

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

FSD No.: 203 OF 2020 (NSJ)

BETWEEN:



ABDULHAMEED DHIA JAFAR

Plaintiff

- and -

(1) ABRAAJ HOLDINGS
(in official liquidation)

(2) GHF GENERAL PARTNER LIMITED

(in its capacity as general partner of GHF Fund LP (formerly Abraaj Growth Markets Health Fund LP) and GHF Fund (B) LP (formerly Abraaj Growth Markets Health Fund (B) LP))

(3) THE GHF GROUP LIMITED

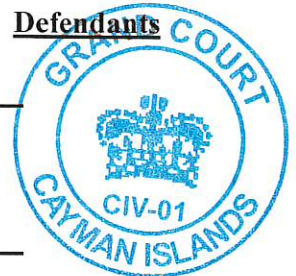
(formerly The Abraaj Healthcare Group Limited)

(4) ABRAAJ GENERAL PARTNER VIII LIMITED

(in its capacity as general partner of Neoma Private Equity Fund IV LP (formerly known as Abraaj Private Equity Fund IV LP))



Defendants



WRIT OF SUMMONS

TO: ABRAAJ HOLDINGS of P.O. Box 258, 4th Floor, 18 Forum Lane, Camana Bay, Grand Cayman KY1-1104, Cayman Islands

GHF GENERAL PARTNER LIMITED of 2nd Floor Harbour Centre, 42 North Church Street, George Town, Grand Cayman KY1-9006, Cayman Islands

THE GHF GROUP LIMITED of 2nd Floor Harbour Centre, 42 North Church Street, George Town, Grand Cayman KY1-9006, Cayman Islands

ABRAAJ GENERAL PARTNER VIII LIMITED of P.O. Box 309, Ugland House, South Church Street, George Town, Grand Cayman KY1-1104, Cayman Islands

THIS WRIT OF SUMMONS is filed by Nelsons, attorneys at Law for the Plaintiff, whose address for service is that of his attorneys at 31 The Strand, P.O. Box 30069, George Town, Grand Cayman KY1-1201, Cayman Islands.

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff, of P.O. Box 30069, Grand Cayman, Cayman Islands, KY1-1201 in respect of the claims set out on the next page.

Within 14 days after service of this Writ on you counting the day of service, you must either satisfy the claim or return to the Courts Office, P.O. Box 495, George Town, Grand Cayman, KY1-1106, Cayman Islands the accompanying Acknowledgement of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgement within the time stated, or if you return the Acknowledgement without stating therein any intention to contest the proceedings, the Plaintiffs may proceed with the action and judgment may be entered against you forthwith without further notice.

Nelsons

Nelsons Attorneys at Law

Issued this 10th day of September 2020.

NOTE this Writ may not be served later than 4 calendar months beginning with the date of original issuance unless renewed by order of the Court

IMPORTANT

Directions for the Acknowledgement of service are given with the accompanying form.

THIS WRIT OF SUMMONS is filed by Nelsons, attorneys at Law for the Plaintiff, whose address for service is that of his attorneys at 31 The Strand, P.O. Box 30069, George Town, Grand Cayman KY1-1201, Cayman Islands.

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

B E T W E E N:

ABDULHAMEED DHIA JAFAR

Plaintiff

- and -

(1) ABRAAJ HOLDINGS
(in official liquidation)

(2) GHF GENERAL PARTNER LIMITED
(in its capacity as general partner of GHF Fund LP (formerly Abraaj Growth Markets Health Fund LP) and GHF Fund (B) LP (formerly Abraaj Growth Markets Health Fund (B) LP))

(3) THE GHF GROUP LIMITED
(formerly The Abraaj Healthcare Group Limited)

(4) ABRAAJ GENERAL PARTNER VIII LIMITED
(in its capacity as general partner of Neoma Private Equity Fund IV LP (formerly known as Abraaj Private Equity Fund IV LP))

Defendants

STATEMENT OF CLAIM

A. Summary

1. This claim arises in the context of a sustained and systematic fraud perpetrated by key figures within the leadership of the Abraaj Group (together ‘the **Abraaj Leadership**’ as defined below) on third-party investors in various investment funds within the corporate group (‘the **Abraaj Group**’) of which the parent company is the First Defendant (‘**AH**’), a company incorporated in the Cayman Islands which entered official liquidation on 11 September 2019.
2. That systematic fraud was the subject of (a) investigations by the United States Securities and Exchange Commission (‘the **SEC**’), which led to (i) charges being brought against Abraaj Investment Management Limited (‘**AIML**’) (a company

incorporated in the Cayman Islands which was, at all material times, wholly-owned by AH and entered official liquidation on 11 September 2019), and Mr Arif Naqvi (**‘Mr Naqvi’**), a leading member of the Abraaj Leadership, in the United States District Court for the Southern District of New York on 11 April 2019, and (ii) the subsequent arrest of Mr Naqvi and two other members of the Abraaj Leadership, Mr Sivendran Vettivetpillai (**‘Mr Vettivetpillai’**), and Mr Mustafa Abdel-Wadood (**‘Mr Abdel-Wadood’**), (b) investigations by the United States Department of Justice (the **‘DOJ’**) which led to a superseding indictment dated 23 May 2019 in the US District Court for the Southern District of New York naming each member of the Abraaj Leadership, and (c) investigations by the Dubai Financial Services Authority leading to a decision notice being issued on 29 July 2019 pursuant to which AIML was fined US\$299,300,000.

3. Pursuant to that systematic fraud, from 2014 until around May 2018, the Abraaj Leadership – which operated the Abraaj Group as a single unit – fraudulently induced investments in each of (i) Abraaj Private Equity Fund IV LP, now known as Neoma Private Equity Fund IV LP, (**‘APEF IV’**), an exempted limited partnership established as an investment fund under the laws of the Cayman Islands, and (ii) GHF Fund LP (formerly Abraaj Growth Markets Health Fund LP) and GHF Fund (B) LP (formerly Abraaj Growth Markets Health Fund (B) LP), each also an exempted limited partnership established as an investment fund under the laws of the Cayman Islands (and the two being collectively, **‘the Healthcare Fund’**), by representing to third-party investors that those entities would make and/or had made investments that they never intended to make and/or did not make.
4. The members of the Abraaj Leadership subsequently misappropriated, misapplied to other entities within the Abraaj Group, or otherwise dissipated the sums that third-party investors had invested in APEF IV and the Healthcare Fund and/or acquiesced in the same.
5. The Abraaj Leadership concealed, and thus sustained, this systematic fraud by various fraudulent and dishonest practices, which included repeatedly issuing

incorrect statements of (i) investments made, (ii) investment values, and (iii) uninvested monies held.

6. Notwithstanding these attempts to conceal the systematic fraud, by the last quarter of 2017 certain of the third-party investors had become dissatisfied with the information available to them regarding the operation of the entity or entities in which they had invested. This led them to taking various steps liable to expose the systematic fraud.
7. These steps, and other imminent financial pressures, including the year end for APEF IV in circumstances where it faced a significant shortfall as a result of the fraud, led Mr Naqvi – as part of a combination, plan, understanding and/or agreement, amongst the members of the Abraaj Leadership which induced or procured such action by Mr Naqvi – to approach the Plaintiff (**‘Mr Jafar’**) in December 2017 and deliberately make various misrepresentations to Mr Jafar, which he (and, consequently and otherwise, each of the Defendants) knew to be false, in order fraudulently to induce Mr Jafar to advance, by way of loan, substantial sums to benefit entities within the Abraaj Group.
8. These fraudulent misrepresentations (as particularised more fully below) concerned (i) the circumstances in which funds were sought, (ii) the intended use of the funds, and (iii) the intended means and timing for repaying the funds, and were made on behalf of, or fall to be attributed to, each of the Defendants, as well as being instigated, procured, induced and/or assisted by the Abraaj Leadership and each of the Defendants.
9. As each of Mr Naqvi and the Defendants well knew, these fraudulent misrepresentations induced Mr Jafar to advance, by way of a series of loans, sums totalling the equivalent of around US\$350,000,000 to entities within the Abraaj Group, via payments to the accounts of AH and AIML, in late December 2017. The sums advanced were, upon receipt, immediately distributed to other entities in the Abraaj Group, including each of the Third and Fourth Defendants.

10. As mentioned above, Mr Naqvi made these fraudulent misrepresentations to Mr Jafar pursuant to a combination, plan, understanding and/or agreement amongst the members of the Abraaj Leadership, to have Mr Naqvi, and, as required, other members of the Abraaj Leadership, fraudulently seek to induce third parties, including Mr Jafar, to lend monies to entities within the Abraaj Group by making misrepresentations that they knew to be false. In joining in this combination, plan, understanding and/or agreement, the Abraaj Leadership was acting for and on behalf of each of the Defendants, being the directing mind and will of those entities for this purpose. This combination, plan, understanding and/or agreement to use such unlawful means to induce the desired loans is the “**Conspiracy**” (as described in more detail below).

11. The motive for the fraudulent misrepresentations to Mr Jafar and the Conspiracy was (i) the concealment of the prior systematic fraud on the existing third-party investors whose monies had already been misused, and/or (ii) the need for funds as a result of that fraud. The Conspiracy involved the same persons and entities that had perpetrated the prior systematic fraud; including the members of the Abraaj Leadership and each of the Defendants (to whom the acts, knowledge and intentions of the Abraaj Leadership are to be attributed).

12. Upon, and as a result of, advancing sums totalling the equivalent of around US\$350,000,000 in late December 2017, Mr Jafar suffered loss and damage in the amount of the sums advanced.

13. Having since discovered the frauds perpetrated by the Abraaj Leadership and the Defendants, Mr Jafar rescinded the loan agreements pursuant to which he had advanced US\$300,000,000 of those sums.

14. Now, by this claim, as more fully pleaded below, Mr Jafar seeks:
 - (1) damages from each of the Defendants in respect of both Mr Jafar’s direct loss in advancing these sums, and further consequential loss that he has also suffered, whilst giving appropriate credit for such limited recovery as he has

to date been able to make from entities within the Abraaj Group and Mr Naqvi, (a) on the grounds that each of the Defendants is jointly liable and/or vicariously liable for Mr Naqvi's deceit, and/or (b) on the grounds of unlawful means conspiracy (the unlawful means being Mr Naqvi's deceit);

(2) appropriate proprietary relief as against each of the Defendants who received the sums that Mr Jafar advanced and/or their traceable proceeds or substitutes, on the grounds that they hold the same on constructive trust for Mr Jafar (a) as a result of their receipt of the same as the proceeds of fraud for no consideration, other than in good faith and with notice of Mr Jafar's equitable rights, and/or (b) Mr Jafar's rescission of the loan agreements and their receipt of the same for no consideration, other than in good faith and with notice of Mr Jafar's equitable rights;

(3) as against each of the Defendants who received sums that Mr Jafar advanced and/or their traceable proceed or substitutes, such accounts, enquiries and further and/or other relief as the Court might think fit on the grounds of knowing or unconscionable receipt; and/or

(4) to the extent that the law of the United Arab Emirates (the 'UAE') applies (as a result of circumstances including the transfers of the sums advanced being made from Mr Jafar's account in the UAE and the fraudulent inducement of those transfers in the UAE): (a) restitution from the Third and Fourth Defendants under UAE Civil Code Articles 318, 319 and 324, to the extent that they have been enriched at Mr Jafar's expense; and/or (b) appropriate proprietary relief insofar as the Third and Fourth Defendants (i) received identifiable property of Mr Jafar without valid claim and other than in good faith and (ii) continue to hold the same, such that he is entitled to recover it pursuant to UAE Civil Code Articles 1325 and 1326.

B. Parties

15. AH, the First Defendant, is a company incorporated under the laws of the Cayman Islands with company number 173354.

16. AH is the parent company of the Abraaj Group. The Abraaj Group provided private equity financing through the creation of various funds at least until June 2018. At all material times, Mr Naqvi owned a majority of the shares in Abraaj Employees 2 SPC Limited ('**AE2L**'), of which he was a director, which in turn owned a majority of the shares in AH. Mr Naqvi was the leading figure within the Abraaj Leadership (defined and detailed further below) and at all material times exercised significant influence over all (or all relevant) entities within the Abraaj Group (as further particularised below).
17. AH entered provisional liquidation by order of the Grand Court of the Cayman Islands on 18 June 2018, and entered official liquidation by order of the Grand Court of the Cayman Islands on 11 September 2019.
18. AIML is a company incorporated under the laws of the Cayman Islands with company number 84033.
19. AIML is, or was at all material times, wholly owned by AH and, therefore, a member of the Abraaj Group.
20. AIML entered provisional liquidation by order of the Grand Court of the Cayman Islands on 18 June 2018. AIML entered official liquidation by order of the Grand Court of the Cayman Islands on 11 September 2019.
21. The Second Defendant is GHF General Partner Limited ('**Healthcare GP**') in its capacity as general partner of GHF Fund LP (formerly Abraaj Growth Markets Health Fund LP) ('the **Healthcare Partnership**') and GHF Fund (B) LP (formerly Abraaj Growth Markets Health Fund (B) LP) (the two funds being collectively, as aforesaid, 'the **Healthcare Fund**')¹. Healthcare GP is a company incorporated under the laws of the Cayman Islands with company number 347867. At all material times prior to (on information and belief) June 2019, Abraaj Growth

¹ Prior to June 2019, on information and belief, the Healthcare Fund also comprised Abraaj Growth Markets Health Fund (C) LP.

Markets Health Fund General Partner Limited was the general partner of the Healthcare Fund. This too was a company incorporated under the laws of the Cayman Islands with company number 301291. Healthcare GP is sued because it is the current general partner; however, references below to Healthcare GP are to include the former general partner unless otherwise stated.

22. Healthcare GP is, or was at all material times, wholly owned by AIML. Therefore, Healthcare GP is, or was at all material times, a member of the Abraaj Group.
23. The Healthcare Partnership, Abraaj Growth Markets Health Fund (B) LP, and Abraaj Growth Markets Health Fund (C) LP are exempted limited partnerships under the laws of the Cayman Islands established as investment funds. In respect of each of the funds, Healthcare GP is, or was at all material times, the general partner and AIML is, or was at all material times, the manager of the partnership.
24. The Third Defendant is The GHF Group Limited, formerly The Abraaj Healthcare Group Limited ('**AHG**'). AHG is a company incorporated under the laws of the Cayman Islands with company number 317115.
25. AHG is, or was at all material times, wholly owned by Healthcare GP in its capacity as general partner of the Healthcare Fund and, therefore, a member of the Abraaj Group. AHG served as the main holding company for investments made by the Healthcare Fund.
26. The Fourth Defendant is Abraaj General Partner VIII Limited ('**GP8**') in its capacity as general partner of Neoma Private Equity Fund IV LP (formerly known as Abraaj Private Equity Fund IV LP) (defined above as '**APEF IV**'). GP8 is a company incorporated under the laws of the Cayman Islands with company number 209811.
27. GP8 is, or was at all material times, wholly owned by AIML and, therefore, a member of the Abraaj Group.

28. APEF IV is an exempted limited partnership under the laws of the Cayman Islands established as an investment fund. In respect of APEF IV, GP8 is, or was at all material times, the general partner and AIML is, or was at all material times, the manager of the partnership.
29. The Plaintiff is Mr Abdulhameed Dhia Jafar (defined above as '**Mr Jafar**') and his address is Crescent Tower, Buhaira Corniche, PO Box 2222, Sharjah, United Arab Emirates. Mr Jafar provided funds under three loan agreements to entities within the Abraaj Group on or about 21 December 2017, 27 December 2017 and 28 December 2017 (collectively the '**Jafar Loans**').
30. Mr Jafar was a long-standing acquaintance of Mr Naqvi. He had previously invested in the Abraaj Group as one of its first shareholders, and served as a member of its board of directors from 2006 until his resignation in October 2010. Following his resignation, Mr Jafar retained a personal shareholding in AH and some personal investments in other entities in the Abraaj Group. In March 2013, Mr Jafar's son (Mr Badr Jafar) was appointed a non-executive director of AH and remained in that position until June 2018.
31. As at the date of this Statement of Claim, Mr Jafar has received limited documentary disclosure from the liquidators of AH and AIML and no disclosure from other entities within the Abraaj Group. The facts stated herein are believed to be true based upon the information to which Mr Jafar has access at this time, but Mr Jafar reserves the right to state further or other particulars, and to seek to amend to pursue further claims, following disclosure.

B. Background

i. Abraaj Group

32. Decision-making regarding, and control of, entities within the Abraaj Group was highly centralised. The entities within the Abraaj Group were operated as a single unit by the Abraaj Leadership (described further above and below). Mr Naqvi, being

the most influential member of the Abraaj Leadership, had and exercised substantial control over material decisions within the Abraaj Group.

33. This single unit approach extended beyond operations of entities within the Abraaj Group to the control of bank accounts and transfers of monies between those entities (as described below).

34. Private equity funds within the Abraaj Group were typically structured as follows:

(1) It established separate exempted limited partnerships for each fund created by Limited Partnership Agreements ('LPA').

(2) An Abraaj Group entity would act as general partner of the partnership.

(3) Investors (sometimes including other Abraaj Group entities) would be limited partners of the partnership.

(4) The general partner would typically appoint another Abraaj entity as investment advisor and manager of the exempted limited partnership.

35. Since 2006, AH has been the parent company of the Abraaj Group. Partnership interests in each of the funds created within the Abraaj Group were typically placed under the ownership of AH.

36. At all material times, AIML, or a subsidiary of AIML, was the investment manager for various Abraaj Group funds, including the Healthcare Fund and APEF IV.

ii. Mr Naqvi

37. Mr Naqvi was the founder of the Abraaj Group. At all material times, he led the Abraaj Leadership that controlled the various entities that comprised the Abraaj Group.

38. At all material times, he was:

- (1) Executive director and CEO of AH;
- (2) Sole shareholder in AE2L, the majority shareholder of AH;
- (3) Executive director and CEO of AIML;
- (4) An authorised signatory for all AIML bank accounts for transfers in excess of US\$25 million or US\$75 million depending on the account (or from March 2017, US\$75 million for all accounts);
- (5) Chairman of the Global Investment Committee ('GIC'), the principal body of the Abraaj Group that made investment decisions; and
- (6) Possessed of a veto and ability to override one dissenting vote on the GIC.

39. In addition:

- (1) As regards AH, according to the Memorandum and Articles of Association of AH, dated 1 July 2012, Mr Naqvi had the right to: (i) appoint or remove the CEO of AH; (ii) approve investment decisions in funds managed by the Abraaj Group, up to maximum limits; (iii) appoint an Executive Committee of AH, of which he would be the Chairman; (iv) appoint an Advisory Board, with members and powers he deemed appropriate; and (v) appoint an Investors' Council, with a charter and powers he defined.
- (2) As regards the Healthcare Fund, (i) the Healthcare Partnership LPA identified Mr Naqvi as a "key person" and provided that a suspension of the Healthcare Fund's investment period would automatically occur if, among other things, Mr Naqvi and one of three other executives of AIML did not "devote substantially all of their business time to the affairs of the [Healthcare Fund]" or, alternatively, if Mr Naqvi "ceas[ed] to oversee the [Healthcare Fund's] strategy, investments and divestments" along with one

other fund executive; (ii) the Healthcare Fund's private placement memorandum stated that Mr Naqvi was the "*Head of the Fund*" and "*led the design of the [Fund] concept and the strategy and business plan*", and was one of two executives responsible for "*overseeing the Fund's activities*"; (iii) Mr Naqvi had signatory authority on all bank accounts of the Healthcare Fund, and was a required signatory for all transactions of more than US\$75 million; and (iv) Mr Naqvi corresponded from time to time on behalf of the Healthcare Fund.

(3) APEF IV LPA listed Mr Naqvi as a "*Key Investment Executive*", and Mr Naqvi had signatory authority on all bank accounts of APEF IV, and was a required signatory for all transactions of more than US\$25 million until February 2017, when he became a required signatory for all transactions of more than US\$75 million.

40. Beyond this, Mr Naqvi otherwise exercised significant influence and control within the Abraaj Group, and over each entity within it, including over each of the Defendants. With the other members of the Abraaj Leadership, Mr Naqvi was able to, and did, instruct and direct the actions and activities of each of the entities within the Abraaj Group, including, in particular, each of the Defendants.

41. In the premises, at all material times, Mr Naqvi was, in combination with the Abraaj Leadership (as detailed below), the directing mind and will of the entities within the Abraaj Group, including of each of the Defendants, for the purposes of the conduct particularised below.

42. Further, at all material times:

(1) Each of the Defendants held Mr Naqvi out to Mr Jafar as being authorised to act on their behalf as he saw fit by (a) being aware that he was holding himself out as such, both generally and, in particular, to Mr Jafar, and (b) permitting him to continue to hold himself out as such;

(2) Mr Naqvi acted for and on behalf of each of the Defendants when performing the conduct particularised below; and/or

(3) Mr Naqvi was regarded, and held out, by each of the Defendants as acting for and on their behalf when performing the conduct particularised below.

43. In addition, Mr Naqvi has, or had, other business interests, including, at all material times, being a non-executive director of Air Arabia PJSC (**'Air Arabia'**).

iii. Other members of the Abraaj Leadership

44. The Abraaj Group was controlled, directed and/or managed by Mr Naqvi in combination with the following persons (who are, together with Mr Naqvi, **'the Abraaj Leadership'**): Mr Waqar Siddique (**'Mr Siddique'**), Mr Rafique Lakhani (**'Mr Lakhani'**), Mr Abdel-Wadood (mentioned above), Mr Ahish Dave (**'Mr Dave'**), and Mr Vettivetpillai (also mentioned above).

45. Mr Siddique was at all material times:

(1) An executive director of AH;

(2) From 7 July 2013 to 3 April 2018, an executive director of AIML;

(3) Senior Partner and Chief Operating Officer of the Abraaj Group;

(4) A member of the Abraaj executive committee;

(5) Listed as a "*Key Investment Executive*" for APEF IV in the APEF IV LPA, which he executed at various times on behalf of each of GP8, AIML and Abraaj Capital Limited (**'Abraaj Capital'**), another Abraaj Group entity; and

(6) The representative of the Abraaj Group on the board of several companies including as Chairman of the Board of Directors of Karachi Electric Supply Company.

46. Mr Lakhani was at all material times:

(1) From 1 September 2005, the Managing Director of Finance in the Abraaj Group;

(2) Vice President of the Abraaj Group;

(3) The executive in the Abraaj Group with day-to-day responsibility for managing cash flows, including in respect of the Abraaj Group's underlying funds;

(4) The managing director of AIML and a signatory in respect of AIML's bank accounts;

(5) A director of the Dubai branch of AIML; and

(6) From at least 2014, the individual with responsibility for updating Mr Naqvi on the financial condition of the Abraaj Group.

47. Mr Abdel-Wadood was at all material times:

(1) A managing partner of the Abraaj Group and the executive with primary responsibility for overseeing the Middle East and North Africa (MENA) region;

(2) Global Head of Private Equity at the Abraaj Group;

(3) A member of the Board of Directors and Vice-Chair of the Abraaj Executive Committee;

- (4) From 11 November 2006 to 26 February 2018, an executive director of AH;
- (5) A member of the GIC;
- (6) A managing partner of AIML with oversight responsibility on the Executive Committee of AIML;
- (7) From 9 July 2006 to 26 February 2018, an executive director of AIML; and
- (8) Listed as a “*Senior Abraaj Executive*” in the Healthcare Partnership LPA, and as a “*Key Investment Executive*” for APEF IV in the APEF IV LPA.

48. Mr Dave was at all material times:

- (1) A partner, Chief Financial Officer, and Company Secretary of the Abraaj Group;
- (2) A member of the Abraaj Executive Committee; and
- (3) An authorised signatory of the corporate director of the Healthcare GP.

49. Mr Vettivetpillai was at all material times:

- (1) A managing partner of the Abraaj Group and the executive with primary responsibility for overseeing the Abraaj Group’s impact investment projects, including the Healthcare Fund;
- (2) From 26 March 2014 to 19 February 2018, an executive director of AH;
- (3) A member of the GIC;
- (4) A managing partner of AIML with oversight responsibility on the Executive Committee of AIML;

(5) Listed as a “*Fund Executive*” and as a “*Senior Abraaj Executive*” in the Healthcare Partnership LPA, and as a “*Key Person*” for APEF IV in the APEF IV LPA; and

(6) Founder of Aueros Capital, a private equity fund acquired by the Abraaj Group in or around 2012.

50. Each member of the Abraaj Leadership was aware of, and participated in, the conduct particularised below.

51. Further at all material times, each of the members of the Abraaj Leadership:

(1) Acted for and on behalf of each of the Defendants when performing the conduct particularised below;

(2) Were regarded, and held out, by each of the Defendants as acting for and on their behalf when performing the conduct particularised below; and/or

(3) Procured, or induced, actions by the Defendants (as particularised below) in circumstances in which their actions, intentions, and knowledge are attributable to each Defendant.

iv. Financial Difficulties at the Abraaj Group

52. From at least 2014 onwards, the Abraaj Group suffered serious financial difficulties. From 2014 through to 2017, the income of the Abraaj Group was insufficient to meet its liabilities, such that the Abraaj Group was insolvent on the cash flow basis. Over that period the Abraaj Group faced a series of liquidity crises.

C. APEF IV

i. Structure of APEF IV

53. APEF IV was held out by entities within the Abraaj Group, including by AH and AIML, as a vehicle for buyout and growth investments in the Middle East, North Africa and South Asia regions.
54. APEF IV was established by an LPA entered into by GP8 and the initial limited partner on 22 July 2018 ('the **APEF IV LPA**').
55. Pursuant to a management agreement, entered into on or around 22 July 2018 by GP8 and AIML, AIML was appointed as manager of APEF IV.
56. AH owns, or at all material times owned, limited partnership interests in APEF IV through special purpose vehicles.

ii. Use of Investor's Monies

57. Prior to May 2012, APEF IV provided a US\$50 million convertible loan to an unknown entity ('the **Unknown Entity**') through a special purpose vehicle. Between May 2012 and December 2017, interest was paid to the special purpose vehicle by the Unknown Entity totalling US\$27 million.
58. Instead of being paid into APEF IV accounts, these interest payments were transferred to AIML and used for purposes unrelated to APEF IV. The payments were thereby misappropriated.
59. In an email dated 9 January 2014, an employee of an entity within the Abraaj Group ('the **Finance Employee**') wrote to Mr Naqvi, Mr Siddique, Mr Abdel-Wadood and Mr Lakhani stating: "*We will have a deficit of \$100m by 15th Jan*" and "*the cash balance by mid-March... will be negative \$5m and need to be covered by APEFIV/ASAS Inflows.*"

60. In an email, dated 2 March 2014, to Mr Naqvi, Mr Siddique, Mr Abdel-Wadood and Mr Lakhani, the Finance Employee stated that US\$19,600,000 would be required to pay investors in another fund in the Abraaj Group but that there were insufficient funds to do so.
61. Mr Lakhani responded by email stating: *"We cannot pay this until further inflows come in from APEF IV investors..."*
62. In an email, dated 18 March 2014, to Mr Naqvi, Mr Siddique, Mr Abdel-Wadood and Mr Lakhani, the Finance Employee stated that taking money from a new APEF IV investor was *"critical to restore regulatory cash balances in [Abraaj Capital] and MCM at quarter-end"* and to allow a required distribution to another investor.
63. On 21 September 2015, AIML issued a drawdown notice to APEF IV investors requiring US\$238,500,000 ('the **September 2015 Drawdown**').
64. Between September and December 2015, as part of the September 2015 Drawdown, US\$150 million was transferred by investors into an APEF IV account.
65. Approximately US\$94,700,000 of these funds was transferred into AIML's own account. These funds were then used to make other payments to other Abraaj Group funds, other Abraaj Group entities, Mr Naqvi or entities controlled and owned by Naqvi, or to meet unrelated Abraaj Group expenses.
66. As a result, significant funds from the September 2015 Drawdown were used for purposes unrelated to APEF IV and thereby misappropriated.
67. On 30 December 2015, APEF IV's account received US\$135 million as part proceeds from the sale of its stake in Network International ('the **First NI Proceeds**'). APEF IV was entitled to retain US\$116,900,000 of the First NI Proceeds.
68. On the same day, US\$135 million was transferred into AIML's own account. AIML then made payments of:

(1) US\$7,500,000 to an entity owned by a member of AIML senior management; and

(2) US\$92 million to another Abraaj Group fund, called Infrastructure and Growth Capital Fund LP ('IGCF').

69. In an internal email sent between unknown employees of an entity or entities within the Abraaj Group (on a date presently unknown to Mr Jafar but inferred to be at around the time of the payments referred to in the immediately preceding paragraphs), it was stated that:

"It is critical that IGCF distribution of \$67m gets done by 31 Dec and IGCF Intercompany of \$25 million is settled, so the IGCF audit can be completed without any complications non-compliance disclosure. It is therefore imperative that the [Networks International] closing takes place as scheduled on 28th Dec..."

70. Subsequently, US\$67 million was paid out to IGCF investors.

71. As a result, significant funds from the First NI Proceeds were used for purposes unrelated to APEF IV and thereby misappropriated.

72. On 11 February 2016, APEF IV's account received US\$195 million as further part proceeds from the sale of its stake in Network International ('the **Second NI Proceeds**').

73. By an email dated 14 February 2016, Mr Lakhani told Mr Naqvi that the Abraaj Group was due to have a negative cash balance at the end of February 2016 "*mainly due to projected payments*" for APEF IV investments, which would increase to US\$297 million by March 2016. Mr Lakhani stated: "*We will not have funds in March to meet the various day to day obligation[s] in the absence of any receipts*" and "*We are not currently in a position to fund all of the above APEF IV deals*".

74. The APEF IV investments should have been made using funds provided by APEF IV investors for that purpose. However, these funds had been misappropriated, including by the means referred to above. On or about 16 February 2016, as a result of the cash shortfall, senior management proposed that APEF IV use the Second NI Proceeds to fund its planned investments. This proposal was carried into effect.
75. As a result, significant funds from the Second NI Proceeds were misappropriated and used to make up shortfalls in investments due to earlier misappropriations of APEF IV monies, including those referred to above.
76. By an email, dated 27 February 2016, Mr Lakhani sought direction as to how to address a US\$2,400,000 shortfall in funding for Mr Naqvi's charitable foundation (the Aman Foundation) and two other entities controlled and owned by Mr Naqvi. Mr Naqvi responded by asking: "*We can't pull some cash from APEF 4?*". Mr Lakhani answered by proposing that money approved for APEF IV investments could be used for this purpose (i.e. Mr Naqvi's personal purposes) if some of those investments were delayed.
77. On 8 and 11 March 2016, APEF IV received US\$185 million as proceeds from the sale of its stake in Saham Finances ('the **Saham Finances Proceeds**').
78. US\$76 million of the Saham Finances Proceeds was transferred to AIML's own account and then used to meet various liabilities unrelated to APEF IV. Such funds were thereby misappropriated, and ultimately used for purposes unrelated to APEF IV.
79. On or about 28 March 2016, Mr Lakhani emailed Mr Naqvi, Mr Abdel-Wadood, Mr Dave, and Mr Siddique stating: "*We will be able to survive the month only, if we borrow \$16m from APEF IV to cover \$8m payable to [bank] and \$8m for [a required] regulatory deposit*". Mr Lakhani estimated the funds transferred out of APEF IV to that date stood at US\$219,650,000.
80. On 31 March 2016, US\$16 million was transferred from APEF IV to AIML. Such funds were used for purposes unrelated to APEF IV and thereby misappropriated.

81. From March 2016, in view of the cash shortfall, the decision was taken to delay distributions to investors in APEF IV.
82. Notwithstanding this, a request was made on 10 May 2016, by an internal email between employees of an entity or entities within the Abraaj Group, to “*please approve transfer of \$47m from APEF IV... After the transfer of \$47m APEF IV will have a cash balance of \$4m*”.
83. In the premises, in an attempt to conceal the serious financial difficulties of entities within the Abraaj Group, the Abraaj Leadership dishonestly misapplied and misappropriated investors’ monies in APEF IV.

iii. Treatment of Investors

84. As at 11 March 2016, approximately US\$497 million had been received as a result of the sale of securities in certain APEF IV investment portfolio companies. These proceeds should have been distributed to investors (“the **Investor Distributions**”).
85. As a result of the cash shortfall in the Abraaj Group, and in breach of the APEF IV LPA, AIML delayed the Investor Distributions.
86. In March 2016, investors in APEF IV enquired as to the Investor Distributions.
87. On 20 March 2016, by an email to certain of the Abraaj Leadership, Mr Naqvi stated: “*I think we should start paying selectively to ward off noise*”. A schedule of payments was then devised. Mr Naqvi distributed this by email dated 1 April 2016, stating that it was arranged “*in order of importance, noise makers and those that will come back, with the latest being legacy investors and passive voices.*”
88. By an email, dated 4 April 2016, Mr Naqvi responded to an investor who had made enquiries about the Investor Distributions: “*April 15 latest; hence imminent. Cash all pretty much in, doing final tax and corporate sign offs.*”

89. In April 2016, AIML distributed only US\$91 million to selected investors in APEF IV.
90. By May 2016, due to increasing liquidity issues within the Abraaj Group, AIML was unable to comply with the distribution schedule and paid out only US\$10 million to investors in APEF IV. This left US\$134 million outstanding to investors in APEF IV.
91. An internal email between employees or officers of entities within the Abraaj Group, dated 5 June 2016, stated that:
- “Although we have talked about the issue, but as a reminder. APEF IV year end is 30 June and AH is projected to owe c.\$316m to APEF IV at 30 June 2016. We will be able to adjust c.\$122m of distribution payable with the AH balance leaving a balance of c.\$195m to be funded by AH on or before 30 June 2016”.*
92. On or around 15 June 2016, AIML, GP8, a member of the AIML senior management, Air Arabia and Menasa Capital Management Limited (**‘Menasa’**) entered into a short term loan agreement (the **‘June 2016 Loan Agreement’**). Under the June 2016 Loan Agreement, Air Arabia would provide US\$195 million to APEF IV.
93. As appears from an internal email between employees or officers of entities within the Abraaj Group dated 6 June 2016, it was acknowledged internally within the Abraaj Group that, as part of the June 2016 Loan Agreement, Air Arabia required the funds to be placed *“into an account which has their people as signatories but in the name of say ABOF 4?”*.
94. Pursuant to the June 2016 Loan Agreement, on or about 22 June 2016, Air Arabia transferred US\$195 million via Menasa to AIML, in its capacity as manager of APEF IV.
95. As a result, AIML was able to obtain a bank confirmation, addressed to APEF IV’s auditors, stating that as at 30 June 2016 APEF IV’s account held US\$195 million.

96. On 5 July 2016, US\$195 million was transferred from APEF IV's account back to Air Arabia. On 20 July 2016, US\$4,900,000 was transferred from APEF IV's accounts to Air Arabia representing interest on the June 2016 Loan.
97. It is averred, in the premises, that the circular transfers described in paragraphs 92 - 96 above, were designed by the Abraaj Leadership, AH, AIML and GP8 dishonestly to mislead auditors and/or investors in APEF IV as to the sums held for the benefit of APEF IV. In those circumstances, the bank confirmation (at paragraph 95) was misleading.
98. As at 20 June 2016, approximately US\$122 million was outstanding to APEF IV investors.
99. In an internal email between employees or officers of entities within the Abraaj Group, dated 21 June 2016, it was proposed that general partner reports would not be sent to investors who had yet to receive distributions, noting that "*[i]here will be ramifications if investors speak to each other.*"
100. In a further internal email, dated 23 October 2016, it was stated that: "*APEF IV and ASAS Q1 & Q2 2016 reports have not been shared with investors who are yet to receive distributions.*"
101. On 21 February 2017, a drawdown notice was issued (by AIML and/or otherwise by or on behalf of the general partner of APEF IV and/or APEF IV) to investors in APEF IV for US\$110 million ('the **February 2017 Drawdown**'). The drawdown notice stated these funds would be used for a new investment "*Project Dido*" which was "*in the final stages of due diligence.*"
102. APEF IV's account received the funds on 27 March 2017. However, contrary to the February 2017 Drawdown, "*Project Dido*" was not in the final stages of due diligence in February 2017. The funds from the February 2017 Drawdown were transferred to AIML's own account and used by AIML for purposes unrelated to APEF IV, thereby misappropriated, and ultimately used for purposes unrelated to

APEF IV. The February 2017 Drawdown notice (at paragraph 101) was, therefore, false and/or highly misleading.

103. The financial year for AH, AIML, the Healthcare Partnership and APEF IV was due to end 30 June 2017. At this time, the Abraaj Group owed APEF IV and the Healthcare Partnership approximately US\$426 million.
104. In response to these deficits, on or about 12 June 2017, APEF IV's financial year was changed so that it ended on 31 December 2017. It is to be inferred that this was done to perpetuate the dishonest concealment from investors of the financial difficulties of entities within the Abraaj Group.
105. In or about September 2017, GP8, as general partner, disseminated a report to investors in APEF IV. This suggested that APEF IV funds had been used only for specified projects and that uninvested funds had been retained by APEF IV. This was, however, false and/or misleadingly incomplete in the light of the misappropriations identified above (of which the report made no mention). It is to be inferred that the Abraaj Leadership knew this when the report was disseminated.
106. In February 2018, the Abraaj Leadership engaged Deloitte to conduct a review of APEF IV and the Healthcare Fund in order to attempt to characterise their conduct as mere errors in corporate governance rather than dishonest. On 23 May 2019, at a meeting in London, members of the Abraaj Leadership (including Mr Naqvi) purported to present Deloitte's findings to investors stating that:
 - (1) "*Unemployed cash*" had been transferred from APEF IV's bank account to AIML; and
 - (2) As at March 2018, APEF IV's net exposure to AIML was US\$99,500,000.
107. On 12 June 2018, the Abraaj Group told investors in APEF IV that US\$94,537,618 was owed by AIML to APEF IV. This was said to consist of an APEF IV receivable in the amount of US\$67,533,451 resulting from a direct transfer of funds to AIML.

108. In the premises, in order to conceal dishonest practices by which investment monies were misappropriated, and the true financial position of the Abraaj Group, the Abraaj Leadership, AH, AIML and GP8 dishonestly misled investors in APEF IV by:

- (1) Providing false and/or misleading drawdown notices and reports to investors about the intended use and status of their investments;
- (2) Deflecting enquiries from investors who posed questions about delays in respect of promised distributions or the status of their investments; and
- (3) Issuing false and/or misleading denials when asked by investors about potential improprieties.

D. Healthcare Fund

i. Structure of the Healthcare Fund

109. The Healthcare Fund held itself out as a vehicle for investment in businesses in the healthcare sector (and other related sectors) in emerging markets.
110. The Healthcare Partnership was established by an LPA entered into by Healthcare GP and Abraaj Growth Markets Health Fund CIP LP on 25 June 2015 ('the **Healthcare Partnership LPA**').
111. Two other parallel funds were set up: Abraaj Growth Markets Health Fund (B) LP and Abraaj Growth Markets Health Fund (C) LP (together 'the **Parallel Funds**').
112. Pursuant to a management agreement, dated 17 July 2015, between the Healthcare Partnership, the Parallel Funds and AIML, AIML was appointed as manager of the Healthcare Fund.
113. The Healthcare Partnership and the Parallel Funds are in turn limited partners of Abraaj Growth Markets Health Fund Borrower LP (the '**Borrower Partnership**'). The Borrower Partnership is an exempted limited partnership under the laws of the

Cayman Islands, of which Healthcare GP is, or was at all material times, the general partner.

114. The assets of the Healthcare Fund are held by AHG. Paragraph 25 above is repeated.

115. AH owns, or at all material times owned, limited partnership interests in the Healthcare Partnership through three special purpose vehicles.

ii. Use of Investor's Monies

116. On 7 August 2016, Mr Abdel-Wadood emailed Mr Lakhani, in response to an email about negative projected cash flow within the Abraaj Group, and stated: "*We should also drawdown [the Healthcare Fund]. [Mr Naqvi] has mentioned to [Mr Vettivetpillai] yesterday*".

117. On 21 September 2016, a drawdown notice was issued (by or on behalf of the general partner of the Healthcare Fund, or otherwise on behalf of the Healthcare Fund) to investors in respect of US\$15,900,000 ('the **September 2016 Drawdown**'), although only approximately US\$12,900,000 was collected. The drawdown notice stated that these funds would be used for management fees and payments relating to acquisition finance for an investment.

118. However, following receipt of the September 2016 Drawdown funds:

(1) Approximately US\$13,094,938 was, in a series of payments on 21 and 27 October 2017, transferred to AIML's own account and then diverted to recipients unrelated to the Healthcare Fund; and

(2) More than US\$500,000 was transferred to a private entity under the control of Mr Naqvi.

119. As a result, significant sums from the September 2016 Drawdown were, therefore, used for purposes unrelated to the Healthcare Fund and thereby misappropriated.

120. On 24 November 2016, a drawdown notice was issued (by the general partner of the Healthcare Fund, or otherwise on behalf of the Healthcare Fund) to investors in respect of US\$415 million ('the **November 2016 Drawdown**'). The drawdown notice stated that US\$398 million would be used for investments and the remaining US\$17 million for other costs and expenses.
121. However, following receipt of the November 2016 Drawdown funds, US\$265,740,390 was paid into an account held by AHG. AHG then made onwards payments to other Abraaj Group entities including, on 21 December 2016, by the transfer of:
- (1) US\$40 million to AIML; and
 - (2) US\$102 million to The Abraaj Healthcare Group Hospitals Limited, who, on the same day, made a payment of US\$100,000,051 to AH.
122. Significant sums from the November 2016 Drawdown were, therefore, used for purposes unrelated to the Healthcare Fund and thereby misappropriated.
123. On 3 January 2017, Mr Naqvi was informed that:
- (1) AH was expected to have a cash shortfall of US\$85 million; and
 - (2) While the Healthcare Fund's cash requirement for the first quarter of 2017 would be approximately US\$173 million, it had cash reserves of only US\$111,500,000.
124. On 19 January 2017, Mr Naqvi told the Managing Director and Finance Head to use "*their common sense to process and just don't shut down the business*".
125. On 15 March 2017, a drawdown notice was issued (by the general partner of the Healthcare Fund, or otherwise on behalf of the Healthcare Fund) to investors in the Healthcare Fund in respect of US\$115 million ('the **March 2017 Drawdown**'). The drawdown notice stated that approximately US\$106,500,000 would be used for

investments and the remaining approximately US\$8,500,000 million for management fees.

126. US\$114,911,498 was collected from investors under the March 2017 Drawdown. Funds totalling US\$114,482,930 were paid to AHG's own account via accounts held by AGHF HoldCo Mauritius 1 Limited and AGHF HoldCo Mauritius 2 Limited. AHG then made transfers:

(1) On 12 April 2017, of US\$16,500,041 to AH; and

(2) In a series of payments on 12, 13, 19 and 24 April 2017 and 23 May 2017, totalling US\$56,700,000 to AIML.

127. The effect of this was that US\$73,200,041 from the March 2017 Drawdown was paid to AH and AIML and, therefore, used for purposes unrelated to the Healthcare Fund and thereby misappropriated.

128. In an email, dated 31 May 2017, Mr Lakhani wrote to Mr Naqvi:

"As you are aware, I am under tremendous pressure re Abraaj cash as well, there is a serious cash crunch and currently I don't have the funds to pay essential payments like salaries for the month of June. You are fully aware of the situation... I humbly and respectfully request you to please help me in this situation."

129. Mr Naqvi responded to Mr Lakhani: *"I will sort it out."*

130. The financial year of AH, AIML, the Healthcare Partnership and APEF IV ended on 30 June 2017. At this time entities within the Abraaj Group owed APEF IV and the Healthcare Fund approximately US\$426 million.

131. On 3 June 2017, the Managing Director emailed Mr Naqvi and the Finance Head regarding the *"additional challenge"* in having to *"arrange for the cash of APEF IV and [the Healthcare Fund] audit"*. Several *"potential audit issues"* were identified

including that the balance payable to the Healthcare Fund was US\$225 million as at 30 June 2017.

132. Unlike in relation to APEF IV (as to which see paragraph 104 above), it was not possible to change the financial year end for the Healthcare Fund.

133. Ahead of 30 June 2017, two cash injections were made into AHG:

(1) On or about 21 June 2017, Air Arabia, Healthcare GP and Mr Naqvi entered into a loan agreement for Air Arabia to loan Healthcare GP approximately US\$196 million with a thirty-day term ('the **June 2017 Loan**'). Mr Naqvi signed this loan agreement as personal guarantor. On 24 June 2017, pursuant to the June 2017 Loan, US\$195,999,990 was paid by Air Arabia to AHG; and

(2) On 22 June 2017, US\$15,079,397 was paid by AIML to AHG.

134. On 28 June 2017, AHG transferred US\$224 million to a time deposit account with Commercial Bank of Dubai ('**CBD**'). This deposit is reflected in a letter dated 13 August 2017 from CBD to KPMG (the Healthcare Partnership's auditors) which showed AHG had, as at 30 June 2017, a balance of US\$224 million in a time deposit account and US\$400,783.13 in a saving deposit account with CBD ('the **CBD August 2017 Confirmation**').

135. On 19 July 2017, the funds, plus interest, held in the time deposit account with CBD were paid back to AHG. AHG then made two payments:

(1) On 19 July 2017, US\$196,000,051 was transferred to Air Arabia in repayment of the June 2017 Loan; and

(2) On 24 July 2017, US\$14 million was transferred to AIML.

136. It is averred that, in the premises, these circular transfers, described at paragraphs 133 - 135 above, were designed by the Abraaj Leadership, AH, AIML, AHG and

the Healthcare GP dishonestly to mislead the auditors and the limited partners of the Healthcare Partnership as to the sums which AHG held for the benefit of the Healthcare Partnership.

137. On 18 August 2017, the Borrower Partnership entered into a finance agreement with Overseas Private Investment Corporation ('OPIC') ('the **OPIC Facility**').
138. By a disbursement request dated 18 August 2017, US\$68,100,000 was required from OPIC under the OPIC Facility by 18 September 2017 ('the **OPIC Facility Drawdown**'). The request stated that US\$60,309,919 would be used for portfolio investments, US\$7,405,479 for management fees, and US\$375,000 for organisational expenses.
139. By an email, on or about 18 August 2017, Mr Lakhani wrote to Mr Naqvi, Mr Siddique and Mr Dave that "*we will also receive \$68m from [OPIC] for the [Healthcare Fund]*" and identified that the total cash available, being US\$124,500,000, could be used to pay, inter alia, debts unrelated to the Healthcare Fund, payroll obligations of other entities within the Abraaj Group, and distributions to investors in other funds within the Abraaj Group.
140. On 19 September 2017, the Borrower Partnership received US\$68,099,976 from OPIC. In two separate payments on 27 September 2017, US\$68,098,930 was transferred to AHG. Subsequently, AHG:
 - (1) By way of payments on 28 September 2017, 5 October 2017 and 23 October 2017, transferred US\$41 million to AIML; and
 - (2) By way of two payments on 2 October 2017, transferred US\$27,589,407 to another Abraaj Group entity, called The Abraaj Healthcare Group Hospitals Limited).
141. As a result, significant sums from the OPIC Facility Drawdown were, therefore, used for purposes unrelated to the Healthcare Fund and thereby misappropriated.

142. As particularised above, the Abraaj Leadership dishonestly misapplied and misappropriated investors' monies in the Healthcare Fund in an attempt to conceal the serious financial difficulties of the Abraaj Group.

iii. Treatment of Investors

143. By late 2017, investors in the Healthcare Fund became increasingly concerned about the capital invested in the fund and began to contact members of the Abraaj Leadership to raise such concerns.

144. In or about September 2017, certain investors in funds within the Abraaj Group received an anonymous email alleging that investment funds were being used to fund cash flow within the Abraaj Group. Mr Naqvi responded in writing that he: "*categorically reject[s] the slanderous allegation... [I]t is bizarre and frankly unintelligible for anyone to insinuate that the group would be using LP money for working capital*". By reason of the matters set out above, this statement was false and/or misleading. It is to be inferred that Mr Naqvi knew that this was so when he made the statement; and the statement was accordingly made dishonestly to conceal the financial difficulties of entities within the Abraaj Group and mislead investors.

145. In an email dated 12 September 2017, a representative of an investor in the Healthcare Fund (the Gates Foundation) wrote to AIML:

"I'm concerned about the disconnect between the capital draw down and the capital actually invested. There seems to be an extraordinary amount of money sitting in the fund for quite an extended period of time. Two questions related to this. First, can you send me details on where those funds are located and how they are currently invested? Second, do you have a schedule you can send of when the actual investments are expected to be made."

146. Mr Raj Morjaria ('**Mr Morjaria**') responded, for and on behalf of AIML, that: "*On the treasury question, as advised by Accounts / Treasury: the funds are currently held in the top Cayman Holdco which sits below the Fund vehicle*".

147. On 20 September 2017, Mr Dave, having been made aware of the email referred to at paragraph 145 above, made a proposal to Mr Siddique, Mr Lakhani and, ultimately, Mr Naqvi to share the CBD August 2017 Confirmation Letter with the investor.
148. Subsequently, Mr Morjaria sent the CBD August 2017 Confirmation Letter to the investor in order to support his representation that, as of 15 September 2017, the funds were held in the Healthcare Fund's accounts.
149. In light of the matters particularised at paragraphs 133 - 136, the representation, at paragraphs 146 and 148, and the use of the CBD August 2017 Confirmation Letter were false and/or misleading. It is to be inferred that each of the members of the Abraaj Leadership knew that this was the case when the representation was made and the CBD August 2017 Confirmation Letter used; and they were further attempts by them dishonestly to conceal the financial difficulties of entities within the Abraaj Group and mislead investors
150. In or around October 2017, certain investors in the Healthcare Fund exercised their rights under the Healthcare Partnership LPA to inspect the books and records of the Healthcare Fund.
151. On 12 October 2017, at a meeting with the Limited Partners Advisory Committee of the Healthcare Fund ('the LPAC'), AIML agreed to provide confirmation of current cash balances held by, or on behalf of, the Healthcare Fund.
152. On 15 October 2017, Mr Badru Hilal, an Abraaj Group employee, emailed members of the LPAC:

"1. A total of \$544.8 M was drawn down from LP's and against this, USD 318.9 M was deployed as of June 30 2017. 2. This leaves an available cash balance of USD 225.9 M which is held with the Commercial Bank of Dubai under the entity [AHG] – refer to the attached bank statement for the audited cash balance as of June 30th 2017"

153. In fact, the cash balance in AHG's bank accounts on 15 October 2017 was approximately US\$15,300,000. The representation at paragraph 152 was, therefore, false and/or misleading. It is to be inferred that each of the members of the Abraaj Leadership knew that that was the case when it was made; and that the representation was a further attempt by the Abraaj Leadership dishonestly to conceal the financial difficulties at Abraaj Group and mislead investors.
154. On 22 October 2017, Mr Naqvi emailed an investor who had raised concerns stating that AIML "*had decided to keep the uninvested amounts with us*" and "*keep the drawn funds in place*" as they await to deploy capital to investments, which was said to be "*slightly delayed for reasons beyond our control*". By reason of the matters set out above, this statement was false and/or misleading. In the premises, it is to be inferred that each of the members of the Abraaj Leadership knew that this was the case when it was made; and it was a further attempt by them dishonestly to conceal the financial difficulties at Abraaj Group and mislead investors.
155. On 23 October 2017, Mr Khawar Mann ('**Mr Mann**') (the CEO of the Healthcare Fund) emailed LPAC members stating:
- "The current cash balance is \$194.8M and based on the above all these funds will be deployed by 31st December 2017. The Funds sit in the CBD accounts."*
156. In fact, the cash balance on 23 October 2017 for AHG's bank accounts was US\$8,400,000. The representation at paragraph 155 was, therefore, false and/or misleading. In the premises, it is to be inferred that each of the members of the Abraaj Leadership knew that that was the case when it was made; and it was a further attempt by them dishonestly to conceal the financial difficulties of entities within the Abraaj Group and mislead investors.
157. On 30 November 2017, a representative of an investor emailed AIML, on behalf of the LPAC, requesting actual bank statements in respect of accounts held for, or on behalf of, the Healthcare Fund.

158. Mr Vettivetpillai responded by email stating that there would be a delay due to religious festivities in Dubai. Separately, Mr Vettivetpillai wrote to Mr Naqvi and others about the request.

159. Mr Naqvi directed Mr Vettivetpillai to keep the request quiet, writing: *“Let’s not forward to ANYONE internally yet please”*. Mr Naqvi proposed to Mr Dave, Mr Siddique and Mr Lakhani that funds be obtained from Air Arabia, stating that:

“[Air Arabia] is easy to give us 100 on Monday into a designated account for a week to enable a certificate to be sent; with the balance from the 50, Can we make it work? Ie show more as spent?”

160. Subsequently, three payments were made to AHG:

(1) On 5 December 2017, US\$139,999,999 was paid by Air Arabia, pursuant to a loan to repaid on 13 December 2017 with a flat fee of US\$5,600,000;

(2) On 5 December 2017, US\$29,328,497 by AIML; and

(3) On 6 December 2017, US\$631,724 by AIML.

161. After these payments, Mr Vettivetpillai wrote to the investor by an email, dated 8 December 2017, stating that: *“[w]e will get a confirmation of bank balances in the account of the date requested when the bank reopened after the National day celebrations in the UAE. This should be with you next week as UAE was closed for a few days for National Day celebrations.”*

162. Following this, three payments were then made by AHG:

(1) On 11 December 2017, US\$10 million was transferred to AIML;

(2) On 13 December 2017, US\$140 million was transferred to Air Arabia; and

(3) On 13 December 2017, US\$10 million was transferred to AIML.

163. It is averred, in the premises, that these circular transfers, at paragraphs 160 - 162 above, were designed by the Abraaj Leadership, AH, AIML, AHG and the Healthcare GP dishonestly to mislead the limited partners of the Healthcare Partnership as to the sums held by AHG for the benefit of the Healthcare Partnership.

164. By an email, dated 13 December 2017, a representative of an investor in the Healthcare Fund wrote to Mr Vettivetpillai reiterating the request for actual bank statements.

165. On 15 December 2017, Mr Mann provided a representative of one of the investors with two documents by email:

(1) Firstly, a document titled "*AGHF Deployment Update*", dated December 2017, which gave the "*AGHF Fund Balance*" as US\$170 million to November 2017 and US\$116,600,000 to December 2017; and

(2) Secondly, a letter from CBD stating that the AHG current account balance at 7 December 2017 was US\$169,975,946.66 ('the **CBD December 2017 Confirmation**').

166. The representations at paragraph 165 were, false and/or misleading as:

(1) In fact, AHG's CBD account had a cash balance of only US\$16,186 on 1 December 2017 and US\$9,975,895 on 15 December 2017; and

(2) The balance referred to in the CBD December 2017 Confirmation was created purely by the circular payments referred to at paragraphs 160 - 163 above.

It is to be inferred that each of the members of the Abraaj Leadership knew that the representations were false and/or misleading when made; and they were further attempts by the Abraaj Leadership dishonestly to conceal the financial difficulties at Abraaj Group and mislead investors.

167. In the premises, in order to conceal dishonest and fraudulent practices by which investment monies were misappropriated, and the true financial position of the Abraaj Group, the Abraaj Leadership, AH, AIML, AHG and the Healthcare GP dishonestly misled investors in the Healthcare Fund by:

- (1) Providing false and/or misleading drawdown notices and reports to investors about the intended use and status of their investments;
- (2) Deflecting enquiries from investors who posed questions about delays in respect of promised distributions or the status of their investments; and
- (3) Issuing false and/or misleading denials when asked by investors about potential improprieties.

E. The Jafar Loans

i. Pressures on the Abraaj Group

168. Following further requests from investors in the Healthcare Fund for bank account statements, the Abraaj Leadership and AHG decided to begin to pay money to investors in the Healthcare Fund. An employee of an entity or entities within the Abraaj Group emailed investors, copying in Mr Vettivetpillai, stating that the Abraaj Group: *“would immediately arrange to return US\$95.5 million to you, along with the disbursements from [OPIC] that related to the approved investments”*.

169. Following this, various payments were made to investors in the Healthcare Fund.

170. In addition, as a result of the matters set out at paragraphs 103 - 104 above, the financial year for APEF IV was due to end on 30 December 2017. By December 2017, the APEF IV shortfall was approximately US\$150 million.

171. As a result, by December 2017, the Abraaj Leadership, AH, AIML, AHG, Healthcare GP and GP8 recognised that their misappropriation of investment monies, and dishonest steps to conceal such misappropriation, were liable to be

exposed in light of persistent investor enquiries and the financial year end for APEF IV.

172. In the premises stated above, it was clear to the Abraaj Leadership and so to AH, AIML, AHG, the Healthcare GP and GP8 that:

(1) Further funding was required to continue the concealment of wrongdoing;
and

(2) It would be difficult or impossible to obtain such funding if the true financial position of entities within the Abraaj Group was disclosed to investors or potential funders.

ii. Agreement or Combination to Seek Funding

173. As a result of the matters set out above, in or around December 2017, Mr Naqvi and the other members of the Abraaj Leadership joined in a combination and/or plan and/or entered into an understanding or agreement to have Mr Naqvi and, as required, other members of the Abraaj Leadership induce third parties to lend money to entities within the Abraaj Group, in particular, to fund the redemptions and activities of the Healthcare Fund and APEF IV. In so acting, the members of the Abraaj Leadership were acting for and on behalf of each of the Defendants, being the directing minds and will of those entities for that purpose.

174. In so combining, planning, agreeing and/or understanding, the Abraaj Leadership and the Defendants agreed, knew or understood that:

(1) This would involve the making of false representations by Mr Naqvi and/or other members of the Abraaj Leadership to induce such loans, including as to the circumstances in, and purposes for, which the loans were sought; and

(2) Third-party investors would thereby suffer loss and damage upon the advance of funds.

175. It is averred, in the premises, that (because Mr Jafar was so targeted as particularised below) it was agreed, intended, and/or understood, by the Abraaj Leadership and the Defendants, that Mr Jafar would be targeted by Mr Naqvi for this purpose. In particular, it is averred that:

- (1) the other members of the Abraaj Leadership and the Defendants in this way instigated, procured, induced and/or assisted Mr Naqvi to target Mr Jafar because of Mr Naqvi's personal acquaintance with Mr Jafar; and
- (2) Mr Naqvi would not have so acted without such instigation, procurement, inducement and/or assistance. Mr Naqvi alone could not have hoped to conceal the existing fraud on investors in the Healthcare Fund and APEF IV and accordingly had to act, and did act, in concert with the other members of the Abraaj Leadership to coordinate the activities of the Defendants to that end.

iii. First Loan

176. On 21 December 2017, Mr Naqvi requested a meeting with Mr Jafar that day at Mr Jafar's offices in Sharjah ('the **21 December 2017 Meeting**').

177. At the 21 December 2017 Meeting, Mr Naqvi stated that:

- (1) Certain investors in the Healthcare Fund ('the **Healthcare Investors**') had demanded the return of their uninvested capital ('the **Uninvested Capital**');
- (2) There was no contractual or legal basis for this demand, since the use of the Uninvested Capital for the Abraaj Group's general business purposes was permitted by the relevant contractual arrangements;
- (3) A legal opinion from Freshfields Bruckhaus Deringer LLP had confirmed this;

- (4) The Healthcare Investors had threatened to escalate their demands for the Uninvested Capital and, thereby, generate adverse publicity for the Abraaj Group;
- (5) Mr Naqvi feared that such adverse publicity would cause irreparable reputational and consequential damage to the Abraaj Group;
- (6) The Abraaj Group needed to borrow US\$290 million before the end of December 2017, of which US\$250 million was to pay the Uninvested Capital to the Healthcare Investors;
- (7) This loan was needed on a short-term basis, since senior representatives of the Healthcare Investors had assured Mr Naqvi that funds returned to investors would be re-invested before the end of January 2018; and
- (8) The Abraaj Group was not in any underlying financial trouble, but was simply facing short-term cash/liquidity issues over the year end.

178. Mr Naqvi requested that Mr Jafar urgently lend US\$90 million and explained that he (Mr Naqvi) was in discussions with Emirates NBD to raise an additional US\$200 million.

179. Mr Jafar told Mr Naqvi that he wished to discuss matters with his banker, Mr Varouj Nerguizian (**'Mr Nerguizian'**), CEO of the Bank of Sharjah (**'BoS'**).

180. Later on, that day, Mr Jafar and Mr Nerguizian telephoned Mr Naqvi (the **'21 December 2017 Telephone Call'**).

181. In the 21 December 2017 Telephone Call, Mr Naqvi:

- (1) Repeated the statements made at the 21 December 2017 Meeting, set out at paragraph 177 above;

- (2) Stated that the unencumbered assets of the Abraaj Group would be available to meet repayments to Mr Jafar and identified alternative sources of funds which could be used to meet such repayments;
- (3) Stated that he was on the verge of finalising other funding, including selling down equity in AH, which would generate significant liquidity;
- (4) Requested that the proposed loan be US\$100 million and the date for repayment be extended to 28 February 2018 to provide an additional buffer of time; and
- (5) Requested that the loan be made to AIML, since, unlike AH which did not have a chequing account, AIML could, at the time that the loan was to be made, issue a cheque (in the amount of the principal, plus fees and interest) to Mr Jafar post-dated to 28 February 2018.

182. On the basis of, and in reliance on, these statements, Mr Jafar agreed to make a loan to AIML for the benefit of the Abraaj Group ('the **First Loan Agreement**'). The First Loan Agreement was made orally by telephone on or about 21 December 2017 and by other subsequent conduct, as detailed below.

183. As to the terms of the First Loan Agreement:

- (1) The loan was of US\$100 million;
- (2) The loan was repayable by 28 February 2018;
- (3) A fee of 6% of the principal would be charged;
- (4) Interest of 6% per annum would be payable on 28 February 2018;
- (5) Default interest would accrue after 28 February 2018 at 12% per annum;
and

(6) A post-dated cheque would be provided in the amount of the principal, fees and interest.

184. Mr Jafar and Mr Naqvi agreed that Mr Nerguizian and Mr Naqvi would take care of the necessary arrangements and documentation in respect of the First Loan Agreement.

185. BoS calculated that the amount due to Mr Jafar on 28 February 2018 under the First Loan Agreement would be AED 393,653,775. Mr Nerguizian informed Mr Naqvi of this figure.

186. By a letter from Mr Lakhani to BoS, dated 21 December 2017, AIML provided two cheques, post-dated to 28 February 2018, payable to Mr Jafar drawn on AIML's account with CBD, each signed by Mr Naqvi and Mr Lakhani ('the **First and Second Post-Dated Cheques**').

187. Mr Jafar arranged for BoS to transfer AED 367,300,000 from his account (Account number 01307-020246) (being the equivalent of US\$100 million at the exchange rate applied by BoS) to AIML's account with CBD (Account number AE780230000001001833704) ('the **AIML CBD Account**'). This transfer took place on 21 December 2017.

iv. Second Loan

188. On 26 December 2017, Mr Naqvi contacted Mr Jafar requesting a further loan of US\$200 million. Mr Naqvi explained that:

(1) The proposed terms from Emirates NBD, referred to at paragraph 178, were draconian and this deal was unlikely to close;

(2) He was requesting Mr Jafar supply funding on the same terms as the First Loan Agreement;

(3) He was prepared to offer security in the same form as Emirates NBD had requested, namely over the Abraaj Group's unencumbered assets and his own personal assets; and

(4) Mr Jafar would have to proceed on his word that the security would be documented in the new year, as there was insufficient time to do so before making the loan.

189. Mr Jafar told Mr Naqvi that he wished to discuss matters with Mr Nerguizian. Later on that day, Mr Jafar asked Mr Nerguizian to meet Mr Naqvi personally to verify his account. Mr Nerguizian agreed to meet Mr Naqvi the next day.

190. At a meeting between Mr Naqvi and Mr Nerguizian on 27 December 2017 at BoS' head office in Sharjah, Mr Naqvi:

(1) Produced the terms purportedly demanded by Emirates NBD, including a pledge of over shares in AH held by AE2L;

(2) Reiterated that security would be provided on these terms, to be documented in the new year; and

(3) Reiterated that the funding was required on a short-term basis, since senior representatives of the Healthcare Investors had assured Mr Naqvi that Uninvested Capital returned to investors would be re-invested in the Healthcare Fund before the end of January 2018.

191. On the basis of, and in reliance on, these statements, Mr Jafar agreed to make a loan to AH for the benefit of the Abraaj Group ('the **Second Loan Agreement**'). The Second Loan Agreement was made orally on or about 27 December 2017 and by other subsequent conduct.

192. As to the terms of the Second Loan Agreement:

(1) The loan was of US\$200 million;

- (2) The loan was repayable by 28 February 2018;
- (3) A fee of 7.5% of the principal would be charged;
- (4) Interest of 6% per annum would be payable on 28 February 2018;
- (5) Default interest would accrue after 28 February 2018 at 12% per annum;
- (6) A post-dated cheque would be provided in the amount of the principal, fees and interest; and
- (7) Security would be provided from the Abraaj Group's unencumbered assets and Mr Naqvi's personal assets in a form to be agreed.

193. Mr Jafar and Mr Naqvi agreed that BoS would work with Mr Naqvi in the new year to formally document the Second Loan Agreement and related security.

194. Prior to the transfer of funds:

- (1) A Memorandum of Agreement was signed by Mr Jafar, Mr Naqvi (on behalf of AIML) and Mr Nerguizian (on behalf of BoS) setting out the terms of the Second Loan Agreement. In error, BoS's legal department stated that the loan was to AIML not AH;
- (2) Mr Naqvi provided a letter, on behalf of AE2L, that noted the Second Loan Agreement and pledged AE2L's 210,000,000 ordinary shares in AH to Mr Jafar by way of security for the Second Loan. This letter had been countersigned by Mr Siddique on behalf of AH; and
- (3) AIML provided a cheque, post-dated to 28 February 2018, payable to Mr Jafar drawn on the AIML CBD Account, signed by Mr Naqvi and Mr Lakhani ('the **Third Post-Dated Cheque**') (together with the First and Second Post-Dated Cheques 'the **Post-Dated Cheques**').

195. Mr Jafar arranged for BoS to make two transfers each totalling AED 367,300,000 from his account (Account number 01307-020246) (being, in total, the equivalent of US\$200 million at the exchange rate applied by BoS) to AH's accounts with CBD (Account number AE120230000001001716552) ('the **AH CBD Account**') and with First Gulf Bank, Abu Dhabi ('**FAB**') (Account number AE7202271011201888783014) ('the **AH FAB Account**'). These transfers were made on 27 December 2017.

v. Third Loan

196. On 28 December 2017, Mr Naqvi requested that Mr Jafar provide a separate loan of US\$50,000,000 for a period of just one week for the benefit of the Abraaj Group.

197. Mr Naqvi stated this was required to cover very short-term, year-end liquidity issues.

198. Given the First and Second Loan Agreements and the very short term requested, Mr Jafar agreed to provide the further loan to AH for the benefit of the Abraaj Group without interest or fees ('the **Third Loan Agreement**'). The Third Loan Agreement was made orally on or about 28 December 2017.

199. Pursuant to the Third Loan Agreement, Mr Jafar instructed BoS to transfer AED 183,650,000 from his account (Account number 01307-020246) (being the equivalent of US\$50,000,000 at the exchange rate applied by BoS) to the AH CBD Account. This transfer was made on 28 December 2017.

200. On or around 4 January 2018, Mr Jafar received a repayment of AED 183,650,000 from AIML in full repayment of the Third Loan.

F. Use of the Jafar Loans

i. AIML CBD Account

201. On 21 December 2017, the AIML CBD Account had an opening balance of zero.

202. On 21 December 2017, pursuant to the First Loan Agreement, Mr Jafar paid AED 367,300,000 into the AIML CBD Account.

203. Subsequently, on 21 December 2017, AIML transferred AED 367,300,000 to AHG.

204. Following this payment, the balance in the AIML CBD Account was zero.

ii. AH CBD Account

205. On 27 December 2017, the AH CBD Account had an opening balance of AED 476.

206. On 27 December 2017, pursuant to the Second Loan Agreement, Mr Jafar paid AED 367,300,000 into the AH CBD Account.

207. Subsequently, on 27 or 28 December 2017, the following payments were made from the AH CBD Account:

(1) AED 40 million to AIML;

(2) AED 29,392,000 to AHG;

(3) AED 12,920,000 to AH;

(4) AED 3,703,630 to Abraaj Global Credit Fund L.P, an Abraaj Group entity;

(5) AED 18,518,146 to Abraaj Global Credit Fund L.P;

(6) AED 36,767,500 to Saudi Tadawi Company for Healthcare, an Abraaj Group entity; and

(7) AED 8,865,518 to AH.

208. On 28 December 2017, pursuant to the Third Loan Agreement, Mr Jafar paid AED 183,650,000 into the AH CBD Account.
209. Subsequently, on 28 December 2017, the following payments were made from the AH CBD Account:
- (1) AED 363,173,979 to GP8;
 - (2) AED 1 million to AH; and
 - (3) AED 36,324,000 to Abraaj Capital.
210. Two payments from AH of AED 820,000 and 2,300,000 respectively were received on 28 December 2017.
211. Subsequently, on 28 December 2017, AED 3,005,553 was transferred to Abraaj Kenya Advisors International, an Abraaj Group entity.
212. Following this payment, the balance in the AH CBD Account was AED 379,732.

iii. AH FAB Account

213. On 27 December 2017, the AH FAB Account had an opening balance of zero.
214. On 27 December 2017, pursuant to the Second Loan Agreement, Mr Jafar paid AED 367,300,000 into the AH FAB Account.
215. Subsequently, on 28 December 2017, the following payments were made from the AH FAB Account:
- (1) AED 275,500,000 to Air Arabia; and
 - (2) AED 91,700,000 to GP8.
216. Following these payments, the balance in the AH FAB Account was AED 100,000.

G. Subsequent Events

i. Dealings between the Abraaj Group and Mr Jafar

217. During early 2018, progress on the formalisation of documents relating to the First and Second Loan Agreements was slow. On 15 February 2018, Mr Jafar instructed Gibson, Dunn & Crutcher ('**Gibson Dunn**') to seek to ensure that the necessary documentation was completed.
218. On 22 February 2018, a meeting took place between Mr Jafar and Mr Naqvi at AH's offices in Dubai. Mr Naqvi requested revisions to the amounts and dates of repayments due under the First and Second Loan Agreements.
219. Mr Jafar stated that he would be prepared to do so if certain conditions were satisfied, including regarding security for the debts.
220. On 28 February 2018, a further meeting took place between Mr Jafar, Mr Naqvi, Mr Nerguizian and Mr Majiid Jafar (the son of Mr Jafar) at Mr Jafar's offices in Sharjah. Mr Naqvi was informed of the terms on which Mr Jafar would be prepared to revise the amounts and dates of repayments under the First and Second Loan Agreements. A document summarising these terms was provided to Mr Naqvi on 1 March 2018.
221. On 21 and 22 March 2018, repayments totalling AED 121 million (being the equivalent of approximately US\$33 million at the exchange rate then prevailing) were made to Mr Jafar in respect of the First and Second Loans.
222. Negotiations continued through March and April 2018, but no agreement was reached.
223. On 27 April 2018, Mr Jafar wrote by letter to AH and AIML demanding the repayment of the First and Second Loans. This demand was not complied with.

224. On 1 May 2018, Gibson Dunn met with Houlihan Lokey Inc. (**'Houlihan Lokey'**) (who had been engaged by AH). Houlihan Lokey reported that they had not seen any documentation relating to the First and Second Loan Agreements and were not aware of the First and Second Loans.
225. Following this meeting, on 1 May 2018, Gibson Dunn wrote to Houlihan Lokey, Mr Naqvi and AIML by email stating that unless the First and Second Loan Agreements were revised, on the terms proposed, by 4pm UAE time on 2 May 2018, he would present the Post-Dated Cheques. No satisfactory response to this letter was received.
226. On the night of 2 May 2018, it appears that Mr Naqvi and Mr Lakhani travelled from the UAE to London. It is averred that they did so:
- (1) In anticipation that Mr Jafar would present the Post-Dated Cheques;
 - (2) In the expectation that the Post-Dated Cheques would be dishonoured; and
 - (3) Because it is a criminal offence under the laws of the UAE to sign a corporate cheque which is dishonoured.
227. On 3 May 2018, Mr Jafar presented the Post-Dated Cheques. They were returned unpaid that day by CBD on the grounds that there were insufficient funds in the AIML CBD Account.
228. On 5 May 2018, Mr Naqvi signed a written restructuring agreement on behalf of AH, AIML, AE2L and himself personally, and Mr Jafar countersigned on 6 May 2018 (**'the Loan Restructuring Agreement'**). The Loan Restructuring Agreement was conditional on the satisfaction of various conditions by 7 May 2018.
229. Those conditions were not satisfied, and the Loan Restructuring Agreement is thus of no effect.

ii. Liquidations and Regulatory Action

230. On 18 June 2018, by order of the Grand Court of the Cayman Islands, AH and AIML were placed into provisional liquidation. On 12 July 2018, Mr Jafar submitted proofs of debt in those liquidations for voting purposes.
231. In or around August 2018, Mr Jafar and Mr Naqvi agreed as follows:
- (1) Mr Jafar agreed not to pursue certain criminal charges against Mr Naqvi in the UAE; and
 - (2) in exchange, Mr Naqvi agreed to transfer, or procure the transfer of, certain personal assets held by parties or entities associated with him and/or his family. These assets are estimated to be worth between US\$35-55 million as at the date of this Statement of Claim.
232. On 11 April 2019, the United States Securities and Exchange Commission charged Mr Naqvi and AIML in the United States District Court for the Southern District of New York, inter alia, with the misappropriation of funds from the Healthcare Fund.
233. Subsequently, Mr Naqvi and Mr Vettivetpillai were arrested in the United Kingdom, and Mr Abdel-Wadood was arrested in the United States.
234. On 23 May 2019, a superseding indictment was submitted to the United District Court for the Southern District of New York naming each of the Abraaj Leadership as defendants.
235. Prior to reviewing the facts and evidence set out in the SEC's Summary of Allegations, dated 11 April 2019 (as amended on 16 August 2019), and the superseding US Indictment, dated 23 May 2019, Mr Jafar did not know and/or understand, and could not reasonably have been expected to know and/or understand:

- (1) The depth and scale of the mismanagement and misfeasance within the Abraaj Group over a number of years;
- (2) The true nature and extent of Mr Naqvi's dishonesty in relation to both the fraud on investors and his dealings with Mr Jafar, as particularised above; and/or
- (3) The involvement of the other members of the Abraaj Leadership, whose acts and intentions are to be attributed to the Defendants, in both the fraud on investors and Mr Naqvi's dealings with Mr Jafar, as particularised above.

iii. Notices of Rescission

236. Following the actions by the SEC described above, Mr Jafar instructed Jones Day LLP to send notices of rescission and claims to AH, AIML, AHG and GP8 on 30 April 2019.

iv. DFSA Decision Notices and Further Liquidations

237. On 29 July 2019, the Dubai Financial Services Authority ('DFSA') issued decision notices against AIML and Abraaj Capital:

- (1) AIML was fined US\$299,300,000 for undertaking financial services activities without authorisation and its misleading and deceptive conduct (largely as particularised above); and
- (2) Abraaj Capital was fined US\$15,275,925 for, inter alia, employing a practice between 2017 and 2018 of systematically moving funds in and out of its accounts either side of financial reporting dates.

238. Following this, Abraaj Capital was placed into provisional liquidation.

239. On 11 September 2019, by orders of the Grand Court of the Cayman Islands, AH and AIML was each placed into official liquidation.

H. UAE Law

240. In this section, Mr Jafar states the propositions of the law of the UAE on which he will rely as required:

- (1) to establish the actionability of his tortious claims against the Defendants in the Grand Court, subject to any ruling of that court those claims are to be tried solely by reference to the law of the Cayman Islands; and
- (2) in respect of his claims for proprietary relief and unjust enrichment in recognition of (i) the power of the Grand Court to give effect in equity (by way of remedy) to a foreign law proprietary entitlement; and (ii) the applicability of that law to his claims in unjust enrichment on the facts stated above, in particular, in the light of the transfers from Mr Jafar's account in the UAE and the fraudulent inducement of those transfers in the UAE.

241. Extracts of the UAE Civil Code which are relied on are set out in Appendix 1.

242. In summary:

- (1) In relation to a contract, a contracting party who deceives another through fraudulent means (by words or conduct) commits deceit (UAE Civil Code, Article 185);
- (2) A contract induced by deceit is voidable, and the contracting party who was induced to enter into that contract is entitled to rescind it (UAE Civil Code, Articles 191, 212 (1) and 212 (4));
- (3) Whether or not the contract is rescinded, a contracting party who commits deceit is (also) liable to pay compensation to restore the position to what it would have been had the tort not been committed. This liability arises under the general provisions concerning tortious liability for a harmful act (UAE Civil Code, Articles 282 and 285);

- (4) A person (even if not a contracting party) who is responsible for a harmful act (even if not conscious that the relevant harmful act is in law a tort) is bound to pay compensation to restore the position to what it would have been had the harmful act not been committed (UAE Civil Code, Article 282). For these purposes, an agreement or combination with others to cause harm to another (including by a deceit practiced by one party to that agreement or combination) is a harmful act and the participants are responsible for the loss caused by the harmful act;
- (5) A person can commit a tort directly as a perpetrator, or indirectly if they planned or directed the tortious act, or if they caused the harmful act (UAE Civil Code, Article 283);
- (6) When several persons are responsible for a harmful act, each one of them is responsible for their own share in it and the judge may decide to allot the liability equally between them or consider them jointly and severally responsible (UAE Civil Code, Article 291). In the circumstances of the deceit practiced on, and the Conspiracy against Mr Jafar, (as particularised below) the liability of the Defendants falls to be allotted on a joint and several basis;
- (7) UAE law provides that an employer/principal can be held vicariously liable for the tort of its employee/agent (including in relationships akin to employment) where the tort is perpetrated by the subordinate in the exercise of his duty or because of it (UAE Civil Code, Article 313 (1) (b));
- (8) The natural consequences of a harmful act are actionable in damages, such recoverable heads of loss including lost profit (UAE Civil Code, Article 292);
- (9) Thus, under UAE law, the liability of the Defendants to Mr Jafar in tort is at least as extensive as that which arises under the law of the Cayman Islands (as particularised below);

- (10) UAE law provides for liability for unjust enrichment under UAE Civil Code Articles 318, 319, and 324;
- (11) The liability to make restitution arises if there was no just cause for any enrichment. The liability is either to restore the property received, in specie, if existing, or, if no longer in existence, to make a payment equal to the value received (as well as any profits earned or interest due as a result of the enrichment);
- (12) Further, a person from whom money or other moveable property has been obtained fraudulently is entitled to recover it from a person who has possession of it (UAE Civil Code, Articles 1325 and 1326);
- (13) As a result of the matters particularised below, under UAE law the Defendants are liable to make restitution to Mr Jafar of monies received or the value of monies that were received (i) as a result of the loan contracts, which were induced by deceit and were voidable and have been rescinded; and/or (ii) as a result of the Conspiracy, irrespective of whether the loan contract under which those monies were transferred has been rescinded. In each case, there is no just cause for the enrichment, whether by a direct recipient of the monies transferred or by an indirect recipient of those monies, or the value of those monies, who is also a party to the conspiracy to defraud Mr Jafar.

243. In those circumstances, each of the Defendants is, or would be, personally liable to Mr Jafar under the law of the UAE in tort and/or unjust enrichment, on a joint and several basis, to pay compensation and/or make restitution in the sum of at least US\$300 million less US\$33 million repayments made and less the value of the consideration received from Mr Naqvi as particularised above in paragraph 231, and/or to return to him any identifiable loan monies that remain in their hands.

I. Mr Jafar's Causes of Action

i. Unlawful Means Conspiracy

244. Paragraphs 168 - 175 above are repeated.

245. In or around December 2017, the Abraaj Leadership, whose acts and intentions are to be attributed to the Defendants, joined in a combination and/or plan and/or entered into an understanding or agreement to induce third parties, including Mr Jafar, to lend monies to the Abraaj Group by using unlawful means, being the making of knowingly false representations which were, and were intended to be, relied on by those third parties, including Mr Jafar, to their detriment ('the **Conspiracy**').

246. The Abraaj Leadership's entry into the Conspiracy is to be inferred from:

- (1) The previous coordinated efforts of the Defendants and the Abraaj Leadership to misuse investors' monies and dishonestly to conceal that misuse, as particularised above.
- (2) The Defendants and the Abraaj Leadership each having the motive for the Conspiracy, being to conceal the aforesaid frauds on existing investors in entities within the Abraaj Group and/or the need for funds as a result of those frauds.
- (3) The timing of the fraudulent representations made to Mr Jafar (as particularised below) and the way in which they coincided with:
 - a. The heightened inquiries of investors (as particularised above);
 - b. APEF IV's financial year end, in circumstances where it faced a considerable shortfall, as to which paragraphs 103 - 104 and 170 are repeated; and

c. The difficulty the Abraaj Group would have in finding institutional lenders, particularly if it disclosed its true financial situation and the facts and matters that had led to it, including the misappropriation of investor monies particularised above. Paragraphs 171 - 172 are repeated.

(4) Mr Jafar being a long-standing acquaintance of Mr Naqvi with personal wealth and a history of involvement with the Abraaj Group. Paragraph 30 is repeated. The Abraaj Leadership knew that Mr Naqvi was likely to have the ability to induce Mr Jafar into making loans to the Abraaj Group on the basis of fraudulent representations. In the premises, this knowledge is to be attributed to each of the Defendants. Further, in the premises it is to be inferred that each of the Abraaj Leadership and the Defendants knew that Mr Naqvi would only approach third parties who he considered that he would be able to induce to make loans on the basis of fraudulent representations.

(5) The immediate onward transfer of the loan monies transferred under the First and Second Loan Agreement (the '**Loan Monies**') by AIML and AH to other entities in the Abraaj Group. Paragraphs 201 - 216 are repeated.

247. At all material times, each Defendant intended for Mr Naqvi to execute, and knew that he would execute, the Conspiracy, on behalf of each Defendant, by making the representations (particularised below) to Mr Jafar and/or by making knowingly false representations in general to Mr Jafar. The members of the Abraaj Leadership other than Mr Naqvi instigated, procured, induced and/or assisted those representations which Mr Naqvi would not otherwise have made in circumstances where he was unable to act to coordinate the actions of the Defendants to conceal the existing fraud on the investors in the Healthcare Funds and APEF IV on his own.

248. At all material times, each member of the Abraaj Leadership, and so each Defendant, knew that the making of knowingly false representations to Mr Jafar as part of the Conspiracy would constitute deceit.

249. At all material times, each member of the Abraaj Leadership and so each Defendant intended, by the execution of the Conspiracy, to injure Mr Jafar, in that he would suffer loss and damage by advancing funds to AH and AIML in reliance on the representations made to him.

250. Paragraphs 177, 180, 188, and 190 above are repeated.

251. Pursuant to and in furtherance of the Conspiracy, Mr Naqvi, in his personal capacity and on behalf of each Defendant, made express representations to Mr Jafar that:

- (1) The Abraaj Group was not in any underlying financial trouble, it was simply facing short-term cash/liquidity issues over the year end for the reasons explained by Mr Naqvi .
- (2) The Uninvested Capital held by the Abraaj Group had properly been placed in the Abraaj Group treasury and properly used for the Abraaj Group's general business purposes.
- (3) The Uninvested Capital had been dealt with in accordance with the Healthcare Partnership LPA, and/or (expressly or impliedly) that Mr Naqvi believed that to be the case and had a reasonable basis for that belief.
- (4) The Healthcare Investors had requested the return of the Uninvested Capital by the end of 2017.
- (5) It was intended and/or expected that approximately US\$250 million of the Loan Monies would be used for the purpose of returning the Uninvested Capital to the Healthcare Investors.
- (6) Mr Naqvi had been informed by senior representatives of the Healthcare Investors and/or (expressly or impliedly) he believed, and had a reasonable basis for his belief, that the money paid out as Uninvested Capital would

be returned by the Healthcare Investors by way of reinvestments before the end of January 2018.

(7) Mr Naqvi believed, and (expressly or impliedly) he had a reasonable basis for his belief, that AIML and AH would be able to repay the First and Second Loan Agreement, if not by January 2018, then by February 2018.

(8) Mr Naqvi believed, and (expressly or impliedly) that he had a reasonable basis for his belief, that the Abraaj Group's unencumbered assets and other anticipated revenue would generate sufficient liquidity to enable repayment of the First and Second Loan Agreement prior to the end of January 2018.

252. Furthermore, pursuant to and in furtherance of the Conspiracy, Mr Naqvi in his personal capacity and on behalf of each Defendant made implied representations (collectively with the express (or implied) representations particularised at paragraph 251 above, 'the **Representations**') to Mr Jafar that:

(1) The Abraaj Group, including each Abraaj entity and its underlying funds, was being operated legally and in accordance with proper corporate governance principles; and

(2) Save for the short-term liquidity issue, which arose from legitimate business dealings and proper corporate governance by and within the Abraaj Group, none of the entities within the Abraaj Group or its underlying funds was insolvent or liable to become insolvent.

253. The Representations were made in the course of the negotiations for the First Loan Agreement on 21 December 2017 and continued and/or were repeated and/or were not corrected in the course of the negotiations for the Second Loan Agreement on 26 and 27 December 2017.

254. Each of the Representations was false at the time(s) that it was made. In addition, each of Mr Naqvi, the other members of the Abraaj Leadership, and so the

Defendants, knew that each of the Representations was false at the time(s) that it was made. In particular, each knew that:

- (1) The Uninvested Capital had been used by AHG for purposes unrelated to the Healthcare Fund, in particular, for the purpose of making payments to AH, AIML and Air Arabia. Paragraphs 116 - 140 above are repeated. These were not proper business purposes for the use of the Uninvested Capital.
- (2) The Uninvested Capital had been dealt with in a way that was in breach of the Healthcare Partnership LPA, or there was no reasonable basis for believing they had been dealt with in accordance with the Healthcare Partnership LPA.
- (3) The Healthcare Investors had been raising concerns and seeking information regarding the manner in which their investments had been handled since, at least, September 2017, and the Abraaj Leadership and other Abraaj Group employees had been providing false and/or highly misleading information to them. Paragraphs 143 - 167 above are repeated.
- (4) The Abraaj Group was not being operated legally or in accordance with proper corporate governance principles. In relation to the Healthcare Fund and APEF IV, the Abraaj Leadership dishonestly and fraudulently misapplied and misappropriated investors' monies in an attempt to conceal the serious financial difficulties of the Abraaj Group (and the extent of those difficulties). Paragraphs 116 - 167 and 57 - 108 above are repeated.
- (5) It was not intended, or expected, that the Loan Monies would be used for the purpose of returning the Uninvested Capital to the Healthcare Investors, given that:
 - a. The total of the Uninvested Capital was less than US\$250 million;

- b. Only US\$142 million was, in fact, returned to all investors in the Healthcare Fund, the Healthcare Investors being a subset of this group;
 - c. The Loan Monies were, on receipt, immediately transferred onwards by AIML and AH to other entities in the Abraaj Group. Paragraphs 201 - 216 above are repeated; and
 - d. The balance of the Loan Monies was used for purposes, the nature and extent of which are not entirely known.
- (6) Mr Naqvi had not been informed by senior representatives of the Healthcare Investors, and/or did not believe, and/or had no reasonable basis for such belief, that if the Uninvested Capital was returned to the Healthcare Investors before the end of 2017 it would be reinvested by them by the end of January 2018.
- (7) The Abraaj Group had been experiencing serious financial difficulty for some time and/or was already in fact insolvent before the requests for the First and Second Loans. In particular:
- a. The Defendants' and Abraaj Leadership's dishonest and fraudulent practices, as particularised above, had drawn in and misappropriated investors' monies in order to hide liquidity issues;
 - b. The effect of those dishonest and fraudulent practices was to entitle all investors to redeem and to have the monies, misapplied and misappropriated, restored and repaid with immediate effect;
 - c. Even without accounting for the above liabilities, the Abraaj Group had an anticipated cash deficit by 31 March 2018 of US\$205,500,000; and

d. From 2014 through to 2017, the income of the Abraaj Group was insufficient to meet its liabilities, such that the liquidity shortfall had to be made up by loans.

(8) AIML and AH were not in a position to be able, or, alternatively, were not likely to be able, to repay the loans advanced under the First and Second Loan Agreements by 28 February 2018.

255. In the premises, the Representations were made by Mr Naqvi, for and on behalf of himself and each Defendant, in circumstances where he (and, consequently, each of the Defendants) knew them to be false and/or had no belief in their truth and/or was reckless as to whether they were true. Each Defendant knew and intended for the Representations to be so made by Mr Naqvi.

256. The Representations were made with the intention, on the part of Mr Naqvi, the other members of the Abraaj Leadership and, consequently, each of the Defendants, that they be relied on by Mr Jafar.

257. The Representations, which were material, influenced, and/or were relied on by, Mr Jafar in deciding to enter into the First and Second Loan Agreements and in transferring US\$300 million in total to AIML and AH. In particular, but without prejudice to the generality of the foregoing, Mr Jafar attached significance to the representations that:

(1) The Abraaj Group was solvent and not in financial difficulties, apart from the short-term liquidity issues described to him;

(2) The Abraaj Group was being operated legally and in accordance with proper corporate governance principles;

(3) There was a proper basis to believe that he would be repaid in very short order, which was particularly important where:

a. The need for finance was urgent;

- b. The transactions had yet to be documented; and
 - c. The precise form of security was to be subsequently agreed and documented;
- (4) The circumstances in which the return of the Uninvested Capital had been sought and the likelihood of the Healthcare Investors reinvesting those funds were as stated by Mr Naqvi, particularly where this was portrayed as the, or at least a, principal means by which Mr Jafar would be repaid; and
- (5) The Abraaj Group's unencumbered assets and expected revenue from other sources would be available to meet the liabilities under the First and Second Loan Agreements.
258. In the premises, in furtherance of the Conspiracy, the unlawful means of deceit were used against Mr Jafar.
259. Had the Defendants and the Abraaj Leadership not formed and/or furthered the Conspiracy, then Mr Jafar would not have entered into the First and Second Loan Agreements or have transferred US\$300 million to AH and AIML.
260. As a result of the matters set out above, Mr Jafar has suffered loss and damage being:

PARTICULARS OF LOSS

- a. The US\$300 million lent to AH and AIML, less US\$33 million repayments made and less the value of the consideration received from Mr Naqvi particularised in paragraph 231 above (to be assessed); and
- b. Consequential damages (to be assessed).

261. In the premises, Mr Jafar seeks and is entitled to the following relief:

- (1) Damages for direct loss being US\$300 million less US\$33 million repayments made and less the value of the consideration received from Mr Naqvi particularised in paragraph 231 above (to be assessed);
- (2) Damages for consequential loss (to be assessed); and
- (3) Interest on all such sums until judgment or earlier payment at the rate of $2^{3/80}\%$ per annum or at such other rate then prevailing and/or determined by the Court in accordance with s.34 of the Judicature Law (2017 Revision) and the Judgment Debts (Rates of Interest) Rules 2012 as amended from time to time, or such other rate and for such period as the court may think fit.

ii. Deceit

262. Further, or alternatively, each of the Defendants is jointly liable and/or vicariously liable for the actions of Mr Naqvi in making the Representations in that:

- (1) They instigated or procured Mr Naqvi to make the Representations or, alternatively, they assisted in Mr Naqvi's tortious wrongdoing pursuant to a common scheme and/or design to defraud Mr Jafar, as to which paragraphs 245 - 246 above are repeated; and/or
- (2) The Representations were made by Mr Naqvi for and on behalf of each Defendant such that the actions, intentions, and knowledge of Mr Naqvi are attributed to them, as to which paragraphs 37 - 42 above are repeated; and/or
- (3) The actions of Mr Naqvi in making the Representations were so closely connected with the role that Mr Naqvi performed on behalf of each

Defendant, that each Defendant ought fairly to be made vicariously liable in respect of his actions, as to which paragraphs 37 - 42 above are repeated.

263. Paragraphs 251 - 257 above are repeated.

264. Had the Representations not been made, Mr Jafar would not have entered into the First and Second Loan Agreements or have transferred US\$300 million to AH and AIML.

265. As a result of the matters set out above, Mr Jafar has suffered loss and damage being:

PARTICULARS OF LOSS

- a. The US\$300 million lent to AH and AIML, less US\$33 million repayments made and less the value of the consideration received from Mr Naqvi particularised in paragraph 231 above (to be assessed); and
- b. Consequential damages (to be assessed).

266. In the premises, Mr Jafar seeks and is entitled to the following relief:

- (1) Damages for direct loss being US\$300 million less US\$33 million repayments made and the value of the consideration received from Mr Naqvi particularised in paragraph 231 above (to be assessed);
- (2) Damages for consequential loss (to be assessed); and
- (3) Interest on all such sums until judgment or earlier payment at the rate of $2\frac{3}{8}$ % per annum or at such other rate then prevailing and/or determined by the Court in accordance with s.34 of the Judicature Law (2017 Revision) and the Judgment Debts (Rates of Interest) Rules 2012 as

amended from time to time, or such other rate and for such period as the court may think fit.

iii. Unjust enrichment under UAE law

267. Paragraphs 173 - 216 above are repeated.

268. In the premises:

(1) AHG was enriched at Mr Jafar's expense to at least AED 367,300,000 on 21 December 2017 and AED 23,392,000 on 27 or 28 December 2017.

(2) GP8 was enriched at Mr Jafar's expense to at least AED 363,173,979 and AED 91,700,000 on 28 December 2017.

(3) In each case:

a. It is irrelevant under UAE law that the enrichment of those Defendants was not the result of a direct transfer from Mr Jafar to those Defendants.

b. There was no just cause for the enrichment of those Defendants at the expense of Mr Jafar.

269. Mr Jafar is accordingly entitled to restitution to the extent of the above Defendants' enrichment at his expense, pursuant to UAE Civil Code Articles 318, 319 and 324: see paragraph 228(10) and 228(11) above.

iii. Proprietary claim under UAE law

270. Paragraphs 173 - 216 above are repeated.

271. In the premises:

- (1) AHG received movable property of Mr Jafar within the meaning of UAE Civil Code Article 1325, being its receipt of at least AED 367,300,000 on 21 December 2017 and AED 23,392,000 on 27 or 28 December 2017, each derived from Mr Jafar's advances to AH / AIMIL;
- (2) GP8 received movable property of Mr Jafar within the meaning of UAE Civil Code Article 1325, being its receipt of AED 363,173,979 and AED 91,700,000 on 28 December 2017, each derived from Mr Jafar's advances to AH / AIMIL;
- (3) The above Defendants so received Mr Jafar's moveable property without valid claim and not in good faith. In particular, the above Defendants could not have received in good faith because of the attribution to them of the knowledge and intentions of the Abraaj Leadership in respect of those receipts.

272. Accordingly, Mr Jafar is entitled to recover his moveable property from the above Defendants, pursuant to UAE Civil Code Article 1325 and 1326: see paragraph 228(12) above. The Grand Court is entitled to give effect to Mr Jafar's proprietary entitlement by the recognition of a constructive trust on any identifiable property of Mr Jafar that remains in the possession of the above Defendants. What identifiable property remains is, as a matter of UAE law, to be determined as a question of fact.

iii. Constructive Trust based on the Receipt of Proceeds of Fraud

273. Paragraphs 201 - 216 above are repeated.

274. As a result of the matters pleaded above, in particular at paragraphs 244 - 261 above, the Loan Monies received by AH and AIML were the proceeds, or fruits, of fraud practised on Mr Jafar.

275. AH and AIML, therefore, held the Loan Monies on constructive trust for Mr Jafar from the moment of their receipt.

276. AH, AIML and the other Defendants who subsequently received the Loan Monies and/or their traceable proceeds or substitutes gave no consideration for their receipt, and, as a result of the matters pleaded above (and in particular paragraphs 245 - 256 above), did not receive the same bona fide and without notice of the equitable rights of Mr Jafar.

277. In the premises, the Defendants hold, or held, any Loan Monies, and/or their traceable proceeds or substitutes, they received on constructive trust for Mr Jafar.

278. In the premises, Mr Jafar seeks and is entitled to the following relief:

- (1) A declaration that the Loan Monies, and/or their traceable proceeds or substitutes, which were received by each Defendant are, or were, held on constructive trust for Mr Jafar;
- (2) All accounts and inquiries required to identify the Loan Monies, and/or their traceable proceeds or substitutes, received by the Defendants;
- (3) An account in equity pursuant to which each Defendant is liable to Mr Jafar by way of equitable compensation equal to the amount of Loan Monies, and/or their traceable proceeds or substitutes, each Defendant received; and
- (4) Compound interest pursuant to the Court's equitable jurisdiction at such a rate and for such a period as the Court thinks fit.

iv. Constructive Trust based on Rescission

279. Paragraphs 201 - 216 above are repeated.

280. Paragraphs 235 - 236 above are repeated. These notices constituted valid rescissions by Mr Jafar of the First and Second Loan Agreements.
281. As a result of the matters set out above and, in particular, Mr Jafar's rescission of the First and Second Loan Agreements, the Loan Monies, and/or their traceable proceeds or substitutes, received by each Defendant were held on constructive trust for Mr Jafar from the point of rescission.
282. AH, AIML and the other Defendants, who subsequently received the Loan Monies and/or their traceable proceeds or substitutes, gave no consideration for their receipt and, as a result of the matters pleaded above (and in particular paragraphs 245 - 256 above), did not receive the Loan Monies and/or their traceable proceeds or substitutes bona fide and without notice of the equitable rights of Mr Jafar.
283. In the premises, the Defendants hold, or held, any Loan Monies, and/or their traceable proceeds or substitutes, that they received on constructive trust for Mr Jafar.
284. In the premises, Mr Jafar seeks and is entitled to the following relief:
- (1) A declaration that the Loan Monies, and/or their traceable proceeds or substitutes, which were received by each Defendant are, or were, held on constructive trust for Mr Jafar;
 - (2) All accounts and enquiries required to identify the Loan Monies, and/or their traceable proceeds or substitutes, received by the Defendants;
 - (3) An account in equity pursuant to which each Defendant is liable to Mr Jafar by way of equitable compensation equal to the amount of Loan Monies, and/or their traceable proceeds or substitutes, each Defendant received; and
 - (4) Compound interest pursuant to the Court's equitable jurisdiction at such a rate and for such a period as the Court thinks fit.

v. Knowing or Unconscionable Receipt

285. As a result of the matters pleaded above (and in particular paragraphs 273 - 277 and/or 279 - 283 above), any Loan Monies, and/or their traceable proceeds or substitutes, received by each Defendant are, or were, held on constructive trust for Mr Jafar.

286. At the point of receipt and/or subsequently, as a result of the matters pleaded above (and in particular paragraphs 245 - 256 above), each Defendant who received Loan Monies and/or their traceable proceeds or substitutes knew of Mr Jafar's equitable rights and/or their state of mind was such as to make it unconscionable for them to retain the benefit of the Loan Monies, and/or their traceable proceeds or substitutes, received.

287. In the premises, each Defendant is liable to Mr Jafar in knowing or unconscionable receipt.

288. In the premises, Mr Jafar seeks and is entitled to the following relief:

- (1) All accounts and enquiries required to identify the Loan Monies, and/or their traceable proceeds or substitutes, received by the Defendants;
- (2) An account in equity pursuant to which each Defendant is liable to Mr Jafar by way of equitable compensation equal to the amount of Loan Monies, and/or their traceable proceeds or substitutes, each Defendant received; and
- (3) Compound interest pursuant to the Court's equitable jurisdiction at such a rate and for such a period as the Court thinks fit.

AND THE PLAINTIFF claims:

- (1) Damages for direct loss being US\$300 million less US\$33 million repayments made and less the value of the consideration received from Mr Naqvi particularised in paragraph 231 above (to be assessed);
- (2) Damages for consequential loss (to be assessed);
- (3) A declaration that the Loan Monies, and/or their traceable proceeds or substitutes, which were received by each Defendant are, or were, held on constructive trust for Mr Jafar;
- (4) All accounts and enquiries required to identify the Loan Monies, and/or their traceable proceeds or substitutes, received by the Defendants;
- (5) An account in equity pursuant to which each Defendant is liable to Mr Jafar by way of equitable compensation equal to the amount of Loan Monies, and/or their traceable proceeds or substitutes, each Defendant received; and/or
- (6) Further and/or other relief; and
- (7) Compound interest pursuant to the Court's equitable jurisdiction at such a rate and for such a period as the Court thinks fit, or alternatively, simple interest until judgment or earlier payment at the rate of $2\frac{3}{8}$ % per annum or at such other rate then prevailing and/or determined by the Court in accordance with s.34 of the Judicature Law (2017 Revision) and the Judgment Debts (Rates of Interest) Rules 2012 as amended from time to time, or at such other rate and for such period as the court may think fit; and

(8) Costs.

**NELSONS
EDWARD CUMMING QC
ANDREW SCOTT
ADAM AL-ATTAR**

Issued this 10th September 2020

Nelsons

Nelsons Attorneys at Law

Appendix 1 – UAE Civil Code

BOOK 1 – PERSONAL OBLIGATIONS AND RIGHTS; Chapter 1 – Sources of Personal Obligations & Rights

Chapter 1 – The Contract

Section 2 – Constituents, Validity and Implementation of Contracts and the Options

4 – Defective assent

B – Deceit and Undue Influence

Article 185

Deceit is the act by which one of the contracting parties deceives the other through the use of fraudulent means, in words or other means, inducing him to assent to what he would have never consented to do in the absence of such means.

Article 191

A contract made under exorbitant hardship but without deceit shall not be rescinded except as concerns the property of the interdicted, the Wakf and the State.

5 – Valid, Void and Voidable Contracts

C – The Voidable Contract

Article 212

1 – The voidable contract is licit in its essence but not in its characterization. It shall be valid once the cause of its voidableness has ceased to exist.

2 – Ownership of the object of the contract is not established unless upon receiving its value.

3 – It shall have no effect except within the limits specified by law.

4 – Each of the contracting parties or their heirs shall have the right to rescind the contract after notifying the other party.

Chapter 3 – Tort

Section 1 – General Principles

Article 282

The author of any tort, even if not discerning, shall be bound to repair the prejudice.

Article 283

1 – Tort shall be committed by perpetration or by causation.

2 – If committed by perpetration, he is unconditionally bound to repair the prejudice and, if by causation, it is conditional upon transgression premeditation or if the act caused the prejudice.

Article 285

If any person shall mislead another, he shall be liable for reparation of the prejudice resulting from the misleading.

Article 291

When several persons are responsible for a prejudicial act, each one of them is responsible for his share in it and the judge may decide to allot the liability equally between them or consider them jointly and severally responsible.

Article 292

Damages shall, under all circumstances, be assessed to cover the prejudice sustained and the lost profit provided it is a natural consequence of the prejudicial act.

Section 3 – Liability arising from the acts of others

Article 313

1 – No one is liable for the act of another person, however, upon request of the victim, the judge, if he deems it justified, shall order any of the following persons, as the case may be, to pay the damages to which the tort doer has been sentenced...

b – The one having actual authority to control and guide the tort doer, even if he was not free in his choice, if the tort was perpetrated by a subordinate in the exercise of his duty or because of it.

Chapter 4 – Beneficial Act

Section 1 – Enrichment without cause

Article 318

No one is entitled, without cause, to enrich himself to the detriment of another person, without just cause. If he does so, he is liable to restitute it.

Article 319

1 – Unless otherwise provided by law, whoever enriches without just cause, is bound to restitute what he obtained, if existing, or replacement thereof of its value, if not existing.

2 – If one, unintentionally, loses control over his property, which was merged by accident with the property of somebody else, in such a manner as it cannot be separated without

prejudice to any of the owners, then the property of lesser value shall follow the one with greater value, after settlement of its price. If both are equal in value, they shall be sold for their account, and the price thereof shall be equally divided and distributed among them, unless otherwise stipulated by Law.

Section 2 – Payment not due

Article 324

Whoever unduly receives that which is not due to him, he is bound to restitute it to the payor together with the profits and interests. The judge may indemnify the right owner of what he has failed by neglect to collect at that time.

BOOK 3 – THE PRINCIPAL REAL RIGHTS

Chapter 2 – Reasons for acquisition of property

Section 8 – Possession

2 – Effects of possession

B – Possession of moveables

Article 1325

1 – No claim of ownership shall be heard against whoever possesses a moveable property or a right in rem over a moveable or a bearer warrant and his possession is based on a valid cause and in good faith

2 – Subject to proof to the contrary, mere possession is a presumption of ownership.

Article 1326

1 – As an exception to the provisions of the foregoing article, the owner of a moveable or a bearer warrant who has lost it or has been robbed of or extorted, can, within three years from the date of the loss, the theft or the extortion, recover it from the one who possesses it in good faith. The provisions governing extorted moveables shall apply to such recovering.

2 – When the thing robbed, lost or extorted is found in possession of a third party who bought it in good faith on the market, at a public sale or from a merchant trading similar articles, such third party is entitled to recover from the person claiming restitution the price he has paid for the thing.

**IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION**

FSD No.: OF 2020 (**NSJ**)

B E T W E E N:

ABDULHAMEED DHIA JAFAR

Plaintiff

- and -

(1) ABRAAJ HOLDINGS

(in official liquidation)

(2) GHF GENERAL PARTNER LIMITED

(in its capacity as general partner of GHF Fund LP (formerly Abraaj Growth Markets Health Fund LP) and GHF Fund (B) LP (formerly Abraaj Growth Markets Health Fund (B) LP))

(3) THE GHF GROUP LIMITED

(formerly The Abraaj Healthcare Group Limited)

(4) ABRAAJ GENERAL PARTNER VIII LIMITED

(in its capacity as general partner of Neoma Private Equity Fund IV LP (formerly known as Abraaj Private Equity Fund IV LP))

Defendants

ACKNOWLEDGMENT OF SERVICE OF WRIT OF SUMMONS

If you intend to instruct an Attorney to act for you, give him this form IMMEDIATELY.

Important. Read the accompanying directions and notes for guidance carefully before completing this form. If any information required is omitted or given wrongly, THIS FORM MAY HAVE TO BE RETURNED.

Delay may result in judgment being entered against a Defendant whereby he may have to pay the costs of applying to set it aside.

1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged.

2. State whether the Defendant intends to contest the proceedings (tick appropriate box)

Yes No

3. If the claim against the Defendant is for a debt or liquidated demand, AND he does not intend to contest the proceedings, state if the Defendant intends to apply for a stay of execution against any judgment entered by the Plaintiff (tick box)

Yes No

Service of the Writ is acknowledged accordingly

Signed
Attorney for the Defendant

Address for service:

Please complete overleaf

Notes on address for service

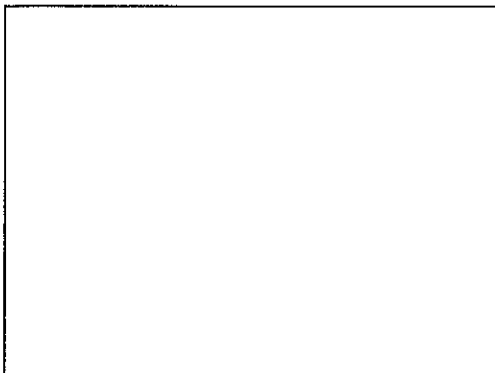
Attorney: where the Defendant is represented by an attorney, state the attorney's place of business in the Cayman Islands. A Defendant may not act by a foreign attorney.

Defendant in person: where the Defendant is acting in person, he must give his post office box number and the physical address of his residence or, if he does not reside in the Cayman Islands, he must give an address in Grand Cayman where communications for him should be sent. In the case of a limited company, "residence" means its registered or principal office.

Indorsement by Plaintiffs' Attorney (or by Plaintiffs if suing in person) of his name, address and reference, if any, in the box below.

Nelsons
Attorneys at Law
PO Box 30069
31 The Strand
46 Canal Point Drive
Grand Cayman KY1-1201
Attn: C Flanagan/A Carver
Ref: 7920-44

Indorsement by Defendant's Attorney (or by defendant if suing in person) of his name, address and reference, if any, in the box below.



DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE
OF WRIT OF SUMMONS

1. The accompanying form of *Acknowledgment of Service* should be completed by an Attorney acting on behalf of the Defendant or by the Defendant if acting in person.

After completion it must be delivered or sent by post to the Law Courts, P.O. Box 495, George Town, Grand Cayman.

2. A Defendant who states in his Acknowledgment of Service that he intends to contest the proceedings *must also serve a defence* on the Attorney for the Plaintiff (or on the Plaintiff if acting in person).

If a Statement of Claim is indorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2), the Defence must be served within 14 days after the time for acknowledging service of the Writ, unless in the meantime a summons for judgment is served on the Defendant.

If the Statement of Claim is not indorsed on the Writ, the Defence need not be served until 14 days after a Statement of Claim has been served on the Defendant.

If the Defendant fails to serve his defence within the appropriate time, the Plaintiff may enter judgment against him without further notice.

3. A *Stay of Execution* against the Defendant's goods may be applied for where the Defendant is unable to pay the money for which any judgment is entered. If a Defendant to an action for a debt or liquidated demand (i.e. a fixed sum) who does not intend to contest the proceedings states, in answer to Question 3 in the Acknowledgment of Service, that he intends to apply for a stay, execution will be stayed for 14 days after his Acknowledgment, but he must, within that time, *issue a Summons* for a stay of execution, supported by an affidavit of his means. The affidavit should state any offer which the Defendant desires to make for payment of the money by instalments or otherwise.

See over for notes for guidance

Notes for Guidance

1. Each Defendant (if there are more than one) is required to complete an Acknowledgment of Service and return it to the Courts Office.
2. For the purpose of calculating the period of 14 days for acknowledging service a writ served on the Defendant personally is treated as having been served on the day it was delivered to him.
3. Where the Defendant is sued in a name different from his own, the form must be completed by him with the addition in paragraph 1 of the words "sued as (*the name stated on the Writ of Summons*)".
4. Where the Defendant is a FIRM and an attorney is not instructed, the form must be completed by a PARTNER by name, with the addition in paragraph 1 of the description "Partner in the firm of (.....)" after his name.
5. Where the Defendant is sued as an individual TRADING IN A NAME OTHER THAN HIS OWN, the form must be completed by him with the addition in paragraph 1 of the description "trading as (.....)" after his name.
6. Where the Defendant is a LIMITED COMPANY the form must be completed by an Attorney or by someone authorised to act on behalf of the Company, but the Company can take no further step in the proceedings without an Attorney acting on its behalf.
7. Where the Defendant is a MINOR or a MENTAL PATIENT, the form must be completed by an Attorney acting for a guardian *ad litem*.
8. A Defendant acting in person may obtain help in completing the form at the Courts Office.