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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

_____, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

vs.

THIRD AVENUE TRUST, THIRD
AVENUE MANAGEMENT LLC, M.J.
WHITMAN LLC, MARTIN J.
WHITMAN, DAVID M. BARSE,
VINCENT J. DUGAN, WILLIAM E.
CHAPMAN, II, LUCINDA FRANKS,
EDWARD J. KAIER, ERIC
RAKOWSKI, MARTIN SHUBIK,
CHARLES C. WALDEN and
PATRICK REINKEMEYER,

Defendants.

Case No.

CLASS ACTION

COMPLAINT FOR VIOLATIONS OF
THE FEDERAL SECURITIES LAWS

DEMAND FOR JURY TRIAL

1 Plaintiff, individually and on behalf of all others similarly situated, by
2 plaintiff's undersigned attorneys, for plaintiff's complaint against defendants, alleges
3 the following based upon personal knowledge as to plaintiff and plaintiff's own acts,
4 and upon information and belief as to all other matters based on the investigation
5 conducted by and through plaintiff's attorneys, which included, among other things, a
6 review of U.S. Securities and Exchange Commission ("SEC") filings by Third
7 Avenue Trust ("Third Avenue" or the "Trust"), as well as media and analyst reports
8 about the Trust and Trust press releases. Plaintiff believes that substantial additional
9 evidentiary support will exist for the allegations set forth herein after a reasonable
10 opportunity for discovery.

11 JURISDICTION AND VENUE

12 1. This Court has jurisdiction over the subject matter of this action pursuant
13 to 28 U.S.C. §1331 and §22 of the Securities Act of 1933 (the "1933 Act") [15 U.S.C.
14 §77v].

15 2. The claims asserted herein arise under and pursuant to §§11, 12(a)(2) and
16 15 of the 1933 Act [15 U.S.C. §§77k, 77l(a)(2) and 77o]. In connection with the acts
17 complained of, defendants, directly or indirectly, used the means and instrumentalities
18 of interstate commerce, including, but not limited to, the mails, interstate telephone
19 communications and the facilities of the national securities markets.

20 3. Venue is proper in this District pursuant to 28 U.S.C. §1391(b) because
21 the acts complained of herein occurred in this District, including the dissemination of
22 defendants' false and misleading statements into this District and the purchase of
23 artificially inflated Fund (as defined below) shares by investors residing in this
24 District. A complaint seeking substantially similar relief by a person purporting to be
25 a shareholder of the Fund and to be a resident of this District was filed in this District
26 on January 27, 2016. *See Tran v. Third Avenue Management LLC, et. al*, No. 16-cv-
27 00602 (C.D. Cal.).

1 **NATURE OF THE ACTION**

2 4. This is a securities class action on behalf of all purchasers of Third
3 Avenue Focused Credit Fund Investor Class shares (“TFCVX”) and Third Avenue
4 Focused Credit Fund Institutional Class shares (“TFCIX”) between March 1, 2013 and
5 December 10, 2015, inclusive (the “Class Period”), against Third Avenue, certain of
6 its officers and/or trustees, its investment advisor, Third Avenue Management LLC
7 (“Third Avenue Management”), and M.J. Whitman LLC, Third Avenue
8 Management’s affiliated broker-dealer, for violations of the 1933 Act.

9 5. Third Avenue is an open-ended management investment company
10 focused on value investing, and specifically the purchase of undervalued assets based
11 on fundamental analysis. Third Avenue Focused Credit Fund (“Focused Credit Fund”
12 or the “Fund”) is a mutual fund within the Third Avenue family of investment funds
13 that seeks to achieve long-term total returns mainly by investing in bonds and other
14 types of credit instruments, including in a substantial proportion of non-investment
15 grade assets commonly known as “high-yield” or “junk” bonds.

16 6. Third Avenue is registered with the SEC as an open-ended investment
17 company under the Investment Company Act of 1940 (“ICA”). As such, its series of
18 investment funds, including the Focused Credit Fund, are subject to the rules and
19 regulations governing mutual funds under the ICA. The SEC lists the ability of
20 investors to readily redeem their shares as one of the “traditional, distinguishing
21 characteristics of mutual funds” on its website.¹ Codifying this key characteristic,
22 ICA §22(e) states that mutual funds must stand ready to redeem shares daily and pay
23 redeeming shareholders within seven days of receiving a redemption request. In order
24 to ensure a mutual fund will be able to timely satisfy investor redemption requests, at
25 least 85% of its assets must be “liquid” under SEC guidelines. *See Revisions of*

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27 ¹ See U.S. Securities and Exchange Commission, *Invest Wisely: An Introduction to*
28 *Mutual Funds*, <http://www.sec.gov/investor/pubs/inwsmf.htm#key> (last visited Feb. 1, 2016).

1 *Guidelines to Form N-1A*, SEC Release No. 33-6927; IC-18612, 1992 SEC LEXIS
2 1083 (Mar. 12, 1992) (“SEC Release No. 33-6927”). A security is defined as
3 “illiquid” if a fund cannot receive the amount at which it values the asset within seven
4 days. *See Acquisition and Valuation of Certain Portfolio Instruments by Registered*
5 *Investment Companies*, SEC Release No. IC-14983, 1986 SEC LEXIS 2317 (Mar. 21,
6 1986) (“SEC Release No. IC-14983”).

7 7. Since its launch in August 2009, the Focused Credit Fund has promised
8 investors access to higher yielding distressed debt investments, while purporting to
9 maintain the liquidity and share redemption guarantees of a traditional mutual fund.
10 For example, the Fund’s prospectus and registration statement (together with all
11 amendments and supplements thereto, the “Offering Materials”) stated that investors
12 in the Fund would be able to “redeem [their] shares on any day during which the
13 NYSE is open,” and that the “Fund will usually make payment for redemptions of
14 Fund shares within one business day, but not later than seven calendar days, after
15 receipt of a redemption request.” The Offering Materials also stated that throughout
16 the Class Period, the Fund maintained only a small proportion of its investments in
17 illiquid securities and at no point held more than the 15% threshold set by the SEC.
18 The Offering Materials also stated that only a small proportion of the Fund’s assets
19 were “not readily marketable” for “which market quotations are not readily available.”

20 8. These statements were false and misleading when made. Specifically,
21 defendants failed to disclose that the Fund had taken on excessive amounts of illiquid
22 securities as it grew in size, more than tripling from approximately \$1 billion in assets
23 to approximately \$3.5 billion in assets from 2012 to 2014. As a result, the Fund
24 became heavily concentrated in assets for which no market readily existed, subjecting
25 the Fund and investor capital to undisclosed risks of outsized investment losses and to
26 the impairment of shareholders’ redemption rights in the event of a market downturn
27 or a run of redemption activity.

28

1 9. As the junk bond market experienced negative trends in the summer of
2 2014 and redemptions picked up, the Fund entered a “death spiral” of its own making.
3 While the Fund continued to outwardly represent that it was abiding by the SEC’s
4 15% liquidity rule and had sufficient liquidity to cover investor redemptions, it
5 internally found it could not sell its positions at prices reasonably reflecting the value
6 it had attributed to them, causing it to sell its most liquid assets to cover investor
7 redemptions, thereby increasing its concentration of illiquid and underperforming
8 assets and further impairing its ability to meet future redemptions. By early
9 December, the Fund was down 27% on the year, compared to less than 4% for high-
10 yield funds as a category, according to Morningstar.

11 10. By December 10, 2015, the incongruence between the Fund’s internal
12 investment strategy and outward obligations as a mutual fund reached a breaking
13 point. On that day, Third Avenue shocked the investment community by announcing
14 that it had completely frozen investor withdrawals and shifted all Fund assets into a
15 liquidating trust. The Company had taken this unprecedented step without seeking
16 prior SEC approval. Third Avenue stated that it may take a “year or more” for
17 investors with money still locked in the Fund to get their money back (assuming they
18 are able to get their money back at all).

19 11. The news sparked a rout in high-yield debt markets. Illustrative of
20 market commentary, *Dow Jones* called the move “highly unorthodox,” with *The Wall*
21 *Street Journal* stating that it would have potentially “significant repercussions for both
22 the company and the mutual-fund industry, ***which for decades has thrived by***
23 ***promising to allow investors to take a long-term view of the markets while retaining***
24 ***the right to cash out shares at any time.*”²**

25 12. Shortly thereafter, defendant David M. Barse (“Barse”), the Chief
26 Executive Officer (“CEO”) of Third Avenue Management, was fired.

27 _____
28 ² All emphasis has been added unless otherwise noted.

1 organized under the laws of Delaware pursuant to a Trust Instrument dated October
2 31, 1996.

3 17. Defendant Third Avenue Management is an investment advisor to private
4 and institutional clients, including defendant Third Avenue.

5 18. Defendant M.J. Whitman LLC (the “Distributor”), is an affiliate of Third
6 Avenue Management and was, during the relevant time period, the principal
7 underwriter and distributor for shares of the Fund. The Distributor also served as
8 Third Avenue’s agent for the purpose of the continuous public offering of the Fund’s
9 shares.

10 19. Defendant Martin J. Whitman (“Whitman”) was at all relevant times the
11 Chairman of the Board of Trustees of the Fund and signed each Registration
12 Statement effective during the Class Period.

13 20. Defendant Barse was at all relevant times CEO, President, Investment
14 Advisor and a Trustee of Third Avenue until he was fired in December 2015. Barse
15 signed each Registration Statement effective during the Class Period.

16 21. Defendant Vincent J. Dugan (“Dugan”) was at all relevant times Chief
17 Financial Officer (“CFO”) and Investment Manager of Third Avenue, and also sat on
18 the Valuation Committee of the Focused Credit Fund. Dugan signed each
19 Registration Statement effective during the Class Period.

20 22. Defendant William E. Chapman, II (“Chapman”) was at all relevant
21 times a Trustee of Third Avenue and signed each Registration Statement effective
22 during the Class Period.

23 23. Defendant Lucinda Franks (“Franks”) was at all relevant times a Trustee
24 of Third Avenue and signed each Registration Statement effective during the Class
25 Period.

26 24. Defendant Edward J. Kaier (“Kaier”) was at all relevant times a Trustee
27 of Third Avenue and signed each Registration Statement effective during the Class
28 Period.

1 bonds and other types of credit instruments, such as high-yield bonds (commonly
2 known as “junk bonds” or “junk debt”).

3 32. Investors could purchase two series of shares in the Focused Credit Fund:
4 (i) TFCVX, which required an upfront investment of at least \$2,500; and (ii) TFCIX,
5 which required an upfront investment of at least \$100,000, but had lower fees.

6 33. Because of the nature of the Fund’s investments, which generally have
7 limited publicly available information, it would be practically impossible for outside
8 shareholders to independently determine the value of the Fund’s total reported assets.
9 For example, the Fund generally categorizes its investments as Level 1, Level 2 or
10 Level 3 based on the amount of “observable data” on valuation inputs. Only Level 1
11 assets reflect “unadjusted quoted prices in active markets for identical assets or
12 liabilities.” Level 2 assets, by contrast, “require[] significant judgment by the Fund[]”
13 in order to determine their fair value because they are based on “[i]nputs other than
14 [observable] quoted prices,” including in non-active markets. The Fund’s valuation of
15 Level 3 assets are the most opaque, because they rely on “[s]ignificant unobservable
16 inputs,” and thus on assumptions by the Fund. Over the Class Period, only a relatively
17 small proportion of the Fund’s assets were categorized as Level 1. For example, as of
18 October 31, 2013, the Fund categorized only \$119 million of its total \$1.6 billion in
19 portfolio assets (at fair value) as Level 1, or approximately 7.5%.

20 **Management of the Focused Credit Fund**

21 34. Third Avenue Management is the investment adviser for Third Avenue
22 and the Focused Credit Fund pursuant to an investment advisory agreement and is
23 registered with the SEC as such under the ICA. As a result, Third Avenue
24 Management owes the Trust and the Fund fiduciary duties, including the duty to act in
25 good faith, in the best interests of clients, to fully and fairly disclose all material facts
26 to clients, to expose and eliminate any conflicts of interest that may cause the
27 investment adviser to render advice that is not disinterested, and to affirmatively
28 employ reasonable care to avoid misleading clients.

1 35. Third Avenue Management earned tens of millions of dollars in fees from
2 Third Avenue and the Focused Credit Fund (as well as other asset portfolios under its
3 management) for the provision of advisory, management and related services. For
4 example, for the fiscal year ended October 31, 2015, the Focused Credit Fund paid
5 approximately \$23 million in fees and expenses, primarily to Third Avenue
6 Management and its employees. Similarly, for the fiscal year ended October 31,
7 2014, the Fund paid approximately \$29 million in fees and expenses, primarily to
8 Third Avenue Management and its employees.

9 36. During the Class Period, the Fund had no independent officers and was
10 managed by employees of Third Avenue and Third Avenue Management and the
11 Fund’s Board of Trustees (the “Board”), including the Individual Defendants. For
12 example, Third Avenue Management was responsible for the Fund’s investments as
13 overseen by the Board. The Fund also maintained a Valuation Committee, on which
14 defendant Dugan sat, responsible for valuing the Fund’s assets, and a Fair Value
15 Committee, responsible for overseeing fair valuations pursuant to procedures and
16 methodologies implemented and periodically reviewed by the Board.⁴ The Board was
17 also responsible for monitoring the liquidity of the Fund to ensure that it remained
18 within the limits set by the Board and to ensure that assets deemed “liquid” were
19 properly categorized as such.

20 **Mutual Funds Must Maintain Adequate Liquidity**

21 37. “Because open-end companies hold themselves out at all times as being
22 prepared to meet redemptions within seven days,” the SEC considers it “*essential* that
23 such companies maintain a portfolio of investments that enable them to fulfill that
24 obligation.” ICA Release No. 5847, 1969 SEC LEXIS 812, at *15 (Oct. 21, 1969).
25 Section 22(e) of the ICA prohibits mutual funds from suspending the right of
26

27 ⁴ Defendants Chapman, Franks, Kaier, Rakowski, Shubik, Walden and Reinkemeyer
28 sat on the Fair Value Committee.

1 redemption or postponing payment of a redemption request for more than seven days
2 after a tender of shares, except in very narrow circumstances limited to:

3 (1) for any period (A) during which the New York Stock
4 Exchange is closed other than customary week-end and holiday closings
5 or (B) during which trading on the New York Stock Exchange is
6 restricted;

7 (2) for any period during which an emergency exists as a result of
8 which (A) disposal by the company of securities owned by it is not
9 reasonably practicable or (B) it is not reasonably practicable for such
10 company fairly to determine the value of its net assets; or

11 (3) for such other periods as the Commission may by order permit
12 for the protection of security holders of the company.

13 Investors generally consider the easily redeemable nature of mutual fund shares as a
14 primary benefit of investing in them.⁵ In fact, the SEC considers the right of
15 redemption a “traditional, distinguishing characteristic of mutual funds.”⁶

16 38. In addition, a mutual fund must compute its NAV each business day and
17 give purchase and redemption orders the price next computed after receipt of an order.
18 *See* 17 C.F.R. 270.22c-1. To compute an accurate NAV per share, a mutual fund must
19 be able to value each portfolio security accurately. Mutual funds must use market
20 price to value securities for which market quotations are readily available, and the
21 board of directors must make a good faith determination of the fair value of securities
22 for which market prices are not readily available. *See* 17 C.F.R. 270.2a-4(a)(1).

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24 ⁵ *See, e.g.,* Mark P. Cussen, *The Benefits of Mutual Funds* (Sept. 18, 2014),
25 <http://mutualfunds.com/education/benefits-of-mutual-funds/> (“Another element of
26 convenience found with mutual funds is the ability to purchase and redeem shares
with relative ease.”).

27 ⁶ *See* U.S. Securities and Exchange Commission, *Invest Wisely: An Introduction to*
28 *Mutual Funds*, <http://www.sec.gov/investor/pubs/inwsmf.htm#key> (last visited Feb. 1,
2016).

1 However, even if market quotations are not available to value certain securities,
2 mutual funds complying with generally accepted accounting principles (“GAAP”) are
3 required to use market-based inputs and assumptions to the extent possible to value
4 those securities. *See* ASC 820-10-05-1C. If the NAV of a mutual fund is not
5 accurate, purchasing or redeeming shareholders may pay or receive too little or too
6 much for their shares, and the interests of remaining shareholders may be overvalued
7 or diluted.

8 39. In order to meet these requirements, the SEC requires mutual funds to
9 “maintain a high degree of portfolio liquidity.” *See* SEC Release No. 33-6927, 1992
10 SEC LEXIS 1083, at *5. As a result, current SEC guidelines set the maximum
11 amount of illiquid assets a mutual fund may hold at any given time at 15% of total
12 fund assets. *See id.* at *9. A security is defined as “illiquid” if a fund cannot receive
13 the amount at which it values the asset within seven days. *See* SEC Release No. IC-
14 14983, 1986 SEC LEXIS 2317. The SEC also has stated that open-end funds have a
15 “general responsibility to maintain a level of portfolio liquidity that is appropriate
16 under the circumstances,” and to engage in ongoing portfolio liquidity monitoring “to
17 determine whether, in light of the current circumstances, an adequate level of liquidity
18 is being maintained.” *See* SEC Release No. 33-6927, 1992 SEC LEXIS 1083, at *7.
19 For example, the SEC has stated that when a fund is experiencing a net outflow of
20 assets it “should consider reducing its holdings of illiquid securities in an orderly
21 fashion in order to maintain adequate liquidity.” *Id.* at *7-*8. As stated by Roger
22 Ibbotson, a highly regarded finance expert and emeritus professor of the practice of
23 finance at Yale School of Management, “things that are really illiquid do not belong
24 in mutual funds.”

25 40. In January 2014, the SEC issued a risk management guidance update for
26 fixed income markets investing.⁷ The guidance encouraged investment advisors for

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28 ⁷ *Guidance Update* (Jan. 2014), <http://www.sec.gov/divisions/investment/guidance/im-guidance-2014-1.pdf>.

1 bond mutual funds (such as the Focused Credit Fund) to evaluate and stress test their
2 liquidity and ability to meet investor redemption requests and to assess the adequacy
3 of their disclosures to investors regarding related risks.

4 **Relevant SEC Filings**

5 41. On or about August 24, 2009, defendants began offering shares of the
6 Focused Credit Fund pursuant to an initial registration statement filed with the SEC.

7 42. Defendants annually filed nearly identical Registration Statements and
8 Prospectuses throughout the Class Period in connection with the continuous offerings
9 of the Focused Credit Fund's shares. The Fund's shares were issued to investors
10 pursuant to the following series of Registration Statements and Prospectuses that
11 formed part of the Registration Statements filed with the SEC and made effective
12 during the relevant period, which are referred to collectively herein as the "Offering
13 Materials":

14 (a) Summary Prospectus filed February 28, 2013 and dated March 1,
15 2013;

16 (b) Registration Statement and Prospectus filed on February 28, 2013
17 and dated March 1, 2013;

18 (c) Post-effective amendment to the Registration Statement filed
19 March 15, 2013;

20 (d) Summary Prospectus filed February 28, 2014;

21 (e) Registration Statement and Prospectus filed on February 28, 2014;

22 (f) Post-effective amendment to the Registration Statement filed
23 March 13, 2014;

24 (g) Summary Prospectus filed February 27, 2015 and dated March 1,
25 2015;

26 (h) Registration Statement and Prospectus filed on February 27, 2015
27 and dated March 1, 2015;

28

1 (i) Post-effective amendment to the Registration Statement filed
2 March 18, 2015;

3 (j) Prospectus supplement and prospectus summary filed March 23,
4 2015; and

5 (k) Prospectus supplement filed December 10, 2015.

6 43. A statement of additional information (“SAI”) and the Fund’s Annual
7 Report for that year, which provided investors with additional guidance about, *inter*
8 *alia*, the Fund’s investment strategies and limitations, were incorporated by reference
9 and filed with the Offering Materials. The Fund filed Annual Reports with the SEC
10 on Form N-CSR on December 30, 2013, January 6, 2015 and December 24, 2015, and
11 stand-alone SAIs on June 11, 2014, March 2, 2015, March 23, 2015 and October 15,
12 2015, and Semi-Annual and Quarterly reports which were part of the Offering
13 Materials.

14 44. The Offering Materials referred investors seeking more information to
15 the SAIs, and expressly incorporated the SAIs, which “provide[] more detailed
16 information about the Fund.” Defendants reissued and updated the SAIs throughout
17 the relevant time period. The Offering Materials directed investors to review the
18 SAIs, Annual Reports and Semi-Annual Reports for additional information. The
19 Annual Reports included “a discussion of the market conditions and investment
20 strategies that significantly affected the Fund[’s] performance[] during the last fiscal
21 year.”

22 45. Disclosure of the Fund’s complete holdings is required to be made
23 quarterly within 60 days of the end of each fiscal quarter in the Annual Report and
24 Semi-Annual Report to Fund shareholders and in the quarterly holdings report on
25 Form N-Q. The Semi-Annual Reports and Form N-Qs were part of the Offering
26 Materials. Each member of the Class purchased shares of the Focused Credit Fund
27 pursuant to the Offering Materials.

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1 **DEFENDANTS’ MATERIALLY FALSE AND**
2 **MISLEADING STATEMENTS IN THE OFFERING MATERIALS**

3 46. The Offering Materials stated that the Fund employed a “disciplined and
4 deliberate” approach to value investing “through intensive research of individual
5 companies,” which was designed to “lower[] investment risk” and increase long-term
6 capital appreciation in distressed assets:

7 Focused Credit Fund . . . *adheres to a strict value discipline* in selecting
8 securities and other instruments. This means seeking investments whose
9 market prices are low in relation to what the Fund’s Adviser, Third
10 Avenue Management . . . believes is their intrinsic value and/or whose
11 total return potential is considered by the Adviser to be high. *The*
12 *Fund’s Adviser believes this both lowers investment risk and increases*
13 *capital appreciation and total return potential.* The Fund identifies
14 investment opportunities through intensive research of individual
15 companies and generally does not focus solely on market conditions and
16 other macro factors. For these reasons, the Fund may seek investments
17 in the debt or other securities of companies in industries that are believed
18 to be temporarily depressed.

19 47. The Offering Materials stated that the “Third Avenue Focused Credit
20 Fund may be appropriate for long-term investors seeking alternatives to equity
21 investments for long-term total return, which may include returns from a combination
22 of sources including capital appreciation, fees and interest income.”

23 48. In addition, the Offering Materials stated the Fund’s share prices would
24 be set by the Fund’s NAV, calculated daily, generally “*using the most readily*
25 *available market price,*” *i.e.,* the “*market value*” of the Fund’s investments. For those
26 illiquid investments for which no “market quotations” were readily available or
27 deemed unreliable, the Fund’s Board would determine their “fair value” in good faith
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1 and according to pre-determined procedures, including in-depth reviews by the Fair
2 Value Committee of the Board.

3 49. The Offering Materials also stated that investors would be able to
4 **“redeem [their] shares on any day during which the NYSE is open**, either directly
5 from the Fund or through certain broker-dealers or other financial intermediaries.”
6 The Offering Materials further stated that the Fund would “usually make payment for
7 redemptions of Fund shares within one business day, **but not later than seven**
8 **calendar days**, after receipt of a redemption request.”

9 50. The SAI set out narrow circumstances under which the right of
10 redemption may be deferred for greater than seven days, which generally tracked the
11 exceptions listed in ICA §22(e):

- 12 • (a) “when trading on the New York Stock Exchange (“NYSE”) is
13 restricted”;
- 14 • (b) “when the NYSE is closed for other than weekends and holidays”;
- 15 • (c) “when the SEC has by order permitted such suspension”; or
- 16 • “when an emergency exists making disposal of portfolio securities or
17 valuation of net assets of the Fund not reasonably practicable; provided
18 that applicable rules and regulations of the SEC shall govern as to
19 whether the conditions prescribed [above] exist.”

20 51. The Fund did not disclose that redemptions could be suspended
21 unilaterally by Third Avenue as to all shareholders and for an indefinite duration, or
22 due to an “emergency” of Third Avenue’s own creation caused by it taking on
23 undisclosed investment concentration and liquidity risks. To the contrary, the SAI
24 stated that the Fund **“will not purchase or otherwise acquire any investment if, as a**
25 **result, more than 15% of its net assets (taken at current market value) would be**
26 **invested in securities that are illiquid.”** The SAI defined an illiquid asset or
27 investment as any which the Fund **“cannot sell a normal trading unit in the ordinary**
28 **course of business within seven days** at approximately the value at which the Fund

1 has valued the asset or investment, including securities that cannot be sold publicly
2 due to legal or contractual restrictions.” The SAI also stated that the Board would
3 “*monitor*” the liquidity of the Fund’s investments to ensure securities deemed liquid
4 are “*freely salable*,” including a “*review [of] pertinent factors such as trading*
5 *activity, reliability of price information and trading patterns of comparable*
6 *securities.*”

7 52. On March 7, 2013, Third Avenue filed its quarterly report for the Fund
8 for the period ended January 31, 2013 with the SEC on Form N-Q (the “1Q13 N-Q”).
9 The 1Q13 N-Q stated that at period end the Fund had approximately \$1 billion in net
10 assets, with an NAV per share of \$10.79 for TFCVX shares and \$10.78 for TFCIX
11 shares. The “fair value” of the Fund’s assets was defined as “*the price that a Fund*
12 *would receive upon selling an investment in an orderly transaction to an*
13 *independent buyer* in the principal or most advantageous market for the investment
14 under current market conditions.” The 1Q13 N-Q also stated that the Fund could only
15 invest “*up to 15% of its total net assets* in securities which are not readily marketable,
16 including those which are restricted as to disposition under applicable securities laws
17 (‘restricted securities’).” It also stated that “[r]estricted securities and other securities
18 and assets for which market quotations are not readily available are valued at ‘fair
19 value’, determined in good faith by the Trust’s Valuation Committee as authorized by
20 the Board of the Trust, under procedures established by the Board.” The 1Q13 N-Q
21 stated that “*\$0 or 0.00% of net assets*” for the Fund were calculated at fair value under
22 this definition at period end.⁸

23 53. On June 25, 2013, Third Avenue filed its semi-annual report for the Fund
24 for the period ended April 30, 2013 with the SEC on Form N-CSRS (the “2013 Semi-
25 Annual Report”). The 2013 Semi-Annual Report stated that at period end the Fund

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27 ⁸ These definitions of “fair value,” “liquidity” and securities for which “market
28 quotations are not readily available” were used in the Fund’s periodic financial filings
throughout the Class Period.

1 had approximately \$1.2 billion in net assets, with an NAV per share of \$11.21 for
2 TFCVX shares and \$11.20 for TFCIX shares, and reiterated the Fund’s purportedly
3 **“disciplined and deliberate investing approach.”** The 2013 Semi-Annual Report also
4 stated that the Fund could only invest **“up to 15% of its total net assets** in securities
5 which are not readily marketable.” The 2013 Semi-Annual Report stated that only
6 **“\$1,409,667 or 0.12% of net assets”** for the Fund were calculated at fair value for
7 “which market quotations are not readily available” at period end.

8 54. On September 19, 2013, Third Avenue filed its quarterly report for the
9 Fund for the period ended July 31, 2013 with the SEC on Form N-Q (the “3Q13
10 N-Q”). The 3Q13 N-Q stated that at period end the Fund had approximately \$1.3
11 billion in net assets, with an NAV per share of \$11.00 for TFCVX shares and \$10.99
12 for TFCIX shares. The 3Q13 N-Q also stated that the Fund could only invest **“up to**
13 **15% of its total net assets** in securities which are not readily marketable.” The 3Q13
14 N-Q stated that **“\$0 or 0.00% of net assets”** for the Fund were calculated at fair value
15 for “which market quotations are not readily available” at period end.

16 55. On December 30, 2013, Third Avenue filed its annual report for the Fund
17 for the period ended October 31, 2013 with the SEC on Form N-CSR (the “2013
18 Annual Report”). The 2013 Annual Report stated that at period end the Fund had
19 approximately \$1.8 billion in net assets, with an NAV per share of \$11.08 for TFCVX
20 shares and \$11.07 for TFCIX shares, and generated a 16.61% and 16.91% return for
21 each investor class, respectively, over the fiscal year. The 2013 Annual Report also
22 reiterated the Fund’s purportedly **“disciplined and deliberate investing approach”** and
23 its valuation policies and procedures described in the Offering Materials, including the
24 regular review by Board committee to ensure investment liquidity and the reliability
25 of fair value determinations and other valuations. The 2013 Annual Report also stated
26 that the Fund could only invest **“up to 15% of its total net assets** in securities which
27 are not readily marketable.” The 2013 Annual Report stated that only **“\$9,713,252 or**
28

1 **0.55% of the net assets**” for the Fund were calculated at fair value for “which market
2 quotations are not readily available” at period end.

3 56. On March 12, 2014, Third Avenue filed its quarterly report for the Fund
4 for the period ended January 31, 2014 with the SEC on Form N-Q (the “1Q14 N-Q”).
5 The 1Q14 N-Q stated that the Fund could only invest “**up to 15% of its total net assets**
6 in securities which are not readily marketable.” The 1Q14 N-Q stated that only
7 “**\$21,281,220 or 0.92%**” of net assets for the Fund were calculated at fair value for
8 “which market quotations are not readily available” at period end.

9 57. On June 20, 2014, Third Avenue filed its semi-annual report for the Fund
10 for the period ended April 30, 2014 with the SEC on Form N-CSRS (the “2014 Semi-
11 Annual Report”). The 2014 Semi-Annual Report stated that at period end the Fund
12 had approximately \$3 billion in net assets, with an NAV per share of \$11.95 for
13 TFCVX shares and \$11.94 for TFCIX shares, and reiterated the Fund’s purportedly
14 “**disciplined and deliberate investing approach.**” The 2014 Semi-Annual Report also
15 stated that the Fund could only invest “**up to 15% of its total net assets** in securities
16 which are not readily marketable.” The 2014 Semi-Annual Report stated that only
17 “**\$82,524,097 or 2.69% of net assets**” for the Fund were calculated at fair value for
18 “which market quotations are not readily available” at period end.

19 58. On September 16, 2014, Third Avenue filed its quarterly report for the
20 Fund for the period ended July 31, 2014 with the SEC on Form N-Q (the “3Q14
21 N-Q”). The 3Q14 N-Q stated that at period end the Fund had approximately \$3.5
22 billion in net assets, with an NAV per share of \$12.02 for TFCVX shares and \$12.01
23 for TFCIX shares. The 3Q14 N-Q also stated that the Fund could only invest “**up to**
24 **15% of its total net assets** in securities which are not readily marketable.” The 3Q14
25 N-Q stated that only “**\$162,798,833 or 4.60% of net assets**” for the Fund were
26 calculated at fair value for “which market quotations are not readily available” at
27 period end.

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1 59. On January 6, 2015, Third Avenue filed its annual report for the Fund for
2 the period ended October 31, 2014 with the SEC on Form N-CSR (the “2014 Annual
3 Report”). The 2014 Annual Report stated that at period end the Fund had
4 approximately \$3 billion in net assets, with an NAV per share of \$10.61 for TFCVX
5 shares and \$10.60 for TFCIX shares, and generated a 2.67% and 2.93% return for
6 each investor class, respectively, over the fiscal year. The 2014 Annual Report also
7 reiterated the Fund’s purportedly “*disciplined and deliberate investing approach*” and
8 its valuation policies and procedures described in the Offering Materials, including the
9 regular review by Board committee to ensure investment liquidity and the reliability
10 of fair value determinations and other valuations. The 2014 Annual Report also stated
11 that the Fund could only invest “*up to 15% of its total net assets* in securities which
12 are not readily marketable.” The 2014 Annual Report stated that only “*\$136,136,872*
13 *or 4.58% of net assets*” for the Fund were calculated at fair value for “which market
14 quotations are not readily available” at period end. In addition, the 2014 Annual
15 Report stated that at period end the Fund had *only “14.25%” in illiquid securities*,
16 which the report described as “liquidity risk” from “investments in private debt
17 instruments, restricted securities, and securities having substantial market and/or
18 credit risk *which may be difficult to sell* at certain periods of time and thus may not be
19 able to dispose of at the value the Fund places on them.”⁹

20 60. On March 16, 2015, Third Avenue filed its quarterly report for the Fund
21 for the period ended January 31, 2015 with the SEC on Form N-Q (the “1Q15 N-Q”).
22 The 1Q15 N-Q stated that at period end the Fund had approximately \$2.4 billion in net
23 assets, with an NAV per share of \$9.50 for TFCVX shares and \$9.49 for TFCIX
24 shares. The 1Q15 N-Q also stated that the Fund could only invest “*up to 15% of its*
25 *total net assets* in securities which are not readily marketable.” The 1Q15 N-Q stated
26

27 ⁹ This appears to be the first time that Third Avenue had specifically disclosed the
28 proportion of illiquid assets of the Fund.

1 that only “**\$101,999,735 or 4.31%**” of net assets for the Fund were calculated at fair
2 value for “which market quotations are not readily available” at period end.

3 61. On June 26, 2015, Third Avenue filed its semi-annual report for the Fund
4 for the period ended April 30, 2015 with the SEC on Form N-CSRS (the “2015 Semi-
5 Annual Report”). The 2015 Semi-Annual Report stated that at period end the Fund
6 had approximately \$2.5 billion in net assets, with an NAV per share of \$9.40 for
7 TFCVX shares and \$9.39 for TFCIX shares, and reiterated the Fund’s purportedly
8 “*disciplined and deliberate investing approach.*” The 2015 Semi-Annual Report also
9 stated that the Fund could only invest “*up to 15% of its total net assets* in securities
10 which are not readily marketable.” The 2015 Semi-Annual Report stated that only
11 “**\$167,108,679 or 6.78% of net assets**” for the Fund were calculated at fair value for
12 “which market quotations are not readily available” at period end. In addition, the
13 2015 Semi-Annual Report stated that at period end the Fund had *only “12.22%” in*
14 *illiquid securities*. Thus, not only did defendants state that the amount of illiquid
15 securities in the Fund’s portfolio was well below the threshold at which investors’
16 right of redemption may be put at risk as determined by the SEC, but also that
17 liquidity in the portfolio had actually *improved by more than 14%* in the six months
18 since the end of the previous fiscal year.

19 62. On September 25, 2015, Third Avenue filed its quarterly report for the
20 Fund for the period ended July 31, 2015 with the SEC on Form N-Q (the “3Q15
21 N-Q”).¹⁰ The 3Q15 N-Q stated that at period end the Fund had approximately \$2

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23 ¹⁰ This filing came less than a week after the SEC proposed new rules for mutual
24 funds on September 22, 2015, which would require such funds to implement liquidity
25 risk management programs and enhance disclosure regarding fund liquidity and
26 redemption practices. See Press Release, U.S. Securities and Exchange Commission,
27 *SEC Proposes Liquidity Management Rules for Mutual Funds and ETFs* (Sept. 22,
28 2015). These proposals placed the shareholder right of redemption front and center,
and became a major topic of discussion among mutual fund investors, advisors and
other market commentators in the weeks that followed. See, e.g., U.S. Securities and
Exchange Commission, *The SEC & New Liquidity Management Rules* (Oct. 20,
2015), [http://mutualfunds.com/news/2015/10/20/the-sec-new-liquidity-management-
rules/](http://mutualfunds.com/news/2015/10/20/the-sec-new-liquidity-management-rules/).

1 billion in net assets, with an NAV per share of \$8.93 for TFCVX shares and \$8.92 for
2 TFCIX shares. The 3Q15 N-Q also stated that the Fund could only invest “*up to 15%*
3 *of its total net assets* in securities which are not readily marketable.” It also stated
4 that only “*\$191,455,179 or 9.13% of net assets*” for the Fund were calculated at fair
5 value for “which market quotations are not readily available” at period end.

6 63. Defendants’ statements in ¶¶46-62 were false and misleading when
7 made. Defendants knew and/or recklessly disregarded, but failed to disclose, the
8 following adverse facts:

9 (a) The Fund had materially understated the proportion of illiquid
10 assets in its investment holdings, which far exceeded the 15% limit set by SEC
11 guidelines and reiterated in the Fund’s Offering Materials and periodic financial
12 filings;

13 (b) The Fund had concentrated its positions in the securities of
14 relatively few issuers for which no market readily existed, presenting an undisclosed
15 risk that the Fund would not be able to sell its positions quickly or at desirable prices,
16 thereby magnifying the illiquidity of the Fund and decreasing the value of the Fund’s
17 holdings;

18 (c) The Fund’s NAV was artificially inflated in that the Fund’s
19 investments did not have, and could not reasonably have had, the market valuations
20 attributable to them under the valuation guidelines and procedures purportedly used
21 by defendants;

22 (d) The Fund’s internal controls for valuing securities and the liquidity
23 of its investments were deficient; and

24 (e) As a result of (a)-(d), the Fund’s shareholders were subject to the
25 material undisclosed risk that they would not be able to redeem their shares at all
26 and/or for an indefinite period of time in the event of a market downturn or a period of
27 high investor redemptions.

28

1 64. Then, on December 10, 2015, Third Avenue stunned the investment
2 community when it issued a letter to shareholders stating that it had completely frozen
3 share redemptions in the Fund. The letter stated that Fund assets had been placed into
4 a liquidating trust and would be liquidated over a period of months, which “*may take*
5 *up to a year or more* before a final distribution is made in order to achieve favorable
6 results.” The letter claimed that the drastic action had been necessitated due to the
7 number of redemption requests and “the general reduction of liquidity in the fixed
8 income markets [which had] *made it impracticable for [the Fund] going forward to*
9 *create sufficient cash to pay anticipated redemptions without resorting to sales at*
10 *prices that would unfairly disadvantage the remaining shareholders.*” The letter
11 also blamed the Fund’s investments in companies “that have undergone restructurings
12 in the last eighteen months” that it could not sell at reasonable prices.

13 65. The move shocked the investment community and precipitated a rout in
14 high-yield bond markets. A December 11, 2015 *BloombergBusiness* article headlined
15 “Third Avenue Redemption Freeze Sends Chill Through Credit Market,” called the
16 move “highly unusual” and quoted an investment advisor at another credit fund who
17 stated, “*We’re looking at some real carnage in the junk-bond market.*” Similarly,
18 a *Dow Jones* report called the redemption freeze “highly unorthodox,” which “helped
19 fuel a junk-bond market selloff amid a wave of investor withdrawals from poorly
20 performing funds.” *The Wall Street Journal* likewise wrote that “Third Avenue’s
21 decision to wind down the mutual fund without giving investors all their cash back
22 could have significant repercussions for both the company and the mutual-fund
23 industry, *which for decades has thrived by promising to allow investors to take a*
24 *long-term view of the markets while retaining the right to cash out shares at any*
25 *time.*” It also reported that the Fund was “*the first mutual-fund to halt redemptions*
26 *without obtaining an SEC order authorizing the move.*”

27 66. By December 11, 2015, defendant Barse had been fired.
28

1 67. On December 16, 2015, Third Avenue issued a second letter to
2 shareholders stating that it had struck a belated deal with the SEC that would require it
3 to transfer assets back into the Focused Credit Fund so that investors could receive
4 more transparency on the liquidation, while continuing to freeze redemption requests.
5 The letter also stated that the initial shareholder distribution would ***include only 9% of***
6 ***the Fund's capital***, indicating that the Fund could not quickly sell 91% of its assets at
7 reasonable or above fire-sale prices.

8 68. Later reporting would reveal that the problems at the Focused Credit
9 Fund were unique to its overly aggressive investing strategy and not macroeconomic
10 factors. For example, a December 14, 2015 *Wall Street Journal* article stated the
11 Fund “was significantly more aggressive than other junk bond mutual funds.” “More
12 than half the bonds it held paid annual coupons of over 10%, while the average high-
13 yield fund had less than 5% of its assets in that category.” The Fund also reportedly
14 “scooped up large amounts of distressed debt and unrated securities, [becoming] the
15 largest holder of certain loans and securities that traded infrequently, according to a
16 person familiar with the matter.” When the Fund tried to sell these concentrated
17 positions, “***savvy traders . . . quickly figure[d] out that a large investor was under***
18 ***pressure to sell***” and offered “***lowball bids for some of its assets, which would have***
19 ***caused it to absorb big losses if it sold at those prices.***” For example, it was reported
20 that Barry Kupferberg, head of research at hedge fund Trilogy Capital, purchased the
21 Fund’s private equity position in Longview Power LLC, a low-cost coal-burning
22 power plant in West Virginia, ***at a more-than-40% discount*** to the \$8 price at which
23 the shares were quoted.

24 69. According to *The Wall Street Journal*, as far back as the spring of 2014
25 when the Fund reached its peak of approximately \$3.5 billion in assets, an investor
26 had approached the Fund’s portfolio manager, Thomas Lapointe, out of concern that
27 the Fund had grown too large. Lapointe reportedly responded that he “was dealing”
28 with the growth even as he allowed the Fund to take more of investors’ money.

1 Trust, at all relevant times, members of their immediate families and their legal
2 representatives, heirs, successors or assigns, and any entity in which defendants have
3 or had a controlling interest.

4 76. The members of the Class are so numerous that joinder of all members is
5 impracticable. As of October 31, 2015, there were over 52 million TFCVX shares and
6 over 122 million TFCIX shares outstanding. While the exact number of Class
7 members is unknown to plaintiff at this time and can only be ascertained through
8 appropriate discovery, plaintiff believes that there are hundreds of members in the
9 proposed Class. Record owners and other members of the Class may be identified
10 from records maintained by Third Avenue or its transfer agent and may be notified of
11 the pendency of this action by mail, using the form of notice similar to that
12 customarily used in securities class actions.

13 77. Common questions of law and fact predominate and include: (i) whether
14 defendants violated the 1933 Act; (ii) whether defendants omitted and/or
15 misrepresented material facts; and (iii) the extent and appropriate measure of
16 damages.

17 78. Plaintiff's claims are typical of the claims of the members of the Class as
18 all members of the Class are similarly affected by defendants' wrongful conduct in
19 violation of federal law that is complained of herein.

20 79. Plaintiff will fairly and adequately protect the interests of the members of
21 the Class and has retained counsel competent and experienced in class and securities
22 litigation.

23 80. A class action is superior to all other available methods for the fair and
24 efficient adjudication of this controversy since joinder of all members is
25 impracticable. Furthermore, as the damages suffered by individual Class members
26 may be relatively small, the expense and burden of individual litigation make it
27 impossible for members of the Class to individually redress the wrongs done to them.
28 There will be no difficulty in the management of this action as a class action.

1 **COUNT I**

2 **For Violation of §11 of the 1933 Act**
3 **Against All Defendants**

4 81. Plaintiff incorporates all allegations in ¶¶1-80 above by reference.

5 82. This Count is brought pursuant to §11 of the 1933 Act on behalf of the
6 Class, against all defendants.

7 83. The Registration Statements were inaccurate and misleading, contained
8 untrue statements of material facts, omitted to state other facts necessary to make the
9 statements made not misleading, and omitted to state material facts required to be
10 stated therein.

11 84. Third Avenue is the registrant for the shares of the Fund, and as such is
12 strictly liable for the false statements contained in the Registration Statements. The
13 defendants named herein were responsible for the contents and dissemination of the
14 Registration Statements.

15 85. None of the defendants named herein made a reasonable investigation or
16 possessed reasonable grounds for the belief that the statements contained in the
17 Registration Statements were true and without omissions of any material facts and
18 were not misleading.

19 86. By reasons of the conduct herein alleged, each defendant violated, and/or
20 controlled a person who violated, §11 of the 1933 Act.

21 87. Plaintiff acquired shares of the Fund during the Class Period and pursuant
22 to the Registration Statements.

23 88. Plaintiff and the Class have sustained damages. The value of the shares
24 of the Fund declined substantially subsequent to and due to defendants' violations.

25 89. At the times they purchased shares of the Fund, plaintiff and other
26 members of the Class were without knowledge of the facts concerning the wrongful
27 conduct alleged herein. Less than one year had elapsed from the time that plaintiff
28 discovered or reasonably could have discovered the facts upon which this complaint is

1 based to the time of filing of the initial complaint in this action. Less than three years
2 elapsed between the time that the securities upon which this Count is brought were
3 offered to the public and the time of the filing of the initial complaint.

4 **COUNT II**

5 **For Violation of §12(a)(2) of the 1933 Act** 6 **Against All Defendants**

7 90. Plaintiff incorporates all allegations in ¶¶1-89 above by reference.

8 91. This Count is brought pursuant to §12(a)(2) of the 1933 Act on behalf of
9 the Class, against all defendants.

10 92. Defendants were sellers and offerors and/or solicitors of purchasers of the
11 shares of the Focused Credit Fund offered pursuant to the Registration Statements,
12 Prospectuses and other documents incorporated therein.

13 93. The Prospectuses contained untrue statements of material facts, omitted
14 to state other facts necessary to make the statements made not misleading, and omitted
15 to state material facts required to be stated therein. The Individual Defendants'
16 actions of solicitation included participating in the preparation of the false and
17 misleading Prospectuses and participating in marketing the shares of the Fund to
18 investors.

19 94. Defendants owed to the purchasers of the shares of the Fund, including
20 Plaintiff and other Class members, the duty to make a reasonable and diligent
21 investigation of the statements contained in the Prospectuses and corresponding
22 supplements and amendments to ensure that such statements were true and that there
23 was no omission to state a material fact required to be stated in order to make the
24 statements contained therein not misleading. Defendants in the exercise of reasonable
25 care should have known of the misstatements and omissions contained in the
26 Prospectuses as set forth above.

27 95. Plaintiff and other members of the Class purchased or otherwise acquired
28 shares of the Fund pursuant to the defective Prospectuses. Plaintiff did not know, nor

1 in the exercise of reasonable diligence could have known, of the untruths and
2 omissions contained in defendants' Offering Materials.

3 96. By reason of the conduct alleged herein, defendants violated, and/or
4 controlled a person who violated, §12(a)(2) of the 1933 Act. Accordingly, plaintiff
5 and members of the Class who hold shares of the Fund have the right to rescind and
6 recover the consideration paid for their shares of the Focused Credit Fund and hereby
7 elect to rescind and tender those shares to the defendants sued herein. Plaintiff and
8 Class members who have sold their shares of the Fund are entitled to rescissory
9 damages.

10 **COUNT III**

11 **For Violation of §15 of the 1933 Act**
12 **Against Third Avenue, the Individual Defendants and Third Avenue**
13 **Management**

14 97. The Individual Defendants and Third Avenue Management acted as
15 controlling persons of Third Avenue within the meaning of §15 of the 1933 Act. By
16 virtue of their positions with Third Avenue, these defendants had the power and
17 authority to cause Third Avenue to engage in the wrongful conduct complained of
18 herein. Third Avenue controlled the Individual Defendants and all of its employees.
19 By reason of such conduct, these defendants are liable pursuant to §15 of the 1933
20 Act.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, plaintiff prays for judgment as follows:

- 23 A. Determining that this action is a proper class action, designating plaintiff
24 as Lead Plaintiff and certifying plaintiff as a class representative under Rule 23 of the
25 Federal Rules of Civil Procedure and plaintiff's counsel as Lead Counsel;
26 B. Awarding damages and interest;
27 C. Awarding rescission and/or a rescissory measure of damages;
28 D. Awarding plaintiff's reasonable costs, including attorneys' fees; and

1 E. Awarding such equitable/injunctive or other relief as the Court may deem
2 just and proper.

3 **JURY DEMAND**

4 Plaintiff demands a trial by jury.
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