

Exhibit J

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

Mara Karzen Metzner
Plaintiff

v.

No. 2019CH01301

Brian Swerdlow, Anchor Financial, Inc., Brookstone Capital Management, MJSM Financial, LLC, and Melanie Schulze-Miller
Defendant

CHANCERY DIVISION CIVIL COVER SHEET
GENERAL CHANCERY SECTION

A Chancery Division Civil Cover Sheet - General Chancery Section shall be filed with the initial complaint in all actions filed in the General Chancery Section of Chancery Division. The information contained herein is for administrative purposes only. Please check the box in front of the appropriate category which best characterizes your action being filed.

- 0005 Administrative Review
- 0001 Class Action
- 0002 Declaratory Judgment
- 0004 Injunction

- 0007 General Chancery
- 0010 Accounting
- 0011 Arbitration
- 0012 Certiorari
- 0013 Dissolution of Corporation
- 0014 Dissolution of Partnership
- 0015 Equitable Lien
- 0016 Interpleader
- 0017 Mandamus
- 0018 Ne Exeat

- 0019 Partition
- 0020 Quiet Title
- 0021 Quo Warranto
- 0022 Redemption Rights
- 0023 Reformation of a Contract
- 0024 Rescission of a Contract
- 0025 Specific Performance
- 0026 Trust Construction
- Other (specify) _____

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Hearing Date: 6/3/2019 9:30 AM - 9:30 AM
 Courtroom Number: N/A
 Location: District 1 Court
 Cook County, IL

FILED DATE: 1/31/2019 10:34 AM 2019CH01301

**IN THE CIRCUIT COURT OF COOK COUNTY
CHANCERY DIVISION**

MARA KARZEN METZNER)
)
Plaintiff,)
)
v.)
)
BRIAN SWERDLOW,)
ANCHOR FINANCIAL, INC.,)
BROOKSTONE CAPITAL MANAGEMENT,)
SHURWEST LLC,)
MJSM FINANCIAL, LLC, and)
MELANIE SCHULZE- MILLER)
Defendants.)
_____)

Case No. 2019CH01301

Judge:

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Mara Karzen Metzner (hereinafter “Plaintiff”), by and through her undersigned counsel, upon personal knowledge as to herself and her own acts, and upon information and belief as to all other matters, brings this Complaint against Brian Swerdlow (“Swerdlow”), Anchor Financial, Inc. (“Anchor Financial”), Brookstone Capital Management (“Brookstone Capital”), Shurwest, LLC (“Shurwest”), MJSM Financial, LLC (“MJSM”), and Melanie Schulze-Miller (“Schulze-Miller”) (collectively, “Defendants”). Plaintiff alleges as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff Mara Karzen Metzner is an individual citizen of Illinois. She resides in Highland Park, Illinois.
2. Defendant Brian Swerdlow is an individual citizen of the State of Illinois. During the relevant time period, Mr. Swerdlow maintained residences in Wheeling, Illinois, and Chicago.

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Illinois. His office is in Schaumburg, Illinois. He is an Investment Advisor Representative employed by Brookstone Capital Management, LLC. His IARD# with the SEC is 141413.

3. Defendant Anchor Financial is a corporation organized and existing under the laws of Illinois. Anchor Financial maintains a principal place of business at 1821 Walden Office Square, Suite 400, Schaumburg, Illinois 60173. Defendant Brian Swerdlow is and was – at all relevant times – the President and CEO of Defendant Anchor Financial, Inc.

4. Defendant Brookstone Capital Management is an investment management services company (Registered Investment Advisor or “RIA”) organized and existing under the laws of the State of Illinois. It is also registered with the SEC (CIK #0001599584). Brookstone Capital maintains a principal place of business at 1745 South Naperville Road, Suite 200, Wheaton, Illinois 60189. Anchor Financial represents Brookstone Capital in Schaumburg, Illinois. Defendant Brian Swerdlow is and was – at all relevant times – a registered agent of Brookstone Capital Management.

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

6. In particular, Shurwest provided education, advice, and training to Swerdlow and created the Life Insurance Retirement Strategy that is the center of this lawsuit via its National Sales Director for Life Insurance.

7. Defendant MJSM Financial, LLC, is an Arizona limited liability company organized in May of 2016 by Defendant Melanie Schulze-Miller. Its principal place of business

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is 2 East Congress Street, Suite 900, Tucson, Arizona 85701. Defendant Schulze-Miller is the sole member of the company.

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

9. This Court has personal jurisdiction over Defendants because they are residents of Illinois and/or because they conducted business with residents of Illinois. The out of state Defendants conducted business in Illinois, utilized agents in Illinois, and utilized the United States Postal Service and the Internet to promote the investment strategy described herein to the Plaintiff in Illinois.

10. Venue is appropriate in this county as Defendants Swerdlow, Anchor Financial, and Brookstone Capital maintain an office in this county and do business in this county.

FACTUAL BACKGROUND

Swerdlow Recommends that Plaintiff Employ a Life Insurance Retirement Strategy

11. Plaintiff resides in Highland Park, Illinois. She is 53 years old.

12. Swerdlow is a licensed Investment Adviser Representative registered in the State of Illinois and also holds an Illinois license to sell life insurance products. He is also registered with the SEC. Swerdlow holds himself out as an expert in retirement and financial planning and offers

his advice and related services to the general public through Anchor Financial, Inc., which is based in Schaumburg, Illinois. He also represents Brookstone Capital Management, which is based in Wheaton, Illinois.

13. On information and belief, Swerdlow is, and was at all pertinent times, an officer, shareholder, employee, and/or agent of Anchor Financial, Inc. On its website, Anchor Financial suggests that it works “closely with clients in order to maximize their income and ensure their money works as hard and smart as they did to provide the highest potential return.” Anchor Financial also boasts that it is “affiliated with Brookstone Capital Management[,] which is ranked as one of the top 50 Fastest-Growing RIAs in the country.”

14. According to Brookstone Capital Management’s website, it strives to conduct its business “according to the highest standards of honesty, integrity, and fairness.” Its “ultimate goal is to continually maintain that [the client’s] best interests are the foundation of [the client’s] financial planning. It does “this by attempting to provide a consistent and structured approach to [the client’s] financial needs that will result in an integrated and customized solution for [the client].”

15. In or about January of 2017, Plaintiff began discussing with Swerdlow, who was a college friend of hers, the best way to safely invest her savings to avoid exposure to the stock market and provide additional income.

16. After consultation with Plaintiff, Swerdlow proposed that Plaintiff execute a strategy (the “Life Insurance Retirement Strategy”) based around two products. First, Swerdlow 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 her retirement income later in life by borrowing against the policy.

17. Swerdlow further advised Plaintiff that she should implement this life insurance strategy by using structured cash flows acquired through Future Income Payments, LLC (“FIP”) as a mechanism for paying the necessary premiums on the IUL and generating additional monthly cash flow. In that transaction, Plaintiff would pay a lump sum to FIP to purchase monthly income streams that represented the total amount paid to FIP plus a fixed return, which depended on the term of the structured cash flow. FIP paid higher returns for cash flows with longer terms. Swerdlow recommended that Plaintiff use FIP to fund her life insurance premiums because the fixed return on the FIP product would allow her to fund the IUL at a higher target amount.

18. Swerdlow explained to Plaintiff that the Life Insurance Retirement Strategy had been presented to him by Schulze-Miller, who was Swerdlow’s former point of contact with Minnesota Life Insurance Company (“Minnesota Life”), who had since left Minnesota Life to become the National Sales Director for Life Insurance at Shurwest. According to Swerdlow, Shurwest was a reputable company and Schulze-Miller was both knowledgeable and trustworthy, and Swerdlow placed the highest confidence in the life insurance strategy she had outlined for him to recommend to Plaintiff. Swerdlow further represented to Plaintiff that he had researched and understood both how the FIP product worked and the risks associated with the product. Swerdlow repeatedly assured Plaintiff that FIP was a reasonable, appropriate, and prudent use of her savings.

19. In or around March 2017, Swerdlow began implementing the plan he and Schulze-Miller had prepared and recommended to Plaintiff. First, Plaintiff established an IUL with

Minnesota Life to be funded at a target level of approximately \$535,000 over five years. That policy carried a death benefit of \$2.2 million.

20. In or around March 2017, on Swerdlow's recommendation, Plaintiff also purchased a structured cash flow from FIP. Plaintiff paid a lump sum of approximately \$168,000 to FIP, through an escrow agent, in exchange for FIP's agreement to pay Plaintiff monthly payments of approximately \$3,362 for a period of five years.

21. The money Plaintiff used to fund that FIP purchase came from a 401(k) account she had from a previous employer, which Swerdlow advised her to roll over into a self-directed IRA through GoldStar Trust Company.

22. In or around May 2017, on Swerdlow's recommendation, Plaintiff purchased a second structured cash flow from FIP for approximately \$197,000. At this time, she also paid a lump sum premium of \$53,000 to Minnesota Life.

23. In or around November 2017, on Swerdlow's recommendation, Plaintiff purchased a third structured cash flow from FIP for approximately \$250,000. Around this same time, Plaintiff made another premium payment to Minnesota Life of approximately \$20,000.

24. All three FIP cash flows purchased by Plaintiff provided that she would receive monthly payments for a term of 5 years at 8% return. The FIP purchases were funded with conservatively invested retirement funds and other savings.

25. Plaintiff only agreed to use those savings to fund the FIP purchases because Swerdlow represented that (1) purchasing the Minnesota Life policy was a suitable and prudent use of those funds, and (2) he had done due diligence on the FIP product and had determined it to

be a reasonable, appropriate, and prudent way to fund the Minnesota Life policy and provide income in accordance with his recommended strategy for Plaintiff.

26. Upon information and belief, Swerdlow and Shurwest received substantial commissions on the sale of the Minnesota Life policy to Plaintiff.

27. Upon information and belief, Swerdlow and Schulze-Miller (through MJSM, LLC) received commissions or “referral fees” of 5% or higher on the sales of FIP cash flows.

28. Shurwest and Schulze-Miller were the architects of the financial planning strategy involving FIP, promoting it to financial advisors such as Defendant Swerdlow and thereafter to Plaintiff. These Defendants also clearly understood that the funds Plaintiff paid to fund her life insurance needed to be protected and could not be subject to unreasonable risk of loss.

29. Despite this fact, Schulze-Miller and Shurwest recommended the Life Insurance Retirement Strategy to Swerdlow knowing that Swerdlow was relying on their advice to direct Plaintiff’s investments and knowing that Shurwest and Schulze-Miller themselves did not conduct adequate due diligence and were negligent in their disregard of the numerous risks associated with the FIP cash flow transactions. As the regulatory actions against FIP detailed below make clear, the FIP cash flow product was inherently flawed and subject to serious risks that should have prevented Defendants from recommending that Plaintiff use it to fund her life insurance policy.

30. Shurwest, Schulze-Miller, and Swerdlow either knew or should have known that the FIP product was not safe enough to justify using it as part of the Life Insurance Retirement Strategy. In addition to the issues raised in the various regulatory actions, numerous other risks made these FIP transactions wholly inappropriate for use in the strategy. Shurwest, Schulze-Miller,

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and Swerdlow violated their duties to the Plaintiff by recommending that she use FIP cash flows to fund her IUL.

31. Upon information and belief, Schulze-Miller would visit agents such as Swerdlow and demonstrate, explain, and provide in-person illustrations regarding the Life Insurance Retirement Strategy to agents and their staff.

32. Shurwest and/or Schulze-Miller also invited agents and staff to attend planning and strategy sessions at Shurwest's offices where agents were introduced to various members of the Shurwest team who would be explaining, facilitating, and helping the agents, such as Swerdlow – and their staff – with the Life Insurance Retirement Strategy.

33. Upon information and belief, Shurwest and Schulze-Miller did not adequately perform the necessary due diligence and investigation related to this strategy or know of the risks associated with the recommended funding mechanisms and the Life Insurance Retirement Strategy; and they stayed silent when they had a duty to act.

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

The Indexed Universal Life Policy

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

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36. IUL policies typically provide a guaranteed “floor” and a “cap” for returns credited to the policyholder’s equity index each year. In the Minnesota Life Policy that Swerdlow sold to Plaintiff, the “floor” was 0% and the “cap” was 17%.

37. As noted above, Swerdlow promoted a strategy to Plaintiff whereby her IUL policy would (1) have an accumulated value in the equity index that would allow Plaintiff to supplement her retirement income by borrowing against the policy later in life, and (2) provide a death benefit sufficient to pay off those loans and provide additional funds to her beneficiaries.

38. For the IUL to perform as intended, however, several things need to happen. First, Plaintiff would have to “overfund” the IUL by making premium payments sufficient to cover the cost of insurance and to fund the equity index to a target level. Based on Swerdlow’s advice, Plaintiff intended to pay approximately \$535,000 into the Minnesota Life policy over 5 years.

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

40. This IUL product was unsuitable for Plaintiff. First, she did not need life insurance, as her existing assets were sufficient to provide an inheritance for her heirs without incurring the cost of life insurance premiums.

41. Second, Because the Life Insurance Retirement Strategy could not work if the IUL lapsed, Plaintiff would be forced to pay the cost of insurance under the IUL for the rest of her life. Predictably, the cost of insurance would increase steadily and dramatically the longer Plaintiff were to live.

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

43. Plaintiff trusted Swerdlow's advice as to how to avoid the volatility of the stock market and to provide a reliable source of supplemental income. His recommendation of the Life Insurance Retirement Strategy as the best way for Plaintiff to achieve those modest goals was unsuitable, as it involved Plaintiff incurring a lifetime of substantial and ever-increasing insurance costs that could ultimately exhaust the funds she put into the IUL without meeting her objectives.

44. As noted above, this unsuitable recommendation was just one part of the overall strategy designed and recommended by Schulze-Miller and Swerdlow. Unfortunately, the second part of the plan — using FIP structured cash flows to fund the IUL policy — was even more irresponsible and inappropriate than the life insurance component.

The FIP Structured Cash Flow Product

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

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

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

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

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

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

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

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

53. As concerns about pension advance transactions grew, numerous state regulators initiated enforcement actions against FIP, alleging that its pension income purchases were, in fact, unlawful loans. Even though FIP characterized its pension transactions as “sales” or “purchases,” the transactions lacked certain fundamental characteristics of a sale and had all the salient features of a loan. For example, FIP would characterize the difference between the amount it paid for the income streams and the amount it would receive as a “discount,” when, in fact, that amount was really interest that pensioners were charged on the lump-sum that he or she borrowed. Having determined that the FIP transactions actually were loans, the regulators determined that those loans were unlawful because (a) FIP was not a licensed lender; (b) the effective interest rates charged to the pensioners (more than 100% in some cases) violated state usury laws; and (c) the loans were made without legally mandated disclosures. These regulatory actions also pointed out numerous questionable marketing, sales, and collection practices employed by FIP.

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

- The State of Colorado determined that FIP was making loans without proper licensure. In a January 2015 assurance of discontinuance, FIP agreed not to enter into any transactions in Colorado without first obtaining a supervised lender’s license and not to charge interest on their existing agreements in Colorado.
- In March 2015, the State of California issued a desist and refrain order against FIP, alleging that it engaged in the business of financial lending or brokerage without a license. In September 2015, FIP agreed not to engage in transactions in California without obtaining a license.
- In March 2016, FIP entered into an assurance of discontinuance with the Commonwealth of Massachusetts that it would not enter into any future agreements with Massachusetts residents and that it would not charge interest on its existing contracts with Massachusetts residents.

- In June 2016, FIP entered into a settlement with the State of North Carolina whereby it agreed to reform its existing North Carolina transactions and to ensure that any future transactions with North Carolina residents would comply with the state's usury laws.
- In October 2016, FIP entered into a consent order with the State of New 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.
- Under a December 2016 consent order with the State of Washington, FIP 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.
- Under an assurance of compliance reached with the State of Iowa in December of 2016, FIP agreed not to enter into any future transactions with Iowa consumers and not to charge interest on its existing contracts in Iowa.
- In February 2017, the Los Angeles City Attorney filed suit against FIP for failing to obtain a license to lend, making usurious loans, failing to disclose the terms of the loans, falsely threatening defaulting borrowers with criminal liability if they failed to make their monthly payments, and making illegal and harassing phone calls to collect on defaulted loan payments.
- In May 2017, the Commonwealth of Pennsylvania issued a cease and desist order against FIP for engaging in the business of making loans without a license and charging usurious rates of interest.
- In August 2017, the State of Minnesota filed a court action alleging that FIP's actions violated Minnesota law, and seeking to enjoin FIP from continuing in those violations; to declare all FIP loans to be void and releasing Minnesota residents from any obligations incurred under those agreements; to force FIP to make restitution to any residents harmed by its practices; and to require FIP to pay civil penalties.
- In January 2018, the State of Oregon launched an investigation of FIP's practices.
- In February 2018, the Illinois Department of Financial and Professional Regulation issued a cease and desist order, providing that FIP cease making loans to Illinois residents and stop collecting on loans previously made to Illinois residents.
- In March 2018, the Commonwealth of Virginia sued FIP, alleging that it targeted elderly veterans and retired civil servants in a scheme that masquerades high-interest predatory loans as "pension sales."

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

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

56. The loss of the monthly income stream that Plaintiff purchased from FIP has been both financially and emotionally devastating. Those monthly payments represented the only way that Plaintiff could recoup the principal, much less the expected returns, of the retirement savings she had set aside.

Defendants Failed to Assess the Risks of the FIP Product Adequately

57. Swerdlow knew that the money that Plaintiff used to purchase the FIP products represented a substantial part of her entire savings. As such, he further knew that Plaintiff needed and expected the FIP income streams to be safe and secure, more than she needed the expected returns. It was therefore imperative that Swerdlow investigate and understand all risks associated with the FIP cash flow product before recommending and selling it to Plaintiff. Swerdlow should never have recommended the FIP cash flow product without being completely sure that the risks of FIP could not cause Plaintiff to lose the precious savings she was trying to grow and protect.

58. Unfortunately, Swerdlow recommended the FIP cash flow product to Plaintiff despite the substantial and troubling risks associated with FIP and the underlying pension transactions.

59. First, the FIP cash flow product was inherently mischaracterized as a purchase and not a loan. As the regulatory actions against FIP described above make clear, that fact posed an existential risk to the entire FIP enterprise and threatened Plaintiff with the loss of retirement assets. Swerdlow was aware or should have been aware of that risk, as manifested by the numerous public enforcement actions and specific disclosures in the FIP purchase agreements, but either failed to investigate and understand those risks adequately or disregarded those risks.

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

- The fact that Scott Kohn, the sole owner and manager of FIP, is a convicted felon who has served time in a federal penitentiary for selling counterfeit computer equipment;
- The fact that FIP is a small private company operated by a few individuals and is not associated with or backed by any financial institution or other reputable entity;
- The fact that the federal government, in the 2014 GAO report, questioned the business practices of the pension advance industry and called for more investigations into whether that industry was violating consumer-protection laws;
- The risk that the pensioners whose income streams were purchased could stop making payments at any time, with no recourse other than hoping that income from other pensioners will cover the shortfall;
- The risks that a pensioner could go bankrupt and the FIP contract be treated as an unsecured debt;

- The risk that pensioners could die, and their pension beneficiaries would not make payments;
- The fact that the FIP cash flows are completely illiquid;
- The fact that U.S. federal law prohibits the assignment or alienation of federal pensions, and that those laws may be enforced to prohibit or invalidate FIP pension advance contracts with federal pensioners.

61. Despite all of these risks, Swerdlow recommended the FIP pension income streams to Plaintiff as a suitable way to preserve and grow her retirement savings. That recommendation was inappropriate and irresponsible and fell below the standard of care owed to Plaintiff, particularly in light of the fact that Plaintiff could lose crucial assets if she did not receive the expected cash flow payments. Sadly, the risks that should have prevented Swerdlow from recommending the FIP cash flows in the first place have now materialized, and Plaintiff is faced with a significant loss of retirement assets. Defendants should be held to account for those losses.

**COUNT 1 –BREACH OF FIDUCIARY DUTY
(Against Swerdlow, Anchor Financial, and Brookstone Capital)**

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

63. As an investment advisor and investment advisor representative, Swerdlow assumed the role and duties of fiduciary as to Plaintiff.

64. Swerdlow held himself out as an experienced financial adviser and provided retirement-planning and other financial advice to Plaintiff. Plaintiff placed her trust and confidence in Swerdlow, which Swerdlow accepted by providing specific advice as to how Plaintiff should manage and invest her assets. As such, Swerdlow undertook a fiduciary duty to Plaintiff to act fairly and honestly, in good faith, and in the sole best interest of Plaintiff.

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65. At all pertinent times, Swerdlow was an officer, shareholder, employee and/or agent of Anchor Financial and Brookstone Capital Management acting within the line of his duty and exercising the functions of his employment or agency. Anchor Financial and Brookstone Capital Management are fully responsible and accountable for and jointly and severally liable for the acts and omissions of Swerdlow.

66. Swerdlow, Anchor Financial, and Brookstone Capital Management thus owed Plaintiff the utmost duty of good faith to act solely in Plaintiff's best interests. They had the duty to ascertain the quality of the products that Swerdlow recommended to Plaintiff and to refrain from soliciting or entering into transactions that were illegal and/or improper or unsuitable.

67. Swerdlow, Anchor Financial, and Brookstone Capital Management provided Plaintiff with retirement planning advice in conjunction with the sale, attempted sale or servicing of insurance policies.

68. Swerdlow, Anchor Financial, and Brookstone Capital Management recommended that Plaintiff implement the Life Insurance Retirement Strategy.

69. Prior to recommending the IUL policy, Swerdlow, Anchor Financial, and Brookstone Capital Management either conducted no investigation or an inadequate investigation and thus lacked sufficient information to properly evaluate the suitability of the IUL policy for the Plaintiff.

70. Had Swerdlow, Anchor Financial, and Brookstone Capital Management fulfilled their promise to conduct a careful analysis and properly investigate IUL policies before recommending them to Plaintiff, these Defendants would have learned that it was grossly inappropriate for an individual who did not have a need for insurance, especially given its

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substantial, expensive continuing annual premium, including costs and fees, for an individual who was at age of the Plaintiff where such an IUL product was prohibitively costly and unsuitable.

71. Swerdlow, Anchor Financial, and Brookstone Capital Management violated their fiduciary obligations to Plaintiff by failing to conduct adequate due diligence on and/or failing to understand the risks of the FIP income stream product and nevertheless recommending those products to Plaintiff as part of the Life Insurance Retirement Strategy.

72. As a result of Swerdlow, Anchor Financial, and Brookstone Capital Management recommending this improper and unsuitable Life Insurance Retirement Strategy, Plaintiff has invested a substantial amount of money in annual premium payments and has a continuing obligation to make annual premium payments indefinitely or risk cancellation of the policy and further forfeiture of her hard-earned and irreplaceable financial assets.

73. Plaintiff is left without the ability to fund her life insurance policies and now faces the risk of significant penalties and/or the lapse of her policies.

74. The acts and/or omissions of Swerdlow, Anchor Financial, and Brookstone Capital Management constitute negligence and/or gross negligence because they constitute an extreme departure from what a reasonably careful person would do in the same situation to prevent loss of retirement income.

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

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- a. For actual damages;

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- 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.

**COUNT 2 – AIDING AND ABETTING BREACH OF FIDUCIARY DUTY
(Against Shurwest, Schulze-Miller and MJSM, LLC)**

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

77. As an investment advisor and investment advisor representative, Swerdlow assumed the role and duties of fiduciary as to Plaintiff.

78. Schulze-Miller and Shurwest knew that Swerdlow held himself out as an experienced financial adviser and provided retirement-planning and other financial advice to his clients, including Plaintiff. Schulze-Miller and Shurwest knew that Swerdlow's clients, including Plaintiff, placed their trust and confidence in Swerdlow, which Swerdlow accepted by providing specific advice as to how those clients should manage and invest their savings.

79. Schulze-Miller and Shurwest further knew that Swerdlow owed Plaintiff the utmost duty of good faith to act solely in Plaintiff's best interests and had the duty to ascertain the quality of the products that Swerdlow recommended to Plaintiff and to refrain from soliciting or entering into transactions that were illegal and/or improper or unsuitable.

80. By designing the the Life Insurance Retirement Strategy and assisting Swerdlow in promoting it to Plaintiff, Schulze-Miller and Shurwest knowingly and substantially assisted Swerdlow in violating his fiduciary obligations to Plaintiff. Schulze-Miller, Shurwest, and

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Swerdlow failed to conduct adequate due diligence on and/or failed to understand the risks of the FIP income stream product and nevertheless recommended those products to Plaintiff as part of her retirement-planning strategy.

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

82. At all times, Shurwest also employed Schulze-Miller and was aware of, and assisted her in promoting this Life Insurance Retirement Strategy.

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

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- a. For actual damages;
- 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.

**COUNT 3 – NEGLIGENCE
(Against All Defendants)**

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

85. Swerdlow offered investment advice to Plaintiff and thus owed Plaintiff the clear duty to exercise reasonable care, skill, diligence and prudence under the circumstances presented by Plaintiff’s unique situation and investment objectives.

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

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

88. At all pertinent times, Swerdlow was an officer, shareholder, employee and/or agent of Anchor Financial and Brookstone Capital Management acting within the line of his duty and exercising the functions of his employment or agency. Anchor Financial and Brookstone Capital Management are fully responsible and accountable for and jointly and severally liable for the acts and omissions of Swerdlow.

89. At all pertinent times, Schulze-Miller was an officer, shareholder, employee and/or agent of MJSM, LLC, acting within the line of her duty and exercising the functions of her employment or agency. On information and belief, Schulze-Miller shared in the commissions from

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Plaintiff’s FIP purchase through MJSM, LLC, which is fully responsible and accountable for and jointly and severally liable for the acts and omissions of Schulze-Miller.

90. At all pertinent times, Shurwest also employed Schulze-Miller and was aware of and assisted her in promoting this Life Insurance Retirement Strategy.

91. Accordingly, Shurwest is jointly and severally liable for all illegal, unlawful, and wrongful acts of Schulze-Miller.

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

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- a. For actual damages;
- 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 in this action;
- e. For reasonable attorneys’ fees; and
- f. For such other and further relief as is just, equitable, and proper.

Dated: January 31, 2019

Respectfully submitted,

By: /s/ Brandon M. Wise
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 Paul A. Lesko – IL Bar No. 6288806
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 Cook County Atty # 62258

ATTORNEYS FOR PLAINTIFF MARA KARZEN METZNER

IN THE CIRCUIT COURT OF COOK COUNTY
CHANCERY DIVISION

MARA KARZEN METZNER)
)
Plaintiff,)
)
v.)
)
BRIAN SWERDLOW,)
ANCHOR FINANCIAL, INC.,)
BROOKSTONE CAPITAL MANAGEMENT,)
SHURWEST LLC,)
MJSM FINANCIAL, LLC, and)
MELANIE SCHULZE- MILLER)
)
Defendants.)
_____)

Case No. 2019CH01301

Judge:


JURY TRIAL DEMANDED

Rule 222(b) Affidavit

1. My name is Mara K. Metzner and I reside in Highland Park, Illinois.
2. I have reviewed the Complaint to be filed in this matter and believe it to be true to the best of my knowledge.
3. I believe that Defendants have harmed me in multiple ways, as outlined in the Complaint.
4. Through the Complaint, I seek a recovery in excess of \$50,000.00.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies that he verily believes the same to be true.

Executed:

By:  _____

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