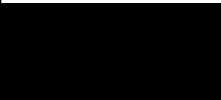


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION



Plaintiff,

v.

THIRD AVENUE MANAGEMENT
LLC; THIRD AVENUE TRUST; M.J.
WHITMAN LLC; MARTIN J.
WHITMAN; DAVID M. BARSE;
JACK W. ABER; WILLIAM E.
CHAPMAN, II; LUCINDA FRANKS;
EDWARD J. KAIER; MARVIN
MOSER; ERIC RAKOWSKI;
MARTIN SHUBIK; CHARLES C.
WALDEN; VINCENT J. DUGAN; W.
JAMES HALL III; MICHAEL
BUONO; THOMAS LAPOINTE;
NATHANIEL KIRK; EDWIN TAI; and
JOSEPH ZALEWSKI;

Defendants.

No. 2:16-cv-00602

COMPLAINT FOR VIOLATION
OF THE FEDERAL SECURITIES
LAWS

CLASS ACTION

DEMAND FOR JURY TRIAL

SUMMARY OF THE ACTION

1
2 1. This is an action by and on behalf of persons who purchased
3 Institutional and Investor class shares of Third Avenue Focused Credit Fund (the
4 “Fund”) (Ticker Symbols: TFCIX (Institutional shares) and TFCVX (Investor
5 shares) during the period from March 1, 2013 to December 10, 2015 (the “Class
6 Period”), pursuant or traceable to one of the Fund’s registration statements or
7 prospectuses.

8 2. Plaintiff [REDACTED] individually and on behalf of all other persons
9 similarly situated, alleges the following upon personal knowledge as to himself and
10 his own acts, and as to all other matters upon information and belief, based upon
11 the investigation made by and through his undersigned counsel, which included,
12 *inter alia*, review of Securities and Exchange Commission (“SEC”) filings, various
13 websites and Internet information sources, analyst reports, news articles, bond
14 issues, trading reports, and other publicly available materials.

15 3. Plaintiff alleges that the Fund, its investment advisor, underwriter,
16 trustees, officers, and other Defendants violated the Securities Act of 1933
17 (“Securities Act”) by registering, offering, and selling shares of the Fund pursuant
18 to false and misleading registration statements and prospectuses.

19 4. One of the key features of mutual funds is that they allow investors to
20 redeem their shares on any day during which the exchange upon which they are
21 traded is open. To meet this obligation, mutual funds must ensure that they have
22 adequate liquid assets sufficient to meet redemption requests. Like most mutual
23 funds, the Fund promised investors that it would hold only a small portion of its
24 assets in illiquid securities. The Fund’s Registration Statements and Prospectuses
25 issued and filed with the SEC during the relevant period represented that the Fund
26 would hold no more than 15% of its assets in illiquid securities. In fact, during the
27 Class Period a far greater portion of the Fund consisted of illiquid assets. As far
28 back as 2012, more than 20% of the Fund was held in illiquid securities that could

1 not quickly be sold at the value at which they were held. From 2012 to 2014, the
2 Fund grew in size from \$1 billion to \$3.5 billion. As a result, although it held
3 excessive amounts of illiquid securities, it did not face significant pressure to sell
4 them in order to meet redemptions. In 2014 and 2015, however, the Fund faced
5 growing redemptions, ultimately shrinking to less than \$1 billion in assets. The
6 increasing redemptions combined with the excessive illiquidity of the Fund's
7 remaining assets drove down the net asset value of the Fund and threatened to force
8 it to sell illiquid securities at fire sale prices. Ultimately, the Fund became so
9 highly concentrated in illiquid securities that on December 10, 2015, Defendants
10 suspended redemptions in the Fund and announced a plan to sell its remaining
11 assets over time.

12 **JURISDICTION AND VENUE**

13 5. The claims asserted herein arise under and pursuant to Sections 11,
14 12(a)(2), and 15 of the Securities Act, 15 U.S.C. §§77k, 77i, 77o.

15 6. This Court has jurisdiction over the subject matter of this action
16 pursuant to Section 22 of the Securities Act, 15 U.S.C. §77v, and 28 U.S.C.
17 §§1331, 1332(d), 1367.

18 7. Venue is proper in this District pursuant to 15 U.S.C. §77v and 28
19 U.S.C. §1391(b). Several of the Defendants are found in, inhabitants of, or transact
20 business in this District. In addition, many of the acts giving rise to the violations
21 of law complained of herein, including the dissemination to shareholders of the
22 Registration Statements and Prospectuses, occurred in this District.

23 8. In connection with the acts alleged in this Complaint, Defendants,
24 directly or indirectly, used the means and instrumentalities of interstate commerce,
25 including, but not limited to, the mails, interstate telephone communications, and
26 the facilities of the national securities markets.

27
28

PARTIES

A. Plaintiff.

9. Plaintiff [REDACTED] purchased shares of the Fund during the relevant time period pursuant to or traceable to a registration statement and prospectus at issue in this Complaint and has been damaged thereby.

B. Defendants.

10. Defendant Third Avenue Trust (the “Trust”) is an open-end management investment company that consists of different investment series, including Third Avenue Focused Credit Fund (the “Fund”). The Trust is organized under the laws of Delaware pursuant to a Trust Instrument dated October 31, 1996. The Trust is headquartered at 622 Third Avenue, New York, New York 10017.

11. Defendant Third Avenue Management LLC (the “Adviser”) is the manager and investment adviser of the Fund and chooses the Fund’s investments and handles its day-to-day business. The Adviser is headquartered at 622 Third Avenue, New York, New York 10017. The Adviser carries out its duties, subject to the policies established by the Fund’s Board of Trustees, under an investment advisory agreement. As compensation for its services, the Adviser receives a management fee.

12. Defendant M.J. Whitman LLC (the “Distributor”), is an affiliate of the Manager and was, during the relevant time period, the principal underwriter and distributor for shares of the Fund. The Distributor also served as the Trust’s agent for the purpose of the continuous public offering of the Fund’s shares. The Distributor is also located at 622 Third Avenue, New York, New York 10017.

13. Defendant Martin J. Whitman (“Whitman”) is the Chairman of the Board of Trustees of the Fund and signed each Registration Statement effective during the Class Period through December 10, 2015.

14. Defendant David M. Barse (“Barse”) was President, Chief Executive Officer, and Trustee of the Trust, President and Chief Executive Officer of the

1 Adviser, and President, Director and Chief Executive Officer of the Distributor
2 during the Class Period. Barse signed each Registration Statement effective during
3 the Class Period through December 10, 2015.

4 15. Defendant Jack W. Aber (“Aber”) is Trustee of the Trust and signed
5 each Registration Statement effective during the Class Period through December
6 10, 2015.

7 16. Defendant William E. Chapman, II (“Chapman”) is a Trustee of the
8 Fund and signed each Registration Statement effective during the Class Period
9 through December 10, 2015.

10 17. Defendant Lucinda Franks (“Franks”) is a Trustee of the Fund and
11 signed each Registration Statement effective during the Class Period through
12 December 10, 2015.

13 18. Defendant Edward J. Kaier (“Kaier”) is a Trustee of the Fund and
14 signed each Registration Statement effective during the Class Period through
15 December 10, 2015.

16 19. Defendant Marvin Moser (“Moser”) is a Trustee of the Fund and
17 signed each Registration Statement effective during the Class Period through
18 December 10, 2015.

19 20. Defendant Eric Rakowski (“Rakowski”) is a Trustee of the Fund and
20 signed each Registration Statement effective during the Class Period through
21 December 10, 2015.

22 21. Defendant Martin Shubik (“Shubik”) is a Trustee of the Fund and
23 signed each Registration Statement effective during the Class Period through
24 December 10, 2015.

25 22. Defendant Charles C. Walden (“Walden”) is a Trustee of the Fund and
26 signed each Registration Statement effective during the Class Period through
27 December 10, 2015.

28 23. Defendant Vincent J. Dugan (“Dugan”) has been Treasurer and Chief

1 Financial Officer of the Trust, and Chief Operating Officer and Chief Financial
2 Officer of the Adviser and the Distributor, since 2004. He was a member of the
3 Trust's Valuation Committee during the Class Period and signed each Registration
4 Statement effective during the Class Period through December 10, 2015.

5 24. Defendant W. James Hall III ("Hall") has been General Counsel and
6 Secretary of the Trust, the Adviser, and the Distributor since 2000. He was a
7 member of the Trust's Valuation Committee during the Class Period.

8 25. Defendant Michael Buono ("Buono") has been Controller of the Trust,
9 the Adviser, and the Distributor since 2006. He was a member of the Trust's
10 Valuation Committee during the Class Period.

11 26. Defendant Thomas Lapointe ("Lapointe") has been a Portfolio
12 Manager and Team Leader for the Fund since 2010. He participated in the drafting
13 of the prospectuses pursuant to which the Fund was sold.

14 27. Defendant Nathaniel Kirk ("Kirk") has been a Portfolio Manager for
15 the Fund since 2013. He participated in the drafting of the prospectuses pursuant to
16 which the Fund was sold.

17 28. Defendant Edwin Tai ("Tai") has been a Portfolio Manager and Team
18 Leader for the Fund since 2013. He participated in the drafting of the prospectuses
19 pursuant to which the Fund was sold.

20 29. Defendant Joseph Zalewski ("Zalewski") has been a Portfolio
21 Manager and Team Leader for the Fund since 2013. He participated in the drafting
22 of the prospectuses pursuant to which the Fund was sold.

23 30. This complaint refers to Defendants Whitman, Barse, Aber, Chapman,
24 Franks, Kaier, Moser, Rakowski, Shubik, and Walden collectively as the "Trustee
25 Defendants."

26 31. This complaint refers to Defendants Barse, Dugan, Hall, Buono,
27 Lapointe, Kirk, Tai, and Zalewski collectively as the "Officer Defendants."

28 32. This complaint refers to the Trustee Defendants and the Officer

1 Defendants collectively as the “Individual Defendants.”

2
3 **DEFENDANTS’ FALSE AND DEFICIENT**
4 **REGISTRATION STATEMENT**

5 33. This is a class action on behalf of all persons or entities who acquired
6 the Fund’s shares during the period from March 1, 2013 to December 10, 2015
7 pursuant to the Fund’s untrue and misleading registration statements, prospectuses,
8 and annual reports filed in connection with the offerings of the Fund’s shares
9 during this period (the “Registration Statements”).

10 34. The Fund’s shares were issued to investors pursuant to the following
11 series of Registration Statements, Prospectuses, and Statements of Additional
12 Information (“SAIs”) filed with the SEC and made effective during the Class
13 Period:

14 • Registration Statement filed pursuant to Form N-1A, Prospectus, SAI,
15 and Annual Report incorporated in the Prospectus by reference on March 1, 2013
16 (collectively “March 2013 Prospectus”);

17 • Registration Statement filed pursuant to Form N-1A, Prospectus, SAI,
18 and Annual Report incorporated in the Prospectus by reference on February 28,
19 2014 (collectively “February 2014 Prospectus”);

20 • Registration Statement filed pursuant to Form N-1A, Prospectus, SAI,
21 and Annual Report incorporated in the Prospectus by reference on March 1, 2015
22 (collectively “March 2015 Prospectus”);

23 35. Each of the foregoing documents was negligently prepared and
24 contained untrue statements of material fact and/or omitted to state other facts
25 necessary to make the statements made not misleading, as described below. While
26 the documents were not identical, they contained many substantially similar untrue
27 statements and were rendered misleading by substantially similar omissions of
28 material fact.

36. A reasonable investor would have viewed the undisclosed facts

1 described herein, jointly and severally, as having altered the total mix of available
2 information. A reasonable investor also would understand that the undisclosed
3 facts would cause the Fund to undertake materially increased investment risk
4 during the Class Period because the Fund was investing in a manner that was of
5 materially greater risk than had been disclosed.

6 37. The false statements and omissions of material fact contained in the
7 Fund's Registration Statements and SEC-filed materials included the following
8 statements made in the March 2013 Prospectus:

9 • "None of the Funds will purchase or otherwise acquire any investment
10 if, as a result, more than 15% of its net assets (taken at current market value) would
11 be invested in securities that are illiquid."

12 • "Generally speaking, an illiquid security is any asset or investment of
13 which a Fund cannot sell a normal trading unit in the ordinary course of business
14 within seven days at approximately the value at which a Fund has valued the asset
15 or investment, including securities that cannot be sold publicly due to legal or
16 contractual restrictions."

17 • "Also, should illiquid assets ever exceed 15% of a Fund's net assets,
18 the Adviser would work with the Board to determine the appropriate steps and
19 timeframe for alleviating such excess."

20 • "The Adviser's Executive Risk Committee (the 'Committee')
21 recommends certain position limitation guidelines for the Funds. The guidelines
22 supplement limits imposed by regulatory agencies and the Prospectus. The
23 guidelines are not meant to impose rigid limitations and from time to time the
24 Committee fully expects exceptions to occur. However, exceptions may only occur
25 with prior approval from the Committee. These guidelines serve to provide
26 enhanced oversight of more concentrated positions."

27 38. Substantially similar representations were made in the February 2014
28 Prospectus and the March 2015 Prospectus.

1 39. In addition, each Annual Report, incorporated by reference into the
2 prospectuses and SAIs, supposedly identified the percentage of net assets of the
3 Fund that were illiquid. Each Annual Report stated that the “Fund may invest up to
4 15% of its total net assets in securities which are not readily marketable, including
5 those which are restricted as to disposition under applicable securities laws
6 (‘restricted securities’).” For example, as of October 31, 2015, Defendants claimed
7 that only 13.4% of the Fund was illiquid. These statements likewise were false or
8 misleading, as an independent investigation has determined that a far greater
9 percentage of the Fund’s assets were in fact illiquid.

10 40. These statements were false and misleading. An analysis of the
11 Fund’s holdings in 2013, 2014, and 2015 has shown that the Fund consistently held
12 more than 15% of its net assets in illiquid securities that could not be sold within
13 seven days at approximately the value at which the Fund held them. Defendants
14 did not take adequate steps to reduce the Fund’s illiquid holdings as the excessive
15 illiquidity remained over a period of years. Nor did the Adviser’s Executive Risk
16 Committee take adequate steps to control the risks of the Fund or ensure that it
17 remained within its 15% limit on illiquid securities. The Fund was so concentrated
18 in illiquid securities that it should not have been offered as a mutual fund allowing
19 daily redemptions. Redemptions in the Fund eventually caused Defendants to sell
20 less liquid assets that reduced the Fund’s share price, leading to more redemptions
21 and more losses. This death spiral led Defendants ultimately to take the nearly
22 unprecedented step of shutting down the Fund and suspending redemptions. The
23 investors remaining in the Fund will get back some unknown portion of their
24 investment over an undetermined length of time.

25 41. Independent analysts likewise have concluded that the Fund exceeded
26 its 15% limit on illiquid securities. “At least one-fifth of Third Avenue’s Focused
27 Credit Fund, with less than \$1 billion under management, was composed of illiquid
28 assets, meaning they trade so infrequently that they don't have a market price,

1 according to a Reuters analysis. That’s one of the highest percentages of exposure
2 in the junk bond sector.”¹

3 42. The Fund was so highly concentrated in illiquid securities that it never
4 should have operated as a mutual fund. ““That particular fund was a bit of an
5 anomaly from the standpoint of it was really a wolf in sheep’s clothing, so to
6 speak,”” said Bradley Tank, chief investment officer of fixed income at Neuberger
7 Berman, speaking on a conference call about his firm’s 2016 outlook. ““You have
8 a fund that has traditionally been invested in a way that’s probably more consistent
9 with what a distressed investor would do in a private equity-like framework, with
10 lockup provisions and so on—not necessarily consistent with managing a 40 Act
11 fund that requires daily liquidity.””²

12 43. “Bruce Richards, chief executive officer of Marathon Asset
13 Management, called managers of Third Avenue Management ‘triple-C cowboys’
14 for loading up on hard-to-sell unrated and low-rated bonds. ‘The big picture is that
15 mutual funds are offering daily liquidity, so they have to be very strongly managed
16 with cash balances, lines of credit, good, quality names that you can trade in the
17 marketplace when you need to sell, as opposed to what Third Avenue was doing,’
18 Richards said Friday in a television interview on ‘Bloomberg <GO>.’”³

19 44. “The event also raises questions about whether Third Avenue's focus
20 on extremely risky and difficult to trade assets was really appropriate given the fact
21

22 ¹Tim McLaughlin, *Third Avenue Junk fund blowup exposes risks of*
23 *unsellable assets*, Reuters (Dec. 12, 2015), <http://www.reuters.com/article/us-funds-bonds-risks-analysis-idUSKBN0TU0DK20151212>.

24 ²Diana Britton, *Neuberger Berman: Third Avenue Fund Managed Like*
25 *Private Equity*, WealthManagement.com (Dec. 17, 2015),
<http://wealthmanagement.com/blog/neuberger-berman-third-avenue-fund-managed-private-equity>.

26 ³Ben Steverman, *Bruce Richards Calls Third Avenue Management ‘Triple-C*
27 *Cowboys,’* Bloomberg Business (Dec. 18, 2015),
<http://www.bloomberg.com/news/articles/2015-12-18/bruce-richards-calls-third-avenue-management-triple-c-cowboys->
28

1 that mutual funds promise investors the ability to take their money out whenever
2 they wish. ‘It is irresponsible to run the fund in such a way that they can’t meet
3 redemptions,’ said Leo Acheson, an analyst at Morningstar.”⁴

4 45. Nor did Defendants provide the promised “enhanced oversight” of the
5 Fund’s risks as they related to its concentrated position in illiquid securities.
6 “Perhaps the most fundamental failure came at the outset in the firm’s decision to
7 offer the Focused Credit strategy as an open-end mutual fund at all. The open-end
8 format demands daily liquidity, yet this was no ordinary high-yield bond fund. . . .
9 The underlying distressed bonds central to the strategy were particularly prone to
10 illiquidity. Management, and the board that oversaw the fund, failed to reconcile
11 this inconsistency, and that mismatch ultimately proved to be the fund’s undoing.
12 However, once the decision to launch the fund had been made, management and
13 the fund’s board had a responsibility to monitor the fund’s liquidity and make
14 necessary adjustments to ensure the fund could meet redemption requests in an
15 orderly way. They failed to do so—management in miscalculating the potential
16 illiquidity of the fund’s holdings and the board in not holding management’s feet to
17 the fire as a secondary check.”⁵

18 46. The Fund’s excessively illiquid portfolio lead it to enter into a death-
19 spiral as redemptions caused the Fund to sell assets that lead to further losses
20 causing further redemption requests. “Third Avenue may have been caught in a
21 self-fulfilling spiral. As investors demanded their money back because of falling
22 prices, the firm was forced to liquidate its holdings, pushing the prices lower on the
23

24
25 ⁴Matt Egan, *CEO exits after mutual fund implodes*, CNN Money (Dec. 14,
26 2015), <http://money.cnn.com/2015/12/11/investing/junk-bond-fund-blows-up-third-avenue/>.

27 ⁵Bridget B. Hughes and Leo Acheson, *Many Concerns About Third Avenue*,
28 Morningstar (Dec. 22, 2015), <http://news.morningstar.com/articlenet/article.aspx?id=734259>.

1 lowest-rated notes and spurring even more redemption requests.”⁶

2 47. “The day-to-day life of a fund manager involves spending a lot of time
3 thinking about liquidity, and what to do if a fund faces redemptions, but these
4 knuckleheads appear to have had blinders on, and lacked a fall-back position once
5 cash in the portfolio was exhausted by people checking out. Thus, they faced
6 unloading their junk at fire-sale prices to pay other defectors, which forced the
7 shut-down to allow an orderly liquidation.”⁷

8 48. Ultimately, Defendants themselves were forced to concede that the
9 Fund’s assets were illiquid. In a letter dated December 9, 2015, the Adviser
10 notified investors that redemptions in the Fund were being halted and that the
11 Fund’s remaining assets had been placed into a liquidating trust. The letter stated
12 that paying anticipated redemptions would have forced the Fund to sell assets at
13 prices that represented only “a portion of those investments’ fair value given
14 current market conditions.”⁸ In other words, the Fund was so highly concentrated
15 in illiquid investments that it could no longer satisfy redemption requests.

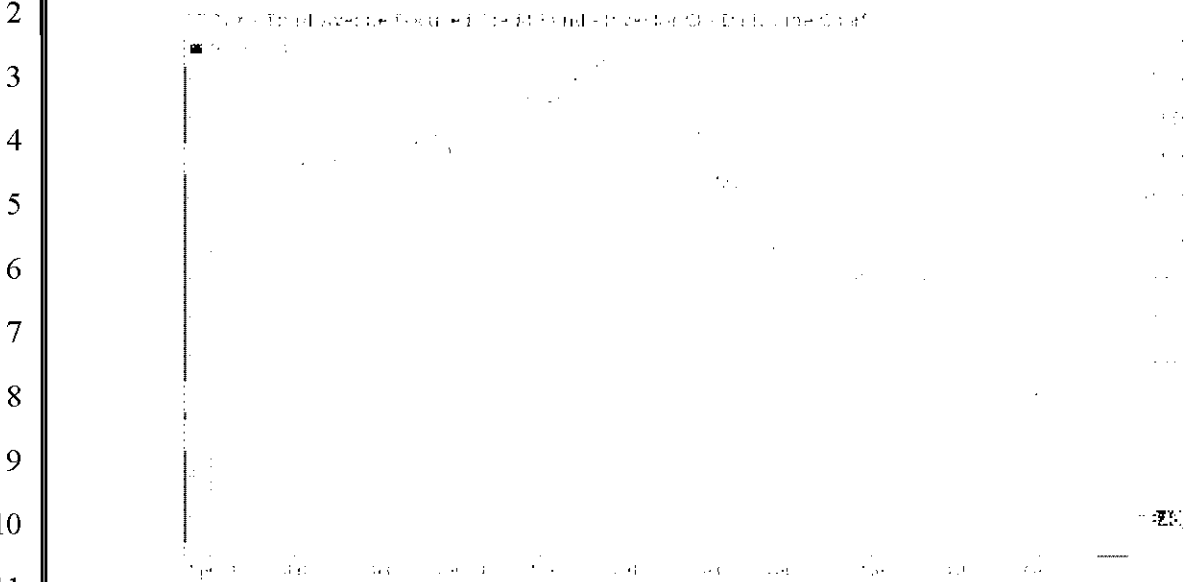
16 49. Due to Defendants’ positive, but misleading or untrue statements,
17 billions of dollars poured into Defendants’ Fund at prices set by Defendants. The
18 NAV of the Fund was approximately \$10.89 per share at the beginning of the Class
19 Period before reaching as high as \$12.28 on June 20, 2014. As shown in the chart
20 below, the NAV then began to decline, plummeting to as low as \$6.48 per share on
21 December 10, 2015. During the class period, the decline in NAV of the Fund’s
22

23 ⁶Lisa Abramowicz, *Third Avenue Freeze-Out*, Bloomberg (Dec. 10, 2015),
24 <http://www.bloomberg.com/gadfly/articles/2015-12-10/third-avenue-halts-one-high-yield-debt-spiral-but-not-others>).

25 ⁷Chuck Jaffe, *These Mutual-Fund Fumbles Cost Investors Real Money In*
26 *2015*, MarketWatch (Dec. 17, 2015), <http://www.marketwatch.com/story/these-mutual-fund-fumbles-cost-investors-real-money-in-2015-2015-12-17>.

27 ⁸Letter from Third Avenue Management (Dec. 9, 2015),
28 <http://thirdave.com/wp-content/uploads/2015/12/FCF-Shareholder-Letter-12-2015.pdf>).

1 shares represents a loss of over 36%.



12 50. The Fund’s losses were not due simply to market forces. According to
13 Reuters, “[t]he nearly \$800 million Focused Credit Fund had a negative total return
14 of nearly 30 percent this year before its closure, according to Morningstar Inc. By
15 contrast, the high-yield bond fund category is off 4.2 percent this year.”⁹

16 **CLASS ACTION ALLEGATIONS**

17 51. Plaintiff brings this action as a class action pursuant to Federal Rules
18 of Civil Procedure 23(a) and (b)(3) on behalf of a class consisting of all persons or
19 entities who acquired the Fund’s shares traceable to Defendants’ false and
20 misleading Registration Statements and who were damaged thereby (the “Class”).
21 Excluded from the Class are Defendants, the Officers and Directors of the entities
22 named herein, members of their immediate families, their legal representatives,
23 heirs, successors, or assigns, and any entity in which Defendants had or have a
24 controlling interest.

25 52. The members of the Class are so numerous that joinder of all members

26 _____
27 ⁹Tim McLaughlin, *Third Avenue says fund seized up before collapse amid*
28 *redemption flood*, Reuters (Dec. 17, 2015), <http://www.reuters.com/article/us-funds-thirdavenue-sec-idUSKBN0U022620151217>.

1 is impracticable. While the exact number of Class members is unknown to
2 Plaintiff at this time and can only be ascertained through appropriate discovery,
3 Plaintiff believes that there are thousands of members in the proposed Class.
4 Record owners and other members of the Class may be identified from records
5 maintained by Registrant or its transfer agent and may be notified of the pendency
6 of this action by mail, using the form of notice similar to that customarily used in
7 securities class actions.

8 53. Plaintiff's claims are typical of the claims of the members of the Class
9 as all members of the Class are similarly affected by Defendants' wrongful conduct
10 in violation of federal law that is complained of herein.

11 54. Plaintiff will fairly and adequately protect the interests of the members
12 of the Class and has retained counsel competent and experienced in class and
13 securities litigation.

14 55. Common questions of law and fact exist as to all members of the Class
15 and predominate over any questions solely affecting individual members of the
16 Class. Among the questions of law and fact common to the Class are:

17 (a) Whether Defendants' acts as alleged were a violation of
18 Sections 11 and 12(a)(2) of the Securities Act of 1933;

19 (b) Whether statements made by Defendants to the investing public
20 in the Registration Statements and any sales or promotional material for the Fund
21 misrepresented or omitted material facts about the investment objectives, assets,
22 operations, or management of the Fund; and

23 (c) Whether, and to what extent, the members of the Class have
24 sustained damages and the proper measure of damages.

25 56. A class action is superior to all other available methods for the fair and
26 efficient adjudication of this controversy since joinder of all members is
27 impracticable. Furthermore, as the damages suffered by individual Class members
28 may be relatively small, the expense and burden of individual litigation make it

1 impossible for members of the Class to redress individually the wrongs done to
2 them. There will be no difficulty in the management of this action as a class
3 action.

4 **COUNT I**
5 **VIOLATIONS OF SECTION 11 OF THE 1933 ACT**
6 **AGAINST ALL DEFENDANTS**

7 57. Lead Plaintiff repeats and realleges each and every allegation
8 contained above. For purposes of this Count, Plaintiff expressly excludes and
9 disclaims any allegation that could be construed as alleging fraud or intentional or
10 reckless misconduct, as this Count is based solely on claims of strict liability and/or
11 negligence under the Securities Act.

12 58. Lead Plaintiff brings this Count pursuant to Section 11 of the
13 Securities Act, 15 U.S.C. §77k, on behalf of himself and other members of the
14 Class against the Trust, the Adviser, the Distributor, and the Trustee Defendants.

15 59. The March 2013 Prospectus, February 2014 Prospectus, and March
16 2015 Prospectus were false and misleading, contained untrue statements of material
17 facts, omitted to state other facts necessary to make the statements made not
18 misleading, and/or omitted to state material facts required to be stated therein.

19 60. The Trust is the registrant for the share offering. As issuer of the
20 shares, the Trust is strictly liable to Plaintiff and the Class for the misstatements
21 and omissions.

22 61. The Adviser was responsible for the contents and dissemination of the
23 March 2013 Prospectus, February 2014 Prospectus, and March 2015 Prospectus.

24 62. The Distributor served as the Fund's principal underwriter of the
25 Fund's shares, and was responsible for the contents and dissemination of the March
26 2013 Prospectus, February 2014 Prospectus, and March 2015 Prospectus.

27 63. The Trustee Defendants were responsible for the contents and
28 dissemination of the March 2013 Prospectus, February 2014 Prospectus, and

1 March 2015 Prospectus. Each of the Trustee Defendants signed or authorized the
2 signing of the March 2013 Prospectus, February 2014 Prospectus, and March 2015
3 Prospectus.

4 64. None of the Defendants named in this Count made a reasonable
5 investigation or possessed reasonable grounds for the belief that the statements
6 contained in the March 2013 Prospectus, February 2014 Prospectus, and March
7 2015 Prospectus were true and without omissions of any material facts and were
8 not misleading.

9 65. By reason of the conduct herein alleged, each Defendant violated,
10 and/or controlled a person who violated, Section 11 of the Securities Act.

11 66. Plaintiff and other members of the Class acquired shares of the Fund
12 pursuant and/or traceable to the March 2013 Prospectus, February 2014 Prospectus,
13 and March 2015 Prospectus.

14 67. Plaintiff and other members of the Class sustained damages. At the
15 time of their purchases of shares of the Fund, Plaintiff and other members of the
16 Class were without knowledge of the facts concerning the wrongful conduct
17 alleged herein and could not have reasonably discovered those facts.

18 68. Less than three years elapsed between the time that the securities upon
19 which this Count is brought were offered to the public and the filing of this
20 complaint. Less than one year elapsed between the time that Lead Plaintiff
21 discovered or reasonably could have discovered the facts upon which this Count is
22 based and the filing of this complaint.

23 **COUNT II**

24 **VIOLATIONS OF SECTION 12(a)(2) OF THE 1933**
25 **ACT AGAINST ALL DEFENDANTS**

26 69. This Count II is asserted against all Defendants as participants in the
27 distribution of the Fund's shares.

28 70. Plaintiff repeats and incorporates each and every allegation contained

1 above as if fully set forth herein, except to the extent any allegations above contain
2 facts which are unnecessary or irrelevant for purposes of stating a claim under
3 Section 12, including allegations that might be interpreted to sound in fraud or
4 relating to any state of mind on the part of the Defendants, other than strict liability
5 or negligence.

6 71. Defendants offered and sold a security, namely shares of the Fund's
7 common stock, by means of the March 2013 Prospectus, February 2014
8 Prospectus, and March 2015 Prospectus, or were controlling persons of the Fund or
9 of those who offered and sold the Fund's shares. The March 2013 Prospectus,
10 February 2014 Prospectus, and March 2015 Prospectus contained untrue and/or
11 misleading statements of material fact, contained material omissions, or omitted
12 material facts necessary in order to make the statements, in light of the
13 circumstances under which they were made, not misleading, or contained material
14 statements of fact that the Defendants in the exercise of reasonable care should
15 have known were false.

16 72. Defendants actively solicited the sale of the Fund's shares to serve
17 their own financial interests.

18 73. At the time of purchase of the Fund's shares, Plaintiff and other
19 members of the Class did not know that the representations made to them by
20 Defendants in connection with the distribution of shares and the matters described
21 above were untrue, and did not know the above described omitted material facts
22 were not disclosed.

23 74. As a result of the matters set forth above, pursuant to Section 12(a)(2)
24 of the Securities Act, Plaintiff and Class members are entitled to recover upon
25 tender of the Fund shares they purchased the consideration paid for the shares with
26 interest thereon, less the amount of any income received thereon, or damages
27 resulting from Defendants' conduct.

28 75. Plaintiff and putative Class members who do not opt out, hereby

1 tender their shares in the Fund.

2 76. Defendants are liable to Plaintiff and Class members pursuant to
3 Section 12(a)(2) of the Securities Act, as sellers of the Fund shares.

4 **COUNT III**

5 **VIOLATIONS OF SECTION 15 OF THE 1933 ACT**
6 **AGAINST THE INDIVIDUAL DEFENDANTS**

7 77. Plaintiff repeats and incorporates each allegation contained above.

8 78. This Count III is brought pursuant to Section 15 of the 1933 Act
9 against the Individual Defendants.

10 79. Each of the Individual Defendants was a control person of the Trust,
11 the Adviser, or the Distributor by virtue of his or her position as a trustee and/or
12 senior officer of these Defendant entities. The Individual Defendants each had a
13 series of direct and/or indirect business and/or personal relationships with other
14 trustees and/or officers and/or major shareholders of the Defendant entities.

15 80. Each of the Individual Defendants was a culpable participant in the
16 violations of Sections 11 and 12 of the 1933 Act alleged in the Counts above, based
17 on their having signed or authorized the signing of the March 2013 Prospectus,
18 February 2014 Prospectus, and March 2015 Prospectus and having otherwise
19 participated in the process which allowed the share offering to be successfully
20 completed, or having participated in the offer or sale of the shares of the Fund.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff prays for judgment as follows:

23 1. Determining that this action is a proper class action, certifying
24 Plaintiff as representative of the Class alleged herein, and appointing his attorneys
25 as counsel for the Classes under Federal Rule of Civil Procedure 23;

26 2. Awarding compensatory and rescissionary damages in favor of
27 Plaintiff and other members of the Class against all Defendants, jointly and
28

1 severally, for all damages sustained as a result of Defendants' wrongdoing, in an
2 amount to be proven at trial, including interest thereon;

3 3. Enjoining Defendants from continuing to engage in the violations of
4 law, as alleged herein;

5 4. Awarding Plaintiff and other members of the Class pre-judgment and
6 post-judgment interest;

7 5. Awarding Plaintiff and other members of the Class their reasonable
8 costs and expenses incurred in this action, including counsel fees and expert fees;

9 6. Awarding such equitable, injunctive or other relief as deemed
10 appropriate by the Court;

11 7. Awarding such other and further relief as this Court may deem just
12 and proper.

13

14

DEMAND FOR JURY TRIAL

15

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

16

17

Dated: January 27, 2016

18

19

20

21

22

23

24

25

26

27

28