

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

YS GM MARFIN II LLC; YS GM MF VI LLC,
YS GM MF VII LLC; YS GM MF VIII LLC;
YS GM MF IX LLC; YS GM MF X LLC,
YIELDSTREET MARINE FINANCE, LLC,
AND YIELDSTREET MANAGEMENT, LLC,

Plaintiffs,

v.

FOUR WOOD CAPITAL ADVISORS, LLC,
FOUR WOOD CAPITAL PARTNERS, LLC,
STEVEN BAFFICO, AND ANDREW
SIMMONS,

Defendants.

CIVIL ACTION NO.: 20-cv-3320

**AMENDED
COMPLAINT**

Plaintiffs YS GM MARFIN II LLC, YS GM MF VI LLC, YS GM MF VII LLC, YS GM MF VIII LLC, YS GM MF IX LLC, YS GM MF X LLC (collectively, “Lenders”), Yieldstreet Management, LLC (“YS Management”), and Yieldstreet Marine Finance, LLC (“YS Marine”) (YS Management and YS Marine collectively, “Yieldstreet”) file this amended complaint against Four Wood Capital Advisors, LLC (“FWCA”) and Four Wood Capital Partners, LLC (“FWCP”) Steven Baffico, and Andrew Simmons (collectively, “Manager” or “the Defendants”) and allege as follows:

PRELIMINARY STATEMENT

1. The Defendants falsely portrayed themselves as high-integrity, expert originators and managers of overseas maritime finance transactions, with decades of experience in the industry and a years-long relationship with the Dubai-based Lakhani family (also referred to as the “North Star Borrowers”). The deceitful, roguish conduct that followed proved they were anything but that. Although paid more than \$3 million to protect investors, the *Defendants repeatedly lost track of vessels—some large as three football fields —while the Lakhani’s “deconstructed” (scrapped) the vessels and then lied about it.* Defendants’ purported “expertise” and their fiduciary and contractual duties to Plaintiffs notwithstanding, defendants Baffico and Simmons ultimately served as little more than mouthpieces for the fraudulent borrowers, parroting their lies and tendering multiple fabricated documents when asked by Yieldstreet for backup. Indeed, given the pre-discovery factual record and in light of their purported shipping expertise, contacts, and experience, the Defendants surely knew that they were substantially assisting the Lakhani’s fraud.

2. The Defendants’ critical role in the Lakhani’s fraud is richly detailed. The Defendants sent the Plaintiffs *many* false documents on behalf of the Lakhani’s. Defendants Baffico, Simmons, and their Four Wood team assured Plaintiffs that the vessels they were

monitoring were sailing on the high seas—when, in fact, *many of those vessels had already been stripped and sold for scrap* in Bangladesh and elsewhere. And, when Plaintiffs raised concerns, the Defendants repeatedly vouched for the Lakhani, claiming, for example, that payment delays were due to severe weather and banking issues, when the real reason was because the Lakhani's scheme was falling apart. At the same time Defendants were deceiving Plaintiffs, they also were *stealing*—with Mr. Baffico personally submitting more than **\$320,000 in false invoices** for December 2019 and January 2020 alone, calling for payment of “interest” and “margin” expenses without legitimate basis (to the extent any expenses existed at all).

3. By their actions, and inactions, the Defendants breached their contractual and common law duties, ran afoul of their obligations as investment advisers, and sought to evade detection by affirmatively feigning performance even as the truth inevitably surfaced.

4. The Defendants have now been exposed for their critical assistance to the Lakhani family's global fraud—a fraud that defendants Andrew Simmons and Steven Baffico personally concealed until Yieldstreet learned the truth and urgently brought the Lakhani's actions to the attention of courts, government regulators and criminal authorities on three continents. In April 2020, several Plaintiffs were awarded a Worldwide Freezing Injunction against the Lakhani in the amount of **\$76.7 million** by the High Court of Justice of England and Wales (Queen's Bench Division). In addition, *another group of sophisticated lenders*—unaffiliated with Yieldstreet—has filed a separate action against the Lakhani in the High Court of Justice, alleging that the Lakhani defrauded them by “misrepresenting that the delivery of certain vessels was delayed” when, in fact, “[t]he true position was that the relevant vessels had already been delivered and broken up

for scrap.”¹ The High Court imposed a \$46 million freezing order in favor of those lenders, who were led by Njord Partners.² A third sophisticated lender has also filed similar claims against the Lakhani in recent months.³

5. Further, Yieldstreet obtained an order from a High Court in Malaysia for the arrest of a vessel that the Lakhani had sold without Plaintiffs’ consent and without repaying the relevant Loan. All this happened while the Defendants were falsely reassuring Yieldstreet that they were monitoring the Lakhani on a close and constant basis.

6. Closer to home, in a proceeding under 28 U.S.C. § 1782, this Court has now authorized Yieldstreet to serve nearly twenty subpoenas in aid of the foreign proceedings (including a subpoena on Defendants here), so that Yieldstreet can forensically trace the flow of the funds stolen by the Lakhani, who the Defendants, including Baffico and Simmons personally, brought to Yieldstreet’s doorstep.

7. All told, Yieldstreet attorneys and forensic specialists have spent the last six months working across the globe to recover from a *fraud that would never have been possible “but for” the Defendants’ critical, active and ongoing assistance.*

8. Even now, the *Defendants are still acting against investors.* Defendants are obstructing enforcement of a \$76.7 million High Court Order by concealing their banking records and money transfers with the Lakhani, despite both a court subpoena and contractual obligations

¹ See Najjiyya Budaly, *Lenders Win Asset Freeze on Scrap Sellers Over \$50M Loan*, Law360.com (UK), May 18, 2020 (“Njord Article”)

² *See id.*

³ See Chiristan Carlsen, *Former Oaktree Execs Also Take Owner Family Behind Cash Buyer to Court*, Shipping Watch, May 5, 2020.

requiring disclosure. Facing rampant accusations elsewhere,⁴ the Defendants now occupy themselves by victim blaming and rumor mongering, including false, and increasingly bizarre statements to marine industry participants and by soliciting press coverage. They have also facilitated litigation against Yieldstreet by collaborating with lawyers who have spent months on Facebook and Google soliciting assistance for a potential class action case against Yieldstreet.

9. It certainly did not start out this way. By way of background, based on Defendants' representations regarding their purported decades of experience in marine finance transactions, plaintiff YS Marine entered into an Investment Management Agreement with Defendants dated April 18, 2018 (the "Agreement"). Pursuant to that Agreement, Defendants recommended that Plaintiffs engage in specialty financing transactions whereby the Lenders originally loaned over \$89.2 million to Dubai-based companies, among others, that borrowed the funds to acquire end-of-life vessels for the purpose of resale and deconstruction (*e.g.*, recycling of the metal) (the "Loans").

10. The Agreement required that Defendants manage and service the Loans, monitor the borrowers' performance of the underlying loan agreements, monitor and track the locations of

⁴ As Yieldstreet discovered only after the North Star loans began defaulting, this is not the first time the Four Wood Defendants have threatened a former client that terminated them for documented reasons and complained that they were charging excessive fees for questionable service. For example, publicly available documents indicate that Defendants FWCA and FWCP threatened litigation against a former advisory client for termination of that relationship and certain shareholders of that former client are seeking a declaratory judgment that FWCA and FWCP have no claims against the former client. Complaint ¶ 25, *Phillip Goldstein v. Four Wood Capital Advisors LLC et al*, Index No. 654498/2020 (N.Y. Sup. Ct.). And, several months ago, Defendant FWCP was sued in New York State Court in another case involving allegations of divided loyalties. In *ASM Capital and Sanford Scott and Co. LLC v. Four Wood Capital Partners LLC*, Index No. 657238/2019, the plaintiff alleges he hired FWCP to raise capital for development of a deep-water port in Florida. According to the complaint in that case, not only did FWCP fail to raise the capital, it falsely told that plaintiff that his plan for development of the port was dead, while secretly acquiring the rights to develop the port for itself.

the vessels that served as secured collateral for the Loans, and manage the borrowers' repayment of the Loans. Even apart from the Agreement, Defendants assumed fiduciary duties to Plaintiffs, including the duty of care and duty of candor.

11. The North Star Borrowers that Defendants introduced to Plaintiffs—entities associated with Tahir Lakhani and his sons—defaulted on the Loans. The Defendants not only vouched for the Lakhanis, but assured Plaintiffs that Defendants' diligence was informed by extraordinary direct access to that family's business, including that Mr. Simmons personally worked in the North Star Borrowers' Dubai offices on a monthly basis. Notwithstanding Defendants' obligations to track, monitor, and secure the collateral for the Loans on behalf of Plaintiffs, and notwithstanding Defendants' purported expertise in detecting and responding to maritime borrower defaults, the Lakhanis and their associates managed to conceal, sell, and deconstruct the vessels that constituted the collateral and to misappropriate the loan proceeds. That the Lakhanis engaged in a massive fraud against several sophisticated lenders is not open to serious dispute.

12. As discussed herein, a court in the United Kingdom has already entered a \$76.7 million Worldwide Freezing Order against the Lakhanis on behalf of certain of the Plaintiffs here. In addition, as also discussed herein, other lenders to the Lakhanis have filed their own actions against them, alleging that the Lakhanis defrauded those lenders by using many of the same means and methods they used to defraud Yieldstreet.⁵

13. The Lakhanis' fraud was made possible because, after the Loans were originated and financed, Defendants failed to satisfy their fiduciary and contractual duties. Defendants failed to use reasonable care in ensuring the borrowers' compliance and in monitoring the whereabouts

⁵ See Njord Article.

of the vessels that formed the collateral for the Loans, thereby allowing the Lakhani borrowers to sell those vessels without Plaintiffs' knowledge or consent and without repaying the loans. Despite touting their purported expertise in curing potential defaults by marine borrowers, Defendants did not monitor the vessels, and failed to search for, or even disclose to Plaintiffs, the lost collateral in a timely manner. As a result, the Lender Plaintiffs have not received the majority of their principal back nor the interest owed on the Loans that were extended to finance the purchase of those vessels.

14. Not only did Defendants (literally) miss the boats, they also actively lied about it, thereby again substantially assisting the Lakhani's fraud. To assuage Plaintiffs' concerns and induce Plaintiffs to finance an additional loan to the Lakhani's, the Defendants provided Plaintiffs with fake documents, continued to vouch for the borrowers, and claimed to be "tracking the vessels," when in fact most of the vessels no longer existed, because they already had been broken into pieces on beaches in Bangladesh and elsewhere in South Asia.

15. Plaintiffs have engaged in extensive efforts to recover Lenders' investment from the borrowers and guarantors in multiple jurisdictions. Since March, Plaintiffs have commenced proceedings in multiple jurisdictions against the North Star Borrowers and their affiliates to recover for investors, including in (i) Malaysia (on March 17, 2020); (ii) England (on April 2, 2020); and (iii) New York (April 28, 2020). Yieldstreet has committed extraordinary resources to this recovery effort, with a team of eight people, including members of the leadership team itself (the founders, the managing director responsible for marine finance and the most senior in-house counsel), meeting five to six days each week to discuss strategy and progress. Yieldstreet has retained separate litigation counsel in numerous jurisdictions, counsel and fraud recovery experts specialized in cross-border asset tracing, forensic accounts and marine insurance coverage lawyers, among others. The ongoing, expensive effort to recover from the borrowers would have been

completely unnecessary had Defendants discharged their fiduciary and contractual duties, or failing that, even if Defendants had come clean in enough time for Plaintiffs to minimize losses.

16. Plaintiffs seek damages due to Defendants' breach of the Agreement, the Defendants' substantial assistance of the Lakhani's fraud, Defendants' own false statements, their breach of fiduciary duties, misrepresentation, negligence, and conversion. To date, those damages exceed \$87 million in compensatory damages alone, plus additional damages resulting from the great expense of the ongoing international recovery effort, the use of substantial resources by Plaintiffs' personnel, which would otherwise have been directed to generating new business and earning income, the reputational loss caused by Defendants' conduct, and the substantial fees charged by Defendants as managers of these loans and as trusted fiduciaries of Plaintiffs.

THE PARTIES

17. Plaintiff YS GM MARFIN II LLC is an entity organized under the laws of the State of Delaware with its principal place of business located at 300 Park Ave, New York, NY 10022, and is a wholly-owned subsidiary of YS ALTNOTES I, LLC.

18. Plaintiff YS GM MF VI LLC is an entity organized under the laws of the State of Delaware with its principal place of business located at 300 Park Ave, New York, NY 10022, and is a wholly-owned subsidiary of YS ALTNOTES I LLC.

19. Plaintiff YS GM MF VII LLC is an entity organized under the laws of the State of Delaware with its principal place of business located at 300 Park Ave, New York, NY 10022, and is a wholly-owned subsidiary of YS ALTNOTES I LLC.

20. Plaintiff YS GM MF VIII LLC is an entity organized under the laws of the State of Delaware with its principal place of business located at 300 Park Ave, New York, NY 10022, and is a wholly-owned subsidiary of YS ALTNOTES II LLC.

21. Plaintiff YS GM MF IX LLC is an entity organized under the laws of the State of Delaware with its principal place of business located at 300 Park Ave, New York, NY 10022, and is a wholly-owned subsidiary of YS ALTNOTES II LLC.

22. Plaintiff YS GM MF X LLC is an entity organized under the laws of the State of Delaware with its principal place of business located at 300 Park Ave, New York, NY 10022, and is a wholly-owned subsidiary of YS ALTNOTES I LLC.

23. Plaintiff YS Marine is an entity organized under the laws of the State of Delaware with its principal place of business located at 300 Park Ave, New York, NY 10022.

24. Plaintiff YS Management is an entity organized under the laws of the State of Delaware with its principal place of business located at 300 Park Ave, New York, NY 10022.

25. Defendant FWCP is a private equity fund manager organized under the laws of the State of New York with its principal place of business located at 33 Plymouth Street, Montclair, NJ 07042.

26. Defendant FWCA is a financial advisory firm and investment adviser. FWCA is an entity organized under the laws of the State of New York with its principal place of business located at 33 Plymouth Street, Montclair, NJ 07042.

27. Defendant Steven Baffico was, at all relevant times, Managing Partner of FWCA and Chief Executive Officer of Defendant FWCP, acting on behalf of FWCP and FWCA, and, upon information and belief, a resident of New Jersey.

28. Defendant Andrew Simmons was, at all relevant times, Chief Executive Officer of Global Marine Transport Capital LLC, an affiliate of Defendant FWCP, acting on behalf of FWCP and FWCA, and, upon information and belief, a resident of Cyprus.

29. At all relevant times, Defendants Simmons and Baffico regularly served as intermediaries between (i) the Plaintiffs, on the one hand, and (ii) the Lakhani on the other. Plaintiffs believed that, during these communications, Defendants being honest and were using their superior knowledge and expertise in marine financing to carry out their fiduciary and contractual obligations to Plaintiffs.

JURISDICTION AND VENUE

30. This Court has subject matter jurisdiction over this case pursuant to Article III of the U.S. Constitution and 28 U.S.C. § 1333. Federal district courts have original jurisdiction over “[a]ny civil case of admiralty or maritime jurisdiction,” 28 U.S.C. § 1333(1). The Agreement at issue in this case is a maritime contract. The principal objective of the Agreement relates to maritime commerce, specifically the origination and financing of vessels to be acquired overseas, transported on navigable and international waterways, and ultimately sold for vessel deconstruction. The damages sought resulted from the destruction and dissipation of vessels that navigated international waters, ostensibly under monitoring by Defendants. The methods and means of the fraudulent scheme alleged herein was undertaken in part by false representations to and concerning foreign maritime flag registries, such as the Republic of Palau and the Union of Comoros, but not the United States.

31. This Court has subject matter jurisdiction over the related state law claims pursuant to 28 U.S.C. § 1367 because the state law claims are so related to claims falling under this Court’s original jurisdiction that they form part of the same case or controversy.

32. The parties themselves have contractually agreed that both jurisdiction and venue are proper in this District. The Agreement provided that “[i]n the event of any judicial proceeding involving any dispute, controversy or claim arising out of or relating to this Agreement, each of

the parties hereto irrevocably and unconditionally agrees (i) to be subject to the exclusive jurisdiction of the courts of the State of New York and of the United States District Court for the Southern District of New York, and any courts appealable from any such court” for the dispute, such as this one, arising out of or relating to this Agreement.

33. Venue is also proper in this District pursuant to 28 U.S.C. § 1391 for the same reasons that this Court has jurisdiction over the Defendants. A substantial amount of the events complained of occurred in this district, and Defendants carry on a continuous and systematic part of its business in the State of New York.

FACTUAL ALLEGATIONS

I. The Defendants Introduce YS Marine to the North Star Borrowers

34. The Defendants were introduced to the principals of YS Marine in or about mid-2017. During these meetings, the Defendants, including Baffico and Simmons, touted the services and expertise that they could provide through their affiliate Global Marine Transport Capital, LLC (“GMTC”). Defendants provided “pitch” materials, highlighting that Defendants were “currently among the most active middle-market shipping lenders in the maritime industry.” The pitch materials gave a “Overview of the Global Shipping Industry” and claimed that GMTC was “actively lending to smaller [shipping] companies, many of which are solid, conservative family businesses with excellent track records and sound financials” In addition, the pitch materials described the Defendants “Comprehensive Loan Issuance Process,” including “700+ long standing relationships with key shipping players.” Further, the pitch materials extensively described actions that Defendants would take in the event of a default by a marine borrower, including purported case studies of how the Defendants had responded to previous borrower breaches. The materials

also noted “GMTC’s opinion” that one of “the main reason[s] lenders have lost money in shipping is that . . . [t]hey have acted too late once the breach has occurred.”

35. The pitch materials also described the purported experience of the Defendants’ personnel. The materials noted, for example, Defendants’ “experienced management team,” which had “[o]ver 150 years of combined experience with a strong operating track record, extensive domain expertise and practical experience across both the global shipping industry and the public securities markets,” and prior involvement “in the commercial and technical aspects of fleet management, overseeing approximately 50 vessels with an aggregate value of \$300+ million.” And more specifically, the materials described Andrew Simmons, GMTC’s Chief Executive Officer, as having “over 30 years of experience in the banking industry, with particular expertise in shipping finance dating back to 1973.” Simmons also relied on his credentials and experience with leading shipping entities and marine professional services firms, including serving as Head of Credit Reports of Lloyd’s Intelligence List and Director of Shipping Finance for Heath Lambert in Dubai and Bahrain.

36. Discussions between Yieldstreet and the Defendants continued for the next several months. Defendant Baffico took a personal, lead role in answering Yieldstreet’s questions about both (i) potential maritime borrowers and (ii) the Defendants’ own operations.

37. For example, in or about January 2018, Baffico emailed Yieldstreet regarding the potential “partnership with GMTC” and included information on what he described as “highly actionable transactions,” attaching a memorandum describing a proposed \$25 million loan facility to the North Star Borrowers for vessel “recycling” or deconstruction transactions. Before this, Yieldstreet had not done any business with North Star or the Lakhani, or even heard of them. The Lakhani’s role in these transactions was, purportedly, to purchase vessels (which could be located

anywhere in the world) at or near the end of their useful economic life and then sell (and sometimes sail) those vessels to recyclers/scrapers in South Asia for deconstruction into component parts, scrap, and commoditized metal.

38. The memorandum Baffico attached described North Star's principal, Tahir Lakhani, and his two sons, Ali and Hasan, as willing and able to "support the facility with personal guarantees for the full sum on a joint and several basis." For his part, Simmons assured that his long relationship with the Lakhanis and atypically direct access to their business affairs and personnel—to the point where he regularly worked out of their headquarters in Dubai—would serve Plaintiffs every step of the way.

II. The Defendants Agree to "Originate," "Manage" and "Service" Ship Finance Transactions

39. After months of receiving these pitch materials from Defendants, and Baffico personally, YS Marine signed the Agreement with Defendants on or about April 18, 2018. Defendant Baffico signed the Agreement on behalf of both FWCA and FWCP. Each of the Lenders subsequently signed a Joinder to the Agreement in addition to a Schedule B-1 of the Agreement which were specifically incorporated by reference into the Agreement.

40. As specified in the second paragraph of the Agreement, Defendants were engaged "to provide investment management services with respect to ship finance transactions, loans or leases sourced and managed by the Manager"

41. Defendants were required to originate, facilitate, monitor and manage alternative investments that targeted high-yield returns in specialty lending to overseas marine finance companies. Pursuant to the Agreement, Defendants were to "source prospective transactions from qualified owner/operators of middle market shipping companies."

42. Importantly, the Agreement also required that “Manager will monitor loan repayments, the underlying security and the compliance of the documented terms and covenants by the borrowers, taking action as (or if) directed by the [Lenders] in the event of a breach of the agreed terms by the borrower.” In the case of vessel-backed maritime loans, Defendants’ obligations for “monitoring” the underlying security required them to keep track of the location of the vessels, among many other obligations. This would have included independently verifying the vessels’ location, such as using a third-party tracking system.

43. Under Schedule A of the Agreement, “100%” of the Loans were to be in connection with the “financing of vessels and other maritime assets.”

44. Each Schedule B-1 signed between Defendants and Lenders specifically stated that: Manager “shall seek to source opportunities for the [Lenders] to lend capital to shipping companies that meet the Schedule A Investment Guidelines” in the Agreement. These supplements executed under Schedule B-1 were specifically incorporated into the Agreement.

45. Defendants were also to use reasonable care and reasonable commercial judgment in performing their duties under the Agreement. Specifically, the Agreement required that “Manager shall use its reasonable commercial judgment in accordance with reasonable industry standards” in discharging their contractual duties. Furthermore, “Manager shall monitor, collect, administer and service each loan with reasonable care using the degree of skill and attention that is (i) deemed commercially reasonable in the industry, and (ii) no less than the degree of skill and attention it uses in servicing and administering similar loans for its own accounts, accounts for its affiliates, or for the account of other investors and in all cases in accordance with applicable laws.”

46. Defendants also had a duty to promptly notify Plaintiffs of material adverse events relating to the Loans (defined below). Specifically, “Manager shall promptly, but in no event later

than two (2) days after receipt of notice thereof or actual knowledge of an occurrence, as applicable, provide [Plaintiffs] with: . . . (ii) notice of the occurrence of an ‘Event of Default’ (as such term is defined in each loan agreement); (iii) notice of any event or condition [that] could be reasonably likely to have a material adverse effect on the ability of the borrower to repay the loan by the maturity date then in effect; and (iv) any other material notices, reporting or documents received by Manager in connection with the loans.” Similarly, pursuant to paragraph (c) in Exhibit B to the Agreement, Defendants were obligated provide “prompt notice of a breach, amendment, waiver or termination by any party to the Underlying Document and any other material event or occurrence relating” to the Loans.

47. Defendants also agreed not to disclose information about YS Marine or the relevant investments to third-parties, absent specific, enumerated exceptions. The Agreement states, for example, that “all information related in any manner to [YS Marine’s a]ccount, the assets, loans, funds, and other properties comprising [YS Marine’s a]ccount, and the terms and provisions of this Agreement constitute confidential information,” which was not to be disclosed or divulged, absent certain explicit exceptions.

48. The Agreement provides that it was “to be governed by and interpreted in accordance with the laws of the State of New York without giving effect to the principles of conflicts of laws.”

49. Paragraph (i) of Exhibit B to the Agreement provides: “In any litigation, arbitration or other proceeding by which one party either seeks to enforce its rights or obligations under this Agreement (whether in contract, tort, or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing party shall be awarded its reasonable attorney fees, and costs and expenses incurred.”

50. Throughout the relevant time period, Defendants conducted business in their own name and in the name of their affiliate GMTC. GMTC has offices in New York and Greece and is a subsidiary of FWCP, formed to perform services relating to the global shipping industry. While the Agreement permitted Defendants to delegate some of its duties to GMTC, Defendants remained responsible for their duties under the Agreement.

51. In addition, Defendants recommended that Plaintiffs retain Stephenson Harwood, a law firm that bills itself as having a “world leading marine law practice,” to advise and assist the Plaintiffs in the drafting of documents related to ship finance transactions that Defendants would manage under the Agreement. Based on Defendants’ purported expertise and experience in marine-related matters, Plaintiffs did so.

52. Defendants charged more than \$3 million for services purportedly provided under the Agreement.

III. The Defendants Source Over \$89 Million in Loan Facilities for the Lender-Plaintiffs

53. Between June 2018 and September 2019, Lenders extended six loan facilities in the total amount of approximately \$89.2 million to fifteen (15) companies sourced by Defendants and affiliated with the North Star Borrowers (the “Loans”). As discussed above, Defendants, and Baffico and Simmons specifically, had introduced YS Marine to North Star. The North Star Borrowers were: Gemini Marine Ltd., Gemini Marine (No. 1) Ltd., Gemini Marine (No. 2) Ltd., Gemini Marine (No. 3) Ltd., Gemini Marine (No. 4) Ltd., Gemini Marine (No. 5) Ltd., Gemini Marine (No. 6) Ltd., Gemini Marine (No. 7) Ltd., Gemini Marine (No. 8) Ltd., Gemini Marine (No. 10) Ltd., Gemini Marine (No. 12), Ltd., Gemini Marine (No. 13) Ltd., Gemini Marine (No. 14) Ltd., Aquarius Marine Ltd., and North Star Marine Ltd. (collectively, “North Star Borrowers”).

54. For each of the Loans, North Star provided corporate guarantees and the Lakhani (Tahir, Ali, and Hasan) provided personal guarantees as additional security. To demonstrate to Plaintiffs that the Lakhani's personal guarantees offered sufficient security to Plaintiffs and their investors, Defendants provided Plaintiffs with net worth statements for the Lakhani in April 2018, May 2018, and February 2019. In connection with the recent recovery efforts against North Star and the Lakhani, however, Plaintiffs have learned these statements were false and grossly overrepresented the Lakhani's net worth.

55. These Loans were extended to the North Star Borrowers for financing vessel deconstructions. North Star Borrowers sought loans in order to on-sell these vessels to third parties for deconstruction. The deconstruction proceeds were then to be paid to the Lenders under the loan agreements.

56. On or around June 1, 2018, YS GM MarFin II LLC made a loan facility of \$25,000,000. The loan was subsequently amended in late 2018 to increase the total loan amount of \$37,500,000. The purpose of the facility was to finance acquisition of vessels slated for deconstruction, as described above.

57. On or around March 22, 2019, YS GM MF VIII LLC made a loan of \$16,050,000 to Gemini Marine (No. 6) Ltd. for the purchase of the vessel, *Wu Xian*.

58. On or around March 31, 2019, YS GM MF VII LLC made a loan of \$12,650,000 to Gemini Marine (No. 7) Ltd. and Gemini Marine (No. 8) Ltd., for the purchase of three vessels, namely the *Geneva*, *Ana*, and *Ron*. The loan was subsequently amended to include Gemini Marine (No. 10) Ltd. as an additional borrower.

59. On or around May 29, 2019, YS GM MF IX LLC made a loan of \$9 million to Gemini Marine (No. 12) Ltd. and Gemini Marine (No. 13) Ltd. for the purchase of two vessels, namely the *Ari* and the *Spirit*.

60. On or around September 11, 2019, YS GM MF X LLC made a loan of \$14,500,000 to Gemini Marine (No. 14) Ltd. for the purchase of the vessel *Atban*.

61. Pursuant to the underlying loan agreements, certain amounts were to be repaid by the earlier of 180 days after the funds were advanced or the date the vessels were delivered to the scrappers. In every event, the Loans were to be repaid by the termination dates set forth in the applicable agreement. Once the memorandum of agreement (“MOA”) for the sale of a vessel was in place, it was the expectation that the vessel would be re-sold to scrappers within 30 to 60 days.

62. The Loans were secured by collateral, which, included, depending on the type of transaction, first priority ship mortgages on each of the vessels financed by the Loans, corporate guarantees, personal guarantees, assignments of sales proceeds and/or insurance proceeds, including mortgagee’s interest insurance. North Star and the Lakhanis also served as guarantors for the Loans.

IV. North Star Defaults on the Loans, and Defendants Facilitate the Fraud by the North Star Borrowers

63. At first, the relationship among Defendants, the North Star Borrowers, and Plaintiffs appeared to be working generally as planned, and consistent with the Agreement. By the beginning of June 2019, for example, the North Star Borrowers had repaid in full a \$9 million loan extended by another YS Marine affiliate, YS GM MF V LLC (not named as a Plaintiff herein).

64. Beginning in no later than late 2018 and continuing through early 2020, at Plaintiffs’ request, Plaintiffs and representatives of Defendants had a weekly status call to discuss

the status of the outstanding Loans. Defendants Baffico and Simmons were regularly invited to, and participated in, these calls.

65. However, unbeknownst to the Plaintiffs, the North Star Borrowers and the Lakhani were engaging in a massive fraud—deconstructing, double-flagging, and obtaining duplicate financing for many of the vessels that formed the collateral for the Loans. Based on Plaintiffs’ investigative efforts over the last several months, Plaintiffs have also determined that much of the loan proceeds obtained by the North Star Borrowers was used to repay other lenders’ loan facilities, rather than being used to finance the purchase of vessels, or was otherwise misappropriated.

66. Even though Defendants held themselves out as a “one stop shop” with unique, highly-specialized knowledge regarding the overseas market for vessel deconstruction lending, they never once informed Plaintiffs of these deceitful actions by the North Star Borrowers. This would have been bad enough, given Defendants’ obligation under the Agreement to manage, monitor and service the Loans and the North Star Borrowers’ compliance with their underlying loan agreements. But to make matters worse, after the Loans were originated and distributed, Defendants failed to comply with their fiduciary and contractual duties owed to Plaintiffs, substantially assisted the global fraud perpetrated by the North Star Borrowers, and made fraudulent representations about their own performance under the Agreement.

67. Among their many derelictions of duty, Defendants also failed to exercise reasonable care—and thus also fell well short of their still higher fiduciary duty of care—when it came to securing and safeguarding Lenders’ interests in the vessels as creditors. Defendants failed to secure and track the vessels and failed to ensure that the other professionals they supervised did so in an effective manner and free of conflicts.

68. Indeed, it now appears that, during the second half of 2019 and early 2020, Defendants' loyalties lay with the Lakhanis, and not with the Plaintiffs, to whom they owed fiduciary duties. In the fall of 2019, YS Marine began to develop its own capabilities to originate maritime-loan transactions. As Defendants knew, this would diminish Plaintiffs' need for Defendants to originate, (purportedly) monitor, and (purportedly) manage subsequent maritime-loan transactions. At the same time, Defendants continued to view the Lakhani family as a source of business, and indeed, the Lakhanis required a steady stream of additional financing, because, as noted above, they were using much of this new financing not to purchase vessels, but instead to repay existing investors and lenders.

69. On or about September 9, 2019, for example, Simmons, on behalf of the Four Wood Defendants, sent Yieldstreet detailed pitch materials for a proposed transaction for over \$40 million in which a Lakhani-related entity was seeking to refinance three vessels that had been financed by another lender. Defendants continued to try to get Plaintiffs and their affiliates to finance other Lakhani-related transactions through at least the end of March 2020. Neither Plaintiffs nor their affiliates entered into any of these transactions.

70. In addition, by encouraging Plaintiffs to grant the North Star Borrowers extensions on existing loans extended by Plaintiffs, Defendants obtained additional management fees. On or about September 13, 2019, for example, Baffico, on behalf of the Defendants, sent Plaintiffs invoices for management fees purportedly due to Defendants work relating to loans extended by Plaintiff YS GM MarFin II. Baffico explained that Defendants' fees were higher than previous months, because the acquisition and disposition of the vessels financed under that facility had exceeded 150 days. Baffico assuaged Plaintiffs' concerns by stating that the "overdue vessels . . . finally hit the beach in Aug[ust]" so the extra payments would likely be a "one-time assessment"

for YS GM MarFin II. However, the vessels that Baffico stated “hit the beach” in August had, in fact, been scrapped months prior or were never actually purchased by the North Star Borrowers.

A. Defendants Provide YS Marine with Fake Documents to Induce a \$14.5 Million Loan

71. Perhaps most egregiously, around this same time, the Defendants provided YS Marine with fake documents, to induce plaintiff YS GM MF X LLC to make a \$14.5 million loan to the Lakhani.

72. This series of events began in approximately mid-August 2019, when defendant Simmons, Chief Executive Officer of GMTC, pitched to representatives of Plaintiffs via email that the North Star Borrowers wanted to finance the purchase of a vessel called the *Atban*, which was formerly known as the *Watban* (the “*Atban/Watban*”), a large crude vessel, depicted below.



73. In his email, Simmons emphasized that “Tahir [Lakhani] has requested a prompt response . . . if you are interested to fund the vessel.”

74. In response to Simmons’ pitch, and before agreeing to fund the purchase of the *Atban/Watban*, YS Marine asked the Defendants a series of questions about the status of the existing facilities that had been extended to the North Star Borrowers, and to confirm repayment on those facilities would be forthcoming. Among other things, YS Marine asked about the status of the *Geneva*, *Ana*, and *Ron*, the vessels for which plaintiff YS GM MF VII had provided

acquisition financing in March 2019, and the *Ari* and *Spirit*, the vessels for which plaintiff YS GM MF IX had provided acquisition financing in May 2019. It was, of course, important to YS Marine to reconfirm that the Defendants—who were paid to diligence, vet and monitor the loans—that the North Star Borrowers were performing on their existing loans before pursuing this additional deal that Simmons had brought to the table.

75. Defendants committed to providing the facts necessary for YS Marine to confirm Defendants' assurances that Lakhanis were complying with their obligations. Simmons arranged for YS Marine to have a call with Tahir Lakhani. On the call with Simmons and representatives of YS Marine, Lakhani stated in, sum and substance, that all five vessels had been sold to ship breakers and that North Star would deliver them to the ship breakers in late September. YS Marine's representatives asked Defendants to have North Star provide documentation of these sales.

76. On or about August 26, 2019, Simmons, acting on behalf of defendants FWCP and FWCA, forwarded YS Marine the purportedly official sale memoranda of agreement ("MOAs") claiming to show that the North Star Borrowers had agreed to sell the *Geneva*, *Ana*, and *Ron* to ship breakers. These MOAs stated that these agreements for sale had been reached in August 2019 and that North Star would deliver the vessels to the ship breakers at the end of September 2019. Two days later, another of Defendants' officers sent YS Marine the MOAs for the sale of the *Ari* and *Spirit*, reflecting the relevant North Star Borrowers had also recently reached agreements regarding the sale of those vessels to ship breakers, with delivery to occur in late September or early October 2019.

77. The MOAs that Defendants provided were significant to Yieldstreet, because they provided documentary assurance that repayment on the outstanding Loans would be forthcoming

in the fall of 2019 and that it would be prudent to consider extending the North Star Borrowers financing for the *Atban/Watban*. At no point, despite touting over 45 years of experience in marine finance transactions, did Simmons raise any concerns about the legitimacy of these MOAs.

78. Based in part on these documents, on or around September 11, 2019, YS GM MF X LLC made a loan of \$14,500,000 to a North Star borrower for the purchase of the *Atban/Watban*. Meanwhile, the Four Wood Defendants earned over \$100,000 for having brought the loan to the table. The urgency with which defendants Baffico, Simmons and Four Wood fraudulently procured this final loan, and fee, is now clear – just a little over eleven days earlier Defendants’ once lucrative investment management contract with another client ended, having been terminated because Defendants overcharged that unrelated client while providing essentially no services.⁶

79. Unbeknownst to Plaintiffs at the time, in fact the MOAs that Defendants provided were fraudulent. ***In fact, most, if not all, of the vessels in question no longer existed.*** It since has been revealed that the *Geneva*, *Ron*, and *Ana* had been scrapped by ship breakers months prior, in the spring of 2019, and that the *Ari* and *Spirit* already had been delivered to Bangladesh for deconstruction earlier in the summer—before Simmons sent YS Marine the false MOAs that, on the revealed facts, appear to have been sent simply to deceive Yieldstreet into making one more loan to the Lakhani and paying one more fraudulently-procured fee to the Four Wood Defendants.

80. Defendants’ sending of fake documents to Plaintiffs was not based simply on mistake or ignorance. Under the Agreement, Defendants had an obligation to accurately track and monitor the status of the vessels. Indeed, just weeks later, in response to inquiries about other vessels whose purchase Plaintiffs had financed, Simmons, on behalf of FWCP and FWCA,

⁶ Notably, this past week, shareholders of that client sued some of the Four Wood Defendants. *See Phillip Goldstein v. Four Wood Capital Advisors LLC et al*, Index No. 654498/2020 (NY Sup. Ct.).

emphasized that Defendants were “tracking the vessels,” as they were required to do under the Agreement. That is, on these facts, a *written admission of fraud*—there was no possible way the Defendants could have been “tracking” multiple vessels that had already been reduced to scrap metal and spare parts, *i.e.*, there were no longer any “vessels” to “track.”

81. Clearly though, based on the secret scrapping of the *Geneva*, *Ron*, *Ana*, *Ari*, and *Spirit*, this was not only a lie told by the Lakhani, but a lie directly attributable to Defendants, who procured substantial compensation for their failing business by that deceit. By providing fake MOAs to YS Marine, Defendants feigned performance under the Agreement and substantially assisted the fraud carried out by the Lakhani and the North Star Borrowers. And in reality, the Defendants knew that the Lakhani were carrying out this fraud. Despite having (in Defendants’ own words) “particular expertise in shipping finance dating back to 1973,” Simmons provided Plaintiffs with false MOAs, made claims about Defendants’ purported tracking of vessels that, in reality, were being turned into scraps of metal on South Asian beaches, and continued to offer assurances about the North Star Borrowers’ performance well past the issuance of the loan for the purchase of the *Atban/Watban* in September 2019.

82. Defendants continued to attempt to lull Plaintiffs into a false sense of security regarding these vessels into early 2020. In November 2019, in response to Plaintiffs’ continued inquiries about the status of the *Geneva*, *Ron*, and *Ana*, Defendants told Plaintiffs, in sum and substance, that the vessels were off the coast of Bangladesh (in the case of the *Geneva* and *Ron*) and Pakistan (the *Ana*) and indicated that continued delays in the delivery of these vessels was due to severe weather in the area. In reality, as noted above, these vessels had been beached or scrapped months earlier. In short, their purported “expertise” notwithstanding, Defendants served as little

more than mouthpieces for the North Star Borrowers and, in light of their purported shipping expertise, knew that they were substantially assisting the Lakhani's fraud.

B. Defendants Continue to Vouch and Lie for the Lakhani's, Feign Performance Under the Agreement, and Fail to Monitor the Collateral

83. The Defendants' misconduct was not limited to vessels discussed above. In or about September 2019, the North Star Borrowers became late for the first time in paying amounts due under certain Loans. Despite their fiduciary duties to Plaintiffs, Defendants began advocating on North Star's behalf for extensions of the maturities on some of these facilities, assuring Plaintiffs that the North Star Borrowers' explanations for late payments were appropriate when, in fact, they were pretextual. In fact, Defendants had wholly failed in their obligations under the Agreement to monitor the collateral underlying the Loans. Again, Defendants also made affirmative fraudulent misrepresentations in the course of purportedly performing their obligations under the Agreement, lied to feign performance under the Agreement, and substantially assisted the fraud by the North Star borrowers.

84. For example, on September 12, 2019—conveniently, the *day after* plaintiff YS GM MF X LLC had been defrauded into making the loan to finance the purchase of the *Atban/Watban*—Simmons, on behalf of FWCA and FWCP, forwarded Yieldstreet another false email from Tahir Lakhani. That email stated that an interest payment had been delayed “due to what is happening in the international developments certain restriction on payments in and out were imposed which took us by surprised, . . . banks especially in the middle east have been hit by penalties. They have completely become paranoid.” Although Lakhani's late payment came as a surprise to Yieldstreet (and the email was also a bit difficult to follow), Simmons, on behalf of FWCA and FWCP, assured Plaintiffs that there was no cause for concern because he personally was in telephone contact with Tahir Lakhani and, in another act of deceit, represented that the

North Star Borrowers would be “opening new bank accounts in Singapore to avoid these issues in the future.”

85. Similarly, on September 30, 2019, Yieldstreet again inquired of Defendants about North Star’s repayment schedule for the existing facilities. Simmons again responded to these concerns, stating: “I have spoken to Tahir [Lakhani]” and “[h]e will call you directly tomorrow regarding the pending matters.”

86. On or around October 21, 2019, after the North Star Borrowers failed to make an initial payment due under the *Atban/Watban* facility, Simmons, on behalf of the Four Wood Defendants, once again made what were clearly false assurances. This time he explained that there were legitimate reasons for the delay in payment, *i.e.*, issues with Chinese banks and that Lakhani was “in a constant dialogue with the Chinese regarding further payments due under the facility.”

87. Simmons did not stop there. In yet another false follow-up email, Simmons assured that he personally “believe[d] we will receive the swift notification” of payment by the Lakhanis “within the hour.” In fact, no such payment was ever received. Nor was there any legitimate basis for Simmons to have claimed to “believe” that any such payment would ever be forthcoming because, in reality, the *Atban/Watban* was already in the process of being scrapped on a beach in Bangladesh.

88. Ten days later, Defendants were still vouching for North Star and the Lakhanis, claiming falsely that delayed payments on certain of the Loans were due to problems with the Chinese banking system. These lies were, in hindsight, apparent efforts to buy still more time before Yieldstreet inevitably learned that, in fact, the real reason the Lakhanis had not paid was because the Lakhanis had stolen the money they borrowed – a loan procured after Defendants tendered false documentation – and scrapped the collateral. On October 31, 2019, for example,

Defendant Simmons emailed representatives of Plaintiffs with a supposed summary of a “further call we had with Tahir” Lakhani to provide still more false assurances. This time Simmons explained the “issue on the payments from China re Coco [sic] and Kunglung [sic] is their access to the US banking system in terms of making \$ payments and ultimately those funds reaching a US entity more to follow on this.”

89. Baffico also repeatedly and personally deceived Yieldstreet. He assured that the Four Wood team would “work with [North Star’s] internal team tonight to provide some bullet points we can distribute to this working group which provide some additional color on the USD payment complications / issues from the Chinese company to [North Star]. As mentioned, this factor ultimately will have no bearing on the NS obligation or timing of payments back to YS, but we think would be helpful for the working group to have more information for the sake of having a better understanding of this issue.” That, of course, was also false – the true facts that Baffico did not divulge had a devastating “bearing” on *both* the Lakhani’s “obligation” *and* “timing of payments back to YS” – because the *Atban/Watban* loan obligation that Defendants procured was a fraud, and the payments never came.

90. Several days later, Simmons, on behalf of FWCA and FWCP, notified representatives of Plaintiffs that a payment had, in fact, been received from the North Star Borrowers. But even though he was personally responsible for monitoring payment compliance, he (conveniently) failed to mention that the amount was only around ten percent of what the North Star Borrowers had said they would pay. Plaintiffs were shocked, and immediately pointed out this extraordinary 90% payment shortfall. Simmons, meanwhile, did not seem the least bit surprised, and certainly not angry—he demurred, merely stating the “comments [were] duly noted,” and assuring that “further funds will arrive tomorrow and Wednesday.” Baffico again piled

onto the false narrative, adding that he “would concur” since he and Simmons and been “on . . . calls together” with Tahir Lakhani. Baffico added “[w]e are of course closely monitoring the situation and speaking with the Borrower [*i.e.*, Lakhani] several times a day.”

91. But while claiming to be “closely monitoring the situation,” the Defendants continued to breach their obligations under the Agreement, feign performance, and substantially assist the fraud being carried out by the North Star Borrowers. It is clear too that the Defendants were merely serving as mouthpieces for the Lakhani instead of fiduciaries to Plaintiffs. For example, as noted above, in March 2019, plaintiff YS GM MF VIII LLC extended a loan to the North Star Borrowers for the refinancing of a vessel later renamed the *Wu Xian*. The underlying loan agreement required the vessel to ultimately be sold to a buyer in Hong Kong with delivery in September 2019 and for the North Star Borrowers to repay the loan using the proceeds from that sale.

92. In October 2019, Yieldstreet asked Defendants for information about the status of the *Wu Xian* and the interest payments on the relevant Loan. Simmons, acting on behalf of the FWCA and FWCP, again claimed to be in contact with Tahir Lakhani and that he was “constantly pressing daily *I can assure you . . . this is not a [North Star] issue[.] [I]t is the Chinese end . . .*.” That was false. In truth and fact, the issue was very much a North Star issue, and an issue for Defendants. As was later revealed, in September 2019, North Star had sold the *Wu Xian* without Plaintiffs’ knowledge or consent and without paying the relevant loan, and the proceeds were instead diverted to other entities. As referenced above, the Plaintiffs are currently engaged in proceedings before the Malaysian High Court (Admiralty Division), after Plaintiffs secured the arrest of the vessel. The loan remains in default.

C. The Defendants' Failure to Carry Out Their Duties Under the Agreement, and Their Assistance to the North Star Borrowers' Fraud, Continued into 2020

93. Well into 2020, the Defendants failed to carry out their obligations under the Agreement and continued to provide substantial assistance to the North Star Borrowers' fraud.

94. For example, on January 9, 2020, Simmons, on behalf of the FWCA and FWCP, forwarded to YS Marine coordinates purporting to reflect the locations of certain financed vessels. Again, despite their purported expertise in marine shipping and their obligations under the Agreement, and their fiduciary obligations to Plaintiffs (not North Star), Defendants served as little more than puppets and frontmen for the North Star Borrowers. Simmons forwarded the email only three minutes after receiving it; he either did not verify the information or, given all that has come to light, did not need to verify it because he knew the information was false. Notably, the positions for the *Ron* and *Ana* were the same positions Defendants had provided to Plaintiffs in a purported update two months prior in November 2019.

95. Additional North Star Borrowers began to miss payments to the Lender Plaintiffs in January and February 2020.

96. Plaintiffs attempted to receive payment from these North Star entities by, among other things, requesting that Stephenson Harwood, the law firm recommended and supervised by Defendants, serve Lenders' notices of default and acceleration on the North Star Borrowers, Shockingly, Stephenson Harwood refused to do so, asserting that they would not take public action adverse or provocative to the Lakhani because of a undisclosed conflict of interest.

97. Further, in late February 2020, a third party—not Defendants—notified Plaintiffs that North Star was in voluntary liquidation proceedings in St. Kitts and Nevis.

98. Despite this, shockingly, Defendants continued to vouch for the Lakhani. On February 17, 2020, for example, defendant Simmons told Yieldstreet he had “just got back from” a meeting with Tahir Lakhani and that he “believe[d] Tahir fully understands the situation . . . and has assured me all vessels financed are in place and we will obtain the positions tomorrow or Wednesday” Of course, this was all a lie, and none of the information promised was actually provided.

99. In March 2020, faced with lying borrowers, aided by a now-clearly compromised investment adviser, and a law firm (recommended by the investment adviser) that was unwilling to take any action against the borrowers, Plaintiffs exercised their contractual rights to terminate and accelerate the Loans, requiring the immediate payment of the remaining principal and default interest and began the worldwide recovery efforts described herein. As of March 31, 2020, a total of approximately \$76.7 million was in default across the five North Star Loans. As of the filing of this Complaint, North Star Borrowers have not repaid any of that amount to Plaintiffs.

100. Defendants failed to exercise reasonable care in recommending, retaining and directly supervising Stephenson Harwood, which they portrayed as a leading, multinational law firm that would represent Lenders by documenting key loan safeguards to protect Plaintiffs’ interests, including the drafting of underlying loan and security agreements, guarantees, promissory notes, by making sound recommendations on which flag states to use when registering Lenders’ mortgages as a primary means to protecting Lenders’ security, and ultimately by registering ship mortgages to secure and perfect those security interests on behalf of Lenders and Plaintiffs.

101. Defendants also never disclosed that Stephenson Harwood had a longstanding and substantial business relationship with the Lakhani (the ultimate owners of the North Star

Borrowers). Upon information and belief, the Lakhani are Stephenson Harwood's largest client in its Dubai office. Based on public documents filed in the past few months, the Lakhani received advice from Stephenson Harwood on their personal guarantees. Had Plaintiffs known these facts, Plaintiffs would not have hired that firm for these transactions.

102. As manager, Defendants also allowed critical mortgages and related documents securing the loans to be recorded in foreign flag jurisdictions that Defendants knew (or should have known) were not reliably creditor-friendly or otherwise sufficiently protective of creditors' rights. Defendants never informed Plaintiffs of the commercial creditor risks to their collateral interests in these foreign jurisdictions, specifically Palau and Comoros. Nor did, to Plaintiffs' knowledge, Defendants do anything to mitigate that undisclosed risk with certain flag registries or require the North Star Borrowers to flag the vessels in more protective flag registries for the deconstruction transactions. Instead of disclosing these risks, the Four Wood Defendants enabled the Lakhani to exploit them.

103. When the North Star Borrowers failed to pay in accordance with the Loans, Plaintiffs requested specific information, including the location of the vessels which Defendants were obligated to track. However, Defendants and the North Star Borrowers failed to provide that critical information. Despite Defendants' fiduciary and contractual duties to monitor and inform Plaintiffs of the status of the Loans, Defendants lost track of the vessels that were the collateral for the Loans.

104. Defendants failed to use reasonable care in monitoring the Loans and the collateral, despite assurances that the vessels were secured. During Defendants' tenure as manager, they represented to Plaintiffs that they were in "constant dialogue" with Borrowers. These assurances turned out to be false. Vessels were in fact beached on the coast of Bangladesh and other South

Asian countries. At least twelve (12) vessels financed by and secured as collateral for the Loans were sold and/or deconstructed overseas in countries such as Pakistan and India. Defendants also failed to disclose that four (4) other vessels may have been double-financed by other lenders (and that the Lakhani therefore had no equity in those vessels).

105. Defendants also failed to disclose to Plaintiffs that North Star had been voluntarily dissolved by its shareholders, *i.e.*, the Lakhani, and that trustees had been appointed to liquidate the company. Pursuant to the underlying loan agreements, both events constituted “Events of Default” that suffice for acceleration of the Loans. Furthermore, Defendants did nothing to prevent the proceeds from the sales of the vessels to be distributed by North Star to other entities in violation of Plaintiffs’ rights and interests in the vessels and the Loans.

106. Despite their requirements in the Agreement, Defendants failed to properly monitor the loans, Defendants failed to ensure the North Star Borrowers’ compliance with the underlying loan agreements, and Defendants failed to provide material information regarding the Loans to Plaintiffs.

107. Defendants were also to receive a certain percentage as a management fee under the Schedule B-1 to the Agreement. For certain facilities, Defendants were also to receive a specific percentage if the loan was outstanding from 150 to 180 days, also called a margin fee.

108. Defendants charged fees in excess of what the Agreement and Schedule B-1 provided, including by charging the margin fee for facilities for which such fees were inapplicable. Over the course of several months, this amounted to hundreds of thousands of dollars of excessive fees to which Defendants had no contractual right. Mr. Baffico personally submitted these illegitimate invoices, seeking more than \$320,000 in December 2019 and January 2020 alone.

109. Since commencing these recovery efforts, Plaintiffs have repeatedly requested that Defendants provide information and documents concerning what Defendants did and did not do in discharge of their duties. Defendants have failed to comply with these requests.⁷

110. On April 27, 2020, Plaintiffs terminated the Agreement for cause.

D. Even After the Agreement Was Terminated, Defendants Continued to Violate Their Duties

111. Further, even after Plaintiffs terminated the Agreement, Defendants had ongoing obligations which survived the Agreement's termination and which Defendants breached. As noted above, the Agreement contains a confidentiality provision, requiring Plaintiffs to keep confidential "all information related in *any manner* to [YS Marine's a]ccount, the assets, loans, funds, and other properties comprising [YS Marine's a]ccount, and the terms and provisions of this Agreement constitute confidential information." Further, "confidential information" "shall not [be] disclose[d] or divulge[d] . . . except as reasonably necessary to perform [a party's] obligations under [this] Agreement, unless" certain enumerated exceptions apply.

112. Here, despite these provisions, Defendants' counsel provided quotes to journalists regarding this action in an August 12, 2020 Wall Street Journal article and in a Law360 September 9, 2020 article. No exception to the confidentiality provisions applied to those statements.

113. Moreover, on information and belief, Defendants have violated this provision in other more egregious ways. Among other things, a recently filed class-action complaint in this District contains allegations regarding the alleged contents of purported conversations between Defendants and one of Plaintiffs' principals.⁸ To be clear, Plaintiffs do not agree with the

⁷ Defendants have also refused to comply with the § 1782 subpoena issued by this Court.

⁸ See Complaint, *Tecku v. Yieldstreet, Inc.*, No. 20 Civ. 3727 (S.D.N.Y. Sept. 9, 2020), ECF No. 1, ¶¶ 84-88, 92-93.

characterizations of these allegation nor admit them. However, the source of these allegations clearly appears to be Defendants and/or their agents, in flagrant violation of the Agreement's confidentiality provisions.

CAUSES OF ACTION

COUNT 1: Aiding and Abetting Fraud (Against All Defendants)

114. Plaintiffs repeat and incorporate each and every allegation set forth above as if fully set forth herein.

115. The North Star Borrowers and the Lakhani family committed fraud. Among other things, in transactions facilitated by Defendants, the North Star Borrowers induced Plaintiffs to issue more than \$89 million dollars of maritime-related loans by providing false documents and making false representations about how the loan proceeds would be used. Plaintiffs reasonably relied on these documents and representations in extending the Loans. The North Star Borrowers then misappropriated the loan proceeds and failed to pay the amounts due and owing under the Loans, causing Plaintiffs tens of millions of dollars of damages.

116. From at least late August 2019, continuing through approximately April 2020, Defendants substantially assisted in the Lakhani's fraud, in at least three ways:

117. First, Defendants provided Plaintiffs with fake documents, including, in late August 2019, fraudulent memoranda of agreement purportedly reflecting contracts to sell certain vessels. These memoranda of agreement, and other assurances Defendants provided at the time, induced Plaintiffs YS Marine and YS GM MF X LLC to enter into a transaction in which YS GM MF X

LLC loaned a North Star Borrower \$14,500,000 for the purchase of the vessel *Watban/Atban* on or about September 11, 2019.

118. Second, Defendants repeatedly pretended that they were actively monitoring the status of the collateral underlying the Loans and then fraudulently misrepresented the reasons behind increasingly delayed payments by the Lakhanis. For example, defendant Baffico falsely advised Plaintiffs in September 2019 that certain vessels had “hit the beach” the month prior, indicating that Plaintiffs could expect re-payment shortly on the facilities relating to those vessels. In fact, those vessels had already been scrapped. Defendant Simmons assured Plaintiffs in September 2019, for example, that they were “tracking the vessels.” Similarly, in November 2019, in response to continued delays in payments from the North Star Borrowers, defendant Baffico assured Plaintiffs: “[w]e are of course closely monitoring the situation and speaking with the Borrower [*i.e.*, the Lakhanis] several times a day.” All the while, the Lakhanis were arranging for the scrapping of the vessels that formed the collateral for the Loans and/or selling those vessels without Plaintiffs’ knowledge or consent.

119. Third, Defendants also repeatedly provided false excuses for increasingly late payments by the North Star Borrowers, falsely claiming, for example, that the delays were due to severe weather and banking issues. In September 2019, defendant Simmons forwarded an email by Tahir Lakhani, claiming that banking delays were due to issues in the Middle East. In October 2019, Simmons falsely claimed that additional payment delays were due to issues with Chinese banks, including their access to the U.S. banking systems. Around this same time, Baffico similarly added that the payment delays were due to “the USD payment complications / issues from the Chinese company.”

120. Defendants' conduct consisted not only of false statements and the sending of false documents, but also of material omissions. Defendants had near-weekly status calls with Plaintiffs during this time. At no point did Defendants indicate that they were failing to monitor the vessels, that they had concerns about the underlying collateral, or that they were merely repeating the Lakhani's explanations for payment delays.

121. Defendants' substantial assistance, including the misrepresentations and omissions described above, caused Plaintiffs harm by (i) inducing them to extend \$14,500,000 to the North Star Borrowers to finance the purchase of the *Atban/Watban* and (ii) allowing the Lakhani to escape detection for months while the collateral underlying the loans continued to be deconstructed and the loan proceeds continued to be dissipated.

122. Defendants knew that they were substantially assisting the Lakhani's commission of this fraud.

123. Plaintiffs suffered damages as a result of the Lakhani's fraud, and the Defendants' substantial assistance of it, which is compensable in an amount to be determined at trial. Plaintiffs are further entitled to punitive damages.

**COUNT 2: Breach of Contract
(Against the Defendants FWCA and FWCP)**

124. Plaintiffs repeat and incorporate each and every allegation set forth above as if fully set forth herein.

125. YS Marine signed the Agreement with the Four Wood Defendants dated April 18, 2018. Each Lender signed a Joinder that was specifically incorporated by reference into the Agreement. Plaintiffs have complied with their material contractual obligations.

126. The Agreement required, among other things, that Defendants provide to Yieldstreet “prompt notice of a breach, amendment, waiver or termination by any party to the Underlying Document and any other material event or occurrence relating to the Opportunities.”

127. The Agreement further required that Defendants “shall monitor, collect, administer and service each loan with reasonable care using the degree of skill and attention that is (i) deemed commercially reasonable in the industry, and (ii) no less than the degree of skill and attention it uses in servicing and administering similar loans for its own accounts, accounts for its affiliates, or for the account of other investors and in all cases in accordance with applicable laws.”

128. Defendants breached the Agreement, including but not limited to failure to use reasonable care in monitoring the loans, repayments and the secured collateral. Defendants did not use “reasonable care” or the “degree of skill and attention that is deemed commercially reasonable in the industry.” Defendants lost track of nearly all vessels financed by and used as collateral for the Loans.

129. Due to Defendants’ breaches of the Agreement, Plaintiffs sustained damages, including but not limited to the loss of Plaintiffs’ principal investment in the Loans and loss of their secured mortgage interests in the vessels.

**COUNT 3: Fraud
(Against All Defendants)**

130. Plaintiffs repeat and incorporate each and every allegation set forth above as if fully set forth herein.

131. Between August 2019 and March 2020, Defendants made material misrepresentations and omissions in the course of their purported performance under the Agreement and feigned performance under the Agreement, as set forth above.

132. Defendants' conduct was willful, malicious, and made with the intent to defraud Plaintiffs.

133. Plaintiffs reasonably relied on Defendants' representations, given, among other things, Defendants' purported decades of expertise in marine finance transactions and their regular contact with the Lakhani/North Star Borrowers. These misrepresentations allowed the North Star Borrowers to obtain additional funds from Plaintiffs, escape detection, dissipate the collateral underlying the Loans, transfer of the Loan proceeds out of North Star, and then voluntarily liquidate, rendering Plaintiffs' security interests essentially null and void.

134. Plaintiffs suffered damages as a result of Defendants' misrepresentations and omissions. These damages include, but are not limited to, the loss of the principal invested in the loans and interference in Plaintiffs' rights and interests in the vessels as collateral for the Loans. Plaintiffs are further entitled to punitive damages.

**COUNT 4: Breach of Fiduciary Duty
(Against All Defendants)**

135. Plaintiffs repeat and incorporate each and every allegation set forth above as if fully set forth herein.

136. Defendants (as Plaintiffs' agent and adviser) owe Plaintiffs fiduciary duties, including the duty of candor and the duty of care.

137. Defendants breached those fiduciary duties, including but not limited to Defendants' failure to properly ensure the security for the Loans. For example, Defendants engaged a law firm on Plaintiffs' behalf that apparently has significant commercial conflicts and recorded mortgages and filed related documents for Plaintiffs in jurisdictions that would not properly safeguard Plaintiffs' security interests.

138. Furthermore, Defendants failed to provide Plaintiffs with timely or accurate information. Defendants did not notify Plaintiffs that North Star was in liquidation proceedings, even though this would materially affect the payments on Plaintiffs' investments, nor did Defendants inform Plaintiffs of the potential commercial issues with securing Plaintiffs' mortgage interests in jurisdictions that were unfriendly to creditors. Defendants similarly fell short of their fiduciary obligations with respect to other loans.

139. Defendants also advised Plaintiffs to grant extensions to the North Star Borrowers' payment due dates, thereby allowing the North Star Borrowers to continue selling the vessels, transferring the proceeds out of North Star, and voluntarily liquidate North Star, and thereby rendering Plaintiffs' security interests essentially null and void.

140. Due to Defendants' breaches of those fiduciary duties, Plaintiffs suffered damages. These damages include, but are not limited to, the loss of the principal invested in the Loans and interference in Plaintiffs' rights and interests in the vessels as collateral for the Loans.

**COUNT 5: Negligent Misrepresentation
(Against All Defendants)**

141. Plaintiffs repeat and incorporate each and every allegation set forth above as if fully set forth herein.

142. Defendants owe fiduciary duties to Plaintiffs, including the duty of candor to provide Plaintiffs with accurate and timely information relating to the loans. Apart from those fiduciary obligations, Defendants were obligated to perform their professional duties competently, and to provide honest and complete information to Plaintiffs.

143. Defendants failed to provide Plaintiffs with correct and accurate information regarding the North Star Borrowers, the Loans and their repayment. For example, Defendants advised Plaintiffs to grant extensions to the Borrowers' interest and principal payment due dates.

Defendants did this either with the knowledge that the North Star Borrowers had violated the underlying loan agreements (if Defendants had been properly monitoring the Loans) or without any knowledge of the North Star Borrowers' compliance (if Defendants failed to monitor the Loans).

144. During Defendants' tenure as manager, they made numerous false representations and omissions to Plaintiffs regarding, among other things and as set forth above, (i) agreements the North Star Borrowers had to sell certain vessels, (ii) reasons for delays in payment from the North Star Borrowers, and (iii) their efforts to monitor and track both the collateral underlying the Loans and the status of repayments on those Loans, including as set forth above in paragraphs 63 through 113. Defendants also misrepresented and omitted the benefits of hiring the law firm they recommended, including a striking failure to disclose the law firm's substantial relationship with the North Star Borrowers.

145. Plaintiffs reasonably relied on the information provided by Defendants. Defendants held themselves out as having unique and specialized knowledge in originating, facilitating, and monitoring marine finance loans. Defendants originated, negotiated and then serviced the Loans for Plaintiffs. After the Loans were originated, Defendants were required to monitor the Loans and North Star Borrowers' compliance therewith.

146. Due to Defendants' negligent misrepresentations, Plaintiffs suffered damages. These damages include, but are not limited to, the loss of the principal invested in the Loans and the loss of their interests in the collateral.

**COUNT 6: Negligence
(Against All Defendants)**

147. Plaintiffs repeat and incorporate each and every allegation set forth above as if fully set forth herein.

148. Defendants owe a duty to exercise reasonable care to Plaintiffs. Plaintiffs reasonably relied (to their detriment) on Defendants' performance of their obligations. Defendants were required to monitor the Loans and inform Plaintiffs of relevant information. Furthermore, Defendants held themselves out as having unique, specialized knowledge in marine finance loans.

149. Defendants breached that duty of care. Defendants delegated many of their duties to GMTC but failed to ensure that the Loans or the collateral were monitored. Defendants further failed to ensure that the mortgages were recorded in flag jurisdictions that would protect Plaintiffs' interests. It was negligent for Defendants to repeatedly lose track of the collateral that, as managers, they were paid millions to secure, safeguard, and monitor. It was negligent for Defendants to recommend and supervise a law firm to represent Lenders in connection with the Loans without ever disclosing that firm's substantial relationship with the North Star Borrowers.

150. The sales of vessels, the breach of the underlying loans agreements and the nonpayment of more than \$87 million were proximately caused by and were foreseeable consequences of Defendants' negligence.

151. Due to Defendants' breaches of their duty to exercise reasonable care, Plaintiffs sustained damages, including but not limited to, loss of the principal investment and loss of the collateral used to secure the investments.

**COUNT 7: CONVERSION
(Against All Defendants)**

152. Plaintiffs repeat and incorporate each and every allegation set forth above as if fully set forth herein.

153. Defendants substantially interfered with Plaintiffs' property by knowingly or intentionally taking possession of hundreds of thousands of dollars and refusing to return the money to Yieldstreet.

154. Plaintiffs did not consent to the taking of its money for the purposes used for, or to the transfer or use of the money for the benefit of the Defendants.

155. Plaintiffs were damaged as a direct, proximate, and foreseeable result of the knowing or intentional misconduct of Defendants.

156. Defendants' conduct has caused and continues to cause damage to Plaintiffs.

RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully request that this Court grant the following relief:

- A. Judgment in favor of Plaintiffs and against Defendants on Counts 1 through 7, and award Plaintiffs damages of an amount to be determined at trial, in an amount no less than \$87 million plus statutory pre- and post-judgment interest;
- B. Punitive damages as determined by the Court;
- C. Disgorgement of all compensation or fees paid to Defendants under the Agreement;
- D. Reimbursement for all expenses incurred by Plaintiffs in its recovery efforts;
- E. An award of reasonable attorney fees and costs incurred by Plaintiffs, as also required by the Agreement; and
- F. Such other and further relief as this Court deems just and proper.

Dated: September 21, 2020
New York, New York

Respectfully submitted,

BAKER BOTTS L.L.P.

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