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14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**
16 **WESTERN DIVISION**

17 BLAKE MICHAEL WHITMORE,
18 DANIEL RAPHAEL, MICHAEL
19 DOMINGUEZ, and TOM
20 LOCHTEFELD, on behalf of themselves
and all others similarly situated,

21 Plaintiffs,

22 v.

23 ZACHARY HORWITZ, 1INMM
24 CAPITAL, LLC, and CITY NATIONAL
25 BANK,

26 Defendants.

Case No. 21-cv-3393

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

1 Plaintiffs Blake Michael Whitmore, Daniel Raphael, Michael Dominguez, and
2 Tom Lochtefeld, on behalf of themselves and all others similarly situated, allege as
3 follows against Defendants Zachary A. Horwitz, 1inMM Capital, LLC, and City
4 National Bank, based on personal knowledge as to themselves and their own acts, and
5 otherwise based on the investigations conducted by and through their counsel, including
6 review of Defendants’ public statements, United States Securities and Exchange
7 Commission filings, interviews, media reports, and social media information, as well as
8 other commentary, analysis, and information.

9 **I. SUMMARY OF THE ACTION**

10 1. 1inMM, LLC, by and through its owner and operator, Zachary Horwitz,
11 marketed and sold promissory notes as high-yield investments backed by purported
12 content distribution contracts with Netflix and HBO. Unbeknownst to investors, those
13 contracts never existed. 1inMM had no revenue, and no expectation of ever receiving
14 revenue, at any time. Horwitz paid investor returns using new investor money, raising
15 more than \$690 million before his Ponzi scheme collapsed.

16 2. Instead of acquiring and licensing movie rights, Horwitz diverted and
17 misapplied investor funds—the “movements of funds [were] consistent with a Ponzi
18 scheme,” the Federal Bureau of Investigation concluded, as “incoming investor money
19 was used to repay investors for previous investments. In some instances, the investors
20 were repaid with their own money. In addition, funds were sent to the HORWITZ
21 personal account.” The FBI thus found that the frequent transfers that kept 1inMM afloat
22 reflected “a Ponzi scheme rather than legitimate business along the lines of what
23 HORWITZ described to his investors.” The unlawful nature of Horwitz’s enterprise was
24 revealed on April 5, 2021, when the SEC filed a criminal complaint based on Horwitz’s
25 wrongful conduct. Horwitz now owes investors more than \$230,000,000.

26 3. A single Defendant bank received and processed the 1inMM investments.
27 All of the accounts that held and transferred the money generated by Horwitz’s fraud
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1 were maintained at City National Bank, where Horwitz also had his personal bank
2 account. 1inMM’s banking activities were integral to his scheme to defraud investors.
3 City National loaned Horwitz \$1.4 million during 2019 and 2020 on a personal line of
4 credit, and was on notice of Horwitz’s fraud from a series of red flags associated with
5 the accounts Horwitz was using to perpetrate the fraud. Drawing on 1inMM’s accounts
6 at City National, Horwitz spent millions of dollars on private plane travel, fancy cars,
7 jewelry, and other luxury items. Although hundreds of millions of dollars flowed
8 through the 1inMM enterprise, Horwitz remained the sole signatory on all of 1inMM’s
9 accounts. Further, 1inMM lacked internal controls and engaged in atypical banking
10 activities. Horwitz pooled investment funds from holders of promissory notes in
11 personal and entity accounts, commingling those funds between the accounts and using
12 investor funds to pay purported returns to earlier investors. Despite the high volume of
13 suspicious account activity—and the absence of any income consistent with 1inMM’s
14 stated business—there is no indication City National ever audited or questioned Horwitz
15 about the 1inMM accounts. City National knew of and substantially assisted Horwitz’s
16 fraudulent scheme and is therefore jointly liable to the class of 1inMM investors.

18 **II. PARTIES AND RELEVANT NON-PARTIES**

19 **A. Plaintiffs**

20 4. Plaintiff Blake Michael Whitmore is a citizen of California. Whitmore
21 invested \$200,000 in promissory notes issued by 1inMM through SAC Advisory, LLC.

22 5. Plaintiff Daniel Raphael is a citizen of California. Raphael invested
23 \$100,000 in the 1inMM scheme by purchasing a \$100,000 promissory note.

24 6. Plaintiff Tom Lochtefeld is a citizen of Connecticut. Lochtefeld invested
25 \$150,000 in the 1inMM scheme by purchasing \$150,000 worth of promissory notes.

26 7. Plaintiff Michael Dominguez is a citizen of California. Dominguez invested
27 \$100,000 in promissory notes issued by 1inMM through SAC Advisory, LLC.
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1 **B. Defendants**

2 8. Defendant Zachary Horwitz is a citizen of Los Angeles, California.

3 9. Horwitz, an actor, founded 1inMM Capital, LLC in 2013 as a film
4 distribution company.

5 10. Defendant 1inMM Capital, LLC is a California limited liability company
6 headquartered in Los Angeles. The address of 1inMM’s headquarters is Horwitz’s
7 personal residence.

8 11. All bank accounts associated with 1inMM were maintained at City National
9 Bank. Horwitz was the sole signatory on each 1inMM account.

10 12. Defendant City National Bank is a federally chartered bank with its
11 principal place of business in Los Angeles. City National is a subsidiary of the Royal
12 Bank of Canada, a foreign entity headquartered in Montreal, Quebec.

13 **C. Relevant Non-Parties**

14 13. Home Box Office, Inc. is an American entertainment company best known
15 for its paid television channel HBO. Home Box Office, Inc. is a subsidiary of AT&T
16 Inc., through Home Box Office, Inc.’s parent company Warner Media, LLC. AT&T, Inc.
17 is a Delaware corporation headquartered in Dallas, Texas.

18 14. Netflix, Inc., is an American entertainment company that runs a
19 subscription-based video streaming service. Netflix is a Delaware corporation
20 headquartered in Los Gatos, California.

21 15. A number of entities were formed, or used, by persons persuaded by
22 Horwitz to purchase 1inMM promissory notes. The following subparagraphs describe
23 these “Feeder Funds”:

24 a. JJMT, LLC was a fund founded by Jacob Wunderlin, Mathew
25 Schweinzger, and Joseph Dealteris for the purpose of supplying capital to 1inMM. JJMT
26 agreed to loan Horwitz money in connection with Horwitz’s scheme to deceive investors
27 into investing in non-existent film distribution agreements. JJMT raised at least
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1 \$490,000,000 in investor funds that it paid Horwitz and 1inMM.

2 b. Pure Health Enterprises, Inc. was a fund that raised and supplied
3 investor money to 1inMM. By the end of Horwitz’s scheme, Pure Health had loaned
4 1inMM at least \$20,400,000.

5 c. SAC Advisory, LLC (“SAC”), and its associated Fortune Film Fund
6 One, LLC, and Fortune Film Fund Two, LLC, also raised and supplied investor money
7 to 1inMM to fund its purported film licensing activities. By the end of Horwitz’s
8 scheme, SAC had loaned 1inMM at least \$78,600,000.

9 d. Vausse Films was a fund that raised and supplied investor funds to
10 1inMM. By the end of Horwitz’s scheme, Vausse had loaned 1inMM at least
11 \$21,000,000.

12 e. Movie Fund, LLC was another fund that raised and supplied investor
13 money to 1inMM to fund its purported activities. By the end of Horwitz’s scheme,
14 Movie Fund, LLC had loaned 1inMM at least \$80,000,000.

15 16. Plaintiffs reserve their right to amend these allegations concerning Relevant
16 Non-Parties.

17
18 **III. JURISDICTION AND VENUE**

19 17. This Court has subject matter jurisdiction over all claims in this action
20 pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2), because at least one
21 member of the plaintiff class is a citizen of a different state than at least one Defendant,
22 the total amount in controversy exceeds \$5 million, excluding interest and costs, and the
23 class contains more than 100 members.

24 18. Venue is proper in this District under 28 U.S.C. § 1391 because Defendants
25 Zachary Horwitz and 1inMM transacted business in and maintained their principal place
26 of business in this district.

27 19. The Court has personal jurisdiction over Defendants because, among other
28 things, each Defendant, directly or through its agents and affiliates, sold the subject

1 investments throughout the United States, including in this judicial district, and has
2 sufficient contacts with this district to make the Court’s exercise of personal jurisdiction
3 proper and necessary. Horwitz resides in this district, 1inMM maintained its principal
4 office here, and the underlying scheme to defraud emanated from the Los Angeles area.

5 **IV. OVERVIEW OF RELEVANT BANKING REGULATIONS**

6 20. Federal law requires banks to know their customers and understand their
7 customers’ banking behavior. Under applicable regulations, a bank must maintain
8 procedures that allow it to “form a reasonable belief that it knows the true identity of
9 each customer.” 31 C.F.R. §§ 1020.220(a)(1), (2). Thus, banks are required to collect
10 information about the holder of each account. Where an entity opens an account, the
11 bank must obtain information concerning the individuals who control the account.

12 21. City National is obligated to comply with the Bank Secrecy Act (BSA), 12
13 C.F.R. § 21.21, including regulations broadening its anti-money laundering provisions.

14 22. The BSA requires City National to develop, administer, and maintain a
15 program to ensure compliance. The program must be approved by the bank’s board of
16 directors and noted in the board meeting minutes. It must: (1) provide for a system of
17 internal controls to ensure ongoing BSA compliance, (2) provide for independent testing
18 of the bank’s compliance, (3) designate an individual to coordinate and monitor
19 compliance, and (4) provide training for appropriate personnel.

20 23. City National also must develop a customer due diligence program to assist
21 in predicting the types of transactions, dollar volume, and transaction volume each
22 customer is likely to conduct, thereby providing the bank with a means for identifying
23 unusual or suspicious transactions for each customer. The customer due diligence
24 program allows the bank to maintain awareness of the financial activity of its customers
25 and the ability to predict the type and frequency of transactions in which its customers
26 are likely to engage.

27 24. Customer due diligence programs should be tailored to the risk presented by
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1 individual customers, such that the higher the risk presented, the more attention is paid.
2 Where a customer is determined to be high risk, banks should gather additional
3 information about the customer and accounts, including determining: (1) purpose of the
4 account; (2) source of funds; (3) proximity of customer's residence to the bank; and (4)
5 explanations for changes in account activity.

6 25. Additionally, City National must designate a BSA compliance officer who
7 is a senior bank official responsible for coordinating and monitoring compliance with the
8 BSA. The compliance officer must, in turn, designate an individual at each office or
9 branch to monitor the bank's day-to-day BSA compliance.

10 26. The federal government established the Federal Financial Institutions
11 Council ("FFIEC") in 1979 to prescribe uniform principles, standards, and report forms
12 and to promote uniformity in the supervision of financial institutions. The FFIEC's Bank
13 Secrecy Anti-Money Laundering Manual summarizes BSA and anti-money laundering
14 compliance program requirements, risks and risk management expectations, industry
15 sound practices, and examination procedures. The FFIEC manual is based on BSA laws
16 and regulations and BSA and anti-money laundering directives issued by federal banking
17 agencies, such as the Federal Reserve, the Federal Deposit Insurance Corporation, and
18 the Office of the Comptroller of Currency. *See* FFIEC BSA/AML Examination Manual,
19 at p. 1 (2014).

20 27. Banks must also ensure that their employees follow BSA guidelines. Banks
21 make compliance a condition of employment and incorporate compliance with the BSA
22 and its implementing regulations into job descriptions and performance evaluations.
23 Banks are therefore required to train all personnel whose duties may require knowledge
24 of the BSA on that statute's requirements.

25 28. Banks and their personnel must be able to identify and take appropriate
26 action once put on notice of any of a series of money laundering "red flags" set forth in
27 the FFIEC BSA/AML Examination Manual. These red flags include: (1) repetitive or
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1 unusual fund transfer activity; (2) fund transfers sent or received from the same person
2 to or from different accounts; (3) transactions inconsistent with the account holder’s
3 business; (4) transfers of funds among related accounts; (5) depositing of funds into
4 several accounts that are later consolidated into a single master account; (6) large fund
5 transfers sent in round dollar amounts; (7) multiple accounts established in various
6 corporate names that lack sufficient business purpose to justify the account complexities;
7 (8) multiple high-value payments or transfers between shell companies without a
8 legitimate business purpose; (9) payments unconnected to legitimate contracts or
9 revenue sources; (10) fund transfers containing limited content or related party
10 information; (11) transacting businesses sharing the same address; and (12) an unusually
11 large number of persons or entities receiving fund transfers from one company.

12
13 29. The FFIEC Manual identifies “lending activities” and “nondeposit account
14 services”—including nondeposit investment products—as services requiring enhanced
15 due diligence and carrying a high risk of money laundering because they facilitate a
16 higher degree of anonymity and involve high volumes of currency. Thus, the FFIEC
17 Manual requires heightened due diligence on the part of banks when such services occur,
18 including determining the purpose of the account, ascertaining the source and funds of
19 wealth, identifying account control persons and signatories, scrutinizing the account
20 holders’ business operations, and obtaining explanations for account activity.

21 **V. FACTUAL ALLEGATIONS**

22 **A. Horwitz and 1inMM Committed Investment Fraud Based on a**
23 **Fictitious Film-Rights Licensing Enterprise.**

24 30. Zach Horwitz, better known by the screen name Zach Avery, is a 34-year-
25 old actor. In 2013, Horwitz started a putative film distribution company called 1inMM
26 Capital, LLC. Horwitz soon began soliciting investors to put money into his company.
27 Among the first individuals Horwitz contacted were three of his friends from college,
28 Jacob Wunderlin, Joseph Dealeris, and Mathew Schweinzger. These three individuals

1 purchased their first 1inMM promissory notes in or about March 2014. Horwitz
2 continued to solicit investments from the three, and they formed JJMT to facilitate their
3 investing in 1inMM. By raising funds from their friends and families, the principals of
4 JJMT ultimately provided the majority of 1inMM’s funding.

5 31. From 2013 to February 2021, 1inMM raised money by issuing promissory
6 notes. Investors purchased these notes on the premise that they secured an interest in
7 film licensing agreements between 1inMM and reputable film companies like Netflix or
8 HBO. The relevant promissory notes typically had a term of 6-12 months and were
9 marketed as paying between 15-40% annual returns on principal upon maturation of the
10 note.

11 32. Horwitz represented to investors that through 1inMM (and his purported
12 Hollywood insider status) he was able to purchase the distribution rights to certain films,
13 which he would then license for distribution on HBO and Netflix in Latin American
14 markets. Horwitz represented to investors that his industry connections gave him the
15 ability to license the film distribution rights to HBO and Netflix at a higher price than
16 what he had paid for the rights, and that 1inMM derived its income from the profits from
17 such sales of rights. But in fact, Horwitz transferred investor funds between his various
18 City National accounts to create the illusion that 1inMM was paying out on the
19 promissory notes, using funds from later investments to pay returns on notes purchased
20 earlier.

21 33. In July 2015, Horwitz sent investors hard copies of a purported “Annual
22 Report” produced by 1inMM. The report states that in 2015 1inMM had “continue[d] to
23 source quality feature film projects,” and “expanded [its] business model with HBO
24 Entertainment and Netflix to not only service the thriving Latin-American marketplace
25 but” also to “distribut[e] feature films to Australia and New Zealand as well.”

26 34. This Annual Report document shows thumbnail-sized movie covers for 52
27 films, and contains a section entitled “Our Strategic Partnerships” that depicts the logos
28

1 of such companies as HBO, Netflix, Sony, and City National Bank.

2 35. 1inMM claimed that its “strategy has been and will always be a
3 collateralized investment approach to ensure that solid returns and safe investments are
4 the pillars that solidify our foundation.” The Annual Report document further states that
5 “[i]f, at any point, one of our current output deals” with HBO, Sony, or Netflix
6 “default[s] on a payment owed to the company,” 1inMM would retain its license to the
7 film and hence would still be able to license it to another distribution company. These
8 statements were false.

9 36. Horwitz also falsified emails. A Netflix content executive averred that it
10 became known to Netflix that 1inMM was using forged documents and communications
11 to falsely represent it had entered into licensing agreements with Netflix.
12

13 37. Horwitz raised money from investors who purchased the promissory notes
14 described above. Horwitz claimed that each note corresponded to the purchase of
15 distribution rights to a specific film. For example:

16 a. On December 17, 2018, Horwitz signed a promissory note by which
17 1inMM borrowed \$1,425,500 from investors and obligated itself to repay \$1,998,825
18 within 12 months for a return on investment of approximately 40 percent. This note was
19 purportedly related to a deal for distribution rights to a film called “Active Measures.”

20 b. On September 27, 2019, Horwitz signed a promissory note by which
21 1inMM borrowed \$742,250 from investors and obligated itself to repay \$999,845
22 within six months for a return on investment of approximately 35 percent. This note
23 was purportedly related to a deal for distribution rights to a film called “Bitter Harvest.”

24 38. Horwitz also provided investors with forged documents purporting to show
25 that Horwitz and 1inMM had legitimate film-licensing deals with online platforms. For
26 example:

27 a. Horwitz provided JJMT with a 12-page license agreement dated
28 October 2, 2019, purportedly between 1inMM and Sierra/Affinity (as agent for Meyer

1 Media Group), granting 1inMM exclusive rights to distribute “Bitter Harvest” in Latin
2 America for \$739,500.

3 b. Horwitz provided JJMT with a 13-page distribution agreement dated
4 September 11, 2019, purportedly between 1inMM and HBO, granting HBO rights to
5 distribute the film “Bitter Harvest” in Africa and Latin America for a term of three years
6 for \$999,845.

7 c. Horwitz provided JJMT with a 12-page license agreement dated
8 December 17, 2018, purportedly between 1inMM and Sierra/Affinity (as agent for
9 Shooting Films), granting 1inMM exclusive rights to distribute the film “Active
10 Measures” in certain foreign countries for a term of 15 years for \$1,425,500.

11 39. A member of HBO’s legal department attested that HBO had obtained
12 licenses to the films listed in 1inMM’s promotional materials from studios unaffiliated
13 with Horwitz like Lionsgate or Sony.

14 **B. The Investor Fraud Was Made Possible by 1inMM’s Accounts and**
15 **Banking Activities at City National.**

16 40. 1inMM raised more than \$690,000,000 from investors nationwide. Many of
17 these individuals invested their retirement funds in the scheme. 1inMM now owes its
18 investors more than \$234,700,000, and is in default to investors as follows:

- 19 a. \$165,000,000 owed to JJMT;
- 20 b. \$22,000,000 owed to Movie Fund;
- 21 c. \$29,700,00 owed to SAC;
- 22 d. \$8,000,000 owed to Vausse Films; and
- 23 e. \$10,000,000 owed to Pure Health.

24 41. Horwitz was the sole signatory on all of 1inMM’s company bank accounts:
25 “1inMM Business Account,” “1inMM Business Account #2,” and “1inMM Productions
26 Account” (the “1inMM Accounts”). Horwitz was the sole owner, and maintained sole
27 operational control over, 1inMM and each of its related entities. Horwitz maintained his
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1 personal bank account at City National, along with the 1inMM Accounts, and transferred
2 money directly between the 1inMM Accounts and his personal account.

3 42. After conducting a forensic analysis of 1inMM Business Account and
4 1inMM Business Account #2, the SEC determined that “disbursements made to
5 investors” out of these company accounts were “Ponzi payments based on the fact that
6 all the money in the bank account at the time the payments were made consisted of
7 investor funds.” The SEC found that a sample of the fraudulent payments made from
8 1inMM Business Account totaled nearly \$2,500,000 in March 2017, more than
9 \$3,000,000 in November 2018, and over \$3,500,000 in June 2019. Every penny of these
10 payments was investor money.

11 43. On March 26, 2018, Horwitz’s personal account at City National had a
12 balance of approximately \$100,000. The next day, \$2,225,564 of investor money was
13 deposited into the account. The day after that, Horwitz transferred more than \$3,000,000
14 from the 1inMM Accounts to his personal account and, using the investor funds,
15 purchased a private home for \$5,556,401 near Beverly Hills.

16 44. Horwitz also used investor funds in the City National accounts to pay for
17 personal luxuries and extravagant trips. In 2018, Horwitz used money invested by class
18 members to pay for the following personal expenses, among others: (1) satisfying
19 personal credit-card debt of \$1,842,840; (2) chartering private planes at a cost of
20 \$137,072; and (3) paying at least \$691,800 for luxury automobiles. In 2016 and 2017
21 Horwitz spent at least \$124,582 in investor money on trips to Las Vegas. As part of
22 those trips Horwitz paid approximately \$58,000 to “Red Carpet VIP,” a travel company
23 whose website shows young women in bikinis.

24 45. Furthermore, Horwitz repeatedly commingled investor and personal funds.
25 On one occasion, a 1inMM Account received \$23,756 from another Horwitz account
26 (which the SEC termed the “Rogue Black” account), and the 1inMM Account then
27 transferred \$23,756 to Horwitz’s personal account. On another occasion, Horwitz’s
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1 personal account received \$30,000 from a source labeled “Tr Invst A/C,” \$23,756 from
2 1inMM Business Account #2, and \$18,000 from another of Horwitz’s accounts—after
3 which Horwitz’s personal account disbursed \$33,762 in credit-card payments, \$18,769
4 toward a mortgage, and \$11,980 into another 1inMM Account.

5 46. As of April 1, 2021, the 1inMM Accounts held only around \$1.15 million, a
6 shortfall of over \$200 million from the investor funds that had been raised.

7 **C. City National Bank Materially Aided the Investment Fraud.**

8 47. Horwitz’s banking activities were integral to his scheme to defraud
9 investors. Horwitz could not have carried out his scheme without a compliant financial
10 institution willing to look the other way when confronted with suspect account activity.

11 48. Horwitz maintained at least seven different bank accounts at City National
12 for which he was the sole authorized signatory. Horwitz also maintained a personal bank
13 account at City National, as well as a City National bank account for the MJLZ Trust (a
14 Horwitz-created trust that, as late as April 2021, held title to a \$5.5 million dollar home
15 in Los Angeles). City National also provided Horwitz with a personal credit line in
16 excess of \$1.1 million.

17 49. As set forth above, federal law requires banks to know their customers and
18 understand their customers’ banking behavior. When an entity opens an account, the
19 bank must obtain information concerning the individuals who control the account as well
20 as the nature of the entity’s business. To these ends, when establishing a bank account
21 for an entity, banks classify the entity in accordance with the North American Industry
22 Classification System—i.e., banks assign the entity a “NAICS Code.”

23 50. City National applied the NAICS designation for “film finance” to the two
24 primary business accounts through which Horwitz perpetrated his scheme. Despite City
25 National’s recognition that Horwitz’s supposed business model related to film finance,
26 the only business model consistent with Horwitz’s banking practices was the operation
27 of a Ponzi scheme.
28

1 51. Had 1inMM been a legitimate film financing business, City National would
2 have processed and seen debits from the accounts to purchase film distribution rights.
3 And it would have processed and seen credits from film distributors like HBO and
4 Netflix for the purchase of those rights. Instead, once investor funds were deposited into
5 the business accounts controlled by Horwitz, the funds received were used to repay
6 Horwitz’s earlier investors, in Ponzi-like fashion. Millions of dollars also were diverted
7 into Horwitz’s personal account at City National, and used to purchase Horwitz’s multi-
8 million-dollar home, pay off his credit card balances and fund a lavish lifestyle.

9 52. Horwitz treated his accounts at City National as “pass-through” accounts, a
10 recognized marker of Ponzi-style fraud or money laundering. In December 2018, the
11 1inMM capital account started with a balance of more than \$4.3 million. Over the course
12 of the month, it received more than \$16.3 million in deposits comprised of investor
13 funds. More than \$18.4 million in wires left the account, round-tripping back to
14 investors. And more than \$680,000 in transfers were made to *other* Horwitz-related
15 accounts, including \$500,000 to Horwitz’s personal account. The 1inMM capital
16 account ledger reflected no payments consistent with the purchase or sale of movie
17 distribution rights. There were no payments to sales agents or film production
18 companies. Further, no money came in from HBO, Sony, Netflix or any other online
19 entertainment platform. At month’s end, the account balance was just over \$1.4 million.

20 53. In addition, transfers between Horwitz’s accounts were almost always in
21 round dollar amounts even when millions of dollars were being moved around. Round
22 number transfers, another hallmark of financial fraud, are a “red flag” cited in the FFIEC
23 BSA/AML Examination Manual referenced above.

24 54. The account activities in which Horwitz was engaging reflected
25 characteristic indicia of a Ponzi scheme and no indication of a legitimate investment
26 business. Yet City National processed all of Horwitz’s suspicious transfers even though
27 it had sophisticated artificial intelligence systems for detecting money laundering and
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1 other suspicious account activity. City National never took any steps to close Horwitz's
2 accounts.

3 55. In March 2019, despite the commingling, pass-through activity, round
4 dollar transfers, and declining funds in the other Horwitz-related accounts, City
5 National's "Entertainment Premier" division underwrote and extended Horwitz a
6 personal line of credit for \$1.14 million (activity triggering enhanced due diligence
7 obligations under the FFIEC Manual). Even with 1inMM's account balances dwindling,
8 City National decided to fund this line of credit to retain Horwitz as a customer. It even
9 allowed Horwitz to put up as collateral a securities account controlled at least partly by
10 his mother. Horwitz used the money from the City National line of credit to keep his
11 1inMM scheme going.

12 56. 1inMM also touted its relationship with City National in investor marketing
13 materials and in legal documents it circulated to investors, lending an air of legitimacy to
14 its business.

15
16 **D. The Fraud Is Revealed**

17 57. Horwitz and 1inMM paid investors their promised returns until December
18 2019, when Horwitz and 1inMM began defaulting on their promissory notes with JJMT.

19 58. Horwitz attempted to conceal the impending defaults by maintaining that
20 HBO and Netflix were refusing to provide agreed-upon payments. Horwitz forged
21 emails purporting to show employees at Netflix and HBO communicating with 1inMM
22 about its licensing agreements. He then provided these phony emails to investors in an
23 effort to placate them.

24 59. On February 13, 2020, Horwitz emailed the JJMT principals, passing on
25 forged correspondence between him and a "Senior Counsel" at Netflix. In the forwarded
26 email, the senior counsel wrote that Netflix was performing an audit to confirm "that all
27 materials are in place, rights are cleared, paperwork is in order, etc." Horwitz forwarded
28 multiple similar emails to JJMT over the next few months.

1 60. In March 2020, Horwitz informed investors that Netflix was performing an
2 audit on the films he had licensed it. Horwitz claimed the reason for this audit was to
3 ensure the films had “clear title,” and that Netflix would pay 1inMM the licensing fees
4 when it completed the audit.

5 61. As for HBO Latin America, Horwitz claimed that division was
6 restructuring, which would require it to change its operating practices. Horwitz again
7 forwarded multiple fabricated emails to JJMT purporting to show employees at HBO
8 discussing this restructuring with Horwitz.

9 62. Law firm K&L Gates provided legal counsel to Horwitz. With his
10 fraudulent scheme beginning to unravel and promissory debts overdue, a New York-
11 based K&L Gates attorney wrote a letter dated October 30, 2020 to investors assuring
12 them that payments were coming soon. Horwitz’s K&L Gates lawyer informed the
13 investors that 1inMM’s default resulted from HBO’s failure to pay 1inMM for content
14 that 1inMM had licensed to HBO. He wrote that 1inMM was negotiating with HBO and
15 expected payment within month. The attorney designated his letter “STRICTLY
16 CONFIDENTIAL,” warning the investors that any disclosures about 1inMM’s dealings
17 with HBO might jeopardize any deal and dash their hopes of repayment.
18

19 **E. The SEC’s Enforcement Action**

20 63. On April 5, 2021, the SEC filed a criminal complaint against Horwitz and
21 1inMM in this district. The complaint alleges that Horwitz ran a Ponzi scheme.

22 64. That same day Horwitz was arrested at his home in Los Angeles, and he
23 remains in custody.

24 **VI. AGENCY AND ALTER EGO ALLEGATIONS**

25 65. At all relevant times, Defendants and each Relevant Non-Party was a
26 principal, agent, alter ego, joint venturer, partner, or affiliate of Defendants and each of
27 the other Relevant Non-Parties, and in doing the acts alleged herein, was acting within
28 the course and scope of that principal, agent, alter ego, joint venture, partnership, or

1 affiliate relationship. Defendants and each Relevant Non-Party had actual knowledge of
2 the wrongful acts of Defendants and each of the other Relevant Non-Parties; ratified,
3 approved, joined in, acquiesced, or authorized the wrongful acts of Defendants and each
4 of the other Relevant Non-Parties; and retained the benefits of those wrongful acts.

5 66. Defendants and each Relevant Non-Party aided and abetted, encouraged,
6 and rendered substantial assistance to Defendants and each of the other Relevant Non-
7 Parties in perpetrating their fraudulent scheme on Plaintiffs and the class. In taking
8 action, as alleged herein, to aid, abet, encourage, and substantially assist the
9 commissions of the wrongful acts and other misconduct set forth herein, Defendants and
10 each Relevant Non-Party acted with an awareness of its primary wrongdoing and
11 realized that its conduct would substantially aid the accomplishment of the wrongful acts
12 and purposes set forth herein.

13
14 **VII. TOLLING OF THE STATUTES OF LIMITATIONS**

15 67. Horwitz and 1inMM, aware of the illegal scheme and its injurious effects,
16 fraudulently concealed the scheme by failing to report it while continuing to solicit new
17 investors. Horwitz and 1inMM fraudulently concealed from Plaintiffs that the
18 promissory note offered by 1inMM were fabricated, and that, in fact, 1inMM and
19 Horwitz had never had any business relations with Netflix, Sony or HBO; that rather
20 than profiting from selling film rights at an increased price, Horwitz and 1inMM were
21 embezzling millions of dollars in investor funds for his own personal use and enjoyment;
22 and that Horwitz and 1inMM had never entered into any agreements whatsoever with its
23 purported strategic partners.

24 68. Horwitz and 1inMM were aware that Plaintiffs did not know about the
25 licensing fraud. Horwitz and 1inMM had superior and exclusive knowledge of that
26 fraud. Despite reasonable diligence on their part, Plaintiffs and class members were kept
27 ignorant by Horwitz and 1inMM of the factual bases for these claims for relief.

28 69. Horwitz and 1inMM caused to be distributed materials containing material

1 misstatements and omissions designed to entice Plaintiffs to purchase supposedly safe
2 investments with high returns generated by Horwitz's and 1inMM's contacts in film
3 production. These fraudulent misrepresentations had the effect of concealing that
4 Horwitz was, in fact, using new investor funds to pay existing investors' supposed
5 returns.

6 70. Plaintiffs reasonably relied to their detriment on Horwitz's and 1inMM's
7 fraudulent concealment of their violations. As a result of this concealment, Plaintiffs and
8 class members did not believe that it was necessary to file a lawsuit.

9 71. Plaintiffs did not discover, and exercising reasonable diligence could not
10 have discovered, the facts establishing Horwitz's and 1inMM violations or the harm
11 caused thereby until the FBI arrested Zachary Horwitz in April 2021. Plaintiffs learned
12 of the relevant actions of Horwitz and 1inMM through the SEC actions and their
13 coverage in the press. Because Plaintiffs could not have reasonably discovered the facts
14 constituting Defendants' violations until April 2021, all applicable statutes of limitation
15 were tolled until then.

16
17 **VIII. CLASS ACTION ALLEGATIONS**

18 72. Plaintiffs bring this suit as a class action on behalf of themselves and all
19 other persons similarly situated, pursuant to Federal Rules of Civil Procedure 23(a) and
20 (b)(3), on behalf of a class of all persons who directly, or indirectly, invested in 1inMM
21 promissory notes.

22 73. Excluded from the class are Defendants, their parents, affiliates,
23 subsidiaries, agents, legal representatives, predecessors, successors, assigns, employees,
24 any entity in which Defendants has a controlling interest or which has a controlling
25 interest in Defendants, and the Relevant Non-Parties listed above.

26 74. Numerosity. The class members are too numerous to be practicably joined.
27 The class members are identifiable from information and records in the possession,
28 custody, or control of Defendants or the Relevant Non-Parties. Notice of this action can

1 be provided to all members of the class, and the disposition of their claims in a single
2 action will provide substantial benefits to all parties and the Court.

3 75. Typicality. Plaintiffs' claims are typical of the claims of other members of
4 the class. Plaintiffs and each class member invested either directly, through solicitations
5 by Defendants, or indirectly via solicitations from a Feeder Fund or other entity, in the
6 1inMM licensing scheme and were thus subject to the wrongful conduct alleged herein.

7 76. Adequacy of Representation. Plaintiffs are members of the class and will
8 fairly and adequately represent and protect its interests. Plaintiffs have no interests
9 contrary to or in conflict with the interests of the other class members.

10 77. Plaintiffs' counsel are competent and experienced in class action and
11 investor fraud litigation and will pursue this action vigorously.

12 78. Commonality and Predominance. Common questions of fact and law exist
13 as to all members of the class and predominate over any questions pertaining to
14 individual class members. The questions common to the class include:

- 15
- 16 a. Whether Horwitz and 1inMM committed fraud;
 - 17 b. Whether Horwitz and 1inMM breached duties to Plaintiffs and
18 members of the class;
 - 19 c. Whether City National aided and abetted such violations; and
 - 20 d. Whether, in view of their investment losses, Plaintiffs and class
21 members are entitled to damages.

22 79. Superiority. This class action is superior to other alternatives for the fair and
23 efficient adjudication of this controversy. Absent a class action, most members of the
24 class would find the cost of litigating their claims individually to be prohibitively high
25 and would have no effective remedy. Class treatment will conserve judicial resources,
26 avoid the risk of inconsistent rulings, and promote efficiency of adjudication.

1 **IX. CLAIMS FOR RELIEF**

2 **COUNT 1**

3 **Fraud by Omission**

4 **(Against Horwitz and 1inMM)**

5 80. Plaintiffs hereby incorporate all the foregoing allegations by reference.

6 81. As set forth more fully above, Horwitz and 1inMM perpetrated fraud on the
7 investing public through a series of materially false and misleading statements and
8 omissions in promoting these investments. Among other fraudulent conduct, Horwitz
9 and 1inMM:

10 a. Misrepresented that film licensing and distribution agreements
11 secured the promissory notes being sold;

12 b. Misrepresented that the licensing and distribution agreements were
13 made possible by Horwitz's relationship with major studios such as Netflix and HBO;

14 c. Misrepresented that the investment funds would be applied to obtain
15 the rights to films;

16 d. Concealed from investors that Horwitz and 1inMM were operating a
17 Ponzi scheme by, among other unlawful acts, commingling investor funds and paying
18 earlier investors with funds obtained from later investors; and

19 e. Concealed from investors that Horwitz was misappropriating and
20 misusing millions of dollars in investor funds for improper purposes.

21 82. Plaintiffs and class members reasonably relied to their detriment on
22 Horwitz's and 1inMM's fraudulent representations and omissions when they made the
23 relevant investments.

24 83. As a direct and proximate result of Horwitz's and 1inMM's fraud, Plaintiffs
25 and class members have been damaged in an amount to be determined at trial.
26
27
28

1 knowingly in assisting Horwitz and 1inMM.

2 87. City National substantially benefited from its participation in Horwitz's
3 Ponzi scheme. The scheme caused City National to earn income from fees and from
4 investing capital derived from 1inMM investors.

5 88. As a direct and proximate result of City National's aiding and abetting of
6 fraud, Plaintiffs and class members have been damaged in an amount to be determined at
7 trial.

8 **COUNT 3**

9 **Breach of Fiduciary Duty**

10 **(Against Horwitz)**

11 89. Plaintiffs hereby incorporate all the foregoing allegations by reference.

12 90. At all relevant times, Horwitz was the managing director of 1inMM Capital,
13 LLC and maintained complete or substantially complete control over 1inMM. Horwitz
14 also had complete control over, and was the sole signatory for, the City National Bank
15 accounts in which investor funds were deposited. Horwitz personally communicated
16 with investors as well.

17 91. At all relevant times, the Feeder Funds were Horwitz's agents in that they
18 had actual authority to act on Horwitz's behalf in soliciting investors, Horwitz
19 manifested his assent for them to so act, and they operated under Horwitz's control with
20 regard to the marketing and sale of the promissory note investments.

21 92. By reason of his controlling positions, actions, and direct and indirect
22 representations to Plaintiffs, Horwitz owed them fiduciary duties of loyalty, care, and to
23 deal honestly and in good faith. By selling Plaintiffs promissory notes pursuant to false
24 offering materials, and by misappropriating, commingling, and otherwise misusing
25 investor funds, Horwitz breached fiduciary duties he owed to Plaintiffs.

26 93. As a direct and proximate result of Horwitz's breaches, Plaintiffs and class
27 members have been damaged in an amount to be determined at trial.
28

1 **COUNT 4**

2 **Aiding and Abetting Breach of Fiduciary Duty**

3 **(Against City National)**

4 94. Plaintiffs hereby incorporate all the foregoing allegations by reference.

5 95. City National substantially assisted in Horwitz's breaches of fiduciary duty
6 with knowledge that Horwitz was breaching those duties, and, as a direct and proximate
7 result of City National's aiding and abetting violations, Plaintiffs have been damaged in
8 an amount to be determined at trial.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiffs pray for a judgment:

11 A. Certifying this action for class treatment, appointing Plaintiffs as
12 class representatives, and appointing Plaintiffs' counsel as class counsel;

13 B. Awarding damages, including pre-judgment interest, on each Count
14 in an amount to be determined at trial;

15 C. Awarding reasonable attorneys' fees and costs of litigation; and,

16 D. Granting such other relief as the Court may deem just and proper.

17 **DEMAND FOR JURY TRIAL**

18 Plaintiffs respectfully request a jury trial on their claims.

19
20
21 Respectfully submitted,

22
23 Dated: April 20, 2021

By: /s/ Adam E. Polk

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