

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA
JUDGE T. JACKSON BEDFORD, JR., PRESIDING

HYPERDYNAMICS CORPORATION,)
))
Plaintiff,)

v.)

J.P. CAREY SECURITIES, INC., J.P.)
CAREY ASSET MANAGEMENT LLC,)
JOSEPH C. CANOUSE, JOHN C.)
CANOUSE, JAMES P. CANOUSE,)
JEFFREY CANOUSE, CACHE)
CAPITAL (USA), L.P., CARPE DIEM,)
CARPE DIEM LTD., STEPHEN HICKS)
a/k/a STEVE HICKS, SOUTHRIDGE)
CAPITAL MANAGEMENT LLC,)
DAVID SIMS, NAVIGATOR)
MANAGEMENT LTD., FALCON)
SECRETARIES, LTD., MINGLEWOOD)
CAPITAL, LLC, WELLINGTON, LLC,)
MARK VALENTINE, THOMSON)
KERNAGHAN & CO., LIMITED,)
SOVEREIGN PARTNERS, L.P.)
DOMINION CAPITAL FUND LTD.,)
CANADIAN ADVANTAGE LIMITED)
PARTNERSHIP, VMH LIMITED,)
TERRAPIN TRADING, LLC, BEACON)
CAPITAL MANAGEMENT LTD., and)
LIVINGSTONE ASSET)
MANAGEMENT LTD.,)

CIVIL ACTION FILE

NO. 2001CV44988

Defendants.)

FOURTH AMENDED COMPLAINT - NOTICE OF
FILING UNDER SEAL

WELLINGTON, LLC,)

Counterclaim/Third-Party)
Plaintiff,)

v.)

HYPERDYNAMICS CORPORATION,)
a Delaware corporation, KENT WATTS,)
MICHAEL WATTS, ROBERT HILL,)
HARRY J. BRIERS, DJX, LTD., a)
Belize corporation, and DOES 1-10,)

Counterclaim/Third-Party)
Defendants.)

The enclosed document is hereby designated as "Confidential" and is being filed under seal. The enclosed document is to be kept under seal and released only upon further Order of the Court.

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STATE OF GEORGIA
JUDGE T. JACKSON BEDFORD, JR., PRESIDING

HYPERDYNAMICS CORPORATION,)
))
Plaintiff,)

v.)

J.P. CAREY SECURITIES, INC., J.P.)
CAREY ASSET MANAGEMENT LLC,)
JOSEPH C. CANOUSE, JOHN C.)
CANOUSE, JAMES P. CANOUSE,)
JEFFREY CANOUSE, CACHE)
CAPITAL (USA), L.P., CARPE DIEM)
LTD., STEPHEN HICKS a/k/a)
STEVE HICKS, SOUTHRIDGE)
CAPITAL MANAGEMENT LLC,)
DAVID SIMS, NAVIGATOR)
MANAGEMENT LTD., FALCON)
SECRETARIES, LTD., MINGLEWOOD)
CAPITAL, LLC, WELLINGTON, LLC,)
MARK VALENTINE, THOMSON)
KERNAGHAN & CO., LIMITED,)
SOVEREIGN PARTNERS, L.P.,)
DOMINION CAPITAL FUND LTD.,)
CANADIAN ADVANTAGE LIMITED)
PARTNERSHIP, VMH LIMITED,)
TERRAPIN TRADING, LLC, BEACON)
CAPITAL MANAGEMENT LTD., and)
LIVINGSTONE ASSET)
MANAGEMENT LTD.,)

Defendants.)

WELLINGTON, LLC,)

Counterclaim/Third-Party)
Plaintiff,)

v.)

HYPERDYNAMICS CORPORATION,)
a Delaware corporation, KENT WATTS,)

CIVIL ACTION FILE

NO. 2001CV44988

FOURTH AMENDED COMPLAINT-
FILED UNDER SEAL

**MICHAEL WATTS, ROBERT HILL,)
HARRY J. BRIERS, DJX, LTD., a)
Belize corporation, and DOES 1-10,)
)
Counterclaim/Third-Party)
Defendants.)**

Hyperdynamics Corporation (“Hyperdynamics”), Plaintiff herein, respectfully files and serves this Fourth Amended Complaint against Defendants, J.P. Carey Securities, Inc. (“JPCSI”), J.P. Carey Asset Management LLC (“JPCAM”), Joseph C. Canouse (“Joe Canouse”), John C. Canouse (“Jack Canouse”), James P. Canouse (“Jim Canouse”), Jeffrey Canouse (“Jeff Canouse”), Cache Capital (USA), L.P. (“Cache”), Carpe Diem Ltd. (“Carpe”), Stephen Hicks a/k/a Steve Hicks (“Hicks”), Southridge Capital Management LLC (“Southridge”), David Sims (“Sims”), Navigator Management Ltd. (“Navigator”), Falcon Secretaries, Ltd. (“Falcon”), Minglewood Capital, LLC (“Minglewood”), Wellington, LLC (“Wellington”), Mark Valentine (“Valentine”), Thomson Kernaghan & Co., Limited, (“TK”), Sovereign Partners, L.P. (“Sovereign”), Dominion Capital Fund Ltd. (“Dominion”), Canadian Advantage Limited Partnership (“CALP”), VMH Limited (“VMH”), Terrapin Trading, LLC (“Terrapin”), Beacon Capital Management Ltd. (“Beacon”), and Livingstone Asset Management Ltd. (“Livingstone”). JPCSI, JPCAM, Joe Canouse, Jack Canouse, Jim Canouse, Jeff Canouse, Cache, Carpe, Hicks, Southridge, Sims, Navigator, Falcon, Minglewood, Wellington, Valentine, TK, Sovereign, Dominion, CALP, VMH, Terrapin, Beacon, and Livingstone are collectively referred to herein as “Defendants.” Hyperdynamics shows this Court the following.

PRELIMINARY STATEMENT

1.

This case involves a conspiracy by and among the Defendants to defraud and manipulate the market in the securities of a number of United States companies to which the Defendants provided “toxic convertible” or “death spiral” financing. The Defendants intentionally conducted their illegal death spiral scheme through the use of a multi-tiered offshore structure designed to conceal the identities of the persons and entities actually providing the financing and conducting the market manipulation and to protect the assets of said persons and entities from liabilities arising from their intentional and anticipated violations of state and federal securities laws and other laws. Hyperdynamics was one of many victims of this conspiracy. Throughout the course of the Hyperdynamics financing transaction and in a number of related financing transactions, the Defendants violated the Georgia Racketeer Influenced Corrupt Organization Act (RICO) by engaging in multiple acts of conversion, fraud, and deception, including wire fraud, mail fraud, and securities fraud. Additionally, multiple Defendants breached their contracts with Hyperdynamics and engaged in numerous other tortious activities. As a result of the Defendants’ activities, Hyperdynamics stock suffered a great decrease in value. At the same time, the Defendants all profited from their activities in furtherance of the conspiracy to damage Hyperdynamics.

PARTIES

The Plaintiff

2.

Hyperdynamics is a Delaware corporation with its principal place of business in Houston, Harris County, Texas.

The Canouse Defendants

3.

JPCSI is a Georgia corporation with its registered office in Fulton County, Georgia. *See*, Deposition of Joseph Canouse, p. 21, lines 14-24; p. 32, line 9-p. 33, line 2. JPCSI has also used the false, fictitious, and fraudulent name “J.P. Carey, Inc.” *See, generally*, Deposition of Joseph Canouse, p. 33, lines 9-11. The purpose of the alias J.P. Carey, Inc. was to deceive Hyperdynamics and others in multiple business dealings. In fact, J.P. Carey, Inc. does not exist according to JPCSI. *See*, Deposition of Joseph Canouse, p. 33, lines 18-23. JPCSI may be served with process by and through its registered agent, Joe Canouse at 555 North Point Center East, 4th Floor, Alpharetta, Fulton County, Georgia, 30022.

4.

JPCAM is a Delaware limited liability company. *See, generally*, Deposition of Joseph Canouse, p. 34, line 3-p. 35, line 2. JPCAM maintains its registered office in Fulton County, Georgia. *See*, Deposition of Tony Auffant, p. 40, lines 18-20. JPCAM has also used the false, fictitious, and fraudulent name “J.P. Carey, Inc.” to deceive Hyperdynamics and others in multiple business dealings. JPCAM is the General Partner of Cache. *See*, Deposition of Joseph Canouse, p. 35, lines 3-5. At all times relevant to this action, JPCAM acted as the “Investment Manager” for Cache and Carpe. *See*, Deposition of Joseph Canouse, p. 35, line 10-p. 36, line 6. JPCAM may be served with process by and through its registered agent, Joe Canouse at 555 North Point Center East, 4th Floor, Alpharetta, Fulton County, Georgia, 30022.

5.

Joe Canouse is an individual residing in Georgia. *See*, Deposition of Joseph Canouse, p. 22, lines 6-7. Joe Canouse may be served at 555 North Point Center East, 4th Floor, Alpharetta,

Fulton County, Georgia, 30022. At all times relevant to this action, Joe Canouse acted as the President and sole owner of JPCSI and JPCAM. *See*, Deposition of Joseph Canouse, p. 38, line 1-p. 39, line 4. Joe Canouse personally directed and controlled the actions of JPCSI, JPCAM, Cache, and Carpe. *See*, Deposition of Joseph Canouse, p. 39, line 24-p. 41, line 4; Deposition of Tony Auffant, p. 48, line 20-p. 49, line 19. Joe Canouse has had extensive prior business dealings with Jack Canouse, Jim Canouse, Jeff Canouse, Hicks, Valentine, and the entities which they own and control. *See, generally*, Deposition of Joseph Canouse, p. 48, lines 14-20; p. 51, lines 9-17; p. 57, lines 11-18; p. 60, lines 12-23; p. 61, line 14-p. 62, line 15; p. 63, line 3-p. 64, line 14; p. 76, line 22-p. 77, line 3; p. 80, lines 7-12; p. 161, lines 21-23; p. 169, lines 8-13; p. 188, lines 16-25; Deposition of Mark Valentine, p. 68, lines 1-11; Second Affidavit of Stephen Hicks in Support of Motion to Dismiss for Lack of Personal Jurisdiction, ¶¶ 2-3. All of the human Canouse Defendants are brothers. *See*, Deposition of Joseph Canouse, p. 41, lines 8-13.

6.

Jack Canouse is an individual residing in Georgia. *See*, Deposition of Joseph Canouse, p. 41, lines 8-9. Jack Canouse may be served at 555 North Point Center East, 4th Floor, Alpharetta, Fulton County, Georgia, 30022. At all times relevant to this action, Jack Canouse acted as an officer of JPCSI and JPCAM. *See*, documents bates numbered JP5157-JP5174. Jack Canouse has had extensive prior business dealings with Joe Canouse, Jim Canouse, Jeff Canouse, Hicks, Valentine, and the entities which they own and control. *See, generally*, Deposition of John Canouse, p. 23, lines 1-3; p. 25, lines 23-24; p. 26, lines 8-10 and 21-22; p. 32, line 25-p. 33, line 2; p. 33, lines 14-21; p. 34, lines 4-6; p. 35, lines 19-23; p. 36, line 13-p. 37, line 2; p. 37, line 11-p. 38, line 1.

7.

Jim Canouse is an individual residing in Georgia. *See*, Deposition of Joseph Canouse, p. 41, lines 10-11. Jim Canouse may be served at 555 North Point Center East, 4th Floor, Alpharetta, Fulton County, Georgia, 30022. At all times relevant to this action, Jim Canouse acted as an officer of JPCSI and JPCAM. *See*, documents bates numbered JP5157-JP5174.

8.

Jeff Canouse is an individual residing in Georgia. *See*, Deposition of Joseph Canouse, p. 41, lines 12-13. Jeff Canouse may be served at 555 North Point Center East, 4th Floor, Alpharetta, Fulton County, Georgia, 30022. Between January 1998 and May 2000, Jeff Canouse acted as an officer of JPCSI and JPCAM. *See*, Deposition of Tony Auffant, p. 45, line 23-p. 46, line 2; *see, also*, documents bates numbered JP5157-JP5174.

9.

Cache is a Delaware limited partnership. *See*, Deposition of Joseph Canouse, p. 44, lines 17-22. Cache may be served with process at its registered office by and through its registered agent, Joe Canouse at 555 North Point Center East, 4th Floor, Alpharetta, Fulton County, Georgia, 30022. Cache has also done business under the false, fictitious, and fraudulent names "Cache Capital L.P." and "Cache Capital USA, L.P." Cache registered to transact business in Georgia under the false, fictitious, and fraudulent name "Cache Capital, L.P."

10.

Carpe is an Anguillan business entity of unknown nature. Carpe transacted business in the State of Georgia by and through its agents, Joe Canouse, JPCSI, and JPCAM. *See*, Deposition of Tony Auffant, p. 34, line 24-p. 35, line 18; p. 97, line 19-p. 98, line 3; *see, also*, Deposition of Joseph Canouse, p. 265, lines 4-20. Carpe has also transacted business under the

fictitious name “Carpe Diem.” Carpe has never registered to transact business in the State of Georgia. Carpe may be served by and through its Investment Manager, Joseph C. Canouse, at 555 North Point Center East, 4th Floor, Alpharetta, Fulton County, Georgia, 30022.

11.

JPCSI, JPCAM, Joe Canouse, Jack Canouse, Jim Canouse, Jeff Canouse, Cache, and Carpe, are collectively referred to herein as “the Canouse Defendants.”

The Hicks/Sims Defendants

12.

Hicks is an individual who is a Canadian citizen residing in Connecticut and who may be served at 90 Grove Street, Ridgefield, Connecticut 06877. *See*, Stephen Hicks’ Audited Responses to Plaintiff’s First Interrogatories, Response to Interrogatory No. 1; *see, also*, Deposition of Stephen Hicks, p. 18, lines 3-4, 16-18. At all times relevant to this action, Hicks acted as the managing director of Southridge. *See*, Deposition of Stephen Hicks, p. 22, line 22. Hicks has extensive prior business dealings with the Canouse Defendants, Sims, and Valentine. Hicks personally directed the creation of a multi-tiered offshore structure (sometimes referred to by Defendants as the “SPV/Minglewood/Terrapin structure”) to facilitate the tortious activities of the Hicks/Sims Defendants (defined below). *See*, Minglewood Capital, LLC’s Responses to Plaintiff’s First Interrogatories, Response to Interrogatory No. 23. Hicks, acting through Southridge, directed the illegal trading activity conducted by Wellington and by each of the special purpose vehicles (“SPVs”) used in each of the related financing transactions. *See, generally*, Wellington, LLC’s Amended Supplemental Responses to Michael Watts’ First Interrogatories, Response to Interrogatory No. 1. Hicks also directed trades of Hyperdynamics securities through Atlantis Capital Fund, Ltd. (“Atlantis”), which Hicks, Sims, and Joe Canouse

controlled jointly. *See*, Deposition of Joseph Canouse, p. 135, line 3- p. 136, line 24; p. 140, lines 15-25. Hicks, acting through Southridge, directed the investment decisions made by the Offshore Funds as defined below. *See*, Deposition of Southridge Capital Management LLC, p. 176, lines 6-14; p. 178, lines 5-15; *see, also*, Wellington, LLC's Amended Supplemental Responses to Michael Watts' First Interrogatories, Response to Interrogatory No. 3. Hicks, acting through Southridge, directed the transfer of funds and proceeds through the multi-tiered offshore structure. *See*, Wellington, LLC's Amended Supplemental Responses to Michael Watts' First Interrogatories, Response to Interrogatory Nos. 3, 7-9.

13.

Southridge is a Delaware limited liability company with its principal place of business in Ridgefield, Connecticut. *See*, Southridge Capital Management LLC's Audited Responses to Plaintiff's First Interrogatories, Response to Interrogatory No. 1. Southridge may be served at its registered office by and through its registered agent, Registered Agents Ltd., 1220 N. Market Street, Suite 606, Wilmington, Delaware 19801. At all times relevant to this action, Southridge was directed and controlled by Hicks, its managing director. *See*, Deposition of Stephen Hicks, p. 35, lines 3-5. At all times relevant to this action, Southridge was a client of the Canouse Defendants with whom Hicks and Southridge have a long standing relationship. *See*, Deposition of Joseph Canouse, p. 51, lines 9-17. Southridge was the "subadvisor" to Minglewood, Wellington, Terrapin, Livingstone, Dominion, and numerous other SPVs used in the Hyperdynamics financing transaction and in several related financing transactions. *See*, Southridge Capital Management LLC's Fourth Supplemental Responses to Plaintiff's First Interrogatories, Response to Interrogatory No. 25. Southridge's Subadvisor Agreements conferred virtually unlimited power to Southridge to act on behalf of entities being "subadvised"

by Southridge, including a general power of attorney. *See*, documents bates numbered SCM131-SCM140. Therefore, Southridge and Hicks exercised control over all entities in the multi-tiered offshore structure. *See*, Deposition of Michael Griffin, p. 123, line 9-p. 124, line 4. Southridge was the General Partner of Sovereign. *See*, Deposition of Stephen Hicks, p. 61, line 25-p. 62, line 2. Southridge was also a “subadvisor” to each of the Offshore Funds (defined below) which funded the Hyperdynamics transaction. *See*, Deposition of Henry Sargent, p. 37, lines 5-13; *see, also*, Southridge Capital Management LLC’s Fourth Supplemental Responses to Plaintiff’s First Interrogatories, Response to Interrogatory No. 25. Additionally, Southridge was the “subadvisor” to Atlantis, which Hicks, Sims, and Joe Canouse controlled jointly, and which was used to trade Hyperdynamics securities. *See*, Deposition of Joseph Canouse, p. 135, line 3-p. 136, line 24; p. 140, lines 15-25. Hicks, acting through Southridge, directed the trading activities of Wellington as well as the trading activities of each of the SPVs used in each of the related financing transactions. *See*, Wellington, LLC’s Amended Supplemental Responses to Michael Watts’ First Interrogatories, Response to Interrogatory No. 1; *see, also*, Deposition of Henry Sargent, p. 84, lines 11-13. Hicks, acting through Southridge, also made the investment decisions for the Offshore Funds and directed the transfer of funds and proceeds through the multi-tiered offshore structure. *See*, Deposition of Southridge Capital Management LLC, p. 37, lines 5-13; *see, also*, Wellington, LLC’s Amended Supplemental Responses to Michael Watts’ First Interrogatories, Response to Interrogatory Nos. 1, 3-9.

14.

Sims is an individual who may be served with process at Harbour House, 2nd Floor, Waterfront Drive, Post Office Box 972, Road Town, Tortola, British Virgin Islands. Sims is the sole director of Falcon, Navigator, and Beacon. *See*, Deposition of David Sims, p. 16, lines 16-

18; p. 19, lines 3-17. Sims is also a director and/or officer of Livingstone and a director of Dominion. *See*, Deposition of David Sims, p. 19, lines 10-14; *see, also*, document bates numbered SCM6046. Sims executed signature pages to Wellington, LLC's Regulation D Subscription Agreements and related documents in the Hyperdynamics death spiral scheme and also executed numerous other documents on behalf of Navigator as director of Wellington. *See*, Deposition of David Sims, p. 160, lines 9-17; *see, also*, p. 162, lines 11-22; p. 197, line 17-p. 199, line 16; p. 207, line 19-p. 208, line 6. Sims also assisted Hicks in the transfer of funds and proceeds through the multi-tiered offshore structure. *See*, Wellington, LLC's Amended Supplemental Responses to Michael Watts' First Interrogatories, Response to Interrogatory Nos. 3, 7-9.

15.

Navigator is a British Virgin Islands international business company which may be served with process at its offices at Harbour House, 2nd Floor, Waterfront Drive, Post Office Box 972, Road Town, Tortola, British Virgin Islands through Sims, its sole director, or through Arlene DeCastro ("DeCastro"), its sole officer. Navigator is merely a "paper company" and a "shell entity" which was used by the Hicks/Sims Defendants for the purpose of conducting their illegal death spiral scheme. Navigator is now the sole director of Terrapin, Minglewood, Wellington, and numerous other SPVs which were used by the Hicks/Sims Defendants in other similar financing transactions. *See, generally*, Navigator Management Ltd.'s Third Supplemental Responses to Plaintiff's First Interrogatories, Response to Interrogatory No. 25. Even though Navigator was and is the sole director of Terrapin, Minglewood, Wellington, and the SPVs, Navigator took its directions and orders from Hicks by virtue of the "subadvisor" agreement between Southridge and each of the said entities. *See*, documents bates numbered

SCM131-SCM140; *see, also*, Deposition of Michael Griffin, p. 123, line 9-p. 124, line 4. Navigator is now or was previously an officer of Dominion and, perhaps, an officer and/or director of Livingstone. *See*, Objections and Responses to Plaintiff's Second Continuing Interrogatories to Navigator Management Ltd., Response to Interrogatory Nos. 3 and 8; *see, also*, Deposition of David Sims, p. 237, line 15-p. 238, line 21; document bates numbered SCM6046. Navigator has also done business under the false, fictitious, and fraudulent name "Navigator Management Limited."

16.

Falcon is a British Virgin Islands international business company which may be served by and through its sole director, Sims, or through its secretary, DeCastro, at Harbour House, 2nd Floor, Waterfront Drive, Post Office Box 972, Road Town, Tortola, British Virginia Islands. Falcon is now the sole officer of Terrapin, Minglewood, Wellington, Livingstone, and numerous other SPVs which were used by the Hicks/Sims Defendants in other similar financing transactions. *See, generally*, Deposition of Southridge Capital Management LLC, p. 137, line 22-p. 138, line 5; Deposition of Henry Sargent, p. 33, lines 17-19; p. 35, lines 15-17. Falcon is merely a "paper company" and a "shell entity" which was used by the Hicks/Sims Defendants and the Offshore Funds for the purpose of conducting their illegal death spiral scheme. Falcon was previously misidentified by Defendants in discovery responses as Falcon *Securities*, Ltd. Defendants now state that the correct name is Falcon *Secretaries*, Ltd.

17.

Terrapin is an offshore entity organized as a Cayman Islands limited liability company. *See*, Deposition of Michael Griffin, p. 68, lines 21-24. Terrapin is merely a "paper company" and "shell entity" which has no human owners, officers, directors, or employees and no physical

offices. *See*, Deposition of Henry Sargent, p. 56, line 18-p. 57, line 6; p. 61, line 16-p. 62, line 3; Terrapin Trading, LLC's Objections and Responses to Plaintiff's First Requests for Admission, Response to RFA No. 45. Terrapin was used to funnel the aggregate \$1,500,000.00 investment from Dominion and CALP to Minglewood in the Hyperdynamics transaction. *See*, Minglewood Capital, LLC's Responses to Plaintiff's First Interrogatories, Response to Interrogatory No. 11. Terrapin was subsequently used to funnel the proceeds of the Defendants' illegal market manipulation from Wellington and Minglewood back to the Offshore Funds. *See*, Wellington, LLC's Amended Supplemental Responses to Michael Watts' First Interrogatories, Response to Interrogatory Nos. 5-6; *see, also*, Minglewood Capital, LLC's Responses to Plaintiff's First Interrogatories, Response to Interrogatory No. 10. Terrapin was used in a similar capacity in a number of other death spiral schemes. Terrapin and Sovereign own Minglewood. *See*, Deposition of David Sims, p. 91, lines 2-3, p. 93, lines 20-24. At all times relevant to this action, Terrapin, in turn, was owned by a number of Offshore Funds, including CALP, Dominion, Atlantis, Dominion Investment Fund, LLC ("DIF"), Southshore Capital Fund, Ltd. ("Southshore"), and FETU Holdings, Ltd. ("FETU"). *See*, Deposition of Southridge Capital Management LLC, p. 35, line 21-p. 36, line 18; *see, also*, documents bates numbered SCM4917B-SCM4921B. All of the Offshore Funds which owned shares of Terrapin were controlled by Hicks, Joe Canouse, Sims, and/or Valentine. *See*, Deposition of Henry Sargent, p. 29, line 23-p. 30, line 8; p. 44, lines 20-24; p. 46, lines 9-23; Deposition of Southridge Capital Management LLC, p. 36, line 6-p. 39, line 21. Navigator is now the sole director of Terrapin. *See*, Navigator Management Ltd.'s Second Supplemental Responses to Plaintiff's Second Interrogatories, Response to Interrogatory No. 2. Falcon is now the sole officer of Terrapin. *See*, Navigator Management Ltd.'s Second Supplemental Responses to Plaintiff's Second

Interrogatories, Response to Interrogatory No. 2. Livingstone is the investment advisor for Terrapin. *See*, Deposition of Stephen Hicks, p. 41, lines 14-18. Southridge is the “subadvisor” for Terrapin. *See*, Southridge Capital Management LLC’s Fourth Supplemental Responses to Plaintiff’s First Interrogatories, Response to Interrogatory No. 25. All of the “investment” decisions and many of the decisions regarding the transfer of funds and proceeds through Terrapin were directed and controlled by Hicks as managing director of Southridge and by Sims as sole director of Navigator. *See*, Wellington, LLC’s Amended Supplemental Responses to Michael Watts’ First Interrogatories, Response to Interrogatory Nos. 3, 8-9; *see, also*, Deposition of Southridge Capital Management LLC, p. 311, lines 10-21. Authority for such control was conferred upon Hicks through the Advisor Agreements and Subadvisor Agreements between Southridge and Minglewood. *See*, documents bates numbered SCM131-SCM140.

18.

Minglewood is a Cayman Islands limited liability company which may be served at P.O. Box 30592 S.M.B Cayside, 2nd Floor, George Town, Grand Cayman, Cayman Islands, British West Indies. *See*, Minglewood Capital, LLC’s Responses to Plaintiff’s First Interrogatories, Response to Interrogatory Nos. 8 and 9. Minglewood is merely a “paper company” or “shell entity,” which has no human owners, officers, directors, or employees and no physical offices. *See*, Minglewood Capital, LLC’s Responses to Plaintiff’s First Requests for Admission, Response to RFA No. 85. Minglewood is the sole equity owner of Wellington and of numerous other SPVs used in other similar financing transactions. *See*, Deposition of Stephen Hicks, p. 79, lines 3-20. Navigator is now the sole director of Minglewood. *See*, Deposition of Stephen Hicks, p. 57, lines 20-22. Falcon is now the sole officer of Minglewood. *See*, Navigator Management Ltd.’s Second Supplemental Responses to Plaintiff’s Second Interrogatories,

Response to Interrogatory No. 1. Livingstone is the “advisor” for Minglewood. *See*, Deposition of Southridge Capital Management LLC, p. 66, line 1-p. 67, line 2; Deposition of Henry Sargent, p. 35, lines 18-21. Southridge is the “subadvisor” for Minglewood. *See*, Deposition of Henry Sargent, p. 35, lines 18-21. All of the “investment” decisions made by Minglewood and decisions regarding the transfer of funds and proceeds through Minglewood were directed and controlled by Hicks as managing director of Southridge and by Sims as director of Navigator. *See*, Wellington, LLC’s Amended Supplemental Responses to Michael Watts’ First Interrogatories, Response to Interrogatory No. 8; *see, also*, Deposition of Michael Griffin, p. 123, line 9-p. 124, line 4; Deposition of Southridge Capital Management LLC, p. 309, line 18-p. 312, line 16. Authority for such control was conferred upon Hicks through the Advisor Agreements and Subadvisors Agreements between Southridge and Minglewood. *See*, documents bates numbered SCM131-SCM140.

19.

Livingstone is an offshore “shell entity” investment advisor organized as a Cayman Islands limited liability company. Livingstone can be served c/o Lion Corporate Services Ltd., Delaporte Point, Western District, New Providence Island, Bahamas. Livingstone is the “advisor” to Wellington, Minglewood, Terrapin, Dominion, and numerous SPVs utilized by Defendants in other death spiral schemes. *See*, Deposition of Stephen Hicks, p. 41, lines 14-21. Sims is the director of Livingstone. *See*, Deposition of David Sims, p. 19, lines 10-14. Hicks is the president, or former president, of Livingstone. *See*, Deposition of David Sims, p. 89, lines 6-14; p. 179, lines 8-13.

Wellington is a Cayman Islands limited liability company which can be served at Cayside, 2nd Floor, George Town, Grand Cayman, Cayman Islands, BWI. *See*, Wellington, LLC's "Audited" Responses to Plaintiff's First Interrogatories, Response to Interrogatory No. 1. Wellington is merely a "paper company" or a "shell entity," which has no human owners, officers, directors, or employees, no physical offices, no bank accounts, and no assets other than those provided and controlled by the Hicks/Sims Defendants and the Offshore Funds. *See*, Deposition of Southridge Capital Management LLC, p. 132, line 21-p. 134, line 19; p. 144, lines 10-21. Wellington is the SPV used by the Hicks/Sims Defendants in the Hyperdynamics death spiral scheme. All of the "investment" decisions and all of the trading decisions made by Wellington were directed and controlled by Hicks as managing director of Southridge and by Sims as director of Navigator. *See*, Wellington, LLC's Amended Supplemental Responses to Michael Watts' First Interrogatories, Response to Interrogatory No. 1. Authority for such control was conferred upon Hicks through the Advisor Agreements and Subadvisors Agreements between Southridge and Minglewood. *See*, documents bates numbered SCM131-SCM140.

Beacon is an offshore holding company or investment advisor organized as a British Virgin Islands limited partnership. *See*, Objections and Responses to Plaintiff's Second Interrogatories to Navigator Management Ltd., Response to Interrogatory No. 1. Beacon can be served c/o David Sims at Harbour House, Waterfront Drive, P.O. Box 972, Road Town, Tortola, British Virgin Islands. *See, id.* Beacon is the sole owner of Navigator and Falcon. *See*, Deposition of David Sims, p. 62, lines 1-6. Sims is the founder and director of Beacon. *See*, Deposition of David Sims, p. 68, line 24-p. 71, line 21; p. 140, line 5-p. 141, line 21. Sims,

acting as director of Beacon, controlled the activities of Navigator and each of the SPVs directed by Navigator. *See, generally*, Deposition of Henry Sargent, p. 33, line 14-p. 34, line 19. Beacon received payment for the services which Falcon and Navigator performed for the entities in the multi-tiered offshore structure. *See*, Deposition of David Sims, p. 171, line 17-p. 173, line 3.

22.

Hicks, Southridge, Sims, Navigator, Falcon, Terrapin, Minglewood, Livingstone, Wellington, and Beacon are hereinafter collectively referred to as “the Hicks/Sims Defendants.”

The Valentine Defendants

23.

Valentine is a former principal in and chairman of TK, a now defunct Canadian brokerage house. *See*, Deposition of Mark Valentine, p. 37, lines 5-20. Valentine has been named in a Statement of Allegations filed before the Ontario Securities Commission alleging that he participated in death spiral schemes, similar to that at issue in this action. Valentine has participated in other death spiral schemes with the Hicks/Sims Defendants and the Canouse Defendants. *See*, Deposition of Mark Valentine, p. 67, line 18-p. 68, line 7. Valentine was aware of the existence of the multi-tiered offshore structure. Valentine directed that “investments” by CALP be made through the multi-tiered offshore structure. CALP participated in the Hyperdynamics financing transaction through the multi-tiered offshore structure. Following the issuance of the Statement of Allegations and the filing of this action, Valentine fled Canada. Valentine was subsequently arrested in Frankfurt, Germany and extradited to the United States. Valentine was indicted in United States District Court for mail fraud, wire fraud, securities fraud, and for his role in a conspiracy to manipulate the market of several publicly traded stocks on the Over the Counter Bulletin Board (OTC/BB). *See, U.S. v. Valentine, et al.*, Case No. 02-80088-

CR, in the United States District Court, Southern District of Florida. Valentine was served by Hyperdynamics while under house arrest in Miami, Florida. *See*, Deposition of Mark Valentine, p. 13, lines 6-12; p. 43, lines 5-9. Valentine failed to file an Answer in this action, and a default judgment as to liability has already been entered against him. *See*, Default Judgment Against Mark Valentine, entered March 13, 2003. Valentine has recently pled guilty to felony criminal securities fraud and has been convicted. Valentine is currently serving time.

24.

TK is an Ontario, Canada corporation which may be served at 365 Bay Street, 10th Floor, Toronto, Ontario, M5H2V2, Canada. Since the filing of this action, Valentine has been ousted as a principal of TK. Additionally, TK has filed for bankruptcy in Canada. TK's Canadian registration to trade in securities has been suspended and Ernst & Young (Canada), Inc. has been appointed as a receiver to manage TK's affairs.

25.

VMH is a Toronto, Canada limited partnership. Valentine and Hicks (or Southridge) are (or were formerly) each general partners, limited partners, or officers of VMH. *See*, Deposition of Mark Valentine, p. 63, lines 2-13; Deposition of Stephen Hicks (*DG Jewelry* litigation), p. 41, line 1-p. 42, line 24. VMH is the general partner of CALP. *See*, Deposition of Stephen Hicks, p. 99, lines 11-13. Southridge acted as a "subadvisor" to VMH and/or CALP. *See*, Deposition of Henry Sargent, p. 46, lines 19-23. VMH is an acronym for Valentine McKinnon and Hicks. *See*, Deposition of Stephen Hicks, p. 100, lines 6-10; Deposition of Stephen Hicks (*DG Jewelry* Litigation), p. 41, lines 1-11. Southridge presented investment opportunities to VMH and CALP, provided SPVs through which CALP could invest in U.S. companies, and traded the accounts of such SPVs for the benefit of CALP. *See*, Deposition of Southridge Capital Management LLC, p.

180, line 12-p. 181, line 24. VMH paid fees to Southridge for its services as “subadvisor.” *See*, Deposition of Southridge Capital Management LLC, p. 183, line 9-p. 184, line 7. All of the actions of CALP were directed and controlled by Hicks and Valentine through Southridge and VMH.

26.

Valentine, TK, and VMH are hereinafter referred to as “the Valentine Defendants.”

The Offshore Funds

27.

Sovereign is a fund organized as a Delaware limited partnership. *See*, Deposition of Southridge Capital Management LLC, p. 173, lines 22-24. Sovereign funneled \$500,000.00 through Minglewood and Wellington to Hyperdynamics. *See*, Deposition of Southridge Capital Management LLC, p. 173, line 25-p. 174, line 6. Sovereign is an owner of Minglewood. *See*, Deposition of Henry Sargent, p. 29, lines 13-15; Deposition of Stephen Hicks, p. 157, lines 5-12. Southridge is the general partner of Sovereign. *See*, Deposition of Stephen Hicks, p. 61, line 25-p. 62, line 2. Decisions regarding the entity structure and the transfer of funds between and among Sovereign, Minglewood, and Wellington were made by Hicks as managing director of Southridge and by Sims as director of Navigator. *See*, Wellington, LLC’s Amended Supplemental Responses to Michael Watts’ First Interrogatories, Response to Interrogatory No. 3. Sovereign also provided funding in a number of related death spiral schemes. *See, e.g.*, Affidavit of Hunter M.A. Carr, ¶ 24; Affidavit of Samuel Ellis, Jr., ¶ 25; Affidavit of Paul Metzinger, ¶ 23; *see, also*, documents bates numbered SCM4917B-SCM4921B.

Dominion is an offshore fund organized as a Nassau, Bahamas international business company. Dominion funneled \$500,000.00 through Terrapin, Minglewood, and Wellington to Hyperdynamics. *See*, Deposition of Southridge Capital Management LLC, p. 175, line 18-p. 176, line 2. Dominion is an owner of Terrapin. *See*, Deposition of Henry Sargent, p. 30, lines 3-5. Sims is the sole director of Navigator and the sole director of Dominion. *See*, Deposition of David Sims, p. 19, lines 10-17. Navigator is now the sole officer of Dominion. *See*, Objections and Responses to Plaintiff's Second Continuing Interrogatories to Navigator Management Ltd., Response to Interrogatory No. 3. Southridge is the "subadvisor" for Dominion. *See*, Deposition of Henry Sargent, p. 35, line 22-p. 36, line 2. Investment and trading decisions relating to Dominion were made by Hicks, in his role as managing director of Southridge, and Sims, both personally and in his role as director of Navigator. *See*, Deposition of Southridge Capital Management LLC, p. 176, lines 6-14; p. 178, lines 5-22; *see, also*, Wellington, LLC's Amended Supplemental Responses to First Set of Interrogatories of Michael Watts, Response to Interrogatory No. 3. Dominion has also provided funding in a number of related death spiral schemes. *See, e.g.*, Affidavit of Hunter M.A. Carr, ¶ 24; Affidavit of Samuel Ellis, Jr., ¶ 8; Affidavit of Paul Metzinger, ¶ 23; *see, also*, documents bates numbered SCM4917B-SCM4921B.

CALP is an offshore fund organized as a Toronto, Canada limited partnership. CALP funneled \$1,000,000.00 through Terrapin, Minglewood, and Wellington to Hyperdynamics. *See*, Deposition of Southridge Capital Management LLC, p. 179, line 14-p. 180, line 11. The general partner of CALP is VMH. *See*, Deposition of Stephen Hicks, p. 98, lines 16-20; p. 99, lines 11-

13. Valentine and Hicks are (or were) both partners, officers, or directors in VMH. *See*, Deposition of Stephen Hicks, p. 99, lines 22-23; Deposition of Mark Valentine, p. 63, lines 2-13; *see, also*, document bates numbered SCM4922-SCM4923. Southridge has acted as a trading subadvisor for VMH and/or CALP. *See*, Deposition of Stephen Hicks, p. 100, lines 13-15; Deposition of Henry Sargent, p. 46, lines 19-23. With respect to the Hyperdynamics death spiral scheme, Valentine and Hicks made many of the decisions regarding the structure and method of investment of CALP's funds. *See, generally*, Deposition of Henry Sargent, p. 42, line 11-p. 43, line 7; p. 46, lines 19-23; Deposition of Southridge Capital Management LLC, p. 181, line 9-p. 182, line 23. Southridge receives money in the form of management fees from CALP through VMH. *See*, Deposition of Southridge Capital Management LLC, p. 183, lines 9-25. CALP has also provided funding in a number of related death spiral schemes. *See, e.g.*, Deposition of Mark Valentine, p. 65, lines 13-19; p. 67, line 18-p. 68, line 7; Deposition of Joseph Canouse, p. 205, lines 14-16, Affidavit of Hunter M.A. Carr, ¶ 24; *see, also*, documents bates numbered SCM4917B-SCM4921B.

30.

Sovereign, Dominion, and CALP are hereinafter collectively referred to as "the Offshore Funds."

31.

Some of the Defendants have used multiple names, fictitious names, and/or variants of a name in multiple documents, transactions, and dealings. Additionally, one or more of the Defendants are believed to be "front" entities and/or "straw man" enterprises employed by Defendants in furtherance of a conspiracy to tortiously injure and defraud Hyperdynamics. Further discovery will be necessary in order to determine correct legal names, type of legal

entity, correct addresses, and other information with respect to certain Defendants. The style of this action has been amended to reflect the correct identity of Carpe Diem Ltd. Hyperdynamics has been forced to amend its Complaint on multiple occasions, and may need to amend its Complaint further, as a result of the discovery abuses and the false and fraudulent discovery responses served by various Defendants in this action.

Interested Non-Parties

32.

In addition to the Defendants, several non-parties played a significant role in the acts, omissions, and events set forth in this Complaint. These individuals and entities include the following: Citco Trustees (Cayman) Limited (“Citco Cayman”), JPC Capital Partners, LLC f/k/a Corpfin.com, Inc. (“Corpfin”), Dorsey & Whitney LLP (“Dorsey”), Atlantis, and others.

33.

Citco Cayman is a Cayman Islands limited liability company. *See*, Deposition of Citco Trustees (Cayman) Limited, p. 21, line 20-p. 22, line 1. Citco Cayman is one of forty-six companies which are wholly-owned by The Citco Group Limited and which collectively do business as the “Citco Group.” *See*, documents bates numbered HY5135-HY5183. According to its website www.citco.com, The Citco Group professes to be the worldwide industry leader in the provision of international corporate and fiduciary services. *See, id.* Citco Cayman owns 100% of the shares of two other Cayman Islands companies, CTC Corporation Ltd. (“CTC”) and CSS Corporation Ltd. (“CSS”). *See*, Deposition of Citco Trustees (Cayman) Limited, p. 29, lines 1-9; Citco Trustees (Cayman) Limited’s Responses to Plaintiff’s First Requests for Admission, Response to RFA Nos. 1, 6. CTC and CSS were established in the mid-1990s and have been used over time by Citco Cayman to act as directors, officers, and administrators of

offshore entities such as Wellington and other SPVs set up by the Offshore Funds to carry out their illegal death spiral schemes such as those used to victimize Hyperdynamics and others. *See*, Deposition of Citco Trustees (Cayman) Limited, p. 140, line 17-p. 145, line 4. CTC and CSS operate as the alter egos of Citco Cayman. Citco Cayman, CTC, and CSS share common offices, employees, and some officers. *See*, Deposition of Citco Trustees (Cayman) Limited, p. 9, line 22-p. 10, line 1; p. 29, line 10-p. 30, line 11; p. 31, line 18-p. 35, line 22. CTC and CSS do not act independently, but decisions for CTC and CSS are made by executives and employees of Citco Cayman, and thus their separate corporate existence should be disregarded. *See*, Deposition of Citco Trustees (Cayman) Limited, p. 30, lines 20-25. In early 1999, Citco Cayman, acting through CTC and CSS, and acting at the direction of the Hicks/Sims Defendants and the Offshore Funds, created a multi-tiered offshore structure. *See*, Deposition of Michael Griffin, p. 53, lines 10-13. This structure was designed to protect the Hicks/Sims Defendants and the Offshore Funds from liability arising from their anticipated violations of applicable securities laws and other laws. *See*, Deposition of Michael Griffin, p. 52, lines 11-24; *see, also*, David Sims' Responses to Plaintiff's First Requests for Admission, Response to RFA Nos. 75-77. As part of this structure, CTC and CSS acted as the original director(s) and officer(s) of Terrapin, Minglewood, Wellington, and numerous other SPVs. *See*, Citco Trustees (Cayman) Limited's Responses to Plaintiff's First Requests for Admission, Response to RFA Nos. 2-5, 7-9; Deposition of Citco Trustees (Cayman) Limited, p. 140, line 17-p. 145, line 4. According to a document that was produced in this litigation, two other Citco Group Companies, Inter Caribbean Services (Bahamas) Limited ("Inter Caribbean") and Citco Fund Services (Bahamas) Limited ("Citco Bahamas"), served as the director and administrator, respectively, for Dominion. *See*, documents bates numbered SCM5853-SCM5858. Citco Bahamas also served as the

administrator of the SPVs, including Wellington, which were set up under the multi-tiered offshore structure as “front entities” or to serve as the “straw man” investors in the victim companies such as Hyperdynamics. *See, id.; see, also*, Deposition of Henry Sargent, p. 39, lines 9-23; Deposition of Southridge Capital Management LLC, p. 186, lines 8-22. Citco Cayman received compensation for its role in creating, administering, and perpetuating the multi-tiered offshore structure for the Hicks/Sims Defendants and the Offshore Funds. *See*, documents bates numbered CIT59; CIT188; SCM10340; *see, also*, Deposition of Citco Trustees (Cayman) Limited, p. 127, lines 10-15.

34.

Corpfin is a Delaware corporation registered to transact business in the State of Georgia. Corpfin can be served by and through its registered agent, Jose Antonio Auffant (“Auffant”), at its registered office located at 555 North Point Center East, 4th Floor, Alpharetta, Fulton County, Georgia 30022. Jack Canouse is the Chairman, President, Chief Executive Officer, and a director of Corpfin. *See*, Deposition of John Canouse, p. 19, lines 8-16. Tony Auffant, who serves as in-house counsel to the Canouse Defendants, is an Executive Vice President and a director of Corpfin. *See*, Deposition of Tony Auffant, p. 17, lines 17-21. Jack Canouse, Joe Canouse, Atlantis, and Cache are owners of Corpfin. *See*, documents bates numbered CORPFIN5-CORPFIN9; CORPFIN51; Deposition of Joseph Canouse, p. 144, lines 6-9. Joe Canouse, Jack Canouse, Jim Canouse, Jeff Canouse, JPCAM, Cache, Carpe, Dominion, Sovereign, and Atlantis all maintained accounts at Corpfin. *See*, documents bates numbered CORPFIN2-CORPFIN3, CORPFIN11-CORPFIN14; CORPFIN16-CORPFIN21; CORPFIN23-CORPFIN24; CORPFIN26-CORPFIN27; CORPFIN29-CORPFIN31; CORPFIN33; CORPFIN37-CORPFIN38; CORPFIN40-CORPFIN41; CORPFIN43-CORPFIN44;

CORPFIN46-CORPFIN47. Joe Canouse directed trades of Hyperdynamics securities through various accounts at Corpfin. *See*, Deposition of Joe Canouse, p. 148, lines 4-5; p. 153, lines 21-25; p. 346, line 12-p. 347, line 14.

35.

Dorsey is a national law firm with a New York office. Various attorneys at Dorsey aided and abetted the wrongful acts alleged herein by forming a multi-tiered offshore structure which included the Offshore Funds, Terrapin, Minglewood, and the SPVs, through which the Defendants engaged in various death spiral financing transactions and other tortious and illegal acts. *See, generally*, Deposition of Michael Griffin, p. 36, lines 5-13; p. 64, lines 9-14; Deposition of Southridge Capital Management LLC, p. 56, line 10-p. 59, line 15. The attorneys at Dorsey knew, or should have known, that there was no legitimate legal or business purpose for forming the multi-tiered offshore structure. The purpose of forming the multi-tiered offshore structure was to conceal the identities of the conspirators, to conceal wrongful conduct of the conspirators, and to attempt to shield the conspirators from liability for their anticipated tortious and illegal acts. The Canouse Defendants, the Hicks/Sims Defendants, the Offshore Funds, Southridge, DIF, Atlantis, and the SPVs were all clients of Dorsey at times relevant to this action.

36.

Atlantis is another Offshore Fund organized in the Cayman Islands. *See*, Supplemental Responses to Plaintiff's First Set of Interrogatories to J.P. Carey Securities, Inc., *et al.*, Response to Interrogatory No. 19. Atlantis was formed by Dorsey at the request of the Canouses. *See*, Deposition of Joseph Canouse, p. 142, lines 8-10. Joseph Canouse was the President of Harbourcrest Investment Management Ltd. ("Harbourcrest"), which served as the investment

manager for Atlantis. *See*, Deposition of Joseph Canouse, p. 133, line 17-p. 134, line 8; p. 135, lines 4-6. Livingstone was the trading “advisor” for Atlantis. *See*, Deposition of Joseph Canouse, p. 140, lines 18-25; Deposition of Henry Sargent, p. 46, lines 10-11. Southridge was the “subadvisor” to Atlantis. *See*, Deposition of Henry Sargent, p. 46, lines 9-18. Navigator acted as a director for Atlantis. *See*, Deposition of David Sims, p. 235, line 20-p. 236, line 1; *see, also*, Navigator Management Ltd.’s Third Supplemental Responses to Plaintiff’s First Interrogatories, Response to Interrogatory No. 25. Atlantis maintained investment accounts at TK and Corpfin. *See*, documents bates numbered CORPFIN46-CORPFIN47; Deposition of Joseph Canouse, p. 58, line 24-p. 59, line 1; p. 60, lines 1-8. Atlantis was jointly controlled by Hicks, Joe Canouse, and Sims. *See, generally*, Deposition of Joseph Canouse, p. 53, lines 14-17; p. 188, lines 4-11; p. 239, lines 11-13; p. 240, line 21-p. 241, line 4. Citco Cayman was the administrator for Atlantis. *See*, Deposition of Joseph Canouse, p. 55, lines 11-15. Atlantis invested through the multi-tiered offshore structure. *See*, Deposition of David Sims, p. 31, lines 6-8; Deposition of Henry Sargent, p. 31, lines 6-8; p. Deposition of Haley Greene, p. 54, line 25-p. 55, line 103; p. 69, lines 9-15; p. 93, lines 3-15; *see, also*, documents bates numbered SCM4917B-SCM4921B. Atlantis traded Hyperdynamics securities through its account at TK. *See*, Deposition of Joseph Canouse, p. 136, lines 18-24; *see, also*, documents bates numbered TK299-TK374.

JURISDICTION AND VENUE

37.

Hyperdynamics and each of the Defendants are subject to the personal jurisdiction and venue of this Court.

The General Enterprise and Conspiracy

38.

The Canouse Defendants, the Hicks/Sims Defendants, the Valentine Defendants, and the Offshore Funds each acted knowingly and in concert with each of the other Defendants as part of a scheme and conspiracy to defraud Hyperdynamics and other target victims. The scheme and conspiracy to defraud Hyperdynamics and others is hereinafter referred to as “the General Enterprise and Conspiracy.” Each of the members of the General Enterprise and Conspiracy is a co-conspirator and an agent for each of the other Defendants. Each of the members of the General Enterprise and Conspiracy is jointly and severally liable for the tortious acts of each of the other Defendants. Although the Defendants employed numerous entities in order to accomplish the illegal activities of the General Enterprise and Conspiracy, these entities were all controlled, either directly or indirectly, by Joe Canouse, Hicks, Sims, and Valentine. Hyperdynamics has filed a detailed 100 page RICO Case Statement (and a detailed 100 page Supplemental Exhibits to Plaintiffs’ RICO Case Statement) setting forth further evidence regarding the purpose, structure, and activities of the General Enterprise and Conspiracy. Plaintiff’s RICO Case Statement and the Supplemental Exhibits to Plaintiff’s RICO Case Statement thereto are hereby incorporated herein as if set forth verbatim herein.

The Resident Defendants

39.

The Canouse Defendants, other than Carpe, are each residents of the State of Georgia. The Canouse Defendants transacted business in the State of Georgia. All of the claims alleged herein arise, either directly or indirectly, from the Canouse Defendants’ transaction of business in the State of Georgia. Many of the tortious acts committed by the Canouse Defendants took

place in the State of Georgia. The Canouse Defendants knowingly acted in concert with the Hicks/Sims Defendants, the Offshore Funds, and the Valentine Defendants as part of the General Enterprise and Conspiracy.

40.

Each of the Defendants is a member of the General Enterprise and Conspiracy. Each of the Defendants acted as an agent for each of their co-conspirators. Accordingly, the in-state activities of the Canouse Defendants in furtherance of the conspiracy are attributable to each of the non-resident Defendants. Likewise, the tortious in-state actions of Hicks, Wellington, Navigator, Beacon, and Sims are all attributable to each of the co-conspirators.

41.

The Canouse Defendants acted as agents for the Hicks/Sims Defendants and the Valentine Defendants as evidenced by their long course of dealing with and on behalf of the Hicks/Sims Defendants and the Valentine Defendants and as a result of said Defendants' participation in the General Enterprise and Conspiracy. The Canouse Defendants even signed each of the Regulation D Subscription Agreements and numerous related documents as "placement agents." *See, e.g.*, documents bates numbered HYPD840-HYPD871; HY6205-HY6270; HY6271-HY6345. The Canouse Defendants referred to the Hicks/Sims Defendants, the Valentine Defendants, Cache, and Carpe as their "clients." *See*, Deposition of Joseph Canouse, p. 50, line 24-p. 53, line 12; p. 205, lines 5-14; p. 253, lines 11-19; p. 254, lines 9-13, 11-17.

42.

The Canouse Defendants acted as a conduit for the transmission of documents and communications between and among the Hicks/Sims Defendants, the Offshore Funds, Nelson,

Mullins, Riley & Scarborough, L.L.P., and Hyperdynamics. *See, e.g.*, Supplemental Responses to Plaintiff's First Set of Interrogatories to Defendants J.P. Carey Securities, Inc., *et al.*, Response to Interrogatory No. 13. *See, also*, Deposition of Joseph Canouse, p. 262, lines 7-12; p. 269, lines 4-12; Deposition of David Wisniewski, p. 28, lines 12-17; p. 29, lines 4-6; p. 29, lines 7-11; p. 48, lines 9-14. The Canouse Defendants (and their attorneys at Nelson, Mullins, Riley & Scarborough, L.L.P.) acted as agents for the Hicks/Sims Defendants, the Valentine Defendants, and the Offshore Funds and transacted business on behalf of said Defendants by negotiating the terms of the Hyperdynamics death spiral scheme in Georgia for said Defendants. *See*, Deposition of David Wisniewski, p. 23, lines 1-5; p. 28, lines 12-17; p. 29, lines 4-11; p. 48, lines 9-14; p. 49, lines 2-4; Deposition of Henry Sargent, p. 90, line 18-p. 91, line 11; Deposition of Joseph Canouse, p. 262, lines 7-12; p. 269, lines 4-12. The Canouse Defendants also negotiated terms on behalf of Cache and Carpe which they controlled. *See*, Deposition of Joseph Canouse, p. 259, lines 12-21; p. 262, lines 6-12; p. 269, lines 4-12. The Canouse Defendants acted as a "facilitator" in the negotiations and continued to correspond and communicate regularly with the Hicks/Sims Defendants and Hyperdynamics regarding the Hyperdynamics financing transaction throughout 1999, 2000, and 2001. *See, e.g.*, Supplemental Responses to Plaintiff's First Set of Interrogatories to Defendants J.P. Carey Securities, Inc., *et al.*, Response to Interrogatory No. 13. Hicks and Southridge have endorsed the services provided by the Canouse Defendants. *See, e.g.*, documents bates numbered JPC568-JPC571; *see, also*, Deposition of Joseph Canouse, p. 215, lines 3-20. Various Hicks/Sims Defendants opened and maintained brokerage accounts at Corpfin, an Atlanta, Georgia brokerage house owned and controlled by the Canouse Defendants, after the collapse of TK. *See, e.g.*, documents bates numbered CORPFIN11-CORPFIN14; CORPFIN16-CORPFIN21. Although the Hicks/Sims

Defendants retained ultimate control of the multi-tiered offshore structure, they clearly delegated the authority to negotiate the terms of the Hyperdynamics death spiral scheme to their agents and co-conspirators, the Canouse Defendants and their attorneys at Nelson, Mullins, Riley & Scarborough, L.L.P. *See*, Deposition of Joseph Canouse, p. 262, lines 7-12; p. 269, lines 4-12; Deposition of Henry Sargent, p. 90, line 18-p. 91, line 11; Deposition of David Wisniewski, p. 28, lines 12-17; p. 29, lines 4-11; p. 29, line 23-p. 30, line 5; p. 48, lines 9-14. The Hicks/Sims Defendants also authorized and consented to the Canouse Defendants' transmission of documents and information to and from Hyperdynamics and others on their behalf as their agents. The Hicks/Sims Defendants subsequently ratified the actions taken by the Canouse Defendants on their behalf, as evidenced by the funding of Hyperdynamics.

43.

The foregoing actions indicate that the Canouse Defendants were acting, at least in part, at the direction and control of the Hicks/Sims Defendants. The Hicks/Sims Defendants authorized and requested that the Canouse Defendants act on their behalf. The Hicks/Sims Defendants subsequently ratified the actions taken by the Canouse Defendants on their behalf. The interactions between the Hicks/Sims Defendants, the Offshore Funds, and the Canouse Defendants were not "random" or "fortuitous" contacts. Rather, these contacts were deliberate actions designed to facilitate a potentially lucrative business transaction while concealing the identities of the Hicks/Sims Defendants and the Offshore Funds. In other words, the Hicks/Sims Defendants and the Offshore Funds could reasonably have anticipated that they might be haled into court in the State of Georgia. All Defendants directed "substantial acts" toward the State of Georgia, either directly or through an agent or agents.

The Nonresident Defendants

44.

Carpe is a member of the General Enterprise and Conspiracy and a co-conspirator with each of the other Defendants. Carpe transacted business in the State of Georgia by and through its agents Joe Canouse, JPCSI, and JPCAM. JPCAM and Joe Canouse acted as investment advisors for Carpe, pursuant to a written agreement with Carpe. *See*, Deposition of Tony Auffant, p. 35, lines 3-18. Joe Canouse (and other Canouse Defendants) signed various documents on behalf of Carpe, facilitated the transfer of money from Carpe to Hyperdynamics, communicated regularly with the principals of Carpe, and negotiated the Regulation D Subscription Agreement on behalf of Carpe. *See, e.g.*, Deposition of Joseph Canouse, p. 78, lines 7-12; p. 259, lines 20-21; p. 342, lines 20-25; p. 343, lines 12-18; Deposition of Tony Auffant, p. 35, lines 3-18; p. 97, lines 19-24; p. 110, line 14-p. 114, line 9. JPCAM and Joe Canouse traded Hyperdynamics securities for Carpe through accounts at TK and at Corpfin, an Atlanta, Georgia brokerage house owned and controlled by the Canouse Defendants. *See*, Deposition of Joseph Canouse, p. 148, lines 4-5; p. 343, lines 1-5; p. 349, lines 8-20; Deposition of Tony Auffant, p. 208, lines 7-13.

45.

Hicks is a member of the General Enterprise and Conspiracy and a co-conspirator with each of the other Defendants. Hicks was directly contacted by the Canouse Defendants regarding the death spiral scheme directed at Hyperdynamics. *See, e.g.*, document bates numbered WELL189. Hicks has **admitted** that he has a business relationship with the Canouses and that he has transacted business in the State of Georgia with the Canouse Defendants on multiple occasions. *See*, Supplemental Affidavit of Stephen M. Hicks in Support of Motion to

Dismiss for Lack of Personal Jurisdiction, ¶ 2; *see, also*, Wellington, LLC's Amended Supplemental Responses to Michael Watts' First Set of Interrogatories, Response to Interrogatory No. 34. Hicks has **admitted** that he attended multiple business meetings with Valentine and the Canouse Defendants in Atlanta, Georgia between 1998 and 2000. *See*, Supplemental Affidavit of Stephen M. Hicks in Support of Motion to Dismiss for Lack of Personal Jurisdiction, ¶¶ 4-5; Affidavit of Alan B. Thomas, Jr., ¶¶ 4-5. Wellington, LLC **admits** that Hicks traveled to Georgia on at least a dozen occasions to meet with the Canouse Defendants and/or the management of various companies in which the funds "subadvised" by Southridge (including Sovereign, Dominion, Atlantis, CALP, and the SPVs) had invested. *See*, Wellington, LLC's Amended Supplemental Responses to First Set of Interrogatories of Michael Watts, Response to Interrogatory Nos. 31 and 34. Hicks and Southridge have been involved in multiple investments involving Georgia companies in conjunction with the Canouse Defendants. *See, e.g.*, Wellington, LLC's Amended Supplemental Responses to Michael Watts' First Set of Interrogatories, Response to Interrogatory Nos. 29, 31, and 34. Hicks, acting through Southridge, along with Citco Cayman and Dorsey, directed and controlled the creation of the multi-tiered offshore structure through which the Offshore Funds conducted the Hyperdynamics death spiral scheme and other death spiral schemes. *See*, Deposition of Michael Griffin, p. 64, lines 9-25; p. 123, line 9-p. 125, line 4. Hicks, acting on behalf of Southridge, made the decision that Wellington would contract to fund Hyperdynamics. *See*, Wellington, LLC's Supplemental Responses to Harry Briers' First Requests for Admission, Response to RFA No. 84. Hicks, acting through Southridge, directed and controlled the unlawful trading activities of Wellington. *See, e.g.*, David Sims' Responses to Plaintiff's First Requests for Admission, Response to Request No. 40. Hicks, acting through Southridge, directed the transfer of funds and proceeds

between and among the Offshore Funds and the various Hicks/Sims Defendants. *See*, Wellington, LLC's Amended Supplemental Responses to Michael Watts' First Interrogatories, Response to Interrogatory Nos. 3, 7-9. Hicks was aware that the documents used in the Hyperdynamics death spiral scheme were being negotiated by the Canouse Defendants in Atlanta, Georgia and that the private placement documents were being drafted by the Canouse Defendants' attorneys in Atlanta, Georgia. *See, e.g.*, Deposition of David Wisniewski, p. 23, lines 1-5; p. 28, lines 12-17; p. 29, lines 4-6; *see, also*, Deposition of Henry Sargent, p. 90, line 18-p. 91, line 11; p. 95, lines 8-15; documents bates numbered WELL189; SCM6407-SCM6409; JPC185-JPC191; DAW112-DAW114. Hicks, acting on behalf of the Hicks/Sims Defendants, directed the negotiation of important terms of the Regulation D Subscription Agreement for Wellington through his in-state agents, the Canouse Defendants. *See*, Deposition of David Wisniewski, p. 29, line 4-p. 30, line 5. Hicks has previously testified that he spoke with Valentine one or two times per day during the times relevant to this action. *See*, Deposition of Stephen Hicks (*DG Jewelry* litigation), p. 112, lines 17-25. Hicks was introduced to Sims by Dorsey. *See*, Deposition of David Sims, p. 31, line 15-p. 33, line 15. Hicks, and the funds which he and Southridge control, have been involved in numerous joint financing ventures with the Valentine Defendants and the Canouse Defendants. *See, e.g.*, Wellington, LLC's Amended Supplemental Responses to Michael Watts First Interrogatories, Response to Interrogatory Nos. 29, 31, and 34; *see, also*, Deposition of Henry Sargent, p. 30, line 3-p. 31, line 8; p. 49, lines 2-20; Deposition of Stephen Hicks (*DG Jewelry* litigation), p. 110, line 25-p. 111, line 5; p. 112, lines 17-25; Deposition of Southridge Capital Management LLC, p. 151, line 25-p. 152, line 25; documents bates numbered SCM4917B-SCM4921B. Hicks transacted business in Georgia

directly and through his in-state agents and committed torts in Georgia directly and through his in-state agents, the Canouse Defendants.

46.

Southridge is a member of the General Enterprise and Conspiracy and a co-conspirator with each of the other Defendants. Southridge was the “subadvisor” to Wellington, Minglewood, Terrapin, and numerous SPVs used in related death spiral schemes. *See*, Southridge Capital Management LLC’s Fourth Supplemental Responses to Plaintiff’s First Continuing Interrogatories, Response to Interrogatory No. 25. Hicks, acting through Southridge, along with Citco Cayman and Dorsey & Whitney LLP, directed and controlled the creation of the multi-tiered offshore structure through which the Offshore Funds conducted the Hyperdynamics death spiral scheme and other death spiral schemes. *See, e.g.*, Wellington, LLC’s Amended Supplemental Responses to Michael Watts’ First Set of Interrogatories, Response to Interrogatory No. 20; *see, also*, documents bates numbered SCM4917B-SCM4921B. Hicks, acting through Southridge, made the decision that the Offshore Funds would fund Hyperdynamics through Wellington or another SPV. *See, generally*, Wellington, LLC’s Supplemental Responses to Harry Briers’ First Requests for Admission, Response to RFA No. 84. Hicks, acting through Southridge, directed and controlled all of the illegal trading activities of Wellington. *See*, Wellington, LLC’s Supplemental Responses to Harry Briers’ First Requests for Admission, Response to RFA No. 74. Southridge was aware that the documents used in the Hyperdynamics death spiral scheme were being negotiated by the Canouse Defendants in Atlanta, Georgia and were being drafted by the Canouse Defendants’ attorneys in Atlanta, Georgia. *See, e.g.*, Deposition of David Wisniewski, p. 23, lines 1-5; p. 28, lines 12-17; p. 29, lines 4-6, Deposition of Henry Sargent, p. 90, line 18-p. 91, line 11; p. 95, lines 8-15; *see, also*,

documents bates numbered WELL189; JPC185-JPC191; DAW112-DAW114. Southridge committed torts in Georgia and transacted business in Georgia both directly and by and through its in-state agents, the Canouse Defendants and through Hicks.

47.

Sims is a member of the General Enterprise and Conspiracy and a co-conspirator with each of the other Defendants. Hicks was introduced to Sims by Dorsey, the New York law firm which designed the multi-tiered offshore structure used by the Hicks/Sims Defendants in the Hyperdynamics death spiral scheme and in other death spiral schemes. *See*, Deposition of David Sims, p. 31, line 15-p. 33, line 15. Hicks and Sims met in person and also communicated and corresponded with one another by telephone, e-mail, and letter throughout the times relevant to this action. *See, e.g.*, Stephen Hicks a/k/a Steve Hicks' Audited Responses to Plaintiff's First Requests for Admission, Response to Request Nos. 28, 30, and 32; *see, also*, Deposition of David Sims, p. 31, line 15-p. 33, line 15. Sims acted as the sole director of Navigator, Falcon, and Beacon and as a director of Livingstone and Dominion. *See*, David Sims' Audited Responses to Plaintiff's First Interrogatories, Response to Interrogatory No. 6. Sims, acting at the request of Hicks and Southridge, executed the Regulation D Subscription Agreements and related documents on behalf of Navigator for Wellington. *See*, documents bates numbered HYPD838-HYPD871; Deposition of Henry Sargent, p. 76, lines 15-24. At the time, Sims was aware that the Regulation D Subscription Agreement contained numerous false statements which are set forth in detail below and in Plaintiff's RICO Case Statement. *See*, David Sims' Responses to Plaintiff's First Requests for Admission, Response to Request Nos. 1-4. Sims, acting on behalf of Navigator, for Wellington, also instructed that the false and fraudulent statements contained in the Regulation D Subscription Agreements be transmitted to Georgia

through interstate transmission facilities and delivered through the United States mail. *See*, David Sims' Responses to Plaintiff's First Requests for Admission, Response to Request Nos. 68 and 69. Sims received money, indirectly through Navigator, Dominion, and Beacon, as a result of his participation in the General Enterprise and Conspiracy between and among the Defendants. *See, e.g.*, documents bates numbered SCM6282-SCM6283. Sims purposefully availed himself of the privilege of transacting business in the State of Georgia and purposefully directed his activities toward the State of Georgia by forwarding documents to the Canouse Defendants in the State of Georgia. *See, e.g.*, documents bates numbered JPC177-JPC197; *see, also*, Deposition of David Sims, p. 162, line 23-p. 163, line 15. The Canouse Defendants then forwarded the same documents on to Hyperdynamics. *See, e.g.*, documents bates numbered JPC177-JPC197. Sims conducted business in Georgia and committed tortious acts and predicate acts in the State of Georgia in furtherance of the General Enterprise and Conspiracy both directly and indirectly through his in-state agents, the Canouse Defendants and through Hicks.

48.

Navigator is a member of the General Enterprise and Conspiracy and a co-conspirator with each of the other Defendants. Navigator acted as a director, and for much of the relevant period, the sole director for Terrapin, Minglewood, and Wellington. *See*, Navigator Management Ltd.'s Third Supplemental Responses to Plaintiff's First Interrogatories, Response to Interrogatory No. 25. Navigator was the director for Dominion and Atlantis and the President of Livingstone. *See*, Deposition of David Sims, p. 238, lines 8-18; *see, also*, Objections and Responses to Plaintiff's Second Continuing Interrogatories to Navigator Management Ltd., Response to Interrogatory No. 3; Navigator Management Ltd.'s Third Supplemental Responses to Plaintiff's First Interrogatories, Response to Interrogatory No. 25. Navigator also acted as the

director for numerous other funds and SPVs through which the General Enterprise and Conspiracy “invested” in a number of **Georgia** business entities. *See*, Deposition of David Sims, pp. 229-236; *see, also*, Wellington, LLC’s Amended Supplemental Responses to First Interrogatories of Michael Watts, Response to Interrogatory Nos. 29 and 31. Navigator was aware that the documents used in the Hyperdynamics death spiral scheme were being negotiated by the Canouse Defendants in Atlanta, Georgia and were being drafted by the Canouse Defendants’ attorneys in Atlanta, Georgia. *See, e.g.*, documents bates numbered JPC177-JPC197; DAW99-DAW109; *see, also*, Deposition of David Wisniewski, p. 23, lines 1-5; p. 28, lines 12-17; p. 29, lines 4-6; p. 46, lines 13-17; p. 48, lines 9-14; p. 49, lines 2-4; p. 49, lines 6-14; p. 50, lines 12-18. Sims, acting on behalf of Navigator, at the direction of Hicks, executed the Regulation D Subscription Agreements which contained numerous false and fraudulent statements. *See*, documents bates numbered HYPD838-HYPD871; Deposition of Henry Sargent, p. 76, lines 17-24; *see, also*, David Sims’ Responses to Plaintiff’s First Requests for Admission, Response to RFA Nos. 1, 2, and 37; Deposition of Henry Sargent, p. 76, lines 15-24. Sims then knowingly routed the Regulation D Subscription Agreements and other related documents to the Canouse Defendants in Atlanta, Georgia through the use of interstate transmission facilities and also through the use of the United States mail and requested that they be forwarded to Hyperdynamics. *See*, David Sims’ Responses to Plaintiff’s First Requests for Admission, Response to RFA Nos. 68 and 69. Navigator purposefully availed itself of the privilege of doing business in the State of Georgia and purposefully directed its activities toward the State of Georgia by forwarding the documents which contained knowingly false representations to the State of Georgia. Navigator conducted business in the State of Georgia and committed tortious acts and predicate acts in the State of Georgia in furtherance of the

General Enterprise and Conspiracy both directly and through its agents, the Canouse Defendants and through Hicks. Throughout the Hyperdynamics death spiral scheme, and in numerous related death spiral schemes, Navigator acted as an “alter ego” of Sims and the other Hicks/Sims Defendants.

49.

Falcon is a member of the General Enterprise and Conspiracy and a co-conspirator with each of the other Defendants. Falcon, in its role as sole officer of Terrapin, Minglewood, and Wellington, directed and ratified the breaches of contract and the tortious acts and omissions complained of herein. Falcon also participated in the General Enterprise and Conspiracy by acting as an officer of Minglewood, Terrapin, Livingstone, and numerous other SPVs, including Wellington. *See*, Navigator Management Ltd.’s Third Supplemental Responses to Plaintiff’s Second Interrogatories, Response to Interrogatory Nos. 1-2; *See, also*, Wellington, LLC’s Objections and Responses to Plaintiff’s First Interrogatories, Response to Interrogatory No. 1; Deposition of Henry Sargent, p. 33, lines 17-19; Deposition of Southridge Capital Management LLC, p. 137, line 22-p. 138, line 5. Falcon, through its sole director, Sims, was aware that the documents used in the Hyperdynamics death spiral scheme were being negotiated by the Canouse Defendants in Atlanta, Georgia and were being drafted by the Canouse Defendants’ attorneys in Atlanta, Georgia. *See, e.g.*, documents bates numbered JPC177-JPC197; documents bates numbered DAW99-DAW109; *see, also*, Deposition of David Wisniewski, p. 23, lines 1-5; p. 28, lines 12-17, p. 29, lines 4-6; p. 46, lines 13-17; p. 48, lines 9-14; p. 49, lines 2-4; p. 49, lines 6-14; p. 50 lines 12-18. Falcon, through its sole director, Sims, was further aware that Wellington was transmitting false statements into the State of Georgia through the use of interstate transmission facilities and the United States mail in order to transact business in

Georgia. Falcon purposefully directed its activities and the activities of Wellington toward the State of Georgia. Falcon transacted business in the State of Georgia by and through its in-state agents, the Canouse Defendants and through Hicks. Throughout the Hyperdynamics death spiral scheme and in numerous related death spiral schemes, Falcon acted as an “alter ego” of Sims and the other Hicks/Sims Defendants. Falcon committed tortious acts in the State of Georgia through its agents.

50.

Minglewood is a member of the General Enterprise and Conspiracy and a co-conspirator with each of the other Defendants. Minglewood, through its sole director, Navigator, was aware that the documents used in the Hyperdynamics death spiral scheme were being negotiated by the Canouse Defendants in Atlanta, Georgia and were being drafted by the Canouse Defendants’ attorneys in Atlanta, Georgia. Minglewood was further aware that Wellington and others were transmitting false and fraudulent statements into the State of Georgia. *See*, Minglewood Capital, LLC’s Responses to Plaintiff’s First Requests for Admissions, Response to RFA No. 2. Minglewood is the sole owner of Wellington and numerous other SPVs. *See*, documents bates numbered SCM4917B-SCM4921B. Minglewood, as sole owner of Wellington, directed and ratified the breaches of contract and the tortious acts and omissions complained of herein. Minglewood directed and assisted in the transfer of funds from the Offshore Funds and Terrapin to Wellington or another SPV. *See, e.g.*, Minglewood Capital, LLC’s Responses to Plaintiff’s First Requests for Admissions, Response to RFA Nos. 3, 5-8; Deposition of Henry Sargent, p. 43, lines 4-7. These funds were used by Wellington or another SPV in the Hyperdynamics death spiral scheme. *Id.* Minglewood also directed and assisted in the transfer of proceeds of Wellington’s illegal trading activities from Wellington to Terrapin and the Offshore Funds. *See*,

Wellington, LLC's Amended Supplemental Responses to Michael Watts' First Interrogatories, Response to Interrogatory No. 5. Minglewood profited as a result of its participation in the General Enterprise and Conspiracy. *See*, Minglewood Capital, LLC's Responses to Plaintiff's First Requests for Admissions, Response to Request No. 4. Throughout the Hyperdynamics death spiral scheme, Minglewood acted as an "alter ego" of Hicks, Sims, and the other Hicks/Sims Defendants. Minglewood transacted business in the State of Georgia and committed tortious acts in the State of Georgia through its agents.

51.

Wellington is a member of the General Enterprise and Conspiracy and a co-conspirator with each of the other Defendants. Wellington was aware that the documents used in the Hyperdynamics death spiral scheme were being negotiated by the Canouse Defendants in Atlanta, Georgia and were being drafted by the Canouse Defendants' attorneys in Atlanta, Georgia. *See*, Deposition of David Wisniewski, p. 23, lines 1-5; p. 28, lines 12-17; p. 29, lines 4-11; p. 29, line 23-p. 30, line 5; Deposition of Henry Sargent, p. 90, line 18-p. 91, line 11; p. 95, lines 8-15. Wellington is one of numerous SPVs wholly owned by Minglewood and controlled by the Hicks/Sims Defendants and the Offshore Funds. *See*, SCM4917B-SCM4921B. Wellington, through Navigator and Sims, **admittedly** made false and fraudulent representations regarding its investment history, its purported status as an accredited investor, and numerous other issues material to the Hyperdynamics financing transaction. *See, e.g.*, Wellington, LLC's Responses to Plaintiff's First Requests for Admission, RFA Nos. 1-4; *see, also*, Deposition of Henry Sargent, p. 74, line 9-p. 75, line 4; Deposition of David Sims, p. 187, line 23-p. 189, line 17; Deposition of Southridge Capital Management LLC, p. 220, lines 9-15; p. 224, line 20-p. 225, line 16; p. 226, lines 12-21; p. 227, lines 5-23. Wellington then purposefully and knowingly

transmitted documents containing these misrepresentations to Atlanta, Georgia through the use of interstate transmission facilities and the United States mail in order to transact business in Georgia. *See*, Deposition of David Wisniewski, p. 40, line 15-p. 42, line 7. Wellington profited as a result of its participation in the General Enterprise and Conspiracy. *See, e.g.*, documents bates numbered WELL258-WELL287; WELL453-WELL456; WELL672-WELL719; WELL791-WELL797. Wellington subsequently transferred the illegally obtained proceeds to Minglewood, Terrapin, and the Offshore Funds. *See*, Wellington, LLC's Amended Supplemental Responses to Michael Watts' First Interrogatories, Response to Interrogatory Nos. 4-6. Throughout the Hyperdynamics death spiral scheme, Wellington acted as an "alter ego" of Hicks, Sims, and the other Hicks/Sims Defendants. Wellington has **consented** to the exercise of personal jurisdiction over it by the Fulton County Superior Court and the State of Georgia and has filed counterclaims and third-party claims relating to the Hyperdynamics financing transaction in this action. *See*, Agreement for Transfer of Claims in Delaware Litigation to Georgia. Wellington transacted business in the State of Georgia and committed tortious acts in the State of Georgia directly and through its agents.

52.

Valentine is a member of the General Enterprise and Conspiracy and a co-conspirator with each of the other Defendants. Valentine and Hicks made investment decisions on behalf of CALP through VMH and Southridge. *See, generally*, Deposition of Henry Sargent, p. 42, line 11-p. 43, line 7; p. 46, lines 19-23; Deposition of Southridge Capital Management LLC, p. 181, line 9-p. 182, line 23. Valentine acted as the account representative and executed trades and money transfers for Cache, Carpe, Terrapin, Minglewood, Sovereign, Dominion, Wellington, Atlantis, and other SPVs. *See, e.g.*, documents bates numbered JPC1-JPC13; JPC70-JPC72;

JPC676-JPC686; WELL672-WELL681; SCM5472-SCM5578; SCM5614-SCM5727; SOUTHRIDGE100082-SOUTHRIDGE100156; TK299-TK374; Deposition of Haley Greene, p. 34, lines 3-10; p. 47, line 18-p. 48, line 15; Deposition of Henry Sargent, p. 84, lines 14-20. Valentine assisted and participated in the transfer of funds and proceeds between and among Wellington's account at TK, Minglewood's account at TK, Terrapin's account at TK, Dominion's account at TK, and Sovereign's account at TK. *See, generally*, Deposition of Haley Greene, p. 34, lines 3-10; p. 47, line 14-p. 48, line 15; Deposition of Henry Sargent, p. 84, lines 14-20. Valentine was the account representative for each of the foregoing accounts. *See, e.g.*, documents bates numbered JPC1-JPC13; JPC70-JPC72; JPC676-JPC686; SCM6856-SCM6858; SCM5697-SCM5711; SCM6875-SCM6890; SCM7234-SCM7237; SCM6905-SCM6914; TK299-TK374. Valentine was aware that the Hyperdynamics death spiral scheme was being negotiated by the Canouse Defendants and was to be consummated in Atlanta, Georgia. *See, e.g.*, document bates numbered WELL189. Valentine was aware that the documents used in the Hyperdynamics death spiral scheme were being negotiated by the Canouse Defendants in Atlanta, Georgia and were being drafted by the Canouse Defendants' attorneys in Atlanta, Georgia. *See, id.* Valentine met with Hicks and the Canouse Defendants in Atlanta, Georgia on multiple occasions to discuss the various death spiral schemes in which they were participating. *See*, Affidavit of Alan B. Thomas, Jr., ¶ 4; Affidavit of William S. Woulfin, ¶ 10. Hicks has personally testified that he spoke with Valentine one to two times per day during the times relevant to this action. *See*, Deposition of Stephen Hicks (*DG Jewelry* litigation), p. 112, lines 17-25. Valentine received fees and commissions as a result of his participation in the General Enterprise and Conspiracy. *See, e.g.*, documents bates numbered TK299-TK374. Valentine

transacted business in the State of Georgia and committed tortious acts in the State of Georgia directly and through his agents.

53.

TK is a member of the General Enterprise and Conspiracy and a co-conspirator with each of the other Defendants. TK, through Valentine, was aware that the documents used in the Hyperdynamics death spiral scheme were being negotiated by the Canouse Defendants in Atlanta, Georgia and were being drafted by the Canouse Defendants' attorneys in Atlanta, Georgia. The Defendants conducted their illegal trading conspiracy through TK with the knowledge and with the assistance of TK's chairman, Valentine. Talya Davies, an employee of TK and an agent of Wellington, Carpe, and Cache sent numerous conversion notices to Hyperdynamics, in furtherance of the General Enterprise and Conspiracy, through the use of interstate transmission facilities. *See, e.g.*, documents bates numbered WELL63-WELL67; WELL68-WELL71; WELL72-WELL78; WELL79-WELL83; WELL84-WELL86; WELL87-WELL89. TK, through Valentine and Davies, was aware of and acted as an active participant in the illegal trading scheme and market manipulation conducted by the Defendants. TK also acted as the brokerage house in numerous other related death spiral schemes. TK received fees and commissions as a result of its participation in the General Enterprise and Conspiracy. *See, e.g.*, documents bates numbered TK299-TK374. TK transacted business in the State of Georgia and committed tortious acts in the State of Georgia directly and through its agents.

54.

Sovereign is a member of the General Enterprise and Conspiracy and a co-conspirator with each of the other Defendants. Sovereign was formed by Dorsey at the request of Hicks. *See*, Deposition of Michael Griffin, p. 25, line 5-p. 26, line 18. Sovereign, through Hicks and

Southridge, was aware that the documents used in the Hyperdynamics death spiral scheme were being negotiated by the Canouse Defendants in Atlanta, Georgia and were being drafted by the Canouse Defendants' attorneys in Atlanta, Georgia. *See*, Deposition of Henry Sargent, p. 90, line 18-p. 91, line 11; p. 95, lines 8-15. Southridge is the general partner of Sovereign and has exclusive authority to act on behalf of Sovereign. *See*, Stephen Hicks a/k/a Steve Hicks' Responses to Plaintiff's First Requests for Admission, Response to RFA No. 25. Southridge and Sovereign share the same address. *See*, Wellington, LLC's Audited Responses to Plaintiff's First Interrogatories, Response to Interrogatory Nos. 1 and 22. Sovereign provided a portion of the money used to fund the Hyperdynamics death spiral scheme. *See*, Stephen Hicks a/k/a Steve Hicks' Responses to Plaintiff's First Requests for Admission, Response to RFA No. 46. Sovereign was aware that this money was to be funneled through Minglewood, Wellington, and/or another SPV to Hyperdynamics as part of an illegal and fraudulent death spiral scheme. *See*, Deposition of Southridge Capital Management LLC, p. 173, line 25-p. 174, line 6. Sovereign was also aware that the Defendants intended to manipulate the market in Hyperdynamics securities and drive the price of common shares down. Sovereign received proceeds from Wellington's violations of state and federal securities laws and other laws. *See, generally*, Deposition of Henry Sargent, p. 42, line 11-p. 43, line 3; p. 114, line 7-p. 115, line 16. Actions of Sovereign were directed and controlled by the Hicks/Sims Defendants. Sovereign transacted business in the State of Georgia by and through its in-state agents, the Canouse Defendants, and committed tortious acts in the State of Georgia through its agents.

55.

Dominion is a member of the General Enterprise and Conspiracy and a co-conspirator with each of the other Defendants. Dominion was formed at the request of Hicks. *See*,

Deposition of Michael Griffin, p. 20, lines 5-12. Dominion, through Sims and Navigator (its sole officer and sole director), was aware that the documents used in the Hyperdynamics death spiral scheme were being negotiated by the Canouse Defendants in Atlanta, Georgia and were being drafted by the Canouse Defendants' attorneys in Atlanta, Georgia. *See, generally*, documents bates numbered WELL542-WELL547; JPC185-JPC191; WELL598-WELL460; WELL599; WELL600-WELL601; WELL602A; DAW99-DAW109. At various times, Navigator, Sims, and a nonparty Citco Group Company (Inter Caribbean) act (or acted) as the officer(s) and director(s) of Dominion. *See*, Deposition of David Sims, p. 19, lines 10-17; p. 95, lines 2-9; p. 98, line 7; Objections and Responses to Plaintiff's Second Interrogatories to Navigator Management Ltd., Response to Interrogatory Nos. 3 and 8. Dominion provided a portion of the money used to fund the Hyperdynamics death spiral scheme. *See, e.g.*, Minglewood Capital, LLC's Responses to Plaintiff's First Interrogatories, Response to Interrogatory No. 11. Dominion was aware that this money was to be funneled through Terrapin, Minglewood, Wellington, or another SPV to Hyperdynamics as part of the illegal and fraudulent death spiral scheme. *See, id.; see, also*, Deposition of Henry Sargent, p. 42, line 11-p. 43, line 7. Dominion was also aware that the Defendants intended to manipulate the market in Hyperdynamics securities downward. Dominion received proceeds from Wellington's violations of state and federal securities laws and other laws. *See*, Wellington, LLC's Amended Supplemental Responses to Michael Watts' First Set of Interrogatories, Response to Interrogatory Nos. 4-6. The actions of Dominion were directed and controlled by the Hicks/Sims Defendants. Dominion transacted business in the State of Georgia and committed tortious acts in the State of Georgia by and through its in-state agents, the Canouse Defendants.

CALP is a member of the General Enterprise and Conspiracy and a co-conspirator with each of the other Defendants. VMH is the general partner of CALP and possessed authority to direct the actions of CALP. *See*, Deposition of Stephen Hicks (*DG Jewelry* action), p. 39, lines 5-25. VMH is now owned and controlled by Valentine. *See*, Deposition of Stephen Hicks (*DG Jewelry* action), p. 41, lines 1-11. Southridge acted as a “subadvisor” to CALP, either directly or through VMH. *See*, Deposition of Henry Sargent, p. 46, lines 19-23. CALP was aware that the documents used in the Hyperdynamics death spiral scheme were being negotiated by the Canouse Defendants in Atlanta, Georgia and were being drafted by the Canouse Defendants’ attorneys in Atlanta, Georgia. *See, e.g.*, document bates numbered WELL189. CALP provided a portion of the money used to fund the Hyperdynamics death spiral scheme. *See, e.g.*, Minglewood Capital, LLC’s Responses to Plaintiff’s First Interrogatories, Response to Interrogatory No. 11. CALP, through its relationship with Southridge, was aware that this money was to be funneled through Terrapin, Minglewood, Wellington, or another SPV to Hyperdynamics as part of an illegal and fraudulent death spiral scheme. *See*, Deposition of Henry Sargent, p. 42, line 11-p. 43, line 7; Deposition of Southridge Capital Management LLC, p. 152, lines 15-25; p. 164, line 24-p. 165, line 17; p. 182, lines 18-23. CALP was also aware that the Defendants intended to manipulate the market in Hyperdynamics securities downward. CALP received proceeds from Wellington’s violations of state and federal securities laws and other laws. *See, generally*, Deposition of Henry Sargent, p. 114, line 7-p. 115, line 16. All of the actions of CALP were directed and controlled by Valentine acting through VMH and by Hicks through Southridge. *See, generally*, Deposition of Henry Sargent, p. 42, line 11-p. 43, line 7; p. 46, lines 19-23; Deposition of Southridge Capital Management LLC, p. 181, line 9-p. 182, line

23. CALP transacted business in the State of Georgia and committed tortious acts in the State of Georgia by and through its agents, the Canouse Defendants.

57.

VMH is a member of the General Enterprise and Conspiracy and a co-conspirator with each of the other Defendants. VMH is the general partner in CALP. *See*, Deposition of Stephen Hicks (*DG Jewelry* action) p. 39, lines 5-25. Valentine, acting through VMH, and Hicks, acting through Southridge (CALP's "subadvisor"), directed and controlled all of the actions of CALP. *Id.*, p. 39, lines 5-25 and p. 41, lines 1-11. VMH was aware that CALP was providing funds which were to be funneled through Terrapin, Minglewood, Wellington, or another SPV as part of an illegal and fraudulent death spiral scheme. *See*, Minglewood Capital, LLC's Responses to Plaintiff's First Interrogatories, Response to Interrogatory No. 11. VMH was further aware that the Defendants intended to manipulate the market in Hyperdynamics securities downward. VMH, through Valentine, was aware that the documents used in the Hyperdynamics death spiral scheme were being negotiated by the Canouse Defendants in Atlanta, Georgia and were being drafted by the Canouse Defendants' attorneys in Atlanta, Georgia. *See, e.g.*, document bates numbered WELL189. VMH transacted business in the State of Georgia and committed tortious acts in the State of Georgia by and through its in-state agents, the Canouse Defendants.

58.

Terrapin is a member of the General Enterprise and Conspiracy and a co-conspirator with each of the other Defendants. Terrapin, through Hicks (its control person), Southridge (its subadvisor), Sims (its control person), and Navigator (its director), was aware that the documents used in the Hyperdynamics death spiral scheme were being negotiated by the Canouse Defendants in Atlanta, Georgia and being drafted by the Canouse Defendants' attorneys in

Atlanta, Georgia. *See, generally*, documents bates numbered WELL189; WELL542-WELL547; JPC185-JPC191; WELL598-WELL599; WELL602A; WELL600-WELL601; DAW99-DAW109; Deposition of Henry Sargent, p. 43, lines 4-7. Terrapin was aware that the Regulation D Subscription Agreements executed by Wellington contained numerous false statements. Terrapin was further aware that the Defendants intended to manipulate the market in Hyperdynamics securities downward. Terrapin was aware of and ratified the breaches of contract and tortious acts and omissions of Wellington. Hicks and Sims directed and controlled actions of Terrapin. *See*, Deposition of Michael Griffin, p. 123, line 18-23; Deposition of Henry Sargent, p. 58, lines 18-23. Terrapin transferred the money from Dominion and CALP to Minglewood which was used to fund the Hyperdynamics death spiral scheme. *See*, Deposition of Henry Sargent, p. 42, line 11-p. 43, line 7. Terrapin also participated in the transfer of proceeds which were obtained through the illegal trading conspiracy back to Dominion and CALP. *See*, Wellington, LLC's Amended Supplemental Responses to Michael Watts' First Interrogatories, Response to Interrogatory Nos. 4-6. Terrapin profited from its participation in the General Enterprise and Conspiracy. *Id.* Terrapin transacted business in the State of Georgia and committed tortious acts in the State of Georgia by and through its in-state agents, the Canouse Defendants.

59.

Beacon is a member of the General Enterprise and Conspiracy and a co-conspirator with each of the other Defendants. Beacon is the sole owner of Navigator and Falcon. *See*, Deposition of David Sims, p. 62, lines 1-6. Beacon was aware of and ratified the false statements made by Wellington in the Regulation D Subscription Agreement. Beacon purposefully directed its activities toward the State of Georgia by transmitting numerous false

and fraudulent statements into the State of Georgia through the use of interstate transmission facilities in order to transact business in Georgia. *See, e.g.*, documents bates numbered JPC184-JPC191; JPC296-JPC300; DAW99-DAW109. Beacon was aware that the documents used in the Hyperdynamics death spiral scheme were being negotiated by the Canouse Defendants in Atlanta, Georgia and were being drafted by the Canouse Defendants' attorneys in Atlanta, Georgia. *See, e.g.*, documents bates numbered JPC184-JPC191; JPC296-JPC300; DAW99-DAW109. Beacon committed tortious acts and predicate acts in the State of Georgia. Throughout the Hyperdynamics death spiral scheme, and in numerous related death spiral schemes, Beacon acted as the "alter ego" of Sims. Beacon also transacted business in the State of Georgia and committed tortious acts in the State of Georgia by and through its in-state agents, the Canouse Defendants.

60.

Livingstone is a member of the General Enterprise and Conspiracy and a co-conspirator with each of the other Defendants. Livingstone is the "advisor" to Terrapin, Minglewood, Wellington, and each of the SPVs utilized by the Hicks/Sims Defendants in each of the related death spiral schemes. *See*, documents bates numbered DW1-DW67. Livingstone is also the "advisor" to Dominion. *See*, Deposition of Michael Griffin, p. 43, lines 14-19. Navigator is currently, or was previously, an officer of Livingstone. *See*, Deposition of David Sims, p. 237, lines 15-21; p. 238, lines 11-12. Falcon is currently, or was previously, an officer of Livingstone. *See*, Objections and Responses to Plaintiff's Second Interrogatories to Navigator Management Ltd., Response to Interrogatory No. 2. Livingstone, through Sims and Southridge (its "subadvisor"), was aware of and ratified the false and fraudulent statements made by Wellington in the Regulation D Subscription Agreements. *See, generally*, documents bates

numbered WELL189; WELL542-WELL547; JPC185-JPC191; WELL598-WELL599; WELL602A; WELL600-WELL601; DAW99-DAW109. All of the acts of Livingstone were directed and controlled by Navigator, a director and officer of Livingstone, by Sims, a director of Livingstone, and by Hicks, the President of Livingstone. Livingstone was granted power of attorney and unlimited authority to make investment decisions on behalf of Wellington, Minglewood, Terrapin, and Dominion and was called the “advisor.” *See*, documents bates numbered DW1-DW67; *See*, Deposition of Stephen Hicks, p. 41, lines 14-21; Deposition of Sims, p. 174, line 1-p. 176, line 5. Livingstone subsequently delegated this authority (including the power of attorney) to Southridge, who was called the “subadvisor.” *See*, documents bates numbered DW829-DW867. Throughout the Hyperdynamics death spiral scheme, Livingstone acted as an “alter ego” of Hicks, Sims, and Navigator. Livingstone transacted business in the State of Georgia and committed tortious acts in the State of Georgia through its agents.

61.

Each of the Defendants was a knowing and willing participant in the General Enterprise and Conspiracy. Each of the Defendants was aware of the purpose, nature, and structure of the General Enterprise and Conspiracy. Each of the Defendants profited, either directly or indirectly, from the illegal activities of the General Enterprise and Conspiracy. Each member of the General Enterprise and Conspiracy was aware that the documents used in the Hyperdynamics death spiral scheme were being negotiated by the Canouse Defendants in Atlanta, Georgia and being drafted by the Canouse Defendants’ attorneys in the State of Georgia in order to transact business and commit torts in Georgia. Each of the Defendants was aware that substantial tortious acts in furtherance of the General Enterprise and Conspiracy were being committed in Atlanta, Georgia. Each member of the General Enterprise and Conspiracy knowingly and tacitly

approved of and ratified the acts taken in furtherance of the General Enterprise and Conspiracy in Atlanta, Georgia, including the transaction of business, the tortious acts, and the predicate acts.

62.

The State of Georgia was the “center of gravity” for the Defendants’ death spiral scheme as set forth herein. A substantial portion of the events, allegations, and actions giving rise to the claims set forth herein occurred in Fulton County, Georgia. Numerous substantial acts and omissions which give rise to Hyperdynamics’ claims occurred in Fulton County, Georgia. Moreover, numerous substantial acts in furtherance of the conspiracy and numerous predicate acts underlying Plaintiff’s RICO claim occurred in the State of Georgia. Each of the non-resident co-conspirators was aware that the documents being used in the Hyperdynamics death spiral scheme were being negotiated by the Canouse Defendants in Atlanta, Georgia and were being drafted by the Canouse Defendants’ attorneys in Atlanta, Georgia. *See*, Deposition of Joseph Canouse, p. 254, lines 9-22; p. 262, lines 7-12; p. 269, lines 4-12; Deposition of Henry Sargent, p. 90, line 18-p. 91, line 11; Deposition of David Wisniewski, p. 28, lines 12-17; p. 29, lines 4-11; p. 29, line 23-p. 30, line 5; p. 48, lines 9-14. The Canouse Defendants acted as a conduit for the transmission of information, terms, and documents between and among the non-resident Defendants, the attorneys drafting the Hyperdynamics financing documents, and Hyperdynamics. *See*, Deposition of Joseph Canouse, p. 254, lines 9-22; p. 262, lines 7-12; p. 269, lines 4-12; Deposition of Henry Sargent, p. 90, line 18-p. 91, line 11; Deposition of David Wisniewski, p. 28, lines 12-17; p. 29, lines 4-11; p. 29, line 23-p. 30, line 5; p. 48, lines 9-14. The Canouse Defendants reside in Atlanta, Georgia. *See*, Deposition of Joseph Canouse, p. 22, lines 6-7, p. 41, lines 8-13. The Canouse Defendants acted as agents for the nonresident

Defendants. *See*, Deposition of Joseph Canouse, p. 254, lines 9-22; p. 262, lines 7-12; p. 269, lines 4-12; Deposition of Henry Sargent, p. 90, line 18-p. 91, line 11; Deposition of David Wisniewski, p. 28, lines 12-17; p. 29, lines 4-11; p. 29, line 23-p. 30, line 5; p. 48, lines 9-14. Hicks, Valentine, and the Canouse Defendants met in Atlanta, Georgia. *See, e.g.*, Affidavit of Sam Ellis, ¶ 4; Affidavit of William S. Woulfin, ¶ 10; Affidavit of Alan B. Thomas, Jr., ¶ 4. The purpose of this meeting was to discuss another death spiral scheme involving and to be accomplished through the multi-tiered offshore structure. Numerous documents, including five of the Regulation D Subscription Agreements, relating to the Hyperdynamics death spiral scheme were executed in Atlanta, Georgia. *See, e.g.*, Deposition of Joseph Canouse, p. 304, line 2-p. 317, line 20. Approximately \$1,000,000.00 of the money which the Defendants used to fund the Hyperdynamics death spiral scheme came from or passed through bank accounts maintained in Atlanta, Georgia. *See*, documents bates numbered JPC360-JPC362; Deposition of Joseph Canouse, p. 410, line 5-p. 412, line 12. Kent Watts, President of Hyperdynamics, visited the Canouse Defendants in Atlanta, Georgia on multiple occasions to negotiate various aspects of the Hyperdynamics financing transaction. *See, e.g.*, Deposition of Kent Watts, p. 44, line 19-p. 45, line 20. Additionally, many of the non-resident co-conspirators purposefully directed mailings, telephone calls, and facsimile transmissions to the Canouse Defendants and to Nelson, Mullins, Riley & Scarborough, L.L.P. in the State of Georgia in furtherance of the Hyperdynamics death spiral scheme. *See, e.g.*, documents bates numbered JPC185-JPC191; DAW99-DAW109; WELL542-WELL547; WELL598-WELL599; WELL600-WELL601; WELL460; WELL629; WELL463; WELL465A; WELL466A; SOUTHRIDGE2090; Deposition of Henry Sargent, p. 25, line 19-p. 28, line 1; Deposition of Joseph Canouse, p. 76, line 22-p. 77, line 3.

63.

In addition to the foregoing facts, which justify this Court's exercise of "specific" jurisdiction over the non-resident Defendants, there are numerous facts which support this Court's exercise of personal jurisdiction over said non-resident Defendants based upon the Defendants' "general" jurisdiction contacts with the State of Georgia.

64.

Each of the non-resident Defendants has maintained systematic, ongoing, substantial, and continuous contacts with the State of Georgia, not just related to the Hyperdynamics transaction, but also related to many other transactions of business.

65.

The multi-tiered offshore structure, which was and is created and controlled by the Hicks/Sims Defendants and the Offshore Funds, has been used to invest in numerous Georgia-based companies, including, but not limited to LecStar Corporation, Bioshield Technologies, Inc., Homecom Communications, Inc., Ecompanystore.com, Inc., and Realestate.com, Inc. *See*, Wellington, LLC's Amended Supplemental Responses to Michael Watts' First Interrogatories, Response to Interrogatory Nos. 29, 31, 32, and 34; Deposition of Joseph Canouse, p. 435, line 14-p. 439, line 22; Deposition of Southridge Capital Management LLC, p. 77, line 12-p. 91, line 17; p. 101, line 20-p. 113, line 23; Deposition of Henry Sargent, p. 39, line 6-p. 41, line 21; p. 49, lines 2-20; p. 51, lines 4-13; Deposition of Haley Greene, p. 36, line 17-p. 37, line 10; p. 90, lines 1-25; p. 93, lines 5-12; p. 94, lines 8-24; p. 95, lines 4-9.

66.

These numerous investments in Georgia totaled tens of millions of dollars. *See*, Deposition of W. Dale Smith (Transcript not yet available). These Georgia investments were not

through a national stock exchange. They were private transactions directly with Georgia-based companies.

67.

The in-state Canouse Defendants contributed funds or acted as in-state placement agents with regard to each of the foregoing financing transactions. *See, e.g.*, Deposition of Joseph Canouse, p. 435, lines 11-17; p. 438, lines 6-10; Deposition of Southridge Capital Management LLC, p. 83, line 24-p. 84, line 5; p. 90, lines 6-14; Wellington, LLC's Amended Supplemental Responses to Michael Watts' First Interrogatories, Response to Interrogatory No. 31.

68.

Each of the foregoing transactions was also funded by one or more of the Offshore Funds. *See*, documents bates numbered SCM4917B-SCM4921B.

69.

The funding was passed down through Terrapin, Minglewood, and SPVs such as Bonham, LLC, Sherman, LLC, Jackson, LLC, Jameson, LLC, Maple Circle, LLC, McNab, LLC, and Wilson, LLC, just like the Hyperdynamics transaction. *See*, Deposition of Daniel Pickett, p. 69, line 13-p. 70, line 14; documents bates numbered SCM4917B-SCM4921B. Proceeds of the SPVs trading of the Georgia-based target companies' securities would then be passed through the multi-tiered offshore structure to the Offshore Funds. *See*, Deposition of Daniel Pickett, p. 70, line 16-p. 71, line 22; documents bates numbered SCM4917B-SCM4921B.

70.

Livingstone "advised" each of the foregoing SPVs with regard to each of the foregoing Georgia investments. *See*, Deposition of Henry Sargent, p. 33, lines 11-13.

71.

Southridge “subadvised” each of the foregoing SPVs with regard to each of the foregoing Georgia investments. *See*, Deposition of Henry Sargent, p. 33, lines 7-10.

72.

Navigator was the director for each of the foregoing SPVs with regard to each of the foregoing Georgia investments. *See*, Deposition of Henry Sargent, p. 33, lines 14-16; p. 24, lines 12-19.

73.

Falcon was an officer of each of the foregoing SPVs with regard to each of the foregoing Georgia investments. *See*, Deposition of Henry Sargent, p. 33, lines 17-19; documents bates numbered SCM6807-SCM6809; SCM11919-SCM11921.

74.

Additionally, Southridge and the Canouse Defendants have participated in a Georgia based joint venture named Technest.com, LLC. *See*, Deposition of Joseph Canouse, p. 167, lines 14-16; p. 169, lines 8-13; p. 188, lines 16-25; Deposition of John Canouse, p. 21, lines 10-12; p. 24, lines 6-16; p. 28, lines 8-12; p. 88, line 24-p. 89, line 4; Deposition of Henry Sargent, p. 48, line 24-p. 50, line 6; Deposition of Daniel Pickett, p. 63, line 22-p. 64, line 5; p. 73, line 9-p. 74, line 8. Hicks and Jack Canouse were both directors of Technest. *See*, Deposition of John Canouse, p. 21, lines 10-12; p. 24, lines 6-16; Deposition of Stephen Hicks (*DG Jewelry Litigation*), p. 58, line 25-p. 59, line 1; p. 68, line 21-p. 69, line 1. The Canouse Defendants, Hicks, and Southridge were each involved in the formation and/or operations of Technest. *See*, Deposition of Joseph Canouse, p. 167, lines 14-16; p. 169, lines 8-13; p. 188, lines 16-25; Deposition of John Canouse, p. 21, lines 10-12; p. 24, lines 6-16; p. 28, lines 8-12; p. 88, line 24-

p. 89, line 4; Deposition of Henry Sargent, p. 48, line 24-p. 50, line 6; Deposition of Daniel Pickett, p. 63, line 22-p. 64, line 5; p. 73, line 9-p. 74, line 8. In short, none of the Defendants are strangers to Georgia. They routinely do business here.

75.

Moreover, Dominion and CALP have filed at least one civil action as Plaintiffs in the Superior Court of Fulton County (arising out of another deal in which the Canouse Defendants and entities under their control acted as placement agents and investors), thereby submitting to the jurisdiction of this Court. *See, First Empire Corporation, Atlantis Capital Fund Limited, Canadian Advantage Limited Partnership, Dominion Capital Fund Limited, et al., Plaintiffs, v. Nelson, Mullins, Riley & Scarborough, L.L.P., Defendant, Superior Court of Fulton County, State of Georgia, Case No. 2001-CV-43514.*

76.

Likewise, Wellington, LLC has asserted a counter-claim in this very action. The prosecution of the counter-claim is being funded and controlled by the Hicks/Sims Defendants and the Offshore Funds. Moreover, in the event that Wellington is successful in its counter-claim, the proceeds of its counter-claim will be distributed up the multi-tiered offshore structure to Minglewood, Terrapin, Sovereign, and Dominion. *See, Deposition of Henry Sargent, p. 116, lines 2-7.*

77.

Based upon the foregoing, it is clear that this Court may also exercise personal jurisdiction over the non-resident Defendants based upon both their “general” jurisdiction contacts with Georgia and based upon “specific” jurisdiction for the transaction of business in Georgia on the Hyperdynamics transaction.

Venue is proper in this Court.

FACTS

Creation of the Multi-Tiered Offshore Structure

In or about early 1999, the Hicks/Sims Defendants and the Offshore Funds concocted a scheme to provide “toxic convertible” or “death spiral” financing to various companies traded on the OTC/BB. In order to effectuate this scheme, said Defendants conspired to create a multi-tiered offshore structure, consisting of numerous offshore “shell entities,” that would protect the Offshore Funds from liabilities arising under the various applicable securities laws and other laws which they intended to violate. *See, generally*, Deposition of Michael Griffin, p. 52, lines 11-24; p. 110, lines 13-18; documents bates numbered SCM5459-SCM5460; Minglewood Capital, LLC’s Responses to Plaintiff’s First Requests for Admission, Responses to REQUEST Nos. 13-15; 71-73. Indeed, Sovereign and Dominion both “anticipated that [they] may be engaged in litigation . . . as a defendant” and that “issuers may bring claims and/or counterclaims against [Sovereign and Dominion], [Livingstone], [Southridge], and/or their respective principals and affiliates alleging violations of securities laws . . .” *See*, documents bates numbered SCM5165 and SCM5311. The multi-tiered offshore structure was created for the purpose of victimizing and defrauding companies located in the United States and for the purpose of manipulating the United States securities markets. The Citco companies required and received an indemnity from Dominion and Sovereign for their role in forming, administering, and participating in the multi-tiered offshore structure. *See*, Deposition of Michael Griffin, p. 235, line 15-p. 240, line 3; *see, also*, document bates numbered SCM4941. By operating through

offshore “shell entities,” the Hicks/Sims Defendants and the Offshore Funds sought to conceal the identities of the parties involved in the scheme and sought to undermine the enforcement of U.S. securities laws and other laws against them.

80.

On January 28, 1999, Citco Cayman, acting at the direction of Hicks, Southridge, and Dorsey & Whitney LLP, created a number of new Cayman Island limited liability companies, including Minglewood, Terrapin, and numerous SPVs. *See, generally*, document bates numbered SCM6328-SCM6372; *see, also*, Wellington, LLC’s Amended Supplemental Responses to Harry Briers’ First Interrogatories, Response to Interrogatory No. 25.

81.

On March 10, 1999, Langhorn S. Perrow, a paralegal at Dorsey, sent a facsimile to Sabrina Hew of Citco Cayman. In the March 10, 1999 facsimile, Langhorn S. Perrow stated in relevant part:

Attached please find certain marked pages from the model memorandum and articles of association as they exist on Citco System. I have compared the model you forwarded last night against the master we originally prepared and we would appreciate if you could please make the minor changes as indicated. We will be using this corrected model in the formation of all future limited liability companies.

Once we have made these changes, please forward a corrected version of the memorandum and articles of association that Citco will be using to my attention via e-mail. Thereafter, please proceed to form five (5) new limited liability companies continuing with the next available name on the list as previously forwarded to your attention. In addition, please open bank accounts for each of the five, new limited liability companies. Once the companies have been formed please forward the certificate of incorporation, a copy of the filed memorandum and articles of association and the shareholder’s resolution electing CTC Corporation Ltd. as the director of each new company. . . .

See, document bates numbered DW4002.

On March 12, 1999, Dorsey sent a letter to Citco Cayman and sent a copy of the letter to

Hicks. The March 12, 1999 letter stated in relevant part:

We have been asked to provide a letter on behalf of Minglewood, a Cayman Islands limited liability company, explaining the structure and purpose of the organization of Minglewood and each additional limited liability company to be formed under the laws of the Cayman Islands and which will be wholly-owned by Minglewood (collectively, the "SPVs").

As of the date hereof, it is our understanding that the sole owners of all of the issued and outstanding participating, voting shares of Minglewood will be Sovereign Partners L.P., a Delaware (USA) limited partnership ("Sovereign"), and Terrapin Trading LLC, a Cayman Islands limited liability company. It is our further understanding that the sole owners of all of the issued and outstanding participating, voting shares of Terrapin will be Dominion Capital Fund Limited, a Bahamian international business company ("Dominion"), and Dominion Investment Fund LLC, a Cayman Islands limited liability company ("DIF"). Each of Sovereign, Dominion and DIF were formed for the purpose of seeking to achieve capital appreciation through trading and investing, directly and indirectly, in securities and other investment instruments (collectively, "Securities").

BY TRADING AND INVESTING DIRECTLY IN SECURITIES THROUGH A MULTI-TIERED INVESTMENT STRUCTURE UTILIZING TERRAPIN, MINGLEWOOD AND THE SPVS, IT IS OUR UNDERSTANDING THAT EACH OF SOVEREIGN, DOMINION, AND DIF, AS THE CASE MAY BE, WILL BE USING AN INVESTMENT STRUCTURE DESIGNED TO PROTECT THEIR RESPECTIVE ASSETS FROM THE RISK OF CERTAIN LIABILITIES THAT MAY ARISE OUT OF THEIR INVESTMENT IN CERTAIN SECURITIES UNDER APPLICABLE LAWS.

See, documents bates numbered SCM5459-SCM5460 (emphasis added). These documents bates numbered SCM5459-SCM5460 were intentionally concealed from Hyperdynamics by the Hicks/Sims Defendants, despite the fact that such documents are relevant to this action and were requested by Hyperdynamics over a year earlier in discovery. The Hicks/Sims Defendants did not produce said documents until October 2003, after Hyperdynamics' counsel became aware of the existence of such documents through another legal action.

In or about early 1999, Michael F. Griffin, an attorney at Dorsey & Whitney LLP, is believed to have sent a letter to Citco Trustees (Cayman) Limited. The undated letter from Michael F. Griffin stated in relevant part:

We have been asked to provide a letter on behalf of Minglewood, a Cayman Islands limited liability company, explaining the organization and purpose of Minglewood and each additional limited liability company to be formed in the Cayman Islands. Sovereign Partners, L.P., a Delaware limited partnership (“Sovereign”), and Dominion Investment Fund LLC, a Cayman Islands limited liability company ([“]Dominion”), through Terrapin Trading LLC, a Cayman Islands limited liability company, will make periodic investments in Minglewood in an attempt to achieve capital appreciation through the implementation of their respective investment strategies. Thereafter, Minglewood will make a one-time investment in numerous special purpose vehicles organized in the Cayman Islands and established for the overall investment objectives of Sovereign and Dominion.

UTILIZING MINGLEWOOD AS AN INTERMEDIATE INVESTMENT VEHICLE WILL PROVIDE BOTH SOVEREIGN AND DOMINION WITH INSULATION FROM ANY POTENTIAL LIABILITY THAT MIGHT OTHERWISE ARISE. MORE SPECIFICALLY, BY IMPLEMENTING A TIERED INVESTMENT STRUCTURE, SOVEREIGN AND DOMINION AND THEIR INVESTMENTS MAY POTENTIALLY AVOID UNDERWRITER LIABILITY THAT COULD ARISE UNDER THE UNITED STATES SECURITIES LAWS.

See, documents bates numbered SCM3950-SCM3951 (emphasis added). A copy of the Michael F. Griffin letter was sent to Hicks.

On May 5, 1999, Hicks sent a letter to CTC, the director of Terrapin, Minglewood, and numerous other SPVs owned and controlled by the Defendants. A copy of the May 5, 1999 letter was sent to Dorsey. The May 5, 1999 letter stated in relevant part:

Please be advised hereby as follows:

Southridge Capital Management LLC (“Southridge”) is the general partner of Sovereign Partners, L.P. (“Sovereign”), a Delaware limited partnership, and as such has exclusive authority to manage the business affairs of Sovereign.

THE DIRECTOR, IN ITS CAPACITY AS THE DIRECTOR OF THOSE CERTAIN STREET NAME CAYMAN ISLANDS LIMITED LIFE COMPANIES WHICH ARE WHOLLY-OWNED SUBSIDIARIES OF MINGLEWOOD CAPITAL LLC ("THE STREET NAME LLCS"), BE AND HEREBY IS AUTHORIZED, EMPOWERED AND DIRECTED TO ACCEPT INSTRUCTIONS AND AUTHORIZATIONS FROM SOUTHRIDGE, WHOSE PRINCIPALS ARE STEPHEN HICKS AND DANIEL PICKETT.

In consideration of the Director [CTC] serving as the director of the Street Name LLCs, the Director will receive an indemnity from Sovereign, which is a beneficial owner of Minglewood Capital LLC, indemnifying the director from and against any and [sic] losses which it may incur as a result of its serving or having served as a director of any Street Name LLC.

Formal documentation confirming the foregoing will be forwarded to you shortly. Please contact Southridge at the below number if you have further questions regarding this matter.

See, document bates numbered SCM4941 (emphasis added). The document bates numbered SCM4941 was intentionally concealed from Hyperdynamics by the Hicks/Sims Defendants, despite the fact that said document is relevant to this action and was requested by Hyperdynamics over a year earlier in discovery. The Hicks/Sims Defendants did not produce said document until October 2003, after counsel for Hyperdynamics became aware of this document through other means.

85.

On July 23, 1999, Sims sent a facsimile to J.P. Bruynes, another attorney at Dorsey. The July 23, 1999 facsimile stated in relevant part:

Dear Mr. Bruynes, as we discussed last week with you, Mr. Perrow, and Mr. Griffin as well as Mr. Hicks and Mr. Pickett, I confirm that we are willing to provide additional director services as detailed below:

For special purpose investment subsidiaries I propose a flat annual fee for up to 100 companies of US\$20,000.00. This amounts to a US\$200.00 per company a reduction of 60% on our usual fee of US\$500.00. However, since this is a very low fee, I will monitor time spent closely and advise on any capacity issues in this

regard, to allow for a greater recovery as seen fit. I understand that both Dan Pickett and Henry Sargent are in agreement. . . .

WITH REGARD TO CITCO'S POLICY ON CO-OPERATING WITH REQUEST/DEMANDS FOR INFORMATION ETC., UNDER SUBPOENA FROM ATTORNEYS ACTING FOR COMPANIES AND WHICH ONE OF THE FUNDS HAS INVERTED [SIC], I HAVE BEEN INFORMED THAT NO INFORMATION WILL BE PROVIDED EXCEPT UNDER COURT ORDER, WHERE CRIMINAL ACTIVITY IS SUSPECTED. AS REQUESTED BY STEVE HICKS, I WILL REQUEST THAT THEY CONFIRM THIS IN WRITING TO US. . . .

See, documents bates numbered SCM6282-SCM6283 (emphasis added).

86.

The multi-tiered offshore structure which Dorsey & Whitney LLP and Citco Cayman created for the Hicks/Sims Defendants and the Offshore Funds was set up as illustrated in Exhibits 1 and 2 attached hereto. *See*, Deposition of Henry Sargent, p. 32, lines 4-10; Deposition of Michael Griffin, p. 114, lines 2-22.

87.

Each of the SPVs created by Citco Cayman for the conspirators is (or was) a wholly owned subsidiary of Minglewood. *See*, Deposition of Henry Sargent, p. 29, lines 4-7; p. 32, lines 4-19.

88.

The SPVs formed by Citco Cayman and Dorsey include the following companies: Aberdeen Avenue LLC, Arkledun Drive LLC, Augusta Street LLC, Beach Boulevard LLC, Binkley LLC, Birch Circle LLC, Bold Street LLC, Briencrest Avenue LLC, Brock Road LLC, Burlington Street LLC, Catharine Street LLC, Cedar Avenue LLC, Centennial Parkway LLC, Charlton Avenue LLC, Crooks Hollow Road LLC, Duke Street LLC, Dundurn Street LLC, Fennell Avenue LLC, Forest Avenue LLC, Gage LLC, Garth LLC, George LLC, Governor's

Road LLC, Grandview Court LLC, Haymarket LLC, Haines Avenue LLC, Herkimer LLC, Hillcrest Avenue LLC, Hughson LLC, Hunts Drive LLC, Hunter LLC, Jackson LLC, James LLC, Jameson Drive LLC, Kenilworth LLC, Kew Court LLC, King LLC, King William LLC, Limeridge LLC, McNab LLC, Maple Avenue LLC, Market LLC, Markham LLC, Markland LLC, Mowhawk LLC, Mount Albion LLC, Mountwood LLC, Nash LLC, Parkdale LLC, Queen LLC, Queenston LLC, Rebecca LLC, Wellington, Wentworth LLC, Wilson LLC, Woodward LLC, York LLC. *See, e.g.*, document bates numbered SCM9214-SCM9280. The foregoing list may not contain all of the SPVs formed by Citco Cayman, and Dorsey for the members of the General Enterprise and Conspiracy.

89.

CTC acted as the initial director of all or substantially all of the foregoing SPVs. *See, generally*, Deposition of Michael Griffin, p. 165, lines 3-10; Deposition of Citco Trustees (Cayman) Limited, p. 140, line 17-p. 145, line 4.

90.

CSS acted as the initial officer of all or substantially all of the foregoing SPVs. *See, generally*, Deposition of David Sims, p. 60, line 15-p. 61, line 4; Deposition of Citco Trustees (Cayman) Limited, p. 140, line 17-p. 145, line 4.

91.

Navigator acted as the director (concurrent with or subsequent to CTC's service as director) of all or substantially all of the foregoing SPVs. *See*, Deposition of Henry Sargent, p. 33, lines 14-16; p. 24, lines 12-19.

92.

Falcon acted as the officer (concurrent with or subsequent to CSS' service as officer) of all or substantially all of the foregoing SPVs. *See*, Deposition of Henry Sargent, p. 33, lines 17-19.

93.

Livingstone acted as the "advisor" for all or substantially all of the foregoing SPVs. *See*, Deposition of Henry Sargent, p. 33, lines 11-13.

94.

Southridge acted as the "subadvisor" for all or substantially all of the foregoing SPVs. *See*, Southridge Capital Management LLC's Fourth Supplemental Responses to Plaintiff's First Interrogatories, Response to Interrogatory No. 25; Deposition of Henry Sargent, p. 33, lines 7-10.

95.

All or substantially all of the foregoing SPVs were wholly owned subsidiaries of Minglewood. *See*, Deposition of Henry Sargent, p. 32, lines 12-21; *see, also*, documents bates numbered SCM4917B-SCM4921B.

96.

The Canouse Defendants have participated in Georgia as a placement agent, underwriter, and/or investor in **dozens** of private securities offerings that involved the other Defendants in this litigation.

97.

Hicks has **admitted** that he has a business relationship with the Canouses and that, since the time he met the Canouses in 1994, the entities which he and Southridge control have been

involved in twelve to eighteen securities offerings in which he “worked with the Canouses.” *See*, Second Affidavit of Stephen Hicks in Support of Motion to Dismiss for Lack of Personal Jurisdiction, ¶¶ 2-3. Many of these transactions involved the financing of Georgia companies. *See, e.g.*, Wellington, LLC’s Amended Supplemental Responses to Michael Watts’ First Interrogatories, Response to Interrogatory Nos. 29, 31, 32, and 34; Deposition of Joseph Canouse, p. 435, line 14-p. 439, line 22; Deposition of Southridge Capital Management LLC, p. 77, line 12-p. 91, line 17; p. 101, line 20-p. 113, line 23; Deposition of Henry Sargent, p. 39, line 6-p. 41, line 21; p. 49, lines 2-20; p. 51, lines 4-13; Deposition of Haley Greene, p. 36, line 17-p. 37, line 10; p. 90, lines 1-25; p. 93, lines 5-12; p. 94, lines 8-24; p. 95, lines 4-9.

98.

Additionally, SEC filings reveal that one or more of the Canouse Defendants, one or more of the Hicks/Sims Defendants, one or more of the Valentine Defendants, and one or more of the Offshore Funds were each involved in the following securities transactions together: American Healthchoice, Inc., BICO, Inc., Bioshield Technologies, Inc., Cable & Co. Worldwide, Inc., DCI Telecommunications, Inc., Eat at Joes Ltd., Environmental Remediation Holding Corp., Euroweb International Corp., FINET.COM, Inc., Global Telemedia International, Inc., Halstead Energy, Hyperdynamics Corporation, International Fibercom, Inc., Lasergate Systems, Inc., LecStar Corporation, NCT Group, Inc., Network Connection, Perma Fix Environmental Services, Inc., Popmail.com, Inc., Professional Transportation Group, Ltd., SAF T LOK, Inc., SI Diamond Technology, Inc., Snake Eyes Golf Clubs, Inc., Spatialight, Inc., Spintek Gaming Technologies, Inc., Struthers Industries, Inc., 2 Infinity, Inc., Technest Holdings, Inc., Telechips Corp., Total World Telecommunications, Inc., US Digital Communications, Inc., USA Talks Com, Inc., Uniview Technologies, Versatech Inc., and Vialink Company. Additionally, Citco

Cayman and numerous SPVs participated in many of the foregoing transactions, a number of which involve the financing of Georgia companies. Upon information and belief, the Defendants' investments in the foregoing companies each involved death spiral financing. These transactions demonstrate a systematic and continuous course of conduct on behalf of the members of the General Enterprise and Conspiracy.

The Hyperdynamics Death Spiral Scheme

99.

In or about November 1999, Hyperdynamics, a publicly traded corporation, was searching for capital to fulfill its business plan. Specifically, Hyperdynamics was searching for an investor or investors who would provide sufficient capital to carry it through its growth period.

100.

As a result of this search, Hyperdynamics came into contact with the Canouse Defendants. Unknown to Hyperdynamics at the time (and concealed by the Canouse Defendants), the Canouse Defendants had a preexisting relationship with the Hicks/Sims Defendants, the Valentine Defendants, Cache, and Carpe. The Canouse Defendants had acted as "placement agents" and been otherwise involved in numerous other death spiral schemes which involved the Hicks/Sims Defendants, the Valentine Defendants, and the Offshore Funds, many of which involved Georgia companies.

101.

For example, the Canouse Defendants, the Hicks/Sims Defendants, and the Valentine Defendants had provided similar joint financing packages to NCT Group, Inc., Struthers

Industries, Inc., Internet Commerce Corp., LecStar Corporation (and its predecessors), and others.

102.

The fact that the Canouse Defendants, the Hicks/Sims Defendants, and the Valentine Defendants had a preexisting relationship and that they planned to accomplish the Hyperdynamics death spiral scheme, in part, through the multi-tiered offshore structure was never disclosed to Hyperdynamics and, in fact, was purposefully concealed from Hyperdynamics.

103.

Between October 1999 and December 1999, Hyperdynamics and the Canouse Defendants engaged in discussions regarding the terms upon which the Canouse Defendants would agree to act as a "Consultant" for Hyperdynamics. In their discussions with Hyperdynamics, the Canouse Defendants made certain representations which were subsequently embodied in an "Engagement Agreement." *See*, document bates numbered JPC107-JPC108.

104.

Shortly after being contacted by Hyperdynamics, and well **before** the Engagement Agreement had been executed, Jim Canouse sent a letter to Hicks and Valentine which stated in relevant part:

Please find enclosed the Investor Package and Business Plan for Hyperdynamics Corporation HYPD-BB . . . **J.P. Carey Securities, Inc. has a big interest in this deal so we have ONLY sent it to you [Hicks] and Mark Valentine to participate . . .** (emphasis added).

See, document bates numbered WELL189. In other words, despite the fact that the Canouse Defendants promised to use their "best efforts" to locate investors for Hyperdynamics, in fact,

their **only** contacts were with other members of the General Enterprise and Conspiracy with whom they were conspiring to defraud Hyperdynamics through a death spiral scheme.

105.

Subsequently, on December 1, 1999, unknown to Hyperdynamics, Citco Cayman, acting at the direction of Hicks and Southridge, formed Wellington. *See*, documents bates numbered WELL251-WELL257; WELL549-WELL578; Deposition of Michael Griffin, p. 53, lines 10-13; p. 191, lines 10-11. CTC and CSS, both wholly-owned subsidiaries of Citco Cayman, were the original director and officer of Wellington. *See*, Citco Trustees (Cayman) Limited's Responses to Plaintiff's First Requests for Admission, Response to RFA Nos. 2 and 7.

106.

On December 8, 1999, prior to the execution of the Engagement Agreement, Jim Canouse sent a fax to Hicks. *See*, document bates numbered SCM6407-SCM6409. The fax to Hicks included a copy of the initial confidential term sheet which the Canouse Defendants were providing to Hyperdynamics. *See, id.* The term sheet listed JPCSI as the "Banker" which was offering the financing. *See, id.*

107.

On December 13, 1999, Navigator replaced CTC as the director of Wellington. *See*, document bates numbered CIT110. Falcon was appointed as an assistant secretary of Wellington on the same day. *See, id.* Falcon and CSS jointly served as assistant secretaries of Wellington until CSS resigned on January 3, 2002. *See, id.* Despite the fact that CTC had resigned as the director of Wellington, CTC's parent company, Citco Cayman, continued to be actively involved in the administration of Wellington. Wellington continued to maintain its corporate office at a post office box belonging to Citco Cayman. *See*, Deposition of Citco Trustees (Cayman)

Limited, p. 94, lines 10-16. Citco Cayman continued to receive copies of Wellington's monthly brokerage account statements from TK. *See*, Deposition of Citco Trustees (Cayman) Limited, p. 92, line 23-p. 93, line 15. Moreover, CTC or Citco Cayman continued to hold and vote the proxy of Navigator at each annual meeting of Wellington. *See*, Deposition of Citco Trustees (Cayman) Limited, p. 108, lines 7-23; p. 111, line 23-p. 112, line 7.

108.

The final draft of the Engagement Agreement was signed in late December 1999 or early January 2000. Important among the representations made by the Canouse Defendants in the Engagement Agreement were the following:

(a) That the Canouse Defendants would arrange for financing in the amount of seven million dollars (\$7,000,000.00) through two vehicles, to wit: a two million dollar (\$2,000,000.00) convertible preferred stock purchase and a five million dollar (\$5,000,000.00) subsequent purchase;

(b) That the Canouse Defendants would ensure that the preferred shares only be sold to prospective purchasers who were "accredited investors" as that term is defined in Rule 501(a) of Regulation D promulgated under the Securities Exchange Act of 1934;

(c) That the Canouse Defendants would use their best efforts to locate up to twenty-five potential investors to take part in the Hyperdynamics transaction;

(d) That the Canouse Defendants would provide Hyperdynamics with written confirmation containing the name, business address, telephone number, facsimile number, and contact person for each of the prospective purchasers;

(e) That the Canouse Defendants would hold the nature and existence of the transaction in strict confidence and would not disclose the nature or existence of the transaction to any party other than a prospective purchaser;

(f) That the Canouse Defendants would not be authorized to accept, and would not accept, any executed documents, signature pages, or funds from any prospective purchaser; and

(g) That the Canouse Defendants would indemnify, defend, and hold Hyperdynamics harmless against all losses, claims, damages, expenses, fees or liabilities, joint or several, to which Hyperdynamics might become subject, insofar as said losses, claims, damages, expenses, fees or liabilities arose out of or were based upon the nonfulfillment by the Canouse Defendants of their representations, warranties, duties, obligations, or agreements under the Engagement Agreement.

In deciding to select the Canouse Defendants to assist in obtaining the contemplated funding, Hyperdynamics specifically and justifiably relied upon the foregoing material representations made by the Canouse Defendants.

109.

After the execution of the Engagement Agreement, the Canouse Defendants identified five prospective purchasers to Hyperdynamics. *See*, document bates numbered JPC122. The prospective purchasers were identified only as “Cache Capital,” “Carpe Diem,” “Atlantis Fund,” “Wellington,” and “GPS America Fund.” *See, id.* No other information was provided regarding any of the prospective purchasers.

110.

The Canouse Defendants concealed from Hyperdynamics that the Canouse Defendants, the Hicks/Sims Defendants, and/or the Valentine Defendants, in fact, controlled and had a financial interest in **all** of the prospective purchasers. *See*, Deposition of Joseph Canouse, p. 250, lines 13-16; p. 354, lines 5-10. The Canouse Defendants further concealed the fact that they were self-dealing and had a financial interest in Cache and Carpe.

111.

The Canouse Defendants concealed from Hyperdynamics that, in the case of Wellington, the funds which were to be invested were actually being funneled by the Offshore Funds through several offshore entities and into an offshore SPV. *See*, Deposition of Henry Sargent, p. 42, line 11-p. 43, line 7.

112.

The Canouse Defendants concealed from Hyperdynamics that they had done nothing to determine whether or not Wellington and Carpe were, in fact, accredited investors. *See*, Deposition of Joseph Canouse, p. 151, line 4-p. 152, line 20; p. 187, lines 4-19.

113.

In fact, contrary to the Engagement Agreement, the Canouse Defendants did not even provide Hyperdynamics with the correct legal names, business addresses, telephone numbers, facsimile numbers, and contact information for the prospective purchasers. The Canouse Defendants' failure to provide the foregoing information was not an oversight, but rather part of a deliberate effort to conceal the true identities of the persons and entities providing the funding and to conceal the Canouse Defendants' self-dealing.

114.

Nevertheless, based upon the Canouse Defendants' representations that the prospective purchasers were "accredited investors," Hyperdynamics agreed to enter into Regulation D Subscription Agreements for an aggregate three million dollars (\$3,000,000.00) worth of convertible preferred stock with Cache, Carpe, and Wellington (hereinafter collectively referred to as "the Front Man Entities"). *See*, documents bates numbered HY5185-HY5427; HY6205-HY6308.

115.

During late December 1999 and early January 2000, the Canouse Defendants, acting on behalf of and at the direction of the other members of the General Enterprise and Conspiracy, negotiated the terms of the Hyperdynamics financing transaction with Hyperdynamics. *See*, Deposition of David Wisniewski, p. 23, lines 1-5; p. 28, lines 12-17; p. 29, lines 4-11; p. 29, line 23-p. 30, line 5. During these negotiations, the Canouse Defendants were actually acting as agents on behalf of the other members of the General Enterprise and Conspiracy and on their own behalf. *See, id.* The only way that the Georgia attorney drafting the documents relating to the financing knew what terms the investors wanted in the Hyperdynamics financing documents was through his communications with the Canouse Defendants. *See*, Deposition of David Wisniewski, p. 29, line 23-p. 30, line 5; p. 48, lines 9-14.

116.

For example, on January 11, 2000, Jim Canouse sent an e-mail to Kent Watts. That e-mail stated in relevant part:

I spoke to the investors [the Front Man Entities] who were going over the paperwork last night. They have some minor changes they would like to see.

1. *They would like to see some language in the warrant agreement as well as the certificate of designation covering the 4.9% limit. i.e., at no time do the investors [the Front Man Entities] want to own more than 4.9% of your company. This is standard and it protects the company as well as the investor.*

2. *They would like to have some sort of first right of refusal on any financing you may do in the next twelve months. At least a 'Most Favored Nations' clause that states that you will not do any financing at better terms than the one we are doing here.*

3. *Now the big sticking point that I did not originally think would be problem. They need to see some language in the registration rights agreement that covers late effectiveness of the registration. They suggested that the company has 100 days for the deal to become effective. On the 130th day, the company would owe the investors [the Front Man Entities] 3% of the principle amount invested. i.e., a penalty for late effectiveness after 100 days. They are stuck in about six deals right now because the company is simply taking their time when it comes to answering comments to the SEC and there are no penalties to make them do so. Investors for the first \$950K agree to waive effectiveness penalty . . .*

See, documents bates numbered DAW112-DAW113 (emphasis added). Once again, the Canouse Defendants intentionally concealed the fact that they controlled Cache and had a financial interest in the transaction.

117.

The Canouse Defendants also facilitated the drafting of documents and the review and execution of documents by the Hicks/Sims Defendants. For example, on January 12, 2000, David Wisniewski, one of the Canouse Defendants' attorneys at Nelson, Mullins, Riley & Scarborough, L.L.P., sent an e-mail to Southridge. The e-mail, which included three attached documents, stated "*at the request of Jim Canouse of J.P. Carey, attached please find the updated investment documents.*" *See, document bates numbered DAW114.*

118.

By mid-January 2000, the Regulation D Subscription Agreement and other related documents had been prepared by the attorneys for the Canouse Defendants. *See, Deposition of*

Joseph Canouse p. 268, line 20-p. 269, line 3. On or about January 12, 2000, Hicks, acting on behalf of Southridge, sent a facsimile to Sims in which Hicks instructed Sims to conduct certain wire transfers. Subsequently, on January 12, 2000, Sims, acting on behalf of Beacon and Navigator, sent a facsimile containing wire instructions to the Valentine Defendants. The wire instructions requested that TK do the following:

- (1) Debit the account of Dominion Capital and transfer \$500,000.00 to the account of Terrapin.
- (2) . . . debit the account of Terrapin and transfer \$1,500,000.00 to Minglewood; and
- (3) . . . debit the account of Minglewood and transfer \$2,000,000.00 to Wellington LLC.

See, document bates numbered [NAV] 180.

119.

On or about January 13, 2000, Hicks, acting on behalf of Southridge, directed Sims to execute signature pages for the Regulation D Subscription Agreements and other documents on behalf of Wellington. *See*, Deposition of Henry Sargent, p. 76, lines 15-24. In accordance with these instructions, Sims executed the signature pages for the Regulation D Subscription Agreements and other related documents as director of Navigator on behalf of Wellington. *See*, documents bates numbered HYPD840-HYPD871; HY6271-HY6345; Deposition of David Sims, p. 144, line 10-p. 145, line 10; p. 146, lines 11-12; p. 147, lines 20-25; p. 198, line 11-p. 199, line 16; p. 201, lines 3-11; p. 207, line 23-p. 208, line 6. Sims and Beacon, acting on behalf of Navigator and Wellington, subsequently sent each of the executed signature pages to Southridge, which forwarded the signature pages and a false accredited investor representation to the Canouse Defendants in Atlanta, Georgia through the use of interstate transmission facilities and through the U.S. Mail in order to conduct a transaction in Georgia. *See*, documents bates

numbered DAW99-DAW109; JPC185-JPC191. Sims and Beacon, on behalf of Navigator and Wellington, also sent copies of various documents, including the signed signature pages, to the Canouse Defendants' attorneys in Atlanta, Georgia who had drafted the Regulation D Subscription Agreements. *See*, documents bates numbered DAW99-DAW109; JPC185-JPC191. The various signature pages and false accredited investor representations were then affixed to two sets of Subscription documents and delivered to Hyperdynamics. *See*, documents bates numbered HYPD838-HYPD871; HY6205-HY6345.

120.

On or about January 12, 2000, Joe Canouse signed each of the Regulation D Subscription Agreements and related documents on behalf of Carpe and Cache. *See*, documents bates numbered HY5185-HY5427; Deposition of Joseph Canouse, p. 305, line 7-p. 315, line 15.

121.

Additionally, one or more of the Canouse Defendants signed each of the Regulation D Subscription Agreements in Atlanta, Georgia, in their capacity as "placement agents." *See*, documents bates numbered HY5185-HY5427; Deposition of Joseph Canouse, p. 309, lines 3-17; p. 311, lines 10-15.

122.

Each of the Regulation D Subscription Agreements was accompanied by a Registration Rights Agreement, a Warrant Agreement, an Escrow Agreement, a Certificate of Designations, and an Opinion of Counsel (hereinafter collectively referred to as "the Operative Agreements"). The Regulation D Subscription Agreements each contained the following relevant and material representations:

(a) In Section 2.1 of each of the Regulation D Subscription Agreements, each of the Front Man Entities specifically and affirmatively “represent[ed] and warrant[ed] that it was an ‘accredited investor’ as defined in Rule 501 of Regulation D;”

(b) In Section 2.2.4 of each of the Regulation D Subscription Agreements, each of the Front Man Entities further represented that it “had made investments in securities other than those of [Hyperdynamics],” and that it had “not been organized for the purpose of investing in the securities of [Hyperdynamics];”

(c) In Section 2.3.1 of each of the Regulation D Subscription Agreements, each of the Front Man Entities represented that it was acquiring the Series A Preferred Stock “solely for investment purposes . . . and not with a view to a distribution of all or any part thereof;”

(d) In Section 3.3.2 of each of the Regulation D Subscription Agreements, each of the Front Man Entities agreed that it would not “sell any Conversion Shares [defined as shares of Hyperdynamics common stock into which the Series A Preferred Stock was converted] . . . on any Trading Day . . . to the extent that such sale, when combined with all previous sales by [the Front Man Entities] on such Trading Day, would exceed ten percent (10%) of the aggregate number of Conversion Shares . . . purchased under [the] Agreement . . .;”

(e) In Section 3.4 of each of the Regulation D Subscription Agreements, each of the Front Man Entities acknowledged that “the Preferred Shares . . . [were] being offered and sold in reliance on specific exemptions from the registration requirements of federal and state law and [the Front Man Entities’] representations, warranties,

agreements, acknowledgments and applicability of such exemptions and the suitability of [the Front Man Entities] to acquire Preferred Shares;" and,

(f) In Section 10 of each of the Regulation D Subscription Agreements, each of the Front Man Entities checked only the box stating that said Investor was "a corporation, business trust, or partnership not formed for the specific purpose of acquiring the securities offered, with total assets in excess of five million dollars (\$5,000,000.00)" – one of the categories of "accredited investors" under Regulation D. *See*, documents bates numbered HY5185-HY5427; HY6205-HY6308.

123.

The Hyperdynamics transaction closed in January 2000. An aggregate \$3,000,000.00 was funded as a result of the Hyperdynamics financing transaction. According to prior interrogatory responses of the Defendants, this money was in turn provided by the entities set forth on Exhibit 3 attached hereto (except that some or all of the funding apparently passed through another SPV named Dundurn Street, LLC ("Dundurn") instead of Wellington).

124.

Pursuant to the Escrow Agreement, Hyperdynamics received approximately \$2,587,500.00. JPCSI received approximately \$211,000.00 for its role as a consultant to Hyperdynamics. JPCSI in turn paid this money to Joe Canouse, Jack Canouse, Jim Canouse, and Jeff Canouse in the form of bonuses and salaries.

125.

Unknown to Hyperdynamics at the time that the Hyperdynamics financing transaction closed, one or more of the Front Man Entities was, in fact, nothing more than a "straw man" entity, created for the sole purpose of effecting a scheme to defraud Hyperdynamics and

manipulate the market in Hyperdynamics securities downward. Hyperdynamics has since learned that each of the Front Man Entities are owned and/or controlled by the other Defendants named herein. Hyperdynamics has also learned that, in the case of Wellington, the funds transferred to Hyperdynamics were actually provided by the Offshore Funds and funneled through Terrapin and Minglewood to Wellington (or Dundurn) through the multi-tiered offshore structure created to insulate the Offshore Funds from liability for anticipated violations of securities laws and other laws. *See*, Minglewood Capital, LLC's Responses to Plaintiff's First Interrogatories, Response to Interrogatory No. 11; Deposition of Henry Sargent, p. 42, line 11-p. 43, line 7.

126.

Additionally, Hyperdynamics has learned that the "accredited investor" representations made by the Canouse Defendants and one or more of the Front Man Entities were false and fraudulent. Said Defendants asserted that they qualified as an "accredited investor" under Regulation D because they had total assets in excess of \$5,000,000.00. *See*, Regulation D Subscription Agreements, Section 10. The Hicks/Sims Defendants have now **admitted** that, contrary to the representation in the Regulation D Subscription Agreements, **"Wellington, LLC did NOT have assets in excess of \$5,000,000.00 at the time it made its investment in Hyperdynamics."** *See*, Wellington, LLC's Audited Responses to Plaintiff's First Requests for Admission, Response to RFA No. 1. The Hicks/Sims Defendants have also **admitted** that Hicks, Southridge, Sims, and Navigator were each aware of this fact.

127.

Wellington has also **admitted** that **"it was created for the sole purpose of making an investment in Hyperdynamics Corporation."** *See*, [Wellington, LLC's] Objections and

Answers to Interrogatory Nos. 1-6 and 15 of [Hyperdynamics Corporation's] First Set of Interrogatories (Delaware litigation), Response to Interrogatory No. 5. This admission directly contradicts Wellington's representation in Section 10 of the Regulation D Subscription Agreement in which it stated that it "was **not** formed for the specific purpose of acquiring the securities offered" (emphasis added).

128.

Additionally, Wellington represented in Section 2.2.4 of the Subscription Agreement that it "had made investments in securities other than those of [Hyperdynamics]." Wellington has now **admitted** that, contrary to said representation, "**Wellington, LLC had NOT made any investments prior to its investment in Hyperdynamics Corporation.**" *See*, Wellington, LLC's Audited Responses to Plaintiff's First Requests for Admission, Response to RFA No. 3. Once again, the Hicks/Sims Defendants now **admit** that Hicks, Southridge, Sims, and Navigator were each aware of this fact at the time that Wellington made the false and fraudulent representations contained in Section 2.2.4 of the Regulation D Subscription Agreements. *See*, Stephen Hicks' Audited Responses to Plaintiff's First Requests for Admission, Response to RFA No. 2; Southridge Capital Management LLC's Audited Responses to Plaintiff's First Requests for Admission, Response to RFA No. 2; David Sims' Response to Plaintiff's First Requests for Admission, Response to RFA No. 2; Navigator Management Ltd.'s Audited Responses to Plaintiff's First Requests for Admission, Response to RFA No. 2.

129.

The Canouse Defendants have **admitted** that they "**had no personal information which would suggest that Carpe was an accredited investor,**" even though they repeatedly

represented to Hyperdynamics in the Engagement Agreement and the Regulation D Subscription Agreements that all of the Front Man Entities were in fact accredited investors.

130.

Had Hyperdynamics been aware that the foregoing representations were false and fraudulent, Hyperdynamics would not have entered into the Regulation D Subscription Agreements.

*The Defendants' Illegal Conspiracy to Violate Selling Limitations
and to Manipulate the Market in Hyperdynamics Securities*

131.

Throughout the course of the negotiations of the Hyperdynamics financing transaction, Hyperdynamics had specifically and continually endeavored to impress upon various Defendants the importance of not short-selling or over-selling Hyperdynamics common stock. Because Hyperdynamics is thinly traded, its stock price is prone to fluctuations which can be influenced by trading volume. Sections 2.3.1 and 3.3.2, quoted above, were specifically included by Hyperdynamics in the Regulation D Subscription Agreements in an effort to minimize the effect of trading volume upon Hyperdynamics stock price.

132.

On February 25, 2000, Hyperdynamics filed an SB2 Registration Statement registering approximately 2.3 million additional shares of Hyperdynamics common stock.

133.

Notwithstanding their written obligations and oral assurances regarding selling limitations, the Defendants began a massive campaign of overselling and short-selling Hyperdynamics common stock immediately after the Subscription Agreements were executed and prior to the conversion of any of the Series A Preferred Stock received from Hyperdynamics.

The Defendants later “covered” some or all of their short sales by converting a portion of the Series A Preferred Stock into Hyperdynamics common stock. These sales were contrary to the Front Man Entities’ representations in Section 2.3.1 of the Subscription Agreement that the Front Man Entities were “acquiring the Series A Preferred Stock solely for investment purposes . . . and not with a view toward distribution.” These sales were designed to manipulate the market for Hyperdynamics securities downward. These sales also exceeded and violated the selling limitations agreed to in the Regulation D Subscription Agreements.

134.

The illegal sales by Wellington were directed and controlled by Hicks, Sims, the Offshore Funds, and Valentine. *See*, Minglewood Capital, LLC’s Response to Plaintiff’s First Requests for Admission, Response to RFA Nos. 38 and 39; Wellington, LLC’s Amended Supplemental Responses to Michael Watts’ First Interrogatories, Response to RFA No. 1. All of the Hicks/Sims Defendants, the Offshore Funds, and the Valentine Defendants were aware of and approved and ratified the illegal sales of Hyperdynamics securities. Most, if not all, of the Hicks/Sims Defendants and all of the Offshore Funds and the Valentine Defendants profited from and ratified the illegal sales by Wellington.

135.

The illegal sales by Cache and Carpe were directed and controlled by Joe Canouse, JPCAM, and Valentine. The illegal sales by Cache and Carpe were carried out by the Canouse Defendants and the Valentine Defendants. All of the Canouse Defendants and all of the Valentine Defendants were aware of, approved of, and ratified the illegal sales of Hyperdynamics securities. The Canouse Defendants, as well as Valentine and TK, profited from and ratified the illegal sales by Cache and Carpe.

136.

The Defendants repeatedly and intentionally violated Section 3.3.2 by selling more than ten percent (10%) of the Conversion Shares that they held on a given trading day. These sales were intended to manipulate the market in Hyperdynamics securities by forcing the price downward.

137.

In or about July 2000, Hyperdynamics first discovered that the Defendants had breached the selling limitations. Assuming that these breaches were unintentional, Hyperdynamics immediately contacted the Defendants in order to obtain assurances that no further breaches would occur.

138.

On August 9, 2000, Hyperdynamics sent a letter to Hicks and Jim Canouse regarding the violations of Section 3.3.2 of the Regulation D Subscription Agreements. The letter stated in relevant part:

In view of the recent selling activity in our stock it was requested that I look deeper into the selling provision clause 3.2.2[sic] included in the subscription document.

Upon my review of this provision and analysis of the daily trading volumes and the weekly DTC reports, I have concluded that this provision has been breached. However inadvertent this may have been, the effect of this has been seriously detrimental to our market and damaging to the Company. We believe that it has been the primary catalyst in driving our stock price down from \$6 per share (beginning the day that the registration became effective) to a price of less than \$1.

Apparently this breach has occurred from the very beginning that the registration became effective as it appears that shares were sold short prior to receiving any conversion shares. Per my detailed analysis of DTC entries for Thomson Karnaghan[sic], since on or about April 28, 2000, there have been many days that the existing covenant was not adhered to.

Based on these facts it is imperative that we meet immediately in order to address this matter. . . .

See, document bates numbered WELL11.

139.

Because of the ongoing short-sales and violations of the selling limitations, Hyperdynamics requested that the Defendants agree to a written amendment to Section 3.3.2 of the Regulation D Subscription Agreements. The Canouse Defendants and the Hicks/Sims Defendants sent numerous communications back and forth between one another regarding the proposed amended selling limitation. Eventually, after considerable consultation between and among the Hicks/Sims Defendants and the Canouse Defendants, Wellington, Cache, and Carpe each agreed to amended selling limitations.

140.

On or about September 28, 2000, Hyperdynamics and Wellington agreed to a written amendment to Section 3.3.2 which provided that:

[f]or each Trading Day [after September 30, 2000], [Wellington] shall not sell any Conversion Shares . . . on any Trading Day . . . to the extent that such sale, when combined with all previous sales by [Wellington] on such Trading Day, would exceed ten percent (10%) of the total of Hyperdynamics['] . . . common stock shares traded on the OTC/BB open market and any other exchanges on which Hyperdynamics . . . common stock shares traded . . . on that same Trading Day . . .
”

See, document bates numbered WELL19. The Amendment to Section 3.3.2 was executed by Navigator on behalf of Wellington. *See, id.* The Amendment to Section 3.3.2 was executed at the direction of Hicks and Southridge.

141.

On or about September 25, 2000, Cache and Carpe agreed to a written agreement to the Regulation D Subscription Agreements. The amended Section 3.3.2 executed by Cache and Carpe provided that:

Subscriber shall suspend all selling of Conversion Shares or Warrant Shares through September 30, 2000. For each Trading Day Thereafter, Subscriber shall not sell any Conversion Shares or Warrant Shares on any Trading Day (as defined below) to the extent that such sale, when combined with all previous sales by Subscriber on such Trading Day, would exceed five percent (5%) of the total of Hyperdynamics Corporations' common stock shares traded on the OTC/BB open market on the same trading day.

Subscribers further agree to deposit all Conversion Shares and Warrant Shares into a single designated brokerage account and sell all Conversion Shares out of designated brokerage account. Subscriber will not transfer any Conversion Shares or Warrant Shares to any other account without written agreement with Hyperdynamics Corporation. Finally, Subscribers agree to provide daily transaction reports to substantiate compliance with this selling limitation within 48 hours of the written request of Hyperdynamics Corporation.

See, document bates numbered HYPD1396.

142.

The amendment to Section 3.3.2 of the Regulation D Subscription Agreements between Hyperdynamics and Cache and Carpe was executed by Joseph Canouse on behalf of Cache and Carpe. Joe Canouse listed his title as "CEO." In discovery responses, Joe Canouse now asserts that he was not the CEO of either Cache or Carpe.

143.

After September 30, 2000, Hyperdynamics resumed honoring the Defendants' conversions of its Series A Preferred Stock into Hyperdynamics common stock. The Defendants, however, continued to breach the selling limitations (as amended) on a repeated and sustained basis by selling in excess of ten percent of the total trading volume of Hyperdynamics

common stock in a single day – once again often through short sales of Hyperdynamics common stock that would be “covered” by converting Series A Preferred Stock into common stock. During this same time, Defendants repeatedly and falsely assured Hyperdynamics that they were **not** short-selling or violating the amended selling limitations.

144.

For example, on or about October 23, 2000 and October 24, 2000, Wellington violated Section 3.3.2 of the Regulation D Subscription Agreements by selling Hyperdynamics securities in excess of the agreed upon selling limitations (and the amended selling limitation). Immediately thereafter, on October 25, 2000, Talya Davies, acting on behalf of TK and Wellington, and at the direction of Hicks and Southridge, sent a conversion notice to Hyperdynamics. The violations of the selling limitations (and the amended selling limitation) by Wellington, directed by Hicks and Southridge, were intended to manipulate the market in Hyperdynamics securities and did manipulate the market in Hyperdynamics securities by increasing the sale orders of Hyperdynamics securities and lowering the share price of Hyperdynamics securities. As a result of this market manipulation, Wellington was able to convert its Series A Preferred Stock into a greater number of Hyperdynamics common shares. The foregoing market manipulation was conducted willfully and deliberately.

145.

Again, on November 2, 2000, November 3, 2000, and November 6, 2000, Wellington sold Hyperdynamics securities in excess of the agreed upon selling limitations (and the amended selling limitation) contained in Section 3.3.2 of the Regulation D Subscription Agreement. On November 8, 2000, Talya Davies, acting on behalf of TK and Wellington, and at the direction of Hicks and Southridge, sent a notice of conversion to Hyperdynamics. As a result of the

violations of the selling limitations (and the amended selling limitation) on November 2, 2000, November 3, 2000, and November 6, 2000, Hicks, Southridge, and Wellington intended to manipulate and did manipulate the market for Hyperdynamics securities, by increasing the sale orders of Hyperdynamics securities, and consequently, decreasing the share price of Hyperdynamics securities. As a result of this market manipulation, Wellington was able to convert its Hyperdynamics Series A Preferred Stock into a greater number of Hyperdynamics common stock shares. The foregoing market manipulation was conducted willfully and deliberately.

146.

On November 24, 2000, November 27, 2000, November 28, 2000, and November 29, 2000, Wellington, acting at the direction of Hicks and Southridge, violated the agreed upon selling limitations (and the amended selling limitation) contained in Section 3.3.2 of the Regulation D Subscription Agreements. On December 1, 2000, Talya Davies, acting on behalf of TK and Wellington, and at the direction of Hicks and Southridge, sent a conversion notice to Hyperdynamics. The foregoing violations of the selling limitations (and the amended selling limitation) were intended to manipulate the market in Hyperdynamics securities and did manipulate the market in Hyperdynamics securities by increasing the sale orders of Hyperdynamics securities, and consequently, decreasing the share price of Hyperdynamics securities. As a result of this market manipulation, Wellington was able to convert its Hyperdynamics Series A Preferred Stock into a greater number of shares of Hyperdynamics common stock. The foregoing market manipulation was conducted willfully and deliberately.

Between October 3, 2000 and December 4, 2000, Wellington, acting at the direction of Hicks and Southridge, violated the selling limitations (and the amended selling limitation) set forth in Section 3.3.2 of the Regulation D Subscription Agreements **on twenty-four out of a total of forty-four possible trading dates**. In multiple instances, Wellington sold in excess of **six times** the number of shares which it was permitted to sell under the selling limitations (and the amended selling limitation). All of these sales were intended to manipulate the market for Hyperdynamics securities and did manipulate the market for Hyperdynamics securities by increasing sale orders of Hyperdynamics securities, and thus, lowering the share price of Hyperdynamics securities. As a result of this market manipulation, Wellington was able to convert its Hyperdynamics Series A Preferred Stock into a greater number of shares of Hyperdynamics common stock.

On December 29, 2000, Cache sold Hyperdynamics securities in excess of the agreed upon selling limitations (and the amended selling limitation). Again, on May 3, 2001, Cache sold Hyperdynamics securities in excess of the agreed upon selling limitations (and the amended selling limitation). On June 12, 2001, Cache sold Hyperdynamics securities in excess of the agreed upon selling limitations (and the amended selling limitation). On October 4, 2001, Cache sold Hyperdynamics securities in excess of the agreed upon selling limitations (and the amended selling limitation). On October 11, 2001, Cache sold Hyperdynamics securities in excess of the agreed upon selling limitations (and the amended selling limitation). On October 22, 2001, Cache sold Hyperdynamics securities in excess of the agreed upon selling limitations (and the amended selling limitation). On November 16, 2000 and on November 17, 2000, Carpe sold

Hyperdynamics securities in excess of the agreed upon selling limitations (and the amended selling limitation).

149.

Such manipulation and conversions would have ultimately resulted in Defendants owning a majority of Hyperdynamics common shares of stock and taking over control of Hyperdynamics, like Defendants did to other target victim companies. If Defendants had been able to take over control of Hyperdynamics, they obviously would not have brought a legal action on behalf of Hyperdynamics against themselves. The foregoing market manipulation was conducted willfully and deliberately. Defendants were able to take control of other target companies in this fashion.

150.

As a result of the repeated and intentional violation of the selling limitations (and the amended selling limitation), Hyperdynamics suspended further conversions by Defendants of their preferred stock into common stock of Hyperdynamics. Fortunately, such suspension of conversions was accomplished prior to Defendants taking over control of Hyperdynamics.

151.

Other target companies were not as fortunate as Hyperdynamics. One example of such a pattern and practice by Defendants occurred against a Georgia-based target company, LecStar Corporation ("LecStar"). LecStar was headquartered in Atlanta, Georgia. In the LecStar case, Defendants (and the SPVs under their control) were able to acquire sufficient numbers of LecStar common shares to take control of LecStar. Thereafter, Defendants appointed their affiliates (including Jack Canouse) as new directors and officers of LecStar. Subsequently, several of the Defendants engineered a fraudulent conveyance of virtually all of LecStar's assets

to one of their own offshore entities for a total consideration of \$769,000. *See*, Deposition of William Woulfin, ¶¶ 28-32. All of the LecStar officers and directors then resigned their positions at LecStar, leaving LecStar without any employees, officers, or directors. Thereafter, Defendants resold exactly the same assets less than a year later for approximately \$33,000,000. LecStar's charter has since been revoked. Consequently, Defendants left virtually nothing in their wake and no method by which LecStar could pursue litigation against Defendants other than a potential shareholder derivative action. Such a shareholder derivative action has been filed in this Court on behalf of LecStar.

152.

Some or all of the Defendants' illegal selling of Hyperdynamics securities was conducted through accounts maintained by the Front Man Entities at TK. Hyperdynamics believes that the foregoing selling activity is only a small percentage of the total market manipulation conducted by the Defendants. Hyperdynamics has requested documents from TK which Hyperdynamics believes will demonstrate further violations of the selling limitation and other activities designed to manipulate the market in Hyperdynamics securities. TK refused to produce the requested documents. Hyperdynamics filed a Motion to Compel Discovery against TK on July 3, 2002 for refusing to produce the requested documents. On December 23, 2003, this Court issued an Order compelling such discovery from TK. As of this date, Hyperdynamics has still not received a single document or other discovery information from TK despite this Court's Order compelling discovery issued in 2003. Additionally, Hyperdynamics seeks trading records and other documents in the possession, custody, and control of the Depository Trust Corporation ("DTC"), the National Association of Securities Dealers ("NASD"), the National Securities Clearing Corporation ("NSCC"), the NASDAQ securities exchange, and others. Pursuant to an Order of

the Court, Hyperdynamics was forced to delay requesting such documents until such time as the Court ruled on issues relating to personal jurisdiction. However, Special Master Whitley has recently authorized Hyperdynamics to request such information.

153.

All of the excessive sales were designed to manipulate the market in Hyperdynamics securities by reducing the price of said securities. By reducing the price of Hyperdynamics securities just prior to issuing a conversion notice, the Defendants put themselves in a position to convert their preferred shares into a greater number of Hyperdynamics common stock shares. These common shares were then used to cover short sales engaged in by Defendants.

The Defendants' Scheme to Cover-up Their Illegal Selling Activities and Intentional Manipulation of the Market for Hyperdynamics Securities

154.

On or about December 4, 2000, Hyperdynamics became aware of the foregoing violations of the selling limitations and the amended selling limitation. On December 4, 2000, Hyperdynamics sent a letter to Hicks. The letter to Hicks stated in relevant part:

Upon review of recent trading history available to us from the Depository Trust Corporation, we have strong reason to believe that the selling limitation agreed to and as amended on September 25, 2000 has been breached by Wellington, LLC.

Please [F]ederal [E]xpress to us . . . detail supporting evidence that you have adhered to this provision for the period beginning October 4, 2000 through the current date of December 4, 2000. Under the circumstances, and in order to protect all shareholders interest, it will not be possible for [Hyperdynamics] to convert any more Series A Preferred stock until this supporting evidence can be provided and we can become reasonably comfortable that this breach has not occurred as it appears.

See, document bates numbered WELL4.

155.

In response to the Kent Watts letter, on December 6, 2000, Southridge e-mailed a draft letter to Sims. The draft letter responded to Hyperdynamics' letter of December 4, 2000. Hicks and Southridge instructed Sims to sign the letter on behalf of Wellington and send it to Hyperdynamics.

156.

On December 6, 2000, Sims, acting on behalf of Navigator as director of Wellington, signed the letter prepared by Southridge and Hicks and sent it to Hyperdynamics through use of interstate transmission facilities as he had been instructed to do by Hicks and Southridge. The letter stated in relevant part:

Attached please find the trading information you requested. With regard to trading last week there was a new trader hired who sold more shares than he should have and we have since rectified the situation.

See, document bates numbered WELL29.

157.

In fact, however, all of the selling activities engaged in by Wellington were directed and controlled by Hicks and the Hicks/Sims Defendants and Valentine and the Valentine Defendants. *See*, Wellington, LLC's Amended Supplemental Responses to Michael Watts' First Interrogatories, Response to Interrogatory No. 1. The statement regarding the "new trader" was simply another fraud committed as part of an attempt to "cover up" the illegal market manipulation engaged in by Defendants. When questioned at deposition, none of the Hicks/Sims Defendants was able to identify the purported "new trader." *See*, Deposition of David Sims, p. 183, line 7-p. 186, line 9; Deposition of Southridge Capital Management LLC, p. 346, line 6-p. 347, line 20.

158.

On or about December 10, 2000, Hyperdynamics had a conversation with Jim Canouse regarding the violations of the selling limitations (and the amended selling limitation) and the moratorium on conversions. During this conversation, Jim Canouse stated to Kent Watts that Hicks had stated that “[Hicks] would make it his personal vendetta to see Hyperdynamics go out of business if [the Hyperdynamics financing transaction] got ugly and [Hyperdynamics] refused to deliver the shares.” This verbal statement was confirmed by e-mail.

159.

On January 10, 2001, an employee of Southridge sent an e-mail to Hicks. The e-mail stated in relevant part:

Steve, as you can see, we exceeded 10% of the prior day on 12/11 . . . I hate to open it up again. In any case, just let me know if you want me to send this, I fear even though we’ve sold very little in the scheme of things, they are just trying to prove their point that we violated something in the agreement . . . Just let me know what you want to do.

See, document bates numbered WELL516.

160.

In or about April 2001, Wellington filed an action against Hyperdynamics in the Court of Chancery in and for New Castle County, State of Delaware. Wellington has since “transferred” the claims which it had previously asserted in Delaware to this action. Wellington’s prosecution of said claims is being financed by the Offshore Funds. Henry Sargent, the in-house counsel at Southridge has testified that, in the event Wellington were to prevail, the proceeds of Wellington’s claims would be distributed through Minglewood and Terrapin to the Offshore Funds.

On or about October 29, 2001, Hyperdynamics became aware of additional violations of the selling limitations (and the amended selling limitation) by the Canouse Defendants since the execution of the amended selling limitation. Accordingly, on October 29, 2001, Hyperdynamics sent a letter to the Canouse Defendants. The October 29, 2001 letter stated in relevant part:

Based on serious problems that we have had in the past with [S]eries A shareholders breach of the selling provision 3.3.2 of the subscription document as originally written and as amended on September 25, 2000, it is necessary for me to request the following:

(1) identify the "single designated brokerage account" that you have been trading Hyperdynamics stock out of.

(2) provide me daily transaction reports or a history statement showing every stock deposit into and sale out of this account from September 26, 2000 to the current date. On this statement all OTC/BB:HYPD transactions must be accounted for.

See, documents bates numbered JPC305-JPC306.

On October 30, 2001, Joe Canouse sent a letter to Hyperdynamics. In the October 30, 2001 letter, Joe Canouse stated in relevant part:

I am including in this fax the trade records for Cache Capital in shares of Hyperdynamics. As you will clearly see, Cache Capital has complied with the agreement of September 25, 2000. *The single designated brokerage account is at Corpfin Securities, which clears through Fiserv Securities and will continue to be the "single designated account" . . . [T]he pages following shows all sales of stock. No shares have been transferred out of this account other than the sales listed . . .*

See, documents bates numbered JPC308 (emphasis added).

In fact, however, the pages attached to the October 30, 2001 letter did not include brokerage account statements. Rather, the documents attached to the October 30, 2001 letter

were part of a spreadsheet maintained by the Canouse Defendants. Unknown to Hyperdynamics at the time, the Canouse Defendants had purposefully and fraudulently “doctored” the spreadsheet in order to deceive Hyperdynamics and to cover up their knowing violations of the selling limitation. The Canouse Defendants were each aware that the “doctored” spreadsheet was a forgery and a fraud.

164.

For example, the doctored spreadsheet produced by the Canouse Defendants falsely indicated Cache had sold 1,500 shares (2.78%) on December 29, 2000 and that Cache had sold 0 shares (0.00%) on January 2, 2001. In fact, however, Cache had actually sold only 1,000 shares (1.85%) on December 29, 2000 and had sold 500 shares (8.93%) on January 2, 2001. In other words, the Canouse Defendants had purposefully and fraudulently forged the spreadsheet to conceal the fact that Cache had breached the amended selling limitation on January 2, 2001.

165.

Likewise, the doctored spreadsheet produced by the Canouse Defendants falsely indicated that Cache had sold 1,800 shares (4.86%) on May 2, 2001 and that Cache had sold 1,400 (4.83%) on May 3, 2001. In fact, however, Cache had sold 1,700 shares (4.59%) on May 2, 2001 and had sold 1,500 shares (5.17%) on May 3, 2001. In other words, the Canouse Defendants had purposefully and fraudulently forged the spreadsheet to conceal the fact that Cache had breached the amended selling limitation on May 3, 2001.

166.

The spreadsheet produced by the Canouse Defendants had also been doctored to falsely indicate that Cache had sold 2,100 shares (4.3%) on June 12, 2001 and that Cache had sold 900 shares (4.74%) on June 13, 2001. In fact, however, Cache had sold 2,000 shares (4.09%) on

June 12, 2001 and had sold 1,000 shares (5.26%) on June 13, 2001. In other words, the Canouse Defendants had purposefully and fraudulently forged the spreadsheet to conceal the fact that Cache had violated the amended selling limitation on June 13, 2001.

167.

The spreadsheet produced by the Canouse Defendants had also been doctored to falsely indicate that Cache sold 4,650 (4.42%) shares on October 4, 2001 and that Cache had sold 750 shares (4.81%) on October 5, 2001. In fact, Cache had sold 4,400 shares (4.18%) on October 4, 2001 and had sold 1,000 shares (6.41%) on October 5, 2001. In other words, the Canouse Defendants had purposefully and fraudulently forged the spreadsheet to conceal the fact that Cache breached the amended selling limitation on October 5, 2001.

168.

Additionally, the doctored spreadsheet produced by the Canouse Defendants falsely indicated that Cache had only sold 2,800 shares (4.67%) of Hyperdynamics securities on October 11, 2001. The cover letter also falsely indicated that **all** of the sales of Hyperdynamics securities by Cache were being conducted out of a single designated brokerage account. In fact, in addition to the 2,800 shares of Hyperdynamics securities which were sold out of the Corpfin.com brokerage account, Cache had also surreptitiously sold an additional 8,600 shares of Hyperdynamics securities out of a brokerage account at TK on October 11, 2001 at the direction of the Canouse Defendants. In other words, contrary to the false and fraudulent data contained in the forged spreadsheet and in the cover letter, Cache had sold an aggregate of at least 11,400 (19.03%) shares on October 11, 2001 in violation of the amended selling limitation and had sold out of multiple brokerage accounts in violation of the amended selling limitation.

169.

The doctored spreadsheet produced by the Canouse Defendants also falsely indicated that Cache had sold 3,000 shares (4.33%) on October 22, 2001 and that Cache had sold 13,700 shares (4.12%) on October 23, 2001. In fact however, Cache had sold 3,500 shares (5.05%) on October 22, 2001 and 13,200 shares (3.97%) on October 23, 2001. In other words, the Canouse Defendants had purposefully and fraudulently forged the spreadsheet to conceal the fact that Cache had violated the amended selling limitation on October 22, 2001.

170.

The spreadsheet had also been doctored to show that Cache had sold 7,000 shares (4.67%) and that Cache had sold 4,500 shares (4.11%) on November 16, 2000 and November 17, 2000, respectively. However, the spreadsheet had been altered to conceal the fact that Carpe also had sold 10,000 shares (6.67%) on November 16, 2000 and that Carpe also had sold 10,000 shares (9.12%) on November 17, 2000 despite the fact that Hyperdynamics had requested this information. In other words, the Canouse Defendants had intentionally withheld evidence of Carpe's violations of the selling limitation which had been directed by the Canouse Defendants.

171.

The Canouse Defendants purposefully sent the foregoing fraudulent statements regarding their sales of Hyperdynamics securities to Hyperdynamics through interstate transmission facilities and through the U.S. Mail. The Canouse Defendants purposefully forged their own spreadsheet in an attempt to defraud Hyperdynamics. The Canouse Defendants were aware that Hyperdynamics was relying upon on the truth and accuracy of Defendant's records regarding their sales of Hyperdynamics securities. The Canouse Defendants were aware that the doctored

spreadsheet was a forgery and a fraud and that the foregoing misrepresentations were being made with regard to sales of Hyperdynamics securities.

172.

In addition to the foregoing, the Canouse Defendants and/or the Hicks/Sims Defendants also purposefully sold shares of Hyperdynamics securities through brokerage accounts maintained at TK **in the name of other funds** controlled by the Canouse Defendants and the Hicks/Sims Defendants. For example, the Canouse Defendants and/or the Hicks/Sims Defendants sold thousands of shares of Hyperdynamics securities through brokerage accounts maintained at TK in the name of Atlantis Capital Fund Ltd., another offshore fund which was jointly controlled by the Hicks/Sims Defendants and the Canouse Defendants. The Defendants never disclosed to Hyperdynamics the fact that they were selling Hyperdynamics securities through other funds which they owned and controlled. Instead, they intentionally concealed this fact. The Defendants' sales through other funds which they controlled were designed to manipulate the market in Hyperdynamics securities.

173.

Unbeknownst to Hyperdynamics at the time it executed the Operative Agreements, the convertible preferred stock was of a type known in the securities industry as "toxic convertible" or "death spiral convertible." Unlike conventional convertible stock, which is convertible into a predetermined number of shares of common stock, the "death spiral" convertible preferred stock is convertible into a dollar value of common stock, thus the conversion rate floats with the price of the common stock. Since the Hyperdynamics preferred stock was also convertible at a discount to the market price of the common stock, this provided the Front Man Entities an even greater profit for short sales of the common stock as the stock price was being driven lower. The

Defendants, by depressing the price of the common stock, allowed the Front Man Entities to obtain a much greater number of shares of common stock upon conversion. The lower the price of Hyperdynamics common stock, the more common stock the Front Man Entities were able to obtain upon conversion. Further, because the stock had been sold short at a higher price and because the Front Man Entities were subsequently able to cover short sales with discounted conversion shares, the Defendants were able to reap immense profits at the expense of Hyperdynamics, as the price of Hyperdynamics securities continued to drop. Further, with each conversion, the market was being saturated with more and more shares of common stock which were rapidly offered for sale, thus creating a constant and massive overhanging selling pressure on the market, driving the price even lower. The fact that millions of shares of Hyperdynamics common stock could flood into the market from the Front Man Entities upon conversion assured the decrease of Hyperdynamics stock price, hence a “death spiral.”

174.

The United States government considers death spiral securities schemes to be illegal. In a criminal complaint styled *United States of America v. Thomas Badian and Andreas Badian*, 03MAG2355, United States District Court, Southern District of New York, the United States government alleges that various persons, conspired to commit securities fraud through their participation in a death spiral financing scheme conducted through an offshore structure similar to that used in the Hyperdynamics death spiral scheme. Specifically, the United States government alleges that:

Under the terms of the [Sedona] financing agreement, the Offshore Entity’s approximately \$3 million in debentures converted into a larger number of Sedona shares if the share price of Sedona’s common stock fell. Conversely if Sedona’s share price rose, then the Offshore Entity was entitled to a smaller number of Sedona common shares. . . .

The convertible debentures that Sedona issued to the Offshore Entity pursuant to the financing agreement are colloquially known as “toxic convertibles.”

A toxic convertible is one version of a type of financing often referred to as private investment and public equities (“PIPE”). . . .

[T]he [issuer] typically raises capital by selling an equity type security that is not publicly traded to an investment fund. In effect, this typically results in the company selling shares at a significant discount than the current market price. The security is often in the form of a convertible debenture that can be converted into publicly traded shares at a later date. The conversion price, *i.e.*, the price at which investors can buy the underlying shares when converted, traditionally is fixed when the convertible security is initially sold and never changes.

BY CONTRAST, IN A TOXIC CONVERTIBLE THE CONVERSION PRICE IS NOT FIXED AT THE TIME THAT THE COMPANY SELLS THE DEBENTURE, BUT RATHER AT THE TIME THAT THE INVESTOR DECIDES THAT IT WANTS TO CARRY OUT THE CONVERSION TO OBTAIN THE SHARES OF [COMMON] STOCK.

THERE HAVE BEEN INSTANCES WHERE HOLDERS OF TOXIC CONVERTIBLE SHORT SELL THE COMPANY’S COMMON STOCK TO DRIVE DOWN THE PRICE AND THEREBY MAXIMIZE THE NUMBER OF SHARES TO WHICH THEY ARE ENTITLED UPON CONVERSION OF THEIR DEBENTURES. IN MANY CASES THIS SCENARIO HAS BEEN A “DEATH SPIRAL” FOR COMPANIES, WITH CONVERTIBLE DEBENTURE INVESTORS ENDING UP WITH MAJORITY CONTROL OF THE FINANCIALLY WEAKENED COMPANY BECAUSE OF THE DILUTIVE EFFECTS OF THE SUCCESSFULLY LOWERED CONVERSION PRICE (emphasis added).

The Sedona criminal complaint alleges that various broker dealers intentionally conspired to sell common stock of Sedona with “unbridled levels of aggression” until the company’s share price had “collapsed.” After being named in a complaint filed by the Securities Exchange Commission (“SEC”), one of the Sedona conspirators sent an e-mail to another, stating in part:

It seems like we always knew what [we were] doing was[,] well[,] not right[,] but we set up all these elaborate structures with [separate] entities etc. for protection, now it seems like it was all for nothing . . . How did this occur? There is no way we can have this go into court. Not with the records and the endless trader testimony.

One or more of the Hicks/Sims Defendants in this action also participated in the Sedona death spiral scheme. David Sims has been named in a civil complaint filed by Sedona against various conspirators.

175.

Valentine has **admitted** in sworn testimony that he has been involved in death spiral financing on behalf of CALP and that he engaged in death spiral financing with entities controlled by the Canouse Defendants on multiple occasions. *See*, Deposition of Mark Valentine, p. 67, line 18-p. 68, line 7. Valentine has further testified that he “does not recall” whether or not he was involved in the death spiral scheme involving Hyperdynamics. *See*, Deposition of Valentine, pp. 65-68. Moreover, the Canouse Defendants’ own attorney has testified that the funding which was provided to Hyperdynamics was, in fact, death spiral financing. *See*, Deposition of David Wisniewski, p. 17, line 20-p. 19, line 13.

176.

During the entire course of the Hyperdynamics stock death spiral, Hyperdynamics had continually inquired of Defendants as to whether they (or others under their control) were short selling Hyperdynamics stock short and/or overselling Hyperdynamics stock. Hyperdynamics was repeatedly assured (except as stated above) that no short sales or overselling was occurring. These statements were false and misleading. Hyperdynamics also believes that, in order to create and sustain the initial decline in the stock price to start the “death spiral,” Defendants resorted to various fraudulent and illegal trading practices designed to manipulate the market for Hyperdynamics securities. Hyperdynamics has requested, but the Defendants have refused to produce, documents which it believes will demonstrate certain fraudulent and illegal trading practices.

Moreover, it is clear that the Defendants were coordinating their illegal selling tactics in an effort to further manipulate the market for Hyperdynamics securities and maximize their illegal profits. Between May 12, 2000 and May 15, 2000, each of the Front Man Entities converted Series A Preferred Stock. Each of the Front Man Entities converted Series A Preferred Stock on July 14, 2000. Likewise, each of the Front Man Entities converted Series A Preferred Stock on August 9, 2000. On September 12, 2000, both Cache and Carpe converted Series A Preferred Stock. Again on December 29, 2000, Cache and Wellington both converted Series A Preferred Stock. These joint conversions were not due to random coincidence, but rather were part of a calculated strategy and conspiracy to take maximum advantage of the Defendants' illegal market manipulation of Hyperdynamics securities.

The Continuing Nature of the Conspiracy

Defendants have continued their active conspiracy and have attempted to "cover up" their illegal actions during the course of this litigation by delaying and obstructing discovery, by obfuscating, by committing perjury, by lying to this Court, by providing false responses to interrogatories and requests for admission, and by concealing and refusing to provide clearly relevant documents which were requested by Hyperdynamics and which the Defendants were obligated to provide.

The Court has repeatedly sanctioned several Defendants and their counsel for such bad faith tactics and has granted multiple Motions to Compel Discovery, as well as Plaintiff's Motion for Contempt and Sanctions against various Hicks/Sims Defendants. The Court has found that

one counsel for the Hicks/Sims Defendants “act[ed] in bad faith by serving knowingly misleading discovery responses and by unnecessarily expanding this litigation without justification.” See, Order filed December 3, 2003. Hyperdynamics has been forced to file several amended Complaints, and may need to amend its Complaint further, as a result of the perjury, discovery abuses, and the false and fraudulent discovery responses served by various Defendants. The following examples are illustrative of the Defendants’ continuing conspiracy and abuses of the judicial process.

*Example 1: The Concealment of Dundurn, LLC’s Role in
the Hyperdynamics financing transaction*

180.

In addition to the foregoing, the Hicks/Sims Defendants and their attorneys purposely concealed the involvement of Dundurn in the Hyperdynamics financing transaction from Hyperdynamics throughout the first two years of this litigation. The Hicks/Sims Defendants and their attorneys concealed the fact that the **majority** of the funding in the Hyperdynamics transaction was **never actually paid by** Wellington as required in the Regulation D Subscription Agreements (and as alleged in Wellington’s Complaint which it filed against Hyperdynamics in Delaware). Instead, the funding of Hyperdynamics actually came from the Offshore Funds directly, and, from a different SPV named Dundurn. See, Minglewood Capital, LLC’s Responses to Plaintiff’s First Interrogatories, Response to Interrogatory No. 11 (dated March 1, 2004); compare, e.g., Southridge Capital Management LLC’s Supplemental Responses to Plaintiff’s Second Continuing Interrogatories to Plaintiff, Response to Interrogatory No. 9 (dated June 5, 2003); Wellington, LLC’s Objections and Responses to Plaintiff’s First Interrogatories, Response to Interrogatory No. 17. This fact, although known to Defendants, was purposely concealed from Hyperdynamics and its attorneys for over two years.

181.

The involvement of Dundurn in the Hyperdynamics financing transaction was only discovered through the diligent efforts of Plaintiff, based upon a notation on a privilege log produced by the accounting firm which had performed audit services related to Wellington's "investment" in Hyperdynamics. *See, e.g.*, December 16, 2003 Hearing Transcript, p. 22, line 10-p. 26, line 2. The Southridge Defendants originally objected to providing the identities of their auditors and subsequently falsely **denied** in interrogatory responses that Wellington had any auditors. *See, e.g.*, Wellington, LLC's Objections and Responses to Plaintiff's First Interrogatories, Response to Interrogatory No. 9; Wellington, LLC's Supplemental Objections and Responses to Plaintiff's First Interrogatories, Response to Interrogatory No. 9. Plaintiff found out about the existence of the accounting firm that provided audit services regarding Wellington's investment in Hyperdynamics only after the Court entered an **ORDER** compelling the Defendants to provide the requested information. *See*, Order dated November 18, 2003, ¶ 5.

182.

Hyperdynamics subsequently sent a non-party document request to the auditors, McGladry & Pullen, LLP ("McGladry"). McGladry, acting at the instruction of its clients, the Hicks/Sims Defendants, did not produce even a single document to Plaintiff.

183.

After the filing of a Motion to Compel by Plaintiff, McGladry provided a privilege log listing out various documents relating to Wellington's investment in Hyperdynamics. Included on the privilege log was a notation regarding the "involvement of the Dundurn special purpose vehicle" in the Hyperdynamics financing transaction. Thereafter, the Court compelled the

Hicks/Sims Defendants to explain the involvement of Dundurn. *See*, December 17, 2003 Hearing Transcript, p. 3, line 2-p. 6, line 12.

184.

Consequently, Hyperdynamics was entitled to receive funding from Wellington in accordance with the Subscription Agreements. Wellington made many important representations about itself and the funding it was to provide to Hyperdynamics. Subsequently, Hyperdynamics has now discovered that the funding came from Dundurn, not Wellington. Dundurn was not mentioned in the Subscription Agreements, and Dundurn provided no representations about being an accredited investor or any other representations. The Hicks/Sims Defendants attempted to hide this fact from Hyperdynamics throughout the discovery process in this action by first denying in interrogatory responses that Wellington had any auditors. The Hicks/Sims Defendants knew that, if Hyperdynamics discovered the identity of Wellington's auditors, Hyperdynamics would seek discovery from the auditors and learn the truth regarding the involvement of Dundurn. After a great deal of discovery litigation and an Order compelling the Hicks/Sims Defendants to provide further information regarding auditors, Hyperdynamics finally learned that the prior interrogatory responses of the Hicks/Sims Defendants asserting that there were no auditors was blatantly false. After finally learning of the identity of Wellington's auditors, Hyperdynamics served a document request upon the auditors. Thereafter, the Hicks/Sims Defendants asserted their accountant/client privilege in order to attempt to block discovery from their auditors. On a privilege log produced by the auditors, the name of Dundurn was first revealed and Hyperdynamics was finally able to learn that Dundurn provided financing to Hyperdynamics instead of Wellington, the entity with whom they contracted.

*Example 2: False denials regarding Wellington, LLC's
short sales of Hyperdynamics securities*

185.

Likewise, the Hicks/Sims Defendants have **falsely denied** Plaintiff's discovery requests regarding short sales by Wellington. For example, on March 10, 2003, Plaintiff sent a Request for Admission to Southridge, requesting that Southridge "*admit that Wellington, LLC engaged in short sells of Hyperdynamics Corporation's stock.*"

186.

In its first Objections and Responses to Plaintiff's First Requests for Admission (dated April 23, 2003), Southridge **denied** the Request for Admission. *See*, Southridge Capital Management LLC's Objections and Responses to Plaintiff's First Requests for Admission, Response to RFA No. 15.

187.

In its Supplemental Objections and Responses to Plaintiff's First Requests for Admission (dated July 22, 2003), Southridge answered "**deny, except that Wellington's account statements may reflect short sells in Hyperdynamics stock.**" *See*, Southridge Capital Management LLC's Supplemental Objections and Responses to Plaintiff's First Requests for Admission, Response to RFA No. 15.

188.

It was only after Plaintiff filed a Motion to strike Southridge's pleadings that Southridge, in its "Audited" Responses (third generation) to Plaintiff's First Requests for Admission (served on or about March 8, 2004), finally **admitted** that Wellington had engaged in short sales. *See*, Southridge Capital Management LLC's Audited Responses to Plaintiff's First Requests for Admission, Response to RFA No. 15. In other words, despite over a year of false denials by

Southridge (and other Hicks/Sims Defendants), Wellington now **ADMITS** that it engaged in short sales of Hyperdynamics stock because the Hicks/Sims Defendants knew that Hyperdynamics had finally uncovered such information, and they could no longer hide behind false denials. *See, id.*

Example 3: False and incomplete Responses designed to conceal entities "subadvised" by Southridge and for which Southridge acts as a partner

189.

Another example of the Hicks/Sims Defendants' discovery abuse and continuing conspiracy concerns Plaintiff's First Interrogatories to Southridge Capital Management LLC, Interrogatory No. 25. This Interrogatory requests that Southridge "*identify each entity for which [it] act[ed] as a . . . partner . . . or agent.*"

190.

In its initial Responses to Plaintiff's First Interrogatories (dated May 31, 2002), Southridge objected to Plaintiff's Interrogatory No. 25 on **twenty-five** different grounds and provided none of the requested information.

191.

In its Supplemental Responses to Plaintiff's First Interrogatories (dated January 22, 2003), Southridge finally **admitted** its agency relationship with Wellington. No other entity was identified in the January 22, 2003 "Supplemental" Response, even though Southridge was aware that it was a partner in Sovereign and an agent for Minglewood, Terrapin, the Offshore Funds, Livingstone, and the SPVs.

192.

In its Second Supplemental Responses to Plaintiff's First Interrogatories, Southridge conceded that, in fact, it had an agency relationship with Wellington, Minglewood, Dominion, and the fact that it is a partner in Sovereign. However, Minglewood, Dominion, and Sovereign were not identified by their correct legal name in the Second Supplemental Response. Moreover, the Second Supplemental Responses failed to identify Southridge's agency relationship with Terrapin, Dundurn, Livingstone, CALP (or VMH), and the numerous other SPVs (including those which had invested in Georgia companies).

193.

On March 31, 2003, Southridge served its Third Supplemental Responses to Plaintiff's First Interrogatories. In its Third Supplemental Response, Southridge finally conceded its agency relationship with Wellington, Minglewood, Terrapin, Dominion, and Sovereign. Again, Southridge intentionally misstated the names of Minglewood, Dominion, and Sovereign. Moreover, the Third Supplemental Responses failed to identify Southridge's agency relationship with Dundurn, CALP (or VMH), Livingstone, and the numerous other offshore funds and SPVs (including those which had invested in Georgia companies) for which it acts as an agent. Obviously, the omission of entities which had been transacting business in Georgia was done as part of a scheme to avoid personal jurisdiction in this action and the continuing conspiracy.

194.

On May 1, 2003, the Court heard Plaintiff's Motion to Compel Discovery from Southridge Capital Management LLC. At the May 1, 2003 Hearing, the Court **ORDERED** Southridge to fully respond to Plaintiff's Interrogatory No. 25.

195.

On May 30, 2003, Southridge served its Fourth Supplemental Responses to Plaintiff's First Interrogatories. In its Fourth Supplemental Responses, Southridge finally admitted the fact that it was a partner in Sovereign and "Southridge Partners LP." Southridge also **admitted** its agency relationship with Livingstone, Wellington, Minglewood, Terrapin, Dominion, and approximately thirty-two of the SPVs. Nevertheless, Southridge still failed to identify its agency relationship with numerous other SPVs (including Dundurn and many other SPVs which have made investments in Georgia companies).

196.

On November 18, 2003, the Court entered a written Order requiring that Southridge fully answer Plaintiff's Interrogatory No. 25. Nevertheless, Southridge did nothing to further supplement or correct its various Responses to Plaintiff's Interrogatory No. 25. On January 16, 2004, Plaintiff filed a Motion seeking to strike the answer of Southridge and for the entry of sanctions as a result of Southridge's discovery abuse. One of the numerous examples of Southridge's discovery abuse cited in Plaintiff's Motion was the abusive discovery tactics regarding Plaintiff's Interrogatory No. 25.

197.

Following the filing of Plaintiff's Motion to Strike, the Southridge Defendant's filed an "Audited" Response (**sixth** generation response) to Plaintiff's Interrogatory No. 25. Shockingly, in its final "Audited" Response, Southridge indicated that, despite this Court's written Order, Southridge does **not** believe that it is required to identify the entities for which it acts as a partner or an agent, an "in your face" attack on the Court. To date, Southridge has never correctly

answered Plaintiff's Interrogatory No. 25, despite the fact that Southridge has filed six generations of responses.

Example Four: More perjury, fraud upon this Court, and lies to this Court by the Hicks/Sims Defendants

198.

Dominion, one of the Hicks/Sims Defendants, in support of its Motion to Dismiss the Complaint for Lack of Personal Jurisdiction in this action, filed a Supporting Affidavit signed by Sims (the "Dominion Affidavit"), dated March 5, 2004. The Hicks/Sims Defendants (including Dominion) are represented by Piper Rudnick Gray Cary US LLP and Ashe, Rafuse & Hill, LLP among other law firms.

199.

At Paragraph 12 of the Dominion Affidavit, Sims swore that, "*Dominion never has commenced a lawsuit in Georgia.*" At Paragraph 15 of the Dominion Affidavit, Sims swore that, "*Dominion never has sold or purchased any product or service in Georgia.*" At Paragraph 16 of the Dominion Affidavit, Sims swore that, "*Dominion never has negotiated nor entered into any contract in Georgia.*" At Paragraph 17 of the Dominion Affidavit, Sims swore that, "*Dominion never has communicated with anyone located in Georgia.*"

200.

Dominion and Sims knew that each of the foregoing alleged facts was important to the personal jurisdiction analysis in this case. The Hicks/Sims Defendants knew these alleged facts were important to the personal jurisdiction analysis, otherwise, they never would have included the alleged information in the Dominion Affidavit.

201.

The Dominion Affidavit was filed of record in this action and is signed by Sims, one of the Hicks/Sims Defendants. Contrary to the sworn statements of Sims in the Dominion Affidavit, Hyperdynamics has recently discovered a civil action in this very Court, the Superior Court of Fulton County, State of Georgia, Civil Action File No. 2001-CV-43514, which was filed on October 1, 2001 (“the Nelson Mullins litigation”). The Nelson Mullins litigation arose out of another convertible financing transaction involving the Canouse Defendants and the Hicks/Sims Defendants, including Dominion and Sims. In that transaction, the law firm of Nelson, Mullins, Riley & Scarborough, L.L.P. acted as an escrow agent. In the Nelson Mullins litigation, Dominion is a named Plaintiff, along with Atlantis, CALP, and others.

202.

In light of the Nelson Mullins litigation, there is no doubt that Dominion has, in fact, commenced a lawsuit in Georgia, being a named Plaintiff. The representations in the Dominion Affidavit to the contrary constitute perjury and were part of a deliberate campaign to defraud this Court. Moreover, as alleged in the Nelson Mullins litigation, Dominion claimed that Nelson, Mullins, Riley & Scarborough, L.L.P. breached the Escrow Agreement which governed the disbursement of Dominion’s investment funds. Moreover, Dominion has obviously purchased services and entered into contracts in Georgia, and has communicated with someone in Georgia in light of the fact that Dominion retained attorney Everette L. Doffermyre and attorney David S. Hagy of the law firm of Doffermyre Shields Canfield Knowles & Devine to be Dominion’s attorney in the Nelson Mullins litigation. This can all be seen from the face of the Complaint in the Nelson Mullins litigation.

203.

Consequently, three years after Dominion filed the Nelson Mullins litigation, Dominion filed the Dominion Affidavit signed by Sims in this action, which clearly and directly contradicts the Complaint which Dominion filed in the Nelson Mullins litigation in 2001. Dominion's role in the Nelson Mullins litigation has been concealed from Plaintiff and this Court by the Hicks/Sims Defendants throughout the discovery process in this action.

204.

The foregoing are only a few of the numerous and egregious examples of discovery abuse practiced by Defendants. These tactics are part of an intentional campaign, designed to conceal the existence and continuing nature of the conspiracy between and among the Defendants. Each stage and each generation of discovery response required Hyperdynamics to litigate and fight for truth and honesty in discovery.

The Aftermath of the Defendants' Scheme and Conspiracy

205.

Defendants' scheme and conspiracy artificially drove down the price of Hyperdynamics stock from over \$6.00 per share in April 2000 (when the SB2 registration statement was filed) to \$0.60 per share in September 2001 (just prior to the filing of this action).

206.

The Defendants conducted their illegal and fraudulent trading conspiracy through TK, with the cooperation and assistance of the Canouse Defendants, the Hicks/Sims Defendants, the Valentine Defendants, and other domestic and offshore entities. Many of the sales at issue occurred on the Canadian stock markets, where the regulatory requirements for short sales are less stringent than comparable regulations in the United States.

207.

Hyperdynamics has learned that TK is in receivership and that the Ontario Securities Commission has filed formal allegations regarding death spiral schemes and other illegal trading practices against Valentine, the former Chairman of TK. Allegations regarding death spiral schemes of the sort alleged herein by various broker-dealers are also under investigation by the Securities and Exchange Commission and the Department of Justice here in the United States.

208.

The unlawful acts, violations, breaches, and tortious conduct complained of by Hyperdynamics in this action were conducted by Defendants in a knowing and malicious conspiracy and acting cooperatively with each other and in concert. All Defendants herein are jointly and severally liable for the claims asserted herein.

209.

Hyperdynamics is just one of a number of publicly traded companies that have entered into toxic convertible/death spiral financing transactions with these Defendants. In each of these death spiral schemes, the Defendants employed a similar multi-tiered offshore structure, a similar financing structure, and a similar *modus operandi*. Defendants' pattern of conduct demonstrates the knowing and intentional nature of Defendants' actions.

210.

Indeed, Caryn G. Mazin, counsel for the Hicks/Sims Defendants has **admitted** in open Court in this action that:

[the Hicks/Sims Defendants] have a pattern – if doing business is a pattern, then okay, that is the way they do business . . .

That's their business. . . . That is just the way they do their business. . . Do they have a pattern of doing investments, absolutely. That is what they do. That is their business.

See, May 1, 2003 Hearing Transcript, p. 31.

211.

The Defendants' **admitted** pattern of doing business has resulted in a great deal of litigation. Other actions in which it was alleged that some or all of the Defendants in this action engaged in securities fraud, RICO violations, or other tortious conduct include the following:

(1) *Internet Law Library, Inc. and Carr v. Southridge Capital Management LLC Steve Hicks, Dan Pickett, Christy Constabile, Thomson Kernaghan & Co., Ltd. and Bill U. Brewer, Marc Caldwell, et al. v. Southridge Capital Management LLC, Stephen Hicks, Pickett, Christy Constabile, Thomson Kernaghan & Co., Ltd., TK Holdings, Inc., and Mark Valentine*, United States District Court, Southern District of New York, Case No. 01 CIV 6600;

(2) *Nanopierce Technologies, Inc. v. Southridge Capital Management LLC, Dan Pickett, Patricia Singer, Thomson Kernaghan, and Harvest Court, LLC*, United States District Court, Southern District of New York, Case No. 02-CV-0767;

(3) *Restaurant Teams International, Inc. v. Dominion Capital Fund Ltd., Canadian Advantage Limited Partnership, Sovereign Partners, L.P., Corporate Capital Management, Thomson Kernaghan & Co., Ltd., Stephen Hicks, Mark Valentine, and Mark Savage*, United States District Court, Southern District of New York, Case No. 6:98-CV-679;

(4) *Busschaert & Company, et al., v. J.P. Carey Enterprises, Inc., J.P. Carey Asset Management, LLC, J.P. Carey Securities, Inc., Joseph C. Canouse, and John C. Canouse*, Superior Court of Fulton County, State of Georgia, Case Nos. 2000CV30612 and 2002CV47605;

(5) *Mobile Pet Systems v. Southridge Capital Management, LLC, York, LLC, Thomson Kernaghan & Co., Ltd., Steven Hicks, Mark Valentine, et al.*, Superior Court for the State of California, County of San Diego, Case No. GIC 664633 *removed to* United States District Court, Southern District of California, Case No.01 CV 0779W;

(6) *Composite Industries of America v. Lenore Avenue, LLC, Navigator Management Ltd., Southridge Capital Management LLC, Steve Hicks et al.*, United States District Court, District of Nevada, Case No. CV-S-0482-PMP-RJJ;

(7) *Haymarket LLC v. D.G. Jewellery of Canada Ltd.*, Supreme Court of the State of New York, County of New York, Case No. 15971 (reported on appeal as *Haymarket LLC v. D.G. Jewellery of Canada Ltd.*, 290 A.D.2d 318 (2002));

(8) *Sedona Corporation v. Ladenburg Thalmann & Co., Inc., et al.*, United States District Court, Southern District of New York, Case No. 03CV3120;

(9) *James D. Grenfell v. John C. Canouse, et al.*, Superior Court of Fulton County, State of Georgia, Case No. 2003-CV-77098 (Judge Bedford); and

(10) *First Empire Corporation (directly and derivatively in its capacity as a shareholder of LecStar Corporation) and Alan B. Thomas, Jr. (directly and derivatively in his capacity as a shareholder of LecStar Corporation) v. John C. Canouse, Joseph C. Canouse, J.P. Carey Securities, Inc., J.P. Carey Asset Management, LLC, Corpfin.com, Inc., Harbourcrest Investments Ltd., Stephen M. Hicks a/k/a Steve Hicks, Southridge Capital Management LLC, David Sims, Arlene DeCastro, Navigator Management Ltd., Falcon Secretaries, Ltd., Livingstone Asset Management Ltd., Minglewood Capital, LLC, Terrapin Trading, LLC, Mark Valentine, Thomson Kernaghan & Co., Limited, Ernst & Young (Canada), Inc. (solely in its capacity as Trustee for the Bankruptcy Estate of Thomson Kernaghan & Co., Limited), W. Dale Smith, Michael E. Britt, Jr., W. Chad Smith, Cache Capital (USA), L.P., Atlantis Capital Fund Ltd., Sovereign Partners, L.P., Southshore Capital Fund, Ltd., Dominion Capital Fund Ltd., GPS America Fund, Ltd., Bonham Drive, LLC, Sherman, LLC, McCormack Avenue, LLC, Maple Circle Ltd., LTEL Holdings Ltd., Citco Trustees (Cayman) Limited, CTC Corporation, and CSS Corporation, and v. LecStar Corporation*, Superior Court of Fulton County, State of Georgia, Civil Action File No. 2004CV88793

The list set forth above is only a sample of such actions.

212.

Additionally, various persons have offered affidavits regarding the Defendants' acts of mail fraud, wire fraud, securities fraud, and other predicate acts. *See, e.g.*, Affidavit of Hunter M.A. Carr; Affidavit of Paul Metzinger. The affidavits are attached to Plaintiff's Supplemental Exhibits to Plaintiff's RICO Case Statement which is hereby incorporated by reference as if fully set forth verbatim herein.

213.

Defendants' wrongful acts, omissions, breaches, violations of law, and tortious conduct have damaged Hyperdynamics in an amount to be proven at trial.

214.

Defendants have committed willful, intentional, and malicious torts upon Hyperdynamics and are jointly and severally liable to Hyperdynamics for all damages and for punitive damages and exemplary damages in an amount to be determined by the enlightened conscience of the jury and are jointly and severally liable to Hyperdynamics for its reasonable attorneys' fees and expenses of litigation in this action.

215.

Defendants have acted in bad faith, have been stubbornly litigious, and have caused Hyperdynamics unnecessary trouble and expense. Hyperdynamics is entitled to recover its reasonable attorneys' fees and litigation expenses in this action jointly and severally from all Defendants.

CAUSES OF ACTION

COUNT ONE – BREACHES OF CONTRACT (THE ENGAGEMENT AGREEMENT)

216.

All Paragraphs of this Fourth Amended Complaint are hereby incorporated by reference into this Paragraph, as if fully restated verbatim herein.

217.

Hyperdynamics on the one hand and JPCSI and Joe Canouse on the other hand are parties to a contract (“the Engagement Agreement”).

218.

Hyperdynamics fulfilled its contractual obligations under the Engagement Agreement.

219.

Conversely, JPCSI and Joe Canouse have materially breached several relevant sections of the Engagement Agreement, including those identified above.

220.

Hyperdynamics has been damaged by said breaches of contract.

221.

JPCSI's and Joe Canouse's breaches of contract have been intentional, knowing, malicious, and in bad faith. JPCSI's and Joe Canouse's breaches of contract are part and parcel of JPCSI's and Joe Canouse's involvement in a conspiracy to bilk Hyperdynamics out of millions of dollars.

222.

Hyperdynamics has suffered foreseeable injury and substantial damages as a direct and proximate result of JPCSI's and Joe Canouse's breaches of contract. Conversely, JPCSI and Joe Canouse (and other Defendants named herein) have profited from said breaches at the expense of Hyperdynamics. JPCSI and Joe Canouse are each jointly and severally liable to Hyperdynamics for breach of contract.

COUNT TWO – BREACHES OF CONTRACTS
(THE REGULATION D SUBSCRIPTION AGREEMENTS)

223.

All Paragraphs of this Fourth Amended Complaint are hereby incorporated by reference into this Paragraph, as if fully restated verbatim herein.

224.

Hyperdynamics and the Front Man Entities are each party to one or more contracts (“the Regulation D Subscription Agreements”).

225.

Hyperdynamics fulfilled its contractual obligations under the Regulation D Subscription Agreements.

226.

Conversely, the Front Man Entities have each materially breached several relevant sections of the Regulation D Subscription Agreements, including those identified above.

227.

Hyperdynamics has been damaged by said breaches of said contracts.

228.

The Front Man Entities' breaches of their contracts have been intentional, knowing, malicious, and in bad faith. The Front Man Entities' breaches of their contracts are part and parcel of the Front Man Entities' involvement in a conspiracy to bilk Hyperdynamics out of millions of dollars.

229.

Hyperdynamics has suffered foreseeable injury and substantial damages as a direct and proximate result of the Front Man Entities' breaches of their contracts. Conversely, the Front Man Entities (and other Defendants named herein) have profited because of their breaches at the expense of Hyperdynamics. The Front Man Entities are each liable to Hyperdynamics for breach of contract.

COUNT THREE – FRAUD

230.

All Paragraphs of this Fourth Amended Complaint are hereby incorporated by reference into this Paragraph, as if fully restated verbatim herein.

231.

The Canouse Defendants, the Front Man Entities, and the Hicks/Sims Defendants have defrauded Hyperdynamics by making statements and representations that were false and fraudulent when made, and by making promises and giving assurances which they had no intention of honoring.

232.

These misrepresentations include the false and fraudulent statements identified above. These false and fraudulent statements were contained in numerous written documents, including the Engagement Agreement and the Regulation D Subscription Agreements. Various Defendants, including but not limited to the Canouse Defendants and the Front Man Entities, have also made false and fraudulent oral statements similar to those identified above prior to, contemporaneous with, and subsequent to the execution of said written statements.

233.

The Canouse Defendants, the Front Man Entities, and the other Defendants were expressly and specifically aware that Hyperdynamics was relying upon the truth and accuracy of the statements identified above. Hyperdynamics materially changed its position due to its reliance upon said false statements, so that it is now impossible to return Hyperdynamics and the Front Man Entities to the status quo ante.

234.

All of the misrepresentations and false statements made by Defendants were made with knowledge of their falsity, maliciously, and with intent to defraud and damage Hyperdynamics.

Additionally, the Canouse Defendants have defrauded Hyperdynamics by remaining silent when they were under an obligation to speak. The Canouse Defendants were aware of the fact that Hyperdynamics was relying upon them to advise Hyperdynamics with regard to a complicated securities transaction. Despite the fact that they had been engaged as consultants on behalf of Hyperdynamics, and despite the fact that they were supposed to be in a confidential relationship with Hyperdynamics, the Canouse Defendants repeatedly, knowingly, and intentionally failed to disclose information which they were obligated to disclose. Specifically, the facts and information which the Canouse Defendants failed to disclose include, but are not limited to, the following:

- (a) The fact that the “accredited investor” representations of one or more of the Front Man Entities were false;
- (b) The fact that the Canouse Defendants had a financial stake in and control over several of the potential investors, including the Front Man Entities;
- (c) The fact that the Canouse Defendants had no intention of ever arranging capital in the amount of seven million dollars (\$7,000,000.00); and,
- (d) The fact that the Canouse Defendants failed to use their “best efforts” to find legitimate accredited investors, and instead **only** informed their co-conspirators, Hicks and Valentine, of the financing opportunity;
- (e) The fact that there existed an inherent conflict of interest in the financing which the Canouse Defendants were promoting, whereby the Canouse Defendants stood to profit.

236.

Hyperdynamics reasonably relied upon and materially changed their position as a result of the Canouse Defendants' silence to Hyperdynamics' detriment, so that it is now impossible to return the parties to the status quo ante. Hyperdynamics acted in reliance upon the false belief that the Canouse Defendants had disclosed all facts material to the transaction between Hyperdynamics and Defendants.

237.

Hyperdynamics has been damaged by the false and fraudulent statements and representations of the Canouse Defendants, the Front Man Entities, and the other Defendants, by the silence, omissions, and non-disclosures of the Canouse Defendants.

238.

The false and fraudulent statements of the Front Man Entities, the Canouse Defendants, and the other Defendants, and the silence of the Canouse Defendants when they were under an obligation to speak were all part of a knowing and intentional conspiracy to bilk Hyperdynamics out of millions of dollars.

239.

Hyperdynamics has been directly and proximately injured and has suffered substantial damages as a result of the false and fraudulent statements of Defendants and, by the Canouse Defendants' silence when they were under an obligation to speak. The Front Man Entities, the Canouse Defendants, and the other Defendants have all reaped enormous profits at the expense of Hyperdynamics as a direct and proximate result of their participation in the conspiracy to defraud Hyperdynamics.

240.

Hyperdynamics is entitled to recover against Defendants, jointly and severally, for constructive and/or actual fraud.

COUNT FOUR – NEGLIGENT MISREPRESENTATION

241.

All Paragraphs of this Fourth Amended Complaint are hereby incorporated by reference into this Paragraph, as if fully restated verbatim herein.

242.

Both the Canouse Defendants and the Front Man Entities have made material misrepresentations to Hyperdynamics as set forth above. These false statements were contained in numerous written documents, including the Engagement Agreement and the Regulation D Subscription Agreements. Various Defendants, including, but not limited to, the Canouse Defendants and the Front Man Entities, have also made false oral statements similar to those identified above prior to, contemporaneous with, and subsequent to the execution of said written statements.

243.

The Canouse Defendants, the Front Man Entities, and the other Defendants were expressly and specifically aware that Hyperdynamics was relying upon the truth and accuracy of the statements identified above. Hyperdynamics has been damaged by the false statements and representations of the Canouse Defendants, the Front Man Entities, and the other Defendants.

244.

Hyperdynamics has been directly and proximately injured and has suffered substantial damages as a result of the false statements of the Defendants. The Front Man Entities, the

Canouse Defendants, and the other Defendants have all reaped enormous profits due to their false statements.

245.

Hyperdynamics is entitled to recover against Defendants, jointly and severally, for negligent misrepresentation.

COUNT FIVE – MISFEASANCE, MALFEASANCE,
AND BREACHES OF FIDUCIARY DUTIES

246.

All Paragraphs of this Fourth Amended Complaint are hereby incorporated by reference into this Paragraph, as if fully restated verbatim herein.

247.

By its express terms, the Engagement Agreement created a confidential relationship between the Canouse Defendants and Hyperdynamics, whereby the Canouse Defendants agreed to act as consultants for the benefit of Hyperdynamics.

248.

The Canouse Defendants each owed fiduciary duties to Hyperdynamics as a result of and in accordance with the confidential relationship between the Canouse Defendants and Hyperdynamics.

249.

As a result of the confidential relationship and the fiduciary duties which they owed to Hyperdynamics, the Canouse Defendants were obligated to act with the utmost candor and good faith toward Hyperdynamics.

250.

The Canouse Defendants breached the fiduciary duties which they owed to Hyperdynamics. These breaches were knowing, intentional, and malicious. Specifically, the Canouse Defendants breached their fiduciary duties to Hyperdynamics by virtue of their participation in a death spiral conspiracy to defraud Hyperdynamics, by their silence when they were under an obligation to speak, by their false statements and representations, by their various and repeated acts of misfeasance and malfeasance, by their knowing and intentional breaches of the Engagement Agreement, and by their undisclosed financial interest in and/or control over Cache and Carpe, which were used as a means of perpetrating the aforementioned conspiracy and torts.

251.

The Canouse Defendants' breaches of their fiduciary duties were knowingly and intentionally committed as part and parcel of a conspiracy to bilk Hyperdynamics and others out of millions of dollars. Each of the Defendants named herein has acted in concert with the others in furtherance of said conspiracy. Each of the Defendants named herein has reaped enormous profits at the expense of Hyperdynamics as a direct and proximate result of their participation in the conspiracy against Hyperdynamics.

252.

Hyperdynamics has been directly and proximately injured and has suffered substantial damages as a result of the Canouse Defendants' breaches of their fiduciary duties and the Defendants' participation in the conspiracy to harm Hyperdynamics, which included said breaches of fiduciary duties. Hyperdynamics is entitled to recover against the Canouse Defendants, jointly and severally, for their misfeasance, malfeasance, and breaches of their

fiduciary duties. Hyperdynamics is also entitled to recover against each of the Defendants jointly and severally due to said Defendants' acts in furtherance of the tortious conspiracy which entailed said misfeasance, malfeasance, and breaches of fiduciary duties.

COUNT SIX – UNJUST ENRICHMENT, RESTITUTION, AND DISGORGEMENT

253.

All Paragraphs of this Fourth Amended Complaint are hereby incorporated by reference into this Paragraph, as if fully restated verbatim herein.

254.

Defendants have been unjustly enriched as a result of their short sales, over sales, manipulation of the market for Hyperdynamics securities, and other torts.

255.

Defendants were each aware of the facts and circumstances surrounding such short sales, over sales, market manipulation, and torts.

256.

Defendants accepted the proceeds from such short sales, over sales, market manipulation, and torts.

257.

Defendants' receipt of proceeds, as a result of said short sales, over sales, market manipulation, and torts is unjust, inequitable, and improper.

258.

Plaintiff is entitled to recover against Defendants for their unjust enrichment, are entitled to cancellation of all securities currently in the possession of Defendants, and are entitled to

disgorgement of the proceeds received by said Defendants as a result of Defendants' short sales, over sales, market manipulation, and torts.

259.

Defendants are jointly and severally liable to Hyperdynamics for unjust enrichment, restitution, and disgorgement.

COUNT SEVEN – FRAUDULENT CONVEYANCE

260.

All Paragraphs of this Fourth Amended Complaint are hereby incorporated by reference into this Paragraph, as if fully restated verbatim herein.

261.

Plaintiff is a party with “claims” against Defendants, as defined in O.C.G.A. § 18-2-71.

262.

Each of the Hicks/Sims Defendants and each of the Offshore Funds is an “insider” and/or an “affiliate” of Wellington as defined by O.C.G.A. § 18-2-71.

263.

Wellington, the Hicks/Sims Defendants, and the Offshore Funds have each conspired to violate and have each violated the Georgia Uniform Fraudulent Transfers Act, O.C.G.A. §§ 18-2-70, *et seq.* Specifically, said Defendants have transferred assets formerly held by Wellington to the other Hicks/Sims Defendants and the Offshore Funds without receiving reasonably equivalent value in exchange for the transfer. Wellington is insolvent as a result of said transfers. Hyperdynamics' claims arose before, contemporaneous with, and after such transfers were made. The aforesaid transfers violated both O.C.G.A. § 18-2-75(a) and (b).

264.

Specifically, Defendants have transferred the proceeds obtained by Wellington to Minglewood, Terrapin, Sovereign, Dominion, and CALP, without providing Wellington with reasonably equivalent value in exchange for the transfer. These transfers were directed by Hicks, Sims, Southridge, Navigator, Beacon, Falcon, Livingstone, and the Valentine Defendants. Wellington was insolvent both before said transfers and as a result of said transfers. Plaintiffs' claims arose before, contemporaneous with, and after such transfers were made. The aforesaid transfers violate both O.C.G.A. § 18-2-75(a) and (b).

265.

The foregoing transfers were made with actual intent to hinder, delay, and defraud Plaintiff.

266.

Wellington did not receive reasonably equivalent value in exchange for said transfers.

267.

The remaining assets of Wellington were (and are) unreasonably small in relation to the transactions at issue and insufficient to satisfy the claims of Plaintiff.

268.

The transfers in questions were all to "insiders" and/or "affiliates" of Wellington as defined in O.C.G.A. § 18-2-70.

269.

Material facts regarding the transfers in question were not disclosed by Wellington or Defendants and, in fact, were intentionally concealed by Defendants from Plaintiff.

270.

Some of the transfers occurred after Wellington had been named as a party in various legal actions and threatened with other legal actions.

271.

Substantially all of Wellington's assets have been transferred to other Defendants.

272.

All of the foregoing transfers should be voided to the extent necessary to satisfy Hyperdynamics' claims, and all assets fraudulently transferred from Wellington should be returned. Temporary and permanent injunctions should be entered against Wellington, the Hicks/Sims Defendants, and the Offshore Funds in order to prevent further transfers of assets.

273.

Plaintiff should be awarded damages, punitive damages, and reasonable attorneys' fees against each of the Hicks/Sims Defendants, and Offshore Funds, jointly and severally, as a result of the foregoing fraudulent transfers.

COUNT EIGHT – INDEMNIFICATION (JPCSI AND JOE CANOUSE)

274.

All Paragraphs of this Fourth Amended Complaint are hereby incorporated by reference into this Paragraph, as if fully restated verbatim herein.

275.

JPCSI and Joe Canouse have specifically and expressly agreed to indemnify Hyperdynamics in the Engagement Agreement between Hyperdynamics and JPCSI and Joe Canouse.

276.

The "Engagement Agreement" states that:

The consultant [JPCSI and Joe Canouse] agrees to indemnify, defend and hold harmless the company [Hyperdynamics] against any losses, claims, damages, expenses, fees or liabilities, joint or several, to which the company may become subject, insofar as they arise out of or are based upon the breach or nonfulfillment by the consultant of its representations, warranties, duties, obligations, or agreements under this Agreement.

277.

Hyperdynamics has expended funds to third parties and has incurred losses, damages, expenses, fees, and liabilities as a direct result of JPCSI's and Joe Canouse's breaches and nonfulfillment of their representations, warranties, duties, obligations and agreements as set forth above.

278.

JPCSI and Joe Canouse have failed and refused to indemnify Hyperdynamics even though they are legally obligated to do so.

279.

Hyperdynamics has suffered direct and proximate injury and has sustained substantial damages as a result of JPCSI's and Joe Canouse's failure and refusal to indemnify Hyperdynamics.

280.

JPCSI and Joe Canouse are jointly and severally liable to indemnify and reimburse Hyperdynamics for all funds expended to third parties and all losses, damages, expenses, fees, and liabilities incurred as a result of JPCSI's and Joe Canouse's breaches and nonfulfillment of their representations, warranties, duties, obligations and agreements as set forth above.

COUNT NINE – INDEMNIFICATION (THE FRONT MAN ENTITIES)

281.

All Paragraphs of this Fourth Amended Complaint are hereby incorporated by reference into this Paragraph, as if fully restated verbatim herein.

282.

The Front Man Entities have each specifically and expressly agreed to indemnify Hyperdynamics in the Regulation D Subscription Agreements between Hyperdynamics and said Front Man Entities.

283.

By virtue of Section 8 of the Regulation D Subscription Agreements, which is titled “Indemnification,” the Front Man Entities each agreed as follows:

The subscriber agrees to indemnify and hold harmless the company [Hyperdynamics] and . . . each of [its] officers, directors, employees and agents . . . against any losses, claims, damages or liabilities, joint or several, to which it, they or any of them may become subject arising from or due to any untrue statement of a material fact.

284.

Hyperdynamics has expended funds to third parties and has incurred losses, claims, damages and liabilities due to the untrue statements of material fact identified above.

285.

The Front Man Entities have failed and refused to indemnify Hyperdynamics even though they are legally obligated to do so.

286.

Hyperdynamics has suffered direct and proximate injury and has sustained substantial damages as a result of the Front Man Entities’ failure and refusal to indemnify Hyperdynamics.

287.

The Front Man Entities are jointly and severally liable to reimburse Hyperdynamics for all funds expended to third parties and all losses, claims, damages, and liabilities to which Hyperdynamics has become subject or will become subject due to the aforementioned untrue statements of material fact.

COUNT TEN – TORTIOUS INTERFERENCE WITH CONTRACTS

288.

All Paragraphs of this Fourth Amended Complaint are hereby incorporated by reference into this Paragraph, as if fully restated verbatim herein.

289.

The Front Man Entities, JPCSI, and Joe Canouse are each parties to contracts with Hyperdynamics, to wit: the Regulation D Subscription Agreements and the Engagement Agreement. The other Defendants are not parties to the Regulation D Subscription Agreements or to the Engagement Agreement.

290.

Nevertheless, the other Defendants have all, through improper actions and wrongful conduct, purposely, intentionally, and maliciously induced and caused the Front Man Entities, JPCSI, and Joe Canouse to breach their contractual obligations owing to Hyperdynamics.

291.

The actions of the other Defendants have been improper, wrongful, and without privilege.

292.

The other Defendants are all liable to Hyperdynamics for tortious interference with said contracts.

293.

The tortious actions of the other Defendants have directly and proximately injured Hyperdynamics, and Hyperdynamics has suffered substantial damages as a result of said tortious interference with said contracts.

COUNT ELEVEN – CONVERSION

294.

All Paragraphs of this Fourth Amended Complaint are hereby incorporated by reference into this Paragraph, as if fully restated verbatim herein.

295.

Each of the Front Man Entities has unlawfully converted and assumed ownership of shares of Hyperdynamics common stock and Series A Preferred Stock, without authorization through wrongful taking and false pretenses. The Front Man Entities also falsely claim the right to ownership of additional shares of Hyperdynamics common stock which have not been delivered due to the Defendants' unlawful acts and omissions as alleged herein. Despite Hyperdynamics' demands, Defendants have refused to give up possession of the unlawfully converted stock.

296.

The Front Man Entities would not have accomplished this wrongful taking, but for their unlawful conspiracy and scheme of fraud, short-selling, overselling, market manipulation, and other unlawful acts alleged in this Fourth Amended Complaint.

297.

The Front Man Entities' acts of conversion were knowingly and intentionally committed as part and parcel of a conspiracy to bilk Hyperdynamics and other victims out of millions of

dollars. Each of the Defendants named herein has acted in concert with the others in furtherance of said conspiracy. Each of the Defendants named herein has reaped enormous profits at the expense of Hyperdynamics as a direct and proximate result of said Defendants' participation in a conspiracy to unlawfully convert Hyperdynamics common stock and Series A Preferred Stock.

298.

Hyperdynamics is entitled to recover against the Front Man Entities jointly and severally for their acts of conversion, and is also entitled to recover against each of the Defendants jointly and severally due to said Defendants' acts in furtherance of the tortious conspiracy to illegally convert Hyperdynamics common stock and Series A Preferred Stock.

COUNT TWELVE – VIOLATIONS OF GEORGIA SECURITIES ACT OF 1973

299.

All Paragraphs of this Fourth Amended Complaint are hereby incorporated by reference into this Paragraph, as if fully restated verbatim herein.

300.

Defendants have employed devices, schemes, and/or artifices to defraud in the sale, offer to sell, purchase and/or offer to purchase a security.

301.

Defendants have engaged in acts, practices, and/or courses of business that have operated as a fraud or deceit upon Hyperdynamics.

302.

Defendants have made untrue statements of material fact and have omitted and failed to disclose material facts in order to mislead Hyperdynamics.

303.

Defendants have employed deceptive and fraudulent devices, schemes, and artifices to manipulate the market in the securities of Hyperdynamics, in some cases directly and in other cases as “control persons” as set forth above.

304.

Specifically, the Defendants have made multiple false and fraudulent representations as alleged above, have remained silent when they were under an obligation to speak and when they were aware that their silence would operate as a fraud, have intentionally engaged in unlawful and deceptive trading practices intended to manipulate the market in Hyperdynamics’ securities, have intentionally violated fiduciary duties owed to Hyperdynamics, have failed to disclose their financial interest in and control over entities involved in said activities, have knowingly and intentionally breached their contracts with Hyperdynamics in an effort to manipulate the market in Hyperdynamics securities, have unlawfully converted the stock of Hyperdynamics, have utilized various false and fictitious names in an effort to deceive Hyperdynamics, have employed “front” entities and “straw man” enterprises to intentionally conceal the true nature of their scheme from Hyperdynamics, and have otherwise conspired and acted in concert in furtherance of the unlawful acts and omissions described herein. The specific violations of the Georgia Securities Act of 1973, as well as the primary violators and control persons liable for each such violation, are set forth in further detail in Plaintiff’s RICO Case Statement and the Supplemental Exhibits to Plaintiff’s RICO Case Statement.

305.

By virtue of the foregoing acts and omissions, Defendants have each conspired to violate the Georgia Securities Act of 1973 and have each violated the Georgia Securities Act of 1973.

306.

In addition to the direct actions by the Front Man Entities and other Defendants, the Canouse Defendants, the Hicks/Sims Defendants, the Valentine Defendants, and the Offshore Funds are each liable as “control persons” pursuant to O.C.G.A. § 10-5-14.

307.

Defendants’ conspiracy to violate the Georgia Securities Act of 1973 and Defendants’ violations of the Georgia Securities Act of 1973 were committed knowingly, maliciously, intentionally, and with the specific intent to harm Hyperdynamics.

308.

Hyperdynamics was directly and proximately injured and substantially damaged as a result of the violations by Defendants of the Georgia Securities Act of 1973. Each of the Defendants is jointly and severally liable to Hyperdynamics as a result of their conspiracy to violate the Georgia Securities Act of 1973 and their actual violations of the Georgia Securities Act of 1973.

COUNT THIRTEEN – VIOLATIONS OF GEORGIA RACKETEER INFLUENCED
AND CORRUPT ORGANIZATIONS (RICO) ACT (O.C.G.A. §§ 16-14-1, *ET SEQ*)

309.

All Paragraphs of this Fourth Amended Complaint are hereby incorporated by reference into this Paragraph, as if fully restated verbatim herein.

310.

Defendants have violated the Georgia Racketeer Influenced Corrupt Organizations Act (“RICO”) (O.C.G.A. §§ 16-14-1, *et seq*). Plaintiff has filed a RICO Case Statement detailing the specific violations committed by Defendants, the predicate acts engaged in by Defendants, and the purpose, structure, and nature of the General Enterprise and Conspiracy engaged in by the

Defendants. Plaintiff's RICO Case Statement and each of the Exhibits thereto are hereby incorporated by reference in this Paragraph as if fully restated verbatim herein.

311.

Defendants have unlawfully, through a pattern of racketeering activity or proceeds derived therefrom, acquired or maintained, directly or indirectly, an interest in and control of shares of stock in Hyperdynamics and money. Both the pattern of racketeering activity and the interests acquired and maintained by Defendants are set forth in detail in Plaintiff's RICO Case Statement.

312.

Further, as part and parcel of their conspiracy to bilk Hyperdynamics and others out of millions of dollars, Defendants have unlawfully, through a pattern of racketeering activity or proceeds derived therefrom, acquired or maintained, directly or indirectly, an interest in and control of Cache, Carpe, Wellington, and other entity Defendants. Each of said entities was created for the purpose of and utilized in furtherance of the General Enterprise and Conspiracy.

313.

Each Defendant has associated with the other Defendants in a General Enterprise and Conspiracy to conduct and participate in, directly or indirectly, such General Enterprise and Conspiracy through a pattern of racketeering activity which injured Hyperdynamics.

314.

As part and parcel of their participation in the General Enterprise and Conspiracy, the Defendants have engaged in multiple violations of the Georgia Securities Act of 1973 and conspired with the other Defendants to violate the Georgia Securities Act of 1973 as set forth above. Other predicate acts engaged in by Defendants include multiple acts in violation of

securities laws and regulations promulgated thereunder, multiple acts of forgery, multiple acts of mail fraud, multiple acts of wire fraud, multiple acts of securities fraud, and multiple acts of perjury, such acts being indictable offenses punishable by more than one year imprisonment. Hyperdynamics has set forth below the facts and circumstances relating to numerous predicate acts of which Hyperdynamics is currently aware, both in this Fourth Amended Complaint and in Plaintiff's RICO Case Statement and the Supplemental Exhibits to Plaintiff's RICO Case Statement. Further discovery and analysis will be necessary to identify each and every predicate act engaged in by Defendants. As of the date of filing this Fourth Amended Complaint, merits discovery has not yet begun in this action.

315.

Each of the Defendants has violated and has conspired with the others and acted in concert as part of a General Enterprise and Conspiracy to violate the provisions of O.C.G.A. § 16-14-4(a), (b), and (c).

316.

Hyperdynamics has been directly and proximately injured and substantially damaged as a result of Defendants' intentional and illegal pattern of racketeering activity.

317.

Each of the Defendants is liable to Hyperdynamics jointly and severally for said Defendants' violations of the Georgia RICO statute. In accordance with O.C.G.A. § 16-14-6(c), Hyperdynamics is entitled to recover three times Hyperdynamics' damages sustained, including punitive damages, attorney fees, and litigation expenses from Defendants. Hyperdynamics is also entitled to recover treble attorneys' fees in the trial and appellate courts and costs and expenses of investigation and litigation reasonably incurred.

COUNT FOURTEEN – CIVIL CONSPIRACY

318.

All Paragraphs of this Fourth Amended Complaint are hereby incorporated by reference into this Paragraph, as if fully restated verbatim herein.

319.

With regard to the acts of fraud, acts of conversion, breaches of fiduciary duty, violations of the Georgia Securities Act of 1973, violations of the Georgia Racketeer Influenced Corrupt Organization Act (RICO) (O.C.G.A. §§ 16-14-1, *et seq.*), and other tortious conduct alleged herein, each of the Defendants has covertly and clandestinely conspired and acted in concert for the purpose of accomplishing unlawful ends through lawful and unlawful means and to accomplish lawful ends through unlawful means.

320.

The Defendants are each jointly and severally liable for each and every one of the tortious acts and omissions of the others and all damages caused thereby.

COUNT FIFTEEN – PERSONAL LIABILITY AND “ALTER EGO”

321.

All Paragraphs of this Fourth Amended Complaint are hereby incorporated by reference into this Paragraph, as if fully restated verbatim herein.

322.

Each of the human Defendants is personally liable for each of the tortious acts and omissions of the various entity Defendants, due to said humans knowing utilization of said entities in a conspiracy to perpetrate frauds and commit intentional torts and contract breaches against Hyperdynamics, as well as said individuals' disregard for corporate/entity formalities.

323.

Many of the entity nonhuman Defendants are nothing more than “mere instrumentalities” and “alter egos” of other human and entity Defendants. The “alter ego” entities, which include Wellington, Navigator, Falcon, Livingstone, Minglewood, and Terrapin have no separate personality or existence from that of the other Defendants, but rather, were merely tools employed by the other Defendants in the perpetration of the breaches, fraud, and other tortious activities alleged herein. These “alter ego” entities exist only on paper, and typically have no human officers, directors, or employees, no physical offices, and no assets other than those controlled by the other Defendants. Accordingly, the purported separate existence of these “alter ego” Defendants should be ignored both for purposes of the assertion of liability and the exercise of personal jurisdiction.

COUNT SIXTEEN – PUNITIVE AND EXEMPLARY DAMAGES

324.

All Paragraphs of this Fourth Amended Complaint are hereby incorporated by reference into this Paragraph, as if fully restated verbatim herein.

325.

Defendants are all jointly and severally liable to Hyperdynamics for punitive and exemplary damages in an amount to be determined by the enlightened conscience of the jury and to be trebled by the Court.

COUNT SEVENTEEN – REASONABLE ATTORNEYS’
FEES AND EXPENSES OF LITIGATION

326.

All Paragraphs of this Fourth Amended Complaint are hereby incorporated by reference into this Paragraph, as if fully restated verbatim herein.

Defendants are all jointly and severally liable to Hyperdynamics for Hyperdynamics' reasonable attorneys' fees and expenses of litigation in this action and to be trebled by the Court.

PRAYER FOR RELIEF

WHEREFORE, Hyperdynamics respectfully demands a jury trial on all issues in this action triable by a jury and respectfully requests the following relief:

(a) That Hyperdynamics be awarded judgment in an amount to be proven at trial on the basis of the claimed injuries and damages set forth above against all Defendants, jointly and severally;

(b) That Hyperdynamics be awarded all compensatory, consequential, and derivative damages from all Defendants, jointly and severally;

(c) That the damage awards to Hyperdynamics (including punitive damages, attorney fees, and litigation expenses) be trebled by the Court in the final judgment against all Defendants, jointly and severally;

(d) That Defendants be required to provide an accounting of all proceeds received as a result of the illegal activities alleged herein;

(e) That Defendants be ordered to disgorge all proceeds received as a result of the illegal activities alleged herein and that Hyperdynamics recover all such proceeds from Defendants, jointly and severally;

(f) That Hyperdynamics be awarded punitive damages and exemplary damages in an amount determined by the enlightened conscience of an impartial jury from all Defendants, jointly and severally;

(g) That Hyperdynamics receive indemnification for all amounts which Defendants are obligated to indemnify Hyperdynamics;

(h) That Hyperdynamics recover all attorneys' fees, costs, and litigation expenses incurred in the action styled *Wellington, LLC v. Hyperdynamics Corporation, a Delaware corporation, Kent Watts, Michael Watts, Robert Hill, Harry J. Briers and DJX, Ltd., a Belize corporation*, Court of Chancery of the State of Delaware, In and For New Castle County, Case No. 18811-NC, the claims and contentions at issue therein having been "transferred" to this action by agreement;

(i) That all costs of this action be cast against Defendants, jointly and severally, and awarded to Hyperdynamics;

(j) That Hyperdynamics be awarded reasonable attorneys' fees, including trial and appellate attorneys' fees, investigation fees and expenses, and expenses of litigation in pursuit of Hyperdynamics' claims against all Defendants, jointly and severally;

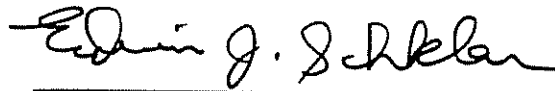
(k) That Hyperdynamics be awarded both prejudgment and postjudgment interest from all Defendants, jointly and severally, upon all amounts awarded in this action;

(l) That this Court enter Temporary and Permanent Injunctions to stop further fraudulent transfers of assets by Defendants, that all prior fraudulent transfers be voided, and that the Court Order the return of assets previously fraudulently transferred by Defendants; and

(m) That Hyperdynamics be awarded such additional damages, remedies, or relief as this Court may deem just and proper.

Dated: January 13, 2005

Respectfully submitted,



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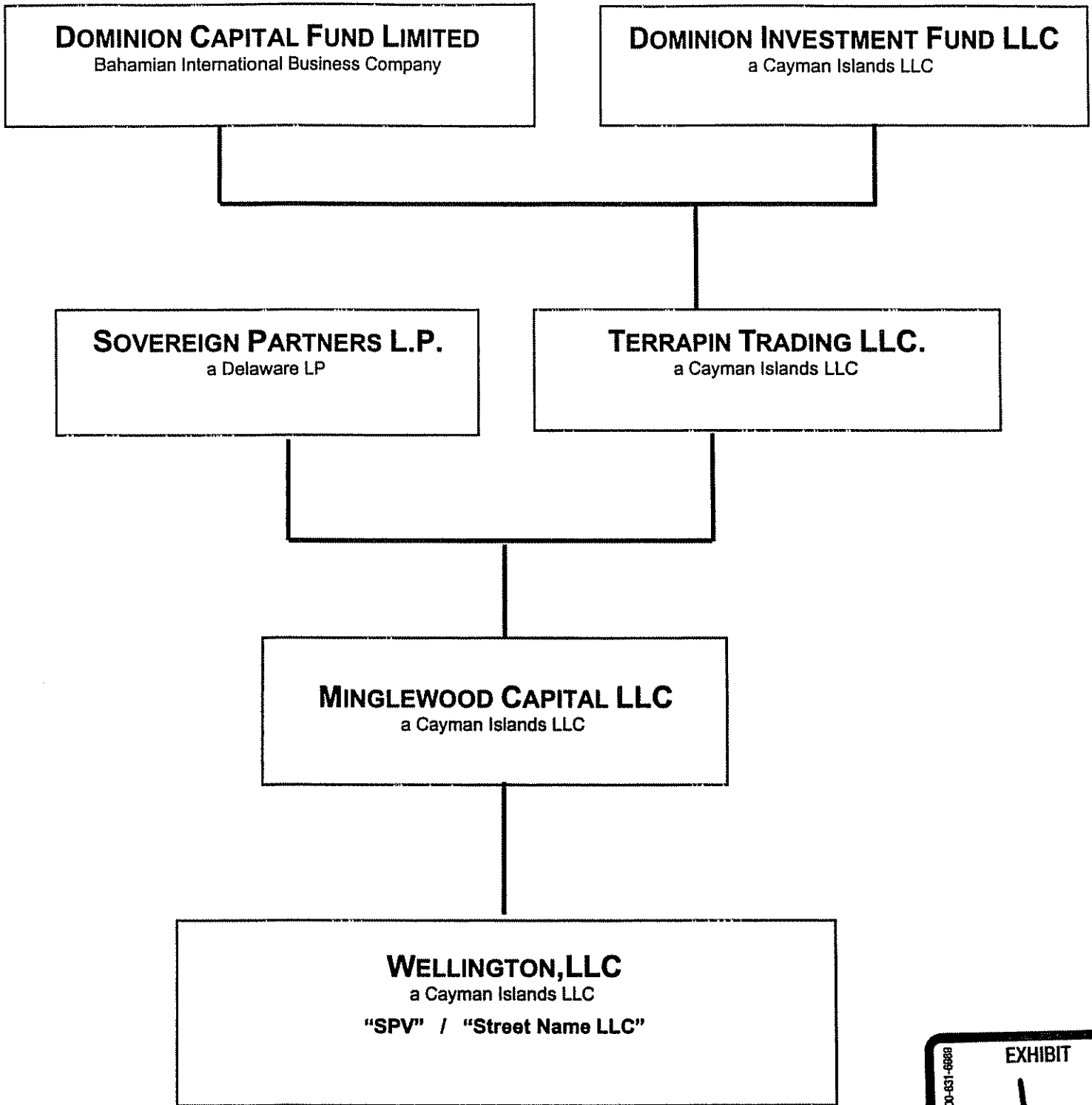
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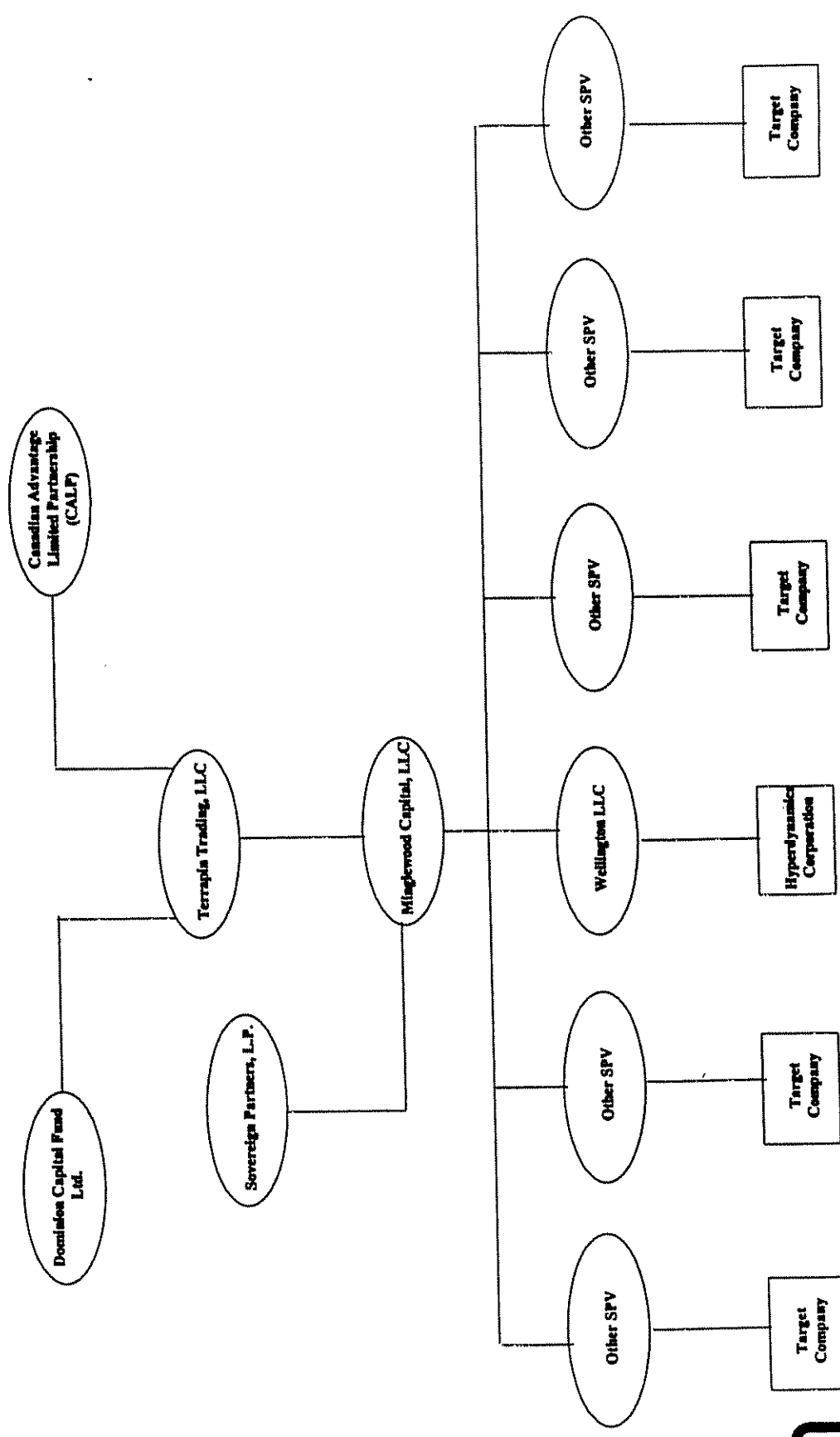
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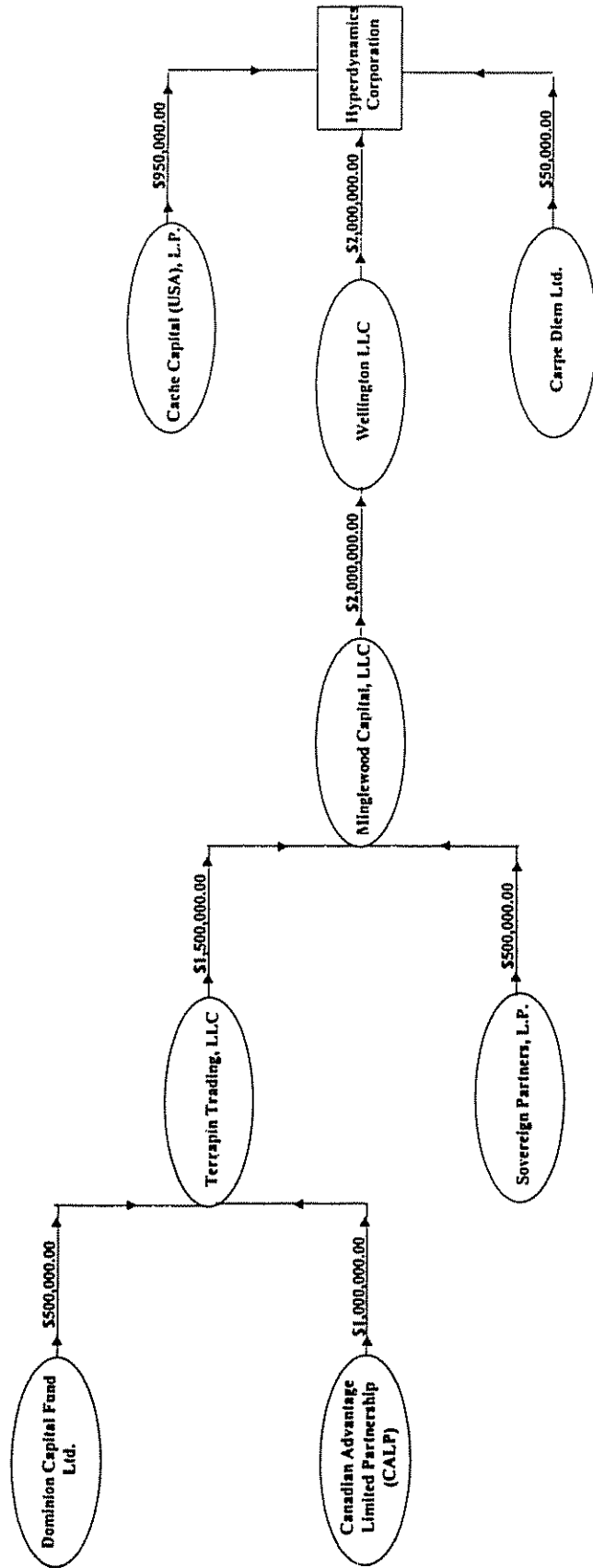
Organizational Chart of Multi-Tiered Off-Shore Structure - Hyperdynamics Case



This document was prepared based on information contained in confidential documents produced by Southridge Capital and/or Wellington, LLC in Civil Action File No. 2001CV44988 styled *Hyperdynamics Corporation v. J.P. Carey Securities, Inc., et al*, Superior Court of Fulton County, State of Georgia.

This document is CONFIDENTIAL and is to be viewed only by persons who are eligible to do so under the protective order in Civil Action File No. 2001CV44988; *Hyperdynamics Corporation v. J.P. Carey Securities, Inc., et al.*, Superior Court of Fulton County, State of Georgia





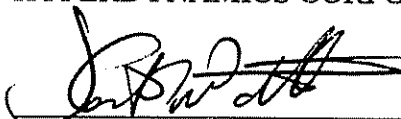
VERIFICATION

STATE OF TEXAS

COUNTY OF HARRIS

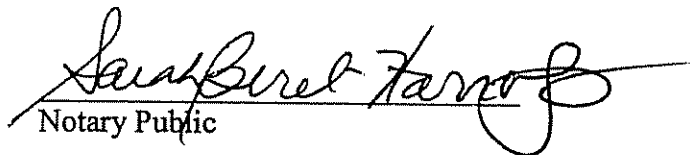
Personally appeared before me, the undersigned officer duly authorized by law to administer oaths, Kent Watts, Chief Executive Officer and President of Hyperdynamics Corporation, who, after first being duly sworn, deposes and says that the contents of the foregoing "Fourth Amended Complaint" are true and correct to the best of his knowledge, information, and belief.

HYPERDYNAMICS CORPORATION



By: KENT WATTS, Chief Executive Officer and President

Sworn to and subscribed before me
this 10th day of January, 2005.


Notary Public

[Notarial Seal]

My Commission Expires:



CERTIFICATE OF SERVICE

This is to certify that I have this day caused the within and foregoing **“Fourth Amended Complaint – Filed Under Seal”** to be served upon all other parties in this action by depositing a copy of same in the United States Mail with sufficient first class postage to ensure delivery, addressed to:

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This 13th day of January, 2005.



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