
IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No. 83356

Electronically Filed
Jan 10 2022 04:36 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

GREGORY GARMONG,

Appellant

--against--

WESPAC; GREG CHRISTIAN,

Respondents

Appeal from the Second Judicial District Court of Washoe County, Nevada
Judge Lynne Simons, Case No. CV12-01271

APPELLANT'S APPENDIX VOLUME 1

Carl M. Hebert, Esq.
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(775) 323-5556

*Attorney for Appellant
Gregory Garmong*

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Amended Complaint Filed: September 18, 2017	1/JA 20-30
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Appellant's Opening Brief in <u>Garmong v. Wespac</u> , appeal no. 80376, filed May 27, 2020	8/JA 1240-1317
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Complaint Filed: May 9, 2012	1/JA 1-9
Declaration of Carl M. Hebert, signed April 27, 2021	8/JA 1424
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Defendants' Motion for Attorney's Fees Filed: August 8, 2019	7/JA 1131
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Defendants' Opposition to Plaintiff's Motion for Partial Summary Judgment Filed: December 21, 2017	3/JA 246-282
Defendants' Opposition to Plaintiff's Motion for Reconsideration of Order Denying Plaintiff's Motion for Summary Judgment Filed: March 8, 2018	3/JA 380-390
Defendants' Opposition to Plaintiff's Motion to Strike, filed May 5, 2021	8/JA 1425-1428
Defendants' Opposition to Plaintiff's Motions to Vacate Arbitrator's Award of Denial of Plaintiff's Motion for Partial Summary Judgment and for the Court to Decide and Grant Plaintiff's Motion for Partial Summary Judgment Filed: May 9, 2019	6/JA 1016-1025
Defendants' Opposition to Plaintiff's Motions to Vacate Arbitrator's Award of Denial of Plaintiff's Motion for Partial Summary Judgment and for the Court to Decide and Grant Plaintiff's Motion for Partial Summary Judgment Filed: May 9, 2019	6/JA 1026-1080
Defendants' Petition for an Order Confirming Arbitrator's Final Award and Reduce Award to Judgment, Including, Attorneys' Fees and Costs Filed: April 15, 2019	5/JA 784-818
Defendants' Second Amended Motion for Attorney's Fees, filed February 18, 2021	8/JA 1331-1336
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Opening Arbitration Brief Filed: September 18, 2017	1/JA 31-45
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Order re Motions Filed: August 8, 2019	6 & 7/JA 1114- 1130
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Plaintiff's Motions to Vacate Arbitrator's Award of Denial of Plaintiff's Motion for Partial Summary Judgment and for the Court to Decide and Grant Plaintiff's Motion for Partial Summary Judgment Filed: April 22, 2019	5/JA 820-850
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Plaintiff's Opposition to Defendants' Motion to Confirm Arbitrator's Award Filed: April 25, 2019	5 & 6/JA 923-1015
Plaintiff's Reply to Defendants' Opposition to Plaintiff's Motions to Vacate Arbitrator's Award of Denial of Plaintiff's Motion for Partial Summary Judgment and for the Court to Decide and Grant Plaintiff's Motion for Partial Summary Judgment Filed: May 20, 2019	6/JA 1081-1094
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Plaintiff's Objection Pursuant to NRS 38.231(3) And 38.241(1)(e) that there is no Agreement to Arbitrate; Notification of Objection to the Court Filed: March 27, 2017	1/JA 12-13
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Plaintiff's Reply Points and Authorities in Support of Motion for Partial Summary Judgment, dated January 11, 2018	3/JA 283-365
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Second Order re Scheduling Filed: November 22, 2017	1/JA 56-58
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Transcript of Proceedings
Arbitration
Thursday, October 18, 2018

4/JA 618-629

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Code: \$1425
Gregory Garmong
11 Dee Court
Smith, NV 89430
Tel No. 775-465-2981
Plaintiff In Proper Person

FILED
MAY -9 AM 10:18
CLERK OF THE COURT
BY S. Martensen
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT
OF THE STATE OF
NEVADA IN AND FOR THE
COUNTY OF WASHOE

GREGORY GARMONG,)
)
Plaintiff)
)
vs.)
)
WESPAC, GREG CHRISTIAN,)
)
and Does 1-10)
)
Defendants)
_____)

Case No. CV12 01271
Dept. No. 6

COMPLAINT

1 COMES NOW Plaintiff, GREGORY GARMONG, appearing In Proper
2 Person, as and for claims for relief against Defendants Wespac,
3 Greg Christian ("Christian"), and Does 1-10 (collectively,
4 "Defendants"), alleges as follows:

5 1. At all times relevant hereto, Plaintiff was a resident
6 of Douglas County Nevada and Lyon County Nevada.

7 2. At all times relevant hereto, Defendants held
8 themselves out to the public as investment advisors and
9 investment managers performing fiduciary and other services for
10 customers; Christian was affiliated with Wespac.

11 3. Does 1-10 are owners/shareholders and/or employees
12 and/or are otherwise associated with Defendants whose identities
13 are unknown to Plaintiff at this time. Plaintiff will ascertain
14 the identities of Does 1-10 during discovery and will move to
15 add these persons to the list of named Defendants.

16 4. At all times relevant hereto, Defendants did business
17 in Washoe County, Nevada.

18 5. The Second Judicial District Court in and for Washoe
19 County, Nevada is a proper venue for this action because of the
20 place of business of Defendants.

21 6. The Second Judicial District Court in and for Washoe
22 County, Nevada has subject matter jurisdiction of this matter
23 because of the dollar amount of damages alleged.

24 7. At a time prior to 2007, Plaintiff entered a contract
25 ("Contract") with Defendants and became a client of Defendants.
26 Plaintiff entrusted a major portion of his life savings and
27 retirement savings to Defendants to manage. The life savings
28 and retirement savings were held in accounts at Schwab, and

1 Defendants had signature authority and control over these
2 accounts for management purposes. Plaintiff had other accounts
3 with Schwab with which Defendants had no involvement.

4 8. In late 2007 and early 2008, Defendant Christian
5 solicited, urged, and begged Plaintiff to allow Defendants to
6 take over the sole management of Plaintiff's accounts because of
7 their investment expertise, leaving all discretionary actions to
8 Defendants. Defendant Christian proposed that Plaintiff should
9 not be involved in the active management of his life savings and
10 retirement accounts, and that ultimate investment decisions
11 should be made by Defendants. Plaintiff accepted the proposal.

12 9. In conjunction with Defendants taking over sole
13 management of Plaintiff's accounts, Plaintiff informed
14 Defendants that he had recently retired. Plaintiff further
15 established general investment guidelines with Defendants that
16 it was therefore important that his accounts be managed to
17 conserve capital, and that Defendants' management should be
18 within those guidelines. Plaintiff instructed the Defendants
19 that it was preferable to sacrifice potential gains so as not to
20 lose capital. When losses first appeared, Defendant Christian
21 assured Plaintiff that Defendants were following their plan to
22 manage Plaintiff's life savings and retirement accounts to
23 conserve Plaintiff's capital, and that Defendants should be
24 given the opportunity to allow their plan to work out.

25 10. Despite Defendants' assurances to Plaintiff that they
26 would follow his investment guidelines and manage Plaintiff's
27 life savings and retirement accounts to conserve capital,
28 Defendants failed to do so. Defendants mismanaged Plaintiff's

1 life savings and retirement accounts, and caused the loss of and
2 wasted a significant portion of Plaintiff's life savings and
3 retirement accounts. When it became apparent in late 2008 that
4 Defendants were not properly managing Plaintiff's life savings
5 and retirement accounts within Plaintiff's guidelines and had
6 misled Plaintiff, Plaintiff ended Defendants' management of
7 Plaintiff's life savings and retirement accounts.

8

9

FIRST CLAIM FOR RELIEF

10

(Breach of Contract)

11

11. Plaintiff incorporates the allegations of Para. 1-10.

12

12. Plaintiff fulfilled all of his obligations under the
13 Contract.

14

13. The Defendants breached their obligations under the
15 Contract, causing damage to Plaintiff.

16

14. Plaintiff was damaged in an amount in excess of
17 \$10,000 of general damages and special damages.

18

19

SECOND CLAIM FOR RELIEF

20

(Breach of Nevada Deceptive Trade Practices Act)

21

15. Plaintiff incorporates the allegations of Para. 1-10.

22

16. At all times relevant hereto, Plaintiff was at least
23 60 years of age.

24

17. When the Defendants induced Plaintiff to enter the
25 Contract, and thereafter, Defendants failed to disclose material
26 information to Plaintiff. Specifically, Defendants did not
27 disclose to Plaintiff that they would not follow his investment
28 guidelines, would conceal the fact that they would not follow

1 his investment guidelines, and would concentrate their energies
2 on obtaining and providing services to other clients to the
3 exclusion of Plaintiff's interests. Had Plaintiff known this
4 material information, he would not have entered the Contract.

5 18. Plaintiff was damaged as a result of the breach by
6 Defendants of the Nevada Deceptive Trade Practices Act in an
7 amount in excess of \$10,000.

8

9

THIRD CLAIM FOR RELIEF

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(Breach of Implied Covenant of Good Faith and Fair Dealing)

11

19. Plaintiff incorporates the allegations of Para. 1-10.

12

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20. By failing to follow Plaintiff's investment guidelines
and not properly managing Plaintiff's life savings and
retirement accounts, Defendants breached their covenant of good
faith and fair dealing implied under the Contract.

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21. Plaintiff was damaged as a result of the breach by
Defendants of the covenant of good faith and fair dealing in an
amount in excess of \$10,000.

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FOURTH CLAIM FOR RELIEF

21

(Unjust Enrichment)

22

22. Plaintiff incorporates the allegations of Para. 1-10.

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24

25

23. Plaintiff made payments to Defendants during their
business relationship, which payments were accepted and retained
by the Defendants.

26

27

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24. Defendants failed to provide the services for which
Plaintiff was paying Defendants. Defendants were unjustly
enriched by the payments that Plaintiff made to them.

1 25. Plaintiff was damaged as a result of the unjust
2 enrichment of Defendants in an amount in excess of \$10,000.

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FIFTH CLAIM FOR RELIEF

(Breach of Fiduciary Duty)

26. Plaintiff incorporates the allegations of Para. 1-10.

27. Defendants had a fiduciary duty to Plaintiff arising from their investment advisory and management relation to Plaintiff.

28. Defendants breached their fiduciary duty to Plaintiff by failing to exercise a fiduciary responsibility to their management of Plaintiff's life savings and retirement accounts and by deceiving Plaintiff as to their actions and inaction.

29. Plaintiff was damaged as a result of the Defendant's breach of their fiduciary duties in an amount in excess of \$10,000.

SIXTH CLAIM FOR RELIEF

(Malpractice)

30. Plaintiff incorporates the allegations of Para. 1-10.

31. Defendants owed Plaintiff a duty of care as a result of their relationship. Defendants committed malpractice against Plaintiff in their mismanagement of his life savings and retirement accounts by breaching that duty, causing damage to Plaintiff.

32. Plaintiff was damaged as a result of the Defendant's malpractice in an amount in excess of \$10,000.

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SEVENTH CLAIM FOR RELIEF

(Negligence)

33. Plaintiff incorporates the allegations of Para. 1-10.

34. Defendants had a duty of care to Plaintiff. Defendants breached that duty of care, in that they failed to represent Plaintiff at the level of skill expected from those managing life savings and retirement accounts.

35. Plaintiff was damaged as a result of the Defendant's negligence in an amount in excess of \$10,000.

Prayer and Demand for Relief.

WHEREFORE, Plaintiff prays for the Court's order, judgment and decree against the Defendants as follows:

FIRST CLAIM FOR RELIEF

1. For general and special damages according to proof in excess of TEN THOUSAND DOLLARS (\$10,000).
2. For punitive and exemplary damages.
3. For Plaintiff's costs of suit and attorney's fees.
4. For such other and further relief as the Court may deem proper.

SECOND CLAIM FOR RELIEF

1. For general and special damages in excess of TEN THOUSAND DOLLARS (\$10,000) according to proof.
2. For punitive and exemplary damages.
3. For Plaintiff's costs of suit and attorney's fees.
4. For such other and further relief as the Court may

1 deem proper.

2

3

THIRD CLAIM FOR RELIEF

4 1. For general and special damages in excess of TEN
5 THOUSAND DOLLARS (\$10,000) according to proof.

6 2. For punitive and exemplary damages.

7 3. For Plaintiff's costs of suit and attorney's fees.

8 4. For such other and further relief as the Court may
9 deem proper.

10

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FOURTH CLAIM FOR RELIEF

12 1. For general and special damages in excess of TEN
13 THOUSAND DOLLARS (\$10,000) according to proof.

14 2. For punitive and exemplary damages.

15 3. For Plaintiff's costs of suit and attorney's fees.

16 4. For such other and further relief as the Court may
17 deem proper.

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FIFTH CLAIM FOR RELIEF

20 1. For general and special damages in excess of TEN
21 THOUSAND DOLLARS (\$10,000) according to proof.

22 2. For punitive and exemplary damages.

23 3. For Plaintiff's costs of suit and attorney's fees.

24 4. For such other and further relief as the Court may
25 deem proper.

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SIXTH CLAIM FOR RELIEF

28 1. For general and special damages in excess of TEN

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THOUSAND DOLLARS (\$10,000) according to proof.

- 2. For punitive and exemplary damages.
- 3. For Plaintiff's costs of suit and attorney's fees.
- 4. For such other and further relief as the Court may deem proper.

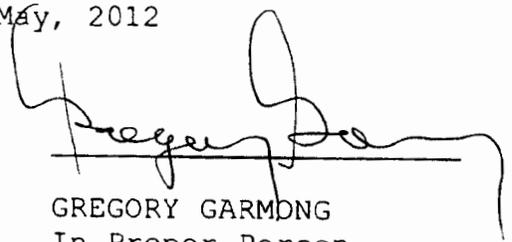
SEVENTH CLAIM FOR RELIEF

1. For general and special damages in excess of TEN THOUSAND DOLLARS (\$10,000) according to proof.

- 2. For punitive and exemplary damages.
- 3. For Plaintiff's costs of suit and attorney's fees.
- 4. For such other and further relief as the Court may deem proper.

The undersigned hereby affirms that this document does not contain a social security number.

Dated this 8th day of May, 2012



GREGORY GARMONG
In Proper Person
11 Dee Court, Smith, NV 89430
775-465-2981 (voice)

FILED

Electronically
09-08-2012:06:38:44 PM
Joey Orduna Hastings
Clerk of the Court
Transaction # 3203848

1 CODE 1067
Affidavit of Service

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6 IN THE SECOND JUDICIAL DISTRICT COURT

7 IN AND FOR THE COUNTY OF WASHOE, STATE OF NEVADA

8 Gregory GARMONG,

Plaintiff,

CASE NO.: CV 12- 01271

9 vs

DEPT. NO.: 6

10 WESPAC, Greg CHRISTIAN,

AFFIDAVIT of Service re:

WESPAC

11 Defendants

12 STATE OF NEVADA)
13)
14 COUNTY OF WASHOE)

Ss:

15 PATRICK J. PEREGRIN, hereby states that affiant is over 18 years of age, licensed to serve civil process in the State
16 of Nevada under Nevada License #903, and not a party to, nor interested in, the above-captioned action.

17 August 29, 2012, affiant received the Summons and Complaint for service upon WESPAC c/o Greg Christian at
18 the WESPAC office, 698 Sierra Rose Dr., Ste A-2, Reno, NV.

19 September 4, 2012 at 11:30 a.m., Affiant served a true and correct copy of the Summons and Complaint upon
20 WESPAC, accepted by Julie L. Miller, WESPAC Office Manager, Receptionist and Assistant to Greg Christian as
21 Resident Agent for WESPAC at 698 Sierra Rose Drive, Suite A-2, in the City of Reno, County of Washoe, State of
22 Nevada.

23 I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

24 **FURTHER YOUR AFFIANT SAYETH NAUGHT**

25 **AFFIRMATION PURSUANT TO NRS 239B.030, the undersigned does hereby affirm that the preceding document
does not contain the social security number of any person.**

26 EXECUTED September 7, 2012

27 **SUBSCRIBED and SWORN** to before me, September 7, 2012 by Patrick J. Peregrin.

28 
NOTARY PUBLIC


Patrick Peregrin Nevada Judicial Services Lic # 903
9732 State Rte. 445, Sparks, Nv. 89442
Office: 775-329-9944 FAX 329-3055



1 CODE 1067
Affidavit of Service

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6 IN THE SECOND JUDICIAL DISTRICT COURT
7 IN AND FOR THE COUNTY OF WASHOE, STATE OF NEVADA

8 Gregory GARMONG,

Plaintiff,

CASE NO.: CV 12- 01271

9 vs

DEPT. NO.: 6

10 WESPAC, Greg CHRISTIAN,

AFFIDAVIT of Service re:

Greg Christian

11 Defendants

12 STATE OF NEVADA)

) Ss:

13 COUNTY OF WASHOE)

14
15 PATRICK J. PEREGRIN, hereby states that affiant is over 18 years of age, licensed to serve civil process in the State
16 of Nevada under Nevada License #903, and not a party to, nor interested in, the above-captioned action.

17 August 29, 2012, affiant received the Summons and Complaint for service upon Greg Christian at the WESPAC
18 office, 698 Sierra Rose Dr., Ste A-2, Reno, NV.

19 September 6, 2012 at 8:40 a.m., Affiant personally served a true and correct copy of the Summons and Complaint
20 upon Greg Christian at the WESPAC office, 698 Sierra Rose Drive, Suite A-2, in the City of Reno, County of Washoe,
21 State of Nevada.

22 I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

23 FURTHER YOUR AFFIANT SAYETH NAUGHT

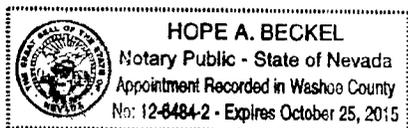
24 AFFIRMATION PURSUANT TO NRS 239B.030, the undersigned does hereby affirm that the preceding document
25 does not contain the social security number of any person.

26 EXECUTED September 7, 2012

27 SUBSCRIBED and SWORN to before me, September 7, 2012 by Patrick J. Peregrin.

28 
NOTARY PUBLIC


Patrick Peregrin Nevada Judicial Services Lic # 903
9732 State Rte. 445, Sparks, Nv. 89442
Office: 775-329-9944 FAX 329-3055



1 CARL M. HEBERT, ESQ.
2 Nevada Bar #250
3 202 California Avenue
4 Reno, NV 89509
5 (775) 323-5556

6 Attorney for plaintiff

7
8 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
9
10 IN AND FOR THE COUNTY OF WASHOE

11 GREGORY O. GARMONG,
12
13 Plaintiff,

14 vs.

CASE NO. : CV12-01271

15 WESPAC; GREG CHRISTIAN;
16 DOES 1-10, inclusive,

DEPT. NO. : 6

17 Defendants.
18 _____/

19
20 **PLAINTIFF'S OBJECTION PURSUANT TO NRS 38.231(3) AND**
21 **38.241(1)(e) THAT THERE IS NO AGREEMENT TO ARBITRATE;**
22 **NOTIFICATION OF OBJECTION TO THE COURT**

23 Plaintiff objects to the arbitral proceeding ordered in above-captioned
24 case on the basis that there was no agreement to arbitrate. This objection
25 is made pursuant to NRS 38.241(1)(e) and NRS 38.231(3).

26 NRS 38.241(1)(e) provides:

27 (1) Upon motion to the court by a party to an arbitral
28 proceeding, the court shall vacate an award made in the arbitral
proceeding if:

(e) There was no agreement to arbitrate, unless the
movant participated in the arbitral proceeding without raising the
objection under subsection 3 of NRS 38.231 not later than the
beginning of the arbitral hearing;

An objection that there was no agreement to arbitrate must be raised
"not later than the beginning of the arbitral hearing." Plaintiff raises the

1 objection in this paper, filed before the beginning of any arbitral hearing.

2

3 **THE UNDERSIGNED DOES HEREBY AFFIRM THAT THIS DOCUMENT**
4 **DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY**
5 **PERSON.**

6 DATED this 27th day of March, 2017.

7

/S/ Carl M. Hebert
CARL M. HEBERT, ESQ.

8

Counsel for plaintiff

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1 CARL M. HEBERT, ESQ.
2 Nevada Bar #250
3 202 California Avenue
4 Reno, NV 89509
5 (775) 323-5556
6 carl@cmhebertlaw.com

7 Attorney for plaintiff Gregory Garmong

JAMS ARBITRATION
LAS VEGAS, NEVADA

8 GREGORY GARMONG,

9 Plaintiff,

10 vs.

11 WESPAC; GREG CHRISTIAN,

12 Defendants.

1260003474

DISCOVERY PLAN AND
SCHEDULING ORDER

13
14 Counsel for the parties and the arbitrator held a telephonic case
15 management conference on August 9, 2017. After consideration of the issues
16 raised by counsel the following Discovery Plan and Scheduling Order is entered:

17 1. The parties have agreed that Rules 6, 16.1(a)(1)(A-D), 30, 33, 34 and
18 37 of the Nevada Rules of Civil Procedure and the deadlines for filing
19 oppositions and replies to motions found in Washoe District Court Rule 12 will
20 generally govern this case unless the Arbitrator rules otherwise.

21 2. Within 30 days from the date this Order is signed the parties will
22 exchange the documents and information required by NRCP 16.1(a)(1)(A-D).
23 Neither an early case conference nor a joint case conference report are required.

24 3. The parties may serve written discovery no sooner than 20 days after
25 the exchange of documents required by # 2 above. No requests for admissions
26 may be served. Interrogatories, including sub-parts, and requests for
27
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1 production of documents are limited to 25 each. This limit is per party. If
2 any party later desires to serve requests for admissions, that party may file
3 a motion requesting leave to do so. There will only be one period allowed for
4 discovery unless a party can show that additional discovery is needed on a
5 particular issue.

6 4. The parties are directed to serve opening arbitration briefs, limited
7 to 10 pages maximum, within 21 days of the entry of this order.

8 5. The depositions of the parties may be taken. Further, the plaintiff
9 may take one or more depositions of the officers, directors, managing agents or
10 employees of defendant Wespac, however, any Wespac depositions must be taken in
11 Oakland, California, if requested by defendants.

12 6. The parties may bring motions for summary judgment, pursuant to NRC
13 56.

14 7. The parties may file one pre-hearing brief prior to the arbitration
15 hearing.

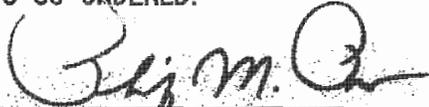
16 8. Counsel are directed to file a joint status report on or before
17 November 9, 2017.

18 9. Within 20 days after the entry of this Discovery Plan and Scheduling
19 Order, the plaintiff may file an amended complaint. The defendants will then
20 have 20 additional days to file an answer.

21 10. The setting of an arbitration hearing date is reserved for future
22 determination.

23 IT IS SO ORDERED.

24 DATED: August 11, 2017

25 
26 Hon. Philip M. Pro (Ret.)
27 Arbitrator

PROOF OF SERVICE BY EMAIL & U.S. MAIL

Re: Garmong, Gregory vs. Wespac et al.
Reference No. 1260003474

I, Mara Satterthwaite, not a party to the within action, hereby declare that on August 11, 2017, I served the attached DISCOVERY PLAN AND SCHEDULING ORDER on the parties in the within action by Email and by depositing true copies thereof enclosed in sealed envelopes with postage thereon fully prepaid, in the United States Mail, at Las Vegas, NEVADA, addressed as follows:

Carl M. Hebert Esq.
L/O Carl M. Hebert
202 California Ave
Reno, NV 89509
Phone: 775-323-5556
carl@cmhebertlaw.com
Parties Represented:
Gregory Garmong

Thomas C. Bradley Esq.
Sinai, Schroeder, Mooney, Boetsch, Bradley & Pace
448 Hill Street
Reno, NV 89501
Phone: 775-323-5178
Tom@stockmarketattorney.com
Parties Represented:
Greg Christian
Wespac

I declare under penalty of perjury the foregoing to be true and correct. Executed at Las Vegas, NEVADA on August 11, 2017.



Mara Satterthwaite
msatterthwaite@jamsadr.com

SINAI, SCHROEDER, MOONEY, BOETSCH,
BRADLEY & PACE
AN ASSOCIATION OF LAW OFFICES
448 HILL STREET
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(775) 323-8178 • (775) 323-0709 FACSIMILE

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Code: 2635
Thomas C. Bradley, Esq.
Bar No. 1621
448 Hill Street
Reno, Nevada 89501
Telephone (775) 323-5178
Fax: (775) 323-0709
Counsel for Defendants

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

GREGORY GARMONG,

Plaintiff,

Case No. CV 12-01271

v.

Dept. No. 6

WESPAC, GREG CHRISTIAN, and
Does 1-10,

Defendants.

OFFER OF JUDGMENT

COMES NOW, Defendants WESPAC and GREG CHRISTIAN, by and through their attorney of record, THOMAS C. BRADLEY, ESQ., of Sinai, Schroeder, Mooney, Boetsch, Bradley & Pace, pursuant to NRCPC Rule 68, hereby offer to allow judgment to be taken against them and in favor of Plaintiff, Greg Garmong, for the total sum of TEN THOUSAND DOLLARS (\$10,000), which sum shall include any and all legally taxable costs, pre-judgment interest, and attorneys' fees incurred by Plaintiff to date in said action, and any other sums or remedies that could be claimed by Plaintiff against Defendants in the above-captioned action.

This written Offer of Judgment to Plaintiff is made pursuant to and for the purposes specified in Rule 68 of the Nevada Rules of Civil Procedure and is not to be construed either as an admission that Defendants are liable for Plaintiff's alleged injuries in this action or that Plaintiff is entitled to, or has suffered, any damages. Defendants waive no defense by virtue of this offer.

SINAI, SCHROEDER, MOONEY, BOETSCH,
BRADLEY & PACE
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If you accept this Offer and give written notice thereof within ten (10) days, Defendants demand that this action be dismissed with prejudice.

You are further notified that if notice of acceptance is not given as provided in Rule 68 of the Nevada Rules of Civil Procedure within ten (10) days from the date of service of the Offer upon you, this Offer will be automatically withdrawn. You will then be responsible for Defendants' costs, expert fees and attorneys' fees incurred from this day forward in the event you fail to obtain judgment in an amount greater than that offered herein.

The undersigned affirms that this document does not include the Social Security Number of any persons pursuant to NRS 239B.030.

DATED this 17 day of Sept, 2017.

Sinai, Schroeder, Mooney,
Boetsch, Bradley & Pace


Thomas C. Bradley, Esq.
Attorney for Defendants

SINAI, SCHROEDER, MOONEY, BOETSCH,
BRADLEY & PACE
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RENO, NEVADA 89501
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CERTIFICATE OF SERVICE

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Pursuant to NRCP 5(b), I certify that I am an employee of SINAI, SCHROEDER, MOONEY, BOETSCH, BRADLEY & PACE, and that on this day I caused to be served a true and correct copy of the attached document **OFFER OF JUDGMENT (Second Judicial District)** to the following parties by

___ using the Court's CM/ECF Electronic Notification System:

X placing an original or true copy thereof in a sealed envelope, with sufficient postage affixed thereto, in the United States mail (USPS) at Reno, NV addressed to:

ATTORNEY	PARTY(IES)
Carl Hebert, Esq. 202 California Avenue Reno, NV 89509	Plaintiff Gregory Garmong

Dated this 12th day of September, 2017.

David Methers
An Employee of Thomas C. Bradley, Esq.

1 CARL M. HEBERT, ESQ.
Nevada Bar #250
2 202 California Avenue
Reno, NV 89509
3 (775) 323-5556

4 Attorney for plaintiff

5 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
6 IN AND FOR THE COUNTY OF WASHOE

7 GREGORY O. GARMONG,
8 Plaintiff,

9 vs.

CASE NO. : CV12-01271

10 WESPAC; GREG CHRISTIAN;
11 DOES 1-10, inclusive,

DEPT. NO. : 6

12 Defendants.
13 _____/

14 **AMENDED COMPLAINT**

15
16 Plaintiff GREGORY GARMONG, by and through his counsel of record,
17 Carl M. Hebert, Esq. and for his First Amended Complaint against Defendants
18 Wespac Advisors, LLC (“Wespac”), Greg Christian (“Christian”), and Does 1-
19 10 (collectively, “Defendants”), alleges:

20 1. At all times relevant, Plaintiff was a resident of Douglas County
21 Nevada and Lyon County, Nevada.

22 2. At all times relevant, Defendants held themselves out to the public
23 as investment advisors and investment managers performing fiduciary and
24 other services for customers; Christian was affiliated with Wespac.

25 3. Does 1-10 are owners/shareholders, joint venturers, partners,
26 parent corporations and/or employers and/or are otherwise associated with
27 Defendants who are responsible for the actions or omissions of the named
28 defendants by operation of law or through agency principles, whose identities

1 are unknown to Plaintiff at this time. Plaintiff will ascertain the identities of
2 Does 1-10 during discovery and will move to add these persons to the list of
3 named Defendants.

4 4. At all times relevant, Defendants did business in Washoe County,
5 Nevada.

6 5. The Second Judicial District Court in and for Washoe County,
7 Nevada is a proper venue for this action because of the place of business of
8 Defendants.

9 6. The Second Judicial District Court in and for Washoe County,
10 Nevada has subject matter jurisdiction of this matter because of the dollar
11 amount of damages alleged.

12 7. At a time prior to 2007, Plaintiff became a client of Defendants.
13 Plaintiff entrusted a major portion of his life savings and retirement savings to
14 Defendants to manage. The life savings and retirement savings were held in
15 accounts at Schwab, and Defendants had signature authority and control over
16 these accounts for management purposes. Plaintiff had other accounts with
17 Schwab with which Defendants had no involvement.

18 8. In late 2007 and early 2008, Defendant Christian solicited, urged
19 and pleaded with Plaintiff to allow Defendants to take over the sole
20 management of Plaintiff's accounts because of their investment expertise,
21 leaving all discretionary actions to Defendants. Defendant Christian proposed
22 that Plaintiff should not be involved in the active management of his life
23 savings and retirement accounts, and that ultimate investment decisions
24 should be made by Defendants. Plaintiff accepted the proposal.

25 9. In conjunction with Defendants taking over sole management of
26 Plaintiff's accounts, Plaintiff informed Defendants that he had recently retired.
27 Plaintiff further established general investment guidelines with Defendants
28 that it was important that his accounts be managed to conserve capital, and

1 that Defendants' management should be within those guidelines. Plaintiff
2 instructed the Defendants that it was preferable to sacrifice potential gains so
3 as not to lose capital. When losses first appeared, Defendant Christian
4 assured Plaintiff that Defendants were following their plan to manage
5 Plaintiff's life savings and retirement accounts to conserve Plaintiff's capital,
6 and that Defendants should be given the opportunity to allow their plan to
7 work out.

8 10. Despite Defendants' assurances to Plaintiff that they would follow
9 his investment guidelines and manage Plaintiff's life savings and retirement
10 accounts to conserve capital, Defendants failed to do so. Defendants
11 mismanaged Plaintiff's life savings and retirement accounts, and caused the
12 loss of and wasted a significant portion of Plaintiff's life savings and retirement
13 accounts. When it became apparent in late 2008 that Defendants were not
14 properly managing Plaintiff's life savings and retirement accounts within
15 Plaintiff's guidelines and had misled Plaintiff, Plaintiff ended Defendants'
16 management of Plaintiff's life savings and retirement accounts.

17 **FIRST CLAIM FOR RELIEF**

18 **(Breach of Contract)**

19 11. Plaintiff here incorporates paragraphs 1-10 by reference.

20 12. Plaintiff fulfilled all of his obligations under his contract with the
21 defendants..

22 13. The Defendants breached their obligations under the contract,
23 causing damage to Plaintiff.

24 14. Defendants' breach was the proximate cause of general damages
25 and special damages to Plaintiff in an amount in excess of \$10,000.

26 **SECOND CLAIM FOR RELIEF**

27 **(Breach of implied warranty in contract)**

28 15. Plaintiff here incorporates the preceding paragraphs of the

1 complaint by reference.

2 16. An implied warranty existed for Defendants under the contract, to
3 perform their duties properly, with care, skill, reasonable expediency, and
4 faithfulness.

5 17. Defendants breached the implied warranty by failing to perform
6 their duties properly.

7 18. Defendants' breach was the proximate cause of general damages
8 and special damages to Plaintiff in an amount in excess of \$10,000.

9 **THIRD CLAIM FOR RELIEF**
10 **(Contractual Breach of Implied Covenant**
11 **of Good Faith and Fair Dealing)**

12 19. Plaintiff here incorporates the preceding paragraphs of the
13 complaint by reference.

14 20. There is an implied covenant of good faith and fair dealing
15 associated with all contracts.

16 21. Defendants went through the motions of performing the contract,
17 but they did so in a manner completely unfaithful to the purpose of the
18 contract and the investment objectives and instructions of Plaintiff.

19 22. Defendants contractually breached their implied covenant of good
20 faith and fair dealing. As a result of Defendants' contractual breach, the life
21 savings and retirement accounts under Defendants' management ("managed
22 accounts") lost a large amount of capital and Plaintiff was charged for work
23 that was either not performed or not performed properly.

24 23. Defendants' breach was the proximate cause of general damages
25 and special damages to Plaintiff in an amount in excess of \$10,000.

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1 **SIXTH CLAIM FOR RELIEF**

2 **(Breach of Fiduciary Duty)**

3 31. Plaintiff here incorporates the preceding paragraphs of the
4 complaint by reference.

5 32. Defendants had a fiduciary duty to Plaintiff arising from their
6 investment advisory, financial planning, and management relationship with
7 Plaintiff.

8 33. Defendants breached their fiduciary duty to Plaintiff by failing to
9 exercise a fiduciary responsibility in their management of Plaintiff's life
10 savings and retirement accounts and by deceiving Plaintiff as to their actions
11 and inaction.

12 34. Defendants' breach was the proximate cause of general damages
13 and special damages to Plaintiff in an amount in excess of \$10,000.

14 **SEVENTH CLAIM FOR RELIEF**

15 **(Breach of Fiduciary Duty of Full Disclosure)**

16 35. Plaintiff here incorporates the preceding paragraphs of the
17 complaint by reference.

18 36. Defendants had fiduciary duties to Plaintiff arising from their
19 investment advisory, financial planning, and management relationship to
20 Plaintiff.

21 37. Defendants breached their fiduciary duty to Plaintiff by failing to
22 make full disclosure to Plaintiff that Defendants were not properly registered
23 and licensed to make investment recommendations, as they were not properly
24 registered pursuant to NRS 86.544 and licensed pursuant to NRS 90.330(1)),
25 and that they had not fulfilled their obligations to him under federal law.

26 38. Defendants' breach was the proximate cause of general damages
27 and special damages to Plaintiff in an amount in excess of \$10,000.
28

1 47. Defendants breached their fiduciary duties to Plaintiff by, among
2 other things, failing to exercise a fiduciary responsibility in their management
3 of Plaintiff's managed accounts; failing to follow Plaintiff's investment
4 objectives and instructions; failing to act in good faith and with due regard to
5 the interests of Plaintiff; failing to make full disclosure to Plaintiff; breaching
6 their fiduciary duties of loyalty, good faith, and fair dealing; making promises
7 to Plaintiff and then not attempting to implement those promises,
8 concentrating on obtaining and providing services to other clients to the
9 exclusion of Plaintiff's interests; deceiving Plaintiff as to their actions and
10 inactions; and deceiving Plaintiff by not disclosing that they were not in
11 conformance with Nevada and federal law.

12 48. Defendants were grossly negligent in light of Plaintiff's
13 circumstances of being more than 60 years old and having recently retired,
14 and his express investment objectives and instructions to them to manage
15 his accounts conservatively and not to lose capital, when they were fully
16 aware of a management procedure that would have met Plaintiff's investment
17 objectives and instructions and elected not to implement that management
18 procedure.

19 49. Defendants violated laws of the State of Nevada in recommending
20 and taking the course of action they pursued. Defendants were not properly
21 registered and licensed to make investment recommendations, as they were
22 not properly registered pursuant to NRS 86.544 and not licensed pursuant to
23 NRS 90.330(1)).

24 50. Defendants are liable to Plaintiff in the amount of the economic
25 loss and all costs of litigation and attorney's fees.

26 51. Defendants' breach, negligence, and violations of law were the
27 proximate cause of general damages and special damages to Plaintiff in an
28 amount in excess of \$10,000.

1 **TWELFTH CLAIM FOR RELIEF**

2 **(Unjust Enrichment)**

3 58. Plaintiff here incorporates the preceding paragraphs of the
4 complaint by reference.

5 59. Plaintiff made payments to Defendants during their business
6 relationship, which payments were accepted and retained by the Defendants.

7 60. Defendants failed to provide the services for which Plaintiff was
8 paying Defendants. Defendants were unjustly enriched by the payments that
9 Plaintiff made to them.

10 61. Plaintiff was damaged as a result of the unjust enrichment of
11 Defendants in an amount in excess of \$10,000.

12 **DOUBLING OF DAMAGES PURSUANT TO NRS 41.1395**

13 62. Plaintiff here incorporates the preceding paragraphs of the
14 complaint by reference.

15 63. Plaintiff was, at all relevant times, over 60 years old and is
16 therefore an "older person" as defined by NRS 41.1395(4)(d).

17 64. Defendants exploited plaintiff by obtaining control, through
18 deception, misrepresentation and undue influence, over the money, assets
19 and property of Plaintiff with the intention of permanently depriving plaintiff of
20 the ownership, use, benefit or possession of plaintiff's's money, assets and
21 property. Defendants also converted money, assets and property of plaintiff
22 with the intention of permanently depriving plaintiff of the ownership, use,
23 benefit or possession of plaintiff's money, assets and property.

24 65. Defendants acted with recklessness, oppression, fraud or malice.

25 66. As a result of Defendants' exploitation of Plaintiff, all damages
26 awarded to Plaintiff under the First through Twelfth Claims for Relief should
27 be doubled.

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PRAYER AND DEMAND FOR RELIEF

WHEREFORE, Plaintiff prays for the Court’s order, judgment and decree against the Defendants as follows:

1. For general and special damages.
2. For return of the “advisor fees” that Defendants charged Plaintiff.
3. For punitive and exemplary damages.
4. For Plaintiff’s costs of suit and attorney’s fees.
5. For a doubling of the damages.
6. For an award of interest according to law.
7. For such other and further relief as the Court may deem proper.

The undersigned hereby affirms that this document does not contain a social security number or other restricted personal identifying information.

Dated this 18th day of September, 2017.

/S/ Carl M. Hebert
CARL M. HEBERT, ESQ.
Counsel for plaintiff Garmong

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5 Telephone (775) 323-5178
6 Fax: (775) 323-0709
7 Counsel for Defendants

8 *Judicial Arbitration and Mediation Services*
9 *Las Vegas, Nevada*

10 GREGORY GARMONG,

11 Plaintiff,

Case No. 1260003474

12 v.

13 WESPAC, GREG CHRISTIAN, and

14 Does 1-10,

15 Defendants.

16 **OPENING ARBITRATION BRIEF**

17 **I. The Worldwide Financial Crisis of 2008-2009**

18 Claimant's allegations are nothing more than the complaint of an investor who was,
19 unfortunately, caught in an unprecedented worldwide financial crisis and is upset his investments
20 did not turn out as well as he hoped. Indeed, Claimant was invested while the financial markets
21 were experiencing unprecedented volatility during the midst of a deep financial crisis that
22 affected the credit markets, the housing market, and the financial markets alike, not just in the
23 United States, but worldwide.

24 The financial devastation changed the face of Wall Street beyond anyone's wildest
25 expectations. It led to the United States government taking on ownership roles like never before
26 in several public companies, including bailing out some of Wall Street's largest financial
27 institutions while others went out of business, in efforts to avoid the collapse of entities that were

1 “too big to fail,” because their failure would have had devastating consequences on the United
2 States and world economies. The financial crisis led to the disappearance of such investment
3 banking icons as Bear Stearns and Lehman Brothers, and led to the conservatorship and control
4 of two government sponsored enterprises, Fannie Mae (Federal National Mortgage Association)
5 and Freddie Mac (Federal Home Loan Mortgage Corporation), by the Federal Housing Finance
6 Agency (FHFA). These historic events were all beyond Wespac’s control and were certainly
7 unforeseeable by Mr. Christian.

8 Yet, Claimant’s Statement of Claim seeks to make Wespac, and Mr. Christian in
9 particular, responsible for the declines in the value of Claimant’s portfolio occasioned by the
10 collapse of the financial markets in 2008 through early 2009 on account of these unprecedented
11 events. It is unfortunate that Claimant invested in securities during this time, however, the
12 evidence will show that during the financial crisis of 2008 and 2009, where the values of assets,
13 whether stock, real estate, or commodities, plummeted as the world faced a major recession,
14 neither Wespac nor its Financial Advisors were in a position to foresee these events or the
15 number of companies that were close to collapsing without government intervention. In fact, as
16 set forth below, the evidence will show that Mr. Christian always discussed the nature of the
17 investments he was recommending and Claimant always made the final decision as to whether or
18 not he wanted to make the investments. In any event, Claimant’s allegations are without merit
19 and should be dismissed in their entirety.

20 **II. BACKGROUND OF PARTIES**

21 **A) Claimant**

22 Claimant Gregory Garmong is a very wealthy retired lawyer. He is a frequent litigant. In
23 this case, Judge Brent Adams ordered him to submit to arbitration. Mr. Garmong then filed a
24 Motion for Reconsideration that was denied. Mr. Garmong then filed a Writ of Mandamus which
25 was denied. He subsequently filed a request for a Rehearing before the Nevada Supreme Court
26 which was denied. He then filed a Petition for Rehearing En Banc which was denied.

27 He then filed a Motion for a Court-Appointed Arbitrator because he did not like the
28

1 manner in which JAMS arbitrators were selected. Judge Simon granted the Motion and
2 subsequently appointed Judge Pro to serve as the JAMS arbitrator.

3 In 2007, Mr. Garmong filed suit against Roney and Sons Construction and other
4 defendants alleging construction defects on doors he purchased for his home, including claims
5 for breach of fiduciary duty, fraud, and civil conspiracy. The Nevada District Court Judge
6 granted Summary Judgment against Mr. Garmong. Mr. Garmong then filed a Writ of Mandamus
7 or in the Alternative an Order Prohibiting the District Judge from Entering the Summary
8 Judgement Order. In 2008, the Nevada Supreme Court ruled against Mr. Garmong. The Nevada
9 District Court also ordered Mr. Garmong to pay Defendant's attorney fees and costs. The District
10 Court found he violated Rule 11 of Nevada Rules of Civil Procedure by filing motions with the
11 improper purposes of harassing defendants, causing unnecessary delay, and needlessly increasing
12 litigation costs. Mr. Garmong then appealed that issue to the Nevada Supreme Court. The
13 Nevada Supreme Court also ruled against him on that issue.

14 Following his divorce in 2009, Mr. Garmong also filed suit against his ex-wife, Linda
15 Garmong, alleging that she failed to maintain real property to which Mr. Garmong had
16 ownership and remainder interests. Ms. Garmong then sought the protection of the Bankruptcy
17 Court. In Bankruptcy Court, Mr. Garmong asked the Trustee to order a sale of the property. The
18 Trustee and the Bankruptcy Judge refused to do so. Mr. Garmong then appealed the case to the
19 Federal District Court, which also ruled against him. Mr. Garmong then appealed to the Ninth
20 Circuit which also ruled against him.

21 In 2013, Mr. Garmong sued his divorce attorney Gary Silverman and his law firm
22 essentially alleging legal malpractice. The District Court granted Summary Judgment on nine (9)
23 claims for relief because Mr. Garmong failed to present expert evidence as required by Nevada
24 law. The District Court later granted Summary Judgment on the remaining claims. The District
25 Court also ordered Mr. Garmong to pay substantial attorney fees to the Defendants. Mr.
26 Garmong appealed the case twice to the Nevada Supreme Court, which ruled against him both
27 times. He also unsuccessfully sought Rehearings and En Banc hearings.

1 In 2016, Mr. Garmong has filed a Complaint against the Lyon County Planning
2 Commission allegedly because the Commissioners badgered him. Mr. Garmong contended that
3 the planning Commission violated the open meeting laws. This claim was summarily rejected by
4 the Nevada Attorney General.

5 In 2016, Mr. Garmong filed suit in the United States District Court for the District of
6 Nevada against the members of the Nevada Supreme Court including Justices Hardesty,
7 Pickering, Gibbons, Cherry, Douglas, Saitta, and Parraguirre. He claims they violated his civil
8 rights by failing to consider jurisdictional issues and failing to consider applicable law in four (4)
9 different cases. United States District Court Judge Gordon granted a Motion to Dismiss the
10 Complaint because the case amounted to “de facto” appeals of prior cases. Mr. Garmong has
11 appealed the case to the Ninth Circuit Court of Appeals.

12 In 2017, Mr. Garmong filed suit against the Tahoe Regional Planning Agency (TRPA)
13 and its officers and members based upon TRPA’s approval of a permit for Verizon to install a
14 cellular tower in the Tahoe National Forest. Mr. Garmong claims, in part, that his civil rights
15 were violated because the proposed cellular tower would be placed in an area in which Mr.
16 Garmong enjoys hiking. In fact, Mr. Garmong alleged twenty eight (28) different claims
17 including violations of his civil rights.

18 In short, Mr. Garmong has a track record of filing meritless lawsuits and claims. The
19 evidence in this arbitration will prove that Mr. Garmong’s claims are also without merit and
20 should be summarily dismissed.

21 **B) Greg Christian**

22 Mr. Christian is an experienced financial advisor with over 30 years experience advising
23 investors on how to invest their securities portfolios. He passed his securities examination in
24 1987 and has worked at several different brokerage firms and banks. He has been employed with
25 Wespac Advisors, LLC, a SEC registered Investment Advisor, since 2004.

26 Mr. Christian has a fairly clean, but not perfect, record as a financial advisor. In 1992, his
27 then employer, Wedbush Morgan Securities, approved the sale of Crown Gold Companies, Ltd.

1 stock. Mr. Christian traded some of these securities. Unfortunately, Wedbush did not perform its
2 due diligence and failed to discover that the stock was not properly registered. The SEC initiated
3 an action against Mr. Christian and his branch manager. Mr. Christian agreed to accept a
4 suspension of ninety days to resolve the matter.

5 A former client of Mr. Christian brought an arbitration claim against Mr. Christian in
6 2009. The dispute proceeded to arbitration and all claims were denied.

7 Apart from his professional life, Mr. Christian has been married for 28 years and has
8 three children. He has been a member of Rotary International and volunteer ski patrolman at
9 Squaw Valley for several decades. He also served as an assistant football coach at Truckee High
10 School.

11 Currently, Mr. Christian is the President of two foundations to benefit youth sports and is
12 the head coach for the girl's varsity lacrosse team at Truckee High School.

13 C) **Wespac Advisors, LLC**

14 Wespac has been a SEC Registered Investment Advisor for the past 22 years and has
15 never been the subject of a regulatory complaint. Wespac utilizes a sophisticated systematic
16 approach to implementing tactical asset allocation across asset classes and across investment
17 horizons. This approach helps identify market leadership to keep portfolios allocated to the right
18 asset classes and the right securities at the right time. Wespac's investment strategy participates
19 in asset classes that are leading the market, and, when safe assets lead, tactically shifts its
20 allocations to that new leadership. The Wespac approach is a disciplined process that has been
21 deployed across all types of market environments and is tailored to each investor's individual
22 goals and objectives.

23 **III. INVESTMENTS AT ISSUE**

24 Greg Christian and Wespac Advisors have been members of the Charles Schwab Advisor
25 Network for many years. This network is difficult to join and its members must continually meet
26 the stringent requirements of Charles Schwab. In 2005, a Charles Schwab representative
27 recommended Greg Christian and Wespac to Mr. Garmong. Charles Schwab apparently
28

1 determined that Mr. Christian and Wespac were suitable advisors for Mr. Garmong. In the
2 summer of 2005, Mr. Garmong followed the advice of the Charles Schwab representative and
3 contacted Mr. Christian. Mr. Garmong set an appointment and interviewed Mr. Christian.
4 Following the interview, Mr. Garmong elected to retain him.

5 During their face to face meeting, Mr. Garmong explained to Mr. Christian that he was a
6 wealthy retired attorney. He also explained that he wanted to be fully involved in all investment
7 decisions and wanted to pre-approve the purchase and sale of all securities. In fact, Mr. Garmong
8 insisted that investment decisions would be jointly made by him and Mr. Christian.

9 Accordingly, in or about September 2005, Mr. Garmong transferred securities into five
10 new accounts at Charles Schwab that were managed by Wespac Advisors and Mr. Christian. The
11 five accounts consisted of two Qualified Retirement Accounts, a defined benefit account, an
12 IRA, and an individual account.

13 Specifically, in September 2005, Mr. Garmong transferred a number of securities into the
14 two Qualified Retirements Accounts. Throughout the life of the accounts, a number of securities
15 were sold and the proceeds were held in cash. There were no purchases of securities in the
16 Qualified Retirement Accounts. Over the life of these accounts, the accounts were profitable.

17 In September 2005, Mr. Garmong also transferred a number of securities into his
18 individual account. Mr. Christian recommended, and Mr. Garmong agreed, to sell a number of
19 securities and to purchase other securities. All of these investment decisions were jointly made
20 after full consideration by Mr. Garmong.

21 In October 2005, Mr. Garmong also transferred a number of securities into his Defined
22 Benefit account. Throughout the life of this account, a number of securities were sold and some
23 bonds matured. The proceeds from the sales of the securities and maturation of the bonds were
24 held in cash. There were no purchases of securities in this account. Over the life of this account,
25 the account was also profitable.

26 In July 2007, Mr. Garmong transferred the Defined Benefit account into his IRA.
27 Throughout the life of this account, a number of securities were sold and bonds matured. Again,
28

1 the proceeds were held in cash and there were no purchases of securities in this account.

2 Initially, the IRA and the individual account enjoyed an increase in value and performed
3 well. The gains were consistent with the performance of the overall stock market. These two
4 accounts, like the rest of the overall stock market, began to suffer large declines in the fall of
5 2007. Mr. Garmong carefully followed the declining values of these accounts and frequently
6 spoke with Mr. Christian. Throughout the decline in value of his accounts, Mr. Garmong sought
7 Mr. Christian's advice.

8 **IV. DAMAGES**

9 To the extent that there were losses in some accounts, the losses were directly attributable
10 to the sharp declines in the overall stock market. In 2008, Mr. Christian explained to Mr.
11 Garmong that although the overall market was declining. Mr. Christian believed that his clients
12 should not panic by converting all securities investments into cash. However, Mr. Christian did,
13 in fact, suggest reducing Mr. Garmong's exposure by selling only a portion of his securities.

14 On September 26, 2008, Mr. Garmong sent a fax to Mr. Christian which stated, in part, "I
15 told you that I wanted no losses" in my investment accounts. Mr. Christian categorically denies
16 that Mr. Garmong had previously made such a statement to him. Moreover, Mr. Christian sent
17 Mr. Garmong a letter stating,

18 Regarding the specific allegation in your letter, I respectfully disagree with your
19 recollection of events. You never told me that "there could not be losses from my
20 accounts in 2008." If any client had told me that I would have offered you two
21 alternatives; (1) go to 100% cash or (2) to close your accounts.

22 *See Exhibit 1.*

23 Mr. Garmong ultimately fired Mr. Christian on March 9, 2009. Presumably, if Mr.
24 Garmong truly wanted to ensure that his investment accounts would not have any losses, then he
25 would have immediately sold all of his remaining securities on or before March 9, 2009.
26 Notably, it turns out that March 9, 2009, was the very bottom of the bear market. Thus, Mr.
27 Garmong could not have selected a worse time to stop following Mr. Christian's advice and to
28

1 terminate his services.

2 A historical look at the overall market conditions is instructive. First, attached is a chart
3 showing the values of the S&P 500 and NASDAQ during the time period Mr. Christian gave
4 investment advice to Mr. Garmong - September 1, 2005 to March 9, 2009. *See* Exhibit 2, which
5 shows that the SP500 and NASDAQ, after a lengthy period of appreciation, decreased in value
6 approximately 45% during this period of time.

7 The next chart depicts the market conditions from the day Mr. Garmong terminated Mr.
8 Christian's services until the present time. *See* Exhibit 3, which shows that the S&P 500 has
9 increased in value approximately 275% and NASDAQ has increased in value almost 400%.
10 Clearly, had Mr. Garmong followed Mr. Christian's advice to stay in the market and not panic,
11 Mr. Garmong's accounts would likely have tripled in value since March 2009.

12 One of the critical issues in this case will be to determine exactly what changes Mr.
13 Garmong made in his investment accounts after he terminated the services of Mr. Christian. If
14 Mr. Garmong did not make substantial changes to his holdings, then he can hardly complain that
15 Mr. Christian's advice was not suitable. If, however, Mr. Garmong panicked, sold all his
16 securities, and remained in cash, then Mr. Garmong caused his damages by not following Mr.
17 Christian's advice.

18 **V. CONCLUSION**

19 Essentially, Mr. Garmong contends that Mr. Christian failed to have a crystal ball and
20 accurately predict the market crash of 2008. No one, including the best and brightest investment
21 professionals can predict short term market fluctuations. Predicting short term fluctuations is also
22 known as market timing strategies.

23 Jack Bogle, the founder of Vanguard, has famously said, "after nearly fifty years in this
24 business, I do not know of anybody who has done it [market timing] successfully and
25 consistently. I don't even know anybody who knows anybody who has done it successfully and
26 consistently." Yet, Mr. Garmong apparently holds Mr. Christian to this impossible standard.

27 In conclusion, Mr. Garmong's claims are without merit and should be summarily
28

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1 dismissed. Moreover, Mr. Garmong caused his own damages by panicking and not following the
2 Mr. Christian's advice. Indeed, had Mr. Garmong maintained his relationship with Wespac and
3 Mr. Christian, his accounts would have experienced substantial gains and his claim would not
4 have been brought.

5
6 Submitted this 18th day of September, 2017

7
8 
9 Thomas C. Bradley, Esq.
10 Attorney for Respondents

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EXHIBIT 1

EXHIBIT 1

WESPAC

Offices located nationally

Reno Office
10425 Double R Blvd.
Reno, NV. 89521
p. 888.895.2889
renowespac@wespac.net
www.wespac.net

Oakland Office
2001 Broadway
2nd Floor
Oakland, CA. 94612

So. California Office
655 North Central Avenue
17th Floor
Glendale, CA. 91238

Tuesday, September 30, 2008

Dear Greg,

We are in receipt of your letters sent via fax on Sunday, September 28, 2008 and Friday, September 26th. I understand and empathize with your concern over your losses. No one enjoys losing money. However, everyone knows that there is risk in the financial markets and to gain the long term benefits associated with investing in the markets, an investor must be willing to accept the risk of loss from time to time.

Regarding the specific allegations in your letter, I respectfully disagree with your recollection of events. You never told me that "there could not be losses from my accounts in 2008." If any client had told me that I would have offered you two alternatives; (1) go to 100% cash or (2) to close your accounts.

My understanding of our past conversations was that you did want me to take steps to be more conservative if the stock market declines. I complied with those instructions by raising cash and selling what we believed were weak holdings. Unfortunately, due to unusual financial times in which we find our country today, these steps were not sufficient to protect your accounts from loss of capital.

Regarding the requirements you have demanded in order to maintain our professional relationship, I cannot comply. However, if you wish to continue our relationship I would recommend that in the near term we stay with our current allocations and continue to monitor your accounts. During our conversation yesterday at lunch you mentioned that the market would probably rally through the election and then run into trouble again. If this is the case then you would afford yourself the opportunity to recoup some of the losses and hopefully allow the markets to start trading in a more normal fashion. I am more than happy to meet with you on Wednesday as discussed and map out a workable solution.

Thank you for the opportunity to manage your funds.

Sincerely,



Greg Christian

MEMBER

SCHWAB *advisor network**

Independent investment adviser; prescreened for investor evaluation and selection.*

CONFIDENTIAL

WESPAC000567

* Schwab has not prepared, reviewed or verified the information contained in this document, and Schwab makes no representation or warranty about its accuracy or completeness. Ask advisor for more important information.

EXHIBIT 2

EXHIBIT 2

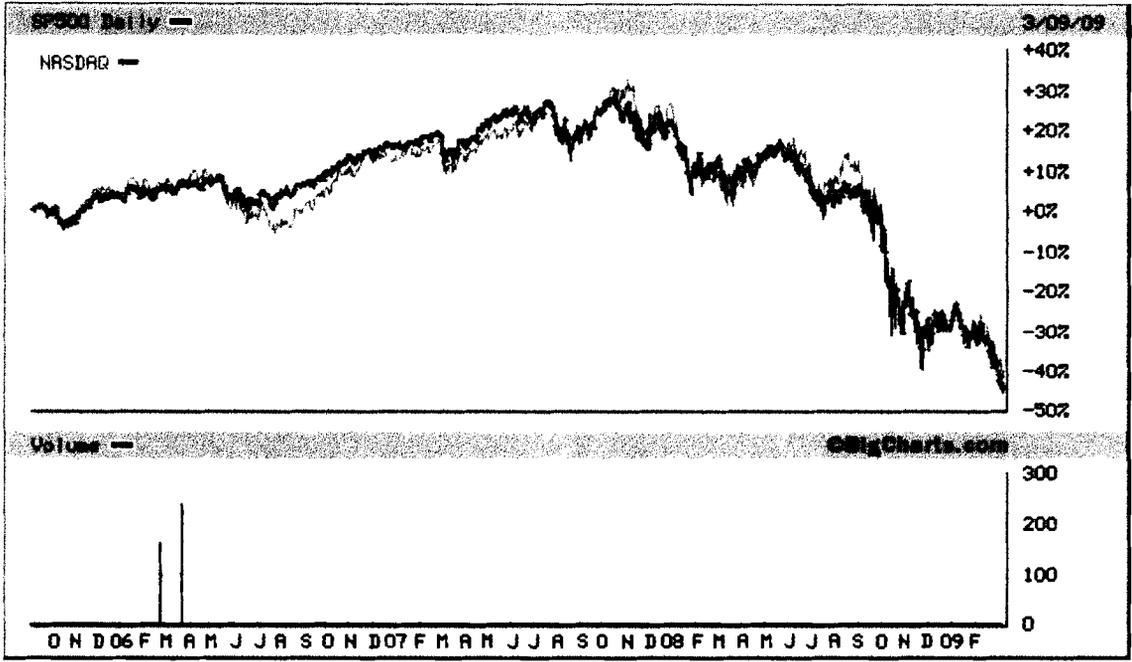
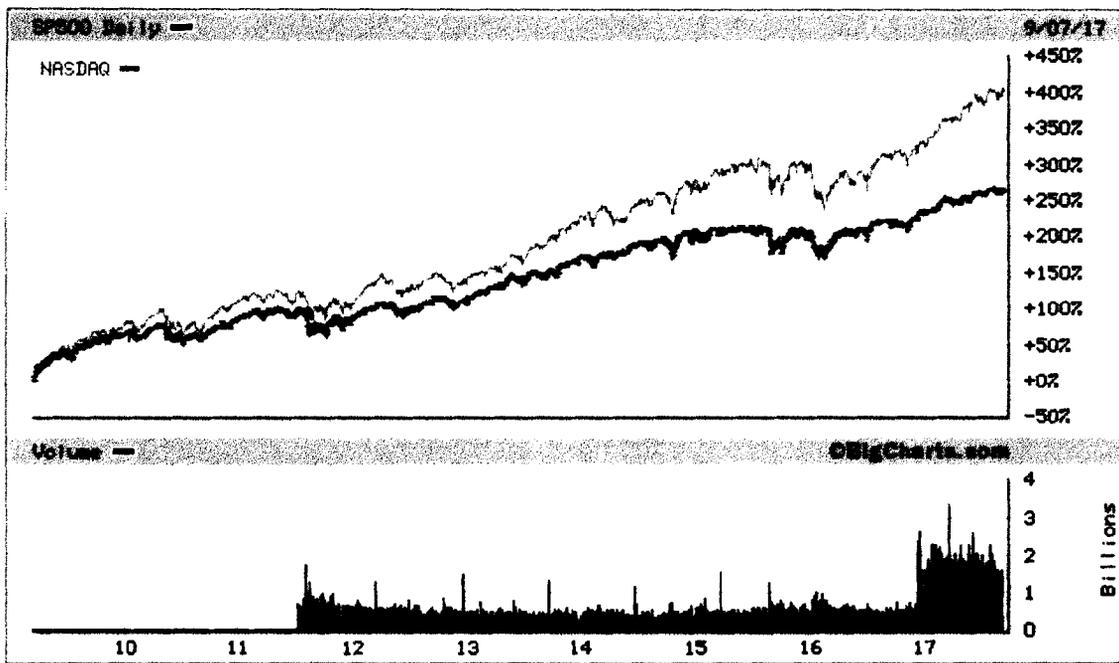


EXHIBIT 3

EXHIBIT 3



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1 Thomas C. Bradley, Esq.
2 Bar No. 1621
3 448 Hill Street
4 Reno, Nevada 89501
5 Telephone (775) 323-5178
6 Fax: (775) 323-0709
7 Counsel for Defendants

8 *Judicial Arbitration and Mediation Services*
9 *Las Vegas, Nevada*

10 GREGORY GARMONG,
11 Plaintiff,

Case No. 1260003474

12 v.

13 WESPAC, GREG CHRISTIAN, and
14 Does 1-10,
15 Defendants.

16 **ANSWER OF DEFENDANTS**

17 DEFENDANTS WESPAC and GREG CHRISTIAN (collectively referred to as
18 "Defendants") answers the Amended Complaint filed by Gregory Garmong (hereinafter
19 "Plaintiff") and hereby denies and alleges as follows:

20 1. Defendants lack sufficient information to form a belief as to the allegations of
21 Paragraph 1, and basing its denial on that ground, deny generally and specifically each and all of
22 the allegations contained in that paragraph.

23 2. Defendants admit that Defendants held themselves out to the public as investment
24 advisors and managers, that they performed services for their customers, and that Christian was
25 affiliated with Wespac but deny the remaining allegations contained in Paragraph 2.

26 3. Defendants lack sufficient information to form a belief as to the allegations of
27 Paragraph 3, and basing its denial on that ground, deny generally and specifically each and all of
28 the allegations contained in that paragraph.

4. Defendants admit the allegations contained in Paragraph 4.

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Plaintiff's Complaint, as if the same were fully set forth herein.

16. As to Paragraph 16, Defendants deny generally and specifically each and all of the allegations contained in that paragraph.

17. As to Paragraph 17, Defendants deny generally and specifically each and all of the allegations contained in that paragraph.

18. As to Paragraph 18, Defendants deny generally and specifically each and all of the allegations contained in that paragraph.

THIRD CLAIM FOR RELIEF

(Contractual Breach of Implied Covenant of Good Faith and Fair Dealing)

19. Defendants reincorporate and reallege their previous answers to the allegations in Plaintiff's Complaint, as if the same were fully set forth herein.

20. The allegations in Paragraph 20 call for a legal conclusion, and basing its denial on that ground, Defendants deny generally and specifically each and all allegations contained in that paragraph.

21. As to Paragraph 21, Defendants deny generally and specifically each and all of the allegations contained in that paragraph.

22. As to Paragraph 22, Defendants deny generally and specifically each and all of the allegations contained in that paragraph.

23. As to Paragraph 23, Defendants deny generally and specifically each and all of the allegations contained in that paragraph.

FOURTH CLAIM FOR RELIEF

(Tortious Breach of Implied Covenant of Good Faith and Fair Dealing)

24. Defendants reincorporate and reallege their previous answers to the allegations in Plaintiff's Complaint, as if the same were fully set forth herein.

25. Defendants admit the allegations in Paragraph 25.

26. As to Paragraph 26, Defendants deny generally and specifically each and all of the allegations contained in that paragraph.

27. As to Paragraph 27, Defendants deny generally and specifically each and all of

1 the allegations contained in that paragraph.

2 ///

3 **FIFTH CLAIM FOR RELIEF**

4 **(Breach of Nevada Deceptive Trade Practices Act)**

5 28. Defendants reincorporate and reallege their previous answers to the allegations in
6 Plaintiff's Complaint, as if the same were fully set forth herein.

7 29. As to Paragraph 29, Defendants deny generally and specifically each and all of
8 the allegations contained in that paragraph.

9 30. As to Paragraph 30, Defendants deny generally and specifically each and all of
10 the allegations contained in that paragraph.

11 **SIXTH CLAIM FOR RELIEF**

12 **(Breach of Fiduciary Duty)**

13 31. Defendants reincorporate and reallege their previous answers to the allegations in
14 Plaintiff's Complaint, as if the same were fully set forth herein.

15 32. As to Paragraph 32, Defendants deny generally and specifically each and all of
16 the allegations contained in that paragraph.

17 33. As to Paragraph 33, Defendants deny generally and specifically each and all of
18 the allegations contained in that paragraph.

19 34. As to Paragraph 34, Defendants deny generally and specifically each and all of
20 the allegations contained in that paragraph.

21 **SEVENTH CLAIM FOR RELIEF**

22 **(Breach of Fiduciary Duty of Full Disclosure)**

23 35. Defendants reincorporate and reallege their previous answers to the allegations in
24 Plaintiff's Complaint, as if the same were fully set forth herein.

25 36. As to Paragraph 36, Defendants deny generally and specifically each and all of
26 the allegations contained in that paragraph.

27 37. As to Paragraph 37, Defendants deny generally and specifically each and all of
28 the allegations contained in that paragraph.

1 49. As to Paragraph 49, Defendants deny generally and specifically each and all of
2 the allegations contained in that paragraph.

3 50. As to Paragraph 50, Defendants deny generally and specifically each and all of
4 the allegations contained in that paragraph.

5 51. As to Paragraph 51, Defendants deny generally and specifically each and all of
6 the allegations contained in that paragraph.

7 **ELEVENTH CLAIM FOR RELIEF**

8 **(Intentional Infliction of Emotional Distress)**

9 52 Defendants reincorporate and reallege their previous answers to the allegations in
10 Plaintiff's Complaint, as if the same were fully set forth herein.

11 53. As to Paragraph 53, Defendants deny generally and specifically each and all of
12 the allegations contained in that paragraph.

13 54. As to Paragraph 54, Defendants deny generally and specifically each and all of
14 the allegations contained in that paragraph.

15 55. As to Paragraph 55, Defendants deny generally and specifically each and all of
16 the allegations contained in that paragraph.

17 56. As to Paragraph 56, Defendants deny generally and specifically each and all of
18 the allegations contained in that paragraph.

19 57. As to Paragraph 57, Defendants deny generally and specifically each and all of
20 the allegations contained in that paragraph.

21 **TWELFTH CLAIM FOR RELIEF**

22 **(Unjust Enrichment)**

23 58. Defendants reincorporate and reallege their previous answers to the allegations in
24 Plaintiff's Complaint, as if the same were fully set forth herein.

25 59. Defendants admit the allegations in Paragraph 59.

26 60. As to Paragraph 60, Defendants deny generally and specifically each and all of
27 the allegations contained in that paragraph.

28 61. As to Paragraph 61, Defendants deny generally and specifically each and all of

1 the allegations contained in that paragraph.

2 ///

3 **DOUBLING OF DAMAGES PURSUANT TO NRS 41.1395**

4 62. Defendants reincorporate and reallege their previous answers to the allegations in
5 Plaintiff's Complaint, as if the same were fully set forth herein.

6 63. Defendants admit that Plaintiff was over 60 years old during the relevant period.
7 The remaining allegations in Paragraph 63 call for a legal conclusion, and basing its denial on
8 that ground, Defendants deny generally and specifically each and all of the remaining allegations
9 contained in that paragraph.

10 64. As to Paragraph 64, Defendants deny generally and specifically each and all of
11 the allegations contained in that paragraph.

12 65. As to Paragraph 65, Defendants deny generally and specifically each and all of
13 the allegations contained in that paragraph.

14 66. As to Paragraph 66, Defendants deny generally and specifically each and all of
15 the allegations contained in that paragraph.

16 **AFFIRMATIVE DEFENSES**

17 By way of affirmative defenses, Defendants allege that Plaintiff's claims are barred in
18 whole and in part by the following:

19 **First Defense:** The Amended Complaint fails to state a claim upon which relief can be
20 granted.

21 **Second Defense:** Defendants' actions did not cause any loss to Plaintiff.

22 **Third Defense:** Plaintiff's claims are barred in whole, or in part, by the applicable statutes
23 of limitation.

24 **Fourth Defense:** The claims alleged in, and relief sought by, the Amended Complaint
25 are barred, in whole or in part, because Defendants acted in good faith and in conformity with all
26 applicable statutes, regulations, laws, rules, and industry standards based upon the state of
27 knowledge existing at the time alleged in the Statement of Claim.

28 **Fifth Defense:** The claims alleged in, and relief sought by, the Amended Complaint are

1 barred, in whole or in part, because Plaintiff knowingly assumed the risk of any injury or damage
2 alleged in the Amended Complaint.

3 **Sixth Defense:** The claims alleged in, and relief sought by, the Amended Complaint are
4 barred, in whole or in part, because Plaintiff's alleged injuries, if any, were caused in whole or
5 in part by a supervening or intervening cause.

6 **Seventh Defense:** The claims alleged in, and relief sought by, the Amended Complaint
7 are barred, in whole or in part, by the doctrine of estoppel and/or quasi-estoppel.

8 **Eighth Defense:** The claims alleged in, and relief sought by, the Amended Complaint are
9 barred, in whole or in part, by the doctrine of waiver.

10 **Ninth Defense:** The claims alleged in, and relief sought by, the Amended Complaint are
11 barred, in whole or in part, by the doctrine of laches.

12 **Tenth Defense:** Plaintiff has unclean hands.

13 **Eleventh Defense:** Plaintiff has failed to mitigate any alleged damages.

14 **Twelfth Defense:** There is not factual basis for Plaintiff's claim for punitive damages nor
15 has Plaintiff properly pled a claim for punitive damages.

16 **Thirteenth Defense:** Upon information and belief, Plaintiff conducted himself
17 negligently and carelessly in and about the matters referred to in the Amended Complaint, which
18 said negligence proximately caused and contributed to the matters referred to in the Amended
19 Complaint and any and all injuries or damages resulted therefrom.

20 **Fourteenth Defense:** The Plaintiff has committed fraud.

21 **Additional Defenses:** Defendants reserve the right to assert additional affirmative
22 defenses once additional facts are made known through discovery.

23
24 WHEREFORE, Defendants pray for judgment as follows:

25 1. That Plaintiff's Amended Complaint be dismissed with prejudice and that
26 Plaintiff take nothing by way of his Amended Complaint.

27 2. That Defendants be awarded their reasonable attorney fees and costs incurred
28 herein.

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3. For such other and further relief as the Arbitrator may deem appropriate.

Submitted this 16 day of October, 2017.

*Sinai, Schroeder, Mooney,
Boetsch, Bradley & Pace*



Thomas C. Bradley, Esq.
Attorney for Defendants

CERTIFICATE OF SERVICE

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Pursuant to NRCP 5(b), I hereby certify that I am an employee of Thomas Bradley, Esq, and that on October 16, 2017, I served the foregoing **ANSWER** via USPS to the following:

Carl Hebert, Esq. for Plaintiff Gregory Garmong

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BRADLEY & PACE
AN ASSOCIATION OF LAW OFFICES
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David McIntosh

Hon. Philip M. Pro (Ret.)
JAMS
3800 Howard Hughes Parkway
11th Floor
Las Vegas, NV 89169
Phone: (702) 457-5267
Fax: (702) 437-5267
Arbitrator

JAMS ARBITRATION CASE REFERENCE NO. 1260003474

GREGORY GARMONG,

Claimant,

vs.

WESPAC, and GREG CHRISTIAN,

Respondents.

SECOND ORDER RE SCHEDULING

Having reviewed the recent series of emails from counsel, the Arbitrator finds it is appropriate to revise the Order Re Scheduling entered September 19, 2017, to reflect recent adjustments to scheduling in this case.

On November 13, 2017, the Honorable Lynne K. Simons, entered an Order in the Second Judicial District Court of the State of Nevada granting Respondents Motion to Strike Claimant's Amended Complaint in that Court, and directed Claimant to file his Amended Complaint in these arbitration proceedings in accordance with the directions of the undersigned Arbitrator. Judge Simons Order further provided that the underlying proceedings between the parties remains stayed pending the outcome of this arbitration.

The Arbitrator deems the copy of the Claimant/Plaintiffs Amended Complaint received by JAMS on or about September 18, 2017, to be sufficient filing in these arbitration proceedings, and considers Respondents' Answer submitted to JAMS on October 16, 2017, also to be sufficient. The parties shall proceed accordingly.

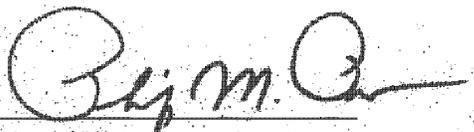
Additionally, the stipulation of counsel to extend the deadline of November 9, 2017, by which to file a Joint Status Report is approved, and the deadline for filing the Report is hereby

extended to and including December 11, 2017.

Finally, counsel for Claimant has advised in his email of November 13, 2017, that he intends to file a Motion for Summary Judgment in the immediate future. To ensure the orderly progress of these proceedings, the Arbitrator hereby sets November 30, 2017, as the deadline for filing dispositive motions by either party. In the event dispositive motions are filed by either party, the opposing party shall have 21 days within which to file a response, and the moving party shall thereafter have 10 days within which to reply.

IT IS SO ORDERED.

Dated: November 22, 2017



Hon. Philip M. Pro (Ret.)
Arbitrator

PROOF OF SERVICE BY EMAIL & U.S. MAIL

Re: Garmong, Gregory vs. Wespac et al.
Reference No. 1260003474

I, Mara Satterthwaite, Esq., not a party to the within action, hereby declare that on November 22, 2017, I served the attached SECOND ORDER RE SCHEDULING on the parties in the within action by Email and by depositing true copies thereof enclosed in sealed envelopes with postage thereon fully prepaid, in the United States Mail, at Las Vegas, NEVADA, addressed as follows:

Carl M. Hebert Esq.
L/O Carl M. Hebert
202 California Ave
Reno, NV 89509
Phone: 775-323-5556
carl@cmhebertlaw.com
Parties Represented:
Gregory Garmong

Thomas C. Bradley Esq.
Sinai, Schroeder, Mooney, Boetsch, Bradley & Pace
448 Hill Street
Reno, NV 89501
Phone: 775-323-5178
Tom@stockmarketattorney.com
Parties Represented:
Greg Christian
Wespac

I declare under penalty of perjury the foregoing to be true and correct. Executed at Las Vegas, NEVADA on November 22, 2017.



Mara Satterthwaite, Esq.
msatterthwaite@jamsadr.com

1 CARL M. HEBERT, ESQ.
2 Nevada Bar #250
3 202 California Avenue
4 Reno, NV 89509
5 (775) 323-5556
6 carl@cmhebertlaw.com

7 Attorney for plaintiff Gregory Garmong

8 JAMS ARBITRATION
9 LAS VEGAS, NEVADA

10 GREGORY GARMONG,
11 Plaintiff,
12 vs.
13 WESPAC; GREG CHRISTIAN,
14 Defendants.

1260003474

**PLAINTIFF'S MOTION FOR
PARTIAL SUMMARY
JUDGMENT**

15 Plaintiff moves for partial summary judgment on the First-Eighth, Tenth,
16 and Twelfth Claims for Relief, and for Doubling of Damages Pursuant to NRS
17 41.1395.

18 This Motion for Partial Summary Judgment ("MSJ") is brought pursuant
19 to NRCP 56, and ¶ 6 of the Discovery Plan and Scheduling Order
20 ("Scheduling Order").

21 The MSJ is based upon the First Amended Complaint, the Answer, the
22 documents produced in this action, the Opening Arbitration Briefs pursuant
23 to Scheduling Order ¶ 4, the following Points and Authorities, the Declaration
24 of Gregory Garmong ("Garmong Declaration"), and the Exhibits identified
25 herein and in the Garmong Declaration.

26 **POINTS AND AUTHORITIES**

27 **I. INTRODUCTION**

28 This MSJ is brought early in the arbitration proceeding because
material facts sufficient to find summary judgment in favor of Plaintiff on

1 multiple claims are not in dispute, and Plaintiff is entitled to judgement as a
2 matter of law.

3 The MSJ is also prompted by a startling admission first made in
4 Defendants' Opening Arbitration Brief at 4:26-5:4:

5 Mr. Christian has a fairly clean, but not perfect, record as a
6 financial advisor. In 1992, his then employer, Wedbush Morgan
7 Securities, approved the sale of Crown Gold Companies, Ltd.
8 stock. Mr. Christian traded some of these securities.
9 Unfortunately, Wedbush did not perform its due diligence and
10 failed to discover that the stock was not properly registered. The
11 SEC initiated an action against Mr. Christian and his branch
12 manager. Mr. Christian agreed to accept a suspension of ninety
13 days to resolve the matter.

14 Spin-free translation: Defendant Christian was personally and directly
15 involved in illegal securities fraud to deceive clients. His activities were
16 discovered, and the SEC, the preeminent governmental authority regulating
17 the securities and investment business, disciplined and suspended him.

18 Neither Defendant disclosed this information until now.

19 But if there was any doubt previously of Defendants' intentional
20 deception of Plaintiff, this disclosure decisively resolves it.

21 A financially conservative potential customer such as Plaintiff would
22 certainly wanted to have known such information about those who were
23 soliciting him to become a customer in a relation built upon "trust," as
24 Defendants represented their mode of doing business.

25 Summary Judgment for Plaintiff is proper at this time, and will avoid
26 needless discovery and further diversionary tactics by Defendants.

27 As demonstrated by the Opening Briefs, the parties have completely
28 divergent views. Plaintiff believes that Defendants had a contractual duty
under the Investment Management Agreement ("Agreement") and a fiduciary
duty under statute and common law. Defendant did not discuss the
governing law, contending that it was bad luck for Plaintiff that in just 13

1 months Defendants wasted \$580,649.82 in capital losses from his managed
2 accounts, directly contrary to Plaintiff's objectives and instructions, while
3 charging him \$21,283.29 in "advisor fees." Defendants refused to discuss
4 the legal issues.

5 The present MSJ should force the Defendants to address the legal
6 issues and present their opposing position, if any. They declined to do so in
7 their Answer to the Amended Complaint. If the legal issues are not
8 addressed now, both Plaintiff and the Arbitrator will have to deal with a mass
9 of discovery, much of it irrelevant as already indicated by Defendants.

10 **II. STANDARD FOR GRANTING SUMMARY JUDGMENT**

11 NRCP 56(a) permits a plaintiff or other claimant to move for summary
12 judgment, with or without supporting affidavits, "upon all or any part thereof."
13 NRCP Rule 56(c) sets forth the standard for evaluating a summary judgment
14 motion:

15 The judgment sought shall be rendered forthwith if the pleadings,
16 depositions, answers to interrogatories, and admissions on file,
17 together with the affidavits, if any, show that there is no genuine
18 issue as to any material fact and that the moving party is entitled
19 to a judgment as a matter of law.

20 See Cuzze v. University and Community College System of Nevada, 123
21 Nev. 598, 602-603, 172 P.3d 131, 134 (2007); Wood v. Safeway, Inc., 121
22 Nev. 724, 729, 121 P.3d 1026 (2005).

23 **III. UNDISPUTED MATERIAL FACTS**

24 NRCP 56(c) provides in relevant part:

25 Motions for summary judgment and responses thereto shall
26 include a concise statement setting forth each fact material to the
27 disposition of the motion which the party claims is or is not
28 genuinely in issue, citing the particular portions of any pleading,
affidavit, deposition, interrogatory, answer, admission, or other
evidence upon which the party relies.

The following Argument refers to these Undisputed Material Facts

1 (“UMFs”). In each case, the reference to “Evidentiary Source” is to the
2 Garmong Declaration and Exhibits. The referenced paragraphs of the
3 Garmong Declaration also refer to Exhibits. All Exhibits are documents
4 produced by the parties earlier.

5 UMF 1. In August , 2005, Plaintiff and Defendant Wespac signed
6 an Investment Management Agreement whereby Defendant Wespac
7 [calling itself “WA”] would act as Plaintiff’s fiduciary and agent, and would
8 provide financial advice, planning and management services to Plaintiff for a
9 specified group of “managed accounts” held at Charles Schwab Co.

10 Evidentiary Source: Garmong Declaration, Exhibit 22, ¶¶ 6-9; Exhibit
11 18.

12 UMF 2. Defendant Christian was at all relevant times associated
13 with Defendant Wespac. Plaintiff’s sole contact with Defendants was
14 Defendant Christian.

15 Evidentiary Source: Garmong Declaration ¶ 6; Answer of Defendants
16 to Amended Complaint, ¶ 2.

17 UMF 3. Defendants had an obligation and fiduciary duty under
18 Investment Management Agreement ¶ 5 to manage Plaintiff’s managed
19 accounts according to the following provision of the Investment Management
20 Agreement: “Although WA may make investment decisions without prior
21 consultation with or further consent from Client, all such decisions shall be
22 made in accordance with the investment objectives of which Client has
23 informed, and may inform, WA from time to time in writing.”

24 Evidentiary Source: Garmong Declaration ¶¶ 6, 10, 19; Exhibit 18,
25 ¶ 5.

26 UMF 4. In August, 2005, Plaintiff provided Defendants with an
27 initial set of financially conservative investment objectives and instructions in
28 a Confidential Client Profile. At that time, Plaintiff was working full time in his

1 profession.

2 Evidentiary Source: Garmong Declaration ¶¶ 6, 11; Exhibit 17.

3 UMF 5. Two years later, at the end of August, 2007, Plaintiff's
4 circumstances changed. Plaintiff commenced retirement. He could no
5 longer earn money to replace any capital losses of principal from the
6 managed accounts.

7 Evidentiary Source: Garmong Declaration ¶ 12, Exhibit 3.

8 UMF 6. On October 22, 2007, effective immediately, Plaintiff
9 informed Defendants in writing and orally of his changed financial
10 circumstances and of additional investment objectives and instructions.
11 Plaintiff's stated objectives and instructions were: "It is really important to me
12 that you structure and manage my accounts so that they do not lose capital
13 if the markets decline, as I believe they may, and if the markets do decline,
14 to sell out the losers. I want to confirm to you what I said at the meeting, and
15 to instruct you that I am willing to sacrifice potential gains to avoid losses."
16 Defendants would assume sole responsibility for the management of
17 Plaintiff's managed accounts, as proposed by Defendants. But, as a
18 condition to Defendants' being solely responsible for the management of
19 Plaintiff's managed accounts, Plaintiff set forth an objective and instruction
20 which was even more conservative than those of the Confidential Client
21 Profile: Defendants were instructed to manage Plaintiff's accounts so as not
22 to lose capital and that it was preferable to forego potential gains than to risk
23 losses. Defendants never objected to these objectives and instructions or
24 suggested that they would not or could not adhere to them, until September
25 30, 2008, when nearly all of their wasting of Plaintiff's managed accounts had
26 already occurred.

27 Evidentiary Source: Garmong Declaration ¶¶ 12-18; (Exhibit 3, at page
28 GG 0004); Exhibit 18, ¶ 5.

1 UMF 7. To ensure that Defendants would have no uncertainty,
2 Plaintiff repeated in writing his objective and instruction that Defendants were
3 not to lose capital from the managed accounts and that it was preferable to
4 forego potential gains than to risk losses, in additional communications after
5 the letter of October 22, 2007. Prior to September 30, 2008, Defendants
6 never asserted that they could not, or would not, follow Plaintiff's written
7 objectives and instructions.

8 Evidentiary Source: Garmong Declaration ¶¶ 13-18; Exhibits 4-8.

9 UMF 8. After Defendants took over sole management of Plaintiff's
10 managed accounts in October 2007, Defendants failed to follow Plaintiff's
11 investment objectives and instructions, with the result that the managed
12 accounts lost \$580,649.82 in value of invested capital in the 13 month
13 period from October 2007 to November 2008, inclusive.

14 Evidentiary source: Garmong Declaration ¶ 22; Exhibits 9, 10.

15 UMF 9. During the same 13-month period, Defendants were paid
16 \$21,283.29 in "advisor fees" by transfer from Plaintiff's managed accounts.

17 Evidentiary source: Garmong Declaration ¶ 22; Exhibits 9, 11.

18 UMF 10. Plaintiff fulfilled all of his obligations and duties under the
19 Investment Management Agreement.

20 Evidentiary Source: Garmong Declaration ¶¶ 20-21; Exhibit 18.

21 UMF 11. To induce Plaintiff to become a client, Defendants
22 represented to Plaintiff that they were financial advisors, financial planners,
23 and financial managers, that their services were of outstanding quality, and
24 that Plaintiff should trust them.

25 Evidentiary Source: Garmong Declaration ¶5; Exhibits 1, 2, 12, 18.

26 UMF 12. At all times relevant to this matter, Plaintiff was over the age
27 of 60, and Defendants knew he was over the age of 60.

28 Evidentiary Source: Garmong Declaration ¶ 4.

1 UMF 13. Defendant Wespac failed to obey the Rules of the
2 Securities Exchange Commission by failing to adopt by January 7, 2005 a
3 Code of Ethics.

4 Evidentiary Source: Garmong Declaration ¶¶ 24-29; Exhibits 14-15.

5 UMF 14. Defendant Wespac failed to obey the rules of the Securities
6 Exchange Commission by failing to inform Plaintiff in its Form ADV-II that
7 Defendant Wespac had a Code of Ethics, and that a copy of the Code of
8 Ethics was available to Plaintiff upon request.

9 Evidentiary Source: Garmong Declaration ¶¶ 24-29; Exhibits 14-15.

10 UMF 15. Defendants failed to register as investment advisors as
11 required by Nevada statute, until nearly the end of the period they dealt with
12 Plaintiff.

13 Evidentiary Source: Garmong Declaration ¶¶ 32-33; Exhibit 13.

14 UMF 16. Defendants concealed from, and never disclosed to,
15 Plaintiff that they did not comply with Nevada statute by failing to register as
16 investment advisors until September 24, 2007.

17 Evidentiary Source: Garmong Declaration ¶¶ 32-33; Exhibit 13.

18 UMF 17. Defendant Wespac failed to register as a foreign LLC in
19 violation of Nevada statute, until nearly the end of the period it dealt with
20 Plaintiff.

21 Evidentiary Source: Garmong Declaration ¶¶ 30-31; Exhibit 16.

22 UMF 18. Defendant Wespac concealed from, and never disclosed
23 to, Plaintiff that it had failed to register as a foreign LLC in violation of Nevada
24 statute until October 22, 2008.

25 Evidentiary Source: Garmong Declaration ¶¶ 30-31; Exhibit 16.

26 UMF 19. Defendants concealed from Plaintiff, during the entire
27 period he was their client, that Defendant Christian had previously been
28 disciplined and suspended by the Securities Exchange Commission in 1992

1 for violations directly related to his dealings with customers. Defendants
2 made this disclosure only on September 18, 2017.

3 Evidentiary Source: Garmong Declaration ¶ 34; Defendants' Opening
4 Arbitration Brief, page 4:26-5:4.

5 UMF 20. If Defendants had not concealed from him, and instead had
6 disclosed to Plaintiff that they did not meet the requirements of federal SEC
7 law and Nevada state law, or that Defendant Christian had been previously
8 disciplined and suspended by the SEC, Plaintiff would have been on notice
9 and would never have dealt with them.

10 Evidentiary Source: Garmong Declaration ¶ 35.

11 **IV. ARGUMENT**

12 **GROUND FOR SUMMARY JUDGMENT FOR PLAINTIFF**

13 The grounds for summary judgment for Plaintiff are presented
14 according to the claims for relief of the Amended Complaint.

15 **1 First Claim for Relief, Breach of Contract.**

16 **A. Elements of Breach of Contract**

17 The elements of breach of contract are:

- 18 1. The parties entered into a valid and enforceable
19 contract;
- 20 2. Plaintiff performed all obligations required under the
21 contract or was excused from performance;
- 22 3. The defendant breached its obligations under the
23 contract;
- 24 4. The plaintiff suffered damages as a result.

25 Mason v. Artwork Pictures, 2007 WL 1100826 (D.Nev. 2007), citing Nevada
26 Contract Services, Inc. v. Squirrel Companies, Inc., 119 Nev 157, 68 P.3d
27 896, 899 (Nev. 2003) (“A breach of contract may be said to be a material
28 failure of performance of a duty arising under or imposed by agreement.”);
Brown v. Kinross Gold U.S.A., Inc., 531 F.Supp.2d 1234 (D.Nev. 2008).

1 **B. Application to the present facts**

2 To prove the breach, the evidence establishes the following elements:

3 1. There was a Contract between the parties. (UMF 1).

4 2. Plaintiff performed all of his obligations under the Contract. (UMF
5 10). Further, there are no counterclaims by Defendants suggesting that
6 Plaintiff had any breach. Answer of Defendants to Amended Complaint.

7 3. Defendant breached its obligations. (UMFs 8-9, 13-19)
8 Defendants had an obligation under the Contract to manage Plaintiff's
9 managed accounts according to investment objectives and instructions given
10 by Plaintiff to Defendants in writing. (UMF 3) Plaintiff provided investment
11 objectives and instructions to Defendants in writing. (UMF 4-7) In August
12 2005, Plaintiff initially instructed Defendants to manage the managed
13 accounts generally conservatively, as he expected to retire in 1-5 years and
14 his principal objective was to provide for his retirement. (UMF 4) Two years
15 later, in August, 2007, Plaintiff's circumstances changed when he
16 commenced retirement and could no longer earn money to replace any
17 capital losses in the principal amount of the managed accounts. (UMFs 5, 6)

18 Shortly thereafter, Plaintiff informed Defendants orally and in writing on
19 October 22, 2007 of his changed circumstances. (UMF 6) At Defendants'
20 urging Plaintiff appointed Defendants as solely responsible for managing his
21 managed accounts. Plaintiff would no longer be involved in the management
22 (UMF 6). Instead, Defendants would manage the managed accounts solely
23 at their discretion but in strict accordance with the objectives and instructions
24 given them by Plaintiff (UMF 3; Exhibit 18, ¶ 5). Plaintiff provided Defendants
25 in writing an objective and instruction that they were not to lose capital (i.e.,
26 principal) from the managed accounts. (UMF 6; Exhibit 3)

27 To be certain that Defendants understood the objective and instruction
28 of not losing capital from the managed accounts, Plaintiff repeated the

1 objective and instruction in several subsequent faxes. (UMF 7; Exhibits 4-8)

2 4. Damages and causation. During October, 2007-November, 2008,
3 Defendants failed to manage Plaintiff's managed accounts according to his
4 investment objective and instructions not to lose capital. Under Defendants'
5 sole management, Plaintiff's managed accounts lost \$580,649.82 in capital
6 in about 13 months from October,2007 to November, 2008. (UMFs 9, 10)
7 Defendants' breach was the proximate cause of Plaintiff's loss, inasmuch as
8 Defendants had sole responsibility for managing the managed accounts
9 (UMF 6). Defendants charged Plaintiff \$21,283.29 in unearned "advisor
10 fees." (UMFs 9, 11) The total damages is \$580,649.82 + \$21,283.29 =
11 \$601,933.11.

12 Plaintiff has demonstrated the four elements required to prevail under
13 this First Claim for Relief for breach of contract.

14 **2. Second Claim for Relief; Breach of implied warranty in contract**

15 **A. Basis of claim**

16 A contract to perform services includes an implied warranty of
17 workmanship to perform the contract with care, skill, reasonable expediency,
18 and faithfulness. As held by Robert Dillon Framing, Inc. v. Canyon Villas
19 Apartment Corp., 2013 WL 3984885 at *3 (Nevada 2013),

20 An implied warranty of workmanship accompanies a service
21 contract as a matter of law. In this covenant, the performing party
22 promises he will perform with care, skill, reasonable expediency,
23 and faithfulness. 23 Richard A. Lord, Williston on Contracts ¶
63:25, at 525 (4th ed.2002). And because the warranty of
24 workmanship addresses the quality of workmanship expected of
a promisor, the warranty sounds in contract.

25 **B. Elements of claim for breach of warranty**

26 Nevada Contract Services, Inc. v. Squirrel Companies, Inc., 119 Nev.
27 157, 161, 68 P.3d 896, 899 (2003) held,
28

1 In a breach of warranty cause of action, a plaintiff must prove that
2 (1) a warranty existed, (2) the defendant breached the warranty,
3 and (3) the defendant's breach was the proximate cause of the
4 loss sustained. [numbered identifiers added]

4 **C. Application to the present facts**

5 The evidence establishes these elements:

6 1. Warranty existed. There was a contract between Defendant
7 Wespac and Plaintiff. (UMF 1) As a matter of law, that Contract carried an
8 implied warranty to perform the contracted-for services in a workmanlike,
9 professional manner and with care, skill, expediency, and faithfulness.
10 Plaintiff instructed Defendants in writing that they were to manage his
11 managed accounts so as not to lose capital. (UMF 6, 7).

12 2. Defendant breached the implied warranty. Defendant failed to
13 perform its duties with care, skill, reasonable expediency, and faithfulness,
14 thereby breaching the warranty. Specifically, Defendants failed to manage
15 the managed accounts so as to avoid loss of capital, the objective and
16 instruction that Plaintiff had given them. (UMF 6-8)

17 3. Damages and causation. Under Defendants' sole management,
18 Plaintiff's managed accounts lost \$580,649.82 in about 13 months. (UMF 9,
19 10) Defendants' breach was the proximate cause of Plaintiff's loss, inasmuch
20 as Defendants had sole responsibility for managing the managed accounts
21 (UMF 6). During that same period Defendants charged Plaintiff \$21,283.29
22 in unearned "advisor fees". (UMF 9, 11) The losses and fees were incurred
23 because Defendants failed to honor the implied warranty of the Contract.

24 Plaintiff has demonstrated the three elements required to prevail under
25 this Second Claim for Relief for breach of implied warranty.

26 **3. Third Claim for Relief; Contractual Breach of Implied**
27 **Covenant of Good Faith and Fair Dealing.**

28 "[A]n implied covenant of good faith and fair dealing exists in *all*

1 contracts.” [italics in original]. A.C. Shaw Construction v. Washoe County,
2 105 Nev. 913, 914, 784 P.2d 9, 11 (1989). “Every contract imposes upon
3 each party an implied duty of good faith and fair dealing in its performance
4 and its enforcement.” J.A. Jones Constr. v. Lehrer McGovern Bovis, 120
5 Nev. 277, 286, 89 P.3d 1009, 1015 (2004). See also State, University and
6 Community College System v. Sutton, 120 Nev. 972, 989-90, 103 P.3d 8
7 (2004). The implied covenant prohibits arbitrary or unfair acts by one party
8 that work to the disadvantage of the other. The parties must make a full and
9 fair disclosure of material facts.

10 Hilton Hotels Corp. v. Butch Lewis Productions, Inc., 109 Nev. 1043,
11 1046, 862 P.2d 1207, 1209 (1993) held, “Moreover, it is recognized that a
12 wrongful act which is committed during the course of a contractual
13 relationship may give rise to both tort and contractual remedies[.]” In the
14 present case, Defendants contractually and tortiously breached the
15 covenant. The Third Claim for Relief addresses the contractual breach, and
16 the Fourth Claim for Relief addresses the tortious breach.

17 **A. Basis of claim for contractual breach of the implied covenant**

18 As held in Andreatta v. Eldorado Resorts Corporation, ____
19 F.Supp.3d____, 2016 WL 5867413 (D. Nev. 2016), applying Nevada law,

20 A contractual claim for breach of the implied covenant of
21 good faith and fair dealing exists where ‘one party performs a
22 contract in a manner that is unfaithful to the purpose of the
23 contract and the justified expectations of the other party are thus
denied[.]’ Hilton Hotels Corp. v. Butch Lewis Productions, Inc.,
107 Nev. 226, 808 P.2d 919, 923 (1991).

24 “Where one party to a contract ‘deliberately contravenes the intention and
25 spirit of the contract, that party can incur liability for breach of the implied
26 covenant of good faith and fair dealing.’” Morris v. Bank of American
27 Nevada, 110 Nev. 1274, 1278, 886 P. 2d 454, 457 (1994).

1 **B. Elements of claim for contractual breach**

2 Based upon Andreatta and Hilton Hotels, the elements of contractual
3 breach of the implied covenant of good faith and fair dealing are:

4 1. A contract between the parties.

5 2. “One party performs the contract in a manner that is unfaithful to
6 the purpose of the contract and the justified expectations of the other party
7 are thus denied[.]”;

8 3. The other party performed all obligations required under the
9 contract or was excused from performance.

10 4. The party who performed all of his obligations was damaged as
11 a result of the performance of the contract in a manner that is unfaithful to the
12 purpose of the contract.

13 **C. Application to the present facts.**

14 The evidence establishes the following elements:

15 1. There was a contract between Plaintiff and Defendants. (UMF 1)

16 2. Defendants were unfaithful to the purpose of the contract and
17 Plaintiff’s expectations. Pursuant to the terms of the contract, Defendants
18 were to manage Plaintiff’s managed accounts according to the objectives and
19 instructions that Plaintiff gave Defendants in writing. (UMF 3, 6; Exhibit 18,
20 ¶ 5) In the Confidential Client Profile prepared in August 2005, Plaintiff
21 expressly instructed that his accounts were to be managed conservatively
22 because he was close to retirement. (UMF 4) Plaintiff’s circumstances
23 changed two years later in August 2007, when he commenced retirement.
24 (UMF 5) In October 2007, Plaintiff turned over sole management of his
25 accounts to Defendants on the condition that they manage the accounts
26 even more conservatively, with an objective and instruction in writing that
27 Defendants manage the accounts so as not to lose capital. (UMF 6) Plaintiff
28

1 repeated and emphasized that objective and instruction in writing to
2 Defendants on several subsequent occasions. (UMF 7) Defendants took
3 over sole management on that condition, never suggesting or objecting that
4 they could not or would not manage the accounts as instructed by Plaintiff
5 until after nearly all of the losses to Plaintiff's managed accounts had already
6 occurred. (UMF 6)

7 The Agreement, Exhibit 18 ¶ 5, was not the only legal basis upon
8 which Defendants were required to follow Plaintiff's objectives and
9 instructions. As investment advisors and managers, Defendants had a
10 contractual, statutory and common-law fiduciary duty to Plaintiff (see authority
11 discussed in §§ IV.4 and IV.6) and had a contractual and common-law
12 agency relation to Plaintiff (see authority discussed subsequently in § IV.8).
13 Under these fiduciary duty and agency relations, Defendants were required
14 to perform according to Plaintiff's instructions.

15 Defendants performance, such as it was, under the contract was
16 unfaithful to the purpose of the contract as Plaintiff had instructed
17 Defendants, which was to conserve and not to lose the capital that was to
18 sustain him in retirement. Under Defendants' sole management Plaintiff's
19 managed accounts lost capital of \$580,649.82 in 13 months. (UMF 9, 10)
20 Defendants did substantially nothing to stem the tide of losses, while charging
21 Plaintiff \$21,283.29 in unearned "advisor fees." (UMFs 9, 11) Defendants'
22 breach was the proximate cause of Plaintiff's loss, because Defendants had
23 sole responsibility for managing the managed accounts according to
24 Plaintiff's written objectives and instructions. (UMFs 3, 6, 7)

25
26 3. Plaintiff performed all of his obligations under the contract. (UMF
27 10)

28 4. Damages and causation. Plaintiff was damaged, as a result of

1 Defendants' failure to follow Plaintiff's written investment objectives and
2 instructions, in an amount of \$580,649.82 of capital losses (UMFs 9, 10) plus
3 \$21,283.29 in unearned "advisor fees" (UMFs 9, 11), a total of \$601,933.11.
4 These losses were proximately caused by Defendants' failure to follow
5 Plaintiff's written investment objectives and instructions because Defendants
6 had sole responsibility for the performance of the managed accounts. (UMF
7 3, 6, 7)

8 Plaintiff has demonstrated the four elements required to prevail under
9 this Third Claim for Relief.

10 **4. Fourth Claim for relief; Tortious Breach of Implied Covenant**
11 **of Good Faith and Fair Dealing.**

12 **A. Legal basis of claim and contrast with contractual breach**

13 This tort originated in actions against insurance companies, but has
14 since been extended to a range of other injuries that arise from a contract.
15 K Mart Corp. v. Ponsock, 103 Nev. 39, 49-50, 732 P.2d 1364, 1371 (1987),
16 which deals with tortious deprivation of retirement benefits, provides the
17 reasoning underlying the claim:

18 One of the underlying rationales for extending tort liability in the
19 described kinds of cases is that ordinary contract damages do
20 not adequately compensate the victim because they do not
21 require the party in the superior or entrusted position, such as the
22 insurer, the partner, or the franchiser, to account adequately for
23 grievous and perfidious misconduct; and contract damages do
24 not make the aggrieved, weaker, "trusting" party "whole." If we
25 are to be consistent in trying to 'protect the weak from the insults
26 of the stronger' (Blackstone, above), we should in the present
27 case be asking ourselves these questions:

28 1. Is there, as in the insurance cases, such a
superior-inferior power differential as to create a 'special element
of reliance' resulting from the employee's reliance on the
employer's credibility and the employer's promise and powerfully
expectant guarantee of retirement benefits?

2. Would contract damages hold employers like K Mart
accountable for this kind of misconduct?

3. Would contract damages, under circumstances such as
these, make an aggrieved employee 'whole'?

1 More recently, Shaw v. CitiMortgage, Inc., 201 F.Supp. 3d 1222, 1254
2 (D. Nev. 2016), applying Nevada law, confirmed Ponsock's approach:

3 [A] breach of the implied covenants can give rise to tort liability
4 when there is a special relationship between the contracting
5 parties. *Id.* (stating that a tort action for an implied covenants
6 claim requires a special element of reliance or fiduciary duty);
7 see also *Sutton*, 103 P.3d at 19 (tort liability for breach of the
8 implied covenants of good faith and fair dealing is appropriate
9 where 'the party in the superior or entrusted position has engaged
10 in grievous and perfidious misconduct. '); *Max Baer Prods., Ltd. v.*
11 *Riverwood Partners, LLC*, 2010 WL 3743926, t *5, 2010 U.S. Dist.
12 LEXIS 100325, at *14 (D.Nev.2010) ("Although every contract
13 contains an implied covenant of good faith and fair dealing, an
14 action in tort for breach of the covenant arises only 'in rare and
15 exceptional cases' when there is a special relationship between
16 'he victim and tortfeasor.'). A special relationship is 'characterized
17 by elements of public interest, adhesion, and fiduciary
18 responsibility.' *Id.* Under a tortious breach, 'a successful plaintiff
19 is entitled to compensation for all of the natural and probable
20 consequences of the wrong, including injury to the feelings from
21 humiliation, indignity and disgrace to the person.' *Sutton*, 103
22 P.3d at 19.

23 Tortious breach of the covenant is a tort, not a breach of contract.
24 Ponsock, 103 Nev. at 48-51, 732 P.2d at 1370-1.

25 **B. Elements of claim for tortious breach of covenant of good
26 faith and fair dealing.**

27 The elements of tortious breach of the covenant are:

- 28 1. The existence of a contract between the parties.
2. A special element of reliance or fiduciary duty associated with the contract.
3. Breach by a party of the implied duty of good faith and fair dealing in the contract's performance and enforcement, specifically where the party in the superior or entrusted position has engaged in grievous and perfidious misconduct.'
4. The other party fulfilled his obligations under the contract.
5. The breach is the cause of damage to the non-breaching party.

1 **C. Application to the present facts.**

2 To prove the tort, the evidence establishes the following elements:

3 1. Contract. There was a Contract between the parties. (UMF 1)

4 2. Fiduciary duty. Contract, statute and case authority establish the
5 special element of reliance and fiduciary duty of an investment advisor to his
6 client (see also authority discussed subsequently in §§ IV.6 and IV.8). The
7 Agreement acknowledges that Defendants had a fiduciary duty to Plaintiff.
8 Exhibit 18, ¶ 3(3), WESPAC 00049.

9 3. “Grievous and perfidious” misconduct

10 Defendants had the specific intent of defrauding and deceiving Plaintiff
11 by concealing the prior discipline and suspension of Defendant Christian at
12 the outset of the relation in 2005 when they were attempting to persuade
13 Plaintiff to enter the Investment Management Agreement and to become a
14 customer, and thereafter during 2005-2008 when he did become a customer.
15 (UMF 19) When they set out to defraud and deceive him, Defendants knew
16 that Plaintiff was over 60 years of age (UMF 12), was soon to retire (and had
17 retired at the time they took over sole management of Plaintiff’s retirement
18 accounts in October 2007 (UMFs 4-7)), had instructed Defendants to manage
19 his accounts conservatively and so as not to lose capital, and that Plaintiff
20 had relinquished to Defendants sole management authority over his
21 managed accounts on the condition that they not lose capital. (UMFs 3, 6, 7)
22 Defendants knew that they had made sweeping claims in their advertising to
23 induce Plaintiff to become their Client and trust them. (UMF 11)

24 Defendants knew they had contractual, fiduciary, and agency duties to
25 Plaintiff.

26 Nevertheless, Defendants knowingly engaged in misconduct and
27 breach of their contractual, fiduciary and agency duties by failing to follow
28

1 Plaintiff's investment objectives and instructions, costing Plaintiff
2 \$580,649.82 in capital losses and \$21,283.29 in unearned "advisor fees" in
3 just 13 months. (UMFs 6, 8-9)

4 The inquiry into "grievous and perfidious misconduct" expresses the
5 result of a mixed factual and legal investigation by the Arbitrator. A primary
6 guide to whether Defendants engaged in such "grievous and perfidious
7 misconduct" is prior decisions assessing that term under Nevada law. The
8 Courts have recognized circumstances resulting in "grievous and perfidious"
9 misconduct, considering both the nature of the wrongdoing and the person
10 against whom it is perpetrated.

11 The nature of the contractual relation must first be considered, and the
12 effect of Defendants' breach on Plaintiff. The Agreement does not deal with
13 a merchant sale of a crate of eggs. It deals with the funds that Plaintiff had
14 earned and saved to support himself after retirement, for the rest of his life.
15 Defendants were well aware of this. The breach relates to the intentional
16 deprivation of an older person's retirement benefits by his fiduciary and
17 agent, who was bound to act according to investment objectives and
18 instructions provided by Plaintiff.

19 Defendants could have easily earned the over-\$20,000 a year that they
20 charged Plaintiff, and he paid them, to avoid the disaster they imposed upon
21 Plaintiff's life savings. At Exhibit 2, page GG 0345, Defendants' sales
22 brochure touts "Wespac's hi-tech recordkeeping system. Participants'
23 accounts can be valued as often as you wish: quarterly, monthly, weekly, or
24 daily." Defendant Christian had only to check the value of the managed
25 accounts and determine how they were doing. Presumably, Wespac's "hi-
26 tech recordkeeping system" could even have been instructed to signal
27 automatically changes in the value of capital in the accounts. Defendants had
28 only to instruct their "hi-tech recordkeeping system" to signal capital losses,

1 and respond. Apparently they did not bother to do even that to earn their
2 “advisor fees.”

3 If Defendants’ failure to do the job they contracted to perform and were
4 fully paid for is not sufficient, five additional circumstances reflect Defendants’
5 callous attitude and their “grievous and perfidious misconduct.”

6 First, when Plaintiff began to question their failure to follow his
7 instructions, Defendants talked him out of taking action. Defendant Christian
8 said that so much new business came into Wespac that he didn’t have time
9 to devote attention to Plaintiff’s accounts, and that Plaintiff had not griped
10 sufficiently forcefully to get his attention. He rubbed salt into the wounds by
11 bragging that other Wespac clients were doing well. (Garmong Declaration,
12 ¶ 23) Of course, Defendants should have fulfilled their fiduciary duty to
13 Plaintiff before taking on new business.

14 Second, after Plaintiff did become vociferous in August, 2008,
15 Defendants did nothing to stem the tidal wave of losses, and instead focused
16 on talking Plaintiff into remaining as a Client. (Exhibits 20-21) As seen by
17 reviewing the financial summary results of Exhibit 10 (GG 0334), in the last
18 three months of the relationship Defendants wasted Plaintiff’s managed
19 accounts of over \$321,000, while blithely continuing to collect their “advisor
20 fees” of over \$5,000 (document GG 0335) for that three months. Even when
21 Plaintiff did complain, Defendants did nothing to stop the losses.

22 Third, as Plaintiff has himself discovered in the last year and as
23 set forth in UMFs 13-19 and discussed more fully in § IV.5 and § IV.7 below,
24 during this entire period Defendant Wespac was a scofflaw, refusing to follow
25 the federal SEC rules and the Nevada state laws governing their company
26 and their business.

27 Fourth, Defendants even concealed Defendant Christian’s prior
28 lawbreaking, and discipline and suspension by the SEC. (UMF 19) Defendant

1 Christian's prior lawbreaking and disciplining by the SEC was first revealed
2 in Defendants' Opening Arbitration Brief, page 4:26-5:4. (Garmong
3 Declaration, ¶ 34). Despite the fact of this lawsuit being filed in May 2012,
4 Defendants kept this shocking information secret until now to induce the
5 District Court and the Nevada Supreme Court to allow them to continue the
6 fraud. This concealment is particularly "grievous and perfidious" misconduct.

7 The purpose of full disclosure by fiduciaries and agents is that the client
8 may make informed decisions. Had Defendants informed Plaintiff that they
9 were not obeying federal and state laws, or that Defendant Christian had been
10 disciplined and suspended by the SEC for misconduct with earlier clients,
11 Plaintiff would have had the information required to make an informed
12 decision. Plaintiff would have been on notice that Defendants likely would
13 not honor a private Contract and their legal obligations, and he never would
14 have dealt with them. (UMF 20)

15 Fifth, Defendants had and have no remorse or concern for their
16 having deprived their elderly Client, Plaintiff, of a significant fraction of his life
17 savings for retirement, over \$600,000 in just 13 months. On April 23, 2013,
18 Defendant Christian sent a letter on behalf of Defendant Wespac to Schwab.
19 (Exhibit 21, Document WESPAC 000579) This letter was unknown to Plaintiff
20 until the recent document production by Defendants. Defendants continue
21 to conceal the other documents associated with WESPAC 000579, but it can
22 be surmised from the context that Schwab inquired of Wespac about its
23 treatment of Plaintiff, and Wespac responded that "We have no plans of
24 entering into a settlement offer with Mr. Garmong. We acted completely
25 within our fiduciary duties to manage his assets in accordance with the stated
26 objectives." and "We have not and do not intend to reimburse management
27 fees." In the minds of Defendants, their "fiduciary duties" included
28 concealing significant material information from Plaintiff and refusing to

1 follow their customer's written objectives and instructions, costing Plaintiff
2 over \$600,000. Neither Schwab nor Wespac informed Plaintiff of this
3 exchange. Defendants were not only dishonest with Plaintiff, but also
4 dishonest with their source of business, Schwab.

5 So if Defendants were not using the more than \$20,000 a year that
6 Plaintiff was paying them to manage his accounts according to his objectives
7 and instructions, what were they doing with that money? Apparently some of
8 it—the amount has not yet been disclosed by Defendants—was being paid as
9 kickbacks to Schwab for referring yet more potential victims to Defendants.
10 See Exhibit 12 at GG 0372, one page of the SEC Form ADV-II of Wespac.
11 Wespac discloses “Wespac pays Schwab fees to receive client referrals
12 through the Service.” Spin-free translation: Kickbacks.

13 Another factor bearing on establishing “grievous and perfidious
14 misconduct” is whether the behavior of the Defendants was manifested in a
15 single act, or there were multiple acts, see State, University and Community
16 College System v. Sutton, 120 Nev. 972, 989-90, 103 P.3d 8, 19-20 (2004).
17 Had Plaintiff expressed only a single time his instructions to be conservative
18 and not to lose capital from his accounts, there might be some argument that
19 Defendants did not understand, and were not ignoring his instructions
20 intentionally. But in view of Plaintiff's repeated instructions to manage
21 conservatively and not to lose capital, Defendants' repeated failure to obey
22 his instructions, extending over a period of time, evidences bad faith,
23 grievous and perfidious misconduct. (UMFs 4-7) Moreover, the losses were
24 not confined to a single month, but occurred repeatedly, month after month.
25 (Exhibits 9, 10)

26 These factual circumstances, including intentional and willful breach of
27 contractual, fiduciary, and agency duties and refusal to follow the client's
28 express, written objectives and instructions, must be viewed in the context of

1 prior Court decisions on what constitutes “grievous and perfidious
2 misconduct.” In Ponsock, where the defendant had no fiduciary or agency
3 relation and the plaintiff was in his 50's, the intentional dishonest deprivation
4 of retirement benefits constituted “grievous and perfidious misconduct.” In
5 the present case, Defendants knew that Plaintiff was elderly, that he was
6 already retired, that he had no pension other than social security, and that he
7 relied upon the managed accounts for support throughout the rest of his life.
8 (UMFs 3-7; Garmong Declaration ¶¶ 4, 6, 11-19.) And in the present case,
9 as discussed above, Defendants were particularly callous in their dealings
10 with Plaintiff.

11 In Ponsock, the employee was in his 50's and had the opportunity to
12 recover from the defendant's deceit by earning more money before
13 retirement, not 10-15 years older as in the present case and already retired.
14 K-Mart did not owe a fiduciary duty to the employee. Breach of a fiduciary
15 duty to an already-retired elderly person, costing him a significant amount of
16 his retirement savings, is “grievous and perfidious misconduct” by its very
17 nature.

18 The courts have begun to take a special interest in protecting the
19 elderly from physical and financial abuse. See, for example, Evans v. Dean
20 Witter Reynolds, Inc., 116 Nev. 598, 5 P.3d 1043 (2000) and Estate of
21 Wildhaber ex rel. Halbrook v. Life Care Centers, 2012 WL 5287980 (D. Nev.
22 2012). As the U.S. Supreme Court has stated in Washington v. Glucksberg,
23 521 U.S. 702, 731, 117 S.Ct. 2258, 2273 (1997), “[T]he State has an interest
24 in protecting vulnerable groups-including the poor, the elderly, and disabled
25 persons-from abuse, neglect, and mistakes.”

26 In Parsons v. First Investors Corp., 122 F.3d 525, 530 (8th Cir. 1997),
27 the Eighth Circuit quoted with approval the district court in upholding punitive
28 damages: “Fraudulent representations which put the life savings of the

1 elderly at risk are reprehensible and deserve punishment.”

2 Never once did Defendants notify Plaintiff that they would not, or could
3 not, manage his managed accounts as he had instructed them. (UMFs 6,7).
4 In a letter of September 30, 2008, when under Defendants’ fiduciary
5 management Plaintiff had lost over \$500,000 in capital value, Defendant
6 Christian calmly informed Plaintiff that he knew all along how to have avoided
7 the wasting of Plaintiff’s life savings: “Go to 100% cash” for the duration of the
8 decline in the stock markets. (Exhibit 19) But he did not do that, contrary to
9 his contractual, fiduciary, and agency duties.

10 Defendants’ misconduct is properly considered “grievous and
11 perfidious.”

12 4. Plaintiff fulfilled all of his obligations under the contract. (UMF 10)

13 5. Damage and causation. Plaintiff, the party who performed all of
14 his obligations, was damaged as a result of Defendants’ failure to follow
15 Plaintiff’s written investment objectives and instructions in an amount of
16 \$580,649.82 (UMFs 9, 10) plus \$21,283.29 in unearned “advisor fees” (UMFs
17 9, 11). These losses were proximately caused by Defendants’ failure to
18 follow Plaintiff’s written investment objectives and instructions because
19 Defendants had sole responsibility for the performance of the managed
20 accounts. (UMF 3, 6, 8)

21 **D. The appropriate measure of damages.**

22 As quoted above from Andreatta, “This additional tort liability is allowed
23 only in cases where ‘ordinary contract damages do not adequately
24 compensate the victim because they do not require the party in the superior
25 or entrusted position . . . to account adequately for grievous and perfidious
26 misconduct, and contract damages do not make the aggrieved, weaker,
27 ‘trusting’ party ‘whole.’ ”

28 Contract damages of \$580,649.82 plus \$21,283.29 do not make

1 Plaintiff whole nor hold Defendants to account for their “grievous and
2 perfidious misconduct.” Defendants will likely do the same thing to others
3 unless they are properly penalized.

4 The authority quoted above allows the Arbitrator to award special and
5 general damages for the tortious breach of the covenant of good faith and fair
6 dealing.

7 Nevada law allows for a doubling of the damages for injury to the elderly
8 pursuant to NRS 41.1395, see subsequent discussion in § IV.11.

9 Additionally, Nevada law allows the assessment of punitive damages.
10 Ponsock, 103 Nev. at 53, 732 P. 2d at 1373, endorses the appropriate award
11 of punitive damages and affirmed the jury’s award of punitive damages,
12 stating,

13

14 The use of punitive damages in appropriate cases of breach of
15 the duty of good faith and fair dealing expresses society's
16 disapproval of exploitation by a superior power and creates a
17 strong incentive for employers to conform to clearly defined legal
duties. Such duties are so explicit and so subject of common
understanding as to justify the punitive award.

18 Shaw v. CitiMortgage, Inc., 201 F.Supp. 3d 1222, 1263-1265 (D. Nev.
19 2016), applying Nevada law, reviewed in detail the criteria for awarding
20 punitive damages:

21

22 Under Nevada law, in order to recover punitive damages, a
23 plaintiff must show the defendant acted with oppression, fraud or
24 malice. Pioneer Chlor Alkali Co. v. National Union Fire Ins. Co.,
25 863 F.Supp. 1237, 1250 (D.Nev.1994). Oppression is a conscious
26 disregard for the rights of others constituting cruel and unjust
27 hardship. Id. at 1251 (citing Ainsworth v. Combined Ins. Co. of
28 America, 104 Nev. 587, 763 P.2d 673, 675 (1988)). ‘Conscious
disregard’ is defined as ‘the knowledge of the probable harmful
consequences of a wrongful act and a willful and deliberate failure
to act to avoid those consequences.’ NRS ¶ 42.001(1). Malice is
conduct which is intended to injure a person or despicable
conduct which is engaged in with a conscious disregard of the
rights and safety of others. See NRS ¶ 42.005(1). In order to
establish that a defendant's conduct constitutes conscious

1 disregard, the conduct must at a minimum 'exceed mere
2 recklessness or gross negligence.' Pioneer Chlor Alkali Co., 863
3 F.Supp. at 1251; see also Countrywide Home Loans, Inc. v.
4 Thitchener, 124 Nev. 725, 192 P.3d 243, 255 (2008) (holding that
conscious disregard requires a 'culpable state of mind' and
therefore 'denotes conduct that, at a minimum, must exceed mere
recklessness or gross negligence.').

5 Based upon the substantial factual history in this action, and
6 recognizing that CMI is a large home loan servicing company, the
7 court finds by clear and convincing evidence that CMI's business
8 practices and its specific conduct toward Shaw constituted
9 oppression and a conscious disregard for Shaw's rights
10 warranting punitive damages. Given the fact that Shaw's debt of
over \$900,000 was for his home, that a home is most Americans
greatest asset and also greatest liability and is such an integral
part of any homeowner's personal well being, the court finds that
a homeowner is particularly vulnerable as a result of a tortious
breach of the implied covenant of good faith and fair dealing
oppressively committed by a large corporate servicing company
such as CMI.

11 Here, there was a willful and unconscionable failure to avoid
12 needless and harmful consequences in refusing to honor or
13 recognize the May 2011 Modification Agreement (executed by
14 CMI's Vice-President in May 2011). CMI's conduct in recognizing
15 then continuously disavowing that agreement—despite a
16 resolving document from CMI's Assistant General Counsel—was
made with a conscious disregard for the harm that it was causing
Shaw. Further, there was a willful and deliberate failure by CMI to
avoid these consequences. Accordingly, the court finds that this
is an appropriate case for punitive damages.
* * * * *

17 Given the obvious effects such a position would have upon
18 any borrower/homeowner and the lack of any bargaining position
19 to challenge CMI's position, it is clear that there would be
20 dramatic and harmful consequences to a borrower which would
21 cause feelings of utter frustration, worthlessness, and
shame—shame and fear over losing a home—at the very time
that the borrower was likely experiencing an insurmountable
burden of debt. A non-attorney borrower would likely have caved
in to CMI while an attorney like Shaw chose instead to rely upon
his contract, though not without obvious compensable injury.
* * * * *

22 In Nevada, an award of punitive damages is limited to
23 "[t]hree times the amount of compensatory damages awarded to
24 the plaintiff if the amount of compensatory damages is \$100,000
25 or more." NRS ¶ 42.005(a). Here, the compensatory damages
26 under Shaw's tortious breach of the implied covenants claim is
27 \$239,850.00 and the court finds that an appropriate amount of
punitive damages for the conduct outlined above is the statutory
limit. Thus, trebling this amount, the court shall enter judgment in
the amount of \$719,550.00 in favor of Shaw and against CMI for
punitive damages.

28 In the present case, Defendants' misconduct in the wasting the

1 retirement savings of an elderly, already-retired person is even more
2 blameworthy than the lender's conduct in Shaw.

3 Because Defendants' misconduct is particularly reprehensible, and
4 "grievous and perfidious," punitive damages, assessed in addition to actual
5 and general damages, equal to three times the actual damages should be
6 awarded, per NRS 42.005.

7 Plaintiff has established the five elements required to prevail under this
8 Fourth Claim for Relief.

9 **5. Fifth Claim for Relief; Breach of Nevada Deceptive Trade**
10 **Practices Act, NRS Ch. 598.**

11 NRS Ch. 598 includes many of the considerations discussed in relation
12 to the Fourth Claim, but adds a further consideration, explicit special
13 protection for the elderly. That Plaintiff falls within the specially protected
14 class of elderly persons is sufficient to invoke protection under NRS Ch. 598.
15 The protection afforded by NRS Ch. 598 does not require "grievous and
16 perfidious conduct."

17 **A. Basis of claim—consumer protection under NRS Ch. 598.**

18 NRS Ch. 598, the Nevada Deceptive Trade Practices Act, defines
19 deceptive trade practices used to damage consumers, establishes private
20 civil actions as remedies, and defines penalties. Its significance in this action
21 is that it provides special remedies for, and special penalties against,
22 deceptive trade practices perpetrated against the elderly, including deceptive
23 trade practices by financial planners and investment advisors such as
24 Defendants.

25 NRS 598.0915 defines two pertinent types of deceptive trade practices:

26 NRS 598.0915 "Deceptive trade practice" defined. A person
27 engages in a "deceptive trade practice" if, in the course of his or
28 her business or occupation, he or she:

7. Represents that goods or services for sale or lease are

1 of a particular standard, quality or grade, or that such goods are
2 of a particular style or model, if he or she knows or should know
3 that they are of another standard, quality, grade, style or model.
4 15. Knowingly makes any other false representation in a
5 transaction.

6 NRS 598.092 defines another pertinent type of deceptive trade
7 practice:

8 NRS 598.092 “Deceptive trade practice” defined. A person
9 engages in “deceptive trade practice” when in the course of his or
10 her business or occupation he or she:
11 (f) Fails to comply with any law or regulation for the
12 marketing of securities or other investments.

13 NRS 598.0923 defines three other pertinent types of deceptive trade
14 practices:

15 “NRS 598.0923. ‘Deceptive trade practice’ defined. A person
16 engages in a ‘deceptive trade practice’ when in the course of his
17 business or occupation he knowingly:
18 1. Conducts the business or occupation without all
19 required state, county, or city licenses.
20 2. Fails to disclose a material fact in connection with the
21 sale or lease of goods or services. . . .
22 3. Violates a state or federal statute or regulation
23 relating to the sale or lease of goods or services.

24 **B. Special application to deceptive trade practices against the
25 elderly.**

26 NRS 598.0933 defines an “Elderly” person”: “Elderly person’ means a
27 person who is 60 years of age or older.”

28 NRS 598.0977 creates a private civil action against those who
perpetrate deceptive trade practices against the “elderly,” and also provides
for the assessment of actual damages, punitive damages, and attorney’s
fees:

NRS 598.0977. Civil action by elderly person or person with
disability against person who engaged in deceptive trade
practice; remedies. If an elderly person or a person with a
disability suffers damage or injury as a result of a deceptive trade
practice, he or his legal representative, if any, may commence a

1 civil action against any person who engaged in the practice to
2 recover the actual damages suffered by the elderly person or
3 person with a disability, punitive damages, if appropriate, and
4 reasonable attorney's fees. The collection of any restitution
awarded pursuant to this section has a priority over the collection
of any civil penalty imposed pursuant to NRS 598.0973.

5 **C. Elements and burden of proof.**

6 Nevada state courts have not addressed the elements and burden of
7 proof of a private civil action under NRS Ch. 598. The Nevada federal district
8 court has, in interpreting NRS Ch. 598 of Nevada law, predicted how Nevada
9 courts would rule. See Picus v. Wal-Mart Stores, Inc., 256 F.R.D. 651, 658
10 (D.Nev. 2009) and Sobel v. Hertz Corporation, 698 F.Supp.2d 1218, 1230
11 (D.Nev. 2010). Picus states,

12 The Court therefore concludes that for a private NDTPA [Nevada
13 Deceptive Trade Practices Act] claim for damages, the Nevada
14 Supreme Court would require, at a minimum, a victim of
consumer fraud to prove that (1) an act of consumer fraud by the
defendant (2) caused (3) damage to the plaintiff.

15 Bracketed explanation added).

16 The burden of proof in a private deceptive trade practices action under
17 NRS 598.0977, as with all civil matters in the absence of legislative intent to
18 the contrary, is "preponderance of evidence." Betsinger v. D.R. Horton, 126
19 Nev. 162, 165, 232 P.3d 433, 436 (2010).

20 **D. Application to the present facts.**

21 Standing to pursue a private-remedy civil action. Plaintiff is, and
22 was at all relevant times, an "elderly person" as defined in NRS 598.093.
23 (UMF 12)

24 A preponderance of the evidence must establish the following
25 elements:

26 1. Act of consumer fraud. Defendants engaged in multiple
27 deceptive trade practices in their dealings with Plaintiff.

28 Defendants violated NRS 598.0915(7) and (15), most significantly by

1 representing and contractually agreeing that they would and did follow
2 Plaintiff's instructions, and would provide competent investment advice and
3 management to Plaintiff, when they were fully aware that was not the case.
4 Indeed, they admitted that they had taken on so much work that they could
5 not properly advise Plaintiff and manage his accounts that he had entrusted
6 to the Defendants. (Garmong Declaration ¶ 23) More generally, Defendants
7 represented in their sales materials that they would provide personalized
8 service to clients, of the highest quality. (UMFs 3, 6, 11).

9 Defendants conducted a deceptive practice as defined in NRS
10 598.092(f) by failing to comply with laws or regulations for the marketing of
11 securities or other investments, specifically the rules of the Securities
12 Exchange Commissioner (UMFs 13-14)

13 Defendants perpetrated a deceptive trade practice as defined by NRS
14 598.0923(1) by conducting their business without all required state, county,
15 and city licenses. Defendants were not licensed as investment advisors as
16 required by NRS 90.330 (UMF 15-16) and were not registered as a foreign
17 LLC as required by NRS 86.544. (UMF 17-18).

18 Defendants perpetrated a deceptive trade practice as defined by NRS
19 598.0923(2) by failing to disclose material facts in connection with the sale or
20 lease of goods or services. . . , specifically Defendant Christian's prior illegal
21 conduct resulting in discipline and suspension by the SEC (UMF 19). Also,
22 Defendants did not disclose that they were not properly managing Plaintiff's
23 accounts according to his written objectives and instructions, and that they
24 had overcommitted themselves so that they did not have the time to properly
25 manage his accounts (UMF 6, 7; Garmong Declaration ¶ 23). They also
26 were not in compliance with the rules of the SEC (UMFs 13, 14) and the
27 statutory law of Nevada (UMFs 15-18). Defendants concealed the fact that
28 they did not make the mandatory disclosure of a Code of Ethics in their Form

1 ADV-II (UMF 14).

2 Defendants perpetrated deceptive trade practices as defined by NRS
3 598.0923(3) by violating the rules of the SEC concerning adopting a Code of
4 Ethics and by failing to disclose a Code of Ethics in their Form ADV-II (UMFs
5 13-14), by not complying with NRS 90.330 requiring registration of
6 investment advisors (UMFs 15-16), and by not complying with NRS 86.544
7 requiring registration of a foreign LLC (UMFs 17-18).

8 2. Causation of damages. Defendants were in sole management of
9 Plaintiff's managed accounts during October 2007-November 2008, and
10 failed to follow his written objectives and instructions. (UMFs 3, 6, 7)
11 Additionally, if Defendants had made the disclosures of their failure to obey
12 federal and state laws as required by their fiduciary and agency duties to
13 Plaintiff, and the fact that the SEC had previously disciplined and suspended
14 Defendant Christian, Plaintiff would never have dealt with Defendants in the
15 first instance. (UMF 20)

16 3. Damage to the plaintiff. As a direct result of Defendants'
17 violations of the provisions of NRS 598.0915, NRS 598.092, and NRS
18 598.0923, Plaintiff's accounts under the sole management of Defendants lost
19 \$580,649.82 in value of invested capital in the 13 month period from October
20 2007 to November 2008, inclusive. (UMF 8). During the same 13-month
21 period, Defendants collected about \$21,283.29 in unearned "advisor fees."
22 (UMF 9) Plaintiff should be awarded the total of these damages, \$601,933.11.

23 These damages should be doubled pursuant to NRS 41.1395, see
24 § IV.11.

25 Plaintiff should also be awarded punitive damages (NRS 598.0977) in
26 an amount of three times the actual damages (NRS 42.005).

27 Plaintiff is also entitled to an award of attorney's fees, NRS 598.0977.

28 Plaintiff has demonstrated the three elements required to prevail under

1 this Fifth Claim for Relief.

2 **6. Sixth Claim for Relief; Breach of Fiduciary Duty**

3 **A. Legal Basis**

4 Defendant financial planners/investment advisors/agents had a
5 fiduciary duty to Plaintiff. The fiduciary duty arises out of statute, common
6 law, and the provisions of the Agreement.

7 As to the statutory duty, see NRS 628A.010(3) and NRS 628A.020,
8 providing that a financial planner has a fiduciary duty to his client.

9 The common law expressed in case authority states that an investment
10 advisor/financial planner has a confidential relation, and thence a fiduciary
11 duty, to his client, including duties of full and fair disclosure, loyalty, and good
12 faith and fair dealing. Randono v. Turk, 86 Nev. 123, 129, 466 P.2d 218, 222
13 (Nev. 1970).

14 The Agreement prepared by Defendants, Exhibit 18, ¶ 3(3) (document
15 page WESPAC 000049), provides that Defendants have a fiduciary
16 responsibility to Plaintiff, referring to “its fiduciary obligations to Client[.]” See
17 also Exhibit 12, the Form ADV-II provided by Defendants to Plaintiff,
18 document page GG 0371, stating that “The Advisor understands his fiduciary
19 responsibility. . . .”

20 **B. Some legal consequences of the determination that**
21 **Defendants had a fiduciary duty to Plaintiff.**

22 The determination that Defendants had a fiduciary duty to Plaintiff has
23 important consequences.

24 Perry v. Jordan, 111 Nev. 943, 946-7, 900 P.2d 335, 337-8 (1995) held
25 that the duty of a fiduciary requires “the person to act in good faith and with
26 due regard to the interests of the other” party. Jory v. Bennight, 91 Nev. 763,
27 768, 542 P.2d 1400, 1404 (1975) found that fiduciary duties “include
28 obligations of the utmost good faith, diligence, loyalty, fair dealing, and

1 disclosure of material facts.”

2 The case authorities take an exceedingly dim view of a fiduciary who
3 breaches his fiduciary duties. Randono v. Turk, 86 Nev. at 129, 466 P.2d at
4 222, held: “This civil wrong, the breach of trust, is as reprehensible as the
5 criminal act of embezzlement, from the point of view of equity.”

6 **C. Elements of the tort**

7 The elements of breach of fiduciary duty or constructive fraud are
8 therefore

- 9
- 10 1. the existence of a confidential or fiduciary duty. and
 - 11 2 a breach of that confidential or fiduciary duty.

12 There are no elements of intent, moral guilt, or justifiable reliance. Clark
13 v. Lubritz, 113 Nev. 1089, 1096, 944 P.2d 861, 865 (1997).

14 Peardon v. Peardon, 65 Nev. 717, 767, 201 P.2d 309, 333 (1948),
15 states “Where an antecedent fiduciary relation exists, a court of equity will
16 *presume* confidence placed and influence exerted.” (Emphasis in original).
17 Defendants are presumed to exert influence over Plaintiff.

18 **D. Application to the present facts.**

19 The evidence establishes the following elements:

20 **(1) A confidential or fiduciary duty of Defendants to Plaintiff.**

21 Defendants meet the definition of “financial planner.” NRS 628A.010(3). A
22 “financial planner” has a fiduciary duty to his customer. NRS 628A.020.

23 The case authority holds that an investment advisor has a confidential
24 relation to his client, with consequent fiduciary duties. Randono v. Turk, 86
25 Nev. at 129, 466 P.2d at 222.

26 The Investment Management Agreement Exhibit 18 ¶ 3(3) (document
27 page WESPAC 00049) prepared by Defendants expressly provides for a
28 fiduciary obligation of Defendants to Plaintiff.

1 **(2) Breach of the fiduciary duty.** On September 18, 2017,
2 Defendants first disclosed to Plaintiff that Defendant Christian, Plaintiff's sole
3 contact with Defendants, had been disciplined and suspended by the SEC in
4 1992 for a violation directly related to his illegal dealings with customers.
5 (UMF 19) Defendants had not previously disclosed these highly material
6 facts to Plaintiff. Had Defendants disclosed these events to Plaintiff in a
7 timely manner during the period August 2005-November 2008, he would
8 never have dealt with Defendants, because Defendant Christian's
9 deceptions raised too many doubts about his honesty. (UMF 20). These
10 doubts, as it turns out, would have been well-founded.

11 When Defendants Wespac and Christian solicited Plaintiff in 2005 to
12 select them as investment advisors, they both knew full well that Defendant
13 Christian had been disciplined and suspended by the SEC in 1992 for
14 dishonesty, but concealed this information from Plaintiff. Their concealment
15 of this information from Plaintiff was part of a deliberate, intentional, willful,
16 and conscious program of dishonesty, deceit, and fraud, planned and
17 perpetrated even from before the first meeting of Defendants and Plaintiff,
18 and continuing after the Investment Management Agreement, Exhibit 18, was
19 signed. Defendants' objective was to persuade Plaintiff to become their
20 customer and pay them for "investment advice" that they did not earn.

21 That is, the entire relation between Defendants and Plaintiff was
22 poisoned by the intentional breach of fiduciary duty by Defendants.

23 Plaintiff has demonstrated the two elements required to prevail under
24 this Seventh Claim for Relief.

25 **E. Damages**

26 The arbitrator may award damages both in contract and in fraudulent
27 breach of fiduciary duties, plus punitive damages. See Clark v. Lubritz, 113
28 Nev. at 1099-1100, 944 P.2d 861 at 867, where the jury found that the

1 appellants were liable for breach of contract and awarded compensatory
2 damages in the amount of \$195,942.17. The jury also found that the
3 appellants breached their fiduciary duty to Lubritz, and awarded
4 compensatory damages in tort in the amount of \$195,942.17. The jury
5 awarded Lubritz \$200,000 in punitive damages, which award was upheld on
6 appeal.

7 Powers v. United Services Auto Assn, 114 Nev. 690, 703-704, 962
8 P.2d 596, 604-605 (1998) provides for the award of punitive damages for bad
9 faith exercised in a fiduciary relationship.

10 NRS 42.005 requires a finding of clear and convincing evidence of
11 oppression, fraud or malice to sustain an award of punitive damages. There
12 could be no more clear and convincing evidence of oppression, fraud, and
13 malice than Defendants' conduct in concealing Defendant Christian's prior
14 discipline and suspension, with the goal of deceiving Plaintiff into becoming
15 a customer of Defendants.

16 **7. Seventh Claim for Relief; Breach of Fiduciary Duty of Full**
17 **Disclosure**

18 This Seventh Claim is founded upon the same legal theory as the Sixth
19 Claim, with a different set of facts. The Sixth Claim is based upon the truly
20 reprehensible concealment by Defendants of Defendant Christian's discipline
21 and suspension by the SEC for securities violations, a tort aimed directly and
22 specifically at Plaintiff (and possibly other customers, as will be determined
23 in discovery, if discovery is necessary). The Seventh Claim relates to
24 Defendants' failure to follow requirements of SEC rules and Nevada statutes.

25 The legal basis, consequences, and elements of the tort are the same
26 as for the Sixth Claim, and that discussion is incorporated here.

27 **A. Application to the present facts.**

28 The evidence establishes the following elements:

1 **(1) Existence of a confidential or fiduciary duty of Defendants to**
2 **Plaintiff.** The same facts as cited for the Sixth Claim are applicable here, and
3 that discussion is incorporated by reference.

4 **(2) Breach of the fiduciary duty.** The failures of Defendants'
5 disclosure include the following:

6 **a. Defendants' concealment of their violation of federal SEC**
7 **law.**

8 Defendants emphasized in the very first sentence of their Investment
9 Management Agreement, Exhibit 18, that "WESPAC Advisors, LLC [is] an
10 investment advisor registered with the Securities Exchange Commission[.]"
11 It was therefore reasonable for Plaintiff to expect that Defendants complied
12 with the rules promulgated by the SEC for the protection of consumers, and
13 made a full disclosure concerning SEC matters. Notably, Defendants relied
14 upon this Agreement to bring this lawsuit to arbitration, see Defendants'
15 Motion to Dismiss and to Compel Arbitration, filed September 19, 2012, and
16 particularly Exhibit 1 thereto. Defendants cannot now disavow their
17 representations made in the present Exhibit 18.

18 In 2004, the SEC amended 17 CFR parts 270, 275, and 290, to require
19 that investment advisors must adopt Codes of Ethics, must include notice of
20 their Codes of Ethics in their Form ADV Part II that is provided to clients, and
21 must notify the clients in Form ADV that the Code of Ethics is available upon
22 request. The effective date was August 31, 2004, and the mandatory
23 compliance date was January 7, 2005. Exhibit 14 is the SEC rule and
24 explanation, and Exhibit 15 is the interpretation and advisory by an industry
25 trade group. (UMF 13-14)

26 Exhibit 12 (GG 0358–GG 0373) is a copy of the SEC Form ADV-II,
27 dated March 22, 2005, that Plaintiff received from Defendants on or before
28 August 31, 2005. The Investment Management Agreement of that date,

1 Exhibit 18, includes an acknowledge of the receipt by Plaintiff of Form ADV
2 Part II (Exhibit 18, ¶2 (WESPAC 000048)). There is no disclosure at all in
3 Exhibit 12 or Exhibit 18 (WESPAC 000048-WESPAC 000054) of the required
4 Codes of Ethics, in direct violation of the SEC Order mandating compliance
5 no later than January 7, 2005. (UMFs 13-14)

6 Nor did Defendants later disclose to Plaintiff their concealment of their
7 Code of Ethics, if any, and their violation of the SEC rule requiring disclosure
8 of a Code of Ethics. Plaintiff learned about the SEC requirement only in
9 November 2016 when he found the requirement on the SEC's internet site.
10 (Garmong Declaration ¶ 25)

11 Plaintiff cannot be sure whether Defendants violated others of the SEC
12 rules. But violation, and concealment of the violation, of the rule concerning
13 Codes of Ethics is particularly significant, because it would appear that
14 Defendants had no Code of Ethics in dealing with Plaintiff.

15 **b. Defendants' concealment of their violation of Nevada state**
16 **laws—duty of a foreign LLC to register.**

17 Defendant Wespac is a California LLC. (Exhibit 16, document page
18 GG 0337) It is a "foreign" LLC under Nevada law. NRS 86.051. A "foreign"
19 LLC must register with the Nevada Secretary of State. NRS 86.544. For
20 most of the time that Plaintiff dealt with Defendants, from August 2005 to
21 November 2008, Defendant Wespac had not registered with the Nevada
22 Secretary of State as a foreign LLC in direct violation of NRS 86.544, and
23 had concealed that fact from Plaintiff. (UMFs 17, 18) Defendant Wespac
24 registered with the Nevada Secretary of State as a foreign LLC effective
25 October 22, 2008 (Exhibit 16, GG 0338-0339), shortly before Plaintiff fired
26 Defendants. Defendants did not disclose to Plaintiff at that time, or at any
27 time, that they were and had been in violation of NRS 86.544. Plaintiff does
28 not know how long prior to October 22, 2008 that Defendants learned they

1 were not in compliance with NRS 86.544, but in any event they did not notify
2 Plaintiff at any time, in violation of their fiduciary duty of full disclosure of all
3 material facts to Plaintiff.

4 **c. Defendants' concealment of their violation of Nevada state**
5 **laws—duty of an investment advisor to register.**

6 NRS 90.330 requires that investment advisors must register with the
7 State of Nevada. During the period August 2005 to November 2008,
8 Defendants acted as "investment advisors" to Plaintiff; see the first sentence
9 of the "Agreement" Exhibit 18 quoted above (WESPAC 000048). However,
10 Defendants willfully refused to become licensed as required by NRS 90.330
11 until the very end of that period, with an effective date of September 24, 2008
12 (UMF 15, Exhibit 13, GG 0336). When Defendants finally did decide to obey
13 NRS 90.330, they concealed and failed to disclose to Plaintiff that they had
14 refused to obey the law up to that point, contrary to their fiduciary duty of full
15 disclosure to Plaintiff. (UMF 16).

16 Defendants violated laws of the State of Nevada in recommending and
17 taking the course of action they pursued in wasting Plaintiff's account,
18 because they were not properly registered pursuant to NRS 86.544 and were
19 not properly licensed pursuant to NRS 90.330. See NRS
20 598.0923(1)("Conducts the business or occupation without all required state,
21 county, or city licenses").

22 Plaintiff has demonstrated the two elements required to prevail under
23 this Seventh Claim for Relief.

24 Damages are as discussed for the Sixth Claim, § IV.6 above.

25 **8. Eighth Claim for Relief; Breach of agency.**

26 **A. Basis of Claim**

27 An agency relationship bears some similarities to a fiduciary
28 relationship, but they are distinct. An agency relation may exist when there

1 is no fiduciary relation.

2 Restatement (Second) Agency § 14 provides "A principal has the right
3 to control the conduct of the agent with respect to matters entrusted to him,"
4 cited by Hunter Min. Laboratories, Inc., 104 Nev. 568, 570, 763 P.2d 350, 352
5 (1988). As stated in Restatement (Second) Agency § 14 comment a, "The
6 right of control by the principal may be exercised by prescribing what the
7 agent shall or shall not do before the agent acts, or at the time when he acts,
8 or at both times." Plaintiff stated in writing what the agent was to do before
9 the agent acted (UMF 4), and reiterated the written instructions at several
10 times thereafter (UMF 7). As set forth in Restatement (Second) Agency §
11 385(1), "Unless otherwise agreed, an agent is subject to a duty to obey all
12 reasonable directions in regard to the manner of performing a service that he
13 has contracted to perform."

14 **B. Elements of tort for breach of agency**

15 As discussed in Hunter Min. Laboratories, Nevada recognizes the
16 Restatement of Agency as defining the law of agency. The Restatement of
17 Agency (Second) §§ 12-14, 383 and 385 provides the following four
18 elements:

- 19
- 20 1. An agency relationship exists.
 - 21 2. The Principal gave instructions to the Agent.
 - 22 3. The Agent failed to follow the instructions.
 - 23 4. The Principal suffered damages as a result.

24 **C. Application to the present facts.**

25 To prove the breach, the evidence establishes the following elements:

26 **1. An agency relationship exists.**

27 The Agreement that Defendants wrote, Exhibit 18, states, ¶ 5
28 (WESPAC 000051), "Client appoints WA [Wespac Associates] as agent. . .

1 ." (UMF 1) Defendants acted as agents by transacting trades in the
2 managed accounts.

3 **2. Plaintiff gave written instructions to Defendants in the form**
4 **of investment objectives and instructions.**

5 The initial written instructions were given in the Confidential Client
6 Profile (UMF 4). Thereafter, NRS 628A.020, "A financial planner shall make
7 diligent inquiry of each client to ascertain initially, and keep currently informed
8 concerning, the client's financial circumstances and obligations and the
9 client's present and anticipated obligations to and goals for his or her family."
10 In accordance with this statute and the Agreement, Plaintiff gave Defendants
11 updated written objectives and instructions not to lose capital when he
12 commenced retirement and Defendants took over sole management of
13 Plaintiff's managed accounts. (UMFs 5-7)

14 **3. Defendant-agents failed to follow Plaintiff's written**
15 **instructions not to lose capital.**

16 Defendant agents did not follow the investment objectives and
17 instructions not to lose capital, given to them in writing by Plaintiff. Under
18 Defendants' sole management from October 2007 to November 2008,
19 Plaintiff's managed accounts lost \$580,649.82 in about 13 months. (UMFs
20 8) During that period Defendants did substantially nothing to stem the tide of
21 losses, while charging Plaintiff \$21,283.29 in "advisor fees". (UMF 9)

22 **4. Plaintiff suffered damages as a result.** During the period from
23 October 2007 to November 2008, Defendants were in sole control of Plaintiff's
24 managed accounts. (UMFs 6-8) Defendants did not follow the objectives and
25 instructions that Plaintiff gave them. (UMFs 8, 9) As a result of Defendants'
26 failure to follow Plaintiff's instructions and investment objectives, Plaintiff lost
27 a total of at least \$601,933.11.

28 Plaintiff has demonstrated the four elements required to prevail under

1 this Eighth Claim for Relief.

2 **9. Tenth Claim for Relief; Breach of NRS 628A.030**

3 Because financial planners and investment advisors hold such a
4 powerful position over their clients, particularly elderly clients, and because
5 there has been such great abuse of that position, Nevada has enacted an
6 entire chapter of the Nevada Revised Statutes to govern their behavior. NRS
7 Ch. 628A specifies the standards for financial planners and provides for
8 injured clients a private civil action for violation of Chapter 628A. Although it
9 includes some of the same bases for recovery as found in other statutes and
10 common law, NRS Ch. 628A is a separate ground of recovery.

11 **A. Basis of Claim**

12 NRS Ch. 628A sets forth the statutory framework governing financial
13 planners, including their duties, the breach of those duties, and the
14 consequences of breaching those duties.

15 NRS 628A.010(3) defines "financial planner".

16 'Financial planner' means a person who for compensation
17 advises others upon the investment of money or upon provision
18 for income to be needed in the future, or who holds himself or
19 herself out as qualified to perform either of these functions, but
20 does not include:

21 (d) An investment adviser licensed pursuant to NRS 90.330 or
22 exempt under NRS 90.340.

23 Defendants are "financial planners" as defined by NRS 628A.010(3),
24 and are not exempt from licensing.

25 NRS 628A.020 provides that a financial planner has a fiduciary duty:

26 Duties of financial planner.

27 A financial planner has the duty of a fiduciary toward a client. A
28 financial planner shall disclose to a client, at the time advice is
given, any gain the financial planner may receive, such as profit
or commission, if the advice is followed. A financial planner shall
make diligent inquiry of each client to ascertain initially, and
keep currently informed concerning, the client's financial
circumstances and obligations and the client's present and
anticipated obligations to and goals for his or her family.

1 NRS 628A.030 defines a breach of duty by the financial planner and the
2 private civil action to recover losses:

3 Liability of financial planner.

4 1. If loss results from following a financial planner's advice under
5 any of the circumstances listed in subsection 2, the client may
6 recover from the financial planner in a civil action the amount of
7 the economic loss and all costs of litigation and attorney's fees.

8 2. The circumstances giving rise to liability of a financial planner
9 are that the financial planner:

10 (a) Violated any element of his or her fiduciary duty;

11 (b) Was grossly negligent in selecting the course of action
12 advised, in the light of all the client's circumstances known to the
13 financial planner; or

14 (c) Violated any law of this State in recommending the investment
15 or service.

16 A breach of fiduciary duty by a financial planner under NRS 628A.030
17 permits recovery of "the amount of the economic loss and all costs of litigation
18 and attorney's fees."

19 **B. Elements of claim**

20 NRS 628A.030 has not been interpreted in case law. However, based
21 upon the statutes, the elements of liability are:

22 1. The entity is a financial planner.

23 2. The financial planner meets any one or more of the following:

24 (a) Violated any element of his or her fiduciary duty;

25 (b) Was grossly negligent in selecting the course of action
26 advised, in the light of all the client's circumstances known to the
27 financial planner; or

28 (c) Violated any law of this State in recommending the
investment or service.

3. The financial planner's advice resulted in a loss to the client.

C. Application to the present facts

The evidence establishes the following elements:

1 **1. Defendants are “financial planners”** as defined by NRS
2 628A.010(3), because for compensation they advise others upon the
3 investment of money or upon provision for income to be needed in the future,
4 or hold themselves out as qualified to perform either of these functions.
5 (UMF 1).

6 **2. Defendants are liable under each of the grounds 2(a) and 2(c)**
7 **set forth in NRS 628A.030(2):**

8 2(a). Defendants violated their fiduciary duty to Plaintiff as discussed
9 previously, including but not limited to failing to make full disclosure to him of
10 material information (UMFs 13-19), by failing to follow his investment
11 objectives and instructions (UMF 8), and by failing in their duties of loyalty,
12 good faith, and fair dealing. Defendants breached their fiduciary duty of full
13 disclosure by concealing Defendant Christian’s discipline and suspension by
14 the SEC. (UMF 19)

15 2(c) In doing business in Nevada and thence making investment
16 recommendations, Defendants violated the laws including not being properly
17 registered pursuant to NRS 86.544 and not being properly licensed pursuant
18 to NRS 90.330(1)). (UMF 15-18)

19 Note. Defendants are liable under ground 2(b) as well, but this ground
20 is not suitable for decision by summary judgment.

21 **3. Defendants actions resulted in Plaintiff’s loss of \$580,649.82**
22 **(UMF 8), plus \$21,283.29 (UMF 9) in “advisor fees”.** Ironically, as
23 Defendants were wasting Plaintiff’s managed accounts, they knew of an
24 approach that would have avoided the wasting: specifically “go to 100%
25 cash.” (Exhibit 19; WESPAC 000567) But they did not do that, or advise
26 Plaintiff to do it, until the wasting had occurred.

27 Accordingly, Defendants are liable to Plaintiff in "the amount of the
28 economic loss and all costs of litigation and attorney’s fees."

1 Plaintiff has demonstrated the three elements required to prevail under
2 this Tenth Claim for Relief.

3 **10. Twelfth Claim for Relief; Unjust Enrichment**

4 **A. Basis of the Claim**

5 This claim is an alternative to breach of contract, in the event that the
6 Arbitrator finds that there is no written contract. An action based on a theory
7 of unjust enrichment is not available when there is an express, written
8 contract, because no agreement can be implied when there is an express
9 agreement. LeasePartners Corp. v. Brooks Trust, 113 Nev. 747, 756, 942
10 P.2d 182, 187 (1997).

11 **B. Elements of the Claim**

12 Unionamerica Mtg. v. McDonald, 97 Nev. 210, 212, 626 P.2d 1272-3
13 (1981) states “The terms ‘restitution’ and ‘unjust enrichment’ are the modern
14 counterparts of the doctrine of quasi-contract. [citation omitted]. The purpose
15 of quasi-contractual relief is to do justice to the parties regardless of their
16 intention.” That is, there is no element of intent. McDonald lists the elements
17 of proof of unjust enrichment or “quasi contract”:

18 The essential elements of quasi contract are a benefit conferred
19 on the defendant by the plaintiff, appreciation by the defendant of
20 such benefit, and acceptance and retention by the defendant of
21 such benefit under circumstances such that it would be
22 inequitable for him to retain the benefit without payment of the
value thereof. . . [citation omitted]. . . Unjust enrichment occurs
whenever a person has, and retains a benefit which in equity and
good conscience belongs to another. [citation omitted].

23 **C. Application to the present facts**

24 The evidence establishes the following elements:

25 Defendants charged Plaintiff \$21,283.29 in “advisor fees”, while
26 ignoring his investment objectives and instructions to them (UMFs 4, 6, 7),
27 and wasting \$580,649.82 from his managed accounts. (UMFs 8, 9)
28

1 Defendants should not be able to retain the "advisor fees" in good
2 conscience in view of their complete failure to do the work for which they were
3 hired.

4 Plaintiff has demonstrated the elements required to prevail under this
5 Twelfth Claim for Relief, and the amount of recovery.

6 **11. Doubling of Damages Pursuant to NRS 41.1395.**

7 **A. Legal Basis**

8 As part of its protection of older or elderly persons, Nevada has
9 provided for the doubling of damages in certain situations where an older or
10 elderly person is exploited. NRS 41.1395 is not a separate cause of action,
11 but provides for doubling of damages incurred under other causes of action
12 in appropriate factual situations.

13 According to Doe v. Clark County School District, 2016 WL 4432683 at
14 *13 (D. Nev. 2016), interpreting Nevada law,

15 This statute does not create an independent claim. Rather it is a
16 means to recover special damages under certain circumstances.
17 *Findlay Mgmt. Grp. v. Jenkins*, No. 60920, 2015 WL 5728870, at
18 *2 (Nev. Sept. 28, 2015) (describing this statute as one for special
19 damages that must be specifically pleaded under Nevada law);
20 *Phipps v. Clark Cty. Sch. Dist.*, ___ F. Supp. 3d. ___, No.
21 2:13-CV-0002-GMN-PAL, 2016 WL 730728, at *7 (D. Nev. Feb.
22 22, 2016) (referring to this section as providing "enhanced
23 damages").

24 NRS 41.1395 sets the legal requirements for a doubling of damages:

25 NRS 41.1395 Action for damages for injury or loss suffered by
26 older or vulnerable person from abuse, neglect or exploitation;
27 double damages; attorney's fees and costs.

28 1. Except as otherwise provided in subsection 3, if an older
person or a vulnerable person suffers a personal injury or death
that is caused by abuse or neglect or suffers a loss of money or
property caused by exploitation, the person who caused the
injury, death or loss is liable to the older person or vulnerable
person for two times the actual damages incurred by the older
person or vulnerable person.

2. If it is established by a preponderance of the evidence that a
person who is liable for damages pursuant to this section acted
with recklessness, oppression, fraud or malice, the court shall

1 order the person to pay the attorney's fees and costs of the
2 person who initiated the lawsuit.

3 3. The provisions of this section do not apply to a person who
4 caused injury, death or loss to a vulnerable person if the person
5 did not know or have reason to know that the harmed person was
6 a vulnerable person.

7 4. For the purposes of this section:

8 (b) "Exploitation" means any act taken by a person who has the
9 trust and confidence of an older person or a vulnerable person or
10 any use of the power of attorney or guardianship of an older
11 person or a vulnerable person to:

12 (1) Obtain control, through deception, intimidation or undue
13 influence, over the money, assets or property of the older person
14 or vulnerable person with the intention of permanently depriving
15 the older person or vulnerable person of the ownership, use,
16 benefit or possession of that person's money, assets or property;
17 or

18 (2) Convert money, assets or property of the older person
19 with the intention of permanently depriving the older person or
20 vulnerable person of the ownership, use, benefit or possession of
21 that person's money, assets or property.

22 "[O]lder person" is defined in NRS 41.1395(4)(d) the same as "elderly
23 person", i.e., "a person who is 60 years of age or older."

24 **B. Elements of Doubling Damages**

25 The statutory elements of proof for a doubling of damages in the
26 present circumstances are:

- 27 1. Plaintiff must be an older or vulnerable person.
- 28 2. The older person suffers a loss of money caused by
exploitation, where
3. "exploitation" means any act taken by a person who
has the trust and confidence of the older person to obtain control,
through deception, intimidation or undue influence, over the
money, assets or property of the older person with the intention
of permanently depriving the older person of the ownership, use,
benefit or possession of that person's money, assets or property.

29 **C. Application to the present case**

30 **1. "Older person"**

31 Plaintiff was over 60 years of age at all times relevant hereto, and
32 therefore is an "older person" under NRS 41.1395(4)(d). (UMF 12).

33 **2. Loss of money**

34 Plaintiff suffered a loss of money in the amount of \$580,649.82 (UMF

1 8) plus \$21,283.29 (UMF 9) in “advisor fees”, a total of \$601,933.11.

2 **3. The loss resulted from “exploitation.”**

3 The Defendants exerted control through deception and undue influence
4 over Plaintiff’s money, \$21,283.29 (UMF 9) in “advisor fees”, with the intention
5 of permanently depriving Plaintiff of its ownership, use, benefit or possession.

6 Plaintiff has demonstrated the elements required to prevail under this
7 Eighth Claim for Relief.

8 **V. NUMERICAL AMOUNTS OF DAMAGES:**

9 **OTHER DAMAGE ISSUES**

10 **A. Categories and amounts of damages**

11 The Arbitrator may award special and general damages both in contract
12 and in tort, costs, and attorney’s fees, plus punitive damages. See earlier
13 discussion, and Clark v. Lubritz, 113 Nev. 1089, 1099, 944 P.2d 861, 867
14 (1997), where the jury found that the appellants were liable for breach of
15 contract and awarded compensatory damages in the amount of \$195,942.17.
16 The jury also found that the appellants breached their fiduciary duty, and
17 awarded compensatory damages in tort in the amount of \$195,942.17. The
18 jury awarded \$200,000 in punitive damages. The awards were upheld on
19 appeal.

20 In the present case, the Arbitrator may award contract damages for
21 Breach of Contract (First Claim), Breach of Implied Warranty in Contract
22 (Second Claim), or Contractual Breach of Implied Covenant (Third Claim).
23 These contract damages are \$580,649.82 plus \$21,283.29 in “advisor fees,”
24 a total of \$601,933.11.

25 However, the contract damages do not make Plaintiff whole and hold
26 Defendants to account for their misconduct. The tort claims allow the
27 Arbitrator to award such damages.

28 The Tortious Breach of the Implied Covenant (Fourth Claim) allows the

1 Arbitrator to award special and general damages. The total of loss of capital
2 plus “advisor fees,” \$601,933.11, may also be awarded as special tort
3 damages, as in Clark. Plaintiff urges that the Arbitrator also award general
4 damages in an amount at least as large as the total of the capital loss plus the
5 “advisor fees,” \$601,933.11. This award would be specified as general tort
6 damages designed to compensate Plaintiff for the mental anguish that he has
7 suffered due to the wasting by Defendants of Plaintiff’s hard-earned savings
8 of a lifetime. If the Arbitrator follows this approach, the total tort damages
9 would be \$601,933.11 + \$601,933.11, or \$1,203,866.22.

10 NRS 41.1395 allows this amount to be doubled, to \$2,407.732.44.

11 NRS 42.005 allows an additional award of punitive damages of three
12 times the actual damages, or $\$2,407.732.44 \times 3 = \$7,223,197.32$.

13 The Fifth Claim, Breach of the Nevada Deceptive Trade Practices Act,
14 allows under NRS 598.0977 “actual damages suffered by the elderly
15 person,...punitive damages, if appropriate, and reasonable attorney’s fees.
16 The same damages set forth for the Fourth Claim, \$2,407.732.44 plus
17 punitive damages of $\$7,223,197.32 = \$9,630,929.76$ are applicable here.

18 The Sixth and Seventh Claims, Breach of Fiduciary Duty, allow the
19 same actual damages and punitive damages. See Clark. The same
20 damages set forth for the Fifth Claim, \$2,407.732.44 plus punitive damages
21 of $\$7,223,197.32 = \$9,630,929.76$ are applicable here.

22 Plaintiff has not yet identified case authority for the measure of
23 damages in the Eighth Claim, Breach of Agency. Because of its similarity to
24 the Sixth and Seventh Claims, Breach of Fiduciary Duty, Plaintiff believes that
25 the measure of damages would be the same. Plaintiff will continue to
26 research this point.

27 The Tenth Claim, Breach of NRS 628A.030, provides for damages
28 according to NRS 628A.030, “the client may recover from the financial

1 planner in a civil action the amount of the economic loss and all costs of
2 litigation and attorney's fees." The amount of damages are therefore the
3 same as for the Fourth-Seventh Claims.

4 The Twelfth Claim, Unjust Enrichment, comes into play if the Arbitrator
5 decides that there was no contract under which damages may be awarded
6 under the First-Third Claims. The Amount of unjust enrichment is the "advisor
7 fees," \$21,283.29.

8 9 **B. Punitive or exemplary damages**

10 Statute and case law allow punitive damages in certain instances.

11 Under the Fourth-Seventh Cause of Action, statutory and/or case law
12 allows the Arbitrator to award punitive damages. The punitive damages may
13 be as much as three times the amount of actual damages, NRS 42.005. For
14 example, Ponsock, 103 Nev. at 53, 732 P. 2d at 1373, allowed punitive
15 damages for Tortious Breach of the Implied Covenant.

16 The Courts are now taking action against those, like Defendants, who
17 use their positions to defraud the elderly from their savings. In Parsons v.
18 First Investors Corp., 122 F.3d 525, 530 (8th Cir. 1997), the Eighth Circuit
19 quoted with strong approval the district court in upholding punitive damages,

20 [f]raudulent representations which put the life savings of the
21 elderly at risk are reprehensible and deserve punishment.

22 Because of the particularly dishonest misconduct of the Defendants,
23 Plaintiff urges the arbitrator to award to Plaintiff punitive damages in an
24 amount of three times the actual damages, or \$7,223,197.32.

25 **C. Total Damages**

26 An award of contract or tort damages only is \$601,933.11.

27 An award of tort damages for actual loss plus general tort damages of
28 an equal amount is \$1,203,866.22.

1 An award of doubled tort damages is \$2,407.732.44

2 An award of doubled tort damages plus punitive damages is
3 \$2,407.732.44 + \$7,223,197.32 = \$9,630,929.76.

4 While this total is large, it is appropriate to compensate Plaintiff and to
5 discourage Defendants from perpetrating their approach on others,
6 particularly seniors.

7 Interest is also awarded as provided by law.

8 **D. Duplicate awards are not permitted**

9 Plaintiff wishes to be clear that the Arbitrator may not make duplicate
10 tort awards under different Claims for Relief. Plaintiff has listed the awards
11 for the various Claims in the event that the Arbitrator were to find liability
12 under some Claims but not others.

13 **E. Other liabilities of Defendants**

14 The costs of the entire litigation are awarded pursuant to NRS
15 628A.030 and also NRS 18.020.

16 The reasonable attorneys fees for the entire lawsuit (not just the
17 arbitration) may be awarded pursuant to NRS 598.0977 and NRS 628A.030,
18 according to proof.

19 **F. Tax issues**

20 Some of the total loss of capital, \$580,649.82, caused by Defendants
21 was from tax-sheltered accounts. The Arbitrator should require the
22 Defendants to restore the losses, plus interest, to those accounts in their
23 original form, so that Plaintiff does not incur tax liability at this time. The
24 whole point of having a tax-sheltered account is that the owner may withdraw
25 his savings after retirement and at the rate he chooses. Plaintiff should not
26 incur premature tax liability due to Defendants' wrongful acts.

27 Some of the total loss of capital was from non-tax-deferred,
28 conventional accounts on which Plaintiff had already paid taxes. Similarly,

1 Plaintiff had already paid taxes on some of the "advisor fees" that Defendants
2 charged. Plaintiff should not have to pay taxes again on that same savings
3 and "advisor fees" when they are restored to Plaintiff.

4 It appears to Plaintiff that the tax problem is not a simple one. Plaintiff
5 asks that the Arbitrator include in his award to Plaintiff an amount sufficient
6 to pay a CPA tax accountant, an actuary if necessary, and a tax lawyer if
7 necessary, of Plaintiff's choosing, so that he does not suffer further from
8 Defendants' wrongdoing.

9 **VI. CONCLUSION**

10 Plaintiff is entitled to Summary Judgment in his favor at this time, and
11 urges the Arbitrator to make that determination now.

12 DATED this 30th day of November, 2017.

13
14 

15 CARL M. HEBERT, ESQ.

16 Counsel for plaintiff
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INDEX OF EXHIBITS

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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of CARL M.
3 HEBERT, ESQ., and that on November 30, 2017, I

4 _____ hand-delivered

5 X mailed, postage pre-paid U.S. Postal Service in Reno, Nevada

6 X e-mailed

7 _____ telefaxed, followed by mailing on the next business day,

8 a copy of the attached

9 **PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

10 addressed to:

11

12 Hon. Phillip Pro (Ret.)
13 JAMS
14 3800 Howard Hughes Parkway
15 11th Floor
16 Las Vegas, NV 89169
17 702-457-5267

Arbitrator

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Voice (775) 465-2981
Facsimile (775) 465-2861

October 22, 2007

Mr. Greg Christian
WESPAC
10425 Double R Blvd.
Reno, NV 89521

Re: Quarterly meeting and future management strategy

Dear Greg,

When we met recently, we discussed the current state of my investments that you manage. I expressed my concern about the volatility of the financial markets. You said not to worry, that you would be watching my accounts carefully.

I have retired as of August 31, 2007, 15 months before I reach age 65, and am winding down my practice although that will take 6-12 months because some long-time clients have asked me to complete work already started for them, and I agreed. As we discussed, I am in the midst of a difficult, contentious divorce. I am also involved heavily in my search-and-rescue work and volunteer firefighting, and taking a lot of EMT, paramedic, firefighting, and mountaineering training. These occupy much time, attention, and energy. As much as I hate to admit it, I am finding that as I approach age 64 my ability to handle some things is diminishing. So I am not able to contribute as much to the management of my accounts as I have in the past. That is why I hired you.

With all that in mind, you proposed that you would take over sole management of my investment accounts without input or attention from me. Your proposal was unexpected, but I very much appreciate it, as it eases many of my concerns. But, as you can appreciate, that is an enormous step for me, as I have taken sole responsibility for my finances since my late teens.

After having thought about it some more, I agree to turn the management of my retirement and savings investment accounts over to you entirely, under the condition that you manage them very conservatively. I've now had a chance to think more about the approach you propose, and I want to re-state and re-emphasize the general

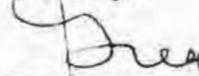
instructions that I gave you at the meeting: it is important that my investment accounts be managed very conservatively, and that they not lose money. The psychological impact of entering retirement is greater than I had expected it to be, the main effect being that I realize that I cannot earn any more and have to depend upon my savings and investments to support myself the rest of my life, as I have no pension other than social security. My savings are sufficiently large that I will be OK even if they do not earn any return, and I just draw on the capital, particularly after I complete the alimony.

The basic instruction in the Client Profile and that I gave you and Wespac orally when I started with you in 2005 was to manage my accounts generally conservatively. Now I want to emphasize that instruction even more. It is really important to me that you structure and manage my accounts so that they do not lose capital if the markets decline, as I believe they may, and if the markets do decline, to sell out the losers. I want to confirm to you what I said at the meeting, and to instruct you that I am willing to sacrifice potential gains to avoid losses. If the stock markets do well in 2008 and after that, I won't blame you if I don't have big gains, as long as I don't have big losses if the markets decline. You said that you would follow that approach.

As a final point, I am attaching some articles on housing markets and prices that I printed from the internet a while back and have saved in my files, that we discussed in general terms at the meeting, and that give me concern. The articles of August 25, 2006 and September 25, 2006 from the New York Times are of the most serious concern, as they reference the national market and the national organizations such as Fannie Mae. The articles from the local papers discuss the local markets, with much the same effect. I haven't printed any articles recently, but from what I read they are largely to the same point. And of course with declining housing markets, the building and financing industries are likely to have trouble.

I don't know enough about investing to understand the relation between the decline in the housing industry and the stock market, but from what I read recently the decline in housing prices is somehow related to mortgage finance and the sale of mortgage-based securities on the stock markets. In sum, with the housing market falling, it seems very possible that the stock market will fall as well. I am trusting you to watch my accounts very, very carefully and act to avoid losses, even at the expense of potential gains.

Sincerely,



Gregory O. Garmong



Existing Home Sales at Two-Year Low

July Sales of Existing Homes Are at their Lowest Level Since January 2004

By DAN ARNALL

Aug. 23, 2006 — - The National Association of Realtors reported this morning that July sales of preowned homes fell to their lowest level in 2½ years, the latest sign of a pronounced slowdown in the housing market during the past year.

The Realtors' group says people bought existing homes at a seasonally adjusted annual rate of 6.33 million units during the month. That's 4.1 percent lower than in June, and 11.2 percent below the level from a year ago. Economists were expecting the number to be closer to 6.58 million units. In August 2005, nearly 7.2 million units were sold.

The report also showed that the median price of a home sold in July was \$230,000, down slightly from the previous month but still above the level from a year ago (by 0.9 percent). Many economists had predicted a negative year-over-year growth for the first time in more than a decade, but that didn't happen this month.

Why Is This Happening?

David Lereah, chief economist at NAR, said it best in the press release: "Many potential home buyers have been on the sidelines, some kicking the tires but mostly waiting for sellers to compromise on prices and terms."

Interest rates have increased over the past year, which has given buyers pause when they're looking at buying a home. Freddie Mac says that on average a 30-year fixed rate mortgage is now 6.52 percent (up from 5.80 percent a year ago). Another factor -- jobs growth is slowing, which gives many first-time buyers another reason not to jump into the ownership pool.

Buyer hesitation has led to price-reduction signs popping up across the country and a significant uptick in inventory levels to their highest point in more than a decade. At this time, there's a 7.3 months' supply of homes on the market. That's the highest level we've seen since April 1993.

What Does This Mean for Consumers?

If you want to buy, you might see better pricing power in the next few months. If you're trying to sell your house, expect it to take longer than you'd initially imagined, and expect offers to come in below your asking price.

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August 25, 2006

Home for Sale, by Anxious Owner

By VIKAS BAJAJ and DAVID LEONHARDT

Home sales are falling rapidly, and the number of houses on the market is surging. Yet each new economic report offering evidence of a housing slowdown also shows that the national median home price has continued to rise over the last year.

To understand how this could be happening, consider a three-bedroom house surrounded by oak and redwood trees, not far from the Golden Gate Bridge, in San Rafael, Calif. Reluctant to cut the price from its current listing of \$1.54 million, its owners are instead offering a weeklong vacation time-share, every year for life, worth about \$10,000, or an equal amount toward lease of a car.

"Location and value will give the buyers a reason — this will give them a sense of urgency," said Tom Wessling, who owns the house with his wife, Brenda, and is being transferred to Atlanta. "If nothing else, it will be the thing that calls attention" to the house.

In California, the Northeast, South Florida and parts of the Southwest, deal sweeteners like these are playing an increasingly important role in supporting home prices. From large national home builders to individual homeowners, many sellers are offering thousands of dollars in perks, including straight cash, so they do not have to slice deeply into asking prices.

But these discounts are almost entirely missing from the statistics on new-home prices reported by the government and on existing-home prices reported by the National Association of Realtors. As a result, home prices may now be falling, despite what the official numbers show, many economists say.

The use of rebates helps home builders and individual sellers by making the real estate market look healthier than it may truly be and by preventing a snowballing decline in home prices. It also keeps commissions for real estate agents higher than they would otherwise be.

In July, the national median price — half sold for more and half for less — of a newly built home was \$230,000, the Commerce Department said yesterday. That is 0.3 percent higher than the median price a year ago. The number of new-home sales fell 21.6 percent over the last year, with the sharpest drop occurring in the Northeast.

On Wednesday, the Realtor group reported that the median price of existing homes was also \$230,000

in July, up 0.9 percent from a year earlier.

Mark Zandi, the chief economist of Moody's [Economy.com](#), estimated that incentives might now be equal to as much as 3 percent of the effective prices of houses across the country, on average. But he and other economists said there was simply no way to know for certain.

"We don't have any house price indexes that get it right," said Todd Sinai, an associate professor of real estate at the Wharton School of the University of Pennsylvania.

"Sellers are pretty picky," he added. "They are not willing to lower prices enough in downturns; they don't do it very quickly." Their reluctance delays sales, contributes to rising inventories and allows prices on the remaining transactions to show an annual increase.

Incentives are most common in the new-home market, where builders are under financial pressure to sell empty homes and, as large businesses, have the ability to absorb the financial hit. Depending on the market, executives at the nation's biggest builders say the giveaways can equal 3 percent to 8 percent of a home's sale price. If builders instead reduced asking prices by that much, it would be enough to wipe out the year-over-year price gains in many markets. Last year, by contrast, many builders were selling out new subdivisions and condominiums in hours or days, often in auctions.

"If you were going to sell the house exactly the way it was before, you would be looking at a price decline," said David Seiders, chief economist at the National Association of Home Builders.

But in a sign of the housing market's deterioration, creative — and expensive — lures are also becoming more common in the existing-home market. With many houses languishing on the market for months, buyers often have the leverage to request a last-minute concession of a few thousand dollars, or more, as a prerequisite to a sale. The subsidy often comes in the form of a discount on the amount of cash a seller must pay at closing.

"It's using a little psychology," said Frank Borges LLosá, who owns Frankly Realty in northern Virginia, an agency that mainly represents buyers. "It makes it sometimes appear like I'm offering a higher price."

Mr. LLosá recently analyzed records for condominiums in one Virginia ZIP code and found that the use of subsidies had soared since last year, when they were almost nonexistent. In Arlington, 14 condominiums had sold for \$350,000 to \$550,000 since June 1, and 10 of them included a subsidy from the seller to the buyer. The average subsidy was more than \$7,000.

The Wesslings of San Rafael have cut the price of their house twice, by a total of \$160,000, since they put it on the market in May. Mr. Wessling, a marketing executive, believes the home is now "competitively priced" and hopes the perks, which also include a \$10,000 reward for referring a

qualified buyer, will be enough to clinch a deal.

Mr. Zandi, the economist, said he believed that the use of perks was now approaching its peak and that sellers would soon be forced to cut list prices more heavily. He predicted that the home-price data released by the Realtors association would show a year-over-year decline, relative to the same month a year earlier, before the end of this year. If so, that would be the first such drop since 1993. The Realtors have never reported a drop in the annual average of national home prices, a fact frequently cited by real estate analysts.

"The reason the Realtors' data has never showed an outright decline" before, he said, "might be that they're not measuring the effective price."

Lawrence Yun, a senior economist with the Realtors group, said that in markets where inventories had been rising rapidly — like the Northeast and California — incentives could well equal 3 percent of house values. But he estimated that the national number was smaller, because homes sales were continuing to rise in roughly a third of markets around the country.

The typical incentive package from a home builder consists of upgrades to the house — granite countertops instead of humdrum tiles, stainless-steel refrigerators and stoves instead of plain white models and wood blinds instead of plastic. At the extremes, some have thrown in \$30,000 swimming pools.

Buyers who demand discounts often get them in the form of excused closing costs or low interest rate loans made by builder-affiliated mortgage companies.

On the west coast of Florida, builders are advertising incentives like upgraded countertops, interest rate promotions and cash rebates totaling \$40,000, or 6.6 percent to 8 percent of the sales price, on homes that sell for \$500,000 to \$600,000, said John Dew, a real estate agent in Naples.

Builders tend to choose discounts because they worry that reductions in the list price would send a clear signal that the market is in trouble, potentially angering previous buyers and emboldening future customers.

"They already sold the same product to the guy next door and if they reduce the price he is going to scream," Mr. Dew said. He added that many builders were also offering agents bonuses worth tens of thousands of dollars in finders' fees for bringing in buyers.

In effect, the incentives have become a quiet way to cut the price of houses without further damaging the market. Sellers "don't want to create this environment of fear in the market that prices are going down, so you should wait to buy," said Dean Baker, co-director of the Center for Economic Policy Research in Washington, who believes that prices will fall in coming years.

Incentives are often most substantial on homes built on speculation before a sales contract has been signed, or on properties that buyers have walked away from after signing a contract. Big builders report that cancellation rates are running as high as a third of new sales, compared with about 20 percent or less a year ago.

Pulte Homes, for instance, was recently offering unspecified incentives totaling as much as \$10,000 on homes in a Connecticut development to buyers who were willing to move in before school started. In the spring, Centex Homes ran a "24-hour sale" in Southern California where buyers who agreed to purchase within the day could get a \$100,000 discount. It ran a similar offer for a \$60,000 discount in Atlanta.

Lenders are also wary of incentives. Lenders do not want to finance transactions where the sales price exceeds the true value of the home. Fannie Mae, the large buyer of mortgages, requires disclosure of perks and it caps them on a sliding scale from 2 percent to 9 percent of selling prices, depending on whether buyers will live in the home and based on the size of the down payment. The concerns of lenders will eventually limit the size of incentives in home sales, said Anthony Hsieh, president of LendingTree.com, the Web loan site. Many buyers may also balk because their property taxes will be based on the sales price listed on the contract.

Eventually, buyers will realize "there is no free lunch," he said. "There is a reason it's being given away."

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September 25, 2006

Home Prices Drop After 11-Year Ascent

By JEREMY W. PETERS

The median price of a previously owned home fell for the first time in 11 years last month, and inventories of unsold homes swelled to levels not seen in more than a decade.

The number of existing homes sold also fell, but by only a small amount, suggesting that the sharp decline in home sales seen earlier this year has leveled off for now.

The National Association of Realtors reported today that existing home sales dropped 0.5 percent from July to August to a seasonally adjusted annual rate of 6.3 million units. That compares with a decline from June to July of 4.1 percent.

The median price in August fell to \$225,000, down 1.7 percent from August 2005. That was the first time since April 1995 that the national median price was lower than the same month a year before.

David Lereah, chief economist of the association, said he expects prices to continue to fall. "We do expect an adjustment in home prices to last several months, as we work through a buildup in the inventory of homes on the market," he said in a written statement. "This is the price correction we've been expecting — with sales stabilizing, we should go back to positive price growth early next year."

At the end of August, there were enough unsold, previously owned homes on the market that it would take 7½ months to sell them all at the current sales pace. The association said that was a bigger backlog than at any time since April 1993.

"With inventory still rising, there is no chance of any short-term relief" for sellers, said Ian Shepherdson, chief United States economist with High Frequency Economics. "Prices and volumes have a long way to fall yet."

The decline was sharpest in the West, where the volume of sales in August was 2.3 percent lower than in July and 22.8 percent lower than a year ago, in August 2005. Prices in the West held steady.

In the South, sales volume in August was 0.8 percent lower than July 2006 and 7.4 percent lower than August 2005.

Sales volume rose moderately in the Northeast (up 1.9 percent) and the Midwest (up 0.7 percent).

Compared with a year earlier, prices were off 3.9 percent in the Northeast and 1.1 percent in the Midwest.



The Record-Courier

Serving Douglas County Since 1880

Steep decline in Douglas housing market

Record Courier Staff Reports
July 21, 2006

by Susie Vasquez

Staff Writer

The seller's market in Douglas County is over.

The average price of a home in Douglas County dropped significantly in recent months, from a high of \$675,000 during the last quarter of 2005 to \$544,600 during the first quarter of 2006.

That's a drop of about \$130,000, according to a quarterly report compiled by the Northern Nevada Regional Multiple Listing Service.

The organization provides information to real estate professionals in eight Northern Nevada counties and according to their figures, the number of homes on the market has risen from 584 to 719, while the number of homes sold has dropped, from 229 to 171 during the same period.

The amount of time homes are on the market in Douglas County also increased during that period, from 61 to 90 days.

Steve Bohler, a broker/owner with Pinon Pines Realty in Minden, said home selling prices in Douglas County are significantly lower than the asking prices, which indicates to him that they're overpriced.

"We still have plenty of buyers calling on ads, but once they've looked, they're shopping somewhere else," he said. "Buyers are checking out Elko, Winnemucca and Lovelock, or going up to Idaho, Oregon, Washington or Montana."

About four or five years ago the people moving here from California had never refinanced their homes, but that isn't the case now, he said.

"Instead of coming here with \$700,000, they now have \$300,000 to \$400,000 cash," he said. "They want to buy a home for a couple hundred thousand and still have enough equity to retire."

"I hear that from a lot of people," he said.

The average asking price for a home in Douglas County had increased to \$582,000 this week, but the actual sale price is around \$484,000, according to information from Multiple Listing.

That's a discrepancy of about \$100,000 and average home prices in neighboring counties are significantly lower. The market is flat in Washoe County where the average price of a home is \$376,000. In Carson City where the median price of a home is \$310,000, costs have dipped about \$18,000 from the last quarter of 2005 to the first quarter of 2006.

Affordability is an issue in "hot" markets across the nation. The recent real estate boom seems to have bypassed cities like Denver, Colo. and Albuquerque, N.M., but those markets are now raising some eyebrows, according to David Lereah, chief economist for the National Association of Realtors.

"What these metros have in common is a healthy local economy and affordable housing prices," he said. "It is becoming increasingly clear that in the aftermath of the boom, households are now seeking affordable property to purchase and live in."

Bohler doesn't think mortgage interest rates, now at 6.75 percent, are having a major impact and that will continue until those rates rise to between 7 or 8 percent.

A report from the National Association of Realtors indicate that nationally, higher interest rates are cutting into existing home sales, particularly in high-priced markets.

New home sales have seen a 10.5 percent decrease in recent months, housing starts have declined and developers are seeing a huge rise in unsold inventory across the country.

In the face of this market adjustment some developers could be in deep trouble locally, Bohler said.

"I know of a development in Yerington that took his homes off the market. They've rented them because the developer can't get the asking price," he said. "Developers will have to get realistic quickly, or they're going to end up sitting on a lot of houses."

Despite the downturn, this is still a great market to make money for the astute investor, Bohler said.

"A lot of people are in way over their heads and eventually, they're going to have to sell," he said. "There will be deals that can be picked up and turned around. For buyers who know what they're doing, there's money to be made."

Lereah said the boom is over and most of the nation's hot housing markets are cooling, but most hot markets still have a healthy local economy and that should shore up the housing market.

"With job creation and income growth, households will continue to have the wherewithal to purchase property even in cooling local markets," he said. "That is the perfect recipe for a soft landing."

Despite the deflation of real estate prices, Bohler does not think the trend will help first-buyers in Douglas County.

"Average kids that grow up in Douglas County haven't been able to afford to live here for a long time," he said. "It's always been a lot cheaper to live in Carson City."

Susie Vasquez can be reached at svasquez@recordcourier.com or 782-5121, ext. 211.

BACK 

The Record-Courier

Average Douglas home price declines \$130K

Record Courier Staff Reports

July 23, 2006

by Susie Vasquez

Staff Writer

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BACK 

NEVADA APPEAL

A competitive market pushes home prices lower

Rising interest rates have slowed Carson City home sales



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With the help of Mike Clements, right, Laura and Gerald Denham add a set of steps to their new manufactured home off of Koontz Lane on Tuesday.

Chad Lundquist/Nevada Appeal

[Browse and Buy Nevada Appeal Photos](#)

By Becky Bosshart

Appeal Staff Writer, bbosshart@nevadaappeal.com

July 26, 2006

As experts across the country speculate housing prices will fall to a soft landing, local buyers are finding a packed market and competitive pricing. But for some, those single-family homes are still too costly.

Buyers such as Laura and Gerald Denham, who are retired, decided to purchase a manufactured home in Carson City in May for about \$80,000. The couple believes they saved about \$10,000 over buying a home in California.

"I think you are going through high prices right now," Laura Denham said Tuesday. "But it was the time that we had to do it."

With interest rates reaching 6.8 percent for a 30-year mortgage, the frantic buying period has cooled. The cost of homes leveled off in mid-2005 and is decreasing, said Carson City Assessor Dave Dawley. The frenzy started in Carson City in 2002, peaked in 2004 and has settled into a buyer's market — if you've got the cash to get in.

"We're still getting people from California willing to pay higher prices," Dawley said.

The average single-family home sold for \$319,000 in the second quarter, which is about 10 percent less than the first quarter, according to the Northern Nevada Regional Multiple Listing Service. The listing service counted 134 agent-assisted home sales in Carson City.

According to city assessor records, which counted all 170 single-family home sales in Q2, the average price of a home was \$347,800, only about \$1,000 less than the previous quarter's average sale price.

If that is too much for buyers, the manufactured housing market is competitive, said Krisann Seiler-Tagay, general manager of Clayton Homes, in Mound House.

The average manufactured home sold for about \$165,500 in Q2, according to the listing service. She estimates that number is too low because a fewer number of manufactured homes are sold in Carson City. She estimates a home with land will cost up to \$250,000.

"The first of the year was great for us, and I think it was because of the stick-built industry," said Seiler-Tagay.

The average number of days on the market has also increased. More days on the market means there are not enough buyers and too much product, said Bob Fredlund, an agent with Coldwell Banker Best Sellers in Carson City.

"We've got a saturated market right now," he said. "A lot of people are trying to sell, and it's going to be a tough road ahead."

Fredlund said he believes not as many buyers are coming from California. Those who invested in a new property, second home or a resale got their business completed when interest rates were lower.

Sellers must price competitively, he said, because there are a lot more houses on the market, compared to 2005.

Federal Reserve Chairman Ben Bernanke has predicted a "soft landing" in the residential housing market, and local banker Jane Auerswald agrees.

"I think interest rates have slowed the market more than anything," said the city president of Colonial Bank. "I don't think they'll go higher, therefore, we can have a little lull and a nice recovery in the fall."

Declining prices will continue to benefit the Denhams. They have family members who plan to move here to be close to their parents. If everything goes according to plan, their daughters will be looking for homes in Carson City next summer.

• Contact reporter Becky Bosshart at bbosshart@nevadaappeal.com or 881-1212.

BACK ←

The Record-Courier

Serving Douglas County Since 1880

Housing market's hills and valleys

Record Courier Staff Reports

July 26, 2006

The wave that was Nevada real estate values has crested and now homebuyers and sellers may have to spend a little bit of time in the trough.

What did we think would happen when tract homes selling for \$200,000 two years ago hit \$400,000? That somehow the market would magically lose all sense and continue to rocket upwards without rhyme or reason?

At some point people were going to get wise to the deal and start looking a little bit closer at the price of a house in Douglas County and decide that maybe it was better to wait out the high market.

As always the ones hurt most are those who overpaid for a home, thinking they would be able to turn it around for a profit within a couple of years. It is the last to purchase who find themselves paying a mortgage for a \$500,000 home that is only worth \$400,000. As long as they are willing to stick around for awhile, they'll be fine.

Compared to some periods in Nevada's history, this is only a minor pothole. Look out into the desert where fortunes were sought only to leave dilapidated ghost towns and tailing piles in their wake.

This state has seen more booms and busts than any other. Our economy has risen and fallen through history like the basin and range that covers most of the state.

This most recent trend is only a hiccup in a market that has consistently increased in value. Nevada real estate is still a great investment.

[BACK](#) ←



Local housing market shows fewer houses selling

Buyers are spending slightly less than in second quarter

Becky Bosshart

Appeal Staff Writer, bbosshart@nevadaappeal.com

August 31, 2006

There aren't many people looking to buy homes during this typically slow season in late summer/early fall, but those who do are spending slightly less on average for a Carson City home, according to local officials.

The average single-family home in Carson City sold for \$323,416 in July, which is about 6 percent less than a month before, according to city assessor records released Wednesday. Fifty homes sold in July. The average home sold for \$345,798 in June. Seventy homes sold that month.

The July average sale price is nearly identical to what was reported at the same time last year.

"Around this time of year school starts so people are getting back into their cushion mode," said city Assessor Dave Dawley. "They are staying in properties and are not looking to move."

Spring and summer are typically the hot selling times. According to city assessor records, the average price for the 170 single-family homes sold in the second quarter was \$347,800, only about \$1,000 less than the previous quarter's average sale price.

Commercial property sales are staying even year-to-year. In July 2005, five commercial properties sold, compared to six last month.

"It's a stable, healthy market," said Andie Wilson, commercial sales agent for Coldwell Banker Commercial Premier Brokers. "It's a little harder for the (commercial) broker to put a deal together, and the reason is that sellers are still thinking it's this wild, crazy market where they can ask silly prices."

"The buyers are demanding reasonable returns at this point."

Residential sales are also being brought down by higher interest rates and sellers overestimating what their property is worth, said Bob Fredlund, an agent with Coldwell Banker Best Sellers in Carson City.

"The problem is that people don't want to lower the price because they have high expectations of the product," he said.

Sellers are shocked because of the decrease in the value of their property over a year ago when all real property was inflated, Fredlund said. Sellers perceive that they are taking a loss from what they might have made during the boom. But they're still going to make money, he said. Many sellers are making reductions in asking prices. He believes this trend will continue until Carson City gets a population influx.

"The reality is we've got fewer buyers now," he said. "Everybody purchased in the last year."

For example, 107 single-family homes sold in June 2005. Another 103 sold the next month.

Seller unease piqued because of rising interest rates.

The Federal Reserve held a key interest rate at 5.25 percent earlier this month, and market buzz has it staying steady at the next Fed meeting.

"Today's rates are wonderful, 6.75 to 7 percent, that's a beautiful rate," Fredlund said. "That's great for first-time buyers, great for all buyers."

• Contact reporter Becky Bosshart at bbosshart@nevadaappeal.com or 881-1212.

Average home sale prices in Carson City

July 2006

Single-family home: \$323,416

Condo/town home: \$184,400

Vacant land for a home: \$206,500

June 2006

Single-family home: \$345,798

Condo/town home: \$160,300

Vacant land for a home: \$200,000

July 2005

Single-family home: \$325,180

Condo/town home: \$196,892

Vacant land for a home: \$223,333

June 2005

Single-family home: \$344,455

Condo/town home: \$201,146

Vacant land for a home: \$243,103

Source: Carson City Assessor records

BACK 

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FAX COVER SHEET

FAX NUMBER TRANSMITTED TO: 775-825-9655

To: Greg Christian
Of: WESPAC
From: Greg Garmong
Subject: 2007 Returns; Planning
Date: January 21, 2008

DOCUMENTS	NUMBER OF PAGES*
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Greg,

1. 2007 return for retirement plans (DB, two Keoghs, two IRAs)

I reviewed the summaries that you sent me for the three qualified plans. I did a slightly different calculation, for all of my qualified plans taken together. My results are as follows, using total values:

$\$2494150.76$ (12/31/07) - $\$2125302.21$ (12/31/06) - $\$190000$ (contrib) = $\$178,848.55$ gain = 8.4% return for year

That doesn't square too well with your return percentages, and I'd like to discuss why we have such significant differences

2. 2007 return, taxable investment account (Schwab 4935-0713).

You didn't send me a calculation for this account

A similar calculation to that above is as follows:

$\$576,721.34$ (12/31/07) - $\$436,510.75$ (12/31/06) - $\$128476.47$ (net contrib) = $11,734.12$ = 2.7% return for year

3. I know you said not to worry about stock indices, but I can't help but be worried as I listen to the reports. As I told you, I'll sacrifice potential gains to ensure that I don't have capital losses. Now that I'm retired and won't be adding to my accounts, I have to avoid capital losses. I'll assume that everything is under control under that guideline, and will wait for the end-of-January Schwab report. (I'm not able to access my account during the month.)

4. We need to schedule our end-of-year meeting soon.

* NOT COUNTING COVER SHEET. IF YOU DO NOT RECEIVE ALL PAGES, PLEASE TELEPHONE US IMMEDIATELY AT (775) 588-0345.

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FAX COVER SHEET

FAX NUMBER TRANSMITTED TO: 775-825-9655

To: Greg Christian
Of: WESPAC
From: Greg Garmong
Subject: Discussion items
Date: March 17, 2008

DOCUMENTS	NUMBER OF PAGES*
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Greg,

Thanks for the information on the capital gains.

I was actually seeking a listing of Wespac charges for 2007, and I understand that you can provide that data. I hadn't gotten to the Schedule D capital gains yet in my tax thinking, but I would have eventually, so you just got me a little ahead of where I'd be otherwise. Thanks.

I have just reviewed my various retirement accounts, and am of course very concerned. The total of my retirement accounts is down over \$100,000 for the year. If March is as bad as February, the result may be to wipe out all gains in those accounts for all of 2007.

I think we should discuss where we are and where we should go, in view of the extreme volatility of the markets. As I had said before, my big concern is losing money on these accounts. The volatility is just driving me nuts, and that mental insecurity is what I had hoped to avoid. I read stuff like this Bear Sterns story and don't understand the details, but the point for people like me, I guess, is that the Fed is so worried about the financial system going to hell that it is bailing out what was the fifth largest investment bank (actually its acquirer) to avoid a "domino effect". That's scary, because I never believe the government is telling the whole story.

The only bright spot in all my end-of-February reports from Schwab was the taxable investment account 4935-0713, that you are working to generate retirement income for me. Should we be using some of that philosophy in the retirement accounts?

\$300,000 in bonds matures on April 1. What should I do with that money? Sit on it?

I'd also like to ask you a question about my tax-free bond account, 3142-7217, that you don't manage. Its value was down sharply last month. I had thought that with interest rates going down, the value of the assortment of municipal bonds would go up. What am I missing? Doesn't make any difference, as I hold the bonds to maturity, but I'm curious.

I'll be here all day tomorrow Tuesday, but gone Wednesday and Thursday.

* NOT COUNTING COVER SHEET. IF YOU DO NOT RECEIVE ALL PAGES, PLEASE TELEPHONE US IMMEDIATELY AT (775) 588-0345.

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11 Dee Court
Smith, NV 89430
phone: 775-465-2981, fax 775-465-2861

FAX COVER SHEET

FAX NUMBER TRANSMITTED TO: 775-825-9655 (2 pages total)

To: Greg Christian
Of: WESPAC
From: Greg Garmong
Subject: Quarterly Review
Date: June 12 2008

DOCUMENTS	NUMBER OF PAGES*
None	

Greg,

I'll be at your office for the quarterly performance review at 10 am on Monday, July 21, 2008.

At your suggestion, I had left my accounts in the sole care of Wespac for the first half of 2008. You advised me not to worry, and let Wespac handle the management. So, I did.

I decided a few days ago that it would be reasonable to do an evaluation at the halfway point of the year. I assembled all the performance data since the beginning of the year.

The results are mixed, and in one respect very disturbing in light of my direction to Wespac that I expected the stock market to decline in 2008 and wanted to sacrifice potential gains to avoid loss.

Account 4935-0713 that Wespac manages for retirement cash flow is performing well, right on target with the cash-production projections you gave me. Good job, as this fits with my retirement planning very well.

The retirement accounts that Wespac manages, on the other hand, are being destroyed. Taken together, they lost over \$141,000 in the first six month of the year, and, incredibly, lost over \$86,000 in the single month of June. Over \$86,000 in one month!

These losses occurred with the accounts collectively about 41% managed equities, 59% cash. Imagine what would have happened if a higher percentage had been invested in managed equities.

The retirement accounts are now collectively within a few thousand dollars of where they were on January 1, 2007. In 18 months, I'm just about even.

This situation has to change. This is reminiscent of 1999-2000, when I lost amounts of this magnitude under a different investment manager. The difference now is that I can't earn more to make up the losses. This is what I have to live on the rest of my life.

At the quarterly review, we'll discuss how this has happened in light of my earlier-expressed concerns and instructions, what steps Wespac took this year in view of the declining stock market to avoid what has happened, why these steps were not successful, and what has to be done to clean up the mess.

I'll want to hear Wespac's plan to reverse this situation on the retirement accounts, and get my retirement accounts back even for the year by, say September 30, 2008.

GREGORY O. GARMONG
11 Dee Court
Smith, NV 89430
phone: 775-465-2981, fax 775-465-2861

FAX COVER SHEET

FAX NUMBER TRANSMITTED TO: 775-825-9655 (3 pages total)

To: Greg Christian
Of: WESPAC
From: Greg Garmong
Subject: Meeting on Sept. 29, 2008
Date: September 26, 2008

DOCUMENTS	NUMBER OF PAGES*
None	

Mr. Christian:

This letter confirms our meeting in Carson City at 11:30 am on Monday, Sept. 29, 2008. The meeting will be at the same restaurant we met at for a prior meeting, I'm not sure of the name, might have the word Eagle in the title. It is the first restaurant on the right as you come into town, 1/4 mile past the Arco station.

I am deeply upset at what you have done to me, not only in destroying so much of my retirement funds, but also in utterly ignoring my instructions to you that have been repeated time and again over the last year. It is now time for you to take responsibility and cure the problem.

A year ago, I told you at our quarterly meeting that I was becoming more conservative because I had just retired and could no longer replace losses from my retirement savings with more contributions. I carefully outlined for you my financial cash-flow projections, and over the next few months into early 2008 we established a plan for using my non-retirement account that you manage to generate cash for me. I also predicted that there would be a major stock market fall in 2008.

I specifically instructed you that there could not be losses from my accounts in 2008, and that they must be managed accordingly. I instructed you that I was willing to sacrifice potential gains to avoid losses.

As we moved into 2008, I repeatedly gave you that same instruction. I was convinced that the stock market would fall significantly, taking my retirement with it,

unless my accounts were managed to avoid loss. Each time we talked, you assured me that I shouldn't worry, I should leave everything in your hands, and my accounts were doing just fine. So I did as you said for 6 months, pretty much ignored the financial status of my retirement accounts, and then checked at the end of June 2008. I was thunderstruck that you had lost over \$140,000 cumulatively from my retirement accounts, a loss of 5.6% in just 6 months.

I called a meeting on July 21 to discuss the financial disaster that you had brought about. By way of reply, you told me that nearly all of your clients were between -2% and +2% for the year, and that the money from new investors was rolling in. We agreed that you would actively manage my accounts so that I returned to the beginning-of-year financial level by September 30, 2008.

I just obtained the account information for September 25, 2008 from Schwab. Your management has lost about \$80,000 from my accounts in 25 calendar days in September, or \$80,000 in 18 working days. And not one word, not one call, nothing from you as my life savings disappears at the rate of \$4400 for each and every working day of September. I repeat those numbers because I want them to sink in. \$80,000 in 18 working days. My retirement account is down \$196,284, or 7.9% in just under 9 months for 2008. This is the money I have sweat my whole life to save for a financially secure retirement, and you are destroying my retirement at a phenomenal rate after you have repeatedly assured me that all was well. In fact, for the year the losses from my accounts that you are managing are roughly \$1000 a day, day in and day out, for every working day of the year. Keep in mind that my retirement accounts are approximately 60% in cash that you couldn't lose. You had to work really hard to lose that much money in the remaining equities.

I pay you about \$20,000 a year in management fees. For that, I expect that you will listen to my instructions and give some individual attention to my specific situation and needs. If I had told you to be speculative and be as wild as possible, that would be one thing. But I expressly instructed you just the opposite, not once but many times. I correctly predicted a year ago that the stock market would take a major dive in 2008. I told you that I wanted no losses, that I was willing to forego gains to avoid losses. Still you have found a way to lose nearly \$250,000 for the year, counting the losses from both the retirement account and the non-retirement account for which you have responsibility.

When we talked earlier today on the phone, you said that now was not the time to be emotional. Yes, it is, in that it is time for me to be greatly upset by what has been done to me. I have in good faith accepted what you have told me for the past 9 months, and look where it has gotten me: financial disaster. Massive losses at a time when I expressly instructed you to be conservative in view of my retirement and not to take any losses in my accounts, and when I correctly predicted that the market would fall greatly in 2008. You also said that the only way to do that would have been to put the money in the bank. The response is yes, that would have been one possibility and far better than what you have done to me. My brother investing in CDs has done better than I have, and he doesn't pay a professional manager.

So for Monday's meeting, here is what you will provide, in writing. This management history will help us to understand what went wrong and why there has been such a financial disaster on the matters for which you have responsibility.

1. A detailed report as to why you ignored my instructions on the management of my accounts.

2. A report why my accounts were selected from all your accounts under management for the greatest losses, when I instructed you that they should be managed for no losses. On July 21, you were proud that most accounts that you manage for other clients were between -2% and +2% for the year. Mine was -5.6% for the first 6 months of the year at the time. It is critical to understand why my accounts were selected by you for taking massive losses when the others did comparatively well.

3. A detailed report, on an account-by-account, security-by-security basis if necessary, as to exactly what strategy you followed to lose so much from my accounts.

4. A report as to why and how, after we expressly discussed these matters on July 21 in a face-to-face meeting, and you agreed to get the situation under control, you have caused the additional losses to happen since then.

Finally and perhaps most importantly, we will establish a plan to restore the value of my accounts in the light of this financial disaster. This will not be an "emotional" plan, but instead will provide specific procedures and objectives.

I will listen to what you propose, if anything.

Absent something that you propose which is more satisfactory to me, we will proceed as follows. The problem is that there have been no verifiable objectives and procedures in your financial management of my retirement accounts. Now we will establish objectives and a procedure, as follows. Every Friday afternoon by 4pm, you will fax me the current status of my accounts under management, on a form that I will provide. Every Monday morning at 9 am, you and I will review the performance of the accounts for the prior week by telephone, to understand what has been done right and what has been done wrong. There will be a straightforward criterion for successful management. The total value of the accounts must cumulatively increase by at least \$10,000 for the prior week. If the accounts do not cumulatively increase by \$10,000 for the prior week, Wespac will make up the difference by adding the difference to my non-retirement account for which you have responsibility. In 25 weeks or so under this management plan, my accounts will be back to the level they were at the start of 2008. We will then decide how to proceed from there.

This approach will provide us both with a clearly defined procedure and a clearly defined criterion for management success to enable Wespac to earn its management fees.

Gregory Garmong

GREGORY O. GARMONG
11 Dee Court
Smith, NV 89430
phone: 775-465-2981, fax 775-465-2861

FAX COVER SHEET

FAX NUMBER TRANSMITTED TO: 775-825-9655 (1 page total)

To: Greg Christian
Of: WESPAC
From: Greg Garmong
Subject: Account 4935-0713
Date: October 24, 2008

DOCUMENTS	NUMBER OF PAGES*
None	

Mr. Christian:

I recently sold out my retirement accounts to stop the losses that you intentionally caused in them, against my express oral and written instructions not to lose money in those accounts in 2008, and to avoid further losses after I discovered that you had ignored my instructions.

At that time, you begged and advised me to leave unchanged the investments that you had selected in account 4935-0713, acknowledging that you would manage it as I requested, to avoid losses in 2008. I did as you requested.

You remain under the express instruction of not losing money in that account, as well as my other accounts, as long as you have any management responsibility for my accounts. Any losses in 2008 in account 4935-0713 are your responsibility, because my express instruction was to manage all of my accounts so as not to lose money in any of my accounts in 2008. I have not heard one word from you about account 4935-0713, and I therefore assume that you have followed my instructions and it has not lost money and will not lose money in 2008.

Gregory Garmong

CHANGE IN INVESTMENT VALUE DURING PERIOD

Period	Dollar Change in Account Value					Monthly Total
Account	4935-0713	3084-1746	5215-5386	6205-6376	7192-4369	
Month						
11/07	-6,451.24	0	-15,105.16	2,172.35	-14,599.56	-33983.61
12/07	-3,353.72	0	-39,948.70	-1,694.14	-28,865.60	-73862.16
1/08	-8,630.46	2.84	-39,982.69	-14,231.11	-22,063.30	-84904.72
2/08	2,496.26	5.06	-9454.39	6,088.95	3,479.62	2615.5
3/08	-31,851.16	4.38	-4992.85	5,700.92	1,330.24	-29808.47
4/08	18,320.78	3.37	24,757.24	10,371.44	14,301.50	67754.33
5/08	5,093.57	3.02	5,634.97	1,003.71	1,262.45	12997.72
6/08	-24,806.45	3.13	-48,597.46	-13,272.85	-22,731.78	-109405.41
7/08	-2,474.33	2.61	-14,967.92	4,874.87	-4,236.68	-16801.45
8/08	-3,479.91	2.79	8,102.10	5,910.25	-4,724.20	5811.03
9/08	-50,258.77	2.80	-44,142.94	-1810.48	-23,898.67	-120108.06
10/08	-45,665.98	2.58	-90,123.46	-10,555.61	-24,134.87	-170477.34
11/08	-32,049.06	2.44	1,882.42	743.88	-1,056.86	-30477.18
						-580649.82
Account Total	-183110.5	35.02	-266938.8	-4697.82	-125937.7	-580649.82

ADVISOR FEES

Date	Dollar Amount for Each Account					Total
	4935-0713	3084-1746	5215-5386	6205-6376	7192-4369	
11/07	0	0	0	0	0	
12/07	0	0	0	0	0	
1/08	1,081.35	2.91	2,712.56	979.10	882.37	5658.29
2/08	0	0	0	0	0	
3/08	0	0	0	0	0	
4/08	959.15	2.93	2,609.36	951.71	848.37	5371.52
5/08	0	0	0	0	0	
6/08	0	0	0	0	0	
7/08	932.48	2.94	2,573.05	909.47	833.34	5251.28
8/08	0	0	0	0	0	
9/08	0	0	0	0	0	
10/08	827.72	2.95	2,474.79	926.58	770.16	5002.2
11/08	0	0	0	0	0	
12/08	0	0	0	0	0	
Account Total	3800.70	11.73	10369.76	3766.86	3334.24	21283.29

FORM ADV - PART II

UNIFORM APPLICATION FOR INVESTMENT ADVISOR REGISTRATION



WESPAC ADVISORS, LLC

WESPAC ADVISORS,LLC

PRIVACY POLICY FOR INDIVIDUAL CLIENTS

WESPAC Advisors, LLC is committed to protecting your privacy. To conduct regular business, we may collect non-public personal information from sources such as:

Information reported by you on applications or other forms you provide to us; and/or

Information about your transactions with us, our affiliates, or others.

WESPAC Advisors, LLC shares non-public information solely to service our client accounts. We do not disclose any non-public personal information about our customers or former customers to anyone, except as permitted by law. If you decide to close your account(s) or become an inactive client, we will adhere to the privacy policies and practices as described in this notice.

Information Safeguarding

WESPAC Advisors, LLC will internally safeguard your non-public personal information by restricting access to only WESPAC Advisors, LLC employees. WESPAC Advisors, LLC employees provide products or services to you and need access to your information to service your account. In addition, we will maintain physical, electronic, and procedural safeguards that meet federal and/or state standards to guard your non-public personal information.

Uniform Application for Investment Adviser Registration

Name of Investment Adviser:
NESPAC Advisors, LLC

Address: (Number and Street)	(City)	(State)	(Zip Code)	Area Code	Telephone Number
1001 Broadway, 2nd Floor	Oakland	CA	94612	(510)	287-5255

This part of Form ADV gives information about the investment adviser and its business for the use of clients.
 The information has not been approved or verified by any governmental authority.

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12	Investment or Brokerage Discretion	6
13	Additional Compensation	6
14	Balance Sheet	6
	Continuation Sheet	Schedule F
	Balance Sheet, if required	Schedule G

(Schedules A, B, C, D, and E are included with Part I of this Form, for the use of regulatory bodies, and are not distributed to clients.)

Potential persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB control number.

I. A. Advisory Services and Fees. (check the applicable boxes)

For each type of service provided, state the approximate % of total advisory billings from that service. (See instruction below.)

Applicant:

- (1) Provides investment supervisory services 70 %
- (2) Manages investment advisory accounts not involving investment supervisory services 30 %
- (3) Furnishes investment advice through consultations not included in either service described above %
- (4) Issues periodicals about securities by subscription %
- (5) Issues special reports about securities not included in any service described above %
- (6) Issues, not as part of any service described above, any charts, graphs, formulas, or other devices which clients may use to evaluate securities %
- (7) On more than an occasional basis, furnishes advice to clients on matters not involving securities %
- (8) Provides a timing service %
- (9) Furnishes advice about securities in any manner not described above %

(Percentages should be based on applicant's last fiscal year. If applicant has not completed its first fiscal year, provide estimates of advisory billings for that year and state that the percentages are estimates.)

B. Does applicant call any of the services it checked above financial planning or some similar term? Yes No

C. Applicant offers investment advisory services for: (check all that apply)

- (1) A percentage of assets under management (4) Subscription fees
- (2) Hourly charges (5) Commissions
- (3) Fixed fees (not including subscription fees) (6) Other

D. For each checked box in A above, describe on Schedule F:

- the services provided, including the name of any publication or report issued by the adviser on a subscription basis or for a fee
- applicant's basic fee schedule, how fees are charged and whether its fees are negotiable
- when compensation is payable, and if compensation is payable before service is provided, how a client may get a refund or may terminate an investment advisory contract before its expiration date

2. Types of Clients — Applicant generally provides investment advice to: (check those that apply)

- A. Individuals E. Trusts, estates, or charitable organizations
- B. Banks or thrift institutions F. Corporations or business entities other than those listed above
- C. Investment companies G. Other (describe on Schedule F)
- D. Pension and profit sharing plans

Answer all items. Complete amended pages in full, circle amended items and file with execution page (page 1).

I. Types of Investments. Applicant offers advice on the following: (check those that apply)

- A. Equity securities
- (1) exchange-listed securities
 - (2) securities traded over-the-counter
 - (3) foreign issuers
- B. Warrants
- C. Corporate debt securities (other than commercial paper)
- D. Commercial paper
- E. Certificates of deposit
- F. Municipal securities
- G. Investment company securities:
- (1) variable life insurance
 - (2) variable annuities
 - (3) mutual fund shares
- H. United States government securities
- I. Options contracts on:
- (1) securities
 - (2) commodities
- J. Futures contracts on:
- (1) tangibles
 - (2) intangibles
- K. Interests in partnerships investing in:
- (1) real estate
 - (2) oil and gas interests
 - (3) other (explain on Schedule F)
- L. Other (explain on Schedule F)
-

I. Methods of Analysis, Sources of Information, and Investment Strategies.

A. Applicant's security analysis methods include: (check those that apply)

- (1) Charting
- (2) Fundamental
- (3) Technical
- (4) Cyclical
- (5) Other (explain on Schedule F)

B. The main sources of information applicant uses include: (check those that apply)

- (1) Financial newspapers and magazines
- (2) Inspections of corporate activities
- (3) Research materials prepared by others
- (4) Corporate rating services
- (5) Timing services
- (6) Annual reports, prospectuses, filings with the Securities and Exchange Commission
- (7) Company press releases
- (8) Other (explain on Schedule F)

C. The investment strategies used to implement any investment advice given to clients include: (check those that apply)

- (1) Long term purchases (securities held at least a year)
- (2) Short term purchases (securities sold within a year)
- (3) Trading (securities sold within 30 days)
- (4) Short sales
- (5) Margin transactions
- (6) Option writing, including covered options, uncovered options, or spreading strategies
- (7) Other (explain on Schedule F)

Answer all items. Complete amended pages in full, circle amended items and file with execution page (page 1).

Education and Business Standards.

Are there any general standards of education or business experience that applicant requires of those involved in determining or giving investment advice to clients?

Yes No
[] [x]

(If yes, describe these standards on Schedule F.)

Education and Business Background.

- For:
- each member of the investment committee or group that determines general investment advice to be given to clients, or
- if the applicant has no investment committee or group, each individual who determines general investment advice given to clients (if more than five, respond only for their supervisors)
- each principal executive officer of applicant or each person with similar status or performing similar functions.

On Schedule F, give the:

- name, year of birth, formal education after high school, business background for the preceding five years

Other Business Activities. (check those that apply)

- [x] A. Applicant is actively engaged in a business other than giving investment advice.
[] B. Applicant sells products or services other than investment advice to clients.
[x] C. The principal business of applicant or its principal executive officers involves something other than providing investment advice.

(For each checked box describe the other activities, including the time spent on them, on Schedule F.)

Other Financial Industry Activities or Affiliations. (check those that apply)

- [] A. Applicant is registered (or has an application pending) as a securities broker-dealer.
[] B. Applicant is registered (or has an application pending) as a futures commission merchant, commodity pool operator or commodity trading adviser.
C. Applicant has arrangements that are material to its advisory business or its clients with a related person who is a:
[x] (1) broker-dealer [] (7) accounting firm
[] (2) investment company [] (8) law firm
[] (3) other investment adviser [x] (9) insurance company or agency
[] (4) financial planning firm [x] (10) pension consultant
[] (5) commodity pool operator, commodity trading adviser or futures commission merchant [] (11) real estate broker or dealer
[] (6) banking or thrift institution [] (12) entity that creates or packages limited partnerships

(For each checked box in C, on Schedule F identify the related person and describe the relationship and the arrangements.)

D. Is applicant or a related person a general partner in any partnership in which clients are solicited to invest?

Yes No
[] [x]

(If yes, describe on Schedule F the partnerships and what they invest in.)

Answer all items. Complete amended pages in full. circle amended items and file with execution page (page 1).

9. Participation or Interest in Client Transactions.

Applicant or a related person: (check those that apply)

- A. As principal, buys securities for itself from or sells securities it owns to any client.
- B. As broker or agent effects securities transactions for compensation for any client.
- C. As broker or agent for any person other than a client effects transactions in which client securities are sold to or bought from a brokerage customer.
- D. Recommends to clients that they buy or sell securities or investment products in which the applicant or a related person has some financial interest.
- E. Buys or sells for itself securities that it also recommends to clients.

(For each box checked, describe on Schedule F when the applicant or a related person engages in these transactions and what restrictions, internal procedures, or disclosures are used for conflicts of interest in those transactions.)

10. **Conditions for Managing Accounts.** Does the applicant provide investment supervisory services, manage investment advisory accounts or hold itself out as providing financial planning or some similarly termed services *and* impose a minimum dollar value of assets or other conditions for starting or maintaining an account? Yes No

(If yes, describe on Schedule F.)

11. **Review of Accounts.** If applicant provides investment supervisory services, manages investment advisory accounts, or holds itself out as providing financial planning or some similarly termed services:

A. Describe below the reviews and reviewers of the accounts. For reviews, include their frequency, different levels, and triggering factors. For reviewers, include the number of reviewers, their titles and functions, instructions they receive from applicant on performing reviews, and number of accounts assigned each.

Greg Christian
 Andrew Corradetti
 Robert Perussina
 John C. Williams, III
 Please see Schedule F for additional information

B. Describe below the nature and frequency of regular reports to clients on their accounts.

Quarterly statements of holding and transaction activities, as well as market commentary.
 Please see Schedule F for additional information.

Answer all items. Complete amended pages in full, circle amended items and file with execution page (page 1).

2. Investment or Brokerage Discretion.

A. Does applicant or any related person have authority to determine, without obtaining specific client consent, the:

- (1) securities to be bought or sold? Yes No
- (2) amount of the securities to be bought or sold? Yes No
- (3) broker or dealer to be used? Yes No
- (4) commission rates paid? Yes No

B. Does applicant or a related person suggest brokers to clients? Yes No

For each yes answer to A describe on Schedule F any limitations on the authority. For each yes to A(3), A(4) or B, describe on Schedule F the factors considered in selecting brokers and determining the reasonableness of their commissions. If the value of products, research and services given to the applicant or a related person is a factor, describe:

- the products, research and services
- whether clients may pay commissions higher than those obtainable from other brokers in return for those products and services
- whether research is used to service all of applicant's accounts or just those accounts paying for it, and
- any procedures the applicant used during the last fiscal year to direct client transactions to a particular broker in return for products and research services received.

3. Additional Compensation.

Does the applicant or a related person have any arrangements, oral or in writing, where it:

- A. is paid cash by or receives some economic benefit (including commissions, equipment or non-research services) from a non-client in connection with giving advice to clients? Yes No
- B. directly or indirectly compensates any person for client referrals? Yes No

(For each yes, describe the arrangements on Schedule F.)

4. Balance Sheet. Applicant must provide a balance sheet for the most recent fiscal year on Schedule G if applicant:

- has custody of client funds or securities; or
 - requires prepayment of more than \$500 in fees per client and 6 or more months in advance
- Has applicant provided a Schedule G balance sheet? Yes No

Answer all items. Complete amended pages in full, circle amended items and file with execution page (page 1).

(Do not use this Schedule as a continuation sheet for Form ADV Part I or any other schedules.)

Full name of applicant exactly as stated in Item 1A of Part I of Form ADV:
WESPAC Advisors, LLC

IRS Empl. Ident. No.:

Item of Form (identify)	Answer																		
I.	INVESTMENT ADVISORY SERVICES AND FEES																		
I.B	WESPAC may use any of the following items to describe its business operations: investment management, investment advisory service, investment counsel, and investment planning.																		
I.D.A(1)	<p>WESPAC Advisors ("WESPAC") will contract with certain clients to provide investment supervisory and management services in order to plan, develop, design, implement and administer an investment program based on the client's goals and needs. Once the client's risk and return objectives are determined, the level of interest rates, price change risks, market sector and credit quality standards, etc. are then established. Such decisions are implemented uniformly for all clients with similar portfolios. Discretionary trading authority does not permit WESPAC to withdraw either cash or securities from client accounts. All portfolio holdings are scrutinized regularly to review their relative value compared to other securities available in the marketplace.</p> <p>WESPAC provides certain asset management consulting services for individual and institutional clients. These services are referred to as either Investment Management Consulting or Personal Financial Consulting:</p> <p>INVESTMENT MANAGEMENT CONSULTING SERVICES: WESPAC is primarily engaged in providing investment management consulting services for individuals and families, retirement plans, trusts and corporations. These services are designed to assist clients with the proper engagement and supervision of professionally managed investment programs by following this comprehensive four step investment management process: 1.) analysis of client's current investment position as it relates to investment objectives; 2.) design of an asset allocation strategy; 3.) formalization and implementation of client's investment program; and 4.) monitoring client's investment program and the reporting thereof.</p> <p>PERSONAL FINANCIAL CONSULTING: The personal financial consulting service includes the preparation of financial analyses and reports which evaluate and summarize the client's present financial condition.</p> <p>As full compensation for investment advisory services, WESPAC charges investment management fees based on the following maximum annual percentage of total asset values:</p> <table border="1" data-bbox="329 1291 1443 1501"> <thead> <tr> <th></th> <th>TOTAL PORTFOLIO ASSET VALUE</th> <th>ANNUAL FEE RATE</th> </tr> </thead> <tbody> <tr> <td>First</td> <td>\$250,000</td> <td>1.25%</td> </tr> <tr> <td>Next</td> <td>\$750,000</td> <td>1.00%</td> </tr> <tr> <td>Next</td> <td>\$1-2,000,000</td> <td>0.75%</td> </tr> <tr> <td>Next</td> <td>\$2-5,000,000</td> <td>0.50%</td> </tr> <tr> <td>Next</td> <td>\$5,000,000+</td> <td>Negotiable</td> </tr> </tbody> </table> <p>In addition, there is a one-time account set-up fee of \$250 due and payable at account establishment.</p>		TOTAL PORTFOLIO ASSET VALUE	ANNUAL FEE RATE	First	\$250,000	1.25%	Next	\$750,000	1.00%	Next	\$1-2,000,000	0.75%	Next	\$2-5,000,000	0.50%	Next	\$5,000,000+	Negotiable
	TOTAL PORTFOLIO ASSET VALUE	ANNUAL FEE RATE																	
First	\$250,000	1.25%																	
Next	\$750,000	1.00%																	
Next	\$1-2,000,000	0.75%																	
Next	\$2-5,000,000	0.50%																	
Next	\$5,000,000+	Negotiable																	
I.D.A(2)	<p>Management fees are charged as a percentage of assets based on the total market values of the securities portfolio, including cash and cash equivalents held in the account at the close of each calendar quarter. One fourth of the annual fee is payable quarterly, in arrears. Fees are negotiable under limited circumstances based on the size of the account, prospective growth and other factors. During the final quarter of the management agreement, fees are payable on the number of calendar days the agreement was effective. A full refund on the prorated portion of</p>																		

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Full name of applicant exactly as stated in Item 1A of Part I of Form ADV:

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WESPAC Advisors, LLC

Item of Form (identify)	Answer
<p>1.D.A(3)</p> <p>1.</p> <p>1.L</p> <p>1.</p> <p>1.B(8)</p> <p>1.</p> <p>1.</p>	<p>any prepaid fees from the termination date to the end of the calendar quarter will be paid to the client. Termination of the investment advisory agreement may be effected by either the client or WESPAC at any time by notification in writing. Such notification to WESPAC shall be made at our office in Oakland, California.</p> <p>In the event of non-payment of management fees for a period of 30 days after invoice date, WESPAC reserves the right without notice, to cease performance of account supervision and management functions.</p> <p>Client may authorize the custodian of the account to pay these fees directly from the custodial account or the client may choose to pay direct. Depending upon the relationship, multiple portfolios with a common interest may be treated as one for billing purposes. Should payment come directly from a custodial account, the following conditions will be met.</p> <p>1. Client will provide the custodian with written authorization permitting the advisor's fee to be paid directly from the client's account held by a broker or an independent custodian; and</p> <p>2. Advisor will send to the client and custodian simultaneously a bill showing the amount of the fee, the value of the client's assets upon which the fee was based, and the specific manner in which the advisor's fee was calculated.</p> <p>Investment advisory services of a non-discretionary, non-continuous nature are offered on a flat-fee basis and on a hourly basis; fees are negotiable, but the standard rate is \$150 hour. Fees are invoiced and payable immediately after the services are rendered. The California Department of Corporations requires the following disclosure: "Comparable services may be available from other sources at a lower or higher cost."</p> <p>Investment advisory seminars or short courses of varying duration, comprehensiveness, and cost may be offered. Free seminars on topics of various interest may also be offered.</p> <p>TYPES OF INVESTMENTS: Investment advice may be provided with regard to real estate investment trusts ("REITS")</p> <p>METHOD OF ANALYSIS, SOURCES OF INFORMATION & INVESTMENT STRATEGIES: Through its association with various national investment consulting firms as described herein, WESPAC receives capital markets research, asset allocation, and other investment planning technologies, investment manager due diligence information and performance evaluation services.</p> <p>EDUCATION AND BUSINESS STANDARDS:</p> <p>Either relevant formal education in business, economics, or finance, or demonstrated experience relating to providing investment advice may become necessary. All required licenses are, of course, mandatory. In the state of California, this means either having the Series 65 or the Series 7 and Series 66 (or having been grandfathered in under certain waiver conditions).</p> <p>EDUCATION AND BUSINESS BACKGROUND:</p> <p>NAME: Chia, Nelson P. DOB: November 29, 1948 FORMAL EDUCATION & TRAINING: Attended the University of California/Berkeley. After serving in the U.S. Army and returning from Vietnam, Mr. Chia began his financial career track</p>

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7.	<p>with Connecticut Mutual.</p> <p>BUSINESS BACKGROUND FOR PRECEDING FIVE YEARS: In addition to being the president of WESPAC Advisors, Mr. Chia is one of the co-principals for the WESPAC parent organization, WESPAC Plan Services. He has more than 25 years of experience involving pension and benefits consulting and investment advisory. Mr. Chia maintains a leadership role in recent years in the pension industry's business owner's strategy conference.</p> <p>NAME: Szu, Renee T. DOB: March 26, 1953 FORMAL EDUCATION & TRAINING: Taiwan University; B.S. in Accounting; University of California/Hayward; MBA in Finance & Accounting BUSINESS BACKGROUND FOR PRECEDING FIVE YEARS: Ms. Szu is the other co-principal of WESPAC Plan Services and has served as the company's CFO for the past five years.</p> <p>NAME: Williams, John C., III DOB: April 20, 1968 FORMAL EDUCATION & TRAINING: The American Graduate School of International Management; MBA in Finance; University of Florida; BA with honors in Political Science with minors in Business Administration and Japanese language. BUSINESS BACKGROUND FOR PRECEDING FIVE YEARS: Mr. Williams has run the investment advisory department at WESPAC for the past 5 years. A registered securities representative (Series 7 & 63) with the NASD and licensed investment advisory representative (Series 65), Mr. Williams will serve as part of the technical support team under WESPAC Advisors. In addition, he is currently participating in the CFA program.</p> <p>NAME: Liu, Paul K. DOB: August 25, 1959 FORMAL EDUCATION & TRAINING: University of Texas, MBA; Texas A&M University, BBA. BUSINESS BACKGROUND FOR PRECEDING FIVE YEARS: Mr. Liu's has been the manager of WESPAC's trust accounting department for the past 5 years. In addition, he is a registered securities representative and registered securities principal with the NASD, holding the series 7, 63, and 24 licenses.</p> <p>OTHER BUSINESS ACTIVITIES</p> <p>The parent company of WESPAC Advisors is WESPAC Plan Services, which is a full-service pension administrator and recordkeeper. There are peripheral activities conducted by WESPAC Advisors that contribute to the overall success of the pension business, but these activities constitute only 5% of the aggregate time of the operations staff in the advisory department. Nelson Chia, the principal executive of WESPAC Advisors, spends approximately 75% of his time focusing on business other than providing investment advice.</p> <p>OTHER FINANCIAL INDUSTRY ACTIVITIES OR AFFILIATIONS:</p> <p>Broker-Dealer and Investment Companies:</p> <p>WESPAC: WESPAC may manage securities accounts referred to WESPAC by other professional firms such as broker-dealers and other investment advisory firms. As compensation for performing business development activities related to establishing and servicing these</p>

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	<p>accounts on an ongoing basis, WESPAC may share its management fees with referring firms. These fees are paid only after full disclosure to and written authorization by referred clients as required by rule 206(4)-3 of the Investment Advisor's Act of 1940. WESPAC may share only advisory fees with broker-dealers and investment companies that are also registered investment advisors.</p> <p>WESPAC's management fees are not increased because of referral; the referring firm is paid out of WESPAC's fee.</p> <p>FINANCIAL TELESIS: Financial Telesis is the broker/dealer headquartered in Larkspur, CA with which several WESPAC associates are licensed as securities representatives. WESPAC would use Financial Telesis for variable annuity or other securities-related insurance products, including bundled pension plan products.</p> <p>CHARLES SCHWAB & CO., INC. ("Schwab"): WESPAC may recommend using Schwab Institutional to accommodate clients who wish to use discount brokerage services to implement and administer portfolio management services. In such cases, the client's assets are held in "street name" at Schwab and securities are purchased and sold at discounted rates for the client. The Advisor does not share in fees and/or commissions charged by Schwab for such brokerage services.</p>
3.C(3)	<p>Other Investment Advisors:</p> <p>Frank Russell Investment Management Company ("FRIMCO"): The Frank Russell Company is one of the world's largest pension consultants and its investment management arm, FRIMCO, leverages their expertise in researching money managers around the globe to create investment vehicles that are then made available through approved investment advisors like WESPAC. FRIMCO's philosophy is based on the principles of asset allocation and modern portfolio theory, but they do advocate specialist active managers for the various asset classes that comprise their portfolios. FRIMCO's investment products are used frequently in client portfolios and their research and marketing capabilities are also made available to WESPAC.</p>
3.C(4)	<p>Financial Planning Firm: From time to time, WESPAC may retain the services of independent financial planning organizations to include financial planning concerns directly or indirectly operated by WESPAC Advisors. In those instances where such engagements would be considered, full disclosure shall be made at the time of engagement with regard to any potential conflicts.</p>
3.C(9)	<p>Insurance Company or Agency: WESPAC Advisors, through its affiliate, WESPAC Benefits & Insurance Services, also acts as a broker and maintains a number of active contracts with major insurance companies, e.g., Manufacturer's Life, Sun Life of Canada, Guardian, Blue Cross, Blue Shield, etc. As part of its due diligence procedure and services, WESPAC Benefits & Insurance, on a fee for service basis, also performs insurance advisory functions through WESPAC Plan Services, Inc.'s Certified Insurance Analyst licensed under the California Department of Insurance. Advisory clients are under no obligation to utilize these services.</p>
3.C(10)	<p>Pension consultant: WESPAC Advisors is affiliated with WESPAC Plan Services, Inc. which is established as a Third Party Administrator for certain Qualified and Health & Welfare benefit plans. The scope of its services includes legal, actuarial, consulting and recordkeeping and are entirely provided on a fee for service basis. Advisory clients are under no obligation to utilize these services.</p>

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9.	<p>PARTICIPATION OR INTEREST IN CLIENT TRANSACTIONS</p> <p>Employees of the Advisor may purchase and sell for their own accounts securities that are also included in clients' accounts. Clients are always given preferential treatment in the timing of purchase or sale transactions. Due to personal circumstances and investment objectives, actions by Advisor's employees regarding specific securities held in their own accounts may differ from that taken in client's portfolios. Internal procedures and policies provide for all personal securities transactions to be reported quarterly and reviewed by the firm's compliance officer.</p> <p>The following procedures apply to the employees of WESPAC and all its affiliated persons and subadvisors having access to information about securities being considered for sale or purchase, as well as securities being sold or purchased for client advisory accounts. Such persons are not permitted:</p> <ol style="list-style-type: none"> 1. To trade in securities for their own accounts in a manner contrary to recommendations made to or action taken on behalf of clients of the Advisor, where the effect of such trading, recommendations, or action may be to affect the price of the securities involved; 2. To purchase or sell securities for their own accounts or for client accounts which would involve the use of material, non-public information in violation of applicable laws; and 3. In situations wherein Advisor employees purchase or sell securities for their own accounts on the same day that transactions in such securities are effected for clients of WESPAC, the price paid or realized by Advisor employees may not be more advantageous than the worst price at which the Client transactions are effected. 				
10.	<p>CONDITIONS FOR MANAGING ACCOUNTS:</p> <p>Although some exceptions may be made, minimum capital for starting an account is as follows:</p> <table style="margin-left: 40px;"> <tr> <td>Individual or Trustee Directed Plan:</td> <td>\$250,000</td> </tr> <tr> <td>401(k) Plan</td> <td>\$50,000</td> </tr> </table> <p>Disputes: In the event of a dispute between a client and WESPAC, a good faith effort will be made by WESPAC to come to an agreement that the client will find satisfactory. If no agreement can be reached, disputes shall be resolved by arbitration. Any award rendered by the arbitrator shall be final, and judgement may be entered in any court of competent jurisdiction.</p>	Individual or Trustee Directed Plan:	\$250,000	401(k) Plan	\$50,000
Individual or Trustee Directed Plan:	\$250,000				
401(k) Plan	\$50,000				
11. 11.A	<p>REVIEW OF ACCOUNTS:</p> <p>Reviews: Investment Management accounts are reviewed quarterly, or more often on an ad hoc basis, as needed. Triggering factors are numerous and include: changes in clients circumstances, federal or state legislation, regulatory and political events such as changes in monetary policy, interest rates, large market fluctuations, mergers, rating agency changes and corporate restructuring.</p> <p>Reviewer: 1.) John C. Williams, III 2.) Greg Christian 3.) Robert Perusinna</p>				
11.B	<p>Clients will receive from Charles Schwab & Co., Inc., Charles Schwab Trust Co., or other</p>				

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12.	<p>custodial broker-dealers, trade confirmations and monthly statements. A quarterly report will be prepared by WESPAC which will include the following information: Portfolio value at the beginning and end of the quarter, contributions, withdrawals, realized capital gains and losses, interest, dividends, management fees, and time-weighted rate of return for the quarter and year to date. The custodial broker dealer or trust company will provide the client with a form 1099 after the close of each calendar year.</p>
12.A(1-2)	<p>INVESTMENT OR BROKERAGE DISCRETION:</p>
	<p>Generally, the Advisor will be retained on a discretionary basis and authorized to determine and direct execution of portfolio transactions, without consultation with the client on a transaction by transaction basis. WESPAC prefers to select broker dealers who will execute portfolio transactions at an omnibus account level. In most cases, the client will leave that selection to the firm, although occasionally the client may direct the use of a particular broker dealer. Client may limit discretionary authority in terms of type or amount of mutual funds and other securities to be bought or sold as well as the broker to be used.</p> <p>In selecting a broker dealer for any transaction, series of transactions, or where the custodial services are rendered, the Advisor may consider a number of factors including, for example, net price, reputation, financial strength and stability, efficiency of execution and error resolution, block trading and block positioning capabilities, willingness to execute related or unrelated difficult transactions in the future, order of call, offering Advisor the complete on-line computer access to data regarding client's accounts, and other matters generally involved in brokerage services.</p> <p>WESPAC does not obligate itself to obtain lowest commission or best net price for the account on any particular transaction, nor does it execute any order in a fashion which would be preferential to one account relative to other like accounts managed by WESPAC Advisors. The Advisors may handle securities transactions which cause an account to pay a commission that exceeds the commission another broker-dealer would have charged; provided however, the Advisor determines in good faith that said commission is reasonable in relation to the value of brokerage, research and other services provided by such broker dealer, viewed in terms of either specific transaction or Advisor's overall responsibilities to the portfolios over which the Advisor exercises investment authority.</p> <p>The receipt of investment information from any broker dealer executing transactions for the Advisor will not result in a reduction in Advisor's customary and normal research activities; the value of any such information received from outside services is, in the view of the Advisor, undeterminable. As such information received from the broker-dealers as a consequence of the placement of brokerage business for certain clients may be used by Advisor for the benefit of all its clients.</p>
12.B	<p>WESPAC recommends broker dealers to clients. Most clients are advised to open a segregated brokerage account with Charles Schwab & Co., Inc. The Advisor understands his fiduciary responsibility to provide the best execution possible for his client's investment transactions. WESPAC believes that Charles Schwab provides the best quality mutual fund executions. Schwab designates a team of investment professionals to WESPAC to ensure prompt transactions and thorough account support. WESPAC's clients do not pay higher transaction costs in return for these services; in fact they may indeed pay lower mutual fund transaction and brokerage fees based upon WESPAC's overall servicing volume as negotiated.</p>
13.	<p>ADDITIONAL COMPENSATION:</p>

CERTIFICATE OF SERVICE

Pursuant to NRAP 25(c), I certify that I am an employee of CARL M. HEBERT, ESQ., and that on January 10, 2022, I

_____hand-delivered

_____mailed, postage pre-paid U.S. Postal Service in Reno, Nevada

_____e-mailed

_____telefaxed, followed by mailing on the next business day,

X served through use of the court's electronic filing system pursuant Nevada

EFCR 9(c),

a copy of the attached

APPELLANT'S APPENDIX VOLUME 1

addressed to:

THOMAS C. BRADLEY, ESQ.

Bar No. 1621

435 Marsh Ave.

Reno, NV 89509

775-323-5178

tom@tombradleylaw.com

Counsel for defendants/respondents

WESPAC; Greg Christian

/S/ Carl M. Hebert

An employee of Carl M. Hebert, Esq.