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DISTRICT OF UTAH
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

ANNETTE KAY DONNELL, an individual,

Plaintiff,

vs.

ROGER E. TAYLOR, an individual;
RICHARD T. SMITH, an individual; SMITH
HOLDINGS, LLC; ASCENDUS CAPITAL
MANAGEMENT, LLC, a Utah limited
liability company; FFCF INVESTORS, LLC,
a Utah limited liability company; GREAT
EASTERN SECURITIES; TOUCH TRADE;
TOM NEWREN; LBS MANAGEMENT;
HANS B. ANDERSEN, CPA; HANS
ANDERSEN ACCOUNTING; HJ &
ASSOCIATES, LLC; FRANKLIN HUNT;
and JOHN DOES I-XXX,

Defendants.

COMPLAINT AND JURY DEMAND

Case: 2:09cv00127
Assigned To : Campbell, Tena
Assign. Date : 2/10/2009
Description: Donnell v Taylor, et al

Plaintiff Annette Kay Donnell ("Donnell") hereby files this Complaint and alleges the following:

INTRODUCTORY STATEMENT

1. Donnell is one of a number of victims who was defrauded and otherwise harmed by Taylor, Smith, and various other individuals and companies with whom they conspired. It appears Donnell was one of the Defendants' largest and earliest victims.

2. As explained more fully below, Taylor and Smith induced Donnell to invest her life savings into Taylor's trading program using promises of lucrative returns. After she invested, Donnell was told that she had made significant profits. Indeed, as reflected on her Pension 1099s and other documents, Donnell's account value swelled to over \$2.8 million. As part of her agreement with Taylor and Smith, she paid them commissions based on those profits.

3. However, Taylor and other Defendants failed to follow instructions by Donnell on how to manage her account, failed to follow her stated investment objectives, misappropriated funds in her account, mismanaged her margin, and otherwise failed to keep promises made to Donnell, leaving her with far less in her account than had been earned.

4. Based on a Subscription Agreement signed by Taylor, and documents some of the Defendants falsified, all of which indicated significant wealth, Donnell did not learn of Defendants' misconduct until mid-2008, when she learned of another, broader Ponzi scheme involving the Defendants.

5. On information and belief, prospective investors, including Donnell, were led to believe through a series of false communications, both oral and written, that their investments were guaranteed and they would make substantial profits. After she invested, Donnell was told she was

continuing to make money. However, Donnell has recently learned that her prior investments, including the substantial profits she had made, have disappeared.

PARTIES

6. Plaintiff Annette Kay Donnell is a resident of Cook County, State of Illinois.

7. Defendant Roger E. Taylor ("Taylor") is an individual who currently resides at 1360 Summerwood Circle, Santa Clara, Washington County, Utah 84765. At all relevant times, Taylor acted as Founder and President of Ascendus Capital Management and also as the sole Manager of FFCF Investors, LLC.

8. Defendant Richard T. Smith ("Smith") is an individual who resides at 443 North 750 East, Orem, Utah County, Utah 84097. At all relevant times, Smith was the Chief Operating Officer of Ascendus Capital Management, LLC, and, on information and belief, had a management and ownership role with FFCF Investors, LLC and Smith Holdings. Smith was not the "Manager" of FFCF. That position was held by Taylor.

9. Defendant FFCF Investors, LLC ("FFCF") is a Utah limited liability company with its former principal place of business at 222 East South Temple, Salt Lake City, Salt Lake County, Utah 84111.

10. Defendant Ascendus Capital Management, LLC ("Ascendus") is a Utah limited liability company with its former place of business also at 222 East South Temple, Salt Lake City, Salt Lake County, Utah 84111.

11. On information and belief, Defendant Smith Holdings, LLC ("Smith Holdings") is a Utah limited liability company located at Smith's residence, 443 North 750 East, Orem, Utah County, Utah 84097.

12. Defendant Great Eastern Securities ("Great Eastern"), is a company of unknown residence that participated in the conspiracy and otherwise held and tracked funds belonging to Donnell. Great Eastern's address is or was 1224 S. Business Park Drive, Suite 230, Draper, Utah 84020. At all relevant times, Great Eastern did business in Utah. On information and belief, Great Eastern worked closely with Ascendus, Taylor, Newren, Smith and others, and knew or should have known of irregularities regarding Donnell's account.

13. On information and belief, Defendant Touch Trade is a Utah limited liability company which does or did business in Utah. Touch Trade did or does business at the same address as Great Eastern. Touch Trade had or has a close relationship with Great Eastern and other Defendants. Touch Trade played a substantial role in managing Donnell's account and knew or should have known of irregularities in her account.

14. On information and belief, Defendant Tom Newren is a Utah or Nevada resident who did business in Utah and was Donnell's primary contact at Touch Trade. Newren played a substantial role in managing Donnell's account and knew or should have known of irregularities in her account.

15. Defendant LBS Management ("LBS") is a corporate entity of unknown residence apparently having as its principal place of business 110 Newport Center Drive, Second Floor,

Newport Beach, California 92660. On information and belief, LBS worked closely with FFCF, Taylor, and Smith and knew or should have known FFCF was a Ponzi scheme.

16. Defendant Hans B. Andersen, on information and belief, is a CPA doing business in the State of Utah as or with the corporate entity of Hans Andersen Accounting. It appears that Hans B. Andersen worked closely with FFCF, Taylor, and Smith and knew or should have known FFCF was a Ponzi scheme.

17. On information and belief, Defendant HJ & Associates, is a Utah limited liability company which does business in Utah. It appears that HJ & Associates, LLC worked closely with FFCF, Taylor, and Smith and knew or should have known FFCF was a Ponzi scheme.

18. On information and belief, Defendant Franklin Hunt is a CPA doing business in the State of Utah who worked for HJ & Associates during the relevant time period. It appears that Franklin Hunt worked closely with FFCF, Taylor, and Smith and knew or should have known FFCF was a Ponzi scheme.

19. Defendant John Does I-XXX are individuals who aided and abetted Taylor, Smith, and the other Defendants in their unlawful conduct as described more fully below.

VENUE AND JURISDICTION

20. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(a) based on complete diversity of the parties and damages in excess of \$75,000.00 per Defendant. As indicated above, Donnell is a resident of Illinois. No other Defendant resides in Illinois. Independent of diversity, this Court also has jurisdiction over the federal securities claims pursuant to 28 U.S.C. § 1331 and supplemental jurisdiction over the remaining claims.

21. Venue in this District is appropriate, pursuant to 28 *U.S.C.* § 1391, because a substantial part of the events giving rise to the dispute occurred in this District, a substantial part of the property that is the subject of this action is or has been situated in this District, and/or this Court has personal jurisdiction over each of the parties as alleged in this Complaint.

22. Personal jurisdiction exists over each of the Defendants either because they are a resident of Utah, have a principal place of business in Utah, or under the Utah long-arm statute, *Utah Code Ann.* § 78B-3-205, because each of them has transacted business within Utah, contracted with a Utah Corporation, or otherwise caused an injury to Donnell in Utah.

FACTUAL BACKGROUND

23. Donnell first heard about an investment opportunity involving Roger Taylor in early 2003. Donnell had recently lost her job with Juniper Networks and attended a seminar in Salt Lake City called "Teach Me to Trade." She knew nothing about trading, investing, or the stock market. At that seminar, the instructor, a woman with the first name of Linda, told Donnell about Taylor and his ability to generate large profits for investors and that he would effectively protect her investments using "stops" and other tools.

24. Through subsequent conversations with Smith, Donnell came to understand that Taylor was the founder and President of Defendant Ascendus. Smith represented to Donnell that Taylor was Smith's boss and that Taylor was a trader who was able to generate substantial returns on investors' money while protecting their investments.

25. On April 15, 2003, Taylor sent an email to Donnell in which he indicated that he had reviewed her assets and that he had "some ideas about what we can do to attain the results that you are looking for."

26. On April 21, 2003, Taylor wrote an email to Donnell in which he stated that he didn't see a big problem generating an \$11,000 monthly return on Donnell's account.

27. On April 22, 2003, Taylor sent an email to Donnell in which he represented that he and his firm, Ascendus, believed in accountability, and that they had an internal goal of generating 4% per month net of their fees.

28. On that same day, Taylor responded by separate email to an earlier email by Donnell in which she indicated she may want to invest in bonds. Taylor told her that "it would be a very smart investment, [but] I do not believe it would be smarter than utilizing my firm." Taylor represented that his historical returns had been 4% per month.

29. Prior to investing, Donnell told Taylor and Smith her investment objectives, which included the importance of preserving her principal and paying off her margin balance. She told Taylor that she expected him to put "stop" orders on her accounts to prevent substantial losses and informed him that her prior broker had failed to do so.

30. Prior to Donnell investing any funds with Taylor and Smith or their co-defendants, Taylor provided a chart to Donnell showing a 42% annual return for his fund compared to losses for similar periods in the Dow Jones Industrial average and the S&P.

31. Taylor and Smith continued to persistently pursue Donnell to invest in their "fund." For example, on or about May 12, 2003, Taylor represented that his fund would "make \$25,000.00

per month easily.” He and Smith also made independent claims of “huge returns” if Donnell would invest.

32. Donnell was interested in meeting with Taylor prior to entrusting her savings to him. Such a meeting was set up in May 2003, and Donnell traveled to Utah. However, prior to the meeting, Taylor indicated he would be out of town but that he would send a partner to meet with her. This partner turned out to be Smith, who sought to further persuade Donnell to invest in funds that were being traded by Taylor.

33. Eventually, Donnell invested almost all of her net worth with Taylor and the companies with which he was affiliated.

34. Following her initial investments, Donnell repeatedly communicated with Smith and sometimes with Taylor regarding the status of her investments. She was told in a July 22, 2003 email that her investments would be “safe and secure.” In response to requests by Donnell concerning the status of her investments, Smith told Donnell in a July 25, 2003 email that she should not feel obligated to check on her funds daily and that Taylor was handling her account “personally.”

35. Donnell also reiterated her desire that Taylor set “stops” on her Juniper Networks stock, which represented a large portion of her net worth, and which traded at over \$30 per share in 2004.

36. On August 1, 2003, Smith sent the first monthly Ascendus account statement to Donnell which indicated that her “Financial Advisor” was Roger E. Taylor. Donnell believed Taylor was her Financial Advisor for all investments she made with Ascendus and, later, FFCF.

37. That same day, Donnell signed a "Limited Trading Authorization Agreement" which allowed Taylor to trade the funds in her Penson account.

38. In or about August 2003, Taylor and Smith and the entities with which they were involved began paying profits to Donnell. Smith instructed Donnell that of those profits she received, she was to wire a "commission" of 30% of those amounts to Ascendus. She did as directed on a monthly basis.

39. On August 25, 2003, Taylor sent a letter to Donnell indicating that his fund "is up over 36% year-to-date and we are far ahead of the markets overall." He also represented that her investments "should result in a substantial retirement income stream."

40. Donnell's monthly Ascendus statements reflected such profits on a monthly basis, even after accounting for the 30% commission payment to Taylor and Smith, as did 1099s Penson provided to Donnell. Penson is a company which held the funds belonging to Donnell and which were traded by Taylor.

41. Monthly income to Donnell was one of her investment goals. Donnell told Taylor and Smith that her interests were preservation of capital as well as a reasonable monthly income. She specifically communicated this to them in October 2003. Such communications were wholly consistent with her pre-investment communications to Taylor and Smith.

42. Taylor acknowledged this in an email dated October 22, 2003, stating "our goals are capital preservation and then monthly income, in that order."

43. Taylor also represented that his fund had "a positive return for every month this year." He then touted that his fund was up "over 50.8% year-to-date and we are far ahead of the markets

overall.” He promised in that same email that “[a]s you compound this money over the coming years it should result in a substantial retirement income stream.”

44. Taylor also stated in this same letter that he had “frequent meetings with all the traders” that he supervised.

45. As reflected in various documents provided to her, Donnell’s account value continued to grow.

46. Also in October 2003, Taylor took a large “short” position on Donnell’s behalf in a company known as Netflix. On or about October 28, 2003, Smith indicated to Donnell by email, with a copy to Taylor, as follows: “Roger asked me to email you with regards to the NFLX position in your account. He is concerned with the recent volatility of this stock and the potential effect it could have on our ability to maximize the margin in an account of your size. In addition, it exceeds the risk/loss minimums you have expressed a wish to carry on your account. Roger would like to reallocate it to the Ascendus general account so that it will not potentially effect your future margins.”

47. As part of this “reallocation,” Smith told Donnell that “due to regulations imposed by the Patriots act they need an original notarized copy of all stock transfer orders.” Donnell provided this form to Defendant Touch Trade, which, on information and belief, apparently has or had an affiliation with Defendant Great Eastern. Donnell expected the Netflix position to be transferred to the Ascendus general account as requested by Taylor. At some point, the document was altered by the letters “DTC” being written over, and replaced with the word “move.”

48. On February 24, 2004, Donnell asked Smith a question regarding the Netflix transaction. Smith responded the following day that Roger would have the information necessary to respond. On February 28, 2004, presumably after talking to Taylor, Smith wrote to Donnell that "Netflix neither added to nor subtracted from your account I will get you a letter stating it was a Rogue order and should have never been in your account." Donnell learned in mid-2008 that this representation was false.

49. Further, Donnell recently received information that Taylor and Smith transferred her short position in the Netflix shares not to the Ascendus general account as they promised, but to another investor named Albert Wirth. The value of these misappropriated shares was \$119,200 at the time. In an email dated November 18, 2003, Taylor confirmed such a transfer had occurred. But in an email dated July 18, 2008, Taylor then denied transfers of short position from one account to another took place, stating "That is not something we ever did!"

50. Such behavior was contrary to Donnell's justified expectations. It was important to Donnell that Taylor be cautious with her funds. She communicated this repeatedly to Taylor and Smith. Among other things, she requested on multiple occasions that "all trades must be protected," that she wanted "no more than 8 to 10 percent risk of a position," and that "stops" should be put in place to preserve all of her positions, especially in the Juniper stock that represented a large portion of her account.

51. Despite these specific instructions, Taylor sometimes sought to entice Donnell to take greater risks with her account. In an email Taylor sent to Donnell on November 18, 2003, Taylor indicated, "[a]s to the 8-10 percent . . . I can do that, but you may see greatly diminished returns and

I do not think it wise with this strategy. If you will permit, let me give you a modified version of a letter wrote to one of my clients who had the same type concerns last year. He is very happy with us still and we made him 42.15% last year.” (Emphasis in original).

52. Taylor also told Donnell he would “make a great monthly income or be able to enjoy monthly compound interest and toast most every fund manager on a yearly basis.” (Emphasis in original).

53. It also appears Defendants were similarly irresponsible regarding Donnell’s specific instructions concerning her account. As set forth above, Donnell was concerned about her “margin account,” and asked that it be paid off as quickly as possible to avoid interest charges and additional risk.

54. On or about September 29, 2003, Donnell sent \$80,000.00 to Ascendus which she directed be used towards paying off her margin account.

55. On or about October 2, 2003, Smith told Donnell: “I just heard from Penson that the wire arrived it was applied toward your margin. This should really increase our ability to generate good returns on your account.”

56. On or about October 29, 2003, Donnell asked for information on her margin balance, indicating her belief that she had paid \$90,000.00 toward her margin account. Via email copied to Taylor, Smith informed Donnell that her margin balance was only \$37,557.29.

57. On or about November 24, 2003, Donnell reiterated to Taylor and Smith that she wanted them to pay off her margin account.

58. Donnell received a statement indicating that her margin balance was \$193,168.11, far different than the \$37,557.29 represented to her a few weeks earlier. She raised this issue with Ascendus by email dated December 12, 2003.

59. In response to this concern, Smith wrote on December 12, 2003 that "[t]hose numbers are accurate, BUT it is not what you would be on the hook for or your responsibility." Donnell was also told that Taylor's strategy "protects your stock and we protect your margin."

60. On or about December 13, 2003, Smith said in an email to Donnell that her remaining margin balance, "as of next Friday, will be very low."

61. On January 20, 2004, Taylor wrote a letter to Donnell and his other "priority clients" in which he talked about his pride in starting Ascendus. He also promised Donnell that "some major changes in the trading department...should make for an exciting 12 months for you profit wise." Indeed, Ascendus statements for the following twelve months indicated dramatic positive returns every single month. Similarly, the Penson 1099s showed significant annual profits.

62. Based on her monthly returns, Donnell inquired of Taylor and Smith whether one of her friends might also be able to invest. Smith informed Donnell by email dated March 7, 2004 that access to the funds being managed by Taylor was "limited" but that he "might be able to get your friend in."

63. In fact, in reliance on the stellar performance of her investments, she referred a friend to Defendants. He invested \$50,000 and was told that "Roger is the 'lead' trader, but they have between five and seven other guys, apparently, all work closely with Roger, and no one makes a move without Roger's ok"

64. In 2004, Donnell became confused over the discrepancies in the Ascendus statements and the Great Eastern statements. She raised these issues with Smith. Smith represented that the Ascendus statements were the most reliable indicator of her "net worth." Then in or about May 2004, Taylor and Smith sent a letter to Donnell in which they represented to Donnell and all other Ascendus clients that "[t]he Ascendus statements are accurate and can be utilized by your accountants for tax purposes."

65. On information and belief, Defendants Great Eastern, Touch Trade and Newren monitored Donnell's account and obtained profit and loss reports that also reflected commissions Donnell paid to one or more of the Defendants. These Defendants, and others, had access to Donnell's account.

66. As set forth above, part of the stocks that represented assets in Donnell's account were a number of shares of Juniper Networks. Prior to investing with Taylor, Smith, and their companies, Donnell had worked for several years for Juniper. Through that employment, a portion of which was pre-IPO, she received a sizeable number of Juniper shares, which represented a significant portion of her overall net worth. Eventually, she was laid off by Juniper, which was one of the reasons she sought a safe haven and reasonable monthly payments on her investments with Taylor's fund.

67. At the seminar where she was told about Taylor's prowess in generating large returns for his investors, Donnell was also told that Taylor protected his clients' investments using stop losses and other mechanisms. During the seminar, Donnell realized that she had lost millions of dollars because her prior broker had not used such tools in managing her Juniper shares. As

mentioned above, Donnell conveyed this information to Taylor and Smith even prior to investing in Taylor's fund.

68. Donnell provided specific instructions to Taylor and Smith regarding where to place "stop losses" on her Juniper shares. Despite these instructions, Taylor actually purchased additional Juniper stock rather than selling Juniper stock at specific "stop loss" prices as previously directed by Donnell. Even though Juniper sold higher than \$30 per share during portions of 2004, Taylor failed to set stops on that stock, and the price fell by more than one-third thereafter, causing significant losses to Donnell.

69. This was contrary to prior promises by Taylor and Smith. For example, on July 22, 2003, Smith stated: "As Roger and I discussed your account this is the information we wanted to pass on to you . . . your stock is, and always will be, safe and secure." Similarly, on May 10, 2004 she was informed by Taylor that the manner in which he was handling her funds, including her Juniper stock, was a "low risk" strategy.

70. Despite Donnell's specific instructions about setting stop losses on Juniper stock to prevent losses in her account, and prior promises to protect her stock, Taylor failed to sell the stock as directed, resulting in a significant loss. To cover up what had happened, Taylor and Smith made false representations about the Juniper stock to Donnell and her CPA that were not discovered until 2008.

71. Donnell also has discovered that further stop loss orders were not honored, and Juniper stock was not sold until approximately February 20, 2006. It was liquidated in order to facilitate a transfer of funds to another program run by Taylor, Smith, LBS, and others.

72. On information and belief, Taylor, Smith, Newren, Touch Trade, Great Eastern, and others improperly caused significant losses in Donnell's account before, during, and after the transfer of funds from Penson to FFCF or otherwise failed to see that her funds were safely transferred.

73. Donnell was told her entire Penson balance was transferred to FFCF, yet Donnell has learned that not all of her Penson funds were actually transferred. As one small example, Smith claimed that Donnell's Penson account showed a transfer of \$88,532.10 to FFCF which Donnell now knows did not arrive in her FFCF account, despite Defendants' statements to the contrary. Andersen also provided a document wrongfully indicating this transfer took place. Moreover, recent disclosures suggest that only \$332,000 made it into the FFCF account rather than the dramatically higher figure that should have been transferred.

74. Donnell was persuaded to allow the transfer of her funds out of Penson and into FFCF, a company, on information and belief, totally controlled by Smith, Taylor, and LBS. Donnell was told FFCF was a safer program for her funds which would bring higher returns and that Taylor would continue managing her money.

75. Throughout the time Donnell's funds were with Ascendus, her monthly Ascendus statements reflected significant returns every single month, as did her Penson 1099s. This was also true with FFCF.

76. Tax documents Donnell received from Defendants and others supported Donnell's belief that she had significant assets in her account. For example, 1099s she received from Penson indicated profits of at least \$807,499.46 in 2004, \$1,533,972.98 in 2005, and \$539,359.31 in 2006. This over \$2.8 million in profits is now mysteriously gone from Donnell's account.

77. Similarly, for tax year 2006, FFCF released a K-1 indicating that Donnell's ending capital account was worth \$1,948,051.15. FFCF's K-1 to Donnell for tax year 2007 indicated an ending capital account balance of \$2,153,573.56.

78. The FFCF Operating Agreement dated January 23, 2006 states as follows: **"The sole initial Manager of the Company shall be Roger E. Taylor.** The Manager shall direct, manage and control the business of the Company and shall have full and complete authority, power and discretion to make any and all decisions and to do any and all things which the Manager shall deem to be reasonably required" (Emphasis added).

79. The FFCF Operating Agreement further states that "Roger E. Taylor shall serve as the Manager of the Company until his resignation, removal, death, Legal Incompetency or Financial Insolvency"

80. On information and belief, Taylor signed Donnell's FFCF Subscription Agreement, listing himself as Manager of FFCF. In that document, Taylor certifies that the sum of \$1,486,791.44 was transferred into FFCF on Donnell's behalf by Taylor and Smith.

81. The FFCF Subscription Agreement refers potential investors to the FFCF Operating Agreement, which designates Taylor as FFCF's sole Manager.

82. The FFCF Subscription Agreement indicates that any notices to FFCF are to be sent to Taylor's attention.

83. Further, the FFCF domain name listed Taylor as the owner, using his home address and name.

84. Donnell later invested an additional \$401,000 into FFCF, showing her trust in Taylor and Smith and her belief that prior investments with them had performed well. An FFCF statement sent by Defendant Andersen confirms that \$400,000 was added to her FFCF account.

85. Taylor has subsequently denied, through a letter from his counsel dated August 29, 2008, that he was ever a manager of FFCF, as well as indicating directly on a separate occasion that while he was a manager of FFCF, he didn't realize it. Such statements are contrary to his prior conduct. Moreover, he previously suggested to Donnell that he was the one who signed the Subscription Agreements on behalf of FFCF.

86. Smith indicated by email to Donnell on October 14, 2007 that all funds she put into FFCF (called the "bond product") was "principal guaranteed."

87. FFCF purportedly put its investors' funds with Defendant LBS Management, located in Newport Beach, California. FFCF would sometimes use this same address as a business address.

88. Subsequent documents provided to Donnell indicated that the balance of funds in her FFCF account exceeded \$2 million. For example, Hans Andersen prepared the FFCF statements. He indicated that such statements were prepared in accordance with "proper and accepted accounting practices." One such statement prepared by Andersen for the time period ending June 20, 2006 represented that Donnell's account contained \$2,057,712.96.

89. Subsequently, the accounting firm of HJ & Associates took over responsibility for FFCF's books and records. In a statement for the time period ending December 31, 2007, HJ & Associates, through CPA Franklin Hunt, released a statement they prepared "based on proper and

accepted accounting principles according to industry standards.” This statement indicated that the total value of Donnell’s FFCF account was \$2,487,715.77.

90. Based on information recently revealed to Donnell, it now appears that Taylor, Smith, and companies that they own or control transferred funds out of Donnell’s name and misappropriated them. Donnell was told in late November 2008 for the first time that Defendants no longer have any of her money and that it has all been “lost.”

91. Based on her belief (now shown to be misguided) that Taylor and Smith had properly managed her account, in March 2008, she agreed to invest the sum of \$115,000 toward what she was told was an “oil well loan.” Donnell was promised a \$30,000 return on this investment. She wired this investment to Ascendus as directed by Smith. When this amount was not paid by its due date of April 19, 2008, she was promised an additional \$65,000, for a total of \$210,000.00, to be paid by close of business on July 7, 2008. Nothing has been paid towards this debt.

92. On July 13, 2008, Donnell sent an email to Smith. Smith’s wife responded, informing Donnell that Smith had taken a bottle of pills and was hospitalized. In subsequent emails, Smith’s wife told Donnell that Smith was of no help in responding to Donnell’s urgent inquiries about the status of her account.

93. Mrs. Smith informed Donnell on July 23, 2008, that the Ascendus account where the \$115,000 had been wired for the investment in the “oil well loan” had been closed and had a zero balance.

94. On July 16, 2008, Taylor sent an email to Donnell urging her not to contact the Attorney General's Office or the "Feds." He indicated to her that such an approach would result in "no money or very little" and that if she would just "work with me for a few months = money."

95. Twelve minutes prior to that email, Taylor sent another email urging Donnell not to seek legal counsel because it would "dramatically slow this process into the years and years."

96. On July 17, 2008, Taylor sent a letter to FFCF investors indicating that Smith had acknowledged wrongdoing and had attempted suicide. Taylor also represented that there were trading gains in FFCF.

97. On July 21, 2008, Taylor sent an email to Donnell in which Taylor indicated that he "was always communicating to Richard in report form."

98. Smith wrote a letter to Donnell and others at about this time in which he stated that in fact there had been significant trading losses and that investors' accounts had been losing money since 2004, which had been kept hidden from investors.

99. In contrast, Taylor's counsel has informed Donnell, through her attorney, that Taylor never lost funds while trading Donnell's account, suggesting that her funds have been misappropriated rather than lost through unauthorized and unsafe trading practices. The Pension 1099s support this claim.

FIRST CLAIM FOR RELIEF
(Fraud/Intentional Misrepresentation)
(All Defendants)

100. Donnell realleges and incorporates herein all of the allegations set forth elsewhere in paragraphs 1 through 99 of this Complaint as though fully set forth herein.

101. Defendants in this case committed numerous acts of fraud.

102. Among the material misstatements are the following:

- a. That her FFCF investment was guaranteed.
- b. That her FFCF investment was safe.
- c. That her investments in FFCF made steady returns.
- d. That her FFCF statements were accurate.
- e. That she was not “on the hook” for margin balances.
- f. That her margin had been paid off.
- g. That Ascendus’ statements were the most reliable indicator of Donnell’s net worth.
- h. That Ascendus’ statements were accurate for tax purposes.
- i. That the manner in which Taylor was handling Donnell’s funds was a “low risk” strategy.
- j. That the NetFlix position neither added to or subtracted from her account and was transferred to the Ascendus general account.
- k. Repeated assurances that her investments should result in a substantial retirement income stream.
- l. That information provided by Defendants to Donnell about the cost basis of her Juniper stock was accurate.
- m. That all of the funds in Donnell’s Penson account were transferred to her FFCF account.

103. Among the material omissions are the following:

- a. That her funds had been transferred away from her and to other third parties.
- b. That she had a margin balance and was being charged interest on it.
- c. That her so-called profit payments were merely being paid out of her own margin balance, thereby increasing her debt.
- d. That the Defendants had transferred funds belonging to her to other investors to keep their Ponzi scheme going.
- e. That instead of selling Juniper stock pursuant to Donnell's repeated "stop loss" instructions, Taylor actually purchased additional Juniper stock.
- f. What happened to Donnell's Juniper holdings when her Penson account was liquidated.
- g. Omitting to tell Donnell until mid-2008 that her funds were "lost."
- h. That the amounts reflected in account statements were inaccurate.
- i. That all of her funds in Ascendus were not transferred to FFCF.

104. Defendants statements and omissions were false or misleading and Defendants knew at the time that they were false and misleading.

105. Donnell reasonably relied on these misrepresentations and omissions to her detriment.

106. As a result of the misstatements and omissions, Donnell has been damaged in an amount to be proven at trial, but which is reasonably expected to exceed \$2.8 million.

107. As a result of the wilful and wanton nature of Defendants' conduct, Donnell is entitled to exemplary damages in an amount to be proven at trial but which are expected to exceed \$10 million.

SECOND CLAIM FOR RELIEF
(Breach of Contract—Oil Well Loan Agreement)
(Smith, Smith Holdings, Ascendus)

108. Donnell realleges and incorporates herein all of the allegations set forth in paragraphs 1 through 99 of this Complaint as though fully set forth herein.

109. Donnell entered into an agreement with Smith, Smith Holdings, and Ascendus through which she loaned these entities the total amount of \$115,000. In return she was to receive the sum of \$210,000.

110. Donnell fully performed her obligations under this agreement.

111. Defendants Smith, Smith Holdings, and Ascendus failed to abide by their contractual commitments by failing to pay Donnell the sum of \$210,000 by July 7, 2008.

112. As a result of this breach, Donnell is entitled to the sum of \$210,000, plus interest, costs, and attorneys fees.

THIRD CLAIM FOR RELIEF
(Breach of Contract)
(Taylor, Smith, Ascendus, FFCF)

113. Donnell realleges and incorporates herein all of the allegations set forth in paragraphs 1 through 99 in this Complaint as though fully set forth herein.

114. Donnell entered into agreements with Defendants Taylor, Smith, Ascendus, and FFCF through which Defendants agreed to manage her investments and to generate returns consistent with

her investment objectives. These Agreements include the Limited Trading Authorization Agreement, the Subscription Agreement, and certain oral agreements. Pursuant to these oral agreements, Donnell was promised that her principal would always be "safe and secure," that her margin would be paid off, that stop losses would be used, and similar terms set forth above.

115. Donnell fully performed her obligations under those agreements.

116. Defendants Taylor, Smith, Ascendus, and FFCF failed to perform as promised and agreed, repeatedly breaching the agreements by improperly using margin, by failing to maintain and protect Donnell's investment funds as promised, by failing to follow Donnell's instructions regarding specific trades for Juniper stock, and by otherwise misusing her funds. Such conduct represents breaches of the oral agreements, the Subscription Agreement, and the Limited Trading Authorization Agreement.

117. In addition, Taylor has recently admitted through counsel that Defendants Smith and FFCF took funds belonging to Donnell and transferred them to other FFCF investors. This apparently was done in order to perpetuate the Ponzi scheme being operated by certain of the Defendants. Such conduct also represents a breach of contract.

118. As a result, Donnell has been damaged in an amount to be proven at trial but which she reasonably expects will exceed \$2.8 million.

FOURTH CLAIM FOR RELIEF
(Breach of Fiduciary Duty)
(All Defendants)

119. Donnell realleges and incorporates herein all of the allegations set forth in paragraphs 1 through 99 of this Complaint as though fully set forth herein.

120. Defendants owed fiduciary duties to Donnell, given the position of trust granted to them by Donnell. Among other things, Donnell entrusted them with a substantial portion of her life savings.

121. As a result, Defendants had a duty of utmost care to appropriately protect Donnell and her investments.

122. In breach of their fiduciary duties, Defendants failed to protect the interests of Donnell by, among other ways, allowing her funds to be misappropriated, by directly transferring them to others who had no right to such funds, by misrepresenting material facts to Donnell, by omitting to tell her critical facts that would have allowed her to preserve and protect her investment, by failing to exercise proper care in performing services for the benefit of Donnell, by failing to pay off her margin account, by misusing her margin account, and by otherwise failing to appropriately maintain and protect her assets.

123. In further violation of their fiduciary duties, Defendants Smith, Taylor, and Ascendus failed to follow express instructions of Donnell regarding trading of Juniper stock.

124. As a result of these breaches of fiduciary duties, Donnell has been damaged in an amount to be proven at trial, but which is reasonably expected to exceed \$2.8 million.

125. Due to the wilful and wanton misconduct of the Defendants, Donnell is entitled to exemplary and punitive damages in an amount to be proven at trial but which are expected to be no less than \$10 million.

FIFTH CLAIM FOR RELIEF

(Conversion)
(All Defendants)

126. Donnell realleges and incorporates herein all of the allegations set forth in paragraphs 1 through 99 of this Complaint as though fully set forth herein.

127. Defendants held Donnell's funds in trust. In violation of Donnell's rights, Defendants converted Donnell's funds to their own use by transferring her funds to third parties without authority and by otherwise using Donnell's funds for their own use. In addition, Defendants, or some of them, wrongfully used Donnell's Juniper shares and her margin account without authority and for their benefit.

128. As a result of such conversion, Donnell has been damaged in an amount to be proven at trial, which is reasonably expected to exceed \$2.8 million.

SIXTH CLAIM FOR RELIEF

(Accounting)
(All Defendants)

129. Donnell realleges and incorporates herein all of the allegations set forth in paragraphs 1 through 99 of this Complaint as though fully set forth herein.

130. As an investor, Donnell is entitled to an accounting of what Defendants did with her funds.

131. Consequently, Donnell seeks an order compelling all Defendants to provide complete access to all books and records of their companies and individually in order for Donnell to ascertain the disposition of her funds.

SEVENTH CLAIM FOR RELIEF
(Unjust Enrichment/Quantum Meruit)
(All Defendants)

132. Donnell realleges and incorporates herein all of the allegations set forth in paragraphs 1 through 99 of this Complaint as though fully set forth herein.

133. By retaining funds belonging to Donnell, Defendants have been unjustly enriched.

134. Therefore, Donnell is entitled to an order compelling Defendants to return to Donnell any and all of her funds they received, directly or indirectly.

EIGHTH CLAIM FOR RELIEF
(Professional Negligence)
(Accountants/Accounting Firms)

135. Donnell realleges and incorporates herein all of the allegations set forth in paragraphs 1 through 99 of this Complaint as though fully set forth herein.

136. Defendants Hans B. Andersen, Hans Andersen Accounting, HJ & Associates, and Franklin Hunt ("Accounting Defendants") all performed services for and on behalf of Donnell. As alleged above, the Accounting Defendants purportedly provided audited FFCF statements, including Donnell's FFCF statement.

137. The Accounting Defendants owed a duty to Donnell.

138. The Accounting Defendants breached this duty by failing to perform their professional services in a reasonable manner. The Accounting Defendants claimed that they conducted an analysis of Donnell's FFCF balance and repeatedly affirmed that she had, at times, in excess of \$2 million in her FFCF account. In fact, it now appears that she did not have those funds in her account. The Accounting Defendants failed to recognize this fact and failed to notify Donnell

as required. In addition, Accounting Defendant Andersen provided confirmation of various transfers into the FFCF account which may not have occurred.

139. In this regard, the Accounting Defendants' behavior fell below the reasonable standard of care for similarly situated accountants performing similar services.

140. Had Donnell known of the true situation with respect to her FFCF account, she would have acted far differently than she did.

141. As a result of the professional negligence of the Accounting Defendants, Donnell has been damaged in an amount to be proven at trial, but which is reasonably expected to be no less than \$2.8 million.

142. In addition, based on the wilful, wanton, and reckless nature of the Accounting Defendants' misconduct, Donnell is entitled to exemplary damages in an amount to be proven at trial.

NINTH CLAIM FOR RELIEF
(Negligence)
(All Defendants)

143. Donnell realleges and incorporates herein all of the allegations set forth in paragraphs 1 through 99 of this Complaint as though fully set forth herein.

144. Each of the Defendants owed a duty of care to Donnell. Each of them had specific responsibilities regarding reporting information, managing her account, or otherwise protecting her funds.

145. The Defendants breached their duties as set forth in this Complaint.

146. As a result of these breaches of duty, Donnell has been damaged in an amount to be proven at trial, but which is reasonably expected to be no less than \$2.8 million.

147. Because Defendants' conduct was wilful and wanton, Donnell is also entitled to exemplary damages in an amount to be proven at trial.

TENTH CLAIM FOR RELIEF

(Securities Fraud - Federal - Section 10(b) of the Exchange Act 15 -
U.S.C. § 78j(b); and Rule R10b-5 Thereunder-5, 17 C.F.R. § 240.10b-5)
(All Defendants)

148. Donnell realleges and incorporates herein all of the allegations set forth in paragraphs 1 through 99 of this Complaint as though fully set forth herein.

149. In connection with the activities described in the foregoing paragraphs of this Complaint, Defendants, directly and indirectly, in connection with the purchase and sale of securities, by use of the mails and other instrumentalities of interstate commerce (a) employed devices, schemes, and artifices to defraud Donnell; (b) made untrue statements of material fact to Donnell and omitted to state to Donnell material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in acts, practices, and courses of conduct that operated or would operate as a fraud and deceit upon Donnell.

150. By virtue of the foregoing activities, Defendants violated Section 10b of the Exchange Act, 15 U.S.C. § 78j(b), and Rule R10b-5 thereunder, 17 C.F.R. § 240.10b-5, and are liable to Donnell for so doing.

151. As a direct and proximate consequence of this wrongful and fraudulent conduct by Defendants, Donnell has been damaged and Defendants are liable for an amount to be proven at trial,

which is reasonably expected to exceed \$2.8 million, plus interest thereon, along with all other available relief.

ELEVENTH CLAIM FOR RELIEF

(Securities Fraud - Utah - Utah Uniform Securities Act, Utah Code Ann. § 61-1-1)
(All Defendants)

152. Donnell realleges and incorporates herein all of the allegations set forth in paragraphs 1 through 99 of this Complaint as though fully set forth herein.

153. In connection with the activities described in the foregoing paragraphs of this Complaint, Defendants, directly and indirectly, in connection with the purchase and sale of securities, by use of the mails and other instrumentalities of commerce; (a) employed devices, schemes, and artifices to defraud Donnell; (b) made untrue statements of material fact to Donnell and omitted to state to Donnell material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in acts, practices, and courses of business that operated or would operate as a fraud and deceit upon Donnell.

154. By virtue of the foregoing activities, Defendants violated the Utah Uniform Securities Act, *Utah Code Ann.* § 61-1-1, *et seq.*, and are liable to Donnell for so doing.

155. As a direct and proximate consequence of these violations of the Utah Uniform Securities Act by Defendants, Donnell has been damaged and continues to be damaged in an amount to be proven at trial, which is reasonably expected to exceed \$2.8 million and, pursuant to *Utah Code Ann.* § 61-1-22, is properly trebled, plus interest thereon, along with all other available relief.

JURY DEMAND

Plaintiffs demand a trial by jury on all issues so triable.

WHEREFORE, Donnell prays for relief as follows:

1. ON DONNELL'S FIRST CLAIM FOR RELIEF: For actual and consequential damages as a result of fraud, including interest and attorneys' fees, exemplary and punitive damages, and for such other and further relief as the Court deems just;
2. ON DONNELL'S SECOND CLAIM FOR RELIEF: For actual and consequential damages as a result of the breaches of contract alleged, including interest and attorneys' fees and for such other and further relief as the Court deems just;
3. ON DONNELL'S THIRD CLAIM FOR RELIEF: For actual and consequential damages as a result of the breaches of contract alleged, including interest and attorneys' fees and for such other and further relief as the Court deems just;
4. ON DONNELL'S FOURTH CLAIM FOR RELIEF: For actual and consequential damages as a result of the breaches of fiduciary duty, including interest and attorneys' fees and for such other and further relief as the Court deems just, and for exemplary and punitive damages in an amount to be proven at trial;
5. ON DONNELL'S FIFTH CLAIM FOR RELIEF: For actual and consequential damages as a result of the conversion alleged, including interest and attorneys fees and for such other and further relief as the Court deems just;

6. ON DONNELL'S SIXTH CLAIM FOR RELIEF: For an Order compelling Defendants to provide complete access to all books and records of their companies and individually in order for Donnell to ascertain disposition of her funds;

7. ON DONNELL'S SEVENTH CLAIM FOR RELIEF: For Judgment in favor of Donnell and against Defendants in an amount to be proven to be the amount by which the Defendants have each been unjustly enriched, along with interest, costs, and attorneys fees;

8. ON DONNELL'S EIGHTH CLAIM FOR RELIEF: For Judgment in favor of Donnell and against the Accounting Defendants in an amount to be proven at trial, plus interest, costs, attorneys fees and for exemplary and punitive damages in an amount to be proven at trial;

9. ON DONNELL'S NINTH CLAIM FOR RELIEF: For Judgment in favor of Donnell and against the Defendants in an amount to be proven at trial, plus interest, costs, attorneys fees and for exemplary and punitive damages in an amount to be proven at trial;

10. ON DONNELL'S TENTH CLAIM FOR RELIEF: For Judgment in favor of Donnell and against the Defendants in an amount to be proven at trial, plus interest, costs, attorneys fees, and all other remedies available under applicable federal securities laws;

11. ON DONNELL'S ELEVENTH CLAIM FOR RELIEF: For Judgment in favor of Donnell and against Defendants in an amount to be proven at trial, plus interest, costs, attorneys fees, treble damages, and all other remedies available under applicable Utah securities laws;

12. ON ALL CLAIMS FOR RELIEF: For attorneys fees, costs, and other available relief;
and,

13. ON ALL CLAIMS FOR RELIEF: For such other and further relief as the Court
deems just under the circumstances.

DATED this 10th day of February, 2009.

PARR BROWN GEE & LOVELESS



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