IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

HYPERDYNAMICS CORPORATION	§	
	§	
Plaintiff,	§	
	§	
V.	§	
	§	
SOUTHRIDGE CAPITAL	§	
MANAGEMENT LLC, STEPHEN	§	
HICKS, DOMINION CAPITAL FUND,	§	CIVIL ACTION NO. H-05-1953
LTD, SOVEREIGN PARTNERS LP,	§	JURY TRIAL DEMANDED
NAVIGATOR MANAGEMENT LTD,	§	
AND DAVID SIMS	§	
	§	
Defendants.	§	

PLAINTIFF'S FIRST AMENDED COMPLAINT[1]

Plaintiff Hyperdynamics Corporation ("Hyperdynamics") complains of Defendants Southridge Capital Management LLC ("Southridge"), Stephen Hicks ("Hicks"), Dominion Capital Fund Limited ("Dominion"), Sovereign Partners LP ("Sovereign"), Navigator Management Ltd. ("Navigator") and David Sims ("Sims").

A. Parties

1. Plaintiff Hyperdynamics Corporation is a Delaware Corporation with its principal place of business in the Southern District of Texas. Prior to May 5, 2005, Hyperdynamics' stock was traded on the NASDAQ over-the-counter bulletin board under the symbol "HYPD." The stock is now traded on the AMEX under the symbol "HDY."

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[1] This First Amended Complaint is being filed before any defendant has answered. In addition, pursuant to an Order dated August 30, 2005 the Court granted the joint motion of the parties to extend certain deadlines and permitting the filing of this amendment on or before September 6, 2005.

of business in Ridgefield, Connecticut. At all relevant times, Southridge acted for itself and as agent of and on behalf of Defendants Dominion and Sovereign.

3. Defendant Hicks is an individual who is a Canadian citizen who resides in Connecticut. At all relevant times, Hicks was the controlling principal, agent or officer of Southridge and in that capacity engaged in or directed the unlawful actions complained of in this action.

4. Defendant Dominion is an international business incorporated in the Commonwealth of the Bahamas having its registered and principal office in Nassau, Commonwealth of the Bahamas.

5. Defendant Sovereign is a Delaware Limited Partnership having its principal office in Ridgefield, Connecticut.

6. Defendant Navigator is a British Virgin Islands international business company having its principal office in Road Town, Tortola, British Virgin Islands.

7. Defendant Sims is a natural person and a citizen and resident of Road Town, Tortola, British Virgin Islands.

B. Jurisdiction

8. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1332(a)(2). The amount in controversy exceeds $75,000. This Court further has personal jurisdiction over Defendants under the Texas Long-Arm Statute §17.042(1) and (2). *See* TEX. CIV. PRAC. & REM. CODE § 17.042(1)-(2).

9. This case was originally brought as a part of an action against the Defendants named in paragraphs 2-7, and other persons and entities, in the Superior Court of Fulton County, Georgia, Civil Action File No. 200144988. These Defendants each brought a Motion to Dismiss for Lack of

Personal Jurisdiction which was granted by the Georgia Court by order dated April 6, 2005. This case against the Defendants who were dismissed from the Georgia suit is being filed pursuant to Texas Civil Practice & Remedies Code §16.064 within the 60-day period provided by that statute.

C. Venue

10. Venue is proper in this Court pursuant to 28 U.S.C. §1391(a)(2).

D. "Death-Spiral Financing"

11. The underlying action involves a corporate financing scheme used to victimize numerous thinly-capitalized over-the-counter-bulletin-board ("OTC/BB") United States companies. The financing scheme is called "death-spiral financing."

12. In a death-spiral financing scheme, the wrongdoers conspire to provide "financing" to a target company through convertible instruments. These instruments allow the wrongdoers to purchase shares of the company's common stock which in turn entitles them to receive more stock of the company if the price declines. Typically, there is an initial convertible financing arrangement with a promise of a second round of financing in the form of a larger line of credit if the target company's share price remains above a certain floor. The wrongdoers then proceed to aggressively and illegally manipulate the target company's common stock in order to drive down the price. This price drop, in turn, enables the wrongdoers to obtain more shares of common stock upon exercise of the conversion provision. The issuance and sale of the shares upon conversion dilutes the value of the company's outstanding shares, causing the stock price to fall further. When the wrongdoers sell additional shares from the conversion, the stock price is pushed even lower—hence the characterization death-spiral. Consequently, the share price typically drops below the floor and the wrongdoers never have to provide the line of credit. In order for the scheme to work, and for the wrongdoers to go undetected, the wrongdoers must secretly act through others. For that purpose,

offshore limited liability companies are generally created and used.

13. The importance of offshore entities in the implementation of death-spiral financing schemes is demonstrated in the criminal complaint in *United States v. Badian*, No. 03 Mag. 2355 (S.D.N.Y.). In that complaint, a United States Postal Inspector quotes portions of an audio recording of wrongdoers engaged in illegal short-selling of the stock of a target company (Sedona Corporation) in furtherance of a death-spiral financing scheme. David Sims, one of the key actors in the underlying death-spiral financing scheme, was also involved in the Sedona scheme. The Postal Inspector's description of the recordings is instructive:

> On or about March 20, 2001, ANDREAS BADIAN, the Defendant, told a registered representative at the Broker Dealer ("Broker 1"), in substance and in part, to sell the common stock of Sedona with "unbridled levels of aggression" on behalf of the Offshore Entity Brokerage Account.
>
> Upon receiving this direction from ANDREAS BADIAN, the Broker Dealer sold short approximately 74,500 shares of Sedona common stock. On March 20, 2001, Sedona's share price closed at $0.9688 per share.
>
> The next day, on or about March 21, 2001, ANDREAS BADIAN congratulated Broker 1 on a "good job," noting that the company's share price had "collapsed." BADIAN then directed Broker 1 to be "merciless" with Sedona.

14. The Postal Inspector's review of certain e-mails between the Defendants and others in *Badian* is likewise instructive:

> On or about March 27, 2001, the Offshore Entity notified Sedona that the Offshore Entity wished to convert its convertibles debentures into Sedona common stock.
>
> After Sedona refused, the Offshore Entity sued and Sedona filed a counterclaim. The case was subsequently settled.
>
> Prior to the settlement of that litigation, ANDREAS BADIAN sent an e-mail to THOMAS BADIAN on or about October 25, 2001 that stated, in relevant part:
>
> > "It seems like we always knew what where [sic] doing was well not right but we set up all these elaborate structures with seperatye [sic]

> entities etc. for protection, now it seems like it was all for nothing, the separatenss [sic] of the corpso and accounts was is no protection at all. How did this occur? There is no way we can have this go into court. Not with the records and the endless trader testimony."

15. As the criminal complaint and the above-quoted e-mail make clear, offshore entities are an essential tool utilized by the perpetrators of death-spiral financing schemes in order to evade liability for their depredations such as the case in this action.

16. The underlying death-spiral financing scheme involves a conspiracy by and among the Defendants to defraud and manipulate the market and the securities of dozens of United States companies, one of which was the Plaintiff Hyperdynamics. The Defendants intentionally conducted their illegal death-spiral financing through the use of the same type of multi-leveled offshore structure as was used in Sedona. The principal features of the scheme were the use of a multi-leveled investment structure, thin capitalization of the entities at the bottom of the structure, such as Wellington, that would make the ultimate investment in the targets, such as Hyperdynamics, and the absence of human beings at all levels of the structure. All of these features are designed to conceal the identities of the wrongdoers and to escape liability for acts that were planned to be unlawful–an investment strategy aimed not at profiting from an increase but at profiting from a decline in the price of the target companies' stock through the death spiral. In early 1999 the Defendants made a conscious decision to create and use such a structure to undertake what they claimed to be a proprietary investment strategy by which they planned to invest in small micro-cap companies traded in alternative markets such as the NASDAQ-Over-the Counter Bulletin Board ("OTCBB") and the Pink Sheets. The proprietary investment strategy was death-spiral financing. SEC public records now show us that the Defendants employed this strategy in dozens of other

micro-cap companies and achieved identical results–a dramatic decline in the share price of the companies. Such results are inconsistent with a successful investment strategy unless the strategy involves short selling to drive prices down, covered by conversions at ever lower prices, discounted from the declining market values brought on by the short-selling.

17. Plaintiff Hyperdynamics was one of many victims of this conspiracy. Throughout the course of the Hyperdynamics financing transaction, and in a number of related financing transactions using the same multi-level offshore structure, the Defendants engaged in multiple acts of fraud, deception and tortious activities, including the manipulation of the market for the target companies' stock. As a result of the Defendants' activities, Plaintiff's stock suffered a great decrease in value. At the same time, the Defendants all profited from their activities in furtherance of the conspiracy to damage Hyperdynamics.

E. The Offshore Entities

18. Sovereign and Dominion were investment funds created and controlled by Hicks. Sovereign and Dominion (acting through Southridge, Hicks, non-Defendant Mark Valentine, and Sims) decided to form multiple-levels of offshore entities to be used in trading and manipulating the stock of dozens of United States OTC/BB small-cap companies through death-spiral schemes. Sovereign's general partner was Southridge, and Hicks was the controlling principal of Southridge. The investment decisions of all the offshore entities were controlled by Southridge and Hicks, and the decisions were carried out through Navigator and Sims who, upon information and belief, took their directions from Southridge and Hicks. Sovereign and Dominion (itself an offshore entity) made their investments through multiple offshore entities owned by other offshore entities with still other offshore entities serving as officers and directors. Those entities serving as officers and

other offshore entities serving as officers and directors. Those entities serving as officers and directors were themselves owned by offshore entities. After sifting through the multiple levels of offshore corporations, their offshore corporate officers and directors and the offshore corporate owners of the offshore coporate officers and directors, the ultimate control of the structure both started and ended with Hicks who orchestrated the design and creation of the structure and ultimately controlled the decisions at every level of the structure.

19. The use of the offshore entities was designed not simply to legitimately protect Sovereign, Dominion and their controlling persons from liability one normally associates with the formation of corporations, but in this case, Sovereign, Dominion and their controlling persons expected to engage in, and sought protection from, investment and trading activities that would likely violate securities laws and harm the targets of their planned death-spiral financing scheme by lowering the companies' stock price. Sovereign and Dominion accomplished their investments through Cayman Islands offshore entities called Special Purpose Vehicles ("SPVS"). History developed from a review of the SEC's Edgar public filing data base now tells us that of the dozens of United States companies in which Sovereign and Dominion invested through these offshore SPVs, virtually all suffered a dramatic free-fall in their stock price following the death-spiral investment. As discussed below, this free-fall in stock price cannot be explained by market forces.

20. The SPVs were merely pass-through entities for the investments of Sovereign and Dominion. The SPVs were named after streets in Hamilton, Ontario, the city in which Stephen Hicks formerly lived. The SPV used to provide the death-spiral financing to Hyperdynamics was a Cayman Islands corporation named Wellington LLC. Wellington submitted to the jurisdiction of the Georgia Court as a Defendant and filed a counterclaim in the Georgia proceeding, thus it remains a Defendant in that proceeding and is not included as a party in this action.

Hicks made the decisions for Southridge.

22. A review of SEC records on the history of the investments made by Southridge and Hicks on behalf of Sovereign and Dominion tells us that from the inception of the proprietary investment strategy, all of the Defendants intended to engage in a trading strategy aimed at driving down the price of the companies in which they planned to invest. This strategy was not disclosed to Hyperdynamics or the other companies that were targeted for investment.

23. The offshore scheme by which Sovereign and Dominion invested in Hyperdynamics was not an isolated and separate investment decision having no connection with their investments in other similarly-situated companies. Rather, it was a part of the overall scheme that, from the outset, targeted dozens of United States companies and was **expected** to harm those companies and draw lawsuits from those companies while earning profits for the Defendants.

24. As of January 2004, an analysis of SEC's Edgar database for forty-eight companies in which Hicks and/or Southridge appear to have conducted similar financings reveals that the vast majority of the companies' stock prices declined sharply over the eighteen-month period following the Hicks/Southridge investment and virtually all of them sharply underperformed the NASDAQ. Among the companies who appear to have received financing from Hicks and Southridge:

a. 40 of the 48 companies, or 83.3 %, experienced a decline in average share price 18 months after the investment;

b. 44 of the 48 companies, or 91.7 %, underperformed the NASDAQ over the relevant 18-month period;

c. 33 of the 48 companies, or 68.8 %, lost at least half of their market value over the relevant 18-month period;

d. Among the 40 companies whose average share price declined over the relevant 18-month period, the average decline was 71.9 %;

e. Over the same 18-month period, the NASDAQ rose by an average of 36.7 %;

f. Among all 48 companies, the average decline in share price was 18.4 % over the relevant 18-month period, while the NASDAQ rose 45.7 %;

g. Excluding one company with an unusually high return, the average decline in share price for the remaining 47 companies was 48.7 %; and

h. Over the same 18-month period, of the 47 companies, NASDAQ rose 45.7 %.

F. Canadian Advantage Limited Partnership

25. To assist in the funding of many of the death-spiral financings, Hicks enlisted the involvement of Canadian Advantage Limited Partnership ("CALP"). Just as the name suggests, CALP is a Canadian limited partnership whose general partner was VMH, Ltd., another Canadian entity. VMH stands for Valentine (Mark), Hicks (Stephen) and McKinnon (Ian).

26. At all relevant times, Valentine was the President, CEO, Director and a shareholder of VMH, which, as stated, was the General Partner of CALP. In that capacity, Valentine also joined with Hicks in selecting the companies which were to be the targets of the death-spiral financing carried out through the offshore entities. Upon information and belief, Dominion and CALP, acting through Hicks and Valentine, selected the Canadian Brokerage firm of Thomson Kernaghan & Co. Limited ("TK") to maintain brokerage accounts and conduct the manipulative trading activities of the offshore entities.

27. Valentine, at all relevant times and continuing through July 2002, controlled TK and became its Chairman and largest shareholder. In June 2002, Valentine was suspended from his employment with TK and was precluded from entering TK's premises as a result of an internal investigation. On July 6, 2002, the Ontario Securities Commission ("OSC") suspended Valentine's trading registration. That suspension continues through today's date as the investigation by the OSC

continues. On May 14, 2002, Valentine was indicted in a sealed indictment in the United States District Court for the Southern District of Florida on multiple counts of securities fraud. The indictment was unsealed on August 15, 2002, and Valentine was arrested in Germany and extradited to the United States. On March 5, 2004, he plead guilty to one count of securities fraud. TK is now in bankruptcy.

28. In its reasons for the investigation and suspension of Valentine, the OSC stated that Valentine "created a culture of conflict and non-compliance at TK and breached Ontario securities laws in respect to a series of transactions." The OSC investigation focused extensively on the trading activities of CALP. The OSC alleged that CALP, acting through Valentine, engaged in a particular trading strategy involving death-spiral financing and massive short-selling while recommending to other clients that they buy the illegally-shorted securities and without disclosing their involvement in the death-spiral financing. Notably, this is the same strategy Plaintiff alleges in this action. Hicks chose to use TK for the trading accounts of the entities in the multi-tiered offshore structure, and Valentine was the account representative.

29. As a result of his problems with Canadian securities regulators and the United States Justice Department, Valentine and VMH were removed from their positions of control in CALP. CALP, which is now controlled by innocent investors who were also victimized by the manipulative conduct of Valentine, is not a Defendant in this case.

G. The Hyperdynamics Transaction

30. Hyperdynamics is a Houston-based publicly-traded company whose operations now are focused on oil and gas seismology and exploration. Hyperdynamics has an extensive data management background. Its mission is now to successfully discover and produce commercially-

viable hydrocarbons and, as an integrated technology service provider, to facilitate efficient seismic data management for its operations and its clients.

31. In or about October 1999, Hyperdynamics was in the business of providing integrated information management services to small companies and was searching for capital to fulfill its business plan. Specifically, Hyperdynamics was searching for an investor (or investors) to provide sufficient capital to carry it through its start-up period.

32. As a result of this search, Hyperdynamics came into contact with Hicks' business affiliates Joe Canouse, John Canouse, Jim Canouse and Jeff Canouse, all of whom lived in the Atlanta, Georgia area. The Canouse brothers owned and controlled two companies known as J.P. Carey Securities, Inc. and J.P. Carey Asset Management, Inc. (the Canouse individuals, J.P. Carey Securities, Inc. and J.P. Carey Asset Management, Inc. are hereinafter collectively referred to as "the Canouses"). Unknown to Hyperdynamics at the time, the Canouses were participants with Hicks in death-spiral schemes. The Canouses remain Defendants in the Georgia proceeding mentioned above and thus are not Defendants in this proceeding. In their discussions with Hyperdynamics, the Canouses made certain representations which were subsequently embodied in an "Engagement Agreement." Important among those representations were the following:

a. The Canouses would arrange for financing in the amount of seven million dollars ($7,000,000.00) through two vehicles: a two million dollar ($2,000,000.00) convertible preferred stock purchase and a five million dollar ($5,000,000.00) subsequent purchase;

b. The Canouses would ensure that the preferred shares were only sold to prospective purchasers who were "accredited investors" as that term is defined in Rule 501 (a) of Regulation D promulgated under the Securities Exchange Act of 1934;

c. The Canouses would provide Hyperdynamics with written confirmation containing the name, business address, telephone number, facsimile number, and contact person for each of the prospective purchasers;

d. The Canouses would hold the nature and existence of the transaction in strict confidence and would not disclose the nature or existence of the transaction to any party other than a prospective purchaser; and

e. The Canouses would indemnify, defend, and hold Hyperdynamics harmless against all losses, claims, damages, expenses, fees or liabilities, joint or several, to which Hyperdynamics might become subject, insofar as said losses, claims, damages, expenses, fees or liabilities arose out of or were based upon the nonfulfillment by the Canouses of their representations, warranties, duties, obligations, or agreements under the Engagement Agreement.

33. In deciding to select the Canouses to assist in obtaining the contemplated funding, Hyperdynamics specifically and justifiably relied upon the foregoing material representations made by the Canouses.

34. After the execution of the Engagement Agreement, the Canouses identified five prospective purchasers to Hyperdynamics. The prospective purchasers were identified only as "Cache Capital," "Carpe Diem," "Atlantis Fund," "Wellington," and "GPS America Fund." No other information was provided regarding any of the prospective purchasers.

35. Nevertheless, based upon the Canouses' representations that the prospective purchasers were "accredited investors," Hyperdynamics entered into Regulation D Subscription Agreements (hereinafter "Subscription Agreements") for over $3 million in convertible preferred stock with Cache, Carpe and Wellington. $1 million came from Cache and Carpe, and $2 million came from Wellington. Cache and Carpe also remain Defendants in the Georgia proceeding and are not Defendants herein. A second round of financing was to have included an additional $4 million.

36. Each of the Subscription Agreements was accompanied by a Registration Rights Agreement, a Warrant Agreement, an Escrow Agreement, a Certificate of Designations, and an

Opinion of Counsel (hereinafter collectively referred to as "the Operative Agreements"). Most important among the Operative Agreements were the Subscription Agreements. There were two Subscription Agreements for the Wellington investment, each for $1 million. Like all the Subscription Agreements, the two Wellington Agreements contained the following relevant and material representations by Wellington:

a. In Section 2.1 of the Subscription Agreements, Wellington specifically and affirmatively "represent[ed] and warrant[ed] that it was an 'accredited investor' as defined in Rule 501 of Regulation D;"

b. In Section 2.2.4 of the Subscription Agreements, Wellington further represented that it "had made investments in securities other than those of [Hyperdynamics]," and that it had "not been organized for the purpose of investing in the securities of [Hyperdynamics];"

c. In Section 2.3.1 of the Subscription Agreements, Wellington represented that it was acquiring the Series A Preferred Stock "solely for investment purposes . . . and not with a view to a distribution of all or any part thereof;"

d. In Section 3.3.2 of the Subscription Agreements, Wellington agreed that it would not "sell any Conversion Shares [defined as shares of Hyperdynamics common stock into which the Series A Preferred Stock was converted] . . . on any Trading Day . . . to the extent that such sale, when combined with all previous sales by (Wellington] on such Trading Day, would exceed 10% of the aggregate number of Conversion Shares . . . purchased under [the] Agreement . . . ;

e. In Section 3.4 of the Subscription Agreements, Wellington acknowledged that "the Preferred Shares . . . [were] being offered and sold in reliance on specific exemptions from the registration requirements of federal and state law and the Subscriber's [Wellington's] representations, warranties, agreements, acknowledgments and applicability of such exemptions and the suitability of [Wellington] to acquire Preferred Shares;" and

f. In Section 10 of each of the Subscription Agreements, Wellington checked only the box stating that said Investor was "a corporation, business trust, or partnership not formed for the specific purpose of acquiring the securities offered, with total assets in excess of five million dollars ($5,000,000.00)" – one of the categories of "accredited investors" under Regulation D.

37. Sims, acting on behalf of Navigator, the Director of Wellington, signed the Subscription Agreement for Wellington. Upon information and belief, Sims took his instructions to do so from Southridge. Hicks directed the investment decisions at Southridge. Unknown to Hyperdynamics at the time, Wellington was, in fact, nothing more than a "straw man" entity created for the sole purpose of effecting the death spiral scheme to defraud Hyperdynamics. Upon information and belief, Wellington is a mere conduit entity that is beneficially owned by Sovereign and Dominion and is controlled by Navigator and Sims, acting under instructions from Southridge and Hicks.

38. Additionally, Hyperdynamics subsequently learned that the "accredited investor" representation made by Wellington was false at the time it was made and remains false today. Had Hyperdynamics been aware that the "accredited investor" representation was false, Hyperdynamics would not have entered into the Subscription Agreements.

39. During the course of the negotiations for the convertible preferred stock, Hyperdynamics continually endeavored to impress upon the Canouses the importance of not short-selling or over-selling Hyperdynamics' stock. Because Hyperdynamics was traded on the NASD Electronic Bulletin Board, its stock price was prone to wide fluctuations that can be influenced by trading volume. Section 3.3.2 was specifically included in the Subscription Agreements in an effort to minimize the effect of trading volume upon Hyperdynamics' stock price.

40. Section 3.3.2 also had the effect of prohibiting "pre-conversion" short sales by Wellington because prior to converting any Series A Preferred Stock into common stock, Wellington would not (and could not) have any "Conversion Shares" to sell. In other words, prior to conversion, any sale of stock would exceed 10 % of the Conversion Shares then held by Wellington which was

zero.

41. Notwithstanding their written representations and oral assurances, Southridge on behalf of Wellington (and thus beneficially for Sovereign and Dominion), began a campaign of over-selling and short-selling Hyperdynamics' common stock shortly after the Subscription Agreements were executed and prior to the conversion of any of the Series A Preferred Stock. Upon information and belief, Wellington later "covered" the short sales by converting a portion of the Series A Preferred Stock into Hyperdynamics common stock. Moreover, even when Wellington had Conversion Shares to sell, acting through Navigator and Sims who took their instructions from Southridge and Hicks for the benefit of Sovereign and Dominion, Wellington violated Section 3.3.2 by selling more than 10% of the Conversion Shares that it held in a given trading day. These sales were contrary to Wellington's representations in Section 2.3.1 of the Subscription Agreement that Wellington was "acquiring the Series A Preferred Stock solely for investment purposes . . . and not with a view toward distribution." The aforementioned sales directly violated the selling limitation in Section 3.3.2 of the Subscription Agreement.

42. In or around July 2000, Hyperdynamics discovered Wellington's breaches of the selling limitation that had been carried out by Southridge and/or Hicks. In response, Hyperdynamics was told that a "new trader" had sold more shares than he should have and that Southridge had "rectified the situation." Because of the ongoing short-sales and violations of the selling limitation, Hyperdynamics declared a moratorium on all conversions of Series A Preferred Stock into Hyperdynamics common stock and requested that Wellington agree to a written amendment of Section 3.3.2. Hyperdynamics and Wellington subsequently agreed to a written amendment to Section 3.3.2 (the "Amendment") which provided: "For each Trading Day [after September 30,

2000], [Wellington] shall not sell any Conversion Shares . . . on any Trading Day . . . to the extent that such sale, when combined with all previous sales by [Wellington] on such Trading Day, would exceed 10 % (10%) of the total of Hyperdynamics['] . . . common stock shares traded on the *OTC/BB* open market and any other exchanges on which Hyperdynamics['] . . . common stock is traded on that same Trading Day . . . . "

43. After September 30, 2000, Hyperdynamics resumed honoring Wellington's conversions of its Series A Preferred Stock into Hyperdynamics' common stock. However, Wellington, acting at the direction of Southridge and Hicks, continued to breach the selling limitation (as amended) on a repeated and sustained basis by selling in excess of 10 % of the total trading volume of Hyperdynamics' common stock in a single day – once again often through short sales of Hyperdynamics' common stock that would be "covered" by converting Series A Preferred Stock into common stock. During this same time, Southridge repeatedly assured Hyperdynamics that it was not short-selling or violating the Amendment.

44. Unbeknownst to Hyperdynamics at the time it executed the Operative Agreements, the convertible preferred stock was a "death-spiral convertible." Because the preferred stock is convertible at a discount to the current market value of the common stock, Wellington was faced with an inherent conflict of interest. By depressing the price of the common stock, Wellington was able to obtain a greater number of shares upon conversion. Because the stock had been sold short at a higher price and because Wellington, again acting through Navigator and Sims and under the direction of Southridge and Hicks, was subsequently able to cover its sales with discounted conversion shares, and thus Sovereign and Dominion were able to reap immense profits at the expense of Hyperdynamics so long as the price of Hyperdynamics' securities continued to drop.

Navigator, Sims, Southridge and Hicks profited through fees and commissions they earned on the transactions.

45. Further, with each conversion, the market was saturated with more and more shares of common stock which were rapidly offered for sale, thus creating a constant overhanging selling pressure on the market and driving the price even lower. The prospect that millions of shares of Hyperdynamics' common stock could flood back into the market upon conversion negated any chance for a sustained increase in the share price.

46. During the entire course of the Hyperdynamics death-spiral, Hyperdynamics continually inquired of Southridge as to whether it (or others under its control) were selling Hyperdynamics' stock short and/or over-selling Hyperdynamics' stock. Hyperdynamics was repeatedly assured by employees or representatives of Southridge (except as stated above) that no short sales or over-selling was occurring. These statements were false and misleading.

47. Hyperdynamics also believes that, in order to create and sustain the initial decline in the stock price to start the death-spiral, Southridge and Hicks conducted manipulative trading in the stock of Hyperdynamics through entities they controlled which are not beneficially owned by Sovereign and Dominion. On September 1, 1999, Southridge and Hicks caused the issuance and circulation of a Private Placement Memorandum for Dominion. In the text of that memorandum Southridge and Hicks disclose to the potential investors in Dominion that they "may enter into transactions in the same or different securities to be traded on behalf of the fund for their proprietary accounts and for other accounts under their management. In addition, the Investment Manager, the Sub Advisor [Southridge] and their respective principals [Hicks] and affiliates [other entities controlled by Southridge and Hicks but not in the multi-tiered structure through which Dominion and

Sovereign invested] in proprietary trading and investments . . . which are more favorable than the results achieved by the Fund." Though Southridge and Hicks may have disclosed this fact to the potential investors in the Dominion private placement, no disclosure was made to Hyperdynamics that Southridge and Hicks intended to or even contemplated trading Hyperdynamics securities through affiliated entities in a manipulative manner that would also cause a decline in the share price of Hyperdynamics stock.

48. Defendants' scheme and conspiracy artificially drove down the price of Hyperdynamics' stock from a high of $6.00 in April 2000 to less than $0.50 in March 2001. There was no second round of financing.

49. The Defendants conducted their unlawful trading conspiracy through TK with the cooperation and assistance of the Canouses, Hicks, Southridge, Valentine, Navigator, and Sims. They did so through trading accounts in the name of the SPVs in the multi-tiered offshore structure. Many of the sales at issue occurred on the Canadian stock markets, where the regulatory requirements for short sales are less stringent than comparable regulations in the United States.

50. TK is in receivership, and the OSC has filed formal allegations regarding death-spiral financing and other illegal trading practices against Valentine. Valentine has plead guilty to one count of securities fraud. Allegations regarding death-spiral financing of the sort alleged herein by various broker-dealers are also under investigation by the SEC.

51. The SEC Edgar database reveals that Hyperdynamics is just one of a number of small publicly-traded companies that have entered into similar transactions with one or more of the Defendants and their co-conspirators. These transactions have resulted in the dramatic decline in the value of the common stock of the various companies. Defendants' actions in this case mirror a pattern

of fraudulent transactions with dozens of other companies which demonstrates the knowing and intentional nature of Defendants' conduct and that they acted with the requisite scienter required for each of the counts stated below.

H. Wellington's Breach of The Subscription Agreement

52. Hyperdynamics and Wellington were parties to the Subscription Agreements dated January 12, 2000 and January 25, 2000.

53. Hyperdynamics fulfilled its contractual obligations under the Subscription Agreements.

54. Conversely, Wellington materially breached several relevant sections of the Subscription Agreements, including those identified in Paragraphs 36(a)-(f), 41, 43 and 44 above.

55. Hyperdynamics was damaged by Wellington's breach of the Subscription Agreements.

56. Wellington's breaches of contract were intentional, knowing, malicious, and in bad faith. Wellington's breach of contract was part and parcel of Wellington's involvement in a conspiracy to profit from the decline in Hyperdynamics' share price.

57. Hyperdynamics suffered foreseeable injury and substantial damages as a direct and proximate result of Wellington's breaches of the Subscription Agreement. Conversely, Wellington and the Defendants named herein profited because of the breach at the expense of Hyperdynamics. Wellington is liable to Hyperdynamics for breach of contract. That claim still exists in the Georgia case but is described here as a basis for the alter ego liability of Sovereign and Dominion set forth in Count 6 below.

I. Claims for Relief

Count One - Fraud by Affirmative Misrepresentations Against Navigator, Sims, Hicks and Southridge

58. All Paragraphs of this Complaint are hereby incorporated by reference into this Count One, as if fully restated verbatim herein.

59. Wellington (acting through Navigator and Sims who received their directions and instructions from Southridge and Hicks) has defrauded Hyperdynamics by making statements and representations that were false and fraudulent when made and by making promises and giving assurances which Wellington had no intention of honoring at the time those promises and assurances were made. Wellington remains a Defendant and Counter-Claimant in the Georgia proceeding and thus is not a Defendant here. The Subscription Agreement containing the misrepresentations was signed by Sims on behalf of Navigator. Sims knew at the time he signed the Subscription Agreement that the statements referenced in Paragraph 36 (a)-(f) above were false. Consequently Navigator, as the director of Wellington and Sims, as the human being who made the misrepresentations are liable for the misrepresentations. At the time he made the misrepresentations Sims was acting under instructions from Hicks and Southridge, both of whom knew the statements were false. Thus Southridge, as the Investment Sub-Advisor of Wellington and Hicks as the human being who directed that the misrepresentations be made are liable for the misrepresentations.

60. Specifically with respect to the representations set forth in Paragraph 36(a) that Wellington was and accredited investor; 36(b) that Wellington had invested in securities other than Hyperdynamics and that Wellington had not been formed for the purpose of investing in Hyperdynamics; and, 36(f) that Wellington was "a corporation, business trust, or partnership not formed for the specific purpose of acquiring the securities offered, with total assets in excess of five

million dollars ($5,000,000.00)" –both Sims and Hicks knew those statements to be false at the time they were made. They knew them to be false because at the time the representations were made they both knew and understood the multi-leveled structure set up by Hicks through which Dominion and Sovereign would be investing. They both knew that each SPV such as Wellington at the bottom of the structure was being established to invest in only one company and was specifically established to make that investment in only one company and would have only the assets necessary to make that single investment–in this case $2,000,000.00.

61. With respect to the representations set forth in Paragraph 36(c) that Wellington was acquiring the Series A Preferred Stock "solely for investment purposes . . . and not with a view to a distribution of all or any part thereof;" 36(d) that it would not "sell any Conversion Shares [defined as shares of Hyperdynamics common stock into which the Series A Preferred Stock was converted] . . . on any Trading Day . . . to the extent that such sale, when combined with all previous sales by (Wellington] on such Trading Day, would exceed 10% of the aggregate number of Conversion Shares . . . purchased under [the] Agreement . . . ; and, 36(e) that "the Preferred Shares . . . [were] being offered and sold in reliance on specific exemptions from the registration requirements of federal and state law and the Subscriber's [Wellington's] representations, warranties, agreements, acknowledgments and applicability of such exemptions and the suitability of [Wellington] to acquire Preferred Shares" both Hicks and Sims knew those representations were false when made. They both knew of the falsity of these statements because they both knew that the structure had been set up to avoid subjecting Dominion and Sovereign and concomitantly Hicks, Southridge, Navigator and Sims from liability they expected to arise under U.S. securities laws and the securities laws and common law of the various states in which their target companies such as Hyperdynamics were located. At

the time Hicks orchestrated the establishment of the structure he knew the trading he planned to conduct through the structure would likely give rise to lawsuits by the issuers (such as Hyperdynamics). In fact Hicks and Sims so definitely expected liability for their planned investment scheme that during the period of time they were setting up the structure and putting it into motion Hicks had Sims obtain the assurance of the offshore administrator they initially planned to use that it (the offshore administrator) would not cooperate with subpoenas from attorneys representing issuers (such as Hyperdynamics) in civil litigation resulting from the investment.

62. At the time it entered into the Subscription Agreements Hyperdynamics was relying upon the truth and accuracy of the statements identified in Paragraph 36 (a)-(f). That reliance was justified. By entering into the Subscription Agreements Hyperdynamics materially changed its position due to its reliance upon these false statements. As a result of these misrepresentations, Hyperdynamics has been damaged in an amount greatly in excess of the required amount in controversy as shown below in the paragraph entitled "Remedies and Damages."

Count Two - Fraud by Omission (Failure to Disclose) Against Dominion, Sovereign, Southridge, Hicks Navigator and Sims

63. All Paragraphs of this Complaint are hereby incorporated by reference into this Count Two, as if fully restated verbatim herein.

64. In addition to the misrepresentations set forth in paragraph 36(a) through (f) above, Dominion, Sovereign, Southridge, Hicks, Navigator and Sims failed to disclose to the Plaintiff the fact that they had established a multi-leveled offshore structure through which they were going to make the Hyperdynamics investment, that they intended to use that structure to engage in death spiral financing scheme involving a trading strategy aimed at driving down the price of Plaintiff's stock; that they expected the trading strategy would violate securities laws and common law; and that they

were using the structure so that the beneficial owners Sovereign and Dominion and the principal actors Hicks, Southridge, Sims and Navigator could avoid liability for those expected violations of law–all then present facts that were known to Hicks and Sims and thus Sovereign, Dominion, Southridge and Navigator. Likewise, Southridge and Hicks failed to disclose that they intended to trade Hyperdynamics stock through affiliated entities in a manipulative manner–also a then present fact known to Hicks and Southridge.

65. At the time Plaintiff justifiably believed that Wellington intended an investment which would result in successful implementation of Hyperdynamics' business plan and a resulting increase in its share price. At the time Plaintiff justifiably believed that Wellington and Hicks, Southridge, Navigator and Sims, as the persons and entities which controlled Wellington's decisions, intended to comply with the representations contained in the Subscription Agreement. At the time Plaintiff justifiably believed that Southridge and Hicks would not conduct trading through undisclosed affiliates in a manner that would manipulate the price of Plaintiff's stock. The failure of Hicks and Sims acting for Dominion, Sovereign, Southridge and Navigator to disclose the secret proprietary investment strategy aimed at doing the opposite was a material omission. Further, the failure of Hicks and Southridge to disclose their intention to trade through undisclosed affiliates in a manipulative manner inconsistent with the Subscription Agreement was a material omission. Hicks and Sims knew that Hyperdynamics was ignorant of their intention to use the multi-leveled structure to engage in the unlawful death spiral strategy and did not have an equal opportunity to discover the truth of these undisclosed facts. Therefore, a duty to disclose these material undisclosed facts arose on their part and on the part of Dominion, Sovereign, Southridge and Navigator for whom they were acting. Hicks knew that Hyperdynamics was ignorant of his intent to trade Hyperdynamics stock through

affiliated entities in a manner inconsistent with the Subscription Agreement and did not have an equal opportunity to discover the truth of this undisclosed fact. Dominion was controlled by Hicks and Sims and is thus charged with their knowledge. Sovereign and Southridge are controlled by Hicks and are thus charged with his knowledge. Navigator is controlled by Sims and is thus charged with his knowledge.

66. In omitting to disclose the material fact that they intended to use the multi-leveled structure to engage in a death spiral trading strategy that they expected to violate the law and draw lawsuits from target issuers (such as Hyperdynamics), Dominion, Sovereign, Southridge, Hicks, Navigator and Sims intended to induce and did induce Hyperdynamics to take the action of entering into the Subscription and related agreements. As a result, Hyperdynamics suffered injury. Likewise Dominion, Sovereign, Southridge, Hicks, Navigator and Sims all benefitted from the failure to disclose. Consequently, Dominion, Sovereign, Southridge, Hicks, Navigator and Sims are liable to Plaintiff for damages. These damages greatly exceed the minimum amount in controversy required for this Court's jurisdiction and are described in the section below entitled "Remedies and Damages."

67. In omitting to disclose the material fact that Hicks and Southridge intended to trade Hyperdynamics stock through undisclosed affiliates in a manipulative manner inconsistent with the provisions of the Subscription Agreement Southridge and Hicks intended to induce and did induce Hyperdynamics to take the action of entering into the Subscription and related agreements. As a result, Hyperdynamics suffered injury. Likewise Southridge and Hicks benefitted from the failure to disclose. Consequently, Southridge and Hicks are liable to Plaintiff for damages. These damages greatly exceed the minimum amount in controversy required for this Court's jurisdiction and are described in the section below entitled "Remedies and Damages."

Count Three - Negligent Misrepresentation Against Dominion, Sovereign Southridge, Hicks, Navigator and Sims

68. All Paragraphs of this Complaint are hereby incorporated by reference into this Count Three, as if fully restated verbatim herein.

69. In its capacity as director of Wellington, Navigator (acting through Sims) made material misrepresentations to Hyperdynamics as set forth in Paragraph 36(a)-(f) above. At the time, Navigator and Sims were acting under instructions from Southridge and Hicks. In addition, Southridge, Hicks, Navigator and Sims neglected to inform the Plaintiff that they intended conduct the investment through a multi-leveled offshore structure using a death spiral trading strategy aimed at driving down the price of Plaintiff's stock and which they expected would violate the law and draw lawsuits from target companies. Hicks and Southridge omitted to inform Plaintiff that they intended to trade Hyperdynamics stock through undisclosed affiliates in a manner inconsistent with the Subscription Agreement. These misrepresentations and omissions were of then existing facts known to Hicks and the entities for whom he acted (Sovereign, Dominion and Southridge) and Sims and the entities for whom he acted (Dominion and Navigator). The misrepresentations and omissions were made in the course of the business of Hicks, Sims, Dominion, Sovereign and Navigator. The false statements or information and omissions were provided/committed and intended for the guidance of Hyperdynamics in its business. Southridge, Hicks, Navigator and Sims did not exercise reasonable care or competence in obtaining or communicating the information, and Hyperdynamics suffered pecuniary loss by justifiably relying on these representations.

70. The foregoing negligent misrepresentations and omissions were material and were carried out by Hicks and the entities he controlled (Southridge, Sovereign and Dominion) and Sims

and the entities he controlled (Navigator and Dominion) with the intent that Plaintiff Hyperdynamics rely upon them. Plaintiff Hyperdynamics did indeed rely, and such reliance was justifiable. These negligent misrepresentations and omission to act proximately caused damage to the Plaintiff greatly in excess of the required amount in controversy as set forth in the Paragraph below entitled "Remedies and Damages."

71. Hyperdynamics is entitled to recover against Defendants Dominion, Sovereign, Southridge, Hicks, Navigator and Sims, jointly and severally, for negligent misrepresentation.

Count Four – Statutory Fraud in a Stock Transaction against Southridge, Hicks, Navigator and Sims

72. All Paragraphs of this Complaint are hereby incorporated by reference into this Count Four, as if fully restated verbatim herein.

73. At the time of the signing of the Subscription Agreement Hicks and Sims knew that the statements set forth in Paragraph 36 (a)-(f) above were false. Sims, as the human being acting on behalf of Wellington and Navigator and at the instructions of Southridge and Hicks, signed the agreement knowing of the misrepresentations. Hicks gave those instructions to Sims while acting as an agent and authorized representative of Dominion and Sovereign, the ultimate beneficiaries of the investment. The representations were false representations of a past or existing material fact, were made to Hyperdynamics for the purpose of inducing Hyperdynamics to enter into a contract, and were relied on by Hyperdynamics in entering into the Subscription Agreement and related agreements. As such, the false statements constitute fraud in a stock transaction in violation of the Texas Business & Commerce Code § 27.01(a). The false statements were made by Sims and Navigator on behalf of Wellington. Sims and Navigator are liable for actual damages under Section

27.01(b) and exemplary damages under Section 27.01(c). Plaintiff's actual damages exceed the minimum amount in controversy for this Court's jurisdiction and are described in the section below entitled "Remedies and Damages."

74. Southridge and Hicks had actual awareness of the falsity of the representations made by Navigator and Sims on behalf of Wellington, failed to disclose the falsity of the representations to Hyperdynamics, and benefitted from the false representation through fees, commissions and profits. Since Sims and Hicks were the only human beings authorized to act on behalf of Dominion their knowledge is charged to Dominion. Since Hicks was the human being authorized to act for Sovereign his knowledge is charged to Sovereign. Thus, Southridge, Hicks, Dominion and Sovereign are liable to Hyperdynamics for exemplary damages under Section 27.01(d).

75. As a result of their violations of Section 27.01 as set forth above, Navigator, Sims, Southridge, Hicks, Dominion and Sovereign are liable to Hyperdynamics for reasonable and necessary attorneys' fees, expert witness fees, costs for copies of depositions, and costs of court.

Count Five - Conspiracy

76. All Paragraphs of this Complaint are hereby incorporated by reference into this Count Five, as if fully restated verbatim herein

77. All of the Defendants named in this action had knowledge of, agreed to, and intended the following unlawful common objective or course of action:

a. using the multi-leveled structure to invest in dozens of micro-cap companies such as Hyperdynamics;

b. using a trading strategy that they intended to cause a decline rather that an increase in the stock price of the investment targets such as Hyperdynamics;

c. using a trading strategy that they expected would violate securities laws and common law;

d. using a multi-leveled structure that would protect the beneficial owners of the investments from liability for their expected unlawful conduct so as to perpetuate a fraud on target companies such as Hyperdynamics;

e. using a structure and trading strategy that would cause harm to the target companies such as Hyperdynamics; and,

f. did cause harm to Hyperdynamics.

Hicks (acting on behalf of Dominion, Sovereign and Southridge) and Sims (acting on behalf of Navigator and Dominion) performed acts set forth in Counts One through Four above in furtherance of objectives thus constituting a civil conspiracy to accomplish unlawful acts or a lawful act by unlawful means. The unlawful acts, violations, breaches, and tortious conduct complained of by Hyperdynamics in this action were conducted by Defendants in a knowing and malicious conspiracy and acting cooperatively and in concert with each other. All Defendants herein are jointly and severally liable for all of the claims asserted herein.

Count Six - Alter Ego Liability of Sovereign and Dominion

78. All Paragraphs of this Complaint are hereby incorporated by reference into this Count Six, as if fully restated verbatim herein.

79. Upon information and belief, Wellington was organized and operated as a mere tool or business conduit for the benefit of Sovereign and Dominion, and was used for the purpose of perpetuating, and did perpetuate, an actual fraud on Hyperdynamics for the primary purpose of benefitting Sovereign and Dominion. Wellington was merely a file folder in a file cabinet of its offshore organizer. Wellington had no human officers or directors. Wellington was organized and operated as a mere tool or business conduit of Sovereign and Dominion, and there was such a unity among Sovereign, Dominion and Wellington that to recognize the separateness of Sovereign and

Dominion from Wellington would promote an injustice. Consequently, the corporate veil of Wellington and the other intermediate entities in the multi-leveled offshore structure should be disregarded and Sovereign and Dominion should be held liable for Wellington's breach of contract, fraud, negligent misrepresentations and statutory fraud under the theory of alter ego or corporate disregard.

Remedies and Damages

80. *Damages*. As a result of the trading strategy employed by the Defendants as described above, Hyperdynamics was forced to attempt to raise equity financing at a time when its share price was being driven down by the manipulative conduct of the Defendants. Consequently Plaintiff was forced to sell shares to numerous potential investors at prices lower that it could have realized for the stock sales in the absence of the manipulative conduct. The losses suffered by Plaintiff is measured by the difference between the price at which it sold the equity shares and the price at which it would have been able to sell those shares had there been no manipulation by the Defendants.

81. *Disgorgement*. In addition or in the alternative, Defendants should be disgorged of all profits, fees and commissions earned as a result of their unlawful and manipulative conduct described above.

82. *Exemplary Damages*. As set forth above, Defendants' have engaged in both common law and statutory fraud by affirmative misrepresentation and by omission. As a consequence Plaintiff is entitled to recovery of exemplary damages. *See* TEX. CIV. PRAC. & REM. CODE § 41.003(a)(1).

consequence Plaintiff is entitled to recovery of exemplary damages. *See* TEX. CIV. PRAC. & REM. CODE § 41.003(a)(1).

83. In addition, as set forth in Counts One through Four, Defendants secured the execution of the Subscription Agreement and related documents by deception in violation of Section 32.46 of the Texas Penal Code. Consequently, pursuant to TEX. CIV. PRAC. & REM. CODE § 41.008(c)(13) the limitations on exemplary damages contained in §41.008 are inapplicable.

Jury Demand

84. Plaintiff respectfully requests a trial by jury in this cause.

I. Relief Requested

85. Plaintiff respectfully requests that upon the trial of this action, Plaintiff recover from each Defendant, jointly and severally, as follows:

a. Damages in an amount to be proven trial greatly in excess of the minimum amount in controversy required for this Court's jurisdiction.

b. An accounting for all profits made by the Defendants in transactions in securities issued by Hyperdynamics and restitution and disgorgement of those profits to the Plaintiffs;

c. Recovery of all of the Plaintiff's attorney's fees, expert witness fees and costs and disbursements of suit;

d. Pre-judgment and post-judgment interest at the maximum rate provided by law;

e. Exemplary damages from each of the Defendants;

f. Trial by jury; and

g. Any and all such other and further relief to which the Plaintiff is deemed entitled by the Court and/or the jury.

Respectfully submitted,

By:

RICHARD L. TATE
TATE MOERER & KING, LLP
Texas Bar No. 19664460
Attorney in Charge
206 So. 2nd Street
Richmond, Texas 77469
Telephone: 281-341-0077
Facsimile: 281-341-1003

ATTORNEY IN CHARGE FOR PLAINTIFFS

OF COUNSEL:

JOHN M. O'QUINN
Texas Bar No. 15296000
O'QUINN, LAMINACK & PIRTLE
Lyric Centre Building
400 Louisiana, Suite 2300
Houston, Texas 77002
Telephone: 713-223-1000

JAMES W. CHRISTIAN
Texas Bar No. 04228700
GARY M. JEWEL
Texas Bar No. 10664800
CHRISTIAN, SMITH & JEWELL, LLP
2302 Fannin, Suite 500
Houston, Texas 77002
Telephone: 713-659-761

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing First Amended Complaint has been provided to all known counsel of record in accordance with the Federal Rules of Procedure on this 6th day of September , 2005 as follows:

Mr. Alan W. Harris
DLA Piper Rudnick Gray Cary US LLP
1717 Main Street, Suite 4600
Dallas, Texas 75201-4605
Via Facsimile: 214-743-4545

Richard L. Tate