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

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ALBERT WIRTH, and FLORENCE T.  
WIRTH,

Plaintiffs,

vs.

ROGER E. TAYLOR, RICHARD T. SMITH,  
ASCENDUS CAPITAL MANAGEMENT,  
LLC, FFCF INVESTORS, LLC, FRANKLIN  
FORBES ADVISORS, LP., LBS FUND, L.P.,  
LBS ADVISORS, INC., SUMMIT CAPITAL  
ADVISORS, INC., JEFFREY B. ROYLANCE,  
JENNETTE L. ROYLANCE, GJB  
ENTERPRISES, INC., GERALD BURKE a/k/a  
G.J. BURKE, JASON BUCK, RICHARD C.  
SCHMITZ, and KARI M. LAITINEN,

Defendants.

**COMPLAINT AND JURY DEMAND**

Case No. 2:09-cv-229

Judge: Dee Benson

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Plaintiff alleges and complains against the above-named defendants as follows:

**INTRODUCTION**

1. Plaintiff Albert Wirth is a resident of Chicago, Illinois who is 65 years old. He and his family owned and ran a Continental Landmark restaurant in Chicago named Zum Deutschen Eck for 44 years. In 2000, the restaurant was closed. After the restaurant closed, Mr.

Wirth needed a place to invest his life savings for retirement. Accordingly, Mr. Wirth attended a "Teach Me To Trade" seminar in Las Vegas, Nevada in September 2003, which was being taught by defendant Roger Taylor. Mr. Wirth spent his entire career in the restaurant business and knew little about trading, investing, or the stock market. Following the seminar, Mr. Taylor invited Mr. Wirth to come to Utah to find out about investment opportunities offered by Mr. Taylor. In advance of the meeting, Mr. Wirth sent Mr. Taylor a list of his mutual fund holdings and stock portfolio to review.

2. When Mr. Wirth visited Mr. Taylor in October 2003 in Utah, Mr. Taylor represented that he had 4 to 5 people trading for him. Mr. Taylor also did a PowerPoint presentation for Mr. Wirth, wherein he represented that he was consistently achieving returns of thirty (30) to forty (40) percent for his clients. Mr. Taylor also represented to Mr. Wirth that his clients' investments were safe and secure. Mr. Wirth asked Mr. Taylor if he could manage Mr. Wirth's portfolio. Mr. Taylor indicated that he would call Mr. Wirth and let him know.

3. Mr. Taylor called Mr. Wirth and told him that he had a company by the name of Ascendus Capital Management, LLC ("Ascendus"), a Registered Investment Advisor, in which he traded for his clients. Mr. Taylor indicated that he charged a commission based on profits made in his clients' accounts. Mr. Taylor represented that "[t]here are NO fees associated with the services. We either make you money or we don't. If we don't, you don't pay, if we do, you share the profits with us in the form of a commission; straight forward and simple." Mr. Taylor said that if Mr. Wirth earned between .01% and 11.99%, he would pay a 10% commission. If Mr. Wirth earned between 12% to 23.99%, he would pay a 20% commission. If Mr. Wirth earned above 24%, he would pay a 30% commission. Mr. Taylor explained to Mr. Wirth that

Ascendus would send Mr. Wirth statements each month and wire profits to Mr. Wirth, and then in return, Mr. Wirth would wire back commission payments.

4. Mr. Wirth made arrangements to meet with Mr. Taylor at his office in Salt Lake City, Utah on October 2, 2003 to learn more about how Ascendus worked. At this meeting, Mr. Taylor introduced Mr. Wirth to defendant Richard T. Smith, whom Mr. Taylor described as his assistant. Mr. Taylor also met Richard A. Alsop, counsel for Ascendus, that afternoon.

5. Mr. Wirth had two accounts, an investment account and an IRA account. In reliance upon the representations made by Mr. Taylor about his track record, between October 10, 2003 and October 15, 2003, Mr. Wirth moved both of his accounts to Mr. Taylor to manage. Mr. Wirth moved \$3,503,016.57 from his investment account, and \$220,720.52 from his IRA account to Mr. Taylor. The total Mr. Wirth initially invested with Mr. Taylor was \$3,723,737.09. Later, on May 24, 2005, Mr. Wirth added \$219,079.80 to his IRA investment, which increased his IRA account investment to \$439,800.32. The total invested by Mr. Wirth in both accounts was \$3,942,816.89.

6. Mr. Taylor managed Mr. Wirth's accounts, which were discretionary trading accounts, and had complete and sole trading authority over the accounts. To assist Mr. Wirth in being able to check his account balances, Mr. Taylor set up a portfolio account for Mr. Wirth at the Trade Center ("Teach Me to Trade"). Mr. Taylor entered and updated Mr. Wirth's various positions in his portfolio on the Trade Center, so that Mr. Wirth could log on and check his account balances through the software program. Mr. Taylor managed and controlled what Mr. Wirth saw on his Trade Center account.

7. Right away, Mr. Taylor sent monthly statements to Mr. Wirth, and reported high returns. For example, as of November 21, 2003, Mr. Taylor and Ascendus represented that Mr. Wirth earned 1.4% in one month, which Mr. Taylor represented entitled Ascendus to a 30% trading commission of \$12,489.02. Similarly, as of December 19, 2003, Mr. Taylor and Ascendus represented that Mr. Wirth's account earned 5.7% in one month, entitling Mr. Taylor to a 30% trading commission of \$37,763.07. Mr. Smith sent Mr. Wirth a statement indicating that he paid \$52,496.45 in commissions in 2003 to Ascendus.

8. As of January 17, 2004, Mr. Taylor and Ascendus represented that he had made an 8% return in one month, again entitling Mr. Taylor to a 30% trading commission of \$20,151.32.

9. Continuing this pattern, Mr. Taylor and Ascendus represented to Mr. Wirth that he had achieved the following returns and earned the following commissions in 2004:

<u>Date</u>	<u>Gross Return</u>	<u>Commission Earned</u>	<u>Net Monthly Income</u>
02/20/2004	12.4%	30% (\$37,966.67)	\$88,588.92 +4.4%
3/19/2004	16.6%	30% (\$35,810.15)	\$83,557.03 +4.2%
4/16/2004	18.8%	30% (\$19,450.91)	\$45,385.48 +2.2%
5/21/2004	20.4%	30% (\$14,237.50)	\$33,220.85 +1.6%
06/18/2004	22.5%	30% (\$18,215.01)	\$42,502.70 +2.1%
07/17/2004	24.8%	30% (\$17,164.50)	\$40,050.51 +2.3%
08/20/2004	27.4%	30% (\$19,037.46)	\$44,420.74 +2.6%
09/30/2004	29.6%	30% (\$17,226.70)	\$40,195.64 +2.2%
10/31/2004	31.7%	30% (\$16,366.50)	\$38,188.50 +2.1%
11/30/2004	33.2%	30% (\$11,976.87)	\$27,946.03 +1.5%
12/31/2004	34.8%	30% (\$12,895.11)	\$30,088.60 +1.6%

10. During 2004, each month, Mr. Taylor would wire the gross reportable income to Mr. Wirth, and then Mr. Wirth would wire back to Mr. Taylor the commission amount set forth in each statement to Ascendus' bank account at Far West Bank in North Orem, Utah. Mr. Smith

sent Mr. Wirth a statement verifying that Mr. Wirth paid \$240,498.25 in commissions to Ascendus in 2004.

11. Mr. Taylor's representation of high returns continued in 2005. In 2005, Mr. Taylor represented that he made the following monthly returns, and earned the following commissions:

<u>Date</u>	<u>Gross Return</u>	<u>Commission Earned</u>	<u>Net Monthly Income</u>
01/31/2005	36.3%	30% (\$11,825.94)	\$27,593.86 +1.5%
02/28/2005	3.6%	30% (\$16,321.05)	\$38,082.47 +1.5%
03/31/2005	5.4%	30% (\$14,562.20)	\$33,978.47 +1.8%
04/30/2005	7.1%	30% (\$13,386.60)	\$31,235.40 +1.7%
05/31/2005	7.9%	20% (\$3,061.70)	\$12,246.80 +.8%
06/30/2005	8.5%	20% (3,741.59)	\$14,966.36 +.9%
07/31/2005	9.9%	20% (\$5604.05)	\$22,416.22 +1.4%
08/31/2005	10.9%	20% (\$3091.76)	\$12,367.07 +1%
09/31/2005	12.8%	30% (\$12,526.74)	\$29,229.07 +1.9%
10/31/2005	14.1%	30% (\$5757.11)	\$23,028.44 +1.3%
11/30/2005	15.1%	10% (1456.67)	\$13,110.10 +1%

12. Mr. Smith sent Mr. Wirth a statement indicating that Mr. Wirth paid \$105,773.85 in commissions in 2005 to Ascendus.

13. In the summer of 2005, Mr. Taylor called Mr. Wirth and told Mr. Wirth that he wanted to shift Mr. Wirth's funds into another company he was forming called FFCF, which company invested in Franklin Forbes Composite Funds, which funds were backed by the international French bank, Societe Generale. Mr. Taylor represented to Mr. Wirth that although the returns were smaller with the Franklin Forbes Composite Funds, and that Mr. Wirth would only receive twelve (12) to fourteen (14) percent per year, the funds were "100% safe", were backed by Societe Generale and they were "insured." Mr. Taylor also represented to Mr. Wirth that he would receive a check for one percent (1%) per month, which would permit Mr. Wirth to

travel and relax, without market worries. Mr. Taylor also represented that “we need to get together and make this decision first, because normally this product will not accept anyone with less than 25 million to put in. We need to double your portfolio in the next 3-4 years and do that every 3-4 and we need to get you up to 40-50-60,000 a month that doesn’t change ... that you can actually budget and say, I know exactly what is coming in on April 24<sup>th</sup>. That is where I can take you.”

14. Accordingly, in reliance upon Mr. Taylor’s representations, Mr. Wirth consented to have his funds transferred to Mr. Taylor’s company, FFCF, which transfer took place on or about February 9, 2006. Mr. Taylor and Ascendus confirmed and represented to Mr. Wirth that he was transferring a total of \$3,678,987.04 -- \$3,215,954.77 in his investment account and \$463,032.27 in his IRA, but Mr. Wirth has no independent knowledge of such fact, other than what was reported to him by Mr. Taylor, Ascendus and FFCF. Mr. Wirth has not seen a wire transfer or check to verify that such funds were actually transferred as represented. It will be investigated in this lawsuit whether the represented balances were ever, in fact, transferred from Ascendus to FFCF.

15. Mr. Taylor on February 7, 2006 confirmed that Mr. Wirth’s account had been moved, and moved into the new product.

16. Mr. Taylor represented on February 22, 2006 that Mr. Wirth’s money “is held in SG Bank under the name of the LLC, FFCF Investors. They are one of the top ten banks in the world. Stronger than U.S. banks. See website. <http://www.socgen.com/indexen.htm>.” Mr. Taylor also represented to Mr. Wirth that he would receive “quarterly statements from SG for the LLC.” Mr. Taylor further represented that “[y]ou own a portion of the LLC and an accounting firm here

in the US, Utah, will take the SG statement and generate your statement based on how much money you have in the LLC.” Mr. Taylor further represented that “[a]lthough the money is commingled, there is a separate accounting account for each person that will be kept by the accounting firm.”

17. Subsequently, Mr. Wirth wrote to Mr. Taylor on March 26, 2006 that he had not received any statements from Franklin Forbes. “I would like to receive an official statement from Franklin Forbes Monthly for my account just as I receive from all the financial institutions I do business with. This is a standard procedure. . . . This account is most important to me and I want to make sure it is safe and that the funds are growing accordingly.”

18. In response, on March 28, 2006, Mr. Taylor made the following representations:

- “I will be providing a monthly or every other month newsletter to give everyone in our LLC updates on anything of interest and import.”
- “[Y]our first monthly statement will not come until the April audit (as we discussed) because we did not get in during Feb as planned. Many were ready, but many did not get their money transferred until the first of March. We needed to meet the minimums and some were slow, some on vacation, some had to fly in and Richard and I had to travel out to many. Good news is we had a lot of different lawyers from different states pass off on both sets of paperwork :-). We actually waited a couple days after we met the minimums because some were not quite in and they wanted in.”
- “There is a delay each month as PriceWaterhouse Coopers and Franklin Templeton does their audit and sends it to us. Your first statement will be for march (received near the third week in April) then steadily and routinely every month after that.”
- “[Y]our first payment will be at the end of April for the first quarter profits which include march only.”

19. On May 11, 2006, Mr. Wirth asked Mr. Taylor why he had not yet received a statement. “The e/mail you sent me on 2/22/06 did mention that I would be receiving a quarterly

statement from SG. I have not yet seen a statement.” Mr. Wirth also stated that “I would like to receive from Franklin Forbes a Summary signed by you or the accountant exactly how the investments work. . . .”

20. Mr. Wirth eventually received a statement from FFCF Investors, LLC for the Franklin Forbes Composite Funds LLC for the quarter 01/30/2006 to 03/31/2006. The statement represented that Mr. Wirth had a total net increase in his account of \$29,270.96, and a total account value of \$3,209,211.70 in his investment account. The statement for his IRA represented that Mr. Wirth had a net growth of \$4573.06, and a total account balance of \$466,254.60 as of 3/31/2006.

21. On August 10, 2006, Mr. Wirth asked Mr. Taylor to send his accountant, Hans, to explain to Mr. Wirth’s accountant, Tom Murtagh, “how the Franklin Forbes Portfolio works and what the future tax consequences will be for 2006 and the future.” Mr. Wirth also stated to Mr. Taylor that “[w]e were supposed to receive a newsletter quarterly from Franklin Forbes-Composite Funds but I have not received one in July.”

22. Following the end of the second quarter, on August 16, 2006, Mr. Smith represented that Mr. Wirth owned 1258 shares of FFCF Investors, LLC, which shares were up 1.2%.

23. On August 16, 2006, Mr. Wirth sent Mr. Smith an e-mail and inquired as follows: “According to your newsletter Franklin Forbes, LLC you mentioned is changed to LBS Management. Is LBS a LLC and which state is it registered?”



24. On August 26, 2006, Mr. Smith represented to Mr. Wirth that “Number of FFCF Investors, LLC Shares 1258 Up 1.2%.” Mr. Smith also provided Mr. Wirth a worksheet, purportedly showing his account values and returns.

25. On August 30, 2006, Mr. Taylor represented that Mr. Wirth would now “be receiving monthly statements from FFCFUNDs instead of quarterly. The payments will still be quarterly, but the statements will be monthly. Also, because of our increased size, we will be using a larger firm from now on.”

26. On September 25, 2006, Mr. Taylor on behalf of Summit Capital Advisors, LLC made the following representations to Mr. Wirth:

- “[FFCF Investors, LLC fund] with LBS had a good July and August. There were profits posted in each month despite the stock market falling hard then rebounding modestly with energy prices rising and consumer confidence and spending falling.”
- “The market and the economy can suffer, but [FFCF Investors, LLC fund] in conjunction with LBS Management has several low ‘Standard Deviation’ (ris), high ‘Sharpe Ratio’ (return) funds that will excel in down markets and economies, up markets and economies and consolidation markets and economies and we will continue to follow all geopolitical and economic circumstances in all markets to keep all our money Safe first, with ‘flowing and growing’ as a priority.”

27. Defendant Summit Capital Advisors, LLC also provided Mr. Wirth with account statements, wherein in represented the account balances in Mr. Wirth’s account, and indicated that Summit Capital Advisors, LLC had taken an advisory management fee for managing Mr. Wirth’s account.

28. Subsequently, Mr. Taylor recommended that Mr. Wirth place his funds with LBS Advisors out of Newport Beach, California. In making the recommendation, Mr. Taylor represented to Mr. Wirth that LBS “deal[s] with multibillion dollar fund managers, not

individual investors.” Mr. Taylor also represented, “[r]emember, just the fact that they will talk with one of the members of FFCF is pushing it.” Mr. Taylor also represented to Mr. Wirth that “[t]here is over 1 billion in client money in the fund.”

29. To explore the opportunity, Mr. Wirth at the urging of Mr. Taylor flew to Newport Beach, California on or about September 26, 2006, and met with Richard Smith, Kari Laitinen, Roger Taylor, and Richard Schmitz. Mr. Wirth was told that Jason Buck, the famous NFL star and former BYU football player, was one of the principals of LBS Advisors. Messrs. Smith, Laitinen, Mr. Schmitz and Mr. Taylor represented to Mr. Wirth that his funds would be safe, and insured, and that he would continue to receive a return of twelve to fourteen percent per annum.

30. Mr. Wirth was provided information by Messrs. Smith, Laitinen, Schmitz and Taylor which represented that Franklin Forbes Advisors, Inc. was a registered investment advisor. The materials also represented that “Franklin Forbes Composite Fund (FFCF) is a best of breed alternative investment listed fund on the Luxembourg stock-exchange with investment alliances among two major bulge-bracket banks, Dresdner Kleinwort Wasserstein (DrKW) and Societe Generale (SG); strong world banking presence with a total combined assets exceeding \$2 trillion.”

31. The materials provided by Messrs. Smith, Laitinen, Schmitz and Taylor also represented to Mr. Wirth that “FFCF allocates dollars amongst DrKW and SG confidently investing in managers such as JP Morgan, Goldman Sachs, Deutsche Bank, Pimco, ING, and Fiduciary Trust (FT), a wholly owned subsidiary of Franklin Templeton. Many of these managers require \$25 million minimums to gain access to entry with high barriers to entry. “

32. The materials provided by Messrs. Smith, Laitinen, Schmitz and Taylor also represented to Mr. Wirth that “[w]orking with SG provides an EIGHT-year track record, with two years of average leveraged returns in excess of 40% per year (at 400% participation) in partnership with Societe Generale, the 2<sup>nd</sup> largest bank in Europe, 14<sup>th</sup> in the world, S&P AA-rating, almost 100,000 employees in over 80 different countries.”

33. The materials provided by Messrs. Smith, Laitinen, Schmitz and Taylor also represented to Mr. Wirth that “[w]orking with DrKW and FT provides a TWENTY-year track record of not one single default in its absolute return fixed income portfolio.”

34. Messrs. Smith, Laitinen, Schmitz and Taylor represented to Mr. Wirth that Franklin Forbes Advisors, LP had changed their name to LBS Fund, LP.

35. Following the meeting with LBS, Mr. Taylor represented on November 17, 2006 that “[y]ou will continue to get monthly statements from us, but as of January, you will be receiving statements directly from the funds, LBS, with no middleman. You will not be dealing with FFCF investors any longer.” Mr. Taylor also represented on November 17, 2006 that Mr. Wirth was about to “realize” a “profit” of “[a]round 845k.” In response, Mr. Wirth expressed concern that he had not received any statements from LBS. On November 17, 2006, Mr. Wirth wrote to Mr. Taylor:

Since this is my life savings, I want to make sure it is safe and sound and that all is invested the best method possible. I am trying to ascertain where the funds are at this moment – which bank??

36. In response, on November 18, 2006, Mr. Taylor stated that “I have come to love you like a brother, and I mean that, but I am concerned that you are concerned. I really enjoy knowing that we have you in a principal guaranteed fund with monthly income for you.

(Monthly starting Jan.) When you asked to meet the Fund managers, I flew down with you to do so. . . . I am willing to put you directly with the fund managers so that you can get direct accounting on your funds.”

37. In reliance upon these representations by Mr. Taylor, Mr. Wirth consented to have his funds moved to LBS. In connection with the movement of Mr. Wirth’s funds, Mr. Wirth asked Mr. Taylor what the amount transferred would total. In response Mr. Taylor represented that as of February 1, 2007, Mr. Wirth’s accounts were worth \$3,834,540.75. Mr. Taylor represented that \$845,000 of that total was “in Carry Overs”. Mr. Wirth asked Mr. Taylor what the result would be of Mr. Taylor’s clearing out the \$845,000 in open positions that Mr. Wirth had as part of his investments with FFCE. In response, on January 30, 2007, Mr. Taylor represented that “[t]hese positions will be 100% profit as I have explained to Tom [Mr. Wirth’s accountant].”

38. Subsequently, Mr. Wirth met on or about February 2, 2007 with Mr. Taylor and Mr. Smith in Las Vegas, Nevada in the lobby at the Four Seasons hotel. Mr. Taylor had suggested Las Vegas as a meeting place since Mr. Taylor lives in a suburb of St. George, Utah. Messrs. Smith and Taylor reiterated their representation that Mr. Wirth’s funds were safe, and secure at LBS, and repeated that Mr. Wirth’s account was worth approximately \$3.8 million.

39. Mr. Wirth received a statement from LBS Fund, L.P. and signed by Kari Laitinen dated October 31, 2007, which represented that “[t]he statement also reflects the account performing at a monthly annualized nominal rate of 14%.”

40. Subsequently, on December 18, 2007, Mr. Taylor advised Mr. Wirth that his funds at LBS Advisors were invested in a GJB product with GJB Enterprises and/or G.J. Berke,

a fund run by Gerald Berke, in Los Angeles, California. Mr. Laitinen then advised Mr. Wirth that his funds were invested in commercial paper with Mr. Burke. On December 18, 2007, Mr. Taylor represented to Mr. Wirth that “the GJB product at LBS funds is generally safer and more secure during credit crunches, like we are starting to experience, and will most likely experience for some years to come.”

41. On January 16, 2007, Mr. Smith sent out a “newsletter” via e-mail to Mr. Wirth.

Mr. Smith on behalf of FFCF made the following representations:

- “The LBS Secured Commercial Income Fund, L.P. (Class B Income) allows investors access to an otherwise closed fund. This investment allocation is with a firm that began in 1976 and is engaged in the purchase and financing of commercial paper. The consistent application of their stringent safeguards and due diligence has provided 30 years of successful business without having ever missed a payment or been late on interest and/or principal payments. As a result they are able to pay a preferred rate of 14% per annum. We currently manage approximately \$120 million in this fund and have approved a total portfolio size of \$150 million (after which the fund will be closed again to additional investment).”
- “We are going to move FFCF Investors out of the middle-man role and dual accounting role and put you as a client directly with LBS and their accounting and their customer service.”

42. Mr. Wirth received an acknowledge from LBS Fund, L.P. and LBS Advisors, Inc., General Partner on April 15, 2007, that his initial balance was \$494,993.54 in his IRA account. The statement reflected 16 days of earnings in the amount of \$2,603.80.

43. On April 25, 2007, Mr. Taylor sent Mr. Wirth an e-mail stating that FFCF made gains of \$2,278.33 in the IRA, and \$15,454.87 in the main account.

44. On June 9, 2008, LBS Advisors, Inc. represented to Mr. Wirth that:

- “The LBS Fund invested within the secured commercial income strategy allows investors’ access to an otherwise closed fund.”

- “This investment allocation (hereafter ‘sub-manager’) is with a commercial lender that began in 1976 and is engaged in the purchase and financing of commercial paper. Although past performance is not a guarantee of future results, the consistent application of their stringent safeguards and due diligence has provided over 30 years of successful business without having ever missed a monthly 1% distribution payment or been late on interest and/or principal payments.”
- “The sub-manager currently manages approximately \$120 million and have approved a total portfolio size of \$150 million (after-which the fund will be closed again to additional investment).
- “All loans are secured by tangible and intangible property owned by the borrower, thus insulating the assets from claims by creditors in the unlikely event of bankruptcy.”

45. In reliance upon such representations, on or about June 26, 2008, Mr. Wirth also assisted his mother, Florence T. Wirth, who is 94-years old, to invest \$220,000.00 with LBS Advisors.

46. On or about February 1, 2009, Mr. Taylor informed Mr. Wirth that Mr. Smith had tried to commit suicide.

47. On or about February 19, 2009, Mr. Wirth requested the return of all of his principal and his mother’s principal from LBS Fund L.P. and LBS Advisors, Inc. in both his trust account and his IRA account, and as his mother’s account, as well as an accounting. LBS, in response, advised Mr. Wirth on February 4, 2009 that Mr. Berke had a collapsed lung, and thus was unavailable to liquidate Mr. Wirth’s account. It has now been more than four (4) weeks since Mr. Berke allegedly suffered a collapsed lung, and to date, LBS has not returned Mr. Wirth’s funds, despite repeated requests.

48. Defendant Kari M. Laitinen has represented to Mr. Wirth that LBS Fund L.P. and LBS Advisors, Inc. have filed a lawsuit against GJB Enterprises, Inc. and Gerald Berke to attempt to recover Mr. Wirth's allegedly lost funds.

49. FFCF has alleged through counsel, among other things, that Mr. Smith has misappropriated and stolen funds that belonged to certain investors in FFCF, that FFCF was a ponzi scheme, and that FFCF allegedly transferred more funds to Mr. Wirth than he allegedly was due from FFCF. Mr. Smith has purportedly confessed to these facts in a letter.

#### PARTIES

50. Plaintiff Al Wirth is an individual, who resides in Chicago, Illinois, and who is a citizen of the State of Illinois.

51. Plaintiff Florence T. Wirth is an individual who resides in Chicago, Illinois, and who is a citizen of the State of Illinois.

52. Defendant Roger E. Taylor is an individual who currently resides at 1360 Summerwood Circle, Santa Clara, Washington County, Utah 84765, although Mr. Taylor has currently listed the house for sale. At all relevant times, Mr. Wirth believed that Mr. Taylor was his financial advisor. Mr. Taylor represented to Mr. Wirth that he was the Manager of FFCF Investors, LLC. Mr. Taylor is a citizen of the State of Utah.

53. Defendant Richard T. Smith is an individual who resides at either 243 N. 1100 E., Springville, Utah 84663 or 443 North 750 East, Orem, Utah County, Utah 84097. Mr. Smith is a citizen of the State of Utah.

54. Defendant Ascendus Capital Management, LLC is a Utah limited liability company with its former place of business at 222 East South Temple, Salt Lake City, Salt Lake

County, Utah 84111. Mr. Roger E. Taylor is the Manager of Ascendus. Ascendus is believed to be a citizen of the State of Utah.

55. Defendant FFCF Investors, LLC 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. FFCF Investors, LLC is believed to be a citizen of the State of Utah.

56. Defendant Franklin Forbes Advisors, Inc. is a California corporation, with its place of business located at 110 Newport Center Drive, Suite 200, New Port Beach, California 92660. Defendant Richard Schmitz is the President of Franklin Forbes Advisors, Inc. Defendant Franklin Forbes Advisors, Inc. is a citizen of the State of California.

57. Defendant LBS Fund, L.P. is a corporate entity having as its principal place of business 110 Newport Center Drive, Second Floor, Suite 200, Newport Beach, California 92660. LBS Fund, L.P. is believed to be a citizen of the State of California.

58. Defendant LBS Advisors, Inc. is a corporate entity having as its principal place of business 110 Newport Center Drive, Second Floor, Suite 200, Newport Beach, California 92660. LBS Fund, L.P. is believed to be a citizen of the State of California.

59. Summit Capital Advisors, Inc. is a Utah corporation, with its principal place of business located at 224 South Main, Suite 456, Springville, Utah 84663. Summit is believed to be a citizen of the State of Utah.

60. Defendant Jeffrey B. Roylance is an officer of Summit, and a citizen of the State of Utah.

61. Defendant Jennette L. Roylance is an officer of Summit, and a citizen of the State of Utah.



62. Defendant GJB Enterprises, Inc. is a California corporation, with its principal business of business located at 11835 W. Olympic Blvd., Suite 755, Los Angeles, California 90064. GJB Enterprises, Inc. is a citizen of the State of California.

63. Defendant Gerald Berke is believed to reside at 2133 Century Woods Way, Los Angeles, California 90067. Mr. Berke is a citizen of the State of California.

64. Defendant Jason Buck is an officer, director or managing member of LBS Fund, L.P. and/or LBS Advisors, Inc., and is believed to be a citizen of the State of California.

65. Defendant Richard C. Schmitz is an officer, director or managing member of LBS Fund, L.P. and/or LBS Advisors, Inc., and is believed to reside at 5392 Via Vicente, Yorba Linda, California 92887, Mr. Schmitz is a citizen of the State of California.

66. Defendant Kari M. Laitinen is the CEO, and/or an officer, director or managing member, of LBS Fund, L.P. and/or LBS Advisors, Inc., the CEO of Franklin Forbes Advisors, Inc., and is believed to reside at 5417 Lakeview Avenue, Yorba Linda, California 92886. Mr. Laitinen is a citizen of the State of California.

#### **JURISDICTION AND VENUE**

67. Jurisdiction is proper pursuant to 28 U.S.C. § 1332, in that there is complete diversity and the amount in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs. This action also, in part, arises under § 10(b) of the Securities Exchange Act of 1934 (the “1934 Act”), 15 U.S.C. § 78j(b), and the rules and regulations promulgated thereunder, including Securities and Exchange Commission (“SEC”) Rule 10b-5, 17 C.F.R. § 240.10b-5. Jurisdiction is based upon § 27 of the 1934 Act, 15 U.S.C. § 78aa and 28 U.S.C. § 1331.

68. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because a substantial part of the acts complained of, including the dissemination of materially false and misleading statements and reports by defendants, occurred in this District.

**FIRST CAUSE OF ACTION**

**(Common Law Fraud Against All Defendants,**

**Except Jeffrey B. Roylance and Jennette L. Roylance)**

69. Plaintiffs incorporate by reference each and every allegation set forth in paragraphs 1-68 above as if fully set forth herein.

70. Defendants, and each of them, committed numerous acts of fraud.

71. Among the material misstatements made by Defendants are the following:

- a. That Mr. Taylor consistently achieved returns of thirty to forty percent for his clients;
- b. That the principal of Plaintiffs' investments was guaranteed;
- c. That Plaintiffs' investments were safe and secure;
- d. That Plaintiffs' investments were always and profitable and never lost money;
- e. That the statements issued by Defendants were accurate, and accurately reflected the performance of the investments made in Plaintiffs' accounts;
- f. That Mr. Taylor, Ascendus, FFCF and Summit had earned the commissions they were paid;
- g. That the balances shown in the Teach Me To Trade portfolio in the Trade Center set up by Mr. Taylor for Mr. Wirth were accurate;
- h. That the tax documentation provided to Plaintiffs were accurate;
- i. That FFCF invested Mr. Wirth's funds in Franklin Forbes Composite Funds, backed by Societe Generale.
- j. That Mr. Wirth's funds were held in SG Bank under the name of FFCF Investors, LLC.

- k. The FFCF properly transferred Plaintiffs' funds by check or wire transfer to LBS;
- l. That LBS manages over \$1 billion in funds;
- m. That Mr. Wirth's funds at LBS are safe, secure, and have guaranteed principal.
- n. That Mr. Wirth's funds at GJB, Enterprises, GJB Fund, and/or with Gerry Berke are safe and secure.
- o. That Gerry Burke has a collapsed lung and that is the reason Mr. Burke is unable to return Plaintiffs' funds.

72. Each of the above-identified material misrepresentations were false when made, or were made with reckless disregard for the truth thereof.

73. Plaintiffs reasonably and actually relied on each of the above misrepresentations to their detriment.

74. As a result of the willful and wanton nature of Defendants' conduct, Plaintiffs are entitled to exemplary damages in an amount to be proven at trial, but which are expected to exceed \$12 million.

### **SECOND CAUSE OF ACTION**

**(Section 10(b) and Rule 10b-5 Against All Defendants,**

**Except Jeffrey B. Roylance and Jennette L. Roylance)**

75. Plaintiffs incorporate by reference each and every allegation set forth in paragraphs 1-74 above as if fully set forth herein.

76. Defendants violated Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5, by, singly and in concert, directly engaging in a common plan, scheme, and unlawful course of conduct,

pursuant to which they knowingly and recklessly engaged in acts, transactions, practices, and courses of business which operated as a fraud and deceit upon plaintiffs, and failed to disclose material information in order to make the statements made, in light of the circumstances under which they were made, not misleading to plaintiffs.

77. The purpose and effect of said scheme, plan, and unlawful course of conduct was, among other things, to induce Plaintiffs to invest more than \$4,000,000 with Defendants.

78. As a result of the failure to disclose material facts, the information that Defendants disseminated to Plaintiffs was materially false and misleading as set forth above. Plaintiffs reasonably and actually relied on the above-described false and misleading statements investing with Defendants. In ignorance of the false and misleading nature of the statements described above and the deceptive and manipulative devices and contrivances employed by Defendants, Plaintiffs, to their detriment, relied on Defendants' representations. Had Plaintiffs known the truth, they would not have invested with Defendants.

79. By reason of the foregoing, directly violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder by: (a) employing devices, schemes and artifices to defraud; (b) failing to disclose material information; or (c) engaging in acts, practices, and a course of business which operated as a fraud and deceit upon Plaintiffs in connection with their investments in Defendants.

80. As a direct and proximate result, Plaintiffs have suffered substantial damages in an amount to be proven at trial, but which amounts are estimated to exceed \$4,000,000.00.

**THIRD CAUSE OF ACTION**

**(Section 20 of the 1934 Act Against Taylor, Smith, Berke, Buck, Schmitz, Leitinen,  
Jeffrey B. Roylance, and Jennette L. Roylance)**

81. Plaintiffs incorporate by reference each and every allegation set forth in paragraphs 1-80 above as if fully set forth herein.

82. Each of the individual defendants, by virtue of their management positions, officerships, directorships, stock ownership and/or specific acts described above, were, at the time of the wrongs alleged herein, controlling persons within the meaning of Section 20(a) of the 1934 Act.

83. The individual defendants had the power and influence and exercised the same to cause the other Defendants to engage in illegal conduct and practices as set forth in detail above.

84. Each of these defendants, at all relevant times, by virtue of their positions and participation in the above-identified actions, had real knowledge of, and exercised control over the dissemination of, the material misstatements and omissions described above.

85. By reason of the conduct alleged above, the individual defendants are liable for the wrongful conduct alleged herein, and are liable to Plaintiffs for the substantial damages which they suffered in connection with their investments in Defendants.

**FOURTH CAUSE OF ACTION**

**(Negligent Misrepresentation Against All Defendants)**

86. Plaintiffs incorporate by reference each and every allegation set forth in paragraphs 1-85 above as if fully set forth herein.

87. Defendants supplied false information for the guidance of others in the above-mentioned business transactions, and in so doing, failed to exercise reasonable care or competence in so doing.

88. Defendants had a duty to make sure that their statements to plaintiffs concerning the above-referenced material facts were accurate, complete and truthful.

89. Defendants breached their respective duties of care as described above. In so doing, Defendants acted in accord with their pecuniary interests.

90. As a direct and proximate result of defendants' breach, Plaintiffs have been damaged in an amount to be proven at trial, but which amount is expected to exceed \$4,000,000.00.

#### **FIFTH CAUSE OF ACTION**

##### **(Breach of Fiduciary Duty Against All Defendants)**

91. Plaintiffs incorporate by reference each and every allegation set forth in paragraphs 1-90 above as if fully set forth herein.

92. Defendants held themselves out to Plaintiffs as professionals skilled and experienced in acting as investment advisors and/or fund managers.

93. By accepting the responsibility of investing Plaintiffs' funds and protecting Plaintiffs' life savings, Defendants became fiduciaries, and were charged with the duty to act in the best interests of Plaintiffs.

94. In reasonable and actual reliance upon the statements made by Defendants, Plaintiffs entrusted Defendants with the duties of investment advisors and fund managers.

95. Defendants, and each of them, owed Plaintiffs a fiduciary duty to act with that degree of professional skill and competence of other investment advisors and fund managers in such a capacity.

96. Defendants, and each of them, breached the fiduciary duties that they owed to Plaintiffs by engaging in the acts set forth above.

97. As a direct and proximate result of Defendants' breach of their fiduciary duties to Plaintiffs, Plaintiffs have been damaged in an amount to be proven at trial, but which amount is expected to exceed \$4,000,000.00.

98. Due to the willful and wanton misconduct of the Defendants, Plaintiffs are entitled to exemplary and punitive damages in an amount to be proven at trial, but which amount is expected to exceed \$12 million.

#### **SIXTH CAUSE OF ACTION**

##### **(Conversion Against All Defendants)**

99. Plaintiffs incorporate by reference each and every allegation set forth in paragraphs 1-99 above as if fully set forth herein.

100. Defendants held Plaintiffs funds in trust. In violation of that trust, Defendants converted Plaintiffs funds to their own use.

101. As a result of such conversion, Plaintiffs have been damaged in an amount to be proven at trial, which is reasonably expected to exceed \$4 million.

**SEVENTH CAUSE OF ACTION**

**(Accounting Against All Defendants)**

102. Plaintiffs incorporate by reference each and every allegation set forth in paragraphs 1-101 above as if fully set forth herein.

103. As investors, Plaintiffs are entitled to an account of what Defendants have done with Plaintiffs' funds.

104. Consequently, Plaintiffs seek an order compelling all Defendants to provide full and complete access to all books, records and bank accounts for themselves and their companies, so that Plaintiffs can ascertain what happened to their funds.

**EIGHTH CAUSE OF ACTION**

**(Unjust Enrichment Against All Defendants)**

105. Plaintiffs incorporate by reference each and every allegation set forth in paragraphs 1-104 above as if fully set forth herein.

106. By retaining funds that belong to Plaintiffs, Defendants have been unjustly enriched.

107. Plaintiffs are thus entitled to an order compelling Defendants to return to Plaintiffs all of their funds they each received, directly or indirectly.

**NINTH CAUSE OF ACTION**

**(Negligence Against All Defendants)**

108. Plaintiffs incorporate by reference each and every allegation set forth in paragraphs 1-109 above as if fully set forth herein.



109. Each of the Defendants owed a duty of care to Plaintiffs. Each of them had specific responsibilities regarding the investment of Plaintiffs' funds, reporting of information, management of accounts, and otherwise protecting Plaintiffs' funds and investments from loss.

110. Defendants breached their duties to Plaintiffs as set forth in this Complaint, including, among other things, by engaging in unsuitable and risky investments given the age, investment objectives, and risk tolerances of Plaintiffs; by engaging in high risk investment activities contrary to Plaintiffs' objectives and Defendants' representations; by churning Plaintiffs' accounts; by paying inaccurate commissions; by self-dealing; and/or by not protecting Plaintiffs' funds from loss.

111. As a direct and proximate result of Defendants' breaches of duty, Plaintiffs have been damaged in an amount to be proven at trial, but which amount is expected to exceed \$4 million.

112. Because Defendants' conduct was willful and wanton, Plaintiffs are entitled to exemplary damages in an amount to be proven at trial, but which amount is expected to exceed \$12 million.

#### **TENTH CAUSE OF ACTION**

##### **(Securities Fraud under Utah Code Ann. § 61-1-1 Against All Defendants)**

113. Plaintiffs incorporate by reference each and every allegation set forth in paragraphs 1-113 above as if fully set forth herein.

114. In connection with the activities described above, 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 Plaintiffs;

(b) made untrue statements of material fact to Plaintiffs and omitted to state to Plaintiffs 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 Plaintiffs.

115. 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 Plaintiffs for so doing.

116. As a direct and proximate result of Defendants' violations of the Utah Uniform Securities Act, Plaintiffs have been damaged and continue to be damaged in an amount to be proven at trial, but which amount is reasonably expected to exceed \$4 million, and pursuant to Utah Code ann. § 61-1-22, is properly trebled to in excess of \$12 million, plus interest thereon, along with all other available relief.

WHEREFORE, Plaintiffs pray for judgment as follows:


1. For damages in an amount to be proven at trial, but which damages are expected to exceed \$12 million;
2. For appropriate pre-judgment and post-judgment interest;
3. For punitive damages;
4. For costs and reasonable attorneys' fees; and
5. For such other and appropriate relief as deemed appropriate by the Court.

DATED this 11<sup>th</sup> day of March, 2009.

  
ERIK A. CHRISTIANSEN  
PARSONS BEHLE & LATIMER  
Attorneys for Plaintiffs

**JURY DEMAND**

Plaintiffs respectfully request a jury on all claims and causes of action properly triable  
before a jury.



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