

**IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION**

WILLIAM H. YOUNG,
ELIZABETH GROOM, ANA AFANE, JORGE
AFANE, RALPH ALBERGO, BEVERLY ALKOW,
ETHAN ALKOW, MITCHELL ALKOW,
NADIA ALKOW, STEVEN ALKOW, HURIYET
ANAZ, FRED ANDREWS, ASHLEY ARKIN,
DEBORAH ARKIN, STEVEN ARKIN M.D.,
ALAN BALFOUR, JJ BARRETT III, JOANNE
BARRETT, JASON BERG, LINDSEY BERG,
CHARLES BERG, MAURICE BERNSTEIN, JOAN
BERNSTEIN, IRVIN BINDER, ANA BOENIG,
JEFFREY BOENIG, WILLIAM BOENIG,
BARBARA BRUCE, GAIL BURNS, WILLIAM
BURNS, CASSANDRA COPOBIANCO, RICHARD
CASSIDY, MICHAEL CELLAMARE, RICHARD
CELLAMARE, JODY CHIMBEL, LES CHITESTER,
MARY CHITESTER, ROBERT CHRISTENSON,
INDIVIDUALLY AND AS CUSTODIAN,
JULIE CHRISTENSON, JAMES CHRISTENSON
ANGELA CHRISTENSON, MARCI CHRISTENSON,
MARK CHRISTENSON, KATHLEEN CLEMENTS,
FRANK CIOLLI, HOWARD COHEN, JARED
COHEN, JENNIFER COHEN, MARLENE COHEN,
DONALD COLBERT, ANTHONY COLUCCI,
CHRISTOPHER COLUCCI, MARGERY COLUCCI,
MICHAEL CONNELLY, DENNIS COREN,
ROBERTA COREN, ARNOLD DECAMP, FAYE
DECAMP, DAVID DEWALT, LYNN DEXTER,
JENNIE DI ROSA, JOSEPH DIACO, STEPHEN
DIACO, ALFRED DYEL, DAVID ESCH,
INDIVIDUALLY, AS CUSTODIAN AND AS
TRUSTEE, ROBERT FALCETTI, JR,
SUSAN FALCETTI, FRED FINKELSTEIN,
JEANNETTE FREDERICKSON,
WENDELL FREDERICKSON, DANIEL FRIESEN,
DONNA FRIESEN, MARVIN FRIESEN, ELVINA
FRIESEN, ABILIO GONZALEZ, MARY
GONZALEZ, RAE GROOM, LORA GULOYAN,
LLOYD HALL, MARILYN HALL, JESSIE HALL,
RICHARD HOLLORAN, VICTORIA HAND,
DONALD HANNEY, MARY HANNEY, LAWRENCE
HELFT, TERI HENKEL, LARRY HINES, PATRICIA
HINES, FRAN HIRSHMAN, KENNETH HIRSHMAN,
ANDREA HIRSHMAN, FAYE HOFFMAN, GLEN

**Case No.: 08-30380
DIVISION: A**

HOFFMAN, STEVEN HOFFMAN, NANCY HUANG,
JOE HAUNG, WILLIE HUDSON, LINDA HUDSON,
PAUL HULTGREN, GREGORY ICEBERG, RUTH
ISHAM, FORREST JACKSON, JAMES
ALEXANDER, BARRY JONAS, ROBERTA
JORDAN, KEITH KARTZ, ANN KERR, GAIL |
KESSINGER, KEVIN KESSINGER, STUART
KREINER, ALAN KRONISH, RENEE KRONISH,
TOM LABARGE, MALCOLM LAUDER,
MARGARET LAUDER, EDWARD LAURIA,
LIBBY LAURIA, ELINOR LILES, BETTE LOHR,
JACQUELINE LOWY, LUZ LOZANO |
ESTATE, FRANK LUCE,
RICHARD MAJESKI, SUSAN MAJESKI, DALE
MARCUM, DANIEL MARSH, BEVERLY MATHIS,
DAVID MATHIS, JAMES MATTHEWS, BONNIE
MAXWELL, GERALD MAXWELL, LILLIAN |
MCCOLLOUGH, BRYAN MCCORMICK, DAVID
MCDERMID, AS TRUSTEE FOR NORMAN
MCDERMID ESTATE, JOSEPH MCMAHON,
INDIVIDUALLY AND AS TRUSTEE, JOSEPHINE
MCMAHON, INDIVIDUALLY AND AS TRUSTEE,
RAYMOND MEAGHER, TERESA MEAGHER,
HARVE MILLER, WAYNE MILLER,
INDIVIDUALLY AND AS TRUSTEE, JEFFREY
MILLER, MARYLOU MITCHELL,
PATRICIA MOBLEY, DONALD MONKS, ROSALIE
MONKS, MARTIZA MONTERMARANO, MEDORO
MONTERMARANO, ROGER MORGAN,
KYRAN MARTIN MURPHY ESTATE,
MARGARET NAGY, JOANNE NETTIE,
JORDAN NEVLER, LEDA NEVLER, NORTH SHORE
PLUMBING SUPPLY, DAVID O'DONNELL, CHRIS
OWENS, THEODORA PAASO, THOMAS PAASO,
JUNE PAINTER, ANASTASIOS PAPARGIRIOU,
DEBORAH PAPICH, GWYNETH PAPPERT,
INDIVIDUALLY AND AS EXECUTOR
OF JOSEPH PAPPERT, JR. ESTATE,
RICHARD PASHAYAN, MARIA PASHAYAN,
MELISSA PASHAYAN, LAURA PASHAYAN,
CHRISTINA PASHAYAN, STEPHEN PARR,
RODNEY PAYNE, CHARLES MAURICE
PAYNE, JULIETTE POZZOULI,
MICHAEL POZZOULI, LINDA PROVENZANO,
ALAN PUTTERMAN, CHARLES RAGAN, MARY
ANN RAGAN, BEVERLY REED, RICHARDSON
INVESTMENTS & PERSONAL PROPERTY FLP,
ELIZABETH RICHARDSON, JOHN RICHARDSON,
RIVER VALE CHIROPRACTIC CENTER, WILLIAM

ROBERTS, HARRY ROBINSON III, PATRICIA ROOS, NICHOLAS ROOS, ROGER ROOS, INDIVIDUALLY AND AS TRUSTEE, ALAN ROSEN, PAULA ROSEN, PETER ROSEN, PETER ROSSI, JEROME ROTHSCHILD, JACQUELINE ROWE, MARY RUTLEDGE, RICHARD RUTLEDGE, STEVEN SARIN, BARRY SARIN, HAROLD SARIN, HELEN SARIN, JEFFERY SARIN, MICHAEL SARIN, SHERYL SARIN, ED SCHAFFNER, FREDERICK SCHELLER, LIBIA F. SCHELLER, JAMES SCHEISMAN, DEIRDRE SCHOELLER, CLOGENE SCHONS, HARRY SCHONS, JERRY SCHONS, ROENA SCHONS, FLORENCE SCHULMAN ESTATE, ANNABELL SCHUTTE, ADEEN SCHWARTZ, IAN SCHWARTZ, JESSICA SCHWARTZ, RALPH SIKKEMA, INDIVIDUALLY AND AS TRUSTEE, BEVERLY SILVA, EMMANUEL SILVA, THOMAS SITTON, VIRGINIA SITTON, GARY SLONE, CAROLE SMITH, MIKE SMITH, MARLO SPRINGER, THEODORE SPRINGER, MARCY STREICHER, AS EXECUTOR OF THE ESTATE OF GERALD LINDENMEYER, PATRICIA STEVENS, DAVID STONE, PAUL STOUTD, THOMAS SUAZO, CAROL SULLIVAN, THELMA SULLIVAN, DOMINIQUE SWETTE, CORA ESCH AS TRUSTEE, MILO THALROSE, MICHAEL TANNENHAUSER, JONATHAN TANNENHAUSER, MARK TANNENHAUSER, ROBERT THORPE, JAMES LEE VAN FOSSEN, ANITA VOLK, BILL WHITE, HAROLD WHITMORE, JAMES WILLIAMS, BILL WILLIS, MICHELLE WILLIS, ANITA WOLMETZ, LARRY WOLMETZ, JACK WUEST, NANCY YACOVONE, MARILYN YOUNG, MICHAEL YOUNG, SUSAN ZUCKER, ANITA VOLK TRUST, ARNOLD AND FAYE DECAMP LIVING TRUST, BARETT FAMILY TRUST, BOENIG/AFANE FAMILY TRUST, CAPITOL ELECTRIC COMPANY INC., BEVERY CARTER REVOCABLE TRUST, CERBERUSES ELEVEN TRUST, CONCRETE ASSURANCE CORP PSP, JOHN J. BARRETT III AS TRUSTEE OF THE DYNASTY CONSTRUCTION INC. 401K PLAN, EDWARD LAURIA TRUST, EYE Q INC., ROBERT FALCETTI, GONZALEZ INVEST. PERSONAL PROPERTY FAMILY LIMITED PARTNERSHIP, GROOM INVESTMENTS& PERSONAL PROPERTIES

FLP, JB III CONSULTING INC., JFL VENTURE FUND I, JFL VENTURE FUND II, JFL VENTURE FUND III, JFL VENTURE FUND IV, JFL VENTURE FUND V, JONATHAN TANNENHAUSER IRA, JUNE PAINTER REVOCABLE TRUST, LILLIAN MCCOLLOUGH AMENDED REVOCABLE TRUST, LOWY FAMILY TRUST, RICHARD & SUSAN MAJESKI REVOCABLE LIVING TRUST, PEARSON INC. PENSION PLAN, RETIREMENT ACCOUNTS INC., ROBERT & SUSAN FALCETTI REVOCABLE TRUST, ROBERTA COREN LIVING TRUST, SCHONS SR. REVOCABLE TRUST, SECURE STORAGE CORPORATION, SIKKEMA FAMILY TRUST, SIKKEMA FAMILY LIMITED PARTNERSHIP, RIVERBUFF PROPERTIES, JEROME D. ARKIN, TRUSTEE, TEAM FOUNDATION INC., WILLIAM & GAIL BURNS REVOCABLE LIVING TRUST,

Plaintiffs,

Plaintiffs,

CHARLES J. CRIST; STATE OF FLORIDA;
STATE OF FLORIDA OFFICE OF
FINANCIAL REGULATION,

Defendants.

AMENDED COMPLAINT

DEMAND FOR A JURY TRIAL

Plaintiffs (collectively “Plaintiffs”) for their Amended Complaint as against Defendants, allege as follows:

INTRODUCTION

1. This case involves the actions and inactions of defendants State of Florida (the “State”), the State of Florida Office of Financial Regulation (“OFR”) and Charles J. Crist (“Crist” or “Charlie Crist”), the Governor of the State, who is also a former Attorney General of Florida and former Member of the Financial Services Commission (the “FSC”) of the State.

2. The FSC is a part of the executive branch of the State government and was established by F.S. § 20.121. OFR, which is housed within FSC and was formerly known as the “Department of

Banking and Finance”, consists of three divisions, the Division of Financial Institutions (which regulates State-Chartered Commercial Banks, Credit Unions, Savings Associations, Non-Deposit Trust Companies, and International Banking Offices), the Division of Finance (which regulates Collection Agencies, Consumer Finance Companies, Mortgage Broker Businesses and Lenders and Branches, Mortgage Broker Individuals, Retail Installment Sellers and Sales Finance Companies) and the Division of Securities (which regulates Securities Dealers and Agents, Investment Advisers and Securities Offerings).

3.

The powers, structure, authority, budget and virtually all other aspects of the FSC and its commissioners over and related to OFR are set forth in F.S. § 20.121 (3) a. Within OFR is the Bureau of Financial Investigations created by F.S. § 20.121 (3) (a) (2), which provides:

The Office of Financial Regulation shall include a Bureau of Financial Investigations, which shall function as a criminal justice agency for purposes of ss. 943.045-943.08 and shall have a separate budget. The bureau may conduct investigations within or outside this state as the bureau deems necessary to aid in the enforcement of this section. If, during an investigation, the office has reason to believe that any criminal law of this state has or may have been violated, the office shall refer any records tending to show such violation to state or federal law enforcement or prosecutorial agencies and shall provide investigative assistance to those agencies as required.

4. At all times relevant hereto, Crist was one of four Commissioners of the FSC, along with former Governor Jeb Bush, former Chief Financial Officer Tom Gallagher and former Commissioner of Agriculture Charles Bronson. At all times the Commissioner of OFR was Don Saxon. Because of his position as the Chief Legal Officer of the State of Florida and Commissioner of OFR, Defendant Crist was in a position of authority regarding the day to day affairs of OFR and as such was also in a unique position to make known his positions and/or recommendations about investigations being considered and/or in process by OFR, including the investigations into what is described below as the Pearlman Fraud.

5. At all relevant times, Defendants turned a blind eye to, a long-term *Ponzi* scheme perpetrated by one Louis J. Pearlman (“Pearlman”) that robbed hundreds if not thousands of elderly and unsophisticated investors, many who were in their 70's and 80's, out of in excess of \$300 million of the investors' life savings by facilitating the purchase by these investors of certain illusory investments (hereinafter described and referred to as the “Transcon Investments”) Hereinafter, the *Ponzi* scheme perpetrated by Pearlman and his co-conspirators is referred to as the “Pearlman Fraud”.

6. Many of those who purchased the Transcon Investments lost their entire life savings which they amassed by sacrificing and cautiously saving throughout the course of their working lives.

The losses at issue are not the simple result of the failure of legitimate investments to perform as expected; rather, this was a massive and pervasive fraud which could not have been perpetrated had Defendants not violated their civic and statutory duties and wittingly or unwittingly facilitated the Pearlman Fraud, thereby rendering substantial assistance to the fraudulent scheme perpetrated by Pearlman, which devastated the Plaintiffs and their families.

THE NATURE OF THE PEARLMAN FRAUD

7. The term “*Ponzi Scheme*” derives from the notorious Charles Ponzi, who stole millions of dollars from Boston investors in 1920 and describes a financial fraud which is perpetrated by utilizing monies obtained under false pretenses from subsequent investors to pay “interest” or “dividends” and return of principal to earlier investors who have no reason to suspect that no legitimate enterprise is actually generating revenues to make these payments. A *Ponzi* scheme will only last as long as there are new investors who part with their investment funds anticipating unusually high returns. Eventually, the house of cards will have to collapse, usually leaving the later-in-time investors holding the bag and the con-artist promoters in jail.

The *Ponzi* scheme perpetrated by Pearlman did not unravel until OFR finally brought injunctive proceedings against Pearlman in December 2006, after years and years of on-again, off-again investigations by the State, effectively shutting down his operations.

8. From the early 1980's until December 2006, Pearlman and related entities wholly owned by Pearlman such as Transcontinental Airlines, Inc., Trans Continental Travel Services Inc., Clean Systems Technology, Inc., and other related companies and entities (collectively, “Transcon”), offered and sold, and received proceeds from, unregistered and, hence, illegal securities identified either as the “Employee Investment Savings Accounts” (“E.I.S.A.”), or as common or preferred stock in one or more of the Transcon companies.

9. The E.I.S.A. savings program was marketed by Pearlman and his cohorts as providing CD and/or savings accounts to friends and family of Transcon, with pass-through Federal Deposit Insurance Corporation (“FDIC”) insurance and reinsurance through Lloyd of London and AIG. The preferred stock sold in Trans Continental Travel Services Inc. was slated to pay 10% annual dividends. Stock in other entities was sold as well, including Airship International, Inc., another of the Transcon companies.

10. Unbeknownst to the Plaintiffs and other bilked investors, the Transcon companies were little more than shell companies designed to defraud investors. There was no charter airline with 50 airplanes as presented by Transcon on its balance sheets. Pearlman, the entertainment impresario who

obtained fame by promoting the “boy bands” N-Sync and Backstreet Boys, was expert at moving assets out of one company and into another, and therefore out of reach of creditors. He and his co-conspirators created an elaborate fake accounting scheme, with false data from a fictional accounting firm, creating entirely fabricated financial statements which were summarily republished in Dun & Bradstreet reports for a decade or more.

11. By the time the scheme unraveled in late 2006, Trans Con had few if any profitable entities or divisions. No actual segregated E.I.S.A savings accounts were ever established for investors and companies issuing preferred stock had little or no income or assets other than deposits from the E.I.S.A. program. As is typical in *Ponzi* schemes of this nature, Pearlman and his co-conspirators used incoming funds from newer investors to pay principal and interest or dividends to already existing investors.

12. Transcon’s E.I.S.A. “savings program” was initially sold by Pearlman and his co-conspirators directly to investors. As the program expanded, the Transcon Investments were sold through a loose network of sales agents, who were either licensed securities brokers or insurance salespeople and who all reported to Pearlman’s chief salesman, Michael Crudele (“Crudele”), someone who has been under continuous investigation by the State for illegally selling unregistered securities and against whom the State had secured a cease and desist order against such illegal conduct back in 2002.

13. Funds paid by Plaintiffs to invest in the Transcon Investments were deposited by Pearlman and his co-conspirators into various Transcon accounts with Florida based banks.

14. Plaintiffs were to be passive and were not expected or obligated to perform any entrepreneurial effort in conjunction with their Transcon Investments to produce the income or profit, which would result in the payment of the interest.

15. According to an OFR analysis, between January 2003 and December 2006 alone, approximately \$118 million in proceeds from the sale of the E.I.S.A. program were received and deposited in the Transcon bank accounts.

16. Investors in the Transcon Investments were never advised that their funds would be paid out to earlier investors for account redemption or as interest payments.

17. Investors in the Transcon Investments were never advised that their funds would be paid to third parties in any manner.

18. Investors in the Transcon Investments were informed:

- a. that the E.I.S.A. program investor funds were held in U.S. bank accounts;
- b. that the FDIC insured each E.I.S.A. account up to \$100,000;

- c. that a Lloyd's of London insurance policy and Subsequently an AIG insurance policy covered each E.I.S.A. account;
- d. that a Florida C.P.A. firm, Cohen & Siegel, issued an opinion concerning the E.I.S.A. program on May 3, 1995.

19. Investors in the Transcon Investments , or some of them, were provided a document to demonstrate that Lloyd's of London insured E.I.S.A. accounts in U.S. financial institutions under Lloyd's Policy # 823/AM9 100780 with the "Assured" being Trans Continental Airlines, Inc. Orlando, Florida, 32819 U.S.A.

20. § 517.021, Florida Statutes, entitled Definitions, provides at subsection (20) the following definition of a security:

(20) "Security" includes any of the following:

- (a) ...
- (f) An evidence of indebtedness.
- (q) An investment contract.

21. The Transcon Investments were "securities" as defined by F.S. §§ 517.021 (20)(f) and (q).

22. The Transcon Investments were not "federal covered securities" as defined by F.S. § 517.021(10).

23. Upon information and belief, in connection with the sale of the Transcon Investments, no persons were ever registered as an "issuer," "dealer" or "associated person" pursuant to the registration provisions of Chapter 517, Florida Statutes.

24. At all times material to this action, the Transcon Investments offered to Plaintiffs were never registered as "securities" pursuant to the registration provisions of Chapter 517, Florida Statutes.

25. Recommending the investment in the Transcon Investments constitutes the rendering of investment advice.

26. Pearlman and his co-conspirators obtained money from the Transcon Investors by means of a scheme to defraud, and misrepresentations and omissions of material facts in connection with the rendering of investment advice in violation of § 517.301 of the Florida Securities and Investor Protection Act, falsely misrepresented to the Plaintiffs material facts as set forth herein above.

27. In connection with the transactions described above, Pearlman and his co-conspirators also omitted to disclose material facts to the Transcon Investors in violation of § 517.301, Florida Securities and Investor Protection Act, as set forth herein above.

28. In connection with the transactions described above, Pearlman and his co-conspirators employed a scheme to defraud and engaged in business which operated as a fraud, as previously set forth herein, all in violation of F.S. § 517.301.

29. F.S. § 517.301, entitled Fraudulent transactions; falsification or concealment of facts, provides at §§ (l)(a)1, 2, and 3, the following:

(1) It is unlawful and a violation of the provisions of this chapter for a person:

(a) In connection with the rendering of any investment advice or in connection with the offer, sale, or purchase of any investment or security, including any security exempted under the provisions of § 517.051 and including any security sold in a transaction exempted under the provisions of § 517.061, directly or indirectly:

1. To employ any device, scheme, or artifice to defraud;
2. To obtain money or property by means of any untrue statement of 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
3. To engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon a person.

30. Pearlman and his co-conspirators violated the registration and anti-fraud provisions of the Florida Securities and Investor Protection Act in selling unregistered securities and engaging in fraudulent misrepresentations and omissions in connection with the sale of the Transcon Investments, evidence of which was in the possession of Defendants dating back to 2003 if not earlier, which evidence triggered a legal duty to act on the part of Defendants; yet they did nothing.

31. In late 2006, Pearlman's *Ponzi* scheme began to unravel. Transcon was unable to pay investors interest on their investments or cash people out of their Transcon Investments.

**DEFENDANT OFR FINALLY TAKES ACTION IN A
CASE OF TOO LITTLE, TOO LATE**

32. Finally, on December 27, 2006, OFR filed suit against Pearlman. In February 2007, the State regulators announced that Pearlman had indeed engaged in a massive fraud and a receiver was appointed by the Court to take possession of all of the Transcon companies and assets. Later, Pearlman himself and all the Transcon companies were placed into involuntary bankruptcy, which bankruptcy proceeding is still pending and being jointly administered by a single Trustee, Soneet Kapila.

33. OFR sued Transcon to enjoin the continuing violation of the Florida Securities and Investor Protection Act, Chapter 517, Florida Statutes, and the Florida Financial Institution Code, Chapter 655, Florida Statutes.

34. On May 21, 2008, Pearlman was sentenced to 25 years in federal prison, after pleading guilty to charges of conspiracy, money laundering, and making false statements during a bankruptcy proceeding. U.S. District Judge G. Kendall Sharp gave Pearlman the chance to cut his prison time, by offering to reduce the sentence by one month for every million dollars he helps a bankruptcy Trustee recover. Pearlman is currently in Federal prison serving his sentence.

JURISDICTIONAL ALLEGATIONS

35. This is an action for negligence, violation of statutory duty and aiding and abetting common law fraud causing damages in excess of \$15,000 exclusive of interest, costs and attorneys fees, which must be brought in State Court pursuant to F.S. § 768.28, and as such, this Court has subject matter jurisdiction over this cause.

36. Certain Plaintiffs are citizens of the State of Florida. Other Plaintiffs are citizens of other States. All Plaintiffs invested personal monies in the Pearlman Fraud and has lost approximately a total of at least \$40,820,000 as a result of Defendants' conduct.

37. Defendant Charles J. Crist ("Crist" or "Charlie Crist") is the Governor of Florida, former Attorney General of Florida and former Member of the Financial Services Commission¹ who resides in Tallahassee, Florida. The evidence from (i) independent and credible reporters, authors and investigators, (ii) witnesses with knowledge of The Fraudulent Enterprise, and (iii) statements by Court Appointed Officials in Florida involved with Defendant Pearlman and Defendant Pearlman Companies, Defendant Crist appears to be a person who benefitted from the below described fraud and enterprise and by, among other things, (i) engaging in questionable, improper and/or potentially unethical ultra vires acts while an official of the State of Florida; (ii) failing to take the necessary steps as required by his job as Attorney General; (iii) delaying or interfering with the investigations against Defendant Pearlman and Defendant Pearlman Companies; (iv) conspiring to delay or interfere with the investigations against Pearlman; (v) violating the oath of office as Attorney General; (vi) engaging in negligent and potentially improper acts such as using his official position and influence which helped and/or allowed Defendant Pearlman and his Companies to continue the scheme to defraud and unlawful enterprise which he knew, had reason to know or should have known and/or could have discovered through the exercise of reasonable diligence was defrauding Plaintiffs and others out of hundreds of millions of dollars; (viii) breaching fiduciary duties; (ix) failing to take necessary and appropriate action through investigations or acting upon

available information so as to prevent the misappropriation of hundreds of millions of dollars; (x) violating the public trust and official duties and (xi) other wrongful activities.

38. Defendant State of Florida is a US state with its seat of government located in Tallahassee, Florida.

39. Defendant Office of Financial Regulation (OFR) is an agency of the State of Florida.

ALLEGATIONS AGAINST DEFENDANTS

40. Public officials in Florida, including Defendant Crist, had actual or constructive knowledge that Defendant Pearlman and his companies had been accused of being engaged in fraudulent marketing schemes, consumer fraud and other illegal activities.

41. As early as 2002, 2003 and 2004, State officials, including Crist and others in OFR had actual or constructive knowledge about accusations related to Pearlman's modeling promotion companies and improprieties related directly to the Pearlman Fraud.

42. State officials in Florida, including Crist and others in OFR had actual or constructive knowledge that complaints, dating back to 1995, had been made against Pearlman by the FDIC, consumers, the State of Texas Securities Board and Lloyd's of London related to financial improprieties, fraud, misrepresentations and the unlawful sale of CDs and securities.

43. In 2003, State officials, including Crist and others in OFR had received complaints and had information that Pearlman and his cohorts were violating Florida law with respect to the E.I.S.A accounts. In response to these complaints, Pearlman wrote a letter in which he said:

Our company is Trans Continental Airlines Inc. We do not offer to anyone other than employees or our private shareholders our Employee Investment Savings Account plan.

Our employees have their own individual accounts set up with approved banking institutions. Our matching plan is based on years of service. We have not solicited anyone nor have (we) accepted anyone to this plan that does not qualify and certainly not to the general public.

44. Based on that letter, the State investigation was stopped.

45. In 2003, State officials, including Crist and others in OFR had actual knowledge that Pearlman and his cohorts were engaged in violation of securities laws in Florida.

46. In response to these new complaints, in mid-January 2004, an attorney named Peter Antonacci ("Antonacci"), on behalf of Pearlman, made phone calls to persons unknown believed to include OFR and possibly other State officials.

47. Antonacci is a former statewide prosecutor, former having served from 1991 to 1997 under then Attorney General Bob Butterworth as Deputy Attorney General of Florida, and has a close professional association with Crist, who re-appointed him to the Governing Board of the Northwest Florida Water Management District and appointed him to the First District Court of Appeals Nominating Committee.

48. Antonacci and his firm had extraordinary access to persons in position of power at the highest levels of State government and all of the branches thereof, including former Governor Jeb Bush and Crist.

49. On January 30, 2004, Antonacci wrote the OFR identifying himself as “Counsel for Trans Continental Companies” stating:

This is a follow up to our conversation this past week with respect to my client the Trans Continental Companies, specifically with regard to the Trans Continental Airlines Employee Investment Savings Account (TCA EISA) and the Trans Continental Records, Inc. Confidential Private Placement Memorandum . . .

Neither of these products has been offered for sale to the public by the company since at least 2002. Accordingly, the company has not authorized any broker to offer for sale either of these products to the public since then. If your office receives any information to the contrary, please contact me so that the immediate action can be taken by the company.

50. This letter was certified as being true and accurate by Pearlman at a point in time when the statements contained therein were false, untrue and sent so that Pearlman Fraud could be perpetuated. Notably, the Antonacci letter did not claim that the Transcon Investments had *never* been sold to members of the public, only that such “products” had not been offered for sale to the public since 2002, a statement that was false.

51. Nevertheless, OFR, charged by law with investigating the illegal sale of securities within the State, halted all investigations into the Pearlman Fraud *again*.

1) Periodically from 2003 forward, OFR issued press releases about its efforts to reduce securities fraud, racketeering, schemes to defraud investors and banking fraud. These and other press releases, which are posted and can be found on the OFR website at www.flofr.com, include a January 6, 2003 Release about “Seven Suspects Arrested for Racketeering and Securities Fraud Charges”, a May 23, 2003 Release “Man Arrested for Sale of Unregistered Securities”, and a April 6, 2005 Release of “Top Ten Threats to Florida’s Investors” which notably ranked them as follows # *Ponzi* Schemes, # Unlicensed Individuals Selling Securities, #

Unregistered Investment products, # Promissory Notes, # Senior Investment Fraud and # High Yield Investment Schemes.

52. In fact, the Pearlman Fraud encompassed six of these “Top Ten Threats” as identified by OFR itself. Yet OFR and Crist did nothing.

53. From 2001 to 2006, as a result of its investigations, complaints brought to its attention and through the use of ordinary common sense, OFR had or should have had actual and/or constructive knowledge that the Pearlman Fraud violated numerous State laws and that Pearlman and his cohorts were engaged in sale of unregistered, illegal securities.

54. Throughout this period, OFR had a very close professional relationship with Crist, the sitting Attorney General, with whom OFR has worked closely in a similar prosecution related to banking fraud. In January 2006, OFR and Crist jointly proudly announced their close cooperation in the investigation, prosecution and settlement of a \$325 million predatory lending scheme perpetrated by Ameriquest Mortgage Company and its parent company, ACC Capital Holding Corporation.

55. In fact, according to F.S. § 20.121 (3) (a) 2, “if the Office (of Financial Regulation) has reason to believe that any criminal law of this states has or may have been violated, the office shall refer any records tending to show such violation to state or federal law enforcement or prosecutorial agencies and shall provide investigative assistance to those agencies as required”.

56. During the period from 2001 to 2006, it was the Florida law that the “records tending to show (the) violation” related to the Pearlman Fraud had to be sent to Crist’s offices.

57. Despite this knowledge and the information that had to have been provided by OFR, and for reasons which border on potential criminally negligent or willful breach of duties or other unlawful activities, the Office of the Attorney General, as then headed by Crist (also Commissioner of OFR) determined or recommended that investigation into the Pearlman Fraud be halted and no action be taken.

58. Upon information and belief, during the period 2001 to 2006, when OFR had reason to believe that criminal laws of the State were being violated or may have been violated through the Pearlman Fraud, for reasons which border on the criminal negligence and willful breach of duties or other unlawful activities, Crist in his official capacity as Attorney General directed that that investigation into the Pearlman Fraud be halted by the State and OFR and no action be taken.

59. Once the State's investigations into the Pearlman Fraud were halted in 2003, the Pearlman Fraud then kicked into a new phase.

60. Starting in about 2003, the Pearlman Fraud started to accept more monies from investors, with Pearlman touting the fact that he had been given "a clean bill of health" by the State.

61. From 2003 forward, Pearlman directed Crudele and his other cohorts to market the Transcon Investments more aggressively and to use a larger network of brokers and third parties.

62. Ironically, all during this period Defendants either knew or were charged with the knowledge that Crudele, the chief salesman and sales manager for the Pearlman Fraud, had already been the subject of a State investigation into the sale of unregistered securities, which investigation resulted in the imposition of a Cease and Desist Order dated May 15, 2002 issued by the State of Florida Department of Banking and Finance, the name by which OFR was known at the time, in which Crudele was *permanently* ordered to "CEASE AND DESIST all violations of Chapter 517, Florida Statutes, and the rules duly promulgated thereunder (the "Act"), including but not limited to §§ 517.07, 517.12 and 517.301(1)(a) 2, Florida Statutes."

63. Even more telling is that, despite Crudele's role as one of the principal culprits in the massive marketing and selling of the Transcon Investments, which sales were all violative of the very statutes cited in the above-referenced May 15, 2002 Order, Crudele has never been subjected to any legal proceedings initiated by the State for his role in the Pearlman Fraud or for violating said Order.

DEFENDANTS' MOTIVES TO PROTECT PEARLMAN

64. During the period that OFR was responsible to investigate and prosecute the very illegal activities encompassed by the Pearlman Fraud, Crist was the personal recipient and beneficiary of Pearlman's largesse, receiving financial contributions and other financial consideration funded by the ill-gotten gains obtained by Pearlman and his cohorts from victims of the Pearlman Fraud, including Plaintiffs in this action.

65. At a time when Crist's offices and OFR were, or should have been, investigating Pearlman, Crist personally received and/or benefitted from campaign contributions to the tune of at least \$12,000, which was contributed by Pearlman and his cohorts to Crist's 2006 gubernatorial campaign.

66. At a time when Crist's offices and OFR were, or should have been, investigating Pearlman, Crist personally received and/or benefitted from unpaid or underpaid use of a private jet provided by Pearlman to Crist for his personal use during the course of his gubernatorial campaign.

67. At a time when Crist's offices and OFR were, or should have been, investigating Pearlman, Crist personally was provided unpaid-for use of private skyboxes, tickets and/or other similar sports and entertainment facilities, which included use of a sky box at Raymond James Stadium in Tampa so that Crist could entertain his guests during the Tampa Bay Buccaneers football team's 2005 season.

68. At a time when Crist's offices and OFR were, or should have been, investigating Pearlman, Crist personally benefitted from fund raisers sponsored by Pearlman and his cohorts.

69. Moreover, this does not appear to be the first time that Crist accepted monetary favors from those he was charged by law to investigate. Accepting campaign money from individuals under investigation by his office is a pattern that has occurred throughout Crist's career. Crist also has long been plagued by ethics investigations and irregular campaign practices.

70. For example, in 2002, Crist avoided ethics charges by failing to cooperate with the Commission on Ethics. Ethics Commission staffers said their investigation was hampered by Crist's "stonewalling" their probe into his unethical and potentially illegal campaign activities. (Palm Beach Post, 10/11/02). The 2002 complaint to the Ethics Commission complaint charged Crist "with taking contributions before opening a campaign account and using private planes for campaign travel at less than market cost." Crist was alleged to have committed "seven specific violations of Florida statutes." (Associated Press, 01/23/02)

71. Also in 2002, Crist was the subject of a complaint before the Florida Elections Commission in which it was alleged that Crist mingled state-paid travel and campaign activities, in violation of state law. (Ft. Lauderdale Sun-Sentinel, 2/19/02)

72. Again in 2002, Crist was charged with illegally using state money to pander for political support by sending political mailings on official letterhead. (Tampa Tribune, 08/29/02)

73. In a pattern repeated again, in 2002, Crist accepted donations from a firm under investigation by the Attorney General's office - an office he was seeking at the time. (Palm Beach Post, 08/31/02)

74. In 2005, as the state’s top lawyer, Crist improperly accepted thousands of contributions and failed to report occupations for his contributors as required by state law. (Miami Herald, 02/13/06)

75. In 2006, Crist accepted tens of thousands of dollars from companies and individuals then under investigation by the Attorney General's office - a clear conflict of interest. (Associated Press, 02/13/06)

76. Also in 2006, Crist was chastised by a judge for his “meddling” in a case involving a firm represented by one of his senior campaign advisors. (St. Petersburg Times, 04/23/06)

77. Furthermore, this was not the first time that Crist had given Pearlman a “pass” for political and financial reasons. Pearlman's model scouting business, which operated under many names: Studio 58 Models; WHY Models; eFashionShow.com; emodel.com; Options Talent; Trans Continental Talent; Wilhelmina Scouting Network; and Web Style Network and which was essentially run by convicted fraudsters and other unsavory characters, was portrayed in the media, including Dateline NBC and myriad other investigative news reports, including Newsweek, as an outright scam. Yet, after two years of investigation, the Attorney General's Office under Crist virtually gave it a clean bill of health after the Assistant Attorney General, Jackie Dowd, who was prepared to launch litigation to close Pearlman’s illegal operations suddenly “resigned” without explanation. Despite the thousands of complaints received by Crist’s office while he was Florida Attorney General and the overwhelming evidence exposing a multitude of fraudulent and deceptive acts at Pearlman’s Orlando scouting network, Crist secretly allowed his underlying goal of becoming Governor to negate his purported “tough-on-crime” stance when it came to his Republican supporter, Pearlman.

STATUTORY FRAMEWORK FOR THESE CLAIMS UNDER F.S. § 768.28

78. F.S. § 768.28 states in pertinent part:

§ 768.28 Waiver of sovereign immunity in tort actions . . .

(1) In accordance with § 13, Art. X of the State Constitution, the state, for itself and for its agencies or subdivisions, hereby waives sovereign immunity for liability for torts, but only to the extent specified in this act. Actions at law against the state or any of its agencies or subdivisions to recover damages in tort for money damages against the state or its agencies or subdivisions for injury or loss of property, personal injury, or death caused by the negligent or wrongful act or omission of any employee of the agency or subdivision while acting within the scope of the employee's office or employment under circumstances in which the state or such agency or subdivision, if a private person, would

be liable to the claimant, in accordance with the general laws of this state, may be prosecuted subject to the limitations specified in this act.

(5) The state and its agencies and subdivisions shall be liable for tort claims in the same manner and to the same extent as a private individual under like circumstances, but liability shall not include punitive damages or interest for the period before judgment. Neither the state nor its agencies or subdivisions shall be liable to pay a claim or a judgment by any one person which exceeds the sum of \$100,000 or any claim or judgment, or portions thereof, which, when totaled with all other claims or judgments paid by the state or its agencies or subdivisions arising out of the same incident or occurrence, exceeds the sum of \$200,000. However, a judgment or judgments may be claimed and rendered in excess of these amounts and may be settled and paid pursuant to this act up to \$100,000 or \$200,000, as the case may be; and that portion of the judgment that exceeds these amounts may be reported to the Legislature, but may be paid in part or in whole only by further act of the Legislature. Notwithstanding the limited waiver of sovereign immunity provided herein, the state or an agency or subdivision thereof may agree, within the limits of insurance coverage provided, to settle a claim made or a judgment rendered against it without further action by the Legislature, but the state or agency or subdivision thereof shall not be deemed to have waived any defense of sovereign immunity or to have increased the limits of its liability as a result of its obtaining insurance coverage for tortious acts in excess of the \$100,000 or \$200,000 waiver provided above. The limitations of liability set forth in this subsection shall apply to the state and its agencies and subdivisions whether or not the state or its agencies or subdivisions possessed sovereign immunity before July 1, 1974.

(6)(a) An action may not be instituted on a claim against the state or one of its agencies or subdivisions unless the claimant presents the claim in writing to the appropriate agency, and also, except as to any claim against a municipality or the Florida Space Authority, presents such claim in writing to the Department of Financial Services, within 3 years after such claim accrues and the Department of Financial Services or the appropriate agency denies the claim in writing; except that, if such claim is for contribution pursuant to § 768.31, it must be so presented within 6 months after the judgment against the tortfeasor seeking contribution has become final by lapse of time for appeal or after appellate review or, if there is no such judgment, within 6 months after the tortfeasor seeking contribution has either

discharged the common liability by payment or agreed, while the action is pending against her or him, to discharge the common liability.

(b) For purposes of this section, the requirements of notice to the agency and denial of the claim pursuant to paragraph (a) are conditions precedent to maintaining an action but shall not be deemed to be elements of the cause of action and shall not affect the date on which the cause of action accrues . . .

(d) For purposes of this section, complete, accurate, and timely compliance with the requirements of paragraph (c) shall occur prior to settlement payment, close of discovery or commencement of trial, whichever is sooner; The failure of the Department of Financial Services or the appropriate agency to make final disposition of a claim within 6 months after it is filed shall be deemed a final denial of the claim for purposes of

this section. For purposes of this subsection, in medical malpractice actions, the failure of the Department of Financial Services or the appropriate agency to make final disposition of a claim within 90 days after it is filed shall be deemed a final denial of the claim. The provisions of this subsection do not apply to such claims as may be asserted by counterclaim pursuant to § 768.14.

79. On April 16, 2008, on behalf of all named Plaintiffs herein, Plaintiffs' counsel wrote a letter to the State's Chief Financial Officer, the Honorable Alex Sink, to the then Commissioner of OFR, Donald Saxon and to the Inspector General of the State, Robert E. Clift (See "Exhibit A" attached hereto, a copy of said letter with some of the attached exhibits) in which notice of the claims asserted herein was given as required by F.S. § 728.28 (6) (a).

80. Plaintiffs have received no response to said April 16, 2008 letter and, therefore, the State has failed to make final disposition of the claim within six (6) months after the claim was filed.

81. By reason of the foregoing, a final denial" of the claim for purposes of F.S. § 768.28 has occurred and all conditions precedent to suit as required by said statute have been satisfied.

82. As set forth above, the State, OFR and Crist and other officials, agents and/or representatives of Florida were negligent in the handling of the investigation and prosecution of Defendants Pearlman and his companies as well as its/their officers, agents, employees and/or other persons acting on their behalf, at their direction or with their knowledge, with regard to the numerous prior fraudulent schemes and unlawful sales of EISA "securities" which led to Floridians and others losing hundreds of millions of dollars. This negligence creates liability as against Florida for victims of The Pearlman Fraud. In addition to negligence, the specific acts an alleged against Defendants OFR and Crist constitute state actors' possible negligence and/or other violations of federal and state law. These acts and omissions also directly relate to negligence that has to be imputed to Defendant Florida, to malfeasance of the office of Attorney General, *ultra vires* acts by Defendants OFR and Crist, and failing to take steps to avoid a present conflict of interest and the appearance of impropriety in the current and ongoing criminal investigation of Pearlman, his associates, the Pearlman Companies, and the Pearlman Fraud.

83. Further, the past and ongoing acts by Defendants Florida, OFR and Crist have caused further delays and interference with the impartial investigation into The Fraudulent Enterprise, Defendants Pearlman and his companies. Further, their actions may violate federal statutes regarding bribery, obstruction of justice and receiving stolen property via mail, wire, and check in interstate commerce.

84. Further the allegations and evidence as set forth herein in greater detail suggest that there may have been violations of Florida and U.S. laws by officials of the State of Florida, including but not limited to violations of 18 USC § 201 and F.S. § 102 related to the maximum election campaign contributions allowed per person or company, and/or other laws related to acceptance of monies by public officials from persons under investigation.

85. In August 2007, it was publicly reported that at least ten (10) of the agents selling the Transcon Investments had previously been cited by the State for the sale of unregistered securities, including the infamous ETS Payphones *Ponzi* scheme. Even State CFO Sink has candidly acknowledged that lapses within state government and lack of proper oversight led to these massive losses and that the State failed to protect "our citizen's assets", as she expressed her desire to ferret out those responsible, what went wrong and what is needed to correct it. (See Exhibit B)

COUNT I
NEGLIGENCE

86. Plaintiffs incorporate by reference all prior paragraphs of this Complaint as though fully set forth herein.

87. As a result of the foregoing, Plaintiffs have suffered injury and loss of property caused by the negligent or wrongful act or omission of a employee of an agency or subdivision of the State within the meaning of F.S. § 768.28.

88. Had the Defendants performed their statutory duties in an ethical and non-negligent manner, Plaintiffs would not have sustained the losses they incurred.

WHEREFORE, Plaintiffs demand judgment for damages, interest, prejudgment interest, attorneys' fees and costs, in an amount necessary to fully compensate plaintiffs and for such other and further relief that this Court deems appropriate.

COUNT II
VIOLATION OF STATUTORY DUTY

89. Plaintiffs incorporate by reference all prior paragraphs of this Complaint as though fully set forth herein.

90. By reason of the Defendants' failure to satisfy its statutory duty of care for their failure to act on obvious investigative findings. That statute creates within the Department a criminal justice arm (Bureau of Financial Investigations) that is tasked with investigating potential violations of the laws and regulations that the Department governs. *Id.*

91. Under F.S. § 20.121(3)(a)(2) the State, through the Bureau of Financial Investigations of OFR, *may* undertake investigations such as that actually conducted by the State into the Pearlman Fraud over a period of many years, but *must* refer its investigations where there is an indication of a violation to state or federal authorities:

The bureau *may* conduct investigations within or outside this state as the bureau deems necessary to aid in the enforcement of this section. If, during an investigation, the office has reason to believe that *any* criminal law of this state *has or may have been* violated, the office *shall* refer any records tending to show such violation to state or federal law enforcement or prosecutorial agencies and *shall* provide investigative assistance to those agencies as required.
Id. (emphasis supplied).

92. Thus, while the State retains discretion to conduct an initial investigation, its investigations that yield information of a potential violation must be referred to proper law enforcement agencies.

93. For purely political and financial reasons, particularly relating to the interests of powerful political figures such as Crist who stood to benefit from Pearlman's continued ability to maintain his illegal *Ponzi* scheme, the mandatory referral of Pearlman and his cohorts, including the unlicensed salesmen who had previously been identified by the State as having engaged in the unlicensed sale of unregistered securities, never occurred.

94. Had the Defendants performed their statutory duties in an ethical and non-negligent manner, Plaintiffs would not have sustained the losses they incurred.

WHEREFORE, Plaintiffs demand judgment for damages, interest, prejudgment interest, attorneys' fees and costs, in an amount necessary to fully compensate plaintiffs and for such other and further relief that this Court deems appropriate.

COUNT III

AIDING AND ABETTING COMMON LAW FRAUD AGAINST DEFENDANT CRIST

95. Plaintiffs incorporate by reference all prior paragraphs of this Complaint as though fully set forth herein.

96. Crist had knowledge of the Pearlman Fraud, or at least some of the elements of the Pearlman Fraud and rendered substantial assistance to Pearlman and his co-conspirators in their fraudulent conduct by hindering, at a minimum, or halting, at worst, any State investigation into Pearlman's nefarious activities.

97. As a result of Crist's aiding and abetting Pearlman and his co-conspirators, the Pearlman Fraud was allowed to flourish, and Plaintiffs suffered damages, with interest thereon, in an amount to be determined at trial.

98. Plaintiffs have suffered substantial financial injury as a result of Crist's conduct, as alleged herein.

WHEREFORE, Plaintiffs demand judgment for damages, interest, prejudgment interest, attorneys' fees and costs, in an amount necessary to fully compensate plaintiffs and for such other and further relief that this Court deems appropriate.

Dated: April 17, 2009

Respectfully Submitted,

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