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CAUSE NO. DC-09-08239

SSR CAPITAL PARTNERS, LP, STRATEGIC STABLE RETURN FUND (ID), LP, STRATEGIC STABLE RETURN FUND II, LP PLAINTIFFS,	§	IN THE DISTRICT COURT OF
vs.	§	
ARROWHEAD CAPITAL PARTNERS II, LP ARROWHEAD CAPITAL MANAGEMENT, LLC, METRO I, LLC, JAMES N. FRY, McGLADREY & PULLEN, LLP, PALM BEACH FINANCE II, LP, PALM BEACH FINANCE PARTNERS, LP, PALM BEACH CAPITAL MANAGEMENT, LP, PALM BEACH CAPITAL MANAGEMENT, LLC, PALM BEACH MANAGEMENT CORP., PALM BEACH CAPITAL CORP., PBFP HOLDINGS, LLC, BRUCE F. PREVOST, DAVID W. HARROLD, SCOTT OLSON, KAUFMAN, ROSSIN & CO., P.A. STEWARDSHIP CREDITARBITRAGE FUND, LLC, STEWARDSHIP INVESTMENT ADVISORS, LLC, ACORNCAPITAL GROUP, LLC, MARLON QUAN, ERNST & YOUNG, LLP, ERNST & YOUNG, LTD. (BERMUDA), ERNST & YOUNG, Ltd. (BAHAMAS); ERNST & YOUNG AMERICAS, LLC, JONATHAN SPRING, SPRING INVESTORSERVICES, INC. and ROGER HENDREN	§	DALLAS COUNTY, TEXAS H-160TH JUDICIAL DISTRICT

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PLAINTIFFS' ORIGINAL PETITION

Plaintiffs SSR Capital Partners, LP, Strategic Stable Return Fund (ID), LP, Strategic Stable Return Fund II, LP (collectively, unless otherwise indicated, "Plaintiffs" or "SSR"), complain of Defendants ArrowHead Capital Partners II, LP, ArrowHead Capital Management, LLC, Metro I, LLC, James N. Fry, McGladrey & Pullen, LLP, Palm Beach Finance II, LP, Palm Beach Finance Partners, LP, Palm Beach Capital Management LLC, Palm Beach Management Corp., Palm Beach Capital Corp., PBFP Holdings, LLC, Bruce F. Prevost, David W. Harrold, Scott Olson, Kaufman, Rossin & Co., P.A., Stewardship Credit Arbitrage Fund, LLC, Stewardship Investment Advisors, LLC, Acorn Capital Group, LLC, Marlon Quan, Ernst & Young, LLP, Ernst & Young, Ltd.

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(Bermuda), Ernst& Young, Ltd. (Bahamas), Ernst & Young Americas, LLC, Jonathan Spring, Spring Investor Services, Inc. and Roger Hendren (collectively "Defendants").

Plaintiffs' allegations are upon information and belief, except for those allegations pertaining to Plaintiffs, which are based on personal knowledge. Plaintiffs' information and belief is based upon a continuing investigation conducted by Plaintiffs' counsel into the facts and circumstances alleged including, without limitation, review and analysis of: (i) documents the Defendants named herein authorized and drafted or otherwise provided to Plaintiffs in the course of securing Plaintiffs' investments; (ii) public statements, internet postings and other publications concerning the Defendants; and (iii) press releases, civil complaints, criminal indictments and other publications relating to Thomas Petters, Petters Company, Inc., Petters Group Worldwide LLC and their subsidiaries and affiliates (collectively "Petters").

DISCOVERY LEVEL

1. Plaintiffs intend for discovery to proceed under Level 3 pursuant to Rule 190.4 of the Texas Rules of Civil Procedure.

NATURE AND SUMMARY OF ACTION

2. This is a case about the hedge funds, hedge fund managers, and auditors who helped sustain a Ponzi scheme created and run by Tom Petters—a scam that stole literally billions of investor dollars.

3. Plaintiffs are two "fund of funds"—Strategic Stable Return Fund (ID), LP and Strategic Stable Return Fund II, LP—and the General Partner of these two funds, SSR Capital Partners, LP. SSR invests in a variety of hedge funds in order to provide investors greater diversification. This case concerns SSR's investments in four hedge funds, all of which invested—and lost—all or a great majority of their funds with Petters: (1) ArrowHead Capital Partners II, LP,

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managed by ArrowHead Capital Management, LLC ("ArrowHead"); (2) Palm Beach Finance Partners, LP, whose general partner was Palm Beach Capital Management, LP, with Palm Beach Capital Management, LLC serving as investment manager and Palm Beach Capital Corp. serving as general partner of Palm Beach Capital Management, LP ("Palm Beach I"); (3) Palm Beach Finance II, LP, whose general partner was Palm Beach Capital Management, LP with Palm Beach Capital Management, LLC once again serving as investment manager ("Palm Beach II"); and (4) Stewardship Credit Arbitrage Fund, LLC, managed by Stewardship Investment Advisors, LLC ("Stewardship"). The hedge funds and their managers are collectively referred to as the "Hedge Fund Defendants."

4. Petters gave the Hedge Fund Defendants purchase orders for high-end electronic merchandise ostensibly from "Big Box Retailers" such as Sam's Club and Costco Wholesale. The Hedge Fund Defendants, or their affiliates, solicited money from investors to loan to Petters in return for secured promissory notes from Petters and/or his affiliated companies to finance the purchase of goods, earning fees for their solicitations. These notes or loans were supposedly secured by the inventory, accounts receivable, and credit insurance. Petters claimed he was purchasing merchandise at a discount from manufacturers who were overstocked or were liquidating excess merchandise. In theory—as Petters told the story—he would warehouse the merchandise and then ship it to purchasing retailers. Petters would use the funds from the retailers to repay the loans from the hedge funds with earned interest. The only problem with this investment plan was that Petters never actually purchased any merchandise or resold merchandise to any retailers—and any loan payments he made were made with other investors' money. How much was lost we may never know but the losses are currently estimated at more than $3 billion.

5. McGladrey & Pullen, LLP, Kaufman, Rossin & Co., P.A., Ernst & Young, LLP, Ernst

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& Young Ltd. (Bahamas), Ernst & Young Ltd. (Bermuda), and Ernst & Young Americas, LLC (collectively, the "Auditor Defendants") claimed to have audited the Hedge Fund Defendants' financial statements following all the rules and with all the diligence and care required by auditors, assured investors that their audits and financial statements showed the Hedge Fund Defendants were protecting their investments, that the value of the promissory notes and capital accounts reflected were accurate, and that the promissory notes were secured by collateral. None of that was true.

6. Also integral to this Ponzi scheme were the salesmen and aiders—people like Scott Olson, Jonathan Spring, and Spring Investor Services, Inc.—who offered or sold or materially aided in the sale of these investments to Plaintiffs.

7. Of the estimated $3 billion lost in the Petters Ponzi scheme, Plaintiffs lost approximately $24,000,000.

JURISDICTION AND VENUE

8. This Court has jurisdiction over the subject matter of this action and the parties because this is a civil dispute involving residents of Texas and other states and all foreign Defendants have had sufficient contacts in Texas relating to the events at issue to subject themselves to the jurisdiction of this Court. The damages sought and sustained are in excess of the minimum jurisdictional amount for this Court.

9. Venue is proper in Dallas County, Texas under Tex. Civ. Prac. & Rem. Code §15.002 because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred there and because Plaintiffs maintained their principal office in Dallas County, Texas at the time these causes of action accrued. Among other things: (i) one or more Defendants solicited investments for the funds at issue at meetings in Dallas County; (ii) Defendants provided Plaintiffs with promotional and offering materials regarding the funds in Dallas County; (iii) one or more

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Defendants employed agents for the conduct of business in Dallas County; and (iv) Defendants offered and sold the limited partnership interests to Plaintiffs in Dallas County

PARTIES

10. Plaintiff SSR Capital Partners, LP is a Delaware limited partnership with its principal office in Dallas County, Texas.

11. Plaintiff Strategic Stable Return Fund (ID), LP ("SSR I") is a Delaware limited partnership with its principal office in Dallas County, Texas.

12. Plaintiff Strategic Stable Return Fund II, LP is a Delaware limited partnership with its principal office in Dallas County, Texas.

13. Defendant ArrowHead Capital Partners II, LP is a Delaware limited partnership with its principal place of business at 601 Carlson Parkway, Suite 1250, Minnetonka, Minnesota, 55305 Because this defendant did business in Texas as defined by Tex. Civ. Prac. & Rem. Code § 17.042(1) and (2) and has no regular place of business in Texas or any designated agent for service of process in this State, this defendant may be served by service on the Texas Secretary of State under Tex. Civ. Prac. & Rem. Code §§ 17.026 and 17.44(b).

14. Defendant ArrowHead Capital Management, LLC is a Minnesota limited liability company with its principal place of business at 601 Carlson Parkway, Suite 1250, Minnetonka, Minnesota, 55305. Because this defendant did business in Texas as defined by Tex. Civ. Prac. & Rem. Code § 17.042(1) and (2) and has no regular place of business in Texas or any designated agent for service of process in this State, this defendant may be served by service on the Texas Secretary of State under Tex. Civ. Prac. & Rem. Code §§ 17.026 and 17.44(b).

15. Metro I, LLC, is a Delaware limited liability company with its principal place of business at 601 Carlson Parkway, Suite 1250, Minnetonka, Minnesota, 55305. Because this

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defendant did business in Texas as defined by Tex. Civ. Prac. & Rem. Code § 17.042(1) and (2) and has no regular place of business in Texas or any designated agent for service of process in this State, this defendant may be served by service on the Texas Secretary of State under Tex. Civ. Prac. & Rem. Code §§ 17.026 and 17.44(b).

16. Defendant Palm Beach Finance II, LP is a Delaware limited partnership with its principal place of business at 3601 PGA Blvd., Suite 301, Palm Beach Gardens, Florida 33410 Because this defendant did business in Texas as defined by Tex. Civ. Prac. & Rem. Code § 17.042(1) and (2) and has no regular place of business in Texas or any designated agent for service of process in this State, this defendant may be served by service on the Texas Secretary of State under Tex. Civ. Prac. & Rem. Code §§ 17.026 and 17.44(b).

17. Defendant Palm Beach Capital Management, LP is a Delaware limited partnership with its principal place of business at 3601 PGA Blvd., Suite 301, Palm Beach Gardens, Florida 33410. Because this defendant did business in Texas as defined by Tex. Civ. Prac. & Rem. Code § 17.042(1) and (2) and has no regular place of business in Texas or any designated agent for service of process in this State, this defendant may be served by service on the Texas Secretary of State under Tex. Civ. Prac. & Rem. Code §§ 17.026 and 17.44(b).

18. Defendant Palm Beach Capital Management, LLC is a Florida limited liability company with its principal place of business at 3601 PGA Blvd., Suite 301, Palm Beach Gardens, Florida 33410. Because this defendant did business in Texas as defined by Tex. Civ. Prac. & Rem. Code § 17.042(1) and (2) and has no regular place of business in Texas or any designated agent for service of process in this State, this defendant may be served by service on the Texas Secretary of State under Tex. Civ. Prac. & Rem. Code §§ 17.026 and 17.44(b).

19. Defendant Palm Beach Finance Partners, LP is a Delaware limited partnership with its

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principal place of business at 3601 PGA Blvd., Suite 301, Palm Beach Gardens, Florida 33410. Because this defendant did business in Texas as defined by Tex. Civ. Prac. & Rem. Code § 17.042(1) and (2) and has no regular place of business in Texas or any designated agent for service of process in this State, this defendant may be served by service on the Texas Secretary of State under Tex. Civ. Prac. & Rem. Code §§ 17.026 and 17.44(b).

20. Defendant Palm Beach Management Corp. is a Delaware corporation with a registered agent for service at Registered Agents, Ltd., 1220 North Market Street, Suite 104, Wilmington, DE 19801. Because this defendant did business in Texas as defined by Tex. Civ. Prac. & Rem. Code § 17.042(1) and (2) and has no regular place of business in Texas or any designated agent for service of process in this State, this defendant may be served by service on the Texas Secretary of State under Tex. Civ. Prac. & Rem. Code §§ 17.026 and 17.44(b).

21. Defendant Palm Beach Capital Corp. is a Delaware corporation with a registered agent for service at Incorporating Services, Ltd., 3500 South Dupont Highway, Dover, DE 19901. Because this defendant did business in Texas as defined by Tex. Civ. Prac. & Rem. Code § 17.042(1) and (2) and has no regular place of business in Texas or any designated agent for service of process in this State, this defendant may be served by service on the Texas Secretary of State under Tex. Civ. Prac. & Rem. Code §§ 17.026 and 17.44(b).

22. Defendant PBFP Holdings, LLC is a Delaware limited liability company with its principal place of business at 3601 PGA Blvd., Suite 301, Palm Beach Gardens, Florida 33410. Because this defendant did business in Texas as defined by Tex. Civ. Prac. & Rem. Code § 17.042(1) and (2) and has no regular place of business in Texas or any designated agent for service of process in this State, this defendant may be served by service on the Texas Secretary of State under Tex. Civ. Prac. & Rem. Code §§ 17.026 and 17.44(b).

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23. Defendant Bruce F. Prevost is an individual believed to be residing in Florida with his place of business, 3601 PGA Blvd., Suite 301, Palm Beach Gardens, Florida 33410. Prevost is a Managing Director and Chairman of Defendant Palm Beach Capital Corp., the general partner of Palm Beach Capital Management, LP and a manager and owner of Palm Beach Capital Management, LLC. Because Prevost did business in Texas as defined by Tex. Civ. Prac. & Rem. Code § 17.042(1) and (2) and has no regular place of business in Texas or any designated agent for service of process in this State, Prevost may be served by service on the Texas Secretary of State under Tex. Civ. Prac. & Rem. Code §§ 17.026 and 17.44(b).

24. Defendant David W. Harrold is an individual believed to be residing in Florida with his place of business at 3601 PGA Blvd., Suite 301, Palm Beach Gardens, Florida 33410 where he is a Managing Director and President of Palm Beach Capital Corp., the general partner of Palm Beach Capital Management, LP and a manager and owner of Palm Beach Capital Management, LLC. Because Harrold did business in Texas as defined by Tex. Civ. Prac. & Rem. Code § 17.042(1) and (2) and has no regular place of business in Texas or any designated agent for service of process in this State, Harrold may be served by service on the Texas Secretary of State under Tex. Civ. Prac. & Rem. Code §§ 17.026 and 17.44(b).

25. Defendant Scott Olson is an individual residing at 6414 Deloache Ave., Dallas, TX, 75225. He may be served at that address.

26. Defendant Stewardship Credit Arbitrage Fund, LLC ("SCAF") is a Delaware limited liability company with its principal place of business at Two Greenwich Office Park, Greenwich, CT 06831. Because this defendant did business in Texas as defined by Tex. Civ. Prac. & Rem. Code § 17.042(1) and (2) and has no regular place of business in Texas or any designated agent for service of process in this State, this defendant may be served by service on the Texas Secretary of State

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under Tex. Civ. Prac. & Rem. Code §§ 17.026 and 17.44(b).

27. Defendant Stewardship Investment Advisors, LLC is a Delaware limited liability company with its principal place of business at Two Greenwich Office Park, Greenwich, CT 06831. Because this defendant did business in Texas as defined by Tex. Civ. Prac. & Rem. Code § 17.042(1) and (2) and has no regular place of business in Texas or any designated agent for service of process in this State, this defendant may be served by service on the Texas Secretary of State under Tex. Civ. Prac. & Rem. Code §§ 17.026 and 17.44(b).

28. Defendant Acorn Capital Group, LLC ("Acorn") is a Delaware limited liability company with its principal place of business at Two Greenwich Office Park, Greenwich, CT 06831. Because Acorn did business in Texas as defined by Tex. Civ. Prac. & Rem. Code § 17.042(1) and (2) and has no regular place of business in Texas or any designated agent for service of process in this State, Acorn may be served by service on the Texas Secretary of State under Tex. Civ. Prac. & Rem. Code §§ 17.026 and 17.44(b).

29. Defendant Marlon Quan is an individual believed to be residing in Connecticut. Quan is the owner and CEO of Acorn, an affiliate of Stewardship Investment Advisors LLC and Managing Member of Stewardship Investment Advisors LLC. Because Quan did business in Texas as defined by Tex. Civ. Prac. & Rem. Code § 17.042(1) and (2) and has no regular place of business in Texas or any designated agent for service of process in this State, this defendant may be served by service on the Texas Secretary of State under Tex. Civ. Prac. & Rem. Code §§ 17.026 and 17.44(b).

30. Defendant McGladrey & Pullen, LLP ("McGladrey") is an Iowa limited liability partnership with principal offices located at 3600 American Blvd. W., Third Floor, Bloomington, MN 55431-4502. McGladrey has approximately 100 offices in the United States, including an office in Dallas County at 13366 Noel Road, Dallas, Texas 75240 that serves as a regular place of business

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at which McGladrey may be served. McGladrey served as outside auditor for ArrowHead at all relevant times.

31. Defendant Roger Hendren is an individual residing in Dallas County, Texas. He is the Managing Director of McGladrey's Dallas office at 13335 Noel Road, 8th Floor / LB 4, Dallas, Texas 75240 and may be served at his place of business at 13335 Noel Road, 8th Floor / LB 4, Dallas, Texas 75240.

32. Jonathan Spring is an individual who, on information and belief, resides at 89 Nason Hill Road, Sherborn, MA 01770-1233. Because Spring did business in Texas as defined by Tex. Civ. Prac. & Rem. Code § 17.042(1) and (2) and has no regular place of business in Texas or any designated agent for service of process in this State, Spring may be served by service on the Texas Secretary of State under Tex. Civ. Prac. & Rem. Code §§ 17.026 and 17.44(b).

33. Spring Investors Services, Inc. is a Massachusetts corporation that, on information and belief, has its offices at 89 Nason Hill Road, Sherborn, MA 01770-1233. Because this defendant did business in Texas as defined by Tex. Civ. Prac. & Rem. Code § 17.042(1) and (2) and has no regular place of business in Texas or any designated agent for service of process in this State, this defendant may be served by service on the Texas Secretary of State under Tex. Civ. Prac. & Rem. Code §§ 17.026 and 17.44(b).

34. Defendant Kaufman Rossin & Co., P.A. ("Kaufman"), is a Florida company with principal offices at 2699 South Bayshore Drive, Miami, Florida 33133. Kaufman served as outside auditor for Palm Beach I and Palm Beach II at all relevant times. Because this defendant did business in Texas as defined by Tex. Civ. Prac. & Rem. Code § 17.042(1) and (2) and has no regular place of business in Texas or any designated agent for service of process in this State, this defendant may be served by service on the Texas Secretary of State under Tex. Civ. Prac. & Rem. Code §§

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17.026 and 17.44(b).

35. Ernst & Young, LLP ("Ernst & Young") is a Delaware limited liability partnership headquartered in New York City, but with 80 offices nationwide, two of which are in Dallas, TX. Ernst & Young may be served either at 1201 Main Street, 20th Floor, Dallas, TX 75202 or at 2100 Ross Ave., Suite 1500, Dallas, TX 75201, both of which constitute Ernst & Young's regular places of business in Texas. Ernst & Young was outside auditor for Stewardship at all relevant times.

36. Ernst & Young, Ltd. (Bermuda) is a company with principal offices at 3 Reid Street, Hamilton HM 11, Bermuda. Because this defendant did business in Texas as defined by Tex. Civ. Prac. & Rem. Code § 17.042(1) and (2) and has no regular place of business in Texas or any designated agent for service of process in this State, this defendant may be served by service on the Texas Secretary of State under Tex. Civ. Prac. & Rem. Code §§ 17.026 and 17.44(b).

37. Ernst & Young, Ltd. (Bahamas) is a company with principal offices at One Montague Place, Third Floor, East Bay Street, P.L. Box N-3231, Nassau, Bahamas. Because this defendant did business in Texas as defined by Tex. Civ. Prac. & Rem. Code § 17.042(1) and (2) and has no regular place of business in Texas or any designated agent for service of process in this State, this defendant may be served by service on the Texas Secretary of State under Tex. Civ. Prac. & Rem. Code §§ 17.026 and 17.44(b).

38. Ernst & Young Americas, LLC, is a limited liability company. Because this defendant did business in Texas as defined by Tex. Civ. Prac. & Rem. Code § 17.042(1) and (2) and has no regular place of business in Texas or any designated agent for service of process in this State, this defendant may be served by service on the Texas Secretary of State under Tex. Civ. Prac. & Rem. Code §§ 17.026 and 17.44(b).

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SUBSTANTIVE ALLEGATIONS

39. Plaintiffs invested in the Hedge Fund Defendants as the result of their solicitations to investors to purchase membership interests in their respective funds. The offering memoranda from these different entities were remarkably similar.

40. The "Confidential Private Placement Memorandum dated September 1, 2004 of Palm Beach Finance Partners LP" (the "Palm Beach PPM"), for example, was provided to Plaintiffs by the Palm Beach Defendants to solicit their investment in the Palm Beach funds. The Palm Beach PPM reveals an intricate management structure: Palm Beach Capital Management LP was supposed to serve as the Fund's general partner; Palm Beach Capital Management LLC was the Fund's investment manager; Palm Beach Capital Corp. was the general partner of Palm Beach Capital Management, LP and Prevost and Harrold were the controlling owners of Palm Beach Capital Corp. The Palm Beach PPM explains that "[t]he investment objective of the Fund is to achieve consistent, advantageous rates of return through the purchase of secured notes relating to transaction financing of new, in-the-box, pre-sold, name brand products." These "secured notes" were originated by yet another affiliate of the Palm Beach entities—PBFP Holdings, LLC—owned by Prevost and Harrold. The Palm Beach PPM assured investors that "merchandise will be pre-sold to inventory purchasers **before** the Note is purchased" (emphasis in original). The Palm Beach PPM explained the "Investment Criteria" as to these notes as follows:

a. Note proceeds must be used to pay the cost of specific identified merchandise the issuer is acquiring and with respect to which the issuer has received one or more purchase orders for such merchandise;

b. Aggregate property and casualty insurance must be in force that names the fund as loss payee and covers the purchased merchandise in an amount, under normal circumstances, greater than the respective aggregate Note principal amounts while related merchandise is in transit to the related inventory purchaser(s);

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c. PBFP Holdings, PBC Corp., as collateral agent, and/or the Fund must have filed against the Principal Issuer appropriate UCC-1 financing statements covering the specific inventory, sales contract and proceeds related to the Note and the Fund must have filed against PBFP Holdings and/or PBC Corp appropriate UCC-1 financing statements;

d. The Note obligor must be a United States resident rated the equivalent of "1A2" or better by Dun & Bradstreet, Inc. or "BBB-" or better by Standard & Poor's that is not an Affiliate of PBFP Holdings, the General Partner or the issuer, is not a government or governmental subdivision or agency and is not more than 60 days delinquent in the payment of any receivable relating to an outstanding Note purchased by the Fund;

e. The Note relates to a contract that requires payment in full in not later than 60 days from the date on which the purchaser receives the merchandise;

f. The merchandise purchase arises in the ordinary course of the issuer's business in connection with the purchase and sale of merchandise in the United States;

g. The purchase merchandise is covered under a credit insurance policy naming PBFP Holdings as loss payee; which policy (A) will be paid in full through the contractual due date of such receivable and is the valid and binding obligation of the related insurance company, and (B) requires the relevant insurer to indemnify PBFP Holdings for up to 20% of the principal amount of the related Note in the event the purchaser fails to pay the issuer for the Merchandise within the number of days specified in the policy;

h. The purchased merchandise must be goods that are consumer brand name, new, in-the-box products in one of the following categories: (a) household goods, (b) apparel, (c) sporting goods, (d) electronic goods or (e) other goods that the General Partner has approved in advance.

All these statements were false and materially misleading: there was no "specific identified merchandise," no real "purchase orders," no merchandise to insure, and no purchases arising out of anybody's ordinary course of business. It was all a fraud—and one that Palm Beach could easily have discovered had they done what they said they would do.

41. Even though they failed to fulfill their fiduciary duties, the Palm Beach principals, funds, and related entities charged huge fees. SSR and other investors holding membership interests were charged 0.25% of their capital account each calendar quarter. Each quarter, the investors were charged another 12% of their reported net profits. Although the exact amount collected in these fees

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remains undetermined, it is safe to say that, for the money invested and lost in the Petters Ponzi scheme, the Palm Beach entities and managers received tens of millions of dollars in fees.

42. As of the date of the discovery of the Petters fraud by the FBI, the two SSR funds had invested—and lost—$12,470,000 in the two Palm Beach funds in principal alone. SSR has requested a refund of these amounts, but has received nothing.

43. The Stewardship Credit Arbitrage Fund, LLC Confidential Private Placement Memorandum, (the "Stewardship PPM") also dated September 1, 2004, was strangely similar. It claimed that the "Company will seek a high level of current income and capital appreciation while minimizing risk by (1) purchasing a broad range of secured high-yield short term notes, from, or issued by, Acorn Capital Group, LLC." The Stewardship PPM claimed that Acorn would protect the integrity and security of the notes by taking the following steps:

a. enter into a Credit Agreement, Security Agreement(s) and Lock-Box Agreement (and certain ancillary agreements);

b. receive a Secured Promissory Note;

c. be designated a co-beneficiary on policies of insurance with respect to various defaults or other risks of loss on the Short Term Notes;

d. confirm that the underlying assets fall into an acceptable category;

e. confirm that the accounts receivable counterparty has an "A" or higher credit rating prior to acquisition, inclusive of any credit insurance coverage;

f. obtain a security interest in the underlying assets and accounts receivable proceeds;

g. require payment of the accounts receivable into a lock-box account; and

h. perform ongoing quantitative and qualitative analysis or similar protracted procedure to determine the fair market value of underlying assets of the short-term commercial credit market and the financial conditions of the borrower and its customers.

These statements, too, were completely false. Neither Acorn nor Stewardship "confirmed" that the

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underlying assets were of an "acceptable category." No one even "confirmed" that they existed. As with the Palm Beach transactions, there was no merchandise, and no Defendant did anything to confirm there was.

44. In early 2005, Stewardship gave SSR marketing materials promoting its fund. In those materials, Stewardship claimed:

- *"Our objective is to provide investors with both a safe and stable return by investing in short-term asset-based securities. To enhance principal protection, virtually all securities are over collateralized"*(emphasis in original).
- "The strategy uses multiple safeguards to lower the risk profile of the funds" including "strong capital reserves and collateral."
- In a slide entitled "Risk Management," Stewardship touted the protections it offered investors by stating, "Risk management is critical to our success," and that Stewardship considered factors such as "Collateral," "Receivables" and "Audits."
- In a slide entitled "Collateral Risk Management," Stewardship represented that the types of collateral it considered were "Inventory" and "Accounts Receivable."
- In a slide entitled "Borrower Risk Management," Stewardship assured investors that a "Major accounting firm has been retained to examine the books of intermediaries."
- A slide entitled "Other Risk Management Tools" laid out strict "lock box" procedures that Stewardship would follow to protect its investors' capital.

None of these statements were true either. In later marketing materials, Stewardship began its presentation with the following definition: "Stewardship: *Entrusted with the care, management and oversight of the property of others"* (emphasis in original). How ironic! SSR relied on these representations in deciding to invest in Stewardship.

45. Again, these Defendants were well compensated for failing to perform their fiduciary duties to their investors. Acorn (owned by Quan and an affiliate of Stewardship Investment Advisors, LLS) charged "between 50 and 75 basis points of the principal amount of each Acorn

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Financed Note sold to the Company."[1] Stewardship Investment Advisors also charged each investor holding a membership interest a monthly "management fee" of 0.0833% monthly and another 20% of net profits quarterly. Although the exact amount of these fees remains undetermined, it is safe to say that, for the money invested and lost in the Petters Ponzi scheme, the Stewardship entities and managers received millions of dollars.

46. As of the date of the discovery of the Petters fraud by the FBI, the two SSR funds had invested—and lost—$6,950,000 with the Stewardship funds in principal alone. SSR has requested a refund of these amounts, but has received nothing.

47. The ArrowHead Capital Partners, II, LP, Confidential Private Placement Memorandum ("ArrowHead PPM"), dated April 11, 2003, was, again, strangely similar. It provided that the "investment objective" of the fund was "to achieve advantageous rates of return through purchasing short-term, secured notes relating to the financing of pre-sold, new, name-brand products," and to "achieve a consistent rate of return on the basis of the interest rates on these notes." The ArrowHead PPM provided further that:

a. The Fund may buy Notes to finance purchases of underlying merchandise (defined below). Only new, name-brand products will be considered for purchase. Acceptable product categories include sporting goods, electronic goods, household goods, clothing and apparel or other goods approved by the General Partner;

b. Merchandise will be pre-sold to inventory purchasers before the related Note is purchased (emphasis added);

c. Inventory purchasers will have a Dun & Bradstreet credit rating of "IA" or better ("Eligible Obligors"); and

d. Merchandise will be property- and casualty-insured while in transit for not less than the Note principal amount.

There is no record that any ArrowHead Defendant ever did anything to confirm that the "underlying

1 A "basis point" is 1/100th of a percentage point; thus 100 basis points equal one percent.

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merchandise" ever existed. As it turned out, of course, it did not. As of the date of the discovery by the FBI of the Petters fraud, the SSR ID Fund had invested—and lost—a total, in principal alone, of $5,000,000. SSR ID has requested the refund of these amounts but has received nothing.

48. The ArrowHead Defendants were well compensated for failing to perform their fiduciary duties to the investors holding limited partnership interests. First, the General Partner charged each limited partner a Management Fee of one percent per annum, payable monthly. In addition, limited partners were charged another ten percent as a Performance Allocation.

The Petters Fraud

49. During September 2008, a federal investigatory task force assembled in Minnesota uncovered a massive fraudulent Ponzi scheme that Tom Petters began as early as 1993. Petters and his co-conspirators have been charged with multiple federal felonies and more charges are expected. Four of those co-conspirators have pleaded guilty to fraud, money laundering and other charges. Petters remains incarcerated awaiting trial with losses from his scam estimated in the billions.

50. As described in FBI affidavits, this scam was a completely fictitious sale of high-definition flat screen television sets and other expensive electronic consumer products by the Petters organization to retail wholesale clubs like Sam's Club, Costco Wholesale, and BJ's Wholesale Club. Petters and his co-conspirators would prepare phony purchase orders and invoices to give to investors who loaned money to Petters. These investors included numerous investment funds that, in turn, obtained money from private investors. These investment funds were fiduciaries of the private investors from whom they solicited funds. And a particularly attractive feature for investment funds was the promise that the loans were protected by the purchase of partial or full credit insurance and that they were secured by the inventory and accounts receivable.

51. As described in the October 2, 2008, Affidavit of an FBI Special Agent (the "FBI

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Affidavit"):

> The primary method of effectuating the fraud scheme involves PETTERS, his employees, and his associates creating fictitious documents and then providing these documents to current and potential investors as evidence that PCI is buying and selling substantial goods and merchandise which PCI will then resell. In many instances, funds from investors are sent directly to the purported supplier of the merchandise, NIR or ENCHANTED.[2] In turn, NIR or ENCHANTED direct the funds to PCI (less a commission) without any merchandise. PETTERS and other persons then fraudulently pledge the non-existent goods and merchandise as security for the investments.

52. Although the scam was elaborate, the ease with which it was uncovered is shocking. FBI agents simply took the phony purchase orders and invoices directly to the retailers like Sam's Club and Costco who Petters claimed were buying his merchandise to confirm whether those purchase orders and invoices were legitimate. The retailers were able to show that they had never ordered or received any of these goods. Indeed, according to the FBI Affidavit, Petters and his co-conspirators knew this could happen and discussed it among themselves: "If investors send auditors out to visit warehouses where the merchandise is located, . . . the scheme would implode."

53. Plaintiffs did not know any of this when they purchased limited partnership interests in the funds—they were, in fact, told that they could have only a limited review of transactional documentation because the transactions were subject to confidentiality agreements and were prohibited (or strongly discouraged) from contacting the retailers or Petters.[3] Instead, the Hedge Fund Defendants gave Plaintiffs offering memoranda touting the diligent and comprehensive steps the Hedge Fund Defendants would take before loaning the funds' monies and the efforts they claimed were in place to safeguard the funds' assets.

54. The Hedge Fund Defendants actually took none of these steps and provided no

2 As detailed in the FBI Affidavit, Nationwide International Resources, Inc ("NIR") and Enchanted Family Buying Company ("Enchanted") were a part of the fraud perpetuated by Petters.

3 This, of course, made the investors more dependent upon the Hedge Fund managers to make sure that the transactions were being adequately verified and monitored.

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safeguards. Nor did any of the other Defendants take steps to safeguard the Plaintiffs' investments, despite their fiduciary duties to monitor or verify the Hedge Fund Defendants' investments. While a simple telephone call by the Hedge Fund Defendants or their auditors to any of the supposed "retail customers" would have revealed that the purchase orders and invoices were complete fabrications, no one apparently made that call. Indeed, the Hedge Fund Defendants performed little, if any, due diligence regarding the Petters transactions, despite their fiduciary duties to Plaintiffs and the complicated due diligence process they advertised in their PPMs. Defendants' utter failure to do anything to verify the legitimacy of the notes and the transactions underlying those notes is all the more egregious given that Petters was the primary—or in many cases, the only—distribution company to which the Hedge Fund Defendants loaned Plaintiffs' money.

55. The Hedge Fund Defendants not only literally handed over millions of dollars to Petters with no investigation or supervision, contrary to their assurances, there was no collateral for the loans to protect the investors.

56. Yet the Hedge Fund Defendants paid themselves tens of millions of dollars in management and performance fees for years, while Plaintiffs' investments became almost entirely worthless.

57. The annual financial statements of the Hedge Fund Defendants were materially false and misleading in that they overstated both asset values and the members' or partners' capital accounts. In addition, they stated that the promissory notes were secured by collateral.

58. Defendants McGladrey, Ernst & Young, LLP, Ernst & Young, Ltd. (Bermuda), Ernst & Young Ltd. (Bahamas), and Ernst & Young Americas, LLC (collectively "E&Y") and Kaufman (collectively, the "Auditor Defendants") served as the Hedge Fund Defendants' outside auditors at all relevant times. Kaufman audited the financial statements of the Palm Beach hedge funds between

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the calendar years ending December 31, 2003 through December 31, 2007 and performed certain "Agreed Upon Procedures" for Palm Beach beginning as early as September of 2006 through at least April of 2008. Kaufman also compiled monthly financial statements for Palm Beach through at least May of 2008. E&Y audited the financial statements of Stewardship for the calendar years ending December 31, 2005 through December 31, 2007. ArrowHead's financial statements, which had been audited by Altschuler, Melvoin & Glasser, LLP ("AMG") for the years ending December 31, 2001 through December 31, 2005, and were audited by McGladrey for the years ending December 31, 2006 and 2007 after McGladrey acquired AMG's practice in November of 2006.

59. When a certified public accounting firm audits a client's financial statements, it has a duty to exercise due professional care, professional skepticism and objectivity, and to develop and follow procedures, analysis, and tests to verify the legitimacy and accuracy of the client's assets, liabilities, operations, and cash flow. The Auditor Defendants failed in these duties when they conducted audits that were so superficial and perfunctory that they failed to detect that all of the assets reflected in the Hedge Fund Defendants' financial statements were a complete and total sham. For years the Auditor Defendants disseminated audit opinions falsely representing that the financial statements "present fairly, in all materials respects," the Hedge Fund Defendants' financial position, results of operations, and shareholders' capital.

60. The bottom line is simple. The Hedge Fund Defendants made materially false and misleading statements in their promotional materials and failed to perform as they had promised they would. The principals of the Hedge Fund Defendants failed to exercise due diligence and profited from their failure. The Auditor Defendants failed to fulfill their professional duties and grossly overstated and mischaracterized the financial conditions of the investments. The sales people sold and offered for sale these investments through false and misleading statements and omissions of

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material fact and they materially aided in the sale of these investments.

The Funds' Transactions With Petters Were Entirely Fictitious

61. The Plaintiffs placed millions of dollars with the Hedge Fund Defendants for investment. The Hedge Fund Defendants, in turn, gave that money to Petters and his affiliates.

62. In fact, as set out in this Petition, the transactions with Petters were completely bogus. There was no merchandise purchased or sold with the monies paid by the Plaintiffs; thus, there was no collateral securing the loans to the Hedge Funds Defendants as they had represented. Moreover, the purchase orders and invoices purportedly underlying the transactions were entirely fictitious; consequently, the UCC filings and loan documents associated with the transactions were based on fraudulently prepared documents. This left the Plaintiffs and their investors with no security or other protections for their investments.

The Auditor Defendants Failed To Perform Their Duties

63. McGladrey, through its predecessor AMG,[4] conducted audits of ArrowHead's financial statements for the calendar years ending December 31, 2001 though December 31, 2005. McGladrey audited ArrowHead's financial statements for the years ending December 31, 2006 and 2007. In the context of these audits, Plaintiffs were furnished with clean audit opinion letters (collectively, the "Audit Reports"). AMG's and McGladrey's Audit Reports represented that the Fund's financial statements presented fairly, in all material respects, its financial position and the results of its operations, changes in shareholders' capital, and the Fund's cash flow for each year, in conformity with generally accepted accounting principles ("GAAP").

64. McGladrey's Audit Reports, in fact, were specifically addressed to the "partners of

4 McGladrey acquired AMG's practice in November of 2006.

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ArrowHead Capital Partners II, LP." McGladrey thus expected and intended SSR, as a limited partner or membership interest holder in ArrowHead, to rely on the thoroughness, accuracy, integrity, independence, and overall professional caliber of its audits.

65. E & Y conducted audits of Stewardship's financial statements for the calendar years ending December 31, 2005 through 2007. In the context of these audits, the Plaintiffs were furnished with Audit Reports. The Audit Reports issued by E & Y represented that the Fund's financial statements presented fairly, in all material respects the Stewardship Fund's financial position and the results of its operations, changes in shareholders' capital, and the Fund's cash flow for each year, in conformity with GAAP.

66. E & Y's Audit Reports were specifically addressed "To the Members of Stewardship Credit Arbitrage Fund, LLC." E & Y thus expected and intended SSR to rely on the thoroughness, accuracy, integrity, independence, and overall professional caliber of its audits.

67. Kaufman conducted audits of Palm Beach's financial statements for the calendar years ending December 31, 2005 through 2007. In the context of these audits, the Plaintiffs were furnished with Audit Reports. The Audit Reports issued by Kaufman represented that the Funds' financial statements presented fairly, in all material respects, their financial position and the result of their operations, changes in shareholders' capital, and each Fund's cash flow for each year, in conformity with GAAP.

68. Kaufman's Audit Reports were specifically addressed "To the Partners of Palm Beach Finance Partners, LP" and "To the Partners of Palm Beach Finance II, LP." Kaufman thus expected and intended SSR to rely on the thoroughness, accuracy, integrity, independence, and overall professional caliber of its audits.

69. In performing audits of financial statements, certified public accountants are required

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to follow generally accepted auditing standards ("GAAS") in arriving at their opinion that the financial statements are fairly stated in accordance with GAAP. When performing an independent audit of a client's financial statements, a professional certified public accountant is obligated to follow these standards, among others:

i. In all matters relating to the performance of the audit, the auditor is obligated to exercise and maintain professional skepticism and an independence in mental attitude;

ii. Due professional care must be exercised in the performance of the audit and the preparation of the audit report;

iii. A sufficient understanding of internal controls must be obtained to plan the audit and determine the nature, timing, and extent of tests to be performed;

iv. Sufficient competent evidential matter must be obtained by inspection, observation, inquiries, and confirmations to afford a reasonable basis for an opinion regarding the financial statements under audit. This includes seeking and obtaining reliable information from independent sources, including third parties; and

v. The auditor has the responsibility to plan, supervise, and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether caused by error or fraud.

70. In performing their audits of the Funds' financial statements, the Auditor Defendants breached their duties to Plaintiffs by violating one or more applicable auditing standards, including those identified above. For example, it is utterly inexplicable that the Auditor Defendants issued unqualified audit opinions, purportedly after conducting audits in accordance with GAAS, when bogus purchase orders and invoices could instantly be identified as fraudulent by the retailers supposedly ordering this merchandise. Any reasonable and minimal investigation of third party participants, as required by GAAS, would have uncovered this thinly veiled fraud during any of the multiple audits supposedly performed by the Auditor Defendants.

71. As set forth above, the Auditor Defendants audited the annual financial statements of

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the Hedge Fund Defendants. These financial statements materially misstated the assets of the Hedge Fund Defendants and the "value" of the promissory notes. In addition, the financial statements materially misstated the value of the members' and partners' capital accounts. The Auditor Defendants' footnotes to the financial statements falsely stated that there was collateral securing the promissory notes. Had even the simplest of audit procedures been undertaken (such as confirming the existence of the "collateral"), the Petters Ponzi scheme would have been stopped in its tracks many years ago.

72. In addition, the Auditor Defendants' Audit Reports for the Funds were materially false and misleading inasmuch as they grossly overstated and otherwise mischaracterized the financial results and the condition of the Funds. Among other things, the Funds' financial statements, as reviewed, approved, audited, and disseminated by the Auditor Defendant, materially misstated: (i) the fair value of the Funds' promissory notes; (ii) shareholders' or members' capital accounts; and (iii) the Funds' total assets. Lastly, the footnotes to the audited financial statements falsely stated that the promissory notes were secured by collateral.

All Defendants' Knowing or Reckless Conduct

73. Defendants' false and misleading statements, failures to act, and breaches of fiduciary duties, as described above, were made knowingly and/or recklessly. Viewed alone or collectively, Defendants' culpable state of mind is demonstrated by the following facts and circumstances:

A. Defendants' repeated failures to investigate and verify the validity of the Funds' transactions demonstrates knowing or reckless conduct. As described above, Defendants affirmatively represented that they exercised extensive "monitoring" of the Funds' transactions and implemented "protections" for the benefit of the Funds and their investors, yet they performed few, if any, of the promised procedures. Upon information and belief, Defendants did not verify the accuracy of the purchase orders, invoices, bills of sales and other documents associated with the Funds' transactions with Petters; they did not visit any warehouses to verify that there was actually merchandise securing the Petters transactions; and they did not contact retailers to

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verify purchases of goods or the validity of Accounts Receivable generated by the "sales" that purportedly secured the Funds' loans. At a minimum, Defendants acted with gross recklessness.

B. Defendants' ignorance of clear and obvious warning signs of fraud demonstrates knowing or reckless conduct. Given their access to the Funds' accounts and bank statements, the Hedge Fund Defendants knew or should have known that the principal and interest payments received came not from the ultimate buyer of merchandise as represented in the Funds' offering documents, but from Petters and his sham companies. The fact that the Hedge Fund Defendants did not receive payments from any retail buyers was a clear and obvious warning sign that no merchandise was being sold by Petters, but that Petters, employing a Ponzi scheme, was using monies from one investor to pay off loans owed to others.

C. Defendants' financial motives further demonstrate their knowing or reckless conduct. The Hedge Fund Defendants had enormous financial incentives to misrepresent the Funds' strategies and their work on each Fund's behalf. Each of the Funds charged annual or quarterly management fees, and each charged additional fees for supposed investment "profits," which, as we have seen, were completely illusory. Likewise, the Auditor Defendants received substantial fees for the work they performed on the financial statements of the Hedge Fund Defendants. The Defendants were too well paid to be concerned or careful about investors' interests.

Loss Causation

74. The misrepresentations and misconduct described above directly and proximately caused Plaintiffs to lose tens of millions of dollars. The absence of collateral and credit insurance for these transactions left Plaintiffs with no security when the Petters notes were exposed as worthless. Thus, the protections and safeguards Defendants promised their respective limited partners or members holders simply did not exist.

75. Similarly, Defendants' abject failure to perform due diligence and "monitor and verify" the Petters transactions directly caused or contributed to Plaintiffs' losses. Had such due diligence, monitoring, and verifying actually been done, Plaintiffs would not have lost money in the Petters Ponzi scheme. Instead, investor monies were casually handed over to Petters without the slightest assurance that money would be returned, let alone that Plaintiffs would realize a meaningful

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return on their investments.

76. Defendants concealed their repeated and inexcusable failures to monitor and verify the Funds' transactions with Petters or to employ protections and safeguards in those transactions from Plaintiffs who, as a result, sustained direct and immediate losses in their investments.

77. In addition, Defendants could have readily anticipated that, if there were no *bona fide* transactions with Petters (and no attempt to determine that there were such transactions), no collateral securing the Funds' transactions, and no due diligence concerning the Funds' investments, investors in these transactions would suffer losses—as Plaintiffs have. Plaintiffs' massive losses, were, thus, eminently foreseeable to these Defendants.

Defendants' Negligence, Mismanagement and Breaches of Fiduciary Duties

78. The Hedge Fund Defendants owed Plaintiffs fiduciary duties of due care, good faith, loyalty and complete candor. Among other things, these Defendants: (i) reviewed, approved and disseminated offering and promotional materials to Plaintiffs regarding the Funds; (ii) had unique and superior access to financial and operational information regarding the Funds' investments, access Plaintiffs did not have; (iii) were ostensibly in communication with Petters and the counterparties that engaged in purported transactions with Petters, communications that Plaintiffs were not privy to; (iv) were paid management, performance and directors' fees for their purported work on behalf of the Fund, some of which were derived from monies Plaintiffs' members paid for their limited partnership or membership interests; (v) represented to Plaintiffs that they were engaging in due diligence in purchasing notes for the Fund and "monitoring" the Funds' investments; and (vi) and had exclusive decision making authority regarding the Fund's investments.

79. More important, the Auditor Defendants and sales people like Jonathan Spring, in the course of their business and profession, supplied false and misleading information for the guidance

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of investors like the Plaintiffs. The Auditor Defendants and sellers of these investments knew that their information was being directed to investors—they even had direct communications with Plaintiffs. The Auditors, therefore, knew Plaintiffs were relying on their work and expertise regarding the Hedge Funds Defendants' financial results, investments and operations. When the Auditor Defendants provided Plaintiffs with clean Audit Reports for each relevant year, these Defendants knew that Plaintiffs were relying upon their expertise in deciding to invest and to continue their investment in the Hedge Fund Defendants' operations. The Auditor Defendants and sales people, in fact, intended that the investors rely upon the information they were providing. Plaintiffs were justified in relying upon the information these Defendants provided, and through their reliance, the Plaintiffs were injured. These Defendants are, therefore, liable to the Plaintiffs for their losses because these Defendants failed to exercise reasonable care or competence in obtaining or communicating the information. *See* RESTATEMENT (SECOND) OF TORTS, §552.

Conditions Precedent

80. All conditions precedent to Plaintiffs' claims for relief have been performed or have occurred.

Request for Disclosure

81. Under Texas Rule of Civil Procedure 194, Plaintiffs request that Defendants disclose, within 50 days of the service of this request, the information or material described in Rule 194.2.

CAUSES OF ACTION

COUNT I:

Violations of the Texas Securities Act As To All Defendants

82. Under the Texas Securities Act, Tex. Rev. Civ. Stat. Art. 481-4(A), the term security is broadly defined to include: "[a]ny limited partner interest in a limited partnership … any certificate

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or instrument representing or secured by an interest in any or all of the capital, property, assets, profits or earnings of any company, investment contract, or any other instrument commonly known as a security ..." The Plaintiffs invested in the Palm Beach and ArrowHead funds by purchasing limited partnership interests. SCAF sold "membership interests" to Plaintiffs, but there is no doubt that, under Texas law, the SCAF interests were securities as well. Likewise, there is no doubt that the SCAF "memberships" fit the definition of an investment contract. An investment contract exists if the following factors are present:

a. an investment of money,

b. in a common enterprise,

c. with the expectation of profits, and

d. profits are realized solely from the efforts of others.

83. The SCAF investments easily fit within this definition.

84. The Texas Securities Act provides that sellers, control persons and aiders of sellers can be liable for the fraudulent sales of securities. The sale of a security is broadly defined in Texas to include "any act by which a sale is made." Tex. Rev. Civ. Stat. Art. 581-4.

85. Texas Rev. Civ. Stat. Art-581-33A(1) establishes liability for "a person who offers or sells a security . . . by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading" is liable to the purchaser either in rescission or for damages.

86. As set out above, each of the Hedge Fund Defendants sold securities—whether limited partnership interests or membership interests to Plaintiffs in Texas. Those sales, as shown above, were made through numerous false and misleading statements contained in the Hedge Fund Defendants' private placement memoranda provided to Plaintiffs. These statements included

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a. that the note proceeds would be "used to pay the cost of specific identified merchandise the issuer is acquiring";

b. that the Defendant would confirm that the underlying merchandise was acceptable; and

c. that the "merchandise" would be "pre-sold to inventory purchasers before the related Note is purchased."

All these statements were material and all were false. There was no merchandise, and no confirmation by the Hedge Fund Defendants of the existence of the merchandise. Thus, each of ArrowHead Capital Partners, II, LP, Palm Beach Finance Partners, LP, Palm Beach Finance II, LP, and Stewardship Credit Arbitrage Fund, LLC are liable to the Plaintiffs as sellers of securities under Tex. Rev. Civ. Stat. Art. 581-33(A)(1). Defendants PBFP Holdings, LLC, Olson, Spring, and Spring Investment Services, Inc. were also sellers under the Act as links in the chain of sale.

87. Tex. Rev. Civ. Stat. Art. 581-33(F)(1) provides that any "person who directly or indirectly controls a seller ... of a security is liable ... jointly and severally with the seller ... and to the same extent as if he were the seller ... unless the controlling person sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist." On information and belief, Defendants ArrowHead Capital Management, LLC, and Fry controlled ArrowHead Capital Partners II LP; Defendants Prevost and Harrold controlled Palm Beach Capital Management LP, Palm Beach Capital Management LLC, Palm Beach Capital Corp., Palm Beach Palm Beach Finance Partners LP, and Palm Beach Finance II LP; and Stewardship Investment Advisors, LLC, and Defendant Quan controlled Stewardship Credit Arbitrage Fund, LLC. Thus, each of these Defendants is liable to the Plaintiffs to the same extent as if they were the seller of the securities at issue.

88. Tex. Rev. Civ. Stat. Art. 581-33(F)(2) provides that any "person who directly or indirectly with intent to deceive or defraud or with reckless disregard for the truth or the law

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materially aids a seller ... is liable ... jointly and severally with the seller and to the same extent as if he were the seller." On information and belief, Defendants Metro I, LLC and McGladrey materially aided the sellers and control persons of ArrowHead; Defendants Acorn Capital Group LLC and Ernst & Young materially aided the sellers and control persons of Stewardship; and Defendants PBFP Holdings, LLC, Kaufman, Olson, Spring, and Spring Investment Services, Inc. materially aided the sellers and control persons of Palm Beach. Each is thus liable to the same extent as each of the Hedge Fund Defendants.

COUNT II

Breach of Fiduciary Duty As To The Hedge Fund Defendants

89. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

90. The Hedge Fund Defendants owed and breached their fiduciary duties to Plaintiffs.

91. As detailed above, a unique degree of trust and confidence existed between Plaintiffs and the Hedge Fund Defendants.

92. Because of, among other things, their access to internal financial information from, and about, the Funds and their investments, the Defendants named in this count possessed superior knowledge, skill, and expertise *vis a vis* investors in the Funds such as Plaintiffs. In addition, given what Defendants knew or should have known about the Funds and their investments and transactions, Defendants could reasonably anticipate the harm and damage Plaintiffs suffered as described above. The Defendants named in this Count thus had a duty to represent and safeguard the interests of Plaintiffs.

93. As a result of their conduct as alleged herein, the Defendants named in this count have failed to fulfill their fiduciary duties of, among other things, due care, complete candor fair

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dealing, and good faith.

94. As a proximate result of Defendants' breaches of their fiduciary duties, Plaintiffs have sustained damages, having lost all or substantially all of their investments in the Fund in an amount yet to be determined, and to be proven at trial.

95. The actions of the Defendants named in this count were willful and wanton, and Plaintiffs are entitles to punitive damages.

COUNT III:

Negligence As To All Defendants

96. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

97. All the Defendants owed Plaintiffs a duty of care, fair dealing, complete candor and good faith (among others) in connection with, *inter alia*, their obligations to investigate, oversee, and monitor and manage the Funds' investments and transactions. In addition, given what they knew or should have known about the Fund and their investments and transactions; Defendants could reasonably anticipate the damage Plaintiffs would suffer as described above.

98. Any reasonable and minimal due diligence by Defendants into the Funds' dealings with Petters would have uncovered the misconduct depicted herein.

99. Defendants acted negligently and violated their foregoing duties by failing to conduct reasonable and minimal due diligence into the Fund's investments.

100. As a direct and proximate result of Defendants' negligence, Plaintiffs have suffered damages in an amount yet to be determined, and to be proven at trial.

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COUNT IV:

Aiding Breach of Fiduciary Duties and Securities Fraud As To The Auditor Defendants

101. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

102. Each of the Hedge Fund Defendants owed fiduciary duties to the Plaintiffs and violated those duties as set forth above. In addition, as set forth above, the Hedge Fund Defendants have committed securities fraud and common law fraud, and the Plaintiffs suffered damages thereby.

103. As set forth herein, the Auditor Defendants aided and abetted the Hedge Fund Defendants' breach of duty to Plaintiffs, and Plaintiffs have been injured thereby. The Auditor Defendants are thus liable jointly and severally with the Hedge Fund Defendants that they aided for the damages suffered by Plaintiffs.

104. As the Funds' outside auditors, the Auditor Defendants had actual and intimate knowledge of the purported transactions and investments being made on behalf of the Funds, and, with that knowledge, knew of the frauds and breaches of duty perpetuated by the Hedge Fund Defendants, or were willfully ignorant to substantial evidence of those frauds and breaches of duty.

105. As set forth in detail elsewhere herein, the Auditor Defendants named in this count substantially and knowingly assisted in, or acquiesced or approved, the frauds and breaches of duty committed by the Hedge Fund Defendants. Plaintiffs have suffered damages proximately caused by the aiding and abetting of frauds and breaches of duty by the Auditor Defendants, in an amount to be proven at trial.

COUNT V:

Conspiracy to Breach Fiduciary Duties and to Commit Securities Fraud

106. Plaintiffs repeat and reallege each and every allegation contained in the foregoing

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paragraphs as if fully set forth herein.

107. Each of the ArrowHead Defendants and their auditors conspired with one another to breach the fiduciary duties owed by the ArrowHead Fund to Plaintiffs and to commit securities fraud from which Plaintiffs suffered damages; each of the Palm Beach Defendants and their auditors conspired with one another to breach the fiduciary duties owed the Palm Beach Funds to the Plaintiffs and to commit securities fraud from which Plaintiffs suffered damages, and each of the Stewardship Defendants and their auditors conspired with one another to breach the fiduciary duties owed by the Stewardship Fund to Plaintiffs and to commit securities fraud from which Plaintiffs suffered damages.

COUNT VI:

Negligent Misrepresentations Against all Defendants

108. Plaintiffs repeat and reallege each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

109. As set forth above, the Funds' Offering Memoranda and Audit Reports prepared and disseminated by Defendants and the sales people hawking their investments contained material omissions and misrepresentations made as statements of fact for the guidance of Plaintiffs in their investment decisions. Defendants knew, and intended, that Plaintiffs would rely upon the information Defendants were providing.

110. Plaintiffs, in justifiable reliance on these documents and the statements contained therein, purchased and retained securities in the Funds.

111. All Defendants failed to exercise reasonable care or competence when making these misrepresentations and omissions of material fact. In addition, Defendants owed a duty to Plaintiffs to communicate accurate information regarding the Fund.

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112. Plaintiffs as a result of their purchases and retention of these securities based upon Defendants' false and negligent representations and omissions, have sustained damages, having lost all or substantially all of their respective investments in the Funds attributable to Petters or Petters-related entities in an amount yet to be determined, and to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that the Court grant the following relief:

A. That Plaintiffs be awarded damages in an amount to be proven at trial.

B. That Plaintiffs be awarded their costs, disbursements, and attorneys' fees to the fullest extent permitted by law.

C. That Plaintiffs be awarded punitive damages, to the fullest extent permitted by law.

D. That the Court order such further or additional relief as it deems just, proper, and equitable.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFFS

JURY DEMAND

Plaintiffs demand a trial by jury in this cause and hereby provide notice to Defendants that their jury fee has been paid.