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Superior Court of California  
County of Los Angeles

MAR 23 2015

Sherri R. Carter, Executive Officer/Clerk  
By Cristina Grijalva, Deputy

8 Attorneys for Plaintiffs ROGER W. CORMAN,  
9 JULIE A. CORMAN, and PASIG, LTD.

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 FOR THE COUNTY OF LOS ANGELES

12 ROGER W. CORMAN, an individual; JULIE  
13 A. CORMAN, an individual; and PASIG,  
14 LTD., a British Virgin Islands company,

CASE NO. BC 576379

Plaintiffs.

COMPLAINT FOR:

vs.

15 CITCO GROUP LIMITED, a Netherlands  
16 company; CITCO GROUP (MONACO) SAM,  
17 a Monaco company; CITCO GLOBAL  
18 CUSTODY (N.A.) N.V., a Curacao company;  
19 TORTRUST CORPORATION COMPANY  
20 LIMITED, a British Virgin Islands company;  
21 CITCO TRUSTEES S.A., a Switzerland  
22 company; CITCO B.V.I. LIMITED, a British  
23 Virgin Islands company; CITCO BANK BVI  
24 LIMITED, a British Virgin Islands company;  
25 CITCO BANK & TRUST COMPANY  
26 LIMITED, a Cayman Islands company;  
27 CITCO BANKING CORPORATION N.V., a  
28 Curacao company; SECURITAS  
MANAGEMENT SERVICES CORP, a British  
Virgin Islands company; CITCO FUND  
SERVICES (CAYMAN ISLANDS) LTD., a  
Cayman Islands company; CITCO SUISSE  
S.A., a Switzerland company; ERMANNO  
UNTERNAEHRER, an individual;  
CHRISTOPHER SMEETS, an individual; and  
DOES, 1 through 100,

- 1) Breach of Fiduciary Duty
- 2) Constructive Fraud
- 3) Concealment
- 4) Negligent Misrepresentation
- 5) Fraud – Intentional Misrepresentation
- 6) Unjust Enrichment
- 7) Breach of Contract
- 8) Breach of Implied Covenant of Good Faith and Fair Dealing
- 9) Corporations Code § 25401
- 10) Corporations Code § 25403
- 11) Negligence
- 12) Punitive Damages

Defendants.

JURY TRIAL DEMANDED

1 Plaintiffs Roger W. Corman (“Roger Corman” or “Mr. Corman”), Julie A. Corman  
2 (“Julie Corman” or “Mrs. Corman”) (collectively, the “Cormans”), and Pasig Ltd. (“Pasig”)  
3 (collectively, “Plaintiffs”), complain of the Defendants Citco Group Limited, Citco Group  
4 (Monaco) SAM, Citco Global Custody (N.A.) N.V., Tortrust Corporation Company  
5 Limited, Citco Trustees S.A., Citco B.V.I. Limited, Citco Bank BVI Limited, Citco Bank &  
6 Trust Company Limited, Citco Banking Corporation N.V., Securitas Management Services  
7 Corp, Citco Fund Services (Cayman Islands) Ltd., Citco Suisse, S.A., Ermanno  
8 Unternaehrer, Christopher Smeets, and Does, 1 through 100, (collectively “Defendants” or  
9 “Citco”), and each of them, and allege as follows:

10 **PARTIES**

11 1. Plaintiff Roger Corman is an individual residing in Los Angeles County in the  
12 city of Santa Monica.

13 2. Plaintiff Julie Corman is an individual residing in Los Angeles County in the  
14 city of Santa Monica.

15 3. Plaintiff Pasig is a company incorporated in the British Virgin Islands  
16 (“BVI”), and owned 100% by the Cormans.

17 4. Defendants include the following corporate entities, collectively described  
18 herein as Citco:

- 19 a. Citco Group Limited, a Netherlands company;
- 20 b. Citco Group (Monaco) SAM, a Monaco company;
- 21 c. Citco Global Custody (N.A.) N.V., a Curacao company;
- 22 d. Tortrust Corporation Company Limited, a British Virgin Islands  
23 company;
- 24 e. Citco Trustees S.A., a Switzerland company;
- 25 f. Citco B.V.I. Limited, a British Virgin Islands company;
- 26 g. Citco Bank BVI Limited, a British Virgin Islands company;
- 27 h. Citco Bank & Trust Company Limited, a Cayman Islands Company;
- 28 i. Citco Banking Corporation N.V., a Curacao company;

- 1           j.     Securitas Management Services Corp, a British Virgin Islands  
2                 company;  
3           k.     Citco Fund Services (Cayman Islands) Ltd., a Cayman Islands  
4                 company; and  
5           l.     Citco Suisse S.A., a Switzerland company.

6           5.     Defendants also include the following individuals who were officers,  
7     directors, owners, control persons, employees and/or agents of Citco:

- 8           a.     Ermanno Unternaehrer, an individual residing in Monaco; and  
9           b.     Christopher Smeets, an individual residing in the Netherlands.

10          6.     Plaintiffs are informed and believe, and on that basis allege, that the individual  
11     defendants were aware of, approved, participated in, and/or ratified all acts of Citco as  
12     described herein.

13          7.     The true names and capacities, whether individuals, legal corporations, or  
14     otherwise, of Defendant DOES 1 through 100, inclusive, and each of them, are unknown to  
15     Plaintiffs at this time and therefore Plaintiffs sue said Defendants by such fictitious names.  
16     Plaintiffs will amend this Complaint to show the true names and capacities of the fictitiously  
17     named Defendants when they have been ascertained. Plaintiffs are informed and believe,  
18     and on that basis allege, that each fictitiously named Defendant is liable in some manner to  
19     Plaintiff respecting in response to the events and damages referred to in this Complaint.

20          8.     Plaintiffs are informed and believe, and thereon allege, that at all times  
21     mentioned herein, each of the Defendants, including all DOE Defendants, was the agent,  
22     employee, partner, officer, director, shareholder, joint venturer, part of a single enterprise,  
23     officer, director, owner, successor, assign, affiliate, subsidiary, alter ego, or other  
24     representative of every other Defendant and acting within the course and scope of such  
25     agency, employment, and/or other relationship in conducting the actions and activities or  
26     omissions of each other Defendant and/or generally or specifically approving the failure to  
27     take necessary and appropriate actions and activities, and/or subsequently ratified each other

28     ///

1 Defendants' conduct. References made herein to "Defendants" mean the acts of Defendants  
2 acting individually, jointly, and/or severally.

3 9. At all times mentioned herein, all Defendants were the alter egos of one  
4 another and formed a single enterprise. There is a sufficient unity of interest and ownership  
5 among Defendants, and each of them, such that the acts of one are for the benefit of each  
6 other and can be imputed to the acts of the others. The separate corporate personalities of  
7 Defendants are and were merged, so that one Defendant is and was a mere adjunct of  
8 another, or the Defendants formed a single enterprise. The separate personalities of each  
9 individual Defendant do not and never did in reality exist, and there would be an inequitable  
10 result if the acts of the entity in question were treated as the acts of one entity alone and not  
11 of each of them.

#### 12 JURISDICTION AND VENUE

13 10. This Court has personal jurisdiction over Defendants because Defendants have  
14 the necessary contacts with California, provided services and/or contracted for services with  
15 the Plaintiffs in the County of Los Angeles, California, either directly and/or through its  
16 agents, purposefully availed themselves of the jurisdiction of the state of California, and  
17 submitted to personal jurisdiction in California for actions relating to those contacts.  
18 Further, Defendant Ermanno Unternaehrer lived in California in the time period when he  
19 met with the Cormans, as set out herein below.

20 11. Venue is proper in the County of Los Angeles because the Cormans reside in  
21 Los Angeles, the Cormans and Pasig suffered harm in Los Angeles, pursuant to California  
22 Code of Civil Procedure § 395.5, and because no Defendant resides in California, pursuant  
23 to California Code of Civil Procedure § 395(a).

#### 24 FACTUAL ALLEGATIONS

25 12. The Cormans are iconic Hollywood figures who have been in the film  
26 business for decades.

27 13. Roger Corman is an Academy Award-winning film producer and director. He  
28 is recognized for producing over 300 films and directing over 60, including a series based

1 on the works of Edgar Allan Poe. One of his most famous films, *The Little Shop of*  
2 *Horrors*, made in 1960, is the basis for a successful Broadway musical. His filmography is  
3 documented in his autobiography, *How I Made a Hundred Movies in Hollywood*, first  
4 published in 1990. He was the youngest director ever to have a retrospective at the  
5 Cinemateque Francaise in Paris, the British Film Institute in London and the Museum of  
6 Modern Art in New York. In 1998, he won the first Producer's Award ever given by the  
7 Cannes Film Festival. In 2006, he received the David O. Selznick Award, the highest honor  
8 given by the Producers Guild of America. Also in 2006, his film *Fall of the House of Usher*  
9 was among the twenty-five films selected for the National Film Registry, a compilation of  
10 significant films preserved by the Library of Congress. He is the subject of the 1978  
11 documentary *Roger Corman: Hollywood's Wild Angel*, as well as *Corman's World: Exploits*  
12 *of a Hollywood Rebel*, which premiered at Sundance and Cannes Film Festivals in 2011. In  
13 addition to his Academy Award and many other honors, he has a star on the Hollywood  
14 Walk of Fame. He has also acted in films directed by his protégés, including *The Silence of*  
15 *the Lambs*, *The Godfather Part II*, *Apollo 13*, *The Manchurian Candidate*, and *Philadelphia*.

16 14. Julie Corman began producing movies in the early 1970s. During her  
17 distinguished career, she has produced more than 35 films, including Jonathan Demme's  
18 *Crazy Mama*, family classics such as *A Cry in the Wind*, and the Tony Award-winning play,  
19 *DA*. In 2000, Julie was appointed Chair of the Graduate Film Department at NYU. She  
20 lectures widely at leading universities around the world, including USC, UCLA, Yale,  
21 Duke, University of Pennsylvania, and at several universities in Japan. She has received  
22 many film awards, including several lifetime achievement honors, most notably from the  
23 USC School of Cinematic Arts and Yale University and most recently from the Honolulu  
24 International Film Festival. She has been a member of the Academy of Arts and Sciences  
25 for thirty years, and is listed in "Who's Who in the World."

26 15. In addition to their own film work, Roger and Julie have given countless  
27 opportunities to young talent, forming what has become known as the "Corman School" of  
28 film. Roger was a mentor to Francis Coppola, Martin Scorsese, Jonathan Demme, James

1 Cameron, Peter Bogdanovich, Ron Howard, and Curtis Hanson, all Academy Award-  
2 winning filmmakers. Academy Award-winning actors Jack Nicholson, Tommy Lee Jones,  
3 and Sandra Bullock started with him, as well as Sylvester Stallone, Charles Bronson, Will  
4 Farrell, and many more. The Cormans' company, New World Pictures, also served as the  
5 domestic distributor for international films by film legends Federico Fellini, Ingmar  
6 Bergman, Francois Truffaut, Akira Kurosawa, and many others. Together, Roger and Julie  
7 Corman represent one of Hollywood's most original and enduring couples.

8 16. Through their efforts in the film industry, the Cormans were able to acquire  
9 substantial funds, much of which they put to use in various investments.

10 17. In the 1990s, the Cormans were invested in a fund managed by George Soros,  
11 who as manager made all investment decisions for the fund. Under the direction and  
12 management of George Soros, the Cormans' investments were very successful, and over the  
13 years, these investments accumulated substantial appreciation for the Cormans.

14 18. The administrator of the Soros fund was Citco. As such, Citco provided all  
15 accounting services for the fund, prepared reports to shareholders, paid fund expenses,  
16 provided valuations of the fund, distributed dividends, and monitored compliance with SEC,  
17 IRS, and other U.S. legal requirements. The Cormans' investments with George Soros were  
18 held at a Citco bank. Citco is the largest independent hedge fund administrator in the world,  
19 administering over 2,000 funds with more assets than any other hedge fund administrator,  
20 and is a global industry leader in the financial services market.

21 19. The Cormans' primary contact at Citco for the Soros-managed fund was  
22 Defendant Ermanno Unternaehrer ("Mr. Unternaehrer"). Mr. Unternaehrer was an agent,  
23 employee, and control person of Citco, as well as a member of Citco's Board of Directors.  
24 Mr. Unternaehrer also provided legal and tax advice to the Cormans relating to their  
25 investments. In 1996, Citco through Mr. Unternaehrer recommended that the Cormans  
26 invest a substantial part of their moneys in a fund managed by Citco, instead of the Soros-  
27 managed fund. Mr. Unternaehrer was the individual at Citco who was primarily responsible  
28 for management of the Citco fund which he recommended to the Cormans.

1           20.    In late 1996, Mr. Unternaehrer, on behalf of Citco, came to Los Angeles and  
2 met with the Cormans. He represented to them that the Citco fund was a safe, secure place  
3 to invest their moneys, and that Citco would administer and manage the fund to ensure  
4 continued high performance. He further represented that Citco was the largest off-shore  
5 money manager in the world, that it would use its affiliated entities where appropriate in  
6 handling the funds, that it had its own moneys invested in the fund into which the Cormans'  
7 moneys would be put and would continue to keep Citco's own moneys side-by-side with the  
8 Cormans' moneys, that Citco would be an investment partner with the Cormans, that Citco  
9 would handle the funds in the best financial interests of the Cormans, and that the Cormans  
10 could trust and rely on Citco regarding the investing, managing, and administering of their  
11 funds. Mr. Unternaehrer made these representations and agreements with the intent that the  
12 Cormans would rely on them.

13           21.    The Cormans accepted and relied upon Citco's advice and representations and  
14 agreed on that basis to move substantial funds from the Soros funds to be under the  
15 management of Citco. The Cormans entrusted their funds to Citco in reliance on Citco's  
16 representations. As part of their agreement and in reliance on Citco's representations, Citco  
17 became the Cormans' agent, investment partner, investment and tax advisor, and promoter,  
18 manager, and administrator of their investment funds. This agreement was partly oral and  
19 partly in writings and was also implied in fact, among other things from the ensuing  
20 management of the Cormans' funds by Citco and the actions taken by Citco concerning the  
21 Cormans' investments. In reliance on Citco's representations and as part of their agreement  
22 to go forward, the Cormans committed their funds to Citco's management.

23           22.    Mr. Unternaehrer also gave the Cormans tax advice regarding the investment,  
24 including that the Citco fund would have tax advantages for the Cormans, and that the fund  
25 was 100% compliant with United States tax law.

26           23.    Relying on the representations of Mr. Unternaehrer, among other things, as  
27 Director and agent for Citco, the Cormans fulfilled their agreement with Citco and invested  
28 substantial moneys in the Citco fund, which had previously been invested in the fund

1 managed by George Soros, and left such funds there for about fourteen years, which they  
2 would not have done but for the solicitation by the Citco and its agents and the  
3 representations made by them. The Cormans' reliance on Citco's representations was  
4 reasonable, given the prior success of their investments in the Soros-managed funds that  
5 were administered by Citco.

6 24. From the time the Cormans made their first investments in the Citco managed  
7 fund, Citco received fees for the on-going management of the fund.

8 25. Between 1996 and 2008, Mr. Unternaehrer met with the Cormans  
9 approximately once per year, usually in Los Angeles. At these meetings, Mr. Unternaehrer  
10 urged them to continue to keep their moneys under Citco management, and provided them  
11 with tax advice relating to their investments.

12 26. In 2002, in order to have even more complete control of the Cormans funds,  
13 Citco, through Mr. Unternaehrer, recommended that Pasig Ltd. ("Pasig") be set up and that  
14 for tax reasons, that it should be a British Virgin Islands entity. Citco then set up Pasig and  
15 used a Citco address in the British Virgin Islands as Pasig's address. Once Pasig was set up,  
16 Citco became the sole conduit for these investments of the Cormans, with Citco fully  
17 managing and handling all administrative functions for Pasig.

18 27. Roger Corman was included initially as a Director when Citco incorporated  
19 Pasig. However, within a few months of Pasig's incorporation, Mr. Unternaehrer told  
20 Roger Corman that, for tax reasons, he should resign as Director, after which the Cormans'  
21 only role in Pasig was as signatories to the account.

22 28. Thereafter, having obtained complete control of Pasig, in or about June, 2008,  
23 Citco transferred the management of the Cormans' funds then totaling \$73 million in Pasig  
24 to one Alphonse "Buddy" Fletcher ("Mr. Fletcher" and, together with the entities controlled  
25 by him, "Fletcher"). Citco did so without informing the Cormans that it was transferring  
26 management of the Pasig moneys to Fletcher.

27 29. Citco did not make this transfer of management to Fletcher in good faith based  
28 on the business or financial interests of the Cormans, but rather to further its own interests.



1 Citco was facing criticism from other clients for its conflicting role as both a bank and the  
2 manager of investment funds, and the transfer to Fletcher allowed Citco to mitigate this  
3 criticism. In addition, Citco obtained a payout to itself of at least \$28 million for the  
4 transfer of management, along with other benefits for Citco and its representatives.  
5 Further, in connection with this transfer of management to Fletcher, Citco and its CEO,  
6 Defendant Christopher Smeets, and Defendant Unternaehrer arranged a side deal whereby  
7 Mr. Unternaehrer obtained \$6.6 million in cash from Fletcher and received stock in a  
8 Fletcher entity, which he was able to redeem for cash. Mr. Smeets is also a control person  
9 of Citco and, as CEO was involved in and ratified all decisions by Citco herein.

10 30. At the time of the transfer, Citco was familiar with Fletcher's operations  
11 because it was already serving as an administrator for Fletcher's funds, and in that capacity  
12 provided accounting services, prepared reports to shareholders, paid fund expenses,  
13 provided valuations of the fund, distributed dividends, and monitored compliance with SEC,  
14 IRS, and other U.S. legal requirements for Fletcher; and in particular Mr. Unternaehrer held  
15 a management position with Fletcher. Thus, Citco had access to Fletcher's financial  
16 information and knowledge about Fletcher's operations prior to the transfer of the  
17 management of the Pasig funds to Fletcher.

18 31. At the time of the transfer, Citco was in possession of information that was  
19 material to the transfer of management of the funds to Fletcher. Citco knew or should have  
20 known at the time of the transfer that Fletcher would be a poor manager of the fund, and that  
21 he was already engaged in fraud and mismanagement of other funds under his control,  
22 including but not limited to knowledge of the following:

- 23 a. Fletcher had not made a single profitable investment in the ten months  
24 prior to the transfer of management of Pasig funds;
- 25 b. Citco was a lender to Fletcher, and Fletcher was having great difficulty  
26 paying back the Citco loan;
- 27 c. Fletcher repaid Citco loans with money that was invested with Fletcher  
28 by the Firefighter's Retirement System, Municipal Employees

1 Retirement System, and New Orleans Firefighters Pension Relief fund  
2 (collectively, "Louisiana Firefighters Pension fund"). This investment  
3 is the subject of the ongoing litigation in *Firefighters' Retirement*  
4 *System et al. v. Citco Group Limited et al.*, Case No. 13cv00373-SDD-  
5 SCR (M.D. La.). Fletcher's use of this pension fund money, which  
6 Fletcher was purporting to invest, to pay old investors is a classic  
7 hallmark of a Ponzi scheme and was not a permitted use of new  
8 investor funds per Fletcher's organizing documents;

9 d. Just two months prior to the transfer of management of the fund, the  
10 combined cash balance of all Fletcher entities was only \$1.6 million,  
11 plainly insufficient to pay all of Fletcher's existing obligations; and

12 e. The \$28 million or more paid by Fletcher to Citco in return for the  
13 transfer in management of the Pasig funds came directly from the  
14 money invested by the Louisiana Firefighters Pension fund, which was  
15 also not a permitted use of new investor funds per Fletcher's organizing  
16 documents.

17 32. Citco did not inform the Cormans that Fletcher would be a poor manager or  
18 that he was already engaged in fraud and mismanagement of other funds under his control,  
19 and did not give the Cormans an opportunity to decline to put the Pasig money with  
20 Fletcher. Had Citco revealed this material information to the Cormans, the Cormans would  
21 not have agreed to allow Fletcher to manage their funds. Rather, Citco failed to disclose this  
22 material information and actively concealed this information from the Cormans, intending to  
23 deceive them.

24 33. No reasonable agent, investment partner, investment and tax advisor,  
25 promoter, manager, and/or administrator of investment funds would have agreed to the  
26 transfer of management of the funds to Fletcher in similar circumstances. In addition, Citco  
27 also undertook direct actions that harmed the Cormans' interests just prior to the transfer in  
28 management to Fletcher. At the time of the investment by the Louisiana Firefighters

1 Pension fund, Citco had already directed the Cormans' fund to invest in the same Fletcher  
2 entity as the Louisiana Firefighters Pension fund. Fletcher promised the Louisiana  
3 Firefighters Pension fund that it would always obtain at least a 12% return on its investment.  
4 Citco agreed to subordinate the rights of the Cormans' fund in the Fletcher entity to those of  
5 the Louisiana Firefighters Pension fund, even allowing Fletcher to reduce the value of the  
6 Cormans' funds in the entity in order to ensure that 12% return to the Firefighters. This  
7 transaction provided Fletcher with needed cash to pay back the Citco loan and to pay Citco  
8 for the transfer of management of the Cormans' Pasig funds. These actions were not in the  
9 best financial or business interests of the Cormans, were not actions that a reasonable agent,  
10 investment partner, investment and tax advisor, promoter, manager, and/or administrator of  
11 investment funds would have undertaken in similar circumstances, and were not disclosed to  
12 the Cormans, but were rather intentionally concealed so that Citco could benefit from them.  
13 Had Citco revealed this material information to the Cormans, the Cormans would not have  
14 agreed to the transfer of management of the Pasig funds.

15 34. After the transfer of the management of the Pasig funds, Citco continued to  
16 serve as the administrator of the funds. In that capacity, Citco continued to have access to  
17 the financial information regarding the investments and had the ability to monitor the  
18 activities of the Fletcher and the status of the Cormans' investments.

19 35. In October 2008, just four months after the transfer to Fletcher, Citco removed  
20 the Cormans as signatories to the Pasig account. This step took away the last remaining  
21 control the Cormans had over their money, removed any transparency from Citco's control  
22 of the Cormans' funds, and kept them ignorant of the risks to which their moneys were  
23 subjected by the transfer to Fletcher, and of the benefits Citco received for the transfer of the  
24 Cormans' moneys. By 2009, the Cormans no longer received account statements for Pasig.  
25 Instead, account statements were sent from one Citco entity to another Citco entity.

26 36. At or about this time, additional red flags appeared that made Citco fully  
27 aware that the funds were in jeopardy as a result of Fletcher's mismanagement and fraud.  
28 These included, without limitation, the expiration of Fletcher's credit lines three months

1 after the transfer, with the foreseeable result that, without such credit lines, Fletcher would  
2 use assets which would have otherwise have gone to investors to pay Fletcher's own  
3 expenses. Also, Fletcher directed the fund in which the Pasig moneys were held to invest  
4 approximately \$60 million into other of his own entities, while double counting for this \$60  
5 million as an asset of each entity, and collecting a fee for each such transaction.

6 37. These red flags put or should have put Citco on further notice that investments  
7 under Fletcher management, including those of the Cormans, were at extreme risk and likely  
8 to lose substantial value by virtue of Fletcher's mismanagement. Citco did not reveal these  
9 red flags to the Cormans, but rather intentionally concealed this material information in  
10 order to deceive the Cormans and to further Citco's own financial interests.

11 38. Indeed, by November 2008, just five months after the transfer, the Fletcher  
12 managed funds were insolvent and restrictions were imposed on investors, including the  
13 Cormans, from withdrawing funds invested or from receiving full value of their investments  
14 if they did withdraw funds.

15 39. However, without informing the Cormans, prior to the time that Fletcher  
16 began restricting investors from exiting the funds he managed, Citco pulled out its own  
17 money from the Fletcher investments, and did not keep its funds alongside the Cormans'  
18 money as it had represented and agreed it would do. Citco did not pull out the Cormans'  
19 Pasig funds or advise them to do so when it withdrew its own funds, and did not inform the  
20 Cormans of its withdrawal of its own funds or of any of the danger signals it became aware  
21 of as to investments with Fletcher, or the fact that it received a payout for putting the  
22 investments with Fletcher. These actions were self-serving and not in the best financial or  
23 business interests of the Cormans, were not actions that a reasonable agent, investment  
24 partner, investment and tax advisor, promoter, manager, and/or administrator of investment  
25 funds would have undertaken in similar circumstances, and were not disclosed to the  
26 Cormans, but were rather intentionally concealed so that Citco could benefit from them.  
27 Had Citco told the Cormans that it was pulling its money out of the Fletcher funds, the  
28 Cormans would not have left their own funds invested with Fletcher at that time.

1           40.    When Citco did finally attempt to withdraw the Cormans' funds from Fletcher  
2 in or about May 2010, it was unable to do so given the state of the Fletcher investments.

3           41.    By the summer of 2013, the Cormans were able to recover about \$13 million  
4 from the total of \$73 million Pasig funds which Citco had transferred to Fletcher's  
5 management. Faced with this stunning loss, the Cormans investigated the activities of Citco  
6 and Fletcher and became aware of some of the facts alleged herein as to Fletcher's fraud and  
7 mismanagement and Citco's fraud, self-dealing, mismanagement and failures to act or  
8 inform the Cormans.

9           42.    In August, 2013, the Cormans demanded that Citco make them whole for their  
10 losses. Citco refused to do so but did enter into a tolling agreement for the claims of the  
11 Cormans as to all Citco entities. The Cormans made a further demand to be made whole in  
12 December, 2014, which Citco also refused; and the tolling agreement was extended until  
13 March 31, 2015.

14           43.    In or about 2013 and 2014, bankruptcy proceedings involving funds managed  
15 by Fletcher were filed in New York, the Cayman Islands, and the British Virgin Islands.  
16 The Cormans and/or Pasig have appeared and made claims in such bankruptcy actions, and  
17 may receive small amounts as a creditor. Plaintiffs are informed and believe that such  
18 bankruptcy recoveries will not be more than something on the order of \$5 million, and will  
19 credit any such monies received as an offset against damages herein. In order to make these  
20 claims in mitigation of damages herein, the Cormans have been required to retain counsel to  
21 represent them in the bankruptcy actions, and have incurred attorneys' fees and costs in  
22 connection with the bankruptcies which they would not have incurred but for the conduct of  
23 Citco as set forth herein.

24           44.    As a result of Citco's conduct, as alleged herein, the Cormans lost an amount  
25 to be determined at trial but on the order of \$55-\$60 million, after offset for possible  
26 recoveries from the bankruptcies, which they had invested with Citco at the time Citco  
27 transferred management of such funds to Fletcher, lost the reasonable and expected  
28 continued earnings on their \$73 million investment funds from 2008 to present, in an

1 amount to be determined at trial, and have incurred attorney's fees and costs in connection  
2 with the bankruptcy actions which were all made necessary by the conduct of Defendants as  
3 set forth herein.

4 **FIRST CAUSE OF ACTION**

5 **(Breach of Fiduciary Duty Against All Defendants)**

6 44. Plaintiffs, the Cormans, hereby repeat and re-allege the factual allegations  
7 contained in paragraphs 1 through 43 above as though set forth in full herein.

8 45. A fiduciary relationship existed between Plaintiffs and each of the Defendants.  
9 Citco, including all of its affiliates, subsidiaries, parents, related entities, employees and  
10 agents, including those named herein as Defendants, was an agent of Plaintiffs, investment  
11 and tax advisor to Plaintiffs, promoter of stocks and other financial transactions, and  
12 manager and administrator of their funds. Plaintiffs entrusted their funds to Citco; the  
13 Cormans gave broad authority to Citco to invest their funds; the Cormans relied on Citco's  
14 advice and representations; the Cormans were vulnerable to Citco and depended on Citco;  
15 Citco held itself out as and was an investment partner with the Cormans; Defendants  
16 voluntarily and knowingly undertook to act on behalf of and for the benefit of the Cormans.

17 46. Defendants owed fiduciary duties to Plaintiffs, including the duty to act with  
18 the utmost good faith in the best interests of Plaintiffs.

19 47. As alleged herein, Defendants, among other things, acted as Plaintiffs' agent  
20 for purposes of investing their funds.

21 48. As alleged herein above, Defendants, including all entities and individuals  
22 named as Defendants, failed to act as reasonably careful agents, investment and tax  
23 advisors, partners, managers, and/or administrators would have acted under the same or  
24 similar circumstances.

25 49. As alleged herein above, Defendants, including all entities and individuals  
26 named as Defendants, also failed to act in the best interests of Plaintiffs, knowingly acted  
27 against Plaintiffs' interests, and instead acted in their own self-interest, subordinated

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1 Plaintiffs interests to their own interests and engaged in numerous activities to the detriment  
2 of Plaintiffs and did so without Plaintiffs' knowledge or consent.

3 50. As alleged herein above, Defendants undertook direct actions and omissions  
4 which caused harm to the Plaintiffs' investments and caused Plaintiffs to lose substantial  
5 amounts of money.

6 51. Plaintiffs were harmed by Defendants' actions and were damaged in an  
7 amount to be proven at trial.

8 52. Defendants' conduct was a substantial factor in causing Plaintiffs' harm.

9 **SECOND CAUSE OF ACTION**

10 **(Constructive Fraud Against All Defendants)**

11 53. Plaintiffs hereby repeat and re-allege the factual allegations contained in  
12 paragraphs 1 through 52 above as though set forth in full herein.

13 54. A fiduciary relationship existed between Plaintiffs and each of the Defendants.  
14 Citco, including all of its affiliates, subsidiaries, parents, related entities, employees and  
15 agents, including those named herein as Defendants, was an agent of Plaintiffs, investment  
16 and tax advisor to Plaintiffs, promoter of stocks and other financial transactions, and  
17 manager and administrator of their funds. Plaintiffs entrusted their funds to Citco; the  
18 Cormans gave broad authority to Citco to invest their funds; the Cormans relied on Citco's  
19 advice and representations; the Cormans were vulnerable to Citco and depended on Citco;  
20 Citco held itself out as and was an investment partner with the Cormans; Defendants  
21 voluntarily and knowingly undertook to act on behalf of and for the benefit of the Cormans.

22 55. Defendants owed fiduciary duties to Plaintiffs, including the duty to act with  
23 the utmost good faith in the best interests of Plaintiffs.

24 56. As alleged herein above, Defendants possessed information material to  
25 Plaintiff's interests relating to the transfer, administration, and management of the Cormans'  
26 investments.

27 57. As alleged herein above, Defendants knew or should have known that this  
28 information was material to Plaintiffs' interest.

1 58. As alleged herein above, Defendants failed to disclose this material  
2 information to Plaintiffs.

3 59. Plaintiffs would have acted differently and would not have been damaged if  
4 defendants have not breached their duties, had not made false representations and had not  
5 omitted to inform Plaintiffs of material facts known or should have been known to them.

6 60. Plaintiffs were damaged by Defendants' wrongdoing in an amount to be  
7 proven at trial.

8 61. Defendants' conduct and omissions were a substantial factors in causing  
9 Plaintiffs' harm.

### 10 THIRD CAUSE OF ACTION

#### 11 (Concealment Against All Defendants)

12 62. Plaintiffs hereby repeat and re-allege the factual allegations contained in  
13 paragraphs 1 through 61 above as though set forth in full herein.

14 63. A fiduciary relationship existed between Plaintiffs and each of the Defendants.  
15 Citco, including all of its affiliates, subsidiaries, parents, related entities, employees and  
16 agents, including those named herein as Defendants, was an agent of Plaintiffs, investment  
17 and tax advisor to Plaintiffs, promoter of stocks and other financial transactions, and  
18 manager and administrator of their funds. Plaintiffs entrusted their funds to Citco; the  
19 Cormans gave broad authority to Citco to invest their funds; the Cormans relied on Citco's  
20 advice and representations; the Cormans were vulnerable to Citco and depended on Citco;  
21 Citco held itself out as and was an investment partner with the Cormans; Defendants  
22 voluntarily and knowingly undertook to act on behalf of and for the benefit of the Cormans.

23 64. Defendants owed fiduciary duties to Plaintiffs, including the duty to act with  
24 the utmost good faith in the best interests of Plaintiffs.

25 65. As alleged herein above, Defendants had exclusive knowledge of material  
26 facts and intentionally concealed, suppressed, and failed to disclose facts to Plaintiffs  
27 relating to the Cormans' investments and Defendants' own actions which harmed Plaintiffs'  
28 interests and subordinated Plaintiffs' interests to their own.





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**SIXTH CAUSE OF ACTION**

**(Unjust Enrichment Against All Defendants)**

90. Plaintiffs hereby repeat and re-allege the factual allegations contained in paragraphs 1 through 89 above as though set forth in full herein.

91. As alleged herein above, a result of their actions and omissions, Defendants received financial and economic benefit at the expense of Plaintiffs.

92. As alleged herein above, Plaintiffs suffered harm as a result of Defendants' actions in obtaining an economic benefit.

93. Defendants' retention of these benefits at the expense of Plaintiffs is unjust.

94. As a direct and proximate result of the allegations above, Defendants have been unjustly enriched at the expense of Plaintiffs in an amount to be proved at trial.

**SEVENTH CAUSE OF ACTION**

**(Breach of Written, Oral, and/or Implied Contracts Against All Defendants)**

95. Plaintiffs hereby repeat and re-allege the factual allegations contained in paragraphs 1 through 94 above as though set forth in full herein.

96. As alleged herein above, Defendants entered into partly written, partly oral and/or implied contracts with Plaintiffs.

97. As alleged herein above, pursuant to their contract, Defendants promised and agreed to undertake certain actions, to refrain from undertaking certain actions, and made representations to Plaintiffs concerning the contracts.

98. In return for the promises made by Defendants, Plaintiffs gave Defendants substantial amounts of money.

99. Plaintiffs did all or substantially all of significant things that their contract with Defendants required.

100. As alleged herein above, Defendants breached their contract with Plaintiffs by failing to undertake actions that the contract required them to and by undertaking actions that the contract prohibited them from doing.

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1 101. As a direct and proximate result of the breaches of contract, Plaintiffs were  
2 harmed in an amount to be proven at trial.

3 **EIGHTH CAUSE OF ACTION**

4 **(Breach of Implied Covenant of Good Faith and Fair Dealing Against All Defendants)**

5 102. Plaintiffs hereby repeat and re-allege the factual allegations contained in  
6 paragraphs 1 through 101 above as though set forth in full herein.

7 103. As alleged herein above, Defendants entered into partly written, partly oral,  
8 and/or implied contracts with Plaintiffs.

9 104. As alleged herein above, pursuant to their contract, Defendants promised and  
10 agreed to undertake certain actions, to refrain from undertaking certain actions, and made  
11 representations to Plaintiffs concerning the contracts.

12 105. In return for the promises made by Defendants, Plaintiffs gave Defendants  
13 substantial amounts of money.

14 106. Plaintiffs did all or substantially all of significant things that their contract  
15 with Defendants required.

16 107. As alleged herein above, Defendants unfairly interfered with Plaintiffs' rights  
17 to receive the benefit of its promises and thereby breached their implied covenant of good  
18 faith and fair dealing inherent in every contract.

19 108. As a direct and proximate result of the breaches of the implied covenant of  
20 good faith and fair dealing, Plaintiffs were in an amount to be proven at trial.

21 **NINTH CAUSE OF ACTION**

22 **(Violation of Corporations Code § 25401 Against All Defendants)**

23 109. Plaintiffs hereby repeat and re-allege the factual allegations contained in  
24 paragraphs 1 through 108 above as though set forth in full herein.

25 110. As alleged herein above, Defendants made untrue statements of material fact  
26 and omitted to state material facts in inducing Plaintiffs to invest their funds with Citco.

27 111. Plaintiffs' investment in the funds owned and/or managed by Defendants  
28 included purchases of securities.

1 112. The Cormans authorized payments for securities in Los Angeles, California.

2 113. Defendants intended Plaintiffs to rely on their representations and intended to  
3 induce Plaintiffs to purchase the securities.

4 114. Plaintiffs reasonably relied on the representations in deciding to purchase the  
5 securities and not to sell the securities.

6 115. Plaintiffs were damaged by Defendants' actions in an amount to be proven at  
7 trial.

8 116. Defendants' conduct was a substantial factor in causing Plaintiffs' harm.

9 117. Defendants' conduct as alleged above, was unconscionable, fraudulent,  
10 oppressive, malicious and done intentionally or in conscious disregard of Plaintiffs' rights  
11 and in order to further their own financial self-interest at Plaintiffs expense so as to justify  
12 an award of punitive damages.

13 **TENTH CAUSE OF ACTION**

14 **(Violation of Corporations Code § 25403 Against Individual Defendants)**

15 118. Plaintiffs hereby repeat and re-allege the factual allegations contained in  
16 paragraphs 1 through 117 above as though set forth in full herein.

17 119. As alleged herein above, Defendants made untrue statements of material fact  
18 and omitted to state material facts in inducing Plaintiffs to invest their funds with Citco in  
19 violation of California Corporations Code § 25401.

20 120. Individual Defendants Mr. Unternaehrer and Mr. Smeets are control persons  
21 of Citco. Mr. Unternaehrer is an executive of Citco and directly or indirectly controls the  
22 actions of Citco. Mr. Smeets is the Chief Executive Officer, President, and Executive  
23 Director, and directly controls the actions of Citco.

24 121. California Corporations Code § 25403 imposes liability on persons who, with  
25 knowledge, directly or indirectly control an entity liable under Corporations Code § 25401.

26 122. Mr. Unternaehrer and Mr. Smeets are liable for the harm to the Cormans.

27 123. Defendants' conduct as alleged above, was unconscionable, fraudulent,  
28 oppressive, malicious and done intentionally or in conscious disregard of Plaintiffs' rights

1 and in order to further their own financial self-interest at Plaintiffs expense so as to justify  
2 an award of punitive damages.

3 **ELEVENTH CAUSE OF ACTION**

4 **(Negligence Against All Defendants)**

5 124. Plaintiffs hereby repeat and re-allege the factual allegations contained in  
6 paragraphs 1 through 123 above as though set forth in full herein.

7 125. Defendants had a duty to Plaintiffs to act reasonably carefully in the  
8 administration, management and handling of their money and to give them investment and  
9 tax advice within the standard of care. Defendants fell below the standard of care and were  
10 negligent. As alleged herein, Defendants failed to use the skill and care that reasonably  
11 careful agents, investment and tax advisors, partners, and/or managers would have used in  
12 similar circumstances.

13 126. As alleged herein, as a direct and proximate result of Defendants' negligence,  
14 Plaintiffs were harmed.

15 127. As alleged herein, Defendants' negligence was a substantial factor in causing  
16 Plaintiffs' harm and Plaintiff would not have suffered the harm but for Defendants'  
17 negligence.

18 **TWELFTH CAUSE OF ACTION**

19 **(Punitive Damages Against All Defendants)**

20 128. Plaintiffs hereby repeat and re-allege the factual allegations contained in  
21 paragraphs 1 through 127 above as though set forth in full herein.

22 129. As alleged herein, Defendants' conduct causing Plaintiffs' harm justifies an  
23 award of punitive damages against Defendants.

24 130. As alleged herein, Defendants engaged in that conduct with malice,  
25 oppression, or fraud.

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**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for judgment against all Defendants as follows:

**As to the First, Second, Third, Fourth, Fifth, Seventh, Eighth, Ninth, Tenth, and Eleventh Causes of Action:**

1. For compensatory damages according to proof;

**As to the Fifth, Ninth, and Tenth Causes of Action:**

2. For punitive damages pursuant to California Civil Code § 3294(a);

**As to the Sixth Cause of Action:**

3. For restitution in such amounts as shall be shown at the time of trial and by which the Defendants have been unjustly enriched;

**As to All Causes of Action:**

4. For attorneys' fees, costs, and interest as provided by law, including but not limited to prejudgment interest as provided for by Cal. Civil Code §§ 3288 and 3291; and


5. For such other and further relief as the Court may deem just, equitable, and proper.

Dated: March 23, 2015

Respectfully Submitted,

HOWARTH & SMITH  
DON HOWARTH  
SUZELLE M. SMITH  
PADRAIC GLASPY  
JESSICA L. RANKIN

By:

  
Don Howarth

Attorneys for Plaintiffs  
ROGER W. CORMAN, JULIE A. CORMAN,  
and PASIG, LTD.

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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand trial by jury.

Dated: March 23, 2015

Respectfully Submitted,

HOWARTH & SMITH  
DON HOWARTH  
SUZELLE M. SMITH  
PADRAIC GLASPY  
JESSICA L. RANKIN

By:   
Don Howarth

Attorneys for Plaintiffs  
ROGER W. CORMAN, JULIE A. CORMAN,  
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