FELHABER LARSON

ATTORNEYS AT LAW

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May 21, 2021

Via Email

Mr. Damien F. Toven
Dove Fretland, PLLP
413 S. Rum River Drive, Suite 6
Princeton, MN 55371
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Re: KAW Parks' Request for Annexation

Mr. Toven,

Our firm represents KAW Parks, LLC ("KAW Parks"), Amicorp, Inc. ("Amicorp"), and Mr. Kent S. Titcomb ("Mr. Titcomb"). As you know, KAW Parks has a pending annexation request before the City of Princeton with respect to the Sherburne Village Mobile Home Park ("Sherburne Village").

It has come to our attention that a concern has been raised that Amicorp has been accused of engaging in a Ponzi scheme and has been sued over it in a Florida court. I understand that this concern was raised by a woman during the May 13 public hearing before the Princeton City Council. Additionally, on May 20, 2021, the Union-Times published an article repeating the statements made by this woman.

I write to inform you and the City of Princeton that this concern and these allegations have no merit whatsoever, and should not in any way negatively impact KAW Parks' pending annexation request. KAW Parks is a Minnesota limited liability company which owns and operates Sherburne Village. KAW Parks is ultimately owned and operated by Mr. Titcomb through Amicorp, a Florida corporation. Neither Amicorp nor Mr. Titcomb have ever been subject to an allegation that they have engaged in a Ponzi scheme, and they have certainly never been sued over an alleged Ponzi scheme in Florida.

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There was indeed a lawsuit filed in Miami-Dade County, Florida, in 2018 that asserted certain alleged fraudulent conduct, but that lawsuit had nothing to do with KAW Parks, Amicorp, or Mr. Titcomb. Enclosed with this letter is a copy of the Complaint from that lawsuit that identifies the following entities as defendants, among others: Amicorp Trustees (New Zealand) Limited, a New Zealand entity; Amicorp Mexico S.A. DE C.V. SOFOM ENR., a Mexico entity; Amicorp (BVI) Trustees, Ltd., a British Virgin Islands entity; Amicorp (Barbados) Ltd., a Barbados entity; Amicorp Curacao B.V., a Curacao entity; Amicorp Management Limited, a British Virgin Islands entity; and Amicorp New Zealand Limited, a New Zealand entity.

While the defendants in this lawsuit use the "Amicorp" name, they are entirely separate and distinct entities from Amicorp, Inc. (a Florida corporation) and Mr. Titcomb. Amicorp and Mr. Titcomb have no relationship whatsoever to the entities or individuals named as plaintiffs or defendants in the above-referenced lawsuit.

We hope that this information resolves any concern that you or the City of Princeton has regarding this matter. If you would like to discuss or need any further information, please feel free to contact me at sblake@felhaber.com or 612-373-8538.

Sincerely,

/s/ Scott D. Blake

Scott D. Blake

cc: Mr. Kent Titcomb (*via email*)
Mr. Todd Olin (*via email*)

Enclosure

Filing # 79401812 E-Filed 10/16/2018 02:00:12 PM

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT, IN AND FOR MIAMI-DADE COUNTY, FLORIDA

DIEGO ROMAY, *individually and as guardian of his minor children, I.R., O.R., and L.R.*;
I.R., *a minor*;
O.R., *a minor*;
L.R., *a minor*;
MIRTA ROMAY;
CYNTHIA LEVI;
ARIEL TOBI; and
ANALI TOBI.

Plaintiffs,

vs.

CIRCUIT CIVIL DIVISION

Case No. _____

SOUTH BAY HOLDING LLC, a Florida limited liability corporation;
BISCAYNE GROUP HOLDINGS LLC, a Florida limited liability corporation;
EVOLUTION CONSULTING PARTNERS LTD., a British Virgin Islands entity;
ROBERTO G. CORTES;
JUAN CARLOS CORTES;
ERNESTO H. WEISSON;
FERNANDO HABERER;
TOTAL ADVISORS LLC, a Cayman Islands limited liability corporation;
AMICORP TRUSTEES (NEW ZEALAND) LIMITED, a New Zealand entity;
AMICORP MEXICO S.A. DE C.V. SOFOM ENR., a Mexico entity;
AMICORP (BVI) TRUSTEES, LTD., a British Virgin Islands entity;
AMICORP (BARBADOS) LTD., a Barbados entity;
AMICORP CURAÇAO B.V., a Curaçao entity;
AMICORP MANAGEMENT LIMITED, a British Virgin Islands entity;
AMICORP NEW ZEALAND LIMITED, a New Zealand entity;
JUAN PABLO DEMICHELIS;
BANQUE PICTET & CIE, a Switzerland entity; and
SGG MANAGEMENT (CURAÇAO) N.V., a Curaçao entity.

Defendants.

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiffs, DIEGO ROMAY, individually and as guardian of his minor children, I.R., O.R., L.R., MIRTA ROMAY, CYNTHIA LEVI, ARIEL TOBI, and ANALI TOBI, through their undersigned counsel, as and for their Complaint against Defendants, SOUTH BAY HOLDING LLC, BISCAYNE GROUP HOLDINGS LLC, EVOLUTION CONSULTING PARTNERS LTD., ROBERTO G. CORTES, JUAN CARLOS CORTES, ERNESTO H. WEISSON, FERNANDO HABERER, TOTAL ADVISORS LLC, AMICORP TRUSTEES (NEW ZEALAND) LIMITED, AMICORP MÉXICO S.A. DE C.V. SOFOM ENR., AMICORP (BVI) TRUSTEES LTD., AMICORP (BARBADOS) LTD., AMICORP CURAÇAO B.V., AMICORP MANAGEMENT LIMITED, AMICORP NEW ZEALAND LIMITED, JUAN PABLO DEMICHELIS, BANQUE PICTET & CIE, and SGG MANAGEMENT (CURAÇAO) N.V. complain and allege as follows:

INTRODUCTION

1. This case concerns a massive fraud perpetrated by defendants through which they stole more than $40 million from plaintiffs by siphoning plaintiffs' funds away from proper investments into worthless notes to further a South Florida Ponzi scheme.

2. In approximately 1999, defendants Roberto Cortes, Juan Carlos Cortes, and Ernesto Weisson, all residents of Florida, attempted to develop real estate investment projects through defendant South Bay Holdings, LLC ("South Bay"), a Florida company focused on residential real estate in South Florida. Between 1999 and approximately 2005, South Bay concentrated on residential real estate development in Key Biscayne, Florida. South Bay's business activities expanded significantly in 2006 and 2007 when it acquired 29 lots and associated club memberships in an exclusive resort in South Florida. Until approximately 2007, South Bay's business activities

were financed primarily through commercial bank loans and investments from friends and family of defendants Roberto Cortes, Juan Carlos Cortes, and Weisson.

3. In approximately 2006, defendants Juan Carlos Cortes, Roberto Cortes, and Weisson formed the first of several special purpose vehicles ("SPVs") to issue notes, the sale of which would ostensibly finance South Bay's activities. The SPVs generally invested the proceeds of the notes sold to investors in promissory notes issued by South Bay and backed by non-registered mortgages on South Florida properties.

4. By 2009, the combination of the global financial crisis, the accompanying disruption of the South Florida real estate market, and numerous development delays relating to the resort project caused severe financial difficulties for defendant South Bay. Defendants Juan Carlos Cortes, Roberto Cortes, and Weisson scrambled to pursue their various development projects through South Bay, but delays stretched into the heart of the real estate crisis, leaving South Bay in a clearly unviable financial position. Defendant South Bay failed to generate enough revenue or operating cash flows to pay off its debt, sustain operations, or fund its development plans. In fact, South Bay had significant negative cash flows from its operations. Rather than accept that their project was unviable and insolvent, defendants Juan Carlos Cortes, Roberto Cortes, and Weisson, acting in concert, formulated a scheme to hide the project's insolvency and fraudulently draw new funds into the project.

5. In order to generate additional cash flow, defendants Juan Carlos Cortes, Roberto Cortes, and Weisson created additional SPVs and aggressively sold worthless notes issued by the SPVs (the "Notes") to unwitting investors through a network of unscrupulous financial advisors, including defendant Fernando Haberer. These advisors all knew that they were causing their clients to throw good money after bad and that the Notes were not bona fide investments, but all stood to gain by defrauding new investors. Defendants South Bay, Biscayne Capital Holdings LLC,

Evolution Consulting Partners Ltd., and Total Advisors LLC, as well as several other related entities including Biscayne Capital Ltd. (Bahamas) (in liquidation), Madison Asset LLC (Cayman) (in liquidation), and a now-defunct Florida LLC, Biscayne Capital International, LLC (collectively the "Biscayne-related Companies"), were owned and/or controlled directly or indirectly by defendants Juan Carlos Cortes, Roberto Cortes, Weisson, and Haberer (collectively the "Principals") and used in furtherance of this scheme.

6. The initial Note sales became the subject of a May 27, 2106 Cease and Desist Order by the Securities and Exchange Commission (the "SEC Order"). The SEC found that defendants Roberto Cortes, Juan Carlos Cortes, and Weisson, as well as the now-defunct Biscayne Capital International, LLC had violated U.S. law by failing to make adequate disclosures relating to the Notes, including South Bay's desperate financial condition and their multiple conflicts of interest in the Note sales.

7. Despite the SEC Order, defendants Roberto Cortes, Juan Carlos Cortes, and Weisson surreptitiously continued their scheme. They made certain modifications to the scheme to hide the involvement of the Principals named in the SEC Order. Since they could no longer sell the Notes to U.S. investors after the publication of the SEC Order, they turned their attention to defrauding South American investors.

8. By this point, the Note sales were nothing more than a Ponzi scheme as there were no assets backing the Notes; funds generated by the sales were used, *inter alia*, to pay off earlier investors who complained about the investments. As defendants Roberto Cortes, Juan Carlos Cortes, and Weisson well knew, there was no reasonable prospect of the proceeds of the Notes being used to complete the South Bay project and generate returns for the Note holders. Defendants Roberto Cortes, Juan Carlos Cortes, and Weisson, through their network of financial advisors, including defendant Haberer, caused unwitting investors to invest in the Notes.

9. Plaintiffs Mirta Romay and Diego Romay are siblings. Plaintiff Cynthia Levi is plaintiff Diego Romay's wife. Diego Romay asserts claims in this action individually and as guardian of his three minor children, I.R., O.R., and L.R. Plaintiffs Ariel Tobi and Anali Tobi are plaintiff Mirta Romay's adult children. Defendant Haberer is the brother of plaintiff Anali Tobi's husband. He developed a relationship of trust with plaintiffs, took control of their investment accounts, lied to them about how he was directing their investments, including by showing them falsified spreadsheets purporting to reflect the holdings of the accounts that plaintiffs beneficially owned, and directed the investment of tens of millions of dollars into the worthless Notes, as described in greater detail herein. The investment accounts at issue were owned by trusts of which plaintiffs were the beneficial owners. Because of the trust structures, plaintiffs did not have direct access to or control over the accounts.

10. In January 2018, Haberer's investment activity caused an overdraft in a U.S. custodial bank account managed from Miami, Florida that was beneficially owned by plaintiff Diego Romay. Unable to collect the overdraft from Haberer, the custodian bank finally reached out to Mr. Romay in April 2018 to collect the overdraft. Only then did plaintiffs learn that Haberer, with the assistance of the other defendants, had breached the plaintiffs' trust and defrauded them by draining their accounts of tens of millions of dollars in furtherance of the Ponzi scheme.

11. As part of their efforts to conceal their fraudulent scheme and their personal involvement in executing it, the Principals operated through a complex web of interrelated companies, including many companies in Florida and others located abroad. In Florida, the Principals and the Biscayne-related Companies are associated with over 40 companies that share a registered address with defendants South Bay Holdings LLC and Evolution Consulting Partners Ltd. Abroad, the Principals operated and conspired with companies in a wide range of offshore and other jurisdictions of convenience. Despite the many layers of insulation put in place by the

Principals, at all relevant times the Principals, most of whom were Florida residents, orchestrated and directed the scheme from Florida, and the purported object of the scheme at all relevant times was a Florida company and its failing Florida real estate development projects.

PARTIES AND JURISDICTION

12. This is an action for damages in excess of Forty Million Dollars ($40,000,000), exclusive of interest and costs.

13. Plaintiffs Mirta Romay, Diego Romay, I.R., O.R., L.R., and Cynthia Levi are citizens and residents of Argentina. Plaintiffs Ariel Tobi and Anali Tobi are residents of Florida.

14. Defendant South Bay Holdings LLC, a Florida limited liability company headquartered in Miami, Florida, is a private real estate development company that at all relevant times was in the business of acquiring and building residential real estate in South Florida. South Bay is subject to this Court's jurisdiction pursuant to Fla. Stat. § 48.193(2). South Bay owns Biscayne Group Holdings LLC and several other Biscayne-related Companies.

15. Defendant Biscayne Group Holdings LLC ("Biscayne Group Holdings"), a Florida limited liability company headquartered in Key Biscayne, Florida, is subject to this Court's jurisdiction pursuant to Fla. Stat. § 48.193(2).

16. Defendant Evolution Consulting Partners Ltd. ("Evolution Consulting"), a company incorporated in accordance with the laws of the British Virgin Islands, at all relevant times maintained an office in Miami Florida, where it conducted significant business related to the fraudulent scheme described herein causing injury in Florida. Evolution Consulting operated and conducted business in Florida through its agents, including the Principals, who at all relevant times had a physical presence in and/or were residents of Florida. Evolution Consulting is subject to this Court's jurisdiction pursuant to Fla. Stat. §§ 48.193(1)(a)(1), 48.193(1)(a)(2), and 48.193(2).

17. Defendant Roberto G. Cortes, an individual, is, and at all relevant times was, a resident of Miami, Florida. Roberto Cortes carried out the fraudulent scheme described herein in Florida causing injury in Florida and is engaged in substantial and not isolated activity within Florida, including but not limited to his ownership of and/or involvement with defendants South Bay and Biscayne Group Holdings. Roberto Cortes is subject to this Court's jurisdiction pursuant to Fla. Stat. § 48.193(2). Jurisdiction over Roberto Cortes also exists pursuant to Fla. Stat. §§ 48.193(1)(a)(1) and 48.193(1)(a)(2).

18. Defendant Juan Carlos Cortes, an individual, is, and at all relevant times was, a resident of Miami, Florida. Juan Carlos Cortes carried out the fraudulent scheme described herein in Florida causing injury in Florida and is engaged in substantial and not isolated activity within Florida, including but not limited to his ownership of and/or involvement with defendants South Bay, Biscayne Group Holdings, and Evolution Consulting. Juan Carlos Cortes is subject to this Court's jurisdiction pursuant to Fla. Stat. § 48.193(2). Jurisdiction over Juan Carlos Cortes also exists pursuant to Fla. Stat. §§ 48.193(1)(a)(1) and 48.193(1)(a)(2).

19. Defendant Ernesto H. Weisson, an individual, is, and at all relevant times was, a resident of Miami, Florida. Weisson carried out the fraudulent scheme described herein causing injury in Florida and is engaged in substantial and not isolated activity within Florida, including but not limited to his ownership of and/or involvement with defendants South Bay, Biscayne Group Holdings, and Evolution Consulting. Weisson is subject to this Court's jurisdiction pursuant to Fla. Stat. § 48.193(2). Jurisdiction over Weisson also exists pursuant to Fla. Stat. §§ 48.193(1)(a)(1) and 48.193(1)(a)(2).

20. Defendant Fernando Haberer, an individual, is a citizen of Uruguay and resident of Argentina. Haberer is engaged in substantial and not isolated activity within Florida, including significant roles in defendants Biscayne Group Holdings and Evolution Consulting and previous

positions, including with American Express Bank, in Miami, Florida. Haberer, who acted in concert and conspired with the other Principals, performed multiple acts in Florida in connection with the fraudulent scheme, including attending meetings in Miami in February 2016 to discuss the SBH and Vanguardia Trusts (which were created to hide the involvement of defendants Juan Carlos Cortes, Roberto Cortes, and Weisson in the Note fraud), in furtherance of the fraudulent scheme described herein causing injury in Florida, and extensively communicating regarding the scheme with the other Principals in Miami, Florida. Haberer is subject to this Court's jurisdiction pursuant to Fla. Stat. §§ 48.193(1)(a)(1), 48.193(1)(a)(2), and 48.193(2).

21. Defendant Total Advisors LLC ("Total Advisors") is a company incorporated under the laws of the Cayman Islands with an office in Grand Cayman, Cayman Islands. Total Advisors was created and controlled by the Principals and at all relevant times acted in concert and conspired with them and the other Biscayne-related Companies to execute the fraudulent scheme described herein. Total Advisors operated and conducted business in Florida, including its involvement in the scheme described herein causing injury in Florida, through its agents, including the Principals, who at all relevant times had a physical presence in and/or were residents of Florida. Total Advisors is subject to this Court's jurisdiction pursuant to Fla. Stat. §§ 48.193(1)(a)(1), 48.193(1)(a)(2), and 48.193(2).

22. Defendant Amicorp (BVI) Trustees Ltd. is a company incorporated under the laws of the British Virgin Islands with an office in Tortola, British Virgin Islands. As trustee of the SBH and Vanguardia Trusts, Amicorp (BVI) Trustees Ltd. possesses an equitable ownership in the trust assets, including non-registered private mortgages on Florida development properties. Amicorp (BVI) Trustees Ltd., which acted at all relevant times in concert with Amicorp Trustees (New Zealand) Limited, Amicorp New Zealand Limited, Amicorp Curaçao B.V., Amicorp México S.a. De C.v. Sofom Enr., Amicorp (Barbados) Ltd., and Amicorp Management Limited, holds itself out

as an office of the Amicorp Group, an umbrella organization providing assurance, administrative, legal, corporate secretarial, and support services through and marketing itself as a single entity spanning an international network of offices (the "Amicorp Group"). Amicorp (BVI) Trustees Ltd., as part of the Amicorp Group, performed acts in Florida in furtherance of the fraudulent scheme described herein causing injury in Florida, including planning and attending meetings in Miami in February and October 2016 to discuss the SBH and Vanguardia Trusts and extensively communicating with the Principals and the Principals' counsel in Miami, Florida. Amicorp (BVI) Trustees Ltd., as part of the Amicorp Group, at all relevant times acted in concert and conspired with the Principals and the Biscayne-related Companies to carry out the fraudulent scheme centered in Florida and described herein. Amicorp (BVI) Trustees Ltd. knowingly established a trust structure that had the purpose and effect of permitting the Principals to continue the fraud against plaintiffs and others at the same time that its affiliates, Amicorp Trustees (New Zealand) Ltd., Amicorp New Zealand Limited, and Amicorp Management Limited, ostensibly acted as trustees and fiduciaries for plaintiffs. Amicorp (BVI) Trustees Ltd. is subject to this Court's jurisdiction pursuant to Fla. Stat. §§ 48.193(1)(a)(2) and 48.193(1)(a)(3).

23. Defendant Amicorp Trustees (New Zealand) Limited is a company incorporated under the laws of New Zealand with an office in Auckland, New Zealand. Amicorp Trustees (New Zealand) Limited, which acted at all relevant times in concert with Amicorp (BVI) Trustees Ltd., Amicorp New Zealand Limited, Amicorp Curaçao B.V., Amicorp México S.a. De C.v. Sofom Enr., Amicorp (Barbados) Ltd., and Amicorp Management Limited, holds itself out as an office of the Amicorp Group. Amicorp Trustees (New Zealand) Limited, by virtue of being a part of the Amicorp Group, performed multiple acts in Florida in furtherance of the fraudulent scheme described herein causing injury in Florida, including planning and attending critical meetings in Miami in February and October 2016 to discuss the SBH and Vanguardia Trusts and extensively

communicating with the Principals and the Principals' counsel in Miami, Florida. Amicorp Trustees (New Zealand) Limited, as part of the Amicorp Group, at all relevant times acted in concert and conspired with the Principals and the Biscayne-related Companies to carry out the fraudulent scheme centered in Florida and described herein. Amicorp Trustees (New Zealand) Limited is subject to this Court's jurisdiction pursuant to Fla. Stat. § 48.193(1)(a)(2).

24. Defendant Amicorp New Zealand Limited is a company incorporated under the laws of New Zealand with an office in Auckland, New Zealand. Amicorp New Zealand Limited, which acted at all relevant times in concert with Amicorp (BVI) Trustees Ltd., Amicorp Trustees (New Zealand) Limited, Amicorp Curaçao B.V., Amicorp México S.a. De C.v. Sofom Enr., Amicorp (Barbados) Ltd., and Amicorp Management Limited, holds itself out as an office of the Amicorp Group. Amicorp New Zealand Limited, by virtue of being a part of the Amicorp Group, performed acts in Florida in furtherance of the fraudulent scheme described herein causing injury in Florida, including planning and attending critical meetings in Miami in February and October 2016 to discuss the SBH and Vanguardia Trusts and extensively communicating with the Principals and the Principals' counsel in Miami, Florida. Amicorp New Zealand Limited, as part of the Amicorp Group, at all relevant times acted in concert and conspired with the Principals and the Biscayne-related Companies to carry out the fraudulent scheme centered in Florida and described herein. Amicorp New Zealand Limited is subject to this Court's jurisdiction pursuant to Fla. Stat. § 48.193(1)(a)(2).

25. Defendant Amicorp Curaçao B.V. is a company incorporated under the laws of Curaçao with an office in Willemstad, Curaçao. Amicorp Curaçao B.V., which acted at all relevant times in concert with Amicorp (BVI) Trustees Ltd., Amicorp Trustees (New Zealand) Limited, Amicorp New Zealand Limited, Amicorp México S.a. De C.v. Sofom Enr., Amicorp (Barbados) Ltd., and Amicorp Management Limited, holds itself out as an office of the Amicorp Group.

Amicorp Curaçao B.V., as part of the Amicorp Group, performed acts in Florida in furtherance of the fraudulent scheme described herein causing injury in Florida, including planning and attending critical meetings in Miami in February and October 2016 to discuss the SBH and Vanguardia Trusts and extensively communicating with the Principals and the Principals' counsel in Miami, Florida. Amicorp Curaçao B.V., as part of the Amicorp Group, at all relevant times acted in concert and conspired with the Principals and the Biscayne-related Companies to carry out the fraudulent scheme centered in Florida and described herein. Amicorp Curaçao B.V. is subject to this Court's jurisdiction pursuant to Fla. Stat. § 48.193(1)(a)(2).

26. Defendant Amicorp México S.a. De C.v. Sofom Enr. is a company incorporated under the laws of Mexico with an office in Mexico City, Mexico. Amicorp México S.a. De C.v. Sofom Enr., which acted at all relevant times in concert with Amicorp Trustees (New Zealand) Limited, Amicorp New Zealand Limited, Amicorp Curaçao B.V., Amicorp (BVI) Trustees Ltd., Amicorp (Barbados) Ltd., and Amicorp Management Limited, holds itself out as an office of the Amicorp Group. Amicorp México S.a. De C.v. Sofom Enr., as part of the Amicorp Group, performed acts in Florida in furtherance of the fraudulent scheme described herein causing injury in Florida, including planning and attending critical meetings in Miami in February and October 2016 to discuss the SBH and Vanguardia Trusts and extensively communicating with the Principals and the Principals' counsel in Miami, Florida. Amicorp México S.a. De C.v. Sofom Enr., as part of the Amicorp Group, at all relevant times acted in concert and conspired with the Principals and the Biscayne-related Companies to carry out the fraudulent scheme centered in Florida and described herein. Amicorp México S.a. De C.v. Sofom Enr. is subject to this Court's jurisdiction pursuant to Fla. Stat. § 48.193(1)(a)(2).

27. Defendant Amicorp (Barbados) Ltd. is a company incorporated under the laws of Barbados with an office in Bridgetown, Barbados. Amicorp Barbados, which acted at all relevant

times in concert with Amicorp Trustees (New Zealand) Limited, Amicorp New Zealand Limited, Amicorp Curaçao B.V., Amicorp (BVI) Trustees Ltd., Amicorp México S.a. De C.v. Sofom Enr., and Amicorp Management Limited, holds itself out as an office of the Amicorp Group. Amicorp (Barbados) Ltd., as part of the Amicorp Group, performed acts in Florida in furtherance of the fraudulent scheme described herein causing injury in Florida, including planning and attending critical meetings in Miami in February and October 2016 to discuss the SBH and Vanguardia Trusts and extensively communicating with the Principals and the Principals' counsel in Miami, Florida. Amicorp (Barbados) Ltd., as part of the Amicorp Group, at all relevant times acted in concert and conspired with the Principals and the Biscayne-related Companies to carry out the fraudulent scheme centered in Florida and described herein. Amicorp (Barbados) Ltd. is subject to this Court's jurisdiction pursuant to Fla. Stat. § 48.193(1)(a)(2).

28. Defendant Amicorp Management Limited is a company organized under the laws of the British Virgin Islands with an office in Tortola, British Virgin Islands. Amicorp Management Limited, which acted at all relevant times in concert with Amicorp (BVI) Trustees Ltd., Amicorp Trustees (New Zealand) Limited, Amicorp New Zealand Limited, Amicorp Curaçao B.V., and Amicorp México S.a. De C.v. Sofom Enr., Amicorp (Barbados) Ltd., holds itself out as an office of the Amicorp Group. Amicorp Management Limited, as part of the Amicorp Group, performed acts in Florida in furtherance of the fraudulent scheme described herein causing injury in Florida, including planning and attending critical meetings in Miami in February and October 2016 to discuss the SBH and Vanguardia Trusts and extensively communicating with the Principals and the Principals' counsel in Miami, Florida. Amicorp Management Limited, as part of the Amicorp Group, at all relevant times acted in concert and conspired with the Principals and the Biscayne-related Companies to carry out the fraudulent scheme centered in Florida and described herein.

Amicorp Management Limited is subject to this Court's jurisdiction pursuant to Fla. Stat. § 48.193(1)(a)(2).

29. Defendant Juan Pablo Demichelis, an individual, is a resident of Mexico City, Mexico. He is also an employee of one or more Amicorp entities and acted in concert with other defendants in implementing the fraudulent scheme and accepted kickbacks for his role in this scheme as further described below. Demichelis performed multiple acts in Florida in connection with the fraudulent scheme, including attending a critical meeting in Miami in September 2014 to discuss the SBH and Vanguardia Trusts in furtherance of the fraudulent scheme described herein causing injury in Florida. Demichelis is subject to this Court's jurisdiction pursuant to Fla. Stat. § 48.193(1)(a)(2).

30. Defendant Banque Pictet & Cie ("Pictet") is a company organized under the laws of Switzerland and headquartered in Geneva, Switzerland. Pictet has a longstanding commercial relationship and self-described "partnership" with the Biscayne-related Companies, and at all relevant times acted in concert and conspired with the Principals and the Biscayne-related Companies to carry out the fraudulent scheme centered in Florida and causing injury there as described herein. Pictet uses a Florida bank as a correspondent bank in effectuating transfers of funds. Pictet is subject to this Court's jurisdiction pursuant to Fla. Stat. § 48.193(1)(a)(2).

31. Defendant SGG Management (Curaçao) N.V. ("SGG") is a company incorporated under the laws of Curaçao with an office in Willemstad, Curaçao. SGG at all relevant times acted in concert and conspired with the Principals and Biscayne-related Companies to carry out the fraudulent scheme centered in Florida and causing injury there as described herein. SGG is subject to this Court's jurisdiction pursuant to Fla. Stat. § 48.183(1)(a)(2).

OTHER RELEVANT ENTITIES

32. The Principals acted through several corporate entities that are not named as defendants in this action. These entities include Biscayne Capital Ltd. ("Biscayne Capital"), which is currently in liquidation, and Biscayne Capital International, LLC ("Biscayne Capital International"), a now-defunct Florida company.

33. Biscayne Capital was owned, directly or indirectly, and/or controlled at all relevant times by the Principals through defendant South Bay.

34. Biscayne Capital acted as investment advisor for several of the accounts beneficially owned by plaintiffs that are at issue in this complaint.

35. Biscayne Capital International was a respondent to the SEC Order. Defendant South Bay was the majority beneficial owner of Biscayne Capital International during the relevant time period. Biscayne Capital International was formerly a U.S. registered investment adviser. The principals of Biscayne Capital International were defendants Roberto Cortes, Juan Carlos Cortes, and Weisson. Through Biscayne Capital International, as well as affiliated entities and their network of financial advisors, including defendant Haberer, defendants Roberto Cortes, Juan Carlos Cortes, and Weisson marketed the Notes to investors. The SEC found that Biscayne Capital International violated federal law by failing to make certain disclosures to investors, including that its principals had a beneficial ownership interest and active role in the creation of the Note issuers and that South Bay Holdings, which was to be financed by the Note sales, was in a dire financial situation. As described below, following the SEC Order the Principals surreptitiously continued the fraudulent scheme, setting up trust structures through the Amicorp Group to hide their involvement and targeting South American rather than U.S. investors.

THE FRAUDULENT SCHEME

36. At the heart of this suit is a long-running fraudulent scheme by the Principals and the Biscayne-related Companies that they owned and/or controlled. These defendants used their control of client investment accounts to cause the accounts to invest in the Notes, which were worthless securities linked to South Bay's failing real estate development activities in Florida. The Notes were issued by private offshore companies that were controlled by the Principals from Miami.

37. Operating in classic Ponzi scheme fashion, the Principals and the Biscayne-related Companies then diverted the newly raised proceeds generated by the sale of the Notes for personal use and to buy out earlier investors who had raised concerns about these investments.

38. The Principals and the Biscayne-related Companies did not carry out this fraudulent scheme on their own. The scheme was implemented with the knowing, necessary and active participation of defendants Amicorp Trustees (New Zealand) Limited, Amicorp Mexico S.A. De C.v. Sofom Enr., Amicorp (Barbados) Ltd., Amicorp (BVI) Trustees Ltd., Amicorp Curaçao B.V., Amicorp Management Limited, and Amicorp New Zealand Limited (collectively referred to as "Amicorp"), as well as Amicorp employee defendant Demichelis. Amicorp is a group of companies that provided services to trusts, including by creating trust structures and underlying companies, acting as trustee for existing trusts, and providing employees to act as directors and authorized signatories for underlying companies. Amicorp worked with the Principals to create trust structures that would allow the Principals to continue to operate and control the Biscayne-related Companies in a clandestine manner after they had agreed to the SEC Order. Amicorp also conspired with the Principals and in particular with Haberer as he looted plaintiffs' investment accounts, which Amicorp had a fiduciary duty to actively monitor and protect. Defendant Demichelis, a senior employee of defendant Amicorp Curaçao B.V. and

later defendant Amicorp Mexico S.A. de C.V. Sofom Enr., solicited and received kickbacks from Haberer for his role in allowing Haberer to take control of and loot these accounts.

39. Amicorp operates an international network of more than 40 offices in 30 countries. Several Amicorp offices in various countries worked together and in concert with the Principals and the Biscayne-related Companies to assist the Principals and the Biscayne-related Companies in their scheme to loot the investment accounts of the plaintiffs and to hide the continuation of the scheme once the SEC Order was issued.

40. The Principals and the Biscayne-related Companies also had the active assistance of a Swiss Bank, Pictet, that knowingly conspired with and aided and abetted the Principals and the Biscayne-related Companies to permit them to continue to market the worthless Notes even after the publication of the SEC Order. Pictet continued to conspire with and aid and abet the fraudulent scheme even after observing other irregular activity in the accounts beneficially owned by Plaintiff Mirta Romay that clearly alerted Pictet to the existence of the fraudulent scheme. As a beneficial owner with no direct access to the accounts, Plaintiff Mirta Romay could not see the activity taking place in them.

41. Pictet had a longstanding commercial relationship with the Principals and the Biscayne-related Companies. In internal emails, Pictet managers referenced a "partnership" between Pictet and Biscayne-related Companies. Pictet had direct, actual knowledge of the SEC Order but nevertheless chose to ignore the fact that the prohibited scheme was ongoing. Pictet also had knowledge of, but chose to ignore, many other indicators of fraudulent activity in the accounts and the fact that the Notes were worthless. Instead, Pictet knowingly elected to continue to aid and assist Biscayne in its distribution of the Notes.

42. The offshore companies that issued the Notes were also owned and/or controlled by the Principals. The proceeds of the Notes were purportedly to be used to finance the

operation of South Bay. In reality, they were used to service debts, to pay off earlier disgruntled noteholders, and to funnel money to the Principals for their personal use.

43. The SEC Order issued in May 2016 found that the respondents in the SEC proceeding, defendants Roberto Cortes, Juan Carlos Cortes, and Weisson, as well as the now-defunct Florida company Biscayne Capital International, had violated federal law in connection with the sale of the Notes. The violations of law, discussed in more detail below, related primarily to South Bay's desperate financial situation and the failure of the respondents to disclose to investors South Bay's actual financial situation, the multiple conflicts of interest, and their involvement on all sides of the transactions.

44. After the issuance of the SEC Order, it was plainly impossible for the Principals and the Biscayne-related Companies to sell the Notes to U.S. investors. But these defendants were undaunted. They continued to distribute the toxic Notes in South America using a network of investment advisors who were employees of the Biscayne-related Companies. These employees knew that the Notes had little or no value, but they nevertheless purchased them to put in the portfolios of their unsuspecting investor clients so that they could divert their clients' assets into their Ponzi scheme.

45. In order to continue their scheme after the issuance of the SEC Order, defendants Roberto Cortes, Juan Carlos Cortes, and Weisson took steps to hide their ongoing involvement in the scheme. These efforts included a sham sale of Biscayne-related Companies that nevertheless left them with full control over the Biscayne-related Companies. They continued to manage the companies through defendant Evolution Consulting. In addition, in anticipation of the SEC Order, and with the assistance of defendants Amicorp and SGG, they created the Vanguardia and SBH Trusts to hold the Notes. The same Amicorp personnel that set up the

Romay trusts also set up the Vanguardia and SBH trusts, which were created to disguise the continuing involvement of the Biscayne-related Companies and the Principals.

46. Defendant Evolution Consulting was created by defendants Roberto Cortes, Juan Carlos Cortes, and Weisson, as another entity in their complex web of companies. The purpose of Evolution Consulting was to allow defendants Roberto Cortes, Juan Carlos Cortes, and Weisson to continue to control and manage the activities of Biscayne Capital notwithstanding the efforts that they had undertaken to hide their involvement with the Biscayne-related Companies. An agreement was reached whereby Biscayne Capital was sold to a straw buyer for a five-year period, after which Evolution Consulting would be able to purchase it. During the five-year period, Roberto Cortes, Juan Carlos Cortes, and Weisson, pursuant to a Consulting Agreement between Biscayne Capital and Evolution Consulting, were to receive fees from Biscayne Capital for their "management" services.

47. Defendants Roberto Cortes, Juan Carlos Cortes, and Weisson sought to "carefully handle" Evolution Consulting before regulators, auditors, and others, and to represent that the company had other clients besides Biscayne Capital.

48. Through Evolution Consulting, defendants Roberto Cortes, Juan Carlos Cortes, and Weisson managed Biscayne Capital's relationships with banks holding its clients' accounts, including defendant Pictet, and all aspects of the SBH and Vanguardia trusts and the continued marketing and sale of the Notes.

HABERER TARGETS PLAINTIFFS IN THE SCHEME

49. Defendant Haberer is the brother of plaintiff Anali Tobi's husband. Haberer used his position of trust with plaintiffs to gain control of investment accounts (the "Investment Accounts") that were held within plaintiffs' family trust structures in the names of Silesia LP

("Silesia"), Rose LP ("Rose"), Rado LP ("Rado"), and Clodi Holdings Limited ("Clodi") (collectively the "Investment Companies").

50. Haberer also sought out service providers who were willing to consciously ignore unmistakable signs of impropriety relating to the investment activity that he planned to conduct in the Investment Accounts and to assist in perpetrating his scheme to loot the Investment Accounts. Such service providers included defendants Amicorp and Pictet, among others. Amicorp's multi-faceted and highly conflicted role in the overall scheme is detailed in paragraphs 78-144 below. Haberer selected defendant Pictet as well as non-parties Deutsche Bank Trust Company, N.A. ("Deutsche Bank") and Insight Securities ("Insight") to hold the Investment Accounts.[1] Pictet's crucial role in the scheme is detailed in paragraphs 145-167 below.

51. Defendants Amicorp and Pictet, as well as the other chosen service providers, were aware of the contents of the SEC Order and knew that the Notes were worthless. Amicorp and Pictet knew that plaintiffs' purported fiduciary was moving funds in the Investment Accounts out of traditional investments and into the Notes. Amicorp and Pictet chose not to alert the plaintiffs.

52. Haberer had personal and professional relationships with employees of Amicorp and Pictet. By means of these relationships, Haberer was able to persuade Amicorp and Pictet not to alert the plaintiffs of the changes in the investment portfolios of the companies that they beneficially owned, despite numerous and stark indications of fraud and looting and Amicorp's and Pictet's knowledge that the Notes were worthless.

[1] The Investment Account at Deutsche Bank is the subject of a separate suit preemptively filed by Deutsche Bank against Rado in the Southern District of New York, in which Rado has filed counterclaims against Deutsche Bank for its role in facilitating Haberer's fraud.

53. Haberer caused several of the Investment Accounts to enter into investment management agreements with Biscayne-related Companies. Non-party Biscayne Capital and defendant Total Advisors were the investment managers for the Pictet and Insight Investment Accounts, respectively. Although the contractual documents listed other Biscayne Capital and Total Advisors agents, including defendant Juan Carlos Cortes, as investment advisors for these accounts, at all relevant times, Haberer acted on behalf of the investment managers and controlled the activity in the Investment Accounts.

54. Defendant Total Advisors became involved in the scheme after the issuance of the SEC Order as part of the effort to hide the involvement of the Principals and the Biscayne-related Companies, including Biscayne Capital, with certain client accounts. The same investment advisors previously employed by Biscayne Capital, including defendant Haberer, simply moved over to defendant Total Advisors and continued their business as usual.

55. When additional funds were needed by the Principals to fund their scheme, they looked to their network of investment advisors, including defendant Haberer. In particular, defendants Roberto Cortes, Juan Carlos Cortes, or Weisson would insist that an investment advisor make a client account available to invest in the Notes. These requests were made simply to find client funds, including overdraft funds, to prop up the Ponzi scheme, without reference to the identity of the client, the interests of the client, or the parameters of the client's investment mandates. When such a demand was directed to Haberer, Haberer abused his relationship of trust, using the plaintiffs' Investment Accounts as a piggy bank for the continuation of the Ponzi scheme, causing funds from those accounts to be invested in the Notes, and even causing the accounts to go into overdraft for these Note investments. Haberer, acting on behalf of the investment managers for the Investment Accounts and in concert with the other Principals and

the Biscayne-related Companies, looted these accounts and defrauded plaintiffs, knowing that he was diverting funds from liquid, reputable securities into the worthless Notes.

56. The other Principals promised Haberer ownership of Biscayne Capital in exchange for his looting of plaintiffs' accounts in furtherance of the scheme.

57. Haberer, acting on behalf of the investment managers for the Investment Accounts and in concert with the other Principals and the Biscayne-related Companies, used fraudulent means to conceal the investments in the Notes from plaintiffs.

58. The investments in the Notes were made without ever advising plaintiffs of what was being done and without ever considering that these investments were manifestly against the applicable investment mandates and the interests of plaintiffs. These investments were in reality nothing more than theft in furtherance of the Ponzi scheme.

59. Haberer, as investment advisor to plaintiffs with control over the Investment Accounts, had fiduciary duties to plaintiffs. He completely abandoned those duties.

60. Haberer provided falsified spreadsheets purporting to reflect the Investment Account holdings to plaintiffs. These spreadsheets falsely showed that the accounts were invested in liquid, reputable securities, mostly highly-rated bonds issued by companies whose stock traded on reputable exchanges, when in fact the accounts were invested in the Notes.

61. The trusts of which plaintiffs were beneficiaries were created to support plaintiffs and their families through conservative investments. As a result of this fraud, the trusts' assets were instead invested heavily in the illiquid and ultimately worthless Notes, some of which were the same securities at issue in the SEC Order.

62. In early 2018, trading by Haberer in the Deutsche Bank Investment Account caused a substantial overdraft. Deutsche Bank allowed Haberer several months – an unusually long period of time – to resolve the overdraft. Eventually, Haberer attempted to cover the

overdraft by misappropriating over $6 million in assets from the Insight Investment Account, as well as other accounts that he controlled.

63. Still, Haberer was unable to fully cover the overdraft, and a deficit of approximately $2.5 million remained. Many months after the overdraft was generated, Deutsche Bank was still unable to recover fully from Haberer. Deutsche Bank contacted plaintiff Diego Romay, the beneficial owner of the account, to inform him of and attempt to collect the remaining overdraft. As a result of that contact and their subsequent investigations, plaintiffs learned that over $40 million in the Investment Accounts had been invested in the worthless Notes, resulting in the loss of nearly the entire value of those accounts, and in some cases causing overdrafts in those accounts.

64. Plaintiffs' enormous losses were directly caused by the wrongful actions of their fiduciary, Haberer, and the other defendants as well as nonparties with whom he acted in concert and who aided and abetted his wrongdoing.

THE ROMAY FAMILY TRUSTS

65. Plaintiffs are the beneficiaries of several New Zealand trusts created for investment purposes. Plaintiff Diego Romay is the beneficiary of the Diego and Diego II Trusts; plaintiffs Mirta Romay, Ariel Tobi, and Anali Tobi are the beneficiaries of the Mirta, Mirta II and Miro Trusts; and plaintiffs Cynthia Levi, I.R., O.R., and L.R. are the beneficiaries of the Docil Trust (collectively, the "Romay Family Trusts"). The Romay Family Trusts own the Investment Companies.

66. Defendant Amicorp Trustees (New Zealand) Limited acted as trustee for the Romay Family Trusts, while Amicorp Management Limited and Amicorp New Zealand Limited provided directors and authorized signatories for the Investment Companies.

67. The Notes did not fit within investment profiles for the Investment Companies.

THE SEC ORDER

68. The SEC Order concerns violations of federal law by Biscayne Capital International, as well as defendants Juan Carlos Cortes, Roberto Cortes, and Weisson, in connection with the sale of the Notes. Years before the issuance of the SEC Order, these defendants, Haberer, and the Biscayne-related Companies knew that the SEC was investigating matters relating to these violations.

69. The Notes were issued by private offshore investment companies under the common beneficial ownership of Biscayne Capital International, as well as the other Biscayne-related Companies.

70. The Notes were issued ostensibly for the purpose of financing ongoing operations of South Bay. In reality, South Bay was deeply in debt and financially unviable, and there was no reasonable prospect that South Bay's development project could be completed or that the Note investors would ever be repaid.

71. South Bay was beneficially owned by Roberto Cortes and Weisson, and perhaps others.

72. South Bay was the majority owner of several Biscayne-related Companies, including Biscayne Capital International, Biscayne Capital, and defendant Biscayne Group Holdings during the period addressed by the SEC Order.

73. Roberto Cortes, Juan Carlos Cortes, and Weisson created Biscayne Capital International and several affiliated non-U.S. financial advisory entities to market the Notes through investment advisors, including Haberer.

74. An essential component of the scheme was to sell the Notes to clients of financial advisors employed by or otherwise affiliated with Biscayne Capital International and/or Biscayne-related Companies that operated outside of the United States.

75. The SEC Order identifies a number of concerns with the Notes, including that:

- The Notes were unsecured debt obligations backed primarily by non-registered private mortgage-backed notes. In other words, there was no physical collateral backing the notes that could be realized in the event of default.
- The private offshore companies that issued the Notes were newly formed private issuers with no operating history.
- The investment advisor to the private offshore companies was a newly formed company with no operating history.
- The proceeds from the sale of the Notes were to be invested in South Bay, which was under the beneficial control of a Biscayne entity.
- The private offshore companies that issued the Notes were unaudited.

76. The SEC Order also depicted the South Bay real estate operations as severely under-capitalized. South Bay failed to generate enough revenue or operating cash flow to pay off maturing debt, sustain its ongoing operations, or fund its development plans without obtaining additional financing.

77. The basic scheme outlined in the SEC Order is that Roberto Cortes, Juan Carlos Cortes, and Weisson arranged for the issuance of Notes by private offshore companies, and then used financial advisors affiliated with Biscayne-related Companies to cause the Notes to be purchased into client accounts in violation of fiduciary duties to these clients. All the while, the financial condition of South Bay was such that the funds available to repay the Notes were completely inadequate.

AMICORP'S ROLE

A. Amicorp and Haberer Work Together to Gain Control Over the Romay Family Trusts

78. Haberer approached Amicorp with the prospect of Amicorp being retained by plaintiffs to act as the trustee of the Romay Family Trusts and to provide director services to the companies through which the Romay Family Trusts would invest.

79. Amicorp expressed to Haberer its interest in obtaining this business, and agreed to make payments to Haberer to reward him for bringing the Romay Family Trusts business to Amicorp. Amicorp did not disclose to plaintiffs that it was making payments to Haberer.

80. Haberer, in turn, paid kickbacks to defendant Demichelis, a high-level Amicorp employee, for his assistance with the fraudulent scheme. These kickbacks were also not disclosed to plaintiffs.

81. Amicorp allowed Haberer to represent Amicorp's interests with plaintiffs, even though he gave instructions in direct contradiction of trust mandates and had multiple conflicts of interest known to Amicorp, including Haberer's receipt of payments from Amicorp and his payment of undisclosed kickbacks to a high-level Amicorp employee.

82. In April 2016, Amicorp and Biscayne Capital agreed that Biscayne Capital would pay Amicorp directly for fees it incurred to set up the Romay Family Trusts. Luisa Cardenas, defendant Demichelis, Derk Scheltema, and Eugene Lafaele, all Amicorp managers, agreed to accept funds directly from Biscayne Capital rather than be in direct contact with and make payment arrangements with the Romays.

B. Amicorp Promises to Monitor and Protect the Romay Family Trust Assets

83. Amicorp agreed, in its own words, to the "[p]rovision of fiduciary services in the capacity as trustee in compliance with the trust deeds and the relevant trust laws of various jurisdictions."

84. Amicorp promised that its duties would "include[], … protecting and enhancing the assets of the trusts…."

85. Amicorp agreed that it would conduct "an [a]nnual verification of the existence, ownership and *value* of all assets and liabilities" (emphasis supplied).

86. It did none of these things.

87. Rado was one of the limited partnerships held within the Diego and Diego II Trusts. Amicorp, in the context of providing director services to Rado, prepared and provided to plaintiff Diego Romay a report which stated Amicorp would "select suitable accounting policies and then apply them consistently"; "make judgments and estimates that are reasonable and prudent"; "prepare the financial statements on the going concern basis unless it is inappropriate to presume that the limited partnership will continue in business"; "*safeguard the assets of the limited partnership*"; and "*take reasonable steps for the prevention and detection of fraud and other irregularities*." (emphases supplied).

88. The terms of the Deeds of Trust to which Amicorp agreed state that "[t]he purpose of the present trust is to protect the assets settled in trust and plan the Settlor's succession."

89. Amicorp's conduct described herein was deliberately contrary to that purpose.

90. Amicorp, in its capacity as director of certain of the limited partnerships held within the trust structures, entered into investment management agreements with Biscayne Capital and defendant Total Advisors. The agreement with Biscayne Capital included an addendum entitled "Investment Risk Profile." This addendum established Minimum, Target and Maximum

allocations for a variety of defined fixed income and equity investments. Amicorp knew that the Notes issued by the Biscayne-controlled entities, which were purchased by the limited partnerships and companies maintained within the Romay Family Trusts, did not fit within the investment risk profile; however Amicorp did nothing to prevent the investments or to advise plaintiffs of what was happening in the Investment Accounts.

C. Amicorp Works With the Principals and the Biscayne-related Companies to Continue in Operation After the SEC Order and Hide Biscayne's Involvement

91. After the publication of the SEC Order, it became virtually impossible for the Principals and the Biscayne-related Companies to continue marketing the Notes. Indeed, the Principals and the Biscayne-related Companies decided to cease marketing the Notes to any U.S. investors. But the actions of Amicorp allowed the fraudulent scheme to remain hidden and continue.

92. In order to fill the gap caused by the inability to market to U.S. investors following the SEC Order, the Principals and the Biscayne-related Companies decided to use a network of financial advisors employed by or otherwise associated with the Biscayne-related Companies to market the Notes to South American investors, primarily those in Argentina, Uruguay and Ecuador. The advisors had the ability to market the Notes to client accounts that they controlled, including the Investment Accounts.

93. The SEC Order still had the potential to frustrate efforts by the Principals and the Biscayne-related Companies to sell the Notes in South America since it specifically named Roberto Cortes, Juan Carlos Cortes, and Weisson, and any responsible investment professional would have avoided doing business with the Biscayne-related Companies or these Principals if it was known that they were involved. Once they learned that the SEC was investigating matters relating to the Notes sales, the Principals and the Biscayne-related Companies knew they had to

create the illusion that they were no longer involved in the management of the companies responsible for handling the administration and payment of the Notes.

94. To create this illusion, the Principals and the Biscayne-related Companies secured Amicorp's agreement to act as the trustee for two newly established trusts which would ostensibly take over the administration and payment of the Notes. This put Amicorp on both sides, acting as trustee for the Romay Family Trusts as well as for the Principals in a scheme to hide their involvement with the Notes and allow the Notes to continue to be sold to unsuspecting investors.

95. Amicorp conspired with the Principals and the Biscayne-related Companies to create a labyrinth of trusts and corporate entities that masked the involvement of the Principals and the Biscayne-related Companies in the issuance, administration and payment of the Notes.

96. The top-tier trusts created by Amicorp to hide the involvement of the Principals and the Biscayne-related Companies were known as the Vanguardia and SBH Trusts. Amicorp agreed to be the trustee for the Vanguardia and SBH Trusts knowing full well that the beneficiaries of those trusts were the holders of the Notes and that the trusts were woefully undercapitalized from inception.

97. Within Amicorp, various managers raised questions about Amicorp's agreement to act as trustee for such undercapitalized trusts. Because Amicorp proceeded to act as trustee, these concerns necessarily were overridden at higher levels within Amicorp.

98. The very same individuals within Amicorp who were intimately involved in setting up various Romay Family Trusts also worked with the Principals to set up the Vanguardia and SBH Trusts.

99. For example, the January 27, 2016 SBH Asset Trust/Settlement is signed by Ernesto Weisson and Roberto Cortes as Managing Members of South Bay Holding LLC, as well as by Eugene Jonathan Lafaele, as a Director of Amicorp (B.V.I.) Trustees Ltd.

100. Mr. Lafaele presently works at the Amicorp branch operating from New Zealand. In that capacity, Mr. Lafaele has principal responsibility for the administration of the Romay Family Trusts and the Investment Companies and partnerships held within those trusts.

101. Mr. Lafaele was involved in both setting up the sham Vanguardia and SBH trusts, which had no financial capacity to meet their obligations to the Note holders, as well as monitoring and oversight of the Romay Family Trusts, which then purchased the same Notes.

102. In addition, defendant Demichelis and Derk Scheltema were directly involved in setting up and administering both the Romay Family Trusts and the sham Vanguardia and SBH trusts.

103. Mr. Scheltema raised concerns within Amicorp that the assets in the Vanguardia and SBH trusts did not show proof of ownership, were not audited, and were not sufficient to meet the liabilities of the trusts. Nevertheless, Amicorp chose to ignore these concerns and agreed to be the trustee for the Vanguardia and SBH Trusts.

104. Before Amicorp agreed to become the trustee for companies beneficially owned by the Principals and the Biscayne-related Companies, it would have been standard practice for Amicorp to investigate the financial ability of the companies to meet the obligations of the note issuers. The SEC Order had identified a massive shortfall in the assets that supposedly backed the Notes. According to the SEC, by September 2010, the past due obligations exceeded $41 million. Amicorp also would have known of the massive shortfall through its standard investigative practice.

105. Despite Amicorp's knowledge of this massive shortfall and the concerns that had been raised internally, it nevertheless agreed to accommodate the Principals and the Biscayne-related Companies to develop a structure that would mask their involvement with the Notes.

106. By doing so, Amicorp aided and abetted the Principals and the Biscayne-related Companies in continuing their fraudulent scheme to market the Notes. Amicorp further aided and abetted the scheme by knowingly using its roles and positions with respect to the SBH and Vanguardia trusts and the Romay Family Trusts to allow its fiduciary clients to have their accounts looted and siphoned into the Notes held by Vanguardia and SBH.

107. Email communications between Amicorp, on the one hand, and Haberer and Juan Carlos Cortes, on the other, confirm this corrupt agreement. In addition, internal Amicorp emails show that Amicorp was aware that it lacked the most basic information necessary to support a conclusion that the Vanguardia and SBH trusts had sufficient assets to meet obligations to the Note holders.

108. For example, in a December 24, 2015 internal Amicorp email from Mr. Scheltema to defendant Demichelis concerning the "Vanguardia and SHB vista trusts," Mr. Scheltema commented that "[t]he current overview of assets is very summier [sic], does not show proof of ownership, are not audited, and does not seems sufficient to meet the liabilities."

109. In an earlier email sent on November 1, 2015, also concerning the "Vanguardia and SBH vista trust," Mr. Scheltema told defendant Demichelis and Mr. Lafaele, "as discussed, please make sure that we send a follow up in writing to Juan Carlos, and Fernando stating what we need." Thus, Amicorp communicated directly with Juan Carlos Cortes and Haberer about the Vanguardia and SBH trusts.

110. Mr. Scheltema's email references "draft trust deeds as drafted by McKenzie," and makes the prescient comment that "while Mr. McKenzie is at it, we should also ask him to confirm

that our liability as trustee of the vista trust is zero, in case the assets contributed are lower than the debtors holding the notes."

111. Amicorp never received a satisfactory statement of the assets that would be placed in the Vanguardia and SBH trusts, or any indication that the assets would be, in Amicorp's words, "sufficient to meet the liabilities."

112. Nevertheless, Amicorp agreed with Roberto Cortes, Juan Carlos Cortes, Weisson, and Haberer to become the trustee for the sham Vanguardia and SBH trusts and to accept substantial fees for doing so, along with the expectation of a future stream of fees.

113. Email correspondence nearly two years later between Amicorp and Fernando Haberer and others shows that Amicorp had *still not* received a statement of assets or other information sufficient to establish that the assets of the Vanguardia and SBH trusts were "sufficient to meet the liabilities."

114. Amicorp willingly agreed to and did participate in a scheme to create the appearance of normal operations, when the trust entities that Amicorp created were known to be in fact empty shells. Because of Amicorp's active participation and assistance, the scheme was allowed to continue for at least two more years, during which time Amicorp received substantial fees and plaintiffs had tens of millions of dollars looted from their accounts.

115. Email communication between Amicorp and Haberer and Juan Carlos Cortes establishes that Amicorp knew full well that the trusts were empty shells.

116. On August 24, 2017, Trevor Burke, the Director of Trust Services at Amicorp, Barbados Ltd. wrote to Haberer and Juan Carlos Cortes with a cc to defendant Demichelis and Derk Scheltema concerning the "SBH Trust and Vanguardia Trust." In it, Mr. Burke noted that "[w]e are finally in receipt of the consolidated statements (CS) for the SBH asset trust. After a thorough

review and analysis of the CS, we have urgent concerns as trustees of both the SBH Trust and Vanguardia Trust."

117. Amicorp had been operating as the trustee of the Vanguardia and SBH trusts for nearly two years fully aware that it was doing so without even the most basic information about the financial status of the trusts.

118. Mr. Burke's email went on to state that "we do have a fiduciary duty to the beneficiaries of the Trusts to ensure that the ULE's are in a sound financial position to be able to provide distributions to the beneficiaries of the Trusts if and when called upon to do so. It is clear that based on the CS that the assets cannot cover the liabilities and our obligations to the beneficiaries are a grave concern for us."

119. Mr. Burke closed his email by noting that "lastly, but not least we remind you of your current indebtedness to us for our invoices for our services."

120. In a subsequent email dated October 17, 2017 to Juan Carlos Cortes at biscaynecapital.com and copied to defendant Demichelis and to Derk Scheltema, Mr. Burke said "[y]ou will recall that we had previously expressed our concerns about the negative position of the assets to liabilities…." He went on to say "[b]ased on the foregoing we think that it is appropriate to prepare a Deed of Resignation of Trustee which will appoint you as trustee of the trust and whereby you assume fiduciary responsibility to the beneficiaries." In other words, after all this time, and all the transfers from its other customers to buy these toxic Notes, Amicorp now wanted to get out.

121. Mr. Burke's email makes clear that Amicorp accepts that it continues to hold a fiduciary responsibility to the beneficiaries of the SBH and Vanguardia trusts. Those purported beneficiaries are primarily, if not exclusively, the Note holders, including plaintiffs.

122. On October 11, 2017, Trevor Burke and Derk Scheltema wrote to Juan Carlos Cortes concerning the "SBH Assets Trust and Vanguardia Trust" stating: "[w]e write once again to remind you of the outstanding balances which are owing in fees for the captioned trust deeds and underlying entities. To date, this amount is in excess of $147,000, which is totally unacceptable." Mr. Scheltema and Mr. Burke further stated that they "intend to exercise our right provided under the deeds in view of liquidating assets to recover our fees."

123. This is but one example of Amicorp putting its own interest – collecting fees for its corrupt work to help the Principals perpetuate their scheme – ahead of Amicorp's obligations to the beneficiaries of the trusts, *i.e.*, the Note holders.

124. In November 2017, Mr. Burke began to correspond with Herman Oosten, the protector of the SBH Asset Trust and the Vanguardia Trust, and the director of certain of the companies that are involved in the trust structure. Mr. Burke's correspondence sought information concerning:

- value of total assets in the trusts
- amount of back-to-back loans
- other intercompany loan agreements
- updated balance sheets, profit and loss statements for all companies involved.

125. This is further evidence that, although Amicorp was the trustee of the SBH and Vanguardia trusts and had responsibilities to the beneficiaries of those trusts, it was aware that it lacked even the most basic information about the assets held within the trusts. It is also further evidence of the sham nature of the Vanguardia and SBH trust structures and Amicorp's essential role in the sham.

126. A month later, on November 16, 2017, Mr. Burke again wrote to Herman Oosten stating "[w]hen you speak with the directors can you also raise the following requests on our

behalf." The requests included "that the accounting is prepared by Amicorp and that we are provided with a full supportive documentation for all transactions." Mr. Burke also asked that "all assets inclusive of bank accounts are accessible to us." Finally, Mr. Burke stated that "[s]hould assets be less than liabilities, we will obtain a detailed plan from underlying entities directors, which will outline how the negative position will be rectified."

127. As late as December 2017, Amicorp still did not have information regarding the assets held within the trusts.

D. Amicorp Facilitates Haberer's Looting of the Romay Family Trusts

128. In addition to setting up the offshore structure to hold the worthless Notes, Amicorp was also fully aware that the Biscayne-related Companies and the Principals had used their network of financial advisors to distribute these worthless Notes to clients, including clients for whom Amicorp was trustee.

129. Amicorp knew that Haberer was associated with the other Principals and the Biscayne-related Companies. Amicorp had a corrupt financial arrangement with Haberer, including payments to Haberer for bringing the Romay Family Trust business to Amicorp, and defendant Demichelis's receipt of kickbacks from Haberer for allowing him to loot the Romay Family Trusts.

130. Amicorp thus could see the full picture. It knew that the Principals and the Biscayne-related Companies had a scheme for using their operations in Uruguay, Ecuador and Argentina to distribute worthless Notes to clients and it knowingly facilitated that scheme.

131. At the same time, Amicorp knew that Haberer was selling legitimate investments out of the Investment Accounts, such as the highly rated bonds, and was replacing them with the Notes.

132. Amicorp had agreed to monitor the Investment Accounts and to value the assets in them. It had direct access to the Investment Accounts, while plaintiffs did not. As trustee for the Vanguardia and SBH trusts, Amicorp knew that there were insufficient assets to support the Notes, and that the value of the Notes in the Investment Accounts was severely impaired, if not zero.

133. Even as the scheme began to unravel, Amicorp took extraordinary steps to continue to hide from the plaintiffs that the Romay Family Trusts had been looted through the investments in the Notes. For example, on February 9, 2018, Lara Mossiere, of defendant Pictet, emailed Amicorp employees Eugene Lafaele, defendant Demichelis and Jose Romero, stating that Pictet had been "unable to execute the trade – to sell securities, and clear the debt on the account." Ms. Mossier went on to say that "this situation is not acceptable and needs to be addressed."

134. Having received this message from Pictet, Amicorp decided not to communicate with plaintiff Mirta Romay to inform her that her trust's Investment Account with Pictet had been looted. Instead, Amicorp continued to work directly with Haberer to try to find some way to avoid disclosure of the situation, thereby allowing Haberer to continue to hide from plaintiffs the fact that the Romay Family Trusts had been caused to invest in worthless Notes.

E. Amicorp Was Also Closely Involved With the Biscayne-Related Companies and the Entities that Issued the Notes

135. Amicorp's involvement with the scheme extended beyond its role as trustee for the Romay Family Trusts and the Vanguardia and SBH trusts. Amicorp was involved with the Notes themselves.

136. For example, one category of Notes was issued by an Irish company known as IA Capital Structures. The IA Capital Structures Notes are described in a document known as a

Series Memorandum, dated September 4, 2015. The Series Memorandum states that the issuer of the Notes intended to use the Notes proceeds to invest in the shares of a company known as AD Market Limited, which was described as a limited liability company incorporated in Malta.

137. An Amicorp company, Amicorp Services Limited, became the appointed director of AD Market Limited.

138. The Series Memorandum states that the IA Capital Structures Notes proceeds would also be invested in shares of Biscayne Capital Holding Limited which, according to the Series Memorandum, provides wealth management services to high net worth individuals through its wholly owned subsidiaries in Uruguay, Bahamas and Switzerland.

139. The Series Memorandum refers to an SEC inspection which eventually led to the SEC Order but misleadingly discounts its significance by stating that it concerns "a defunct (dissolved), former subsidiary of [Biscayne Capital Holding Limited] that was located in the U.S…." In fact, as was known by the Biscayne-related Companies, the Principals, and Amicorp, the SEC investigation that resulted in the SEC Order involved each of the individuals who continued to control Biscayne Capital Holding Limited and the Biscayne-related Companies, and who continued to control the operations of the Vanguardia and SBH trusts.

140. Amicorp agreed to sell its name and services as an appointed director to enable the Principals and the Biscayne-related Companies to disguise and continue their scheme of issuing and marketing the Notes, including the IA Capital Structures Notes. Some IA Capital Structures Notes were purchased into Investment Accounts owned by the Romay Family Trusts – accounts for which Amicorp acted as the trustee ostensibly on behalf of plaintiffs.

141. As noted in paragraph 5, one of the entities related to defendants South Bay, Biscayne Capital Holdings, Evolution Consulting, and Total Advisors was Madison Asset, which is now in liquidation.

142. On information and belief, Madison Asset had a number of key roles in the fraudulent scheme, including acting as a financial conduit and internal bank for the Biscayne-related Companies and for the Principals.

143. Madison Asset was owned by Sunset Investments Limited, whose current officers include Amicorp (UK) Secretaries Limited and Amicorp (UK) Directors Limited.

144. In its role as officers of the owner of Madison Asset, Amicorp would have had access to information about the fraudulent activities of Madison Asset.

PICTET'S ROLE

145. Plaintiffs Mirta Romay, Ariel Tobi, and Anali Tobi are the ultimate beneficiaries of the Mirta Trust, the Mirta II Trust, and the Miro Trust, which own and invest through Silesia and Rose. At Haberer's recommendation, Silesia's and Rose's Investment Accounts were opened at Pictet. These accounts were managed by Haberer acting on behalf of Biscayne Capital, with which Silesa and Rose had investment management agreements.

146. Account opening documents show that Pictet knew that the Silesia and Rose accounts were owned by trusts and that Mirta Romay was the beneficiary of those trusts.

147. When the Silesia and Rose accounts were opened, they held conservative investments, including mostly blue chip bonds issued by companies that trade on a U.S. stock exchange. Beginning in 2015, these safe, conservative assets were replaced by investments in illiquid notes issued by the SPVs that were an integral part of the Principals' fraudulent scheme.

148. Pictet knew that safe and conservative assets were being swapped out in exchange for illiquid Notes issued by unknown companies operating offshore. By May 2018, the Rose and Silesia accounts held Notes with a face value of approximately $34 million. Pictet could also see that these Notes were issued by companies under the control of the Principals, and

that financial advisers employed by the Biscayne-related Companies were responsible for causing their clients' accounts to purchase the Notes.

149. From 2015 to 2018, the Rose and Silesia accounts had total transactions of over $156 million, almost all of which reflected the transfer of blue chip investments into what Pictet knew was essentially worthless junk.

150. Pictet had a longstanding commercial relationship with the Principals and the Biscayne-related Companies, which Pictet managers referred to as a "partnership." A January 16, 2018 email from Jean-Marc Vannay of Pictet references "the partnership between Biscayne and Bank Pictet" and expresses concerns about harming that partnership. Pictet took actions to maintain that partnership at the expense of the plaintiffs.

151. High-level Pictet managers met in person with defendants Roberto Cortes and Juan Carlos Cortes to discuss the Biscayne-related business. Pictet chose to disregard recognized problems with the Principals, the Biscayne-related Companies, and the Notes and continued to facilitate their fraudulent scheme because of this longstanding profitable partnership.

152. By no later than the end of June 2016, Pictet was fully aware of the SEC Order indicating that the Notes were toxic and an unsuitable investment for its account holders. A June 29, 2016 email from Alejandro Duvillard of Pictet to a Biscayne Capital employee shows that Pictet's compliance department sought information about the Biscayne-related Companies because of the "damage caused to the company's image" by the SEC Order.

153. Pictet contacted Biscayne Capital asking for an explanation of the roles of each of the people associated with the Biscayne-related Companies and the actions those companies would take as a result of the SEC Order.

154. Nevertheless, Pictet stood by and thereafter allowed the looting of the Investment Accounts, and chose to take no steps to assure itself that its customers were not being harmed, or even to inform its customers that they were continuing to have their accounts drained into the Notes. After the publication of the SEC Order, the Biscayne-related Companies continued to issue and market the Notes without any significant change to their practices – and Pictet knew it.

155. As part of its longstanding commercial relationship with the Principals and the Biscayne-related Companies, Pictet acted as a custodial bank for a number of clients of Biscayne Capital. Biscayne Capital used its role as investment adviser to these clients to cause them to invest in the Notes. Pictet could see, across a number of accounts, a common scenario: tens of millions of dollars of traditional, conservative investments were swapped out, at the direction of investment advisers employed by or associated with Biscayne Capital, and replaced by the Notes. In other words, the scheme exposed by the SEC Order continued at full throttle, with Pictet continuing to effect the very transactions that it knew would destroy the value of its clients' Investment Accounts.

156. Pictet saw many other indications of problems with the Notes. In July 2016, Pictet experienced failed trades relating to one of the Notes. In particular, an attempted sale of GMS Global Market Notes with Biscayne Capital as counterparty failed for more than a month. These Notes, in which a Biscayne-related Company had a direct proprietary interest, were specifically identified in the SEC Order.

157. Pictet saw that Biscayne-related Companies were on all sides of this transaction, as the investment manager on the account, the counterparty to the failed trade, and the proprietary beneficiary of the Notes – the proceeds of which were to be invested in South Bay, which owns several of the Biscayne-related Companies. Therefore, Pictet knew that a Biscayne Capital representative was using his authority over a Pictet account to invest its funds in

proprietary products issued by a related Biscayne entity, and that Biscayne Capital, as the counterparty to the trade, could not complete the trade. This was not simply a case of Pictet blindly following orders; it had notice of a failed transaction involving the same parties about which it had expressed concern.

158. By April 2017, Pictet had received alarming complaints about the Biscayne-related Companies. In an April 10, 2017 email, another Biscayne Capital client wrote to Alejandro Duvillard of Pictet to express concerns about the GMS Notes and the lack of response from Biscayne Capital. Instead of taking action against Biscayne Capital or warning other account holders whose accounts were managed by Biscayne Capital in response to the complaint, Duvillard forwarded the email to Pictet's "partner," Biscayne Capital, noting (emphasis supplied): "If the pressure continues to increase I'm going to have to take it to the bosses and I don't know what we will do ***since it will be another black mark for Biscayne***. I ask that we find a solution to this problem."

159. By May 2017, Pictet had experienced three additional failed trades with Biscayne Capital as counterparty because the latter was "short of cash." Biscayne Capital was unable to settle these trades for at least two months.

160. In October 2017, Pictet took the extraordinary step of advising Biscayne Capital of multiple customer complaints relating to the GMS Global Market notes, and asking Biscayne Capital to provide guarantees "that Clients are treated fairly according to market's practice." Pictet did not receive even these figleaf assurances.

161. Still, Pictet chose not to stop the Principals or the Biscayne-related Companies or to alert its customers, including the plaintiff Mirta Romay or, upon information and belief, Rose or Silesia.

162. In an internal Pictet email, dated 18 December 2017, Jean-Marc Vannay, the Head of Client Support, discussed more than $1,700,000 in failed trades, each of which concerned the Notes. Mr. Vannay indicated that Pictet was seeking a way to avoid cancelling the trades, and wanted to "arrange with the counterparty," Biscayne Capital, to change the trade dates.

163. Thus Pictet worked "under the radar" with its partner Biscayne Capital to hide the troubling issues with the Notes and to avoid contacting the beneficial owners of the Investment Accounts to inform them that they were the victims of a fraud.

164. As a result of the failed trades involving the Notes, Pictet knew the following:

a. there were unauthorized overdrafts on the Investment Accounts;

b. the overdrafts were generated by investment instructions on Biscayne-related Companies' proprietary products, the same proprietary products that were the subject of the SEC Order;

c. the continuing overdrafts were evidence that the Notes were not saleable and lacked value;

d. there was no contact with Pictet's account holders;

e. despite its requests, Pictet had been provided no factual details about the Notes.

165. In the face of this situation, Pictet suggested to Biscayne Capital in a May 1, 2018 email that "Biscayne generate deals to cover the overdraft."

166. In other words, Pictet advised Biscayne Capital *to keep the Ponzi scheme going by finding new investors to fleece*. While Pictet allowed the Rose and Silesia accounts to be looted, other banks, including at least one other Swiss bank, were refusing to do business with Biscayne Capital.

167. By the end of April 2018, the Rose and Silesia accounts held illiquid Notes with an approximate face value of $34 million. On April 30, 2018, Pictet, unable to complete the ongoing failed trades, marked the value of the Notes down to $0 "to reflect the lack of liquidity on the Bank's statements." Far too late, Pictet admitted what it had known all alone – the Notes were worthless and their clients' investments had been lost.

THE DEUTSCHE BANK AND INSIGHT ACCOUNTS

168. Plaintiff Diego Romay is the beneficial owner of Rado, which owns an Investment Account with Deutsche Bank that was controlled by Haberer acting on behalf of Biscayne Capital. Plaintiffs Cynthia Levi, I.R., O.R., and L.R., are the beneficial owners of Clodi, which owns an Investment Account with Insight that was controlled by Haberer acting through defendant Total Advisors, with which Clodi signed an investment management agreement.

169. Haberer, through defendant Total Advisors, caused Clodi to invest approximately $1 million in one of the Notes, specifically, IA Capital Structures (Ireland) PLC. The remainder of the Clodi account was made up of conservative investments, including highly liquid bonds issued by companies that trade on a U.S. stock exchange, worth approximately $5 million.

170. Haberer, through Biscayne Capital, caused Rado to invest millions of dollars in the Notes, including several of the same Notes addressed in the SEC Order, specifically SG Strategic Income, Ltd. and GMS Global Market Step Up Note, Ltd.

171. Amicorp had fiduciary obligations with respect to both accounts but allowed them to be looted through investments in the Notes without ever alerting plaintiffs.

172. In January 2018, several failed trades with Biscayne Capital involving the Notes in the Deutsche Bank Investment Account resulted in an overdraft in that account of over $12 million.

173. Deutsche Bank gave Haberer several months to cover the overdraft. As pressure mounted, Haberer scrambled to find funding, causing funds and securities to be transferred to the Rado account from several sources, including the Clodi Investment Account, as well as other client accounts.

174. Haberer sent Insight forged transfer instructions dated March 8 and March 15, 2018, requesting the transfer of nearly the entire balance of the Clodi account. As a result, these securities were transferred to the Rado account.

175. Upon receipt of the securities, Deutsche Bank sold them to partially cover the overdraft in the Rado account.[2]

SGG MANAGEMENT (BVI) LTD.'S ROLE

176. Defendant SGG operates as a trust and corporate services organization.

177. SGG agreed to play and did play a variety of roles in the overall fraudulent scheme orchestrated by Roberto Cortes, Juan Carlos Cortes, Weisson and Haberer.

178. SGG managed the companies that issued the Notes, and as the sole director of these companies, SGG supervised the affairs of these companies.

179. SGG provided essential services in the scheme to Roberto Cortes, Juan Carlos Cortes, Weisson and Haberer by having one of its managers, Herman T. Oosten, act as the sole director of Biscayne Capital Holdings Ltd.

180. The Principals, in order to disguise the scheme, determined to set up a labyrinth of companies and trusts to create the illusion of distance between them personally and the issuance and administration of the Notes.

[2] In July 2018, Deutsche Bank filed suit against Rado in the United States District Court for the Southern District of New York seeking to collect the remaining overdraft in the Rado account. On September 12, 2018, Rado filed counterclaims against Deutsche Bank in that action.

181. SGG played multiple roles in this labyrinth, including its role as the sole director of North Pointe Holdings Ltd., the majority owner of Biscayne Capital Holdings Limited.

182. SGG also acted as the Protector of SBH Assets Trust, as well as Protector of the Vanguardia Trust. Vanguardia Holdings Ltd. is a British Virgin Islands company set up within the scope of the Vanguardia Trust. The day-to-day management of Vanguardia Holdings Ltd. was with its Board of Directors, that is, SGG.

183. Because of its multiple roles, SGG was fully aware of the fraudulent activities of the companies that issued the Notes, and in particular, was fully aware of the lack of financial statements, the lack of audited records, the negative position of the trust assets, the absence of businesslike financial controls, in short, a complete lack of any indicia that these were *bona fide* companies.

184. SGG was also aware that holders of the Notes were raising complaints and concerns, and yet, even though it was the Protector of the Vanguardia and SBH trusts, it did nothing to protect the interests of the beneficiaries of the trusts. It protected nothing and no one, other than itself.

185. Instead, SGG made its name, reputation, and status as a regulated entity available to the Principals so that they could use SGG to create a patina of legitimacy for the various trusts and companies that they created to carry out their fraudulent scheme.

AMICORP NZ, AMICORP TRUSTEES (NEW ZEALAND) LIMITED, AND AMICORP MANAGEMENT LIMITED CONTINUE TO OWE FIDUCIARY DUTIES TO MIRTA ROMAY AND DIEGO ROMAY AND CANNOT HARM THEIR INTERESTS BECAUSE OF THE PENDENCY OF THIS LAWSUIT

186. Mirta Romay and Diego Romay, along with the other plaintiffs, are beneficiaries of trusts for which Amicorp Trustees (New Zealand) Limited is the trustee. By virtue of its role

as trustee for these trusts, Amicorp Trustees (NZ) Limited owes, *inter alia*, continuing fiduciary duties to Mirta Romay and Diego Romay.

187. Given what Diego Romay and Mirta Romay have learned about Amicorp's conduct as trustee, the protectors of the trusts described elsewhere in this complaint are considering appointing a replacement trustee for Amicorp Trustees (NZ) Limited (in which trust property would be vested) and taking other administrative steps to avoid further harm to the beneficiaries' interests, including having a disinterested party in charge of the trust assets.

188. These steps require and will continue to require cooperation from Amicorp Trustees (NZ) Limited which it is obligated to provide.

189. To date, Amicorp Trustees (NZ) Limited has been very slow in providing the necessary cooperation, and has taken weeks or more to respond to routine requests.

190. In the recent past, Amicorp Trustees (NZ) Limited or an affiliated company, in direct violation of its fiduciary duties, declined to respond to administrative requests on the basis that Diego Romay's attorneys had taken an "adversarial approach" to Amicorp Trustees (NZ) Limited. Given its central role in the fraud, Amicorp should not be surprised that there is an actual adversity of interest between the defrauded plaintiffs and Amicorp.

191. Amicorp Trustee (NZ) Limited nevertheless has a continuing fiduciary obligation to cooperate with requests from Diego Romay and Mirta Romay to transfer funds to disinterested institutions, and to refrain from interfering in the efforts of Diego Romay and Mirta Romay to disentangle their financial affairs from Amicorp Trustee (NZ) Limited, which has acted tortiously as alleged in the instant complaint.

192. That Diego Romay and Mirta Romay have brought claims against Amicorp Trustees (NZ) Limited for past conduct does not give Amicorp Trustees (NZ) Limited the right to interfere in the intended transfer of trust assets or responsibilities. To the contrary, such

interference would be in bad faith, would be a further violation of Amicorp Trustees (NZ) Limited's continuing fiduciary obligations, and would cause additional and irreparable harm to Diego Romay and Mirta Romay. Diego Romay and Mirta Romay refer to clause 6.7 of the Diego II Trust Deed by way of example (other trusts are also at issue in this complaint), which requires (in summary) a former trustee to execute all documents and perform all other acts or things necessary for vesting the trust property in the new trustee.

193. Rado LP and Clodi Holdings Limited, which are two companies or partnerships which are held within the trust structures, have granted limited powers of attorney to Diego Romay and Jose Luis Marcelo Elkes, respectively, as protectors of the trusts that own those companies.

194. These powers of attorney relate to a litigation pending in New York and to an arbitration before the Financial Industry Regulatory Authority.

195. The power of attorney for Clodi Holdings Limited was signed by Amicorp Management Limited.

196. The power of attorney for Rado LP was signed by managers employed by Amicorp Management Limited and/or Amicorp NZ Limited.

197. The powers of attorney were designed to ensure that litigation and arbitration could be pursued to the benefit of the trusts and the beneficiaries of the trusts.

198. Amicorp NZ Limited and Amicorp Management Limited have fiduciary and other duties with respect to the companies and partnerships, such as Clodi Holdings Limited and Rado LP, for which they provided directorial and management services.

199. To that end, Amicorp Management Limited and/or Amicorp NZ Limited should not, in response to or in retaliation for the filing of the instant complaint, revoke the powers of

attorney or otherwise interfere in the litigation and/or arbitration. Any such action would be in bad faith and would cause additional and irreparable harm to Diego Romay.

200. Diego Romay and Mirta Romay, as part of the process of disentangling their financial affairs from Amicorp Trustees (NZ) Limited, intend to prepare a Deed of Resignation or Deed of Removal. These documents may be necessary so that a new trustee can be appointed.

201. Consistent with its fiduciary obligations, Amicorp Trustee (NZ) Limited should agree to sign the Deed of Resignation or Deed of Removal, and should not condition its signature on the receipt of any waiver of future legal action against Amicorp Trustee (NZ) Limited, or upon the receipt of an indemnity, as through the imposition of such condition, Amicorp Trustee (NZ) Limited would be acting in bad faith and would be leveraging its role as a trustee to insulate itself from liabilities to which it is properly subject given its conduct as alleged in the instant complaint.

202. Plaintiffs make these allegations based upon a good faith belief given prior interaction with Amicorp Trustees (NZ) Limited that it intends directly or indirectly to refuse to perform its fiduciary obligations in order to create pressure on Plaintiffs not to pursue their legitimate rights and remedies in the instant action.

203. Should Amicorp Trustee (NZ) Limited or Amicorp Management Limited or Amicorp NZ Limited in the future violate any of their continuing fiduciary duties, including those duties discussed herein, Plaintiffs will seek damages for any and all injuries incurred and will seek declaratory or injunctive relief to prevent those entities from attempting to leverage their residual role as a fiduciary to pressure Plaintiffs with respect to the pursuit of their claims.

COUNT I – BREACH OF FIDUCIARY DUTY
(*As to Fernando Haberer*)

204. Plaintiffs incorporate each and every allegation set forth above as if fully set forth herein.

205. Fernando Haberer, by virtue of his position as a financial adviser to plaintiffs, owed a fiduciary duty to plaintiffs.

206. A relation of trust and confidence existed between, on the one hand, plaintiffs, and, on the other hand, Haberer. Plaintiffs reposed trust and confidence in Haberer, and Haberer accepted that relationship of trust and confidence.

207. Haberer was required to discharge his fiduciary duties:

a. In good faith;

b. With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

c. In a manner he reasonably believed to be in the best interests of plaintiffs.

208. Haberer breached his fiduciary duty to plaintiffs by, among other actions:

a. Causing Investment Accounts maintained within the Romay Family Trust structures to invest in Notes that Haberer knew were worthless or nearly worthless;

b. Lying to Mirta Romay and Diego Romay, who acted on behalf of themselves and the other plaintiffs who were their family members and the other beneficiaries of the Romay Family Trusts, about the nature of the investments in the Investment Accounts;

c. Providing falsified spreadsheets purporting to reflect the Investment Account holdings to Mirta Romay and Diego Romay;

d. Acting under a conflict of interest by causing the Investment Accounts to invest in Notes issued by companies controlled by Biscayne Capital;

e. Engineering, by means of forged letters of instruction, the theft of investments from the Insight account and failing to advise Cynthia Romay, I.R., O.R. and L.R. of the thefts;

f. Receiving payments from Amicorp for steering Mirta Romay and Diego Romay to use Amicorp as the trustee for the Romay Family Trusts;

g. Failing to advise Mirta Romay, Ariel Tobi, and Anali Tobi of the failed trades occurring within the Investment Accounts maintained at Pictet;

h. Failing to advise Diego Romay of the failed trades occurring with the Investment Account maintained at Deutsche Bank;

h. Paying kickbacks to an Amicorp employee to cause the employee to act adversely to the interests of the Romay Family Trusts and of the plaintiffs who are the beneficiaries.

209. Haberer did not act in good faith when he undertook each of the above stated acts.

210. Haberer did not use ordinary care when he undertook each of the above stated acts.

211. Haberer did not have a reasonable belief that he was acting in the best interests of plaintiffs when he undertook each of the above stated acts.

212. Haberer's breach of his fiduciary duties to plaintiffs proximately caused injuries to the Romay Family Trusts and thereby caused injury to plaintiffs, who are the beneficiaries of the Trusts.

213. WHEREFORE, plaintiffs request judgment against the Count I Defendant awarding compensatory damages, interest, and for such further relief as the Court deems just and proper. Moreover, the acts of the Count I Defendant as described in this Complaint were willful, wanton, malicious and oppressive or, alternatively, were so reckless as to constitute a conscious disregard or indifference to plaintiffs' rights, and therefore justify the award of punitive damages.

COUNT II – AIDING AND ABETTING BREACH OF FIDUCIARY DUTY
(As to Amicorp Trustees (New Zealand) Limited, Amicorp (BVI) Trustees Ltd., Amicorp Mexico S.A. de C.V. Sofom Enr., Amicorp (Barbados) Ltd., Amicorp Curaçao B.V., Amicorp Management Limited, Amicorp New Zealand Limited, and Juan Pablo Demichelis)

214. Plaintiffs incorporate each and every allegation set forth above as if fully set forth herein.

215. Haberer owed fiduciary duties to plaintiffs.

216. Haberer breached his fiduciary duties to plaintiffs.

217. Amicorp, through its various branches, and Demichelis understood that Haberer had a fiduciary relationship with plaintiffs.

218. Amicorp and Demichelis knew that Haberer, acting on behalf of investment managers Biscayne Capital and Total Advisors, was acting and had acted in serious and material breach of his fiduciary duties, including by reason of the following:

- Amicorp and Demichelis could see that Haberer caused the Investment Accounts to replace safe, highly liquid securities that fit within the investment mandates of the Investment Accounts with the Notes, and Amicorp and Demichelis knew, by virtue of being the trustee of the Vanguardia and SBH trusts, that the assets available to pay out the Notes were grossly inadequate;

- Amicorp and Demichelis knew, by virtue of the SEC Order and investigation leading to it, that Biscayne Capital was involved in a scheme to use its network of financial advisors to place the Notes in client accounts;
- Amicorp and Demichelis knew, as a result of communications with Pictet, that the Investment Accounts maintained at Pictet were being negatively impacted by failed trades; and
- Amicorp and Demichelis knew that Amicorp had made payments to Haberer to cause Haberer to bring the Romay Family Trust business to Amicorp.

219. Amicorp and Demichelis provided substantial assistance to Haberer. Without that assistance, Haberer would not have been able to carry out the breaches of his fiduciary duties to plaintiffs described herein. This substantial assistance included the following:

- Despite its affirmative duties under the trust documents and despite duties that flow directly from its role as a trustee for the Romay Family Trusts, Amicorp and Demichelis withheld from plaintiffs the highly unusual activity in the Investment Accounts;
- Amicorp and Demichelis failed to put a reasonable value on the Notes, despite stating in its account statements that it would do so;
- Amicorp and Demichelis withheld information about the failed trades from Mirta Romay, Ariel Tobi, and Anali Tobi when contacted by Pictet about the failed trades;

- Amicorp, through its directorships of the companies within the Romay Family Trust structures that held the Investment Accounts, and through its actions as a general partner of limited partnerships within the Romay Family Trust structures that held the Investment Accounts, enabled Haberer to loot the Investment Accounts.

220. Amicorp's and Demichelis's aiding and abetting Haberer's breaches of his fiduciary duties to plaintiffs proximately caused injuries to the Romay Family Trusts and thereby caused injury to plaintiffs, who are the beneficiaries of the Trusts.

221. WHEREFORE, plaintiffs request judgment against the Count II Defendants awarding compensatory damages, interest, and for such further relief as the Court deems just and proper. Moreover, the acts of the Count II Defendants as described in this Complaint were willful, wanton, malicious and oppressive or, alternatively, were so reckless as to constitute a conscious disregard or indifference to plaintiffs' rights and therefore justify the award of punitive damages.

COUNT III – AIDING AND ABETTING BREACH OF FIDUCIARY DUTY
(As to Pictet)

222. Plaintiffs incorporate each and every allegation set forth above as if fully set forth herein.

223. Haberer owed fiduciary duties to Mirta Romay, Ariel Tobi, and Anali Tobi.

224. Haberer breached his fiduciary duties to Mirta Romay, Ariel Tobi, and Anali Tobi.

225. Pictet understood that Haberer had a fiduciary relationship with Mirta Romay.

226. Pictet knew that Haberer was acting and had acted in serious and material breach of his fiduciary duties to Mirta Romay, including by reason of the following:

- Pictet knew that Haberer represented Biscayne Capital and that Biscayne Capital was the investment manager for the Investment Accounts at Pictet;
- Pictet was fully aware of the SEC Order, which detailed the playbook by which Biscayne Capital used its stable of financial advisors to defraud the clients of those financial advisors;
- Pictet could see that Haberer, acting on behalf of Biscayne Capital, was selling traditional, conservative investments in the Rose and Silesia accounts and replacing them with the Notes, which were Biscayne Capital proprietary products, and which Pictet knew were worthless or virtually so;
- Upon execution of Haberer's sale instructions, Pictet experienced failed trades relating to the Notes, which indicated that the Notes were not saleable and that Biscayne Capital was financially unstable; and
- Pictet received multiple complaints about Biscayne Capital and the Notes from other clients of Biscayne Capital who had accounts at Pictet, and Pictet chose not to act on those complaints but instead to continue to conspire with Haberer, acting on behalf of Biscayne Capital.

227. Pictet provided substantial assistance to Haberer, and without that assistance, Haberer would not have been able to carry out the breaches of his fiduciary duties to plaintiffs described herein. This substantial assistance included:

- Permitting the use of Pictet's custodial accounts, including the Rose and Silesia accounts, to purchase Notes that had been publicly identified by the SEC as part of an illegitimate investment scheme;

- Permitting the use of Pictet's custodial accounts as part of a scheme whereby Biscayne Capital used its network of financial advisors to hijack client accounts with the result that these accounts "invested in" the Notes, which were Biscayne Capital proprietary products, and which were worthless or virtually so;
- Enabling Haberer and the Biscayne-related entities to use Pictet's reputation as a purportedly respectable Swiss bank to create a patina of respectability for these illegal operations;
- Withholding from the beneficial owners of the Silesia and Rose accounts and, on information and belief, the account holders, the fact that the accounts were being looted as part of Haberer's scheme; and
- Permitting Biscayne Capital to continue to operate as a counterparty in the trades initiated by Haberer, acting on behalf of Biscayne Capital, with respect to Notes, even after a series of failed trades, and even after the publication of the SEC Order.

228. Mirta Romay, Ariel Tobi, and Anali Tobi incurred catastrophic financial damage as a proximate result of Haberer's breaches of fiduciary duty, damages that are equally attributable to Pictet's actions in aiding and abetting these breaches.

229. WHEREFORE, plaintiffs request judgment against the Count III Defendant awarding compensatory damages, interest, and for such further relief as the Court deems just and proper. Moreover, the acts of the Count III Defendant as described in this Complaint were willful, wanton, malicious and oppressive or, alternatively, were so reckless as to constitute a conscious disregard or indifference to plaintiffs' rights, and therefore justify the award of punitive damages.

COUNT IV – AIDING AND ABETTING BREACH OF FIDUCIARY DUTY
(As to Roberto G. Cortes, Juan Carlos Cortes, Ernesto H. Weisson, and Evolution Consulting Partners Ltd.)

230. Plaintiffs incorporate each and every allegation set forth above as if fully set forth herein.

231. Haberer owed fiduciary duties to plaintiffs.

232. Haberer breached his fiduciary duties in the manner that is described in this Complaint and in Count I.

233. Roberto Cortes, Juan Carlos Cortes, Weisson, and Evolution Consulting knew that Haberer had a fiduciary relationship with plaintiffs.

234. Roberto Cortes, Juan Carlos Cortes, Weisson, and Evolution Consulting knew that Haberer was acting and had acted in serious and material breach of his fiduciary duties to plaintiffs.

235. Roberto Cortes, Juan Carlos Cortes and Weisson, at times through Evolution Consulting, controlled Biscayne Capital, and knew about and actively encouraged Haberer's unlawful actions with respect to the Investment Accounts, including by offering Haberer financial incentives if he would make the accounts "available" for the purchase of the Notes.

236. Roberto Cortes, Juan Carlos Cortes, Weisson, and Evolution Consulting provided substantial assistance to Haberer, including:

- Enabling Haberer to use Biscayne Capital's network of banking and broker-dealer relationships, including relationships with Pictet;
- Enabling Haberer to present himself to clients and prospective clients as being employed by or associated with Biscayne Capital;
- Directing Haberer to find client funds to be siphoned from their legitimate investments into the Notes to continue the Ponzi scheme;

- Enabling Haberer to utilize the back office capabilities of the Biscayne-related Companies to effectuate the purchases of the Notes; and
- Enabling Biscayne Capital to act as counterparty in trades involving the Notes.

237. As a proximate result of Haberer's breaches of fiduciary duty, as aided and abetted by Roberto Cortes, Juan Carlos Cortes, Weisson, and Evolution Consulting, plaintiffs suffered damages.

238. WHEREFORE, plaintiffs request judgment against the Count IV Defendants awarding compensatory damages, interest, and for such further relief as the Court deems just and proper. Moreover, the acts of the Count IV Defendants as described in this Complaint were willful, wanton, malicious and oppressive or, alternatively, were so reckless as to constitute a conscious disregard or indifference to plaintiffs' rights, and therefore justify the award of punitive damages.

COUNT V – CONSPIRACY TO COMMIT BREACH OF FIDUCIARY DUTY
(Against All Defendants)

239. Plaintiffs incorporate each and every allegation set forth above as if fully set forth herein.

240. Defendants are parties to a civil conspiracy.

241. Defendants entered into an illicit agreement and conspiracy to have Fernando Haberer breach his fiduciary duties to plaintiffs, by causing the Investment Accounts to invest in the Notes.

242. Defendants committed overt acts in furtherance of their conspiracy including the following:

- Amicorp conspired with Roberto Cortes, Juan Carlos Cortes, and Weisson, at times acting through Evolution Consulting, to set up woefully undercapitalized trusts in the British Virgin Islands so as to enable Roberto Cortes, Juan Carlos Cortes, and Weisson to continue to market the Notes;
- Amicorp conspired with Haberer to enable him to swap out conservative liquid investments from the Investment Accounts held within the Romay Family Trust structure and replace these with the Notes, and Amicorp failed to advise plaintiffs that this had happened; and
- Pictet conspired with Haberer to permit Haberer to transfer the Notes into custodial accounts at Pictet.

243. WHEREFORE, plaintiffs request judgment against the Count V Defendants awarding compensatory damages, interest, and for such further relief as the Court deems just and proper. Moreover, the acts of the Count V Defendants as described in this Complaint were willful, wanton, malicious and oppressive or, alternatively, were so reckless as to constitute a conscious disregard or indifference to plaintiffs' rights, and therefore justify the award of punitive damages.

COUNT VI – FRAUDULENT SCHEME

(As to Fernando Haberer, Roberto G. Cortes, Juan Carlos Cortes, Ernesto H. Weisson, Total Advisors LLC, South Bay Holding LLC, Biscayne Group Holdings LLC, Evolution Consulting Partners Ltd.),

244. Plaintiffs incorporate each and every allegation set forth above as if fully set forth herein.

245. Each of the above-named Defendants participated in the fraudulent scheme described herein and participated in structuring and operating the entities that issued the Notes.

246. Each of the above-named Defendants knew that the assets backing the Notes were woefully insufficient and that the Notes had little or no value.

247. Each of the above-named Defendants participated in the scheme to distribute the Notes to clients of financial advisors who were affiliated with one or more of the Biscayne-related Companies and assisted each other in the distribution of such Notes. These clients included plaintiffs.

248. Each of the above-named Defendants knew that the Notes were distributed using fraudulent and dishonest methods, and by means of false statements of material facts, and by fraudulent omission of material facts.

249. The Plaintiffs were targets of this scheme, and as a result of this scheme, the Investment Companies were caused to purchase the Notes. The Plaintiffs relied upon the truthfulness and completeness of the representations made to them, and relied upon the above-named Defendants to fully disclose all material facts pertinent to the transactions at issue, and each of the above-named Defendants intended that the Plaintiffs would so rely.

250. The Notes were and are worthless or virtually worthless, as a proximate result of which the Plaintiffs, who relied upon the truthfulness and completeness of representations made to them, and relied upon the above-named Defendants to fully disclose all material facts, have been injured.

251. While participating in this scheme, these Defendants had actual knowledge of the wrongfulness of the scheme and the high probability that the scheme would damage the Plaintiffs, and, despite that knowledge, intentionally pursued the fraudulent scheme, and thereby caused great damage to the Plaintiffs.

252. WHEREFORE, plaintiffs request judgment against the Count VI Defendants awarding compensatory damages, interest, and for such further relief as the Court deems just and

proper. Moreover, the acts of the Count VI Defendants as described in this Complaint were willful, wanton, malicious and oppressive or, alternatively, were so reckless as to constitute a conscious disregard or indifference to plaintiffs' rights, and therefore justify the award of punitive damages.

COUNT VII – CONSPIRACY TO DEFRAUD
(As to Fernando Haberer, Roberto G. Cortes, Juan Carlos Cortes, Ernesto H. Weisson, Total Advisors LLC, South Bay Holding LLC, Biscayne Group Holdings LLC, Evolution Consulting Partners Ltd., Amicorp Trustees (New Zealand) Limited, Amicorp (BVI) Trustees Ltd., Amicorp Mexico S.A. de C.V. Sofom Enr., Amicorp (Barbados) Ltd., Amicorp Curaçao B.V., Amicorp Management Limited, Amicorp New Zealand Limited, Juan Pablo Demichelis, and SGG)

253. Plaintiffs incorporate each and every allegation set forth above as if fully set forth herein.

254. As is detailed above, the foregoing Defendants conspired and agreed at numerous times and on various dates and in various places to participate in the fraudulent scheme and achieve its objectives, as alleged, and to hide the proceeds in false names and in jurisdictions where they would not be available for payments due under the Notes. Each such Defendant performed overt acts as detailed above in the furtherance of the conspiracy.

255. While conspiring and agreeing to participate in the fraudulent scheme, these Defendants had actual knowledge of the wrongfulness of the scheme and the high probability that the scheme would damage the Plaintiffs and, despite that knowledge, intentionally pursued the conspiracy, damaging the Plaintiffs.

256. WHEREFORE, plaintiffs request judgment against the Count VII Defendants awarding compensatory damages, interest, and for such further relief as the Court deems just and proper. Moreover, the acts of the Count VII Defendants as described in this Complaint were willful, wanton, malicious and oppressive or, alternatively, were so reckless as to constitute a

conscious disregard or indifference to plaintiffs' rights, and therefore justify the award of punitive damages.

COUNT VIII –FRAUD
(As to Fernando Haberer)

257. Plaintiffs incorporate each and every allegation set forth above as if fully set forth herein.

258. While serving as investment advisor to plaintiffs, Haberer committed the following misrepresentations or omissions of material fact in causing the Investment Accounts to purchase the Notes.

a. Misrepresenting the securities that were purchased by the Investment Accounts;

b. Failing to disclose to Plaintiffs that the Investment Accounts had purchased the Notes and failing to provide a prospectus concerning the Notes;

c. Providing to Diego Romay and Mirta Romay on a regular basis excel spreadsheets that were represented to reflect the holdings in the Investment Accounts, but that were false, and did not disclose the purchase of the Notes;

d. Failing to disclose the financial incentives to Haberer to compensate him for causing the Investment Accounts to purchase the Notes;

e. Failing to disclose the payments that Haberer received from Amicorp for bringing the Romay Family Trust business to Amicorp;

e. Failing to disclose the kickbacks paid by Haberer to Demichelis; and

e. Failing to disclose that the Investment Accounts were being used to purchase Notes from accounts of other clients who had complained about the Notes.

259. Each of the foregoing misrepresentations or omissions of material fact occurred with the intent of Haberer to defraud plaintiffs and to cause the Investment Accounts to purchase the Notes, which Haberer knew had little or no value.

260. As to each of the foregoing misrepresentations of material fact, Haberer made them with the specific intent and actual knowledge of either their materiality, or in reckless disregard of same, to cause the Investment Accounts to purchase the Notes.

261. As to each of the foregoing omissions of material fact, Haberer failed to disclose them to Plaintiffs with the specific intent and actual knowledge of either their falsity, or in reckless disregard of same, to cause the Investment Accounts to purchase the Notes.

262. Each of the foregoing misrepresentations or omissions occurred on a regular and continuous basis commencing from the time of the first purchase of the Notes through the first quarter of 2018.

263. The representations and omissions took place during personal meetings between Plaintiffs and Haberer in person, by email, and by telephone, primarily in Buenos Aires, Argentina, commencing from the time of the first purchase of the Notes through the first quarter of 2018.

264. Plaintiffs reasonably relied to their detriment on the representations and omissions of Haberer.

265. As a direct and proximate result of the foregoing misrepresentations and omissions by Haberer, Plaintiffs have suffered actual and special damages.

266. Plaintiffs further seek an award of punitive damages against Haberer based upon his willful and malicious conduct orchestrated against Plaintiffs. This course of conduct comprised not just one instance of willful and malicious conduct, but as stated above, comprised an ongoing and systematic pattern, any instance of which would independently support an award of punitive damages, the cumulative effect of which demonstrates extremely egregious behavior.

267. WHEREFORE, plaintiffs request judgment against the Count VIII Defendant awarding compensatory damages, interest, and for such further relief as the Court deems just and proper. Moreover, the acts of the Count VIII Defendant as described in this Complaint were willful, wanton, malicious and oppressive or, alternatively, were so reckless as to constitute a conscious disregard or indifference to plaintiffs' rights, and therefore justify the award of punitive damages.

COUNT IX – AIDING AND ABETTING A FRAUDULENT SCHEME

(As to Amicorp Trustees (New Zealand) Limited, Amicorp (BVI) Trustees Ltd., Amicorp Mexico S.A. de C.V. Sofom Enr., Amicorp (Barbados) Ltd., Amicorp Curaçao B.V., Amicorp Management Limited, Amicorp New Zealand Limited, and Juan Pablo Demichelis)

268. Plaintiffs incorporate each and every allegation set forth above as if fully set forth herein.

269. As described further above, and in particular in Count VI, Haberer and certain other Defendants engaged in a fraudulent scheme to market and distribute the Notes to clients of financial advisors affiliated with one or more of the Biscayne-related Companies. These clients included plaintiffs.

270. Amicorp and Demichelis had knowledge of this fraudulent scheme, including by reason of the following:

- Amicorp and Demichelis knew, by virtue of Amicorp being trustee of the Vanguardia and SBH trusts, that the assets available to pay out the Notes were grossly inadequate;
- Amicorp and Demichelis knew, by virtue of the SEC Order and investigation leading to it, that Biscayne Capital was involved in a scheme to use its network of financial advisors to place the Notes in client accounts;
- Amicorp and Demichelis knew of unusual and irregular activity in the Investment Accounts, in that conservative, highly liquid assets were being sold and then replaced with the Notes; and
- On information and belief, Amicorp acted as the trustee for numerous other clients, who used financial advisors associated with some of the Biscayne-related Companies, and knew that the same unusual and irregular activity was taking place across all these accounts.

271. Amicorp and Demichelis provided substantial assistance to the Defendants who were engaged in this fraudulent scheme, including by:

- Acting as the trustee for the Vanguardia and SBH trusts, even though Amicorp knew these trusts were woefully undercapitalized;
- Providing services, such as directorship services, to various of the corporate entities created by the Principals, knowing that such entities were created in furtherance of the scheme to issue and market the Notes;
- Through Amicorp's directorships of the companies within the Romay Family Trust structures that held the Investment Accounts, and through its

actions as a general partner of limited partnerships within the Romay Family Trust structures that held the Investment Accounts, enabling Haberer to loot the Investment Accounts.

272. Plaintiffs incurred substantial injury as a proximate result of the fraudulent scheme, as aided and assisted by Amicorp and Demichelis.

273. WHEREFORE, plaintiffs request judgment against the Count IX Defendants awarding compensatory damages, interest, and for such further relief as the Court deems just and proper. Moreover, the acts of the Count IX Defendants as described in this Complaint were willful, wanton, malicious and oppressive or, alternatively, were so reckless as to constitute a conscious disregard or indifference to plaintiffs' rights, and therefore justify the award of punitive damages.

COUNT X – AIDING AND ABETTING A FRAUDULENT SCHEME
(As to SGG)

274. Plaintiffs incorporate each and every allegation set forth above as if fully set forth herein.

275. As described further above, and in particular in Count VI, Haberer and certain other Defendants engaged in a fraudulent scheme to market and distribute the Notes to clients of financial advisors affiliated with one or more of the Biscayne-related companies. These clients included plaintiffs.

276. SSG had knowledge of this fraudulent scheme, including by reason of the following:

- SSG knew, as Protector of the Vanguardia and SBH trusts, that the assets available to pay out the Notes were grossly inadequate;

- SGG knew, by virtue of the SEC Order, that Biscayne Capital was involved in a scheme to use its network of advisors to place the Notes in client accounts; and
- SGG knew, by virtue of its role as the Director of North Pointe Holdings Ltd., as Director of Biscayne Capital Holdings Limited, as Director of Vanguardia Holdings Ltd., as well as its directorships of the Cayman Island companies that issued the Notes, that these companies were not being operated as *bona fide* companies, but rather were operated in such a way to constitute a fraud on the purchasers of the Notes.

277. SGG provided substantial assistance to the Defendants who were engaged in this fraudulent scheme, including by:

- Acting as the Protector for the Vanguardia and SBH trusts, even though it knew these trusts were woefully undercapitalized;
- Providing services, such as directorship services, to corporate entities created by the Principals, knowing that such entities were created in furtherance of the scheme to issue and market the Notes; and
- Failing to take any steps, either through various directorships, or by reason of its position as the Protector of the Vanguardia and SBH trusts, to prevent or refuse to participate in the Defendants' fraudulent scheme.

278. Plaintiffs incurred substantial injury as a proximate result of the fraudulent scheme, as aided and assisted by SGG.

279. WHEREFORE, plaintiffs request judgment against the Count X Defendant awarding compensatory damages, interest, and for such further relief as the Court deems just and proper. Moreover, the acts of the Count X Defendant as described in this Complaint were

willful, wanton, malicious and oppressive or, alternatively, were so reckless as to constitute a conscious disregard or indifference to plaintiffs' rights, and therefore justify the award of punitive damages.

COUNT XI – BREACH OF FIDUCIARY DUTY
(As to Amicorp B.V.I. and relating to the Vanguardia and SBH Asset Trusts)

280. Plaintiffs incorporate each and every allegation set forth above as if fully set forth herein.

281. Amicorp B.V.I., by virtue of its role as the trustee of SBH Asset Trust and the Vanguardia Trust, owed fiduciary duties to the beneficiaries of those trusts.

282. The beneficiaries of these trusts are any individual or corporate holder of the Notes issued by the Cayman Island companies that were established by the Defendants to issue the Notes ("Note Holders").

283. Plaintiffs are the beneficiaries of trusts that hold, either directly or indirectly, the Notes that are the beneficiaries of the Vanguardia and SBH Asset Trusts. Therefore, plaintiffs are Note Holders.

284. Amicorp B.V.I. breached its fiduciary duties to the Note Holders, including plaintiffs, by, among other acts and omissions:

- Failing to ensure that there were sufficient assets to pay off the Notes;
- Failing to communicate the financial situation of the SBH Asset and Vanguardia trusts to the beneficiaries;
- Failing to monitor and protect the assets held within the two Trusts;
- Failing to operate the Trusts in a proper and legitimate manner; and
- Failing to take any actions in response to strong indicia of fraud affecting the operations of the two Trusts.

285. Amicorp B.V.I., by breaching its fiduciary duties, proximately caused Plaintiffs to incur large financial losses.

286. WHEREFORE, plaintiffs request judgment against the Count XI Defendant awarding compensatory damages, interest, and for such further relief as the Court deems just and proper. Moreover, the acts of the Count XI Defendant as described in this Complaint were willful, wanton, malicious and oppressive or, alternatively, were so reckless as to constitute a conscious disregard or indifference to plaintiffs' rights, and therefore justify the award of punitive damages.

COUNT XII – AIDING AND ABETTING AMICORP B.V.I.'S BREACH OF FIDUCIARY DUTY AS IT RELATES TO THE VANGUARDIA AND SBH ASSET TRUST
(As to SGG)

287. Plaintiffs incorporate each and every allegation set forth above as if fully set forth herein.

288. Amicorp B.V.I. owed fiduciary duties to the Note Holders as defined in Count XI. Plaintiffs were among the Note Holders.

289. SGG knew that Amicorp B.V.I. owed the Note Holders fiduciary duties.

290. As is further detailed in Count XI, Amicorp B.V.I. breached its fiduciary duties to the Note Holders.

291. By virtue of its multiple roles as the Protector of the two trusts, and as the Director of various companies within the trust structures, and the Director of the Cayman Island companies that issued the Notes, SGG knew that Amicorp had breached its fiduciary duties to the Note Holders.

292. SGG provided substantial assistance to Amicorp B.V.I.'s breach of its fiduciary duties to the Note Holders. This substantial assistance included:

- Acting as the Protector for the Vanguardia and SBH trusts, even though it knew these trusts were woefully undercapitalized;
- Providing services, such as directorship services, to various of the corporate entities created by the Principals, knowing the entities were created in furtherance of the scheme to issue and market the Notes; and
- Failing to take any steps, either through various directorships, or by reason of its position as the Protector of the Vanguardia and SBH trusts, to prevent the continuation of the fraudulent scheme.

293. As a proximate result of Amicorp B.V.I.'s breach of its fiduciary duties, as aided and assisted by SGG, Plaintiffs incurred substantial damages.

294. WHEREFORE, plaintiffs request judgment against the Count XII Defendant awarding compensatory damages, interest, and for such further relief as the Court deems just and proper. Moreover, the acts of Count XII Defendant as described in this Complaint were willful, wanton, malicious and oppressive or, alternatively, were so reckless as to constitute a conscious disregard or indifference to plaintiffs' rights and therefore justify the award of punitive damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand a judgment for compensatory and punitive damages, along with an award for reasonable attorneys' fees and costs, interest, and any other relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs demand trial by jury on all issues so triable.

Dated: October 16, 2018

Respectfully submitted,

LEWIS BAACH KAUFMANN MIDDLEMISS PLLC

By: /s/
Eric L. Lewis (*pro hac vice application to be filed)*
Elizabeth M. Velez (Bar No. 0073614)

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