

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

GAIL I. HOWELL, individually and on behalf of the GAIL I HOWELL IRA; KEA L. HRVATIN; SCOTT J. HRVATIN; STEVEN RAPP; ALICE G. SHRADER, individually and on behalf of the ALICE G SHRADER IRA; JONATHAN A. TURNER, individually and on behalf of the JONATHAN A TURNER IRA; CAROL B. WIGGINS, individually and on behalf of the CAROL B WIGGINS IRA; DAVID M. WRIGHT, JR.; ~~and~~ BRIAN H. FETNER, as executor of the ESTATE SHEILA MARLOWE FETNER and personal representative of SHEILA M FETNER; SUSAN A. GOLDMAN; and THOMAS B. ODELL, individually and on behalf of the THOMAS B O'DELL IRA,

Plaintiffs

v.

JAMES H. HEAFNER; FORMULAFOLIO INVESTMENTS, LLC; and RETIREMENT WEALTH ADVISORS, INC.,

Defendants.

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

19-CVS-                    -21708

                     **AMENDED COMPLAINT**

                     (Jury Trial Demanded)

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Plaintiffs complain of Defendants by alleging:

**NATURE OF THE CASE**

1. Defendant James “Jim” H. Heafner (“Heafner”) advised Plaintiffs to invest in 1 Global Capital LLC (“1 Global”). At that time, Heafner was an investment adviser associated with Defendants Retirement Wealth Advisors, Inc. (“RWA”) and FormulaFolio Investments, LLC (“FFI”). Plaintiffs are unsophisticated retail investors, and 1 Global was a highly risky

five-year-old company with many red flags when Heafner recommended it. 1 Global turned out to be a sham, defrauding more than 3,400 investors out of at least \$285 million. Plaintiffs lost ~~all~~ ~~or most~~ of their collective ~~\$1.05 million~~, 695,787 invested in MOIs.

2. 1 Global raised funds by issuing notes sold to investors that it called Memorandums of Indebtedness (“MOI” or “MOIs”). 1 Global said it used the funds to advance cash to merchants. However, it misappropriated or mismanaged most of the funds. It also failed to register MOIs as securities with the U.S. Securities and Exchange Commission (“SEC”) and North Carolina Securities Division, which made it unlawful to offer or sell them in North Carolina. In July 2018, after learning the SEC was investigating it, 1 Global filed for bankruptcy. The SEC later charged it with committing fraud and violating securities laws.

3. RWA and FFI each registered with the SEC as *registered investment advisers* (“RIAs” or “RIA”). They were founded by their ex-CEO Jason Wenk; share identical officers and owners; and collectively report managing more than \$5 billion for their more than 18,000 mostly individual retail clients. Thus, RWA and FFI are subject to the Investment Adviser Act of 1940 (the “IAA”), SEC rules promulgated thereunder, and certain sections of the North Carolina Investment Adviser Act (“NCIAA”).

4. In 2014, RWA registered Heafner as one of its *investment adviser representatives* (“IARs” or “IAR”). While so registered, Heafner became well-known in Charlotte from TV appearances and radio advertisements promoting him as an investment advisor with a fiduciary duty specializing in advice for retirees. He conducted RWA’s and FFI’s advisory services and recommended 1) annuities and 2) a trading account managed by FFI in which it traded its proprietary securities. In or around July 2017, Heafner began recommending 1 Global’s MOIs. On one-page financial plans prepared on behalf of RWA and FFI, he recommended to clients a

portfolio of 1) an annuity, 2) an FFI account, and 3) a **1 Global MOI**. On August 31, 2018, after learning of 1 Global's bankruptcy, RWA and FFI fired Heafner for recommending MOIs. They said Heafner recommending MOIs violated RWA's policy on outside business activities.

5. Heafner violated the Securities Act of 1933 and the North Carolina Securities Act (the "NCSA") by offering and selling MOIs since they were unregistered securities. He violated the NCSA by offering and selling Plaintiffs MOIs by way of (a) false material statements of fact or (b) statements made misleading under the circumstances due to omissions of material fact. The Securities Act and NCSA impose strict liability upon Heafner and makes RWA and FFI jointly and severally liable with him because they controlled him. The Securities Act and NCSA provide Plaintiffs the right to recover from any Defendant their MOI purchase prices or damages, plus interest, and the NCSA provides Plaintiffs may recover attorneys' fees. Heafner is also liable to Plaintiffs for breaching his fiduciary duty by recommending MOIs and for negligently misrepresenting MOIs, including in the *one-page* plans. RWA and FFI are vicariously liable for Heafner's liability and liable for their breaches of fiduciary duty to Plaintiffs.

6. RWA's and FFI's compliance officer told Plaintiff Wright in a letter that Heafner discussed recommending MOIs with RWA and FFI *before* doing so. Duties, established by laws and industry standards to protect investors, required RWA and FFI to supervise Heafner, and RWA and FFI attested under penalty of perjury they are committed to these duties. But their compliance officer told Wright in an email that RWA and FFI chose to not supervise Heafner as an employee since they denoted him an independent contractor, thus, only reviewed his FFI recommendations. For at least 28 months, Heafner raised red flags while recommending FFI, like sometimes taking months to reinvest funds from liquidated investments. For a year, the one-page plans recommending FFI could not be viewed without seeing MOI recommendations.

7. At least annually, RWA and FFI must file with the SEC amended Form ADVs signed under penalty of perjury, and in RWA's amended form, they classified Heafner as an employee. Instructions to the form adopted under the IAA plainly state that all independent contractors performing advisory functions on behalf of an RIA are its "employees" and all the RIA's employees are its "supervised persons." Under the IAA, Heafner was RWA's and FFI's employee and supervised person, thus, they were required to supervise him under the IAA's supervisory requirements designed to protect investors. RWA and FFI grew from managing \$200 million to \$5 billion in six years by rapidly hiring IARs to recommend FFI. Choosing to not supervise IARs denoted as independent contractors, as required, helped the growth. But this model contributed to Plaintiffs losing much of their life savings. Maximum punitive damages are justified for RWA's and FFI's willful or wanton breach of fiduciary duties, supervision, and breach of duty of care, as set forth in Counts II, VI, and VII.

#### **PARTIES**

##### **A. Plaintiffs**

8. Plaintiff Gail I Howell IRA is an IRA established and is controlled by Plaintiff Gail I. Howell (collectively "Howell"). Howell resides in Charlotte, North Carolina. At Heafner's recommendation, she invested \$99,425 in a MOI that is held in the Gail I Howell IRA.

9. Plaintiffs Kea L. Hrvatin ("Mrs. Hrvatin") and Scott J. Hrvatin ("Mr. Hrvatin") (collectively the "Hrvatins") are married and reside in Belmont, North Carolina. At Heafner's recommendation, Mrs. and Mr. Hrvatin invested \$250,000 in a MOI.

10. Plaintiff Steven Rapp ("Rapp") resides in Charlotte, North Carolina. At Heafner's recommendation, Rapp invested \$110,000 in a MOI.

11. Plaintiff Alice G Shrader IRA is an IRA established and is controlled by Plaintiff Alice G. Shrader (collectively “Shrader”), who resides in Waxhaw, North Carolina. At Heafner’s recommendation, she invested \$94,307.66 in a MOI held in the Alice G Shrader IRA.

12. Plaintiff Jonathan A Turner IRA is an IRA established and is controlled by Plaintiff Jonathan A. Turner (collectively “Turner”), who resides in Shelby, North Carolina. At Heafner’s recommendation, he invested \$159,425 in a MOI held in the Jonathan A Turner IRA.

13. Plaintiff Carol B Wiggins IRA is an IRA established and is controlled by Plaintiff Carol B. Wiggins (collectively “Wiggins”), who resides in Kannapolis, North Carolina. At Heafner’s recommendation, she invested \$124,782.62 in a MOI held in the Carol B Wiggins IRA.

14. Plaintiff David M. Wright, Jr. (“Wright”) resides in Belmont, North Carolina. At Heafner’s recommendation, Wright invested \$100,000 in a MOI.

15. Plaintiff Brian Fetner (“Mr. Fetner”) brings his action under N.C. Gen. Stat. § 28A-18-3 in his capacity as personal representative and executor of the Estate Sheila Marlowe Fetner (“Fetner Estate”) and as sole beneficiary of the Sheila M Fetner IRA (“Fetner IRA”). The Fetner Estate is the property that Sheila M Fetner (“Ms. Fetner”) owned when she died on May 26, 2019. Ms. Fetner owned the Sheila M Fetner IRA (“Fetner IRA”), established to own a \$115,407.27 MOI that Heafner recommended to Ms. Fetner.

16. Plaintiff Susan A. Goldman (“Goldman”) resides in Charlotte, North Carolina. At Heafner’s recommendation, Goldman invested \$ 442,322 in a MOI.

17. Plaintiff Thomas B O’Dell IRA is an IRA established and is controlled by Plaintiff Thomas B. ODell (collectively “ODell”), who resides in Midland, North Carolina. At Heafner’s recommendation, he invested \$199,425 in a MOI held in the Thomas B O’Dell IRA.

**B. Defendant James H. Heafner**

~~16,18.~~ Defendant James (“Jim”) H. Heafner is approximately 70 years old, and at all relevant times herein, resided in Charlotte, Mecklenburg County, North Carolina.

~~17,19.~~ In 2004, Heafner passed the Investment Company Products/Variable Contracts Representative Examination—i.e., the Series 6. In 2011, he passed his Uniform Securities Agent State Law Examination—i.e., the Series 63. In 2009, he passed the Uniform Investment Adviser Law Examination—i.e., the Series 65. In 2014, he became a Certified Financial Planner (“CFP”) by passing an exam administered by the Certified Financial Planner Board of Standards, the standards-setting organization for financial planners that requires its members providing financial planning adhere to a fiduciary standard.

~~18,20.~~ In July 2014, RWA registered Heafner as one of its investment adviser representatives (“IARs”), and RWA employed him in this capacity until it terminated him on August 31, 2018. At all relevant times herein, RWA and FFI are the only registered investment advisers (“RIAs”) that Heafner was associated with.

~~19,21.~~ From March 2009 through July 2014, two other RIA firms had registered Heafner as their IAR. From 2004 through January 22, 2018, broker-dealers had registered Heafner with FINRA as a registered representative; he has not been registered with a broker-dealer since January 22, 2018.

~~20,22.~~ Heafner was licensed with the State of North Carolina Department of Insurance as a producer authorized to sell life insurance (as of 2000), accident and health or sickness insurance (as of 2000), and variable life and variable annuity investment products (as of 2008).

~~21,23.~~ At all times relevant herein, Heafner worked out of his office in Charlotte, Mecklenburg County, North Carolina. Heafner solely owns Heafner Financial Solutions, Inc.

(f/k/a Heafner Senior Solutions, LLC) and Heafner Wealth Management, Inc., neither of which ever registered as a broker-dealer or an RIA. They did business as Heafner Financial until they stopped doing business when Heafner stopped providing investment advice after RWA fired him and a regulator began investigating his MOI sales.

22-24. Heafner operated the website [www.heafnerfinancial.com](http://www.heafnerfinancial.com) to advertise Heafner Financial, and during all times relevant herein, his website stated on it “Investment Advice is offered by Retirement Wealth Advisors, Inc, a SEC Registered Investment Advisor.”

23-25. Heafner’s business card that he gave all or some Plaintiffs stated:

Investment advice is offered by Retirement Wealth Advisors, Inc, a  
SEC Registered Investment Advisor. . . . Investment Advisory  
Services are offered through Retirement Wealth Advisors. . . .

24-26. Heafner’s LinkedIn page states that, before he began selling insurance products, he sold exercise equipment for at least sixteen years until 1998.

**C. Defendant Retirement Wealth Advisors, Inc.**

25-27. RWA does business as Retirement Wealth incorporated in the State of Michigan as a domestic corporation in 2005. In March 2007, RWA registered as an RIA, and during all times relevant herein, it has been registered as such with the SEC. Jason Wenk founded RWA and served as its President and CEO until stepping down from those roles on September 5, 2018.

26-28. RWA filed a mandatory Form ADV with the SEC to register as an RIA that it amends, which includes a Part 2A supplement called the Firm Brochure (“Firm Brochure”) describing its business.

**D. Defendant ForumlaFolio Investments, LLC**

27-29. FFI was formed in the State of Michigan as a domestic limited liability company in 2010. In November 2011, FFI registered for the first time as an RIA, and during all times

relevant herein, it has been registered in that capacity with the SEC. Jason Wenk founded FFI and served as its President and CEO until stepping down from those roles on September 5, 2018.

~~28-30.~~ FFI filed a mandatory Form ADV and Firm Brochure with the SEC it amends.

#### **JURISDICTION AND VENUE**

~~29-31.~~ This Court has subject matter jurisdiction over this action pursuant N.C. Gen. Stat. §§ 7A-240 and 7A-243 and § 22(a) of the Securities Act, i.e., 15 U.S.C. § 77v(a).

~~30-32.~~ This action should be adjudicated in North Carolina Business Court because it meets the criteria for designation as a mandatory complex business case under N.C. Gen. Stat. § 7A-45.4 since involves securities, including claims under N.C. Gen. Stat. § 78A.

~~31-33.~~ This Court has personal jurisdiction over Heafner pursuant to N.C. Gen. Stat. § 1-75.4(1), (2), and (5) because he resided in Mecklenburg County and operated Heafner Financial out of an office in Mecklenburg County, at which he advised Plaintiffs to invest in MOIs.

~~32-34.~~ This Court has personal jurisdiction over RWA and FFI under N.C. Gen. Stat. § 1-75.4(1) because they are engaged in substantial activity within North Carolina, including:

a) The Investment Adviser Public Disclosure (“IAPD”) database at

[adviserinfo.sec.gov](http://adviserinfo.sec.gov) states RWA and FFI first registered an IAR in North Carolina in 2014, and since 2016, they consistently maintained at least twelve IARs in North Carolina, all of whom maintain an office in North Carolina.

b) RWA and FFI must supervise their IARs’ activities in North Carolina.

c) RWA’s website has an “Advisor Directory” page searchable by state.

Searching by North Carolina displays RWA’s IARs in North Carolina and links to their biographies on RWA’s website.



d) Each RWA and FFI IAR in North Carolina provides investment advice on behalf of RWA and FFI in North Carolina to North Carolina residents. RWA and FFI monetarily incentivizes each such adviser to advise clients on FFI's proprietary securities services and products and to solicit the clients to contract with FFI in North Carolina to purchase FFI's services and products, and on information and belief, each such adviser so advises their clients.

e) Since at least 2016, RWA and FFI have maintained about 5 to 8 percent of their IARs in North Carolina, and on information and belief, these IARs solicited thousands of North Carolina residents to generated more than \$100 million in business for RWA and FFI.

f) FFI's and RWA's founder Wenk explained some ways FFI and RWA rely upon the presence of their IARs in North Carolina in an interview in which he was quoted:

'We communicate with over 6,000 clients and prospective clients. With over 130 *Registered Financial Advisors* who each have their own brand, website and blog we also communicate through about 100 *additional sites* at the advisor level.'

*Q&A With Jason Wenk - CEO, Retirement Wealth Advisors, [blog.pagefreezer.com](http://blog.pagefreezer.com),*

April 7, 2016 (emphasis added). The "Registered Financial Advisors" and 100 sites that Wenk referenced included RWA's and FFI's IARs in North Carolina and their websites that state "Investment Advisory Services offered through Retirement Wealth Advisors, Inc., an SEC Registered Investment Advisor." These websites direct North Carolina residents to these IARs' offices in North Carolina to receive advice on behalf of RWA and FFI.

g) Craig Moser ("C. Moser") and Jennifer Moser (J. Moser) are on FFI's thirteen-member Advisory Board with FFI's CEO, president, and Wenk. FFI's website states the board is "guiding us towards impactful solutions for real-world business problems." RWA and FFI have registered C. Moser as their IAR since 2015; no other firms so register him. He owns

Maestro Wealth Advisors and works out of one of its North Carolina offices where J. Moser also works for Maestro (Maestro Wealth is not an RIA).

h) This Court has jurisdiction over RWA and FFI under § 1-75.4(4) because injuries to Plaintiffs' retirement assets in North Carolina arose out of RWA's and FFI's acts or omissions occurring outside of North Carolina while (a) solicitations and services were carried on within North Carolina by or on their behalf or (b) their investment products or services were used or consumed within North Carolina.

i) This Court also has personal jurisdiction over RWA and FFI pursuant to N.C. Gen. Stat. § 1-75.4(5) because RWA and FFI, through Heafner, performed portfolio management, financial planning, and/or investment management for Plaintiffs in North Carolina.

33-35. Exercising personal jurisdiction over Defendants satisfies due process of law because they purposefully directed actions into North Carolina for their benefit, and thus have sufficient minimum contacts with North Carolina such that it is fair for them to defend their actions in North Carolina.

34-36. Venue is proper in this Court pursuant to N.C. Gen. Stat. §§1-80 and 1-82.

#### **ALLEGATIONS COMMON TO MULTIPLE COUNTS**

#### **I. BACKGROUND FACTS**

##### **A. Investment at Issue**

35-37. 1 Global raised most of its capital by issuing Memorandums of Indebtedness purchased by investors. *See* MOI Contract at Exhibit A; *see* SEC Complaint at Exhibit B ¶ 37.

36-38. Investors did not purchase MOIs directly from 1 Global.

37-39. 1 Global recruited financial advisers and firms nationwide to be agents recommending MOIs to investors, including brokers barred from the securities industry and unregistered investment advisers. *Id.* ¶ 2. In North Carolina, it enlisted Heafner to do so.

38-40. Advisers and firms earned a commission of up to 3% of the proceeds from the MOIs that they recommended to their clients.

39-41. MOIs matured in nine months. Ex. A ¶ 6. If an investor did not redeem his MOI, upon maturity, his proceeds from his first MOI rolled into a new MOI, which earned his agent a second commission that was usually the same amount as the first commission. 1 Global would pay investors who redeemed their MOIs in installments over several months after their MOIs matured. *Id.* ¶ 11.

40-42. Advisers selling MOIs emailed paperwork to 1 Global ordering and setting up MOIs and wired clients' funds to buy them. 1 Global emailed monthly MOI statements to investors and carbon copied their advisers. Before nine months passed, advisers discussed renewing MOIs with their clients and completed renewal paperwork. MOI investors entered ongoing advisory relationships with advisers.

41-43. 1 Global used its investors' funds to make unsecured short-term cash advances to small merchants. It allocated some of its purported profits from the advances to investors in the form of interest. Monthly MOI statements showed investors' funds purportedly allocated in amounts generally under \$50, and sometimes in amounts under \$5, to cash advances to hundreds of types of merchants—like “beer \$9.84,” “taxi service \$19.36,” and “cosmetics \$2.13.” *See, e.g.,* Statement at Exhibit C pgs. 6, 14, and 17. The statements stated a rate of return from interest purportedly allocated to investors. *Id.* at 1.

42.44. MOI instruments state 1 Global charged investors a 13% management fee every time it collected their funds used to advance cash (i.e., for every \$1 of an investor's funds loaned out and collected, 1 Global kept \$0.13 for its operating costs and used \$0.87 to make new loans, then charged another 13% every time it collected on new loans). Ex. A ¶¶ 8.4 and 8.6. This compares to less than one percent expense ratios for some broad-based index funds that were available while the Dow Jones set records.

43.45. MOIs only guaranteed investors 3% interest on their MOI principal. But advisers—like Heafner—promised 1 Global paid more when it earned more profits, even 9% interest in nine months.

44.46. Before 1 Global could legitimately allocate investors any interest, its earnings from cash advances would have had to cover its 13% management fees, its costs over the fees, and investors' principal.

**B. 1 Global**

45.47. 1 Global Capital LLC was formed in June 2013 by Carl Ruderman, also founder of Playgirl magazine, and it operated a website (“Website”) stating “We provide businesses with unsecured funding” in four hours, regardless of credit score, upon completion of an application and phone consultation:

“we can work with most businesses regardless of credit score”

“Just answer a few questions and one of our agents will contact you for a free consultation. Your personal consultant will determine the factor rate and the amount of your loan. Once you agree to the terms, your advanced amount will be directly deposited into your bank account within minutes.”

“an approval notice takes about 4 hours.”

See Website pages from May and November of 2016 and 2017 at Exhibit D at 3, 7, and 9-14.

46-48. The application only requested a merchant’s contact information, years in business, purpose for the loan, and how much money the merchant wanted. *Id.* The purpose was selected from a dropdown of broad categories like “inventory,” and the amount was selected from a dropdown with eight ranges, the fourth starting at \$50,000 and the last being \$200,000+. *Id.* A credit check was not requested.

47-49. The SEC found that, as of April 2018, 1 Global had raised at least \$287 million from investors and used about \$193 million of the funds—i.e., as much as 65%—to pay about \$9 million to agents for commissions for recommending MOIs, \$15 million to pay third parties’ finder fees for locating merchants to take MCAs, \$53 million to pay its operating expenses, \$71 million for one investment in bad credit card debt, and \$45 million for a loan to one car dealership. Ex. B ¶¶ 32, 36, 42, 64, 66 (the \$71 and \$45 million figures cited here are based on more recent Bankruptcy information).

48-50. At that time, 1 Global had already collected \$241 million—71%—of the \$348 million total MCAs it granted merchants, leaving about \$107 million either to collect or that was uncollectible. *Id.* at 36. Yet, it still owed investors \$272 million—as much as 95% of their original investments—and it had only \$27.5 million in the bank to pay them. *Id.* 1 Global’s only source of funding outside of investors was a \$10 million line of credit from which it had drawn \$9.5 million on in 2016 and 2017. *Id.* ¶ 37. The SEC states 1 Global’s poor performance forced it to use new investor money to pay older investors. *Id.* ¶ 57.

49-51. On July 27, 2018, shortly after learning the SEC was investigating it, 1 Global filed a chapter 11 bankruptcy petition in the Southern District of Florida (the “Bankruptcy”), after which an independent management team replaced its management, including Ruderman.

[50-52.](#) On August 23, 2018, the SEC filed charges in the U.S. District Court for the Southern District of Florida against 1 Global, Ruderman, and several relief defendants. The SEC alleged Ruderman and 1 Global, among other things, violated federal laws by misappropriating \$28 million of investors' funds and misrepresenting material information to investors that included issuing false account statements, falsely asserting some of its accounting records were audited, and misrepresenting its financial performance.

[51-53.](#) The SEC's receiver finished recouping funds misappropriated from 1 Global, recovering less than \$10 million. 1 Global settled with the SEC and agreed to judgment against it, to waive rights to deny allegations against it, and the SEC may seek civil penalties and disgorgement from it. 1 Global will cease existence and be liquidated under its Bankruptcy plan.

[52-54.](#) On August 10, 2019, Ruderman settled the SEC's charges. On August 13, a final order was entered in the U.S. District Court for the Southern District of Florida barring Ruderman from certain securities activities and making him liable for \$49 million of disgorgement and civil penalties. ~~The order identifies, but identifying far less than \$9 million of his assets available assets of Ruderman's subject to for~~ disgorgement.

[53-55.](#) On July 15, 2019, the SEC filed its first civil charges against an adviser offering and selling MOIs when it charged Henry J. Wieniewitz for offering and selling MOIs and another unregistered security in violation of §§ 5(a) and 5(c) of the Securities Act (15 U.S.C. §§ 77e(a) and 77(c)) and unlawfully operating as an unregistered broker or dealer in violation of § 15(a)(1) of the Securities Exchange Act (15 U.S.C. § 78o(a)(1)). On August 2, 2019, a U.S. district court approved a settlement between the SEC and Wieniewitz in which he agreed to pay \$3,883,102, inclusive of civil penalties under federal securities laws.

[54-56.](#) By selling MOIs, Heafner violated the laws Wieniewitz allegedly violated.

**C. Heafner and His Recommendations of MOIs**

~~55-57.~~ An RIA first registered Heafner as an IAR in 2009.

~~56-58.~~ Regulators have investigated him for selling MOIs and he is no longer an IAR.

~~57-59.~~ As a result of offering and selling MOIs, he has been investigated for MOI sales, is permanently barred from associating with broker-dealers, and is no longer an IAR.

**a. Heafner Cultivated a Reputation as an Expert**

~~58-60.~~ Before Plaintiffs met Heafner, he became well-known in the greater Charlotte area as an expert in advice about tax strategies and investing clients safely for retirement.

~~59-61.~~ He wrote the books *Retire Tax Free* and *Winning the Tax Game* and a chapter of *Successonomics* featuring a chapter by Steve Forbes, all which had his picture on the cover and were displayed at his office.

~~60-62.~~ In 2017 and 2018, Heafner frequently advertised on local Charlotte radio and television stations, during which he held himself out as a retirement investing expert, an investment adviser with a fiduciary duty, and used the tagline “You’ll Just Know,” meaning you will know when it is time to retire.

~~61-63.~~ Heafner’s advertising targeted retirees or near retirees desiring safe portfolios.

~~62-64.~~ Heafner made several appearances on WCNC’s Charlotte Today show to provide tax and investment advice for retirees, and his segments displayed his phone number.

**b. WBTB Reported Allegations of Heafner Recommending MOIs**

~~63-65.~~ Heafner frequently appeared on the local Charlotte Channel 3 WBTB’s Morning Break to provide tax and investment advice for retirees.

~~64-66.~~ In TV appearances and advertisements, Heafner said he was a fiduciary placing clients’ interests first, and Plaintiffs who saw him on TV believed he was an invited expert.

~~65-67.~~ On March 28, 2019, WBTV published an article about Heafner “investing clients’ money in 1st Global Capital” titled *Charlotte area financial adviser faces claims of mismanaging investments*, which is included herein as Exhibit E.

~~66-68.~~ WBTV described Heafner as “a well-known financial advisor in the Charlotte area” and clarified “Heafner paid for sponsored content on WBTV’s lifestyle program Morning break.” *Id.* at 1.

~~67-69.~~ WBTV cited FINRA’s public record showing RWA fired Heafner: “According to FINRA, Heafner was fired from a company for his outside business activities.” *Id.* RWA fired Heafner August 31, 2018, and the dates stated by WBTV clarifies that it referenced RWA discharging Heafner:

Heafner’s material on WBTV was paid advertising and paid sponsored content and was not endorsed by WBTV. That relationship ended in *February 2018*. *Six months later* Heafner was terminated from the company that employed him. He is no longer a registered broker according to information publicly available on the FINRA and SEC websites.

*Id.* at 2 (emphasis added).

~~68-70.~~ WBTV said “Heafner confirmed to WBTV [he was fired] related to investments he made for his clients.” *Id.* The only investment WBTV discussed is 1 Global.

~~69-71.~~ Heafner admitted to WBTV that he recommended MOIs to about 45 individuals. *Id.* at 2.

c. **Heafner Admitted He Received Commission for Recommending MOIs**

~~70-72.~~ Heafner told WBTV he received commissions for recommending 1 Global. *Id.*

d. **Bankruptcy Records Confirm Heafner Received Commissions and the Extent of Harm to North Carolina Residents Caused by MOIs**



~~74~~73. Bankruptcy records confirm Heafner received commissions for recommending MOIs.

~~72~~74. Bankruptcy records show 54 North Carolina residents and 2 small business' 401(k) plans filed creditor claims in the Bankruptcy for \$6.147 million that they invested in MOIs.

~~73~~75. Thirty-nine such claims are for MOIs over \$51,000, with nine exceeding \$200,000.

~~74~~76. Bankruptcy records state the North Carolina claimants purchased MOIs between July 19, 2017 and July 18, 2018 . Heafner's clients were typically retirement aged North Carolina residents. On information and belief, most or all North Carolina Bankruptcy claimants are Heafner's clients.

**D. Heafner Provided Investment Advice on Behalf of RWA and FFI**

~~75~~77. RWA states in its Firm Brochure "RWA provides two primary financial advisory services: 1) investment management services, and 2) personal financial planning." RWA Brochure, Exhibit F at 4.

~~76~~78. RWA also states it offers "continuous portfolio management services." *Id.*

~~77~~79. RWA states: "Individuals associated with RWA will provide its investment advisory services" and "Such individuals are known as Investment Adviser Representatives." *Id.*

**a. RWA Describes Its Portfolio Management Services in Its Brochure**

~~78~~80. RWA states it offers "*non-discretionary continuous portfolio management services* where the investment advice provided is tailored to meet the needs and investment objectives of the client." Ex. F at 4 (emphasis added). RWA states these services include an

“*initial consultation* in which pertinent information about the client’s personal and financial circumstances and objectives is collected.” *Id.* (emphasis added).

~~79-81.~~ RWA states regarding these services: “Once the portfolio is constructed, RWA provides ongoing supervision and rebalancing of the portfolio as changes in market conditions and client circumstances require. For non-discretionary portfolio management services, RWA will monitor the client’s assets and will provide recommendations as to the client’s asset allocation.” *Id.* at 5.

~~80-82.~~ RWA states: “For non-discretionary portfolio management, *RWA will implement recommendations* upon obtaining client approval.” *Id.* (emphasis added).

**b. RWA Describes Its Financial Planning Services in Its Firm Brochure**

~~81-83.~~ RWA describes its *financial planning services* in its Firm Brochure:

An *Investment Adviser Representative of RWA will first conduct an initial consultation*. After the initial consultation, if the client decides to engage RWA for financial planning services, an *Investment Adviser Representative will conduct follow up meetings* as necessary, during which pertinent information about the client’s financial circumstances and objectives is collected. Once such information has been reviewed and analyzed, a *financial plan* – designed to *achieve the client’s stated financial goals and objectives* – if created, will be presented to the client.

*Id.* at 5 (emphasis added).

~~82-84.~~ RWA states a “client is under no obligation to act on *the Firm’s* financial planning recommendations.” *Id.* (emphasis added). Thus, it states that recommendations are *its recommendations*.

~~83-85.~~ RWA states its “[f]inancial plans are based on the client’s financial situation at the time the plan is presented and on financial information disclosed by the client to RWA.” *Id.*

~~84-86.~~ RWA states it provides clients the scope of work and fees in writing for “investment management” services; however, it does not state it does this for “financial planning services.” *Id.* at 5-6.

~~85-87.~~ RWA states the “financial planning may be the only service provided to the client and does not require that the client use or purchase the investment advisory services offered by” RWA. *Id.*

~~86-88.~~ RWA states the “Financial planning fees may be waived upon discretion of RWA or the advisors registered by RWA.” *Id.* at 10.

c. **Heafner Recommended MOIs to Plaintiffs While Conducting RWA’s Portfolio Management and Financial Planning Services**

~~87-89.~~ IARs provide services in many ways, like hosting dinner seminars, holding coffee shop meetings, using questionnaires, meeting once to recommend plans, robo-advising, or charging hourly fees.

~~88-90.~~ Heafner provided RWA’s portfolio management and financial planning services to Plaintiffs in the manner described by RWA.

~~89-91.~~ Heafner conducted initial consultations with Plaintiffs to collect “pertinent information about” their “personal and financial circumstances and objectives.” *See id.* at 4.

~~90-92.~~ Heafner would then “conduct follow up meetings as necessary.” *See id.* at 5.

~~91-93.~~ As part of financial plans, Heafner constructed portfolios purportedly to meet Plaintiffs’ specific objectives and needs “based on [their] financial situation at the time the plan[s] were] presented and on financial information disclosed by” Plaintiffs; he provided “ongoing supervision and rebalancing of the portfolios.” *See id.* Heafner presented Plaintiffs’ plans in follow-up meetings orally and in writing.

92-94. Examples of financial plans Heafner prepared for Plaintiffs are the one-page plans in Exhibit G.

93-95. Plans in Exhibit G show that, after June 2017, Heafner's plans would recommend a portfolio of 1) an FFI managed securities account, 2) an annuity, and 3) a MOI.

94-96. The plans in Exhibit G have a far-left column titled "Current Positions," underneath which are boxes for each investment account held by a Plaintiff stating an account type and dollar value.

95-97. A column to the right in the plans is titled "Recommendations," underneath which, for all but one plan created after July 2017 in Exhibit G, are separate boxes with dollar amounts stating the name of an annuity, "Formula Folios (Fidelity)," and "MCA 1st Global." MCA means merchant cash advance.

96-98. A plan from November 2017 for Shiela Fetner contains under "Recommendation" boxes for an annuity and "MCA 1st Global." On information and belief, she was previously recommended FFI.

97-99. Boxes in the plans for Plaintiffs' current positions are colored **red**, and a key in the plan says red means "High Risk." *Id.* The boxes for recommended annuities are green, which the plans say means "No Risk." *Id.* The boxes for FormulaFolio and 1 Global are yellow, meaning "Low Risk." *Id.*

98-100. Plans state MOI benefits included a "9 Month Commitment" and "Current 9%" return. *Id.*

99-101. While MOIs are notes with a locked in principal value, the plans say they offer "Growth," which is a financial industry term describing an investment strategy focusing on capital appreciation. *Id.*

~~100~~102. RWA's brochure says it provides Morningstar data in financial plans, which was irrelevant to Heafner because Morningstar (A) does not analyze FFI's services, annuities, or MOIs and (B) only rates products trading at least three years, and only two FFI products traded that long, occurring in July 2018.

~~101~~103. Heafner waived fees for creating Plaintiffs' financial plans.

~~102~~104. RWA states on page 6 of its brochure its IARs may receive fees for "other products and services," and Heafner earned fees from other products in the plans provided to Plaintiffs, including MOIs.

~~103~~105. FFI made money when Plaintiffs followed its recommendations to use its services, and it paid Heafner a percent of its management fees from accounts he recommended.

~~104~~106. Heafner performed RWA's portfolio management and financial planning services.

~~105~~107. Exhibit G contains examples of financial plans Heafner created on RWA's behalf.

~~106~~108. On behalf of RWA, Heafner implemented recommendations Plaintiffs followed.

d. **RWA Describes Its Investment Management Services in Its Firm Brochure, Which Are Actually FFI's Services**

~~107~~109. RWA states "investment management services are provided through separately managed accounts for each client," and RWA "has discretion of client accounts and places trades for clients." *Id.* at 4.

~~108~~110. During all relevant times herein, anyone claiming an association with RWA in their LinkedIn page is its IAR or officer.

~~109,111.~~ Throughout 2017 and 2018, RWA stated in its amended Form ADVs that it had between 129 and 189 employees and all of them were its IARs.

~~110,112.~~ RWA's IARs do not manage the separately managed accounts.

~~111,113.~~ Automated algorithmic software programs generate trade orders for the separately managed accounts. RWA does not employ software engineers or others creating algorithms.

~~112,114.~~ On July 13, 2019, FFI's website listed 97 employees, and on or around that date, such employees' LinkedIn or other social media pages stated they worked for FFI as software engineers, web developers, portfolio specialists, back-office or other support staff, or as officers.

~~113,115.~~ During all times relevant herein, FFI employed the software engineers developing and maintaining the algorithms and back-office staff sending trade instructions from the algorithms to broker-dealers effecting the trades.

~~114,116.~~ RWA states on page 8 of its Firm Brochure at Exhibit F that "FFI offers separately managed accounts."

~~115,117.~~ RWA has its IARs recommend "investment management services" to its clients to use "separately managed accounts" provided and managed by FFI.

~~116,118.~~ FFI charges clients a management fee based on a percentage of the value of assets in the accounts, and it pays RWA's IARs a percent of the fees from the clients they obtained.

~~117,119.~~ FFI states "FFI ensures that clients' investments are suitable for their investment needs, goals, objectives and risk tolerance based on the information [they] provided." FFI Brochure, Ex. H at 4.

e. **Heafner Performed FFI's Investment Management Services**

~~118,120.~~ On behalf of FFI, Heafner (a) gathered Plaintiffs' information about their investment objectives or needs, (b) determined a suitable amount of their savings to allocate to FFI to meet their objectives or needs, (c) included FFI in a portfolio he constructed for Plaintiffs, (d) presented financial plans to them recommending the portfolio, (e) and explained why FFI would meet their objectives or needs.

~~119,121.~~ Exhibit G contains plans in which Heafner recommended FFI, which communicated his investment advice about FFI like allocations, risk, benefits, and how it meets income objectives and needs.

~~120,122.~~ For clients following the FFI recommendation, on behalf of FFI, Heafner chose a trading strategy from a list of strategies from FFI that it used to place discretionary trades in clients' FFI accounts. On behalf of FFI, Heafner ensured the strategy he selected was "suitable for [clients'] investment needs, goals, objectives and risk tolerance based on the information" that he had gathered during consultations. *Id.*

~~121,123.~~ On behalf of FFI, Heafner reviewed the accounts and contacted clients at least annually to discuss their FFI account and any impacts from any changes to clients' financial situations or objectives.

~~122,124.~~ FFI charged its and Heafner's clients a management fee based on a percentage of the value of their account assets, and it paid Heafner a percentage of these fees. Heafner never earned RWA money.

~~123,125.~~ Plaintiffs thought Heafner would recommend the best investments from any options, and FFI benefited from him looking unassociated, making him look not conflicted and FFI look more appealing.

~~124,126.~~ Wenk said about FFI: ““We’re the personal investment vehicle you’ll never hear about, and that’s what we want. Our job is to make the adviser the star.”” *He Doesn’t Shave, Shower, or Commute—but His Startup Made \$17 Million Last Year*, Inc. 5000, Aug. 16, 2017 (quoting Wenk) at Exhibit I at pg. 4.

**E. RWA’s and FFI’s Business Models**

~~125,127.~~ Wenk steered RWA and FFI to rapidly grow into a \$5 billion business. On information and belief, their rapid growth and business model contributed to deficient supervision of Heafner.

**a. Wenk’s Career Leading Up to His Founding RWA**

~~126,128.~~ In 2002, Wenk licensed as an insurance agent with the Michigan Department of Insurance and Financial Services. In 2002 through 2004 he received four life and variable annuity appointments.

~~127,129.~~ Before founding RWA, Wenk worked for Geneos Wealth Management, Inc., which is registered as a broker-dealer with FINRA, an RIA with the SEC, and an insurance producer with Michigan.

~~128,130.~~ Geneos did not register Wenk with FINRA as a broker or the SEC as an IAR, and his FINRA and SEC records reflect associations only with Geneos, RWA, FFI, and Altruist, founded in 2018.

~~129,131.~~ In September 2005, Geneos disclosed to the SEC that Wenk resigned amid allegations of his “failure to follow sales literature and advertising procedures.” Wenk added comments to the disclosure refuting the allegations and stating Geneos “suggested that we should part ways, which I agreed with . . . .”

**b. RWA’s Founding and Initial Business Model**



~~130~~132. On September 22, 2005, Jason Wenk incorporated RWA when he was 24 or 25 years old.

~~131~~133. From December 2005 to 2008, Wenk received more insurance appointments.

**c. RWA Registers as an RIA and Wenk as an IAR**

~~132~~134. On March 16, 2007, RWA registered as an RIA with the SEC, and on June 17, 2010, Wenk first registered as an IAR when RWA registered him in that capacity with the SEC.

**d. Wenk Moved to California and Used Online Blogging to Grow RWA**

~~133~~135. On October 2, 2013, RIABiz reported “[a]fter four years of building his Grand Rapids, Mich.-based RIA to \$110 million, Jason Wenk, 33, hit a plateau in 2008.” *How a 33 year-old advisor ditched the Midwest for California and used mad blogging and SEO skills to hijack annuitybound web traffic to propel giant growth* at Exhibit J pg. 1.

~~134~~136. In 2010, Wenk moved to California and found clients by blogging, which “doubled his business” by 2012, and he expected to “manage around \$220 million of assets” by the end of 2013. *Id.* at 2.

~~135~~137. In 2013, RWA had “[s]even employees work out of the Grand Rapids office” and Wenk “also brought on” three advisers in three other states. *Id.* at 4.

~~136~~138. RIABiz said “[a]t this point, though, Wenk’s not sure how quickly he can grow.” In August of 2013, “he had 105 prospective new clients. ‘No one could keep up with that.’” *Id.* (quoting Wenk).

**e. RWA and FFI Experienced Rapid Growth**

~~137,139.~~ On May 24, 2019, RWA amended its Form ADV to state that it manages over \$1.9 billion for 16,448 non-high net worth individuals, and FFI amended its Form ADV to state it manages over \$2.4 billion for 19,041 such individuals, aggregating to over \$4.3 billion managed. They also reported managing amounts combining to \$772.2 million for organizations, raising total assets managed to over \$5.1 billion.

~~138,140.~~ Altruist's online profile of Wenk states "With Jason as CEO, FormulaFolios achieved a 13,927% 3-year growth rate and managed over \$3.2 billion. This rapid growth ranked the firm as a fastest-growing private company in the country by Inc. magazine 4 years in a row, reaching as high as #10."

~~139,141.~~ In August 2018, Inc. ranked FFI #285, in 2017 it ranked FFI #10, in 2016 it ranked FFI #15, and in 2015 it ranked FFI #944, posted at [www.inc.com/profile/formulafolio-investments](http://www.inc.com/profile/formulafolio-investments).

~~140,142.~~ Inc. also reported that FFI had \$17 million in revenue in 2016, \$29.3 million in 2017, and \$44.2 million in 2018. *See, e.g.*, Ex. I at 1 (showing 2018 revenue).

~~141,143.~~ In September 2018 and May 2019, RWA reported in its Form ADV that it had 189 employees, all of whom perform investment advisory functions.

~~142,144.~~ In September 2018, FFI reported in its Form ADV that it had only 69 employees, and in May 2019 it reported 114 employees, at least 97 of whom are not advisers but are back office or other staff.

**f. Wenk Formed FFI to Help Grow His Business**

~~143,145.~~ On February 10, 2010, Wenk incorporated FFI in Michigan, which was registered as an RIA on November 28, 2011. FFI registered Wenk as one of its IARs on February 5, 2014.

[144,146.](#) Wenk formed FFI to be a technology-driven trading firm working with RWA.

[145,147.](#) FFI and RWA state in their respective Form ADVs that Wenk owns 37.9336% of both FFI and RWA, and all other owners are natural persons owning less than 25% of each.

[146,148.](#) FFI and RWA filed amended Form ADVs in September 2018 and May 2019 that disclosed identical officers and control persons with identical or near identical titles, as follows:

<b>Name</b>	<b>Title or Status at RWA</b>	<b>Title / Status Acquired</b>	<b>Title or Status at FFI</b>	<b>Title / Status Acquired</b>
Jason Wenk	Consultant Shareholder	09/2018	Strategic Consultant Managing Member Exec. Dir. of Product Devel.	09/2018
Jason Crump	Chief Executive Officer Shareholder	09/2018	Chief Executive Officer Managing Member	09/2018
Joel VanWoerkom	President Shareholder	09/2018	President Managing Member	09/2018
Danielle Tyler	Chief Compliance Officer	11/2015	Chief Compliance Officer	11/2015
James Ward	Chief People Officer	09/2018	Chief People Officer	09/2018
Diane Ferris	Chief Financial Officer Chief Administration Officer Secretary Treasurer	09/2018	Chief Financial Officer Chief Administration Officer Secretary Treasurer	09/2018
Stephen Odom	Shareholder	01/2015	Member	01/2015
Steven Craig	Shareholder	01/2015	Member	01/2015
Andrew Craig	Shareholder	01/2015	Member	01/2015
Brandon George	Shareholder	01/2015	Member	01/2015

Edward Nolan	Shareholder	01/2015	Member	01/2015
Stephen Ashton	Shareholder	01/2015	Member	01/2015

**g. Wenk Rapidly Grew FFI By Creating Proprietary Mutual Funds and ETF Products and Trading Accounts Managed by FFI**

~~147,149.~~ FFI created two mutual funds and four exchange traded funds (“ETFs”).

~~148,150.~~ FFI filed registration or exemption paperwork with the SEC for each product.

~~149,151.~~ Each product is comprised of a portfolio of other securities. FFI invests investors’ pooled funds in a portfolio chosen by FFI, and investors own a portion of the product’s portfolio.

~~150,152.~~ Each product’s prospectus states Derek Prusa and Wenk manages its portfolio, which during all times relevant was done using algorithms Wenk helped develop.

~~151,153.~~ The algorithms determine ~~what~~which and how many securities, ~~and how much of them~~, to buy or sell in the FFI product portfolios and create trade instructions FFI sends to broker-dealers that effect the trades.

**i. FFI’s Mutual Funds’ Ratings**

~~152,154.~~ On December 17, 2015, FFI launched the mutual funds FormulaFolios US Equity Fund Institutional Class (FFILX) and FormulaFolios US Equity Fund Investor Class (FFIOX).

~~153,155.~~ As of June 30, 2019 and September 30, 2019, Morningstar rated (a) FFILX a two out of five stars—rating it in the bottom 32.5% of funds ranked funds in a Mid-Cap Value category—and (b) FFIOX a one out of five stars—rating it in the bottom 10% of funds in that category.

~~154,156.~~ As of June 30, 2019, Lipper Rankings rated FFILX 2,666 out of 2,959 and FFIOX 2,706 out of 2,959 “based on total return” of a “universe of funds with similar investment objectives,” as reported on [fundresearch.fidelity.com](http://fundresearch.fidelity.com) operated by Fidelity.

~~155,157.~~ As of September 30, 2019, Lipper rated FFILX 2,746 out of 2,939 and FFIOX 2,796 out of 2,939.

ii. **FFI’s ETFs’ Ratings**

~~156,158.~~ On June 6, 2017, FFI launched its first two ETFs, the FormulaFolios Tactical Income ETF (FFTI) and the FormulaFolios Hedged Growth ETF (FFHG).

~~157,159.~~ On October 30, 2017, FFI launched its other ETFs, the FormulaFolios Smart Growth ETF (FFSG) and the FormulaFolios Tactical Growth (FFTG).

~~158,160.~~ XTF Inc. rates ETFs from 0 to 10, 10 being the best, and its ratings are used by institutions like Fidelity. As of July 19, 2019, XTF Inc. rated FFTI a 2.6 out of 10 and FFHG a 0.1 out of 10, and as of October 24, 2019, it rated FFTI a 4.3 out of 10 and FFHG a 0.1 out of 10.

~~159,161.~~ XTF Inc. does not rank FFSG and FFTG; their rates of return from inception through October 24, 2019 based on closing day prices were less than rates of returns for the Dow, NASDAQ, and S&P 500 indexes.

iii. **FFI Products Held by Investors and FFI’s Trading Accounts**

~~160,162.~~ Investors hold at least \$700,000,000 of FFI’s mutual funds and ETFs.

~~161,163.~~ RWA and FFI provide investment management services through accounts managed by FFI.

~~162,164.~~ FFI has discretion to place trades in the accounts it manages for its clients.

~~163~~165. FFI often manages clients' accounts by using discretion to buy its proprietary products or a "portfolios of investments that are substantially identical" to one of its products. Ex. H at 6.

~~164~~166. FFI charges each such client a management fee based on a percentage of the market value of investments held in the client's account managed by FFI.

~~165~~167. FFI indicates in its Firm Brochure it may earn more fees by buying its proprietary products in clients' managed accounts since the products charge clients a separate fee. *Id.* at 8.

**h. RWA and FFI Obtained Investors in FFI Products by Registering More IARs with RWA and Having Them Recommend FFI Products to Clients**

~~166~~168. In January 2015, six individuals became shareholders of RWA and members of FFI who also own The Impact Partnership, LLC ("Impact"), a sales and marketing consulting firm supporting insurance companies and agents. Impact recruits annuity salesmen to be IARs at RWA and FFI.

~~167~~169. RWA and FFI state in their Firm Brochures that many of their "investment adviser representatives have been, and continue to be, recruited through a strategic networking relationship with The Impact Partnership, LLC." Ex. F at 18; Ex. H at 16.

~~168~~170. RWA increased its IARs from about seven in 2013 to at least 189 in 2018.

~~169~~171. RWA and FFI increased assets under their management from about \$220 million in 2013 to, according to their Firm Brochures, about \$5 billion by 2018.

~~170~~172. The Firm Brochures further state that "[a]fter becoming associated with [FFI and/or RWA,] newly recruited individuals are incentivized to solicit and recommend that

their existing customers and future prospects engage the investment advisory services of FormulaFolio Investments.” *Id.* at 17.

i. **RWA and FFI Availed Themselves of Providing Investment Advice Through Their IARs to Grow into a \$5 Billion Business**

~~171~~173. RWA and FFI were not permitted to launch and grow FFI by selling its products for a commission since they did not register as broker-dealers. The NCSA and § 15 of the Securities Exchange Act of 1934 require firms effecting securities transactions—e.g., by selling them for commissions—to register with FINRA as broker-dealers and subject themselves to FINRA rules, audits, and oversight.

~~172~~174. RWA and FFI could not rely upon any broker-dealer or their registered representatives to sell FFI products for a commission unless the broker-dealer added FFI products to a list of investments approved to offer to its customers after performing due diligence. FINRA requires such due diligence.

~~173~~175. Instead of registering as, or relying upon, broker-dealers, RWA and FFI registered as RIAs and used their IARs’ “investment advice” to rapidly grow FFI’s products and services.

~~174~~176. RWA and FFI authorize their IARs to recommend unaffiliated investment products alongside FFI’s products and services in a portfolio, which contributed to the IARs appearing unassociated with FFI to Plaintiffs.

~~175~~177. RWA’s and FFI’s IARs find clients, and the IARs appear unassociated with FFI when they meet clients, which FFI seemingly wants. *See* Ex. I at pg. 4. The IARs are incentivized to recommend FFI’s investment management services as part of financial planning performed on behalf of RWA and FFI.

~~176~~178. This model helped rapidly grow RWA and FFI into a \$5 billion business.

**II. RWA AND FFI SIGN THEIR FIRM BROCHURES UNDER PENALTY OF PERJURY**

~~177~~179. Form ADV states that, before an RIA files it or its amended versions with the SEC, the RIA must “certify, under penalty of perjury under the laws of the United States of America, that the information and statements made in” it and its exhibits, including the Firm Brochure, “are true and correct.”

~~178~~180. RWA and FFI must certify and file with the SEC an amended Form ADV and Firm Brochure at least annually and deliver Firm Brochures to clients and prospective clients.

**III. HEAFNER WAS AN “ASSOCIATED PERSON” OF RWA AND FFI**

~~179~~181. The IAA defines “person associated with an investment adviser” as “any person directly or indirectly controlling or controlled by such investment adviser” (other than clerical employees). 15 U.S. 80b-2(a)(17). The SEC and investment advisory industry define “associated person” in this manner.

~~180~~182. Heafner was an *associated person* of RWA and FFI because he was directly or indirectly controlled by them, as alleged in § VI. ¶¶ ~~225-252~~227-254 and § VII. ¶¶ ~~254-292~~256-294, which are incorporated as if set forth here.

**IV. HEAFNER WAS THE “SUPERVISED PERSON” OF RWA AND FFI**

~~181~~183. Plaintiffs repeat and reallege the above allegations as if set forth throughout § IV.

**A. Supervised Persons Under § 202(a)(25) of the IAA**

~~182~~184. The IAA requires RIAs to supervise their “supervised persons.” Section 202(a)(25) of the IAA states: “‘**Supervised person**’ means any partner, officer, director (or other person occupying a similar status or performing similar functions), or employee of an investment



adviser, or other person who provides investment advice on behalf of the investment adviser and is subject to the supervision and control of the investment adviser.” 15 U.S. 80b-2(a)(25) (emphasis added).

~~183,185.~~ Form ADV instructions, enacted and amended under the IAA after notice and comment periods, on page 29 in a glossary define “employee” by stating: “**Employee:** This term includes an independent contractor who performs advisory functions on your behalf.” (Emphasis in original.)

**B. Heafner Was RWA’s and FFI’s Supervised Person Because He Was Their Employee Under the IAA**

~~184,186.~~ Heafner was an employee of RWA and FFI under the IAA because he was their servant, agent, independent contractor, and/or employee who performed advisory functions on their behalf.

~~185,187.~~ Heafner was the supervised person of RWA and FFI since he was their employee.

**C. If Heafner Was Not RWA’s and FFI’s Employee, He Would Have Been an “Other Person” Under § 202(a)(25) Who Was Their Supervised Person**

~~186,188.~~ Heafner was RWA’s and FFI’s employee under the IAA, thus, not an “other person” enumerated in § 202(a)(25) of the IAA.

~~187,189.~~ If Heafner had not been RWA’s and/or FFI’s employee under the IAA regulatory scheme, he would have been their “supervised person” as an “other person who provide[d] investment advice on behalf of [RWA and FFI] and [wa]s subject to the supervision and control of” RWA and FFI. *See id.*

~~188,190.~~ Heafner provided investment advice on behalf of RWA and FFI as alleged herein, including in § I.D. ¶¶ ~~75-12377-125~~. RWA and FFI subjected Heafner to their

supervision and control as alleged herein, including § VII. ¶¶ ~~257-292~~259-294, below, incorporated here as if fully set forth.

V. **HEAFNER, RWA, AND FFI OWED PLAINTIFFS A FIDUCIARY DUTY**

~~189,191.~~ Plaintiffs incorporate the above paragraphs as if fully set forth throughout § V.

A. **RWA, FFI, and Heafner Owed Plaintiffs a Fiduciary Duty to Plaintiffs Under the IAA and Under Industry Standards of Conduct**

~~190,192.~~ The Supreme Court established in *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180 (1963) that federally registered investment advisers owe clients a fiduciary duty under the IAA.

~~191,193.~~ Rule 204A-1 under the IAA states an RIA “must establish, maintain, and enforce” a written code of ethics that at a minimum requires it to enforce a standard that “must reflect your fiduciary obligations and those of your supervised persons.” Rule 206(4)-7 under the IAA requires an RIA to establish an internal compliance program that ensures it performs its fiduciary obligations under the IAA.

~~192,194.~~ The SEC promulgates required standard of conduct for investment advisers under federal securities laws and regulations in interpretive releases adopted after notice and comment periods and in staff reports, including in *Commission Interpretation Regarding Standard of Conduct for Investment Advisers*, SEC Release No. IA-55258, June 6, 2019 and *Regulation of Investment Advisers by the U.S. Securities and Exchange Commission*, Staff of the Investment Adviser Regulation Office Div. of Investment Management, March 2013.

~~193,195.~~ The SEC in such promulgations states standards of conduct for investment advisers requires they adhere to a fiduciary standard that includes specific obligations to:

- a) Make full and fair disclosure of all material facts while advising clients including all conflicts of interest;
- b) Recommend only suitable investment advice based on a client's financial situation and investment experience and objectives, which requires a reasonable inquiry into the client's objectives;
- c) Perform due diligence of an investment to form a reasonable basis to recommend it, which includes not relying on incredible claims of an issuer;
- d) Always act in a client's best interest; and
- e) Provide advice and monitoring over the course of an advisory relationship.

[194,196.](#) Release IA-5248 states RIAs' fiduciary duty, and obligations thereunder, even "applies to automated advisers, which are often colloquially referred to as 'robo-advisers.' Automated advisers, like all SEC-registered investment advisers, are subject to all of the requirements of the Advisers Act, including the requirement that they provide advice consistent with the fiduciary duty they owe to their clients."

[195,197.](#) The required standards of conduct that the SEC promulgates under the IAA establishes standards of care followed by the investment advisory industry, including investment advisers adhering to a fiduciary duty and the specific obligations that the SEC states are encompassed within this duty.

[196,198.](#) During all times relevant herein, each Defendant was an investment adviser under the IAA and each of them owed Plaintiffs a fiduciary duty under the IAA and its rules and the specific obligations the SEC states are part of this obligation.

~~197,199.~~ During all times relevant herein, Defendants each also owed Plaintiffs a duty to conform to industry standard of care requiring they adhere to a fiduciary standard with Plaintiffs.

**B. Heafner Owed Plaintiffs a Fiduciary Duty Based on Their Trust and Repose**

~~198,200.~~ Plaintiffs incorporate the above paragraphs as if fully set forth herein.

~~199,201.~~ In radio or television promotions that Plaintiffs heard, Heafner held himself out as an investment adviser with a fiduciary duty and an expert in advising for retirement.

~~200,202.~~ Plaintiffs are unsophisticated retail investors who are retired or near retirement.

~~201,203.~~ Plaintiffs met with Heafner at his office because they sought the advice of an expert in investing for retirement and they believed he possessed such expertise.

~~202,204.~~ Heafner told Plaintiffs when he met them he was a fiduciary acting in their best interests.

~~203,205.~~ Heafner recommended Plaintiffs reinvest all their savings into a new portfolio.

~~204,206.~~ The investments Heafner recommended Plaintiffs required ongoing advice.

~~205,207.~~ Plaintiffs placed trust and repose in Heafner by following his advice to reinvest nearly all or substantial portions of their savings, including at least about \$100,000 into a MOI.

~~206,208.~~ Heafner fully dominated Plaintiffs because he possessed all the expertise.

207-209. For the above reasons, Heafner owed Plaintiffs a continuous fiduciary duty over the course of their relationship and the specific obligations the SEC states flow from such a duty.

C. **RWA and FFI in Firm Brochures Admit and Hold Out They Are Fiduciaries**

208-210. Plaintiffs incorporate the above paragraphs as if fully set forth herein.

209-211. RWA states on pages 11, 12, 17, and 19 of its Firm Brochure at Exhibit F that it:

is committed to its obligation to ensure associated persons adhere to the Firm's Code of Ethics and to ensure that the Firm and its associated persons fulfill their fiduciary duty to clients or investors.

210-212. FFI states on page 11 of its Firm Brochure at Exhibit H that it:

is committed to its obligation to ensure associated persons adhere to the Firm's Code of Ethics and to ensure that the Firm and its associated persons fulfill their fiduciary duty to clients or investors.

211-213. RWA and FFI thereby stated that their "associated persons," which included Heafner, owed a "fiduciary duty to clients or investors," which included Plaintiffs.

212-214. Heafner's clients, including Plaintiffs, were also RWA's and FFI's clients. RWA and FFI each state in its respective Firm Brochure that it "is committed to its obligation to ensure the Firm . . . fulfill[s its] fiduciary duty to clients or investors," which included Plaintiffs, and RWA and FFI thereby admitted in regulatory filings certified under penalty of perjury that they owed a fiduciary duty to Plaintiffs.

213-215. RWA and FFI held out to the SEC, clients, and the public that they are committed to their obligation to ensure that they and their IARs fulfill fiduciary duties to clients and investors because they filed the Firm Brochures with the SEC, must give them to potential clients, and the brochures are in the IAPD.

**D. RWA and FFI Owed Plaintiffs Fiduciary Duties Because Plaintiffs Placed Trust and Repose in RWA and FFI**

~~214~~216. Plaintiffs incorporate the above paragraphs as if fully set forth herein.

~~215~~217. Plaintiffs trusted Heafner because he was a fiduciary since he was an IAR, and he was an IAR since he was registered as one with RWA and a supervised person of RWA and FFI.

~~216~~218. Heafner advertised on his website, business card, and elsewhere:

“Investment Advice is offered by Retirement Wealth Advisors, Inc, a SEC Registered Investment Advisor.”

~~217~~219. RWA and FFI only act through agents, like Heafner. RWA and FFI advised on, recommended, implemented, and monitored on an ongoing basis their advisory services through Heafner, and he was only allowed to do so as RWA’s and FFI’s IAR and supervised person.

~~218~~220. RWA and FFI were obligated and committed to ensuring they and Heafner met fiduciary duties. FFI, on its and RWA’s behalf, was responsible for performing, and performed, due diligence of securities Heafner recommended, including MOIs.

~~219~~221. Plaintiffs implicitly trusted recommendations Heafner made because they knew they were made under strict fiduciary duties legally imposed upon investment advisors.

~~220~~222. RWA and FFI were in a position of trust and repose with Plaintiffs because they were entrusted with power to use Plaintiffs’ confidential personal financial information to recommend how Plaintiffs should reinvest all or nearly all their savings into a new portfolio.

~~221~~223. Plaintiffs placed trust and repose in RWA and FFI by reinvesting nearly all or much of their savings based upon RWA’s and FFI’s recommendations through Heafner.

~~222-224.~~ RWA and FFI fully dominated Plaintiffs because they possessed all the expertise.

~~223-225.~~ For the above reasons, RWA and FFI owed Plaintiffs continual fiduciary duties over the course of their relationships and the specific obligations flowing from such duties.

VI. **LEGAL DUTIES IMPOSED UPON RIAs ESTABLISH STANDARDS OF CARE OWED TO PLAINTIFFS AND PROVIDE SUPPORT RWA AND FFI POSSESSED THE POWER TO CONTROL HEAFNER**

~~224-226.~~ Plaintiffs incorporate the above paragraphs as if fully set forth throughout § VI.

~~225-227.~~ Certain IAA provisions and SEC rules and regulations thereunder designed to protect retail investors' property obligate RIAs to establish and enforce certain compliance policies and procedures reasonably designed to ensure they and their IARs adhere to fiduciary standards and securities laws.

~~226-228.~~ These legal obligations establish industry standards of conduct, and these legal obligations and standards of conduct establish a duty and standard of care that RWA and FFI owed to Plaintiffs to conform to certain standards protecting the property of retail investor advisory clients, like Plaintiffs.

~~227-229.~~ These duties required RWA and FFI to ensure that certain details of Heafner's work did not violate specific standards and laws, and thus, these laws, rules, and standards also provide support of the direct or indirect power to control the general affairs of Heafner and his specific conduct related to MOIs.

A. **The IAA and Its Rules Establish RIAs Control Their IARs and Owe Clients Legal Duties**

~~228-230.~~ The IAA and the SEC’s rules promulgated thereunder imposed specific supervisory responsibilities upon RWA and FFI to supervise the detail of Heafner’s work to protect investors.

**a. Make and Keep Records of Recommendations—Rule 204-2(a)**

~~229-231.~~ Paragraph (a)(7) of Rule 204-2 under the IAA requires RWA and FFI to “*make and keep*”:

copies of all written communications sent by such investment adviser relating to:

- (i) *Any recommendation made* or proposed to be made and any advice given or proposed to be given;
- (ii) Any receipt, disbursement or delivery of funds or securities;
- (iii) The placing or execution of any order to purchase or sell any security;
- (iv) The performance or rate of return of any or all . . . securities recommendations.

§ 17 CFR 275.204-2(a)(i)-(iv) (emphasis added).

~~230-232.~~ Paragraph (a)(16) of Rule 204-2 requires RWA and FFI to “*make and keep*” all:

records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of any or all . . . securities recommendations.

§ 17 CFR 275.204-2(a)(16) (emphasis added).

**b. Maintain Records in an Easily Accessible Place—Rule 204-2(e)**

~~231-233.~~ Paragraph (e) of Rule 204-2 provides RWA’s and FFI’s records kept pursuant to paragraph (a)(7) of the rule “shall be maintained and preserved in an *easily*



accessible place for a period of not less than five years.” § 17 CFR 275.204-2(e) (emphasis added).

**c. Code of Ethics—Rule 204A-1(a)**

~~232~~234. Rule 204A-1(a) requires that RWA and FFI to have established ethics codes requiring their IARs to comply with a fiduciary standard and securities laws and that RWA and FFI “enforce” their codes:

If you are an investment adviser registered or required to be registered under section 203 of the Act (15 U.S.C. 80b-3), you must establish, maintain and enforce a *written code of ethics* that, *at a minimum*, includes

(1) A standard (or standards) of business conduct that you require of your supervised persons, which standard *must reflect your fiduciary obligations and those of your supervised persons*;

(2) Provisions requiring your supervised persons to *comply with applicable Federal securities laws . . .*”

§ 17 CFR 275.204A-1(a) (emphasis added).

**d. Compliance Policies and Procedures—Rule 206(4)-7**

~~233~~235. Rule 206(4)-7 under the IAA states in part:

If you are an investment adviser registered or required to be registered under . . . the Investment Advisers Act . . . , it *shall be unlawful* within the meaning of section 206 of the Act (15 U.S.C. 80b-6) for you to provide investment advice to clients unless you:

(a) **Policies and Procedures.** Adopt and implement written policies and procedures *reasonably designed* to *prevent* violation, by *you* and your *supervised persons*, of the Act and the rules . . . adopted under the Act;

(c) **Chief compliance officer.** Designate an individual (who is a supervised person) responsible for administering the policies and procedures that you adopt under paragraph (a) of this section.

§ 17 CFR 275.206(4)-7 (emphasis added).

e. **Prohibiting Fraud and Breaches of Fiduciary Duties—§ 206 of the IAA**

~~234~~236. Section 206 of the IAA (15 U.S.C. 80b-6) states in part:

It shall be unlawful for any investment adviser, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly—

(1) to employ any device, scheme, or artifice to defraud any client or prospective client; (2) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client; . . . (4) to engage in any act, practice, or course of business which is fraudulent, deceptive, or manipulative. The Commission shall, for the purposes of this paragraph (4) by rules and regulations define, and prescribe means reasonably designed to prevent, such acts, practices, and courses of business as are fraudulent, deceptive, or manipulative.

~~235~~237. Section 206 expressly does not limit prohibited conduct to conduct involving securities.

f. **Prohibiting Material Misstatements in Registration Statements Filed With the SEC—§ 207 of the IAA**

~~236~~238. Section 207 of the IAA (15 U.S.C. 80b-7) states:

It shall be unlawful for any person willfully to make any untrue statement of a material fact in any registration application or report filed with the [SEC] under section 203 or 204, or willfully to omit to state in any such application or report any material fact which is required to be stated therein.

~~237~~239. Reports filed under § 203 include Form ADV, the Firm Brochure, and their amendments.

~~238~~240. Reports filed under § 204 include Form U-4 and amendments thereto that North Carolina and other states require to be filed with the SEC to register IARs, which RIAs certify under penalty of perjury to attest to their truth and accuracy. Form U-4s require disclosing an IAR's *outside business activities*.

[239-241.](#) Information disclosed in Form U-4 and their amendments—particularly about *outside business activities*—is critical and highly utilized in the securities and investment advisory industries; securities laws require Form U-4s to be timely amended when changes occur; and causing a false Form U-4 or amendment thereto to be filed with a state or the SEC can violate federal securities laws and be a crime.

[240-242.](#) The above rules and laws set forth in the allegations in this §. A. establish standards of care followed in the investment advisory profession.

**B. RWA and FFI Had to Enforce Procedures Reasonably Designed to Prevent Heafner Recommending MOIs Even If It Was an Outside Business Activity**

[241-243.](#) RWA and FFI manage billions of dollars for clients, and thus, had to implement and enforce robust compliance programs to satisfy Rule 206(4)-7 duties to implement and enforce procedures reasonably designed to “prevent violations” by supervised persons of securities laws and fiduciary duties.

[242-244.](#) RWA and FFI had to supervise Heafner recommending MOIs like any recommendation on their behalf for any one of or all the following reasons: they authorized him to, he did so in the scope of his employment, they ratified him to, he was their associated person, and he was their supervised person.

[243-245.](#) FFI and RWA did not disclose MOIs as an outside business activity in Heafner’s Form U-4.

[244-246.](#) RWA and FFI had to supervise Heafner recommending MOIs even if this was an outside business activity because they had to ensure he did not violate securities laws or a fiduciary duty.

[245-247.](#) The SEC has taken enforcement actions resulting in findings of IAA violations and civil penalties against RIAs who failed to implement or enforce procedures

reasonably designed to prevent or monitor for violations of securities laws or fiduciary duties committed by supervised persons within the scope of outside business activities not disclosed to the RIAs.

246,248. RWA and FFI had to implement and enforce procedures preventing MOI recommendations in order to have reasonably designed procedures meeting their duties.

**C. RWA and FFI Controlled Heafner Because RWA Registered Him as Its IAR**

247,249. Heafner had to be registered as an IAR with North Carolina before transacting business as an IAR (G.S. § 78C-16(a1)), his registration was only effective while an RIA that was registered with North Carolina or the SEC registered him as its IAR (§ 78C-(b)), and he was only permitted to be registered with one such RIA unless each RIA associating or employing him was under common ownership or control (§ 78-b1).

248,250. North Carolina only required Heafner to register with it so that it could ensure he passed a qualifying examination and did not violate the NCIAA through fraud. Like most federally covered IARs, he was not directly registered with the SEC, his advice was covered under the umbrella of RWA's and FFI's registrations with the SEC as their supervised person, and it was only covered if it was on their behalf.

249,251. Everyone an RIA registers as its IAR is its supervised person under the IAA.

**D. RWA and FFI Following Industry Standards to Supervise Heafner Would Have Given Them the Power to Control Heafner Recommending MOIs**

**a. Storing and Reviewing Email**

250,252. Electronic message storage providers—like the biggest two, Smarsh, Inc. and Global Relay Communications Inc.—provide their RIA clients software to monitor emails in

real time and perform Boolean searches of emails and their attachments for regulatory supervisory reviews.

251-253. Industry standard is for a RIA's Chief Compliance Officer ("CCO") to maintain and enforce procedures to:

- i. Maintain an arrangement with an electronic message storage provider;
- ii. Use the electronic message storage provider's software to instantly archive all emails to and from all *email accounts* used to communicate with clients by the RIA's supervised persons;
- iii. (A) Designate someone use the electronic storage provider software to, at least monthly, perform reviews of emails and their attachments from all accounts supervised persons use with clients, (B) document such reviews, and (C) the CCO timely attests the email reviews were adequate; and
- iv. Ensure the email reviews *prevent* violations of securities laws and fiduciary duties.

**b. Storing and Reviewing Records of Recommendations**

252-254. Industry standard is for a RIA's CCO to maintain and enforce procedures ensuring:

- i. An electronic storage provider *timely* stores in a manner easily accessible to compliance staff all securities recommendations supervised persons make and all performances and rates of returns communicated about the recommended securities;
- ii. An electronic storage provider stores records necessary to form the basis for, or demonstrate the calculation of, the performance or rate of return of any or all securities recommendations;

iii. (A) The CCO *knows* all investments all supervised persons are recommending, (B) all investments are reviewed that supervised persons propose to recommend, and (C) the CCO only approve investments that supervised persons may recommended that align with a code of ethics.; and

iv. Recommendations are reviewed for violations of laws and fiduciary duties.

**VII. RWA AND FFI POSSESSED THE POWER TO CONTROL HEAFNER'S GENERAL AFFAIRS AND TO CONTROL HIS SPECIFIC CONDUCT OF RECOMMENDING MOIs**

253,255. Plaintiffs incorporate the above paragraphs as if fully set forth throughout § VII.

**A. One-Page Plans RWA and FFI Had to Keep Easily Accessible and Review Gave Them Power to Directly or Indirectly Control Heafner Recommending MOIs**

254,256. The financial plans Heafner created at Exhibit G plainly show he recommended on a one-page financial plan a portfolio of: 1) FormulaFolio, 2) an annuity, and 3) a MOI.

255,257. Rule 201A-1(a)(7) obligated RWA and FFI to keep the one-page plans in an easily accessible place because Heafner communicated in the one-page plans to clients: (A) recommendations of MOIs and FFI, (B) rates of returns for MOIs and FFI, and (C) investment advice about MOIs and FFI.

256,258. RWA and FFI possessed the power to control Heafner recommending MOIs because they possessed or had access to the one-page plans they were required to keep easily accessible and review.

**B. RWA and FFI Actually Exercised General Control Over Heafner by Subjecting Him to Their Codes of Ethics**

257;259. RWA stated on page 19 of its Firm Brochure at Exhibit F (emphasis added here):

RWA has adopted a Code of Ethics that establishes standards of conduct for its *supervised persons*. The Code of Ethics includes general requirements that such *supervised persons* comply with their fiduciary obligations to clients and applicable securities laws.

258;260. FFI stated on page 18 of its Firm Brochure at Exhibit H (emphasis added here):

FormulaFolio Investments has adopted a code of ethics that sets forth the standards of conduct expected of its *associated persons* and requires compliance with applicable securities laws ('Code of Ethics').

259;261. RWA stated it subjected its "*supervised persons*" to its Code of Ethics, and FFI stated it subjected its "*associated persons*" to its Code of Ethics. RWA and FFI thereby stated under penalty of perjury they subjected Heafner to their codes of ethics because he was a "supervised person" and "associated person" of RWA and FFI. RWA and FFI thereby exercised actual control over Heafner by making him comply with their codes, which among other things, required adherence to fiduciary standards and securities laws.

**C. FFI's Compliance Department Possessed the Power to Control Heafner**

260;262. RWA's website lists only its IARs and officers.

261;263. ~~Every~~In 2017 and 2018, ~~every~~ amended Form ADV RWA filed ~~in 2017~~ and 2018 stated all its employees are IARs.

262;264. In May 2019, FFI filed an amended Form ADV stating it has 114 employees, at least 97 of whom do not provide investment advisory functions, thus, are back-office or other support staff.

263-265. On October 24, 2019, FFI listed about 85 employees on its website, and on or about this date, about six of the employees stated in LinkedIn they worked for FFI as a compliance analyst, compliance officer, or compliance professional; none of these six individuals stated in LinkedIn they worked for RWA.

264-266. FFI employing the compliance staff overseeing RWA empowered FFI to control Heafner.

**D. RWA and FFI Actually Exercised Control Over Heafner’s General Affairs by Firing Him for Violating Compliance Policies and Procedures**

265-267. RIAs must report terminating IARs and reasons for doing so in Form U-5s filed with the SEC. The SEC will disclose an IAR’s discharge in IAPD that a Form U-5 states occurred after allegations that the IAR violated investment-related statutes, regulations, or rules or industry standards of conduct.

266-268. RWA filed a Form U-5 with the SEC that disclosed it terminated Heafner, and his IAPD profile page at [www.adviserinfo.sec.gov/Individual/4837072](http://www.adviserinfo.sec.gov/Individual/4837072) states he had one disclosed termination. A report opened from Heafner’s IAPD page states, on August 31, 2018, RWA discharged him for “Failure to follow written policies and procedures in regard to Outside Business Activities,” as shown here:

<b>Termination</b>	
This disclosure event involves a situation where the Investment Adviser Representative voluntarily resigned, was discharged or was permitted to resign after allegations were made that accused the Investment Adviser Representative of violating investment-related statutes, regulations, rules or industry standards of conduct; fraud or the wrongful taking of property; or failure to supervise in connection with investment-related statutes, regulations, rules or industry standards of conduct.	
<b>Disclosure 1 of 1</b>	
<b>Reporting Source:</b>	Firm
<b>Firm Name:</b>	Retirement Wealth Advisors
<b>Termination Type:</b>	Discharged
<b>Termination Date:</b>	08/31/2018
<b>Allegations:</b>	Failure to follow written policies and procedures in regard to Outside Business Activities.



267-269. Heafner was registered with FINRA, which discloses in his BrokerCheck profile the same Form U-5 information as IAPD. Heafner’s page at [brokercheck.finra.org/individual/summary/4837072](https://brokercheck.finra.org/individual/summary/4837072) discloses that RWA discharged him on August 31, 2018 for “Failure to follow written policies and procedures in regard to Outside Business Activities,” as shown here:

8/31/2018 Employment Separation After Allegations	
Firm Name	Retirement Wealth Advisors
Termination Type	Discharged
Allegations	Failure to follow written policies and procedures in regard to Outside Business Activities.

268-270. RWA exercised general control of Heafner and demonstrated that he was subject to its policies and procedures because it fired him for his “failure to follow written policies and procedures.”

269-271. FFI’s compliance staff are the only compliance staff available to enforce RWA’s outside business activities policies and procedures, and FFI exercised general control over Heafner because its compliance staff discharged him from RWA for violating this policy. FFI also exercised actual general control over Heafner by terminating him from FFI for violating its code of ethics.

E. **RWA’s and FFI’s Power to Fire Heafner for Violating Policies and Procedures Demonstrated That They Possessed Significant Power to Control Him**

270-272. RIAs check IAPD and BrokerCheck before hiring anyone, and the SEC tells RIAs to consider disciplinary histories in designing compliance programs, including a recent Risk Alert telling RIAs:

when designing and implementing their compliance and supervision frameworks, to consider the risks presented by, as well as the disclosure requirements triggered by, the hiring and employing of

supervised persons with disciplinary histories and adopt policies and procedures to address those risks and disclosure requirements.

*Observations from Examinations of Investment Advisers: Compliance, Supervision, and Disclosure of Conflicts of Interest*, July 23, 2019, Risk Alerts Tab at [www.sec.gov/ocie](http://www.sec.gov/ocie).

~~271-273.~~ Broker-dealers check BrokerCheck and IAPD before hiring or registering someone because FINRA requires firms to investigate people's backgrounds before hiring or registering them, investigate red flags, and place people with a history of industry or regulatory-related incidents on heightened supervision.

~~272-274.~~ The SEC, FINRA, and state regulators investigate red-flags reported in Form U-5s, and the regulators consider BrokerCheck and IAPD disclosures before approving registration applications.

~~273-275.~~ Form U-5 disclosures about outside business activities are significant red flags to regulators, and RWA's Form U-5 disclosure about Heafner prompted at least FINRA to begin investigating him.

~~274-276.~~ Many investors check BrokerCheck and IAPD profiles.

~~275-277.~~ Individuals with discharges disclosed in IAPD and BrokerCheck frequently experience increased challenges to becoming registered as a registered representative or IAR due to the discharge.

~~276-278.~~ On February 28, 2019, Heafner sent his clients a letter stating "I am engaged in 1 Global Capital, LLC issues with regulators who oversee securities, insurance and advisory sales," "I face losing my licenses, my career, and my wealth," and regulators "will likely eventually force me from the industry." Heafner Letter at Exhibit K.

~~277-279.~~ After RWA fired Heafner, he told his clients he was going to another RIA, Baker Wealth Management. But Baker never registered him, FINRA has permanently barred

him from associating with broker-dealers, he left the investment advisory industry, and public records state he moved to Puerto Rico.

278,280. RWA and FFI possessed significant power to control Heafner recommending MOIs from their power to discharge him and submit a mandatory Form U-5 disclosing their reason for doing so.

**F. RWA and FFI Possessed the Power to Control Heafner’s General Affairs and Specific Conduct Related to MOI Recommendations Through Email Reviews**

**a. RWA and FFI Use Global Relay to Store and Review Emails**

279,281. RWA and FFI state in their respective Form ADVs that they maintain books and records at “Global Relay Communications Inc.,” and each state “THE RECORDS KEPT AT THIS LOCATION CONSIST OF EMAIL COMMUNICATIONS.”

280,282. Global Relay automatically saves all emails for all its clients offsite and provides instant remote access to the emails from anywhere at any time.

281,283. Global Relay caters to regulated industries, states on its website “We provide solutions to more than 70% of all FINRA Broker-Dealers” (at [globalrelay.com/solution/broker-dealer](http://globalrelay.com/solution/broker-dealer)), maintains “Solutions for Registered Investment Advisors” page at [globalrelay.com/solution/investment-advisor](http://globalrelay.com/solution/investment-advisor), and publishes a free “SEC compliance Guidebook” on its website detailing the IAA’s and its regulations’ record keeping requirements for investment advisers and Globally Relay’s corresponding solutions.

282,284. Global Relay software is designed to accommodate clients using multiple email accounts.

283,285. Global Relay software provides users sophisticated email monitoring, alerts, indexing, filtering, and Boolean searches, all designed for compliance reviews of emails

and their attached documents. Such tools include displaying lists of emails and their subject headings that can be scanned.

**b. Heafner Sent or Received Hundreds of Emails Relating to 1 Global MOIs that a Reasonable Email Review Would Have Detected**

284-286. Heafner sent and received at least hundreds of emails to and from 1 Global attaching MOI records, including to make the investment, disburse funds, and learn his commissions. Such emails were to or from Heafner's regular work email address, which is what he used with RWA's and FFI's clients.

285-287. 1 Global sent Heafner's clients—who were also RWA's and FFI's clients—welcome emails and emails attaching monthly statements that carbon copied Heafner's regular work email address.

286-288. Some of Plaintiff Rapp's emails from 1 Global that carbon copied Heafner's regular work email address are in Exhibit L. Their subject headings include "Welcome to 1st Global Capital" and "1st Global Capital - January 2018 Portfolio Statement." RWA's and FFI's clients—including the Plaintiffs—collectively received at least hundreds of similar emails from 1 Global that carbon copied Heafner.

287-289. Heafner used his same regular work email address to conduct business about FFI accounts.

288-290. RWA and FFI were required to keep records in Heafner's emails about MOIs and FFI.

289-291. RWA and FFI could not have maintained procedures reasonably designed to prevent them and Heafner from violating fiduciary duties and securities laws without following industry standards to use Global Relay to archive all Heafner's emails and review them and their attachments at least monthly.

290-292. RWA and FFI would have seen that portfolios Heafner recommended and monitored included MOIs if they had used industry standards to review his emails during the approximately one year that he incorporated a MOI in portfolios with an annuity and an FFI account.

291-293. If FFI and RWA had reviewed Heafner's emails, when 1 Global records turned up, a compliance staff following standards of conduct would have followed-up on any questions about MOIs by, for instance, looking at 1 Global's website and searching the SEC website for any securities registration or exemption requests, which would have revealed significant red flags for compliance professionals.

292-294. RWA and FFI possessed the direct or indirect power to control or influence Heafner recommending MOIs by following industry standard to use Global Relay to review his emails.

**VIII. HEAFNER WAS AN AGENT OF RWA AND FFI, AND THEY AUTHORIZED AND RATIFIED HEAFNER'S MOI RECOMMENDATIONS, OFFERS, AND SALES**

293-295. Plaintiffs incorporate the above paragraphs as if fully set forth throughout § VIII.

**A. Heafner Was RWA's and FFI's Servant, Agent, or Employee**

294-296. Heafner held himself out in Charlotte as an investment adviser with a fiduciary duty specializing in advice for retirement, and he was permitted to hold himself out as such only because RWA registered him as its IAR with North Carolina and he was its and FFI's supervised person.

295-297. Heafner's registration as an IAR was only effective if a firm registered him as its IAR.

~~296,298.~~ While registered with RWA, except for FFI, Heafner could not be registered with, employed by, or associated with another RIA registered with the SEC or North Carolina for whom he provided investment advice. His investment advice was covered only under RWA's and FFI's SEC registration, and only when on their behalf.

~~297,299.~~ Heafner provided investment advice on behalf of RWA and FFI, as memorialized in the plans in Exhibit G that state advice like allocations, risks, and "Benefits" for recommended MOIs and FFI.

~~298,300.~~ RWA and FFI maintained control over Heafner's work details because they were subject to RWA and FFI ensuring they complied with their ethics codes, policies and procedures, and securities laws.

~~299,301.~~ RWA's and FFI's control of Heafner included a discharge for his work details violating their ethics codes or policies or procedures, securities laws, or industry standards and filing a Form U-5.

~~300,302.~~ Heafner's occupation was as an IAR, and RWA and FFI continually employed and paid him for his services in this capacity for a period that was to cease only upon this employment terminating.

~~301,303.~~ Heafner was not RWA's or FFI's independent contractor but their servant, agent, or employee since he worked for them and he and his work detail remained subject to their control.

~~302,304.~~ RWA and FFI put Heafner in a position that enabled him, while acting within his express or implied authority, to commit the acts related to MOIs that led to Plaintiffs' losses.

~~303~~305. Heafner committed his acts related to MOIs within the scope of his authority to provide advisory functions as a servant, employee, or agent of RWA and FFI while furthering their business as RIAs.

**B. RWA and FFI Ratified Heafner Offering and Selling MOIs**

~~304~~306. Plaintiffs incorporate the above paragraphs as if fully set forth in this Section B.

**a. RWA and FFI Had Full Knowledge of All Material Facts and Circumstances of Heafner Offering and Selling MOIs**

~~305~~307. Heafner discussed with RWA and FFI recommending MOIs and FFI as a course of conduct.

~~306~~308. While undertaking this course of conduct, Heafner left a trail of documents and emails RWA and FFI should have kept and reviewed, like one-page plans and records in emails.

~~307~~309. A person of ordinary intelligence would have inferred Heafner was recommending MOIs based on facts available to RWA and FFI, and their knowledge is inferable from availability of information.

~~308~~310. RWA and FFI had actual or effective knowledge of the material facts and circumstances concerning Heafner recommending, offering, and/or selling MOIs.

**b. RWA and FFI Expressly or Impliedly Ratified Heafner Recommending MOIs**

~~309~~311. RWA and FFI, by words or conduct, showed an intention to ratify Heafner's acts related to recommending, offering, and selling MOIs while offering FFI.

~~310~~312. RWA and FFI expressly or impliedly ratified Heafner offering or selling MOIs.

~~311-313.~~ RWA's and FFI's intent to ratify Heafner offering or selling MOIs is shown by their failing to timely repudiate any act of his that they did not authorize or that they disapproved of related to MOIs.

c. **RWA and FFI Could not Ratify Heafner Offering FFI's Products or Services Without Also Ratifying His Offering MOIs**

~~312-314.~~ Heafner recommended new clients in one act on one page a portfolio including a MOI and FFI to offer on behalf of RWA and FFI to reinvest the clients into the portfolio.

~~313-315.~~ Heafner recommended existing clients MOIs as part of RWA's portfolio monitoring services, which provided more options and helped retain clients in FFI accounts.

~~314-316.~~ RWA and FFI could not retain the benefits of Heafner recommending and offering portfolios including an FFI account and a MOI while either repudiating the burdens of his offers or maintaining his making them was outside the scope of his authority.

~~315-317.~~ RWA and FFI must have ratified the whole of Heafner recommending and offering a portfolio that included a MOI and FFI, or not at all.

~~316-318.~~ RWA and FFI ratified Heafner recommending, offering, and selling MOIs.

C. **Heafner was RWA's and FFI's Agent When He Recommended MOIs Because He Did So Within the Scope of Their Express or Actual Authority**

~~317-319.~~ RWA expressly authorized Heafner to conduct its portfolio management and financial planning to create RWA's plans recommending portfolios, as alleged in ¶¶ ~~75-106~~~~77-108.~~

~~318-320.~~ Heafner was authorized to advertise all his advice was offered by RWA.



~~319,321.~~ RWA's Firm Brochure does not state its IARs only offer FFI; it states they recommend portfolios. Ex. F at 5. RWA and FFI authorized Heafner to recommend FFI in a portfolio of products.

~~320,322.~~ FFI directed him to perform its investment management services, as alleged in ¶¶ ~~107-124~~ 109-126 in § I.D.d.-e., above.

~~321,323.~~ On behalf of RWA and FFI, Heafner created plans recommending portfolios including FFI and a MOI that also included investment advice about risks, allocations, benefits, and projections. Ex. G.

~~322,324.~~ RWA and FFI expressly authorized Heafner to recommend, offer, and sell MOIs because his doing so was incident to performance of duties that they entrusted to him.

~~323,325.~~ Heafner recommended MOIs with actual authority from RWA and FFI because he recommended MOIs and FFI in a course of conduct that he believed he had authority to continue, and RWA and FFI conferred actual authority intentionally or by want of ordinary care.

~~324,326.~~ Heafner's actual authority is implied from circumstances and conduct. For a year, he used his regular work email and books and records to recommend MOIs and FFI on behalf of RWA and FFI, and he implemented clients' plans. He did so subject to RWA's and FFI's supervision, ethics codes, and policies and procedures, and RWA and FFI did not fire him until after the Bankruptcy.

~~325,327.~~ RWA and FFI are liable for Heafner's acts related to MOIs because he was their agent acting within the scope of their express and/or actual authority when he performed them.

**IX. MOIs ARE UNREGISTERED SECURITIES**

[326-328.](#) Plaintiffs incorporate the above paragraphs as if fully set forth throughout § IX.

**A. MOIs Are Notes That Are Securities**

[327-329.](#) MOIs are notes. *Reves. v. Ernst & Young*, 494 U.S. 56 (1990) established that notes are presumed securities, defendants overcome the presumption by either showing a note at issue resembles a note on a recognized list of exceptions or a new exception should be recognized, and to determine if the note resembles an exception or to recognize a new exception, courts must considered these four questions:

**1. What Were the Motivations to Issue, Sell, and Purchase MOIs?**

[328-330.](#) 1 Global was motivated to issue MOIs because it raised nearly all its capital from them to finance its operations and investments (Ex. B ¶¶ 3 and 64), its agents—like Heafner—recommended them to earn commissions, and investors—including Plaintiffs—wanted to passively earn interest.

**2. What Was the Plan to Distribute MOIs?**

[329-331.](#) 1 Global recruited more than 100 financial advisers from more 25 states to be agents recommending MOIs to retail investor clients, gave agents marketing material to present to retail investors, did not restrict the amounts of MOIs sales, incentivized agents to sell as many as possible with 3% commissions, and incentivized agents to keep investors in MOIs by paying another 3% upon MOI renewals.

**3. Would A Reasonable Member of the Investing Public Consider MOIs an Investment?**

[330-332.](#) Advisers, like Heafner, promoted MOIs as passive investments paying more interest when 1 Global earned more profits and recommended them to investors seeking

advice, like Plaintiffs. Most investors liquidated other investments to buy MOIs, and at least 1,000 creditors of 1 Global are IRAs.

4. **Was an Alternative Regulatory Scheme Available to Oversee MOIs Outside of SEC and State Securities Regulations and Oversight?**

~~331-333.~~ Bank instruments are subject to oversight like FDIC, SEC, and FINRA regulation and examinations; stock exchange traded securities are subject to rules and oversight by exchanges regulated by the SEC and FINRA and audits by CPA firms regulated by the PCAOB; and annuities are subject to state insurance licensing and regulations such as requirements to ensure annuities are suitable to an investor.

~~332-334.~~ MOIs were unregulated because they were not registered with the SEC or state regulators, which enabled Ruderman’s fraud. The SEC continually warns that unregistered securities pose high risks from fraud, and the SEC and North Carolina Securities Division and their rules and laws forbid offers or sales of unregistered securities that are not exempt from registration requirements.

B. **MOIs Cannot Meet Any Exception to The Presumption That Notes Are Securities Because They Were Unsecured**

~~333-335.~~ Exceptions to the presumption that notes are securities involve notes secured by collateral, and MOIs were unsecured. 1 Global’s website stated it was simple and quick for merchants to obtain “*unsecured* business cash advances.” Ex. B ¶ 34 (emphasis by SEC); *see also* Ex. D at 3. Merchants contracted with 1 Global to obtain loans, investors were not parties to the agreements, and 1 Global assigned no collateral to investors—like receivables from a merchant—that investors could collect from the merchant upon 1 Global’s default. All 2,400 plus MOI investors with Bankruptcy claims are unsecured creditors.

**C. MOIs Are Also Investment Contracts and Evidence of Indebtedness That Are Securities**

~~334~~336. MOIs are investment contracts and evidence of indebtedness that are securities under the NCSA and Securities Act.

**D. It Was Unlawful to Offer or Sell MOIs**

~~335~~337. MOIs are securities as alleged in A-C, above. The SEC's complaint against Ruderman alleged MOIs are securities. The U.S. District Court for the Southern District of Florida denied Ruderman's motion to dismiss arguing they are not securities and ruled, under *Reves*, MOIs are securities.

~~336~~338. MOIs were not exempt from the Securities Act's or NCSA's requirements to register them with the SEC and North Carolina, respectfully. They were unregistered, thus, unlawful to offer or sell.

**X. PLAINTIFFS**

~~337~~339. Heafner conducted RWA's and FFI's investment advisory services for Plaintiffs.

**A. Gail Howell**

~~338~~340. Howell is 67-year-old and retired. She graduated from community college in 1969 and worked as a designer and trainer for a funeral services company for thirty-eight years and retired in 2017.

~~339~~341. Howell has no investment sophistication. Upon retirement, she had about \$9k in an IRA and about \$484k in a 401(k) invested in a stable value mutual fund, and she wanted to find the best investment adviser to ensure she was suitably and safely invested for her retirement.

340,342. On a family member's suggestion, Howell watched Heafner on WBTV and saw him tout his retirement investment expertise and say he is a fiduciary. Howell researched him and saw him described as a best-selling author of retirement investment books and featured guest of network and cable stations. She believed her due diligence found the best adviser and set an appointment with Heafner.

341,343. In or around early December 2017, Howell went to Heafner's office for an initial consultation and was impressed to meet him. She remembers he dressed immaculate, was eloquent, and reinforced he was a fiduciary. Heafner elicited information about her life, finances, investments, and goals. She said multiple times she was unwilling to take risks, and he said he knew she did not want any risk.

342,344. On or around December 14, 2017, Howell went back to Heafner's office for a follow-up meeting during which he presented a financial plan recommending she reinvest her savings into a new portfolio of \$247k in an annuity, \$150k in FFI, and \$100k in a MOI. Heafner told Howell MOI benefits included a 9-month term and a current rate of return of 9%. He told Howell a MOI was suitable for her.

343,345. Howell asked Heafner if he was comfortable that a MOI was a safe, conservative investment, with minimal risk, and he responded that the stock market she was invested in was very risky and a MOI was more conservative and safer and had had virtually no risk.

344,346. Heafner showed Howell a one-page financial plan color-coding her current investments red for "High Risk," the recommended annuity green for "Safe," and recommendations of FFI and MOI yellow for "Low Risk." *See* Howell Dec. 14, 2017 Plan at Ex. G. Her one-page plan states MOI "Benefits" are "Current 9%" return, "9 Month" terms, and

“Growth,” and it states in a column labeled “Income Now” that MOIs had a “5% withdraw rate” and the recommended MOI would pay “\$5,000” of income now. *Id.*

[345,347.](#) Heafner also advised why FFI was suitable and how it would meet her objectives and needs and selected an FFI strategy for her. She accepted Heafner’s recommendation for him to reinvest her into the portfolio because she believed he was an expert adviser and a fiduciary acting in her best interests.

[346,348.](#) Howell recalls that, in about her second or a third meeting at Heafner’s office, she first received paperwork to be reinvested into the portfolio, was asked to sign it during the appointment, and was told where to sign as someone else flipped pages while providing very little or no explanation of terms.

[347,349.](#) Heafner’s records state that he transferred funds out of Howell’s 401(k) on December 28, 2017. Howell recalls these funds sat idle as cash in a custodial account for a month before Heafner moved them into a MOI, and 1 Global’s records state Howell was not invested into a MOI until February 2, 2018. On February 2, 2018, Heafner’s financial planning led to Howell investing in a \$99,425 MOI.

**B. Scott and Kea Hrvatin**

[348,350.](#) Mr. and Mrs. Hrvatin are married, have been together for over sixteen years, and are both 55 years old. Mr. Hrvatin is an unemployed engineer and Mrs. Hrvatin majored in theatre and earns about \$50k a year managing a restaurant. Before meeting Heafner, Mr. Hrvatin’s prior salary and their modest living allowed them to save \$1.7 million held in low-cost Vanguard index funds in Mr. Hrvatin’s IRAs, brokerage accounts managed by his broker, a \$15k annuity, \$26k in Mrs. Hrvatin’s IRA, and \$307k of cash.

~~349~~351. Mr. Hrvatin is not a sophisticated investor. His investing experience included buying Vanguard index funds, having his broker manage investments, and buying a \$15k annuity over ten years ago. Mrs. Hrvatin relies on him for investment decisions and lacks any investment product sophistication.

~~350~~352. Throughout 2016-2017, during respective weekday drives home from work, the Hrvatins listened to WBT radio and heard ads promoting Heafner as an investment adviser. Mr. Hrvatin recalls they said this meant Heafner was a fiduciary required to act in clients' best interests, unlike brokers. They recall his tagline and WBT hosts endorsing him as a retirement specialist. In late 2017, they wanted an investment adviser who is a fiduciary to decrease risks to their savings to preserve their wealth. In about January 2018, they called Heafner since they knew him to be a fiduciary and retirement planning expert.

~~351~~353. In or around the beginning of January 2018, the Hrvatins went to Heafner's office for an initial consultation. In his waiting room, they saw his books and pictures of him with celebrities. In the consultation, Heafner said he was a fiduciary and elicited information about their lives, finances, investments, and goals and used a white board and visual aids to explain his services and investing concepts. They said that they were risk averse and wanted a conservative strategy to preserve their wealth.

~~352~~354. In the initial consultation or a follow-up, Heafner told the Hrvatins, while there is normally a \$3,000 charge for financial plans, he could waive the fee if they use his services.

~~353~~355. On January 10, 2018, the Hrvatins went to Heafner's office for a follow-up. In this meeting, Heafner presented a financial plan recommending they reinvest their savings into a portfolio of \$723k in annuities, \$967k in FFI, and \$272k in a MOI. *See Hrvatins' Plan at*

Ex. G (coloring all current investments red for “High Risk,” a recommended annuity green for “Safe,” and recommended MOI and FFI yellow for “Low Risk” and stating MOIs offer “Current 9%” return, “9 Month” terms, and “Growth”).

~~354,356.~~ In the meeting, Heafner said 1 Global was safe and avoided risks because it diversified micro loans to many businesses. The Hrvatins asked follow-up questions, including if it could fail, and Heafner assured them 1 Global could not fail due to it diversifying loans to many businesses. Heafner said MOI benefits include a 9% historical rate of return and withdrawable capital in nine months. Heafner also explained how FFI was suitable and would meet their objectives and needs.

~~355,357.~~ They accepted Heafner’s recommendation to have him invest them into the new portfolio because they found him knowledgeable and trustworthy and knew he was a fiduciary. The plan was to be executed in stages, and the first stage was to invest \$117k in FFI, \$40k in an annuity, and \$250k in a MOI.

~~356,358.~~ Within two weeks, the Hrvatins went to Heafner’s office to sign paperwork for him to begin implementing the plan. While there, they received a lot of paperwork for the first time, were told to sign before leaving, were shown where to sign without terms being explained, and did not receive copies.

~~357,359.~~ Heafner struggled to implement the plan, did not invest them into a MOI until March 20, 2018, and the annuity fell through due to his errors; the Hrvatins left him after the bankruptcy.

~~358,360.~~ In February 2019, Mr. Hrvatin’s employer downsized and let him go, and this combined with his stress from 1 Global led him to take time off before looking for a new job.



~~359,361.~~ Heafner's financial planning led to the Hrvatins' \$250,000 MOI investment.

**C. Steven Rapp**

~~360,362.~~ Rapp is a 60-year-old engineer for a food packing container manufacturer.

~~361,363.~~ Before meeting Heafner, Rapp had seen him on WBTV promoted as an expert in retirement solutions, and Rapp recalls Heafner would promote offering safe retirement planning.

~~362,364.~~ In the Fall of 2017, Rapp was 58, had saved about \$1.05 million, anticipated retiring within seven years, and wanted an investment adviser to ensure he had a conservative strategy suitable for his age providing moderate growth potential while prioritizing wealth preservation. Rapp made an appointment with Heafner because he saw him on WBTV and wanted an expert to provide a suitable plan.

~~363,365.~~ On August 31, 2017, Rapp went to Heafner's office for an initial consultation, and there he noticed on display Heafner's credentials, an autographed guitar, pictures with celebrities, and investment books written by Heafner. In the meeting, Heafner said he was a fiduciary and used visual aids and a white board to describe his financial planning services and solutions. He elicited information about Rapp's life, finances, investments, and objectives. Rapp said about 5% to 7% returns would be fine, but he prioritized a low risk strategy suitable for his age and anticipated retirement to preserve his wealth.

~~364,366.~~ On September 22, 2017, in a follow-up at his office, Heafner presented Rapp a financial plan recommending he reinvest into a portfolio of about \$536k in annuities, about \$371k in FFI, and a \$121k MOI. Heafner used printed visual aids, projector displays, and a white board to present it. He said 1 Global was a safe because it diversified loans to thousands

of businesses. Rapp asked follow-up questions, including what is the worst thing that could happen to 1 Global if some of the businesses it lent cash to went bankrupt. Heafner said the worst that could happen is 1 Global pays its investors a lower interest rate, and he said that 1 Global could not fail. Heafner said MOIs paid 8%-9% or more and had nine-month terms.

365,367. Heafner showed Rapp a one-page plan (see Rapp's plan in Ex. G) that colored all his then current investments red for "High Risk." It has five green boxes under "Current Positions" representing cash positions of about \$306k—i.e., about 29% of his savings was cash. The plan colored recommended annuities green for "Safe" and recommended FFI and MOI yellow for "Low Risk" and said MOIs offered "Low Risk," "Growth," "Current 9%" returns, and "9% Growth rate and 5% withdrawal rate."

366,368. Heafner also orally and in writing explained why FFI was suitable. See Ex. G.

367,369. Rapp requested another appointment to ask more questions about the portfolio. In this meeting, Heafner assured him 1 Global was suitable for Rapp and Rapp accepted the recommendation for Heafner to reinvest all his investment savings into the new portfolio because Rapp trusted Heafner.

368,370. On October 31, 2017, Rapp went back to Heafner's office to sign paperwork for Heafner to implement the new portfolio. In the appointment, Rapp was given significant amounts of documents, told where to sign by sticky notes as someone else flipped through pages, was provided minimal explanations of terms upon request only (including MOI terms), and was not provided copies.

369,371. Rapp's MOI investment and sale was completed on November 6, 2017, at which time, he was invested into a \$110,000 MOI as a result of Heafner's financial planning.

**D. Alice Shrader**

370,372. Shrader is 56 years old, has been married to her husband (collectively the “Shraders”) for 24 years, and has two stepchildren and three children, including a college sophomore. In February 2018, she retired after teaching high school language for 30 years in North Carolina public schools. Her husband is 65, and ~~in 2006~~, he retired in 2006 from North Carolina public schools as a principal and former elementary school teacher. They are unsophisticated investors.

371,373. In the spring of 2016, they had saved about \$241k consisting of about \$44.5k of mutual funds in IRAs, about \$80k in an annuity in Shrader’s 403(b), about \$50k in a joint CD, about \$42k of cash in a bank, and a 529 college savings plan consisting of about \$12.5k in an annuity and about \$12.3k in mutual funds. Shrader wanted a financial adviser to ensure her inherited IRA was properly managed.

372,374. Before meeting Heafner, driving home from work, Shrader would listen to WBT and often hear Heafner’s ads emphasizing he was unique because he was a fiduciary. She recalls this meant he had to act in clients’ best interests. Her husband also heard the WBT ads. Notably, they heard WBT’s Keith Larson promote Heafner. In March or April 2016, Shrader made an appointment with Heafner since she believed he could be trusted to help manage retirement issues with her inherited IRA.

373,375. On April 4 or 14, 2016, the Shraders went to Heafner’s office for an initial consultation where they recall seeing pictures of Heafner with celebrities and a television screen in the waiting room broadcasting Heafner discussing the value of a fiduciary. In the consultation, Heafner said he was a fiduciary and elicited information about their lives, finances,

investments, and objectives. She said she would retire in two years upon teaching for 30 years and they wanted a conservative strategy suitable for their ages.

374,376. On May 3, 2016, they went in for a follow-up and Heafner presented a financial plan recommending they reinvest \$130k into two annuities and \$40k into FFI. Heafner also showed them a visual of the recommended portfolio, which color coded all their current investments red for “High Risk,” *including one or more annuities*. See Shrader May 3, 2016 Plan at Ex. G. The plan color coded the FFI recommendation yellow for “Low Risk” and *recommended annuities green for “Safe.”* *Id.*

375,377. In July 2016, the Shraders saw Heafner for a follow-up, they were shown a slightly updated plan (*see id.*), and they trusted him and accepted his advice to invest into the recommended portfolio. In the next two months, Heafner transferred \$130,000 of their savings into annuities and set up an FFI account.

376,378. On or about November 1, 2017, before retiring on or about February 1, 2018, Shrader met Heafner to discuss reinvesting her 403(b) plan and unused paid-time-off payout. He recommended she invest all of it into a MOI, but he offered very little information about it or 1 Global. On November 1, 2017, Shrader signed a MOI instrument for \$81,662.31 because she implicitly trusted Heafner.

377,379. On January 11, 2018, since she knew little about 1 Global, she emailed Heafner’s office: “I cannot remember more about this company into which I am moving a large sum of money. Can you refresh my memory please?” His office emailed back that day: “We are investing your Great American account in a company called 1st Global Capital. They are a Merchant Cash Advance Company. I have attached some information about this company to this email.” The email attached 1 Global’s brochure and FAQ.

~~378,380.~~ Due to Heafner's administrative issues, Shrader's investment was significantly delayed, and over the next four months, she exchanged many calls and emails with Heafner about his troubles investing her into a MOI, which did not occur until May 24, 2018. With all her time off payout and 403(k) funds, Shrader became invested in a \$94,307.66 MOI on May 24, 2018 as a result of Heafner's financial planning.

~~379,381.~~ In 2019, Shrader unretired to work fulltime as a teacher to help recuperate some of her MOI losses.

**E. Jonathan Turner**

~~380,382.~~ Turner is 61 years old, has been married to his wife for more than 30 years, and they have three adult children. Turner has an associate degree and has worked with software for an energy company for twenty years. He and his wife are unsophisticated investors.

~~381,383.~~ In late 2017, Turner had saved about \$663k consisting of \$433k in mutual funds in a 401(k) and \$230k of Vanguard index funds in IRAs. He also has a pension plan he does not control guaranteeing future cash of \$165k upon a set age. In late 2017, he wanted an adviser to ensure he had a safe strategy that avoided risks and preserved his capital for his wife and him in retirement and for their son who has Asperger syndrome. In December 2017, he contacted Heafner because, throughout 2017, he saw his TV appearances and heard his WBT ads touting him as a retirement investment expert and a fiduciary.

~~382,384.~~ On December 27, 2017, Turner and his wife went to Heafner's office for an initial consultation where they saw his credentials and accolades prominently displayed. In the meeting, Heafner said he was a fiduciary and asked Turner about his life, finances, and objectives, who said he wanted to avoid risk and preserve principal for retirement and his son with Asperger's.

~~383-385.~~ On January 11, ~~2019~~2018, Turner and his wife met Heafner who presented a financial plan recommending a portfolio of \$299k in an annuity, \$204k in FFI, and \$160k in a 1 Global MOI. See Turner's Plan at Ex. G (coloring current positions—*and his pension plan*—red for “High Risk,” the recommended annuity green for “Safe,” and the recommended FFI and MOI yellow for “Low Risk.” *Id.*

~~384-386.~~ Heafner told Turner FFI earned about 7%-8% and never lost money and 1 Global loaned cash to small businesses and was a safe short-term investment currently paying 9% interest. Turner's wife asked if 1 Global could go bankrupt, and Heafner said that could only happen if all the businesses that 1 Global lent money to went bankrupt. Turner trusted Heafner and agreed to invest into the portfolio.

~~385-387.~~ On January 24, 2018, Turner went to Heafner's office to sign paperwork for him to implement the portfolio, and while there, was presented with a large amount of paperwork. Turner was asked to sign before leaving, was told where to sign, was not instructed to add dates, and no one explained in any, or more than cursory, detail any contract terms.

~~386-388.~~ Due to Heafner's administrative struggles, Turner's money was not reinvested for about three months, and Turner recalls his funds sat idle as cash in a Fidelity account.

~~387-389.~~ On April 26, 2018, a date was added to Turner's MOI contract.

~~388-390.~~ On May 2, 2018, 1 Global emailed Turner and Heafner stating it just received his funds; on this date, Turner purchased a \$159,425 MOI due to Heafner's financial planning.

F. Carol Wiggins

~~389~~391. Wiggins is 61 years old, has been married to her husband for fifteen years, and has a high school diploma. She has worked for a bank for eighteen years helping customers with their bank accounts. Her husband's highest degree is also a high school diploma, and he was a laborer, building and maintaining trains before he retired. Neither ever worked with investments and both are unsophisticated investors.

~~390~~392. In 2016, every day driving home from work, Wiggins listened to WBT and heard ads promoting Heafner as an investment adviser. The ads said this meant he is a fiduciary who must act in clients' best interests free of conflicts from commissions, unlike brokers. She also recalls WBT's Keith Larson say he was Heafner's client and highly recommended him.

~~391~~393. In August 2016, Wiggins and her husband had \$500k in savings consisting of cash, \$190k of stock her husband inherited, and \$231k in her 401(k). They wanted help reinvesting the stock. Knowing Heafner was a fiduciary with a legal standard and good reputation, she called him for an appointment.

~~392~~394. On August 4, 2016, the Wiggins met Heafner for an initial consultation, and in his waiting room she saw a book that appeared to be written by him and Steve Forbes, bolstering her trust. In the consultation, they told Heafner they wanted to discuss the inherited stock, and he elicited information about their lives, finances, investments, and objectives. They said Mr. Wiggins was retired, she may retire within five years, and their objective was a conservative plan suitable for their ages and preserving principal.

~~393~~395. In August, September, or October 2016, they met Heafner again, and he presented a plan recommending a portfolio of \$216k in a joint FFI account and \$255k in an annuity. See Wiggins Plan at Ex. G (coloring current investments red for "High Risk" and

recommended investments green for “No Risk” or yellow for “Low Risk”). Orally and in writing, Heafner advised on how FFI would meet their objectives. *Id.* They trusted him and followed his advice to reinvest the stock into a joint FFI account.

394,396. Heafner said, since they were risk averse, he chose an FFI strategy converting their account to cash if it lost 7% and then reinvesting at a more optimal time, which sounded safe to them. Since Wiggins was under fifty-nine and a half, the rest of the plan involving her 401(k) was postponed.

395,397. On February 16, 2018, when Wiggins was 60, the Wiggins met Heafner again to tell him she would retire at age 62 and to discuss implementing the rest of the plan. Heafner amended the plan and recommended she move her 401(k) into a \$150k annuity and a \$126k MOI issued by 1 Global, which he repeatedly called a “lending contract company.” Heafner said 1 Global was safe because it diversified loans among thousands of businesses and had been around awhile, was suitable for them, and could only go bankrupt if every small business it made loans to went bankrupt. Heafner said MOI benefits included funds withdrawable in nine month and providing 9% returns. He made it sound safe, simple, and suitable.

396,398. Wiggins did not commit to the plan in the meeting since she wanted to consider the annuity, which sounded complex. On February 23, 2018, after Heafner had not heard back from Wiggins, his office followed up by emailing her more information about 1 Global.

397,399. In the end of February or beginning of March, Heafner’s office mailed her paperwork to transfer her 401(k) into the new investments with stickies indicating where to sign. Wiggins did not understand the MOI contract or some other paperwork, but she knew Heafner



was a fiduciary and signed and mailed it back. On March 20, 2018, Heafner's planning led to Wiggins investing in a \$124,783 MOI.

**G. David Wright**

398,400. Wright is 66 years-old and does not have a college degree. He has four children, and he and his wife of 21 years have an eighteen-year-old daughter who just started college.

399,401. In December 2015, Wright was a director for Duke Energy, his employer of 42 years, and he wanted help reinvesting his 401(k) since he planned to retire in January 2016. He heard about Heafner through word-of-mouth and on WBT radio and later called him for an appointment after seeing him described as a fiduciary and retirement investment expert on WBT, as Wright believed the longest running Charlotte station would invite on trusted experts.

400,402. In December 2015, Wright went to Heafner's office for an initial consultation, and in the waiting room, Wright saw videos on TV screens suggesting a person should use a fiduciary. During the consultation, Heafner told Wright he should use a fiduciary and elicited information about Wright's life, finances, investments, and objectives. Wright mentioned his planned retirement and said he wanted a conservative strategy with reliable retirement income.

401,403. In January 2016 in a follow-up meeting, Heafner presented Wright a plan recommending he reinvest all his investments into a portfolio of an annuity and FFI. Heafner offered to reinvest Wright into the portfolio, and Wright accepted. Heafner did FFI's risk assessment and selected a trading strategy.

402,404. Afterward, Wright met Heafner periodically to discuss his investments, and in a February 13, 2018 meeting, Wright asked Heafner for advice about savings set aside for

his daughter's college that he emphasized had to be preserved for this purpose. Wright said he was interested in a safe, short-term option with small returns above what bank accounts pay. Heafner recommended a 1 Global MOI that he said was safe since it diversified loans to many businesses and could only fail if every businesses it lent cash to went bankrupt at once. Heafner said MOI benefits included a 9% return and funds withdrawable in nine months.

[403.405.](#) Wright trusted Heafner and followed his recommendation to invest in a MOI. On or around the next day, Wright went to Heafner's office and received MOI paperwork, he was asked to sign there, no one explained the terms, and he recalls getting a copy on a later date. On February 14, 2018, Wright bought a \$100,000 MOI as a result of Heafner's financial planning.

**H. Estate Sheila Marlowe Fetner**

[404.406.](#) On May 26, 2019, Ms. Fetner died at the age of 68 and was survived by her only child, Mr. Fetner. Ms. Fetner obtained a master's degree in vocal performance and taught music in the Mecklenburg school system before working more than 20 years in human resources for a property manager until her death. During her last twenty-one years, she also served as a choir director for a church in Charlotte.

[405.407.](#) When she died, Ms. Fetner was a longtime resident of a modest home in Charlotte that was less than two miles away from Mr. Fetner's residence in Charlotte.

[406.408.](#) Until her death, Mr. Fetner and Ms. Fetner had a good relationship and would often visit each other and discuss their lives and careers. He knows from their relationship and being executor of her estate that she lacked investment sophistication and intended to retire from her fulltime job in 2020.

[407.409.](#) Mr. Fetner is aware that Ms. Fetner was depending upon her 401(k) to support her in retirement. Based upon his first-hand knowledge of Ms. Fetner and her finances, and on what is reasonably inferable about what Ms. Fetner's financial needs were, Mr. Fetner believes with a high level of certainty that Ms. Fetner would have wanted safe investments.

[408.410.](#) Documents that Ms. Fetner possessed and electronically transmitted before she died indicate that she met with Heafner multiple times to discuss her investments beginning in the late summer or fall of 2017 and continuing at least through April 12, 2018. *See* Ms. Fetner's One-Page Financial Plan in Exhibit G (the "Fetner Plan"); *see* Ms. Fetner's Documents at Exhibit M (the "Fetner Documents").

[409.411.](#) Ms. Fetner possessed a black and white copy of the Fetner Plan, which is substantially like the plans in Exhibit G Heafner prepared for the other Plaintiffs.

[410.412.](#) The Fetner Plan is dated November 15, 2017 and states at the top "Sheila Fetner Visual of Recommendations," and its date and content indicate that Ms. Fetner met Heafner at his office for a follow-up meeting on this date, during which, he presented her the Fetner Plan.

[411.413.](#) The Fetner Plan communicated to Ms. Fetner her \$15,000 cash in a bank was "Safe" and her Vanguard 401(k) with \$497,583 of investments was a "High Risk" position. *Id.*

[412.414.](#) The Fetner Plan recommended Ms. Fetner (A) keep her cash and (B) liquidate her 401(k) and transfer the funds into 1) "1st Global \$100,000" and 2) "AIG Power Select Plus Income \$397,588." *Id.*

[413.415.](#) The Fetner Plan communicated the recommended AIG annuity was “Safe” and the recommended \$100,000 1st Global—i.e., MOI—was “Low Risk” and offered “Growth” and “Historical 9%” returns. *Id.*

[414.416.](#) The Fetner Plan states that the recommended MOI would both pay Ms. Fetner an annual income of \$11,665 *and grow in value by 9%*. *Id.* On information and belief, Heafner projected the income the MOI would pay Ms. Fetner by assuming that it paid a per annum rate of 11.665%—i.e., a monthly rate of just under one percent and a nine-month rate of just under 9%.

[415.417.](#) The Fetner Plan indicates that when Heafner met Ms. Fetner on November 15, 2017, he provided the investment advice stated in the Fetner Plan that is set forth in the preceding five paragraphs.

[416.418.](#) Ms. Fetner signed a MOI contract on December 7, 2017 which was later crossed out and January 12, 2018 written in. On January 12, 2018, 1 Global sent Ms. Fetner an email that carbon copied Heafner, confirmed it just received \$99,425 of her funds, and stated: “reach out to Jim Heafner for assistance.” *See* Fetner MOI in Ex. N and Fetner January 12, 2018 Email.

[417.419.](#) On April 12, 2018, Ms. Fetner signed an addendum to add \$15,982.27 to her MOI, and on April 17, 2018, 1 Global sent her an email carbon copying Heafner that confirmed it received her new funds. *See* Fetner MOI at Ex. N (addendum on last page); Fetner Apr. 17, 2018 email at Ex. M at 5.

[418.420.](#) Thereafter, Heafner included Ms. Fetner on emails to his clients containing investment advice (like her January 29, 2019 email in Exhibit N at 1), which stated at

the bottom “Investment Advisory Services offered through Retirement Wealth Advisers (RWA), a Registered Investment Advisor.”

421. On January 12, 2018, Ms. Fetner purchased a MOI that Heafner recommended, and on April 17, 2018, she invested \$15,982.27 more to raise her MOI principal to \$115,407.27.

**I. Susan Goldman**

422. Goldman is a sixty-five-year old retired therapist. Her and her ex-husband divorced in October 2016. They have two adult children.

423. Goldman’s ex-husband handled their finances, and she has no investment sophistication. She inherited her father’s farm and obtained about \$440,000 by selling it in 2017.

424. Shortly thereafter, in August or September 2017, she saw Heafner on a WBTV show in which he was presented as a guest and “The Retirement Adviser for the Carolinas.” The program said the first five callers with over \$500,000 would receive a copy *Succession*.

425. Goldman called, qualified for a book, and set up an appointment for September 11, 2017. Shortly before her appointment, she received his book in the mail and read it.

426. Goldman went to Heafner’s office for an initial consultation, during which, she received a pamphlet discussing his services. She read it in the meeting, which stated:

Fiduciary...

As a fiduciary, our team acts in your best interest. We act with loyalty to you, not to a financial institution.

Pamphlet at Exhibit Q at 2. The pamphlet further stated Heafner is a “Certified Independent Fiduciary” (*id.* at 1) and an “independent, certified fiduciary.” *Id.* at 2.

427. The pamphlet states Heafner was RWA’s IAR and his “investment advisory services” were offered by RWA. *Id.* at 1.

428. In the consultation, Heafner discussed his services and elicited information about Goldman's life, finances, investments, and goals. She told him about her divorce, investment and financial experiences, and her money from selling the farm.

429. On October 4, 2017, she had a follow-up with Heafner, during which, he presented her plan in Exhibit G stating she had \$795,756 in savings.

430. Goldman's plan stated her SEP IRA at Charles Schwab holding with \$15,000 of assets was high risk (see Ex. G), even though a detailed outline of her life and finances Heafner gave her in the meeting correctly identified this account had only cash in it.

431. In this meeting, Heafner said 1 Global loans money to small businesses. He "guaranteed" 1 Global would pay her at least 9% in nine months and was "risk free." Goldman asked if it would pay 9% if some of the small businesses defaulted on loans. Heafner said 1 Global factored the defaults into the 9% return. She understood 1 Global guaranteed 9% returns.

432. Heafner said FFI was a "managed account" and little else about it.

433. Goldman trusted Heafner as a fiduciary and followed his advice by agreeing in the meeting to invest \$167,322 into a MOI and about \$28,000 into an FFI account and signing paperwork for the investments in the meeting, which lasted about one-hour in total.

434. She was asked to sign paperwork without reading it. She said she wanted to read the 1 Global contract, which she did, though she did not understand all its terms. She has no recollection of what she signed for the FFI investment or ever receiving a copy of it.

435. On October 6, 2017, Goldman received an email, which was also sent to Heafner's other clients, that described in its first three bullet points the three products that Heafner recommended: (1) MOIs, (2) FFI accounts, and (3) annuities. Exhibit R.

436. In its first bullet point, the October 6, 2017 email stated about 1 Global 1 MOIs:

Get a high return on Short-term money! Bank rates aren't cutting it. If you can commit your money for a 9-month period, we can offer you much higher rates.

Id.

437. In its second bullet point, the October 6, 2017 email stated about FFI accounts:

“Get higher growth in your *Fidelity* accounts!” *Id.* (emphasis added).

438. The title of the email stated underneath Heafner Financial: “Certified Independent Fiduciary.” *Id.* at 1.

439. Goldman did not initially invest more into the recommended portfolio since she was overwhelmed about investing her life savings. Afterwards, she considered Heafner's advice that 1 Global was safe and the 2008 crash showed she could lose money in the markets.

440. On November 7, 2017, Goldman went back to Heafner and said she would follow his prior advice and invest another \$175,000 into a MOI. He again failed to disclose risks about MOIs and had her execute an addendum to her first MOI contract to add \$175,000 in principal.

441. On March 12, 2018, Goldman saw Heafner for advice about investing \$100,000 from a sale of a home she had owned with her ex-husband. He proposed an investment requiring at least \$150,000 down, which she did not have, so she said she would follow his prior advice and invest in another MOI. He had her execute another addendum and again disclosed no risks.

442. Heafner's investment advice led to Goldman investing \$442,322 into a MOI. Goldman has experienced extreme stress over the devastating depletion Heafner caused her life savings. She has been living in a modest apartment as a result of his recommending 1 Global.

**J. Thomas ODell**

443. ODell is 65 years old, has a technical school degree, and repairs x-ray machines. He has been married to his wife for 41 years who has a high school diploma and retired from the North Carolina public schools as a teaching assistant helping children undeforming in reading.

444. ODell and his wife are unsophisticated investors. In the beginning of January 2018, all ODell's savings consisted of about \$830,000 in a T. Rowe Price retirement 2020 fund held in his work T. Rowe Price 401(k) account and immaterial cash. He recalls always putting all his savings into the 2020 retirement mutual fund. His wife has no retirement savings.

445. ODell often listens to WBT Radio in his car. From about mid-2016 through January 2018, he frequently heard Heafner's radio ads saying he was a fiduciary, which meant he puts clients first. Before January 2018, ODell and his wife saw Heafner on WBTV's Morning Break. ODell recalls such ads and appearances said Heafner provided safe retirement plans.

446. ODell set up an appointment with Heafner in January 2018 because he was nearing retirement and wanted an adviser to provide him a financial plan suitable for retirement.

447. In January 2018, ODell and his wife went to Heafner's office for an initial consultation. There, they sat in a waiting room where ODell saw a TV screen broadcasting Heafner discussing safe retirement planning and stating he is a fiduciary.

448. In the consultation, Heafner described his advisory services, said he is a fiduciary, and elicited information about ODell's life, finances, investments, and goals. ODell stated he had a low risk tolerance and wanted a safe plan with about 4% to 5% growth.

449. On or about February 12, 2018, ODell and his wife saw Heafner for a follow-up. In this meeting, Heafner presented a one-page plan recommending ODell reallocate his T. Row Price mutual fund into a \$151,000 FFI account, a \$480,000 annuity, and a \$200,000 MOI.

450. The plan in Exhibit G titled "Thomas & Peggy ODell Visual of Recommendations" advises ODell's T. Rowe Price account was "High Risk," a recommended annuity was "Safe," a recommended FFI account and MOI were "Low Risk," and benefits of the recommended MOI were "Current 9%" return, "9 Month Commitment," and "Growth."



451. ODell's plan in Exhibit G advised his 2020 mutual fund was "High Risk," a recommended annuity was "Safe," a recommended FFI account and MOI were "Low Risk," and benefits of a MOI was a "Current 9%" return, "9 Month Commitment," and "Growth."

452. In the meeting, which was about sixty minutes, ODell accepted the recommendations for the annuity and FFI account and signed paperwork for them.

453. Either in the same or a follow up meeting, Heafner told ODell and his wife about 1 Global and said it provides loans to small businesses. ODell's wife then asked, "Is it safe?" In replying, Heafner advised, as a fiduciary, he could not put a clients' money in an unsafe investment. Heafner further advised 1 Global was a viable and successful company.

454. ODell and his wife trusted Heafner, and in this meeting, they agreed to follow his recommendation and signed paperwork to invest in a MOI issued by 1 Global.

455. Heafner liquidated ODell's T. Rowe Price assets. Heafner's administrative issues caused ODell's more than \$800,000 T. Rowe Price rollover check to be returned to T. Rowe Price while ODell and his wife anxiously awaited to learn what happened to it.

456. On April 5, 2018, Heafner transferred some of ODell's liquidated T. Rowe Price funds funds to FFI and on May 1 and May 3, 2018, he transferred the rest, respectfully, into an annuity and custodial account set up for ODell's 1 Global investment.

457. On May 22, 2018, ODell's MOI purchase was finalized, at which time, he was invested into 1 Global as a result of Heafner's investment advisory services.

458. Based on when he met ODell and transferred his funds into new investments, Heafner took three months to reinvest most of ODell's liquidated T. Rowe Price assets.

419,459. Heafner decimated ODell's life savings by recommending him a MOI. ODell has suffered significant stress and anger over this, which has caused him many sleepless nights. He will postpone retiring by up to two years due to Heafner recommending 1 Global.

### **CAUSES OF ACTION**

#### **COUNT I—BREACH OF FIDUCIARY DUTY BY HEAFNER**

420,460. Plaintiffs repeat and reallege the above paragraphs as if set forth in Count I.

##### **A. Heafner Breached His Duty by Failing to Disclose Material Facts**

421,461. 1 Global was a five-year-old private company with little publicly available information outside marketing material, and MOIs did not have a prospectus. Heafner had a duty to fully and fairly disclose all material facts about it and its MOIs relevant to recommending MOIs under these circumstances.

422,462. Heafner breached his duty by failing to disclose material facts to Plaintiffs such as: (a) information about 1 Global's business and how MOIs work, (b) red flags about 1 Global and MOIs, (c) the nature and risk of alternative investments like MOIs, (d) 1 Global and MOIs lacked public information and regulatory oversight, (f) 1 Global was only five years old, (g) MOIs permitted 1 Global to use investors' funds for anything, (h) all types of investments 1 Global may invest investors' funds in, (i) MOIs permitted 1 Global to comingle investors' funds, (j) MOIs were unsecured by collateral, or (k) MOI contracts contained misleading terms stating they were backed by collateral when MOIs were unsecured.

423,463. Heafner breached his disclosure obligations by requesting Plaintiffs sign documents he did not explain, or inadequately explained, that contained terms in legalese

overshadowed or contradicted by Heafner's oral or written representations, including that 1 Global's MOIs were a safe investment.

[424.464.](#) Heafner breached his fiduciary duty to Plaintiffs by failing to fully and fairly disclose his conflicts of interests, including whether and how he limited investment recommendations, he was incentivized to recommend as many MOIs as possible to earn commissions, he earned substantial commissions on MOIs, his profits influenced his recommendations, and RWA and FFI were affiliated.

[425.465.](#) Heafner breached his duty to Plaintiffs when he failed to act in the utmost good faith by failing to provide full and fair disclosure of all facts that were material to advising them.

**B. Breach of Duty for Unsuitable Investments and Investment Strategies**

[426.466.](#) MOIs were unsuitable to Plaintiffs because they were unsuitable to anyone. 1 Global was a five-year-old, non-publicly traded company making incredible claims not supportable by credible independent analysis. It had red flags of fraud, and it was a fraud.

[427.467.](#) Heafner breached his fiduciary duty recommending Plaintiffs MOIs that were unsuitable to each Plaintiff based on his or her investment profile, including his or her being near retirement age, lack of investment sophistication, financial situation, low risk tolerance, and/or objective of capital preservation.

[428.468.](#) Heafner breached his duty by recommending unsuitable investment strategies involving MOIs that overconcentrated Plaintiffs in alternative investments, resulted in improper asset allocations, involved excessive fees, and failed to diversify their portfolios.

[429.469.](#) Heafner breached his fiduciary duty by failing to adequately obtain Plaintiffs' investment profiles required to make suitable recommendations.

**C. Breach of Duty for Lack of Reasonable Basis to Recommend MOIs**

[430.470.](#) As investment advisers with fiduciary duties, it was Defendants' duty to investigate 1 Global, not their clients. Because 1 Global was an alternative investment in a five-year-old, non-publicly traded, private company making incredible claims with no reliable publicly available information, they had heightened duties to investigate 1 Global before recommending MOIs to retail investors.

**a. Due Diligence Failures Regarding 1 Global Finances and Audit Claims**

[431.471.](#) Heafner failed to reasonably investigate 1 Global's financing sources or claims.

[432.472.](#) 1 Global only generated material capital from: (1) MOI sales and (2) profits, if any, from merchant cash advances. Thus, it had suspect cash flow to pay for: (a) operating expenses, (b) investor redemptions, (c) other investments, (d) 3% per annum commissions to MOI sales agents upon MOI sales and every nine months thereafter, and (e) finder fees to firms finding merchants to loan cash.

[433.473.](#) 1 Global claimed in monthly statements that it sent to its investors and Heafner: "Our independent audit firm, Daszkal Bolton L.L.P., has endorsed and agrees with the rate of return formula." Ex. C at 1. It also claimed: "an external accounting firm validates loan balances quarterly." Ex. B ¶¶ 90.

[434.474.](#) Daszkal last worked for 1 Global in December 2016, and neither it nor another accounting firm ~~ever~~ validated the rates of returns or loan balances or audited 1 Global. *Id.* ¶¶ 88-89.

[435.475.](#) Audited financial statements and accompanying notes and audit opinion letters and rate of return validation were the only independent information purportedly available

to assess 1 Global's finances, and an investment adviser's basic due diligence would have required obtaining and examining them.

[436.476.](#) Heafner failed to reasonably verify 1 Global's audit and validation claims, including by not requesting copies of 1 Global's audited financial statements and audit opinion letters. Had he performed such basic due diligence, he would have learned no such records existed and 1 Global was a fraud.

**b. Due Diligence Failures Regarding MOI 9% Rate of Return**

[437.477.](#) Heafner did not independently analyze or verify MOI yields in order to obtain a reasonable basis to advise Plaintiffs that MOIs had current 9% rates of return in nine months.

[438.478.](#) 1 Global charged 13% management fees when it collected an investor's funds that it advanced to merchants, meaning it would have had to earn a profit margin of 22% in nine months—29.3% per annum—from advancing an investors' funds just to cover a 13% fee and pay the investor 9% interest.

[439.479.](#) This high 29% rate assumes all investor funds were utilized, no advances went uncollected, and all profits went to investors. In reality, 1 Global failed to find enough merchants to make loans to, did not collect many advances, was unprofitable, and misappropriated or mismanaged investors' funds.

[440.480.](#) The SEC said 1 Global made Ponzi-like payments: "Often the Company would not generate enough money from the [merchant cash advances] to fully pay redeeming investors, forcing the Company to use new investor funds to pay off redeeming investors." Ex.

B ¶ 57.

**c. Due Diligence Failures Regarding MOI Terms**

[441.481.](#) Terms in MOI instruments had significant red flags glaring to competent investment advisers performing reasonable due diligence but that were not clear to retail investors like Plaintiffs.

[442.482.](#) MOI contracts permitted 1 Global to use investor funds from MOI sales for “**Covered Activities**” that “shall include, *but not be limited to*, providing innovative funding known as Merchant Cash Advance.” Ex. A ¶ 7 (emphasis added). Stating Covered Activities shall “not be limited to” merchant cash advances removed limits on use of the funds and permitted 1 Global to use them for anything.

[443.483.](#) MOI contracts call 1 Global *Borrower* and MOIs *Indebtedness* and state: “The proceeds of this Indebtedness may be *aggregated with other funds of Borrower.*” *Id.* ¶ 12.1 (emphasis added). This permitted 1 Global to comingle investor funds with any funds, which increased risks of misappropriation. Ex. B ¶ 58.

[444.484.](#) Paragraph 13 of MOI contracts falsely stated a MOI was secured with collateral by titling the paragraph “Collateral” and stating therein an investor’s principal “is secured by accounts/assets.” *Id.* This term would have been obviously false to financial professionals reviewing it. Asserting funds secured themselves was absurd. 1 Global pooled funds as allowed. Its statements generically labeled merchants funds were supposedly allocated to—like “beer \$9.84”—and investors could not collect small amounts from hundreds of unidentified merchants to recover \$100,000 or more. Ex. C. No merchant would ever pay 1 Global’s debt to thousands of its investors with no privity of contract calling about small amounts.

[445.485.](#) Paragraph 4 of MOI contracts state an investor “agrees that a thirteen percent (13%) management fee will be” charged on all his funds collected from merchants, and ¶

8.6 states collected funds “shall be reinvested in future” advances. *Id.* This subjected investors’ principal to repeated 13% fees.

[446.486.](#) Heafner failed to perform reasonable due diligence of terms in MOI contracts through his efforts or a competent counsel that was independent of 1 Global.

[447.487.](#) Heafner’s due diligence failures in A.-C., above, violated his fiduciary duty to Plaintiffs.

**D. Breach of Duty for Failure to Act in Clients’ Best Interests**

[448.488.](#) Heafner allowed his conflict of interest to impair his advice when he acted in his best interest of earning commissions by recommending MOIs to Plaintiffs’ detriment.

[449.489.](#) Heafner breached his fiduciary duty owed to Plaintiffs by failing to primarily act in their best interests, as well as for other reasons stated above and throughout this complaint.

**E. Heafner’s Breaches of Fiduciary Duty Proximately Caused Plaintiffs’ Losses**

[450.490.](#) For the above reasons, Heafner breached his fiduciary duty to Plaintiffs by recommending them MOIs that now have severely impaired or no value. Heafner is liable to Plaintiffs for their damages in the amount of their MOI consideration because his breaches proximately caused their losses when the losses were foreseeable since MOIs locked principal in for more than nine months; there were no caps on MOI sales and advisers throughout the country were incentivized to sell as many as possible; 1 Global and its MOIs were bad investment with red flags; it is common knowledge to professionals in the investment advisory industry that promissory notes sold widely to retail investors that are unregistered non-exempt securities, like MOIs, are usually scams; MOIs would foreseeably suddenly lose value from a regulatory action or 1 Global’s fraud, mismanagement, or bankruptcy; and for other reasons alleged herein.

## COUNT II—BREACH OF FIDUCIARY DUTY BY RWA AND FFI

451.491. Plaintiffs repeat and reallege the above paragraphs as if fully set forth herein.

452.492. RWA and FFI each owed Plaintiffs a continuous fiduciary duty and the specific obligations flowing therefrom, as alleged in ~~§ V, in ¶¶ 190-197, ¶¶ 209-223, and ¶¶ 215-223, above, including because (a) RWA and FFI owed Plaintiffs such a duty under federal law, (b) RWA and FFI had a duty to conform to a certain standard of conduct prevailing in the investment advisory industry that ¶¶ 192-199, ¶¶ 211-225, and ¶¶ 217-225, above.~~

453.493. RWA's and FFI's fiduciary duty required they take affirmative actions they did not take.

454.494. RWA and FFI failed to make full and fair disclosure of all material facts. Plaintiffs did not receive material information about 1 Global's background and risks or its MOIs and how they worked or their nature, risks, or terms. Plaintiffs did not receive information about either conflict of interests like MOI commissions or other material information, including as alleged in Count I § A. ~~¶¶ 422-424, 462-464,~~ above.

455.495. RWA and FFI did not recommend only suitable investments to Plaintiffs or ensure that only suitable investments were recommended to them because Plaintiffs were recommended MOIs.

456.496. RWA and FFI failed to reasonably perform due diligence over MOIs, even though FFI's compliance officer admitted to Wright that Heafner told RWA and FFI he planned to recommend MOIs.

457.497. Regardless of whether Heafner performed due diligence of MOIs, RWA and FFI were required to perform their own due diligence of MOIs. FFI had the compliance



department available to perform such due diligence, and its and RWA's duties included performing due diligence of proposed investments. A cursory review of 1 Global and MOIs would have revealed to a RIA's compliance department that MOIs should not be recommended to any clients.

[458,498.](#) To the extent RWA and FFI performed any due diligence, they breached their ongoing fiduciary duty by failing to follow through and act to ensure MOIs were not recommended to their clients.

[459,499.](#) RWA and FFI are liable to Plaintiffs for MOIs damages in the amount of MOI consideration because their breaches of fiduciary duties proximately caused Plaintiffs' losses since it was foreseeable to RWA and FFI that Plaintiffs would be invested in MOIs after Heafner discussed recommending MOIs with RWA and FFI; they did not oversee or minimally oversaw him; they were responsible for and committed to ensuring they and Heafner did not violate securities laws, fiduciary duties, or ethics codes; Heafner openly recommended MOIs to their clients for about five months before a Plaintiff purchased one; and MOIs would foreseeably cause Plaintiffs' losses for reasons alleged herein, including in ¶ [450470](#) in Count I, § E., above.

[460,500.](#) Despite stating that they are committed to their obligations to clients and investors to ensure they meet their fiduciary duties, RWA and FFI did not act in Plaintiffs' best interests because they chose to not fulfill their affirmative obligations under this duty or to monitor their advice made through IARs, like Heafner, who they denoted independent contractors.

[461,501.](#) MOIs posed clear danger to the life savings of unsophisticated investors like Plaintiffs who were retirees or near retirees that sought expertise and recommendations covered by a fiduciary duty that they could trust and were supposed to be able trust. RWA and

FFI willfully or wantonly breached their fiduciary duties to Plaintiffs by choosing to repudiate a duty that they admitted they owed, which was a conscious and intentional disregard of and indifference to the rights and safety of Plaintiffs, which RWA and FFI knew or should have known was reasonably likely to result in Plaintiffs' damages.

[462-502.](#) For the above reasons, punitive damages may be awarded to Plaintiffs under N.C. G.S. § 1D-1, *et seq.*, and Plaintiffs request awards of maximum allowable punitive damages.

**COUNT III—BREACH OF DUTY TO EXERCISE REASONABLE SKILL, CARE, AND DILIGENCE BY HEAFNER**

[463-503.](#) Plaintiffs repeat and reallege the above paragraphs as if fully set forth herein.

[464-504.](#) Heafner owed duties to Plaintiffs established by common law, statutory obligations, and industry standards to act as a reasonable, prudent, and competent supervised person of federally registered RIAs, RWA, and FFI, to provide investment advice on their behalf.

[465-505.](#) These duties required Heafner to act as a reasonable, prudent, and competent IAR to (a) perform due diligence of MOIs and (b) recommend only suitable investments to Plaintiffs.

[466-506.](#) Heafner breached these duties by negligently performing due diligence of MOIs before recommending, offering, and selling them to Plaintiffs.

[467-507.](#) Heafner also breached this duty because recommending MOIs was negligent since: (a) MOIs were unsuitable investments to Plaintiffs based on their investment profiles, including their risk tolerances, financial statuses, and investment objectives; (b) red flags of 1 Global's fraud made MOIs unsuitable to anyone; and (c) MOIs overconcentrated Plaintiffs' portfolios in alternative investments.

~~468~~508. \_\_\_\_\_ Heafner’s breaches of his duties to Plaintiffs proximately caused their damages because Plaintiffs sought Heafner’s advice on how to invest their retirement money, he introduced them to 1 Global’s MOIs, Plaintiffs followed his advice and invested in MOIs, and MOIs foreseeably suddenly lost value from 1 Global’s mismanagement, fraud, and bankruptcy.

**COUNT IV—NEGLIGENT MISREPRESENTATIONS BY HEAFNER**

~~469~~509. \_\_\_\_\_ Plaintiffs repeat and reallege the above paragraphs as if fully set forth herein.

~~470~~510. \_\_\_\_\_ Heafner owed Plaintiffs a duty of care to not misrepresent material information when advising about MOIs because he is in the business of providing information as an investment adviser and Plaintiffs met with him to receive investment advice and financial planning on investing their portfolios.

~~471~~511. \_\_\_\_\_ Heafner provided information about MOIs to Plaintiffs to advise them about reinvesting all or nearly all their retirement savings into a new portfolio that included a MOI.

~~472~~512. \_\_\_\_\_ Plaintiffs justifiably relied upon misrepresented information supplied by Heafner to invest in MOIs because, when he recommended them MOIs, they were unsophisticated investors who were retired or planning for retirement, they wanted safe investment strategies to preserve their wealth for retirement, and they sought advice from an investment adviser who was a local celebrity, had a good reputation, and was known as a fiduciary and expert in advising clients on, and investing them in, strategies designed to preserve wealth for retirement.

473-513. Heafner failed to exercise reasonable care to obtain or communicate information that he supplied to Plaintiffs about 1 Global and its MOIs, including by communicating that:

a) MOIs are “low risk” when MOIs are *alternative investments* and the financial industry, which classifies investments into risk categories, classifies alternative investments as high risk;

b) MOIs are “low risk” in light of their red flags and the SEC warning “promissory notes that are sold broadly to individual investors are often scams” at [www.investor.gov/protect-your-investments/fraud/types-fraud/promissory-notes](http://www.investor.gov/protect-your-investments/fraud/types-fraud/promissory-notes);

c) MOIs are “Growth” investments, which in the financial industry means their value was likely to appreciate at an above average rate, when MOIs are notes with principal that cannot fluctuate;

d) MOIs provided both growth and income, when MOI contracts state that 1 Global repeatedly loaned, collected, and relented investors’ funds and kept 13% every time it collected the funds;

e) 1 Global could not go bankrupt since it diversified cash advances among many small businesses when the businesses obtained money in four hours without credit checks;

f) MOIs are secured by collateral;

g) 1 Global would use investors’ funds to only advance cash to merchants, despite MOI contract terms permitting 1 Global to use their funds for anything; and

h) MOIs paid 9% interest in nine months when almost no MOI investors redeemed MOIs and there was no reasonable basis for this rate of return assertion.

~~474-514.~~ 474.514. Heafner misrepresented to Plaintiffs orally and/or in the written plans in Exhibit G that MOIs are “low risk” “Growth” investments with a “Current 9%” return in nine months.

~~475-515.~~ 475.515. When Heafner presented the plans in Exhibit G to Plaintiffs, he negligently misrepresented in writing and orally that all each respective Plaintiff’s current investments were “High Risk,” including low risk mutual funds and a defined benefit pension plan.

~~476-516.~~ 476.516. Heafner's above cited misrepresentations were material information and Plaintiffs were unaware this information was misrepresented.

~~477-517.~~ 477.517. Heafner breached his duty to Plaintiffs by negligently misrepresenting information about MOIs, which proximately caused their damages because they had never heard of 1 Global or its MOIs until he recommended them and Plaintiffs foreseeably relied upon information he provided to invest in MOIs.

**COUNT V—VICARIOUS LIABILITY OF RWA AND FFI**

~~478-518.~~ 478.518. Plaintiffs repeat and reallege the above paragraphs as if fully set forth herein.

~~479-519.~~ 479.519. RWA and FFI are liable to Plaintiffs for Heafner’s tortuous conduct under the doctrine of *respondeat superior* because Heafner recommended, offered, and sold MOIs to Plaintiffs in the scope of his employment with RWA and FFI in furtherance of their business, as alleged in ¶¶ ~~294-303~~296-305 in § VIII.A., above.

~~480-520.~~ 480.520. RWA and FFI are vicariously liable for Heafner’s tortuous conduct since he was their agent and RWA and FFI ratified Heafner recommending, offering, and selling MOIs, as alleged in ¶¶ ~~305-316~~307-318 in § VIII.B., above.

[481-521.](#) RWA and FFI are vicariously liable for Heafner's tortious conduct because Heafner had express or actual authority to act on behalf of RWA and FFI to recommend MOIs, as alleged in ¶¶ [317-325](#) [319-327](#) in § VIII.C., above.

**COUNT VI—NEGLIGENT AND WILLFUL OR WANTON SUPERVISION BY RWA AND FFI**

[482-522.](#) Plaintiffs repeat and reallege the above paragraphs as if fully set forth herein.

[483-523.](#) RWA and FFI owed Plaintiffs a duty to supervise Heafner pursuant to laws and industry standards designed to protect investors, like Plaintiffs, that require RIAs to supervise their supervised persons to ensure they adhere to securities laws and fiduciary standards.

[484-524.](#) RWA and FFI state in their respective Firm Brochures that their internal ethics codes and procedures required they supervise and monitor their supervised persons—which included Heafner—to fulfill their duties to clients—which included Plaintiffs—and investors.

[485-525.](#) RWA and FFI owed a duty to Plaintiffs to supervise Heafner's tortious conduct alleged herein because he perpetrated it within the scope of his services provided on behalf of RWA and FFI who controlled his work detail to ensure such details adhered to their ethical standards and policies and procedures.

[486-526.](#) Public BrokerCheck and IAPD records state Heafner was inherently unfit to sell securities, including MOIs, because he did not maintain a license to do so.

[487-527.](#) RWA and FFI should have inferred Heafner's incompetence from his consistent long-term pattern of incompetently providing investment advice and implementing investment plans on their behalf.

[488,528.](#) Heafner liquidated multiple Plaintiffs' investment accounts, then let their funds sit idle for several months, due to his deficient administration, before he reinvested the funds.

[489,529.](#) Heafner failed to submit proper paperwork for clients' investments, including at least Shrader, the Hrvatins, and the Wiggins. One of the Hrvatins' planned investments was canceled due to Heafner's errors and their funds, uninvested for months, were returned to them.

[490,530.](#) When Heafner presented portfolios, he told clients that, other than cash, all their current positions had *high risk*, which he emphasized with bright *red boxes*. Ex. G. This included low risk positions in IRA, 401(k), or Vanguard accounts like low risk Vanguard broad-based index funds, large institutions' targeted retirement mutual funds, and annuities (in contrast to annuities he recommended that he called *safe*). *Id.* He even called Turner's pension plan with a contractually set future value *high risk*. *Id.* Heafner said all his recommendations—including FFI and MOIs— were *safe* or *low risk*, as emphasized by yellow or green boxes. *Id.* Shrader's plan shows he presented portfolios like this since at least May 3, 2016. *Id.*

[491,531.](#) Heafner's above mistakes are apparent in his emails and client records.

[492,532.](#) On information and belief, from before May 2016 until he was fired, Heafner consistently exhibited red flags of gross incompetence while providing investment advice on behalf of RWA and FFI to their clients through the same or similar conduct as alleged above.

[493,533.](#) Heafner began recommending MOIs around mid-2017, and he told RWA and FFI he would do so. RWA and FFI were required to perform due diligence over MOIs, and

they should have inferred Heafner was incompetent from his proposal considering the dangers MOIs posed to retail investors that would have been glaring to a competent IAR.

494-534. Had RWA and FFI exercised ordinary care, they would have known Heafner was unfit and incompetent and prevented him from recommending MOIs to Plaintiffs.

495-535. RWA and FFI breached their duty to Plaintiffs by negligently supervising Heafner's acts related to proposing to recommend, recommending, offering, selling, and implementing MOI investments because they failed to act as ordinary, prudent, or reasonable RIAs to prevent, monitor for, detect, or stop his ongoing course of conduct of recommending portfolios incorporating MOIs on RWA's and FFI's behalf.

496-536. RWA and FFI are liable to Plaintiffs for damages in the amount of their MOI consideration because RWA's and FFI's breaches proximately caused the damages where it was foreseeable Heafner would recommend MOIs when RWA and FFI knew, or should have known, of his unfitness or incompetence; he discussed recommending them with RWA and FFI; RWA and FFI would have known he knew of their lax supervision; he openly recommended and sold MOIs for about four or five months before the first MOI sale to a Plaintiff; Plaintiffs foreseeably followed his advice; and MOIs foreseeably lost value.

497-537. RWA and FFI also willfully or wantonly supervised Heafner because they chose to not supervise him as legally required since they denoted him an independent contractor, as alleged in Count VII § D. ¶¶ ~~501-541~~558-581, below, which are incorporated here as if fully set forth.

498-538. Heafner was clearly not RWA's and FFI's independent contractor under North Carolina law for the reasons alleged in § VIII. A. ¶¶ ~~294-303~~296-305, above. Punitive



damages are justified for RWA's and FFI's willful or wanton supervision, and Plaintiffs request maximum allowable punitive damages.

**COUNT VII—NEGLIGENT AND WILLFUL OR WANTON BREACHES OF DUTY BY RWA AND FFI AND PUNITIVE DAMAGES**

~~499,539.~~ Plaintiffs repeat and reallege the above paragraphs as if fully set forth herein.

**A. RWA and FFI Owed Plaintiffs A Duty of Care**

~~500,540.~~ RWA and FFI owed Plaintiffs duties to act as reasonable, prudent, and competent RIAs to implement, maintain, and enforce compliance programs reasonably designed to prevent them and their supervised persons from violating securities laws or fiduciary duties.

~~501,541.~~ RWA and FFI also owed Plaintiffs duties to conform to a certain standard of care under the IAA, its rules, and industry standards requiring establishing and enforcing policies and procedures reasonably ensuring they and Heafner adhered to fiduciary duties and securities laws.

~~502,542.~~ Under penalty of perjury, RWA and FFI each stated it “is committed to *its obligation* to ensure associated persons adhere to the firm’s Code of Ethics” that requires compliance with “applicable securities law” and that it “is committed to *its obligation* . . . to ensure that the firm and its associated persons fulfill their fiduciary duty to clients or investors.” Ex. F at 19 and Ex. H at 11 and 18 (emphases added).

**B. Heafner Told RWA and FFI That He Would Recommend MOIs**

~~503,543.~~ In or about July 2017, Heafner began recommending, offering, and selling MOIs.

~~504,544.~~ On July 27, 2018, 1 Global petitioned for bankruptcy and new MOI sales were barred.

505-545. On August 31, 2018, RWA and FFI fired Heafner.

506-546. On November 26, 2018, Thaddeus Braun, Compliance Officer for FFI, wrote a letter to Plaintiff David Wright on RWA's letterhead stating:

RWA *expressly informed* Mr. Heafner that RWA did not approve or permit any sale of 1st Global Capital through RWA. . . . RWA *explicitly refused* to participate in any sales of that product . . . RWA did not become aware that Mr. Heafner was selling 1st Global Capital, *despite being told that RWA did not approve any such transactions*, until after that entity had filed bankruptcy.

Exhibit O (emphasis added).

507-547. Braun states in his LinkedIn page he is "Compliance Officer at FormulaFolios" and does not state that he is associated with RWA; he said in his letter "[i]f you have any further questions or concerns, . . . email me at [REDACTED]@formulafolios.com." (Braun's email address redacted herein). In the letter, Braun spoke as both RWA's and FFI's actual or apparent agent.

508-548. Braun stating "RWA explicitly *refused to participate in any sale*" indicated RWA told Heafner this before July 27, 2018; afterwards, there were no sales to refuse to participate in. *Id.* (emphasis added). Braun clarified that Heafner told RWA he would sell MOIs before he sold any: "Mr. Heafner was selling 1st Global Capital, *despite being told* that RWA did not approve any such transactions." *Id.* (emphasis added).

C. **Braun Made Several Admissions, Such as RWA and FFI Did Not Supervise Heafner's Acts That Did Not Earn FFI Money**

509-549. Braun indicated RWA could disapprove of Heafner selling MOIs by stating: "RWA did not approve any such transactions." *Id.*

510-550. Braun admitted RWA and FFI did not learn Heafner sold MOIs until after 1 Global's bankruptcy petition on July 27, 2018 when he stated "RWA did not become aware

that Mr. Heafner was selling 1st Global Capital . . . until after that entity had filed bankruptcy.”

*Id.*

511.551. In his letter, Braun stated that:

. . . RWA never, at any point, received any compensation for any sale of 1st Global Capital. RWA explicitly refused to participate in any sales of that product[.] *Id.*

512.552. On December 7, 2018, Braun emailed Wright from FFI’s account and stated that:

. . . our obligation to supervise Heafner . . . were restricted to supervising the actions he performed on our behalf. *He was under our oversight with respect to his advice and recommendations with respect to FFI model portfolios*, which is the only thing we ever received compensation for. He was not under our oversight with respect to 1st Global, or his insurance business, or any activities he engaged in that were not authorized and approved by RWA. The fact that *we terminated* our relationship with him does not prove that we were responsible for his outside business activities.

Braun Email at Exhibit P (emphasis added).

513.553. FFI was compensated from FFI accounts and RWA was not, and Braun admitted FFI subjected Heafner to its supervision and control by stating: “he was under *our oversight* with respect to his advice and recommendations with respect to FFI . . . the only thing we ever received compensation for.” *Id.* (emphasis added).

514.554. Braun admitted Heafner performed investment advisory functions on FFI’s behalf by stating “his advice and recommendations with respect to FFI model portfolios.”

*Id.* (emphasis added).

515.555. Braun admitted FFI terminated Heafner by stating “we terminated our relationship.” *Id.*

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~~516-556.~~ Braun admitted that RWA and FFI did not monitor for or supervise Heafner's outside business activities.

~~517-557.~~ Braun admitted RWA and FFI deliberately limited overseeing Heafner's acts to those directly making FFI money while not overseeing any of his other acts.

**D. RWA and FFI Chose to Not Supervise Heafner Because They Denoted Him an Independent Contractor but Stated, Under Penalty of Perjury, He Was Their Employee They Supervised**

~~518-558.~~ In his December 7, 2018 email to Wright, Braun stated that RWA and FFI restricted their supervision of Heafner to his advice about and recommendations of FFI accounts because he was an independent contractor:

Contrary to what he states in his email, Heafner was not our 'employee.' He was an independent contractor. In an employee/employer relationship, the employer is responsible to supervise all actions of its employee and is liable for his actions (unless they are completely outside the bounds of what his job involves). As an independent contractor, our obligations to supervise Heafner were much different, and were restricted to supervising the actions he performed on our behalf.

~~519-559.~~ Since at least December 3, 1985, the SEC has told the investment advisory industry RIAs must supervise independent contractors performing advisory functions on their behalf, and the SEC has continually reminded RIAs of this in its releases, no-action letters, and Form ADV FAQs and instructions.

~~520-560.~~ In 1985, the SEC adopted Uniform Form ADV under its authority from § 203(c) of the IAA, and on December 3, 1985, an Investment Advisers Act Release provided interpretations for Form ADV stating:

the term employee . . . include[s] *independent contractors* whose activities are controlled by the investment adviser n5 An independent contractor is subject to the control of an employer if their relationship is one of principal and agent or master and servant. Accordingly, in responding to Item 17A of Form ADV an adviser should count among

its employees any persons, including those denoted ‘independent contractors,’ performing investment advisory functions for the adviser whose activities are controlled by the adviser.

n5 This is consistent with the Commission’s long-standing interpretation of the status of independent contractors as employees of broker-dealers under the Exchange Act.

SEC Release No. IA-1000 (Dec. 3, 1985), pgs. 4-5, FAQ § II.C.3. (emphasis added).

~~524-561.~~ Form ADV instructions are adopted under § 203(c) after a notice and comment period.

~~522-562.~~ Rule 203-1 under the IAA states an investment adviser must apply for registration with the SEC by completing Form ADV “by following the instructions in the form,” and Rule 204-1 under the IAA requires RIAs to amend Form ADV at least annually or “if required by the instructions to Form ADV.”

~~523-563.~~ Section 202(a)(17) of the IAA states the SEC “may by rules and regulations classify, for the purposes of any portion or portions of this title, persons, including employees.”

~~524-564.~~ On September 12, 2000, Release No. IA-1897 announced that after a notice and comment period, proposed amended Form ADV instructions were approved that would become effective in 2001 that added in a glossary a definition of “employee” stating, in its entirety: “**Employee:** This term includes an independent contractor who performs advisory functions on your behalf.” (Emphasis in original.)

~~525-565.~~ Release IA-1897 thereby decreed *all* independent contractors performing advisory functions on behalf of an RIA are its employees under the IAA, irrespective of whether the RIA controls them.

[§26,566.](#) The current Form ADV instructions, at [www.sec.gov/about/forms/formadv-instructions.pdf](http://www.sec.gov/about/forms/formadv-instructions.pdf) on page 29 in a glossary, state the identical definition of employee that was adopted in Release No. IA-1000.

[§27,567.](#) The glossary in the Form ADV instructions also states, on page 35: “**Supervised Person:** Any of your officers, partners, directors (or other persons occupying a similar status or performing similar functions), or *employees*, or any other *person* who provides investment advice on your behalf and is subject to your supervision or *control*.” (Emphases in original.)

[§28,568.](#) “Supervised Person” has been so defined in the glossary in the Form ADV instructions since 2011, and this definition is nearly identical to the definition of supervised person in § 202(a)(25) of the IAA.

[§29,569.](#) “Supervised persons” was added as a defined term to the IAA in 1997. After a notice and comment period, Release IA-1633 adopted an interpretation of *supervised persons* that became effective July 21, 1997. This release dictates that under the IAA all a RIA’s “*employees*” are its “*supervised persons*”:

A supervised person is defined in section 202(a)(25) to be (i) any partner, officer, director (or other person occupying a similar status or performing similar functions), or employee of an investment adviser, or (ii) any other person who provides investment advice on behalf of the investment adviser and is subject to the supervision and control of the investment adviser.

Release No. IA-1633, pg. 58, § II.F.1.e. “Solicitors” (<https://www.sec.gov/rules/final/ia-1633.txt>).

[§30,570.](#) Release IA-1633 states in footnote 123 on page 59: “The definition of ‘supervised person’ and the ‘other persons who provide investment advice’ language were added . . . to include persons who may not be employees but assume a similar function (e.g., *independent contractors*).” (Emphasis added.)

[§31-571.](#) Form ADV instructions state that an IAR providing investment advice on behalf of an RIA who is the RIA's independent contractor is deemed the RIA's *employee* and *supervised person* under the IAA.

[§32-572.](#) RWA and FFI update their Form ADVs at least annually; they are thereby reminded that an IAR performing their investment advisory functions who they denote an independent contractor is deemed their employee and supervised person they must supervise.

[§33-573.](#) On September 18, 2018, RWA filed an amended Form ADV that stated in Item 5.A., 5.B.(1), 5.B.(3), and 5.B.(6) it has 189 "*employees*" who are IARs who perform "investment advisory functions" and no one else solicits advisory clients on its behalf, as shown in this screen print of the form:

Item 5 Information About Your Advisory Business - Employees, Clients, and Compensation	
Responses to this Item help us understand your business, assist us in preparing for on-site examinations, and provide us with data we use when making regulatory policy. Part 1A Instruction 5.a. provides additional guidance to newly formed advisers for completing this Item 5.	
<b>Employees</b>	
<i>If you are organized as a sole proprietorship, include yourself as an employee in your responses to Item 5.A. and Items 5.B.(1), (2), (3), (4), and (5). If an employee performs more than one function, you should count that employee in each of your responses to Items 5.B.(1), (2), (3), (4), and (5).</i>	
A.	Approximately how many <i>employees</i> do you have? Include full- and part-time <i>employees</i> but do not include any clerical workers. 189
B.	(1) Approximately how many of the <i>employees</i> reported in 5.A. perform investment advisory functions (including research)? 189
	(2) Approximately how many of the <i>employees</i> reported in 5.A. are registered representatives of a broker-dealer? 7
	(3) Approximately how many of the <i>employees</i> reported in 5.A. are registered with one or more state securities authorities as investment adviser representatives? 189
	(4) Approximately how many of the <i>employees</i> reported in 5.A. are registered with one or more state securities authorities as investment adviser representatives for an investment adviser other than you? 28
	(5) Approximately how many of the <i>employees</i> reported in 5.A. are licensed agents of an insurance company or agency? 175
	(6) Approximately how many firms or other <i>persons</i> solicit advisory clients on your behalf? 0
<i>In your response to Item 5.B.(6), do not count any of your employees and count a firm only once - do not count each of the firm's employees that solicit on your behalf.</i>	

[§34.574.](#) RWA had filed its previous amended Form ADV on March 30, 2018 while it still employed Heafner, which also stated that RWA had 189 employees who were IARs performing investment advisory functions, which included Heafner, and no one else solicited clients on behalf of RWA.

[§35.575.](#) In 2017, RWA filed nine amended Form ADVs, and each classified all its employees as IARs performing advisory functions, which included Heafner, with no one else soliciting clients. In 2017, it changed its total employees from 125 on January 27th to 173 on March 31st to 194 on November 7th.

[§36.576.](#) RWA and FFI denotes many of their IARs who perform advisory functions on their behalf as independent contractors, and in 2017 and 2018, RWA reported in Item 5.A. of its Form ADV that all such IARs are its “*employees*,” which included Heafner.

[§37.577.](#) By reporting its IARs as employees in Item 5.A. of Form ADV, as opposed to “other persons” in Item B.(6) of Form ADV, RWA attested in 2017 and 2018 under penalty of perjury that all the IARs it registers are its “*supervised persons*” as that term is defined in the instructions to Form ADV.

[§38.578.](#) RWA reporting IARs whom it considers its independent contractors as employees in its Form ADV shows RWA has known since it first filed a Form ADV, or should have always known since this time, that any IAR performing advisory functions on its behalf whom it considers an independent contractor is, under the IAA regulatory scheme, its employee and supervised person whom RWA must supervise pursuant to compliance procedures it established, implemented, and enforces that are reasonably designed to ensure the IAR does not violate RWA’s ethics code, securities laws, or the IAR’s fiduciary duty.



539-579. In 2017 and 2018, RWA attested under penalty of perjury its IARs were its employees, which included Heafner, and RWA and FFI stated through their actual or apparent agent: “In an employee/employer relationship, the employer is responsible to supervise all actions of its employee and is liable for his actions (unless they are completely outside the bounds of what his job involves).” Ex. P.

540-580. Because Daniele Tyler is the chief compliance officer for FFI and RWA and signs both of their respective Form ADVs and amended Form ADVs and FFI’s compliance staff supervise RWA, RWA reporting IARs whom it considers its independent contractors as employees in its Form ADV shows that FFI has known since it first filed a Form ADV, or should have always known since this time, that any IAR performing advisory functions on its behalf whom it considers an independent contractor is, under the IAA regulatory scheme, its employee and supervised person whom FFI must supervise pursuant to compliance procedures it established, implemented, and enforces that are reasonably designed to ensure the IAR does not violate FFI’s ethics code, securities laws, or the IAR’s fiduciary duty.

541-581. RWA and FFI knew or should have known their denoting Heafner an independent contractor was irrelevant to their common law and statutory duties to supervise Heafner.

E. **RWA and FFI Breached Their Duties of Care to Plaintiffs and Thereby Proximately Caused Plaintiffs’ Losses**

542-582. RWA and FFI breached their duties to Plaintiffs by failing to implement or maintain policies and procedures reasonably designed to prevent or stop violations of securities laws and fiduciary duties resulting from Heafner’s actions related to MOIs. For instance, they implemented and maintained a policy to not supervise IARs like Heafner who performed

advisory functions on their behalf because they denoted them independent contractors. Such status is irrelevant to RIAs' duties to supervise their IARs.

[543,583.](#) RWA and FFI breached their duties to Plaintiffs by failing to *reasonably enforce* their ethics codes and policies and procedures that forbid Heafner recommending, offering, or selling MOIs. For instance, they fired Heafner for “failure to follow written policies in regards to Outside Business Activities” after he recommended FFI and MOI on one-page plans for a year, and they could not have reviewed his FFI recommendations without seeing he recommended MOIs that they claimed was an outside business activity.

[544,584.](#) RWA and FFI breached their duties to Plaintiffs by failing to adhere to a standard of care owed to Plaintiffs. Their breaches proximately caused Plaintiffs' losses because it was foreseeable they would buy a MOI from Heafner where RWA and FFI did not oversee this activity, he discussed his plans to recommend MOIs with RWA and FFI, and he openly did so for about five months before any Plaintiff bought one.

**F. RWA and FFI Willfully or Wantonly Breached Their Duties to Plaintiffs**

[545,585.](#) RWA and FFI choosing to not supervise any of Heafner's actions outside of recommending FFI was egregious considering (A) Heafner had a long sales history and became an IAR later in life, (B) he had a track record of gross incompetence performing advisory functions on RWA's and FFI's behalf, (C) he told RWA and FFI he would recommend their clients MOIs that were laden with clear red flags of being a fraud and unregistered securities unlawful to offer or sell, (D) RWA stated under penalty of perjury its IARs perform on its behalf services Heafner performed, (E) FFI relied upon IARs like Heafner to perform functions only licensed IARs may perform, (F) RWA and FFI stated under penalty of perjury—and reported to the SEC and clients—they ensured their associated persons and supervised

persons adhered to fiduciary duties and securities laws, (G) RWA and FFI must supervise and monitor for outside business activities to prevent violations of fiduciary duties and securities laws, and (H) Heafner recommended portfolios of only a few investments, including FFI and a MOI on *one-page*.

[§46,586.](#) RWA and FFI evidently chose to not supervise Heafner recommending FFI because the one-page plans he prepared to do so stated investment advice with blatant red flags of breaches of fiduciary duty and violations of securities laws by way of false statements, omissions, and unlawful securities sales.

[§47,587.](#) RWA and FFI evidently chose to not enforce its outside business activities policies and procedures while Heafner recommended MOIs because they authorized him to recommend FFI accounts in a portfolio and they could not review the portfolios in which he recommended FFI accounts in Exhibit G without seeing that they included MOIs.

[§48,588.](#) RWA and FFI choosing to not supervise all activities they were required to supervise of the IARs performing investment advisory functions on their behalf who they denoted independent contractors, which included Heafner, saved RWA and FFI substantial money and freed the IARs from substantial oversight, which helped rapidly grow FFI.

[§49,589.](#) RWA and FFI choosing to not supervise Heafner as required violated duties and statutes designed to protect investors and caused Plaintiffs to lose much of their life savings.

[§50,590.](#) RWA and FFI willfully or wantonly failed to supervise Heafner by choosing to not supervise him which was a conscious and intentional disregard of and indifference to the rights and safety of Plaintiffs, which RWA and FFI knew or should have known was reasonably likely to result in damages.

~~§51-591.~~ For the above reasons, punitive damages may be awarded to Plaintiffs under N.C. G.S. § 1D-1, *et seq.*, and Plaintiffs request maximum allowable punitive damages.

**COUNT VIII—VIOLATIONS OF N.C. GEN. STAT. § 78A-24 FOR UNREGISTERED SECURITIES OFFERS AND SALES BY HEAFNER**

~~§52-592.~~ Plaintiffs repeat and reallege the above paragraphs as if fully set forth herein.

~~§53-593.~~ Pursuant to the North Carolina Securities Act (“NCSA”) and the U.S. Supreme Court, MOIs are securities issued by 1 Global.

~~§54-594.~~ Section 78A-24 of the NCSA states:

It is unlawful for any person to offer or sell any security in this State unless (i) it is registered under this Chapter, (ii) the security or transaction is exempted under G.S. 78A-16 or 78A-17 and such exemption has not been denied or revoked under G.S. 78A-18, or (iii) it is a security covered under federal law.

N.C. Gen. Stat. § 78A-24.

~~§55-595.~~ MOIs were not exempt from requirements to register them with the North Carolina Securities Division, MOI sales were not exempt transactions under the NCSA, and 1 Global never filed an exemption request with the North Carolina Securities Division.

~~§56-596.~~ MOIs were not registered with the North Carolina Securities Division.

~~§57-597.~~ Heafner offered and sold MOIs to Plaintiffs within the meaning of the NCSA. This includes by soliciting Plaintiffs to purchase MOIs in order to earn himself commissions.

~~§58-598.~~ Heafner violated N.C. Gen. Stat. § 78A-24 by offering and selling MOIs to Plaintiffs because MOIs were not registered as required by § 78A-24.

~~559-599.~~ N.C. Gen. Stat. § 78A-56(a)(1) provides that persons offering or selling securities in violation of N.C. Gen. Stat. § 78A-24 are civilly liable to the purchaser:

Any person who offers or sells a security in violation of G.S. . . . 78A-24 . . . is liable to the person purchasing the security from him, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at the legal rate from the date of payment, costs, and reasonable attorneys' fees, less the amount of any income received on the security, upon the tender of the security, or for damages if the purchaser no longer owns the security. Damages are the amount that would be recoverable upon a tender less the value of the security when the purchaser disposed of it and interest at the legal rate as provided by G.S. 24-1 from the date of disposition.

~~560-600.~~ Under § 78A-56(a)(1), Plaintiffs have the right to recover from Heafner their MOI consideration or damages plus interest from purchase dates of MOIs, attorneys' fees, and costs.

**COUNT IX—LIABILITY UNDER N.C. GEN. STAT. 78A-56(a)(2) FOR OFFERING OR SELLING MOIs BY MEANS OF UNTRUE STATEMENTS OF MATERIAL FACT OR OMISSIONS TO STATE A MATERIAL FACT NECESSARY TO MAKE A STATEMENT MADE NOT MISLEADING BY HEAFNER**

~~561-601.~~ Plaintiffs repeat and reallege the above paragraphs as if fully set forth herein.

~~562-602.~~ Section 78A-56(a)(2) of the NCSA provides:

Offers or sells a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading (the purchaser not knowing of the untruth or omission), and who does not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the untruth or omission liable to the person purchasing the security from him, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at the legal rate from the date of payment, costs, and reasonable attorneys' fees.

N.C. Gen. Stat. 78A-56(a)(2) (emphasis added).

563-603. Heafner offered or sold MOIs to Plaintiffs by means of untrue statements of material facts like those alleged in Count IV ¶¶ 473-475513-515, above.

564-604. Plaintiff did not know of the untruths of these statements.

565-605. Each such misstatement was material because knowledge of its untruth would have influenced a reasonable investor's judgement or decision to act with regards to MOIs.

566-606. Because Heafner offered or sold MOIs by means of such untrue statements, under § 78A-56(a)(2), he is liable to Plaintiffs for their MOI consideration or damages plus interest at 8% from MOI purchase dates, attorneys' fees, and litigation expenses and costs.

567-607. Heafner offered or sold MOIs by means of omissions of fact alleged in Count I § A. ¶¶ 422-424461-463, which made statements Count IV alleges in ¶¶ 473-475513-516 he made misleading under the circumstances.

568-608. Stating a "Benefit" of MOIs was a "9 Month Commitment," was misleading due to omissions that 1 Global (A) took several months after nine month terms to pay redeeming investors, (B) did not use a formula to determine repayment amounts, and (C) did not limit how long or the number of payments to redeem most investors. *See* Ex. G.

569-609. Statements that MOIs were low risk, suitable to Plaintiffs, had 9% returns, and offered growth and income were misleading due to omissions of facts about 1 Global's finances, audit claims, rates of return, and MOI terms alleged in Count I § C. ¶¶ 431-446470-485 and omissions of facts about very few investors ever redeeming MOI investments. *See* Ex. B ¶ 54.

570-610. Each above omission was material because a reasonable investor would have viewed its disclosure as significantly altering the total mix of information that was provided about MOIs and I Global.

571-611. Plaintiffs were unaware of the above omissions when they purchased MOIs.

572-612. Under § 78A-56(a)(2), Heafner is liable to Plaintiffs for MOI consideration or damages plus interest, attorney's fees, and costs because he offered or sold MOIs by means of omissions to state material facts that made statements (including opinions) misleading under the circumstances they were made.

**COUNT X— N.C. GEN. STAT. 78A-56(c)(1) CONTROL LIABILITY OF RWA AND FFI**

573-613. Plaintiffs repeat and reallege the above paragraphs as if fully set forth herein.

574-614. Section 78A-2(c)(1) of the NSCA provides control persons of primary violators of § 78C-2(a)(1) and (2) are liable by stating as follows (emphasis added here):

*Every person who directly or indirectly controls a person liable under subsection (a), (b), or (b1) of this section . . . is also liable jointly and severally with and to the same extent as the person, unless able to sustain the burden of proof that the person did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist.*

(Emphasis added.)

575-615. Section 78A-2(7) defines "Person" to include an entity, and § 78A-2(2a) defines "Entity" to include a corporation or limited liability company.

576-616. RWA and FFI are persons under the NCSA because, respectfully, they are a corporation and a limited liability company.

~~577-617.~~ RWA and FFI possessed the power or potential power to influence and directly or indirectly control Heafner's general affairs, including for the reasons alleged in § VI., above, in ¶¶ ~~225-252~~227-254 and in § VII., above, in ¶¶ ~~254-292~~256-294.

~~578-618.~~ RWA and FFI possessed the power or potential power to influence and control Heafner's specific activities resulting in his primary liability alleged in Count VIII in ¶¶ ~~553-560~~593-600 and IX in ¶¶ ~~562-572~~602-612.

~~579-619.~~ For the above reasons, RWA and FFI are liable jointly and severally with and to the same extent that Heafner is liable to Plaintiffs under the NCSA.

**COUNT XI—VIOLATIONS OF 15 U.S.C. 77e(a) AND (c) FOR UNREGISTERED SECURITIES OFFERS AND SALES BY HEAFNER**

~~580-620.~~ Plaintiffs repeat and reallege the above paragraphs as if fully set forth herein.

~~581-621.~~ Pursuant to the Securities Act of 1933 ("Securities Act"), MOIs are securities that are not exempt from the Securities Act's registration requirements.

~~582-622.~~ Thus, it was unlawful under § 77e(a) and (c) of the Securities Act to offer or sell MOIs unless they were appropriately registered with the SEC. *See* 15 U.S.C. 77e(a) and (c).

~~583-623.~~ Securities registration requests and requests for exemption filed with the SEC are viewable at [www.sec.gov/edgar/searchedgar/companysearch.html](http://www.sec.gov/edgar/searchedgar/companysearch.html). Searching "1 Global Capital" in this website shows 1 Global never filed a registration or exemption request with the SEC.

~~584-624.~~ Because MOIs were unregistered and nonexempt securities unlawful to offer or sell under the Securities Act, Heafner violated § 77e(c) of the Securities Act by offering MOIs to Plaintiffs, and he violated § 77e(a) by selling them to Plaintiffs.



~~585-625.~~ Pursuant to § 771(a), because Heafner violated § 77e(a) and (c), Plaintiffs may rescind their MOI sales and recover from Heafner the consideration paid for MOIs plus interest.

~~586-626.~~ Plaintiffs request the full relief due to them pursuant to § 78A-56(a)(1).

**COUNT XII—15 U.S.C. 77o(a) SECURITIES ACT OF 1933 CONTROL LIABILITY OF RWA AND FFI**

~~587-627.~~ Plaintiffs repeat and reallege the above paragraphs as if fully set forth herein.

~~588-628.~~ RWA and FFI controlled Heafner as alleged in Count X ¶¶ ~~574-579~~~~614-619.~~

~~589-629.~~ Under § 77o(a), RWA and FFI is jointly and severally liable to Plaintiffs for Heafner's liability to Plaintiffs under § 771(a).

~~590-630.~~ Under the Securities Act, RWA and FFI are liable to Plaintiffs for the consideration that they paid for their MOIs and interest on their MOIs.

**COUNT XIII—LIABILITY UNDER THE MICHIGAN UNIFORM SECURITIES ACT OF HEAFNER, RWA, AND FFI**

~~591-631.~~ Plaintiffs repeat and reallege the above paragraphs as if fully set forth herein.

~~592-632.~~ The Michigan Uniform Securities Act M.C.L. § 451.2501 (the "MUSA") provides civil liability and private rights of actions that require purchasers allege the same elements to state a cause action as the NCSA requires as set forth in Counts VIII-XI, above, in ¶¶ ~~552-572~~~~592-612.~~, the factual allegations of which are incorporated here as if set fully set forth.

~~593-633.~~ MOIs are securities under the MUSA and they were never registered pursuant to the MUSA's requirements, thus, unlawful to sell under the MUSA.

~~594-634.~~ Heafner is liable to Plaintiffs under § 451.2501(2) because he sold them MOIs in violation of § 301 of the MUSA since MOIs were not registered as the MUSA required.

~~595-635.~~ Heafner is liable to Plaintiffs under MUSA § 451.2501(2) because he sold them MOIs by means of an untrue statement of material fact or an omission to state a material fact that made a statement made misleading under the circumstances and Plaintiffs did not know of the untruths or omissions.

~~596-636.~~ RWA and FFI are jointly and severally liable with Heafner to Plaintiffs under MUSA § 451.2501(7)(a) because RWA and FFI are persons that directly or indirectly controlled Heafner when he committed his acts forming the basis of his liability.

~~597-637.~~ For the above reasons, under § 451.2501(2) of the MUSA, Heafner, RWA, and FFI are jointly and severally liable to Plaintiffs for their MOI consideration and interest at 6% per year from the purchase dates of their MOIs, plus costs and reasonable attorney fees.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that the Court:

1. Enter judgment for Plaintiffs and against Defendants on all Plaintiffs' claims herein;
2. Award Plaintiffs compensatory damages of full consideration paid for Memorandums of Indebtedness issued by 1 Global Capital LLC;
3. Award Plaintiffs interest, attorneys' fees, and costs and expenses under N.C. Gen. Stat. § 78A-56(a)(2) or other applicable law;
4. Award Plaintiffs punitive damages;
5. Allow a trial by jury on all triable issues; and
6. Grant Plaintiffs such further and other relief as the Court deems just and proper.

Dated: ~~November 5, 2019~~January 10, 2020 Respectfully Submitted,

\_\_\_\_\_/s/  
Adam J. Marquardt  
Adam J. Marquardt (Illinois Bar No. 6306514)  
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Suite 202  
Chicago, Illinois 60613  
312-945-6065  
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*Attorney for Plaintiffs*

# **EXHIBIT A**

**MEMORANDUM OF INDEBTEDNESS**

[REDACTED] “Effective Date”)

This Memorandum of Indebtedness (“Agreement”) is made and entered into by and between **I Global Capital LLC**, a Florida limited liability company, with a mailing address of 1250 East Hallandale Beach Boulevard, Suite 409, Hallandale Beach, FL 33009 (the **“Borrower”**), and [REDACTED], with a mailing address of [REDACTED] (the **“Lender,”** or together, the Parties).

**RECITALS:**

Lender has offered to provide funds, as described below, to Borrower as described in this Agreement. Lender is willing to make such funds available to Borrower and Borrower is willing to accept such funds upon and subject to the provisions, terms and conditions hereinafter set forth herein.

Subject to and upon the terms and conditions of this Agreement, Lender has agreed to provide Borrower the funds herein described for the purposes set forth below.

**TERMS OF AGREEMENT**

1. Indebtedness. Lender hereby agrees to provide the sum of \$ [REDACTED] to Borrower in accordance with this Agreement.
2. Existence. Borrower is a limited liability company duly organized, validly existing, and in good standing under the laws of Florida, and is duly qualified to transact business as a foreign corporation in each jurisdiction where the nature and extent of its business and property requires the same.
3. Authorization. Borrower possesses all requisite authority, power, licenses, permits, and franchises to conduct its business and to execute, deliver, and comply with the terms of this

Agreement. The execution and delivery of this Agreement, the consummation of the transactions herein contemplated, compliance with the terms and provisions hereof, and the execution, issuance, and delivery of the Agreement have been duly authorized and approved by Borrower.

4. Enforceability of Agreement. This Agreement, when duly executed and delivered by Borrower, will constitute a legal, valid, and binding obligation of Borrower and wholly enforceable in accordance with its terms.

5. Litigation. Borrower may be involved in litigation arising from its efforts to collect consumer debts and accounts. Borrower will not report such litigation to Lender unless it is likely to have a material adverse effect on Borrower.

6. Maturity Date. The Indebtedness shall mature at the end of the ninth month from the Effective Date (the "Maturity Date") and shall automatically rollover into a new indebtedness unless Borrower receives written notice of termination by the Lender no less than thirty (30) days before the Maturity Date. If this Indebtedness is terminated pursuant to this section, the distribution of any outstanding amounts owed to Lender by Borrower upon the maturity of this Indebtedness shall be controlled by Sections 8 and 11, below.

7. Covered Activities. This Indebtedness is designed to enable Borrower to expand its current business activities ("Covered Activities") for a certain period beginning on the Effective Date and ending on the Maturity Date (the "Activity Period"). The Covered Activities shall be conducted by Borrower in Borrower's sole discretion. Covered Activities shall include, but shall not be limited to, providing innovative funding known as a Merchant Cash Advance Transaction ("MCAT") in order to provide alternative financing for a market that is inadequately serviced by traditional banking and banking institutions.

MOI contracts called 1 Global Borrower, investors Lender, and merchant cash advance transactions MCAT. See pgs. 1-2.

8. Payments. Lender's payments during the Activity Period shall be based on Borrower's Covered Activities for the Activity Period, as follows:

8.1 Borrower shall enter into MCATs in certain amounts and with certain merchants, which shall be done in Borrower's sole discretion.

8.2 Upon Borrower's use of the Indebtedness for each individual MCAT, Borrower shall assign Lender a percentage of such MCAT, entitling Lender to that percentage of the regularly collected amounts received by Borrower for each individual MCAT ("Lender's Allocation").

8.3 The percentage assigned to Lender by Borrower for each MCAT shall depend on the monetary amount of the Indebtedness allocated to each MCAT by Borrower. Lender understands that the percentages assigned to it for each individual MCAT may vary and that the amount of the Indebtedness used by Borrower, and resulting assigned percentages to Lender, shall be decisions made by Borrower in its sole discretion.

8.4 Lender agrees that a thirteen percent (13%) management fee will be computed on and withdrawn from all collected amounts of Lender's Allocation for each MCAT. The net amount shall hereinafter be referred to as "Lender's Payment."

8.5 Borrower shall allocate Lender's Payment to Lender pursuant to this Section; however, Lender understands and agrees that Lender's Payment will be retained by Borrower as working capital through the Maturity Date.

8.6 Lender has been advised that the MCAT advances are repaid through Automatic Clearing House (ACH) debits deducted daily from the merchant's receipts, and or via a percentage of merchant's daily credit card receipts. Lender's Payment shall be reinvested in future MCATs.

8.7 The totality of Lender's Allocations, Lender's Payments, and any portion of the Indebtedness that has not been allocated to an MCAT shall hereinafter be referred to as Lender's "Account."

9. Monthly Reports. On a monthly basis, Borrower shall provide Lender a reconciliation statement that reflects the following: (a) the total value of Lender's Account; (b) a listing of each MCAT included in Lender's Account; and (c) the amount due to Lender from each MCAT.

10. Fees. Lender understands that Borrower may owe an origination fee to a third party by entering into a MCAT with a merchant. Lender acknowledges and agrees that Borrower will use the Indebtedness or Lender's Payment to pay Lender's pro rata share of such origination fee (based on Lender's Allocation), if any.

11. Grace Period. If Lender elects to terminate this Indebtedness on the Maturity Date pursuant to Section 6, upon maturity of the Indebtedness, monies from the ACH daily collections shall be paid to Lender as each MCAT included in the Account unwinds through the daily course of business, until such time that Lender's Indebtedness is repaid in full (the "Grace Period"). Any amount included in Lender's Allocation for each MCAT during the Grace Period, which has yet to unwind, shall continue to accrue pursuant to Section 8 until such time as the MCAT unwinds.

12. Lender's Acknowledgments. Lender hereby specifically acknowledges and agrees to the following:

12.1 The proceeds of this Indebtedness may be aggregated with other funds of Borrower for the Covered Activities of Borrower and any collateral (as set forth in Section 13) associated with this Indebtedness shall be a proportional aggregate of assets acquired by Borrower



therefrom and/or unspent proceeds of the Indebtedness held in Borrower's account, as the case may be.

12.2 Lender has no right to accelerate this Indebtedness. Lender may not transfer, encumber, assign, hypothecate, or otherwise transfer this Indebtedness to any other party, individual, or entity without prior written approval of Borrower.

12.3 Lender is a sophisticated and qualified individual, or business entity, and has entered into this Agreement for a commercial purpose. Lender's decision to execute this Agreement is and was based upon Lender's own independent evaluation of information deemed relevant to Lender, including, but not limited to, the information made available by Borrower to Lender, and Lender's independent evaluation of all such information. Lender acknowledges that Borrower has responded satisfactorily to all of Lender's requests for information.

12.4 Lender has relied solely on its own investigation and due diligence and it has not relied upon any oral or written information provided by Borrower, Borrower's personnel or agents, and acknowledges that no employee or representative of Borrower has been authorized to make any written statements other than those specifically contained or incorporated in this Agreement, and that Lender has not relied upon any such statements.

12.5 Lender has had the opportunity to do any and all due diligence and has had sufficient access to information to make its own credit decision, and it has performed such due diligence to its satisfaction. Lender has had the opportunity to seek advice from its own independent professionals. Lender understands that Borrower has made no representations as to the applicability of any federal or state statutes or laws.

12.6 Lender acknowledges that Borrower, in utilizing the Indebtedness provided under this Agreement, and in the ordinary course of its business, may maintain multiple accounts

simultaneously and, as such, waives any right to bring any claim or complaint regarding Borrower's prioritization of one account or business function as to the utilization of the proceeds of this Indebtedness. All such decisions shall be made by Borrower based on its experience and in its sole discretion.

13. Collateral. Lender specifically acknowledges that this Indebtedness is secured by accounts/assets contained within the Lender's Account during the Activity Period, acquired by Borrower pursuant to the Covered Activities relating to this specific Indebtedness, or lesser portions thereof in aggregated accounts as delineated above.

14. Governing Law, Jurisdiction and Venue. This Indebtedness shall be governed by and construed in accordance with the laws of the State of Florida, without regard to any applicable principles of conflicts of law. Any suit, action or proceeding arising hereunder, or involving the interpretation, performance or breach hereof, shall be instituted in Broward County, Florida.

15. Severability. Any provision of this Agreement that is not enforceable in any jurisdiction shall, as to that particular jurisdiction only, not be effective but only to the extent it is not unenforceable, without making the remaining provisions of this Agreement invalid. It will not affect the validity or enforceability of that provision in any other jurisdiction.

16. Litigation and Attorneys' Fees. In the event that either party finds it necessary to retain counsel in connection with the interpretation, defense, or enforcement of this Agreement, the prevailing party shall recover its reasonable attorneys' fees and expenses from the unsuccessful party.

17. Counterparts. This Agreement may be executed in any number of identical counterparts, each of which shall constitute an original and may be delivered by facsimile or e-mail, and together shall constitute one instrument.

18. Articles, Sections, and Exhibits. All references to "Article," "Articles," "Section," "Sections," "Subsection," or "Subsections" contained herein are, unless specifically indicated otherwise, references to articles, sections, and subsections of this Agreement. The words "herein" "hereof," "hereunder" and other similar compounds of the word "here" when used in this Agreement shall refer to the entire Agreement and not to any particular provision or section.

All references to "Exhibits" contained herein are references to exhibits attached hereto, all of which are made a part hereof for all purposes, the same as if set forth herein verbatim, it being understood that if any exhibit attached hereto, which is to be executed and delivered, contains blanks, the same shall be completed correctly and in accordance with the terms and provisions contained and as contemplated herein prior to or at the time of the execution and delivery thereof.

19. Number and Gender of Words. Whenever herein the singular number is used, the same shall include the plural where appropriate, and vice versa; and words of any gender shall include each other gender where appropriate.

20. Notices. Unless otherwise expressly provided herein, all notices and other communications provided for hereunder shall be in writing and mailed by USPS certified mail, faxed, or delivered, to the address, facsimile number to the address specified for notices on the signature page below or to such other address as shall be designated by such party in a notice to the other parties. All such other notices and other communications shall be deemed to have been given or made upon the earliest to occur of (a) actual receipt by the intended recipient or (b) if delivered by certified mail, return receipt requested with signature or the intended recipient,

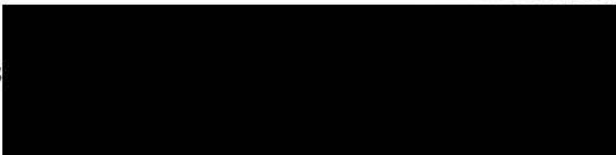
postage prepaid; or (c) if delivered by a nationally known overnight delivery service, upon receipt and signature of the recipient. Electronic mail and internet websites may be used to distribute routine communications, financial reports, and other information, and to distribute Loan Documents for execution by the parties thereto.

21. Entirety and Amendments. This Agreement embodies the entire understanding between the parties relating to the subject matter hereof (except documents, agreements and instruments delivered or to be delivered in accordance with the express terms hereof), supersedes all prior agreements and understandings, if any, relating to the subject matter hereof, and may be amended only by an instrument in writing executed jointly by Borrower and Lender and supplemented only by documents delivered or to be delivered in accordance with the express terms hereof. This Agreement may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

22. Parties Bound. This Agreement shall be binding upon and inure to the benefit of Borrower, Lender and their respective successors and assigns. No term or provision of this Agreement shall inure to the benefit of any Person other than Borrower and Lender and their respective successors and assigns; consequently, no Person other than Borrower and Lender and their respective successors and assigns, shall be entitled to rely upon, or to raise as a defense, in any manner whatsoever, the failure of Borrower or Lender to perform, observe, or comply with any such term or provision.

23. Waiver of Trial by Jury. Lender and Borrower knowingly, voluntarily and intentionally waive the right each may have to trial by jury with respect to any litigation that arises out of or under this Agreement.

THE PARTIES INDICATE THAT THEY HAVE READ THIS MEMORANDUM OF INDEBTEDNESS IN ITS ENTIRETY, UNDERSTAND ITS TERMS, AND AGREE TO BE BOUND BY THEM. THE UNDERSIGNED FURTHER WARRANT THAT THEY ARE AUTHORIZED TO EXECUTE THIS MEMORANDUM OF INDEBTEDNESS.

Signed this 

**BORROWER:**

**LENDER:**

I GLOBAL CAPITAL LLC



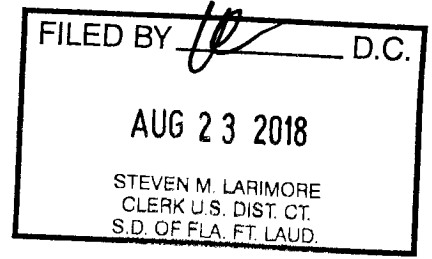
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# **EXHIBIT B**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA



CASE NO.

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

1 GLOBAL CAPITAL LLC, and  
CARL RUDERMAN,

**UNDER SEAL**

Defendants, and

1 WEST CAPITAL LLC,  
BRIGHT SMILE FINANCING, LLC,  
BRR BLOCK INC.,  
DIGI SOUTH LLC,  
GANADOR ENTERPRISES, LLC,  
MEDIA PAY LLC,  
PAY NOW DIRECT LLC, and  
RUDERMAN FAMILY TRUST,

Relief Defendants.

**COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF**

Plaintiff Securities and Exchange Commission alleges as follows:

**I. INTRODUCTION**

1. The Commission brings this action as the result of a four-year-long unregistered securities offering fraud conducted by Defendant 1 Global Capital LLC, and overseen by Defendant Carl Ruderman, that victimized thousands of investors nationwide, many of whom used their retirement savings to invest. From no later than February 2014 until July 27, 2018, 1 Global (also referred to as “the Company”), a private, South Florida firm, fraudulently raised more than \$287 million from more than 3,400 investors to fund its business of offering short-term financing to small and medium-sized businesses.

2. 1 Global used a network of barred brokers, registered and unregistered investment advisers, and other sales agents – to whom they paid millions in commissions – to offer and sell unregistered securities to investors in no fewer than 25 states. The Company, through its marketing materials distributed to sales agents and the sales agents themselves, promised investors a high-return, low-risk investment in which 1 Global would use investor money to make short-term cash advances called Merchant Cash Advances (“MCAs”) to businesses that could not obtain more traditional financing such as bank loans. The Company touted a rigorous underwriting process through which it purportedly approved only one in ten merchants who applied for a loan, and an electronic collection process that would allow investors to make a profit.

3. In reality, the Company used substantial investor funds for purposes other than the cash advances, including paying operating expenses and purchasing already-distressed, long-term credit card debt. In addition, 1 Global and Ruderman misappropriated at least \$35 million of investor money, at least \$28 million of which was paid: (1) directly to Ruderman, Relief Defendant Ruderman Family Trust, and other entities he owned or controlled; (2) to companies owned or operated by Ruderman’s relatives and acquaintances that had nothing to do with 1 Global’s cash advance business; and (3) to fund Ruderman’s lavish expenses such as a luxury vacation to Greece and monthly payments for his Mercedes Benz.

4. 1 Global and its sales representatives also made numerous other material misrepresentations and omissions to investors, including: (1) deceptively claiming the Company would only use investor money to fund MCAs; (2) falsely representing the amount of investor money the Company would take for its own use; (3) sending monthly account statements to investors that falsely represented their portfolio balances, rates of return, and the amount of their



cash 1 Global had in the bank to fund merchant loans; and (4) falsely representing the Company had an independent auditor that had endorsed certain aspects of the Company's business model.

5. Largely as a result of 1 Global and Ruderman's misappropriation and improper use of investor funds, by no later than October 2017 1 Global experienced a shortage of investor funds approximating \$23 million that should have been in the Company's bank accounts and available for merchant loans. This shortfall continued and increased with time, so that by June 30, 2018, 1 Global's financial records showed approximately \$50 million in missing investor funds.

6. Less than a month later, 1 Global and a sister company, Relief Defendant 1 West Capital LLC (which 1 Global used to make merchant loans in California), filed for Chapter 11 bankruptcy protection, placing investors at risk of losing significant funds. An independent management team is now operating 1 Global and 1 West.

7. Ruderman founded 1 Global, was its chairman, and functioned for the entirety of its operations as its Chief Executive Officer. He maintained sole operational control over the Company, closely monitored its fundraising from investors and the merchant loan process, and made all key management decisions. Although Ruderman is no longer associated with 1 Global, he continues to control or have access to entities that received misappropriated investor funds from 1 Global.

8. Through their conduct, 1 Global and Ruderman violated Sections 5(a) and (c) and Section 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§ 77e(a) and (c) and 77q(a), and Sections 10(b) and 15(a)(1) and Rule 10b-5 of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §78j(b) and 78o(a)(1) and 17 C.F.R. §240.10b-5. Additionally, Ruderman aided and abetted 1 Global's violations of Section 10(b) and Rule 10b-5 of the

Exchange Act. As 1 Global's control person, due to 1 Global violations of Section 10(b) and Rule 10b-5 of the Exchange Act, Ruderman also violated Section 20(a) of the Exchange Act, 15 U.S.C. §78t(a). The Commission seeks injunctive relief, disgorgement and prejudgment interest, and civil penalties against both Defendants, and disgorgement and prejudgment interest against the Relief Defendants. Simultaneously with filing this Complaint, the Commission also seeks emergency relief, including the appointment of a Receiver over certain Relief Defendants and an asset freeze against Ruderman and certain Relief Defendants.

## **II. DEFENDANTS AND RELIEF DEFENDANTS**

### **A. Defendants**

9. **1 Global** is a Florida limited liability company headquartered in Hallandale Beach and formed in 2013. Corporate records show the Company is owned entirely by the Ruderman Family Trust. Until July 27, 2018, Ruderman was its Chairman and CEO. The Company had about 100 employees at the time it filed for bankruptcy. The Company never registered any of its securities with the Commission and did not have any publicly traded stock.

10. **Ruderman**, 77, is a resident of Aventura, Florida, and the sole owner of 1 Global through the Ruderman Family Trust. Until July 27, 2018, when he resigned from 1 Global, he was 1 Global's Chairman and CEO. He controlled all aspects of the Company's operations until he resigned. Ruderman continues to have ownership interests in Relief Defendants Bright Smile Financing, LLC, and Ganador Enterprises, LLC through Trusts that he controls. As part of the Commission's investigation into this matter, the staff subpoenaed Ruderman for sworn testimony, but he refused to appear.

### **B. Relief Defendants**

11. **1 West** is a Florida limited liability company formed in April 2014 and

headquartered at 1 Global's Hallandale Beach address. It is also owned by the Ruderman Family Trust. Corporate records list 1 Global's former operations manager as its manager. 1 West operated as 1 Global's agent in California to solicit and enter into contracts with merchants, and received approximately \$50 million in investor funds from 1 Global. 1 West also filed for Chapter 11 bankruptcy protection on July 27, 2018, and is now under the control of the same independent management as 1 Global.

12. **Bright Smile Financing** is a Florida limited liability company formed in March 2017. Bright Smile Financing loans individuals money to finance cosmetic or dental procedures. Corporate records show Bright Smile Financing used the same address as 1 Global and is 100% owned by Ruderman through the Bright Smile Trust, that Ruderman controls. Up until a few days ago, Bright Smile Financing used 1 Global's former operations manager as its manager. From May 16, 2017 through June 2018, Bright Smile Financing received approximately \$15.3 million in investor funds from 1 Global at Ruderman's direction for no consideration or legitimate services.

13. **Ganador Enterprises** is a Florida limited liability company formed on March 3, 2016. Corporate records show the Ruderman Family Trust owns 50% of Ganador, with two other individuals who are unrelated to 1 Global owning the other 50%. Ganador lists 1 Global's former chief operating officer and Ruderman's brother-in-law as its manager. Ganador makes individual consumer loans, including payday loans. Ganador uses the same address as 1 Global. From April 28, 2016 through June 2018, Ganador received approximately \$5.6 million in investor funds from 1 Global at Ruderman's direction for no consideration or legitimate services.

14. **BRR Block Inc.** is a Florida corporation based in Boca Raton and incorporated in January 2018. Corporate records show one of Ruderman's sons is BRR Block's sole officer and

director. Its business is purportedly related to blockchain technology. In January 16 2018, BRR Block received at least \$1 million in investor funds from 1 Global for no consideration or legitimate services.

15. **Digi South, LLC** is a Florida limited liability company formed in November 2012. Digi South is owned by the Ruderman Family Trust and uses the same address as 1 Global. Corporate records show that until 2017, its manager was Ruderman's sister-in-law. Since 2017, the company has listed 1 Global's former operations manager as its manager. Among other things, Digi South used to own Playgirl and other adult magazines. Through April 2018, Digi South received approximately \$805,000 in investor funds from 1 Global for no consideration or legitimate services.

16. **Media Pay LLC** is a Florida limited liability company based in North Miami, Florida and formed in January 2015 and administratively dissolved in September 2016. Corporate records show its manager is Ruderman's sister-in-law. Through April 2018, Media Pay received approximately \$647,000 in investor funds from 1 Global for no consideration or legitimate services.

17. **Pay Now Direct LLC** is a Florida limited liability company formed in April 2015 that was administratively dissolved in September 2017. The entity listed 1 Global's former operations manager as its manager. Pay Now Direct is an entity Ruderman uses to pay his expenses, and it uses the same address as 1 Global. Through June 2018, Pay Now Direct received approximately \$5.3 million in investor funds from 1 Global and the Ruderman Family Trust for no consideration or legitimate services.

18. The **Ruderman Family Trust** is a Florida trust instrument dated June 2, 2014, created to administer certain Ruderman assets. Ruderman is the grantor, his brother-in-law is the

trustee, and Ruderman's wife and children are the beneficiaries. Through April 2018, the Trust received approximately \$4 million in investor funds from 1 Global for no consideration or legitimate services.

### **III. JURISDICTION AND VENUE**

19. The Court has jurisdiction over this action pursuant to Sections 20(b), 20(d), and 22(a) of the Securities Act, 15 U.S.C. §§77t(b), 77t(d), and 77v(a), and Sections 21(d), 21(e), and 27 of the Exchange Act, 15 U.S.C. §§78u(d), 78u(e), and 78aa.

20. This Court has personal jurisdiction over the Defendants and Relief Defendants and venue is proper in the Southern District of Florida as Ruderman resides in the District and 1 Global and all of the Relief Defendants used addresses in this District and conducted their business in this District. In particular, 1 Global's operations were located in the Southern District, and Ruderman and other Company officers conducted, supervised, and managed all aspects of 1 Global's fundraising and MCA business at 1 Global's Hallandale Beach headquarters.

21. The Defendants, directly and indirectly, made use of the means and instrumentalities of interstate commerce, and the mails, in connection with the acts, practices, and courses of business set forth in this Complaint.

### **IV. 1 GLOBAL'S MERCHANT CASH ADVANCE BUSINESS**

22. Ruderman founded 1 Global in 2013, purportedly seeking "a better growth opportunity for his family's funds." By 2018, the Company had grown to more than 100 employees in sales, underwriting, collections, finance, technology and lawyers.

23. Ruderman was a hands-on Chairman and CEO, personally overseeing all aspects of the Company's operations. There was no board of directors or any other high-level executive

with decision-making authority. Ruderman knew at all times how much 1 Global had raised from investors and received a daily report showing how many cash advance transactions the Company had funded. Ruderman signed 1 Global's agreements with third-party sales agents to allow them to offer and sell 1 Global's unregistered securities. He thus was responsible for the terms of those agreements, which specified the sales agents' compensation and required 1 Global to approve all marketing materials and sales brochures the agents used.

24. Ruderman also personally directed or approved all of the Company's major transactions, including an approximate \$40 million loan to a California automotive firm and the \$50 million purchase of distressed credit card debt, the latter of which was not an allowed use of investor funds. He carefully monitored account statements the Company sent to investors each month, approved sending them, and knew they contained false statements about the value of investors' portfolios and rates of return. He directed bad debt reserve amounts, ordered investor funds sent to himself and companies his family owned, and told one employee who questioned those transactions it was his company and he could do what he wanted with investor money.

25. In fact, Ruderman was so involved in the Company that he bragged in an email to an executive of a hedge fund that gave 1 Global a line of credit in 2016 "I'm personally on top of all operations from 8am thru 6:30pm everyday!"

26. Until it ceased operations on July 27, 2018, 1 Global was in the business of funding MCAs - short-term loans to small and medium-sized businesses. According to its marketing materials and website, 1 Global provided these businesses with an alternative source of funding to traditional bank loans and other financing methods, which it touted as insufficient to meet the short-term needs of smaller businesses.

27. 1 Global contracted with 100 to 200 third-party vendors to find merchants

interested in applying for cash advances. 1 Global paid those companies a finder's fee for each merchant who received a cash advance. The amount of each finder's fee varied, depending on the loan amount, the third party's track record with 1 Global, and other factors. 1 Global determined the amount of the finder's fee in each instance. Through April 2018, 1 Global paid third parties who solicited merchants approximately \$15 million in finder's fees for their efforts.

28. Once a finder located an interested merchant, the merchant would apply directly to 1 Global for a cash advance. In marketing materials 1 Global sent to sales agents to use in soliciting investors, 1 Global touted a comprehensive underwriting process and stressed that it only approved loans to one out of every ten merchants who applied.

29. The Company indicated in its marketing materials that it used a variety of methods to weed out risky loan candidates, including internet research, credit checks, specific programs for background checks and business analysis, a review of bank records and other documents, and, most importantly, personal contact with every merchant before the Company made an advance.

30. The Company's materials also reported that 1 Global's MCAs were typically small, averaging \$68,000. The typical repayment term was anywhere from four months to one year. The MCAs were purportedly made against a business' future cash receivables, and merchants agreed to make daily payments via electronic (ACH) debiting from their business operating bank accounts as they received payments from their customers or vendors.

31. 1 Global's materials also touted a consistently low default rate, specifically stating that its average annual loan write-off rate was only 4%. In addition, the Company told investors and others that approximately 30% of the merchants it loaned money to refinanced their loans.

32. In reality, the Company's MCA process was not nearly so rigorous and its cash

advance business functioned much differently. In contrast to its claim that its average loan amount was \$68,000, 1 Global often made loans of hundreds of thousands or even millions of dollars. In one instance, 1 Global made an MCA of approximately \$40 million to a single California automobile dealership – a transaction Ruderman personally directed.

33. The Company also had far more difficulty collecting from merchants than it publicly disclosed. For example, in 2016, 210 of the approximately 1,166 MCAs 1 Global funded, a total of 18%, were the subject of collection lawsuits. In 2017, 328 of 1 Global's 2,092 MCAs, a total of 15%, were the subject of collection lawsuits.

34. Additionally, the Company's website told a far different story than the thorough underwriting process 1 Global touted to investors and elsewhere. The website stressed how simple and quick it was for merchants to obtain loans, noting that the MCAs were *unsecured* business cash advances. The website consistently promised merchants they could execute an MCA and "have your money in as little as 24 hours."

35. The website also promised merchants that "If you own a business and need cash fast, we're the company to call," going on to promise "We can provide the money you need without the hassles and hoops other financial institutions put you through . . . You do not have to come to us hat in hand with scads of paperwork proving your credit worthiness only to have your application denied. *We fund 90% of the businesses that apply without basing it on their credit scores . . .* We have the resources and the commitment to get you that unsecured advancement you need immediately." Emphasis added.

36. Through April 2018, 1 Global and 1 West made about \$348 million in merchant cash advances involving approximately 4,000 MCAs. As of that same date, merchants had repaid approximately \$241 million of that amount. As of April 2018, due to collectability issues



and the Defendants' misappropriation of investor funds, 1 Global owes investors at least \$272 million but only had \$27.5 million in its bank accounts. 1 Global does not currently have enough funds to repay investors and filed for bankruptcy in July 2018.

## V. 1 GLOBAL'S SOLICITATION OF INVESTOR FUNDS

### A. The Network Of Sales Agents

37. 1 Global funded its MCA business and its operations almost entirely with money from investors, whom the Company referred to alternately as "Lenders" or "Syndicate Partners." The only non-investor source of funds for 1 Global came from a \$10 million line of credit the Company obtained from a hedge fund in 2016, from which it drew down \$9.5 million over several months in 2016 and 2017 to make MCAs at the direction of the hedge fund. The remainder of 1 Global's MCA business derived entirely from investors' contributions.

38. 1 Global found its investors through a second network of sales agents consisting in large part of registered and unregistered investment advisers and former (and in some cases barred) brokers. The Company had dozens of sales agents, to whom it paid commissions usually ranging from .75% to 3% of the amount of investor funds they brought to 1 Global.

39. For example, many sales agents received 3% of every new investment amount they brought in to the Company. If the investment rolled over into another term, most sales agents received an additional .75%. In addition, some sales agents who brought other sales agents into the Company received an additional .75% of every amount their recruited sales agents sold. Through April 2018, 1 Global paid sales agents nearly \$9 million in commissions for getting investors to put money into 1 Global.

40. Sales agents signed an Affiliate Agreement with 1 Global outlining their rights and responsibilities in, and compensation for, selling the 1 Global investment. Ruderman signed at least two of these Affiliate Agreements on behalf of the Company, allowing sales agents to

market the 1 Global investment. The Agreements specified that 1 Global had to provide or approve all marketing materials the sales agents provided to prospective investors. In the Agreements and in meetings and telephone calls, 1 Global stressed that its minimum investment amount was \$25,000, and that the investment opportunity was for a limited number of sophisticated investors.

41. In practice, however, 1 Global placed no restrictions on who sales agents could solicit to invest in the Company, and frequently waived the \$25,000 minimum investment requirement. Sales agents regularly solicited large numbers of their existing clients to invest. In short, the Company accepted money from any and all investors the sales agents could find. As 1 Global's owner, Chairman, and CEO, Ruderman substantially participated in the offer and sale of 1 Global's unregistered securities to the investing public and paying transaction-based compensation to the sales agents by: (1) hiring sales agents; (2) attending due diligence meetings with sales agents; (3) executing at least two Affiliate Agreements; and (4) directing 1 Global to pay the sales agents' commissions.

42. From February 2014 through April 2018, 1 Global received at least \$287 million from 3,400 investors located in at least 25 states, with at least 100 investors each located in California, Florida, Illinois, Ohio, and Tennessee. More than one-third of the money came from those who invested through IRAs. In the months after April 2018, 1 Global continued to receive millions of dollars from investors. The funds 1 Global raised were commingled or pooled together into one or more of 1 Global's bank accounts.

#### **B. 1 Global's Sales And Marketing Efforts**

43. 1 Global regularly provided sales materials to its agents for use in marketing the investment. Those materials included a list of Frequently Asked Questions, a history of the

Company, and a description of both the MCA program and the investment process. Sales agents used the materials in soliciting clients to invest, attaching them to emails in at least one case and other times using the information in them when they spoke to prospective investors.

44. The marketing materials contained the statements about the purportedly rigorous MCA loan approval and repayment process described earlier in this Complaint. In addition, the marketing materials consistently touted 1 Global's alleged consistently high returns for investors. The Frequently Asked Questions claimed 1 Global investors had *averaged* "high single digit" and "low double digit" annual returns.

45. In addition, 1 Global sent copies of actual monthly investor account statements to sales agents to show investors. Those account statements showed returns ranging from 8% to 17% a year. Starting in January 2018, 1 Global changed its marketing materials to tell investors that they would earn a guaranteed minimum of 3% a year, with the possibility of much higher returns.

46. The marketing materials, including the Frequently Asked Questions, also stated that 1 Global collected an average of \$1.30 to \$1.35 or \$1.40 on each dollar it advanced in an MCA. This was the means by which 1 Global and investors both purportedly made a profit.

47. Using this information, sales agents usually told investors 1 Global could earn them high single digit to low double digit returns a year, and at least one sales agent created his own promotional flyer based on the Company's information emphasizing these returns. Both the Company and sales agents stressed that 1 Global offered better returns than fixed instruments such as annuities, and was a safe, short-term alternative to more risky stock market investments.

48. Both sales agents and investors were attracted by these allegedly high profits, with many investors deciding to send money on the basis of them. For example, based on the

promised high returns, one investor gave almost \$1 million from a 401K retirement plan to 1 Global for MCAs. Another investor invested \$135,000 after his sales agent showed him one of the sample client statements that reflected double digit annual returns. That same investor sent in another approximately \$150,000 in the ensuing months based on receiving his own monthly account statements showing annual returns of at least 8%. Still another investor contributed approximately 20% of her net worth in two investments in September 2017 and May 2018 based on the promised high rates of return and the profits being shown on her monthly account statements.

49. Although 1 Global told sales agents and investors that it was not selling securities because the notes it gave to investors were allegedly only for nine months, at least one early version of the Company's marketing materials called the opportunity to put money into 1 Global an investment. The cover read "Putting cash to work for merchants while earning high returns on your investment." Many investors wrote the word "investment" in the memo line of their checks, and 1 Global's marketing materials touted the Company as an investment alternative to annuities and stocks. At least one sales agent repeatedly told clients in emails that he was offering them an investment in 1 Global.

### **C. The Memorandum Of Indebtedness**

50. For the vast majority of the four-plus years 1 Global offered and sold its investment, it used an instrument entitled a Memorandum of Indebtedness ("MOI") as the note or contract between the Company and investors.

51. The MOI termed the investor a "Lender," and identified the Company as the "Borrower." The MOI specifically stated that an investor was providing money to 1 Global so the Company could expand its business activities, which it termed the "Covered Activities." The

only specific Covered Activity identified in the MOI was the MCAs. And the only use of investor money the Company identified in its marketing materials was the MCAs. After 1 Global received investor funds, it pooled and commingled them together in non-segregated 1 Global bank accounts.

52. While the MOI stated that it was a nine-month note, for most of the time 1 Global raised money from investors, the MOI also stated the note would automatically roll over into a new nine-month term unless the investor expressly informed the Company in writing at least 30 days before the end of the nine months that he or she did not want the note to roll over.

53. For a brief period in early 2018, 1 Global changed the MOI to provide that the note would mature after nine months unless an investor specifically informed the Company that he or she wanted to renew the investment. However, 1 Global reinstated the automatic rollover provision about two months later as a result of the “paperwork nightmare” the revised opt-in procedure was causing.

54. In fact, the overwhelming majority of investors allowed their investments to automatically roll over. One sales agent estimated only six to eight of the hundreds of investors he solicited redeemed their investments after nine months. Company bank records show that as of April 30, 2018, investors had sent more than \$287 million to 1 Global, but 1 Global had returned only about \$16 million of those funds through redemptions or other payments.

55. Even if an investor redeemed his or her investment after nine months, the note extended beyond nine months because it took 1 Global several months to fully pay out an investor’s principal and interest. 1 Global called this period “the unwinding” and “the grace period” in the MOIs.

56. The unwinding period was caused by the way 1 Global used investor money to

fund MCAs. Rather than use investor funds on a single MCA or a small number of MCAs, the Company gave each investor a small, fractionalized interest in up to hundreds of MCAs. A Company computer system would assign the investor's funds automatically, based on the amount of MCAs that came in daily in the weeks following an investment. Under this system, one MCA would be funded with dozens or even hundreds of investors' funds pooled together.

57. Using this process often resulted in the Company taking months to place all of an investor's funds into MCAs. Thus, if an investor elected to redeem his or her investment after nine months, it could take months after that for the merchants who received the investor's money to fully repay the MCAs. Often the Company would not generate enough money from the MCAs to fully pay redeeming investors, forcing the Company to use new investor funds to pay off redeeming investors.

58. 1 Global did not pay investors the interest or the increase in valuation of their portfolio the Company told them they were earning until the investor cashed out some or all of their investment. Although 1 Global sent investors monthly account statements purporting to show each investor's account credited with the interest the investor had earned on MCA repayments, investors did not receive those payments right away. Rather, 1 Global simply commingled all those investor funds into its various bank accounts and frequently reinvested the investor money into new MCAs. This also allowed 1 Global to misappropriate investor funds.

59. 1 Global eventually memorialized the unwinding period into specific timetables at the beginning of 2018. It informed investors through marketing materials sent to sales agents that if an investor who redeemed had placed less than \$250,000 with 1 Global, he or she would be fully repaid in 12 months, three months after the end of the nine-month term. For investments of greater than \$250,000, the repayment would take six additional months, making the MOI a 15-

month note.

60. Another key provision of the MOI provided that it was within 1 Global's sole discretion how to use investor money to make MCA loans. In fact, investors had no say in how 1 Global used their money. Investors could not and did not manage their MCA loan portfolios; it was solely up to 1 Global whether and when to use an investor's money to fund MCAs and which MCAs to fund. The success of the investment and whether an investor earned profits was solely dependent on 1 Global's decisions on MCA funding and other uses of funds, as well as repayment and collection efforts.

61. The MOI contained a paragraph stating the investor was sophisticated and was "qualified," meaning he or she had a certain income level or net worth. However, 1 Global never enforced this provision, did not restrict who sales agents could offer the investments to, and accepted investments from anyone who wanted to invest, regardless of their net worth, income, or sophistication.

62. Finally, the MOI disclosed 1 Global would charge investors in two ways. The first was a 13% management fee that 1 Global would take from the amount collected from MCA repayments. The second way 1 Global said it would charge investors was to have them reimburse the Company the finders' fees it paid to third parties for finding merchants to take MCAs. The MOI contained only those two ways 1 Global could charge investors. However, in truth 1 Global took far greater amounts from investor funds to pay its operating expenses, and for its misappropriation to Ruderman and his related businesses.

## **VI. MISREPRESENTATIONS AND OMISSIONS TO INVESTORS**

### **A. False Claims About Use Of Investor Funds**

63. 1 Global falsely represented to investors on its website, in its marketing materials,

and in the MOIs that it would use their money to fund MCAs. 1 Global representatives also made these same false statements to sales agents in meetings to pitch the MOI investment.

64. In reality, 1 Global used a substantial amount of investors' funds for purposes other than making MCAs. First, 1 Global used significant investor funds on the Company's operations. 1 Global spent approximately \$53 million in operating expenses through April 2018. Because investor funds were the sole source of 1 Global's money, the Company necessarily had to use investor funds to pay operating expenses.

65. However, the total investor funds available to 1 Global to use for operating expenses from the two ways it could collect money from investors, as described more fully below, was only about \$46.6 million. Thus, 1 Global spent about \$6.4 million more in investor funds on operating expenses than it told investors it would.

66. Ruderman also authorized 1 Global to spend another \$50 million of investor money to purchase \$60 million of bad credit card debt from an entity called Travis Portfolio. 1 Global began making the payments for this purchase on September 28, 2017. The \$50 million represented about 16% of all investor funds 1 Global raised through April 2018.

67. Buying the credit card debt was not an MCA, and thus not an allowed use of investor funds. Travis Portfolio was not using the money to fund specific business operations as 1 Global's marketing materials and website indicated MCAs were for. Furthermore, because the credit card debt was already considered bad debt, this was a very risky investment and the repayment time was far longer than the 4-to-12 months for MCAs that 1 Global advertised. In fact, Travis Portfolio collected the credit card debt so slowly that it could have taken that entity *four years* to repay 1 Global the entire amount. This slow repayment impacted investors' ability to make a profit and 1 Global's ability to fund its MCA business and repay investors.



68. Last, 1 Global, authorized and directed by Ruderman, misappropriated at least \$28 million in investor funds to pay Ruderman personally as well as several companies in which he or his family members had a direct interest. This included, as described more fully below, money to help fund a family vacation to Greece, monthly payments for a Mercedes Benz Ruderman leased, his monthly American Express credit card bill, payments for Ruderman's chef and housekeeper, and \$4 million to his family trust.

69. It also included more than \$20 million payments over several years to Bright Smile Financing and Ganador, companies that funded consumer and individual loans that had nothing to do with MCAs, and which Ruderman either owned outright or partially owned through Trusts he controlled. The first payment by 1 Global to Bright Smile Financing occurred on May 6, 2017, while 1 Global made its first payment to Ganador on April 28, 2016.

70. The misappropriation also included a \$1 million payment on January 16, 2018 from 1 Global to BRR Block, a company owned by one of Ruderman's sons that also had nothing to do with MCAs. None of the payments was disclosed in 1 Global's marketing materials or the MOIs, and these payments led directly to the shortage of investor funds.

71. Investors said they would not have invested in 1 Global's MCA program, and sales agents said they would not have solicited investors, if they had known 1 Global was misrepresenting how it used investor funds.

#### **B. False Claims About Fees And Expenses 1 Global Could Take From Investors**

72. As previously described, 1 Global disclosed one fee and one expense it could take from investors in the MOIs. The first was a management fee of 13% of merchants' MCA repayments. Through April 2018, 1 Global's bank records show it collected \$240 million in MCA repayments. 1 West, 1 Global's sister company, collected an additional \$1 million.

Furthermore, the Company collected about \$2.1 million from Travis Portfolio, for a total of \$243.1 million in collections. Taking 13% of that total, 1 Global could have taken a maximum of \$31.6 million in management fees from those repayments through April 2018.

73. The expense 1 Global told investors about in the MOI was the finder's fees it was paying third parties to find merchants to enter into MCAs. 1 Global paid those third parties approximately \$15 million in fees through April 2018. Thus, the maximum amount of fees and expenses 1 Global could have taken from investors through April 2018 was only \$46.6 million.

74. However, through April 2018, Ruderman and 1 Global actually used about \$81.3 million in investor funds (not including the \$50 million 1 Global spent on the Travis Portfolio deal). This consisted of \$53 million in operating expenses, and at least \$28 million in misappropriated funds sent to Ruderman and numerous Ruderman-related entities (described below). Thus, the statements that 1 Global would take a 13% management fee and get reimbursed for only one expense from investor funds were false.

75. Ruderman knew 1 Global had used these excess investor funds because he personally authorized most, if not all, of the \$28 million in misappropriated funds and closely monitored the Company's finances, sometimes receiving daily reports.

### **C. False Monthly Account Statements**

76. 1 Global provided every investor with a monthly account statement that showed all of the individual MCAs in which an investor's money was spent – frequently numbering into the hundreds of contracts. The monthly statements at first showed the individual merchants who received each MCA, then were changed to show only contract numbers, then changed again to show only the type of business that had received each MCA. Ruderman ordered these changes.

77. Early versions of the account statements added up the dollar amount in each MCA

to reflect “total net current account receivables” – i.e., how much each investor could expect to receive in repayment from the outstanding MCAs. Below that figure, the account statement contained a total alternatively called “cash not yet deployed,” “cash to be deployed,” or “cash for future receivables.” Regardless of the terminology used, the figure represented the amount of the investment that 1 Global had not yet put into MCAs and was purportedly sitting in 1 Global’s bank accounts available for MCA funding.

78. The early versions of the account statement added up the two totals to represent what the investor’s portfolio was then purportedly worth. Investors could plainly see on these monthly statements how much their investment had allegedly increased in value, which directly correlated to the rate of return each investor was allegedly earning. In addition, on the first page of each monthly statement, 1 Global expressly told investors the value of their portfolio, the increase in the valuation of their portfolio since they invested, and what rate of return their investment had earned to date.

79. Ruderman received, reviewed, and approved the client statements before 1 Global sent them to investors. He also received a monthly report from the Company’s financial analysts showing the total amounts from all investors loaned to merchants and the total cash allegedly available from investors in 1 Global’s bank accounts. The Company’s Chief Financial Officer signed the account statements, and its Director of Business Development sent them out. However, Ruderman had to approve sending out the statements before they could be given to investors.

80. Starting no later than October 2017, the monthly account statements were false because they misrepresented the amount of “cash not yet deployed” available in 1 Global’s bank accounts on every investor’s account statement. That month, due in large part to the Ruderman-

authorized misappropriation and misuse of investor funds, the company's financial analysts discovered that the total of "cash not yet deployed" on all the account statements was approximately \$23 million higher than the actual cash in 1 Global's bank accounts.

81. As of October 31, 2017, investor account statements in the aggregate showed approximately \$89 million in "cash not yet deployed." Yet 1 Global's bank accounts held only approximately \$65.7 million in cash, a difference of \$23.3 million. Thus, every account statement showed a false amount of "cash not yet deployed." Because that amount was false, the total value of each investor's portfolio, the increase in the valuation since they had invested, and the rate of return each account statement showed for each investor were all overstated.

82. When financial analysts brought this cash shortfall to Ruderman's attention, he falsely claimed they did not include all the Company's bank accounts, and his only action was to order the "total net current account receivables" and "cash not yet deployed" lines removed from future account statements so investors could not easily tell how much of their investment remained in cash or how their total portfolio value was determined.

83. Despite Ruderman's attempt to hide the cash shortfall from investors, the monthly account statements that he reviewed and approved continued to be false every month because the cash shortage continued every month. Despite knowing that the "cash not yet deployed" number was inaccurate, he continued to use overstated amounts of cash to overstate the total value of investors' portfolios, the increase in the valuation of investors' portfolios, and the investors' rates of return on all subsequent monthly account statements.

84. The cash shortfall not only continued, but increased over time. As of November 30, 2017, the combination of all investors' account statements showed 1 Global should have had approximately \$100.3 million in its bank accounts as "cash not yet deployed." Yet the bank

accounts held only approximately \$75.5 million, a difference of \$24.8 million. Thus the rates of return, the value of the portfolio, and the increase in valuation of the portfolio since inception for each investor on each monthly account statement were overstated.

85. For December 2017, when according to the total of all monthly statements 1 Global should have had approximately \$97.7 million in “cash not yet deployed” in its bank accounts, the Company had only approximately \$72.4 million in its accounts, a difference of \$25.3 million. So again the rates of return and other financial metrics described above were false for each investor.

86. This pattern continued through at least June 2018, when at month’s end the combination of all investor account statements showed the Company should have had approximately \$70 million in its bank accounts, while the accounts held only about \$20 million, a difference of \$50 million. As a result, the rates of return and other financial metrics described above were false on each investor’s account statement.

87. Investors receiving these account statements often based their decision to allow their investment to automatically roll over on the profits and rates of return 1 Global represented they were making. Investors said they would not have invested with 1 Global, and sales agents said they would not have solicited investors, if they had known 1 Global was misrepresenting the amount of investor cash it had on hand and the rates of return investors were earning.

#### **D. False Claims About Daszkal Bolton’s Work**

88. Each investor’s monthly account statement falsely claimed that “Our independent audit firm, **Daszkal Bolton L.L.P.**, has endorsed and agrees with the rate of return formula.” Emphasis in original. However, Daszkal Bolton never audited 1 Global’s financial statements, and never endorsed or agreed with 1 Global’s rate of return formula.

89. While 1 Global did hire Daszkal Bolton, the firm's work was limited to drafting a set of agreed-upon procedures for evaluating investors' accounts. Furthermore, the audit firm stopped doing work for 1 Global after 2016. Thus, every account statement containing the representation about Daszkal Bolton was false. Investors said they would not have invested in 1 Global, and sales agents said they would not have solicited investors, if they had known 1 Global was misrepresenting the work Daszkal Bolton performed for 1 Global.

90. In addition to misrepresenting Daszkal Bolton's status on the monthly account statements, numerous versions of 1 Global's Frequently Asked Questions provided to sales agents and in some cases to investors stated that "An external accounting firm validates [investor] loan balances quarterly."

91. This statement was also false because neither Daszkal Bolton nor any other external accounting firm ever validated the amounts listed on investor account statements or any other document showing the amounts in an investor portfolio.

92. Investors said they would not have invested in 1 Global, and sales agents said they would not have solicited investors, if they had known 1 Global was falsely representing the work Daszkal Bolton performed for the Company.

#### **E. Misappropriation Of Investor Funds**

93. Beginning no later than 2016, Ruderman regularly instructed 1 Global accountants and other employees to transfer investor funds to benefit himself, his family, and other close acquaintances, either directly or through entities they owned. When one accountant repeatedly questioned these transfers as improper, Ruderman told the accountant 1 Global was his company and he could do what he wanted with its money.

94. As of June 30, 2018, 1 Global at Ruderman's direction had transferred about

\$15.3 million to Bright Smile Financing, a company that loaned individuals money for cosmetic dental procedures. There was no agreement between 1 Global investors and Bright Smile Financing for 1 Global to provide that funding, and 1 Global investors do not have a documented ownership interest in Bright Smile Financing. Bright Smile Financing provided no consideration or services in exchange for the money. Corporate records show Bright Smile Financing is 100% owned by Ruderman through the Bright Smile Trust.

95. Also as of June 30, 2018, 1 Global had sent approximately \$5.6 million to Ganador, a consumer/payday loan service, at Ruderman's direction. 1 Global investors do not have a documented ownership interest in Ganador, but the Ruderman Family Trust owns 50% of the firm. Ganador provided no consideration or services for the \$5.6 million.

96. Ruderman authorized or ordered 1 Global to send investor funds to family members as well. For example, on January 10, 2018, one of Ruderman's sons incorporated BRR Block. Six days later, 1 Global funded BRR Block with \$1 million of investor funds for no consideration or services.

97. Ruderman also had more than \$4 million of 1 Global investor money sent to the Ruderman Family Trust, of which his wife and children are beneficiaries. Ruderman had the Company pay the Trust approximately \$81,283 a month (slightly less than \$1 million a year) in investor funds, purportedly to compensate Ruderman for his interest in entities that had almost nothing to do with 1 Global's business. The last of these payments occurred on July 26, 2018, one day before 1 Global filed for bankruptcy. The Trust provided no services or consideration for the money.

98. 1 Global paid Ruderman's current wife a \$116,000 annual salary, although she had no listed job with the Company and no office or desk there. 1 Global employees never saw

her do any work for the Company. In addition, Ruderman received a \$240,000 annual salary.

99. Ruderman's pilfering of investor funds did not stop there. He used significant amounts to fund a lavish lifestyle that included:

- Monthly lease payments for a Mercedes Benz;
- Payment for a luxury family vacation to Greece;
- Payments to a housekeeper and a chef;
- Monthly payments on a personal American Express credit card and a Bank of America credit card;
- Payment for his son's auto insurance;
- Payment to a company where his wife's sister was listed as the manager; and
- Payments to his ex-wife.

100. None of these payments to Ruderman and related entities were disclosed to investors, and the fleecing of investor funds by Ruderman from 1 Global directly inhibited 1 Global's ability to make MCA loans and placed investor funds at risk.

## **VII. CLAIMS FOR RELIEF**

### **COUNT I**

#### **Violations Of Sections 5(a) And 5(c) Of The Securities Act**

101. The Commission repeats and realleges Paragraphs 1 through 100 of this Complaint as if fully set forth herein.

102. No registration statement was filed or in effect with the Commission pursuant to the Securities Act with respect to the securities issued by 1 Global as described in this Complaint, and no exemption from registration existed with respect to those securities.

103. From no later than February 2014 through July 27, 2018, 1 Global and Ruderman,



directly and indirectly:

- (a) made use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell securities, through the use or medium of a prospectus or otherwise;
- (b) carried or caused to be carried securities through the mails or in interstate commerce, by any means or instruments of transportation, for the purpose of sale or delivery after sale; or
- (c) made use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use of medium of any prospectus or otherwise any security,

without a registration statement having been filed or being in effect with the Commission as to such securities.

104. By reason of the foregoing 1 Global and Ruderman violated, and unless enjoined, are reasonably likely to continue to violate, Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a) and 77e(c).

## COUNT II

### Violations Of Section 17(a)(1) Of The Securities Act

105. The Commission repeats and realleges Paragraphs 1 through 100 of this Complaint as if fully set forth herein.

106. From no later than February 2014 through July 27, 2018, 1 Global and Ruderman, in the offer or sale of securities by use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly, employed devices, schemes or artifices to defraud.

107. By reason of the foregoing, 1 Global and Ruderman violated, and unless enjoined, are reasonably likely to continue to violate, Section 17(a)(1) of the Securities Act, 15 U.S.C. § 77q(a)(1).

**COUNT III**

**Violations Of Section 17(a)(2) Of The Securities Act**

108. The Commission repeats and realleges Paragraphs 1 through 100 of this Complaint as if fully set forth herein.

109. From no later than February 2014 through July 27, 2018, 1 Global and Ruderman, in the offer or sale of securities by any use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly obtained money or property by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

110. By reason of the foregoing, 1 Global and Ruderman violated, and, unless enjoined, are reasonably likely to continue to violate, Section 17(a)(2) of the Securities Act, 15 U.S.C. § 77q(a)(2).

**COUNT IV**

**Violations Of Section 17(a)(3) Of The Securities Act**

111. The Commission repeats and realleges Paragraphs 1 through 100 of this Complaint as if fully set forth herein.

112. From no later than February 2014 through July 27, 2018, 1 Global and Ruderman, in the offer or sale of securities by use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly, engaged in transactions, practices, or courses of business which operated or would have operated as a fraud or deceit upon the purchasers.

113. By reason of the foregoing, 1 Global and Ruderman violated, and, unless

enjoined, are reasonably likely to continue to violate, Section 17(a)(3) of the Securities Act, 15 U.S.C. § 77q(a)(3).

### **COUNT V**

#### **Violations Of Section 10(b) And Rule 10b-5(a) Of The Exchange Act**

114. The Commission repeats and realleges Paragraphs 1 through 100 of this Complaint as if fully set forth herein.

115. From no later than February 2014 through July 27, 2018, 1 Global and Ruderman, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, employed devices, schemes, or artifices to defraud in connection with the purchase or sale of securities.

116. By reason of the foregoing, 1 Global and Ruderman violated, and, unless enjoined, are reasonably likely to continue to violate, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Exchange Act Rule 10b-5(a), 17 C.F.R. § 240.10b-5(a).

### **COUNT VI**

#### **Violations Of Section 10(b) And Rule 10b-5(b) Of The Exchange Act**

117. The Commission repeats and realleges Paragraphs 1 through 100 of this Complaint as if fully set forth herein.

118. From no later than February 2014 through July 27, 2018, 1 Global and Ruderman, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

119. By reason of the foregoing, 1 Global violated, and, unless enjoined, is reasonably

likely to continue to violate, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Exchange Act Rule 10b-5(b), 17 C.F.R. § 240.10b-5(b).

### **COUNT VII**

#### **Violations Of Section 10(b) And Rule 10b-5(c) Of The Exchange Act**

124. The Commission repeats and realleges Paragraphs 1 through 100 of this Complaint as if fully set forth herein.

125. 1 Global and Ruderman, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, engaged in acts, practices, and courses of business which have operated, or are now operating and will operate, as a fraud upon the purchasers of securities.

126. By reason of the foregoing, 1 Global and Ruderman violated, and, unless enjoined, are reasonably likely to continue to violate, Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5(c), 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5(c).

### **COUNT VIII**

#### **Aiding And Abetting 1 Global's Violations Of Section 10(b) And Rule 10b-5 Of The Exchange Act**

##### **(Against Ruderman)**

120. The Commission repeats and realleges Paragraphs 1 through 100 of this Complaint as if fully set forth herein.

121. From no later than February 2014 through July 27, 2018, 1 Global, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, employed devices, schemes, or artifices to defraud in connection with the purchase or sale of securities; made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were

made, not misleading; or engaged in acts, practices, and courses of business which have operated, or are now operating and will operate, as a fraud upon the purchasers of securities, in violation of Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5(b), 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5(b).

122. Ruderman knowingly or recklessly substantially assisted 1 Global's violations of Section 10(b) and Rule 10b-5(b) of the Exchange Act.

123. By reason of the foregoing, Ruderman, directly or indirectly, violated, and, unless enjoined, is reasonably likely to continue to aid and abet violations of Section 10(b) and Rule 10b-5(b) of the Exchange Act, 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5(b).

## COUNT IX

### Section 20(a) Of The Exchange Act – Control Person Liability

#### **(Against Ruderman)**

127. The Commission repeats and realleges Paragraphs 1 through 100 of this Complaint as if fully set forth herein.

128. From no later than February 2014 through July 27, 2018, Ruderman was, directly or indirectly, a control person of 1 Global for purposes of Section 20(a) of the Exchange Act, 15 U.S.C. § 78t(a).

129. During that time, 1 Global violated Section 10(b) and Rule 10b-5 of the Exchange Act.

130. As a control person of 1 Global, Ruderman is jointly and severally liable with and to the same extent as 1 Global for its violations of Section 10(b) and Rule 10b-5 of the Exchange Act.

131. By reason of the foregoing, Ruderman, directly and indirectly, violated, and,

unless enjoined, is reasonably likely to continue to violate, Sections 10(b) and 20(a) and Rule 10b-5 of the Exchange Act, 15 U.S.C. §§ 78j(b) and 78t(a), and 17 C.F.R. § 240.10b-5.

## **COUNT X**

### **Violations Of Section 15(a) Of The Exchange Act**

132. The Commission repeats and realleges Paragraphs 1 through 100 of this Complaint as if fully set forth herein.

133. From no later than February 2014 through July 27, 2018, the Defendants, directly or indirectly, by the use of the mails or the means or instrumentalities of interstate commerce, while acting as or associating with a broker or dealer, effected transactions in, or induced or attempted to induce the purchase or sale of securities, while they were not registered with the Commission as a broker or dealer or when they were not associated with an entity registered with the Commission as a broker-dealer.

134. By reason of the foregoing, the Defendants, directly or indirectly, violated, and, unless enjoined, are reasonably likely to continue to violate, Section 15(a)(1) of the Exchange Act, 15 U.S.C. § 78o(a)(1).

## **VIII. REMEDIES REQUESTED**

**WHEREFORE**, the Commission respectfully requests that the Court find the Defendants committed the violations alleged, and:

### **A. Permanent Injunctive Relief**

Issue a Permanent Injunction restraining and enjoining: (1) 1 Global and Ruderman from violating Sections 5(a) and 5(c) and 17(a) of the Securities Act, and Sections 10(b) and 15(a)(1) and Rule 10b-5 of the Exchange Act; (2) Ruderman from aiding and abetting 1 Global's violations of Section 10(b) and Rule 10b-5 of the Exchange Act; and (3) Ruderman from

violating Sections 10(b) and 20(a) and Rule 10b-5 of the Exchange Act.

**B. Disgorgement**

Issue an Order directing 1 Global, Ruderman, and all of the Relief Defendants to disgorge all ill-gotten gains, including prejudgment interest, resulting from the acts or courses of conduct alleged in this Complaint.

**C. Civil Penalties**

Issue an Order directing 1 Global and Ruderman to pay civil money penalties pursuant to Section 20(d) of the Securities Act and Section 21(d) of the Exchange Act.

**D. Asset Freeze**

Issue an Order freezing the assets of Ruderman and Relief Defendants Bright Smile Financing, BRR Block, Digi South, Ganador Enterprises, Media Pay, Pay Now Direct, and the Ruderman Family Trust until further Order of this Court.

**E. Sworn Accounting**

Issue an Order directing Ruderman and Relief Defendants Bright Smile Financing, BRR Block, Digi South, Ganador Enterprises, Media Pay, Pay Now Direct, and the Ruderman Family Trust to provide a sworn accounting of all proceeds received resulting from the acts or courses of conduct alleged in this Complaint.

**F. Appointment Of A Receiver**

Appoint a Receiver over Relief Defendants Bright Smile Financing, Ganador Enterprises, BRR Block, Digi South, Media Pay, and Pay Now Direct.

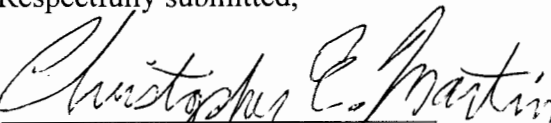
**G. Records Preservation**

Issue an Order restraining and enjoining Ruderman and Relief Defendants Bright Smile Financing, BRR Block, Digi South, Ganador Enterprises, Media Pay, Pay Now Direct, and the

Ruderman Family Trust from, directly or indirectly, destroying, mutilating, concealing, altering, disposing of, or otherwise rendering illegible in any manner, any of the books, records, documents, correspondence, brochures, manuals, papers, ledgers, accounts, statements, obligations, files, and other property of or pertaining to all Defendants and Relief Defendants, wherever located and in whatever form, electronic or otherwise, that refer, reflect, or relate to the acts of courses of conduct alleged in this Complaint, until further Order of the Court.

Respectfully submitted,

August 23, 2018

By:   
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# **EXHIBIT C**



June 7, 2018

Steven Rapp  
12301 Gilston Ct.  
Charlotte, NC 28273

Dear Steven Rapp,

We are pleased to provide you with the enclosed statement relating to your loan.

**LOAN DETAILS**

Account No.	1233638
Start Date	11/06/2017
Maturity Date	08/06/2018
Loan Amount	\$110,000.00
Total Accrued Interest	\$8,114.28
Principal & Interest at end of Period	\$118,114.28
Effective Interest Rate	7.4 %

Our independent audit firm, **Daszkal Bolton LLP**, has endorsed and agrees with the interest rate formula. Should you have any questions, please don't hesitate to contact your advisor directly or 1st Global Capital Lender Relations at [inquiries@1stGlobalCapital.com](mailto:inquiries@1stGlobalCapital.com).

Sincerely,

*Scott Merkelson*

Scott Merkelson  
Director of Business Development

D: 786-646-1960  
E: [SMerkelson@1stglobalcapital.com](mailto:SMerkelson@1stglobalcapital.com)



CLIENT STATEMENT | For The Period Ended May 31, 2018

**Steven Rapp Acct#1233638**

**Net Current Merchant Accounts Receivable**

<u>Contract No.</u>	<u>Assigned Collateral</u>
Beauty Salons	\$37.57
Other	\$108.58
All Other Specialty Trade Contractors	\$10.00
Electrical Contractors and Other Wiring Installati...	\$86.57
Jewelry	\$347.30
Other	\$13.24
Boat Dealers	\$43.16
Retail Bakeries	\$9.50
Sporting Goods Stores	\$16.67
Taxi Service	\$36.84
All Other Support Activities for Transportation	\$31.91
Poured Concrete Foundation and Structure Contracto...	\$44.44
Beauty Salons	\$10.89
Elementary and Secondary Schools	\$64.98
Security Guards and Patrol Services	\$14.45
All Other Support Activities for Transportation	\$18.15
Security Systems Services (except Locksmiths)	\$6.04
All Other Personal Services	\$5.31
All Other Specialty Trade Contractors	\$18.78
Other Residential Care Facilities	\$14.14
All Other Specialty Trade Contractors	\$36.08
Other	\$2.47
All Other Specialty Trade Contractors	\$5.31
Beer and Ale Merchant Wholesalers	\$76.98
Offices of All Other Miscellaneous Health Practiti...	\$24.98
Software Publishers	\$18.81
All Other Support Activities for Transportation	\$440.63
Commercial and Institutional Building Construction...	\$50.66
Beauty Salons	\$15.93
All Other Personal Services	\$2,061.71
Other Building Material Dealers	\$69.77
All Other Specialty Trade Contractors	\$6.77
All Other Miscellaneous Store Retailers (except To...	\$5.80



All Other Support Activities for Transportation	\$23.95
All Other Personal Services	\$259.13
All Other Personal Services	\$12.69
All Other Specialty Trade Contractors	\$13.01
Motor Vehicle Towing	\$3.57
Supermarkets and Other Grocery (except Convenience...	\$37.55
Other	\$43.71
All Other Specialty Trade Contractors	\$20.46
All Other Support Activities for Transportation	\$8.72
Software Publishers	\$150.78
All Other Specialty Trade Contractors	\$8.40
All Other Outpatient Care Centers	\$172.10
Other	\$392.62
All Other Specialty Trade Contractors	\$15.53
All Other Automotive Repair and Maintenance	\$6.32
Other	\$6.22
All Other Specialty Trade Contractors	\$72.51
Fresh Fruit and Vegetable Merchant Wholesalers	\$9.51
Toilet Preparation Manufacturing	\$37.09
All Other Support Activities for Transportation	\$20.19
All Other Personal Services	\$24.94
All Other Support Activities for Transportation	\$10.48
All Other Specialty Trade Contractors	\$15.14
Home Furnishing Merchant Wholesalers	\$127.16
All Other Support Activities for Transportation	\$45.67
Other	\$20.84
Wood Kitchen Cabinet and Countertop Manufacturing	\$121.02
All Other Specialty Trade Contractors	\$29.14
All Other Specialty Trade Contractors	\$47.17
Other Grocery and Related Products Merchant Wholes...	\$26.52
All Other Specialty Trade Contractors	\$9.20
Poured Concrete Foundation and Structure Contracto...	\$19.28
All Other Support Activities for Transportation	\$13.35
Tobacco Stores	\$741.83
Mortgage and Nonmortgage Loan Brokers	\$5.18
All Other Miscellaneous Waste Management Services	\$7.01
All Other Professional	\$16.76
All Other Specialty Trade Contractors	\$21.27
Other Miscellaneous Nondurable Goods Merchant Whol...	\$2.34
All Other Specialty Trade Contractors	\$168.20



All Other Automotive Repair and Maintenance	\$9.58
All Other Specialty Trade Contractors	\$24.48
Other	\$59.59
All Other Personal Services	\$7.13
All Other Support Activities for Transportation	\$8.63
Other	\$41.72
All Other Specialty Trade Contractors	\$17.37
Other	\$10.24
Gasoline Stations with Convenience Stores	\$1.81
Beer	\$5.12
Medical Laboratories	\$7.75
Commercial and Institutional Building Construction...	\$11.41
All Other Support Activities for Transportation	\$2.58
All Other Specialty Trade Contractors	\$32.60
Household Appliances	\$214.53
Jewelry	\$517.14
Other	\$96.35
All Other Specialty Trade Contractors	\$70.50
Administrative Management and General Management C...	\$86.23
Other	\$78.87
All Other Specialty Trade Contractors	\$18.15
Drywall and Insulation Contractors	\$53.92
All Other Specialty Trade Contractors	\$142.10
All Other Specialty Trade Contractors	\$10.07
Automotive Body	\$16.07
Landscaping Services	\$9.63
Meat Processed from Carcasses	\$9.04
Offices of Dentists	\$2.38
All Other Personal Services	\$5.48
All Other Personal Services	\$9.63
All Other Personal Services	\$31.91
Electrical Contractors and Other Wiring Installati...	\$30.04
All Other Specialty Trade Contractors	\$29.22
Fitness and Recreational Sports Centers	\$10.93
All Other Specialty Trade Contractors	\$151.48
All Other Amusement and Recreation Industries	\$13.55
Commercial and Institutional Building Construction...	\$7.72
Fine Arts Schools	\$5.05
Offices of All Other Miscellaneous Health Practiti...	\$17.63
All Other Specialty Trade Contractors	\$2.28



CLIENT STATEMENT | For The Period Ended May 31, 2018

Electrical Contractors and Other Wiring Installati...	\$57.30
Offices of Dentists	\$46.89
All Other Automotive Repair and Maintenance	\$19.45
All Other Specialty Trade Contractors	\$4.22
All Other Support Activities for Transportation	\$52.51
All Other Support Activities for Transportation	\$26.05
All Other Specialty Trade Contractors	\$2,061.63
All Other Support Activities for Transportation	\$40.22
All Other Specialty Trade Contractors	\$40.43
Household Appliances	\$83.98
Landscaping Services	\$9.51
All Other Specialty Trade Contractors	\$24.52
Beauty Salons	\$12.46
Other	\$13.34
Other Technical and Trade Schools	\$422.68
All Other Personal Services	\$1.92
Gasoline Stations with Convenience Stores	\$38.85
Logging	\$33.42
Other	\$1,640.40
All Other Specialty Trade Contractors	\$15.24
Other	\$31.91
Residential Mental Health and Substance Abuse Faci...	\$49.60
Freight Transportation Arrangement	\$12.05
Fresh Fruit and Vegetable Merchant Wholesalers	\$9.53
All Other Specialty Trade Contractors	\$10.28
All Other Support Activities for Transportation	\$43.96
All Other Support Activities for Transportation	\$21.73
Retail Bakeries	\$34.53
Plumbing	\$2.23
All Other Personal Services	\$10.94
All Other Specialty Trade Contractors	\$14.18
Other	\$6.18
Janitorial Services	\$7.20
Other	\$13.63
All Other Support Activities for Transportation	\$6.42
All Other Grain Farming	\$151.64
All Other Specialty Trade Contractors	\$41.39
All Other Support Activities for Transportation	\$19.04
Drywall and Insulation Contractors	\$5.57
New Single-Family Housing Construction (except For...	\$54.63



CLIENT STATEMENT | For The Period Ended May 31, 2018

Offices of Dentists	\$4.03
All Other Specialty Trade Contractors	\$29.35
Other	\$3,246.22
All Other Personal Services	\$1,093.25
All Other Support Activities for Transportation	\$10.76
All Other Specialty Trade Contractors	\$27.91
All Other Specialty Trade Contractors	\$15.60
All Other Personal Services	\$48.16
All Other Specialty Trade Contractors	\$9.43
Adhesive Manufacturing	\$38.21
All Other Specialty Trade Contractors	\$163.34
All Other Support Activities for Transportation	\$23.71
Flooring Contractors	\$20.92
All Other Transit and Ground Passenger Transportat...	\$33.98
General Freight Trucking	\$57.43
Other	\$22.73
All Other Personal Services	\$1,841.50
All Other Support Activities for Transportation	\$23.72
All Other Specialty Trade Contractors	\$34.33
Home Health Care Services	\$18.26
All Other Outpatient Care Centers	\$4.48
All Other Specialty Trade Contractors	\$44.33
Janitorial Services	\$2.92
Fresh Fruit and Vegetable Merchant Wholesalers	\$22.78
Landscaping Services	\$11.37
Gasoline Stations with Convenience Stores	\$12.02
Recreational Vehicle Dealers	\$52.11
All Other Automotive Repair and Maintenance	\$7.48
All Other Specialty Trade Contractors	\$28.34
All Other Support Activities for Transportation	\$159.36
Furniture Stores	\$0.12
Automotive Body	\$3.63
Office Equipment Merchant Wholesalers	\$11.02
Clothing Accessories Stores	\$7.71
All Other Specialty Trade Contractors	\$21.92
Beer	\$9.84
Site Preparation Contractors	\$24.49
Other	\$20.08
All Other Specialty Trade Contractors	\$24.88
All Other Specialty Trade Contractors	\$164.34



CLIENT STATEMENT | For The Period Ended May 31, 2018

Warm Air Heating and Air-Conditioning Equipment an...	\$23.61
All Other Specialty Trade Contractors	\$17.24
Automotive Parts and Accessories Stores	\$144.42
Drinking Places (Alcoholic Beverages)	\$18.94
Offices of Chiropractors	\$6.08
Plumbing	\$14.68
Pharmacies and Drug Stores	\$5.25
Direct Title Insurance Carriers	\$4.20
Brick	\$104.41
Plumbing	\$21.79
All Other Specialty Trade Contractors	\$26.53
All Other Support Activities for Transportation	\$20.96
All Other Business Support Services	\$43.34
All Other Amusement and Recreation Industries	\$26.00
All Other Support Services	\$10.40
Wood Window and Door Manufacturing	\$0.21
All Other Transit and Ground Passenger Transportat...	\$4.67
Other	\$47.95
Pharmacies and Drug Stores	\$29.35
Commercial and Institutional Building Construction...	\$12.14
General Freight Trucking	\$1.72
All Other Specialty Trade Contractors	\$21.21
Other	\$39.05
All Other Support Activities for Transportation	\$52.58
All Other Miscellaneous Manufacturing	\$20.00
All Other Specialty Trade Contractors	\$44.00
Other	\$164.72
All Other Miscellaneous Chemical Product and Prepa...	\$4.34
Painting and Wall Covering Contractors	\$20.00
Sporting Goods Stores	\$7.63
Beer	\$10.54
Commercial and Institutional Building Construction...	\$48.45
Offices of Dentists	\$51.63
All Other Specialty Trade Contractors	\$9.65
General Medical and Surgical Hospitals	\$2,007.45
Motion Picture and Video Production	\$39.37
Advertising Agencies	\$15.88
Other	\$3,364.07
All Other Specialty Trade Contractors	\$35.98
All Other Professional	\$22.85





CLIENT STATEMENT | For The Period Ended May 31, 2018

Offices of All Other Miscellaneous Health Practiti...	\$17.36
All Other Support Activities for Transportation	\$14.01
Gasoline Stations with Convenience Stores	\$43.41
All Other Specialty Trade Contractors	\$22.28
All Other Support Activities for Transportation	\$19.76
Landscaping Services	\$6.80
All Other Support Activities for Transportation	\$128.07
Painting and Wall Covering Contractors	\$8.11
All Other Business Support Services	\$38.70
All Other Specialty Trade Contractors	\$12.30
All Other Specialty Trade Contractors	\$1,473.37
Masonry Contractors	\$57.38
Painting and Wall Covering Contractors	\$5.57
All Other Support Activities for Transportation	\$74.38
All Other Support Activities for Transportation	\$7.71
Jewelry	\$255.11
All Other Professional	\$31.30
All Other Support Activities for Transportation	\$6.79
All Other Professional	\$26.81
Other	\$116.17
Landscaping Services	\$31.98
Commercial and Institutional Building Construction...	\$30.27
Fresh Fruit and Vegetable Merchant Wholesalers	\$207.86
All Other Personal Services	\$0.95
All Other Support Activities for Transportation	\$6.31
All Other Miscellaneous Store Retailers (except To...	\$10.87
All Other Specialty Trade Contractors	\$8.75
Supermarkets and Other Grocery (except Convenience...	\$10.07
Other	\$8.14
Other Activities Related to Real Estate	\$40.31
All Other Specialty Trade Contractors	\$41.86
Packing and Crating	\$105.50
Janitorial Services	\$15.23
Other Business Service Centers (including Copy Sho...	\$3.23
Painting and Wall Covering Contractors	\$21.89
Roofing Contractors	\$90.18
Supermarkets and Other Grocery (except Convenience...	\$16.63
All Other Personal Services	\$12.58
All Other Specialty Trade Contractors	\$828.40
Pharmacies and Drug Stores	\$23.95



CLIENT STATEMENT | For The Period Ended May 31, 2018

All Other Support Activities for Transportation	\$23.15
All Other Support Activities for Transportation	\$8.42
Other	\$31.44
Hardware Merchant Wholesalers	\$57.53
All Other Support Activities for Transportation	\$21.64
All Other Specialty Trade Contractors	\$16.06
All Other Outpatient Care Centers	\$50.20
Oil and Gas Field Machinery and Equipment Manufact...	\$271.59
Other	\$1,768.83
Other	\$1,607.81
All Other Support Activities for Transportation	\$27.17
Funeral Homes and Funeral Services	\$6.24
All Other Automotive Repair and Maintenance	\$33.53
Other	\$78.17
All Other Support Activities for Transportation	\$29.62
Software Publishers	\$36.41
Colleges	\$20.33
Commercial and Institutional Building Construction...	\$19.22
Painting and Wall Covering Contractors	\$14.32
Women's Clothing Stores	\$10.23
Other	\$5.55
All Other Personal Services	\$6.64
Other	\$8.77
All Other Support Activities for Transportation	\$7.04
Other	\$16.85
Beauty Salons	\$18.74
Air-Conditioning and Warm Air Heating Equipment an...	\$12.42
Electrical Contractors and Other Wiring Installati...	\$17.13
Drywall and Insulation Contractors	\$19.69
All Other Miscellaneous Crop Farming	\$52.87
Automotive Body	\$11.25
Other Miscellaneous Nondurable Goods Merchant Whol...	\$39.51
Commercial and Institutional Building Construction...	\$7.69
Commercial and Industrial Machinery and Equipment	\$7.16
Automotive Body	\$68.32
All Other Personal Services	\$3.81
Beauty Salons	\$39.21
All Other Specialty Trade Contractors	\$20.59
All Other Specialty Trade Contractors	\$12.43
Commercial and Institutional Building Construction...	\$58.21



CLIENT STATEMENT | For The Period Ended May 31, 2018

Other Technical and Trade Schools	\$16.30
All Other Specialty Food Stores	\$5.47
Recreational and Vacation Camps (except Campground...	\$0.91
Automotive Body	\$4.74
Fitness and Recreational Sports Centers	\$7.05
All Other Support Activities for Transportation	\$19.77
All Other Support Activities for Transportation	\$44.42
All Other Personal Services	\$141.64
Electrical Contractors and Other Wiring Installati...	\$221.40
All Other Support Activities for Transportation	\$15.12
Insurance Agencies and Brokerages	\$18.78
Other	\$2.43
All Other Specialty Trade Contractors	\$161.01
General Freight Trucking	\$60.57
General Warehousing and Storage	\$328.27
Electrical Contractors and Other Wiring Installati...	\$40.67
All Other Specialty Trade Contractors	\$5.67
Pharmacies and Drug Stores	\$25.73
Jewelry Stores	\$26.28
Other Activities Related to Real Estate	\$52.98
All Other Support Activities for Transportation	\$6.47
Sports Teams and Clubs	\$32.69
Other Miscellaneous Durable Goods Merchant Wholesa...	\$11.20
Graphic Design Services	\$3.95
Logging	\$4.18
Advertising Agencies	\$13.24
All Other Support Activities for Transportation	\$18.06
All Other Specialty Trade Contractors	\$47.66
All Other Miscellaneous Fabricated Metal Product M...	\$29.94
Other Building Equipment Contractors	\$186.21
Freight Transportation Arrangement	\$25.34
All Other Miscellaneous General Purpose Machinery	\$57.10
General Freight Trucking	\$67.96
All Other Specialty Trade Contractors	\$132.52
Plumbing	\$170.32
All Other Support Activities for Transportation	\$224.95
All Other Specialty Trade Contractors	\$35.43
All Other Personal Services	\$11.25
All Other Specialty Trade Contractors	\$155.12
Other Warehousing and Storage	\$8.05



Other	\$13.07
Other	\$25.22
Sporting Goods Stores	\$4.65
Medical Laboratories	\$111.67
All Other Specialty Trade Contractors	\$15.46
Support Activities for Oil and Gas Operations	\$22.46
Other Services Related to Advertising	\$10.33
All Other Specialty Trade Contractors	\$1,322.89
Security Systems Services (except Locksmiths)	\$19.25
Landscaping Services	\$80.55
All Other Specialty Trade Contractors	\$10.92
All Other Miscellaneous Store Retailers (except To...	\$24.13
All Other Support Activities for Transportation	\$8.80
Commercial and Institutional Building Construction...	\$7.21
All Other Specialty Trade Contractors	\$9.50
Automotive Body	\$24.57
Home Health Care Services	\$25.01
All Other Specialty Trade Contractors	\$36.11
Other Building Equipment Contractors	\$167.41
All Other Support Activities for Transportation	\$36.84
New Housing For-Sale Builders	\$5.90
All Other Specialty Trade Contractors	\$8.10
Other	\$10.06
Other	\$11.94
All Other Personal Services	\$2,435.64
All Other Specialty Trade Contractors	\$20.80
All Other Specialty Trade Contractors	\$45.02
Flooring Contractors	\$38.26
All Other Automotive Repair and Maintenance	\$14.02
All Other Specialty Trade Contractors	\$9.59
Commercial and Institutional Building Construction...	\$0.47
All Other Professional	\$8.33
All Other Home Furnishings Stores	\$34.46
Industrial Machinery and Equipment Merchant Wholes...	\$28.68
All Other Specialty Trade Contractors	\$9.17
All Other Professional	\$6.12
All Other Amusement and Recreation Industries	\$2.06
Other	\$69.26
Other	\$1,740.91
All Other Support Activities for Transportation	\$56.80



CLIENT STATEMENT | For The Period Ended May 31, 2018

Other Building Material Dealers	\$23.75
All Other Personal Services	\$2,769.48
Drywall and Insulation Contractors	\$15.59
All Other Specialty Trade Contractors	\$25.59
Other	\$19.68
All Other Support Activities for Transportation	\$10.97
All Other Specialty Trade Contractors	\$37.63
All Other Personal Services	\$52.97
Furniture Merchant Wholesalers	\$58.58
Office Supplies and Stationery Stores	\$12.76
All Other Specialty Trade Contractors	\$8.26
Masonry Contractors	\$14.10
Other	\$1,824.69
All Other Specialty Trade Contractors	\$5.82
All Other Support Activities for Transportation	\$16.64
All Other Support Activities for Transportation	\$8.09
All Other Automotive Repair and Maintenance	\$16.83
All Other Professional	\$9.15
All Other Specialty Trade Contractors	\$49.04
Insurance Agencies and Brokerages	\$21.80
Electromedical and Electrotherapeutic Apparatus Ma...	\$63.21
Other Miscellaneous Durable Goods Merchant Wholesa...	\$58.70
All Other Support Activities for Transportation	\$47.28
Electrical Contractors and Other Wiring Installati...	\$46.53
All Other Support Services	\$108.70
All Other Support Activities for Transportation	\$10.28
Electrical Contractors and Other Wiring Installati...	\$115.15
All Other Specialty Trade Contractors	\$39.92
All Other Support Activities for Transportation	\$9.32
All Other Miscellaneous Manufacturing	\$56.48
All Other Specialty Trade Contractors	\$33.26
Poured Concrete Foundation and Structure Contracto...	\$18.88
All Other Support Activities for Transportation	\$74.26
All Other Miscellaneous Crop Farming	\$78.21
All Other Support Activities for Transportation	\$52.49
All Other Automotive Repair and Maintenance	\$42.53
All Other Automotive Repair and Maintenance	\$30.59
Plumbing	\$79.03
Janitorial Services	\$10.58
All Other Specialty Trade Contractors	\$3.38



CLIENT STATEMENT | For The Period Ended May 31, 2018

All Other Automotive Repair and Maintenance	\$10.70
All Other Support Activities for Transportation	\$98.58
All Other Support Activities for Transportation	\$17.08
Jewelry Stores	\$16.25
All Other Specialty Trade Contractors	\$58.37
Construction Sand and Gravel Mining	\$54.07
All Other Specialty Trade Contractors	\$30.41
Plumbing	\$19.75
All Other Business Support Services	\$8.32
Automotive Parts and Accessories Stores	\$98.57
All Other Professional	\$26.08
All Other Specialty Food Stores	\$32.67
All Other Automotive Repair and Maintenance	\$14.02
Educational Support Services	\$12.13
Other Activities Related to Real Estate	\$419.70
Flooring Contractors	\$70.75
Offices of All Other Miscellaneous Health Practiti...	\$30.90
Surgical and Medical Instrument Manufacturing	\$13.58
Commercial and Institutional Building Construction...	\$21.81
Other Grocery and Related Products Merchant Wholes...	\$10.06
Plumbing	\$8.39
All Other Specialty Trade Contractors	\$14.28
Painting and Wall Covering Contractors	\$8.51
Other	\$14.68
All Other Specialty Trade Contractors	\$122.74
All Other Automotive Repair and Maintenance	\$17.30
Other	\$25.34
Tire Dealers	\$15.22
All Other Specialty Trade Contractors	\$17.91
All Other Miscellaneous Wood Product Manufacturing...	\$197.91
General Freight Trucking	\$15.44
All Other Specialty Trade Contractors	\$31.62
All Other Personal Services	\$25.83
Insurance Agencies and Brokerages	\$6.20
Drywall and Insulation Contractors	\$39.22
General Freight Trucking	\$18.52
Janitorial Services	\$5.98
Other	\$19.71
All Other Specialty Trade Contractors	\$28.31
All Other Specialty Trade Contractors	\$21.28



CLIENT STATEMENT | For The Period Ended May 31, 2018

All Other Specialty Trade Contractors	\$16.02
Medical	\$6.50
All Other Specialty Trade Contractors	\$147.91
Other Similar Organizations (except Business	\$7.43
Other	\$8.04
Plumbing	\$38.60
Retail Bakeries	\$18.07
Electrical Contractors and Other Wiring Installati...	\$27.55
Child Day Care Services	\$61.01
Electrical Contractors and Other Wiring Installati...	\$100.54
Tire Dealers	\$29.50
All Other Specialty Trade Contractors	\$13.74
Taxi Service	\$19.36
All Other Specialty Trade Contractors	\$26.72
All Other Miscellaneous Electrical Equipment and C...	\$23.16
Plumbing	\$24.66
Offices of All Other Miscellaneous Health Practiti...	\$77.93
All Other Automotive Repair and Maintenance	\$3.73
Flooring Contractors	\$8.45
All Other Specialty Trade Contractors	\$52.86
All Other Specialty Trade Contractors	\$27.22
Landscaping Services	\$6.72
Other	\$84.61
Wood Window and Door Manufacturing	\$10.68
All Other Personal Services	\$9.26
All Other Automotive Repair and Maintenance	\$30.21
Jewelry	\$504.31
Beauty Salons	\$119.89
All Other Specialty Trade Contractors	\$12.58
All Other Specialty Trade Contractors	\$23.11
Commercial and Institutional Building Construction...	\$15.24
Landscaping Services	\$14.44
Offices of Dentists	\$18.09
All Other Personal Services	\$14.69
Other	\$36.68
Other	\$3.03
All Other Professional	\$4.64
Site Preparation Contractors	\$23.91
All Other Specialty Trade Contractors	\$6.74
General Line Grocery Merchant Wholesalers	\$18.46



CLIENT STATEMENT | For The Period Ended May 31, 2018

Nursery	\$83.15
All Other Specialty Trade Contractors	\$23.02
Beauty Salons	\$7.39
All Other Specialty Trade Contractors	\$26.08
Jewelry Stores	\$10.95
Plumbing	\$6.85
Freight Transportation Arrangement	\$22.02
All Other Specialty Trade Contractors	\$11.08
All Other Specialty Trade Contractors	\$55.43
All Other Specialty Trade Contractors	\$6.35
Administrative Management and General Management C...	\$33.18
All Other Specialty Trade Contractors	\$14.07
Commercial and Institutional Building Construction...	\$4.33
Other	\$7.77
Graphic Design Services	\$30.41
Administrative Management and General Management C...	\$139.86
Other Computer Related Services	\$7.78
Other	\$11.33
All Other Miscellaneous Ambulatory Health Care Ser...	\$77.63
Roofing Contractors	\$56.40
All Other Support Activities for Transportation	\$5.77
Advertising Agencies	\$1.83
Solid Waste Collection	\$47.53
All Other Specialty Trade Contractors	\$32.27
Drywall and Insulation Contractors	\$36.69
Plumbing	\$7.93
Other	\$21.75
Furniture Stores	\$7.50
Oil and Gas Field Machinery and Equipment Manufact...	\$560.87
Educational Support Services	\$8.21
Brick	\$20.97
All Other Specialty Trade Contractors	\$117.11
Beer	\$23.16
Plumbing	\$14.96
All Other Support Activities for Transportation	\$10.43
Supermarkets and Other Grocery (except Convenience...	\$222.48
Supermarkets and Other Grocery (except Convenience...	\$353.77
Commercial and Institutional Building Construction...	\$39.76
Household Appliances	\$31.38
All Other Personal Services	\$5.31





All Other Personal Services	\$35.47
All Other Support Activities for Transportation	\$40.24
All Other Personal Services	\$10.92
All Other Personal Services	\$5.38
All Other Support Activities for Transportation	\$2.24
Other	\$5.66
Medical Laboratories	\$7.88
All Other Support Activities for Transportation	\$24.06
Administrative Management and General Management C...	\$110.33
All Other Professional	\$37.74
Drilling Oil and Gas Wells	\$605.92
Roofing Contractors	\$12.90
Roofing Contractors	\$55.22
All Other Automotive Repair and Maintenance	\$59.13
All Other Support Activities for Transportation	\$7.24
All Other Support Activities for Transportation	\$7.01
Other	\$0.11
Hobby	\$335.56
All Other Support Activities for Transportation	\$166.91
All Other Support Activities for Transportation	\$42.30
All Other Specialty Trade Contractors	\$7.54
All Other Specialty Trade Contractors	\$43.69
Plumbing	\$8.27
Drywall and Insulation Contractors	\$21.16
Fresh Fruit and Vegetable Merchant Wholesalers	\$9.80
All Other Specialty Trade Contractors	\$9.92
Freight Transportation Arrangement	\$7.55
Home Health Care Services	\$141.66
Other	\$183.10
Men's and Boys' Clothing and Furnishings Merchant	\$9.22
Other	\$25.87
Miscellaneous Intermediation	\$919.03
Other	\$21.82
Cosmetics	\$3.17
All Other Miscellaneous Wood Product Manufacturing...	\$170.40
Commercial Bakeries	\$2.65
All Other Support Activities for Transportation	\$36.39
Other Services to Buildings and Dwellings	\$19.51
Other	\$19.09
Hotels (except Casino Hotels) and Motels	\$63.35



CLIENT STATEMENT | For The Period Ended May 31, 2018

All Other Specialty Trade Contractors	\$65.53
Other Services to Buildings and Dwellings	\$7.72
All Other Specialty Trade Contractors	\$110.41
Commercial and Institutional Building Construction...	\$4.97
All Other Specialty Trade Contractors	\$34.15
Cosmetics	\$2.13
Confectionery and Nut Stores	\$7.09
Janitorial Services	\$45.45
Janitorial Services	\$16.16
All Other Personal Services	\$8.25
Plumbing	\$72.07
Residential Property Managers	\$118.55
All Other Support Activities for Transportation	\$16.27
Advertising Agencies	\$21.02
All Other Specialty Trade Contractors	\$138.77
Drywall and Insulation Contractors	\$14.07
Finish Carpentry Contractors	\$8.05
All Other Specialty Trade Contractors	\$32.08
All Other Personal Services	\$171.64
All Other Support Activities for Transportation	\$4.96
Roofing Contractors	\$22.78
Offices of All Other Miscellaneous Health Practiti...	\$88.80
Other Services to Buildings and Dwellings	\$99.57
All Other Specialty Trade Contractors	\$11.54
Janitorial Services	\$31.00
Commercial and Institutional Building Construction...	\$162.63
All Other Specialty Trade Contractors	\$1.45
Electrical Apparatus and Equipment	\$17.98
All Other Personal Services	\$120.15
All Other Specialty Trade Contractors	\$26.14
Computer and Office Machine Repair and Maintenance...	\$7.17
All Other Transit and Ground Passenger Transportat...	\$12.93
All Other Support Activities for Transportation	\$152.80
All Other Specialty Trade Contractors	\$190.45
Other Heavy and Civil Engineering Construction	\$87.73
All Other Specialty Food Stores	\$31.01
Medical	\$18.28
Plumbing	\$9.71
Other	\$10.31
Plumbing	\$8.75



Other Computer Related Services	\$8.47
Process	\$10.29
Commercial and Institutional Building Construction...	\$54.99
All Other Transit and Ground Passenger Transportat...	\$21.43
Family Planning Centers	\$18.19
Landscaping Services	\$92.82
Home Health Care Services	\$23.67
All Other Specialty Trade Contractors	\$42.07
Women's	\$15.55
Household Appliances	\$27.91
Process	\$48.67
Women's Clothing Stores	\$38.45
Gasoline Stations with Convenience Stores	\$129.49
General Freight Trucking	\$17.90
All Other Personal Services	\$5.03
Other Direct Insurance (except Life)	\$157.42
All Other Specialty Trade Contractors	\$28.19
All Other Specialty Trade Contractors	\$141.60
Other	\$1,624.90
All Other Personal Services	\$6.28
All Other Support Activities for Transportation	\$16.66
Other	\$125.99
All Other Support Activities for Transportation	\$15.34
Electrical Contractors and Other Wiring Installati...	\$108.54
All Other Support Activities for Transportation	\$12.30
Other	\$71.76
Logging	\$5.80
Appliance Repair and Maintenance	\$23.68
All Other Miscellaneous Ambulatory Health Care Ser...	\$9.79
Used Car Dealers	\$131.48
Temporary Help Services	\$19.58
Automotive Parts and Accessories Stores	\$119.99
Other	\$19.06
All Other Specialty Trade Contractors	\$30.27
Plumbing	\$27.72
Furniture Stores	\$6.14
Commercial and Industrial Machinery and Equipment	\$40.12
All Other Support Activities for Transportation	\$45.12
Commercial and Institutional Building Construction...	\$10.79
Freight Transportation Arrangement	\$53.41



CLIENT STATEMENT | For The Period Ended May 31, 2018

Commercial and Institutional Building Construction...	\$10.01
Insurance Agencies and Brokerages	\$219.79
Other	\$5.18
All Other Specialty Trade Contractors	\$252.71
Other	\$204.07
All Other Support Activities for Transportation	\$25.71
All Other Support Activities for Transportation	\$335.62
Wood Window and Door Manufacturing	\$30.17
All Other Personal Services	\$34.15
All Other Specialty Trade Contractors	\$13.22
All Other Specialty Trade Contractors	\$14.51
Software Publishers	\$67.56
All Other Specialty Trade Contractors	\$46.90
Other Miscellaneous Durable Goods Merchant Wholesa...	\$23.87
General Automotive Repair	\$25.54
All Other Specialty Trade Contractors	\$12.66
All Other Miscellaneous Textile Product Mills	\$9.87
All Other Specialty Trade Contractors	\$21.58
All Other Professional	\$3.73
All Other Specialty Trade Contractors	\$26.64
Freight Transportation Arrangement	\$36.92
Other Electronic and Precision Equipment Repair an...	\$44.55
Other	\$54.01
All Other Miscellaneous Manufacturing	\$4.94
All Other Support Activities for Transportation	\$40.59
Hotels (except Casino Hotels) and Motels	\$177.61
Data Processing	\$3.45
Other Motion Picture and Video Industries	\$27.57
Other Electronic and Precision Equipment Repair an...	\$42.84
All Other Specialty Trade Contractors	\$12.77
Other	\$7.88
Other	\$16.88
Other	\$0.67
Fresh Fruit and Vegetable Merchant Wholesalers	\$9.51
Direct Health and Medical Insurance Carriers	\$166.31
Home Health Care Services	\$9.15
All Other Specialty Trade Contractors	\$38.48
All Other Support Activities for Transportation	\$13.19
Mattress Manufacturing	\$9.93
All Other Personal Services	\$16.80



CLIENT STATEMENT | For The Period Ended May 31, 2018

Offices of Chiropractors	\$13.50
Plumbing	\$166.57
All Other Automotive Repair and Maintenance	\$7.75
All Other Personal Services	\$9.55
Janitorial Services	\$20.97
All Other Support Activities for Transportation	\$9.46
Offices of Dentists	\$2.91
All Other Specialty Trade Contractors	\$45.01
All Other Specialty Trade Contractors	\$67.52
All Other Amusement and Recreation Industries	\$3.70
All Other Specialty Trade Contractors	\$11.19
All Other Specialty Trade Contractors	\$12.65
Offices of All Other Miscellaneous Health Practiti...	\$16.03
Administrative Management and General Management C...	\$201.83
All Other Specialty Trade Contractors	\$27.70
Other	\$1.07
Pharmacies and Drug Stores	\$67.86
Electrical Contractors and Other Wiring Installati...	\$19.19
Automotive Parts and Accessories Stores	\$21.22
All Other Specialty Trade Contractors	\$29.46
All Other Specialty Trade Contractors	\$47.77
Other	\$1.45
All Other Specialty Trade Contractors	\$18.50
All Other Transit and Ground Passenger Transportat...	\$12.73
Other	\$79.60
All Other Support Activities for Transportation	\$25.77
All Other Personal Services	\$1,559.49
All Other Automotive Repair and Maintenance	\$15.14
Engineering Services	\$21.24
All Other Personal Services	\$388.11
Other Miscellaneous Durable Goods Merchant Wholesa...	\$40.40
All Other Specialty Trade Contractors	\$17.97
All Other Specialty Trade Contractors	\$25.82
Other	\$22.55
All Other Specialty Trade Contractors	\$5.85
All Other Automotive Repair and Maintenance	\$18.33
All Other Support Activities for Transportation	\$51.74
Janitorial Services	\$10.08
Other Services to Buildings and Dwellings	\$6.12
All Other Specialty Trade Contractors	\$56.97



CLIENT STATEMENT | For The Period Ended May 31, 2018

Medical	\$225.13
All Other Automotive Repair and Maintenance	\$7.56
All Other Specialty Trade Contractors	\$16.45
Other	\$5.94
Museums	\$156.83
Roofing Contractors	\$3.61
All Other Personal Services	\$117.74
All Other Automotive Repair and Maintenance	\$17.81
Other	\$8.65
All Other Miscellaneous Store Retailers (except To...	\$15.87
Fitness and Recreational Sports Centers	\$38.34
Commercial and Institutional Building Construction...	\$34.81
All Other Support Activities for Transportation	\$33.43
All Other Specialty Trade Contractors	\$112.73
All Other Support Activities for Transportation	\$17.91
All Other Transit and Ground Passenger Transportat...	\$90.26
Beauty Salons	\$5.00
Janitorial Services	\$0.14
Site Preparation Contractors	\$10.34
All Other Support Activities for Transportation	\$51.52
Supermarkets and Other Grocery (except Convenience...	\$33.48
Landscaping Services	\$10.75
Other Miscellaneous Durable Goods Merchant Wholesa...	\$35.22
Medical	\$4.11
Plumbing	\$18.79
Data Processing	\$7.97
Other	\$47.20
Travel Agencies	\$69.91
All Other Specialty Trade Contractors	\$9.23
Home Health Care Services	\$16.95
All Other Personal Services	\$13.00
All Other Support Activities for Transportation	\$51.52
Other	\$26.94
Convenience Stores	\$115.25
All Other Outpatient Care Centers	\$2.85
Other	\$8.42
All Other Automotive Repair and Maintenance	\$33.02
All Other Specialty Trade Contractors	\$32.32
Other Miscellaneous Durable Goods Merchant Wholesa...	\$115.53
All Other Specialty Trade Contractors	\$288.26



Other Activities Related to Real Estate	\$17.54
All Other Support Activities for Transportation	\$10.97
All Other Specialty Trade Contractors	\$6.21
All Other Specialty Trade Contractors	\$34.47
Offices of Dentists	\$32.48
All Other Professional	\$35.52
Other	\$407.63
Other Activities Related to Real Estate	\$18.09
All Other Support Activities for Transportation	\$8.06
Masonry Contractors	\$10.66
Offices of Dentists	\$88.51
General Freight Trucking	\$5.76
Painting and Wall Covering Contractors	\$6.38
Other Miscellaneous Durable Goods Merchant Wholesa...	\$23.30
All Other Support Activities for Transportation	\$19.33
All Other Support Activities for Transportation	\$48.64
General Freight Trucking	\$11.50
Couriers and Express Delivery Services	\$10.72
All Other Automotive Repair and Maintenance	\$22.53
Offices of Dentists	\$19.37
All Other Automotive Repair and Maintenance	\$8.52
All Other Personal Services	\$8.61
Fresh Fruit and Vegetable Merchant Wholesalers	\$92.08
Other	\$44.13
New Housing For-Sale Builders	\$41.71
All Other Personal Services	\$21.80
Home Health Care Services	\$92.97
Meat and Meat Product Merchant Wholesalers	\$7.60
Other	\$4.04
Other	\$17.97
All Other Transit and Ground Passenger Transportat...	\$43.11
All Other Support Activities for Transportation	\$96.42
All Other Transit and Ground Passenger Transportat...	\$50.48
Farm Product Warehousing and Storage	\$72.57
All Other Support Activities for Transportation	\$2.47
Fine Arts Schools	\$9.62
All Other Specialty Trade Contractors	\$135.91
All Other Personal Services	\$3.61
All Other Personal Services	\$742.20
All Other Personal Services	\$41.70



CLIENT STATEMENT | For The Period Ended May 31, 2018

All Other Automotive Repair and Maintenance	\$5.46
Automotive Body	\$7.34
New Car Dealers	\$32.47
All Other Support Activities for Transportation	\$11.14
Finish Carpentry Contractors	\$6.99
Plumbing	\$8.34
All Other Specialty Trade Contractors	\$3.84
Other	\$48.86
Other Residential Care Facilities	\$99.43
General Freight Trucking	\$150.08
Other Computer Related Services	\$3.49
All Other Specialty Trade Contractors	\$9.87
Other	\$22.52
All Other Support Activities for Transportation	\$94.51
All Other Specialty Trade Contractors	\$16.37
All Other Support Activities for Transportation	\$105.79
All Other Professional	\$1.05
All Other Specialty Trade Contractors	\$9.69
Fitness and Recreational Sports Centers	\$13.06
All Other Personal Services	\$13.75
Plumbing	\$26.69
Other	\$14.76
Other Miscellaneous Durable Goods Merchant Wholesa...	\$36.75
All Other Support Activities for Transportation	\$39.88
Motor Vehicle Towing	\$9.07
All Other Support Activities for Transportation	\$15.36
Other Support Activities for Road Transportation	\$21.79
All Other Support Activities for Transportation	\$18.29
All Other Personal Services	\$56.05
Couriers and Express Delivery Services	\$5.86
All Other Specialty Trade Contractors	\$5.15
Water and Sewer Line and Related Structures Constr...	\$15.60
Women's Clothing Stores	\$25.97
Offices of Chiropractors	\$8.08
Other	\$75.91
All Other Automotive Repair and Maintenance	\$49.32
All Other Professional	\$42.19
All Other Specialty Trade Contractors	\$19.97
All Other Specialty Trade Contractors	\$42.25
All Other Specialty Trade Contractors	\$66.85





CLIENT STATEMENT | For The Period Ended May 31, 2018

Other Activities Related to Real Estate	\$67.96
Veterinary Services	\$13.50
Other	\$29.57
All Other Personal Services	\$2,991.27
Construction Sand and Gravel Mining	\$19.22
Other	\$127.97
Offices of Dentists	\$3.55
General Freight Trucking	\$44.84
All Other Specialty Trade Contractors	\$46.55
Landscaping Services	\$10.40
All Other Specialty Trade Contractors	\$53.77
All Other Specialty Trade Contractors	\$23.43
New Single-Family Housing Construction (except For...	\$35.69
All Other Specialty Trade Contractors	\$17.89
All Other Automotive Repair and Maintenance	\$21.77
Direct Mail Advertising	\$24.82
All Other Personal Services	\$115.84
All Other Automotive Repair and Maintenance	\$2,174.54
Other Management Consulting Services	\$44.94
Drinking Places (Alcoholic Beverages)	\$24.84
Roofing Contractors	\$2.48
Residential Property Managers	\$14.13
Automotive Parts and Accessories Stores	\$12.63
Other	\$18.49
Highway	\$108.81
Other Business Service Centers (including Copy Sho...	\$6.68
Roofing Contractors	\$53.56
Carpet and Upholstery Cleaning Services	\$12.13
Plumbing	\$18.88
All Other Specialty Trade Contractors	\$54.71
All Other Support Activities for Transportation	\$94.50
All Other Specialty Trade Contractors	\$16.41
All Other Personal Services	\$113.52
Jewelry Stores	\$8.89
All Other Specialty Trade Contractors	\$73.42
All Other Specialty Trade Contractors	\$39.59
All Other Professional	\$48.57
Jewelry Stores	\$5.71
All Other Specialty Trade Contractors	\$23.10
All Other Miscellaneous Manufacturing	\$3.32



CLIENT STATEMENT | For The Period Ended May 31, 2018

Home Health Care Services	\$30.78
All Other Specialty Trade Contractors	\$191.14
Fresh Fruit and Vegetable Merchant Wholesalers	\$11.47
All Other Miscellaneous Fabricated Metal Product M...	\$169.06
Other Activities Related to Real Estate	\$92.69
All Other Personal Services	\$75.34
Offices of Mental Health Practitioners (except Phy...	\$39.06
Other	\$0.08
Other	\$29.21
Other	\$2.78
Consumer Lending	\$440.56
All Other Specialty Trade Contractors	\$6.98
All Other Specialty Trade Contractors	\$203.82
All Other Professional	\$5.84
Automotive Body	\$18.24
Recreational Vehicle Dealers	\$85.61
All Other Specialty Trade Contractors	\$46.37
All Other Automotive Repair and Maintenance	\$13.71
All Other Business Support Services	\$4.16
Engineering Services	\$252.85
Lumber	\$43.04
All Other Support Activities for Transportation	\$193.57
Administrative Management and General Management C...	\$42.25
Supermarkets and Other Grocery (except Convenience...	\$53.32
Other	\$12.95
All Other Support Activities for Transportation	\$9.93
All Other Business Support Services	\$85.55
Electrical Contractors and Other Wiring Installati...	\$30.63
Fitness and Recreational Sports Centers	\$25.01
All Other Miscellaneous Waste Management Services	\$64.58
Finfish Fishing	\$60.94
All Other Personal Services	\$12.73
Other	\$5.03
Painting and Wall Covering Contractors	\$2.83
All Other Specialty Trade Contractors	\$82.82
Electrical Contractors and Other Wiring Installati...	\$10.13
All Other Specialty Trade Contractors	\$31.87
All Other Personal Services	\$16.15
Car Washes	\$11.67
All Other Specialty Trade Contractors	\$40.94



Fresh Fruit and Vegetable Merchant Wholesalers	\$3.71
All Other Outpatient Care Centers	\$14.14
All Other Specialty Trade Contractors	\$31.80
Offices of Optometrists	\$5.76
All Other Support Activities for Transportation	\$17.74
Cemeteries and Crematories	\$23.63
All Other Miscellaneous Crop Farming	\$80.63
Other	\$1,173.33
Advertising Agencies	\$23.55
All Other Support Activities for Transportation	\$85.27
Other	\$353.47
Electrical Contractors and Other Wiring Installati...	\$41.34
All Other Personal Services	\$202.36
Fresh Fruit and Vegetable Merchant Wholesalers	\$9.72
Insurance Agencies and Brokerages	\$191.38
Other Miscellaneous Durable Goods Merchant Wholesa...	\$72.46
Fresh Fruit and Vegetable Merchant Wholesalers	\$4.76
All Other Support Activities for Transportation	\$40.31
Other	\$181.10
Aircraft Engine and Engine Parts Manufacturing	\$9.95
Musical Groups and Artists	\$11.38
All Other Specialty Trade Contractors	\$6.25
All Other Personal Services	\$105.34
All Other Specialty Trade Contractors	\$204.52
Plumbing	\$19.56
All Other Specialty Trade Contractors	\$1.33
All Other Miscellaneous Electrical Equipment and C...	\$20.99
Women's	\$32.71
Other	\$46.43
Hardware Stores	\$9.10
Other	\$6.06
Other Miscellaneous Durable Goods Merchant Wholesa...	\$8.98
Jewelry	\$21.51
Other	\$169.37
All Other Specialty Trade Contractors	\$5.16
Offices of All Other Miscellaneous Health Practiti...	\$8.00
Administrative Management and General Management C...	\$9.82
All Other Specialty Trade Contractors	\$472.17
All Other Personal Services	\$25.97
All Other Support Activities for Transportation	\$11.51



CLIENT STATEMENT | For The Period Ended May 31, 2018

Other	\$50.08
All Other Support Activities for Transportation	\$7.88
All Other Specialty Trade Contractors	\$28.57
All Other Specialty Trade Contractors	\$386.04
Janitorial Services	\$13.70
Supermarkets and Other Grocery (except Convenience...	\$32.35
All Other Personal Services	\$861.38
All Other Support Activities for Transportation	\$36.78
All Other Automotive Repair and Maintenance	\$85.67
Plumbing	\$43.42
All Other Support Activities for Transportation	\$11.88
All Other Support Activities for Transportation	\$5.45
All Other Specialty Trade Contractors	\$6.56
Site Preparation Contractors	\$92.59
Tobacco Stores	\$26.11
Home Health Care Services	\$21.60
All Other Automotive Repair and Maintenance	\$7.48
Commercial and Institutional Building Construction...	\$6.79
Other	\$95.06
Travel Agencies	\$38.29
All Other Professional	\$15.04
Other	\$7.89
Other	\$19.41
General Freight Trucking	\$83.02
All Other Specialty Trade Contractors	\$79.42
Janitorial Services	\$7.42
All Other Support Activities for Transportation	\$10.41
Flooring Contractors	\$46.03
Data Processing	\$48.76
Commercial and Institutional Building Construction...	\$25.67
All Other Support Activities for Transportation	\$14.53
Drinking Places (Alcoholic Beverages)	\$1.83
Other Clothing Stores	\$1.06
All Other Personal Services	\$2,023.76
All Other Support Activities for Transportation	\$57.28
Professional Organizations	\$72.82
All Other Transit and Ground Passenger Transportat...	\$8.51
Other Building Equipment Contractors	\$40.86
Construction	\$40.62
All Other Support Activities for Transportation	\$40.63



Home Health Care Services	\$4.27
All Other Support Activities for Transportation	\$1.63
All Other Personal Services	\$1,403.37
Other Airport Operations	\$99.48
Commercial and Institutional Building Construction...	\$52.66
All Other Specialty Trade Contractors	\$18.98
Logging	\$6.20
Farm and Garden Machinery and Equipment Merchant W...	\$27.78
Couriers and Express Delivery Services	\$10.29
All Other Support Activities for Transportation	\$3.04
Administrative Management and General Management C...	\$12.77
Metal Service Centers and Other Metal Merchant Who...	\$37.40
Offices of All Other Miscellaneous Health Practiti...	\$15.84
Offices of Bank Holding Companies	\$37.95
Mattress Manufacturing	\$7.95
Other Services Related to Advertising	\$159.97
Other	\$5.02
Optical Goods Stores	\$0.08
Data Processing	\$84.20
All Other Business Support Services	\$53.89
Other	\$13.70
Automotive Body	\$28.94
Other	\$14.27
All Other Support Activities for Transportation	\$38.02
Flooring Contractors	\$53.65
General Automotive Repair	\$12.54
Other	\$16.36
All Other Specialty Trade Contractors	\$48.58
Other	\$9.13
Commercial and Institutional Building Construction...	\$569.10
All Other Support Activities for Transportation	\$6.95
All Other Specialty Trade Contractors	\$40.03
All Other Specialty Trade Contractors	\$119.97
All Other Automotive Repair and Maintenance	\$28.83
All Other Support Activities for Transportation	\$15.18
All Other Automotive Repair and Maintenance	\$4.69
Other	\$32.07
All Other Specialty Trade Contractors	\$11.28
All Other Support Activities for Transportation	\$12.39
Other	\$43.48



CLIENT STATEMENT | For The Period Ended May 31, 2018

All Other Specialty Trade Contractors	\$22.98
All Other Specialty Trade Contractors	\$103.07
Drywall and Insulation Contractors	\$77.33
Freight Transportation Arrangement	\$136.72
Offices of Other Holding Companies	\$26.27
Beauty Salons	\$6.35
All Other Automotive Repair and Maintenance	\$1.88
Supermarkets and Other Grocery (except Convenience...	\$49.22
All Other Specialty Trade Contractors	\$32.79
Graphic Design Services	\$54.69
Commercial and Institutional Building Construction...	\$9.57
All Other Support Activities for Transportation	\$13.91
All Other Support Activities for Transportation	\$34.49
General Freight Trucking	\$338.07
Insurance Agencies and Brokerages	\$13.09
General Freight Trucking	\$14.33
Other Clothing Stores	\$34.20
Glass Product Manufacturing Made of Purchased Glas...	\$5.77
Child Day Care Services	\$14.44
All Other Personal Services	\$16.71
Freight Transportation Arrangement	\$12.13
All Other Personal Services	\$37.27
Drilling Oil and Gas Wells	\$1,588.84
All Other Personal Services	\$0.61
All Other Support Activities for Transportation	\$10.75
All Other Miscellaneous Electrical Equipment and C...	\$10.55
All Other Support Activities for Transportation	\$3.52
Other	\$47.39
All Other Grain Farming	\$140.90
Beauty Salons	\$18.16
Miscellaneous Intermediation	\$67.48
All Other Automotive Repair and Maintenance	\$9.62
All Other Outpatient Care Centers	\$137.29
All Other Automotive Repair and Maintenance	\$6.41
All Other Support Activities for Transportation	\$9.15
General Freight Trucking	\$4.90
Other	\$26.29
Electrical Contractors and Other Wiring Installati...	\$15.14
Freight Transportation Arrangement	\$10.45
Other	\$65.41



CLIENT STATEMENT | For The Period Ended May 31, 2018

Other	\$86.66
All Other Outpatient Care Centers	\$75.55
Oil and Gas Field Machinery and Equipment Manufact...	\$71.29
Other	\$0.18
All Other Support Activities for Transportation	\$191.86
All Other Business Support Services	\$48.99
All Other Specialty Trade Contractors	\$45.37
General Freight Trucking	\$18.21
All Other Miscellaneous Ambulatory Health Care Ser...	\$29.87
All Other Specialty Trade Contractors	\$9.37
All Other Support Activities for Transportation	\$33.70
All Other Personal Services	\$12.58
Other Vegetable (except Potato) and Melon Farming	\$16.15
Landscaping Services	\$11.50
All Other Personal Services	\$40.61
Farm and Garden Machinery and Equipment Merchant W...	\$190.67
All Other Specialty Trade Contractors	\$54.37
All Other Specialty Trade Contractors	\$39.22
Funeral Homes and Funeral Services	\$33.29
Other	\$16.90
All Other Personal Services	\$21.25
All Other Specialty Trade Contractors	\$1.86
Other	\$61.05
New Housing For-Sale Builders	\$170.68
All Other Specialty Trade Contractors	\$12.84
Beauty Salons	\$6.15
Clothing Accessories Stores	\$20.28
Other Miscellaneous Durable Goods Merchant Wholesa...	\$84.08
Private Households	\$30.87
Other	\$33.97
All Other Support Activities for Transportation	\$487.45
Other	\$14.68
Promoters of Performing Arts	\$22.57
Supermarkets and Other Grocery (except Convenience...	\$150.52
All Other Specialty Trade Contractors	\$25.53
Automotive Body	\$30.32
All Other Specialty Trade Contractors	\$24.72
Advertising Agencies	\$53.92
All Other Support Activities for Transportation	\$25.43
All Other Support Activities for Transportation	\$5.92

CLIENT STATEMENT | For The Period Ended May 31, 2018



Commercial and Institutional Building Construction...

\$46.30



# EXHIBIT D

## Table of Contents—Exhibit D

Home Page as of 5/4/17.....	1-4
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## QUICK APPLICATION

OR VIEW FULL APPLICATION FOR FASTER FUNDS

# 1<sup>ST</sup> GLOBAL CAPITAL FINANCIAL SERVICES

SMALL BUSINESS CASH ADVANCEMENTS

Providing small businesses with financial stability no matter what the situation may be.



ACCREDITED  
BUSINESS

BBB Rating A+

[Click for Review](#)

# YOUR BUSINESS NEEDS CAN'T WAIT SO WHY SHOULD YOU?

1-888-374-3150

## Easy Approval Process

WE SAY "YES"  
WHEN BANKS SAY "NO!"



We will go the extra mile to get you approved.

## All Credit Types

ACCEPTED



Perfect credit is no longer a requirement. We work with several lenders that work with all credit types.

## Quick & Easy

24 HOUR PROCESSING



Our team of associates understand that your time is valuable. They diligently work to process your application quickly and effectively.

## No Credit Card Processing

WE MAKE IT EASY

While financial institutions make obtaining funds difficult, we work with all types of businesses.

## OUR GOAL

Is To Provide Your Business The Right Funding Solution.

### ABOUT 1ST GLOBAL CAPITAL

We are 1st Global Capital LLC and our primary goal is to provide all businesses with the money they need to invest in inventory, improve machinery, pay bills, upgrade technology or systems or whatever else they need funding to do.

Many funding sources require you to have near-perfect credit. Many lenders want you to process credit cards in order to get the money you need. Not 1st Global Capital LLC. We provide businesses with unsecured funding they can use to get their business on solid footing.

### WHAT WE OFFER YOU

- Secured Business funds
- Merchant Cash Advance
- Factoring



### MERCHANT CASH ADVANCE

Obtain a payment plan that is right for you based on monthly earnings.

Highlight added to Exhibit D

# Testimonial

I was on the tail-end of my 2nd year in business, when a laundry fire destroyed 90% of my facility and property. I had property insurance, but no insurance to cover the loss of equipment, products, or the fact that we were now losing business every day.

I never considered taking out a merchant cash advance previous to the fire, and had no idea what was ahead - or if I would be eligible, considering the now devastated circumstances of my business. 1st Global Capital took a chance on funding my business. The process was simple and quick. The cash advance helped get us started in a new location, replace what was lost and get back to work.

When I repaid the first short term amount, they offered a second one, which was accepted. Suddenly, we were 6 months past the fire, in a beautiful location, and going strong again.

Today, I paid off the remaining amount on that cash advance, two months early. I can honestly say that had it not been for 1st Global Capital taking the risk on funding my business during one of the most difficult times of our lives, we would not be in business today.

Marlaina S.  
Colorado Springs, Co.

1<sup>ST</sup> GLOBAL CAPITAL LLC  
BUSINESS CASH ADVANCEMENTS



BBB Rating: A+  
[Click for Review](#)

Do not spend your time searching for business funds. 1st Global Capital provides you with the necessary funds so you can spend your time growing your business.



## CONTACT DETAILS

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Hallandale Beach, FL 33009

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## QUICK APPLICATION

OR VIEW [FULL APPLICATION](#) FOR  
FASTER FUNDS

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SMALL BUSINESS CASH ADVANCEMENTS

Providing small businesses with financial stability  
no matter what the situation may be.



BBB Rating: **A**

[Click for Review](#)

**YOUR BUSINESS NEEDS  
CAN'T WAIT  
SO WHY SHOULD  
YOU?**

**1-888-374-3150**

**Easy Approval Process**

90% ACCEPTANCE RATE



We have one of the highest approval rate in the market. We will go the extra mile to get you approved.

### All Credit Types

ACCEPTED



Perfect credit is no longer a requirement. We work with several lenders that work with all credit types.

### Quick & Easy

24 HOUR PROCESSING



Our team of associates understand that your time is valuable. They diligently work to process your application quickly and effectively.

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While financial institutions make obtaining funds difficult, we work with all types of businesses.

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Today, I paid off the remaining amount on that loan, two months early. I can honestly say that had it not been for 1st Global Capital taking the risk on funding my business during one of the most difficult times of our lives, we would not be in business today.

Marlaina S.



1<sup>ST</sup> GLOBAL CAPITAL LLC  
BUSINESS CASH ADVANCEMENTS



BBB Rating: A  
[Click for Review](#)

Do not spend your time searching for business funds. 1st Global Capital provides you with the necessary funds so you can spend your time growing your business.



## CONTACT DETAILS

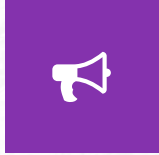
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# FAQ PAGE

YOU ARE HERE: HOME / FAQ PAGE

## FREQUENTLY ASKED QUESTIONS

FAQ Knowledge Base

Before contacting support, please browse our FAQ Knowledge Base, you might just find the solution you're looking for.

+ WHAT CAN 1ST GLOBAL CAPITAL LLC DO FOR MY BUSINESS?

+ HOW CAN I USE THE MONEY?

- HOW DOES IT WORK?

1st Global Capital has a simple application process. The reason we are able to provide funds to businesses that have less than perfect credit, is how we process our advancements. Just answer a few questions and one of our agents will contact you for a free consultation. Your personal consultant will determine the factor rate and the amount of your loan. Once you agree to the terms, your advanced amount will be directly deposited into your bank account within minutes. 1st Global is then repaid by the agreed amount between you and 1st Global Capital daily from your business banking account.

+ WILL I QUALIFY IF I HAVE BAD CREDIT?

+ HOW LONG WILL IT TAKE TO FIND OUT IF I AM APPROVED?

+ HOW MUCH CAN I QUALIFY FOR?

+ HOW QUICKLY CAN I GET THE MONEY?

+ IS THERE ANY PREPAYMENT PENALTY FOR PAYING BACK THE ADVANCE EARLY?

+ I ALREADY HAVE A CASH ADVANCE WITH ANOTHER COMPANY, CAN I STILL APPLY?

+ WHO CAN ANSWER MY QUESTIONS, OR HELP ME START THE FUNDING PROCESS?

1<sup>ST</sup> GLOBAL CAPITAL LLC  
BUSINESS CASH ADVANCEMENTS



BBB Rating: A+  
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1st GLOBAL CAPITAL LLC  
BUSINESS CASH ADVANCEMENTS



BBB Rating: A+  
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+ WILL I QUALIFY IF I HAVE BAD CREDIT?

- HOW LONG WILL IT TAKE TO FIND OUT IF I AM APPROVED?

Once the application and documentation are received, an approval notice takes about 4 hours.

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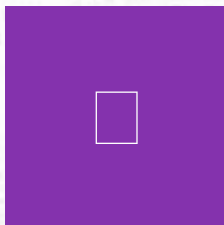
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Español

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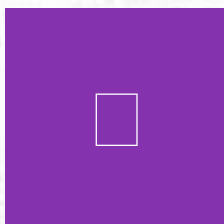
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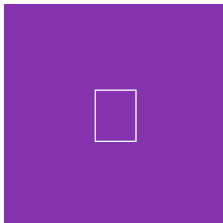
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■ HOW QUICKLY CAN I GET THE MONEY?



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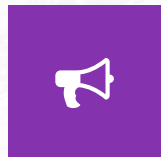
Once the application and documentation are received, an approval notice takes about 4 hours.

■ HOW MUCH CAN I QUALIFY FOR?

■ HOW QUICKLY CAN I GET THE MONEY?



Application Page accessed as of July 1, 2017 by selecting "Apply Now" from the Home Page.



# APPLICATION

YOU ARE HERE: HOME / APPLY PAGE

PLEASE COMPLETE THE FOLLOWING FORM.

## PERSONAL INFORMATION

First Name:

Last Name:

Email:

Phone Number:

## FINANCIAL INFORMATION

Amount of funds needed:

Purpose for requesting funds:

See Ex. D, pg. 17.

See Ex. D, pg. 18.

## BUSINESS INFORMATION

Business Legal Name:

Business Phone:

Years in Business:

Business Address:

Business City:

Business State:

Business Zip Code:

Simple math to verify you are a human being

9 + 3 =





BBB Rating: A+  
[Click for Review](#)

Do not spend your time searching for business funds. 1st Global Capital provides you with the necessary funds so you can spend your time growing your business.



**CONTACT DETAILS**

**Address:**

1250 East Hallandale Beach Blvd.  
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**Website:** [www.1stglobalcapital.com](http://www.1stglobalcapital.com)

**Phone:** (888) 374-3150



# APPLICATION

YOU ARE HERE: HOME / APPLY PAGE

PLEASE COMPLETE THE FOLLOWING FORM.

## PERSONAL INFORMATION

First Name:

Last Name:

First Name:

Last Name:

Email:

Phone Number:

## FINANCIAL INFORMATION

Amount of funds needed:  
Please Choose:

Purpose for requesting funds:  
Please Choose:

Address:

Business Phone:

Business City:

Business State:

Years In Business:

Business Zip Code:

City:

State:

Zip Code:

Exhibit D



# APPLICATION

YOU ARE HERE: HOME / APPLY PAGE

PLEASE COMPLETE THE FOLLOWING FORM.

## PERSONAL INFORMATION

First Name:

Last Name:

Email:

Phone Number:

## FINANCIAL INFORMATION

Amount of funds needed:

Purpose for requesting funds:

## BUSINESS INFORMATION

Business Legal Name:

Years In Business:

Years In Business

Business Address:

Business Zip Code:

Exhibit D

1 Global Website 18 of 22





Application Page accessed as of March 14, 2015 by selecting "Apply Now" from the Home Page.



# APPLICATION

YOU ARE HERE: [HOME](#) / [APPLY PAGE](#)

PLEASE COMPLETE THE FOLLOWING TWO STEP FORM.

First Name:\*

Last Name:\*

Email:\*

Phone Number:\*

Amount of funds needed:\*

Purpose for requesting funds:\*

Business Legal Name:\*

Business Address:\*

See Ex. D, pg. 21.

See Ex. D, pg. 22.

Business Phone:\*

Business City:\*

Years in Business:\*

Business State:\*

Business Zip Code:\*

Simple math to verify you are a human being

9 + 3 =

SUBMIT

1<sup>ST</sup> GLOBAL CAPITAL LLC  
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**Phone:** (800) 910-2274



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# APPLICATION

YOU ARE HERE: HOME / APPLY PAGE

PLEASE COMPLETE THE FOLLOWING TWO STEP FORM.

First Name:\*  
Enter First Name

Last Name:\*  
Enter Last Name

Email:\*  
Enter Email

Phone Number:\*  
( ) - -

Amount of funds needed:\*  
Please Choose:

Purpose for requesting funds:\*  
Please Choose:

Business Legal Name:\*  
Enter Business Name

Business Phone:\*  
( ) - -

Years in Business:\*  
Enter Years In Business

Business Zip Code:\*  
Enter Business Zip Code

Simple math to verify you are a human being  
9 + 3 =

SUBMIT



# APPLICATION

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First Name:\*  
Enter First Name

Last Name:\*  
Enter Last Name

Email:\*  
Enter Email

Phone Number:\*  
( ) - - -

Amount of funds needed:\*  
Please Choose:

Purpose for requesting funds:\*  
Please Choose:

Business Legal Name:\*  
Enter Business Name

Business Address:\*  
Enter Business Address

Operational Capital  
 Equipment Purchase  
 Inventory Purchase  
 Remodeling  
 Expansion  
 Marketing  
 Refinancing Debt  
 Hiring  
 Other

Business Phone:\*  
( ) - - -

Business City:\*  
Enter Business Address

Years In Business:\*  
Enter Years In Business

Business State:\*  
Enter Business State

Business Zip Code:\*  
Enter Business Zip Code

Simple math to verify you are a human being  
9 + 3 =

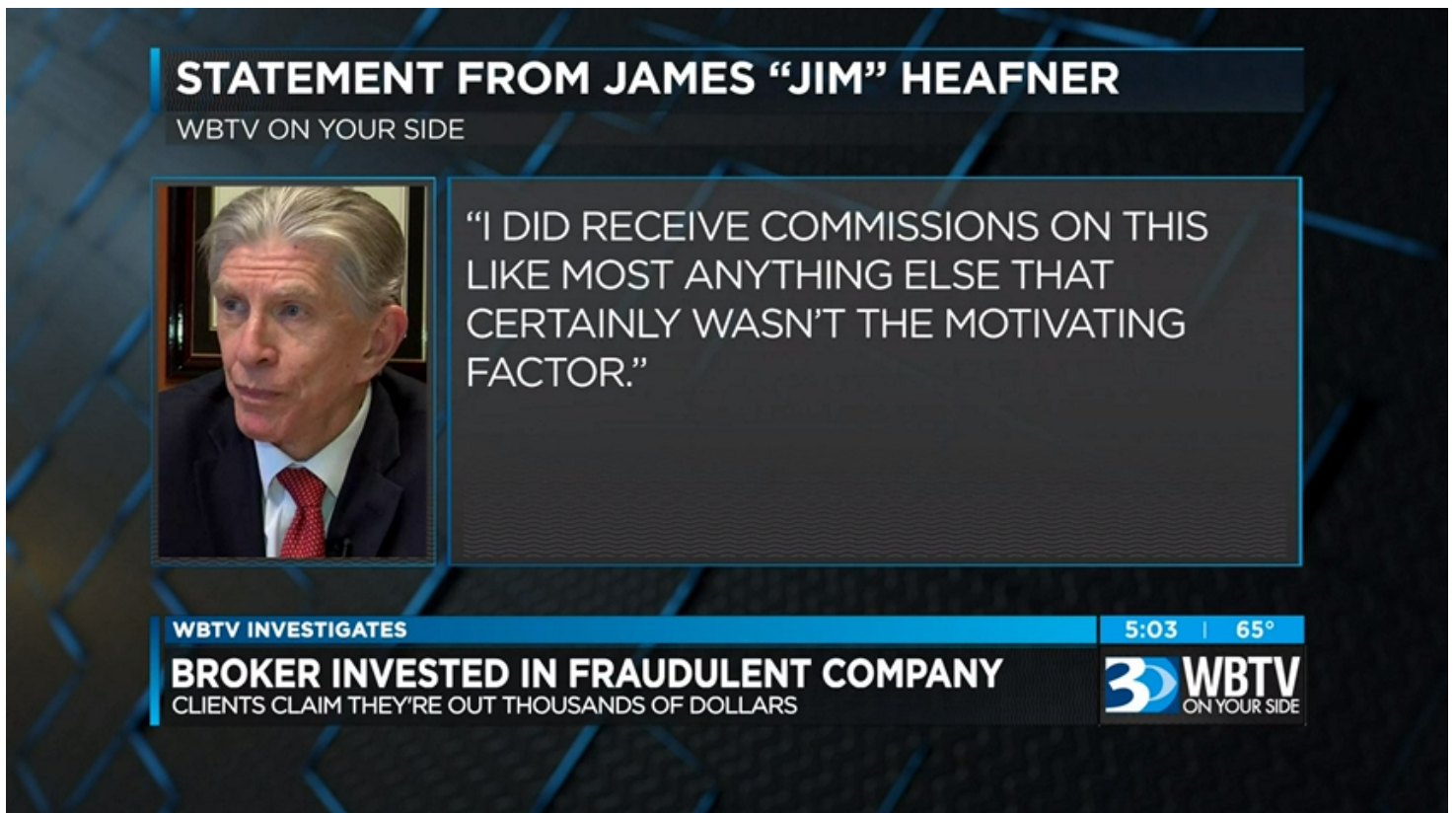
SUBMIT

# **EXHIBIT E**



WBTV INVESTIGATES

## Charlotte area financial advisor faces claims of mismanaging investments



**STATEMENT FROM JAMES "JIM" HEAFNER**  
WBTV ON YOUR SIDE

"I DID RECEIVE COMMISSIONS ON THIS LIKE MOST ANYTHING ELSE THAT CERTAINLY WASN'T THE MOTIVATING FACTOR."

**WBTV INVESTIGATES**  
**BROKER INVESTED IN FRAUDULENT COMPANY**  
CLIENTS CLAIM THEY'RE OUT THOUSANDS OF DOLLARS

5:03 | 65°  
**WBTV**  
ON YOUR SIDE

Broker invested in fraudulent company

By [David Hodges](#) | March 28, 2019 at 6:01 PM EDT - Updated March 28 at 8:15 PM

CHARLOTTE, NC (WBTV) - Clients of a well-known financial advisor in the Charlotte area claim he squandered hundreds of thousands of dollars by investing in a risky business. That's according to complaints filed with the Financial Industry Regulatory Authority. The company he invested in is facing a lawsuit from the Securities and Exchange Commission.

James "Jim" Heafner and viewers may recognize him. Heafner paid for sponsored content on WBTV's lifestyle program Morning Break. That relationship ended in November 2017. Heafner also advertised on WBTV until February 2018.

According to FINRA, Heafner was fired from a company for his outside business activities. Heafner confirmed to WBTV it was related to investments he made for his clients.

**Exhibit E**

**WBT Article 1 of 2**

Heafner is accused of investing clients' money in 1st Global Capital according the complaints filed with FINRA. 1st Global is a South Florida company that has now had its assets frozen by the Securities and Exchange Commission. The SEC claims that 1st Global was paying commissions to registered and unregistered investment advisors to fraudulently raise \$287 million in investments. According to the SEC court filing, the owner of 1st Global put \$35 million into his own pocket or his own companies. The SEC also claims 1st Global falsified financial information, including the return on investment.

In a phone call with WBTV Heafner stated "Everything we saw about it (1st Global) looked really good and everything looked safe as it could possibly be.

"(I) made a recommendation based upon what we believed to be true," Heafner said.

On the FINRA website three customers of Jim Heafner claim he was negligent in investing their money in 1st Global. They say the losses add up to almost a half a million dollars.

I asked Heafner if he received commissions from 1st Global.

"I did receive commissions on this like most anything else that certainly wasn't the motivating factor," Heafner said.

He did not tell WBTV how much he made in commission or whether it was more than other security commissions. Heafner estimated he had 45 clients whose money he invested in 1st Global.

WBTV obtained a letter a client says was sent to them from Heafner. The client does not wish to be named. In it Heafner compares himself to Captain 'Sully' Sullenberger, the pilot who landed the plane in the Miracle on the Hudson.

The letter reads "I always did the best for my clients and like Sully I am being accused of making the wrong call by clients, authorities and attorneys."

It also reads "The authorities say I didn't follow protocol. And that i should lose my licenses for my mistake.

Heafner's material on WBTV was paid advertising and paid sponsored content and was not endorsed by WBTV. That relationship ended in February 2018. Six months later Heafner was terminated from the company that employed him. He is no longer a registered broker according to information publicly available on the FINRA and SEC websites.

*Copyright 2019 WBTV. All rights reserved.*

# **EXHIBIT F**



RETIREMENT WEALTH

# FIRM BROCHURE

## Part 2A of Form ADV

This brochure provides information about the qualifications and business practices of Retirement Wealth Advisors, Inc. If you have any questions about the contents of this Brochure, please contact us at 888-562-8880 or [compliance@retirementwealthadvisors.com](mailto:compliance@retirementwealthadvisors.com).

The information in this brochure has not been approved or verified by the United States Securities and Exchange Commission or by any state securities authority.

Additional information about Retirement Wealth Advisors, Inc. is available on the SEC's website at [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov).

Retirement Wealth Advisors, Inc. is a registered investment adviser. Registration does not imply any level of skill or training.

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Effective Date: 09/05/2018

## **ITEM 2 – MATERIAL CHANGES**

### **Annual Update**

The Material Changes section of this brochure will be updated annually when material changes occur since the previous release of the Firm Brochure.

### **Material changes since the last update**

Since the annual amendment filing on March 30, 2018 this ADV Part 2A Brochure has been materially amended as follows:

As of 9/05/2018:

- Jason Wenk stepped down as Chief Executive Officer and President Jason will remain a majority owner and consultant to the firm.
- Jason Crump has accepted the Chief Executive Officer position.
- Joel VanWoerkom has accepted the President position.
- Diane Ferris has added the position of Chief Administration Officer to her responsibilities.
- James Ward has accepted the position of Chief People Officer.

### **Full Brochure Available**

Whenever you would like to receive a complete copy of our Firm Brochure, please contact us by telephone at 888-562-8880 or by email at: [support@retirementwealthadvisors.com](mailto:support@retirementwealthadvisors.com)

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## ITEM 4 - ADVISORY BUSINESS

Retirement Wealth Advisors, Inc. hereinafter ("RWA"), ("Firm") or the ("Adviser") is a corporation formed under the laws of Michigan founded in 2005 and is an SEC registered investment adviser. Retirement Wealth Advisors, Inc. offers personalized investment advisory services to individuals, pension and profit sharing plans, trusts, estates, charitable organizations, corporations, and other business entities.

This narrative provides clients with information regarding RWA and the qualifications, business practices, and nature of advisory services that should be considered before becoming an advisory client of RWA. Individuals associated with RWA will provide its investment advisory services. These individuals are appropriately licensed, qualified, or authorized to provide advisory services on behalf of RWA. Such individuals are known as Investment Adviser Representatives. RWA provides two primary financial advisory services: 1) investment management services, and 2) personal financial planning. Each of these two services may be billed separately as unique services, or, in most cases for ongoing clients, billings for both services are integrated, as described below. Some clients may use the Adviser only for the financial planning; others may choose to use the Adviser only for investment management services.

The Adviser is a fee-only investment management and financial planning firm. The firm does not sell securities on a commission basis. However, there are some associated persons who are in other fields where they receive commissions as compensation. The investment management services are provided through separately managed accounts for each client. The Adviser does not act as a custodian of client assets, and the client always maintains asset control. The Adviser has discretion of client accounts and places trades for clients under a limited power of attorney.

Other professionals (e.g., lawyers, accountants, insurance agents, etc.) are engaged directly by the client on an as-needed basis. Any conflicts of interest arising out of the Adviser's or its associated persons are disclosed in this brochure.

### Principal Owners

Jason Wenk is a principal owner of Retirement Wealth Advisors, Inc. Jason Wenk's share of ownership is 37.9336%. There are no remaining ownership shares having greater than 25% interest in Retirement Wealth Advisors, Inc.

### Types of Advisory Services

RWA provides investment supervisory services, also known as asset management services and furnishes investment advice through consultations. On more than an occasional basis, RWA furnishes advice to clients on matters not involving securities.

RWA offers discretionary and non-discretionary continuous portfolio management services where the investment advice provided is tailored to meet the needs and investment objectives of the client. The Firm offers an initial consultation in which pertinent information about the client's personal and financial circumstances and objectives is collected, and the scope of the engagement is determined. Where RWA enters into discretionary arrangements with clients, RWA will be granted discretion and authority to manage the client's account subject to any written guidelines that the client provides. Accordingly, RWA is authorized to perform various functions, at the client's expense, without further approval from the client. Such functions include the determination of securities and the amount of securities to be purchased and/or sold.

Once the portfolio is constructed, RWA provides ongoing supervision and rebalancing of the portfolio as changes in market conditions and client circumstances require. For non-discretionary portfolio management services, RWA will monitor the client's assets and will provide recommendations as to the client's asset allocation. The client is free at all times to accept or reject any investment recommendation from RWA. For non-discretionary portfolio management, RWA will implement recommendations upon obtaining client approval.

### **Variable Annuity Asset Allocation**

RWA also provides Variable Annuity Asset Allocation services for Variable Annuity contracts issued by numerous Insurance Companies. These strategies are known as "VaR Allocation Series" and "RWA Multi-Strategy Allocation".

### **Financial Planning Services**

RWA engages in financial planning services for a fee. Financial planning and consulting will typically involve providing a variety of services, principally advisory in nature, to clients regarding the management of their financial resources based upon an analysis of their individual needs. An Investment Adviser Representative of RWA will first conduct an initial consultation. After the initial consultation, if the client decides to engage RWA for financial planning services, an Investment Adviser Representative will conduct follow up meetings as necessary, during which pertinent information about the client's financial circumstances and objectives is collected. Once such information has been reviewed and analyzed, a financial plan – designed to achieve the client's stated financial goals and objectives – if created, will be presented to the client. Clients may act on the Firm's recommendations by placing securities transactions with any brokerage firm the client chooses. The client is under no obligation to act on the Firm's financial planning recommendations. Moreover, the client is under no obligation to implement the financial plan through RWA. Financial plans are based on the client's financial situation at the time the plan is presented and on financial information disclosed by the client to RWA. Clients are advised that certain assumptions may be made with respect to interest and inflation rates and the use of past trends and performance of the market and economy. Past performance is in no way an indication of future performance. RWA cannot offer any guarantees or promises that the client's financial goals and objectives will be met. As the client's financial situation, goals, objectives, or needs change, the client must notify RWA promptly.

As of September 12, 2018, RWA manages \$1,828,631,367 in discretionary assets for 14,903 accounts and \$106,603,165 in non-discretionary assets for 1,215 accounts.

### **Types of Agreements**

The following agreements define the typical client relationships:

**Investment Management Agreement:** As part of the investment management service, all aspects of the client's financial affairs are reviewed and realistic and measurable goals are set and objectives to reach those goals are defined. As goals and objectives change over time, suggestions are made and implemented on an ongoing basis. The Adviser periodically reviews a client's financial situation and portfolio through regular contact with the client and often includes an annual meeting with the client.

The scope of work and fee for an Advisory Service Agreement is provided to the client in writing prior to the start of the relationship. The agreement sets forth the services to be provided, the fees for the service and the agreement may be terminated by either party in writing at any time.



**Financial Planning Agreement:** The financial plans include Morning Star® analysis. The plans may also include the following:

- net worth statement,
- cash flow statement,
- review of investment accounts, asset allocation, and repositioning recommendations,
- strategic tax planning,
- review and recommendations for retirement accounts,
- review and recommendations of insurance policies,
- one or more retirement scenarios,
- estate planning review and recommendations,
- education planning with funding recommendations,
- individual securities hold/sell recommendations,
- mutual fund fee analysis,
- annuity stress test, and
- 401(k) optimization.

The financial planning may be the only service provided to the client and does not require that the client use or purchase the investment advisory services offered by the Advisor or any of the insurance products or other products and services offered by the associated persons of the Advisor. There is an inherent conflict of interest for the Advisor whenever a financial plan recommends use of professional investment management services or the purchase of insurance products or other financial products or services. The Advisor or its associated persons may receive compensation for financial planning and the provision of investment management services and/or the sale of insurance and other products and services. The Advisor does not make any representation that these products and services are offered at the lowest available cost and the client may be able to obtain the same products or services at a lower cost from other providers. However, the client is under no obligation to accept any of the recommendations of the Advisor or use the services of the Advisor in particular.

Hourly Engagements: The Advisor provides hourly services for clients who need advice on a limited scope of work.

## **Asset Management**

Investments may include: equities (stocks), warrants, corporate debt securities, commercial paper, certificates of deposit, municipal securities, investment company securities (variable life insurance, variable annuities, and mutual funds shares), U. S. government securities, options contracts, futures contracts, and interests in partnerships. RWA reserves the right to advise clients on any other types of investments deemed appropriate based on the client's stated goals and objectives. The Firm, at times, provides advice on other types of investments held in a client's portfolio at the inception of the advisory relationship or on investments for which the client requests advice.

Stocks and bonds are purchased or sold through a brokerage account. When appropriate, the brokerage firm charges a fee for stock and bond trades.

## **Selection of Third Party Investment**

Advisers and Sub-Investment Advisers

RWA may recommend that clients utilize the services of a third party investment adviser ("TPIA") to manage a portion of, or their entire portfolio. All TPIAs that the Firm recommends to its clients must

either be registered as investment advisers with the Securities and Exchange Commission or with the appropriate state authority(ies).

After gathering information about the client's financial situation and objectives, an investment adviser representative of RWA will make recommendations regarding the suitability of a TPIA or investment style based on, but not limited to, the client's financial needs, investment goals, tolerance for risk, and investment objectives. Upon selection of a TPIA(s), RWA will monitor the performance of the TPIA(s) to ensure their performance and investment style remains aligned with the investment goals and objectives of the client.

RWA may share in the fee paid by the client to the TPIA. Clients who are referred to TPIAs will receive full disclosure, including services rendered and fee schedules, at the time of the referral by delivery of a copy of the relevant TPIA's Form ADV Part 2 or equivalent disclosure document. In addition, if the investment program recommended to a client is a wrap fee program, the client will also receive the wrap fee brochure or equivalent wrap fee account size, minimum fees, or other portfolio conditions as outlined in their disclosure statements. The Firm or the TPIA will provide to each client all appropriate disclosure statements, including disclosure of solicitation fees paid to RWA and its investment adviser representatives.

Fees paid by the client to the TPIA are established and payable in accordance with the Form ADV Part 2 or other equivalent disclosure document provided by each TPIA to whom the client is referred and these fees may or may not be negotiable. Such compensation may differ depending upon the Firm's individual agreement with each TPIA. As such, RWA or its investment adviser representatives may have an incentive to recommend one TPIA over another TPIA with whom it has less favorable compensation arrangements or other advisory programs offered by TPIAs with which it has no compensation arrangements. Clients may be required to sign an agreement directly with the TPIA(s) selected. The client, the Firm, or the TPIA, in accordance with the provisions of those agreements, may terminate the advisory relationship. If the TPIA is compensated in advance, the client will typically receive a pro rata refund of any prepaid advisory fees upon termination of an advisory agreement.

### **Termination of Agreement**

A Client may terminate any of the aforementioned agreements at any time by notifying the Adviser in writing. Clients shall be charged pro rata for services provided through to the date of termination. If the client made an advance payment, the Adviser will refund any unearned portion of the advance payment. The Adviser reserves the right to terminate any financial planning engagement where a client has willfully concealed or has refused to provide pertinent information about financial situations when necessary and appropriate, in the Adviser's judgment, to providing proper financial advice. Any unused portion of fees collected in advance will be refunded.

### **Affiliated Registered Mutual Funds**

FormulaFolio Investments, LLC (FFI) serves as the investment advisor to the FormulaFolios US Equity Fund. The investment of the FormulaFolios US Equity Fund is long-term capital appreciation. FormulaFolio Investments, LLC manages the FormulaFolios US Equity Fund portfolio assets based on the specific investment objectives and restrictions as outlined in the FormulaFolios US Equity Fund's prospectus and statement of additional information, rather than on the individual needs and objectives of the FormulaFolios US Equity Fund shareholders. Prior to investing, shareholders should consider whether the investment strategy of the FormulaFolios US Equity Fund meets their investment objectives and risk tolerance. For a complete description of the investment object and risks, please refer to the FormulaFolios US Equity Fund prospectus.

FFI also serves as the investment advisor to the FormulaFolios US Equity Portfolio. Shares of the FormulaFolios US Equity Portfolio are intended to be sold to certain separate accounts of the participating life insurance companies, as well as qualified pension and retirement plans and certain unregistered separate accounts. Shares will be held by the separate accounts or plans for the benefit of the purchaser or participant. The investment objective of the FormulaFolios US Equity Portfolio is the same as the FormulaFolios US Equity Fund seeking long-term capital appreciation. FFI manages the FormulaFolios US Equity Portfolio assets based on the specific investment objectives and restrictions as outlined in the FormulaFolios US Equity Portfolio prospectus and statement of additional information, rather than on the individual needs and objectives of the insurance carrier and/or policyholder. Please refer to the FormulaFolios US Equity Portfolio prospectus for a complete description of the investment objective and risks pertaining to the FormulaFolios US Equity Portfolio.

Clients of an advisor registered with RWA may invest in a portfolio that has an FFI proprietary mutual fund.

FormulaFolios (FFI) serves as the investment advisor to the FormulaFolios Hedge Growth ETF, Income ETF, Smart Growth ETF, and Tactical Growth ETF. The FormulaFolios Hedged Growth ETF seeks to achieve its investment objective by investing primarily in domestic equity securities of any market capitalization and US Treasuries through other unaffiliated exchange traded funds. The FormulaFolios Income ETF seeks to achieve its investment objective by investing primarily in foreign and domestic fixed income securities through other exchange traded funds. The fixed income securities in which the fund will invest are US Treasuries, investment grade US bonds, high yield US bonds, US aggregate bond, and international government bonds of any maturity and duration. Complete descriptions of the investment objectives and risk can be found in the Funds' prospectuses or, if available, the summary prospectuses. In all cases, FFI's portfolio management operates in accordance with the investment guidelines outlined in the fund's governing documents.

**FFI offers separately managed accounts** and other investment fund products in addition to the funds above. Some of these offerings include portfolios of investments that may be substantially identical to these funds, and could create certain conflicts of interest. As the FormulaFolios US Equity Fund and the FormulaFolios US Equity Portfolio and any separate accounts or investment funds managed similarly to these will be managed concurrently, all transactions will be implemented according to FFI's trade allocation procedures. These procedures, among other things, ensure that all trades allocated to advisory clients fulfill the FFI's fiduciary duty to each client and otherwise allocate securities on a basis that is fair and nondiscriminatory. Such procedures are generally applied in numerous instances, including, among other things, block and bunched trades, cross transactions and private placements. In determining a fair allocation, FFI takes into account a number of factors, including among other things, the Adviser's fiduciary duty to each client, any potential conflicts of interest, the size of the transaction, the relative size of a client's portfolio, cash available for investment, suitability as well as each client's investment objectives.

### **ERISA Qualified Plans**

In accordance with Department of Labor regulations under Section 408(b)(2) of ERISA, we are required to provide certain information regarding our services and compensation to assist fiduciaries and plan sponsors of those retirement plans that are subject to the requirements of ERISA in assessing the reasonableness of their plan's contracts or arrangements with us, including the reasonableness of our compensation. This information (the services we provide as well as the fees) is provided to you at the outset of your relationship with us and is set forth in your advisory contract with us (including the

fee table, other exhibits and, as applicable, this document), and then at least annually to the extent that there are changes.

### **ERISA Fiduciary Status**

Depending on the agreement between FFI and the plan sponsor, pursuant to the agreed upon investment advisory contract we may either share fiduciary responsibility with the plan sponsor or we may be the investment manager specifically appointed to have full discretionary authority and control to make actual investment decisions in the plan.

## **ITEM 5 - FEES AND COMPENSATION**

### **Investment Management**

RWA bases its fees on a percentage of assets under management. Although the Investment Management Agreement is an ongoing agreement and constant adjustments are required, the length of service to the client is at the client's discretion. The client or the investment manager may terminate an Agreement by written notice to the other party. At termination, fees will be billed on a pro rata basis for the portion of the quarter completed. The portfolio value at the completion of the prior full billing quarter is used as the basis for the fee computation, adjusted for the number of days during the billing quarter prior to termination.

RWA currently offers three programs. The annual fee for portfolio management services for FOLIOfn accounts is billed quarterly in advance based on the asset value on the last business day of the previous quarter. The annual fee for portfolio management services for TD Ameritrade accounts is billed quarterly in arrears based on the asset value on the last business day of the current quarter. Fees will be assessed pro rata in the event the portfolio management agreement is executed at any time other than the first day of a calendar quarter. Portfolio management fees may be negotiable depending on factors such as the amount of assets under management, range of investments, and complexity of the client's financial circumstances, among others. Advisor Managed Program Fee will be based on the gross value of Adviser's account(s), and will be paid quarterly in arrears, at the end of each quarter.

Annual management fees can be billed monthly in--arrears based on the average daily balance of the managed account for the--preceding calendar month with statements sent Quarterly. For partial months, fees are prorated for only the days in the preceding month.

For all accounts non-discretionary, non-managed accounts (non-- asset billed) there is an annual fee of \$50 for administrative services. For all managed accounts, there is an annual administrative fee of \$50. This fee applies on accounts that have balances of less than \$100,000 at the end of a billing cycle. This fee can be waived at the discretion of the firm.

### **Variable Annuity Asset Allocation**

RWA also provides Variable Annuity Asset Allocation services for Variable Annuity contracts issued by numerous Insurance Companies.

The annualized negotiable fees for discretionary and non-discretionary Variable Annuity Asset Allocation services are based on the following fee schedule:

VaR Allocation Series 1.25%  
 RWA Multi--Strategy Allocation 1.50%

The annual fees for Variable Annuity Asset Allocation Services are billed quarterly in advance based on the asset value on the last business day of the previous quarter. Payment of the Firm's management fees will be made by the qualified custodian holding the client's funds and securities provided the client supplies written authorization permitting the fees to be paid directly from the account. A client may terminate the agreement at any time and will receive a refund of any prepaid but unearned advisory fees for the period from the termination date through the end of that calendar quarter.

Advisor Managed Accounts	
Agreed upon fee is:	_____ % 0.5% - 2.0%

TD Ameritrade	Rep. Fee
<100K	_____ % 0.5% - 2.0%
100K-250K	
250K-500K	
500K-1M	
1M+	

FolioFN	FolioFN Wrap Fee	Rep. Fee
<100K	0.1%	_____ % 0.5% - 2.0%
100K-250K	0.1%	
250K-500K	0.1%	
500K-1M	0.1%	
1M+	0.1%	

For all allocations, in addition to the rep fee, a TPIA management fee of 10 bps will be charged. An additional 10 bps management fee will be charged to MM series allocations.

### Affiliated Mutual & ETF Fund Fees

The money manager, FormulaFolio Investments, LLC, has proprietary mutual funds and ETFs. Fees for these mutual funds and ETFs are built into the portfolios created by FFI.

### Financial Planning

RWA can charge up to a maximum fee of \$5000 for financial planning services. Fees are based on the scope and complexity of the engagement with the client varying due to the work needed and client goals. **Financial planning fees may be waived upon discretion of RWA or the advisors registered by RWA.** A fifty-percent (50%) retainer may be requested with the remainder of the fee due upon completion of the financial plan being delivered or consultation rendered to the client. A retainer exceeding \$1,200 will not be required when services cannot be rendered within six (6) months. Plans come with a satisfaction guarantee. If a client is not satisfied after their plan is complete, then RWA does not bill them for the plan. Lower fees for comparable services may be available from other sources.

The Adviser offers several different services detailed in this brochure that compensate the Adviser differently depending on the service selected. There is a conflict of interest for the Adviser and its associated personnel to recommend the services that offer a higher level of compensation to the Firm through either higher management fees or reduced administrative expenses. The Adviser mitigates

this conflict through its procedures to review client accounts relative to the client or investors personal financial situation to ensure the investment management service provided is appropriate. Further, the Adviser is committed to its obligation to ensure associated persons adhere to the Firm's Code of Ethics and to ensure that the Firm and its associated persons fulfill their fiduciary duty to clients or investors.

## **ITEM 6 - PERFORMANCE FEES**

### **Performance Fees**

Currently, RWA does not provide a performance fee-based account option. Should this change, the fee would be as follows: The annual advisory fee for the program ranges from 1.00% to 2.00%. If the portfolio outperforms the individual benchmark for the portfolio, a performance fee will be assessed. The performance fee is generally equal to 20% tied to the annual gross profits, adjusted for deposits and withdrawals made during the year, in a client's account over a hurdle rate. Performance-based fees are charged annually or quarterly in arrears.

### **Other Fees**

Unless the client portfolio account is in a wrap program, the client will likely incur fees from brokerages, custodians, administrators and other service providers. These fees are incurred as a result of managing a client account and are charged by the service provider. The amount and nature of these fees is based on the service provider's fee schedule(s) at the provider's sole discretion. These fees are separate and distinct from any fees charged by the Adviser.

The Adviser or the sub-advisors selected by the Adviser may include mutual funds, variable annuity products, ETFs, and other managed products or partnerships in clients' portfolios. Clients may be charged for the services by the providers/managers of these products in addition to the management fee paid to the Adviser. The Adviser, from time to time, may select or recommend to separately managed clients the purchase of proprietary investment products. To the extent that the client's separately managed portfolio includes such proprietary products, the Adviser will adjust the client's fee associated with the client's separately managed account. The fees and expenses charged by the product providers are separate and distinct from the management fee charged by the Adviser. These fees and expenses are described in each mutual fund's or underlying annuity fund's prospectus or in the offering memorandums of a partnership. These fees will generally include a management fee, other fund expenses and a possible distribution fee. No-load or load waived mutual funds may be used in client portfolios so there would be no initial or deferred sales charges; however, if a fund that imposes sales charges is selected, a client may pay an initial or deferred sales charge. A client could invest in a mutual fund or variable annuity or investment partnership directly, without the services of the Adviser. Accordingly, the client should review both the fees charged by the funds and the applicable program fee charged by the Advisor to fully understand the total amount of fees to be paid by the client and to thereby evaluate the advisory services being provided.

If it is determined that a client portfolio shall contain corporate debt or other types of over the counter securities, the client may pay a mark-up or mark-down or a "spread" to the broker or dealer on the other side of the transaction that is built into the purchase price of the security.

In some cases, there may be fees charged that are a result of brokered trading activity by associated personnel of the Adviser outside of the constructs of the Adviser's investment advisory portfolios and

are thus not included in the management fee. These trades are generally at the request of the client and the fees may vary in size depending on the nature of the client's requests.

### **Conflict of Interest Between Different Fee Structures**

The Adviser offers several different services detailed in this firm brochure that compensate the Adviser differently depending on the service selected. There is a conflict of interest for the Adviser and its associated personnel to recommend the services that offer a higher level of compensation to the Firm through either higher management fees or reduced administrative expenses. The Adviser mitigates this conflict through its procedures to review client accounts relative to the client or investors personal financial situation to ensure the investment management service provided is appropriate. Further, the Adviser is committed to its obligation to ensure associated persons adhere to the Firm's Code of Ethics and to ensure that the Firm and its associated persons fulfill their fiduciary duty to clients or investors.

## **ITEM 7 - TYPES OF CLIENTS**

### **Types of Clients**

RWA generally provides investment advice to individuals, pension and profit sharing plans, trusts, estates, or charitable organizations, and corporations or business entities. Client relationships vary in scope and length of service.

### **Account Minimums**

Generally, RWA requires an account minimum of \$25,000 for asset management services; however, at its sole discretion, RWA may waive or lower this minimum.

### **Methods of Analysis**

Security analysis methods may include charting, fundamental analysis, and technical analysis. The main sources of information include financial newspapers and magazines, research materials prepared by others, corporate rating services, timing services, annual reports, prospectuses, filings with the Securities and Exchange Commission, and company press releases.

### **Investment Strategies**

Strategies include various investments such as:

- long-term purchases,
- short-term purchases,
- trading,
- short sales, option purchases and writing (including covered options, uncovered options, or spreading strategies),
- exchange traded funds, and
- mutual funds

RWA strives to build portfolios that are globally diversified to control the risk associated with traditional markets. The investment strategy for a specific client is based upon the objectives stated by the client during consultations. The client is able to change these objectives at any time. Each client executes an Investment Policy Statement that documents their objectives and their desired investment strategy involve frequent trading.

### **Market, Security and Regulatory Risks**

Any investment with the Adviser involves significant risk, including a complete loss of capital and conflicts of interest. All investment programs have certain risks that are borne by the investor that are described below:

#### **Market Risks**

**Competition.** The securities industry and the varied strategies and techniques to be engaged in by the Adviser are extremely competitive and each involves a degree of risk. The Adviser will compete with firms, including many of the larger securities and investment banking firms, that have substantially greater financial resources and research staffs.

**Market Volatility.** The profitability of the Adviser substantially depends upon it correctly assessing the future price movements of stocks, bonds, options on stocks, and other securities and the movements of interest rates. The Adviser cannot guarantee that it will be successful in accurately predicting price and interest rate movements.

### **ITEM 8 - METHODS OF ANALYSIS, INVESTMENTS STRATEGIES AND RISK OF LOSS**

**Retirement Wealth Advisors Inc. Investment Activities.** The Adviser's investment activities involve a significant degree of risk. The performance of any investment is subject to numerous factors that are neither within the control of nor predictable by the Adviser. Such factors include a wide range of economic, political, competitive, technological and other conditions (including acts of terrorism and war) that may affect investments in general or specific industries or companies. The securities markets may be volatile, and may adversely affect the ability of the Adviser to realize profits.

**Material, Non-Public Information.** By reason of their responsibilities in connection with other activities of the Adviser or its affiliates, certain principals or employees of the Adviser or its affiliates acquire confidential or material, non-public information. These principals or employees could be restricted from initiating transactions in certain securities. The Adviser will not be free to act upon any such confidential or material, non-public information. Due to these restrictions, the Adviser may not be able to initiate a transaction that it otherwise might have initiated and may not be able to sell an investment that it otherwise might have sold.

**Accuracy of Public Information.** The Adviser selects investments, in part, on the basis of information and data filed by issuers with various government regulators or made directly available to the Adviser by the issuers or through sources other than the issuers. Although the Adviser evaluates all such information and data and sometimes seeks independent corroboration when it's considered appropriate and reasonably available, the Adviser is not in a position to confirm the completeness, genuineness or accuracy of such information and data, and in some cases, complete and accurate information is not available.



**Investments in Undervalued Securities.** The Adviser intends to invest in undervalued securities. The identification of investment opportunities in undervalued securities is a difficult task, and there are no assurances that such opportunities will be successfully recognized or acquired. While investments in undervalued securities offer the opportunities for above average capital appreciation, these investments involve a high degree of financial risk and can result in substantial losses. Returns generated from the Adviser's investments may not adequately compensate for the business and financial risks assumed.

**Small Companies.** In the Adviser's equity funds, the Adviser invests a portion of its assets in small and/or unseasoned companies with small market capitalization. While smaller companies generally have potential for rapid growth, they often involve higher risks because they may lack the management experience, financial resources, product diversification and competitive strength of larger companies. In addition, in many instances, the frequency and volume of their trading may be substantially less than is typical of larger companies. As a result, the securities of smaller companies may be subject to wider price fluctuations.

**Leverage.** When deemed appropriate by the Adviser and subject to applicable regulations, the Adviser may incur leverage in its investment program, whether directly through the use of borrowed funds, or indirectly through investment in certain types of financial instruments with inherent leverage, such as puts, calls and warrants, that may be purchased for a fraction of the price of the underlying securities while giving the purchaser the full benefit of movement in the market of those underlying securities. While such strategies and techniques increase the opportunity to achieve higher returns on the amounts invested, they also increase the risk of loss.

**Options and Other Derivative Instruments.** The Adviser invests, from time to time, in options and other derivative instruments, including, but not limited to, the buying and selling of puts and calls on some of the securities held by the Adviser. The prices of many derivative instruments, including many options and swaps, are highly volatile. The values of options and swap agreements depend primarily upon the price of the securities, indexes, commodities, currencies or other instruments underlying them. Price movements of options contracts and payments pursuant to swap agreements are also influenced by, among other things, interest rates, changing supply and demand relationships, trade, fiscal, monetary and exchange control programs and policies of governments, and national and international political and economic events and policies. Options on highly volatile securities, currencies or other assets may be more expensive than options on other investments.

**Hedging Transactions.** Investments in financial instruments such as forward contracts, options, commodities and interest rate swaps, caps and floors, other derivatives, and other investment techniques are commonly utilized by investment funds to hedge against fluctuations in the relative values of its portfolio positions as a result of changes in currency exchange rates, interest rates and/or the equity markets or sectors thereof. Any hedging against a decline in the value of portfolio positions does not eliminate fluctuations in the values of portfolio positions or prevent losses if the values of such positions decline, but establishes other positions designed to gain from those same developments, thus moderating the decline in the portfolio positions' value. Such hedging transactions also limit the opportunity for gain if the value of the portfolio positions should increase. The Adviser is not obligated to establish hedges for portfolio positions and may not do so.

**Market or Interest Rate Risk.** The price of most fixed income securities move in the opposite direction of the change in interest rates. For example, as interest rates rise, the price of fixed income securities falls. If the Adviser holds a fixed income security to maturity, the change in its price before maturity may have little impact on the Adviser's performance; however, if the Adviser has to sell the fixed

income security before the maturity date, an increase in interest rates could result in a loss to the Adviser.

**Fixed Income Call Option Risk.** Many bonds, including agency, corporate and municipal bonds, and all mortgage-backed securities, contain a provision that allows the issuer to “call” all or part of the issue before the bond’s maturity date. The issuer usually retains this right to refinance the bond in the future if market interest rates decline below the coupon rate. There are three disadvantages to the call provision. First, the cash flow pattern of a callable bond is not known with certainty. Second, because the issuer will call the bonds when interest rates have dropped, the Adviser is exposed to reinvestment rate risk – the Adviser will have to reinvest the proceeds received when the bond is called at lower interest rates. Finally, the capital appreciation potential of a bond will be reduced because the price of a callable bond may not rise much above the price at which the issuer may call the bond.

**Inflation Risk.** Inflation risk results from the variation in the value of cash flows from a security due to inflation, as measured in terms of purchasing power. For example, if the Adviser purchases a 5-year bond that it can realize a coupon rate of 5%, but the rate of inflation is 6%, then the purchasing power of the cash flow has declined. For all but inflation-linked bonds, adjustable bonds or floating rate bonds, the Adviser is exposed to inflation risk because the interest rate the issuer promises to make is fixed for the life of the security.

**Investments in Non-U.S. Investments.** From time to time, the Adviser invests and trades a portion of its assets in non-U.S. securities and other assets (through ADRs and otherwise), that will give rise to risks relating to political, social and economic developments abroad, as well as risks resulting from the differences between the regulations that U.S. and foreign issuers and markets are subject. Such risks may include: Political or social instability, the seizure by foreign governments of company assets, acts of war or terrorism, withholding taxes on dividends and interest, high or confiscatory tax levels, and limitations on the use or transfer of portfolio assets. Enforcing legal rights in some foreign countries is difficult, costly and slow, and there are sometimes special problems enforcing claims against foreign governments.

Foreign securities and other assets often trade in currencies other than the U.S. dollar, and the Adviser may directly hold foreign currencies and purchase and sell foreign currencies through forward exchange contracts. Changes in currency exchange rates will affect the Adviser’s net asset value, the value of dividends and interest earned, and gains and losses realized on the sale of investments. An increase in the strength of the U.S. dollar relative to these other currencies may cause the value of the Adviser’s investments to decline. Some foreign currencies are particularly volatile. Foreign governments may intervene in the currency markets, causing a decline in value or liquidity of the Adviser’s foreign currency holdings. If the Adviser enters into forward foreign currency exchange contracts for hedging purposes, it can lose the benefits of advantageous changes in exchange rates. On the other hand, if the Adviser enters forward contracts for the purpose of increasing return, it is possible to sustain losses. Non-U.S. securities, commodities and other markets tend to be less liquid, more volatile and less closely supervised by the government than in the United States. Foreign countries often lack uniform accounting, auditing and financial reporting standards, and there may be less public information about the operations of issuers in such markets.

**Risk of Default or Bankruptcy of Third Parties.** The Adviser may engage in transactions in securities, commodities, other financial instruments and other assets that involve counter-parties. Under certain conditions, the Adviser could suffer losses if a counter-party to a transaction were to default or if the market for certain securities, commodities, other financial instruments and/or other assets were to become illiquid.

## Regulatory Risks

**Strategy Restrictions.** Certain institutions may be restricted from directly utilizing investment strategies of the type that the Adviser chooses to engage. Such institutions, including entities subject to ERISA, should consult their own advisors, counsel and accountants to determine what restrictions apply and whether an investment in the Adviser is appropriate.

**Trading Limitations.** For all securities, instruments and/or assets listed on an exchange, including options listed on a public exchange, the exchange generally has the right to suspend or limit trading under certain circumstances. Such suspensions or limits could render certain strategies difficult to complete or continue and subject the Adviser to loss. Also, such a suspension could render it impossible for the Adviser to liquidate positions and thereby expose the Adviser to potential losses.

**Conflicts of Interest.** In the administration of client accounts, portfolios and financial reporting, the Adviser faces inherent conflicts of interest that are described in this firm brochure. Generally, the Adviser mitigates these conflicts through its Code of Ethics. **The Code of Ethics provides that the client's interest is always held above that of the Firm and its associated persons.**

**Supervision of Trading Operations.** The Adviser, with assistance from its brokerage and clearing firms, intends to supervise and monitor trading activity in the portfolio accounts to ensure compliance with firm and client objectives. Despite the Adviser's efforts, however, there is a risk that unauthorized or otherwise inappropriate trading activity may occur in portfolio accounts. Depending on the nature of the investment management service selected by a client and the securities used to implement the investment strategy, clients will be exposed to risks that are specific to the securities in their particular investment portfolio.

## Security Specific Risks

**Liquidity.** Liquidity is the ability to readily convert an investment into cash. Securities where there is a ready market that is traded through an exchange are generally more liquid. Securities traded over the counter or that do not have a ready market or are thinly traded are less liquid and may face material discounts in price level in a liquidation situation.

**Currency.** Overseas investments are subject to fluctuations in the value of the dollar against the currency of the investment's originating country. This is also referred to as exchange rate risk.

**Limited Liquidity of Interests.** An investment in a partnership usually involves substantial restrictions on liquidity and its interests are not freely transferable. There is no market for these interests and no market should be expected to develop. Additionally, transfers are usually subject to the consent of the general partner at the general partner's sole discretion.

**Lack of Registration.** Funds or LP interests have neither been registered under the Securities Act nor under the securities or "blue sky" laws of any state and, therefore, are subject to transfer restrictions.

**Withdrawal of Capital.** The ability to withdraw funds from the funds or LP interests is usually restricted in accordance with the withdrawal provisions contained in an Offering Memorandum. In addition, substantial withdrawals by investors within a short period of time could require a fund to liquidate securities positions and other investments more rapidly than would otherwise be desirable, possibly reducing the value of the fund's assets and/or disrupting the fund's investment strategy.

## ITEM 9 - LEGAL AND DISCIPLINARY INFORMATION

The firm and its management persons have not been involved in legal or disciplinary events related to past or present investment clients.

## ITEM 10 - OTHER FINANCIAL INDUSTRY ACTIVITIES AND AFFILIATIONS

### Insurance Affiliations

Some investment adviser representatives of RWA are licensed to sell insurance products through various independent insurance agencies. In some instances, certain investment adviser representatives sell insurance products through their independently owned insurance agency. In either case, these investment adviser representatives, in their capacity as independent insurance agents, sell insurance products to advisory clients. These individuals will receive normal and customary commissions as a result of selling insurance as well as advisory fees for providing advisory services through RWA. Clients are hereby advised that such commissions and advisory fees are separate and apart from the fees charged by the Firm.

Clients are under no obligation, contractually or otherwise, to purchase insurance products or receive investment advice through these associated persons in their separate capacities as insurance agents and/or advisory representatives of RWA. However, if the client freely chooses to implement the plan through such individuals, the investment adviser used will be RWA, and commissions/fees will be earned in addition to any fees paid for advisory services provided by the Firm.

### Brokerage Affiliations

Additionally, some investment adviser representatives of RWA are registered representatives of various licensed broker dealers. They offer securities and receive normal and customary commissions as a result of securities transactions. A conflict of interest may arise if these commissionable securities sales create an incentive to recommend products based on the compensation the registered representative earns and may not necessarily be in the best interests of the client. However, clients of RWA are not required to use the brokerage services offered by the registered representatives associated with RWA. RWA does not make any representation that the brokerage services are at the lowest cost available and clients may be able to obtain those services and/or products at a more favorable rate from other brokerages. The brokerage activities provided by these individuals are entirely separate and distinct from the advisory services provided by RWA.

RWA mitigates these conflicts through its procedures to review client accounts relative to the client or investors personal financial situation to ensure the investment management service provided is appropriate. Further, RWA is committed to its obligation to ensure associated persons adhere to the firm's Code of Ethics and to ensure that the firm and its associated persons fulfill their fiduciary duty to clients or investors.

### Recruiting Affiliations

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Retirement Wealth Advisors, Inc. is required to disclose any relationship or arrangement that is material to its advisory business or to its clients with certain related persons.

RWA actively recruits new investment adviser representatives in a number of ways. Some of the firm's investment adviser representatives have been, and continue to be, recruited through a strategic networking relationship with The Impact Partnership, LLC, Kennesaw, Georgia ("Impact"). Impact is an independent insurance marketing organization and is licensed as an insurance agency. Impact enjoys appointments from a number of unaffiliated insurance companies to "wholesale" and distribute their insurance products to independent insurance agents. Impact works with and provides a variety of services to independent insurance agents to educate, train, market, strengthen, and grow their insurance practices. Impact also serves as a resource to independent insurance agents in processing insurance applications and in addressing unique or specialty insurance needs of their customers.

Pursuant to this strategic relationship, Impact introduces insurance agents to RWA. At the time of the introduction, these insurance agents may or may not be registered as investment adviser representatives with other investment advisers. Following the introduction, there is no obligation for an introduced insurance agent to establish an investment adviser representative relationship with RWA. Moreover, there is no obligation for any introduced insurance agent to refer or recommend the investment advisory services of RWA to his or her customers. Impact has no contact with, makes no recommendations to, and does not market or solicit any person to become an investment advisory client of RWA.

In consideration of Impact's recruiting, marketing, and practice support services, RWA compensates Impact and its owner/principals based, in part, upon the recruited insurance agent's book of business;; that is, as a measure of the volume of business the insurance agent produces, which is reflective of the anticipated value of that recruit to the firm. Several of Impact's owners and principals are also owners and serve as principals of RWA, and so benefit from the firm's recruiting new investment adviser representatives. The compensation received by Impact and its owners/principals includes both cash and non-cash types of consideration. This compensation does not increase the cost of investment advisory services provided by RWA to clients.

The compensation paid by RWA to Impact and its owners/principals create potential conflicts of interest. After becoming associated with RWA, newly recruited individuals are incented to solicit and recommend that their existing customers and future prospects engage the investment advisory services of RWA with whom they have then become registered.

### **Other Affiliations**

**Jason Wenk** is a shareholder of Retirement Wealth Advisors, Inc. In addition to Mr. Wenk's duties for Retirement Wealth Advisors, Inc., he is also: (1) a shareholder and partner in 521, LLC, a real estate development and management company;; (2) a shareholder of Kasia Insurance Agency, Ltd., a Property and Casualty Insurance Agency. Mr. Wenk is not licensed as an insurance agent nor does he offer clients insurance services. His role in Kasia is strictly as an investor shareholder only. (3) Member of FormulaFolio Investments, LLC, an SEC Registered Investment Advisor.

**Jason Crump** is the Chief Executive Officer and a shareholder of Retirement Wealth Advisors, Inc. In addition to Mr. Crump's duties for Retirement Wealth Advisors, Inc., he is: (1) Chief Executive Officer and member of FormulaFolio Investments, LLC, an SEC Registered Investment Advisor;; (2) a member of Altruistic Financial Planning, LLC, an Insurance Agency;; and (3) a licensed life insurance agent.

**Joel VanWoerkom** is the President and a shareholder of Retirement Wealth Advisors, Inc. In addition to Mr. VanWoerkom's duties for Retirement Wealth Advisors, Inc., he is: (1) a member of FormulaFolio Investments, LLC, an SEC Registered Investment Advisor (2) a member of Altruistic Financial Planning, LLC, an Insurance Agency and (3) a licensed life insurance agent.

Stephen Odom, Steven Craig, Andrew Craig, Brandon George, Edward Nolan, and Stephen A. Ashton are members of FormulaFolio Investments, LLC and shareholders of Retirement Wealth Advisors, Inc. Their roles in these two firms are as investor members/shareholders only. Stephen Odom, Steven Craig, Andrew Craig, Brandon George, Edward Nolan, and Stephen A. Ashton are also members of The Impact Partnership, LLC, an Insurance Marketing Organization (IMO) headquartered in Kennesaw, Georgia. Furthermore, RWA is committed to its obligation to ensure associated persons adhere to the firm's Code of Ethics and to ensure that the firm and its associated persons fulfill their fiduciary duty to clients or investors.

## **ITEM 11 - CODE OF ETHICS, PARTICIPATION OR INTEREST IN CLIENT TRANSACTIONS, AND PERSONAL TRADING**

### **Code of Ethics**

RWA has adopted a Code of Ethics that establishes standards of conduct for its supervised persons. The Code of Ethics includes general requirements that such supervised persons comply with their fiduciary obligations to clients and applicable securities laws, and specific requirements relating to, among other things, personal trading, insider trading, conflicts of interest and confidentiality of client information. It requires supervised persons to report their personal securities transactions and holdings quarterly to RWA's Compliance Department, and requires the Compliance Department to review those reports. It also requires supervised persons to report any violations of the Code of Ethics promptly to RWA's Compliance Officer. Each supervised person of RWA receives a copy of the Code of Ethics and any amendments to it and must acknowledge in writing having received the materials. Annually, each supervised person must certify that he or she complied with the Code of Ethics during that year. Clients and prospective clients are able to obtain a copy of RWA's Code of Ethics by contacting the Compliance Officer of RWA.

### **Participation or Interest in Client Transactions**

From time to time, RWA or persons associated with RWA buy or sell securities that are recommended to its clients or securities that its clients are invested. This presents a conflict of interest. To mitigate this conflict, it is RWA's policy that associated persons of RWA shall not have priority over any client account in the purchase or sale of securities. Under certain circumstances, exceptions to the trading policy are made.

### **Personal Trading**

The Chief Compliance Officer of RWA is Danielle Tyler. She reviews all employee trades each quarter (The personal trading reviews ensure that personal trading of employees does not affect the markets, and that clients of the firm receive preferential treatment.)

Brokerage Selection and Soft Dollars RWA will recommend that securities be purchased through facilities of TD Ameritrade Institutional ("TD Ameritrade") or FOLIOfn Institutional ("FOLIOfn"), all

institutions are Members of FINRA/SIPC. All firms recommended to clients for these services are independent and unaffiliated. It may be the case that the recommended broker charges higher fees or commission rates than another broker charges. Clients can utilize the broker/dealer of their choice and have no obligation to purchase or sell securities through such broker as RWA recommends.

In suggesting or considering a broker dealer based on discretionary authority or on behalf of a non-discretionary account, the Firm will endeavor to recommend those brokers or dealers that will provide quality services at reasonable commission rates. The reasonableness of commissions is based on several factors, including the broker's ability to provide professional services, competitive commission rates, volume discounts, execution price negotiations, and other services. It is the policy and practice of RWA to strive for the best price and execution for costs and discounts that are competitive in relation to the value of the transaction and comply with Section 28(e) of the Securities Exchange Act of 1934, as amended. Nevertheless, it is understood that RWA may pay compensation on a transaction in excess of the amount of compensation that another broker or dealer charges so long as it is in compliance with Section 28(e), and RWA makes no warranty or representation regarding compensation paid on transactions.

### **FormulaFolios US Equity Fund and FormulaFolios US Equity Portfolio**

FFI, its officers, directors, employees or other Access Persons may purchase the same or similar securities for the FormulaFolios US Equity Fund and the FormulaFolios US Equity Portfolio at the same time as it affects transactions for other clients. A conflict of interest could arrive should FFI and/or the persons listed above trade before other FFI clients. FFI has written policies and procedures to address this conflict of interest.

## **ITEM 12 - BROKERAGE PRACTICES**

The research products and services that RWA receives from brokerage firms (e.g. TD Ameritrade, FOLIOfn) include financial publications, information about particular companies and industries, and other products or services that provide lawful and appropriate assistance to the Firm in the performance of its investment decision-making responsibilities. Such research products and services are provided to all investment advisers who utilize TD Ameritrade, FOLIOfn, and are not considered to be paid for with soft dollars. However, the commissions charged by a particular broker for a particular transaction, or set of transactions, may be greater than the amounts another broker who did not provide research services or products might charge.

### **Order Aggregation**

The nature of the clients and/or trading activity on behalf of client accounts is such that trade aggregation does not garner any client benefit.

### **Directing Brokerage for Client Referrals**

The Adviser and its associated persons do not receive client referrals from broker dealers or third parties as consideration for selecting or recommending brokers for client accounts.

### **Directed Brokerage**

In limited circumstances and at the Firm's discretion, some clients instruct RWA to use one or more particular brokers for the transactions in their accounts. Clients who want to direct the Firm to use a particular broker should understand that this may prevent RWA from effectively negotiating brokerage compensation on their behalf and may also prevent RWA from obtaining the most favorable net price and execution. Moreover, clients that direct brokerage may incur additional costs for performance reporting. Thus, when directing brokerage business, clients should consider whether the commission expenses, execution, clearance, and settlement capabilities that they will obtain through their broker are adequately favorable in comparison to those that RWA would otherwise obtain for its clients.

## **ITEM 13 - REVIEW OF ACCOUNTS**

### **Periodic Reviews**

Account reviews are performed on an ongoing basis and no less than quarterly. Reviews are conducted for the purpose of evaluating, reporting and implementing the investment objective of the client. They consider the client's current security positions and the likelihood that the performance of each security will contribute to the investment objectives of the client. The accounts are reviewed by the Investment Adviser Representative who is responsible for the account.

### **Review Triggers**

Accounts are reviewed quarterly or more frequently when market conditions dictate. Other conditions that may trigger a review are changes in the tax laws, new investment information, and changes in a client's financial or personal situation.

### **Regular Reports**

RWA provides clients with quarterly reports for managed accounts. The written reports may include account valuation, performance stated in dollars and as a percent, net worth statement, portfolio statement, and a summary of objectives and progress towards meeting those objectives. Clients receive statements of account positions no less than quarterly from the account custodian.

## **ITEM 14 - CLIENT REFERRALS AND OTHER COMPENSATION**

### **Referrals**

Employee and non-employee (outside) solicitors, e.g. unaffiliated broker/dealers, Investment Advisers, accountants, attorneys, etc., who are directly responsible for bringing a client to RWA, may receive compensation from RWA for the client referral. A conflict of interest for recommending RWA to clients for investment advisory services may arise as the recommendation could be made on the basis of



compensation to be received. However, under these arrangements, the client does not pay higher fees than RWA's normal/typical advisory fees.

Such arrangements will comply with the requirements set forth under the Investment Advisers Act of 1940 and/or the applicable state Securities Act, including a written agreement between RWA and the solicitor. Non-employee solicitors must provide a copy of RWA's ADV Part 2A (Disclosure Brochure) and a separate solicitor's disclosure statement regarding the relationship between the solicitor and RWA to the prospective client at the time of the solicitation or referral. The prospective client will be requested to acknowledge this arrangement prior to acceptance of the account for advisory services. Applicable state laws may require these persons to become either licensed or registered as representatives of RWA or as an independent investment adviser.

#### **ITEM 15 - CUSTODY**

All client funds, securities and accounts are held at third-party custodians. RWA does not take possession of the funds, securities or accounts. RWA's agreement with any financial institution authorizes the debiting of the client's account for the amount of RWA's fee and directly remits that management fee to RWA in accordance with applicable custody rules.

RWA also provides clients with written account reports on at least a quarterly basis. Clients are urged to compare those reports with the account statements received from the account custodian. Clients with questions about their statements should contact RWA at the address or phone number provided on the cover of this brochure.

#### **ITEM 16 - INVESTMENT DISCRETION**

Clients can grant RWA complete discretion over the selection and amount of securities to be purchased or sold without obtaining their prior consent or approval. However, RWA's investment authority is subject to specified investment objectives, guidelines and/or conditions imposed by the client. For example, a client may specify that at the time of purchase the investment in any particular stock or industry should not exceed specified percentages of the value of the portfolio and/or restrictions or prohibitions of transactions in the securities of a specific industry. Where the Firm enters into non-discretionary arrangements with clients, RWA will implement recommended transactions upon obtaining client approval

#### **ITEM 17 - VOTING CLIENT SECURITIES**

RWA will not vote nor advise clients how to vote proxies for securities held in client accounts. The client clearly keeps the authority and responsibility for the voting of these proxies. RWA does not give any advice or take any action with respect to the voting of these proxies. For accounts subject to the

provisions of the Employee Retirement Income Security Act of 1974 (“ERISA”), the plan fiduciary specifically keeps the authority and responsibility for the voting of any proxies for securities held in plan accounts. RWA promptly passes along any proxy voting information to the clients or their representatives.

### **FormulaFolios US Equity Fund and FormulaFolios US Portfolio**

FFI does not vote proxies on behalf of clients unless required to do so. As it pertains to the Formula Folios US Equity Fund and the Formula Folios US Equity Portfolio, FFI has been delegated proxy voting responsibility by the Board of Trustees for proxies solicited on the securities held in the Funds’ portfolios. As a matter of policy and as a fiduciary, FFI has responsibility for voting proxies for portfolios securities consistent with the best economic interests of the Funds, Portfolios and clients. The proxy policies and records of each proxy voted by FFI on behalf of the portfolio including a report on the resolution of all proxies identified by FFI as involving a conflict of interest will be presented to the Board of Trustees at least annually.

Information regarding how proxies are voted is outlined in each prospectus and statement of additional information. Clients can obtain a copy of our complete proxy voting policies and procedures by contacting the main number on the cover page of this disclosure brochure.

FFI does not vote proxies on behalf of clients. As it pertains to the FormulaFolios US Equity Fund and the FormulaFolios US Equity Portfolio, FFI has been delegated proxy voting responsibility by the Board of Trustees for proxies solicited on the securities held in the Funds’ portfolios. As a matter of policy and as a fiduciary, FFI has responsibility for voting proxies for portfolios securities consistent with the best economic interests of the Funds, Portfolios and clients. The proxy policies and a records of each proxy voted by FFI on behalf of the portfolio including a report on the resolution of all proxies identified by FFI as involving a conflict of interest will be presented to the Board of Trustees at least annually.

In certain situations, FFI is required to vote proxies on behalf of FormulaFolios Hedge Growth, Income, Smart Growth, and Tactical Growth ETFs. These are done as laid out in the funds’ proxy voting policies. Information regarding how proxies are voted is outlined in each prospectus and statement of additional information. Clients can obtain a copy of our complete proxy voting policies and procedures by contacting the main number on the cover page of this disclosure brochure

### **ITEM 18 - FINANCIAL INFORMATION**

RWA does not have any financial impairment that will preclude the firm from meeting contractual commitments to clients. RWA meets all net capital requirements that it is subject to and RWA has not been the subject of a bankruptcy petition in the last 10 years. RWA is not required to provide a balance sheet as it does not serve as a custodian for client funds or securities, and does not require fees of more than \$5,000 per client, and six months or more in advance.

# **EXHIBIT G**



1/10/2018

Current Positions	Recommendations	Benefit	Value In 4 years	Income In 5 years plus
Cash Bank \$307,330 <i>*Ready to transfer but will drop the check off</i>	Cash Bank \$35,000 Joint MCA 1st Global \$272,330	No Risk Liquidity		
Scott's 401(k) Voya \$451,400	Scott's 401(k) Voya \$451,400	9 Month Commitment Growth Current 9%	Spend 1st Years 1-4 To do roth conversions	
Scott's IRA Vanguard \$53,057	Scott's IRA Formula Fidelity \$53,057	Low Risk Growth Historical 6-12%	*7% Growth Rate \$69,546	*5% withdraw rate \$3,477
Scott's Individual Capital One \$19,413	Scott's IRA Formula Fidelity \$53,057	Low Risk Growth Historical 6-12%	*7% Growth Rate \$69,546	*5% withdraw rate \$3,477
Scott's Individual Vanguard \$263,676	Scott's Individual Athene BCA Elevate 12 \$298,683	No Market Risk Growth Historical 7-11%	*8% Growth Rate \$406,300	*5% withdraw rate \$20,315
Scott's MQ Variable Annuity Ameriprise \$15,554	Scott's IRA Formula Fidelity \$36,122	Low Risk Growth Historical 6-12%	*7% Growth Rate \$47,348	*5% withdraw rate \$1,806
Scott's Roth IRA Capital One \$6,548	Kea's Roth IRA Formula Fidelity \$26,001	Low Risk Growth Historical 6-12%	*7% Growth Rate \$34,082	*5% withdraw rate \$1,300
Scott's Roth IRA Vanguard \$29,574	Scott's Roth IRA Formula Fidelity \$39,588	Low Risk Growth Historical 6-12%	*7% Growth Rate \$51,891	*5% withdraw rate \$2,594
Kea's Roth IRA USA \$26,001	Scott's Roth IRA Formula Fidelity \$39,588	Low Risk Growth Historical 6-12%	*7% Growth Rate \$51,891	*5% withdraw rate \$2,594
Scott's IRA Wells Fargo \$360,800	Scott's IRA Formula Fidelity \$360,800	Low Risk Growth Historical 6-12%	*7% Growth Rate \$472,935	*5% withdraw rate \$23,646
Scott's Individual Wells Fargo \$390,000	Scott's Individual Athene BCA Elevate 12 \$390,000	No Market Risk Growth Historical 7-11%	*8% Growth Rate \$530,590	*5% withdraw rate \$26,529
Scott's Roth Wells Fargo \$39,588	Scott's Roth IRA Formula Fidelity \$39,588	Low Risk Growth Historical 6-12%	*7% Growth Rate \$51,891	*5% withdraw rate \$2,594

Total	\$1,962,941	\$1,962,941		
Safe	\$307,330	\$723,643	16%	37%
Low Risk	\$0	\$787,898	0%	40%
High Risk	\$1,655,611	\$451,400	84%	23%

Past Performance is no guarantee of future performance.  
Rates shown are not guaranteed, but are representative of past performance.  
\*Not including social security, pension, part time work, or 401(k) income

Steven Rapp  
Visual of Recommendations

9/22/17

Current Positions

Recommendations

Benefit

In 7 Years:

In 8 Years:

Steve's Brokerage Scottrade \$233,799	Steve's Individual Formula Folios (Fidelity) \$273,799	MM180	Low Risk Growth Historical 6-10%	5% Growth rate and 5% withdraw rate \$19,263	
Steve's Brokerage Scottrade \$40,000					
Steve's Roth IRA Scottrade \$98,127	Steve's Roth IRA Formula Folios (Fidelity) \$98,127	MM100	Low Risk Growth Historical 6-10%	5% Growth rate and 5% withdraw rate \$6,803	
Steve's IRA Scottrade \$374,649	Steve's IRA Athene Ascend 2.0 \$484,649		Guaranteed Lifetime Income	\$35,989	
Steve's IRA Scottrade \$60,000					
Steve's Individual Founders \$121,000	Steve's Individual MICA- 1st Global \$121,000		Low Risk Growth Current 9%	9% Growth rate and 5% withdraw rate \$11,059	
Steve's Individual Connexus \$35,000	Steve's Individual Connexus \$35,000		*Keep for emergency fund		
Steve's Individual Centric \$50,000	Steve's IQ BCA Elevate 12 \$67,000		No Market Risk Growth Historical 7-11%	5% Growth rate and 5% withdraw rate \$4,713	
Steve's Annuity Principal \$17,000					
Steve's Life Insurance AXA \$22,000	Steve's Life Insurance AXA \$22,000				
Saving's Each Year \$50,000	Steve's Personal Retirement Plan Minnesota Life \$50,000		Tax-free Compounded Growth in Life Insurance		Income: \$21,085
<b>Total</b>	<b>\$1,051,575</b>	<b>\$1,051,575</b>	<b>Total Income:</b>	<b>\$77,927</b>	<b>\$77,927</b>
Safe	\$306,000	\$586,649			
Low Risk	\$0	\$492,926			
High Risk	\$795,575	\$22,000			

Past Performance is no guarantee of future performance.  
Rates shown are not guaranteed, but are representative of past performance.

*possible*

*Trade*

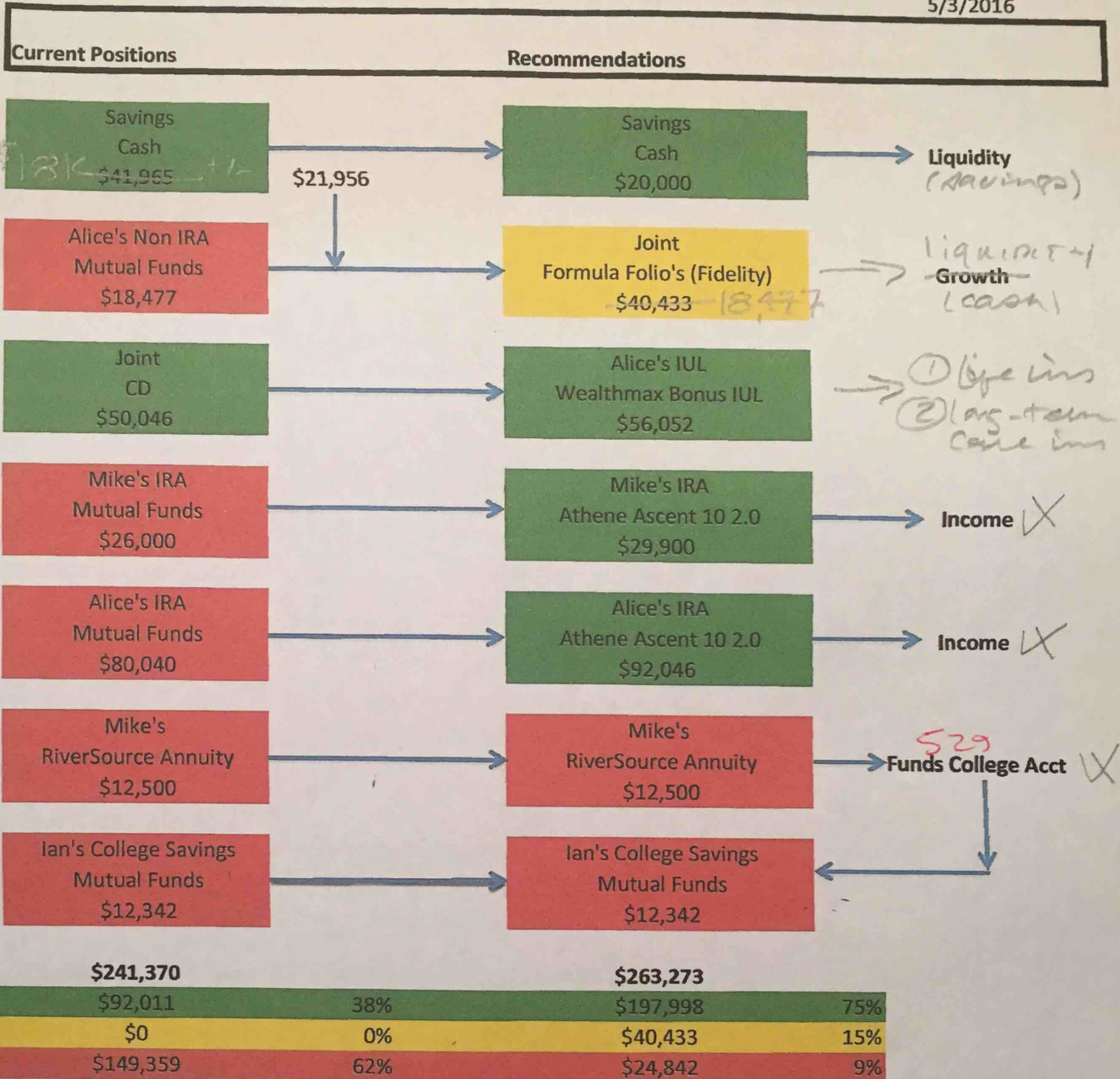
1/11/2018

Current Positions	Recommendations	Benefit	Income & Value in 8 years
Cash Bank ?	Cash Bank ?	No Risk Liquidity	
Jonathan's Pension \$165,000	Jonathan's Pension \$165,000	*Can't move until seperation	
Jonathan's 401(k) Merrill Lynch \$433,000	Jonathan's IRA Athene BCA Elevate 12 \$299,000	No Market Risk Growth Historical 7-11%	* Assumed 6% growth Rate & 5% withdraw \$476,560 \$23,828
Jonathan's IRA Vanguard \$226,000	Jonathan's IRA Formula Folios (Fidelity) \$200,000	Low Risk Growth Historical 6-12%	* Assumed 7% growth Rate & 5% withdraw \$343,637 \$17,181
Jonathan's Roth IRA Vanguard \$4,500	Jonathan's IRA MCA 1st Global \$160,000	9 Month Commitment Growth Current 9%	* Assumed 7% growth Rate & 5% withdraw \$274,909 \$13,745
	Jonathan's Roth IRA Formula Folios (Fidelity) \$4,500	Low Risk Growth Historical 6-12%	* Assumed 7% growth Rate & 5% withdraw \$7,731 \$386
<b>Total</b>	\$828,500	Total Value:	\$1,102,837
<b>Safe</b>	\$0	Total Income:	\$55,140
<b>Low Risk</b>	\$0		
<b>High Risk</b>	\$828,500		

Past Performance is no guarantee of future performance.  
Rates shown are not guaranteed, but are representative of past performance.

Mike & Alice Shrader  
Visual of Recommendations

5/3/2016



but are representative of past performance.  
guarantee of future performance.



Mike & Alice Shrader  
Visual of Recommendations

7/8/2016

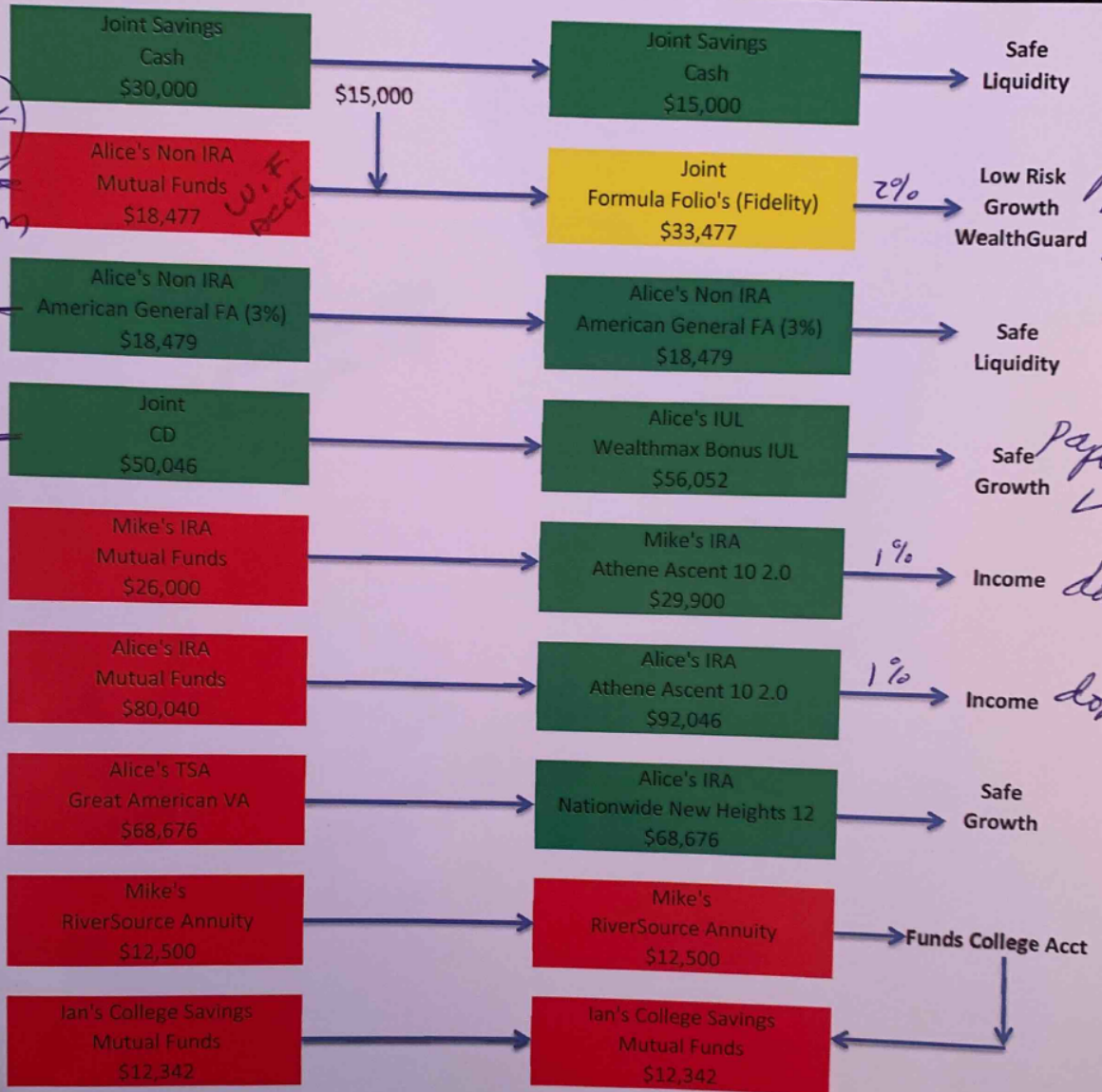
Current Positions

Recommendations

*(min \$25K)  
agreed  
(need to add from  
cash)  
agreed  
same  
agreed*

✓ Done  
✓ Done

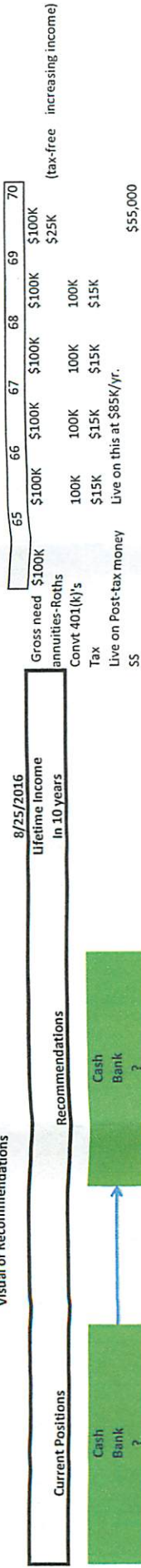
*paper work  
done  
done*



	Total	\$229,405		\$251,317	
Safe	\$80,046	35%	\$192,998	77%	
Low Risk	\$0	0%	\$33,477	13%	
High Risk	\$149,359	65%	\$24,842	10%	

ed, but are representative of past performance.  
s no guarantee of future performance.

Mike & Carol Wiggins  
Visual of Recommendations



017

il	\$518,942	\$549,236	61%
isk	\$26,000	\$33,236	39%
isk	\$0	\$216,000	61%
isk	\$492,942	\$333,236	61%

Rates shown are not guaranteed, but are representative of past performance.  
Past Performance is no guarantee of future performance.

Heafner Financial Solutions, Inc.

Sheila Fetner  
Visual of Recommendations

11/15/2017

Current Positions	Recommendations	Benefit	Income in 3 years
-------------------	-----------------	---------	-------------------

Cash  
Bank  
\$17,000

Cash  
Bank  
\$17,000

No Risk  
Liquidity

Growth  
Historical 9%

\$11,665/ year  
Assumed 9% withdrawal & 9% growth rate  
Non Guaranteed

Sheila's IRA  
MCAT 1st Global  
\$100,000

Sheila's 401(k)  
Vanguard  
\$497,583

Sheila's IRA  
Auto Pay Selected the Income  
\$97,688

No Market Risk  
Income

\$28,348  
Guaranteed Lifetime Income  
Starting at 70

Total

\$512,583

Total

\$512,583

\$0

Total:

\$100,000

\$497,583

Total:

20%

0%

97%

Total:

0%

97%

\$0

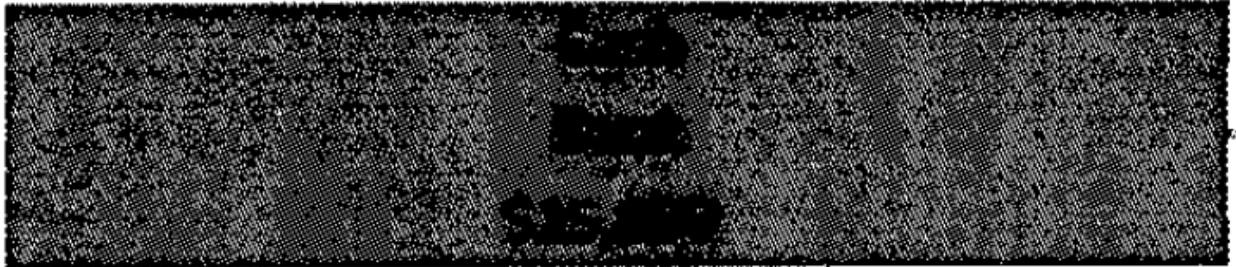
Total:

Past Performance is no guarantee of future performance.  
Rates shown are not guaranteed, but are representative of past performance.

\$40,013  
(Not Including Social Security)

Blown Up Images from Sheila M. Fetner Visual of Recommendations

Top left grey box:



Top right grey box:

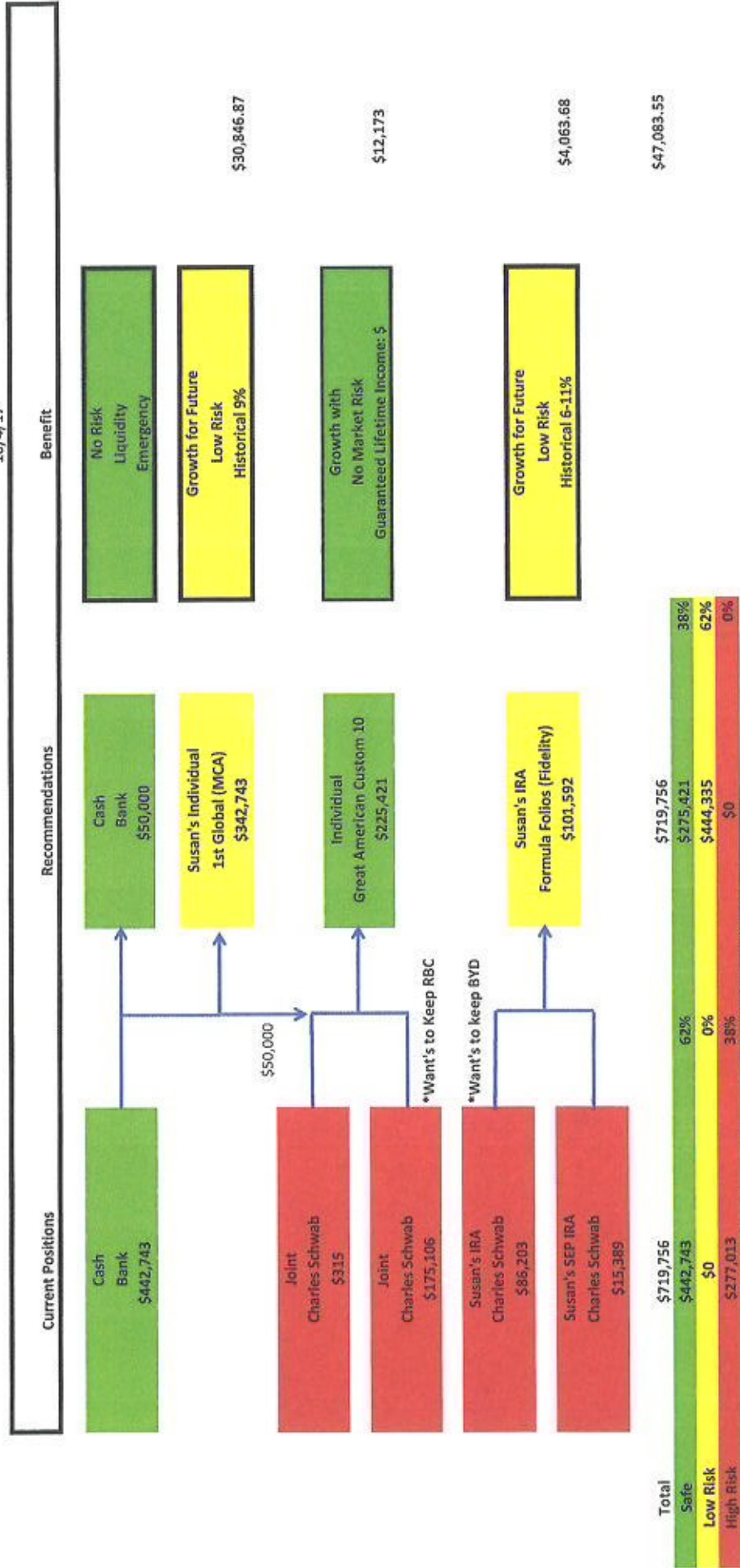


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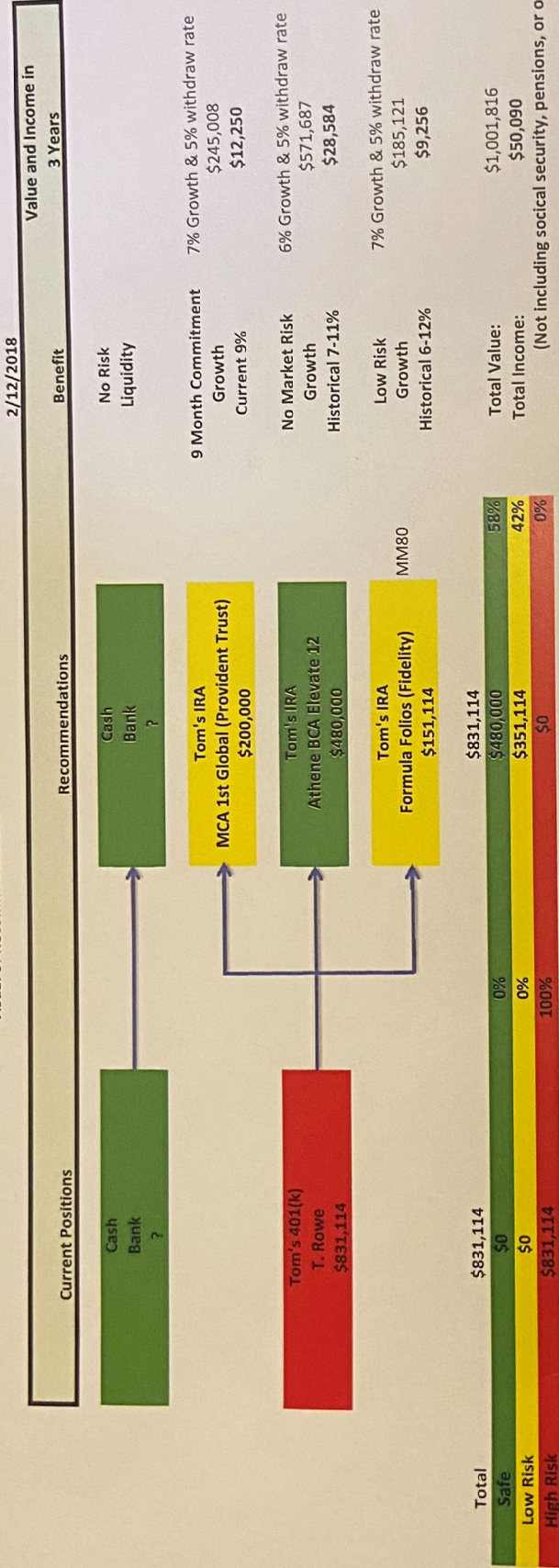


Susan Goldman  
Visual of Recommendation

10/4/17



Thomas & Peggy O'Deill  
Visual of Recommendations



Past Performance is no guarantee of future performance.  
Rates shown are not guaranteed, but are representative of past performance.  
Heafner Financial, LLC

# **EXHIBIT H**



# FIRM BROCHURE

## Part 2A of Form ADV

This brochure provides information about the qualifications and business practices of FormulaFolio Investments, LLC. If you have any questions about the contents of this Brochure, please contact us at 888-562-8880 or [compliance@formulafolioinvestments.com](mailto:compliance@formulafolioinvestments.com).

The information in this Brochure has not been approved or verified by the United States Securities and Exchange Commission (the "SEC") or by any state securities authority.

Additional information about FormulaFolio Investments, LLC is available on the SEC's website at [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov).

FormulaFolio Investments, LLC is a registered investment adviser. Registration with the SEC does not imply a certain level of skill or training.

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Phone: 888-562-8880  
Fax: 616-667-2218  
<https://formulafolios.com>

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Effective Date: 09/05/2018



## **ITEM 2 - MATERIAL CHANGES**

### **Annual Update**

The Material Changes section of this brochure will be updated annually when material changes occur since the previous release of the Firm Brochure.

### **Material changes since the last update:**

Since the annual amendment filing on March 30, 2018 this ADV Part 2A Brochure has been materially amended as follows:

As of 9/05/2018:

- Jason Wenk stepped down as Chief Executive Officer and President Jason will remain a majority owner and strategy consultant to the firm. Jason will also have the new role of Director of Product Development.
- Jason Crump has accepted the Chief Executive Officer position.
- Joel VanWoerkom has accepted the President position.
- Diane Ferris has added the position of Chief Administration Officer to her responsibilities.
- James Ward has accepted the position of Chief People Officer.

### **Full Brochure Available**

Whenever you would like to receive a complete copy of our Firm Brochure, please contact us by telephone at 888-562-8880 or by email at [support@formulafolios.com](mailto:support@formulafolios.com).

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## **ITEM 4 – ADVISORY BUSINESS**

FormulaFolio Investments, LLC ("FFI"), ("FormulaFolio Investments"), ("Adviser"), or ("Firm") provides investment management services to its clients. Registered with the SEC as an investment advisor since September 2011, the firm works with its clients to develop a plan that is customized to the clients' goals and investment objectives. Prior to engaging FFI to provide any of the foregoing investment advisory services, the client is required to enter into one or more written agreements with FFI setting forth the terms and conditions that FFI renders its services (collectively the "Agreement"). As of September 12, 2018, FFI has \$2,998,364,874 of discretionary assets under management for 22,004 accounts and \$188,596,587 of non-discretionary for 2,114 accounts. This Disclosure Brochure describes the business of FFI. Certain sections will also describe the activities of Supervised Persons. Supervised Personal are any of FFI's officers, partners, directors (or other persons occupying a similar status or performing similar functions), employees, or any other person who provides investment advice on FFI's behalf and is subject to FFI supervision or control.

### **Principal Owners**

Jason Wenk is a principal owner of FormulaFolio Investments, LLC. Jason Wenk's share of ownership is 35.8412%. There are no remaining ownership shares having greater than 25% interest in FormulaFolio Investments, LLC.

### **Investment Management Services**

Clients can engage FFI to manage all or a portion of their assets on a discretionary basis. As detailed in Item 8, FFI primarily allocates clients' investment management assets among different tactical asset allocation strategies. These may take the form of long-short, long- only or other strategies depending upon the client's investment objectives among other factors. The strategies are primarily comprised of individual equity securities, various mutual funds, or exchange traded funds ("ETFs"). The firm acts as the investment manager to these strategies. Individual clients cannot hire FFI to manage their assets directly. Other investment advisors hire FFI to invest their own clients' assets in one or more of FFI's strategies. In this scenario, the advisor will select the strategy for its client, and will hire FFI to manage the assets. Participants in the programs may pay a higher aggregate fee than if investment management and brokerage services are purchased separately.

A complete description of each program's terms and conditions (including fees) are contained in this brochure and the wrap brochure as it pertains to one of FFI's custodians.

For certain clients, FFI may provide its services pursuant to a sub-advisory relationship. The terms and conditions for these engagements are set forth in the agreement between the firm and the client. Sometimes, FFI also renders non-discretionary investment management services to clients relative to variable life/annuity products that they own, their individual employer-sponsored retirement plans, 529 plans, or other products that may not be held by the client's primary custodian. In so doing, FFI either directs or recommends the allocation of client assets among the various investment options that are available with the product. Client assets are maintained at the specific insurance company or custodian designated by the product.

FFI tailors its advisory services to the individual needs of clients. The firm works with licensed advisers to consult with clients initially and on an ongoing basis to determine needs. FFI ensures that clients' investments are suitable for their investment needs, goals, objectives and risk tolerance based on the information provided.

Clients are advised to notify FFI if there are changes in their financial situation or investment objectives or if they wish to impose any reasonable restrictions upon the firm's management services. Clients are able to impose reasonable restrictions or mandates on the management of their account if, in FFI's sole discretion, the conditions will not materially impact the performance of a portfolio strategy or prove overly burdensome to its management efforts.

FFI may allocate or recommend that certain clients authorize the active discretionary management of a portion of their assets by or among certain independent investment managers or investment programs (the "Independent Manager(s)"), based upon the stated investment objectives of the client.

Prior to recommending an Independent Manager, the firm will conduct in its belief to have been an appropriate level of due diligence on the recommended Independent Manager. The due diligence review is to include ensuring the Independent Manager is registered or notice-filed within the client's jurisdiction. Factors which the firm will consider in recommending an Independent Manager include the client's stated investment objective, management style, performance, reputation, financial strength, reporting, pricing, and research.

The terms and conditions under which the client will engage the Independent Manager will be set forth in separate written agreements between the client and the firm, and the client and the designated Independent Manager. FFI will continue to render investment supervisory services to the client relative to the ongoing monitoring and review of account performance, asset allocation and client investment objectives, for which the firm will receive an annual advisory fee which is based upon a percentage of the market value of the assets being managed by the designated Independent Manager (between 0.20% and 1.00%). The investment management fees charged by the designated Independent Manager, together with the fees charged by the corresponding designated broker-dealer/custodian of the client's assets, are exclusive of, and in addition to, the firm's ongoing investment advisory fee.

### **Affiliated Registered Funds**

FormulaFolios (FFI) serves as the investment advisor to the FormulaFolios US Equity Fund. The investment of the FormulaFolios US Equity Fund is long-term capital appreciation. FFI manages the FormulaFolios US Equity Fund portfolio assets based on the specific investment objectives and restrictions as outlined in the FormulaFolios US Equity Fund's prospectus and statement of additional information, rather than on the individual needs and objectives of the FormulaFolios US Equity Fund shareholders. Prior to investing, shareholders should consider whether the investment strategy of the FormulaFolios US Equity Fund meets their investment objectives and risk tolerance. For a complete description of the investment object and risks, please refer to the FormulaFolios US Equity Fund prospectus.

FFI also serves as the investment advisor to the FormulaFolios US Equity Portfolio. Shares of the FormulaFolios US Equity Portfolio are intended to be sold to certain separate accounts of the participating life insurance companies, as well as qualified pension and retirement plans and certain unregistered separate accounts. Shares will be held by the separate accounts or plans for the benefit of the purchaser or participant. The investment objective of the FormulaFolios US Equity Portfolio is the same as the FormulaFolios US Equity Fund seeking long-term capital appreciation. FFI manages the FormulaFolios US Equity Portfolio assets based on the specific investment objectives and restrictions as outlined in the FormulaFolios US Equity Portfolio prospectus and statement of additional information, rather than on the individual needs and objectives of the insurance carrier or policyholder. Please refer to the FormulaFolios US Equity Portfolio prospectus for a complete description of the investment objective and risks pertaining to the FormulaFolios US Equity Portfolio.

Both the FormulaFolios US Equity Fund and the FormulaFolios US Equity Portfolio are diversified series of the Northern Lights Fund Trust II, an Investment Company registered under the Investment Company Act of 1940.

FormulaFolios (FFI) serves as the investment advisor to the FormulaFolios Hedge Growth ETF, Income ETF, Smart Growth ETF, and Tactical Growth ETF. The FormulaFolios Hedged Growth ETF seeks to achieve its investment objective by investing primarily in domestic equity securities of any market capitalization and US Treasuries through other unaffiliated exchange traded funds. The FormulaFolios Income ETF seeks to achieve its investment objective by investing primarily in foreign and domestic fixed income securities through other exchange traded funds. The fixed income securities in which the fund will invest are US Treasuries, investment grade US bonds, high yield US bonds, US aggregate bond, and international government bonds of any maturity and duration. Complete descriptions of the investment objectives and risk can be found in the Funds' prospectuses or, if available, the summary prospectuses. In all cases, FFI's portfolio management operates in accordance with the investment guidelines outlines in the fund's governing documents.

FFI offers separately managed accounts and other investment fund products in addition to the funds above. Some of these offerings include portfolios of investments that are substantially identical to these funds, and could create certain conflicts of interest. These procedures, among other things, ensure that all trades allocated to advisory clients fulfill the FFI's fiduciary duty to each client and otherwise allocate securities on a basis that is fair and nondiscriminatory. Such procedures are generally applied in numerous instances, including, among other things, block and bunched trades, cross transactions and private placements. In determining a fair allocation, FFI takes into account a number of factors, including, among other things, the Adviser's fiduciary duty to each client, any potential conflicts of interest, the size of the transaction, the relative size of a client's portfolio, cash available for investment, suitability, as well as each client's investment objectives.

## Other

FFI may provide signals to other third parties for money management with fees ranging from 50 bps to 75 bps.

## Unified Managed Account Program(UMA):

FFI also participates in a Unified Managed Account (UMA) program. In this case, the "sponsor" of the program Envestnet, has contracts directly with their clients to perform various types of investment management services. The UMA combines the investment expertise of asset managers, ETFs, and Mutual Funds into single portfolio services to their clients where FFI delivers "model" portfolios to Envestnet. As part of this UMA, the adviser typically obtains the necessary financial data from the client, assists the client in determining the suitability of the program, assists the client in setting an appropriate investment objective and assists the client in opening an account.

FFI generally applies the same investment philosophy and strategy for clients of UMA program as is done for FFI's other client's, depending upon any restrictions, limitations, or specific directions that the sponsor or their clients give to us. It is the sponsor that has client authority to purchase and sell securities on a discretionary or non-discretionary basis pursuant to the investment objective chosen by the client. For specific details regarding the managers, FFI recommends the clients review the individual companies ADV Part 2A brochure.

The Sponsor of the UMA program generally charges their clients an aggregated or "all inclusive" fee, and FFI receives a portion of those fees.

## **Serving as a Sub-Advisor to Independently Sponsored Advisory Programs**

FFI may from time to time participate as a sub-advisor under other firms' advisory programs. A client of the other firm selects a registered investment advisor from a list of approved advisors to provide investment management service. FFI receives a fee for account management services provided to clients of an outside firm as outlined in a sub-advisory agreement. This agreement may also outline items such as the advisory services to be provided, the responsibilities of FFI and the other firm, and the terms of engagement including, but not limited to, fees and termination. Responsibilities such as collecting the clients' investment objectives, determining the strategy best suited for the clients, and communication with the clients will be the responsibility of the outside firm. FFI has no responsibility to assess the value of services provided by the outside firm; therefore, the clients should evaluate whether such a program is suitable for their needs and objectives, and whether comparable or similar services are available at a lower cost elsewhere.

## **ITEM 5 FEES AND COMPENSATION**

### **Investment Management Wrap Fee**

FormulaFolio Investments provides investment management services for an annual fee based upon a percentage of the market value of the assets being managed. The firm provides its investment management services and arranges for brokerage transactions through multiple custodian options. Participants utilizing FOLIOfn, do so under a single annualized fee through its wrap program. Participants in the programs may pay a higher aggregate fee than if investment management and brokerage services are purchased separately. A complete description of the program's terms and conditions (including fees) are contained in the program's wrap fee brochure.

### **ERISA Qualified Plans**

In accordance with Department of Labor regulations under Section 408(b)(2) of ERISA, we are required to provide certain information regarding our services and compensation to assist fiduciaries and plan sponsors of those retirement plans that are subject to the requirements of ERISA in assessing the reasonableness of their plan's contracts or arrangements with us, including the reasonableness of our compensation. This information (the services we provide as well as the fees) is provided to you at the outset of your relationship with us and is set forth in your advisory contract with us (including the fee table, other exhibits and, as applicable, this document), and then at least annually to the extent that there are changes.

### **ERISA Fiduciary Status**

Depending on the agreement between FFI and/or affiliate and the plan sponsor, pursuant to the agreed upon investment advisory contract we may either share fiduciary responsibility with the plan sponsor or we may be the investment manager specifically appointed to have full discretionary authority and control to make actual investment decisions in the plan.

FormulaFolio Investments, in its sole discretion, may negotiate to charge a lesser management fee based upon certain criteria (i.e., anticipated future earning capacity, anticipated future additional

assets, dollar amount of assets to be managed, related accounts, account composition, pre-existing client, account retention, pro bono activities, etc.).

## Fee Schedules

Fee schedule for FormulaFolio Custom Allocation Programs: Clients pay FormulaFolio Investments an annual management fee calculated in accordance with the fee schedules shown.

Annual management fees are billed monthly in-arrears based on the average daily balance of the managed account for the preceding calendar month with statements sent Quarterly. For partial months, fees are prorated for only the days in the preceding month when the account was managed.

### Fee Schedules with WealthGuard™:

WealthGuard™ is a tracking software used to monitor the performance/ growth of a clients' portfolio, and to predetermine the amount of downside the client(s) is/are willing to tolerate. It is NOT an actual stop-loss, and will NOT automatically sell the individual securities in the portfolio. WealthGuard™ offers the client multiple options: (1) Upon reaching the WealthGuard™ value, the client's account will be liquidated into cash, or (2) Upon reaching the WealthGuard™ value, the client's account is reinvested two allocations more conservatively (i.e. from MM100 to MM60). Should the client choose to liquidate the portfolio into cash, there is no guarantee the exact WealthGuard™ value will be captured, nor that the assets will be sold the very same day, but rather the notification will alert both the client/s and FFI that the portfolio needs to be sold and moved into a cash account at FFI's earliest opportunity.

Due to FormulaFolios acting as an investment advisor for both the account allocation, as well as the manager of some proprietary mutual funds and ETFs, when these proprietary mutual funds and ETFs are used substantially in accounts we are providing advisory fee discounts to ensure transparent and fair pricing to clients. When invested, your account will receive the following FFI management fee discount:

Note added to Exhibit H: FFI charges its clients using individual trading accounts managed by FFI a fee for managing the accounts (i.e., for being the adviser for the account allocation). It also charges holders of its proprietary ETFs and mutual funds a management fee for these products. When FFI purchases its ETFs and mutual funds in its clients' managed accounts, FFI charges the clients management fees for: 1) the account and 2) each of FFI's mutual funds and ETFs held in the account. FFI discusses here providing a discount to its managed trading account clients when FFI frequently purchases its proprietary mutual funds and ETFs in their accounts.

### Fee Schedules with WealthGuard™

The total advisory fee paid by Client equals the FFI platform fee detailed below, PLUS the representative fee. Platform fee is determined based on aggregate household value, account size at initial investment, and account allocation series and risk tolerance.

### Transaction Based Pricing: Multi-Manager Allocation Series

Transaction Based Pricing Schedule

(Custodians: Fidelity, TD Ameritrade, and Charles Schwab)

For accounts under \$100,000 when initially invested

AUM	First <\$100,000	Next \$100,000-\$249,999	Next \$250,000-\$499,999	Next \$500,000-\$999,999	Next >\$1,000,000
MM Income	0.55%	0.50%	0.45%	0.40%	0.35%
MM 20	0.55%	0.50%	0.45%	0.40%	0.35%
MM 40	0.65%	0.60%	0.55%	0.50%	0.45%
MM 60	0.65%	0.60%	0.55%	0.50%	0.45%
MM 80	0.65%	0.60%	0.55%	0.50%	0.45%
MM 100	0.65%	0.60%	0.55%	0.50%	0.45%

For accounts over \$100,000 when initially invested

AUM	FormulaFolios Mgmt. Fee
First <\$100,000	0.75%
Next \$100,000 - \$249,999	0.70%
Next \$250,000 - \$499,999	0.65%
Next \$500,000 - \$999,999	0.60%
Next >\$1,000,000	0.55%

## FF Allocation Series

Transaction Based Pricing Schedule

(Custodians: Fidelity, TD Ameritrade, and Charles Schwab)

For accounts under \$100,000 when initially invested

AUM	FormulaFolios Mgmt. Fee
First <\$100,000	0.55%
Next \$100,000 - \$249,999	0.50%
Next \$250,000 - \$499,999	0.45%
Next \$500,000 - \$999,999	0.40%
Next >\$1,000,000	0.35%

For accounts over \$100,000 when initially invested

AUM	FormulaFolios Mgmt. Fee
First <\$100,000	0.65%
Next \$100,000 - \$249,999	0.60%
Next \$250,000 - \$499,999	0.55%
Next \$500,000 - \$999,999	0.50%
Next >\$1,000,000	0.45%

## Core Satellite Allocation Series

Transaction Based Pricing Schedule

(Custodians: Fidelity, TD Ameritrade, and Charles Schwab)

For accounts under \$100,000 when initially invested

AUM	First <\$500,000	Next \$500,000- \$999,999	Next >\$1,000,000
CS Income	0.55%	0.50%	0.45%
CS 20	0.55%	0.50%	0.45%
CS 40	0.55%	0.50%	0.45%
CS 60	0.55%	0.50%	0.45%
CS 80	0.50%	0.45%	0.40%
CS 100	0.50%	0.45%	0.40%

For accounts over \$100,000 when initially invested

AUM	FormulaFolios Mgmt. Fee
First <\$500,000	0.55%
Next \$500,000 - \$1,000,000	0.50%
Next >\$1,000,000	0.45%

## Smart Passive Series

Transaction Based Pricing Schedule

(Custodians: Fidelity, TD Ameritrade, and Charles Schwab)

For accounts of any value when initially invested

AUM	First <\$500,000	Next \$500,000- \$999,999	Next >\$1,000,000
SP Income	0.30%	0.25%	0.20%
SP 20	0.35%	0.30%	0.25%
SP 40	0.35%	0.30%	0.25%
SP 60	0.35%	0.30%	0.25%
SP 80	0.35%	0.30%	0.25%
SP 100	0.40%	0.35%	0.30%

## Endeavor Series

Transaction Based Pricing Schedule

(Custodians: Fidelity, TD Ameritrade, and Charles Schwab)

For accounts of any value when initially invested

AUM	FormulaFolios Mgmt. Fee
All account values	\$25 per month



### Tactical Allocation Series

Transaction Based Pricing Schedule

(Custodians: Fidelity, TD Ameritrade, and Charles Schwab)

For accounts of any value when initially invested

AUM	FormulaFolios Mgmt. Fee
All account values	0.10%

### Asset Based Pricing:

#### Multi-Manager, Tactical, and FF Series

Asset Based Pricing Schedule

(Custodian: Folio Institutional)

AUM	FormulaFolios Mgmt. Fee
First <\$250,000	0.90%
Next \$250,001 - \$500,000	0.85%
Next \$500,001 - \$1,000,000	0.80%
Next \$1,000,001 - \$2,000,000	0.70%
Next >\$2,000,001	Please contact FormulaFolios

#### Core Satellite Allocation Series

Asset Based Pricing Schedule

(Custodian: Folio Institutional)

AUM	FormulaFolios Mgmt. Fee
First <\$500,000	0.70%
Next \$500,000 - \$1,000,000	0.65%
Next >\$1,000,001	0.60%

\*For FF and Tactical Allocations (allocations of proprietary only strategies) the above fee schedule is used but with 0.15% reductions for each account size level.

### Unified Managed Account Program

Amount Under Management	Platform Fees
Without WealthGuard™	0.40%
With WealthGuard™	0.50%

## **Affiliated Mutual Fund Fees for WealthGuard**

FFI is paid an annual management fee. Specific management fee and related expense information may be found in the prospectus and statement of additional information for the FormulaFolios US Equity Fund & FormulaFolios US Equity Portfolio and should be read carefully before investing. No performance fees are charged to these funds.

## **Affiliated ETF Fees for WealthGuard**

FormulaFolios Income, Hedge Growth, Smart Growth, and Tactical Growth ETFs have annual fund operating expenses. Specific management fee and related expenses can be found in the prospectus and statement of additional information and should be read carefully before investing. Fees paid to FFI for investment advisory services are separate and distinct from the fund operating expenses.

The Adviser offers several different services detailed in this brochure that compensate the Adviser differently depending on the service selected. There is a conflict of interest for the Adviser and its associated personnel to recommend the services that offer a higher level of compensation to the Firm through either higher management fees or reduced administrative expenses. The Adviser mitigates this conflict through its procedures to review client accounts relative to the client or investors personal financial situation to ensure the investment management service provided is appropriate. Further, the Adviser is committed to its obligation to ensure associated persons adhere to the Firm's Code of Ethics and to ensure that the Firm and its associated persons fulfill their fiduciary duty to clients or investors.

For all accounts non-discretionary, non-managed accounts (non-asset billed) there is an annual fee of \$50 for administrative services. For all managed accounts, there is an annual administrative fee of \$50. This fee applies on accounts that have balances of less than \$100,000 at the end of a billing cycle. This fee can be waived at the discretion of the firm.

## **Advisory Fees for Sub-Advisory Relationships**

Fees and payment arrangements are negotiable and will vary on a case by case basis.

FFI provides investment management services as a sub-advisor to certain accounts. An investor may engage an independent investment advisor ("primary adviser") which in turn engages FFI to provide portfolio management services to all or part of such investor's portfolio. In this situation, FFI will typically receive a fee charged as a percentage of assets sub advised by FFI, typically ranging from 0.25% to 0.80% of the assets sub-advised by FFI. Such fees are generally charged by directly debiting the end-investor's custodial accounts. Clients should contact their primary advisor for more information relating to the deduction of fees from their accounts. The specific manner of account fee debit and payment to primary advisor will be detailed in the sub-advisory agreement. End investors should refer to the primary advisor's disclosure documents for full information on the primary advisor's advisory services.

## **Fees Charged by Financial Institutions**

As further discussed in response to Item 12 (below), FormulaFolio Investments generally recommends that clients utilize the brokerage and clearing services of FOLIOfn Investments ("FOLIOfn"), TD Ameritrade ("TDA"), Fidelity, or Charles Schwab for investment management accounts. FormulaFolio Investments may only implement its investment management recommendations after the client has arranged for and furnished FormulaFolio Investments with all information and authorization regarding

accounts with appropriate financial institutions. Financial institutions include, but are not limited to, FOLIOfn, TDA, Fidelity, Charles Schwab, any other broker-dealer recommended by FormulaFolio Investments, broker dealer directed by the client, trust companies, banks, etc. (collectively referred to herein as the “Financial Institutions”).

While FOLIOfn utilizes a wrap fee, clients may incur certain charges imposed by the other custodians and other third parties such as charges imposed directly by a mutual fund or ETF in the account that are disclosed in the fund’s prospectus (e.g., fund management fees and other fund expenses), deferred sales charges, odd lot differentials, transfer taxes, wire transfer and electronic fund fees, and other fees and taxes on brokerage accounts and securities transactions.

The firm’s agreement with any Financial Institutions may authorize FormulaFolio Investments to debit the client’s account for the amount FormulaFolio Investment’s fee and to directly remit that management fee to FormulaFolio Investments. Any Financial Institutions recommended by FormulaFolio Investments have agreed to send a statement to the client, at least quarterly, indicating all amounts disbursed from the account including the amount of management fees paid directly to FormulaFolio Investments. Alternatively, clients may elect to have FormulaFolio Investments send an invoice for payment.

### **Fees for Management During Partial Quarters of Service**

For the initial period of investment management services, the fees are calculated on a pro rata basis.

The Agreement between FormulaFolio Investments and the client will continue in effect until terminated by either party pursuant to the terms of the Agreement. FormulaFolio Investment’s fees are prorated through the date of termination and any remaining balance is charged or refunded to the client, as appropriate.

Clients can make additions to and withdrawals from their account at any time, subject to FormulaFolio Investment’s right to terminate an account. Additions may be in cash or securities provided that FormulaFolio Investments reserves the right to liquidate any transferred securities or decline to accept particular securities into a client’s account. In addition, for ERISA accounts, mutual fund shares may be deposited only if they are front-end load funds (including “front-end load—waived funds”) or no-load funds. Clients may withdraw account assets on notice to FormulaFolio Investments, subject to the usual and customary securities settlement procedures. However, the firm designs its portfolios as long-term investments and the withdrawal of assets may impair the achievement of a client’s investment objectives. FormulaFolio Investments may consult with its clients about the options and ramifications of transferring securities. However, clients are advised that when transferred securities are liquidated, they are subject to transaction fees, fees assessed at the mutual fund level (i.e. contingent deferred sales charge) or tax ramifications.

The client’s fee will be adjusted only if the prorated fee is calculated to be more than \$25 after any assets are deposited or withdrawn from an account during a quarter.

## **ITEM 6 - PERFORMANCE-BASED FEES AND SIDE-BY-SIDE MANAGEMENT**

FormulaFolio Investments does not provide any services for performance based fees.

Performance-based fees are those based on a share of capital gains on or capital appreciation of the assets of the client.

- dollar amount of assets to be managed,
- related accounts,
- account composition,
- pre-existing client,
- account retention, and
- pro bono activities.

## **ITEM 7 - TYPES OF CLIENTS**

FormulaFolio Investments generally provides services to individuals and high net worth individuals. However, the firm also may provide advice to pension and profit sharing plans, trusts, estates, charitable organizations, corporations and business entities.

Minimum Account Size:

As a condition for starting and maintaining a relationship, FormulaFolio Investments generally imposes a minimum account size of \$25,000. The firm, in its sole discretion, may accept clients with smaller portfolios based upon certain criteria including:

- anticipated future earning capacity,
- anticipated future additional assets,

FormulaFolio Investments only accepts clients with less than the minimum portfolio size if, in the sole opinion of FormulaFolio Investments, the smaller portfolio size will not cause a substantial increase of investment risk beyond the client's identified risk tolerance. The firm minimum is a per account minimum, not a per client minimum, meaning each client account is considered individually when calculating account size rather than the sum of all potential accounts for each client.

## **ITEM 8 - METHODS OF ANALYSIS, INVESTMENT STRATEGIES AND RISK OF LOSS**

### **Investment Strategies and Methods of Analysis**

Clients can engage FormulaFolio Investments to manage all or a portion of their assets on a discretionary basis. The firm primarily allocates clients' investment management assets among different tactical allocation strategies. Depending upon the client's investment objectives among other factors, strategies include various investments such as:

- long-term purchases,
- short-term purchases,
- trading,
- short sales,
- option purchases and writing (including covered options, uncovered options, or spreading strategies),
- exchange traded funds, and mutual funds.

The strategies are primarily comprised of various individual equity securities, mutual funds or ETFs. The firm acts as the investment manager to these strategies. Individual clients cannot hire

FormulaFolio Investments to manage their assets directly. Other investment advisors hire FormulaFolio Investments to invest their own clients' assets in one or more of the strategies. In this scenario, the advisor will select the strategy for its client, and will hire FormulaFolio Investments to manage the assets.

Generally, the investment strategies are growth-oriented investment strategies designed for investors seeking to diversify their portfolios through a long term allocation to tactical management. The strategies include equity-based programs, which on a daily basis, analyze a wide variety of individual equity securities, index mutual funds, international funds, and ETFs, that together broadly represent the global economy. Using technical analysis among other factors, the firm determines which individual equity securities, index mutual funds, industry sector or international funds, if any, look attractive to own. The decision essentially comes down to the fundamentals of each security analyzed, the recent trend of each individual fund, and the overall strength of the US economy.

Technical analysis involves, among other things, the analysis of past market data rather than specific company data in determining the recommendations made to clients. Technical analysis often involves the use of charts to identify market patterns and trends that may be based on investor sentiment rather than the fundamentals of the company. The primary risk in using technical analysis is that spotting historical trends may not help to predict such trends in the future. Even if the trend will eventually reoccur, there is no guarantee that FormulaFolio Investments will be able to accurately predict such a re-occurrence. The primary risk in fundamental analysis is that the balance sheet and income statement data used may change, in some cases abruptly. Additionally, securities deemed to meet the fundamental requirement for inclusion to portfolios may not result in positive performance for investors and therefore could result in loss of invested capital.

Primarily, the strategies seek capital appreciation through asset selection. FormulaFolio Investments will invest in the securities and funds ranked highest, as determined by its analysis. When the stock market is in a positive intermediate or long-term trend, the firm expects the strategies to be highly correlated to either the U.S. or international equity markets, as well as either the U.S. or international income markets. To manage risk exposure, the firm performs an overall equity market risk assessment. This assessment seeks to identify periods of high risk by studying economic data of the U.S. economy. Based on the results of the assessment, FormulaFolio Investments may move the strategies to broader based investments and further seek to limit risk by adjusting allocations to cash on a daily basis. Depending upon the severity of the risk signals, the firm seeks out opportunities for growth through funds that could benefit from poor equity market conditions, such as bonds, commodities, or alternative funds.

## **Risks of Loss**

### *Individual Equities, Mutual Funds, and ETFs*

An investment in individual equities, a mutual fund, or ETF involves risk, including the loss of principal. Individual equity, Mutual fund and ETF shareholders are necessarily subject to the risks stemming from the individual issuers of the fund's underlying portfolio securities. Such shareholders are also liable for taxes on any fund-level capital gains, as mutual funds and ETFs are required by law to distribute capital gains in the event they sell securities for a profit that cannot be offset by a corresponding loss.

Shares of mutual funds are generally distributed and redeemed on an ongoing basis by the fund itself or a broker acting on its behalf. The trading price at which a share is transacted is equal to a fund's stated daily per share net asset value ("NAV"), plus any shareholder's fees (e.g., sales loads, purchase

fees, redemption fees). The per share NAV of a mutual fund is calculated at the end of each business day, although the actual NAV fluctuates with intra-day changes to the market value of the fund's holdings. The trading prices of a mutual fund's shares may differ significantly from the NAV during periods of market volatility that, among other factors, can lead to the mutual fund's shares trading at a premium or discount to NAV. Shares of ETFs are listed on securities exchanges and transacted at negotiated prices in the secondary market. Generally, ETF shares trade at or near their most recent NAV, which is generally calculated at least once daily for indexed-based ETFs and more frequently for actively managed ETFs. However, certain inefficiencies may cause the shares to trade at a premium or discount to their pro rata NAV. There is also no guarantee that an active secondary market for such shares will develop or continue to exist. Generally, an ETF only redeems shares when aggregated as creation units (usually 50,000 shares or more).

### **Market Risks**

The profitability of a portion of FormulaFolio Investments' recommendations may depend to a great extent upon correctly assessing the future course of price movements of stocks and bonds. There can be no assurance that FormulaFolio Investments will be able to predict those price movements accurately.

### **Management Through Similarly Managed Accounts**

FormulaFolio Investments may manage portfolios by allocating portfolio assets among various individual equity securities, mutual funds, or ETFs on a discretionary basis using one or more of its proprietary investment strategies (collectively referred to as "investment strategy"). In doing so, FormulaFolio Investments buys, sells, exchanges or transfers shares of securities based upon the investment strategy.

FormulaFolio Investment's management using the investment strategy complies with the requirements of Rule 3a-4 of the Investment Company Act of 1940, as amended. Rule 3a-4 provides similarly managed accounts, such as the investment strategy, with a safe harbor from the definition of an investment company.

The investment strategy may involve an above-average portfolio turnover that could negatively impact upon the net after tax gain experienced by an individual client. Securities in the investment strategy are usually exchanged or transferred without regard to a client's individual tax ramifications. Certain investment opportunities that become available to FormulaFolio Investment's clients may be limited. For example, various mutual funds or insurance companies limit the ability of FormulaFolio Investments to buy, sell, exchange or transfer securities consistent with its investment strategy. As further discussed in response to Item 12 (below), FormulaFolio Investments allocates investment opportunities among its clients on a fair and equitable basis.

### **Use of Margin**

To the extent that a client authorizes the use of margin, and margin is thereafter employed by FormulaFolio Investments in the management of the client's investment portfolio, the market value of the client's account and corresponding fee payable by the client to FormulaFolio Investments will be increased. As a result, in addition to understanding and assuming the additional principal risks associated with the use of margin, clients authorizing margin are advised of the potential conflict of interest whereby the client's decision to employ margin shall correspondingly increase the management fee payable to FormulaFolio Investments. Accordingly, the decision as to whether to employ margin is left totally to the discretion of client. While the use of margin borrowing can

substantially improve returns, such use can increase the adverse impact to a client's portfolio. Borrowings will usually be from securities brokers and dealers and will typically be secured by the client's securities or other assets. Under certain circumstances, such a broker-dealer may demand an increase in the collateral that secures the client's obligations and if the client were unable to provide additional collateral, the broker-dealer could liquidate assets held in the account to satisfy the client's obligations to the broker-dealer. Liquidation in that manner could have extremely adverse consequences. In addition, the amount of the client's borrowings and the interest rates on those borrowings, which will fluctuate, will have a significant effect on the client's profitability.

### **General Risk of Loss**

Investing in securities involves the risk of loss. Clients should be prepared to bear such loss. FFI uses the following software (WealthGuard™):

**WealthGuard™** is a tracking software used to monitor the performance/ growth of a clients' portfolio, and to predetermine the amount of downside the client is willing to tolerate. It is NOT an actual stop-loss, and will NOT automatically sell the individual securities in the portfolio. WealthGuard™ offers the client multiple options: (1) Upon reaching the WealthGuard™ value, the client's account will be liquidated into cash, or (2) Upon reaching the WealthGuard™ value, the client's account is reinvested two allocations more conservatively (i.e. from MM100 to MM60).

Should the client choose to liquidate the portfolio into cash, there is no guarantee the exact WealthGuard™ value will be captured, nor that the assets will be sold the very same day, but rather the notification will alert both the client(s) and FFI that the portfolio needs to be sold and moved into a cash account at FFI's earliest opportunity.

### **ITEM 9 - DISCIPLINARY INFORMATION**

FormulaFolio Investments is required to disclose the facts of any legal or disciplinary events that are material to a client's evaluation of its advisory business or the integrity of management. FormulaFolio Investments does not have any required disclosures to this Item.

### **ITEM 10 - OTHER FINANCIAL INDUSTRY ACTIVITIES AND AFFILIATIONS**

FormulaFolio Investments is required to disclose any relationship or arrangement that is material to its advisory business or to its clients with certain related persons.

FormulaFolio Investments actively recruits newinvestment adviser representatives in a number of ways. Many of the firm's investment adviser representatives have been, and continue to be, recruited through a strategic networking relationship with The Impact Partnership, LLC, Kennesaw, Georgia ("Impact"). Impact is an independent insurance marketing organization and is licensed as an insurance agency. Impact has appointments from a number of unaffiliated insurance companies to "wholesale" and distribute their insurance products to independent insurance agents. Impact works with and provides a variety of services to independent insurance agents to educate, train, market, strengthen,

and grow their insurance practices. Impact also serves as a resource to independent insurance agents in processing insurance applications and in addressing unique or specialty insurance needs of their customers.

Pursuant to this strategic relationship, Impact introduces insurance agents to FormulaFolio Investments. At the time of the introduction, some of these insurance agents are registered as investment adviser representatives with other investment advisers. Following the introduction, there is no obligation for an introduced insurance agent to establish an investment adviser representative relationship with FormulaFolio Investments. Moreover, there is no obligation for any introduced insurance agent to refer or recommend the investment advisory services of FormulaFolio Investments to his or her customers. Impact has no contact with, makes no recommendations to, and does not market or solicit any person to become an investment advisory client of FormulaFolio Investments.

In consideration of Impact's recruiting, marketing, and practice support services, FormulaFolio Investments compensates Impact and its owner/principals based, in part, upon the recruited insurance agent's book of business; that is, as a measure of the volume of business the insurance agent produces and is reflective of the anticipated value of that recruit to the firm. Several of Impact's owners and principals are also owners and serve as principals of FormulaFolio Investments, and so benefit from the firm's recruiting new investment adviser representatives. The compensation received by Impact and its owners/ principals includes both cash and non-cash types of consideration. This compensation does not increase the cost of investment advisory services provided by FormulaFolio Investments to clients.

The compensation paid by FormulaFolio Investments to Impact and its owners/principals may create potential conflicts of interest. After becoming associated with FormulaFolio Investments, newly recruited individuals are incentivized to solicit and recommend that their existing customers and future prospects engage the investment advisory services of FormulaFolio Investments with whom they have then become registered.

#### **Jason Wenk**

Jason Wenk is the Executive Director of Product Development, a strategic consultant, and member of FormulaFolio Investments, LLC. In addition to Mr. Wenk's duties for FormulaFolio Investments, LLC, he is also: (1) Shareholder of Retirement Wealth Advisors, Inc., an SEC Registered Investment Advisor;; (2) a member of and partner in 521, LLC, a real estate development and management company;; (3) a shareholder of Kasia Insurance Agency, Ltd., a Property and Casualty Insurance Agency. Mr. Wenk is not licensed as an insurance agent nor does he offer clients insurance services. His role in Kasia is strictly as an investor shareholder only.

#### **Jason Crump**

Jason Crump is the Chief Executive Officer and a member of FormulaFolio Investments, LLC. In addition to Mr. Crump's duties for FormulaFolio Investments, LLC, he is also: (1) A shareholder and Chief Executive Officer of Retirement Wealth Advisors, Inc., an SEC Registered Investment Advisor;; (2) a member of Altruistic Financial Planning, LLC, an Insurance Agency;; and (3) a licensed life insurance agent.

#### **Joel VanWoerkom**

Joel VanWoerkom is the President and a member of FormulaFolio Investments, LLC. In addition to Mr. VanWoerkom's duties for FormulaFolio Investments, LLC, he is also: (1) a shareholder and President of Retirement Wealth Advisors, Inc., an SEC Registered Investment Advisor;; (2) a member of Altruistic Financial Planning, LLC, an Insurance Agency; and (3) a licensed life insurance agent.



Stephen Odom, Steven Craig, Andrew Craig, Brandon George, Edward Nolan, and Stephen A. Ashton are members of FormulaFolio Investments, LLC and shareholders of Retirement Wealth Advisors, Inc. Their roles in these two firms are as investor members/shareholders only. Stephen Odom, Steven Craig, Andrew Craig, Brandon George, Edward Nolan, and Stephen A. Ashton are also owners/members of The Impact Partnership, LLC, an Insurance Marketing Organization (IMO) headquartered in Kennesaw, Georgia.

## **ITEM 11 - CODE OF ETHICS**

FormulaFolio Investments and persons associated with FormulaFolio Investments (“Associated Persons”) are permitted to buy or sell securities that it also recommends to clients consistent with FormulaFolio Investment’s policies and procedures. FormulaFolio Investments has adopted a code of ethics that sets forth the standards of conduct expected of its associated persons and requires compliance with applicable securities laws (“Code of Ethics”). In accordance with Section 204A of the Investment Advisers Act of 1940 (the “Advisers Act”), its Code of Ethics contains written policies reasonably designed to prevent the unlawful use of material non-public information by FormulaFolio Investments or any of its associated persons. The Code of Ethics also requires Access Persons of FormulaFolio Investment’s report their personal securities holdings and transactions and obtain pre-approval of certain investments such as initial public offerings and limited offerings. Unless specifically permitted in FormulaFolio Investment’s Code of Ethics, none of FormulaFolio Investment’s Access Persons may buy or sell for themselves or for their immediate family (i.e., spouse, minor children, and adults living in the same household) any security that is actively purchased or sold, or is considered for purchase or sale, on behalf of any of FormulaFolio Investment’s clients. Access Persons are allowed to buy or sell such securities only after FFI has sold or purchased or chosen not to sell or purchase such securities.

These requirements are not applicable to:

- direct obligations of the Government of the United States
- money market instruments, bankers’ acceptances, bank certificates of deposit, commercial paper, repurchase agreements and other high quality short-term debt instruments, including repurchase agreements;
- shares issued by mutual funds or money market funds; and
- shares issued by unit investment trusts that are invested exclusively in one or more mutual funds.

Clients and prospective clients can obtain FormulaFolio Investments' Code of Ethics by contacting the FFI Compliance Department.

FFI, its officers, directors, employees or other Access Persons may purchase the same or similar securities for the FormulaFolios US Equity Fund and the FormulaFolios US Equity Portfolio at the same time as it affects transactions for other clients. A conflict of interest could arrive should FFI or the persons listed above trade before other FFI clients. FFI has written policies and procedures to address this conflict of interest.

## **ITEM 12 - BROKERAGE PRACTICES**

As discussed above, in Item 5, FormulaFolio Investments generally recommends that clients utilize the brokerage and clearing services of TD Ameritrade Institutional, Fidelity Institutional Wealth Services, FOLIOfn, and Charles Schwab. Trust Company of America may be used in some situations. Factors which FormulaFolio Investments considers in recommending these or any other broker-dealer to clients include their respective financial strength, reputation, execution, pricing, research and service. TD Ameritrade Institutional, Fidelity Institutional Wealth Services, FOLIOfn and Charles Schwab enable FormulaFolio Investments to obtain many individual equity securities, no-load mutual funds, and ETFs without transaction charges and other no-load and load-waived funds at nominal transaction charges. The commissions or transaction fees charged by these firms may be higher or lower than those charged by other Financial Institutions.

The commissions paid by FormulaFolio Investment's clients comply with FormulaFolio Investment's duty to obtain "best execution." Clients may pay commissions that are higher than another qualified Financial Institution might charge to effect the same transaction where the firm determines that the commissions are reasonable in relation to the value of the brokerage and research services received. In seeking best execution, the determinative factor is not the lowest possible cost, but whether the transaction represents the best qualitative execution, taking into consideration the full range of a Financial Institution's services, including among others, the value of research provided, execution capability, commission rates, and responsiveness. FormulaFolio Investments seeks competitive rates but may not necessarily obtain the lowest possible commission rates for client transactions.

The firm periodically and systematically reviews its policies and procedures regarding its recommendation of Financial Institutions in light of its duty to obtain best execution. The client can request FormulaFolio Investments in writing to use a particular Financial Institution to execute some or all transactions for the client. In that case, the client will negotiate terms and arrangements for the account with that Financial Institution, and FormulaFolio Investments will not seek better execution services or prices from other Financial Institutions or be able to "batch" client transactions for execution through other Financial Institutions with orders for other accounts managed by FormulaFolio Investments (as described below). As a result, the client may pay higher commissions or other transaction costs or greater spreads, or receive less favorable net prices, on transactions for the account than would otherwise be the case. Subject to its duty of best execution, FormulaFolio Investments may decline a client's request to direct brokerage if, in FormulaFolio Investment's sole discretion, such directed brokerage arrangements would result in additional operational difficulties. Transactions for each client generally will be effected independently, unless FormulaFolio Investments decides to purchase or sell the same securities for several clients at approximately the same time. Although it is not obligated to, FormulaFolio Investments combines or "batches" such orders to obtain best execution, negotiate more favorable commission rates, or allocate equitably among FormulaFolio Investment's clients differences in prices and commissions or other transaction costs that might have been obtained had such orders been placed independently.

Under this procedure, transactions will generally be averaged as to price and allocated among FormulaFolio Investment's clients pro rata to the purchase and sale orders placed for each client on any given day. To the extent that FormulaFolio Investments determines to aggregate client orders for the purchase or sale of securities, including securities in which FormulaFolio Investment's Supervised Persons may invest, FormulaFolio Investments generally does so in accordance with applicable rules promulgated under the Advisers Act and no-action guidance provided by the staff of the U.S. Securities and Exchange Commission. FormulaFolio Investments does not receive any additional compensation or remuneration as a result of the aggregation. In the event that FormulaFolio Investments determines that a prorated allocation is not appropriate under the particular circumstances, the allocation will be made based upon other relevant factors that may include:

- when only a small percentage of the order is executed, shares may be allocated to the account with the smallest order or the smallest position or to an account that is out of line with respect to security or sector weightings relative to other portfolios, with similar mandates;
- allocations may be given to one account when one account has limitations in its investment guidelines which prohibit it from purchasing other securities which are expected to produce similar investment results and can be purchased by other accounts;
- if an account reaches an investment guideline limit and cannot participate in an allocation, shares may be reallocated to other accounts (this may be due to unforeseen changes in an account's assets after an order is placed);
- with respect to sale allocations, allocations may be given to accounts low in cash;
- in cases when a pro rata allocation of a potential execution would result in a de minimis allocation in one or more accounts, FormulaFolio Investments may exclude the account(s) from the allocation the transactions may be executed on a pro rata basis among the remaining accounts; or
- in cases where a small proportion of an order is executed in all accounts, shares may be allocated to one or more accounts on a random basis.

In an effort to avoid transaction costs, portfolios are designed to utilize No Transaction Fee ETFs and Mutual Funds whenever possible. Custodians often charge a short term redemption fee if funds are not held on to for a period of 30 days for ETFs and 30 to 60 days for mutual funds. To mitigate these costs, FFI has designed some of the models to trade every 31 days. Client accounts may incur this cost if the model changes within the first 30 days of the clients investment.

Consistent with obtaining best execution, brokerage transactions may be directed to certain broker-dealers in return for investment research products or services that assist FormulaFolio Investments in its investment decision-making process. Such research generally will be used to service all of FormulaFolio Investment's clients, but brokerage commissions paid by one client may be used to pay for research that is not used in managing that client's portfolio.

The receipt of investment research products or services as well as the allocation of the benefit of such investment research products or services poses a conflict of interest because FormulaFolio Investments does not have to produce or pay for the products or services. Such transactions are in compliance with Section 28(e) of the Securities Exchange Act of 1934, as amended. In addition, FormulaFolio Investments may receive a portion of charges imposed by mutual funds for its servicing of client accounts. These charges do not result in any additional fees paid by clients.

### **Software and Support Provided by Financial Institutions**

FormulaFolio Investments may receive from TD Ameritrade Institutional, Fidelity Institutional Wealth Services, FOLIOfn and Charles Schwab without cost to FormulaFolio Investments, computer software and related systems support, which allow the firm to better monitor client accounts maintained at TD Ameritrade Institutional, Fidelity Institutional Wealth Services, FOLIOfn, and Charles Schwab. FormulaFolio Investments may receive the software and related support without cost because FormulaFolio Investments renders investment management services to clients that maintain assets at TD Ameritrade Institutional, Fidelity Institutional Wealth Services, FOLIOfn, and Charles Schwab. The software and related systems support may benefit the firm, but not its clients directly. In fulfilling its duties to its clients, FormulaFolio Investments endeavors at all times to put the interests of its clients first. Clients should be aware, however, that FormulaFolio Investment's receipt of economic benefits from a broker-dealer creates a conflict of interest since these benefits may influence FormulaFolio Investment's choice of broker-dealer over another broker-dealer that does not furnish similar software, systems support, or services.

Additionally, FormulaFolio Investments may receive the following benefits from TD Ameritrade Institutional, Fidelity Institutional Wealth Services, FOLIOfn, and Charles Schwab:

- receipt of duplicate client confirmations and bundled duplicate statements;
- access to block trading which provides the ability to aggregate securities transactions and then allocate the appropriate shares to client accounts; and
- access to an electronic communication network for client order entry and account information.

Our blocks are generated by calculating orders based on each account and then aggregating the orders into block orders and allocating each share quantity generated for each account to the appropriate account. The blocks are executed in block trading accounts and then allocated according to the shares needed per account. This supplies all clients with average price instead of being subject to individual order market fluctuation. In the event that blocks are not fully filled and only portions of shares are purchased, each account would receive the lower number of shares prorated.

### **ITEM 13 - REVIEW OF ACCOUNTS**

FormulaFolio Investments monitors client portfolios as part of an ongoing process while regular account reviews are conducted on at least a quarterly basis. Such reviews are conducted by one of FormulaFolio Investment's investment advisor representatives. All investment advisory clients are encouraged to discuss their needs, goals, and objectives with the firm and to keep FormulaFolio Investments informed of any changes thereto. FormulaFolio Investments contacts ongoing investment advisory clients at least annually to review its previous services or recommendations and to discuss the impact resulting from any changes in the client's financial situation or investment objectives. Unless otherwise agreed upon, clients are provided with transaction confirmation notices and regular summary account statements directly from the broker-dealer or custodian for the client accounts. Clients also receive a report from FormulaFolio Investments that may include such relevant account or market-related information such as an inventory of account holdings and account performance on a quarterly basis. Clients should compare the account statements they receive from their custodian with those they receive from FormulaFolio Investments. As requested by the client, the firm will furnish a supporting schedule for capital gains and losses realized in the account for the year.

### **ITEM 14 - CLIENT REFERRALS, SUB-ADVISORY ARRANGEMENTS, AND OTHER COMPENSATION**

FormulaFolio Investments may receive economic benefits from non-clients for providing advice or other advisory services to clients. This type of relationship poses a conflict of interest and any such relationship is disclosed in response to Item 12, above.

In addition, FormulaFolio Investments is required to disclose any direct or indirect compensation that it provides for client referrals. If a client is introduced to FormulaFolio Investments by either an unaffiliated or an affiliated solicitor, FormulaFolio Investments may pay that solicitor a referral fee in accordance with the requirements of Rule 206(4)-3 of the Advisers Act and any corresponding state securities law requirements. Any such referral fee is paid solely from FormulaFolio Investment's investment management fee, and does not result in any additional charge to the client. If the client is introduced to FormulaFolio Investments by an unaffiliated solicitor, the solicitor provides the client with

a copy of FormulaFolio Investment's written disclosure brochure which meets the requirements of Rule 204-3 of the Advisers Act and a copy of the solicitor's disclosure statement containing the terms and conditions of the solicitation arrangement including compensation. Any affiliated solicitor of FormulaFolio Investments discloses the nature of his/her relationship to prospective clients at the time of the solicitation and will provide all prospective clients with a copy of FormulaFolio Investment's written disclosure brochure at the time of the solicitation. This paragraph also applies to primary advisors in a sub-advisory agreement with FFI, wherein clients remain the client of the primary advisor and FFI manages the client's accounts for an advisory fee.

#### **ITEM 15 - CUSTODY**

FormulaFolio Investment's Agreement or the separate agreement with any Financial Institution authorizes FormulaFolio Investments through such Financial Institution to debit the client's account for the amount of FormulaFolio Investment's fee and to directly remit that management fee to FormulaFolio Investments in accordance with applicable custody rules. The Financial Institutions recommended by the firm have agreed to send a statement to the client, at least quarterly, indicating all amounts disbursed from the account including the amount of management fees paid directly to FormulaFolio Investments. In addition, as discussed in Item 13, FormulaFolio Investments also sends periodic supplemental reports to clients. Clients should carefully review the statements sent directly by the Financial Institutions and compare them to those received from FormulaFolio Investments.

#### **ITEM 16 - INVESTMENT DISCRETION**

FormulaFolio Investments is given the authority to exercise discretion on behalf of clients. FormulaFolio Investments is considered to exercise investment discretion over a client's account if it can affect transactions for the client without first having to seek the client's consent. FormulaFolio Investments is given this authority at the outset of the advisory relationship included in the agreement between FormulaFolio Investments and the client. Clients may request a limitation on this authority (such as certain securities not to be bought or sold). FormulaFolio Investments takes discretion over the following activities:

- The securities to be purchased or sold;
- The amount of securities to be purchased or sold;
- When transactions are made; and
- The Independent Managers to be hired or fired.

#### **ITEM 17 - VOTING CLIENT SECURITIES**

FormulaFolio Investments is required to disclose if it accepts authority to vote client securities. FormulaFolio Investments does not vote client securities on behalf of its clients. Clients receive proxies directly from the Financial Institutions.

FFI does not vote proxies on behalf of clients. As it pertains to the FormulaFolios US Equity Fund and the FormulaFolios US Equity Portfolio, FFI has been delegated proxy voting responsibility by the Board of Trustees for proxies solicited on the securities held in the Funds' portfolios. As a matter of policy and as a fiduciary, FFI has responsibility for voting proxies for portfolios securities consistent with the

best economic interests of the Funds, Portfolios and clients. The proxy policies and a records of each proxy voted by FFI on behalf of the portfolio including a report on the resolution of all proxies identified by FFI as involving a conflict of interest will be presented to the Board of Trustees at least annually.

In certain situations, FFI is required to vote proxies on behalf of FormulaFolios Hedge Growth, Income, Smart Growth, and Tactical Growth ETFs. These are done as laid out in the funds' proxy voting policies. Information regarding how proxies are voted is outlined in each prospectus and statement of additional information. Clients can obtain a copy of our complete proxy voting policies and procedures by contacting the main number on the cover page of this disclosure brochure.

#### **ITEM 18 - FINANCIAL INFORMATION**

FormulaFolio Investments does not require or solicit the prepayment of more than \$1,200 in fees six months or more in advance. In addition, FormulaFolio Investments is required to disclose any financial condition that is reasonably likely to impair its ability to meet contractual commitments to clients no disclosures pursuant to this Item.

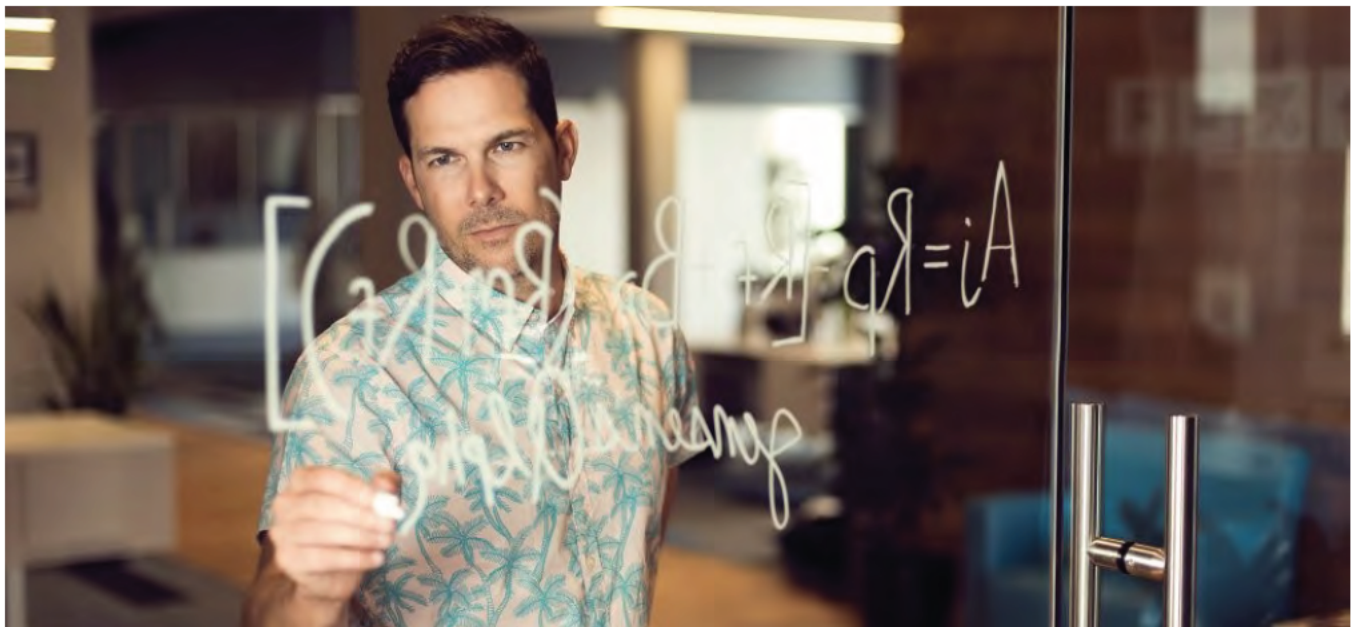
# **EXHIBIT I**

# He Doesn't Shave, Shower, or Commute--but His Startup Made \$17 Million Last Year

The investment management software company found a home with independent financial advisers and never looked back.



By **Will Yakowicz** *Staff writer, Inc.* [@WillYakowicz](#)



Jason Wenk, founder of FormulaFolio Investments, says his platform helps financial advisers spend more time with clients while his algorithms do the work. LOGAN ZILLMER

## COMPANY PROFILE

COMPANY: **FormulaFolio Investments**

2019 INC. 5000 RANK: **1432**

HEADQUARTERS: **Grand Rapids, MI**

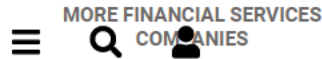
YEAR FOUNDED: **2011**

2018 REVENUE: **\$44.2 Million**

3-YEAR GROWTH:

Every morning, Jason Wenk wakes up at 5 in his Laguna Beach, California, house. He reaches to his nightstand for a Clif Bar, a bottle of water, and his iPad. He tracks how the Asian markets closed, checks on the European markets, and reads the news as he prepares for the U.S. markets to open. In another time zone, some of his close to 60 employees are heading into work at his company, [FormulaFolio Investments](#), which maintains its headquarters in Grand Rapids,





MORE FINANCIAL SERVICES COMPANIES

- #2275 PIONEER BANK
- #732 FREED MARCROFT
- #3232 GATEWAY MORTGAGE GROUP
- #4813 ABACUS WEALTH PARTNERS
- #1988 CROSSCOUNTRY MORTGAGE

THE COMPLETE LIST

Michigan, and an outpost in San Juan Capistrano, California.

Most days, Wenk doesn't shave, shower, or commute. But he's not lazy. He says cutting out the monotonous, everyday time-sucking things helped him grow FormulaFolio Investments, an algorithm-based money manager and software platform for financial advisers that landed at No. 10 on this year's Inc. 5000, an annual tally of the [fastest-growing private companies](#)

[in the U.S.](#) Wenk's company, which he founded in 2011 to help financial advisers manage both their business and their clients' investments, grew more than 13,000 percent in the past three years, bringing in \$17.2 million in 2016 revenue.

## "The problem with people"

The 37-year-old founder has come a long way. In 1999, the then-sophomore at Grand Valley State University, where he studied computer science before dropping out, found out his girlfriend was pregnant. After seeing a job listing for Morgan Stanley at school, he applied at the Grand Rapids office. Wenk trained in New York City, passed his exams, and became a licensed financial adviser. Within a year, he went back to Grand Rapids to be closer to his girlfriend and child.

After working in financial services for a time, Wenk saw what he called a major weakness in the industry: *People* were managing money. He didn't think advisers and managers could generate more profits for investors than computer models.

"The problem with people is that people get sick, people have family problems, people retire, people are late, or people get greedy," says Wenk. "There isn't a good way to manage 100 clients' portfolios by hand, and there is a lot of possibility for error."

Wenk got to work building computer models that could incorporate historical and market data to shift an investor's holdings into safer or more aggressive investments, depending on a client's risk tolerance.



He incorporated some of what he built into his first company, Retirement Wealth Advisors, a wealth investment management firm, which he founded in 2005. It would be years before Wenk's vision was truly realized, however. After talking about his algorithms during a seminar for financial advisers in 2013, he says some conference goers asked if they could use his formula-based system and client-management platform for their own clients. That's when FormulaFolios started to take off.

## A Robo adviser for advisers

"Think of us as a robo adviser for advisers," says Wenk, referring to a class of financial adviser that aims to take the human component out of financial advising and portfolio management.

Today, Wenk's algorithms use what's called tactical asset allocation, which means the system shifts assets automatically within a portfolio among money market accounts (or cash equivalents), stocks, exchange traded funds, and bonds, depending on a client's appetite for risk. The research is all automated--Wenk's algorithms decide what people should own, as well as when to buy and sell. Wenk and his employees conduct the actual trades, he says. The platform also helps its adviser clients manage investments, conduct trades, and help with marketing, billing, and paperwork.

Approved advisers can use FormulaFolios for free if they manage more than \$3 million. Otherwise, the service costs \$200 a month. Plus, an adviser's clients pay between 0.25 percent and 0.75 percent a year. (Customers typically pay a total of less than 1 percent to 1.55 percent.) The average investment adviser fee was 0.99 percent a year in 2016, according to the [Registered Investment Adviser Industry Overview Report](#).

Wenk says 250 advisers across the country use FormulaFolios to manage roughly 10,000 clients. The company boasts a total of \$2.1 billion in assets under management.



## Finding a niche

It's a smart strategy, says Will Trout, a senior analyst at Celent, an international financial services consulting firm, who studies robo advisers. There's nothing all

that technically impressive with FormulaFolios' platform, he says. But the business model, which caters to advisers directly, is notable.

"This is a plug-and-play model," he says. "It's great for the adviser, especially small independent ones, who have no bandwidth to manage portfolios." He adds that almost 50 percent of advisers don't manage their clients' investments.

It's also taken the company away from the overheated competition wrought by direct-to-consumer robo advisers like Betterment, says Trout. These companies typically offer a direct-to-consumer platform, which can charge close to zero percent.

"We're the personal investment vehicle you'll never hear about, and that's what we want," says Wenk. "Our job is to make the adviser the star."

**Correction:** An earlier version of this article stated incorrectly that Jason Wenk works from his bed until noon.



**FEATURED VIDEOS** | 2:48

These Are the 10 Fastest-Growing Private Companies in America



PUBLISHED ON: AUG 16, 2017

# **EXHIBIT J**

# How a 33 year-old advisor ditched the Midwest for California and used mad blogging and SEO skills to hijack annuity-bound web traffic to propel giant growth



Jason Wenk says he brought in 105 prospective clients through blogging last month. 'No one could keep up with that.'

With \$40 million and counting in new business this year alone, Jason Wenk expects to double his AUM by year's end in part by mining clients' keyword gold

October 2, 2013 — 12:26 PM by [Kelly O'Mara](#)

**Brooke's Note:** I really like this story and I get it. Once you have moved to California and you don't want to go back to winter, your mind thinks in ways you never thought possible. It's not just that you're working for money. You're working for the constant stream of good weather that you have become addicted to. This article is about clever use of web marketing. It's also about hard work. Everybody likes writing stock commentary. Jason writes annuity commentary and that's where the demand is.



7 Comments

After four years of building his Grand Rapids, Mich.-based RIA to \$110 million, Jason Wenk, 33, hit a plateau in 2008. He was the head of a perfectly good retirement-focused business, Retirement Wealth Advisors Inc., and served a few dozen clients with retirement plans and asset management.

But, there was one problem: He wanted to move out of Michigan — get away from the cold winters to the beaches of California.

Instead of trying to build an entirely new geographically based business halfway across the country, Wenk decided to build a virtual practice to communicate with clients back in Michigan and to attract new clients who would then be more likely to be open to doing everything virtually.

Before opening his own practice in 2002, Wenk first worked at Morgan Stanley and then did investment research for nonprofit organizations, but he left those to create computer-based investment models and later start his own tech company, FormulaFolios, for which he still serves as the chief investment strategist. While his tech familiarity made the idea of a virtual practice easier, the real temptation was the flexibility of being able to serve anyone anywhere.

“The first part is how do you get the clients without meeting them in person?” says Wenk. See: [The advisor who sailed off grid and found a new business model for his \\$550-million RIA on the way.](#)

## Heading west

So nearly three years ago, with his wife and kids in tow, he moved to Laguna Beach, Calif., and set up the Southern California office of Retirement Wealth Advisors. Then, he began trying to figure out how to connect with his old clients — and find new clients — online. It's something [Loren Kayfetz did successfully in moving to Hawaii](#).

Turns out, he was a lot more successful than he thought he'd be. By using some simple principles to create an online presence and a popular blog, Wenk says he's brought in \$40 million in new business this year, with another \$20 million in the pipeline. In less than two years, since the first blog post that really attracted traffic at the beginning of 2012, he says, he has doubled his business and by the end of the year, Wenk expects to be manage around \$220 million of assets. See: [What three highly wired financial advisors have to teach us about social media](#).

"The Internet is still the wild wild West," says Tim Welsh, president and founder of [Nexus Strategy LLC](#), who saw Wenk speak at a conference this spring. As the advisor explained his technique and his returns, "every jaw in the room hit the floor," Welsh says.

## Going to the clients

SEO — search engine optimization — is the Holy Grail for those who toil on the Internet. Plenty of SEO experts and Internet consultants talk about how important it is to be ranked highly in search engines in case someone searches online for "Laguna Beach financial advisor," for example, says Wenk.

But, why? Wenk asks. First, very few people are searching "Laguna Beach financial advisor." But, more importantly, he says, those that are might not be serious potential clients. See: [How Google Love can put an RIA onto an equal marketing footing with BlackRock](#).

Why wait for your target market to come to you, asks Wenk. Instead, "you meet them where they are." In other words, figure out specifically what your ideal client is searching for.

Retirement Wealth Advisors focuses on conservative planning for retirement, so the potential clients are older and, naturally, on the conservative side. But that's still pretty generic. To narrow down the field still more, the first thing Wenk did when he started his blog was ask his current clients what specific questions they had on the assumption that potential prospective clients would have some of the same concerns.

In his case, clients were looking for information about retirement products, and entering queries like: I just sold my business, what do I do with the money? Lots of his clients were worried about the United States economy and the amount of debt that was accumulating, so he started a recession probability model on his monthly blog. One client asked him about a specific annuity that a salesperson had pitched.



Tim Welsh: Every jaw in the room hit the floor.

## 'Excruciating detail'

Wenk set out to answer those questions. He wrote a review of that specific annuity his client asked about, "in excruciating detail," he says, with an hour-long video and a coded model showing all the different possible outcomes and how everything worked. See: [A \\$17-billion RIA doubles down on a social media strategy that netted it 50 Facebook employees](#).

That post went up in January 2012 and it was the first thing on his blog that blew up. Suddenly, he says, he was getting 500 to 600 unique visitors a month for that review alone.

"Everything made sense after that post," he says.

## The Amazon approach

The strategy is reminiscent of Amazon.com Inc.'s approach, Wenk says. If someone is searching online generically for "flat-screen TVs," for example, then they're likely not a serious buyer. But, if they search for a specific brand or size of flat-screen TV, then they're shopping to buy.

Likewise, if someone is searching because they have questions about a specific annuity product, then they're not 100% sold, he says, but they're looking for answers and options — like possibly working with a financial advisor or planner. That's where he comes in.

"You put your tent up next to the bigger tent," says Welsh — in this case the bigger tent is the large annuity companies. Now, Wenk comes up near the top in a Google search for those products. See: [Gathering assets with long tails: Exactly how RIAs of any size can market with the big boys with 'Google Love'](#).

Wenk emphasizes that he doesn't just trash the products in his reviews; he writes fair and unbiased reviews to show that he knows what he's talking about and to convince prospective client to trust him.

## Nothing but scale

Once potential clients find his personal blog, which connects them to Retirement Wealth Advisors, or one of the many other blogs that he runs as part of his Internet expansion, they're directed to an option to learn more. Often, he says, people e-mail him using the contact form with detailed information about their concerns, problems, finances and situation. Then Wenk, or one of his other advisors, writes back to set up a phone call. About 50% of the people follow through, he says.

Even scheduling the call is automated, through a link to his online calendar that's included in his e-mail. Everything is done virtually, making it easy for him to run a virtual practice from the get-go. See: [Online brokers may be bigger threat to financial advisors than they realize, study says](#).

The ability to scale is impressive, says Welsh. "All he's got to do is put more people through the pipe and bring on more advisors."

## Too much to handle

At this point, though, Wenk's not sure how quickly he can grow. Incoming assets are directly related to the Internet traffic, which is why he's exploring different ways to reach his market online. Right now, he's getting about 10,000 unique visitors/month to the dozen different sites he operates.

In August, Wenk says, he had 105 prospective new clients. "No one could keep up with that," says Wenk.

Instead, he now directs some of those prospects to the other advisors he has on staff, who "never have to do any prospecting," he says.

Seven employees work out of the Grand Rapids office, most of whom were hired since the firm's business expanded. They primarily handle back-office work, with the three advisors working with clients both virtually and in person. About half of the firm's clients remained based in Michigan.

Wenk has also brought on an advisor in Northern California, one in New Mexico and one in Louisiana, all of whom work with a variety of clients, primarily remotely. He plans on bringing on 10 to 20 more people next year if the business keeps rolling in from the Internet.

## Wanting to talk to Jason

Wenk says he owns nearly 300 domains but that he's only using about a dozen of them. Since he does all the blogging himself — which he emphasizes takes less time than cold calling or putting on steak dinners — he's able to play around with different ideas on how to attract visitors. Ultimately, he hopes to be getting 25,000 to 30,000 unique visitors/month.

Wenk acknowledges that when prospective clients come in through "JasonWenk.com" <http://www.jasonwenk.com> those people kind of want to talk to Jason Wenk. But on some of the sites, his name does not appear. In that case, any of the advisors at the firm will do. "There's nothing great about me personally," he says.

One such site, [annuitygator.com](http://annuitygator.com), features an alligator mascot dubbed the "annuity investigator" who promises "in-depth annuity reviews that reveal the facts on what you can really expect from your annuity." The site offers instant access to a free annuity e-book. If a visitor has questions, they're directed to contact "annuity gator," which leads them to Retirement Wealth Advisors.

## Moving target

Blogging is a good first step, but it's not going to draw thousands of people easily, says Frank Troise, founder of My New Financial Advisor Inc., who uses [FreeRetirementReport.com](http://FreeRetirementReport.com) to bring in prospects.





Frank Troise: The hard reality is the majority of what's out there's already been built.

“There’s nothing wrong with what he’s doing,” he says, the principles are sound, but there are a lot of supposed internet experts who profess to have figured out the big secret to attracting business online. See: [Online RIAs will mostly fail — and here are 10 reasons why](#).

If you really have cracked the code, he says, “you don’t tell people” — especially in talks at conferences or to reporters. When you do figure out the math, he says, you want to book the business as quickly and as quietly as possible.

Troise points out that lots of information about annuities already exists online. “The hard reality is the majority of what’s out there’s already been built.” To make a post stand out, then, or go viral, you’d have to take a crazy or controversial view to separate yourself from the herd. That might attract web visitors, he says, but not business.

“The secret always changes,” says Troise. Keywords that are high-profile one day may not be the next, and Google changes its SEO algorithm frequently. To stay on top of the constantly moving target, Troise has about 22 people on staff just analyzing the data and testing different analytics. They’ll test how big a button should be, what should be bolded or what fonts should be used. That’s what it takes to be successful online over the long term. See: [The top 10 deepest fears — and highest hopes — of RIA practitioners](#).

## No more secrets

Wenk says he doesn’t have some big secret, though. This is all stuff anyone could do or learn with a little research. “Nothing’s really a secret anymore,” he says — that’s the beauty of the Internet.

“The average advisor can do the same thing,” Wenk adds. He has all of his social-media accounts set to publish from his blogs automatically, and the blog archives immediately for compliance purposes. The blogs and social media also make it easier for existing clients to share or refer him to others. Instead of spending hours cold calling, Wenk focuses on blogging and reaching out online. “If all I did was one hour only blogging per week, I’d bring in \$30 million in new business a year,” he says. See: [How RIAs can maximize their web marketing with nary a ‘friend-ing’ or tweet](#).

His caveat: It’s only that easy if you know how to do it.

Wenk recently wrote a blog entry that he says only took him 15 minutes — including an eight-minute video. The in-depth annuity reviews take him longer (much longer), but he also has to code the automated calculations for that.

What he doesn't do is contract out the blogging. "Anyone who hires out web-writing stuff is making a huge mistake," says Wenk. He does 100% of the writing and the videos.

## Great equalizer

Advisors aren't doing this not because it's hard, but because they don't understand, says Welsh. "Most financial advisors are really conservative," he says, so they're scared of driving away clients or saying something wrong — instead of understanding that might be why clients would want you.

They're going to have to come around, though. "It's the new world order," says Welsh.

"The Internet is the great equalizer," says Wenk.

 [Tim Welsh](#) | [Frank Troise](#) | [Jason Wenk](#)

 [Nexus](#) | [My New Financial Advisor](#) | [Retirement Wealth Advisors](#)

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Mentioned in this article:

### **Nexus Strategy**

*Consulting Firm*

*Top Executive: **Timothy D. Welsh***

# **EXHIBIT K**



February 28, 2019

[REDACTED]  
[REDACTED]  
[REDACTED]

Dear [REDACTED]

I was watching the movie, “Sully” late last night, since I couldn’t sleep. Sully was immediately seen as a national hero, for his quick thinking and piloting skills. Then the investigations began and he was attacked by the Federal Aviation Administration, because he did not follow protocol. Investigators told him he should have turned back to LaGuardia, or Newark, or anything except what he did. Computer models showed that he could have guided the plane to an airport.

Sully asked himself, “Did I make the wrong call?” and because of that, “Will I lose my pilot’s license, my career, my pension and my credibility, and my consulting business?” Will I lose everything, because while deemed a “hero”, saving all lives, I used judgment to override protocol?

It was later determined that the original simulations allowed no time for testing and evaluating their circumstance and decision-making. Once new simulations allowed for only 35 seconds for grasping the situation and choosing a course, it was determined that he could not have made it back to any airport; that his decision was a risk appropriately taken.

That hit me in the gut. I felt a close connection with Sully because, like Sully, I always did my best for my clients, and like Sully I am being accused of making the wrong call by clients, authorities and attorneys for recommending 1 Global Capital, LLC. Like Sully, I face losing my licenses, my career, and my wealth.

While we don’t know the facts about 1 Global Capital, LLC—that will come out with time—the SEC accuses 1Global and its owner of many illegal activities. It says 1Global claimed to be issuing audited statements, but,—instead, the statements were not audited. It says the owner misused our funds. The SEC also says that it is unlikely any investor would have invested, nor would any financial advisor have recommended 1 Global Capital, LLC had 1 Global Capital, LLC been truthful.



But the authorities say I didn't follow protocol. And that I should lose my licenses for my mistake. The courts may deem that I lose everything to compensate clients for losses.

I want you to know that in my mind, like Sully, I did everything I could to help you succeed. Given what was presented, 1 Global Capital, LLC appeared to be an excellent opportunity for short-term high returns, without stock market risk.

I have always acted in your best interest, and never recommended any investment that I did not make myself. Because of 1 Global Capital, LLC, it may appear otherwise, but I promise you that your success is worth more to me than any commission I could make from selling a product. My fingers are crossed for a positive outcome, but only time will tell.

I thank you for the relationship we've had. For allowing me to act as your financial advisor. I hope you know how much I care about you and your continued success.

Once a resolution is made; once we can define whatever loss you have incurred, then I will discuss with our attorney, Paul Foley of Kilpatrick Townsend & Stockton. the best actions to take for you. We may sue 1 Global Capital, LLC, its owner, its agents, etc. to recover your loss. Again, until the loss is identified we have nothing to sue for.

In the meantime, I am engaged in 1 Global Capital, LLC issues with the regulators who oversee securities, insurance and advisory sales. Unfortunately, these issues are severely limiting my ability to serve you, and will likely eventually force me from the industry. In the meantime, the issues are compounding some health concerns, and I will follow my doctor's advice and retire at the end of March.

I am working to create a continuation plan for you so that our team Alex, Kristina, Gail, and Matt can continue to assist you, should you desire that support. My attorneys and I will continue to watch for 1 Global Capital, LLC announcements and outcomes in order to hopefully provide some legal leverage at the right time. In the meantime, I wish you all the best!

Sincerely,

**James H. Heafner, MBA**  
CERTIFIED FINANCIAL PLANNER™

# **EXHIBIT L**

----- Forwarded message -----

From: **Katherine Valarezo** <[kvalarezo@1stglobalcapital.com](mailto:kvalarezo@1stglobalcapital.com)>

Date: Mon, Nov 6, 2017 at 1:02 PM

Subject: Welcome to 1st Global Capital

To: [@gmail.com](mailto:@gmail.com) <[stevenrapp19@gmail.com](mailto:stevenrapp19@gmail.com)>

Cc: Darice Lang <[darice@1stglobalcapital.com](mailto:darice@1stglobalcapital.com)>, Jim Heafner <[jim@heafnerfinancial.com](mailto:jim@heafnerfinancial.com)>

Dear Mr. Rapp,

We are pleased to welcome you as a lender to 1<sup>st</sup> Global Capital. We wanted to inform you that your funds have been received and your new account is being activated:

**Account Title –Steven Rapp**

**Loan Amount – \$110,000.00**

You will receive correspondence from us from time to time updating you on your account. If you have requested access to the 1GC online portal, you will be receiving your log in credentials within the next 3 business days. Should you have any questions, please reach out to Jim Heafner directly for assistance

-

Best Regards,

**Katherine Valarezo**

*Lender Relations Coordinator*

**1<sup>st</sup> Global Capital Financial Services**

1250 East Hallandale Beach Blvd.

Suite #409

Hallandale Beach, FL 33009

T: 888-374-3150

D: 786-530-3916

E: [Kvalarezo@1stGlobalCapital.com](mailto:Kvalarezo@1stGlobalCapital.com)



*“Funding the Future of Small Business”*



----- Forwarded message -----

From: **Katherine Valarezo** <[kvalarezo@1stglobalcapital.com](mailto:kvalarezo@1stglobalcapital.com)>

Date: Tue, Nov 7, 2017 at 10:32 AM

Subject: 1st Global Capital-Portal Access/Rapp

To: [@gmail.com](mailto:) <[@gmail.com](mailto:)>

Cc: Jim Heafner <[jim@heafnerfinancial.com](mailto:jim@heafnerfinancial.com)>

Please use the following credentials to log on to our platform:

url: <https://1globalcapital.com>

Username: [REDACTED]

Temporary Password: [REDACTED]

Upon your first successful login, the system will prompt you to reset the temporary password. Once reset, the system will automatically log you off and you will have to log back in with the newly created password. **When you are completely logged in you will see a “Select Client” tab in the top left corner of the screen (under the 1<sup>st</sup> Global Capital logo). Click that tab and then click on your name in the drop down menu. *If you do not select an account from the dropdown menu you will see a zero balance.***

Feel free to call me if you have any questions or have any difficulty logging in.

**Katherine Valarezo**

***Lender Relations Coordinator***

**1<sup>st</sup> Global Capital Financial Services**

1250 East Hallandale Beach Blvd.

Suite #409

Hallandale Beach, FL 33009

T: 888-374-3150

D: 786-530-3916

E: [Kvalarezo@1stGlobalCapital.com](mailto:Kvalarezo@1stGlobalCapital.com)



***“Funding the Future of Small Business”***

----- Forwarded message -----

From: **1st Global Capital** <[statements@1stglobalcapital.com](mailto:statements@1stglobalcapital.com)>

Date: Fri, Jan 5, 2018 at 11:57 PM

Subject: Rapp, Steven - 1st Global Capital - December 2017 Portfolio Statement

To: <[@gmail.com](mailto:)>

Cc: <[jim@heafnerfinancial.com](mailto:jim@heafnerfinancial.com)>

Greetings from 1<sup>st</sup> Global Capital,

Attached is your portfolio statement as of December 31, 2017.

We appreciate your partnership. Should you have any questions, please don't hesitate to contact your advisor directly or 1<sup>st</sup> Global Capital Lender Relations at [inquiries@1stGlobalCapital.com](mailto:inquiries@1stGlobalCapital.com).

Sincerely,

Scott Merkelson

Director of Business Development

D:786-646-1960

E: [SMerkelson@1stglobalcapital.com](mailto:SMerkelson@1stglobalcapital.com)

----- Forwarded message -----

From: **1st Global Capital** <[statements@1stglobalcapital.com](mailto:statements@1stglobalcapital.com)>  
Date: Sat, Feb 3, 2018 at 2:09 AM  
Subject: Rapp, Steven - 1st Global Capital - January 2018 Portfolio Statement  
To:  [@gmail.com](mailto: @gmail.com)>  
Cc: <[jim@heafnerfinancial.com](mailto:jim@heafnerfinancial.com)>

Greetings from 1<sup>st</sup> Global Capital,

Attached is your portfolio statement as of January 31, 2018.

We appreciate your partnership. Should you have any questions, please don't hesitate to contact your advisor directly or 1<sup>st</sup> Global Capital Lender Relations at [inquiries@1stGlobalCapital.com](mailto:inquiries@1stGlobalCapital.com).

Sincerely,

Scott Merkelson

Director of Business Development

D:786-646-1960

E: [SMerkelson@1stglobalcapital.com](mailto:SMerkelson@1stglobalcapital.com)

----- Forwarded message -----

From: **1st Global Capital** <[statements@1stglobalcapital.com](mailto:statements@1stglobalcapital.com)>  
Date: Sat, Mar 3, 2018 at 5:35 AM  
Subject: Rapp, Steven - 1st Global Capital - February 2018 Portfolio Statement  
To: [@gmail.com](mailto:)>  
Cc: <[jim@heafnerfinancial.com](mailto:jim@heafnerfinancial.com)>

Greetings from 1<sup>st</sup> Global Capital,

Attached is your portfolio statement as of February 28, 2018.

We appreciate your partnership. Should you have any questions, please don't hesitate to contact your advisor directly or 1<sup>st</sup> Global Capital Lender Relations at [inquiries@1stGlobalCapital.com](mailto:inquiries@1stGlobalCapital.com).

Sincerely,

Scott Merkelson

Director of Business Development

D:786-646-1960

E: [SMerkelson@1stglobalcapital.com](mailto:SMerkelson@1stglobalcapital.com)

# **EXHIBIT M**

----- Forwarded message -----

From: **Katherine Valarezo** <[kvalarezo@1stglobalcapital.com](mailto:kvalarezo@1stglobalcapital.com)>

Date: Fri, Jan 12, 2018 at 11:04 AM

Subject: Welcome to 1st Global Capital

To: [REDACTED] <[\[REDACTED\]@gmail.com](mailto:[REDACTED]@gmail.com)> <[\[REDACTED\]@gmail.com](mailto:[REDACTED]@gmail.com)>

Cc: Jim Heafner <[jim@heafnerfinancial.com](mailto:jim@heafnerfinancial.com)>, Darice Lang <[darice@1stglobalcapital.com](mailto:darice@1stglobalcapital.com)>, Cassie Bishop <[cassie@heafnerfinancial.com](mailto:cassie@heafnerfinancial.com)>

Dear Ms. Fetner,

We are pleased to welcome you as a lender to 1<sup>st</sup> Global Capital. We wanted to inform you that your funds have been received and your new account is being activated:

**Account Title – Sheila M. Fetner IRA**

**Loan Amount – \$99,425.00**

You will receive correspondence from us from time to time updating you on your account. Should you have any questions, please reach out to Jim Heafner directly for assistance.

Best Regards

**Katherine Valarezo**

*Lender Relations Coordinator*

**1<sup>st</sup> Global Capital Financial Services**

1250 East Hallandale Beach Blvd.

Suite #409

Hallandale Beach, FL 33009

T: 888-374-3150

D: 786-530-3916

E: [Kvalarezo@1stGlobalCapital.com](mailto:Kvalarezo@1stGlobalCapital.com)



*“Funding the Future of Small Business”*



**Sheila M Fetner  
Transfer History**

*Sheila ~ IRA*

Original Company	Amount	Transfer Date	Current Company	Contributions	Withdrawals	Current Value	Income Value
Vanguard 401(k)	\$ 412,418.00	3/15/2018	American General Life Power Select Plus Income Multiplier	\$ 412,418.00	\$ -	\$ 412,418.00	\$ 412,418.00

*Sheila ~ IRA*

Original Company	Amount	Transfer Date	Current Company	Contributions	Withdrawals	Current Value	Income Value
Vanguard 401(k)	\$ 109,790.53	1/8/2018	Provident Trust Group 1 Global Capital MCA	\$ 109,790.53	\$ -	\$ 109,482.27	N/A

Original Company	Amount	Transfer Date	Current Company	Contributions	Withdrawals	Current Value	Income Value

Original Company	Amount	Transfer Date	Current Company	Contributions	Withdrawals	Current Value	Income Value

Original Company	Amount	Transfer Date	Current Company	Contributions	Withdrawals	Current Value	Income Value

<b>TOTAL CONTRIBUTIONS</b>	<b>\$</b>	<b>522,208.53</b>
<b>TOTAL WITHDRAWALS</b>	<b>\$</b>	<b>-</b>
<b>* TOTAL CURRENT VALUES</b>	<b>\$</b>	<b>521,900.27</b>
<b>** TOTAL INCOME VALUES</b>	<b>\$</b>	<b>412,418.00</b>

\* Current Values - This is your cash value, less any surrender penalty.

\*\* Income Value - This is the base on which your income is calculated and has no cash value.

Heafner Financial Solutions, Inc  
10700 Sikes Place, Suite 200  
Charlotte, NC 28277  
704-552-1230

----- Forwarded message -----

From: **Katherine Valarezo** <[kvalarezo@1stglobalcapital.com](mailto:kvalarezo@1stglobalcapital.com)>

Date: Tue, Apr 17, 2018 at 12:42 PM

Subject: Welcome to 1st Global Capital

To: [REDACTED]@gmail.com [REDACTED]@gmail.com

Cc: [jim@heafnerfinancial.com](mailto:jim@heafnerfinancial.com) <[jim@heafnerfinancial.com](mailto:jim@heafnerfinancial.com)>, Cassie <[cassie@heafnerfinancial.com](mailto:cassie@heafnerfinancial.com)>, Darice Lang <[darice@1stglobalcapital.com](mailto:darice@1stglobalcapital.com)>

Dear Mr. Fetner,

We are pleased to inform you that your addendum along with your funds have been received. The following account is being updated:

**Account Title** â€“Sheila M. Fetner IRA

**Additional Loan Amount** â€“ \$15,982.27

Should you have any questions, please reach out to Jim Heafner for assistance.

Best Regards

**Katherine Valarezo**

*Lender Relations Coordinator*

**1<sup>st</sup> Global Capital Financial Services**

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# **EXHIBIT O**



November 26, 2018

David M. Wright  
111 West Woodrow Avenue  
Belmont, NC 28012

RE: 1<sup>st</sup> Global Capital and FFI Flexible Growth  
SEC HO::~00700610::~HO

Dear Mr. Wright,

Thank you for contacting our office in regard to your investigation into transactions conducted by Jim Heafner and Heafner Financial. We appreciate the opportunity to respond.

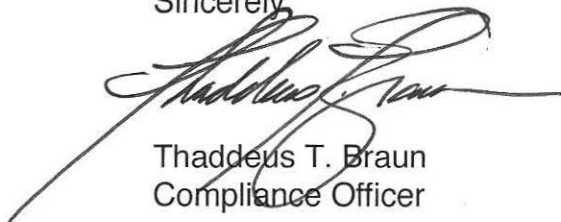
First, we would like to clear up any misconception that Mr. Heafner was selling 1<sup>st</sup> Global Capital with RWA's approval, or that RWA had anything to do with the sale of that product. To the contrary, RWA expressly informed Mr. Heafner that RWA did not approve or permit any sale of 1<sup>st</sup> Global Capital through RWA. RWA never, at any point, received any compensation for any sale of 1<sup>st</sup> Global Capital. RWA explicitly refused to participate in any sales of that product, and to the extent Mr. Heafner sold it he did so without RWA's approval or permission, and did so away from the auspices of our firm. In your communication you stated that Mr. Heafner told you "if he had been working at Baker Wealth Management, the Global situation would not have occurred as that was Retirement Wealth Advisors' responsibility." As indicated above, this is blatantly false. To the contrary, RWA did not become aware that Mr. Heafner was selling 1<sup>st</sup> Global Capital, despite being told that RWA did not approve any such transactions, until that entity had filed bankruptcy. Mr. Heafner's association with Retirement Wealth Advisors was terminated as a result of failing to follow firm policies and procedures.

In regard to your concern with the FFI Flexible Growth fund that Mr. Heafner placed you in, we have reviewed your file. We see that you completed the required risk assessment with an Investor Risk Rating of Aggressive. We also show that, as of November 20, 2018, your account, while down 4.37% YTD during this volatile market, is overall up an average of 5.39% since inception. Since FFI Flexible Growth fits the suitability profile we have from you, we believe this is a suitable investment. If your information has

changed or you wish to reevaluate your investments, please contact us and we will gladly assist you in whatever you choose to do.

If you have any further questions or concerns, please reach out to me at (616) 426-8442 or email me at [tbraun@formulafolios.com](mailto:tbraun@formulafolios.com).

Sincerely,

A handwritten signature in black ink, appearing to read "Thaddeus T. Braun". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Thaddeus T. Braun  
Compliance Officer

CC: Katherine Shiu, Office of Investor Education and Advocacy, SEC

# **EXHIBIT P**

## Marty Wright

---

**From:** Thad Braun <tbraun@formulafolios.com>  
**Sent:** Friday, December 7, 2018 4:52 PM  
**To:** mwandmw@carolina.rr.com  
**Cc:** shiuk@sec.gov  
**Subject:** Receipt of Your Response

Mr. Wright-

Contrary to what he states in his email, Heafner was not our “employee.” He was an independent contractor. In an employee/employer relationship, the employer is responsible to supervise all actions of its employee and is liable for his actions (unless they are completely outside the bounds of what his job involves). As an independent contractor, our obligations to supervise Heafner were much different, and were restricted to supervising the actions he performed on our behalf. He was under our oversight with respect to his advice and recommendations with respect to FFI model portfolios, which is the only thing we ever received compensation for. He was not under our oversight with respect to 1<sup>st</sup> Global, or his insurance business, or any other activities he engaged in that were not authorized and approved by RWA. The fact that we terminated our relationship with him does not prove that we were responsible for his outside business activities. It simply proves that we have the right not to associate with independent contractors who don’t adhere to the standards of conduct we expect, including people like Mr. Heafner who (as we are aware) has been bad-mouthing RWA and trying to blame us for his own conduct and actions, which are wholly separate from those of our firm.

Regards,

Thaddeus Braun



## Thad Braun

Compliance Officer

Direct (616) 426-8442

Toll Free (888) 562-8880 x1054

[formulafolios.com](http://formulafolios.com)



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# **EXHIBIT Q**

There are three critical breakthroughs that enabled Heafner Financial Solutions to create Your Secure Retirement Masterplan™.

**1 INCREASING INCOME AND WEALTH WITH LESS RISK**

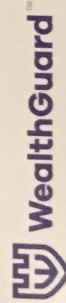
You don't always have to take more risk to get a better return. It doesn't require exotic stock picks; it just requires a strategy. The American College calls "A Better Efficient Frontier." Our software will show you how this can work specifically for you, using exact (not theoretical) numbers.

**2 OUTSTANDING MONEY MANAGEMENT**

Heafner Financial helps to keep you protected by managing the amount of risk in your portfolio. With us, you can potentially reduce your market risk and increase your returns. We make sure that you are always comfortable with your portfolio.

**3 A SAFETY NET FOR YOUR FINANCIAL PLAN**

We are an exclusive provider of the innovative portfolio monitoring program WealthGuard™, which helps protect hard-earned assets from market volatility.



10700 Sikes Place, Suite 200  
Charlotte, NC 28277

OFFICE: (704) 552-1230  
FAX: (704) 552-1281

info@HeafnerFinancial.com  
www.HeafnerFinancial.com



**HEAFNER**  
FINANCIAL

*Certified • Independent • Fiduciary*

SEEN ON

FORTUNE Yahoo! Money NEW YORK POST



WALL STREET JOURNAL

Investment Advisory Representative of Retirement Wealth Advisors, Inc. (RWA), 89 Ionia Ave. NW, Suite 600, Grand Rapids, MI 49503. (800) 903-2562. Investment Advisory Services are offered through RWA. Heafner Financial and RWA are not affiliated. Securities are offered through TCM Securities, Members FINRA/SIPC, 2230 Towne Lake Parkway, Building 800, Suite 130, Woodstock, GA 30189. TCM Securities and RWA are not affiliated.

## Why Heafner Financial?

We put your financial goals above ours. Three characteristics help us guide you to financial success:

- 1** Independent...  
We are an independent advisory firm, free of the limitations imposed by a "big shop." We work to connect you with exceptional investment tools, large or small, that are not on the menu for the big firms, the "Walmarts" of financial planning.
- 2** Fiduciary...  
As a fiduciary, our team acts in your best interest. We act with loyalty to you, not to a financial institution.
- 3** Certified...  
As a Certified Financial Planner™ and Certified Tax Specialist™, Jim is more than an advisor. He is a financial planner, able to design comprehensive plans, maximizing wealth while reducing taxes.



Jim Heafner, MBA  
CERTIFIED FINANCIAL PLANNER™, CERTIFIED TAX SPECIALIST™

## Wall Street's Mantra

In MBA school, Jim read case studies of Wall Street firms acting unethically for their own gain. Once in the financial services industry, his research and experience uncovered a systemic model designed to maximize Wall Street's profit, leaving your success to chance:

### Wall Street's Method

- 1** Ignore the latest independent research conducted by the brightest minds in America about making your retirement successful.
- 2** Promote the ongoing belief that long-term market appreciation will conquer all challenges, ignoring market risk and taxes.
- 3** Appeal to your basic emotions of fear and greed that consistently make suckers of even the most experienced investors.

As an "independent, certified fiduciary," Jim's mission is for you to achieve financial peace of mind and leave a lasting impact. Nothing is more important than your success. We work to design and implement a simple but concrete plan, connecting you with the financial tools that best meet your needs — not ours or those of the Wall Street system.

## Your Secure Retirement Masterplan™

Research, independence of thought, and understanding the financial challenges retirees face have allowed Heafner Financial Solutions to create a unique retirement planning process, Your Secure Retirement Masterplan™, which is rooted in the latest academic and industry research.

Your Secure Retirement Masterplan™ brings together three points of distinction for clients:

- 1** The ability to spend with confidence by providing income you can count on for life.
- 2** Strategies to take the power and sting out of market volatility.
- 3** Exceptional market growth in the face of market downturns and crashes, outstanding private wealth managers, and WealthGuard™ to monitor and protect your accounts from significant losses.

"It's not that your financial advisor doesn't want the best for you; it's that what's best for you isn't on his approved menu."

— Jim Heafner

# **EXHIBIT R**

Sent from AOL Mobile Mail  
Get the new AOL app: [mail.mobile.aol.com](mailto:mail.mobile.aol.com)

On Friday, October 6, 2017, Heafner Financial <[alex@heafnersolutions.com](mailto:alex@heafnersolutions.com)> wrote:



**HEAFNER™**  
— FINANCIAL —

*Certified • Independent • Fiduciary*



**Jim Heafner**

President  
CERTIFIED FINANCIAL PLANNER  
CERTIFIED TAX SPECIALIST

Office: 704.552.1230  
[www.HeafnerFinancial.com](http://www.HeafnerFinancial.com)  
[Jim@HeafnerFinancial.com](mailto:Jim@HeafnerFinancial.com)

**Dear Susan,**

Jim and I want to make sure we keep you informed of market opportunities.

We have uncovered some great new products that provide big benefits. I am confident that you will find real value in at least one of these ideas:

1. Get a high return on Short-term money! Bank rates aren't cutting it. If you can commit your money for a 9-month period, we can offer you much higher rates.
2. Get higher growth in your Fidelity accounts!
3. Reduce taxes on your annuities! If you have annuities that are not IRA's your gain will be taxed fully when you withdraw income and when you pass it on. We can slash the taxes on your

non-IRA annuities.

4. Invest \$20,000 and pass on \$500,000 to \$1,000,000 to your grandchildren.

5. Guarantee that your kids won't have to pay for your final expenses.

6. Slash your unsecured debt in half. If you have student loans or other unsecured loans we can help.

We believe it is our job to bring you great ideas!

If any of these topics are of interest to you, please call Kristina to set an appointment to learn how you can benefit from one or more of these strategies.

Sincerely,

[Redacted Signature]

Heafner Financial, 10700 Sikes Pl, Ste 200, Charlotte, NC 28277

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Sent by [alex@heafnersolutions.com](mailto:alex@heafnersolutions.com) in collaboration with



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