

Exhibit H

SUM-100

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

George Geoffrey Leland

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

Jay Brown, Blue Duck Wealth Management, Shurwest, LLC, Melanie Schulze-Miller, Mike Seabolt and MJSM, LLC.

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED

FEB 14 2019

JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: J. Chen, Deputy

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Marin County Superior Court

3501 Civic Center Drive
San Rafael, CA 94903

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Adam Wolf, 5042 Wilshire Blvd., No. 304, Los Angeles, CA 90036, 415-766-3545 awolf@pwcklegal.com

DATE:
(Fecha)

FEB 14 2019

Clerk, by
(Secretario)

J. CHEN

, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

JAMES M. KIM

(SEAL)



NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):

- ☐ on behalf of (specify):

- | | |
|--|---|
| under: <input type="checkbox"/> CCP 416.10 (corporation) | <input type="checkbox"/> CCP 416.60 (minor) |
| <input type="checkbox"/> CCP 416.20 (defunct corporation) | <input type="checkbox"/> CCP 416.70 (conservatee) |
| <input type="checkbox"/> CCP 416.40 (association or partnership) | <input type="checkbox"/> CCP 416.90 (authorized person) |

☐ other (specify):

- ☐ by personal delivery on (date):

BY FAX

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JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: J. Chen, Deputy

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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF MARIN

George Geoffrey Leland

Case No. *CIV* 19 00627

Plaintiff,

COMPLAINT FOR MONETARY
RELIEF

v.

1. Breach of Fiduciary Duty
2. Negligence
3. Aiding & Abetting Breach of Fiduciary Duty

Jay Brown, Blue Duck Wealth Management,
Shurwest, LLC, Melanie Schulze-Miller,
Mike Seabolt and MJSM, LLC.,

DEMAND FOR JURY TRIAL

Defendants.

Plaintiff George Geoffrey Leland (hereinafter "Plaintiff"), by and through his undersigned counsel, upon personal knowledge as to himself and his own actions, and upon information and belief as to all other matters, brings this Complaint against Jay Brown ("Brown"), Blue Duck Wealth Management ("Blue Duck"), Shurwest, LLC ("Shurwest"), Melanie Schulze-Miller

435 FEB 14 2019

1 (“Schulze-Miller”), Mike Seabolt (“Seabolt”), and MJSM, LLC (“MJSM”). Plaintiff respectfully
 2 alleges as follows:

3 **PARTIES, JURISDICTION AND VENUE**

4 1. Plaintiff Geoff Leland is a resident of the County of Marin in the State of California.

5 2. Defendant Jay Brown is, upon information and belief, a resident of the County of
 6 Marin in the State of California. Defendant Brown offers advising and financial planning services
 7 to the general public in addition to selling insurance products. His California Life-Only Insurance
 8 Producer License number in California is 0606096. According to the SEC, he has been registered
 9 as a representative of Arete Wealth Advisors, LLC, (IARD #145488), Lustig Financial Services,
 10 LLC, (IARD #154175), and Blue Duck Wealth Management (IARD #281832). Brown does
 11 business as business is “Strategic Financial,” with an office located at 1000 Fourth Street, Suite
 12 580, San Rafael, California 94901. According to a website for Strategic Financial
 13 (www.stratfinan.com), that business is associated with Lustig Financial Services, LLC,

14 3. Defendant The Optimized RIA, d/b/a Blue Duck Wealth Management, is a
 15 registered investment advisor (“RIA”) primarily based in Roswell, Georgia. It is organized as a
 16 corporation under the laws of the State of Texas. Its registered agent is Corporation Service
 17 Company d/b/a CSC—Lawyers Incorporated, whose street address is 211 E. 7th Street, Suite 620,
 18 Austin, Texas 78701. Its CRD# is 281832, and its SEC# is 801-107148. According to its SEC
 19 Investment Advisor Public Disclosure Firm Summary, it was approved by the SEC on January 12,
 20 2016, and it made its first notice filing and/or became registered in California on March 23, 2017,
 21 on information and belief under the alternate name(s) of Harold Lustig Financial Services and/or
 22 Strategic Financial. The web page for Harold Lustig Financial Services states: “[a]dvisory services
 23 provided through The Optimized RIA d/b/a Blue Duck Wealth Management, Inc.” The web page
 24 for Strategic Financial states: “Advisory services are offered by Lustig Financial Services, LLC, a
 25 Registered Investment Adviser in the State of California. Insurance products and services are
 26 offered through Harold Lustig (CA Insurance License #0A95432).” According to its own web
 27 page, Blue Duck “is designed to help advisors reach their goals without compromising their values.
 28

1 The elite platform is focused on uniting financial advisors who share the same moral vision
2 towards building their practice.”

3 4. Defendant Shurwest is a corporation organized and existing under the laws of the
4 State of Arizona. Shurwest markets to, provides information for, and advises insurance agents
5 and investment advisors. Furthermore, Shurwest provides training with product education,
6 operations, and marketing support to insurance agents and investment advisors.

7 5. In particular, Shurwest provided education, advice, and training to Brown and/or
8 Harold Lustig as to the Life Insurance Retirement Strategy that is the center of this lawsuit via its
9 Senior Life Manager, Mike Seabolt.

10 6. Defendant Schulze-Miller is a citizen of the State of Arizona. Schulze-Miller was
11 employed by Shurwest, LLC (“Shurwest”) from June 2012 until May 2018, where she served most
12 recently as National Sales Director for Life Insurance. Shurwest, markets to, distributes
13 information for, and advises insurance agents and investment advisors. Furthermore, Shurwest
14 provides these agents and advisors training with product education, operations strategy, and
15 marketing support. In particular, Shurwest provided these services to Swerdlow via Schulze-
16 Miller, its National Sales Director for Life Insurance.

17 7. Defendant Mike Seabolt is, on information and belief, a resident of the County of
18 Maricopa in the State of Arizona. He served as Senior Life Manager for Shurwest from
19 approximately August of 2016 until August of 2018. Shurwest is a marketing service specializing
20 in fixed indexed annuities and indexed universal life insurance policies (“IULs”) and servicing
21 financial advisors and RIAs all across the country.

22 8. Defendant MJSM Financial, LLC, is an Arizona limited liability company organized
23 in May of 2016 by Melanie Schulze-Miller. Its principal place of business is 2 East Congress
24 Street, Suite 900, Tucson, Arizona 85701. Schulze-Miller is the sole member of the company. On
25 information and belief, MJSM Financial compensated Defendant Mike Seabolt for the actions
26 forming the basis of the complaint herein.

27 9. Venue and jurisdiction are proper in this County by virtue of, among other things,
28 the fact that a substantial part of the events giving rise to this Complaint occurred in this County.

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FACTUAL BACKGROUND

Brown Recommends that Plaintiff Employ a Life Insurance Retirement Strategy

10. Plaintiff resides in San Rafael, California. He is 67 years old and is a retired electrician.

11. Brown holds a California license to sell insurance products but also holds himself out as an expert in financial planning and offers advice and related services to the general public in San Rafael, California. He was formerly registered as an Investment Advisor Representative with the State of California until approximately May of 2018, at which time he represented Blue Duck Wealth Management and, noted by the SEC as an “other business activit[y],” Strategic Financial. He was previously registered as a broker with FINRA, but said registration ended on August 31, 2015, when he left Arete Wealth Management in San Francisco, California, to join Lustig Financial Services.

12. On information and belief, Brown is and was, at all pertinent times, an officer, shareholder, employee, and/or agent of Strategic Financial representing Blue Duck Wealth Management.

13. According to its website, Blue Duck is an “SEC-registered RIA, leading the industry with personalized service in wealth management, marketing, technology, business mentoring, education, and compliance.”

14. In or about May of 2017, Plaintiff sought retirement and financial planning advice from Brown, who was a friend.

15. After consulting with Plaintiff, Brown proposed a retirement-planning strategy for him based around two products. First, Brown recommended that Plaintiff establish an Indexed Universal Life Insurance Policy (“IUL”). That policy would provide a death benefit and would also have an accumulated value that would allow Plaintiff to supplement his retirement income later in life by borrowing against the policy.

16. Brown further advised Plaintiff that he should implement this life insurance strategy by using structured cash flows acquired through Future Income Payments (“FIP”) as a mechanism for paying the necessary premiums on the IUL. In that transaction, Plaintiff would pay a lump sum

1 to FIP to purchase monthly income streams that represented the total amount paid to FIP plus a
2 fixed return, which depended on the term of the structured cash flow. FIP paid higher returns for
3 cash flows with longer terms. Brown recommended that Plaintiff use FIP to fund his life insurance
4 premiums because the fixed return on the FIP product would allow him to fund the life insurance
5 policy at a higher target amount.

6 17. Brown explained to Plaintiff that this strategy had been presented to him by his
7 colleague and associate Harold Lustig ("Lustig," now deceased) of Lustig Financial. Brown
8 explained to Plaintiff that this strategy had been presented to Lustig by Mike Seabolt, then the
9 Senior Life Manager for Shurwest. On information and belief, the sales were to be run through
10 Shurwest – and Seabolt and Schulze-Miller would receive payment from MJSM Financial, LLC.
11 According to Brown, Seabolt and Schulze-Miller were pushing the investment strategy, and Lustig
12 and Brown placed the highest confidence in the life insurance strategy they had outlined for them
13 to recommend to Plaintiff. Brown further represented to Plaintiff that he had researched and
14 understood both how the FIP product worked and the risks associated with the product. Brown
15 repeatedly assured Plaintiff that FIP was a reasonable, appropriate, and prudent use of his
16 retirement savings.

17 18. On or about May 15, 2017, Brown began implementing the plan he and Lustig and
18 Seabolt and Schulze-Miller had prepared and recommended to Plaintiff. First, Plaintiff established
19 a universal life insurance policy with Minnesota Life Insurance Company to be funded at a target
20 level of approximately 480,000 over five years. That policy carried a death benefit of
21 approximately \$1.35 million.

22 19. On or about August 10, 2017, on Brown's recommendation, Plaintiff also purchased
23 a structured cash flow from FIP. Plaintiff paid a lump sum of approximately \$400,000 to FIP,
24 through an escrow agent, in exchange for FIP's agreement to make monthly payments at an 8%
25 return (\$480,000 total) for five years.

26 20. The money Plaintiff used to fund that FIP purchase came from a 401(k) account he
27 had with the Electricians' Union, as well as some stocks and bonds, which Brown advised him to
28 roll over into a self-directed IRA through GoldStar Trust Company.

1 21. Plaintiff only agreed to use these savings to fund the FIP purchases because Brown
2 represented that (1) purchasing the Minnesota Life policy was a suitable and prudent use of those
3 funds, and (2) he had done sufficient due diligence on the FIP product and determined it to be a
4 reasonable, appropriate, and prudent means to fund the Minnesota Life policy and provide
5 retirement income in accordance with his recommended retirement-planning strategy for Plaintiff.

6 22. On information and belief, Brown, Lustig, and Shurwest received substantial
7 commissions on the sale of the Minnesota Life policy to Plaintiff.

8 23. Upon information and belief, Brown, Lustig, Schulze-Miller and Seabolt (through
9 MJSM Financial and/or Shurwest) received commissions, or "referral fees," of 5% or higher on
10 the sale of the FIP cash flow.

11 24. Shurwest, Schulze-Miller and Seabolt were the architects of the financial planning
12 strategy involving FIP, promoting it to financial advisors such as Lustig and Defendant Brown and
13 thereafter to Plaintiff. These Defendants also clearly understood that the funds Plaintiff paid to
14 fund his life insurance needed to be protected and could not be subject to unreasonable risk of loss.

15 25. In spite of this, Seabolt, Schulze-Miller and Shurwest recommended the Life
16 Insurance Retirement Strategy to Lustig and Brown knowing that Lustig and Brown were relying
17 on their advice to direct clients' investments and knowing that they themselves had had not
18 conducted adequate due diligence and were negligent in disregarding the numerous risks
19 associated with the FIP cash flow transactions. As the regulatory actions initiated against FIP
20 detailed below make clear, the FIP cash flow product was inherently flawed and subject to serious
21 risks that should have prevented Defendants from recommending that Plaintiff use it to fund his
22 life insurance policy.

23 26. Shurwest, Schulze-Miller, Seabolt, Lustig, and Brown either knew or should have
24 known that the FIP product was not safe enough to justify using it as a part of the Life Insurance
25 Retirement Strategy. In addition to the issues raised in the various regulatory actions, numerous
26 other risks made these FIP transactions wholly inappropriate for use in the strategy. Shurwest,
27 Schulze-Miller, Seabolt, Lustig, and Brown violated their duties to the plaintiff by recommending
28 that he use the FIP cash flows to fund his IUL.

1 27. Upon information and belief, Seabolt and Schulze-Miller would visit agents such as
2 Lustig and Brown and demonstrate, explain, and provide in-person illustrations of the Life
3 Insurance Retirement Strategy to agents and their staff.

4 28. Shurwest and/or Seabolt and Schulze-Miller also invited agents and staff to attend
5 planning and strategy sessions at Shurwest's offices where agents were introduced to various
6 members of the Shurwest team who would be explaining the process, facilitating its
7 implementation, and helping the agents, such as Brown, Lustig – and their staff – with the Life
8 Insurance Retirement Strategy.

9 29. Upon information and belief, Shurwest and/or Seabolt and Schulze-Miller did not
10 adequately perform the necessary due diligence and investigation required for this strategy or know
11 of the risks associated with the recommended funding mechanisms and the Life Insurance
12 Retirement Strategy, and they stayed silent when they had a duty to act.

13 30. Beginning in early 2018, Plaintiff's FIP payments were first delayed and then
14 stopped completely. Plaintiff is now faced with the prospect of losing a substantial part of his
15 savings as a result of Defendants' advice.

16 **The Indexed Universal Life Policy**

17 31. Indexed Universal Life policies consist of two components: (1) an annual
18 renewable term life policy that provides the death benefit; and (2) an equity index or group of
19 indexes tied to the stock market. The IUL policyholder is responsible to pay the cost of the
20 insurance, and any premiums paid above the cost of insurance are credited to the equity index.

21 32. IUL policies typically provide a guaranteed "floor" and a "cap" for returns credited
22 to the policyholder's equity index each year. In the Minnesota Life Policy that Brown sold to
23 Plaintiff, the "floor" was 0% and the "cap" was 17%.

24 33. As noted above, Brown promoted a strategy to Plaintiff whereby his IUL policy
25 would (1) have an accumulated value in the equity index that would allow Plaintiff to supplement
26 his retirement income by borrowing against the policy later in life, and (2) provide a death benefit
27 sufficient to pay off those loans and provide additional funds to his beneficiary.

1 34. For the IUL to perform as intended, however, several things need to happen. First,
2 Plaintiff would have to “overfund” the IUL by making premium payments sufficient to cover the
3 cost of insurance and to fund the equity index to a target level. Based on Brown’s advice, Plaintiff
4 intended to pay approximately \$480,000 into the Minnesota Life policy over 5 years.

5 35. Once that funding level was reached, the equity index would then have to grow at
6 a sufficient rate to cover the cost of insurance and provide the expected returns to support policy
7 loans taken by Plaintiff later.

8 36. This IUL product was unsuitable for Plaintiff. First, he did not need life insurance,
9 as his existing assets were sufficient to provide an inheritance for his heirs without incurring the
10 cost of life insurance premiums.

11 37. Second, Because the IUL strategy could not work if the policy lapsed, Plaintiff
12 would be forced to pay the cost of insurance under the IUL for the rest of his life. Predictably,
13 the cost of insurance would increase steadily and dramatically the longer Plaintiff were to live.

14 38. Thus, in order to cover the cost of insurance and to fund loans to supplement
15 Plaintiff’s retirement income, the equity index would have to produce consistent and substantial
16 positive returns. Even with the “floor” on losses in the equity index, any down years in the market
17 would reduce the index account by the cost of insurance. That reduction would, in turn, increase
18 the return needed in subsequent years to reach the intended target levels. Because of the cap on
19 the equity index and the increasing cost of insurance, making such a recovery could be impossible
20 under certain market conditions, ultimately causing the policy to lapse.

21 39. Plaintiff approached Brown seeking advice as to how to avoid the volatility of the
22 stock market and to provide a reliable source of supplemental income later in life. His
23 recommendation of the Minnesota Life policy as the best way for Plaintiff to achieve those modest
24 goals was unsuitable, as it involved Plaintiff incurring a lifetime of substantial and ever-increasing
25 insurance costs that could ultimately exhaust the funds he put into the policy without meeting his
26 objectives.

27 40. As noted above, this unsuitable recommendation was just one part of the overall
28 strategy designed and recommended by Shurwest, Schulze-Miller, Seabolt, Lustig, and Brown.

1 Unfortunately, the second part of the plan — using FIP structured cash flows to fund the IUL
2 policy — was even more irresponsible and inappropriate than the life insurance component.

3 **The FIP Structured Cash Flow Product**

4 41. Pensions, Annuities, and Settlements, LLC, is a Delaware limited liability company
5 formed in 2011 and located in Henderson, Nevada. Scott Kohn is the sole and founding member
6 of Pensions, Annuities, and Settlements, LLC, and its president, secretary, and treasurer.

7 42. In 2014, Pensions, Annuities, and Settlements, LLC amended its certificate of
8 formation to change its name to Future Income Payments, LLC. Scott Kohn is the sole and
9 managing member of Future Income Payments, LLC.

10 43. FIP LLC is a Nevada limited liability company formed in 2016 and located in
11 Henderson, Nevada. Cash Flow Outsourcing Services, Incorporated, a corporation based in the
12 Philippines and solely owned by Kohn, is the sole and managing member of FIP LLC.

13 44. The entities operating as Pensions, Annuities and Settlements, LLC, Future Income
14 Payments, LLC, or FIP, LLC are collectively referred to herein as “FIP.” All available
15 information indicates that Scott Kohn was the sole owner and manager of FIP at all times pertinent
16 to this Complaint.

17 45. Scott Kohn pleaded guilty in 2006 to three federal felony offenses related to
18 trafficking in counterfeit goods, and he was sentenced to fifteen months in federal prison. More
19 specifically, Kohn pleaded guilty to directing employees of a company he owned to replace
20 branded computer memory modules with counterfeit memory chips and then sell them
21 fraudulently as though they were genuinely branded computer memory modules. He also hired
22 other companies to encode generic computer hard drives with software to make them appear
23 (falsely) to be branded hard drives and directed employees to sell them as though they were
24 genuinely branded drives.

25 46. FIP funded the cash flows it sold to individuals like Plaintiff by “purchasing” future
26 income from pensioners, including retired teachers, police officers, and military personnel. FIP
27 offered pensioners up-front, lump-sum payments in exchange for receiving a portion of their
28 monthly pension payments over a specific term, often three to five years.

1 47. FIP marketed its product to pensioners as a “pension advance” or “pension buyout.”
2 FIP’s agreement with pensioners provided that the pensioner would receive a one-time lump sum
3 in exchange for a specified amount of the pensioner’s monthly pension for a specified period of
4 months. As part of this arrangement, pensioners would instruct the bank into which their pension
5 payments were received to transfer that specified amount to FIP, and pensioners often executed
6 authorizations for electronic funds transfers allowing FIP to collect the pension installment
7 payments from pensioners’ accounts.

8 48. The pension-advance industry has long been the subject of scrutiny with respect to
9 the business practices prevalent among its companies. As the Consumer Fraud Protection Bureau
10 noted in a recent court filing, “[i]n the past few years, the income stream market has come under
11 sharp scrutiny for allegedly marketing loans at undisclosed, exorbitant interest rates to vulnerable
12 populations, including veterans and the elderly.” *See John Doe Co. v. CFPB*, 849 F.3d 1129,
13 1130 (D.C. Cir. 2017). For example, in 2014, the United States Government Accountability
14 Office did a thorough investigation of the industry and issued a report (GAO 14-420) concluding
15 that “pension advance companies market their products as a quick and easy financial option that
16 retirees may turn to when in financial distress from unexpected costly emergencies or when in
17 need of immediate cash for other purposes, but, in fact, pension advances may come at a price
18 that may not be well understood by retirees . . . [and] the lack of transparency and disclosure about
19 the terms and conditions of these transactions, and the questionable practices of some pension
20 advance companies, could limit consumer knowledge in making informed decisions.” The GAO
21 report also recommended that the CFPB and FTC conduct formal reviews to determine whether
22 the pension-advance companies such as FIP violated consumer laws or engaged in unfair trade
23 practices.

24 49. As concerns about pension advance transactions grew, numerous state regulators
25 initiated enforcement actions against FIP, alleging that its pension income purchases were, in fact,
26 unlawful loans. Even though FIP characterized its pension transactions as “sales” or “purchases,”
27 the transactions lacked certain fundamental characteristics of a sale and had all the salient features
28 of a loan. For example, FIP would characterize the difference between the amount it paid for the

1 income streams and the amount it would receive as a “discount,” when, in fact, that amount was
2 really interest that pensioners were charged on the lump-sum that he or she borrowed. Having
3 determined that the FIP transactions actually were loans, the regulators determined that those
4 loans were unlawful because (a) FIP was not a licensed lender; (b) the effective interest rates
5 charged to the pensioners (more than 100% in some cases) violated state usury laws; and (c) the
6 loans were made without legally mandated disclosures. These regulatory actions also pointed out
7 numerous questionable marketing, sales, and collection practices employed by FIP.

8 50. The following is a non-exclusive list of some of the regulatory actions taken against
9 FIP in the past few years:

10 • The State of Colorado determined that FIP was making loans without proper
11 licensure. In a January 2015 assurance of discontinuance, FIP agreed not to enter into
12 any transactions in Colorado without first obtaining a supervised lender’s license and
not to charge interest on their existing agreements in Colorado.

13 • In March of 2015, the State of California issued a desist and refrain order
14 against FIP, alleging that it engaged in the business of financial lending or brokerage
15 without a license. In September of 2015, FIP agreed not to engage in transactions in
California without obtaining a license.

16 • In March of 2016, FIP entered into an assurance of discontinuance with the
17 Commonwealth of Massachusetts that it would not enter into any future agreements
18 with Massachusetts residents and that it would not charge interest on its existing
contracts with Massachusetts residents.

19 • In June of 2016, FIP entered into a settlement with the State of North
20 Carolina whereby it agreed to reform its existing North Carolina transactions and to
21 ensure that any future transactions with North Carolina residents would comply with
the state’s usury laws.

22 • In October of 2016, FIP entered into a consent order with the State of New
23 York, in which it agreed not to enter into any future transactions with New York
residents and not to charge interest on its existing contracts with residents of New York.

24 • Under a December 2016 consent order with the State of Washington, FIP
25 agreed not to enter into any transactions with Washington residents without obtaining
a license and not to charge interest on its existing contracts with Washington residents.

26 • Under an assurance of compliance reached with the State of Iowa in
27 December of 2016, FIP agreed not to enter into any future transactions with Iowa
28 consumers and not to charge interest on its existing contracts in Iowa.

1 • In February of 2017, the Los Angeles City Attorney filed suit against FIP
2 for failing to obtain a license to lend, making usurious loans, failing to disclose the
3 terms of the loans, falsely threatening defaulting borrowers with criminal liability if
4 they failed to make their monthly payments, and making illegal and harassing phone
5 calls to collect on defaulted loan payments.

6 • In May of 2017, the Commonwealth of Pennsylvania issued a cease and
7 desist order against FIP for engaging in the business of making loans without a license
8 and charging usurious rates of interest.

9 • In August of 2017, the State of Minnesota filed a court action alleging that
10 FIP's actions violated Minnesota law, and seeking to enjoin FIP from continuing in
11 those violations; to declare all FIP loans to be void and releasing Minnesota residents
12 from any obligations incurred under those agreements; to force FIP to make restitution
13 to any residents harmed by its practices; and to require FIP to pay civil penalties.

14 • In January of 2018, the State of Oregon launched an investigation of FIP's
15 practices.

16 • In February of 2018, the Illinois Department of Financial and Professional
17 Regulation issued a cease and desist order, providing that FIP cease making loans to
18 Illinois residents and stop collecting on loans previously made to Illinois residents.

19 • In March of 2018, the Commonwealth of Virginia sued FIP, alleging that it
20 targeted elderly veterans and retired civil servants in a scheme that masquerades high-
21 interest predatory loans as "pension sales." In November of 2018, the Commonwealth
22 secured a default judgment against FIP, including a civil penalty, a permanent
23 injunction against usurious fees, restitution for losses, attorneys' fees and costs, and a
24 permanent injunction against violation of the Virginia Consumer Protection Act.

25 • In April of 2018, the State of Illinois asked the court to void FIP's deceptive
26 contracts and sought restitution for Illinois residents who had contracted with FIP. The
27 State also sought to prohibit FIP from marketing or offering loan services without being
28 licensed in the state.

 • In April of 2018, the State of Maryland ordered FIP to stop making new
pension advances and other loans to Maryland consumers, and it also required that FIP
stop collecting on any existing advances or other loans.

51. As a result of this overwhelming regulatory pressure, FIP ultimately ceased issuing
new pension advances or collecting payments from pensioners in or about April of 2018. All
monthly payments to Plaintiff stopped around this same time, and FIP has subsequently informed

1 Plaintiff and other FIP purchasers that they cannot expect to receive any further payments from
2 FIP.

3 52. The loss of the monthly income stream that Plaintiff purchased from FIP has been
4 devastating. Those monthly payments represented the only way that Plaintiff could fund his IUL
5 premiums as intended and recoup the principal, much less the expected returns, of the retirement
6 savings he had set aside.

7 **Defendants Failed to Assess the Risks of the FIP Product Adequately**

8 53. Brown and Lustig knew that the money that Plaintiff used to purchase the FIP
9 products represented nearly all of his retirement savings. Moreover, Shurwest, Schulze-Miller,
10 Seabolt, Lustig, and Brown knew that the IUL and overall Life Insurance Retirement Strategy
11 they designed and recommended to Plaintiff and others would fail without those funds. As such,
12 Shurwest, Schulze-Miller, Seabolt, Lustig, and Brown knew that Plaintiff and others who
13 implemented the Life Insurance Retirement Strategy needed and expected the FIP income streams
14 to be safe and secure, far more than they needed the expected returns. It was therefore imperative
15 that these defendants investigate and understand all risks associated with the FIP cash flow
16 product before recommending and selling it to Plaintiff and others. Brown should never have
17 recommended the FIP cash flow product without being completely sure that the risks of FIP could
18 not cause Plaintiff to lose the precious retirement savings he was trying to grow and protect.

19 54. Unfortunately, Brown recommended the FIP cash flow as a way to fund the Life
20 Insurance Retirement Strategy designed and promoted by Shurwest, Seabolt, and Schulze-Miller
21 and despite the substantial and troubling risks associated with FIP and the underlying pension
22 transactions.

23 55. First, the FIP cash flow product was inherently mischaracterized as a purchase and
24 not a loan. As the regulatory actions against FIP described above make clear, that fact posed an
25 existential risk to the entire FIP enterprise and threatened Plaintiff with the loss of retirement
26 assets. Shurwest, Schulze-Miller, Seabolt, Lustig, and Brown were aware or should have been
27 aware of that risk, as manifested by the numerous public enforcement actions and specific
28

1 disclosures in the FIP purchase agreements, but either failed to investigate and understand those
2 risks adequately or disregarded those risks.

3 56. Beyond this regulatory risk, there were many other substantial risks associated with
4 the FIP cash flow product that Brown failed to assess adequately in deciding to recommend FIP
5 to Plaintiff. These risks include:

- 6 • The fact that Scott Kohn, the sole owner and manager of FIP, is a convicted felon
7 who has served time in a federal penitentiary for selling counterfeit computer
8 equipment;
- 9 • The fact that FIP is a small private company operated by a few individuals and is not
10 associated with or backed by any financial institution or other reputable entity;
- 11 • The fact that the federal government, in the 2014 GAO report, questioned the
12 business practices of the pension advance industry and called for more investigations
13 into whether that industry was violating consumer-protection laws;
- 14 • The risk that the pensioners whose income streams were purchased could stop making
15 payments at any time, with no recourse other than hoping that income from other
16 pensioners will cover the shortfall;
- 17 • The risks that a pensioner could go bankrupt and the FIP contract be treated as an
18 unsecured debt;
- 19 • The risk that pensioners could die, and their pension beneficiaries would not make
20 payments;
- 21 • The fact that the FIP cash flows are completely illiquid;
- 22 • The fact that U.S. federal law prohibits the assignment or alienation of federal
23 pensions, and that those laws may be enforced to prohibit or invalidate FIP pension
24 advance contracts with federal pensioners.

25 Despite all of these risks, Brown recommended the FIP pension income streams to Plaintiff
26 as a suitable way to preserve and grow his retirement savings through the Life Insurance
27 Retirement Strategy. That recommendation was inappropriate and irresponsible and fell below the
28 standard of care owed to Plaintiff, particularly in light of the fact that Plaintiff could lose crucial
assets if he did not receive the expected cash flow payments. Sadly, the risks that should have
prevented Shurwest, Schulze-Miller, Seabolt, Lustig, and Brown from recommending the FIP cash

1 flows in the first place have now materialized, and Plaintiff is faced with a significant loss of
2 retirement assets. Defendants should be held to account for those losses.

3 **FOR THE FIRST CAUSE OF ACTION**

4 **Breach of Fiduciary Duty**

5 **(Against Brown and Blue Duck Wealth Management)**

6 57. Each and every allegation contained in the foregoing paragraphs is hereby re-
7 alleged as fully as if set out herein.

8 58. As an investment advisor and investment advisor representative, Brown assumed
9 the role and duties of fiduciary as to Plaintiff.

10 59. Brown and Lustig held themselves out as experienced financial advisers and
11 provided retirement-planning and other financial advice to Plaintiff. Plaintiff placed his trust and
12 confidence in Brown and Lustig, which Brown and Lustig accepted by providing specific advice
13 as to how Plaintiff should manage and invest his assets. As such, Brown and Lustig undertook a
14 fiduciary duty to Plaintiff to act fairly and honestly, in good faith, and in the sole best interest of
15 Plaintiff.

16 60. At all pertinent times, Brown and Lustig were employees and/or agents of Blue
17 Duck Wealth Management and Strategic Financial, acting within the line of their duty and
18 exercising the functions of their employment or agency. Blue Duck Wealth Management is fully
19 responsible and accountable for and jointly and severally liable for the acts and omissions of
20 Brown and Lustig.

21 61. Brown, Lustig, and Blue Duck Wealth Management thus owed Plaintiff the utmost
22 duty of good faith to act solely in Plaintiff's best interests. They had the duty to ascertain the
23 quality of the products that Brown recommended to Plaintiff and to refrain from soliciting or
24 entering into transactions that were illegal and/or improper or unsuitable.

25 62. Brown, Lustig, and Blue Duck Wealth Management violated their fiduciary
26 obligations to Plaintiff by failing to conduct adequate due diligence on and/or failing to
27 understand the risks of the FIP income stream product and nevertheless recommending those
28 products to Plaintiff as part of the Life Insurance Retirement Strategy.

1 63. As a result of Brown, Lustig, and Blue Duck's recommendation of this improper
2 and unsuitable Life Insurance Retirement Strategy, Plaintiff has invested a substantial amount of
3 money in annual premium payments and has a continuing obligation to make annual premium
4 payments indefinitely or to risk the cancellation of the policy and further forfeiture of his hard-
5 earned and irreplaceable financial assets.

6 64. The acts and/or omissions of Brown, Lustig, and Blue Duck constitute negligence
7 and/or gross negligence because they constitute an extreme departure from what a reasonably
8 careful person would do in the same circumstances to prevent loss of retirement income.

9 65. As a direct and proximate result of that breach of fiduciary duty, Plaintiff suffered
10 substantial injury and damage. Plaintiff is entitled to (1) actual damages, (2) consequential
11 damages, (3) punitive damages, and (4) such other relief as is just, equitable, and proper.

12 **WHEREFORE**, Plaintiff prays for judgment against Defendants as follows:

- 13 a. For actual damages;
14 b. For consequential damages;
15 c. For prejudgment interest at the highest legal rate;
16 d. For the costs of this action;
17 e. For reasonable attorneys' fees; and
18 f. For such other and further relief as is just, equitable, and proper.

19 **FOR THE SECOND CAUSE OF ACTION**

20 **Aiding and Abetting Breach of Fiduciary Duty**

21 **(Against Shurwest, Schulze-Miller, Seabolt, and MJSM, LLC)**

22 66. Each and every allegation contained in the foregoing paragraphs is hereby re-
23 alleged as fully as if set out herein.

24 67. Brown and Lustig offered investment advice to Plaintiff and thus owed Plaintiff the
25 clear duty to exercise reasonable care, skill, diligence, and prudence under the circumstances

26 68. Shurwest, Schulze-Miller, Seabolt, and MJSM, LLC, knew that Brown and Lustig
27 held themselves out as experienced financial advisers and provided retirement-planning and other
28 financial advice to clients, including Plaintiff. Shurwest, Schulze-Miller and Seabolt knew that

1 Brown and Lustig's clients, including Plaintiff, placed their trust and confidence in Brown and
2 Lustig, which they accepted by providing specific advice as to how those clients should manage
3 and invest their savings.

4 69. Shurwest, Schulze-Miller and Seabolt further knew that Brown and Lustig owed
5 Plaintiff the utmost duty of good faith to act solely in Plaintiff's best interests and had the duty to
6 ascertain the quality of the products recommended to Plaintiff and to refrain from soliciting or
7 entering into transactions that were illegal and/or improper or unsuitable.

8 70. By designing the Life Insurance Retirement Strategy and assisting Brown and
9 Lustig in promoting it to Plaintiff, Shurwest, Schulze-Miller and Seabolt knowingly and
10 substantially assisted in violating the fiduciary obligations owed to Plaintiff. Shurwest, Schulze-
11 Miller, Seabolt, Lustig and Brown failed to conduct adequate due diligence on and/or failed to
12 understand the risks of the FIP income stream product and nevertheless recommended those
13 products to Plaintiff as part of his retirement-planning strategy.

14 71. At all pertinent times, Seabolt was an officer, shareholder, employee and/or agent
15 of Shurwest, LLC, acting within the line of his duty and exercising the functions of his
16 employment or agency. On information and belief, Seabolt and Schulze-Miller shared in the
17 commissions from Plaintiff's FIP purchase through Shurwest and/or MJSM, LLC, which are fully
18 responsible and accountable for and jointly and severally liable for the acts and omissions of
19 Seabolt and Schulze-Miller.

20 72. At all times, Shurwest was aware of, and assisted Seabolt and Schulze-Miller in
21 promoting the Life Insurance Retirement Strategy.

22 73. As a direct and proximate result of Shurwest, Schulze-Miller, Seabolt, and MJSM,
23 LLC's aiding and abetting in Brown's breach of fiduciary duty, Plaintiff suffered substantial
24 injury and damage. Plaintiff is entitled to (1) actual damages, (2) consequential damages, (3)
25 punitive damages, and (4) such other relief as is just, equitable, and proper.

26 **WHEREFORE**, Plaintiff prays for judgment against Defendants as follows:

- 27 a. For actual damages;
28 b. For consequential damages;

- c. For pre- and post-judgment interest at the highest applicable legal rate;
- d. For all allowable costs of litigation incurred this action;
- e. For reasonable attorneys' fees; and
- f. For such other and further relief as is just, equitable, and proper.

FOR THE THIRD CAUSE OF ACTION

Common Law Negligence

(Against All Defendants)

74. Each and every allegation contained in the foregoing paragraphs is hereby re-alleged as fully as if set out herein.

75. Brown and Lustig offered investment advice to Plaintiffs and thus owed Plaintiffs the clear duty to exercise reasonable care, skill, diligence, and prudence under the circumstances presented by Plaintiff's unique situation and investment objectives.

76. Brown and Lustig offered those investment recommendations upon the instruction, advice, and counsel of Seabolt and Schulze-Miller, who knew that Brown and Lustig would be acting upon that instruction, advice, and counsel in recommending FIP cash flows and Minnesota Life IUL policies to clients such as Plaintiff.

77. Brown, Lustig, Schulze-Miller, Seabolt and Shurwest failed to exercise reasonable care, skill, diligence, and prudence under the circumstances, and such breaches caused Plaintiff to suffer damages.

78. At all pertinent times, Brown and Lustig were employees and/or agent of Blue Duck Wealth Management acting within the line of their duty and exercising the functions of their employment or agency. Blue Duck Wealth Management is fully responsible and accountable for and jointly and severally liable for the acts and omissions of Brown.

79. At all pertinent times, Seabolt and Schulze-Miller were officers, shareholders, employees, and/or agents of Shurwest, acting within the line of his duty and exercising the functions of their employment or agency. On information and belief, they were also employed by or shared commissions with MJSM, LLC. On further information and belief, Seabolt and Schulze-Miller shared in the commissions from Plaintiff's FIP purchase through MJSM, LLC, which is

1 fully responsible and accountable for and jointly and severally liable for the acts and omissions of
2 Seabolt and Schulze-Miller.

3 80. At all pertinent times, Shurwest and MJSM, LLC, were aware of and assisted
4 Seabolt and Schulze-Miller in promoting this Life Insurance Retirement Strategy.

5 81. Accordingly, both are jointly and severally liable for the illegal, unlawful, and
6 wrongful acts of Seabolt and Schulze-Miller.

7 82. As a direct and proximate result of Defendants' negligence, Plaintiff suffered
8 substantial injury and damage. Plaintiff is therefore entitled to (1) actual damages, (2)
9 consequential damages, (3) costs, (4) prejudgment interest, and (5) such other relief as is just,
10 equitable and proper.

11 **PRAYER FOR RELIEF**

12 **WHEREFORE**, Plaintiffs pray for judgment against Defendants as follows:

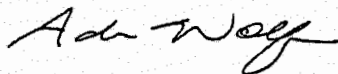
- 13 a. For actual damages;
14 b. For consequential damages;
15 c. For prejudgment interest at the highest legal rate;
16 d. For the costs of this action;
17 e. For reasonable attorneys' fees; and
18 f. For such other and further relief as is just, equitable, and proper.

19 **JURY TRIAL DEMANDED**

20 Plaintiffs request a jury trial for any counts for which a trial by jury is permitted by law.

21
22 Dated: February 14, 2019

Respectfully submitted,

23
24 

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