SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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In the Matter of the Application of

Index No.: 157170/2019

FGLS Equity LLC, a New York State Limited Liability Company in Dissolution, by its Managing Member and Liquidator, Steven Turchin,

VERIFIED ANSWER WITH COUNTERCLAIMS

Petitioner,

For a decree judicially winding up the affairs of FGLS EQUITY LLC pursuant to Section 703(a) of the New York Limited Liability Company Law and for Declaratory Relief

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-and-

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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Sajust, LLC, and Larry Warshaw, as the sole Trustee of Carol Ann Enterprises, Inc. Pension Plan,

Respondents-Counterclaimants,

-against-

FGLS EQUITY, LLC

Petitioner – Counterclaim Defendant.

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Respondents - Counterclaimants Sajust, LLC ("Sajust") and Larry Warshaw, as the sole Trustee of Carol Ann Enterprises, Inc. Pension Plan ("Carol Ann," collectively with Sajust, "Counterclaimants"), by and through their undersigned counsel, allege as follows:

1. Admit that Steven Mendelow formed, operated and controlled an entity called FGLS Equity, LLC, deny that FGLS was formed in 2002 and all other allegations. Publicly available records establish that FGLS was not incorporated until March 4, 2003. Steven Mendelow did open an account with Bernard L. Madoff Investment Securities, LLC ("BLMIS") in the name of FGLS in or around November 2002, even though no such entity existed at the time. Further, the

statement that Mendelow was an accountant that "practiced at Konigsberg & Wolf," a New York accounting firm is misleading. Mr. Mendelow was not a licensed CPA and his acting as a partner of the Konigsberg & Wolf accounting firm violated the law. Steven Turchin, FGLS's purported liquidating Member, had personal knowledge of Mr. Mendelow's role at Konigsberg & Wolf as Mr. Turchin reported to Mendelow at Konigsberg & Wolf.

2. Deny the allegations, except admit that Steven and Nancy Mendelow (the "Mendelows") operated FGLS as a feeder fund into Madoff for the purposes of earning their continued kickbacks from Madoff, as described below. FGLS's Members with positive capital accounts lost their investments at the time that they were fraudulently induced by the Mendelows to invest in FGLS, as is the case with all Ponzi schemes.

3. Deny the allegations, except admit that on June 28, 2018, Irving Picard, as the Chapter 7 Trustee of BLMIS ("Picard") sent a payment to FGLS of $500,000, the amount of SIPC insurance, and on September 14, 2018 he sent to FGLS an additional payment of $2,204,688, making the total recovery from Picard to date $2,704,688. FGLS had the right to obtain the payment of $2,704,688 back in October of 2015, but did not do so due to the Mendelows' blatant conflicts of interest, as explained below. Further, the simple statement that the "objecting members have threatened to pursue their objections through litigation" is not accurate. Rather, FGLS advised Counterclaimants that the Mendelow Parties, as defined in the Petition, will bring suit if FGLS pursued any action that is adverse to them. Further, after months of negotiations, FGLS admitted that it was without authority to negotiate any compromise with Counterclaims relating to suing the Mendelow Parties because the Mendelow Parties will object to and file suit over any such agreement.

4. Denied, except admit that the Mendelows, as explained in the Counterclaims, received millions of dollars in kickbacks from Madoff into C&P from 1994-1997. The Mendelows served as C&P's officers. The Mendelows' daughters were the limited partners of C&P. In 1998, Mendelow allowed certain clients and family friends, with investments too small to invest directly into BLMIS to lend money to C&P and to receive a fixed return based upon the profits supposedly earned by C&P from alleged securities trading performed by BLMIS in C&P's account.

5. Denied. FGLS was not incorporated until March 2003. Mendelow transferred $3.1 million in investor funds from C&P's BLMIS account to FGLS's BLMIS account in November 2002 because Mendelow was concerned he was committing the same violations of the Investment Advisors act for which he had been sanctioned in 1993.

6. Denied, except admit that Mendelow caused $3,149,075 from the C&P BLMIS account to the FGLS BLMIS account (the "Rollover").

7. Denied, except admit that the value of FGLS's BLMIS account was wiped out when Bernard Madoff was arrested in December 2008 due to his operation of a Ponzi scheme.

8. Admitted.

9. Admitted.

10. Admitted.

11. Admitted, and state that the C&P account was a net winner of an amount in excess of $3,149,075 at the time of the Rollover due to the Mendelows' receipt of millions of dollars in fraudulent kickbacks from Madoff into C&P, and then earned 17% interest per year thereon.

12. Deny knowledge or information as to the actions and thought processes of Arkin Solbakken LLP, counsel to the Mendelows personally and FGLS, without the benefit of discovery regarding the same.

13. Deny, except admit to the dates of death for the Mendelows, and refer the Court to the Operating Agreement for its true and full terms.

14. Admit that Steven Turchin has been elected as the liquidator of FGLS, and deny sufficient knowledge and information to form a belief as to Turchin's actions and thought processes.

15. Deny, except admit that Turchin filed a claim against the Estate of Nancy Mendelow on March 14, 2018. Further, the Court should be apprised that Turchin never filed a claim against the Estate of Steven Mendelow, Turchin's former business colleague. Turchin waited three months after his election to even hire counsel for FGLS. By the time that Turchin realized he needed to hire counsel for FGLS, or risk being sued, the assets within Steven Mendelow's estate had been dissipated.

16. Deny knowledge or information sufficient to form a belief as to whether Turchin served the December 13, 2018 Proposed Plan of Liquidation of FGLS's 41 members, but admit that Counterclaimants had received the same.

17. The Petition does not contain a paragraph 17.

18. Admit that the Counterclaimants objected to the Proposed Plan of Liquidation, and deny knowledge or information sufficient to form a belief as to all other allegations.

19. Counterclaimants do not object to the use of the net equity method to determine members' capital accounts and otherwise deny all allegations.[1]

[1] Although there is room for argument to object to the adoption of SIPC accounting principles, instead of the accounting principles provided for by FGLS's operating agreement, Counterclaimants agreed as part of their good

20. Counterclaimants do not object to the use of the net equity method to determine members' capital accounts, or to adopt Picard's treatment of the Rollover for purposes of FGLS's internal accounting and otherwise deny all allegations.

21. There is no paragraph 21 in the Petition.

22. Counterclaimants do not object to the use of the net equity method to determine members' capital accounts and otherwise deny all allegations.

23. Deny the allegations, except admit that the Counterclaimants and Mr. Turchin disagree on the merits of suing the Mendelow Parties.

24. Deny the allegations, except admit that the Counterclaimants and Mr. Turchin disagree on the merits of suing the Mendelow Parties.

25. Insofar as this paragraph sets forth legal conclusions, no response is required. To the extent a response is required, Counterclaimants deny the allegations.

26. Insofar as this paragraph sets forth legal conclusions, no response is required. To the extent a response is required, Counterclaimants deny the allegations.

27. Insofar as this paragraph sets forth legal conclusions, no response is required. To the extent a response is required, Counterclaimants deny the allegations.

28. Insofar as this paragraph sets forth legal conclusions, no response is required. To the extent a response is required, Counterclaimants deny the allegations.

29. Insofar as this paragraph sets forth legal conclusions, no response is required. To the extent a response is required, Counterclaimants deny the allegations.

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faith efforts to resolve the terms of liquidation to not pursue these arguments. Unfortunately, FGLS later revealed that it was without authority to enter into any agreement because the Mendelow Parties would sue to change the terms.

30. Insofar as this paragraph sets forth legal conclusions, no response is required. To the extent a response is required, Counterclaimants deny the allegations.

31. Insofar as this paragraph sets forth legal conclusions, no response is required. To the extent a response is required, Counterclaimants deny the allegations.

32. Insofar as this paragraph sets forth legal conclusions, no response is required. To the extent a response is required, Counterclaimants deny the allegations.

33. Insofar as this paragraph sets forth legal conclusions, no response is required. To the extent a response is required, Counterclaimants deny the allegations.

34. Insofar as this paragraph sets forth legal conclusions, no response is required. To the extent a response is required, Counterclaimants deny the allegations.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

The Petition fails to state any claim upon which relief can be granted.

SECOND DEFENSE

The Operating Agreement provisions relied upon are unenforceable because they were procured as part of the Mendelows' ongoing fraud scheme.

THIRD DEFENSE

The Petition is barred by Turchin's unclean hands including his conflicts of interest, his concealment of his conflicts of interest and his complicity in Mendelow's underlying fraud relating to Madoff.

FOURTH DEFENSE

The Petition should be denied because it explicitly contradicts express provisions of the Operating Agreement while purporting to enforce the Members' rights as provided for under the Operating Agreement.

FIFTH DEFENSE

FGLS's claims are barred by the doctrine of in pari delicto.

SIXTH DEFENSE

FGLS'S Petition is barred by the doctrines of estoppel, laches, waiver and ratification as demonstrated by FGLS's filing of a claim with the Estate of Nancy Mendelow.

SEVENTH DEFENSE

Steven Turchin, FGLS's Managing Member, is not entitled to the protection of the business judgment rule due to his conflicts of interest and his complicity with Steven Mendelow's wrongdoing relating to Madoff.

COUNTERCLAIMS

Counterclaimants Sajust, LLC ("Sajust") and Larry Warshaw, as the sole Trustee of Carol Ann Enterprises, Inc. Pension Plan ("Carol Ann" collectively with Sajust, "Counterclaimants"), by and through their undersigned counsel, allege as follows:

PRELIMINARY STATEMENT

1. Counterclaimants had been fraudulently induced by Steven Mendelow to invest into FGLS Equity, LLC ("FGLS"), a feeder fund into the Ponzi scheme orchestrated by Bernard L. Madoff Investment Securities, LLC ("BLMIS"). Steven Mendelow was a sophisticated accountant and financial advisor who had extracted from Madoff a deal to pay him kickbacks in the form of fabricated securities trades in exchange for Mendelow's complicity in the Ponzi scheme. Steven

Mendelow, and his wife Nancy, who also shared in the kickbacks, were FGLS's original Operating Managers. After their deaths, Steven Turchin, Mendelow's longtime business associate, became FGLS's Managing Member.

2. Counterclaimants seek declaratory relief that: i) Turchin's decision to not pursue claims against parties related to Steven Mendelow ("Mendelow Parties")[2] and their attorneys for harm inflicted upon FGLS is not protected by the business judgment rule; and ii) disallowing an account controlled by Steven Mendelow from participating in FGLS's recovery from the Madoff bankruptcy due to Mendelow's fraud.

3. This dispute arises out of the malfeasance perpetrated by Steven and Nancy Mendelow (the "Mendelows"), and their attorneys, heirs, executors and related entities, after Bernard Madoff's arrest, through their continued domination and control of FGLS as its sole managing members.

4. After Madoff's arrest on December 8, 2008, FGLS's members lost all of the value reflected in their capital accounts. In November 2010, Irving Picard, the Trustee for BLMIS ("Trustee") filed suit against the Mendelow Parties to seek to recover more than $14 million in fraudulent transfers received from BLMIS ("*Picard v. Mendelow*"). The Mendelows also arranged for their own counsel defending them in *Picard v. Mendelow* to represent FGLS with respect to its claim seeking a recovery from the BLMIS bankruptcy based upon its net loss from the Madoff Ponzi scheme. As explained below, this was done because the Mendelows planned to abuse their position as Operating Managers to benefit themselves.

5. After Steven Mendelow died on June 7, 2016, Nancy Mendelow remained FGLS's sole managing member until her death on June 17, 2017. Clayman & Rosenberg, LLP ("Rosenberg")

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[2] The "Mendelow Parties" refers collectively to Defendants Cara Mendelow, Individually and In Her Capacity as Executrix Of The Estates Of Steven Mendelow And Nancy Mendelow; Pamela Christian, Individually And In Her Capacity As Executrix Of The Estates Of Steven Mendelow and Nancy Mendelow; C&P Associates, Ltd. ("C&P"); and C&P Associates, Inc.

simultaneously served as FGLS's counsel and counsel for the Mendelow Parties before dumping FGLS as a client to aid the Mendelow Parties in claiming for themselves a $3.1 million benefit that belonged to FGLS, as explained below.

6. On November 14, 2017, Steven Turchin, Mendelow's longtime business colleague at the Konigsberg, Wolf & Company, P.C. ("KW"), and its two successors, became FGLS's Managing Member and Liquidator. On December 13, 2018, Turchin distributed to FGLS's Members a Proposed Plan for the Dissolution of FGLS ("Dissolution Plan").

7. The Dissolution Plan explained that FGLS had received payment from Picard in the amount of $2,704,688 from the Madoff bankruptcy proceeding. The Dissolution Plan explained that Picard determined FGLS's claim to be $3,450,000 using the "net equity" method of subtracting FGLS's withdrawals from its contributions, and that these funds were now available to be distributed among FGLS's Members.

8. The Dissolution Plan disclosed that the Mendelows had opened FGLS's BLMIS account in November 2002 by transferring $3,149,075 from the BLMIS account belonging to a different entity controlled by the Mendelows, C&P (the "Rollover"). In turn, Mendelow credited the proceeds from the Rollover to the capital accounts of FGLS's initial Members. About half of the Rollover was assigned to Sajust's capital account.

9. As the Dissolution Plan explained, Picard disallowed any credit for the Rollover from C&P to FGLS, when determining the value of FGLS's claim, due to the amount of fictitious profits that Mendelow had earned in C&P.

10. The Dissolution Plan admits that FGLS could have procured the $2,704,688 payment back in October 2015 but the Mendelows never demanded payment over the course of several years. Instead, the funds were not received by FGLS until September 14, 2018.

11. The Dissolution Plan also first disclosed to FGLS's Members how the Mendelows and their counsel had breached fiduciary duties owed to FGLS. Turchin explained that when the Mendelow Parties settled Picard's claim against them that the Mendelow Parties "received the benefit of the actual cash deposits made by the FGLS members whose C&P accounts were later transferred into FGLS accounts." Turchin explained that "[i]n contrast, FGLS received no benefit from these deposits because C&P had already withdrawn more money from the C&P account then they had deposited into it." Turchin revealed that Rosenberg had finalized this Settlement Agreement on behalf of the Mendelow Parties in January 2018, or during the three month interval between Turchin's election as Managing Member and Turchin first hiring counsel for FGLS in February 2018.

12. On July 23, 2019, Turchin filed the instant Petition seeking declaratory relief approving, among other things, his decision as part of a plan of dissolution for FGLS to forego suing the Mendelow Parties and their attorneys (the "Mendelow Claims"). Turchin claims to have exercised his alleged disinterested "business judgment" in deciding to not pursue the Mendelow Claims.

13. However, Turchin has not disclosed to the Court that he had worked closely with Paul Konigsberg and Steven Mendelow in providing tax and accounting services to many of Madoff's investors. In fact, Paul Konigsberg has been convicted of multiple felony counts for his brazen misconduct, as detailed below, relating to Madoff. Mendelow's receipt of fictitious securities trades fabricated in the C&P account, and later in other accounts, as kickbacks for his complicity with Madoff has been laid bare in, among other things, a lawsuit filed against the Mendelow Parties by Irving Picard, the Trustee overseeing the liquidation of BLMIS in the United States District Court for the Southern District of New York ("Picard"), in an action styled, *Picard v. Mendelow, et. al.* ("*Picard v. Mendelow*").

14. As detailed below, any claim by Turchin that he was unaware of Mendelow's and Konigsberg's wrongdoing in aiding Madoff through the Konigsberg firm, while Turchin was one of the primary accountants assigned to assist in this work, is not credible. As chronicled below, there was widespread knowledge within KW of irregularities with Madoff's operation, and Konigsberg's and Mendelow's relationships with Madoff. Mendelow even had rewarded Turchin with the opportunity to invest in Madoff through FGLS for his diligent work handling accounting and tax services for some of the firm's Madoff clients, even though Madoff supposedly was notoriously exclusive and typically only accepted investments in the millions of dollars.

15. In response to Turchin's disclosures of the Mendelows' misconduct, Sajust has filed a direct suit against: i) the Mendelow Parties for Unjust Enrichment based upon their inequitable retaining the benefit of the principal underlying the Rollover attributable to Sajust's Capital Account, while Sajust's capital accounts was virtually wiped out; and ii) the Estate of Nancy Mendelow arising out of Nancy Mendelow's breaches of her fiduciary duties of loyalty and candor owed to Sajust in her capacity as Operating Manager relating to the Rollover ("Direct Suit").

16. Additionally, the Counterclaimants have prepared a Proposed Complaint to be filed by FGLS against the Mendelow Parties and Rosenberg ("FGLS Suit"). The FGLS Suit addresses the harm caused to FGLS arising out of the Rollover plus the harm caused to FGLS arising out of the Mendelows' failure for years to procure the payment of $2,704,688 from Picard after it was first available in October 2015 (the "Interest Claim"). The FGLS Suit sets forth claims claims against: i) the Mendelow Parties for Unjust Enrichment relating to the Rollover; ii) the Estate of Nancy Mendelow for her breach of fiduciary duty relating to the Rollover and the Interest Claim; and iii) Rosenberg for legal malpractice and breach of fiduciary duty relating to the Rollover and the Interest Claim.

17. Accordingly, as expanded upon below, Steven Turchin's decision to block the Proposed FGLS Suit is not protected by the business judgment rule due to Turchin's lack of disinterestedness based upon his relationships with Mendelow, Konigsberg and their successor firms and Turchin's own financial interests. Further, Counterclaimants are entitled to declaratory relief that the Mendelow Foundation is precluded from participating in the distribution from FGLS because Mendelow's fraud is imputed to them.

PARTIES

18. Respondent Counter-Claimant **Sajust, LLC** ("Sajust") is a limited liability company formed under the laws of the state of New York.

19. Respondent- Counter-Claimant **Carol Ann Enterprises, Inc. Pension Plan** ("Carol Ann") is a tax exempt employees' pension trust under the applicable sections of the Internal Revenue Code. **Larry Warshaw** ("Warshaw"), a Florida resident, is the Trustee for Carol Ann.

20. **FGLS Equity, LLC** ("FGLS") is a New York Limited Liability Company incorporated by Steven Mendelow in March 2003 to allow clients and relatives of Mendelow to invest with Madoff. FGLS was operated out of the accounting firm of Konigsberg Wolf & Co. Mendelow and his wife, Nancy were the Operating Members of FGLS before their deaths.

OTHER RELEVANT PERSONS

21. **Konigsberg, Wolf & Co., P.C.** ("KW") was a certified public accounting firm incorporated in the state of New York.

22. **Paul Konigsberg** ("Konigsberg") was the founder and President of KW. Konigsberg is a certified public accountant and an attorney. On June 24, 2014, Paul Konigsberg pled guilty in the United States District Court for the Southern District of New York to one count of conspiracy to

falsify the books and records of Madoff Securities and to obstruct the administration of the tax laws, as well as two substantive books and records counts.

23. **KMR, LLP** is an inactive New York Limited Liability Company. In November 2010, the principals of KW determined to form a new accounting firm, KMR, LLP because the names Konigsberg and Mendelow had become deeply ensnared in the toxic allegations against Bernard Madoff. On January 1, 2011, KMR commenced operations and KW ceased operations. KMR constituted a mere continuation of KW as KMR assumed KW's management, personnel, physical location, clients and general business operation.

24. **Citrin Cooperman LLP** is an accounting firm located in Manhattan, New York. On or about September 1, 2011, Konigsberg, Mendelow, Robert Konigsberg and Michael Gershon (the "Citrin Partners") withdrew from KMR LLP and joined Citrin. Upon information and belief, Citrin paid to the Citrin partners for seven years a total of 18% of the revenue that Citrin received from the former KW clients and other business introduced by the Citrin Partners. As part of the deal, Citrin hired former KW accountants, such as Steven Turchin and Marshal Zieses, to continue to service the acquired KW clients. Ultimately, upon the deaths of Steven and Nancy Mendelow, Turchin operated FGLS from his office at Citrin and through his Citrin email account.

25. **Cara Mendelow and Pamela Christian** were appointed executrices of the Estate of their father, Steven Mendelow, on August 14, 2017. Cara Mendelow and Pamela Christian were appointed executrices of the Estate of Nancy Mendelow, their mother, on October 18, 2017. Cara Mendelow and Pamela Christian are the limited partners of C&P Associates, Limited. After the deaths of Steven and Nancy Mendelow, Cara Mendelow and Pamela Christian completely controlled and dominated C&P Associates, Limited and C&P Associates, Inc. The Defendant Cara Mendelow, upon information and belief, resides at 15 West 72nd Street, #20R, New York,

N.Y. 10023. The Defendant Pamela Mendelow, upon information and belief, resides at 200 Sunset Avenue, Ridgewood, New Jersey, 07450.

26. **Clayman & Rosenberg LLP** is a law firm with offices located at 305 Madison Avenue, Suite 1301, New York, New York 10165.

27. **Arkin Solbakken LLP** is a law firm with offices located at 750 Lexington Ave. Suite 25, New York, N.Y. 10022.

28. **The Mendelow Family Foundation** was dominated and controlled by Steven Mendelow. Mendelow acted as an agent for the Mendelow Family Foundation's account with BLMIS held through FGLS, including the opening of the account, depositing funds into and withdrawing funds out of the accounts, and receiving and reviewing the corresponding BLMIS account documents. Mendelow acted as agent for the Mendelow Family Foundation's FGLS account with the knowledge and consent of the foundation, and Mendelow's knowledge of Madoff's fraud is imputed to the account. According to Turchin's Plan of Dissolution, the Mendelow Family Foundation should receive full credit for its positive capital account of $256,357, despite Mendelow's undeniable fraud and many other accounts controlled by him being large net winners.

FACTUAL BACKGROUND

A. THE MENDELOWS FORMED AND OPERATED FGLS

29. Madoff paid kickbacks to Mendelow on annual basis due to Mendelow's: i) helping Madoff conceal the Ponzi scheme during an SEC investigation of Madoff and ii) Mendelow's introduction of tens of millions of dollars in investments into BLMIS. From 1994-1997, Mendelow directed Madoff to direct $432,000 per year in fraudulent payments into a BLMIS account held by C&P. In sum, BLMIS paid $2,058,901 in fictitious payments into C&P from 1994 to 1997. By

November 2002, the $2,058,901 in fictitious payments grew to almost $4.5 million by earning a guaranteed 17% interest per year compounded in the C&P Account.

30. Beginning in 1998, Mendelow used C&P to solicit investors into Madoff. In or around November 2002, Mendelow caused BLMIS to transfer $3,149,075 from C&P's BLMIS account to an account with BLMIS opened in FGLS's name (the "Rollover"). The Rollover consists of the funds belonging to investors in C&P. Mendelow left in the C&P account his family's money. Most of the Rollover consists of moneys that Mendelow had induced the Counterclaimants to invest in Madoff through C&P.

B. AFTER MADOFF'S ARREST IN DECEMBER 2008, THE MENDELOWS CONTINUED TO BREACH THEIR FIDUCIARY DUTIES.

31. In the month before Madoff's arrest, entities controlled by Mendelow made the following withdrawals from FGLS: (i) MAJ Partners withdrew $427,500 out of $427,956.29; (ii) C&P Assoc. Money Purchase withdrew its *entire* investment of $160,627.35; and (iii) C&P Assoc. Defined Benefit withdrew its *entire* balance of $56,576. In sum, Mendelow, and a few parties very close to him, withdrew more than $1.9 million from FGLS in the month before Madoff's arrest, including about $1 million in fictitious profits, which significantly reduced FGLS's recovery in the BLMIS bankruptcy.

32. Based upon Mendelow's clear knowledge of the BLMIS fraud, these withdrawals unmistakably were motivated by Mendelow seeking to withdraw fictitious profits with knowledge that Madoff's Ponzi scheme could collapse imminently. As discussed below, by withdrawing these fictitious profits just before Madoff's arrest, Mendelow and related parties wound up significantly diminishing FGLS's claim in the bankruptcy.

33. In the months after Madoff's arrest, Mendelow vowed to certain Members of FGLS that he would arrange for these moneys to be returned to FGLS due to the plain inequity caused to FGLS's remaining members.

34. Yet, Steven and Nancy Mendelow, as FGLS's managing members, never did so because: i) the Mendelows did not want to turn over $1 million of their own money and ii) the Mendelows did not want to highlight for the ignorant members of FGLS their own conflicts of interest.

35. On June 25, 2009, FGLS filed a claim with Picard for the losses it incurred in its BLMIS account.

36. On November 23, 2010, Irving Picard, as the Trustee for Bernard L Madoff Investment Securities ("BLMIS") filed an adversary proceeding ("*Picard v. Mendelow*") against the Mendelow Parties seeking to recover $14,040,000 in fraudulent transfers.

37. On October 7, 2015, Picard determined FGLS's claim to be $3,450,000 using the net equity method. Picard calculated FGLS's "net equity" by computing the total amount of money FGLS advanced to BLMIS minus the total amount withdrawn from BLMIS.

38. Picard disallowed any credit for the Rollover from C&P due to the amount of fictitious profits that Mendelow had earned in C&P before the Rollover. Picard's decision was due to C&P's status as a net winner of millions of dollars of fictitious profits at the time of the Rollover, which principally is attributable to Mendelow's receipt of millions of dollars in Schupt payments from BLMIS in the C&P BLMIS account.

39. FGLS credited the Rollover to the following capital accounts in FGLS:

a. Sands Family Partnership - $615,986.00;

b. Dubarry 5th Ave Profit Sharing Plan - $472,040;

c. Tiannalee LLC - $388,101;

d. Sajust, LLC - $1,672,948

40. "Even though FGLS had the right to ask for money on account of its approved claim and retain the right to litigate the contested part of the claim," upon Picard determining the value of FGLS's claim in October 2015, the Mendelows "did not ask for the approved claim monies." *See* December 13, 2018 Proposed Plan of Liquidation, page 6, annexed to the Petition at Exhibit 2.

41. Mendelow did not demand payment of the $2.2 million back in October 2015, or anytime thereafter, due to his conflicts of interest. Mendelow had no interest in the payment being made because he would not receive any of the payment. Further, Mendelow knew that telling FGLS's Members he had $2.7 million to distribute would raise all of the scrutiny now being raised by the instant proceeding. This result was untenable to Mendelow as he still had not settled Picard's lawsuit against him and his family (as explained more fully below) and he could still be sued, among other things, for failing to clawback the moneys withdrawn from FGLS within the 30 days before Madoff's arrest.

C. AFTER MENDELOW'S DEATH, NANCY MENDELOW AND ROSENBERG BREACHED THEIR FIDUCIARY DUTIES

42. FGLS has been completely under the domination and control of Steven Mendelow and/or Nancy Mendelow from its inception until Nancy Mendelow's death.

43. The Mendelows arranged for their counsel defending them in *Picard v. Mendelow* to simultaneously represent FGLS because the Mendelows intended to abuse their position as FGLS's Operating Managers by claiming the benefit for the Rollover for the Mendelow Parties to the disadvantage of FGLS.

44. First, the law firm of Arkin Solbakken, LLP jointly represented FGLS and the Mendelow Parties. On November 24, 2016, Rosenberg filed Notices of Appearances in *Picard v. Mendelow*

on behalf of the Mendelow Parties, and upon information and belief, Rosenberg began representing FGLS shortly after Mendelow's death on June 7, 2016

45. After Nancy Mendelow's death, Rosenberg resigned from the representation of FGLS and specifically cited to a conflict of interest in jointly representing the Mendelow Parties and FGLS. This admitted conflict of interest concerned Rosenberg's conduct in steering the benefit of the Rollover to the Mendelow Parties to the detriment of FGLS.

46. On January 5, 2018, Picard entered into a Settlement Agreement with the Mendelow parties which required them to pay $9.7 million to Picard ("Picard Settlement").

47. Rosenberg appeared as counsel of record for each of the Mendelow Parties in the Settlement Agreement.

48. The Settlement Agreement states that the Mendelow Parties began negotiating the Settlement Agreement with the Trustee in March 2017 – or about five months or so before Rosenberg withdrew from its representation of FGLS. Thus, Rosenberg, at Nancy Mendelow's direction, began negotiating the Picard Settlement to the detriment of FGLS while still employed as FGLS's counsel.

49. FGLS's March 14, 2018 claim against the Estate of Nancy Mendelow explains her blatant conflicts of interest that harmed FGLS:

> *In addition, Steven and Nancy Mendelow improperly benefitted from the improper commingling of $3.1 million in FGLS funds in the C&P Associates Account. In determining the amount of claims against a "net winner" account, the trustee compared the total amount of funds deposited into the account and the total amount of cash withdrawn from the account. The excess of withdrawals over deposits represents the "net winnings" that serve as the basis of the trustee's claim. Transfers to a different BLMIS customer account are not treated as withdrawals. Accordingly, in connection with the claims by the trustee against the Mendelows and their entities, which were recently settled, the $3.1 million of FGLS funds was treated as a deposit that had been made by C&P Associates and reduced the Mendelows' liabilities to the trustee by the same amount, $3.1 million...*

> *The Mendelow persons and entities sued by the Bankruptcy Trustee additionally received an improper benefit as a result of the commingling of the FGLS funds in the BLMIS account of C&P Associates. The deposit reduced the amount of their net winnings by the amount of the deposit, approximately $3.1 million, and gave them the benefit of $3.1 million. Under principles of equity, FGLS should be entitled to recover these funds from the Mendelows...*
>
> *Nancy Mendelow violated her fiduciary and business judgment duties to FGLS to the extent she participated in or benefited from the actions described above. In addition, when Nancy Mendelow became operating manager of FGLS upon the death of Steven Mendelow, she was under a fiduciary and business judgment obligation to bring a claim against her husband's Estate on behalf of FGLS in the amount of at least $3.1 million, based on Steven Mendelow's violations of his duties to FGLS...*

50. When he withdrew, Rosenberg knew that he was leaving FGLS without a Managing Member or counsel. Rosenberg then consummated the Picard settlement on behalf of the Mendelow Parties to the disadvantage of FGLS.

51. Cara Mendelow and Pamela Christian approved the Picard Settlement in their capacities as: i) Individual Defendants; ii) as the Executors and only beneficiaries of their parents' estates; iii) as the Limited Partners of C&P and on behalf of C&P Associates, Inc.

52. When Cara Mendelow and Pamela Christian approved the Picard Settlement, the knowledge of their counsel, Rosenberg, was imputable to them.

D. THE TURCHIN PETITION

53. On July 23, 2018, Turchin filed a Petition in New York State Supreme Court seeking judicial approval of his plan of dissolution of FGLS and for the distribution of $2,798,838.50 received from Picard ("Petition").

54. The Petition seeks approval for an accounting which reduces Members' capital accounts based upon the amount of the Rollover received in their accounts. Counterclaimants do not object to the accounting set forth in Turchin's December 13, 2018 proposed Plan of Liquidation, which is attached to the Petition as Exhibit 2.

55. The Proposed Plan of Liquidation, and Petition, provide that FGLS will forego bringing legal action against the Mendelow Estates, their prior attorneys and related parties.

56. The Proposed Plan of Liquidation identifies three potential claims: i) a "Possible Willful Blindness Case," arising out of Mendelow's fraudulent solicitation of investments into FGLS before Madoff's arrest in December 2008; ii) a "Possible Equitable Reimbursement Case," which is styled as a claim for Unjust Enrichment in the Direct Case and in the FGLS case, arising out of the Mendelow Parties receiving the benefit of the $3.1 million Rollover in their settlement of *Picard v. Mendelow* while FGLS's claim was reduced by the amount of the Rollover; and iii) a malpractice claim against Rosenberg relating to the Rollover.

57. The Proposed Plan of Liquidation sets forth a litany of justifications for not pursuing the Mendelow Claims, which relate principally to the willful blindness case, even though there is no evidence that any Member belatedly seeks to file such a claim. For example, the first three justifications for not suing the Mendelows – the "Assignment to Picard," "Standing" and "Statute of Limitations – are by Turchin's own description only applicable as grounds for not pursuing the Willful Blindness case. In other words, Turchin attacks the "straw man" of the "Willful Blindness Case" to obfuscate the weakness of the justification for not pursuing the claims set forth in the FGLS Case. This only served to confuse many of FGLS's unrepresented Members.

58. The Proposed Plan of Liquidation misrepresents that Section 5.7 of FGLS's Operating Agreement requires that FGLS "advance" to the Mendelow Estates their attorneys' fees in defending any claims.

59. When advised that the Proposed Plan of Liquidation confused the "advancement" of legal fees with the "indemnification" of legal fees, Turchin substituted a new proposal designed to even more aggressively chill any litigation against the Mendelow Parties.

60. Instead, Turchin demanded that Members suing the Mendelows must escrow with his counsel more than half a million dollars, to be available to pay the Mendelows if their claims are not successful, or to be otherwise depleted in Turchin's counsel's discretion. Advancement, on the other hand, only would require the payment of invoices on a monthly basis upon the submission of invoices demonstrating the work performed.

61. However, Section 5.5(D) of FGLS's Operating Agreement, prohibits an Operating Manager, "without obtaining the consent of two-thirds in interest of the Members" from "obligating any Member as a surety, guarantor or accommodation party to any obligation." By asking certain Members to escrow funds, Turchin has disregarded Section 5.5(D) of the Operating Agreement.

62. When confronted with Section 5.5(D) of the Operating Agreement, Turchin admitted that his demand for the escrowing of funds was not predicated upon the Operating Agreement but the inequity of leaving him exposed to suits from the Mendelows, or there being no money left in FGLS to fully compensate the Mendelows if they prevail on their indemnity claim.

63. Yet, Turchin never demanded the Mendelow Parties to escrow either: i) an amount reflecting the damage inflicted by them upon FGLS and its Members; or ii) the amount of FGLS's anticipated attorneys' fees if FGLS prevailed against the Mendelows.

64. Turchin claims that his allegedly disinterested decision to decline to pursue the Mendelow Claims is protected by the Business Judgment Rule.

E. THE SAJUST DIRECT ACTION

65. Sajust has filed direct claims against only the Mendelow Parties arising out of the Rollover, and the Mendelow Parties' subsequent actions ("Direct Suit").

66. Specifically, Sajust filed claims against: i) the Mendelow Parties for Unjust Enrichment based upon their retaining the benefit of the principal underlying the amount of the Rollover attributable to the Sajust Capital Account and ii) the Estate of Nancy Mendelow arising out of Nancy Mendelow's breaches of her fiduciary duties owed directly to Sajust.

67. Sajust seeks to recover the principal underlying the $2,288,934 by which their capital accounts were reduced by the Rollover and the Mendelows' subsequent actions.

68. This claim belongs directly to Sajust because Sajust suffered a distinct and unique harm that was not inflicted upon other members of FGLS due to Nancy Mendelow's breaches of fiduciary duty owed to Sajust.

F. THE FGLS PROPOSED ACTION

69. The FGLS suit alleges claims for: i) Unjust Enrichment against the Mendelow Parties; ii) Breach of Fiduciary Duty Against the Estate of Nancy Mendelow; iii) Legal Malpractice against Rosenberg; and iv) Breach of Fiduciary Duty against Rosenberg.

70. The FGLS Suit's Unjust Enrichment Claim seeks to recover from the Mendelow Parties, and to distribute on a pro rata basis to all of FGLS's Members, the portion of the Rollover which was assigned to FGLS's members who have negative capital accounts.[3]

71. FGLS's claim from Picard was artificially reduced by the amount of the Rollover, even though there was true principal underlying the Rollover. In particular, FGLS's claim was reduced by the amount of $860,141 consisting of $472,040 of proceeds rolled into the FGLS account of Dubarry 5th Ave Profit Sharing Plan ("Dubarry") and $388,101 in proceeds transferred from C&P

[3]The Unjust Enrichment claim pled in the Direct Suit seeks different relief from the Unjust Enrichment Claim pled in the FGLS Suit. The Direct Suit seeks to recover in its Unjust Enrichment Claim from the Mendelow Parties the principal by which Sajust's capital accounts was reduced, and by which the Mendelow Parties were unjustly enriched.

to the FGLS account of Tiannalee LLC ("Tiannalee"). Significantly, Dubarry and Tiannalee are "net winners" of amounts greater than the portion of the Rollover initially received in their accounts. Hence, Tiannalee and Dubarry lack standing to sue for this portion of the Rollover as they did not suffer an injury individually. However, the $860,141 in proceeds deposited in the Dubarry and Tiannalee accounts reduced FGLS's recovery from Picard by that amount ("Negative Accounts Rollover Amount").

72. The FGLS Suit alleges that Nancy Mendelow and Rosenberg breached duties both with respect to: i) securing the benefit of the Rollover for the Mendelow Parties to the detriment of FGLS; and ii) failing to procure the payment from Picard to FGLS of $2,204,688 for years, and delaying the distribution of $2,704,688 from FGLS to its Members for years, due to conflicts of interest ("Interest Claim").

73. The FGLS suit seeks to recover as damages: i) damages from the Interest Claim consisting of prejudgment interest at the rate of 9% (nine percent) per annum, calculated from when the $2,704,688 should have been available to be distributed to FGLS's Members and when it will be distributed; ii) the amount of the Negative Accounts Rollover; iii) disgorgement of all fees paid to Rosenberg; iv) reimbursement of all fees paid to Yeskoo to address the conflicts; and v) FGLS's fees for prosecuting these claims.

G. TURCHIN IS NOT DISINTERESTED BECAUSE HE WORKED CLOSELY WITH MENDELOW WHEN MENDELOW COMMITTED HIS FRAUD.

74. Turchin could not independently determine whether to prosecute the Mendelow Claims based upon Turchin having worked closely with Mendelow and Konigsberg in providing tax and accounting services to firm clients placed into Madoff investments by Mendelow and Konigsberg. In exchange for his complicit services, Turchin was rewarded with years of employment plus an investment in FGLS. Even after toxic allegations were publicly raised with respect to

Konigsberg's and Mendelow's involvement with Madoff – allegations that Turchin knew were true – Turchin continued to loyally work underneath them.

75. An understanding of Turchin's lack of independence necessitates understanding the widespread knowledge within Konigsberg and Wolf of Mendelow's and Konigsberg's wrongdoing and Turchin's involvement therein.

i. THE KONIGSBERG WOLF FIRM

76. Konigsberg, a certified public accountant and an attorney, was the founder and President of Konigsberg, Wolf ("KW"), a certified public accounting firm. KW's website described the firm as "one of the oldest and most distinguished mid-sized certified public accounting firm and consulting practices in the New York metropolitan area" specializing in "strategic and financial planning."

77. In reality, KW developed as an accounting firm because of its decades-long relationship with Madoff. Some clients sought KW's services because KW could provide access to invest with Madoff. Madoff also referred some of his most substantial investors of his to KW to handle their tax and accounting work relating to their BLMIS investments. As a consequence, KW significantly expanded its client base and retained substantial high net-worth individuals as clients, some of whom also used KW's services for their businesses as well as their BLMIS investments.

78. Mendelow, who was not a certified public accountant, joined KW in around 1982.

79. Mendelow was Konigsberg's equal economic partner in KW due to Mendelow's business generation. Consistently, "Mendelow always introduced himself to prospective clients and business contacts as a partner" and internally was referred to and treated as a partner of the firm. Mendelow's acting as a partner of a firm of certified professional accountants, much less serving

as the firm's co-managing partner, violated clearly established licensing and ethical rules governing the accounting profession.

ii. MENDELOW'S ROLE AT THE FIRM WAS TO EARN KICKBACKS FROM PLACING FIRM CLIENTS IN DUBIOUS INVESTMENTS, INCLUDING MOST PROMINENTLY BLMIS.

80. Mendelow's role at the firm was to develop commissions – or kickbacks – from placing firm clients in investments, or other financial products, offered by insurance brokers, pension planners, and operators of dubious tax shelters. As Mendelow once explained to the head of KW's Tax Department, "***we make money the old fashioned way. We sell things and we get paid for it***."

81. For example, Konigsberg and Mendelow had marketed oil and gas tax investments to firm clients as legitimate tax shelters that would withstand scrutiny by the IRS and the New York State Department of Taxation. Mendelow received a commission for each investment into these shelters which were ultimately declared invalid by the IRS.

82. Fortified with the Konigsberg Defendants' imprimatur of legitimacy, Mendelow aggressively solicited firm clients out of KW's office to invest in BLMIS.

83. Investing in BLMIS was restricted and investors needed an introduction from someone close to Madoff, to wit – Konigsberg or Mendelow.

84. Mendelow's clients had invested in excess of $100 million in BLMIS outside of FGLS.

85. KW appeared hundreds of times on the list of Madoff's victims because Madoff often referred his split-strike accountholders to the firm for tax preparation services, or Mendelow and Konigsberg were able to introduce the investor to Madoff. Often, KW acted as an intermediary between Madoff and his investors, including handling withdrawals and advances to the Madoff accounts on behalf of investors and receiving monthly statements on their behalf regarding their alleged investments.

86. Most of the accounting and tax preparation for these clients – including feeder funds, individuals, partnerships and corporations – was prepared by either Marshall Zeises or Steven Turchin. Zeises and Turchin both followed Konigsberg and Mendelow to KMR and then to Citrin.

iii. KONIGSBERG WOLF PROVIDED ACCOUNTING AND TAX SERVICES TO MADOFF INSIDERS WHO RECEIVED IMPLAUSIBLE RETURNS, BACKDATED TRANSACTIONS AND REPLACEMENT STATEMENTS.

87. Madoff misrepresented to his rank-and-file investors that BLMIS created its consistent returns of 10 – 15% per year through implementing what Madoff described as a "split strike conversion" strategy. BLMIS generated account statements for 4,900 "split strike" accounts.

88. Besides the "split-strike" accounts, BLMIS maintained, as of November 30, 2008, an additional 244 active accounts specially administered by BLMIS to generate far greater returns. The non-split-strike accounts reported unusually high rates of return, sometimes in excess of 100%, and far in excess of the purported 10-17% that the accounts utilizing the split-strike strategy reported. The non-split-strike conversion strategy customer accounts were handled on an account-by-account basis, meaning each of the trades were keyed into the trading system manually.

89. Madoff also referred to KW to handle the tax preparation and accounting work for some of his closest investors who held non-split strike accounts. These clients received *guaranteed* fixed returns at rates much higher than those earned by the split strike account holders, sometime higher than 100% per year, in conspicuously fraudulent transactions.

90. Madoff required that the tax and accounting work for his most suspicious non-split strike accounts be handled by accountants and financial advisors loyal to him to avoid questions being raised by sophisticated outsiders about the anomalous returns.

91. Marshall Zeises, a Senior Audit Partner with KW, testified that he was aware of at least one client of KW who received returns from Madoff substantially higher than 100% in a particular

year, and regularly received returns from Madoff substantially higher than what was earned by the split-strike accounts. Konigsberg explained to Zeises that "this client had referred other investors to Madoff and that, quote-unquote, ***he was giving his client these extra rates of return than all the other people were getting. That was the manner in which Madoff was paying him for referring this business***." Zeises, who handled the tax preparation work for the split strike accounts, testified that Konigsberg personally handled the tax and accounting work for other non-split strike accounts as well.

92. KW served as the accountants and tax preparers for the following Madoff investors who received guaranteed returns much higher than those earned by the split-strike accounts:

a. David Kugel: A trader at BLMIS since the 1970's he assumed the position of "Trading Floor Compliance Analyst" with BLMIS in the late 1990s. Kugel has pled guilty to conspiring with Madoff to structuring the fraudulent and backdated trades which sustained the Ponzi scheme. Kugel received more than $13 million in fictitious profits despite having made only one deposit of $25,000 into a BLMIS account in 1977. Paul Konigsberg handled the accounting and tax preparation relating to Kugel's "investments" in BLMIS. In July 1999, Kugel engineered a fictitious rate of return of 675% in his own account. In 2006, Kugel engineered fictitious securities trades in his son's accounts, which generated a return of 106% for the year, all earned at the end of the year. *See USA v. Kugel*, 10 Cr. 228 (SDNY); *Picard v. Kugel*, 1:11 CV 04227 (SDNY);

b. S. Donald Friedman: Madoff's neighbor and close friend who corresponded with Madoff regarding fraudulent transactions. Friedman received nearly $14 million in fictitious profits from BLMIS. His accounts received implausible annual rates of return over 50%, with some annual returns as high as 61.2%. In 2004, a year in which Friedman earned fictitious returns of 54.6%, the annual return of the S&P 100 was 4.5%. Friedman failed to plan properly for the tax consequences resulting from the substantial capital gains in his BLMIS accounts. Consequently, Madoff backdated fictitious trades in order to eliminate capital gains on purported sales of stock previously reflected in Friedman's BLMIS accounts. Madoff opened an account at BLMIS on his behalf with no initial securities which served as no more than a loan from Madoff to Friedman. *See Picard v. Friedman*, 10-05395.

c. Stanley Shapiro: In 1995, Stanley Shapiro began working as a part-time consultant and proprietary trader at BLMIS. He received a $50 million in fictitious profits from BLMIS. He was present at BLMIS the day Madoff was arrested. One of the accounts controlled by Stanley Shapiro: i) achieved a positive rate of return every

year from 1998 through 2008, even though the S&P 100 index declined during half of those years; ii) the annual rates of his returns were as high as 102%, 69%, and 63%; iii) Shapiro directed losses to appear in the account for tax purposes which were obviously achieved by BLMIS through backdating trades to equal the specific amount of losses requested; and iv) received "revised" monthly statements from BLMIS in 2002 which contained massive profits earned from shorting securities during the market downturn that did not appear in the original statements. Paul Konigsberg was the engagement partner for the Shapiro accounts. *See Picard v. Stanley Shapiro*, 10-05383.

d. Edward Blumenfeld: Madoff's close personal friend. Blumenfeld dined with Madoff the night before Madoff confessed to operating the Ponzi scheme. Blumenthal received an $11 million transfer from Madoff days before his arrest. Blumenfeld received fictitious profits of $40 million through 38 separate accounts with BLMIS. In 2005, Blumenfeld opened accounts with Madoff on behalf of two entities he controlled with an agreement that these accounts would receive annual returns of 20% per year. *See Picard v. Blumenfeld*, 10-04730 (Bkrptcy Ct. SDNY).

93. At Madoff's referral, KW provided accounting, tax preparation and tax planning services to Norman Levy, who financed the Ponzi scheme from KW's office. Paul Konigsberg hired and paid Carole Bryer to serve as Levy's controller out of an office at KW. The magnitude of Levy's transactions necessitated that KW, under Konigsberg's supervision, create an entire department designed to handle the accounting and tax preparation services for these transfers.

94. Levy's transfers into and out of BLMIS for *each* year from 1992 through 2001 exceeded the amount of transfers made by all of BLMIS' other customers combined in each of those same years. Between 1998 through 2001, Levy transferred more than $83 billion into and more than $83 billion out of BLMIS – or more than four times the amount of transfers made by all of BLMIS' other investors combined during the same time.

95. As part of an apparent check-kiting scheme, Levy and Madoff transferred billions of dollars and back and forth, with no securities being purchased:

a. Norman Levy received almost $76 billion in payments from BLMIS between December 1998 and September 2005;

b. In 2002, Madoff initiated outgoing transactions to Levy in the precise amount of $986,301 hundreds of times – 318 separate times, to be exact. These highly unusual transactions often occurred multiple times on a single day;

c. From December 2001 to March 2003, the total monthly dollar amounts coming into the Madoff account from Levy were almost always equal to the total monthly dollar amounts going out of the Madoff account to Levy. There was no clear economic purpose for such repetitive transactions that had no net impact on Levy's account at BLMIS;

d. There was a huge spike in activity between Levy and the Madoff bank account in December 2001. In that month alone, Madoff engaged in approximately $6.8 billion worth of transactions with Levy. Shortly thereafter, Levy's activity with the Madoff account decreased dramatically;

e. The majority of Levy's transactions with the Madoff account were conducted by check. For example, in December 2001, the Madoff account received checks from Levy, each in the amount of $90 million, on a daily basis – a pattern of activity with no identifiable business purpose;

f. Madoff had helped increase Levy's wealth from $180 million in 1986 to $1.5 billion in 1998;

g. Levy enjoyed "special deal" with Madoff with guaranteed returns of up to 40% on the money he invested with Madoff

See, e.g., Picard v. JP Morgan Chase & Co., 1:11-cv-00913

iv. PAUL KONIGSBERG'S GUILTY PLEA

96. On September 26, 2013, Paul Konigsberg was indicted by a Grand Jury empaneled in the United States District Court for the Southern District of New York for, *inter alia*, conspiring to falsify the records of BLMIS. On June 24, 2014, the government filed a Superseding Information, a copy of which is attached hereto as Exhibit 3.

97. The Superseding Information charges Paul Konigsberg with: i) conspiracy to falsify the records of a Broker-Dealer and Investment Advisor and obstructing and impeding the due administration of the IRS law; ii) falsifying the records of a broker-dealer; and iii) falsifying the records of an investment advisor.

98. On June 24, 2014, Paul Konigsberg then pled guilty to the three charges contained in the Superseding Information.

99. The Superseding Indictment details how Madoff directed some of his most important investment advisory clients to use Konigsberg and his firm as their accountants because Madoff trusted Konigsberg to cover-up and to participate in glaringly fraudulent transactions being engineered and backdated into their accounts.

100. According to the Superseding Information, Konigsberg knew that Madoff backdated trades to provide guaranteed returns to certain clients, and facilitated this conduct by advising on the transactions and returning the "original" statements in his possession so new trading statements could be manufactured. Konigsberg also arranged for Madoff to make a cash payment of $20,000 per year to a relative for a no-show job as a kickback to Konigsberg for his having referred clients to Madoff.

v. THERE WAS WIDESPREAD KNOWLEDGE AMONG KONIGSBERG WOLF'S EMPLOYEES OF IRREGULARITIES WITH MADOFF.

101. Knowledge of the serious irregularities with BLMIS was not limited within KW to just Mendelow and Konigsberg. Instead, KW's involvement with Madoff was so extensive, and required the work of so many accountants, that there was widespread concern within KW years before Madoff's collapse about the irregularities with his operation.

102. According to Alfred Pruskowski, the firm's internal ethics expert, he and other partners within the firm recognized that Madoff was "too good to be true" long before his arrest.

103. KW's accountants regularly discussed the implausibility of BLMIS' returns of 20% per year in a down market, despite repeatedly moving into Treasuries at the end of the year, which

required earning higher rates of returns on Madoff's other investments. Indeed, it was well-known within KW that BLMIS claimed abnormally high and consistent returns since the early 1970s.

104. KW accountants joked "that Levy is making so much money and he's going to wind up some day without any because of Madoff."

105. KW's senior personnel recognized and discussed among themselves a number of serious irregularities regarding BLMIS, such as:

a. over decades the returns were contrary to the market and consistently above ten percent, even during stock market crashes;

b. even though hedge funds typically charged their clients two percent of the assets managed and 20% of the profits, Madoff purportedly was content only receiving the commissions from the trades, thereby leaving extraordinary sums of money on the table just given the investments by KW's clients;

c. although it was industry standard by 2000 to provide real-time electronic access to accounts, Madoff sent paper statements at the end of the month printed out on dot-matrix printers without ever changing the presentation;

d. clients needed approval from Madoff to withdraw some of their money, which sometimes was not given for weeks;

e. Madoff kicked out clients who asked too many questions;

f. Madoff purported to sell all securities, and move into treasuries, right before year end reporting requirements.

106. KW employees had widely distributed an article published in Barron's in 2001 titled "*Don't Ask, Don't Tell, Bernie Madoff Is So Secretive He Even Asks His Investors To Keep Mum*," which reported industry professionals' suspicions about the legitimacy of Madoff's returns to investors, and his demands for secrecy.

107. The article stated that "[Madoff's] returns have been so consistent that some on the Street have begun speculating that Madoff's market-making operation subsidizes and smooths [sic] his hedge-fund returns." The article also reported that "three option strategists at major investment

banks told Barron's they couldn't understand how Madoff churns out such numbers." (*Id.*) One particular investor told Barron's that "[w]hen [Madoff] couldn't explain (to my satisfaction) how they were up or down in a particular month ... I pulled the money out." (*Id.*)

108. Nevertheless, whenever management raised concerns about Madoff, Konigsberg scolded them "we cannot ask Bernie any questions".

vi. STEVEN TURCHIN WORKED CLOSELY WITH MENDELOW AND KONIGSBERG IN PROVIDING TAX AND ACCOUNTING SERVICES TO FIRM CLIENTS INVESTED IN MADOFF.

109. BLMIS sent to KW monthly statements for many KW clients to KW instead of to the clients. KW would then use the monthly statements to handle the accounting and tax work for the BLMIS client.

110. KW then disbursed some of these BLMIS monthly statements for certain accounts to Steven Turchin, and the rest of the statements were principally reviewed by Marshall Zeises.

111. Steve Turchin joined KW after working as the CFO for an apparel company that was a client of KW. Upon information and belief, Mendelow facilitated that particular client investing more than $10 million into Madoff, and earning millions of dollars in fictitious profits.

112. Turchin knew that Mendelow actively solicited firm clients to invest in BLMIS, tax shelters and other dubious investments.

113. Turchin also knew that Mendelow pressured and bullied firm employees to engage in unethical accounting practices.

114. Upon information and belief, Turchin and Zieses were rewarded by KW for their loyal work in handling the tax and accounting work for the firm's BLMIS clients by providing them with the opportunity to invest in BLMIS. Although investors typically needed to invest millions

of dollars to have an individual account with BLMIS, Mendelow provided Turchin with the opportunity to earn consistently high returns by investing only $50,000 in FGLS.

115. In sum, Turchin knew of, or was willfully blind, to Mendelow's and Konigsberg's wrongdoing relating to Madoff as evidenced by KW's extensive entanglements with Madoff and Turchin's active involvement in the firm's Madoff work. For his silence, Turchin was rewarded with life-long employment and a FGLS investment, and in return he continued to work with Konigsberg and Mendelow even after their wrongdoing became public knowledge.

H. TURCHIN IS NOT DISINTERESTED BECAUSE TURCHIN HAS A PERSONAL FINANCIAL INTEREST IN OPPRESSING SAJUST

116. Turchin has oppressed Sajust due to his financial and personal interests.

117. Turchin personally invested in FGLS after the Rollover. Hence, it is in Turchin's personal interests to assure that no money is spent by FGLS to address the severe wrongdoing inflicted uniquely upon Sajust by Turchin's former business colleague, Steven Mendelow.

118. Turchin, while working under Mendelow's wing, also provided tax and accounting services to other investors in FGLS. These investors also invested after the Rollover and it is in their financial interest that FGLS not spend any money, or delay any distribution, based upon the harm uniquely inflicted by the Mendelows upon Sajust.

119. Upon information and belief, Turchin continued to provide accounting and tax services at Citrin to other FGLS Members who invested after the Rollover and share Turchin's financial interest.

120. FGLS's accounting for the Rollover had the effect of virtually disenfranchising Sajust, one of FGLS's earliest Members.

121. After eliminating the proceeds traceable to the Rollover, Sajust's account has a total of less than two percent of the total capital assigned to FGLS's positive capital accounts.

122. Given Sajust's now miniscule voting interest due to the fraud perpetrated upon it by the Mendelows, Turchin, out of his own selfish interest, has acted to further oppress it by imposing odious and unreasonable conditions upon it if Sajust seeks to redress this flagrant wrongdoing perpetrated upon it.

I. TURCHIN'S CONFLICTS MANIFESTED THEMSELVES WHEN HE SERVED AS MANAGING MEMBER

123. Turchin operated FGLS from his office at Citrin and through his Citrin email account.

124. After Citrin acquired the KW practice, Citrin handled all of the accounting and tax work for FGLS.

125. Upon information and belief, Citrin encouraged Turchin to become the new managing member of FGLS, despite his possession of a relatively small amount of capital invested in FGLS. Upon information and belief, Citrin had taken over the accounting and tax work for many of the investors in FGLS after Citrin acquired the KW practice. Citrin encouraged Turchin to become the managing member to enable Citrin's clients invested in FGLS to obtain their recovery under terms that would not negatively redound to the firm. There is no other logical reason why Turchin would voluntarily step into this maelstrom by seeking to become Managing Member.

126. When serving as Managing Member of FGLS, Turchin recognized that suing Mendelow's Estate was adverse to his interests and the interests of his employer Citrin. Turchin did not want to educate Citrin's clients about the wrongdoing which occurred at the predecessor firm, or for that matter his participation in that wrongdoing.

127. Turchin had worked loyally for many years with Steven Mendelow and Paul Konigsberg at KW. Despite all of the warning signs of fraud, Turchin never disassociated himself from Konigsberg and Mendelow.

128. Moreover, after Madoff's arrest, Konigsberg's and Mendelow's name became toxic because of their involvement with Madoff. Nevertheless, Turchin continued to loyally work with Mendelow and Konigsberg, by following them to KMR and then to Citrin.

129. Upon being elected the new managing member in November 2017, Turchin did not hire counsel for three months. During this three month time period, FGLS's rights were prejudiced because: i) the Picard Settlement was effectuated in January 2018 and ii) statutes of limitations against the Mendelow parties arguably expired in December 2017.

130. Specifically, Steven Mendelow had failed to clawback his own monies, and the monies of other members of FGLS, that were withdrawn from BLIMS within 30 days before Madoff's arrest with knowledge of Madoff's fraud and likely collapse, as he had told Weinberg and Warshaw he would do. Consequently, Mendelow and these related parties received full payment shortly before the bankruptcy for fictitious profits which wound up depleting FGLS's claim in the bankruptcy. FGLS's statute of limitations to sue to recover these funds expired in December 2014, and arguably the statute of limitations to sue the Mendelows or their lawyers for failing to bring such claims expired in December 2017.

131. Turchin never filed any claim against the Estate of Steven Mendelow due to the belief that all assets from his Estate already had been dissipated by the time he had retained counsel to look into the existence of potential claims against Steven Mendelow.

132. Although Turchin recognized that the Mendelows never procured the FGLS Payment from Picard for years due to a conflict of interest, Turchin never prosecuted any claims arising out of this malfeasance nor asked FGLS's counsel to evaluate this potential claim.

133. Upon uncovering actionable wrongdoing by the Mendelow Parties and their counsel, Turchin never obtained a tolling of the statute of limitations against any of the Mendelow Parties or tried to settle any of the claims against any of them.

LEGAL CLAIMS
COUNT I
DECLARATORY RELIEF PURSUANT TO CPLR 3001

134. Counter-Claimants repeat each of the above paragraphs as if fully set forth herein.

135. An actual justiciable controversy exists with respect to the rights and legal relations of the members of FGLS in connection with the proposed plan of liquidation.

136. Counter-Claimants have no adequate alternate remedy that would justify denial of declaratory relief.

137. Counter-Claimants are therefore entitled to a final judgment with respect to the rights and legal relations of the members of FGLS in connection with the proposed plan of liquidation.

WHEREFORE, Counter-Claimants demands judgment:

a. Declaring that Steven Turchin's decision to block the Counterclaimants from pursuing the Derivative Action is not protected by the business judgment rule due to Turchin's lack of disinterestedness based upon his relationships with Mendelow;

b. Declaring that the Mendelow Foundation is precluded from participating in the distribution from FGLS because Mendelow's fraud is imputed to it.

Dated: New York, New York
October 11, 2019

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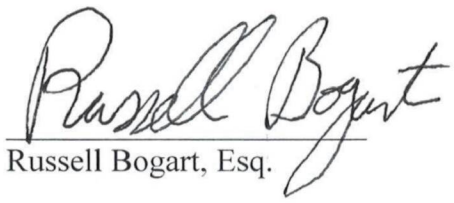
Attorneys for Respondents - Counterclaimants

ATTORNEY'S VERIFICATION

The undersigned, duly admitted to the practice of law in the State of New York, affirms under the penalty of perjury that the undersigned is the attorney for Respondents-Counterclaimants in the within action; that the undersigned has read the foregoing proposed verified answer and knows the contents thereof; and that the undersigned believes those contents to be true, based upon personal knowledge and books, papers and records supplied by the foregoing party and in possession of said the attorney.

The reason this verification is made by the undersigned and not by Respondents-Counterclaimants is that Respondents-Counterclaimants are not in the county wherein the aforesaid attorney maintains the office.

Dated: New York, New York
October 11, 2019



Russell Bogart, Esq.