UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EITHAN EPHRATI, on behalf of himself and all others similarly situated,

Plaintiff,

vs.

KINGATE MANAGEMENT LIMITED; FIM LIMITED; FIM ADVISERS LLP; FIM (USA) INCORPORATED; PRICEWATERHOUSECOOPERS; PRICEWATERHOUSECOOPERS BERMUDA; CITI HEDGE FUND SERVICES, LIMITED; BANK OF BERMUDA LIMITED; GRAHAM H. COOK; JOHN E. EPPS; CARLO GROSSO; FEDERICO M. CERETTI; MICHAEL G. TANNENBAUM; and CHRISTOPHER WETHERHILL,

Defendants.

ECF Case

Case No. 09 Civ. 5762

CLASS ACTION COMPLAINT AND JURY TRIAL DEMAND

Plaintiff Eithan Ephrati brings this action on behalf of himself and all other persons who, as of December 10, 2008 (the "Class Period"), (1) owned shares of Kingate Global Fund, Ltd. ("Kingate Global" or the "Fund");[1] and (2) suffered losses as a result of the Fund's investments in connection with Bernard L. Madoff ("Madoff") and the Bernard L. Madoff Investment Securities LLC ("BMIS") (the "Class"). Excluded from the Class are Defendants, their affiliates, representative, successors, and assigns. Except for those allegations as to himself, which are alleged upon personal knowledge, Plaintiff alleges the following upon information and belief and based on counsel's investigation. Substantial additional evidentiary support will exist for Plaintiff's allegations after a reasonable opportunity for discovery.

[1] Kingate Global is not named as defendant in this Complaint.

NATURE OF THE ACTION

1. Defendants breached their fiduciary duties to Plaintiff and other Class members by negligently funneling investments to Madoff and BMIS. As a result of Defendants' breaches, Plaintiff and other Class members lost billions of dollars of their investments. Plaintiff now brings this action to recover damages against Defendants.

2. Plaintiff asserts five causes of action: (a) breach of fiduciary duty; (b) aiding and abetting breach of fiduciary duty; (c) gross negligence; (d) unjust enrichment; and (e) professional negligence on the basis that Defendants failed to, among other things,

- conduct due diligence and provide accurate and complete information to Plaintiff about the Fund, both before and after the initial investment;
- exercise care with Plaintiff's investments; and
- monitor Madoff, BMIS, and others chosen by Defendants to carry out the Fund's investment strategy and safeguard its assets.

3. Defendant Kingate Management Limited ("KML"), as Fund's manager, and other Defendants (including the Fund's consultants – Defendants FIM Limited, FIM Advisers LLP, and FIM (USA) Incorporated) marketed the Fund to investors and purported to conduct evaluation, management, and oversight of the Fund. Defendants selected Madoff and BMIS as the Fund's investment adviser, broker-dealer, and custodian, but failed to properly evaluate, manage, and oversee Madoff and/or BMIS.

4. As a result, Defendants funnel billions of dollars of investments to Madoff and BMIS and collected tens of millions of dollars in fees.

5. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23 on behalf of the Class.

JURISDICTION AND VENUE

6. This Court has jurisdiction pursuant to the Class Action Fairness Act of 2005, codified at 28 U.S.C. § 1332(d)(2). The amount in controversy exceeds the jurisdictional amount of $5,000,000 because, as set forth fully below, Plaintiff and the Class suffered billions of dollars in damages and Defendants wrongfully collected tens of millions of dollars in service fees. Moreover, the Class includes thousand of members, some of whom are citizens of a foreign state. And at least one Defendant is a citizen of New York.

7. This Court has personal jurisdiction over Defendants because, among other things, they reside, maintain offices, transacted business, and communicated regularly with persons in this District. In addition, substantial acts in furtherance of Defendants' wrongful conduct occurred in this District.

8. Venue is proper in this District under 28 U.S.C. § 1391(a)(3) because at least one Defendant resides or maintains a principal place of business in this District.

PARTIES

9. **Plaintiff Eithan Ephrati** owned shares of the Fund at all relevant times.

10. **Defendant KML** is incorporated under the laws of Bermuda and maintains its principal place of business at 99 Front Street, Hamilton, Bermuda. As the Fund's manager, KML controlled all aspects of the investment advisory services provided to the Fund and was directly responsible for the Fund's involvement with Madoff and BMIS. For its purported services, KML collected from Plaintiff and other Class members an annual fee of 1.5 percent of the Fund's net asset value ("NAV").

11. **Defendant FIM Limited ("FIM")** is an asset management company with its principal place of business at 25-28 Old Burlington Street, London, United Kingdom, W1S 3AN.

FIM earned millions of dollars in fees from KML for its consulting services. FIM was affiliated with Defendants FIM Advisers LLP and FIM (USA) Incorporated.

12. **Defendant FIM Advisers LLP ("FIM Advisers")**, an English limited liability partnership, took over its affiliate, FIM, on August 1, 2005. FIM Advisers has employees located in Bermuda, London, and New York and conducts a substantial amount of its business in the United States through its affiliate FIM (USA) Incorporated. At all relevant times, FIM Advisers acted as a consultant to the Fund.

13. **Defendant FIM (USA) Incorporated ("FIM USA")** is the American arm of FIM Advisers and is located at 780 Third Avenue, New York, New York 10017. At all relevant times, FIM USA acted as a consultant to the Fund.

14. Defendants FIM, FIM Advisers, and FIM USA are collectively referred to as the "FIM Defendants."

15. **Defendant Graham H. Cook ("Cook")** was at all relevant times a director of Kingate Global and breached the fiduciary duties he owed to Plaintiff and the Class.

16. **Defendant John E. Epps ("Epps")** was at all relevant times a director of Kingate Global and breached the fiduciary duties he owed to Plaintiff and the Class.

17. **Defendant Carlo Grosso ("Grosso")**, the founder of FIM, was at all relevant times its Executive Chairman. Defendant Grosso also co-founded FIM Advisers and was at all relevant times its Executive Chairman and Chief Investment Officer. Defendant Grosso breached the fiduciary duties he owed to Plaintiff and the Class.

18. **Defendant Federico M. Ceretti ("Ceretti")**, a co-founder of FIM Advisers, was at all relevant times FIM's Chief Executive Officer and breached the fiduciary duties he owed to Plaintiff and the Class.

19. **Defendant Michael G. Tannenbaum ("Tannenbaum")** was at all relevant times a director of KML and breached the fiduciary duties he owed to Plaintiff and the Class. Defendant Tannenbaum resides in New York.

20. **Defendant Christopher Wetherhill ("Wetherhill")** was at all relevant times a director of Kingate Global and KML and breached the fiduciary duties he owed to Plaintiff and the Class.

21. Defendants Cook, Epps, Grosso, Ceretti, Tannebaum, and Wetherhill are collectively referred to as the "Individual Defendants." All Individual Defendants participated in the Fund's transactions conducted in this District.

22. **Defendant Citi Hedge Fund Services Ltd. ("Citi Hedge")**, formerly known as BISYS Hedge Fund Services Limited, is registered in accordance with the laws of Bermuda and maintains its principal place of business located at 9 Church Street, Hamilton, Bermuda. As the Fund's administrator, Citi Hedge was responsible for performing day-to-day administrative services for the Fund, including (a) preparing and distributing monthly reports to the investors containing the amount of the Fund's net assets, the amount of any distributions from the Fund, and accounting and legal fees and all other fees and expenses of the Fund; (b) maintaining the Fund's financial books and records; (c) calculating the NAV; (d) handling investor communications; and (e) supervising the payment of expenses by the Fund.

23. **Defendant Bank of Bermuda Limited ("Bank of Bermuda")** was at all relevant times Kingate Global's banker. Defendant Bank of Bermuda is a banking institution with an address at 9 Bermudiana Road, Compass Point, 5th Floor, Pembroke, Bermuda. On July 1, 1996, Defendant Bank of Bermuda entered into a Sub-Custody Agreement with BMIS whereby BMIS acted as the sub-custodian for certain funds for which Defendant Bank of Bermuda was the

custodian, including Kingate Global. BMIS held these funds in New York, New York for the benefit of the Bank of Bermuda on behalf of, among others, Kingate Global.

24. Defendants Citi Hedge and Bank of Bermuda are collectively referred to as the "Bermuda Defendants."

25. **Defendant PricewaterhouseCoopers ("PwC")** is an accounting firm with offices at 300 Madison Avenue, New York, New York. PwC has member firms worldwide. PwC was the auditor of the Fund at all relevant times and reported on the financial statements and results of the Fund's operations by issuing unqualified audit opinions. The audit opinions accompanying the Fund's financial statements for 2005, 2006, and 2007 were signed by "PricewaterhouseCoopers," and stated that "PricewaterhouseCoopers refers to the members of the worldwide PricewaterhouseCoopers organization." These audits were purportedly conducted "in conformity with accounting principles generally accepted ["GAAP"] in the United States."

26. **Defendant PricewaterhouseCoopers Bermuda ("PwC Bermuda")** is an accounting firm organized under the laws of Bermuda. PwC Bermuda was one of the PricewaterhouseCoopers' worldwide members and participated in conducting the audit of the Fund at all relevant times and reported on the financial statements and results of the Fund's operations. PwC Bermuda is licensed to use the names "PwC" and "PricewaterhouseCoopers."

27. Defendants PwC and PwC Bermuda are collectively referred to as the "PwC Defendants."

28. Each Defendant was an agent, principal, representative, and/or employee of the other Defendants for the purposes of the unlawful conduct alleged in this Complaint. And in engaging in such unlawful conduct, Defendants acted within their agency, representation, and employment with permission of each co-Defendant.

CLASS ACTION ALLEGATIONS

29. **Class Definition.** Plaintiff brings this action as a class action under Federal Rule of Civil Procedure 23(a), (b)(1), (b)(2), and (b)(3) on behalf of himself and the following Class of persons similarly situated:

> All persons who, as of December 10, 2008, (a) owned shares of Kingate Global; and (b) suffered losses as a result of the Kingate Global's investments in connection with Madoff and BMIS. Excluded from the Class are Defendants, their affiliates, representative, successors, and assigns.

30. **Numerosity.** The members of the Class are so numerous that joinder of all members is impracticable. Although the exact number of Class members is currently unknown to Plaintiff and can only be ascertained through discovery, Plaintiff reasonably believes that the Class includes thousands of investors.

31. **Commonality.** Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting solely individual members of the Class. Among the questions of law and fact common to the Class are:

(a) whether Defendants owed fiduciary duties to Plaintiff and the Class;

(b) whether Defendants' conduct alleged was intentional, reckless, grossly negligent, or negligent;

(c) whether Defendants' conduct violated their fiduciary duties owed to Plaintiff and the Class; and

(c) whether and to what extent Plaintiff and the Class were damaged as a result of Defendants' conduct.

32. **Typicality.** Plaintiff's claims are typical of those of other Class members because, like all other Class members, he invested in the Fund and was damaged as a result of his investments.

33. **Adequacy.** Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in complex class actions. Plaintiff has no interests antagonistic to or in conflict with those of the Class.

34. **Rule 23(b)(1)(B) Requirements.** Class action status in this action is warranted under Rule 23(b)(1)(B) because prosecution of separate actions by the members of the Class would create a risk of adjudications with respect to individual members of the Class which would, as a practical matter, be dispositive of the interests of the other members not parties to the actions, or substantially impair or impede their ability to protect their interests.

35. **Other Rule 23(b) Requirements.** Class action status is also warranted under the other subsections of Rule 23(b) because: (a) prosecution of separate actions by the members of the Class would create a risk of establishing incompatible standards of conduct for Defendants; (b) Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive, declaratory, or other appropriate equitable relief with respect to the Class as a whole; and (c) questions of law or fact common to members of the Class predominate over any questions affecting only individual members and a class action is superior to the other available methods for the fair and efficient adjudication of this controversy.

DEFENDANTS' WRONGFUL CONDUCT

A. Madoff's Massive Ponzi Scheme

36. In the 1960s, Madoff founded BMIS, a broker-dealer investment adviser registered with the U.S. Securities and Exchange Commission (the "SEC"). For decades, Madoff and BMIS managed tens of billions of dollars in investments, including funds funneled by Kingate Global.

37. Madoff's house of cards came crashing down in December 2008. In early December 2008, BMIS claimed that it had between $8 billion and $15 billion under management. On or about December 10, 2008, Madoff's sons Andrew and Mark Madoff, who were also senior employees of BMIS, met with Madoff at his Manhattan apartment; during that meeting, Madoff confessed that his entire investment advisory business was a fraud, and that the business was "all just one big lie," and was "basically a giant Ponzi scheme." Madoff admitted that for years, he had been paying returns to certain investors out of the principal received from other investors. Madoff also declared that BMIS was insolvent, and had been insolvent for years. At that time, Madoff estimated that losses from his fraud were approximately $50 billion; this figure has now risen to $65 billion.

38. On December 11, 2008, the SEC filed *SEC v. Madoff*, No. 08 Civ. 10791 (S.D.N.Y.), an emergency action in the Southern District of New York to halt Madoff's ongoing fraudulent securities offering and investment. On that same day, Madoff and BMIS were criminally charged by the United States Attorney's Office for the Southern District of New York with securities fraud.

39. On March 13, 2009, Madoff pleaded guilty to eleven counts of fraud, money laundering, perjury, and theft, stating: "Your honor, for many years up until my arrest on December 11, 2008, I operated a Ponzi scheme through the investment advisory side of my

business, Bernard L. Madoff Securities, L.L.C." The SEC and U.S. Attorney's Offices are continuing their investigations of Madoff and BMIS, filing criminal charges against BMIS's accountant in March 2009 for aiding and abetting Madoff's fraud by failing to conduct proper audits.

B. Red Flags Defendants Failed to Uncovered Due to the Lack of Diligence

40. According to a December 19, 2008 Bloomberg article, regulators investigating Madoff found evidence that the scheme began at least as early as the 1970s. For years since the scheme's inception, there have been a myriad of warnings that would have been meaningful to Defendants, had they been conducting proper due diligence, but unavailable to Plaintiff and the Class, as they were unaware their investments in the Fund were being sent to Madoff's Ponzi scheme. Some of the red flags are discussed in the following paragraphs.

41. In 1992, the SEC filed a lawsuit against accountants Frank Avellino and Michael Bienes, who sold $441 million in unregistered securities to 3,200 people beginning in 1962, promising them returns of 13.5% to 20%, and invested the money entirely with Madoff. As a result of the SEC investigation, Avellino and Bienes agreed to shut down their business and reimburse their clients.

42. In May 1999, Harry Markopolos ("Markopolos"), a derivatives expert with experience managing split-strike conversion strategies, sent a letter to the SEC describing how Madoff could not have generated the returns he reported using the split-strike conversion strategy.

43. By May 2001, Defendants should have known that significant questions had surfaced about Madoff's so-called split-strike conversion strategy. The hedge fund world was baffled by the way Madoff had obtained such consistent, nonvolatile returns month after month and year after year. Many questioned the consistency of the returns, including current and former

traders, other money managers, consultants, and quantitative analysts. Others who had used the split-strike conversion strategy were known to have had nowhere near the same degree of success. The best known entity using a similar strategy, a publicly traded mutual fund dating from 1978 called Gateway, has experienced far greater volatility and lower returns during the same period.

44. In addition, experts were asking why no one had been able to duplicate similar returns using the strategy and why other firms on Wall Street had not become aware of the fund and its strategy and traded against it, as had happened so often in other cases. When pressed at the time to truly explain the basis of the split-strike conversion strategy, Madoff stated, "I'm not interested in educating the world on our strategy, and I won't get into the nuances of how we manage risk."

45. Also, by May 2001, Defendants were negligent in failing to realize that certain option strategists for major investment banks could not understand how BMIS and Madoff achieved the results they claimed with their purported investment strategy. Madoff responded by stating, "It's a proprietary strategy. I can't go into great detail."

46. Markopolos again provided an analysis to the SEC on November 7, 2005, warning that Madoff was running a Ponzi scheme. In his over 17 page single-spaced letter entitled "The World's Largest Hedge Fund is a Fraud," Markopolos asserted that the consistency of Madoff's positive returns was mathematically impossible, stating that it was "highly likely" that "Madoff Securities is the world's largest Ponzi Scheme."

47. Markopolos's analysis further stated as follows:

> At my best guess level of BM's assets under management of $30 billion, or even at my low end estimate of $20 billion in assets under management, BM would have to be over 100% of the total [S&P 100] put option contract open interest in order to hedge his stock holdings as depicted in the third party hedge funds marketing literature [*e.g.*, the Optimal Memorandum]. In other words, there

are not enough index option put contracts to hedge the way BM says he is hedging[.] And there is no way the OTC market is bigger than the exchange listed market for plain vanilla S&P 100 index put options.

One hedge fund . . . has told that BM uses Over-the-Counter options and trades exclusively [through] UBS and Merrill Lynch . . . .

The counter-party credit exposures for UBS and Merrill Lynch would be too large for these firms['] credit departments to approve. The SEC should ask BM for trade tickets showing he has traded OTC options [through] these two firms. Then the SEC should visit the firms' OTC derivatives desk, talk to the heads of trading and ask to see BM's trade tickets.

* * *

It is mathematically impossible for a strategy using index call options and index put options [as described by Madoff] to have such a low correlation to the market where its returns are supposedly generated from. . . . BM's performance numbers show only 7 extremely small [monthly] losses during 14.5 years . . . .

* * *

[S]ince Madoff owns a broker-dealer, he can generate whatever trade tickets he wants. . . . [H]ave the [feeder funds] matched [the trade tickets] to the time and sales of the exchanges? For example, if BM says he [bought] 1 million shares of GM, sold $1 million worth of OTC OEX calls and [bought] $1 million worth of OTC OEX puts . . . the GM share prints would show on either the NYSE or some other exchange while the broker-dealers he traded OTC options thru [sic] would show prints of the hedges they traded to be able to provide BM with the OTC options at the prices listed on BM's trade tickets.

Madoff does not allow outside performance audits. One London based hedge fund . . . asked to send in a team of Big 4 accountants to conduct a performance audit during their planned due diligence. They were told "No, only Madoff's brother-in-law who owns his accounting firm is allowed to audit performance for reasons of secrecy in order to keep Madoff's proprietary trading strategy secret so that nobody can copy it."

* * *

Madoff is suspected of being a fraud by some of the world's largest and most sophisticated financial services firms. Without naming names, here's an abbreviated tally:

> A managing director at Goldman, Sachs prime brokerage operation told me that his firm doubts Bernie Madoff is legitimate so they don't deal with him.
>
> * * *
>
> [Royal Bank of Canada] and [Societe Generale] have removed Madoff some time ago from approved lists of individual managers . . . .
>
> Madoff was turned down . . . for a borrowing line from a Euro bank. . . . Now why would Madoff need to borrow more funds? . . . Looks like he is stepping down the payout.
>
> * * *
>
> BM tells the third party FOF's [fund of funds] that he has so much money under management that he's going to close his strategy to new investments. However, I have met several FOF's who brag about their "special access" to BM's capacity. This would be humorous except that too many European FOF's have told me this same seductive story about their being so close to BM that he'll waive the fact that he's closed his funds to other investors but let them in because they're special. It seems like every single one of these third party FOF's has a "special relationship" with BM.

48. Had Defendants conducted reasonable and adequate due diligence, they would have detected the fraud based on the red flags and glaring inconsistencies identified by Markopolos. In fact, given that Defendants had provided Madoff with billions of dollars in assets, Defendants had considerably more access than Markopolos to Madoff's operations to detect these red flags. For example, one of Markopolos's critical tests was the confirmation with the supposed counterparties of the trades Madoff claimed to have executed. But, as reported by the Associated Press on January 16, 2009, in an article entitled "Madoff fund may have made no trades,"

> [T]he securities and brokerage industry self-policing organization, the Financial Industry Regulatory Authority, confirmed that there was no evidence of Madoff's secretive investment fund executing trades through its brokerage operation. And Fidelity Investments, which had a money-market fund listed among the many trades included in statements Madoff's fund sent to customers, says Madoff was not a client.

Defendants' minimal and reasonable inquiries with Fidelity, or other similar counterparties, would have alerted defendants to the fraud.

49. Other finance professionals echoed Markopolos's obvious questions about the legitimacy of Madoff's enterprise. In 2007, hedge fund investment adviser Aksia LLC ("Aksia") urged its clients not to invest in Madoff feeder funds after performing due diligence on Madoff. Aksia identified the following red flags:

(a) Aksia discovered the 2005 letter from Markopolos to the SEC set forth above.

(b) Madoff's auditor, Friehling & Horowitz ("F&H"), was a three-person accounting firm located in a 13-by-18 foot office in Munsey, New York. A financial institution of the size of BMIS is typically audited by a big-four accounting firm, or one of the other larger and more reputable auditors. In addition, while F&H purportedly audited BMIS, F&H had filed annual forms with The American Institute of Certified Public Accountants ("AICPA") attesting that it had not performed audits for the past fifteen years. The AICPA has begun an ethics investigation into F&H. Federal investigators have issued a subpoena to F&H and have requested documents going back to 2000.

(c) The comptroller of BMIS was based in Bermuda. Most mainstream hedge fund investment advisers have their comptroller in house. And,

(d) BMIS had no outside clearing agent that could confirm its trading activity.

50. Societe Generale ("SocGen") sent a due diligence team to New York in 2003 to investigate Madoff. As reported by *The New York Times* on December 17, 2008, in an article entitled "European Banks Tally Losses Linked to Fraud," SocGen concluded that something was not right. "'It's a strategy that can lose sometimes, but the monthly returns were almost all positive' . . . ."

51. On December 12, 2008 Robert Rosenkranz, a principal at Acorn Partners, an investment advisory firm, stated: "'Our due diligence, which got into both account statements of his customers, and the audited statements of Madoff Securities, which he filed with the S.E.C., made it seem highly likely that the account statements themselves were just pieces of paper that were generated in connection with some sort of fraudulent activity' . . . ."

52. Jeffrey S. Thomas, Chief Investment Officer at Atlantic Trust, which manages $13.5 billion, said that it had "reviewed and declined to invest with Madoff." The firm said it spotted a number of "red flags" in Madoff's operation, including a lack of an outside firm to handle trades and accounting for the funds and the inability to document how Madoff made profits.

53. Had Defendants conducted proper and thorough due diligence into Madoff, BMIS, and/or Madoff-controlled entities, they would have identified at least some of the dozens of these red flags. To the extent Defendants did uncover some of these red flags, they were grossly negligent in choosing to ignore rather than act on their investigations.

54. To the extent Defendants did perform due diligence, it was completely inadequate and did not fulfill Defendants' fiduciary and professional duties to the limited partners and other investors. Defendants acted with gross negligence and violated their duties by failing to ensure the performance of appropriate due diligence that would have revealed that the assets of the Fund were invested with Madoff, BMIS, and/or Madoff-controlled entities such that a portion of the Fund's losses were attributable to Madoff. among other things, Defendants failed to:

(a) safely manage the Class's capital;

(b) perform adequate due diligence with regard to Madoff's investment strategies, daily activities, and unbelievable results;

(c) investigate the various red flags as reported in the mainstream press;

(d) verify Madoff's financial statements;

(e) monitor ongoing risks associated with Madoff's use of the Class's capital; and

(f) safeguard the Class's investments from risks of large losses.

C. The Wrongful Conduct of Defendant KML, the FIM Defendants, and the Individual Defendants

55. The red flags of Madoff's and BMIS's fraud also existed in Kingate Global's documents – Kingate Global received monthly account statements from BMIS. These account statements showed purchases and sales at prices outside the daily price range on the days in question. For example, the monthly account statements received by the Fund for the month of October 2003 reported a purchase of 984,137 shares of Intel Corporation on the Settlement Date of October 7, 2003, which was purportedly executed on the Trade Date of October 2, 2003 at a price of $27.63. But the daily price range for Intel Corporation stock on October 2, 2003 ranged from a low of $28.41 to a high of $28.95. In total, for the analyzed time period through November 2008, Kingate Global received monthly account statements that displayed numerous trades that were purportedly executed at a price outside the daily price range. This pattern in Kingate Global's accounts should have caused Defendants to independently verify the trades with the public exchanges and alerted Defendants to Madoff's Ponzi scheme.

56. Defendants, however, failed to exercise due diligence to detect these red flags and continued to funnel investments to Madoff and BMIS.

57. According to the Fund's Amended and Restated Information Memorandum dated May 1, 2006 (the "Information Memorandum"), Kingate Global is an "open-end investment

company" that "seeks long-term capital growth by allocating USD Share capital to a selected investment advisor to execute the Fund's Investment Objective and Process."

58. The Fund's "investment objective" as set forth in the Information Memorandum is "to obtain capital appreciation of its assets through the utilization of a non-traditional stock/ options trading strategy." The strategy consists of "a variation of the traditional 'option conversion strategies' (generally consisting of the purchasing of equity shares, the selling of related options representing a number of underlying shares equal to the number of shares purchased, and the buying of related put options representing the same number of underlying shares.)."

59. According to the Information Memorandum, the strategy entailed:

> (i) purchasing a basket of forty-five (45) to fifty (50) large capitalization S&P 100 stocks (*e.g.* General Electric, Microsoft, Pfizer, Exxon Mobil, Wal-Mart Stores, Citigroup, Intel, American International, IBM, Johnson & Johnson, etc.), which together account for the greatest weight of the Index and therefore, when combined, present a high degree of correlation with the general market;
>
> (ii) selling out-of-the money S&P 100 Index call options representing a dollar amount of the underlying Index equivalent to the dollar amount of the basket of shares purchased;
>
> (iii) purchasing out-of-the-money or at-the-money S&P Index put options in the same dollar amount.

60. The Fund's audited annual financial statements stated:

> [The Fund's] investment advisor is Bernard L. Madoff Investment Securities LLC ("[BMIS]"), a New York based financial institution. [BMIS] also acts as the [Fund's] broker-dealer for all equity, US Treasury and option transactions, these transactions being executed in certain instances with Madoff as the principal.

61. Kingate Global represented in its financial statements that through Madoff it executed transactions of approximately $58 billion in 2007, $48 billion in 2006, $48 billion in 2005, and $49 billion in 2004.

62. The Fund's Information Memorandum contained a clause relating to due diligence obligations:

> Neither the Fund nor the Custodian has actual custody of the assets. Such actual custody rests with the Investment Advisor and its affiliated broker-dealer. Therefore, there is the risk that the custodian could abscond with those assets. There is always the risk that the assets with the Investment Advisor could be misappropriated. In addition, information supplied by the Investment Advisor may be inaccurate or even fraudulent. The Manager is entitled to rely on such information (provided they do so in good faith) and are not required to undertake any due diligence to confirm the accuracy thereof.

63. This clause does not exonerates Defendant KML or the FIM Defendants from conducting due diligence on the propriety of Madoff as the chosen Investment Advisor to whom the Fund delegated all investment management discretion and authority in the first instance. Defendant KML and the FIM Defendants were required to conduct due diligence on Madoff and BMIS in any event.

64. Furthermore, the Individual Defendants controlled the Fund and are responsible for the appointment of Defendant KML as Fund Manager and for the Fund's investments with Madoff and/or BMIS.

65. The Individual Defendants owed duties of care and loyalty to the Class. Had the Individual Defendants exercised the appropriate duty of care and loyalty, they could have discovered the many red flags described above.

66. The Individual Defendants therefore violated their duties of care and loyalty by failing to, among other things:

(a) safely manage the Fund's assets;

(b) perform, or supervise those tasked to perform, adequate due diligence of the Fund's custodian of assets and investment advisor, Madoff and/or BMIS;

(c) investigate red flags regarding Madoff and BMIS;

(d) provide the Fund with accurate financial statements and reports; and

(e) warn the Fund and its investors of the risks involved in their investments.

67. Despite these failures, the Individual Defendants each personally benefited from the breaches by being the ultimate recipients of the fees paid out of the Fund.

D. Defendant KML's and the FIM Defendants' Multi-Million Dollar Fees

68. Pursuant to the Information Memorandum, Defendant KML is responsible for directing the Fund's investment and trading activities. Defendant KML completely abdicated its responsibilities to the Fund by failing to perform even minimal evaluation and supervision of BMIS. Among other things, Defendant KML failed to:

(a) safely manage the Fund's assets;

(b) perform, or supervise those tasked to perform, adequate evaluation and supervision of the Fund's custodian of assets, BMIS;

(c) investigate obvious red flags regarding Madoff and BMIS;

(d) provide the Fund with accurate financial statements and reports; and

(e) adequately warn the Fund and its investors of the risks involved in their investments.

69. Furthermore, Defendant KML violated its duties of candor and loyalty to the Fund by falsely representing that it performed an evaluation of the Investment Advisor and post-investment oversight.

70. Although Defendant KML failed to perform duties it promised to carry out, Defendant KML collected Fees at an annual rate equal to 1.5 percent of the month-end NAV of the Fund. For example, KML collected fees from Kingate Global in excess of $30 million each year between 2004 and 20007.

71. As consultant to the Fund, the FIM Defendants are culpable for the malfeasance of Defendant KML. Defendant KML paid the fees it earned from Kingate Global, discussed above, to the FIM Defendants.

E. The Bermuda Defendants' Wrongful Conduct

72. The Bermuda Defendants were instrumental in facilitating the other Defendants' dealings with Madoff and BMIS.

73. Defendant Citi Hedge, as administrator of the Fund, was responsible for performing day-to-day administrative services for the Fund, including preparing and distributing monthly reports to the Fund containing the amount of the Fund's net assets and the amount of any distributions from the Fund.

74. Defendant Citi Hedge was also responsible for maintaining the financial books and records, calculating NAV, managing investor communications, and supervising the payment of expenses by the Fund.

75. As such, Defendant Citi Hedge had a duty to accurately calculate the NAV of the Fund, report accurately the Fund's financial records, and distribute accurate monthly reports. Citi Hedge failed in all three duties.

76. Despite these failures, Defendant Citi Hedge was paid a service fee from the Fund's assets.

77. Defendant Bank of Bermuda was at all relevant times Kingate Global's banker. Kingate Global maintained an account with BMIS designated account 1FN061 (the "Kingate Global Account"). The Kingate Global Account was opened pursuant to a Customer Agreement, an Option Agreement, and a Trading Authorization Limited to Purchases and Sales of Securities and Options (the "Account Agreements") that were executed and delivered to BMIS's headquarters in New York, New York. The Customer Agreement and Account Agreements were deemed made in the State of New York, to be performed in New York through securities trading activities that would take place in New York. The Kingate Global Account was held in New York through BMIS.

78. Defendant Bank of Bermuda consistently wired funds to the BMIS bank account in New York for application to the Kingate Global Account. Kingate Global intentionally took advantage of the benefits of conducting transactions in New York.

79. Between March 1994 and December 10, 2008, certain entities, including Defendant Bank of Bermuda, for the benefit of Kingate Global, invested $963.45 million with BMIS through 63 separate wire transfers directly into BMIS's account at JPMorgan Chase & Co. in New York City.

80. Defendant Bank of Bermuda consistently engaged in banking business and investment activities in New York, including, but not limited to, the solicitation of investors and the conducting of trading and money management activities relating to Kingate Global.

F. The PwC Defendants' Wrongful Conduct

81. At all relevant times, the PwC Defendants performed audits of the Fund's financial statements.

82. These audits were to be performed in accordance with Generally Accepted Auditing Standards ("GAAS"), established by the Accounting Standards Board of the AICPA. GAAS fall into three basic categories: General Standards, Fieldwork Standards, and Reporting Standards. The General Standards provide guidance to the auditor on the exercise of professional care. The Standards of Fieldwork provide guidance on audit planning, proper evaluation of internal controls, and the collection of evidential matter sufficient to allow the auditor a reasonable basis for rendering an opinion regarding the financial statements under audit. The Standards of Reporting provide guidance to the auditor on the content of the audit report and the auditor's responsibility contained therein. (AU § 150.02.)

83. GAAS required the PwC Defendants to exercise due professional care in the performance of their audits and the preparation of their reports. (AU §§ 150.02, 230.02.) Due professional care required the PwC Defendants to exercise professional skepticism, an attitude that includes a questioning mind and a critical assessment of audit evidence. (AU § 230.07.)

84. GAAS required the PwC Defendants to obtain a sufficient understanding of Kingate Global's environment, including its internal controls, in order to assess the risk of material misstatement of Kingate Global's financial statements, whether due to error or fraud, and to design the nature, timing, and extent of further audit procedures. (AU § 150.02.)

85. As part of the process of obtaining an understanding of Kingate Global and its environment, the PwC Defendants were required to obtain an understanding of, among other things, the hedge fund industry in general, and, in particular, the nature of Kingate Global and the

objectives, strategies, and related business risks which may result in a material misstatement in the financial statements of the Fund. This included obtaining an understanding of Kingate Global's operations, ownership, governance, structure, how it was financed, and the types of investments it made. (AU §§ 314.21, 314.26.)

86. As part of the process of obtaining an understanding of Kingate Global's internal controls, GAAS required the PwC Defendants to evaluate the design of those controls, and determine whether they had been implemented. (AU § 314.40.) Additionally, if the PwC Defendants planned to rely on Kingate Global's internal controls, GAAS required the PwC Defendants to determine that these controls were operating effectively. (AU §§ 318.13, 318.23, 318.24, 318.45.) "Internal control is a process – effected by those charged with governance, management, and other personnel – designed to provide reasonable assurance about the achievement of the entity's objectives with regard to reliability of financial reporting, effectiveness and efficiency of operations, and compliance with applicable laws and regulations." (AU § 314.41.)

87. GAAS recognizes that an understanding of an entity and its environment, including its internal controls, does not provide by itself a sufficient basis for forming an opinion on an entity's financial statements. Rather, GAAS requires the auditor to perform further audit procedures. (AU § 150.02.) Further audit procedures include "tests of controls" and/or "substantive procedures."

88. Tests of controls are used to "obtain audit evidence that controls operate effectively. This includes obtaining audit evidence about how controls were applied at relevant times during the period under audit, the consistency with which they were applied, and by whom or by what means they were applied." (AU § 318.26.) Substantive procedures are performed to

detect material misstatements, and primarily include tests of details of balance sheet and income statement accounts, and of analytical procedures. (AU § 318.50.)

89. Because effective internal controls generally reduce, but do not eliminate, the risk of material misstatement, and because an auditor's assessment of risk is judgmental and may not be sufficiently precise to identify all risks of material misstatement, tests of controls reduce, but do not eliminate, the need for substantive procedures. (AU §§ 318.09, 318.51.) Therefore, GAAS required the PwC Defendants to design and perform substantive procedures for each of Kingate Global's material balance sheet and income statement accounts, such as Kingate Global's investments and investment income. More specifically, the PwC Defendants were required to test: (a) the existence and valuation of Kingate Global's securities at every balance sheet date; (b) Kingate Global's ownership of those securities; (c) the occurrence and accuracy of Kingate Global's transactions in U.S. Treasury obligations, stocks, and options; and (d) the reasonableness of Kingate Global's reported investment income. (AU §§ 318.09, 318.51, 326.15, 332.21-22, 332.25.)

90. The PwC Defendants knew or negligently disregarded that Defendant KML and the FIM Defendants engaged Madoff and/or BMIS to serve as Kingate Global's investment advisor, broker-dealer, and custodian.

91. This concentration of functions at BMIS created risks requiring special audit consideration – what GAAS calls "significant risks." (AU § 314.110.) Because primarily all of Kingate Global's investment and income information available to the PwC Defendants were based on information from Madoff and/or BMIS, the PwC Defendants needed to do more than rely solely on the procedures it performed with respect to Kingate Global. (AU §§ 314.115, 318.53, 332.20.) In these circumstances, the PwC Defendants should have determined whether an

auditor conducted adequate procedures to satisfy itself of the effectiveness of BMIS's internal controls (AU §§ 332.18, 332.20), and the existence of assets and the occurrence of trades reported by BMIS.

92. In view of this concentration of functions at BMIS, among other red flags, the PwC Defendants should have obtained additional audit evidence relating to the effectiveness of the functions performed by BMIS relevant to Kingate Global's reported investments and investment income. (AU § 332.18, 332.20.) For example, the PwC Defendants should have obtained additional audit evidence about the operating effectiveness of those controls relating to initiation, recording, processing, and reporting of BMIS's investment advisory clients' transactions (including those of Kingate Global), and those relating to the custody of BMIS's investment advisory clients' investments (including those of Kingate Global). (AU §§ 318.25, 332.18, 332.20.)

93. In addition, an AICPA publication (Alternative Investments – Audit Considerations, A Practice Aid for Auditors) which was intended to assist auditors in their audits of hedge funds and funds like Kingate Global, provides that the extent of the audit evidence necessary to conclude on the sufficiency and the appropriateness of audit evidence increases as: (a) the percentage of alternative investments to both the total assets, as well as the total investment portfolio increases; and (b) the nature, complexity and volatility of the underlying investments increases. Here, because the investments in BMIS accounted for the vast majority of Kingate Global's assets and BMIS's operations were opaque, this should have alerted the PwC Defendants that the highest level of audit evidence would be required in order to opine on Kingate Global's financial statements.

94. Under these circumstances, the PwC Defendants should have taken additional steps to verify Kingate Global's investments with BMIS, including observing Kingate Global's visits and telephone calls with BMIS; inspecting other documentation showing Kingate Global's investments with BMIS; and reviewing periodic statements from BMIS reflecting the investment activity and comparing that activity with amounts recorded by Kingate Global.

95. The PwC Defendants, however, failed to obtain sufficient audit evidence about the operating effectiveness of controls at BMIS and to reasonably satisfy themselves about the existence of the investments and the reasonableness of the reported investment income by performing substantive audit procedures.

96. Nevertheless, the PwC Defendants negligently issued unqualified audit opinions on Kingate Global's financial statements. In view of the unreliability of the audit evidence, as described above, the PwC Defendants could not have issued unqualified audit opinions on Kingate Global's financial statements unless additional audit procedures were performed, the results of which reasonably satisfied the PwC Defendants that the reported securities existed and the reported investment income was reasonably stated. If these required procedures could not be performed, then GAAS required that the PwC Defendants disclaim an opinion on Kingate Global's financial statements. (AU § 508.62.)

97. Moreover, the PwC Defendants failed to consider in doing its audits that Kingate Global did not have sufficient internal controls for evaluating the veracity of the financial returns that Madoff reported to Kingate Global. Kingate Global was unable or unwilling to analyze the financial returns claimed by Madoff, or the data available to Kingate Global to conduct such an analysis. Since the financial returns that Madoff reported were routinely fabricated, it is apparent that the PwC Defendants failed to determine and consider that no analysis was done by Kingate

Global. Nevertheless, the PwC Defendants opined that Kingate Global's financial statements presented fairly in all material respects its financial position and results of operations.

98. Furthermore, in auditing the financial statements for Kingate Global, the PwC Defendants negligently disregarded numerous red flags, including that: (a) Kingate Global's investments were heavily concentrated in a single manager, Madoff; (b) Madoff's purported trading strategy and returns were unable to be replicated by others in the financial industry and were consistently achieved despite the performance of the overall financial market; (c) Madoff did not employ any third-party administrators and custodians; Madoff instead ran his own back office operations; (d) Kingate Global relied solely on Madoff to provide reports on the performance of Kingate Global's investments; (e) there was a discrepancy between the trading activity in which Madoff claimed to be buying and selling puts and calls and the open interest of index option contracts; (f) Madoff lacked transparency and limited access to his books and records; (g) Madoff later admitted to illegally manipulating his accounting records by personally subsidizing returns in slow quarters in order to minimize risk and to maximize reported performance; and (h) BMIS was audited by a small operation, F&H, as opposed to 90 percent of the single strategy hedge funds that are audited by one of the top ten auditors.

99. Because of the foregoing red flags and other warnings discussed above, the need for heightened professional skepticism required that the procedures performed by the PwC Defendants include seeking corroboration of the existence of the assets and the occurrence of trades from sources independent of BMIS. (AU §§ 326.08, 326.11.) Any such attempts would have revealed the Madoff fraud.

100. For example, Madoff and BMIS claimed to hold all of its investment advisory clients' assets – purportedly billions of dollars – in U.S. Treasuries at the end of each reporting

period. An auditor having access to BMIS's books and records easily could have sought to corroborate the existence of these U.S. Treasuries – especially given the large amount reported – by requesting confirmations from the depository institutions or clearing institutions at which book entries for these assets should have existed. If Madoff and BMIS actually held the U.S. Treasuries reported, these confirmations would have indicated U.S. Treasuries BMIS held in the aggregate for all of its clients totaling in the multi-billions of dollars.

101. However, no such confirmations were possible. As Madoff admitted in his plea allocution, Madoff and BMIS held no investment advisory clients' assets in U.S. Treasuries, let alone billions of dollars worth. Rather, according to Madoff, BMIS held only cash in an account at Chase Manhattan Bank, from which Madoff operated his Ponzi scheme. Accordingly, the PwC Defendants could have revealed Madoff's fraud by simply requesting routine confirmations from depository institutions regarding BMIS's purported holdings of U.S. Treasuries.

102. The PwC Defendants also could have sought to corroborate Madoff's and/or BMIS's purported purchases and sales of equities for Kingate Global by: (a) instructing Madoff and BMIS to request confirmation of these trades from depository or clearing organizations or counterparties to the trades, and (b) reconciling the trades to settlement reports from these organizations or counterparties. Such procedures would have revealed either that no such trades had occurred, or that the amounts were inconsistent with the trades that Kingate Global reported Madoff and/or BMIS had made.

103. With respect to the over-the-counter option trades Madoff and/or BMIS claimed to make for investment advisory clients, Madoff testified in front of the SEC on or about May 19, 2006, that the counterparties to his purported option contracts were "basically European banks," and that there is "an affirmation that's generated electronically" and an electronic "master option

agreement" that is attached to the affirmation that documented these option trades. Madoff admitted in his plea allocution that these option trades never occurred. Thus, had an auditor sought to confirm this nonexistent documentation with these European banks (and any other) counterparties, the fraud would have been immediately revealed.

104. By whatever means, any meaningful attempt to seek corroboration of the existence of assets and occurrence of trades independent of BMIS would have uncovered the fraud. Because the PwC Defendants issued unqualified audit opinions on Kingate Global's financial statements, it is clear that neither the PwC Defendants, nor any other reputable auditor at the PwC Defendants' request, ever attempted to obtain this independent corroboration.

105. Accordingly, under no circumstances should the PwC Defendants have issued unqualified opinions on Kingate Global's financial statements, or claimed that the audits were performed in accordance with GAAS. By doing so, the PwC Defendants acted, at a minimum, negligently.

106. Although the PwC Defendants failed to perform the audits of Kingate Global in accordance with GAAS, Kingate Global nevertheless sent to Plaintiff and the Class unqualified audit opinions with respect to the financial statements.

107. In each of the audit reports, the PwC Defendants stated that they conducted the audits in accordance with GAAS, and expressed an unqualified opinion. Because the PwC Defendants violated GAAS in the face of known dangers arising from, among other things, the concentration of functions at BMIS and the myriad red flags discussed above, it was negligent, at a minimum, for the PwC Defendants to issue unqualified audit opinions on Kingate Global's financial statements.

108. The PwC Defendants negligently disregarded that potential investors and shareholders would rely on the PwC Defendants' audit opinions concerning Kingate Global's financial statements. Had the PwC Defendants issued anything other than an unqualified audit opinion with respect to Kingate Global, Plaintiff and the Class would not have invested in the Fund, and immediately would have redeemed any existing investments.

CAUSES OF ACTION

Count I: Breach of Fiduciary Duty

(Against Defendant KML, the FIM Defendants, the Individual Defendants, and the Bermuda Defendants)

109. Plaintiff realleges the foregoing paragraph set forth above.

110. Plaintiff and the Class entrusted their assets to Defendant KML, the FIM Defendants, the Individual Defendants, and the Bermuda Defendants.

111. These Defendants owed fiduciary duties to Plaintiff and the Class, including:

(a) the duty to use reasonable care when performing due diligence and ensuring the legitimacy of opportunities for investing the Class's assets;

(b) the duty of reasonable care in managing, overseeing and safeguarding the Class's invested assets;

(c) the duty to use reasonable care in disseminating proper account statements;

(d) the duty to deal fairly and in good faith with the Class;

(e) the duty to avoid and disclose conflicts of interest with the Class; and

(f) the duty to warn the Class when their assets had been placed at an unacceptable risk of loss.

112. But these Defendants breached their fiduciary duties by failing to:

(a) take all reasonable steps to ensure that the investments of the assets of Plaintiff and the Class were made and maintained in a prudent manner;

(b) perform proper due diligence;

(c) manage the Plaintiff's and the Class's investments and to preserve the value of the Plaintiff's and the Class's investments;

(d) exercise reasonable care to avoid the unlawful Ponzi scheme operated by Madoff;

(e) exercise reasonable care when they abandoned management and oversight of Plaintiff's and the Class's investments in the face of numerous red flags;

(f) exercise reasonable care insofar as they failed to provide proper account statements that accurately reflected the Plaintiff's and the Class's account values;

(g) deal fairly and in good faith with the Plaintiff and the Class;

(h) avoid conflicts in interest while managing the Fund by engaging in transactions with Madoff and BMIS in order to increase their own compensation;

(i) warn the Plaintiff and the Class that their investments were being subjected to an unacceptably high risk of loss from fraud; and

(h) exercise generally the degree of prudence, caution, and good business practices that would be expected of reasonable investment professionals overseeing client funds.

113. As a direct and proximate result of the breaches of fiduciary duties of Defendants named in this Count, Plaintiff and the Class have suffered damages and are entitled to such damages from these Defendants, jointly and severally, as well as a return of all fees paid to these Defendants.

Count II: Aiding and Abetting Breach of Fiduciary Duty

(Against Defendant KML, the FIM Defendants, the Individual Defendants, and the Bermuda Defendants)

114. Plaintiff realleges all paragraphs set forth above.

115. Defendant KML, the FIM Defendants, the Individual Defendants, and the Bermuda Defendants aided and abetted each other in breaching their fiduciary duties to the Class by, among other things, knowingly participating in the following breaches of fiduciary duties:

(a) failing to take all reasonable steps to ensure that the investments of the assets of Plaintiff and the Class were made and maintained in a prudent and professional manner;

(b) failing to perform proper due diligence;

(c) failing to manage Plaintiff's and the Class's investments and to preserve the value of the Plaintiff's and the Class's investments;

(d) failing to use reasonable care to avoid the unlawful Ponzi scheme operated by Madoff;

(e) failing to use reasonable care when they abandoned management and oversight of the Plaintiff and the Class's invested capital in the face of numerous red flags;

(f) failing to use reasonable care insofar as they failed to provide proper account statements that accurately reflected the Plaintiff's and the Class's account values;

(g) failing to avoid conflicts in interest while managing the Fund by engaging in transactions with Madoff and BMIS in order to increase these Defendants' own compensation;

(h) failing to deal fairly and in good faith with the Plaintiff and the Class; and

(i) failing to warn the Plaintiff and the Class that their investments were being subjected to an unacceptably high risk of loss from fraud.

116. The breaches of fiduciary duties these Defendants aided and abetted have directly and proximately caused the Class to lose a significant portion of their investments in the Fund, and thereby suffered damages in an amount to be proven at trial.

Count III: Gross Negligence
(Against All Defendants)

117. Plaintiff realleges all paragraphs set forth above.

118. All Defendants owed Plaintiff and the Class a duty to manage and monitor the investments of Plaintiff and the Class with reasonable care. Defendants breached this duty by failing to, among other things:

(a) take all reasonable steps to ensure that the investments of the assets of Plaintiff and the Class were made and maintained in a prudent and professional manner;

(b) perform proper due diligence;

(c) manage the Plaintiff's and the Class's investments and preserve the value of the Plaintiff's and the Class's investments; and,

(d) exercise the degree of prudence, caution, and good business practices that would be expected of any reasonable professional.

119. As a direct and proximate result of Defendants' gross negligence, Plaintiff and the Class have suffered damages and are entitled to such damages from Defendants.

Count IV: Unjust Enrichment
(Against All Defendants)

120. Plaintiff realleges all paragraphs set forth above.

121. All Defendants reaped substantial fees and other pecuniary benefits at the expense of Plaintiff and the Class.

122. To the extent the Fund's assets were invested with Madoff and BMIS, such assets were worthless and fictitious, and any purported profits generated illusory. Thus, Defendants were not entitled to their fees in connection with the investments with and purported profits generated by Madoff and BMIS.

123. Defendants have therefore been unjustly enriched. Equity, good conscience, and public policy require that Defendants rescind and disgorge back to the Plaintiff and the Class all such unjust enrichment.

124. Plaintiff and the Class are entitled to the establishment of a constructive trust impressed on the benefits reaped by Defendants from their unjust enrichment and inequitable conduct.

Count V: Professional Negligence
(Against the PwC Defendants)

125. Plaintiff realleges all paragraphs set forth above.

126. The PwC Defendants serve as auditors for the Fund.

127. Plaintiff and other Class members were entitle to rely on the thoroughness, accuracy, integrity, independence, and overall professional caliber of the PwC Defendants.

128. As accounting professionals and independent auditors, the PwC Defendants were required to exercise professional care in:

(a) inspecting the Fund's financial records;

(b) gathering sufficient evidence with respect to the Fund's financial conditions;

(c) ascertaining that the Fund's financial statements are free of material misstatement;

(d) inquiring into the Fund's dealings with third parties; and

(e) ensuring the accuracy of all statements in the audit reports.

129. The PwC Defendants, however, failed to perform the foregoing tasks in a professional manner and thus breached their duties to Plaintiff and other Class members.

130. As a direct and proximate result of the PwC Defendants' breach of duties, Plaintiff and other Class members have suffered significant damages.

PRAYER

WHEREFORE, Plaintiff requests the following:

A. Certification of this class action as proper and maintainable under Federal Rule of Civil Procedure 23 and declaration of the proposed named Plaintiff as a proper Class representative;

B. Such preliminary and permanent injunctive relief, including imposition of a constructive trust, as is appropriate to preserve the assets wrongfully taken from Plaintiff and the Class;

C. Compensatory, consequential, and general damages in an amount to be determined at trial;

D. Disgorgement and restitution of all earnings, profits, compensation and benefits received by Defendants as a result of their unlawful acts and practices;

E. Punitive damages on account of Defendants' willful and wanton disregard of Plaintiff's and the Class's rights;

F. Costs and disbursements of the action;

G. Pre- and post-judgment interest;

H. Reasonable attorneys' fees; and

I. Such other and further relief as this Court may deem just and proper.

JURY TRIAL DEMAND

Plaintiff demands a trial by jury of all triable issues.

Dated: June 24, 2009

JOHNSON BOTTINI, LLP

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ORIGINAL

09 CIV 5762

JS 44C/SDNY
REV. 1/2008

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

JUN 24 2009

PLAINTIFFS	DEFENDANTS
Eithan Ephrati, on behalf of himself and all others similarly situated,	Kingate Management Limited et al.
ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)	ATTORNEYS (IF KNOWN)
JOHNSON BOTTINI, LLP, Francis A. Bottini, Jr., Albert Y. Chang, 655 W. Broadway, Suite 1400, San Diego, CA 92101; (619) 230-0063	

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)
(DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Breach of Fiduciary Duty; Aiding & Abetting Breach of Fiduciary Duty; Gross Negligence; Unjust Enrichment; Negligence

Has this or a similar case been previously filed in SDNY at any time? No? ☑ Yes? ☐ Judge Previously Assigned _____

If yes, was this case Vol.☐ Invol. ☐ Dismissed. No☐ Yes ☐ If yes, give date _____ & Case No. _____

(PLACE AN [x] IN ONE BOX ONLY) NATURE OF SUIT

TORTS

CONTRACT
- [ ] 110 INSURANCE
- [ ] 120 MARINE
- [ ] 130 MILLER ACT
- [ ] 140 NEGOTIABLE INSTRUMENT
- [ ] 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT
- [ ] 151 MEDICARE ACT
- [ ] 152 RECOVERY OF DEFAULTED STUDENT LOANS (EXCL VETERANS)
- [ ] 153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS
- [ ] 160 STOCKHOLDERS SUITS
- [ ] 190 OTHER CONTRACT
- [ ] 195 CONTRACT PRODUCT LIABILITY
- [ ] 196 FRANCHISE

REAL PROPERTY
- [ ] 210 LAND CONDEMNATION
- [ ] 220 FORECLOSURE
- [ ] 230 RENT LEASE & EJECTMENT
- [ ] 240 TORTS TO LAND
- [ ] 245 TORT PRODUCT LIABILITY
- [ ] 290 ALL OTHER REAL PROPERTY

PERSONAL INJURY
- [ ] 310 AIRPLANE
- [ ] 315 AIRPLANE PRODUCT LIABILITY
- [ ] 320 ASSAULT, LIBEL & SLANDER
- [ ] 330 FEDERAL EMPLOYERS' LIABILITY
- [ ] 340 MARINE
- [ ] 345 MARINE PRODUCT LIABILITY
- [ ] 350 MOTOR VEHICLE
- [ ] 355 MOTOR VEHICLE PRODUCT LIABILITY
- [ ] 360 OTHER PERSONAL INJURY

PERSONAL INJURY
- [ ] 362 PERSONAL INJURY - MED MALPRACTICE
- [ ] 365 PERSONAL INJURY PRODUCT LIABILITY
- [ ] 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY

PERSONAL PROPERTY
- [ ] 370 OTHER FRAUD
- [ ] 371 TRUTH IN LENDING
- [X] 380 OTHER PERSONAL PROPERTY DAMAGE
- [ ] 385 PROPERTY DAMAGE PRODUCT LIABILITY

ACTIONS UNDER STATUTES

CIVIL RIGHTS
- [ ] 441 VOTING
- [ ] 442 EMPLOYMENT
- [ ] 443 HOUSING/ ACCOMMODATIONS
- [ ] 444 WELFARE
- [ ] 445 AMERICANS WITH DISABILITIES - EMPLOYMENT
- [ ] 446 AMERICANS WITH DISABILITIES -OTHER
- [ ] 440 OTHER CIVIL RIGHTS

PRISONER PETITIONS
- [ ] 510 MOTIONS TO VACATE SENTENCE 28 USC 2255
- [ ] 530 HABEAS CORPUS
- [ ] 535 DEATH PENALTY
- [ ] 540 MANDAMUS & OTHER
- [ ] 550 CIVIL RIGHTS
- [ ] 555 PRISON CONDITION

FORFEITURE/PENALTY
- [ ] 610 AGRICULTURE
- [ ] 620 OTHER FOOD & DRUG
- [ ] 625 DRUG RELATED SEIZURE OF PROPERTY 21 USC 881
- [ ] 630 LIQUOR LAWS
- [ ] 640 RR & TRUCK
- [ ] 650 AIRLINE REGS
- [ ] 660 OCCUPATIONAL SAFETY/HEALTH
- [ ] 690 OTHER

LABOR
- [ ] 710 FAIR LABOR STANDARDS ACT
- [ ] 720 LABOR/MGMT RELATIONS
- [ ] 730 LABOR/MGMT REPORTING & DISCLOSURE ACT
- [ ] 740 RAILWAY LABOR ACT
- [ ] 790 OTHER LABOR LITIGATION
- [ ] 791 EMPL RET INC SECURITY ACT

IMMIGRATION
- [ ] 462 NATURALIZATION APPLICATION
- [ ] 463 HABEAS CORPUS-ALIEN DETAINEE
- [ ] 465 OTHER IMMIGRATION ACTIONS

ACTIONS UNDER STATUTES

BANKRUPTCY
- [ ] 422 APPEAL 28 USC 158
- [ ] 423 WITHDRAWAL 28 USC 157

PROPERTY RIGHTS
- [ ] 820 COPYRIGHTS
- [ ] 830 PATENT
- [ ] 840 TRADEMARK

SOCIAL SECURITY
- [ ] 861 HIA (1395ff)
- [ ] 862 BLACK LUNG (923)
- [ ] 863 DIWC/DIWW (405(g))
- [ ] 864 SSID TITLE XVI
- [ ] 865 RSI (405(g))

FEDERAL TAX SUITS
- [ ] 870 TAXES (U.S. Plaintiff or Defendant)
- [ ] 871 IRS-THIRD PARTY 26 USC 7609

OTHER STATUTES
- [ ] 400 STATE REAPPORTIONMENT
- [ ] 410 ANTITRUST
- [ ] 430 BANKS & BANKING
- [ ] 450 COMMERCE
- [ ] 460 DEPORTATION
- [ ] 470 RACKETEER INFLUENCED & CORRUPT ORGANIZATION ACT (RICO)
- [ ] 480 CONSUMER CREDIT
- [ ] 490 CABLE/SATELLITE TV
- [ ] 810 SELECTIVE SERVICE
- [ ] 850 SECURITIES/ COMMODITIES/ EXCHANGE
- [ ] 875 CUSTOMER CHALLENGE 12 USC 3410
- [ ] 890 OTHER STATUTORY ACTIONS
- [ ] 891 AGRICULTURAL ACTS
- [ ] 892 ECONOMIC STABILIZATION ACT
- [ ] 893 ENVIRONMENTAL MATTERS
- [ ] 894 ENERGY ALLOCATION ACT
- [ ] 895 FREEDOM OF INFORMATION ACT
- [ ] 900 APPEAL OF FEE DETERMINATION UNDER EQUAL ACCESS TO JUSTICE
- [ ] 950 CONSTITUTIONALITY OF STATE STATUTES

604932

Check if demanded in complaint:

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.? IF SO, STATE:

DEMAND $ Proof OTHER _____ JUDGE Denise L. Cote DOCKET NUMBER 09Civ5470(DLC)

Check YES only if demanded in complaint
JURY DEMAND: ☑ YES ☐ NO

NOTE: Please submit at the time of filing an explanation of why cases are deemed related.

(PLACE AN x IN ONE BOX ONLY)

ORIGIN

☑ 1 Original Proceeding ☐ 2a. Removed from State Court ☐ 2b. Removed from State Court AND at least one party is pro se. ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from (Specify District) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judge Judgment

(PLACE AN x IN ONE BOX ONLY)

BASIS OF JURISDICTION

☐ 1 U.S. PLAINTIFF ☐ 2 U.S. DEFENDANT ☐ 3 FEDERAL QUESTION (U.S. NOT A PARTY) ☑ 4 DIVERSITY

IF DIVERSITY, INDICATE CITIZENSHIP BELOW. (28 USC 1322, 1441)

CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

	PTF	DEF		PTF	DEF		PTF	DEF
CITIZEN OF THIS STATE	[ ] 1	[X] 1	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	[X] 3	[ ] 3	INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	[ ] 5	[ ] 5
CITIZEN OF ANOTHER STATE	[ ] 2	[ ] 2	INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE	[ ] 4	[ ] 4	FOREIGN NATION	[ ] 6	[ ] 6

PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

66 Parliament Hill, London, UK NW3 2TJ

DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

Kingate Management Limited, 99 Front St., Hamilton, Bermuda; FIM Limited, 25-28 Old Berlington St., London, UK W1S 3AN; FIM Advisers LLP, 780 Third Ave., NY, NY, 10017; FIM (USA) Inc., 780 Third Ave., NY, NY 10017; PricewaterhouseCoopers, 300 Madison Ave., NY, NY 10017; PricewaterhouseCoopers Bermuda, Dorchester House, 7 Church St., Hamilton, HM 11 Bermuda; Citi Hedge Fund Services, Ltd., 9 Church St., Hamilton, HM DX Bermuda; Bank of Bermuda Ltd., 9 Bermudian Rd., Compass Point 5th fl., Pembroke, Bermuda; Michael G. Tannenbaum, 900 Third Ave., NY, NY 10022; and Christopher Wetherhill, 500 Seventh Ave., 10th fl., NY, NY 10018.

DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

Graham H. Cook; John E. Epps; Carlo Grosso; and Federico M. Ceretti.

Check one: THIS ACTION SHOULD BE ASSIGNED TO: (DO NOT check either box if this a PRISONER PETITION.) ☐ WHITE PLAINS ☑ MANHATTAN

DATE 6/22/09 SIGNATURE OF ATTORNEY OF RECORD

RECEIPT # Albert Y. Chang

ADMITTED TO PRACTICE IN THIS DISTRICT

[ ] NO

[✓] YES (DATE ADMITTED Mo. 07 Yr. 2005)

Attorney Bar Code # AC 5415

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge _____ is so Designated.

J. Michael McMahon, Clerk of Court by _____ Deputy Clerk, DATED _____.

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)