

Case: D-1-GN-09-004226 with (8) documents

Filed Date	Category	Description	Additional Info
12/14/2009	PET-PL	ORIGINAL PETITION/APPLICATION	PLAINTIFF'S ORIGINAL PETITION
12/16/2009	SRVPROCESS ...	EXE SERVICE OF CITATION	TRITON FINANCIAL LLC
12/16/2009	SRVPROCESS ...	EXE SERVICE OF CITATION	TRITON HOLDINGS, LP
12/16/2009	SRVPROCESS ...	EXE SERVICE OF CITATION	TVEST GROUP LLC
12/16/2009	SRVPROCESS ...	EXE SERVICE OF CITATION	KURT BARTON
12/16/2009	SRVPROCESS ...	EXE SERVICE OF CITATION	TRITON AQUISITION LP
12/22/2009	PET-PL	AMENDED PETITION	PLAINTIFFS FIRST AMENDED PETITION
12/31/2009	PET-PL	AMENDED PETITION	PLAINTIFF'S SECOND AMENDED ORIGINAL PETITION



TVEST GROUP entities are also known as the "TRITON GROUP" and together with KURT BARTON referred to as "Defendants").

I. DISCOVERY

1. Discovery is intended to be conducted under Level 3 pursuant to Rule 190.4 of the Texas Rules of Civil Procedure.

II. PARTIES

A. Plaintiff

2. Plaintiff Ryan Shapiro, a resident of Travis County, Texas brings this action on his own behalf and as a representative of the Plaintiff Class hereinafter described.

B. Defendants

3. Defendant TRITON FINANCIAL, LLC is a Texas limited liability company headquartered in Travis County, Texas, at 12117 Bee Caves Road, Suite 100, Austin, Texas 78738. Service of process may be effected by serving its registered agent, Anthony C. Goodall, 1250 Capital of Texas Highway South, Three Cielo Center, Suite 601, Austin, Texas 78746.

4. Defendant TRITON ACQUISITION, LP d/b/a TRITON INSURANCE, LP is a Texas limited partnership headquartered in Travis County, Texas, at 12117 Bee Caves Road, Suite 200, Austin, Texas 78738. Service of process may be effected through its registered agent, Kurt Barton, at the same address.

5. On information and belief, Defendant TRITON HOLDINGS, LP is a Texas limited partnership headquartered in Travis County, Texas, at 12117 Bee Caves Road, Suite 200, Austin, Texas 78738. Service of process may be effected by serving its General Partner, TVEST GROUP, LLC through its registered agent, Kurt Barton, at the same address or 7035 Bee Cave Road, Suite 200, Austin, Texas 78746-5066, or through the Secretary of State.

6. Defendant TVEST GROUP, LLC is a foreign limited liability company formed under the laws of Delaware and registered in Texas with its principal place of business in Travis County at 7035 Bee Cave Road, Suite 200, Austin, Texas 78746-5066. TVEST GROUP, LLC may be served through its registered agent, Kurt Barton, at the same address.

7. Defendant KURT BARTON resides in Travis County and may be served at his place of business, 12117 Bee Caves Road, Suite 100, Austin, Texas 78738, or at his residence: 11600 Astoria Drive, Bee Cave, Texas 78738.

III. CLASS ACTION

8. This action is brought by the named Plaintiff as a class action on behalf of himself and on behalf of others similarly situated (the "Plaintiff Class"), under Tex. R. Civ. P. 42.

9. The exact number of the members of the Plaintiff Class is not known, but Triton Acquisition, LP d/b/a Triton Insurance, LP sought a total investment of \$12,000,000 from investors in \$50,000 units. At the General Partner's discretion smaller units were offered for \$25,000 each.

10. There are common questions of law and fact that relate to or affect the rights and interests of each limited partner in the Plaintiff Class in connection with his, her or its respective purchase of investor units. By way of example, these include, but are not limited to:

- a. Whether the Defendants breached their fiduciary duties owed the Plaintiff Class in their operation, administration and management of Triton Acquisition, LP d/b/a Triton Insurance, LP or Triton Holdings, LP;
- b. Whether the Defendants breached their fiduciary duties owed the Plaintiff Class in the accounting for and the management, investment, and disposition of the Plaintiff Class's invested funds;

- c. Whether the Defendants breached their fiduciary duties owed to the Plaintiff Class in excessively compensating the General Partner or its officers, directors and employees;
- d. Whether the Defendants breached their fiduciary duties in maintaining and reporting financial information, accounting records and financial reports of Triton Acquisition, LP d/b/a Triton Insurance, LP or Triton Holdings, LP; and
- e. Whether the Defendants breached their fiduciary duties in transferring partnership assets to other entities related to the General Partner or its officers, directors or employees.

11. Furthermore, the relief sought by these causes of action is common to the entire Plaintiff Class.

12. The claims of the Plaintiff, who is representative of the Plaintiff Class, are typical of the claims of the Plaintiff Class, in that the claims of all members of the Plaintiff Class, including Plaintiff, depend on the showing of the acts or omissions of the Defendants giving rise to the right of the Plaintiff and Plaintiff Class to the relief sought herein. There is no conflict as between the individual named Plaintiff and other members of the Plaintiff Class with respect to this action, or with respect to the claims for relief set forth herein.

13. The Plaintiff is the representative party for the Plaintiff Class and is able to fairly and adequately protect the interests of the Plaintiff Class. No conflict exists between Plaintiff and Plaintiff Class. The attorneys for the Plaintiff are experienced and capable in the type of litigation involved here.

14. This action is properly maintained as a class action because (i) the prosecution of separate actions by individual members of the Plaintiff Class would create the risk of inconsistent or varying adjudications which would establish incompatible standards of conduct for the Defendants, and adjudications with respect to individual members of the Plaintiff Class which would as a practical matter be dispositive of the interests of the other members of the Plaintiff Class, or would substantially impair or impede their ability to protect such interests; or (ii) questions of law and fact common to the Plaintiff Class predominate over any questions affecting only individual members.

15. All of the claims alleged by the Plaintiff on behalf of himself and the Plaintiff Class were caused by the action or omission of the Defendants.

16. This class action is superior to other available, alternative methods, if any, for the fair and efficient adjudication of these causes of action.

17. The Plaintiff brings this action on behalf of himself and on behalf of all others similarly situated. The Plaintiff Class is defined as all limited partners of Triton Acquisition, LP d/b/a Triton Insurance, LP or Triton Holdings, LP and excluding from this class the undersigned Plaintiff's counsel, members of their immediate families and lawyers and staff at their law firms; Defendants and members of their immediate families; and federal, state and local governmental entities, political subdivisions, and members of the judiciary.

IV. BACKGROUND AND FACTUAL ALLEGATIONS

18. In the latter half of 2008, Kurt Barton formed Triton Acquisition, LP d/b/a Triton Insurance, LP for the purpose of soliciting investment of \$12,000,000 to be exchanged for stock in Triton Holdings, LP, a Texas limited partnership. The primary objective of Triton Holdings, LP was to purchase an underperforming insurance company at a significant discount, which

Triton Holdings, LP represented it had negotiated. TVEST Group, LLC was the General Manager and Kurt Barton its President and Chief Executive Officer.

19. Upon purchasing the insurance company, Triton Holdings, LP would install its own management team and invest the insurance company's substantial reserves in real estate ventures controlled by other Triton entities, particularly Triton Financial, LLC and Kurt Barton.

20. On information and belief, Triton Holdings, LP never purchased the insurance company, and the investors' equity investment in Triton Acquisition, LP d/b/a Triton Insurance, LP and Triton Holdings, LP was transferred to other Triton entities controlled by Kurt Barton and Triton Financial, LLC and used for real estate purchases by those entities or transferred to investors in other Triton entities as "returns" on their investments.

21. Despite looting Triton Acquisition, LP d/b/a Triton Insurance, LP and Triton Holdings, LP, Kurt Barton and TVEST Group LLC, as General Partner, provided statements to the limited partners purporting to show appreciated account balances and even paid token dividends to the limited partners on at least one occasion.

22. On information and belief, the General Partner and Kurt Barton extracted from the partnership's funds excessive compensation and fees despite failing to achieve the primary objective of the partnership.

23. The General Partner and Kurt Barton have refused or failed to disclose to the limited partners whether the partnership holds any assets or the whereabouts of any of the partnership funds, if any remain.

V. CAUSE OF ACTION: BREACH OF FIDUCIARY DUTY

24. The above and foregoing described conduct concerning the misuse of partnership funds constitutes breach of fiduciary duties established by common law, Texas statutes and the relationship of the parties and owed by the Defendants to the Plaintiff and Plaintiff Class.

25. TVEST Group, LLC and Kurt Barton owe a fiduciary duty to the Plaintiff and Plaintiff Class created by the common law of Texas.

26. Specifically, TVEST Group, LLC and Kurt Barton owe the Plaintiff and Plaintiff Class the following fiduciary duties:

- (a) Of loyalty and utmost good faith;
- (b) Of candor;
- (c) To refrain from self-dealing;
- (d) To act with integrity of the strictest kind;
- (e) Of fair, honest dealing; and
- (f) Of full disclosure.

27. On information and belief, TVEST Group, LLC and Kurt Barton misappropriated the limited partners' fiduciary funds by transferring those fiduciary funds to other entities controlled or owned by the General Partner or Kurt Barton.

28. The Plaintiff and Plaintiff Class have suffered injury as a result of the Defendants' breaches of fiduciary duties and seek the following remedies.

VI. REMEDIES SOUGHT

29. Constructive Trust. The Defendants' conduct in the breach of their fiduciary duty owed to Plaintiff and described herein, creates a presumption of unfairness as a matter of law. As a result, the burden of persuasion rests squarely on the individual Defendants to show that

any transactions conducted on behalf of the partnership were fair and equitable to the beneficiaries/limited partners.

30. Plaintiff requests that the Court place a constructive trust on all proceeds, funds or property obtained by the Defendants as a result of their breaches of fiduciary duty, to protect the rights and interests of the Plaintiff and Plaintiff Class in them, and return such proceeds, funds or property to Plaintiff and Plaintiff Class.

31. Accounting and Disgorgement. Plaintiff requests that the Court order the Defendants to provide an accounting of:

- a. All compensation and benefits paid to the Defendants and to any other employees, officers, directors, agents or representatives;
- b. All partnership assets;
- c. The financial status, profits, losses, revenues, expenses and liabilities of the partnership or any other subsidiary; and
- d. All partnership assets transferred, lent, or otherwise controlled by any other entity, including without limitation any other Triton Group entity, office, director or employee.

32. Compensatory Damages. The Plaintiff seeks actual compensatory damages on behalf of himself and the Plaintiff Class for the injury caused by Defendants' breaches. As compensation, therefore, Plaintiff seeks monetary damages on behalf of himself and the Plaintiff Class including the return of compensation wrongfully paid, the return of partnership assets wrongfully transferred to Defendants or entities in their control, any profits realized by their use of partnership assets, and return of self-dealing expenditures.

33. Exemplary Damages. Defendants' wrongs appear to have been aggravated by the kind of malice for which the law allows the imposition of exemplary damages. The General Partners' conduct, when viewed objectively from its standpoint at the time of its occurrence, involved an extreme degree of risk considering the probability and magnitude of the potential harm to the Plaintiff and Plaintiff Class. Moreover, it appears that the General Partner and Kurt Barton had actual, subjective awareness of the risk involved but nevertheless proceeded with conscious indifference to the welfare of the limited partners. The General Partner's conduct, acts and omissions resulting in their breaches of fiduciary duties were performed with malice, fraud and/or gross negligence, and as a result, the Plaintiff Class is entitled to recover exemplary and/or punitive damages.

34. Attorneys' Fees. Plaintiff has been required to retain the services of the undersigned attorneys to bring this cause of action. Plaintiffs are entitled to recover their reasonable and necessary attorneys' fees under Tex. Civ. Prac. & Rem. Code. Ann. §§ 37.009, 38.001 (8) (Vernon 1997), and on equitable grounds.

35. If and when the Plaintiff Class is certified as requested, Plaintiff requests attorneys' fees and costs authorized by law or by agreement of the parties under the procedures set out in Tex. R. Civ. P. 42 (i).

36. Plaintiff requests a jury trial and has paid the appropriate jury fee.

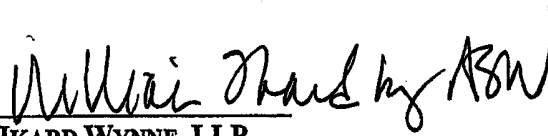
VII. PRAYER

37. Plaintiff, on behalf of himself and the Plaintiff Class, respectfully requests that the Court grant to them all relief sought in paragraphs 30 through 36 above, including without limitation the following:

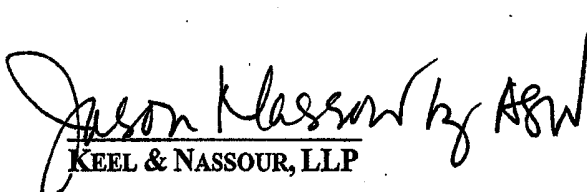
- a. Certify the Plaintiff Class as described herein and that the Plaintiff is representative of the Plaintiff Class and appoint the undersigned attorneys as class counsel for the Plaintiff Class;
- b. Enter judgment that all Defendants jointly and severally are liable for actual damages, including, but not limited to, (i) all excessive compensation and benefits and all improper expenditures paid to the General Partner or Kurt Barton or employees, directors, or officers of any entity excessively compensated; (ii) transferred partnership assets; (iii) partnership losses resulting from the General Partner's or Kurt Barton's self-dealing; (iv) partnership profits lost as a result of misappropriation of partnership assets;
- c. Enter judgment that all Defendants, jointly and severally, are liable for exemplary damages based on malice and/or malfeasance in an amount sufficient to punish Defendants for their intentional malicious acts and breaches of fiduciary duty;
- d. Order disgorgement of all amounts misappropriated by the Defendants and impose a constructive trust on such amounts to be held solely for limited partners;
- e. Reform the partnership agreement to permit the limited partners to revoke their subscription and order return of the limited partners' investment;
- f. Award Plaintiff and Plaintiff Class pre-judgment and post-judgment interest, as permitted by law, on all damages;
- g. Award Plaintiff and Plaintiff Class their reasonable and necessary attorneys' fees, expenses and costs of court; and

h. Award Plaintiff and Plaintiff Class such further relief at law and equity to which they are entitled.

Respectfully submitted,


IKARD WYNNE, LLP

William Ikard
State Bar No. 10385500
Anne S. Wynne
State Bar No. 22105000
Cabrach J. Connor
State Bar No. 24036390
515 Congress Avenue, Suite 1320
Austin, Texas 78701
512-275-7880 (Phone)
512-542-9581 (Fax)


KEEL & NASSOUR, LLP

Jason Nassour
State Bar No. 24003713
KEEL & NASSOUR, LLP
508 West 14th Street
Austin, Texas 78701
(512) 480-8694 (Phone)
(512) 480-8170 (Fax)

ATTORNEYS FOR THE PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 14th day of December, 2009, a true and correct copy of the above and foregoing was forwarded via hand delivery, and U.S. First Class Certified Mail, Return Receipt Requested:



Cabrach Connor

Anthony C. Goodall, registered agent
TRITON FINANCIAL, LLC
1250 Capital of Texas Highway South
Three Cielo Center, Suite 601
Austin, Texas 78746
Via: hand delivery

Kurt Barton, registered agent
TRITON ACQUISITION, LP d/b/a TRITON INSURANCE
12117 Bee Caves Road, Suite 200
Austin, Texas 78738
Via: hand delivery

Kurt Barton, registered agent
TRITON HOLDINGS, LP
12117 Bee Caves Road, Suite 200
Austin, Texas 78738
Via: hand delivery

Kurt Barton, registered agent
TVEST GROUP, LLC
7035 Bee Cave Road, Suite 200
Austin, Texas 78746-5066
Via: hand delivery

Kurt Barton
12117 Bee Caves Road
Suite 100
Austin, Texas 78738
Via: hand delivery

or

11600 Astoria Drive
Bee Cave, Texas 78738
Via: hand delivery

CITATION
THE STATE OF TEXAS
CAUSE NO. D-1-GN-09-004226

RYAN SHAPIRO, INDIVIDUALLY, AND AS REPRESENTATIVE OF ALL OTHERS SIMILARLY SITUATED, Plaintiff

vs.

TRITON FINANCIAL, LLC; TRITON ACQUISITION, LP D/B/A TRITON INSURANCE, LP; TRITON HOLDINGS LP; TVEST GROUP, LLC, Defendant
INDIVIDUALLY AND IN ITS CAPACITIES AS GENERAL PARTNER

Filed in The District Court of Travis County, Texas

TO: TRITON FINANCIAL LLC
BY SERVING ITS REGISTERED AGENT, ANTHONY C. GOODALL
1250 CAPITAL OF TEXAS HIGHWAY SOUTH, THREE CIELO CENTER
SUITE 601
AUSTIN, TEXAS 78746

DEC 16 2009 TH
At 11:19 A.M.
Amalia Rodriguez-Mendoza, Clerk

Defendant, in the above styled and numbered cause:

YOU HAVE BEEN SUED. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 A.M. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you.

Attached is a copy of the PLAINTIFF'S ORIGINAL PETITION of the PLAINTIFF in the above styled and numbered cause, which was filed on DECEMBER 14, 2009 in the 98TH JUDICIAL DISTRICT COURT of Travis County, Austin, Texas.

ISSUED AND GIVEN UNDER MY HAND AND SEAL of said Court at office, December 15, 2009.

REQUESTED BY:
JASON ROBERT NASSOUR
WWW.KEELNASSOUR.COM
508 W 14TH ST
AUSTIN, TX 78701
BUSINESS PHONE: (512) 480-8693 FAX: (512) 480-81

AMALIA RODRIGUEZ-MENDOZA
Travis County District Clerk
Travis County Courthouse
1000 Guadalupe, P.O. Box 679003 (78767)
Austin, Texas 78701



[Signature]
RIGO OLIVA, Deputy

RETURN

Came to hand on the 15 day of December, 2009 at 359 o'clock P M., and executed at 1250 Capital of Texas Highway South Suite 601, Austin 78746 within the County of TRAVIS on the 16th day of December, 2009, at 9:28 o'clock A M., by delivering to the within named Triton Financial LLC by serving its registered agent Anthony C Goodall Plaintiffs Original Petition, each in person, a true copy of this citation together with the E-FILE MANDATE NOTICE accompanying pleading, having first attached such copy of such citation to such copy of pleading and endorsed on such copy of citation the date of delivery.

Service Fee: \$ per invoice

[Signature]
~~Sheriff / Constable~~ / Authorized Person

Sworn to and subscribed before me this the

16th day of December, 2009.

By: Travis Wyatt
TRAVIS WYATT SW 499
Printed Name of Server

[Signature]
Notary Public, THE STATE OF TEXAS

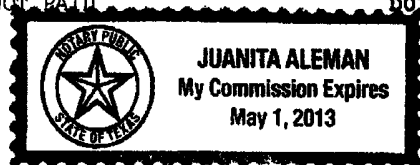
TRAVIS County, Texas

D-1-GN-09-004226

SERVICE FEE NOT PAID

DO1 - 44520

Original Service Copy



C I T I O N

THE STATE OF TEXAS

CAUSE NO. D-1-GN-09-004226

RYAN SHAPIRO, INDIVIDUALLY, AND AS REPRESENTATIVE OF ALL OTHERS SIMILARLY SITUATED, Plaintiff

vs.

TRITON FINANCIAL, LLC; TRITON ACQUISITION, LP D/B/A TRITON INSURANCE, LP; TRITON HOLDINGS LP; TVEST GROUP, LLC, Defendant
INDIVIDUALLY AND IN ITS CAPACITIES AS GENERAL PARTNER

TO: TRITON HOLDINGS LP
BY SERVING ITS GENERAL PARTNER, TVEST GROUP, LLC
REGISTERED AGENT, KURT BARTON
7035 BEE CAVES ROAD, SUITE 200
AUSTIN, TEXAS 78746-5066
OR AT 12117 BEE CAVES ROAD, SUITE 200, AUSTIN, TEXAS 78738

Filed in The District Court of Travis County, Texas
DEC 16 2009
8:20 AM

Defendant, in the above styled and numbered cause:

YOU HAVE BEEN SUED. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 A.M. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you.

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ISSUED AND GIVEN UNDER MY HAND AND SEAL of said Court at office, December 15, 2009.

REQUESTED BY:
JASON ROBERT NASSOUR
WWW.KEELNASSOUR.COM
508 W 14TH ST
AUSTIN, TX 78701
BUSINESS PHONE: (512) 480-8693 FAX: (512) 480-8670

AMALIA RODRIGUEZ-MENDOZA
Travis County District Clerk
Travis County Courthouse
1000 Guadalupe, P.O. Box 679003 (78767)
Austin, Texas 78701



By RICO OLIVA, Deputy

RETURN

Came to hand on the 15th day of December, 2009 at 359 o'clock P. M., and executed at 12117 Bee Caves Road Ste. 100 Austin TX 78738 within the County of Travis on the 15th day of December, 2009, at 4:00 o'clock P. M., by delivering to the within named Triton Holdings LP by serving its registered agent Kurt Barton - Plaintiff's original petition each in person, a true copy of this citation together with the E-FILE MANDATE NOTICE accompanying pleading, having first attached such copy of such citation to such copy of pleading and endorsed on such copy of citation the date of delivery.

Service Fee: \$ pro in via

Sworn to and subscribed before me this the

15th day of December, 2009.

Notary Public, THE STATE OF TEXAS

Sheriff / Constable / Authorized Person

By: Juanita Aleman SCH#1133
Printed Name of Server
Travis County, Texas

D-1-GN-09-004226

SERVICE FEE NOT PAID

D01 - 44522

Original

Service Copy

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CITATION
THE STATE OF TEXAS
CAUSE NO. D-1-GN-09-004226

RYAN SHAPIRO, INDIVIDUALLY, AND AS REPRESENTATIVE OF ALL OTHERS SIMILARLY SITUATED, Plaintiff

vs.

TRITON FINANCIAL, LLC; TRITON ACQUISITION, LP D/B/A TRITON INSURANCE, LP; TRITON HOLDINGS LP; TVEST GROUP, LLC, Defendant
INDIVIDUALLY AND IN ITS CAPACITIES AS GENERAL PARTNER

DEC 16 2009
5:20 PM

TO: TVEST GROUP LLC
BY SERVING ITS REGISTERED AGENT, KURT BARTON
7035 BEE CAVES ROAD, SUITE 200
AUSTIN, TEXAS 78746-5066

Defendant, in the above styled and numbered cause:

YOU HAVE BEEN SUED. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 A.M. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you.

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ISSUED AND GIVEN UNDER MY HAND AND SEAL of said Court at office, December 15, 2009.

REQUESTED BY:
JASON ROBERT NASSOUR
WWW.KEELNASSOUR.COM
508 W 14TH ST
AUSTIN, TX 78701
BUSINESS PHONE: (512) 480-8693 FAX: (512) 480-

AMALIA RODRIGUEZ-MENDOZA
Travis County District Clerk
Travis County Courthouse
1000 Guadalupe, P.O. Box 679003 (78767)
Austin, Texas 78701



By:
RIGO OLIVA, Deputy

RETURN

Came to hand on the 15th day of December, 2009 at 359 o'clock P M., and executed at 12117 Bee Caves Rd Ste 100 Austin TX 78738 within the County of Travis on the 15th day of December, 2009, at 4:50 o'clock P M., by delivering to the within named TVEST GROUP LLC by serving registered agent Kurt Barton - Plaintiff's Original Petition each in person, a true copy of this citation together with the E-FILE MANDATE NOTICE accompanying pleading, having first attached such copy of such citation to such copy of pleading and endorsed on such copy of citation the date of elivery.

Service Fee: \$ per invoice

Sheriff Constable / Authorized Person

Sworn to and subscribed before me this the

15th day of December, 2009.

By: Juanita Akman SCH2133
Printed Name of Server

Notary Public, THE STATE OF TEXAS

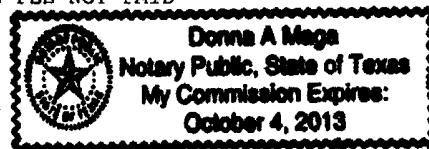
TRAVIS County, Texas

D-1-GN-09-004226

SERVICE FEE NOT PAID

D01 - 44523

Original Service Copy



001305120

CITATION
THE STATE OF TEXAS

CAUSE NO. D-1-GN-09-004226

RYAN SHAPIRO, INDIVIDUALLY, AND AS REPRESENTATIVE OF ALL OTHERS SIMILARLY SITUATED

, Plaintiff

vs.

TRITON FINANCIAL, LLC; TRITON ACQUISITION, LP D/B/A TRITON INSURANCE, LP; TRITON HOLDINGS LP; TVEST GROUP, LLC, INDIVIDUALLY AND IN ITS CAPACITIES AS GENERAL PARTNER

, Defendant

TO: KURT BARTON
12117 BEE CAVES ROAD, STE 100
AUSTIN, TEXAS 78738
OR AT 11600 ASTORIA DRIVE
BEE CAVE, TEXAS 78738

FILED IN THE
CLERK OF TRAVIS COUNTY
DEC 16 2009
8:20 a.m.

Defendant, in the above styled and numbered cause:

YOU HAVE BEEN SUED. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 A.M. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you.

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REQUESTED BY:
JASON ROBERT NASSOUR
WWW.KEELNASSOUR.COM
508 W 14TH ST
AUSTIN, TX 78701
BUSINESS PHONE: (512) 480-8693 FAX: (512) 480-



AMALIA RODRIGUEZ-MENDOZA
Travis County District Clerk
Travis County Courthouse
1000 Guadalupe, P.O. Box 679003 (78767)
Austin, Texas 78701

By
RIGO OLIVA Deputy

RETURN

Came to hand on the 15th day of December, 2009 at 359 o'clock P M., and executed at 12117 Bee Caves Road Suite 100 Austin TX 78738 within the County of TRAVIS on the 15th day of December, 2009, at 450 o'clock P M., by delivering to the within named KURT BARTON Plaintiff's Original Petition, each in person, a true copy of this citation together with the E-FILE MANDATE NOTICE accompanying pleading, having first attached such copy of such citation to such copy of pleading and endorsed on such copy of citation the date of delivery.

Service Fee: \$ per invoice

Sheriff / Constable / Authorized Person

Sworn to and subscribed before me this the

15th day of December, 2009.

By: Juanita Aleman SCA2133
Printed Name of Server

Notary Public, THE STATE OF TEXAS

TRAVIS County, Texas

D-1-GN-09-004226

SERVICE FEE NOT PAID

D01 - 44524

Original

Service Copy



001305125

CITATION
THE STATE OF TEXAS
CAUSE NO. D-1-GN-09-004226

RYAN SHAPIRO, INDIVIDUALLY, AND AS REPRESENTATIVE OF ALL OTHERS SIMILARLY SITUATED, Plaintiff

vs.

TRITON FINANCIAL, LLC; TRITON ACQUISITION, LP D/B/A TRITON INSURANCE, LP; TRITON HOLDINGS LP; TVEST GROUP, LLC, Defendant
INDIVIDUALLY AND IN ITS CAPACITIES AS GENERAL PARTNER

TO: TRITON ACQUISITION LP
D/B/A TRITON INSURANCE LP
12117 BEE CAVES ROAD, SUITE 200
AUSTIN, TEXAS 78738

DEC 16 2009
8:20 AM

Defendant, in the above styled and numbered cause:

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ISSUED AND GIVEN UNDER MY HAND AND SEAL of said Court at office, December 15, 2009.

REQUESTED BY:
JASON ROBERT NASSOUR
WWW.KEELNASSOUR.COM
508 W 14TH ST
AUSTIN, TX 78701
BUSINESS PHONE: (512)480-8693 FAX: (512)480-8170

AMALIA RODRIGUEZ-MENDOZA
Travis County District Clerk
Travis County Courthouse
1000 Guadalupe, P.O. Box 679003 (78767)
Austin, Texas 78701


AMALIA RODRIGUEZ-MENDOZA, Deputy

RETURN

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Service Fee: \$ per invoice

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Sworn to and subscribed before me this the

15 day of December, 2009.

By: Juanita Aleman SCH2133
Printed Name of Server

Notary Public, THE STATE OF TEXAS

TRAVIS County, Texas

D-1-GN-09-004226

SERVICE FEE NOT PAID

D01 - 44521

Original

Service Copy



001305266

Filed
09 December 22 P3:25
Amalia Rodriguez-Mendoza
District Clerk
Travis District

CAUSE NO. D-1-GN-09-004226

RYAN SHAPIRO, individually, and as
representative of all others similarly situated,
Plaintiff

v.

TRITON FINANCIAL, LLC; TRITON
ACQUISITION, LP d/b/a TRITON
INSURANCE, LP; TRITON HOLDINGS,
LP; TVEST GROUP, LLC, individually and
in its capacities as General Partner of
TRITON ACQUISITION, LP d/b/a TRITON
INSURANCE, LP; KURT BARTON,
individually and in his capacities as President
and CEO of TVEST GROUP, LLC and
Director of TRITON FINANCIAL, LLC,
and KURT BARTON d/b/a X, unknown
entities owned or controlled by Kurt Barton;
TRITON SERVICES, LLC d/b/a TRITON
REALTY LLC, individually and in its
capacities as General Partner of TRITON
ATHLETIC CENTER, LP, and other
unknown partnerships controlled by Kurt
Barton or Triton Financial and as managing
member of TRITON MORTGAGE, LLC;
TRITON ATHLETIC CENTER, LP;
TRITON AGGREGATED, LP d/b/a
TRITON HOLDINGS, LP; TRITON
MORTGAGE, LLC; TRITON
ACQUISITION, LP; TRITON BRIDGE
FUND, LP; TRITON OPPORTUNITY
FUND III, LLC; CAPVEST, LLC,
individually and in its capacities as General
Partner of TRITON BRIDGE FUND, LP;
TRITON CAPITAL SERVICES, LLC,
individually and in its capacities as General
Partner of RUNDBERG LP, RUNDBERG
BUSINESS PARK, LP; X d/b/a Triton,
unknown entities owned or controlled by
Kurt Barton or Triton Financial,
Defendants.

IN THE 98th DISTRICT COURT,
TRAVIS COUNTY, TEXAS

PLAINTIFF'S FIRST AMENDED PETITION

Plaintiff RYAN SHAPIRO, individually, and as representative of all others similarly situated (collectively, "Plaintiffs"), files this Original Petition complaining of TRITON FINANCIAL, LLC, a Texas Limited Liability Company; TRITON ACQUISITION, LP, a Texas Limited Partnership doing business as TRITON INSURANCE, LP; TRITON HOLDINGS, LP, a Texas Limited Partnership, TVEST GROUP, LLC, a Delaware Limited Liability Company and General Partner of TRITON ACQUISITION LP d/b/a TRITON INSURANCE, LP; KURT BARTON, individually and in his capacities as President and Chief Executive Officer of TVEST GROUP, LLC and as Director of TRITON FINANCIAL, LLC, and KURT BARTON doing business as entities unknown at this time which are controlled or owned by Kurt Barton; TRITON SERVICES, LLC, a Texas Limited Liability Company doing business as TRITON REALTY, LLC, and General Partner of TRITON ATHLETIC CENTER, LP, and other unknown partnerships controlled by Kurt Barton or Triton Financial and Managing Member of TRITON MORTGAGE, LLC; TRITON ATHLETIC CENTER, LP, a Texas Limited Partnership; TRITON AGGREGATED, LP, a Texas Limited Partnership doing business as TRITON HOLDINGS, LP; TRITON MORTGAGE, LLC, a Texas Limited Liability Company; TRITON ACQUISITION, LP, a Texas Limited Partnership; TRITON BRIDGE FUND, LP, a Texas Limited Partnership; TRITON OPPORTUNITY FUND III, LLC, a Texas Limited Liability Company; CAPVEST, LLC, a Texas Limited Liability Company, individually and in its capacities as General Partner of TRITON BRIDGE FUND, LP; TRITON CAPITAL SERVICES, LLC, a Texas Limited Liability Company, individually and in its capacities as General Partner of RUNDBERG LP, RUNDBERG BUSINESS PARK, LP; and unknown entities doing business as Triton, which entities are owned or controlled by Kurt Barton or Triton Financial. (Collectively, the TRITON, TVEST GROUP, CAPVEST, and RUNDBERG entities

are also known as the "TRITON GROUP" and together with KURT BARTON referred to as "Defendants.")

I. DISCOVERY

1. Discovery is intended to be conducted under Level 3 pursuant to Rule 190.4 of the Texas Rules of Civil Procedure.

II. PARTIES

A. Plaintiff

2. Plaintiff Ryan Shapiro, a resident of Travis County, Texas brings this action on his own behalf and as a representative of the Plaintiff Class hereinafter described.

B. Defendants

3. Defendant TRITON FINANCIAL, LLC is a Texas limited liability company headquartered in Travis County, Texas, at 12117 Bee Caves Road, Suite 100, Austin, Texas 78738. Service of process may be effected by serving its registered agent, Anthony C. Goodall, 1250 Capital of Texas Highway South, Three Cielo Center, Suite 601, Austin, Texas 78746.

4. Defendant TRITON ACQUISITION, LP d/b/a TRITON INSURANCE, LP, is a Texas limited partnership headquartered in Travis County, Texas, at 12117 Bee Caves Road, Suite 200, Austin, Texas 78738. Service of process may be effected through its registered agent, Kurt Barton, at the same address.

5. On information and belief, Defendant TRITON HOLDINGS, LP, is a Texas limited partnership headquartered in Travis County, Texas, at 12117 Bee Caves Road, Suite 200, Austin, Texas 78738. Service of process may be effected by serving its General Partner, TVEST GROUP, LLC through its registered agent, Kurt Barton, at the same address or 7035 Bee Cave Road, Suite 200, Austin, Texas 78746-5066, or through the Secretary of State.

6. Defendant TVEST GROUP, LLC is a foreign limited liability company formed under the laws of Delaware and registered in Texas with its principal place of business in Travis County at 7035 Bee Cave Road, Suite 200, Austin, Texas 78746-5066. TVEST GROUP, LLC may be served through its registered agent, Kurt Barton, at the same address.

7. Defendant KURT BARTON resides in Travis County and may be served at his place of business, 12117 Bee Caves Road, Suite 100, Austin, Texas 78738, or at his residence: 11600 Astoria Drive, Bee Cave, Texas 78738.

8. Defendant TRITON SERVICES, LLC d/b/a TRITON REALTY, LLC, is a Texas limited liability company headquartered in Travis County, Texas, at 12117 FM 2244, Suite 200, Bee Cave, Texas 78738-5390. Service of process may be effected by serving its registered agent, Kurt B. Barton, at the same address.

9. Defendant TRITON ATHLETIC CENTER, LP is a Texas limited partnership headquartered in Travis County, Texas, at 7035 Bee Cave Road, Suite 200, Austin, Texas 78746-5066. Service of process may be effected by serving its registered agent, Triton Services, LLC at the same address.

10. Defendant TRITON AGGREGATED, LP is a Texas limited partnership headquartered in Travis County, Texas, at 12117 FM 2244, Suite 200, Bee Cave, Texas 78738-5390. Service of process may be effected by serving its registered agent, David James Tuckfield at the same address.

11. Defendant TRITON HOLDINGS, LP is a Texas limited partnership headquartered in Travis County, Texas, at 12117 FM 2244, Suite 200, Bee Cave, Texas 78738-5390. Service of process may be effected by serving its registered agent, David James Tuckfield at the same address.

12. Defendant TRITON MORTGAGE, LLC is a Texas limited liability company headquartered in Travis County, Texas, at 12117 FM 2244, Suite 200, Bee Cave, Texas 78738-5390. Service of process may be effected by serving its registered agent, John Dimeglio at 7035 Bee Cave Road, Suite 200, Austin, Texas 78746-5066.

13. Defendant TRITON ACQUISITION, LP is a Texas limited partnership headquartered in Travis County, Texas, at 12117 FM 2244, Suite 200, Bee Cave, Texas 78738-5390. Service of process may be effected by serving its registered agent, Kurt Barton at 12117 FM 2244, Suite 200, Bee Cave, Texas 78738-5349.

14. Defendant TRITON BRIDGE FUND, LP is a Texas limited partnership headquartered at 12117 FM 2244, Suite 200, Bee Cave, Texas 78738-5390. Service of process may be effected by serving its registered agent, David James Tuckfield, at the same address.

15. Defendant TRITON OPPORTUNITY FUND III, LLC is a Texas limited liability company headquartered in Travis County, Texas, at 12117 FM 2244, Suite 200, Bee Cave, Texas 78738-5390. Service of process may be effected by serving its registered agent, David James Tuckfield, at the same address.

16. Defendant CAPVEST, LLC is a Texas limited liability company headquartered in Travis County, Texas, at 7035 Bee Cave Road, Suite 200, Austin, Texas 78746-5066. Service of process may be effected by serving its registered agent, Kurt Barton, at the same address.

17. Defendant TRITON CAPITAL SERVICES, LLC is a Texas limited liability company headquartered in Travis County, Texas, at 7035 Bee Cave Road, Suite 200, Austin, Texas 78746-5066. Service of process may be effected by serving its registered agent, Kurt Barton, at 7035 Bee Cave Road, Suite 200, Austin, Texas 78746-5000.

III. CLASS ACTION

18. This action is brought by the named Plaintiff as a class action on behalf of himself and on behalf of others similarly situated (the "Plaintiff Class"), under Tex. R. Civ. P. 42.

19. The exact number of the members of the Plaintiff Class is not known, but Triton Acquisition, LP d/b/a Triton Insurance, LP sought a total investment of \$12,000,000 from investors in \$50,000 units. At the General Partner's discretion smaller units were offered for \$25,000 each.

20. On information and belief, there are at least 302 Triton investors.

21. There are common questions of law and fact that relate to or affect the rights and interests of each limited partner in the Plaintiff Class in connection with his, her or its respective purchase of investor units. By way of example, these include, but are not limited to:

- a. Whether the Defendants breached their fiduciary duties owed the Plaintiff Class in their operation, administration and management of Triton Acquisition, LP d/b/a Triton Insurance, LP or Triton Holdings, LP;
- b. Whether the Defendants breached their fiduciary duties owed the Plaintiff Class in the accounting for and the management, investment, and disposition of the Plaintiff Class's invested funds;
- c. Whether the Defendants breached their fiduciary duties owed to the Plaintiff Class in excessively compensating the General Partner or its officers, directors and employees;
- d. Whether the Defendants breached their fiduciary duties in maintaining and reporting financial information, accounting records and financial reports of

Triton Acquisition, LP d/b/a Triton Insurance, LP, Triton Holdings, LP, Triton Realty LLC or Triton Group entities; and

- e. Whether the Defendants breached their fiduciary duties in transferring partnership assets to other entities related to the General Partner or its officers, directors or employees.

22. Furthermore, the relief sought by these causes of action is common to the entire Plaintiff Class.

23. The claims of the Plaintiff, who is representative of the Plaintiff Class, are typical of the claims of the Plaintiff Class, in that the claims of all members of the Plaintiff Class, including Plaintiff, depend on the showing of the acts or omissions of the Defendants giving rise to the right of the Plaintiff and Plaintiff Class to the relief sought herein. There is no conflict as between the individual named Plaintiff and other members of the Plaintiff Class with respect to this action, or with respect to the claims for relief set forth herein.

24. The Plaintiff is the representative party for the Plaintiff Class and is able to fairly and adequately protect the interests of the Plaintiff Class. No conflict exists between Plaintiff and Plaintiff Class. The attorneys for the Plaintiff are experienced and capable in the type of litigation involved here.

25. This action is properly maintained as a class action because (i) the prosecution of separate actions by individual members of the Plaintiff Class would create the risk of inconsistent or varying adjudications which would establish incompatible standards of conduct for the Defendants, and adjudications with respect to individual members of the Plaintiff Class which would as a practical matter be dispositive of the interests of the other members of the Plaintiff Class, or would substantially impair or impede their ability to protect such interests; or

(ii) questions of law and fact common to the Plaintiff Class predominate over any questions affecting only individual members.

26. All of the claims alleged by the Plaintiff on behalf of himself and the Plaintiff Class were caused by the action or omission of the Defendants.

27. This class action is superior to other available, alternative methods, if any, for the fair and efficient adjudication of these causes of action.

28. The Plaintiff brings this action on behalf of himself and on behalf of all others similarly situated. The Plaintiff Class is defined as all limited partners of Triton Acquisition, LP d/b/a Triton Insurance, LP or Triton Holdings, LP or other Triton Group entities with commingled assets and excluding from this class the undersigned Plaintiff's counsel, members of their immediate families and lawyers and staff at their law firms; Defendants and members of their immediate families; and federal, state and local governmental entities, political subdivisions, and members of the judiciary.

IV. BACKGROUND AND FACTUAL ALLEGATIONS

29. In the latter half of 2008, Kurt Barton formed Triton Acquisition, LP d/b/a Triton Insurance, LP for the purpose of soliciting investment of \$12,000,000 to be exchanged for stock in Triton Holdings, LP, a Texas limited partnership. The primary objective of Triton Holdings, LP was to purchase an underperforming insurance company at a significant discount, which Triton Holdings, LP represented it had negotiated. TVEST Group, LLC was the General Manager and Kurt Barton its President and Chief Executive Officer.

30. Upon purchasing the insurance company, Triton Holdings, LP would install its own management team and invest the insurance company's substantial reserves in real estate ventures controlled by other Triton entities, particularly Triton Financial, LLC and Kurt Barton.

31. On information and belief, Triton Holdings, LP never purchased the insurance company, and the investors' equity investment in Triton Acquisition, LP d/b/a Triton Insurance, LP and Triton Holdings, LP was transferred to other Triton entities controlled by Kurt Barton and Triton Financial, LLC and used for real estate purchases by those entities or transferred to investors in other Triton entities as "returns" on their investments.

32. Despite looting Triton Acquisition, LP d/b/a Triton Insurance, LP and Triton Holdings, LP, Kurt Barton and TVEST Group LLC, as General Partner, provided statements to the limited partners purporting to show appreciated account balances and even paid token dividends to the limited partners on at least one occasion.

33. Beginning at least as early as May 2008, Triton presented to prospective investors an unaudited proforma balance sheet that purportedly represented "the combined assets, liabilities and equity of the Limited Partnerships under management by Triton Financial."

34. Despite assuring Triton Group investors that partnership funds were not commingled, on information and belief Kurt Barton transferred partnership funds among partnerships controlled by Triton Financial or Kurt Barton.

35. On information and belief, the General Partner and Kurt Barton extracted from the partnership's funds excessive compensation and fees despite failing to achieve the primary objective of the partnership.

36. The General Partner and Kurt Barton have refused or failed to disclose to the limited partners whether the partnership holds any assets or the whereabouts of any of the partnership funds, if any remain.

V. CAUSE OF ACTION: BREACH OF FIDUCIARY DUTY

37. The above and foregoing described conduct concerning the misuse of partnership funds constitutes breach of fiduciary duties established by common law, Texas statutes and the relationship of the parties and owed by the Defendants to the Plaintiff and Plaintiff Class.

38. TVEST Group, LLC and Kurt Barton owe a fiduciary duty to the Plaintiff and Plaintiff Class created by the common law of Texas.

39. Specifically, TVEST Group, LLC and Kurt Barton owe the Plaintiff and Plaintiff Class the following fiduciary duties:

- (a) Of loyalty and utmost good faith;
- (b) Of candor;
- (c) To refrain from self-dealing;
- (d) To act with integrity of the strictest kind;
- (e) Of fair, honest dealing; and
- (f) Of full disclosure.

40. On information and belief, TVEST Group, LLC and Kurt Barton misappropriated the limited partners' fiduciary funds by transferring those fiduciary funds to other entities controlled or owned by the General Partner or Kurt Barton.

41. The Plaintiff and Plaintiff Class have suffered injury as a result of the Defendants' breaches of fiduciary duties and seek the following remedies.

VI. REMEDIES SOUGHT

42. Constructive Trust. The Defendants' conduct in the breach of their fiduciary duty owed to Plaintiff and described herein, creates a presumption of unfairness as a matter of law. As a result, the burden of persuasion rests squarely on the individual Defendants to show that

any transactions conducted on behalf of the partnership were fair and equitable to the beneficiaries/limited partners.

43. Plaintiff requests that the Court place a constructive trust on all proceeds, funds or property obtained by the Defendants as a result of their breaches of fiduciary duty, to protect the rights and interests of the Plaintiff and Plaintiff Class in them, and return such proceeds, funds or property to Plaintiff and Plaintiff Class.

44. Accounting and Disgorgement. Plaintiff requests that the Court order the Defendants to provide an accounting of:

- a. All compensation and benefits paid to the Defendants and to any other employees, officers, directors, agents or representatives;
- b. All partnership assets;
- c. The financial status, profits, losses, revenues, expenses and liabilities of the partnership or any other subsidiary; and
- d. All partnership assets transferred, lent, or otherwise controlled by any other entity, including without limitation any other Triton Group entity, office, director or employee.

45. Compensatory Damages. The Plaintiff seeks actual compensatory damages on behalf of himself and the Plaintiff Class for the injury caused by Defendants' breaches. As compensation, therefore, Plaintiff seeks monetary damages on behalf of himself and the Plaintiff Class including the return of compensation wrongfully paid, the return of partnership assets wrongfully transferred to Defendants or entities in their control, any profits realized by their use of partnership assets, and return of self-dealing expenditures.

46. Exemplary Damages. Defendants' wrongs appear to have been aggravated by the kind of malice for which the law allows the imposition of exemplary damages. The General Partners' conduct, when viewed objectively from its standpoint at the time of its occurrence, involved an extreme degree of risk considering the probability and magnitude of the potential harm to the Plaintiff and Plaintiff Class. Moreover, it appears that the General Partner and Kurt Barton had actual, subjective awareness of the risk involved but nevertheless proceeded with conscious indifference to the welfare of the limited partners. The General Partner's conduct, acts and omissions resulting in their breaches of fiduciary duties were performed with malice, fraud and/or gross negligence, and as a result, the Plaintiff Class is entitled to recover exemplary and/or punitive damages.

47. Attorneys' Fees. Plaintiff has been required to retain the services of the undersigned attorneys to bring this cause of action. Plaintiffs are entitled to recover their reasonable and necessary attorneys' fees under Tex. Civ. Prac. & Rem. Code. Ann. §§ 37.009, 38.001 (8) (Vernon 1997), and on equitable grounds.

48. If and when the Plaintiff Class is certified as requested, Plaintiff requests attorneys' fees and costs authorized by law or by agreement of the parties under the procedures set out in Tex. R. Civ. P. 42 (i).

49. Plaintiff requests a jury trial and has paid the appropriate jury fee.

VII. PRAYER

50. Plaintiff, on behalf of himself and the Plaintiff Class, respectfully requests that the Court grant to them all relief sought in paragraphs 30 through 36 above, including without limitation the following:

- a. Certify the Plaintiff Class as described herein and that the Plaintiff is representative of the Plaintiff Class and appoint the undersigned attorneys as class counsel for the Plaintiff Class;
- b. Enter judgment that all Defendants jointly and severally are liable for actual damages, including, but not limited to, (i) all excessive compensation and benefits and all improper expenditures paid to the General Partner or Kurt Barton or employees, directors, or officers of any entity excessively compensated; (ii) transferred partnership assets; (iii) partnership losses resulting from the General Partner's or Kurt Barton's self-dealing; (iv) partnership profits lost as a result of misappropriation of partnership assets;
- c. Enter judgment that all Defendants, jointly and severally, are liable for exemplary damages based on malice and/or malfeasance in an amount sufficient to punish Defendants for their intentional malicious acts and breaches of fiduciary duty;
- d. Order disgorgement of all amounts misappropriated by the Defendants and impose a constructive trust on such amounts to be held solely for limited partners;
- e. Reform the partnership agreement to permit the limited partners to revoke their subscription and order return of the limited partners' investment;
- f. Award Plaintiff and Plaintiff Class pre-judgment and post-judgment interest, as permitted by law, on all damages;
- g. Award Plaintiff and Plaintiff Class their reasonable and necessary attorneys' fees, expenses and costs of court; and

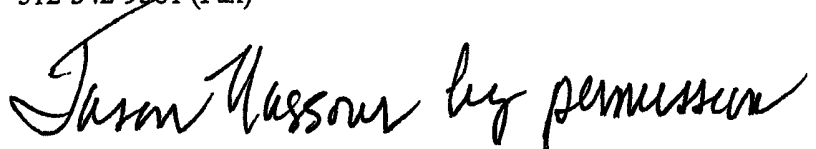
- h. Award Plaintiff and Plaintiff Class such further relief at law and equity to which they are entitled.

Respectfully submitted,



IKARD WYNNE, LLP

William Ikard
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Anne S. Wynne
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(512) 480-8694 (Phone)
(512) 480-8170 (Fax)

ATTORNEYS FOR THE PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 12^d day of December, 2009, a true and correct copy of the above and foregoing was forwarded via hand delivery, and U.S. First Class Certified Mail, Return Receipt Requested:



Cabrach Connor

Kurt B. Barton, registered agent
TRITON SERVICES, LLC d/b/a TRITON REALTY, LLC
12117 FM 2244, Suite 200
Bee Cave, TX 78738-5390
Via: hand delivery

TRITON SERVICES, LLC, registered agent
TRITON ATHLETIC CENTER, LP
7035 Bee Cave Road, Suite 200
Austin, TX 78746-5066
Via: hand delivery

David James Tuckfield, registered agent
TRITON AGGREGATED, LP
12117 FM 2244, Suite 200
Austin, Texas 78738
Via: hand delivery

David James Tuckfield, registered agent
TRITON HOLDINGS, LP
12117 FM 2244, Suite 200
Austin, Texas 78738-5390
Via: hand delivery

John Dimeglio, as registered agent
TRITON MORTGAGE, LLC
12117 FM 2244, Suite 200
Bee Cave, Texas 78746-5066

Kurt Barton, as registered agent
TRITON ACQUISITION, LP
12117 FM 2244, Suite 200
Bee Cave, Texas 78738-5349

David James Tuckfield, as registered agent
TRITON BRIDGE FUND, LP
12117 FM 2244, Suite 200
Bee Cave, Texas 78738-5390

David James Tuckfield, as registered agent
TRITON OPPORTUNITY FUND III, LLC
12117 FM 2244, Suite 200
Bee Cave, Texas 78738-5390

Kurt Barton, as registered agent
CAPVEST, LLC
7035 Bee Cave Road, Suite 200
Austin, Texas 78746-5066

Kurt Barton, as registered agent
TRITON CAPITAL SERVICES, LLC
7035 Bee Cave Road, Suite 200
Austin, Texas 78746-5066

Filed
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District Clerk
Travis District

CAUSE NO. D-1-GN-09-004226

RYAN SHAPIRO and DEBRA PRICE,
individually, and as representatives of all
others similarly situated,
Plaintiffs

v.

TRITON FINANCIAL, LLC; TRITON
ACQUISITION, LP d/b/a TRITON
INSURANCE, LP; TRITON HOLDINGS,
LP; TVEST GROUP, LLC, individually and
in its capacities as General Partner of
TRITON ACQUISITION, LP d/b/a TRITON
INSURANCE, LP; KURT BARTON,
individually and in his capacities as President
and CEO of TVEST GROUP, LLC and
Director of TRITON FINANCIAL, LLC,
and KURT BARTON d/b/a X, unknown
entities owned or controlled by Kurt Barton;
TRITON SERVICES, LLC d/b/a TRITON
REALTY LLC, individually and in its
capacities as General Partner of TRITON
ATHLETIC CENTER, LP, and other
unknown partnerships controlled by Kurt
Barton or Triton Financial and as managing
member of TRITON MORTGAGE, LLC;
TRITON ATHLETIC CENTER, LP;
TRITON AGGREGATED, LP d/b/a
TRITON HOLDINGS, LP; TRITON
MORTGAGE, LLC; TRITON
ACQUISITION, LP; TRITON BRIDGE
FUND, LP; TRITON OPPORTUNITY
FUND III, LLC; CAPVEST, LLC,
individually and in its capacities as General
Partner of TRITON BRIDGE FUND, LP;
TRITON CAPITAL SERVICES, LLC,
individually and in its capacities as General
Partner of RUNDBERG LP, RUNDBERG
BUSINESS PARK, LP; X d/b/a Triton,
unknown entities owned or controlled by
Kurt Barton or Triton Financial; TY
DETMER; KOY DETMER; CHRIS
WEINKE; JEFF BLAKE; JOHN
DiMEGLIO; DAVID TUCKFIELD;
MICHAEL COUR; BRIAN WHITNEY;

IN THE 98th DISTRICT COURT,

TRAVIS COUNTY, TEXAS

CALEB CUNNINGHAM; RICHARD §
 FINLAYSON; WILLIAM (PAT) TEDROW; §
 MIKE BERRY; and FIDELITY §
 BROKERAGE SERVICES LLC §
 Defendants.

PLAINTIFFS' SECOND AMENDED ORIGINAL PETITION

Plaintiffs RYAN SHAPIRO and DEBRA PRICE, individually, and as representatives of all others similarly situated (collectively, "Plaintiffs"), file this Second Amended Original Petition complaining of TRITON FINANCIAL, LLC, a Texas Limited Liability Company; TRITON ACQUISITION, LP, a Texas Limited Partnership doing business as TRITON INSURANCE, LP; TRITON HOLDINGS, LP, a Texas Limited Partnership, TVEST GROUP, LLC, a Delaware Limited Liability Company and General Partner of TRITON ACQUISITION LP d/b/a TRITON INSURANCE, LP; KURT BARTON, individually and in his capacities as President and Chief Executive Officer of TVEST GROUP, LLC and as Director of TRITON FINANCIAL, LLC, and KURT BARTON doing business as entities unknown at this time which are controlled or owned by Kurt Barton; TRITON SERVICES, LLC, a Texas Limited Liability Company doing business as TRITON REALTY, LLC, and General Partner of TRITON ATHLETIC CENTER, LP, and other unknown partnerships controlled by Kurt Barton or Triton Financial and Managing Member of TRITON MORTGAGE, LLC; TRITON ATHLETIC CENTER, LP, a Texas Limited Partnership; TRITON AGGREGATED, LP, a Texas Limited Partnership doing business as TRITON HOLDINGS, LP; TRITON MORTGAGE, LLC, a Texas Limited Liability Company; TRITON ACQUISITION, LP, a Texas Limited Partnership; TRITON BRIDGE FUND, LP, a Texas Limited Partnership; TRITON OPPORTUNITY FUND III, LLC, a Texas Limited Liability Company; CAPVEST, LLC, a Texas Limited Liability Company, individually and in its capacities as General Partner of TRITON BRIDGE FUND, LP;

TRITON CAPITAL SERVICES, LLC, a Texas Limited Liability Company, individually and in its capacities as General Partner of RUNDBERG LP, RUNDBERG BUSINESS PARK, LP; unknown entities doing business as Triton, which entities are owned or controlled by Kurt Barton or Triton Financial; TY DETMER; KOY DETMER; CHRIS WEINKE; JEFF BLAKE; JOHN DiMEGLIO; DAVID TUCKFIELD; MICHAEL COUR; BRIAN WHITNEY; CALEB CUNNINGHAM; RICHARD FINLAYSON; WILLIAM (PAT) TEDROW; CHRIS WEINKE; MIKE BERRY; and FIDELITY BROKERAGE SERVICES LLC. (Collectively, the TRITON, TVEST GROUP, CAPVEST, and RUNDBERG entities are also known as the "TRITON GROUP" and together with KURT BARTON, JOHN DiMEGLIO; DAVID TUCKFIELD; MICHAEL COUR; BRIAN WHITNEY; CALEB CUNNINGHAM; RICHARD FINLAYSON; WILLIAM (PAT) TEDROW; and MIKE BERRY, and FIDELITY BROKERAGE SERVICES LLC are referred to as "Defendants.")

I. DISCOVERY

1. Discovery is intended to be conducted under Level 3 pursuant to Rule 190.4 of the Texas Rules of Civil Procedure.

II. PARTIES

A. Plaintiffs

2. Plaintiff Ryan Shapiro, a resident of Travis County, Texas brings this action on his own behalf and as a representative of the Plaintiff Class hereinafter described.

3. Plaintiff Debra Price, a resident of Williamson County, Texas brings this action on her own behalf and as a representative of the Plaintiff Class hereinafter described.

B. Defendants

4. Defendant TRITON FINANCIAL, LLC is a Texas limited liability company headquartered in Travis County, Texas, at 12117 Bee Caves Road, Suite 100, Austin, Texas 78738. Service of process may be effected by serving its registered agent, Anthony C. Goodall, 1250 Capital of Texas Highway South, Three Cielo Center, Suite 601, Austin, Texas 78746.

5. Defendant TRITON ACQUISITION, LP d/b/a TRITON INSURANCE, LP, is a Texas limited partnership headquartered in Travis County, Texas, at 12117 Bee Caves Road, Suite 200, Austin, Texas 78738. Service of process may be effected through its registered agent, Kurt Barton, at the same address.

6. On information and belief, Defendant TRITON HOLDINGS, LP, is a Texas limited partnership headquartered in Travis County, Texas, at 12117 Bee Caves Road, Suite 200, Austin, Texas 78738. Service of process may be effected by serving its General Partner, TVEST GROUP, LLC through its registered agent, Kurt Barton, at the same address or 7035 Bee Cave Road, Suite 200, Austin, Texas 78746-5066, or through the Secretary of State.

7. Defendant TVEST GROUP, LLC is a foreign limited liability company formed under the laws of Delaware and registered in Texas with its principal place of business in Travis County at 7035 Bee Cave Road, Suite 200, Austin, Texas 78746-5066. TVEST GROUP, LLC may be served through its registered agent, Kurt Barton, at the same address.

8. Defendant KURT BARTON resides in Travis County and may be served at his place of business, 12117 Bee Caves Road, Suite 100, Austin, Texas 78738, or at his residence: 11600 Astoria Drive, Bee Cave, Texas 78738.

9. Defendant TRITON SERVICES, LLC d/b/a TRITON REALTY, LLC, is a Texas limited liability company headquartered in Travis County, Texas, at 12117 FM 2244, Suite 200,

Bee Cave, Texas 78738-5390. Service of process may be effected by serving its registered agent, Kurt B. Barton, at the same address.

10. Defendant TRITON ATHLETIC CENTER, LP is a Texas limited partnership headquartered in Travis County, Texas, at 7035 Bee Cave Road, Suite 200, Austin, Texas 78746-5066. Service of process may be effected by serving its registered agent, Triton Services, LLC at the same address.

11. Defendant TRITON AGGREGATED, LP is a Texas limited partnership headquartered in Travis County, Texas, at 12117 FM 2244, Suite 200, Bee Cave, Texas 78738-5390. Service of process may be effected by serving its registered agent, David James Tuckfield at the same address.

12. Defendant TRITON HOLDINGS, LP is a Texas limited partnership headquartered in Travis County, Texas, at 12117 FM 2244, Suite 200, Bee Cave, Texas 78738-5390. Service of process may be effected by serving its registered agent, David James Tuckfield at the same address.

13. Defendant TRITON MORTGAGE, LLC is a Texas limited liability company headquartered in Travis County, Texas, at 12117 FM 2244, Suite 200, Bee Cave, Texas 78738-5390. Service of process may be effected by serving its registered agent, John Dimeglio at 7035 Bee Cave Road, Suite 200, Austin, Texas 78746-5066.

14. Defendant TRITON ACQUISITION, LP is a Texas limited partnership headquartered in Travis County, Texas, at 12117 FM 2244, Suite 200, Bee Cave, Texas 78738-5390. Service of process may be effected by serving its registered agent, Kurt Barton at 12117 FM 2244, Suite 200, Bee Cave, Texas 78738-5349.

15. Defendant TRITON BRIDGE FUND, LP is a Texas limited partnership headquartered at 12117 FM 2244, Suite 200, Bee Cave, Texas 78738-5390. Service of process may be effected by serving its registered agent, David James Tuckfield, at the same address.

16. Defendant TRITON OPPORTUNITY FUND III, LLC is a Texas limited liability company headquartered in Travis County, Texas, at 12117 FM 2244, Suite 200, Bee Cave, Texas 78738-5390. Service of process may be effected by serving its registered agent, David James Tuckfield, at the same address.

17. Defendant CAPVEST, LLC is a Texas limited liability company headquartered in Travis County, Texas, at 7035 Bee Cave Road, Suite 200, Austin, Texas 78746-5066. Service of process may be effected by serving its registered agent, Kurt Barton, at the same address.

18. Defendant TRITON CAPITAL SERVICES, LLC is a Texas limited liability company headquartered in Travis County, Texas, at 7035 Bee Cave Road, Suite 200, Austin, Texas 78746-5066. Service of process may be effected by serving its registered agent, Kurt Barton, at 7035 Bee Cave Road, Suite 200, Austin, Texas 78746-5000.

19. Defendant TY DETMER resides in Travis County and may be served at his residence at 11403 Musket Rim Street, Austin, Texas 78738.

20. On information and belief, Defendant KOY DETMER resides in Comal County and may be served at his residence at 26730 Rockwall Parkway, New Braunfels, Texas 78132.

21. Defendant CHRIS WEINKE resides in Travis County and may be served at his residence at 213 Black Wolf Run, Lakeway, Texas 78738.

22. On information and belief, Defendant JEFF BLAKE resides in Travis County and may be served at his residence at 11510 Champion Drive, Austin, Texas 78750.

23. On information and belief, Defendant MICHAEL COUR resides in Williamson County and may be served at his residence at 3309 Shell Road, Georgetown, Texas 78628.

24. Defendant RICHARD FINLAYSON resides in Travis County and may be served at his residence at 11515 Warbler Ledge, Austin, Texas 78738.

25. Defendant DAVID TUCKFIELD resides in Travis County and may be served at his residence at 11712 Uplands Ridge Drive, Austin, Texas 78738.

26. On information and belief, Defendant MIKE BERRY resides in Travis County and may be served at his residence at 11205 Cezanne St., Austin, Texas 78726-1445.

27. Defendant JOHN DiMEGLIO resides in Travis County and may be served at his place of business, 12117 Bee Caves Road, Suite 100, Austin, Texas 78738, or at his residence: 17313 E. Darleen Drive, Leander, Texas 78641.

28. Defendant CALEB CUNNINGHAM resides in Travis County and may be served at his residence at 3 Applegreen Lane, Austin, Texas 78738.

29. Defendant BRIAN WHITNEY resides in Travis County and may be served at his residence at 11509 Georgian Oaks Drive, Austin, Texas 78739.

30. Defendant WILLIAM (Pat) TEDROW resides in Travis County and may be served at his residence at 102 Cold Water Lane, Lakeway, Texas 78734.

31. Defendant FIDELITY BROKERAGE SERVICES LLC is a Delaware limited liability company having a principal place of business at 82 Devonshire St., V6D, Boston, MA, and having an office in Travis County, Texas, at 10000 Research Blvd., Suite 500, Austin, Texas 78759. Service of process may be effected by serving its registered agent, CT Corporation System, 350 N. St. Paul St., Dallas, Texas 75201.

III. CLASS ACTION

32. This action is brought by the named Plaintiffs as a class action on behalf of themselves and on behalf of others similarly situated (the "Plaintiff Class"), under Tex. R. Civ. P. 42.

33. The exact number of the members of the Plaintiff Class is not known, but Triton Acquisition, LP d/b/a Triton Insurance, LP sought a total investment of \$12,000,000 from investors in \$50,000 units. At the General Partner's discretion smaller units were offered for \$25,000 each.

34. On information and belief, there are at least 302 Triton investors.

35. There are common questions of law and fact that relate to or affect the rights and interests of each limited partner in the Plaintiff Class in connection with his, her or its respective purchase of investor units. By way of example, these include, but are not limited to:

- a. Whether the Defendants breached their fiduciary duties owed the Plaintiff Class in their operation, administration and management of Triton Acquisition, LP d/b/a Triton Insurance, LP or Triton Holdings, LP;
- b. Whether the Defendants breached their fiduciary duties owed the Plaintiff Class in the accounting for and the management, investment, and disposition of the Plaintiff Class's invested funds;
- c. Whether the Defendants breached their fiduciary duties owed to the Plaintiff Class in excessively compensating the General Partner or its officers, directors and employees;

- d. Whether the Defendants breached their fiduciary duties in maintaining and reporting financial information, accounting records and financial reports of Triton Acquisition, LP d/b/a Triton Insurance, LP, Triton Holdings, LP, Triton Realty LLC or Triton Group entities;
- e. Whether the Defendants breached their fiduciary duties in transferring partnership assets to other entities related to the General Partner or its officers, directors or employees; and
- f. Whether Defendants knowingly participated in or conspired to breach fiduciary duties owed to the Plaintiff Class.

36. Furthermore, the relief sought by these causes of action is common to the entire Plaintiff Class.

37. The claims of the Plaintiffs, who are representative of the Plaintiff Class, are typical of the claims of the Plaintiff Class, in that the claims of all members of the Plaintiff Class, including Plaintiffs, depend on the showing of the acts or omissions of the Defendants giving rise to the right of the Plaintiffs and Plaintiff Class to the relief sought herein. There is no conflict as between the individual named Plaintiffs and other members of the Plaintiff Class with respect to this action, or with respect to the claims for relief set forth herein.

38. The Plaintiffs are the representative parties for the Plaintiff Class and are able to fairly and adequately protect the interests of the Plaintiff Class. No conflict exists between Plaintiffs and Plaintiff Class. The attorneys for the Plaintiffs are experienced and capable in the type of litigation involved here.

39. This action is properly maintained as a class action because (i) the prosecution of separate actions by individual members of the Plaintiff Class would create the risk of

inconsistent or varying adjudications which would establish incompatible standards of conduct for the Defendants, and adjudications with respect to individual members of the Plaintiff Class which would as a practical matter be dispositive of the interests of the other members of the Plaintiff Class, or would substantially impair or impede their ability to protect such interests; or (ii) questions of law and fact common to the Plaintiff Class predominate over any questions affecting only individual members.

40. All of the claims alleged by the Plaintiffs on behalf of himself and the Plaintiff Class were caused by the action or omission of the Defendants.

41. This class action is superior to other available, alternative methods, if any, for the fair and efficient adjudication of these causes of action.

42. The Plaintiffs bring this action on behalf of themselves and on behalf of all others similarly situated. The Plaintiff Class is defined as all limited partners of Triton Acquisition, LP d/b/a Triton Insurance, LP or Triton Holdings, LP or other Triton Group entities and excluding from this class the undersigned Plaintiffs' counsel, members of their immediate families and lawyers and staff at their law firms; Triton creditors; Defendants and members of their immediate families; Defendants' counsel; and federal, state and local governmental entities, political subdivisions, and members of the judiciary.

IV. BACKGROUND AND FACTUAL ALLEGATIONS

43. In the latter half of 2008, Kurt Barton formed Triton Acquisition, LP d/b/a Triton Insurance, LP for the purpose of soliciting investment of \$12,000,000 to be exchanged for stock in Triton Holdings, LP, a Texas limited partnership. The primary objective of Triton Holdings, LP was to purchase an underperforming insurance company at a significant discount, which

Triton Holdings, LP represented it had negotiated. TVEST Group, LLC was the General Manager and Kurt Barton its President and Chief Executive Officer.

44. Upon purchasing the insurance company, Triton Holdings, LP would install its own management team and invest the insurance company's substantial reserves in real estate ventures controlled by other Triton entities, particularly Triton Financial, LLC and Kurt Barton.

45. On information and belief, Triton Holdings, LP never purchased the insurance company, and the investors' equity investment in Triton Acquisition, LP d/b/a Triton Insurance, LP and Triton Holdings, LP was transferred to other Triton entities controlled by Kurt Barton, the other individual Defendants, and Triton Financial, LLC and used for real estate purchases by those entities or transferred to investors in other Triton entities as "returns" on their investments.

46. Despite looting Triton Acquisition, LP d/b/a Triton Insurance, LP and Triton Holdings, LP, Kurt Barton and TVEST Group LLC, as General Partner, provided statements to the limited partners purporting to show appreciated account balances and even paid token dividends to the limited partners on at least one occasion.

47. Beginning at least as early as May 2008, Triton presented to prospective investors an unaudited proforma balance sheet that purportedly represented "the combined assets, liabilities and equity of the Limited Partnerships under management by Triton Financial."

48. Despite assuring Triton Group investors that partnership funds were not commingled, on information and belief Kurt Barton transferred partnership funds among partnerships controlled by Triton Financial or Kurt Barton and other individual Defendants.

49. On information and belief, the General Partner, Kurt Barton and the other individual Defendants extracted from the partnership's funds excessive compensation and fees, despite failing to achieve the primary objective of the partnership.

50. The General Partner, Kurt Barton, and other individual Defendants have refused or failed to disclose to the limited partners whether the partnership holds any assets or the whereabouts of any of the partnership funds, if any remain.

51. Defendant Ty Detmer held the position of Senior Vice President of Business Development at Triton.

52. Defendant Koy Detmer held the position of Vice President of Business Development and, according to Triton's Sports Management team website, was "responsible for expanding Triton's relationships with preeminent professional athletes to capitalize on the accelerating growth of the 'value-based' market."

53. Defendant Chris Weinke held the position of Senior Vice President, Athlete Services, at Triton. According to Triton's website, Weinke was "responsible for new client contact, player relations, and acquisition of sponsorships for events and clients" of Triton. Chris Weinke later held the position of Senior Vice President of Business Development when Ty Detmer left Triton.

54. Defendant Jeff Blake held the position of Vice President, Athlete Services, at Triton. According to Triton's website, Blake was "responsible for new client contact, player relations, and acquisition of sponsorships for clients and events."

55. Defendant Michael Cour co-founded Triton with Kurt Barton and actively solicited investors to participate in various Triton partnerships.

56. Defendant Richard Finlayson held the position of Chief Administrative Officer and Chief Technology Officer at Triton.

57. Defendant David Tuckfield held the position of General Counsel and Chief Compliance Officer at Triton.

58. Defendant Mike Berry held the position of Senior Vice President, Athlete Services, at Triton Athlete Services, a Triton entity.

59. Defendant John DiMeglio held the position of Executive Vice President at Triton.

60. Defendant Caleb Cunningham held the position of Director of Real Estate Investments at Triton. According to Triton, Cunningham was "responsible for real estate acquisitions and dispositions, including sourcing of opportunities, project analysis and due diligence."

61. Defendants Brian Whitney and William Tedrow held executive officer positions at Triton. Whitney held the position of Vice President, Product Development, and according to Triton was "responsible for Triton's product development, sales and marketing, distribution, and business development within the Broker/Dealer and RIA communities." William (Pat) Tedrow held the position of Chief Marketing Officer of the General Partner, Capvest, LLC, and the Investment Advisor.

62. Defendant Fidelity Brokerage Services LLC serviced for a fee investors' accounts, transferred investor funds to the various Triton entities or partnerships or to Defendants, and issued periodic statements to investors purporting to show account balances or "returns."

V. CAUSE OF ACTION: BREACH OF FIDUCIARY DUTY

63. The above and foregoing described conduct concerning the misuse of partnership funds constitutes breach of fiduciary duties established by common law, Texas statutes and the relationship of the parties and owed by the Defendants to the Plaintiffs and Plaintiff Class.

64. TVEST Group, LLC, Kurt Barton, the other individual Defendants, and the General Partners of other Triton limited partnerships owe a fiduciary duty to the Plaintiffs and Plaintiff Class created by statute, common law, contract and the relationship of the parties.

65. Specifically, TVEST Group, LLC, Kurt Barton, the other individual Defendants, and the General Partners of other Triton limited partnerships owe the Plaintiffs and Plaintiff Class the following fiduciary duties:

- (a) Of loyalty and utmost good faith;
- (b) Of candor;
- (c) To refrain from self-dealing;
- (d) To act with integrity of the strictest kind;
- (e) Of fair, honest dealing; and
- (f) Of full disclosure.

66. On information and belief, TVEST Group, LLC, Kurt Barton, Triton limited partnership General Partners, and the other individual Defendants misappropriated the limited partners' fiduciary funds by transferring those fiduciary funds to other entities controlled or owned by the General Partner, Kurt Barton, or the other individual Defendants.

67. On information and belief, the individual Defendants and Fidelity knowingly participated in and furthered the above described acts by Kurt Barton and the General Partners of Triton partnerships that constitute a breach of fiduciary duty.

68. The Plaintiffs and Plaintiff Class have suffered injury as a result of the Defendants' breaches of fiduciary duties and seek the following remedies.

VI. CAUSE OF ACTION: CIVIL CONSPIRACY

69. On information and belief, Kurt Barton, Fidelity, and the individual Defendants, acting in concert, enticed investors in various Triton entities or partnerships, commingled investor funds and transferred investor funds from investors' brokerage accounts to accounts controlled by Defendants.

70. The above and foregoing described conduct concerning the misuse of partnership funds constitutes a breach of fiduciary duties which Defendants knowingly conspired to accomplish.

71. The Plaintiffs and Plaintiff Class have suffered injury as a result of the Defendants' participation in and furtherance of the breaches of fiduciary duties and seek the following remedies.

VII. REMEDIES SOUGHT

72. Constructive Trust. The Defendants' conduct in the breach of their fiduciary duties owed to Plaintiffs and conspiracy described herein, creates a presumption of unfairness as a matter of law. As a result, the burden of persuasion rests squarely on the individual Defendants to show that any transactions conducted on behalf of the partnership were fair and equitable to the beneficiaries/limited partners.

73. Plaintiffs request that the Court place a constructive trust on all proceeds, funds or property obtained by the Defendants as a result of their breaches of fiduciary duty and conspiracy, to protect the rights and interests of the Plaintiffs and Plaintiff Class in them, and return such proceeds, funds or property to Plaintiffs and Plaintiff Class.

74. Accounting and Disgorgement. Plaintiffs request that the Court order the Defendants to provide an accounting of:

- a. All compensation and benefits paid to the Defendants and to any other employees, officers, directors, agents or representatives;
- b. All partnership assets;
- c. The financial status, profits, losses, revenues, expenses and liabilities of the partnership or any other subsidiary; and
- d. All partnership assets transferred, lent, or otherwise controlled by any other entity, including without limitation any other Triton Group entity, office, director or employee.

75. Compensatory Damages. The Plaintiffs seek actual compensatory damages on behalf of themselves and the Plaintiff Class for the injury caused by Defendants' breaches. As compensation, therefore, Plaintiffs seek monetary damages on behalf of themselves and the Plaintiff Class including the return of compensation wrongfully paid, the return of partnership assets wrongfully transferred to Defendants or entities in their control, any profits realized by their use of partnership assets, and return of self-dealing expenditures.

76. Exemplary Damages. Defendants' wrongs appear to have been aggravated by the kind of malice for which the law allows the imposition of exemplary damages. The General Partners' conduct, when viewed objectively from its standpoint at the time of its occurrence, involved an extreme degree of risk considering the probability and magnitude of the potential harm to the Plaintiffs and Plaintiff Class. Moreover, it appears that the General Partner, Kurt Barton, Fidelity, and the other individual Defendants had actual, subjective awareness of the risk involved but nevertheless proceeded with conscious indifference to the welfare of the limited partners. The General Partners' conduct, acts and omissions resulting in their breaches of

fiduciary duties were performed with malice, fraud and/or gross negligence, and as a result, the Plaintiff Class is entitled to recover exemplary and/or punitive damages.

77. Attorneys' Fees. Plaintiffs have been required to retain the services of the undersigned attorneys to bring this cause of action. Plaintiffs are entitled to recover their reasonable and necessary attorneys' fees under Tex. Civ. Prac. & Rem. Code. Ann. §§ 37.009, 38.001 (8) (Vernon 1997), and on equitable grounds.

78. If and when the Plaintiff Class is certified as requested, Plaintiffs request attorneys' fees and costs authorized by law or by agreement of the parties under the procedures set out in Tex. R. Civ. P. 42 (i).

79. Plaintiffs request a jury trial and have paid the appropriate jury fee.

VIII. PRAYER

80. Plaintiffs, on behalf of themselves and the Plaintiff Class, respectfully request that the Court grant to them all relief sought in paragraphs 72 through 78 above, including without limitation the following:

- e. Certify the Plaintiff Class as described herein and that the Plaintiffs are representatives of the Plaintiff Class and appoint the undersigned attorneys as class counsel for the Plaintiff Class;
- f. Enter judgment that all Defendants jointly and severally are liable for actual damages, including, but not limited to, (i) all excessive compensation and benefits and all improper expenditures paid to the General Partner, Kurt Barton and the other individual Defendants, or employees, directors, or officers of any entity excessively compensated; (ii) transferred partnership assets; (iii) partnership losses resulting from the General Partner's or Kurt

- Barton's or the other individual Defendants' self-dealing; (iv) partnership profits lost as a result of misappropriation of partnership assets;
- g. Enter judgment that all Defendants, jointly and severally, are liable for exemplary damages based on malice and/or malfeasance in an amount sufficient to punish Defendants for their intentional malicious acts and breaches of fiduciary duty;
 - h. Order disgorgement of all amounts misappropriated by the Defendants and impose a constructive trust on such amounts to be held solely for limited partners;
 - i. Reform the partnership agreements to permit the limited partners to revoke their subscription and order return of the limited partners' investment;
 - j. Award Plaintiffs and Plaintiff Class pre-judgment and post-judgment interest, as permitted by law, on all damages;
 - k. Award Plaintiffs and Plaintiff Class their reasonable and necessary attorneys' fees, expenses and costs of court; and
 - l. Award Plaintiffs and Plaintiff Class such further relief at law and equity to which they are entitled.

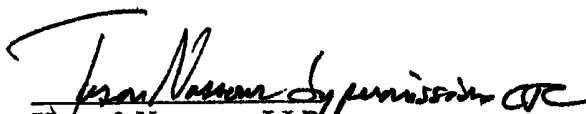
Respectfully submitted,



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ATTORNEYS FOR THE PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 31st day of December, 2009, service of a true and correct copy of the above and foregoing was undertaken via hand delivery or U.S. First Class Certified Mail, Return Receipt Requested as follows:



Cabrach Connor

Anthony C. Goodall, registered agent
TRITON FINANCIAL, LLC
1250 Capital of Texas Highway South
Three Cielo Center, Suite 601
Austin, Texas 78746
Via: Certified Mail, Return Receipt Requested

Kurt Barton, registered agent
TRITON ACQUISITION, LP d/b/a TRITON INSURANCE
12117 Bee Caves Road, Suite 200
Austin, Texas 78738
Via: Certified Mail, Return Receipt Requested

Kurt Barton, registered agent
TRITON HOLDINGS, LP
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Austin, Texas 78738
Via: Certified Mail, Return Receipt Requested

Kurt Barton, registered agent
TVEST GROUP, LLC
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Kurt Barton
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Bee Cave, Texas 78738
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Kurt Barton, registered agent
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TRITON SERVICES, LLC, registered agent
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Via: Certified Mail, Return Receipt Requested

David James Tuckfield, registered agent
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David James Tuckfield, as registered agent
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Via: Certified Mail, Return Receipt Requested

David James Tuckfield, as registered agent
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Via: Hand Delivery

Caleb Cunningham
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Via: Hand Delivery

Brian Whitney
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William (Pat) Tedrow
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