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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, vs. PARKER TERRILL AUSTIN and EMBARCADERO CAPITAL ADVISORS, INC. Defendants.	Case No. 8:25-cv-02034 **COMPLAINT** **DEMAND FOR JURY TRIAL**

Plaintiff Securities and Exchange Commission ("SEC") alleges:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this action pursuant to Sections 209(d) and 214 of the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. §§ 80b-9(d) and 80b-14].

2. The Commission seeks permanent injunctions pursuant to Section 209(d) of the Advisers Act [18 U.S.C. § 80b-9(d)]. The Commission seeks disgorgement with prejudgment interest pursuant to Sections 21(d)(5) and 21(d)(7) of the Exchange Act [15 U.S.C. §§ 78u(d)(5) and (7)]. The Commission seeks the imposition of civil penalties pursuant to Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e).] Unless enjoined, Defendants will continue to engage in the securities law violations alleged here, or in similar conduct that would violate the securities laws. Defendants' conduct involved fraud, deceit, or deliberate or reckless disregard of regulatory requirements, and resulted in substantial loss, or significant risk of substantial loss, to other persons.

3. Defendants directly or indirectly used the mails or the means or instruments of transportation or communication in interstate commerce in connection with their business as investment advisers and the conduct described in this Complaint.

4. The Court has personal jurisdiction over Defendants and venue is proper in this District because the Defendants engaged in many of the acts and omissions constituting the alleged violations, in whole or in part, in this District, and because Embarcadero Capital Advisors, Inc. has its principal place of business in this District.

SUMMARY OF THE ACTION

5. Starting at latest in the Spring of 2023, Parker Terrill Austin, an investment adviser, intended to leave his then-current employer ("Firm A") and start his own investment advisory firm, which ultimately became known as Embarcadero Capital Advisors, Inc. ("Embarcadero"). Several of the actions Austin took to create, and to obtain clients for, Embarcadero violated the federal securities laws.

6. While at Firm A, Austin emailed to his personal email address Firm A clients' nonpublic personal information. He also, on at least four occasions, sent or caused to be sent additional personal information about clients (including investment account and billing information) to his personal email address. On at least one occasion, Austin forwarded Firm A clients' nonpublic personal information to his future business partner at Embarcadero, who was not affiliated with Firm A. By doing so, Austin aided and abetted Firm A's violation of Rule 10 of Regulation S-P [17 C.F.R. § 248.10], which prohibits investment advisers from disclosing nonpublic personal information about a consumer to a nonaffiliated third party unless certain conditions are met.

7. Austin also repeatedly placed Firm A clients in a strategy the firm's investment committee had not approved, without notifying at least some of the clients and, in several cases, dramatically increasing their exposure to equities and, consequently, risk.

8. Austin placed at least one client in investments that were contrary to that client's instructions, breaching his fiduciary duty to that client. By doing so, Austin violated Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. § 80b-6(1) and (2)].

9. Upon becoming aware of Austin's actions, Firm A terminated Austin.

10. Two days later, Austin and his business partner filed to register Embarcadero as an investment adviser.

11. Defendants then engaged in a scheme to fraudulently induce clients to join Embarcadero. This scheme involved a series of misrepresentations to clients and prospective clients about the reason for Austin's termination from Firm A. Austin and Embarcadero continued to misrepresent why Austin was terminated, even after Embarcadero was contacted by staff members from the SEC's Division of Enforcement. In doing so, Defendants engaged in a fraudulent scheme and a course of business that operated as a fraud or deceit on their clients and prospective clients,

violating Advisers Act Sections 206(1) and 206(2) [15 U.S.C. § 80b-6(1) and (2)]. Austin also aided and abetted Embarcadero's violations of these provisions.

12. Some of Defendants' misrepresentations about Austin's terminations were contained in filings Embarcadero was required to make with the Commission. As a result, Defendants violated Section 207 of the Advisers Act [15 U.S.C. § 80b-7]. In addition, Austin aided and abetted Embarcadero's violation of this provision.

13. Based on these violations, the Commission seeks:

(a) Entry of permanent injunctions prohibiting Austin and Embarcadero from violating Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. § 80b-6(1) and (2)] by committing or engaging in specified actions or activities relevant to such violations;

(b) Entry of permanent injunctions prohibiting Austin and Embarcadero from violating Section 207 of the Advisers Act [15 U.S.C. § 80b-7];

(c) Entry of permanent injunctions prohibiting Austin from aiding and abetting violations of Regulation S-P [17 C.F.R. § 248.1 *et seq.*];

(d) Entry of a permanent injunction restraining and enjoining Austin from, directly or indirectly, acting as or being associated with any broker, dealer, or investment adviser;

(e) Disgorgement of Embarcadero's ill-gotten gains, pursuant to Section 21(d)(5) and 21(d)(7) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78u(d)(5) and (7)], plus prejudgment interest;

(f) Appropriate civil monetary penalties against Austin and Embarcadero pursuant to Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)]; and

(g) Any additional relief that the Court deems just and proper.

DEFENDANTS

14. **Parker Terrill Austin**, age 42, resides in San Francisco, CA. Austin is an investment adviser representative registered with Embarcadero. He is also a co-

founder and majority owner of Embarcadero, where he serves as the President and Chief Executive Officer.

15. Austin was previously employed with Firm A, as well as with another financial adviser. He is also a registered representative with Embarcadero's broker-dealer.

16. Austin passed the Series 7 and Series 66 securities industry exams.

17. **Embarcadero Capital Advisors, Inc.**, is a California corporation based in Laguna Hills, CA. Embarcadero was registered with the SEC as an investment adviser from January 9, 2024 to August 1, 2024, when it withdrew its SEC registration. It is now registered as an investment adviser in Arizona, California, Nevada, and Texas.

18. Embarcadero is owned by Austin and his business partner.

RELATED ENTITY

19. **Firm A** is a California limited liability company based in San Francisco, CA. It has been registered with the SEC as an investment adviser since 2017.

THE ALLEGATIONS

A. Austin Wanted To Establish His Own Investment Advisory Firm

20. In September 2020, Austin began working at Firm A. He worked as an investment adviser, receiving compensation for advising clients about their investments in securities.

21. While providing advice to clients at Firm A, Austin had disagreements with Firm A's managing partner. These disagreements centered around the degree of risk appropriate for client portfolios. Austin believed that the managing partner was too conservative in the amount of investment risk Firm A took for clients, resulting in clients not achieving investment gains that they otherwise may have obtained through riskier investments.

22. By Spring 2023, Austin wanted to leave Firm A and start his own investment advisory firm.

23. On or around April 5, 2023, Austin sent three emails from his Firm A email address to his personal email address concerning steps Austin would need to take to establish his own firm, along with draft marketing blurbs promoting the new firm.

B. Austin Sent And Had Others Send Nonpublic Personal Client Information To His Personal Email And Forwarded It To His Future Business Partner

24. On the same day that he sent himself the emails of tasks to establish his new firm (April 5, 2023), Austin used his email account at Firm A to send account billing files for hundreds of Firm A's clients to his personal email address.

25. These files contained nonpublic personal information about Firm A's clients, including names and account balances.

26. The following day, Austin directed a subordinate at Firm A to send files with the names of 328 of Firm A's clients and their account values to Austin's personal email address. The employee did so.

27. Of the 328 clients whose information was sent to Austin's personal email address, 134 clients were managed by persons at Firm A other than Austin.

28. About two weeks later, on April 19, 2023, Austin instructed his personal assistant at Firm A to send to Austin's personal email a file listing all of Firm A's clients and their phone numbers, email addresses, and home addresses. She did so.

29. About two months later, on June 29, 2023, Austin instructed his assistant to send to his personal email account a file containing every contact record Firm A maintained in its Customer Relations Management ("CRM") database. She did so.

30. The CRM file contained nonpublic personal information about Firm A's past and current clients, including their names, phone numbers, email addresses, and home addresses.

31. On September 20, 2023, Austin forwarded this CRM file from his personal email address to his future business partner at Embarcadero. This business

partner had no affiliation with Firm A.

32. A week later, on September 27, 2023, the future business partner forwarded the CRM file from his own investment advisory firm email account to his personal account. He then printed out the file.

33. On October 6, 2023, Austin instructed his assistant to send to his personal email another file containing information about Firm A's clients and the advisory fees each paid.

34. Upon information and belief, Austin used the client information he took from Firm A to develop business at Embarcadero and solicit those Firm A clients to become Embarcadero clients. Austin telephoned these clients, sometimes multiple times, to solicit their business.

35. Austin later falsely claimed that his assistant twice sent the information to his personal email account in error and that he had reprimanded her. He also falsely claimed that he had the client information sent to his personal email address to assign clients to different tier groups and to arrange for holiday gifts.

36. Firm A's compliance manual in effect at the time required that personal client information be kept in confidence and limited distribution of Firm A's information, including client information in Firm A's possession, to devices and servers on Firm A's security protocol.

37. Austin signed at least one acknowledgment that he had reviewed and understood Firm A's compliance policy. He also attended periodic trainings that specified that Firm A "permits its employees to access their personal email and instant messaging accounts to discuss non-work-related issues" but that "[a]ny correspondence that is to be sent via email and pertains to Firm business MUST be sent through the email account provided to the employee by" Firm A.

38. Austin knew or should have known that sending client information to his personal email account violated Firm A's policies.

39. Neither Austin nor Firm A provided Firm A clients with a privacy notice

describing the nonpublic personal information that Austin disclosed or notifying customers of their right to opt out of the disclosure and affording them a reasonable opportunity to opt out of the disclosure before it was made.

C. Austin Reallocated Firm A Clients' Portfolios Into An Unapproved Strategy Without Notifying Clients

40. Austin reallocated at least 109 client accounts into an equity strategy that Firm A's investment committee had not approved, without notifying at least some of those clients about the changes.

41. On July 18, 2023, Austin changed investments for 26 clients from a strategy approved by Firm A's investment committee to a different strategy that was not approved.

42. Firm A's managing partner discovered the change on September 16, 2023 and met with Austin that day. The managing partner told Austin that Austin was not authorized to invest clients in unapproved strategies.

43. During that meeting, Austin stated that he had made a mistake in reallocating the client portfolios to unapproved strategies. Austin committed to working with the managing partner in managing client portfolios rather than act unilaterally using investments Firm A's investment committee had not approved.

44. Then, on September 28, 2023, Austin reallocated another 83 Firm A clients into that same unapproved strategy. He did so without consulting Firm A's managing partner.

45. The reallocation of the clients' portfolios to the unapproved strategy caused some of those clients' portfolios to contain far more exposure to equities than was consistent with the clients' stated risk profiles and with Firm A's established benchmarks for exposure to equities for those risk profiles. In other words, the reallocation of the client portfolios resulted in those clients being invested in a strategy that was riskier than what they had said was acceptable.

46. On October 5, 2023, after discovering the reallocation of the portfolios

of the additional 83 clients, the Firm A managing partner emailed Austin that he had again selected an unapproved strategy.

D. Austin Placed A Firm A Client In Investments That Were Contrary To The Client's Instructions

47. On October 11, 2023, a Firm A client emailed Austin and Firm A's managing partner with instructions to sell all shares of particular securities that the client held in a Roth IRA. The client also specified that he would "prefer US Treasuries or Moneymarket [sic] fixed rate investments at this time."

48. The client also spoke with Austin around that time, informing Austin that he wanted to ensure he was invested conservatively, because of the client's age and interest in buying a house in the near term.

49. In November 2023, the same client told Austin that he wanted a portfolio that was low risk, safe, and earned between 4 and 5%. The client later told Firm A's managing partner of his instructions to Austin.

50. Austin, however, did not follow the client's instructions.

51. Instead, Austin placed the client in convertible bond and long-term U.S. treasury leveraged ETFs.

52. The investments Austin selected for the client carried higher risk and higher volatility than what the client had requested. In addition, those investments were not approved by the Firm A investment committee.

53. On November 21, 2023, when the client learned about the investments that Austin had placed him in, the client contacted the Firm A managing partner. The managing partner executed trades to place the client into the securities the client had requested.

E. Austin And His Business Partner Take Steps To Establish Embarcadero While Austin Was Still Working at Firm A

54. On November 6, 2023, Austin retained a compliance consultant to assist him in setting up his then-unnamed investment advisory firm.

55. On November 14, 2023, Austin's future business partner made the necessary filings to incorporate Embarcadero.

56. By November 30, 2023, Austin, his business partner, and the hired compliance consultant had begun the process of registering Embarcadero with the Commission as an investment adviser. This registration process was completed on January 9, 2024.

F. Austin's Termination From Firm A

57. Austin's improper reallocation of client accounts caused the managing partner to review Austin's emails. Through this email review, the managing partner discovered that Austin had improperly sent client information to Austin's personal email account.

58. On December 4, 2023, the managing partner informed Austin that his employment was terminated.

59. The managing partner explained to Austin the reasons for his termination. Those reasons included, among others, violation of Firm A's policies and procedures about the safeguarding of client records and adherence to the fiduciary duty owed to clients (relating to the reallocation of client accounts).

60. Form U5 is the uniform termination notice used by entities in the securities industry, including investment advisory firms, to report to regulators when an employee has separated from a firm.

61. On December 26, 2023, Firm A filed a Form U5 disclosing that Austin had been terminated and indicating (in Item 7F) that Austin separated from the firm "after allegations were made that accused [Austin] of: 1. violating investment-related statutes, regulations, rules or industry standards of conduct [and] 2. fraud or the wrongful taking of property." The Form U5 described the allegation as, "Violations of firm policies and procedures related to the safekeeping of client records and adherence to fiduciary duty."

62. Austin, Embarcadero, and Embarcadero's compliance consultant all

received a copy of the Form U5 when it was filed.

G. Defendants' Actions To Induce Clients To Join Embarcadero By Misrepresenting Austin's Misconduct And Termination From Firm A

False Statements on Embarcadero's Website and Emailed to Clients

63. Advisers Act Rule 204-5 requires investment advisers registered with the Commission under Section 203 of the Advisers Act and that provide services to a retail investor to disclose to certain information about the investment advisory firm and its financial professionals through Form CRS. The Form CRS requires such registered investment advisers to answer whether there are disclosable disciplinary events for the firm or financial professionals employed by the firm.

64. Item 4 of Form CRS asks, "[d]o you or your financial professionals have legal or disciplinary history." The Form CRS instructions state that the answer should be "yes" if the firm or its financial professionals are the subject of disclosures in various parts of the Form U5, including Item 7F, the section where Firm A had disclosed Austin's termination and the reasons for it.

65. In late November 2023, before Austin had been terminated, Embarcadero's compliance consultant prepared a draft Form CRS for Embarcadero. The compliance consultant answered "no" to Item 4 on the draft form, as Austin had not yet been terminated.

66. After Austin was terminated and Firm A filed the Form U5 with the information about the termination, Austin's business partner at Embarcadero corresponded with Embarcadero's compliance consultant. On December 29, 2023, the business partner wrote to the consultant: "We got [Austin's] U5 from [Firm A] . . . and while it was not bad . . . it was not as clean as we had hoped it would be. There was a termination for 'taking/improper use of company assets'. We probably should use my U4 as the basis of the applications to get things thru smoothly . . . and then add Parker right behind me, once everything is online" (ellipses in

original).

67. On or around January 9, 2024, after reviewing the Form U5 Firm A had filed about Austin's termination, the compliance consultant advised Embarcadero to answer "yes" to Item 4 on its Form CRS. The compliance consultant then provided Embarcadero a revised version of the Embarcadero Form CRS with that answer. In the cover email enclosing the updated Form CRS, the compliance consultant wrote, "be sure to utilize this CRS version and disregard the previous." Embarcadero's compliance consultant proceeded to file with the Commission the corrected version answering "yes" to Item 4.

68. However, Austin and Embarcadero did not use with their clients and prospective clients the corrected Form CRS that indicated that Austin had disciplinary history, even though they knew that Austin had that history as a result of his termination, knew the compliance consultant had told them they needed to change their answer on the Form CRS, and knew that the compliance consultant had provided Embarcadero with a new Form CRS that checked "yes" in response to Item 4.

69. Instead, on January 26, 2024, Austin sent Embarcadero's website developer the earlier version of Form CRS that answered "no" in response to Item 4. He did so either intentionally or recklessly.

70. As a result, Embarcadero's website included a link to this incorrect Form CRS.

71. Embarcadero's website also included "FAQs" that repeated information from the Form CRS, including a "no" response to the question "Do You Or Your Financial Professionals Have Legal Or Disciplinary History."

72. Sections 203 and 204 of the Advisers Act [15 U.S.C. §§ 80b-3 and 80b-4] authorize the Commission to collect from investment advisory firms the information required by Form ADV. Advisory firms complete the Form ADV. The Commission collects the information for regulatory purposes, such as deciding

whether to grant registration. The Commission makes the information submitted on the Form ADV publicly available.

73. Austin also provided the false Form CRS denying his disciplinary history to another of Embarcadero's vendors, which sent prospective clients Embarcadero's Form ADV and Form CRS when they expressed an indication of interest in Embarcadero. He did so either intentionally or recklessly.

74. The inaccurate information about Austin's disciplinary history remained on Embarcadero's website from January to April 2024. It was only corrected after Commission staff issued subpoenas regarding this matter. The corrected response to Item 4 in Form CRS provided a "yes" response and referred readers to Investor.gov/CRS for additional information.

False Statements in Austin's Form U4

75. Representatives of broker-dealers or investment advisers must be registered with the appropriate jurisdictions and/or self-regulatory organizations. Form U4 – the Uniform Application for Securities Industry Registration or Transfer – is used to establish that registration.

76. On January 9, 2024, Austin filed a Form U4, registering Austin as an investment adviser with Embarcadero. Although Form U4 expressly asks whether the person filing it has ever voluntarily resigned, been discharged, or permitted to resign after various allegations were made, Austin failed to disclose that he had been terminated from Firm A. He did so intentionally or recklessly.

77. On April 22, 2024, after Embarcadero's compliance consultant received a subpoena from the Commission staff in its investigation of this matter, Austin filed an amended Form U4. This amended form answered for the first time "yes" to the questions: "Have you ever voluntarily resigned, been discharged or permitted to resign after allegations were made that accused you of: (1) violating investment-related statutes, regulations, rules, or industry standards of conduct?" or "(2) fraud or the wrongful taking of property?"

78. But in the amended Form U4, Austin falsely stated that he was terminated because "[a] firm associate inadvertently sent an email sent [sic] to my personal email account that contained client contact information. I deleted the email instead of reporting it as per the firm[']s IT policy. The Managing Partner used this email as ground to dismiss me."

79. Austin knew, or was reckless in not knowing, that his explanation was false and intentionally, or at a minimum recklessly, misrepresented why he was terminated. Austin himself sent his personal email address confidential client information, including client names and account balances, and on four occasions directed support staff to send him similar nonpublic personal customer information. Austin did not delete the information. He instead sent it to his future business partner. He was also terminated for breaching his fiduciary duty owed to clients.

80. This knowingly or recklessly false explanation appeared in Austin's profile on the Investment Adviser Public Disclosure website at adviserinfo.sec.gov, which pulls in data from the Form U4. Clients or prospective clients following the instructions in Embarcadero's corrected Form CRS and visiting Investor.gov/CRS to research the disciplinary history of Embarcadero and its financial professionals would have, after typing in Austin's name, been taken to adviserinfo.sec.gov and seen Austin's false statements regarding his termination.

81. Austin also told the Embarcadero compliance consultant the false explanation for his termination.

False Statements in Embarcadero's Form ADV Part 2A and Part 2B Brochures

82. The Form ADV Part 2A is a narrative brochure created by an investment advisory firm, containing information about that firm.

83. When Embarcadero filed its initial Form ADV Part 2A brochure with the Commission on December 6, 2023, Embarcadero failed to disclose Austin's disciplinary history.

84. This history was required to be disclosed in Item 9 of the brochure. Item 9's instructions state: "If your advisory firm or a management person has been involved in a legal or disciplinary event that is … material to a client's or prospective client's evaluation of your advisory business or the integrity of its management, you must disclose the event."

85. Austin's termination and the circumstances that led to it would be material to a client's or prospective client's evaluation of Embarcadero and to retaining Austin as an investment adviser.

86. For Item 9 of Embarcadero's initial Part 2A brochure, Embarcadero knowingly and falsely stated: "Not applicable. There are no legal or disciplinary events." Embarcadero stated the same on its Part 2A filed January 2, 2024 and February 5, 2024.

87. On May 8, 2024, Embarcadero revised its Part 2A, Item 9 answer to: "There are no legal or disciplinary events that are material to the evaluation of our advisory business or the integrity of our management." But the causes for Austin's termination were material to the evaluation of Embarcadero and of Austin's integrity. Thus, the revised answer was still knowingly or recklessly false.

88. Austin fully participated in the preparation of these forms and the answers provided. As the President and CEO of Embarcadero, he also had the ultimate authority and legal control over the statements made by Embarcadero in its Form ADVs.

89. Embarcadero and Austin repeated this knowingly or recklessly false answer in Embarcadero's Form ADV Part 2A brochures dated June 6, June 27, July 24, and August 1, 2024.

90. After Commission staff asked Austin about his statement during investigative testimony, Embarcadero corrected its Item 9 answer. On August 20, 2024, Embarcadero changed its answer to read: "Parker Austin has a disciplinary event; the details this event [sic] can be found on www.adviserinfo.sec.gov."

91. This statement was also false. The instructions in Embarcadero's Form ADV Part 2A said to consult advisorinfo.sec.gov (the Investment Adviser Public Disclosure website) to find the details of Austin's disciplinary event. But doing so led to the false disclosure described above, that Austin was terminated because a firm associate inadvertently sent an email containing client contact information to his personal email account and that Austin deleted the email instead of reporting it in accordance with Firm A's policy.

92. Austin did not remove the false statement about his termination from his Form U4 until December 18, 2024.

93. Embarcadero's Form ADV Part 2B also contained false information. The Form ADV Part 2B requires advisers to create brochure supplements containing information about certain supervised persons working at the advisory firm.

94. Embarcadero filed multiple Form ADV Part 2B brochures concerning Austin but omitting or misstating his disciplinary history.

95. The instructions for the Part 2B brochure stated: "If the supervised person has been involved in a legal or disciplinary event that is … material to a client's or prospective client's evaluation of the supervised person's integrity, you must disclose the event."

96. Embarcadero's initial Form ADV Part 2B was filed on May 8, 2024. There, Embarcadero stated "There are no legal or disciplinary events material to a client's a prospective client's [sic] evaluation of Mr. Austin."

97. Embarcadero and Austin repeated that knowingly or recklessly false statement in Form ADV Part 2B brochures dated June 6 and June 27, 2024.

98. On August 20, 2024, Embarcadero filed a new amended Form ADV Part 2B. The new Part 2B brochure disclosed that Austin had a disciplinary event. But, like the Part 2A, it directed people to consult adviserinfo.sec.gov, which led them to the false explanation for Austin's termination that Austin provided on his Form U4.

FIRST CLAIM FOR RELIEF

Fraudulent Scheme and Fraudulent Conduct by Investment Advisers Violations of Sections 206(1) and 206(2) of the Advisers Act (against Defendants Austin and Embarcadero)

99. The Commission repeats and incorporates by reference the allegations in paragraphs 1 through 98 as if set forth fully here.

100. At all relevant times, Austin and Embarcadero were "investment advisers" within the meaning of Section 202(a)(11) of the Advisers Act [15 U.S.C. § 80b-2(a)(11)]. Both Austin and Embarcadero were in the business of providing investment advice concerning securities for compensation. Austin was also an investment adviser due to his ownership, management, and control of Embarcadero.

101. As detailed above, Austin and Embarcadero employed and/or are employing a fraudulent device, scheme, or artifice to defraud their clients and prospective clients through a series of false and/or fraudulently misleading statements and actions to fraudulently induce clients to join Embarcadero. This scheme involved a series of misrepresentations to clients and prospective clients about the reason for Austin's termination from Firm A.

102. Austin and Embarcadero, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, acting intentionally, knowingly, or recklessly, have employed or are employing devices, schemes, or artifices to defraud clients or prospective clients.

103. In addition, Austin and Embarcadero, by use of the mails or any means or instrumentalities of interstate commerce, directly or indirectly, acting intentionally, knowing, recklessly, or negligently, have engaged or are engaging in transactions, practices, and courses of business which operate as a fraud or deceit upon a client or prospective client.

104. By engaging in the conduct described above, Defendants have violated, and unless enjoined, will continue to violate Sections 206(1) and (2) of the Advisers

Act [15 U.S.C. § 80b-6(1) and (2)].

SECOND CLAIM FOR RELIEF

Aiding and Abetting Violations of Sections 206(1) and 206(2) of the Advisers Act (against Defendant Austin)

105. The Commission repeats and incorporates by reference the allegations in paragraphs 1 through 104 as if set forth fully here.

106. As detailed above, Embarcadero violated Sections 206(1) and (2) of the Advisers Act [15 U.S.C. § 80b-6(1) and (2)].

107. Austin knew or recklessly disregarded that Embarcadero's conduct was improper and knowingly rendered to Embarcadero substantial assistance in that conduct. Austin knew or recklessly disregarded Embarcadero's provision of false information to clients and prospective clients and his role in furthering it. Austin knew the reasons for his termination from January Capital. But he nevertheless sent the false Form CRS to the web developer and to the third-party email service. Further, Austin knew the explanation he provided in his Form U4 was false and either knew or was reckless in not knowing that this false explanation would be referenced in Embarcadero's disclosures to clients.

108. Austin provided substantial assistance to Embarcadero's violation by, for instance, providing the incorrect Form CRS to Embarcadero's website developer and the third-party service that emailed the Form CRS to clients. Austin also provided the false information in his Form U4 that rendered misleading the disclosures eventually made in Embarcadero's Form ADV Part 2A and 2B brochures.

109. As a result, Austin knowingly or recklessly aided, abetted, counseled, commanded, induced, or procured Embarcadero's violation of Sections 206(1) and (2) of the Advisers Act [15 U.S.C. § 80b-6(1) and (2)] and, unless enjoined, is reasonably likely to continue to do so. Thus, Austin aided and abetted Embarcadero's violation of Sections 206(1) and (2) of the Advisers Act.

THIRD CLAIM FOR RELIEF

Fraudulent Conduct by Investment Advisers
Violations of Sections 206(1) and 206(2) of the Advisers Act
(against Defendant Austin)

110. The Commission repeats and incorporates by reference the allegations in paragraphs 1 through 109 as if set forth fully here.

111. At all relevant times, Austin was an "investment adviser" within the meaning of Section 202(a)(11) of the Advisers Act [15 U.S.C. § 80b-2(a)(11)].

112. As detailed above, Austin breached his fiduciary duty to a client when he placed that client in investments that were contrary to the client's instructions.

113. In doing so, Austin, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, acting intentionally, knowingly, or recklessly, employed or is employing devices, schemes, or artifices to defraud clients or potential clients.

114. In doing so, Austin, by use of the mails or any means or instrumentalities of interstate commerce, directly or indirectly, acting intentionally, knowingly, recklessly, or negligently, engaged or is engaging in transactions, practices, and courses of business which operate as a fraud or deceit upon a client or prospective client.

115. By engaging in the conduct described above, Austin violated, and unless enjoined, will continue to violate Sections 206(1) and (2) of the Advisers Act [15 U.S.C. § 80b-6(1) and (2)].

FOURTH CLAIM FOR RELIEF

Material Misstatements in Reports Filed with the Commission
Violations of Section 207 of the Advisers Act
(against Defendants Austin and Embarcadero)

116. The Commission repeats and incorporates by reference the allegations in paragraphs 1 through 115 as if set forth fully here.

117. As detailed above, Defendants willfully made untrue statements of material fact in Embarcadero's Form ADV Part 2A brochures, filed with the Commission on or about December 6, 2023; January 2, 2024; February 5, 2024; May 8, 2024; June 6, 2024; June 27, 2024; July 24, 2024; and August 1, 2024, pursuant to Sections 203 and 204 of the Advisers Act [15 U.S.C. §§ 80b-3 and 80b-4]. Defendants also willfully omitted to state or report material facts required to be stated in the Form ADV. These material misstatements and omissions concerned Austin's disciplinary history.

118. Austin knew or was reckless in not knowing he had a disciplinary event that would be material to a client's or prospective client's evaluation of his advisory business or the integrity of its management.

119. The concealed information was material because a reasonable client would have wanted to know that Austin was terminated for breaching his fiduciary duty to clients and that he had failed to safeguard the personal information of hundreds of clients.

120. Nevertheless, Embarcadero filed with the Commission a Form ADV Part 2A brochure that did not disclose Austin's disciplinary history. As the President and CEO of Embarcadero, Austin had the ultimate authority and control over the statements in Embarcadero's ADV brochures. Accordingly, Austin and Embarcadero made a false filing with the Commission.

121. Thus, Defendants willfully violated, and unless enjoined will continue to violate, Section 207 of the Advisers Act [15 U.S.C. § 80b-7].

FIFTH CLAIM FOR RELIEF

Aiding and Abetting Violations of Section 207 of the Advisers Act (against Defendant Austin)

122. The Commission repeats and incorporates by reference the allegations in paragraphs 1 through 121 as if set forth fully here.

123. As detailed above, Embarcadero violated Section 207 of the Advisers

Act by willfully making untrue statements in the Forms ADV Part 2A brochures listed above and filed with the Commission.

124. Austin knew or recklessly disregarded that Embarcadero's conduct was improper and knowingly rendered to Embarcadero substantial assistance in that conduct.

125. Austin provided substantial assistance to Embarcadero's violation by providing false information in the Form ADV Part 2A brochure stating that he had no disciplinary history.

126. Austin knew or was reckless in not knowing his role in furthering Embarcadero's violation, as he knew the true reasons for his termination, yet he permitted Embarcadero to make a misleading statement in its Form ADV Part 2A brochure filed with the Commission.

127. As a result, Austin knowingly or recklessly aided, abetted, counseled, commanded, induced, or procured Embarcadero's violation of Section 207 of the Advisers Act [15 U.S.C. § 80b-7] and, unless enjoined, is reasonably likely to continue to do so. Thus, Austin aided and abetted Embarcadero's violation of Section 207 of the Advisers Act.

SIXTH CLAIM FOR RELIEF

Aiding and Abetting Violation of Rule 10 of Regulation S-P (against Defendant Austin)

128. The Commission repeats and incorporates by reference the allegations in paragraphs 1 through 127 as if set forth fully here.

129. As detailed above, Firm A violated Rule 10 of Regulation S-P [17 C.F.R. § 248.10] by disclosing nonpublic personal information about a consumer to a nonaffiliated third party without (1) providing the consumer with a privacy notice describing the nonpublic personal information they disclosed; (2) notifying the consumer of the right to opt out of any disclosure; and, (3) affording the consumer a reasonable opportunity to opt out before disclosure is made.

130. Austin knew or recklessly disregarded that Firm A's conduct relating to the disclosure of the clients' nonpublic personal information was improper. Austin knowingly rendered substantial assistance to Firm A in that conduct.

131. Austin aided and abetted Firm A's violations of Rule 10 of Regulation S-P by improperly removing and sending to his business partner nonpublic personal information about Firm A's clients without notice. This information included contact information, account numbers, balances, and fee information, all of which are nonpublic personal information protected by Regulation S-P. Austin did not warn clients that he planned to remove this information from January Capital, nor were clients given the opportunity to opt out. Austin also provided substantial assistance by directing support staff to send nonpublic personal client information to his personal email address and then forwarding that information to his future business partner.

132. Austin knew, or was reckless in not knowing, that his conduct was improper

133. As a result, Austin knowingly or recklessly aided, abetted, counseled, commanded, induced, or procured Firm A's violation of Rule 10 of Regulation S-P and, unless enjoined, is reasonably likely to continue to do so. Thus, Austin aided and abetted Firm A's violation of Rule 10 of Regulation S-P.

PRAYER FOR RELIEF

WHEREFORE, the SEC respectfully requests that the Court:

I.

Enter permanent injunctions prohibiting Defendants from violating Sections 206(1) and 206(2) of the Advisers Act by committing or engaging in specified actions or activities relevant to such violations.

II.

Enter permanent injunctions prohibiting Defendants from violating Section 207

of the Advisers Act.

III.

Enter a permanent injunction prohibiting Austin from aiding and abetting violations of Regulation S-P.

IV.

Enter an injunction restraining and enjoining Austin from, directly or indirectly, acting as or being associated with any broker, dealer, or investment adviser. For the purposes of this injunction, (a) a person is associated with a broker or dealer if such person is a partner, officer, director, or branch manager of such broker or dealer (or occupies a similar status or performs similar functions), directly or indirectly controls, is controlled by, or is under common control with such broker or dealer, or is an employee of such broker or dealer; and (b) a person is associated with an investment adviser if such person is a partner, officer, or director of such investment adviser (or performs similar functions), or directly or indirectly controls or is controlled by such investment adviser, including any employee of such investment adviser.

V.

Order Defendants to pay appropriate civil monetary penalties pursuant to Sections 209(e) and (f) of the Advisers Act [15 U.S.C. §§ 80b-9(e) and (f)].

VI.

Require Embarcadero to disgorge its ill-gotten gains, pursuant to Sections 21(d)(5) and 21(d)(7) of the Securities Exchange Act of 1934 [15 U.S.C. §§ 78u(d)(5) and (7)], plus prejudgment interest.

VII.

Retain jurisdiction over this action to implement and carry out the terms of all orders and decrees that may be entered.

VIII.

Award any other relief that the Court deems just and proper.

Dated: September 10, 2025

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