

Plaintiff Securities and Exchange Commission (“Commission”), for its Complaint against Defendants Gryphon Holdings, Inc. d/b/a Gryphon Financial and Gryphon Daily (“Gryphon”), Kenneth E. Marsh a/k/a “Kenneth Maseka,” “Michael Warren” and “Marcus Thorn” (“K. Marsh”), Baldwin Anderson a/k/a “Bolton Anderson” (“Anderson”), Robert Anthony Budion a/k/a “Bobby Budion” and “Robert Anthony” (“Budion”), Jeanne M. Lada a/k/a “Jeanne Grecco” (“Lada”), and James T. Levier (“Levier”) (collectively, “Defendants”), and against Relief Defendants Richard Borrello (“Borrello”), Nicole Marsh (“Nicole Marsh”), Ginna Mungiovi (“Mungiovi”), Michael Scarpaci (“Scarpaci”), Dominic Spinelli (“Spinelli”), and Paul Stokes (“Stokes”) (collectively, “Relief Defendants”), alleges as follows:

SUMMARY OF ALLEGATIONS

1. The Commission brings this action against Defendants Gryphon, its founder and owner, K. Marsh, and several representatives of Gryphon for knowingly making materially false and misleading statements to clients in order to induce them to buy Gryphon’s investment advisory services, including investment recommendations, portfolio analysis and, in at least one instance, management of investment accounts. Since at least 2007, the Defendants have used various fraudulent tactics to convince prospective and existing clients to pay fees to Gryphon to get access to purportedly exclusive investment opportunities, which Gryphon marketed under monikers such as “Wolves of Wall Street,” “Pure Profit,” “Inner Circle,” and “Mafia Trader.”

2. The tactics that Gryphon and its associates used included a wide range of flagrant misrepresentations that were disseminated at various times through the firm’s website, internet advertisements and promotions, e-mails, and in telephone calls to existing or prospective clients. These included outlandish misrepresentations about the purported qualifications, trading experience and investment prowess of members of Gryphon’s trading desk, when in fact

Gryphon had neither operated a trading desk nor had any basis to claim that its traders had obtained the claimed exceptional investment returns. Similarly, Gryphon's website falsely claimed an endorsement by famed investor George Soros and displayed numerous fabricated "testimonials" from purportedly satisfied clients.

3. To further portray themselves as investment experts in the trading of stocks and options, and to mislead existing and prospective clients that they, too, would make extraordinary profits if they paid fees for Gryphon's investment recommendations, the Defendants falsely represented that Gryphon managed a hedge fund with holdings in excess of \$1.4 billion. In truth, Gryphon did not operate, manage or advise any hedge fund, let alone one with over a billion dollars under management. And in conversations with clients, Gryphon representatives frequently referred to self-made millionaires or billionaires "Michael Warren" and "Kenneth Maseka" as the firm's chief traders. Neither Maseka nor Warren existed -- both were figments of Defendant K. Marsh's imagination.

4. As a result of the Defendants' fraudulent scheme, Gryphon obtained over \$17.5 million since at least 2007. The fraud intensified in recent years, with Gryphon obtaining approximately \$9.6 million in 2009 alone and \$3 million in the first two months of 2010. Gryphon clients, who had paid fees ranging from \$99 to \$250,000 to access Gryphon's investment advisory services, often suffered additional losses by trading at Gryphon's direction on Gryphon's investment recommendations or, in at least one documented instance, permitting a Gryphon representative to execute discretionary trades for the client's benefit. When clients complained to Gryphon about losses or other unsatisfactory aspects of Gryphon's service, Defendants often unilaterally terminated any further contact with the client and refused to refund sums owed to the clients.

VIOLATIONS

5. By virtue of the foregoing conduct and as alleged further herein, Defendants Gryphon, K. Marsh, Anderson, Budion, Lada and Levier, singly or in concert, directly or indirectly, violated Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 (“Advisers Act”) [15 U.S.C. §§ 80b-6(1) and (2)], Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]. By virtue of their conduct and as alleged herein, Defendants Lada, Anderson, Budion and Levier have aided and abetted violations of Sections 206(1) and 206(2) of the Advisers Act. By virtue of his conduct and as alleged herein, Defendant K. Marsh is a culpable participant in the fraudulent scheme and he is also liable as a control person under Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)] for Defendant Gryphon’s violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]. Unless the Defendants are temporarily, preliminarily, and permanently restrained and enjoined, the Defendants will again engage in the acts and transactions set forth in this Complaint, or in acts and transactions of similar type and object.

JURISDICTION AND VENUE

6. The Commission brings this action pursuant to the authority conferred by Section 209(d) of the Advisers Act [15 U.S.C. § 80b-9(d)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)]. The Commission seeks, as immediate relief, a temporary restraining order and a preliminary injunction against the Defendants, asset freezes against the Defendants, verified accountings from the Defendants and Relief Defendants, expedited discovery, and an order prohibiting the Defendants and Relief Defendants from destroying or altering documents. The

Commission also seeks a final judgment to permanently restrain and enjoin the Defendants from violating Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and (2)], Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5], permanently restrain and enjoin Defendants Lada, Anderson, Budion and Levier from aiding and abetting any person's violation of Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and (2)], and to permanently restrain and enjoin Defendant K. Marsh from controlling any person who violates Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5].

7. This Court has jurisdiction over this action, and venue lies in this District, pursuant to Section 214 of the Advisers Act [15 U.S.C. §80b-14] and Sections 21(d) and 27 of the Exchange Act [15 U.S.C. §§78u(d) and 78aa]. The Defendants, directly or indirectly, have used the mails and the means and instrumentalities of interstate commerce in connection with the acts, practices, and courses of business alleged herein, many of which occurred in this District. During the relevant period Defendant Gryphon transacted business and maintained an office in Staten Island, New York, from which office the other Defendants operated.

DEFENDANTS

8. **Gryphon** is a New York corporation doing business under various names, including Gryphon Holdings, Gryphon Financial, Gryphon Daily, Gryphon Consulting Group, Gryphon Hedge Fund Partners LLC, Gryphon Management Hedge fund, Gryphon Financial UK Ltd, and Gryphon Australia. According to Gryphon's website, Gryphon is a publisher of financial, retirement, travel, and sports newsletters. The firm offers its services to provide investment tips and recommendations to the public via internet postings as well as via direct

telephone and e-mail communications to individual advisory clients. Gryphon's physical offices are located in a strip mall in Staten Island, New York, but the firm's Internet posts depict an international operation with offices located on Wall Street, in Chicago, California, London, England, and Australia. The firm claims to have twenty-five to thirty employees and affiliations with expert, successful securities traders.

9. **Kenneth Marsh**, age 43, resides in Staten Island, New York and is the owner and registered agent for Gryphon. K. Marsh directs Gryphon's operations and plays a central role in Gryphon's day-to-day functions, including creating marketing and promotional materials, interacting with prospective and existing clients, drafting materials for Gryphon's websites, and conducting research for the firm's publications. In communications with Gryphon's prospective or existing clients, Defendant K. Marsh has used various aliases, including "Kenneth Maseka," "Michael Warren," and "Marcus Thorn." In 2007, the National Association of Securities Dealers ("NASD"), the predecessor to the Financial Industry Regulatory Authority ("FINRA"), barred K. Marsh from associating in any capacity with any firm that is a member of the NASD.

10. **Baldwin Anderson**, age 55, resides in Staten Island, New York. Anderson, who is also known as "Bolton" Anderson, is employed by Gryphon as a marketing and sales representative. Anderson is Manager of Pembroke Hall, LLC ("Pembroke Hall"). Between January 2008 and February 2010, Anderson received approximately \$849,000 from Gryphon either directly or through Pembroke Hall, an entity under his direction or control.

11. **Robert Anthony Budion**, age 28, resides in Staten Island, New York. Budion, who is also known as "Bobby Budion" and as "Robert Anthony," is employed by Gryphon as a marketing and sales representative. Budion is President of RB Platinum, Inc. ("RB Platinum").

Between May 2008 and February 2010, Budion received approximately \$812,000 from Gryphon either directly or through RB Platinum, an entity under his direction or control.

12. **Jeanne M. Lada**, age 44, resides in Freehold, New Jersey. Lada, who is also known as “Jeanne Grecco,” is employed by Gryphon as a marketing and content creator for Gryphon’s website, and is identified as the “Editor and Trader at Gryphon Daily,” and the editor of two other publications that Gryphon pitches to prospective or existing clients, the “Bond Authority Manager” and “The Complete Leap Report.” Lada is the Executive Vice President of JMLS Secret, Inc. (“JMLS”). Between May 2008 and February 2010, Lada received approximately \$586,000 from Gryphon either directly or through JMLS, an entity under her direction or control.

13. **James T. Levier**, age 34, resides in Beachwood, New Jersey. Levier, who is also known as “J.T. Levier” and “J.T.,” is employed by Gryphon as a marketing and sales representative. Levier is the owner of RMJ Marketing LLC (“RMJ”). Between May 2008 and February 2010, Levier received approximately \$483,000 from Gryphon either directly or through RMJ, an entity under Levier’s direction or control.

RELIEF DEFENDANTS

14. **Nicole Marsh**, age 30, resides in Staten Island, New York and is Defendant K. Marsh’s wife. During the relevant period, Nicole Marsh served as either chairman, chief executive officer, vice president, or bookkeeper of Gryphon. Nicole Marsh received over \$200,000 in payments from Gryphon, purportedly for compensation as an officer of Gryphon. From 2008 to 2010, Nicole Marsh received a total of approximately \$600,000 from Gryphon.

15. **Richard Borrello**, age 26, resides in Broad Channel, New York. Borrello is a co-signatory for a bank account in the name of R and G Dreamworks Enterprise, Inc. (“R and G”), a

company that was incorporated as a domestic business corporation in New York on February 15, 2007. Borrello is also R and G's President and Consultant. From October 2008 through February 2009, Borrello and/or R and G received approximately \$900,000 from Gryphon.

16. **Gianna Mungiovi**, age 25, resides in Massapequa, New York. Mungiovi is the Secretary of R and G. Together with Relief Defendant Borrello, Mungiovi is also a co-signatory for the bank account in the name of R and G that, between October 2008 and February 2009, received approximately \$900,000 from Gryphon.

17. **Michael Scarpaci**, age 34, resides in Staten Island, New York. Scarpaci is the signatory for a bank account in the name of MGS Sr., Inc. ("MGS"), a company that was incorporated in New York as a domestic business corporation on April 13, 2006. Scarpaci is also the President of MGS. From October 2009 through February 2010, Scarpaci and/or MGS received approximately \$562,000 from Gryphon.

18. **Dominic Spinelli**, age 31, resides in Staten Island, New York. Spinelli is the signatory for a bank account in the name of ARC&T, Inc. ("ARC&T"), a company that was incorporated as a New York domestic business corporation on January 28, 2008. Spinelli is also the President of ARC&T. From January 2008 through September 2009, Spinelli and/or ARC&T received approximately \$873,000 from Gryphon.

19. **Paul Stokes**, age 31, resides in Staten Island, New York. Stokes is the signatory for a bank account in the name of P Botz, Inc. ("P Botz"), a company that was incorporated as a New York domestic corporation on February 6, 2009. Stokes is also the President of P Botz. From January 2009 through February 2010, Stokes and/or P Botz received approximately \$514,000 from Gryphon.

FACTUAL ALLEGATIONS

Gryphon's Operations

20. Gryphon markets itself as a publisher of financial newsletters and solicits "subscribers" to purchase its publications. Gryphon's publications, in reality, serve as a vehicle to attract clients to pay additional fees for premium services that include investment tips and recommendations, portfolio analysis, and investment management. Although Gryphon provides investment advice, neither it nor any of the Defendants who are associated with it is registered as an investment adviser with the Commission.

21. Since at least 2007, Gryphon has advertised its services on several websites, which at various times included, among others, www.gryphondaily.com, www.gryphonfinancial.net, www.poisonpilltrader.com, www.cnbceffect.com, and www.6ammoneymachine.com. Gryphon describes itself as the "World's No. 1 Investment Newsletter," and provides its investment recommendations through various services bearing names such as "6AM Money Machine," "Raging Bull," "Wolves of Wall Street," "Wall Street's Most Wanted," "Put Play of the Day," "Pure Profit," "Wolf Option Trader VIP," "Elite Option Service," "Inner Circle," "Brain Trust," and "Mafia Trader." Once a client pays Gryphon for one or more of these advisory services, Gryphon representatives provide the client with investment recommendations on an individualized basis via telephone, e-mail, and/or through a password-protected section of Gryphon's website.

22. Gryphon representatives use high-pressure, aggressive tactics to convince clients to pay fees ranging from \$99 to \$250,000 for Gryphon's advisory services in order to get access to purportedly "premium" and "tested" stock and options recommendations. Gryphon's written

sales pitches, promotional materials, and website are rife with material misrepresentations and omissions, which Gryphon representatives often repeat in telephone conversations, e-mails, or other correspondence with clients, including misstatements about: (1) the trading prowess of Gryphon's principals and traders; (2) the historical and expected performance of its trading recommendations; (3) the identity, credentials, and experience of Gryphon's key personnel; (4) the sophistication and scope of its operations; and (5) the satisfaction of clients who purportedly traded on the firm's investment recommendations. As alleged further below, Defendants K. Marsh, Anderson, Budion, Lada and Levier have each made some or all of these misrepresentations to induce clients to purchase Gryphon's advisory or money-management services.

23. Based on the Defendants' various misrepresentations, Gryphon's clients purchased the firm's services believing that Gryphon's claims were true and that the firm's trading recommendations would produce lucrative results, as promised by Gryphon's representatives. However, instead of replicating the purported success of Gryphon's "expert" traders, Gryphon's clients frequently suffered significant losses by trading on the recommendations Gryphon provided, or, in at least one instance, after providing Defendant K. Marsh discretion to trade on the client's behalf in the client's brokerage account.

Direction and Management of Client Trades

24. Gryphon's fraudulent scheme was not limited to material misstatements and aggressive, high-pressure sales tactics. In 2008, Defendant K. Marsh, pretending to be "Michael Warren," induced a Gryphon client to provide him with authority to trade for the client's benefit in the client's Fidelity brokerage accounts. "Warren" purportedly agreed to trade for the client's

benefit pursuant to an agreement where “Warren” would retain 20 percent of profits and the client would pay Warren a \$50,000 management fee. The client paid Gryphon \$50,000 by a check dated May 13, 2008, which was endorsed by “president and C.E.O.” and deposited into Gryphon’s bank account. After the client noticed that “Warren” traded for more than 60 days but was losing money, the client terminated the trading authority. On a separate occasion in 2008, Defendant Anderson solicited the same client to provide \$100,000 to “Warren” for what Defendant Anderson said was a “special type of investment pool.” The client was also advised that “Warren” was able to give a similarly-situated client a return of 1,600 percent, and that the client could expect the return of his principal within two to three years. The client provided the \$100,000 to Gryphon but, despite demands to Gryphon to account for or return his money, the client has been unable to get a satisfactory response from the firm or its representatives.

25. The tactics used by Gryphon representatives often included directing clients to engage in specific recommended trades. Some Gryphon clients provided Gryphon representatives with information about their securities portfolios and, in turn, Gryphon’s representatives instructed the clients whether and when to buy, sell, or hold securities in the client’s portfolios. Gryphon representatives called clients to make sure that the clients purchased the securities Gryphon had recommended. On at least one occasion, a Gryphon associate counseled a client to sell one of his securities in order to trade securities recommended by Gryphon, and specifically directed the client: “You’re going to do exactly what I say . . . You’re gonna put four grand behind both of those. You will not sell these things until I tell you to sell them.”

26. Gryphon knew that clients would trade on its recommendations and told clients that they could pay some of the fees Gryphon charged from profits generated from the clients’ trades.

Gryphon routinely provided invoices to clients who owed fees with a demand notice stating that “balance is to be paid in increments as [the] client profits from trades provided by Gryphon Financial.”

Unproven Claims of Extraordinary Returns and Guarantees of Future Gains

27. To induce clients to pay for Gryphon’s investment advisory services, Gryphon representatives frequently made wild promises about future performance and spread falsehoods about the purported past successes of its traders and the outcome of client trades that Gryphon had recommended.

28. On its website, Gryphon promised clients that it would “stuff your pockets with more cash tha[n] you thought possible,” and boasted that its connections on “the street” allowed it access to more information than the “average investor would hear in a hundred lifetimes.” Gryphon’s website also falsely stated that the firm provided services to “the top 1% of the wealth from around the globe,” and claimed that Gryphon clients obtained “remarkable gains of 1500%, 2400% buying calls prior to some of the biggest mergers and buyouts in Wall Street history.”

29. Clients were also informed that Gryphon had the “longest string of winning trades ever known to man,” and that its Inner Circle service -- one of the firm’s more expensive advisory plans -- was “up 1,324% in total compounding returns in the last 16 years.” In fact, Gryphon, which was only formed in 2005, had not been offering the Inner Circle product for “16 years,” and therefore had no basis to tout that it obtained the outlandish 1,324 percent returns over that period, as the firm represented to clients.

30. Many of the misrepresentations falsely assured clients that Gryphon’s representatives had substantial and successful trading experience. For example, Defendant Lada claimed on Gryphon’s website as recently as April 15, 2010, that she “has 18 straight winning

years buying and selling LEAPS” and that her “Complete Leap report ... has never had a losing year!” (Gryphon told its clients that LEAPS are options that have an expiration date of at least nine months and up to approximately three years after they are first listed.) Defendant Budion told one elderly client that he (i.e., Defendant Budion) was “gifted” with an 80% success rate in choosing trades. Similarly, Gryphon’s website stated that one of the firm’s key traders, Kenneth Maseka -- who, in fact, was a fictitious person that Defendant K. Marsh invented -- managed a portfolio of “25 out of 30” stocks that have either “doubled, tripled, or quadrupled in value.”

31. Gryphon also tried to solicit clients by suggesting that the firm could provide them with outlandish profits. The firm’s website described to clients a 62% “risk-free” gain, suggesting that if clients “sign up today for a ‘risk free trial’” they would be shown “a 62% average” profit or else their next “year of service is personally on me!” The website also stated that clients who use Gryphon’s trading techniques could “turn \$5,000 into \$249,450 in just six weeks.” Another promotion proclaimed that “In the Next Few Days, \$105 Million May HIT THE BUY-SIDE INTO THIS ‘Covert Market.’ Use this Knowledge Now to Spin \$5,000 into \$229,320 in just 6 months!” And in another misleading pronouncement, Gryphon’s website stated that “9 out of every 10 trades will hit 100% profit status,” and that Gryphon’s strategy was “guaranteeing you a winning head start. You will hit 90% of your trades in the first 90 days or you owe nothing again ever.”

32. As recently as April 16, 2010, Gryphon’s website induced prospective clients by describing “Returns of Up to 483% in Less Than 2 Months!” and by stating that clients “have the opportunity to turn \$5,000 into hundreds of thousands in months . . . the profits will keep rolling in, enabling the bequest of lasting prosperity, securely and easily.” Similarly, as recently as April 17, 2010, Gryphon urged prospective clients to “Just this once – step outside your comfort

zone – buy stocks without prejudice and don't look at the numbers, don't look at the chart, buy the stock the minute you hear from us and don't sell a single share until we tell you to – do this and you are rich, do not and continue to invest in mediocrity.”

33. Gryphon's website and promotional materials were also replete with false testimonials from clients about its performance and affiliations, and a purported endorsement of Gryphon by George Soros, that in fact Gryphon fabricated. Gryphon claimed that Soros stated: “Alone the traders of Gryphon Financial are incredible, together the [sic] are unstoppable.” The client testimonials falsely attested to the success of Gryphon's recommendations, which purportedly resulted in a “huge nest egg,” the ability to buy expensive cars, and freedom to no longer work.

34. Gryphon did not limit its false and misleading promises about future gains to the firm's website. On one occasion in early 2010, Defendant Levier told a client who had already suffered trading losses by following Gryphon's recommendations, that he had three specific trades for \$1,000 that were a “7 on a scale of 5,” “the right thing to do,” and that the Levier was “confident” that the client “will be successful.” Levier also falsely claimed that his recommendations were supported by research “coming from people I pay a lot of money to.” Levier also intimated to a client that Gryphon had “inside information,” and that for an appropriate amount of money, the client could substantially profit by getting “in on it.” Another Gryphon representative, who called himself “John Stevens,” told a client in September 2009 that a recommended options trade would turn a \$20,000 investment into a six-figure return, and was so “safe” that he was purchasing it for his (i.e., “John Stevens”) sister. “John Stevens” also “guaranteed” that if the client invested \$20,000 and didn't at least double her investment, she would get lifetime access to Gryphon's services.

35. Further touting its trading performance to induce clients to sign up for its pricey services, Gryphon described to investors multiple “examples” of its trading recommendations that purportedly returned enormous profits, such as “GDX @ \$9.80,” which purportedly provided a “378% profit;” “DRYS @ \$46.80,” which purportedly provided a “350% profit;” “ABX @ \$0.90,” which purportedly provided a “182% profit;” and “RYL @ \$6.10,” which purportedly provided a “139% profit.” On its website, Gryphon claimed that various securities that it supposedly recommended rose between 354 and 3,044 percent, and stated that “best of all, the returns... are real, not hypothetical.” The website also described Gryphon subscribers who, by following “Kenneth Maseka’s” tips, cashed in a return of “385% in less than 2 weeks.” In truth, Gryphon significantly misrepresented actual losses incurred by clients who traded on the basis of the firm’s recommendations and, because Gryphon provided no basis to verify the accuracy of its purported returns or made significant misrepresentations about other aspects of its trading operations, some or all of those exorbitant performance claims were likely fabricated.

36. While Gryphon’s materials occasionally mentioned that not every trade is profitable, the firm’s website and promotional materials did not typically disclose losing recommendations to clients and dramatically downplayed any risks by portraying Gryphon’s investment advice as a guarantee or near-guarantee of success. One promotion of Gryphon’s “Bond Authority” advisory service, for example, stated that clients will get a “RISK FREE Guarantee that will Gain Profits for you for a Lifetime.” Another stated that by following Gryphon’s recommendations, clients would be “guaranteeing ... a winning head start.” As recently as April 17, 2010, Gryphon claimed that “in 2008 only seven recommendations issued didn’t make money, even more remarkable 40 of the 43 that hit worked out BIG.”

Fictitious Traders, Trading Desk, and Hedge Fund

37. In addition to misstatements about its historical returns and its success as investment adviser, Gryphon's website and promotional materials falsely claimed the firm's trading desk and its traders' unparalleled experience and investment expertise. Gryphon's representatives claimed that the firm had a hedge fund, which "opened [its] doors to the individual investor" on January 1, 2007, and the firm's website similarly stated that one of its "traders ... currently manages one of Gryphon Hedge fund partners' accounts with excess holdings of 1.4 billion" dollars. Defendant Anderson falsely represented in an e-mail to a client who paid Gryphon a fee of more than \$200,000 that Gryphon had a "trading desk." Defendant Levier similarly falsely informed a client that Gryphon's trading was run by "hedge fund people who made a lot of money" and had intimate contacts in the financial industry. Defendant Budion advised a client that he was "taking over" Gryphon's "hedge funds." In truth, Gryphon never operated or managed any hedge fund, let alone one with \$1.4 billion in holdings, nor was the firm itself run by hedge fund managers or traders, as Gryphon and its representatives told prospective or existing clients. The Defendants knew, or were reckless in not knowing, that any statements they made to clients about Gryphon's hedge fund operations and asset under management in the course of inducing those clients to purchase investment advisory services or to trade in securities were false.

38. Similarly, Gryphon's representatives often claimed to clients and prospective clients the investment prowess of the firm's traders. On its website, Gryphon described its "ruthless" group of "10 traders" that collectively had over 100 years of experience and used a secret strategy to make "billions." The website also informed clients that "[a]s a group, the traders of Gryphon Hedge fund Partners find their success by sifting through the piles of research

to find Wall Street's 'Hidden Gems.'" Defendant Anderson told one client that Gryphon managed several hedge funds and that its traders had a "phenomenal" record. On one occasion, when a client called, Gryphon's representatives appeared to cheer in the background to convey the false impression of an active, real-time trading operation. In reality, Gryphon never operated a trading desk or ever employed any professional traders who had the guru-like expertise that the Defendants claimed. The Defendants knew, or were reckless in not knowing, that any statements they made to clients about Gryphon's investment prowess in the course of inducing those clients to purchase investment advisory services or to trade in securities were false.

39. In yet another false claim, Gryphon represented to clients that it traded in the same securities that the firm recommended to its clients, and that Gryphon therefore provided "the only [news]letter that's [sic] actually trades our own recommendations - We are traders - who trade! Not a publication that talks about traders who trade." Defendant Lada claimed in web postings that she is a "trader at Gryphon Financial" whose trading "approach is used exclusively by Gryphon's elite group of '10,'" and who provided "trading recommendations" that reflected "what I and my fellow traders are buying in our own portfolios." In truth, Defendant K. Marsh and other Gryphon representatives did not routinely maintain trading accounts in which they purchased or sold the securities they recommended to Gryphon clients. Gryphon's clients sustained substantial investment losses trading Gryphon's baseless recommendations.

Fictional Traders and Principals

40. Gryphon representatives also induced clients to buy advisory services by falsely representing that the firm's principals were wealthy, highly educated, and successful trading gurus. Gryphon described its "V.P. and partial owner" as "Michael Warren," whom Gryphon's

website falsely portrayed as a graduate of Columbia University and the Wharton School of Business. According to the website, Warren served as “Gryphon’s chief financial strategist,” “head of equity Hedge Fund strategies” and as manager of the firm’s “offshore Hedge Fund and Structured products division.” Gryphon’s website and e-mails to clients highlighted Warren’s remarkable record, which consisted of maintaining an average of over “100% quarterly gain” since Gryphon’s portfolio was first created.

41. As recently as April 17, 2010, in a Gryphon web posting labeled “Pure Profit,” Michael Warren identifies himself as a “part owner and partner of Gryphon Daily.” Warren further is attributed as stating: “In just the past year, in 2009, I broke the half million mark in trading profits in my own personal trading account by summer – how did I do it? – SIMPLE – It is not what you know, it is who you know – With my connections to the market spanning 5 generations in investment banking, the relationships my past relatives have developed are passed down to this day.” In truth, Warren was a fictional character created by Defendant K. Marsh. No such person was ever associated with Gryphon and the Defendants knew, or were reckless in not knowing, that any statements they made to clients about Warren in the course of inducing those clients to purchase investment advisory services or to trade in securities were false.

42. Gryphon’s website, promotions, and e-mails also referred to Gryphon’s president and owner, “Kenneth Maseka,” who was described as a “self-made millionaire” and a “great” stock picker whose twelve-year returns have been “better than the country’s top equity fund manager.” Gryphon’s materials informed clients that “as a founding partner and head trader at Gryphon Financial and all of its divisions,” Maseka needed “less than 20 years to pull in revenues that exceed \$50 Billion.” At one time, Gryphon’s website claimed that Maseka was educated at “Harvard”, then “Oxford,” and that he spent a brief period working for Goldman

Sachs as a risk arbitrage trader. Defendant Anderson told one client that Michael Warren was associated with Lehman Brothers. The Gryphon website currently claims that Maseka was educated at Georgetown University and spent a brief period at Goldman Sachs as a broker. Neither Maseka nor Warren was ever affiliated with any investment bank and any claims by the Defendants to the contrary are false and misleading.

43. As recently as April 16, 2010, Gryphon's website stated that "Maseka uses his expertise, his in-depth examination, and his special contacts around the globe to select for you the handful of worldwide companies that have the probability to beat the market by the broadest margin, in the shortest amount of time . . . The ultimate evidence is in the results. Maseka has been using his momentous system ... with incredible results!" In truth, Maseka, like Warren, was a fictitious character invented by K. Marsh. The Defendants knew, or were reckless in not knowing, that any statements they made to clients about Maseka in the course of inducing those clients to purchase investment advisory services or to trade in securities were false.

44. Gryphon's website listed several other fictitious characters, such as "Chris Wolfe," whose average profit since 1995 purportedly "exceeded 1000% per trade;" "Marc Seigel," who purportedly "manage[s] in excess of 700 million in daily option trading volume" and whose "talents trading options can be traced back five generations;" "John Gage," a graduate of Columbia and Wharton, a partner at Gryphon Financial and head of "equity Hedge Strategies;" and "Marcus Thorn," who delivered "189% gain" on an "Intel play in one day." All of these personas, as Defendants knew or were reckless in not knowing, were fictitious and the trading prowess attributed to them was false. Although Gryphon claimed these fictitious persons to its clients, neither the firm nor its representatives disclosed material information concerning

the prior sanctions imposed against its actual principal by a securities regulator, namely that in 2007 the NASD barred Defendant K. Marsh from association with any member firm of the NASD.

45. In conversations with clients, Gryphon's representatives frequently referred to Warren, Maseka and the other fictional personas to gain clients' confidence. Defendant Lada, for example, falsely wrote on Gryphon's website that Warren and Maseka were self-made millionaires and referred to Warren and Maseka in conversations with prospective clients. As recently as April 16, 2010, Defendant Lada wrote that "Maseka is on top of this sizzling market and on top of his game, showing his subscribers how to profit from the top notch opportunities available right now." Defendant Anderson told a client that he was an "assistant to Michael Warren," and pitched a \$25,000 advisory plan, telling the client that once Michael Warren provided recommendations, "you gotta do those trades, that's how you're gonna pay your balance [for the Gryphon services] and put money in your pocket." Other Gryphon associates with aliases such as "John Stevens," "Paul Ross," and "Richard Lanza" similarly told clients that Warren and Maseka were wealthy and successful traders, that Warren flew a helicopter, and that clients could have access to Warren if they purchased one of Gryphon's more expensive advisory plans. When clients purchased the recommended advisory plans, Gryphon's representatives gave the client a telephone number to call "Warren." When those clients called to discuss investments with Warren, Defendant K. Marsh and other Gryphon representatives pretended to be Warren in order to maintain the deception.

46. The Defendants knew, or were reckless in not knowing, that their representations regarding Gryphon's or its affiliates' profitable securities trading -- an integral part of the

Defendants' sales pitches to induce clients to purchase investment advisory services -- were false. While the Defendants portrayed K. Marsh, masquerading as "Maseka" or "Warren," as a successful investor who obtained millions for himself, or who enriched his clients based on his trading expertise, at best Defendant K. Marsh had only marginal success trading in a small securities account. Defendant K. Marsh also had no basis to believe that Gryphon's other representatives were trading experts or even traded in their own accounts.

47. As a result of the wide range of misrepresentations that Gryphon and its associates made to prospective and existing clients, numerous clients paid fees to Gryphon for access to investment advisory services that Gryphon had agreed to provide. Often, the clients sustained losses by following Gryphon's recommendations and, after complaining to Gryphon, were unilaterally cut-off from any additional recommendations, even though Gryphon had contractually agreed to provide such investment recommendation in return for fees paid by the clients.

48. As a result, the Defendants obtained millions of dollars in illicit fees and payments. Defendants K. Marsh, Anderson, Budion, Lada, and Levier obtained a combined sum of at least \$4.6 million from Gryphon since 2008. Defendant K. Marsh alone has obtained over \$1.9 million from Gryphon. In addition, the Relief Defendants, directly or indirectly, have obtained a total of over \$3.4 million in payments from Gryphon during the relevant period often while purporting to be independent contractors providing unspecified services to Gryphon.

FIRST CAUSE OF ACTION

**Violations of Sections 206(1) and 206(2)
of the Advisers Act**

**(against Defendants Gryphon, K. Marsh,
Anderson, Budion, Lada, and Levier)**

49. The Commission realleges and incorporates paragraphs 1 through 5 and 8 through 48 as if fully set forth herein.

50. As a result of the conduct described above, Defendants Gryphon, K. Marsh, Anderson, Budion, Lada, and Levier, directly or indirectly, by the use of the mails or means and instrumentalities of interstate commerce: (a) with requisite scienter, employed and are employing devices, schemes and artifices to defraud clients or prospective clients; (b) engaged in and are engaged in transactions, practices, and courses of business which operated and operate as a fraud or deceit upon existing or prospective clients; or (c) engaged in acts, practices, or courses of business which were fraudulent, deceptive, or manipulative.

51. By reason of the foregoing, Defendants Gryphon, K. Marsh, Anderson, Budion, Lada, and Levier violated, and unless enjoined and restrained will continue to violate, Sections 206(1) and (2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and (2)].

SECOND CAUSE OF ACTION

**Aiding and Abetting Violations of
Sections 206(1) and 206(2) of the Advisers Act
(against Defendants Anderson, Budion, Lada, and Levier)**

52. The Commission realleges and incorporates paragraphs 1 through 5 and 8 through 51 as if fully set forth herein.

53. At all relevant times, Gryphon and K. Marsh operated as investment advisers, as defined by Section 202(a)(11) of the Advisers Act [15 U.S.C. § 80b-2(a)(11)], and served in that capacity with respect to Gryphon's clients.

54. Gryphon and K. Marsh violated Sections 206(1) and 206(2) of the Advisers Act when, by the use of the means and instrumentalities of interstate commerce or of the mails, Gryphon and K. Marsh employed devices, schemes and artifices to defraud clients, and engaged in transactions, practices and courses of business which operated as a fraud and deceit upon Gryphon's clients.

55. From at least 2008 through 2010, Defendants Anderson, Budion, Lada, and Levier, directly or indirectly, aided and abetted Gryphon's or K. Marsh's violations of Sections 206(1) and 206(2) of the Advisers Act. Specifically, Defendants Anderson, Budion, Lada, and Levier knowingly, or with the requisite scienter, provided substantial assistance to Gryphon or K. Marsh in employing devices, schemes and artifices to defraud clients, and engaging in transactions, practices and courses of business which operated as a fraud and deceit upon Gryphon's clients.

56. By reason of the foregoing, Defendants Anderson, Budion, Lada, and Levier aided and abetted Gryphon's and K. Marsh's violations of, and unless enjoined and restrained will continue to aid and abet violations of, Sections 206(1) and (2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and (2)].

THIRD CAUSE OF ACTION
Violations of Section 10(b) of the
Exchange Act and Rule 10b-5
(against Defendants Gryphon, K. Marsh,
Anderson, Budion, Lada, and Levier)

57. The Commission realleges and incorporates paragraphs 1 through 5 and 8 through 48 as if fully set forth herein.

58. As a result of the conduct described above, Defendants Gryphon, K. Marsh, Anderson, Budion, Lada, and Levier, directly or indirectly, in connection with the purchase or sale of a security, by the use of means or instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange, with scienter: (a) employed devices, schemes, or artifices to defraud; (b) made untrue statements of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices, or course of business which operated and operate as a fraud or deceit upon other persons.

59. By reason of the foregoing, Defendants Gryphon, K. Marsh, Anderson, Budion, Lada, and Levier, directly or indirectly violated, and unless enjoined and restrained will continue to violate, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder [15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5].

FOURTH CAUSE OF ACTION
Control Person Liability Under
Section 20(a) of The Exchange Act
(against Defendant K. Marsh)

60. The Commission realleges and incorporates paragraphs 1 through 5, 8 through 48, and 57 through 59 as if fully set forth herein.

61. Defendant Gryphon, directly or indirectly, in connection with the purchase or sale of a security, by the use of means or instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange, with scienter: (a) employed devices, schemes, or artifices to defraud; (b) made untrue statements of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices, or course of business

which operated and operate as a fraud or deceit upon other persons in violation of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5].

62. At all relevant times, Defendant K. Marsh possessed, directly or indirectly, the power to direct and control Gryphon's management and policies, including the conduct of its representatives, and was a controlling person of Gryphon and its representatives pursuant to Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)]. Defendant K. Marsh was a culpable participant in the fraudulent conduct described above, and directly induced many of the misrepresentations and misstatements alleged herein.

63. By reason of his actions alleged herein, Defendant K. Marsh is liable as a controlling person pursuant to Section 20(a) of the Exchange Act for Gryphon's and its representatives' violations of Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)], and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5], and unless enjoined and restrained will again violate these provisions and rules.

FIFTH CAUSE OF ACTION
(against Relief Defendants)

64. The Commission realleges and incorporates paragraphs 1 through 63 as if fully set forth herein.

65. Each of the Relief Defendants Nicole Marsh, Borrello, Mungiovi, Scarpaci, Spinelli and Stokes has obtained funds as part, and in furtherance, of the violations by Defendants Gryphon, K. Marsh, Anderson, Budion, Lada and Levier, as alleged above, and under circumstances in which it is not just, equitable or conscionable for the Relief Defendants to retain the funds.

66. By reason of the acts, omissions, practices and courses of business set forth in this Complaint, the Defendants violated Sections 206(1) and (2) of the Advisers Act [15 U.S.C. §§

80b-6(1) and (2)], Defendants Anderson, Budion, Lada and Levier aided and abetted violations of Sections 206(1) and (2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and (2)], Defendants violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder [15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5], and Defendant K. Marsh is liable as a controlling person pursuant to Section 20(a) of the Exchange Act for Gryphon's and its representatives' violations of Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)], and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5]. At least some of the proceeds of the Defendants' fraudulent schemes, alleged above, were obtained by the Relief Defendants, transferred to bank accounts owned or controlled by the Relief Defendants, or are otherwise in the Relief Defendants' possession or control. As a consequence, Relief Defendants Nicole Marsh, Borrello, Mungiovi, Scarpaci, Spinelli and Stokes have each been unjustly enriched.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court grant the following relief:

I.

An Order temporarily and preliminarily, and a Final Judgment permanently, enjoining and restraining the Defendants, their agents, servants, employees, attorneys, assigns and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from violating Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and 80b-6(2)], Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5].

II.

An Order temporarily and preliminarily, and a Final Judgment permanently, enjoining and restraining the Defendants Anderson, Budion, Lada and Levier, their agents, servants,

employees, attorneys, assigns and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from aiding and abetting violations of Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

III.

An Order temporarily and preliminarily, and a Final Judgment permanently, enjoining and restraining Defendant K. Marsh, his agents, servants, employees, attorneys, assigns and all persons in active concert or participation with him who receive actual notice of the injunction by personal service or otherwise, and each of them, from controlling any person who violates Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5].

IV.

An Order freezing all of the Defendants' assets and directing Defendants Gryphon, K. Marsh, Anderson, Budion, Lada and Levier, and each of their financial and brokerage institutions, agents, servants, employees attorneys-in-fact, and those persons in active concert or participation with them who receive actual notice of such Order by personal service, facsimile service, or otherwise, to hold and retain within their control, and otherwise prevent, any withdrawal, transfer, pledge, encumbrance, assignment, dissipation, concealment or other disposal of any assets, funds, or other property (including money, real or personal property, securities, commodities, choses in action or other property of any kind whatsoever) of, held by, or under the control of Defendants Gryphon, K. Marsh, Anderson, Budion, Lada or Levier, whether held in their names, or for their direct or indirect beneficial interest, wherever situated.

V.

An Order freezing the Relief Defendants' assets up to the amount, for each Relief Defendant, of the potential ill-gotten gains that the Relief Defendant received, and directing Relief Defendants Borrello, N. Marsh, Mungiovi, Spinelli, Scarpaci, and Stokes, and each of their financial and brokerage institutions, agents, servants, employees attorneys-in-fact, and those persons in active concert or participation with them who receive actual notice of such Order by personal service, facsimile service, or otherwise, to hold and retain within their control, and otherwise prevent, any withdrawal, transfer, pledge, encumbrance, assignment, dissipation, concealment or other disposal of any assets, funds, or other property (including money, real or personal property, securities, commodities, choses in action or other property of any kind whatsoever) of, held by, or under the control of Relief Defendants Borrello, N. Marsh, Mungiovi, Spinelli, Scarpaci, and Stokes, whether held in their names, or for their direct or indirect beneficial interest, wherever situated.

VI.

An Order directing each of the Defendants and Relief Defendants, and any entities that are majority-owned by, controlled, or under the direction of each Defendant or Relief Defendant (including, without limitation, with respect to Defendant Anderson, Pembroke Hall, LLC; with respect to Defendant Budion, RB Platinum, Inc.; with respect to Defendant Lada, JMLS Secret, Inc.; with respect to Defendant Levier, RMJ Marketing, LLC; with respect to Relief Defendants Borrello and Mungiovi, R and G Dreamworks Enterprises, Inc.; with respect to Relief Defendant Spinelli, ARC&T, Inc.; with respect to Relief Defendant Scarpaci, MGS Sr., Inc.; and with respect to Relief Defendant Stokes, P Botz, Inc.) to file with this Court, and serve upon the Commission, within five (5) business days, or within such extension of time as the Commission

staff agrees to, a verified written accounting, signed by each Defendant or Relief Defendant under penalty of perjury, setting forth:

- (1) All assets, liabilities and property currently held, directly or indirectly, by or for the benefit of each such Defendant or Relief Defendant, including, without limitation, bank accounts, brokerage accounts, investments, business interests, loans, lines of credit, and real and personal property wherever situated, describing each asset and liability, its current location and amount;
- (2) All money, property, assets and income received by each such Defendant or Relief Defendant for his direct or indirect benefit, at any time from January 1, 2005 through the date of such accounting, describing the source, amount, disposition and current location of each of the items listed;
- (3) The names and last known addresses of all bailees, debtors, and other persons and entities that currently are holding the assets, funds or property of each such Defendant or Relief Defendant; and
- (4) All assets, funds, securities, and real or personal property received by each such Defendant or Relief Defendant, or any other person controlled by them, from persons who provided money to the Defendant or Relief Defendant in connection with the business of Gryphon from January 1, 2005 to the date of the accounting, and the disposition of such assets, funds, securities, real or personal property; and
- (5) All assets, liabilities and property currently held, directly or indirectly, by entities that are majority-owned by, controlled, or under the direction of each Defendant or Relief Defendant (including, without limitation, with respect to Defendant Anderson, Pembroke

Hall, LLC; with respect to Defendant Budion, RB Platinum, Inc.; with respect to Defendant Lada, JMLS Secret, Inc.; with respect to Defendant Levier, RMJ Marketing, LLC; with respect to Relief Defendants Borrello and Mungiovi, R and G Dreamworks Enterprises, Inc.; with respect to Relief Defendant Spinelli, ARC&T, Inc.; with respect to Relief Defendant Scarpaci, MGS Sr., Inc.; and with respect to Relief Defendant Stokes, P Botz, Inc.) including, without limitation, bank accounts, brokerage accounts, investments, business interests, loans, lines of credit, and real and personal property wherever situated, describing each asset and liability, its current location and amount.

VII.

An Order permitting expedited discovery.

VIII.

An Order enjoining and restraining each of the Defendants and Relief Defendants, and any person or entity acting at their direction or on their behalf, from destroying, altering, concealing, or otherwise interfering with the access of the Commission to relevant documents, books and records.

IX.

An Order enjoining and restraining each of the Defendants and Relief Defendants, and each of their respective officers, agents, employees, attorneys, or other professionals, anyone acting in concert with them, and any third party from filing a bankruptcy proceeding on behalf of the Defendants or Relief Defendants without at least (three) 3 days notice to the Commission and approval of the Court.

X.

A Final Judgment ordering each of the Defendants to pay a civil monetary penalty pursuant to Section 209(e)(1) of the Advisers Act [15 U.S.C. §80b-9(e)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)].


XI.

A Final Judgment ordering each of the Defendants and Relief Defendants to disgorge, with prejudgment interest thereon, all illicit profits or other ill-gotten gains received as a result of the misconduct alleged in this Complaint, including, as to each Defendant and Relief Defendant, their own illicit profits or other ill-gotten gain, and such other and further amounts as the Court may find appropriate.

XII.

Granting such other and further relief as this Court deems just and appropriate.

Dated: April 20, 2010
New York, New York

By: 
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