg's Violations of Section 10(b) of the Exchange Act and Rule 10b-5 [15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5] (Goldstone and Simmons, Alternatively)

109. Paragraphs 1 through 105 are hereby realleged and incorporated by reference.

110. Thornburg, directly or indirectly, acting with scienter, by use of the means or instrumentalities of interstate commerce, or of the mails, or of a facility of a national securities exchange, in connection with the purchase or sale of a security: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material fact or 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; or (c) engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon another person.

111. Goldstone, as president, CEO, and a director of Thornburg, and Simmons, as senior executive vice president, CFO, and a director of Thornburg, exercised control over the management, general operations, and policies of Thornburg, as well as the specific activities upon which Thornburg's violations are based.

112. By reason of the foregoing, Goldstone and Simmons are liable as control persons under Section 20(a) of the Exchange Act for Thornburg's violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

THIRD CLAIM FOR RELIEF

Fraud -- Aiding and Abetting Thornburg's Violations of Section 10(b) of the Exchange Act and Rule 10b-5 [15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5] (All Defendants, Alternatively)

113. Paragraphs 1 through 105 are hereby realleged and incorporated by reference.

114. Thornburg, directly or indirectly, acting with scienter, by use of the means or instrumentalities of interstate commerce, or of the mails, or of a facility of a national securities exchange, in connection with the purchase or sale of a security: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material fact or

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; or (c) engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon another person.

115. By engaging in the conduct described above, Goldstone, Simmons, and Starrett each aided and abetted the fraud violations of Thornburg, in that they knowingly or recklessly provided substantial assistance to Thornburg in committing these reporting violations.

116. By reason of the foregoing, Goldstone, Simmons, and Starrett, and each of them, have aided and abetted and, unless restrained and enjoined, will continue to aid and abet, Thornburg's violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

FOURTH CLAIM FOR RELIEF
Fraud in the Offer or Sale of Securities in Violation of
Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)]
(All Defendants)

117. Paragraphs 1 through 105 are hereby realleged and incorporated by reference.

118. By engaging in the conduct described above, Goldstone, Simmons, and Starrett have, directly or indirectly, in the offer or sale of securities, by use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, employed a device, scheme or artifice to defraud with scienter; obtained money or property by means of an untrue statement of material fact or omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or engaged in transactions,

practices, or courses of business that operated or would operate as a fraud or deceit upon the purchasers of such securities.

119. By reason of the foregoing, Goldstone, Simmons, and Starrett violated and, unless restrained and enjoined, will continue to violate Section 17(a) of the Securities Act.

FIFTH CLAIM FOR RELIEF

**Falsified Books, Records, or Accounts - Section 13(b)(5) of the Exchange Act and Rule 13b2-1 [15 U.S.C. § 78m(b)(5) and 17 C.F.R. § 240.13b2-1]
(All Defendants)**

120. Paragraphs 1 through 105 are hereby realleged and incorporated by reference.

121. By engaging in the conduct described above, Goldstone, Simmons, and Starrett knowingly circumvented or knowingly failed to implement a system of internal accounting controls to assure that Thornburg's financial statements were prepared in conformity with GAAP or knowingly falsified or caused to be falsified books, records or accounts of Thornburg.

122. By reason of the foregoing, Goldstone, Simmons, and Starrett violated and unless restrained and enjoined will in the future violate Section 13(b)(5) of the Exchange Act and Rule 13b2-1.

SIXTH CLAIM FOR RELIEF

**False Certifications - Rule 13a-14 of the Exchange Act
[17 C.F.R. § 240.13a-14]
(Goldstone and Simmons)**

123. Paragraphs 1 through 105 are hereby realleged and incorporated by reference.

124. Goldstone and Simmons each falsely certified in connection with Thornburg's 2007 10-K, that as signing officers they have reviewed the report, and: (1) based on the officer's knowledge, the report does not contain any untrue statement of material fact; (2) based on the officer's knowledge, the financial statements fairly present, in all material respects, the financial results of operations; and (3) the signing officers are responsible for establishing and maintaining adequate internal controls over financial reporting, have designed and evaluated such controls, and have disclosed any changes or weaknesses to the registrant's auditor and audit committee.

125. By reason of the foregoing, Goldstone and Simmons violated and unless restrained and enjoined will in the future violate Rule 13a-14 of the Exchange Act.

SEVENTH CLAIM FOR RELIEF
Deceit of Auditors - Rule 13b2-2 of the Exchange Act
[17 C.F.R. § 240.13b2-2]
(All Defendants)

126. Paragraphs 1 through 105 are hereby realleged and incorporated by reference.

127. By engaging in the conduct described above, Goldstone, Simmons, and Starrett each made or caused to be made materially false or misleading statements to an accountant in connection with audits, reviews or examinations of Thornburg's financial statements or in the preparation or filing of Thornburg's documents or reports required to be filed with the Commission; or omitted to state, or caused another person to omit to state, material facts necessary in order to make statements made, in light of the circumstances under which such statements were made, not misleading, to an accountant in connection with audits, reviews or examinations of financial statements or in the

preparation or filing of Thornburg's documents or reports required to be filed with the Commission.

128. By reason of the foregoing, Goldstone, Simmons, and Starrett each violated and unless restrained and enjoined will in the future violate Rule 13b2-2 of the Exchange Act.

EIGHTH CLAIM FOR RELIEF

**False SEC Filings – Aiding and Abetting Thornburg's Violations of Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-1 [15 U.S.C. § 78m(a) and 17 C.F.R. §§ 240.12b-20 and 240.13a-1]
(All Defendants)**

129. Paragraphs 1 through 105 are hereby realleged and incorporated by reference. Thornburg, which was an issuer of securities registered pursuant to Section 12 of the Exchange Act, filed a materially false and misleading annual report with the SEC that made untrue statements of material fact or 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, in violation of Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-1.

130. By engaging in the conduct described above, Goldstone, Simmons, and Starrett each aided and abetted the reporting violations of Thornburg, in that they knowingly or recklessly provided substantial assistance to Thornburg in committing these reporting violations.

131. By reason of the foregoing, Goldstone, Simmons, and Starrett each aided and abetted, and unless restrained and enjoined will in the future aid and abet, Thornburg's violations of Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-1.

NINTH CLAIM FOR RELIEF

**False SEC Filings -- Control Person Liability under Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)] for Thornburg's Violations of Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-1 [15 U.S.C. § 78m(a) and 17 C.F.R. §§ 240.12b-20 and 240.13a-1]
(Goldstone and Simmons, Alternatively)**

132. Paragraphs 1 through 105 are hereby realleged and incorporated by reference.

133. Thornburg, which was an issuer of securities registered pursuant to Section 12 of the Exchange Act, filed a materially false and misleading annual report with the SEC that made untrue statements of material fact or 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, in violation of Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-1.

134. Goldstone, as president, CEO, and a director of Thornburg, and Simmons, as senior executive vice president, CFO, and a director of Thornburg, exercised control over the management, general operations, and policies of Thornburg, as well as the specific activities upon which Thornburg's violations are based.

135. By reason of the foregoing, Goldstone and Simmons are liable as control persons under Section 20(a) of the Exchange Act for Thornburg's violations of Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-1.

TENTH CLAIM FOR RELIEF

**False Books and Records – Aiding and Abetting Thornburg's Violation of Section 13(b)(2) of the Exchange Act[15 U.S.C. § 78m(b)(2)]
(All Defendants)**

136. Paragraphs 1 through 106 are hereby realleged and incorporated by reference.

137. By engaging in the conduct described above, Thornburg, in violation of Section 13(b)(2) of the Exchange Act, failed to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflected the company's transactions and dispositions of its assets and failed to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions were recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and any other criteria applicable to such statements.

138. By engaging in the conduct described above, Goldstone, Simmons, and Starrett aided and abetted Thornburg, in that they knowingly or recklessly provided substantial assistance to Thornburg, in committing these violations.

139. By reason of the foregoing, Goldstone, Simmons, and Starrett aided and abetted, and unless restrained and enjoined will in the future aid and abet, Thornburg's violations of Section 13(b)(2).

ELEVENTH CLAIM FOR RELIEF

**False Books and Records – Control Person Liability under Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)] for Thornburg's Violation of Section 13(b)(2) of the Exchange Act [15 U.S.C. § 78m(b)(2)]
(Goldstone and Simmons, Alternatively)**

140. Paragraphs 1 through 105 are hereby realleged and incorporated by reference.

141. By engaging in the conduct described above, Thornburg, in violation of Section 13(b)(2) of the Exchange Act, failed to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflected the company's transactions and dispositions of its assets and failed to devise and maintain a system of

internal accounting controls sufficient to provide reasonable assurances that transactions were recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and any other criteria applicable to such statements.

142. Goldstone, as president, chief executive officer, and a director of Thornburg, and Simmons, as senior executive vice president, chief financial officer, and a director of Thornburg, exercised control over the management, general operations, and policies of Thornburg, as well as the specific activities upon which Thornburg's violations are based.

143. By reason of the foregoing, Goldstone and Simmons are liable as control persons under Section 20(a) of the Exchange Act for Thornburg's violations of Section 13(b)(2) of the Exchange Act.

VI. PRAYER FOR RELIEF

WHEREFORE, the SEC respectfully requests that the Court:

I.

Find that each of the Defendants committed the violations alleged in this Complaint;

II.

Enter an Injunction, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, permanently restraining and enjoining each of the Defendants from violating, directly or indirectly, the laws and rules alleged in this Complaint;

III.

Order that each of the Defendants be permanently prohibited from acting as an officer or director of any public company;

IV.

Order that each of the Defendants disgorge any and all ill-gotten gains, together with pre-judgment interest, derived from the improper conduct set forth in this Complaint;

V.

Order that each of the Defendants pay civil money penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)] in an amount to be determined by the Court, plus post-judgment interest;

VI.

Grant such other relief as this Court may deem just or appropriate.

Plaintiff requests trial to a jury.

Respectfully submitted this 12th day of March, 2012.

Filed electronically 3/13/12
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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
SECURITIES AND EXCHANGE COMMISSION
(b) County of Residence of First Listed Plaintiff
(c) Attorney's (Firm Name, Address, and Telephone Number)

DEFENDANTS
LARRY A. GOLDSTONE,
CLARENCE G. SIMMONS, III, and
JANE E. STARRETT
County of Residence of First Listed Defendant SANTA FE
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
X 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)
PTF DEF
Citizen of This State 1 1
Citizen of Another State 2 2
Citizen or Subject of a Foreign Country 3 3
Incorporated or Principal Place of Business In This State 4 4
Incorporated and Principal Place of Business In Another State 5 5
Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT TORTS FORFEITURE/PENALTY LABOR IMMIGRATION BANKRUPTCY SOCIAL SECURITY FEDERAL TAX SUITS OTHER STATUTES
110 Insurance 120 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment & Enforcement of Judgment 151 Medicare Act 152 Recovery of Defaulted Student Loans (Excl. Veterans) 153 Recovery of Overpayment of Veteran's Benefits 160 Stockholders' Suits 190 Other Contract 195 Contract Product Liability 196 Franchise
PERSONAL INJURY 310 Airplane 315 Airplane Product Liability 320 Assault, Libel & Slander 330 Federal Employers' Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle 355 Motor Vehicle Product Liability 360 Other Personal Injury
PERSONAL INJURY 362 Personal Injury - Med. Malpractice 365 Personal Injury - Product Liability 368 Asbestos Personal Injury Product Liability
PERSONAL PROPERTY 370 Other Fraud 371 Truth in Lending 380 Other Personal Property Damage 385 Property Damage Product Liability
610 Agriculture 620 Other Food & Drug 625 Drug Related Seizure of Property 21 USC 881 630 Liquor Laws 640 R.R. & Truck 650 Airline Regs. 660 Occupational Safety/Health 690 Other
710 Fair Labor Standards Act 720 Labor/Mgmt. Relations 730 Labor/Mgmt. Reporting & Disclosure Act 740 Railway Labor Act 790 Other Labor Litigation 791 Empl. Ret. Inc. Security Act
462 Naturalization Application 463 Habeas Corpus - Alien Detainee 465 Other Immigration Actions
422 Appeal 28 USC 158 423 Withdrawal 28 USC 157
820 Copyrights 830 Patent 840 Trademark
861 HIA (1395ff) 862 Black Lung (923) 863 DIWC/DIWW (405(g)) 864 SSID Title XVI 865 RSI (405(g))
870 Taxes (U.S. Plaintiff or Defendant) 871 IRS—Third Party 26 USC 7609
400 State Reapportionment 410 Antitrust 430 Banks and Banking 450 Commerce 460 Deportation 470 Racketeer Influenced and Corrupt Organizations 480 Consumer Credit 490 Cable/Sat TV 810 Selective Service 850 Securities/Commodities/Exchange 875 Customer Challenge 12 USC 3410 890 Other Statutory Actions 891 Agricultural Acts 892 Economic Stabilization Act 893 Environmental Matters 894 Energy Allocation Act 895 Freedom of Information Act 900 Appeal of Fee Determination Under Equal Access to Justice 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)
X 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C. §§ 77q(a), 78j(b), 78m(a), 78m(b)(2), 78m(b)(5), 78t(a)
Brief description of cause:
SECURITIES FRAUD

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint:
JURY DEMAND: [X] Yes [] No

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE DOCKET NUMBER

DATE 03/13/2012 SIGNATURE OF ATTORNEY OF RECORD /s/ Michael H. Hoses, Assistant U.S. Attorney

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.