



State of Wisconsin
Department of Financial Institutions

Tony Evers, **Governor**

Cheryll Olson-Collins, **Secretary**

STATE OF WISCONSIN
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF SECURITIES
IN THE MATTER OF CHRISTOPHER L. LEACH
IN THE MATTER OF DANIEL CUNNINGHAM AND PV WEALTH ADVISORS
DFI CASE NO. S-238505 (EX)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL ORDERS

PROCEDURAL HISTORY

- 1) On February 10, 2021, the Division of Securities, Department of Financial Institutions (“Division”) entered the original two Summary Orders against each of the Respondents.
- 2) On March 11, 2021, Respondents each filed a Motion to Dismiss the original two Summary Orders, while simultaneously filing Petitions for Hearing.
- 3) On March 18, 2021, the Division issued a Notice of Prehearing designating Christopher N. Green as Designated Hearing Officer (“Hearing Officer”) with final decisional authority.
- 4) On April 21, 2021, the Division issued an Amended Summary Order to Cease and Desist, Revoking Exemptions and Imposing Restitution with Interest and Civil Penalties against Daniel Cunningham (“Cunningham”) and PV Wealth Advisors, LLC (“PV Wealth”).
- 5) On April 21, 2021, the Division issued an Amended Summary Order to Cease and Desist, Revoking Exemptions and Imposing Restitution with Interest and Civil Penalties against Christopher Leach (“Leach”).
- 6) On May 20, 2021, Respondents Cunningham and PV Wealth filed a Petition for Hearing on the Amended Summary Order.

Office of the Secretary

Mail: PO Box 8861 Madison, WI 53708-8861
Courier: 4822 Madison Yards Way, Madison, WI 53705
Voice: (608) 264-7800 Fax: (608) 261-4334 Web: www.wdfi.org

- 7) On May 20, 2021, Respondent Leach filed a Petition for Hearing on the Amended Summary Order.
- 8) On May 20, 2021, all Respondents filed Motions to Dismiss the Amended Summary Orders.
- 9) On June 10, 2021, following an initial prehearing conference held on June 9, 2021 in this matter, the Hearing Officer issued a scheduling order in which he stated that given the overlapping facts in the Amended Summary Orders, these cases may proceed together. He also set a briefing schedule to address the Respondents' Motions to Dismiss.
- 10) On August 6, 2021, Hearing Officer Green issued rulings in which he denied the Motions to Dismiss.
- 11) On September 3, 2021, following a prehearing conference held on September 1, 2021, the Hearing Officer issued a Discovery and Hearing Scheduling Order in this matter.
- 12) On December 13, 2021, the Division filed a Motion to Compel Discovery against the Respondents related to documents requested by the Division. Following briefing, the Division's Motion to Compel was granted on December 29, 2021.
- 13) On January 7, 2022, the Respondents filed a Petition for Judicial Review of the Ruling on Motion to Compel in Dane County Circuit Court, Case no. 2022CV53. On March 25, 2022, the circuit court issued a Decision and Order which dismissed the Respondents' Petition.
- 14) The hearing took place on March 28, 29, 30 and 31, 2022 in Madison, Wisconsin at the Hill Farms State Office Building before the Hearing Officer. The Division was represented by Attorney Supervisor Robin Jacobs and the Respondents were represented by Attorney Leila Nadim Sahar and Attorney Aaron Aizenberg.
- 15) At the hearing, the Hearing Officer received testimony from the following witnesses:

- a. Thomas Poehling, Investment Advisor/Money Manager, Poehling Capital Management;
 - b. Chad Robert MacHolz, Securities examiner advanced, DFI;
 - c. Ronald M. Fitzpatrick, Attorney;
 - d. Charles David Benson, Securities examiner advanced, DFI;
 - e. Anne Marie Moore, Redondo Beach, California;
 - f. Justin James Wise, financial advisor, Edward Jones, Onalaska, Wisconsin;
 - g. Kelly Seago (“Seago”), Onalaska, Wisconsin
 - h. Christopher Leach, Rancho Palo Verdes, California;
 - i. Daniel Cunningham, Torrance, California.
- 16) The record includes the transcripts of the hearing, the pleadings, motions and orders filed in this case, DFI Exhibits 1-30, 32-38, 40, 43-67, and Respondents’ Exhibits 1-66. The record shall also include the briefs submitted by the parties after the hearing, DFI’s Motion for Costs along with the supporting Affidavit of Robin Jacobs, and any further post-hearing filings, orders or motions.

STANDARD OF REVIEW

Because this is a Class 2 proceeding, the Division has the burden of proving its case by a preponderance of the evidence. Wis. Admin. Code § DFI -Sec 8.10. “To prove by a preponderance of the evidence means that it is ‘more likely than not’ that the examined action occurred.” *United States v. Saulter*, 60 F.3d 270, 280 (7th Cir. 1995), cited by *State v. Rodriguez*, 2007 WI App 252, ¶18, 306 Wis. 2d 129, 743 N.W.2d 460 (2007).

In discovery and during the hearing the Respondents asserted the Fifth Amendment privilege against self-incrimination. Wisconsin has long recognized that the invocation of the Fifth

Amendment in civil cases can result in an adverse inference. *Grognet v. Fox Valley Trucking Serv.*, 45 Wis. 2d 235, 239, 172 N.W.2d 812 (1969). An inference of guilt may be drawn as a matter of law from the assertion of the Fifth Amendment in a civil suit and the weight to be given the inference depends upon the facts. *State v. Postorino*, 53 Wis. 2d 412, 417, 193 N.W.2d 1 (1972).

FINDINGS OF FACT

Based on the submissions of the parties and the testimony of witnesses, the hearing examiner makes the following **findings of fact**, pursuant to Wis. Stat. s. 227.47 (1):

Respondents' Investment Industry Background

- 1) Cunningham is an adult male resident of the State of California with a last known address of 2518 Loftyview Drive, Torrance, CA 90505 DFI Ex. 33, p. 6/15. According to the Articles of Organization on file with the California Secretary of State, Cunningham is the sole managing member of PV Wealth. Respondents' Ex. 46.
- 2) PV Wealth Advisors, LLC ("PV Wealth") is a California limited liability company founded by Cunningham with a last known address of 30021 Avenida Esplendida, Rancho Palos Verdes, CA 90275. DFI Ex. 58 p. 53/71. PV Wealth is in the business of financial planning. Id. PV Wealth was placed in suspended status by the California Secretary of State. DFI Ex 58 p. 52/71.
- 3) In 2014, Cunningham was self-employed through PV Test Prep, a business he owned and operated that provided tutoring services to high school and college students. Testimony of MacHolz, Tr 156, DFI Ex. 10-001054. Testimony of Poehling, Tr 58: DFI Ex 33. He also had a Facebook page on which he held himself out as a Certified Financial Planner and as possessing other professional finance skills, including investment management. Testimony

of MacHolz, Tr. 122-123; Testimony of SEAGO, Tr 564-65; DFI Ex 57. Cunningham's Facebook page linked to his website, DanielCunningham.com. Testimony of MacHolz, Tr 122; Testimony of Seago, Tr 563.

- 4) Cunningham has never held a certified financial planner certification and neither Cunningham nor PV Wealth have ever been registered as investment advisers or broker-dealers in Wisconsin or any other state. Testimony of MacHolz, TR 119-21; Testimony of Benson, Tr 307. Cunningham does not have any formal training in financial services, investment management, or derivatives. Cunningham's background as he describes it:

To give you a brief background about myself: I used to be a successful education consultant, SAT instructor, and tutor. I was the owner of PV Test Prep, LLC, Palos Verdes Test Prep, LLC, and Celebrity Tutoring, LLC. We served high end clients and children of A-list parents at their homes. I was owner/founder, and built a very successful business over many years....

* * *

I had a lot of cash in the bank, as I did not know how to, nor did I have the time, to manage my assets.

* * *

Prior to meeting Chris, I did not even know how to open a brokerage account, let alone trade. Chris introduced this to me. My specialty was chemistry, math, and biology, which I went to school for.

DFI Ex. 27-051993-994 (Cunningham email to DFI dated 7/21/19)

- 5) Cunningham attempted to pass the Series 65 twice, April 24, 2015 and June 10, 2015. He failed both exams. Testimony of Benson, Tr 308.
- 6) From January 21, 2009 through January 27, 2015, Leach (CRD# 5604046) was registered with Poehling Capital Management, Inc. (PCM) as an investment advisory representative (IAR). Id. at 309-310; DFI Ex. 21-051391 and 051384.2 Leach had no other securities

registrations with any prior or future employers. Testimony of Benson, Tr 309-10; DFI Ex. 21 (Leach CRD record)

- 7) Leach was a cardiothoracic surgeon at Gunderson Lutheran Medical Center in Wisconsin for about 19 years. DFI Ex. 21-051382 (Leach CRD record). In October 2008, Leach became employed as an IAR at PCM, where his role was “just to solicit prospective new clients” and to complete new client applications. Testimony of Tom Poehling (“Poehling”), Tr 30-31, 42-43. Leach’s employment relationship with PCM ended in December 2014. DFI Ex. 21-051382.
- 8) In November 2013, Leach met Cunningham online through a mutual friend who had wished Cunningham happy birthday on Facebook. Leach went to Cunningham’s Facebook page and looked at his picture and read his “bio.” Testimony of MacHolz, Tr 156; DFI Ex. 22 (first audio file) at 22 mins and 04 secs to 23 mins and 20 secs.
- 9) In 2014, Leach brought Cunningham to PCM as an investment client. Testimony of Poehling, Tr 50-51; DFI Ex 30-052225. Cunningham was not a sophisticated investor. Id. at Tr 56. In the Information Questionnaire & Assessment Packet of PCM, Cunningham indicated that his experience with securities was limited to holding only DRIP (Dividend Reinvestment Plan) stocks of Exxon, Merck, and GE, valued at approximately \$4,000. Id. at 53-54; DFI Ex 33. As an indicator of Cunningham’s lack of sophisticated investment experience, DRIPS are a passive way to invest in high quality stocks for the long term—the dividends automatically reinvest in buying more shares. Id. Cunningham described himself as self-employed through Palos Verdes Test Prep, a business that provided tutoring services to high school and college students. DFI Ex 33. There was no mention of

knowledge, experience or training with complex securities products such as derivatives.
Id.

- 10) Leach and Cunningham met in person for the first time in May 2014, at the Berkshire Hathaway annual conference in Omaha. DFI Ex. 22 (Leach interview; first audio file) at 23 mins and 50 secs. Cunningham attended the conference as a guest of PCM. Testimony of Poehling, Tr 51.
- 11) In August of 2014, Leach informed PCM that he had developed a personal relationship with Cunningham and that he was moving to Palos Verdes, California. Testimony of Poehling, Tr 42- 44. DFI Ex 30-052225.
- 12) On August 11, 2014, Leach emailed Poehling to ask if he would consider hiring Cunningham as an independent contractor for PCM, to work with Leach when he was in California. Testimony of Poehling, Tr 63-67; DFI Ex 38. Leach explained “Daniel has wanted to be a financial planner/CFP for years. He is pursuing his Series 65 on his own (you can do it without a firm’s sponsorship) and would like to gain the years of exposure so he can eventually move on to the CFP.” DFI Ex 38-052280. Poehling had “no interest in taking Daniel on[,]” telling Leach that Cunningham “should maintain his focus on his current career path,” meaning “his tutoring business.” Id.; Testimony of Poehling, Tr. 65. Further, PCM had no interest in opening up any kind of operations in California. DFI Ex 30- 052225. In fact, PCM specifically instructed Leach NOT to conduct any business after his relocation to California. Id.
- 13) Cunningham had never been in the investment industry, and Leach did not have sufficient knowledge or experience to mentor Cunningham in becoming an investment advisor or to

mentor Cunningham in trading options and other derivatives. Testimony of Poehling, Tr 67-68. In fact, Leach informed Division staff that his own experience with options and derivatives was “little to none.” DFI Ex. 22 (Leach interview, first audio file at 11 minutes and 30 secs).

- 14) In September of 2014, Leach moved to California to live with Cunningham, whom he later married. Testimony of MacHolz, Tr 189; Respondents’ Petition for Hearing, Response to N. 9. Between September and December 2014, PCM and Leach negotiated the termination of Leach’s employment. DFI Ex 30-052225.
- 15) In October 2014, after Leach had moved to California and was still technically a PCM employee, PCM noticed Leach had “liked” PV Wealth on Facebook. DFI Ex 30-052225. Investigating further, PCM discovered Cunningham had created a website/Facebook page for PV Wealth and was falsely holding himself out as a registered investment advisor. Id.; Testimony of Poehling, Tr. 70-71. Leach was immediately contacted and asked to remove his “like” because it raised a compliance issue. DFI Ex. 30-052225. PCM was troubled Cunningham was “holding himself out as a registered investment advisor” and “basically conveying to the public [PV Wealth is] a registered investment advisory firm” and Leach’s (at that point still employed by PCM) “like” of Cunningham could be seen as recommendation of Cunningham thereby creating a potential compliance issue for PCM. Testimony of Poehling, Tr 70-72.
- 16) Leach formally resigned from PCM effective December 31, 2014. DFI Ex. 30-052225; Ex. 21-051384. He ceased being a registered investment advisor representative in the State of Wisconsin on January 27, 2015. DFI Ex 21-051384.

Cunningham and PV Wealth's Social Media Presence

- 17) PV Wealth had a Facebook page as early as 2014. Testimony of MacHolz, Tr 137-39. See DFI Ex 58 p. 48/71 (Lucid Design Co. website containing message from Cunningham dated May 23, 2014 "A+ work! Check out the Facebook avatar and banner they created for #PVWealth Advisors!"); DFI Ex 58 p. 49/71 (directing public to "Visit facebook.com/pvwealthadvisors").
- 18) PV Wealth also had a website in 2014/2015 and a Foursquare page. Testimony of MacHolz, Tr 125; 131; 132-37; Testimony of Seago, Tr 571, 573.
- 19) As early as October 2014, PCM had noticed Cunningham holding himself as a registered IA on a website/Facebook page for PV Wealth. Testimony of Poehling, Tr 70-71; DFI Ex 30-052225.
- 20) Cunningham also posted on PV Wealth's Foursquare page that it was a CFP (posted on July 12, 2014) and an RIA (posted on October 15, 2014). DFI Ex. 58 pp. 54-58/71. On March 26, 2015, Cunningham also posted a PV Wealth client intake form on Foursquare. Id.
- 21) Cunningham's other business, PV Test Prep, also had a Foursquare page. PV Test Prep's Foursquare page referenced PV Wealth under "Recent Tips" as follows: #PVWealth #PVWealthAdvisors #PalosVerdes #WealthManagement #Finance #RetirementPlanning Daniel Cunningham September 4, 2014. Testimony of MacHolz, Tr 131; DFI Ex 58 pp.17, 18/71.

- 22) As far back as December 19, 2014, Cunningham's website, danielcunningham.com, listed PV Wealth as one of his businesses. DFI Ex 58 p. 40/71.
- 23) By 2016, Cunningham updated the listing of PV Wealth on the danielcunningham.com website. DFI Ex 58 p. 41/71.
- 24) By 2018, Cunningham's website altered how it identified PV Wealth to include a direct website address, among other things. DFI Ex 58 p. 13/71.
- 25) Cunningham also had a personal Facebook page that listed "Professional Skills." Testimony of MacHolz, Tr 122-3; Testimony of Seago, Tr 563-65; DFI Ex 57_IMG_0794.mov. In 2015, Cunningham's "Professional Skills" on Facebook included, but were not limited to, Financial products, Derivatives market, Derivative (finance), Leverage (finance), Certified Financial Planner, Stock trading, Financial analysis, Financial Services, Short selling, Hedge Fund, Foreign currency, Futures exchange, Options strategy, Forex Trading, Commodities exchange, and Investment Management. Although Seago captured the image in Ex 57 on her phone in 2017, Seago testified it reflects "the exact same thing" she viewed in 2015, before she became a client of PV Wealth. Testimony of Seago, Tr 564-65, 777.
- 26) Cunningham possessed no professional financial skills whatsoever in 2015 when Seago agreed to become a client of PV Wealth, a fact that Cunningham admitted to DFI examiner Chad MacHolz in an email. Testimony of MacHolz, Tr 140-42; DFI Ex. 27-051993-994 (email dated 7/21/19). Cunningham also did not hold the CFP credential. Testimony of MacHolz, Tr 120. Leach knew Cunningham did not have a securities or financial background and knew he was not a CFP. Leach stated in an email to Poehling in August,

2014 that Cunningham “has wanted to be a financial planner/CFP for years” and Cunningham “would like to gain the years of exposure so he can eventually move on to the CFP.” DFI Ex. 38-052280, p. 4. When asked about Cunningham’s prior investment experience during his DFI interview, Leach reported Cunningham had “none whatsoever” except that he may have invested his own money until he gave it to PCM to manage. DFI Ex 22 (first audio file at 41 mins: 29 sec).

Respondents Solicit Investor Kelly Seago

- 27) Kelly Seago (“Seago”) is an adult female resident of Onalaska, Wisconsin who was formerly employed as a cardiac sonographer at the same hospital where Leach worked as a surgeon. Testimony of Seago, Tr 546, 549. Seago has no financial, investment or business experience. Id. at 548. Prior to her relationship with PV Wealth, Seago had never had a relationship with a broker-dealer or investment advisor. Id. Seago had no significant investment experience.
- 28) In 2010, Seago sustained a work-related, career-ending neck injury. Id. at 549-550. Seago’s injury prevented her from earning a living and left her with lingering chronic pain and depression. Id. at 551-555. The injury and depression, as well as the medication (including a narcotic) she took for pain/depression, impacted her memory, her ability to concentrate and her ability to read and comprehend complex documents. Id. at 551-555, 601.
- 29) In 2015, Seago received a net worker’s compensation settlement of \$310,910 for her permanent disability. Testimony of Seago, Tr 599, DFI Ex. 44-052296. She also had saved retirement funds in the amount of \$231,113.73. Id at 598-99. These funds in the aggregate represented her total net worth. Id. at 600. Seago wanted to have her funds managed by a

professional investment advisor as she had no ability to invest the funds herself. Id. at 558-59.

- 30) In 2015, Leach told Seago in a phone call that he and Cunningham were going into business together. Testimony of Seago, Tr 560-61. Leach touted Cunningham's experience in trading and managing investment accounts. Id. at 561. Cunningham was managing his mother's account and accounts for students he tutored. Id. at 562. Leach directed Seago to look up Cunningham on Cunningham's Facebook page. Id. at 563. Leach would have known Cunningham held himself out on Facebook as a Certified Financial Planner (CFP) with other professional financial skills because he was familiar with Cunningham's Facebook page and communicated with Cunningham on Facebook. Testimony of Leach, Tr 805-08; 810; Testimony of Seago, Tr 566, 777-78.
- 31) Seago went online to view Cunningham's Facebook page as directed by Leach. Id. She saw that Cunningham posted that he was a CFP under "Professional Skills." Id. at 565. Testimony of MacHolz, Tr 123; DFI Ex 57_IMG_0794.mov. She also viewed his other finance-related "Professional Skills" on his Facebook page and was very impressed. Testimony of Seago, Tr 565, 574.
- 32) Cunningham's Facebook page contained a link to the website danielcunningham.com. Testimony of Seago, Tr 563. On the danielcunningham.com website, Seago saw PV Wealth listed as one of Cunningham's businesses. Id. at 568-69. Seago viewed the credentials and expertise of Cunningham on both his website and Facebook page. Id. at 571-72. On April 4, 2015, Seago emailed Leach to confirm that she had found Cunningham online as directed by Leach. Id. at 574-75; DFI Ex. 61.

- 33) In late March or early April of 2015, Leach and Cunningham organized a Skype meeting with Seago and her then husband to discuss documents they would need to set up an account, and the investment services PV Wealth would provide. Testimony of Seago, Tr 575-76. Seago told them her financial goal was to preserve her capital and live off of her settlement for the rest of her life. Id. at 576. They also discussed Seago's financial needs and expenses. Id. at 579.
- 34) Leach and Cunningham represented to Seago that they were starting their own business, PV Wealth, and that they would be honored to have Seago as their first client. Id. at 577-78. Cunningham told Seago that he had a lot of experience with trading and managed other people's accounts, including his mother's and his tutoring students'. Id. at 578-79. In addition, Leach and Cunningham informed Seago and her husband that their fee would be a small percentage of each transaction just like any other broker would charge. Id. at 577-78.
- 35) Based on the representations made by Leach and Cunningham about Cunningham's skill, experience, and knowledge in investing other people's money, and the online representations posted by Cunningham, including his finance-related "Professional Skills" and his credential as a CFP, Seago agreed to invest her money with PV Wealth. Id. at 572, 777. Seago would not have allowed Leach and Cunningham to manage her investments if they had not started the business of PV Wealth. Id. at 581. She understood that by retaining PV Wealth, she would be receiving professional investment management of her assets. Id. at 578.
- 36) Cunningham and Leach communicated via texts, emails and phone calls with Seago in

Wisconsin about how to invest her retirement and settlement funds. Testimony of Seago, Tr 579. See generally DFI Exs. 13-16 (text/email messages between Respondents and Seago). Among other things, Leach and Cunningham told Seago not to put her funds into an annuity because it would not make any money. Testimony of Seago, Tr 580. They told Seago that they would help her live off her settlement for the rest of her life, and that they would never let the value of her accounts fall below her original investment amount—a figure Cunningham called “the holy grail.” DFI Ex. 12, (Seago Deposition pp. 71-72); DFI Ex. 18- 051349 (Seago text to Leach dated 9/20/17: “Daniel assured me several times that the original amount is still there, he called it the holy grail...”)

37) On March 31, 2015, Leach sent an email to Seago with the subject line “Risk Tolerance.” The email stated: Dear [Seago]: Delightful speaking with you and [spouse] this evening. I am sending along the “Risk Tolerance Questionnaire” for you and [spouse] to look over. Also, received your text message, and your thoughts are well taken. We will devise a plan for you and review it with you and [spouse] before we send it to Ron...Chris.” Testimony of Seago, Tr 582-83; DFI Ex. 11-050415.

38) On April 5, 2015, Seago emailed to Leach her answers to the Risk Tolerance Questionnaire which indicated the goal for her investments was moderate growth, and that she wished to trail the stock market and make a moderate profit. Seago also indicated she would have a hard time tolerating any losses. DFI Ex. 11-050416; Testimony of Seago, Tr 583-87 (testifying as to her responses to risk questionnaire).

Creation of The PV Wealth Investment Plan And Transmission to Seago and Attorney Fitzpatrick

- 39) Cunningham and Leach devised an investment plan for Seago for managing both her retirement funds and her disability settlement. Testimony of MacHolz, Tr 161; Testimony of Seago, Tr 593; Ex 26 (Deposition of Leach in California case 20TRCV471) p. 37. On April 7, 2015, with Cunningham's knowledge and consent, Leach transmitted via email an investment plan to Seago's attorney, Ron Fitzpatrick, located in La Crosse, Wisconsin, for Seago's worker's compensation settlement in the amount of \$320,000. Seago was copied on the email. The cover letter was written on letterhead for PV Wealth Advisors, LLC along with the words "Private Client Services." Leach signed the letter and identified himself as an "Investment Adviser Representative", apparently of PV Wealth. In the transmittal email, Leach stated "I have discussed these allocations with [Seago] and she is comfortable with this dispersal." Testimony of Seago, Tr 590-95; DFI Ex 46.
- 40) Leach transmitted the cover letter and investment plan to Attorney Fitzpatrick on behalf of and as a representative of PV Wealth. DFI Ex. 46-052300 (Cover letter on PV Wealth letterhead). They wrote the letter and investment plan in "an effort to get that [worker's compensation settlement] money released for her." DFI Ex. 26 (Leach deposition dated 6/15/21) at p. 37. At the time, Leach knew that Daniel Cunningham and PV Wealth Advisors were not registered as investment advisers, as he had informed DFI that Cunningham had no investment experience "whatsoever" prior to becoming Leach's client at PCM. DFI Ex 22 Leach Interview (first audio file at 41 mins: 29 sec). Leach knew that holding himself out as an Investment Adviser Representative of PV Wealth Advisors was false. Id at 1 min and 4 secs. In a California lawsuit in which Leach and Cunningham are plaintiffs, Leach testified under oath in a deposition that at the time the April 7, 2015 letter

was written, he did not hold any license or registration in either California or Wisconsin as any type of investment advisor. DFI Ex. 26 (Leach deposition dated 6/15/21) at pp. 35-37.

- 41) Around this same timeframe of April 2015, Leach and Attorney Fitzpatrick spoke on the telephone. Leach identified himself as a “licensed financial advisor” to Attorney Fitzpatrick and they discussed various investment proposals. Testimony of Fitzpatrick, Tr. 281-82; DFI Ex. 45. Leach was not a licensed or registered financial advisor at the time. Testimony of Benson, 311. Leach has not held an effective registration as an investment advisor representative since January 27, 2015. Testimony of Benson, Tr 310.
- 42) Based on Leach’s communications with him, Attorney Fitzpatrick understood that Seago was the client of PV Wealth, and PV Wealth and Leach were licensed investment advisors. Testimony of Fitzpatrick, Tr 290-91.
- 43) The PV Wealth investment plan submitted by Leach and Cunningham to Seago’s attorney and the Worker’s Compensation Division placed \$310,910 of the settlement funds in large cap stocks such as Procter & Gamble, GlaxoSmithKline Plc, Verizon and GE. The plan estimated that those investments would yield monthly dividends of \$1,103.58, or an aggregate of \$13,243 annually to supplement Seago’s income. There was no mention of margin or options trading or leveraged and inverse ETFs in the PV Wealth investment plan. DFI Ex 46.
- 44) Attorney Fitzpatrick provided a copy of the PV Wealth investment plan to the Worker’s Compensation Division for their approval, due to that Division’s concern that the funds be professionally managed. Testimony of Fitzpatrick, Tr 276, 278-79; 284.

- 45) Based on the PV Wealth investment plan, the Worker's Compensation Division entered an order dated April 30, 2015, that the sum of \$310,910 be paid to Seago and PV Wealth to be invested, thereby resolving Seago's worker's compensation claim. Testimony of Fitzpatrick, Tr 279, 284; DFI Ex 44.
- 46) Attorney Fitzpatrick would never have submitted the PV Wealth investment plan to the Worker's Compensation Division if he had known Leach was no longer a registered investment advisor representative. Testimony of Fitzpatrick, Tr. 285. He would not have submitted the PV Wealth investment plan to the Worker's Compensation Division if he had known that the sole managing member of PV Wealth was not registered to give investment advice. Id. at 290. He "absolutely" would not have submitted the PV Wealth investment plan to the Worker's Compensation Division if he had been told PV Wealth was not even an operating investment firm and Seago was not its client. Id. at 291.
- 47) Seago understood that Leach and Cunningham were going to buy and hold stock in the companies listed in the investment plan and that they were going to follow her Risk Tolerance Questionnaire answers. Testimony of Seago, Tr 593-94, 607, 634, 650-51. Leach and Cunningham knew Seago is disabled since they were aware of her worker's compensation settlement. They also knew Seago is financially unsophisticated and that she is not comfortable with aggressive investments, because they acquired her risk assessment responses. Neither Leach nor Cunningham ever mentioned margin or options trading or leveraged and inverse ETFs prior to the time Seago entrusted her entire savings to them. Id. at 594; Testimony of MacHolz, Tr 161.
- 48) As an unsophisticated investor, Investor Seago completely relied on Leach and

Cunningham's advice in making investment decisions. Testimony of Seago, Tr 784-88. Based entirely on their recommendations as set forth in the investment plan, their touted credentials and experience managing the accounts of other investors, Investor Seago allowed Cunningham and Leach to have full discretion in investing her entire savings of \$542,023.73. Id. at 572-73, 607, 780.

- 49) Contrary to the written investment plan provided by Leach, Cunningham and PV Wealth to Seago, Leach and Cunningham convinced Seago to allow Cunningham to trade on margin, to trade options and to invest in leveraged and inverse ETFs. Testimony of Seago, Tr 636-37 (Daniel raised the issue of options "shortly after they started working with my money." "[T]hey said that they were an insurance policy and that they were very safe. Basically, I wouldn't lose money with them."); Testimony of MacHolz, Tr 162 (Leach reported Cunningham first raised the idea of options trading for Seago; Leach did not inform Seago about the risks of options); DFI Ex.24-051446 (6/22/15 Text from Leach to Seago: "Daniel wants to make the most for you and options trading will help him do that."). Relying on the recommendation of the Respondents, Seago signed the Schwab "Add Options Trading and Margin to Your Account" applications (hereinafter referred to as "Options Applications".) Testimony of Seago, Tr 786.
- 50) Seago agreed to these investment strategies because Leach and Cunningham convinced her they would only use these investments conservatively, to hedge risk and to generate revenue, a message they repeated over and over. Testimony of Seago, Tr 633-35; 642-45; 649-52; 669-70; 671-72. See the following DFI exhibits:

a. DFI Ex 24-051446 (Leach text to Seago dated 6/22/15): "Daniel wants to make the most for you and options trading will help him do that."

b. DFI Ex 52-052355 (Email from Cunningham to Seago dated 6/26/15): “Schwab, for some reason, approved options trading on one account, but not the other. On the other hand, they approved it at a very low level, so I am limited in the trading techniques I can use. They allow me to sell “covered calls” on your shares, which generates revenue – and that is the fourth type of income, which comes when the option expires. I usually buy them every couple weeks or monthly. The income from covered calls can be substantial and it also insures shares against some degree of loss (if the stock market were to tank – heaven forbid). When Schwab allows me to trade other option techniques, there are many more things I can do to generate income.”

c. DFI Ex 13-050984-986 (Text from Cunningham to Seago dated 6/30/15): where Cunningham instructs Seago to inform Schwab that Cunningham “will be conservative when trading in my account. He does not intend to trade anything high risk.... I am comfortable having him trade options on my account because I know he will do so conservatively. It will, for instance, enable him to protect against losses—using puts....in certain cases, options are less risky than buying stocks alone.”

d. DFI Ex 13-051005-006 (Text from Cunningham to Seago dated 7/13/15 excerpt): “They [Schwab] are having me submit in writing my reason for requesting level 1 trading so they have it on record. I explained that I’d prefer option tools to better protect your portfolio against market fluctuations and to increase/lock in profit - so I don’t have to buy and sell frequently. My reason for selling out certain days is to prevent a steep decline when the market opens the next day.... The goal is long term growth, which is best assessed on a quarterly basis, rather than based on daily change - so it’s important not to feel concerned when you see fluctuation (I know, it’s hard!)....”

e. DFI Ex 13-051029-30 (Text from Cunningham to Seago dated 8/21/15) discussing trading options in his mother’s account: “[T]hey enable me to trade higher level options, that actually reduce market risk and generate income simultaneously.” (Schwab refuses) “to enable the options needed to hedge equities while generating income.”

f. DFI Ex 54-052363-64 (Text from Leach to Seago dated 11/9/16) explaining options and derivatives: “‘Positioned’ in this instance means that he has money in various investments that go up when the market does down, and vice versa. Not all your money, but a portion of it is allocated to this strategy. This allows your total portfolio to perform well in most any kind of market environment... It’s called non-correlated investing. It protects you from a rapid downturn in the value of your portfolio.”

g. DFI Ex 16-051162-163 (Text from Cunningham to Seago dated 1/23/17) stating, among other things, “Fortunately, unlike other account managers,

I am able to insure stocks using options and rather than those who lost a lot of money, I'm able to sell options against the stock to get back some of that return. I also use options to grow the account, which they don't do. All of that enhances your returns. And generate cash flow in addition to dividends. I checked the records of most hedge funds last year and couldn't find a single one I didn't beat. Most hedge funds lost money. I made out with returns of about 50% in client accounts and more than doubled my own by taking a little more risk...which I don't do in other peoples account because I don't expose people to undue risk."

h. DFI Ex 18-051298 (Text from Leach to Seago dated 5/11/17) which states among other things in reference to Fidelity "Daniel will be able to trade full options on the account which will be helpful generating income."

i. DFI Ex 18-051327 (text from Leach to Seago dated 7/10/17) which states among other things "The accounts are not down. Daniel is unique in his ability to generate the cash flow he has so far as well as preserve and grow the nest egg."

j. DFI Ex 18-051349-350 (Leach text to Seago dated 9/20/17) "The derivates will fluctuate but you have hundreds of thousands of dollars and he will never lose you[r] nest egg. And you are gaining about \$1,000 a day. He is being very conservative with you."

- 51) Respondents never told Seago they would use options, margin and leveraged and inverse ETFs in a manner that would greatly increase the risk of loss to her portfolio. Testimony of Seago, Tr 640-41, 652.

Respondents Prefill The Schwab Account Paperwork Providing False Information

- 52) At the direction of and with the assistance of Leach and Cunningham, in June of 2015 Seago deposited \$542,023.73 at Charles Schwab, which included her entire worker's compensation settlement proceeds and her 401(k) funds. Testimony of Seago, Tr 600-630; DFI Ex. 10-001048; DFI Ex 10-001077.
- 53) Seago authorized Cunningham to conduct trades in her Charles Schwab brokerage accounts in reliance on the written investment plan to invest her funds conservatively and to

supplement her income. Testimony of Seago, Tr 607, 609. If she had known their strategy would expose her to heavy losses in a short period of time she would have said “stop” because she “couldn’t afford losses” which she had disclosed to them “[f]rom the very beginning.” Id. at 640-641.

- 54) The Worker’s Compensation settlement check dated May 5, 2015 in the amount of \$310,910.00 was made payable to PV Wealth and Seago. DFI Ex. 10-001077. Seago wrote on the back of the check “Pay to the order of Charles Schwab & Co.” and signed her name. DFI Ex. 10-001078. She also signed the prefilled account application forms that had been prepared and sent to her by Leach and Cunningham. DFI Ex. 24-051425; DFI Ex 59. She then mailed the check and the signed account forms from Wisconsin to Leach and Cunningham in California. DFI Ex 24-051449 (Text from Leach to Seago dated 5/26/15 with mailing instructions).
- 55) Leach and Cunningham received the signed account forms and settlement check in California. Cunningham wrote on the back of the check: “PV Wealth Advisors – Daniel Cunningham For Deposit Only – Charles Schwab & Co.” Testimony of Seago, Tr 599; DFI Ex. 10-001078. On or about June 1, 2015, Leach and/or Cunningham sent the fully endorsed settlement check and the account applications via FedEx to Schwab, where they were received on June 2, 2015. DFI Ex. 10-001047; DFI Ex. 24-051449; Testimony of Seago, Tr 597-98.
- 56) Leach and Cunningham assisted Seago with the paperwork to open Schwab accounts to receive her settlement and retirement funds. Testimony of Seago, Tr 596-98. They communicated with Seago via email and text to complete the necessary forms. Leach filled

out the application forms, asked Seago via email for her personal information to include in the forms, and instructed Seago to get a check from Gunderson for her 401(k). Id. Once Leach completed the forms, he and/or Cunningham emailed the forms to Seago in Wisconsin so that she could sign them. DFI Ex 24-051449. Seago trusted Leach and Cunningham to complete the forms accurately and completely because she did not understand them. Testimony of Seago, Tr 607 (“I don’t understand any of this. I was trusting them to do everything for me, and I thought they were doing what I wanted.”). Leach and Cunningham understood and accepted her trust. DFI Ex 59 (Leach email to Seago dated 5/11/15 “Thank you for your trust...Chris”).

- 57) At the time Leach and Cunningham were completing the Schwab paperwork in 2015, Seago relied on the Respondents to advise her. “I don’t understand any of this. I was trusting them to do everything for me, and I thought they were doing what I wanted[.]” (investing her money according to the PV Wealth investment plan). Testimony of Seago, Tr 607. Seago also was experiencing chronic pain, anxiety, and had difficulty concentrating. Testimony of Seago, Tr 601. She was taking medication for depression and a narcotic for pain. Id. at 553, 601. These conditions impacted her ability to comprehend complex documents. Id. at 552, 601. Seago testified that in May and June of 2015:

I was a mess. I was depressed. I was in therapy. I was going to physical therapy every day, the chiropractor. I was in pain. Life wasn’t great. There was a lot of stress going on with Kylie and the boys. Nolan was stressful. He was a teenage boy.” Testimony of Seago, Tr 780.

- 58) With respect to the Schwab paperwork Seago was signing, she relied on Leach and Cunningham to bring to her attention anything pertinent to her investments because “I hired

them to advise me and to work for me because I didn't know what I was doing." Id. at 787.
It was a relief for Seago to turn over management of her assets to PV Wealth. Id. at 780.

- 59) Leach sent to Seago applications to open two Schwab accounts: an IRA account and a brokerage account. DFI Exhibit 10-001058 (IRA) and DFI Ex 10-001086 (brokerage account). Seago did not complete any part of the applications herself—except for her signature. Testimony of Seago, Tr 605-07. Leach and/or Cunningham indicated on the forms that Seago had “good” investment experience. Seago testified the correct answer should have been “none.” Id. at 605. Under “Overall Investment Objectives”, Leach and/or Cunningham marked all four boxes: Capital Preservation, Income, Growth, and Speculation. Id. at 606. No one explained to Seago why all four boxes were checked. Id. The Respondents did not obtain Seago’s permission to indicate “speculation” was her investment objective, and she would not have understood the form language if she had read it. Id. at 607. Seago believed the Respondents were going to follow the PV Wealth investment plan regardless of how the forms were filled out. Id.
- 60) Cunningham and Leach executed limited power of attorney (LPOA) applications for the two Schwab accounts so that Cunningham could trade for her. DFI Ex. 10-001051 (IRA LPOA); DFI Ex 10-001079 (brokerage account). In the LPOA forms, Cunningham represented that he had “extensive” investment experience. DFI Ex. 10-001054; DFI Ex. 10-001082. Seago believed that Cunningham did have extensive investment experience based on his representations on Facebook and danielcunningham.com. Testimony of Seago, Tr 603-04. Leach never disclosed Cunningham did not have extensive experience. Id. at 604.

- 61) When examiner MacHolz asked Leach why Seago gave power of attorney (LPOA) to Cunningham, Leach stated:

He was trading for her... The problem occurred when they would call her and ask her to verify that she made a trade, which he had made for her, and she wouldn't know. She couldn't do it and with the POA they would call him. (DFI Ex 22- second audio file 58 mins and 14 secs)

- 62) Leach and/or Cunningham also had Seago execute the Options Applications for the Schwab accounts. DFI Ex. 10-001066 (IRA) and DFI Ex. 10-001095 (brokerage); DFI Ex 24-051448 (text from Leach to Seago dated 6/22/15: "I will fill out the forms for you and email them to you tonight..."). Cunningham touted himself in the Applications as having "extensive" knowledge in trading stocks. Cunningham also represented that he had 20 years of trading experience, that he placed an average of 1,000 trades per year, and that his average amount per transaction was \$20,000.00. Cunningham further represented himself to have "extensive" knowledge in options trading. Furthermore, Cunningham touted that he had four years of options trading experience, that he placed an average of 500 options trades per year, and that his average amount per transaction was \$10,000. The Respondents also claimed in the Applications that Seago had 15 years' investment experience trading stocks, "extensive" knowledge of options trading and 4 years of options trading experience, with an average of 500 trades per year in the amount of \$10,000. DFI Ex. 10-001068-69; DFI Ex 10-01097-98. Seago testified the information about her was false—if she had completed the forms she would have indicated no knowledge and zero experience in stocks and options. Testimony of Seago, Tr 612-615.
- 63) Contrary to the representations of Cunningham and Leach to Seago and Schwab in the Options Applications, Cunningham did not have extensive experience or knowledge

regarding stock or options trading. Cunningham stated to Division staff via email that “Prior to meeting Chris [Leach], I did not even know how to open a brokerage account, let alone trade. Chris introduced this to me. My specialty was chemistry, math, and biology, which I went to school for.” DFI Ex. 27-051993-994. Leach reported to DFI that his own knowledge/experience about options was “little to none.” DFI Ex. 22 (Leach interview: First audio file at 11 mins. 30 secs).

- 64) The Schwab Options Applications had an acknowledgment section that every Schwab account holder must sign in order to trade options. Testimony of Seago, Tr 737. Seago did not read the boilerplate language in this section because Leach and Cunningham had already explained that options were like an insurance policy. Id. 744. Also, she did not think the language applied to her because she was not doing the trading. Id. at 743-44. Regardless of what the forms said, Leach and Cunningham were going to invest her money according to the PV Wealth investment plan. Id. at 607, 609. “I was trusting them to do everything for me, and I thought they were doing what I wanted.” Id. at 607.
- 65) All of Seago’s understanding of options came from Cunningham. Testimony of Seago, Tr 644. He only described options as a conservative strategy to hedge risk and generate income. See text/email messages in Findings of Fact (FOF) ¶ 50 above.

From The Beginning Cunningham Speculated With Seago’s Life Savings While Telling Seago He Was Being Conservative With Her Investments

- 66) Cunningham requested that Schwab approve speculative Level 1 options trading privileges on both of Kelly’s Schwab accounts. DFI Ex. 10-001066 (IRA) and DFI Ex. 10-001095 (brokerage). Schwab denied the request, granting only Level 0 trading privileges in a June 30, 2015 phone call with Cunningham. In that call, Cunningham claimed to be Seago’s

stepbrother and falsely claimed Seago wanted to sell cash secured puts and take on risks.

DFI Ex 10_Schwab natives: Inbound calls 06302015 Chris_O'Connell.wav. Excerpts from

the conversation include the following exchanges (emphasis added):

2 mins: 44 sec: Schwab: What is Kelly's relationship to you?

Cunningham: I'm her stepbrother.

2 mins:48 sec: Schwab: Does she have options knowledge or trading experience at all?

Cunningham: She has a little bit but I'm the one that has options knowledge and that's why I have power of attorney on this account.

3 mins:22 sec: Schwab: do you plan to buy options at all or speculate on the long side?

Cunningham: yes

9 mins:23 sec: Schwab: Based on the previous conversation with Kelly, it looks like she has all her income from a disability, a neck injury, an unfortunate event, and ... we didn't cover with her how much heavy losses could impact her lifestyle or her retirement....

Cunningham: that's why she's having me trade them for her

Schwab: The key for us is are long options suitable. The only way we can approve for Level 1 is if we make that determination.

Cunningham: She wants to be able to sell cash secured puts so she can not have to actually buy the stock necessarily but actually just generate some passive income off of her cash....

11 mins:11 sec: Schwab: ...somebody that's 44 years old, and this is her entire net worth, these two combined accounts, buying options do include heavy losses and [that] can happen in a short period of time. So we would not think that's appropriate for Kelly if she has stated that she is not comfortable with that.

11 mins:35 sec: Schwab: I would look at the long options different than selling the puts. **It doesn't look like we have had a conversation with Kelly before if she is comfortable with the loss potential behind options and how it would impact her lifestyle if the worst case scenarios were to occur as well.**

16 mins:08 sec: Schwab: if Kelly wants to call us and have a conversation about she thinks her income is stable and heavy losses wouldn't impact her retirement or make her uncomfortable then we could pursue level 1 but she would have to call us and have a conversation about it. Because **we won't approve her for speculative level 1 for buying options unless she is**

absolutely 100% ok with the risks and that she does not have any severe discomfort on losses in her accounts.

17 mins:55 sec: Cunningham: you do realize she has given me power of attorney to do this for her....

Schwab: Suitability judgments have to be on the account owner.

Cunningham: I know. She has said that is okay

Schwab: **yep, the application she has signed away on it but we still have to make sure she understands the risks in a phone conversation.**

- 67) Cunningham never told Seago about the June 30, 2015 conversation he had with Schwab about the risks to Seago's accounts from using options to speculate; namely, that she could sustain heavy losses in a short period of time. Testimony of Seago, Tr 639-40. She did not have her own conversation with Schwab about those risks either. Id. Over a week prior, Seago had had a phone call with a Charles Schwab representative in which she requested Level 1 options authority and the representative told her, somewhat vaguely, options are "highly regulated" and require a person to have knowledge of the risks and benefits of trading options. Resp. Ex. 66 ZZD, at 3:10-3:55; Testimony of Seago, Tr 729:2-14). Cunningham knew Seago had not been informed of the risks. [Schwab told Cunningham that that "we didn't cover with her how much heavy losses could impact her lifestyle or her retirement...." DFI Ex 10_Schwab natives: Inbound calls 06302015 Chris_O'Connell.wav. (9 min., 23 secs.) and "It doesn't look like we have had a conversation with Kelly before if she is comfortable with the loss potential behind options and how it would impact her lifestyle if the worst case scenarios were to occur as well." DFI Ex 10_Schwab natives: Inbound calls 06302015 Chris_O'Connell.wav. (9 min., 23 secs.)] If Seago has been informed that Cunningham's strategy could cause heavy losses in a short period of time, she would have said "stop" because "I couldn't afford losses. From the very beginning they knew I couldn't afford losses." Id., Tr 640-41. The risk

disclosure that Schwab said needed to take place with Seago never occurred.

- 68) On the same day Schwab told Cunningham they would not approve Level 1 authority because it was too speculative for Seago, Cunningham sent Seago a text in which he completely downplayed the risks of speculative options trading (DFI Ex 13-050984-986 text dated 6/30/15), telling her options would protect against losses, are less risky than buying stocks alone and never mentioning that she could sustain heavy losses in a short period of time:

Hi Kelly: Here's the phone number is 877-903-7544. I would tell them something like this: "My stepbrother Daniel is a professional stock & options trader. Although he doesn't usually trade options on the Schwab platform, he fluently trades calls, puts, vertical/calendar spreads and all the fancy "condors". Personally, he generates substantial income with his TD Ameritrade accounts, although he will be conservative when trading in my account. He does not intend to trade anything high risk, but he needs discretion & ability to buy calls, puts, sell covered calls, and sell cash secured puts. He knows fully the risks and benefits and I understand and accept them as well – just like I recognize the risks and benefits of the stock market in general as well. I am comfortable having him trade options on my account because I know he will do so conservatively. It will, for instance, enable him to protect against losses – using puts. I (Kelly) understand the basics and know that it can, in certain cases, options are less risky than buying stocks alone. I want him to be able to trade level 1 on both accounts; 30 I not asking for anything advanced." Sound okay? I know that's a lot. Let me know if you have any questions =)

- 69) Based on the above text message, Seago believed Cunningham was a professional stock and options trader, that he was not trading anything high risk and was being conservative, and that options were very safe investments. Testimony of Seago, Tr 643-45. She had no idea why Cunningham wanted Schwab to think Cunningham was her stepbrother. Id. at 643. She also had no idea that by June 30, 2015 she had lost \$10,958.54 in the aggregate

in her accounts, the very first month that PV Wealth was managing her investments. Id. at 645; Testimony of Benson, Tr 321, 328; DFI Ex 48 Demonstrative Excel (second tab).

- 70) In August of 2015, Cunningham expressed frustration that Schwab denied approval for upper-level options trading “because they know the account is from a disability payout.” DFI Ex. 13-051029 to 051031 (Cunningham text to Seago dated 8/23/15). He complained “they refuse to enable the options needed to hedge equities while generating income.” Id. He recommended that Seago open an OptionsXpress (a subsidiary of Schwab) account “as I use them to trade for other clients” Id. “I think you’ll be shocked at the difference in free cash flow. I generate my mother a LOT of money off of her \$325,000.” Id.
- 71) On or about September 1, 2015, Cunningham completed the OptionsXpress application for Seago and submitted it electronically using the email address ClickMeSEO@gmail.com. Testimony of MacHolz, Tr 112-14; DFI Ex. 55-052378. On the OptionsXpress application, Cunningham indicated ClickMeSEO was Seago’s email address—it was not. DFI Ex 55-052379; Testimony of Seago, Tr 616. He also indicated Seago’s income was between \$50,000 to \$100,000, that she had been trading stocks since 1995, trading options since 2000, and her investment objectives were speculation, aggressive growth, growth, and income. DFI Ex 55-052379. None of this was true. Id. at 618. If Seago had completed the form, she would have listed her investment objective as “conservative.” Seago does not recall if she read the completed form before it was submitted. Id. at 619.
- 72) On September 4, 2015, Angela Marley of Schwab emailed “Kelly Seago” at ClickMeSEO asking for additional information about the sources of Seago’s income. DFI Ex. 55-052384. The email went to Cunningham— not Seago. Testimony of Seago, Tr 620. Cunningham

responded (DFI Ex 55-052386):

Dear Angela Marley:

The following are my sources of income:

1. My husband works at Century Link and earns \$50,000/yr
2. I have a \$700,000 portfolio of stocks, bonds, and mutual funds, on which I generate \$20,000+/yr
3. I receive \$24,000/yr from regular disability payments, as I was injured on the job.

My husband and I are financial savvy and experienced investors.

If you have any more questions, feel free to email me. Thank you!

Sincerely,

Kelly Seago

- 73) The information in Cunningham's response email was false. Seago's husband earned \$32,000 or \$34,000 per year—not \$50,000. She did not have a portfolio of \$700,000 and her funds did not generate \$20,000 per year. She did not start receiving SSI benefits until 2017 and she and her husband were not savvy and experienced investors. Testimony of Seago, 621-22. Seago did not give Cunningham permission to impersonate her to Schwab in email communications. *Id.* at 621.
- 74) On July 8, 2016, Cunningham impersonated Seago in a chat message with Schwab in another attempt to get speculative Level 1 trading approved on her accounts. In that exchange, he falsely informed Schwab that it is Seago who is doing the options trading and that Seago is aware of the risks. Testimony of Seago, Tr 645-48; DFI Ex 10 PST file: [See the 11/28/2017 email from Sara Rotwein, of Schwab, to callmekelly@hotmail.com cc Seth Oberlin. Specifically, the attachment named "Seago Chat (8)"] . An excerpt of that chat exchange:

Cunningham (as Seago): “Now, also I have been trading options very well in OptionsXpress. Yet I was denied this privilege. Why can’t I sell cash secure puts in spreads and write condors?”

Schwab: When did you apply for options approval?

Cunningham (as Seago): yep, denied.

Schwab: when did you apply?

Cunningham (as Seago): A while ago, but they lectured me about how this is my account on which to live and I can’t afford to lose. But I haven’t been losing in OptionXpress, doing very well.

Schwab: I found your application, and it’s from June 2015. You are welcome to reapply as there is no limit as to how many times. Unfortunately, we do have specially trained options supervisors that made these decisions, and I have no authority over what their decisions are. As a formality, I will need to add a disclosure. Options carry a high level of risk and are not suitable for all investors....”

Cunningham (as Seago): I am aware of the risk....

- 75) Seago did not participate in the above chat message with Schwab, had no prior knowledge of it, and did not give Cunningham or Leach permission to impersonate her to Schwab. Testimony of Seago, Tr 647-48.

The Respondents’ Speculative Trading at Schwab Triggered Margin Calls

- 76) Cunningham’s trading activities at Schwab triggered margin and maintenance calls on Seago’s accounts including but not limited to the following: (8/24/15 \$1,269.73; 10/21/15 \$7,718.77; 11/12/15 \$9,702.70; 8/31/16 \$4,172; 9/13/16 \$17,320; 11/3/16 \$13,346.58; 2/17/17 \$5,521; 2/24/17 \$30,289; 3/30/17 \$17,774; 4/7/17 \$1,793; 4/27/17 \$1,137.45). These letters were generated because losses in the accounts resulting from Cunningham’s trading activity caused the account values to drop below the maintenance requirements, which is concerning to an investor with a low risk tolerance, as Seago disclosed in her responses to the risk tolerance

questionnaire. Testimony of Benson, Tr 353-56, 364-70, 489-90; DFI Ex 50; Testimony of Seago, Tr 586-87.

- 77) Margin calls may require the account holder to deposit additional cash or securities in their account on short notice. Among other possible consequences, the brokerage firm may sell some or all of the securities without consulting the account holder to pay off the margin loan. Testimony of Benson, Tr 353-54.
- 78) Cunningham failed to explain to Seago the significance of the margin call letters, and she did not know what they meant. Testimony of Seago, Tr 663. For example, on or about March 1, 2017, Seago informed Cunningham by text that she received another letter from Schwab. DFI Ex. 16-051175. She sent him a screen shot of the “Urgent Margin Maintenance” letter dated February 24, 2017 identifying a margin call of \$30,289 for her worker’s compensation account. Id. Cunningham texted her, stating “This is a lie!” and “They are 100% wrong” and instructing Seago to shred such letters. Id; DFI Ex. 16-051177. He also falsely stated he was working with Schwab to debug their system, and that in the past he had sued Schwab and won. DFI Ex 16-051178 and 051175. None of this was true. Testimony of MacHolz, Tr 144-51.

In 2017 Respondents Recommended Seago Move Her Funds to Fidelity

- 79) Frustrated by the margin call letters and Schwab’s refusal to allow Level 1 options trading, Leach and Cunningham recommended to Seago that she move her funds from Charles Schwab to Fidelity. DFI Ex 16-051179 (Cunningham text to Seago

dated March 2, 2017: “I think we should jump ship from Schwab. They’ve finally pissed me off for the last time, and we will get better trading privileges on your account elsewhere.”). Testimony of Seago, Tr, 622-23. At the time the Respondents opened the Fidelity accounts in May of 2017, they did not disclose that by the end of April 2017, her Schwab accounts had lost \$185,023.38. DFI Ex 48 second tab (Sum of columns C, D, E. Rows 6-28).

- 80) Cunningham electronically submitted a margin application and options trading agreement to Fidelity with the false information relating to “Employment Status”, “Income Source”, “Annual Income”, “Estimated Net Worth”, “Estimated Liquid Net Worth”, “Federal Tax Bracket”, “Investment Objective”, as well as all information relating to “Experience (years) with” various types of securities and “Option Level” which was approved by Fidelity on May 17, 2017. Testimony of Seago, Tr 629, DFI Ex 6-000205-06.
- 81) In Fidelity’s margin application and options trading agreement (above), unbeknownst to Seago and without her consent, they falsely described Seago as an “Options Trader” having an annual income of over \$100,000 and her investment objective as “Most Aggressive.” They falsely described Seago as having “extensive” experience in highly speculative options trading strategies. Testimony of Seago, Tr 624-27.
- 82) None of the above financial information about Seago was true. Testimony of Seago, Tr 624-27. Seago testified “I am seeing a lot of this stuff for the first time... It’s

overwhelming.” Id . at 626. In fact, not even Cunningham or Leach had “extensive” experience with options. FOF ¶¶ 4, 13, 26.

- 83) The day before Fidelity approved the account application, Cunningham sent Seago the following text:

I have filled out all the paperwork to transfer all assets but I had to redo some of it because it once again deleted everything and had to reapply for options etc. I don't know why but they switched your cash management account, also, so I had to check on that. It will be done soon and the minute it is, I will recover with covered calls and if they grant us spread trading, I will write & sell some spreads options and we can go ahead and withdraw \$\$ for two months since you've had to wait. I resell covered calls after buying back the stocks and accounts will be back up and running. So sorry about this. Nothing I could do about it and I know it's really frustrating.

But this platform is really worth it. For now, until we have the authorization approved for me to trade on your account, don't let them know that I am trading or they will not let you trade options at all they will suspend it until they know that the person who is trading is a professional derivative trader. (DFI Ex 16-051194)

- 84) Seago testified she believed Cunningham was a professional derivative trader as stated in the text. Testimony of Seago, Tr 631. She did not understand any of the financial terms. She had no understanding of how these transactions might affect the safety of her investment accounts. Id.

The Risks of Leveraged Investment Strategies

- 85) Cunningham, aided and abetted by Leach, used Seago’s funds to engage in a series of transactions involving margin, options and leveraged and inversed ETFs that were inconsistent with the PV Wealth investment plan and Seago’s risk tolerance of hardly tolerating any losses. Testimony of Benson, Tr 319-35 (Cunningham used

all three of these leveraged investment strategies in the first three months of investing). See generally *Id.* at Tr 351-70 (testifying that margin, day trading options, and leveraged and inversed ETFs are speculative strategies that are not consistent with a conservative investment strategy that focuses on long term growth).

- 86) Margin trading means the investor has borrowed money from the brokerage firm to purchase securities. The value of the securities in the account is used for collateral. The firm charges interest for the loan, and the investor must repay the loan and interest regardless of how the purchased securities perform. Testimony of Benson, Tr. 352. The risks of margin trading are that substantial losses can mount quickly, you can lose more money than you have invested, and you may have to deposit additional monies on short notice to satisfy margin calls. A brokerage firm may sell some or all of the securities in the account to pay off the margin loan. In that instance, the account holder is not entitled to choose which securities get sold. *Id.* 352-55; Ex. 49-052308-09.
- 87) Typically, selling covered calls options is a limited risk strategy. Testimony of Benson, Tr 357-58. However, options can also be used to speculate, in which case the investor takes on additional risk to reap a higher return. *Id.* In managing Seago's assets, Cunningham was opening and closing covered call options on the same day. *Id.* at 359. See DFI Exhibit 48 Demonstrative Excel third tab (Notable Trxns). This is called day trading, which is a speculative strategy—not conservative—and not typical of investors who sell covered call options. Testimony of Benson, Tr 359-60.

- 88) Leveraged ETFs seek to deliver multiples of the performance of the index or benchmark they track. Testimony of Benson, Tr 360. Leveraged and inversed ETFs (also known as Ultra Short funds) seek to achieve a return that is a multiple of the inverse performance of the underlying index. Id. These products are inconsistent with a conservative investment strategy, and unsuitable for an investor with a long-term investment horizon. Id. at 361-62.
- 89) Cunningham's use of leveraged and inversed ETFs exposed Seago to the risk that she would lose the full value of her derivative investments over a period as short as one day and exposed her to losses in excess of the amount invested. Testimony of Benson, Tr 362-63. For example, in 2016, Cunningham opened and closed positions in one leveraged and inverse ETF 59 times, resulting in a loss of \$78,963.15 in Seago's Schwab brokerage account. Id. at 363. In another example, he lost \$41,707.29 in just two weeks buying and selling a leveraged and inverse ETF in Seago's Schwab IRA account. DFI Ex 48 Demonstrative Excel "Notable Trxns" tab, line 24.
- 90) The speculative trading activity over 29 months was not conservative and was not consistent with the PV Wealth Investment plan. Testimony of Benson, Tr at 323 (options and leveraged/inverse ETF trades not consistent with PV Wealth investment plan or Seago risk tolerances); Id. at 325 (same); Id. at 328 (same); Id. at 331 (opening and closing options contracts on the same day and trading leveraged and inverse ETFs are not consistent with PV Wealth investment plan); Id. at 334 (open and closing options contracts on the same day and trading leveraged and inverse ETFs are not consistent with PV Wealth investment plan and Seago's

professed risk tolerance “of hardly tolerating any losses.”); Id. at 380 (Cunningham was not being conservative with Seago’s investments).

PV Wealth’s Investment Performance Over 29 Months

- 91) On June 3, 2015, Seago’s Schwab IRA account was funded with \$231,213.73 and her Schwab brokerage account containing her worker’s compensation settlement was funded with \$310,810. Testimony of Benson, Tr 319, 326. During that first month of investing, Cunningham sold covered calls in both accounts that were inconsistent with Seago’s professed risk tolerance of hardly tolerating any losses. Id. at 328.
- 92) During July of 2015, Cunningham began departing from the PV Wealth investment plan by speculatively day trading covered calls, trading on margin and trading in leveraged and inverse ETFs. Testimony of Benson, Tr 321-24, 329-32, 350, 359. None of these leveraged investment strategies were consistent with the PV Wealth investment plan or Seago’s professed risk tolerance. Id. at 323, 325, 334- 35; 359; 361. In July, Seago sustained aggregate investment losses totaling \$44,660.88 (sum of cells C7 + C8). DFI Ex. 48 second tab. In August of 2015, Seago sustained aggregate investment losses totaling \$64,641.49. Id.
- 93) For the first 3 months of managing Seago’s funds, from June 3, 2015 to August 31, 2015, the Respondents caused Seago to lose \$120,260.91. Testimony of Benson, Tr 345. This represents a 22.19% loss from the original \$542,023.73 investment. The Division stated it found that during the same time period, the S&P 500 was

down only 6.71% and the accuracy of this figure was not challenged by Respondents.

- 94) Seago's net investment losses at the end of 2015 were \$133,193.40. DFI Ex 48 first tab (sum of cells B6 + C6 – E6). This represents a 24.57% loss from the original \$542,023.73 investment. The Division stated it found that during the same time period, the S&P 500 was down only 3.32% and the accuracy of this figure was not challenged by Respondents.
- 95) In the year 2016, the Schwab IRA account lost \$22,547.26, the Schwab brokerage account lost \$12,691.05, and the OptionsXpress account lost \$1,991.71. Testimony of Benson, Tr 339-40. The Division stated it found that during the same time period, the S&P 500 was up 9.54% and the accuracy of this figure was not challenged by Respondents.
- 96) During the period of time that Seago's investments were with Schwab and OptionsXpress, from June 3, 2015 to approximately May 22, 2017, Seago lost a total of \$178,568.92. Testimony of Benson, Tr 342. This represents a 32.94% loss from the original \$542,023.73 investment. The Division stated it found that during the same time period, the S&P 500 was up 13.24% and the accuracy of this figure was not challenged by Respondents.
- 97) In May of 2017, Cunningham and Leach moved Seago's funds to Fidelity. During the time period Seago held accounts at Fidelity (May 22, 2017 to January 11, 2018), Seago's accounts netted under \$2,000. Testimony of Benson, Tr 343. The Division

stated it found that during the same time period, the S&P 500 was up 15.60% and the accuracy of his figure was not challenged by Respondents.

- 98) In total, under the investment management of PV Wealth, Cunningham and Leach, over 29 months SEAGO sustained investment losses of \$176,599.98, a loss of 32.58% of her original \$542,023.73 investment. Id.; DFI Ex 48 first tab.
- 99) From June 2015 to approximately December 2017, Cunningham, aided and abetted by Leach, made all of the trading and investment decisions concerning Seago's funds, as she had no knowledge or experience to understand the complex transactions he conducted. Testimony of Seago, Tr 784; 786. "I hired them to advise me and to work for me because I didn't know what I was doing." Id. at 787. Seago trusted and depended on PV Wealth Advisors, Leach and Cunningham because they represented themselves as having extensive experience, knowledge and expertise about investing which was superior to that of Seago. Id. at 785.

The Respondents Misled Seago About How Her Investments Were Performing

- 100) During the 29 months the Respondents managed Seago's funds, they visited Seago once and frequently communicated with her via text about the performance of her investments. In August 2015, shortly after Seago invested with PV Wealth, Leach and Cunningham traveled to Wisconsin. They invited Seago and her husband to dinner where they discussed Seago's investments, and how well she was doing. Testimony of Seago, Tr 655-56. They did not disclose that, by the end of July 2015, Seago's Schwab accounts had sustained \$55,619.42 in investment losses. DFI Ex 48 Demonstrative Excel second tab (sum of cells C6 + C7 +D6 + D7). Testimony

of Seago, Tr 674 (the first time Seago realized she had, in fact, lost substantial amounts of money was when she visited Justin Wise at Edward Jones in 2017).

- 101) In early September of 2015, when Cunningham used the ClickMeSEO email to impersonate Seago and to submit the OptionsXpress application, replete with false information about Seago's investment experience and objectives, he failed to inform Seago that her Schwab brokerage and IRA accounts had already sustained a total investment loss of \$120,260.91. Testimony of Benson, Tr 345; Ex 13-051033.
- 102) On November 15, 2016, Cunningham reported to Seago that "Things are fine with accounts; during the election I pulled off calls and put on hedges but now gradually rebuying stocks but have to do so slowly. I transferred 25,000 back into OptionsXpress for fast money tradin." DFI Ex 16-051136. Things were not "fine" with Seago's accounts. By the end of October 2016, Seago's net losses since her original investment with PV Wealth were \$159,935.14. DFI Ex 48 Demonstrative Excel second tab (sum of columns C, D and F, rows 6 through 22).
- 103) On December 1, 2016, Seago texted to Cunningham a screen shot of her account with several figures on it under the words "Margin Details" and "Buying Power." Seago wanted to know "is this actually money that is sitting and growing?" DFI Ex. 16-051144-45. Cunningham responded he did not know the actual balances because there was a "major glitch in the system". He stated, "just know your account is there, that you own stock, and that it's generating substantial income." He indicated that he was shorting Google to profit when it falls. Id. He also claimed

to have made “\$2 million one year” from European style options. Id. He stated “Yeah, if we continue to manage this nicely, it doesn’t matter market up or down, we generate income.” DFI Ex. 16-051146. However, he did not inform Seago that by the end of November of 2016, her net losses since her original investment were \$168,061.37. DFI Ex 48 Demonstrative Excel second tab (sum of columns C, D and F, rows 6 through 23).

- 104) On January 23, 2017, Cunningham texted to Seago (DFI Ex 16-051168): “Most people cannot do it, to be honest I say that humbly. Even Chris cannot because it stresses him out way too much. But I have a good system to where there’s a nice balance between growth and risk I’m very confident in that system. Like I say. At that rate, you won’t ever run out of money.” By the end of December 2016, Seago’s net losses since her original investment were \$170,351.43. DFI Ex 48 Demonstrative Excel second tab (sum of columns C, D and F, rows 6 through 24).
- 105) On March 1, 2017, after Seago received a margin call letter in the amount of \$30,289, and Cunningham texted her that “it was a lie”, Seago asked if she should just shred them. Cunningham texted back: “Yes I would shred those letters. They are 100% wrong ... and yes we’re doing great.” DFI Ex 16-051177. The margin call letters were not wrong and Seago was not doing great. At the end of February of 2017, her investment losses were \$178,625.52. DFI Ex 48 Demonstrative Excel second tab (sum of columns C, D and F, rows 6 through 26) .
- 106) On April 11, 2017, Seago and Leach had the following text exchange:

Seago: “good morning, I know im probably annoying the shit out of Daniel but is there only 89,000 left in the account or does that reflect what isn’t tied up? Yes, im panicking, we are both unemployed now and I need that money to last the rest of my life. Im sorry, not trying to be rude or annoying, I know he says we’re sitting really good but im nervous very nervous.”

Leach: “No promises, this is a volatile place and time. I can tell you he is managing all our money as well. Trust he will not lose your money.”

(DFI Ex 18-051281 to 051284) (excerpt; emphasis added)

By the end of March, 2017, Seago’s net investment losses were \$166,168.15.

Testimony of Benson, Tr 376.

107) On June 14, 2017, Seago sent Cunningham a screen shot showing a figure of \$671,804. She asked Cunningham “Is that how much cash is really in there? Yowza, nice.” Cunningham responded: “yes.” DFI Ex. 16-051207. Actually, Seago’s account balances at Fidelity never approached \$671,804. Testimony of Benson, Tr 377.

108) On July 10, 2017, after the Respondents had discouraged Seago from buying a house for her family, Leach and Seago had the following text exchange:

Seago: “are my accounts way down or something or do u just not want that to happen? Daniel made it sound like the market is doing great and lots of wealth is being generated.”...

Leach: **the accounts are not down.** Daniel is unique in his ability to generate the cash flow he has so far as well as preserve and grow the nest egg.”

DFI Ex 18-051326 (excerpt; emphasis added)

By the end of June 2017, Seago’s investment losses were \$162,260.25. Testimony of Benson, Tr 379.

109) On September 20, 2017, Seago and Leach had the following exchange:

Seago: “hi, im sorry, im not trying to be an annoying bitch, but u and Daniel have both said u would let me know how much I have in investments and neither of u have. Daniel assured me several times that the original amount is still there, he called it the holy grail, all I need to know is how its looking. That’s it, its my entire lifetime worth of money in his hands and I just want to know how its looking....”

Leach: “The derivatives will fluctuate but you have hundreds of thousands of dollars and he will never lose you[r] nest egg. And you are gaining about \$1,000 a day. He is being very conservative with you. Do you need any cash?”

Seago: awesome!!!! Thank u very much. I hope he is feeling better! And we LOVE the house!!! No, don’t need cash, doing good right now.”

Leach: “And he will get back to you as soon as he is recovered. He trades on your account every day. You will not lose your nest egg.”

DFI Ex 18-051349-051350 (excerpt; emphasis added).

Cunningham was not being conservative with Seago’s investments. Testimony of Benson, Tr 380. She was not making \$1,000 per day. Id. By the end of August 2017, KK’s investment losses were \$174,720.22. Id at 381.

110) Further, Leach acknowledged Seago had sent “many messages about wanting to know the balances,” which he flat out refused to provide, stating “Daniel has asked me to not tell you how much the accounts are worth or how they are earning.” DFI Ex 18-051351 (Leach text to Seago dated September 21, 2017).

111) In November 2017, Seago needed to withdraw \$9,500 for dental work. But Leach and Cunningham stalled on releasing the funds. Testimony of Seago, Tr 672-73. This made Seago nervous, so she made an appointment with Justin Wise at Edward Jones to review her account. Id. During her appointment with Wise, Seago learned

she had lost a substantial amount of money, Cunningham had never been a certified financial planner and PV Wealth was not a registered investment advisor firm. Id. at 674. She also learned that she had not been paying PV Wealth a brokerage fee as she had thought. Id. at 679.

- 112) As of November 28, 2017, as Seago was learning about the loss of her account value, Cunningham continued to deny there was any problem:

Seago: answer my question, where is my money

Cunningham: Like I say, need to discuss after market ends. And I need to review the portfolio.

Cunningham: nobody took any money from you Kelly.

Seago: so you are saying u lost my money?

Cunningham: no, I am not saying that. Would you just calm down. You are being psychotic. I don't think it is Productive, and I would rather have an adult conversation about it.

(DFI Ex:16-051220 emphasis added)

PV Wealth Was An Ongoing Unregistered Financial Services Firm

- 113) PV Wealth was an ongoing business at the time Seago became its client in 2015. Cunningham and/or Leach filed Articles of Organization for PV Wealth with the State of California on or about March 27, 2015. DFI Ex. 58 p. 51/71. They filed a Statement of Information for PV Wealth with the State of California, which described the type of business as “financial planning” on May 6, 2015. Resp. Ex. 46; DFI Ex. 58 p. 53/71. PV Wealth’s office address was the same as Leach and Cunningham’s home address. Id. Leach and Cunningham also filed for a service

mark for “No Substitute for First Class.” DFI Ex. 58 p. 69/71. The service mark was published for opposition on April 7, 2015 for a business described as “Strategic financial advisory services.” Id. In addition, on or around May 23, 2014, Cunningham touted the “Facebook avatar and banner” that Lucid Design “created for #PVWealthAdvisors”. DFI Ex 58 pp. 48, 49/71. The Lucid Design website further touted “Logo was a success! Visit facebook.com/pvwealthadvisors.” Id.

114) PV Wealth’s social media presence included a website, a Facebook page, and a Foursquare page. On PV Wealth’s Facebook page, Cunningham held himself out as an RIA, which was noticed by Leach’s investment advisor firm, PCM. Cunningham also posted on PV Wealth’s Foursquare page that it was a CFP (posted on July 12, 2014) and an RIA (posted on October 15, 2014). DFI Ex. 58 pp. 54-58/71. On March 26, 2015, Cunningham also posted a PV Wealth client intake form on Foursquare. Id. As far back as December 19, 2014, Cunningham’s website, danielcunningham.com, listed PV Wealth as one of his businesses, which was viewed by Seago before she gave Cunningham the LPOA. Testimony of Seago, Tr 568-69. DFI Ex. 58 p.40/71.

115) PV Wealth also had two clients: Seago in Wisconsin and Anne Moore (“Moore”) in California. Seago became a PV Wealth client in April 2015 at or around the time Leach and Cunningham created the PV Wealth investment plan for Seago and transmitted it to her worker’s compensation attorney. Testimony of Seago, Tr 589. Seago was told Leach and Cunningham would charge a small percentage of each transaction just like any other broker. Testimony of Seago, Tr 577. Seago believed

she was paying fees to PV Wealth during the period PV Wealth, Cunningham and Leach were managing her investments. Testimony of Seago, Tr 678-79.

116) Investor Moore, of Redondo Beach, California, became a client of PV Wealth on or around April 21, 2015, when Leach and Cunningham came to her home to discuss investing with PV Wealth. Testimony of Moore, Tr 386; 391-93, 408. DFI Ex. 40: PV Wealth memo from meeting dated 21 April 2015. Like Seago, Moore gave Cunningham power of attorney because Cunningham told her “if I didn’t do that, he couldn’t make the trades.” Testimony of Moore, Tr 392. They also told Moore that PV Wealth would waive their fee “because we were starting at the ground floor with them, and you know, when we started making money they would—then they would be making money. So, you know, at this point they were—they were waiving any fees for us—for them to manage our money.” Testimony of Moore, Tr. 394. Like investor Seago, investor Moore lost substantial amounts of money through PV Wealth and Cunningham’s trading activity, causing one Schwab representative to remark “Wow. This person didn’t know what they were doing.” Testimony of Moore, Tr 404.

117) Although Seago believed she had been paying fees to PV Wealth, she was apparently mistaken. PV Wealth did not collect a fee for providing financial services to Seago or Moore. This was a business decision of Cunningham and Leach. Through managing the investments of Moore and Seago, they expected PV Wealth to build a reputation as a successful financial advisor at which point they would start collecting fees. As Leach explained during his interview with DFI (DFI Ex 22-Leach interview w/DFI, 3rd audio file at 34 mins:43 sec- 36 mins:18 sec):

Leach: “Our intent was at that time, was to have PV Wealth as an LLC. We had applied for it. And it was our choice not to charge them anything until we had built up a track record.”

DFI: “So the benefit to PV Wealth was to develop a reputation and track record?”

Leach: “yes.”

The Kenton Lane Letter Filed With DFI

- 118) During his August 15, 2019 interview of at DFI’s office, Leach submitted to the Division a letter dated August 14, 2019 from a psychotherapist named Kenton Lane which described the emotional, mental and physical issues of Cunningham. Testimony of MacHolz, Tr 165-68; DFI Ex 24-051593. Leach informed the Division that he requested Lane to write the letter on his behalf and that the letter was truthful and accurate to the best of his knowledge. Id. at 167; DFI Ex 22 (Leach interview-third audio recording at 56 mins and 30 secs.). Leach also informed the Division that neither Cunningham nor Leach had ever been patients of Lane—just roommates with Lane in the same home with Cunningham and Leach. Id.
- 119) On July 6, 2020, Cunningham and Leach filed a lawsuit in the Superior Court of the State of California for the County of Los Angeles (Case No. 20TRCV00471) against Lane and others alleging, among other things, that Lane provided professional psychotherapy services to them while he resided with them, and that Lane used those therapy sessions to create animosity between them for his personal benefit. Testimony of MacHolz, Tr. 168-71; DFI Ex. 25-051617. Leach and Cunningham further allege that Lane “took it upon himself to draft a letter to the Department of Financial Investigations in Wisconsin on or about August 14, 2019”

in which Lane “wrongly intimated that Plaintiffs had allegedly sequestered money out of accounts Plaintiffs managed, which was untrue.” Testimony of MacHolz, Tr 169-70; Ex. 25 at ¶ 23.

- 120) On June 15, 2021, Leach provided sworn testimony in a deposition in California that contradicted what he told DFI about Lane. For example, he testified he received psychotherapy from Lane three times per week from May 2018 to December 2019. DFI Ex. 26 at p. 94. Leach then went through the letter line by line and testified that he disagreed with the truthfulness of many assertions in the letter. He denied selling the house “as a result of their severe financial situation.” Id. at 137. He denied telling Lane that Cunningham was taking money Lane had paid Leach and using it in the stock market Id. at 138. He denied Cunningham was a drug addict as stated in the Lane letter. Id. at 139.

Cunningham and Leach’s False Representations

- 121) Cunningham, aided and abetted by Leach:
- a. Allowed Leach to falsely represent himself as an investment advisor representative of PV Wealth and PV Wealth as a registered investment advisor firm in the April 7, 2015 letter to Attorney Fitzpatrick and Seago; FOF ¶¶ 39-42, 46;
 - b. Falsely represented himself to Seago in social media to be a Certified Financial Planner with extensive financial experience and

professional skills, including but not limited to “Investment Management”; FOF ¶¶ 25, 26;

- c. Falsely represented to Seago he was a “professional stock & options trader” in a text dated June 30, 2015, and falsely represented to Seago that he was a “professional derivative trader” in a text dated May 16, 2017; FOF ¶¶ 68-69, 83-84;
- d. Represented to Seago that options generate income and insure shares against loss without disclosing the risks of options, margin and leveraged and inverse ETFs to Seago’s overall portfolio due to the speculative investment strategies he employed and failed to disclose his strategies were not consistent with her risk tolerances and substantially departed from the PV Wealth investment plan; FOF ¶¶ 50, 51, 69, 85-90;
- e. Falsely represented himself on Schwab LPOA forms as having “extensive” investment experience when he did not, and omitted to disclose his business relationship with Seago through PV Wealth; FOF ¶¶ 4, 60;
- f. Falsely represented Seago’s investment objectives to include “speculation” on Schwab brokerage and IRA account applications; FOF ¶ 59;

- g. Falsely represented himself to Seago and Charles Schwab on the Options Applications as having extensive knowledge about trading stocks and extensive knowledge and experience in options trading, and falsely represented Seago's knowledge and experience with options as well; FOF ¶¶ 62-63;
- h. Impersonated Seago to Schwab, without her knowledge or consent, in emails using Clickmeseo@gmail.com, and in at least one chat message; FOF ¶¶ 71-73, 74-75; and
- i. Falsely represented Seago's annual income, investment objective, and investment experience to Fidelity. FOF ¶ 80-82.

122) Leach engaged in the following false representations:

- a. Falsely represented himself to be an Investment Adviser Representative of PV Wealth Advisors to Seago and her attorney; FOF ¶¶ 39-42, 46;
- b. Failed to inform Seago and her attorney that PV Wealth Advisors was not a registered investment adviser; FOF ¶¶ 39-42, 46;
- c. Failed to inform Seago that Cunningham was not a Certified Financial Planner; FOF ¶¶ 26, 40;
- d. Failed to inform Seago that Cunningham was not an experienced investor; FOF ¶¶ 26, 40;

- e. Represented to Seago that options generate income and insure shares against loss without disclosing the risks of options, margin and leveraged and inverse ETFs to Seago's overall portfolio due to the speculative investment strategies Cunningham employed and failed to disclose those strategies were not consistent with Seago's risk tolerances and substantially departed from the PV Wealth investment plan; FOF ¶¶ 50, 51, 69, 85-90;
- f. Assisted Cunningham to falsely represented himself on Schwab LPOA forms as having "extensive" investment experience when he did not, and omitted to disclose Cunningham's business relationship with Seago through PV Wealth; FOF ¶¶ 4, 60;
- g. Falsely represented Seago's investment objectives to include "speculation" on Schwab brokerage and IRA account applications; FOF ¶ 59 47;
- h. Assisted Cunningham to falsely represented himself to Seago and Charles Schwab on the Options Applications as having extensive knowledge about trading stocks and extensive knowledge and experience in options trading, and falsely represented Seago's knowledge and experience with options as well; FOF ¶¶ 62-63; and
- i. Assisted Cunningham to falsely represent Seago's annual income, investment objective, and investment experience to Fidelity. FOF ¶ 80-82

CONCLUSIONS OF LAW

Legal Authority and Jurisdiction

- 1) The Administrator of the Division (“administrator”) has the legal authority and jurisdiction over the conduct described above pursuant to Wis. Stat. Ch. 551 and the rules and order promulgated thereunder.
- 2) Pursuant to Wis. Stat. § 551.604, if the administrator determines that a person has engaged, is engaging or is about to engage in an act, practice or course of business constituting a violation of Ch. 551 or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice or course of business constituting a violation of Ch. 551 or a rule or order issued under Ch. 551, the administrator may issue cease and desist orders, revoke exemptions, and order civil penalties, restitution, disgorgement, interest and costs pursuant to § 551.604(1)-(5).
- 3) PV Wealth Advisors was transacting business in Wisconsin as a broker-dealer as defined under Wis. Stat. § 551.102(4) and DFI Sec. 1.02(5), Wis. Admin. Code.
- 4) Daniel Cunningham was transacting business in Wisconsin as the agent of a broker-dealer as defined under Wis. Stat. § 551.102(2) and DFI Sec. 1.02(5), Wis. Admin. Code.
- 5) Pursuant to Wis. Stat. § 551.401(1), it is unlawful for a person to transact business in Wisconsin as a broker-dealer unless the person is registered under Ch. 551 as a broker-dealer or is exempt from registration under Wis. Stat. § 551.401(2).

- 6) Pursuant to Wis. Stat. § 551.402(1), it is unlawful for an individual to transact business in Wisconsin as an agent unless the individual is registered under Ch. 551 as an agent or is exempt from registration under Wis. Stat. § 551.402(2).
- 7) Pursuant to Wis. Stat. § 551.501(2), it is unlawful for a person, in connection with the offer, sale or purchase of a security, directly or indirectly, to make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.
- 8) Pursuant to Wis. Stat. § 551.501(3), it is unlawful for a person, in connection with the offer, sale or purchase of a security, directly or indirectly, to engage in an act, practice or course of business that operates or would operate as a fraud or deceit upon another person.
- 9) Pursuant to Wis. Stat. § 551.505, it is unlawful for a person, to make or cause to be made in a record that is used in an action or proceeding or filed under this chapter, a statement that, at the time and in the light of the circumstances under which it is made, is false or misleading in a material respect, or, in connection with the statement, to omit to state a material fact necessary to make the statement made, in the light of the circumstances under which it was made, not false or misleading.

Violations

- 10) Through the conduct described above in the Findings of Fact, PV Wealth Advisors, LLC violated Wis. Stat. § 551.401(1) by transacting business as a

broker-dealer in Wisconsin without registration and without being exempt from registration.

- 11) Through the conduct described above in the Findings of Fact, Daniel Cunningham violated Wis. Stat. § 551.402(1) by transacting business in Wisconsin as an agent of PV Wealth Advisors without registration as an agent and without being exempt from registration.
- 12) Through the conduct described above in the Findings of Fact, and as aided and abetted by Leach, Daniel Cunningham and PV Wealth Advisors violated Wis. Stat. § 551.501(2), when in connection with the offer, sale or purchase of securities, directly or indirectly, Cunningham made untrue statements of material fact and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.
- 13) Through the conduct described above in the Findings of Fact, and as aided and abetted by Leach, Daniel Cunningham and PV Wealth Advisors violated Wis. Stat. § 551.501(3) when in connection with the offer, sale or purchase of securities, directly or indirectly, they engaged in an act, practice or course of business that operates or would operate as a fraud or deceit upon another person.
- 14) Through the conduct described above in the Findings of Fact, Leach violated Wis. Stat. § 551.501(2) when in connection with the offer, sale or purchase of securities, he made untrue statements of material fact and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

- 15) Through the conduct described above in the Findings of Fact, Leach violated Wis. Stat. § 551.501(3) when in connection with the offer, sale or purchase of securities, directly or indirectly, he engaged in an act, practice or course of business that operates or would operate as a fraud or deceit upon another person.

DISCUSSION

I. PV Wealth transacted business in Wisconsin as an unregistered broker-dealer in violation of Wis. Stat. § 551.401(1) and Cunningham acted as its unregistered agent in violation of Wis. Stat. § 551.402(1).

A. The Respondents were “effecting transactions in securities.”

- 1) Pursuant to Wis. Stat. § 551.102(4), “broker-dealer” means a person engaged in the business of effecting transactions in securities for the account of others.
 - a) A “person” includes a limited liability company. Wis. Stat. § 551.102(20). PV Wealth Advisors, LLC is a limited liability company.
- 2) Pursuant to Wis. Stat. § 551.102(2), an “agent” means “an individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities.”

The record shows ample evidence, uncontradicted, that Cunningham, was effecting transactions in securities in the accounts of Ms. Seago at Fidelity and Schwab. Cunningham was the sole and managing member of PV Wealth, an LLC he created to engage in the business of financial planning.

Cunningham was trading in Seago's accounts, effecting transactions, for 29 months. See generally DFI's Post-Hearing Brief ¶¶ 91-99 at pp. 37-38. Thus, he was offering and selling securities within the meaning of the Wisconsin Uniform Securities Law. Wis. Stat. § 551.102(26) (a sale includes every "disposition of a security ... for value").

The definition of sale in Wis. Stat. § 551.102(26) contains no requirement one pay compensation to a broker in order for the disposition of the security to be "for value". The securities Seago received were not given her to free, instead, Seago paid trading and margin fees in addition to the actual purchase price for the securities Cunningham bought and sold on her behalf. Thus, Seago paid "value" for the purchased securities. The fact that the Respondents did not collect "compensation" for their services is irrelevant.

Wisconsin courts coordinate the interpretation and administration of Wis. Stat. ch. 551 with related federal regulations and "find instructive case law interpreting federal securities legislation and accompanying regulations and case law from other jurisdictions that have enacted the Uniform Securities Act." *State v. McGuire*, 2007 WI App 139, ¶12, 302 Wis. 2d 688, 699-700, 735 N.W.2d 555, 561. Therefore, See *United States v. Naftalin*, 441 U.S. at 773 (a broker placing a sell order constitutes an "attempt to dispose" of a security within the definition of "sale"); see also *Ainsworth v. Skurnick*, 909 F.2d 456, 460-61 (11th Cir. 1990), certified question answered, 591 So. 2d 904 (Fla. 1991) (affirming trial court's finding that Skurnick, a New York broker-dealer, "sold" securities in Florida when the defendant opened an account and traded securities for a Florida resident, had direct, extensive correspondence with the client, and exercised discretionary authority over the account).

It does not matter whether Seago thought she was engaging Respondents as an investment

advisor or as a broker-dealer. What does matter are the activities the Respondents were engaging in on behalf of Seago and whether they trigger licensing and registration requirements. PV Wealth clearly was engaged in the business of effecting transactions in securities in Seago's accounts under the definition of a broker-dealer in Wis. Stat. § 551.102(4), and Cunningham represented PV Wealth as its agent in effecting purchases or sales of securities, pursuant to Wis. Stat. § 551.102(2). Therefore, the registration provisions of the broker-dealer statute, apply, with their lack of a compensation component, rather than the provisions pertaining to investment advisers, which do require compensation.

B. The Respondents “transacted business” in Wisconsin without registration.

- 1) It is unlawful for both broker-dealers and agents to transact business in Wisconsin without registration. Wis. Stat. §§ 551.401(1) and 551.402(1).
- 2) For purposes §§ 551.401(1) and 551.402(1), “transact business” means effecting or attempting to effect transactions in securities for the account of any person in this state through the United States mail, by telephone or by other means from outside or from within this state. Wisc. Admin Code, DFI §1.02(5)(a). “Transact business” also includes soliciting persons in this state via mail, telephone or other means to become a customer. Wisc. Admin Code, DFI §1.02(5)(c).

Numerous facts established at the hearing meet the definition of “transact business” for purposes of determining a violation of §§ 551.401(1) and .402(1). The Respondents solicited Seago to be the first client of PV Wealth. They told her they would charge her a fee just like any other broker would charge. FOF ¶ 34. They conducted a risk assessment and created an investment

plan for Seago as part of their financial management services. FOF ¶¶ 37-39. They transmitted the investment plan and a cover letter dated April 7, 2015, both on PV Wealth letterhead, to Seago and her attorney, Ron Fitzpatrick, both located in Wisconsin. FOF ¶ 40; DFI Ex. 46. Leach represented himself to be an investor advisor representative of PV Wealth, an investment advisor firm, on the cover letter. Id. Leach also spoke with Fitzpatrick in Wisconsin on the telephone, identifying himself as a licensed financial advisor. FOF ¶ 41. Because of Leach's letter and discussions with Seago and Fitzpatrick, they believed the PV Wealth investment plan was created by registered financial advisors, that Seago was the client of PV Wealth, and her worker's compensation settlement would be invested as set forth in the plan. FOF ¶¶ 46-47. From about March or April of 2015 to November 2017, Cunningham and Leach were in regular contact through email, text and phone with Seago in Wisconsin as part of the investment management services of PV Wealth. FOF ¶¶ 36, 50.

PV Wealth through its representatives, Cunningham and Leach, was an operating business in 2015. PV Wealth was a registered LLC in the State of California and Cunningham promoted it through a prominent social media presence, including a Facebook page, a website and a Foursquare page which were viewable to Seago in Wisconsin. FOF ¶¶ 113-114. In addition, before Seago invested with PV Wealth and Cunningham, Leach directed Seago to view Cunningham's Facebook page which contained a link to the danielcunningham.com website, where PV Wealth was prominently referenced. FOF ¶¶ 22, 30-32. Leach and Cunningham had trademarked the phrase "No Substitute for First Class" and used it on firm letterhead, which was sent to Seago and her attorney. Testimony of MacHolz, Tr 139. Ex. 46. In addition to Seago, PV Wealth had another client, Moore, in California, who received its investment management services during the same time period as Seago and Cunningham and Leach even laid out their business model for Moore.

FOF ¶ 116. All of this evidence establishes PV Wealth intended to operate and was operating an investment management business in 2015.

Respondents' assert that the lack of a written agreement coupled with the lack of any direct, monetary compensation means they did not "transact business" in violation of §§ 551.401(1) and 551.402(1). However, this argument is without merit. The definition of "transact business" in the administrative code does not require the existence of written agreements or compensation paid to the broker-dealer or agent. See Wisc. Admin Code, DFI §1.02(5)(a) and (c). The arrangements with Seago and Moore were not charitable, they were entered into with a business intent and focus. Cunningham and PV Wealth were clearly effecting transactions in securities in the accounts of Seago and they did so with the business, not charitable, intent of launching and promoting PV Wealth as a business.

Respondents deny they were engaged in the "business of effecting transactions in securities" because there is no evidence that they received direct, monetary compensation from Seago. The decision to not charge a fee to Seago was a business decision of Cunningham and Leach. The testimonies of both Seago and Moore are very similar and involve meetings occurring in late March/early April 2015 for Seago and around April 2015 for Moore. Seago testified, credibly, that (and the Leach interview indicated) there would be a small percentage of each transaction for a fee (like any other broker) Testimony of Seago, Tr. 577. Moore did not testify that there was no fee, rather, she testified that they (Cunningham and Leach) said they were just starting their business and were going to waive their fee until "we" started making money, "then they would". Testimony of Moore, Tr at 394. The relevance of the Moore testimony is that Respondents claim PV Wealth was not operating when it in fact was and Moore shows, like with Seago, there was a business strategy that was being followed.

The similarities of the Seago and Moore recollections of their discussions with Cunningham and Leach regarding fees are entirely consistent with Leach's own statement to DFI in an interview. Cunningham and Leach planned to build PV Wealth's reputation as a successful financial adviser through managing the investments of Seago and Moore. Once they were successful, they would begin collecting fees. This "business plan" was explained by Leach as follows:

Leach: "Our intent was at that time, to have PV Wealth as an LLC. We had applied for it. And it was our choice not to charge them anything until we had built up a track record."

DFI: "So the benefit to PV Wealth was to develop a reputation and track record?"

Leach: "Yes."

(DFI Ex 22-Leach interview w/DFI, 3rd audio file at 34 mins:43 sec- 36 mins:18 sec:)

Finally, the definitions of a broker-dealer and agent under Wis. Stat. §§ 551.102(4) and .102(2) do not require the person effecting transactions in the accounts of others do so for compensation. While it is true that in order to be liable for registration violations as a broker-dealer and agent under Wis. Stat. §§ 551.401(1) and 551.402(1), Cunningham and PV Wealth must have "transacted business" in Wisconsin as that phrase is defined under Wisconsin law, the definition of "transact business" omits any reference to compensation or profit and focuses instead on the forms of communication between the Respondents and customer, such as effecting or attempting to effect transactions in securities via mail, telephone or other means. Wisc. Admin. Code, DFI §1.02(5)(a) and (c). In this case, Respondents transacted business in Wisconsin by effecting transactions in securities for the accounts of Seago in Wisconsin through the mail, telephone and Skype.

The fact that the Respondents did not offer Seago or Moore an investment services agreement to sign does not change the fact that they had a business relationship with both Seago and Moore. Cunningham and Leach met with both of these potential investors and left both investors with the same impression that this was a business relationship and they were both being solicited to be early clients of the Respondents. Testimony of Seago, Tr. 677; FOF ¶ 116. This was not some free or charitable relationship; it was a business relationship.

II. The Respondents Made Numerous Misrepresentations in Violation of Wis. Stat. §§ 551.501(2) and (3).

Under Wis. Stat. § 551.501, it is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly,

to make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. § 551.501(2); or

to engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person. § 551.501(3).

A. The Respondents misrepresented their registration status and Cunningham’s investment experience to Seago.

DFI proved by a preponderance of the evidence that Leach and Cunningham misrepresented PV Wealth’s and Leach’s registration status to Seago and her attorney, Ron Fitzpatrick. Leach directed Seago to Cunningham’s Facebook page before she invested, so that she could review Cunningham’s credentials. FOF ¶¶ 30-32. On Cunningham’s Facebook page, he identified himself as a certified financial planner, and listed other “professional skills” such as Financial products, Derivates market, Derivative (finance), Leverage (finance), Stock trading, Financial analysis, Financial Services, Short selling, Hedge Fund, Foreign currency, Futures exchange, Options strategy, Forex Trading, Commodities exchange, and Investment Management. FOF ¶¶ 25-26. None of this was true. Cunningham was not a certified financial planner and he

had no investment or finance experience prior to meeting Leach in 2013 or 2014. To the contrary, he had a tutoring business and specialized in the subjects of chemistry, math and biology. FOF ¶¶ 4, 26.

Cunningham's misrepresentations were material. "Materiality is measured by an objective standard." *Cuene v. Hilliard*, 2008 WI App 85, ¶ 26, 312 Wis. 2d 506, 754 N.W.2d 509. The fact finder assesses whether the omitted or misrepresented fact would have made a difference to a reasonable investor's decision to invest. *Id.*; *State v. Johnson*, 2002 WI App 224, ¶ 21, 257 Wis. 2d 736, 652 N.W.2d 642.

A reasonable investor such as Seago would have considered it significant that Cunningham did not actually hold the CFP designation and had none of the investment skills listed on his Facebook page. A reasonable investor would not have retained PV Wealth to manage her assets if she knew its sole managing member did not have any of the professed financial skills. Respondents do not deny the misleading things that Cunningham said or posted, rather, they try to argue that, technically, because Seago was initially imprecise about the date when she saw this information that she did not, then, see the representations before she invested. Therefore, Respondents claim, she could not have relied on them. However, she testified, repeatedly and credibly, that she did see them and rely on them. In fact, Seago testified, credibly, that she was impressed by his apparent skills and credentials as was her husband at the time. Testimony of Seago, Tr. 562, 563, 565-566, 569-572. An individual who fabricates their professional background and expertise to attract investors, as Leach and Cunningham did here, commits securities fraud. *SEC v. Helms*, 2015 U.S. 55 Dist. LEXIS 110758 *43-44 (W. Dist. Tex. 2015); *In the Matter of Timothy S. Dembski*, 2017 SEC Lexis 959 (Opinion of the Commission) (March 24, 2017) *22-23.

The misrepresentations continued after they had convinced Seago to use their services. In communicating with Attorney Fitzpatrick and Seago, the Respondents misrepresented the registration status of both Leach and PV Wealth. Leach told Fitzpatrick he was a licensed financial advisor. FOF ¶ 41. He transmitted to Seago and Fitzpatrick a cover letter dated April 7, 2015 and investment plan on PV Wealth letterhead that contained the words “Private Client Services” and “No Substitute for First Class” and asserted that he had discussed the allocations in the plan with Seago. FOF ¶ 39; DFI Ex. 46. Both Seago and Fitzpatrick predictably understood 1) Seago was a client of PV Wealth and 2) Leach and PV Wealth were both licensed advisors. Testimony of Fitzpatrick, Tr 291; Testimony of Seago, Tr 591. In fact, neither Leach nor PV Wealth were registered with any securities regulator FOF ¶¶ 4, 16.

Respondents argue that Seago should have known that Cunningham was a “30 year old test prep tutor who’s experience in investing at the time was limited to managing his own account, his mother’s accounts, and the accounts for a few personal connections.” Of course, this ignores many statements by Leach in support of Cunningham’s expertise, Cunningham’s own social media and webpage misrepresentations about his abilities and credentials as well as the misrepresentations to the Attorney Fitzpatrick and brokerage firms.

Respondents cannot, on the one hand, flaunt Cunningham’s experience and credentials in order to attract clients then, on the other hand, when his incompetence is exposed, claim the victim should have known he was only 30 and had little experience. Cunningham and Leach went to great lengths to convince Seago and everyone else that the opposite of what the Respondents say now (he’s 30 years old with little experience) is true and everyone should have known. Respondents do not deny the harm caused to victim Seago, instead they blame the victim for ever relying on them in the first place.

Respondents actually argue that the letter to Fitzpatrick signed by Leach which contains the phrase “Investment Adviser Representative” was not misleading because it did not say he was currently an IAR and Seago knew he no longer worked for Poehling Capital. It is ludicrous to suggest that ANY investor, let alone an inexperienced investor, or anyone else who does not work in the industry or for DFI’s Division of Securities would understand licensing requirements and practices. Simply put, that misleading statement was included on the letter signed and submitted by Leach for the sole purpose of convincing Fitzpatrick that Ms. Seago’s settlement funds would be handled conservatively by licensed investment professionals. In addition, this also ignores the fact Leach directly told Fitzpatrick that he was a “licensed financial advisor”. Again, Respondents claim the victims of their misrepresentations should have known the truth.

These misrepresentations were material. A reasonable investor would want to know whether her advisors were registered to give investment advice and whether they had obtained and maintained their registration with authorities. In fact, Attorney Fitzpatrick would not have presented the PV Wealth investment plan to the Worker’s Compensation Division if he had known Leach and the firm were not registered. FOF ¶ 46. These initial misrepresentations 1) to Seago to get her business and 2) to Fitzpatrick to obtain his necessary recommended approval to the Worker’s Compensation Division set everything else into motion. If Respondents had been honest to Seago about their lack of credentials and experience or they had been likewise honest to Fitzpatrick, it is likely that none of the harm to Seago’s life savings would have followed. Without those misrepresentations, they would not have had over 60% of the money they ultimately invested and it is unlikely that Seago would have moved the rest of her finances, her retirement funds, to the Respondents.

B. The Respondents misrepresented the trading strategies they employed as conservative.

The PV Wealth investment plan created by the Respondents and agreed to by Seago appeared to be consistent with her risk tolerances, which included “trail stock market but make moderate profit” and “hard time tolerating any losses.” Testimony of Benson, Tr 313, 316. In the hearing, Seago testified her investment objective at the time was “conservative” as she wanted to “preserve that capital” and “live off of [her] settlement for the rest of [her] life”, which she disclosed to the Respondents. Testimony of Seago, Tr 576, 619.

However, Respondents departed from the PV Wealth investment plan in the very first month they began managing Seago’s money by engaging in options trading. FOF ¶¶ 91-92. While they told Seago the “goal was long term growth” (DFI Ex. 13-051006) in June 2015, the first month PV Wealth managed her assets, Cunningham began trading in options. FOF ¶ 91 As Poehling testified, options are “a very risky strategy” based on short term movements in the market and “Warren Buffet[t], who today is 91 years old probably recognized as the greatest investor [of the] last century, will say that even he with his superior talents cannot predict the short-term movements of the financial markets. That’s what you’re doing with options.” Testimony of Poehling, Tr 39. In the second and third months under the Respondents’ management, Cunningham intensified his speculative strategies by day trading covered calls, buying stocks on margin, and trading in leveraged and inverse ETFs, resulting in a net loss of \$120,260.91. FOF ¶¶ 92-93. Testimony of Benson, Tr 345.

There is no evidence that either Cunningham or Leach ever discussed the risks of options, margin or leveraged and inverse ETFs with Seago. The record also shows that while PVW Wealth managed her funds, Seago made no investment decisions herself and, instead, relied entirely on

the statements of Leach, Cunningham and PV Wealth. Testimony of Seago, Tr 786. Leach completed the Schwab and Fidelity brokerage applications. Testimony of MacHolz, Tr. 162. Leach, who should have known better as a *former* investment advisor representative, told DFI that disclosing the risks of recommended investments to Seago “wasn’t my job.” DFI Ex. 22 (second audio file at 37 mins and 40 secs). Further, none of the texts from Cunningham to Seago disclosed the risks. He discussed only the use of the options to hedge risks and generate income. FOF ¶ 50. Both Leach and Cunningham informed Seago their strategy was a conservative one that works in up and down markets. DFI Exs. 16-051146 and 54-052363-64. In fact, Cunningham claimed higher levels of options trading “actually reduce market risk and generate income simultaneously.” FOF ¶ 50(e); DFI Ex. 13-051029.

DFI has established by a preponderance of the evidence that Seago agreed to options trading, margin and leveraged and inverse ETFs only because they were represented to her to be safe strategies. Seago was consistent and credible in her testimony that her knowledge of options came from Cunningham, that he first raised the topic of options **after** the PV Wealth investment plan was shared with Seago and they had started working with her money, and he told her options were “an insurance policy and that they were very safe.” Testimony of Seago, 594, 615, 636. The text messages from Cunningham and Leach to Seago, especially in 2015, when PV Wealth started investing her assets, demonstrate that the Respondents referred to their trading strategy as conservative. FOF ¶ 50.

Thus, the evidence establishes that when Seago agreed to allow options trading and margin in her accounts, she was not agreeing to speculation or high risk. She was agreeing to a conservative strategy in line with her risk tolerances and investment plan. Seago testified, credibly, that she never changed her risk tolerance. Testimony of Seago, Tr 587-88. Portraying options

trading as a conservative strategy that works in up and down markets when it is actually an aggressive and speculative strategy is securities fraud. See *Gray v. TD Ameritrade*, 2019 U.S. Dist. LEXIS 80027 (N. Dist. Ill. May 13, 2019) (defendants’ misrepresentations about the conservative nature of the put options income strategy were made “in connection with” a securities transaction because such a transaction is the foundation of the plaintiffs’ claim). Seago was naïve, trusting and inexperienced. Cunningham and Leach knew that and used it to their advantage. Cunningham knew she did not understand options trading and margin but he knew she relied on his misrepresented expertise. He knew that all he had to do was tell her that, whatever he was doing with her accounts, it was in line with her desired conservative approach and she would trust him.

C. The signed Options Applications do not excuse the Respondents’ material misrepresentations and omissions.

Respondents argue that Seago consented to high risk speculative trading when she signed the Schwab Options Applications. The evidence at the hearing established Seago did not consent to speculation, and the fact that Seago signed the boilerplate forms (at Respondents’ urging) does not preclude the Respondents’ liability under Ch. 551. This is consistent with the complete trust that Seago credibly testified she had placed in Respondents to invest in accordance with her conservative goals, which they repeatedly assured her they were doing. Even taking Respondents’ argument as true and exculpatory, the verbiage in the Options Applications only referenced options and margin—not leveraged and inverse ETFs. Seago was naïve in trusting Respondents’ abilities and experience but this was a trust cultivated by Respondents then exploited.

As discussed by DFI Examiner Benson, trading in covered call options can be a limited risk strategy that has its place in a conservative investment portfolio. Testimony of Benson, Tr 357- 58. Indeed, the Respondents convinced Seago to allow options trading because it would “hedge equities while generating income” and were “less risky than buying stocks alone.” DFI Ex

13-051029; 050984-986. See FOF ¶ 50. Thus, as discussed above, the evidence establishes Seago signed Schwab's Options Applications because she believed she was agreeing to the conservative strategy her advisors promised to implement. Signing these applications, alone, does not demonstrate an indication to change her investment philosophy or her risk tolerance. Testimony of Seago, Tr 587-88; 640-41. Therefore, the acknowledgments in those applications are irrelevant to the culpability and liability of the Respondents.

1. Applicable case law demonstrates boilerplate acknowledgments in account applications do not preclude liability for securities fraud.

The Schwab paperwork signed by Seago does not excuse the Respondents' material misrepresentations and omissions. In *Patel v. Wagha*, the customer signed options agreements only after the financial advisor assured him that he would invest conservatively and his assets would be safe. Despite offering these assurances, the advisor began trading options on the customer's account almost immediately, with catastrophic losses. The customer would not have invested with the advisor if he knew the advisor would invest the money in high-risk options. *Patel v. Wagha*, 2016 U.S. Dist. 74983 at *6-7 (N. Dist. Ill. 2016). After a jury trial in favor of the customer, the advisor sought judgment as a matter of law arguing in part, the customer had signed investment agreements allowing risky options trading which were incompatible with his conservative goals. *Id.* at *12. The district court rejected this argument, which was affirmed by the Seventh Circuit:

[T]he Dealers' principal argument is that the evidence used to show Patel's investment goals is incompatible with the contracts he signed when opening his account... [T]hey observe the contracts allow them to purchase many kinds of instruments, including options. This necessarily establishes that Patel consented to high-risk investments...

[T]his argument reflects a common misunderstanding about options and other leveraged derivative instruments, such as futures contracts. Derivatives can be used to speculate, which is how Wagha used them.

An investor (or agent) hoping that the market will rise can use derivatives to multiply the gain if prices go up, at the cost of multiplying the loss if they go down. But derivatives also can be used to hedge risk. Wagha could have used most of Patel's money to buy a diversified basket of stocks and then bought options that would have made money if the market fell; gains from those options would have offset any losses from the securities and so made Patel's investment safer. **The fact that options can mitigate risk by hedging, as well as augment risk by speculation, means that a client's assent to options trading does not imply agreement to take extra risk. It means agreement to the sort of options trading suitable to the client's investment goals. And if, as the jury found, Patel told Wagha that his goal was to protect his principal, then what Patel consented to was the use of options to hedge risk.**

Patel v. Wagha, 866 F. 3d 846, 848 (7th Cir. 2017) (emphasis added). Like Patel, Seago signed the Schwab Options Applications because she was agreeing to the conservative options strategy which the Respondents promised to implement, in accordance with the conservative risk tolerance she had repeatedly expressed to Respondents.

Respondents cannot rely on Schwab's "boilerplate" disclosures to make up for Respondents' own misrepresentations and omissions. The Schwab options and margin applications contained generic acknowledgements and all customers who open such accounts must sign them. The terms are not negotiated or tailored to any particular customer's risk tolerances or objectives. Testimony of Benson, Tr 493. They were certainly not tailored to Seago.

Financial professionals may be liable under the securities laws for misrepresenting the risks of their recommended strategies regardless of boilerplate disclosures. See *In re Philip L. Spartis, et al.*, Admin. Proc. File, 3-13979 SEC Commission Decision, 2011 SEC LEXIS 1693 (May 13, 2011) (Registered reps provided a one-sided picture of earnings potential and omitted important risk disclosures, such as potential adverse consequences of financing transactions on margin. Generic risk disclosures gave customers only a general understanding of margin, but did not

disclose the specific risks to the customer's particular situation if the stock price remained flat or decreased.)

The boilerplate acknowledgments in the Schwab options trading and margin applications did not address the risks of leveraged and inverse ETFs, nor Seago's risk assessment and the conservative investment plan that was created and tailored to address Seago's unique circumstances and risk tolerances. Testimony of Benson, Tr 487-89. The Schwab acknowledgements were not designed to protect non-Schwab financial advisors from their obligations to disclose the risks of their specific investment advice, or the risk that they would depart from the agreed to conservative strategy to a speculative and risky strategy. Id. at 488-489

2. Seago did not read the Schwab acknowledgment section in the Schwab forms.

Seago testified she did not read the acknowledgment section in the Schwab Options Applications and, if she had read it, she would not have understood it. Testimony of Seago, 744-46. Seago claims, credibly, that at the time, she was facing mental and physical challenges, she had difficulty comprehending legal documents. FOF ¶ 28. It is clear in the record and was clear to Respondents that she was not a sophisticated investor. FOF ¶ 57. It is entirely credible that at the time, combining her mental and physical challenges with her lack of sophistication, even if she had tried to read the documents, she would not have comprehended their meaning. Rather, she relied on Cunningham and Leach, who she believed had superior knowledge and skills with respect to investments, to point out anything in the Schwab paperwork that was pertinent to her investments. See *Bank of Sun Prairie v. Esser*, 155 Wis. 2d 724, 733-34, 456 N.W.2d 585 (1989) (rejecting bank's argument that a guarantor was barred from bringing a misrepresentation claim

even though she failed to read the guarantee, and noting all the circumstances must be considered, including the intelligence and experience of the misled individual).

Cunningham had broad discretion over Seago's accounts and made every investment decision for her, which created a fiduciary relationship between Cunningham and Seago under Wisconsin law. *Schweiger v. Loewi*, 65 Wis. 2d 56, 64, 221 N.W. 2d 882 (1974); *Merrill Lynch, Pierce, Fenner & Smith v. Boeck*, 127 Wis. 2d 127, 133-134, 377 N.W. 2d 605 (1985). Unregistered brokers who act as fiduciaries have an obligation to disclose and not remain silent regarding material facts. See *SEC v. Helms*, 2015 U.S. Dist. Lexis 110758 *46 n. 26 (W. Dist. Texas 2015) (unregistered brokers had a fiduciary duty to investors even though they were unlicensed); *SEC v. Randy*, 38 F. Supp. 2d 657, 670 (N.D. Ill. 1999) (holding unregistered broker to the same standard of care as a registered broker—he “should not be held to a lesser standard of care because he failed to comply with registration provisions of the federal securities laws.”). Under such circumstances, it was reasonable for Seago to sign the account forms without reading the small print, and to rely on her advisors to alert her to any pertinent information impacting her investments. Testimony of Benson, Tr 489. See *Bank of Sun Prairie*, 155 Wis. 2d at 732-34.

Two licensed/registered investment management professionals from separate firms who testified in this case agreed that it is standard practice for investment management professionals such as themselves, and which Respondents purported to be, to personally review and discuss risks with their clients before the clients sign boilerplate disclosure forms. Testimony of Poehling, Tr 49-50; Testimony of Wise, Tr 540-41. Such professionals do not rely on boilerplate forms created by third parties. Leach attended meetings with clients when he worked at Poehling Capital Management where he would have seen firsthand that standard practice as well being as a licensed professional himself previously. Testimony of Poehling, Tr. 50.

Cunningham himself also was aware that merely having Seago sign off on boilerplate disclosure documents was not enough to ensure she understood the risks of the activities that Cunningham wanted to engage in. When Cunningham spoke with Schwab about trying to raise the level of options trading privileges in Seago's accounts, Schwab was aware that Seago had signed the Options Applications. Nevertheless, Schwab still would not approve speculative Level 1 trading privileges unless they spoke to Seago directly about the impact of substantial losses on her retirement. FOF ¶ 66. Cunningham kept that conversation from Seago and she never spoke with Schwab about the potential of losses in her account. Testimony of Seago, Tr 639-41.

3. The Options Applications did not contain detailed disclosures about risk

The acknowledgment section in the Options Applications indicates that substantive disclosures about margin and options were contained in separate documents called the "Margin Borrowing at Schwab Overview and Disclosure Statement" and the "Options Application Agreement" which contains the "Option Trading Rules" and "Option Agreement." See, e.g. DFI Ex 10-001069. Seago testified she did not read a document called "Margin Borrowing at Schwab Overview and Disclosure Statement" and if she had, knowing her own level of education and experience, she would not have understood it. Testimony of Seago, Tr 787-788. This lack of experience and knowledge is exactly why she retained PV Wealth to invest for her. In fact, Seago relied on Cunningham's professed, but misrepresented, expertise so much so that she executed limited power of attorney documents so that Cunningham could trade for her. FOF ¶ 60.

Respondents have not testified or presented evidence of what information is in those separate documents referenced in the Options Application nor that Seago read and comprehended them. There is only Seago's credible testimony that she did not read them and, if she did, that she

would not have understood them. This, combined with the earlier evidence that when Schwab stated they wanted to discuss the risks with Seago about options and margin and Cunningham never passed that information on to Seago, demonstrates that the Respondents cannot reasonably argue that Seago was somehow informed of the risks of options and margin to her portfolio based on the Options Applications. One could assume that apparent avoidance of providing meaningful and fully accurate explanations about the risks of options and margin was intentional by Respondents.

D. Other Material Misrepresentations and Omissions

The evidence put forth by the Division establishes the Respondents made repeated material misrepresentations to both Seago and the brokerage firms during the time the Respondents managed her assets. In 2015, blatant false information was entered into Seago's account applications in order to get approval for options trading. There is no dispute in the record that the information was entered by the Respondents. The record shows that when misrepresentations were made, they were either made by Respondents or by Seago but originating from Respondents, such as the prefilled account forms and the idea for Cunningham to represent himself as Seago's stepbrother to name a few. Respondents, for the most part, do not even argue that they didn't lie, they simply say that Seago knew or should have asked why they were lying. None of the misrepresentations originated from Seago or were the brainchild of Seago, they came from the Respondents. Again, this is consistent with Seago's complete trust in Respondents' management of her accounts.

The record shows that:

- 1) Cunningham completely falsified his options knowledge and trading

experience to Schwab in the Options Applications. FOF ¶¶ 62-63;

- 2) when applying for the OptionsXpress account, Cunningham pretended to be Seago in an email, and misrepresented her options knowledge, experience and investment objectives on the application. FOF ¶¶ 71-73;
- 3) when the OptionsXpress representative wrote an email back requesting additional information about Seago's income, Cunningham continued to impersonate Seago and submitted more false information about Seago's income and her sophistication as an investor. Id.;
- 4) in 2016, Cunningham pretended to be Seago while chat messaging with a Schwab representative in order to get Level 1 options trading approved on her brokerage and IRA accounts after it had been denied in 2015. FOF ¶¶ 74-75.
- 5) finally, Cunningham lied in the Fidelity application in 2017, referring to Seago as an "Option Trader" with an annual income of over \$100,000, with a "most aggressive" investment objective and "extensive" experience in a variety of options strategies. FOF ¶¶ 80-82.

This pattern and practice of deception establishes Cunningham and Leach were determined to trade aggressively in Seago's accounts regardless of her risk tolerance and the PV Wealth investment plan they had devised for her.

Further, in communications with Seago, the Respondents omitted to state material facts

necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. The examples of this include:

- 1) the Respondents met with Seago in person in August 2015 and told her how well her investments were doing, which is misleading since by the end of July she had lost \$55,619.42. FOF ¶ 100;
- 2) by September 2015, Seago had lost \$120,260.91, which Cunningham failed to disclose when he was texting Seago for information to open the new OptionsXpress account. FOF ¶ 101; DFI Ex. 13-051034 (Cunningham text to Seago dated 9/1/15 requesting copy of backside of her driver's license);
- 3) in November 2016, Cunningham texted Seago that "things are fine with the accounts." FOF ¶ 102. This statement was misleading because of what Cunningham failed to disclose—that her accounts had lost \$159,935.14 since he started managing her money. Id.;
- 4) in 2017, when Leach blatantly refused to tell Seago her account balances but tried to reassure her by falsely claiming she was gaining \$1,000 per day, and she would not lose her nest egg. Claiming she would not lose her nest egg was misleading by what he did not tell her—that she was down \$174,720.22. FOF ¶ 109;
- 5) and other numerous omissions/misrepresentations about Seago's account performance in the record See generally FOF ¶¶ 100-110 citing numerous omissions/misrepresentations about account performance in the record.

All of these affirmative misrepresentations and omissions were material to a reasonable

investor who would want to have accurate information about her account performance so she could decide how to proceed with her investments going forward.

Respondents argue that Seago should have known her own account balances (and presumably the risky nature of the investments that Respondents had put her in) as she had access to her own accounts. However, consistent with her repeated testimony, Seago relied on Respondents for all information about her investments. She trusted them. She did not ignore her account balances. In fact, the performance of her investments *was* the topic of many discussions with her “trusted” advisors (Respondents) and they repeatedly assured her that “things are fine with (your) accounts” FOF ¶ 102, “just know your account is there, that you own stock, and that it’s generating substantial income” FOF ¶ 103, “I’m very confident in that system...At that rate, you won’t ever run out of money.” FOF ¶ 104, “Trust he will not lose your money” FOF ¶ 106, and at one point when Seago sent Cunningham a screen shot showing a figure of \$671,804. She asked Cunningham “Is that how much cash is really in there? Yowza, nice.” Cunningham responded: “yes.” FOF ¶ 107 In fact, when Seago received margin call letters from Schwab, Cunningham told her “Yes I would shred those letters. They are 100% wrong ... and yes we’re doing great” FOF ¶ 105. There are other detailed examples at FOF ¶¶ 109 and 110. The Respondents’ attempts to blame the victim highlight their arrogance.

Every time Respondents made a misrepresentation it was with the intention to cause someone to rely upon it to the Respondents’ advantage. The only conclusion one can draw is that this pattern was part of their arrogance. In their arrogance, they believed that if everyone (Seago, Fitzpatrick, the Worker’s Compensation Division, Schwab, Fidelity and others) would just let them do what they wanted, they would show how brilliant Cunningham was and that PV Wealth would take off as a business. They lied to Seago to invest with them, Fitzpatrick to get him to recommend

to the Worker's Compensation Division to approve the plan to get her funds released, the Worker's Compensation Division to release Seago's settlement funds to the Respondents, Schwab to give them certain trading authority, and continually to Seago to placate her in the face of losses she was suffering. The record also shows Cunningham was often annoyed, to put it lightly, whenever he was ever questioned by Seago or any of the myriad of pesky oversight bodies (Fitzpatrick, the Worker's Compensation Division, Schwab, Fidelity) in the performance of their normal function. The Respondents intentional misrepresentations were done for the purpose, usually effectively, of placating anyone who questioned them so they could continue in their activities, using Seago's life savings as their toy.

E. The Respondents engaged in an act, practice or course of business that operated as a fraud or deceit upon Seago in violation of Wis. Stat. § 551.501(3).

The separate provisions in Wis. Stat. § 551.501(2) and (3) are not mutually exclusive. Misrepresentations and omissions that violate Wis. Stat. § 551.501(2) may also form the basis for violations of Wis. Stat. § 551.501(3). See *Lorenzo v. SEC*, 139 S. Ct. 1094, 1102 (2019). The Division has proven by the preponderance of evidence that from their first solicitation of Seago to become a client of PV Wealth, the Respondents engaged in an act, practice or course of business that operated as a fraud or deceit upon Seago.

As previously recited above, the Respondents misrepresented Cunningham's credentials as a CFP, and Leach's and PV Wealth's credentials as registered advisors, in order to convince Seago to become their client and to acquire control and authority over her assets. Respondents created an investment plan to convince Seago that her assets would be conservatively managed in accordance with her wishes and with her statements that she would have difficulty tolerating any losses. Cunningham acknowledged this by referring to her original investment amount as her "holy grail"

which they would not let fall below the original balance. FOF ¶ 36. Respondents knew that Seago's wishes were to trail the stock market and make a moderate profit.

Respondents further convinced Seago to allow options trading "to hedge risks and generate substantial income," and then completed options agreements filled with false information so that Schwab and Fidelity would approve options trading in the account. Having gained approval from those firms, they engaged in an aggressive and entirely unsuitable asset management strategy, day trading stocks and options, and using margin and leveraged and inverse ETFs that exposed Seago to risk she neither wanted nor understood. Over 29 months, they sent numerous text messages to appease her amid her growing concerns and hide their fraudulent activity. All of this conduct constitutes an "act" or "practice" or "course of business" that operated as a fraud or deceit upon Seago.

The general fraud statute, Wis. Stat. § 551.501, states "It is unlawful for a person, in connection with the *offer*, sale or purchase of a security, directly or indirectly, to ... make an untrue statement ... [or] to engage in an act, practice or course of business that operates or would operate as a fraud or deceit upon another person." (emphasis added) The fact the fraud statute applies to *offers* of securities as well as actual sales removes the need to make a profit or be compensated in order to have engaged in fraudulent activity. It is sufficient that the person makes a material untrue statement or omission in connection with an offer or sale.

III. Leach materially aided Cunningham's primary violations of the securities laws.

Cunningham's violations of Wis. Stat. § 551.501 include falsely representing himself to Seago to be a CFP and holding a host of other false financial skills; falsely representing PV Wealth to be a registered IA firm and Leach to be its registered investment advisor representative; falsely representing himself to be an experienced investor when he was not; falsely representing the risks

of the trading strategies he employed; falsely representing himself to Seago and Schwab as having extensive knowledge and experience about options; and falsely representing Seago's knowledge and experience to Fidelity. Leach materially aided Cunningham in all of this misconduct. FOF ¶¶ 121-122. Without Leach, Seago would never have met Cunningham or entrusted her life savings to Cunningham.

Leach is the person who directed Seago to Cunningham's Facebook page where she first learned about Cunningham's false credentials. Leach wrote, signed and transmitted the April 7, 2015 cover letter and PV Wealth investment plan in which he blatantly misrepresented his own qualifications as a registered investment advisor representative and misrepresented PV Wealth to be an RIA as well. This can only be seen as an intentional misrepresentation designed to influence Attorney Fitzpatrick and the Worker's Compensation Division. As such, he materially aided Cunningham to hold out his firm, PV Wealth, as a registered firm to Seago and Attorney Fitzpatrick. It was that letter and investment plan that caused the Worker's Compensation Division to release Seago's settlement funds in a check made payable to Seago and PV Wealth.

To reiterate, Fitzpatrick would not have presented the PV Wealth investment plan to the Worker's Compensation Division if he had known Leach and the firm were not registered. FOF ¶ 46. These initial misrepresentations 1) to Seago to get her business and 2) to Fitzpatrick to obtain his necessary recommended approval to the Worker's Compensation Division set everything else into motion. If Leach had been honest to Seago or Fitzpatrick about Respondents' lack of credentials and experience, it is likely that none of the harm to Seago's life savings would have followed. Without those misrepresentations, Respondents would not have had over 60% of the money they ultimately invested and it is unlikely that Seago would have moved the rest of her finances, her retirement funds, to the Respondents. It all started with Leach.

Cunningham's other misrepresentations and omissions, primary violations of Wis. Stat. § 551.501, were materially aided by Leach as well. Once Seago agreed to retain PV Wealth and to allow Cunningham to manage her assets, Leach aided Cunningham in a series of fraudulent acts. He encouraged Seago to allow Cunningham to trade in options without disclosing Cunningham's lack of experience with options and the riskiness of the strategies he was employing. FOF ¶ 50 (a), (f), (i), (j). Testimony of MacHolz, Tr 162. He and Cunningham together completed the LPOA forms and other paperwork to open the brokerage accounts at Schwab. Id. The LPOA forms identified Cunningham as having "extensive" knowledge of investments which Leach knew was not true. FOF ¶ 26. When Seago wanted to know if her investments were safe, Leach assured her they were and he reported to Seago whatever Cunningham told him to say. FOF ¶¶ 50 (f), (i); 106, 108-110. At all times, he encouraged Seago to trust Cunningham, made her believe her funds were being conservatively invested, and took no steps to either accurately disclose the true risks Cunningham was taking with her money or to disclose the losses she sustained. Id. Therefore, in addition to being responsible for primary violations of Ch. 551, Leach is liable for materially aiding Cunningham to violate Ch 551 for which the Division administrator may bring enforcement proceedings under Wis. Stat. § 551.604(1).

IV. The Kenton Lane Letter Filed With DFI

Pursuant to Wis. Stat. § 551.505, it is unlawful for a person to make or cause to be made, in a record that is used in an action or proceeding or filed under this chapter, a statement that, at the time and in the light of the circumstances under which it is made is false or misleading in a material respect.

On August 15, 2019, during the investigation of this matter, Leach brought a letter to the

Division from psychotherapist, Kenton Lane, informing the Division that statements of fact in the letter were true. FOF ¶ 118. The letter contained unfavorable descriptions of Cunningham, including statements implying that Cunningham misused funds, and that Cunningham was a drug addict. DFI Ex. 24-051593. Leach told the Division neither Leach nor Cunningham had been patients of Lane. FOF ¶ 118. The Lane letter constitutes a “record” as defined by Wis. Stat. § 551.102(25).

Eleven months later, on July 6, 2020, Cunningham and Leach filed a lawsuit in California against Lane, alleging Lane in fact provided psychotherapy services to both of them and used those psychotherapy sessions to create animosity between them. FOF ¶ 119. They alleged Lane “took it upon himself to draft a letter to the Department of Financial Investigations in Wisconsin on or about August 14, 2019” in which Lane “wrongly intimated that Plaintiffs had allegedly sequestered money out of accounts Plaintiffs managed, which was untrue.” *Id.*

In Leach’s sworn deposition testimony in the California case, Leach denied the truth of the Lane letter which he caused to be filed with the Division. FOF ¶ 120. Respondents argue while the statements are inconsistent, DFI is not able to prove which statements are false. Leach, could have been lying in his sworn testimony in California. Leach and Cunningham were going through divorce proceedings at the time of Leach’s statements to DFI and Lane’s letter. DFI Ex. 25-051621. It is possible that everything Leach said and presented to DFI was true and that he regretted doing so after he and Cunningham had reconciled. Therefore, there is not a preponderance of the evidence that establishes Leach’s statements to the Division during his interview about the provenance of the Lane letter and its truth and accuracy are materially false and misleading.

V. The Imposition of Restitution, Penalties and Costs

Pursuant to Wis. Stat. § 551.604(4m), the administrator has the authority to impose a civil penalty under .604(4) and, in addition to any such penalty, order any person subject to an enforcement order to pay costs under .604(5) and pay restitution to any persons suffering a loss as a result of the violation(s) of Chapter 551.

A. Restitution is ordered with interest because Seago suffered losses as a result of the Respondents' securities law violations.

In total, under the investment management of PV Wealth, Cunningham and Leach, over 29 months Seago sustained investment losses of \$176,599.98, a loss of 32.58% of her original \$542,023.73 investment. Testimony of Benson, Tr 343, FOF ¶ 98. Seago's losses were due to the high risk, speculative strategies the Respondents employed. It is apparent that Cunningham, as the sole managing member of PV Wealth, took on an excessive amount of risk using options, margin and leveraged and inverse ETFs almost immediately after he began managing Seago's assets. FOF ¶¶ 85-90, 91-92. Although Cunningham told Seago that he does not "expose people to undue risk", he clearly did and she suffered great financial loss because of it. FOF ¶ 50(g).

The testimony of DFI Advanced Examiner Charles Benson was not refuted at the hearing. The Division used the S&P 500 as a benchmark. As a result, Seago got hit with excessive losses, which is obvious when you compare the performance of her accounts with the performance of the S&P over the same time frame. In 2015, after only three months of investing for Seago, her accounts were down 22.19%, while the S&P was down only 6.71%. FOF ¶ 93. By the end of 2015, Seago's accounts were down 24.57%, while the S&P 500 was down only 3.32%. FOF ¶ 94.

While the performance comparisons are illustrative of the high risk and poor performance of Respondents' investing strategies, it is more important to look at what Respondents promised

Seago and what she reasonably believed she was getting from Respondents. It was reasonable for Seago to believe and to rely on the repeated promises of the Respondents that she would not lose her “nest egg” DFI Ex 18-051327; DFI Ex 18-051349; DFI Ex 18-051350; and that the balance of her accounts would never dip below her initial balance, the “holy grail”. FOF ¶ 36.

Respondents argue that an analysis of how the original PV Wealth plan would have performed if followed should be done in order to determine Seago’s losses. To the extent that that could lower the amount of restitution ordered to be paid Respondents, that would effectively reward Respondents’ unlicensed activity. They would essentially be getting paid for their advice without being licensed. That cannot happen.

The order to pay restitution is tied to loss “as a result of” securities law violations as required by Wis. Stat. § 551.604(4m). Cunningham and PV Wealth acted as an unregistered broker-dealer and agent, respectively, by effecting transactions in Seago’s accounts and, therefore, all of Seago’s total net results (including gains and losses) due to their unregistered trading activity are “as a result of” violations of Wis. Stat. §§ 551.401(1) and .402(1).

Respondents engaged in an act, practice or course of business to induce Seago to invest with PV Wealth, in violation of Wis. Stat. § 551.501(3). As detailed above, Respondents misrepresented Cunningham’s credentials as a CFP, and Leach’s and PV Wealth’s credentials as registered advisors, in order to acquire Seago as a client and to acquire control over her assets. They created an investment plan to convince Seago her assets would be conservatively managed in accordance with her wishes, to trail the stock market and make a moderate profit. But for these initial misrepresentations 1) to Seago to get her business and 2) to Fitzpatrick to obtain his necessary recommended approval to the Worker’s Compensation Division, Respondents’

disastrous investment practices could not have occurred (detailed above as well). Attorney Fitzpatrick would not have presented the PV Wealth investment plan to the Worker's Compensation Division if he had known Leach and the firm were not registered. FOF ¶ 46. If they had been honest to Seago about their lack of credentials and experience or they had been likewise honest to Fitzpatrick, none of the harm to Seago's life savings would have followed.

An order granting restitution in the amount of \$176,599.98 is the most certain and fair means of restoring Seago to where she would have been if she had never been the victim of Respondents' misrepresentations. Therefore, all the \$176,599.98 in net losses are "as a result of" violating Wis. Stat. § 551.501(3) and are restored as restitution. This same conduct violated Wis. Stat. § 551.501(2) as well.

It is entirely possible that her funds would have performed reasonably well and safely if invested with a licensed firm and therefore her "nest egg" of \$542,023.73 would have been somewhat higher but we cannot be certain how an investment firm would have invested her money. All we can point to are the promises, albeit false, of Respondents and Seago's reasonable expectations based on those promises. Even with a comparison to the qualitative benchmark of "conservative" investments, one cannot ignore what Respondents repeatedly told Seago were the current balances of her accounts. Those balances were significantly higher than the \$542,023.73 figure that is being used as basis for restitution. However, while an award of \$176,599.98 in restitution may not completely undo the harm Seago has suffered, it is the most reasonable and certain figure the I can order.

B. Penalties are necessary to protect the public and deter future misconduct.

The Respondents' misrepresentations and misconduct were egregious and continual for

29 months to a host of entities and individuals. Most of these were entities whose function was to protect citizens/investors and their assets from the very conduct engaged in by Respondents - Attorney Fitzpatrick, the Worker's Compensation Division, Schwab, Fidelity and others. Respondents did not merely provide casual, informal investment advice. Instead, their misconduct was pervasive, active and extensive misrepresentation in the trading of Seago's funds, her "holy grail". The brazenness is shocking and Respondents' cavalier attitude only makes it worse.

Both Leach and Cunningham knew virtually nothing about options and were not qualified to recommend leveraged products given their background and experience. Cunningham was uniquely unqualified to manage the accounts of others, given his background was in chemistry, math and biology. In fact, Respondents acknowledge this and merely assert that Seago should have known they had no experience. Leach's touting of Cunningham's investment experience to Seago, when he knew Cunningham lacked the skills of investment management, is inexplicable.

The Respondents' misconduct caused Seago to lose \$176,599.98, a significant portion of that was lost in the first three months they managed her assets. The Respondents' refusal to disclose the actual account balances to Seago in 2017 when she was desperate to know how her investments were performing demonstrates they understood the impact of their strategies on the safety of her portfolio, which makes their conduct even more reprehensible.

While I agree with DFI's position that penalties are justified under the circumstances, I am reducing the amount against Leach to \$7,500 only because I do not believe DFI sufficiently established that Leach submitted false records or made false statements to DFI in violation of Wis. Stat. § 551.505. I grant DFI's request for penalties in the amount of \$10,000 against Cunningham and PV Wealth. Both penalties are necessary to protect the public and deter future misconduct by

the Respondents.

C. DFI has proven its costs in the amount of \$11,345.95.

DFI requests costs under Wis. Stat. 501.604(5) for the actual costs of the investigation or proceeding. DFI has proven the costs through the Affidavit of Robin Jacobs and the attached invoices for court reporter services incurred during the taking of depositions noticed by the Respondents and the four day hearing. The request for costs is granted.

ORDERS

Based on the foregoing, **IT IS HEREBY ORDERED:**

1. RESPONDENTS, their agents, servants, officers, employees, successors, affiliates, and every entity and person directly or indirectly controlled or organized by or on behalf of the RESPONDENTS, shall cease and desist from making or causing to be made to any person or entity in Wisconsin any further offers or sales of securities unless and until such securities qualify as covered securities or are registered under Ch. 551 or successor statute, pursuant to Wis. Stat. §§ 551.604(1)(a) and (2).
2. All exemptions from registration set forth at Ch. 551 or successor statute that might otherwise apply to any offer or sale of any security of or by the RESPONDENTS, their agents, servants, officers, employees, successors, affiliates, and every entity and person directly or indirectly controlled or organized by or on behalf of the RESPONDENTS, are hereby revoked, pursuant to Wis. Stats. §§ 551.604(1)(b) and (2).
3. All exemptions from registration set forth in Wis. Stat. §§ 551.201 and 551.202 that may otherwise apply to a specific security, transaction or offer of or by the RESPONDENTS, their agents, servants, officers, employees, successors, affiliates, and every entity and person directly or

indirectly controlled or organized by or on behalf of the RESPONDENTS, are hereby revoked, pursuant to Wis. Stats. §§ 551.604(1)(c) and (2).

4. RESPONDENTS, their successors, affiliates, controlling persons, officers, agents, servants, employees and every entity and person directly or indirectly controlled or hereafter organized by or on behalf of the RESPONDENTS, are prohibited from violating Wis. Stat. § 551.501 or successor statute.

5. RESPONDENTS shall pay restitution, jointly and severally, to Investor Kelly Seago in the amount of \$176,599.98 with interest on such amount at the legal rate under Wis. Stat. § 138.04, starting from the effective date of this order through the date of satisfaction, pursuant to Wis. Stat. § 551.604(4m). RESPONDENTS shall pay restitution within 30 calendar days of the issuance of this order and provide the Division with proof of the restitution payment to Investor Seago by no later than 30 days after restitution has been paid.

6. DANIEL CUNNINGHAM and PV WEALTH ADVISORS, LLC shall pay a civil penalty in the form of an administrative assessment totaling \$10,000 for the violations committed against Seago pursuant to Wis. Stat. § 551.604(4). Such payment shall be made payable to the Wisconsin Department of Financial Institutions and shall be remitted to the Division no later than 30 calendar days from the date of issuance of this Order.

7. CHRISTOPHER LEACH shall pay a civil penalty in the form of an administrative assessment totaling \$7,500 for the violations committed against Seago pursuant to Wis. Stat. § 551.604(4). Such payment shall be made payable to the Wisconsin Department of Financial Institutions and shall be remitted to the Division no later than 30 calendar days from the date of issuance of this Order.

8. RESPONDENTS shall pay the actual costs of the investigation or proceeding in the amount of \$11,345.95 pursuant to Wis. Stat. § 551.604(5). Such payment shall be made payable to the Wisconsin Department of Financial Institutions and shall be remitted to the Division no later than 30 calendar days from the date of issuance of this Order.

9. RESPONDENTS, their successors, affiliates, controlling persons, officers, agents, servants, employees, and every entity and person directly or indirectly controlled or hereafter organized by or on behalf of the RESPONDENTS, are prohibited from becoming registered in any capacity under Ch. 551 or successor statute that might otherwise apply, prior to satisfying their civil liabilities under Wis. Stat. §§ 551.604(4), (4m), (5) and 551.509.

10. The effective date of this Order is the date on which it is signed, and service is complete upon mailing. Wis. Stat. s. 227.48 (1); Wis. Admin. Code § DFI-Sec 8.07.

Pursuant to Wis. Stat. ss. 227.46 and 227.47, this decision constitutes the final decision of the Department.

Dated this 16th day of August, 2022

By: /s/ Christopher N. Green
Christopher N. Green, Designated Hearing Officer
Wisconsin Department of Financial Institutions
4822 Madison Yards Way, North Tower, Fourth Floor
Madison, WI 53705
(608) 716 -9687
chris.green1@dfi.wisconsin.gov

To seek judicial review of this order:

The procedures to petition for judicial review of an administrative order are set forth in Wis. Stat. §§ 227.52 through 227.57, including the requirement that **the petition for judicial review must be filed and served upon the division within 30 days of this order unless rehearing is timely sought (in which case the petition must be filed within 30 days of final disposition of the request for rehearing)**. The 30-day period for serving and filing a petition commences on the day after mailing of the decision by the Division. The respondent in any such judicial proceeding should be named as:

Wisconsin Department of Financial Institutions, Division of Securities
P.O. Box 1768
4822 Madison Yards Way
North Tower, 5th Floor
Madison, WI 53701-1768