**UNITED STATES DISTRICT COURT**
**NORTHERN DISTRICT OF OHIO**
**EASTERN DIVISION**

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| **SECURITIES AND EXCHANGE COMMISSION,**<br><br>**Plaintiff,**<br><br>**v.**<br><br>**BRANTLEY CAPITAL MANAGEMENT, LLC, ROBERT PINKAS, and TAB KEPLINGER,**<br><br>**Defendants.** | : | **C.A. No.____________** |

**COMPLAINT**

Plaintiff Securities and Exchange Commission ("SEC"), for its Complaint against Brantley Capital Management ("BCM"), Robert Pinkas ("Pinkas"), and Tab Keplinger ("Keplinger"), (collectively, "Defendants"), alleges the following:

**NATURE OF THE ACTION**

1. The SEC brings this action against the Defendants, who substantially overstated the value of equity and debt investments in two failing companies that represented over one-half of Brantley Capital Corp.'s ("Brantley Capital") investment portfolio to generate higher investment advisory fees. Defendant BCM was the investment adviser to Brantley Capital, a publicly-traded business development company. Defendant Pinkas was the Chairman and Chief Executive Officer of both BCM and Brantley Capital, and directed all of BCM's investment decisions and valuation recommendations. Defendant Keplinger was the Chief Financial Officer

of both BCM and Brantley Capital. The Defendants also made material misrepresentations and failed to make required disclosures regarding the two companies, Flight Options International ("FOI") and Disposable Products Company ("DPC"), to Brantley Capital's board of directors, independent auditors, and to investors. These violations of the federal securities laws occurred during the period 2002 to 2005 as the operating company underlying the FOI investment was practically insolvent and DPC teetered on bankruptcy.

2. From 2002 to 2005, BCM, through Pinkas and Keplinger, advised Brantley Capital's board that its investment in FOI was worth $32.5 million. This represented approximately 50 percent of Brantley's total investment portfolio. The value of Brantley Capital's interest in FOI was derived primarily from FOI's ownership interest in Flight Options, LLC ("Flight Options"), a private airline that consistently lost millions of dollars. From 2002 to 2005, Pinkas and Keplinger understood that Flight Options faced severe financial difficulties and Pinkas knew that it was able to remain in business only because Raytheon Company, the co-owner of Flight Options along with FOI, repeatedly loaned it money. Pinkas and Keplinger failed to disclose these financial difficulties to Brantley Capital's board and investors. Pinkas and Keplinger also misrepresented Flight Options' performance to Brantley Capital's board.

3. Pinkas and Keplinger cited various factors—none of which was true—to support Brantley Capital's $32.5 million valuation of FOI. From 2002 to 2005, Pinkas and Keplinger told Brantley Capital's board, investors, and independent auditors that a Morgan Stanley appraisal of Flight Options prepared in 2001 supported the $32.5 million valuation. However, both knew that Flight Options fell far short of the appraisal's revenue and EBITDA (Earnings Before Interest, Taxes, Depreciation, and Amortization) assumptions, and Pinkas knew that Flight Options was unable to obtain the financing that the appraisal assumed. From 2003 to

2005, Pinkas and Keplinger told Brantley Capital's board, investors, and auditors that a 2003 investment in Flight Options by Raytheon also supported the $32.5 million FOI valuation. In fact, Pinkas and Keplinger knew, or were reckless in not knowing, that the 2003 investment did not support the valuation. Additionally, Pinkas knew, or was reckless in not knowing, that the terms of the Raytheon transaction suggested a significantly lower valuation. Moreover, Pinkas knew that the 2003 Raytheon investment included "liquidation preferences" that were likely to reduce the value of Brantley's investment in FOI by about $5 million. Pinkas also told Brantley Capital's board and auditors that the FOI valuation was supported by offers to invest in Flight Options by third parties in 2002. In fact, the third-party investment offers indicated that Brantley Capital was significantly overstating Flight Options' value.

4. From 2002 to 2005, BCM, through Pinkas and Keplinger, also directed Brantley Capital to overstate the value of its debt investments in DPC. These loans comprised between four to eight percent of its total investment portfolio. Pinkas and Keplinger repeatedly advised Brantley Capital's board that DPC would repay most of the loans. In fact, Pinkas and Keplinger knew, or were reckless in not knowing, that DPC could not. Pinkas and Keplinger understood, but did not disclose, that DPC had constantly and significantly declining revenue, was losing ever-increasing amounts of money, consistently missed its financial targets by large margins, remained in business only because Brantley Capital continued to loan it money, and lacked sufficient assets to cover Brantley Capital's loans in the event of liquidation. Indeed, Pinkas and Keplinger understood that a senior DPC creditor had agreed in 2002 to accept ten cents on the dollar to settle a loan that it had made to DPC, and that other banks would only loan DPC funds if Brantley Capital guaranteed the balances. Despite knowing all of these facts, Pinkas and

Keplinger advised Brantley Capital's board that only relatively minor write-downs of its loans to DPC were required.

5. In October 2005, shortly after BCM withdrew as Brantley Capital's investment adviser and Pinkas and Keplinger had left Brantley Capital, Brantley Capital announced that after a review by its new administrator, its FOI and DPC investments appeared to have no value.

6. By engaging in such conduct, Defendant Pinkas violated the antifraud provisions of the Securities Exchange Act of 1934 ("Exchange Act") and the Investment Advisers Act of 1940 ("Advisers Act"), as well as other provisions of the federal securities laws. In particular, Pinkas violated Exchange Act Sections 10(b) and 13(b)(5) [15 U.S.C. §§ 78j(b) and 78m(b)(5)] and Rules 10b-5, 13a-14, 13b2-1, and 13b2-2 [17 C.F.R. §§ 240.10b-5, 240.13a-14, 240.13b2-1 and 240.13b2-2]; and Advisers Act Sections 206(1) and 206(2) [15 U.S. §§ 80b-6(1), (2)]. Pinkas also aided and abetted BCM's violations of Advisers Act Sections 206(1) and 206(2) [15 U.S.C. §§ 80b-6(1), (2)], and Brantley Capital's violations of Exchange Act Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) [15 U.S.C. §§ 78m(a), 78m(b)(2)(A) and 78m(b)(2)(B)] and Rules 13a-1 and 13a-13 [17 C.F.R. §§ 240.13a-1 and 240.13a-13].

7. Defendant Keplinger violated Exchange Act Sections 10(b) and 13(b)(5) [15 U.S.C. §§ 78j(b) and 78m(b)(5)] and Rules 10b-5, 13a-14, 13b2-1, and 13b2-2 [17 C.F.R. §§ 240.10b-5, 240.13a-14, 240.13b2-1 and 240.13b2-2]. Keplinger also aided and abetted BCM's and Pinkas' violations of Advisers Act Sections 206(1) and 206(2) [15 U.S.C. §§ 80b-6(1), (2)] and Brantley Capital's violations of Exchange Act Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) [15 U.S.C. §§ 78m(a), 78m(b)(2)(A) and 78m(b)(2)(B)] and Rules 13a-1 and 13a-13 [17 C.F.R. §§ 240.13a-1 and 240.13a-13].

8. Defendant BCM violated Exchange Act Sections 10(b) and 13(b)(5) [15 U.S.C. §§ 78j(b) and 78m(b)(5)] and Rules 10b-5 and 13b2-1 [17 C.F.R. §§ 240.10b-5 and 240.13b2-1]; and Advisers Act Sections 206(1) and 206(2) [15 U.S.C. §§ 80b-6(1), (2)]. BCM also aided and abetted Brantley Capital's violations of Exchange Act Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) [15 U.S.C. §§ 78m(a), 78m(b)(2)(A) and 78m(b)(2)(B)] and Rules 13a-1 and 13a-13 [17 C.F.R. §§ 240.13a-1 and 240.13a-13].

9. Unless enjoined, BCM, Pinkas and Keplinger are likely to commit such violations in the future. Each defendant should be permanently enjoined from doing so. Each defendant should be ordered to disgorge any ill-gotten gains or benefits derived as a result of these violations and to pay prejudgment interest thereon, and BCM should be ordered to provide an accounting of all money it obtained from the conduct alleged in this Complaint. In addition, each defendant should be ordered to pay civil penalties. Further, Pinkas and Keplinger should be prohibited from serving as an officer or director of any issuer having a class of securities registered with the Commission pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Exchange Act Section 15(d) [15 U.S.C. § 78o(d)].

## JURISDICTION AND VENUE

10. This court has jurisdiction over this action pursuant to Sections 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(e) and 78aa] and Section 214 of the Advisers Act [15 U.S.C. § 80b-14].

11. The Defendants, directly and indirectly, singly and in concert, have made use of the means and instrumentalities of transportation or communication in, or the instrumentalities of, interstate commerce, or of the mails in connection with the transactions, acts, practices and courses of business alleged in this Complaint.

12. Certain of the transactions, acts, practices and courses of business occurred within the Northern District of Ohio. BCM, Pinkas, and Keplinger all conducted their business in offices located in this district. In addition, Brantley Capital, the business development company whose shareholders were defrauded, was headquartered in this district.

## DEFENDANTS

13. **Robert Pinkas**, age 55, is a resident of Shaker Heights, Ohio. He was the Chairman of the Board, CEO, and Treasurer of Brantley Capital from 1996 to September 28, 2005. Pinkas is Chairman of the Board, CEO, Treasurer, and a manager of BCM. Pinkas was licensed to practice law in New York from 1978 to 1980, but he currently does not have an active law license.

14. **Tab Keplinger**, 48, is a resident of Dover, Ohio. He was the CFO of Brantley Capital and BCM from approximately June 1996 until July 15, 2005. He is a Certified Public Accountant licensed to practice in the state of Ohio since 1985.

15. **Brantley Capital Management, LLC** is a limited liability company headquartered in Ohio, which served as Brantley Capital's investment adviser from Brantley Capital's 1996 inception until September 28, 2005. BCM has previously been registered with the Commission as an investment adviser, but currently is not a registered investment adviser.

## OTHER INVOLVED ENTITIES

16. **Brantley Capital Corp.** was during the relevant period a closed-end, non-diversified investment company, incorporated in Maryland and headquartered in Ohio, which elected to be regulated as a business development company under the Investment Company Act of 1940 ("Investment Company Act"). From 1996 to 2005, Brantley Capital provided private

equity and mezzanine debt to small and medium-sized companies in a variety of industries throughout the United States. Brantley Capital's common stock is registered with the SEC pursuant to Section 12(g) of the Exchange Act. Prior to April 21, 2005, Brantley Capital's common stock traded on the Nasdaq National Market system under the symbol BBDC. On August 3, 2005, the NASD delisted Brantley Capital's common stock. Brantley Capital's last periodic filing was its Form 10-Q for the quarter ended September 30, 2004, which was filed on November 15, 2004. Brantley Capital is winding down its affairs pursuant to a "Plan of Liquidation and Dissolution" its shareholders approved on April 11, 2007. On July 22, 2009, Brantley Capital withdrew its election to be regulated as a business development company.

17. **Flight Options International** was during the relevant period a Delaware corporation, that was originally in the business of selling aircraft maintenance services. By 2000, it derived most of its revenue from the provision of private air travel through the sale of fractional interests in aircraft. In March 2002, it merged its private air travel business with that of Raytheon to create Flight Options, LLC. Subsequent to the merger, FOI maintained other business interests independent of Flight Options.

18. **Flight Options, LLC** was during the relevant period a Delaware limited liability company, headquartered in Ohio. Flight Options provides private air travel service through the sale of fractional interests in jet aircraft. In December 2005, Flight Options became a wholly-owned subsidiary of Raytheon. In November 2007, Raytheon sold Flight Options to an unrelated private equity firm.

19. **Disposable Products Company, LLC** was during the relevant period a limited liability company, headquartered in Phoenixville, Pennsylvania, that manufactured janitorial supplies. DPC discontinued operations in September 2005.

## THE CONDUCT

### Brantley Capital's Valuation Process

20. The Investment Company Act requires Brantley Capital's board of directors to determine the fair value of its investments each quarter. In connection with this process, BCM, through Pinkas and Keplinger, provided each board member quarterly valuation summaries of each investment, which contain a narrative description, summary financial data and forecast, and a valuation recommendation for each portfolio security. These summaries were compiled in "board books" distributed to each board member shortly before each board meeting.

21. At all relevant times, Brantley Capital's internal controls provided that BCM, its investment adviser, would receive monthly, quarterly, and annual financial statements for each investment. Brantley Capital's internal controls also provided that upon receipt of "any sort of valuation performed by third parties," BCM would analyze the third-party valuation against Brantley Capital's valuation and record any significant adjustments.

22. Pursuant to BCM's investment advisory agreement with Brantley Capital, BCM was also responsible for preparing Brantley Capital's financial statements that included the valuations of the portfolio investments.

23. Generally Accepted Accounting Principles ("GAAP") and Brantley Capital's valuation guidelines define "fair value" as what Brantley Capital might reasonably expect to receive for its investment in a current sale.

24. Brantley Capital's valuation guidelines stated further that Brantley Capital would hold an investment at cost until significant developments or other factors provide a basis for value other than cost. Significant developments include subsequent financings by arms-length

third-party investors, the portfolio company's operations, and changes in general market conditions.

**Brantley Capital's Valuations of Its Investment in FOI**

***Background of Brantley Capital's Investment in FOI***

25. Brantley Capital first invested in FOI in 1997 with the purchase of $2.1 million of FOI stock. Though FOI's primary business at that time was the sale of aircraft maintenance services, by 2000, it derived most of its revenue from the provision of private air travel through the sale of fractional interests in aircraft. By December 12, 2000, Brantley Capital had invested a total of $5.6 million in FOI and owned 10 percent of the company. In June 2001, third parties offered to invest in the company at a valuation of $178 million. Based on this investment, the terms of which were subsequently supported by third party investment offers in June 2001, Brantley Capital valued FOI at $178 million, and its 10 percent interest in the company at $17.8 million.

26. In December 2001, FOI and Raytheon agreed to merge their private air travel businesses into a new company, Flight Options. The parties agreed that FOI would own 50.1 percent of Flight Options and Raytheon would own the remaining 49.9 percent. This resulted in Brantley Capital indirectly owning 5 percent of Flight Options. Pinkas became a member of Flight Options' board of directors immediately after the merger.

27. In connection with the planned merger, Raytheon engaged Morgan Stanley to prepare an independent valuation of the new company. In October 2001, Morgan Stanley valued Flight Options at $494 million to $1.3 billion.

28. Morgan Stanley's valuation range was predicated on three major assumptions. The first assumption was that Flight Options would obtain a $41 million capital infusion by

March 2002 that it would use to fund its operations and growth. The second assumption was that Flight Options would generate revenue of $314 million in fiscal year 2002; $571 million in fiscal year 2003; $841 million in fiscal year 2004; and $1.27 billion in fiscal year 2005. The third assumption was that Flight Options would generate EBITDA of $32 million in fiscal year 2002; $68 million in fiscal year 2003; $128 million in fiscal year 2004; and $190 million in fiscal year 2005.

29. Morgan Stanley based its revenue and EBITDA assumptions on Flight Options having an April 1 through March 31 fiscal year. Upon its creation, Flight Options instead used a January 1 through December 31 fiscal year.

30. Citing Morgan Stanley's valuation range, Pinkas and Keplinger advised Brantley Capital's board that Flight Options was worth $600 million and recommended that Brantley Capital value its five percent interest in Flight Options (through FOI) at $30 million. Pinkas and Keplinger also advised the board that Brantley Capital's share of FOI's other businesses, which FOI maintained independent of Flight Options after the merger of the fractional aircraft interests, should be valued at $2.5 million.

31. The board accepted Pinkas and Keplinger's recommendations and valued Brantley Capital's entire interest in FOI at $32.5 million in its Form 10-K for the year ended December 31, 2001. In its 2001 Form 10-K, Brantley Capital cited the Morgan Stanley valuation as the primary basis for the increase in its valuation of its FOI investment. At this time, the FOI investment comprised 54 percent of Brantley Capital's investment portfolio.

***Defendants Overvalue FOI in Brantley Capital's 2002 Form 10-K***

32. Soon after the FOI/Raytheon merger closed in March 2002, it became apparent that Flight Options would not perform nearly as well as the parties expected or as Morgan Stanley's valuation assumed. Whereas Morgan Stanley had assumed that Flight Options would be profitable in its first year in business, the company began losing millions of dollars as it experienced integration and service problems and failed to meet sales forecasts.

33. As a result of its poor performance, Flight Options was unable to obtain the $41 million capital infusion that Morgan Stanley had assumed the company would receive by March 2002.

34. After being engaged to assist Flight Options in obtaining a capital infusion, Morgan Stanley sent private placement materials to prospective investors in April 2002. In May 2002, two private equity funds submitted initial bids to invest in Flight Options at valuation ranges of $600 to $650 million and $300 to $400 million.

35. However, Flight Options subsequently missed by a wide margin the financial targets included in the private placement materials, and on July 23, 2002, the equity funds lowered the valuations on their bids to $460 million and $100 million.

36. On August 13, 2002, in conjunction with Brantley Capital's determination of the fair value of its portfolio for the quarter ended June 30, 2002, Pinkas told Brantley Capital's board that Flight Options had received "two indications of interest in a private round of financing at approximately the current valuation from sophisticated third party investors." Pinkas did not provide the board any details regarding the bids. In fact, at the time he made that representation, Pinkas knew that the two private equity firm bids valued Flight Options at $460 million and $100 million, which were 23 percent and 83 percent below Brantley Capital's $600 million valuation.

37. As the equity funds' review of Flight Options progressed, they lowered their bids even further to valuations of $200 million and $150 million on August 15, 2002.

38. On August 27, 2002, Pinkas joined the rest of Flight Options' board in voting to accept the capital infusion bid that valued Flight Options at $150 million.

39. On or around September 3, 2002, the private equity firm signed a term sheet for an investment at a $150 million valuation. The private equity firm began due diligence and a closing was scheduled for no later than November 30, 2002.

40. This transaction, however, fell apart on October 9, 2002, when Flight Options' continued poor performance caused the private equity fund to lower its valuation of Flight Options further still to $55 million.

41. Flight Options' financial condition was so poor that by November 2002, it was having trouble funding its business from week to week, including paying salaries to its employees. On November 8, 2002, Flight Options' counsel briefed its board of directors, including Pinkas, about its obligations when in a "zone of insolvency."

42. To keep Flight Options afloat, Raytheon made a series of loans to Flight Options to fund its operations.

43. On February 27, 2003, Brantley Capital's board met to consider, among other things, Pinkas and Keplinger's recommendation that Brantley Capital continue to value Flight Options at $600 million, resulting in a $32.5 million valuation of FOI in the company's Form 10-K for the year ended December 31, 2002.

44. By the time of this meeting, Flight Options had provided Pinkas and Keplinger financial statements reflecting that its EBITDA through November 2002 was *negative* $15.7 million on revenue of $368 million.

45. As a member of Flight Options' board of directors, Pinkas knew by February 27, 2003, that Flight Options (1) would not achieve the EBITDA and revenue targets for 2002 underlying the Morgan Stanley valuation; (2) had failed to obtain the capital infusion that Morgan Stanley's valuation assumed; (3) would most likely have had to declare bankruptcy but for loans from Raytheon; (4) had voted to accept a capital infusion bid by a private equity fund that valued the company at $150 million; and (5) was subsequently valued by the private equity fund at $55 million.

46. A $55 million valuation of Flight Options was over 90 percent less than Brantley Capital's $600 million valuation of Flight Options as of year-end 2001.

47. Pinkas knew, or was reckless in not knowing, that Flight Options' decision to accept the private equity fund's $150 million bid was the best evidence of the fair value of Flight Options at that time.

48. In connection with Brantley Capital's preparation of its Form 10-K for the year ended December 31, 2002, Pinkas and Keplinger told Brantley Capital's board of directors on February 27, 2003, that the fair value of Flight Options remained $600 million and that it should thus maintain the valuation of its FOI investment at $32.5 million.

49. In justifying their recommendation regarding the valuation of Flight Options, Pinkas and Keplinger knowingly or recklessly made affirmative misrepresentations and failed to disclose material information to Brantley Capital's board of directors.

50. Though they knew that Flight Options' financial results fell far short of Morgan Stanley's assumptions, Pinkas and Keplinger told the board that the Morgan Stanley valuation supported their $600 million valuation of Flight Options.

51. Pinkas and Keplinger provided the directors board books indicating that Flight Options was estimating that it had generated $808 million in revenue and $40 million in EBITDA in calendar year 2002. In fact, both knew or were reckless in not knowing that Flight Options' revenue and EBITDA were nowhere close to those levels and that Flight Options was, in fact, losing millions of dollars.

52. In addition, Pinkas and Keplinger told the board that the valuation was supported by Flight Options' "EBITDA run rate." Pinkas and Keplinger knew, however, that Flight Options' EBITDA run rate was negative and therefore could not have provided such a basis to support the valuation.

53. On March 31, 2003, before Brantley Capital filed its Form 10-K for the year ended December 31, 2002, Pinkas told the audit committee of Brantley Capital's board of directors and Brantley Capital's independent auditors, KPMG, that a third party had expressed interest in investing in Flight Options "based on a valuation of $650 million." This was a misleading reference to one of the private equity funds, which had indeed valued Flight Options at $600 to $650 million in May 2002, when it first expressed interest in investing in the company, but had reduced its valuation to $200 million in August 2002, after the fund gathered additional information about Flight Options' performance.

54. Neither Pinkas nor anyone else at BCM disclosed the private equity funds' valuations of Flight Options to Brantley Capital's board, even though they were significantly lower than what the Defendants were telling the board Flight Options was worth.

55. Neither Pinkas nor anyone else at BCM informed Brantley Capital's board of the decision of Flight Options' board to accept the bid that valued Flight Options at $150 million or

that the private equity firm whose capital infusion bid Flight Options had accepted had reduced its valuation of the company to $55 million in October 2002.

56. Neither Pinkas nor anyone else at BCM told Brantley Capital's board that Flight Options was only able to continue operating due to financing from Raytheon.

57. In reliance on Pinkas and Keplinger's recommendation that Flight Options was worth $600 million, Brantley Capital's board valued its investment in FOI at $32.5 million in the company's Form 10-K for the year ended December 31, 2002, filed March 31, 2003.

58. This filing discloses that the $32.5 million FOI valuation was the result of the board's review of the "terms" of the 2002 merger of Flight Options and Raytheon "including, among other things, a valuation review prepared by an investment banking firm working on the transaction" (the Morgan Stanley valuation) and the board's use of a "private market method" to value the investment. The Form 10-K does not include any reference to Flight Options' financial condition or the private equity funds' valuations of Flight Options. As in all of Brantley Capital's periodic filings in 2002 through 2004, the Form 10-K disclosed that Brantley Capital valued its investments based on its board's good faith determination of "fair value." At this time, FOI comprised 52 percent of Brantley Capital's investment portfolio.

59. As they did for each periodic report Brantley Capital filed for 2002 through 2004, Pinkas and Keplinger reviewed and signed the Form 10-K and also certified that the filing fully complied with the requirements of Exchange Act Section 13(a) and did not, based on their knowledge, contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to that annual period.

***Defendants Overvalue FOI in Brantley Capital's Periodic Filings for 2003***

***Brantley Capital's Form 10-Q for the Quarter Ended March 31, 2003***

60. Flight Options' financial difficulties continued in 2003. From January through March 2003, Flight Options' financial condition remained so poor that it continued to rely on loans from Raytheon to avoid bankruptcy. Pinkas knew that Raytheon was the only entity willing and able to provide Flight Options the funding it needed to remain in business.

61. On April 16, 2003, Flight Options provided Pinkas with Flight Options' actual financial results for 2002 and the first quarter of 2003. From March 21, 2002 through March 31, 2003, the company generated $530 million in revenue and had negative EBITDA. In contrast, Morgan Stanley's valuation had assumed that Flight Options would generate $571 million in revenue and a net profit of $34.7 million in that period.

62. Neither Pinkas nor anyone else at BCM disclosed Flight Options' poor financial condition and its reliance on Raytheon to Brantley Capital's board of directors. Indeed, Pinkas and Keplinger continued to misrepresent Flight Options' financial results to Brantley Capital's board. On May 12, 2003, Pinkas and Keplinger told Brantley Capital's board in board books that Flight Options had generated $808.7 million in revenue and $40 million in EBITDA between January 1, 2002 and December 31, 2002. In fact, Pinkas and Keplinger understood at the latest by April 16, 2003, that Flight Options had generated far less than those projections. Pinkas and Keplinger understood that Flight Options had, at most, *negative* $15.7 million EBITDA on revenues of $414 million in that period.

63. Although Pinkas and Keplinger knew that Flight Options had failed to achieve Morgan Stanley's revenue expectations, had fallen far short of the EBITDA assumptions, had not raised the capital that Morgan Stanley had assumed it would, and remained in business only

because Raytheon agreed to continue loaning it money—all facts that Pinkas and Keplinger failed to disclose to Brantley Capital's board—they continued to tell the board that Flight Options was worth $600 million and that Morgan Stanley's appraisal supported their valuation.

64. Based on the $600 million valuation, Pinkas and Keplinger again advised Brantley Capital's board on May 12, 2003, that it should maintain the valuation of Brantley Capital's investment in FOI at $32.5 million in its Form 10-Q for the quarter ended March 31, 2003. The board followed Pinkas and Keplinger's recommendation.

65. This Form 10-Q's description of the basis of the FOI valuation is the same as the 2002 Form 10-K and does not include any disclosures about how Flight Options' financial difficulties in turn affected Brantley Capital's financial condition.

66. At the time of this filing, the Flight Options investment comprised 48 percent of Brantley Capital's total investment portfolio.

***Brantley Capital's Forms 10-Q for the Quarters Ended June 30 and September 30, 2003 and Form 10-K for the Year Ended December 31, 2003***

67. Between October 2002 and May 2003, Raytheon loaned Flight Options approximately $28 million to keep it solvent.

68. In June 2003, Raytheon and FOI agreed to a "restructuring" transaction whereby Raytheon committed to provide Flight Options an additional $21 million to fund its operations and working capital needs through December 31, 2004. This resulted in a total of $49 million of loans from Raytheon to Flight Options.

69. In exchange for the combined $49 million, Raytheon received "Series A" preferred stock units in Flight Options that represented a 14.7 percent ownership interest in Flight Options.

70. Though this "restructuring" transaction increased Brantley Capital's interest in Flight Options from 5 percent to 5.7 percent, it included three terms that were likely to reduce the value of Brantley Capital's FOI investment.

71. First, Raytheon's Series A units included a "liquidation preference" of two times their purchase price in any transaction after 2005. This meant that Raytheon would receive the first $98 million (2 times $49 million) generated from the liquidation or sale of Flight Options. This liquidation preference was likely to reduce the value of Brantley Capital's investment in FOI by about $5 million.

72. Second, on behalf of Brantley Capital, Pinkas insisted as a condition to approving the Raytheon transaction that FOI place one-half of its Flight Options shares in escrow to guarantee a $10 million personal liability that Pinkas had. In 2000, Pinkas obtained personal bank loans to finance his purchase of two aircraft that he leased to FOI for use in its fractional program. FOI made interest payments on the loans directly to the banks on Pinkas' behalf. However, by June 2003, the outstanding balances of these loans exceeded the value of the planes by $15 million. On behalf of Brantley Capital, Pinkas required FOI to place in escrow 49 percent of its Flight Options shares, which were to be sold to the extent necessary to cover $10 million of the equity shortfall in the event that the banks sought payment. This guarantee ultimately reduced Brantley Capital's share of the liquidation of FOI by approximately $1.7 million in 2005. Pinkas did not disclose this guarantee either to Brantley Capital's board or to Brantley Capital's investors.

73. Finally, in conjunction with the restructuring transaction, Brantley Capital and another FOI investor jointly and severally guaranteed the $3 million investment of a third FOI investor (the "Private Investment Fund").. The Private Investment Fund had made a $3 million

investment in FOI and demanded the guarantee as a condition of its required consent for the restructuring transaction. Pinkas, on behalf of Brantley Capital but without the board's knowledge, and the other FOI investor agreed to provide this guarantee to the Private Investment Fund.

74. Although Flight Options' financial condition improved temporarily following its receipt of the Raytheon cash infusion, Pinkas and Keplinger knew that it continued to lose millions of dollars and to fall far short of Morgan Stanley's projections.

75. Whereas Morgan Stanley had assumed that Flight Options would generate $840 million in revenue and $128 million in EBITDA from April 1, 2003 through March 31, 2004, Flight Options was able to generate only $623 million in revenue and *negative* $11.2 million in EBITDA in that period.

76. Though Pinkas knew the terms of the Raytheon transaction, and Pinkas and Keplinger knew that Flight Options was continuing to miss Morgan Stanley's revenue and EBITDA assumptions by large margins, Pinkas and Keplinger again told Brantley Capital's board in meetings on August 5, 2003, November 6, 2003, and March 29, 2004 that Flight Options' fair value continued to be $600 million and recommended that Brantley Capital maintain the valuation of its investment in FOI at $32.5 million in its Forms 10-Q for the quarterly periods ended June 30 and September 30, 2003 and for its Form 10-K for the year ended December 31, 2003.

77. Pinkas and Keplinger told the board that they based this recommendation on the Raytheon investment. However, they misrepresented to the board and the independent auditors the terms of the Raytheon transaction. Pinkas and Keplinger both told Brantley Capital's board

and its independent auditors that Raytheon purchased 9 percent of Flight Options for $51 million, which indicated that Flight Options was worth $567 million.

78. In fact, Raytheon paid $49 million in exchange for 14 percent of Flight Options plus the Series A liquidation preferences.

79. Pinkas and Keplinger also told Brantley Capital's board that they based their valuation recommendation on the 2001 Morgan Stanley appraisal and Flight Options' "EBITDA run rate." However, Pinkas and Keplinger understood that Flight Options never came close to Morgan Stanley's EBITDA assumptions and that its EBITDA run rate, in fact, was negative.

80. Pinkas and Keplinger continued to misrepresent Flight Options' financial condition to Brantley Capital's board. On March 29, 2004, and again on May 13, 2004, they listed expected revenues for Flight Options of $748 million and EBITDA of $28.8 million for fiscal year 2003 in Brantley Capital's board books. However, Pinkas and Keplinger were receiving updates on Flight Options' performance, and they understood that Flight Options had not generated that level of revenue and EBITDA. Pinkas and Keplinger knew that Flight Options' revenue and EBITDA during 2003 were $615 million and *negative* $15 million.

81. Pinkas and Keplinger also continued to misrepresent Flight Options' fiscal year 2002 financial results in Brantley Capital's board books in connection with the board's valuation determinations for Brantley Capital's second and third quarters of 2003 and its 2003 full-year financial statements. These board books indicate that Flight Options had generated $808.7 million in revenue and $40 million in EBITDA. In contrast, Pinkas and Keplinger understood that Flight Options had generated only $414 million in revenue and at most *negative* $15.7 million in EBITDA in that period.

82. Pinkas failed to disclose to Brantley Capital's board the existence of the liquidation preferences, even though they were likely to reduce the value of Brantley Capital's interest in FOI by about $5 million (or 15 percent of their recommended $32.5 million valuation). Pinkas and Keplinger also failed to make any allowance for the liquidation preferences in Brantley Capital's valuation.

83. Pinkas failed to disclose to Brantley Capital's board that FOI placed one-half of its Flight Options shares in escrow to guarantee a $10 million personal liability of his, much less his insistence on behalf of Brantley Capital that without that deal, Brantley Capital would have blocked the Raytheon transaction.

84. Pinkas failed to disclose to Brantley Capital's board his direction that Brantley Capital be jointly and severally liable for the $3 million guarantee made to the Private Investment Fund.

85. Accepting Pinkas and Keplinger's recommendation, Brantley Capital maintained the valuation of its investment in FOI at $32.5 million in its Forms 10-Q for the quarterly periods ended June 30 and September 30, 2003, filed August 14 and November 14, 2003, respectively, and in its Form 10-K for the year ended December 31, 2003, filed March 30, 2004.

86. Although Pinkas and Keplinger continued to tell the board that the Morgan Stanley valuation was the basis of the FOI valuation, the 2003 Forms 10-Q and the 2003 Form 10-K omit the disclosure from the previous filings regarding the board's consideration of the Morgan Stanley valuation. Instead, these filings cite only the "terms" of the 2002 merger of Flight Options and Raytheon and "private market methods," without further explanation, as the basis for the $32.5 million valuation. Regarding the June 2003 restructuring, the filings state only that Raytheon "provided additional debt and equity financing to Flight Options."

87. The filings did not include any disclosures about how Flight Options' financial difficulties in turn affected Brantley's financial condition.

88. The FOI investment comprised 50 percent of Brantley Capital's total investment portfolio as of the quarterly period ended June 30, 2003, and 53 percent of Brantley Capital's total investment portfolio as of the quarterly and annual periods ended September 30, 2003, and December 31, 2003.

***Defendants Overvalue FOI in Brantley Capital's Periodic Filings in 2004***

89. Throughout 2004, Pinkas and Keplinger knew that Flight Options continued to miss Morgan Stanley's projections by wide margins.

90. Pinkas understood from his seat on the Flight Options board of directors that by November 2004 Flight Options was continuing to lose so much money that its board was again discussing whether it was in the zone of insolvency, and its auditors were questioning whether it could continue as a going concern. As a result, Flight Options' board recognized in late 2004 that the company could not continue to make payments on debts owed to Raytheon and other creditors without additional funding.

91. Again citing Morgan Stanley's 2001 valuation, however, Pinkas and Keplinger told Brantley Capital's board of directors in board meetings on May 13, August 12, and November 8, 2004 that Flight Options continued to be worth $600 million and that Brantley Capital should maintain the valuation of its FOI investment at $32.5 million.

92. Brantley Capital's board accepted their recommendations. Brantley Capital's 2004 Forms 10-Q refer only to the "terms" of the 2002 merger of Flight Options and Raytheon and "private market methods" as the basis for the $32.5 million valuation. Though Flight Options comprised 50 percent of the value of Brantley Capital's investment portfolio, it did not

disclose how Flight Options' financial difficulties in turn affected Brantley Capital's financial condition in any of its Forms 10-Q in 2004.

***Defendants Continue to Overvalue Flight Options Even After Auditors Raise Concerns***

93. In March 2005, Pinkas and Keplinger knew or were reckless in not knowing that Flight Options' performance continued to fall far below the Morgan Stanley projections, which assumed that Flight Options would generate $1.3 billion in revenue and $190 million in EBITDA from April 1, 2004 to March 31, 2005. Flight Options was able to generate only $688 million in revenue and *negative* $11.36 million in EBITDA from April 1, 2004 to March 31, 2005.

94. On March 31, 2005, Brantley Capital filed Form NT 10-K, alerting investors that it was unable to file its Form 10-K on time. Brantley Capital delayed the filing because the KPMG engagement partner on the Brantley Capital audit had raised doubts to Pinkas about the Flight Options valuation in March 2005 that had not yet been resolved. The partner became concerned after reviewing Flight Options' draft 2004 financial statements, which contained a going concern opinion by Flight Options' independent auditors.

95. In response, Pinkas told the KPMG partner in April 2005 that the Flight Options $600 million valuation was still supported by the 2001 Morgan Stanley valuation and the June 2003 Raytheon restructuring. The KPMG partner argued that these data points were too old and requested that Brantley Capital commission a third party valuation of Flight Options.

96. Pinkas refused and instead provided the KPMG partner a document that Pinkas claimed was an offer by a private equity firm (the "Private Equity Firm") to invest in Flight Options in a deal that supported Brantley Capital's $600 million valuation. Pinkas claimed that the Private Equity Firm had offered to purchase 50 percent of Flight Options for $150 million. Pinkas also claimed that the Private Equity Firm's offer envisioned an increase in Brantley

Capital's ownership stake in Flight Options from 5.7 percent to 7.3 percent. Pinkas told the partner that the Private Equity Firm's offer indicated that Flight Options was worth $480 million.

97. The KPMG partner rejected Pinkas' contention that the Private Equity Firm's offer he described valued Flight Options at $480 million and supported Brantley Capital's $600 million valuation. The partner told Pinkas and Keplinger that he did not believe that the Private Equity Firm's offer could support a value for Flight Options exceeding $300 million.

98. The "offer" that Pinkas described to KPMG was not the true offer that the Private Equity Firm had made. Instead, it was an unrealistic offer that Pinkas had made to the Private Equity Firm in March 2005 and that the Private Equity Firm had rejected. Pinkas' offer envisioned Raytheon agreeing simply to transfer its ownership interest in Flight Options to the Private Equity Firm for no compensation. However, Pinkas knew at that time that Raytheon wanted not only to maintain its ownership interest in Flight Options, but was considering ways to increase it. Pinkas made this offer to the Private Equity Firm without first having gauged Raytheon's interest in divesting its ownership interest without compensation.

99. Though the Private Equity Firm had indeed made an offer to invest in Flight Options in April 2005, it was far different from the one that Pinkas described to KPMG and did not support even a $300 million valuation for Flight Options. The Private Equity Firm offered to buy out Raytheon's ownership interest in Flight Options for $150 million. In addition to stepping into Raytheon's shoes, the Private Equity Firm's offer required that it earn a 17 percent interest rate on its $150 million investment that would be payable in Flight Options shares, which would have significantly increased its ownership interest. The Private Equity Firm's offer also included significant liquidation preferences: upon the sale or liquidation of Flight Options, the Private Equity Firm would be paid first a sum equal to the value of the accrued interest plus $150

million. Assuming sufficient excess funds after this payment, FOI would receive the next $50 million, and then any remaining proceeds would be divided 70 percent to the Private Equity Firm and 30 percent to FOI.

100. Moreover, Pinkas did not tell KPMG that Flight Options had been unable to repay its debts to Raytheon and that on April 4, 2005, Raytheon had proposed dealing with Flight Options' imminent loan defaults by making a follow-on investment in Flight Options that would keep the company in business, but would give Raytheon sole ownership.

101. Pinkas knew that under this proposal, FOI's, and hence Brantley Capital's, ownership interest in Flight Options would be eliminated without compensation.

102. Although Pinkas understood in April 2005 that Raytheon, which remained the only entity willing and able to provide Flight Options the funds necessary to avoid a bankruptcy, was in a strong position to force the other Flight Options shareholders to accept its proposal, and although Flight Options continued to comprise about one-half of Brantley Capital's investments, he did not disclose Raytheon's April 4, 2005 offer to Brantley Capital's board or KPMG until June 2005.

103. During an April 21, 2005 Brantley Capital board meeting, Pinkas and Keplinger again told Brantley Capital's board that Flight Options' fair market value was $600 million and recommended that Brantley Capital maintain the valuation of its FOI investment at $32.5 million. Pinkas and Keplinger told Brantley Capital's board that this valuation was supported by the 2001 Morgan Stanley appraisal.

104. During this meeting, Pinkas and Keplinger told the board that Flight Options had *negative* $6.4 million EBITDA for 2004 and was forecasting *negative* $3 million EBITDA for 2005. However, Pinkas and Keplinger knew that these numbers were wrong. When they made

these representations, Pinkas and Keplinger knew that Flight Options' EBITDA was *negative* $17.8 million in 2004 and was forecasting that its EBITDA would be *negative* $22 million in 2005. In contrast, Morgan Stanley's valuation assumed that Flight Options' EBITDA would be $128 million in fiscal year 2004 and $190 million in fiscal year 2005.

105. Pinkas and Keplinger also told the Brantley Capital board that the valuation was supported by an offer from the Private Equity Firm, which they now described as "effectively" valuing the company at $562.5 million. Pinkas' description of the Private Equity Firm's offer to Brantley Capital's board mirrored the false description he had earlier given to KPMG.

106. Pinkas and Keplinger did not tell the Brantley Capital board that Flight Options' auditors were questioning whether it could continue as a going concern. Nor did Pinkas tell the board at this time about Raytheon's proposed offer to invest in Flight Options, which threatened to render Brantley Capital's investment worthless. Pinkas also failed to disclose to the board that Brantley Capital's own auditors believed that the value of Flight Options was less than one-half the amount he had recommended.

107. Relying on Pinkas and Keplinger's misrepresentations, Brantley Capital's board approved maintaining Brantley Capital's $32.5 million valuation for FOI on April 21, 2005.

108. After learning of the Brantley Capital board's decision, the KPMG partner intervened and on May 4, 2009, called the board members directly to express his concerns. After hearing KPMG's concerns, Brantley Capital's board voted to write-down the FOI investment for the first time from $32.5 million to $21.9 million. This was based on a $300 million valuation of Flight Options and Pinkas' false claim that the Private Equity Firm's offer envisioned an increase in Brantley Capital's ownership interest in Flight Options to 7.3 percent.

109. Brantley Capital did not, however, file a Form 10-K for the year ended December 31, 2005 because KPMG refused to issue a clean audit opinion.

110. Instead, Brantley Capital reported its 2004 financial results—including the Flight Options write-down—in a Form 8-K filed on May 19, 2005, that was reviewed by Pinkas and signed by Keplinger. In the filing, Brantley Capital attributed the write-down to "the overall market conditions of the general aviation industry, the operating results of Flight Options through December 31, 2004, and [Flight Options'] ongoing capital needs including financing proposals being evaluated by the Flight Options Board of Directors."

111. On May 25, 2005, Brantley Capital filed another Form 8-K, reviewed by Pinkas and signed by Keplinger, that reported its 2004 year-end results and again valued its investment in FOI at $21.9 million.

112. KPMG suspended its audit of Brantley Capital's financial statements on June 6, 2005, when Keplinger gave the KPMG partner a 2005 Standard & Poors ("S&P") valuation of Flight Options indicating that the fair market value of Flight Options' common stock was "de minimis." Pinkas had received this valuation on May 31, 2005. Pinkas' administrative assistant gave Keplinger the valuation earlier in June 2005 without Pinkas' knowledge because she overheard Pinkas denying to the KPMG partner that any independent valuations of Flight Options existed or were planned.

113. When KPMG reviewed the S&P valuation, it learned for the first time about the proposed Raytheon investment that threatened to dilute Brantley Capital's investment to zero value. Immediately after receiving this valuation, the KPMG partner contacted Brantley Capital's audit committee to express reservations about the veracity of management's

representations and to request that Brantley Capital investigate and report back. Brantley Capital never reported back to KPMG.

114. Keplinger resigned from Brantley Capital on July 15, 2005.

***Ultimate Disposition of Brantley Capital's Interest in Flight Options***

115. Flight Options' continued poor performance in 2005 required that Raytheon again provide capital infusions to keep the company in business. On June 9, 2005, Raytheon threatened that it would cease to provide Flight Options further funds unless the Flight Options board approved the issuance of 5 billion common units of the company to Raytheon as compensation for the $50 million that Raytheon had previously loaned Flight Options. This transaction would have diluted FOI's interest in Flight Options to the point that Brantley Capital's investment would be worthless. Flight Options issued the units as Raytheon demanded. Brantley Capital and the other minority shareholders in Flight Options brought suit to stop the proposed Raytheon investment, alleging a breach of fiduciary duties.

116. On June 28, 2005, Brantley Capital filed a Form 8-K, signed by Pinkas, that included its financial statements for the year ended December 31, 2004, and a Management's Discussion and Analysis. In the filing, Brantley Capital disclosed Flight Options' approval of the 5 billion common units at $.01 a unit and that this transaction would result in the loss of substantially all of the value of Brantley Capital's investment in Flight Options.

117. Nevertheless, Brantley Capital maintained a $21.9 million valuation for its FOI investment in this report and in a subsequent Form 8-K filed on August 22, 2005, that amended Brantley Capital's financial statements for the year ended December 31, 2004. Pinkas signed both Forms 8-K.

118. In September 2005, Pinkas resigned his position as Chairman and CEO of Brantley Capital, and Brantley Capital's board of directors terminated its relationship with BCM.

119. FOI and Raytheon eventually settled their dispute over Raytheon's proposed investment on December 20, 2005. This resulted in Brantley Capital receiving only $84,617 for its investment in FOI.

**Brantley Capital's Valuations of Its Investment in DPC**

120. During the same period that Pinkas and Keplinger were misrepresenting the value of Brantley Capital's investment in Flight Options, they were also misrepresenting to Brantley Capital's board and shareholders the value of Brantley Capital's investment in another portfolio company, DPC. DPC comprised between four to eight percent of Brantley Capital's total investment portfolio from 2002 to 2005.

***Background of Brantley Capital's Investment in DPC***

121. Brantley Capital made its initial investment in DPC, a private manufacturer of janitorial supplies, in August 1998. Brantley Capital's investment consisted of a $1 million subordinated loan. This loan, which was Brantley Capital's first debt investment, was subordinate to $4 million in loans from, and a $3.75 million line of credit provided by, PNC Bank to DPC.

122. Soon after Brantley Capital made its investment, DPC began to experience financial difficulties. In 1999, a hurricane flooded one of DPC's two manufacturing sites. Though DPC's flood insurance covered the costs of repairing and replacing the damaged equipment, the company was unable to resume full operations until 2001. In 2000, DPC lost its largest customer.

123. By 2001, DPC was experiencing such significant financial difficulties that the company's continued existence was in jeopardy. DPC's sales fell far short of forecasts, and it discovered a $1 million inventory shortfall that year. As a result of these issues, DPC reduced its workforce by 50 percent in April 2001 and hired new management in July 2001. These actions did not help DPC avoid a loss.

124. Whereas DPC was projecting in February 2001 that it would generate $16,831,000 in revenue and $1,848,000 in EBITDA in 2001, its actual 2001 results were $11,080,000 in revenue and *negative* $392,000 in EBITDA.

125. To remain in business, DPC needed to borrow money. Because of its poor financial condition, however, DPC was unable to obtain any additional bank loans on its own. Instead, DPC relied on Brantley Capital for the funding it required to avoid going out of business. In 2001, Brantley Capital made two additional loans to DPC totaling $173,000 to keep the company operating.

126. Although Brantley Capital's board was aware from the board books that Brantley Capital was making these loans to DPC, Pinkas and Keplinger did not disclose DPC's precarious financial condition to the board or that the loans were necessary to keep DPC in business.

127. Instead, Pinkas and Keplinger told the board on February 21, 2002, one month before Brantley Capital filed its Form 10-K for the year ended December 31, 2001, that DPC had "dealt with several significant distractions in 2000" that had been resolved.

128. In that filing, Brantley Capital made no disclosures about DPC's financial condition and reported the fair value of its investment at its cost of $1,373,000, indicating that it expected to recover the full amount of its loans to DPC.

***Defendants Overvalue DPC in Brantley Capital's 2002 Form 10-K***

129. In 2002, DPC's financial conditioned worsened, and it required significantly larger cash infusions from Brantley Capital to stay in business as its revenue and EBITDA fell by 20 percent and 136 percent, respectively, from the prior year.

130. Whereas Pinkas and Keplinger told Brantley Capital's board in February 2002 that DPC was projecting $13,750,000 in revenue and $542,000 in EBITDA in 2002, DPC's actual 2002 results were $8,758,000 in revenue and *negative* $926,000 in EBITDA.

131. In light of DPC's poor financial condition, Banc One Capital agreed in June 2002 to accept $250,000 in satisfaction of a $2,500,000 loan it had made to DPC.

132. In 2002, Pinkas directed Brantley Capital to make five additional loans to DPC totaling $1,258,000 to keep it operating. Keplinger prepared the documents necessary to provide these loans.

133. In a note to its 2002 financial statements, which are not public and were not provided to Brantley Capital's board of directors, DPC disclosed that there is "substantial doubt about the Company's ability to continue as a going concern." DPC cited the facts that it "has incurred significant losses from operations" in 2001 and 2002; "its current liabilities exceed its current assets"; and it "has debt obligations of $5.9 million due during 2003."

134. DPC also disclosed to its investors in its 2002 financial statements that its outstanding debt to PNC Bank—which was senior to the Brantley Capital loans—"is secured by substantially all of the assets of the Company."

135. Though Pinkas and Keplinger knew all of these facts, neither disclosed to Brantley Capital's board that (1) at their direction, Brantley Capital was propping up DPC through routine cash transfers; (2) in the event of liquidation, all of DPC's assets would likely be

used to pay off debt that was senior to Brantley Capital's; and (3) because of DPC's poor financial condition, Banc One had in June 2002 accepted $250,000 in settlement of a $2.5 million loan to DPC.

136. Instead, Pinkas and Keplinger told the board that "DPC has sustained a series of setbacks since the inception of the investment that has inhibited its ability to focus on its growth plan" but that DPC "now believes that they have the right formula to increase shareholder value."

137. Pinkas also orally told the board that even given DPC's setbacks, Brantley Capital's investment was safe because DPC's assets would cover Brantley Capital's loans in the event of a liquidation.

138. Despite DPC's continuing and growing losses, inability to meet financial targets, dependency on loans from Brantley Capital to remain in business, as well as the fact that, in the event of liquidation, all of DPC's assets would likely be used to pay off debt that was senior to Brantley Capital's, Brantley Capital did not write down in 2002 the value of its loans to DPC.

139. Pinkas and Keplinger represented to Brantley Capital's investors in the company's Form 10-K for the year ended December 31, 2002, which was filed on March 31, 2003, that it believed that it would recover the full principal from all of its loans. In this filing, Brantley Capital recorded its loans to DPC as investments that had a fair market value of $2.4 million, which equated to the aggregate principal balance of the outstanding loans. This comprised four percent of the purported value at that time of Brantley Capital's entire investment portfolio.

140. DPC's difficulties, which indicated that four percent of Brantley's entire business was worthless, had a materially negative impact on Brantley's balance sheet, and hence its

financial condition. Nevertheless, Brantley did not make any disclosures in its Form 10-K for the year ended December 31, 2002 in its MD&A or otherwise about how DPC's severe financial difficulties in turn affected Brantley's financial condition or changes in Brantley's financial condition.

***Defendants Overvalue DPC in Brantley Capital's Periodic Filings for 2003***

141. In 2003, DPC's financial condition continued to deteriorate as its revenue and EBITDA fell by 52 percent and 102 percent, respectively, from the prior year.

142. Whereas Pinkas and Keplinger told Brantley Capital's board in February 2003 that DPC was projecting $14,160,000 in revenue and $825,000 in EBITDA in 2003, DPC's actual 2003 results were $4,201,000 in revenue and *negative* $1,877,067 in EBITDA.

143. In that year, Pinkas directed Brantley Capital to make 15 additional loans to DPC totaling $1,428,792 to keep it operating. Keplinger prepared the documents necessary to provide these loans.

144. In its 2003 financial statements, which were also not provided to Brantley Capital's board, DPC again noted that, in light of its poor financial condition, there is "substantial doubt about the Company's ability to continue as a going concern."

145. DPC also disclosed in its 2003 financial statements that the total value of its assets as of December 31, 2003, had declined to $1,431,000. As of the end of 2003, DPC had $1,800,000 in debt that was senior to Brantley Capital's.

146. In its 2003 financial statements, DPC reduced the value of its goodwill to zero.

147. In September 2003, Pinkas learned that a venture capital fund that was offering to buy Brantley Capital believed that the value of DPC was zero because it "has had falling revenues, has been unprofitable for some time and has a very weak balance sheet."

148. Despite fully understanding DPC's perilous financial condition, throughout most of 2003, Pinkas and Keplinger continued to repeat to Brantley Capital's board that "DPC has sustained a series of setbacks since the inception of the investment that has inhibited its ability to focus on its growth plan" but that DPC "now believes that they have the right formula to increase shareholder value."

149. In its Forms 10-Q for the quarters ended March 31, 2003, June 30, 2003, and September 30, 2003, Brantley Capital continued to value its loans to DPC at cost. In none of these filings did Brantley Capital make any disclosures relating to DPC's financial condition. DPC comprised 4 percent, 4.3 percent, and 5.9 percent of the value of Brantley Capital's entire investment portfolio for the quarters ended March 31, 2003, June 30, 2003, and September 30, 2003, respectively.

150. Brantley Capital wrote-down the value of its loans to DPC for the first time in its Form 10-K for the year ended December 31, 2003, which was filed on March 30, 2004.

151. At that time, Brantley Capital had outstanding loans to DPC totaling $3,866,000. Despite DPC's growing losses and continuing inability to operate without recurring cash infusions from Brantley Capital, and the fact that in the event of liquidation, all of DPC's assets would likely be used to pay off debt that was senior to Brantley Capital's, Brantley Capital wrote down its investment by only $750,000.

152. DPC comprised five percent of the value of Brantley Capital's entire investment portfolio as of December 31, 2003.

153. Again, Brantley made no disclosures in its Form 10-K for the year ended December 31, 2003, about how DPC's financial difficulties in turn affected Brantley's financial condition.

***Defendants Overvalue DPC in Brantley Capital's Periodic Filings in 2004***

154. In 2004, DPC's revenue and EBITDA continued declining, falling 74 percent and 27 percent, respectively, from the prior year.

155. After the March 29, 2004 meeting of the Brantley Capital board of directors, Pinkas and Keplinger discontinued their practice of itemizing for the Brantley Capital board the loans that Brantley Capital had made to DPC. In fact, throughout 2004, Brantley Capital continued to provide cash infusions to DPC to keep it operational. Though DPC had yet to make any loan payments to Brantley Capital, and despite DPC's continually declining revenue and earnings, Brantley Capital loaned DPC an additional $1,771,000 in 2004 to help it avoid bankruptcy.

156. In 2004, DPC generated only $1,094,635 in revenue and *negative* $2,389,000 in EBITDA. DPC recorded total assets of $579,000 as of December 31, 2004, and had $1,345,000 in outstanding debt that was senior to Brantley Capital's.

***Brantley Capital's Form 10-Q for the Quarter Ended March 31, 2004***

157. In the first quarter of 2004, Pinkas directed Brantley Capital to loan DPC an additional $395,993 to keep it in business, raising the aggregate amount of outstanding principal to $4,260,993. Keplinger prepared the documents necessary to provide these loans.

158. In March 2004, Pinkas, with Keplinger's knowledge, also directed Brantley Capital to guarantee a $1.3 million loan from Huntington Bank to DPC. Both Pinkas and Keplinger understood that because of DPC's poor financial condition, Huntington Bank had refused to make this loan to DPC without Brantley Capital's guarantee.

159. In fact, Huntington Bank was so concerned about DPC's ability to repay a $1.3 million loan that it required Brantley Capital not only to guarantee the entire loan amount, but to place $1 million in escrow in case of default.

160. This guarantee was a material commitment to Brantley Capital. Brantley Capital had $391,126 in unrestricted cash and cash equivalents as of March 31, 2004, but owed $976,943 in advisory fees and accrued professional fees.

161. Moreover, Brantley Capital's liquidity was constrained by its inability to generate consistent income from its investments. Brantley Capital realized losses of $547,549 in 2003 and $2.5 million in 2002, and it realized losses of $541,469 on its investments in the first quarter of 2004.

162. Pinkas, with Keplinger's knowledge, guaranteed this loan despite the likelihood that DPC would be unable to repay its debts, thereby requiring Brantley Capital to expend additional cash that it could not afford. Pinkas and Keplinger both understood that DPC had operating losses exceeding $2 million since 2001, had been unable to generate sufficient revenues to repay—to any extent—any of the loans that Brantley Capital had made to DPC since 1998, and, most importantly, was only able to stay in business because of repeated cash infusions from Brantley Capital. They also knew that DPC had been repeatedly unable to make principal payments to PNC Bank, which had been DPC's senior creditor. In addition, Pinkas and Keplinger understood that Banc One Capital had such little confidence in DPC's ability to repay its debts that, in June 2002, when DPC's financial condition was stronger than it was in 2004, it accepted $250,000 in satisfaction of a loan that had an outstanding balance of $2,500,000.

163. Though Pinkas and Keplinger owed a fiduciary duty to Brantley Capital to disclose all material information, neither of them, nor anyone else at BCM, informed Brantley

Capital's board about the Huntington Bank loan guarantee. In October 2005, DPC defaulted on this loan, requiring BCC to forfeit the $1 million it placed in escrow for Huntington Bank's benefit. In addition, neither Pinkas nor Keplinger took any steps to disclose the loan guarantee to investors in Brantley Capital's Form 10-Q for the quarter ended March 31, 2004.

164. Indeed, Brantley Capital made no disclosures about how DPC's financial difficulties in turn affected Brantley's financial condition or changes in Brantley's financial condition. The only disclosure that Brantley Capital made in any way related to this guarantee in this Form 10-Q was a chart indicating that Brantley Capital had $1 million more in restricted cash compared to year-end 2003.

165. In this filing, Pinkas and Keplinger continued to assume in its valuation that DPC would repay the entire principal balance of its loans, less the $750,000 write-down that Brantley Capital had taken as of year-end 2003. In its Form 10-Q for the quarter ended March 31, 2004, Brantley Capital valued its investment in DPC at $3,504,332, which represented six percent of the value of Brantley Capital's entire investment portfolio.

***Brantley Capital's Form 10-Q for the Quarter Ended June 30, 2004***

166. In the second quarter of 2004, Pinkas directed Brantley Capital to loan DPC an additional $390,250 to keep it in business, raising the aggregate amount of outstanding principal to $4,651,243. Keplinger prepared the documents necessary to provide these loans.

167. Brantley Capital made these loans even though its own liquidity position was tenuous. In fact, Brantley Capital's liquidity was so constrained that in June 2004, Keplinger noted to a colleague that "due to [Brantley Capital's] lack of cash, I do not recommend paying [an interest payment due on an outstanding loan] until we get another inflow of cash."

Ultimately, Brantley Capital was able to make this interest payment only by using the proceeds from an additional loan.

168. Nevertheless, Pinkas and Keplinger again failed to disclose to Brantley Capital's board the $1.3 million loan guarantee to Huntington Bank. Again, the only disclosure that Brantley Capital made related to this guarantee in this filing was a chart indicating that Brantley Capital had $1 million more in restricted cash compared to year-end 2003.

169. The Huntington Bank loan guarantee continued to be a material commitment to Brantley Capital. Brantley Capital had only $29,751 in unrestricted cash and cash equivalents as of June 30, 2004, and owed $1.4 million in advisory and accrued professional fees. Moreover, Brantley Capital's liquidity continued to be constrained by its inability to generate consistent income from its investments. Brantley Capital realized losses of $356,517 on its investments in the second quarter of 2004.

170. Despite DPC's continuously deteriorating financial condition, Pinkas and Keplinger advised Brantley Capital's board that all of its loans to DPC other than the initial $1 million loan in 1998 "appear to be adequately valued at cost."

171. Though DPC's EBITDA was *negative* $926,000 in 2002 and *negative* $1,877,067 in 2003, and was on track to be even lower in 2004, Pinkas and Keplinger told Brantley Capital's board that they believed DPC's EBITDA in 2005 "will be approximately $850,000. Assuming a 5x multiple, a sale of the Company at current market multiples will result in full repayment of the senior debt and our subordinated notes."

172. Despite Pinkas' and Keplinger's recommendations that Brantley Capital value all of its loans to DPC but one at cost, the board voted to reduce the value of its loans to DPC by an additional $410,000. In its Form 10-Q for the quarter ended June 30, 2004, Brantley Capital

valued its investment in DPC at $3,484,575, which continued to represent six percent of the value of Brantley Capital's entire investment portfolio.

173. Brantley Capital's only disclosure in this filing relating to DPC's financial condition was that DPC was experiencing "working capital constraints."

***Brantley Capital's Form 10-Q for the Quarter Ended September 30, 2004***

174. In the third quarter of 2004, DPC's financial difficulties continued. Pinkas and Keplinger both knew that in August 2004, a mere five months after Huntington Bank loaned DPC the money, DPC failed to make a $500,000 scheduled principal payment to the bank. However, Pinkas and Keplinger again failed to disclose to Brantley Capital's board the $1.3 million loan guarantee to Huntington Bank.

175. In this quarter, Pinkas directed Brantley Capital to loan DPC an additional $143,806 to keep it in business, raising the aggregate amount of outstanding principal to $4,795,049. Keplinger prepared the documents necessary to provide these loans.

176. In fact, DPC's financial condition was so precarious that it could not pay relativity small amounts to secure legal services. Pinkas and Keplinger knew that in August 2004 DPC asked Brantley Capital to guarantee its legal fees for a particular transaction because it was unable to pay counsel a $3,500 retainer. Brantley Capital extended the guarantee, but neither Pinkas, Keplinger, nor anyone else at BCM informed Brantley Capital's board of its existence.

177. Far from reducing the value of its loans to DPC, Brantley Capital in fact increased the value of the loans because of this additional debt. In this Form 10-Q, Brantley Capital valued its investment at $3,628,381, which continued to represent six percent of the value of Brantley Capital's entire investment portfolio.

178. Brantley Capital's only disclosure in this filing relating to DPC's financial condition was that DPC was experiencing "working capital constraints." As in the prior quarters in 2004, the only disclosure that Brantley Capital made related to this guarantee in this filing was a chart indicating that Brantley Capital had $1 million more in restricted cash compared to year-end 2003.

179. The Huntington Bank loan guarantee was a material commitment to Brantley Capital in this quarter as well. Brantley Capital had only $19,976 in unrestricted cash and cash equivalents as of September 30, 2004, and owed $1.7 million in advisory and accrued professional fees. Brantley Capital's liquidity continued to be constrained by its inability to generate consistent income from its investments. Brantley Capital realized losses of $542,457 on its investments in the third quarter of 2004.

***Brantley Capital's Form 8-K and Subsequent Events***

180. By the end of October 2004, DPC informed Pinkas that it was in such poor financial condition that it was "unable to purchase any raw material, nor make any payments." To keep DPC in business, Pinkas directed Brantley Capital to loan DPC an additional $842,935 in the fourth quarter of 2004, raising the aggregate amount of outstanding principal to $5,637,984. Keplinger prepared the documents necessary to provide these loans.

181. During the fourth quarter of 2004, Pinkas, with Keplinger's knowledge, directed Brantley Capital to make additional loan guarantees to induce two other banks to lend money to DPC. As with their guarantee of the Huntington Bank loan in March 2004, both Pinkas and Keplinger understood that because of DPC's poor financial condition, the banks had refused to make these loans to DPC without Brantley Capital's guarantees.

182. In October 2004, Brantley Capital guaranteed a $1 million line of credit from Mercantile Bank to DPC. In December 2004, Brantley Capital guaranteed a $350,000 loan from WesBanco Bank to DPC.

183. At a combined value of $2.65 million, the guarantees to Huntington Bank, Mercantile Bank, and WesBanco were material commitments to Brantley Capital. Brantley Capital had $3.3 million in unrestricted cash and cash equivalents as of December 31, 2004, but owed $3.8 million in advisory fees, accrued professional fees, and distributions payable. Moreover, Brantley Capital's liquidity was constrained by its inability to generate consistent income from its investments. Brantley Capital realized losses of $547,549 in 2003 and $2.5 million in 2002. Though Brantley Capital's investments generated $6.7 million in income in 2004, it had unrealized investment losses of $15 million that year.

184. Given DPC's deteriorating financial condition, its reliance on loans to remain in business, and its inability to repay its debts to any meaningful extent, Pinkas and Keplinger understood that there was a high likelihood that DPC would be unable to repay these loans, thereby requiring Brantley Capital to expend additional cash that it could not afford. Nevertheless, neither Pinkas, Keplinger, nor anyone else at BCM informed Brantley Capital's board about any of the loan guarantees that Brantley Capital had made for DPC's benefit.

185. In addition, neither Pinkas nor Keplinger took any steps to disclose the DPC bank loan guarantees to investors when Brantley Capital reported its financial statements for the year ended December 31, 2004 in a Form 8-K on June 28, 2005.

186. Rather than disclose these facts to Brantley Capital's board, Pinkas and Keplinger misrepresented DPC's 2003 operating results to the board. In November 2004, Pinkas and

Keplinger told the board that DPC's EBITDA in 2003 was negative $645,000 when they understood that DPC's EBITDA was, in fact, negative $1,877,067.

187. Despite a complete absence of any basis for assuming that DPC could repay any of the loans it had received from Brantley Capital, Brantley Capital reduced its valuation by only an additional $563,000 in its 2004 year-end financial statements filed in the June 28, 2005 Form 8-K. In this filing, which Pinkas signed, Brantley Capital reported a fair market value of its DPC loans of $3,908,000, which comprised eight percent of the value of Brantley Capital's entire investment portfolio.

188. During a May 2005 Brantley Capital board meeting in which Pinkas recommended this valuation, Pinkas again misrepresented DPC operating results. Pinkas told the board that DPC had generated $3,309,000 in revenue and *negative* $1,300,000 in EBITDA in 2004. In fact, Pinkas understood at that time that DPC generated only $1,094,635 in revenue and *negative* $2,389,000 in EBITDA in that period.

189. In Brantley Capital's June 28, 2005 Form 8-K, the only disclosures relating to DPC's financial condition were as follows: "Disposable Products' operating performance has not met expectations and as a result has had some working capital constraints."

190. Brantley's guarantees to Huntington Bank, Mercantile Bank, and WesBanco Bank are not disclosed in the filing. Indeed, the filing affirmatively states that Brantley "did not have any material off-balance sheet arrangements . . . ." Pinkas signed this filing.

191. After Pinkas' departure in September 2005, Brantley Capital refused to loan DPC $45,000 in October on the advice of its new administrator, MVC Financial Services. Shortly thereafter, DPC's lack of cash made it impossible to continue operations. Brantley Capital announced in October 2005 that its DPC investment appeared to have no value.

192. In January 2006, Brantley Capital wrote-off the entire value of its investment in DPC, recording a loss of $9,040,499 in unrecoverable principal and interest. After negotiations with DPC's creditors concluded, Brantley Capital recovered $146,000 for its DPC investment.

**BCM Generates Artificially High Investment Advisory Fees**

193. Brantley Capital paid BCM 2.85 percent of its net asset value as a management fee. From 2002 to 2005, this resulted in BCM receiving $6,464,684 in management fees. These fees went from BCM to Brantley Management Company, an Ohio corporation whose sole shareholder is Pinkas.

**Brantley Capital's Shareholders Were Severely Harmed by the Defendants' Misconduct**

194. From January 2002 through March 2005, Brantley's share price traded between $6.60 and $11.94.

195. Following Brantley's May 19, 2005 disclosure that it was writing down its FOI investment from $32.5 million to $21.9 million, its share price fell 7.4 percent, from $11.73 to $10.86, by the close of the next day of trading.

196. On October 24, 2005, Brantley announced that its investments in FOI and DPC appeared to have no value and that the board had discovered that Brantley may be liable for approximately $1.4 million in previously undisclosed liabilities associated with DPC. Brantley's share price dropped 24 percent to $4.90 by the close of the next day. By October 6, 2006, when Brantley announced that it had received only $84,617 for its FOI investment, the share price had fallen to $1.80.

## CLAIM ONE

### Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder (Against BCM, Pinkas and Keplinger)

197. The Commission realleges and incorporates by reference ¶¶ 1 through 196 above.

198. Each of defendants, BCM, Pinkas and Keplinger, by engaging in the conduct described above, directly or indirectly, in connection with the purchase or sale of a security, by the use of means or instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange, with scienter:

a. employed devices, schemes, or artifices to defraud;

b. made untrue statements of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

c. engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon other persons.

199. By engaging in the conduct described above, each of defendants, BCM, Pinkas and Keplinger violated, and unless restrained and enjoined will continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

## CLAIM TWO

### Aiding and Abetting Violations of Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 Thereunder (Against BCM, Pinkas and Keplinger)

200. The Commission realleges and incorporates by reference ¶¶ 1 through 196 above.

201. Brantley Capital violated Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)]

and Exchange Act Rules 13a-1 and 13a-13 [17 C.F.R. §§ 240.13a-1 and 240.13a-13], by filing materially false and misleading annual Reports on Form 10-K for the fiscal years 2002 and 2003 and materially false and misleading quarterly Reports on Form 10-Q for the periods ending March 31, June 30 and September 30 of 2003 and 2004, respectively.

202. Defendants BCM, Pinkas and Keplinger, and each of them, acted with knowledge or recklessly, and thereby knowingly provided substantial assistance to one or more of Brantley Capital's violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Exchange Act Rules 13a-1 and 13a-13 [17 C.F.R. §§ 240.13a-1 and 240.13a-13].

203. By engaging in the conduct described above and pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)], each of defendants BCM, Pinkas and Keplinger aided and abetted one or more of Brantley's violations, and unless restrained and enjoined will continue to aid and abet violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Exchange Act Rules 13a-1 and 13a-13 [17 C.F.R. §§ 240.13a-1 and 240.13a-13].

**CLAIM THREE**

**Aiding and Abetting Violations of Sections 13(b)(2)(A)
and 13(b)(2)(B) of the Exchange Act
(Against BCM, Pinkas and Keplinger)**

204. The Commission realleges and incorporates by reference ¶¶ 1 through 196 above.

205. At the times alleged in this Complaint, Brantley Capital, whose securities were registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l]:

(a) failed to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflected the transactions and dispositions of its assets; and

(b) failed to devise and maintain a system of internal controls sufficient to provide reasonable assurances that (i) transactions were recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (ii) to maintain accountability for assets.

206. By reason of the conduct described above, Brantley Capital violated Sections 13(b)(2)(A) and (B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and (B)].

207. Each of defendants BCM, Pinkas and Keplinger acted with knowledge or recklessly, and thereby knowingly provided substantial assistance to one or more of Brantley Capital's violations of Sections 13(b)(2)(A) and (B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and (B)].

208. By engaging in the conduct described above and pursuant to Section 20(e) of the exchange Act [15 U.S.C. § 78t(e)], each of defendants BCM, Pinkas and Keplinger aided and abetted one or more of Brantley Capital's violations, and unless restrained and enjoined will continue to aid and abet violations of Sections 13(b)(2)(A) and (B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and (B)].

## CLAIM FOUR

### Violations of Section 13(b)(5) of the Exchange Act and Rules 13b2-1 and 13b2-2 (Against BCM, Pinkas and Keplinger)

209. The Commission realleges and incorporates by reference ¶¶ 1 through 196 above.

210. Defendants BCM, Pinkas and Keplinger knowingly or recklessly circumvented or failed to implement internal controls at Brantley and falsified the company's books and records. Defendants Pinkas and Keplinger also knowingly or recklessly made false statements to the

company's auditors and/or failed to provide material information to the auditors in connection with Brantley's valuation of FOI.

211. By engaging in the conduct described above, defendants BCM, Pinkas and Keplinger violated and unless restrained and enjoined will continue to violate Exchange Act Section 13(b)(5) and Rule 13b2-1 [15 U.S.C. § 78m(b)(5) and 17 C.F.R. § 240.13b2-1].

212. By reason of the foregoing conduct, defendants Pinkas and Keplinger also violated and, unless restrained and enjoined, will continue to violate Exchange Act Rule 13b2-2 [17 C.F.R. § 240.13b2-2].

**CLAIM FIVE**

**Violations of Exchange Act Rule 13a-14**
**(Against Pinkas and Keplinger)**

213. The Commission realleges and incorporates by reference ¶¶ 1 through 196 above.

214. As described in this Complaint, Brantley Capital filed materially false and misleading annual Reports on Form 10-K for the fiscal years 2002 and 2003 and materially false and misleading quarterly Reports on Form 10-Q for the periods ending March 31, June 30 and September 30 of 2003 and 2004, respectively. Pinkas and Keplinger signed each of these filings with the Commission in their capacity as CEO and CFO, respectively. With respect to each of the periodic filings, Pinkas and Keplinger, acting knowingly or recklessly, falsely certified that: (1) the filing did not contain any untrue statements or omissions of material facts and (2) that the filing fairly and accurately presented Brantley Capital's financial condition.

215. By the foregoing, Pinkas and Keplinger and each of them violated Exchange Act Rule 13a-14 [17 C.F.R. § 240.13a-14].

**CLAIM SIX**

**Violations of Sections 206(1) and 206(2) of the Advisers Act**
**(Against BCM, Pinkas and Keplinger)**

216. The Commission realleges and incorporates by reference ¶¶ 1 through 196 above.

217. At the times alleged in this Complaint, defendants BCM and Pinkas acted as investment advisors as defined in Section 202(a)(11) of the Advisors Act [15 U.S.C. § 80b-2(a)(11)]. Alternatively, at the times alleged in this Complaint, defendant Pinkas, who served as BCM's Chairman, Chief Executive Officer, Treasurer and Manager, was a person associated with an investment advisor within the meaning of Section 202(a)(17) of the Advisors Act [15 U.S.C. § 80b-2(a)(17)]. At the times alleged in this Complaint, defendant Keplinger, who served as BCM's Chief Financial Officer, likewise was a person associated with an investment advisor within the meaning of Section 202(a)(17) of the Advisors Act. During the relevant period, Brantley Capital was a client of BCM and Pinkas.

218. At the times alleged in this Complaint, BCM, Pinkas and Keplinger made material misrepresentations and omissions to Brantley Capital's board of directors, regarding, among other things, Brantley Capital's investments in FOI and DPC.

219. By engaging in the conduct described above, defendants BCM and Pinkas, directly or indirectly, violated Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1), (2)].

220. Defendant Keplinger and, alternatively, defendant Pinkas, and each of them, acted with knowledge or recklessly, and thereby knowingly provided substantial assistance to one or more of BCM's violations of Sections 202(1) and 206(2) of the Advisors Act [15 U.S.C. §§ 80b-6(1), (2)].

221. By engaging in the conduct described above, each of defendant Keplinger and, alternatively, defendant Pinkas, aided and abetted one or more of BCM's violations and, unless restrained and enjoined will continue to aid and abet violations of Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. § 80b-6(1), (2)].

**PRAYER FOR RELIEF**

WHEREFORE, the Commission respectfully requests that this Court enter a final judgment:

A. Permanently restraining and enjoining BCM from violating Sections 10(b) and 13(b)(5) of the Exchange Act [15 U.S.C. § 78j(b); 15 U.S.C. § 78m(b)(5)] and Exchange Act Rules 10b-5 and 13b2-1 [17 C.F.R. §§ 240.10b-5 and 240.13b2-1]; Sections 206(1) and 206(2) of the Investment Advisors Act [15 U.S.C. §§ 80b-6(1), (2)]; and aiding and abetting violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a) and 78m(b)(2)(A) and (B)] and Exchange Act Rules 13a-1 and 13a-13 [17 C.F.R. §§ 240.13a-1 and 240.13a-13];

B. Permanently restraining and enjoining Pinkas from violating Sections 10(b) and 13(b)(5) of the Exchange Act [15 U.S.C. § 78j(b); 15 U.S.C. § 78m(b)(5)] and Exchange Act Rules 10b-5, 13a-14, 13b2-1 and 13b2-2 [17 C.F.R. §§ 240.10b-5, 240.13a-14, 240.13b2-1, and 240.13b2-2]; Sections 206(1) and 206(2) of the Investment Advisers Act [15 U.S.C. §§ 80b-6(1), (2)]; and aiding and abetting violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a) and 78m(b)(2)(A) and (B)] and Exchange Act Rules 13a-1 and 13a-13 [17 C.F.R. §§ 240.13a-1 and 240.13a-13], and Sections 206(1) and 206(2) of the Investment Advisers Act [15 U.S.C. § 80b-6(1), (2)];

C. Permanently restraining and enjoining Keplinger from violating Sections 10(b) and 13(b)(5) of the Exchange Act [15 U.S.C. § 78j(b); 15 U.S.C. § 78m(b)(5)] and Exchange Act Rules 10b-5, 13a-14, 13b2-1 and 13b2-2 [17 C.F.R. §§ 240.10b-5, 240.13a-14, 240.13b2-1, and 240.13b2-2]; and aiding and abetting violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a) and 78m(b)(2)(A) and (B)] and Exchange Act Rules 13a-1 and 13a-13 [17 C.F.R. §§ 240.13a-1 and 240.13a-13] and Sections 206(1) and 206(2) of the Investment Advisers Act [15 U.S.C. §§ 80b-6(1), (2)];

D. Ordering defendant BCM to produce to the Commission a written, specific sworn accounting of the disposition and present location of all the money it obtained from the conduct alleged herein;

E. Ordering each defendant to disgorge the profits and proceeds defendant obtained as a result of the actions alleged herein and to pay prejudgment interest thereon;

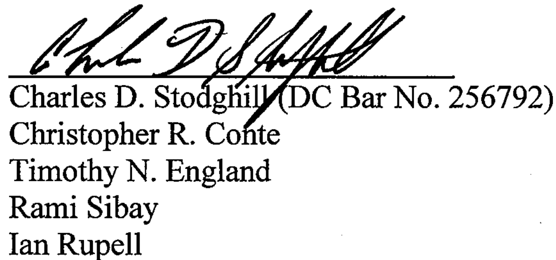
F. Ordering each defendant to pay civil penalties pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)];

G. Prohibiting defendants Pinkas and Keplinger from serving as an officer or director of any issuer having a class of securities registered with the Commission pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l], any issuer required to file reports with the Commission pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)], or any issuer which has issued any security traded on any national securities exchange or through any inter-dealer quotation medium; and

H. Granting such other relief as this Court deems just and proper.

Dated: August 13, 2009

Respectfully submitted,



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