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SUPERIOR COURT FOR THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

STANLEY MOSK COURTHOUSE – CENTRAL DISTRICT

Frances Iacono, Plaintiff, v. Michael A. Frisch and Secure Investment Management, LLC, Defendants.	Case No. **COMPLAINT FOR MONETARY RELIEF** **1. Breach of Contract** **2. Breach of Fiduciary Duty** **3. Negligence** **JURY TRIAL DEMAND**

Plaintiff complains of Defendant and respectfully alleges as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff Frances Iacono ("Plaintiff") is a resident of the County of Los Angeles in the State of California.

2. Defendant Michael A. Frisch ("Frisch") is, upon information and belief, a resident of the State of California. Defendant Frisch is a registered agent of Secure Investment Management, LLC. Defendant Frisch offers his advising and financial services to the general public in addition to selling life insurance.

3. Defendant Secure Investment Management, LLC ("SIM") in an Arizona limited liability company with its principal place of business in Tucson, Arizona. SIM has a branch office in Playa Del Ray, California. SIM provides advising and financial services to individuals across the country.

4. Venue and jurisdiction is proper in this County by virtue of, among other things, the fact that substantial part of the events giving rise to this Complaint occurred in this County.

FACTUAL BACKGROUND

5. Plaintiff is a resident of Redondo Beach, California. Plaintiff is 72 years old.

6. Frisch is an Investment Adviser Representative registered in the State of California and also holds a California license to sell life insurance products. On information and belief, Frisch is, and was at all pertinent times, a registered agent and employee of Defendant SIM, an Investment Adviser Firm registered with the Securities Exchange Commission.

7. Frisch holds himself out as an expert in financial planning and investing and offers his advice and related services to the general public through SIM.

8. Plaintiff met Frisch in or about 2016 and eventually became friendly with him and his wife. In or about early 2017, Plaintiff sought financial advice from Frisch and SIM. Frisch offered to counsel Plaintiff on financial matters and Plaintiff took him up on the offer.

9. Plaintiff explained to Frisch the details of her current financial situation and retirement needs, and Frisch recommended that she purchase "structured cash flows" sold by Future Income Payments, LLC, and FIP, LLC (collectively, "FIP"). Plaintiff would pay a lump sum to FIP to purchase a monthly income stream 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.

10. In making this recommendation, Frisch cited FIP's "A-plus" rating and consistent payment history and its relatively large return on investment. However, Frisch did not adequately understand or investigate the true risks associated with FIP or inform Plaintiff of same. Specifically, Frisch failed to adequately assess the risks posed by the mounting regulatory actions against FIP, which exposed the fact that FIP's unlawful lending practices placed the viability of the entire FIP product at risk of failure.

11. In or around April 2017, Frisch sold Plaintiff a $50,000 FIP structured cash flow for a term of 5 years at an expected return of 7.5%. In or around November 2017, Frisch sold Plaintiff another $25,000 FIP structured cash flow for a term of 5 years at an expected return of 7.5%.

12. As a result mounting regulatory pressure, FIP stopped collecting payments from pensioners or making payments to income stream purchasers on or about April 2018, at which time Plaintiff stopped receiving payments on her cash flow products.

13. As a result of Frisch's recommendations and sales of the FIP products, Plaintiff has incurred significant losses and her retirement savings are depleted.

<u>The FIP Structured Cash Flow Product</u>

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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 and were made without legally mandated disclosures. These regulatory actions also pointed out numerous questionable marketing, sales, and collection practices employed by FIP.

23. 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 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.

24. As a result of this overwhelming regulatory pressure, FIP ultimately ceased issuing new pension advances or collecting payments from pensioners on or about April 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.

25. The loss of the monthly income stream that Plaintiff purchased from FIP has been 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 Adequately Assess the Risks of the FIP Product

26. Frisch knew that the money that Plaintiff used to purchase the FIP products represented a substantial part of her limited retirement savings. As such, Frisch 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 Defendants investigate and understand all risks associated with the FIP cash flow product before recommending and selling it to Plaintiff. Defendants should never have recommended the FIP cash flow product without being completely sure that the risks of FIP could not cause Plaintiff to actually lose the precious retirement savings she was trying to grow and protect.

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

28. 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. Frisch was certainly aware of that risk, as manifested by the numerous public enforcement actions and specific disclosures in the FIP purchase agreements, but Defendants either failed to adequately investigate or understand those risks or disregarded those risks.

29. Beyond this regulatory risk, there were many other substantial risks associated with the FIP cash flow product that Defendants failed to adequately assess 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.

Despite all of these risks, Frisch twice 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 that Frisch owed to Plaintiff, particularly in light of the fact that Plaintiff could lose crucial retirement assets if she did not receive her expected cash flow payments. Sadly, the risks that should have prevented Frisch from recommending the FIP cash flows in the first place have now materialized, and Plaintiff is faced with a significant loss of her retirement assets. Defendants should be held to account for those losses.

FOR THE FIRST CAUSE OF ACTION

BREACH OF CONTRACT

(Against All Defendants)

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

31. Defendants undertook legal, valid and binding contractual obligations to Plaintiff to provide sound retirement planning and other financial advice by undertaking to provide and providing such advice.

32. Defendants breached those contractual obligations 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. For example, Defendants should have discovered that the FIP product was banned in multiple states, and that it was under intense investigation by other states.

33. At all pertinent times, Frisch was an employee and/or agent of SIM acting within the line of his duty and exercising the functions of his employment. SIM is fully responsible and accountable for and jointly and severally liable for the acts and omissions of Frisch, its agent.

34. As a direct and proximate result of Defendants' breaches, Plaintiff is entitled to recover the damages she has suffered including (1) actual damages, including the return of her principal and interest at the rate specified in the investment, (2) consequential damages, (3) costs, (4) prejudgment interest at the highest legal rate, and (5) such other relief as is just, equitable, and proper arising from the Defendants' breaches.

FOR THE SECOND CAUSE OF ACTION

Breach of Fiduciary Duty

(Against All Defendants)

35. As an investment advisor and investment advisor representative, SIM and Frisch assumed the role and duties of fiduciary as to Plaintiff.

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

37. At all pertinent times, Frisch was an employee and/or agent of SIM acting within the line of his duty and exercising the functions of his employment. SIM is fully responsible and accountable for and jointly and severally liable for the acts and omissions of Frisch, its agent..

38. Defendants thus owed Plaintiff the utmost duty of good faith to act solely in Plaintiff's best interests. Defendants had the duty to ascertain the quality of the products that Frisch recommended to Plaintiff and to refrain from soliciting or entering into transactions that were illegal and/or improper or unsuitable.

39. Defendant 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.

40. As a direct and proximate result of Defendants' 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.

FOR THE THIRD CAUSE OF ACTION

Common Law Negligence

(Against All Defendants)

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

42. Frisch 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.

43. SIM had the duty to maintain proper and effective internal controls and supervisory policies over their registered representatives, like Frisch. SIM owes innocent investors, like Plaintiff, a duty of care and a duty to properly supervise its agents to ensure their agents' compliance with securities industry rules and regulations.

44. At all pertinent times, Frisch was an employee and/or agent of SIM acting within the line of his duty and exercising the functions of his employment. SIM is fully responsible and accountable for and jointly and severally liable for the acts and omissions of Frisch, its agent.

45. Defendants breached their respective duties to Plaintiff to exercise reasonable care, skill, diligence and prudence under the circumstances and such breaches caused Plaintiff to suffer damages.

46. 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.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

a. For actual damages;

b. For consequential damages;

c. For prejudgment interest at the highest legal rate;

d. For the costs of this action;

e. For reasonable attorneys' fees; and

f. For such other and further relief as is just, equitable, and proper.

JURY TRIAL DEMANDED

Plaintiff requests a jury trial for any counts for which a trial by jury is permitted by law.

Dated: August 22, 2018

Respectfully submitted,

/s/ Adam B. Wolf
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