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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Jean Hoefer Toal, Chief Justice of the South Carolina Supreme Court (Retired),
Acting as Circuit Court Judge

Appellate Case No. 2021-000341

William F. Tomz and Francis W. Tomz,
Individually and as Class Representatives, Respondents,

v.

Capital Investment Funding, LLC, by and through its Receiver, Jerry T. Saad,
And Arthur M. Field, Defendants,

Of Which Capital Investment Funding, LLC, by and through its Receiver,
Jerry T. Saad is a Respondent and Arthur M. Field is the Appellant.

In Re: Kathryn Taillon, Appellant.

RECORD ON APPEAL - VOLUME II

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IN THE UNITED STATE DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Harold Brooks, Clara Louise Brooks, Benjamin)
Brooks, William F. Tomz, Frances W. Tomz, and)
Sharon Finch, Individually and as Class)
Representatives,)

Plaintiffs,)

vs.)

Arthur M. Field and Frederick Scott Pfeiffer,)

Defendants.)

C/A No. 6:14-2267-BHH-JDA

DECLARATION OF
JERRY SAAD

PERSONALLY APPEARED BEFORE ME, Jerry Saad, who first being duly sworn,
deposes and states as follows:

1. My name is Jerry Saad. I am a Certified Public Accountant in Greenville, South Carolina.

2. On August 24, 2009, I was appointed by The Honorable Judge Edward Miller, the presiding judge in the state (South Carolina) class certified case of *William F. Tomz and Frances W. Tomz, individually and as Class Representatives v. Capital Investment Funding LLC and Arthur M. Field*, Case No. 2008-CP-23-3665 (“Tomz Case”), to serve as Receiver for that case. My appointment was pursuant to the Global Mediated Settlement Agreement and Order of that case, which bound all parties, including Defendant Capital Investment Funding, LLC (“CIF”), Defendant Arthur Field, and the Class Plaintiffs (“CIF Noteholders”), to the terms contained therein.

3. I have served as Receiver in the Tomz Case from my date of appointment through the present date, a period of more than six years.

4. In the course of exercising my duties as court-appointed Receiver, I have kept Judge Miller informed of my efforts and have provided him with several written reports, some of which were authorized by Judge Miller to be disseminated to CIF Noteholders.

5. As the court-appointed Receiver, I have attempted to collect all funds, assets, and claims due to CIF and, derivatively, to CIF Noteholders.

6. With the approval and consent of Judge Miller, I have provided disbursements to CIF Noteholders on a *pro rata* basis.

7. Based on my work as Receiver, I have determined that the scope and complexities of the numerous businesses and transactions through which Arthur Field secreted CIF funds is staggering. Currently, my office is in receipt of over 116 boxes of paper documents and hundreds of thousands of electronic documents related to CIF, CIF Noteholders, and the associated entities through which transactions were funneled.

8. The documents and records of CIF of which I have handled and reviewed include CIF prospectuses, company organization records regarding the formation and operation of CIF and board meeting minutes, company accounting and tax records, company investment files, company litigation files, customer loan files, and noteholder files, which have included senior notes issued to CIF Noteholders, records of funds transferred to and from CIF Noteholders, correspondence with CIF Noteholders, and other documentation of noteholder activities.

9. I am aware from my efforts, interactions, and review of the voluminous documents in this case that Arthur Field controlled all material aspects of CIF and its related companies.

10. In the course of exercising my duties as court-appointed Receiver, I have attended numerous civil and criminal hearings in State Court in Greenville and Anderson Counties related to CIF and its related companies.

11. In the course of exercising my duties as court-appointed Receiver, I was subpoenaed and gave testimony prior to the indictments issued against Arthur Field for the criminal case entitled *State of S.C. v. Arthur M. Field and Frederick Scott Pfeiffer*, Case No. 2012-GS-47-08.

12. I have reviewed substantially all of the information referenced in the State of South Carolina's lengthy indictment of Arthur Field dated June 12, 2012 and have found that the allegations in the indictment were based on facts and supported by records.

13. I attended both the sentencing hearing dated October 8, 2013 and the guilty plea hearing dated May 6, 2013, in which Arthur Field attested under oath that he was guilty to all charges. The court so found and convicted him on all counts.

14. I am aware that, while the afore mentioned Global Mediated Settlement Agreement of the Tomz Case dismissed pending actions against Arthur Field without prejudice, that agreement specifically states "the rights of the class under any state or federal securities laws shall not be affected by this settlement." (See Exhibit ____ pp. 8 and 9.)

15. I am aware of no lawsuits brought by individual investors against Arthur Field and have found that all of the CIF Noteholders have relied on the State Court class action and this action pending in this court to obtain relief for them.

16. The claim in this case applies to all 688 CIF Noteholders as they all arise from the same operative facts.

17. I have found from the records presented to me from the receivership that all of the allegations in the Complaint in this case have been prepared based on the records and investigation I obtained in attempting to recover the investments of CIF Noteholders.

18. I am further aware that all the CIF Noteholders purchased from CIF promissory notes, which were prepared and solicited by Arthur Field and others in the same manner with the exact same documents being given to all CIF Noteholders. Those include senior note series and

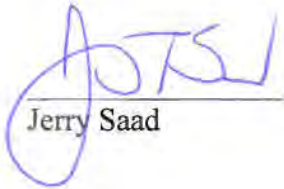
floating rate note series. While the interest rates varied, the notes themselves were the substantively identical and were given to all class members upon payment of the amount requested by Field or other individuals who worked for him.

19. I am aware that on or about January 20, 2008, CIF Noteholders received a letter from Arthur Field as Manager of CIF declaring that CIF was no longer accepting monies and that CIF was going to wind up its business and close the company. Arthur Field's letter indicated there were 1,142 noteholders and each of the noteholders received the same letter. I now know there are only 688 noteholders.

20. I am aware that as part of the sentencing order in the criminal conviction of Arthur Field, the state court requires Arthur Field to pay restitution in the amount of \$2,877,711.73 to the victims, CIF Noteholders. I am further aware that Arthur Field has paid *de minimus* sums of monthly payments towards this order of restitution to the applicable state agency, the South Carolina Department of Probation, Parole and Pardon Services ("DPPPS"), and that agency has forward to me on a monthly basis 80% of the sums it has received from Arthur Field, thereby retaining 20% as the agency's collection fees. I am aware that I am to hold such moneys I receive in trust pending final resolution of the matters of the receivership. I am aware that from the date of the order of restitution, October 8, 2013, through March 22, 2016, a period of approximately 30 months, I have received and deposited a total of \$57,612.77 from DPPPS, which represents approximately 2.0% of the amount of restitution Arthur Field is required to pay under the order of restitution.

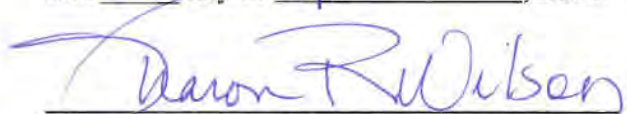
21. I continue to try to wind up CIF as the Receiver to locate any and all assets of that company. Any proceeds from this suit would be credited against any judgment received against Arthur Field in any other pending litigation.

FURTHER THE AFFIANT SAYETH NOT.



Jerry Saad

SWORN AND SUBSCRIBED before me,
this 22 day of April, 2016.



Notary Public for South Carolina
My Commission Expires: 9/9/2021



Sharon R. Wilson
NOTARY PUBLIC
State of South Carolina
My Commission Expires
September 9, 2021

IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR ST.
JOHNS COUNTY, FLORIDA

CASE NO.: CA 18-1513
DIVISION: 55

CAPITAL INVESTMENT FUNDING, LLC,
a South Carolina limited liability company,

Plaintiff,

vs.

ARTHUR FIELD; and KATHRYN
TAILLON;

Defendants.

**PLAINTIFF'S PETITION FOR DECLARATORY JUDGMENT
TO DETERMINE CONSTITUTIONAL HOMESTEAD STATUS**

Pursuant to §222.01(4), Fla. Stat. (2018), Plaintiff, Capital Investment Funding, LLC, hereby files this Petition for Declaratory Judgment to Determine the Constitutional Homestead Status of the Property located at 5489 Atlantic View, St. Augustine, Florida 32080 and described in the Notice of Homestead filed in this case by Defendant Arthur Field ("Field"). Plaintiff asserts that the Property described in Defendant's Notice of Homestead is not entitled to the protections of Article X, Section 4 of the Florida Constitution, as the Property is not and was not the Homestead of Defendants Arthur Field and Kathryn Taillon, Homestead Status does not protect the Property from levy for

satisfaction of a criminal restitution judgment, and the Property was obtained with fraudulently-obtained funds . In support of the petition, Plaintiff states as follows:

1. This action involves the Property located at 5489 Atlantic View, St. Augustine, Florida 32080 (the “Property”), and more particularly described as follows:

Lot 3, Block G, Anastasia Hills, according to the map or plat thereof, as recorded in Plat Book 3, Page(s) 25, of the Public Records of St. Johns County, Florida.

Parcel ID: 177760-0000

2. In September 2011, Defendants Field and Kathryn Taillon (“Taillon”), husband and wife (collectively “Defendants”), purchased the Property for use as a vacation rental home. From the date of purchase to the date this Petition has been filed, Defendants have maintained the Property as a vacation rental. Currently, Defendants rent the Property for the price of \$3,995.00 per week. A copy of the rental advertisement for the Property with pricing and availability is attached as **Composite Exhibit A**.

3. On December 7, 2018, Plaintiff recorded and domesticated a South Carolina criminal restitution judgment against Field in the amount of \$1,767,634.71 (the “Judgment”), pursuant to the Florida Enforcement of Foreign Judgments Act (“FEFJA”), §§55.501-55.509, Fla. Stat. (2018). A copy of the Judgment is attached as **Composite Exhibit B**.

4. Thereafter, on March 11, 2019, the Clerk of Court for St. Johns County, Florida, issued a Writ of Execution for the Property pursuant to the Judgment. (Seq. #36)

5. On March 18, 2019, Field filed a Notice of Homestead for the Property pursuant to §222.01(4), Fla. Stat. (2018). A copy of Defendant's Notice of Homestead is attached as **Composite Exhibit C**.

6. In the Notice of Homestead, Field claims a Homestead exemption for the Property in order to prevent forced sale of the Property to satisfy the Judgment against Field. Field claims that Defendants are entitled to the Homestead exemption because:

- a. In December 2013, Field filed a Declaration of Domicile in St. Johns County, Florida;
- b. In September 2011 when Defendants purchased the Property, Defendants claimed a Homestead exemption as to the Property's ad valorem taxes;
- c. Field is registered to vote at the Property's address; and
- d. Field obtained a Florida driver's license in April 2012.

See attached Composite Exhibit B.

7. Defendants are not entitled to the protections of the Homestead exemption for the Property because:

- a. The Property is not Defendants' permanent residence and has not been Defendants' permanent residence since the time Defendants' purchased the Property in September 2011;
- b. The Property is rented out by Defendants as a vacation rental home, and is not used as a primary residence by Defendants;
- c. Extensive criminal litigation and Field's criminal probation in South Carolina from 2011 through present establish that Field was a South Carolina resident at the time Defendants claimed the Homestead exemption on the Property;

- d. Florida caselaw clearly establishes that criminal restitution judgments are treated the same as tax liens for purposes of Homestead exemption, and therefore do not prevent forced sale of the Property in question; and
- e. The Property was acquired with funds generated by fraudulent activity.

8. The Property is not and has not previously been Defendants' primary or permanent residence. Defendants' tax records indicate that Defendants' used the Property for:

- a. 47 days of rental use and 10 days of personal use in the year 2011;
- b. 161 days of rental use and 0 days of personal use in the year 2012;
- c. 159 days of rental use and 181 days of personal use in the year 2013; and
- d. 159 days of rental use and 186 days of personal use in the year 2014.

A copy of Defendants' tax records is attached as **Composite Exhibit D**.

9. In fact, in Field's Motion to Reopen filed on March 7, 2019 (Seq. #32), Field claimed, "Field was deprived of due process and notice and opportunity to be heard" because "no papers were served upon Field, who resides at 5489 Atlantic View, St. Augustine, FL, 32080." However, on March 14, 2019, the Court's Order (Seq. #30) was returned undeliverable after the Court attempted to mail the Order to the Property. A copy of the returned mail is listed on the case docket at Seq. #38 and attached as **Composite Exhibit E**.

10. Defendants are also not entitled to a Homestead Exemption for the Property because Defendants are not Florida residents and were not Florida residents in December 2013 when Field filed a Declaration of Domicile in St. Johns County, Florida.

11. Extensive criminal litigation in South Carolina and Field's current criminal probation in South Carolina establish that Defendants were residents of South Carolina when Field filed the Declaration of Domicile and the Notice of Homestead Exemption.

12. Field also owned and registered a car in Greenville County, South Carolina from 2004-2016, when Field was first imprisoned for Securities Fraud. A copy of the Greenville County, South Carolina vehicle registration records for Field are attached as **Exhibit F**.

13. Defendants actually resided at 310 Thornblade Boulevard, Greer, South Carolina 29650 ("Thornblade") at the time Defendants claimed the Homestead exemption on the Property. Defendants resided at Thornblade until December 2017, when Thornblade was sold to partially satisfy the Judgment and Field was incarcerated in South Carolina. The State Farm Insurance documents concerning Thornblade show Field claimed to be a resident of South Carolina as late as 2017.

14. The fact that Field has a Florida Driver's License and is registered to vote where the Property is located is irrelevant to the determination of Florida Homestead, as Field used these instruments to further their Fraud when in fact the Property was being rented out by Defendants as a vacation rental home.

15. For example, in an action to determine Homestead, the court in *In re Wiley* stated as follows:

“The fact that debtors’ driver’s licenses listed a property’s address and that they were registered to vote where the property was located might have been evidence of their subjective intent to claim that property as their Florida Homestead but did not prove, objectively, that they ever occupied the property as their homestead. All of their socializing, banking, business, and school took place in the city where they actually resided.”

See *In re Wiley*, 570 B.R. 661, 2016 Bank. LEXIS 4629 (Bankr. N.D. Fla. 2016).

16. Similarly, the court in *In re Harle* found:

“Where debtors had owned real property previously, but did not occupy it with the intent to make it their permanent residence until after the creditors had obtained and perfected a judgment lien against one of the debtors, the debtors’ claim of homestead exemption under Fla. Const. art. 10 §4, and Fla. Stat. §222.01 was subject to the lien” when determining Florida Homestead.

See *In re Harle*, 422 B.R. 310, 2010 Bankr. LEXIS 31 (Bankr. M.D. Fla. 2010).

See also *In re McFadyen*, 216 B.R. 1006, 1008 (Bankr. M.D. Fla. 1998).

17. The Florida homestead exemption does not protect the Property because federal law preempts and precludes the applicability of this exemption. Pursuant to 18 U.S.C. § 3613(c), a criminal restitution lien is treated like a tax lien and, therefore, is not subject to the state law homestead exemption. Specifically, Florida’s homestead exemption cannot apply against contrary federal law. *United States v. Martell*, No. 15-20539-CR, 2016 WL 3627329 (S.D. Fla. May 10, 2016); *United States v. 817 N.E. 29th Drive, Wilton Manors, Florida*, 175 F.3d 1304, 1311 n.14 (11th Cir. 1999).

18. In the same way, the court in *United States ex rel. Doe v. Acculab Labs., Inc.* found when determining Homestead,

“Where the government obtained a writ of execution on defendant’s property after he defaulted on a settlement of a False Claims Act, 31 U.S.C.S. § 3729-3733, suit, his claim of homestead exemption failed because until the government specifically levied on the property, defendant had never claimed that the property was his homestead; prior to that time, whenever the defendant was called upon to designate a homestead, he designated another property as his homestead.”

See *United States ex rel. Doe v. Acculab Labs., Inc.*, 2011 U.S. LEXIS 86041.

19. The funds used to purchase the Property were fraudulently obtained by Field through his criminal enterprise which resulted in the entry of the criminal restitution judgment against him in South Carolina.

20. The protections afforded by Art. X, §4, Fla. Const., do not apply to properties which are purchased with fraudulently-obtained funds and those properties are subject to the imposition of a constructive trust or equitable lien. *Hirchert Family Trust v. Hirchert*, 65 So. 3d 548 (Fla. 5th DCA 2011).

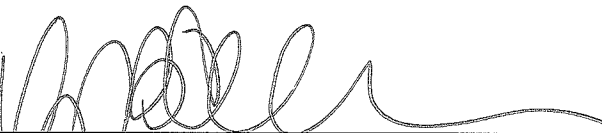
21. The exception to homestead protection applies even where funds obtained through one spouse's fraud are used to invest in, purchase, or improve the homestead, despite the other spouse's innocence or ignorance of wrongdoing.” *Zureikat v. Al Shaibani*, 944 So. 2d 1019 (Fla. 5th DCA 2006), citing *Palm Beach Savings & Loan Ass'n v. Fishbein*, 619 So. 2d 267 (Fla.1993).

22. Defendant Field obtained the funds used to purchase the Property by deceit, fraud, breach of fiduciary duty, or other egregious means and Plaintiff is entitled to impose and foreclose an equitable lien on the Property.

23. Defendants are not entitled to homestead exemption for the Property located at 5489 Atlantic View, St. Augustine, Florida 32080.

WHEREFORE, Plaintiff respectfully requests entry of an order denying Constitutional Homestead Status for the Property located at 5489 Atlantic View, St. Augustine, Florida 32080, as to Defendants Arthur Field and Kathryn Taillon; entry of an order directing the Clerk of Court to issue a Writ of Execution on the Judgment; directing the St. Johns County Sheriff to issue a Notice of Levy and to hold a sale of Defendant Arthur Field's one-half interest in the Property; and granting such further relief as the Court deems proper.

UPCHURCH, BAILEY AND UPCHURCH, P.A.

By: 

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*Attorneys for Plaintiff Capital Investment
Funding, LLC*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail delivery to D. Brad Hughes, Jimerson Birr, P.A., One Independent Drive, Suite 1400, Jacksonville, Florida 32202, bhughes@jimersonfirm.com, this 2^d day of May, 2019.



Allyson B. Currie

IN THE UNITED STATE DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA

CAPITAL INVESTMENT FUNDING, LLC
32JRK

CASE NO.: 3:19-cv-0606-TJC-

Plaintiffs,

vs.

ARTHUR FIELD AND KATHRYN TAILLON

Defendants.

_____ /

TAILLON'S MOTION TO DISMISS WITH PREJUDICE

KATHRYN TAILLON, by her undersigned counsel, moves to dismiss this action as to her with prejudice per Fed. R. Civ. P. 9 & 12(b)(1), (2), (4), (5), (6). All Rule 12 defenses and motions were preserved in the Notice of Removal.

SUMMARY OF ARGUMENTS:

- 1) This court lacks subject matter jurisdiction. No independent action was initiated to provide the court with jurisdiction. Fed. R. Civ. P. Rule 12(b)(1).
- 2) This court lacks personal jurisdiction over Taillon. Fed. R. Civ. P. Rule 12(b)(2). She was never served with any Summons, Complaint or Petition in this matter.
- 3) The matter should be dismissed for insufficient process. Fed. R. Civ. P. Rule 12(b)(4). No Summons or Complaint was issued by the Circuit Court of Florida against Taillon or served upon her. No Summons or Complaint was issued with Petition.

- 4) The matter should be dismissed for insufficient service of process. F.R.Civ.P. Rule 12(b)(5). Taillon was never personally served with any Summons, Complaint or Petition. Fed. R. Civ. P. Rule 4.
- 5) No timely service was made. F.R.Civ.P. Rule 4(m).
- 6) Plaintiff fails to state sufficient factual substantiation, or to plead fraud and fraudulent transfer with sufficient particularity, F.R.Civ.P. 9(b).
- 7) And, in the alternative, or additionally: Petitioner fails to state a claim upon which relief can be granted warranting dismissal with prejudice. F.R.Civ.P. Rule 12(b)(6).
 - a. This action is barred by all principles of *res judicata* and/or collateral estoppel;
 - b. This action is barred by contractual merger, settlement, accord and satisfaction;

Taillon relies on the EXHIBITS in support hereof, which are court and/or public records and this court may take judicial notice thereof and such is requested. F.R.E. 201. "... under Rule 12(b)(6)..., the court may also take judicial notice of court documents, including those from state court. *Lozman v. City of Riviera Beach, Fla.*, 713 F.3d 1066,1075 n.9 (11th Cir. 2013)."

PROCEDURAL BACKGROUND RE PROCESS AND SERVICE:

Fed. R. Civ. P. 3 and Fla. R. Civ. P. 1.040 require an action to be initiated by the filing of a Complaint. None was filed in this matter. Jerry Saad initiated action in Florida Circuit Court #CA18-1513 by filing a Levy and Writ of Execution (Doc. # 5-25) solely against Arthur Field based upon a South Carolina judgment in "Jerry Saad, Receiver of Capital Investment Funding v. Arthur Field" (Doc.#5-2). Taillon was not a party to such action in

South Carolina and had no notice thereof. The foreign civil judgment derived from a prior South Carolina matter relating solely to Arthur Field. Any objections to these foreign civil judgments by Field are preserved and neither apply to Taillon.

Field filed a Designation of Homestead Exemption per *Fla. Stat.* § 222.02, providing for such Notice after a Writ of Execution (Doc. #5-27). The Designation of Homestead terminates the Writ. Nevertheless, choosing to disregard the Designation of Homestead and its statutory bar to forced sale, Saad obtained a sale date for the property in CA18-1513. Taillon

learned of such action by chance when she consulted with the Florida Circuit Court Clerk. No Writ of Execution, Levy or Notice of Sale was ever properly served upon Taillon. Field, *pro se*, moved to Cancel the Sale (Doc. ##5-33, 5-35), which was again disregarded by Saad. Only after Field sought the intercession of attorney Hughes, at a cost of over \$7,000, did Petitioner's counsel acquiesce and stop the sale. (Doc. #5-39).

Thereafter, Capital Investment Funding, LLC ("CIF") filed a Petition on May 2, 2019 seeking declaratory relief in the same CA18-1513. (Doc. #5-40). No Declaratory Judgment action was initiated as required by *Fla. Stat.* §222.10. The caption now read "Capital Investment Funding", but still using CA18-1513 even though that case was closed by the Clerk. CIF also filed a *Lis Pendens* against Taillon's property and failed to serve her or obtain a bond. The *lis pendens* is not based upon a recorded instrument and should be discharged. *Fla. Stat.* §48.23(3). **The Petition bore Taillon's name in its caption for the first time although Taillon was not a party to CA18-1513. No new action was filed for the Petition, stating new claims and seeking new relief by a 'new' party against a newly named, but unserved, defendant.** (See *Affidavit* of Taillon in support hereof.)

LEGAL ARGUMENT RE PROCESS, JURISDICTION AND SERVICE:***I. PROCESS WAS INSUFFICIENT***

No Summons or Complaint was attached to the Petition for declaratory and other relief. No Summons or Complaint was issued against Taillon by any Florida court. Fla. R. Civ. P. 1.070(a); Fed. R. Civ. P. Rule 4. Florida statutes do not provide for a Declaratory Judgment petition without a Complaint. *Fla. Stat.* §222.01 indicates a separate action in equity is required. No statute permits a Petition without a Summons. Process was insufficient and this Petition must be dismissed. Fed. R. Civ. P. 12(b)(4).

II. SERVICE OF PROCESS WAS NOT TIMELY MADE:

No attempt to serve Taillon was made. “As with the challenge to jurisdiction... the party on whose behalf service is made has the burden of establishing its validity.” *Familia De Boom v. Arosa Mercantil, SA*, 629 F.2d 1134,1138 (5th Cir. 1980); *Thompson v. State, DOR*, 867 So.2d 603,605 (Fla.1st DCA 2004). No Summons or Petition was served on Taillon in hand or by abode service at any time as required by *Fla. Stat.* §48.03(1)(a). Fla. R. Civ. P. 1.070(b); Fed. R. Civ. P. 4(e). No attempt at any alternative service was made. Fla. Civ. P. 1.070(e), (i). No return of service was made. Over 90 days passed since the Petition was filed, and no Summons was served with a Complaint or Petition. Fed. R. Civ. P. 4(m); Fla. R. Civ. P. 1.070(j).

This matter was timely and properly removed to the U.S. District Court on May 22, 2019, while preserving all Rule 12 defenses. No service was made within 90 days following removal, i.e. August 20, 2019. Fed. R. Civ. P. Rule 4(m). When confronted with objection *re* service, Petitioner sought to have a Summons issue (Doc.#7 and #8). Petitioner’s counsel

admitted no service was made. Instead, she claimed she sent a copy of the Petition to attorney Hughes (Doc. #10). Nothing in state or federal Rules or statutes provides for service of the initial pleading on an attorney for an individual. This matter should be dismissed.

III. PERSONAL JURISDICTION OVER TAILLON WAS NOT OBTAINED:

“Service of process is a jurisdictional requirement: a court lacks jurisdiction over the person of a defendant when that defendant has not been served.” *Pardazi v. Cullman Med. Ctr.*, 896 F.2d 1313, 1317 (11th Cir. 1990). Since service was not made within the 90-day period

allowed, it therefore cannot be cured with re-issuance. *Holliday, III v. Syndicate 3000 at Lloyds*, 8:17-cv-2063-T-33AEP (M.D.Fla. May 5, 2018).¹ Fed. R. Civ. P. 12(b)(2). No personal jurisdiction was obtained over Taillon. Fed. R. Civ. P. 12(b)(2).

¹ “Therefore, because Holliday failed to timely serve Markel Syndicate 3000 with a copy of the summons and Third Amended Complaint, this Court lacks jurisdiction over Markel Syndicate 3000. *Pardazi*, 896 F.2d at 1317. Furthermore, the time to serve Markel Syndicate 3000 expired on April 23, 2018, so Holliday cannot timely cure the insufficient service. (Doc. # 39). Therefore, the case is dismissed pursuant to Rule 12(b)(5) and Rule 4(m). *See Pelmore*

IV. THIS COURT LACKS SUBJECT MATTER JURISDICTION:

A Petition for Declaratory Relief is an independent bill in equity in Florida. No separate action in equity was instituted. See, *Fla. Stat.* §222.01 and *Fla. Stat.* §222.10. Rather, CIF attempted to insert the Petition in the context of a prior, closed case. Such defective procedural move deprives this court of subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1).

V. DISMISSAL IS WARRANTED:

Taillon has been involved in a collection action in which she is not a Judgment Debtor and frankly in an action in which the Petitioner previously released her. Petitioner violated Taillon's due process rights by making no effort at all to serve her or even have a summons issued. Taillon's *name* was simply stuck on top of the CA18-1513 'Petition' with no attempt to make her a party in a lawful manner. Dismissal is the appropriate remedy as Fed. R. Civ. P. 4(m) calls for dismissal as the time for service of this Petition has now expired. The refusal to attempt to serve Taillon is even more egregious as she could have suffered a default judgment and lost her interest in Field's half of the house, or suffered other drastic consequences including a forced sale. *Bedasee & Bedasee v. Ocwen Loan Servicing, LLC*, 2:16-cv-145-FtM-29MRM, n.4 (M.D. Fla. March 27, 2017), *aff'd* 16-148335_(11th Cir. 2018) (unpubl.). Also, *Rhodes v. Wilkie*, 8:19-cv-464-T-33SPF (M.D.Fla. Aug. 20, 2019).

VI. PETITIONER PREVIOUSLY RELEASED TAILLON:

As set forth in Defendants' Supplement to Notice of Removal, the Petitioner and Taillon arrived at a Global Settlement Agreement ("GSA") executed Feb. 23, 2017 (Doc. #11-1). The Global Settlement Agreement was universal in its dismissal of all claims of every kind.

Paragraph 4 of the Global Settlement Agreement states, in part:

...this Agreement settles with prejudice all claims of every kind and nature which were raised or could have been raised in any above-identified litigation, including any and all causes of action, direct claims, ...and other rights and actions otherwise derived from such, between and among all undersigned parties and all identified entities herein...and the Receiver...in every and all capacity (including capacity as agent, fiduciary, appointee, individual or otherwise. (Emphasis added.)

Paragraph 5 of the Global Settlement Agreement states, in part:

The parties to this Agreement do hereby release all other parties...of and from any and all suits, legal actions or claims of any nature whatsoever, known or unknown, up to and including the present time, including but not limited to, claims described in Paragraph 4 of the Agreement, which include but are not limited to claims arising under all common and statutory laws, ordinances, rules or regulations of the United States of America, and all the states of the United States,... and their political subdivisions, and the public policies thereof. This release shall further include, but shall not be limited to, all those claims which were or could have been asserted in the litigation identified..., which actions shall be dismissed with prejudice... (Emphasis added.)

The language of the release is absolute, unambiguous and unequivocal. On March 5, 2018, the South Carolina Court of Appeals held **“the approved global settlement ...settles with prejudice all claims of every kind which were or could have been raised...”** (Doc. #11-3, 8/8/19). Taillon is entitled to the shield afforded by these Releases she bargained for. As held in *Barber v. Int’l Brotherhood of Boilermakers*, 788 F.2d 750 (11th Cir. 1985):

The language is clear. The parties agreed to give the release preclusive effect on "all claims and causes of action raised or for which could have been raised" in Barber's first suit. We respect the

parties' clear contractual intent and accordingly hold that consideration of the referrals prior to the consent decree is improper. See *Yachts America, Inc. v. United States*, 673 F.2d 356, (1982), *cert. denied*, 459 U.S. 839, (1984) (consent decree, based on settlement agreement expressing clear intent to resolve issues once and for all, precluded relitigation of issue in prior suit); *Green v. Ancora-Citronelle Corp.*, 577 F.2d 1380 (9th Cir.1978) (same); see also *James*, *supra*, at 193 ("Where the agreement upon which a consent judgment is based is fairly to be construed as providing that the parties should be bound ... that agreement will and should generally be given effect."); Comment, *The Consent Judgment as an Instrument of Compromise and Settlement*, 72 Harv.L.Rev. 1314, 1320-21 (1959) ("Because of [a consent] judgment's consensual nature, there seems to be no reason why, if the parties expressly so stipulate, collateral-estoppel effect should not be accorded, provided it is limited to those claims which might reasonably have been foreseen at the time of the agreement.").

Per the GSA ¶14, Field and Taillon executed a Note and Mortgage in favor of CIF for \$105,000. As contemplated in the GSA ¶14, Field and Taillon remitted the sum of \$85,000 to CIF in full satisfaction of all remaining obligations under the GSA. No further action was taken by any party until the institution of this matter. This Petition is due to be dismissed as to Taillon as the Petitioner has already released the claims it intends to assert here.

VII. LAWSUIT IS BARRED BY CLAIM AND/OR ISSUE PRECLUSION:

A. THIS ACTION IS BARRED BY RES JUDICATA-CLAIM PRECLUSION.

The issues raised in this matter were previously raised in a lawsuit that was filed by Petitioner against Taillon and others and then Dismissed. The Amended Complaint (Ex. B without exhibits) and the Order of Dismissal (Ex. C) are attached hereto. "The doctrine of *res judicata*, or claim preclusion, bars the parties to an action from litigating claims that were or could have been litigated in a prior action between the same parties." *Lobo v. Celebrity Cruises, Inc.*, 704 F.3d 882, 892 (11th Cir. 2013)(emphasis added). *Res judicata* is properly raised in a Motion to Dismiss under F.R.Civ.P. 12(b)(6). See, e.g., *Silva v. TAS Management*,

LLC, 3:19-cv-354-J-32MCR (M.D.Fla. May 13, 2019) (dismissed). "*Res judicata's* fundamental purpose is to ensure that no one should be twice sued for the same cause of action." *Yelsen Land Co. v. State*, 397 S.C. 15, 22 (2012). "The doctrine flows from the principle that public interest requires an end to litigation" *Duckett v. Goforth*, 374 S.C. 446, 464, (Ct. App. 2007). "When applied properly, issue and claim preclusion facilitate the worthy aim of efficiency: By 'precluding parties from contesting matters that they have had a full and fair opportunity to litigate, ' these two doctrines protect against 'the expense and vexation attending multiple lawsuits, conserve judicial resources, and foster reliance on judicial action by minimizing the possibility of inconsistent decisions.'" *Taylor v. Sturgell*, 553 U.S. 880, 892, (2008).

"The party invoking *res judicata* must establish that "(1) the prior decision was rendered by a court of competent jurisdiction; (2) there was a final judgment on the merits; (3) the parties were identical in both suits; and (4) the prior and present causes of action are the same." *Davila v. Delta Air Lines, Inc.*, 326 F.3d 1183,1187 (11th Cir. 2003) .South Carolina does not require the fourth prong of the test. "[F]or purposes of *res judicata*, "cause of action" is not the form of action in which a claim is asserted but, rather the cause for action, meaning the underlying facts combined with the law giving the party a right to a remedy of one form or another based thereon." *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30,34, (Ct. App. 1999). Federal law applies the state law of the prior action. Taillon meets all prongs of the test, thus mandating preclusion. The causes of action raised in the Amended Complaint and those 'alleged' in the Petition are the same or could have been raised in the prior action. They arise from a common nucleus of facts, (Amend. Comp. ¶1A). The Cause(s) of Action are so closely related as to be identical (the Petition does not set forth formal Causes of Action so they must

be deduced from allegations and relief sought):

- a. In the Petition, CIF alleges Field obtained the funds from CIF by fraud and then Field and Taillon fraudulently transferred them to purchase their homestead property in Florida and demands Field's share be sold and funds returned to CIF. It is unclear from the Petition what 'Cause of Action' is being alleged against Taillon, but it is assumed for purposes hereof that it could be loosely termed 'conversion' and/or 'fraudulent conveyance', which were also alleged in 2015-cp-23-01263.
- b. The relevant allegations in the 2015 Amended Complaint as to Taillon are:
 - i) A.C. Page 15 ¶37 "...Taillon owned and/or managed several of the above named defendant entities...through which the assets of CIF were funneled and/or laundered..."
 - ii) A.C. Page 15 ¶39 "...Taillon funneled money between and among CIF and York Mortgage Funding and Bradford Financial for which Defendant Field was the *de facto* controlling managing member"
 - iii) A.C. Page 16, ¶40 "...Defendant Taillon fought to keep anyone from learning of their dealings and loan activity with CIF."
 - iv) A.C. Page 52 ¶137 "...Taillon funneled money between and among CIF, York Mortgage Funding and Bradford Financial....Ultimately Defendant Field siphoned off substantial monies from CIF..."
 - v) A.C. Page 56 ¶157 "On or about September 8, 2011, Defendants Arthur Field and Kathryn Taillon used cash to purchase another residence at 5489 Atlantic NW (sic), St. Augustine, Florida. Upon information and belief, Defendants Arthur Field and/or Kathryn

Taillon purchased this residence with funds taken from CIF and/or related entities that these defendants owned and/or controlled.”

- vi) A.C. Page 56 ¶158 “Plaintiff is informed and believes that the property was fraudulently transferred ... for the reasons stated herein and should therefore to be determined by this court to be held in a constructive trust for the plaintiff.”

c. The relevant Causes of Action in the 2015 Amended Complaint are (referring to Field and Taillon at all times in the plural):

- i) First Cause of Action “Unjust Enrichment”, A.C. pg. 75; ¶ 245, pg. 76, “These defendants ... converted the same ... for their own use..”
- ii) Second Cause of Action “Conversion”, A.C. pg. 76;
- iii) Third Cause of Action “Breach of Fiduciary Duty”, A.C. pg 77; ¶255(k), “...converting Plaintiff’s money for their own use ...”
- iv) Seventh Cause of Action “Breach of Contract Accompanied by a Fraudulent Act” A.C. pg. 81; ¶273, pg. 82 ““Defendants breach was accompanied by a fraudulent act, which can be characterized by dishonesty in fact, unfair dealing and/or the unlawful appropriation of plaintiff’s property and/or money by design...”
- v) Eleventh Cause of Action “Fraudulent Conveyance” A.C. pg. 86; ¶293 “The above identified have transferred, sold, conveyed, and/or received the assets of the plaintiff (both directly and derivatively) for nominal or no consideration in an attempt to thwart creditors, such as plaintiff, from recovering the same...”

- vi) Twelfth Cause of Action “Constructive Trust” A.C. pg. 87; ¶298 “The above identified defendants have received money and/or property (both real and personal) which does not equitably belong to them and which they cannot in good conscience retain and/or withhold from the plaintiff, which is beneficially entitled to the same because the monies and/or properties were acquired through fraud and/or a breach of trust ... and/or in violation of fiduciary duties owed to the plaintiff, to wit: Page 88 ¶ 298(b) Upon information and belief, the property at 5489 Atlantic NW (sic), St. Augustine, Florida, currently in the names of defendants Arthur Field and Kathryn Taillon, was acquired with misappropriated and/or fraudulently obtained funds and/or proceeds of the Plaintiff. Wherefore, title to 5489 AtlanticNW[sic], St. Augustine, Florida should be transferred to the Plaintiff and/or ordered to be held in a constructive trust for the benefit of the Plaintiff, until such time as it can be sold.”

The 2015 Amended Complaint. Eleventh and Twelfth Causes of Action are essentially identical to the claim in the Petition and the relief sought is the same. CIF’s Petition is clearly barred by *res judicata*. When Causes are virtually indistinguishable and relief sought is fundamentally the same, *res judicata* bars the second action. *Zinn v. CFI Sales & Mktg, Ltd.*, 415 S.C. 93, (Ct.App. 2015) (claims barred after settlement); *Adams v. So. Farm Bur .Life Ins.Co.*, 493 F.3d 1276, 1289 (11th Cir. 2007).

This case and the 2015-cp-23-01263 matter arose from the same underlying factual allegations—all pre-dating 2012. Hence, the Petition is precluded and must be dismissed with prejudice.). The essential crux of both matters, as to *fraud*, is the same and it makes no

difference if the alleged fraud is pled with some new facts or more specificity in the Petition. *Judy v. Judy*, 393 S.C. 160, (Ct. App. 2011). **As to Taillon, absolutely nothing has changed between the Amended Complaint in 2015-cv-23-01263 and the Petition in this matter.**

“Because *res judicata* operates to preclude not only the issues raised in the prior action, but issues which could have been raised in the prior action,” *N.A.A.C.P. v. Hunt*, 891 F.2d 1555, 1561 (11th Cir. 1990), “[*r*]es judicata applies not only to the exact legal theories advanced in the prior case, but to all legal theories and claims arising out of the same nucleus of operative facts,” *Wesch v. Folsom*, 6 F.3d 1465, 1471 (11th Cir. 1993); *Eastman Kodak Co. v. Atlanta Retail, Inc.*, 456 F.3d 1277, 1288 (11th Cir. 2006). As held in *Trustmark Insurance Co. v. ESLU, Inc.* 299 F.3d 1265 (11th Cir. 2002):

Claims are part of the same "cause of action" when they "arise out of the same transaction or series of transactions." *In re Piper Aircraft*, 244 F.3d 1289, 1297 (11th Cir. 2001). ... we make ... inquiry into whether the cases are based on the same factual predicate or came from the same nucleus of operative fact. If they did, they are the "same" for the purposes of *res judicata*. *Id.* The doctrine is concerned with the substance, and not the form, of the proceedings. *Id.* "... if a case arises out of the same nucleus of operative fact, or is based upon the same factual predicate, as a former action, that the two cases are really the same 'claim' or 'cause of action' for purposes of *res judicata*." *Id.* Thus, we look to the factual issues that must be resolved by the litigation and ask whether those facts arise out of the same transaction or series thereof. *Ragsdale v. Rubbermaid, Inc.*, 193 F.3d 1235, 1239 (11th Cir. 1999). We ask whether the plaintiff could, or rather should, have brought the second claim with the first lawsuit. *Id.*

“When a valid and final judgment rendered in an action extinguishes the plaintiff’s claim, the claim extinguished includes all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction, or series of connected transactions,

out of which the action arose.” *Restatement (Second) of Judgments* § 24 (1982 & Supp. 2012). The plaintiff's claim is extinguished even when the plaintiff is "prepared in the second action

(1) [t]o present evidence or grounds or theories of the case not presented in the first action, or
 (2) [t]o seek remedies or forms of relief not demanded in the first action." *Id.* at § 25. The ‘primary right’ asserted by CIF in both actions is the same, thus barring the Petition. *Johnson v. Amer.Airlines, Inc.*, 157 Cal.App. 3d 430 (Cal. App. 3d 1985).

It should be noted that the Eleventh Circuit has previously upheld contempt sanctions against a plaintiff that brought claims based on situations existing prior to the effective date of the Settlement Agreement. *In re Managed Care v. Wellpoint, Inc.*, 756 F.3d 1222 (11th Cir. 2014): “For purposes of determining *res judicata*, an order approving a settlement agreement provides a final determination on the merits. *Martin v. Pahiakos*, 490 F.3d 1272, 1277 (11th Cir. 2007); *Norfolk S. Corp. v. Chevron, U.S.A., Inc.*, 371 F.3d 1285, 1288 (11th Cir. 2004); *Citibank, N.A. v. Data Lease Fin. Corp.*, 904 F.2d 1498, 1501-02 (11th Cir. 1990).” “Any facts which arose prior to the effective date of the Settlement are merged into the Settlement for the purposes of *res judicata*. *Klay v. All Defendants*, 309 F.App'x 294 (11th Cir. 2009) and *Madison Square Garden, L.P. v. National Hockey League*, 2008 WL 4547518 (S.D.N.Y. Oct. 10, 2008).” *Maldonado v. U.S.Atty.Gen.*, 664 F.3d 1369,1376 (11th Cir. 2011) cited in *Thomas v. City of Lakeland*, 8:16-cv-2029-T-36MAP_(M.D.Fla. July 7, 2017).² To avoid the preclusive language of the Settlement Agreement, plaintiff must first disgorge all the benefits (money and property) it received as a result of the Settlement. *Jackson v. BellSouth Telecom.*, 372 F.3d 1250 (11th Cir. 2004). CIF’s Petition is barred by *res judicata*/claim preclusion and must be dismissed with prejudice.

² “These cases agree upon the appropriate analysis when determining whether a release provision in a settlement agreement releases claims in a subsequent action. The District Court must determine whether the legal basis of the claim relies on events that predated the effective date of the agreement. See *Klay*, 309 F.App'x at 295 (noting magistrate judge's conclusion that plaintiffs were "forced to concede that their claims predate[d] the Effective Date of the settlement"); *Madison Square Garden, L.P.*, 2008 WL 4547518, at *6 (finding antitrust claim barred by release because it existed "at the time of the release" and "contain[ed] no allegations *THE ACTION IS BARRED BY COLLATERAL ESTOPPEL*).

The Petition is barred by collateral estoppel. As held in *Community State Bank, Cash America Financial Services, Inc. v. Strong*, 651 F.3d 1241 (11th Cir. 2011) (collateral estoppel bars claim), "...collateral estoppel does not require identity of the claim -- so long as the issue was determined in the previous action and there is identity of the parties, that issue may not be re-litigated, even as part of a different claim." Federal courts look to the issuing State court to determine the effect of the initial judgment. The issues in the two cases are essentially the same. "Collateral estoppel, ... prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same." *Carolina Renewal, Inc. v. S.C. Dep't of Transp.*, 385 S.C. 550, 554 (Ct. App. 2009). "Under the doctrine of collateral estoppel, once a final judgment on the merits has been reached in a prior claim, the relitigation of those issues ... are precluded as to the parties and their privies in any subsequent action based upon a different claim." *Richburg v. Baughman*, 290 S.C. 431,434, (Ct. App. 1986); *State v. Bacote*, 331 S.C. 328, 330 (Ct. App. 1998). "A case ... dismissed "with prejudice" indicates an adjudication on the merits and, ... prohibits subsequent litigation to the same extent as if the action had been tried to a final adjudication." *Jones v. City of Folly Beach*, 326 S.C. 360, (Ct. App. 1997). *Lawlor v. Nat'l Screen Serv. Corp.*, 349 U.S. 322 (1955); *Nunnery v. Brantley Constr. Co.*, 289 S.C. 205, (Ct. App. 1986). "When an issue of fact or law is determined by a valid and final judgment, ...the determination is conclusive in a subsequent action between the parties, whether on the same or different claim. *McNaughton-McKay Elec. Co. of N.C. v. Andrich*, 324 S.C. 275, (Ct. App. 1996). A consent judgment has substantially the same effect as any other judgment rendered in the ordinary course. 46 Am. Jur. 2d Judgments § 222 (1994).

Not only were the issues in this Petition raised in a prior lawsuit against Taillon that was dismissed, the issues were released by the GSA. *Christo v. Padgett*, 223 F.3d 1324_(11th

Cir. 2000)(settlement agreement results in collateral estoppel). For the reasons previously stated, this action should be dismissed with prejudice due to the doctrine of Collateral Estoppel.

VIII. THE PETITION IS DEVOID OF FACTS AND MUST BE DISMISSED.

The Petition in this matter is devoid of factual substantiation. “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, ‘to state a claim to relief that is plausible on its face... But allegations are not entitled to the assumption of truth when they are “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements.” *Liss v. Jacksonville Aviation Authority*, 3:19-cv-185-J-32JBT

(M.D.Fla. Aug. 7, 2019) (dismissing complaint) citing *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).

CIF alleges funds were obtained by Field by fraud and fraudulently transferred into the purchase of 5489 Atlantic View, St. Augustine, FL, but provides no specifics or facts in support of such conclusory allegation. Petition ¶22. Fraud and fraudulent transfer must be pled with specificity. F.R.Civ.P. 9(b). *Walker v. Sonafi Pasteur, In re Aphon Corp.*, 06-10510 (Bankr. D.Del. Jan. 27, 2010). The failure to do so is fatal to the Petition, which must be dismissed under F.R.Civ.P. 12(b)(6). *In re Rollaguard Security, LLC*, 14-38071 (Bankr. S.D.Fla. July 27, 2017) (dismissed with prejudice). “... a plaintiff’s obligation to provide the grounds of his entitle[ment] to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555(2007).” *A.L. v. Shorstein*, 3:15-cv-1181-J-32PDB (M.D.Fla. Feb. 9, 2017) (dismissed, amendment denied). “In cases where ...a

plaintiff nonetheless frames the claims as a course of fraudulent conduct, the claim is said to be 'grounded in fraud' or to 'sound in fraud' and the pleading of that claim as a whole must satisfy the particularity requirement of Rule 9(b)." *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1103-04 (9th Cir. 2003). "F.R.Civ.P.9(b) applies to fraudulent transfers alleged to have occurred with "actual intent to hinder, delay, or defraud" a creditor; *Kennedy Funding, Inc. v. Chapman*, 2010 WL 2528729, at *9 (N.D. Cal. June 18, 2010). *LaChapelle v. Kim*, 15-cv-02195-JSC (N.D.CA 9/16/2015)(complaint dismissed under 9(b)). Plaintiff presents no allegations to defeat Taillon's homestead rights. Plaintiff also improperly lumps Field and Taillon into the same allegations without clearly delineating which defendant is alleged to have performed which fraudulent act, and in what manner. The Petition should be dismissed. *Brown v. Fidelity Nat'l Title Group*, 3:18-cv- 1148-J-32MCR (M.D.Fla. Jan. 14, 2019).

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CERTIFICATE OF SERVICE

I CERTIFY that the foregoing document was electronically filed with the U.S. Bankruptcy Court on this 1st day of November, 2019, via CM/ECF and was served this day on all counsel and all parties entitled to notice via CM/ECF and/or U.S. Mail.

By: /s/ D. Brad Hughes
Attorney

IN THE UNITED STATE DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA

CAPITAL INVESTMENT FUNDING, LLC
32JRK

CASE NO.: 3:19-cv-0606-TJC-

Plaintiffs,

vs.

ARTHUR FIELD AND KATHRYN TAILLON

Defendants.

_____ /

FIELD'S MOTION TO DISMISS WITH PREJUDICE

Arthur Field, by his undersigned counsel, moves this Court to dismiss this action as to him with prejudice based on F.R.Civ.P. 12(b)(6) and/or 9(b). All Rule 12 defenses were preserved in the Notice of Removal.

SUMMARY OF ARGUMENTS:¹

- 1) Petitioner fails to state a claim upon which relief can be granted warranting dismissal with prejudice as CIF has released and is barred by *res judicata* and/or collateral estoppel from collecting on any civil judgment. F.R.Civ.P. 12(b)(6) and F.R.Civ.P. 9(b). Field is not challenging the State of South Carolina's right to pursue restitution but the State of South Carolina is not a party to this action and CIF's claims are barred as to the homestead property they are seeking to collect upon.

- a. This action is barred by all principles of *res judicata* and/or collateral estoppel;

¹ Field relies on Exhibits in support hereof which are public and/or court records and requests this court take judicial notice thereof. F.R.E. 201. "... under Rule 12(b)(6)..., the court may also take judicial notice of court documents, including those from state court. *Lozman v. City of Riviera Beach, Fla.*, 713 F.3d 1066, 1075 n.9 (11th Cir. 2013)." *Hopkins v. Jacksonville Ass'n of Firefighters, IAAF Local 122, Inc.*, 3:17-cv-74-J-32JRK(M.D.Fla. 1/24/2018).

- b. This action is barred by principles of contractual settlement, and/or accord and satisfaction.

I. FACTUAL/PROCEDURAL BACKGROUND:

In 1999, Capital Investment Funding, LLC (“CIF”) was created in South Carolina. In 2003, Field became manager of CIF and acquired a 95% interest. The LLC members declared a statutory winding up on January 16, 2008. In February, 2008, noteholders instituted actions against CIF and Field, consolidated into a Class Action 2008-cp-23-3665. Jerry Saad was appointed receiver/manager of CIF on August 24, 2009 per settlement agreement in #3665.

In March, 2015, CIF filed South Carolina action “Capital Investment Funding, LLC v. Arthur Field, Taillon, *et al.*” The Amended Complaint (“A.C”) in 2015-cp-23-01263² states thirteen Causes of Action against Field and Taillon. (Doc. #15-2). The parties engaged in extensive mediation and arrived at a Global Settlement Agreement (“GSA”) (Doc. #11-1).

Prior to its ratification, hearing was held before Judge Maddox in *State v. Arthur Field*, on November 1, 2017. CIF supported Field’s motion to terminate all restitution. Judge Maddox pronounced an Order terminating restitution payments, but held the balance would be converted into a civil judgment per *S.C.C.A.* §17-25-323(D), (E). This decision was docketed on November 27, 2017 and is referred to in the Order ultimately obtained by Plaintiff (Doc. #5-2). Field filed an *Affidavit* prior to November 27, 2017 detailing his “50% interest in Homestead property” located in St. Augustine, and also Taillon’s mortgage thereon.

II. PETITIONER PREVIOUSLY RELEASED ARTHUR FIELD:

The Global Settlement Agreement was universal in its dismissal of all claims of every kind.

Paragraph 4 of the Global Settlement Agreement (Doc. # 11-1). states, in part:

...this Agreement settles with prejudice all claims of every kind and nature which were raised or could have been raised in any above-identified litigation, including any and all causes of action, direct claims, ...and other rights and actions otherwise derived from such, between and among all undersigned parties and all identified entities herein...and the Receiver...in every and all capacity (including capacity as agent, fiduciary, appointee, individual or otherwise. (Emphasis added.)

Paragraph 5 of the Global Settlement Agreement states, in part:

The parties to this Agreement do hereby release all other parties...of and from any and all suits, legal actions or claims of any nature whatsoever, known or unknown, up to and including the present time, including but not limited to, claims described in Paragraph 4 of the Agreement, which include but are not limited to claims arising under all common and statutory laws, ordinances, rules or regulations of the United States of America, and all the states of the United States,... and their political subdivisions, and the public policies thereof. This release shall further include, but shall not be limited to, all those claims which were or could have been asserted in the litigation identified..., which actions shall be dismissed with prejudice... (Emphasis added.)

Paragraph 14(I)(ii) of the Settlement Agreement states, **“Upon approval by the Court, this settlement will be full and final as to all parties.”** On March 5, 2018, the South Carolina Court of Appeals held all claims against Field, which were raised or could have been raised at any time were fully resolved merged into the releases set forth in ¶4 and ¶5 of the GSA **“the approved global settlement ...settles with prejudice all claims of every kind which were or could have been raised...”** (Doc. #11-3).

The language of the release is absolute, unambiguous and unequivocal. All claims of any nature whatsoever, known or unknown, arising under any State’s common or statutory law were released. Field is entitled to the shield afforded by these Releases that he bargained for.

As held in *Barber v. Int’l Brotherhood of Boilermakers*, 788 F.2d 750(11th Cir. 1985):

² Dismissal with prejudice of 2015-cv-23-01263 was filed by the Court on June 13, 2018. (Doc. #15-3)

The language is clear. The parties agreed to give the release preclusive effect on "all claims and causes of action raised or for which could have been raised" in Barber's first suit. We respect the parties' clear contractual intent and accordingly hold that consideration of the referrals prior to the consent decree is improper. See *Yachts America, Inc. v. United States*, 673 F.2d 356,(1982), *cert. denied*, 459 U.S. 839, (1984) (consent decree, based on settlement agreement expressing clear intent to resolve issues once and for all, precluded relitigation of issue in prior suit); *Green v. Ancora-Citronelle Corp.*, 577 F.2d 1380 (9th Cir.1978) (same); see also *James, supra*, at 193 ("Where the agreement upon which a consent judgment is based is fairly to be construed as providing that the parties should be bound ... that agreement will and should generally be given effect."); Comment, *The Consent Judgment as an Instrument of Compromise and Settlement*, 72 Harv.L.Rev. 1314, 1320-21 (1959) ("Because of [a consent] judgment's consensual nature, there seems to be no reason why, if the parties expressly so stipulate, collateral-estoppel effect should not be accorded, provided it is limited to those claims which might reasonably have been foreseen at the time of the agreement.").

All parties were aware of the civil judgment to be entered in CIF's favor at some point in the future as a result of Judge Maddox' November 27, 2017 Order. Nothing in the GSA or Addendum reduced the effectiveness or comprehensiveness of the blanket releases contained in GSA paragraphs 4, 5 and 14. No exception or reservation of right to sue was set forth in the GSA or Addendum concerning any future civil judgment that may be converted from a criminal restitution order. *Veltheim v. Int'l Bodytalk Ass'n*, 8:16-cv-298-T-33JSS (M.D. Fla. Jan. 5, 2017) (dismissed based on prior Settlement Agreement—had the parties wished to exempt certain claims they could have carved out those specifically, but they didn't).

See, *Long v. O'Neill*, 126 AD3d 404 (N.Y. 2015)(unanimously affirmed Supreme Court's Order granting defendants' motion to dismiss with prejudice):

... there is no ambiguity as to the release's intended scope. The language in the release contains several phrases indicating its exceptional breadth — for example, the language stated that the agreement was made in full settlement "of all matters arising out of or in connection with the facts, matters, claims, actions and allegations" made in the lawsuits. This language is not "reasonably susceptible of more than one interpretation"... According to the language of the agreement, the release broadly barred "all and/or any" claims "arising from" or "resulting from" or "in connection with" "any act [etc.]" This Court has actually construed similar broad language to bar fraud claims relating to the subject matter where the

signatories to the agreement did not specifically refer to, or even know about, those fraud claims before executing their release...Similarly, courts have given effect to releases even when the releasors are subjectively unaware of the precise claims they are releasing.

Per GSA ¶14, Field and Taillon executed a Note and Mortgage in favor of CIF for \$105,000.

On December 27, 2017, the sum of \$85,000 was remitted to CIF in full satisfaction of the obligations of Field under the GSA.

As held by the Eleventh Circuit, *In re Managed Care* 756 F.3d 1222(11th Cir. 2014) at n.9 citing *Thomas v. Blue Cross & Blue Shield Ass'n*, 594 F.3d 814,817(11th Cir. 2010):

These cases agree ... a release provision in a settlement agreement releases claims in a subsequent action. ...[when] the legal basis of the claim relies on events that predated the effective date of the agreement. See *Klay*, 309 F.App'x at 295 (noting magistrate judge's conclusion that plaintiffs were " forced to concede that their claims predate[d] the Effective Date of the settlement"); *Madison Square Garden, L.P.*, 2008 WL 4547518, at *6 (finding antitrust claim barred by release because it existed " at the time of the release").

See, e.g., *Real v. Goodell*, 2:19-cv-35-FtM-29UAM (M.D. Fla. 5/22/2019)(dismissed with prejudice based on prior settlement; held to be a frivolous action); *Sub-Zero Co. v. R.J. Clarkson Co.*, 308 S.C. 188, 417 S.E.2d 569(1992)(same).

No further relief may be granted based upon contract, settlement, or accord and satisfaction.

This Petition is due to be dismissed as to Field. Petitioner has already contractually released all claims it intends to assert here.

III. LAW SUIT IS BARRED BY CLAIM AND/OR ISSUE PRECLUSION:

A. THIS ACTION IS BARRED BY RES JUDICATA-CLAIM PRECLUSION.

The issues and claims raised in this matter were previously raised in the 2015 lawsuit that was filed by Petitioner and then dismissed. See Amended Complaint (Doc. #15-2) and the Order of Dismissal (Doc. #15-3). *Res judicata* is properly raised in a Motion to Dismiss under F.R.Civ.P. 12(b)(6). *Silva v. TAS Management, LLC*, 3:19-cv-354-J-32MCR(M.D.Fla. 5/13/19) (dismissed).

"The doctrine of *res judicata*, or claim preclusion, bars the parties to an action from litigating claims that were or could have been litigated in a prior action between the same parties." *Lobo v. Celebrity Cruises, Inc.*, 704 F.3d 882,892 (11th Cir. 2013)(emphasis added). "*Res judicata*'s fundamental purpose is to ensure that no one should be twice sued for the same cause of action." *Yelsen Land Co. v. State*, 397 S.C. 15,22, 723 S.E.2d 592,596(2012). "The doctrine flows from the principle that public interest requires an end to litigation"*Duckett v. Goforth*, 374 S.C. 446, 464, 649 S.E.2d 72, 81 (Ct. App. 2007). "When applied properly, issue and claim preclusion facilitate the worthy aim of efficiency: By 'precluding parties from contesting matters that they have had a full and fair opportunity to litigate, ' these two doctrines protect against 'the expense and vexation attending multiple lawsuits, conserve judicial resources, and foster reliance on judicial action by minimizing the possibility of inconsistent decisions.'" *Taylor v. Sturgell*, 553 U.S. 880, 892, 128 S.Ct. 2161, 2171 (2008).

"The party invoking *res judicata* must establish that "(1) the prior decision was rendered by a court of competent jurisdiction; (2) there was a final judgment on the merits; (3) the parties were identical in both suits; and (4) the prior and present causes of action are the same." *Davila v. Delta Air Lines, Inc.*, 326 F.3d 1183,1187 (11th Cir. 2003) .

South Carolina does not require the fourth prong of the test. "[F]or purposes of *res judicata*, "cause of action" is not the form of action in which a claim is asserted but, rather the cause for action, meaning the underlying facts combined with the law giving the party a right to a remedy of one form or another based thereon." *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30,34, 512 S.E.2d 106,109(1999); *Judy v. Judy*, 393 S.C. 160, 172, 712 S.E.2d 408, 414 (2011). Federal law applies the state law of the prior action.

Field meets all prongs of the test, thus mandating preclusion. This case and the 2015-cv-23-01263 (which was dismissed by the Court with prejudice) matter arose from the same underlying factual allegations—all pre-dating 2015, (A.C. ¶1A). The Causes of Action and claims raised in the Amended Complaint and those ‘alleged’ in the Petition are the same or could have been raised in the prior action. The Cause(s) of Action are so closely related as to be identical:

- a. In the Petition, CIF alleges Field obtained the funds from CIF by fraud and then fraudulently transferred them to purchase his share of homestead property in Florida and demands Field’s share be sold and funds returned to CIF.
- b. The relevant allegations in the 2015 Amended Complaint include:
 - i) A.C. Page 10 ¶19 “Once the monies were received into the coffers of CIF, ... Field engaged in numerous transactions of self-dealing for himself, his family members and his business associates...”
 - ii) A.C. Page 15 ¶39 “Defendant Field funneled money Field siphoned off substantial monies....”
 - iii) A.C. Page 16, ¶40 “Additionally, Defendant Field ... fought to keep anyone from learning of their dealings and loan activity with CIF...”
 - iv) A.C. Page 52 ¶137 “...Field ... funneled money Defendant Field siphoned off substantial monies from CIF...”
 - v) A.C. Page 56 ¶157 “On or about September 8, 2011, Defendants Arthur Field and Kathryn Taillon used cash to purchase another residence at 5489 Atlantic NW (sic), St. Augustine, Florida. Upon information and belief, Defendants Arthur Field and/or Kathryn Taillon purchased this

residence with funds taken from CIF and/or related entities that these defendants owned and/or controlled.”

- vi) A.C. Page 56 ¶158 “Plaintiff is informed and believes that the property was fraudulently transferred ... for the reasons stated herein and should therefore to be determined by this court to be held in a constructive trust for the plaintiff.”
- vii) A.C. Page 69 ¶218 “... and having engaged in the above described schemes ... Field made sure to get as much as he could out of CIF before the inevitable demise that he was keeping a secret.”

c. The relevant Causes of Action in the 2015 Amended Complaint are:

- i) First Cause of Action “Unjust Enrichment”, A.C. pg. 75; ¶ 245, pg. 76, “These defendants ... converted the same ... for their own use..”
- ii) Second Cause of Action “Conversion”, A.C. pg. 76;
- iii) Third Cause of Action “Breach of Fiduciary Duty”, A.C. pg 77; ¶255(k), “...converting Plaintiff’s money for their own use ...”
- iv) Seventh Cause of Action “Breach of Contract Accompanied by a Fraudulent Act” A.C. pg. 81; ¶273, pg. 82 ““Defendants breach was accompanied by a fraudulent act, which can be characterized by dishonesty in fact, unfair dealing and/or the unlawful appropriation of plaintiff’s property and/or money by design...”
- v) Eleventh Cause of Action “Fraudulent Conveyance” A.C. pg. 86; ¶293 “The above identified have transferred, sold, conveyed, and/or received the assets of the plaintiff (both directly and derivatively) for nominal or

no consideration in an attempt to thwart creditors, such as plaintiff, from recovering the same...”

- vi) Twelfth Cause of Action “Constructive Trust” A.C. pg. 87; ¶298 “The above identified defendants have received money and/or property (both real and personal) which does not equitably belong to them and which they cannot in good conscience retain and/or withhold from the plaintiff, which is beneficially entitled to the same because the monies and/or properties were acquired through fraud and/or a breach of trust ... and/or in violation of fiduciary duties owed to the plaintiff, to wit: Page 88 ¶ 298(b) Upon information and belief, the property at 5489 Atlantic NW (sic), St. Augustine, Florida, currently in the names of defendants Arthur Field and Kathryn Taillon, was acquired with misappropriated and/or fraudulently obtained funds and/or proceeds of the Plaintiff. Wherefore, title to 5489 Atlantic NW(sic), St. Augustine, Florida should be transferred to the Plaintiff and/or ordered to be held in a constructive trust for the benefit of the Plaintiff, until such time as it can be sold.”

And the relief sought in 2015 was: A.C. Page 89 subsection 2 “...for recovery of all monies and property obtained by defendants ... including ... return of all fraudulently transferred property, both real and personal...” (Compare to Petition, page 8). The 2015 A.C. Eleventh and Twelfth Causes of Action are essentially identical to the claim in the Petition and the relief sought is the same. CIF’s Petition is clearly barred by *res judicata*. When Causes of Action are virtually indistinguishable and relief sought is fundamentally the same, *res judicata* bars the second action. *Zinn v. CFI Sales & Mktg, Ltd.*, 415 S.C. 93, 780 S.E.2d 611,619(Ct.App.

2015)(claims barred after settlement).

The Petition does not allege any new material facts not derived from the same underlying nucleus as the 2015 Amended Complaint or which were known to Petitioner by 2015. Field's restitution was set in October, 2013. Nothing has changed since December 1, 2017 with the sole exception that the amount of the civil judgment was liquidated by the court. Its existence was a certainty and known by November 27, 2017, prior to the GSA effective date. The Agreement states it is only effective upon ratification by both courts, *i.e.* Dec. 1, 2017.

"Because "*res judicata* operates to preclude not only the issues raised in the prior action, but issues which could have been raised in the prior action," *N.A.A.C.P. v. Hunt*, 891 F.2d 1555, 1561 (11th Cir. 1990), "[*r*]es judicata applies not only to the exact legal theories advanced in the prior case, but to all legal theories and claims arising out of the same nucleus of operative facts," *Wesch v. Folsom*, 6 F.3d 1465, 1471 (11th Cir. 1993)." *Eastman Kodak Co. v. Atlanta Retail, Inc.*, 456 F.3d 1277, 1288 (11th Cir. 2006).

As held in *Trustmark Insurance Co. v. ESLU, Inc.* 299 F.3d 1265(11th Cir. 2002):

Claims are part of the same "cause of action" when they "arise out of the same transaction or series of transactions." *In re Piper Aircraft*, 244 F.3d 1289, 1297(11th Cir. 2001). ... we make ... inquiry into whether the cases are based on the same factual predicate or came from the same nucleus of operative fact. If they did, they are the "same" for the purposes of *res judicata*. *Id.* The doctrine is concerned with the substance, and not the form, of the proceedings. *Id.* "... if a case arises out of the same nucleus of operative fact, or is based upon the same factual predicate, as a former action, that the two cases are really the same 'claim' or 'cause of action' for purposes of *res judicata*." *Id.* Thus, we look to the factual issues that must be resolved by the litigation and ask whether those facts arise out of the same transaction or series thereof. *Ragsdale v. Rubbermaid, Inc.*, 193 F.3d 1235,1239 (11th Cir. 1999). .. we ask whether the plaintiff could, or rather should, have brought the second claim with the first lawsuit. *Id.*

“When a valid and final judgment rendered in an action extinguishes the plaintiff's claim, the claim extinguished includes all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose.” *Restatement (Second) of Judgments* § 24 (1982 & Supp. 2012). The plaintiff's claim is extinguished even when the plaintiff is "prepared in the second action (1) [t]o present evidence or grounds or theories of the case not presented in the first action, or (2) [t]o seek remedies or forms of relief not demanded in the first action." *Id.* at § 25. The ‘primary right’ asserted by CIF in both actions is the same, thus barring the Petition. *Johnson v. Amer.Airlines, Inc.*, 157 Cal.App. 3d 430(App. 3 Dist. 1985).

As held by the Eleventh Circuit in upholding contempt sanctions against a plaintiff bringing claims based on situations existing prior to the effective date of the Settlement Agreement, *In re Managed Care v. Wellpoint, Inc.*, 756 F.3d 1222(11th Cir. 2014): “For purposes of determining *res judicata*, an order approving a settlement agreement provides a final determination on the merits. *Martin v. Pahiakos*, 490 F.3d 1272, 1277 (11th Cir. 2007); *Norfolk S. Corp. v. Chevron, U.S.A., Inc.*, 371 F.3d 1285, 1288 (11th Cir. 2004); *Citibank, N.A. v. Data Lease Fin. Corp.*, 904 F.2d 1498, 1501-02 (11th Cir. 1990).” “Any facts which arose prior to the effective date of the Settlement are merged into the Settlement for the purposes of *res judicata*. *Klay v. All Defendants.*, 309 F.App'x 294 (11th Cir. 2009) and *Madison Square Garden, L.P. v. National Hockey League*, 2008 WL 4547518 (S.D.N.Y. Oct. 10, 2008).” *Maldonado v. U.S.Att'y.Gen.*, 664 F.3d 1369, 1376(11th Cir. 2011) cited in *Thomas v. City of Lakeland*, 8:16-cv-2029-T-36MAP(M.D.Fla. 7/7/2017). Similarly, *Adams v. Southern Farm Bureau Life Ins. Co.*, 493 F.3d 1276(11th Cir. 2007) enjoined subsequent claims based on prior Class action settlement. **CIF's Petition should be dismissed with prejudice per *res judicata*.**

B. THE ACTION IS BARRED BY COLLATERAL ESTOPPEL.

The Petition is barred by collateral estoppel. As held in *Community State Bank, Cash America Financial Services, Inc. v. Strong*, 651 F.3d 1241(11th Cir. 2011) (collateral estoppel bars claim), "...collateral estoppel does not require identity of the claim -- so long as the issue was determined in the previous action and there is identity of the parties, that issue may not be re-litigated, even as part of a different claim." Federal courts look to the issuing State court to determine the effect of the initial judgment. The issues in the two cases are essentially the same.

"Collateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same." *Carolina Renewal, Inc. v. S.C. Dep't of Transp.*, 385 S.C. 550, 554, 684 S.E.2d 779,782 (Ct. App. 2009). "Under the doctrine of collateral estoppel, once a final judgment on the merits has been reached in a prior claim, the relitigation of those issues ... determined in the first suit are precluded as to the parties and their privies in any subsequent action based upon a different claim." *Richburg v. Baughman*, 290 S.C. 431,434, 351 S.E.2d 164,166 (1986); *State v. Bacote*, 331 S.C. 328, 330, 503 S.E.2d 161, 162 (1998).

"A case ... dismissed "with prejudice" indicates an adjudication on the merits and, ... prohibits subsequent litigation to the same extent as if the action had been tried to a final adjudication." *Jones v. City of Folly Beach*, 326 S.C. 360, 483 S.E.2d 770 (Ct. App. 1997).

CIF performed in-depth discovery in the 2012—2015 actions. Numerous hearings were held, both in State and Federal court. The parties mediated several times, and entered into a comprehensive Global Settlement Agreement, which was ratified by two different courts. Such

Settlement and dismissal with prejudice operates as a complete adjudication on the merits under South Carolina law. It prohibits subsequent litigation to the same extent as if the action had been tried to a final adjudication. *Lawlor v. Nat'l Screen Serv. Corp.*, 349 U.S. 322, 75 S.Ct. 865(1955); *Nunnery v. Brantley Constr. Co.*, 289 S.C. 205, 345 S.E.2d 740 (Ct. App. 1986). A consent judgment has substantially the same effect as any other judgment rendered in the ordinary course. 46 Am. Jur. 2d Judgments § 222 (1994).

CIF and the Class had a full and fair opportunity for 5+ years to litigate the matter. On March 26, 2017 and December 1, 2017, the court held a fairness hearing after notice to all parties and Class members. The Receiver presented the issues and the terms of the GSA. No finding of fraud or fraudulent transfer was entered against Field or Taillon and none appears in the court's Order. The issues of fraud and fraudulent transfer raised in the Petition should be barred based on the ratification Order and the Settlement Agreement. *Christo v. Padgett*, 223 F.3d 1324(11th Cir. 2000)(settlement agreement results in collateral estoppel). **This Petition is barred by collateral estoppel and should be dismissed.**

IV. THE PETITION IS DEVOID OF FACTS AND MUST BE DISMISSED:

“To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, ‘to state a claim to relief that is plausible on its face... But allegations are not entitled to the assumption of truth when they are “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements.” *Liss v. Jacksonville Aviation Authority*, 3:19-cv-185-J-32JBT (M.D.Fla. 8/7/2019) (dismissing complaint) citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

Although this Petition alleges Field did not maintain a Homestead at 5489 Atlantic Vw,

St. Augustine, FL, the ‘facts’ included in the Complaint are those which substantiate Field’s creation of homestead, including his 2013 Declaration of Domicile, his 2012 Florida driver’s license, and his 2012 Florida voter registration, Petition ¶7.

CIF alleges funds were obtained by fraud and fraudulently transferred into the purchase of 5489 Atlantic Vw, St. Augustine, FL, but provides no specifics or facts in support of such conclusory allegation, Petition ¶22. Nor does it allege how or what CIF funds were used in September, 2011, more than 2 years after Saad became manager and more than 31 months after CIF’s members declared a winding up. No trace of CIF funds to the Florida property has ever been alleged with sufficient facts to overcome F.R.Civ.P. 9(b)’s mandatory requirement. CIF had all of Field’s and Taillon’s bank accounts from prior discovery and have never found a link. Receiver had over 10 years to formulate this allegation and still can’t.

Fraud and fraudulent transfer must be pled with specificity. F.R.Civ.P. 9. The failure to do so is fatal to the Petition, which must be dismissed under F.R.Civ.P. 12(b)(6). *Walker v. Sonafi Pasteur, In re Aphon Corp.*, 06-10510(Bankr. D.Del. 1/27/2010). *In re Rollaguard Security, LLC*, 14-38071(Bankr. S.D.Fla. 7/27/17)(dismissed with prejudice). “In cases where ...a plaintiff nonetheless frames the claims as a course of fraudulent conduct, the claim is said to be 'grounded in fraud' or to 'sound in fraud' and the pleading of that claim as a whole must satisfy the particularity requirement of Rule 9(b).” *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1103-04 (9th Cir. 2003). “F.R.Civ.P.9(b) applies to fraudulent transfers alleged to have occurred with "actual intent to hinder, delay, or defraud" a creditor; *Kennedy Funding, Inc. v. Chapman*, 2010 WL 2528729, at *9 (N.D.CA June 18, 2010)”. *LaChapelle v. Kim*, 15-cv-02195-JSC(N.D.CA 9/16/2015)(complaint dismissed under 9(b)). Also, *Sky Enterprises, LLC v. Offshore Design & Drilling Services, LLC*, 3:16-cv-916-J-32PDB(M.D.Fla. 2/8/17) (dismissed under 9(b) as to

fraud and concealment).

“While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff’s obligation to provide the grounds of his entitle[ment] to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544,555(2007).” *A.L. v. Shorstein*, 3:15-cv-1181-J-32PDB(M.D.Fla. 2/9/17)(dismissed, amendment denied). Further amendment would be futile. **This Petition should be dismissed with prejudice**

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CERTIFICATE OF SERVICE

I CERTIFY that the foregoing document was electronically filed with the U.S. Bankruptcy Court on this 15th day of November, 2019, via CM/ECF and was served this day on all counsel and all parties entitled to notice via CM/ECF and/or U.S. Mail.

By: /s/ D. Brad Hughes
Attorney

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

CAPITAL INVESTMENT FUNDING,
LLC,

Plaintiff,

Case No: 3:19-cv-606-TJC-JRK

v.

ARTHUR FIELD and KATHRYN
TAILLON,

Defendants.

_____ /

**PLAINTIFF'S BRIEF REGARDING JURISDICTION OVER
GLOBAL SETTLEMENT AGREEMENT**

In response to this Court's directive at the hearing held on December 3, 2019, Capital Investment Funding, LLC hereby requests this Court (1) stay the issue of whether the Global Settlement Agreement bars this suit to permit the Honorable Edward W. Miller in Greenville County, South Carolina opportunity to rule, as agreed by the parties in the Global Settlement Agreement, Paragraph I, Section ii, and (2) permit discovery on the issues in this case.

Introduction

Arthur Field ran an illegal investment scheme in Greenville, South Carolina. From 1999 through 2008, Arthur Field operated Capital Investment Funding, LLC. In 2008, Arthur Field attempted to wind up Capital Investment Funding LLC without paying back any of its investors. Subsequently, a class brought suit before the Honorable Edward W. Miller in Greenville County, South Carolina and against Arthur Field seeking a return of their investment of over \$38 million dollars (the "Tomz Case").

A grand jury indictment followed, and Mr. Field thereafter pled guilty to eleven counts of securities fraud, two counts of conspiracy, and one count of forgery. The criminal court ordered Mr. Field to pay \$2.8 million dollars in restitution.

The class action carried on and other individuals filed separate suits, each seeking recovery against Mr. Field. Ultimately, and on February 27, 2017, the parties to these lawsuits (five suits in total) entered into a global settlement agreement with Mr. Field and Ms. Taillon (the “GSA”). The GSA states “[t]he parties agree that the Judge Edward W. Miller, the presiding judge in the Tomz Case, shall have sole and exclusive jurisdiction regarding any dispute related to the enforcement, performance or non-performance of any future obligation contained herein (including any integral components hereof).” See Doc. 11-1, ¶ I.ii.

After the parties entered into the GSA and in light of certain provisions therein, Mr. Field filed a Motion to Modify Restitution Order. In that motion, Mr. Field sought, in part, to have the Court lower the \$2.8 million dollar restitution. The Court declined, ruling instead that:

To the extent any portion of the balance of such restitution remains unpaid at the end of the required probation period, after applying credit for the payments and properties . . . such unpaid balance of restitution shall be converted to a civil judgment . . .

Consequently, and to comply with the court’s directive, the parties amended the GSA to state that any payments made under the GSA would act only as a credit against the amount due under the Restitution Order. On October 30, 2018, the Honorable J. Cordell Maddox, Jr. of Aiken, South Carolina, converted the criminal Restitution Order into a civil judgment. Judge Maddox contemplated the amounts paid or expected to be paid under the GSA as \$1,001,794.96. In light of these payments made pursuant to the GSA and the Court’s previous

directive that such payments be considered a credit against the restitution owed, the Court issued a civil judgment in the remaining amount of \$1,767,634.71. See Doc. 3-2.

Jerry Saad, receiver for Capital Investment Funding, LLC, domesticated the subject civil judgment in St. Johns County, Florida, in December of 2018. That court issued a writ of execution on March 11, 2019. On May 2, 2019, Capital Investment Funding, LLC filed a petition for declaratory relief and naming Field and Katherine Taillon as defendants. Taillon removed this action based upon diversity jurisdiction. Both Field and Taillon have since filed a motion to dismiss in which they claim that Capital Investment Funding is barred from executing on the civil judgment based upon the terms of the GSA.

On December 3, 2019, this Court held a hearing addressing these and other issues. At the hearing, the Court addressed concerns about whether South Carolina is the more appropriate forum to either enforce or interpret the terms of the GSA. The Court directed Capital Investment Funding to provide its position as to the proper forum for this issue no later than December 17, 2019.

Argument and Memorandum of Law

South Carolina is the appropriate forum to address these issues. Although Field and Taillon repeatedly label this issue as one of “res judicata” or “estoppel,” in fact they are asking the Court to interpret and enforce the GSA. All parties previously agreed that interpretation and enforcement of the GSA would be within the sole jurisdiction of the South Carolina Circuit Court, and more particularly Judge Edward Miller, who presided over the Tomz Case and approved the GSA and the Addendum to the GSA on November 27, 2017. A review of the docket for the Tomz Case shows that Judge Miller has already considered multiple motions to

enforce the agreement. Further, Judge Miller is familiar with all parties involved and extensively familiar with the facts of these claims and the procedural history of the GSA.

Conversely, this Court is the appropriate forum to preside over the execution of the now domesticated civil judgment and to determine the Florida homestead issue, which directly concerns Florida real property. Indeed, Capital Investment Funding could not execute on the judgment in Florida without domesticating the judgment in a Florida court. See Section 55.604, Florida Statutes. A South Carolina court would not have jurisdiction to permit execution of a judgment in Florida.

Accordingly, the parties are in a procedural quandary. Capital Investment Funding is unaware of any procedural mechanism which would permit this Court to transfer the issue to South Carolina. See e.g., United Ins. Co. of Am. v. Harris, 939 F. Supp. 1527, 1535 n.14 (M.D. Ala. 1996); Young v. May, Case No. 13-0091, 2013 U.S. Dist. LEXIS 104710 *16-18 (S.D. Ala. July 25, 2013). Consequently, Capital Investment Funding requests this Court decline to resolve the GSA issue until such time as Judge Miller in Greenville County can determine whether the GSA bars this claim, as stated in Defendants' Motions to Dismiss, and any other issues this Court directs Capital Investment Funding to raise.

Capital Investment Funding will file the appropriate papers in South Carolina regarding the determination of these issues within ten days of filing this brief. The parties can provide interim updates to this Court as to the status of the claim in South Carolina until such time as the issue is resolved. Capital Investment Funding estimates that it should not take more than ninety days to obtain the ruling from Judge Miller.

In the meantime, Capital Investment Funding requests this Court permit it to conduct

discovery into the issues of fraudulent transfer and the homestead status of the property. This Court has broad discretion to permit discovery. See Josendis v. Wall to Wall Residence Repairs Inc., 662 F.3d 1292, 1306-07 (11th Cir. 2011). A preliminary look at the documents and procedural history of this matter shows that the courts in South Carolina refused to mitigate Mr. Field's restitution and required that payments made under the GSA constitute only a credit against the amount owed. Mr. Field's victims have been diligently pursuing relief for over ten years. Permitting discovery would prevent any further delay and would promote the resolution of this claim. See e.g., Feldman v. Flood, 176 F.R.D. 651, 652-53 (M.D. Fla. 1997) (declining to stay discovery in the face of a motion to dismiss). Should discovery go forward, Capital Investment Funding should be in a place to amend its petition to properly assert a claim under Federal Rule of Civil Procedure 8 when Judge Miller issues his ruling regarding the GSA.

For these reasons, Capital Investment Funding requests this Court stay any decision as to the GSA, so Judge Miller can determine whether the GSA bars this action. While this issue is pending before the South Carolina court, Capital Investment Funding proposes this Court permit Capital Investment Funding to conduct limited discovery as to the matters raised in this proceeding, including the homestead/fraudulent transfer issues. Capital Investment Funding further proposes the parties provide this Court regular interim status reports as to any proceeding in South Carolina regarding the enforcement of the GSA.

Respectfully submitted,

ORR|COOK

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 17, 2019, I certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List via hand delivery.

ORR|COOK

/s/Michael Fox Orr

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**CAPITAL INVESTMENT FUNDING, LLC V.
ARTHUR FIELD AND KATHRYN TAILLON**

3:19-cv-606-TJC-JRK

United States District Court, Middle District of Florida, Jacksonville Division

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**IN THE UNITED STATE DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE, DIVISION**

CAPITAL INVESTMENT FUNDING, LLC,

Plaintiff,

v.

Case No. 3:19-cv-0606-TJC-32JRK

ARTHUR FIELD AND KATHRYN TAILLON,

Defendants

**DEFENDANTS' BRIEF ON PROPER FORUM AND PLAINTIFF'S REQUEST FOR
ABSTENTION**

Kathryn Taillon ("Taillon") and Arthur Field ("Field") each filed a Motion to Dismiss based on 3 separate principles: 1) Contractual Release and Full Performance; 2) *Res Judicata*; and 3) Collateral Estoppel. All issues and defenses should be determined solely by this Court:

I. INTRODUCTION

The Plaintiff, Capital Investment Funding, LLC ("CIF") was party to a global settlement agreement ("GSA") meant to resolve a complex dispute involving over two dozen parties and signed by twenty-six (26) people in various capacities. The GSA was signed on February 24, 2017 and contained broad release language in which CIF fully released both Arthur Field and Kathryn Taillon. A copy of which is attached hereto as Exhibit "A". Paragraph 4 of the Global Settlement Agreement states, in part:

...this Agreement settles with prejudice all claims of every kind and nature which were raised or could have been raised in any above-identified litigation, including any and all causes of action, direct claims, ...and other rights and actions otherwise derived from such, between and among all undersigned parties and all identified entities herein...and the

Receiver...in every and all capacity (including capacity as agent, fiduciary, appointee, individual or otherwise. (Emphasis added.)

CIF instituted this collection action in St. Johns County, Florida and the Defendants removed the action to this Court. However, CIF now asks this Court to abstain this action so it can seek unspecified relief in South Carolina in front of a specific Judge. It is wholly improper for CIF to seek relief in South Carolina on defenses pending before this Court.¹

II. CIF ADMITS ABSTENTION IS NOT APPROPRIATE

CIF states in its brief that it “is unaware of any procedural mechanism which would permit this Court to transfer the issue to South Carolina.” CIF is correct in that abstention is not appropriate and that there is no legal support for severing defenses from claims. In fact, the Defendants would be prejudiced if the affirmative defenses were litigated in a venue separate from the underlying case. “[T]he pendency of an action in the state court is no bar to proceedings concerning the same matter in the Federal court having jurisdiction....” *Colorado River Water Conservation District v. U.S.*, 424 U.S. 800(1976). “The doctrine of abstention, under which a District Court may decline to exercise or postpone the exercise of its jurisdiction, is an extraordinary and narrow exception to the duty of a District Court to adjudicate a controversy properly before it.” *Id.* 424 U.S. at 813. Abstention is not appropriate under *Ambrosia Coal & Constr. Co. v. Morales*, 368 F.3d 1320(11th Cir. 2004). Neither *Rooker-Feldman* nor *Younger* apply: Defendants are not raising a constitutional challenge in a pending state case. *Barone v. Wells Fargo*, 16-16079(11th Cir. 9/21/17)(unpub.). *Pullman* does not

¹ Despite CIF’s statement to the contrary, the GSA was not amended to provide for *future* restitution payments. The credits applied to existing restitution. Furthermore, the Plaintiff improperly frames the issue as one of Jurisdiction. CIF already conceded to this Court that it has Jurisdiction over the parties and the subject matter.

apply—no federal question. *Burford* does not apply—no state regulation is involved. Abstaining the pending action is not supported by the law.

III. CIF WAIVED VENUE/FORUM SELECTION

CIF knowingly waived venue/forum selection 3 times: 1) CIF's civil judgment was obtained *ex parte* in Spartanburg by Judge J. Cordell Maddox, Jr., not in Greenville County from Judge Miller;² 2) CIF filed in St. Johns, Florida to execute the judgment against Field; 3) CIF then filed a Declaratory Petition in Florida. To the extent, if any, GSA ¶14(I)(ii) is a venue selection clause, it only applies to filing a lawsuit, and not to defenses raised in Florida proceedings filed by CIF. *Norwood v. Kirkpatrick*, 349 U.S. 29(1955). Defendants are Florida residents and are entitled to have their defenses heard in the venue chosen by CIF to litigate this collection proceeding. Jurisdiction cannot be severed so that Plaintiff's claims are heard in Florida but the defenses are heard in South Carolina and no legal authority has been cited indicating that Jurisdiction can be severed.

IV. JUDGE MILLER DID NOT RETAIN JURISDICTION OVER THIS MATTER

The GSA provided Judge Miller would retain jurisdiction only in a very limited circumstance and no other. The clear language of GSA ¶14(I)(ii) states:

This Agreement contains terms and conditions of certain events to happen in the future. [i.e. ¶¶12, 14B,C, 14E--14H, 14(I)(i)] The parties agree that Judge ... Miller, ... shall have sole and exclusive jurisdiction regarding any dispute related to the enforcement, performance or non-performance **of any future obligation contained herein...** (emphasis added).

² Despite being executed on October 30, 2018, the civil judgment was docketed on November 20, 2018.

The plain language indicates the parties intended Judge Miller would oversee only the ‘performance or non-performance’ of future obligations, i.e. the transfer of money and property to CIF as specifically enumerated in GSA ¶12 & 14, which did not include restitution. Nothing in the GSA states that if CIF filed suit against Taillon or Field in some Court other than Judge Miller’s Division that Taillon and Field would be unable to raise release as a defense in the venue chosen by CIF.

No provision for CIF’s enforcement of such civil judgment, despite the possibility of a civil judgment being known to all parties when the GSA was signed, was set forth in the GSA or Addendum. CIF could have carved out such civil judgment from the two comprehensive GSA Releases, but didn’t. *Veltheim v. Int’l Bodytalk Ass’n*, 8:16-cv-298-T-33JSS (M.D. Fla. Jan. 5, 2017). *Expressio unius est exclusio alterius*. “When certain ... things are specified in a ... contract, ... an intention to exclude all others from its operation may be inferred.” *Evans v. Richland C’nty H.P.Comm’n*, 341 S.C.15, 532 S.E.2d 876(2000); cf. *Pritchard v. FL H.S. Athletic Ass’n, Inc.*, 2:19-cv-94-FtM-29MRM(M.D.Fl. 8/1/2019)(dismissed).

V. CONTRACTUAL RELEASE OF FIELD AND TAILLON

The Releases in ¶5 and ¶14(I)(ii)³ of the Global Settlement Agreement (“GSA”) resulted from mediation in *Brooks, Class Rep. v. Field, Taillon, et al.*, 6:14-cv-02267-BHH(D.S.C.), see *Appendix*, #6. It was ratified December 1, 2017 in 2008-cp-23-03665(S.C.).⁴ The GSA is subject to traditional rules of contract interpretation, which are for this court alone to determine.

³ GSA ¶14(I)(ii) “Upon approval by the Court, this settlement will be full and final as to all parties identified herein, with the **sole exception** if it is later demonstrated Arthur Field has made a material misrepresentation to the Court regarding his verified financial disclosure set forth in sub-part (i) above. ...” (Emphasis added) The Addendum did not alter this clause.

⁴ Taillon was never a party to 2008-cp-23-03665. Field was dismissed on Aug. 24, 2009. See *Appendix* 1(c). Only Field’s signature appears on the Addendum.

Monahan v. Comm'r, 321 F.3d 1063,1068(11th Cir. 2003). Only the 'second' court gets to interpret a prior action's Settlement Agreement. "The District Court is best equipped to assess the parties' intentions in entering a [prior] settlement agreement and, therefore, to construe its terms." *In re Managed Care v. Wellpoint, Inc.*, 756 F.3d 1222(11th Cir. 2014). **GSA ¶¶ 5 and 14(I)(ii) are dispositive of the Motions to Dismiss.** The parties agreed there was only one exception to finality: not the anticipated civil judgment. GSA ¶5 is comprehensive and the plain meaning of the GSA is clear. *Monahan*, 321 F.3d at 1068 ("If the agreement is found to be free of ambiguity, its meaning can be declared by the court without the use of extrinsic evidence."). The Releases prohibit collection of the civil judgment by CIF.

VI. PRECLUSIVE EFFECT IS DECIDED BY THE 'SECOND COURT'

Only this court may decide the preclusive effect of dismissals with prejudice based on the claims which were or could have been raised in prior actions. Field and Taillon rely on the dismissals with prejudice from the many matters which CIF and the Class brought against either or both of them. See *Appendix*, #2--#7.⁵ Preclusion is a separate matter from contractual release. Releasing a portion of this Court's Jurisdiction to Judge Miller to decide the *res judicata* or collateral estoppel would be improper. Such determinations are within the exclusive purview of this court.⁶

⁵ Taillon was dismissed with prejudice from 2008-cp-23-05514(S.C.). In January, 2015, she was dismissed with prejudice from 6:12-cv-03401-BHH and 6:13-cv-02326-BHH (D.S.C.). Taillon was also dismissed with prejudice from 2015-cp-23-01263(S.C.). Field was a party in all those matters plus a New Jersey case and 2008-cp-23-03665 and was dismissed with prejudice from all.

⁶ *Consol. Coal Co. v. U.M.W. of A., Dist. 12, Local 1545*, 213 F.3d 404,407(7th Cir. 2000)('Question of preclusive force of the first case, like any defense, is issue for a subsequent judge to decide'.) Accord, *Kelly v. Merrill, Lynch, Pierce, Fenner & Smith*, 985 F.2d 1067,1069 (11th Cir.), cert.den. 510 U.S. 1011(1993)(district court in second matter decides *res judicata* effect of prior litigation). Also, *Lift Truck Bldrs. Union v. NACCO Materials Handling Group, Inc.*, 202 F.3d 965,968 (7th Cir. 2002)("The preclusive effect of...decision is an issue for subsequent...to decide."); *U.S. Fire Ins.Co. v. Nat'l Gypsum Co.*, 101 F.3d 813,816-17(2nd Cir. 1996)(issue preclusion is an affirmative defense and part of the dispute on the merits); *Citigroup Inc. v. Abu Dhabi Investment Auth.*, 776 F.3d 126(2nd Cir. 2015)(only second arbiter decides preclusive effect).

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CERTIFICATE OF SERVICE

I CERTIFY that the foregoing document was electronically filed on this 24th day of December, 2019, via CM/ECF and was served this day on all counsel and all parties entitled to notice via CM/ECF.

By: /s/ D. Brad Hughes
Attorney

FILED

IN THE UNITED STATE DISTRICT COURT

FOR THE MIDDLE DISTRICT OF FLORIDA AT JACKSONVILLE

2020 APR 13 PM 12: 07

CAPITAL INVESTMENT FUNDING, LLC

) No. 3:19-cv-0606-TJC-JK

CLERK, US DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DISTRICT

PLAINTIFF

) FIELD'S MOTION TO VACATE

V.

) STAY / OBJECTION TO NEW STAY;

ARTHUR FIELD AND KATHRYN TAILLON

)

DEFENDANTS

)

Field requests the court vacate its stay, or objects to a new stay, and proceed herein. His Motion to Dismiss is ripe for adjudication. No case against him is pending in South Carolina, as evidenced by the Greenville Court Clerk docket (EXH. A); Judge Stilwell's June, 2018 dismissal with prejudice of *Capital Investment Funding, LLC v. Field, Taillon, et al.* (EXH. B); and the clear holding of USMJ Austin (EXH. C).¹

Any new stay would violate the *Colorado River* doctrine and prejudice Field.² *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 10-11 & n.11 (1983). *In re Managed Care* 756 F.3d 1222(11th Cir. 2014). No extraordinary circumstances exist to justify the stay. The issues raised and relief sought herein are significantly different than those sought by CIF in South Carolina. *Amer. Mnfrs. Mut. Ins. Co. v. Stone*, 743 F.2d 1519(11th Cir. 1984); *Lops v. Lops*, 140 F.3d 927(11th Cir. 1998).

¹ When the initial temporary stay was entered on Feb. 19, 2020, USMJ Austin's Order had not been docketed in 3665 (EXH. A, p.3). Status Report is incorporated. No defenses or rights waived.

² *Colorado River Water Conservation District v. U.S.*, 424 U.S. 800(1976). "The doctrine of abstention, under which a District Court may decline to exercise or postpone the exercise of its jurisdiction, is an extraordinary and narrow exception to the duty of a District Court to adjudicate a controversy properly before it." *Id.* 424 U.S. at 813. "Where a *Colorado River* factor is facially neutral, that is a basis for retaining jurisdiction, not yielding it." *Niagra Mohawk Power Cor. V. Hudson River-Black River Regul. Dist.*, 673 F.3d 84, 101(2nd Cir. 2012). Any doubt in the application of the factors "should be resolved in favor of exercising federal jurisdiction." *Fox v. Maulding*, 16 F.3d 1079, 1082(10th Cir. 1994); *Travelers Indem. Co. v. Madonna*, 914 F.2d 1364, 1369(9th Cir. 1990).

If the cases are not parallel, abstention cannot apply, *Ambrosia Coal & Constr. Co. v. Pages Morales*, 368 F.3d 1320,1331-1332 (11th Cir. 2004). “The abstention doctrine comprises a few extraordinary and narrow exceptions to a federal court’s duty to exercise its jurisdiction.” *Woodford v. Community Action Agency*, 239 F.3d 517,522(2nd Cir. 2001). “*Colorado River* abstention is particularly rare.” *Jackson-Platts v. G.E.Cap.Corp.*, 727 F.3d 1127,1140(11th Cir. 2013). Abstention stays are rarely upheld. *Sprint Commc’ns Inc. v. Jacobs*, 134 S.Ct. 584,588(2013)(“even in the presence of parallel state proceedings, abstention from the exercise of federal jurisdiction is the exception, not the rule.”); *Moore v. Demopolis Waterworks, Inc.*, 374 F.3d 994(11th Cir. 2004).

The *Colorado River* factors all balance in favor of denying any new stay and vacating the prior temporary stay, if necessary--which expires April 15, 2020 per prior Order-- and the presumption is heavily against any new stay which effectively puts the parties out of court.

JURISDICTION OVER THE REAL PROPERTY—THIS FACTOR IS DISPOSITIVE AGAINST A NEW STAY

Only this court has jurisdiction over the Florida real property. CIF seeks a declaratory judgment concerning Field’s homestead, Fl.G.S. §222.01, 02. CIF demands sale of the real property and money damages. No ruling in South Carolina can affect the real property, as CIF conceded. Abstention stays are improper under such situation and this factor is dispositive. *Colorado River, supra*, 424 U.S. at 813. “In actions concerning real property, whichever court has jurisdiction over the real property is entitled to exclusive jurisdiction over the matter and can even enjoin other courts from hearing the case”, which is the appropriate relief herein. Federal Jurisdiction, 7th Ed., E. Chemerinsky, U.Cal., Irvine School of Law. Also, *FDIC v. Four Star Holding Co.*, 178 F.3d 97,102(2nd Cir. 1999) citing *40235 Washington St. Corp. v. Lusardi*, 976 F.2d 587,589(9th Cir. 1992)(per curiam)(in an action concerning the disposition of real property “the first prong of the *Colorado River* abstention test is dispositive...the forum first assuming jurisdiction over the property at issue has exclusive jurisdiction to proceed.”)

A STAY CREATES PIECEMEAL LITIGATION

Any stay will create piecemeal litigation. The stay forces Field to re-litigate the issues already fully resolved in the 2016 federal mediation resulting in the GSA. This will leave all parties in suspended animation for an indefinite period of time before any motion is heard in South Carolina and appeals are pursued to conclusion. Years will elapse.

Even were the South Carolina matter to proceed to fruition, its ruling will not be preclusive on this court as to Field, and certainly not as to Taillon. At most, it will only address a few of the affirmative defenses to this action. It will not dispose of all the claims, or even all defenses, and none as to Taillon. This court will still have to rule on the same defenses. *TruServ Corp. v. Flegles, Inc.*, 419 F.3d 584, 592 (7th Cir. 2005). “Piecemeal litigation occurs when different tribunals consider the same issue...possibly reaching different results.” *Am. Int’l Underwriters, Inc. v. Cont’l Ins. Co.*, 843 F.2d 1253, 1258 (9th Cir. 1988). Avoidance of piecemeal litigation is a primary concern in *Colorado River*.

It would be improper for this court to stay and effectively release a portion of its jurisdiction, even briefly, to South Carolina absent extraordinary exigent circumstances, which do not exist here.

CONVENIENCE OF THE PARTIES STRONGLY FAVORS VACATING STAY

The ‘convenience of the parties’ factor weighs heavily in favor of retaining complete jurisdiction over all matters in Florida. Jacksonville District Court is 47.2 miles from Field’s homestead. Greenville, South Carolina Common Pleas is 439.8 miles away. Field is a senior citizen, with limited financial resources, and unemployed since 2009. Litigating in South Carolina would be an extreme financial and physical hardship requiring a 7 hour drive in each direction. The only other defendant also resides in St. Augustine, Florida. All of the evidence concerning homestead is in Florida.

Conversely, CIF is an entity in winding up with several attorneys representing its interests in many states. It litigates with ease in South Carolina, New Jersey and Florida and appears to have unlimited funds to do so. Its ‘evidence’ is the civil judgment. Its ‘witnesses’, if any, are all paid for their time and travel by CIF. This factor heavily weighs in favor of no stay. *Ambrosia Coal*, 368 F.3d at 1332.

ORDER OF OBTAINING JURISDICTION AND PROGRESS OF THE CASES FAVOR VACATING STAY

This court had jurisdiction first, and should retain it and proceed on this matter. CIF elected Florida venue and voluntarily waived any arguable right to initiate this matter before Judge Miller in South Carolina. This matter has been pending in Florida for 11 months and dispositive motions are before this court. Plaintiff waived all discovery and the case can proceed without delay. CIF only filed the South Carolina Motion on December 31, 2019 in a preemptive strike to avoid having to respond to Field’s Motion to Dismiss. It did not even await this court’s decision on the matter. But, it failed to initiate a new case or file a Summons and Complaint—a deficiency noted by the U.S. District Court Clerk in South Carolina.

No matter involving Field is pending in South Carolina, as determined by USMJ Austin. No hearing is scheduled, and CIF did not obtain jurisdiction over Field. Assuming, *arguendo*, at some point the South Carolina matter proceeds, it will become immediately mired in motions to dismiss, to recuse, etc. and result in a jury trial under S.C.C.A. §15-53-90, and then be subject to a lengthy appeal process. The relative progress favors vacating the stay. *Moses Cone*, 460 U.S. at 21-22. Continuation of the stay would put Field in suspended animation for several years. *Hines v. D’Artois*, 531 F.2d 726, 730(5th Cir. 1976).

But, even were the progress of the cases equal, the proceedings do not involve all the same parties and all the same issues, or seek the same relief on the same theories of law, so a stay is unwarranted. *Diamond Offshore Co. v. A&B Builders, Inc.*, 302 F.3d 531, 540(5th Cir. 2002). *Ambrosia*, *supra*.

THE RULE OF DECISION AND STATE LAW FACTORS FAVOR THIS MOTION

CIF conceded there was no procedural mechanism to refer the case to a lower court judge in South Carolina. Yet, the stay effectively does exactly that. It ‘invites’ Judge Miller to opine on the meaning of the unambiguous language of the GSA. That is parol evidence, unwarranted when the GSA language is clear. It also ‘invites’ Judge Miller to opine about the affirmative defenses of preclusion relating to cases in which he was not involved, ranging across 2 states, 3 different courts and 7 different judges.³

Field’s Motion to Dismiss involves only routine issues of contract law and preclusion. These are not complex issues requiring a ruling of law by a foreign state, *Amer. Bankers Ins. Co. of Fla. v. First State Ins. Co.*, 891 F.2d 882,886(11th Cir. 1990). Where, as here, any state law issues pertaining to South Carolina are not novel or complex, and are greatly outweighed by the issues involving the Florida Constitution, the balance is vastly against abstention or a continued stay. “Federal courts routinely apply [state] contract law, ... See *Noonan South, Inc. v. County of Volusia*, 841 F.2d 380,382(11th Cir. 1988)(explaining that the application of [state] law in a federal diversity case did not favor *Colorado River* abstention where no ‘complex questions of law’ were at issue.)” *Verdex Construction, LLC v. Great Amer. Ins. Co.*, 18-60700-cv-Gayles(S.D.Fl. 1/16/19)(stay denied).

Contract interpretation resides solely within the second court, *Barber v. Int’l Brotherhood of Boilermakers*, 788 F.2d 750(11th Cir. 1985); *In re Managed Care* 756 F.3d 1222(11th Cir. 2014) at n.9 citing *Thomas v. Blue Cross & Blue Shield Assn.*, 594 F.3d 814,817(11th Cir. 2010). *Real v. Goodell*, 2:19-cv-35-FtM-29UAM (M.D. Fla. 5/22/2019).

³ Judge Miller presided for only 32 days prior to the August, 2009 dismissal. Judge Perez-Friscia presided in New Jersey for 6 years, BER-L-12-3790, and USMJ Austin and USDJ Hendricks for 5 years over 6:12-cv-03401, 6:13-cv-02326 and 6:14-cv-02267, including GSA mediation. Judge Graveley presided for 2 years over 2015-cp-23-01263 and Judge Stilwell for 1 year. Those 5 jurists’ opinions would be of more weight.

Unless this court determines the contract is ambiguous, there is no need for parol evidence at this point. The plain language of the GSA unrestricted releases favor dismissal. "Where the words of a contract are clear and unambiguous...parties' intent can be determined [solely] from the face of the agreement." *Citgo Asphalt Refining Co. v. Frescati Shipping Co., Ltd.*, 18-565, ___ U.S. ___ (3/30/2020).

Determinations regarding preclusion are within the sole purview of the subsequent court to whom the defense is raised, *Consol. Coal Co. v. U.M.W. of A., Dist. 12, Local 1545*, 213 F.3d 404,407 (7th Cir. 2000)('Question of preclusive force of the first case, like any defense, is issue for a subsequent judge to decide'.) Accord, *Kelly v. Merrill, Lynch, Pierce, Fenner & Smith*, 985 F.2d 1067,1069 (11th Cir.), cert.den. 510 U.S. 1011(1993)(district court in second matter decides *res judicata* effect of prior litigation). Determinations regarding Florida homestead laws and the Florida Constitution are not within the scope of a lower court in South Carolina. Abstention is proper only if "the state court proceeding will resolve all issues before the federal court." *R.R.St.& Co. v. Transp. Ins. Co.*, 656 F.3d 966,978(9th Cir. 2011).

Even if any such ruling regarding South Carolina law were required, the proper procedure is to certify a question of law to the South Carolina Supreme Court, not to a lower court judge, S.C.A.R. 244.

FORUM SHOPPING REGULARLY ENGAGED IN BY CIF MILITATES AGAINST ANY STAY

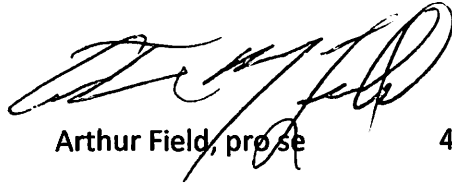
The stay encourages forum-shopping; which CIF has done for 11 years as to Field. Every time CIF was 'losing' in any of the other courts where it sued Field, it immediately created an end run around those judges by fleeing back to the arms of Judge Miller attempting to hold Field in contempt. This is no exception. When this matter began, CIF's attorney Allyson Currie 'warned' attorney Hughes that CIF would run to Judge Miller if it felt its interests were jeopardized. CIF's South Carolina attorneys are employing the same coercive tactics to browbeat Field into submission, again threatening him with contempt.

NO OTHER DOCTRINE JUSTIFIES A STAY

Neither *Rooker-Feldman* nor *Younger* apply. *Barone v. Wells Fargo*, 16-16079(11th Cir. 9/21/17)(unpub.). *Rooker-Feldman* has a narrow scope, and is inapplicable here. *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280,284(2005); *Target Media Partners v. Specialty Marketing Corp.*, 881 F.3d 1279,1281(11th Cir. 2018). Defendant(s) seek to specifically enforce the GSA releases and dismissals, not to overturn the GSA. *Pullman* and *Burford* are inapplicable to this matter.

CONCLUSION: THE STAY EXPIRES 4/15/20. IT SHOULD BE VACATED, AND NO 'NEW STAY' IMPOSED.

"Colorado River abstention is permissible in fewer circumstances than are the other abstention doctrines, which themselves carve out only slender exceptions to the robust duty to exercise jurisdiction." *Ambrosia Coal*, 368 F.3d at 1331 (11th Cir. 2004).⁴ Any stay would effectively put the parties out of court for an indefinite period of time impermissibly surrendering federal jurisdiction to a state lower court.⁵ The initial temporary stay expires April 15, 2020 (EDF 24). CIF waived all discovery and this case is ready to progress to the next stage. Based on the foregoing, it is respectfully requested the initial stay be vacated, if necessary, and/or no new stay be imposed and this matter proceed with consideration of Field's Motion to Dismiss.



Arthur Field, pro se

4/11/2020

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⁴ And, *Allstate Ins. Co. v. AutoGlass America, LLC*, 6:18-cv-2184-ORL-41LRH(M.D.Fla. 9/30/19)(abstention stay denied); *NCH Healthcare System, Inc. v. Paxerahealth Corp.*, 2:19-cv-632-FtM-38MRM(M.D.Fla. 12/17/19)(same); *SOS Furniture Co, Inc. v. Salem*, 6:18-cv-898-Orl-37KRS(M.D.Fl. 1/22/19)(same); *Collier HMA Phys.Mgmt. v. NCH Healthcare System, Inc.*, 2:18-cv-408-FtM-38MRM(1/22/19)(same); *Desai v. Navigators Ins.Co.*, 8:18-cv-1843-T-02AAS(M.D.Fl. 7/12/19)(same). *Catano v. Capuano*, 18-20223-cv(S.D.Fl. 2/11/20)(stay denied when State action will not decide all issues between the parties and compares issues actually raised). *Hall v. Sargeant, III*, 9:18-cv-80748-BLOOM(S.D.Fl. 10/1/18)(same).

⁵ A new Stay is a final Order. *Idlewild Bon Voyage Liquor Corp. v. Epstein*, 370 U.S. 713,715(1962); *Quackenbush v. Allstate Ins.Co.*, 517 U.S. 706(1992); *Moses H. Cone, supra*, 460 U.S. at 10-13; cf. *Micosukee Tribe of Indians of Fla. v. S.Fla. Water Mgt. Dist.*, 559 F.3d 1191(11th Cir. 2009).

CERTIFICATION OF SERVICE

I hereby certify I have served a copy of the Status Report and the Motion on this date on:

Kathryn Taillon, 5489 Atlantic Vw, St. Augustine, FL 32080 by personal delivery and on

Capital Investment Funding, LLC by its attorney Michael Orr, through electronic means, using the

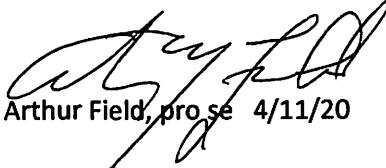
Electronic Filing of the U.S. District Court when such document is filed by the Court Clerk.



Arthur Field, pro se

CERTIFICATION OF CONSULTATION

I certify that Kathryn Taillon has no objection to this Motion. Attorney Hughes' Motion to Withdraw was granted April 9 (EDF 34). I certify that on April 9, 2020 and April 10, 2020, I made good faith effort to contact attorney Orr. He was unavailable due to office closure from the COVID-19. On April 9, the phone was not answered. On April 10, Taillon and I spoke with 'Bonnie' of the firm, who advised us the Jacksonville office was closed, and we left a message for attorney Orr requesting consent under Local Rule 3.01. I provided a phone number for reply. No phone call was received from attorney Orr. On April 10, 2020, at 4:15 P.M. I emailed attorney Orr requesting confirmation of his objection or consent to my Motion to Vacate and asked that he respond by 11 A.M. on April 11; Taillon joined in the email (copy of email annexed). It is 11:15 A.M. on April 11, and no response to such email was received by me or Taillon. Given my efforts, and the lack of response, and in view of Covid-19 closures and the holiday weekend, I request this be sufficient under Local Rule 3.01(g). No prejudice will result to plaintiff. In good faith, I believe attorney Orr would not consent to this Motion, having requested the initial stay.



Arthur Field, pro se 4/11/20

Request for Consent to Motion

Arthur F <arthurfield424@hotmail.com>

Fri 4/10/2020 4:15 PM

To: morr@orrcook.com <morr@orrcook.com>; k.taillon@hotmail.com <k.taillon@hotmail.com>

Attorney Orr and Ms Taillon

On April 9, 2020, USMJ Klindt granted attorney Hughes' Motion to Withdraw as counsel (EDF 34 re EDF 30).

I intend to file a Status Report and Motion to Vacate Stay, if required.

Ms Taillon has advised me she has no objection.

She intends to file a similar Motion, to which I have no objection.

I phoned attorney Orr's office on 4/9 and the phone was not answered.

Ms Taillon and I phoned on 4/10 and the phone was answered by 'Bonnie' at 9:43 A.M..

She was kind enough to confirm the Jacksonville office was 'closed' and she was in 'another location'.

Bonnie offered to email attorney Orr and we requested she inform attorney Orr of our intentions to each file a Motion to Vacate.

I provided a phone # for contact, i.e. 864 419 6609.

It is now 4:15 p.m. and I have not received a return call, which is understandable given the holiday, etc.

Attorney Orr may also be reluctant to confer directly with pro se defendants, or may be unaware of EDF 34.

We assume attorney Orr would not consent to such motions, but are contacting attorney Orr by email to confirm this.

Kindly advise prior to 11 A.M. on April 11, 2020 so we may advise the court accordingly per Local Rule 3.01.

If we don't receive a response by then, we will request waiver of 3.01(g) in light of Covid-19 and the Easter holiday.

Ms Taillon joins in this email and is copied hereon.

Notice to me will be sufficient as to notice to her for this purpose only.

Thank you for your anticipated cooperation.

Arthur Field, pro se

PLEASE NOTE:

The foregoing message or any attachments do not constitute the giving of any legal advice to any person.

All persons are reminded to review items carefully and consult with counsel if applicable.

No privileges are waived by this communication by or as to any person.

This shall not constitute consent to service of any pleading or other document by email.

All rights reserved.

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

CAPITAL INVESTMENT FUNDING,
LLC,

Plaintiff,

Case No: 3:19-cv-606-TJC-JRK

v.

ARTHUR FIELD and KATHRYN
TAILLON,

Defendants.

**PLAINTIFF'S RESPONSE IN OPPOSITION TO
DEFENDANTS' MOTIONS TO VACATE STAY**

Plaintiff Capital Investment Funding, LLC, pursuant hereby files this Response in Opposition to Defendants' Motions To Vacate Stay (Docs. 37; 39). For the reasons stated in Plaintiff's Brief Regarding Jurisdiction Over Global Settlement Agreement (Doc. 22); this Court's Order dated February 19, 2020 (Doc. 24), and Plaintiff's Status Report in Accordance With Court Order Dated February 19, 2020 (Doc. 40), this case should remain stayed until the court in South Carolina is able to rule upon the issues related to the Global Settlement Agreement.

Defendants filed separate Motions to vacate the stay in this case. Neither Motion provides any basis to lift the stay in this matter. Plaintiff thought that by this point in 2020, they would have had the opportunity to have the Court in South Carolina hear issues surrounding the Global Settlement Agreement. However, due to the global pandemic

surrounding COVID-19 and due to actions taken by Defense Counsel in South Carolina, the court in South Carolina has not had the opportunity to resolve these issues.

Procedure History

Defendants filed Motions to Dismiss this action (Docs. 15, 18) which argue primarily that this action is barred by the Parties' Global Settlement Agreement (the "GSA"). The GSA provides that a judge in South Carolina retains "sole and exclusive" jurisdiction to hear claims related to enforcement of the GSA. This Court asked for briefing on this topic, and ultimately stayed this matter so Plaintiff could seek to resolve the issues relating to the GSA in South Carolina. (Doc. 24).

The Court's Order provides that this case should be stayed while Plaintiff seeks consideration of issues surrounding a Global Settlement Agreement from a South Carolina state court. The Court's Order also requires the parties to advise the Court of the status of South Carolina proceedings by April 15, 2020. The Court's Order does not state that the stay will be lifted on April 15, 2020. Id.

Although Plaintiff was diligent in its efforts to obtain a ruling on these issues, circumstances out of its control have delayed any ruling on the same. On December 31, 2019, Plaintiff filed "Receiver's Motion for Declaratory Relief Related to CIF's Judgment Collection Action in Florida" in the Court of Common Pleas, in and for Greenville, South Carolina, requesting the relief sought. On January 3, 2020, the court set a hearing on the motion to occur on February 27, 2020 at 2:00 p.m.

On January 28, 2020, defendant Arthur Field filed a *pro se* "Notice of Removal" to the United States District Court for the District of South Carolina, thus removing this matter from

the hearing calendar. Plaintiff filed a motion to remand the case to South Carolina state court and, on February 20, 2020, the United States District Court for the District of South Carolina entered an Order granting the motion and finding the removal was improper. The very next day, on February 21, 2020, one of defendant Arthur Field's attorneys, Micaiah "Micah" Caskey, IV, sent an email to Plaintiff's counsel in South Carolina invoking a lawyer-legislator privilege to delay any proceedings until after the legislative session expires on June 30, 2020.

On March 16, 2020, the Supreme Court of South Carolina outlined a Trial Courts Coronavirus Memorandum and two days later on March 18, 2020, Chief Justice Donald W. Beatty issued an order regarding the COVID-19 pandemic. The Order provided that "[u]nless otherwise ordered, only emergency hearings shall be held at the discretion of each Chief Judge for Administrative Purposes."

Regrettably, Plaintiff's South Carolina attorneys have advised that the "lawyer-legislative privilege" invoked by one of Arthur Field's South Carolina attorneys will likely delay the proceedings to July or August 2020. Presuming the Supreme Court of South Carolina's emergency order related to COVID-19 is lifted by late June 2020, Plaintiff expects that a hearing on the motion that serves the basis for the current stay in this Court may be heard in July or August 2020.

The Reasons to for the Stay Remain

Defendants' Motions argue that this stay was lifted on April 15, 2020. The Court's Order says nothing of the kind. Rather this Court acknowledged that the South Carolina Court retained "sole and exclusive" jurisdiction regarding the GSA and therefore South Carolina is the appropriate forum to address these issues. Nothing has occurred which should change the

Court's finding in this regard.

South Carolina is the appropriate forum to address issues relating to the Global Settlement Agreement ("GSA"). The GSA states "[t]he parties agree that the Judge Edward W. Miller, the presiding judge in the Tomz Case, shall have sole and exclusive jurisdiction regarding any dispute related to the enforcement, performance or non-performance of any future obligation contained herein (including any integral components hereof)." See Doc. 11-1, ¶ I.ii. The GSA was signed by both Defendants to this matter. See id. at 15. Neither Field nor Taillon have argued that they are not subject to the provisions of the GSA which provides Judge Miller in South Carolina with sole jurisdiction over the issues they raise in their Motions to Dismiss.

All parties to the GSA previously agreed that interpretation and enforcement of the GSA would be within the sole jurisdiction of the South Carolina Circuit Court, and more particularly Judge Edward Miller, who presided over the Tomz Case and approved the GSA and the Addendum to the GSA on November 27, 2017. A review of the docket for the Tomz Case shows that Judge Miller has already considered multiple motions to enforce the agreement. Further, Judge Miller is familiar with all parties involved and extensively familiar with the facts of these claims and the procedural history of the GSA.

Although Field and Taillon have made several arguments regarding why the stay should be lifted, they have both filed motions to dismiss this matter wherein they seek to enforce the GSA. (Docs. 15, 18). They have not abandoned their motions to dismiss, but rather are still insisting that this Court is the appropriate forum to hear the same.

Because Defendants still seek this Court's interpretation of the GSA and because

nothing has occurred which would remove these issues from Judge Miller in South Carolina's sole jurisdiction, and for the reasons stated by the Court in its February 19, 2020 Order, the stay should remain in place until the South Carolina Court can determine the issues raised by Defendants as to the GSA.

DATED: May 15, 2020

Respectfully submitted,

ORR|COOK

/s/Kathleen Crowley

Michael Fox Orr, Esquire

Florida Bar No.: 14594

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Kathleen H. Crowley, Esquire

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Jacksonville, Florida 32202

Telephone: (904) 358-830

Facsimile: (904) 358-8303

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 15, 2020, I certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified.

ORR|COOK

/s/Kathleen Crowley

Michael Fox Orr, Esquire

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SERVICE LIST

CAPITAL INVESTMENT FUNDING, LLC V.

ARTHUR FIELD AND KATHRYN TAILLON

3:19-cv-606-TJC-JRK

United States District Court, Middle District of Florida, Jacksonville Division

ARTHUR FIELD – arthurfield424@hotmail.com

KATHRYN TAILLON – k.taillon@hotmail.com

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

CAPITAL INVESTMENT FUNDING,
LLC,

Plaintiff,

Case No: 3:19-cv-606-TJC-JRK

v.

ARTHUR FIELD and KATHRYN
TAILLON,

Defendants.

_____ /

**PLAINTIFF'S STATUS REPORT IN ACCORDANCE WITH
COURT ORDER DATED DECEMBER 18, 2020 AND MOTION FOR
CONTINUANCE OF STAY**

Plaintiff Capital Investment Funding, LLC, pursuant to the Court's Order dated December 18, 2020 (Doc. 43), hereby files this Status Report.¹ This case is stayed while a court in South Carolina considers the effect of a Global Settlement Agreement on Plaintiff's ability to pursue its South Carolina judgment in St. Johns County, Florida. Since the last status report, Defendants have engaged in repeated attempts to delay and undermine the South Carolina proceedings. The matter in South Carolina could have been resolved as of last February. (See Doc. 40 at 1-2, hearing set on February 27, 2020). Instead, and due to Defendants actions, the South Carolina matter is still ongoing. Accordingly, Plaintiff respectfully requests this Court continue this stay until the conclusion of the South Carolina proceedings.

¹ Defendants Arthur Field and Kathryn Taillon, proceeding pro se, filed respective Status Reports on January 15, 2021. [Docs. 44, 45].

A. Background

This case concerns a domesticated judgment against Arthur Field and Plaintiff's Petition for Declaratory Relief, which requests relief related to Defendants' homestead claims on certain property in St. Augustine, Florida. (Doc. 3). Both Defendants filed Motions to Dismiss Plaintiff's Petition, arguing that Plaintiff's claims were barred by a Global Settlement Agreement ("GSA"). (Docs. 15, 18). The parties entered the GSA as part of resolution of multiple cases filed in Greenville County, South Carolina. (See Doc. 11-1). A full background of the South Carolina cases is detailed in "Plaintiff's Brief Regarding Jurisdiction Over Global Settlement Agreement" (Doc. 22).

The GSA provides that its enforcement is within the sole jurisdiction of Judge Edward W. Miller, the presiding judge over Tomz v. Capital Investment Funding LLC and Arthur M. Field, Case No. 2008-CP-23-3665, filed in and for Greenville County, South Carolina. Therefore, on February 19, 2020 this Court stayed this matter so the court in South Carolina could consider whether the GSA prohibits Plaintiff from pursuing its judgment against Field.

On December 31, 2019, Plaintiff filed "Receiver's Motion for Declaratory Relief Related to CIF's Judgment Collection Action in Florida" in the Court of Common Pleas, in and for Greenville, South Carolina, requesting the relief sought. (Doc. 40-1). On January 28, 2020, defendant Arthur Field filed a *pro se* "Notice of Removal" to the United States District Court for the District of South Carolina. (Doc. 40-2).

Plaintiff filed a motion to remand the case to South Carolina state court and on February 20, 2020, the United States District Court for the District of South Carolina entered an Order granting the motion and finding the removal was improper. (Doc. 40-4). The very next day,

on February 21, 2020, one of defendant Arthur Field's attorneys sent an email to Plaintiff's counsel in South Carolina invoking a lawyer-legislator privilege to delay any proceedings until after the legislative session expires on June 30, 2020. (Doc. 40-5).

B. Events since Plaintiff's last status update

Plaintiff was finally able to set its Motion for Declaratory Relief on September 30, 2020, attached hereto as Exhibit 1. On September 26, 2020, Defendant Taillon filed a response to Plaintiff's Motion for Declaratory Relief, attached hereto as Exhibit 2. Defendant Field filed a Motion to Dismiss Plaintiff's Motion for Declaratory Relief on September 27, 2020, attached hereto as Exhibit 3.

That same date, Field filed a Motion for Recusal of Judge Miller. Field previously threatened such action in his Motion to Vacate Stay/Objection to New Stay filed in this Court on April 13, 2020. (Doc. 37 at 4).² In his Motion for Recusal, Field argued that Judge Miller showed bias during the Tomz litigation, despite that he consented to Judge Miller's jurisdiction and review of the GSA after all alleged incidences of bias occurred. This Motion is attached here to as Exhibit 4. Notwithstanding arguments made in opposition, and without addressing the merits of Field's motion, Judge Miller recused himself. The Honorable Jean Hoefer Toal, retired Chief Justice of the South Carolina Supreme Court, assumed this matter. The Order assigning Judge Toal is attached hereto as Exhibit 5.

Subsequently, on December 17, 2020, Judge Toal entered an Order Granting Receiver's Motion for Declaratory Relief. This Order is attached hereto as Exhibit 6. Of note,

² Threatening that the South Carolina proceeding "will become immediately mired in motions to dismiss, to recuse, etc. and result in a jury trial under S.C.C.A. § 15-53-90, and then be subject to a lengthy appeal process."

the court found that “the GSA incorporates Field’s future obligation to continue to pay his restitution ordered by Judge Maddox and does not release [Plaintiff’s] rights to collect under the civil judgment.” Ex. 6 at 2. “This release **did not** extinguish Field’s obligation to continue to pay his restitution even after the end of his probation,” and “[a]ccordingly, any action commenced by [Plaintiff] to collect on this judgment is entirely appropriate and authorized by the [GSA] (as amended and approved).” *Id.* at 3 (emphasis in original). Finally, citing Defendant Field’s “multiple filings within the state of Florida and his repeated efforts to deny this Court’s jurisdiction and to delay a speedy and just resolution of the matters pending,” the court ordered liquidated damages as provided by the GSA. *Id.* at 3-4.

Defendant Field filed a Motion for Reconsideration of this Order on December 18, 2020, and Defendant Taillon filed a Motion for Reconsideration on December 22, 2020. These Motions are attached hereto as Exhibits 7 and 8, respectively. Plaintiff filed respective responses on January 18 and January 19, 2021. These responses are attached hereto as Exhibits 9 and 10.

C. Request for continuance of stay

Plaintiff requests this Court continue the stay in this matter until the resolution of Defendants’ Motions for Reconsideration. Additionally, Plaintiff requests this Court deny any pending motions by Defendants to the extent such pending motions seek to collaterally attack or vacate Judge Toal’s December 17, 2020 Order. Res judicata prevents Plaintiff from relitigating this issue, and the Younger abstention doctrine prevents interference with the ongoing South Carolina proceedings. Dandar v. Church of Scientology FlagServ.Org., 619 F. App’x 945, 948-49 (11th Cir. 2015) (applying Younger abstention doctrine when “there [was]

a pending state proceeding involving enforcement of a settlement agreement entered into in a state-court case. And that settlement agreement specifically provided that the state court retained jurisdiction to enforce its terms.”); see also Potter v. Chase, LLC, Case No. 16-81273, 2016 U.S. Dist. LEXIS 153418 *8 n.6, *11 (S.D. Fla. Nov. 3, 2016).

Similarly, the Younger abstention doctrine also bars Field’s request that this Court enjoin the South Carolina proceedings. Pompey v. Broward Cnty., 95 F.3d 1543, 1549-50 (11th Cir. 1996). Moreover, under the Anti-Injunction Act, a district court will not enjoin state court proceedings “except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.” 28 U.S. C. § 2283. Defendants cite no pertinent Act of Congress; this Court’s jurisdiction is not in jeopardy, and this Court has not entered any judgments which require protection. As such, the Anti-Injunction Act does not support intervention to enjoin the South Carolina proceeding. See Delta Air Lines v. McCoy Rests., 708 F.2d 582, 585 (11th Cir. 1983); Arthur v. JP Morgan Chase Bank, NA, 569 F. App’x 669, 678-79 (11th Cir. 2014).

Because the South Carolina proceeding remains pending, Plaintiff respectfully requests this Court continue the stay on this proceeding until Judge Toal has had the opportunity to rule on Defendants’ Motions for Reconsideration as to the court’s December 17, 2020 Order. Plaintiff expects entry of Judge Toal’s Order within the next two months.

DATED: January 21, 2021

Respectfully submitted,

ORR|COOK

/s/ Kathleen Crowley

Michael Fox Orr, Esquire

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 15, 2020, I certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified.

ORR|COOK

/s/ Kathleen Crowley

Michael Fox Orr, Esquire
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SERVICE LIST

**CAPITAL INVESTMENT FUNDING, LLC V.
ARTHUR FIELD AND KATHRYN TAILLON**

3:19-cv-606-TJC-JRK

United States District Court, Middle District of Florida, Jacksonville Division

ARTHUR FIELD – arthurfield424@hotmail.com

KATHRYN TAILLON – k.taillon@hotmail.com

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

CAPITAL INVESTMENT FUNDING,
LLC,

Plaintiff,

Case No: 3:19-cv-606-TJC-JRK

v.

ARTHUR FIELD and KATHRYN
TAILLON,

Defendants.

**PLAINTIFF'S STATUS REPORT IN ACCORDANCE WITH
ORDER DATED FEBRUARY 26, 2021**

Plaintiff Capital Investment Funding, LLC, pursuant to the Court's Order dated February 26, 2021 (Doc. 48), hereby files this Status Report.¹ This case was stayed while a court in South Carolina considered the effect of a Global Settlement Agreement ("GSA") on Plaintiff's ability to pursue its South Carolina judgment in Florida. Since the last status report, the Honorable Judge Toal, the distinguished retired Chief Justice of the South Carolina Supreme Court, has affirmed her December 17, 2020 Order which confirms that the parties' GSA permits Plaintiff to collect under the civil judgment at issue in this litigation. *See Amended Order, William F. Tomz, et. al. v. Capital Investment Funding, LLC et. al.*, Case No. 2008-CP-23-3665 (March 2, 2021),

¹ Defendants Arthur Field and Kathryn Taillon, proceeding pro se, filed respective Status Reports on March 5, 2021 and Mr. Field filed a supplemental report on April 2, 2021. (Docs. 49-51).

attached hereto as Exhibit 1 (the “Amended Order”). Fulfilling his promise in his Motion to Vacate Stay/Objection to New Stay filed in this Court on April 13, 2020 (Doc. 37 at 4)², Field and his wife have now appealed Judge Toal’s Amended Order. The Amended Order fully resolves the question of whether the GSA prevents this action.

A. Background and Status Report

This case concerns a domesticated judgment against Arthur Field and Plaintiff’s Petition for Declaratory Relief, which requests relief related to Defendants’ homestead claims on certain property in St. Augustine, Florida. (Doc. 3). Both Defendants filed Motions to Dismiss Plaintiff’s Petition, arguing that Plaintiff’s claims were barred by the GSA. (Docs. 15, 18). The parties entered the GSA as part of resolution of multiple cases filed in Greenville County, South Carolina. (See Doc. 11-1). A full background of the South Carolina cases is detailed in “Plaintiff’s Brief Regarding Jurisdiction Over Global Settlement Agreement.” (Doc. 22).

The GSA provides that its enforcement is within the sole jurisdiction of Judge Edward W. Miller, the presiding judge over Tomz v. Capital Investment Funding LLC and Arthur M. Field, Case No. 2008-CP-23-3665, filed in and for Greenville County, South Carolina. Therefore, on February 19, 2020 this Court stayed this matter so the

² Threatening that the South Carolina proceeding “will become immediately mired in motions to dismiss, to recuse, etc. and result in a jury trial under S.C.C.A. § 15-53-90, and then be subject to a lengthy appeal process.”

court in South Carolina could consider whether the GSA prohibits Plaintiff from pursuing its judgment against Field.

On December 31, 2019, Plaintiff filed “Receiver’s Motion for Declaratory Relief Related to CIF’s Judgment Collection Action in Florida” in the Court of Common Pleas, in and for Greenville, South Carolina, requesting the relief sought. (Doc. 40-1). On January 28, 2020, defendant Arthur Field filed a *pro se* “Notice of Removal” to the United States District Court for the District of South Carolina. (Doc. 40-2).

Plaintiff filed a motion to remand the case to South Carolina state court, and on February 20, 2020, the United States District Court for the District of South Carolina entered an Order granting the motion and finding the removal was improper. (Doc. 40-4). The very next day, on February 21, 2020, one of defendant Arthur Field’s attorneys sent an email to Plaintiff’s counsel in South Carolina invoking a lawyer-legislator privilege to delay any proceedings until after the legislative session expired on June 30, 2020. (Doc. 40-5).

Plaintiff was finally able to set its Motion for Declaratory Relief on September 30, 2020. (Doc. 46-1). On September 26, 2020, Defendant Taillon filed a response to Plaintiff’s Motion for Declaratory Relief. (Doc. 46-2). Defendant Field filed a Motion to Dismiss Plaintiff’s Motion for Declaratory Relief on September 27, 2020. (Doc. 46-3).

That same date, Field filed a Motion for Recusal of Judge Miller. (Doc. 46-4). In his Motion for Recusal, Field argued that Judge Miller showed bias during the

Tomz litigation, despite that he consented to Judge Miller's jurisdiction and review of the GSA after all alleged incidences of bias occurred. Notwithstanding arguments made in opposition, and without addressing the merits of Field's motion, Judge Miller recused himself. The Honorable Jean Hoefer Toal, retired Chief Justice of the South Carolina Supreme Court, assumed this matter. (Doc. 46-5).

Subsequently, on December 17, 2020, Judge Toal entered an Order Granting Receiver's Motion for Declaratory Relief. (Doc. 46-6). Defendant Field filed a Motion for Reconsideration of this Order on December 18, 2020, and Defendant Taillon filed a Motion for Reconsideration on December 22, 2020. (Docs. 46-7 and 46-8). Plaintiff filed respective responses on January 18 and January 19, 2021. (Docs. 46-9 and 46-10).

On March 3, 2021, Judge Toal entered her Amended Order denying Defendants' Motions for Reconsideration. Ex. 1. Of note, Judge Toal expressly found that the "GSA incorporates Field's future obligation to continue to pay his restitution ordered by Judge Maddox and does not release [Plaintiff's] rights to collect under the civil judgment." Id. at 2. Judge Toal also rejected Defendants' arguments and expressly found (1) the GSA does not release Field from his criminal restitution obligations; (2) Plaintiff is the proper party to collect on the outstanding judgment at issue in this action; (3) Plaintiff's Motion for Declaratory Relief was properly pled; (4) Judge Toal and the South Carolina Court had jurisdiction to consider the issues presented, despite the GSA's specific preference for Judge Miller; (5) the Court had

personal jurisdiction over both Field and Taillon; and (6) all remaining arguments by Defendants were meritless. See generally, id.

Defendants have now each filed a notice of appeal of this well-considered Order. These Notices of Appeal are attached hereto as Exhibits 2 (Field) and 3 (Taillon).

B. Whether this Court can Lift the Stay.

The South Carolina Court has now twice fully considered the issue of whether the GSA bars this action. Judge Toal's Amended Order thoroughly addresses the issue of whether this case can proceed. Moreover, the plain language of the GSA provides that Mr. Field's "restitution may be converted to a civil judgment pursuant to the applicable laws of the State of South Carolina." (Doc. 11-2).

Defendants' appeal of this plainly correct Amended Order is an attempt to delay this proceeding. Indeed, it appears this appeal is meaningless in the Defendants' eyes, as Defendants are already arguing this Court need not abide by Judge Toal's decision. (See generally Docs. 49-51; Doc. 49 at 2 n.3; Doc. 50 at 2 n.2; Doc. 51 at 2 n.2).³ As such, there is good reason to lift the stay and permit this case to proceed on its merits, rather than entertain more delay. And certainly, Plaintiff would not object to any order lifting the stay, as Plaintiff would prefer this case proceed.

³ Federal Courts typically afford full faith and credit to state court orders pursuant to 28 U.S.C. § 1738, which provides that: "judicial proceedings of any court of any such State . . . shall have the same full faith and credit in every court within the United States . . . as they have by law or usage in the courts of such State[.]"

Nonetheless, Plaintiff recognizes that at least one court in this District implemented a stay pursuant to Younger after a final judgment was entered but while an appeal was pending. Dandar v. Church of Scientology Flag Serv. Org., Inc., 24 F. Supp. 3d 1181, 1191 (M.D. Fla. 2014) (“Because Dandar has appealed the state court orders entered on March 17, 2014, raising on appeal some of the same issues implicated in his request for injunctive relief before this Court, the relevant proceedings remain ongoing for the purpose of determining the application of Younger.”). Thus, it would appear there is authority, and perhaps cause, to continue the stay in this matter until Defendants’ appeal is resolved. Plaintiff reserves any arguments or objections to continuing the stay should Defendants’ conduct become vexatious.

DATED: April 29, 2021

Respectfully submitted,

ORR | COOK

/s/ Kathleen Crowley

Michael Fox Orr, Esquire

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 29, 2021, I certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified.

ORR | COOK

/s/ Kathleen Crowley

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SERVICE LIST

CAPITAL INVESTMENT FUNDING, LLC V.

ARTHUR FIELD AND KATHRYN TAILLON

3:19-cv-606-TJC-JRK

United States District Court, Middle District of Florida, Jacksonville Division

ARTHUR FIELD – arthurfield424@hotmail.com

KATHRYN TAILLON – k.taillon@hotmail.com

IN THE STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

Capital Investment Funding, LLC,)

Plaintiff,)

C.A. No.: 15-CP-23- 01263

Arthur Field; Kathryn Taillon; Kirsten M. White;)
Allyson Field; Anthony Edgar; Ashley Morey;)
Bart Kelley; Brad Kelley; Charles Pinion;)
Elizabeth Hopper; Eugene Hopper; Paul A.)
Chalmers; Michael Moore; Aladdin's Grill and)
Café, LLC; Blenheim Properties, LLC;)
Bolingbroke United (England) Ltd; Bountiful)
Bingo, LLC; Bradford Financial Group, LLC;)
Capital Intrastate Funding, LLC; Dunross Struan,)
LLC; Empire Document Services; He Will)
Provide, LLC; Krondor Trading Co., LLC;)
Lamplighter Mortgage Company, LLC; Lion)
Financial, LLC; Mithril Funding, LLC;)
Monmouth Financial Group, Ltd.; Moore &)
Associates, LLC; Pelican Way Financial, LLC;)
RAAF Enterprises, LLC; Tcholak Properties,)
LLC; The Chrysler Drive Trust; The Cotton Mill)
Trust; The Old Arcadia Road Trust; The)
Pickering Road Trust; The Upper Nehalem Trust;)
York Mortgage Funding, LLC; John Does 1-35)
(names being fictitious); Jane Does 1-35 (names)
being fictitious); and ABC Companies 1-35)
(names being fictitious),)

Defendants.)

AMENDED COMPLAINT
(Jury Trial Demanded)

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2015 MAR 23 PM 4 45

Pursuant to Rule 15 of the South Carolina Rules of Civil Procedure, by and through its undersigned attorneys, Plaintiff Capital Investment Funding, LLC (hereinafter "Plaintiff" or "CIF") files this amended complaint and alleges of the above-named defendants and will respectfully show unto the Court the following:

Introduction

This case was previously filed against the above-named defendants in the United States District Court for the District of South Carolina (Greenville Division) as Capital

Investment Funding, LLC v. Arthur Field, et al., C.A. No. 6:12-cv-03401-MGL-JDA and Capital Investment Funding, LLC v. Arthur Field, et al., C.A. No. 6:13-cv-02326-MGL-JDA. Plaintiff's federal court case included numerous state court claims, including common law fraud, fraudulent inducement, negligent misrepresentation, breach of fiduciary duty, unjust enrichment, conversion, abuse of civil process, fraudulent transfer of assets in an attempt to defeat creditors, assumpsit, breach of contract, conspiracies to commit each of the aforementioned causes, and aiding and abetting each of the aforementioned cause, as well as four claims under 28 U.S.C.A. § 1964 et seq. (Racketeer Influenced and Corrupt Organization Act "RICO").

Jurisdiction in federal court was predicated upon the exclusivity of federal question jurisdiction (28 U.S.C. §1331) for the violations of RICO. Plaintiff's state court claims were included pursuant to the principles of supplemental jurisdiction under 28 U.S.C. § 1367 pursuant to the Judicial Improvements Act of 1990, as codified at 28 U.S.C.A. §1367(a).

On January 20, 2015, the District Court granted the motions to dismiss Plaintiff's claims for violations of RICO. [Order of Judge Hendrix, dated January 20, 2015, Attachment A]. The court declined to exercise jurisdiction over Plaintiff's state claims, so dismissed the same without prejudice for Plaintiff to file in state court. Plaintiff files this complaint in state court which arises from the same facts and circumstances as well as the common nucleus of operative fact as set forth in Plaintiff's federal court complaints.¹

¹Plaintiff's complaint *sub justitia* differs from its pleadings filed in federal district court in South Carolina to reflect details that have occurred or that have been learned since the filing its original federal court pleadings. Of note, Plaintiff was prevented from conducting any discovery throughout the duration its case was pending in federal court. This complaint also omits some previously-named parties that settled with the Plaintiff since its filing of the federal case. Additionally, this complaint removes allegations and corresponding claims against some previously-named defendants which are subject to pending litigation in the state of New Jersey: Capital Investment Funding, LLC v. Lancaster Resources, Inc., et al., 2:08-cv-04714-JLL-JAD (D. N.J.).

Jurisdictional Statement

A. Parties

1. Plaintiff Capital Investment Funding, LLC (hereinafter referred to as “Plaintiff” or “CIF”) is a South Carolina limited liability corporation with its principal place of business in Greenville County, South Carolina. As a result of other litigation arising out of a common nucleus of operative fact (Tomz et al., v. Capital Investment Funding, LLC et al, Court of Common Pleas, 13th Judicial Circuit, County of Greenville, South Carolina: C.A. 2008-CP-23-3665, Roberts v. Capital Investment Funding, LLC et al, Court of Common Pleas, 13th Judicial Circuit, County of Greenville, South Carolina: C.A. 2008-CP-23-5514, Bridges et al v. Capital Investment Funding, LLC et al, Court of Common Pleas, 13th Judicial Circuit, County of Greenville, South Carolina: C.A. 2008-CP-23-7457, and Lee v. Capital Investment Funding, LLC et al, Court of Common Pleas, 13th Judicial Circuit, County of Greenville, South Carolina: C.A. 2008-CP-39-1184) on or about August 24, 2009, the court entered an order “(Order Approving Settlement”) appointing Jerry Saad, CPA, as a Receiver (“CIF’s Receiver”) in accordance with the South Carolina Limited Liability Company Act. CIF’s Receiver was instructed to take over and complete CIF’s winding up of business and affairs, which the prior principals, managers and officers had purportedly begun in January 2008. In the Order Approving Settlement, the court directed Defendant Arthur Field to produce all “documents, emails, computer records, mortgages and the like” to the Receiver within ten (10) days. While Defendant Arthur Field has produced many documents related to the finances and operations of CIF, Defendant Arthur Field has willfully refused to deliver substantial records and therefore has yet to fully comply with the Court’s order. Prior to this order, control of CIF and its interests remained in the hands of one or more of the above-named defendants.

2. As set forth in detail fully hereunder, one or more of the above-named defendants acted individually and in concert with others in various venues and projects, collectively creating an elaborate labyrinth of corporations, businesses and other entities by which the assets of CIF were secretly siphoned, removed, extracted, absconded, pilfered, and/or wasted. CIF brings this action directly and as the current actual or beneficial owner, manager, and/or real party in interest of the following South Carolina entities by and through which CIF's assets were funneled and/or exhausted: Cosimo, LLC ("Cosimo"); CIF Property Holdings, LLC ("CIF Property Holdings"); WE3 Company, Inc. ("WE3"); Big Deal Land Company, LLC ("Big Deal"); and Rolling Hills Land Co., LLC ("Rolling Hills").

3. Upon information and belief, the following defendants are citizens and/or residents of the State of South Carolina: Arthur Field; Allyson Field; Anthony Edgar; Ashley Morey; Bart Kelley; Brad Kelley; Charles Pinion; Eugene Hopper; Gene Ahlers; Paul Chalmers; Kathryn Taillon; Kirsten M. White; John Does 1-15 (names being fictitious); and Jane Does 1-15 (names being fictitious).

4. Upon information and belief, the following defendants are citizens and residents of the State of Washington and/or Nevada, but are amenable to the jurisdiction of this court by virtue of their transacting business with other defendants within the State of South Carolina and/or their activities foreseeably resulted in damages and injuries to the plaintiff in the forum state: Michael Moore; John Does 1-5 (names being fictitious) and Jane Does 1-5 (names being fictitious).

5. Upon information and belief, the following defendant corporate entities or other legal entities are organized under the laws of South Carolina and/or have their principal places of businesses in the State of South Carolina: Aladdin's Grill and Café, LLC; Blenheim Properties, LLC; Bolingbroke United (England) Ltd; Bountiful Bingo, LLC; Bradford Financial Group,

LLC; Capital Intrastate Funding, LLC; Dunross Struan, LLC; Empire Document Services, He Will Provide, LLC; Krondor Trading Co., LLC; Lamplighter Mortgage Company, LLC; Lion Financial, LLC; Mithril Funding, LLC; Monmouth Financial Group, Ltd.; RAAF Enterprises, LLC; Tcholak Properties, LLC; The Cotton Mill Trust; York Mortgage Funding, LLC; and ABC Companies 1-25 (names being fictitious). At all times relevant herein, these entities were merely the alter-ego of the principals who controlled and operated the same, and, upon information and belief, observed none of the requisite corporate formalities.

6. Upon information and belief, the following corporate or other legal entities are organized under the laws of a state other than South Carolina and/or have their principal places of businesses in a state other than the State of South Carolina, but are amenable to the jurisdiction of this court by virtue of their transacting business with other defendants within the State of South Carolina and/or their activities foreseeably resulted in damages and injuries to the plaintiff in the forum state: Moore & Associates, LLC; The Chrysler Drive Trust; The Old Arcadia Road Trust; The Pickering Road Trust; The Upper Nehalem Trust; and ABC Companies 1-10 (names being fictitious).

7. Upon information and belief, at all times relevant herein, the individual defendants set forth hereunder acted individually and by and through the various entities identified hereafter:

- a. Upon information and belief, during the applicable times of the transactions and occurrences applicable herein, either individually or derivatively, Defendants Arthur Field, Allyson Field, Kathryn Taillon, and Kirsten M. White were officers, directors, managers, owners, shareholders, members, employees, beneficiaries, and/or agents of the following entities: Capital Investment Funding, LLC; CIF Property Holdings, LLC; Cosimo, LLC; CIF TC, LLC; Aladdin's Grill and Café, LLC, Blenheim

Properties, LLC, Bolingbroke United (England) Ltd, Bountiful Bingo, LLC, Bradford Financial Group, LLC, Capital Intrastate Funding, LLC, Dunross Struan, LLC, Empire Document Services, He Will Provide, LLC, Krondor Trading Co., LLC, Lion Financial, LLC, Mithril Funding, LLC, Monmouth Financial Group, Ltd., Pelican Way Financial, LLC, RAAF Enterprises, LLC, Trazom, LLC, and York Mortgage Funding, LLC.

- b. Upon information and belief, during the applicable times of the transactions and occurrences applicable herein, either individually or derivatively, Defendants Bart Kelley and Brad Kelley were officers, directors, managers, owners, shareholders, members, employees, beneficiaries, and/or agents of CIF during the time that CIF was under the direction and control of Defendant Field.
- c. Upon information and belief, during the applicable times of the transactions and occurrences applicable herein, either individually or derivatively, Defendant Ashley Morey was an officer, director, manager, owner, shareholder, member, employee, beneficiary, and/or agent of the following entity: Defendants Krondor Trading, LLC; Lion Financial, LLC; York Mortgage Funding, LLC and/or Bradford Financial Group, LLC.;
- d. Upon information and belief, during the applicable times of the transactions and occurrences applicable herein, either individually or derivatively, Defendants Anthony Edgar, Charles Pinion, Elizabeth Hopper, Eugene Hopper, Gene Ahlers, were officers, directors, managers, owners, shareholders, members, employees, beneficiaries, and/or agents of one or more of the following entities: WE3 Company Inc.; Big Deal Land Company, LLC; Rolling Hills Land Co., LLC; SD Trust, LLC; SD Trust Fractional, LLC, SD Trust Management, LLC; and Defendants Alliance

Development Partners, LLC, Apex Construction, Asante Properties, LLC (a/k/a Asante, LLC), Badger Development, LLC, Construction Resources, Inc., GodProp, LLC, J&H Builders, LLC, Lamplighter Mortgage Company, LLC, Log Dirt, LLC, Lot 37 Waters Edge, LLC, Lot 46 Waters Edge, LLC, Lot 6 Lakewater Cove, LLC, Neighborhood Homes, LLC, Onward Finance Corporation, Onward Recovery Partners Corporation, Saneski, LLC, Seed Construction, Southridge Construction, Inc., Steele Construction of SC, Inc., and Total Package Grading, LLC; and

- e. Upon information and belief, during the applicable times of the transactions and occurrences applicable herein, either individually or derivatively, Defendants Michael Moore was an officer, director, manager, owners, shareholder, member, employee, beneficiary, and/or agent of one or more of the following entities: Amerishare Corporation, Arrowhead Funding Corporation, Gulf Capital LP, Gulf Capital Management, Inc., , Nevada Processing Center, Inc., Onward Recovery Partners Corporation, Onward Finance Corporation, as well as Defendants Moore & Associates, LLC; Tcholak Properties, LLC, The Upper Nehalem Trust, The Chrysler Drive Trust, The Old Arcadia Road Trust, and The Cotton Mill Trust.

B. Jurisdiction

8. This Court has jurisdiction over the parties and subject matter of this action under Articles 5 and 7 of the South Carolina Constitution, Section 14-1-80 of the *Code of Laws of South Carolina* (1976, Annotated) and the common law of South Carolina.

C. Venue

9. Venue is proper because one or more of the defendants reside in or have their principal places of business in Greenville County, South Carolina and a substantial number of the transactions at issue occurred with this county.

Factual Allegations

A. General

10. Plaintiff alleges all paragraphs set forth in detail hereunder based upon the information and beliefs of the information that is currently known and/or available or that which is reasonably anticipated to be learned through discovery.

B. Organizers and Formation of CIF

11. Upon information and belief, Defendant Arthur Field is an attorney who first was licensed by New Jersey in 1977 and by Connecticut in 1978. He managed a commodities fund at one time and engaged in a legal practice that in Connecticut including real estate and business law. In the early 1990s, Defendant Field was named as a defendant in civil litigation brought by private individuals, including, but not limited to, Bentley v. Manufacturing Hanover Trust, et al., C/A 5-91-cv-00715-JAC (D. Conn.)] and by the People of the State of New York [e.g., People of the State of New York v. Swiss Conservative Group, et al., (for detailed discussion about this case, see, Field v. Kirton, 856 F.Supp. 88 (D. Conn. 1994))].

As the presiding United States District Court Judge José A. Cabranes (now serving as a judge on the United States Federal Court of Appeals for the Second Circuit), noted in his opinion dismissing Field's pending lawsuit:

On November 5, 1992, the State of New York sent to the Connecticut Statewide Grievance Committee ("Statewide Grievance Committee") copies of the pleadings in the New York action. The Fairfield Judicial District Grievance Panel ("Fairfield Grievance Panel") subsequently initiated an investigation of Field regarding the allegations contained in the New York action. On May 5, 1993, the defendant attended a hearing on the matter before the Reviewing Panel of the Statewide Grievance Committee, and, on November 18, 1993, the Fairfield Grievance Panel issued a decision to present Attorney Field to the Connecticut Superior Court for discipline.

Field v. Kirton, 856 F.Supp. at 92-93.

12. Upon information and belief, facing disbarment by the Connecticut Bar Association, Defendant Arthur Field² moved to South Carolina in the mid-1990s. Although he presented business cards in South Carolina indicating he was a practicing attorney, Defendant Arthur Field neither applied for, nor was admitted to, practice law in the State of South Carolina.

13. Defendant Field received a Ph.D. in management science from Clemson University upon submission of his dissertation, "Applying Monte Carlo Simulation Techniques to Amusement Park Queueing Protocols to Reduce Waiting Time and Enhance Customer Satisfaction."

14. Defendant Kathryn Taillon is Defendant Arthur Field's wife. They were married in Fairfield, Connecticut in 1985. Upon information and belief, when obtaining their marital license, both Field and Taillon represented their previous marital status as "widowed," which was not true as to either of them.

15. Defendant Allyson Field is daughter of Defendant Field and Defendant Taillon.

16. Defendant Field formed Capital Investment Funding, LLC ("CIF"), the Plaintiff in this action. CIF was a South Carolina limited liability company with its main office located in the town of Easley, in Pickens County, South Carolina. CIF had branch offices in Greenville County, Charleston County, and Horry County.

17. CIF was formed by a filing with the South Carolina Secretary of State on January 13th, 1999, under the name "Carolina Investment Funding, LLC". CIF's minutes reflect that the

² Disbarment hearings were held on June 2, 1993 and June 13, 1993 in the matter of Alphonse and Barbara Izzo v. Arthur Matthew Field, Esq., Grievance No.#92-0133, Superior Court (Judicial Dist. of New Haven). From the records, the hearing was to be reconvened later that month for further testimony. Upon information and belief, Defendant Field reached an off-the-record agreement with the Bar to surrender his license and leave the jurisdiction of Connecticut.

initial meeting of its incorporators took place on February 25, 1999. Upon formation of CIF, Lancaster Resources, Inc., a New Jersey corporation ("LRI") owned more than 90% of the CIF membership interests, with relatively small amounts of membership interests going to Defendants Kathryn Taillon, Brad Kelly, Bart Kelley and each of the directors LRI individually.

18. Through the direction and control of Defendant Arthur Field, between 1999 and 2007 Plaintiff CIF received in excess of \$38 million dollars from monies borrowed from various noteholders, mostly South Carolina residents.

19. Once the monies were received into the coffers of CIF, while under the direction and control of Defendant Field, Defendant Field engaged in numerous transactions of self-dealing for himself, his family members and his business associates.

20. For example, on September 27, 2001, an entity was registered with the Wyoming Secretary of State named Bolingbroke United (England) Ltd ("Defendant Bolingbroke"). The incorporator was listed as Geneva Sellers of Nevada Processing Center, Inc., a Nevada corporation.

21. Geneva Sellers is an associate of Jack Campitelli, who also uses the alias "A.J. Camp". Upon information and belief, Defendant Jack Campitelli is an associate of attorney Scott Pfeiffer.³ Defendant Field represented Mr. Campitelli in quasi-criminal proceedings federal court in Washington, in a matter where, according to public records, Defendant

³ On or about February 15, 2013, Plaintiff reached a settlement with the following parties that were previously named in federal court pleadings: Scott Pfeiffer, David Gantt, Ralph Gleaton, Gleaton Wyatt Hewitt, P.A., Pfeiffer, Gantt & Gleaton, P.A., Pfeiffer Gantt Gleaton Wyatt, P.A. Pfeiffer Gleaton Wyatt Hewitt, P.A., P&G Title Agency, LLC, PG&G Title Insurance, LLC, PGGW Title Insurance, LLC, Paula Haney, Alysia Hazelton, Ross Jones, Bill Beckman, Jose Rodriguez, Red Lion Trading House, LLC, Saxon Business Services, LLC, Saxon Holding, LLC, Angle Holdings, LLC and Our Tree House, LLC. Any discussion of these parties in the complaint *sub justicia* is made strictly for background information only.

Campitelli refused to disgorge funds he controlled in an off-shore trust accounts on behalf of a client who had pled guilty to criminal charges stemming from a scheme.

22. Eventually, the registered agent listed with the Wyoming Secretary of State's Office was "Henry Rex", the supposed president of Defendant Bolingbroke. The address was a P.O. Box in Eugene, Oregon, which was opened by Geneva Sellers and on which A.J. Camp was listed as a recipient of mail. Also, a Bank of America business investment account was opened in South Carolina on October 18, 2001, with the signatory listed as "H Rex". This bank account used the address of the law firm Pfeiffer Gantt & Gleaton, P.A. as the address for the account. The bank did not certify the signature. Ultimately, a number of checks would be issued on this account purportedly signed by "Henry Rex".

23. "Henry Rex" is a fictitious person and does not exist. Defendant Bolingbroke and "Henry Rex" were created at the direction and with the consent of Defendant Arthur Field. Arthur Field's apparent intent was to hide his true interest in Defendant Bolingbroke and the entities with which Defendant Bolingbroke would do business to secretly receive monies for transactions in which CIF had a conflicting interest.

24. Upon the first use of Defendant Bolingbroke was to loan money to Credo Land Holdings, LP ("Credo"). Credo was made of entities in which attorney Scott Pfeiffer and Tommy Moore had ownership interests, and on September 10, 2001, Defendant Arthur Field purchased a 10% interest in Credo and a 10% interest in Saxon Holdings, LLC, a limited partner of Credo's controlled by attorney Scott Pfeiffer. From information obtained, Defendant Arthur Field learned the South Carolina Department of Transportation decided to acquire a certain parcel of land located near an interstate highway in Greenville. With that knowledge, Defendant Arthur Field did cause Credo to purchase that parcel on October 16, 2001. The property was purchased from Baby Superstore, Inc. for \$400,000. This transaction was completed on October

30, 2001. Credo that day gave a \$340,000 note and mortgage to Defendant Bolingbroke and a \$40,000 note and mortgage to Defendant Kathryn Taillon, Defendant Field's wife.

Sometime thereafter, at Defendant Field's direction and control, additional mortgages were recorded on the property to give the appearance of significantly more debt on the property, for the purpose of giving the appearance of a higher value for the property. Less than 18 months later, this property was condemned by the South Carolina Department of Transportation, which March of 2003 paid \$1,150,000 in a check made out to Credo, Defendant Bolingbroke, Defendant Kathryn Taillon, and CIF. The check was endorsed by attorney Scott Pfeiffer on behalf of Credo, by Defendant Arthur Field on behalf of CIF, by Defendant Kathryn Taillon, and by "Henry Rex" for on behalf of Defendant Bolingbroke. Of these funds, Defendant Arthur Field wrote checks from Credo to Defendant Bolingbroke for \$342,963.03, and from Credo to Defendant Taillon and Defendant Arthur Field as well. On January 31, 2003, Defendant Field signed the name of "H Rex" on a release of Defendant Bolingbroke's mortgage on the property.

25. Defendants Arthur Field and others knowingly siphoned, extracted and absconded funds from CIF through ownership in Defendant Bolingbroke. Furthermore. Defendant Arthur Field and others knowingly, intentionally, and continuously concealed, withheld, and failed to disclose the material ownership interest held in Defendant Boilngbroke and the improper and illegal actions of bank fraud and forgery by using the fictitious person, Henry Rex, for banking activities.

26. At Defendant Field's direction, control and/or participation, numerous South Carolina limited liability corporations were established through which CIF's monies and assets were funneled.

27. For example, on January 28, 2002, Lancaster Resources (South Carolina), Inc., was formed with the filing of Articles of Incorporation with the South Carolina Secretary of State. Attorney Scott Pfeiffer was listed as the incorporator and soon he signed for the attorney certification of compliance. On February 11, 2002, Articles of Amendment were filed changing the name of this entity to Defendant Monmouth Financial Group, Ltd ("Monmouth").⁴ Defendant Arthur Field signed this amendment as the incorporator. Attorney Scott Pfeiffer had ownership and management interests in Defendant Monmouth.

28. In or about this same period or after, with intent, structure, and actions similar to Defendant Monmouth, Defendant Arthur Field attorney Scott Pfeiffer and Defendant Field established other South Carolina entities, including, but not limited to Cosimo, LLC and Defendants Bradford Financial Group, LLC ("Defendant Bradford"), Lion Financial, LLC ("Defendant Lion"), and York Mortgage Funding, LLC ("Defendants York").

29. Defendant Arthur Field and others knowingly, intentionally, and continuously concealed, withheld, and failed to fully disclose the material ownership interest he held and/or the operational control he maintained in Defendants Monmouth, Bradford, Lion, and York, and others. The designed purpose of these entities was to create the false appearance that CIF was loaning money to wholly independent South Carolina borrowers.

30. Defendant Arthur Field's plan to start lending to South Carolina entities was primarily centered upon the formation of a new re-lending entity that would be loaning money predominately to South Carolina borrowers.

⁴In keeping with their interest in historical themes, according to history, Henry V was born at Monmouth Castle, and was known as Henry of Monmouth. Henry V later followed his father Bolingbroke, or Henry IV, on the throne. Henry Bolingbroke would, as noted before, sign his name "Henry Rex" upon taking the throne.

31. Towards that end, on January 31, 2002, attorney Scott Pfeiffer filed with the South Carolina Secretary of State the Articles of Organization for Cosimo, LLC ("Cosimo") and was listed as the organizer. Fifty percent (50%) of Cosimo was owned by Red Lion Trading House, LLC, an entity controlled by attorney Scott Pfeiffer. The other fifty percent (50%) was owned by Defendant Bolingbroke, which, as noted before, was controlled by Defendant Arthur Field and was created for the purpose of hiding his ownership interest in this re-lender of CIF. Over the years, Cosimo was co-managed by limited liability companies owned and controlled by Defendant Arthur Field and attorney Scott Pfeiffer.

32. Cosimo began lending to borrowers in South Carolina, Georgia, New York, Washington, and Oregon, with the majority of lending being to South Carolina borrowers.

33. By December 2007, Cosimo had borrowed from CIF and loaned to multiple borrowers more than \$11 million. All of those loans were in default at the end of 2007 and remain substantially uncollectible today. Some of the more significant dealing Cosimo are discussed in more detail later in this Complaint.

34. Meanwhile, on or about March 26, 2002, Defendant Arthur Field caused Defendant Monmouth to purchase a condominium at the River Bend development in Greenville, South Carolina from an estate for \$55,000. Two years later, in February 2004, Defendant Arthur Field caused Defendant Monmouth to sell the condominium to Our Tree House for \$65,000. In connection with the purchase, Bill Beckman, signing as "Authorized Member", executed a mortgage in favor Defendant Bolingbroke in the amount of \$48,000. While, CIF provided funding to Defendant Monmouth for the original purchase, through this process, funds and value were ultimately diverted to Defendants Bolingbroke.

This property was used as an address for Defendant Bolingbroke, Defendant Monmouth, Cosimo and other entities to give the outward appearance of arm's length transactions, when, in fact the entities had common ownership and/or control.

35. Throughout the majority of Defendant Field's tenure as the *de facto* controller of CIF, Field repeatedly made misrepresentations that loans are to be secured by a first mortgage, and that the appraised value had to exceed the loan by 20%. He also stated that the company would never loan money to its managers. These statements were not true.

36. From the onset, the Defendants never established commercially reasonable and generally acceptable lending policies, controls and standards. Notably, this substantial lack of policies, controls and standards, mirrored CIF and all of the other re-lenders that were created to further Field's cause.

37. In an email to his partners dated April 14, 2003, Defendant Arthur Field wrote that he had employed his wife, Defendant Kathryn Taillon, to assist him as the two of them handled the distributions and other financial transactions of CIF. Upon information and belief, Defendant Taillon owned and/or managed several of the above-named defendant entities, including but not limited to Defendants Blenheim Properties, LLC, Bountiful Bingo, LLC, and Pelican Way Financial, LLC, through which the assets of CIF were funneled and/or laundered.

38. In 2002, Defendants Arthur Field and Kathryn Taillon formed York Mortgage Funding, LLC. Upon information and belief, Defendant Field caused a prospectus to be prepared and issued on behalf of York Mortgage Funding. The prospectus identified Defendant Kathryn Taillon as a 48% owner of the business. Upon information and belief, Defendant Field was the *de facto* owner and/or managing member of York Mortgage Funding.

39. Defendant Field and/or Defendant Taillon funneled money between and among CIF, York Mortgage Funding and Bradford Financial, for which Defendant Field was the *de*

facto controlling managing member at all times. Field would routinely sign checks on behalf of York Mortgage Funding or Bradford Financial Group or CIF made payable to either of the other two entities. In doing this, Field concealed and/or transferred monies and debt to and from the related entities that he controlled. Ultimately, Defendant Field siphoned off substantial monies from CIF by transferring the case to his other entities, like York Mortgage Funding and/or Bradford Financial Group.

40. Additionally, Defendant Field and his wife Defendant Taillon fought to keep anyone from learning of their dealings and loan activity with CIF. On or about April 21, 2003, interested parties attempted to have copies made of the files, Defendant Arthur Field, Defendant Kathryn Taillon, and a third individual who refused to identify himself, arrived at the copy service demanding return of the documents. Defendant Arthur Field presented a business card with his Greenville, SC address identifying him as an "Attorney-at-law", even though he was not and never has been licensed in South Carolina.

41. On or about October 9, 2003, Defendant Arthur Field held a meeting for the noteholders of CIF, at which he told them that loans are to be secured by a first mortgage, and that the appraised value had to exceed the loan by 20%. He also stated that the company would never loan money to its managers. CIF was already lending to Cosimo, in which Defendant Arthur Field had an ownership interest hidden through Defendant Bolingbroke.

42. In the December 12, 2003, letter to noteholders, Defendant Arthur Field also stated that "all lending activities will be totally independent". This statement was materially misleading, as Defendant Arthur Field did not disclose his then-existing hidden ownership interest in Cosimo and the interests of attorney Scott Pfeiffer in the various entities and transactions.

43. From January 2002 through April 2002, Defendant Arthur Field began implementing a plan to dramatically and quickly increase the amount of dollars loaned on South Carolina projects by establishing new lending entities in South Carolina, including Cosimo and Defendants Bradford, Monmouth, and York. Defendant Lion Financial was later established in 2004. These entities were instrumental in Defendant Arthur Field's plan to established syndicates which would rapidly deploy CIF's funds.

44. Defendants Bradford, Monmouth, York and Lion were managed by Defendant Arthur Field from CIF's office in Easley and Defendant Arthur Fields' home in Greenville. Cosimo began its operations inside of the law office of co-manager attorney Scott Pfeiffer, where it remained until ownership of Cosimo was transferred to CIF in July 2009.

45. More specifically, under their general mode of operations, as evidenced by the lack of specific documentation, these entities did not require customers to submit loan applications, did not perform credit checks or background checks on customers or principals, did not obtain, much less scrutinize or verify, financial statements of borrowers or guarantors, did not perform any economic analysis, cash flow analysis, or projections for projects, did not perform due diligence on projects, did not properly monitor or inspect projects or construction progress, did not require proper and timely recordings of liens, and often loaned more money to borrowers in default in order to obscure the fact that the loans were in default.

46. Thus, these entities conducted their lending activities carelessly and with reckless abandon, with the immediate goal of hurriedly and dramatically increasing the amount of CIF moneys loaned on South Carolina projects, with no regard or intention to conduct what would be considered, by any reasonable measure, normal underwriting procedures on loans.

47. Under the guise of needing to expand South Carolina lending volume in order to qualify for intrastate exemption to the federal registrations of CIF's securities, with the added

benefit of extracting loan commitment fees, management fees and other kickbacks from loan closings, Defendant Arthur Field through various individuals and entities began to create various syndicates to participate in the lending schemes, which, upon information and belief, included employed previously identified defendants as well as one or more of the following defendants: Anthony Edgar, Ashley Morey, Bart Kelley, Brad Kelley, Charles Pinion, Elizabeth Hopper, Eugene Hopper, Gene Ahlers, Kathryn Taillon, Kirsten M. White and Michael Moore.

48. Then, with their mutual cooperation and participation, Defendant Arthur Field and attorney Scott Pfeiffer along with the aforementioned defendants created a labyrinth of multiple inter-related entities, which operated as the alter-egos of these various individual defendants. The entities created including (but were not necessarily limited to) Aladdin's Grill and Café, LLC; Blenheim Properties, LLC; Bolingbroke United (England) Ltd; Bountiful Bingo, LLC; Bradford Financial Group, LLC; Capital Intrastate Funding, LLC; Dunross Struan, LLC; Ezell Investment Company, LLC; He Will Provide, LLC; Krondor Trading Co., LLC; Lamplighter Mortgage Company, LLC; Lion Financial, LLC; Mithril Funding, LLC; Monmouth Financial Group, Ltd.; Moore & Associates, LLC; Pelican Way Financial, LLC; RAAF Enterprises, LLC; Tcholak Properties, LLC; The Chrysler Drive Trust; The Cotton Mill Trust; The Old Arcadia Road Trust; The Pickering Road Trust; The Upper Nehalem Trust; York Mortgage Funding, LLC.; and ABC Companies 1-35 (names being fictitious).

49. Upon information and belief, the activities conducted by these various defendants constituted money laundering schemes. More specifically, the various defendants, individually and with other defendants, used various money laundering methods to extract and pilfer funds from CIF and others for the benefit of various defendants. The money laundering methods used included, but were not limited to, the following:

- a. Structuring – often known as “smurfing” – a method of placement by which cash is broken into smaller deposits of

- money, used to defeat suspicion of money laundering to avoid anti-money laundering reporting requirements. A sub-component of this is to use smaller amounts of cash to purchase bearer instruments, such as money orders, and then ultimately deposit those, again in small amounts;
- b. Bulk Cash Smuggling - physically smuggling cash to another jurisdiction, where it is deposited in a financial institution, such as an offshore bank, with greater bank secrecy or less rigorous money laundering enforcement;
 - c. Cash-intensive Businesses - using a business typically involved in receiving cash will use its accounts to deposit both legitimate and criminally derived cash, claiming all of it as legitimate earnings;
 - d. Trade-based Laundering - under-or-over valuing invoices in order to disguise the movement of money;
 - e. Trusts and Shell Companies - disguising the true owner of money - depending on jurisdiction, trusts and shell companies do not need to disclose their true, beneficial owner;
 - f. Round-tripping - depositing money in a controlled foreign corporation offshore, preferably in a tax haven where minimal records are kept, and then shipped back as Foreign Direct Investment, exempt from taxation;
 - g. Bank Capture - money launderers or criminals buy a controlling interest in a bank and then move money through the bank without scrutiny;
 - h. Real Estate Transactions - masking sources of funds including, but not limited to: (1) real estate purchased with illegal proceeds, then sold, and the proceeds from the sale appear to outsiders to be legitimate income, (2) the price of the property is manipulated wherein the seller will agree to a contract that under-represents the value of the property and will receive cash to make up the difference, and (3) property is sold to multiple entities all controlled by the same syndicate at increasing sale prices despite no transfer of funds to present the appearance of appreciation of real estate values in a given area;
 - i. Black Salaries - compensating individuals with cash payments which are not reported to taxing authorities, and
 - j. Fictional Loans - providing promissory notes without receiving as consideration some or all of principal amounts described in the promissory notes.

50. As the principal of CIF and the co-manager of Cosimo, LLC, Defendant Field funneled a substantial portion of CIF's assets into projects for which there were no established

commercial guidelines or supervision and for which insiders receiving the benefit of CIF's funds had conflicting interests and wholly lacked documentation to preserve CIF's interests in the same. From 2002 through 2009, Cosimo (for which Defendant Field was co-manager, by and through his ownership and control over Defendant Bolingbroke) became the main outlet for the proliferation of CIF based loans outside of the State of New Jersey. Cosimo funded several syndicates, including Hopper's Syndicate, Campitelli's Syndicate, Trazom's Syndicate, and Field's Syndicate, among others.

a. Hopper's Syndicate Takes CIF For \$8 Million

51. Hopper's Syndicate comprised the largest group of individuals and entities identified with the illegal conduct that resulted in harm and loss to CIF. The group is referenced by the name of the one individual who is pervasive in a multitude of interlinked illegal activities, Defendant Eugene Hopper.

52. By 1997, Defendant Eugene Hopper had befriended other defendants, including, but not limited to, Defendants Charles Pinion and Paul A. Chalmers.

53. Meanwhile, in 1997, the New Hampshire Attorney General indicted Defendant Eugene Hopper on multiple counts of securities violations for selling unregistered securities. The securities were short term promissory notes yielding exorbitantly high rate of interest. The violations occurred while Defendant Eugene Hopper was living in New Hampshire in 1995.

54. On January 2, 1998, Defendant Eugene Hopper pled guilty to two (2) counts of securities violations for selling unregistered securities to Ellen Knight and Eugene Williams, and was sentenced by the Superior Court in Sullivan County, New Hampshire, to twelve (12) months in the Sullivan County House of Correction and six (6) months in the House of Correction, consecutive.

55. On or about December 23, 1998, Defendant Eugene Hopper was released and returned to his native state, South Carolina.

56. Upon his return to South Carolina, Defendant Hopper continued to initiate investment schemes and/or scams. By 2001, Defendant Eugene Hopper, along with a syndicate of individuals and entities, initiated a scam referred to by the investors as "Crystal Lakes". This project, which is discussed in more detail later in this Complaint, was a financial disaster and failure, and resulted in a lawsuit filed in 2005 against Defendant Eugene Hopper and other members of his syndicate.

57. By 2004, Hopper's Syndicate connected with CIF through Cosimo. Between 2004 and 2008, Cosimo consummated dozens of loans to Hopper's Syndicate for purported and various real estate developments, all of which were funded by monies from CIF to Cosimo. By 2007, Hopper's Syndicate owed Cosimo more than \$8 million on dozens of loans, all of the loans were in default, all of the borrowers and projects were operationally infeasible and financially insolvent. Cosimo was unable to recover any value from the underlying real estate properties.

Although Defendant Field represented that the loans were secured by first mortgages on the projects, they were, in fact, not secured by first mortgages, because they : (1) failed to timely record, or did not record at all, Cosimo's mortgages; (2) allowed Cosimo's mortgages to be subordinate to mortgages in favor of other Defendants; (3) released Cosimo's mortgages for the benefit of these and other Defendants without reasonable consideration; and (4) allowed Cosimo's loan proceeds to be diverted to other projects.

58. Fueled by over \$8 million in funds from CIF vis a vie Cosimo, Hopper's Syndicate expanded to include (but was not necessarily limited to) the following individuals and entities: SD Trust, LLC, WE3 Company, Inc., Rolling Hills Land Company, LLC, Big Deal Land Co., LLC, Defendants Arthur Field, Anthony Edgar, Charles Pinion, Elizabeth Hopper,

Eugene Hopper, Gene Ahlers, Greg Bailey, Michael Moore, Alliance Development Partners, LLC, Amerishare Corporation, Apex Construction, Arrowhead Funding Corporation, Asante Properties, LLC (a/k/a Asante, LLC), Badger Development, LLC, CapGain Properties, Inc., Capital Intrastate Funding, LLC, Construction Resources, Inc., Dunross Struan, LLC, Ezell Investment Company, LLC, GodProp, LLC, Gulf Capital LP, Gulf Capital Management, Inc., Instant Cash, Inc., Krondor Trading Co., LLC, J&H Builders, LLC, Lamplighter Mortgage Company, LLC, Log Dirt, LLC, LOP Capital, LLC, Lot 37 Waters Edge, LLC, Lot 46 Waters Edge, LLC, Lot 6 Lakewater Cove, LLC, Moore & Associates, LLC, Neighborhood Homes, LLC, Nevada Processing Center, Inc., Onward Finance Corporation, Onward Recovery Partners Corporation, Saneski, LLC, Seed Construction, Southridge Construction, Inc., Steele Construction of SC, Inc., Strategic Lending Solutions, LLC, Tcholak Properties, LLC, The Chrysler Drive Trust, The Cotton Mill Trust, The Old Arcadia Road Trust, The Pickering Road Trust, The Upper Nehalem Trust, Total Package Grading, Trazom, LLC, United Private Capital, Inc., and York Mortgage Funding, LLC.

59. While the number of participants grew, the schemes became much more complicated and convoluted. Loan proceeds designated to payoff first lien holders or seller financing were not used to pay off such loans, but were diverted for use by other companies within the syndicate. Loan proceeds for one particular project would be used to pay costs of another or to pay totally unrelated expenses. Loan proceeds would be used for personal enjoyment. Money flowed freely between and among the various entities of the syndicate, sometimes by bank wire, sometimes by Western Union wire, and sometime by checks. Significant sums of cash were withdrawn from bank accounts frequently and regularly. Cash payments were made to multiple parties without records. Cash payments were made to a bank loan officer, who falsified construction inspections reports and approved bank loan

disbursements. Mortgages were purposely not recorded. Mortgage liens were inappropriately released. Properties were sold without satisfying liens. While many of these participants and loan activities often appeared to be separate and unrelated, money flowed freely between and among the various participants without reasonable basis or business records related to the various transactions.

60. Defendant Arthur Field participated in these actions by express consent, by failing to request and/or to require documentation confirming the transactions, by failing to implement basic supervision or monitoring, and by ignoring the actions.

61. By November 2007, with knowledge of the financial collapse of CIF nearing, Defendant Arthur Field willfully set out to cover up the catastrophic problems that existed because the \$8 million in loans that Hopper's Syndicate owed to Cosimo were in default and were uncollectible.

62. The culpable and illegal nature of the Hopper's Syndicate as an enterprise is evidenced by the lack of formal accounting records, frequent and prolific structured withdrawals of cash (greenback paper bills) from banks of just less than \$10,000 (\$10,000 being the threshold which would require the bank to disclose the cash transactions to the IRS), frequent and prolific use of cash (greenback paper bills) as a form of payment, failure to keep records to record cash transactions, failure to report cash transactions on income tax returns and IRS Forms 1099, and failure to file income tax returns.

63. Instances of devious, deceptive, and illegal actions among members of Hopper's Syndicate which resulted in more than \$8 million of damage and loss to CIF, Cosimo, and others are voluminous. Examples of devious, deceptive, and illegal acts committed by individuals and entities associated with the Hopper Syndicate are discussed in the sections that follow this

section and are captioned as follows: Crystal Lakes; Lamplighter Mortgage; Waters Edge; Highlands; Sweetwater; Docks at Sweetwater; Badger.

64. On November 10, 2005, attorney David Gantt negotiated a settlement of the Williams Case by having WE3 Company, Inc., a company owned by Defendants Eugene Hopper, Charles Pinion, and Paul Davidson, enter into a promissory note with Defendant Instant Cash, Inc. in the amount of \$350,000, which required an initial payment of \$50,000, 13 monthly payments of \$4,375 each, and a final payment of \$304,375 on December 2006. The promissory note provided for interest an annual rate of 15%. In total, the promissory note required payments totaling \$411,250. At the time the promissory note was signed, WE3 Company, Inc. was insolvent and owed Cosimo more than \$1 million.

65. On September 30, 2004, Cosimo wrote a check to WE3 in the amount of \$205,000. The check was recorded as a purported loan on Cosimo's books. However, Cosimo did not obtain a promissory note, mortgage, guaranty, or any other form of loan document. Thus, the \$205,000 transfer of funds to was undocumented.

66. On December 22, 2004, Cosimo loaned WE3 \$595,000. The loan was secured by a first mortgage on three parcels owned by WE3. The loan closing statement reflected the loan was for \$595,000, of which \$197,027.74 of the proceeds were used to repay the loan made on September 30, 2004 and \$210,000 was used to pay for lot releases from Water's Edge, Inc.

67. On October 31, 2005, Cosimo provided a loan commitment letter to WE3, which stated the terms of a \$940,000 loan Cosimo would make to WE3. The commitment provided that (1) Cosimo would loan WE3 a maximum amount of \$940,000; (2) the loan was to be secured by a first mortgage on several parcels and a second mortgage on several other parcels of the Waters Edge Project; and (3) WE3 would use proceeds of the loan to develop the Water Edge Project. On November 1, 2005, Cosimo's loan to WE3 was consummated and was secured

by a first mortgage on several parcels and a second mortgage on several other parcels of the Waters Edge Project. Cosimo disbursed \$537,000 at the closing of the loan. Attorney David Gantt handled the closing. From November 2005 through March 2006, Cosimo disbursed \$273,300 to WE3 by bank wire and check, disbursed \$30,000 to Defendant Total Package Grading by check, and disbursed \$1,200 to Carolina Pops, purportedly a non-profit music organization run by Defendant Arthur Field. Cosimo recorded these disbursements as loans to WE3. Additionally, Cosimo increased the WE3 loan balances by \$98,000 through a series of convoluted journal entries giving the appearance that WE3 paid Cosimo interest on the loans, even though Cosimo never received any interest payments. As of April 5, 2006, the outstanding loan balance was \$940,000.

68. From 2004 through 2007, with the mutual cooperation of Defendants Arthur Field, Eugene Hopper, Charles Pinion, Paul Chalmers, attorneys Scott Pfeiffer and David Gantt and with funds received from CIF, Cosimo disbursed more than \$2.4 million additional proceeds to entities that were controlled by these same defendants. The amounts Cosimo loaned included:

a. Badger Development, LLC	3-12-04	\$305,000
b. GodProp, LLC	11-6-06	150,000
c. Lot 6 Lakewater Cove, LLC	7-24-06	320,000
d. Lot 37 Waters Edge, LLC	7-27-06	169,000
e. Lot 46 Waters Edge, LLC	7-27-06	230,000
f. Southridge Construction, Inc.	8-24-05	150,000
g. Log Dirt, LLC	3-20-07	150,000
h. Saneski, LLC	1-24-07	50,000
i. Big Deal Land Company, LLC	11-16-07	462,100
j. Rolling Hills Land Co., LLC	11-16-07	<u>470,000</u>
Total		<u>\$2,456,100</u>

These loans were reportedly made for the purpose of purchasing and developing lots at the Waters Edge Project, when, in reality, actual development of the property never occurred.

69. From 2004 through 2007, Cosimo recorded interest payments in a variety of ways, giving the appearance of having received interest on these loans, when in reality most of

the amounts recorded as interest payments were simply a result of manipulations of closings and transfers from other entities

70. Between 2004 through 2007, while Defendant Eugene Hopper controlled the cash accounts of WE3, Mark Davidson observed and became aware of manipulations and transfers of cash between the various defendant entities. On December 15, 2005, in an email sent by Mark Davidson to Defendant Eugene Hopper and attorneys Scott Pfeiffer, David Gantt, Defendant Mark Davidson expressed his concerns and objections about improper transfers and payments, most of which were for the benefit of entities from which he did not derive any benefit. In his email, Defendant Mark Davidson made the following comments :

“I asked you to personally evaluate the road situation, gave you a little bit of my opinion regarding what WE3 is doing about the Cosimo funded infrastructure, and expressed a concern that I have (personally) regarded me participating in what looks like “skimming” of company profits”

“It is pretty obvious to anybody looking that we (WE3 partners) continue to struggle with insufficient cash flow. We do not hide the fact that we have multiple companies that do work across company lines...etc. This is not “new” nor is it something that any of us are particularly proud of. However, to continue doing things that jeopardize our company’s success is foolish.”

“if it quacks/waddles/looks like a duck... it’s probably a duck”

Upon information and belief, Mark Davidson understood the illegal nature of the dealing and insisted on terminating his direct involvement in WE3.

71. As noted above, on July 27, 2006, Cosimo loaned \$230,000 to Lot 46 Waters Edge, LLC, described as a South Carolina limited liability company. The signatory on behalf of

Lot 46 Waters Edge, LLC was Defendant Gene Ahlers, a business associate of Defendant Eugene Hopper. Notably, Lot 46 Waters Edge, LLC was never organized or registered with the South Carolina Secretary of State and therefore was fictitious entity. The loan was documented to have been secured by a first lien on Lot 46 Waters Edge. The proceeds were allegedly used to purchase the lot from WE3. On February 19, 2007, Lot 46 Waters Edge was split into two separate lots, Lot 46(A) Waters Edge and Lot 46(B) Waters Edge. On March 7, 2007, WE3 mortgaged Lot 46(B) to 1st Equitable, LLC, which was owned and operated by George Albright, in the amount of \$125,000. On March 9, 2007, attorney Scott Pfeiffer, as co-manager on behalf of Cosimo, released its mortgage on Lot 46(B) without Cosimo receiving any consideration in exchange. Fast forward to 2009, on February 15, 2009, Lot 46(A) and Lot 46(B) were sold pursuant to a tax sale. On February 25, 2009, attorney Scott Pfeiffer, as co-manager on behalf of Cosimo, and George Albright, on behalf of 1st Equitable, LLC, redeemed the property by paying the delinquent taxes for the benefit of Lot 46 Waters Edge, LLC. On June 1, 2009, Lot 46 Waters Edge, LLC transfers its interest in Lot 46(A) Waters Edge and Lot 46(B) Waters Edge to Cosimo and 1st Equitable, LLC, to be held 25% by Cosimo and 75% by 1st Equitable, LLC. Cosimo issued a \$42,500 credit on WE3's consolidated note in exchange therefore.

72. By October 2007, while dealing with the pressures of the investigation by the Securities Division and with knowledge of the Securities Division having filed its "Notice of Intent to Seek the Issuance of a Stop Order Denying Effectiveness to a Registration Statement", Defendant Arthur Field and other previously identified defendants who have since settled with CIF devised a plan to remove Cosimo's interest in WE3's assets through a structured and coordinated foreclosure process, which obscured the transactions previously conducted with regard to WE3 and WE3's assets. The plan moved approximately \$1,250,000 through a series of transactions and entities, which eventually allowed the remaining WE3 property to be taken

through foreclosure proceedings, thereby eliminating most or all of Cosimo's collateral and rendering Cosimo's loans uncollectible and worthless.

73. In October 2007, Defendant Arthur Field directed, controlled and/or participated in the transfer of approximately \$1,250,000 through an attorney trust account in New Jersey to Robert Miller (aka Robert Post), who was an attorney in New Jersey and in Michigan. Robert Miller in turn transferred the funds to Urbis Group, LLC, which then moved the funds to Avatar Income Fund II, LLC, a company owned or controlled by Thomas Roy Hazelrigg, IV, who resided in Seattle, Washington, where Jack Campitelli resided. Mike Parrish and Dennis Hackney, who were recommended by Robert Miller, served as loan brokers and instigated the loan on behalf of WE3 and Avatar Income Fund II, LLC.

74. Funded by this series of transfers, Avatar Income Fund II, LLC loaned \$1,250,000 to WE3 on November 7, 2007, and in exchange received a first lien on all of WE3's property at Waters Edge, including property previously sold to other third party purchasers, and including WE3 properties that should have been subject to first priority liens securing Cosimo's loans, which had previously been released for inadequate consideration. The closing statement, which reflected the following disbursements:

- a. \$343,848 was paid to Avatar Financial Group for the following:
- b. \$60,800 paid as a loan origination fee;
- c. \$212,800 paid as prepayment of interest for months;
- d. \$60,000 paid as a "marketing holdback" (a term undefined);
- e. \$6,193 paid for payment of future property taxes to be held in escrow;
- f. \$3,040 paid as a service fee;
- g. \$1,015 paid as a credit, background, and environmental fee (even though no due diligence was performed in connection with the loan);
- h. \$45,600 was paid to Parish Capital as a mortgage broker fee;
- i. \$5,606 was paid to P&G Title Agency, LLC as an inspection fee;
- j. \$1,222 was paid to Pfeiffer Gantt & Gleaton, PA as an inspection fee;
- k. \$13,816 was paid to Oconee County Treasurer for 2006 and 2007 property taxes;
- l. \$10,619 was paid to Water's Edge of Lake Keowee for HOA fees owed in 2006

- m. \$5,000 payable to Womble Carlyle Law Firm for lender's attorney fees,
- n. \$2,376 for title insurance premiums and recording fees,
- o. \$584 was paid to Southern Titles & Properties/Jerry Mote for title abstract fee (notably, this report acknowledged priority interests in the property which were missed by attorney David Gantt);
- p. \$179,439 was paid to Troy Grant, Grace Crow and Charles Walker;
- q. \$51,500 was paid to Troy Grant;
- r. \$123,288 was paid to Defendant Instant Cash, Inc.;
- s. \$618,117 was paid to Cosimo, which, by signatures of attorney Scott Pfeiffer as Manager for Cosimo, released all of its lien interests in WE3 properties in exchange for payment of \$230,386 in principal, \$87,731 in interest, and \$300,000 for boat slips (despite having an outstanding loan with WE3 in excess of \$2,900,000 secured solely by the WE3 assets); and
- t. \$53,419 was paid to WE3.

This loan was made at a time when WE3 was delinquent on its Cosimo loans and other debts, had no source of cash flow, had no source of repayment, and was insolvent. Moreover, the principals of WE3 (Defendants Eugene Hopper and Charles Pinion) were in default on more than \$3 million in Cosimo loans related to other projects (Sweetwater Subdivision and Highlands). Clearly, the transfers made were not for the purpose of a *bona fide* loan, but were in furtherance of the money laundering scheme.

75. On November 13, 2007, Avatar Income Fund II, LLC, assigned its WE3 note and mortgage to William Bingham and Beverly Bingham.

76. On November 15, 2007, Cosimo, under the direct control and management of Defendant Arthur Field and attorney Scott Pfeiffer received, deposited, and recorded \$618,117 received from the aforementioned closing, and recorded the deposit on Cosimo's books as follows:

- a. \$300,000 recorded as a "transfer" – discussed more fully below;
- b. \$230,386 recorded as repayment of principal on three Cosimo loans to parties other than WE3 as follows:
 - i. \$150,000 on Cosimo's loan to Defendant Log Dirt, LLC;
 - ii. \$50,000 on Cosimo's loan to Defendant Saneski, LLC;
 - iii. \$30,386 on Cosimo's loan to Defendant Southridge Construction, Inc.;

- c. \$63,831 recorded as payments of interest on Cosimo loans to parties other than WE3 as follows:
- i. \$1,225 on Cosimo's loan to Defendant Badger Development, LLC;
 - ii. \$6,933 on Cosimo's loan to Defendant Lot 6 Lakewater Cove, LLC;
 - iii. \$3,662 on Cosimo's loan to Defendant Lot 37 Waters Edge, LLC;
 - iv. \$4,983 on Cosimo's loan to Defendant Lot 46 Waters Edge, LLC;
 - v. \$1,167 on Cosimo's loan to Defendant Saneski, LLC;
 - vi. \$3,500 on Cosimo's loan to Defendant Southridge Construction, Inc.;
 - vii. \$12,600 on Cosimo's loan to Defendant Badger Development, LLC;
 - viii. \$17,100 on Cosimo's loan to Defendant Badger Development, LLC;
 - ix. \$12,661 on Cosimo's loan to Defendant Badger Development, LLC;
 - x. \$23,900 recorded as payments of loan origination fees on Cosimo's loans as follows:
 - xi. \$9,000 on Cosimo's loan to Defendant Badger Development, LLC;
 - xii. \$1,500 on Cosimo's loan to Defendant Southridge Construction, Inc.; and
 - xiii. \$13,400 on Cosimo's loan to WE3.

77. On November 16, 2007, Cosimo, under the direct control and management of Defendant Arthur Field and attorney Scott Pfeiffer, issued a \$300,000 check to Big Deal Land Company. The check was undocumented and was not supported by any loan documents. The check was funded by the portion of \$618,117 loan proceeds received from Avatar Income Fund II, LLC one day earlier; that portion being the \$300,000 amount recorded as a "transfer". The check was also recorded as a "transfer", and therefore offset the \$300,000 deposit amount recorded as a "transfer". In other words, this money laundering scheme had Avatar Income Fund II, LLC transfer \$300,000 to Cosimo, dressed as a loan to WE3, then had Cosimo transfer \$300,000 to Big Deal Land Company, and had Cosimo record these transactions in its books using a little used and obscure account that hid the real result, the result being a \$300,000

transfer Big Deal Land Company. Big Deal Land Company never repaid Cosimo or CIF the \$300,000.

78. On November 16, 2007, in furtherance of their plan, Defendant Arthur Field and attorney Scott Pfeiffer had Cosimo wire \$470,000, of the \$618,117 it received from the Avatar Income Fund II, LLC loan closing, to Runyan & Green, LLC, a law firm located in Toccoa, Georgia, who in turn used such amounts to fund Cosimo's consolidation of its loan to Rolling Hills Rolling Hills Land Company, LLC. This led to yet another series of transactions, which are also more fully described below in the section entitled "(4) Highlands".

79. In August and September 2009, Defendants Arthur Field, Eugene Hopper and Charles Pinion and attorney Scott Pfeiffer provided written and oral statements to CIF's Receiver that Cosimo's loan to WE3 was secured by first mortgages on approximately 100 acres of interior lots at Waters Edge.

80. By 2010, Avatar Income Fund II, LLC filed a foreclosure action against WE3, in connection with the \$1,520,000 loan from Avatar Income Fund II, LLC, even though the loan and mortgage had been assigned to William Bingham and Beverly Bingham. The foreclosure action sought to foreclose on the WE3 properties that were previously mortgaged as collateral on Cosimo's loans to WE3, but had been released as collateral on Cosimo's loans.

81. On February 24, 2010, a foreclosure hearing was held and a foreclosure sale was ordered. On April 5, 2010, William Bingham and Beverly Bingham offered a price of \$1,550,000 at the foreclosure sale and were awarded title to the WE3 properties. On July 28, 2010, William Bingham and Beverly Bingham were granted a title to the WE3 properties, thereby eliminating most if not all of Cosimo's collateral and rendering Cosimo's loans uncollectible and worthless.

82. In March 2010, with WE3 having been in default on its loans from Cosimo for several years, CIF's Receiver exercised Cosimo's rights under the stockholders' pledge agreements and took over the ownership and management of WE3. Subsequently, through multiple legal processes including bankruptcy filings by WE3, CIF's Receiver and attorneys discovered that Cosimo's loan to WE3 is secured by first mortgages on only 3 interior lots of nominal value at Waters Edge, and that the mortgage liens on other lots have been subordinated or released, leaving the \$2.9 million loan essentially unsecured and uncollectible. The development of the project was, at best, nominally started, and was never completed. The only sign of any development activity by WE3 on the property is a dirt road with nominal amounts of partial incomplete curbing and a partially completed tennis court.

83. The end result of this mad scramble was to leave Cosimo with a single consolidated note from WE3 in the amount of \$2,956,200 with no collateral that was not covered by superior liens in amounts greater than the value of the collateral.

84. In summary, the Waters Edge Project was and is a miserable financial debacle and disaster. The aforementioned members of the Hopper Syndicate unconscionably borrowed \$2.9 million from Cosimo, funded by CIF, to acquire 100 acres of interior unfinished lots on Lake Keowee, made only nominal effort to improve the property, transferred the properties to more than a dozen parties with little or no consideration, and left Cosimo and CIF holding worthless promissory notes secured by nothing of value. The aforementioned defendants willfully and intentionally perpetrated dozens of convoluted exchanges and transfers of deeds, mortgages, releases, and subordinations of mortgages, in order to mask and obscure their money laundering enterprises, all without care or concern of the substantial loss to CIF and Cosimo.

85. The culpable and illegal nature of these activities surrounding this project as an enterprise is evidenced by the lack of formal accounting records, failure to keep records to record

cash transactions, failure to report cash transactions on income tax returns and IRS Form 1099, and failure to file income tax returns.

86. From 2000 through 2009, certain members of Hopper's Syndicate engaged in money laundering schemes using a lakefront project in Georgia as the primary vehicle for culpable activities. The lakefront development was located on Lake Hartwell, in Stephens County Georgia, and was commonly referred to as the "Highlands" project. The project began between 2000 and 2004, with Paul Chalmers and Herman Pinion (father of Charles Pinion) initially acquiring the Highlands project and transferring various parcels between several persons and entities, thereby obscuring titles, values, and debts. In 2004, Rolling Hills and Big Deal acquired 63± acres at the Highlands. The properties were previously titled in the names of The Woods of Lake Oconee, LLC, High Lake, LLC, or Paul Chalmers. The deeds transferring title stated the consideration paid was \$10 and "other valuable consideration", though the other consideration was not specified.

87. In December 2006, under the direction and control of Defendants Arthur Field and Scott Pfeiffer, Cosimo issued, on behalf of Rolling Hills and Big Deal, Standby Letters of Credits in favor of Cory Chambers, James Hasick, Dennis Pifer, and KDP Inc. (collectively "LOC Beneficiaries"), which promised that Cosimo would pay a total of \$462,100 to the LOC Beneficiaries on February 28, 2007. Cosimo's loan documents stated that the loan was made to secure \$462,100 loaned from LOC Beneficiaries to the subdivision known as Sweetwater Cove, South Carolina, a project not related to the Highlands project (further evidence of the propensity of Hopper's Syndicate's to comingle funds, assets, debts, and so forth between various projects). Cosimo's loan documents further stated that the loan would be secured by a title insured first real estate mortgage on 63± acres in Toccoa, Stephens County, Georgia. Cosimo did not get a title insured first real estate mortgage on the entire 63± acre parcel. Rolling Hills and Big Deal never

acquired any more property at the Highlands. On February 28, 2007, Cosimo remitted checks totaling \$462,100 to the LOC Beneficiaries. Cosimo recorded these payments as loans to Big Deal. By October 2007, Cosimo had loaned Big Deal an additional \$500,000 and had outstanding Standby Letters of Credits issued for the benefit of Rolling Hills and Big Deal totaling \$260,000.

88. On November 15 and 16, 2007, while dealing with the pressures of the investigation by the Securities Division and with knowledge of the Securities Division having filed its "Notice of Intent to Seek the Issuance of a Stop Order Denying Effectiveness to a Registration Statement", Defendant Arthur Field scurried to obscure Cosimo's convoluted mess of loans he had perpetrated. As of that date, Defendants Eugene Hopper, Charles Pinion, and others executed documents to consolidate various loans made to Rolling Hills and Big Deal. Commensurate with this consolidation loan, Rolling Hills and Big Deal executed a "Consolidation Promissory Note" payable to Cosimo in the amount of \$1,256,000. The Consolidation Promissory Note provided for interest at a rate of 15% per annum, 13 monthly payments of \$12,601 (based on a 30 year amortization payout), and a balloon payment of the outstanding balance on December 31, 2008. Furthermore, commensurate with this "consolidation" loan, Cosimo loaned an additional \$470,000 to Rolling Hills and Big Deal. All of this happened at a time when Rolling Hills and Big Deal were delinquent on its Cosimo loans and other debts, had no source of repayment, and were insolvent. Moreover, the principals of Rolling Hills and Big Deal (Defendants Eugene Hopper, Charles Pinion, and others) were in default on more than \$5 million in Cosimo loans related to other projects (Waters Edge and Sweetwater Subdivision). Cosimo's loan documents stated the loan was to be secured by title insured first real estate mortgage and second first real estate mortgage on 63 acres in Toccoa,

Stephens County, Georgia. At the time of this loan, not only did Cosimo not have a first mortgage on the property.

89. On November 16, 2007, Cosimo wire transferred \$470,000 to Runyan and Green, LLC and attorney Andrea Runyan prepared a loan closing statement, which reported a \$25,000 payment to Pfeiffer, Gantt & Gleaton for legal fees and \$4,355 to paid Runyan and Green, LLC and others for legal fees, recording costs, title insurance premium, and other sundry items. The closing statement also reported \$439,459 paid to the borrower; however, this payment was not received by Rolling Hills or Big Deal, but was diverted by Defendants Hopper and/or Pinion for culpable use.

90. Also on November 16, 2007, Cosimo wrote a check in the amount of \$300,000 to Big Deal. No loan documents or other collaborating documents have been found to support this payment. The payment was recorded as a transfer on Cosimo's books and was offset by an equal amount recorded as a deposit from a loan closing related to WE3 (yet another example of the propensity of Hopper's Syndicate's to comingle funds, assets, debts, and so forth between various projects).

91. On January 31, 2008, Rolling Hills (and notably not Big Deal) executed and delivered a \$950,000 promissory note ("LOP Capital 1st Note") in favor of LOP Capital, LLC ("LOP Capital"). This note was secured with a first mortgage on property described as The Highlands, totaling approximately 56.71± acres, Lake Hartwell, Toccoa, Georgia. The LOP Capital 1st Note provided for maturity in a mere 60 days, required a \$95,000 "Funding Fee" paid to LOP Capital when the loan was funded, and further required \$68,400 of the proceeds to be held by LOP Capital as prepayment of interest on the note. Based on these amounts, the effective interest rate on amounts allegedly borrowed was more than 126%, calculated as follows:

Principal Sum Per LOP Capital 1st Note		\$950,000
Less prepaid interest		\$(68,400)
Less Funding Fee	<u>(95,000)</u>	<u>(163,400)</u>
Effective Principal Borrowed		<u>\$786,600</u>

Effective Interest Rate = 126.36% per year $(\$163,400 / \$786,600 / 60 \times 365)$

The LOP Capital 1st Note recites the address of Rolling Hills as 200 A South Main Street, Greenville, South Carolina, which was the address of Pfeiffer, Gantt & Gleaton, P.A; all other records of Rolling Hills reflect its address to be in Seneca, South Carolina. The fact that Rolling Hills was delinquent on its Cosimo loans and other debts, had no source of repayment for this loan, and was insolvent at the time this loan was made was irrelevant because the money laundering scheme never contemplated repayment of the loan. Commensurate with this loan closing, attorney Scott Pfeiffer, as co-manager on behalf of Cosimo, executed a subordination agreement ("Cosimo Subordination Agreement"), which allowed the LOP Capital 1st Note and mortgage to be superior to Cosimo's mortgage on the Rolling Hills and Big Deal properties. Most importantly, there was no valuable consideration given to Cosimo by LOP Capital in exchange for the Cosimo Subordination Agreement, which was executed a mere 77 days after Cosimo loaned Rolling Hills and Big Deal an additional \$470,000 and consolidated the various loans to Rolling Hills and Big Deal, thereby resulting in a total loan outstanding of \$1.256 million as of November 16, 2007. LOP Capital performed no due diligence on the entities or their principals prior to loaning Rolling Hills and Big Deal money as the loan was merely a façade to disguise the scheme to launder money within Hopper's Syndicate.

92. On January 31, 2008, in connection with LOP Capital 1st Note, Andrea Runyan, attorney at Runyan and Green, LLC, prepared a loan closing statement, which reported \$950,000 loan proceeds disbursed as follows:

- a. \$302,500 paid to Louis Stacy to pay off his first lien on the Highlands;
- b. \$151,250 paid to John Stenzinger to pay off his first lien on the Highlands;
- c. \$151,250 paid to William Perry to pay off his first lien on the Highlands;
- d. \$19,000 paid to Brian Devlin for broker fees;
- e. \$9,500 paid to Defendant Mike Parish as a consulting fee;
- f. \$95,000 paid to LOP Capital for loan origination fee;
- g. \$68,400 paid to LOP Capital as prepaid interest;
- h. \$500 paid to LOP Capital for document preparation;
- i. \$4,806 paid to Runyan and Green, LLC and others, for title insurance binder, legal fees, title insurance and various sundry costs;
- j. \$5,215 paid for property taxes
- k. \$142,578.62 paid to Rolling Hills as net cash loan proceeds.

The \$142,578.62 was never received by Rolling Hills, but was diverted for culpable use.

93. On February 15, 2008, the membership interests in Cosimo were ostensibly sold, transferred, or exchanged by a conveyance to Onward Recovery Partners Corporation, a Nevada corporation, which was organized by, owned by, and or controlled by J.G. Ryckman, Jack Campitelli (aka A.J. Camp), Jamie McKeough, J.G. "Geneva" Seller (a/k/a Geneva Campitelli), J.G. Ryckman, D. L. Jones, Shawna Freeman, Nevada Processing Center, Inc., and or Onward Finance Corporation, or combinations thereof. The "Membership Interest Purchase Agreement" was executed by Ross Jones, attorney Scott Pfeiffer and Defendant J.G. Ryckman.

94. Between February 15, 2008 and March 28, 2008, attorney Scott Pfeiffer and Ross Jones claim to have resigned their positions as Co-Managers of Cosimo and Jamie McKeough claims to have been appointed Manager of Cosimo. Jamie McKeough claims to have served as co-manager of Cosimo for less than two months, until he resigned on April 8, 2008.

The fact that Rolling Hills was delinquent on the \$1.256 million Cosimo loan, had no source of repayment for this loan, had no source of repayment for the \$950,000 that was required

to be paid on the LOP Capital 1st Note in 2 more days (March 31, 2008), and was insolvent at the time this loan was made was irrelevant because the money laundering scheme never contemplated repayment of these loans.

95. On March 28, 2008, in connection with LOP Capital 2nd Note, Andrea Runyan, attorney at Runyan and Green, LLC, prepared a loan closing statement, which reported \$275,000 loan proceeds disbursed as follows

- a. \$22,000 paid to LOP Capital for loan origination fee;
- b. \$11,000 paid to LOP Capital as prepaid interest;
- c. \$2,902 paid to Runyan and Green, LLC and others, for title insurance binder, legal fees, title insurance and various sundry costs;
- d. \$18,086.54 charged as "Loan In process account"
- e. \$221,021.21 paid to Neighborhood Homes, LLC as net loan proceeds.

The \$18,086.54 amount charged as "Loan in process account" is an undocumented charge and was not paid to or for the benefit of Rolling Hills. The \$221,021.21 payment to Neighborhood Homes, LLC was made pursuant to written instructions signed by Defendants Eugene Hopper and Charles Pinion. had no other connection to the Highlands project and did not provide any goods or services to Rolling Hills. (This disbursement was yet another example the Hopper's Syndicate's free flow method of comingling funds, assets, debts, and so forth between various projects, with total disregard to legal effect.) Commensurate with this loan closing, Rolling Hills executed and delivered a mortgage on the Rolling Hills property in favor of LOP Capital in connection with the LOP Capital 2nd Note. The mortgage is dated March 28, 2008 and LOP Capital 2nd Note presumably referred to in this mortgage is dated January 31, 2008. Thus, Plaintiff Second Mortgage and Plaintiff Second Note are not of even dates. Importantly, Cosimo did not execute a subordination agreement in connection with this loan; thus, Cosimo's mortgage on Rolling Hills' properties was superior to LOP Capital's mortgage on this loan.

96. On or about March 28, 2008, Jamie McKeough, acting as the co-manager for Cosimo, executed a "Conditional Assignment of Mortgage" in favor of LOP Capital. The Conditional Assignment of Mortgage was dated March 28, 2008 and was signed in the State of Washington, as denoted by the signature of J. G. Sellers, who signed the form as a Notary Public for Washington. The Conditional Assignment of Mortgage denoted Cosimo's principal place of business being At Old Arcadia Road, Shelton, Washington, which is a location owned, used or controlled by Defendants Jack Campitelli (aka A.J. Camp), J.G. Ryckman, Jack Campitelli (aka A.J. Camp), Jamie McKeough, J.G. "Geneva" Seller (a/k/a Geneva Campitelli), J.G. Ryckman, D. L. Jones, Shawna Freeman, Nevada Processing Center, Inc., Onward Finance Corporation, and/or Onward Recovery Partners Corporation. The Conditional Assignment of Mortgage also states that the assignment is given "to secure payment of a \$275,000 loan from LOP Capital to Cosimo of even date herewith". Cosimo never executed any note payable to LOP Capital and never received \$275,000 or any amount from LOP Capital. The property which was the subject of the Conditional Assignment of Mortgage was owned by D&D Investments, a South Carolina partnership that had borrowed \$500,000 from Cosimo in 2002. The D&D Investments loan, which had been in default for years, was secured by a 40 acre tract of commercial property located at an exit on I-85 in Spartanburg County, South Carolina. Except for this Conditional Assignment of Mortgage, the D&D Investment loan and the mortgaged property had no connection with the Defendants LOP Capital or any other member of the Hopper Syndicate. The Conditional Assignment of Mortgage was simply a ploy to allow LOP Capital to mask the true nature of the transactions, being a money laundering scheme to pilfer money and properties from Cosimo and CIF.

97. On April 7, 2008, Jamie McKeough delivered a written letter of resignation thereby terminating his appointment as (co-)Manager of Cosimo.

98. On May 1, 2008, Red Lion Trading House, LLC, which was owned by attorney Scott Pfeiffer among other entered into a Management Agreement with "Onward Capital Partners, Inc." The Management Agreement stated "Onward Capital Partners, Inc." was a Nevada corporation and sole shareholder of Cosimo. The agreement employed the services of attorney Scott Pfeiffer and Paula Haney, an employee of Pfeiffer Gantt & Gleaton, P.A. to manage Cosimo and provided for compensation paid monthly at an annual rate of \$60,000. The Nevada Secretary of State has no record of a Nevada corporation called "Onward Capital Partners, Inc." Two Management Agreements were executed as of the same date, each signed by a different president of Onward Capital Partners, Inc. One was executed by a J.G. Ryckman as president, and the other was executed by Defendant Eugene Hopper as president.

99. On July 9, 2008, LOP Capital and Rolling Hills entered into another loan in the amount of \$112,000 ("LOP Capital 3rd Note"). The LOP Capital 3rd Note is dated July 9, 2008 and provided for maturity on August 9, 2008. The LOP Capital 3rd Note required a \$11,200 Funding Fee paid to the LOP Capital and further required \$933 of the proceeds to be held by the LOP Capital as a Payment Reserve. Based on these amounts, the effective interest rate on amounts allegedly borrowed was more than 143%, calculated as follows:

Principal Sum Per Plaintiff Third Note		\$112,000
Less Payment Reserve		\$(11,200)
Less Funding Fee	(933)	<u>(12,133)</u>
Effective Principal Borrowed		<u>\$ 99,867</u>

$$\text{Effective Interest Rate} = \underline{143.05\%} \text{ per year } (\$12,133 / 99,866 / 31 \times 365)$$

The facts that Rolling Hills was delinquent on the \$1.256 million Cosimo loan, had no source of repayment of this loan, had no source of repayment for the \$950,000 due under the LOP Capital 1st Note, which had been delinquent since March 31, 2008, had no source of

repayment for the \$275,000 due under the LOP Capital 2nd Note, which had been delinquent since May 28, 2008, and was insolvent at the time this loan was made are evidence that the money laundering scheme never contemplated repayment of these loans.

100. In summary, over the course of the years, the aforementioned defendants, members of Hopper's Syndicate, had laundered \$1.256 million of Cosimo and CIF loans under the guise of real estate development loans on the Highlands project, when, in reality, none of the funds were used to develop the property. Instead, CIF's funds (*vis a vie* Cosimo) were funneled and syphoned off, which through the orchestrated series of transactions, on paper purposefully left Cosimo holding a single \$1.256 million consolidated note from Rolling Hills and Big Deal, which was knowingly unsecured and uncollectible.

101. On April 27, 2006, Defendants Eugene Hopper, Charles Pinion, Josh Ward along with Attorney David Gantt formed SD Trust, LLC ("SD Trust"), a South Carolina limited liability company. Attorney David Gantt owned 50%, Defendant Eugene Hopper owned 16.67%, Defendant Charles Pinion owned 16.67% and Josh Ward owned 16.67%. Defendants Eugene Hopper, Charles Pinion, and Josh Ward and attorney David Gantt did not contribute any cash or other assets in connection with the formation of SD Trust.

102. By the end of December 2006, SD Trust had not constructed a single home despite having received approximately \$3,000,000 from additional loans and other sources. As of December 29, 2006, SD Trust had only \$13.45 in its bank accounts.

103. On January 1, 2007, attorney David Gantt terminated his interest in SD Trust in exchange for no consideration.

104. Like Waters Edge, the Sweetwater Subdivision Project was and is a miserable financial debacle and disaster. The aforementioned members of the Hopper Syndicate obtained \$2.0 million from Cosimo, (and Cosimo, funded by CIF, unconscionably loaned \$2.0 million to

SD Trust) in order to facilitate the acquisition of 118 acres on Lake Keowee, made only nominal effort to improve the property, transferred the properties to more than a dozen parties with inadequate consideration, and left Cosimo and CIF holding a worthless promissory note secured by nothing of value. The aforementioned defendants willfully and perpetrated dozens of convoluted exchanges and transfers of deeds, mortgages, releases, and subordinations of mortgages, in order to mask and obscure their money laundering enterprises, all without care or concern of the substantial loss to CIF and Cosimo.

105. The culpable and illegal nature of these activities surrounding this project as an enterprise is evidenced by the lack of formal accounting records, frequent and prolific falsification of construction documents, submission of falsified construction documents to government agencies and bank officials, frequent and prolific withdrawals of cash (greenback paper bills) from banks at less than \$10,000 (\$10,000 being the threshold which would require the bank to disclose the cash transactions to the IRS), frequent and prolific use of cash (greenback paper bills) as a form of payment and receipt, failure to keep records to record cash transactions, failure to report cash transactions on income tax returns and IRS Form 1099, and failure to file income tax returns.

106. On August 25, 2006, Big Deal, under the ownership, direction, management, and control of Defendants Eugene Hopper and Charles Pinion, submitted to J. Cayce Burwell, Administrative Assistant for Duke Energy Lake Services, fourteen (14) applications to obtain dock permits for the Sweetwater Subdivision on Lake Keowee (Lots 1, 2, 3, 3a, 4, 4a, 5, 6, 7, 8, 9, 10, 11 and 12). On August 28, 2006, J. Cayce Burwell acknowledged receipt of Big Deal's dock permits and informed Big Deal that the permits were forwarded on to Benji Cannon for his approval. Subsequently, Duke Energy Lake Services issued dock permits.

107. On September 7, 2007, Defendant Chuck Pinion entered into an agreement with

Superior Dock Systems, Inc., 6979 West Oak Highway (24), Westminster, SC 29693, which provided that Superior Dock Systems, Inc. would construct, deliver and install 14 boat docks at a cost of \$17,995 each, for a total of \$251,930. The docks were to be identical and each was to be a 24' X 28' single slip dock, with a gable roof, all aluminum, with Brazilian ironwood (IPE) decking, and would include a 40 foot ramp. The contract price reflected a significant "volume" discount from the typical price, because of the bulk purchase of 14 docks. The purchased price of a single dock is estimated have been approximately \$25,000 each. The agreement gave an approximate installation date of October 2007.

108. From October 2007 until the end of November 2007, Superior Dock Systems, Inc. installed two or three docks each week, until all 14 of the docks were in place.

109. In October 2007, while dealing with the pressures of the investigation by the Securities Division and with knowledge of the Securities Division having filed its "Notice of Intent to Seek the Issuance of a Stop Order Denying Effectiveness to a Registration Statement", Defendant Arthur Field and attorney Scott Pfeiffer devised a plan to disburse \$500,000 out of CIF and Cosimo, which would reconfigure Cosimo's convoluted loans.

110. On October 10, 2007, Cosimo, under the ownership, direction, management, and control of Defendant Arthur Field and attorney Scott Pfeiffer, loaned Big Deal \$500,000 as a loan for the purchase of the 14 boat docks, despite the fact that the manufacturer's contracted purchase price for the 14 docks was only \$251,930. Furthermore, this loan was made at a time when Big Deal and SD Trust were delinquent on their Cosimo loans and other debts, had no source of cash flow, had no source of repayment, and were insolvent. Moreover, the principals of Big Deal and SD Trust (Defendants Eugene Hopper, Charles Pinion, and others) were at that time in default on more than \$7 million in Cosimo loans related to other projects (Waters Edge, Sweetwater Subdivision and Highlands).

111. On October 4, 2007, SD Trust, under the ownership, direction, management, and control of Defendants Eugene Hopper and Charles Pinion, entered into a purchase agreement with Big Deal to purchase the 14 boat docks.

112. On October 23, 2007, Cosimo and Big Deal filed a UCC-1 against SD Trust secured by the docks located on Lots 2, 7, 8, 9, 10, 11, and 12. Cosimo and Big Deal also filed a UCC-1 against SD Trust secured by the docks located on Lots 13 and 14, despite the fact that the boat dock permits issued did not allow, nor did the order include docks for lots 13 & 14.

113. On October 26, 2007, Cosimo and Big Deal filed a UCC-1 against SD Trust and Faulstine Smith, 298 Sugar Hill Road, Seneca, SC 29672, secured by the dock located on Lot 3.

114. On November 20, 2007, Cosimo and Big Deal filed a UCC-1 against SD Trust and Robert Alexander, 351 Cherokee Lake Road, Tamassee, SC 29686, secured by the dock located on Lot 4A, and filed a UCC-1 against SD Trust and Lillian Sonne, 290-G Applewood Center Place, Suite 123, Seneca, SC 29678, secured by the dock located on Lot 4.

115. Between November 20, 2007 and March 21, 2009, Defendants Eugene Hopper and Charles Pinion, with knowledge of, and intent of violation of, the state law which prohibits the sale of property secured by liens without satisfying the liens, sold all of the boat docks to several individuals, without remitting any payments to Cosimo and without satisfying Cosimo's liens or obtaining a release of the liens. Defendants Eugene Hopper and Charles Pinion sold the newly constructed, unused boat docks at unrealistically low prices as follows:

a. Dennis Pifer	1 dock	\$ 6,000
b. John Stenzinger	1 dock	6,000
c. Richard Wilneau	1 dock	6,000
d. Bruce Limpscomb	1 dock	9,500
e. Steve Bridges	1 dock	10,000
f. Joe Echols	1 dock	11,400
g. Johnny Kelley	6 docks	36,000
h. Unknown buyers	2 docks	<u>12,000</u>
Totals		<u>\$96,000</u>

The buyers paid for their purchases by check, which, at the direction of Defendant Eugene Hopper, were made payable to Defendant Neighborhood Homes, an entity owned and or controlled by Defendant Eugene Hopper. All but one of the buyers promptly sold the docks purchased to other individuals at substantial gains, evidence that the buyers knew the deal was illegitimate, and at best turned a blind eye, in order to buy the docks at such a deep discount and make money on the trade.

116. On November 14, 2008, John Young, who had invested substantial amounts with Defendant Eugene Hopper over the years, and who had been duped to believe the dock would be bought free and clear of liens, agreed to buy a dock, tendered a \$6,000 check to Defendant Eugene Hopper, and received a Bill of Sale from SD Trust, which specifically stated that the dock "is free and clear of all liens", and which was executed by Defendant Eugene Hopper, witnessed by Charles Pinion, and notarized. Even though his check was cashed, John Young never received the dock and therefore lost his money.

117. In summary, on October 10, 2007, at a time when the relevant parties were delinquent on their Cosimo loans and other debts, had no source of cash flow, had no source of repayment, were insolvent, and were in default on more than \$7 million in Cosimo loans related to other projects, Defendants Arthur Field, Eugene Hopper and Charles Pinion and attorney Scott Pfeiffer effected a \$500,000 loan from Cosimo to Big Deal and SD Trust, as being secured by 14 boat docks, which only cost \$251,930, and then within 18 months, Defendants Eugene Hopper and Charles Pinion sold all of 14 docks to close associates for approximately \$96,000, each without repayment to Cosimo and without obtaining a release of the UCC-1 security interest held by Cosimo, leaving Cosimo and CIF with an \$500,000 loan that is uncollectible, while the defendants enjoy the benefits of the cash received from selling the docks.

118. The culpable and illegal nature of these activities surrounding this project as an

enterprise is evidenced by the disappearance of the docks with not loan repayment, the lack of formal accounting records, submission of falsified bills of sale, use of multiple entities with no accountability of transactions between them, failure to report transactions on income tax returns and IRS Form 1099, and failure to file income tax returns.

Arthur Field launders money through and siphons CIF money from Trazom

119. On June 7, 2006, CIF loaned Cosimo \$1,000,000 to fund Cosimo's loan to Jade Dragon Properties, LLC ("Defendant Jade Dragon"), which was formed in November 2005. On June 13, 2007, with the loan proceeds received from CIF one week earlier, Cosimo loaned \$1,000,000 to Jade Dragon, and Jade Dragon used the loan proceeds to purchase the Liberty One and Liberty Two warehouse property. At closing, the \$1,000,000 loan proceeds were remitted to Cosimo as payment on the Liberty One loan, the balance of which before this payment totaled \$1,145,246, leaving an unpaid balance of \$145,246. Cosimo subsequently paid CIF \$1,000,000, which was applied against Cosimo's debt owed to CIF.

120. On June 7, 2006, CIF transferred \$2,450,000 to Trazom, LLC ("Trazom") – an entity that did not legally exist at that time. At all times relevant herein, Trazom was merely the alter-ego of Defendant Arthur Field, and, upon information and belief, observed none of the requisite corporate formalities.

121. That same day, Defendant Field executed a mortgage on behalf of Trazom, LLC, at a time when Trazom did not have title to the property and which did not legally exist, in the amount of \$2,650,000.00. Defendants did not record this mortgage for over a year later on June 20, 2007.

122. Two days later, on June 9, 2006, Defendant Arthur Field created Trazom by filing organization documents with the South Carolina Secretary of State. Defendant Arthur Field was listed as the agent and organizer. Trazom was entirely owned by Defendant Arthur Field.

123. Also on June 9, 2006, Defendant Field loaned money from himself – to himself, *vis a vie* CIF transferring \$200,000 to Trazom.

124. On June 13, 2007, with the loan proceeds received from CIF one week earlier, Trazom purchased the 121,000 square foot warehouse located in Anderson South Carolina (“Anderson warehouse”). At closing, the \$2,450,000 loan proceeds were remitted to Cosimo as payment on the outstanding loans - \$145,246 applied against the Liberty One loan (thereby reducing the balance to zero) and \$2,290,451 applied against the Tiger Transport loan balance (thereby reducing the balance to \$27,004).

125. CIF, under the direction and control of Defendant Arthur Field, transferred \$725,000 to Trazom on January 2, 2007 and transferred another \$250,000 to Trazom on January 29, 2007. Although Defendant Arthur Field denoted these transfers as ‘loans’ to Trazom on the books of CIF, Defendant Field executed no promissory notes or loan documents. The “loans” were never repaid.

126. Additionally, CIF, under the direction and control of Defendant Arthur Field, transferred an additional \$25,000 to Trazom on July 16, 2007. Again, Defendant Field neither prepared nor executed any promissory note or loan documents were prepared for this transfer. This ‘loan’ was never repaid. Defendant Arthur Field did not record this transaction as a loan, but instead purposefully, deceptively, and deviously manipulated CIF’s books to record this payment in a way that gave the appearance that this loan and the two previous checks totaling \$975,000 were paid in full in CIF books. (These transactions were a disguise for Defendant Arthur Field’s money laundering schemes discussed in more detail later in this Complaint.)

127. On September 12, 2007, Trazom, under the direction and control of Defendant Arthur Field, refinanced its mortgage debt on the Anderson warehouse by obtaining a first mortgage loan from Palmetto Bank. CIF, under the direction and control of Defendant Arthur

Field, executed a subordination agreement in favor of the bank and receive in exchange approximately \$1.5 million as a partial payment on Trazom's mortgage debt owed to CIF. At the end of this exchange, Trazom owed Palmetto Bank approximately \$1.5 million, secured by a first mortgage on the Anderson Warehouse, and owed CIF approximately \$1.1 million, secured by a second mortgage on the Anderson Warehouse. The bank loan required the personal guaranty of Defendant Arthur Field. Because of the sweetheart deal Defendant Arthur Field arranged for himself, CIF never received a personal guaranty from Defendant Arthur Field. While Trazom was originally solely owned by Defendant Arthur Field, ownership was later transferred without valuable consideration to his son, Davyd Field, in order to avoid creditors and in furtherance of the money laundering schemes.⁵

128. On or about August 28, 2007, Trazom obtained a note and mortgage from Palmetto Bank in the amount of \$1,650,000.00. At the same time Trazom, by and through Defendant Arthur Field and his son Davyd Field, executed a subordination agreement between CIF and Trazom. At the time when executing this agreement, Defendant Arthur Field represented that Trazom owed CIF \$2,650,000.00 on the mortgage executed on June 7, 2006. In truth, between June 2006 and September 2007, CIF had given (or 'loaned') an additional \$1,000,000.00 and only received \$125,765.45 in return. Defendant Arthur Field and Davyd Field, using Trazom as their vehicle, cheated CIF out of \$874,234.55 (plus accrued interest) in masking the monies owed to CIF by Trazom, in addition to the \$2.65 million dollars previous provided to Trazom. Upon information and belief, during this time frame, Defendant Arthur Field allegedly conveyed the interest in Trazom to his son Davyd for the sum of \$6,000.00,

⁵ On or about November 13, 2013, CIF settled its lawsuit with Arthur Field's son, Davyd Field, regarding Trazom. As a result of the settlement, Davyd Field was released of personal liability. The release specifically any acts of Defendant Arthur Field while he was the sole owner and manager of Trazom, LLC.

which was substantially below its value. Thereafter, Defendant Arthur Field continually relinquished assets and monies of CIF in favor of Trazom, which, by then, Defendant Field operated ostensibly through the name of his son.

129. For example, further conspiring to defraud CIF, on September 14, 2007, by and through Defendant Arthur Field and Davyd Field, CIF and Trazom amended the terms of the original promissory note that was dated June 7, 2006. An "Amended Promissory Note" was executed by Davyd Field, son of Arthur Field, signing as Manager of Trazom, and by Defendant Arthur Field signing on behalf of CIF. The Amended Promissory Note stated the principal amount to be \$1,090,488.55 and provided for interest initially at an annual rate of 8.2%, but increasing to 8.8% by 2013. The Amended Promissory Note also included the following statements:

"WHEREAS, Trazom, LLC has repaid the sum of \$1,559,511.55 between June 7, 2006, and September 13, 2007 as requested by Holder [CIF] who is in urgent need of capital funds;..."

"WHEREAS, to achieve such accelerated partial repayments the member(s) of Trazom obtained a first mortgage upon worse terms from Palmetto Bank, and also had to personally guarantee such loan to Palmetto Bank and this Note shall be subordinate to the terms thereof;..."

"The term of this loan shall be extended to August 31, 2017. All principal and interest shall be due upon such date. However, provided the loan is not in default, Trazom shall have the right to extend the term for an additional 5 years to August 31, 2022..."

"The outstanding principal shall be amortized on a **Forty (40) year [Emphasis added]** basis..."

"Neither Davyd Field nor any other member of Trazom shall be personally liable hereon to Lender [CIF] ..."

130. On March 1, 2008, Trazom and CIF, under the direction and control of Defendant Arthur Field, purportedly amended the terms of the Amended Promissory Note that was dated September 14, 2007. A "Second Amended Promissory Note" appeared to have been executed by

Davyd Field, son of Arthur Field, signing as Manager of Trazom, and by Defendant Arthur Field signing on behalf of CIF. The Second Amended Promissory Note stated the principal amount to be \$1,070,008 and provided for a reduction in the interest rates, initially at an annual rate of 6.25%, but increasing to 6.8% by 2017. The Amended Promissory Note also included the following statements:

“WHEREAS, Trazom, LLC has repaid the sum of \$1,559,511.55 between June 7, 2006, and September 13, 2007 as requested by Holder [CIF] who is in urgent need of capital funds;...”

“WHEREAS, Trazom, LLC has repaid an additional \$20,480.45 between September 13, 2007, and February 28, 2008, and has agreed to reduce the term of the amortization from 40 years to approximately 26 years, thus providing Capital Investment Funding, LLC with additional principal to expedite collection;...”

“WHEREAS, in consideration of such accelerated payments and as additional incentive thereof, Capital Investment Funding, LLC offered to again amend the terms of the underlying Note to reflect the terms set forth below and Trazom accepted such second offer and procured and tendered such funds;...”

“The term of this loan shall be extended to August 31, 2018. All principal and interest shall be due upon such date. However, provided the loan is not in default, Trazom shall have the right to extend the term for an additional 5 years to August 31, 2023...”

“The outstanding principal shall be amortized on a **Twenty-Six (26) year basis (reduced from 40 previously [Emphasis added] basis...**”

“In the event Borrower [Trazom] shall prepay the Note prior to maturity (or such later date as extended after payment of extension fee), then Borrower shall receive a prepayment bonus equal to Two (2%) Per-cent of the remaining principal outstanding. If prepayment shall occur prior to December 31, 2010, this bonus shall be increased to Four (\$0.0%) per-cent of the balance outstanding.”

131. Between August 24, 2009 and November 2009, CIF’s Receiver had several conversations with Defendant Arthur Field about CIF discounting its Trazom loan for early payment. No specific amounts were discussed nor were any agreements made. Defendant Arthur Field expressed a strong interest in negotiating a settlement that would result in CIF liquidating

its Trazom loan for cash and Trazom gaining the advantage of a discount by paying the loan early and advised that he would try to arrange for a deal to accomplish such.

132. In November 2009, Defendant Pelican Way Financial, LLC tendered a written offer to purchase from CIF the Trazom loan, which had an outstanding balance believed to be approximately \$1,033,000, for a price of \$500,000, slightly less than 50% of the loans face value. The offer was in the form of a letter written dated November 10, 2009, addressed to CIF's Receiver and purportedly signed by Doug Frederickson on behalf of Defendant Pelican Way Financial, LLC. Online records of the Florida Secretary of State reflect Defendant Pelican Way Financial, LLC was organized on November 12, 2009, with a principal address of 5495 Atlantic View, St. Augustine Florida, and reflects Defendant Arthur Field's wife, Defendant Kathryn Taillon, as manager and registered agent. Importantly, the letter states "You have advised me of the following...." The Receiver never had any communication with Doug Frederickson. The letter also states "You provided me with a copy of the Second Amended Note, which matures....." Most importantly (to be discussed later), the offer does not mention any other amendment or modification to the note. The offer was not accepted.

133. In November 2011, CIF served Defendant Arthur Field with a subpoena demanding he produce the records which the Order Approving Settlement had previously required him to deliver to CIF's Receiver. Defendant Arthur Field had turned over limited records to CIF's Receiver, but not all records.

134. Between January 2 and January 5, 2011, Defendant Arthur Field sent CIF's Receiver several emails, which provided updates regarding the refinancing arrangement with Palmetto Bank, requested CIF's Receiver provide written acknowledgement to Palmetto Bank agreeing to the refinancing terms, and discussed CIF's Receiver's request that Defendant Arthur

Field provide him with whatever Trazom documents he had. One of Defendant Arthur Field's response to the request for copies of Trazom's loan documents stated:

"There was a Note, an Amended Note and a Second Amended Note and a Mortgage. Which, if any, do you have? I have photocopies of the Amended Note and Second Amended and can drop off same today."

Another email from Defendant Arthur Field stated:

"The Amended Note was on September 14, 2007. It was for \$1,090,488.45. 40 year amortization. The Second Amended Note was on March 1, 2008. \$1,070,008.00. 26 year amortization plus added principal."

135. Most importantly, none of the emails mention any other amendment or modification to the note. On or about January 5, 2011, Defendant Kathryn Field delivered a copy of the Amended Promissory Note and the Second Amended Promissory Note to CIF's Receiver. Importantly, copies of the original promissory note and mortgage were not included in the documents delivered.

136. These actions undertaken by Defendant Field deliberately harmed CIF, in order to benefit other members of his family.

Field & Taillon Divest CIF of Money through York Mortgage Funding and Bradford Financial Group.

137. As mentioned previously, Defendant Field and Defendant Taillon established York Mortgage Funding, LLC in 2002. Defendant Field and/or Defendant Taillon funneled money between and among CIF, York Mortgage Funding and Bradford Financial, for which Defendant Field was the *de facto* controlling managing member at all times. Field would routinely sign checks on behalf of York Mortgage Funding or Bradford Financial Group or CIF made payable to either of the other two entities. In doing this, Field concealed and/or transferred monies and debt to and from the related entities that he controlled. Ultimately, Defendant Field

siphoned off substantial monies from CIF by transferring the case to his other entities, like York Mortgage Funding and/or Bradford Financial Group.

138. By and through his control over CIF and York Mortgage Funding, Defendant Field converted the debt of York Mortgage Funding to debt of CIF, with little to no consideration.

139. Defendant Field has yet to produce any of the financial records, loan files, bank statements, etc. of York Mortgage Funding, yet, on paper, York Mortgage Funding owes CIF millions of dollars.

Field & Taillon Divest CIF of Money through and Bountiful Bingo, LLC.

140. On or about November 28, 2005, Defendants Field and Taillon formed two entities: Defendant Blenheim Properties, LLC and Defendant Bountiful Bingo, LLC, which both listed Defendant Taillon as the registered agent, using their Thornblade home as the business address. Upon information and belief, Defendant Field caused to transfer and/or provide these entities with funds, ostensibly to enable the latter to acquire mortgages for various properties.

141. Upon information and belief, at the time Defendants Bountiful Bingo and/or Blenheim Properties sold the properties, the funds were not returned or repaid to CIF, despite Defendant Field executing a satisfaction of mortgage for the same on behalf of CIF.

Field Divests CIF of Money through Lion Financial LLC.

142. Defendant Lion Financial, LLC was formed and owned by Defendant Arthur Field. It was ostensibly in the business of buying and selling residential mortgage loans. Between 2004 and 2007, Defendant Lion Financial bought as many as 30 loans per day. Defendant Arthur Field created Defendant Lion Financial, LLC ("Defendant Lion") as a speculative investment vehicle for his family. Defendants Arthur Field and Kathryn Taillon operated the company from the family residence located at 310 Thornblade Boulevard in

Greenville South Carolina. Over a four year period, Defendant Lion Financial bought hundreds loans.

143. To fund its speculative mortgage trading business, Defendant Lion Financial borrowed money from CIF, which Defendant Field then-controlled.

144. By 2005, at its peak, Defendant Lion Financial was indebted to CIF for more than \$6.3 million. By January 2008 (the date CIF declared commence “winding down”), Defendant Lion’s unpaid outstanding balance tossed to CIF was \$2.7 million, which remains unpaid as of the date this Complaint was filed.

145. On August 31, 2007, Lancaster Mortgage Bankers, LLC (a company managed by Defendant Field’s friend, Elliot Salzman) filed bankruptcy. At the time of filing, Lancaster Mortgage Bankers, LLC reported total debts in excess of \$63 million, including \$1.1 million owed to Defendant Bradford and \$360,000 owed to Defendant Lion Financial.

146. In December 2007, Defendant Lion Financial filed motions in bankruptcy court claiming Defendant Lion had purchased seven notes from Defendant Lancaster Mortgage Bankers, LLC immediately before the bankruptcy filing and alleging Defendant Lion Financial should be entitled to collect all of the proceeds from the seven loans, the face value of which was more than \$1.1 million.

147. In October 2008, Defendant Lion Financial reached an agreement with the US Trustee in the case. The settlement agreement provided that Defendant Lion Financial would pay the US Trustee (on behalf of the Bankruptcy Estate of Defendant Lancaster Mortgage Bankers, LLC) 25% of the proceeds it ultimately collects from the loans.

148. In April 2009, the US Trustee remitted payment to Defendant Lion Financial in the amount of \$59,077, which represented Defendant Lion’s share of proceeds the US Trustee had collected on the loans.

149. On October 13, 2009, Defendant Lion Financial paid CIF \$94,661. When he tendered payment to CIF, Arthur Field stated that the check represented all of the money Defendant Lion Financial had and that Defendant Lion Financial was no longer in business and was defunct.

Family Residences Purchased With CIF Funds

150. In January 2004, Defendants Arthur Field and Defendant Kathryn Taillon purchased the family residence located at 310 Thornblade Boulevard in Greenville South Carolina from a third party for \$910,000. Although these defendants put the deed of the house in Defendant Taillon's name alone, upon information and belief, Defendant Field executed a personal guaranty to effectuate the loan. Defendants Arthur Field and Kathryn Taillon, and their daughter, Allyson Field, made this house their personal residence from 2004 forward.

151. The purchase of the 310 Thornblade Boulevard house was financed with a \$637,000 mortgage loan from Defendant Lancaster Mortgage Bankers, LLC. To finance the loan to Defendant Kathryn Taillon, Lancaster Mortgage Bankers, LLC received funding through Defendant Monmouth, which in turn had received its funding from CIF.

152. Two years later, in February 2006, Lancaster Mortgage Bankers, LLC executed and filed an Affidavit of Lost Assignment of Mortgage, evidencing the transfer of Defendant Kathryn Tallion mortgage loan from Lancaster Mortgage Bankers, LLC to Lehman Brothers Bank, FSB.

153. Upon information and belief, Defendants Field and Taillon satisfied the mortgage in full with funds from CIF or related entities.

154. In May 2009, in the face of lawsuits filed against her by CIF Noteholders, Defendant Kathryn Tallion executed and recorded a deed which transferred the family residence into the name of her daughter, Allyson Field. The transfer of title was made with no monetary

consideration. Plaintiff is informed and believes that the property was fraudulently transferred to these entities for the reasons stated herein, and should therefore to be determined by this Court to be held in a constructive trust for the plaintiff.

155. Upon information and belief, since being deeded title to the home, Defendant Allyson Field has not made any of the tax or insurance payments on the estate. Upon information and belief, Defendants Arthur Field and/or Kathryn Taillon have made all such payments due and owing with funds taken from CIF and/or related entities that these defendants owned and/or controlled.

156. On July 19, 2012, Defendant Allyson Field executed a Mortgage Deed in favor of Lexon Insurance Company, as collateral for bond posted on behalf of Defendant Arthur Field in the General Sessions Court of Richland County.

157. On or about September 8, 2011, Defendants Arthur Field and Kathryn Taillon used cash to purchase another residence at 5489 Atlantic NW, St. Augustine, Florida. Upon information and belief, Defendants Arthur Field and/or Kathryn Taillon purchased this residence with funds taken from CIF and/or related entities that these defendants owned and/or controlled.

158. Plaintiff is informed and believes that the property was fraudulently transferred to these entities for the reasons stated herein, and should therefore to be determined by this Court to be held in a constructive trust for the plaintiff.

Lion Financial Transfers Loan To Kirsten White Without Consideration

159. On August 9, 2006, Defendant Arthur Field caused Defendant Lion Financial, LLC to loan \$97,500 to Gary J. and Lori Lynn Malvern. The loan was secured by a second mortgage the Malvern's personal residence located on 22 Stone Hollow Greenville, South Carolina.

160. On March 13, 2009, Defendant Arthur Field caused Defendant Lion Financial, LLC to assign the \$97,500 note and mortgage to Defendant Kirsten M. White. Defendant Kirsten M. White was the wife of attorney David Gantt, prior to their divorce in or about 2010. (She was formerly known Kirsten W. Gantt.) Defendant Kirsten M. White is an intimate acquaintance of Defendants Arthur Field and Kathryn Taillon.

161. On May 4, 2010, Defendants Arthur Field and Pelican Way Financial, LLC⁶ financed Defendant Kirsten M. White's purchase and construction of her personal residence located at 5 Aldgate Way in Greer, South Carolina. The recorded deed to the property reflects the total cost of the property including construction was \$238,500. After the construction of the house was completed, on October 1, 2010, Defendants Arthur Field recorded two mortgages on Defendant Kirsten M. White's property on October 1, 2010 – a mortgage in the amount of \$175,000 in favor of Defendant Pelican Way Financial, LLC, and a second mortgage in the amount of \$33,000 in favor of [Defendant] Arthur M. Field, Trustee. Greenville County property tax records report the property tax value as \$235,000.

162. On July 10, 2012, Defendant Kathryn Taillon executed and had recorded a Power of Attorney naming Defendant Kirsten M. White as her "Attorney", granter Defendant Kirsten M. White full powers to act on behalf of Defendant Kathryn Taillon.

163. On September 5, 2012, Defendant Kirsten M. White executed and a "mortgage loan satisfaction" for the Malvern loan, which was recorded in the Greenville County records.

164. CIF records reflect it never received any payments for any of these loans.

⁶ Pelican Way Financial, LLC is an entity that Defendants Field and Taillon formed to launder money from CIF. Upon information and belief, Pelican Way Financial continues to hold the mortgage for Defendant Kirsten White's residence. This, despite the fact that Defendants Field and Taillon represented to the federal court that Pelican Way Financial had been dissolved on September 24, 2010, leaving Defendant Taillon as the sole "successor-in-interest." [Exhibit 2, Motion to Dismiss by Kathryn Taillon, as Successor in Interest to Pelican Way Financial, LLC, filed May 2, 2013]

165. Shortly before the Court order the control of CIF to be transferred to its court-appointed receiver, Defendant Field caused Defendant Kirsten White to receive approximately \$17,000.00. Defendant Field made the check payable to Defendant Empire Document Services, purportedly for copying and/or scanning CIF's documents.

166. Upon information and belief, Defendant Empire Document Services does not exist. Defendant Kirsten White deposited these funds in her personal checking account. Upon information and belief, Defendant White did not report this gift or income on her 2009 income tax returns.

167. Thereafter, upon information and belief, Defendant Field and/or Defendant White caused the records of CIF to be destroyed.

168. Defendant Field has failed and refused to produce records or an accounting for Defendant Lion. Thus, not only are activities of its loans unaccounted for, no records of the business operations of Defendant Lion Financial have been produced.

169. Furthermore, at no time has Defendant Arthur Field disclosed the details of the loan which financed the purchase of his family's personal residence, and CIF records do not reflect receiving any payments as repayment of such amounts advanced thereof.

170. Additionally, Defendant Arthur Field has not disclosed the details of the assignment of the Malvern loan and mortgage to Defendant Kirsten M. White.

171. In summary, Defendants Arthur Field, Kathryn Taillon, Allyson Field, Kirsten M. White, Lion Financial, LLC created their unscrupulously speculative investment vehicles, Defendants Lion Financial, LLC, and operated them with willful and reckless abandoned, culminating in over \$63 million in unpaid debts to third parties and at least \$3.7 million of unpaid funds from CIF. Meanwhile, Defendants Arthur Field, Allyson Field, and Kathryn

Tailon enjoy their personal residence while withholding pertinent records to avoid the consequences of scrutiny, and Defendant Kirsten M. White received the benefits of the loan assignment without CIF receiving fair consideration.

Field's Syndicate Takes CIF For \$550,000 and More

172. On April 26, 2006, Defendant Arthur Field and a business associate, Ramon Ashy, Jr., formed Defendant He Will Provide LLC. One half of the membership interests of Defendant He Will Provide, LLC was owned by Krondor, LLC, which was owned and or controlled by Defendant Arthur Field. The other half was owned by Phoenician Family Limited Partnership, which was owned and or controlled by Ramon Ashy, Jr.

173. On August 18, 2006, Defendant Arthur Field and a business associate, Mohammed Edris, formed Defendant Aladdin's Café & Grill, LLC. One half of the membership interests of Defendant Aladdin's Café & Grill, LLC was owned by Defendant RAAF Enterprises, LLC, which was owned and or controlled by Defendant Arthur Field. The other half was owned by Mohammed Edris.

174. On September 21, 2006, under the direction and control of Defendant Arthur Field, CIF loaned \$700,000 to Defendant He Will Provide LLC. Defendant Arthur Field recorded transaction in CIF's books as a "Short term Loan 610 Congaree". Defendant Arthur Field has not provided any records that document and support this loan transaction.

175. On September 22, 2006, Defendant He Will Provide LLC purchased 610 Congaree Road, located in Greenville, SC, from Lone Star Steakhouse & Saloon of South Carolina, Inc. The deed stated that the consideration was \$1,350,000. Defendant Arthur Field recorded the purchase in the books of Defendant He Will Provide LLC. He also recorded capital contributions from "Member One" and "Member Two" in the amounts of \$700,000 and \$637,221, respectively.

176. On October 3, 2006, NBSC Bank loaned \$1,156,000 to Defendant He Will Provide LLC. The loan closing statement reflects borrower received \$1,147,004. The books of Defendant He Will Provide LLC reflect the loan proceeds were not deposited in its bank account, but instead were distributed directly to the members: \$700,000 to “Field/Taillon/Krondor” and \$447,004 to “Ashy/Phoenician Family Limited Partnership”. Defendant Arthur Field and Ramon Ashy Jr. both signed NBSC Bank’s mortgage loan as members and both signed personal guarantees.

177. On October 3, 2006, Defendant Arthur Field recorded in the CIF books a \$700,000 deposit as repayment of the “Short term Loan 610 Congaree”. However, no interest was paid on this loan. The \$700,000 was paid from the proceeds of the mortgage loan from NBSC Bank, which was secured with a first mortgage lien on the property.

178. From September 16, 2006 until December 26, 2006, under the direction and control of Defendant Arthur Field, CIF wrote eight checks made payable to Defendant Aladdin’s Café & Grill, LLC as follows:

9-16-06	#1776	\$ 50,000
9-20-06	#1777	100,000
10-12-06	#1784	100,000
11-21-06	#1797	50,000
12-2-06	#1800	50,000
12-15-06	#1800	25,000
12-26-06	#1800	<u>50,000</u>
Total as of 12-26-06		<u>\$425,000</u>

179. On October 6, 2006, Defendant He Will Provide LLC recorded a \$100,000 deposit on its books. The deposit was recorded as a payment received from Defendant Aladdin’s Café & Grill, LLC for purchase of equipment.

180. On December 26, 2006, Defendant Arthur Field signed a loan commitment letter from CIF to Defendant Aladdin’s Café & Grill, LLC. The letter provided that CIF would loan

Defendant Aladdin's Café & Grill, LLC up to \$475,000. The commitment letter also stated that the loan proceeds were to be used to acquire equipment and leasehold improvements at 610 Congaree Road. The commitment letter made no mention that Defendant Aladdin's Café & Grill, LLC had already received \$425,000 from CIF.

181. On December 30, 2006, Defendant Aladdin's Café & Grill, LLC executed a \$475,000 Promissory Note and Security Agreement payable to CIF. As additional security on the loan, RAAF Enterprises, LLC and Mohammed Edris executed a Membership Pledge Agreements, pledging all of their membership interests in Defendant Aladdin's Café & Grill, LLC. The promissory note did not provide for interest on \$425,000 that CIF had already advanced to Defendant Aladdin's Café & Grill, LLC between September 16, 2006 and December 30, 2006.

182. Between January 6, 2007 and May 14, 2007, under the direction and control of Defendant Arthur Field, CIF wrote three checks made payable to Defendant Aladdin's Café & Grill, LLC totaling \$100,000.

183. As of May 14, 2007, CIF's loans to Defendant Aladdin's Café & Grill, LLC totaled \$525,000, which was \$50,000 more than the loan provided.

184. Defendant Aladdin's Café & Grill, LLC did not make any payments to CIF until March 2007. From March 21, 2007 through September 9, 2007, Defendant Aladdin's Café & Grill, LLC paid CIF five payments as follows:

3-21-07	\$ 851
6-27-07	3,563
7-16-07	3,552
8-10-07	3,552
9-08-07	<u>3552</u>
Total as of 9-08-07	<u>\$ 15,070</u>

185. In or about January 2007, Defendant Aladdin's Café & Grill, LLC opened its business, which was touted as a high-end Moroccan restaurant. The business was an immediate failure and the loan from CIF remained in default. By September 2007, in order to mask the bad loan and failed business, Defendant Arthur Field recruited Jose Rodriguez to help him change the business to a night club and cover up the failure. Jose Rodriguez had been in the construction business and had borrowed money from CIF on three projects, one of which was recorded as in paid full, while the others were shown as being in default. Jose Rodriguez had no previous experience in owning or operating a night club business.

186. Between October 26 and October 30, 2007, under the direction and control of Defendant Arthur Field, CIF created papers and exchanged funds with Jose Rodriguez to give the appearance that CIF was loaning money to Jose Rodriguez, who in turn was acquiring the business from Defendant Aladdin's Café & Grill, LLC. This was further designed to give the appearance that Defendant Aladdin's Café & Grill, LLC paid off its loan from CIF in full, including interest. Effecting this plan, CIF issued seven checks to Jose Rodriguez totaling \$550,000. Jose Rodriguez, in turn, wrote two checks to CIF totaling \$519,451. CIF recorded the checks as new loans to Jose Rodriguez and recorded the deposits as payoff of Defendant Aladdin's Café & Grill, LLC loan.

187. Jose Rodriguez did open up a night club business, but the business failed from the beginning and closed within months.

188. On July 9, 2008, with the restaurant and night club businesses closed, Defendant He Will Provide LLC signed a lease with Joshua Knuckles and Esther Knuckles dba Knuckle-Up Entertainment LLC. The lease was a two year lease and had a one year option. Monthly rent payments under the lease were \$5,500 for the 1st year, \$6,500 for the next year, and \$7,500 for the option period, plus 100% of the property taxes.

189. On August 4, 2008, Ramon Ashy Jr. died in a car wreck. His father, Ramon Ashy Sr., was appointed Personal Representative for the Estate of Ramon Ashy Jr.

190. Defendant He Will Provide LLC received the rent payments, including payments for property taxes, from July 2008 through August 2009.

191. Defendant He Will Provide LLC paid the NCSC mortgage payments, which were \$9,754 per month, from November 2006 through August 2009.

192. On July 14, 2009, Ramon Ashy, Sr. executed a Quit Claim Deed, signing it as Acting Manager of Defendant He Will Provide LLC, thereby transferring ownership of 610 Congaree Road to CIF. The deed stated that it was for "satisfaction of obligation from Defendant Aladdin's Café & Grill, LLC, its successors and assigns to Capital Investment Funding, LLC". The deed made no reference to the fact that NBSC Bank still held a mortgage loan on the property and the balance on the loan was \$1.1 million. Additionally, delinquent property taxes on the property at that time totaled \$25,187.

193. CIF's Receiver collected the rents and paid the NBSC Bank mortgage payments from September through December 2009. The Receiver obtained an appraisal in December 2009 which reported that the appraised value of the property was \$800,000. Since the value of the property was significantly less than NBSC Bank's \$1.1 million mortgage balance and delinquent property taxes, the Receiver stopped paying the mortgage payments.

194. In January 2010, NBSC Bank sent a notice to the Receiver exercising its rights under its loan agreement to collect the rents directly. NBSC Bank then started foreclosure proceedings and paid the delinquent 2008 and 2009 property taxes, which totaled \$50,454.

195. On March 1, 2011, the court granted the foreclosure and issued an order for the sale of the property. The court also affirmed the validity and enforceability of the personal guarantees that NCSC Bank held from Defendant Arthur Field and [the Estate of] Ramon Ashy,

Jr. Notable, CIF did not obtain personal guarantees from Defendants Arthur Field, Ramon Ashy, Jr. or Mohammed Edris.

196. On June 10, 2011, NBSC Bank was deeded the property in the foreclosure sale. On June 30, 2011, NBSC Bank sold the property to an unrelated party for \$566,000.

197. Through these series of events, Defendant Arthur Field used CIF's \$700,000 to buy property, took an additional \$550,000 to start a restaurant business, and never had to pay a penny out of his pocket. Then, the business failed, and he walked away without having to pay a penny. He let CIF finance his fancies with no intention of repaying the money if the business failed. Meanwhile, CIF lost \$550,000 and never receives any interest on the \$700,000 or the \$550,000 loans.

C. Defendant Field's Continued Knowledge Of LRI's Deterioration

198. LRI's financial position continued to deteriorate and it was unable to live up to the principal payment schedule put in place with the December 2003 amendment. According to Defendant Arthur Field's own books, LRI last made a principal payment on the LRI direct loans on May 12, 2005. As time passed, LRI fell further and further behind on the draw down schedule put in place by the December 2003 Amendment to the revolving note. By 2006, the inability of CIF's largest creditor to pay its debts timely meant that CIF's largest creditor was insolvent and unable to pay CIF, and with the consequence that CIF's was also insolvent.

199. Nevertheless, in January of 2006, Defendant Arthur Field sold 5% of his ownership interest in CIF to Sharon and Glen Finch for \$136,500. Defendant Arthur Field helped them set up a South Carolina entity named Log Cabin Financial, LLC to own this interest. In selling this 5% to the Finches, Defendant Arthur Field told them CIF's business was very healthy.

200. On November 7, 2006, Defendant Arthur Field sent an email to the president of the Lancaster Group stating that he had to cancel an \$8 million loan commitment because LRI and the related Lancaster Group had not paid CIF and "were in default in their payment of principal to CIF". Defendant Arthur Field continued:

We still need whatever money you can send ASAP. I have other commitments still waiting. Plus, we would like to clean up the default. The Atty General is waiting on the revised prospectus and I don't want to let anyone know your firm has not made a principal payment in over 1 year, despite the promissory note on file with the Atty General showing payments due of roughly \$4 Million annually;"

We have a new auditor who is supposed to start on 11/9. I will delay that for 10 days but I doubt I can wait beyond 12/1. I doubt the auditor will be as liberal as our prior auditor and will object greatly to the non-payment of principal. Most assuredly this will cause a problem for CIF.

I have gone \$200K in the hole. Between redemptions and small loan commitments I had to honor, I am overdrawn on available cash to lend. I can maintain this for a very short period, but not more than 10 days without fear of incident.

Defendant Arthur Field added: "I must insist upon an immediate payment of at least \$1.5 million to help you cure the current default."

Defendant Arthur Field then caused Defendant Monmouth to issue a check (the "Monmouth check"), dated December 31, 2006, to CIF for the amount of \$514,186.50, as a supposed payment of principal and interest.

201. At the time Defendant Arthur Field caused Defendant Monmouth's check to be issued, Defendant Monmouth had only \$11,631.10 in the bank.

202. On January 2, 2007, Defendant Arthur Field caused CIF to "loan" \$725,000 to Trazom. The same day, Trazom paid \$750,000 to LRI, with a check (the "Trazom check") signed by Defendant Arthur Field, which had the memo line "Acquisition Wyckoff \$250K balance".

203. Defendant Arthur Field did not physically deposit the LRI checks totaling \$668,124.72 until January 4, 2007. They were physically deposited at a branch, and this was the day after Defendant Arthur Field's Trazom check to LRI cleared, on January 3, 2007.

204. Defendant Arthur Field did not physically deposit the Monmouth check he wrote to CIF, dated December 31, 2006, to the CIF account until January 8, 2007.

205. Defendant Arthur Field structured the transaction like this so he could later claim that LRI repaid CIF \$500,000 of principal in 2006, and was current on all its payments of interest in 2006. These circular checking account transactions evidenced an intent to create a false appearance about LRI, and served to postpone the inevitable day of reckoning from the reality that CIF's lead debtor was insolvent.

206. The January payments from LRI inevitably came due and LRI still did not have any money. Thus, in furtherance of the same scheme, Defendant Arthur Field caused CIF to "loan" an additional \$250,000 to Trazom by check dated January 29, 2007. With a check dated the next day, January 30, 2007, Trazom paid \$250,000 to LRI, with a check signed by Defendant Arthur Field that had the memo line merely stating "Bal note purchase".

207. On January 31, 2007, LRI wrote two interest payment checks dated January 31, 2007; one check for \$153,938.22 to CIF and the other for \$14,186.05 to Defendant Monmouth. At the time it wrote these checks, LRI had just over \$200 in the bank. Defendant Arthur Field booked the checks as paid on January 31, 2007.

208. Defendant Arthur Field's Trazom check for \$250,000 cleared in LRI's account on February 1, 2007.

209. Defendant Arthur Field physically deposited LRI's check into the Defendant Monmouth account on February 5, 2007. He then wrote a check for \$14,180.00 from Defendant Monmouth to CIF that was dated January 31, 2009, at a time when Defendant Monmouth only

had \$11,671.94 in the bank. Defendant Arthur Field deposited this check from Defendant Monmouth to CIF on February 7, 2007.

210. The two payments to LRI totaling \$1,000,000, made in January and February 2007 from CIF through Trazom to LRI, were supposedly for the purchase of a \$600,000 note and mortgage from SRG 457, LLC payable to LRI, secured by a mortgage on a residential house located at 457 Carlton Road in Wyckoff, New Jersey ("457 Carlton Road"). Four years earlier, in March of 2002, Defendant Field caused CIF had to transfer \$600,750 to Defendant Monmouth, which in turn transferred the same amount to LRI, which in turn transferred those funds to SRG 457, LLC. In December 2002, such Defendants caused CIF to loan an additional \$100,000 to SRG 457, LLC in similar fashion, noted in CIF's records with the memo "SRG increase". SRG 457, LLC allegedly used all of these funds to purchase and improve 457 Carlton Road in 2002. Very soon thereafter, SRG 457, LLC defaulted on the loans. On August 29, 2006, LRI filed foreclosure against SRG 457, LLC for failure to pay its obligation to LRI.

211. On July 16, 2007, Defendant Arthur Field transferred \$25,000 from CIF to Trazom, LLC, and forgave Trazom's outstanding loan balance by the full \$1,000,000 by booking the transaction as the purchase of real property (when in fact CIF had supposedly only purchased a note and mortgage already in foreclosure, and for which it did not even have any assignment yet). Defendant Arthur Field's Quickbooks memorialized this transaction as: *"SRG 457 Purchase real property NJ foreclosure; satisfy outstanding mortgage [of Trazom]; CIF to collect interest from 7/1/07; Trazom to acquire and assign SRG 457 to CIF immediately; foreclosure to continue in LRI and CIF name"*.

212. Thus, in January and February 2007, Defendants Arthur Field caused CIF to pay \$1,000,000 to LRI through Trazom, for a \$600,000 note and mortgage that was already in foreclosure proceedings, on a property for which CIF had already lent LRI over \$700,000.

Defendant Arthur Field did this so LRI could send substantially all of the \$1,000,000 back to Defendant Monmouth and CIF as "payment" of interest and principal. The purpose of these transactions was to enable Defendants Arthur Field and others to hide the reality that LRI, CIF's leading debtor, was insolvent, thereby delaying the immediate consequence of CIF facing insolvency.

213. Importantly, Defendant Arthur Field did not secure the asset CIF supposedly purchased for \$1,000,000 until June 6, 2008 - over a year later.

214. Further, on June 19, 2009, long after these transactions had taken place, Defendant Arthur Field filed with the South Carolina Secretary of State a "Statement of Disassociation" from Trazom, in which he stated that he had left the membership of Trazom on July 1, 2007 - nearly two years earlier, and 15 days before Defendant Arthur Field had caused CIF to write a \$25,000 check to Trazom allegedly to buy the note from Trazom for the full \$1,000,000.

D. The Winding Up

215. As a result of regulatory scrutiny and intervention as discussed herein, Defendant Arthur Field decided to wind up CIF and called a CIF board meeting on January 15, 2008. Defendant Arthur Field called Sharon Finch and asked her to attend the meeting. He did not tell her at that time that the company was in difficult financial position or that he wanted to wind the company up. At the meeting, Defendant Arthur Field presented to Finch and others that CIF's position was still very positive, and it was related that all the investors would be paid back. Defendant Arthur Field then asked Sharon Finch if anyone had a motion, and looked at her. She then made the motion to wind up the business, feeling as if Defendant Arthur Field expected her to make the motion.

216. The minutes from this meeting reflect a very detailed winding up motion being made by Finch, and that Defendant Arthur Field abstained from the first vote on the motion. However, the details of this motion came from Defendant Arthur Field, and the motion was his proposal that he was advocating to Finch and the other members. The minutes further describe that, pursuant to the terms of the Senior Notes and the respective prospectuses, interest on the Senior Notes shall cease being accrued after January 14, 2008, and that "a 10 year period is reasonable for the wind up".

217. On January 20, 2008, Defendant Arthur Field notified noteholders that CIF would be winding up. Characterizing the company's financial position as solvent and "in good financial condition", he stated he "strongly believed" all noteholders could be substantially repaid. Nevertheless, the noteholders were informed that payments to them would cease until all of CIF's assets were liquidated.

E. Defendant Field Withdraws Capital from an Insolvent Company

218. Despite knowing full well the true dire status of LRI and thus CIF, and having engaged in the above described schemes to prop up LRI so he would not have to disclose the true financial condition to investors and the Securities Division, Defendant Arthur Field made sure to get as much as he could out of CIF before the inevitable demise that he was keeping a secret.

219. In 2007, Defendant Arthur Field wrote multiple payroll checks to himself totaling \$235,807. In addition to these payroll checks and management fee checks, on May 25, 2007, Defendant Arthur Field wrote a check to himself for \$180,000 from a CIF bank account, as a "partial distribution capital account" and on August 31, 2007 he wrote a check to himself for \$90,000 as a "capital distribution".

220. Additionally, in 2008 and 2009, after CIF declared it would be “winding up” its business and payments to noteholders had been halted, Defendant Arthur Field wrote multiple checks to himself as Manager Fees, totaling \$212,404 in 2008 and \$173,901 in 2009.

221. At all times when these payments occurred from 2007 through 2009, CIF was in fact insolvent, despite Defendant Arthur Field’s comprehensive efforts to mask and obscure the pitiful and dire financial condition of CIF.

222. Although Cosimo had been in default of loans it received from CIF almost shortly after the loans were made, shortly before the collapse of CIF, attorney Scott Pfeiffer (as manager of Red Lion Trading) declared its loans to CIF to be in default and, in accordance with the terms of the operation agreement,” tendered the ownership of Cosimo to CIF.

F. Investor Lawsuits and The Mediated Settlement

223. Faced with the proposition that they may have to wait as much as 10 years to receive any of their investment back, the South Carolina investors were outraged. Soon after January 2008, several civil lawsuits were filed in South Carolina Circuit Courts against CIF as well as some of the defendants in this case. The various cases alleged damages and claims as a result of breach of contract, misrepresentation, negligent misrepresentation negligence, breach of fiduciary duties, tortious misconduct, fraudulent misrepresentation, fraudulent concealment, constructive fraud, conversion, civil conspiracy, and violations of the South Carolina Unfair Trade Practices Act, These cases were consolidated into a single case and that case was certified as a class action case entitled Tomz et al v. Capital Investment Funding, et al Case No: 2008-CP-23-3665.

224. Mediation of the class action case resulted in a settlement of the case in 2009. The terms of the settlement were subject of a hearing and were thereafter fully stated in the Court’s

order entitled “Mediated Global Settlement Agreement And Order Approving Settlement”, (“Order”) issued on August 24, 2009. Among other things, the Order stipulated that:

- a. Defendant Arthur Field resign as Manager of CIF;
- b. Jerry T. Saad, CPA (“Mr. Saad”) be appointed as Receiver for CIF;
- c. Defendant Arthur Field delivers to Mr. Saad all CIF records within 10 days;
- d. CIF issue a Confession of Judgment to the Class Plaintiffs in the amount of \$38,491,392; and
- e. “Class Counsel may reinstitute any claim or action dismissed without prejudice...within the time limit imposed by law or court rule”.

225. As of August 24, 2009, Defendant Arthur Field did resign as Manager of CIF.

226. As of August 24, 2009, Mr. Saad began serving as Receiver for CIF.

G. Criminal Indictments of Defendants Field and Pfeiffer

227. On or about June 13, 2012, the South Carolina Attorney General formally indicted Defendants Arthur Field and attorney Scott Pfeiffer on multiple counts of conspiracy, securities fraud and forgery related to their roles in CIF: State of South Carolina v. Arthur Field and Scott Pfeiffer, C.A. No. 2112-GS-4708.

H. Receiver’s Discovery of Defendants’ Culpable Conduct

228. As of August 24, 2009, the Receiver began his services for CIF.

229. On August 24, 2009, the Receiver met with Defendant Arthur Field and Class Counsel Stanley Case to discuss the immediate tasks at hand: transitioning CIF management to the Receiver.

230. On or about August 27, 2009, Defendant Arthur Field delivered to the Receiver limited quantities of banking records, recent mail items, and a small quantity of other records.

Defendant Arthur Field later delivered records to the Receiver in stages. The Receiver received some Cosimo records on or about September 14, 2009. Thereafter, the Receiver received the bulk of the remaining Cosimo records in December 2009 and he received limited quantities of CIF records from time to time. While Defendant Arthur Field did give the Receiver additional records from time to time, he has not yet delivered to the Receiver all of CIF's records.⁷

231. Over the course of September 2009, the Receiver began executing plans to identify, marshal and liquidate CIF's assets. On parallel course, he also focused on significant pending legal matters, including the LRI bankruptcy, several federal and state lawsuits that were ongoing, and several foreclosure lawsuits that were in process. The Receiver also visited most of the identified properties located in South Carolina and New Jersey.

232. Over the course of subsequent months, from October 2009 through January 2010, the Receiver received more records from time to time, obtained formal and informal appraisals and evaluations on properties, began efforts to collect moneys on loan in default, began efforts to liquidate properties, and sold several parcels. During this time period, the Receiver did not discover, identify, or become aware of the culpable nature of any specific acts as related to the allegations of this COMPLAINT.

233. On December 23, 2009, the Receiver received a notice that LOP Capital, LLC was filing a lawsuit against Cosimo in connection with a parcel of land Cosimo obtained from a borrower via a deed in lieu of foreclosure in satisfaction of debt owed to Cosimo. On January 21, 2010, the Receiver accepted service of that lawsuit. In the weeks to follow, the Receiver began

⁷The Receiver requested on various occasions Defendant Arthur Field deliver all CIF records. Receiver believes that even as of the date of the filing of this COMPLAINT, Defendant Arthur Field still retains substantial quantities of CIF records. In or about January 2012, the Receiver filed a motion in the South Carolina Circuit Court that oversees the receivership, seeking the Court's intervention in recovery of such records. That motion is still pending.

investigating the facts surrounding the lawsuit, but did not discover the egregious and culpable acts until months later, in or about May 2010.

234. On April 21, 2010, the Receiver and his legal counsel met with Defendant Eugene Hopper and attorney Scott Pfeiffer. The meeting was held at the offices of Pfeiffer, Gantt, and Gleaton, P.A. The Receiver called the meeting to discuss the delinquency status of the numerous loans Cosimo made to four borrowers: SD Trust; Big Deal; Rolling Hills; and WE3. Each of the four borrowers were owned and controlled by some combination of Defendants Eugene Hopper, Charles Pinion, Josh Ward, and attorney David Gantt, and Mark Davidson. Defendants Eugene Hopper was deemed to be the leader of the pack. Prior to the meeting, in February 2010, the Receiver had delivered to each of the aforementioned borrowers and defendants (as guarantors) a formal written notice of default and demand of full payment. This meeting was also held to discuss the certain foreclosure actions on properties owned by some of the borrowers that were schedule to occur in May 2010.

235. This meeting turned out to be starting point for the Receiver being alerted to and becoming aware of culpable acts committed by any of the defendants.

236. In this meeting, Defendants Eugene Hopper admitted to the Receiver knowledge that:

- a. Cosimo loaned Big Deal \$500,000;
- b. The purpose of the loan was to purchase 14 boat docks;
- c. The boat docks were install at the Sweetwater project as planned;
- d. UCC liens on these docks were filed, thereby securing Cosimo's loan;
- e. He made the decision to sell the docks in order to raise money to pay bills;
- f. He knew it was illegal to sell the docks without satisfying the liens;
- g. He did not get Cosimo to approval the sale of the docks;

- h. He did not get Cosimo to release the liens;
- i. Cosimo did not receive any benefit from the sales.

237. During the meeting, the Receiver informed Defendant Eugene Hopper that, because the aforementioned loans were in default, Cosimo was exercising its rights under the respective membership interest and stock pledge agreements to take control and ownership of SD Trust, Big Deal, Rolling Hills, and WE3. The Receiver also notified Defendant Eugene Hopper that all of the records of SD Trust, Big Deal, Rolling Hills, and WE3 should be protected and not destroyed or altered, and should be relinquished as soon as possible. Defendant Eugene Hopper agreed to meet the Receiver the following week at the borrowers' office in Seneca whereby Defendant Eugene Hopper would relinquish such records.

238. Delivery of the records was delayed because Defendant Eugene Hopper, Charles Pinion, Gene Ahlers, and the borrowers were physically evicted from their offices in Seneca on or about April 27, 2010, which forced them to scurry to find an alternate location for relocation of their offices and records.

239. On May 3, 2010, the Receiver met Defendant Eugene Hopper, Defendant Gene Ahlers, and Paul Chalmers at a storage warehouse in Walhalla, South Carolina. Defendants Eugene Hopper and Gene Ahlers gave limited assistance to the Receiver. The Receiver identified and seized substantially all records that could be identified as records of SD Trust, Big Deal, Rolling Hills, and WE3.

240. Additionally on May 3, 2010, the Receiver did cause SD Trust to file for Chapter 11 protection in the US Bankruptcy Court.

241. Over the course of the next many months, the Receiver and the attorney engaged to handle the bankruptcy conducted very detailed and methodically investigations of the activities of SD Trust, Big Deal, Rolling Hills, and WE3. Through this process, the Receiver and

counsel began to piece together the elaborate labyrinth of individuals, entities, scams, and schemes which prevailed unchecked within this group. The investigations quickly pointed up the chain to Cosimo and CIF, and to all of the defendants associated with Cosimo and CIF, because the Hopper Syndicate and all of its scams and schemes could not have existed, much less proliferated, without those incestuous relationships between the lender, the borrowers, and the attorneys. It thus came to light that they all participated.

242. Also during these months, other lawsuits and legal issues arose - matters connected to LRI, Campitelli, Trazom, Tcholak, New Jersey real estate, and others. As the Receiver investigated the underlying causes, he began to piece together the elaborate labyrinth of individuals, entities, scams, and schemes in these areas as well. The culture was pervasive and went unchecked until the money ran out in 2007.

FOR A FIRST CAUSE OF ACTION

As to Defendants Arthur Field; Kathryn Taillon; Kirsten M. White; Allyson Field; Anthony Edgar; Ashley Morey; Bart Kelley; Brad Kelley; Charles Pinion; Elizabeth Hopper; Eugene Hopper; Paul A. Chalmers; Michael Moore; Aladdin's Grill and Café, LLC; Blenheim Properties, LLC; Bolingbroke United (England) Ltd; Bountiful Bingo, LLC; Bradford Financial Group, LLC; Capital Intrastate Funding, LLC; Dunross Struan, LLC; Empire Document Services; He Will Provide, LLC; Krondor Trading Co., LLC; Lamplighter Mortgage Company, LLC; Lion Financial, LLC; Mithril Funding, LLC; Monmouth Financial Group, Ltd.; Moore & Associates, LLC; Pelican Way Financial, LLC; RAAF Enterprises, LLC; Tcholak Properties, LLC; The Chrysler Drive Trust; The Cotton Mill Trust; The Old Arcadia Road Trust; The Pickering Road Trust; The Upper Nehalem Trust; York Mortgage Funding, LLC; John Does 1-35 (names being fictitious); Jane Does 1-35 (names being fictitious); and ABC Companies 1-35 (names being fictitious)

(Unjust Enrichment)

243. Plaintiff realleges all above paragraphs, to the extent not inconsistent herewith, as if each is set forth *in toto* hereunder.

244. Plaintiff, directly and by and through its assignors and predecessors' in interests (as set forth in Paragraph 2, *supra*), conferred a non-gratuitous benefit upon the above-identified defendants in providing money for these defendants' use of the same.

245. These defendants used and/or converted the same to revenue for their own use and enjoyment.

246. It would be unjust, unfair and inequitable for Defendants to retain these benefits without having to pay for the same.

247. As a direct and proximate result, Plaintiff has been damaged and is entitled to the amount owed, plus pre-judgment interest accrued on the same, in an amount to be determined by the Court.

FOR A SECOND CAUSE OF ACTION

As to Defendants Arthur Field; Kathryn Taillon; Kirsten M. White; Allyson Field; Anthony Edgar; Ashley Morey; Bart Kelley; Brad Kelley; Charles Pinion; Elizabeth Hopper; Eugene Hopper; Paul A. Chalmers; Michael Moore; Aladdin's Grill and Café, LLC; Blenheim Properties, LLC; Bolingbroke United (England) Ltd; Bountiful Bingo, LLC; Bradford Financial Group, LLC; Capital Intrastate Funding, LLC; Dunross Struan, LLC; Empire Document Services; He Will Provide, LLC; Krondor Trading Co., LLC; Lamplighter Mortgage Company, LLC; Lion Financial, LLC; Mithril Funding, LLC; Monmouth Financial Group, Ltd.; Moore & Associates, LLC; Pelican Way Financial, LLC; RAAF Enterprises, LLC; Tcholak Properties, LLC; The Chrysler Drive Trust; The Cotton Mill Trust; The Old Arcadia Road Trust; The Pickering Road Trust; The Upper Nehalem Trust; York Mortgage Funding, LLC; John Does 1-35 (names being fictitious); Jane Does 1-35 (names being fictitious); and ABC Companies 1-35 (names being fictitious)

(Conversion)

248. Plaintiff realleges all above paragraphs, to the extent not inconsistent herewith, as if each is set forth *in toto* hereunder.

249. Plaintiff had a right to possess monies and/or properties owned.

250. Without authority from the Plaintiff, the above-identified defendants took possession of Plaintiff's monies and/or exercised a right of ownership over the same, all to the exclusion of the rights of the Plaintiff.

251. Such actions constitute conversion of Plaintiff's money and/or property.

252. As a direct and proximate result, Plaintiff was damaged, thereby entitling Plaintiff to actual and punitive damages hereunder in an amount to be determined by the Court and the jury duly empaneled and empowered to hear such cause.

FOR A THIRD CAUSE OF ACTION

As to Defendants Arthur Field; Bart Kelley; Brad Kelley; Kathryn Taillon; Aladdin's Grill and Café, LLC; Blenheim Properties, LLC; Bolingbroke United (England) Ltd; Bountiful Bingo, LLC; Bradford Financial Group, LLC; Capital Intrastate Funding, LLC; Dunross Struan, LLC; Krondor Trading Co., LLC; Lion Financial, LLC; Mithril Funding, LLC; Monmouth Financial Group, Ltd.; Pelican Way Financial, LLC; and York Mortgage Funding, LLC

(Breach of Fiduciary Duty)

253. Plaintiff realleges all above paragraphs, to the extent not inconsistent herewith, as if each is set forth *in toto* hereunder.

254. In their capacities as agents, agents, employees, owners, members, shareholders, managers, officers, or directors of the plaintiff, its assignors and/or predecessor's in interests (as set forth in Paragraph 2, *supra*), the above-identified defendants (both directly and by and through related companies and/or corporations in which they were or may have been serving in a dual capacity), owed a fiduciary duty to Plaintiff to insure they acted in its best interest at all times regarding the transactions and occurrences set forth herein.

255. Defendants materially and substantially breached their fiduciary duty in one or more of the following particulars:

- a. failing to exercise and/or to discharge their duties owed to the plaintiff in good faith;
- b. failing to properly document transactions;
- c. failing to properly investigate the ability to pay of a loan applicants;
- d. failing to perfect the plaintiff's interests;
- e. failing to monitor the performance of any given contract;
- f. failing to account for proceeds received;
- g. loaning monies to persons or parties where there was a conflict of interest;
- h. loaning monies to persons or parties where were in default of current loans with the plaintiff;
- i. failing to notify Plaintiff that parties were in default of their loans;
- j. failing to act once a party had defaulted;
- k. converting Plaintiff's money for their own use and benefit; and
- l. failing to exercise ordinary care and diligence commensurate with the applicable standard of care; and
- m. failing to exercise ordinary care and diligence commensurate with the applicable standard of care.

256. As a direct and proximate result, Plaintiff has been damaged as set forth fully hereunder, thereby entitling Plaintiff to actual and punitive damages in an amount to be determined by the Court and the jury duly empaneled and empowered to hear such cause.

FOR A FOURTH CAUSE OF ACTION

As to Defendants Arthur Field; Kathryn Taillon; Kirsten M. White; Allyson Field; Anthony Edgar; Ashley Morey; Bart Kelley; Brad Kelley; Charles Pinion; Elizabeth Hopper; Eugene Hopper; Paul A. Chalmers; Michael Moore; Aladdin's Grill and Café, LLC; Blenheim Properties, LLC; Bolingbroke United (England) Ltd; Bountiful Bingo, LLC; Bradford Financial Group, LLC; Capital Intrastate Funding, LLC; Dunross Struan, LLC; Empire Document Services; He Will Provide, LLC; Krondor Trading Co., LLC; Lamplighter Mortgage Company, LLC; Lion Financial, LLC; Mithril Funding, LLC; Monmouth Financial Group, Ltd.; Moore & Associates, LLC; Pelican Way Financial, LLC; RAAF Enterprises, LLC; Tcholak Properties, LLC; The Chrysler Drive Trust; The Cotton Mill Trust; The Old Arcadia Road Trust; The Pickering Road Trust; The Upper Nehalem Trust; York Mortgage Funding, LLC; John Does 1-35 (names being fictitious); Jane Does 1-35 (names being fictitious); and ABC Companies 1-35 (names being fictitious)

(Aiding and Abetting Breach of Fiduciary Duty)

257. To the extent not inconsistent herewith, all previous allegations are incorporated herein as if set forth *in toto* hereunder.

258. The above-identified defendants, individually, and by and through the respective entities for which these defendants were agents, employees, owners, members, shareholders, managers, officers, or directors, knew or reasonably should have known that a fiduciary relationship existed between the plaintiff and those defendants identified in Count Nine (*supra*).

259. These defendants knowingly participated in the breach of fiduciary duty by the defendants identified in Count Three (*supra*) to the plaintiff.

260. As a direct and proximate result, Plaintiff has been damaged as set forth fully hereunder, thereby entitling Plaintiff to actual and punitive damages in an amount to be determined by the Court and the jury duly empanelled and empowered to hear such cause.

FOR A FIFTH CAUSE OF ACTION

As to Defendants Arthur Field; Kathryn Taillon; Kirsten M. White; Allyson Field; Anthony Edgar; Ashley Morey; Bart Kelley; Brad Kelley; Charles Pinion; Elizabeth Hopper; Eugene Hopper; Paul A. Chalmers; Michael Moore; Aladdin's Grill and Café, LLC; Blenheim Properties, LLC; Bolingbroke United (England) Ltd; Bountiful Bingo, LLC; Bradford Financial Group, LLC; Capital Intrastate Funding, LLC; Dunross Struan, LLC; Empire Document Services; He Will Provide, LLC; Krondor Trading Co., LLC; Lamplighter Mortgage Company, LLC; Lion Financial, LLC; Mithril Funding, LLC; Monmouth Financial Group, Ltd.; Moore & Associates, LLC; Pelican Way Financial, LLC; RAAF Enterprises, LLC; Tcholak Properties, LLC; The Chrysler Drive Trust; The Cotton Mill Trust; The Old Arcadia Road Trust; The Pickering Road Trust; The Upper Nehalem Trust; York Mortgage Funding, LLC; John Does 1-35 (names being fictitious); Jane Does 1-35 (names being fictitious); and ABC Companies 1-35 (names being fictitious)

(Breach of the Implied Covenant of Good Faith and Fair Dealing)

261. Plaintiff realleges all above paragraphs, to the extent not inconsistent herewith, as if each is set forth *in toto* hereunder.

262. There is an implied covenant of Good Faith and Fair Dealing in all contracts entered into or to be performed in the State of South Carolina.

263. Defendants' actions as alleged herein were unreasonable, willful, reckless, and unjustified, and amount to a breach of the implied In-Law duty of Good Faith and Fair Dealing inherent in all contracts.

264. As a proximate result, Plaintiff has suffered actual and consequential damages.

265. As a direct and proximate result, Plaintiff has been damaged as set forth fully hereunder, thereby entitling Plaintiff to actual and punitive damages in an amount to be determined by the Court and the jury duly empaneled and empowered to hear such cause.

FOR A SIXTH CAUSE OF ACTION

As to Defendants Arthur Field; Kathryn Taillon; Kirsten M. White; Allyson Field; Anthony Edgar; Ashley Morey; Bart Kelley; Brad Kelley; Charles Pinion; Elizabeth Hopper; Eugene Hopper; Paul A. Chalmers; Michael Moore; Aladdin's Grill and Café, LLC; Blenheim Properties, LLC; Bolingbroke United (England) Ltd; Bountiful Bingo, LLC; Bradford Financial Group, LLC; Capital Intrastate Funding, LLC; Dunross Struan, LLC; Empire Document Services; He Will Provide, LLC; Krondor Trading Co., LLC; Lamplighter Mortgage Company, LLC; Lion Financial, LLC; Mithril Funding, LLC; Monmouth Financial Group, Ltd.; Moore & Associates, LLC; Pelican Way Financial, LLC; RAAF Enterprises, LLC; Tcholak Properties, LLC; The Chrysler Drive Trust; The Cotton Mill Trust; The Old Arcadia Road Trust; The Pickering Road Trust; The Upper Nehalem Trust; York Mortgage Funding, LLC; John Does 1-35 (names being fictitious); Jane Does 1-35 (names being fictitious); and ABC Companies 1-35 (names being fictitious)

(Breach of Contract)

266. Plaintiff realleges all above paragraphs, to the extent not inconsistent herewith, as if each is set forth *in toto* hereunder.

267. Plaintiff, directly and by and through its assignors and predecessors' in interests (as set forth in Paragraph 2, *supra*), contracted with the above-identified defendants, individually, and by and through the respective entities for which these defendants were agents, employees,

owners, members, shareholders, managers, officers, or directors, to pay money monies loaned from, or services to be provided for the benefit of, the plaintiff.

268. Defendants materially and substantially breached their contract(s) by refusing to pay monies loaned and/or provided the services contracted to perform.

269. As a direct and proximate result, Plaintiff has been damaged as set forth fully hereunder, thereby entitling Plaintiff to actual damages in an amount to be determined by the Court and the jury duly empaneled and empowered to hear such cause.

FOR A SEVENTH CAUSE OF ACTION

As to Defendants Arthur Field; Kathryn Taillon; Kirsten M. White; Allyson Field; Anthony Edgar; Ashley Morey; Bart Kelley; Brad Kelley; Charles Pinion; Elizabeth Hopper; Eugene Hopper; Paul A. Chalmers; Michael Moore; Aladdin's Grill and Café, LLC; Blenheim Properties, LLC; Bolingbroke United (England) Ltd; Bountiful Bingo, LLC; Bradford Financial Group, LLC; Capital Intrastate Funding, LLC; Dunross Struan, LLC; Empire Document Services; He Will Provide, LLC; Krondor Trading Co., LLC; Lamplighter Mortgage Company, LLC; Lion Financial, LLC; Mithril Funding, LLC; Monmouth Financial Group, Ltd.; Moore & Associates, LLC; Pelican Way Financial, LLC; RAAF Enterprises, LLC; Tcholak Properties, LLC; The Chrysler Drive Trust; The Cotton Mill Trust; The Old Arcadia Road Trust; The Pickering Road Trust; The Upper Nehalem Trust; York Mortgage Funding, LLC; John Does 1-35 (names being fictitious); Jane Does 1-35 (names being fictitious); and ABC Companies 1-35 (names being fictitious)

(Breach of Contract Accompanied by a Fraudulent Act)

270. Plaintiff realleges all above paragraphs, to the extent not inconsistent herewith, as if each is set forth *in toto* hereunder.

271. The above-identified defendants, individually, and by and through the respective entities for which these defendants were agents, employees, owners, members, shareholders, managers, officers, or directors, breached their contracts to pay money monies loaned from, or services to be provided for the benefit of, the plaintiff.

272. Defendants had a fraudulent intent relating to the breaching of the contract and not merely to its making.

273. Defendants' breach was accompanied by a fraudulent act, which can be characterized by dishonesty in fact, unfair dealing and/or the unlawful appropriation of Plaintiff's property and/or money by design.

274. As a direct and proximate result, Plaintiff has been damaged as set forth fully hereunder, thereby entitling Plaintiff to actual and punitive damages in an amount to be determined by the Court and the jury duly empaneled and empowered to hear such cause.

FOR AN EIGHTH CAUSE OF ACTION

As to Defendants Arthur Field; Bart Kelley; Brad Kelley; Kathryn Taillon; Aladdin's Grill and Café, LLC; Blenheim Properties, LLC; Bolingbroke United (England) Ltd; Bountiful Bingo, LLC; Bradford Financial Group, LLC; Capital Intrastate Funding, LLC; Dunross Struan, LLC; Krondor Trading Co., LLC; Lion Financial, LLC; Mithril Funding, LLC; Monmouth Financial Group, Ltd.; Pelican Way Financial, LLC; and York Mortgage Funding, LLC

(Negligence)

275. Plaintiff realleges all above paragraphs, to the extent not inconsistent herewith, as if each is set forth *in toto* hereunder.

276. In their capacities as agents, agents, employees, owners, members, shareholders, managers, officers, or directors of the plaintiff, its assignors and/or predecessor's in interests (as set forth in Paragraph 2, *supra*), the above-identified defendants (both directly and by and through related companies and/or corporations in which they were or may have been serving in a dual capacity), owed a duty of care to the Plaintiff to exercise their duties with reasonable care.

277. These defendants negligently, grossly negligently, willfully, wantonly and/or recklessly breached the standard of care in one or more of the following particulars:

- a. failing to exercise and/or to discharge their duties owed to the plaintiff in good faith;
- b. failing to properly document transactions;
- c. failing to properly investigate the ability to pay of a loan applicants;
- d. failing to perfect the plaintiff's interests;
- e. failing to monitor the performance of any given contract;
- f. failing to account for proceeds received;
- g. loaning monies to persons or parties where there was a conflict of interest;
- h. loaning monies to persons or parties where were in default of current loans with the plaintiff;
- i. failing to notify Plaintiff that parties were in default of their loans;
- j. failing to act once a party had defaulted;
- k. converting Plaintiff's money for their own use and benefit; and
- l. failing to exercise ordinary care and diligence commensurate with the applicable standard of care.

278. As a direct and proximate result, Plaintiff has been damaged as set forth fully hereunder, thereby entitling Plaintiff to actual and punitive damages in an amount to be determined by the Court and the jury duly empaneled and empowered to hear such cause.

FOR A NINTH CAUSE OF ACTION

As to Defendants Arthur Field; Kathryn Taillon; Kirsten M. White; Allyson Field; Anthony Edgar; Ashley Morey; Bart Kelley; Brad Kelley; Charles Pinion; Elizabeth Hopper; Eugene Hopper; Paul A. Chalmers; Michael Moore; Aladdin's Grill and Café, LLC; Blenheim Properties, LLC; Bolingbroke United (England) Ltd; Bountiful Bingo, LLC; Bradford Financial Group, LLC; Capital Intrastate Funding, LLC; Dunross Struan, LLC; Empire Document Services; He Will Provide, LLC; Krondor Trading Co., LLC; Lamplighter Mortgage Company, LLC; Lion Financial, LLC; Mithril Funding, LLC; Monmouth Financial Group, Ltd.; Moore & Associates, LLC; Pelican Way Financial, LLC; RAAF Enterprises, LLC; Tcholak Properties, LLC; The Chrysler Drive Trust; The Cotton Mill Trust; The Old Arcadia Road Trust; The Pickering Road Trust; The Upper Nehalem Trust; York Mortgage Funding, LLC; John Does 1-35 (names being fictitious); Jane Does 1-35 (names being fictitious); and ABC Companies 1-35 (names being fictitious)

(Civil Conspiracy)

279. To the extent not inconsistent herewith, all previous allegations are incorporated herein as if set forth *in toto* hereunder.

280. The above-identified defendants, individually, and by and through the respective entities for which these defendants were agents, employees, owners, members, shareholders, managers, officers, or directors, combined together for the purpose of injuring the plaintiff.

281. As a direct and proximate result, Plaintiff was specially injured thereby.

282. As a direct and proximate result, Plaintiff has been damaged as set forth fully hereunder, thereby entitling Plaintiff to actual and punitive damages in an amount to be determined by the Court and the jury duly empanelled and empowered to hear such cause.

FOR A TENTH CAUSE OF ACTION

As to Defendants Arthur Field; Kathryn Taillon; Aladdin's Grill and Café, LLC; Blenheim Properties, LLC; Bolingbroke United (England) Ltd; Bountiful Bingo, LLC; Bradford Financial Group, LLC; Capital Intrastate Funding, LLC; Dunross Struan, LLC; Krondor Trading Co., LLC; Lion Financial, LLC; Mithril Funding, LLC; Monmouth Financial Group, Ltd.; Pelican Way Financial, LLC; and York Mortgage Funding, LLC

(Usurpation of Corporate Opportunity)

283. To the extent not inconsistent herewith, all previous allegations are incorporated herein as if set forth *in toto* hereunder.

284. The opportunity to Plaintiff, directly and by and through its assignors and predecessors' in interests (as set forth in Paragraph 2, *supra*), existed while the above-identified defendants owed a fiduciary duty to the plaintiff.

285. The above-identified defendants exploited the Plaintiff's business opportunity for their own personal benefit to the resulting detriment of the plaintiff.

286. As such, these defendants violated their duties of Good Faith, Fairness and Loyalty to the plaintiff.

287. As a direct and proximate result, Plaintiff has been damaged as set forth fully hereunder, thereby entitling Plaintiff to actual and punitive damages in an amount to be determined by the Court and the jury duly empanelled and empowered to hear such cause.

FOR A TENTH CAUSE OF ACTION

As to Defendants Arthur Field; Kathryn Taillon; Kirsten M. White; Allyson Field; Anthony Edgar; Ashley Morey; Bart Kelley; Brad Kelley; Charles Pinion; Elizabeth Hopper; Eugene Hopper; Paul A. Chalmers; Michael Moore; Aladdin's Grill and Café, LLC; Blenheim Properties, LLC; Bolingbroke United (England) Ltd; Bountiful Bingo, LLC; Bradford Financial Group, LLC; Capital Intrastate Funding, LLC; Dunross Struan, LLC; Empire Document Services; He Will Provide, LLC; Krondor Trading Co., LLC; Lamplighter Mortgage Company, LLC; Lion Financial, LLC; Mithril Funding, LLC; Monmouth Financial Group, Ltd.; Moore & Associates, LLC; Pelican Way Financial, LLC; RAAF Enterprises, LLC; Tcholak Properties, LLC; The Chrysler Drive Trust; The Cotton Mill Trust; The Old Arcadia Road Trust; The Pickering Road Trust; The Upper Nehalem Trust; York Mortgage Funding, LLC; John Does 1-35 (names being fictitious); Jane Does 1-35 (names being fictitious); and ABC Companies 1-35 (names being fictitious)

(Unfair Trade Practice)

288. Plaintiff realleges all above paragraphs, to the extent not inconsistent herewith, as if each is set forth *in toto* hereunder.

289. The actions and/or omissions by Defendants constitute unfair and/or deceptive trade practices in the conduct of trade/commerce, which are unlawful in the State of South Carolina, as set forth by the Code of Law of South Carolina (1976), § 39-5-20, et seq..

290. The actions of Defendants affect the public interest because they are capable of repetition in the deceiving and defrauding of members of the public who might similarly engage the services of the defendants.

291. The actions of the Defendant are willful, within the definition and meaning of § 39-5-140 (S.C. Code, 1976), entitling Plaintiff to treble his actual damages hereunder, plus

attorney's fees, in an amount to be determined by the Court and the jury duly empaneled and empowered to hear such cause.

FOR AN ELEVENTH CAUSE OF ACTION

**As to Defendants Arthur Field, Kathryn Taillon, Allyson Field,
Pelican Financial Way, LLC and Kirsten M. White
(Fraudulent Conveyances)**

292. Plaintiff realleges all above paragraphs, to the extent not inconsistent herewith, as if each is set forth *in toto* hereunder.

293. The above-identified have transferred, sold, conveyed and/or received the assets of the plaintiff (both directly and derivatively) for nominal or no consideration in an attempt to thwart creditors, such as the plaintiff, from recovering the same. To wit:

- a. On or about May 7, 2009, when Defendant Taillon knew discovery of multiple claims were imminent, Defendant Taillon (wife of Defendant Arthur Field) conveyed the property at 310 Thornblade Boulevard, Greer, SC 2950 to Defendant Allyson Field, the daughter of Defendant Arthur Field, for nominal or no consideration.
- b. On or about May 10, 2010, Defendant Arthur Field, by and through a purported trust, issued a mortgage to Defendant Kirsten White, who upon information and believe is the paramour of Defendant Arthur Field and/or Defendant Kathryn Taillon, for property at Lot 3 Cottage at Riverwood Farm in Greer, South Carolina. Upon information and belief, said mortgage utilized funds and proceeds Defendant Field had improperly absconded from the plaintiff. Upon information and belief, Defendant White received nominal or no consideration for the mortgage.

294. Said transactions were made with the intent to defraud creditors, like the plaintiff.

295. Section 27-23-10 of the South Carolina Code of Laws, as amended, prohibits such conveyances as to be clearly and utterly void.

296. Plaintiff is entitled to have these conveyances set aside and to have the property sold at public auction with the proceeds applied to costs, attorney's fees, and the Plaintiff's judgment according to law.

FOR A TWELFTH CAUSE OF ACTION
As to Defendants Arthur Field, Kathryn Taillon, Allyson Field,
Pelican Financial Way, LLC and Kirsten M. White

(Constructive Trusts)

297. Plaintiff realleges all above paragraphs, to the extent not inconsistent herewith, as if each is set forth *in toto* hereunder.

298. The above-identified defendants have received money and/or property (both real and personal) which does not equitably belong to them and which they cannot in good conscience retain and/or withhold from the plaintiff, which is beneficially entitled to the same, because the monies and/or properties were acquired through fraud and/or a breach of trust to the plaintiff and/or in violation of fiduciary duties owed to the plaintiff. To wit:

- a. Upon information and belief, the property at 310 Thornblade Boulevard, Greer, South Carolina, currently in the name of Defendant Allison Field, was acquired with misappropriated and/or fraudulently obtained funds and/or proceeds of the plaintiff. Wherefore, title to 310 Thornblade Boulevard, Greer, South Carolina should be transferred to the plaintiff and/or ordered to be held in a constructive trust for the benefit of the plaintiff, until such time as it can be sold.

- b. Upon information and belief, the property at 5489 Atlantic NW, St. Augustine, Florida, currently in the name of Defendants Arthur Field and Kathryn Taillon, was acquired with misappropriated and/or fraudulently obtained funds and/or proceeds of the plaintiff. Wherefore, title to 5489 Atlantic NW, St. Augustine, Florida should be transferred to the plaintiff and/or ordered to be held in a constructive trust for the benefit of the plaintiff, until such time as it can be sold.
- c. Upon information and belief, the property at Lot 3 Cottage at Riverwood Farm in Greer, South Carolina, currently in the name of Defendants Kirsten White, was acquired with misappropriated and/or fraudulently obtained funds and/or proceeds of the plaintiff. Wherefore, title to Lot 3 Cottage at Riverwood Farm in Greer, South Carolina should be transferred to the plaintiff and/or ordered to be held in a constructive trust for the benefit of the plaintiff, until such time as it can be sold.

PRAYER FOR RELIEF

WHEREFORE, the plaintiff demands that judgment be entered against each of the defendants, jointly and severally, in favor of the plaintiff for the following:

1. For compensatory damages for damage and injury to business or property in an amount as yet undetermined, including, but not limited to, amounts due under all contracts and/or agreements, with prejudgment interest that has accrued thereon, amounts received by these defendants with prejudgment interest that has accrued thereon, loss of income, loss of use, all of which trebled where permitted by the applicable statute;

2. For recovery of all monies and property obtained by defendants as a consequence of the bad acts set forth herein, including but not limited to, rescission and return of all fraudulently transferred property, both real and personal;

3. For the cancellation of any purported obligation that was fraudulently entered into by the defendants with the intent of defrauding and/or harming the plaintiff.

4. For punitive damages,

5. For reasonable attorney fees, and

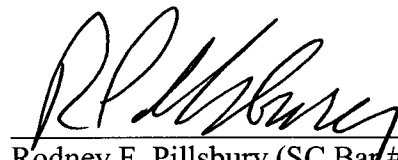
6. For any such further relief the Court determines to be just and proper under the circumstances.

JURY DEMAND

Plaintiff hereby demands a trial by jury as to all issues so triable.

Respectfully submitted,

Pillsbury & Read, P.A.

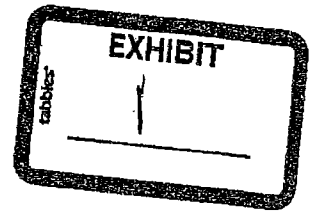


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ATTORNEYS FOR PLAINTIFF

March 22, 2015



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Capital Investment Funding, LLC,	)	Civil Action No.: 6:12-3401-BHH
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Arthur Field, et al.,	)	
	)	
Defendant/Respondent.	)	
_____	)	
Capital Investment Funding, LLC,	)	Civil Action No.: 6:13-2326 -BHH
	)	
Plaintiff,	)	
	)	
v.	)	<u>OPINION AND ORDER</u>
	)	
Arthur Field, et al.,	)	
	)	
Defendant/Respondent.	)	
_____	)	

This matter is before the Court on the Report and Recommendation (2012 Case ECF No. 587; 2013 Case ECF No. 122) of United States Magistrate Judge Jacquelyn D. Austin recommending that the supplemental motions to dismiss in the 2012 Case¹ (2012 Case ECF Nos. 507, 510, 534, 535, 536, 543, 546, 547, 548) be granted, that the motion for sanctions in the 2012 Case (2012 Case ECF No. 573) be granted in part and denied in part, that the motions to dismiss in the 2013 Case (2013 Case ECF Nos. 24, 39, 42, 46, 47, 81, 93, 94, 113) be granted, and that both cases be dismissed. After carefully reviewing the Report and Recommendation, plaintiff's objections (2012 Case ECF Nos. 605; 2013 Case ECF No. 137), defendants objections (2012 Case ECF Nos. 602, 603) and

¹ Unless otherwise denoted, all "ECF No." citations, herein, will be to the 2012 Case.

the defendants replies (2012 Case ECF Nos. 607, 608, 609, 610, 611, 612; 2013 Case ECF Nos. 139, 141, 142, 142, 144) the Court adopts the Report and Recommendation in full.

BACKGROUND

The Report and Recommendations set forth in detail the relevant facts and standards of law on this matter, and the Court incorporates such with limited recitation. The plaintiff, Capital Investment Funding, LLC, ("the plaintiff"), an ongoing corporate entity, filed the 2012 Case on November 29, 2012, and the 2013 Case on August 26, 2013.² In the 2012 Case, the plaintiff alleges twenty-one causes of action (2012 Case, ECF No. 11); in the 2013 Case, the plaintiff alleges fourteen causes of action (2013 Case, ECF No. 1). The causes of action include four civil Racketeer Influenced and Corrupt Organizations Act ("RICO") claims and numerous state law claims, and the plaintiff brings these actions to recover those moneys loaned by South Carolina noteholders who collectively invested \$40 million, without knowledge of the fraudulent schemes created by and perpetuated by the defendants.

STANDARD OF REVIEW

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976).

² The plaintiff admits that the 2013 Case arises from the "same transactions and occurrences" as the 2012 Case and that it filed the 2013 Case to include defendants who were not served at all or claim not to have been served within the appropriate statutory time period in the 2012 Case (2013 Case, ECF No. 1 at 2). In the 2013 Case, the plaintiff attempts to incorporate by reference the entirety of the Second Amended Complaint filed in the 2012 Case. *Id.*

Parties are allowed to make a written objection to a Magistrate Judge's report within fourteen days after being served a copy of the Report. 28 U.S.C. § 636(b)(1). The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. See 28 U.S.C. § 636(b)(1).

DISCUSSION

The plaintiff continues to argue that the Private Securities Litigation Reform Act ("PSLRA") is inapplicable and, therefore, not preclusive of its Racketeer Influenced and Corrupt Organizations Act ("RICO") claims. Specifically, the plaintiff argues that it is neither an investor nor noteholder claiming any fraud in connection with the sale of securities. Rather, it is exclusively seeking relief for fraudulent real estate, loan, and money transfer transactions of the defendants. (Second Amend. Compl. ¶¶ 51-57, 65-78, 127-451.) Accordingly, the plaintiff argues, pursuant to the Sixth Circuit decision in *Ouwinga v. Benistar*, 419 Plan Services, Inc., 694 F.3d 783 (6th Cir. 2012), that it is not the kind of plaintiff precluded by the PSLRA. The magistrate judge properly rejected the plaintiff's view in this respect. The Court would say a little more, in affirmation.

The PSLRA precludes RICO Act claims that are based on alleged securities fraud. Section 107 of the PSLRA – which was enacted as an amendment to the RICO statute and accordingly is often referred to as the "RICO Amendment" – reads in relevant part:

Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefore in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee, except that no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a

violation of section 1962

18 U.S.C § 1964(c); *see also* H.R. Conf. Rep. No. 104-369 at p. 47 (1995).

The magistrate judge's analysis is already well said and, in the Court's estimation, sufficiently answers the additionally specific objection of the plaintiff, here. The magistrate judge properly relied on the decision in *Bald Eagle Area Sch. Dist. v. Keystone Fin., Inc.*, 189 F.3d 321, to resolve it. There, the Third Circuit Court of Appeals considered a plaintiff's allegation that the defendant bank had assisted in "a massive Ponzi scheme . . . perpetrated through the purchase and sale of [securities] in violation of securities laws including § 10(b) of the Securities Exchange Act of 1934," and determined that the alleged scheme was "at the heart of th[e plaintiff's] RICO action." *Id.* at 328. The circuit court concluded that "[a] Ponzi scheme is ongoing, and it continues only so long as new investors can be lured into it so that the early investors can be paid a return on their 'investment.' Consequently, conduct undertaken to keep a securities fraud Ponzi scheme alive is conduct undertaken in connection with the purchase and sale of securities." *Id.* at 330.

As the magistrate judge, concluded, here, "[l]t appears the sale of securities could not have continued without additional monies raised from the sale of the unsecured promissory notes" from South Carolina investors, which were then be loaned to Defendants. (ECF No. 587 at 14.) Accordingly, the plaintiff's allegations of mail, bank and wire fraud claims, predicate acts of the defendants, fail to distinguish these transactions sufficiently from the conduct in connection with the sale of securities the plaintiff issued. They are all a part of an overall securities fraud scheme.

But, the plaintiff insists that the identity of the charging party matters. That because

it is no kind of investor in fraudulent securities, it never could have brought a PSLRA case instead. In fact, the plaintiff emphasizes it is a *beneficiary* of the fraud rather than its victim.

The plaintiff's resistance is not without a sense of logic, and the Fourth Circuit has not considered the issue. The Second Circuit, however, ably has.

In *MLSMK Inv. Co. v. JP Morgan Chase & Co.*, 651 F.3d 268, 275-76 (2d Cir. 2011), the Second Circuit explained that "[t]he language of the statute simply does not require that, for a RICO claim to be barred, the plaintiff who sues under RICO must be able to sue under securities laws, or that the conduct 'actionable as securities fraud' on which the plaintiff relies to establish the RICO violation must be that of the defendant." *Id.* at 275-76. (citations omitted).

Importantly, the court stated, "The better interpretation 'and the one supported by the plain meaning of § 107 [of the PSLRA] is that the RICO Amendment bars claims based on conduct that could be actionable under the securities laws even when the plaintiff, himself, cannot bring a cause of action under the securities laws." *Id.* at 278 (citation omitted). Crucially, the plain language of the statute "does not require that the same plaintiff who sues under RICO must be the one who can sue under securities laws; its wording . . . does not make such a connection.'" *Id.* (quoting *In re Enron Corp. Sec., Derivative & ERISA Litig.*, 284 F. Supp. 2d 511, 620 (S.D. Tex. 2003) (citing *Bald Eagle Area*, 189 F.3d at 327)). The Second Circuit enthusiastically quoted a district court in block:

when Congress stated that "no person" could bring a civil RICO action alleging conduct that would have been actionable as securities fraud, it meant just that. It did not mean "no person except one who has no other actionable securities fraud claim." *It did not specify that the conduct had to be*

actionable as securities fraud by a particular person to serve as a bar to a RICO claim by that same person.

Hemispherx Biopharma, Inc. v. Asensio, 1999 WL 144109, at *4 (E.D. Pa. Mar. 15, 1999) (emphasis added).

Importantly, the plaintiff appears to effectively concede that the noteholders, as purchasers of securities, have an independent claim against Arthur Field and Scott Pfeiffer arising from their purchase of the same. (ECF No. 605 at 3-5.) The defendants also reiterate that the transactions at issue in this case – the plaintiff's lending of monies, fraudulently raised from investors, to the defendants – would have been actionable as fraud in the purchase of securities by the noteholders. (ECF No. 612 at 3-4.)

And, as the magistrate judge exhaustively recounted, the Second Amended Complaint³ includes many allegations about misrepresentations made to noteholders and references the defendants' actions and failure to disclose information with respect to "investors" and "noteholders" rather than to the plaintiff. (ECF No. 587 at 12-14). The plaintiff alleges that the defendants' activities constituted Ponzi and money laundering schemes. (ECF No. 11 ¶¶ 138, 139, 150, 152, 160, 182, 201, 215, 240, 306, 488, 489.) The plaintiff alleges it received member capital contributions, from March through July 1999, totaling \$76,000. *Id.* ¶ 28. Thereafter, the plaintiff sold unsecured promissory notes from 1999 through 2007, *id.* ¶¶ 29–49, and, by the end of 2007, the plaintiff was indebted to more than 680 South Carolina residents for more than \$38 million, *id.* ¶ 49. The plaintiff also alleges that the sale of notes and renewals constituted the sale of securities. *Id.* ¶ 33.

³ The 2013 Complaint is materially identical.

Plagerizing the magistrate judge, the Second Amended Complaint speaks for itself—"Plaintiff brings this action to recover those moneys loaned by South Carolina noteholders" and Plaintiff was left insolvent and unable to honor its obligations with its noteholders. (ECF No. 11 at 3.) The magistrate judge was thorough and clear that the plaintiff's attempts to tease from its Complaint the securities fraud, as mere background, from the predicate acts, being presently prosecuted, was ineffective. (ECF No. 587 at 15-17.) Instead, the magistrate judge "carefully examine[d] the predicate acts in relation to the overall fraudulent conduct to determine if they are part of a scheme that operated as a fraud on sellers or purchasers of securities." *Hollinger Int'l, Inc. v. Hollinger Inc.*, 2004 WL 2278545, at *6 (N.D. Ill. Oct. 8, 2004) (citations omitted); *see also In re Enron Corp. Securities Litigation*, 284 F. Supp. 2d 511, 622 (S.D. Tex. 2003) (noting that section 10(b) of the Securities Exchange Act of 1934 reaches a scheme that operated as a fraud on sellers or purchasers of securities).

Because such predicate acts were, by the Complaint's own language, so expressly necessary to the overall fraudulent scheme, it becomes immaterial that the plaintiff in this case was not specifically an investor in securities. *See MLSMK Inv. Co.*, 651 F.3d at 278. As the Magistrate Judge correctly noted, the noteholders cannot bring RICO claims because any conduct "alleged directly by the noteholders would be in connection with the sale of securities." (ECF No. 587 at 15.) Insofar as the PSLRA would prevent the noteholders themselves from maintaining an action, the plaintiff cannot bring the same action. The RICO claim is precluded.

The plaintiff's continued reliance, on *Ouwinga v. Benistar*, 419 Plan Services, Inc., 694 F.3d 783 (6th Cir. 2012), simply does not answer the bell. *Ouwinga* could not be any

more clear that, in that case, there was no fraud in the underlying security – the insurance policy. *Id.* at 790-91. There was none. *Ouwinga* was not a case where fraud existed in the sale or substance of the insurance policy but then in some companion suit, as here, tax fraud was also separately alleged. The at-issue security, an insurance contract, was simply not fraudulent from “a securities standpoint.” *Id.* at 791. (citation and quotations omitted). The PSLRA bar does not operate simply against any transaction *involving* a security. There is no dispute that, unlike in *Ouwinga*, this present action, however articulated, is companion to an overall fraudulent scheme in securities. The securities underlying this, and every related case to it, *were fraudulent*.

II. Supplemental Jurisdiction

The magistrate judge, having recommended dismissing the plaintiff’s four federal RICO claims, also recommended that the undersigned decline supplemental jurisdiction and dismiss the plaintiff’s numerous state law claims. The plaintiff, in neither filed case, has objected to this recommendation. Instead, defendants Martin Ender, David Lorenzo, James Caserta, and Arthur Field have.

Federal statute, 28 U.S.C. § 1367(a) states that a district court in a controversy where it has original jurisdiction “shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.” *Id.* Such jurisdiction, however, may be declined if

(1) the claim raises a novel or complex issue of State law, (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction, (3) the district court has dismissed all claims over which it has original jurisdiction, or (4) in exceptional circumstances, there are other

compelling reasons for declining jurisdiction.

28 U.S.C. § 1367(c). The defendant, however, represents that the plaintiff's causes would be time-barred if refiled in state court and, under the circumstances, it would be an abuse of the Court's discretion to decline to exercise its permissible jurisdiction to hear the state claims. See *Ketema v. Midwest Stamping, Inc.*, 180 Fed. Appx. 427 (4th Cir. 2006).

It is true that declination of supplemental jurisdiction may be an abuse of discretion "where the state statute of limitations expired prior to dismissal of the anchor federal claim." *Id.* (citing *Edwards v. Okaloosa County*, 5 F.3d 1431, 1433-35 (11th Cir.1993); *Joiner v. Diamond M Drilling Co.*, 677 F.2d 1035, 1043 (5th Cir.1982).) But, the defendants have misapplied that line of cases, here. *Ketema*, and the like, principally operate where the statute of limitations expires during the prolonged pendency of a federal case such that the plaintiff is prejudiced in its ability to refile in state court upon dismissal of the state law claims; in other words, through no fault of its own, the plaintiff has been procedurally handcuffed. Such is not the case here. The defendants argue that they enjoy a preexisting statute of limitations defense, in existence *at the time of the filing of the original Complaint*. (ECF No. 603 at 4.) The statute of limitations, therefore, was not implicated by virtue of the federal case pendency. It is simply an existing defense. And, therefore, the Court is not abusing its discretion, to create some procedural entrapment, by dismissing the claims now. Certainly from the defendants perspective it would be more efficient for the Court to look behind the merits of one of any number of defenses they may have in this action as opposed to dismissing the case, but such would always be true. Supplemental jurisdiction would never be authorized if the touchstone was simply the ease of remaining in the Court where one already is. But, here, the case is not far along,

procedurally speaking. Discovery has not begun. The case is only now beyond the pleading stage in resolution of the motions to dismiss. Certainly the parties have worked hard and over time. The Court, however, would not keep the case now expansively state in nature.

CONCLUSION

The Court has carefully reviewed the plaintiff's and defendants' objections and the various replies and conducted a de novo review of the portions of the Report and Recommendation to which the plaintiff specifically objects. The Court has also reviewed the entire Report and Recommendation for plain error in response to the plaintiff's general objections. After considering the motion, the record, and the Report and Recommendation of the Magistrate Judge, this Court agrees with the thorough analysis of the Magistrate Judge. The Report and Recommendation is adopted in full and incorporated herein by reference. It is, therefore

ORDERED that the supplemental motions to dismiss in the 2012 Case (2012 Case ECF Nos. 507, 510, 534, 535, 536, 543, 546, 547, 548) be GRANTED, that the motion for sanctions in the 2012 Case (2012 Case ECF No. 573) be GRANTED IN PART, DENIED IN PART, that the motions to dismiss in the 2013 Case (2013 Case ECF Nos. 24, 39, 42, 46, 47, 81, 93, 94, 113) be GRANTED, and that both cases be DISMISSED.

IT IS SO ORDERED.

s/ Bruce Howe Hendricks
United States District Judge

January 20, 2014
Greenville, South Carolina

AO 450 (SCD 04/2010) Judgment in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of South Carolina

Capital Investment Funding, LLC.

Plaintiff

v.

Civil Action No. 6:12-cv-03401-BHH

Arthur Field; Kathryn Taillon; Brad Kelley; Davyd
Field; Scott Pfeiffer; David Gantt; Ralph Gleaton;
Gleaton Wyatt Hewitt PA, as the successor in
interest to Pfeiffer & Gantt PA, Pfeiffer, Gantt &
Gleaton PA, Pfeiffer Gantt Gleaton Wyatt PA,
Pfeiffer Gleaton Wyatt Hewitt PA; G&P Title
Agency, LLC; GG&P Title Insurance, LLC; PGGW
Title Insurance, LLC; Paula Haney; Alysia Hazelton;
Ross Jones; Bill Beckman; Ashley Morey; Jose
Rodriguez; Charles Pinion; Joshua Ward; Roger
Ezell; Barry Lynn Spencer; Mark Davidson; Jan
Davidson; Anthony Edgar; Elizabeth Hopper; Gene
Ahlers; Paul Chalmers; Reba Cox; Philip Davidson;
Mark Holbrooks; Melinda Holbrooks; Greg Bailey;
Michael Loprieno; Brian Knight; Dennis Hackney;
Michael Parish; Jack Campitelli, a/k/a J.A. Camp;
Jamie McKeough; Michael Moore; J. Genava Seller,
a/k/a Geneva Campitelli; Donna L. Campitelli,
individually, a/k/a D.L. Jones, a/k/a Donna Jones;
Shawna Freeman; Bolingbroke United Ltd, England;
RAAF Enterprises, LLC; Bradford Financial Group,
LLC; Lion Financial, LLC; Monmouth Financial
Group Ltd; Mithril Funding, LLC; Krondor Trading
Co. LLC; Red Lion Trading House, LLC; Saxon
Business Services, LLC; Saxon Holding, LLC;
Angle Holdings, LLC; Ideal Mortgage Group, Inc.;
York Mortgage Funding, LLC; Trazom, LLC; Our
Tree House, LLC; Aladdin's Grill and Cafe, LLC;
He Will Provide, LLC; Blenheim Properties, LLC;
Bountiful Bingo, LLC; Construction Resources, Inc.;
LOP Capital, LLC; Strategic Lending Solutions,
LLC; Rhododendron, LLC; Asante Properties, LLC,
a/k/a Asamte, LLC; Lamplighter Mortgage
Company, LLC; Steele Construction of SC, Inc.;
Instant Cash, Inc.; Advance Business Funding, LLC;
Ezell Investment Company, LLC; Badger
Development, LLC; GodProp, LLC; Lot 6
Lakewater Cove, LLC; Lot 37 Waters Edge, LLC;
Lot 46 Waters Edge, LLC; Neighborhood Homes,
LLC; Total Package Grading; Seed Construction;
Apex Construction; Southridge Construction, Inc.;
Saneski, LLC; Capital Intrastate Funding, LLC;
Tcholok Properties, LLC; Moore & Associates,
LLC; The Upper Nehalem Trust; The Chrysler Drive
Trust; The Old Arcadia Road Trust; The Cotton Mill

Trust; Onward Recovery Partners Corporation;)
 Onward Finance Corporation; Gulf Capital LP; Gulf)
 Capital Management, Inc.; Arrowhead Funding)
 Corporation; Community South Bank and Trust, an)
 its Receiver, Federal Deposit Insurance Company;)
 John Does 1-25, (names being fictitious); Jane Does)
 1-25, (names being fictitious); ABC Companies,)
 (names being fictitious); Allyson Field; Kirsten M.)
 White; David Lorenzo; Elliot Salzman; James)
 Caserta; Martin Ender; Robert J L'Abbate; Stuart)
 Katz; Alliance Development Partners, LLC; J and H)
 B Builders LLC; Amerishare Corporation; CapGain)
 Properties, Inc.; Lancaster Mortgage Bankers;)
 Pelican Way Financial, LLC; United Private Capital,)
 Inc.; Eugene Hopper; PG&G Title Insurance, LLC;)
 John Does 1-35, names being fictitious; Jane Does)
 1-35, names being fictitious; ABC Companies 1-35,)
 names being fictitious; P and G Title Agency, LLC;)
 The Pickering Road Trust; Timothy Bart Kelley;)
 Benjamin Hines; Gary Lynn Johnson; James Nathan)
 Holbrooks; Johnny M. Kelley; Jessie G. Ryckman,)
 individually, a/k/a/ J.G. Ryckman; Dunross Straun,)
 LLC; Log Dirt. LLC; Nevada Processing Center)
 Inc.;)
 _____)
Defendants)

JUDGMENT IN A CIVIL ACTION

The court has ordered that *(check one)*:

☐ the plaintiff *(name)* _____ recover from the defendant *(name)* _____ the amount of _____ dollars (\$___), which includes prejudgment interest at the rate of ____ %, plus postjudgment interest at the rate of ____ %, along with costs.

☐ the plaintiff recover nothing, the action be dismissed on the merits, and the defendant *(name)* _____ recover costs from the plaintiff *(name)* _____.

☒ other: It is ordered that the defendants' motions to dismiss (entries 507, 510, 534, 535, 536, 543, 546, 547, and 548) are granted and this case is dismissed as to all defendants.

This action was *(check one)*:

☐ tried by a jury, the Honorable _____ presiding, and the jury has rendered a verdict.

☐ tried by the Honorable _____ presiding, without a jury and the above decision was reached.

☐ decided by the Honorable Bruce Howe Hendricks.

Date: January 20, 2015

ROBIN L. BLUME, CLERK OF COURT

s/Ashley Buckingham

Signature of Clerk or Deputy Clerk

AO 450 (SCD 04/2010) Judgment in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of South Carolina

Capital Investment Funding, LLC.

Plaintiff

v.

Civil Action No. 6:13-cv-02326-BHH

Arthur Field; Kathryn Taillon; Davyd Field; Allyson
Field; Kirsten M. White; Bart Kelley; Elizabeth
Hopper; Gary Johnson; Elliot Salzman; James
Caserta; Stuart Katz; Gene Ahlers; Mark Davidson;
Greg Bailey; Dennis Hackney; Michael Parish; Jack
Campitelli, a/k/a A.J. Camp; J.G. Geneva Seller,
a/k/a Geneva Campitelli; J.G. Ryckman; Jamie
McKeough; D.L. Jones; Shawna Freeman; Capital
Intrastate Funding, LLC.; Construction Resources,
Inc.; He Will Provide, LLC; J and H Builders, LLC;
Lamplighter Mortgage Company, LLC; Saneski,
LLC; Steele Construction of SC, Inc.; Amerishare
Corporation; Arrowhead Funding Corporation; Gulf
Capital L.P.; Gulf Capital Management, Inc.;
Onward Finance Corporation; Onward Recovery
Partners Corporation; RAAF Enterprises, LLC; John
Does 1-35, names being fictitious; Jane Does 1-35,
names being fictitious; ABC Companies 1-35, names
being fictitious; James M Williams, III; Godprop,
LLC,

Defendant

JUDGMENT IN A CIVIL ACTION

The court has ordered that (*check one*):

☐ the plaintiff (*name*) _____ recover from the defendant (*name*) _____ the amount of _____ dollars (\$____),
which includes prejudgment interest at the rate of ____ %, plus postjudgment interest at the rate of ____ %, along with
costs.

☐ the plaintiff recover nothing, the action be dismissed on the merits, and the defendant (*name*) _____
recover costs from the plaintiff (*name*) _____.

■ other: the plaintiff, Capital Investment Funding, LLC., shall take nothing of the defendants; Arthur Field, Kathryn Taillon, Davyd Field, Allyson Field, Kirsten M. White, Bart Kelley, Elizabeth Hopper, Gary Johnson, Elliot Salzman, James Caserta, Stuart Katz, Gene Ahlers, Mark Davidson, Greg Bailey, Dennis Hackney, Michael Parish, Jack Campitelli, J.G. Geneva Seller, J.G. Ryckman, Jamie McKeough, D.L. Jones, Shawna Freeman, Capital Intrastate Funding, LLC, Construction Resources, Inc., He Will Provide, LLC, J and H Builders, LLC, Lamplighter Mortgage Company, LLC, Saneski, LLC, Steele Construction of SC, Inc., Amerishare Corporation, Arrowhead Funding Corporation, Gulf Capital L.P., Gulf Capital Management, Inc., Onward Finance Corporation, Onward Recovery Partners Corporation, RAAF Enterprises, LLC, John Does 1-35, Jane Does 1-35, ABC Companies 1-35, James M Williams, III, and Godprop, LLC,

This action was (*check one*):

☐ tried by a jury, the Honorable _____ presiding, and the jury has rendered a verdict.

☐ tried by the Honorable _____ presiding, without a jury and the above decision was reached.

☐ decided by the Honorable Bruce Howe Hendricks, presiding, adopting the Report and Recommendation set forth by the Honorable Jacquelyn D. Austin, United States Magistrate Judge, which recommended granting defendants Stuart Katz, Arthur Field, Kathryn Taillon, Allyson Field, Kirsten M. White and Elliot Salzman's motions to dismiss.

Date: January 20, 2015

ROBIN L. BLUME, CLERK OF COURT

s/Ashley Buckingham

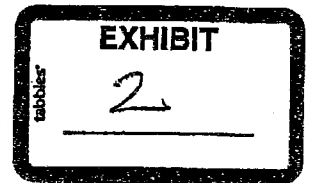
Signature of Clerk or Deputy Clerk

IN THE UNITED STATE DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

GREENVILLE DIVISION

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Capital Investment Funding, LLC,	)	
Plaintiff,	)	Docket # 6:12-CV—03401 MGL-JDA
Vs.	)	MOTION TO DISMISS by KATHRYN TAILLON
	)	AS SUCCESSOR IN INTEREST TO
	)	PELICAN WAY FINANCIAL, LLC
Arthur Field; Scott Pfeiffer; et al.	)	FRCP Rule 12(b)(6) and Rule 9
	)	(as part of all Rule 12 motions)
Defendants	)	



TO ALL PARTIES HERETO:

TAKE NOTICE. Pursuant to FRCP Rules 9 and Rule 12(b)(6), Defendant Kathryn Taillon, as successor in interest to Pelican Way Financial, LLC, under Florida law, will Move before this Court for an ORDER dismissing with prejudice each and every cause of action and/or prayers for relief in the Second Amended Complaint. Such hearing will be at least 5 days herefrom as set by the Clerk of Court.

Kathryn Taillon as successor in interest to the assets of Pelican Way Financial, LLC ("Pelican Way") pursuant to FRCP Rules 9 and 12(b)(6), Moves to Dismiss with Prejudice Plaintiff's Second Amended Complaint, including each and every Cause of Action contained therein for failure to state a claim upon which relief may be granted.¹ Defendant relies on the

¹ All other Motions are preserved and incorporated herein as if fully set forth. Defendant preserves the right to Answer and file Affirmative Defenses and Rule 56 and other permitted motions to Plaintiff's 183 page Second Amended Complaint dated March 20, 2013. Pelican Way Financial, LLC was created on November 12, 2009 and dissolved on September 24, 2010. All assets were assigned to Kathryn Taillon, as successor in interest pursuant to Florida law, FL S.A. Title 36, Chapter 608.444. All references to Taillon are intended to reflect her rights as successor in interest to Pelican Way Financial, LLC. All allegations pertain ONLY to acts done by Pelican Way Financial, LLC, if at all, during its existence and claims are barred as untimely

Memorandum of Law attached and any Exhibits hereto or in any other defendant's Motions, as if fully set forth. This comprehensive Motion to Dismiss is based upon all grounds available and all set forth herein shall apply to each and every of the 21 Causes of Action and based upon allegations appearing in the Second Amended Complaint ("Complaint"), including but not limited to the following:

1. Statute(s) of Limitations under state law
2. Failure to State a Claim under RICO (Causes of Action #1 to #4)
3. Failure to State a Claim under State Law (Causes of Action #5 to #21)
4. Lack of Damages and/or Damages are Too Speculative
5. Lack of Standing and/or Not Real Party-in-Interest
6. Immunity
7. Ripeness
8. Abstention

I. Statute(s) of Limitation-- All causes of action against Pelican Way are brought beyond the relevant statutes of limitations as set forth in South Carolina law,² including but not limited to:

made under Florida law governing Limited Liability Companies. Taillon became a resident of Florida on April 24, 2012.

² The Second Amended Complaint filed on March 20, 2013 should be considered the relevant filing date herein, as it adds many new parties including Pelican Way Financial, LLC (which dissolution was public record as of September 24, 2010), new factual allegations and several new causes of action not set forth in the November 29, 2012 Complaint and does not relate back thereto. All paragraph references are to allegations in the Second Amended Complaint. The "filing date" referred to is November 29, 2012, but this is not an admission such is the proper date for the Court to consider. However, any cause of action barred on or before November 29, 2012, would automatically be barred on March 20, 2013. No admission of these allegations is made; all are denied for purposes hereof, but even if taken as correct, any factual allegations involving material direct and proximate causal wrongdoing ends as of January, 2008.

- a) All 'wrongful acts' alleged in the Complaint insofar as they pertain to Pelican Way Financial, LLC during its existence, if at all, involving (and none of these constitute predicate acts for RICO, and all are denied):
- i) the rejected Offer to purchase the Trazom Note by letter mailed on or about November 6, 2009, received by CIF's Manager Saad on or about November 9, 2009, **more than 3 years prior to the date of the filing of the complaint;**
 - ii) the transfer of funds, if any, from South Carolina to Florida to enable the purchase of the Trazom Note and/or funding of the White loan took place, if at all, on or before November 8, 2009, **more than 3 years prior to the filing of the Complaint** and far more than the filing of the Second Amended Complaint. Pelican's sole affirmative act was to commit to lend funds to Kirsten White on March 5, 2010--more than 3 years prior to the filing date of the Second Amended Complaint on March 20, 2013. White executed a Note in Pelican's favor on May 3, 2010, in accord with the commitment agreement³;
 - iii) The Statute of Limitations for civil RICO is 4 years. More than 4 years elapsed from the date of 'injury' if such injury is defined as Taillon's receipt of funds which she may have invested in or loaned to Pelican Way, if at all.
- b) The statute of limitations in the Fourth Circuit runs from the date of the alleged act causing injury, not the date of discovery of the "other elements of a claim, such as the underlying pattern of racketeering activity" alleged;
- c) Damage from making a 'loan' to any entity occurs immediately upon the transfer of funds and all such transfers were known and disclosed on the Land Records;
- d) Any and all claims based primarily on injuries resulting from violations of state law (e.g. breach of fiduciary duty, fraud, securities fraud, unjust enrichment, negligent misrepresentation) are subject to a 3 year statute of limitations, which bars any claims arising based on injury or acts prior to November 29, 2009;

³ Pelican agreed to lend and White agreed to borrow \$170,000. Kirsten White entered into a contract to purchase property and a construction contract with Virani, LLC on May 3, 2010. White converted the construction financing to permanent mortgage on October 1, 2010, in accord with the March 5, 2010 commitment.

- e) CIF may not 'bootstrap' time barred claims or predicate acts by linking them to later, non time-barred claims and CIF bears the burden of demonstrating the statutes of limitations should be tolled as to Taillon d/b/a Pelican Way;
- f) Pelican Way Financial, LLC dissolved on September 24, 2010, and no claim was presented by any creditor prior to March 20, 2013 and is barred under law.

II. FAILURE TO STATE A CLAIM UNDER RICO (FIRST TO FOURTH CAUSES OF ACTION)

Civil RICO is disfavored at law.⁴

- a) CIF has failed to allege the elements of civil RICO and/or fraud with sufficient particularity supported by facts rather than vague allegations and must be dismissed as to Pelican Way (and/or Taillon, as successor in interest to Pelican Way Financial, LLC). Walk v. Baltimore & Ohio Rrd., 847 F.2d 1100(4th Cir. 1988), FRCP Rule 9(b), Pocahontas Supreme Coal Co. v. Bethlehem Steel Corp., 828 F.2d 211 (4th Cir. 1987).
- b) CIF has failed to sufficiently plead each element of a RICO violation, including: (1) conduct, (2) of an enterprise, (3) through a pattern, (4) of racketeering activity causing direct and proximate actual and special damage to CIF which declared a winding up in January, 2008—1 year and 10 months prior to the creation of Pelican Way Financial, LLC.
- c) All claims are barred by the PSLRA. The Complaint is nothing other than a securities fraud case improperly clothed in wire and mail fraud and all such are always dismissed under Rule 12(b)(6);
- d) CIF claims to bring this case on behalf of the "Note Holders" who allegedly lost money as a result of fraudulent schemes of which they were not informed, i.e.

⁴ See, In re the Dow Co. "Sarabond", 666 F.Supp.1466,1470(D.Colo. 1987); Sedima, Infra: Rehnquist: Cut Jurisdiction, 75 ABA J 22(April 1989); Gross v. Waywell, 628 F.Supp.2d 475 (S.D.N.Y. 2009); Fitzgerald v. Chrysler Corp., 116 F.3d 225,226 (7th Cir. 1997).

securities fraud. Any consequent action of mail fraud, wire fraud or transportation begins with, stems from or is in furtherance of the raising of funds from the sale of securities and is barred under the PSLRA;

Conduct:

- e) CIF has failed to allege any predicate conduct by Pelican Way or a sufficient number connected and related with continuity for the purposes of furthering racketeering. Acts of others may not be imputed to Pelican Way Financial, LLC during its tenure as a viable entity between November, 2009 and September, 2010;
- f) CIF has not alleged at least two predicate acts constituting a pattern committed by Pelican Way Financial, LLC during its tenure as a viable LLC;
- g) Securities fraud does NOT constitute a predicate act, nor does aiding and abetting securities fraud or aiding and abetting common law fraud;
- h) CIF has failed to allege any facts supporting predicate conduct of mail and/or interstate wire fraud by Pelican Way specifying parties, representations, reasonable reliance or damages directly and proximately resulting from such reliance;
- i) CIF has failed to allege any facts demonstrating Pelican Way acted with specific intent to defraud CIF or did defraud CIF and that such acts were separate and distinct;
- j) To the extent, if any, CIF has alleged fraud, such "fraud" is 'garden variety fraud' or 'ordinary commercial fraud' and cannot support a civil RICO claim as a matter of law and such facts are not alleged with sufficient particularity;
- k) Misappropriation of funds, if any, does not constitute a predicate act or support RICO and no facts of such misappropriation are alleged as to Pelican Way;
- l) Failure to disclose something does not constitute mail fraud; the Offer to purchase the Trazom Note was solicited by Saad, as CIF Manager, and made in good faith by Pelican Way with the intention and ability of acquiring such Note and was rejected by CIF and not relied upon by CIF in any manner;
- m) None of the state law torts alleged qualify as predicate acts under RICO;

Enterprise:

- n) CIF has failed to show or sufficiently plead the existence of a true enterprise, or that Pelican Way Financial, LLC during its tenure as a viable entity from November, 2009 to September, 2010, was a member of and control entity in such 'enterprise';
- o) If any such enterprise did allegedly exist, it pre-dated Pelican Way's creation and ceased to exist in or about January, 2008, at the latest;
- p) CIF improperly attempts to link Pelican Way, with CIF or various borrowers from one of CIF's re-lenders without alleging any facts which support such theory or allegations or any law which demonstrates such a link is an enterprise or true commonality of purpose and to the extent there may have been an enterprise at all, such enterprise was CIF, the Plaintiff, which is thus barred from recovery;
- q) Any alleged predicate acts of others were isolated events, which CIF has tried to 'connect' by repeating Pelican Way's name together with the names of all of the defendants and calling them a 'syndicate' without alleging any facts to demonstrate defendants were related in business to each other or to Pelican Way, which was not created until November 9, 2009, more than 2 months after the ratification of the GMSA and at the suggestion of CIF's manager Saad;
- r) No allegations of structure are contained in the Complaint and none is alleged as to Pelican Way with sufficient facts and RICO claims are barred as a matter of law;
- s) CIF has failed to allege any facts which conclusively demonstrate the conduct of Pelican Way on November 29, 2012, (the filing date) or thereafter is an ongoing unlawful activity whose scope and persistence currently poses a special threat to social well-being, (or that any such prior conduct did so) and Plaintiff's claims fail as a matter of law, Al-Abood v. ElShamari, 217 F.3d 225,238(4th Cir. 2000), especially when Pelican Way Financial, LLC was dissolved in September, 2010 and has done no active business since such time, and its only act prior to dissolution was to commit on March 5, 2010, to loan Kirsten White and Virani, LLC funds in May, 2010 for the construction of a residence for White and her children for which White agreed to pay \$230,000, Pelican agreed to lend \$175,000 (converted from a construction mortgage to permanent financing by White on October 1, 2010);

- t) CIF has failed to specifically and sufficiently allege facts supporting Pelican Way or any other person was a principal, control person or manager of any syndicate and claims arising under 18 U.S.C. 1962(a), and/or (b) and/or (c) and/or (d) are barred/ Bell Atl. Corp. v. Twombly, 127 S.Ct. 1955(2007) and Ashcroft v. Iqbal, 129 S.Ct. 1937(2009).

Pattern:

- u) CIF has failed to show an open ended pattern of racketeering and the threat of continuing activity, by Pelican Way Financial, LLC, which was dissolved in September, 2010, or its successor in interest Kathryn Taillon;
- v) CIF has failed to allege sufficient facts to show a closed end pattern of racketeering by Pelican Way spanning over more than 2 years—all affirmative acts of Pelican during its tenure as a viable entity are alleged to have started in November, 2009 and ended not later than March 7, 2010 when the loan to White was committed⁵;
- w) Any actions of Pelican Way in the Complaint have a built in ending point and present no threat of continued activity, Pelican Way Financial, LLC was dissolved in September, 2010, having existed for under 10 months. GE Inv. Private Placement Partners II v. Parker, 247 F.3d 543,549(4th Cir. 2001);
- x) Predicate acts, if any herein, constitutes a single limited, continuous scheme, not a pattern of racketeering activity, Int'l Data Bank v. Zepkin, 812 F.2d 149(4th Cir. 1987) and RICO is barred as a matter of law and no allegations exist Pelican Way committed fraud or was aware of any such alleged conduct by others, US Airline Pilots v. AWAPPA, 615 F.3d 312(4th Cir. 2010)(RICO dismissed);

Racketeering:

- y) CIF is an entity and is considered only a single victim of an alleged RICO, which is insufficient to state a claim;
- z) CIF has failed to allege Pelican Way is currently engaged at this time in continuing unlawful activity whose scope and persistence pose a threat to social well-being;

⁵ The act of White in converting the financing from construction to permanent on October 1, 2010 was contemplated and provided for on March 5, 2010 and was White's action, not Pelican's.

- aa) CIF has failed to allege Pelican Way is currently engaged in activity to harm public processes or institutions; Gross v. Wavell, supra.
- bb) CIF has failed to allege any real damages to CIF or that any act of Pelican Way's was the direct and proximate cause of damages and that CIF has suffered direct and proximate actual loss (as opposed to loss to its creditors) as a result;
- cc) Creditors of a company (i.e. the Class of CIF Note Holders who are judgment creditors of CIF) are not 'victims', and allegations of such 'victimization of creditors' do not support a RICO claim, which is barred as a matter of law, GE Inv. Private Placement Partners II v. Parker, 247 F.3d 543,549 (4th Cir. 2001), alternatively, if the creditors are the victim, CIF has no damages and is not the victim;
- dd) CIF has failed to show it has been directly injured in its business or property solely by the specific alleged predicate acts of Pelican Way, Brandenburg v. Seidel, 859 F.2d 1179(4th Cir. 1988)(financial institution depositors have no RICO claim);

III. FAILURE TO STATE A CLAIM AS TO STATE LAW CLAIMS AS TO PELICAN WAY:

- a) CIF has failed to state a claim for breach of contract (paragraphs #523—#526) as to Pelican Way. No contract was alleged in the facts and no breach was set forth except in conclusion in this Cause of Action.
- b) CIF has failed to state a claim for breach of contract accompanied by a fraudulent act, (Paragraphs #532--#536) and has not proven the existence of a contract between Pelican Way and CIF, nor the breach of any contract, nor any damages directly and proximately caused by such alleged breach;
- c) CIF has failed to state a claim for negligence (Paragraphs #537--#539) or that CIF has suffered any damages as a result of any alleged breach and no duty of Pelican Way to CIF is alleged;
- d) CIF has failed to state a claim for breach of fiduciary duty or sufficiently prove any such fiduciary duty exists in favor of CIF from Pelican Way (paragraphs #541—544) or any actual damages were suffered by CIF as a result of Pelican Way's commitment to loan to White in March, 2010;
- e) CIF has failed to state a claim for aiding and abetting a breach of fiduciary duty, no fiduciary duty existed as to Pelican Way, Taillon or White, to CIF and

no such cause of action exists under South Carolina law and no such claim can support RICO;

- f) CIF has failed to state a claim for civil conspiracy and failed to allege the elements thereof or any facts proving such civil conspiracy existed and/or was the direct or proximate cause of actual and special damages by Pelican Way and that Pelican's primary purpose was to engage in such conspiracy;
- g) CIF has failed to state a claim for tortious interference (Paragraphs #553 to 556), it has failed to allege the existence of a contract known to Pelican Way and how any actions of Pelican Way interfered with such contract thereby causing damage directly and proximately to CIF;
- h) CIF has failed to state a cause of action for 'usurpation of corporate opportunity'; Pelican Way is not alleged to have been an officer in CIF or acquired any opportunity at CIF's direct expense, nor any failure to disclose such loan to CIF, since the loan to White was reflected by a mortgage on the Land Records recorded on or about May 4, 2010. CIF had no claim or interest in the Greer property acquired by White or the title thereof at any time. Neither Taillon nor White were officers in CIF nor were they members on January, 2008 when CIF declared a winding up, nor in August, 2009 when the GMSA was executed;
- i) CIF has failed to state a claim for conversion and has failed to allege sufficient facts that Pelican Way wrongfully and intentionally converted any CIF property to its own use;
- j) CIF has failed to state a claim for promissory estoppel, has not alleged any facts which show any material promise by Pelican Way to CIF, or that CIF relied in any manner upon such promise to its detriment or that Pelican Way knew such promise was false at the time allegedly uttered and any damages caused—the Letter Offer from Pelican to CIF to acquire the Trazom Note was made in good faith at the suggestion of CIF's Manager Saad and was rejected by Saad and not relied upon by CIF;

- k) CIF has failed to allege and demonstrate sufficient facts to support a claim of unjust enrichment or acts by Pelican Way related thereto or that Pelican Way received a benefit belonging to CIF;
- l) CIF has failed to allege fraud with sufficient particularity or to state a claim thereon. CIF has failed to allege specific material utterances made by Pelican Way to CIF, which utterances were false and known to be false at the time of utterance and intended to be relied upon by CIF, and CIF did actually rely to its detriment thereby suffering damages directly and proximately;
- m) CIF has failed to allege a claim based on negligent misrepresentation and any facts showing representations made by Pelican Way to CIF which were uttered by Pelican Way with a reckless disregard for the truth of such utterance and which were relied upon by CIF and was the direct and proximate cause of damages;
- n) CIF has failed to allege a claim for Unfair Trade Practices. CIF has failed to show an existing, ongoing and currently threatened harm involving interstate commerce or any of the other elements of Unfair Trade Practices or any connection between Pelican Way and CIF's actions;
- o) CIF has failed to state a claim for fraudulent conveyance. CIF has failed to allege any facts which prove Pelican Way or Kirsten White, its borrower, had any creditors in May, 2010, known to either and both of them, or that Pelican Way and/or Kirsten White was insolvent before or following any alleged transfer, or that Pelican Way and/or Kirsten White had any knowledge of any imminent claims against either of them at the time of any transfer, or that transfer was not made for sufficient consideration since White indebted herself to Pelican Way and secured real property with a mortgage;
- p) CIF has failed to allege the legal requirements for a constructive trust by clear and convincing evidence, or as a matter of law and failed to state a claim thereon or to allege sufficient facts to show that any such property is not rightfully owned by Kirsten White and that the mortgage was not bona fide and made for good consideration and no adequate remedy exists at law, and that CIF has a superior claim in title to such property or that CIF ever timely

objected to the ownership of such property or that such property was acquired by Kirsten White by fraud from CIF, when CIF was never an owner of any such property. CIF has failed to allege any facts which establish CIF funds were directly used to acquire such property or properties and/or that any funds belonging directly to CIF were used to satisfy any debt of Pelican Way's or Kirsten White's or not commingled with the assets of such person or entity. Neither Pelican Way nor Kirsten White owed any fiduciary or other duty to CIF and a constructive trust is not permitted absent such duty. CIF had no prior right or claim to any property owned by Pelican Way, or Kirsten White in any location.

IV. LACK OF DAMAGES OR SPECULATIVE DAMAGES

CIF has not suffered any damages as a result of any action of Pelican Way and none are specifically alleged. The offer to purchase the Trazom Note was rejected. CIF had no interest or membership interest in Pelican Way or any claim to White's property or funds. Actual damages are an essential element of each and every claim made by CIF and if CIF is unable to demonstrate actual damages incurring directly and proximately to CIF (and not, by extension to its creditors or attorneys), then each and every claim must fail. CIF is an entity in winding up. It is defunct. RICO requires a live functioning group of victims, which CIF does not meet. CIF has a single creditor, i.e. the Class of Note Holders. If CIF is unable to pay its judgment creditor, it will not suffer any damage whatsoever. The only possible persons who could suffer damages are the members of CIF. Civil RICO and all pendent claims must be dismissed. No deficiency judgment was entered against CIF in any action. Any damages which may be suffered, if at all, are totally and wholly speculative and CIF is barred from recovering such damages, and such damages, if any, may not be the basis for a civil RICO claim until liquidated.

V. RIPENESS

To the extent CIF has not yet liquidated its damages, still possesses numerous valuable pieces of property, is still in litigation with Trazom, LLC, Pfeiffer, Pfeiffer & Gantt, P.A., LOP

Capital, Salzman, LRI, L'Abbate, Katz, etc. (all as set forth in the Second Amended Complaint), this action is not ripe for adjudication and must be dismissed.

VI. IMMUNITY

Any acts done by Taillon as Manager, Registered Agent, or Member of Pelican Way Financial, LLC are immune from liability pursuant to Florida Statutes Title 36, Chapter 608.4227 and 4228, et seq. Pelican Way Financial, LLC was dissolved on September 24, 2010 and CIF did not present any claim to Pelican prior to March 20, 2013.

VII. STANDING OR REAL PARTY IN INTEREST

CIF lacks standing. CIF states (page 3, Introduction) it "brings this action to recover moneys loaned by South Carolina noteholders". To the extent CIF attempts to advance a claim on behalf of the Note Holders, it is not the real party in interest. To the extent it is the Note Holders who may suffer any damage, it is the Class which is the real party, not CIF. CIF is not bankrupt and Saad is not a Trustee. CIF is wound up and no longer functioning as a viable company. Neither Saad nor CIF has a real, material interest in the outcome hereof. CIF may not maintain a derivative action pursuant to S.C.Code 33-44-1101, et seq.

VIII. ABSTENTION

This Court should dismiss or abstain based upon one or more federal abstention doctrines. *Brandenburg v. Seidel*, 859 F.2d 1179 (4th Cir. 1988). *Burford v. Sun Oil Co.*, 319 U.S.315, 87 L.Ed.1424, 63 S.Ct.1098(1943).



5/2/2013

KATHRYN TAILLON, pro se, AS
Successor-in-Interest to the assets of
Pelican Way Financial, LLC, dissolved

IN THE STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

Capital Investment Funding, LLC,)

Plaintiff,)

C.A. No.: 15-CP-23- 01263

Arthur Field; Kathryn Taillon; Kirsten M. White;)
Allyson Field; Anthony Edgar; Ashley Morey;)
Bart Kelley; Brad Kelley; Charles Pinion;)
Elizabeth Hopper; Eugene Hopper; Paul A.)
Chalmers; Michael Moore; Aladdin's Grill and)
Café, LLC; Blenheim Properties, LLC;)
Bolingbroke United (England) Ltd; Bountiful)
Bingo, LLC; Bradford Financial Group, LLC;)
Capital Intrastate Funding, LLC; Dunross Struan,)
LLC; Empire Document Services; He Will)
Provide, LLC; Krondor Trading Co., LLC;)
Lamplighter Mortgage Company, LLC; Lion)
Financial, LLC; Mithril Funding, LLC;)
Monmouth Financial Group, Ltd.; Moore &)
Associates, LLC; Pelican Way Financial, LLC;)
RAAF Enterprises, LLC; Tcholak Properties,)
LLC; The Chrysler Drive Trust; The Cotton Mill)
Trust; The Old Arcadia Road Trust; The)
Pickering Road Trust; The Upper Nehalem Trust;)
York Mortgage Funding, LLC; John Does 1-35)
(names being fictitious); Jane Does 1-35 (names)
being fictitious); and ABC Companies 1-35)
(names being fictitious), John Does 1-35 (names)
being fictitious); Jane Does 1-35 (names being)
fictitious); and ABC Companies 1-35 (names)
being fictitious).)

Defendants.)

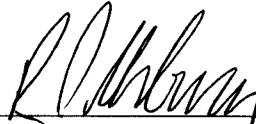
**SUMMONS
for
AMENDED COMPLAINT**

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2015 MAR 23 PM 4 44

TO THE ABOVE-NAMED DEFENDANTS:

You are hereby summoned and required to answer the Amended Complaint in this action, a copy of which is attached hereto and herewith served upon you, and to serve a copy of your answer to same upon the subscribed at 1204 A East Washington Street, Suite A, Greenville, South Carolina, 29601 within thirty (30) days after the service of same, exclusive of the day of such service. If you fail to answer same within the thirty (30) day period, the Plaintiff will apply to the Court for the relief demanded therein and judgment will be taken against you by default.

Pillsbury & Read, P.A.



Rodney F. Pillsbury (SC Bar #013067)
(Email: rpillsbury@prlawpa.com)

John M. Read IV (SC Bar #12569)
(Email: jread@prlawpa.com)
1204-A E. Washington Street
Greenville, SC 29601
Phone: (864) 241-9828
Fax: (864) 241-9818

ATTORNEYS FOR PLAINTIFF

March 23, 2015

CA18-1513 - SAAD, JERRY vs. FIELD, ARTHUR MATTHEW

[Print Summary](#)

[Summary](#)

[History](#)

[Charges](#)

[Citations](#)

[Next](#)

[Previous](#)

SUMMARY

	Judge:	Court Type:	Case Type:
SMITH, R. LEE		Circuit Civil	Domestication of Foreign Judgment
CA18-1513	Case Number:	U n i f o r n C a s e N u m b e r :	S t a t u s :
12/7/2018		552018CA001513A000XX	CLOSED



0.00

5/23/2019

PARTIES

TYPE	PARTY NAME	ATTORNEY
PLAINTIFF	SAAD, JERRY	
DEFENDANT	FIELD, ARTHUR MATTHEW	
DEFENDANT	TAILLON, KATHRYN	

EVENTS

DATE	EVENT	JUDGE	LOCATION	RESULT	EVENT NOTE
4/1/2019 11:30 AM	HEARING (CIVIL)	SMITH, R. LEE	Chambers	CANCELLED	

CASE DOCKETS

IMAGE	DIN	DATE	ENTRY
	61	5/23/2019	REOPENED CASE CLOSED
3	60	5/22/2019	NOTICE OF REMOVAL BASED ON DIVERSITY AND FEDERAL QUESTION
3	59	5/3/2019	NOTICE OF LIS PENDENS - Recorded (OR.4718.1793 / 2019030529)
3	58	5/2/2019	NOTICE OF LIS PENDENS
28	57	5/2/2019	PLAINTIFF'S PETITION FOR DECLARATORY JUDGMENT TO DETERMINE CONSTITUTIONAL HOMESTEAD STATUS
3	55	4/25/2019	CONSENT ORDER CANCELLING SALE AND DISCHARGING NOTICE OF LEVY - Recorded (OR.4714.367 / 2019028263)
	56	4/25/2019	CASE REOPENED FOR RO
	54	4/25/2019	EMAIL SENT TO: CURRIE, ALLYSON B; HUGHES, DOUGLAS BRADFORD; SJSO; REGARDING SERVICE OF COURT DOCUMENT - CA18-1513, SAAD, JERRY VS. FIELD, ARTHUR MATTHEW

			WITH 1 ATTACHMENTS FROM DOCKET: CONSNET ORDER CANCELLING SALE AND DISCHARGING NOTICE OF LEVY-4/25/2019
3	53	4/25/2019	CONSENT ORDER CANCELLING SALE AND DISCHARGING NOTICE OF LEVY
	51	4/8/2019	ATTORNEY: HUGHES, DOUGLAS BRADFORD ASSIGNED TO FIELD, ARTHUR MATTHEW
2	52	4/8/2019	NOTICE OF APPEARANCE / ARTHUR FIELD
11	49	3/29/2019	BRIEF IN SUPPORT OF MOTION TO CANCEL SALE AND REQUEST FOR DECLARTORY AND/ OR INJUNCTIVE AND / OR OTHER RELIEF
1	48	3/29/2019	CERTIFICATION OF SERVICE
1	47	3/29/2019	MOTION TO CANCEL SALE
1	46	3/28/2019	CERTIFICATION OF SERVICE
1	44	3/28/2019	MOTION FOR ORDER TO SHOW CAUSE
9	43	3/28/2019	REQUEST FOR DECLARATORY AND / OR INJUNCTIVE AND / OR OTHER RELIEF
1	42	3/26/2019	PAYMENT \$42.00 RECEIPT #2019010782
	41	3/26/2019	EXEC SVC CHARGE ASSESSED \$42.00
	40	3/18/2019	EMAIL SENT TO: J.A. - T. DAVIS REGARDING SERVICE OF COURT DOCUMENT - CA18-1513, SAAD, JERRY VS. FIELD, ARTHUR MATTHEW WITH 1 ATTACHMENTS FROM DOCKET: NOTICE OF HOMESTEAD EXEMPTION - 3/18/2019
2	39	3/18/2019	NOTICE OF HOMESTEAD EXEMPTION
4	38	3/15/2019	RETURNED UNDELIVERABLE - ORDER STRIKING DEFENDANT'S REQUEST FOR CONTINUANCE, CANCELING HEARING, DIRECTING CLERK TO ISSUE WRIT OF EXECUTION - SENT TO ARTHUR M. FIELD
	37	3/11/2019	EMAIL SENT TO: CURRIE, ALLYSON B REGARDING SERVICE OF COURT DOCUMENT - CA18-1513, SAAD, JERRY VS. FIELD, ARTHUR MATTHEW WITH 1 ATTACHMENTS FROM DOCKET: WRIT OF EXECUTION-3/11/2019
2	36	3/11/2019	WRIT OF EXECUTION
	35	3/11/2019	EMAIL SENT TO: CURRIE, ALLYSON B REGARDING SERVICE OF COURT DOCUMENT - CA18-1513, SAAD, JERRY VS. FIELD, ARTHUR MATTHEW WITH 1 ATTACHMENTS FROM DOCKET: ORDER STRIKING DEFENDANT'S REQUEST FOR CONTINUANCE, CANCELING HEARING, DIRECTING CLERK TO ISSUE WRIT OF EXECUTION-3/11/2019
3	30	3/11/2019	ORDER STRIKING DEFENDANT'S REQUEST FOR CONTINUANCE, CANCELING HEARING, DIRECTING CLERK TO ISSUE WRIT OF EXECUTION
8	34	3/7/2019	MOTION TO QUASH AND / OR FOR OTHER RELIEF
2	33	3/7/2019	CERTIFICATION IN SUPPORT OF MOTION TO REOPEN
2	32	3/7/2019	MOTION TO REOPEN
3	31	2/21/2019	PLAINTIFF'S REQUEST FOR JUDICIAL NOTICE PURSUANT TO 90.202(6) AND 90.201(1) FLA STAT 2018
5	29	2/21/2019	MOTION TO STRIKE DEFENDANT'S REQUEST FOR CONTINUANCE; REQUEST FOR CANCELATION OF HEARING; REQUEST FOR ISSUANCE OF WRIT OF EXECUTION
3	28	2/14/2019	RETURNED UNDELIVERABLE- ORDER SCHEDULING HEARING TO ARTHUR MATTHEW FIELD
3	27	2/11/2019	RETURNED UNDELIVERABLE- ORDER SCHEDULING HEARING FOR ARTHUR FIELD
	26	2/6/2019	EMAIL SENT TO: CURRIE, ALLYSON B REGARDING SERVICE OF COURT DOCUMENT - CA18-1513, SAAD, JERRY VS. FIELD, ARTHUR MATTHEW WITH 1 ATTACHMENTS FROM DOCKET: ORDER SCHEDULING HEARING-2/6/2019
2	25	2/6/2019	ORDER SCHEDULING HEARING - APRIL 1, 2019 AT 11:30AM
	22	1/17/2019	EMAIL SENT TO: T. DAVIS REGARDING SERVICE OF COURT DOCUMENT - CA18-1513, SAAD, JERRY VS. FIELD, ARTHUR MATTHEW - FIRST REQUEST FOR CONTINUANCE -1/17/2019
	21	1/17/2019	JUDGE SMITH, R LEE: ASSIGNED
1	20	1/17/2019	CERTIFICATION

4	19	1/17/2019	FIRST REQUEST FOR CONTINUANCE/ EXTENSION OF TIME
Request	18	1/4/2019	DOMESTIC RETURN RECEIPT
1	17	12/31/2018	CERTIFIED MAIL RECEIPT
	16	12/28/2018	EMAIL SENT TO: CURRIE, ALLYSON B REGARDING SERVICE OF COURT DOCUMENT - CA18-1513, SAAD, RECEIVER JERRY VS. FIELD, ARTHUR MATTHEW WITH 4 ATTACHMENTS FROM DOCKET: 151-12/28/2018, NOTICE OF REGISTRATION OF FOREIGN JUDGMENT-12/28/2018 AFFIDAVIT IN SUPPORT OF RECORDING FOREIGN JUDGMENT PURSUANT TO §55.505 FLORIDA STATUTES / OR 4660 PG 1096 EXEMPLIFIED FOREIGN FINAL JUDGMENT / OR 4660 PG 1092
	15	12/28/2018	CASE CLOSED
2	14	12/28/2018	NOTICE OF REGISTRATION OF FOREIGN JUDGMENT
Request	13	12/28/2018	RECORDING RECEIPT
Request	12	12/28/2018	PAYMENT \$1.50 RECEIPT #2018043350
Request	11	12/28/2018	AFFIDAVIT IN SUPPORT OF RECORDING FOREIGN JUDGMENT PURSUANT TO §55.505 FLORIDA STATUTES / OR 4660 PG 1096
4	10	12/28/2018	EXEMPLIFIED FOREIGN FINAL JUDGMENT / OR 4660 PG 1092
Request	9	12/7/2018	RECORDING RECEIPT
	8	12/7/2018	ATTORNEY: CURRIE, ALLYSON B ASSIGNED TO SAAD, RECEIVER JERRY
Request	7	12/7/2018	PAYMENT \$408.50 RECEIPT #2018041255
	5	12/7/2018	JUDGE TRAYNOR, J MICHAEL: ASSIGNED
Request	6	12/7/2018	AFFIDAVIT IN SUPPORT OF RECORDING FOREIGN JUDGMENT PURSUANT TO §55.505 FLORIDA STATUTES / OR 4651 PG 1603
3	2	12/7/2018	EXEMPLIFIED FOREIGN FINAL JUDGMENT / OR 4651 PG 1600
	1	12/7/2018	FOREIGN JUDGMENT ASSESSED \$410.00
	4	12/7/2018	CASE FILED 12/07/2018 CASE NUMBER CA18-1513

RECEIVED

Jan 06 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Jean Hoefer Toal, Chief Justice of the
South Carolina Supreme Court (Retired),
Acting as Circuit Court Judge

Case No. 2008-CP-23-3665

William F. Tomz and Francis W. Tomz,
Individually and as Class Representatives, Respondents,

v.

Capital Investment Funding, LLC, by and through its Receiver, Jerry T. Saad,
And Arthur M. Field, Defendants,

Of Which Capital Investment Funding, LLC, by and through its Receiver,
Jerry T. Saad is a Respondent and Arthur M. Field is the Appellant.

In Re: Kathryn Taillon, Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material
proposed to be included by any of the parties and not any other material.

December 20, 2021

s/ Jeffrey P. Dunlaevy
Jeffrey P. Dunlaevy (SC Bar No. 16978)
Dunlaevy Law Firm
37 Villa Road, Suite 440
Greenville SC 29615
864.208.9305