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Chris Daniel - District Clerk Harris County
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No. ________________________

RICHARD E. MOURGLIA, INDIVIDUALLY AND ON BEHALF OF THE RICHARD E. MOURGLIA AND MARCIA G. MOURGLIA REVOCABLE LIVING TRUST	§	IN THE DISTRICT COURT
Plaintiff,	§	OF HARRIS COUNTY, TEXAS
v.	§	
PAUL E. FERRARESI AND FOUNDERS GROUP, INC.	§	
Defendant.	§	________ JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL COMPLAINT AND REQUEST FOR DISCLOSURE

Plaintiff Richard E. Mourglia, individually and on behalf of the Richard E. Mourglia and Marcia G. Mourglia Revocable Living Trust ("Mourglia" or "Plaintiff") complains of Defendants Paul E. Ferraresi ("Ferraresi") and Founders Group, Inc. ("Founders Group") (collectively, "Defendants") and respectfully alleges as follows:

DISCOVERY CONTROL PLAN AND RELEIF SOUGHT

1. Plaintiff intends to conduct discovery under Level 2 of the Texas Rules of Civil Procedure.
2. Plaintiff seeks damages within the jurisdictional limits of this court and seeks monetary relief over $200,000 but not more than $1,000,000. TRCP 47(c)(4).

PARTIES

3. Plaintiff Richard E. Mourglia is a resident of New Braunfels, Texas in Guadalupe County. Plaintiff is 89 years old.

4. Ferraresi, upon information and belief, resides at 4900 Tamarisk Lane, Bellaire, Harris County, Texas. Upon information and belief, Ferraresi is an officer, shareholder, employee, and/or agent of Founders Group. Ferraresi offers advising and financial services to the general public through Founders Group in addition to selling life insurance. He may be served with citation at 4900 Tamarisk Lane, Bellaire, Texas 77401.

5. Founders Group is Texas corporation with its principal place of business in Houston, Texas. It may be served with process on its registered agent, Paul E. Ferraresi, 4900 Tamarisk Lane, Bellaire, Texas 77401.

VENUE

6. Venue is proper in Harris County under CPRC § 15.002(a) because all or a substantial part of events giving rise to these claims occurred in Harris County, and Defendants' residences and principal offices are in Harris County.

FACTS

7. Plaintiff was harmed by Defendants' recommendation and sale of a "structured cash flow" sold by Future Income Payments, LLC, and FIP, LLC (collectively, "FIP").

8. Defendant Ferraresi is an Investment Adviser Representative registered in the State of Texas and also holds a Texas license to sell insurance products.

9. Ferraresi holds himself out as an expert in financial planning and investing and offers his advice and related services to the general public through Founders Group.

10. Founders Group advertises itself as a multi-faceted company that provides a host of retirement and financial planning services.

11. Plaintiff sought financial advice from Ferraresi and Founders Group in or about December 2014, after moving to New Braunfels from Corpus Christi to be closer to his son. A few years earlier, Plaintiff had purchased an annuity from Ferraresi, who provided financial

planning advice and related services to Plaintiff's son. Ferraresi offered to counsel Plaintiff on financial matters and provided retirement planning and financial advice to Plaintiff.

12. Plaintiff explained to Ferraresi his current financial situation and retirement needs, and Ferraresi recommended that he use funds from the recent sale of his home to purchase a "structured cash flow" 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 for a set term. The total of those monthly payments represented the 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.

13. For its part, FIP funded the cash flows it sold by "purchasing" future income from individual pensioners, including retired teachers, police officers, and military personnel. FIP offered pensioners upfront, lump-sum payments in exchange for receiving a portion of their monthly pension payments over a specific term. FIP would purchase these pension payments at a "discount," such that the total of the monthly payments made by the individual pensioners far exceeded the amount of the lump-sum he or she received, amounting to an effective interest rate of more than 100% in some cases.

14. In making this recommendation, Ferraresi cited FIP's consistent payment history and its relatively large promised returns. However, Ferraresi did not adequately understand or investigate the true risks associated with FIP or inform Plaintiff of same. Specifically, Ferraresi failed to adequately assess the risks posed by the underlying transactions with the pensioners whose income streams provided the monthly payments to the cash flow purchasers like Plaintiff.

15. In or around December 2014, Ferraresi sold Plaintiff a $200,000 FIP structured cash flow for a term of 10 years at an expected return of 8%.

The FIP Structured Cash Flow Product

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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 he had set aside.

Defendants Failed to Assess the Risks of the FIP Product Adequately

28. Ferraresi knew that the money that Plaintiff used to purchase the FIP product represented a substantial part of his limited retirement savings. As such, Ferraresi further knew that Plaintiff needed and expected the FIP income streams to be safe and secure, more than he 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. Ferraresi 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 he was trying to grow and protect.

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

30. 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. Ferraresi 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 investigate or understand those risks adequately or disregarded those risks.

31. Beyond this regulatory risk, there were many other substantial risks associated with the FIP cash flow product that Defendants 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.

Despite all of these risks, Ferraresi recommended the FIP pension income streams to Plaintiff as a suitable way to preserve and grow his retirement savings. That recommendation was inappropriate and irresponsible and fell below the standard of care that Ferraresi owed to Plaintiff, particularly in light of the fact that Plaintiff could lose crucial retirement assets if he did not receive the expected cash flow payments. Sadly, the risks that should have prevented Ferraresi 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 CONTRACT
(Against All Defendants)

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

33. 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.

34. 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.

35. At all pertinent times, Ferraresi was an officer, shareholder, employee and/or agent of Founders Group acting within the line of his duty and exercising the functions of his employment or agency. Founders Group is fully responsible and accountable for and jointly and severally liable for the acts and omissions of Ferraresi.

36. As a direct and proximate result of Defendants' breaches, Plaintiff is entitled to recover the damages he has suffered including (1) actual damages, including the return of his 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.

COUNT 2 –BREACH OF FIDUCIARY DUTY
(Against All Defendants)

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

38. As an investment advisor and investment advisor representative, Founders Group and Ferraresi assumed the role and duties of fiduciary as to Plaintiff.

39. Ferraresi 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 Ferraresi, which Ferraresi accepted by providing specific advice as to how Plaintiff should manage his 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.

40. At all pertinent times, Ferraresi was an officer, shareholder, employee and/or agent of Founders Group acting within the line of his duty and exercising the functions of his employment or agency. Founders Group is fully responsible and accountable for and jointly and severally liable for the acts and omissions of Ferraresi.

41. 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 Ferraresi recommended to Plaintiff and to refrain from soliciting or entering into transactions that were illegal and/or improper or unsuitable.

42. 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.

43. 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.

COUNT THREE – NEGLIGENCE
(Against All Defendants)

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

45. Ferraresi 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.

46. At all pertinent times, Ferraresi was an officer, shareholder, employee and/or agent of Founders Group acting within the line of his duty and exercising the functions of his employment or agency. Founders Group is fully responsible and accountable for and jointly and severally liable for the acts and omissions of Ferraresi.

47. 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.

48. 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.

ATTORNEY FEES

49. Plaintiff is entitled to recover reasonable and necessary attorney fees under CPRC § 38.001(8).

JURY DEMAND

50. Plaintiff demands a jury trial and tenders the appropriate fee with this petition.

CONDITIONS PRECEDENT

51. All conditions precedent to Plaintiff's claim for relief have been performed or have occurred.

REQUEST FOR DISCLOUSRE

52. Under Texas Rule of Civil Procedure 194, Plaintiff requests that Defendants disclose, within 50 days of the service of this request, the information or material described in Rule 194.2.

PRAYER

53. For these reasons, Plaintiff asks that the Court issue citation for Defendants to appear and answer, and that Plaintiff be awarded a judgment against Defendants for the following:

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 all other relief to which Plaintiff is or may be entitled.

Respectfully Submitted,

/s/ Ryan R. C. Hicks________

Ryan R. C. Hicks
Texas Bar No. 24008896
Email: rhicks@schneiderwallace.com
SCHNEIDER WALLACE COTTRELL
KONECKY WOTKYNS, LLP
3700 Buffalo Speedway, Suite 300
Houston, Texas 77098
Tel: 713-338-2560
Fax: 866-505-8036

Daniel J. Carr
Louisiana Bar No. 31088
Motion for Admission Pro Hac Vice
to be filed
dcarr@pwcklegal.com
PEIFFER, WOLF, CARR & KANE, APLC
201 St. Charles Ave., Suite 4610
New Orleans, Louisiana 70170
Tel: 504-586-5270
Fax: 504-523-2464