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

- X

THE PEOPLE OF THE STATE OF NEW YORK :
By ERIC T. SCHNEIDERMAN,
Attorney General of the State of New York, :

Plaintiff, :

-against- : Index No.:

: **COMPLAINT**

DEAN MUSTAPHALLI,
MUSTAPHALLI CAPITAL PARTNERS FUND, L.P., :
MUSTAPHALLI ADVISORY GROUP, LLC,
MUSTAPHALLI CAPITAL MANAGEMENT, LLC, :
MUSTAPHALLI GROUP, LLC,
LSA QUANT RESEARCH, LLC, :
L & S, LLC and
CAMELOT CRICKET CLUB, INC. :

Defendants,

- X

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NATURE OF THE ACTION

1. Plaintiff, the People of the State of New York, by Eric T. Schneiderman, Attorney General of the State of New York (the "OAG"), brings this action against Dean Mustaphalli, Mustaphalli Capital Partners Fund, L.P., Mustaphalli Advisory Group, LLC, Mustaphalli Capital Management, LLC, Mustaphalli Group, LLC, LSA Quant Research, LLC, L & S, LLC, and Camelot Cricket Club, Inc. (collectively, "Defendants").

2. Defendant Dean Mustaphalli ("Mustaphalli"), an unscrupulous investment adviser, and the other Defendants, all of which are entities solely controlled by Mustaphalli, misled and defrauded New Yorkers who depended and relied on Mustaphalli for investment advice and who entrusted Mustaphalli with all or most of their retirement savings. Without explaining the risks, Mustaphalli diverted their relatively safe investment portfolios to a hedge fund run solely by Mustaphalli, the Mustaphalli Capital Partners Fund, L.P. (the "Mustaphalli Fund" or the "Fund"). The Fund then employed risky, short-term, options and leveraged trading strategies that were inconsistent with the investment objectives, risk tolerances and time horizons of Mustaphalli's clients.

3. Mustaphalli's fraudulent scheme targeted elderly New Yorkers who had been his clients for many years, who had already hired him as their investment adviser, and who had already given him control of trading in their investment accounts. As their investment adviser, Mustaphalli knew that these investors had relatively conservative investment needs. In fact, Mustaphalli had approximately ten years of experience providing financial services to these clients using conventional investment products like annuities, mutual funds, and exchange-traded funds.

4. Most of Mustaphalli's clients live in or around Jamaica, Queens – the same

community where Mustaphalli worked for many years. These clients met Mustaphalli when they visited a Citibank branch in Jamaica, Queens to handle their routine banking matters, including depositing checks and asking questions about their account statements. Mustaphalli was a Citigroup Global Markets, Inc. ("Citigroup") employee at the time, and his prospective clients were unsophisticated, novice investors when they engaged Mustaphalli to help them with their retirement planning and investing.

5. When Mustaphalli left Citigroup, in the midst of an internal review of his performance, he ventured out on his own, becoming an investment adviser and taking his Citigroup clients with him. Within a year, Mustaphalli started to present them with an investment recommendation that was unsuited to their investment objectives, risk tolerances and time horizons. Specifically, Mustaphalli recommended that these clients move their savings to his hedge fund, the Mustaphalli Fund.

6. By the end of 2010, Mustaphalli had accumulated more than 120 investment advisory clients. He sold securities in his hedge fund to nearly half of those clients, who invested essentially in two groups. The first group consisted of 28 investors in 2011 and 2012, and the second group consisted of 30 additional investors in 2015.

7. In his capacity as an investment adviser, Mustaphalli owed a fiduciary duty to his clients. Additionally, Mustaphalli, acting through Mustaphalli Advisory Group, LLC, was contractually obligated to act consistent with his fiduciary obligations and to recommend investments that were suitable for his clients' investment objectives, risk tolerances, and time horizons and were in his clients' best interests. Mustaphalli abused his relationship with his clients, and breached his duty, by investing their savings in wildly risky investments that were inconsistent with their investment objectives, risk tolerances and time horizons without their

knowledge and consent.

8. Mustaphalli's investment of his clients' assets in his Fund was not suitable for these clients' needs. Despite being informed about the clients' relatively conservative investment profiles, Mustaphalli recommended and purchased interests in the Fund for his clients anyway. Mustaphalli misrepresented material information to his clients regarding the Fund's investments and failed to disclose the Fund's risky, short-term, trading strategies. Additionally, Mustaphalli did not disclose or explain to his clients that investing in the Mustaphalli Fund would mean moving their investments out of their existing, safer portfolios into a highly speculative investment.

9. Mustaphalli failed to provide many investors with the offering documents for the Fund. Instead, he told these investors to sign account-opening documents without explaining the consequences of signing such documents. Mustaphalli never told his clients that their investments in his hedge fund were inconsistent with their risk tolerances, investment objectives or time horizons, and thus, unsuitable and not in their best interests. He told certain of his clients that the account-opening documents were an administrative matter. Mustaphalli told some clients that he was moving assets to the Fund to consolidate platforms or because he was merely changing companies, as he had done several times before. Mustaphalli spoke to other clients in generalities, explaining their move into the Fund by simply saying that the Fund would be "better." These clients believed Mustaphalli and signed the account-opening documents because, based on their established relationships with him, they believed that his recommendations would be in their best interests.

10. The Mustaphalli Fund's offering documents contained misleading information about the Fund's investment objectives. The offering documents represented that the Fund's

investment objective was to invest principally in equity and debt securities for the long-term, but the Fund instead invested principally in short-term, risky strategies, including options and other highly levered investments. Had investors known or understood the risks involved with investing in the Fund, they would not have invested in it.

11. As a result of moving his clients' assets into the Fund – inconsistent with their previously stated investor profiles and past investment history – Mustaphalli caused his clients to lose almost the entire value of their investments in the Fund.

12. For example, the first group of Fund investors suffered devastating losses in 2012. The Fund began 2012 with a value of over $7.1 million, but by the end of 2012, investors in the Fund had lost over $6.6 million, a 92% loss in only one year. By December 2014, the Fund's historical performance reflected a net return of *negative 97.6%*, a near total loss.

13. The Financial Industry Regulatory Authority ("FINRA") began an investigation into Mustaphalli and his Fund in early 2013. In December 2014, FINRA suspended Mustaphalli from the securities industry "in all capacities" for a period of two years for failing to "observe high standards of commercial honor and just and equitable principles of trade" and for failing to report his activities in the Fund and to cooperate with the FINRA investigation.[1] Also in 2014, Mustaphalli's New York investment adviser registration lapsed, and as a result, as of January 1, 2015, Mustaphalli's investment adviser firm was no longer registered to provide investment advice in New York.[2] Thus, Mustaphalli could no longer lawfully receive advisory fees on most

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[1] FINRA is a self-regulatory organization with responsibility for writing and enforcing rules and regulations for brokerage firms and brokers in the United States. FINRA's suspension, among other things, barred Mustaphalli from associating with brokerage firms as a financial advisor until January 2017.

[2] In New York, investment adviser registration is required for an adviser providing investment advice to more than five investors in New York State and when the adviser has $25 million or

of his individual investment advisory client accounts. Nonetheless, Mustaphalli continued to offer investments in his Fund to his clients without disclosing to them that he was suspended by FINRA and had lost his firm's New York State investment adviser registration.

14. Mustaphalli's FINRA suspension and his lapsed investment adviser registration, made him unable to receive any significant investment advisory fees. Consequently, his only meaningful source of income was the 2% annual management fee paid to him by the Fund and withdrawn from the Fund at his direction. To increase his management fee, Mustaphalli needed more of his investment advisory clients to invest in the Fund in order to increase its value.

15. To achieve that, Mustaphalli recruited a second group of investors for the Fund in 2015. He recruited this second group in the same way as the first group, by telling his clients to sign the signature pages for the account-opening documents, without any explanation of the consequences of signing such documents, including that their savings would be invested in risky options transactions and other highly levered investments through the Fund. Mustaphalli also failed to tell the second group of prospective Fund investors (his clients) that (i) the Fund had recently lost nearly all of its value, (ii) he was suspended by FINRA, and (iii) his investment adviser firm, Mustaphalli Advisory Group, LLC ("MAG") was no longer registered in New York, and thus, he was not legally permitted to provide investment advice to them through their existing relationship with MAG.

16. In order to be eligible to invest in the Fund, each prospective Fund investor was legally required to meet certain wealth or experience standards. One such standard was that an individual was an "accredited investor," meaning that the investor had a net worth of more than

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less in assets under management, with exceptions that do not apply here. *See* GBL § 359-eee and 13 NYCRR § 11.12.

$1 million, excluding the value of his or her primary residence. Desperate for these investments in 2015, Mustaphalli falsified documents to show that his clients were accredited investors. Based on his past experiences and long-term relationships with his clients, Mustaphalli knew that his clients were not accredited investors, but he forged clients' initials in various documents or checked off the relevant qualification information himself to make it appear that these clients were eligible to invest in the Fund.

17. By May 2015, Mustaphalli had accumulated approximately $5 million in additional investments from the second group of investors in the Fund. However, through Mustaphalli's reckless investing, by the end of 2015, the Fund had lost an additional $4 million, roughly 80% of its value.

18. In 2016, again facing the prospect of a low management fee from the Fund due to his own bad bets that left the Fund's assets depleted, Mustaphalli began looting the Fund. By early 2016, the Fund's assets were valued at approximately $1 million, a value that would have put Mustaphalli's annual management fee at around $20,000 for 2016. Mustaphalli was still unregistered and unable to receive any significant compensation for providing investment advice, so Mustaphalli began looting Fund assets. Between February 2016 and August 2016, the Fund fraudulently conveyed $100,000, to a company called LSA Quant Research, LLC ("LSA"), purportedly to pay for "research;" however, there is no credible evidence that LSA provided any research or other services to the Fund. Mustaphalli is the owner of LSA and used almost all of the $100,000 transferred from the Fund to LSA for his personal expenses.

19. Defendants' fraudulent acts and practices violate the Martin Act and the regulations promulgated thereunder, Executive Law § 63(12) as well as provisions of New York Debtor and Creditor Law §§ 273, 274 and 276, and constitute breaches of fiduciary duty, unjust

enrichment and common law fraud. By this complaint, the OAG seeks (i) a permanent injunction under the Martin Act, barring the Defendants from engaging in any business related to the issuance, distribution, exchange, advertisement, negotiation, purchase, investment advice, or sale of securities within or from this state; (ii) other injunctive and conduct-based relief; and (iii) disgorgement, restitution, rescission, damages and penalties, together with such further and other relief as may be appropriate.

PARTIES

20. Plaintiff Eric T. Schneiderman is the Attorney General of the State of New York. The State of New York has an interest in upholding the laws of the State, and the Attorney General of the State of New York is charged with enforcing those laws. The Martin Act, New York General Business Law ("GBL") §§ 352 *et seq*, protects New Yorkers from fraudulent investment-related conduct. The OAG brings this action on behalf of the People of the State of New York pursuant to, among other authorities, the provisions of the Martin Act which provide that the OAG may commence a civil action seeking legal and equitable relief for the use of fraudulent practices in the issuance, exchange, purchase, sale, promotion, negotiation, advertisement, investment advice, or distribution of securities in or from New York State.

21. Defendant Dean Mustaphalli ("Mustaphalli") is an individual who resides in New York State and has been working in the financial services field since at least 1996. He has worked in New York State as a financial advisor, investment adviser, hedge fund general partner, and investment manager. Mustaphalli has full and exclusive control over all of the other Defendants. Mustaphalli operated and managed most of the Defendant entities out of his office located at 108-18 Queens Boulevard, 6th Floor, Suite 5, Forest Hills, New York 11375.

22. Defendant Mustaphalli Capital Partners Fund, L.P. (the "Mustaphalli Fund" or

"Fund") is a hedge fund formed as a limited partnership under the laws of Delaware on December 30, 2010. In February 2011, Mustaphalli began to sell security interests in the Fund – so-called "Limited Partnership Interests." Mustaphalli operated, managed and directed all investment activity in the Fund out of his office in Forest Hills, New York. At least 58 individuals who lived in New York State have invested in the Mustaphalli Fund since the Fund's inception. Mustaphalli deceived many of these individuals into investing in the Fund by, among other things, concealing the risks associated with such investment and by failing to inform his investors that the Fund was not a suitable investment for them.

23. Defendant Mustaphalli Group, LLC (the "Mustaphalli Group") is a limited liability company formed under the laws of Delaware on December 30, 2010. The Mustaphalli Group is the General Partner of the Mustaphalli Fund. Mustaphalli managed the Mustaphalli Group out of his office in Forest Hills, New York. The Mustaphalli Group has no employees and is solely controlled by Mustaphalli. On paper, the Mustaphalli Group managed the operations of the Fund; however, in practice, Mustaphalli personally managed the Fund, and testified that he had no understanding of the Mustaphalli Group's purpose. The Mustaphalli Group is a shell company and an alter-ego of Mustaphalli.

24. Defendant Mustaphalli Advisory Group, LLC ("MAG") is a limited liability company formed by Mustaphalli on December 11, 2009, under the laws of the State of New York. Mustaphalli operated and managed MAG out of his office in Forest Hills, New York. MAG was first registered as an investment adviser in New York State in 2010. However, in 2014, MAG's New York registration lapsed, and it has not been registered as an investment adviser in New York since January 1, 2015. MAG has no employees and is controlled solely by Mustaphalli. MAG was the investment adviser for nearly all of Mustaphalli's investors prior to

and at the time the investors invested in the Mustaphalli Fund. Mustaphalli used MAG as an interim step in enticing clients away from his past employers (*i.e.*, Citigroup and Sterne Agee) and, ultimately, into the Mustaphalli Fund. In addition to being the investment adviser for individual clients, MAG, simultaneously, was the Investment Manager for the Mustaphalli Fund from the Fund's inception through August 3, 2013. MAG is a shell company and an alter-ego of Mustaphalli.

25. Defendant Mustaphalli Capital Management, LLC ("MCM") is a limited liability company formed by Mustaphalli on January 31, 2013 under the laws of the State of New York. MCM nominally replaced MAG as the Investment Manager for the Fund in August 2013. Mustaphalli managed MCM out of his office in Forest Hills, New York. MCM has no employees and is controlled solely by Mustaphalli. Even though MCM has never been registered as an investment adviser in the State of New York, it played a similar role to MAG by providing investment advice to the Fund as well as individual clients. MCM is a shell company and an alter-ego of Mustaphalli.

26. Acting individually and through the Mustaphalli Group, MAG, and MCM, Mustaphalli has controlled all activity in the Mustaphalli Fund from its inception to the present.

27. Defendant LSA Quant Research, LLC ("LSA") is a limited liability company that was formed in the State of Delaware on January 19, 2016 by LegalZoom. Mustaphalli hired LegalZoom to form LSA. Mustaphalli maintained an office for LSA at 817 Broadway 5th floor, New York, NY 10003. Mustaphalli controls and operates LSA. Mustaphalli used LSA to divert money from the Fund for his own personal use. Substantially all of the deposits into LSA's bank account came from the payments from the Fund. LSA is a shell company and an alter-ego of Mustaphalli.

28. Defendant L & S, LLC ("L & S") is an entity formed in the State of Delaware on August 23, 2013 by LegalZoom. Mustaphalli hired LegalZoom to form L & S. L & S is owned and controlled by Mustaphalli. L & S lists its address at 57 Schuyler Drive, Commack, NY 11725, which is also Mustaphalli's home address. L & S received a significant portion of the money Mustaphalli looted from the Fund via LSA. Mustaphalli paid for his personal expenses from L & S bank accounts. L & S is a shell company and an alter-ego of Mustaphalli.

29. Defendant Camelot Cricket Club, Inc. (the "Cricket Club") is an entity owned and controlled by Mustaphalli. The Cricket Club lists its business address as 57 Schuyler Drive, Commack, NY 11725, which is also Mustaphalli's home address. The Cricket Club received a $4,500 check from LSA signed by Mustaphalli, dated July 12, 2016. Most of the $4,500 paid by LSA to the Cricket Club was subsequently paid to L & S. The Cricket Club is a shell company and an alter-ego of Mustaphalli.

JURISDICTION

30. The OAG has an interest in the economic health and well-being of those who reside or transact business within its borders. Upon information and belief, substantially all of Mustaphalli's recommendations, offers and sales of the Limited Partnership Interests, and other conduct, took place within or from New York State. In addition, the OAG has an interest in ensuring that the marketplace for securities and other financial products functions honestly and fairly with respect to all who participate or consider participating in it. The OAG, moreover, has an interest in upholding the rule of law generally. Defendants' conduct injured these interests.

31. The OAG sues pursuant to the Martin Act, New York General Business Law ("GBL") § 352 *et seq*., Executive Law §§ 63(12), and the New York Debtor and Creditor Law ("DCL") §§ 273, 274 and 276, and as *parens patriae*, under the common law of the State of New York.

FACTUAL ALLEGATIONS

I. MUSTAPHALLI DEVELOPED RELATIONSHIPS OF TRUST WITH HIS CLIENTS AND WAS OBLIGATED TO PROTECT THEIR INTERESTS

32. Mustaphalli's relationship with his clients began when he was their financial advisor[3] at Citigroup. As financial advisor, Mustaphalli collected information from his clients regarding their investor profiles. When Mustaphalli left Citigroup and opened MAG, his own investment adviser firm, he solicited his Citigroup clients to follow him and became their investment adviser.[4]

33. In ensuring that their recommendations are suitable for the client, both financial advisors and investment advisers routinely obtain investor profile information from their clients. Such investor profiles include each investor's (i) investment objectives, (ii) risk tolerance, (iii) age and employment/retirement status (i.e. time horizon) (iv) total net worth, (v) liquid net worth, (vi) current income, and (vii) past investment experience.

34. Investment objectives reflect the investor's desired goals for his investment. For example, a "growth" objective generally means that the investor seeks investments that will appreciate in value over time, like stocks. An "income" objective generally means that the investor seeks investments that will provide a stream of income, like bonds.

35. Risk tolerance reflects the investor's desired risk appetite, and generally includes

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[3] Financial advisors or brokers are primarily hired to buy and sell securities for their clients. Any investment advice they provide should be associated with the execution of such purchase or sale. Financial advisors are generally paid on commission for executed transactions, not for their investment advice. Financial advisors must be associated and supervised by a FINRA registered broker-dealer.

[4] Investment advisers provide investment advice and are generally given discretion over trading in their clients' accounts. Typically, investment advisers are paid in the form of an asset-based fee, usually a percentage of the total value of a client's assets. Investment advisers have a fiduciary duty to act in their clients' best interests.

designations like "conservative," "moderate," "aggressive," and/or "speculation." Each designation reflects the investor's tolerance for investment risk along a spectrum. A designation of "conservative" represents a tolerance for the lowest amount of risk while a designation of "speculation" represents a tolerance for the highest amount of risk.

36. Mustaphalli's clients' actual investor profiles generally included: (i) income and/or growth objectives, (ii) low to moderate risk tolerances, (iii) at or nearing retirement, (iv) net worth of significantly less than $1,000,000, (v) limited liquid net worth, (vi) limited income, and (vii) little prior investment experience, which was limited to primarily annuities and other investment products that are managed by someone other than the investor.

37. Mustaphalli learned of his clients' investor profiles through his relationships with them first as their financial advisor and later as their investment adviser. Mustaphalli's clients relied on Mustaphalli to advise them based on their actual investor profiles and investment needs.

A. The Investor Profiles of Mustaphalli's Clients Confirmed Their Low Risk Tolerances

38. Mustaphalli was aware of the investment history and investor profiles of his clients based on his conversations with them, the information that he had access to while he was their financial advisor at Citigroup, the information initially collected for Trade-PMR, Inc. ("TradePMR") and Sterne Agee, the broker-dealers through which he placed and cleared MAG's trades, and the composition of their past investment portfolios, which he had recommended. Mustaphalli knew that his clients did not want him to risk their life savings on speculative trading.

1. Mustaphalli Was Aware of His Clients' Investor Profiles Based on His Relationship with Them at Citigroup

39. In 1998, Mustaphalli, as a financial advisor at Citigroup, began providing

investment advice to Citigroup's clients. At Citigroup, bank tellers introduced Mustaphalli to his prospective clients to discuss retirement planning and investing.

40. Many of Mustaphalli's Citigroup clients were older and/or retired, had little to no financial or investing experience and had expressed to Mustaphalli that they generally had low to moderate risk tolerances and were not interested in speculative investment portfolios. To ascertain their risk tolerance, Mustaphalli indicated that he performed a "Risk Tolerance Analysis" for his Citigroup clients.

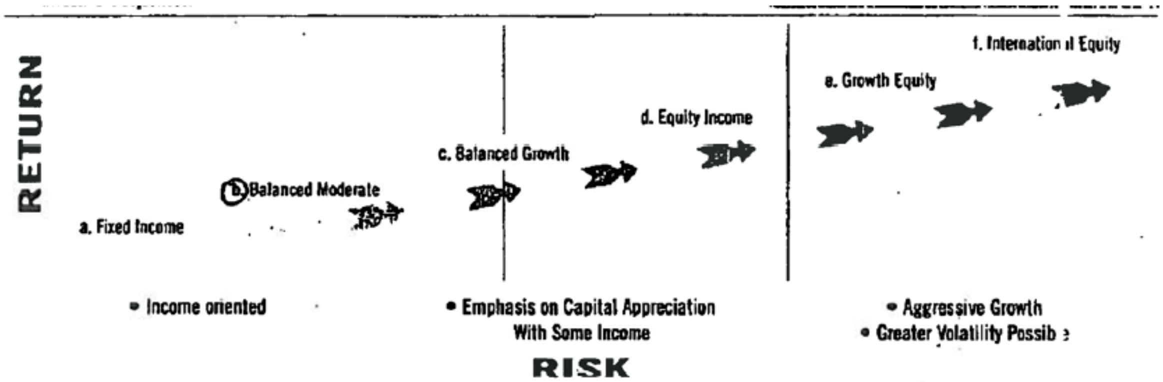
41. While Mustaphalli was at Citigroup, many of his clients' assets were invested, consistent with their risk tolerances, in conservative to moderate risk investment portfolios, including products such as annuities, which generally provide investors with guaranteed income payments for life, a death benefit, and tax deferral.

42. In 2008, certain of Mustaphalli's Citigroup clients moved their assets into managed account programs, a change that involved these clients providing discretionary authority for trading in their investment accounts, with Mustaphalli as their financial advisor. Upon opening their managed accounts, these clients completed investment questionnaires that included, among other things, questions about their risk tolerances and investment objectives.

43. The investment questionnaires show that many of Mustaphalli's clients' accounts listed a "Balanced Moderate" approach to investing. The primary objective under such an approach was to:

> [G]enerate income with some growth through [a] balanced portfolio of equity and fixed income instruments. This portfolio: will be balanced between equities and fixed income; will be diversified by sector and security in the equity component; has a low to moderate risk profile; may experience moderate losses through difficult phases in a market cycle.

Generally, a diversified portfolio – the practice of dispersing money among varied investments in order to decrease risk – may limit losses and reduce the volatility of investment returns. The following chart from one of these investment questionnaires reflects the "Balanced Moderate" approach as a relatively low risk, low return strategy:



Note: To the extent that the investment suitability and objectives information noted herein conflicts with any other information communicated to SB in writt n or verbal form (i.e., via telephone, e-mail, or Investment Policy Statement), the information contained herein shall control with re:pect to the management of your ac ount(s).

44. In December 2008, Citigroup imposed a heightened level of supervision over Mustaphalli due to several client complaints. By December 2009, at least twelve of Mustaphalli's clients had complained to Citigroup about him. These complainants accused Mustaphalli of making misrepresentations about their investments, failing to provide them with disclosure documents, and providing unsuitable investment advice regarding their accounts. On or about December 4, 2009, Mustaphalli resigned from Citigroup, on the heels of a flurry of client complaints about him and in the midst of an internal review regarding his communications with certain clients and his record-keeping practices.

45. After leaving Citigroup, Mustaphalli opened his own investment advisory firm, Defendant MAG. Mustaphalli solicited many of his former clients from Citigroup to follow him to MAG. By the end of 2010, Mustaphalli had accumulated more than 120 clients.

46. Mustaphalli's clients gave him discretionary authority for trading in their investment accounts, control over their investments and agreed to pay him a fee for his investment advice. Mustaphalli's fee was calculated on an annual basis but charged in advance

each month.

47. Almost all of the clients that eventually invested in Mustaphalli's Fund, had been Mustaphalli's clients since he was associated with Citigroup.

2. Mustaphalli Was Aware of His Clients' Investor Profiles Based On Information Initially Provided to TradePMR and Sterne Agee

48. Beginning in December 2009, Mustaphalli cleared trades in the accounts he managed at MAG through broker dealers Sterne Agee and TradePMR.

49. Upon opening accounts at Sterne Agee and TradePMR, Mustaphalli and his clients were required to complete account opening applications, which sought information regarding each investor's profile. These applications elicited, among other things, each client's investment objective, risk tolerance, liquid net worth, and investment experience. Based on Sterne Agee's information, the majority of Mustaphalli's clients were 60 years old or older, and were retirees when they opened their accounts.

50. In addition, the applications indicate that the vast majority of Mustaphalli's clients chose relatively low risk investment objective and risk tolerance combinations when they opened their accounts, such as "Income Moderate" or "Growth Moderate."

51. Overwhelmingly, Mustaphalli's clients did not choose "Speculation" as their investment objective when they opened their accounts even though that choice was available to them. "Speculation" represents the highest amount of investment risk and often draws comparisons to gambling. Mustaphalli's clients instead opted for less risk exposure.

52. The Sterne Agee documents demonstrate that many of Mustaphalli's clients had little investment experience. In 2010, many of Mustaphalli's clients indicated they had limited investment experience with stocks, bonds and mutual funds, and more experience with annuities. For many clients, the majority of their investment experience consisted of the years they had

spent following Mustaphalli's relatively conservative investment recommendations when he worked at Citigroup. Almost all of these clients indicated that they had no experience with options.

B. Mustaphalli Failed to Make Investments in Accordance with Clients' Investment Objectives, Time Horizon and Risk Tolerance Level

53. Mustaphalli had both a fiduciary duty and a contractual obligation to recommend suitable investments that were in his clients' best interests. Mustaphalli violated those duties and obligations by investing many of his clients' life savings in his Fund, which he knew was inconsistent with his clients' investor profiles including their investment objectives, risk tolerances and time horizons.

54. When Mustaphalli's Citigroup clients joined his investment adviser firm, MAG, Mustaphalli and his clients executed investment management agreements ("IMA").

55. The IMAs outlined the investment advisory relationship between MAG and Mustaphalli's clients, pursuant to which MAG would provide "discretionary investment advisory services" to Mustaphalli's clients. Pursuant to the IMAs, Mustaphalli had trading discretion over his clients' investment accounts, and was authorized to buy and sell securities in such accounts.

56. In the IMAs, Mustaphalli, acting through MAG, explicitly agreed to act as a fiduciary, specifically stating, "MAG agrees to act in a manner consistent with its fiduciary obligations, including under ERISA for an Account subject to ERISA."[5]

57. Mustaphalli also promised in the IMAs to make investment decisions based on the "individual client's investment objectives, time horizon, and risk tolerance level" and to

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[5] In MAG's application for investment adviser registration in New York, Mustaphalli further confirmed that "MAG will act in a fiduciary manner, and will always act in the client's best interest."

"construct[] a portfolio that [was] suitable for the client."

58. The IMAs also specified the investment management fee that each client agreed to pay. These annual fees range from 1.1% to 2.1%, depending upon the amount invested.

59. All of the clients who invested in Mustaphalli's hedge fund were clients of MAG at the time they invested in the Fund, and as such, all had been required to sign an IMA. To date, Mustaphalli has not terminated the IMAs with his MAG clients.

60. Based on his history with his clients, his investment adviser status, and the IMAs, Mustaphalli owed a fiduciary duty to each client to recommend investments that were in each client's best interest.

61. In breach of Mustaphalli's duties and promises, Mustaphalli moved the assets of his elderly, retired, and financially inexperienced clients into the Fund and engaged in speculative trading. Mustaphalli himself placed these trades. Thus, Mustaphalli broke his promise to invest in accordance with their investment objectives, time horizons and risk tolerance and failed to act in his clients' best interests.

C. Mustaphalli's Fund Made Risky and Speculative Trades That Were Unsuitable For His Clients

62. Mustaphalli's Fund employed risky, short-term, options and leveraged trading strategies that were unsuitable for his clients.

63. Furthermore, Mustaphalli had very little, if any, experience trading options professionally. In fact, in December 2009, Mustaphalli indicated to TradePMR that despite purportedly being an investment adviser with "250" client accounts and "20,000,000" dollars under management, *none* of the assets he managed were invested in options.

64. Despite his lack of experience in options trading and the Fund's offering

document's stated Investment Objective to seek "long-term, above-market returns by investing principally in publicly traded, marketable equity and debt securities of U.S. and non-U.S. companies," Mustaphalli caused the Fund to invest principally in short-term options trading.[6]

65. Options are contracts and do not confer ownership in a business (as with equities) and do not confer any priority in asset liquidation (as with many debt securities). An option contract itself does not provide "long-term" opportunities because options contracts expire. Options are riskier than equity and debt securities because, among other reasons, an option holder can only wait a short time for prices to move in their favor before the option expires, whereas a holder of equity or debt securities generally has a much longer period of time to sell their holdings and thus, an opportunity to wait out the market. Options trades are also riskier because they increase the sensitivity of the Fund to even small market movements.

66. Mustaphalli's short-term options trading strategy was speculative because, among other things, it exposed the Fund to market fluctuations without holding requisite amounts of stock to protect against adverse price movement.

67. Mustaphalli also engaged in concentrated options trades, which magnified all of these risks. For example, in the spring of 2012, the Fund lost almost $2 million on a single trade that was open for just four days. Mustaphalli bet over $2.5 million (almost half of the Fund's value at the time), through option trades, that the price of MasterCard stock (a roughly $450 per share stock at the time) would fluctuate significantly. Mustaphalli placed the MasterCard trade just before an upcoming MasterCard earnings announcement, and the price of MasterCard stock did not fluctuate enough to satisfy Mustaphalli's enormous wager. He closed the option

[6] An option is a contract that conveys to its holder the right, but not the obligation, to buy or sell shares of the underlying asset at a specified price on or before a given date.

positions at a loss to the Fund of almost $2 million. Mustaphalli's options trading strategy regularly resulted in situations where huge portions of the Fund could be lost, and thus, was nothing more than wild speculation.

68. In 2015 and 2016, Mustaphalli used margin[7] to double down on his bets with his clients' investments. For example, in August 2015, Mustaphalli used margin to increase the exposure of the Fund's investments to nearly 20 times the Fund's value. In other words, the Fund's value was only $2 million, but Mustaphalli borrowed approximately $36 million to invest in stocks and options.

69. Mustaphalli's leveraged trading strategy meant that any loss in stocks held by the Fund would be magnified. For example, if the market value of the Fund's $38 million exposure had rapidly decreased by roughly 5% (or almost $2 million), the Fund's entire actual value could have been wiped away. Mustaphalli's leveraged trading exposed the investors to extreme sensitivity to daily market movement.

70. Instead of investing his clients' life savings in conventional portfolios comprised of stocks, bonds, mutual funds, ETFs, or annuities, Mustaphalli gambled away his clients' nest eggs by employing speculative options and leveraged trading strategies that exposed his clients to far greater risk than warranted by their investment objectives, time horizons and risk tolerance.

II. MUSTAPHALLI FRAUDULENTLY INDUCED THE FIRST GROUP OF HIS INVESTMENT ADVISORY CLIENTS AT MAG TO INVEST IN HIS HIGHLY SPECULATIVE AND RISKY HEDGE FUND

71. Less than a year after Mustaphalli associated with broker dealer Sterne Agee as a financial advisor, Sterne Agee placed him on special supervision. On October 16, 2010,

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[7] Buying on margin is borrowing money from a broker to purchase stock.

Mustaphalli acknowledged an internal memorandum that outlined the conditions of such supervision including that Sterne Agee would review his transactions on a daily basis, call a sample of his clients on a monthly basis and would "conduct a general account review of [Mustaphalli's] client accounts semi-annually and shall pay special attention to suitability matters." Having been placed on special supervision for a second time (first at Citigroup in 2008), with the prospect of his client accounts being reviewed by Sterne Agee, Mustaphalli created his Fund which would entitle him to a similar management fee and would place his clients' accounts beyond the review of Sterne Agee, TradePMR or any other supervisor or compliance regime.

72. By February 2011, Mustaphalli created the Mustaphalli Fund, with the Mustaphalli Group as the Fund's general partner, and MAG as the Fund's investment manager.[8] All of these entities were operated out of Mustaphalli's office on Queens Boulevard in New York City and were controlled by Mustaphalli.

73. The Mustaphalli Fund issued "Limited Partnership Interests" securities which Mustaphalli recommended, offered and sold. Investors who purchased these securities became "limited partners."

74. Between February 2011 and December 2012, Mustaphalli solicited at least 28 of his investment advisory clients to invest in the Mustaphalli Fund as limited partners.[9] In total, these 28 clients, the first group of investors, invested almost $7 million in the Mustaphalli Fund

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[8] Mustaphalli Capital Management, LLC ("MCM') an entity controlled by Mustaphalli, began nominally managing the investments in the Fund in August 2013.

[9] At the same time, Mustaphalli also retained his other individual investment advisory clients, including 30 investors who Mustaphalli would later solicit to invest in the Mustaphalli Fund in 2015.

in 2011 and over $1 million more in 2012. By the end of 2012, almost all of this money had been lost as a result of Mustaphalli's risky trading.

75. Mustaphalli failed to provide many of the prospective investors (his clients) with the offering document, known as a Confidential Private Placement Memorandum ("PPM"), explaining the Fund. Nor did he personally explain the Fund, or its attendant risks, to his clients before soliciting them to invest in the Fund. Moreover, the PPM misrepresented the Fund's investment objective, trading strategy, and risk management approach.

76. The general partner of the Fund, the Mustaphalli Group, owed a fiduciary duty to the limited partners to follow the investment objectives of the Fund. By failing to do so, the Mustaphalli Group (run solely by Mustaphalli) breached its duty.

A. Mustaphalli Made Material Misstatements and Omissions in Order to Induce Investors to Buy Limited Partnership Interests

77. Mustaphalli misled his clients to believe that the Fund's investment approach and risk profile would be similar to their past investments, when in fact investment in the Fund was significantly riskier than his clients' prior investments due to the speculative short-term options trading strategy Mustaphalli employed for the Fund.

78. Mustaphalli routinely failed to inform these investors of the specific investments he was making, the heightened risks of such investments, the likelihood of realizing such risks and the unsuitability of such investments for the investors. Mustaphalli did not highlight, or even mention, the important differences between the Fund's investments in short-term options and each individual investor's prior, more conventional investments.

79. Far from disclosing risks, Mustaphalli told some limited partners that their move to the Fund was a technical matter, a mere platform consolidation or a result of Mustaphalli changing companies. Mustaphalli spoke to other investors in generalities, explaining their move

into the Fund by simply saying that the Fund would be "better."

B. Mustaphalli Failed to Provide the PPM to Many Investors

80. In inducing his MAG clients to invest in the Fund, Mustaphalli did not provide many of them with a copy of the PPM for the Fund. The PPM specified that it was to be used in connection with the decision to invest in the Fund and contained various sections including a "Summary of Key Terms" that described the Fund's investment objectives, fees associated with the Fund, and certain risks of investment in the Fund.

81. Similarly, instead of providing his clients with copies of the subscription documents and explaining their substance to his clients, Mustaphalli often presented his MAG clients with only the subscription document[10] signature pages and marked an "X" where his clients were to sign. He presented the documents as routine paperwork. The signature pages did not contain any information about the Fund's investment objectives, trading strategy, or risk management approach.

82. For many investors, Mustaphalli falsified important subscription documents that were supposed to be filled out by them, by personally checking off important net worth information. In order to be eligible to invest in the Fund, each prospective investor was legally required to meet certain wealth or experience standards. One such requirement was that each investor was an "accredited investor," meaning that he or she had a net worth of more than $1 million, excluding the value of his or her primary residence. Mustaphalli fraudulently stated that these clients had a net worth of more than $1 million, excluding the value of their primary

[10] The Subscription Documents are the packet of documents, including agreements, signature pages, and questionnaires, that an investor signs to invest in the Fund. Specific questionnaires are addressed to inquiring whether the investors meet the "accredited investor" or "qualified client" requirements to invest in the Fund. Among other things, the Subscription Documents called for each client to initial confirming that they met the $1 million net worth threshold.

residence, in an effort to paper over the "accredited investor" requirement. Mustaphalli did not inform investors of the $1,000,000 net worth requirement or make any reasonable inquiry into whether their net worth had grown to such level. In fact, the vast majority of Mustaphalli's first set of clients did not meet the net worth requirement to qualify as accredited investors.

C. The PPM Misrepresented the Fund's Investment Objectives and Risk Management Approach

83. The PPM contained a number of misrepresentations regarding the Fund's investment objectives, potential for trading losses, and risk management approach.

84. The Fund's February 2011 PPM and all subsequent versions represented that the "INVESTMENT OBJECTIVE" of the Fund was to seek "long-term, above-market returns by investing principally in publicly traded, marketable equity and debt securities of U.S. and non-U.S. companies."

85. However, contrary to this statement, Mustaphalli rarely bought "equity" (i.e. stocks) between 2011 and 2014, rarely, if ever, purchased "debt securities" (i.e. bonds), and did not engage in long-term investments. Instead, between 2011 and 2014, Mustaphalli principally traded options on a short-term basis. The PPM itself describes "Equity Securities" and "Option Transactions" separately and notes that "Equity Securities" have a "greater potential for long-term growth." Mustaphalli also did not invest principally in debt securities, and Mustaphalli did not invest for the "long-term." Mustaphalli's trading strategy resulted in realized short-term losses and provided none of the long-term benefits of equity or debt securities.

86. Since options expire at a date certain and the Fund traded such options on a short-term basis, there was never an opportunity for "long-term" growth.

87. The PPM also omitted important information regarding the riskiness of credit spread trading. The PPM stated that "[t]he Investment Manager will establish credit spreads, an

alternative option writing strategy which involves selling an option at a greater premium than the cost of the option that is purchased, thereby creating a credit to the trader writing the spread" and reassures investors that "[i]n credit spreads, the loss is limited to the amount of the difference between the strike prices of the two options in the spread." This section of the PPM is misleading because the losses on even a single trade in such a trading strategy, depending on the size of the options trade, could equal all of, or a significant portion of the Fund's assets.

88. The PPM also represented that the investment manager would demonstrate a significant "commitment to risk management" and would display a "disciplined approach to managing risk." The PPM further stated that "The Investment Manager focuses on security selection in an attempt to mitigate risk. Although the Partnership will have no fixed diversification requirements, the Investment Manager seeks to mitigate security selection risk by hedging, position and industry size limits, loss limit strategies and other risk management considerations. The Investment Manager believes that diversification is beneficial and anticipates that over time the Partnership will have numerous positions (both long and short)." However, far from managing risk, Mustaphalli consistently exposed the Fund's assets to undue risk and concentrated trades that repeatedly caused massive losses. Mustaphalli's approach was not disciplined because he did not deviate from his speculative trading style despite the Fund's rapidly declining value.

89. Mustaphalli's failure to engage in risk management is confirmed by his reckless trading which caused massive losses to the Fund, including in 2012, when he lost nearly the full value of the Fund in less than one year, and in 2015, when he lost 80% of the Fund's value in less than six months. Further, contrary to the PPM's statement that "The Investment Manager believes that diversification is beneficial and anticipates that over time the Partnership will have

numerous positions…," Mustaphalli did not invest the Fund in long-term positions.

90. The PPM also falsely stated that the Fund was "a recently formed entity and has no operating history upon which prospective investors can evaluate its likely performance." In reality, as early as mid 2012 the Fund had established an operating history that reflected massive losses.

91. The PPM also required Mustaphalli to provide the Fund's investors with audited financial statements. However, Mustaphalli failed to do so in 2014 and 2015.

III. MUSTAPHALLI FRAUDULENTLY INDUCED THE SECOND GROUP OF HIS INVESTMENT ADVISORY CLIENTS AT MAG TO INVEST IN HIS HIGHLY SPECULATIVE AND RISKY HEDGE FUND

92. Mustaphalli, through MAG, continued on as investment adviser for the clients that he did not initially put into the Fund in 2011 and 2012. By 2014, Mustaphalli's remaining investment adviser accounts were held at TradePMR. Mustaphalli had so much influence over these remaining clients, that when TradePMR ended its relationship agreement with Mustaphalli Advisory Group, these clients followed Mustaphalli to a new company to continue their relationship.

93. In June 2014, Mustaphalli moved these clients over to a new broker dealer, Interactive Brokers, and set up investment accounts for them. Upon information and belief, Mustaphalli opened some of the accounts at Interactive Brokers himself, using email addresses he created on behalf of his clients without their knowledge or consent. IP address[11] logs show that at least three investors' login credentials were used to log into their Interactive Brokers accounts on the same day they initiated their account opening online application from the same

[11] An IP, or Internet Protocol, address is a numerical label assigned to a device accessing the Internet.

IP address that Mustaphalli himself used on many occasions to log into Interactive Brokers using his own login credentials. Further, certain of the email addresses provided to Interactive Brokers have never belonged to the clients that Mustaphalli attributed them to.

94. FINRA began an investigation into Mustaphalli, his conduct during his association with broker dealer Sterne Agee and his hedge fund in early 2013. In December 2014, FINRA fined Mustaphalli and suspended him from the securities industry "in all capacities" for a period of two years for, among other things, failing to "observe high standards of commercial honor and just and equitable principles of trade" and because he failed to disclose to his last employer that he was operating his Fund and because he failed to cooperate with FINRA's investigation of him. This suspension prevented Mustaphalli from acting as a financial advisor.

95. The FINRA suspension was also significant because it contributed to the Fund's accountant refusing to audit Mustaphalli's Fund. Indeed, on October 31, 2016, Mustaphalli's auditor, Sandler & Company, P.C., informed him that:

> [T]he information concerning your suspension and the activities leading up to it have caused us to conclude that we could not perform sufficient procedures or obtain sufficient evidential matter for us to rely on any representations that you might make to us or on any information that you might provide to us.

96. On January 1, 2015, MAG's required New York State investment adviser registration lapsed, which meant that MAG was no longer registered to provide investment advice in New York. As a result, subject to certain exceptions, Mustaphalli could no longer lawfully receive a management fee through MAG for investment advisory services provided to his clients.[12]

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[12] *See* GBL § 359-eee (2)(a); *see also* GBL § 359-eee (1)(a).

97. By March 2015, Interactive Brokers barred Mustaphalli from receiving fees for investment advisory services associated with MAG accounts through their platform. MAG clients were sent checks for the balance of their Interactive Brokers accounts. Consequently, Mustaphalli was unable to secure meaningful income as a financial advisor or an investment adviser. By the end of March 2015, Mustaphalli placed the last trades in most of those accounts, liquidating their investments to cash.[13]

98. In an effort to circumvent the New York registration requirements, Mustaphalli changed his position from that of an investment adviser for numerous investment advisory clients to that of an adviser of a single client, the Mustaphalli Fund.[14] By doing so, Mustaphalli was able to receive increased cash flow from the Fund's 2% management fee.

99. By mid 2014, the Fund's assets had dwindled to under $300,000. In order to increase his total assets under management and thus, his management fees, Mustaphalli solicited additional clients to invest in the Fund.

100. By funneling more of his clients' assets into his Fund, Mustaphalli increased the Fund's value from roughly $168,000 in December 2014 to approximately $5 million by the end of May 2015.

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[13] After March 2015, Mustaphalli continued to act through MCM as an investment adviser for a limited number of his clients' accounts at Interactive Brokers. GBL § 359-eee (1)(a) includes an exception from the registration requirement for investment advisers with fewer than six New York clients.

[14] New York State does not require an investment adviser that solely advises a limited partnership to register with the OAG. *See* GBL § 359-eee (a)(5); 13 NYCRR § 11.12 (a) ("a single client or a single person for purposes of 359-eee (a)(5) shall mean: [] (2) A. . . limited partnership. . .that receives investment advice based on its investment objectives rather than the individual investment objectives of its. . . limited partners".).

A. Mustaphalli Made Material Misstatements and Omissions in Order to Induce the Second Group of Investors to Buy Limited Partnership Interests and Failed to Provide the PPM to Many Investors

101. Between January and May of 2015, Mustaphalli recommended that another 30 of his MAG clients invest in his Fund, the second group of investors. Like Mustaphalli's first group of investors, the second group were mostly older and generally financially unsophisticated individuals. Mustaphalli did not tell these investors that (i) the Fund had suffered enormous losses in from 2012 through 2014, (ii) he had been suspended by FINRA, (iii) MAG was no longer registered as an investment adviser in New York, and (iv) his control over their investment accounts had been restricted by Interactive Brokers.

102. Mustaphalli even failed to tell some of the investors he solicited in 2015 that they were investing in the Fund at all. Just as with the first group, Mustaphalli made investment in the Fund seem as if it was a mere administrative matter. He told some investors that the paperwork was necessary because he was merely changing companies, as he had done several times before. Mustaphalli told one investor that the transaction involved the transfer of her assets to a new custodian because "that's just how it is." He told another investor, who had received a check for the proceeds of his Interactive Brokers account, that the check was sent by mistake, and that he was just putting the investor's account back the way it was. Mustaphalli told one investor's son that his mother would be subject to fees and penalties if he did not agree again to invest the money with Mustaphalli. These investors believed that they were merely handing a check to Mustaphalli to be deposited into their prior accounts; they did not know that Mustaphalli was moving their money from their prior investment portfolio into a Fund engaged in highly speculative and leveraged trading.

103. Mustaphalli also again concealed the significant risks associated with investment in the Fund. Mustaphalli did not disclose the types of investments the Fund would invest in, or

the risks of such investments, including risky options trading and leveraged trading. He did not disclose the important differences between the Fund's investments and each individual investor's prior, more conservative investment portfolios, and did not disclose that investment in the Fund was unsuitable for them.

104. Mustaphalli did not provide the PPM to many investors or explain the PPM or the subscription documents to them. Instead, Mustaphalli often presented the second group of investors with only signature pages.

105. At the time Mustaphalli was inducing the second group of investors to invest in the Fund, the Fund had already suffered catastrophic losses through unsuitable and risky options trading. Indeed, by December 2014, the Fund had a historical net return of negative 97.6%, a near total loss.

106. Mustaphalli did not disclose, and the PPM did not describe, these past losses to the second group of investors. Instead, the PPM continued to falsely state that the Fund was "a recently formed entity and has no operating history upon which prospective investors can evaluate its likely performance."

B. Mustaphalli Falsified Certain Subscription Documents

107. Just as with the first group, in order to qualify to invest in the Fund, each prospective Fund investor was legally required to meet certain wealth or experience standards. In an effort to increase investment in his Fund, Mustaphalli falsified subscription documents for the second set of investors to the Fund by forging certain of his clients' initials on the "accredited investor" and "qualified client" questionnaires to reflect that his clients met the $1 million net worth requirement when in fact their net worth was far below that.

108. Mustaphalli did not inform his clients of the net worth requirement. Nor did Mustaphalli make any reasonable inquiry into whether his clients met the $1 million threshold at

the various times he had them sign the subscription agreement signature pages. In fact, based on his prior relationship with his clients, Mustaphalli knew that almost all of his clients did not satisfy the net worth requirement.

IV. MUSTAPHALLI INTENTIONALLY DEFRAUDED THE FUND'S INVESTORS AND CONCEALED HIS FRAUD

109. Mustaphalli did not provide investors with detailed account statements revealing the specific investments in the Fund or the trading strategy. In addition, Mustaphalli concealed the true reason for the Fund's losses when questioned by the investors.

110. When individuals in the first group of investors questioned Mustaphalli about the Fund's losses, Mustaphalli blamed the losses on general market conditions, and did not reveal that he was employing a risky, short-term options trading strategy. Mustaphalli falsely reassured multiple investors that the losses would be recovered when the market went back up. However, between 2011 and 2014, the Fund held essentially no equity with value, and thus, the Fund's losses could not be recovered.[15]

111. When one investor complained about the losses and reminded Mustaphalli that she had wanted to invest in a safe, non-risky investment, he reassured her that the Fund would "stabilize" in "another couple of weeks."

112. When individuals in the second group of investors complained to Mustaphalli about the Fund's losses, Mustaphalli again blamed the losses on general market conditions, and did not reveal that he was employing a risky, leveraged trading strategy.

113. Mustaphalli falsely assured one such investor that the Fund's losses were due to a

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[15] If the Fund had held equities, its value would have had the potential to rise. In 2012, the S&P 500's value was up by approximately 13%; in 2013, it was up approximately 29%. *See* Morningstar, Inc. http://performance.morningstar.com/Performance/index-c/performance-return.action?t=SPX&region=usa&culture=en-US, (last visited June 9, 2017).

decline in the stock market and that his investment would recover with the stock market. In actuality, because the Fund held very few stocks, the value of those stocks would have had to increase four-fold for the Fund to just break even.

114. Mustaphalli initially told another investor that the losses reflected on her annual partnership tax statement were a mistake. Mustaphalli later told her that the losses in her account were due to "oil, bad markets and the election." Mustaphalli even promised her "if Hillary wins, you'll get your money back." He told yet another investor that "Brexit" was to blame for the Fund's losses.

115. Mustaphalli concealed from the Fund's investors that he was engaged in reckless and risky trading strategies, namely a short-term speculative options trading strategy from 2011 to 2014 and a highly leveraged trading strategy from 2015 to 2016. Mustaphalli never informed the Fund's investors of, or explained, the risky nature of these strategies. Instead, through misleading statements, omissions, and false reassurances, he actively concealed the trading strategies and their risk from the Fund's investors.

116. Mustaphalli's failure to inform his clients that the Fund used risky and speculative trading strategies was material because his clients would not have invested in the Fund if they knew it meant such a departure from their past investments or that Mustaphalli was essentially gambling with their life savings.

V. MUSTAPHALLI'S TRADING IN UNSUITABLE INVESTMENTS CAUSED HIS INVESTORS TO SUFFER ENORMOUS LOSSES

117. At the beginning of 2012, the Fund's trading account was worth more than $7 million. As Mustaphalli increased his short-term options trading, without incorporating any meaningful equity or debt investments to offset the losses caused by his options positions, the Fund drastically declined in value. By the end of 2014, the value of the Fund was down to

$167,518.

118. In 2015-2016, Mustaphalli's leveraged trading exposed the investors to extreme sensitivity to daily market movement. By the end of September 2015, the Fund had lost more than $4 million of the $5 million invested by the second group of investors less than six months earlier.

119. Instead of investing his clients' life savings in conventional portfolios comprised of stocks, bonds, mutual funds, ETFs, or annuities that were consistent with their investor profiles, Mustaphalli gambled away his clients' nest eggs by employing speculative options and leveraged trading strategies that exposed his clients to far greater risk than they could have ever imagined.

VI. MUSTAPHALLI FRAUDULENTLY TRANSFERRED THE FUND'S AND HIS OWN ASSETS TO SHELL ENTITIES HE CREATED

A. Mustaphalli Looted the Fund by Making Payments to LSA, L & S and the Cricket Club

120. By early 2016, the Fund's assets were down to approximately $1 million. Once again, facing the prospect of a small management fee (just $20,000 if the assets stayed at $1 million), Mustaphalli fraudulently conveyed monies from the Fund to pay himself through LSA, a shell company that he created. Mustaphalli transferred the Fund's money to LSA for no consideration, to place it out of reach of creditors, and to use it for personal expenditures.

121. Mustaphalli formed LSA on January 19, 2016, shortly after the OAG served its January 4, 2016 subpoena on Mustaphalli. Mustaphalli owns and controls LSA. Upon information and belief, Mustaphalli is the only person associated with LSA.

122. Immediately after forming LSA, and between February and August 2016, Mustaphalli caused the Fund to make payments to LSA of between $12,500 and $15,000, for a

total of $100,000, as summarized below:

Date	Amount	Check Number	Category
2/22/2016	$12,500.00	995021	Research
3/9/2016	$12,500.00	995023	Research
5/3/2016	$15,000.00	995027	Research
5/31/2016	$15,000.00	995033	Research
6/13/2016	$15,000.00	995036	Research
7/19/2016	$15,000.00	995040	Research
8/19/2016	$15,000.00	995043	Research
Total	**$100,000.00**		

123. The Fund's administrator documented the transactions to LSA as payments for "research," and certain of the checks written to LSA and authorized by Mustaphalli contain memo lines that note, for example, "Research & Quant Fee." However, there is no credible evidence that LSA provided any research or other services to the Fund and, though he recently acknowledged a connection to LSA, Mustaphalli previously denied any knowledge of its existence or purpose just a few months after the last payment from the Fund to LSA.

124. The Fund's trading pattern does not offer any indication that the Fund implemented a new quantitative research strategy after purportedly engaging LSA. In fact, between February and August 2016, the Fund traded in just four different equity securities and a few related options that Mustaphalli had been trading for years.

125. From March 2016 through September 2016, LSA made payments to L & S and the Cricket Club, other entities controlled by Mustaphalli, for no consideration and with intent to place the money received from the Fund out of reach of creditors and to use it for personal expenditures.

126. L & S is owned and controlled by Mustaphalli and the address of L & S is the same as Mustaphalli's home address.

127. Mustaphalli caused LSA to make payments to L & S totaling at least $81,020, as summarized below:

Date	**Amount**	**Check Number**	**Memo**
3/18/2016	$20,010.00	N/A	N/A
5/9/2016	$10,010.00	N/A	N/A
6/1/2016	$4,000.00	1002	Loan
6/14/2016	$10,000.00	1001	Loan
7/5/2016	$10,000.00	1003	Loan Q2- 2016
7/28/2016	$10,000.00	1005	Research Fee/Leads
8/21/2016	$10,000.00	1006	Research
9/20/2016	$7,000.00	1007	Research/Leads
Total	**$81,020.00**		

128. To make these transfers of funds appear legitimate, Mustaphalli indicated in the memo line on some of the checks that the payments were for "Research Fee/Leads" or for "Research" or "Loan." Yet, there is no evidence that L & S provided any research or loans to LSA. Mustaphalli has recently identified L & S as a "real estate holding" company. Furthermore, by paying himself through LSA, Mustaphalli's total compensation from the Fund amounted to approximately 13% of the Fund's assets (including the 2% he received in management fees from the Fund). This far exceeded the management fee that had been agreed upon with his clients, memorialized in the IMA, and the fees disclosed in the PPM. Mustaphalli did not tell his clients that he was paying himself this unauthorized and excessive amount from the Fund's assets.

129. L & S's bank records show that it regularly made payments to preschools in Mustaphalli's neighborhood, to Mustaphalli's spouse, and for other seemingly personal items.

130. LSA also transferred $4,500 to the Cricket Club supposedly for "sponsorship." The Cricket Club is also operated and controlled by Mustaphalli, and its funds are used for his

personal expenditures, such as payments to an apparent family member and payments to L & S.

131. In 2016, the Fund's aggregate payments to LSA amounted to $100,000, approximately 11% of the Fund's average value that year, leaving the Fund with unreasonably small capital to satisfy potential withdrawals by defrauded investors.

132. At the time of these transfers, Mustaphalli was aware of the OAG's investigation of his fraudulent conduct. Mustaphalli caused the Fund to transfer a total of $100,000 to LSA with the intent to hinder potential recovery by potential creditors in connection with his fraudulent conduct. Mustaphalli's and the Fund's potential liability to the victims of his fraudulent practices rendered him and the Fund insolvent at the time of the transfer.

133. By subsequently transferring the money from LSA to L & S and the Cricket Club, Mustaphalli intended to place these assets even further from reach of potential creditors such as his investors. After the transfers, LSA had approximately $80 in its account, rendering it insolvent and unable to satisfy the potential judgment against it for fraudulent conveyance.

B. Mustaphalli Fraudulently Conveyed His House to L & S to Put It Out of Reach of Potential Creditors

134. Mustaphalli formed L & S in August 2013, shortly after the OAG first contacted Mustaphalli about its investigation of his fraudulent sales of securities in his Fund.

135. On September 12, 2013, within a month of forming L & S and learning about the OAG's investigation, Mustaphalli conveyed his house, located at 57 Schuyler Drive, Commack, New York, to L & S for $10, with the intent to place it out of reach of his and the Fund's creditors and his defrauded investors in the event of any recoveries by them against him.

136. Furthermore, upon information and belief, after transferring funds from LSA to L & S, Mustaphalli caused L & S to make payments towards a mortgage and a home equity loan

associated with the property at 57 Schuyler Drive.

137. At the time Mustaphalli transferred his house to L & S in 2013, the Fund had already lost over $6.6 million of investors' assets. Mustaphalli's potential liability to the victims of his fraudulent practices rendered him insolvent at the time of the transfer.

VII. MUSTAPHALLI VIOLATED NEW YORK STATE INVESTMENT ADVISER REGISTRATION REQUIREMENTS

138. Through MAG and MCM, Mustaphalli provided investment advice for compensation in New York State in at least two distinct ways while suspended by FINRA and while unregistered with the State of New York.

139. First, Mustaphalli placed trades in and collected management fees from the accounts of more than 40 investment advisory clients during the first three months of 2015 while MAG was unregistered in New York.

140. Second, while MAG was unregistered in New York, Mustaphalli recommended that many of his investment advisory clients invest in his Fund.

141. Moreover, while MAG was unregistered, Mustaphalli managed the Fund and continued to collect fees and other unauthorized and excessive amounts from his clients. Due to MAG's lapsed registration, Mustaphalli was not lawfully permitted to collect investment advisory fees from his clients.

142. Mustaphalli also failed to maintain the following four categories of documents required under New York law: (i) originals or copies of the IMAs for certain of his investment adviser clients, as required under 13 NYCRR § 11.9(8); (ii) a list of his discretionary accounts, as required under 13 NYCRR § 11.9(6); (iii) client files that contained original IMAs, as required under 13 NYCRR § 11.9(13)(i); and (iv) risk analysis as required under 13 NYCRR § 11.9(13)(vii).

VIII. MUSTAPHALLI WITHDREW FUNDS IN VIOLATION OF AN ORDER PURSUANT TO GBL § 354

143. On September 26, 2016, the New York Supreme Court issued an order pursuant to GBL § 354 directing that Mustaphalli, Mustaphalli Group, MCM and MAG, "their principals and agents are preliminarily restrained from making withdrawals from any account in the name of Mustaphalli Capital Partners Fund, L.P., Mustaphalli Advisory Group, LLC, Mustaphalli Capital Management, LLC, and/or Mustaphalli Group, LLC, at any bank, savings and loan association, broker dealer, or other financial depository located inside or outside New York, for purposes other than to satisfy withdrawal requests from any limited partner of the Mustaphalli Capital Partners Fund, L.P., other than Respondents."

144. However, bank records for the account of Mustaphalli Capital Management, LLC at Suffolk Federal Credit Union show a withdrawal of $10,000, almost the entire balance of the account, on November 14, 2016. These bank records also show that Mustaphalli was the only authorized party listed on that account. Upon information and belief, such withdrawal violated the September 26, 2016 Order.

<u>CAUSES OF ACTION</u>

FIRST CAUSE OF ACTION

Scheme to Defraud and other Fraudulent Practices

(Martin Act Securities Fraud - General Business Law §§ 352 *et seq.* as to Mustaphalli, MAG, MCM, the Fund, the Mustaphalli Group; and as to LSA, L & S and the Cricket Club for relief)

145. The Attorney General repeats and re-alleges the paragraphs above as if fully stated herein.

146. The acts and practices of the Defendants alleged herein violated Article 23-A of the General Business Law, in that they constituted a scheme to defraud and other fraudulent practices as defined in General Business Law §§ 352 *et seq.*

SECOND CAUSE OF ACTION

Material Misstatements and Omissions

(Martin Act Securities Fraud - General Business Law §§ 352 *et seq.* as to Mustaphalli, MAG, MCM, the Fund, the Mustaphalli Group; and as to LSA, L & S and the Cricket Club for relief)

147. The Attorney General repeats and re-alleges the paragraphs above as if fully stated herein.

148. The acts and practices of Mustaphalli, MAG, MCM, the Fund, and the Mustaphalli Group alleged herein violated Article 23-A of the General Business Law, in that Defendants made, or caused to be made, representations or statements which were false, where (i) they knew the truth, or (ii) with reasonable efforts could have known the truth, or (iii) made no reasonable effort to ascertain the truth, or (iv) did not have knowledge concerning the representations or statements made or where Defendants made material omissions, where said representations, statements or omissions were engaged in to induce or promote the issuance, distribution, exchange, sale, negotiation, or purchase within or from this state of securities.

149. The acts and practices of Mustaphalli, MAG, MCM, the Fund, and the Mustaphalli Group alleged herein violated Article 23-A of the General Business Law, in that they involved the use or employment of a fraud, deception, concealment, suppression, or false pretense, where said uses or employments were engaged in to induce or promote the issuance, distribution, exchange, sale, negotiation, or purchase within or from this state of securities.

THIRD CAUSE OF ACTION

Unsuitability

(Martin Act Securities Fraud - General Business Law §§ 352 *et seq.* as to Mustaphalli, MAG, MCM, the Fund, the Mustaphalli Group; and as to LSA, L & S and the Cricket Club for relief)

150. The Attorney General repeats and re-alleges the paragraphs above as if fully stated herein.

151. The acts and practices of Mustaphalli, MAG, MCM, the Fund and the Mustaphalli Group consisting of recommending or effecting sales of limited partnership interests in the Fund to customers which were unsuitable for their investment objectives, risk tolerances, investment experience, time horizon, net worth, incomes or resources, constitutes a fraudulent practice in violation of the Martin Act, GBL § 352 *et seq.*

FOURTH CAUSE OF ACTION

(Persistent Fraud and Illegality – Executive Law § 63(12) as to Mustaphalli, MAG, MCM, the Fund, the Mustaphalli Group; and as to LSA, L & S and the Cricket Club for relief)

152. The Attorney General repeats and re-alleges the paragraphs above as if fully stated herein.

153. The acts and practices of Defendants alleged herein constitute conduct proscribed by § 63(12) of the New York Executive Law, in that Defendants (a) engaged in repeated fraudulent or illegal acts or otherwise demonstrated persistent fraud or (b) repeatedly violated the Martin Act in the carrying on, conducting or transaction of business within the meaning and intent of Executive Law § 63(12).

FIFTH CAUSE OF ACTION

(Common Law Fraud as to Defendants Mustaphalli, MAG, MCM, the Fund, and the Mustaphalli Group; and as to LSA, L & S and the Cricket Club for relief))

154. The Attorney General repeats and re-alleges the paragraphs above as if fully stated herein.

155. Defendant Mustaphalli, personally and through the other Defendants, misrepresented to the Fund investors material facts about the Fund, such as its true investment objective and investment risk.

156. Mustaphalli, owing a duty to the investors failed to disclose material facts about the Fund including that it was unsuitable to their needs and desires.

157. Mustaphalli knew that his misrepresentations and omissions were false and misleading and that the Fund was not a suitable investment for his clients. Mustaphalli intentionally misrepresented and omitted material information, including relating to the suitability of the Fund, in order to induce his clients to invest in the Fund.

158. Mustaphalli's clients reasonably relied on Mustaphalli's misrepresentations, recommendation and investment advice because of their relationships with him as their financial advisor and investment adviser. Mustaphalli's clients would not have invested in the Fund had they known that the Fund employed risky and speculative strategies, facts that Mustaphalli never disclosed to them.

159. Mustaphalli's conduct caused economic injury to his clients-turned-investors in his Fund.

SIXTH CAUSE OF ACTION

(Breach of Fiduciary Duty as to Defendants Mustaphalli, MAG, MCM, and the Mustaphalli Group; and as to Fund, LSA, L & S and the Cricket Club for relief)

160. The Attorney General repeats and re-alleges the paragraphs above as if fully stated herein.

161. Mustaphalli, individually and through MAG and MCM, owed fiduciary duties to his investment advisory clients as their investment adviser and to the limited partners as investment manager to the Fund.

162. Mustaphalli, individually and through the Mustaphalli Group, owed fiduciary duties to the limited partners as general partner to the Fund.

163. By engaging in the acts and conduct described in this complaint, Defendants Mustaphalli, MAG, MCM and the Mustaphalli Group breached these fiduciary duties. Defendants' breaches caused economic injury to Mustaphalli's clients who became limited partners in the Fund.

SEVENTH CAUSE OF ACTION

(Unjust Enrichment as to Defendants LSA, L & S and the Cricket Club)

164. The Attorney General repeats and re-alleges the paragraphs above as if fully stated herein.

165. Through the acts and practices alleged herein, Defendants LSA, L & S and the Cricket Club unjustly enriched themselves in an amount to be determined at trial.

EIGHT CAUSE OF ACTION

(Violation of New York Investment Adviser Registration Provisions of the Martin Act GBL§ 359-eee and Regulations thereunder, 13 NYCRR § 11 as to Defendants Mustaphalli, MAG and MCM)

166. The Attorney General repeats and re-alleges the paragraphs above as if fully stated herein.

167. The acts and practices of Defendants alleged above violated New York General Business Law §§ 359-eee and regulations promulgated thereunder including provisions of Official Compilation of Codes, Rules, and Regulations of the State of New York Title 13,

Chapter II, Subchapter A, Part 11, insofar as such acts and practices amount to the provision of investment advice while unregistered, failure to register with the State as an investment adviser, failure to renew such registration and failure to maintain books and records in accordance with the law.

NINTH CAUSE OF ACTION

(Violation of GBL § 359-g of the Martin Act as to Defendants Mustaphalli and MCM)

168. The Attorney General repeats and re-alleges paragraphs 143-144 as if fully stated herein.

169. Mustaphalli and MCM violated New York General Business Law § 359-g in as much as Mustaphalli and MCM have been served with the September 26, 2016 order issued pursuant to the provisions of section § 354 enjoining practices and transactions and Mustaphalli, and MCM having knowledge of the issuance of the order, while such order is in effect, have disobeyed the same by withdrawing and/or transferring money from an account of MCM after the date of the Order.

TENTH CAUSE OF ACTION

(Violation of New York Debtor and Creditor Law ("DCL") § 273 as to Defendants Mustaphalli, the Fund, LSA, L & S and the Cricket Club)

170. The Attorney General repeats and re-alleges paragraphs 120-137 as if fully stated herein.

171. In violation of DCL § 273, Mustaphalli caused the Fund to fraudulently transfer to LSA at least $100,000 without fair consideration. Mustaphalli made these transfers while potentially liable to the victims of his fraudulent conduct, rendering him and the Fund insolvent at the time of the transfer.

172. In violation of DCL § 273, Mustaphalli caused LSA to fraudulently transfer at least $81,020 of the money received from the Fund to L & S and at least $4,500 to the Cricket Club without fair consideration. After the transfers, LSA had approximately $80 in its account, rendering it insolvent and unable to satisfy any potential judgment against it.

173. In violation of DCL § 273 Mustaphalli fraudulently transferred his house, located at 57 Schuyler Drive, Commack, New York, to L & S for $10.00, without fair consideration while potentially liable to the victims of his fraudulent practices, which would have rendered him insolvent at the time of the transfer.

ELEVENTH CAUSE OF ACTION

(Violation of New York Debtor and Creditor Law ("DCL") § 274 as to Defendants Mustaphalli, the Fund, LSA, L & S and the Cricket Club)

174. The Attorney General repeats and re-alleges paragraphs 120-137 as if fully stated herein.

175. In violation of DCL § 274, Mustaphalli caused the Fund to fraudulently transfer to LSA $100,000 and caused LSA to fraudulently transfer at least $81,020 of the money received from the Fund to L & S and at least $4,500 to the Cricket Club, all without fair consideration, while Mustaphalli was still trading the Fund's assets. These transfers left Mustaphalli, the Fund and LSA with unreasonably small capital and were fraudulent as to any potential creditors.

176. In violation of DCL § 274, Mustaphalli fraudulently transferred his house, located at 57 Schuyler Drive, Commack, New York, to L & S for $10.00, without fair consideration. while Mustaphalli was still trading the Fund's assets. This transfer left Mustaphalli with unreasonably small capital and was fraudulent as to any potential creditors.

TWELFTH CAUSE OF ACTION

(Violation of New York Debtor and Creditor Law ("DCL") § 276 as to Defendants Mustaphalli, the Fund, LSA, L & S and the Cricket Club)

177. The Attorney General repeats and re-alleges paragraphs 120-137 as if fully stated herein.

178. In violation of DCL § 276, Mustaphalli caused the Fund to fraudulently transfer to LSA $100,000 without fair consideration with intent to hinder, delay or defraud present or future creditors.

179. In violation of DCL § 276, Mustaphalli caused LSA to fraudulently transfer at least $81,020 of the money received from the Fund to L & S and at least $4,500 to the Cricket Club without fair consideration and with intent to hinder, delay or defraud present or future creditors.

180. In violation of DCL § 276, Mustaphalli fraudulently transferred his house, located at 57 Schuyler Drive, Commack, New York, to L & S for $10.00, with intent to hinder, delay or defraud present or future creditors.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

A. Permanently enjoining all Defendants and their principals, agents, and employees from violating the Martin Act, Article 23-A of the General Business Law, and Executive Law § 63(12), and from engaging in the fraudulent, deceptive and illegal acts alleged herein;

B. Permanently enjoining Dean Mustaphalli from engaging in any business related to the issuance, distribution, exchange, advertisement, negotiation, purchase, investment advice, or sale of securities within or from this state;

C. Directing Defendants to pay damages caused, directly or indirectly, by the fraudulent and deceptive acts and repeated fraudulent acts and persistent illegality complained of herein plus applicable pre-judgment interest;

D. Directing Defendants to disgorge all amounts obtained in connection with or as a result of the violations of law alleged herein, all moneys obtained in connection with or as a result of the fraud alleged herein, and all amounts by which Defendants have been unjustly enriched in connection with or as a result of the acts, practices, and omissions alleged herein;

E. Directing Defendants to make restitution of all funds obtained from investors in connection with the fraudulent and deceptive acts complained of herein;

F. Directing rescission of all Fund subscription agreements;

G. Directing Defendants to pay penalties for each instance of the provision of investment advice while unregistered and for each instance of failure to maintain records in accordance with New York law and regulations;

H. Directing such other legal and equitable relief as may be necessary to redress Defendants' violations of New York law, including under DCL§§ 273, 274, 276 and 279;

I. Directing Defendants to pay Plaintiff's costs, including attorneys' fees; and

J. Granting such other and further relief as may be just and proper.

Dated: New York, New York
June 14, 2017

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