EXHIBIT A

☒ IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA.
☐ IN THE COUNTY COURT IN AND FOR MIAMI-DADE COUNTY, FLORIDA.

DIVISION	CIVIL COVER SHEET	CASE NUMBER
☒ CIVIL ☐ DISTRICTS ☐ FAMILY ☐ OTHER		12-48825 CA 10

PLAINTIFF	VS. DEFENDANT	CLOCK IN
Joel L. Tabas, in his capacity as both Chapter 7 Trustee of Capitol Investments USA, Inc.1 and as Assignee to the Claims of Bayside Capital Management, LLC, et al. ⊞	Shook, Hardy and Bacon, LLP and Marc Levinson	

The civil cover sheet and the information contained here does not replace the filing and service of pleadings or other papers as required by law. This form is required by the Clerk of Court for the purpose of reporting judicial workload data pursuant to Florida Statute 25.075. See instructions and definitions on reverse of this form.

TYPE OF CASE (If the case fits more than one type of case, select the most definitive category.) If the most descriptive label is a subcategory (is indented under a broader category), place an x in both the main category and subcategory boxes.

- ☐ 001 - Eminent Domain
- ☐ 003 - Contracts and Indebtedness
- ☐ 010 - Auto Negligence
- ☐ 022 - Products Liability
- ☐ 023 - Condominium
- ☐ **Negligence - Other**
  - ☐ 097 - Business Governance
  - ☒ 098 - Business Torts
  - ☐ 099 - Environmental/Toxin Tort
  - ☐ 100 - Third Party Indemnification
  - ☐ 101 - Construction Defect
  - ☐ 102 - Mass Tort
  - ☐ 103 - Negligent Security
  - ☐ 104 - Nursing Home Negligence
  - ☐ 105 - Premises Liability - Commercial
  - ☐ 106 - Premises Liability - Residential
  - ☐ 107 - Negligence - Other
- ☐ **Real Property/Mortgage Foreclosure**
  - ☐ 108 - Commercial Foreclosure $0 - $50,000
  - ☐ 109 - Commercial Foreclosure $50,001 - $249,999
  - ☐ 110 - Commercial Foreclosure $250,000 - or more
  - ☐ 111 - Homestead Residential Foreclosure $0 - $50,000
  - ☐ 112 - Homestead Residential Foreclosure $50,001 - $249,999
  - ☐ 113 - Homestead Residential Foreclosure $250,000 or more
  - ☐ 114 - Non-Homestead Residential Foreclosure $0 - $50,000
  - ☐ 115 - Non-Homestead Residential Foreclosure $50,001 - $249,999
  - ☐ 116 - Non-Homestead Residential Foreclosure $250,000 or more
  - ☐ 117 - Other Real Property Actions $0 - $50,000
  - ☐ 118 - Other Real Property Actions $50,001 - $249,999
  - ☐ 119 - Other Real Property Actions $250,000 or more
- ☐ **Professional Malpractice**
  - ☐ 094 - Malpractice - Business
  - ☐ 095 - Malpractice - Medical
  - ☐ 096 - Malpractice - Other professional
- ☐ **Other**
  - ☐ 120 - Antitrust/Trade Regulation
  - ☐ 121 - Business Transactions
  - ☐ 122 - Constitutional Challenge - Statute or Ordinance
  - ☐ 123 - Constitutional Challenge - Proposed amendment
  - ☐ 124 - Corporate Trust
  - ☐ 125 - Discrimination - Employment or Other
  - ☐ 126 - Insurance Claims
  - ☐ 127 - Intellectual Property
  - ☐ 128 - Libel/Slander
  - ☐ 129 - Shareholder Derivative Action
  - ☐ 130 - Securities Litigation
  - ☐ 131 - Trade Secrets
  - ☐ 132 - Trust Litigation
  - ☐ 133 - **Other Civil Complaint**
    - ☐ 009 - Bond Estreature
    - ☐ 014 - Replevin
    - ☐ 024 - Witness Protection
    - ☐ 080 - Declaratory Judgment
    - ☐ 081 - Injunctive Relief
    - ☐ 082 - Equitable Relief
    - ☐ 083 - Construction Lien
    - ☐ 084 - Petition for Adversary Preliminary Hearing
    - ☐ 085 - Civil Forfeiture
    - ☐ 086 - Voluntary Binding Arbitration
    - ☐ 087 - Personal Injury Protection (PIP)

COMPLEX BUSINESS COURT

This action is appropriate for assignment to Complex Business Court as delineated and mandated by the Administrative Order. Yes ☐ No ☒

REMEDIES SOUGHT (check all that apply):

☒ monetary;

☐ non-monetary declaratory or injunctive relief;

☐ punitive

NUMBER OF CAUSES OF ACTION: [11]

(specify) _____

_____

IS THIS CASE A CLASS ACTION LAWSUIT?

☐ Yes

☒ No

HAS NOTICE OF ANY KNOWN RELATED CASE BEEN FILED?

☒ No

☐ Yes If "Yes", list all related cases by name, case number, and court.

_____

_____

_____

IS JURY TRIAL DEMANDED IN COMPLAINT?

☒ Yes

☐ No

I CERTIFY that the information I have provided in this cover sheet is accurate to the best of my knowledge and belief.

Signature _____ Florida Bar # 727260

Attorney or party (Bar # if attorney)

Gary M. Freedman

(type or print name)

12/17/2012

Date

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION

CASE NO.: 12-48825 CA 10

JOEL L. TABAS, in his capacity as both Chapter 7 Trustee of Capitol Investments USA, Inc.[1] and as Assignee to the Claims of Bayside Capital Management, LLC, et al.,

Plaintiff,

v.

SHOOK, HARDY AND BACON, L.L.P. and MARC LEVINSON, an Individual,

_____/

CIVIL ACTION SUMMONS
(EN ESPANOL AL DORSO) (FRANCAIS AU VERSO)

THE STATE OF FLORIDA
TO EACH SHERIFF OF SAID STATE:

YOU ARE HEREBY COMMANDED to serve this summons and a copy of the Complaint on defendant:

Shook, Hardy and Bacon, L.L.P.
c/o Deborah S. Corbishley
Kenny Nachwalter, P.A.
201 S. Biscayne Blvd., Suite 1100
Miami, FL 33131

Each defendant is required to serve written defenses to the Complaint on the Plaintiff's attorney, **Gary M. Freedman, Esquire**, whose address is:

TABAS, FREEDMAN, SOLOFF, MILLER & BROWN, P.A.
One Flagler Building
14 Northeast First Avenue, Penthouse
Miami, Florida 33132
Telephone: (305) 375-8171 Facsimile: (305) 381-7708

CIRCUIT AND COUNTY COURTS

within 20 days after service of this summons on that defendant, exclusive of the day of service, and to file the original of the defenses with the Clerk of this Court either before service on Plaintiff's attorney or immediately thereafter. A phone call **WILL NOT** protect you; your written response, including the case number given above and the names of the parties, must be filed if you want the Court to hear your side of the case. If you do not file your response on time, you may lose the case, and your wages, money and property may thereafter be taken without further warning from the Court. You may want to contact an attorney to represent you in this proceeding as there are other legal requirements. If you do not know or have an attorney, you may contact an attorney referral service or legal aid office listed in the telephone directory. If a defendant fails to file a response, a default will be entered against that defendant for the relief demanded in the Complaint.

DATED ON DEC 17 2012

Clerk of Courts

By: _____
as Deputy Clerk
(Court Seal)

[1] The last four digits of the taxpayer identification number for each substantively consolidated Debtor follow in parentheses: Ocean Rock Enterprises, Inc. (3272), JAT Wholesale, Inc. (7903) and Pink Panther Enterprises, LLC (5240).

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION

CASE NO.: 12-48825 CA 10

JOEL L. TABAS, in his capacity as both Chapter 7 Trustee of Capitol Investments USA, Inc.[1] and as Assignee to the Claims of Bayside Capital Management, LLC, et al.,

Plaintiff,

v.

SHOOK, HARDY AND BACON, L.L.P. and MARC LEVINSON, an Individual,

_____/

CIVIL ACTION SUMMONS
(EN ESPANOL AL DORSO) (FRANCAIS AU VERSO)

THE STATE OF FLORIDA
TO EACH SHERIFF OF SAID STATE:

YOU ARE HEREBY COMMANDED to serve this summons and a copy of the Complaint on defendant:

Mark Levinson
c/o Deborah S. Corbishley
Kenny Nachwalter, P.A.
201 S. Biscayne Blvd., Suite 1100
Miami, FL 33131

Each defendant is required to serve written defenses to the Complaint on the Plaintiff's attorney, **Gary M. Freedman, Esquire**, whose address is:

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IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO.: 12-48825 CA 10

JOEL L. TABAS, in his capacity as both Chapter 7 Trustee of Capitol Investments USA, Inc.[1] and as Assignee to the Claims of Bayside Capital Management, LLC, Invest IV Partners, LLC, John W. Spoelhof IRA, Spoelhof Family Limited Partnership, Spoelhof Charitable Lead Trust, Spoelhof Charitable Remainder Unitrust, KJC Partners, LLC, LBA Partners, LLC, JMT Partners, LLC, DDGG Partners, LLC, the John & Judy Spoelhof Foundation, Victor Gonzalez 2006 Revocable Trust, Victor R. Gonzalez, Stephan P. Hokanson, Hokanson Investments, LP, Richard Magnone, Peter Indovina, Bradley Associates, LP, Relianz Mortgage Company, Inc., South Beach Chicago, LLC and South Beach Chicago 2008, LLC,

Plaintiff,

v.

SHOOK, HARDY AND BACON, L.L.P. and MARC LEVINSON, an Individual,

Defendants.

ORIGINAL FILED DEC 17 2012 HARVEY RUVIN CLERK

COMPLAINT

Joel L. Tabas, in his capacity as Chapter 7 trustee for the bankruptcy estate of Capitol Investments USA, Inc. and in his capacity as assignee to the claims of Bayside Capital Management, LLC, Invest IV Partners, LLC, John W. Spoelhof IRA, Spoelhof Family Limited Partnership, Spoelhof Charitable Lead Trust, Spoelhof Charitable Remainder

[1] The last four digits of the taxpayer identification number for each substantively consolidated Debtor follow in parentheses: Ocean Rock Enterprises, Inc. (3272), JAT Wholesale, Inc. (7903) and Pink Panther Enterprises, LLC (5240).

Unitrust, KJC Partners, LLC, LBA Partners, LLC, JMT Partners, LLC, DDGG Partners, LLC, the John & Judy Spoelhof Foundation, Victor Gonzalez 2006 Revocable Trust, Victor R. Gonzalez, Stephan P. Hokanson, Hokanson Investments, LP, Richard Magnone, Peter Indovina, Bradley Associates, LP, Relianz Mortgage Company, Inc., South Beach Chicago, LLC and South Beach Chicago 2008, LLC, through undersigned counsel, sues Shook, Hardy & Bacon, L.L.P. and Marc Levinson (collectively, the "Defendants"), stating as follows:

I. JURISDICTION AND VENUE

1. This is an action against Defendants for negligence, negligent supervision and control, avoidance and recovery of fraudulent transfers, aiding and abetting breaches of fiduciary duty, aiding and abetting a fraud and violations of the Federal and securities laws and, seeking compensatory damages in excess of $15,000, exclusive of pre-judgment interest, costs and attorneys' fees and is within the jurisdiction of this Court.

2. Venue is proper in that the causes of action sued upon accrued in Miami-Dade County, Florida and the Defendants either conduct business or reside in Miami-Dade County, Florida.

II. PARTIES, RELATED PERSONS AND RELATED ENTITIES

A. The Debtors

3. Debtor, Capitol Investments USA, Inc. ("Capitol") is a corporation organized under the laws of the State of Florida, which had its principal place of business at 400 41st Street, #506, Miami Beach, Florida 33140. Nevin Karey Shapiro ("Shapiro" who, along with Capitol, are sometimes collectively referred to as the "Debtors") was at all times a principal of Capitol. Between October 1, 1998 and December 31, 2005, Miriam Menoscal ("Menoscal") was the president, shareholder and an employee of Capitol. In October 2006, Menoscal resigned as a shareholder of Capitol due to her personal relationship with Shapiro

coming to an end and her turbulent relationship with Capitol's CFO, Roberto Torres ("R. Torres"). Alejandro Torres ("A. Torres"), R. Torres's son, was Capitol's bookkeeper during all material times.

4. Debtor, Pink Panther Enterprises, LLC ("Pink Panther") is a limited liability company organized under the laws of the State of Florida, with its principal place of business at 400 41st Street, #506, Miami Beach, FL 33140. Shapiro is the sole member of Pink Panther. Pink Panther was a holding company established to hold title to Shapiro's 2003 61.0' Riviera Yacht (the "Yacht"), on which he entertained University of Miami student athletes and University of Miami athlete recruits. On August 2, 2010, Pink Panther was substantively consolidated into the Capitol bankruptcy estate.

5. Debtor, JAT Wholesale, Inc. ("JAT") is a limited liability company organized under the laws of the State of Florida, with its principal place of business at 400 41st Street, #506, Miami Beach, FL 33140. Shapiro is the sole member of JAT. Upon information and belief, JAT was established for the purpose of funneling millions of dollars of Capitol's funds to Shapiro. On August 2, 2010, JAT was substantively consolidated into the Capitol bankruptcy estate.

B. The Plaintiff

6. Plaintiff, Joel L. Tabas ("Tabas") is the duly appointed Chapter 7 trustee for the bankruptcy estate of Capitol, which has been substantively consolidated with Pink Panther and JAT.

7. Plaintiff, Tabas is also the assignee ("Assignee") of any and all claims of: (i) Bayside Capital Management, LLC, Invest IV Partners, LLC, John W. Spoelhof IRA, Spoelhof Family Limited Partnership, Spoelhof Charitable Lead Trust, Spoelhof Charitable Remainder Unitrust, KJC Partners, LLC, LBA Partners, LLC, JMT Partners, LLC, DDGG Partners, LLC and the John & Judy Spoelhof Foundation (collectively, the "Bayside

Lenders"), (ii) Victor Gonzalez 2006 Revocable Trust and Victor R. Gonzalez (collectively, the "Gonzalez Lenders"), (iii) Stephan P. Hokanson and Hokanson Investments, LP (collectively, the "Hokanson Lenders"), (iv) Richard Magnone ("Magnone"), (v) Peter Indovina ("Indovina") and (vi) Bradley Associates, LP, Relianz Mortgage Company, Inc., South Beach Chicago, LLC and South Beach Chicago 2008, LLC (the "Bradley Lenders") may have against Defendants. The Bayside Lenders, Gonzalez Lenders, Hokanson Lenders, Magnone, Indovina and Bradley Lenders may be collectively referred to herein as the "Assignors."

C. The Defendants and Related Non-Parties

8. Defendant Shook, Hardy & Bacon, L.L.P. ("SHB") is a national law firm organized as a Missouri limited liability limited partnership with an office in downtown Miami, Florida. SHB currently has over 500 attorneys worldwide and specializes in many practice areas including, but not limited to, securities litigation, business records management and consultation, crisis management, security and corporate resiliency and corporate governance.

9. Defendant Marc Levinson ("Levinson") is a resident of Miami-Dade County, Florida and at all times relevant herein, an attorney at SHB who worked out of the downtown Miami, Florida office. Levinson's legal experience is in global product liability at SHB with a primary focus on responding to discovery and complaints in tobacco litigation. Levinson has been close friends with Shapiro since the age of six. Based upon his personal relationship with Shapiro, Levinson stepped outside of his legal specialization and experience and became the attorney primarily responsible for SHB's client relationship with Shapiro and Capitol. Levinson committed the acts and omitted to act as alleged below, within the course and scope of his employment at SHB and such acts benefitted SHB.

10. Supervising Attorney was an attorney of SHB who worked out of the downtown Miami, Florida office between November 2005 and July 2008. Supervising Attorney's legal experience is in antitrust and trade regulation at SHB and he focused on substantive and procedural anti-trust issues. Supervising Attorney stepped outside his legal specialization and experience and supervised Levinson, a junior attorney, in his management of SHB's client relationship with Shapiro and Capitol until he left SHB. Supervising Attorney left SHB in or around July 2008 for another Miami law firm. Supervising Attorney committed the acts and omitted to act as alleged below, within the course and scope of his employment at SHB and such acts benefitted SHB.

11. Partner is a partner of SHB who works in the downtown Miami, Florida office. Partner's legal experience is in tort litigation including, but not limited to, product liability/toxic torts, complex commercial litigation, international litigation, professional malpractice and civil RICO. Partner stepped outside his legal specialization and experience and was designated as the partner responsible for supervising the services provided by SHB to Shapiro. Partner committed the acts and omitted to act as alleged below, within the course and scope of his employment at SHB and such acts benefitted SHB.

III. GENERAL ALLEGATIONS

A. Capitol and Shapiro Bankruptcy

12. On November 30, 2009 (the "Petition Date"), involuntary Chapter 7 bankruptcy petitions were filed in the Bankruptcy Court in the Southern District of Florida against Capitol (Case No. 09-36408) and Shapiro (Case No. 09-36418).

13. On December 11, 2009, Tabas was appointed as interim Chapter 7 trustee of the Capitol and Shapiro bankruptcy cases to prevent the dissipation of Capitol's and

Shapiro's assets in the "gap period" between the Petition Date and the Court entering an order for relief in each case [Case No. 09-36408, ECF 14; Case No. 09-36418, ECF 12].

14. On December 12, 2009, the Bankruptcy Court entered orders providing for the Capitol and Shapiro bankruptcy cases to be jointly administered [Case No. 09-36408, ECF 17; Case No. 09-36418, ECF 16].

15. On December 30, 2009, the Bankruptcy Court entered its Order for Relief in Involuntary Case and Setting Deadline for Filing Schedules, Statement of Financial Affairs and Other Documents in each of the Capitol and Shapiro bankruptcy cases [Case No. 09-36408, ECF 35; Case No. 09-36418, ECF 24].

16. On April 22, 2010, Tabas was appointed as Chapter 7 trustee of the jointly administered Capitol and Shapiro bankruptcy cases [Case No. 09-36408, ECF 333; Case No. 09-36418, ECF 24].

B. Claims

17. The claims brought by Tabas herein (the "Claims") are being asserted both directly on behalf of the substantively consolidated bankruptcy estate of Capitol (referred to herein as the "Direct Claims") and pursuant to assignments to Tabas by the Assignors of claims they have against the Defendants (referred to herein as the "Assigned Claims"). A true and correct copy of the agreements regarding the Assigned Claims are attached hereto as Composite Exhibit "1" (the "Assignment Agreements").

18. Under the Assignment Agreements, 100% of the proceeds of any recoveries obtained by Tabas on the Assigned Claims will be disbursed to the Capitol estate. The Direct Claims and the Assigned Claims are otherwise related because of the overlapping duties owed by the Defendants to the Debtors and the Assignors and the common facts, circumstances and occurrences giving rise to both sets of claims.

19. Tabas is vested with the right, power and authority to prosecute all claims alleged in this action, and, pursuant to Florida law, is authorized to prosecute the Assigned Claims as assignee.

C. Capitol's Business

20. Prior to the Petition Date, Capitol represented itself to be engaged in the wholesale grocery distribution business; and through Shapiro, Capitol raised hundreds of millions of dollars from lenders (the "Lenders") – including the Assignors – to fund its purported business operations.

21. Capitol – both directly, and indirectly through third-party unregistered brokers (the "Brokers") who received hefty illegal commissions for bringing Lenders to Capitol – described Capitol's business as follows:

A. Capitol would find interested buyers of grocery products such as XYZ Grocery Store.

B. Capitol would then find a distributor that was offering those products for sale.

C. Capitol would operate as the broker in the purchase and resale transactions and would make a commission based upon the difference between the purchase price and the resale price of the products.

D. The typical turnaround time for the purchase and resale, on average, was 42 days.

E. Lenders would receive a stated interest rate on funds advanced.

(collectively, "Capitol Representations").

22. Craig Currie ("Currie") purportedly operated a business that sold and re-sold "diverted" or "grey market" goods and products – typically grocery items – called Craigco, Inc. ("CraigCo."). To operate CraigCo., Currie would obtain short term financing, purchase goods and then sell them to a customer at a profit.

23. Currie also purportedly operated another business for the importing of containers of glass and mirrors from China called China Glass, Inc. ("China Glass," and together with CraigCo., collectively, the "Currie Entities").

24. The Currie Entities operated out of New Jersey.

25. Prior to 2002, Capitol's business plan was changed so that it not only bought and sold goods but also started financing the Currie Entities' purchases of goods and in exchange received a percentage of the Currie Entities' profits.

26. And then prior to November 2005, Capitol ceased conducting any of its own wholesale grocery purchases or sales and instead began solely using the Lenders' funds to provide the Currie Entities with short term financing to fund their purchases and sales of goods. Pursuant to Shapiro's agreement with Currie, Capitol was supposed to receive 12% of the Currie Entities' profits.

27. In October 2007, Currie voluntarily filed for Chapter 7 bankruptcy protection (the "Currie Bankruptcy") in the District of New Jersey [Bankr. D.N.J., Case No. 07-24799-BKC-MS] and Benjamin A. Stanziale, Jr. was appointed as the Chapter 7 trustee of the Currie bankruptcy estate (the "Currie Trustee"). At the time of the Currie Bankruptcy, Currie and the Currie Entities owed Capitol in excess of $9.4 million.

28. On October 14, 2008, the Currie Trustee filed a complaint against the Currie Entities seeking to consolidate the financial affairs of the Currie Entities with the Currie bankruptcy estate because Currie "routinely ignored corporate formalities," used the Currie Entities "as an extension and instrumentality of his personal affairs" and there "was a unity of interest between them" (the "Currie Consolidation Adversary") [Bankr. D.N.J., Adv. Proc. No. 08-2440].

29. On March 6, 2009, the New Jersey bankruptcy court entered a Consent Judgment Extending Bankruptcy Proceedings to include CraigCo., Inc. and China Glass,

Inc. in the Currie Consolidation Adversary consolidating the financial affairs of the Currie Entities into the Currie bankruptcy estate [Bankr. D.N.J., Adv. Proc. No. 08-2440, ECF 8]. Upon information and belief, the Currie bankruptcy estate has no assets to distribute to creditors. Accordingly, the recovery of any of Capitol's outstanding $9.4 million receivable from Currie and the Currie Entities is unlikely.

D. The Collapse of Capitol

30. Capitol – not being able to dig itself out of the hole created by the Currie Entities' failure to pay on their indebtedness to Capitol after the Currie Bankruptcy and having no other source of income – began having problems repaying Lenders in late 2006 and sought further Lenders' funds to stay afloat with its obligations. The more Capitol fell behind in payments, the more Lenders started imploring Capitol to return the principal on their loans. Shapiro, knowing that Capitol could not fulfill all of the outstanding obligations to its Lenders, began taking steps to conceal what became the Capitol Ponzi scheme by putting out financial fires as they arose.

31. Due to allegations that Shapiro had begun dissipating his and Capitol's assets, the petitioning creditors (consisting of members of the Gonzalez Lenders and the Bradley Lenders), filed the involuntary Chapter 7 bankruptcy petitions against Capitol and Shapiro in November 2009.

32. Upon motion by the petitioning creditors reflecting that Capitol had over $123 million in liabilities as of December 2008, and only $9 million in speculative assets, the Court swiftly appointed a gap-period interim trustee, Tabas, and the Capitol Ponzi scheme was brought to a screeching halt.

33. On April 20, 2010, the United States Department of Justice (the "DOJ") filed a Criminal Complaint in New Jersey against Shapiro (Case No. 2:10-mj-08082-MCA-1, D.N.J.).

34. On September 15, 2010, Shapiro pled guilty to committing conspiracy to commit securities fraud and wire fraud, securities fraud, wire fraud and money laundering in violation of 18 U.S.C. §§ 371, 1343 and 1957, 15 U.S.C. §§ 78j(b) and 78ff and 17 C.F.R. 240.10b-5, admitting that between 2005 and 2009 he had used Capitol to fraudulently obtain money from Lenders through a Ponzi-like scheme, whereby Capitol secured a constantly increasing volume of new Lender loans to fund the principal and interest payments due on previously secured and then maturing Lender loans, and that between August 2007 and November 2009 Capitol had virtually no legitimate income generating business.

35. Menoscal, the Bayside Lenders, Gonzalez Lenders, Hokanson Lenders, Magnone, Indovina and the Bradley Lenders were unaware that (i) Capitol had ceased operating a grocery diversion business, (ii) Capitol was using new Lenders' funds to repay maturing loans to Capitol Lenders, (iii) Shapiro was causing a substantial portion of the funds which were loaned by the Lenders to Capitol to be siphoned off for Shapiro's personal use, including funding his multi-million dollar gambling habit and his lavish lifestyle and (iv) Shapiro was causing additional substantial sums to be transferred without consideration to other entities owned by Shapiro (the "Ponzi Scheme Activity").

36. Menoscal has never been charged or convicted of any crime in relation to her position at Capitol. If Menoscal had known about the Ponzi Scheme Activity, she had the authority, as Capitol's President, to stop Shapiro's use of Capitol for illegal purposes. In

addition, Menoscal would have reported Shapiro to the authorities had she known about Shapiro's turning Capitol into a Ponzi scheme.

E. Levinson's Close Personal Relationship with Shapiro

37. Levinson grew up on Miami Beach with Shapiro and the two were best friends from the age of six.

38. As kids, Levinson and Shapiro played on the same soccer team and oftentimes would stay at each other's houses.

39. Because of their close friendship, Shapiro also became close with Levinson's family and vice versa.

40. Levinson and Shapiro continued their close friendship in high school at Miami Beach High School along with the rest of the "rat pack," one of which became a Capitol Lender named Eric Sheppard ("Sheppard").

41. When Levinson had a son in 2003, as a gesture to his best friend, he named Shapiro the godfather.

42. At all material times, Levinson and Shapiro would talk on the phone on a near daily basis about all facets of life such as the health of each other's family, Shapiro's girlfriends, Levinson's financial struggles and Shapiro's business ventures.

43. At all material times, Shapiro and Levinson would also discuss their illegal gambling habits. Levinson knew that Shapiro would place large bets on sporting events and had a multi-million gambling habit. Levinson's gambling, although just as crippling, was on a relatively smaller scale. The two would oftentimes discuss their picks for football games, including University of Miami ("UM") games, prior to placing their bets and on occasion Levinson would place Shapiro's bets for him and would share in Shapiro's gambling winnings. This was Shapiro's way of encouraging Levinson not to gamble given his financial difficulties.

44. Levinson, trying to support a family, oftentimes ran into financial problems and had to borrow funds to pay his mounting bills especially after being passed up for partner at SHB shortly after starting there in 1998 and when his wife stopped working in 2003.

45. Levinson, knowing that Shapiro had plenty of sources of funds (i.e. Capitol's Lenders"), requested for Shapiro to arrange loans for him at various times.

46. Between 2005 and 2006, Shapiro arranged for Levinson to borrow $15,000 from Sheppard on two occasions and $10,000 to $15,000 from Bill Bradley (another Capitol Lender). The second loan from Sheppard and the loan from Mr. Bradley are still outstanding.

47. Between 2005 and 2009, Shapiro would also visit Levinson for lunch near his office or stop by his house for dinner at least two to three times a week.

48. Shapiro would also provide Levinson tickets to UM football games while Shapiro was on the sidelines with UM athletes, invited Levinson to attend UM football games in Shapiro's luxury box and provided Levinson Miami Heat tickets, including Shapiro's floor seats.

49. Shapiro would invite Levinson and his wife to parties at his Miami Beach mansion, on his Yacht or at different swanky nightclubs on South Beach. The times Levinson took Shapiro up on his offer, Shapiro – knowing of Levinson's financial woes – treated Levinson.

50. Levinson's close friendship with Shapiro made him a confidant and trusted adviser to Shapiro and Capitol and Shapiro shared all aspects of his business dealings with Levinson.

51. Levinson also frequently discussed with Shapiro his desire to leave SHB – where he knew he had little potential for growth – to become Capitol's salaried in-house counsel as Capitol reflected on its company flow chart attached hereto as Exhibit "2."

F. The Beginning of SHB's Relationship with Shapiro

52. Shapiro was an avid sports enthusiast and a large booster[2] to the UM athletics department and became very close with the UM student athletes, primarily to the UM football players.

53. On January 10, 2003, Shapiro began consulting with SHB about his potential acquisition of an interest in a sports agency, Axcess Sports & Entertainment, Inc. ("Axcess"), in order to take advantage of his close relationship with UM student athletes and to turn his love of sports into a profession.

54. Shapiro chose SHB to represent him based upon his close personal relationship with Levinson as he figured it would help Levinson's career at SHB as well as allow Levinson to earn an origination bonus.

55. As Levinson frequently partied with Shapiro, he had witnessed Shapiro's close relationship with UM athletes.

56. Levinson knew that Shapiro threw elaborate, all-expense-paid parties on the Yacht, at swanky South Beach clubs and at Shapiro's Miami Beach mansion. UM student athletes were present at all of Shapiro's parties, including all of the parties Levinson attended. On one occasion in 2002 – prior to Shapiro's retention of SHB – Shapiro threw such a party in Levinson's honor for his bachelor party at the Sagamore Hotel where there

[2] The NCAA defines a "booster" as someone who plays "a role providing student-athletes with a positive experience through their enthusiastic efforts. They can support teams and athletics departments through donations of time and financial resources which help student-athletes succeed on and off the playing field." And includes anyone who has "made financial contributions to the athletic department or to a university booster organization" or "been involved otherwise in promoting university athletics." Role of Boosters,http://www.ncaa.org/wps/wcm/connect/public/NCAA/Enforcement/Resources/Role+of+boosters+in+intercollegiate+athletics (last accessed on October 29, 2012).

were in excess of 40 prostitutes provided for all attendees (including between 15 to 20 UM student athletes).

57. At the request of Levinson, Partner, as a partner of SHB, became involved in Shapiro's retention of SHB. After Partner, Levinson and Supervising Attorney met with Shapiro, his illicit relationship with the UM student athletes and his booster status with UM became apparent and Partner and Supervising Attorney sought to protect SHB from Shapiro's conduct.

58. And on January 16, 2003, SHB, through Partner, began conducting research and analysis relating to Shapiro's booster status with UM and his providing of personal benefits to UM student athletes to determine the legality of Shapiro's acquisition of an interest in Axcess and concluded that it would be a felony under Florida Statute Section 468.45615 for Shapiro to act as a *de facto* agent and solicit UM student athletes by providing them personal benefits.

59. After making this conclusion, instead of (i) rejecting the retention or (ii) advising Shapiro to cease his illegal activities prior to retention, SHB was formally retained on February 6, 2003 and became Shapiro's primary legal adviser in Shapiro's acquisition of his interest in Axcess.

60. Having already identified Shapiro's illegal conduct, SHB's retainer agreement (the "SHB Retainer Agreement") attempted to limit SHB's exposure for Shapiro's criminal conduct (and now SHB's criminal conduct) by reflecting that SHB's representation of Shapiro was limited to Shapiro's acquisition of Axcess and excluded any advice "*concerning the legal and regulatory issues governing sports agents and/or university boosters, or compliance with the rules and regulations of governing bodies such as the NCAA or the Big East conference*" (i.e. Shapiro's criminal conduct in connection with the UM student athletes

– herein called the "NCAA Violations"). A true and correct copy of the SHB Retainer Agreement is attached hereto as Exhibit "3."

61. SHB represented Shapiro in the closing of his purchase of 30% of the shares of Axcess and actually prepared the Axcess Operating Agreement.

62. SHB, through Levinson, was at all times aware that Capitol was the source of the funds Shapiro was using to purchase his interest in Axcess.

SHB Advises Shapiro in Relation to Illegal Payments to UM Athletes

63. Despite the SHB Retainer Agreement's carve out of any advice relating to the NCAA Violations, SHB provided advice on, encouraged and assisted Shapiro in concealing his NCAA Violations.

64. SHB was at all times aware that Shapiro was illegally providing student athletes with improper benefits including, but not limited to, cash payments, prostitutes and all-expense paid meals, parties at clubs, swanky hotels in South Beach and on the Yacht as reported by Charles Robinson in the Yahoo! Sports article *Renegade Miami football booster spells out illicit benefits to players* dated August 16, 2011 (the "Yahoo Article") in an effort to, among other things, entice the UM student athletes to retain Axcess to represent them.

65. In order to entice athletes to retain Axcess as their agency upon turning pro, Shapiro purchased the Yacht in March 2003 to throw elaborate parties in their honor. Shapiro's focus was primarily on UM football players. In fact, Levinson's bachelor party was one of the last hotel soirees thrown by Shapiro prior to his purchase of the Yacht as is chronicled in the Yahoo Article:

> Shapiro said he threw a sex party for multiple Miami players during an off weekend in the 2002 season. Shapiro said he rented out multiple suites on one floor, and hired several prostitutes to render services to the players. He said it was one of several "invite only" parties, in which the booster would register rooms under his alias, "Teddy Dupay". Shapiro said he stopped throwing the group parties in 2003, after purchasing

> his $1.6 million yacht and utilizing it for similar activities. Two former Miami players confirmed that Shapiro paid prostitutes, escorts or strippers to have sex with football players in various settings.

66. SHB, through Levinson, had full knowledge of Shapiro's explicit use of the Yacht and even hung out on the Yacht with Shapiro and UM athletes. Attached hereto as Composite Exhibit "4" are photographs of Levinson with UM athletes and Shapiro on the Yacht between 2003 and April 2008. SHB also advised Shapiro to register the Yacht in the name of a limited liability company – Pink Panther Enterprises – in an attempt to shield Shapiro from his criminal conduct. Levinson's handwritten notes from meetings with Supervising Attorney, Shapiro and R. Torres reflect that the issue of keeping the Yacht in a separate entity to distinguish it from his interest in Axcess was necessary to protect Shapiro and to help hide the fact that Shapiro was using the Yacht to solicit UM student athletes while he was a UM booster.

67. To further insulate Shapiro from personal liability for his criminal activities, SHB, through Levinson, also recommended that Shapiro use a "middleman" to deal with the UM student athletes, but failed to advise Shapiro that by doing so he would still be committing a felony by aiding and abetting such conduct pursuant to Florida Statute Section 468.4561.

68. At first, SHB had meetings with Shapiro and R. Torres regarding transferring the Yacht to a trust or possibly to Shapiro's mother. It was ultimately determined that R. Torres would become the "middleman." And, upon SHB's advice, in November 2003 – less than a year after Pink Panther was registered with the Florida Division of Corporations – Shapiro was removed as Pink Panther's sole member and was replaced with R. Torres, effectively eliminating any connection between the Yacht and Shapiro.

69. In doing so, not only was SHB, through Levinson, encouraging Shapiro's violation of Florida law by advising him to continue and conceal his felonious conduct, he was also advising him to commit tax fraud as once Shapiro was removed as the member of Pink Panther he no longer reported the financial income of Pink Panther on his individual tax return. Rather, R. Torres began reporting Pink Panther's financial results on his tax return despite having no financial interest in the company.

70. SHB, through Supervising Attorney and Levinson, were Shapiro's proxy at Axcess board meetings, some of which were actually held at SHB's offices. As Shapiro's proxy, Supervising Attorney and Levinson had the authority to, and did in fact, advocate on Shapiro's behalf – oftentimes in Shapiro's absence as Shapiro did not attend all of the Axcess board meetings.

71. During the Axcess board meetings, Shapiro's "gifts" to UM athletes were openly discussed, including a Cadillac Escalade Shapiro purchased for Vince Wilfork while he was playing football at UM.

72. In addition, copies of Axcess's general ledger were provided to SHB at various points in time including, but not limited to, the general ledger for January 1, 2004 through December 31, 2004 and January 1, 2006 through August 31, 2006. Gifts and payments to UM athletes were clearly reflected on the general ledgers.

73. Levinson was also aware that Shapiro would oftentimes use his connections at the Miami Beach Police Department to "make arrests disappear" for UM athletes, but in one instance, Levinson represented a UM athlete, Jonathan Vilma, at Shapiro's request on a *pro bono* basis in connection with Mr. Vilma's criminal traffic infractions in an effort to promote Shapiro's recruiting efforts with Mr. Vilma.

74. Supervising Attorney and Levinson also promoted Shapiro's illegal conduct by attending the Axcess board meetings and lobbying positions for Shapiro that they knew

would result in further illegal activity including, but not limited to, seeking reimbursement from Axcess for personal expenses and gifts Shapiro provided to UM athletes in his effort to recruit them (and while he was a UM booster) and seeking a "bonus" for Shapiro every time a UM athlete signed with Axcess.

75. On January 12, 2004, SHB held an Axcess board meeting at their offices. Supervising Attorney and Levinson hosted the meeting and Shapiro and Axcess's President, Michael Huyghue ("Huyghue") attended. The following items were reflected in the meeting minutes transcribed by Levinson:

> Nevin Shapiro's role in the company: active vs. passive. Michael has concerns about the extent of Nevin's involvement due to his booster status.
>
> Compensation for Nevin in the form of a bonus or salary. Michael has concerns about compensation for Nevin due to this booster status. Nevin will submit proposal to Axcess.
>
> Reimbursement of Nevin's expenses. Nevin will submit promissory notes to Axcess for monies owed to Nevin.

76. At the January 12, 2004 board meeting, in hopes of generating more fees from their improper representations, Levinson and Supervising Attorney also offered their legal services for any of Axcess's needs.

77. After the board meeting, on January 14, 2004, Huyghue e-mailed Levinson in relation to promissory notes that Levinson had his assistant send to Huyghue for monies owed to Pink Panther (Shapiro) for monies he gave to or spent on UM players stating:

> Marc: Not sure what any of these are for? Nevin loaned some money to Bianca [Wilfork] which I am not certain that he is asking back or not. Other than that we don't have any specific agreement on these amounts. When Nevin and Mr. Torres first came to discuss reimbursements, we agreed to a total of $80,000 of which $30,000 would be repaid by the company upon it's sale (as long-term debt to the company) and $50,000 which would be deducted out of his $750,000 payment. The $50,000 was deducted. There should be no additional amounts that will be reimbursed . . .

78. In a February 26, 2004 Memorandum from Levinson to Shapiro regarding "Items to be Discussed with Michael Huyghue" Levinson writes to Shapiro:

> Issue: Nevin to receive some form of bonus when UM players are signed. [Dependant on consultant fee?]
>
> Our position: Nevin is the primary reason Michael has established contact and relationships with UM players. Axcess seems to be doing much better at UM then anywhere else.
>
> Issue: Nevin's role in the company – active vs. passive
>
> Our position: Nevin provides valuable services and he cannot function as a passive investor. He needs to be more involved especially with company activities in South Florida.

79. Levinson's knowledge of improper benefits of UM athletes through Axcess continued when Shapiro forwarded him an e-mail on December 8, 2004 from Huyghue where Huyghue writes:

> OF course we are helping Vince [Wilfork] on the side with (personal matters) but it is what it is.

80. In addition, on or around October 2005, Levinson flew with Shapiro and Jackie Gero ("Gero") – Capitol's and Shapiro's accountant – to Jacksonville for a meeting to determine how Axcess could hide the payments to UM athletes on its books and provided suggestions on how that could be accomplished.

81. During the time that SHB was attending board meetings at Axcess on Shapiro's behalf, in August 2006, Levinson was also managing Shapiro's booster relationship with UM and contacted UM's Associate Athletic Director of Development, Lindsey Radeer, on Shapiro's behalf to obtain information on establishing a private foundation for Shapiro to donate funds to UM.

82. Levinson also attempted to use Shapiro's favor with UM to assist him in getting his son into West Laboratory, a magnet school affiliated with the University of Miami. In an e-mail exchange dated August 24, 2006 between Levinson and Ms. Radeer regarding

Shapiro's donation, Ms. Radeer writes to Levinson "Thanks again Marc, and I will check into West Lab. I am trying to get a hold of who is on the board this year. I called my colleague in the school of Education to get more info."

83. During all material times when SHB was aiding, abetting and promoting the NCAA Violations, SHB, through Levinson, was also aware that Capitol was the source of the funds Shapiro used to (i) make loans to Axcess (usually through Pink Panther – also a recommendation by SHB) and (ii) provide the illegal "benefits" to the UM student athletes, as it was Shapiro's only source of funds at the time. In addition, SHB's legal fees were being paid by Capitol for its work in relation to Axcess.

G. SHB Expands its Retention

84. Despite the purported limited scope of Shapiro's retention of SHB (Shapiro's acquisition of his interest in Axcess), given Levinson and Shapiro's close relationship, SHB quickly became Shapiro's principal legal adviser for all of his business interests including, but not limited to, Capitol, Sapphire National, LLC ("Sapphire," in which Shapiro held a 52% interest in through SMGC, LLC, a Florida limited liability company formed on September 10, 2007 and owned 100% by Shapiro), China Glass, Ocean Rock Enterprises, Inc. (Shapiro's wholly owned corporation which Shapiro used to funnel approximately $7 million from Capitol to fund a mortgage to purchase the golf course owned by Sapphire), Benjaminz Properties, LLC (Shapiro's wholly owned Florida limited liability company established for the purpose of Shapiro starting a clothing line) and Pink Panther. Attached hereto as Exhibit "5" is a memorandum prepared by Levinson and dated September 7, 2006 reflecting SHB's review of all of Shapiro's business interests that SHB was consulting on (the "September 2006 Memo") (SHPO7407).

85. SHB broadcasted its unequivocal representation of Capitol in a May 26, 2005 letter on SHB letterhead stating:

To Whom it May Concern:

I represent Nevin Shapiro with regard to Capitol Investments USA, Inc. This letter verifies that Nevin Shapiro is the owner of Capitol Investments USA, Inc. and has been since 1998.

If you have any questions, please do not hesitate to call.

The letter was signed by Levinson. And upon information and belief, SHB, through Levinson, knew that Shapiro was providing the letter to prospective Capitol Lenders in order to provide Capitol with the appearance of legitimacy and to provide comfort to the Lenders in his efforts to solicit loans to Capitol.

86. Capitol also reflected SHB as its general counsel in its Executive Summary and Corporate Data Sheet which was provided to prospective Lenders with SHB's knowledge and consent. A true and correct copy of the Executive Summary and Corporate Data Sheet is attached hereto as Exhibit "6."

87. SHB's services to Capitol were expansive to the point that SHB became Capitol's *de facto* general counsel providing advice and counsel on all of Capitol's significant matters including, but not limited to, (i) negotiating and documenting loan transactions, (ii) advising Capitol on interest rates charged by Capitol's Lenders, (iii) providing form promissory notes, employment agreements and joint venture agreements to Capitol, (iv) advising on ways to circumvent Florida's usury laws, (v) advising on the presentation of Capitol's financial statements, (vi) advising on the organization of Capitol's books and records, (vii) interviewing and hiring temporary accountants to assist Capitol in organizing and reconciling its books and records, (viii) researching Capitol's potential violations of the securities laws, (ix) referring Capitol to special counsel in relation to Capitol's securities violations and communicating with that counsel on Capitol's behalf to keep apprised of the status, (x) communicating with Capitol's accountant regarding the status of Capitol's books and records and tax issues, (xi) advising Capitol in relation to its

unstable business practices (i.e. Shapiro's borrowings from Capitol and Capitol's use of new Lenders funds to repay maturing loans) and (xii) referring Shapiro to criminal counsel, providing criminal counsel with documentation and Capitol's historical operations to assist criminal counsel in assessing Shapiro's potential criminal exposure, meeting with Shapiro's criminal counsel during debriefings of Shapiro and keeping apprised of Shapiro's criminal issues and (xiii) providing strategic advice to Capitol on litigation and criminal matters, all of which is evidenced by SHB's time records and internal memoranda.

88. In connection with SHB's providing of legal services to Capitol, Levinson and Shapiro spoke on a near daily basis and Levinson met with Shapiro and R. Torres in person at least monthly.

89. As Capitol's *de facto* general counsel, SHB was aware of the Capitol Representations that were made to Capitol's Lenders.

90. And SHB's cavalier attitude towards aiding, abetting, encouraging and secreting of Shapiro's criminal conduct during its representation of Shapiro in connection with his interest in Axcess continued during its representation of Shapiro and Capitol.

91. In March 2006, R. Torres sent an e-mail to Craig Dorne – Capitol's prior corporate counsel – and copying Shapiro. R. Torres writes:

> Pursuant to Nevin Shapiro's instructions please advise us what has to be done to remove Miriam Menoscal as a shareholder of Capitol Investments US Inc. How can we minimize her liabilities related to Capitol. This is only a technical separation and Mimi will continue to be involved with us and will continue to work in the same office as before. She sub leases space from Capitol and will operate her own company (Misuco International) from that office. What documents do we have to give you to register this changes with the state, federal and or county, what documents she/Nevin have to sign. Please let us know asap what you have to do and when it can be completed.

The e-mail was given to Levinson and Supervising Attorney and discussed in a meeting with Shapiro and R. Torres.

92. On August 14, 2006, as SHB was taking over all responsibilities as Capitol's counsel, R. Torres sent an e-mail to Supervising Attorney regarding Capitol's and Shapiro's corporate books:

> Several Shareholders and Directors Minutes have to be made and included in the books. Transfer of Shares Authorization for Loans, etc. For what ever reason Craig Dorne never updated the books.
>
> Suggest you review with JGero to see what she can advise is needed and can be done.
>
> Some of the minutes were to be executed back 2004, 2005 and early 2006. Also please review the inventory book of Nevin to see what is needed (we delivered this several months ago). to see if other legal entities, included in the book are in the same situation.
>
> In my opinion the corporation needs to authorize Nevin to sign for loans (several millions) does it make any difference if there is a shareholders agreement to get the loan and use the company shares as collateral? Application of the funds obtained form the loans is this restricted? Can any shareholder wire monies to his personal account?
>
> Mimi is a ten % shareholder as of 2004, and a 0% shareholder in 2005 (an on 2006, 07 etc.) Does it make any different, liability wise for her??? How is corp liability established??? Liability wise Does it make any difference how many shares $$$ you have in a corp??? What type of Corp it is???
>
> This *(sic)* are the questions that we need answers for and shareholders and directors minutes to support.
>
> I sincerely apologize for our lack of knowledge?? Can you please help now??
>
> I do not know that from the IRS and Florida Dept of State it makes difference!!!
>
> I am not a corporate attorney but some experience tax wise tells me that we are not in compliance. If there is anything to gain by spending time and money to protect the corporate veil I surely want it to be your decision.

In response, Supervising Attorney responded "ok We will advise." Levinson's handwritten notes reflect that Capitol needed a corporate resolution in order for Shapiro to take out personal loans from Capitol as all lenders require it, yet SHB knew no corporate resolution was ever made authorizing Shapiro to take out millions of dollars in loans from Capitol and SHB did nothing to rectify it.

93. On August 17, 2006, SHB was provided a copy of Capitol's general ledger reflecting the "commissions" being paid to Shapiro and payments from Capitol to Ocean Rock and Pink Panther on Shapiro's behalf in 2005 totaling approximately $2.6 million.

94. A few weeks later, Shapiro and R. Torres met with Levinson and Supervising Attorney at SHB's offices to discuss the issues raised in R. Torres's August 14, 2006 e-mail.

95. On September 25, 2006, Levinson e-mailed Shapiro, R. Torres, Gero and Supervising Attorney regarding a meeting at SHB's offices later that week to discuss (i) Menoscal's resignation as an officer of Capitol and the change of the registered agent of Capitol to SHB, (ii) Pink Panther and (iii) the various entities in the September 2006 Memo and the purpose and status of each.

96. On September 27, 2006, Levinson prepared a memorandum titled "Shapiro's To Do List" which reflected that SHB was going to go to Capitol's offices to get copies of all outstanding debts, obligations and promissory notes of Capitol to determine Capitol's ability to service its current debt. The next day Levinson and Supervising Attorney met with Shapiro, R. Torres and Gero regarding Capitol's ability to pay its current obligations and cleaning up Capitol's books and records.

97. On October 4, 2006, Levinson began conferring with R. Torres about hiring an assistant accountant to clean up Capitol's books. And on October 9, 2006, Levinson interviewed a candidate for the position.

98. On October 5, 2006, Levinson wrote a letter to the Florida Division of Corporations enclosing (i) the change of Capitol's registered agent to SHB and (ii) Menoscal's resignation, both of which were effective on October 9, 2006 when they were filed.

99. Between October 24, 2006 and October 26, 2006, Supervising Attorney and Levinson prepared employment agreements for Capitol and Capitol's form promissory note to use with Capitol's Lenders.

100. On October 31, 2006, Levinson interviewed another candidate for an accounting assistant at Gero's office.

Capitol Enters Crisis Mode and Begins Operating a Full Blown Ponzi Scheme

101. Prior to January 2005, Currie defaulted on all of his loans to Capitol. In January 2005, SHB began meeting with R. Torres and Shapiro regarding collection efforts against Currie.

102. By April 2005, Shapiro began efforts to liquidate his assets, primarily the Yacht and his two properties in the Bahamas, and enlisted SHB's help.

103. Despite knowing that Capitol was in a dire financial condition due to Currie's default on his loans to Capitol, SHB – through Levinson – negotiated a loan from David White through a Capitol Broker, Sydney Jack Williams, Jr. ("Williams"), in the amount of $1,200,000 in November 2005 (the "White $1.2M Loan") knowing that Shapiro was making the Capitol Representations and that such representations were false and the proceeds of the White $1.2M Loan were being used to repay maturing Lenders' loans.

104. Levinson directly spoke to Williams about the White $1.2M Loan and knew that Williams was earning an illegal commission for the loan.

105. Levinson also drafted the White $1.2M Loan promissory note (the "White $1.2M Note"), a true and correct copy of which is attached hereto as Exhibit "7," by and

which reflected that Capitol, Williams, Menoscal and Shapiro were the collective "Maker" of the White $1.2M Loan. Levinson also drafted the guarantee agreements from Capitol, Williams, Menoscal and Shapiro (the "White Guarantee Agreements") which secured the White $1.2M Loan.

106. The White $1.2M Note reflects that the White $1.2M Loan would be in default if "the Maker, or any one of them, voluntarily or involuntarily liquidates after the date hereof or sells, transfers, exchanges or otherwise disposes of all or any substantial portion, of its assets in one or any series of transactions (whether related or unrelated) . . . "

107. Levinson sent the White $1.2M Note and White Guarantee Agreements to Shapiro and instructed Shapiro to execute them along with Menoscal and return them to him. The White $1.2M Loan was ultimately closed as instructed by Levinson and Williams earned his illegal commission.

108. On June 1, 2006, R. Torres sent an e-mail to Currie copying Levinson stating:

> It is most important to both of us (Craigco + Capitol) to have an enhanced version of the payback schedule. Nevin is under a tremendous amount of pressure from his investors and it is getting to the point that they no longer feel secure (because of all the extensions on the payment deadlines). If Nevin Capitol goes under Levinson will have to come after you + China Glass, Craigco etc. We have to show them that we are doing something to secure the compliance with their payment. For 5 million they were asking to set up their accountant in our office, imagine if they were out 15 million (w/o collateral).
>
> . . . Nothing you can do now will ever place us back in the position we were back in November last year. We have lost our edge with our money guys, perhaps we can tap into yours, to cover this hole. The only advantage we have is that we are squeaky clean with the IRS, we filed all returns to 2005 and we have financials ytd 2006 (3-31-06). Nevin has paid his taxes and then some.
>
> . . . We have been very close to total collapse because of your delays, if your attorneys did not do the complete job required, if your accountant did not do the proper reporting, if you did not kept *(sic)* track of the chk list for the closing, that is all water

> under the bridge, what is a real fact is that we have no choice, we have to make every effort to be as close to you as possible, so that we are accurate in our assessments and our promises to our investors from now on. Our reply time to J Will [Williams] et al [Capitol Lenders] is very short, payment for us for June are an additional 4 million.

109. By September 2006, it became apparent to SHB and Shapiro that Capitol was in a financial crisis and Currie would not be repaying his outstanding loans to Capitol.

110. On September 7, 2006, Levinson sent an e-mail to R. Torres and Shapiro to determine the outstanding balances on all of the outstanding Currie loans. In response to Levinson's inquiry to R. Torres, R. Torres responded with the amount due on each promissory note in favor of Currie. The total amount outstanding at that time was approximately $11.2 million.

111. Supervising Attorney wrote in a September 27, 2006 e-mail with a subject "Crisis management" to Shapiro and copying Levinson providing the following observations and advice:

> Unfortunately, it appears that your long time business associate Craig Currie will not be able to meet his outstanding obligations to you. Although we hope that your skills might eventually turn that situation around, we all agree, for planning purposes, it is prudent to assume he will be in default; as we know your position with him is unsecured.
>
> In view of the amount involved, it is required that the current situation be treated as a crisis in the same manner, as for example, you were selling a mass produced product which was found to be contaminated. I suggest you establish a crisis management team consisting of Marc, Jackie and Roberto and have them in constant communication as to the financial situation and what can be done to protect Capital *(sic)* and its shareholders. Most importantly, it will be critical of each of them to have all available information both as to what has happened in the past and what situations are coming. I will of course be available to assist them with particular questions and to give them the benefit of my experience.
>
> For what I observe, your effectiveness is being limited by advisors with insufficient information both as to what has

> happened in particular situations and what is coming along. At this point, a poor plan would be to think they can be managed by telling each what it is assumed they need to know for particular projects. You need people with all appropriate knowledge of the situation and ability to act promptly in your best interests. No one can afford to have repeated discussions about the same subject based on faulty information in a crisis.
>
> Let me know what you think.

112. After Supervising Attorney declared Capitol to be in crisis mode, Shapiro and R. Torres began meeting with Levinson weekly to discuss the status of Capitol's financial affairs. Shapiro, R. Torres and Levinson also frequently met and communicated with Gero.

113. On October 16, 2006, R. Torres sent an e-mail to Gero and Levinson regarding "Pending Items" and advised Levinson that Capitol was operating at a net loss:

> Our accounts and notes receivables will be adjusted to reflect the loses *(sic)* of income from Craigco and the sales reduction in general. Capitol networth will be negative, I am still trying to come up with a forecast of how we are going to look by dec 31st 2006.
>
> (f) Nevin's financial reports will also receive similar treatment because of the notes from Craigco(1 m) and China Glass (1.8m). When we reconcile these accounts, and come up with a forecast of the Axcess shares sale (or not) and the sale of the boat, plus the pass thru from Capitol's k-1, Nevin's net worth will also be negative.
>
> Your comments will be appreciated.

114. SHB, knowing Capitol was operating at a loss, never advised Capitol to cease further borrowing from Capitol's Lenders. Rather, SHB, through Levinson, advised Shapiro that he needed to continue borrowing funds to make sure Capitol could continue to service Capitol's debt to its current Lenders.

115. On May 30, 2007, Levinson sent an e-mail to Shapiro, R. Torres and Supervising Attorney regarding "Agenda for upcoming meeting," which included "[i]nvestor update/status of loans/financial information provided," "[r]evenue generation," "[s]taffing

update/monthly financials/financial records," "[s]ale of boat" and "[s]ale of Freeport property." Despite it being apparent that Shapiro was liquidating assets due to his financial crisis, the agenda also included "North Carolina property."

116. SHB knew that Shapiro, in the midst of Capitol's looming demise, was purchasing his interest in Sapphire. The purchase of the golf course was funded in large part by a $7 million loan from Ocean Rock, which funds were derived from Capitol's Lenders. Upon information and belief, Supervising Attorney and Levinson knew that the source of the Ocean Rock $7 million loan was Capitol's Lenders' funds (despite the Capitol Representations to Lenders as to the use of their loan proceeds to Capitol). In fact, Supervising Attorney even contacted a current SHB client in February 2008 to provide the remaining financing for Sapphire's purchase of the North Carolina golf course. And the SHB client was earning substantial fees for procuring financing on behalf of Shapiro.

117. On April 8, 2008, in preparation of finalizing Capitol's and Shapiro's tax returns, R. Torres sent an e-mail to Supervising Attorney, Levinson, Gero and Shapiro suggesting that Pink Panther – which was being dissolved – issue Shapiro a K-1 at the end of 2008, and that K-1 "could show a loss like the rest of Nevin's other entitie's *(sic)* (Axcess Sports, Ocean Rock, etc...) Nothing different than what has been done before . . ." Accordingly, it was clear that Shapiro was in dire financial straights and losing money on Capitol and all his other business ventures.

118. Levinson, as a close friend to Shapiro and knowing of Capitol's and Shapiro's financial condition, oftentimes failed to record the time he spent on their legal matters in an effort to reduce the attorneys' fees being charged to them by SHB.

H. SHB Refers Shapiro to Securities Counsel

119. SHB, knowing that (i) Capitol was operating at a loss due to outstanding Currie loans, (ii) Capitol was using new Lenders funds to repay maturing Lenders' loans to

stay afloat, (iii) Shapiro was continuing to diversify his business interests through the use of Capitol's Lenders' funds and (iv) Shapiro was taking out millions of dollars and funneling them from Capitol through JAT to repay his gambling debts, became concerned about Capitol's mounting financial crisis as it became apparent that Capitol would be unable to repay its current Lenders.

120. Knowing that Capitol would not be able to repay its Lenders and given Capitol's prior misrepresentations to its Lenders about the use of their funds, SHB also became concerned about legal implications to Shapiro and Capitol.

121. In November 2006, according to R. Torres, Levinson asked Shapiro at a meeting if Capitol was operating a Ponzi scheme which caused Levinson to commission research by a SHB attorney, Mihai Vrasmasu, as to whether Capitol was violating the Securities Exchange Act (the "Act") by engaging in the illegal sale of securities and criminal enforcement of the Federal and Florida securities laws. Shapiro advised R. Torres about the meeting and the pending research.

122. Levinson and Supervising Attorney became concerned about Capitol's potential operation of a Ponzi scheme based upon their knowledge that Shapiro was soliciting Lenders to loan funds to Capitol for the purported purchase and sale of grocery products but in actuality was using the Lenders' monies to fund his individual purchase of business ventures (i.e. Axcess, Sapphire, Pink Panther, Ocean Rock and Benjaminz) and advised Shapiro that such activities were dangerous. According to Shapiro, Levinson and Supervising Attorney told him it was "the making of a Ponzi scheme."

123. On December 5, 2006, Levinson received Mr. Vrasmasu's memorandum (the "Securities Memo") and concluded that Capitol was in fact in violation of the Act. A true and correct copy of the Securities Memo is attached hereto as Exhibit "8."

124. At all material times, SHB had an irreconcilable conflict of interest given Levinson's close relationship with Shapiro as Levinson neglected Capitol's interests in favor of promoting and protecting Shapiro's personal interest. And rather than advising Capitol to immediately cease the solicitation of new Lenders to Capitol, Levinson sat on the Securities Memo afraid to deliver it and tell his best friend that he could be held criminally liable for violations of the Act.

125. Upon information and belief, R. Torres was concerned about his own possible liability for the securities violations and instructed A. Torres to e-mail M. Levinson following up on the securities law research on January 11, 2007. It was not until that time that Levinson even conveyed the watered-down results of the research by providing a two paragraph synopsis to A. Torres, R. Torres and Shapiro. But still Levinson failed to convey the seriousness of the violations stating:

> Under Federal and Florida law, Capitol's business scheme wherein promissory notes are executed in exchange for monies from various investors may be considered dealing in "securities". The term "securities" is broadly defined to include some promissory notes and investment contracts. An investment contract for purposes of the Securities Act means a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party. The definition of an investment contract is flexible and capable of adaption to meet the countless and variable schemes devised by those who seek to use the money of others on the promises of profits. Thus, if Capitol's business scheme falls within the broad definition of a "security", it would be regulated by both state and federal securities law.
>
> Please be advised that this is a broad overview of the status of the law. At this point, I would like to consult with an attorney who specializes in securities law to determine exactly how your business scheme operates in this framework. Then we can decide on how to proceed.

Levinson failed to provide Shapiro or R. Torres a copy of the Securities Memo.

126. R. Torres's response to what he called the "generic type of report" was that, from his knowledge of a Ponzi scheme, Capitol was not selling shares of stock but rather getting money from lenders so it could not be in violation of the Act. Levinson never sought to rectify R. Torres's misperception of the law nor did he provide him the Securities Memo which could have clarified what would be considered violations of the Act and the criminal ramifications for those violations.

127. Upon information and belief, had Levinson indicated that R. Torres could have been held criminally liable for violations of the Act, R. Torres would have resigned and went to the authorities thereby causing the immediate cessation of the fraudulent enterprise.

128. And instead of SHB consulting with its internal securities attorneys (as it did with other matters relating to Shapiro), SHB advised Shapiro that it would refer Capitol to securities counsel outside of SHB. But then Capitol, with the assistance of SHB, continued its securities violations.

129. On April 23, 2007, Supervising Attorney and Levinson met with Shapiro and R. Torres and advised them that Shapiro needed to get back to Capitol's "core business" and that "[a] business model which involves borrowing at high interest rates with current interest payments, investments in real estate projects with long returns and additional borrowings needed to make current interest payments is unstable."

130. And Supervising Attorney continued to reiterate these same concerns to Capitol in an e-mail dated April 25, 2007.

131. On May 2, 2007, R. Torres responded to Supervising Attorney's and Levinson's observations, advising them that Capitol was "seeking new funding to retire current high interest debt." Knowing that Capitol was using new Lenders' funds to pay off existing Lender debt and that Capitol was making the Capitol Representations to those new

Lenders (which SHB knew to be false), SHB tacitly agreed with Capitol's proliferation of its Ponzi scheme and SHB failed to ever deter Capitol from its additional borrowings.

132. Instead, Levinson actually encouraged Shapiro's additional borrowings telling Shapiro that he needed to make sure to get more funds so Capitol could stay afloat as Levinson knew that if Capitol failed, Shapiro would likely be prosecuted for the securities violations.

133. In August 2007, Supervising Attorney, Levinson, Shapiro and R. Torres met at SHB's offices and Supervising Attorney informed Shapiro and R. Torres that "[i]t is very important that Capitol's financial and business records are organized to avoid any erroneous implications to outside parties, such as lenders and that no misrepresentations as to these matters be made to anyone." Yet, Supervising Attorney and Levinson knew that Shapiro continued to make the Capitol Representations to solicit Lenders and that those representations were materially false.

134. Over eight months after discovering Capitol's securities violations and financial crisis, and knowing that Capitol's violations were continuing, in or around August 2007, SHB advised Capitol of the possibility of creating a hedge fund and finally referred Capitol and Shapiro to securities counsel at another law firm – Shutts & Bowen ("Shutts") – in a blatant effort to attempt to insulate itself from liability.

135. Shutts had no historical knowledge of Capitol's business to advise on how to rectify Capitol's ongoing securities violations and it would take months to fully understand Capitol's business dealings. This was known by Levinson and Supervising Attorney who did nothing to advise Shutts of Capitol's securities violations or prior business improprieties thereby delaying Shutts' ability to promptly attempt to rectify Capitol's violations.

136. In late August 2007, Shapiro and R. Torres met with Shutts relating to their securities issues and advised Shutts that Capitol's primary focus was "to consolidate loans

and increase cash flow from operations to pay interest obligations which remain [Shapiro's] primary concern as against repayment of principal."

137. On August 29, 2007, Shapiro, R. Torres, Levinson and Supervising Attorney met at SHB's offices and Shapiro reported there same goal to Levinson and Supervising Attorney.

138. Levinson, concerned about Shapiro, made sure to stay apprised of Shutt's progress in preparing a Confidential Offering Memorandum for Capitol to sell securities to sophisticated investors through an exemption in the Act – an attempt to rectify Capitol's prior securities violations – by communicating with Shapiro daily.

139. On November 18, 2007, Shutts provided SHB a memorandum relating to the requirements for a private placement of investment notes. The memorandum specifically provides the following:

a. That Capitol was planning on raising working capital from private note placements to investors and the proceeds would be used to finance Capitol's business activities; and

b. That Capitol needs to ensure that all persons receiving compensation for locating investors for the note placement is properly registered.

140. But SHB knew that Capitol was not complying with these requirements as Capitol was soliciting Lenders to repay outstanding interest payments to previous Lenders and that Capitol was using unregistered Brokers to solicit Lenders including, but not limited to, William Bradley and Williams.

Levinson Refers Shapiro to Criminal Counsel

141. In or around January 2007, SHB and Shapiro learned that Currie and a Capitol Lender, Robert Kallman ("Kallman"), were making criminal allegations to the Federal

Bureau of Investigation ("FBI") in relation to Shapiro's operation of Capitol as a Ponzi scheme and SHB referred Shapiro to Lewis Tein, PL ("Lewis Tein") – criminal counsel.

142. Lewis Tein's two partners are Guy Lewis ("Lewis") and Michael Tein ("Tein") – former partners of SHB. In addition, Levinson had a personal relationship with Lewis, who was friendly with Levinson's father.

143. In exchange for the referral to Lewis Tein, Lewis Tein gave Levinson an extravagant Cartier watch for his wife – unbeknownst to Shapiro – and in violation of Rule 4-1.5(G) of the Rules Regulating the Florida Bar.

144. On February 26, 2007, Shapiro had a consultation with Lewis and Tein where Shapiro revealed to Lewis Tein that (1) he had assets off of Capitol's balance sheet, (2) he used funds from Capitol's Lenders to purchase his interest in a sports agency, (3) he had liabilities of approximately $15 million off of Capitol's books, (4) Capitol's main lender had called Shapiro stating that he received a call from someone stating that Shapiro was in the middle of a Ponzi scheme and (5) Shapiro could not justify the amount of money Capitol received from Lenders for the amount of business Capitol was conducting.

145. Shapiro made the same revelations to Levinson.

146. On February 28, 2007, Shapiro formally retained Lewis Tein to represent him in connection with the "Potential Federal Criminal Investigation."

147. On April 30, 2007, after being dissatisfied with the lack of Lewis Tein's attention to his criminal matters, Shapiro e-mailed Tein and copied Levinson stating "[m]y world is a bit topsy turvy as a result of the matter in which I came to speak to you about . . . I would very much appreciate if you would set up a time in your office at your convenience to meet with me again with an open clock. I need some answers to some questions which are troubling me very much. Hopefully you can ease some of my concerns. Look forward to meeting with you again."

148. Lewis Tein set up a meeting with Shapiro at their offices on May 3, 2007. Shapiro requested that Levinson attend the meeting with him, to which Levinson agreed. Tein's notes from that meeting revealed the following observations about Shapiro:

> You are not revealing everything. Sounds like you made misreps to lenders and paid them returns on certain projects when the returns were borrowed from others, to induce further loans.
>
> Guy [Lewis] (responding to CI) – We do not get any extra consideration because we are from the USAO.

149. Lewis's handwritten notes from the May 3, 2007 meeting also reflect that Lewis compared Capitol's business with Currie and Kallman to that of Premium Sales – a well-known Ponzi scheme in South Florida in the 1990's.

150. Levinson was in attendance during the entire meeting and was aware of Shapiro's misrepresentations to Capitol's Lenders and operation of Capitol as a Ponzi scheme.

151. Prior to the meeting, on May 2, 2007, R. Torres sent an e-mail to Levinson and Shapiro regarding Levinson's May 2, 2007 memorandum regarding the "advantages and disadvantages to filing a lawsuit against Currie and his related companies." The criminal allegations being made by Currie and Kallman had rattled R. Torres who wrote:

> I advised Nevin this morning (5-2-07) that I might go at it alone on my own, most probably via IRS Criminal Investigation Division. I understand all the reasoning of why and why nots, but in reality I should have no concerns, Craig, Craigco, China Glass, Capitol, Nevin, etc have not paid me any monies for the extra work done, and the travel etc . . . and the liabilities, You have a copy of Craig's email , you know the implications. If they take me into court what should I say, will my statements make me guilty of . . . what?? Perhaps Guy Lewis could answer this question for me??

152. Levinson and Shapiro talked R. Torres out of contacting the IRS Criminal Investigation division or any other criminal authorities.

153. In the Currie Bankruptcy, Currie failed to reflect that Capitol was a creditor. Shapiro admitted to Levinson that certain transactions with Currie were "off the books" and that Capitol had difficulty reconciling its books and records to reflect the amount that Capitol was owed by Currie.

154. On November 16, 2007, Levinson sent an e-mail to Shapiro, A. Torres and R. Torres stating:

> As we discussed, we need to make sure that all of Nevin's and his affiliated companies records are complete and accurate.
>
> Specifically, any and all records reflecting an exchange of monies between Currie and his affiliated companies and Nevin and his affiliated companies should be properly documented from when the relationship began. Additionally, the records should reflect the consideration given to Currie in exchange for the monies received. When you have put together all of the records which fall within this category, please advise us so we can review the documentation.

155. At Currie's Section 341 meeting of creditors on November 15, 2007, Currie testified that (i) Shapiro owed Currie between $6.5-7.5 million in connection with two transactions, (ii) Shapiro had threatened Currie and his family with bodily harm unless he transferred approximately $1.4 million into Shapiro's account, (iii) Shapiro had infiltrated Currie's various businesses and had "shaken him down" and (iv) Shapiro provided Currie a written release for approximately $6.7 million within the past week.

156. In connection with the potential criminal investigation, on November 29, 2007, Supervising Attorney sent an e-mail to Shapiro, A. Torres, R. Torres and Levinson stating:

> We need to compile [or reconstruct if necessary] evidence of **each** transaction with the Currie entities during the last four years. I understand these took the form of wire transfers [note if any were otherwise] back and forth. For each, we need to show what each wire was for [interest payment for loan# x, repayment of principal for loan 3y, investment of z$$$ for e.g. "Pillsbury transaction". We need the original records [how the transaction was handled on your books at the time together with any supplementary correspondence [emails or paper]. If

> anything was out of the ordinary, please make a note to counsel with explanation.
>
> I understand there is frustration that we need to do this and be "defensive" while we are being "slandered" in Court by a person unworthy of belief who has "admitted" –by signing promissory notes, guarantees and affidavits – that he is indebted to you. While all of this is true, Currie, or other creditors may well try to convince the trustee that these monies were for other purposes such as preferences, fraudulent transactions, conspiracies or illegal activities.

157. On January 2, 2008, Shapiro had a meeting with his private investigator, R. Torres and Tein. Shapiro reported to Levinson after the meeting and Tein called Levinson for a copy of the transcript of Currie's Section 341 meeting which Levinson reported to Supervising Attorney. Supervising Attorney again inquired of the status of Capitols' documentation project in relation to the Currie transactions.

158. In January 2008, Shapiro again found himself in fear of criminal prosecution, this time regarding a grand jury investigation relating to money laundering in the La Bamba check cashing scheme and further retained Lewis Tein to defend him.

159. As Levinson was Shapiro's close friend and trusted confidant, Shapiro shared his fear with Levinson that he would be indicted in the La Bamba matter and advised Levinson that he was using La Bamba's check cashing operation to convert checks to cash to pay his multi-million gambling debts.

160. Supervising Attorney also tried to stay apprised of Shapiro's criminal matters writing to Shapiro on February 8, 2008:

> Dear Nevin: Marc brought me up to date via cell phone on aspects of several of your legal matters. As you know, we have been trying to have a meeting here at a mutually convenient time to discuss where each matter attends and what help, if any, we can offer that you wish us to do. . . you have three issues with Axcess, Craig Currie and Michael Tein. You might decide . . . "[Supervising Attorney], I have spent a lot of money with Michael and Guy and would like help in assessing the options they say I have," or "[Supervising

> Attorney], I am looking elsewhere for advice in the criminal area and any more counsel will not be helpful. . . Nevin, let me make two clear points: first, I understand your predicaments [in general terms] and have absolutely no desire to [1] abandon your legal representation nor [2] charge you for services you do not want . . .

161. Shapiro responded on February 10, 2008 "I apologize for my abscense *(sic)*. It has been a horrible time for me. I will schedule something after Tuesday to get caught up on all matters. Thanks for your concern as always."

162. On February 20, 2008, Currie e-mailed Williams regarding Capitol stating "just cause [Shapiro] paid you on time does not mean its not a scam, I could [tell] you how to find out but you dismiss me,, am the business!!!,, your being bullshitted !!, and it will tumble eventually, you and your investors will get hurt,, I could fill you in on a lot butt again you want to believe his bullshit records, I know how the whole operation works" (typos in original). Williams forwarded the e-mail to R. Torres and Shapiro, who in turn forwarded it to Lewis Tein. Shapiro and R. Torres disclosed the contents of the e-mail to Levinson and Supervising Attorney as well.

163. In order to pay an outstanding $200,000 legal bill to Lewis Tein from its representation of Shapiro in the La Bamba matter, Shapiro sold the Yacht to Lewis Tein at a discounted price and Levinson represented Pink Panther and Shapiro in the closing of the sale of the Yacht on April 10, 2008 and advised Shapiro to waive the potential conflict of interest with respect to the transaction.

164. Because of Levinson's prior advice to register Pink Panther – the owner of the Yacht – in the name of R. Torres, R. Torres insisted that Pink Panther be transferred back into Shapiro's name so he would avoid tax fraud. Levinson's response was that "it would be suicide if [Shapiro] attempted to take a deduction" from the sale of the Yacht through Pink Panther.

165. But R. Torres insisted as he was concerned that he would be put at risk for "an IRS audit," harkening back to an August 10, 2006 when Shapiro first listed the Yacht, R. Torres had sent an e-mail stating "[t]he reasons we created Pink Panther was to remove [Shapiro] from the liability side as far as we could, from the UM relationship, and the improper use of the boat . . . [w]e have been able to separate the amount of yearly expenses, corresponding to the same amount of income from your return, saving you at least the corresponding taxes (approx 28%)."

166. On April 11, 2008, Levinson filed an amendment with the Florida Department of Corporations replacing R. Torres with Shapiro as Pink Panther's sole member.

167. On April 30, 2008, Shapiro's private investigator e-mailed Tein stating "there must be some truth in all of Currie's bullshit rambling discourse...it comes by way of Mr. Torrez' *(sic)* anxiety re his work for Currie . . ."

168. And then on May 8, 2008, Levinson received a letter from Currie's counsel stating:

> I have affirmative proof and there is a blatant paper trail that Mr. Shapiro has engaged in fraud by opening unauthorized bank accounts under the name of corporations owned and operated by Currie. Moreover, Shapiro was the sole signatory on these accounts and they were opened using Curries tax identification number. Moreover, Shapiro illegally borrowed funds using these accounts as collateral. The account records of China Glass USA, Inc., depict that at least 1.8 million dollars as stolen and received by Shapiro . . .
>
> The records in my possession clearly evidence over $500,000 embezzled by Shapiro from Craigco, Inc.

Levinson and Supervising Attorney passed the letter on to Tein and had a phone conversation with him to discuss these additional allegations.

169. The effect of the Capitol Ponzi scheme began to accelerate and in late December of 2008, Shapiro learned that the government was reviewing incoming and outgoing mail from his residence on Miami Beach via a mail cover and he informed Lewis.

170. Lewis contacted the Department of Justice and was informed that Shapiro was under investigation for operating Capitol as a Ponzi scheme and relayed that information to Shapiro and Shapiro further retained Lewis Tein to defend him.

171. Levinson was kept apprised of the status of Shapiro's criminal issues and met and communicated with Shapiro and Lewis Tein regarding them on a regular basis.

172. Notwithstanding, all the while knowing that Capitol was violating the Act and engaging in a Ponzi scheme, Levinson continued to encourage Shapiro to bring in additional Lenders' funds.

173. R. Torres testified about Levinson during his Rule 2004 examination as follows:

> Q. Looking back in hindsight, and knowing what you know now about Capitol Investments and what Nevin has pled to, do you believe that Marc Levinson should have done more to recognize that Capitol was operating a Ponzi scheme and provided advice to stop it?
>
> A. Yes sir.
>
> Q. What do you base that opinion on?
>
> A. That he was one of the closest friends and confidants that Nevin had. This is an exchange of information almost on a daily basis. This was an availability of financial records at any level. And he was employed by the firm, so the perks that he got from Nevin were very minimal. Tickets, parties, boat, I mean, a few things like that.
>
> So having all the resources at his disposition, he could have done anything, anything he wanted to stop it.
>
> Q. Do you believe that there was significant red flags based upon what Mr. Levinson was told and shown that he had recognized?

A. He has acknowledged those red flags in all e-mails back and forth all over the place.

I. SHB Assists Capitol in its Securities Violations

SBC07 Loan

174. In early 2007, according to Shapiro, he informed Levinson and Supervising Attorney that Williams was out of lenders to fund Capitol and that he was "up against the wall" and needed another source of funds as Capitol was "not bringing in the money that [it was] bringing in" before, Currie owes Capitol "a considerable amount" and, if Capitol had a plug, it would "be perfect."

175. By fall 2007, Shapiro began courting the Bradley Lenders through their primary officer, Sherwin Jarol ("Jarol"). The Bradley Lenders primarily invested in real estate and were looking to diversify their investments as the real estate market was beginning to crash.

176. The Bradley Lenders were to be Capitol's "white knight" and Shapiro hoped that he could bail Capitol out of its looming financial demise by paying off all of Capitol's other Lenders and consolidating loans so the Bradley Lenders would be the only Capitol Lender.

177. If the Bradley Lenders did not agree to lend funds to Capitol, Capitol would have collapsed by the end of 2007.

178. Shapiro advised Levinson that Jarol, the person primarily responsible for the Bradley Lenders' investments, was looking to invest substantial funds in Capitol and would allow him to keep Capitol afloat.

179. To assist Shapiro in soliciting Jarol to invest in Capitol, Levinson met with Shapiro and Jarol at SHB's offices in the Fall of 2007. At that time, the Bradley Lenders

had only made minimal loans to Capitol but were considering significantly increasing their investments.

180. Shapiro explained to Jarol that Levinson was a close friend and a partner in SHB – a large national law firm – as Shapiro only used large law firms. Jarol independently verified that SHB was a well respected law firm with several offices across the United States.

181. In an effort to gain Jarol's trust, during Levinson's meeting with Shapiro and Jarol, Levinson advised Jarol that SHB were the attorneys for Capitol and Shapiro and represented Capitol and Shapiro in all of their legal matters. Levinson further explained to Jarol his long-standing close friendship with Shapiro and touted his legal experience stating that he handled complex cases.

182. In addition, Capitol provided Jarol a copy of its Executive Summary and Corporate Data sheet reflecting that SHB was Capitol's general counsel.

183. After the meeting with Levinson, Jarol became more secure with significantly increasing the Bradley Lenders' investments in Capitol as he thought a large law firm such as SHB would only deal with legitimate clients.

184. In September 2007, SHB, through Levinson and Supervising Attorney, became aware that Jarol had prepared a private offering for a loan to Capitol and disseminated it to potential investors in South Beach Chicago, LLC (the "SBC07 Offering") and reviewed the information Jarol included in the offering. A true and correct copy of the SBC07 Offering is attached hereto as Exhibit "9." Upon information and belief, while Jarol did not know that the information contained in the South Beach Offering was materially inaccurate, including Capitol's and Shapiro's tax returns and financial statements, SHB was aware that the offering contained materially false information and representations about Capitol's business. Primarily, SHB knew that Shapiro and Capitol could not reconcile its

books and records at the time and could not possibly produce accurate financial statements.

185. Nonetheless, SHB signed off on the SBC07 Offering and instructed Shapiro that the SBC07 Offering is how Capitol should be raising funds and advised Shapiro to execute the SBC07 Offering and close on the deal. Had SHB not approved Shapiro's signing of the SBC07 Offering, Shapiro would not have defied his trusted advisors and would not have entered into the transaction.

186. SHB continued to provide services to Capitol including drafting promissory notes – which was how Capitol sold illegal securities – with Capitol's Lenders knowing that (i) Capitol was materially misrepresenting to Lenders that their funds were being used to purchase grocery products and (ii) the funds were in actuality being used to repay interest payments on existing Lenders' loans or were being diverted by Shapiro to Ocean Rock, Sapphire or for his own personal use.

187. In October 2007, after Jarol raised funds from the SBC07 Offering, Levinson prepared the $2 million loan (the "SBC07 Loan") agreement with South Beach Chicago, LLC ("SBC07") and communicated – via telephone and e-mail – directly with Jarol to finalize the agreement (the "SBC07 Loan Agreement"). A true and correct copy of the SBC07 Loan Agreement is attached hereto as Exhibit "10."

188. The SBC Loan Agreement contained the following provisions:

> 3.3 Representations and Warranties. No representation or warranty of Borrower contained herein will be untrue or incorrect in any material respect as of the date of any Loan as though made on such date, except to the extent such representation or warranty expressly relates to an earlier date.
>
> 4. Representations and Warranties. To induce Lender to enter into this Agreement, Borrower represents and warrants the following to Lender as of the date of this Agreement:

> 4.4 Litigation. There is no litigation, arbitration, demand, charge, claim, petition or governmental investigation or proceeding pending, or to the knowledge of Borrower, threatened, against Borrower, which, if adversely determine, which would reasonably be expected to have a material adverse effect upon Borrower, its ability to repay the Loan and satisfy its obligations under the Loan Documents.
>
> 4.5 Compliance with Laws. Borrower is in compliance with all applicable federal, state and local laws except where noncompliance would not be reasonably expected to result in a material adverse effect upon Borrower, its ability to repay the Loan or satisfy its obligations under the Loan Documents.
>
> 4.10 Solvency. As of the date hereof, and immediately prior to and after giving effect to the advance the Loan, (a) the fair value of Borrower's assets is greater than the amount of its liabilities (including disputed, contingent and unliquidated liabilities), (b) Borrower is able to realize upon its assets and pay its debts and other liabilities (including disputed, contingent and unliquidated liabilities) as they mature in the normal course of business, and (d) Borrower is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which its property would constitute unreasonably small capital.

(the "SBC07 Representations and Warranties").

189. Levinson directly communicated with Jarol and drafted the SBC07 Representations and Warranties with the intention of inducing Jarol to make the SBC07 Loan and they did induce Jarol to make the SBC07 Loan.

190. Levinson knew that the SBC07 Representations and Warranties were materially false when he drafted them as Levinson knew (i) that Capitol was operating at a loss and was insolvent due to Currie's default on over $11 million in loans, (ii) that there was threatened litigation against Shapiro by Kallman and Currie and (iii) that Capitol was in violation of Federal and State securities laws.

191. The SBC07 Loan Agreement also contained loan covenants, the breach of which would trigger a default of the SBC Loan. The SBC Loan Agreement provided that (1)

the loan proceeds must be used by Capitol solely for working capital and the payment of trade creditors and (2) that Capitol could not make any distribution, dividend, fees or salaries to any Capitol shareholder – including Shapiro – without SBC's prior written consent (the "SBC07 Loan Restrictions").

192. Levinson was aware that (i) Capitol was using the proceeds of the SBC07 Loan to repay maturing Lenders' loans and (ii) Shapiro was continuing to take out millions of dollars from Capitol including funds for Shapiro's purchase of his interest in Sapphire.

193. Levinson drafted the SBC07 Loan Restrictions with the intention of inducing Jarol to make the SBC07 Loan and they did induce Jarol to make the SBC07 Loan.

194. Further loan covenants required that Capitol would provide SBC (1) quarterly unaudited financial statements (including balance sheet, statement of income and retained earnings, statement of cash flows) not later than 30 days from the end of Capitol's quarterly periods and (2) annual financial statements (including balance sheet, statement of income and retained earnings, statement of cash flows) that have been reviewed by an outside certified accounting firm not later than 90 days after the end of Capitol's fiscal year, both of which were required to be "certified by [Capitol's] chief financial or accounting officer as being true and correct to the knowledge of such person and fairly and accurately reflecting the financial position of [Capitol]" (the "SBC07 Financial Reporting Requirements").

195. Levinson knew that the state of Capitol's financials at the time he instructed Capitol to execute the SBC07 Loan Agreement were in such a state that Capitol could never comply with the SBC07 Financial Reporting Requirements.

196. In addition, Levinson knew that Capitol could not provide financial statements to Jarol that reflected that Capitol was insolvent due to the outstanding Currie loans and, upon information and belief, knew that Capitol was providing Jarol inaccurate financial disclosures which Jarol materially relied upon in entering into the SBC07 Loan.

197. Levinson further knew that Capitol would be further violating the Federal and state securities laws by entering into the SBC07 Loan. Yet, Levinson instructed Shapiro to execute the SBC07 Loan Agreement and close on the SBC07 Loan.

198. Levinson was aware that the funds Jarol was providing through SBC07 were being provided pursuant to the private placement memorandum that was provided to Jarol's investors and that Jarol advised them that the funds were being provided to Capitol for Capitol's purchases of grocery products.

199. Levinson further knew that Capitol would be further violating the Federal and state securities laws by entering into the SBC07 Loan. Yet, Levinson instructed Shapiro to execute the SBC07 Offering, SBC07 Loan Agreement and close on the SBC07 Loan on or around November 19, 2007.

200. Less than two weeks before Levinson instructed Shapiro to close on the SBC07 Loan, on November 6, 2007, Levinson met with Supervising Attorney to discuss Capitol's securities and criminal issues.

201. On December 10, 2007, Supervising Attorney reviewed the draft private placement memorandum (the "PPM") and requirements for Capitol to meet the exemption under the Act from Shutts. The purpose of the PPM was to cleanse Capitol from its prior violations of the Act and bring Capitol in compliance. But Supervising Attorney and Levinson knew that Shapiro could not provide the disclosures required in the draft PPM including, but not limited to, the disclosure of (i) all pending and threatened litigation, (ii) Capitol's true financial statements and (iii) the description of Capitol's current business (which was solely to repay existing Lenders with new Lenders funds). Accordingly, Capitol stalled providing Shutts the requested information necessary for Shutts to finalize the PPM.

202. And on December 18, 2007, Supervising Attorney had a conference with Levinson to discuss Capitol's "new investors and SEC jurisdiction" – the Bradley Lenders were the "new investors."

Levinson Assists Shapiro in Stalling Documentation of Bradley Lenders' Loans

203. In January 2008, Jarol was looking to significantly increase the Bradley Lenders' investment into Capitol and on or about January 29, 2008, Jarol's counsel, Alan Levin ("Levin"), e-mailed Levinson regarding documenting a line of credit (the "Bradley LOC") between his company, Bradley Associates, LP ("Bradley"), and Capitol.

204. Levinson forwarded Levin's e-mail to Supervising Attorney that same day asking for his assistance, to which Supervising Attorney responded stating "Levin seems to want a note of a maximum amount with draws. He is not looking to just create paperwork to memorialize contractually each loan. You have notes of this nature from the Williams *[sic]* transactions and forms of personal guarantees you can send him. He can edit and return for your comments. I would not be too concerned about the simplicity of the paperwork. It would be simpler, however, if both parties used one entity each."

205. On January 30, 2008, Levinson drafted a loan agreement between Bradley and Capitol to document the Bradley LOC (the "Bradley LOC Loan Agreement")[3] and sent it to Levin stating "[a]s we discussed, attached hereto is an initial draft of the Loan Agreement. Please review and provide any comments. Also, please provide me with missing information such as the amount of loan, the interest rate and the lender's name and contact information." A true and correct copy of the draft Bradley LOC Loan Agreement is attached hereto as Exhibit "11."

206. Supervising Attorney reviewed and approved the Bradley LOC Loan Agreement.

[3] The draft Bradley LOC Loan Agreement inaccurately reflects the lender as Relianz.

207. The Bradley LOC Loan Agreement contained the same misguided representations and warranties (the "Bradley LOC Representations and Warranties"), loan restrictions (the "Bradley LOC Loan Restrictions") and financial reporting requirements (the "Bradley LOC Financial Reporting Requirements") as the SBC07 Loan Agreement discussed above.

208. Levinson directly communicated with Levin and drafted the Bradley LOC Representations and Warranties, Bradley LOC Loan Restrictions and the Bradley LOC Financial Reporting Requirements with the intention of inducing Jarol to make advances under the Bradley LOC and they did induce Jarol to make those advances. Jarol had come to trust and rely upon Levinson to the point that Jarol began funding advances under the Bradley LOC prior to its execution as he knew that the Bradley LOC contained the same representations and warranties, loan restrictions and reporting requirements as the SBC07 Loan.

209. Levinson and Supervising Attorney knew that the Bradley LOC Representations and Warranties were materially false when they drafted and approved them as they knew (i) that Capitol was operating at a loss and was insolvent due to Currie's default on over $11 million in loans, (ii) that there was threatened litigation against Shapiro by Kallman and Currie, (iii) that Shapiro was facing federal criminal investigations in two separate matters and (iv) that Capitol was in violation of Federal and State securities laws.

210. Levinson and Supervising Attorney were also aware that (i) Capitol was using the advances from the Bradley LOC to repay maturing Lenders' loans and (ii) Shapiro was continuing to take out millions of dollars from Capitol including funds for Shapiro's purchase of his interest in Sapphire and Benjaminz.

211. Levinson and Supervising Attorney further knew at the time they prepared and approved the Bradley LOC Financial Reporting Requirements that Capitol's financials were in such an abysmal state that Capitol could never comply with them.

212. In addition, Levinson and Supervising Attorney knew that Capitol could not provide financial statements to Jarol that reflected that Capitol was solvent due to the outstanding Currie loans and, upon information and belief, knew that Capitol was providing Jarol inaccurate financial disclosures which Jarol materially relied upon in entering into the Bradley LOC.

213. Levinson and Supervising Attorney further knew that Capitol would be further violating the Federal and state securities laws by entering into the Bradley LOC Loan.

214. On February 4, 2008, Levin provided a blackline and clean copy of the Bradley LOC Agreement to Levinson to review and revise.

215. On February 11, 2008, Levinson forwarded the Bradley LOC Agreement to Shapiro and advised him to execute it.

216. But instead, upon Shapiro's request, Levinson stalled Shapiro's execution of the Bradley LOC Agreement knowing that Capitol (i) could not repay the Bradley LOC and (ii) was using the Bradley LOC proceeds to repay other existing Lenders and would immediately be in breach of the Bradley LOC Loan Agreement.

217. Levinson evasively strung Levin along providing revisions to the Bradley LOC Agreement but delaying its execution all the while knowing that Bradley was relying upon Jarol's trust of Levinson and SHB and providing funding under the prospective Bradley LOC. Jarol had previously met Levinson, gained confidence that Levinson was an honest attorney and had no reason to doubt that Levinson was representing a legitimate entity, Capitol.

218. But in actuality, Levinson abandoned Capitol's interests and was protecting Shapiro and became a pawn in the Capitol Ponzi scheme willingly providing Capitol an air of legitimacy by allowing himself to be used as Shapiro's protective shield from the Bradley Lenders.

219. All the while, Levinson and Nalcerio continued to counsel Shapiro on his potential criminal matters arising from Currie and Kallman's allegations and began preparing for litigation. On April 7, 2008, Supervising Attorney and Levinson met to discuss "potential witnesses for pending and future litigation" in relation to the Currie and Kallman matters.

220. Eventually, Capitol began having trouble borrowing enough funds from other Lenders to repay the loans to the Bradley Lenders. And in order to repay the Bradley Lenders, Capitol solicited another Lender – BJS Limited Partnership ("BJS").

221. On April 7, 2008, A. Torres e-mailed Supervising Attorney a copy of a $5 million revolving promissory note between Capitol and BJS, whereby BJS would provide weekly $5 million loans under the note (the "BJS Revolving Loan").

222. Supervising Attorney requested that Levinson review the BJS Revolving Loan and Levinson directly communicated and negotiated the BJS Revolving Loan with BJS's counsel all the while knowing that the proceeds of the loan were being used to repay the Bradley Lenders and other Capitol Lenders.

223. Also in connection with the BJS Revolving Loan, BJS requested that Capitol enter into a Pledge and Security Agreement with BJS which would securitize the BJS Revolving Loan through a lien of all of Capitol's assets (the "BJS Security Agreement").

224. The timing of the funding of the majority of the loans made under the BJS Revolving Loan coincided with the date that funds were to be repaid to Bradley (through its affiliated entities, Newton, LP and Jamie Ventures, LP). As soon as funds from BJS would

hit Capitol's account, Capitol would wire repayment to Bradley. Bradley in turn would lend additional funds to Capitol under the Bradley LOC, and those funds were used to repay BJS literally creating circular transactions that had no legitimate business purpose other than to prop up the Capitol Ponzi scheme.

225. Between January 2008 and November 2008, Levinson avoided any further communications with Levin.

226. But in early November 2008, in order to assist Capitol in obtaining even more funds from Jarol, Levinson prepared a loan agreement between Capitol and Relianz Mortgage, Inc. ("Relianz"), an Illinois corporation owned by Jarol, in the amount of $2 million (the "Relianz $2M Loan") and communicated – via telephone and e-mail – directly with Jarol's counsel to finalize the agreement (the "Relianz $2M Loan Agreement"). A true and correct copy of the draft Relianz $2M Loan Agreement is attached hereto as Exhibit "12."

227. The Relianz $2M Loan Agreement contained the same representations and warranties (the "Relianz $2M Loan Agreement Representations and Warranties"), loan restrictions (the "Relianz $2M Loan Agreement Loan Restrictions") and financial reporting requirements (the "Relianz $2M Loan Agreement Financial Reporting Requirements") as the SBC07 Loan Agreement.

228. Levinson directly communicated with Jarol's counsel Levin and drafted the Relianz $2M Loan Agreement Representations and Warranties, Relianz $2M Loan Agreement Loan Restrictions and the Relianz $2M Loan Agreement Financial Reporting Requirements with the intention of inducing Jarol to make advances under the Relianz $2M Loan and they did induce Jarol to make those advances. Jarol had come to trust and rely upon Levinson to the point that Jarol funded the Relianz $2M Loan prior to the execution of the loan documentation as he knew that the Relianz $2M Loan Agreement contained the

same representations and warranties, loan restrictions and reporting requirements as the SBC07 Loan.

229. Levinson knew that the Relianz $2M Loan Agreement Representations and Warranties were materially false when he drafted them as Levinson knew (i) that Capitol was operating at a loss and was insolvent due to Currie's default on over $11 million in loans, (ii) that there was threatened litigation against Shapiro by Kallman and Currie, (iii) that Shapiro was facing federal criminal investigations in two separate matters and (iv) that Capitol was in violation of Federal and State securities laws.

230. Levinson was also aware that (i) Capitol was using the proceeds of the Relianz $2M Loan to repay maturing Lenders' loans and (ii) Shapiro was continuing to take out millions of dollars from Capitol including funds for Shapiro's purchase of his interest in Sapphire and Benjaminz.

231. Levinson further knew that at the time he drafted the Relianz $2M Loan Financial Reporting Requirements that Capitol's financials were in such an abysmal state that Capitol could never comply with them.

232. In addition, Levinson knew that Capitol could not provide financial statements to Jarol that reflected that Capitol was solvent due to the outstanding Currie loans and, upon information and belief, knew that Capitol was providing Jarol inaccurate financial disclosures which Jarol materially relied upon in entering into the Relianz $2M Loan.

233. Levinson further knew that Capitol would be further violating the Federal and state securities laws by entering into the Relianz $2M Loan.

234. Nonetheless, on November 7, 2008, Levinson sent the Relianz $2M Loan Agreement to Shapiro to finalize the remaining terms (amount of the loan and the interest rate) and close on the Relianz $2M Loan.

235. On November 12, 2008, Jarol sent a letter to Shapiro enclosing the final Relianz $2M Loan Agreement with the previously missing terms, amongs other loan documents, stating "[p]lease execute all documents where indicated, and return all to our office in the provided Federal Express envelope. Once received, a fully executed original will be sent to your attention." Upon receipt, Shapiro forwarded the letter and the loan agreements on to Levinson for Levinson to further stall.

236. Becoming more concerned with Shapiro's potential liability for executing loan agreements with representations and warranties Levinson knew to be false, Levinson stalled the finalization of the Relianz $2M Loan Agreement.

237. On November 17, 2008, Levin, after receiving no response from Levinson or Shapiro, contacted Levinson stating "[i]n February, I sent to you proposed loan documents between Relianz Mortgage and Capitol Investments et al. Sherwin would like to get the documents signed by Nevin. Please advise of the status of same. Thank you for your cooperation." Knowing that Shairo had no present intention to close on the Relianz $2M Loan Agreement, Levinson nevertheless replied "I need to go over the documents with Nevin and you should have them by the end of the week."

238. On November 24, 2008, Levinson returned the draft of the Relianz $2M Loan Agreement to Levin and Jarol to fill in missing information such as the amount of the loan and interest rate. Levin responded that he agreed with the form and Shapiro and Jarol should fill in the missing terms.

239. On December 16, 2008, after still not receiving finalized loan agreements for the Bradley LOC and the Relianz $2M Loan, Levin again e-mail Levinson (copying Jarol and Shapiro) recapping the outstanding and executed loan agreements between the Bradley Lenders and Capitol and attaching the loan agreements that needed to be

executed. Levin wrote "[p]lease review the above and advise if these matters are now agreeable to your clients." Levinson failed to respond.

240. And on January 5, 2009, Levin e-mailed Levinson to follow up on his December 16th e-mail.

241. The next day, Levinson e-mailed the outstanding loan agreements between the Bradley Lenders and Capitol to Lewis and Tein (copying Shapiro) and writing "[a]ttached are copies of loan agreements that were provided to Nevin from one of his lenders. I would like you to review same prior to Nevin executing any of the agreements." Tein responded "[w]hat in particular would you like me to review them for?" Levinson called Tein to discuss and Tein again sent Levinson an e-mail stating "[t]hanks for the call. I am not familiar enough with Nevin's business to comment on these documents. In light of recent legal developments, I could not advise him to execute these documents without much more information."

242. On January 7, 2009, upon information and belief, Levinson again stalled responding to Levin's e-mail stating "I apologize. My mother has been ill and I have been out of the office. I will meet with Nevin as soon as possible."

243. Levin responded "I am sorry to hear about your mother's ill health. All my best."

244. Levinson continued to stall and on February 23, 2009, Levin again followed up with Levinson stating "Marc: Sherwin has advised me that Nevin has met with you regarding the Loan Agreements and related documents between the parties and that same have been approved . . . Have the above documents been signed by your clients, and, if not, please advise if any further information/documentation are required."

245. On March 26, 2009, after the loan agreements were still not signed and Jarol was pushing Shapiro for their execution, Shapiro e-mailed Levinson stating "I cant stall any

longer. i need language (if any) changed asap." Levinson responded stating "you need to forward this email to Tein & Lewis and get their advice on how to proceed."

246. After the damage was already done and Levinson had strung Jarol and Levin along for over a year making them believe that there were no issues with Shapiro's execution of the Bradley Lenders' loan agreements, Levinson finally advised Shapiro and A. Torres on April 20, 2009 that he could not provide advice on the Bradley Lenders' loan agreements – the same agreements he had already drafted and approved and sent to Jarol and Levin.

J. SHB Negligently Advises Capitol in Settlement with Kallman

247. On February 11, 2002, Bears Investment Company ("Bears") entered into a Financial and Consulting Services Agreement (the "LOC Agreement") with Capitol whereby Bears was to provide Capitol with a $1 million line of credit to purchase goods. A true and correct copy of the LOC Agreement is attached hereto as Exhibit "13." Kallman is Bears sole member.

248. The LOC Agreement provided that Capitol would pay Bears 25% interest on all funds loaned under the LOC Agreement along with consulting fees. In actuality, Bears did not provide any consulting services to Capitol, but rather included the provision for "consulting fees" to disguise the usurious nature of the transaction as Capitol was paying Bears interest between 36% and 272% per annum (the "Bears Usurious Loans").

249. The LOC Agreement automatically renewed every two years unless Bears gave Capitol 30 days' notice of termination.

250. Bears was at all times aware that it was not funding Capitol's purchases but rather Bears was providing funding to Capitol to make loans to CraigCo as the "Requests for Funding" provided to Kallman by Capitol in February 2002 reflected "Craigco, Inc. c/o Capitol Investments USA, Inc."

251. The Bears Usurious Loans were not a part of the Ponzi Scheme Activity and were part of the legitimate financing transactions Capitol engaged in with the Currie Entities.

252. During the course of SHB's representation of Capitol and Shapiro, on numerous occasions Shapiro informed Levinson and Supervising Attorney of the Bears Usurious Loans.

253. At no time did Levinson or Supervising Attorney advise Capitol that is was not obligated to repay the Bears Usurious Loans.

254. From November 30, 2005 through September 18, 2006, Capitol repaid $3,468,666.69 in principal and interest payments to Bears on the Bears Usurious Loans (the "Bears Usurious Loan Transfers"). A schedule of the Bears Usurious Loan Transfers is attached hereto as Exhibit "14" and a schedule reflecting the terms of the Bears Usurious Loans is attached hereto as Exhibit "15."

255. Concurrently with the execution and delivery of the LOC Agreement, Capitol and Bears entered into a Non-Circumvention and Non-Disclosure Agreement (the "NCND Agreement") whereby Bears agreed that it would not interfere with nor utilize any business relationships of Capitol for its own benefit. The NCND Agreement provided for liquidated damages for any breach by Bears in the amount of $500,000.

256. Beginning in January 2004, Kallman decided to circumvent Capitol and directly contacted Currie to make loans to CraigCo thereby cutting out Capitol's profit participation in the Capitol-CraigCo deals – a clear violation of the NCND Agreement.

257. In 2006, Shapiro discovered that Bears was in breach of the NCND Agreement due to Kallman's providing funding to CraigCo and prohibited Capitol from making any further payments to Bears under the LOC Agreement.

258. As of October 2006, Capitol owed $2 million in principal to Bears under the LOC Agreement.

259. On September 20, 2006, R. Torres faxed a copy of the NCND Agreement to Levinson and Supervising Attorney and asked for their advice in resolving Bear's breach of the agreement.

260. On or about September 28, 2006, Levinson sent a letter to Bears (i) informing Bears that Capitol had discovered its breach of the NCND Agreement, (ii) demanding evidence of Bears relationship with CraigCo. and (iii) threatening litigation against Bears for its breach.

261. Over the course of the next month, Levinson communicated with Shapiro, R. Torres and Bears' counsel in an effort to resolve Bears' breach of the NCND Agreement and the amounts due and owing under the LOC Agreement.

262. During Levinson's meetings with Shapiro, Shapiro again advised Levinson of the fictitious consulting fees paid under the LOC Agreement and that the majority of the loans from Bears were at interest rates in excess of 30% per annum – criminally usurious under Florida law – as is evidenced by Levinson's handwritten notes from his meetings with Shapiro.

263. Levinson knew that the LOC Agreement was unenforceable under Florida law due to the criminally usurious nature of Bears' loans to Capitol and the legal research on the usury laws in Florida which was previously conducted by SHB.

264. Yet, Levinson continued to work with Bears' counsel in preparing a settlement agreement whereby Capitol would be required to repay, in part, the outstanding Bears Usurious Loans.

265. And on October 20, 2006, Levinson advised Shapiro and Capitol to execute a Settlement Agreement (the "Settlement Agreement") and Release (the "Release") between Capitol, Shapiro, Bears and Kallman whereby Capitol and Kallman resolved (i) the outstanding amounts owed by Capitol to Bears pursuant to the LOC Agreement and (ii)

Bears breach of the NCND Agreement. A true and correct copy of the Settlement Agreement and Release is attached hereto as Exhibit "16."

266. The terms of the Settlement Agreement were as follows:

a. Bears agreed to forgive the principal amount of $950,000 of Capitol's $2 million indebtedness under the LOC Agreement and all accrued interest due in exchange for Capitol's payment of $1,050,000 to Bears on or before November 1, 2006 (the "Bears Settlement Payment");

b. The LOC Agreement was terminated;

c. The NCND Agreement was terminated; and

d. Shapiro personally guaranteed the Bears Settlement Payment.

267. The Release provided for a complete release of any and all past, present and future claims Capitol and Shapiro had or may have against Bears and Kallman, including all claims relating to the Bears Usurious Loans.

268. In addition, Currie and CraigCo. assumed a portion of the debt owed by Capitol to Bears and executed a Promissory Note in the amount of $510,000 in favor of Bears as part of the Settlement Agreement (the "Currie Note"), as the funds Capitol received from Bears under the LOC Agreement had been transferred to CraigCo. with Kallman's knowledge and approval.

269. Levinson advised Shapiro to execute the Settlement Agreement and the Release.

270. Pursuant to the Settlement Agreement, on October 24, 2006, Capitol transferred the Bears Settlement Payment in the amount of $1,050,000 to Bear's and Kallman's counsel – Loeb & Loeb, LLP – thereby consummating the Settlement Agreement and releasing Capitol's claims against Bears and Kallman for the Bears Usurious Loans.

271. Capitol and Shapiro relied upon the superior advice of their counsel, Levinson, in entering the Settlement Agreement and Release.

272. At no point in time did Levinson advise Capitol or Shapiro that they were not obligated to repay the Bears Usurious Loans and Levinson and Supervising Attorney negligently (i) failed to advise Capitol that is was not required to make the Bears Usurious Loan Transfers and (ii) advised Capitol and Shapiro to execute the Settlement Agreement and Release and make the Bears Settlement Payment, and such negligence caused damage to Capitol.

273. Had Levinson or Supervising Attorney advised Capitol and Shapiro that they were not obligated to repay the Bears Usurious Loans, Capitol would not have made the Bears Usurious Loan Transfers or entered into the Settlement Agreement and Release and made the Bears Settlement Payment to Bears.

COUNT 1
NEGLIGENCE
(DIRECT CLAIMS – SHB AND LEVINSON)

274. Plaintiff realleges paragraphs 1 through 6, 8 through 10, 12 through 17, 20 through 32, 37 through 51 and 247 through 273 as though fully set forth herein.

275. SHB owed Capitol a duty of reasonable care commensurate with the skill and prudence of attorneys practicing corporate law in SHB's community.

276. In derogation of such duty to Capitol, SHB, through Supervising Attorney and Levinson, failed to provide Capitol competent legal advice by (i) not advising Capitol that criminally usurious loans were unenforceable pursuant to Florida law including, but not limited to, the Bears Usurious Loans, (ii) negotiating and drafting the Settlement Agreement between Capitol and Shapiro and Bears and Kallman, (iii) advising Capitol and Shapiro to execute the Settlement Agreement although the Bears Usurious Loans were unenforceable as a matter of law and (iv) advising Capitol to make the Bears Settlement Payment.

277. As a direct and proximate cause of SHB's and Levinson's negligence, Capitol incurred millions of dollars in damages based upon (i) Capitol's release of its claims against

Bears and Kallman for forfeiture of the Bears Usurious Loan Transfers and (ii) Capitol's payment of the Bears Settlement Payment which SHB instructed Capitol and Shapiro to make.

278. Had SHB and Levinson properly carried out their duties of reasonable care, Capitol would not have released the Bears Usurious Loan Transfers or made the Bears Settlement Payment.

WHEREFORE, Plaintiff, Joel L. Tabas, as Chapter 7 trustee of the bankruptcy estate of Capitol Investments USA, Inc., respectfully requests that the Court enter a judgment on his behalf and against the Defendants, Shook, Hardy & Bacon, L.L.P. and Marc Levinson, jointly and severally, and awarding him:

A. Compensatory damages in an amount equal to the amount the Bears Usurious Loan Transfers and the Bears Settlement Payment;

B. Prejudgment interest;

C. Costs; and

D. such other and further relief as this Court deems just and proper.

COUNT 2
NEGLIGENT SUPERVISION AND CONTROL
(DIRECT CLAIMS – SHB)

279. Plaintiff realleges paragraphs 1 through 6, 8 through 10, 12 through 17, 20 through 32, 37 through 51 and 247 through 273 as though fully set forth herein.

280. SHB owed Capitol a duty of reasonable care commensurate with the skill and prudence of attorneys practicing corporate law referenced above in SHB's community.

281. As part of its obligation to fulfill the above referenced duties to Capitol, SHB was required to exercise care in the assigning of attorneys, including Levinson and Supervising Attorney, with the specialty needed to render competent legal advice.

282. In derogation of its duties, SHB improperly designated Levinson – a tobacco litigation attorney – and Supervising Attorney – an antitrust and trade regulation attorney – to manage SHB's client relationship with Capitol, neither of which had the experience or knowledge necessary to render competent legal advice to Capitol.

283. In addition, Levinson – a close childhood friend of Shapiro – went unmonitored by SHB and had an inherent conflict of interest as he participated in the benefits of Shapiro's wrongful conduct, protected the interests of Shapiro and neglected his duties to Capitol.

284. As a result of failing to properly supervise and control its employees and assign attorneys with the proper legal experience, SHB, through Levinson and Supervising Attorney, failed to provide competent legal advice to Capitol in derogation of its duties.

285. As a direct and proximate cause of SHB's failure to properly supervise or control its personnel, Capitol incurred damages, including damages for releasing its claims for forfeiture of the Bears Usurious Loan Transfers and making the Bears Settlement Payment.

WHEREFORE, Plaintiff, Joel L. Tabas, as Chapter 7 Trustee of the bankruptcy estate of Capitol Investments USA, Inc., respectfully requests that the Court enter a judgment on his behalf and against the Defendant, Shook, Hardy & Bacon, L.L.P., and awarding him:

A. Compensatory damages, including damages in the amount of the Bears Usurious Loan Transfers and the Bears Settlement Payment for Shook, Hardy & Bacon, L.L.P.'s negligent supervision and control of its employees;

B. Prejudgment interest;

C. Costs; and

D. such other and further relief as this Court deems just and proper.

COUNT 3
AIDING AND ABETTING BREACH OF FIDUCIARY DUTY
(ALL ASSIGNED CLAIMS – SHB AND LEVINSON)

286. Plaintiff realleges paragraphs 1 through 246 as though fully set forth herein

287. Shapiro, as an officer, director and shareholder of Capitol owed fiduciary duties to Capitol, which included a duty to (i) be honest in reporting to Capitol and the Assignors Capitol's true financial picture, (ii) refrain from misappropriating funds from Capitol for his own personal benefit, including using the funds for purchasing his own business interests in Axcess, Sapphire, Ocean Rock and Benjaminz, which left Capitol undercapitalized, (iii) refrain from borrowing funds from Capitol while Capitol was insolvent, (iv) refrain from using Capitol's Lenders' funds to engage in NCAA Violations by using Capitol's funds to provide improper benefits to the UM student athletes which left Capitol undercapitalized, (v) refrain from engaging in violations of the Act, (vi) refrain from borrowing funds from Lenders and increasing Capitol's liabilities beyond Capitol's ability to repay those obligations and (vii) refrain from making material misrepresentations to Capitol's Lenders through the Capitol Representations (the "Shapiro's Breaches of Fiduciary Duties").

288. SHB, through Supervising Attorney and Levinson, knew that Shapiro breached his fiduciary duties to Capitol by committing the wrongful conduct described above on behalf of SHB, and yet SHB and Levinson failed to disclose that information to Capitol or Menoscal, and rather affirmatively aided, abetted and encouraged the Shapiro Breaches of Fiduciary Duties by advising, directing, assisting and approving the wrongful conduct of Shapiro described above.

289. Specifically, SHB, through Levinson and Supervising Attorney, with full knowledge of (i) Capitol's insolvency and inability to repay its Lenders, (ii) Capitol's misrepresentations to its Lenders, (iii) violations of the Act and (iv) Shapiro's pending

criminal investigations, affirmatively assisted Shapiro in luring in the Bradley Lenders and BJS with full knowledge that the proceeds of their loans would only be used to repay maturing Lenders' loans in contravention of the Capitol Representations made to the Bradley Lenders and BJS and would effectively keep the Capitol Ponzi scheme afloat and perpetuate the scheme.

290. SHB further assisted Shapiro in his diversion of Capitol's funds to Axcess, Sapphire, Ocean Rock and Benjaminz as described above and encouraged his diversion of funds thereby leaving Capitol undercapitalized when Currie defaulted on his loans prior to January 2005.

291. As a direct and proximate result of SHB's aiding and abetting Shapiro's Breaches of Fiduciary Duties to Capitol, the Bayside Lenders, Gonzalez Lenders, Hokanson Lenders, Magnone, Indovina and the Bradley Lenders have suffered substantial damages as they continued to invest substantial funds with Capitol – which would have collapsed in early 2007 had SHB not affirmatively assisted Capitol in attracting the Bradley Lenders and BJS to invest in Capitol.

292. Furthermore, SHB's and Levinson's aiding and abetting Shapiro's Breaches of Fiduciary Duties facilitated Shapiro's success in attracting the Bayside Lenders, Gonzalez Lenders, Hokanson Lenders, Magnone, Indovina and the Bradley Lenders to the Capitol Ponzi scheme thereby causing them injury. SHB and Levinson knowingly provided the means and the veneer of propriety that Shapiro needed to perpetuate his scheme.

293. The Bayside Lenders, Gonzalez Lenders, Hokanson Lenders, Magnone, Indovina and Jarol have been damaged by SHB's and Levinson's aiding and abetting Shapiro's breach of fiduciary duties to Capitol, and the Bayside Lenders, Gonzalez Lenders, Hokanson Lenders, Magnone, Indovina and the Bradley Lenders are entitled to recover all damages proximately flowing from said breaches.

WHEREFORE, Plaintiff, Joel L. Tabas, as assignee of the Bayside Lenders, Gonzalez Lenders, Hokanson Lenders, Magnone, Indovina and the Bradley Lenders, respectfully requests that the Court enter a judgment on his behalf and against the Defendants, Shook, Hardy & Bacon, L.L.P. and Marc Levinson, jointly and severally, and awarding him:

A. Compensatory damages in an amount equal to the Assigned Claims for Shook, Hardy & Bacon, L.L.P.'s and Marc Levinson's aiding and abetting Shapiro's breaches of his fiduciary duties to Capitol;

B. Prejudgment interest;

C. Costs; and

D. such other and further relief as this Court deems just and proper.

COUNT 4
AIDING AND ABETTING FRAUD
(All ASSIGNED CAIMS – SHB & LEVINSON)

294. Plaintiff incorporates and realleges paragraphs 1 through 246 of this Complaint as though fully set forth herein.

295. As described more fully above, Shapiro was operating a scheme to defraud Capitol's investors with the assistance of SHB and others.

296. As early as November 2006, SHB, through Levinson and Supervising Attorney, knew that (1) Capitol was being operated by Shapiro as a Ponzi scheme, (2) Capitol had no legitimate grocery diverting business and its only source of income was Lenders' funds which were used to repay maturing loans of other Lenders, (3) that Capitol was insolvent but continued to solicit Lenders to lend funds to Capitol for purported grocery purchases and (4) that Shapiro was diverting a significant amount of funds from Capitol for his own personal use including, but not limited to, the NCAA Violations, gambling and his personal business interests in Axcess, Sapphire, Ocean Rock and Benjaminz.

297. In an initial in-office consultation with Lewis Tein on February 26, 2007, Shapiro revealed to Lewis Tein that (1) he had assets off of Capitol's balance sheet, (2) he used funds from Capitol's Lenders to purchase his interest in a sports agency, (3) he had liabilities of approximately $15 million off of Capitol's books, (4) Capitol's main lender had called Shapiro stating that he received a call from someone stating that Shapiro was in the middle of a Ponzi scheme and (5) Shapiro could not justify the amount of the money Capitol received from Lenders for the amount of business Capitol was conducting. Upon information and belief, Shapiro reported the same facts to Levinson.

298. On May 3, 2007, during another consultation with Shapiro, Tein's notes revealed the following observations about Shapiro:

a. You are not revealing everything. Sounds like you made misreps to lenders and paid them returns on certain projects when the returns were borrowed from others, to induce further loans.

299. Lewis's handwritten notes also reflect that Lewis compared Capitol's business with Currie and Kallman to that of Premium Sales – a well-known Ponzi scheme in South Florida in the 1990's.

300. Levinson was in attendance at the May 3, 2007 meeting with Shapiro and Lewis Tein, and upon information, was privy to their notes and had similar observations about Capitol.

301. Levinson also stayed apprised of all of Shapiro's criminal matters through Lewis, Tein and daily calls with a frightened Shapiro.

302. SHB, through Levinson, knew that Capitol was operating for a fraudulent purpose and had direct evidence that Capitol was using Lenders' funds to repay earlier Lenders.

303. SHB, through Supervising Attorney and Levinson, provided substantial assistance to Shapiro in perpetuating the Ponzi scheme by providing an air of legitimacy to Capitol as Shapiro directed Lenders with questions to SHB.

304. SHB also provided substantial assistance through its actions as set forth more fully throughout this Complaint which included, but is not limited to, (i) providing Shapiro advice on avoiding detection of Shapiro's NCAA Violations and the diversion of the funds from Capitol which left Capitol undercapitalized, (2) avoiding detection of Capitol's violations of the Act, (3) assisting Capitol in luring in the Bradley Lenders who stopped the demise of the Capitol Ponzi scheme in 2007 and assisting Capitol in closing and advising Capitol to close on the BJS Loans knowing that the funds were needed to repay revolving loans to the Bradley Lenders in 2008 or the Capitol Ponzi scheme would have come to a screeching halt.

305. Pursuant to the Florida Rules of Professional Conduct, Rule 4-1.16, a lawyer ***shall not*** represent a client and ***shall withdraw*** from such representation if:

> (4) the client ***persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent***, unless the client agrees to disclose and rectify the crime or fraud; or
>
> (5) the client ***has used the lawyer's services to perpetrate a crime or fraud***, unless the client agrees to disclose and rectify the crime or fraud.

(emphasis added).

306. Furthermore, Rule 4-1.6 of the Florida Rules of Professional Conduct reflects that "a lawyer ***shall*** reveal such information to the extent the lawyer reasonably believes necessary: (1) to prevent a client from committing a crime . . ." (emphasis added).

307. SHB, through Supervising Attorney and Levinson, knew that Shapiro was continuing to commit a crime and in contravention of the Florida Rules of Professional

Conduct – which created a duty for SHB to disclose Shapiro's fraud. Yet, SHB failed to disclose Shapiro's continuous criminal conduct and violations of the Act to the detriment of the Assignors who continued to invest funds in Capitol.

308. Had SHB fulfilled its duty by reporting Shapiro and Capitol to the federal authorities as required by the Florida Rules of Professional Conduct, Capitol would have been immediately shut down and the Assignors would not have incurred further damages.

309. But instead, SHB failed to disclose Shapiro's continuous criminal conduct to the detriment of the Assignors.

310. The conduct of SHB went far beyond that of an attorney-client relationship to the point where SHB was assisting Shapiro in the proliferation and perpetuation of the Capitol Ponzi scheme.

311. At all material times thereto, Levinson and Supervising Attorney were acting within the scope of their employment at SHB.

WHEREFORE, Plaintiff, Joel L. Tabas, as Chapter 7 Trustee, respectfully requests this Court enter judgment on his behalf and against Defendants, Shook, Hardy & Bacon, L.L.P. and Marc Levinson, jointly and severally, and awarding him:

A. Compensatory damages in an amount equal to the amount owed by Capitol to the Assignors for Shook, Hardy & Bacon, L.L.P.'s and Marc Levinson's aiding and abetting the Capitol fraud;

B. Prejudgment interest;

C. Costs; and

D. such other and further relief as this Court deems just and proper.

COUNT 5
AIDING AND ABETTING FRAUD
(BRADLEY LENDERS' ASSIGNED CLAIMS – SHB AND LEVINSON)

312. Plaintiff incorporates and realleges paragraphs 1 through 246 of this Complaint as though fully set forth herein.

313. As described more fully above, Shapiro was operating a scheme to defraud Capitol's investors with the assistance of SHB and others.

314. As early as November 2006, SHB, through Levinson and Supervising Attorney, knew that (1) Capitol was being operated by Shapiro as a Ponzi scheme, (2) Capitol had no legitimate grocery diverting business and its only source of income was Lenders' funds which were used to repay maturing loans of other Lenders, (3) that Capitol was insolvent but continued to solicit Lenders to lend funds to Capitol for purported grocery purchases and (4) that Shapiro was diverting a significant amount of funds from Capitol for his own personal use including, but not limited to, the NCAA Violations, gambling and his personal business interests in Axcess, Sapphire, Ocean Rock and Benjaminz.

315. In an initial in-office consultation with Lewis Tein on February 26, 2007, Shapiro revealed to Lewis Tein that (1) he had assets off of Capitol's balance sheet, (2) he used funds from Capitol's Lenders to purchase his interest in a sports agency, (3) he had liabilities of approximately $15 million off of Capitol's books, (4) Capitol's main lender had called Shapiro stating that he received a call from someone stating that Shapiro was in the middle of a Ponzi scheme and (5) Shapiro could not justify the amount of the money Capitol received from Lenders for the amount of business Capitol was conducting. Upon information and belief, Shapiro reported the same facts to Levinson.

316. On May 3, 2007, during another consultation with Shapiro, Tein's notes revealed the following observations about Shapiro:

a. You are not revealing everything. Sounds like you made misreps to lenders and paid them returns on certain projects when the returns were borrowed from others, to induce further loans.

317. Lewis's handwritten notes also reflect that Lewis compared Capitol's business with Currie and Kallman to that of Premium Sales – a well-known Ponzi scheme in South Florida in the 1990's.

318. Levinson was in attendance at the May 3, 2007 meeting with Shapiro and Lewis Tein, and upon information, was privy to their notes and had similar observations about Capitol.

319. Levinson also stayed apprised of all of Shapiro's criminal matters through Lewis, Tein and daily calls with a frightened Shapiro.

320. SHB, through Levinson, knew that Capitol was operating for a fraudulent purpose and had direct evidence that Capitol was using Lenders' funds to repay earlier Lenders.

321. SHB, through Supervising Attorney and Levinson, provided substantial assistance to Shapiro in perpetuating the Ponzi scheme by providing an air of legitimacy to Capitol as Shapiro directed Lenders with questions to SHB.

322. SHB also provided substantial assistance through its actions as set forth more fully throughout this Complaint which included, but is not limited to, (i) providing Shapiro advice on avoiding detection of Shapiro's NCAA Violations and the diversion of the funds from Capitol which left Capitol undercapitalized, (2) avoiding detection of Capitol's violations of the Act, (3) assisting Capitol in luring in the Bradley Lenders who stopped the demise of the Capitol Ponzi scheme in 2007 and assisting Capitol in closing and advising Capitol to close on the BJS Loans knowing that the funds were needed to repay revolving loans to the Bradley Lenders in 2008 or the Capitol Ponzi scheme would have come to a screeching halt.

323. Pursuant to the Florida Rules of Professional Conduct, Rule 4-1.16, a lawyer ***shall not*** represent a client and ***shall withdraw*** from such representation if:

> (4) the client ***persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent***, unless the client agrees to disclose and rectify the crime or fraud; or
>
> (5) the client ***has used the lawyer's services to perpetrate a crime or fraud***, unless the client agrees to disclose and rectify the crime or fraud.

(emphasis added).

324. Furthermore, Rule 4-1.6 of the Florida Rules of Professional Conduct reflects that "a lawyer ***shall*** reveal such information to the extent the lawyer reasonably believes necessary: (1) to prevent a client from committing a crime . . ." (emphasis added).

325. SHB, through Supervising Attorney and Levinson, knew that Shapiro was continuing to commit a crime and in contravention of the Florida Rules of Professional Conduct – which created a duty for SHB to disclose Shapiro's fraud. Yet, SHB failed to disclose Shapiro's continuous criminal conduct and violations of the Act to the detriment of the Bradley Lenders who continued to invest funds in Capitol.

326. Had SHB fulfilled its duty by reporting Shapiro and Capitol to the federal authorities as required by the Florida Rules of Professional Conduct, Capitol would have been immediately shut down and the Bradley Lenders would not have incurred further damages.

327. But instead, SHB failed to disclose Shapiro's continuous criminal conduct to the detriment of the Bradley Lenders.

328. The conduct of SHB went far beyond that of an attorney-client relationship to the point where SHB was assisting Shapiro in the proliferation and perpetuation of the Capitol Ponzi scheme.

329. At all material times thereto, Levinson and Supervising Attorney were acting within the scope of their employment at SHB.

WHEREFORE, Plaintiff, Joel L. Tabas, as assignee of the claims of the Bradley Lenders, respectfully requests this Court enter judgment on his behalf and against Defendants, Shook, Hardy & Bacon, L.L.P. and Marc Levinson, jointly and severally, and award him:

A. Compensatory damages in an amount equal to the amount owed by Capitol to the Bradley Lenders for Shook, Hardy & Bacon, L.L.P.'s and Marc Levinson's aiding and abetting the Capitol fraud;

B. Prejudgment interest;

C. Costs; and

D. such other and further relief as this Court deems just and proper.

COUNT 6
FRAUDULENT MISREPRESENTATION
(BRADLEY LENDERS' ASSIGNED CLAIMS – SHB AND LEVINSON)

330. Plaintiff realleges paragraphs 1 through 246 as though fully set forth herein.

331. Levinson met with Jarol and Shapiro prior to the Bradley Lenders making substantial loans to Capitol in 2007 as part of Jarol's due diligence.

332. Levinson, knowing that Shapiro would use SHB to provide Capitol an air of legitimacy to the Bradley Lenders, discussed his longstanding friendship with Shapiro and advised Jarol that SHB and Levinson represented Capitol and Shapiro in all of their legal needs in an effort to provide Jarol comfort and security in making his loans to Capitol through the Bradley Lenders.

333. Levinson also advised Jarol of his background as a lawyer who handled large complex cases in an effort to ease Jarol's concerns about Capitol and convinced Jarol that Capitol was competently represented by counsel. As a result, Levinson gained Jarol's trust.

334. Jarol also did his own investigation of SHB and was impressed with SHB's credentials. Overall, SHB's representation of Capitol and Shapiro provided Jarol comfort in

making his determination for the Bradley Lenders to lend substantial funds to Capitol as Jarol believed that a national law firm such as SHB would only represent legitimate clients.

335. Levinson directly negotiated Capitol's sales of securities to the Bradley Lenders as set forth in paragraphs 167 through 238 on behalf of Capitol through telephone calls and e-mail communications with Jarol and his counsel, Levin.

336. Levinson prepared, revised and drafted the Bradley Lenders' loan agreements as set forth in paragraphs 167 through 238 which knowingly contained material misrepresentations made by Levinson or approved and ratified by Levinson.

337. Levinson at all times knew that Jarol would rely upon the representations set forth in paragraphs 167 through 238 in making the Bradley Lenders' loans to Capitol, intended for Jarol to rely upon the representations and withholding of facts necessary to make the representations not misleading and Jarol did in fact rely upon those representations.

338. The above misrepresentations and omissions were material in that a reasonable investor would consider them important in deciding whether to invest. The Bradley Lenders reasonably relied on the misrepresented facts and would not have invested had they known the true facts.

339. Based upon the acts of Levinson and SHB, as a direct and proximate result of their conduct as described herein the Bradley Lenders have sustained damages.

WHEREFORE, Plaintiff, Joel L. Tabas, as Chapter 7 Trustee, respectfully requests this Court enter judgment on his behalf and against Defendants, Shook, Hardy & Bacon, L.L.P. and Marc Levinson, jointly and severally, and award him:

A. Compensatory damages in an amount equal to the amount owed by Capitol to the Bradley Lenders for Shook, Hardy & Bacon, L.L.P.'s and Marc Levinson's fraudulent misrepresentations to Jarol;

B. Prejudgment interest;

C. Costs; and

D. such other and further relief as this Court deems just and proper.

COUNT 7
NEGLIGENT MISREPRESENTATION
(BRADLEY LENDERS' ASSIGNED CLAIMS – SHB AND LEVINSON)

340. Plaintiff realleges paragraphs 1 through 246 as though fully set forth herein.

341. This Count 7 is plead as an alternative to Count 6 above in that the allegations set out above reflecting that SHB through Levinson intentionally made the misrepresentations to the Bradley Lenders are amended herein so that such material misrepresentations were made by SHB through Levinson without the requisite knowledge to determine their truth or falsity and Levinson should have known that the misrepresentations were false.

342. Levinson met with Jarol and Shapiro prior to the Bradley Lenders making substantial loans to Capitol in 2007 as part of Jarol's due diligence.

343. Levinson, knowing that Shapiro would use SHB to provide Capitol an air of legitimacy to the Bradley Lenders, discussed his longstanding friendship with Shapiro and advised Jarol that SHB and Levinson represented Capitol and Shapiro in all of their legal needs in an effort to provide Jarol comfort and security in making his loans to Capitol through the Bradley Lenders.

344. Levinson also advised Jarol of his background as a lawyer who handled large complex cases in an effort to ease Jarol's concerns about Capitol and convinced Jarol that Capitol was competently represented by counsel. As a result, Levinson gained Jarol's trust.

345. Jarol also did his own investigation of SHB and was impressed with SHB's credentials. Overall, SHB's representation of Capitol and Shapiro provided Jarol comfort in making his determination for the Bradley Lenders to lend substantial funds to Capitol as Jarol believed that a national law firm such as SHB would only represent legitimate clients.

346. Levinson directly negotiated Capitol's sales of securities to the Bradley Lenders as set forth in paragraphs 167 through 238 on behalf of Capitol through telephone calls and e-mail communications with Jarol and his counsel, Levin.

347. Levinson prepared, revised and drafted the Bradley Lenders' loan agreements as set forth in paragraphs 167 through 238 in his course of business which contained material misrepresentations made by Levinson or approved and ratified by Levinson which Levinson should have known were inaccurate and with complete disregard as to the veracity of the representations set forth in paragraphs 167 through 238.

348. Levinson at all times knew that Jarol would rely upon the representations set forth in paragraphs 167 through 238 in making the Bradley Lenders' loans to Capitol, intended for Jarol to rely upon the representations and withholding of facts necessary to make the representations not misleading and Jarol did in fact justifiably rely upon those representations.

349. The above misrepresentations and omissions were material in that a reasonable investor would consider them important in deciding whether to invest. The Bradley Lenders reasonably relied on the misrepresented facts and would not have invested had they known the true facts.

350. Based upon the acts of Levinson and SHB, as a direct and proximate result of their conduct as described herein the Bradley Lenders have sustained damages.

WHEREFORE, Plaintiff, Joel L. Tabas, as Chapter 7 Trustee, respectfully requests this Court enter judgment on his behalf and against Defendants, Shook, Hardy & Bacon, L.L.P. and Marc Levinson, jointly and severally, and award him:

A. Compensatory damages in an amount equal to the amount owed by Capitol to the Bradley Lenders for Shook, Hardy & Bacon, L.L.P.'s and Marc Levinson's negligent misrepresentations to Jarol;

B. Prejudgment interest;

C. Costs; and

D. such other and further relief as this Court deems just and proper.

COUNT 8
VIOLATION OF SECTION 10(b) OF THE
SECURITIES EXCHANGE ACT OF 1934 AND RULE 10b-5
(BRADLEY LENDERS' ASSIGNED CLAIMS – SHB AND LEVINSON)

351. Plaintiff realleges paragraphs 1 through 246 as though fully set forth herein.

352. Levinson met with Jarol and Shapiro prior to the Bradley Lenders making substantial loans to Capitol in 2007 as part of Jarol's due diligence.

353. Levinson, knowing that Shapiro would use SHB to provide Capitol an air of legitimacy to the Bradley Lenders, discussed his longstanding friendship with Shapiro and advised Jarol that SHB and Levinson represented Capitol and Shapiro in all of their legal needs in an effort to provide Jarol comfort and security in making his loans to Capitol.

354. Levinson also advised Jarol of his background as a lawyer who handled large complex cases in an effort to ease Jarol's concerns about Capitol and convinced Jarol that Capitol was competently represented by counsel. As a result, Levinson gained Jarol's trust.

355. Jarol also did his own investigation of SHB and was impressed with SHB's credentials. Overall, SHB's representation of Capitol and Shapiro provided Jarol comfort in making his determination for the Bradley Lenders to lend substantial funds to Capitol as Jarol believed that a national law firm such as SHB would only represent legitimate clients.

356. Levinson directly negotiated Capitol's sales of securities to the Bradley Lenders as set forth in paragraphs 167 through 238 on behalf of Capitol through telephone calls and e-mail communications with Jarol and his counsel, Levin.

357. Levinson prepared, revised and drafted the Bradley Lenders' loan agreements as set forth in paragraphs 167 through 238 which knowingly contained material misrepresentations made by Levinson or approved and ratified by Levinson.

358. Levinson at all times knew that Jarol would rely upon the representations set forth in this Complaint in making the Bradley Lenders' Loans, intended for Jarol to rely upon the representations and withholding of facts necessary to make the representations not misleading and Jarol did in fact rely upon those representations.

359. The above misrepresentations and omissions were material in that a reasonable investor would consider them important in deciding whether to invest. The Bradley Lenders reasonably relied on the misrepresented facts and would not have invested had they known the true facts.

360. Based upon the acts of Levinson and SHB, as a direct and proximate result of their conduct as described herein the Bradley Lenders have sustained damages.

WHEREFORE, Plaintiff, Joel L. Tabas, as Chapter 7 Trustee, respectfully requests this Court enter judgment on his behalf and against Defendants, Shook, Hardy & Bacon, L.L.P. and Marc Levinson, jointly and severally, as follows:

A. Compensatory damages in an amount equal to the amount owed by Capitol to the Bradley Lenders for Shook, Hardy & Bacon, L.L.P.'s and Marc Levinson's violations of Section 10(b) of the Exchange Act and Rule 10b-5;

B. Prejudgment interest;

C. Costs; and

D. such other and further relief as this Court deems just and proper.

COUNT 9
VIOLATION OF SECTION 20(A) OF THE SECURITIES EXCHANGE ACT OF 1934
(JAROL ASSIGNED CLAIMS – SHB)

361. Plaintiff realleges paragraphs 1 through 246 as though fully set forth herein.

362. Shapiro plead guilty and was ultimately convicted of violating Section 10(b) of the Securities Exchange Act and Rule 10b-5 thereunder.

363. SHB acted as Capitol's general counsel and advised Capitol and Shapiro on all significant matters. In addition, SHB, through Levinson's close relationship with Shapiro, became a trusted advisor to Capitol.

364. In November 2006, Capitol specifically sought advice on whether it was acting in violation of the Federal and state securities laws.

365. Specifically, Capitol's CFO, R. Torres, and bookkeeper, A. Torres, requested that SHB – who had superior knowledge and expertise – review Capitol's relationship with its lenders to determine if Capitol's activity was running afoul of the Federal and state securities laws as set forth throughout this Complaint.

366. SHB conducted legal research and wrote a detailed memorandum in relation to whether Capitol's business activity complied with the Federal and state securities laws and billed Capitol for its services.

367. Yet, SHB never advised Capitol that it was in violation of the securities laws and needed to cease its additional borrowings from Lenders until it rectified its securities violations.

368. Rather, SHB, through Levinson, advised Shapiro to continue to bring in funds in order to prevent Capitol's collapse.

369. SHB, through Levinson and Supervising Attorney, knew that Shapiro was making the Capitol Representations to Lenders, including the Bradley Lenders, and those representations were false and in contravention of the Federal securities laws.

370. Nevertheless, SHB prepared, reviewed, approved and disseminated the loan agreements set forth in paragraphs 167 through 238 to the Bradley Lenders which contained knowingly material misstatements and omissions in connection with their purchase of securities from Capitol.

371. SHB became complicit in the violation by failing to advise Capitol that it was in violation of the securities laws and to cease its additional borrowing and, instead, assisting Capitol in luring in the Bradley Lenders.

372. In addition, SHB, through Levinson, continued to negotiate, draft, revise, review and give its final approval to the Bradley Lenders' loan agreements as set forth herein which contained material misrepresentations and omissions as set forth in paragraphs 167 through 238.

373. Levinson even advised Shapiro not to execute any loan agreements with the Bradley Lenders prior to his approval.

374. In negotiating Capitol's continued sales of securities in violation of the Act and in assisting Capitol in making misrepresentations to the Bradley Lenders, SHB became culpable participants in Capitol's and Shapiro's securities violations.

375. Capitol sought SHB's advice based upon its superior knowledge and expertise and followed SHB's advice as its trusted legal advisor.

376. Shapiro further relied upon his childhood friend as his confidant whom he spoke to daily regarding every aspect of life.

377. SHB therefore had sufficient indirect control over Capitol and Shapiro within the meaning of the Exchange Act as set forth herein.

378. By virtue of SHB's position as a control person over Capitol and Shapiro, both of which violated Section 10(b) and Rule 10b-5 of the Exchange Act, SHB is liable to the Bradley Lenders pursuant to Section 20(a) of the Exchange Act.

379. And SHB stood to gain significantly from its continued representation of Shapiro and Capitol by earning fees from Capitol.

380. Levinson also benefited from SHB's relationship with Capitol which proved to SHB that he could generate business for SHB and he earned a bonus for his origination of Shapiro as a client to SHB.

381. As a direct and proximate result of SHB's and Levinson's wrongful conduct, the Bradley Lenders suffered damages in connection with their purchase of securities from Capitol.

WHEREFORE, Plaintiff, Joel L. Tabas, as Chapter 7 Trustee, respectfully requests this Court enter judgment on his behalf and against Defendants, Shook, Hardy & Bacon, L.L.P. and Marc Levinson, jointly and severally, and award him:

A. Compensatory damages in an amount equal to the amount owed by Capitol to the Bradley Lenders for Shook, Hardy & Bacon, L.L.P.'s and Marc Levinson's violations of Section 20(a) of the Exchange Act;

B. Prejudgment interest;

C. Costs; and

D. such other and further relief as this Court deems just and proper.

COUNT 10
AVOIDANCE AND RECOVERY OF FRAUDULENT TRANSFERS PURSUANT FLA. STAT. §§ 726.105(1)(a), 726.108 and 726.109
(DIRECT CLAIMS – SHB)

382. Plaintiff realleges paragraphs 1 through 246 as though fully set forth herein.

383. Within the four years prior to the Petition Date, Capitol transferred a total of $189,526.30 to SHB (the "SHB Transfers") for attorneys' fees SHB charged Capitol for legal services it provided to Capitol and Shapiro as set forth on attached Exhibit "17."

384. As Capitol was admittedly operating a Ponzi scheme at the time that it made the SHB Transfers, the SHB Transfers to SHB were made with the actual intent to hinder, delay, and defraud the creditors of Capitol.

385. In addition, the SHB Transfers were made in furtherance of the Capitol Ponzi scheme including, but not limited to, (i) by providing false security to the Capitol Lenders in the legitimacy of Capitol's business and (ii) for advice that allowed Capitol to avoid detection, attract Lenders and documenting (usurious) loans.

386. As is evidenced by Capitol's bankruptcy schedules and the proofs of claims filed in the Capitol case which exceed $111 million, there existed at least one creditor who could have avoided the SHB Transfers on the Petition Date.

387. Accordingly, the SHB Transfers are avoidable by Plaintiff pursuant to Section 726.105(1)(a) of the Florida Statutes, and as a result, such SHB Transfers are recoverable by the Plaintiff pursuant to Sections 726.108 and 726.109 of the Florida Statutes.

388. SHB was the initial transferee of the SHB Transfers.

WHEREFORE, Plaintiff, Joel L. Tabas, as Chapter 7 trustee of the bankruptcy estate of Capitol Investments USA, Inc., respectfully requests that the Court enter a judgment on his behalf and against the Defendant, Shook, Hardy & Bacon, L.L.P., as follows:

A. determining that the SHB Transfers are fraudulent transfers and are avoidable pursuant to Section 726.105(1)(a) of the Florida Statutes;

B. declaring SHB the initial transferee of the SHB Transfers;

C. awarding damages in the total amount of $189,526.30 against SHB, plus pre-judgment interest, attorneys' fees and costs in favor of the Plaintiff and directing SHB to turn over the SHB Transfers pursuant to Sections 726.108 and 726.109 of the Florida Statutes; and

D. granting such other and further relief as the court deems just and equitable.

COUNT 11
AVOIDANCE AND RECOVERY OF FRAUDULENT TRANSFERS PURSUANT TO FLA. STAT. §§ 726.105(1)(b), 726.108 and 726.109
(DIRECT CLAIMS – SHB)

389. Plaintiff realleges paragraphs 1 through 246 as though fully set forth herein.

390. Within the four years prior to the Petition Date, Capitol made the SHB Transfers to SHB for attorneys' fees SHB charged Capitol for legal services it provided to Capitol and Shapiro as set forth on attached Exhibit "17."

391. The SHB Transfers constitute transfers of interests of Capitol's, and now, the Plaintiff's property.

392. As Capitol was admittedly operating a Ponzi scheme at the time that it made the SHB Transfers to SHB, SHB's services could be for no legitimate purpose other than to perpetuate a fraud and Capitol received less than reasonable equivalent value in exchange for the SHB Transfers, and:

a. Capitol was insolvent on the date each of the SHB Transfers were made or became insolvent as a result of the SHB Transfers;

b. Capitol was engaged in business or a transaction, or was about to engage in a business or transaction, for which any property remaining with Capitol was an unreasonably small capital; or

c. Capitol intended to incur, or believed that it would incur, debts that would be beyond Capitol's ability to pay as such debts matured.

393. In addition, SHB provided no value to Capitol for the negligent services it rendered to Capitol as set forth in Counts 1-2 of this Complaint.

394. As is evidenced by Capitol's bankruptcy schedules and the proofs of claims filed in the Capitol case which exceed $111 million, there existed at least one creditor who could have avoided the SHB Transfers on the Petition Date.

395. Accordingly, the SHB Transfers are avoidable by Plaintiff pursuant to Section 726.105(1)(b) of the Florida Statutes, and as a result, such SHB Transfers are recoverable by the Plaintiff pursuant to Sections 726.108 and 726.109 of the Florida Statutes.

396. SB was the initial transferee of the SHB Transfers.

WHEREFORE, Plaintiff, Joel L. Tabas, as Chapter 7 trustee of the bankruptcy estate of Capitol Investments USA, Inc. respectfully requests that the Court enter a judgment on his behalf and against the Defendant, Shook, Hardy & Bacon, L.L.P., as follows:

A. determining that the SHB Transfers are fraudulent transfers and are avoidable pursuant to Section 726.105(1)(b) of the Florida Statutes;

B. declaring SHB the initial transferee of the SHB Transfers;

C. awarding damages in the total amount of $189,526.30 against SHB, plus pre-judgment interest, attorneys' fees and costs in favor of the Plaintiff and directing SHB to turn over the SHB Transfers pursuant to Sections 726.108 and 726.109 of the Florida Statutes; and

D. granting such other and further relief as the court deems just and equitable.

COUNT 12
AVOIDANCE AND RECOVERY OF FRAUDULENT TRANSFERS PURSUANT TO FLA. STAT. §§ 726.105(1)(b), 726.108 and 726.109
(DIRECT CLAIMS – SHB)

397. Plaintiff realleges paragraphs 1 through 246 as though fully set forth herein.

398. Within the four years prior to the Petition Date, Capitol transferred a total of $90,107.27 to SHB for attorney's fees SHB charged Capitol for legal services it provided solely to Shapiro (the "SHB Fraudulent Transfers") as set forth on attached Exhibit "18."

399. Because Capitol had no obligation to make payments to SHB for services it rendered solely to Shapiro, Capitol did not receive reasonably equivalent value in exchange for making the SHB Fraudulent Transfers to SHB.

400. As Capitol was admittedly operating a Ponzi scheme at the time that it made the SHB Fraudulent Transfers to SHB:

a. Capitol was insolvent on the date each of the SHB Fraudulent Transfers were made or became insolvent as a result of the SHB Fraudulent Transfers;

b. Capitol was engaged in business or a transaction, or was about to engage in a business or transaction, for which any property remaining with Capitol was an unreasonably small capital; or

c. Capitol intended to incur, or believed that it would incur, debts that would be beyond Capitol's ability to pay as such debts matured.

401. The SHB Fraudulent Transfers constitute transfers of interests of Capitol's, and now, the Plaintiff's property.

402. As is evidenced by Capitol's bankruptcy schedules and the proofs of claims filed in the Capitol case which exceed $111 million, there existed at least one creditor who could have avoided the SHB Fraudulent Transfers on the Petition Date.

403. Accordingly, the SHB Fraudulent Transfers are avoidable by Plaintiff pursuant to Section 726.105(1)(b) of the Florida Statutes, and as a result, such SHB Fraudulent Transfers are recoverable by the Plaintiff pursuant to Sections 726.108 and 726.109 of the Florida Statutes.

404. SHB was the initial transferee of the SHB Fraudulent Transfers.

WHEREFORE, Plaintiff, Joel L. Tabas, as Chapter 7 trustee of the bankruptcy estate of Capitol Investments USA, Inc. respectfully requests that the Court enter a judgment on his behalf and against the Defendant, Shook, Hardy & Bacon, L.L.P., as follows:

A. determining that the SHB Fraudulent Transfers are fraudulent transfers and are avoidable pursuant to Section 726.105(1)(b) of the Florida Statutes;

B. declaring SHB the initial transferee of the SHB Fraudulent Transfers;

C. awarding damages in the total amount of $90,107.27 against SHB, plus pre-judgment interest, attorneys' fees and costs in favor of the Plaintiff and directing SHB to turn over the SHB Fraudulent Transfers pursuant to Sections 726.108 and 726.109 of the Florida Statutes; and

D. granting such other and further relief as the court deems just and equitable.

CASE NO.:

JURY DEMAND

Tabas hereby demands a trial by jury on all claims contained herein on which trial by jury may lawfully be had.

Respectfully submitted this 17th day of December, 2012.

Gary M. Freedman
Florida Bar No.: 727260
Andrea L. Rigali
Florida Bar No.: 42015
Tabas, Freedman, Soloff, Miller & Brown, P.A.
Attorneys for Joel L. Tabas
One Flagler Building
14 Northeast First Avenue, Penthouse
Miami, Florida 33132
Telephone: (305) 375-8171
Facsimile: (305) 381-7708
E-mail: gary@tabasfreedman.com
E-mail: andrea@tabasfreedman.com

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

JOEL L. TABAS, in his capacity as both Chapter 7 Trustee of Capitol Investments USA, Inc. and as Assignee to the Claims of Bayside Capital Management, LLC, et al.,

Plaintiff,

CASE NO. 12-48825 CA 10

v.

SHOOK, HARDY AND BACON, L.L.P. and MARC LEVINSON, an Individual

Defendants.

_____/

ORDER ON DEFENDANTS' UNOPPOSED MOTION FOR ENLARGEMENT OF TIME TO RESPOND TO THE COMPLAINT

THIS MATTER has come before the Court on Defendants' Unopposed Motion for Enlargement of Time to Respond to the Complaint. This Court has considered the Motion and it is hereby **ORDERED and ADJUDGED** that:

1. The Motion for Enlargement of Time is **GRANTED.**
2. Defendants shall have up to and including January 25, 2013, to respond to the Complaint.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, on 01/04/13.

PETER R. LOPEZ
CIRCUIT COURT JUDGE

The parties served with this Order are indicated in the accompanying 11th Circuit email confirmation which includes all emails provided by the submitter. The movant shall

IMMEDIATELY serve a true and correct copy of this Order, by mail, facsimile, email or hand-delivery, to all parties/counsel of record for whom service is not indicated by the accompanying 11th Circuit confirmation, and file proof of service with the Clerk of Court.

Signed and stamped original Order sent to court file by Judge Lopez's staff.

Copies provided to all counsel of record