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January 20, 2022

VIA DIGITAL FILING (www.courts.state.ny.us/ctapps)
& PAPER FILING WITH THE CLERK'S OFFICE

John P. Asiello, Esq.
Chief Clerk and Legal Counsel to the Court
Court of Appeals of the State of New York
Clerk's Office
20 Eagle Street
Albany, New York 12207-1095

Re: People v. Allen, et al.
Mo. No. 2022-25 (Pin No. 85775)

Dear Mr. Asiello:

At the outset, we thank you for your correspondence dated January 6, 2022, inviting the parties to brief the issue of subject matter jurisdiction. In that regard, please accept the following response in lieu of a more formal submission as Appellants' Jurisdictional Response.

Briefly, this case directly involves serious constitutional questions, including: (1) the violation of the Appellants' constitutional rights to due process caused by the retroactive application of a statute of limitations reviving time-barred claims; (2) an application of the Martin Act, N.Y. General Business Law §§ 352 *et seq*., by the courts of this State in a manner that is in violation of the U.S. Constitution's Supremacy Clause, Article VI, Clause 2 of the U.S. Constitution; and (3) the rewriting of private contracts entered into between sophisticated parties which do not vindicate any public interest under the Martin Act, exceeding the Office of the Attorney General's ("OAG") authority and jurisdiction under the New York State Constitution in direct violation of Appellants' constitutional rights to due process and equal protection under the laws.

Critically, this Court less than two years ago in *Regina Metro. Co., LLC v. New York State Div. of Hous. & Cmty. Renewal*, 35 N.Y.3d 332, 375 [2020], reversed the retroactive application of a statute of limitations to revive time-barred claims because such a result would violate constitutional due process rights. The decisions below in the Supreme Court, Commercial Division and Supreme Court, Appellate Division, are clearly contrary to this Court's ruling in *Regina* and violate the constitutional due process concerns raised by *Regina*.

With respect to this Court's query regarding whether the Supreme Court ultimately entered an order appointing a provisional receiver, the answer to that question is yes. The Supreme Court and Appellate Division both entered a final judgment and order finally determining the rights between the parties. Litigation after these orders has merely been related to enforcement of the final judgment, which does not deprive this Court of jurisdiction.

Attached hereto as **Exhibit A** is evidence of that order in which the Supreme Court entered a proposed final judgment, submitted by Appellee, the OAG, appointing a receiver. Specifically, the Supreme Court granted the Appellee's motion for entry of judgment, stating specifically that "the motion by the OAG is granted, and the Court is simultaneously executing a Judgment in the form proposed by the OAG," (Exhibit A at 1), and that "[t]he Proposed Judgment also provides for injunctive relief and the appointment of the Honorable Melanie A. Cyganowski (Ret.) as the provisional receiver, which again is consistent with the express terms of the Decision." Exhibit A at 1-2. Attached further as **Exhibit B**, is the notice of entry of the signed judgment appointing the receiver signed by the clerk of the Supreme Court, which provides that "it is hereby ADJUDGED as follows: "3. *That Hon. Melanie L. Cyganowski (Ret.) is appointed as the receiver of ACP X, LP*[.]" (emphasis added). Attached hereto as **Exhibit C** is the notice of entry and notice of appeal from that order, filed on May 14, 2021, and that appeal was decided by the Appellate Division's final decision and order that it is now being appealed from to this Court. The judgment appealed from is a final, appealable order which finally determines all rights between the parties and thus this Court has jurisdiction to review.

I. The Present Appeal Directly Involves Issues of Constitutional Importance That Confer Upon Appellants an Appeal as of Right

A. The Appellate Division and Supreme Court's Judgment Violate Appellants' State and Federal Constitutional Rights to Due Process by Reviving Time-Barred Claims

On August 26, 2019, the New York Legislature amended the statute of limitations applicable to Martin Act claims, and that amendment unambiguously provided that it was to take effect "immediately" and not retroactively. 2019 NY S.B. 6536 ("§ 2. This act shall take effect immediately"). This amendment increased a prior three-year statute of limitations applicable to Martin Act claims to six years. *People v. Credit Suisse Sec. (USA) LLC*, 31 N.Y.3d 622 (2018). The law nowhere puts the public, or anyone, for that matter, on notice that the Legislature or the courts could alter substantive and vested rights and revive previously time-barred claims through retroactive application of the new statute of limitations.

Instead, the statute explicitly declares that it would take effect "immediately," meaning prospectively, not retroactively. Applying the new six-year statute of limitations retroactively to revive time-barred claims, as the Supreme Court and Appellate Division have done in this case, without any statutory basis to do so, violates Appellants' due process rights to fair notice of the laws, repose, and traditional notions of substantial justice and fair play.

"For centuries our law has harbored a singular distrust of retroactive statutes" because "elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled expectations should not be lightly disrupted." *James Square Assocs. LP v. Mullen*, 21 N.Y.3d 233, 246, 993 N.E.2d 374 (2013) (internal quotations and alterations omitted) (quoting (*Eastern Enterprises v Apfel*, 524 US 498, 547 (1998) (Kennedy, J., dissenting in part)) and *Landgraf v. USI Film Prod.*, 511 U.S. 244, 265 (1994)).

The application of a statute of limitations retroactively to revive time-barred claims that impact a party's substantial rights, without any basis in the statute to do so and without notice from the plain language of the statute, is a violation of Appellants' rights under the Fourteenth and Fifth Amendments to the United States Constitution, which forbid the taking of life, liberty, or property without due process of law. *See Landgraf*, 511 U.S. at 266 ("The Due Process Clause also protects the interests in fair notice and repose that may be compromised by retroactive legislation[.]"); *see also U.S. v. Carlton,* 512 U.S. 26, 32 (1994) (upholding a due process challenge to a tax statute applied retroactively which was intended to cure a loophole in prior tax law); *Afanador v. Garland*, 11 F.4th 985, 990 (9th Cir. 2021) ("It has long been established that legislation does not apply retroactively absent a clear indication that Congress intended to make the statute retroactive. This general rule is based on 'deeply rooted' principles of equity and due process. (internal citations omitted)). The U.S. Supreme Court has directed that a Legislature, before reviving time-barred claims retroactively, must make its intent clear in the statute. *See Landgraf*, 511 U.S. at 268 ("[A] requirement that Congress first make its intention clear helps ensure that Congress itself has determined that the benefits of retroactivity outweigh the potential for disruption or unfairness."); *Hem v. Maurer*, 458 F.3d 1185, 1190 (10th Cir. 2006) ("Retroactive legislation presents problems of unfairness that are more serious than those posed by prospective legislation, because it can deprive citizens of legitimate expectations and upset settled transactions." (internal quotations omitted).

Similarly, pursuant to the New York State Constitution and the law of this State, this Court enunciated recently in *Regina Metro. Co., LLC v. New York State Div. of Hous. & Cmty. Renewal*, 35 N.Y.3d 332, 375 [2020], that "[i]f retroactive application would not only impose new liability on past conduct but also revive claims that were time-barred at the time of the new legislation, we require an even clearer expression of legislative intent than that needed to effect other retroactive statutes – the statute's text must unequivocally convey the aim of reviving claims." *Id.* at 371. Based on these principles, this Court found that an application of a statutory amendment reviving time-barred claims was improper, "[b]ecause such application of these amendments to past conduct would not comport with our retroactivity jurisprudence or the requirements of due process[.]"

The trial court and Appellate Division attempted to distinguish *Regina* on facts and other considerations outside of the plain language of the statute, but neither court pointed to any language in the amended statute of limitations that evinces an intent to retroactively revive time-barred claims although this Court made it abundantly clear in *Regina* that the intent to retroactively revive time barred claims must be clearly stated in a statute's text. Just like the statute at issue in *Regina* which substantially expanded the nature and scope of owner liability, so too does the amended legislation here, increasing the Martin Act statute of limitations period from 3 to 6 years, substantially expanding liability. Therefore, any attempt to alter substantive and vested rights by applying the state retroactively must be clearly stated in the statute's text, which the subject legislation here plainly does not accomplish. The Appellate Division and Supreme Court ruled that a statutory amendment increasing the statute of limitations period for Martin Act claims could be applied retroactively to revive time-barred claims without statutory language allowing such retroactive effect, resulting in a violation of due process rights under the Constitution of the United States, the Constitution of the State of New York, and the clear interpretation of due process rights by the U.S. Supreme Court and this Court in *Regina*.

In fact, the OAG is using this decision to revive other time-barred claims and violate other parties' due process rights, as shown in the attached **Exhibit D**, which further demonstrates the constitutional importance of this appeal. Accordingly, Appellants have an appeal as of right under CPLR § 5601.

B. The Martin Act, as Applied Here, is Preempted by Federal Securities Laws

There is no dispute that the fund at issue here is a small, private equity fund that is comprehensively regulated by federal laws and regulations and consists of a small group of sophisticated and accredited investors who were privately solicited (the "Fund"). The Martin Act, as applied here, would conflict with the federal National Securities Markets Improvement Act and federal Securities Litigation Uniform Standards Act. State laws that conflict with federal laws are unenforceable as they violate Article VI, Clause 2 of the U.S. Constitution which provides that "[t]his Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding." *See also New York SMSA Ltd. P'ship v. Town of Clarkstown*, 612 F.3d 97, 103 (2d Cir. 2010) ("Under the Supremacy Clause of the Constitution, state and local laws that conflict with federal law are 'without effect.'").

The Martin Act, as broadly applied here where there has been no showing of scienter or showing of any reliance by investors on allegedly deceptive statements by Appellants[1] would be contrary to and usurp federal securities laws by requiring disclosures or other obligations of small private equity funds that do not exist under federal securities laws or conflict with those laws. *See* 15 U.S.C. § 77r(a)(2)(B) (prohibiting states from enacting disclosure laws different than federal law).

[1] The Appellants maintain that the evidentiary record was devoid of any deceptive or otherwise actionable conduct and was wrongly decided.

Notably, this is a matter of first impression. No New York court has reached the central issue of whether the Martin Act falls within the savings clause of NSMIA, 15 U.S.C. § 77r(a)(1)(A). Commentators have long opined that the Martin Act, stretched to the type of private fund at issue here is preempted by NSMIA and other federal securities laws. *See* Jonathan R. Macey, *Positive Political Theory and Federal Usurpation of the Regulation of Corporate Governance: The Coming Preemption of the Martin Act*, 80 Notre Dame L. Rev. 951 (2005); Robert McTamaney, *NY State Attorney General's Aggressive Use of Martin Act Revives Federal Preemption Objection,* Wash. Lgl. Fndt. Legal Opinion Letter (February 12, 2016); Robert McTamaney & Michael Shapiro, *New York's Martin Act: Preemption is Past Due,* New York Law Journal (March 25, 2021). NSMIA limits state authority to regulate securities regulated by federal law like the Fund at issue here. *See, e.g.*, *Lillard v. Stockton*, 267 F. Supp. 2d 1081, 1116 (N.D. Okla. 2003) ("The undersigned is persuaded that Plaintiffs' state law registration claims are preempted by NSMIA."); *Temple v. Gorman*, 201 F. Supp. 2d 1238, 1244 (S.D. Fla. 2002) ("Where a Form D was filed with the SEC for a transaction that purported to merit an exemption from federal registration pursuant to Regulation D, Florida law could not require duplicative registration or a transactional exemption from registration.").

For example, there is no dispute here that the Fund complied with federal laws and SEC rules regarding affiliate investments, as regulated by SEC Rule 506 and Regulation D, and that affiliate investments have been an industrywide and standard investment strategy by private equity funds for many years. The Martin Act, however, as applied here, would allow the OAG to reverse these well-settled rules and expectations under federal laws and rules, thereby disrupting the integrity of markets in the State of New York.

The case would also be preempted by the Securities Litigation Uniform Standards Act ("SLUSA"), 15 U.S.C. §§ 77p, 78bb, as the fund is a small private fund with 76 sophisticated and high net-worth investors and this case involves no public purpose for the OAG to vindicate. Thus, the Martin Act claims brought here are an effort to improperly vindicate the monetary interests of a collective of more than 50 private investors in a private fund, a matter covered exclusively by SLUSA. 15 U.S.C. § 77p and § 78bb; *Kircher v. Putnam Funds Tr.*, 547 U.S. 633, 637 (2006); *In re J.P. Jeanneret Assocs., Inc.*, 769 F. Supp. 2d 340, 379 (S.D.N.Y. 2011). Neither this Court, nor any court in this State has decided whether the Martin Act falls within the savings clause of NSMIA as a "Fraud" or "Deceit" statute, since the Martin Act does not require scienter, or intent to defraud, which is the critical requirement of a "fraud" claim under federal law. *See People v Greenberg,* 95 AD3d 474, 480-482 [1st Dept 2012], *affd.* 21 NY3d 439 [2013].

The constitutional preemption issues directly raised in this case are yet additional grounds as to why Appellants have an appeal as of right pursuant to CPLR § 5601.

C. The Rewriting of Private Contracts Entered Into Between Sophisticated Parties Serves no Public Purpose and Exceeds the OAG's Jurisdictional Authority, Thereby Violating the New York State Constitution and Fundamental Principles of Due Process and Equal Protection Under the Laws

The OAG has no authority under the New York State Constitution or laws to bring private, common law claims to redress wrongs to private investors in a private fund, as opposed to wrongs against the public and the State of New York. *People ex rel. Spitzer v. Grasso*, 54 A.D.3d 180, 861 N.Y.S.2d 627 [1st Dept. 2008]; *People v. Ingersoll*, 58 N.Y. 1 [1874]. This case involves sophisticated and high networth investors in a small private fund. In short, it vindicates no public purposes, usurps federal laws, and essentially seeks to bring common law claims against a private fund and rewrite the contracts controlling the Fund. Without the Martin Act, the OAG lacks jurisdiction and standing in this case, and it is merely bringing common law claims on behalf of private investors for breach of fiduciary duty in contravention of this State's well settled role for the OAG under the New York Constitution, together with the laws providing the OAG its power to vindicate public rights and interests.

If the OAG is allowed to expand its power to bring claims largely vindicating private interests, then those claims must be controlled by the parties' contracts, yet the decisions below rewrite and ignore those contracts. The lower court's judgment, for example, declines to apply Delaware law and a Delaware statute of limitations period that would similarly bar the claims here, despite a clear Delaware choice of law provision governing common law claims in connection with the Fund's underlying contracts. The Appellate Division's Decision and Order invites the OAG and courts to disregard and rewrite the contracts of private parties, which is similarly in contravention of this Court's numerous decisions that require courts to respect contracts between sophisticated parties. *See 159 MP Corp. v. Redbridge Bedford, LLC*, 33 N.Y.3d 353, 359, 128 N.E.3d 128, 132, *reargument denied*, 33 N.Y.3d 1136, 132 N.E.3d 1097 [2019]; *see also Vermont Teddy Bear Co. v. 538 Madison Realty Co., 1 N.Y.3d 470, 475, 807 N.E.2d 876, 879 [2004] ("Hence, courts may not by construction add or e*xcise terms, nor distort the meaning of those used and thereby make a new contract for the parties under the guise of interpreting the writing[.]").

The decisions also conflict with the careful structure of the constitution and laws in this state that only allow the OAG to vindicate matters pertaining to advancing a public purpose. In the realm of common law claims amongst private parties involving purely private agreements, this Court has stressed that courts in this State should exercise caution by simply disregarding or striking provisions in a contract that would deprive parties the benefit of their bargain. *159 MP Corp., 33 N.Y.3d at 359, Vermont Teddy Bear Co.*, 1 N.Y.3d at 475. The decisions appealed from run contrary to this Court's clear directives ultimately causing uncertainty and disruption in the New York securities industry, encouraging businesses to leave the state to other jurisdictions where contractual agreements and expectations among sophisticated are honored.

Additionally, allowing courts and the OAG to operate in such a manner by singling out Appellants and small private equity funds among countless other sophisticated private party arrangements, and disrupting the private property rights in the Fund of Appellants and interests of sophisticated and high net-worth parties to contract and invest how they choose, without any rational basis to do so or without vindicating any public right or interest, is irrational and arbitrary government action which violates the constitutional protections to substantive and procedural due process and equal protection under the laws. *See Craigmiles v. Giles*, 312 F.3d 220, 225 (6th Cir. 2002) (finding that Tennessee's proposed licensure requirement for businesses in the funeral industry violated due process where the state disrupted those parties' economic rights by imposing licensure requirements without any rational or reasoned basis to do so); *Alvarez v. Hansen*, 493 F. Supp. 2d 278 (D. Conn. 2007) (denial of application for permit to construct freestanding sign stated "class of one" equal protection claim as permitted other similarly-situated owners to place upon their properties signs of same type, configuration, and proximity to road that they prevented him from placing) *see also Allen v. Woodfield Chevrolet, Inc.*, 208 Ill. 2d 12, 280 Ill. Dec. 501, 802 N.E.2d 752 (2003) (finding unique procedural and substantive requirements under consumer fraud and deceptive practices law singling out new and used vehicle dealers violated state constitutional prohibition against special legislation).

Simply put, this case should never have been a Martin Act case, or decided under New York law, because the parties to the partnership decided that the law of another state would govern their partnership. The choice of law issue is material because Delaware law on fraud differs substantially from that of New York law. If the lower court had considered the contracts, the repeated disclosures and provisions therein allowing for affiliated investments, and understood that the investors in the Fund specifically elected Delaware law to apply to the partnership and any issues arising from the contracts, then the lower court could not have applied the Martin Act and its newly minted version of a continuing fraud, which, unlike federal or Delaware law, requires no showing of intent to deceive, reliance or damages. The investors in the Fund deliberately chose to hold the Appellants to a standard under Delaware law, but the lower courts disregarded that intent, instead holding Appellants to a standard having a much lower threshold – absent scienter – under New York law. Such an action is arbitrary, irrational, without any public purpose or interest, and violates Appellants' fundamental constitutional rights.

II. The Order Appealed From Finally Determined the Action

With regard to the issue of finality, the trial court issued a final judgment and there is nothing that remains in this case. *See* **Exhibit B**. The Court's final judgment awarded disgorgement, injunctive relief and the appointment of the receiver.

As noted above, and in response to the question raised in the Court's January 6, 2021, letter, the Court did ultimately appoint the receiver. *See* **Exhibit A**.

There are no pending motions or undecided motions, and enforcement of the final judgment was stayed in certain respects by the Appellate Division. Since, the final judgment was entered, there were some pleadings filed to enforce the judgment, for example, to require production of documents and to effectuate seizure or turnover of assets to a receiver for liquidation of the Fund, but those proceedings have concluded, were stayed, and, most importantly, do not alter the fact that a judgment finally determining the rights of all parties in every facet, has been entered which arms this Court with jurisdiction. *See, e.g.*, *People v. Farrell*, 85 N.Y.2d 60, 70, 647 N.E.2d 762, 767–68 [1995] (observing that an order on a post-judgment motion to vacate did not alter or effect the fact that there had already been a final, appealable judgment of conviction already deciding all rights between the parties); *James v. Powell*, 19 N.Y.2d 249, 256, 225 N.E.2d 741, 744 (1967) (considering appeal from final order of Appellate Division affirming trial court's judgment awarding damages, but dismissing portions of appeal to the extent they related to other collateral, intermediate orders); *Jiggetts v. Dowling*, 21 A.D.3d 178, 180, 799 N.Y.S.2d 460, 462 [1st Dept. 2005] ("As is evident from the dissent, the only matter still pending in this action is defendants' post-judgment compliance; in effect, plaintiffs are attempting to "collect" on their judgment, not litigate undetermined claims."). The judgment and order appealed from here and to the Appellate Division, which the Appellate Division affirmed in its entirety, is a judgment and order which finally determines all rights between the parties under the Martin Act, Executive Law, and common law, as alleged in the operative complaint in this case. This Court, therefore, has jurisdiction to hear the appeal.

In furtherance of this jurisdictional analysis, the Court asks whether the Supreme Court ultimately entered an order appointing a provisional receiver, and as noted above, the answer to that question is in the affirmative.

In addition to the evidence and exhibits referenced in the beginning of this letter, the OAG itself has conceded that a receiver has been appointed. Attached hereto as **Exhibit E** is a pleading in which the OAG itself concedes: "the [Supreme] court appointed a provisional receiver" (Ex. E at 9); and the Supreme Court's "order provide three forms of relief: (1) a permanent injunction continuing the injunctive relief contained in the preliminary injunction order; (2) monetary relief in the form of disgorgement; and (3) the appointment of a receiver" (Ex. E at 12). The OAG further notes that the rights of the parties have been finally determined in the Court's judgment and that the only litigation that has happened since the final judgment entered which finally determined the rights between the parties, is litigation related to enforcement of such final judgment: "Th[e] [Appellate Division] did not stay the injunctive relief ordered by Supreme Court or enforcement of the monetary judgment, despite Defendants' request that it do so. Rather, this Court stayed only the ultimate dissolution of the Fund following the sale of all (or substantially all) of its assets by the court-appointed receiver." (Ex. E at 13.)

The only activity on the docket in Supreme Court and the Appellate Division after the final judgment was related to the receiver's and OAG's attempts to enforce the final judgment entered in this case and liquidate the Fund, but none of that litigation is related to or impacts the plain fact that the judgment appealed from here finally determined all rights between the parties. Such post-judgment litigation only impacted how and the manner in which the final judgment would ultimately be satisfied by a receiver through the OAG's enforcement efforts.

The Appellate Division, for example, stayed the receiver's liquidation of the Fund, which it could not have done absent the appointment of a receiver and final judgment. The Appellate Division further stayed the OAG's attempts to seize the Fund's assets in a manner that disrupted the status quo pending appeal, which are proceedings related to the enforcement of judgment, something that could not have occurred absent a final judgment according all rights between the parties. These stay orders are attached hereto for the Court's reference as **Exhibit F and G.**

There is simply nothing that remains in the case to finally and fully determine the rights between the parties. Accordingly, this Court has jurisdiction to hear the appeal, and we respectfully submit, that an appeal as of right can be taken pursuant to CPLR § 5601.

Alternatively, the Court is well within its discretion and right to grant permission to hear the appeal under CPLR § 5602, given the ruling in *Regina* and matters of paramount importance implicated by the present appeal, which are outlined in the Appellants' motion filed with this Court seeking permission to appeal. For the reasons stated herein, the Court should hear this appeal because it constitutes an appeal from a final judgment for which the Court has jurisdiction to consider.

We thank you again for your time and consideration of this matter, and please do not hesitate to contact us if you require additional information regarding the issues raised in this submission.

Respectfully submitted,

AKERMAN LLP

By:

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Attorney for Appellants

MFD/am
Enc: as stated.
cc: Mark S. Grube, Esq.

Exhibit A

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: **HON. BARRY R. OSTRAGER** **PART** **IAS MOTION 61EFM**

Justice

---X

THE PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York,

Plaintiff,

- v -

LAURENCE G. ALLEN, ACP INVESTMENT GROUP, LLC, NYPPEX HOLDINGS, LLC, ACP PARTNERS X, LLC, and ACP X LP,

Defendants,

and

NYPPEX, LLC, LGA CONSULTANTS, LLC, INSTITUTIONAL INTERNET VENTURES, LLC, EQUITY OPPORTUNITY PARTNERS, LP and INSTITUTIONAL TECHNOLOGY VENTURE, LLC,

Relief Defendants.

---X

INDEX NO.	452378/2019
MOTION DATE	
MOTION SEQ. NO.	009

DECISION & ORDER ON MOTION

HON. BARRY R. OSTRAGER

Before the Court is the motion by the Office of the Attorney General ("the OAG") for the entry of a Judgment implementing the Decision and Order After Trial, as amended on February 26, 2021 to correct a typographical error ("the Decision", NYSCEF Doc. Nos. 538 and 559). Defendants have interposed various objections to the OAG's Proposed Judgment in their opposition papers, as discussed below. For the following reasons, the motion by the OAG is granted, and the Court is simultaneously executing a Judgment in the form proposed by the OAG (NYSCEF Doc. No. 569).

The Proposed Judgment provides for the entry of a money judgment against the defendants in the total amount of $7,871,904.87 based on specific findings by the Court in the Decision and the specific amount the Court directed defendants to disgorge. Consistent with the express terms of the Decision, the Proposed Judgment provides for defendants' joint and several

liability in the amount of $7,871,904.87, but it also includes an allocation of limited portions of that larger sum to specific defendants based on the evidence adduced at trial related to the issue of carried interest. The Proposed Judgment also provides for injunctive relief and the appointment of Hon. Melanie L. Cyganowski (Ret.) as the provisional receiver, which again is consistent with the express terms of the Decision.

Defendants' first objection appears to be that no Judgment is required because the Court issued the Decision providing for all the relief the Court found appropriate. Defendants are mistaken. The relief directed by the Court in its Decision, and particularly the disgorgement direction, calls for the entry of a Judgment.

The Court also rejects defendants' claim that the specific amounts related to carried interest set forth in paragraph 2 of the Proposed Judgment are improper because neither those specific amounts, nor the specific defendants adjudged liable for those amounts, were explicitly included in the Decision. Significantly, defendants in no way claim that either the amounts set forth or the defendants identified are factually incorrect. Quite the contrary, the amounts and the individuals set forth in the Proposed Judgment are solidly based on evidence admitted at the trial (see NYSCEF Doc. Nos. 579 and 580 and the Preliminary Injunction Hearing Transcript, Testimony of Laurence Allen, at 631:6-10, which is part of the trial record pursuant to NYSCEF No. 294). The OAG made that point in its moving papers, and defendants did not challenge the point on the merits in their opposition papers. What is more, the Court has the authority to enter a Judgment based on the specific evidence at trial that is wholly consistent with the Decision directing defendants' disgorgement of the larger sum of $7,871,904.87.

Nor is entry of a Judgment premature, as defendants contend, because counsel are still conferring regarding the terms of an Order Appointing a Receiver. The Decision appointed Hon. Melanie Cyganowski (Ret.), leaving open only the precise terms of the appointment order, and

the Proposed Judgment does nothing more than confirm the appointment. Counsel can continue to confer about the terms of a Proposed Order of Appointment, which should in no way interfere with, nor in any way delay, the entry of a Judgment.

Defendants' proposal of a different receiver is untimely. The Court received and reviewed resumes of potential receivers proposed by the OAG months ago, and defendants did not offer any resume at that time. The Court made its decision and confirms it. However, to facilitate the preparation of an Order of Appointment, and to address defendants' concerns about the cost of the Receiver, the Court is hereby setting a combined cap of $75,000.00 on fees to be incurred by Judge Cyganowski and any accountant she may retain, and the Court is further finding that no basis has been established to allow Judge Cyganowski to retain counsel. Should a specific need for counsel arise at some point in the future, this Court will entertain an application.

As this Decision and Order fully addresses the issues raised in the motion, and as the Court is simultaneously issuing a Judgment in the form proposed by the OAG, the March 22, 2021 appearance is cancelled as unnecessary.

Dated: March 17, 2021

BARRY R. OSTRAGER, J.S.C.

CHECK ONE:	X	CASE DISPOSED				NON-FINAL DISPOSITION		
	X	GRANTED		DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT		REFERENCE

Exhibit B

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York, Plaintiff, - against - LAURENCE G. ALLEN, ACP INVESTMENT GROUP, LLC, NYPPEX HOLDINGS, LLC, ACP PARTNERS X, LLC, and ACP X, LP Defendants, - and - NYPPEX, LLC, LGA CONSULTANTS, LLC, INSTITUTIONAL INTERNET VENTURES, LLC, EQUITY OPPORTUNITY PARTNERS, LP and INSTITUTIONAL TECHNOLOGY VENTURES, LLC, Relief Defendants.	Index No.: 452378/2019 **NOTICE OF ENTRY** IAS Part 61 Hon. Barry R. Ostrager

PLEASE TAKE NOTICE that attached is a true and correct copy of the Judgment in this action, signed by the Honorable Justice Barry R. Ostrager, dated March 17, 2021, and signed by the Honorable Milton Tingling, County Clerk of New York County, dated May 4, 2021, duly entered in the above case by the Clerk of the Supreme Court, New York County on May 4, 2021, and docketed on the Court's electronic filing system on May 4, 2021, as NYSCEF No. 610.

Dated: New York, New York
May 5, 2021

LETITIA JAMES
Attorney General of the State of New York

By: /s/ Jaclyn Grodin
Jaclyn Grodin
Assistant Attorney General
Investor Protection Bureau
28 Liberty Street
New York, New York 10005
(212) 416-6210
Jaclyn.grodin@ag.ny.gov

cc: All Counsel of Record (*via* NYSCEF)

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York,

Plaintiff,

- against -

LAURENCE G. ALLEN, ACP INVESTMENT GROUP, LLC, NYPPEX HOLDINGS, LLC, ACP PARTNERS X, LLC, and ACP X, LP

Defendants,

- and -

NYPPEX, LLC, LGA CONSULTANTS, LLC, INSTITUTIONAL INTERNET VENTURES, LLC, EQUITY OPPORTUNITY PARTNERS, LP and INSTITUTIONAL TECHNOLOGY VENTURES, LLC,

Relief Defendants.

Index No.: 452378/2019

~~[PROPOSED]~~ JUDGMENT

WHEREAS, the issues in this action having been tried before the Honorable Barry R. Ostrager, Justice of the Supreme Court of New York State, New York County, at Part 61 of this Court, at the courthouse on 60 Centre Street, New York, New York, via Microsoft Teams, from January 11, 2021, through January 14, 2021;

WHEREAS, Plaintiff having appeared by counsel from the Office of the New York State Attorney General ("OAG");

WHEREAS, Defendants and Relief Defendants having appeared by counsel at Akerman LLP and Jeremy Kim, Esq.;

WHEREAS, the Court having rendered a decision after trial on February 4, 2021, and an amended decision after trial on February 26, 2021 (NYSCEF No. 559, the "Amended Decision After Trial"), in favor of Plaintiff and against Defendants and Relief Defendants on all claims;

WHEREAS, in the Amended Decision After Trial the Court further awarded injunctive relief and provisionally appointed a receiver;

WHEREAS, in a separate order issued on February 26, 2021, the Court confirmed the appointment of a receiver (NYSCEF No. 560); and

WHEREAS, the total monetary amount awarded to Plaintiff was $7,871,904.87;

NOW, on motion of counsel for Plaintiff, and consistent with the Amended Decision After Trial, it is hereby

ADJUDGED as follows:

1. That Plaintiff OAG, located at 28 Liberty Street, New York, New York 10005, recover jointly and severally from any or all of the above-captioned Defendants, specifically Defendant Laurence G. Allen, residing at 43 Maple Avenue, Greenwich, CT 06830, and Defendants ACP Investment Group, LLC; NYPPEX Holdings, LLC; ACP Partners X, LLC; and ACP X, LP, currently located at 500 West Putnam Avenue, Suite 400, Greenwich, CT 06830, the total sum of $7,871,904.87, and Plaintiff shall have execution for that amount. OAG shall transmit such funds recovered from Defendants to the receiver of ACP X, LP (identified in Paragraph 3, herein), who shall equitably distribute such funds as restitution among the limited partners of ACP X, LP (the "Limited Partners"), subject to the Court's approval. Funds and other assets of ACP X, LP, including those distributed to the Limited Partners by the receiver pursuant to Paragraph 3(a), shall not count toward the $7,871,904.87 sum set forth in this paragraph. X

2. That Plaintiff OAG, located at 28 Liberty Street, New York, New York 10005, recover the following sums from Relief Defendants, currently located at 500 West Putnam Avenue, Suite 400, Greenwich, CT 06830, which were transferred from Defendants to Relief Defendants:

   a. Relief Defendant Equity Opportunity Partners, LP: $877,929.27 X

b. Relief Defendant LGA Consultants, LLC: $994,527.51 X

c. Relief Defendant NYPPEX, LLC: $680,893.37 X

Plaintiff shall have execution for these amounts. OAG shall transmit such funds recovered from Relief Defendants to the receiver of ACP X, LP, who shall equitably distribute such funds as restitution among the Limited Partners, subject to the Court's approval. Funds and other assets of ACP X, LP, including those distributed to the Limited Partners by the receiver pursuant to Paragraph 3(a), shall not count toward sums set forth in Paragraphs 2(a)-(c), above. Funds recovered from Relief Defendants pursuant to this paragraph shall count toward the $7,871,904.87 sum set forth in Paragraph 1. Plaintiff shall not recover pursuant to Paragraphs 1 and 2 in excess of $7,871,904.87. Nothing contained in this Paragraph 2 shall be read in any way to limit OAG's recovery pursuant to Paragraph 1.

3. That Hon. Melanie L. Cyganowski (Ret.) is appointed as the receiver of ACP X, LP, and is instructed to equitably distribute among the Limited Partners, subject to the Court's approval, and any further order of the Court: (a) the assets of ACP X, LP, and (b) all sums recovered by OAG and transferred to the receiver pursuant to Paragraphs 1 and 2.

4. That all of the above-captioned Defendants and Relief Defendants, together with their employees, representatives, agents and all others acting under their direction or authority, are permanently enjoined from directly or indirectly:

   a. Taking any action pursuant to the Seventh Amendment to the Amended and Restated Agreement of the Limited Partnership Agreement of ACP X, LP;

   b. Making distributions from ACP X, LP, except to limited partners of ACP X, LP on a pro-rata basis to their limited partnership interest in ACP X, LP, which distributions must first be approved by the Court;

   c. Making any investments, extending any loans or lines of credit or entering into any agreements on behalf of ACP X, LP to or with Laurence G. Allen, NYPPEX Holdings, LLC, ACP Partners X, LLC, or any other entity in which Allen directly or indirectly exercises control or has an ownership interest;

   d. Facilitating, allowing or participating in the purchase, sale or transfer of any limited partnership interest in ACP X, LP;

   e. Making any payments or distributions from ACP X, LP, ACP Investment Group, LLC or ACP Partners X, LLC, to Defendants, Relief Defendants,

Tyler Allen, Michelle Allen, and/or LGA Investments Family Limited Partnership;

f. Withdrawing, converting, transferring, selling or otherwise disposing of funds and assets held by ACP Investment Group, LLC, ACP X, LP, and ACP Partners X, LLC, wherever they may be situated, for purposes other than that provided for in Paragraph 4(b), *supra*; and

g. Violating Article 23-A of the GBL, and from engaging in fraudulent, deceptive and illegal acts, and further employing any device, scheme or artifice to defraud or to obtain money or property by means of false pretense, representation or promise.

5. This Court shall retain jurisdiction of this action for the purpose of carrying out the terms of (a) the Amended Decision After Trial, (b) any order setting out the terms of the receivership of ACP X, LP, and (c) this Judgment.

Judgment signed on : March 17, 2021

Clerk

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

INDEX # 452378/2019

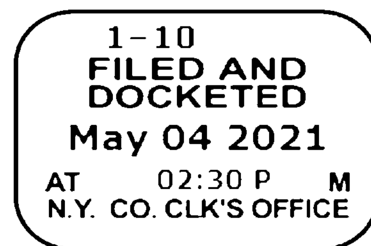
The People Of The State Of New York, By Letitia James, Attorney General Of The State Of New York

Plaintiff(s)/Petitioner(s)

Against

Laurence G. Allen, ACP Investment Group, LLC, NYPPEX Holdings, LLC, ACP Partners X, LLC, ACP X, LP, NYPPEX, LLC, LGA Consultants, LLC, Institutional Internet Ventures, LLC, Equity Opportunity Partners, LP, Institutional Technology Ventures, LLC

Defendant(s)/Respondent(s)



JUDGMENT

Attorney for the Prevailing Party

New York State Office of the Attorney General
28 Liberty Street, New York, NY 10005
212-416-6210

Exhibit C

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York,

Plaintiff,

- against -

LAURENCE G. ALLEN, ACP INVESTMENT GROUP, LLC, NYPPEX HOLDINGS, LLC, ACP PARTNERS X, LLC, and ACP X, LP,

Defendants,

- and -

NYPPEX, LLC, LGA CONSULTANTS, LLC, INSTITUTIONAL INTERNET VENTURES, LLC, EQUITY OPPORTUNITY PARTNERS, LP, and INSTITUTIONAL TECHNOLOGY VENTURES, LLC,

Relief Defendants.

Index No. 452378/2019

IAS Part 61 (Ostrager, J.)

NOTICE OF APPEAL

PLEASE TAKE NOTICE that Defendants Laurence G. Allen, ACP Investment Group, LLC, NYPPEX Holdings, LLC, ACP Partners X, LLC, and ACP X, LP, and Relief Defendants NYPPEX, LLC, LGA Consultants, LLC, Institutional Internet Ventures, LLC, Equity Opportunity Partners, LP, and Institutional Technology Ventures, LLC (collectively, "Defendants"), hereby appeal to the Appellate Division of the Supreme Court of the State of New York, First Department, from the Judgment of the Supreme Court of the State of New York, County of New York (Hon. Barry R. Ostrager, J.S.C.), signed March 17, 2021 and entered in the Office of the Clerk of the Supreme Court, County of New York on May 4, 2021 (NYSCEF Doc. No. 610), and from each

and every part thereof. A true copy of the Judgment and Notice of Entry of the same are annexed hereto as **Exhibit A**.

Dated: New York, New York
May 13, 2021

AKERMAN LLP

By: *_/s/ Massimo F. D'Angelo_*
Massimo F. D'Angelo
1251 Avenue of the Americas, 37th Floor
New York, New York 10020
Tel: (212) 880-3800
Fax: (212) 880-8965
Attorneys for Defendants and Relief Defendants

TO:

LETITIA JAMES
Attorney General of the State of New York
Office of the Attorney General
28 Liberty Street
New York, New York 10005
Jaclyn H. Grodin
Shamiso Maswoswe
Jonathan Zweig
Attorneys for Plaintiff
Tel.: 212-416-6210
jaclyn.grodin@ag.ny.gov
shamiso.maswoswe@ag.ny.gov
jonathan.zweig@ag.ny.gov

(via NYSECF)

Exhibit A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York,

Plaintiff,

- against -

LAURENCE G. ALLEN, ACP INVESTMENT GROUP, LLC, NYPPEX HOLDINGS, LLC, ACP PARTNERS X, LLC, and ACP X, LP

Defendants,

- and -

NYPPEX, LLC, LGA CONSULTANTS, LLC, INSTITUTIONAL INTERNET VENTURES, LLC, EQUITY OPPORTUNITY PARTNERS, LP and INSTITUTIONAL TECHNOLOGY VENTURES, LLC,

Relief Defendants.

Index No.: 452378/2019

NOTICE OF ENTRY

IAS Part 61

Hon. Barry R. Ostrager

PLEASE TAKE NOTICE that attached is a true and correct copy of the Judgment in this action, signed by the Honorable Justice Barry R. Ostrager, dated March 17, 2021, and signed by the Honorable Milton Tingling, County Clerk of New York County, dated May 4, 2021, duly entered in the above case by the Clerk of the Supreme Court, New York County on May 4, 2021, and docketed on the Court's electronic filing system on May 4, 2021, as NYSCEF No. 610.

Dated: New York, New York
May 5, 2021

LETITIA JAMES
Attorney General of the State of New York

By: */s/ Jaclyn Grodin*
Jaclyn Grodin
Assistant Attorney General
Investor Protection Bureau
28 Liberty Street
New York, New York 10005
(212) 416-6210
Jaclyn.grodin@ag.ny.gov

cc: All Counsel of Record (*via* NYSCEF)

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

- x

THE PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York,

Plaintiff,

- against -

LAURENCE G. ALLEN, ACP INVESTMENT GROUP, LLC, NYPPEX HOLDINGS, LLC, ACP PARTNERS X, LLC, and ACP X, LP

Defendants,

- and -

NYPPEX, LLC, LGA CONSULTANTS, LLC, INSTITUTIONAL INTERNET VENTURES, LLC, EQUITY OPPORTUNITY PARTNERS, LP and INSTITUTIONAL TECHNOLOGY VENTURES, LLC,

Relief Defendants.

- x

Index No.: 452378/2019

~~[PROPOSED]~~ **JUDGMENT**

WHEREAS, the issues in this action having been tried before the Honorable Barry R. Ostrager, Justice of the Supreme Court of New York State, New York County, at Part 61 of this Court, at the courthouse on 60 Centre Street, New York, New York, via Microsoft Teams, from January 11, 2021, through January 14, 2021;

WHEREAS, Plaintiff having appeared by counsel from the Office of the New York State Attorney General ("OAG");

WHEREAS, Defendants and Relief Defendants having appeared by counsel at Akerman LLP and Jeremy Kim, Esq.;

WHEREAS, the Court having rendered a decision after trial on February 4, 2021, and an amended decision after trial on February 26, 2021 (NYSCEF No. 559, the "Amended Decision After Trial"), in favor of Plaintiff and against Defendants and Relief Defendants on all claims;

WHEREAS, in the Amended Decision After Trial the Court further awarded injunctive relief and provisionally appointed a receiver;

WHEREAS, in a separate order issued on February 26, 2021, the Court confirmed the appointment of a receiver (NYSCEF No. 560); and

WHEREAS, the total monetary amount awarded to Plaintiff was $7,871,904.87;

NOW, on motion of counsel for Plaintiff, and consistent with the Amended Decision After Trial, it is hereby

ADJUDGED as follows:

1. That Plaintiff OAG, located at 28 Liberty Street, New York, New York 10005, recover jointly and severally from any or all of the above-captioned Defendants, specifically Defendant Laurence G. Allen, residing at 43 Maple Avenue, Greenwich, CT 06830, and Defendants ACP Investment Group, LLC; NYPPEX Holdings, LLC; ACP Partners X, LLC; and ACP X, LP, currently located at 500 West Putnam Avenue, Suite 400, Greenwich, CT 06830, the total sum of $7,871,904.87, and Plaintiff shall have execution for that amount. OAG shall transmit such funds recovered from Defendants to the receiver of ACP X, LP (identified in Paragraph 3, herein), who shall equitably distribute such funds as restitution among the limited partners of ACP X, LP (the "Limited Partners"), subject to the Court's approval. Funds and other assets of ACP X, LP, including those distributed to the Limited Partners by the receiver pursuant to Paragraph 3(a), shall not count toward the $7,871,904.87 sum set forth in this paragraph. X

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   a. Relief Defendant Equity Opportunity Partners, LP: $877,929.27 X

b. Relief Defendant LGA Consultants, LLC: $994,527.51 X

c. Relief Defendant NYPPEX, LLC: $680,893.37 X

Plaintiff shall have execution for these amounts. OAG shall transmit such funds recovered from Relief Defendants to the receiver of ACP X, LP, who shall equitably distribute such funds as restitution among the Limited Partners, subject to the Court's approval. Funds and other assets of ACP X, LP, including those distributed to the Limited Partners by the receiver pursuant to Paragraph 3(a), shall not count toward sums set forth in Paragraphs 2(a)-(c), above. Funds recovered from Relief Defendants pursuant to this paragraph shall count toward the $7,871,904.87 sum set forth in Paragraph 1. Plaintiff shall not recover pursuant to Paragraphs 1 and 2 in excess of $7,871,904.87. Nothing contained in this Paragraph 2 shall be read in any way to limit OAG's recovery pursuant to Paragraph 1.

3. That Hon. Melanie L. Cyganowski (Ret.) is appointed as the receiver of ACP X, LP, and is instructed to equitably distribute among the Limited Partners, subject to the Court's approval, and any further order of the Court: (a) the assets of ACP X, LP, and (b) all sums recovered by OAG and transferred to the receiver pursuant to Paragraphs 1 and 2.

4. That all of the above-captioned Defendants and Relief Defendants, together with their employees, representatives, agents and all others acting under their direction or authority, are permanently enjoined from directly or indirectly:

   a. Taking any action pursuant to the Seventh Amendment to the Amended and Restated Agreement of the Limited Partnership Agreement of ACP X, LP;

   b. Making distributions from ACP X, LP, except to limited partners of ACP X, LP on a pro-rata basis to their limited partnership interest in ACP X, LP, which distributions must first be approved by the Court;

   c. Making any investments, extending any loans or lines of credit or entering into any agreements on behalf of ACP X, LP to or with Laurence G. Allen, NYPPEX Holdings, LLC, ACP Partners X, LLC, or any other entity in which Allen directly or indirectly exercises control or has an ownership interest;

   d. Facilitating, allowing or participating in the purchase, sale or transfer of any limited partnership interest in ACP X, LP;

   e. Making any payments or distributions from ACP X, LP, ACP Investment Group, LLC or ACP Partners X, LLC, to Defendants, Relief Defendants,

Tyler Allen, Michelle Allen, and/or LGA Investments Family Limited Partnership;

f. Withdrawing, converting, transferring, selling or otherwise disposing of funds and assets held by ACP Investment Group, LLC, ACP X, LP, and ACP Partners X, LLC, wherever they may be situated, for purposes other than that provided for in Paragraph 4(b), *supra*; and

g. Violating Article 23-A of the GBL, and from engaging in fraudulent, deceptive and illegal acts, and further employing any device, scheme or artifice to defraud or to obtain money or property by means of false pretense, representation or promise.

5. This Court shall retain jurisdiction of this action for the purpose of carrying out the terms of (a) the Amended Decision After Trial, (b) any order setting out the terms of the receivership of ACP X, LP, and (c) this Judgment.

Judgment signed on : March 17, 2021

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

INDEX # 452378/2019

The People Of The State Of New York, By Letitia James, Attorney General Of The State Of New York

Plaintiff(s)/Petitioner(s)

Against

Laurence G. Allen, ACP Investment Group, LLC, NYPPEX Holdings, LLC, ACP Partners X, LLC, ACP X, LP, NYPPEX, LLC, LGA Consultants, LLC, Institutional Internet Ventures, LLC, Equity Opportunity Partners, LP, Institutional Technology Ventures, LLC

Defendant(s)/Respondent(s)

1-10
FILED AND DOCKETED
May 04 2021
AT 02:30 P M
N.Y. CO. CLK'S OFFICE

JUDGMENT

Attorney for the Prevailing Party

New York State Office of the Attorney General
28 Liberty Street, New York, NY 10005
212-416-6210

Supreme Court of the State of New York
Appellate Division: First Judicial Department

Informational Statement (Pursuant to 22 NYCRR 1250.3 [a]) - Civil

Case Title: Set forth the title of the case as it appears on the summons, notice of petition or order to show cause by which the matter was or is to be commenced, or as amended.	For Court of Original Instance
THE PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York, - against - LAURENCE G. ALLEN, ACP INVESTMENT GROUP, LLC, NYPPEX HOLDINGS, LLC, ACP PARTNERS X, LLC, and ACP X LP, Defendants, and NYPPEX, LLC, LGA CONSULTANTS, LLC, INSTITUTIONAL INTERNET VENTURES, LLC, EQUITY OPPORTUNITY PARTNERS, LP and INSTITUTIONAL TECHNOLOGY VENTURE, LLC, Relief Defendants.	Date Notice of Appeal Filed For Appellate Division

Case Type

- ☒ Civil Action
- ☐ CPLR article 75 Arbitration
- ☐ CPLR article 78 Proceeding
- ☐ Special Proceeding Other
- ☐ Habeas Corpus Proceeding

Filing Type

- ☒ Appeal
- ☐ Original Proceedings
  - ☐ CPLR Article 78
  - ☐ Eminent Domain
  - ☐ Labor Law 220 or 220-b
  - ☐ Public Officers Law § 36
  - ☐ Real Property Tax Law § 1278
- ☐ Transferred Proceeding
  - ☐ CPLR Article 78
  - ☐ Executive Law § 298
- ☐ CPLR 5704 Review

Nature of Suit: Check up to three of the following categories which best reflect the nature of the case.

☐ Administrative Review	☐ Business Relationships	☒ Commercial	☒ Contracts
☐ Declaratory Judgment	☐ Domestic Relations	☐ Election Law	☐ Estate Matters
☐ Family Court	☐ Mortgage Foreclosure	☐ Miscellaneous	☐ Prisoner Discipline & Parole
☐ Real Property (other than foreclosure)	☒ Statutory	☐ Taxation	☐ Torts

Appeal

Paper Appealed From (Check one only):	If an appeal has been taken from more than one order or judgment by the filing of this notice of appeal, please indicate the below information for each such order or judgment appealed from on a separate sheet of paper.

☐ Amended Decree	☐ Determination	☐ Order	☐ Resettled Order
☐ Amended Judgement	☐ Finding	☐ Order & Judgment	☐ Ruling
☐ Amended Order	☐ Interlocutory Decree	☐ Partial Decree	☐ Other (specify):
☐ Decision	☐ Interlocutory Judgment	☐ Resettled Decree	
☐ Decree	☒ Judgment	☐ Resettled Judgment	

Court: Supreme Court	County: New York
Dated: 03/17/2021	Entered: May 4, 2021
Judge (name in full): Barry R. Ostrager	Index No.: 0452378/2019
Stage: ☐ Interlocutory ☒ Final ☐ Post-Final	Trial: ☒ Yes ☐ No If Yes: ☐ Jury ☒ Non-Jury

Prior Unperfected Appeal and Related Case Information

Are any appeals arising in the same action or proceeding currently pending in the court? ☒ Yes ☐ No

If Yes, please set forth the Appellate Division Case Number assigned to each such appeal.

2020-01772; 2020-03705; 2020-04980; 2021-00701; 2020/03705; 2021-00942

Where appropriate, indicate whether there is any related action or proceeding now in any court of this or any other jurisdiction, and if so, the status of the case:

1. 2020-01772: open/pending; 2. 2020-03705: open/pending; 3. 2020-04980: open/pending; 4. 2021-00701: open/pending; 5. 2020/03705:open/pending
6. 2021-00942: open/pending

Original Proceeding

Commenced by: ☐ Order to Show Cause ☐ Notice of Petition ☐ Writ of Habeas Corpus	Date Filed:

Statute authorizing commencement of proceeding in the Appellate Division:

Proceeding Transferred Pursuant to CPLR 7804(g)

Court: Choose Court	County: Choose County
Judge (name in full):	Order of Transfer Date:

CPLR 5704 Review of Ex Parte Order:

Court: Choose Court	County: Choose County
Judge (name in full):	Dated:

Description of Appeal, Proceeding or Application and Statement of Issues

Description: If an appeal, briefly describe the paper appealed from. If the appeal is from an order, specify the relief requested and whether the motion was granted or denied. If an original proceeding commenced in this court or transferred pursuant to CPLR 7804(g), briefly describe the object of proceeding. If an application under CPLR 5704, briefly describe the nature of the ex parte order to be reviewed.

The judgment appealed from is the trial court's March 17, 2021 judgment after trial in favor of plaintiff (Doc. No. 610).

Issues: Specify the issues proposed to be raised on the appeal, proceeding, or application for CPLR 5704 review, the grounds for reversal, or modification to be advanced and the specific relief sought on appeal.

1. The trial court erroneously ruled that a newly enacted law amending the statute of limitations for a claim under the Martin Act applies retroactively to
claims accruing before such newly enacted amendment of the statute of limitations.

2. The trial court did not address the argument that the case is preempted by federal securities laws, which do in fact preempt all of the claims in this case.

3. The trial court found that Defendants' conduct violated "representations made in the offering documents (and subsequent amendments)," but conduct after-the-fact rendering statements false in hindsight is not a viable theory that can give rise to liability.
4. The trial court's findings of fact are clearly erroneous, not supported by admissible evidence, and change the outcome of the case.
5. The trial court's findings of fact and evidence at trial do not prove each and every element of the claims alleged in the case.
6. The trial court denied Defendants a fair trial by instituting trial procedures that are not permitted under applicable law and severely prejudiced Defendants' ability to present their case at trial.

Party Information

Instructions: Fill in the name of each party to the action or proceeding, one name per line. If this form is to be filed for an appeal, indicate the status of the party in the court of original instance and his, her, or its status in this court, if any. If this form is to be filed for a proceeding commenced in this court, fill in only the party's name and his, her, or its status in this court.

No.	Party Name	Original Status	Appellate Division Status
1	THE PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York,	Plaintiff	Appellee
2	LAURENCE G. ALLEN	Defendant	Appellant
3	ACP INVESTMENT GROUP, LLC	Defendant	Appellant
4	NYPPEX HOLDINGS, LLC	Defendant	Appellant
5	ACP PARTNERS X, LLC	Defendant	Appellant
6	ACP X LP	Defendant	Appellant
7	NYPPEX, LLC	Relief Defendant	Appellant
8	LGA CONSULTANTS, LLC	Relief Defendant	Appellant
9	INSTITUTIONAL INTERNET VENTURES, LLC	Relief Defendant	Appellant
10	EQUITY OPPORTUNITY PARTNERS, LP	Relief Defendant	Appellant
11	INSTITUTIONAL TECHNOLOGY VENTURE, LLC	Relief Defendant	Appellant
12			
13			
14			
15			
16			
17			
18			
19			
20			

Attorney Information

Instructions: Fill in the names of the attorneys or firms for the respective parties. If this form is to be filed with the notice of petition or order to show cause by which a special proceeding is to be commenced in the Appellate Division, only the name of the attorney for the petitioner need be provided. In the event that a litigant represents herself or himself, the box marked "Pro Se" must be checked and the appropriate information for that litigant must be supplied in the spaces provided.

Attorney/Firm Name: Massimo F. D'Angelo/Akerman LLP
Address: 1251 Avenue of the Americas, FL 37, New York, NY 10020
City: New York | State: NY | Zip: 10020 | Telephone No:
E-mail Address: massimo.dangelo@akerman.com
Attorney Type: ☒ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice
Party or Parties Represented (set forth party number(s) from table above): 2 through 11

Attorney/Firm Name: Ildefonso P. Mas/Akerman LLP
Address: 1251 Avenue of the Americas, FL 37, New York, NY 10020
City: New York | State: NY | Zip: 10020 | Telephone No:
E-mail Address: ildefonso.mas@akerman.com
Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice
Party or Parties Represented (set forth party number(s) from table above): 2 through 11

Attorney/Firm Name: Mark S. Grube/NYS Office of the Attorney General
Address: 28 Liberty St
City: New York | State: NY | Zip: 10005 | Telephone No:
E-mail Address: mark.grube@ag.ny.gov
Attorney Type: ☐ Retained ☐ Assigned ☒ Government ☐ Pro Se ☐ Pro Hac Vice
Party or Parties Represented (set forth party number(s) from table above): 1

Attorney/Firm Name:
Address:
City: | State: | Zip: | Telephone No:
E-mail Address:
Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice
Party or Parties Represented (set forth party number(s) from table above):

Attorney/Firm Name:
Address:
City: | State: | Zip: | Telephone No:
E-mail Address:
Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice
Party or Parties Represented (set forth party number(s) from table above):

Attorney/Firm Name:
Address:
City: | State: | Zip: | Telephone No:
E-mail Address:
Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice
Party or Parties Represented (set forth party number(s) from table above):

APPENDIX OF OTHER ORDERS OR JUDGMENTS APPEALED FROM

1. The trial court's order on a motion for preliminary injunction, which was Doc. No. 94 in the trial court docket. This order was dated February 4, 2020 and entered the same day. This order was an interlocutory order entered by the Honorable Barry R. Ostrager in the Supreme Court of New York, County of New York, Index No. 452379/2019. There was an evidentiary hearing held on which the trial court based its decision.

2. Trial court orders relating to denial of jury trial and pre-trial and evidentiary procedures that deprived Defendants of a fair trial, significantly prejudiced Defendants, and altered the ultimate outcome of the case and trial. These orders were Doc. Nos. 336, 339, 399, and 428 in the trial court docket. These orders were dated and entered on the following days: Doc. No. 336—December 19, 2020; Doc. No. 339—December 18, 2020; Doc. No. 399—January 7, 2021; and Doc. No. 428—January 8, 2021. These orders were interlocutory orders entered by the Honorable Barry R. Ostrager in the Supreme Court of New York, County of New York, Index No. 452379/2019.

3. The trial court's March 17, 2021 order granting the plaintiff's proposed judgment and issuing an order in the form of the proposed judgment (Doc. No. 581).

Exhibit D

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE
HOUSING PROTECTION UNIT

Writer's Direct Info:
(212) 416-6047
Rachel.Hannaford@ag.ny.gov

November 2, 2021

Hon. Debra A. James, J.S.C.
Supreme Court, New York County
60 Centre Street
New York, New York 10007
By Electronic Filing

Re: *People v. Ram Cohen, et al.* (452037/2018)

Dear Justice James:

Pursuant to Uniform Rule § 202.8-c, I am attaching a recent decision of the Appellate Division, First Department in *People v. Allen, et al.*, holding that C.P.L.R. § 213(9) is to be applied retroactively.

This decision is dispositive of the pending motion to renew and reargue Respondents' motion to dismiss because it further establishes that the Court should have applied a six-year statute of limitations to the claims alleged by Petitioner.

Sincerely,

Rachel Hannaford
Rachel Hannaford
Senior Enforcement Counsel
Rachel.Hannaford@ag.ny.gov

Cc: Hartley T. Bernstein
Bernstein Cherney LLP
hbernstein@bernsteincherney.com

Supreme Court of the State of New York
Appellate Division, First Judicial Department

Renwick, J.P., Kapnick, Scarpulla, Rodriguez, Higgitt, JJ.

14460- 14461- 14462- 14463	THE PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York, Plaintiff-Respondent, -against- LAURENCE G. ALLEN et al., Defendants-Appellants, NYPPEX, LLC, et al., Relief Defendants-Appellants.	Index No. 452378/19 Case No. 2020-01772 2020-03705 2021-00701 2021-00726 2021-00942 2021-01699

Akerman LLP, New York (Massimo F. D'Angelo of counsel), for appellants.

Letitia James, Attorney General, New York (Mark S. Grube of counsel), for respondent.

Judgment, Supreme Court, New York County (Barry R. Ostrager, J., after a nonjury trial), entered May 4, 2021, against defendants and relief defendants in plaintiff's favor, unanimously affirmed, without costs. Appeals from orders, same court and Justice, entered on or about February 4 and June 30, 2020, and February 4 and 26 and March 18, 2021, unanimously dismissed, without costs, as subsumed in the appeal from the judgment.

Plaintiff Attorney General of the State of New York commenced this action after a multiyear investigation into allegations that defendant Lawrence G. Allen misappropriated millions of dollars of investor funds for his own personal enrichment and that he and the corporate defendants acting under his control made various

misrepresentations to investors. After a nonjury trial the court found in favor of plaintiff on claims alleging securities fraud under the Martin Act, repeated and persistent fraud and illegality in violation of Executive Law § 63(12), and common-law breach of fiduciary duty to investors.

Defendants' argument that plaintiff's claims are usurped by federal law is unavailing. Neither the Securities Litigation Uniform Standards Act (15 USC §§ 77p & 78bbb) nor the National Securities Markets Improvement Act (15 USC § 77r[a][1][A]) preempts plaintiff's claim under the Martin Act (General Business Law art 23-A, § 352 *et seq.*) (*see People v Greenberg,* 95 AD3d 474, 480-482 [1st Dept 2012], *affd* 21 NY3d 439 [2013]). Further, the Martin Act applies, even though this action involves only about 75 investors (*see People v Landes,* 84 NY2d 655, 659, 663-664 [1994] [Martin Act applied when 12 individuals invested an aggregate of $100,000 in defendant's venture]).

Defendants also contend that a three-year statute of limitations governs the Martin Act claim, that the offending conduct falls outside that three-year period, and that therefore the Martin Act claim is time-barred. This argument is similarly unavailing. Since August 26, 2019, CPLR 213(9) has stated that a six-year statute of limitations governs "an action by the Attorney General pursuant to" the Martin Act or Executive Law § 63(12). Plaintiff commenced the instant action on December 4, 2019, well within the six-year limitations period.

Defendants' contention that CPLR 213(9) should not be applied retroactively ignores the fact that this court applied a six-year statute of limitations to Martin Act claims during the period of defendants' offending conduct. In 1992, this Court held that a six-year statute of limitations applied to Martin Act claims (*see State of New York v Bronxville Glen I Assoc.*, 181 AD2d 516 [1st Dept 1992]). However, on June 12, 2018, the

Court of Appeals held that Martin Act claims are governed by a three-year statute of limitations (*id.* at 626, 632-633). The legislature swiftly reacted by passing CPLR 213(9) (*see e.g. Matter of Gleason [Michael Vee, Ltd.],* 96 NY2d 117, 122-123 [2001]) and instructed that the statute take effect immediately.

Defendants primarily rely on *Matter of Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal* (35 NY3d 332 [2020]) and *Aguaiza v Vantage Props., LLC* (69 AD3d 422 [1st Dept 2010]), in support of their argument that the court should not have applied a six-year limitations period, but those cases are distinguishable. Unlike the statute in *Aguiaza,* CPLR 213(9) did not create an entirely new cause of action (*cf.* 69 AD3d at 423). Moreover, unlike the situation in *Regina,* where landlords acted in reliance on a four-year statute of limitations, defendants cannot have acted in reliance on a three-year statute of limitations except for the brief period between June 12, 2018 and August 26, 2019, and that period would not be time-barred even if a three-year statute applied.

Defendants argue that no Martin Act violation took place because, although some of defendant ACP X, LP's (the Partnership) assets were invested in defendant NYPPEX Holdings, LLC (Holdings) starting in October 2008, the 2004 and 2005 private placement memoranda (PPMs) for the Partnership were true when issued.

Nevertheless, defendants employed a "device, scheme or artifice to defraud" (General Business Law § 352[1]) "in the . . . exchange . . . [or] sale" of securities (*id.*) by using artificially high valuations of Holdings in the Partnership's reports to the limited partners, which affected the stated value of each partner's capital account; and the value of the capital account would have been a factor influencing a limited partner's decision to take an early withdrawal pursuant to the Third, Fourth, and Fifth Amendments to the

partnership agreement in 2013, 2015, and 2017 (*see generally S.E.C. v Pittsford Capital Income Partners, L.L.C.,* 2007 WL 2455124, *13, 2007 US Dist LEXIS 62338, *44-45 [WD NY, Aug. 23, 2007, No. 06 Civ 6353 T(P)], *affd in part, appeal dismissed in part* 305 Fed Appx 694 [2d Cir 2008]).

In any event, the complaint is not limited to the Martin Act claim; it also includes claims for breach of fiduciary duty and violation of Executive Law § 63(12). The latter concerns "persistent fraud or illegality in the carrying on, conducting or transaction of business." Allen's statement in July 2015 about the investments that the Partnership would make during the wind-down period was made in the conducting of business.

The court's finding of fraud was not against the weight of the evidence (*see generally Richstone v Q-Med, Inc.,* 186 AD2d 354 [1st Dept 1992]). For example, the court found, "Allen's appropriation of $3.4 million of carried interest was procured by the fraudulent representation to [Partnership] investors that [he] was always entitled to carried interest." Defendants cannot seriously dispute this finding. Indeed, their answer admitted that as of December 4, 2019, "the General Partner [defendant ACP Partners X, LLC, of which Mr. Allen is the managing principal] ha[d] not distributed all of the Limited Partners' contributed capital, and ha[d] made no distribution toward the preferred return"; hence, the General Partner was not entitled to take carried interest in 2013, 2015, and 2017. Moreover, defendants took carried interest even though their then-counsel told them that they were still in the first stage of the "waterfall" (priority of distributions) and that they could not take carried interest until the third stage. The fact that some limited partners may have testified that they were not deceived is not consequential, as the Attorney General in a Martin Act case does not have to show reliance (*see e.g. People v Credit Suisee Sec, [USA] LLC,* 31 NY3d 622, 632 [2018]).

Defendants' claim that the trial was so unfair as to require reversal – in part because of the change in the way that the testimony was used by the court from the preliminary injunction hearing to the trial – is unavailing. Defendants failed to show "how this modification ... disrupted [their] trial strategy or otherwise caused [them] any undue prejudice" (*People v Morrow,* 261 AD2d 279, 280 [1st Dept 1999], *lv denied* 93 NY2d 1023 [1999]), and therefore they were not deprived of a fair trial.

The trial court's evidentiary rulings were provident exercises of discretion. Thus, the court properly refused to allow one of defendants' experts to testify on redirect as to matters that were outside the scope of his direct testimony (*see e.g. People v Lee,* 96 NY2d 157, 162 [2001]). The court also properly refused to allow defendants to use a document that they had not previously disclosed (*see Calabrese Bakeries, Inc. v Rockland Bakery, Inc.,* 139 AD3d 1192, 1194 [3d Dept 2016]). We note that, although the court did not allow defendants to use the spreadsheet, it did allow Mr. Allen to testify at length about the returns to the limited partners. Thus, defendants were not prejudiced by the absence of a spreadsheet detailing the returns for each limited partner. Additionally, the letter from the Financial Industry Regulatory Authority was properly used to attack the credibility of a statement that Allen had made in his direct testimony affidavit (*see generally People v Post,* 235 AD2d 299 [1st Dept 1997], *lv denied* 90 NY2d 862 [1997]).

Defendants contend that the preliminary injunction hearing testimony was inadmissible hearsay at trial. However, they agreed in a so-ordered stipulation that "all testimony and exhibits introduced at the . . . hearing . . . shall become part of the trial record" (*see People v Bowen,* 185 AD3d 1219, 1220 [3d Dept 2020]).

The court providently exercised its discretion by refusing to adjourn the trial (*see generally Matter of Anthony M.,* 63 NY2d 270, 283 [1984]). Similarly, it was not an improvident exercise of discretion (*see generally Brooks v Brooks,* 37 AD2d 835 [2d Dept 1971]) for the court to deny defendants' demand for a jury trial. Plaintiff filed its note of issue – which did not request a jury trial – on October 30, 2020, but defendants did not request a jury trial until December 14, 2020, well beyond the 15-day deadline set forth in CPLR 4102(a). In addition, as the court pointed out, jury trials were being held in abeyance at that time due to the Covid pandemic.

We have considered defendants' remaining arguments and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: October 21, 2021

Susanna Molina Rojas
Clerk of the Court

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DEBRA A. JAMES, *Justice* — PART IAS MOTION 59EFM

INDEX NO. 452037/2018
MOTION DATE 05/03/2019
MOTION SEQ. NO. 002

---X

PEOPLE OF THE STATE OF NEW YORK BY LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Petitioner,

- v -

RAM COHEN, ELDAD COHEN, and ERC HOLDING, LLC

Respondents.

---X

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 78, 79, 80, 82

were read on this motion to/for DISMISSAL.

ORDER

Upon the foregoing documents, it is

ORDERED that the first, second, fourth, fifth, sixth, and eleventh causes of action, and the ninth cause of action, insofar as it is based upon those causes of action, and those parts of the tenth cause of action that do not allege fraud upon nonparty Mr. Wu, are dismissed; and it is further

ORDERED that the seventh and eighth causes of action, and that part of the tenth cause of action that alleges the respondents committed fraud against nonparty Mr. Wu are set down for an immediate trial; and it is further

ORDERED that petitioner shall, within 20 days from entry of this order, serve a copy of this order with notice of entry upon

counsel for all parties hereto and upon the Clerk of the General Clerk's Office (60 Centre Street, Room 119) and shall serve and file with such Clerk a note of issue and statement of readiness, and such Clerk shall cause the matter to be placed upon the calendar for such trial before the undersigned; and it is further

ORDERED that such service upon the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh)].

DECISION

The People of the State of New York, by Letitia James, Attorney General of the State of New York (OAG), bring this special proceeding, pursuant to Executive Law § 63 (12), General Business Law (GBL)§ 349, and GBL § 352 et seq. (the Martin Act), alleging that respondents have violated the latter two statutes, as well as committed common law fraud. The petition seeks a permanent injunction barring respondents from doing business in the real estate market in New York, disgorgement of property tax abatements and profits from the sale of their building, restitution, and civil penalties.

Respondents move to dismiss the petition on the grounds that it is untimely and fails to state a cause of action.

Respondents also contend that they have been denied the due process of law.

Introduction

The gist of OAG's position is that respondents Ram Cohen and Eldad Cohen (the Cohens), who owned a building (Building) with eight apartments and one commercial space, that they had caused to be constructed in Fresh Meadows, Queens, listed rents for the apartments with the New York State Division of Housing and Community Renewal (DHCR) that were higher than the rents that were actually paid by the tenants, in order to reap higher tax abatements than they were entitled to, and so as to realize a larger profit on the eventual sale of the Building than they would otherwise have received. Respondents contend that the 2008 recession precluded them from realizing their initial intention to create a condominium, and that they charged lower rents than those listed on the leases as an accommodation to the tenants.

A. The Facts

The following facts are undisputed. The Cohens formed respondent ERC Holdings, LLC (ERC) in 2005 to purchase the property on which the Building would be built and to own the Building thereafter. In 2006, respondents applied to the New York City Department of Housing Preservation and Development ((HPD) for a property tax exemption, pursuant to Real Property

Tax Law (RPTL) § 421-a. Respondents were granted a three-year construction tax benefit, and, following completion of construction, they were granted a 15-year tax exemption based on their representation that the Building was being operated as a condominium. In 2007, respondents submitted an offering plan for the Building to OAG, which was accepted in January 2008 and declared effective that August, after purchase agreements for two of the units were negotiated. The units were not sold, however, and, in the wake of the 2008 recession, respondents abandoned their condominium plan, and, without notifying OAG or HPD, began to rent the units for a one-year term, pursuant to leases that were headed "Lease of a Condominium Unit." The leases expressly provided that the apartments were neither rent stabilized, nor rent controlled, and provided for rents ranging from $2,050 to $2,200 per month. As stated above, the tenants paid substantially less than the stated rents. From 2009 until 2014, respondents failed to register the apartments with DHCR.

In September 2009, respondents applied for a final certificate of eligibility for the RPTL §421-a tax benefit, representing that the Building was a condominium, and that units would be registered with DHCR as they became occupied. In 2011, HPD issued the final certificate, noting, as per respondent's representation, that the building was being operated as a condominium. In July 2014, after OAG determined, after an

investigation, that it had no grounds to act against respondents, respondents filed initial rent registrations with DHCR for the years 2010 through 2014. The rents that respondents reported were the rents stated in the leases. Although the forms submitted to DHCR include a line on which a preferential rent, i.e., a rent lower than the legal rent-stabilized rent, could be listed, respondents listed no such rents. In June 2015, Ram Cohen submitted an affidavit to HPD, in which he averred that the rents that respondents had listed with DHCR were the rents charged, and that the tenants in the Building had been provided with rent-stabilized leases.

In May 2015, respondents submitted a new offering plan to convert the Building to condominium ownership. OAG rejected the plan in April 2016. Meanwhile, in September 2015, respondents entered into a contract to sell the Building for $3,750,000. The contract included a schedule of rents that listed the rents that had been filed with DHCR. The sale closed in January 2016. In the eight preceding months, all the tenants in the Building, but one, vacated their apartments.

B. The Petition

The petition alleges the following 11 causes of action: (1) violation of the Martin Act, GBL § 352-eeee, by forcing tenants to move during the effectiveness of a condominium offering; (2) termination of rent-stabilized tenancies, in violation of the

Rent Stabilization Code (9 NYCRR § 2524.1) (RSC); (3) violation of 28 RCNY §§ 6-02 (g) (2) and 6-05 (d) (1) (iii) (A) (regulations pertaining to the grant of RPTL § 421-a tax exemptions) in failing properly to register the apartments in the Building; (4) failing to register rents with DHCR, in violation of Rent Stabilization Law (RSL) § 26-517; (5) listing illegal initial rents on the tenants' leases, in violation of RSC § 2521.1 (g); (6) issuing leases that failed to offer the choice between a one-year and a two-year renewal, in violation of RSC 2522.5; (7) failing to place security deposits in interest bearing accounts and intermingling security deposits with respondents' funds, in violation of General Obligation Law §§ 7-103(1)-(2) and 7-103 (2-a); (8) violation of RSC § 2525.4 by the conduct alleged in the seventh cause of action; (9) engaging in repeated fraudulent acts, resulting in liability pursuant to Executive Law § 63 (12); (10) common law fraud; (11) violation of GBL § 349. In addition, the petition alleges that the acts alleged in the second through the sixth, and the eighth, tenth, and eleventh causes of action subject respondents to liability under Executive Law § 63 (12).

Discussion

Burden of proof

A special proceeding, such as this one, is treated as a motion for summary judgment. See CPLR 409 (b); Matter of

Northwest 5th and 45th Realty Corp v Mitchell, Maxwell & Jackson, Inc., 164 AD3d 1158, 1158(1st Dept 2018); Matter of Gonzalez v City of New York, 127 AD3d 632, 633 (1st Dept 2015). Accordingly, petitioner has the burden of making a prima facie case. See Matter of New York Community Bank v Bank of Am. N.A., 169 AD3d 35, 39 (1st Dept 2019) (petitioner made prima facie case).

C. The Martin Act and the second cause of action

A claim based upon an alleged violation of the Martin Act is governed by the three-year limitations period prescribed by CPLR 214 (2) for "a liability, penalty or forfeiture created or imposed by statute." People v Credit Suisse Sec.(USA) LLC, 31 NY3d 622, 633 (2018). This action was commenced on October 22, 2018. Petitioner has failed to show that any act in violation of the Martin Act took place after October 23, 2015. The Martin Act bars landlords from taking any steps to evict tenants during the pendency of a cooperative or condominium offering plan. Petitioner argues that, during the limitations period, respondents secured surrenders of tenancy from Shimi and Shami Grinfeld and Shimi Mesilati and told Rene Medrano that he would have to move out. With regard to the Grinfelds, petitioner adduces a confidential interview that OGA conducted with Sharon Mohammed, which mentions no dates (Hannaford affirmation, exhibit 32 at 95), an affidavit from nonparty Mary Elizabeth

Smith, who found an apartment for the Grinfelds, and who recalled only that she met them "in or about 2015") (id., exhibit 72 ¶ 3) and two references to the payment of the Grinfelds' moving expenses, which mention neither when respondents told the Grinfelds that they had to move, nor when the Grinfelds moved (id. exhibits 73 and 74). With regard to Mesilati, petitioner adduces a check made out to her, reimbursing her for her moving expenses (id., exhibit 90), which indicates neither when she was told that she had to move, nor the date on which she moved. Medrano had been working as the super in the building. While respondents may have told him that he would have to move when the building was sold, he suffered no injury thereby, because he spoke with the buyer and arranged, for a time, to remain and work for the new landlord (id., exhibit 27, at 49).

OAG argues that, at an unspecified time in 2015, Eldad Cohen told the tenants that they would have to leave unless they signed renewal leases. That argument is based upon paragraph 12 of Eldad Cohen's affidavit, which states, insofar as is here relevant;

> "I did tell [the tenants] that they had a right to remain in their apartments, even under new ownership, but that in order to exercise that right they would have to sign a lease renewal. If they refused to sign a lease renewal they would, of course, have to leave."

It is not a violation of the Martin Act to tell tenants whose leases are expiring (and all the tenants' leases were due to expire at some time in 2015) that, in order to retain their tenancies, they have to sign renewal leases.

thus, the cause of action alleging violation of the Martin Act shall be dismissed. For the same reasons, the second cause of action, which alleges termination of rent stabilized leases, in violation of the RSC, is also dismissed.

D. The third cause of action

28 RCNY § 6-02 (g) provides that, in order to be eligible for a tax abatement, "rents of a unit shall be fully subject to regulation . . . for the entire period during which the property is receiving tax benefits." While petitioner has shown that respondents violated the RSL and the RSC, the last acts alleged in relation to this cause of action took place in July 2014 (application for final certificate of eligibility for tax abatement) and June 2015 (the affidavit of Ram Cohen) (verified petition, §§ 155 and 157), well outside the limitations period. Accordingly, this cause of action, too, is dismissed.

GBL § 349.

A claim brought for violation of GBL § 349 is governed by CPLR 214 (2), when the conduct alleged does not fall within the confines of a common law tort. Gaidon v Guardian Life Ins. Co. Of Am., 96 NY2d 201, 209-210 (2001). Petitioner alleges that

respondents commingled security deposits that they had received from their tenants with their own funds within the limitations period, and that, within that period, they misrepresented the rent roll of the Building to the person to whom they sold it. However, a claim alleging a violation of GBL § 349 must allege conduct that has "a broad impact on consumers at large." (Gomez-Jimenez v New York Law School, 103 AD3d 13, 16 (1st Dept 2012). quoting Oswego Laborers Local 214 Pension Fund v Marine Midland Bank, 85 NY2d 20, 25 (1995). Here, petitioner alleges conduct, within the limitations period, that affected only the eight tenants of the building and the individual who bought the Building from respondents. Therefore, the claim alleging violation of GBL § 349 must be dismissed.

A. Executive Law § 63 (12)

Executive Law § 63 (12) authorizes the Attorney General to seek an injunction, restitution, and damages "[w]henever any person shall engage in repeated fraudulent or illegal acts." The limitations period for a claim alleging violation of Executive Law § 63 (12) is determined by the nature of the underlying wrong for which the Attorney General seeks a remedy. People v Credit Suisse Sec. (USA) LLC, 31 NY3d at 633-634. Therefore, the Executive law § 63 (12) claims pertaining to statutory violations are governed by a three-year limitations period. The fourth, fifth, and sixth causes of action,

alleging, respectively, failure to register rents with DHCR, listing illegal initial rents, and issuing leases that failed to offer a choice between a one-year and a two-year lease term, are untimely, inasmuch as petitioner has not shown that respondents issued any lease for apartments in the Building during the limitations period. On such basis, those causes of action, as well as the Executive Law § 63 (12) claims that are predicated upon them, are untimely.

E. The remaining causes of action

The tenth cause of action (common law fraud) is timely in part, but it casts too wide a net. The claim that respondents deceived the tenants in the Building from 2009 through 2014 (Petition, ¶ 218) and misled HPD from 209 to 2015 (id. ¶ 216) are time-barred. Petitioner's claims that DHCR and OAG suffered impairment of their regulatory function (Petition, ¶¶ 217 and 220) fail to state a claim for fraud because a claim for fraud must allege, among other things, actual pecuniary loss. Hanlon v McFadden Publ.,302 NY 502, 511 (1951); Connaughton v Chipotle Mexican Grill, Inc.,135 AD3d 535, 539 (1st Dept 2016); Pope v Saget, 29 AD3d 437, 443 (1st Dept 2006). The claim that Mr. Wu, the purchaser of the Building, was defrauded by the rent roll that he was given is viable. However, an essential element of a claim for fraud is justified reliance (ACA Fin. Guar. Corp. v Goldman, Sachs & Co., 25 NY3d 1043, 1044 [2015]; Unique Goals

Intl., Ltd. v Finskiy, 178 AD3d 626, 626 [1st Dept 2019]), and there has been no showing that Mr. Wu, who, apparently, was furnished with all relevant tax returns of each of the respondents, relied upon the rent roll in deciding how much to pay for the Building. The fraud claim, and the associated Executive Law § 63 (12) claim, will be set down for trial. However, respondents' liability for the Executive Law § 63 (12) claim based upon fraud will depend on a finding that they are also liable pursuant to the seventh and eighth causes of action. Executive Law § 63 (12) is applicable only to "repeated fraudulent or illegal acts," not to a sole instance of such an act.

The seventh and eighth causes of action, which pertain to security deposits, will also be set down for trial. Ram Cohen avers in his affidavit that, for the most part, respondents did not take security deposits, but rather collected the rent payable for the last month of a tenancy at the time that a lease

was entered into. See Ram Cohen affidavit, ¶ 20. If, the evidence at the trial shows that respondents did not take security deposits, then a judgment dismissing the seventh and eight causes of action, and the associated Executive Law § 63 (12) claims, as well as the tenth cause of action, will be dismissed.

4/1/2020
DATE

DEBRA A. JAMES, J.S.C.

CHECK ONE:	[ ] CASE DISPOSED		[X] NON-FINAL DISPOSITION			
	[ ] GRANTED	[ ] DENIED	[X] GRANTED IN PART		[ ] OTHER	
APPLICATION:	[ ] SETTLE ORDER		[ ] SUBMIT ORDER			
CHECK IF APPROPRIATE:	[ ] INCLUDES TRANSFER/REASSIGN		[ ] FIDUCIARY APPOINTMENT		[ ] REFERENCE	

Exhibit E

FILED: APPELLATE DIVISION - 1ST DEPT 07/16/2021 08:14 PM 2020-01772
NYSCEF DOC. NO. 40 RECEIVED NYSCEF: 07/16/2021

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION – FIRST DEPARTMENT

THE PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York,

Plaintiff-Respondent,

v.

LAURENCE G. ALLEN, et al.,

Defendants-Appellants,

NYPPEX, LLC, et al.,

Relief Defendants-Appellants.

Nos. 2020-01772
2020-03705
2021-00701
2021-00726
2021-00942

Supreme Court
New York County
Index No. 452378/2019

AFFIRMATION IN OPPOSITION TO EMERGENCY INTERIM MOTION TO COMPEL COMPLIANCE WITH PRIOR STAY AND FOR STAY OF ALL PROCEEDINGS BELOW

MARK S. GRUBE, an attorney duly admitted to practice in the courts of this State, affirms the following under penalty of perjury:

1. I am an Assistant Solicitor General in the Office of Letitia James, Attorney General of the State of New York, counsel for plaintiff-respondent the People of the State of New York. I make this affirmation based on information and belief from my review of this Office's files and conversations with other members of this Office.

2. I submit this affirmation in opposition to the motion of defendants-appellants Laurence G. Allen, ACP Investment Group, LLC, NYPPEX Holdings, LLC, ACP Partners X, LLC, and ACP X, LP (Defendants) seeking an order to (a) compel compliance with this Court's limited stay order dated May 20, 2021; (b) stay and return all monies levied upon from Defendants' bank accounts held at People's Bank; (c) stay all proceedings in the trial court pending appeal; and (d) recover attorney's fees and costs.

3. This Court should deny Defendants' motion, which wholly misconstrues the narrow stay previously granted by this Court. As a threshold matter, Defendants' motion largely hinges on a request for relief—stopping the Attorney General's efforts to enforce the money judgment entered in proceedings below—that this Court has already considered and denied. In April 2021, Defendants moved to stay enforcement of the lower court's post-trial remedies, including the money judgment, pending appeal. This Court granted a stay only to the limited extent that it precluded the court-appointed receiver from dissolving the investment fund at the center of this dispute pending appeal, but it did not grant a stay of any of the other remedies provided by Supreme Court. Accordingly, the "law of the case" doctrine precludes the relief Defendants seek.

4. In any event, Defendants' motion fails on the merits. For starters, it seeks relief that is impossible to provide—namely, it asks the Attorney General to return funds that the Attorney General has never seized. The motion also

fails because Defendants seek to stay enforcement of a money judgment without posting a bond as required by C.P.L.R. 5519(a)(2) or even attempting to explain how complying with C.P.L.R. 5519(a)(2) would cause any hardship at all.

5. Defendants also fail to establish the basic requirements for equitable relief. Bare, conclusory allegations of economic harm, as Defendants present here, are legally insufficient to establish an imminent irreparable injury. By contrast, an indefinite stay of judgment enforcement would deeply prejudice the Attorney General and the investors in the fund at issue: ACP X, LP (the "Fund"). Supreme Court expressly found after an evidentiary hearing that the evidence in this action shows "a shocking level of self-dealing, breaches of fiduciary duty, misappropriation of enormous sums . . ., and outright fraud." (Record on Appeal (R.) 8.) To prevent further dissipation of investors' assets, and to provide relief to investors who have been harmed by Defendants' misconduct, it is important that the judgment enforcement efforts move forward and the receiver be able to continue her work identifying and preserving the Fund's assets. This Court acknowledged as much when it previously denied Defendants' request to stay enforcement of the money judgment here and agreed only to stay the dissolution of the investment fund. The broad stay pending appeal requested by Defendants would impede those procedural steps.

6. Given the multiple deficiencies with Defendants' motion, this Court need not consider Defendants' likelihood of success on the merits to resolve this

motion. But if it does consider that question, it should conclude that the trial court's decision is legally correct and amply supported by the record. Defendants' motion would therefore fail for this additional reason.

7. This Court should also deny Defendants' request for attorney's fees and costs. Their motion falls far short of identifying harassing conduct; to the contrary, they merely complain of standard judgment enforcement efforts that they could have prevented without court intervention by posting an undertaking pursuant to C.P.L.R. 5519(a)(2).

8. Finally, in light of Defendants' misunderstanding of this Court's prior stay and attempts to improperly use that stay to impede the Attorney General's efforts to protect and preserve the assets of defrauded investors, this Court should expressly clarify the scope of that stay: it is limited to staying the ultimate dissolution of the Fund following the sale of all (or substantially all) of the Fund's assets by the court-appointed receiver. The stay does not prevent the Attorney General from enforcing the money judgment or the injunctive relief directed against Defendants. The stay also does not prevent the receiver from taking all necessary steps to collect and preserve investor assets short of the ultimate dissolution of the Fund following the sale of all (or substantially all) of its assets.

BACKGROUND

9. After an investigation, the Attorney General filed a Verified Complaint against Defendants in Supreme Court, New York County, alleging violations of the Martin Act (General Business Law § 352), Executive Law § 63(12), and the common law. (R. 59-113.) At base, the Attorney General alleged that Defendant Allen misappropriated millions of dollars from a private equity fund for his own personal enrichment and that he and the corporate Defendants acting under his control made various misrepresentations to investors.

10. Concurrent with the filing of the Verified Complaint, the Attorney General moved by Order to Show Cause for a preliminary injunction restraining Defendants from certain activities concerning the Fund. (R. 121-127.) Supreme Court (Ostrager, J.) held an evidentiary hearing on the preliminary injunction from January 27 to February 3, 2020. (*See* R. 1200-2139.)

11. Over the course of the hearing, eleven witnesses testified and more than one hundred exhibits were entered into evidence. The witnesses included five investors in the Fund, each of whom testified that Defendants made material misrepresentations to them about the strategy, distribution structure, and operation of the Fund. The Defendants' former corporate treasurer also testified that Defendant Allen controlled Defendants' conduct as it related to the Fund and misappropriated millions of dollars in Fund assets, rejected requests from auditors, misled investors, and overvalued Fund positions

(including investments in Defendant NYPPEX Holdings, LLC, a company owned by Allen that Allen caused the Fund to invest in). Defendant Allen also testified and did not dispute any of the essential facts underlying the Attorney General's claims of wrongdoing.

12. On February 4, 2020, Supreme Court issued a Decision and Order granting the Attorney General's motion. The court found that the Attorney General had demonstrated a likelihood of success on the merits and that the balance of equities tipped "decidedly" in favor of interim relief. (R. 8.) The court specifically noted that "[t]he evidence adduced at the preliminary injunction hearing revealed a shocking level of self-dealing, breaches of fiduciary duty, misappropriation of enormous sums of ACP capital, and outright fraud," and that a preliminary injunction was necessary to prevent Defendant Allen from operating the Fund "in a manner that furthers Allen's self-interest to the detriment of the Limited Partners." (R. 8.) Supreme Court did not credit Allen's purported explanations for his conduct, finding that the Fund was "essentially utilized as a piggy bank to fund a failing broker-dealer, its failing parent, and Mr. Allen." (R. 10.) The court accordingly issued a preliminary injunction that essentially preserved the Fund's assets by preventing Defendants from accessing or disposing of those assets. It also protected investors from further harm by restraining Defendants from violating the Martin Act or otherwise engaging in fraudulent, deceptive, or illegal acts. (R. 11-12.)

13. Supreme Court held a plenary trial on the merits from January 11-14, 2021. On February 4, 2021, Supreme Court issued the Decision After Trial, which concluded that the Attorney General had proven the claims by a preponderance of the evidence. The court found that the four days of trial testimony "confirmed all of the facts established at the preliminary injunction hearing." (R. 26.) For example, "a hopelessly conflicted Allen" diverted a significant portion of the capital contributed to the Fund to NYPPEX, "a failing broker-dealer" that he controlled. (R. 27.) Those funds were then used "to pay Allen exorbitant NYPPEX annual salaries totaling approximately $6 million." (R. 27.) The court also found that the investments in NYPPEX were "in no way consistent with the investment thesis contained" in the Fund's Private Placement Memorandum and Limited Partnership Agreement. (R. 27.)

14. The court rejected Defendants' argument that the Attorney General's case rested on representations contained in offering documents that were outside the statute of limitations. The court correctly held that "future conduct that renders prior representations false **can** serve as the basis for a Martin Act claim **and** that a Martin Act violation accrues <u>at the time of the wrongful conduct</u>." (R. 29.) Accordingly, Defendants' conflicted investments in NYPPEX gave rise to a Martin Act claim at the time those investments were made (not when the offering documents containing the Fund's investment thesis

were issued). As the court explained, "the offering documents were not misleading until the defendant engaged in conduct that contradicted them." (R. 29 (quotation marks omitted).) Moreover, as the court noted, the misrepresentations in the offering documents were only one aspect of the Attorney General's claims, and the Attorney General presented ample additional evidence of "defendants' independent fraudulent conduct (unrelated to any specific representation)" to establish its case. (R. 29.)

15. The trial court also correctly concluded that the six-year statute of limitations contained in C.P.L.R. 213(9) applies to the Martin Act claims here. The court noted that the Legislature enacted C.P.L.R. 213(9) in 2019 in response to a Court of Appeals decision that "overturned long-standing First Department precedent" and held that a three-year statute of limitations applied to Martin Act claims. (R. 31 (citing *People v. Credit Suisse Sec. (USA) LLC*, 31 N.Y.3d 622 (2018)).) The court held that C.P.L.R. 213(9) should be applied to this litigation because the Legislature promptly enacted remedial legislation after a Court of Appeals decision "to clarify what the law was always meant to do and say." (R. 31 (quoting *Matter of Gleason (Michael Vee, Ltd.)*, 96 N.Y.2d 117, 122 (2001)).) The court also noted that false and misleading statements made in March 2017, as well as fraudulent conduct from 2017, easily fall within either the six-year or three-year statute of limitations. (R. 31-32.)

16. In sum, the court concluded that the Attorney General established that Defendants had engaged in eight distinct categories of fraud and misrepresentations. (R. 33-36.) As a result, the court awarded three forms of relief. First, the court entered a permanent injunction continuing the injunctive relief contained in the preliminary injunction order. (R. 36-37.) Second, the court awarded monetary relief in the form of disgorgement. (R. 37-38.) Third, the court appointed a provisional receiver. (R. 37.) On February 26, 2021, the court issued an Amended Decision and Order After Trial to correct a typographical error. (R. 58.)

17. On March 17, 2021, the court issued a decision and order directing the entry of judgment. (R. 58.5-58.7.) The court directed entry of a monetary judgment of $7,871,904.87 based on the court's disgorgement findings and injunctive relief consistent with the Amended Decision and Order after Trial. (R. 58.5-58.6.) The judgment clerk entered the proposed judgment on May 4, 2021. *See* Att'y Affirm. in Supp. of Emergency Interim Mot. to Compel Compliance with Prior Stay and for Stay of All Proceedings Below (July 6, 2021) ("July 2021 D'Angelo Affirm."), Ex. A.

18. On April 14, 2021, Defendants moved this Court for an interim stay and a stay pending appeal of all of the relief provided in the decision and order after trial that had previously been issued on February 4, 2021, and amended on February 26, 2021. Justice Scarpulla granted the application for an interim

stay "only to the extent that the receiver is stayed from immediately liquidating the [Fund] pending full review of the motion." Order at 2 (Apr. 15, 2021), NYSCEF No 29. On May 20, 2021, this Court entered an order continuing the limited stay pending appeal "insofar as it seeks to stay the liquidation of defendant entities." Order at 2 (May 20, 2021), NYSCEF No. 35.

19. Given that this Court's limited stay did not bar enforcement of the money judgment and that Defendants failed to post a bond to stay enforcement of the money judgment, *see* C.P.L.R. 5519(a)(2), the Attorney General proceeded with efforts to enforce the money judgment. Specifically, the Attorney General served various financial institutions with information subpoenas and restraining notices pursuant to C.P.L.R. 5222 in late June and early July 2021. The restraining notices prevent the withdrawal of funds in accounts where money is owed only to the judgment debtor. *See* C.P.L.R. 5222(b). The Attorney General has not yet seized any funds from any of Defendants' accounts, nor can the Attorney General do so without taking further steps; namely, the service of a property execution on a financial institution holding Defendants' funds by a marshal or sheriff. *See* C.P.L.R. 5232.

20. On July 6, 2021, Defendants moved this Court for interim relief and an order to (a) compel compliance with this Court's limited stay order dated May 20, 2021; (b) stay and return all monies levied upon from Defendants' bank accounts held at People's Bank; (c) stay all proceedings in the trial court

pending appeal; and (d) recover attorney's fees and costs. Justice Mendez denied Defendants' application for interim relief, "without prejudice to defendants-appellants posting a bond in the full monetary amount of the judgment." Order at 2 (July 7, 2021), NYSCEF No. 39. As of this date, Defendants have not provided the Attorney General with any evidence that they have obtained a bond.

ARGUMENT

A. This Court Has Already Rejected Defendants' Proposed Relief.

21. Under the "law of the case" doctrine, "a court should not ordinarily reconsider, disturb or overrule an order in the same action of another court of co-ordinate jurisdiction." *Matter of Dondi v. Jones*, 40 N.Y.2d 8, 15 (1976). That doctrine applies squarely to Defendants' motion here. Defendants largely object to the Attorney General's efforts to enforce the money judgment entered in proceedings below. But this Court rejected Defendants' efforts to obtain a court-ordered stay of enforcement of the money judgment when Defendants sought that relief in their April 14, 2021, emergency application. Having failed to show any compelling reason for this Court to reach a different result now, Defendants are "precluded from relitigating an issue decided in an ongoing action where there previously was a full and fair opportunity to address the issue." *Matter of Goldstein v. Zabel*, 146 A.D.3d 624, 631 (1st Dep't 2017) (alteration and quotation marks omitted).

22. Defendants' April 14, 2021, motion sought to stay the February 26, 2021, Amended Decision and Order After Trial. *See* Att'y Affirm. in Supp. of Mot. for a Stay Pending Appeal and Seeking Leave to Appeal ¶ 2 (Apr. 14, 2021) ("April 2021 D'Angelo Affirm."), NYSCEF No. 29. That order provided three distinct forms of relief: (1) a permanent injunction continuing the injunctive relief contained in the preliminary injunction order; (2) monetary relief in the form of disgorgement; and (3) the appointment of a receiver. (R. 36-38.)

23. Defendants' arguments in support of their April 14, 2021, motion, however, focused largely on the purported harms that would flow from the receiver selling and distributing *all* of the Fund's assets and ultimately dissolving the Fund before this Court heard their appeal. For example, Defendants argued that should they "later prevail on their appeal, like Humpty Dumpty, it will be impossible to recreate the Fund after it has been dismembered" (April 2021 D'Angelo Affirm. ¶ 5), and they warned that "the summary liquidation of the Fund . . . would effectively render the appeal moot" (*id.* ¶ 7).[1]

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[1] *See also* April 2021 D'Angelo Affirm. ¶ 49 ("[T]he liquidation of the Fund will irreparably destroy the subject matter of the action forever, to the extreme prejudice of Appellants, as well as the LPs, and ultimately rendering the appeal academic."); *id.* ¶ 54 ("The lower court's Judgment appointed a receiver who plans to take swift action to liquidate the Fund and sell the Fund's assets, actions which can never be undone."); Reply Affirm. in Further Supp. of Mot. for a Stay Pending Appeal and Seeking Leave to Appeal ¶ 4 (Apr. 26, 2021), NYSCEF No. 32 ("[T]he grave harm to Appellants would not be able to be undone once the Fund is destroyed."); *id.* ¶ 14 ("[C]omplete destruction of the

24. In response, the Attorney General observed that Defendants had failed to preserve any argument "that the monetary penalty will cause them irreparable harm" and failed to present any evidence that they could not obtain a stay of the money judgment by posting an undertaking pursuant to C.P.L.R. 5519(a)(2). Affirm. in Opp. to Mot. for a Stay Pending Appeal and Leave to Appeal ¶ 31 (Apr. 22, 2021), NYSCEF No. 31.

25. Based on these arguments, this Court entered a limited stay, "insofar as [Defendants] seek[] to stay the liquidation of defendant entities." Order at 2 (May 20, 2021). This Court did not stay the injunctive relief ordered by Supreme Court or enforcement of the monetary judgment, despite Defendants' request that it do so. Rather, this Court stayed only the ultimate dissolution of the Fund following the sale of all (or substantially all) of its assets by the court-appointed receiver.

26. Accordingly, this Court should deny the relief sought in Defendants' motion because it has already considered and denied that relief in connection with the April 14, 2021, motion. First, Defendants seek to compel compliance with the May 20, 2021, stay order, but the only actions raised in their motion—efforts to enforce the money judgment—comply with the stay order. Second, Defendants seek to stay enforcement of the money judgment and all trial court

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Fund by a costly receivership will continue to proceed if a stay pending appeal is not granted. A stay of the proceedings below preserves the *res*.").

proceedings, but this Court considered Defendants' request for a stay of post-trial remedies and did not grant that relief, apart from the limited stay preventing the receiver from dissolving the Fund before the appeal is heard. Defendants are therefore "precluded from relitigating" these issues because they already had "a full and fair opportunity to" raise them on their prior motion. *Matter of Goldstein*, 146 A.D.3d at 631 (alteration and quotation marks omitted).

B. In Any Event, This Court Should Deny Defendants' Motion.

1. Defendants' request for a return of levied moneys is unsupported.

27. Separate and apart from the Court's consideration of Defendants' arguments in connection with their prior motion, this Court should deny their pending motion on the merits for numerous reasons. To start, the Attorney General has not seized any of Defendants' funds, so it cannot return "all monies levied upon from Appellants' bank accounts held at People's Bank," as Defendants request. July 2021 D'Angelo Affirm. ¶ 2. Defendants do not present any evidence that the Attorney General has actually seized any funds. As explained above (at ¶ 19), the Attorney General served restraining notices on several financial institutions where it had reason to believe funds were available to pay the money judgment[2] (*see* Ex. A, Information Subpoena with Restraining

[2] Contrary to Defendants' irrelevant contentions (*see* July 2021 D'Angelo Affirm. ¶¶ 35, 40), the Attorney General was able to ascertain the location of

Notice, Index No. 452378/2019 (Sup. Ct. N.Y. County June 28, 2021)). The legal effect of those notices is simply to prevent Defendants from withdrawing funds that could satisfy the judgment. *See* C.P.L.R. 5222. As of the date of the filing this affirmation, the Attorney General has not seized any funds from Defendants' accounts; nor could it do so without service of a property execution by a sheriff or marshal, *see* C.P.L.R. 5232.

28. Defendants merely point to two pages of bank account statements as evidence that the Attorney General purportedly "debited the accounts of the Defendant entities to zero." July 2021 D'Angelo Affirm. ¶ 4. But the Attorney General took no such action and does not control the precise manner in which financial institutions implement a C.P.L.R. 5222 restraining notice. And the excerpted bank statements do not shed any light on what internal factors People's Bank may have considered in how it responded to the restraining notice.

29. In short, the Court should deny Defendants' request for the return of all monies in its People's Bank account because the Attorney General has not seized any funds and therefore has no funds to return.

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certain of Defendants' funds based on information obtained during its investigation and during pre-trial discovery. The Attorney General did not rely on documents produced since April 2021, which concern the location of the Fund's assets. *See* Status Conference Order (Apr. 8, 2021), NYSCEF No. 598. To be clear, the Attorney General has not sought to enforce the judgment against the Fund itself, which contains investor funds.

2. Defendants have not posted an undertaking, as they should to obtain a stay of enforcement of a money judgment, and otherwise fail to show irreparable harm.

30. A discretionary court-ordered stay is available only "in a case not provided for in" C.P.L.R. 5519(a) or (b). C.P.L.R. 5519(c). Thus, in order to obtain a stay of a money judgment, Defendants must post an undertaking pursuant to C.P.L.R. 5519(a)(2). *See, e.g.*, *Schachter v. Sofasa LLC*, 66 A.D.3d 526, 526 (1st Dep't 2009) ("Since plaintiff never appealed from the judgment *nor posted an undertaking*, the court had no basis for staying the money judgment." (emphasis added)); *Chase Lincoln First Bank v. El Sawah*, 142 A.D.2d 1005, 1005 (4th Dep't 1988); *Evalenko v. Catts*, 214 A.D. 711, 711 (1st Dep't 1925).

31. Defendants concede that they have not posted an undertaking and acknowledge that they "are open to" doing so, but provide no explanation why they have not complied with the requirements of C.P.L.R. 5519(a)(2). July 2021 D'Angelo Affirm. ¶ 89. Justice Mendez noted this deficiency in Defendants' papers when denying interim relief, explaining that his ruling was "without prejudice to defendants-appellants posting a bond in the full monetary amount of the judgment." Order at 2 (July 7, 2021).

32. Requiring Defendants to post a bond makes sense here. An appellant seeking a stay pending appeal must show the prospect of irreparable harm that is "imminent, not remote or speculative." *Golden v. Steam Heat*, 216 A.D.2d 440, 442 (2d Dep't 1995). "Bare conclusory allegations" are insufficient to carry a

movant's burden to show irreparable harm. *Kaufman v. International Bus. Machs. Corp.*, 97 A.D.2d 925, 926 (3d Dep't 1983). Here, Defendants are unable to make the necessary showing of irreparable harm because C.P.L.R. 5519(a)(2) provides an independent mechanism to automatically stay enforcement of the money judgment, and Defendants have chosen not to avail themselves of this procedure. Accordingly, this Court must deny Defendants' motion on this basis alone—C.P.L.R. 5519(a)(2) provides an adequate and exclusive remedy for staying a money judgment.

33. Moreover, to the extent that Defendants object to the particular actions that financial institutions are taking in response to the Attorney General's restraining notices, Defendants also have an adequate remedy in the C.P.L.R. to address those objections without resorting to the drastic remedy of a court-ordered stay of enforcement of the money judgment. The C.P.L.R. provides a variety of procedures for judgment debtors to contest judgment enforcement actions. *See, e.g.*, C.P.L.R. 5222-a(c) (claiming exemptions from restraining notice).

34. Finally, the limited evidence of irreparable harm presented by Defendants is insufficient to justify the broad relief they seek. In claiming that enforcement of the money judgment will cause Defendant entities to cease operations (*see, e.g.*, July 2021 D'Angelo Affirm. ¶¶ 8, 14, 24, 58), Defendants rest on a conclusory affidavit from Defendant Allen (*id.* ¶ 55), an individual the

trial court found "unworthy of belief" (R. 36). But such "bare, conclusory allegations" that Defendants "would be forced to go out of business" are "insufficient to satisfy [their] burden of demonstrating irreparable injury," without any "financial statements or other evidence" substantiating their claims. *Kurzban & Son v. Board of Educ. of City of N.Y.*, 129 A.D.2d 756, 757 (2d Dep't 1987); *see Rockland Dev. Assoc. v. Village of Hillbu*, 172 A.D.2d 978, 979 (3d Dep't 1991) (conclusory allegations of bankruptcy, absent any "financial statement or other evidence to substantiate" those allegations are "insufficient to demonstrate irreparable injury"); *Wurttembergische Fire Ins. Co. v. Pan Atl. Underwriters*, 133 A.D.2d 268, 269 (2d Dep't 1987) ("[B]are conclusory allegations of . . . potential insolvency are insufficient to satisfy the plaintiff's burden of demonstrating irreparable injury.").

3. Defendants fail to show that the equities weigh in favor of a stay.

35. The equities also weigh against a broader stay pending appeal. *See, e.g.*, *W.T. Grant Co. v. Srogi*, 52 N.Y.2d 496, 517 (1981); *State v. Fine*, 72 N.Y.2d 967, 968-69 (1988). Any stay of the money judgment and the receiver's current efforts, which do not involve dissolving the Fund, would impede the preservation of the Fund's assets for the benefit of the victims of Defendants' fraud. In order to preserve the investors' assets, the receiver needs to be able to move forward with identifying and collecting the Fund's assets, and the Attorney

General needs to be able to proceed with efforts to enforce the money judgment. These steps are necessary because Defendants have failed to maintain and produce accurate records of the investors' interests in the Fund. (*See* R. 3578-3581.) Moreover, Defendants will suffer no prejudice from enforcement of the money judgment.[3] If they prevail on appeal, the Attorney General will return any funds ultimately seized. And despite having multiple opportunities to do so, Defendants have not explained how they face any prejudice from posting an undertaking if they wish to stay enforcement of the money judgment. In short, Defendants face no prejudice from allowing the current process to move forward.

4. Defendants fail to show a likelihood of success on the merits.

36. This Court need not consider Defendants' likelihood of success on the merits given the threshold defects in their application as well as their failure to show irreparable harm and equities supporting a stay. In any event, as explained above (at ¶¶ 13-16), and as will be further demonstrated in the Attorney General's merits brief, the trial court correctly concluded that the

[3] Defendants complain that the Attorney General did not provide advance notice of its efforts to enforce the money judgment. *See, e.g.*, July 2021 D'Angelo Affirm. ¶ 49. But the Attorney General had no obligation to do so and had no notice that Defendants mistakenly believed that the May 20, 2021, limited stay order bars efforts to enforce the money judgment.

Attorney General prevailed on its claims against Defendants.

37. Contrary to Defendants' argument (July 2021 D'Angelo Affirm. ¶¶ 64-70), the court correctly applied a six-year statute of limitations to the Attorney General's Martin Act claims. That statute of limitations is expressly authorized by C.P.L.R. 213(9), which the Legislature enacted in response to the Court of Appeals's decision in *Credit Suisse Sec. (USA) LLC*, 31 N.Y.3d 622. Supreme Court correctly held that C.P.L.R. 213(9) should apply to this litigation because the Legislature promptly enacted remedial legislation "to clarify what the law was always meant to do and say." *Matter of Gleason*, 96 N.Y.2d at 122. And in any event, the trial court found that Defendants engaged in actionable conduct regardless of the applicable limitations period. (*See* R. 31-32 (noting fraudulent conduct and false and misleading statements in 2017, within three-year limitations period).)

38. Defendants also are mistaken to argue that the trial court imposed liability under a fraud-by-hindsight theory. *See* July 2021 D'Angelo Affirm. ¶¶ 71-74. The trial court specifically rejected that argument, concluding that Defendants had committed fraud by engaging in conduct that was inconsistent with their past statements to investors. (R. 29.) As the court explained, "the offering documents were not misleading until the defendant engaged in conduct that contradicted them." (R. 29 (quotation marks omitted).) In any event, the evidence established that Defendants' repeated misstatements and omissions

were not limited to the contents of the offering documents and that Defendants engaged in fraudulent conduct separate and apart from any specific representations, such as using investor funds to keep NYPPEX afloat. (*See* R. 29.)

39. Defendants also are wrong to claim that federal law preempts the application of the Martin Act to Defendants' conduct. *See* July 2021 D'Angelo Affirm. ¶¶ 75-84. This Court squarely rejected such preemption arguments in *People v. Greenberg*, 95 A.D.3d 474, 479-82 (1st Dep't 2012). Defendants' attempt to distinguish the facts here from those in *Greenberg* fails because the pertinent preemption analysis is the same. *See* July 2021 D'Angelo Affirm. ¶¶ 77, 82. Here, as in *Greenberg*, there is no basis in statute, the legislative history, or case law to conclude that Congress intended to preempt the Attorney General from enforcing the Martin Act to protect the citizens of New York, preserve the integrity of the marketplace in New York, to enjoin fraudulent practices, and to direct disgorgement to deter future similar misconduct. *See Greenberg*, 95 A.D.3d at 481-82.

40. Finally, contrary to Defendants' arguments (July 2021 D'Angelo Affirm. ¶ 85), and as shown above (at ¶¶ 11-16), ample evidence in the record supported the trial court's conclusion that the Attorney General established its claims against Defendants.

5. Defendants' request for attorney's fees is meritless.

41. This Court should deny Defendants' request for attorney's fees and costs. *See* July 2021 D'Angelo Affirm. ¶ 94. The conduct of which Defendants complain does not violate the May 20, 2021, order, but instead consists of standard judgment enforcement practices, which would be unnecessary if Defendants paid the judgment or posted an undertaking. This conduct falls far short of harassing behavior that warrants attorney's fees. To the contrary, it is Defendants' scorched-earth litigation tactics—including again seeking a stay that was rejected by a prior panel—that have wasted public and court resources.

C. This Court Should Clarify the Scope of Its May 20, 2021, Order.

42. Finally, in light of Defendants' misunderstanding of this Court's prior stay and attempts to use that stay improperly to impede the Attorney General's efforts to protect and preserve the assets of defrauded investors, this Court should expressly clarify the scope of that stay. As explained above (at ¶¶ 21-26), Defendants largely justified their request for a stay with arguments that they would be irreparably harmed by the ultimate dissolution of the Fund. To prevent that purported harm, this Court entered a limited stay, "insofar as [Defendants] seek[] to stay the liquidation of defendant entities." Order at 2 (May 20, 2021).

43. This Court should clarify that its stay order—barring "the liquidation of defendant entities" (*id.*)— stayed simply the ultimate dissolution of the Fund following the sale of all (or substantially all) of its assets by the court-appointed receiver, the purported harm identified by Defendants. As explained above (at ¶¶ 21-26), Defendants did not identify irreparable harms flowing from the enforcement of the money judgment or the injunctive relief directed against Defendants, and this Court did not stay such relief. Nor did the stay prevent the receiver from taking all necessary steps to collect and preserve investor assets short of the ultimate dissolution of the Fund following the sale of all (or substantially all) of its assets.

WHEREFORE, the Attorney General respectfully requests that this Court deny Defendant's motion in its entirety and confirm that the Court's May 20, 2021, order is limited to staying the ultimate dissolution of the Fund (ACP X, LP) following the sale of all (or substantially all) of its assets by the court-appointed receiver.

Dated: New York, New York
July 16, 2021

MARK S. GRUBE

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EXHIBIT A

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

DIVISION OF STATE COUNSEL
CIVIL RECOVERIES BUREAU

(518) 776-2200
June 28, 2021

CERTIFIED MAIL
<u>RETURN RECEIPT REQUESTED</u>
People's United Bank, N.A.
Attn: Kerrie Robberstad
127 Seventh Avenue
New York, NY 10011

RE: The People of the State of New York by Letitia James, Attorney General of the State of New York v. Laurence G. Allen, et al.
Index No.: 452378/2019

Dear Sir/Madam:

Our office has obtained information indicating that the above-named judgment debtor currently has, or has had in the past, an account with your bank. Enclosed is an information subpoena with restraining notice and two copies of questions to be answered by you.

Please note that pursuant to Civil Practice Law and Rules, **the State of New York is exempt from the requirements of CPLR 5222 (h), (i) and (j) as well as the notice provisions of § 5205(l), 5230 and § 5232 (e), (f) and (g), as well as the procedure for providing forms for claims exemptions pursuant to CPLR § 5222-a.**

Answer the questions in the space provided, sign the questionnaire, have your signature notarized and return the questionnaire to this office in the envelope provided. **<u>Please return only one copy of the questions and keep the second copy for your records.</u>** You must return the completed questionnaire within seven (7) days after your receipt of the questions and subpoena.

Very truly yours,

Domenico M. Pirrotta
Assistant Attorney General

Enclosure
DMP/jo

The judgment creditor is the state of New York, or any of its agencies or municipal corporations AND/OR the debt enforced is for child support, spousal support, maintenance or alimony.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York,

Plaintiff,

-against-

LAURENCE G. ALLEN, ACP INVESTMENT GROUP, LLC, NYPPEX HOLDINGS, LLC, ACP PARTNERS X, LLC AND ACP X, LP,

Defendants,

-and-

NYPPEX, LLC, LGA CONSULTANTS, LLC, INSTITUTIONAL INTERNET VENTURES, LLC EQUITY OPPORTUNITY PARTNER, LP and INSTITUTIONAL TECHNOLOGY VENTURES, LLC,

Relief Defendants.

INFORMATION SUBPOENA WITH RESTRATINING NOTICE

Index No.: 452378/2019

The People of the State of New York

TO: PEOPLE'S UNITED BANK, N.A.
127 SEVENTH AVENUE
NEW YORK, NY 10011

RE: NYPPEX HOLDINGS, LLC

WHEREAS, in the above entitled action, **a judgment was duly entered in Supreme Court, New York County on May 4, 2021, in favor of plaintiff, The People of the State of New York, by Letitia James, Attorney General of the State of New York, and against defendant, NYPPEX HOLDINGS, LLC, for the sum of $7,871,904.87, and there is now due thereon the sum of $7,871,904.87, and the said judgment remains unsatisfied in its entirety.**

NOW, THEREFORE, WE COMMAND YOU, that you answer in writing, under oath, separately and fully, each question in the questionnaire accompanying this subpoena, each answer referring to the question to which it responds and that you return the answers together with the original of the questions within 7 days after you receive this subpoena. False answering or failure to comply with this subpoena is punishable as a CONTEMPT OF COURT.

RESTRAINING NOTICE

WHEREAS, it appears that you owe a debt to the judgment debtor or are in possession or in custody of property in which the judgment debtor has an interest;

TAKE NOTICE that pursuant to Section 5222(b) of the Civil Practice Law and Rules, which is set forth below, you are hereby forbidden to make or suffer any sale, assignment or transfer of, or any interference with any such property or pay over or otherwise dispose of any such debt except as therein provided.

THE DISOBEDIENCE OF THIS RESTRAINING NOTICE IS PUNISHABLE AS A CONTEMPT OF COURT.

DATED: Albany, New York
June 24, 2021

LETITIA JAMES
Attorney General of The State of New York

By: ______________________________
Domenico M. Pirrotta
Assistant Attorney General
Attorney for the Plaintiff
State of New York
Office of the Attorney General
The Capitol
Albany, New York 12224
Telephone: (518) 776-2200

CIVIL PRACTICE LAW AND RULES

Section 5222(b) Effect of Restraint; prohibition of transfer; duration. A judgment debtor or obligor served with a restraining notice is forbidden to make or suffer any sale, assignment, transfer or interference with any property in which he or she has an interest, except upon direction of the sheriff or pursuant to an order of the court, until the judgment or order is satisfied or vacated. A restraining notice served upon a person other than the judgment debtor or obligor is effective only if, at the time of service, he or she owes a debt to the judgment debtor or obligor or he or she is in the possession or custody of property in which he or she knows or has reason to believe the judgment debtor or obligor has an interest, or if the judgment creditor or support collection unit has stated in the notice that a specified debt is owed by the person served to the judgment debtor or obligor or that the judgment debtor or obligor has an interest in specified property in the possession or custody of the person served. All property in which the judgment debtor or obligor is known or believed to have an interest then in and thereafter coming into the possession or custody of such a person, including any specified in the notice, and all debts of such a person, including any specified in the notice, then due and thereafter coming due to the judgment debtor or obligor, shall be subject to the notice. Such a person is forbidden to make or suffer any sale, assignment or transfer of, or any interference with, any such property, or pay over or otherwise dispose of any such debt, to any person other than the sheriff or the support collection unit, except upon direction of the sheriff or pursuant to an order of the court, until the expiration of one year after the notice is served upon him or her, or until the judgment or order is satisfied or vacated, whichever event first occurs. A judgment creditor or support collection unit which has specified personal property or debt in a restraining notice shall be liable to the owner of the property or the person to whom the debt is owed, if other than the judgment debtor or obligor, for any damages sustained by reason of the restraint. If a garnishee served with a restraining notice withholds the payment of money belonging or owed to the judgment debtor or obligor in an amount equal to twice the amount due on the judgment or order, the restraining notice is not effective as to other property or money.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York,

Plaintiff,

-against-

LAURENCE G. ALLEN, ACP INVESTMENT GROUP, LLC, NYPPEXHOLDINGS, LLC, ACP PARTNERS X, LLC AND ACP X, LP,

Defendants,

-and-

NYPPEX, LLC, LGA CONSULTANTS, LLC, INSTITUTIONAL INTERNET VENTURES, LLC EQUITY OPPORTUNITY PARTNER, LP and INSTITUTIONAL TECHNOLOGY VENTURES, LLC,

Relief Defendants.

QUESTIONS AND ANSWERS IN CONNECTION WITH INFORMATION SUBPOENA WITH RESTRAINING NOTICE

Index No.: 452378/2019

To: People's United Bank, N.A.
Attn: Kerrie Robberstad
127 Seventh Avenue
New York, NY 10011

Re: NYPPEX Holdings, LLC

STATE OF ____________________)
)ss.:
COUNTY OF __________________)

________________________________, being duly sworn deposes and says; that deponent is the ____________________________________ of People's United Bank, N.A., recipient of an information subpoena herein and of the original and a copy of questions accompanying said subpoena. The answers set forth below are made from information obtained from the records of the recipient.

Q. No. 1 Do you have a record of any account in which the NYPPEX Holdings, LLC may have an interest, whether under the name of debtor, under a trade or corporate name, or in association with others, as of the date of this subpoena or within 7 year prior thereto?

A. No. 1 ☐ Yes ☐ No

Q. No. 2 As to each such account with identified in answer to question #1, what is the exact type of account (savings checking, certificates of deposit, etc.), the date opened, amounts presently on deposit, and the name of the actual account holder; if closed, the amount on deposit when closed and the date closed?

A. No. 2

Type	Account No.	Date Opened	Amount on Deposit	Date Closed

Q. No. 3 For each account identified in response to question #1, please provide copies of the last 36 available monthly statements preceding June 2021 for the account, together with (1) copies of any checks written on the account and (2) checks deposited into the account.

A. No. 3 ____

Q. No. 4 Have you placed a restraint on the account(s) identified in question # 2 in accordance with CPLR 5222(b)?

A. No. 4 ☐ Yes ☐ No

Q. No. 5 Identify by account number any accounts listed in response to question #2 above that is a qualified retirement account or is otherwise identified in your records as a retirement account.

A. No. 5 ____

Q. No. 6 If social security benefits are being deposited into any of the accounts identified in response to question #2, please indicate the account numbers for those accounts below.

A. No. 6 ____

Q. No. 7 Do you have a record of any accounts that the debtor may have with any other company, bank or financial institution?

A. No. 7 ☐ Yes ☐ No

Q. No. 8 If the answer to the foregoing is yes, state the name(s) and address(es) of the bank, company, or other financial institution where the account(s) is held, the type of account (i.e. savings, checking, annuity, certificates of deposit, etc.) the date opened, the amount originally deposited in the account and the date closed.

A. No. 8 • Name/Address: ________________________

Type	Account No.	Date Opened	Amount Deposited	Date Closed

• Name/Address: ______________________

Type	Account No.	Date Opened	Amount Deposited	Date Closed

Q. No. 9 Identify by account number any accounts listed in response to question #7 above that is a qualified retirement account or is otherwise identified in your records as a retirement account.

A. No. 9 ______________________

Q. No. 10 Do you have a record of any safe deposit box in which the judgment debtor may have an interest, whether under the name of the debtor, under a trade or corporate name, or in association with others, as of the date of the subpoena or within 1 year prior thereto?

A. No. 10 ☐ Yes ☐ No

Q. No. 11 As to each safe deposit box identified in the foregoing paragraph, state the names of the persons who have access to the box, and the date the box was originally leased from you.

A. No. 11 Name ______________________ Date __________

Q. No. 12 If the judgment debtor has had a safe deposit box in the past, state the date when the lease was terminated.

A. No. 12 ______________________

Q. No. 13 Is the judgment debtor, or any entity of business for which an account was identified in response to question #2, EITHER indebted to you or *WAS* indebted to you within the last 7 years?

A. No. 13 ☐ Yes ☐ No

Q. No. 14 As to each indebtedness identified in the foregoing paragraph, what is the amount of the original indebtedness, the date incurred, and principal amount repaid to date, and date the account, if any, was closed out?

A. No. 14

Amount	Date Incurred	Principal Amount Repaid
______	______	______
______	______	______
______	______	______

Q. No. 15 Has the judgment debtor ever submitted an application to you for credit or to open an account, either individually or on behalf of an account holder for which he is an authorized signatory on one or more account(s)?

A. No. 15 ☐ Yes ☐ No

Q. No. 16 If the answer to the foregoing is yes, what is the name and address of the person who has possession or custody of the application(s)?

A. No. 16 Name/Address: ______________________

____

____

Q. No. 17 If the response to question #14 is yes, please provide a copy of 1) any application for credit maintained in your records, and 2) any debt instrument signed by the judgment debtor himself or signed behalf of any account holder identified in response to question #2.

A. No. 17 ______________________________

Q. No. 18 Do you hold any liens against property of the debtor or any entity-account holder identified in response to question #2?

A. No. 18 ☐ Yes ☐ No

Q. No. 19 If the answer to the foregoing is yes, give a full description of the property affected by the lien (including mortgage liens), the location and identity of the office where the lien (or mortgage) is filed and the book and page reference where the lien (or mortgage) is recorded.

A. No. 19

Lien Property	Where Recorded/Filed	Book & Pg. No.
______	______	______
______	______	______
______	______	______

Q. No. 20 Do you have any other transactions with the debtor (or an entity-account holder

identified in response to question #2) directly or indirectly, as a result of which the debtor (or such entity-account holder) may now have, or may in the future become entitled to, real property, money or credit?

A. No. 20 ☐ Yes ☐ No

Q. No. 21 If the answer to the foregoing question is yes, state the nature of the transaction and describe the real property, money or credit, including the value thereof.

A. No. 21 ____
____
____
____

Q. No. 22 Has the debtor, or an entity-account holder identified in response to question #2, given you a statement of his (its) financial condition within the past 10 years?

A. No. 22 ☐ Yes ☐ No

Q. No. 23 If the answer to the foregoing question is yes, what assets are disclosed therein (or in the alternative supply a copy thereof)?

A. No. 23 ____
____
____
____

Q. No. 24 If the answer to question # 22 is yes, what is the name and address of the person who has custody or possession of the judgment debtor's statement of financial condition given to you within the last 10 years?

A. No. 24 Name/Address: ______________________________
____
____

Q. No. 25 Based upon the information in your records, what is the judgment debtors address?

A. No. 25 Address: ______________________________________

Excerpt from CPLR Section 5224(a)(3). "...Answers shall be made in writing under oath by the person upon whom served, if an individual, or by an officer, director, agent or employee having information if a corporation, partnership or sole proprietorship. Each question shall be answered separately and fully and each answer shall refer to the question to which it responds. Answers shall be returned together with the original of the questions within seven (7) days after receipt."

____
Signature

Sworn to before me this
_____ day of __________________.

____
Notary Public

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York,

Plaintiff,

-against-

LAURENCE G. ALLEN, ACP INVESTMENT GROUP, LLC, NYPPEXHOLDINGS, LLC, ACP PARTNERS X, LLC AND ACP X, LP,

Defendants,

-and-

NYPPEX, LLC, LGA CONSULTANTS, LLC, INSTITUTIONAL INTERNET VENTURES, LLC EQUITY OPPORTUNITY PARTNER, LP and INSTITUTIONAL TECHNOLOGY VENTURES, LLC,

Relief Defendants.

QUESTIONS AND ANSWERS IN CONNECTION WITH INFORMATION SUBPOENA WITH RESTRAINING NOTICE

Index No.: 452378/2019

To: People's United Bank, N.A.
Attn: Kerrie Robberstad
127 Seventh Avenue
New York, NY 10011

Re: NYPPEX Holdings, LLC

STATE OF ____________________)
)ss.:
COUNTY OF __________________)

______________________________, being duly sworn deposes and says; that deponent is the ________________________________ of People's United Bank, N.A., recipient of an information subpoena herein and of the original and a copy of questions accompanying said subpoena. The answers set forth below are made from information obtained from the records of the recipient.

Q. No. 1 Do you have a record of any account in which the NYPPEX Holdings, LLC may have an interest, whether under the name of debtor, under a trade or corporate name, or in association with others, as of the date of this subpoena or within 7 year prior thereto?

A. No. 1 ☐ Yes ☐ No

Q. No. 2 As to each such account with identified in answer to question #1, what is the exact type of account (savings checking, certificates of deposit, etc.), the date opened, amounts presently on deposit, and the name of the actual account holder; if closed, the amount on deposit when closed and the date closed?

A. No. 2

Type	Account No.	Date Opened	Amount on Deposit	Date Closed

Q. No. 3 For each account identified in response to question #1, please provide copies of the last 36 available monthly statements preceding June 2021 for the account, together with (1) copies of any checks written on the account and (2) checks deposited into the account.

A. No. 3 ______________________________

Q. No. 4 Have you placed a restraint on the account(s) identified in question # 2 in accordance with CPLR 5222(b)?

A. No. 4 ☐ Yes ☐ No

Q. No. 5 Identify by account number any accounts listed in response to question #2 above that is a qualified retirement account or is otherwise identified in your records as a retirement account.

A. No. 5 ______________________________

Q. No. 6 If social security benefits are being deposited into any of the accounts identified in response to question #2, please indicate the account numbers for those accounts below.

A. No. 6 ______________________________

Q. No. 7 Do you have a record of any accounts that the debtor may have with any other company, bank or financial institution?

A. No. 7 ☐ Yes ☐ No

Q. No. 8 If the answer to the foregoing is yes, state the name(s) and address(es) of the bank, company, or other financial institution where the account(s) is held, the type of account (i.e. savings, checking, annuity, certificates of deposit, etc.) the date opened, the amount originally deposited in the account and the date closed.

A. No. 8

- Name/Address: ______________________________

Type	Account No.	Date Opened	Amount Deposited	Date Closed

• Name/Address: ______________________

Type	Account No.	Date Opened	Amount Deposited	Date Closed

Q. No. 9 Identify by account number any accounts listed in response to question #7 above that is a qualified retirement account or is otherwise identified in your records as a retirement account.

A. No. 9 ______________________

Q. No. 10 Do you have a record of any safe deposit box in which the judgment debtor may have an interest, whether under the name of the debtor, under a trade or corporate name, or in association with others, as of the date of the subpoena or within 1 year prior thereto?

A. No. 10 ☐ Yes ☐ No

Q. No. 11 As to each safe deposit box identified in the foregoing paragraph, state the names of the persons who have access to the box, and the date the box was originally leased from you.

A. No. 11 Name ______________________ Date __________

Q. No. 12 If the judgment debtor has had a safe deposit box in the past, state the date when the lease was terminated.

A. No. 12 ______________________

Q. No. 13 Is the judgment debtor, or any entity of business for which an account was identified in response to question #2, EITHER indebted to you or *WAS* indebted to you within the last 7 years?

A. No. 13 ☐ Yes ☐ No

Q. No. 14 As to each indebtedness identified in the foregoing paragraph, what is the amount of the original indebtedness, the date incurred, and principal amount repaid to date, and date the account, if any, was closed out?

A. No. 14

Amount	Date Incurred	Principal Amount Repaid
____________	____________	____________
____________	____________	____________
____________	____________	____________

Q. No. 15 Has the judgment debtor ever submitted an application to you for credit or to open an account, either individually or on behalf of an account holder for which he is an authorized signatory on one or more account(s)?

A. No. 15 ☐ Yes ☐ No

Q. No. 16 If the answer to the foregoing is yes, what is the name and address of the person who has possession or custody of the application(s)?

A. No. 16 Name/Address: ______________________________

____

____

Q. No. 17 If the response to question #14 is yes, please provide a copy of 1) any application for credit maintained in your records, and 2) any debt instrument signed by the judgment debtor himself or signed behalf of any account holder identified in response to question #2.

A. No. 17 ____

Q. No. 18 Do you hold any liens against property of the debtor or any entity-account holder identified in response to question #2?

A. No. 18 ☐ Yes ☐ No

Q. No. 19 If the answer to the foregoing is yes, give a full description of the property affected by the lien (including mortgage liens), the location and identity of the office where the lien (or mortgage) is filed and the book and page reference where the lien (or mortgage) is recorded.

A. No. 19

Lien Property	Where Recorded/Filed	Book & Pg. No.
____________	____________	____________
____________	____________	____________
____________	____________	____________

Q. No. 20 Do you have any other transactions with the debtor (or an entity-account holder

identified in response to question #2) directly or indirectly, as a result of which the debtor (or such entity-account holder) may now have, or may in the future become entitled to, real property, money or credit?

A. No. 20 ☐ Yes ☐ No

Q. No. 21 If the answer to the foregoing question is yes, state the nature of the transaction and describe the real property, money or credit, including the value thereof.

A. No. 21 ____
____
____
____

Q. No. 22 Has the debtor, or an entity-account holder identified in response to question #2, given you a statement of his (its) financial condition within the past 10 years?

A. No. 22 ☐ Yes ☐ No

Q. No. 23 If the answer to the foregoing question is yes, what assets are disclosed therein (or in the alternative supply a copy thereof)?

A. No. 23 ____
____
____
____

Q. No. 24 If the answer to question # 22 is yes, what is the name and address of the person who has custody or possession of the judgment debtor's statement of financial condition given to you within the last 10 years?

A. No. 24 Name/Address: ____
____
____

Q. No. 25 Based upon the information in your records, what is the judgment debtors address?

A. No. 25 Address: ____

Excerpt from CPLR Section 5224(a)(3). "...Answers shall be made in writing under oath by the person upon whom served, if an individual, or by an officer, director, agent or employee having information if a corporation, partnership or sole proprietorship. Each question shall be answered separately and fully and each answer shall refer to the question to which it responds. Answers shall be returned together with the original of the questions within seven (7) days after receipt."

____
Signature

Sworn to before me this
_____ day of ____________________.

____
Notary Public

AFFIRMATION OF SERVICE

Mark S. Grube affirms upon penalty of perjury:

I am over eighteen years of age and an employee in the Office of the Attorney General of the State of New York, attorney for the Plaintiff-Respondent herein.

Pursuant to the Electronic Filing Rules of the Appellate Division (22 N.Y.C.R.R. pt. 1245), I electronically filed the accompanying Affirmation in Opposition to Emergency Interim Motion to Compel Compliance with Prior Stay and for Stay of All Proceedings Below by using the New York State Courts Electronic Filing system on July 16, 2021, and service was accomplished by that system. No litigant or attorney in the matter is exempt from e-filing.

Dated: New York, NY
July 16, 2021

Mark S. Grube

Exhibit F

FILED: APPELLATE DIVISION - 1ST DEPT 05/20/2021 08:14 AM 2020-01772
NYSCEF DOC. NO. 35 RECEIVED NYSCEF: 05/20/2021

Supreme Court of the State of New York
Appellate Division, First Judicial Department

Present – Hon. Sallie Manzanet-Daniels, Justice Presiding,
Judith J. Gische
Cynthia S. Kern
Lizbeth González
Martin Shulman, Justices.

The People of the State of New York, by Letitia James, Attorney General of the State of New York, Plaintiff-Respondent, -against- Laurence G. Allen, ACP Investment Group, LLC, NYPPEX Holdings, LLC, ACP Partners X, LLC and ACP X, LP, Defendants-Appellants, NYPPEX, LLC, LGA Consultants, LLC, Institutional Internet Ventures, LLC, Equity Opportunity Partners, LP and Institutional Technology Ventures, LLC, Relief Defendants.	Motion No. Index No. Case No.	2021-01325 452378/19 2020-01772 2020-03705 2021-00701 2021-00726 2021-00942

Appeals having been taken from orders of the Supreme Court, New York County, entered on or about February 4, 2020, on or about June 30, 2020, on or about February 4, 2021, on or about February 26, 2021, and on or about March 18, 2021, and said appeals having been perfected,

And defendants-appellants and the relief defendants having moved for leave to appeal to this Court from a status conference order, same court, entered on or about April 09, 2021, and for a stay of enforcement of the aforementioned order entered February 4, 2021, as amended by the aforementioned order entered February 26, 2021, pending hearing and determination of the appeals,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion, insofar as it seeks leave to appeal from a status conference order entered on or about April 09, 2021, is denied. The motion, insofar as it seeks to stay the liquidation of defendant entities pending the hearing and determination of the perfected appeals, is granted.

ENTERED: May 20, 2021

Susanna Molina Rojas
Clerk of the Court

Exhibit G

FILED: APPELLATE DIVISION - 1ST DEPT 08/05/2021 09:54 AM 2020-01772
NYSCEF DOC. NO. 42 RECEIVED NYSCEF: 08/05/2021

Supreme Court of the State of New York
Appellate Division, First Judicial Department

Present – Hon.	Dianne T. Renwick,	Justice Presiding,
	Cynthia S. Kern	
	Jeffrey K. Oing	
	Peter H. Moulton	
	Manuel J. Mendez,	Justices.

The People of the State of New York, by Letitia James, Attorney General of the State of New York,
Plaintiff-Respondent,

-against-

Laurence G. Allen, ACP Investment Group, LLC, NYPPEX Holdings, LLC, ACP Partners X, LLC, and ACP X, LP,
Defendants-Appellants,

NYPPEX, LLC, LGA Consultants, LLC, Institutional Internet Ventures, LLC, Equity Opportunity Partners, LP and Institutional Technology Ventures, LLC,
Relief Defendants.

Motion No. **2021-02280**
Index No. 452378/2019
Case Nos. 2020-01772
2020-03705
2021-00701
2021-00726
2021-00942

Appeals having been taken to this Court from orders of the Supreme Court, New York County, entered on or about February 04, 2020, on or about June 30, 2020, on or about February 4, 2021, on or about February 26, 2021, and on or about March 18, 2021, and said appeals having been perfected,

And defendants-appellants having moved for an order (a) compelling plaintiff-respondent to comply with the stay of the liquidation of defendant entities pending appeal, granted by order of this Court entered May 20, 2021 , (M-2021-01325), (b) directing the immediate stay and return of all monies levied upon from defendants-appellants' bank accounts at People's Bank; and (c) staying all proceedings in the trial court pending the determination of the appeal, including but not limited to any execution or enforcement of the judgment, same court, entered May 4, 2021,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of directing that the defendant-entities be returned to their status as of May 20, 2021, and clarifying that this Court's prior stay order (M-2021-01325) included a stay of the liquidation of the funds and/or the assets held by defendant entities pending the hearing and determination of the aforementioned appeals.

ENTERED: August 05, 2021

Susanna Molina Rojas
Clerk of the Court

AFFIRMATION AND PROOF OF SERVICE

Massimo F. D'Angelo, affirms upon penalty of perjury:

I am over eighteen years of age and a partner at Akerman LLP, attorney for the Defendants-Appellants herein. On January 20, 2022, I served a copy of the foregoing document to Mark S. Grube, counsel of record for the Appellee, via email and U.S. mail at the following address:

Mark. S. Grube
Assistant Solicitor General
New York State Office of the Attorney General
28 Liberty St.
New York, New York 10005
(212) 416-8028
Mark.Grube@ag.ny.gov

Dated: January 20, 2022
New York, NY

Massimo F. D'Angelo