

JUDGE JONES

10 CV 4537

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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Basis Yield Alpha Fund (Master)
Walker House, 87 Mary Street
Georgetown, Grand Cayman
Cayman Islands, KY1-9002
British West Indies

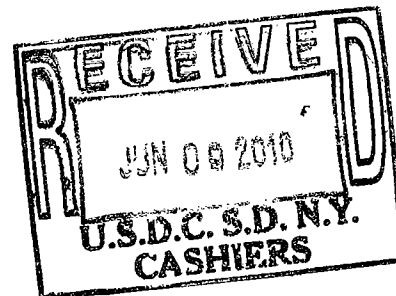
10 Civ. ()
(ECF Case)

Plaintiff,

COMPLAINT
JURY TRIAL DEMANDED

-against-

Goldman Sachs Group, Inc.
85 Broad Street
New York, NY 10004
Goldman Sachs & Co.
85 Broad Street
New York, NY 10004
Goldman Sachs International
85 Broad Street
New York, NY 10004
Goldman Sachs JBWere Pty. Ltd,
1 New York Plaza
New York, NY 10004



Defendants.

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Basis Yield Alpha Fund (Master) ("BYAFM"), through its attorneys, Baach Robinson & Lewis PLLC, as and for its Complaint, alleges:

The Genesis of Timberwolf – "one shitty deal"

1. BYAFM brings this securities fraud action against Goldman Sachs & Company and affiliated companies ("Goldman") for making materially misleading statements and omissions in connection with the sale of AA-rated securities at a price of approximately \$38.6 million and the sale of AAA-rated securities at a price of approximately \$42.1 million from a

collateralized debt obligation (“CDO”) known as Timberwolf 2007-1 (“Timberwolf”). Only two weeks after BYAFM purchased its investment in Timberwolf, the securities precipitously declined in value, leading to five margin calls over a two week period. As a result of BYAFM’s purchase of the Timberwolf securities and Goldman’s subsequent margin calls, BYAFM lost more than \$50 million. These losses forced BYAFM into insolvency.

2. By no later than December 2006, Goldman, at its highest levels, decided that the value of securities based upon subprime residential home mortgages would likely go into sharp decline, and that Goldman could profit by various means of shorting these securities, or at the very least, that Goldman should be an aggressive seller of such securities, so that Goldman would be in a position to repurchase the securities when they drastically declined in price.

3. For example, on December 15, 2006, David Viniar, who was Goldman’s Chief Financial Officer, sent an e-mail discussing subprime risk to Tom Montag, who was the head of Sales and Trading at Goldman. Mr. Viniar wrote “[o]n everything else my basic message was let’s be aggressive distributing things because there will be very good opportunities **as the markets goes into what is likely to be even greater distress** and we want to be in position to take advantage of them” (emphasis supplied).

4. Goldman’s view that the subprime market and securities based on it would go down dramatically was firmly held and widely disseminated within Goldman. Daniel Sparks, who was the head of the Mortgage Department at Goldman Sachs, stated that businesses that originated such mortgages would fail; as Mr. Sparks put it, this failure was a question of “when not if.” Goldman was so sure that failure was imminent that it bought put options on companies involved in originating such mortgages. Such put options would only be profitable if the originators’ stock price collapsed prior to the expiration date of the puts.

5. At the very same time, however, even as Goldman had decided that securities based on subprime mortgages would lose value, Goldman decided to put profits before integrity and continued to construct and market aggressively such securities to its clients while at the same time shorting the market. Mr. Sparks stated that “[b]usiness flows will continue – buy and securitize loans, ramp and execute CDOs. With extra focus on cleaning out left over positions.”

6. The Timberwolf security was a key part of the Goldman strategy of continuing the “business flow” of creating securities and thereby earning fees, while at the same time “cleaning out left over positions,” that is, dumping its inventory of toxic securities on customers while simultaneously providing a vehicle for Goldman to profit from the decline in value of such securities.

7. The Timberwolf marketing material provided by Goldman to BYAFM, as well as the specific statements made by Goldman, both in writing and orally, were designed both by omission and false and misleading statements to disguise and cover up that Timberwolf was a key plank in Goldman’s strategy to “clean out” positions and otherwise to short the market for such securities so that Goldman could be in a position to gain advantage when the market went into distress, *i.e.*, when the value of the securities declined as Goldman anticipated that they would.

8. Goldman’s pitch book for Timberwolf stated that a third-party (Greywolf Capital Management), supposedly independent of Goldman, was “responsible for initial asset selection” of the mortgage securities making up Timberwolf. This was false. In fact, Goldman exercised substantial influence and control over every asset to be included in Timberwolf. For example, the Goldman trading desks had the right to reject any security suggested by Greywolf and Goldman decided to specifically exclude assets that were performing well. The Timberwolf

pitch book devotes twelve pages (out of a total of forty nine pages) to touting Greywolf's expertise and independence, its supposedly multi-stage investment process, and its purported careful investment analysis and screening process. The pitch book nowhere discloses that the Goldman trading desks had veto rights over any security to be included in Timberwolf or that Goldman otherwise was exercising influence and control over the selection of securities included in Timberwolf to exclude better performing assets. In fact, Goldman was a short investor on many Timberwolf securities, betting that they would decline in value.

9. The representations that the portfolio for Timberwolf had been selected by an independent third-party such as Greywolf was alleged to be, and that the independent third-party had experience and economic interests aligned with CDO investors, were important to BYAFM. BYAFM would not have invested in Timberwolf had it known that Goldman played a significant role in the collateral selection process and that Goldman used that position to exclude securities that in its judgment were better performing and to include securities that it was shorting. Among other things, knowledge of Goldman's role would have seriously undermined BYAFM's confidence in the portfolio selection process and would have led BYAFM not to enter the transaction.

10. In its pitch book, Goldman falsely represented that the Timberwolf product was "intended to result in portfolios that will generate positive performance for the benefit of both the debt and equity investors." In fact, on information and belief, Goldman intended to, and did, construct Timberwolf with poorly performing CDOs in order to lay off its own risk onto unsuspecting investors. Moreover, at the time Goldman made that statement to its clients, including BYAFM, Goldman was stating, with respect to CDOs, that "[t]he whole building is about to collapse anytime now." In March 2007, at the very time Timberwolf was being

“ramped up,” Daniel Sparks described the subprime business as being “totally dead.” Goldman was at this time shorting the subprime market.

11. Indeed, at the very time that Goldman was representing that Timberwolf was designed to “generate positive performance for the benefit of both the debt and equity investors,” it was also actively assembling a portfolio of similar securities for the express purpose of helping the hedge fund Paulson & Co., Inc. profit from a sharp decline in the value of such securities. Goldman has been sued for fraud by the U.S. Securities and Exchange Commission in connection with this related transaction.

12. Some within Goldman were rightly concerned about the representations being made to clients about Timberwolf. Donald Mullen of Goldman wrote to Daniel Sparks on May 11, 2007 to tell him that Harvey Schwartz of Goldman was “concerned about the representations we may be making to clients...” This concern went nowhere. Instead, such concerns were shunted to one side in order not to interfere with the selling process or impair Goldman’s profits.

13. In the same week that BYAFM and Goldman were closing their deal, a senior executive with Goldman wrote that Timberwolf was “one shitty deal” - an internal assessment that was never disclosed until the United States Senate subpoenaed Goldman documents. Despite knowing that Timberwolf was “one shitty deal” and notwithstanding concerns expressed by insiders about the securities and representations being made to potential investors, Goldman actively solicited its clients, including BYAFM, to purchase the security, and in doing so made false and misleading statements of material fact, knowing such statements were false and misleading, and failed to disclose material information, knowing that by this failure, material information that Goldman did disclose was rendered misleading.

14. Within five months of issuance, Timberwolf lost 80 percent of its value. It was liquidated in 2008. The Goldman trader responsible for managing the deal later characterized the day that Timberwolf was issued as “a day that will live in infamy.”

The Parties

15. Plaintiff BYAFM is a regulated Cayman Islands Mutual Fund and an exempted company incorporated with limited liability under the laws of the Cayman Islands.

16. BYAFM is a hedge fund investing in corporate and structured credit.

17. Defendant Goldman Sachs Group, Inc. (“GSG”) is a corporation organized and existing under the laws of Delaware. Its principal executive office is located at 85 Broad Street, New York, New York 10004. It is engaged in global investment banking, securities and investment management, including providing services for hedge funds such as BYAFM.

18. Defendant Goldman Sachs & Co. (“GSC”) is a limited partnership registered as a United States broker-dealer. Its principal executive offices are located at 85 Broad Street, New York, New York 10004. It is engaged in global investment banking, securities and investment management, including providing services for hedge funds such as BYAFM.

19. Defendant Goldman Sachs International (“GSI”) is a company with offices in London and New York. GSI operates in the United States in conjunction with GSC and GSG. It is engaged in global investment banking, securities and investment management, including providing services for hedge funds such as BYAFM. It has a New York telephone number (212) 357-2610 and a New York fax number (212) 428-9189.

20. Defendant Goldman Sachs JBWere Pty. Ltd (“GSJBW”) is a corporation organized and existing under the laws of Australia with offices at Level 16, Collins Street, Melbourne, Vic 300 Australia and 1 New York Plaza, New York, New York 10004. It describes

itself as being part of the Goldman Sachs worldwide network. Defendant GSJBW is an entity engaged in global investment banking and securities and investment management, including providing services for hedge funds such as BYAFM.

21. In the transactions at issue in this Complaint GSG, GSC, GSI, and GSJBW acted in a collective and coordinated manner to seek out customers and to sell Timberwolf to BYAFM through the use of false and misleading representations and culpable omissions. The activities were coordinated through New York at the direction of upper management of GSG and GSC in a concerted effort to off-load risk of a collapsing market in CDOs from GSG and GSC to investors, including BYAFM.

22. In all matters relating to the transactions with BYAFM that are at issue in this Complaint, the various Goldman entities, being GSG, GSC, GSI and GSJBW, were interchangeable with each other and were all acting in concert in an integrated fashion under common direction from GSG and GSC and for a common purpose. In the alternative, GSI and GSJBW were acting as agents of GSG and/or GSC in respect of the Timberwolf transactions. The Goldman entities are referred to collectively herein as "Goldman" except where necessary to specify the particular entity.

Jurisdiction and Venue

23. Jurisdiction over the claims based upon violations of 15 U.S.C. §78j(b) and 17 C.F.R. §240.10b-5 is based upon 28 U.S.C. §1331 and 15 U.S.C. §78aa.

24. Jurisdiction of claims arising under state law is based upon 28 U.S.C. §1367(a).

25. Venue is properly laid in the Southern District of New York pursuant to 28 U.S.C. §1391(b).

Overview of Allegations

26. This is a suit for securities fraud and common law fraud. It arises out of a transaction in which plaintiff BYAFM acquired from Goldman AAA-rated Timberwolf securities with a face value of \$50 million at a price of approximately \$42.1 million and AA-rated Timberwolf securities with a face value of \$50 million at a price of approximately \$ 38.6 million. Goldman knowingly or recklessly misrepresented the value, quality and market for these securities in order to induce BYAFM to purchase these securities at an inflated value and to take these toxic securities off the books of Goldman. Goldman also misrepresented or failed to disclose material information about its role in selecting the assets that were put into Timberwolf and Goldman misrepresented Greywolf's role.

27. BYAFM acquired its interests in Timberwolf via credit default swaps that required BYAFM to make payments ("margin calls") to Goldman upon certain events happening, including any legitimate mark downs in the value of Timberwolf.

28. During the period immediately preceding the transactions at issue, BYAFM was concerned about the direction of the market for CDOs. Goldman was a market maker for CDOs and related securities, was an aggregator of the underlying securities that made up CDOs and was otherwise in a unique position to have and acquire information about the current value and short term outlook for CDOs.

29. Goldman had superior knowledge to BYAFM about the market and price for Timberwolf. Goldman was a sponsor and underwriter for Timberwolf. Goldman knew that the securities had been chosen for Timberwolf because of or without regard to their poor quality and, contrary to the representations made to BYAFM, were expected to decline in value. Thus,

Goldman had information and knowledge concerning their quality, value and performance over time, as well as the criteria by which they were selected, that was not available to BYAFM.

30. Because Timberwolf and similar CDOs were not publicly traded and were illiquid, BYAFM had little ability to obtain information about prevailing prices in the AAA and AA subsector or niche of the CDO market and in particular the pricing of the Timberwolf securities and specific CDOs except from market makers like Goldman. In contrast, Goldman, because of its market position, was uniquely knowledgeable not only about Timberwolf but about the market for CDOs in general. Goldman was aware that this circumstance would lead BYAFM to rely on information provided by Goldman and upon Goldman's superior knowledge of the market and unique position in the market, both generally and with respect to Timberwolf.

31. Goldman was aware that BYAFM would of necessity rely on the information Goldman provided to it in any transaction involving Timberwolf, and intended that BYAFM would rely on such information. Goldman also knew that if it disclosed to Basis its view that Timberwolf was "one shitty deal," BYAFM would not invest in Timberwolf and Goldman deliberately failed to disclose this remarkably negative internal view about Timberwolf. Instead, Goldman falsely represented to BYAFM that Timberwolf was designed for "positive performance."

32. At the time relevant to this Complaint, BYAFM was reluctant to purchase any interest in Timberwolf from Goldman because of its concerns about the CDO market.

33. Prior to, and as a condition of, purchasing its interest in Timberwolf, BYAFM sought assurance from the management of Goldman that the price being offered for the interest in Timberwolf was a good price in the existing market and that the market for these types of securities was stable.

34. To induce BYAFM to make the purchase, Goldman informed BYAFM that the price being offered for the interest in Timberwolf was a good price and that the market had stabilized.

35. At the time Goldman made these statements, Goldman knew the statements were false. Alternatively, Goldman made the statements with a reckless disregard as to whether they were true or false. In any event, Goldman did not believe the statements were true at the time they were made.

36. Goldman intentionally failed to provide correct information regarding the state of the market in Timberwolf and/or intentionally failed to provide correct information concerning Goldman's actual opinion concerning the state of the market for the Timberwolf security and its quality and value.

37. At the time Goldman made these statements to BYAFM, Goldman was actively shorting both Timberwolf and comparable securities because Goldman's internal assessment of the market for such securities was that their value would drop.

38. At the time Goldman made these statements to BYAFM, Goldman was aware that the price of comparable securities was trending downwards and that the market for such securities was not stabilizing. Indeed, Goldman's activities in shorting the market in comparable securities reflected that conclusion and created greater volatility in the market. Moreover, Goldman knew that Timberwolf was, even by the standards of the CDO market, "one shitty deal" and was even more likely to decline precipitously.

39. Upon information and belief, at the time Goldman made these statements to BYAFM, Goldman was aware that principal repayments in Timberwolf's underlying reference for securities were far lower than what had been projected. The shortfall in principal repayments

was a strong indicator that the security was not performing and that its value would decline precipitously. Goldman did not share this information with BYAFM although Goldman shared other information with BYAFM concerning projected payments on Timberwolf. As a consequence of this culpable omission, information Goldman provided BYAFM concerning Timberwolf and its anticipated performance was rendered deliberately misleading.

40. At the time Goldman made these statements to BYAFM, Goldman personnel were acting under a mandate from top management (not disclosed to BYAFM) to reduce Goldman's exposure to CDOs, including Timberwolf.

41. In order to reduce Goldman's exposure to CDOs, Goldman personnel made false and misleading statements of material fact, knowing such statements were false and misleading, or with reckless disregard as to whether such statements were false and misleading, and with knowledge that BYAFM would rely on them in making the decision to purchase an interest in Timberwolf. Moreover, Goldman personnel failed to disclose material information knowing that, by this omission, information that they did disclose was rendered misleading, or they acted with reckless disregard as to whether the omission of the information rendered other disclosures misleading.

**Goldman's Internal Assessment Of The
Market for Securities Based on Subprime Mortgages**

42. In the early part of 2007, Goldman, at the highest levels of the organization, and based on its position as a preeminent entity that underwrites and makes markets in mortgage securities and CDOs and trades them itself, concluded that securities and CDOs based upon residential mortgages would drop dramatically in value during the course of 2007. This conclusion then informed Goldman's actions with respect to securities based on residential mortgages.

43. Goldman began shorting the market for such securities, so it could profit from the anticipated downturn. Goldman also purchased put options on the stock of companies that were exposed to the decline in value of residential mortgages and securities based on such mortgages. Finally, Goldman was an aggressive seller of residential mortgage-related securities, moving such securities off of its books by direct sales, and by assembling other securities out of securities it held and then selling these securities to its clients that it itself had assembled.

44. In addition, Goldman agreed to assemble and market a CDO that could be used by the hedge fund Paulson & Co., Inc. to take a short interest in such securities so as to profit from the anticipated market decline. Goldman earned fees from constructing these CDOs for Paulson & Co. The CDO constructed for Paulson & Co., Inc., Abacus 2007-ACI, was similar to Timberwolf.

45. In order to sell these securities, Goldman made numerous false and misleading statements, and failed to disclose information knowing that, by that failure, information that Goldman did disclose was itself rendered false and misleading.

46. The evidence that Goldman had concluded that residential mortgage-related securities would drop in value -- a conclusion that Goldman failed to disclose to its clients, actively covered-up and lied about -- is overwhelming. It includes the following statements from internal Goldman e-mails that were only recently disclosed as part of an investigation by the U.S. Senate's Permanent Subcommittee on Investigations.

47. On February 1, 2007, Daniel Sparks, in an internal Goldman e-mail discussing the "subprime environment" stated that "[d]istressed opportunities will be real, but we aren't close to that time yet."

48. On February 21, 2007, in an internal Goldman e-mail, Daniel Sparks noted that Goldman was “net short.”

49. In an internal Goldman March 2, 2007 e-mail, Patrick Walsh of Goldman stated that “my understanding is that the [Goldman] desk is no longer buying subprime. (We are low balling on bids.)”

50. On March 8, 2007, in an internal Goldman e-mail, Daniel Sparks gives a lengthy statement of his actual views on residential mortgage-related securities. He refers to the Timberwolf deal as one of two “\$1BB CDOs of A-CDOs (most risky, but good progress).” He refers to a “dramatic credit environment downturn” and reiterates that Goldman is “still net short.” He closes by saying “[t]herefore, we are trying to close everything down, but stay on the short side. But it takes time as liquidity is tough. And we will likely do some other things like buying puts on companies with exposure to mortgages.”

51. On March 16, 2007, in an internal Goldman e-mail to Daniel Sparks, it was noted that Goldman had “purchased \$60mm notional of equity put options on subprime lenders as risk mitigant to overall subprime business.” These put options would expire with no value unless the stock of the subprime lenders fell below the strike price prior to the expiration date of the option.

52. On May 11, 2007, as reported in an internal Goldman e-mail (but never disclosed to BYAFM) “Sparks and the Mtg [Mortgage] group are in the process of considering making significant downward adjustments to the marks on their mortgage portfolio esp CDOs and CDO squared.” Timberwolf was a synthetic CDO squared deal. It was recognized internally within Goldman (but never disclosed to BYAFM) that these “downward adjustments” would potentially have a big impact on clients of Goldman “due to the marks and associated margin calls on repos, derivatives, and other products.”

53. In an October 4, 2007 letter to the SEC, Goldman stated that “during most of 2007, we maintained a net short sub-prime position and therefore stood to benefit from declining prices in the mortgage market.”

The Timberwolf Structured CDO

54. In or about March 2007, Greywolf Capital Management LP, acting as collateral manager and equity investor, and GSC, acting as initial purchaser, structuring and placement agent and equity investor, circulated a written Offering Circular for Timberwolf, a \$1 billion single-A structured product CDO.

55. Timberwolf was marketed and sold as a \$1.0 billion defensively-managed cashflow CDO consisting of a portfolio of single-A rated Structured Product CDO assets or reference obligations with a diversified pool of underlying collateral consisting predominantly of 2004, 2005 and first quarter 2006 issues.

56. According to the Goldman Offering Circular dated March 23, 2007 (“Circular”), the offering was for notes secured primarily by a portfolio of CDO securities and synthetic securities referencing the CDO securities.

57. According to the Circular, the Securities were being offered by GSC as exclusive underwriter, and in the case of Securities offered outside the United States, the Securities were being offered by GSC through its selling agents.

58. Timberwolf I, Ltd., a company organized under the laws of the Cayman Islands and Timberwolf I (Delaware) Corp., a corporation organized under the laws of Delaware, were the issuers of Timberwolf. Both were investment vehicles created and managed by Goldman or by business entities with a close relationship to Goldman.

59. On or about March 27, 2007, GSC acquired all of the securities of Timberwolf in its role as exclusive underwriter and Initial Purchaser of the deal.

60. GSC, as Initial Purchaser, thereafter began offering the securities in Timberwolf for sale through its selling agents, including GSI and GSJBW.

61. From the end of March 2007 to Timberwolf's collapse during the summer of 2007, Goldman moved aggressively to offload the Timberwolf securities onto unsuspecting investors. In service of that goal, Goldman offered special incentives in the form of "ginormous" sales credits to its sales people to spur them to push Timberwolf to prospective investors.

Goldman Targets BYAFM and Aggressively Seeks To Off-Load the CDOs to BYAFM

62. In April 2007, Goldman began to target BYAFM in its scheme to off-load Goldman's holdings in CDOs. Goldman had already concluded that the value of the CDOs would dramatically decline and that, unless Goldman could get rid of the securities still on its books, this decline in value would threaten Goldman's balance sheet. By April 11, 2007, Goldman had identified the AAA and AA rated Timberwolf securities as a "high priority" for its trading desk and Dan Sparks emailed his sales team to let them know that "we are very axed to move the Timberwolf mezz AAA and AA classes". Goldman repeatedly solicited BYAFM to entice BYAFM into investing in the AAA and AA-rated Timberwolf securities.

63. Between April 23 and June 13, 2007, there were a series of conversations and e-mail communications concerning the possibility of BYAFM's investing in Timberwolf. These communications were between George Maltezos of GSJBW and John Murphy of Basis Capital Funds Management Limited ("BCFM"), the investment advisor to BYAFM.

64. At all times during these conversations and communications, Maltezos was operating in coordination with and/or under the direction of GSG and/or GSC in New York, with which he communicated by telephone and by email.

65. On April 23, 2007, Maltezos contacted Murphy to inform him that Goldman was offering Timberwolf.

66. On or about April 23, 2007, Maltezos sent Murphy a Preliminary Termsheet dated March 6, 2007, in order to induce BYAFM to make an investment in Timberwolf.

67. On April 24, 2007, Maltezos e-mailed Murphy and told him that he had spoken by telephone with Peter Ostrem and Dan Sparks of GSG and GSC in New York City, New York about the Offering. Maltezos reported to Murphy that Ostrem and Sparks said that Timberwolf was a block of cheap, highly rated CDOs available on a leveraged basis. Upon information and belief, Maltezos had been instructed and/or authorized by Ostrem or Sparks or both to relay this information to Murphy.

68. Maltezos stated that Sparks and Ostrem were “supportive to help structure something that should offer [BYAFM] an attractive risk-adjusted return on capital proposition.” Sparks knew that Goldman was net short on the type of securities that Maltezos was offering BYAFM and that Goldman was in a short position in respect of many of the securities included in Timberwolf. Sparks was already anticipating a “dramatic credit environment downturn.” Sparks knew that Goldman was buying put options on the stock of companies with exposure to subprime mortgages. Finally, Sparks himself was considering making “significant downward adjustments” to the value of Goldman’s CDO squared securities, such as Timberwolf. Given this material information, which was not disclosed to BYAFM, Maltezos’ statement that Timberwolf would offer an “attractive risk-adjusted return on capital” was a flat-out lie, or at the very least was intentionally misleading. Alternatively, in making this statement, Maltezos, Sparks and Ostrem failed to disclose material information knowing that, by this omission, information that they did disclose was rendered misleading and deceptive, or they acted with reckless disregard as

to whether the omission of the information rendered the disclosures that they did make misleading and deceptive.

69. During this time period there was an increased urgency at Goldman to offload the Timberwolf securities. On April 19, 2007, Daniel Sparks suggested special incentives to Goldman's salesman to sell Timberwolf. He proposed that Goldman should "go one at a time with some ginormous [sales] credits – for example, let's double the current offering of credits for Timberwolf." The response was that Goldman had already done that with Timberwolf.

70. On May 22, 2007, Maltezos sent an e-mail to John Murphy soliciting a purchase of Timberwolf. Maltezos asked Murphy to "keep in mind GS is an aggressive seller of risk for QTR end purposes (last day of quarter is this Friday)." Murphy and BYAFM understood that investment banks such as Goldman from time to time offered securities more cheaply at the end of the quarter for accounting reasons that were unrelated to the fundamental value of the security. But contrary to Maltezos' statement, this was not the case with Timberwolf and the quarter end was irrelevant to Goldman's goal of offloading Timberwolf. In fact, Goldman was aggressively selling CDOs because Goldman had concluded that securities based on subprime mortgages would dramatically drop in value. Moreover, Goldman was aware that Timberwolf was a "shitty deal," that it was particularly eager to get off its books. Selling Timberwolf permitted Goldman to obtain further protection against declines in the value of its CDO securities and to further its strategy of shorting the CDO market.

71. For example, Daniel Sparks in September 2007 approved the following description of Goldman's actually-held assessment during this time period of such securities: "our risk bias in that market was to be short and that net short position was profitable ... we've been very aggressive in reducing our long mortgage exposure and conservatively marking down

our long mortgage positions.” Thus, Goldman’s reason for offering Timberwolf to BYAFM at a below-par price was **not** because Goldman was an aggressive seller of risk for quarter end purposes, but because Goldman had concluded that the value of such securities would drop dramatically and soon. Maltezos’ statement to John Murphy was false, misleading, and at the very least omitted material information necessary to make that statement not false and misleading.

72. On or about June 12, 2007, BCFM advised Maltezos that BYAFM would not invest in Timberwolf until it had further information and assurances from Goldman regarding pricing and market conditions. Upon information and belief, Maltezos communicated this information to Ostrem and/or Sparks and/or Lehman in New York.

73. On June 12, 2007, Maltezos told Murphy that Dan Sparks, head of the GSG mortgage department in New York City, New York, had told him that GSG appreciated BYAFM’s support for the business. Maltezos told Murphy that Sparks had proposed that BCFM (on behalf of BYAFM) speak directly to the New York trading desk about the market generally and Timberwolf specifically. On information and belief, Sparks had instructed Maltezos to convey this proposal to Murphy.

74. Maltezos explained to Stuart Fowler of BCFM that David Lehman would speak with BCFM “to clarify any and all questions you have on the marking policy of Goldman ... and the overall trading that has been seen by the GS desk in the last 1-6 months.”

75. Maltezos then set up a conference call for Wednesday afternoon June 13, 2007 to address these concerns and issues.

76. On the afternoon of June 13, 2007, there was a conference call among David Lehman of GSC, Maltezos of GSJBW and Stuart Fowler and Sahil Sachdev of BCFM (“June 13 Call”).

77. Upon information and belief, at the time of the June 13 Call, Lehman was a Managing Director of GSG and was based in GSG’s New York office.

78. Upon information and belief, at the time of the June 13 Call, Maltezos was an Executive Director and the Head of Structured Asset Solutions at GSJBW.

79. The purpose in requesting and setting up the June 13 Call was to provide BCFM, as the investment advisor to BYAFM, with information and assurances from Goldman concerning BYAFM’s proposed investment in Timberwolf, and to answer any questions that BCFM might have, including whether the price being offered by Goldman to BYAFM represented a commercially reasonable entry point and information about current and anticipated market conditions for the investment.

80. BCFM fully expected and was entitled to expect that Goldman would provide truthful, fair and non-misleading information in response to direct inquiries about the CDO market, including without limitation the market for Timberwolf, a market in which Goldman had superior knowledge and information.

81. Because, as the Circular acknowledged, “[t]here is no established trading market for the Securities,” including Timberwolf, BYAFM had little or no ability to obtain information concerning the market and appropriate pricing for Timberwolf other than from Goldman. Due to its position as a market-maker for CDOs in general and Timberwolf in particular, Goldman had a unique perspective on the CDO market.

82. BYAFM was entitled reasonably to rely on the information provided by Goldman.

83. Goldman was aware of BYAFM's expectation that it could reasonably rely on the information and assurances it provided, and intended that BYAFM would rely on the information and assurance it provided.

84. Goldman was familiar with BCFM'S and BYAFM's investment experience. Goldman knew that BCFM and the funds advised by it (including BYAFM) had never invested in AAA or AA-rated CDO securities. Goldman knew that BYAFM was at a substantial disadvantage to Goldman in terms of knowledge about the near-term trading prospects of the AAA and AA sector of the CDO market and, in particular, of Timberwolf, a CDO which Goldman had created.

85. For these reasons, among others, it was critically important to BCFM and BYAFM at the time of the June 13 Call that Goldman give complete, fair, and accurate information about the various subsectors of the CDO market in general and the market for Timberwolf in particular.

86. On the June 13 Call, Maltezos introduced Lehman as head of CDO trading for GSC.

87. During the June 13 Call, Lehman discussed the trading activities of GSC and GSG in the market relevant to the contemplated Timberwolf investment.

88. During the June 13 Call, Lehman was asked by Stuart Fowler of BCFM: Was the price being offered to BYAFM for the proposed Timberwolf investment a good entry price?

89. During the June 13 Call, Lehman responded directly to Fowler's question: Yes, that it was a good entry price and level. Lehman further stated that Goldman had seen active buying of CDOs like Timberwolf and *was expecting price stability going forward.*

90. As Goldman knew, those statements by Lehman during the June 13 Call were critical and material information for BYAFM to consider in deciding whether or not to purchase an interest in Timberwolf, and the price to pay for that interest.

91. Upon information and belief, prior to the June 13 Call, Lehman was aware of and further knew that BYAFM had previously declined an offer to invest in Timberwolf.

92. Upon information and belief, Lehman was aware and knew that what he said relating to Timberwolf was important and material to BYAFM in deciding whether to purchase and the price to pay.

93. Upon information and belief, Lehman intended for BYAFM to rely on his statements in deciding whether to purchase and the price to pay.

94. Upon information and belief, when he made these statements Lehman was aware that BYAFM had few or no alternative sources of information, other than Goldman, with respect to the market for Timberwolf.

95. Upon information and belief, at the time he made these statements, Lehman knew the statements were false, incomplete and misleading, or he made them with reckless disregard as to whether or not they were false, incomplete or misleading. In any event, on information and belief, Lehman did not believe that the price being offered to BYAFM for the purchase of the Timberwolf securities was a "good entry point," nor did he believe that the market for CDOs was stable or stabilizing. He did not see the market as stable going forward. He also believed the prospects for Timberwolf were particularly poor.

96. Upon information and belief, at the time he made these statements, Lehman failed to disclose material information knowing that by this omission information that he did disclose

was rendered misleading, or he acted with reckless disregard as to whether the omission of the information rendered other disclosures misleading.

97. BYAFM reasonably and justifiably relied upon Lehman's statements made during the June 13 Call.

Shorting Activity by Goldman

98. Unknown to Fowler and BYAFM, in this same time frame, Goldman was engaged in significant and large transactions in order to short the market for securities like Timberwolf, including Timberwolf underlying reference securities.

99. This shorting evidenced that Goldman's view of the market for CDO securities was unstable and that Goldman believed that prices for such securities were declining.

100. Upon information and belief, Sparks of GSG and/or GSC was in charge of and was overseeing these significant and large transactions which were shorting the market for securities like Timberwolf.

101. On information and belief, Lehman was aware at the time of the June 13 Call that Goldman was engaged in significant and large transactions which were shorting the market in securities and investments like Timberwolf.

102. Between the June 13 Call and June 18, 2007, when payment was made by BYAFM in New York City, and prior to the later receipt and execution of confirmation documents, Lehman did not tell, communicate or otherwise disclose to BYAFM the fact that Goldman was engaged in significant and large transactions which were shorting the market in securities like Timberwolf during the time that Goldman was marketing and selling Timberwolf.

103. Lehman had a duty to disclose to BYAFM the facts that Goldman was shorting the market and did not believe the market was stable.

104. The omission of this information rendered Lehman's statements on the June 13 Call, including his statement that Goldman was seeing price stability in the market for CDOs going forward, misleading.

Goldman Trades in Comparable Securities at Significantly Lower Prices

105. Unknown to Fowler and BYAFM at the time they were contemplating the Timberwolf investment, since at least May 2007 and up to the June 13 Call, Goldman had been engaged in extensive negotiations with Bear Stearns Asset Management ("BSAM") on behalf of the Bear Stearns High-Grade Structured Credit Strategies Fund, who wished to liquidate in excess of \$10 billion in highly rated CDOs and other asset backed paper including \$100 million of Timberwolf securities.

106. Upon information and belief, at the time of the June 13 Call, Lehman knew or should have known that Goldman had been engaged in extensive negotiations with BSAM, who wished to liquidate in excess of \$10 billion in highly rated CDO securities and other asset backed paper including \$100 million of Timberwolf securities.

107. Lehman, on behalf of Goldman, having agreed to discuss the "overall trading that has been seen by the GS desk in the last 1-6 months," had a duty to disclose to BYAFM that Goldman was aware that there were sellers in the market that would create an overhang of supply and further depress prices. At a minimum, knowing about the BSAM liquidation, Lehman's statement of expecting price stability on a going forward basis was false and misleading.

108. Lehman, on behalf of Goldman, after having agreed to speak with BYAFM, had a duty to disclose to BYAFM that he anticipated significant market activity that would negatively affect the price of Timberwolf in the near future.

109. On information and belief, on or about June 14, 2007, Goldman purchased securities comparable to the Timberwolf securities at substantially lower prices than those offered to BYAFM.

110. On information and belief, the seller of the comparable securities was BSAM.

111. On information and belief, the trade pertaining to the comparable securities followed a series of protracted negotiations between Goldman and BSAM.

112. On information and belief, prior to June 14, Goldman had provided valuations to BSAM of the comparable securities on April 30 and on May 31, 2007. In each instance, the valuation was lower than what Goldman was advising BYAFM was a good price on the comparable Timberwolf securities.

113. Goldman priced the AA Timberwolf Credit Limited Notes at 77.31. On information and belief, Lehman knew or should have known that Goldman had valued comparable securities at significantly lower prices when he told Fowler that 77.31 was a good entry point and that his statement was false and misleading in view of the fact that comparable securities were selling for substantially lower amounts.

114. The foregoing were material facts for BYAFM concerning whether or not to purchase Timberwolf and the price of the investment.

115. These were material facts that were not communicated or otherwise disclosed, orally or in writing, to BCFM, BYAFM or Fowler at any time on or before BYAFM's payment on June 18, 2007 or the subsequent receipt and execution of confirmation documents.

116. By failing to disclose these facts, Lehman on behalf of Goldman knowingly made a misrepresentation by omission, or by failing to disclose these facts, Lehman, on behalf of

Goldman, acted with reckless disregard as to whether he was making a misrepresentation by omission.

117. Had BYAFM known these material facts, BYAFM would not have invested in Timberwolf. Moreover, the information concealed by Goldman was directly and proximately related to the decline in value of the Timberwolf securities purchased by BYAFM.

Misleading Cash Flow Statements

118. During the period April 24, 2007 to June 12, 2007, Maltezos delivered to BYAFM a series of at least ten cash flow projections for Timberwolf (the “Cash Flows”).

119. Each Cash Flow was prepared by GSG and GSC in New York for use by Goldman in marketing Timberwolf.

120. On information and belief, GSG and GSC sent the Cash Flows from New York by electronic means to Maltezos with the intent and expectation that he would provide them to BYAFM.

121. On information and belief, Goldman intended for BYAFM to rely on the Cash Flows in making a decision as to whether and at what price to invest in Timberwolf.

122. BYAFM had reason to believe and did believe that the Cash Flows were based on the most recent and accurate information available to Goldman.

123. The Cash Flows were reviewed and analyzed by BCFM for BYAFM prior to the June 13 Call.

124. The Cash Flows showed substantial repayments of principal for the first and subsequent periods of the investment that BYAFM was considering.

125. The Cash Flows purported to be “based solely upon the current expected liability structure and current market conditions.”

126. The Cash Flows state that “Information contained in this material is current as of the date appearing on this material only.”

127. The Cash Flows were material to BYAFM and relied upon by BYAFM in making its decision to invest in Timberwolf and the price at which to invest.

128. Goldman, as the credit default swap counterparty to transactions underlying the Timberwolf security, or otherwise, had current and timely information as to the performance, including principal repayments, of these underlying securities. As a result, Goldman had full knowledge of the actual level of principal repayments.

129. The actual level of repayment of principal made on the securities underlying the Timberwolf security was substantially below what was forecast in the Cash Flow projections.

130. Goldman did not share information about the actual level of repayment of principal with BYAFM.

131. The failure to share this information rendered the Cash Flows misleading and deceptive.

132. On information and belief, Goldman provided the Cash Flows knowing that the document was misleading, or Goldman provided the Cash Flows with reckless disregard as to whether the document was misleading or not.

133. In September 2007 the trustee’s report disclosed that actual collections of principal for the prior six months on BYAFM’s investment were significantly and materially below and less than stated in the Cash Flows.

134. Upon information and belief, at the time the Cash Flows were delivered to BYAFM and during the June 13 Call, Goldman and/or Lehman and/or Sparks knew or should have known that the principal collections and expected collections on the portions of Timberwolf

relevant to the investment being considered by BYAFM were grossly inflated and overstated in the Cash Flows.

135. Lehman, on behalf of Goldman, or others at Goldman, had a duty to fully disclose to BYAFM all information bearing on the current accuracy of the cash flow statements on the June 13 Call and before BYAFM decided to invest in Timberwolf and/or prior to the receipt and execution of confirmation documents.

136. Upon information and belief, at the time the Cash Flows were delivered to BYAFM and during the June 13 Call, and/or prior to the receipt and execution of confirmation documents, Goldman knew or should have known that the principal collections and expected collections shown on the Cash Flows for the portions of Timberwolf relevant to the investment being considered by BYAFM were grossly inflated and overstated.

137. Goldman had an obligation and duty to disclose the material inaccuracies, differences and discrepancies in the figures relevant to BYAFM before the BYAFM investment in Timberwolf. Had BYAFM known that the actual Cash Flows were significantly less than projected, it would have been alerted to problems with the Timberwolf securities and would not have purchased them.

The Transaction and Subsequent Margin Calls

138. On or about June 13, 2007, BYAFM agreed to purchase from Goldman:
- a. AAA-rated securities with a face value of US\$50 million from Tranche A2 of Timberwolf Ltd. 2007-1 (reference obligation CUSIP/ISN 88714AG1) at a price of 84.33 representing a value of US\$42,165,000; and

- b. AA-rated securities with a face value of US\$50 million from Tranche B of Timberwolf Ltd. 2007-1 (reference obligation CUSIP/ISN 88714PAF3) at a price of 77.31, being a value of US\$38,655,000.

139. Both of these purchases were structured as credit default swaps between BYAFM and GSI with Timberwolf Ltd. 2007-1 as the reference obligation.

140. In connection with these credit default swaps, on or about June 18, 2007, BYAFM paid GSI in New York City, New York the sum of \$11,250,000.00. While structured as a credit default swap, the substance of the transactions was essentially equivalent to having the remainder of the outstanding amounts being financed on margin through credit extended by Goldman.

141. These transactions were confirmed in two Long Form Confirmations, each labeled Second Revised Confirmation and dated June 21, 2007, although received and executed after that date.

142. The Second Revised Confirmations dated June 21, 2007 bear reference numbers SDB981814981.0.0.0/00647077701 and SDB981814615.0.0.0/00647077701, respectively. They were sent to BYAFM on June 21, 2007 and were executed and returned by BYAFM on July 3, 2007.

143. Pursuant to the terms of the Second Revised Confirmations, Goldman was entitled to reevaluate and re-price the value of the Timberwolf Ltd. 2007-1 reference obligation from time to time.

144. Based upon reevaluations and repricing, Goldman was entitled to issue notices to BYAFM to make Transfers of Eligible Credit Support to Goldman pursuant to the Credit

Support Annex which is a part of the ISDA Form to which the Second Revised Confirmations are subject.

145. A notice of Transfer of Eligible Credit Support would require BYAFM to pay additional money to Goldman based upon a reevaluation and repricing of Timberwolf if the value declined.

146. Approximately two weeks after its initial agreement to purchase the Timberwolf securities and only one day after BYAFM returned the signed confirmations of the transaction, on or about July 4, 2007, the day after Goldman received back from BYAFM the signed confirmations of purpose, BYAFM received its first margin call, a notice requiring a Transfer of Eligible Credit Support to Goldman in the sum of \$5,040,000.00.

147. On or about July 5, 2007, pursuant to the notice, BYAFM paid Goldman \$5,040,000.00.

148. One week later, on or about July 11, 2007, BYAFM received a second margin call in the sum of \$5,100,000.00.

149. One day later, on or about July 12, 2007, BYAFM received a third margin call in the sum of \$8,190,000.00.

150. On or about July 16, 2007, BYAFM received a fourth margin call in the sum of \$12,400,000.00.

151. On or about July 17, 2007, BYAFM received a fifth margin call in the sum of \$5,100,000.00. Thus within less than a month of the purchase of the securities, the value according to Goldman had dropped more than \$30 million.

152. BCFM requested that Goldman be transparent about its analysis and pricing decisions that led to these margin calls, but Goldman failed to provide an adequate explanation for the margin calls or the precipitous decline in value.

153. BYAFM did not meet and pay the Transfers of Eligible Credit Support notices of July 11, 12, 16 or 17, 2007.

154. On July 24, 2007 Goldman notified BYAFM that the failures to make the Transfers of Eligible Credit Supports constituted an Event of Default under Section 5(a)(i) of the ISDA Master Agreement (Multicurrency-Cross Border) ("Agreement") that form part of the ISDA Form to which the Confirmations were subject and that Goldman exercised its rights under Section 6(a) of the Agreement designating July 24, 2007 as the Early Termination Date.

155. In or about August 2007, as a direct and foreseeable result of Goldman's conduct in inducing BYAFM to invest in the Timberwolf securities, BYAFM went into provisional liquidation in the Cayman Islands.

156. In or about December 2007, BYAFM went into Official Liquidation in proceedings in the Cayman Islands.

157. In or about December 2007, Official Liquidators were appointed to adjudicate claims, determine the best approach for realizing value from BYAFM assets and pursue remaining assets.

158. In or about summer 2008, as part of the Official Liquidation of BYAFM in the Cayman Islands, the sum of approximately \$40 million from the BYAFM estate was distributed to Goldman to pay its asserted claims against BYAFM for margin principal and interest due under the financing arrangements with Goldman. Such payment by the Official Liquidators was

specifically without prejudice to any claims that BYAFM might have against Goldman with respect to the securities.

COUNT I

CLAIMS FOR RELIEF
FIRST CAUSE OF ACTION

(For violations of Section 10(b)-5 of the Exchange Act and Rule 10b-5 Promulgated Thereunder)

159. Each allegation of paragraphs 1-158 is incorporated in this Count by reference as if set out in full.

160. Goldman intentionally and/or recklessly: (a) employed a device, scheme and artifice to defraud BYAFM with respect to the sale of the two credit default swaps; (b) made untrue statements of material facts or omitted material facts necessary in order to make the statements not misleading; and/or (c) engaged in practices or courses of business which operated as a fraud and deceit upon BYAFM in connection with the sale and purchase of the credit default swaps, in violation of Section 10(b) of the Exchange Act.

161. Goldman also engaged in a series of fraudulent and deceitful acts or practices, including knowingly: (a) making false statements about the market for CDOs; (b) making false statements about the reasonableness of the proposed entry point for the purchase by BYAFM of the credit default swap; (c) failing to disclose Goldman's shorting activity; (d) failing to disclose the trading in comparable securities at lower prices; (e) failing to disclose shortfalls in expected principal repayments; (f) falsely representing that Timberwolf was available at a favorable price because of the end of the quarter; (g) failing to disclose that it created Timberwolf as "one shitty deal" destined to fail quickly in order to offload poor quality collateral and profit from betting on Timberwolf to fail; and (h) failing to disclose Goldman's influence and control over the selection

of assets for Timberwolf and Goldman's decision to exclude better performing assets and that Goldman included assets in Timberwolf that it was shorting. All of these failures to disclose involved the failure to disclose material information.

162. As Goldman intended, BYAFM reasonably relied upon the representations by Lehman and others in deciding to purchase the credit default swaps. Had BYAFM known that the information it received from Goldman contained material misrepresentations, or had BYAFM known of the material adverse information that Goldman concealed from BYAFM, BYAFM would not have purchased the credit default swaps.

163. As a direct and proximate result, BYAFM suffered injury and damage.

164. By reason of the foregoing, Goldman violated 15 U.S.C. §78j(b) and 17 C.F.R. §240.10b-5.

165. By reason of the foregoing, BYAFM suffered damages to be proved at trial, but which are estimated to be not less than \$56 million plus the damages resulting from BYAFM's liquidation.

COUNT II
COMMON LAW FRAUD

166. Each allegation of paragraphs 1-165 is incorporated in this Count by reference as if set out in full.

167. Goldman made material false representations as detailed above in the form of the Cash Flows and in particular the June 12 Cash Flow that were provided to BYAFM.

168. Goldman made material false representations as detailed above in the form of the statements made by Lehman on the June 13 Call.

169. Goldman made material false omissions by failing to disclose that it had selected poor quality collateral for the Timberwolf Deal and that it regarded Timberwolf as “one shitty deal.”

170. Goldman made material false misrepresentations that the security was designed to generate positive performance for the benefit of both the debt and equity investors.

171. Goldman made these false representations with the intent to defraud BYAFM by inducing it to make the investments in Timberwolf and thereby to shift risk to BYAFM while misleading BYAFM as to the extent and nature of the price risk represented by the transaction.

172. Goldman was aware that given the structure of the transaction and the financial condition of BYAFM, the risk represented by the transaction was such that any adverse developments would threaten the continued existence of BYAFM.

173. Goldman was aware that had BYAFM been aware of the true extent of the price risk it would not have entered into the transaction.

174. BYAFM reasonably relied on Goldman’s representations in deciding to enter into the transaction.

175. BYAFM suffered damages as a result of its reliance on the false representations to be proved at trial but which are estimated at not less than \$56 million plus the damages resulting from BYAFM’s liquidation.

COUNT III
FRAUDULENT CONCEALMENT

176. Each allegation of paragraphs 1-175 is incorporated in this Count by reference as if set out in full.

177. Goldman suppressed and concealed the true state of the market in CDOs generally and in the market for Timberwolf in particular.

178. Goldman had a duty of disclosure to BYAFM due to its unique position of control over the information necessary for BYAFM to make its decision and Goldman's knowledge that BYAFM would rely on the information it provided.

179. Goldman intentionally concealed its shorting activities and its trades at lower prices, which was information that would have been material to BYAFM in deciding whether to enter into the credit default swap transactions, with the intention that BYAFM would thereby be induced to enter into the transaction.

180. Goldman intentionally concealed that it had knowingly assembled Timberwolf as a "shitty deal" for the purpose of laying off its risk on particularly poorly performing securities in its portfolio.

181. By virtue of its reasonable reliance on the obligation of Goldman to provide full and accurate information, BYAFM was induced to enter into the transactions.

182. BYAFM suffered damages as a result of its reliance on the false representations to be proved at trial but which are estimated at not less than \$56 million plus the damages resulting from BYAFM's liquidation.

COUNT IV
PUNITIVE DAMAGES

183. Each allegation of paragraphs 1-182 is incorporated in this Count by reference as if set out in full.

184. Upon information and belief, the foregoing material misrepresentations and omissions of material facts were intentional and willful.

185. Moreover, Goldman's conduct with respect to Timberwolf and its misrepresentations concerning its sale of the Timberwolf securities were part of a strategy on Goldman's part to unload toxic assets from its portfolio on unsuspecting investors, including

hedge funds, pension funds, financial institutions and other investors qualified to purchase CDOs. In doing so, Goldman caused pervasive harm to many investors, of which BYAFM was only one. Goldman not only off-loaded poor quality assets but then bet in the market that they would decline thus generating additional profit at the expense of investors who were victimized by Goldman's construction of false representations regarding this one "shitty deal."

186. As a result of Goldman's conduct in respect of similar investment vehicles at or near the same time as the Timberwolf transactions, the Securities and Exchange Commission has filed a civil complaint against Goldman. *Sec. and Exch. Comm'n v. Goldman Sachs & Co.*, No. 10-CV-3229 (S.D.N.Y. filed Apr. 15, 2010). In addition, the United States Senate's Permanent Subcommittee on Investigations has initiated an investigation of Goldman's conduct.

187. Upon information and belief, Goldman knew that a likely result of its actions would be the insolvency and liquidation of BYAFM and the consequent losses to its investors and creditors.

188. As a direct and proximate result, BYAFM suffered injury and damages estimated at not less than \$56 million and was forced into liquidation.

189. By reason of the foregoing, BYAFM is entitled to damages and punitive damage to be proved at trial, but which should be set in excess of \$1 billion to punish and deter Goldman with respect to its pervasive fraudulent practices.

WHEREFORE, Plaintiff BYAFM requests judgment against Defendants GSG, GSI, GSC and GSJBW, jointly and severally, as follows:

- (a) On Counts I, II, and III, damages according to proof;
- (b) On Count IV, damages and punitive damages according to proof,
- (c) On Counts I, II, and III, rescission of the Second Revised Confirmations;

(d) On all Counts, the costs and disbursements of this action, interest and reasonable attorney's fees.

(e) For such other and further relief as may be just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), Plaintiff hereby demands a trial by jury of all claims and issues so triable.

Respectfully submitted,



June 9, 2010

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