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STATE OF MINNESOTA  
COUNTY OF HENNEPIN

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DISTRICT COURT  
FOURTH JUDICIAL DISTRICT

BY *RLW* DEPUTY  
HENNEPIN CO. DISTRICT  
COURT ADMINISTRATOR

CASE TYPE: Civil

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TELLURIDE ASSET MANAGEMENT, LLC, File No.: 27-CV-07-4832  
Plaintiff Judge: Lloyd B. Zimmerman

v.

ERIC FALKENSTEIN  
Defendant

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**DEFENDANT'S FIRST AMENDED ANSWER TO PLAINTIFF'S VERIFIED  
COMPLAINT; COUNTERCLAIMS; AND JURY DEMAND**

**REDACTED PUBLIC VERSION**

For his Answer to Plaintiff's Verified Complaint, Defendant Eric Falkenstein ("Falkenstein") Admits, Denies, and Alleges as follows:

1. With respect to the allegations in Paragraph 1 of Plaintiff's Verified Complaint, admits that Plaintiff Telluride Asset Management, LLC ("Telluride") is a limited liability company organized under the laws of the State of Delaware, having its principal place of business in Wayzata, Minnesota.

2. With respect to the allegations in Paragraph 2 of Plaintiff's Verified Complaint, admits that Falkenstein is an individual with his principal residence in Eden Prairie, Minnesota.

3. With respect to the allegations in Paragraph 3 of Plaintiff's Verified Complaint, admits that this Court has subject matter jurisdiction over the claims asserted herein.

4. With respect to the allegations in Paragraph 4 of Plaintiff's Verified Complaint, admits that Telluride operates hedge funds for both individual and institutional investors; and alleges that Falkenstein lacks sufficient knowledge or information to admit or deny the remaining allegations in Paragraph 4.

5. With respect to the allegations in Paragraph 5 of Plaintiff's Verified Complaint, alleges that Falkenstein lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 5.

6. With respect to the allegations in Paragraph 6 of Plaintiff's Verified Complaint, alleges that Falkenstein lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 6, in particular, knowledge of the specific information Telluride alleges are its "trade secrets".

7. With respect to the allegations in Paragraph 7 of Plaintiff's Verified Complaint, admits that on January 22, 2004, Telluride hired Falkenstein as a Portfolio Manager.

8. With respect to the allegations in Paragraph 8 of Plaintiff's Verified Complaint, admits that Falkenstein's primary job responsibilities were related to investment trading models; and denies the remaining allegations of Paragraph 8.

9. With respect to the allegations in Paragraph 9 of Plaintiff's Verified Complaint, admits that Telluride and Falkenstein executed a written agreement on

January 22, 2004, entitled Employee Confidentiality and Non-Solicitation Agreement ("Confidentiality Agreement").

10. With respect to the allegations in Paragraph 10 of Plaintiff's Verified Complaint, alleges that they state a conclusion of law to which no response is required.

11. With respect to the allegations in Paragraph 11 of Plaintiff's Verified Complaint, alleges that the Confidentiality Agreement speaks for itself.

12. With respect to the allegations in Paragraph 12 of Plaintiff's Verified Complaint, alleges that the Confidentiality Agreement speaks for itself.

13. With respect to the allegations in Paragraph 13 of Plaintiff's Verified Complaint, alleges that the Confidentiality Agreement speaks for itself.

14. With respect to the allegations in Paragraph 14 of Plaintiff's Verified Complaint, alleges that the Confidentiality Agreement speaks for itself.

15. With respect to the allegations in Paragraph 15 of Plaintiff's Verified Complaint, alleges that the Confidentiality Agreement speaks for itself.

16. With respect to the allegations in Paragraph 16 of Plaintiff's Verified Complaint, alleges that the Confidentiality Agreement speaks for itself.

17. With respect to the allegations in Paragraph 17 of Plaintiff's Verified Complaint, admits that Falkenstein was given access to resources and employees while working at Telluride, alleges that he also brought his own resources and publicly known resources and denies the remaining allegations in Paragraph 17.

18. With respect to the allegations in Paragraph 18 of Plaintiff's Verified Complaint, alleges that while employed by Telluride, Falkenstein used his extensive knowledge, prior research, prior investment strategies and experience to monitor and

develop investment strategies; admits that part of the investment strategy factors that Falkenstein brought to Telluride included well-known, widely-used concepts for estimating expected returns like profitability, momentum, and accruals; and denies the remaining allegations in Paragraph 18.

19. With respect to the allegations in Paragraph 19 of Plaintiff's Verified Complaint, alleges that volatility, profitability, and other return-correlated factors, and mean variance optimization are well-known concepts relating to predicting returns and optimizing portfolios and are familiar to portfolio managers; alleges that Falkenstein brought investment management tools to Telluride and introduced them there; alleges that Falkenstein and Telluride are each free to continue to utilize well-known industry concepts in the future; and denies the remaining allegations in Paragraph 19.

20. With respect to the allegations in Paragraph 20 of Plaintiff's Verified Complaint, admits that Falkenstein developed certain investment trading strategies elements while at Telluride, in some cases in collaboration with Telluride; admits that some of these trading strategies involved certain concepts that were used by Falkenstein prior to working for Telluride; admits that during his employment at Telluride, he carried out his job responsibilities and modified certain trading strategy elements; and denies the remaining allegations in Paragraph 20.

21. With respect to the allegations in Paragraph 21 of Plaintiff's Verified Complaint, admits that Falkenstein developed investment trading strategies while at Telluride; admits that some of these trading strategies incorporated return-related concepts like volatility and capital issuance; and denies the remaining allegations in Paragraph 21.

22. With respect to the allegations in Paragraph 22 of Plaintiff's Verified Complaint, admits in performing his work at Telluride, Falkenstein discussed concepts related to his trading strategies with fellow employees; admits that some of the concepts discussed were subsequently utilized at Telluride; lacks sufficient knowledge or information to admit or deny the allegations requiring knowledge of the specific information Telluride claims are its "trade secrets" and "proprietary information," and denies the remaining allegations in Paragraph 22.

23. Denies the allegations in Paragraph 23 of Plaintiff's Verified Complaint.

24. With respect to the allegations in Paragraph 24 of Plaintiff's Verified Complaint, admits that Falkenstein sometimes worked at home using remote access facilities and resources authorized by Telluride; and denies the remaining allegations in Paragraph 24.

25. With respect to the allegations in Paragraph 25 of Plaintiff's Verified Complaint, admits that Falkenstein resigned from his position at Telluride on September 1, 2006; alleges that Falkenstein's resignation letter speaks for itself; and denies the remaining allegations in Paragraph 25.

26. With respect to the allegations in Paragraph 26 of Plaintiff's Verified Complaint, admits that Telluride learned that Falkenstein was pursuing a business opportunity; lacks sufficient knowledge or information concerning which aspects of the "Telluride Modified Model" and the "New Telluride Model" Telluride claims as proprietary for purposes of its similarity analysis to admit or deny this allegation; alleges that the factors and methods used in the various trading models are well-known concepts familiar to portfolio managers; and denies the remaining allegations of Paragraph 26.

27. With respect to the allegations in Paragraph 27 of Plaintiff's Verified Complaint, admits that Peter Hajas ("Hajas"), on behalf of Telluride, contacted Falkenstein regarding Telluride's alleged trade secrets and confidential information; admits that Falkenstein assured Hajas that he was not using or disclosing any of Telluride's trade secrets or confidential information; alleges that Falkenstein did not provide all of the requested information because doing so would have disclosed information proprietary to him and alleges that Hajas' actual motivation was to interfere with Falkenstein's business opportunities; and denies the remaining allegations in Paragraph 27.

28. With respect to the allegations in Paragraph 28 of Plaintiff's Verified Complaint, admits that Falkenstein wrote a letter to Hajas dated February 20, 2007; alleges that the letter speaks for itself; and denies the remaining allegations in Paragraph 28.

29. With respect to the allegations in Paragraph 29 of Plaintiff's Verified Complaint, admits that Hajas wrote a letter dated February 20, 2007; alleges that the letter speaks for itself; and denies the remaining allegations in Paragraph 29.

30. With respect to the allegations in Paragraph 30 of Plaintiff's Verified Complaint, admits that Hajas wrote a letter dated February 20, 2007; alleges that the letter speaks for itself; and denies the remaining allegations in Paragraph 30.

31. With respect to the allegations in Paragraph 31 of Plaintiff's Verified Complaint, admits that Hajas wrote a letter dated February 20, 2007; alleges that the letter speaks for itself; and denies the remaining allegations in Paragraph 31.

32. With respect to the allegations in Paragraph 32 of Plaintiff's Verified Complaint, admits that Hajas wrote an undated letter which was labeled for hand delivery which made demands of Falkenstein; and alleges that the letter speaks for itself.

33. With respect to the allegations in Paragraph 33 of Plaintiff's Verified Complaint, admits that Falkenstein wrote a letter dated March 9, 2007; alleges that the letter speaks for itself; and denies the remaining allegations in Paragraph 33.

34. With respect to the allegations in Paragraph 34 of Plaintiff's Verified Complaint, admits that Falkenstein met with Hajas on March 15, 2007, to address Hajas' purported concerns about use or disclosure of alleged trade secrets or confidential material belonging to Telluride; admits that Falkenstein stated at that meeting that he used public domain information and concepts and algorithms from his pre-Telluride experience - some of which Falkenstein had also used at Telluride - to develop new investment strategies; admits that at that meeting Falkenstein did not disclose to Hajas limited, detailed aspects of his new investment strategies that would have revealed to Telluride aspects of the new strategies proprietary to Falkenstein; alleges that, if revealed, Telluride could use the proprietary aspects to unfairly compete against Falkenstein in the future; and denies the remaining allegations in Paragraph 34.

35. Denies the allegations in Paragraph 35 of Plaintiff's Verified Complaint.

36. With respect to the repeated and realleged allegations in Paragraph 36 of Plaintiff's Verified Complaint, denies each and every allegation in Plaintiff's Verified Complaint unless expressly admitted herein and, with respect to the Headings used throughout Plaintiff's Verified Complaint, alleges that they are descriptive only and denies the accuracy of all such Headings.

37. Denies the allegations in Paragraph 37 of Plaintiff's Verified Complaint.

38. Denies the allegations in Paragraph 38 of Plaintiff's Verified Complaint.

39. Denies the allegations in Paragraph 39 of Plaintiff's Verified Complaint.

40. With respect to the repeated and realleged allegations in Paragraph 40 of Plaintiff's Verified Complaint, denies each and every allegation in Plaintiff's Verified Complaint unless expressly admitted herein and, with respect to the Headings used throughout Plaintiff's Verified Complaint, alleges that they are descriptive only and denies the accuracy of all such Headings.

41. Denies the allegations in Paragraph 41 of Plaintiff's Verified Complaint.

42. Denies the allegations in Paragraph 42 of Plaintiff's Verified Complaint.

43. Denies the allegations in Paragraph 43 of Plaintiff's Verified Complaint.

44. Denies each and every allegation in Plaintiff's Verified Complaint unless expressly admitted herein and with respect to the Headings used throughout Plaintiff's Verified Complaint, alleges that they are descriptive only and denies the accuracy of all such Headings.

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47. Plaintiff's claims are barred, in whole or in part, by the doctrine of unclean hands.

**FOURTH AFFIRMATIVE DEFENSE**

48. The claims levied by Plaintiff against Defendant lack evidentiary support, and there is no likelihood that evidentiary support will be obtained for these claims after further investigation. Upon information and belief, Plaintiff's claims against Defendant are being presented for an improper purpose.

**FIFTH AFFIRMATIVE DEFENSE**

49. Plaintiff's claims are barred, in whole or in part, by the doctrine of estoppel.

**SIXTH AFFIRMATIVE DEFENSE**

50. Plaintiff's claims are being brought for an ulterior motive, and seek to accomplish a result not within the scope of the proceeding in which it was issued.

**SEVENTH AFFIRMATIVE DEFENSE**

51. Plaintiff has failed to mitigate its damages.

**EIGHTH AFFIRMATIVE DEFENSE**

52. As construed by Plaintiff, the contracts between Plaintiff and Falkenstein are unenforceable, in whole or in part, under the doctrine of impossibility.

**NINTH AFFIRMATIVE DEFENSE**

53. As construed by Plaintiff, the contracts between Plaintiff and Falkenstein are unconscionable, in whole or in part.

**TENTH AFFIRMATIVE DEFENSE**

54. Falkenstein's breach of contract, if any, is the result of Plaintiff's conduct.

**ELEVENTH AFFIRMATIVE DEFENSE**

55. Falkenstein's misappropriation of trade secrets, if any, is the result of Plaintiff's conduct.

**FALKENSTEIN'S COUNTERCLAIMS**

Falkenstein, for his Counterclaim against Telluride states and alleges as follows:

**THE PARTIES**

56. Falkenstein is an individual with his principal place of residence in Eden Prairie Minnesota.

57. Telluride is a limited liability company organized under the law of the State of Delaware, having its principal place of business in Wayzata, Minnesota.

**JURISDICTION AND VENUE**

58. Personal jurisdiction by this Court over Telluride is proper pursuant to Minnesota Statute Section 543.19, subdivision 1 because: (1) Telluride has transacted business within Minnesota; (2) Telluride has committed or will commit acts both within and without Minnesota that will cause injury or property damage within Minnesota to Falkenstein; and (3) the exercise of personal jurisdiction over Telluride is consistent with due process.

59. Venue is proper in this Court pursuant to Minnesota Statute Section 542.09, because the cause of action or some part thereof arose in Hennepin County.

**FACTS**

60. Falkenstein holds a Ph.D. in Economics from Northwestern University. His 1994 Ph.D. dissertation, "Mutual Funds, Idiosyncratic Variance, and Asset Returns," introduced, in large part, the premise that high volatility assets have lower returns. This idea was eventually corroborated by other researchers and is now in the public domain.

61. Motivated by his dissertation findings, Falkenstein created the Falken Fund (which he operated from 1996-2001) to use as a vehicle for the successful implementation of this theory regarding volatility.

62. From 1999 until 2001, Falkenstein worked at Moody's Risk Management Services, New York including work on a computerized scoring tool for evaluating private firm default risk.

63. From 2001 until January 2004, Falkenstein worked as a portfolio manager of hedge funds at Deephaven Capital Management ("Deephaven") where he continued to develop his equity trading strategies. Because some economists believe that strategies lose value once the market adjusts to them, portfolio managers, like Falkenstein, choose to employ new strategies from-time-to-time.

64. The strategies Falkenstein studied as an academic and then employed as a fund manager are based on statistical studies done by academics or others, and typically require computer modeling and management.

65. Shortly after leaving Deephaven, Falkenstein sought a position as a quantitative equity portfolio manager at Telluride.

66. Falkenstein interviewed in early 2004 with Peter Hajas, Chief Executive Officer and Chief Investment Officer for Telluride. During the interview, Falkenstein

presented Hajas with an equity strategy outline based on his previous experience, using various return-correlated factors and selecting equities based on those factors.

67. Falkenstein's equity strategy that he presented to Hajas incorporated well-known and researched characteristics (also known as "factors" or "anomalies") relating to returns. The factors of Falkenstein's equity strategy as presented included the general concepts of profitability and accruals. Application of these factors has been the subject of considerable public discourse by top researchers in the field of academic finance.

68. Falkenstein was hired by Telluride to manage a portfolio as a hedge fund, which included implementing the existing trading strategy he presented and developing new strategies. The Confidentiality Agreement Falkenstein signed did not include any provision prohibiting him from taking competitive employment after leaving Telluride.

69. At Telluride, Falkenstein relied on his extensive knowledge (including his knowledge of the factors and anomalies discussed in various publications as used to formulate equity trading strategies), prior research, and experience, as well as research on statistically-based strategies then being published in academia and used in the market.

70. While at various times Falkenstein discussed investment strategies with others at Telluride, no one at Telluride "instructed" Falkenstein to utilize certain factors or algorithms unique to Telluride, or made disclosures to Falkenstein regarding those factors and algorithms that identified these as Telluride trade secrets or proprietary, confidential information.

71. To the extent Falkenstein used factors as part of trading strategies at Telluride, he used them because he was aware of supporting research and chose to employ them, not because he was instructed to use them by others at Telluride.

72. All the factors Falkenstein used at Telluride (including profitability, accruals, and volatility) have been discussed extensively in academic and economic publications and are well-known to portfolio managers. For example, in a memorandum provided to Telluride in March 2005 Falkenstein identified several published documents supporting his use of accruals and profitability in his strategies, and his initial strategy proposal also contained references to academic literature.

73. While Falkenstein added the factor of "capital issuance" to the strategy he originally presented to Hajas after Falkenstein was employed by Telluride, he did so after studying considerable public literature discussing capital issuance and its effect on equity returns. Likewise, Falkenstein's application of a "mean-variance" optimization is drawn from Modern Portfolio Theory (MPT), a pillar of finance, and is related to "portfolio optimization" and "Sharpe ratio maximization." Harry Markowitz won the Nobel Prize in 1990 for his development of this technique and it has been used by portfolio managers for years.

74. The only factor Falkenstein used at Telluride that was not, until recently, widely published, was volatility. Volatility was not in wide publication public at the time, because Falkenstein discovered its utility in research for his 1994 PhD dissertation and chose not to publish it, so that he could use it to build the Falken Fund based on its findings. In 2006, the premier finance academic journal, The Journal of Finance, published an article on the relation of volatility to returns as Falkenstein noted in his 1994 dissertation.

75. Falkenstein resigned from Telluride on September 1, 2006.

76. Since leaving Telluride, Falkenstein has not been employed.

77. Falkenstein currently does not have any offers of employment.

78. Falkenstein has spent many hours researching and developing the details of a new trading tool set that he may use when, and if, he begins working for another hedge fund.

79. Falkenstein's new trading tool set continues to utilize the general concepts of return-related factors that are well-known in the field of academic finance, as well as algorithms that he used previously and/or that are either publicly available and commercially available data.

80. Aside from use of return-related factors that are well-known in the field of academic finance, Falkenstein's new trading tool set, in its detailed implementation uses algorithms differing fundamentally from the models that Falkenstein used while at Telluride.

#### **TELLURIDE'S INTERFERENCE WITH FALKENSTEIN'S PROSPECTIVE**

##### **CONTRACTUAL RELATIONSHIP**

81. Throughout late 2006 and early 2007, Falkenstein spoke with, corresponded with, and met with Irv Kessler ("Kessler") of Provident Advisors regarding the creation and management of a hedge fund. In addition, Mr. Falkenstein met with and spoke with various Kessler representatives.

82. In December 2006, Falkenstein and Kessler had an in-person meeting in which Falkenstein proposed a business relationship involving the creation and management of a hedge fund.

83. On December 14, 2006, Falkenstein sent an email to Kessler setting out some details of his proposal:

REDACTED

84. Kessler acknowledged Falkenstein's offer, and indicated his interest in pursuing the business relationship.

REDACTED

85. On or about December 29, 2006, Falkenstein met with Kessler to discuss the proper legal structure for the proposed venture between Falkenstein and Kessler. Notes from that meeting indicate that Kessler and Falkenstein discussed details of Falkenstein's proposal, including the ownership split between Kessler and Falkenstein, Falkenstein's personal contribution to the fund, and some features of the strategy. The

REDACTED

86. On January 11, 2007, Falkenstein met with Kessler representatives to discuss additional details. At the meeting, Falkenstein and Kessler's representatives discussed various formal legal structures,

REDACTED

REDACTED

87. In late January or early February 2007, Falkenstein and Kessler met again to discuss additional details of the REDACTED At that meeting, Kessler indicated that he wanted to make sure that Peter Hajas (Falkenstein's former employer) did not have objections to the business relationship between Kessler and Falkenstein.

88. In the hedge fund industry such calls are common. For example, Falkenstein disclosed a strategy to Hajas in January 2004 as part of his application for a job as a portfolio manager at Telluride. Prior to officially hiring Falkenstein as a portfolio manager, Hajas called Falkenstein's prior employer at Deephaven Capital Management (where Falkenstein was previously employed as a portfolio manager) to confirm that Deephaven had no objection to Telluride's hiring of Falkenstein. The CEO of Deephaven, Colin Smith, informed Hajas that he had no objection to Telluride's retention of Falkenstein. Hajas made similar phone calls before hiring other ex-Deephaven employees, Jared Lewis and Scott Hoyt.

89.

REDACTED

REDACTED

90. On or about February 15, 2007 Kessler spoke with Hajas,

REDACTED

91.

REDACTED

92.

REDACTED

93. Since that time, Falkenstein repeatedly has attempted to alleviate Hajas' purported concerns that Falkenstein would use in a new trading tool set any trade secrets or confidential information belonging to Telluride.

94. For example, in a letter to Hajas dated February 20, 2007, Falkenstein reiterated an earlier promise that he would not use Telluride's confidential information and attempted to explain the various reasons why his newly developed trading tool set did not incorporate information potentially protected under his confidentiality agreement with Telluride. While Falkenstein noted in the letter that there were "significant similarities" between the strategies he used while at Telluride, and his newly developed

tool set, Falkenstein stated that these similarities refer only to general use of return-correlated factors such as volatility, accrual, profitability, and capital issuance that are in the public domain.

95. In a February 22, 2007 e-mail to Falkenstein, Hajas demanded that Falkenstein specifically identify any similarities between the trading models Falkenstein utilized while at Telluride and Falkenstein's new trading models.

96. In view of Hajas' purported concerns regarding Falkenstein's new trading strategy,

REDACTED

97. Hajas's attorney sent a hand delivered letter to Falkenstein's wife at 7 pm on Friday, March 2, 2007. It included a notice to preserve documents from his lawyer, and also a letter from Hajas demanding that he "provide me [Hajas] with copies of any computer software programs, excel spreadsheets and back testing information" within seven days. As this demand was open ended, Falkenstein sent a letter on March 9, 2007. In that letter, Falkenstein outlined that the only similarities referred to tactics that were covered by prior use and/or public domain, and so under the Confidentiality Agreement valid for his use. In an attempt to reconcile the dispute without litigation, he noted:

I need to have a better idea of the specific information that you think is Telluride confidential information, so that I can limit disclosure of my proprietary information while still addressing your concerns. If you wish, you or your representative can arrange a visit with me at my lawyer's office, Stuart Hemphill of Dorsey & Whitney LLP, where I will try to demonstrate how my new algorithm works and its sources while maintaining the proprietary aspects of my new strategy. If we do that, I would expect you then to be specific as to any material you think is owned by Telluride, so that I have an opportunity to respond and to show you these are

"available by proper means through sources outside the Firm (per the 1/22/04 agreement).

98. With no response, Falkenstein called Peter Hajas directly and set up a meeting on March 15, 2007 to go over his new proposed model in-depth to address Hajas' purported concerns, Falkenstein met with Hajas for approximately ninety minutes he explained how he intended to use a broad set of factors in a new algorithm based on his work at Moody's, some of which included the factor Falkenstein mentioned in his earlier letter to Hajas. Falkenstein asked for any specific objections or concerns, and Hajas did provide any at that meeting. That evening, Falkenstein sent an email to Hajas, stating,

Given what I explained of my strategy, which was more detailed than what I have or will show a potential employer, can you give me some guidance as to what tactics you think are not 'acceptable' for my use (again, mindful of the balance of our respective rights), so that I can consider if a compromise is feasible?

99. On March 19, 2007 as a follow-up to the meeting between Falkenstein and Hajas and his email, Hajas wrote a letter to Falkenstein setting forth Telluride's IP rights as follows:

In addition, anything that you invented from January 24, 2004 until September 1, 2006 that related to the profitability, accruals, volatility and capital issuance of equities also belongs to Telluride.

Alluding to his use of the 'mean-variance optimization', a subject of a Nobel prize in 1990 for work done in 1952 by Harry Markowitz, and a pillar of academic finance, Hajas asserted that mean-variance optimization is "not generally known nor readily ascertainable by proper means." Hajas further asserted with respect to Falkenstein's subsequent work on any new strategy:

Moreover, anything that you invented since September 1, 2006 that relates to the profitability, accruals, volatility and capital issuance of equities cannot be anything but derivative of your work for Telluride and your intimate and extensive knowledge of the profitability, accruals, volatility and capital issuance models that you in collaboration with me made conceived and developed.

This claim of unconstrained ownership of common public domain factors, of which Hajas knew Falkenstein had considerable prior use, and 'mean-variance optimization', would preclude Falkenstein from working as an equity long/short portfolio manager, if not risk management, in perpetuity. No financial executive can avoid using at least some of these concepts in a fundamental way. Falkenstein was thus faced with either leaving the field he had worked in his entire life, or litigation with a plaintiff that had a history of spending millions of dollars on litigation, and the means to do so going forward.

100. Throughout his correspondence with Falkenstein, Hajas was aware that Falkenstein was involved in negotiations with Kessler about a prospective business and contractual relationship, and was aware that Kessler and Falkenstein were communicating about that prospective relationship and about Hajas' purported concerns relating to Telluride's alleged IP rights.

101. Hajas' description of Telluride's IP rights were knowingly and intentionally made in bad faith with the intent of preventing Falkenstein and Kessler from completing their prospective business deal REDACTED

102. The bad faith of Hajas' description of its IP rights contradict and are otherwise inconsistent with information set forth in internal Telluride correspondence, including correspondence between Hajas and Falkenstein and Mark Kuper, the second highest-ranking executive at Telluride, and Falkenstein.