

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JUDGE DANIELS

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Absolute Activist Value Master Fund Limited, Absolute
East West Fund Limited, Absolute East West Master Fund
Limited, Absolute European Catalyst Fund Limited, Absolute
Germany Fund Limited, Absolute India Fund Limited,
Absolute Octane Fund Limited, Absolute Octane Master
Fund Limited, and Absolute Return Europe Fund Limited,

09 CIV 8862

Plaintiffs,

Civil Action No.

-- against --

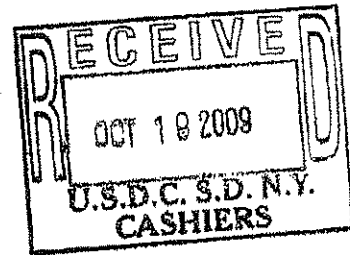
COMPLAINT

Jury Trial Demanded

ECF Case

Todd M. Ficeto individually and as Guardian for Natalia C.
Ficeto and Hunter M. Ficeto, Hunter World Markets, Inc.,
Florian Homm, Colin Heatherington, Craig Heatherington,
CIC Global Capital Ltd., Sean Ewing, Ullrich Angersbach,
John Does 1 to 3, Jane Does 1 to 3, and Doe Entities 1 to 3,

Defendants.
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Plaintiffs Absolute Activist Value Master Fund Limited, Absolute East West Fund
Limited, Absolute East West Master Fund Limited, Absolute European Catalyst Fund Limited,
Absolute Germany Fund Limited, Absolute India Fund Limited, Absolute Octane Fund Limited,
Absolute Octane Master Fund Limited, and Absolute Return Europe Fund Limited (together,
"Plaintiffs" or "the Funds"), by their undersigned attorneys, allege as follows:

Overview of the Complaint

1. This action seeks relief under the federal securities laws and the common law for
Defendants' brazen criminal fraud in connection with the purchase and sale of securities of
United States companies that were registered with the United States Securities and Exchange
Commission ("the SEC").

2. The Funds are Cayman Islands companies registered as mutual (hedge) funds that invested in a variety of asset classes on behalf of hundreds of investors around the world, including investors in the United States.

3. Defendants are individuals and entities who, through an elaborate scheme to defraud that spanned international borders, caused the Funds to purchase billions of shares of stock of virtually worthless companies that were incorporated in the United States, and whose shares were quoted on the Over the Counter Bulletin Board or by Pink OTC Markets Inc. (collectively, the "Penny Stock Companies"). Defendants caused the Funds to purchase shares of the Penny Stock Companies at artificially high prices that resulted from Defendants' successful efforts to manipulate the prices of those Companies' stock. Defendants also engaged in a variety of other fraudulent acts against the Funds as part of Defendants' scheme to defraud.

4. Defendants' scheme to defraud was concocted to, and in fact enabled Defendants to, steal money from the Funds, thereby causing the Funds to incur substantial losses. By means of their scheme to defraud, upon information and belief, Defendants stole from the Funds up to \$100 million or more.

5. As is described in greater detail below, the core of Defendants' scheme to defraud operated as follows:

(a) Exercising lawful control over the Funds, Defendants caused the Funds to purchase billions of shares of the Penny Stock Companies directly from those Companies.

(b) At the times of these purchases by the Funds, Defendants either (1) already held in their own names, or otherwise controlled, substantial amounts of shares and/or warrants of the Penny Stock Companies, and/or (2) received such shares and/or warrants from the Penny Stock Companies in exchange for causing the Funds to purchase shares from those

Companies. Typically, Defendants paid nothing or almost nothing to acquire these shares and warrants.

(c) Thereafter, Defendants manipulated and artificially inflated the prices of the shares of the Penny Stock Companies by causing the Funds to trade those shares between and among themselves at increasing prices.

(d) When Defendants had manipulated the prices of the Penny Stock Companies to the levels that Defendants desired, Defendants caused the Funds to purchase from Defendants the shares that Defendants owned or otherwise controlled, including new shares Defendants obtained by exercising the warrants they held, at the artificially high prices that Defendants had created by means of, and as an object of, their fraudulent scheme.

(e) Pursuant to this fraudulent scheme, Defendants caused the Funds to pay tens of millions of dollars to purchase from Defendants virtually worthless shares of the Penny Stock Companies. Because Defendants had obtained those shares for nothing or almost nothing, Defendants were wrongfully enriched by the amounts the Funds paid to Defendants to purchase those shares.

6. As is also described in detail below, Defendants' scheme to defraud included a variety of other fraudulent acts involving the purchase and sale of securities which enabled Defendants to steal money from the Funds in various other ways and thereby to enrich themselves further.

The Parties

Plaintiffs

7. Plaintiffs Absolute Activist Value Master Fund Limited, Absolute East West Fund Limited, Absolute East West Master Fund Limited, Absolute European Catalyst Fund

Limited, Absolute Germany Fund Limited, Absolute India Fund Limited, Absolute Octane Fund Limited, Absolute Octane Master Fund Limited, and Absolute Return Europe Fund Limited are Cayman Islands registered mutual (hedge) funds that invested in a variety of asset classes on behalf of hundreds of investors in the United States and around the world.

Defendants

8. Defendant Todd M. Ficeto ("Ficeto") is a resident of Malibu, California. Ficeto served as President and Director of Defendant Hunter World Markets, Inc. ("Hunter") and is a fifty percent owner of Hunter. Ficeto managed all aspects of Hunter's business and was familiar with its trading activities, customers, business records, agents, employees, and affairs. Ficeto holds Series 7, 24, 55, and 63 securities licenses from the Financial Industry Regulatory Authority ("FINRA") and is a registered securities agent in California, Florida, Illinois, Massachusetts, New Jersey, New York, Texas, and Washington. Ficeto has been cited for misconduct by securities regulators. Ficeto was previously fined \$62,000 by the National Association of Securities Dealers for three separate infractions. In addition, because Ficeto had recommended transactions in penny stocks without providing customers with adequate information and disclosure, he was suspended in 1996 from recommending penny stocks for two years. In this action, Ficeto is sued both individually and as Guardian for Natalia C. Ficeto and Hunter M. Ficeto, his minor children (together, the "Children"). At relevant times, Ficeto was the control person of shares in the Penny Stock Companies held by the Children.

9. Defendant Hunter World Markets, Inc. is a California corporation with offices in Beverly Hills, California. Hunter is registered with the SEC and FINRA as a broker-dealer. It holds state registrations as a broker-dealer in California, Florida, Hawaii, Illinois, Massachusetts, Nevada, New Jersey, New York, Ohio, Texas, and Washington. Hunter was an underwriter for,

or was otherwise involved in, the offerings of the Penny Stock Companies whose shares Defendants caused the Funds to purchase. Hunter was also affiliated with Defendant CIC Global Capital Ltd. ("CIC"), which sold the Funds millions of shares of the Penny Stock Companies. Defendants Ficeto and Florian Homm each owned fifty percent of Hunter.

10. Defendant Florian Homm ("Homm") is a German national with residences in Mallorca, Spain; Alicante, Spain; Paris, France; and London, England, among other places. Homm was a founder of Absolute Capital Management Holdings Limited ("ACM"), the investment manager for the Funds, served as ACM's Chief Investment Officer, and was responsible for investments made by the Funds from in or around the middle of 2005 through on or about September 18, 2007, when he abruptly resigned from his position and went into hiding. At relevant times, Homm owned more than fifty percent of the outstanding shares of ACM. At relevant times, Homm was also a fifty percent owner of Hunter. Homm has been disciplined by German regulatory authorities in the past for misconduct in connection with the purchase and sale of securities. In August 2004, Homm was fined 70,000 Euros by Germany's market watch dog, the German Supervisory Authority of Financial Services, for publishing false statements about a listed company. In December 2005, Homm was fined 50,000 Euros by a Frankfurt district court for market manipulation in connection with his failure to declare a self-interest in research reports about a company listed on a German Stock Exchange.

11. Defendant Colin Heatherington is a Canadian national and, upon information and belief, a resident of British Columbia, Canada. Colin Heatherington served as the head trader for ACM. Colin Heatherington was also a principal of CIC.

12. Defendant Craig Heatherington is a Canadian national and, upon information and belief, a resident of Australia. Craig Heatherington, who is Colin Heatherington's brother, worked in ACM's back office. Craig Heatherington was also a principal of CIC.

13. Defendant CIC Global Capital Ltd. was a company incorporated in the British Virgin Islands. Upon information and belief, "CIC" is an acronym consisting of the initials of the first names of Colin Heatherington, Ida Manly (who is the wife of Colin Heatherington), and Craig Heatherington. CIC was affiliated with Defendant Hunter.

14. Defendant Sean Ewing ("Ewing") is an Irish national with a residence in Mallorca, Spain. Ewing was a founder of ACM and served as its Chief Executive Officer and Chairman of the Board from in or around the middle of 2005 until he resigned as Chief Executive Officer in July 2007 and then abruptly resigned as Chairman in August 2007. At relevant times, Ewing owned a substantial percentage of the outstanding shares of ACM. Among other responsibilities at ACM, Ewing oversaw compliance and risk management in ACM's activities as the investment manager for the Funds.

15. Defendant Ullrich Angersbach ("Angersbach") is a German national who resides in Stuttgart, Germany. Angersbach was a founder of ACM and served as its Head of Investor Relations and Marketing from in or about the middle of 2005 through December 2007. At various times Angersbach owned a substantial percentage of the outstanding shares of ACM. Working with more than fifty capital introduction agents, Angersbach raised approximately \$2 billion from approximately 400 professional investors such as banks, investment funds, and family offices that managed investments for family members.

16. Defendants John Does, Jane Does, and Doe Entities are persons or entities who participated in the scheme to defraud and whose identities are not presently known.

Jurisdiction and Venue

17. This action arises under the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. § 78a et seq., and the common law of the state of New York.

18. Jurisdiction is conferred on this Court by: (a) 28 U.S.C. § 1331 (federal question), because this is a civil action arising under the laws of the United States; (b) 28 U.S.C. § 1337 (proceeding arising under congressional act regulating commerce), because this action arises under the federal securities laws; (c) 15 U.S.C. § 78aa (Exchange Act jurisdictional provision), because this Complaint includes claims under the Exchange Act; (d) 28 U.S.C. § 1367(a) (supplemental jurisdiction), because all of the claims set forth in this Complaint are so related to the federal claims that they form part of the same case or controversy under Article III of the U.S. Constitution; and (e) principles of pendent jurisdiction.

19. Venue is proper in this district under § 27 of the Exchange Act and 28 U.S.C. § 1391. A substantial part of the events and the acts and omissions giving rise to Plaintiffs' claims occurred in the Southern District of New York.

20. More particularly, for purposes of jurisdiction and venue, significant acts and substantial conduct of Defendants in the United States and the Southern District of New York are material to Plaintiffs' claims and injury, including:

- (i) Defendant Hunter, the broker-dealer at the center of the scheme to defraud, is a U.S. brokerage firm located in California. Hunter is registered as a broker-dealer with the SEC and FINRA, and also holds registrations as a broker-dealer in several states, including New York. The fraudulent transactions that Defendants carried out through Hunter took place in the United States.
- (ii) Defendant Ficeto, the President, Director, and fifty percent shareholder of Hunter, is a California resident and a registered securities agent in several states, including New York. Ficeto carried out his fraudulent activities and caused Hunter to carry out its fraudulent activities in, among other places, the United States. Ficeto, moreover, had a close personal

relationship with Defendant Colin Heatherington, who traveled to California to meet with him in August 2006 and possibly on other occasions.

- (iii) Investors could subscribe to the Funds in either U.S. dollars or Euros. Those who subscribed in U.S. dollars did so through the Southern District of New York. Specifically, all investors who subscribed in U.S. dollars did so by wiring money to the Northern Trust International Banking Corporation, Fifty Broad Street, New York, New York, or the Bank of New York, One Wall Street, New York, New York. Of the total subscriptions made by all of the Funds' investors, approximately forty percent were made by wiring money to banks in the Southern District of New York.
- (iv) Defendants marketed the Funds in the United States. Defendants Ewing, Homm, and Angersbach, for instance, repeatedly traveled to the United States to meet with investors and potential investors. Moreover, Angersbach relied on a network of capital introduction agents to locate and raise money from investors in the United States for the Funds. Each of the Funds contained money invested by U.S. investors, and approximately ten percent of the assets in the Funds came from U.S. persons.
- (v) Statements for U.S. investors in the Funds were sent to those investors in the United States, including in the Southern District of New York, where a number of U.S. resident investors were located.
- (vi) U.S. investors were injured by the fraud. The Funds had approximately eighty-three U.S. resident investors, comprised of fifty-six custodial accounts in the United States and twenty-seven accounts held by name by U.S. residents. These U.S. persons in the aggregate invested approximately \$73 million in dollar-denominated accounts and nearly 12 million Euros in Euro-denominated accounts.
- (vii) The Penny Stock Companies were incorporated in states in the United States and offered their shares for sale to the Funds pursuant to registrations with the SEC.
- (viii) Defendants' illicit gains from their scheme to defraud were in many instances procured in the United States and were conveyed to them in and from the United States.

21. In connection with the acts and conduct alleged in this Complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including the U.S. mails and telephone and electronic communication systems.

Basis for Allegations

22. The factual allegations set forth herein are based upon the investigation and knowledge of Plaintiffs' counsel and the contents of documents.

Detailed Allegations Concerning Defendants' Fraudulent Scheme

23. Each of the Funds engaged ACM to act as its investment manager, pursuant to a written Investment Management Agreement. ACM typically charged each Fund a management fee of two percent per annum, calculated and charged monthly, based on the particular Fund's net asset value ("NAV") and a performance fee of twenty percent of the increase in value of the Fund's NAV, calculated and charged on a monthly basis.

24. Defendant Homm was Chief Investment Officer of ACM. Powers of attorney enabled Homm to invest on the Funds' behalf. In his employment agreement with ACM, Homm vowed to "use his best endeavors to promote and protect the interests and welfare of [ACM and the Funds]" and to "faithfully and diligently perform [his] duties." Further, Homm agreed to disclose fully any conflict of interest which might arise during his employment and not to engage in any business that might present a conflict of interest without written consent from ACM's Board.

25. In fact, Homm did the opposite: he secretly used the Funds as a piggy bank to engage in a scheme to defraud involving Defendants Ficeto, Hunter, Colin Heatherington, Craig Heatherington, CIC, Ewing, and Angersbach, for the benefit of each and every Defendant.

26. From at least mid-2005 and escalating dramatically through September 18, 2007, Homm caused the Funds to invest in securities of the Penny Stock Companies. These companies were thinly capitalized, and their securities were thinly-traded and illiquid, often referred to as "pink sheet" securities or "penny stocks." Given the lack of a market in these securities, such stocks are highly susceptible to price manipulation. By September 19, 2007, at Homm's direction, the Funds' investments in the Penny Stock Companies exceeded \$440 million, which comprised nearly half of some of the Funds' NAVs.

27. The Penny Stock Companies whose shares Homm caused the Funds to invest included:

- ProElite, Inc.
- MicroMed Cardiovascular, Inc.
- Duravest, Inc.
- Berman Center, Inc.
- InterMetro Communications, Inc. (f/k/a "Lucy's Café, Inc.")
- NuRx Pharmaceuticals, Inc.
- Java Detour, Inc.
- Logistical Support, Inc.

(together, "the Penny Stocks").

28. Homm caused the Funds to purchase shares of each Penny Stock Company directly from the Company in a subscription, which is an offering registered with the SEC. Typically, the Penny Stocks were sold to the Funds in these subscriptions at very low prices, below \$1 per share. Despite the low price per share, the amounts the Funds paid to the Penny

Stock Companies in these subscriptions were usually \$10 million or more because of the number of shares purchased.

29. Defendant Colin Heatherington, ACM's head trader, usually purchased the Penny Stocks on behalf of the Funds by placing the trade with Defendant Ficeto. Ficeto brokered the purchases through Defendant Hunter, in which Ficeto and Homm each had fifty percent ownership.

30. At the time of the Penny Stock purchases, Defendants already either (1) owned or controlled shares in the Penny Stock Companies themselves, or (2) received such shares or warrants from the Penny Stock Companies in exchange for causing the Funds to purchase the Penny Stocks. That is, in connection with these purchases of the Penny Stocks, Homm, Ficeto, and Hunter, in collusion with Colin Heatherington, Craig Heatherington, and CIC, arranged for stock purchase warrants to be issued to Hunter and/or CIC, as compensation for their arranging financing for the transactions. That financing was the Funds' money, which Homm had caused to be invested in next-to-worthless securities. The issuance of the warrants was a fraud because it served no purpose, other than to enrich Defendants, not the Funds.

31. Just as Homm and Ficeto had substantial interests in and controlled Hunter, two of the Defendants had an interest in and controlled CIC. Specifically, CIC is a British Virgin Islands ("BVI") company created by Defendant Craig Heatherington, who previously worked as a commercial scuba diver in the BVI. The CIC shareholders were Craig Heatherington, Colin Heatherington, and Colin Heatherington's wife, Ida Manly. Upon information and belief, CIC stands for Craig Ida Colin, all three of whom were employed at ACM. Colin Heatherington was the head trader; Craig Heatherington did back office work, and Ida Manly was Defendant Ewing's executive assistant. Craig Heatherington is listed in certain SEC filings as a director of

CIC. The address CIC used in SEC filings was Craig Heatherington's residential address in Palma, Spain: C/ Falco 24, IC, 07181 Cas Catala, Spain.

32. Having caused the Funds to purchase the Penny Stocks and having caused warrants to issue to Hunter and/or CIC, Homm and Colin Heatherington, in collusion with other Defendants, rapidly traded and re-traded the Penny Stocks many times over, sometimes on the same day, between and among the Funds—each time trading at a higher price and creating the false illusion of volume in the Penny Stocks' trading. Since there was no market in the Penny Stocks, Homm, Ficeto, Hunter, and Colin Heatherington were free to virtually make up prices as they went along, trading the securities between and among the Funds at higher and higher prices. The fraudulent purposes of these otherwise purposeless trades were (1) to generate commissions on each trade, and (2) to manipulate the stock price until it increased to a price at which the warrants, held by Hunter and/or CIC, could be exercised to benefit the principals of those entities with a windfall of cash.

33. An example of how the fraudulent scheme worked can be seen in Defendants' purchases and sales of a Penny Stock Company called ProElite, Inc. ("ProElite") on behalf of the Funds:

(a) Defendants' fraudulent trading in ProElite began in September 2006. Defendants caused five different funds to invest in shares of ProElite, namely, Absolute Activist Value Master Fund Limited, Absolute East West Master Fund Limited, Absolute European Catalyst Fund Limited, Absolute Octane Master Fund Limited, and Absolute Return Europe Fund Limited ("the Five Funds").

(b) On September 29, 2006 and October 2, 2006, Defendants caused the Five Funds to purchase a subscription for ProElite shares. In this subscription purchase, Homm,

Ficeto, and Hunter caused the Five Funds to spend approximately \$10,000,000 on ProElite shares, at the price of two-tenths of a cent per share. Hunter paid itself a placement fee for this transaction of 10%, totaling about \$1,000,000. The \$1,000,000 placement fee would have been evenly split between Homm and Ficeto, as Homm and Ficeto each owned 50% of Hunter. In addition to receiving this placement fee, Homm, Ficeto, and Hunter, in collusion with other Defendants, arranged for the issuance of stock purchase warrants in ProElite, which, upon information and belief, were fraudulently exercised by Hunter and CIC in the months that followed. Ficeto also caused shares of ProElite to be issued in the names of Natalia C. Ficeto and Hunter M. Ficeto, his minor children. Ficeto retained control over those shares and later caused them to be sold to the Funds at grossly inflated prices.

(c) In April of 2007, Defendants began trading shares of ProElite between and among the Five Funds, which generated trading volume, increased the reported price of the securities, and produced commissions for Homm, Ficeto, and Hunter. For instance, on April 27, 2007, Defendants caused Absolute Return Europe Fund Limited to sell 3,000,000 shares of ProElite to Absolute European Catalyst Fund Limited for \$3.25 per share. Homm, Ficeto, and Hunter collected outrageously high commissions on both sides of the transaction, collecting approximately \$150,000 on the sale by Absolute Return Europe Fund Limited and \$150,000 on the purchase by Absolute European Catalyst Fund Limited. Defendants were thus able to collect a total of about \$300,000 in commissions on this single Fund to Fund transaction.

(d) On April 30, 2007, Defendants artificially inflated the price of ProElite by causing the Funds to sell 100 shares of ProElite to the "market" at \$12 per share. Ficeto has admitted that from April through September 2007, Hunter and the Five Funds were the only persons with freely tradable stock in ProElite. This means that the only "market" to which the

Five Funds could sell, at this time, consisted solely of Hunter and those affiliated or acting in concert with Hunter. On information and belief, Defendants made the purchase using stock purchase warrants they had improperly obtained during the first subscription transaction. Defendants sold the shares for \$12 per share despite the fact that, just three days earlier, ProElite had been trading from one Fund to another at \$3.25 per share. This sale, which was done after business hours, had the effect of nearly quadrupling the price of the stock overnight.

(e) The near quadrupling of the stock price of ProElite wrongfully benefited Defendants in at least two ways. First, by elevating the price of ProElite at the end of the month to \$12 per share, Defendants created a massive performance fee for Homm, who, through ACM, earned performance fees on a monthly basis for his work as the Funds' investment manager (which he received as a semi-annual bonus or as dividends from ACM). Second, the inflated price of ProElite enabled Defendants to engage in a series of "market" purchases, which generated enormous sums. For instance, on May 15, 2007, Defendants caused the Five Funds to purchase 940,000 shares of ProElite from the "market" at the inflated price of \$8 per share. The "market," as alleged above, consisted solely of Hunter and those affiliated or acting in concert with Hunter. By selling 940,000 shares of ProElite to the Five Funds at \$8 per share, Defendants were able to illegally obtain approximately \$7,520,000 in proceeds on this purchase alone. On top of the \$7,520,000 in proceeds, Homm, Ficeto, and Hunter collected a commission on the transaction of approximately \$47,000.

(f) Incredibly, from April 30, 2007 through September 7, 2007, Defendants used the shares of ProElite that they controlled to steal approximately \$29,000,000 from the Funds through "market" purchases. This money went directly into Defendants' pockets.

(g) Moreover, on June 29, 2007, Homm, Ficeto, and Hunter caused the Five

Funds to purchase a second subscription for ProElite shares. In this subscription purchase, Homm, Ficeto, and Hunter caused the Five Funds to spend approximately \$25,000,000 on ProElite shares, at a highly inflated price of \$7 per share. This money, like the money taken through "market" purchases, was effectively stolen from the Funds. In connection with the second subscription, Homm, Ficeto, and Hunter also collected a commission of approximately \$178,500; a placement agent fee of 10% of the gross proceeds, valued at approximately \$2,500,000; and warrants to purchase 3,571,428 shares of ProElite at \$7 per share.

(h) All told, on ProElite alone, Defendants Homm, Ficeto, Hunter, Colin Heatherington, Craig Heatherington, and CIC defrauded the Five Funds out of approximately \$29,000,000 in "market" purchases, \$25,000,000 on the inflated second subscription, \$1,000,000 in commissions, and \$3,500,000 in placement fees, totaling about \$58,500,000. Moreover, by grossly inflating the price of ProElite, these Defendants also caused increased performance fees to be paid to ACM, thereby fraudulently increasing the bonuses, dividends, and shareholder value for Defendants Homm, Ewing, and Angersbach.

(i) At present, ProElite is trading at about two cents a share. Bloomberg charts reveal that since Homm's departure from ACM, there has been a drastically lower volume of trades in ProElite. Indeed, from April through September of 2007, nearly all of the ProElite trading that is reflected on the Bloomberg charts is trading that occurred between and among the Five Funds.

(j) On July 20, 2007, at the height of the fraud regarding ProElite, Ficeto sent a revealing email to Colin Heatherington, stating "There's money in the Banana stand." The quote "there's money in the Banana stand" is actually a quote from the television show Arrested Development. On the show, the father is in prison for fraud and the family's assets are frozen;

the father tells his son that "There's always money in the banana stand" because he has hidden piles of cash in the walls of the family's first business – a banana stand.

34. Defendants engaged in similar fraudulent activities with respect to the remainder of the Penny Stock Companies referenced above.

Relationships Between and Among the Defendants

35. ACM emails show that brothers Craig and Colin Heatherington were involved in CIC as officers or directors approving and signing for various transactions related to CIC. For example, Craig Heatherington received an email on May 10, 2006 "in connection with [his] proposal to add a signatory to [CIC's] existing account." And, in an April 24, 2006 email, a Hunter representative asked Craig Heatherington to sign a tax form for CIC.

36. SEC prospectuses for Penny Stock Companies describe CIC as an affiliate of Hunter. On February 17, 2006, Colin Heatherington received a CIC certificate for MicroMed Cardiovascular, Inc., a Penny Stock Company, from Hunter at his ACM email address – a certificate which he promptly forwarded to his personal email address. In 2008, Colin Heatherington admitted that the BVI entity CIC was an entity that he "sort of let Todd [Ficeto] use."

37. A free text search of Edgar filings with the SEC for CIC returns 32 documents. Every one is for a Penny Stock Company that was used in the fraud on the Funds. CIC is not listed in any Edgar filing for any company other than the Penny Stock Companies that were the vehicle for the fraud.

38. Colin Heatherington had a close relationship with Homm, whose home he lived in and worked from for a large portion of his employment by ACM. Colin Heatherington was also close with Ficeto, visiting him in California in August 2006 and traveling with Ficeto to

Russia in July 2007.

39. In or about January 2008, Colin Heatherington bragged to a portfolio manager that he had made \$25 million while working at ACM – far in excess of his salary and bonus for 2005 of 65,600 Euros; and for 2006 of approximately the same amount.

40. Homm, Ficeto and Colin Heatherington purchased a boat together which they named “No Remorse.” In a June 16, 2007 email from Ficeto to Colin Heatherington, Ficeto proposed possible names for the boat, including “Whiplash,” “Fade to Black,” “Sad But True,” and “No Remorse.” After proposing these names, Ficeto stated that “I think No Remorse is the best. Kind of sums up our lives. Especially Florians [sic].” Colin Heatherington responded, “No remorse it is! I love it!”

The Hunter Fund Fraud Vehicle

41. Homm and Ficeto also caused the Funds to invest in a fraudulent vehicle called The Hunter Fund Ltd. (“the Hunter Fund”), which was a company of Ficeto’s creation. The Hunter Fund, which was charged a two percent management fee as well as a five percent performance fee by entities owned and controlled by Homm and Ficeto, had only the Funds as investors. Between December 2004 and July 2007, the Funds invested approximately \$34 million in the Hunter Fund. Upon obtaining the Funds’ money, the Hunter Fund invested it in the Penny Stock Companies referenced above. When the Funds were able to liquidate their positions in the Hunter Fund in September 2008, of the \$34 million invested, they received approximately \$14 million in cash and millions of nearly worthless shares in the Penny Stock Companies.

42. The Funds derived no benefit whatsoever from their money being funneled through the Hunter Fund prior to being invested in the illiquid Penny Stocks. Rather, Homm and

Ficeto simply used the Hunter Fund as an extra vehicle, through which they could milk an additional two percent in management fees and five percent in performance fees. In 2006 and 2007, Ficeto also profited by lending money the Funds had invested in the Hunter Fund to the Penny Stock Companies and earning a ten percent placement fee on these transactions.

How Defendants Benefited from the Fraudulent Scheme

43. Through this fraudulent scheme, Defendants took money out of the Funds' pockets and put it into their own. The fraud benefited Defendants in multiple different ways, including but not limited to the following:

(a) Homm, Ficeto, and Hunter charged millions in placement fees and commissions on the Funds' subscription purchases of shares in the Penny Stock Companies. Homm, Ficeto, and Hunter also issued stock purchase warrants to themselves and those affiliated or acting in concert with them in connection with those transactions. Although some of these subscription purchases were made when the shares were at low prices, others occurred after those prices had been drastically inflated by Defendants.

(b) After manipulating the prices of the Penny Stocks to drastically inflated levels, Homm, Ficeto (individually and as Guardian of Natalia C. Ficeto and Hunter M. Ficeto), Hunter, Colin Heatherington, Craig Heatherington, and CIC caused the Funds to buy from them shares of those Companies' stocks that they owned and had acquired for pennies (or less).

(c) Homm, Ficeto, Hunter, and Colin Heatherington caused the Funds to trade the Penny Stocks between and among each other, and Hunter charged outrageously high commissions for these trades, which served no purpose other than to inflate the prices of the Penny Stocks and generate commissions.

(d) As a result of the fact that the market value of the Penny Stocks was

grossly inflated by means of the manipulation described herein, the NAV of the Funds increased significantly in the years 2006 and 2007, thereby increasing the actual amount of the two percent management fee paid to ACM and causing enormous performance fees to be paid to ACM, thereby increasing the bonuses, dividends and shareholder value for Homm, Ewing, and Angersbach.

(e) Ewing, Homm, and Angersbach had investments in various of the Funds, which they redeemed at a profit well before terminating their employment with ACM.

(f) Homm and Ficeto benefited from causing the Funds to invest in the Hunter Fund as set forth in ¶¶ 41-42 above.

44. In sum, Defendants purchased the Penny Stocks with the Funds' money for the purpose of enriching themselves. The Penny Stock Companies and their shares were merely a launch-pad for a far-reaching fraud involving not only Homm, but also the other Defendants. Defendants' scheme defrauded the Funds of up to \$100 million or more.

Involvement of Defendants Ewing and Angersbach

45. Defendants Ewing and Angersbach were aware of the fraudulent activities of the other Defendants, yet did not disclose these activities to the Funds or to ACM's board of directors.

46. In a November 2007 conversation, Angersbach stated that "Homm has not made any real money in years." Despite his knowledge of Homm's fraudulent activities, Angersbach encouraged further subscription into the Funds and marketed them heavily in the United States and elsewhere.

47. Ewing, moreover, directed in the months prior to his resignation that a 30 million Euro Directors and Officers and professional indemnity insurance policy be procured

prior to his departure from ACM. That policy provided coverage to, among others, himself.

48. Ewing further facilitated the fraudulent scheme by reassuring potential investors that despite any concerns about Homm's disciplinary history, Homm would not be able to perpetrate a fraud on ACM because Ewing would closely supervise him through the use of daily position reports.

49. Finally, Ewing facilitated the fraud by misrepresenting the composition of the Funds' investments to investors. Shortly after Ewing became Chief Executive Officer of ACM, he determined to stop ACM's practice of providing detailed portfolio information to investors, which had included actual stock names. Thus, he ended the transparency of disclosing individual investments or holdings of the Funds in favor of non-specific, aggregated information. In response to a direct question from an investor regarding whether the Funds were investing in U.S. stocks, Ewing stated that the investments shown as U.S. investments on investor reports were really European companies in which the Funds invested through American Depository Receipts. Ewing knew this statement was false.

50. Ewing's false statement was consistent with actions taken by other Defendants to conceal the extent of the Funds' investment in the Penny Stocks. Specifically, in July 2007, when the Defendants made a further investment in ProElite, Homm, Colin Heatherington, and Ficeto caused a line of ProElite shares to be listed on the Frankfurt stock exchange for the sole purpose of improperly classifying ProElite as a European stock on investor risk reports.

Circumstances of Homm's Resignation on September 18, 2007

51. On July 9, 2007, Ewing wrote an ACM news release hailing the Funds' "significant organic growth" during the prior six months and stating that the Funds continued to meet investors' need for "consistent, low volatile absolute returns." Shortly thereafter, ACM

announced that Ewing would be replaced as Chief Executive Officer, though Ewing agreed to continue on as Chairman of the Board. Meanwhile, ACM's share price began to drop as Homm struggled to manage the substantial illiquid positions in the Penny Stock Companies that had burgeoned as fuel for the fraud.

52. In August 2007, Ewing and Homm proposed that Homm gift five million of his own shares of ACM to three of ACM's funds in an attempt to offset market losses that would have had to be announced by mid-September. The ACM Board and the Funds' Boards insisted that this gift be disclosed as a condition of its acceptance by the Funds, and on August 31, 2007, Homm gifted the shares. Just as the disclosure of the gift was scheduled to occur, Homm, via an open letter sent to Bloomberg, announced his resignation, and immediately following his resignation, went into hiding.

53. Upon learning of Homm's resignation, many investors sought to redeem their investments in the Funds. Many also sought redemptions once they learned that the Funds were invested in significant illiquid holdings. As a result, the Funds were forced to freeze redemptions while attempting to restructure.

54. In or around August 2007, Ewing resigned from his position rather than carrying on, as promised, as Chairman of the Board. Ewing sold substantially all of his ACM stock in August 2007, just one month before Homm resigned. On information and belief, Ewing sold his stock at that moment because he knew about the fraud and knew that his complicit behavior had allowed the other Defendants to continue the fraud undetected for years.

55. The SEC is actively investigating the transactions between and among Hunter, the Funds, and CIC.

COUNT I

(Misrepresentations and Omissions - Exchange Act § 10(b) and SEC Rule 10b-5)

56. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 55 above as though fully set forth herein.

57. This Count is alleged and contains claims against all Defendants under Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and SEC Rule 10b-5, 17 C.F.R. § 240.10(b)-5 thereunder.

58. Defendants, in connection with Plaintiffs' purchases and sales of securities, made untrue statements of material fact and omitted to state material facts that they had a duty to disclose.

59. Defendants had a duty to disclose to Plaintiffs material information known to them because, *inter alia*, there was a fiduciary or other similar relation of trust and confidence between the parties, and because Defendants made representations to Plaintiffs that gave rise to a duty to speak completely, accurately, and truthfully.

60. Plaintiffs justifiably relied on Defendants' misstatements and omissions.

61. Defendants misstated and omitted material facts with intent to defraud and/or with reckless disregard for the truth.

62. Defendants' conduct was the proximate cause of injury to Plaintiffs.

63. Defendants used, or caused to be used, means and instrumentalities of interstate commerce in furtherance of their fraudulent conduct.

64. As a direct and proximate result of Defendants' violations of Exchange Act Section 10(b) and SEC Rule 10b-5, Plaintiffs have suffered damages and are entitled to an award of compensatory damages in an amount to be determined at trial.

COUNT II

(Market Manipulation - Exchange Act § 10(b) and SEC Rule 10b-5)

65. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 64 above as though fully set forth herein.

66. This Count is alleged and contains claims against Defendants Ficeto (individually and as Guardian for Natalia C. Ficeto and Hunter M. Ficeto), Hunter, Homm, Colin Heatherington, Craig Heatherington, CIC, John Doe(s), Jane Doe(s), and Doe Entities under Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and SEC Rule 10b-5, 17 C.F.R. § 240.10(b)-5 thereunder.

67. Plaintiffs were injured in connection with the purchase or sale of securities.

68. Plaintiffs suffered this injury by relying on a market for securities.

69. This market for securities was controlled or artificially affected by the Defendants' deceptive and manipulative conduct.

70. Defendants engaged in their deceptive and manipulative conduct with scienter.

71. As a direct and proximate result of Defendants' violations of Exchange Act Section 10(b) and SEC Rule 10b-5, Plaintiffs have suffered damages and are entitled to an award of compensatory damages in an amount to be determined at trial.

COUNT III

(Churning - Exchange Act § 10(b) and SEC Rule 10b-5)

72. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 71 above as though fully set forth herein.

73. This Count is alleged and contains claims against Defendants Ficeto (individually and as Guardian for Natalia C. Ficeto and Hunter M. Ficeto), Hunter, Homm, Colin

Heatherington, Craig Heatherington, CIC, John Doe(s), Jane Doe(s), and Doe Entities under Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and SEC Rule 10b-5, 17 C.F.R. § 240.10(b)-5 thereunder.

74. Defendants engaged in excessive trading in light of the character of Plaintiffs' accounts.

75. Defendants exercised control over Plaintiffs' accounts.

76. Defendants acted with fraudulent intent and willful and reckless disregard for the interests of Plaintiffs.

77. As a direct and proximate result of Defendants' violations of Exchange Act Section 10(b) and SEC Rule 10b-5, Plaintiffs have suffered damages and are entitled to an award of compensatory damages in an amount to be determined at trial.

COUNT IV

(Fraud and Fraud Conspiracy – Common Law)

78. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 77 above as though fully set forth herein.

79. This Count is alleged and contains common law claims for fraud and fraud conspiracy against all Defendants.

80. Defendants made untrue statements of material fact and omitted to state materials facts that they had a duty to disclose.

81. Defendants had a duty to disclose to Plaintiffs material information known to them because, *inter alia*, there was a fiduciary or other similar relation of trust and confidence between the parties, and because Defendants made representations to Plaintiffs that gave rise to a duty to speak completely, accurately, and truthfully.

82. Defendants knew that their statements and omissions were false and misleading, or made the statements and omissions recklessly without regard to whether they were true or false.

83. Defendants intentionally made these misstatements and omissions for the purpose of inducing Plaintiffs to rely on them.

84. Plaintiffs justifiably relied upon each of these misstatements and omissions.

85. As a result of their reliance on Defendants' misstatements and omissions, Plaintiffs suffered damages in an amount to be determined at trial.

86. Defendants entered into a corrupt agreement to defraud Plaintiffs and others.

87. Overt acts in furtherance of that agreement include the misstatements and omissions described above.

88. Each of the Defendants intentionally participated in furtherance of the plan to defraud Plaintiffs.

89. As a result of Defendants' conduct, Plaintiffs sustained damages in an amount to be determined at trial.

DEMAND FOR JUDGMENT AND RELIEF

WHEREFORE, Plaintiffs demand judgment against Defendants on each and every Count in their Complaint and relief as follows:

(a) compensatory damages for all injuries suffered as a result of Defendants' wrongdoing;

(b) prejudgment interest at the maximum rate allowable by law;

(c) reasonable attorney fees, expenses, and costs of this litigation;

(d) punitive damages for all injuries suffered as a result of the wrongdoing set forth in Count IV;

(e) an injunction to restrain the transfer of assets in which Plaintiffs have an equitable claim, lien, or other equitable interest;

(f) such other and further relief that the Court deems just and proper.

Dated: New York, New York
October 19, 2009

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