

**IN THE CIRCUIT COURT OF THE NINETEENTH
JUDICIAL CIRCUIT, IN AND FOR ST. LUCIE COUNTY, FLORIDA**

STATE OF FLORIDA, DEPARTMENT OF
ECONOMIC OPPORTUNITY

Plaintiff,

vs.

JOHN C. TEXTOR; JONATHAN F. TEAFORD;
JOHN M. NICHOLS; JOHN W. KLUGE II; KEVIN
C. AMBLER; JEFFREY W. LUNSFORD; KEITH
"CASEY" L. CUMMINGS; KAEIL ISAZA
TUZMAN; SINGER LEWAK LLP; COWEN &
CO.; ROTH CAPITAL PARTNERS, LLC;
MORGAN JOSEPH TRIARTISAN LLC; PBC
DIGITAL HOLDINGS, LLC; PBC DIGITAL
HOLDINGS, LLC; PBC DIGITAL HOLDINGS II,
LLC; PBC MGPEF DDH, LLC; PBC DDH
WARRANTS, LLC; PBC GP III, LLC; RAFAEL
FOGEL; FALCON MEZZANINE PARTNERS II,
L.P.; MARK MILLER; CLIFF PLUMER; & CARL
STORK

CASE NO.: _____

Defendants.

_____ /

COMPLAINT
(Jury Trial Demanded)

Plaintiff, STATE OF FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY, for
its complaint against defendants JOHN C. TEXTOR, JONATHAN F. TEAFORD, JOHN M.
NICHOLS, JOHN W. KLUGE II, KEVIN C. AMBLER, JEFFREY W. LUNSFORD, KEITH
"CASEY" L. CUMMINGS, KAEIL ISAZA TUZMAN, SINGER LEWAK LLP, COWEN &
CO., ROTH CAPITAL PARTNERS, LLC, MORGAN JOSEPH TRIARTISAN LLC, PBC
DIGITAL HOLDINGS, LLC, PBC DIGITAL HOLDINGS, LLC, PBC DIGITAL HOLDINGS
II, LLC, PBC MGPEF DDH, LLC, PBC DDH WARRANTS, LLC, PBC GP III, LLC, RAFAEL

FOGEL, FALCON MEZZANINE PARTNERS II, L.P.; MARK MILLER, CLIFF PLUMER, & CARL STORK alleges as follows:

I

INTRODUCTION

The script had the makings of a big-budget Hollywood blockbuster: greed, corruption, special effects, and a star-struck audience willing to suspend belief. In the real world, there was no Hollywood happy ending. The hero did not save the day. The villain was not defeated. Instead, the story ended with Florida taxpayers being cheated out of over \$80 million dollars.

This is an action to recover millions of dollars wrongfully taken by the principals of Digital Domain Florida.¹ Digital Domain Florida was created in 2009 to be a visual effects company. At the time, it had not worked on any movies and did not have a single film credit. It had nothing going for it other than a name -- borrowed from a California visual effects company "Digital Domain Productions, Inc." (referred to here as "Digital Domain California") founded in 1993 by "Titanic" director James Cameron. Unlike Digital Domain Florida, Digital Domain California had extensive movie credits, including digital visual effects work for Hollywood blockbusters like "Titanic," "Apollo 13," and "Transformers." But, in addition to its outstanding resume and several Oscar® nominations, Digital Domain California had something else: crushing debt.

¹ The entity began with the incorporation of Wyndcrest DD Florida, Inc. on January 7, 2009. Its name changed to Digital Domain Holdings Corp., then to Digital Domain Media Group. (Mar. 20, 2013 Letter from W. Shepherd to Melinda Miguel, attached to Review of the 2009 Economic Development Inventive Award to Digital Domain Media Group, Inc., Report No.: 2013-11, Mar. 26, 2013). Digital Domain Holdings Corp. is the party to the Grant Agreement at issue in this Complaint. These entities are referred to in this Complaint as "Digital Domain Florida."

The special effects industry has changed significantly since 1993, when computer generated imagery (“CGI”) for movies was relatively new. Computer technology has become cheaper and more powerful, making computers, and in turn CGI technology, cheaper and more accessible. As a result, CGI has almost completely replaced special effects technology used in the past like stop-motion, matte paintings, miniature models and the like. Today, the visual effects industry is highly competitive with very thin margins, which Digital Domain California acknowledged -- along with numerous other “risk factors” -- in documents it filed with the SEC in 2007 (available on-line) in an unsuccessful bid to take the company public:

The entertainment industry, generally, and the visual effects and animation, software and video game segments thereof, in particular, are highly competitive. Although most feature films require some element of visual effects and animation, there are many visual effects and animation companies competing to provide their services, certain of which are companies that have greater financial, creative and managerial resources than we do. The commercial production industry is also highly competitive. In addition, we believe foreign competitors and competitors with operations or subcontractors in countries such as South Korea, China and India may become an increasing source of competition, due largely to their access to low-cost, high-skilled labor.

(Digital Domain California’s Form “S-1,” Filed with the SEC on Dec. 11, 2007). Because of the highly competitive nature of the visual effects segment of the movie business, Digital Domain California had completely stopped turning a profit by 2004, which it acknowledged as another “risk factor” in its 2007 SEC filings:

We have a history of losses.

Since 2004, we have been unable to generate revenues sufficient to be profitable ...We will need to increase revenues to achieve profitability, and we may not be able to do so. Even if we do achieve profitability, we may not be able to sustain or increase profitability on a quarterly or annual basis in the future.

Id.

Digital Domain California was a *de facto* Ponzi scheme. It was a serial borrower which constantly replaced old debt with new debt to keep the enterprise going. Of course, if Digital Domain California's business model made any sense, it would have turned a profit and had no need to constantly seek out loans to pay its employees and stay in business. While Digital Domain's business model may have made sense in 1993, it made absolutely no sense in the highly competitive visual effects world as it existed after 2000, and certainly not in 2009 when it fraudulently obtained a \$20 million grant from the State, or any time after that when it obtained over \$60 million dollars from St. Lucie and Palm Beach counties. Like all Ponzi schemes, Digital Domain's demise was a certainty.

Digital Domain's fraud on the State began in earnest in 2007. For some time, Digital Domain California had been seriously indebted, including to Falcon Mezzanine Partners, its principal lender. Through a series of loans and debt restructuring, Falcon came to hold various notes, stocks, and warrants that by 2009 enabled it to take over the company in the event of a default and call in millions of dollars of personal guarantees. Before 2009, Digital Domain California hatched a new plan to rid itself of debt: 1) start a brand new company (Digital Domain Florida) with no debt on its books; 2) use Digital Domain California's credentials, together with promises of new high paying jobs for Floridians, as security to obtain grant money for Digital Domain Florida; and 3) use the grant to partially bail out Digital Domain California (who, by June 2009, was on the verge of defaulting with Falcon); then 4) merge Digital Domain California with Digital Doman Florida to keep the failed business model going.

The pitch-man for the plan -- code named "Project Bumblebee" -- was John Textor, a Florida native turned wannabe Hollywood movie mogul who (together with other notable investors) had purchased an interest in Digital Domain California in 2006. He and others within the company portrayed Digital Domain Florida to the State as a start-up with no debt whose ties

with Digital Domain California were its management and visual effects credentials. The script included Textor promising that Digital Domain would bring thousands of high paying jobs to Florida during a devastating recession. But, there was just one catch: it needed millions of dollars in State grant money first. Textor never told the State that as soon as Digital Domain Florida obtained the grant, the money would be committed to repay Falcon. He and others within Digital Domain Florida deliberately withheld that information.

Florida has a system in place to ensure that grant applicants like Digital Domain Florida are scrutinized to prevent the State from being defrauded like this. At first, the system worked. Digital Domain Florida's proposal for a \$20 million grant was rejected by Enterprise Florida, the State's public-private partner charged with vetting potential economic development projects. Much to the dismay of Textor and others fraudulently attempting to portray Digital Domain Florida as a start-up, Enterprise Florida scrutinized Digital Domain California, whose reputation Textor was using as currency for the grant. Pursuant to Enterprise Florida's normal process -- due diligence and consideration of statutory requirements for economic incentives -- it found "the financials for the company were 'extremely weak'" and specifically noted concerns over "profitability, income, equity and debt financing, revenue projections, cash position, executive compensation, and recent litigation" involving Digital Doman California (many of the same "risk factors" it identified as part of its 2007 IPO). Enterprise Florida found that Digital Domain's unsound business model could not meet the statutorily required five-to-one payback ratio. Accordingly, Enterprise Florida refused to recommend the funding of \$20 million for the project.

Unable to use the storied past of Digital Domain California as clout while at the same time sweeping under the rug its poor business model and debt, Textor made an end-run around Enterprise Florida by wooing then-Governor Crist and the Florida Legislature. Despite Enterprise Florida's concerns and ultimate rejection, Textor, together with Defendant Jonathan

Teaford (a Board Member who held multiple positions within Digital Domain California and Florida), successfully, and illegally, lobbied Governor Crist and the Legislature for an unprecedented special budget appropriation.

Discussion during these lobbying sessions focused on how to legally get around the State's "Quick Action Closing Fund" statute. The Closing Fund is an economic development tool used by the State to help attract and create business investments and jobs. Textor's scheme found success because the high-level officials he courted ignored the warnings of agency professionals charged with protecting the State and chose to believe the false promises advanced by Textor and others for Digital Domain Florida. Their material misrepresentations and omissions were the denouement of a comedy of errors that facilitated Digital Domain Florida's end-run around the statutory process for economic development grants.

After receiving the State's commitment on June 30, 2009 to provide \$20 million, Textor and others on behalf of Digital Domain used the grant as political clout to obtain an additional \$82 million from St. Lucie and Palm Beach counties. In an e-mail with a prospective buyer for the company (Century Communications Limited) sent on November 15, 2009, Textor bragged that the millions he and others had swindled for Digital Domain was "free money" and a "freebie." Project Bumblebee had stung Florida.

At the end of the day \$82 million was just a bandage on a bullet wound, and Enterprise Florida was 100% correct in its original assessment. After being unable to sell the company to Century Communications (or any other buyer), another failed IPO, and failing to obtain traditional financing, Digital Domain Florida resorted to what is mockingly referred to in the banking industry as "death spiral financing" or "toxic convertibles." Knowing that the State was keeping Digital Domain Florida afloat, a group of hedge funds led by Tenor Opportunity Master Fund, with the assistance of Digital Domain Florida's paid advisor (Cowen & Co.), lent millions

of dollars to Digital Domain Florida on predatory terms intended to force it to default. Digital Domain Florida never notified the State that it was seeking or had obtained “death spiral financing,” despite express obligations under the grant agreement to do so. Behind everyone’s back, Digital Domain Florida and the hedge funds structured the deal so they would have priority in bankruptcy. Bankruptcy is a virtual *fait accompli* with “death spiral financing” even for legitimate businesses (hence the moniker “death spiral”).

In an ironic twist, Digital Domain Florida sank just like the Titanic, with \$82 million dollars in taxpayer money (\$20 million from the State, \$62 million from St. Lucie, and \$2 million from West Palm Beach).

II

PLAINTIFF

1. STATE OF FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY is an agency of the Executive Branch of the State of Florida and is created pursuant to §20.60, Florida Statutes. As part of its statutory obligations, the Plaintiff provides support for attracting out-of-state businesses to Florida, promoting the creation and expansion of Florida businesses, and facilitating Florida’s economic development partnerships.

III

DEFENDANTS

2. Defendant JOHN C. TEXTOR resides in Martin County, Florida, and was the Chief Executive Officer and Chairman of the Board of Directors of Digital Domain Florida and Digital Domain California, operating in Florida from January 2009 to September 2012.

3. Defendant JONATHAN F. TEAFORD resides in St. Lucie County, Florida, and was a member of the Board of Directors of Digital Domain Florida. Teaford served as President

of the Digital Domain Florida from January 2009 to February 2011, and as Chief Financial Officer from March 2009 to February 2012. Teaford became Chief Executive Officer of Digital Domain Institute, a wholly owned subsidiary of Digital Domain Media Group in February 2012.

4. Defendant JOHN M. NICHOLS resides in St. Lucie County, Florida, and was the Treasurer and a member of the Board of Directors of Digital Domain Media Group. Nichols became the Company's Chief Financial Officer in February 2012.

5. Textor, Teaford and Nichols are at times referred to collectively as "Inside Director Defendants."

6. Defendant JOHN W. KLUGE II resides in Martin County, Florida, and was a member of the Board of Directors of Digital Domain Media Group from November 2011 through September 2012.

7. Defendant KEVIN C. AMBLER resides in Hillsborough County, Florida, and was a member of the Board of Directors of Digital Domain Media Group from November 2011 through September 2012. Kevin Ambler served on the audit committee of Digital Domain Media Group's Board of Directors.

8. Defendant JEFFREY W. LUNSFORD resides in Palm Beach County, Florida, and was a member of the Board of Directors of Digital Domain Media Group from November 2011 through October 2012.

9. Defendant KEITH "CASEY" L. CUMMINGS resides in St. Lucie County, Florida and was a member of the Board of Directors of Digital Domain Media Group from November 2011 through September 2012. Casey Cummings served on the audit committee of the Board of Directors.

10. Defendant KAEIL ISAZA TUZMAN resides in St. Lucie County, Florida, and was a member of the Board of Directors of Digital Domain Media Group from November 2011 through September 2012. Kaeil Tuzman served on the audit committee of the Board of Directors and was designated as the “audit committee financial expert.”

11. Kluge, Ambler, Lunsford, Cummings and Tuzman are at times referred to collectively as “Outside Director Defendants.”

12. Kevin Ambler, Casey Cummings and Kaeil Tuzman are at times referred to collectively as the “Audit Committee.”

13. Defendant SINGERLEWAK LLP (“SingerLewak”) is a public accounting and consulting firm with its principal place of business in Los Angeles, California. SingerLewak provided unqualified audit opinions for Digital Domain Florida for the years ending December 31, 2009, 2010 and 2011. SingerLewak has approximately 32 partners who work in the areas of Assurance & Advisory, Tax, Litigation & Valuation Services, Business Management, and Business Risk & Technology Services. On January 13, 2010, Digital Domain Florida engaged SingerLewak to be its independent auditor. Digital Domain Florida provided SingerLewak’s July 15, 2010 audit report on its consolidated financial statements as of December 31, 2009 and for the period January 7, 2009 through December 31, 2009.

14. Defendant COWEN & CO. (“Cowen” or “Placement Agent Defendant”) is a financial services and asset management company with its principal place of business in New York, New York. Cowen & Co. served as placement agent to Digital Domain Florida.

15. Defendant ROTH CAPITAL PARTNERS, LLC (“Roth Capital”) is an investment banking firm with its principal place of business in Newport Beach, California.

16. Defendant MORGAN JOSEPH TRIARTISAN LLC (“Morgan Joseph”) is an investment banking firm incorporated in New York, N.Y., with its principal place of business in Miami, Florida.

17. Roth Capital and Morgan Joseph are at times referred to collectively as “Underwriter Defendants.”

18. Defendant PALM BEACH CAPITAL is a private equity investment firm with offices in West Palm Beach, Florida and Tampa, Florida, and defendants PBC DIGITAL HOLDINGS, LLC, PBC DIGITAL HOLDINGS II, LLC, PBC MGPEF DDH, LLC, PBC DDH WARRANTS, LLC and PBC GP III, LLC are investment vehicles owned or controlled by Defendant Palm Beach Capital (collectively “Palm Beach Capital” or “Palm Beach Capital Defendants”).

19. Defendant RAFAEL FOGEL was at all times relevant a partner with FALCON MEZZANINE PARTNERS II, L.P and a member of the Board of Directors of Digital Domain Productions, Inc., referred to in this Complaint as “Digital Domain California.”

20. Defendant FALCON MEZZANINE PARTNERS II, L.P.’s (“Falcon”) principal place of business is in Boston, Massachusetts. At all times relevant, Falcon was the principal secured lender for Digital Domain Productions, Inc., referred to in this Complaint as “Digital Domain California.”

21. Defendant MARK MILLER resides in California. At all times relevant, Miller was a member of the Board of Directors of Digital Domain Productions, Inc., referred to in this Complaint as “Digital Domain California.”

22. Defendant CLIFF PLUMER resides in California. At all times relevant, Plumer was a member of the Board of Directors of Digital Domain Productions, Inc., referred to in this Complaint as “Digital Domain California.”

23. Defendant CARL STORK resides in California. At all times relevant, Stork was a member of the Board of Directors of Digital Domain Productions, Inc., referred to in this Complaint as “Digital Domain California.”

24. Defendants Fogel, Miller, Plumer, and Stork are at times referred to collectively as “California Officers and Directors.”

IV

JURISDICTION & VENUE

25. This Court has jurisdiction over the claims as the amount in controversy exceeds \$15,000.

26. This Court has personal jurisdiction over all Defendants under Fla. Stat. §§ 48.193(1) or (2) because the in-state tortious conduct of one party to a conspiracy may be imputed to out-of-state co-conspirators.

27. The Inside Director Defendants were all employed by Digital Domain Florida, engaged in tortious conduct here, including participating in fraud or conspiracy, and reside or own real property here.

28. The Outside Director Defendants were all employed by Digital Domain Florida, engaged in tortious conduct here, or participated, contributed or assisted the tortious conduct of others inside Florida.

29. SingerLewak provided accounting and auditing services to Digital Domain Florida, or participated, contributed or assisted the tortious conduct of others inside Florida.

30. The Palm Beach Capital Defendants have offices in Florida and have been conducting business here on a regular and continuous basis since at least as early as February 2001, and engaged in tortious conduct here, or participated, contributed or assisted the tortious conduct of others inside Florida.

31. The Underwriter Defendants were hired by Digital Domain Florida, engaged in tortious conduct here or participated, contributed or assisted the tortious conduct of others inside Florida.

32. The Placement Agent Defendant was hired by Digital Domain Media Group in Florida, engaged in tortious conduct here or participated in, contributed to, or assisted the tortious conduct of others inside Florida.

33. The California Officers and Directors participated in, contributed to, or assisted the tortious conduct of others inside Florida.

34. Venue is proper in St. Lucie County as the underlying events alleged in the Complaint occurred here and this was the last place of business of Digital Domain Media Group prior to its filing for bankruptcy. Each of the Defendants conducted business with Digital Domain Media Group in St. Lucie County. Additionally, several of the Defendants currently reside in St. Lucie County.

V

“THE STING”

35. **Digital Domain California**. Digital Domain Productions, Inc. (referred to here as “Digital Domain California”) was formed in 1993. Founded by James Cameron, it became an Academy Award-winning production company. On May 12, 2006, Digital Domain California

was purchased by a group of investors including Defendants Textor and Teaford, film director Michael Bay, and former Microsoft, Inc. executive Carl Stork (“Stork”).

36. From the time the Textor-led investment group took control of Digital Domain California in 2006, the company’s financial condition was precarious, overburdened with debt and struggling to generate enough money to finance its operating expenses. Digital Domain California had not made a profit since 2004. It was a virtual Ponzi scheme in which new sources of funding paid off the old ones through the use of escalating misrepresentations about the company’s financial condition and future prospects.

37. In May 2006, the group acquired Digital Domain California for \$4.5 million in cash and \$30 million in short-term promissory notes. The promissory notes accrued interest at a rate of 10% per annum, and were scheduled to mature December 31, 2006.

38. The group secured the promissory notes with common stock of the company and guarantees by certain officers and directors.

39. Digital Domain California’s debt burden was so heavy that on June 2, 2006, its auditor, PricewaterhouseCoopers LLP (“PwC”), rendered a “going concern opinion” on the company’s consolidated financial statements for the period ended December 31, 2005. “Going concern” is an accounting term of art, and a “going concern opinion” is a type of adverse accounting opinion in which the accountant expresses doubts about a company’s ability to remain in business. For its part, PwC opined there was substantial doubt regarding the company’s ability to continue as a going concern due to the significant debt outstanding from the promissory notes issued a month earlier on May 12, 2006, scheduled to become due on December 31, 2006.

40. Despite the company's poor financial standing, Digital Domain managed to negotiate an extension of time on its option to prepay the notes in full at 80%. Then, on July 21, 2006, by simply incurring new debt, Digital Domain paid off the notes in full at a total amount of \$24 million without interest.

41. In a revolving door fashion, Digital Domain California simply replaced the debt used to acquire it with new loans. Digital Domain California's pre-payment of the debt taken on to acquire the company was principally financed through a private placement with Falcon. Falcon became the Company's primary secured lender, whereby Digital Domain California agreed to issue to Falcon senior secured notes, preferred stock and warrants. The end result of the Falcon loans was that by January 6, 2009, the day Digital Domain California restructured the Falcon debt, Falcon was in a position to declare a default and take over the company by June 30, 2009. A partner at Falcon, Rafael Fogel, was on the board of Digital Domain California at the time.

42. **The Failed IPO.** In December 2007, attempting to relieve itself of its debt burden, Digital Domain California tried to step into public equity markets and undertake an IPO.

43. However, the IPO stalled because investors were not interested in investing in a company with massive debt, no profits, a failed business model, and host of other "risk factors" identified in documents it filed with the SEC in connection with the IPO. The IPO was abandoned by April 2008. The reasons for the IPO's failure would be misrepresented to the State in 2009 in connection with Digital Domain Florida's grant application. For its part, Digital Domain Florida claimed that the IPO "received substantial interest from investors," but failed because of a "quickly deteriorating public market for all companies" at the time. (Letter from Digital Domain Florida to OTTED, dated Apr. 3, 2009). Of course, that was a lie.

44. **Inability to Make Payroll.** Digital Domain California struggled to pay its employees and debts as they became due -- a clear red flag that the company's business model is seriously flawed.

45. According to Mark Miller, a director at Digital Domain California, questions constantly loomed "week-to-week, month-to-month, of 'Can we make payroll?'"² Former Digital Domain California CEO Cliff Plumer said that "[i]t was to the point of sometimes waking up Friday morning not even knowing if we can make payroll."

46. Digital Domain California CFO Kevin Weston echoed the same concern: "Every payroll was scary...The repercussions of a miss[ed] payroll would be almost certainly the company would cease to exist. All of our clients would pull their work unless we were able to...demonstrate something extremely credible in terms of a backer with capital." Weston Dep. 92:2-92:8.

47. Fogel called the financial situation "dire." Falcon had funded \$800,000 of payments in the summer of 2009 to help Digital Domain California make payroll and, "in this industry, with the fact that you have contractors, if you don't make payroll, you're not in business. So that sounds pretty dire to me." Fogel Dep. 133:8-133:21. According to Fogel, Falcon was keeping Digital Domain California alive. *Id.* at 133:22-134:1. Of course, Fogel was in the best position to make that assessment, being a Falcon partner and Digital Domain California director.

² Testimony cited in this Complaint from Mark Miller, Kevin Weston, Rafael Fogel, Cliff Plumer and Carl Stork are taken from partial deposition transcripts filed in Stork v. Textor, et. al., Case No.: 2:10-cv-7631-MWF-PLA (C.D. Cal. 2010). The transcripts were filed on October 17, 2011 as exhibits to the Declaration of Peter Goldman, Esq. in support of a motion *in limine* filed there [D.E. 61].

48. **Staggering Losses.** From 2005 to 2008, Digital Domain California sustained substantial losses, which exceeded \$35 million. In fact, during the two years preceding the year of the grant (2007 and 2008) Digital Domain California's losses exceeded \$30 million:

Period Ended	Losses	Source
Dec. 31, 2005	(\$4,177,000)	Form S-1, Reg. Stmt. Am. Feb. 2008
Dec. 31, 2006	(\$902,000)	Form S-1, Reg. Stmt. Am. Feb. 2008
Sept. 30, 2007	(\$15,035,000)	Form S-1, Reg. Stmt. Am. Feb. 2008
Dec. 31, 2008	(\$15,271,000)	Audited Financial Statements for the period ended Dec. 31, 2010

49. Digital Domain California's issues with payroll and staggering losses were wholly inconsistent with Textor's promises to the State to bring a successful business to Florida along with thousands of high-paying jobs -- a promise which was a material inducement for the grant commitment fraudulently obtained on June 30, 2009.

50. Textor had his own personal financial and legal problems, which included the IRS filing a lien against him for \$7.8 million in unpaid personal taxes.

51. **The Florida Grant Scam.** Digital Domain California struggled to avoid defaulting on its debt, to earn enough money to finance its operations, and to access traditional sources of financing in the public and private equity markets. Having failed to raise new funds from these sources, Digital Domain California, in desperation, turned to a plan of deceit and misrepresentation. Textor and Teaford, together with the Digital Domain California's board (which included Falcon partner Fogel), planned and calculated to victimize an eager source of financing. Facing historically high unemployment rates and seeking opportunities for instant job creation, the State of Florida was the perfect target. The script was that Digital Domain Florida was a new stand-alone corporation with private backing. But, there never was any private backing and Digital Domain Florida was never intended to be a stand-alone company. Rather,

the true plan all along was to merge the failed Digital Domain California with Digital Domain Florida.

52. **The Debut Party.** In April 2007, Entrepreneur Sean Heyniger threw a party at a neighbor's home in upscale Jupiter Island, Florida. Heyniger had been a lifelong friend of Textor. Heyniger invited Governor Charlie Crist to the party, who had been inaugurated only a few months earlier. Although the stated purpose of the party was a fundraiser, its true purpose was to illegally lobby Governor Crist and pitch Digital Domain Florida as a worthy candidate for State money.

53. Sean Heyniger unwittingly revealed the true purpose of the 2007 party during his deposition in a lawsuit he brought in 2012 against Textor for defaulting on a loan. In June of 2007, a few months after the party, Heyniger personally loaned Textor and his wife Deborah \$700,000. In his later deposition in that case, Heyniger testified that he was paid an illegal "success bonus" for making the introduction to Governor Crist: an interest in Digital Domain Florida. According to an Amended and Restated Convertible Promissory Note and Option Agreement dated November 24, 2010, Heyniger received 488,799 stock warrants in Digital Domain Florida in exchange for his illegal lobbying efforts (Heyniger is not a registered lobbyist). In addition, Heyniger also was made a director of Digital Domain Florida. Although publicly available documents do not identify Heyniger as a director (he testified in his deposition that he served on the company's "advisory board"), he passed out Digital Domain business cards to individuals which had his name on it, along with the title "Director."

54. The guest list for the 2007 party at Sean Heyniger's home was notable for two reasons. First, it included John Sculley, who was a director of Digital Domain California and later Digital Domain Florida (although he was identified as such on the guest list). Second, the list included Sean Heyniger's current date, along with his ex-wife, Kelly Heyniger. Ms.

Heyniger was identified on the guest list as a “serial entrepreneur,” but had been dating the Governor for a few months before the event.

55. According to a local television news report in May of 2007, Ms. Heyniger confirmed that she had begun a personal relationship with Governor Crist. (“WPBF Interviews Hot Mom Girlfriend of Gov. Charlie Crist,” May 23, 2007).

56. In 2008, Ms. Heyniger invited Governor Crist to California. Crist travelled to California to conduct an “economic development mission.” Atypically, there appear to be no reports of the details of this trip. Its purpose was to visit Textor and tour Digital Domain California’s facility.

57. **Textor Works Tallahassee.** Hedging his bet, Textor also started showing up at various political events and fundraisers around this time. He even hired a well-connected consultant, Cynthia Henderson, who was known to be very close to Governor Crist.

58. From 2007, Textor was pitching Digital Domain around Tallahassee as a worthy candidate for a public grant. According to Textor and Teaford the “project will serve as a strong national example of a private-public workforce development partnership that creates jobs in the United States that otherwise would have certainly been sent to either India, Canada, Australia or England.”

59. Textor’s unrestrained lobbying was consistent with his personality. According to Stork, Textor “can be an extremely forceful person, and when he wants to get something done, he uses a variety of techniques...to accomplish it.” Stork Dep. 67:1–67:5. “I think ‘pressuring’ is a word that is description of John’s actions sometimes.” Id.

60. **The Closing Fund.** Governor Crist became a vocal advocate for the project. Textor and Governor Crist made an initial plan for Textor and Digital Domain Florida to apply

for funding from the State of Florida through Florida's Quick Action Closing Fund. Governor Crist agreed to help usher Textor through the application process.

61. So, Textor, out of the blue, called Dr. Dale Brill, a PhD who at the time was the director of the Governor's Office of Tourism Trade and Economic Development -- sometimes referred to as "OTTED." Dr. Brill referred Textor to Enterprise Florida, the entity which, under Florida law, "evaluate[s] individual proposals for high-impact business facilities[,]...forward[s] recommendations regarding the use of moneys in the fund for such facilities to the director of the Office of Tourism, Trade, and Economic Development," and determines eligibility of each project. See Fla. Stat. § 288.1088(3)(a). During these initial calls, Textor made it quite clear to Dr. Brill that Digital Domain had the Governor's favor.

62. Dr. Brill learned Enterprise Florida did not share Governor Crist's enthusiasm for Digital Domain when he overheard Brenda Workman denigrating the project at a political event. (Email from Dr. Brill to John Adams dated July 18, 2008). Dr. Brill decided to pull the State's review of the project away from Enterprise Florida. He kept the project's review with the Governor's Office of Film & Entertainment, hoping to make sense of the proposal.

63. On August 26, 2008, Lucia Fishburne, the State Film Commissioner, sent a "heads up" e-mail to Dr. Brill in which she warned him that Governor Crist had "called [Textor] two weeks ago checking on the status of the project." According to the subject line of the e-mail, Digital Domain's scheme had been given a code name by this time: "Project Bumblebee." In the e-mail, Fishburne wrote about Digital Domain producing "500-600 jobs immediately expending to 1200 jobs within 3-5 years - strong minority program." Fishburne concluded the e-mail by telling Dr. Brill that Textor would be calling him "to find out more info about the \$45 million Charlie was talking about - said Quick Action Closing fund by name."

64. Florida's Quick Action Closing Fund Program ("Closing Fund") offers a statutory mechanism permitting the State to furnish assistance to companies in certain industries and geographical areas in Florida. The Closing Fund was

created as a discretionary grant incentive to respond to unique requirements of economic development projects in the state. The purpose of [Closing Fund] is to provide a stopgap measure for the creation and retention of high wage jobs. It was designed to provide financial incentives to encourage high impact business facilities to locate in Florida's rural areas.

(Review of the 2009 Economic Development Incentive Award to Digital Domain Media Group, Inc., Mar. 26, 2013). To apply for State funds through the Closing Fund, an applicant must submit an application known as a General Project Overview.

65. By November 2008, Textor grew impatient with the process, complaining that it had been "countless months since...hear[ing] anything from the Governor's office," and demanding face-to-face contact with the Governor. (Email from John Textor to Susan Simms, dated Nov. 14, 2008; Email from Lucia Fishburne to Stephanie Gibbons, dated Nov. 6, 2008). But, it had not been "countless months" as Textor exaggerated. Only five months had passed since he initially contacted Dr. Brill.

66. Around this time, Textor made the first of many threats to take Project Bumblebee to another state. In an e-mail sent on November 19, 2008, Textor told Dr. Brill "we are either coming to Florida because of the Governor's office, in spite of the Governor's office, or we are going somewhere else soon." (E-mail from Textor to Dr. Brill dated Nov. 19, 2008).

67. Textor landed a call with Governor Crist scheduled for November 21, 2008. (Email from Diane Moulton, Exec. Asst. to the Governor and Chief of Staff to Katie Bohnett, Director of Scheduling, Exec. Office of the Governor, dated Nov. 20, 2008). According to a call request memo Lucia Fishburne drafted which highlighted Project Bumblebee and Crist's key

talking points, during the call Crist “encourage[d] John Textor to choose Florida as the location for the East Coast facility” and explained his “plan for diversifying Florida’s economy...[by] actively working to restore the entertainment incentive.” (E-mail from Stephanie Gibbons to Keisha Rice dated Nov. 21, 2008 attaching “OTTED Request for Governor’s Call Sheet”)

68. Shortly after the call Textor got his face-to-face meeting with Governor Crist. (Dec. 1, 2008 e-mail from Diane Moulton to Katie Bohnett). “Please add ‘meeting with Eric’ on Governor’s calendar at 1:00 on Wednesday (12/3)...[with] Dale [Brill] to sit in [and] [a]ttendees will be John Textor (Co-Chairman, Digital Domain); Jonathan Teaford (VP, Digital Domain); and Tom McNicholas (Owner, McNicholas & Associates).”

69. **Promises and More Promises.** During their meeting, Textor and Teaford presented a twenty-page Powerpoint presentation about Digital Domain California, which Teaford attached in a follow-up email to Dr. Brill and Fishburne after meeting with Governor Crist. (Email from Jon Teaford to Brill and Fishburne dated Dec. 5, 2008). The presentation boasted about Digital Domain California’s accolades and accomplishments, touting its experience with contributions to 13 of the 20 top grossing films of all-time, and trumpeting its expertise with seven academy awards, the British BAFTA Award, Visual Effects Society Award, Cannes Lion, Clio Award and Grammy Award.

70. Of course, nowhere in the presentation was there any mention of Digital Domain California’s crippling debt and laundry list of other problems, and how Digital Domain California was connected to Digital Domain Florida (an alleged start-up).

71. Textor pitched the financial opportunities that Digital Domain would provide to Florida. (Email from Jon Teaford to Dr. Brill and Fishburne dated Dec. 5, 2008). The presentation depicts market opportunities for computer generated animated feature films. According to the presentation, the movie industry has five major production studios:

Pixar, Dreamworks, Fox, Warner Brothers and Sony. In addition, Textor presented a plan to capitalize on a growing \$10 billion industry for video games. Textor also hung his hat on Digital Domain's claim to be "one of the world's leading producers of visual imagery and animation" with "3 to 5 large projects per year, [and] 5 to 8 smaller projects...rang[ing] from \$1 million to \$25 million."

72. In order to capitalize on those opportunities with a Florida visual effects studio, Textor claimed that he needed \$150 million, of which \$90 million would come from public financing: \$50 million upfront for facilities, \$5 million upfront for employee relocation, \$20 million for "education-production" in phases, and \$15 million in "education-creative." (E-mail from Jon Teaford to Brill and Fishburne dated Dec. 5, 2008). According to the presentation, in return, Textor claimed Digital Domain Florida would be able to create 500 jobs, of which the vast majority would pay over \$50,000 per year.

73. Textor and Teaford knew that Digital Domain Florida never would have gotten any public money, let alone \$135 million in grants and other commitments, if they admitted that the strategy was to merge Digital Domain California with Florida, were truthful about the California entity's "dire" condition, and submitted it to a rigorous due diligence process in Florida. They wanted to avoid providing the detailed information that Enterprise Florida would require.

74. Nonetheless Digital Domain began the official application process in Florida. But, every time Textor and Teaford reached a roadblock in the process, they went over the person's head and disparaged the Enterprise Florida or OTTED employees. They ran to legislators and Governor Crist complaining and lobbying. To high-level Florida politicians, Textor and Teaford disparaged the incentive application process and the people who executed it, undermining and marginalizing what were legitimate concerns about the project.

75. In January 2009, Textor and Teaford submitted a formal application to Enterprise Florida for economic incentives for Digital Domain Florida. Textor and Teaford represented Digital Domain Florida would create 300 (and later 500) new full-time jobs in Florida in the software publishing and motion picture and video industries, would pay average annual salaries of \$64,233, excluding benefits, and would provide benefits such as health insurance, matching 401(k) contributions, vacation, sick leave and sabbatical leave. Their initial application did not identify a specific Florida location, however, where the investment would be made.

76. **The 2009 Falcon Debt Restructuring.** On January 6, 2009, Digital Domain California entered into an agreement with Falcon under which it would repay its existing Falcon debt by paying \$21 million -- \$6 million in cash, and \$15 million from the sale of its UK software subsidiary “The Foundry” for \$15 million. All of that had to occur before June 30, 2009, which became a critical make-or-break date for Digital Domain California.

77. For his part, Miller had “given up hope that there was a private equity solution out there for us” by 2009 and “there was a question of whether there was a future.” Miller Dep. 52:13–52:15; 53:23–24. Miller acknowledged that Digital Domain California was “insolvent enough in early 2009 that we were looking for any mode of avoiding [a default to Falcon].” *Id.* at 54:22–55:1. According to Miller, “[w]eek to week, we were trying to stay out of a Falcon default.”

78. Textor told Stork that Digital Domain California was a “train wreck” and that he (Stork) “should be running for the hills.”

79. **The Revised Application.** On February 12, 2009, Digital Domain Florida submitted a revised incentives application identifying Hobe Sound, Martin County, Florida as a tentative location for the project, and increasing the amount of capital investment they would

commit to \$53.38 million, which consisted of “\$35 million in construction of a new facility; and \$17.38 million to purchase new computer equipment, furniture and other capital assets.” The project depended on support from the local community in the amount of “\$46.862 million in the form of land, building construction and county-level incentive funding.” These figures create a \$7 million shortfall.

80. Expecting problems with the fairly rigorous approval process required by Enterprise Florida, Textor and Teaford suggested to Governor Crist that Project Bumblebee should be funded through legislative appropriation instead of, or as a supplement to, funding from the Closing Fund. These problems were discussed at a meeting in the legislative office of Representative Kevin Ambler (who would soon join the cause).

81. **Proposed Grant Inadequate.** On February 26, 2009, Enterprise Florida concluded in its first analysis that the project’s parameters supported incentive funding under the Closing Fund in the amount of \$6.1 million, as well as other non-monetary incentives, totaling \$11.4 million. In exchange, Textor was expected to create 300 jobs, and spend \$77 million on land, a new building, and equipment.

82. Textor and Teaford were upset with the award. The amount was a far cry from the “\$45 million that Charlie was talking about” getting from the Closing Fund (referenced in the August 26, 2008 e-mail from Fishburne to Dr. Brill). But, more importantly, it was not nearly enough to get Digital Domain California to avoid a default to Falcon, or get Textor exonerated from his personal guarantees.

83. Textor and Teaford responded to the \$6.1 million award with a bluff. They threatening to take Digital Domain Florida to another state, as if they had other options at that point.

84. **Florida Representative Kevin Ambler Joins the Cause.** Textor and Teaford quickly maneuvered around Enterprise Florida and OTTED and complained to Representative Kevin Ambler, Lieutenant Governor Kottkamp, and Governor Crist. Textor told them he was not getting a fair shake, and wanted to know what he had to do to get someone to let him show how Project Bumblebee would be viable and was deserving of far more than \$6.1 million.

85. Textor and Teaford found their sponsor in the Legislature in Representative Ambler -- who, like Mr. Heyniger, was given a success bonus for his support by being named to Digital Domain Florida's board. Like Mr. Heyniger, he also illegally received significant stock options in Digital Domain Florida. Representative Ambler became Digital Domain's chief advocate, which also helped when Textor and Teaford returned to lobby Governor Crist. As a result, they were able to inform Governor Crist that Representative Ambler was ready to "push through" a direct line item allocation in the budget if he knew he had support from the Governor's office.

86. Representative Ambler requested and obtained from OTTED examples of other Closing Fund projects so Textor and Teaford could see what a request looks like, how to build up the application, and what was the most money possible they could request.

87. Textor and Teaford also met with the Lieutenant Governor requesting additional state funding after agreeing to the state and local incentives offered to locate in Martin County.

88. Enterprise Florida and OTTED were pressured by Representative Ambler to consider more funding to Digital Domain Florida. (Apr. 20, 2009 Email from Dr. Brill, former Director of OTTED, to J. Adams, CEO of Enterprise Florida). In addition, he was relentless with Governor Crist's office, seeking support for a direct appropriation if normal channels did not succeed.

89. **The Do-Over.** As a result of the political pressure, Textor and Teaford were able to bring down on it, Enterprise Florida performed a second analysis. This time, it considered \$20 million in funds to Digital Domain Florida. But, Digital Domain Florida was not in the clear yet. The project was put on hold while State officials at Enterprise Florida and OTTED continued to conduct due diligence, this time with a \$20 million target. The continued due diligence made absolutely no sense. If a \$6 million commitment was unsupportable, how would a \$20 million commitment be supportable?

90. On March 30, 2009, Textor, Teaford and officials from Enterprise Florida and OTTED held a meeting “in an effort to clear up any misunderstanding related to our project.” (E-mail from Textor to Brenda Workman among others dated Mar. 29, 2009). During their meeting, Textor responded to Enterprise Florida’s inquiry, “focus[ing] on a list of issues that Enterprise Florida wanted addressed before deciding again to recommend our project for funding.” (Apr. 13, 2009 Email from J. Textor to D. Brill, among others). The issues, of course, centered upon the lack of support for Digital Domain Florida’s proposal.

91. **Show Me the Money.** Following the March 30th meeting with Textor, Brill and others, OTTED, as part of its due diligence, asked for additional explanation and evidence concerning certain aspects of Digital Domain Florida’s finances. In a letter dated April 2, 2009 to Textor with a cc to Bob Rohrlack, Dr. Brill “identif[ied].. additional information that may be needed to allow Enterprise Florida, Inc. to complete and forward its review to the Office of Tourism, Trade, and Economic Development,” and requested explanations and evidence on certain issues such as “Cash Position,” “Expected exponential growth from 2011 to 2012,” “No positive cash flow until 2013,” “Initial Public Offering (IPO) not issued in 2008,” and “Commitment of Funding.” (Letter from Dr. Brill to John Textor dated Apr. 2, 2009).

92. The State also sought explanation and materials regarding Digital Domain California's financial covenants, including its debt level and agreements to maintain a minimum cash balance. The State also inquired into the attainability of certain financial measures, given that Digital Domain Florida was not expecting a positive cash flow until 2013 and was projecting unrealistic exponential revenue growth. In addition, the State requested a complete explanation as to why the Digital Domain California IPO failed, and whether an IPO would be offered again.

93. On April 3, 2009, Textor sent a letter to Dr. Brill with false or misleading responses to his inquiries. This included the false explanation that the IPO failed because of a "quickly deteriorating public market for all companies" notwithstanding "substantial interest from investors." The response also was significant for what was not said -- that Digital Domain Florida was not a start-up, but a continuation of a failed business model and decade-long history of losses of Digital Domain California.

94. Textor claimed that Digital Domain Florida had significant private financial commitments, including from Groves 12, LLC. In the past, Textor had claimed to have private financial commitments from Ram Realty Services and Rockwell. But, Digital Domain Florida had no such commitments.

95. On April 8, 2009, Textor, Teaford and officials from Enterprise Florida and OTTED held another meeting at which Textor and Teaford "provided a number of responses to [the State's] questions." (Apr. 13, 2009 Email from Textor to Dr. Brill, among others).

96. On April 16, 2009, Enterprise Florida prepared a "Closing Fund Review," which expressly refrained from recommending an award to Digital Domain Florida due to ongoing concerns about profitability, income, equity and debt financing, revenue projections, cash position, executive compensation, and recent litigation. Project Bumblebee was effectively dead.

The Closing Fund review is significant in that it failed to provide a statutorily required recommendation.

97. When Textor and Teaford encountered that road block, they again went over the heads of Enterprise Florida and OTTED to Representative Ambler, who turned up the pressure on the Governor's office and OTTED. Ambler requested a meeting on April 20, 2009, with Brill. Governor Crist's Chief of Staff instructed Brill to meet with Representative Ambler. During that meeting Ambler expressed heated frustration over Enterprise Florida's analysis. He demanded removal of Enterprise Florida's lead reviewer, Brenda Workman, from the project. In addition, Ambler demanded that John Adams, EFI's CEO, be hailed to Tallahassee for a face-to-face meeting with Textor and Teaford regarding Enterprise Florida's review of the project. Representative Ambler ultimately held several discussions with Dr. Brill about alternative ways to provide incentives to Digital Domain Florida outside of normal channels. One discussion was held during the legislative session, during which Dr. Brill met Textor, Teaford, and Cynthia Henderson.

98. Textor and Teaford also went directly to Governor Crist. On May 12, 2009, Cynthia Henderson, the lobbyist hired by Textor and Teaford, informed Dr. Brill that she, Textor and Teaford spoke with Governor Crist on the previous Sunday, and that he expressed support for the project. (May 12, 2009 Email from Henderson to Dr. Brill).

99. **A Turkey before Thanksgiving.** With Governor Crist and Representative Ambler backing Project Bumblebee, the Florida Legislature passed, and the Governor signed into law, a State budget provision introduced by Representative Ambler that appropriated "unused" OTTED funds, and provided OTTED authority to award economic development incentives for the purpose of creating high wage jobs and business recruitment to Florida. (IG

Report at p. 7). The appropriation did not require OTTED to observe the QACF statutory requirements. OTTED was given specific instructions to give this “turkey” to Digital Domain Florida.

100. With the special appropriation in place, Governor Crist and Representative Ambler directed OTTED to resume its consideration of State funding for Project Bumblebee, but this time without the statutory constraints of rigorous due diligence.

101. In June of 2009, Dr. Brill prepared a Funding Recommendation memorandum to the Governor, as he would typically submit under the normal Closing Fund procedure. He now recommended that Florida enter into a Grant Fund Agreement and provide a grant of \$20 million to Digital Domain Florida. Dr. Brill later testified that he understood that if he did not provide a positive recommendation to Governor Crist, he would be “looking for other work.” Dr. Brill also stated despite approving the grant, he privately believed (and told Governor Crist) that Digital Domain Florida was unqualified for it. Dr. Brill also stated that he did not “fall on his sword” to make public what he told the Governor. Governor Crist told Brill that would conduct his own financial analysis of the project.

102. **The Grant Fund Agreement.** In reliance on Digital Domain Florida’s false statements and material omissions, OTTED approved State funding in the amount of \$20 million. On June 30, 2009, OTTED entered into the Grant Fund Agreement (“GFA”) with Digital Domain -- curiously, the same day as the date of default under the January 6, 2009 Falcon debt restructuring.

103. **The Foundry Sale.** Unfortunately for Digital Domain California, the State’s grant commitment came 28 days too late. Because the commitment did not come sooner, the company was forced to sell The Foundry on June 2, 2009 for \$12 million (\$3 million less than

agreed under the January 6, 2009 debt restructuring). Weston Dep. 88:4-88:12; 93:1-93:8. The purchaser of The Foundry included The Foundry's management group, a third party equity form, and Falcon. As a result of The Foundry sale, Falcon retired a portion of the debt.

104. The Foundry sale, however, still left \$9 million of Falcon debt. Id. at 93:1-93:8. Digital Domain California received a 30 day extension of the June 30, 2009 deadline from Falcon.

105. **The Grant Payment Schedule.** Under the Grant Fund Agreement, the State agreed to distribute the seed capital upon fulfillment of specific milestones of the business plan. The State made four payments from September 2009 to April 2011. Digital Domain Florida was obligated to execute the parameters of the Grant Fund Agreement's business plan in order to receive and keep the distributions according to the following schedule -- which included obligations related to a proposed facility in Port Saint Lucie, which Digital Domain Florida would use to parlay its \$20 million state grant into additional millions of taxpayer money from St. Lucie:

Payment Date	Distribution Amount	Business Plan Parameters
Sept. 2, 2009	\$7,000,000	<ol style="list-style-type: none"> 1. Local resolution of support for the project from the City of Port St. Lucie 2. Site agreement to construct or occupy facility for 500 people 3. Recruitment and hiring for executive management positions 4. Publicly announce intention to located in the City of Port St. Lucie
June 29, 2010	\$5,000,000	<ol style="list-style-type: none"> 1. Closure on site agreement in the City of Port St. Lucie 2. Commence vertical construction of facility in addition to capital investment of at least \$ 5 million 3. Continued recruitment and hiring activities, and 4. Established executive management team.

Dec. 23, 2010	\$4,000,000	<ol style="list-style-type: none"> 1. Created 100 net new full-time jobs in the City of Port Saint Lucie 2. Average annual wage of those jobs will at least \$64,233, excluding benefits 3. Total Qualified Investment of at least \$15 million in the City of Port St. Lucie by Digital Domain Florida 4. Occupancy of facility for at least 500 people in Port St. Lucie
April 7, 2011	\$4,000,000	<ol style="list-style-type: none"> 1. Created at least 200 net new full-time equivalent jobs in the City of Port St. Lucie 2. Average annual wage of those jobs will at least \$64,233, excluding benefits 3. Aggregate Qualified Investment of at least \$15 million in the City of Port St. Lucie by Digital Domain Florida

106. **The Bailout and Merger.** Textor, Teaford, the California Officers and Directors, and Falcon plotted all along to take the state's money and give it to Digital Domain California to pay off Falcon. The plan was hatched while Textor was negotiating with the State and executed the same day OTTED approved the grant.

107. The merger would involve a multi-step process, deliberately designed to hide the fraud. First, on June 30, 2009, Digital Domain Florida entered into agreements with Textor and Teaford to purchase their shares of common stock in Digital Domain California for \$8.8 million (13% of the company). (See Letter from Marshall-Stevens to Teaford, Feb. 3, 2010). What this meant was that Digital Domain Florida was saddled with \$8.8 million in debt from the moment it received the State grant, contrary to Textor and Teaford's representation to the State that it was a start-up with no debt and was not a continuation of Digital Domain California. Moreover, the stock purchase agreements were contrary to representations made by them that Digital Domain Florida would use the grant money to pay salaries and other start-up operations.

108. Digital Domain Florida received its first payment of \$7 million from the State on September 2, 2009.

109. Digital Domain Florida paid Textor and Teaford for their Digital Domain California shares in installments from September 30, 2009 to November 2, 2009. (Id.) The first installment payment (made September 30, 2009) was \$8 million. (Id.)

110. As if \$8.8 million was not enough for Digital Domain California, Digital Domain Florida also entered in a Subscription Agreement with Digital Domain California -- unanimously approved by the California Officers and Directors at a series of board meetings which took place from September 23, 2009 to October 1, 2009, and approved and supported by Falcon (through Fogel) -- under which Digital Domain Florida agreed to buy more stock from Digital Domain California for another \$8 million as follows:

- A \$1 million lump sum cash payment for Digital Domain California's royalty rights in "Titanic;"
- \$2,000,001.00 for 666,667 shares of Digital Domain California Series C Preferred Stock (payable on or before September 30, 2009); and
- \$5,000,001.00 for 1,666,667 shares of Digital Domain California Series C Preferred Stock stock (payable on or before October 15, 2009).

111. From June 30, 2009 through October 1, 2009, Digital Domain Florida spent \$16.8 million dollars for stock in a virtually insolvent corporation and intellectual property of dubious value. Falcon also received new warrants in Digital Domain Florida, which were valuable to Falcon because of the significant state funding just received by Digital Domain Florida.

112. The stock acquired by Digital Domain Florida through these transactions was equal to 51% of the fully diluted shares of Digital Domain California -- a controlling interest. Weston Dep. 100:9–100:22.

113. The Falcon debt was paid off, and the California Officers and Directors were relieved of their personal liability for it. As a bonus, on October 1, 2009 the California Officers and Directors agreed to pay Textor a \$500,000 transaction fee.

114. According to Fogel, the Digital Domain Florida deal was “the best solution to [Digital Domain California’s]...dire financial condition at the time.” Fogel Dep. 143:1–144:7. Although Fogel claimed that Digital Domain California had other financing options available to it (including a deal with Falcon which would have been “more dilutive”), “our view was that the company needed \$10 million to get on the right footing” and “the deal that John Textor put forth in the fall of 2009 and that we as a board approved and executed on was *the one that saved the company*.” Id. at 134:21–144:2 (emphasis added).

115. Ultimately, Digital Domain Florida would acquire an 81% interest in Digital Domain California.

116. **Material Misrepresentations to the State.** Just as Textor and Teaford planned it, their lies worked. The State suspended disbelief and simply relied upon their representations as if they were true and awarded a \$20 million grant. The misrepresentations were astounding and made with the full support and knowledge of the Inside Directors, Outside Directors, California Officers and Directors, and Falcon. The misrepresentations included:

➤ **Misrepresentation Concerning California Relationship.** First and Foremost, Textor and Teaford misrepresented or concealed material facts on how the grant money would be used. They never told the State that any of the money would be used to pay Falcon debt. They never told the State that their so-called “start-up” paid millions for Digital Domain California stock, which resulted in Digital Domain Florida being “in the red” just after it got the State’s “green light.” They never told the State about their ultimate goal of completely merging

the two entities, which in the end had Digital Domain Florida owning 81% interest of Digital Domain California, and 100% of its debt.

➤ **Misrepresentations Concerning IPO.** Textor and Teaford misrepresented or concealed material facts regarding Digital Domain California's failed IPO. They failed to disclose that the IPO was abandoned due to lack of investor interest because of its dire financial condition. This was significant because there was a robust market at the time. The fact that, at the time Digital Domain Florida applied to the State of Florida for funding, Digital Domain California's financial condition was so poor that it could not launch a successful IPO was a material fact and failure to disclose the reasons for the failure was fraudulent. Although Digital Domain Florida was represented as a fresh start-up, Digital Domain California's failed IPO was relevant because of undisclosed plan to merge with Digital Domain California.

➤ **Misrepresentation Concerning Past Audits.** Textor and Teaford misrepresented or omitted material facts regarding Digital Domain California's past audits. During the State's inquiry, Textor provided critical assurances to State officials concerning the audits of Digital Domain California's financial statements, expressly saying that it had only received "clean audits." But, this was not true. Textor asserted that Digital Domain California used auditors from the best firms -- two members of "the Big 4" (PwC and Deloitte & Touche, LLP). However, he did not disclose that PwC rendered a going concern opinion on the company for the year ending December 31, 2005. As a result of the opinion, PwC was dismissed as Digital Domain California's auditor. Digital Domain California then hired Deloitte, which served as its auditor for the years ending December 31, 2006, December 31, 2007 and December 31, 2008. Deloitte rendered a "going concern" opinion for the year ending December 31, 2008. Digital Domain fired Deloitte. That two major auditors issued "going concern" opinions against Digital Domain California and that the company fired these firms as a result were material facts

that should have been disclosed to the State of Florida. Digital Domain Florida's express misrepresentation about Digital Domain California's audit history and concealment of the audit reports was fraudulent. In fact, had Digital Domain Florida not hired co-conspirator SingerLewak, it would have had eight straight years of "going concern" opinions showing over \$250 million in losses (not including the loss of the public money from Florida).

➤ **Misrepresentation Concerning Bradley Call Lawsuit.** When Tim Proctor, OTTED's Chief Analyst for Incentives, inquired of Textor about allegations made by former Digital Domain California CFO, Bradley Call, in a lawsuit against Digital Domain Florida, Textor falsely assured Proctor: "[t]he vast majority of Mr. Call's three year old claims have been dismissed...All of our auditors (and the SEC) have been aware of the assertions of Mr. Call since his very first filing *and we have received nothing but clean audit opinions ever since.*" (June 25, 2009 Email from Textor to Proctor) (emphasis added).

➤ **Misrepresentation Concerning California Debt.** Textor understood that the financial health of Digital Domain California was a huge problem for Digital Domain Florida's efforts to obtain public funding. On numerous occasions, when he was asked in the application process about the financial health of Digital Domain California, he played a corporate shell game. He claimed that the questions were irrelevant because Digital Domain Florida was a new and independent company that would not be burdened by any debt or other financial challenges faced by Digital Domain California. But, when Textor made these representations, his real plan (which was also the plan of the California Officer and Directors and Falcon) was to obtain public financing for the Florida company and then merge it with the debt-ridden and failed California company.

➤ **Misrepresentation Concerning Future Revenue.** Textor and Teaford falsely assured the State in Digital Domain Florida’s funding application that future operations would be funded with revenue from theater tickets and DVD’s: “Going forward as a private company for the foreseeable future, [Digital Domain Florida] has chosen...to fund any future content creation business with an industry standard model of using film studios and game publishers as partners.” (Email from Textor to Brill, among others, dated Apr. 6, 2009). But, this had never been true with Digital Domain California’s operations, and its failure in the past using this model was a material fact, and the failure to disclose it was fraudulent.

117. **The Grant Fund Agreement Milestones.** For Digital Domain Florida to obtain and continue to maintain eligibility to use the capital provided by the State, it was required to follow the business plan established in the Grant Fund Agreement. Digital Domain Florida’s failure to maintain those milestones until 2019 would be grounds for termination of the Grant Fund Agreement.

118. The State had the ability to terminate the Grant Fund Agreement and demand repayment “upon failure of [Digital Domain Florida] to comply to [the State’s] reasonable satisfaction with any term or condition of the [Grant Fund Agreement].” (GFA § 10(a)). In other words, had the State learned of Digital Domain Florida’s fraud or its failure to perform, it could have terminated the Grant Fund Agreement, ceased making payments, and sought immediate repayment of any funds provided. The Inside Directors, Outside Directors, the California Officers and Directors, and Falcon had a strong incentive to conceal the past and future misrepresentations. In fact, as only became clear upon the failure of the company, from the very outset Digital Domain Florida failed to meet its obligations under the Grant Fund Agreement and continued to engage in fraudulent schemes.

119. **Employment Requirements.** Under the Grant Fund Agreement, Digital Domain Florida was required to create 500 new jobs in six phases, with each phase coinciding with the calendar year according to the table below from 2009 through 2014. The newly-created jobs were required to pay an average annual wage of \$64,233, excluding benefits. The company was obligated to submit and certify to the State employment and wage information each year through January 31, 2019. (GFA § 7(c)).

120. Digital Domain Florida failed to meet the required employment targets under the Grant Fund Agreement as promised. It went out of business despite promises to bring jobs to Florida until 2019. The Inside Directors, Outside Directors, the California Officers and Directors, and Falcon knew that Digital Domain Florida could not meet those targets.

121. **Capital Investment Requirements.** Pursuant to section 5(g)(4), Digital Domain Florida was required to invest \$50 million in Port Saint Lucie in a new facility by December 31, 2014. In addition, the company was required to maintain those assets at the facility for an additional four years, until at least December 31, 2018. It was required by Section 7(d) to submit documentation and certify the investment continues to be in Port Saint Lucie as of December 31, 2019. Digital Domain Florida failed to meet the investment targets of the Grant Fund Agreement. The Inside Directors, Outside Directors, the California Officers and Directors, and Falcon knew that Digital Domain Florida could not meet those targets.

122. **Notice of “Material Developments”.** With a view toward ensuring effective execution of the State’s business plan and protection of the seed capital, the Grant Fund Agreement obligated Digital Domain Florida to keep the State apprised of developments in the company and provide notice of any changes to the company’s capital structure, as follows:

Notify OTTED in writing of any material developments that impact the implementation or operation of this Agreement or the

project that this Agreement covers. Such material developments will include, but not be limited to: announcements with regard to the project, cancellations of the project, or change in ownership of the Grant Fund Awardee.

(GFA § 7(e)).

123. Digital Domain Florida failed to keep the State informed of numerous material developments, including: 1) the ongoing financial crisis at Digital Domain California which, as of October 1, 2009, was majority owned and controlled by Digital Domain Florida; 2) that Digital Domain California had to spin-off its valuable software division to keep from defaulting under the Falcon credit facility; 3) that Digital Domain Florida had used all or part of the grant money to bail out Digital Domain California; and 4) that it sought, and ultimately obtained, “death spiral” financing which forced it into bankruptcy and the terms of the financing gave the “death spiral” lenders a priority position over the State (discussed in detail later in this Complaint). The Inside Directors, Outside Directors, the California Officers and Directors, and Falcon knew that Digital Domain Florida was not adhering to the notice requirement.

124. **Audit Requirement.** To assist in overseeing the seed capital provided by the State to Digital Domain Florida, the Grant Fund Agreement required it to engage and undertake annual audits. In each year when it received more than \$500,000 from the State, it required an audit be performed by an independent auditor. Under the Grant Fund Agreement, copies of the audit reports and certain related audit materials generated in the course of the audit were to be furnished to the State, specifically the Auditor General and a designated accounting firm. (GFA Ex. “B.”). In addition, Digital Domain Florida was obligated “to permit access [to the Chief Financial Officer, Auditor General or Chief Inspector General] to its records and independent auditor’s working papers as necessary to comply with the requirements of [the] Agreement.” Id.

125. Not only did Digital Domain Florida fail to provide the required proper audits, after it terminated both PwC and Deloitte, it hired SingerLewak to provide favorable audits.³

126. **The SingerLewak Audits.** In reckless disregard of its responsibilities under applicable auditing and accounting standards, SingerLewak rendered unqualified audit opinions on the financial statements of Digital Domain Florida for the years ending December 31, 2009, December 31, 2010 and December 31, 2011, despite the fact that PwC and Deloitte had rendered “going concern” opinions in earlier years and Digital Domain California had been unable to finance its operations through revenue.

127. Every audit opinion Digital Domain Florida received from the SingerLewak from 2009 through to its bankruptcy on September 11, 2012 was unqualified. To cover up the fraud, SingerLewak did not reveal the true extent Digital Domain Florida’s serious financial problems. Rather, a clean audit opinion even was delivered for 2011 on March 30, 2012, less than six months before Digital Domain Florida filed for bankruptcy. Each of the audit opinions SingerLewak provided Digital Domain Florida during his period of time should have been properly qualified by SingerLewak’s doubt that Digital Domain Florida could continue as a going concern. In submitting these false and inaccurate audits to the State, Digital Domain

³ SingerLewak has a long history with defendants Textor, Teaford and John Nichols. All three held positions at BabyUniverse, Inc., an Internet retailer of baby-related products. During their tenure, SingerLewak served as BabyUniverse’s auditor. Textor served as Vice Chairman and CEO from April 2005 through October 12, 2007 and was chairman of the Board from October 12, 2007 to September 17, 2008. Teaford was the Executive Vice-President and member of the Board from 1998 through October 2007. Nichols served as a member of the Board from 2005 through September 17, 2008. SingerLewak provided auditing services to BabyUniverse until December 4, 2007, when it was replaced by Ernst & Young. During SingerLewak’s tenure as auditor for BabyUniverse, it issued unqualified opinions on BabyUniverse’s financial statements for the years 2005 through 2007. When E&Y took over as auditor, however, it’s very first opinion for 2008 expressed substantial doubt about BabyUniverse’s ability to continue as a “going concern.” Shortly after issuance of E&Y’s going concern opinion, BabyUniverse filed for bankruptcy.

Florida violated the Grant Fund Agreement. SingerLewak's false and misleading audit reports prevented the State from discovering Digital Domain Florida's fraud and demanding repayment of the grant in time to recover its money. The Inside Directors, Outside Directors, the California Officers and Directors, and Falcon knew that the SingerLewak audits were false and misleading.

VI

"THE COLOR OF MONEY"

128. As with every successful Hollywood movie, a sequel is inevitable. Digital Domain Florida's successful fraud on the State offered a gateway to additional taxpayer money using the same fraudulent tactics with Florida municipalities. Textor made his pitch to a number of them, trying to play them against each other for the chance to host what he called the "Hollywood of the East." Ultimately both Port St. Lucie and West Palm Beach were drawn into the scheme.

129. **Port Saint Lucie.** Textor and Teaford continued their fraudulent scheme, defrauding the City of Port St. Lucie with similar misrepresentations and omissions that were made to the State. Textor and Teaford fraudulently convinced the Port St. Lucie that the State had conducted thorough due diligence of Digital Domain Florida and that the Port St. Lucie was able to rely on the State's decision to award incentives to it.

130. In July 2009, Digital Domain Florida announced its plan to establish an animated film production studio focused on the development of original full-length animated feature films, in Port St. Lucie, promising jobs with an average salary of almost \$65,000 by 2014 and a \$50 million capital investment in a county struggling with a 14.1 percent unemployment rate.

131. In November 2009, the Port St. Lucie City Council unanimously approved an incentive package for Digital Domain Florida which included:

- \$10 million in cash grants;
- 15 acres of land appraised at \$10.5 million; and
- \$39.9 million in low-interest building and equipment lease financing.

132. In December 2009, the first tranche of \$3 million was made to Digital Domain Florida. In November 2010, a second tranche of \$2.5 million was made. Construction was completed and the doors opened to “Tradition Studios” on January 3, 2012.

133. On November 25, 2009, the City of Port St. Lucie entered into a Grant Agreement (ending in 2029), agreeing to provide funds and assets totaling approximately \$51.8 million to Digital Domain. Under the Grant Agreement, Port St. Lucie agreed to build an animation studio on 15 acres in the “Tradition” development at a location off Interstate 95 in Port St. Lucie, and pay a cash grant (over time) totaling \$10 million.

134. To finance the grant, Port St. Lucie issued \$39.9 million in bonds (Series 2010A and Series 2010B). Port St. Lucie and Digital Domain entered into a Lease Agreement (April 8, 2010), which provided that rent payments made by Digital Domain to PSL were to be sufficient to service the bond debt.

135. **Textor Brags about “Free Money.”** In 2009, Textor was courting private investors for Digital Domain Florida. Digital Domain California had attempted that in past, but with no success. According to Miller, “[t]he first couple meetings [with private equity investors] would be great. We would get to a subsequent conversation where they got deeper into the books and us explaining losses and what the company was running on, which was fumes.”

136. Undeterred, Textor believed he found a buyer in September of 2009 --- Century Communications Limited of Noida, India (“Century”). Textor was entertaining offers even though Digital Domain Florida just received \$82 million in public funds. Before fully reviewing

financial statements, in November of 2009 Century's representative floated an offer to Textor in an e-mail to buy Digital Domain for \$70 million. Textor responded to that e-mail claiming that Digital Domain was worth far more than that, as evidenced by the "free money" Digital Domain Florida had gotten from State and local governments:

Your client has chance to be the #1 visual effects company in the world by paying a price that is lower than every other value indicator we have received. They have this opportunity because of the flexibility of the structure and my belief that the relationship with [Century] can be valuable and fun.

Merely the goodwill of Digital Domain was enough to earn \$71.8 million of *free money* in Florida...we'll obtain another \$50 million from Orlando for the FSU project. How could anyone suggest that our company is not even worth the *freebie* just obtained.

(Nov. 15, 2009 E-mail from Textor to Peter Steele (emphasis added)).

137. Of course, the money Digital Domain Florida fraudulently received was not "free money" or a "freebie." It is hard earned taxpayer money which citizens of Florida trust will be used wisely and ultimately for their benefit.

138. **Century to Outsource to India.** Century has its headquarters in India. E-mails exchanged between Textor and Century's representative indicate that the Century deal, had it gone through, would have resulted in outsourcing of jobs to India, which was contrary to Digital Domain Florida's representations about bringing high-paying jobs to Florida. In an e-mail from Century's representative to Textor dated September 8, 2009, Century advised that its interest in Digital Domain was "with a view to outsourcing part of VFX feature projects to its UK and eventually over time, to its India based facilities." In an e-mail from Century's representative to Plumer dated March 11, 2010, Century reiterated that its goal was "to position [Digital Domain] in such a way to fully maximize the brand and leverage lower cost base and tax incentive

supported markets, *outside of N. America* – to allow [Digital Domain] to become more profitable than it has been so far.” (emphasis added).

139. **The FSU Project.** In September 2009, Digital Domain announced its plans to partner with Florida State University to launch a for-profit film school in West Palm Beach, Florida. Just why FSU needed open a film school in West Palm Beach within Florida Atlantic University’s territory is unexplained.

140. In an e-mail, Textor advised that one of the plans for the for-profit school included using its students as free labor for Digital Domain’s visual effects jobs. Putting aside the absurdity of that plan -- surely no movie studio would hire a visual effects company which uses inexperienced and unpaid college students -- the proposal flew in the face of Textor’s repeated promises to bring thousands of high paying visual effects jobs to Florida.

141. In November 2010, the City of West Palm Beach CRA provided Digital Domain Florida grants of \$10 million in cash, title to 2.4 acres of land appraised at \$9.8 million and \$15 million in low-interest financing. The cash grants were structured to be funded through December 2014 as certain targets are met for thresholds of business initiation, capital investment and student enrollment.

142. Although classes commenced at Digital Domain in the second quarter of 2012 and Digital Domain expressed plans to build another campus in Abu Dhabi, the school was operating at a net loss up until the bankruptcy.

143. This fraud further enriched the Inside Directors, Outside Directors, the California Officers and Directors, and Falcon by preventing Florida from learning that the company was built on fraud and was destined to fail.

VII

“DEATH OF A SALESMAN”

144. Ultimately, the Century deal fell through and Digital Domain once again was out of money and needed more to avoid the full disclosure that would follow the failure of the company. Textor and Teaford decided to try again to bail out the company with an IPO.

145. **The 2011 IPO.** Digital Domain Florida was in crisis despite obtaining \$82 million in grant money. The crisis, if discovered, clearly would trigger a demand for repayment of the grants, which were keeping the company afloat. In Digital Domain Florida’s 10Q filing for the period ended March 31, 2012, it disclosed for the first time the significant role of State and local grant funding served in Digital Domain Florida’s finances:

These businesses did not generate a significant amount of revenue during the first three months of 2012. **A majority of the expenses incurred by these businesses was funded by our existing grants from the State of Florida,** the City of Port St. Lucie, and the City of West Palm Beach. While many of these grant proceeds were received between 2009 and the present, we only record a small amount of these receipts as revenue. As of March 31, 2012 we had received \$29.9 million of grant receipts that we plan to recognize into revenue over the next 5 to 20 years. In addition, we expect to receive \$10.3 million in additional grant proceeds over the next several years under our existing grant agreements.

(Digital Domain Florida 10Q for periods ended Mar. 31, 2012, filed May 10, 2012 (emphasis added)).

146. Digital Domain Florida disclosed more details of the revocability of the benefits provided to it by the State and the continuing nature of conditions it was required to satisfy under the Grant Fund Agreement. Digital Domain Florida’s 10K filing with the SEC for the period ended December 31, 2011 sets forth as follows:

If we do not continue to receive governmental grant funding, primarily from the State of Florida and the Cities of West Palm Beach and Port St. Lucie, Florida, or otherwise fail to meet the target thresholds for continued grant funding, it may adversely affect our operations.

Grants from third parties, primarily the **State of Florida** and the Cities of West Palm Beach and Port St. Lucie, Florida, **have been**

and will continue to be an important source of funding for the construction and establishment of our digital studio in Florida.

These grants are generally structured to be funded over a three to five-year period and require that we meet specified target thresholds with respect to business initiation, capital investment and job creation in order to receive the scheduled disbursements. In particular, **in order to receive our complete grant funding, without penalty, from the State of Florida and the City of Port St. Lucie, we will be required, by**

December 31, 2014, to have, among other things, (i) created since our inception at least 500 new jobs in the State of Florida, each with an average annual wage of at least \$64,233, and (ii) invested, with development partners, at least \$50,000,000 in the State of Florida. As of March 1, 2012, we had 272 employees in the State of Florida, at an average annual salary in excess of the required \$65,000, and, as of February 22, 2011, we had satisfied the condition to invest, with our development partners, at least \$50,000,000 in the State of Florida...**If the applicable agencies or authorities controlling the disbursements of such grants determine that we have not met such thresholds or are otherwise no longer qualified to received continued grant funding, the loss of this funding or any subsequent obligation to repay any such funding could adversely impact the growth of our business, which may, in turn, adversely affect our operating results or financial condition.**

(10K filing with the SEC for the period ended Dec. 31, 2011; 10Q filing with the SEC for the period ended Sept. 30, 2011).

147. Through an IPO, Textor and Teaford hoped to keep their fraudulent operation afloat and to continue to conceal the fact that their representations and omissions to the State and local governments in connection with the grant were false. While the State had paid out all of the \$20 million in grant money by April, 2011, it still had the right to terminate the Grant Fund Agreement and seek repayment if Digital Domain Florida failed to comply with its obligations, including the job creation targets. Of course, Digital Domain Florida could not afford to refund the State's money. The local grants were even greater. By this time, the local funding was \$62

million, with approximately \$50 million more, all contingent upon Digital Domain Florida staying in business.

148. In furtherance of Textor and Teaford's earlier fraud on the State, the Inside Directors, Outside Directors, Palm Beach Capital Defendants, SingerLewak, and the Underwriter Defendants undertook the IPO, while concealing the earlier misrepresentations to the State and Digital Domain Florida's poor financial condition.

149. In an e-mail dated January 11, 2010 from Century's representative to Textor in connection with the proposed Century deal, Textor expressly discussed Digital Domain's "IPO intentions." He revealed that Digital Domain had prepared a Private Placement Memorandum for purposes of seeking additional funding "to improve our balance sheet for optical purposes prior to filing the IPO registration documents." Textor never told the State that an IPO was intended. In fact, in his April 3, 2009 letter to Dr. Brill responding to his questions (under the heading "Initial Public Offering"), Textor was quite clear that Digital Domain Florida could finance its own operations, or would rely only on private financing sources:

Going forward, feature film and videogame production costs can be financed by Digital Domain or with the help of both large-scale film studios or video game publishers.

150. Barclays Capital and Janney Montgomery Scott were identified as the underwriters of the 2011 IPO.

151. The IPO was in trouble from the start because, as with the first failed IPO in 2007 and 2008, no sophisticated investor would be interested in purchasing Digital Domain Florida stock in its present financial condition.

152. Initially, on May 16, 2011, Digital Domain Florida expected to receive \$115 million in the IPO. However, its expectations were quickly dashed when it failed to generate

much interest in the IPO during the summer. Further, the underwriters, Barclays and Janney, inexplicably withdrew between September 20, 2011 and November 4, 2011. (Amendment No. 5 to Form S-1 filed Nov. 2, 2011). Two smaller underwriters, Defendants Roth Capital and Morgan Joseph, stepped into their shoes.

153. As an IPO underwriter and co-manager, Defendant Morgan Joseph was allotted 492,000 of the 4,920,000 shares to be sold. In addition, Defendant Roth Capital, as an underwriter, the representative of the underwriters, and sole book running manager for the IPO, was allocated 3,690,000 of the 4,920,000 of the shares to be sold in the IPO. Defendants Morgan Joseph and Roth Capital assisted in the preparation and dissemination of the IPO offering documents. They were responsible for ensuring the truthfulness and accuracy of the various statements contained in, or incorporated by reference into, the IPO offering documents.

154. Digital Domain Florida further lowered its expectations of the IPO proceeds. By November 18, 2011, despite Digital Domain Florida's reduced expectations, the IPO was faltering further. A further reduction of the IPO price, intended to have the effect of closing the order book and attracting additional orders, backfired.

155. To attract more investors and increase demand for its shares, Digital Domain Florida further reduced the number of shares in the IPO. However, the Defendants were confronted with the probability that the underwriters would either refuse to underwrite the offering altogether or proceed with the offering at a significantly lower price, both scenarios that would have been disastrous for Digital Domain Florida, the Palm Beach Capital Defendants, and Defendants Textor and Teaford. Under either scenario, Digital Domain Florida would be deprived of the cash infusion necessary to stay in business. Also, if the IPO price were lowered further, the value of the significant holdings of the Palm Beach Capital Defendants, Textor, and

Teaford would be substantially impaired in the aftermarket, and Digital Domain Florida would be precluded from raising much-needed cash through subsequent offerings.

156. At the time of the IPO, Digital Domain Florida's business model remained flawed and the company could only stay afloat with fresh capital to support its operations. Digital Domain Florida continued to experience a severe liquidity crisis, which was never fully and accurately disclosed. The Inside Director Defendants and Outside Director Defendants made numerous misrepresentations to conceal this, from the public generally and from the State.

157. Digital Domain Florida made additional misrepresentations to the public in the context of the IPO, but the offering remained imperiled. Textor and Teaford took extraordinary measures to try to save it, conspiring with the Inside Director Defendants, Outside Director Defendants, Palm Beach Capital Defendants, Underwriter Defendants, and SingerLewak. In the shadow of the IPO's effective date, November 21, 2011, Textor and Teaford agreed to purchase a substantial portion of the shares being offered. To do so, Textor obtained a secret loan from Palm Beach Capital Capital to finance his purchase of shares. The goal of this unlawful stock manipulation scheme was to make it appear that the closest insiders with knowledge of Digital Domain Florida's prospects were subscribing to 25% of the offering. This purchase avoided the need to price the stock lower for the offering.

158. On November 22, 2011, when trading commenced, Textor entered into an undisclosed loan agreement (the "Loan Agreement") with Defendant PBC Digital Holdings II, LLC, and several non-party lenders,⁴ which made it possible for him to purchase shares of Digital Domain Florida in the IPO. Pursuant to the undisclosed Loan Agreement, PBC Digital

Other counter-parties to the undisclosed agreement are the following non-parties: the Thomas J. Morrison Article IX A Trust dated 12/10/2002, the Thomas J. Morrison Trust dated 1/11/76, Glenmore Enterprise, Inc., and Carlos Morrison, (collectively, the "Non-party Lenders").

Holdings II and the Non-party Lenders lent Defendant Textor the amount needed to facilitate his participation in the IPO (\$10,000,003.00), plus an additional amount to cover transaction expenses (\$86,298.50), for an aggregate amount of \$10,086,301.50. The Non-party Lenders contributed \$500,000.00 each, with PBC Digital Holdings II contributing the remaining balance.

159. Digital Domain Florida's net IPO proceeds were approximately \$33.4 million. Although money raised in the IPO did not reach one-third of its estimate, the money concealed for a few more months the true nature of its liquidity problem. Shares of Digital Domain Florida common stock began trading on November 22, 2011 at \$6.65 and closed at \$7.49, which was also the high trading price for the day. By misrepresenting the purpose of the IPO and Digital Domain Florida's financial condition, and otherwise hiding the true circumstances, the Inside Director Defendants were able to continue keeping secret the earlier fraudulent misrepresentations to the State and preventing the State from exercising its right under the Grant Agreement to seek repayment of the grant funds at a time when Digital Domain Florida still had sufficient assets to allow the State to collect its \$20 million.

160. **Death Spiral Lenders.** In a last ditch desperation move to the keep the company afloat and prevent the State and local governments from demanding repayment of \$82 million dollars, Digital Domain Florida resorted to death spiral financing. In 2009, Digital Domain Florida defaulted on its commitment to Falcon. It replaced its debt to Falcon, in part, with debt from Lydian Private Bank of Palm Beach, an affiliate of Lydian Trust Company, a Florida-based financial services company, founded by Textor. In turn, Lydian was replaced by Comvest Capital II, L.P. ("Comvest"). In 2012, Comvest held \$27.4 million in Digital Domain Florida senior secured debt maturing September 30, 2012, of which \$16 million became due June 30, 2012. Digital Domain Florida's plan to prepay the debt with the 2011 IPO proceeds flopped with

the offering's disappointing proceeds. Lacking money to satisfy its June 30th obligation and facing an immediate risk of defaulting, Digital Domain Florida agreed to refinance the Comvest debt, effectively reducing the \$16 million fixed repayment obligation to \$8 million maturing in 2016, and to repay and refinance the balance.

161. Textor and the other Inside Directors were willing to make a deal, even on highly unfavorable terms, hoping to buy time and figure out yet another way to avoid having their fraud exposed by the collapse of Digital Domain Florida, which was just given a clean audit by the SingerLewak.. Digital Domain Florida paid Cowen & Co. a placement agent fee of \$2.45 million to act as the sole placement agent for a private debt offering. (Form 8k, May 6, 2012). As placement agent, Cowen & Co. was responsible for securing favorable offering terms and advising Digital Domain Florida on the terms of the offering. Instead, Cowen & Co. brought Digital Domain Florida to various "Death Spiral Lenders,"⁵ which spotted a profitable opportunity due to its desperation and the ability to undercut the State's interests.

162. The moniker "death spiral" derives from a key feature of notes purchased by the Defendants in a May 2012 deal with Digital Domain Florida, namely the notes are convertible into a *fixed value* of the issuer's common stock. This characteristic distinguishes these high-risk loans from traditional convertible securities, which are convertible into *fixed numbers* of shares. This feature, coupled with the ability to sell-short the securities, can and has led to manipulative short-selling schemes, which extract the market value of the issuing companies, thereby enriching the purchasers at the expense of issuers. "Death spirals" often result in the issuer's being de-listed from an exchange or forced into bankruptcy.

⁵ The Death Spiral Lenders were Tenor Opportunity Master Fund, Ltd., Tenor Special Situations Funds, L.P., Parsoon Special Situation, Ltd., Hudson Bay Master Fund, Ltd., Empery Asset Masters, Ltd., and Hartz Capital Investments, LLC.

163. On May 8, 2012, Digital Domain Florida announced the securities purchase agreement with the Death Spiral Lenders. The terms reflected the Death Spiral Lenders' success in structuring a deal to enrich themselves at the expense of the State. The Death Spiral Lenders and Cowen insisted Digital Domain Florida agree to a restrictive covenant requiring it to keep minimum amounts of available cash on hand measured at each month end, which covenant, if not met, triggered default. Digital Domain Florida needed to maintain \$7.5 million cash-on-hand at each month-end beginning June 30, 2012 through August 31, 2012. The required amount increased to \$10 million beginning September 30, 2012 through December 31, 2012. Digital Domain Florida's breach of this covenant would cause immediate default and acceleration. Digital Domain Florida's default was nearly certain, given that on March 31, 2012, it had a cash balance of \$2.5 million, 33% of the covenant imposed under the Death Spiral deal.

164. In the event of a default, the loan terms triggered an immediate acceleration of Digital Domain Florida's obligation to repay the senior notes with interest, as well as an obligation to pay a "Redemption Premium" equal to 115% of the amount due under the notes, and a "Make-Whole" penalty equal to the amount of interest that, but for the default, would have accrued under the notes. (Digital Domain Florida SSCN, §4(b)). Because a default also increased the rate at which the notes accrued interest from 9% to 15% per annum, the "Make-Whole" penalty alone amounted to an additional \$25 million. (*Id.* at ¶ 2(b)). This onerous feature of the notes meant any covenant default would threaten Digital Domain Florida's ability to survive as an ongoing entity.

165. The Death Spiral Lenders and Cowen structured the deal so as to render the ability of Textor and Digital Domain Florida to get financing to replace the Death Spiral Notes cost prohibitive to investors in the equity markets or otherwise. Under the notes, Digital Domain

Florida and Textor were prohibited from changing the capital structure without notice and approval from the Death Spiral Lenders. Such a change in the capital structure of Digital Domain Florida may have invoked draconian penalties requiring it to redeem in cash an amount of the notes designated by the Death Spiral Lenders, plus any applicable make-whole amount and a substantial redemption premium.

166. A prominent feature of the deal was the Death Spiral Lender's ability to engage in short sales of Digital Domain Florida's Common Stock, including using the stock being registered to "close out short positions and to return borrowed shares in connection with such short sales." (Form S-1 filed June 11, 2012).

167. This feature of the deal was the tool the Death Spiral Lenders put in place to allow them to interfere with the State's interest in Digital Domain Florida. This characteristic gave the Death Spiral Lenders the means and incentive to push Digital Domain Florida's stock price lower by expressly allowing the Death Spiral Lenders to sell the stock short. Pushing Digital Domain Florida's stock price lower also had the effect of increasing the Death Spiral Lenders' stake in it created by the conversion feature of the deal described below.

168. The Death Spiral Lenders knew such draconian loan covenants and restrictions could not be satisfied by Digital Domain Florida, and thus it would soon be in default. In addition, the Death Spiral Lenders and Cowen structured the deal in a manner that provided the Death Spiral Lenders with priority first liens over all personal property of Digital Domain Florida and its affiliates under a security and pledge agreement,⁶ securing the Death Spiral Lenders an outsized recovery in the eventual bankruptcy, at the expense of the State, which

⁶ D2 Software, DDH Land Holdings, LLC, DDH Land Holdings II, LLC, Digital Domain, Digital Domain Institute, Inc., Digital Domain International, Inc., Digital Domain Stereo Group, Inc., Digital Domain Tactical, Inc., Mothership Media, Inc. and Tradition Studios, Inc.

would then get little or nothing from such a bankruptcy. The Death Spiral Lenders would not have entered into the deal with Digital Domain Florida unless they were able to secure preferred status in the eventual bankruptcy ahead of the State of Florida's interest. The Death Spiral Lenders knew that their plans to profit from Digital Domain Florida certain default would interfere with Florida's interest, which constitutes tortious interference.

169. In addition, the Death Spiral Lenders and Cowen structured the deal to reap substantial benefits from the demise of Digital Domain Florida. The Death Spiral Lenders had the option to convert the notes and exercise the warrants at any time at an initial conversion price of \$9.72 per share.

170. **The Short Sale Attack.** With the predatory terms of the Death Spiral deal in place, the Death Spiral Lenders launched a short-sale attack on Digital Domain Florida's stock, driving the price into the gutter, rendering Digital Domain Florida otherwise unattractive to other investors, and solidifying their position in the certain bankruptcy of the company.

171. The Death Spiral Lender Defendants engaged in improper, inequitable, and potentially illegal short sale transactions in Digital Domain Florida's common stock, while in possession of negative, material, and confidential inside information concerning it. The Death Spiral Lenders' short-sale attack had the effect of driving Digital Domain Florida's stock price down. As the price of Digital Domain Florida's stock declined further, the Death Spiral Lenders' potential equity interest upon conversion of the notes inversely increased.

172. Through such short selling, the Death Spiral Lender Defendants further enriched themselves at the expense of the State and interfered with the Grant Fund Agreement.

173. On or about June 29, 2012, Digital Domain Florida notified the Death Spiral Lender Defendants of its inability to satisfy the minimum cash-on-hand covenant for June 30,

2012. Digital Domain Florida held off notifying the public of the cash-on-hand shortfall while negotiating with the Death Spiral Lender Defendants for an extension of the June 30th deadline. The fact that Digital Domain Florida was unable to satisfy the cash-on-hand covenant as of June 30th, the original deadline, was material, confidential information.

174. Shortly thereafter, on July 11, 2012, the volume of short sales of Digital Domain Florida common stock spiked, increasing by approximately 40%, due in part to trading by the Death Spiral Lenders.

175. The very next day, on July 12, 2012, Digital Domain Florida reported to the SEC a change to the minimum cash-on-hand deadline from June 30, 2012 to July 2, 2012. (Form 8-K filed July 12, 2012). Within one week of this disclosure, the price of Digital Domain Florida's stock dropped by approximately 20%, due to the significance of the information revealed (i.e. the change in its initial deadline for the minimum cash-on-hand covenant).

176. During July 2012, Digital Domain Florida anticipated it would again fail to meet the next deadline for the minimum cash-on-hand covenant of July 30, 2012. Digital Domain Florida again notified the Death Spiral Lenders of the upcoming shortfall and again held off notifying the public of the cash-on-hand shortfall while negotiating an extension of the July 30th deadline. The fact that Digital Domain Florida was unable to satisfy the cash-on-hand covenant as of July 30th, the second deadline, was also material, confidential information.

177. Toward the end of July 2012, and again on August 9, 2012, the volume of short sales of Digital Domain Florida common stock again increased, due in part to trading activity by the Death Spiral Lenders.

178. On August 14, 2012, Digital Domain Florida entered into the Second Amendment Agreement, amending Death Spiral Notes, effective retroactively as of July 31, 2012. Digital

Domain Florida and the Death Spiral Lenders agreed to an extension of the second deadline from July 31, 2012 to August 20, 2012 to satisfy the cash-on-hand covenant.

179. Within one week following Digital Domain Florida's August 2012 Form 8-K disclosure, the price of Digital Domain Florida stock dropped by approximately 21%, due to the significance of the information revealed (i.e. the change in Digital Domain Florida's initial deadline for the minimum cash-on-hand covenant).

180. Textor reportedly stated the Death Spiral Lenders profited as much as \$28 million from their short selling activities. To the extent the Death Spiral Lenders shorted Digital Domain Florida shares and profited therefrom, it was as a result of their inside knowledge regarding its great financial distress. Any profits earned by the Death Spiral Lenders from such short sales were improper and made with non-public, inside information about Digital Domain Florida.

181. There was no way Digital Domain Florida could meet its obligations to the Death Spiral Lenders. Digital Domain Florida's financial statements were "insanely cash-flow negative" because it was incurring expenses during this time at a rate of approximately \$800,000 per day, as a result of its massive investments in the animated film and education businesses, neither of which were generating revenue or earnings, and its involvement in its ill-fated co-production deals. (Tr. of Hearing, p. 131:20-25, In re DDMG, Case No. 12-12568-BLS (Bankr. D. Del. Sept. 12, 2012)).

182. Predictably, the Death Spiral Lenders caused Digital Domain Florida to file for bankruptcy. On August 21, 2012, just days after securing a \$5 million loan from the Palm Beach Capital Defendants to make payroll, the note holders notified Digital Domain Florida in writing that the notes were in default, because it had failed to satisfy the terms of the available cash covenant as of August 20, 2012, ***resulting in an immediate liability of over \$70 million.***

183. On September 11, 2012, Digital Domain Florida filed for bankruptcy. At the time, Digital Domain Florida had only \$40,000 in its bank account and, again, could not meet its payroll.

184. The predatory terms of the death spiral notes and the short sale attack, with non-public, insider information, sent Digital Domain Florida into bankruptcy. The Death Spiral Lenders managed to have an ally, Michael Katzenstein of FTI, appointed as the Chief Restructuring Officer. The Death Spiral Lenders claimed they were owed over \$70 million in Digital Domain Florida's bankruptcy. They received \$35,080,442 from an expedited sale of the company only twelve days after Digital Domain Florida entered bankruptcy, which the Bankruptcy Court was reluctant to grant, and described as "unprecedented" and "extraordinary." (Tr. of Hearing 10:2-3, 33:14-16, 229:9-14, 230:4-11, In re DDMG, Case No. 12-12568-BLS (Bankr. D. Del. Sept. 12, 2012_). The Death Spiral Lenders profited immensely from Digital Domain Florida's demise knowing it was at Florida's expense. The State now only can hope to get its money back in bankruptcy, including from the Death Spiral Lenders.

VIII

INSPECTOR GENERAL INVESTIGATION

185. Digital Domain Florida's obfuscation continued well past the company's bankruptcy.

186. When the Office of the Inspector General investigated the grant after the crash, Textor's attorneys sent a letter in an attempt to avoid any responsibility for the fraud. The letter claimed that Digital Domain Florida had not made any misrepresentations to the State in connection with the grant because it "was a new company which had no financial past, no existing debt, and no prior litigation." (See Mar. 20, 2013 Letter to Melinda Miguel, attached to

Review of the 2009 Economic Development Incentive Award to Digital Domain Media Group, Inc., Report No.: 2013-11, Mar. 26, 2013).

187. The Inspector General's report was also hampered by a lack of cooperation from relevant witnesses. For example, the person with the most direct knowledge of Digital Domain's fraud and efforts to circumvent the statutory process -- former Governor Crist -- failed to respond when contacted by the Inspector General. (See Review of the 2009 Economic Development Incentive Award to Digital Domain Media Group, Inc., Report No.: 2013-11, Mar. 26, 2013, p. 16)

COUNT I: FRAUD
(John Textor & Jonathan Teaford)

188. Plaintiff realleges and incorporates by reference paragraphs 1-187 as if set forth fully herein.

189. Defendants Textor and Teaford engaged in fraud and caused significant damage to Florida as set forth herein.

190. On or about June 30, 2009, the State and Digital Domain Florida entered into the Grant Fund Agreement, under which the State agreed to provide \$20 million to Digital Domain Florida, which was required to meet the specific milestones of a business plan set forth in the Grant Fund Agreement.

191. Textor and Teaford made material misrepresentations or omissions to the State, which the State relied upon in entering into the Grant Fund Agreement. In reliance on the Textor and Teaford misrepresentations, the State distributed \$20 million to Digital Domain Florida. Textor and Teaford intended that their misrepresentations and omissions would induce the State to award the grant to Digital Domain Florida.

192. As previously alleged in detail, Textor and Teaford made numerous misrepresentations or omissions concerning Digital Domain California's failed IPO, their plan to fund Digital Domain Florida's future operations, the actual condition of Digital Domain Florida's finances, and the results of audits performed on its financial statements.

193. In reliance on negotiations with Textor and Teaford and their misrepresentations and omissions, OTTED approved State funding for Digital Domain Florida in the amount of \$20 million, and entered into the Grant Fund Agreement. Florida relied on Textor and Teaford's misrepresentations and omissions to its detriment in entering into the Grant Fund Agreement with Digital Domain Florida.

194. Had Textor and Teaford disclosed their actual knowledge of the bleak financial picture of Digital Domain Florida, Florida would not have entered into the Grant Fund Agreement.

195. Florida did not learn of Textor and Teaford's fraudulent misrepresentations and omissions until around the time when Digital Domain Florida filed bankruptcy. As set forth in detail above, Textor and Teaford fraudulently concealed, and conspired to conceal with the Palm Beach Capital Defendants, SingerLewak and the Outside Director Defendants their earlier misrepresentations and omissions. Due to their fraudulent concealment of the true nature of their deceit, the State of Florida did not learn of the fraudulent misrepresentations and omissions until Digital Domain Florida filed bankruptcy in September 2012.

196. As a direct and proximate result of the fraud by Textor and Teaford, Florida has been damaged by losing the funds distributed to Digital Domain Florida pursuant to the Grant Fund Agreement as well as incurring attorneys' fees and costs in connection with Digital Domain Florida's bankruptcy and this action.

WHEREFORE, Florida demands judgment against Textor and Teaford for damages, attorneys' fees and costs under the Wrongful Act Doctrine, prejudgment interest, costs, and other relief as the Court deems just and proper.

COUNT II: CIVIL CONSPIRACY TO COMMIT FRAUD
(All Defendants)

197. Florida realleges and incorporates by reference paragraphs 1-187 as if set forth fully herein.

198. Based on previous allegations, all defendants acted in concert to perpetrate a scheme to defraud the State and to conceal the fraud.

199. Textor and Teaford defrauded the State to enter into the Grant Fund Agreement. Textor and Teaford knowingly acted in concert in soliciting the State to enter into the Grant Fund Agreement, pursuant to which the State distributed \$20 million to them. Textor and Teaford knowingly acted in concert in misrepresenting material facts or failing to disclose material facts that were necessary to make their statements not misleading. Textor and Teaford knowingly acted in concert to induce the State to rely on their material misrepresentations or omissions and thereby induced the State reliance.

200. As set forth in detail above, the California Officers and Directors and Falcon acted in concert with Textor and Teaford to defraud the State to enter into the Grant Fund Agreement, give Digital Domain Florida a controlling interest in California with the ultimate goal of merging the two entities, and use grant money to pay down Digital Domain California's debt to Falcon, and exonerate the California Directors' and Officers' personal guarantees.

201. As set forth in detail above, Textor, Teaford, Nichols and the Outside Directors undertook an IPO with the Palm Beach Capital Defendants and the Underwriter Defendants further concealing Digital Domain Florida's dire financial condition and thereby concealing the

earlier material misrepresentations or omissions to the State by Textor and Teaford which induced the State to enter into the Grant Fund Agreement. The IPO supplied immediate funds to keep Digital Domain Florida running and thereby conceal for an additional period the earlier misrepresentations by Textor and Teaford to the State and Digital Domain Florida's poor financial condition.

202. The Inside Director Defendants and Underwriter Defendants made material misrepresentations or omissions in public filings. The Outside Director Defendants made or recklessly approved the material misrepresentations or omissions by the Inside Director Defendants and the Underwriter Defendants. Textor and the Palm Beach Capital Defendants fraudulently propped-up the price of Digital Domain Florida stock in the IPO. SingerLewak failed to identify the secret loan described herein and rendered an unqualified audit opinion when a going concern opinion was necessary.

203. The Underwriter Defendants were essential to completion of Digital Domain Florida's IPO. In connection with Digital Domain Florida's IPO, the Underwriter Defendants promoted, marketed or sold common stock of Digital Domain Florida to investors. The Underwriter Defendants solicited investors and created investor demand for the stock of Digital Domain Florida. The Underwriter Defendants knew or should have known of the significant financial difficulties of Digital Domain Florida and the material misrepresentations and omissions in its public filings or the secret loan the Palm Beach Capital Defendants gave to Textor to falsely and deceptively prop-up demand for the IPO and to rescue the IPO from failure.

204. Textor and Palm Beach Capital Defendants knowingly acted in concert to save the failing IPO that continued to conceal the true nature of Digital Domain Florida's poor financial condition. As described more fully herein, Textor and Palm Beach Capital entered into a secret loan agreement that was concealed from the public including the State. Palm Beach Capital

loaned Textor \$10 million to buy Digital Domain Florida's stock in the IPO. Defendants' wrongful conduct led investors to believe that Textor, then-CEO, invested an additional \$10 million of his own money in Digital Domain Florida because he believed it was a good investment. By concealing the true purpose of the transaction and the existence of the Loan Agreement, defendants concealed material facts from the State, which if known to it, would have resulted in the State demanding repayment of the grant money.

205. The Outside Director Defendants' overt acts fraudulently concealed the earlier misrepresentations and omissions of Textor and Teaford that induced the State to enter into the Grant Fund Agreement. The Outside Director Defendants approved and issued public filings with the SEC containing material misrepresentations or omissions regarding the true nature of Digital Domain Florida's poor financial condition. The Outside Director Defendants were reckless or indifferent to the making of false statements to Florida, and thus acquiesced and approved of such false statements. In its SEC filing, Digital Domain Florida misrepresented the reason for raising money in the IPO. In addition, by hiding those circumstances, Textor and Teaford were able to continue keeping secret the earlier fraudulent misrepresentations to the State of Florida. Textor, Teaford and Nichols affirmatively stated in Digital Domain Florida's numerous public filings with the SEC that the Company had sufficient sources of cash to support its business operations through all of 2012.

206. In furtherance of the wrongful conduct described herein, SingerLewak provided unqualified audit opinions without reference to the doubt it had or should have had about the ability of Digital Domain Florida to continue as a going concern based on numerous conditions and events indicating that the Company's liquidity condition was sufficiently precarious to warrant such a qualified audit opinion. Digital Domain Florida continued to incur net losses, record negligible cash flows from operating activities, record stockholders' deficit and undertake

an increasingly heavy debt burden that Digital Domain Florida was unable to sustain. Digital Domain Florida included SingerLewak's May 13, 2011 audit report on its consolidated financial statements as of December 31, 2010 in the IPO offering documents. SingerLewak executed a "Consent of Independent Registered Public Accounting Firm" that was attached as Exhibit 23.1 to the IPO offering documents, which consented to the use in the registration statement and prospectus of its May 13, 2011 report "relating to [its] audit of the consolidated financial statements" and "to the reference to our firm under the caption 'Experts'" in such prospectus and registration statement.

207. Due to defendants' fraudulent concealment of the true nature of their deceit, the State did not learn of the fraudulent misrepresentations and omissions until Digital Domain Florida filed bankruptcy in September 2012.

208. This conspiracy to defraud the State, including through the unlawful overt acts described above and elsewhere in this Complaint, has directly and proximately caused Florida damage and injury. As a direct and proximate result thereof, Florida has been damaged by losing the funds provided to Digital Domain Florida pursuant to the Grant Fund Agreement, as well as incurring attorneys' fees and costs in connection with Digital Domain Florida's bankruptcy and this action.

WHEREFORE, Plaintiff demands judgment against Defendants for damages, attorney's fees and costs under the Wrongful Act Doctrine, prejudgment interest, interest, costs, and any other relief the Court deems just and proper.

COUNT III: GROSS NEGLIGENCE
(SingerLewak)

209. The Plaintiff realleges and incorporates paragraphs 1-187 as if set forth fully herein.

210. As previously alleged in detail, SingerLewak grossly negligently performed audits of Digital Domain Florida. SingerLewak failed to perform its audits in accordance with applicable auditing standards. As a result, SingerLewak made false statements of material fact or omitted material facts that were necessary to make statements not misleading regarding the financial condition of Digital Domain Florida. SingerLewak knew or should have known that its misleading statements or omissions would be relied upon by the State.

211. Digital Domain Florida was required to cooperate with any monitoring procedures/processes deemed appropriate by OTTED, which included conducting “a State single or project-specific audit [performed] ... in accordance with Section 215.97, Florida Statutes (the Single Audit Act); applicable rules of the Executive Office of the Governor and the Chief Financial Officer, and Chapter 69I-5, Rules of the Department of Financial Services” if Digital Domain Florida expended \$500,000 or more from money distributed pursuant to the Grant Fund Agreement in a fiscal year, which it did. (GFA Ex. “B,” Special Audit Requirements).

212. In addition, Digital Domain Florida was obligated “to permit access [to the Chief Financial Officer, Auditor General or Chief Inspector General] to its records and independent auditor’s working papers as necessary to comply with the requirements of [the] Agreement.” *Id.* Copies of the audit reports and certain related audit materials generated in the course of the audit were to be furnished to the State of Florida (the Auditor General and a designated accounting firm). (Id.)

213. Every audit opinion Digital Domain Florida received from SingerLewak from 2009 through its bankruptcy on September 11, 2012 was unqualified, despite the fact that the internal financial and accounting controls of the Company were either non-existent or totally inadequate.

214. Digital Domain Florida continued to incur net losses, record negligible cash flows from operating activities, record stockholders' deficit and undertake an increasingly heavy debt burden that Digital Domain Florida was unable to sustain.

215. On March 30, 2012, less than six months before Digital Domain Florida filed bankruptcy, the SingerLewak issued a clean audit opinion on Digital Domain Florida's financial statements for the period ended December 31, 2011.

216. As a result of the above, each of the SingerLewak's opinions on Digital Domain Florida's financial statements for the periods ending December 31, 2009, December 31, 2010 and December 31, 2011 should have been qualified by SingerLewak that serious doubts existed about Digital Domain Florida's ability to continue as a going concern.

217. Further, during the time when SingerLewak was conducting its audit of the Digital Domain Florida's financial statements for the period ending December 31, 2011 and issued its unqualified audit opinion for that year, Digital Domain Florida was experiencing a terminal liquidity crisis. The result of that, which SingerLewak knew was coming, was Digital Domain Florida filed bankruptcy in September 2012.

218. Florida received false and inaccurate audit reports from SingerLewak and relied on that information in deciding in 2010 and/or 2011 that Digital Domain Florida remained eligible for the grant and/or for the other benefits being provided by the State to Digital Domain Florida. SingerLewak failed to issue a going concern qualification

219. Florida incurred damages because it relied on unqualified representations by SingerLewak that Digital Domain Florida's financial condition was sound.

WHEREFORE, Florida demands judgment against SingerLewak for damages, attorney's fees and costs under the Wrongful Act Doctrine, prejudgment interest, interest, costs, and any other relief the Court deems just and proper.

COUNT IV: AIDING & ABETTING FRAUD
(All Defendants except Textor & Teaford)

220. Florida realleges and incorporates by reference paragraphs 1-187 as if set forth fully herein.

221. SingerLewak and the Outside Director Defendants aided and abetted the fraud of Textor and Teaford. With actual knowledge of misrepresentations made by Textor and Teaford in soliciting the State to enter into the Grant Fund Agreement, SingerLewak, Nichols and the Outside Director Defendants each provided substantial assistance to Textor and Teaford in maintaining and continuing their fraud.

222. As set forth in detail above, the California Officers and Directors and Falcon substantially assisted Textor and Teaford, with knowledge of their misrepresentations, to defraud the State to enter into the Grant Fund Agreement, give Digital Domain Florida a controlling interest in California with the ultimate goal of merging the two entities, and use grant money to pay down Digital Domain California's debt to Falcon, and exonerate the California Directors' and Officers' personal guarantees.

223. As set forth in detail above, Textor, Teaford, Nichols and the Outside Directors undertook an IPO with the Palm Beach Capital Defendants and the Underwriter Defendants further concealing Digital Domain Florida's dire financial condition and the earlier material misrepresentations or omissions to the State by Textor and Teaford inducing the State to enter into the Grant Fund Agreement. The IPO supplied money to keep Digital Domain Florida running and thereby concealed the earlier misrepresentations to the State and Digital Domain Florida's poor financial condition.

224. The Inside Director Defendants and the Underwriter Defendants made material misrepresentations or omissions in public filings. The Outside Director Defendants made or

recklessly approved the material misrepresentations or omissions by the Inside Director defendants and the Underwriter Defendants. Textor and the Palm Beach Capital Defendants fraudulently propped-up the price of Digital Domain Florida stock in the IPO. SingerLewak failed to identify the secret loan and rendered an unqualified audit opinion when a going concern opinion was necessary.

225. The Underwriter Defendants substantially assisted the fraud of Textor and Teaford. The Underwriter Defendants were essential to completion of Digital Domain Florida's IPO. In connection with Digital Domain Florida's IPO, the Underwriter Defendants promoted, marketed or sold common stock of Digital Domain Florida to investors in connection with Digital Domain Florida's IPO with knowledge of its dire financial condition. The Underwriter Defendants solicited investors and created investor demand for the stock of Digital Domain Florida. The Underwriter Defendants knew or should have known of the significant financial difficulties of Digital Domain Florida and the material misrepresentations and omissions in its public filings.

226. The Palm Beach Capital Defendants aided and abetting the fraud of Textor and Teaford. With actual knowledge of representations made by Textor and Teaford in soliciting the State to enter into the Grant Fund Agreement, the Palm Beach Capital Defendants furnished substantial assistance to Textor and Teaford to maintain and continue their fraud.

227. Palm Beach Capital provided substantial assistance to Textor by assisting in saving the failing IPO through a secret loan, of \$10 million to Textor, which ultimately continued to conceal the true nature of Digital Domain Florida's poor financial condition. The Palm Beach Capital Defendants' wrongful conduct led investors to believe that inside director defendant John Textor, then-CEO, invested an additional \$10 million of his own money in Digital Domain Florida because he believed it was a good investment. By concealing the true purposes of the

transaction and the existence of the Loan Agreement, Defendants were able to conceal Digital Domain Florida's dire liquidity condition from investors and the State.

228. The Outside Director Defendants substantially assisted Textor, Teaford and Nichols, and were instrumental in concealing the earlier misrepresentations and omissions of Textor and Teaford that induced the State to enter into the Grant Fund Agreement. The Outside Director Defendants approved and issued public filings with the SEC containing material misrepresentations or omissions that concerned the true nature of Digital Domain Florida's poor financial condition. The Outside Director Defendants were reckless or indifferent to the making of false statements to Florida and thus acquiesced and approved of such false statements. In its SEC filing, Digital Domain Florida misrepresented the reason for raising money in the IPO. In addition, by hiding those circumstances, Textor and Teaford were able to continue keeping secret the earlier fraudulent misrepresentations to the State of Florida. Textor, Teaford and Nichols affirmatively stated in Digital Domain Florida's numerous public filings with the SEC that the Company had sufficient sources of cash to support its business operations through all of 2012.

229. Each year SingerLewak issued, and the Director Defendant's approved, unqualified audit opinions despite the fact that Digital Domain Florida continued to incur net losses, record negligible cash flows from operating activities, record stockholders' deficit and undertake an increasingly heavy debt burden that Digital Domain Florida was unable to sustain.

230. SingerLewak provided unqualified audit opinions without reference to the doubt it had or should have had about the ability of Digital Domain Florida to continue as a going concern based on numerous conditions and events indicating that the Company's liquidity condition was sufficiently precarious to warrant such a qualification audit opinion. Digital Domain Florida continued to incur net losses, record negligible cash flows from operating activities, record stockholders' deficit and undertake an increasingly heavy debt burden that

Digital Domain Florida was unable to sustain. Digital Domain Florida included SingerLewak's May 13, 2011 audit report on Digital Domain Florida's consolidated financial statements as of December 31, 2010 in the IPO offering documents. SingerLewak executed a "Consent of Independent Registered Public Accounting Firm" that was attached as Exhibit 23.1 to the IPO offering documents, which consented to the use in the registration statement and prospectus of its May 13, 2011 report "relating to [its] audit of the consolidated financial statements" and "to the reference to our firm under the caption 'Experts' in such" prospectus and registration statement.

231. On March 30, 2012, less than six months before Digital Domain Florida filed bankruptcy, the Auditor Defendant issued a clean audit opinion on Digital Domain Florida's financial statements for the period ended December 31, 2011, which was approved by the Outside Director Defendants.

232. SingerLewak's opinions on Digital Domain Florida's financial statements for the periods ended December 31, 2009, December 31, 2010 and December 31, 2011 should have been qualified by, or otherwise indicated, that serious doubts existed about Digital Domain Florida's ability to continue as a going concern.

233. SingerLewak's unqualified audits and the Outside Defendant's approval of those and other misleading statements or omissions in public filings with the SEC assisted Textor and Teaford to maintain the illusion of Digital Domain Florida's continued viability as a going concern and conceal their earlier fraudulent misrepresentations or omissions to the State in entering into the Grant Fund Agreement.

234. Due to their fraudulent concealment of the true nature of their deceit, the State of Florida did not learn of the fraudulent misrepresentations and omissions until Digital Domain Florida filed bankruptcy in September 2012.

WHEREFORE, Plaintiff demands judgment against the Defendants (except Textor and Teaford) for damages, attorney's fees and costs under the Wrongful Act Doctrine, prejudgment interest, interest, costs, and any other relief the Court deems just and proper.

COUNT V: TORTIOUS INTERFERENCE WITH GRANT FUND AGREEMENT
(Cowen & Co.)

235. The Plaintiff realleges and incorporates by reference paragraphs 1-187 as if set forth fully herein.

236. This is a claim for tortious interfere with the Grant Fund Agreement. As previously alleged, Cowen knowingly acted to tortiously interfere with the Grant Fund Agreement between the State and Digital Domain Florida. The actions of Cowen assuring the bankruptcy of Digital Domain constitute intentional and unjustified interference with the Grant Fund Agreement between Florida and Digital Domain.

237. Digital Domain Florida engaged Cowen & Co. to act as the sole placement agent for the senior convertible note and warrant offering to the Death Spiral Lenders.

238. As placement agent, Cowen & Co. was engaged to secure a suitable purchaser for Digital Domain Florida's issuance of debt. Cowen was responsible for securing favorable offering terms and advising Digital Domain Florida on the terms of the offering. Cowen & Co. advised Digital Domain Florida to do the death spiral financing and arranged the financing for Digital Domain Florida, as its placement agent. Digital Domain Florida paid Cowen and Co. a placement agent fee of \$2.45 million to act as the sole placement agent. (Form 8k, May 6, 2012).

239. Cowen knew about the Grant Fund Agreement, as a result of their due diligence in preparation for their purchase of debt and equity securities from Digital Domain Florida in a private offering.

240. As set forth above, Digital Domain Florida and its Directors made numerous disclosures in public filings with the SEC about the terms of the Grant Fund Agreement and the significant extent to which Digital Domain Florida relied on the funds from the State to keep its operations running.

241. Cowen knew of Digital Domain Florida's precarious financial position.

242. Instead of fulfilling its fiduciary duty to Digital Domain Florida, Cowen & Co. conspired with the Death Spiral Lenders arranging the private debt and equity issuance and imposing predatory lending terms on Digital Domain Florida that lead to its demise and eventual bankruptcy.

243. Not only did Cowen coerce Digital Domain Florida into a deal that imposed onerous terms that it was likely to breach, but the Death Spiral Lenders and Cowen also structured the deal in a manner that gave the Death Spiral Lenders the ability to short Digital Domain Florida's common stock, which they did, imperiling its stock market value and its viability to survive.

244. In addition, Cowen structured the deal in such a manner to drive the company into the bankruptcy if the terms were not met, which was certain from the inception of the deal.

245. The actions of Cowen resulted in assuring the bankruptcy of Digital Domain and were an intentional and unjustified interference with the relationship between the State and Digital Domain Florida.


246. Florida has been damaged as a result of the Cowen's interference with the Grant Fund Agreement, which prevented Digital Domain Florida from satisfying its obligations to the State.

WHEREFORE, Plaintiff demands judgment against Cowen & Co. for damages, attorney's fees and costs under the Wrongful Act Doctrine, prejudgment interest, interest, costs, and any other relief the Court deems just and proper.

Plaintiff demands a trial by jury on all claims so triable.

DATED this 22nd day of July, 2014.

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