

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

-----X
SURF HORIZON LIMITED,
A Cyprus Special Purpose Corporation
332 Patrician Chambers
3035 Limassol, Cyprus

Plaintiff,

v.

PAUL J. MANAFORT, JR.,
10 St. James Place
Palm Beach Gardens, FL 33418

and

RICHARD W. GATES, III
206 Virginia Avenue
Richmond, Virginia 23226,

Defendants,

and

PERICLES EMERGING MARKET PARTNERS,
L.P
c/o Alexander Lawson and Kris Beighton
KPMG
Century Yard
Cricket Square
Grand Cayman KY1-1106
Cayman Islands,

Nominal Defendant.
-----X

Index No.: _____

SUMMONS

Venue is based on Defendants' Consent
Expressed in Written Agreement

TO THE ABOVE NAMED DEFENDANTS:

You are hereby summoned to answer the complaint in this action and to serve a copy of
your answer, or, if the complaint is not served with this Summons, to serve a Notice of
Appearance, on plaintiff's attorneys within twenty (20) days after the service of this summons,

exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
January 10, 2018

BRYAN CAVE LLP

By: /s/ James M. Altman
James M. Altman
1290 Avenue of the Americas
New York, New York 10104
(212) 541-2000
Attorneys for Plaintiff Surf Horizon Limited

To: PAUL J. MANAFORT, JR.,
10 St. James Place
Palm Beach Gardens, FL 33418

RICHARD W. GATES, III
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Richmond, Virginia 23226

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COMPLAINT

Plaintiff Surf Horizon Limited ("Plaintiff" or "Surf"), by its attorneys, Bryan Cave LLP,
for its complaint against Paul J. Manafort, Jr. ("Manafort") and Richard W. Gates, III ("Gates"),

the defendants in the above-entitled lawsuit (collectively, “Defendants”), and Pericles Emerging Market Partners, L.P. (the “Partnership”), a nominal defendant, hereby alleges as follows:

INTRODUCTION

1. The two defendant fiduciaries – Manafort and Gates – vanished more than \$18.9 million invested by plaintiff Surf in a purchase they recommended of Ukrainian cable and internet companies (collectively, “Black Sea Cable”). Based on the Defendants’ representations that as investment advisers and managers they would “pursue investments that leverage [their] business and political relationships” in Ukraine, Surf provided the Defendants with \$18.9 million in a single capital contribution to purchase the stock and assets of Black Sea Cable. Both Manafort and Gates testified under oath in the fall of 2015 that they did not know whether Surf still owned any interest in Black Sea Cable, even though Surf and its predecessor paid one of their *alter ego* companies \$7.35 million in management fees to, among other things, manage the investment.

2. More than \$26 million dollars was gone and the target of Surf’s investment was lost, but Manafort and Davis could not explain what had happened. Under oath in depositions, both testified vaguely in federal court proceedings that Black Sea Cable had borrowed money from a Ukrainian bank, which foreclosed upon a pledge of stock in the company, which had been pledged by local company managers over whom Manafort and Gates exercised no management control or supervision. In response to a federal court subpoena, neither Manafort, nor Gates, provided any documents showing how Surf’s \$26 million actually had been spent or what happened to its investment. Indeed, during their depositions they testified falsely that they did not possess or have any control over such documents. Thus, it was not until May 2017, when Surf’s affiliate, Adoptol Limited (“Adoptol”), brought a legal proceeding in Cyprus to obtain banking and other corporate documents from the local agent of Defendants’ Cyprus companies –

documents that the Defendants previously had refused to provide, even though they controlled the holder of those documents – that Surf had proof that Defendants fraudulently and in breach of their fiduciary duties, had siphoned for themselves millions of dollars Surf had paid to Defendants’ *alter ego* companies.

3. The Black Sea Cable investment (the “Investment”) was the sole investment of the Partnership, a Cayman Islands limited partnership. Surf was its sole limited partner. Defendants Manafort and Gates were the *alter egos* of the Partnership’s sole general partner, Pericles Emerging Market Investors, L.P. (“Pericles GP”) and the Partnership’s investment manager, Pericles Emerging Market Managers, L.P. (“Pericles Managers”) and were two of the three members of the Partnership’s investment committee. In this lawsuit, Surf seeks compensatory damages for the loss suffered in an amount to be determined at trial as a result of the Defendants’ fraud, gross negligence, blatant disloyalty, and rapacious self-dealing, plus punitive damages in the amount of \$25 million.

THE PARTIES

4. Plaintiff Surf Horizon Limited is a corporation organized under the laws of Cyprus. It is the investment vehicle created and used by a Moscow-based investment company, B-Invest Limited, to provide funding for participation in the nominal defendant Partnership, a limited partnership organized and promoted by the Defendants. Surf became a limited partner of the Partnership after taking an assignment of the subscription from a sister company known as Altimax Investments Limited (“Altimax”) in November 2007. It brings this action on its own behalf and derivatively on behalf of the Partnership.

5. Defendant Manafort is a U.S. citizen who maintains residences in Alexandria, Virginia, Palm Beach Gardens, Florida, and in Southampton, New York. Manafort also

maintains a residence in the Trump Tower, 725 Fifth Avenue, New York, New York. Upon information and belief, Manafort is an *alter ego* of Pericles GP and Pericles Managers.

6. Defendant Gates is a U.S. citizen who resides or may be found at 206 Virginia Avenue, Richmond, Virginia 23226. Upon information and belief, Gates is an *alter ego* of Pericles GP and Pericles Managers.

7. Nominal defendant Pericles Emerging Market Partners, L.P., the Partnership, was organized under the laws of the Cayman Islands in 2007. It consisted of a sole limited partner, Plaintiff Surf, and a general partner, Pericles GP. The Partnership is subject to the Winding Up Order entered by the Grand Court of the Cayman Islands on December 29, 2014. (A copy of the Winding Up Order is attached as Exhibit 1.) The Winding Up Order appointed liquidators, known as the Joint Official Liquidators (“JOLs”), to act with the purpose, among other things, to “take possession of, collect and get in the property of the Partnership.” In Count III, below, Surf asserts a claim against Manafort and Gates derivatively on behalf of the Partnership. As set forth in paragraphs 115-117, below, it has done so without making a demand that the general partner, Pericles GP and/or the Partnership sue Manafort and Gates, because such demands would be futile.

8. Pericles GP, the general partner of the Partnership, was an exempted limited partnership under Cayman law that dissolved after being struck off the Cayman Register on October 31, 2014. (Ex. 1, Winding Up Order, at 1). Consequently, Pericles GP no longer has “authority or power to act in relation to the Partnership” except as directed by the JOLs. (Ex. 1, Winding Up Order, at 2-3). Upon information and belief, at all times relevant before the Winding Up Order, Pericles GP was under the sole and absolute control of Manafort and Gates. Pericles GP was struck off the Cayman Island Registry and dissolved as a result of the failure of Manafort and Gates to maintain the required registration. Manafort and Gates used their

domination of Pericles GP to defraud Surf and to breach their fiduciary duty of loyalty to Surf by self-dealing, among other things. Upon information and belief, Pericles GP was the *alter ego* of Manafort and Gates.

9. Pericles Managers, an affiliate of Pericles GP, was the investment manager of the Partnership and functioned as its day-to-day operator. Pericles Managers was a limited partnership organized under Delaware law that was cancelled and/or voided for failure to pay taxes. (See Ex. 1, Winding Up Order, at 1). Upon information and belief, Pericles Managers failed to pay taxes because Manafort and Gates neglected their management duties. Upon information and belief, at all times relevant, Pericles Managers was under the sole and absolute control of Manafort and Gates. Manafort and Gates used their domination of Pericles Managers to defraud Surf and to breach their fiduciary duty of loyalty to Surf by self-dealing, among other things. Upon information and belief, Pericles Managers was the *alter ego* of Manafort and Gates.

10. An investment committee of Pericles Managers – initially consisting of Defendants and non-party Richard H. Davis – was “responsible for approving all investment decisions for the Partnership.” This description, and the identity of the individuals with responsibility, was made in an Offering Memorandum given to Surf by Defendants prior to the making of the Black Sea Cable investment. (A copy of the Offering Memorandum, including its March 20, 2007 Supplement, is attached as Exhibit 2.)

11. PEM Advisors Ltd. (“PEM Advisors”) was an entity organized under the laws of Cyprus and was related to and under the control of the other Pericles-named entities. Upon information and belief, it has been dissolved. Upon information and belief, PEM Advisors was a special purpose investment vehicle established and controlled by Pericles GP and/or Pericles Managers. PEM Advisors received \$18,938,400 from Surf to fund the Investment. The PEM

Advisors bank account into which that money was deposited is now closed. Coupled with their domination of Pericles GP and Pericles Managers, Manafort and Gates used their domination of PEM Advisors to defraud Surf and steal money from it. Upon information and belief, PEM Advisors was the *alter ego* of Manafort and Gates.

12. Non-party Richard H. Davis ("Davis") is currently the Chief Operating Officer of Pegasus Capital Advisors, LP, an investment advisory group with an office at 850 Third Avenue, New York City, that maintained a strategic relationship with Pericles Managers. Davis was a business associate of Defendants and was involved in the establishment of the Partnership and the initial planning stages of the Investment. He participated directly in the original solicitation of funds for the Partnership. He became less involved in the Partnership after July 2007, when his overt involvement in the affairs of the Partnership appeared to diminish.

JURISDICTION, VENUE, AND GOVERNING LAW

13. Pursuant to Section 10.8 of the Amended and Restated Limited Partnership Agreement, dated as of July 1, 2008 (the "Partnership Agreement"), through their *alter ego*, Pericles GP, Defendants agreed that the claims alleged against them in this complaint, which arise from their fraud, gross negligence, and intentional misconduct in connection with the affairs of the Partnership in violation of Section 4.3 of the Partnership Agreement, would be governed and construed in accordance with the laws of New York and could be brought in New York courts, and they consented to the jurisdiction of New York courts. (A copy of the Partnership Agreement is attached as Exhibit 3).

THE PARTNERSHIP INVESTMENT IN BLACK SEA CABLE

14. The Investment arose from the idea developed by Defendants and Davis that they had, through their political consulting work, become experts on business and the economies of many other countries, including specifically those in Eastern Europe. They embarked on a plan

to profit from finding and managing investments for others in those locations, such as the Ukraine.

15. The Partnership was created in March 2007 with the long-term goal of generating revenue from private equity investments. The Offering Memorandum stated that the Partnership was being “formed to generate significant long-term capital appreciation by making private equity investments in Ukraine, Russia, other countries within the Commonwealth of Independent States (“CIS”), Montenegro, and eastern and southern Europe.” (Ex. 2, Offering Memorandum, at 1.) The Offering Memorandum represented that Manafort and Davis had a “successful record of business transactions both internationally and domestically” and touted their experience in political campaigns “at the highest level.” (Ex. 2, Offering Memorandum, at 2.) In fact, they had no substantial business experience abroad prior to that time.

16. Initially, the Partnership consisted of Pericles GP and one limited partner, Altimax. On April 11, 2007, in response to a call for a capital contribution, Altimax paid \$2 million as a management fee for the Partnership.

17. Surf was incorporated in July 2007. Altimax assigned its limited partnership interest in the Partnership to Surf in November 2007. Surf also paid management fees to the Partnership pursuant to calls for capital contributions from Pericles GP (\$2 million on November 16, 2007, \$2 million on March 28, 2008, and \$1,350,000 on July 31, 2008), bringing to \$7,350,000 the total management fees paid by Surf and its predecessor.

18. After Altimax assigned its interest in the Partnership to Surf, the Partnership Agreement was executed by Pericles GP and Surf on or about July 1, 2008. Manafort signed the Partnership Agreement on behalf of Pericles GP.

19. Under the Partnership Agreement, all “management, operation and policy of the Partnership” was vested “exclusively” in Pericles GP. (See Ex. 3, Partnership Agreement,

Article IV.) Pericles GP was obligated under the Partnership Agreement, among other things, to maintain the books and records of the Partnership and to provide reports to the partners, including financial statements. As the general partner of the Partnership, Pericles GP owed a fiduciary duty to Surf, the sole limited partner of the Partnership.

20. The Partnership Agreement stated that the Partnership would have a term of eight years after closing, a period which could be extended at the discretion of Pericles GP. The closing occurred as of July 1, 2008, when Surf and Pericles GP signed the Partnership Agreement. Thus, the term of the Partnership was expected to end on July 1, 2016.

21. Under the Partnership Agreement, Surf, as a limited partner, had “no ... right or power to participate in the management or affairs of the Partnership.” (See Ex. 3, Partnership Agreement, Article 5.1(a).)

22. In November 2007, Gates (working collaboratively with Manafort) provided Surf a “Fund Plan” that described various investment options for the Partnership. One such option was the proposed acquisition of Black Sea Cable (several Ukrainian cable and internet companies, collectively known, in Ukrainian as Чорне Море, or in English as “Black Sea”).

23. The Plan proposed by the Defendants called for the Partnership to acquire the Ukrainian entities through two Cypriot companies that, upon information and belief, were solely and absolutely controlled by Manafort and Gates. According to the Plan, the two Cypriot companies were to hold Black Sea Cable and related entities until closing, at which time they would be placed in trust with attorneys. The purported purpose of this structure was to capture tax benefits and to maintain the smooth operation of Black Sea Cable until regulatory licenses could be switched over.

24. The documents drafted to purchase Black Sea Cable called for EVO Holdings Limited (“EVO Holdings”), a Cyprus entity controlled by PEM Advisors, to pay the Purchase

Price. By notice dated March 26, 2008, PEM Advisors made a call for a capital contribution of \$18,938,400 upon Surf to fund the purchase of Black Sea Cable. The notice of that capital call was sent to Surf by Gates. (A copy of that Capital Contribution Notice is attached as Exhibit 4.)

25. On or about April 15, 2008, Surf paid \$18,938,400 to PEM Advisors in order to fund the acquisition of Black Sea Cable by the Partnership. Surf's payment was then supposed to be transferred to EVO Holdings to execute the transaction. Roughly a week later, \$17,804,160 was paid to a Ukrainian individual, Andrey Vityukov, as the purchase price to complete the transaction.

26. Although Surf did not know it at the time it responded to the capital call and paid the \$18,938,400, the amount of the capital call to Surf exceeded the purchase price of Black Sea Cable by approximately \$1.1 million. That difference was not paid to Mr. Vityukov or to EVO Holdings. Surf was never advised by Defendants or their *alter egos*, Pericles GP, Pericles Managers, or PEM Advisors, that there was a differential between the amount of the capital call and the amount of the purchase price of Black Sea Cable.

27. Surf did not know about the difference until April 15, 2015, when the JOLs issued their First Report. It was only in May 2017, after Adoptol obtained documents from Defendants' Cyprus agent as the result of legal proceedings, *see* paragraphs 49-51, below, that Surf obtained documents showing that of the approximately \$1.1 million differential, approximately \$500,000 was paid to Manafort or a company he owned (Davis Manafort Inc.) and approximately \$425,000 was paid to Gates or companies he owned. In essence, Defendants had taken for themselves personally more than \$900,000 of the \$18.9 million Surf paid to purchase Black Sea Cable, blatant self-dealing by fiduciaries.

28. Moreover, at the time of the March 26, 2008 capital call, upon information and belief, Defendants knew that the purchase price of Black Sea Cable was approximately \$1.1

million less than the amount of the capital call. By calling for Surf to pay more than \$1.1 million more than the purchase price of Black Sea Cable, Defendants intended to, and did, defraud Surf of approximately \$1.1 million.

29. On April 23, 2008, Gates represented to Surf that Black Sea Cable had been acquired. Representatives of Surf visited the Ukraine in July 2008 to meet with Gates, who provided a tour of the PEM Advisors office and one of the purported offices of Black Sea Cable.

30. During the next several years, Surf communicated with Defendants about the status of Black Sea Cable. Because of the world financial crisis that began in late 2008, Surf conveyed its recommendation to Pericles GP and PEM Advisors that Black Sea Cable be sold or that Surf's position be bought out by another party. Defendants represented that they agreed with this strategy. Indeed, Manafort made several presentations to Surf in 2009 and 2010 explaining the status of Black Sea Cable and purported to be seeking to sell Black Sea Cable or to find another party to take over Surf's investment for consideration.

31. Upon information and belief, Manafort and Gates took no steps to find a buyer for Black Sea Cable or for Surf's investor interest. Between April 2008 and the day in 2010 when the Partnership ceased to own Black Sea Cable, Manafort and Gates, along with their *alter egos* Pericles GP and Pericles Managers, failed to oversee the management of Black Sea Cable, which was left entirely to its local Ukrainian management employees.

32. Gates also represented to Surf on or about September 17, 2010 that an audit of the Partnership was being conducted. Nevertheless, despite repeated requests by Surf, no audit report of the Partnership was ever provided to Surf. Upon information and belief, Gates was intending to, and did, deceive Surf into believing that an audit of the Partnership was being done and would be provided to Surf.

33. After 2010, Surf repeatedly made inquiries of Manafort and Gates for additional updates on the status of the Investment. The last substantive reply from the Defendants was an email received on June 2, 2011, in which Gates falsely stated that efforts to sell Black Sea Cable were still underway. Upon information and belief, Gates was intending to, and did, deceive Surf into believing that the Partnership still owned Black Sea Cable, when, in fact, the Partnership already had lost its ownership of Black Sea Cable.

THE INVESTIGATION AND DISCOVERY OF LOSS

34. On December 4, 2014, Surf filed a petition in the Grand Court of the Cayman Islands for the liquidation of the Partnership on the grounds that the affairs of the Partnership were not being conducted satisfactorily.

35. By Order entered by the Grand Court of the Cayman Islands on December 29, 2014, in accordance with the Companies Winding Up Rules of the Cayman Islands, the JOLs were appointed to control the affairs of the Partnership. Specifically, the JOLs were instructed to ascertain the facts of the Investment. The JOLs were further instructed to determine if any claims on behalf of the Partnership existed. Alexander Lawson and Kris Beighton, of the accounting firm of KPMG in Grand Cayman, were appointed to be the JOLs.

36. Subsequently, the JOLs undertook to investigate the circumstances and facts surrounding the Investment. In the course of that investigation, the JOLs contacted, among others, Manafort, Gates and Davis seeking information and documents about Black Sea Cable and its current status.

37. The investigation by the JOLs was hampered and delayed by a lack of cooperation from Manafort, Gates, and Davis. Manafort and Davis did not respond to the JOLs' inquiries. Gates informed the JOLs that he had instructed a Cyprus lawyer to provide to the JOLs documents and information on the Black Sea Cable investment, but only a limited amount

of information was actually produced, and the material was incomplete and sometimes inaccurate.

38. On April 15, 2015, the JOLs made a First Report to Surf on their findings in draft form (the “First Report”). The key finding of the JOLs was that Black Sea Cable appeared to be owned now by a third party with no connection to the Partnership. The JOLs found public records in Ukraine indicating a transfer of ownership in 2010 to the third party. The JOLs’ First Report states that “there is no evidence of beneficial flow of funds to the Partnership in respect of consideration for the onward sale of” Black Sea Cable.

39. Until receiving the First Report from the JOLs, Surf had no knowledge that Black Sea Cable had been sold or transferred to another party. The Defendants did not report to Surf on the change of ownership or the terms thereof. Instead, the Defendants continued to state that they were seeking a buyer for Black Sea Cable and/or someone to take over Surf’s interest in the Investment. By their false statements, Defendants intended to, and did, conceal from Surf the true status of the Investment.

40. The JOLs further stated in the First Report, after attempting to obtain information from Defendant Gates, that “management had no control over the asset and therefore were not involved in the subsequent sale of Black Sea Cable. There was no active management of this investment and insufficient administration and supervision of the Partnership.”

THE APPLICATION IN FEDERAL COURT

41. On August 12, 2015, the JOLs filed an Application for Assistance Pursuant to 28 U.S.C. § 1782 (the “Application”) in the United States District Court for the Eastern District of Virginia. The Application sought production of documents and depositions from Manafort, Gates and Davis, individually, related to the Partnership and the Investment.

42. The Application was filed by the JOLs because Manafort and Davis had ignored their requests for documents and information up to that point, and the subpoena power of a U.S. court was necessary to obtain their responses. In the case of Gates, the subpoena power was necessary to ascertain whether he had made complete disclosure and also to get his testimony recorded and under oath.

43. The federal court entered an Order on August 19, 2015, granting the JOLs’ Application. Thereafter, subpoenas for the production of documents and for deposition testimony were served on Manafort, Gates and Davis.

44. The deposition of Gates was taken on November 16, 2015, and then adjourned to be completed on December 2, 2015. Davis was deposed on November 30, 2015. Manafort was deposed on December 16, 2015. In connection with the depositions, two document productions were made, purporting to be a joint response from the three deponents.

45. In producing documents and providing deposition testimony, Manafort and Gates, through their lawyers, insisted that their testimony and documents were confidential and “shall not be used” for any other purpose. Surf resisted this conditional response, but it was not until February 18, 2016, that counsel for Manafort and Gates agreed to remove restrictions on “the disclosure and use of the documents and testimony.”

46. Based on evidence later discovered by Surf through the legal proceedings brought in Cyprus by its affiliate, Adoptol, *see* paragraphs 49-51, below, the documents and testimony

provided by the Defendants were simply a continuation of the deception practiced by the Defendants with respect to the Investment. For example, virtually none of the bank records of the Partnership were produced. Manafort and Gates testified under oath that the lawyer who acted as agent with custody of the bank records for the Partnership-related Cyprus corporations was not their agent or the agent of the Partnership and that they lacked control over him and the Partnership-related documents in his files.

47. In fact, however, the statements made by Manafort and Gates about the lawyer in Cyprus and the files of the Partnership were false. In May 2017, as the result of a legal proceeding commenced in Cyprus by Surf's affiliate, Adoptol, certain records of the Partnership were obtained. *See* paragraphs 49-51, below. Those records revealed that Manafort and Gates had withheld the true status of the Partnership Investment and lied under oath in the depositions. For example, Manafort and Gates had in fact retained the lawyer in Cyprus as an agent and had always directed his activity. It was through him and a company under his direction that the Defendants managed the bank accounts of the Cypriot companies related to the Investment.

48. The records of the Partnership and its related entities that were obtained in May 2017 provided proof for the first time that Manafort and Gates had defrauded Surf when, in April 2008, PEM Advisors issued its capital call to Surf for \$18.9 million for the Investment. Surf never agreed to pay Defendants nearly \$1 million of that \$18.9 million capital call, especially since Surf (and its predecessor, Altimax) already had paid management fees in the amount of \$7.35 million. Further, as the JOLs had discovered, neither Defendants, nor any Partnership entity, supervised or managed the ownership and operation of Black Sea Cable.

THE ADOPTOL LEGAL PROCEEDINGS IN CYPRUS

49. In or about April 2017, a proceeding was brought by Adoptol Limited, a corporation incorporated in Belize, against Inter Jura Cy (Services) Limited (“Inter Jura”), a Cyprus company with its principal office in Nicosia, Cyprus, in the District Court of Nicosia, Cyprus, entitled *Adoptol Limited v. Inter Jura (Services) Limited*, Action No. 1959/2017, seeking, among other things, certain bank records and corporate documents relating to the Investment.

50. Inter Jura provides corporate services, including secretarial services, to companies, including PEM Advisors and other Cypriot companies involved with the Investment, such as EVO Holdings. Under the direction of a local lawyer, Inter Jura acted as a corporate agent for PEM Advisors and EVO Holdings and maintained its bank and corporate records. During the federal court depositions resulting from the Application, Manafort and Gates testified that they had not retained a local lawyer or agent and that they did not have any authority or control over the documents in the possession of the local agent.

51. On or about May 3, 2017, the Cypriot court ordered Inter Jura to turn over bank records and corporate documents for PEM Advisors and EVO Holdings and other Cypriot companies related to the Investment. Subsequently, those bank records and corporate documents were turned over to Adoptol and ultimately were shared with Surf and its counsel.

52. For the first time, Surf received bank and corporate records that documented the distribution of the \$18.9 million that Surf had paid to PEM Advisors pursuant to the March 2008 capital call. Those records showed that of the \$1.1 million that did not get paid for the purchase price of Black Sea Cable, approximately \$500,000 was paid to Manafort’s firm, Davis & Manafort, and approximately \$425,000 was paid to Gates. This was the first time that Surf had proof that Manafort and Gates had breached their fiduciary duty and defrauded it by self-dealing.

53. The bank and corporate records further documented that Manafort and Gates had used Cyprus corporations that they solely and absolutely controlled, such as PEM Advisors, LOAV Advisors Ltd., EVO Holdings, and Yiakora Ventures Ltd., as their personal piggy banks, moving funds in and out constantly, without any apparent business reason, but ultimately making payments of millions of dollars to them individually or to their personal vendors or creditors.

54. With this proof that Manafort and Davis had defrauded them of more than \$900,000, and the pattern and practice of moving money among and from these Cypriot corporations to themselves and their personal vendors and creditors, Surf came to believe that Manafort and Davis had used their domination over Pericles GP and Pericles Managers, just as they had used their domination over PEM Advisors and EVO Holdings, to wrong Surf. Surf realized that Pericles GP, Pericles Managers, PEM Advisors and EVO Holdings were all *alter egos* of Manafort and Davis.

THE INDICTMENT

55. The unsealing of the recent criminal indictment of Manafort and Gates in *United States v. Paul J. Manafort, Jr., and Richard W. Gates III*, 17-CR-00201-ABJ (D.D.C.), provided further support for Surf's realization that Manafort and Gates had used Pericles GP, Pericles Managers, PEM Advisors and EVO Holdings as *alter egos* to wrong Surf. That Indictment was unsealed on October 30, 2017. (A copy of the Indictment is attached as Exhibit 5.)

56. The Indictment alleges, among other things, a conspiracy against the United States and a conspiracy to launder money. Manafort and Gates are accused of devising "a scheme and artifice to defraud, and to obtain money and property by means of false and fraudulent pretenses, representations, and promises from the United States, banks and *other* financial institutions. As part of the scheme, Manafort and Gates repeatedly provided false

information to financial bookkeepers, tax accountants, and legal counsel, among others.” (Ex. 5, Indictment, ¶ 14 (emphasis added).)

57. Significantly, the Indictment confirms that the scheme of Manafort and Gates occurred “[b]etween in and around 2008 and 2017” (Ex. 5, Indictment, ¶ 14), and that they “hid the existence of the foreign companies and bank accounts.” (Ex. 5, Indictment, ¶ 2.) The indictment provides detail regarding the movement of funds from bank accounts in Cyprus to accounts in the United States controlled by Manafort and Gates.

58. The dealings of Manafort and Gates with Surf mirror the pattern of corporate dealings alleged in the Indictment. The Indictment supports Surf’s belief that Manafort and Gates have used Pericles GP, Pericles Managers, PEM Advisors, and EVO Holdings as their *alter egos* to wrong Surf and to benefit themselves individually.

COUNT I

FRAUD

59. Surf incorporates paragraphs 1-58, the same as if fully pleaded.

60. In connection with the Investment, Defendants Manafort and Gates fraudulently induced Surf to make a capital contribution of \$18,938,400 to purchase Black Sea Cable, when the actual purchase price to acquire Black Sea Cable was \$17,804,160, so that Defendants could personally profit by more than \$1.1 million.

61. In the months of March and April 2008, Manafort and Gates and their *alter egos*, Pericles GP, Pericles Managers, and PEM Advisors, owed a fiduciary duty to Surf.

62. On or about March 26, 2008, Gates sent to Surf a notice of a capital contribution call relating to the purchase of Black Sea Cable. (*See* Ex. 4, Capital Contribution Notice.)

63. The capital amount requested, \$18,938,400, was represented by Manafort and Gates and their *alter ego*, PEM Advisors, to be the purchase price of the Investment.

64. In fact, the purchase price of the Investment was not \$18,938,400, but \$17,804,160.

65. Upon information and belief, at the time that representation was made, Manafort and Gates knew that the purchase price of the Investment was not \$18,938,400, but \$17,804,160.

66. Upon information and belief, the false representation by Manafort and Gates and their *alter ego*, PEM Advisors, about the purchase price of the Investment was intended to deceive Surf into believing that the purchase price of the Investment was \$18,938,400, so that they personally could profit by the approximately \$1.1 million difference.

67. Manafort and Gates did personally profit by the approximately \$1.1 million difference. Of that approximately \$1.1 million difference, approximately \$500,000 was paid to Davis Manafort Inc., a corporation owned by Manafort, and approximately \$425,000 was paid to Gates or companies owned by him.

68. On or about April 15, 2008, Surf paid \$18,938,400 to the bank account of PEM Advisors, as requested in the March 26, 2008 capital call.

69. Surf paid that amount based upon the request by Manafort and Gates through their *alter ego*, PEM Advisors.

70. Surf's reliance upon the Defendants' representation that \$18,938,400 was the purchase price of the Investment was reasonable.

71. Surf would not have paid PEM Advisors \$18,938,400 in response to the March 26 capital call if it had known that the purchase price of Black Sea Cable was \$17,804,160.

72. Surf would not have paid PEM Advisors \$18,938,400 in response to the March 26 capital call if it had known that, of that amount, more than \$1.1 million was not necessary to purchase the Investment.

73. Surf would not have paid PEM Advisors \$18,938,400 in response to the March 26 capital call if it had known that Manafort personally would receive more than \$500,000 of that \$1.1 million differential and that Gates personally would receive more than \$425,000 of that \$1.1 million differential.

74. As the result of the affirmative misrepresentation of the purchase price of Black Sea Cable by Manafort and Gates, through their *alter ego*, PEM Advisors, Manafort and Gates fraudulently induced Surf into making a payment to PEM Advisors, as a capital contribution, that was more than \$1.1 million than the actual purchase price of Black Sea Cable, so that Defendants could profit personally from that more than \$1.1 million differential.

75. As the result of that fraudulent inducement, Surf suffered a loss of more than \$1.1 million.

COUNT II

FRAUDULENT CONCEALMENT

76. Surf incorporates paragraphs 1-58 and 60-75, the same as if fully pleaded.

77. As fiduciaries, Manafort and Gates owed a fiduciary duty to Surf to disclose to Surf material information about the Investment.

78. In violation of their fiduciary duty, Manafort and Gates engaged in a concerted effort to fraudulently conceal, by affirmative misrepresentations and deliberate omissions, the actual purchase price of the Investment and the fact that the Investment had been lost completely.

79. Manafort and Gates failed to respond to Surf's numerous requests after 2011 about the status of the Investment.

80. Gates stated to Surf on or about September 17, 2010, that an audit of PEM Advisors for the year of 2010 was underway.

81. No such audit of PEM Advisors was ever provided to Surf.

82. Upon information and belief, no such audit of PEM Advisors was ever undertaken.

83. Upon information and belief, when Gates made that statement to Surf about the 2010 audit of PEM Advisors, his statement was false and he knew it.

84. Upon information and belief, Gates made that statement about the 2010 audit of PEM Advisors in order to deceive Surf into continuing to believe that the purchase price of the Investment was \$18,938,400 and to conceal that Manafort and Gates had personally profited in the amount of approximately \$1 million from Surf's payment of the \$1.1 million differential.

85. Initially, Surf relied upon Gates' statement about the 2010 audit of PEM Advisors and took no legal action to obtain PEM Advisors' corporate records.

86. Such reliance was reasonable, since Gates owed Surf a fiduciary duty to report about the status of the Investment truthfully and honestly.

87. Surf never received that 2010 audit, but it did not have proof that such an audit was never done until May 2017, when Adoptol gained access to PEM Advisors' corporate records held by Inter Jura.

88. On or about June 2, 2011, Gates sent Surf an email in which he stated that Defendants were engaged in efforts to sell Black Sea Cable.

89. In fact, on or about June 2, 2011, Defendants were not engaged in efforts to sell Black Sea Cable.

90. During 2011, the Partnership did not own Black Sea Cable. The Partnership had lost any ownership interest in Black Sea Cable in or about the fall of 2010.

91. Gates' June 2, 2011 email about Defendants' efforts to sell Black Sea Cable was false.

92. Upon information and belief, Gates knew that his June 2, 2011 email was false.

93. Upon information and belief, Gates stated in his June 2, 2011 email that Defendants were engaged in efforts to sell Black Sea Cable in order to deceive Surf into believing that the Partnership still owned Black Sea Cable.

94. Upon information and belief, Gates stated in his June 2, 2011 email that Defendants were engaged in efforts to sell Black Sea Cable in order to conceal from Surf the Defendants' gross negligence in supervising and managing the Partnership's Investment.

95. Initially, Surf relied upon Gates' statement in his June 2, 2011 email that Defendants were engaged in efforts to sell Black Sea Cable.

96. Such reliance was reasonable, since Gates owed Surf a fiduciary duty.

97. Surf did not get documents that disproved Gates' statement in his June 2, 2011 email until April 15, 2015, when the JOLs' First Report disclosed that the Partnership did not own Black Sea Cable.

98. During their depositions in the fall of 2015, both Manafort and Gates failed to produce to the JOLs and their counsel documents of their Cyprus companies that were held by Inter Jura that showed that Defendants had fraudulently induced Surf to contribute to PEM Advisors approximately \$1.1 million more than the actual purchase price of Black Sea Cable.

99. Manafort and Gates had retained Inter Jura to maintain the banking and corporate records of PEM Advisors and other Cyprus companies dominated by Defendants that were involved with the Investment.

100. In the fall of 2015, Manafort and Gates had the authority and control to obtain those documents from Inter Jura.

101. In 2015, Manafort and Gates owed a fiduciary duty to Surf and to the Partnership and, therefore, to the JOLs to turn over those documents to the JOLs, but they refused to do so,

both when the JOLs asked informally before April 15, 2015, and after the JOLs had issued federal court subpoenas to them in the fall of 2015.

102. Upon information and belief, Manafort and Gates refused to produce those documents, because they sought to conceal their fraudulent inducement of Surf in connection with the March 26 capital call and their self-dealing in breach of the fiduciary duty they owed to Surf.

103. In light of their fiduciary duty to disclose to Surf, among others, Manafort and Gates' refusal to produce those documents was a fraudulent act.

104. That fraudulent act required Surf's affiliate, Adoptol, to engage a Cypriot law firm in a legal proceeding in Cyprus to obtain the banking and corporate records of PEM Advisors, EVO Holdings, and other Cypriot companies dominated by Defendants that were related to the Investment.

105. During their depositions in the fall of 2015, Manafort and Gates testified under oath that they lacked authority and control over the documents held by the corporate agent.

106. Their testimony was false.

107. Upon information and belief, when Manafort and Gates gave that false testimony in the fall of 2015, they knew that their testimony was false.

108. Upon information and belief, they gave that perjurious testimony in order to conceal from the JOLs and Surf, among others, the documents in the possession of Inter Jura, which showed their fraudulent inducement of Surf in connection with the March 26 capital call and their self-dealing in breach of the fiduciary duty they owed to Surf.

109. As the result of Defendants' strategy and continuing acts of fraudulent concealment, including their fraudulent representations and fraudulent omissions described above, in order to ascertain the truth about the Investment and Manafort and Gates' conduct on

behalf of the Partnership, Surf was forced to pay legal fees and costs in order to initiate a winding up proceeding in the Cayman Islands; to pay for the JOLs investigation; to pay legal fees and costs in connection with the JOLs' Application in federal court; and, to pay legal fees and costs in connection with the legal proceedings initiated by Adoptol in Cyprus, among other things.

110. As a result of Defendants' strategy and continuing acts of fraudulent concealment, Surf has been damaged in an amount to be determined at trial, but at least \$1,750,000.

COUNT III

DERIVATIVE CLAIM FOR BREACH OF FIDUCIARY DUTY

111. Surf incorporates paragraphs 1-58, 60-75, and 77-110, the same as if fully pleaded.

112. As a limited partner of the Partnership, Surf asserts this breach of fiduciary duty claim against the Defendants derivatively on behalf of the Partnership.

113. Defendants individually and as the *alter ego* of Pericles GP and Pericles Managers owed the Partnership a fiduciary duty.

114. As described above, Defendants breached their fiduciary duty to the Partnership by, among other things:

- a. Gross negligence in managing the Partnership and in supervising and managing the Partnership's sole investment, the purchase of Black Sea Cable;
- b. Failing to maintain and keep available books and records of the Partnership;
- c. Failing to report on the activities of the Partnership and the status of the Investment to Surf, the Partnership's sole limited partner;

- d. Delegating the day-to-day operations of Black Sea Cable to others while failing to maintain supervisory control; and
- e. Grossly mismanaging the Investment, resulting in a total loss of the amount invested and of the Investment.

115. It would be futile for Surf to demand that Pericles GP, the general partner of the Partnership, bring a lawsuit against Manafort and Gates for breach of fiduciary duty, since Pericles GP has been struck off the Cayman Island Registry and is defunct, and since Manafort and Gates own and control Pericles GP and, therefore, they would not take legal action against themselves, especially in light of the deliberate strategy of Manafort and Gates to lie and fraudulently conceal their own fraudulent, grossly negligent, disloyal, and rapacious conduct.

116. It would be futile for Surf to demand that the JOLs bring a lawsuit on behalf of the Partnership, since, as stated in the JOLs' First Report, the Partnership has no assets or financial resources with which to do so. Moreover, the JOLs themselves would not bring such a lawsuit, since as such they have no financial resources to allocate to the prosecution of a legal action against Manafort and Gates and, indeed, there is an outstanding arrearage for their prior services as JOLs. Therefore, no lawsuit would be brought on behalf of the Partnership unless it were funded by Surf.

117. Since it would be futile for Surf to demand that the Partnership sue Manafort and Gates for breaches of fiduciary duty, Surf is entitled to bring its claims against Manafort and Gates in the name and for the interest of the Partnership.

118. Surf has suffered damages as a result of the Defendants' breach of fiduciary duties in an amount to be determined, including, but not limited to, the loss of the value of the Investment caused by Defendants' fraud, gross negligence, and breach of fiduciary duty.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Surf demands a judgment against Defendants, Paul J.

Manafort, Jr. and Richard W. Gates III, as follows:

119. Compensatory money damages in the amount of more than \$1.1 million as a result of Defendants' fraud, together with interest; plus,

120. Compensatory money damages in an amount to be determined at trial, but no less than \$1,750,000, for legal and other fees paid by Surf to uncover the true facts concerning the investment in Black Sea Cable, including those fees and costs paid in connection with (i) the winding up procedures in the Cayman Islands, (ii) the JOLs' investigation, (iii) the JOLs' Application in the United States District Court for the Eastern District of Virginia, and, (iv) the Adoptol legal proceedings in Cyprus, together with interest; plus,

121. Compensatory damages in an amount to be determined at trial for the loss of the value of the Investment caused by Defendants' fraud, gross negligence, disloyalty and self-dealing, together with interest; plus,

122. Punitive damages in the amount of \$25,000,000 for gross negligence and fraud on the part of Defendants; plus,

123. A reasonable attorneys' fee and the costs of this action; and,

124. Such other and further relief to which Surf may be entitled based on the evidence presented.

Dated: New York, New York
January 10, 2018

BRYAN CAVE LLP

By: _____/s/_____
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