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 14 KRISTEN A. JANULEWICZ

15 UNITED STATES DISTRICT COURT  
 16 SOUTHERN DISTRICT OF CALIFORNIA

17 SECURITIES AND EXCHANGE  
 18 COMMISSION,

19 Plaintiff,

20 v.

21 TOTAL WEALTH MANAGEMENT,  
 22 INC.; et al.,

23 Defendants.

Case No. 15-cv-226 BAS (DHB)

MEMORANDUM OF POINTS AND  
 AUTHORITIES IN SUPPORT OF  
 MOTION OF RECEIVER, KRISTEN A.  
 JANULEWICZ, FOR AUTHORITY TO  
 PURSUE CLAIMS AGAINST  
 PRIVATE PLACEMENT CAPITAL  
 NOTES II, LLC AND ANTHONY  
 ("TONY") HARTMAN

[Notice of Motion and Motion;  
 Declaration of Kristen A. Janulewicz; and  
 [Proposed] Order submitted concurrently  
 herewith]

Date: December 14, 2015

Time: Not Applicable

Ctrm: 4B

Judge: Hon. Cynthia Bashant

NO ORAL ARGUMENT UNLESS  
 REQUESTED BY THE COURT

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1 **MEMORANDUM POINTS AND AUTHORITIES**

2 **I. INTRODUCTION.**

3 As reflected in the previously submitted Initial Report and Recommendations  
4 and Petition for Instructions (the "Initial Report") and First Interim Report and  
5 Petition for Further Instructions (the "Interim Report") of Kristen A. Janulewicz (the  
6 "Receiver"), the Court-appointed permanent receiver for Defendant Total Wealth  
7 Management, Inc. ("Total Wealth") and its subsidiaries and affiliates, including, but  
8 not limited to Altus Capital Management, LLC (collectively, the "Receivership  
9 Entities" or "Entities"), the Receiver has devoted substantial time and attention to an  
10 analysis and investigation of over \$24 million in investments made by certain  
11 Receivership Entities (here, the "Altus Funds") in Private Placement Capital Notes  
12 II, LLC ("PPCN"), along with PPCN's business and financial activities, and the  
13 nature and scope of its underlying investments. Having completed her initial  
14 analysis and investigation, the Receiver has concluded that PPCN secured the Altus  
15 Funds' investment on the basis of materially false representations to Total Wealth,  
16 its principal, and the Altus Funds regarding the nature of PPCN's business and  
17 underlying investments.

18 Put simply, the Receiver believes that PPCN and Hartman induced the Altus  
19 Funds to invest over \$24 million in PPCN via misrepresentations regarding at least :  
20 (1) the nature of PPCN's business plan and practices; (2) PPCN's holdings and  
21 underlying investments; (3) the source of returns on investment PPCN would pay  
22 out; and (4) the nature and amount of returns on investment that the Altus Funds  
23 would be paid.

24 On the basis of her review of multiple records, including PPCN bank records,  
25 the Receiver has determined that Hartman is the alter-ego of PPCN. Among other  
26 things, Hartman is the beneficial owner and sole principal of PPCN, thereby  
27 exercising full control over PPCN. In that capacity, Hartman caused PPCN to  
28 transfer hundreds of thousands of dollars in PPCN investor funds to unrelated

1 entities that he controlled, for his own benefit, and in a manner that was not  
2 disclosed to PPCN investors, including the Altus Funds.

3 As reflected in the Initial Report and Interim Report, PPCN's records  
4 currently indicate that the value of the Altus Funds' aggregate investment in PPCN  
5 exceeds \$34 million. The Receiver's investigation finds no support for such a  
6 valuation, let alone for any promise of repayment by PPCN. In point of fact, PPCN  
7 has consistently invested in negative cash-flow businesses that appear to be  
8 incapable of supporting any payments, much less the 12.5% semi-annual interest  
9 payments promised to PPCN investors, including the Altus Funds. Moreover, a  
10 substantial portion of the interest payments that PPCN has made to the Altus Funds  
11 appear to have been made from funds raised from later investors, one of the  
12 hallmarks of a Ponzi-like investment scheme. To make matters worse, the Receiver  
13 recently submitted a redemption request to PPCN for approximately \$16 million in  
14 matured notes and has received no acknowledgement of the request whatsoever  
15 from PPCN, let alone any actual payment.

16 Accordingly, and in order to best protect the interests of the Receivership  
17 Entities, including the Altus Funds, and to recover whatever funds may still be  
18 recoverable, the Receiver now respectfully requests that this Court authorize her to  
19 prosecute claims for Fraud, Breach of Contract, Unjust Enrichment, Declaratory  
20 Relief, and Fraudulent Transfer against PPCN and Hartman.

## 21 **II. RELEVANT FACTUAL BACKGROUND.**

### 22 **A. The Receiver's Appointment And Commencement Of Her Analysis** 23 **And Investigation.**

24 The Court initially appointed the Receiver on February 2, 2014. (See Docket  
25 No. 5). The Receiver's appointment was made permanent on February 12, 2015,  
26 pursuant to the Court's "(1) Preliminary Injunction, Appointment of a Receiver, and  
27 Related Orders; and (2) Order Vacating Hearing on Preliminary Injunction" (the  
28 "Appointment Order"). (See Docket No. 8.) The Appointment Order charged the

1 Receiver with, among other things: (1) assuming exclusive authority and control  
2 over the Receivership Entities and their assets ("Receivership Assets"); (2)  
3 conducting an investigation in order to identify, account for, locate, and recover  
4 Receivership Assets; and, most relevant to this Motion (3) pursuing and prosecuting  
5 claims in order to recover Receivership Assets. (See Docket No. 8.)

6 As reflected in her Initial Report and Interim Report, immediately upon her  
7 appointment, the Receiver commenced her analysis of the business and financial  
8 activities of the Receivership Entities, including an investigation into the nature,  
9 location, and amount of recoverable Receivership Assets. (See Dockets Nos. 17,  
10 43.)

11 As part of her investigation, the Receiver commenced a review of over  
12 1 million pages of documents and other materials obtained from a variety of sources,  
13 including the Entities themselves, banks and other financial institutions,  
14 accountants, pre-receivership Entity counsel, and other third parties. (See, e.g.,  
15 Docket No. 43.) As reflected in her Initial Report and Interim Report, the Receiver's  
16 preliminary conclusions from this investigation included that: (1) Total Wealth  
17 received revenue sharing fees from investments into which Receivership Assets  
18 were placed, including investments that appear to have been losing money or are  
19 insolvent; (2) the Entities' investments were subject to substantial losses, including a  
20 write-off of approximately \$20 million in connection with a single set of  
21 investments alone; (3) the Entities hold investments in PPCN allegedly valued in  
22 excess of \$34 million; and (4) PPCN's holdings do not support the interest payments  
23 it has made (or promised) to the Entities in connection with their investments. (See,  
24 Docket Nos. 17, 43.)

25 **B. The PPCN Investments.**

26 With specific respect to PPCN, the Receiver's investigation included a review  
27 of bank records, PPCN financial statements, schedules, agreements, memoranda,  
28 real property records, and other documents – including, notably, recorded telephone

1 calls between Total Wealth's principal, Jacob Cooper ("Cooper") and Hartman,  
2 Cooper and prospective PPCN investors, and text messages between Cooper and  
3 Hartman – and emails between the Receivership Entities, PPCN, and Hartman. (See  
4 concurrently filed Declaration of Kirsten A. Janulewicz ["Receiver Decl."] ¶ 2.)

5 Based on her review of the above-identified materials, the Receiver has  
6 determined that the Altus Funds invested over \$24 million in PPCN. (Receiver  
7 Decl. ¶ 3.) These investments were memorialized by promissory notes (the  
8 "Notes"), which, in concert with PPCN's private placement memoranda ("PPM"),  
9 promised returns on investment, to be paid as semi-annual interest on the Notes, at  
10 the rate of 12.5% per annum. (Id.) As of the date of the Receiver's appointment,  
11 PPCN had paid over \$4 million in interest to the Altus Funds in connection with  
12 their collective investments, but these payments did not reflect the total interest  
13 accrued on these investments. (Id.) Specifically, PPCN allowed for all or part of an  
14 investor's accrued interest to be "reinvested"; that is, added to the outstanding  
15 balance of the Notes, which would then increase the interest-generating amount of  
16 the Notes. (Id.) Accordingly, the most recent PPCN financial statements provided  
17 to the Receiver reflect a valuation of the Altus Funds' collective investment in  
18 excess of \$34 million. (Id.)

19 While PPCN solicited investment from the Altus Funds by claiming that its  
20 business practices supported the interest payments promised in the Notes, based on  
21 her review and analysis of the materials she has obtained, the Receiver has  
22 determined that, among other things, PPCN misrepresented: (1) the nature of its  
23 investment practices; (2) the underlying assets it held; (3) the income generated  
24 from those investments and assets; and (4) its ability to pay interest to investors,  
25 including the Altus Funds. (Id. at ¶ 5.) In point of fact, the Receiver's records  
26 indicate that PPCN has consistently invested funds received from investors in failing  
27 or "negative cash flow" businesses – investments that failed to generate any net  
28 income. (Id.) Indeed, in an interview with the Receiver in early 2015, Hartman

1 conceded that PPCN had insufficient cash on hand to meet a then-pending capital  
2 contribution requirement in connection with an investment in a Utah mining  
3 enterprise. (Id.) Worse, the materials obtained and reviewed by the Receiver  
4 establish that, from 2012 through 2014, PPCN paid interest to older investors from  
5 funds obtained from later investors, not from actual investment income. (Id.) In  
6 this sense, PPCN's payment practices reflect a key characteristic of a Ponzi-like  
7 investment scheme.

8 **C. Hartman's Personal Use Of PPCN Funds.**

9 On the basis of her review of a number of the above-identified records,  
10 including PPCN bank and financial records, the Receiver has concluded that  
11 Hartman caused PPCN to transfer hundreds of thousands of dollars in PPCN  
12 investor funds to unrelated entities that he controlled. (Id. at ¶ 6.) None of the  
13 materials reviewed by the Receiver suggest that these transfers were disclosed to  
14 PPCN investors, including the Altus Funds. (Id.) These transfers are especially  
15 troubling given Hartman's service as the beneficial owner, Executive Officer, and  
16 Managing Partner of PPCN, strongly suggesting that he is the alter-ego of PPCN.

17 **D. The Receiver's Redemption Request.**

18 PPCN's Notes mature after five (5) years, at which point they are subject to a  
19 redemption request at the election of the note holder. (Id. at ¶ 7, Ex. A.) After her  
20 appointment, and in accordance with the terms of the Notes, the Receiver sent  
21 PPCN a redemption request for approximately \$16 million in matured Notes held by  
22 the Altus Funds. (Id.) PPCN has submitted no response whatsoever to the  
23 Receiver's redemption request, and no funds have been paid by PPCN in connection  
24 with the request. (Id.)

25 **E. The Receiver's Claims Against PPCN And Hartman.**

26 Based on the foregoing, the Receiver has concluded that PPCN obtained over  
27 \$24 million in investments from the Altus Funds on the basis of multiple material  
28 misrepresentations, that PPCN's investment practices do not support the returns on



1 investment that it promised – and paid – to investors, that PPCN operated in a  
2 manner analogous to a Ponzi-like investment scheme from at least 2012 through  
3 2014, and that PPCN is unable or unwilling to satisfy its contractual repayment  
4 commitments as reflected in its non-response to a substantial redemption request  
5 from the Receiver. (Id. at ¶ 8.) The Receiver has determined, in her reasonable  
6 business judgment, that it is therefore necessary and in the best interests of the  
7 Receivership Entities, including the Altus Funds, to prosecute an action against  
8 PPCN and Hartman to recover whatever Receivership Assets may be recovered in  
9 connection with the PPCN investments. (Id.) A copy of the Receiver's proposed  
10 Complaint against PPCN and Hartman is attached hereto as **Exhibit 1**.

11 **III. ARGUMENT.**

12 This Court has enjoys broad discretion to administer the receivership case for  
13 the benefit of the Receivership Entities, including to grant the Receiver's request to  
14 prosecute claims against PPCN and Hartman.

15 "The power of a district court to impose a receivership or grant other forms of  
16 ancillary relief does not in the first instance depend on a statutory grant of power  
17 from the securities laws ... [T]he authority derives from the inherent power of a  
18 court of equity to fashion effective relief." SEC v. Wencke, 622 F.2d 1363, 1369  
19 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly  
20 and efficient administration of the estate by the district court for the benefit of  
21 creditors." SEC v. Hardy, 803 F.2d 1034, 1038 (9th Cir. 1986). Accordingly,  
22 district courts have the broad power of a court of equity to determine the appropriate  
23 action in the administration and supervision of an equity receivership. See SEC v.  
24 Capital Consultants, LLC, 397 F.3d 733, 738 (9th Cir. 2005). As the Ninth Circuit  
25 has emphasized:

26 A district court's power to supervise an equity  
27 receivership and to determine the appropriate action to be  
28 taken in the administration of the receivership is

1 extremely broad. The district court has broad powers and  
2 wide discretion to determine the appropriate relief in an  
3 equity receivership.

4 Id. (citations omitted); see also CFTC v. Topworth Int'l, Ltd., 205 F.3d 1107,  
5 1115 (9th Cir. 1999) ("This court affords 'broad deference' to the court's supervisory  
6 role, and 'we generally uphold reasonable procedures instituted by the district court  
7 that serve th[e] purpose' of orderly and efficient administration of the receivership  
8 for the benefit of creditors.").

9 The Receiver respectfully submits that this Court should exercise its broad  
10 discretion here to enable her prosecution of claims against PPCN and Hartman to  
11 recover Receivership Assets. The Receiver has determined, from the materials  
12 reviewed to date, that, among other things: (1) PPCN and Hartman solicited and  
13 obtained over \$24 million in investments from the Altus Funds via multiple,  
14 material misrepresentations; (2) PPCN's business practices and underlying  
15 investments differed markedly from how they were represented to investors,  
16 including the Altus Funds; (3) Hartman treated PPCN as his alter-ego; and (4) for at  
17 least three years, PPCN made payments in a manner closely paralleling a Ponzi-like  
18 investment scheme. Even more distressing from a Receivership Asset recovery  
19 standpoint, despite reporting the value of the Altus Funds' remaining aggregate  
20 investment in PPCN at over \$34 million, PPCN has ignored the Receiver's \$16  
21 million redemption request and appears to have no intent to satisfy its obligations to  
22 the Altus Funds. In other words, absent prompt action from the Receiver, the Altus  
23 Funds could be subject to tens of millions in additional losses. The commencement  
24 of the Receiver's proposed lawsuit provides an avenue for potentially mitigating  
25 such losses. Equity therefore militates strongly in favor of the Receiver's request,  
26 and the Receiver urges the Court to authorize her to prosecute the claims against  
27 PPCN and Hartman reflected in her proposed Complaint, attached **Exhibit 1** hereto.

28



1 **IV. CONCLUSION.**

2 For the foregoing reasons, the Receiver respectfully requests that this Court  
3 enter an Order:

- 4 1. Granting the Motion, in its entirety;
- 5 2. Approving the Receiver's proposed Complaint against PPCN and  
6 Hartman; and
- 7 3. Authorizing the Receiver to file the proposed Complaint and prosecute  
8 the claims alleged therein against PPCN and Hartman.

9  
10 Dated: November 9, 2015

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP  
DAVID R. ZARO  
JOSHUA A. DEL CASTILLO  
KENYON HARBISON

11  
12  
13 By:           /s/          Joshua A. del Castillo          

JOSHUA A. DEL CASTILLO  
Attorneys for Receiver  
KRISTEN A. JANULEWICZ

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*Securities and Exchange Commission v. Total Wealth Management, Inc., et al.,*  
USDC, SD of California, Case No. 15-cv-226 BAS (DHB)

**INDEX OF EXHIBITS**

<b>Exhibit Number.</b>	<b>Description</b>	<b>Page No.</b>
1	Proposed Complaint For Damages and Declaratory Relief against Private Placement Capital Notes II, LLC; Anthony (Tony) Hartman; and Does 1 through 10, inclusive	1

# **EXHIBIT 1**

1 DAVID R. ZARO (BAR NO. 124334)  
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7 Attorneys for Plaintiff  
 8 KRISTEN A. JANULEWICZ, RECEIVER

9 UNITED STATES DISTRICT COURT  
 10 SOUTHERN DISTRICT OF CALIFORNIA

12 KRISTEN A. JANULEWICZ, RECEIVER,

13 Plaintiff,

14 v.

15 PRIVATE PLACEMENT CAPITAL NOTES  
 II, LLC; ANTHONY (TONY) HARTMAN;  
 16 and DOES 1 through 10, inclusive,

17 Defendants.

Case No.

COMPLAINT FOR DAMAGES AND  
 DECLARATORY RELIEF

18  
 19 Plaintiff Kristen A. Janulewicz (the "Receiver"), the Court-appointed  
 20 permanent receiver for Total Wealth Management, Inc. ("Total Wealth"), and its  
 21 subsidiaries and affiliates, including but not limited to Altus Capital Management,  
 22 LLC (collectively, the "Receivership Entities" or "Entities"), hereby brings the  
 23 following Complaint against the above-captioned Defendants and, on behalf of the  
 24 Receivership Entities, alleges as follows:

25 **JURISDICTION AND VENUE**

26 1. This Court has jurisdiction over this matter under 28 U.S.C. Sections  
 27 1345 and 1367(a), and the doctrines of ancillary and supplemental jurisdiction, in  
 28 that this action arises from a common nucleus of operative facts as, and is



1 were otherwise purchased with assets of the Receivership Entities. The Receiver  
2 holds exclusive authority and control over the assets of the Receivership Entities,  
3 including over the causes of action alleged herein, over which this Court has  
4 ancillary and supplemental jurisdiction.

5         5. On information and belief, Defendant Private Placement Capital Notes  
6 II, LLC ("PPCN") is a Colorado limited liability company, formed in 2008, with its  
7 principal place of business listed as 8547 East Arapahoe Road, J192, Greenwood  
8 Village, Colorado 80112 (the "PPCN Address"). The PPCN Address is a mail drop-  
9 box, not a physical office, and no PPCN personnel or records are located at the  
10 PPCN Address.

11         6. On information and belief, Defendant Anthony (Tony) Hartman, an  
12 individual who was the subject of a 2011 securities fraud consent order in the State  
13 of Colorado, is PPCN's principal and a resident of, at least, Colorado and Texas. As  
14 detailed below, and on information and belief, Defendant Tony Hartman is an alter-  
15 ego of PPCN.

16         7. The Receiver is ignorant of the true names and capacities, whether  
17 individual, corporate, associate or otherwise, of Doe Defendants 1 through 10,  
18 inclusive. On information and belief, each fictitiously named Defendant was in  
19 some way responsible for, participated in or contributed to the matters and things  
20 complained of herein, and in some fashion, has legal responsibility therefor. When  
21 the identity and exact nature of such fictitious Defendants' responsibility for,  
22 participation in and contribution to the matters and things herein alleged is  
23 ascertained, the Receiver will seek leave to amend this Complaint and all  
24 proceedings herein to set forth the nature of these fictitious Defendants' identities.



**FACTUAL ALLEGATIONS**

**I. The Establishment Of The Receivership Entities And Their Loan Investment Activities.**

8. As alleged by the Commission in the Enforcement Action, Total Wealth registered as an investment adviser with the Commission in 2009. Total Wealth's sole owner and chief executive officer was Jacob Cooper ("Cooper"), an individual Defendant in the Enforcement Action.

9. In late 2009, Cooper organized ACOF to allow Total Wealth's investor clients to pool their money to invest in securities and other investments, and to meet the mandatory minimum investment requirement for investment funds for which they might not otherwise qualify.

10. In 2011, Cooper established the Altus Funds. As with ACOF, the purpose of the Altus Funds was to allow investor clients to pool their money to invest in securities and other investments, and to meet the mandatory minimum investment requirement for investment funds for which they might not otherwise qualify.

11. The Altus Funds invested in a variety of different investments, including at least: (1) Life's Good, Inc., which was determined by the United States District Court for the Eastern District of Pennsylvania to be a Ponzi-like investment scheme and its principal, Robert Stinson, Jr., a recidivist offender, sentenced to 33 years in prison; (2) Aegis Holding Company, Aegis Atlantic, and Aegis Retail (collectively "Aegis"), in connection with which the Altus Funds experienced losses in excess of \$18 million; and (3) PPCN, into which the Altus Funds invested at least \$24,000,000, in the aggregate, in the form of promissory notes. The Altus Funds made their investments, again, in the form of loans memorialized by promissory notes, in PPCN from approximately December 2007 to February 2014.

12. On information and belief, the Altus Funds' investment in PPCN constitutes at least 70% of all funds invested in PPCN. On information and belief,

1 the Receivership Entities were insolvent at the time the Altus Funds invested in  
2 PPCN, or were rendered insolvent by their investment.

3 **II. PPCN's Solicitation Of Investment From The Altus Funds.**

4 13. PPCN solicited investments through a variety of means, including the  
5 dissemination of Private Placement Memoranda ("PPMs") and other written  
6 solicitations. These PPMs and solicitations were provided to Cooper, Total Wealth,  
7 and the Altus Funds in order to solicit investment from the Altus Funds.

8 14. On information and belief, in its PPMs and other written solicitations,  
9 PPCN represented that its business consisted of making commercial hard money  
10 loans, or "bridge loans," as well as short-term investments, and the acquisition of  
11 distressed and commercial real property, and loans sold by the Federal Deposit  
12 Insurance Corporation.

13 15. On information and belief, in written solicitations provided to Cooper,  
14 Total Wealth, and the Altus Funds, PPCN represented that all loans made by PPCN  
15 were backed by collateral valued in the amount of at least 200% of the value of its  
16 loans.

17 16. On information and belief, PPCN further represented to Cooper, Total  
18 Wealth, and the Altus Funds that its real estate and other holdings included, among  
19 other things, a resort known as Melrose on the Beach (the "Melrose Resort"), a  
20 distressed golf resort on Daufuskie Island, off the coast of South Carolina, and Good  
21 Earth Minerals LLC ("GEM"), a start-up mining enterprise in Utah. In an interview  
22 with the Receiver on or around early March 2015, Defendant Hartman indicated to  
23 the Receiver that PPCN owned equity interests in the Melrose Resort and GEM.

24 17. As described in the PPMs, investments in PPCN were accomplished  
25 through the purchase of notes (the "Notes"), styled as promissory notes. The Altus  
26 Funds entered into at least 221 Notes with PPCN. The PPMs and other written  
27 solicitation materials delivered to Total Wealth and the Altus Funds provided that  
28 the Notes would bear interest at an annual rate of 12.5%, to be paid semi-annually.

1 18. The Notes, again, styled as promissory notes, further provided that they  
2 would have a term of 5 years from the date of purchase, after which note holders  
3 (investors) could redeem the Notes for a full repayment of principal.

4 19. Notably, however, the Notes further provided that, within 6 months of  
5 receipt of a redemption request, PPCN would have to exercise only "diligent efforts"  
6 to repay any outstanding principal, and then only to the extent that PPCN had  
7 actually made money from its lending or other investment activities.

8 **III. PPCN's Investment Holdings.**

9 20. On information and belief, despite the fact that it raised investments in  
10 the aggregate amount of more than \$24,000,000 from the Altus Funds, the income  
11 derived from PPCN's investments was insufficient to satisfy PPCN's promise to pay  
12 investors, including the Altus Funds, annual interest at a rate of 12.5%.

13 21. On information and belief, PPCN does not directly own an equity  
14 interest in the Melrose Resort. Instead, PPCN owns a partial interest in a limited  
15 liability company that itself holds a fractional interest in the Melrose Resort.

16 22. On information and belief, PPCN does not own directly own an equity  
17 interest in GEM, but, as with the Melrose Resort, owns only a fractional or  
18 contingent, limited interest in GEM.

19 **IV. PPCN's Payment Of Interest And The Receiver's Redemption Request.**

20 23. As detailed above, while PPCN appears to have made some bridge  
21 loans, the income derived from such loans, if any, is insufficient to satisfy PPCN's  
22 interest payment obligations to investors, including the Altus Funds. Nonetheless,  
23 PPCN has paid and credited interest to the Altus Funds, characterized as returns on  
24 investment. Notably, however, PPCN has made no interest payments to the Altus  
25 Funds since December 2014, which payment was additionally only a fraction of the  
26 interest owed at that time.

1           24. On information and belief, the Melrose Resort is not generating any net  
2 income. In other words, it is a "negative cash flow" business, meaning that PPCN's  
3 interest in the Melrose Resort is likewise not generating any net income.

4           25. On information and belief, despite the fact that the Melrose Resort is a  
5 "negative cash flow" business, and not generating any net income, PPCN has paid  
6 and credited interest to the Altus Funds, characterized as returns on investment.

7           26. On information and belief, while GEM had secured permits to  
8 commence mining operations, no operations have commenced. Accordingly, GEM  
9 is, on information and belief, likewise not generating any net income, and represents  
10 another "negative cash flow" business. Nonetheless, PPCN has paid and credited  
11 interest to the Altus Funds, characterized as returns on investment.

12           27. On information and belief, PPCN has paid the Altus Funds a total of  
13 approximately \$4,570,000 in interest and has credited the Altus Funds with at least  
14 an additional \$11,200,000 in interest, meaning that such interest was not actually  
15 paid, but merely added to the balance of the Altus Funds' investments. As of the  
16 date of this Complaint, PPCN reports that the value of the Altus Funds' investment  
17 via the Notes, including such credited interest, is at least \$34,100,000, in the  
18 aggregate.

19           28. On information and belief, at least \$4,500,000 of the interest paid to the  
20 Altus Funds from 2012 through 2014, and characterized by PPCN as return on  
21 investment, was paid from funds obtained by PPCN from later, non-Altus Fund  
22 investors. In this sense, PPCN's interest payment practices are suggestive of a  
23 Ponzi-like investment scheme in that they reflect the payment of interest to older  
24 investors from funds obtained from newer investors.

25           29. On information and belief, PPCN failed to disclose to Total Wealth and  
26 the Altus Funds the adverse financial condition of its investments and made material  
27 misrepresentations regarding the value of its investments.

28

1           30. On information and belief, PPCN failed to adequately disclose the risks  
2 associated with the majority of its investment holdings, which, contrary to its stated  
3 goals, consisted principally of highly speculative and/or fractional interests in  
4 various investments.

5           31. In accordance with the terms of the Notes, the Receiver sent PPCN and  
6 its counsel a written redemption request relating to at least \$16,000,000 in Notes  
7 that had reached or exceeded their 5-year maturity horizon. As of the date of this  
8 Complaint, PPCN has failed to respond to the Receiver's redemption request and has  
9 not returned any of the requested amount to the Receiver.

10 **v. PPCN Is Defendant Hartman's Alter-Ego.**

11           32. On information and belief, Defendant Tony Hartman diverted PPCN  
12 funds or assets in a manner undisclosed to PPCN's investors and for his own benefit.  
13 Among other things, on information and belief, between January 2009 and February  
14 2015 Defendant Hartman caused PPCN to transfer at least \$312,000 to entities  
15 wholly owned and controlled by Defendant Hartman. This diversion of funds  
16 inured to the detriment of PPCN's investors and creditors, including the Altus  
17 Funds.

18           33. On information and belief, PPCN did not maintain adequate corporate  
19 records to support its actions.

20           34. On information and belief, and as evidenced by PPCN filings with the  
21 Commission, Defendant Hartman is the beneficial owner, Executive Officer, and  
22 Managing Partner of PPCN. As such, Defendant Hartman exercised full dominion  
23 and control over PPCN and its operations, with no significant oversight.

24           35. On information and belief, Defendant Hartman is the only director,  
25 manager, or executive officer of PPCN.

26           36. On information and belief, PPCN is severely undercapitalized as a  
27 consequence of, in part, its interest-payment practices, as directed by Defendant  
28 Hartman, when compared to the significant liabilities owed by PPCN to its investors

1 and/or creditors, including the Altus Funds. Indeed, in or about March 2015,  
2 Defendant Hartman represented to the Receiver that PPCN had insufficient cash on  
3 hand to meet an existing equity investment obligation.

4 37. On information and belief, Defendant Hartman deliberately failed to  
5 disclose funds transfers made by PPCN to entities under his control, or for his own  
6 personal benefit.

7 38. As a consequence of the above, and other facts to be discovered, there  
8 exists a sufficient unity of interest between PPCN and Defendant Hartman such that  
9 the separate personalities of the two do not exist, and it would be inequitable to treat  
10 the actions of PPCN as those of PPCN alone.

11 **COUNT I – FRAUD**

12 **(as against all Defendants)**

13 39. The Receiver incorporates herein each and every allegation contained  
14 in Paragraphs 1 through 38, inclusive, set forth above.

15 40. On information and belief, PPCN and Defendant Hartman made false  
16 representations to Total Wealth and the Altus Funds about material facts in order to  
17 induce them to invest in PPCN. On information and belief, these material  
18 misrepresentations included, but are not limited to:

19 a. Claiming that PPCN's principal business consisted principally of  
20 making bridge loans;

21 b. Claiming that PPCN's bridge loans were backed by collateral  
22 valued at 200% of the value of the loans;

23 c. Claiming that PPCN's bridge loans and other business and  
24 investments, including the Melrose Resort and GEM investments, generated an  
25 income stream sufficient to satisfy its 12.5% annual interest payment obligations on  
26 the Notes, along with the return of all principal;

27 d. Claiming that PPCN would return its investors' principal upon  
28 the maturity of their Notes, upon written request; and



1 e. Claiming that interest paid to investors, including the Altus  
2 Funds, reflected returns on investment, rather than payments received from newer  
3 investors or new debt.

4 41. On information and belief, PPCN and Defendant Hartman knew the  
5 representations, including those specifically identified in Paragraph 40, above, to be  
6 false.

7 42. On information and belief, PPCN and Defendant Hartman made the  
8 false representations, including those specifically identified in Paragraph 40, above,  
9 intentionally, with the intention that they would be acted upon, and in order to  
10 defraud the Altus Funds, including by causing them to invest in PPCN.

11 43. On information and belief, Total Wealth and the Altus Funds were  
12 ignorant of the falsity of these representations and justifiably and reasonably relied  
13 on the false representations of PPCN and Defendant Hartman, and based on those  
14 representations the Altus Funds invested at least \$24,000,000 with PPCN.

15 44. On information and belief, the Altus Funds, as a result of their and  
16 Total Wealth's reasonable reliance on PPCN's and Defendant Hartman's false  
17 representations, have suffered damages in the amount of at least approximately  
18 \$20,000,000, as a consequence of their investment in PPCN, in an amount to be  
19 proven at trial.

20 **COUNT II – BREACH OF CONTRACT**

21 **(as against PPCN)**

22 45. The Receiver incorporates herein each and every allegation contained  
23 in Paragraphs 1 through 44, inclusive, set forth above.

24 46. The Notes represent contracts between the Altus Funds and PPCN.  
25 Specifically, the Notes memorialize an agreement by the Altus Funds to invest in  
26 PPCN in exchange for the payment of 12.5% annual interest, to be paid semi-  
27 annually, and the return of all outstanding principal and interest upon the maturity of  
28 the Notes. Section II of the Notes provides, in pertinent part, that "Interest shall be

1 payable under this Note semi-annually, on the first business day after January 15  
2 and July 15 of each calendar year during the term hereof. The amount of interest  
3 payable hereunder shall be up to 12.5% per annum." Section IV of the Notes  
4 provides, in pertinent part, that "[t]his Note has a term of five years from the date  
5 first set forth above. After the term, always subject to the provisions of Section III  
6 above, all amounts due hereunder, including interest, will be due and payable within  
7 six months after the date that Maker [PPCN] receives a written payoff request from  
8 Holder[.]" A true and correct, redacted copy of a Note substantially identical to the  
9 other Notes is appended hereto as **Exhibit A**, and incorporated herein by reference.

10 47. On information and belief, despite its interest payment obligations,  
11 PPCN has failed to make any interest payments whatsoever to the Altus Funds since  
12 at least December 2014, and has breached its contractual obligations.

13 48. The Altus Funds have performed all of their obligations under the  
14 Notes.

15 49. As reflected in Paragraph 31, above, the Receiver issued a written  
16 redemption request to PPCN for at least \$16,000,000 in matured Notes. As of the  
17 date of this Complaint, PPCN has failed to make any payment to the Receiver in  
18 accordance with the terms of the Notes and the Receiver's redemption request, and  
19 has accordingly breached its contractual obligations.

20 50. As a consequence, the Altus Funds have suffered damages in the  
21 amount of at least \$16,000,000, in an amount to be proven at trial.

1 **COUNT III – UNJUST ENRICHMENT**

2 **(as against all Defendants)**

3 51. The Receiver incorporates herein each and every allegation contained  
4 in Paragraphs 1 through 50, inclusive, set forth above.

5 52. As described in more detail above, the Altus Funds invested at least  
6 \$24,000,000 in PPCN, in reliance on false representations from PPCN and Hartman  
7 regarding PPCN's business and investment activities, conferring a benefit upon  
8 PPCN and Defendant Hartman, at the expense of the Altus Funds, of which  
9 approximately \$4 million was paid back, as purported interest.

10 53. PPCN did not receive the Altus Funds' investment in good faith, and  
11 the Altus Funds received no equivalent value or consideration in exchange for their  
12 investment.

13 54. The outstanding, aggregate balance owed by PPCN to the Altus Funds  
14 under the Notes, inclusive of interest, is at least \$34,100,000.

15 55. PPCN and its alter-ego, Defendant Hartman, have been unjustly  
16 enriched in the amount of at least approximately \$20,000,000, in an amount to be  
17 proven at trial, which amount is subject to immediate disgorgement to the Receiver.

18 **COUNT IV – DECLARATORY RELIEF**

19 **(as against PPCN)**

20 56. The Receiver incorporates herein each and every allegation contained  
21 in Paragraphs 1 through 55, inclusive, set forth above.

22 57. An actual controversy has arisen and now exists between the Altus  
23 Funds and PPCN concerning their respective rights and duties in connection with  
24 the Notes, especially since PPCN and Defendant Hartman have ignored the  
25 Receiver's pending redemption request, the terms of certain of the Notes are as yet  
26 unexpired, and PPCN continues to retain the Altus Funds' money. The Altus Funds  
27 contend that their investment in PPCN, as memorialized by the Notes, occurred on  
28 the basis of false representations and a false and illusory repayment promise, such

1 that PPCN effectively excused itself from ever making an actual repayment on the  
2 Notes, meaning the Notes were entered into without consideration. On information  
3 and belief, PPCN disputes this contention.

4 58. The Receiver, on behalf of the Altus Funds, therefore desires a judicial  
5 determination that the Notes are subject to rescission and that all funds invested by,  
6 and due and owing to, the Altus Funds in connection with the Notes should be  
7 immediately disgorged to the Receiver.

8 **COUNT V – DECLARATORY RELIEF**

9 **(as against all Defendants)**

10 59. The Receiver incorporates herein each and every allegation contained  
11 in Paragraphs 1 through 58, inclusive, set forth above.

12 60. An actual controversy has arisen and now exists between the Altus  
13 Funds, on the one hand, and PPCN and Defendant Hartman, on the other hand,  
14 concerning the issue of whether Defendant Hartman is the alter-ego of PPCN, given  
15 his use of PPCN funds for his personal benefit, PPCN's undercapitalization, and the  
16 other factors identified in Paragraphs 32 through 38, above.

17 61. The Receiver, on behalf of the Altus Funds, therefore desires a judicial  
18 determination that the Defendant Hartman is the alter-ego of PPCN and,  
19 accordingly, that Defendant Hartman is jointly and severally liable to the Receiver,  
20 on behalf of the Altus Funds, for any and all damages suffered by the Altus Funds,  
21 and for all amounts owed to the Altus Funds arising from or in connection with their  
22 investment in PPCN.

23 **COUNT VI – FRAUDULENT TRANSFER**

24 **(as against PPCN)**

25 62. The Receiver incorporates herein each and every allegation contained  
26 in Paragraphs 1 through 61, inclusive, set forth above.

27 63. On information and belief, the Altus Funds invested, in the aggregate,  
28 more than \$24 million in PPCN.



1           **On Count III:**

2           (a) For a judgment against Defendants PPCN and Hartman, jointly and  
3 severally, in an amount of at least \$20,000,000, which amount may be amended  
4 based on proof at trial;

5           (b) For an order directing Defendants PPCN and Hartman to immediately  
6 disgorge to the Receiver the amount of all funds they received from the Altus Funds,  
7 in and amount of at least \$20,000,000, which amount may be amended based on  
8 proof at trial, plus prejudgment interests and costs; and

9           (c) For such other and further relief as the Court may deem proper.

10           **On Count IV:**

11           (a) For a judgment declaring all Notes held by the Altus Funds to be  
12 rescinded; and

13           (b) For an order directing Defendant PPCN to immediately disgorge to the  
14 Receiver the amount of all funds originally invested pursuant to the Notes, and due  
15 and owing thereunder, in and amount of at least \$20,000,000, which amount may be  
16 amended based on proof at trial, plus prejudgment interests and costs; and

17           (c) For such other and further relief as the Court may deem proper.

18           **On Count V:**

19           (a) For a judgment declaring Defendant Hartman to be the alter-ego of  
20 PPCN and, accordingly, jointly and severally liable to the Receiver for any and all  
21 damages and other amounts owed by PPCN; and

22           (b) For such other and further relief as the Court may deem proper.

23           **On Count VI:**

24           For a judgment against Defendant PPCN in an amount of at least  
25 \$20,000,000, which amount may be amended based on proof at trial;

26           (b) For an order directing Defendant PPCN immediately to disgorge to the  
27 Receiver the amount of all funds it received from the Altus Funds, in and amount of  
28



1 at least \$20,000,000, which amount may be amended based on proof at trial, plus  
2 prejudgment interests and costs; and

3 (c) For such other and further relief as the Court may deem proper.  
4

5 Dated: December \_\_, 2015

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP  
DAVID R. ZARO  
JOSHUA A. DEL CASTILLO  
KENYON HARBISON

8 By: \_\_\_\_\_  
9 JOSHUA A. DEL CASTILLO  
10 Attorneys for Plaintiff  
11 KRISTEN A. JANULEWICZ,  
12 RECEIVER  
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# **EXHIBIT A**

**PROMISSORY NOTE**

THIS PROMISSORY NOTE HAS NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), IN RELIANCE UPON THE EXEMPTION FROM REGISTRATION PROVIDED IN REGULATION D, RULE 506 OF THE ACT. THIS PROMISSORY NOTE IS NOT NEGOTIABLE OR TRANSFERABLE IN ANY WAY WITHOUT THE WRITTEN CONSENT OF THE MAKER OF SUCH PROMISSORY NOTE, WHICH CONSENT MAY BE GRANTED OR WITHHELD IN MAKER'S SOLE DISCRETION. IT IS UNLAWFUL TO CONSUMMATE A SALE OR TRANSFER OR ENDORSEMENT OF THIS PROMISSORY NOTE WITHOUT FIRST OBTAINING SUCH CONSENT. BEFORE DECIDING WHETHER TO GRANT CONSENT TO SUCH A TRANSFER, MAKER MUST ALSO RECEIVE AN OPINION OF COUNSEL ACCEPTABLE TO THE MAKER OF THIS PROMISSORY NOTE AND ADDRESSED TO THE MAKER OF THIS PROMISSORY NOTE THAT THE PROPOSED TRANSFER OR SALE OF THIS PROMISSORY NOTE WOULD NOT AFFECT THE ORIGINAL SALE OF SECURITIES BY THE MAKER OF THIS PROMISSORY NOTE PURSUANT TO THE EXEMPTION FROM REGISTRATION PROVIDED BY SEC RULE 506 AND THAT THE TRANSFER WOULD BE IN COMPLIANCE WITH ALL APPLICABLE STATE OR FEDERAL SECURITIES LAWS.

US \$130,000.00

Greenwood Village, Colorado  
Dated as of 12/31/2009,

I. Principal Obligation. For Value Received, the undersigned, PRIVATE PLACEMENT CAPITAL NOTES II, LLC, a Colorado limited liability company ("Maker"), promises to pay to

**Holder:**

Altus Capital Opportunity Fund, LP

by check or other currently available funds of the United States of America at such address and place as Holder may designate in writing, the principal amount of:

**Amount:**

ONE HUNDRED THIRTY THOUSAND DOLLARS AND NO CENTS (\$130,000.00)

together with interest and other amounts provided for below. This Promissory Note is referred to herein as this "Note." This Note is not transferable or negotiable to any third party for any reason without the prior written consent of Maker.

II. Interest Payments. Interest shall be payable under this Note semi-annually, on the first business day after January 15 and July 15 of each calendar year during the term hereof. The amount of interest payable hereunder shall be up to 12.5% per annum. Holder will be allowed, but will not be required to elect to reinvest all interest payable hereunder in which case such amounts will be added to the principal of this Note. If Holder so elects, such amounts shall be retained by Maker and treated by Maker and Holder as increases in the principal amount of this Note.

III. Limited Recourse. All payments due Holder by Maker hereunder, whether principal or interest, are payable out of and only out of amounts actually received by Maker from making real estate loans or other loans or investments during each calendar year; therefore, this Note is a limited recourse, and not a full recourse, obligation

of Maker. Interest shall not compound and the maximum amount of interest payable each calendar year shall be 12.5%. Principal and Interest are payable hereunder only out of the sources described above.

IV. Term. This Note has a term of five years from the date first set forth above. After the term, always subject to the provisions of Section III above, all amounts due hereunder, including interest, will be due and payable within six months after the date that Maker receives a written payoff request from Holder, provided that Maker shall only be obligated to use diligent efforts to payoff principal owed hereunder following such a payoff request and that Maker shall be required to make any payment to Holder hereunder to the extent, and only to the extent, that Maker actually receives any such payment amount from making real estate loans or other loans or investments.

V. Extension of Term. After the expiration of the term, the principal amount of this Note will be allowed to continue to earn interest under this Note until such time that the Holder delivers a written payoff request and actual repayment is made.

VI. Prepayment Provision. There is no penalty for prepayments made on amounts due under this Note, regardless of when any such prepayment occurs. Prepayments may be made at any time.

VII. Default and Acceleration. All amounts owed hereunder shall, at the option of the Holder, become immediately due and payable upon the happening of any one or more of the following events ("Events of Default"). Except as expressly provided in this Note, no notice of Holder shall be necessary for the occurrence of any of the following to constitute an Event of Default:

(a) Subject to Sections III, IV, and V above, Maker's failure to pay or perform any obligation, liability or indebtedness to the Holder under this Note as and when due (whether at maturity or by acceleration) if such failure is not cured by Maker within ten (10) days of receipt of written notice thereof from Holder.

(b) Maker shall commence a voluntary case of bankruptcy or other similar proceeding seeking liquidation, reorganization or other relief with respect to itself or its respective debts under any bankruptcy, insolvency or other similar debtor relief law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of them, or any of them, or any substantial part of their property, or shall consent to any such relief or to the appointment or taking possession by any such official in any involuntary case or other proceeding commenced against any of them.

(c) An involuntary case of bankruptcy or other similar proceeding shall be commenced against Maker seeking liquidation, reorganization or other relief with respect to Maker or their its debts under any bankruptcy, insolvency or other similar debtor relief law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of them, or any of them, or any substantial part of their property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of sixty (60) days.

(d) Holder's priority under this Section VII. is equal to that of every other Holder that purchased a similar note under the offering commenced on Dec 23, 2008.

VIII. Miscellaneous.

(a) The failure of the Holder to act or to exercise any right or remedy shall not in any way affect or impair the obligations of Maker to the Holder, or constitute a waiver by the Holder of, or otherwise affect any of, the Holder's rights under this Note, under any endorsement or guaranty of this Note or under any document or instrument evidencing any security for payment of this Note.

(b) The invalidity or unenforceability of any one or more provisions of this Note shall in no way affect the other provisions.





**PROOF OF SERVICE**

*Securities and Exchange Commission v. Total Wealth Management, Inc., et al.*  
USDC, Southern District of California – Case No. 15-cv-226 BAS (DHB)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 515 S. Figueroa Street, 9th Floor, Los Angeles, California 90071-3398.

A true and correct copy of the foregoing document(s) described below will be served in the manner indicated below:

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF  
MOTION OF RECEIVER, KRISTEN A. JANULEWICZ, FOR  
AUTHORITY TO PURSUE CLAIMS AGAINST  
PRIVATE PLACEMENT CAPITAL NOTES II, LLC  
AND ANTHONY ("TONY") HARTMAN**

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")** – the above-described document will be served by the Court via NEF. On **November 9, 2015**, I reviewed the CM/ECF Mailing Info For A Case for this case and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

- **Vincent J. Brown**  
vince@vjblaw.com,vjblaw@gmail.com
- **John Bulgozdy**  
bulgozdyj@sec.gov,larofiling@sec.gov,berryj@sec.gov,  
irwinma@sec.gov
- **Christina Lenore Geraci**  
christina@geracilawfirm.com,cynthia.perry@geracilawfirm.com
- **Geraci Law Firm**  
christina@geracilawfirm.com
- **Gary Y. Leung, Jr**  
leungg@sec.gov,larofiling@sec.gov,berryj@sec.gov
- **David J. Van Havermaat**  
vanhavermaatd@sec.gov,larofiling@sec.gov,irwinma@sec.gov
- **Joshua Andrew del Castillo**  
jdelcastillo@allenmatkins.com

1 2. **SERVED BY U.S. MAIL OR OVERNIGHT MAIL (indicate method for**  
2 **each person or entity served)**: On November 9, 2015, I served the  
3 following person(s) and/or entity(ies) in this case by placing a true and correct  
4 copy thereof in a sealed envelope(s) addressed as indicated below. I am readily  
5 familiar with this firm's practice of collection and processing correspondence  
6 for mailing. Under that practice it is deposited with the U.S. postal service on  
7 that same day in the ordinary course of business. I am aware that on motion  
8 for party served, service is presumed invalid if postal cancellation date or  
9 postage meter date is more than 1 (one) day after date of deposit for mailing in  
10 affidavit.

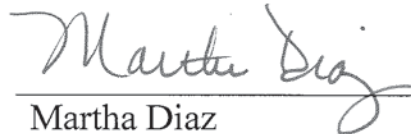
11 Mikel R. Bistrow, Esq.  
12 Ballard Spahr LLP  
13 655 W. Broadway, Suite 1600  
14 San Diego, CA 92101

**Via U.S. First Class Mail**

15 Richard M. Kipperman  
16 PO Box 3010  
17 La Mesa, CA 91944-3010

**Via U.S. First Class Mail**

18 I declare that I am employed in the office of a member of the Bar of this Court  
19 at whose direction the service was made. I declare under penalty of perjury under the  
20 laws of the United States of America that the foregoing is true and correct. Executed  
21 on **November 9, 2015** at Los Angeles, California.

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Martha Diaz