

CAUSE NO: _____

RONALD & LAVONNE ELLISOR, §
RICHARD KADLICK, SAILAJA URI §
KONDURI, ROBERT FICKS, LARRY §
MULLINS, TR DUNN FAMILY TRUST, §
DIANE & PAUL COLLINGS, KOHUR §
SUBRAMANIAN, TIMOTHY KOEHL, §
MARTIN GROSBOLL, DOUG & KAY §
SHAFFER, PHILLIP & ALISA K. JONES, §
KEVIN DEERING, ED & HELENA GRAY, §
JOHNNY & BETTY GAUNTT, TONY §
HUERTA, JACOB TSABAR, MARCUS §
ERICKSON, KURT EVERSON, PUBLIC §
EXPRESS, INC., TOMPKINS 2007 §
FAMILY PARTNERSHIP, LTD., §
GEORGE & MARENE TOMPKINS, §
RICHARD BURKHART, JAMES MAAS, §
JAMES & PATRICIA STEWART, §
HORLANDER, LLC, BOB & KATHY §
HORLANDER, DON & MARTHA KEIL, §
DR. GERALD CROUCH, PAUL & §
SIMONA WILLIAMS, STEPHEN COOK, §
FLORENCE REILEY, CARLOS §
BARBIERI, IVAN CURIEL, RAYMOND §
WARNER, JOHN WILLIS, HOWELL §
TOMPKINS, NADA POR NADA, LTD., §
JOSEPH & SARAH MILLER, and §
ELLIS COUCH, §

Plaintiffs,

v.

DAVID. G. WALLACE, COSTA BAJJALI, §
WALLACE BAJJALI DEVELOPMENT §
PARTNERS, L.P., WALLACE BAJJALI §
INVESTMENT FUND II, L.P., LAFFER §
FRISHBERG WALLACE ECONOMIC §
OPPORTUNITY FUND, L.P., and §
ARTHUR LAFFER, §

Defendants.

IN THE DISTRICT COURT

OF HARRIS COUNTY, TEXAS

_____ JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION

Come now Ronald & Lavonne Ellisor, Richard Kadlick, Sailaja Uri Konduri, Robert Ficks, Larry Mullins, TR Dunn Family Trust, Diane & Paul Collings, Kohur Subramanian, Timothy Koehl, Martin Grosboll, Doug & Kay Shaffer, Phillip & Alisa K. Jones, Kevin Deering, Ed & Helena Gray, Johnny & Betty Gauntt, Tony Huerta, Jacob Tsabar, Marcus Erickson, Kurt Everson, Public Express, Inc., Tompkins 2007 Family Partnership, Ltd., George & Marene Tompkins, Richard Burkhart, James Maas, James & Patricia Stewart, Horlander, LLC, Bob & Kathy Horlander, Don & Martha Keil, Dr. Gerald Crouch, Paul & Simona Williams, Stephen Cook, Florence Reiley, Carlos Barbieri, Ivan Curiel, Raymond Warner, John Willis, Howell Tompkins, Nada Por Nada, Ltd., Joseph & Sarah Miller, and Ellis Couch (hereinafter “Plaintiffs”) in the above-styled and numbered cause, complaining of David G. Wallace, Costa Bajjali, Wallace Bajjali Development Partners, L.P., Wallace Bajjali Investment Fund, II, L.P., Laffer Frishberg Wallace Economic Opportunity Fund, L.P., and Arthur Laffer (hereinafter “Defendants”) and for cause of action would show the Court and Jury as follows:

A. Discovery Control Plan

1. Plaintiffs intend to conduct discovery under Level 2 of Texas Rule of Civil Procedure 190.4.

B. Parties

2. Plaintiffs, Ronald and Lavonne Ellisor, are residents of Houston, Harris County, Texas.

3. Plaintiff, Richard Kadlick, is a resident of Houston, Harris County, Texas.

4. Plaintiff, Sailaja Uri Konduri, is a resident of Houston, Harris County, Texas.

5. Plaintiff, Robert Ficks, is a resident of Sugar Land, Fort Bend County, Texas.

6. Plaintiff, Larry Mullins, is a resident of Angleton, Brazoria County, Texas.

7. Plaintiffs, Diane and Paul Collings, individually and as representatives of the TR Dunn Family Trust, are residents of Houston, Harris County, Texas.
8. Plaintiff, Kohur Subramanian, is a resident of Sugar Land, Fort Bend County, Texas.
9. Plaintiff, Timothy Koehl, is a resident of Houston, Harris County, Texas.
10. Plaintiff, Martin Grosboll, is a resident of Humble, Harris County, Texas.
11. Plaintiffs, Doug and Kay Shaffer, are residents of Bacliffe, Galveston County, Texas.
12. Plaintiffs, Phillip and Alisa K. Jones, are residents of Spring, Harris County, Texas.
13. Plaintiff, Kevin Deering, is a resident of Argyle, Denton County, Texas.
14. Plaintiffs, Ed and Helena Gray, are residents of Montgomery, Montgomery County, Texas.
15. Plaintiffs, Johnny and Betty Gauntt, are residents of Pasadena, Harris County, Texas.
16. Plaintiff, Tony Huerta, is a resident of Houston, Harris County, Texas.
17. Plaintiff, Jacob Tsabar, is a resident of Houston, Harris County, Texas.
18. Plaintiff, Marcus Erickson, is a resident of Missouri City, Fort Bend County, Texas.
19. Plaintiff, Kurt Everson, is a resident of Missouri City, Fort Bend, Texas.
20. Plaintiff, Public Express, Inc., is a Texas corporation. Plaintiff, Tompkins 2007 Family Partnership, Ltd., is a Texas limited partnership. Plaintiffs, George and Marene

Tompkins, are residents of Houston, Harris County, Texas, who own and control the entities mentioned previously.

21. Plaintiff, Richard Burkhart, is a resident of Flower Mound, Denton County, Texas.

22. Plaintiff, James Maas, is a resident of Seabrook, Harris County, Texas.

23. Plaintiff, James and Patricia Stewart, are residents of San Antonio, Bexar County, Texas.

24. Plaintiff, Horlander, LLC, is a Texas limited liability company. Plaintiffs, Bob and Kathy Horlander, are residents of Houston, Harris County, Texas, who own and control the entity mentioned previously.

25. Plaintiffs, Don and Martha Keil, are residents of Seguin, Guadalupe County, Texas.

26. Plaintiff, Dr. Gerald Crouch, is a resident of Shavano Park, Bexar County, Texas.

27. Plaintiffs, Paul and Simona Williams, are residents of Houston, Harris County, Texas.

28. Plaintiff, Stephen Cook, is a resident of Houston, Harris County, Texas.

29. Plaintiff, Florence Reiley, is a resident of Bellaire, Michigan.

30. Plaintiff, Carlos Barbieri, is a resident of Katy, Fort Bend County, Texas.

31. Plaintiff, Ivan Curiel, is a resident of Houston, Harris County, Texas.

32. Plaintiff, Raymond Warner, is a resident of Spring, Harris County, Texas.

33. Plaintiff, John Willis, is a resident of Katy, Harris County, Texas.

34. Plaintiff, Howell Tompkins, is a resident of Harris County, Texas.

35. Plaintiff, Nada Por Nada, Ltd., is a Texas limited partnership. Plaintiffs, Joseph & Sarah Miller, are residents of Bexar County, Texas, who own and control the entity mentioned previously.

36. Plaintiff, Ellis Couch, is a resident of Harris County, Texas.

37. Defendant, David G. Wallace, is a resident of Sugar Land, Fort Bend County, Texas; he may be served with process at his residence at 19 Sweetwater Court, Sugar Land, Texas 77479.

38. Defendant, Costa Bajjali, is a resident of Missouri City, Fort Bend County, Texas; he may be served with process at his residence at 2911 Waters Lake Lane, Missouri City, Texas 77459.

39. Defendant, Wallace Bajjali Development Partners, L.P., is a domestic limited partnership located at 1200 Soldiers Field Drive, Suite 20, Sugar Land, Texas 77479; it may be served by serving its registered agent, David G. Wallace, 13131 Dairy Ashford, Suite 175, Sugar Land, Texas 77478.

40. Defendant, Wallace Bajjali Investment Fund, II, L.P., is a domestic limited partnership located at 1200 Soldiers Field Drive, Suite 20, Sugar Land, Texas 77479; it may be served by serving its registered agent, David G. Wallace, 13131 Dairy Ashford, Suite 175, Sugar Land, Texas 77478.

41. Defendant, Laffer Frishberg Wallace Economic Opportunity Fund, L.P., is a domestic limited partnership located at 1200 Soldiers Field Drive, Suite 20, Sugar Land, Texas 77479; it may be served by serving its registered agent, David G. Wallace, 13131 Dairy Ashford, Suite 175, Sugar Land, Texas 77478.

42. Defendant, Arthur Laffer, is a resident of the State of Tennessee.

C. Jurisdiction

43. This Court has jurisdiction over this lawsuit because the amount in controversy exceeds this Court's minimum jurisdictional requirements.

D. Venue

44. Venue for this suit is proper in Harris County under Civil Practice & Remedies Code §15.002 and §15.005.

E. Facts

45. Defendants David Wallace and Costa Bajjali are the principals, sole managers, and owners of the general partner in Wallace Bajjali Development Partners, LP ("WBDP") and in Wallace Bajjali Investment Fund II, LP. ("WBIF II"). They are also the principals and managers, with Arthur Laffer, of the Laffer Frishberg Wallace Economic Opportunity Fund, L.P. ("LFWEOF"). Mr. Laffer lent his name to Wallace and Bajjali for a fee to increase the credibility of their offerings, and effectively vouched for the credibility of the limited partnerships.

46. The limited partnerships are investment vehicles run by Defendants Wallace and Bajjali, with endorsement and participation from Laffer. They started out primarily in real estate investments, and solicited investors for their various real estate investments. In September 2006, WBIF II made its first investment in Business Radio Network, LP ("BizRadio") in the form of advancing convertible Promissory Notes. By December 31, 2006, WBIF had advanced to BizRadio \$1,493,170.00, and by June 30, 2007 the invested balance in BizRadio was up to \$3,157,170.00. LFWEOF had contributed significantly more than that. At that time, BizRadio was looking to purchase radio stations in both Houston and Dallas/Fort Worth at an estimated cost of \$12,000,000.00.

47. These investments in BizRadio arose from the close relationship between Defendants Wallace and Bajjali, and the principals in BizRadio, Daniel Frishberg and Albert Kaleta. Frishberg and Kaleta were investment counsellors, and Frishberg was an on-air personality in the business talk radio circuit. The BizRadio business was a Ponzi scheme constructed with the support of Defendants. BizRadio never generated sufficient revenue through the sale of airtime to keep itself a viable entity. BizRadio was able to exist through the continuous influx of additional capital until it eventually collapsed in upon itself. Defendants were the primary source of BizRadio's funds. Early on, Defendants were aware that BizRadio was unable to support itself and was a Ponzi scheme. In the Wallace Bajjali Investment Fund II, LP, June 30, 2007 Investor Report, it says "until such time as a significant, equity partner is identified, WBIF II will supplement BizRadio's cash flow to cover monthly operating expenses." No such "significant, equity partner" was ever identified. Rather, the same group of individuals who had invested in other Wallace Bajjali investments, or who had other investments with Frishberg or Kaleta were repeatedly solicited for additional investments with returns which Defendants knew were not possible except through a pyramid scheme. Defendants continued to provide funding to BizRadio to the detriment of the Investors for whom they served as agent, and to whom they owed a fiduciary duty long after they were aware that the promised returns were false and that BizRadio was perpetrating a fraud on the investors. Each of the Plaintiffs in this case was one of those investors.

48. On November 13, 2009, the Securities and Exchange Commission ("SEC") commenced an action against Kaleta and his investment fund, Kaleta Capital Management ("KCM"), alleging multiple violations of the antifraud provisions of the federal securities laws arising from the fraudulent offering of promissory-note securities. A Receiver was appointed and

the Receivership was expanded to include BizRadio and Frishberg's investment fund, DFFS. The SEC filed additional enforcement actions including *SEC v. David Gordon Wallace Jr. and Costa Bajjali*, Civil Action No. 4:11-cv-1932, in the United States District Court for the Southern District of Texas, Houston Division, alleging violations of §17(a)(2) and (3) of the Securities Act of 1933 (the "Securities Act"). The basis of this action was "funds fraudulently obtained by KCM from investors, and other tort claims related to the business dealings between certain Wallace Bajjali Parties" and Frishberg and Kaleta. KCM was not the only entity fraudulently obtaining funds from investors, WBDP and WBIF II and LFWEOF were part of the same effort.

F. Negligence and Negligent Misrepresentation

49. Defendants acted as the facilitators in raising money for the purchase and operations of BizRadio. Defendants and/or their agents generated all of the documents used in these transactions. There are significant irregularities in these documents of which Defendants knew or should have known. These irregularities have significantly impaired Plaintiffs' ability to assert priority standing in regard to the assets of the Radio Station, the primary remaining assets of BizRadio. The irregularities have rendered the promissory notes and security agreements essentially worthless. Defendants also failed to take the necessary steps to perfect Plaintiff's purported security interests.

50. The loan documentation represents that the funds obtained from Plaintiffs would be applied in certain ways and would be protected with perfected security interests in collateral. Defendants failed in their duty to ensure that the transactions were carried out as represented.

51. Defendants negligently misrepresented to Plaintiffs that the investments in the defendant limited partnerships were suitable investments for Plaintiffs. That representation was

false, was made negligently, was made in a business transaction, and was made to induce Plaintiffs to rely on its accuracy.

52. Defendants negligently misrepresented to Plaintiffs that investments would be made at an arms-length basis and that they would be made for the purpose of generating a profit. That representation was false, was made negligently, was made in a business transaction, and was made to induce Plaintiffs to rely on its accuracy.

53. Plaintiffs have suffered substantial damages as a result.

G. Breach of Fiduciary Duty

54. Under Texas law the agent/principal relationship gives rise to fiduciary duties as a matter of law. Defendants were the agents for Plaintiffs in all of the transactions at issue in this suit; therefore, Defendants owed Plaintiffs a fiduciary duty in their dealings with Plaintiffs in regard to the various loans made to, and investments in, BizRadio. Defendants breached that duty to Plaintiffs through misrepresentations regarding the quality and nature of the investments and the character of the individuals and entities involved, and/or in failing to disclose material facts regarding the quality and nature of the investments and the character of the individuals and entities involved. Defendants knew or should have known that BizRadio was not generating revenue sufficient to maintain its operations, much less to pay its spiralling debt. Despite this knowledge and obligation to disclose such information to its principals, Defendants said nothing and allowed their principals' loans and investments be wasted with no reasonable expectation of recovery. Likewise, Defendants knew that Plaintiffs had already invested significant sums in BizRadio, but failed to disclose to investors that money entrusted to WBIF II and WBDP was being redeployed to BizRadio to prop up the scheme.

55. Defendants made profits in soliciting and acquiring money for BizRadio, which continued even after Defendants had knowledge that BizRadio was insolvent. Defendants had an obligation to disclose these facts to their principals and a duty to fully apprise the principals of the risks in proceeding with these transactions with BizRadio. Instead of alerting its principals, Defendants conspired with BizRadio, Dan Frishberg, and Al Kaleta to continue raising funds for BizRadio. Defendants made profits off these transactions at the same time knowing their principals' investments would be lost.

56. Plaintiffs have suffered substantial damages as a result.

H. Statutory Fraud

57. In addition, or in the alternative, Plaintiffs assert a cause of action for violations of Section 27.01 of the Texas Business and Commerce Code.

58. By reason of the foregoing, Defendants have violated, conspired to violate, aided and/or abetted violations of Section 27.01 by making false representations of material fact, or omitting to state material facts necessary in order to make the statements which were made not misleading, in light of the circumstances in which the statements were made.

59. Such false representations were made for the purpose of inducing Plaintiffs to enter into contracts for the purchase of BizRadio securities, or to induce Plaintiffs into providing loans to BizRadio. Plaintiffs relied upon these false representations in entering into such contracts

60. Defendants:

- a. made such false representations knowingly and with actual awareness of the falsity thereof, and/or,
 - (i) had actual awareness of the falsity of the representations made by one or more other Defendant,

- (ii) yet failed to disclose the falsity of the representations, and
- (iii) benefited from the false representations.

61. Plaintiffs have suffered substantial damages as a result.

I. Common Law Fraud

62. In addition or in the alternative, Plaintiffs assert a cause of action for common law fraud (including fraud in the inducement, fraud in the transaction, conspiracy to defraud and aiding and abetting a fraud).

63. By reason of the foregoing, defendants have engaged in common law fraud by:
- a. employing devices, schemes, conspiracies and artifices to defraud,
 - b. Making untrue statements of material facts or failing to state material facts necessary to make the statements made not untrue in light of the circumstances under which they were made,
 - c. engaging in acts, practices, and a course of business which operated as a fraud or deceit upon Plaintiffs in connection with their investments in, and loans made to BizRadio.

64. Each of the Defendants knew or recklessly disregarded the fact that the above described acts, practices, misleading statements and omissions would be relied upon by Plaintiffs to their detriment in making decisions regarding investments in and/or loans to BizRadio and the Defendants.

65. Each of the Defendants knew or recklessly disregarded the fact that as Plaintiffs' agents for these transactions, Plaintiffs were relying on any statements, representations or documents provided by Defendant, and Defendants knew or recklessly disregarded the fact that Plaintiffs did not have alternative sources of information regarding these loans and investments.

66. Each of the Defendants knew or recklessly disregarded that BizRadio was a Ponzi scheme which had not and would not generate the revenues represented to investors including Plaintiffs.

67. Defendants represented that funds invested by Plaintiffs were being loaned to third parties with fully-perfected security interests in assets with value in excess of the amount of the loans. This representation was knowingly false when made.

68. Defendants failed to disclose material facts that were of critical importance to Plaintiffs, including, but not limited to:

- a. That funds were being loaned to BizRadio;
- b. That loans were being made through Wallace Bajjali entities so that promissory notes could be held in a Fidelity account so that Frishberg, et al. could continue to charge management fees on the principal;
- c. That BizRadio was a “loss leader” for the RIA business;
- d. That BizRadio had ownership interests in the Wallace Bajjali funds;
- e. That Wallace and Bajjali had ownership stakes in BizRadio;
- f. That the Wallace Bajjali funds received most of their capital from BizRadio;
- g. That Defendants had a conflict of interest in dealing with BizRadio because of the mutually dependent relationship between the two groups of entities;
- h. That more than 30% of the WBIF II and LFWE OF assets were being invested in BizRadio; and

- i. That investors' funds were being used to pay down purchase money debt for the radio station rather than for operations expenses for BizRadio.

69. Plaintiffs have suffered substantial damages as a result.

J. Violations of the Texas Securities Act

70. Plaintiffs assert this cause of action for violations of the Texas Securities Act, Tex. Rev. Civ. Stat. Ann. Art 581-1 et seq., and in particular 581-33 of the Texas Securities Act.

71. By reason of the foregoing Defendants have violated, conspired to violate, and/or aided and abetted violations of Article 581-33 by making untrue statements of material fact, or omitting to state material facts necessary in order to make the statements which were made not misleading, in light of the circumstances in which the statements were made.

72. The Defendants' statements, representations, and advice materially misrepresented or failed to disclose numerous material facts.

73. By reason of their conduct and omissions, Defendant violated, aided, abetted or controlled another who violated Article 581-33 of the Texas Securities Act and the Defendants are jointly and severally liable to Plaintiffs.

74. Plaintiffs have suffered substantial damages as a result of Defendants acts and omissions.

K. Civil Conspiracy

75. Defendants conspired with the principals in BizRadio to defraud Plaintiffs. Upon information and belief, Defendants were aware that BizRadio was a business doomed to failure if it lost its continued sources of new capital. The documents regarding the loans provided by Plaintiffs are so grossly defective that it appears more likely an intentional error rather than a mistake. The fact that Defendants were also the agent handling the Industrial Info Resources

(“IIR”) loan for the original acquisition of KTEK provides further evidence of conspiracy. The documents in that transaction contain no mistakes, and all of the necessary steps to perfect IIR’s security interest were handled appropriately.

76. The fact that there are no similar irregularities in the documents relating to the IIR loan suggest that Defendants conspired with the principals in BizRadio, who never intended to repay Plaintiffs’ loans. The defective loan documents provided BizRadio an excuse to deny the debts.

L. Damages

77. The foregoing paragraphs are incorporated herein for all purposes.

78. As a proximate result of Defendants’ breaches, negligence, misrepresentations, fraud and conspiracy, Plaintiffs have been harmed and have incurred damages in an amount equal to the amount each Plaintiff invested with Defendants, plus interest, plus loss of other investment opportunities.

79. Plaintiffs seek exemplary damages for Defendants’ fraud. Plaintiffs further plead for all costs and attorney’s fees allowed by law.

M. Prayer

80. For the reasons stated above, Plaintiffs ask the Court to issue citations for Defendants to appear and answer, and that Plaintiffs be awarded a judgment against Defendants for the following:

- a. recovery of investment lost;
- b. recovery for loss of investment opportunities;
- c. exemplary damages;
- d. attorney’s fees and expenses;

- e. pre-judgment and post judgment interest at the maximum rate allowed by law;
- f. costs of court; and
- g. such other relief to which Plaintiffs may be justly entitled.

Respectfully submitted,

SCHMIDT LAW FIRM, PLLC

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