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9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11
12 **SECURITIES AND EXCHANGE**
13 **COMMISSION,**

14 **Plaintiff,**

15 **vs.**

16 **CRITERION WEALTH**
17 **MANAGEMENT INSURANCE**
18 **SERVICES, INC., ROBERT ALLEN**
19 **GRAVETTE, and MARK ANDREW**
20 **MACARTHUR,**

21 **Defendants.**

Case No.

COMPLAINT

22
23 Plaintiff Securities and Exchange Commission (“SEC” or “Commission”)
24 alleges:

25 **JURISDICTION AND VENUE**

26 1. The Court has jurisdiction over this action pursuant to Sections 209(d),
27 209(e)(1) and 214 of the Investment Advisers Act of 1940 (“Advisers Act”), 15
28 U.S.C. §§ 80b-9(d), 80b-9(e)(1) & 90b-14.

1 otherwise received. Defendants kept their clients in the dark as to all these material
2 facts and, in doing so, they violated their fiduciary duty and defrauded their advisory
3 clients. What's more, these undisclosed compensation arrangements rendered
4 Criterion's Form ADV filings with the Commission materially misleading, and no
5 policies and procedures had been adopted and/or implemented at Criterion to prevent
6 these compliance failures.

7 5. By engaging in this conduct: (i) Criterion violated Sections 206(1),
8 206(2), 206(4), and 207 of the Advisers Act [15 U.S.C. §§ 80b-6(1), 80b-6(2), 80b-
9 6(4), and 80b-7, and Rule 206(4)-7 thereunder, 17 C.F.R. § 275.206(4)-7]; (ii)
10 Gravette violated Sections 206(1), 206(2), and 207 of the Advisers Act [15 U.S.C. §§
11 80b-6(1), 80b-6(2), and 80b-7] and, in the alternative, aided and abetted Criterion's
12 violations of Sections 206(1), 206(2), and 207 of the Advisers Act; and (iii)
13 MacArthur violated Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§
14 80b-6(1) and 80b-6(2)] and, in the alternative, aided and abetted Criterion's
15 violations of Sections 206(1) and 206(2) of the Advisers Act.

16 6. With this complaint, the SEC seeks permanent injunctions prohibiting
17 future violations of the federal securities laws and an order requiring defendants to
18 disgorge their ill-gotten gains with prejudgment interest thereon, and imposing civil
19 penalties.

20 **THE DEFENDANTS**

21 7. Defendant Criterion is a California corporation based in Santa Clarita,
22 California that offers discretionary asset management services. Until September 26,
23 2018, Criterion was registered with the Commission as an investment adviser.
24 Criterion is currently registered as an investment adviser in California and Idaho.

25 8. Defendant Gravette, age 54, resides in Santa Clarita, California. At the
26 present time, he is the sole owner and president of Criterion. From 2014 through
27 2017, Gravette and MacArthur were 50/50 co-owners of Criterion, and Gravette was
28 Criterion's chief compliance officer. Gravette has been a registered representative of

1 the broker-dealer at which Criterion investment advisory clients opened brokerage
2 accounts (“Broker-Dealer”) since November 2006. Gravette holds FINRA Series 7,
3 24, 63, and 65 licenses.

4 9. Defendant MacArthur, age 52, resides in Newhall, California. At the
5 present time, he is the president, managing member and chief compliance officer of a
6 state-registered investment adviser, M2 Financial LLC, which he formed after leaving
7 his employment with Criterion in June 2016. From 2004 to mid- 2016, MacArthur
8 was Criterion’s co-owner and chief investment officer. In mid-2016, MacArthur
9 became an independent contractor for, but remained associated with, Criterion. Like
10 Gravette, MacArthur has been a registered representative of Broker-Dealer since
11 November 2006. MacArthur holds FINRA Series 7, 24, 63, and 65 licenses.

12 **THE ALLEGATIONS**

13 **A. Criterion’s Investment Advisory Business**

14 10. Gravette started an investment advisory business in 2000, and in 2004,
15 he changed the name of that firm to Criterion Wealth Management Insurances
16 Services, Inc.

17 11. Gravette hired MacArthur as a partner, and from 2004 to 2016,
18 MacArthur and Gravette worked with Criterion’s clients as their investment adviser
19 representatives.

20 12. In its Part 2A of Form ADV firm brochure, which Criterion was required
21 to deliver to its investment advisory clients, Criterion described its business as
22 follows:

23 Our firm provides continuous advice to a client regarding the
24 investment of client funds based on the individual needs of the
25 client. Through personal discussions in which goals and
26 objectives based on a client’s particular circumstances are
27 established, we develop a client’s personal investment policy and
28 create and provide investment advisory services to our clients on a
discretionary basis based on that policy.

1 13. In exchange for Gravette’s and MacArthur’s advisory services, Criterion
2 charged clients advisory fees equal to a percentage of the dollar amount of the client’s
3 assets under management.

4 14. At all relevant times, Criterion, Gravette, and MacArthur were
5 “investment advisers” within the meaning of Section 202(a)(11) of the Advisers Act,
6 15 U.S.C. §80b-2(a)(11), as each of them were engaged in the business of providing
7 investment advice as to the value of securities and as to the advisability of investing
8 in, purchasing and selling securities.

9 15. In the relevant period, Gravette and MacArthur were also investment
10 advisers due to their ownership, management, and control of Criterion.

11 16. Criterion represented to clients – in its Form ADV brochures – that it
12 had adopted a Code of Ethics “which sets forth high ethical standards of business
13 conduct that we require of our employees, including compliance with applicable
14 securities laws.”

15 17. Criterion also further represented to its clients –in its Form ADV
16 brochures –that “CME [Criterion] and our personnel owe a duty of loyalty, fairness
17 and good faith towards our clients[.]”

18 18. At all relevant times, defendants understood that receipt of additional
19 undisclosed compensation by Criterion and its management persons or employees
20 would create a conflict of interest that may impair their objectivity when making
21 advisory recommendations.

22 **B. Criterion Invested Client Funds in Private Placements**

23 19. Since 2014, Criterion invested a substantial portion of client funds under
24 its discretionary management in private placement investments.

25 20. As of December 31, 2015, for example, private placement investments
26 comprised about 36% of all of Criterion’s assets under management.

27 21. Before deciding to invest their clients’ funds, Gravette and MacArthur
28 identified certain of these private placement opportunities through their own personal

1 and professional connections.

2 **1. Fund Manager A and Fund Manager B**

3 22. From 2012 to 2017, Criterion, acting through Gravette and MacArthur,
4 recommended that clients invest in a series of real estate investment funds offered by
5 a Midwest-based fund manager (“Fund Manager A”).

6 23. MacArthur was a former colleague and a social acquaintance of Fund
7 Manager A’s principals.

8 24. In 2015 and 2016, Criterion recommended that clients invest in two real
9 estate investment funds offered by a West Coast-based fund manager (“Fund
10 Manager B”).

11 25. Both Gravette and MacArthur were long-time social acquaintances of
12 Fund Manager B’s principals, dating back to the 1980’s, when they attended the same
13 university.

14 26. In both cases, MacArthur and Gravette negotiated arrangements with
15 Fund Manager A and Fund Manager B in which those fund sponsors paid hundreds of
16 thousands of dollars of non-advisory compensation – compensation that ultimately
17 went to MacArthur and Gravette – in exchange for investing Criterion clients’ assets
18 in Fund Manager A’s and Fund Manager B’s real estate investment funds.

19 27. Defendants never disclosed the existence, extent, nature, and details of
20 these side compensation arrangements to their advisory clients, in breach of their
21 fiduciary duty of loyalty, fairness and good faith.

22 **2. Criterion’s compensation arrangement with Fund Manager A**

23 28. From 2012 to 2017, Criterion recommended four real estate investment
24 funds offered by Fund Manager A to its advisory clients.

25 29. With respect to each of those funds, defendants negotiated an
26 undisclosed special compensation arrangement with Fund Manager A.

27 30. Criterion clients held their investments in Fund Manager A’s private
28 placement funds in brokerage accounts that Criterion had opened for them at the

1 Midwest-based Broker-Dealer with which they were both associated.

2 31. The special undisclosed compensation arrangements that Criterion had
3 with Fund Manager A provided that Fund Manager A would make payments to
4 Broker-Dealer, 95% of which were then transferred to MacArthur and Gravette.

5 32. The compensation arrangements, however, caused Fund Manager A to
6 reduce the profit participation that Criterion investors would have otherwise received.

7 33. Since defendants had insisted on receiving non-advisory compensation
8 from Fund Manager A, to offset that cost, Criterion clients were placed in a separate
9 share class or separate feeder fund that paid Criterion investors lower returns than the
10 returns paid to all other investors in the same Fund Manager A funds.

11 34. Because Criterion was the only investment adviser who had negotiated
12 for this side compensation from Fund Manager A, Criterion clients were the only
13 investors placed in these disadvantaged feeder funds or share class.

14 35. All other investors in Fund Manager A's real estate funds received
15 higher investment returns, relative to the Criterion clients, even though their
16 investments were based on the same underlying fund assets.

17 **a. Real Estate Fund 1**

18 36. For example, in 2014, Fund Manager A launched a real estate fund that
19 sought to generate investment income through short-term debt as well as equity
20 investments in commercial real estate ("Real Estate Fund 1").

21 37. At defendants' request, Fund Manager A agreed to pay Criterion an
22 amount equal to 50% of the performance allocation that Fund Manager A was
23 entitled to receive on amounts invested by Criterion's clients for as long as they
24 remained invested in the fund.

25 38. For Class A units of Real Estate Fund 1, investors received all returns
26 until profits achieved a 6% annualized return threshold (*i.e.*, a 6% "hurdle"). At that
27 point, Fund Manager A was entitled to a performance allocation of 100% of all new
28 investment income until its profit participation had caught up such that 80% of all

1 profits to date had been allocated to Class A investors, and 20% had been allocated to
2 Fund Manager A. Then, for any investment returns after that, Class A investors and
3 Fund Manager A shared in investment income at 80% and 20%, respectively.

4 39. Fund Manager A agreed to these performance allocation terms – in
5 short, an 80/20 profit split in favor of investors with a 6% hurdle – with respect to all
6 non-Criterion investors in Real Estate Fund 1.

7 40. Because Criterion had insisted on taking half of Fund Manager A’s
8 performance allocation for the investments of Criterion clients in Real Estate Fund 1,
9 Fund Manager A created Class C units, a separate share class designated for Criterion
10 clients only.

11 41. For Class C units of Real Estate Fund 1, investors received all returns
12 until profits achieved a 6% annualized return threshold (*i.e.*, a 6% “hurdle”). At that
13 point, Fund Manager A was entitled to a performance allocation of 100% of all new
14 investment income until its profit participation had caught up such that 60% of all
15 profits to date had been allocated to Class C investors, and 40% had been allocated to
16 Fund Manager A. Then, for any investment returns after that, Class C investors and
17 Fund Manager A shared in investment income at 60% and 40%, respectively.

18 42. Fund Manager A agreed to these performance allocation terms – in
19 short, a 60/40 profit split in favor of investors with a 6% hurdle – with respect to all
20 Criterion investors in Real Estate Fund 1.

21 43. Besides the lower profit split for Class C units (60% of returns to
22 investors in Class C versus 80% of returns to investors in Class A), there was no
23 difference between the Class A and Class C units.

24 44. Criterion, MacArthur, and Gravette knew that this compensation
25 arrangement would depress Criterion clients’ investment returns because, *inter alia*,
26 Fund Manager A’s principal told them.

27 45. Defendants did not disclose to their clients that they were restricted to
28 Class C units, while other investors could invest in Class A units.

1 46. Defendants did not disclose to their clients that Class C units would pay
2 lower investment returns than Class A units if Real Estate Fund 1's performance
3 exceeded the 6% hurdle.

4 47. Defendants did not disclose to their clients that Criterion, through
5 Broker-Dealer, had negotiated an agreement with Fund Manager A which entitled
6 them to a portion of the investment returns that Criterion investors would otherwise
7 have received, and that this compensation arrangement created a conflict of interest
8 between defendants and their clients.

9 **b. Real Estate Fund 2**

10 48. In 2015, Fund Manager A launched a new real estate fund that sought to
11 exploit idiosyncratic price dislocations among commercial real estate assets in the
12 Midwest.

13 49. At defendants' request, Fund Manager A agreed to pay Criterion an
14 amount equal to 50% of the "carried interest" (*i.e.*, the back-end profits allocated to
15 Fund Manager A for managing Real Estate Fund 2) that Fund Manager A was
16 entitled to receive on amounts invested by Criterion's clients in Real Estate Fund 2.

17 50. Rather than creating a separate share class for Criterion clients, Fund
18 Manager A established two separate Real Estate 2 "feeder" funds – one for non-
19 Criterion investors, and one for Criterion investors ("Default Real Estate Fund 2" and
20 "Criterion Real Estate Fund 2," respectively).

21 51. For Default Real Estate Fund 2, investors received all investment returns
22 until profits achieved an 8% annualized return threshold (*i.e.*, an 8% "hurdle"). At
23 that point, Fund Manager A was entitled to carried interest equal to 100% of all new
24 investment income until its profit participation had caught up such that 80% of all
25 profits to date had been allocated to Default Real Estate Fund 2 investors, and 20%
26 had been allocated to Fund Manager A. Then, for any investment returns after that,
27 Default Real Estate Fund 2 investors and Fund Manager A shared in investment
28 income at 80% and 20%, respectively.

1 52. Fund Manager A agreed to these carried interest terms – in short, an
2 80/20 profit split in favor of investors with an 8% hurdle – with respect to all non-
3 Criterion investors in Real Estate Fund 2.

4 53. Because Criterion’s compensation arrangement with Fund Manager A
5 entitled it to half of Fund Manager A’s carried interest on the investments of Criterion
6 clients in Real Estate Fund 2, Fund Manager A created Criterion Real Estate Fund 2,
7 a separate feeder fund designated for Criterion clients only.

8 54. For investors in Criterion Real Estate Fund 2, investors received all
9 investment returns until profits achieved an 8% annualized return threshold (*i.e.*, an
10 8% “hurdle”). At that point, Fund Manager A was entitled to carried interest equal to
11 100% of all new investment income until its profit participation had caught up such
12 that 60% of all profits to date had been allocated to Criterion Real Estate Fund 2
13 investors, and 40% had been allocated to Fund Manager A. Then, for any investment
14 returns after that, Criterion Real Estate Fund 2 investors and Fund Manager A shared
15 in investment income at 60% and 40%, respectively.

16 55. Fund Manager A agreed to these carried interest terms – in short, a 60/40
17 profit split in favor of investors with an 8% hurdle – with respect to all Criterion
18 investors in Real Estate Fund 2.

19 56. Besides the lower profit split for Criterion investors (60% of post-hurdle
20 returns to Criterion investors versus 80% of post-hurdle returns to all other investors),
21 there was no difference between Criterion Real Estate Fund 2 and Default Real Estate
22 Fund 2.

23 57. Criterion, MacArthur, and Gravette knew that this compensation
24 arrangement would depress Criterion clients’ investment returns, *inter alia*, because
25 Fund Manager A’s principal told them.

26 58. Defendants did not disclose to their clients that they were restricted to
27 investments in a Criterion Real Estate Fund 2, while other investors could invest in
28 Default Real Estate Fund 2, which yielded potentially higher returns.

1 59. Defendants did not disclose to their clients that investments in Criterion
2 Real Estate Fund 2 would pay lower investment returns than investments in Default
3 Real Estate Feeder Fund 2 if Real Estate Fund 2's performance exceeded the 8%
4 hurdle.

5 60. Defendants did not disclose to their clients that Criterion, through
6 Broker-Dealer, had negotiated an agreement with Fund Manager A which entitled it
7 to a portion of the investment returns that Criterion investors would otherwise have
8 received, and that this compensation arrangement created a conflict of interest
9 between defendants and their clients.

10 **3. Criterion's compensation arrangement with Fund Manager B**

11 61. Criterion and Fund Manager B's business relationship had dated back to
12 2008, and in prior investments with Fund Manager B's real estate funds, Criterion
13 had negotiated arrangements to receive referral fees that continued to pay out over
14 time ("trailing referral fees") similar to that described below.

15 62. In 2015 and 2016, Fund Manager B launched two real estate funds
16 ("Real Estate Fund 3" and "Real Estate Fund 4").

17 63. Real Estate Fund 3 and Real Estate Fund 4 both invested in real estate in
18 San Diego County, and promised investors an annual preferred return of 8% on their
19 net capital contributions.

20 64. Criterion recommended Real Estate Fund 3 and Real Estate Fund 4 to its
21 clients, and defendants similarly devised a special –and undisclosed –compensation
22 arrangement with the Fund Manager B.

23 65. Criterion clients held their investments in Fund Manager B's private
24 placement funds in brokerage accounts that Criterion had opened for them at Broker-
25 Dealer.

26 66. Fund Manager B agreed to pay Criterion a trailing referral fee of 2%,
27 every year, based on the amount of capital invested by Criterion clients in Real Estate
28 Fund 3 and Real Estate Fund 4.

1 67. Fund Manager B first paid these referral fees to Broker-Dealer, which
2 then transferred 95% of those amounts to defendants.

3 68. No other registered representative of Broker-Dealer besides MacArthur
4 and Gravette referred investors to Real Estate Fund 3 and Real Estate Fund 4.

5 69. Criterion clients ultimately accounted for half of all investors in Real
6 Estate Fund 3 and Real Estate Fund 4.

7 70. Defendants did not disclose to Criterion clients that their compensation
8 arrangement with Fund Manager B created a conflict of interest between defendants
9 and their clients.

10 **C. Defendants' Failure to Disclose Their Conflicts of Interest and**
11 **Misleading Form ADV's**

12 71. Defendants failed to disclose the material conflicts of interest that arose
13 from Criterion's special compensation arrangements with Fund Manager A and Fund
14 Manager B in its Forms ADV or otherwise.

15 72. Prior to September 26, 2018, Criterion was an investment adviser
16 registered with the Commission. Criterion was therefore required to file and annually
17 update its disclosure in Forms ADV. Criterion was also required to provide advisory
18 clients with certain disclosures in brochures and brochure supplements on Forms
19 ADV Part 2A and Part 2B.

20 73. The general instructions to Form ADV Part 2A requires investment
21 advisers to disclose all material conflicts of interest between the adviser and clients,
22 whether in Part 2 of Form ADV or by some other means.

23 74. Moreover, Item 14 of Form ADV Part 2A requires investment advisers
24 to disclose all economic benefits provided to the advisory firm from external sources,
25 as well as all conflicts of interest.

26 75. Except for its 2017 Form ADV, Gravette signed each of Criterion's
27 Forms ADV Part 1 and when doing so, certified under penalty of perjury that the
28 information and statements made in exhibits and any other information submitted –

1 including Criterion's Form ADV Part 2A firm brochure and any Form ADV Part 2B
2 firm brochure supplements – were true and correct and did not omit material
3 information.

4 76. In addition, Gravette had responsibility under Criterion's compliance
5 manual for reviewing the firm's Forms ADV Part 1 and Part 2 and any supporting
6 information for those filings.

7 77. In Forms ADV filed by Criterion on or about March 10, 2014, March 17,
8 2015, and March 30, 2016, Criterion failed to disclose the material conflicts of
9 interest arising from defendants' compensation arrangements with Fund Manager A
10 and Fund Manager B. Reasonable investors would have considered information
11 concerning those compensation arrangements material because such arrangements
12 could affect defendants' ability to render disinterested investment advice.

13 78. With respect to Criterion's compensation arrangement with Fund
14 Manager A, the firm's Forms ADV did not disclose all material facts, including that
15 Criterion clients were restricted to investing in Class C units of Real Estate Fund 1,
16 while other investors could invest in Class A units of Real Estate Fund 1.

17 79. With respect to Criterion's compensation arrangement with Fund
18 Manager A, the firm's Forms ADV did not disclose all material facts, including that
19 Class C units of Real Estate Fund 1 paid potentially lower investment returns than
20 Class A units of Real Estate Fund 1.

21 80. With respect to Criterion's compensation arrangement with Fund
22 Manager A, the firm's Forms ADV did not disclose all material facts, including that
23 Criterion had negotiated for itself a portion of the investment returns that Criterion
24 clients otherwise would have received in Real Estate Fund 1, and that this
25 compensation arrangement created a conflict of interest.

26 81. With respect to Criterion's compensation arrangement with Fund
27 Manager A, the firm's Forms ADV did not disclose all material facts, including that
28 clients were restricted to investing in Criterion Real Estate Fund 2, while other

1 investors could invest in a Default Real Estate Fund 2 that would likely yield higher
2 returns.

3 82. With respect to Criterion's compensation arrangement with Fund
4 Manager A, the firm's Forms ADV did not disclose all material facts, including that
5 investments in Criterion Real Estate Fund 2 would likely pay lower investment
6 returns than investments in Default Real Estate Feeder Fund 2.

7 83. With respect to Criterion's compensation arrangement with Fund
8 Manager A, the firm's Forms ADV did not disclose all material facts, including that
9 Criterion had negotiated for itself a portion of the investment returns that Criterion
10 clients otherwise would have received in Real Estate Fund 2, and that this
11 compensation arrangement created a conflict of interest.

12 84. Defendants' special compensation arrangements with Fund Manager A
13 inclined them to render advice to Criterion's clients that was not disinterested, and
14 defendants' failure to disclose this conflict precluded clients from making informed
15 investment decisions.

16 85. With respect to Criterion's special compensation arrangement with Fund
17 Manager B, the firm's Forms ADV did not disclose all material facts, including that
18 Fund Manager B had agreed to pay Criterion a trailing referral fee of 2%, every year,
19 based on the amount of capital invested by Criterion clients in Real Estate Fund 3 and
20 Real Estate Fund 4, and that this compensation arrangement created a conflict of
21 interest.

22 86. Defendants' compensation arrangements with Fund Manager B inclined
23 them to render advice that was not disinterested, and defendants' failure to disclose
24 this conflict precluded clients from making informed investment decisions.

25 87. Moreover, because the trailing referral fee was ongoing and would
26 continue to be paid by Fund Manager B through the duration of a Criterion client's
27 investment, defendants had a conflict of interest arising from their incentive to
28 recommend that clients continue to invest in Fund Manager B's funds, rather than

1 exit those funds as they were permitted to do under the terms of their investment.
2 Defendants' failure to disclose this conflict precluded clients from providing their
3 informed consent to the conflict of interest.

4 88. Rather, in its Forms ADV, Criterion disclosed only the general conflicts
5 of interest occasioned by the association of unnamed Criterion employees with
6 Broker-Dealer:

7
8 Associated persons of [Criterion] are registered securities
9 representatives and investment adviser representatives of [Broker-
10 Dealer,] a registered broker-dealer ... In these capacities
11 associated persons may recommend securities, insurance,
12 advisory, or other products or services, and receive compensation
13 if products are purchased through [Broker-Dealer.] Thus, a
14 conflict of interest exists between the interests of the associated
15 persons and those of the advisory clients.

16 89. This language was misleading as it did not disclose the material facts
17 about the conflicts of interest alleged above.

18 90. This language did not alert clients to the source, nature, scope, and
19 ramifications of the actual financial conflicts of interest created by Criterion's
20 compensation arrangements with Fund Manager A and Fund Manager B.

21 91. This language misleadingly suggested, instead, that Criterion's
22 investment adviser representatives might receive traditional transaction-based
23 compensation in their capacity as registered representatives of a broker dealer that
24 was simply executing securities transactions for Criterion clients.

25 92. This language did not disclose the truth – that for client investments in
26 Fund Manager A's funds, defendants were actually receiving a portion of the
27 investment returns that would have otherwise been paid to their clients, and that for
28 client investments in Fund Manager B's funds, defendants were in fact actually
receiving ongoing payments based on the amounts that their clients had invested in
those funds.

1 93. Instead, in Item 14 of Criterion’s Forms ADV Part 2A, the firm falsely
2 represented that “It is CWM’s policy not to accept or allow our related persons to
3 accept any form of compensation, including cash, sales awards or other prizes, from a
4 non-client in conjunction with the advisory services we provide to our clients.”

5 94. Staff from the SEC’s Office of Compliance Inspections and
6 Examinations (“OCIE”) conducted an examination of Criterion in 2016 that was
7 completed in April 2017. The OCIE staff provided Criterion with a deficiency letter
8 that detailed, among other things, the undisclosed conflicts of interest presented by its
9 financial arrangements with third-party fund managers, including Fund Manager A
10 and Fund Manager B.

11 95. In June 2017, Criterion prepared a letter to clients acknowledging that its
12 compensation arrangements with Fund Manager A, Fund Manager B, and other third-
13 party fund managers had created potential conflicts of interest that Criterion had
14 failed to fully disclose:

15 Given the potentially considerable amounts of non-advisory
16 compensation from the above-mentioned funds, we should have
17 provided more disclosure around the potential conflicts of interest
18 in offering these funds to our clients.... Having known in more
19 detail these arrangements would have left our clients better
informed in making a decision to invest.

20 96. The June 2017 letter continued, however, to withhold the whole truth.
21 For example, Criterion’s letter did not disclose that Criterion clients were steered
22 away from investments with more favorable performance allocation formulas such as
23 Class A units of Real Estate Fund 1 because of Criterion’s compensation
24 arrangements with Fund Manager A. The June 2017 letter failed to disclose that its
25 compensation arrangements with Fund Manager A had in fact resulted – and
26 continued to result – in lower returns to Criterion clients, relative to all other
27 investors in Fund Manager A’s funds.
28

1 **D. Criterion’s Inadequate Compliance Policies and Procedures**

2 97. Criterion did not conduct annual reviews of the adequacy of its
3 compliance policies and procedures and the effectiveness of its implementation.

4 98. Although Criterion’s written policies and procedures required the firm to
5 conduct review and testing of its compliance framework at least annually, Criterion
6 did not do this. Criterion failed to conduct the required annual reviews from at least
7 2008 to 2014, and failed to adopt appropriate compliance procedures from at least
8 2008 through 2016.

9 99. During a 2014 compliance review with an outside compliance consulting
10 (“Compliance Consultant”), the Compliance Consultant communicated to Criterion
11 the following findings: (i) the firm had not been complying with the requirement that
12 advisers annually review their policies and procedures and specifically tailor those
13 policies to fit the needs of their advisory business; (ii) the firm was still using a
14 compliance manual that had last been updated in 2008 and the compliance manual
15 needed to be updated; and (iii) key topics were missing from Criterion’s written
16 policies and procedures, including sections describing Criterion’s investment process,
17 fee calculations, valuation of private placement investments held by clients, and due
18 diligence.

19 100. Criterion did not implement many of the Compliance Consultant’s
20 recommendations. When Criterion was examined by the SEC’s OCIE examination
21 staff in 2016, two years after its 2014 compliance review, Criterion had not
22 completed updating its policies and procedures and was still using its 2008
23 compliance manual.

24 101. Criterion’s written policies and procedures also required the firm to
25 maintain its Form ADV, Part 2A on a “current and accurate” basis.

26 102. As discussed above, notwithstanding this requirement, Criterion’s Forms
27 ADV did not disclose the conflicts of interest arising from its compensation
28 arrangements with Fund Manager A and Fund Manager B.

1 103. Moreover, before 2017, Criterion had failed to deliver to clients Form
2 ADV Part 2B firm brochure supplements to its clients.

3 **E. Criterion Concealed the Compensation Arrangements From Its**
4 **Outside Compliance Consultant**

5 104. When working with Compliance Consultant during its 2014 compliance
6 review of Criterion, Criterion and Gravette did not tell Compliance Consultant that
7 Criterion was receiving trailing commissions from fund managers, or that this income
8 represented a substantial portion of Criterion's overall income from operations.

9 105. Had Compliance Consultant known these facts, he would have
10 recommended enhanced disclosure of the arrangements because trailing commissions
11 create unique conflicts of interest requiring disclosure, including the risk of double
12 compensation to the investment adviser to the client's detriment and the risk that the
13 adviser would recommend that a client remain invested in the fund, even if not in the
14 client's best interest, due to the adviser's ongoing receipt of commissions.

15 **F. Gravette's and MacArthur's Scierter and Unreasonable Conduct as**
16 **Investment Advisers**

17 106. At all relevant times, Gravette was a person who, for compensation,
18 engaged in the business of advising others as to the value of securities or as to the
19 advisability of investing in, purchasing, or selling securities.

20 107. During the relevant period, Gravette was the founder, 50% partner, and
21 president, and he made investment decisions for Criterion's advisory clients.

22 108. During most of the relevant period, Gravette served as chief compliance
23 officer for Criterion.

24 109. At all relevant times, MacArthur was a person who, for compensation,
25 engaged in the business of advising others as to the value of securities or as to the
26 advisability of investing in, purchasing, or selling securities.

27 110. In the relevant period, MacArthur was Criterion's chief investment
28 officer and 50% partner, and he made investment decisions for Criterion's advisory

1 clients.

2 111. When MacArthur and Gravette were partners in Criterion, they equally
3 controlled Criterion, and equally split the advisory fees and other compensation that
4 Criterion earned in connection with giving investment advice.

5 112. As registered investment advisers, Gravette and MacArthur both knew
6 that Criterion had a fiduciary duty to act in the best interest of its clients and to
7 disclose to clients all material information relating to a potential investment.

8 113. In spite of that fiduciary duty, Gravette and MacArthur knowingly
9 placed their clients in lower-performing, higher cost funds (a consequence of the
10 separate compensation that they had negotiated for from Fund Manager B), and
11 enriched themselves at their clients' expense.

12 114. In addition, Gravette and MacArthur concealed from Compliance
13 Consultant the full extent of their compensation arrangements with third-party fund
14 managers.

15 115. From April 2014 to October 2018, defendants received approximately
16 \$1.1 million in undisclosed non-advisory compensation from Fund Manager A and
17 Fund Manager B.

18 116. Given the sums of compensation at issue and the frequency in which
19 Criterion was placing clients in private placements for which the firm was receiving
20 non-advisory compensation, Gravette and MacArthur's failure to disclose their
21 obvious conflicts of interest was willful, knowing, intentional, or reckless, and their
22 course of conduct was further unreasonable.

23 117. Because Gravette and MacArthur co-owned and controlled Criterion,
24 and acted within the scope of their authority as officers and/or associates of Criterion,
25 their willfulness, knowledge, recklessness and negligence can be imputed to Criterion.

26 **G. Gravette and MacArthur Aided and Abetted Criterion's Violations of**
27 **Sections 206(1) & (2) of the Advisers Act**

28 118. Both Gravette and MacArthur provided substantial assistance to

1 Criterion's violation of Sections 206(1) & (2) of the Advisers Act, by making special
2 compensation agreements with Fund Managers A & B, receiving compensation based
3 on those agreements, and by failing to disclose, in violation of Criterion's fiduciary
4 duty to its clients, those special compensations agreements in Criterion's Form ADV
5 or otherwise.

6 119. Gravette and MacArthur's failure to disclose their obvious conflicts of
7 interest was willful, knowing, intentional, or reckless, and their course of conduct was
8 further unreasonable.

9 **H. Statute of Limitations and Tolling Agreements**

10 120. On information and belief, Criterion's, Gravette's and MacArthur's
11 failure to disclose their financial conflicts of interests as a result of their
12 compensation arrangements with Fund Manager A and B has been ongoing and
13 continuous.

14 121. In addition, Criterion, Gravette and MacArthur entered into two tolling
15 agreements with the Commission for the periods April 1, 2019 through September 30,
16 2019, and November 7, 2019 through March 2, 2020. Collectively these agreements
17 toll the running of any limitations period or any other time-related defenses alleged in
18 this Complaint for a period of 299 days.

19 **FIRST CLAIM FOR RELIEF**

20 **Violations of Section 206(1) of the Advisers Act**

21 **(against all Defendants)**

22 122. The SEC realleges and incorporates by reference paragraphs 1 through
23 121 above.

24 123. Criterion, Gravette, and MacArthur are "investment advisers" within the
25 meaning of Section 202(a)(11) of the Advisers Act, 15 U.S.C. §80b-2(a)(11). Until
26 September 2018, Criterion was registered with the SEC as an investment adviser.
27 Criterion, Gravette, and MacArthur are each in the business of providing investment
28 advice concerning securities for compensation. In the relevant period, Gravette and

1 MacArthur were also investment advisers due to their ownership, management, and
2 control of Criterion.

3 124. Criterion, Gravette, and MacArthur, knowingly or recklessly, employed
4 a device, scheme or artifice to defraud their advisory clients by making special
5 compensation agreements with Fund Managers A and B and by failing to disclose the
6 material conflicts of interest inherent in their receipt of side compensation from the
7 fund sponsors for investing Criterion clients' money in those sponsors' funds.

8 125. Criterion, Gravette, and MacArthur had a financial incentive to
9 recommend that their clients invest and further keep their capital in those funds going
10 forward; and for two of the subject real estate funds, the undisclosed compensation
11 that defendants negotiated for compensation that caused an actual reduction in the
12 investment returns that defendants' advisory clients would have otherwise received.

13 126. By engaging in the conduct described above, Criterion, Gravette, and
14 MacArthur, each of them, directly or indirectly, by use of the mails or any means or
15 instrumentality of interstate commerce, employed a device, scheme, or artifice to
16 defraud their advisory clients.

17 127. By engaging in the conduct described above, Criterion, Gravette, and
18 MacArthur violated, and unless restrained and enjoined will continue to violate,
19 Section 206(1) of the Advisers Act, 15 U.S.C. §80b-6(1).

20 **SECOND CLAIM FOR RELIEF**

21 **Violations of Section 206(2) of the Advisers Act**
22 **(against all Defendants)**

23 128. The SEC realleges and incorporates by reference paragraphs 1 through
24 121 above.

25 129. Criterion, Gravette, and MacArthur are "investment advisers" within the
26 meaning of Section 202(a)(11) of the Advisers Act, 15 U.S.C. §80b-2(a)(11). Until
27 September 2018, Criterion was registered with the SEC as an investment adviser.
28 Criterion, Gravette, and MacArthur are each in the business of providing investment

1 advice concerning securities for compensation. In the relevant period, Gravette and
2 MacArthur were also investment advisers due to their ownership, management, and
3 control of Criterion.

4 130. Criterion, Gravette, and MacArthur, acting negligently and in violation
5 of applicable standards of care, engaged in transactions, practices, or courses of
6 business that operated as a fraud or deceit upon their advisory clients by making
7 special compensation agreements with Fund Managers A and B and by failing to
8 disclose the material conflicts of interest inherent in their receipt of side
9 compensation from fund sponsors for investing Criterion clients' money in those
10 sponsors' funds.

11 131. Criterion, Gravette, and MacArthur had a financial incentive to
12 recommend that their clients invest and further keep their capital in those funds going
13 forward; and for two of the subject real estate funds, the undisclosed compensation
14 that defendants negotiated for compensation which caused an actual reduction in the
15 investment returns that defendants' advisory clients would have otherwise received.

16 132. By engaging in the conduct described above, Criterion, Gravette, and
17 MacArthur, each of them, directly or indirectly, by use of the mails or any means or
18 instrumentality of interstate commerce, engaged in transactions, practices, or courses
19 of business that operated as a fraud or deceit upon their advisory clients.

20 133. By engaging in the conduct described above, Criterion, Gravette, and
21 MacArthur violated, and unless restrained and enjoined will continue to violate,
22 Section 206(2) of the Advisers Act, 15 U.S.C. §80b-6(2).

23 **THIRD CLAIM FOR RELIEF**

24 **Violations of Section 207 of the Advisers Act** 25 **(against Defendants Criterion and Gravette)**

26 134. The SEC realleges and incorporates by reference paragraphs 1 through
27 121 above.

28 135. Section 207 of the Advisers Act, 15 U.S.C. § 80b-7, provides that it is

1 unlawful for any person willfully to make any untrue statement of a material fact in
2 any registration application or report filed with the Commission under Section 203, or
3 to omit to state in any such application or report any material fact which is required to
4 be stated therein.

5 136. Criterion made untrue statements in Forms ADV filed or deemed filed
6 with the Commission by failing to disclose all material facts of the compensation
7 arrangements alleged above, and by failing to explain why those arrangements
8 created a conflict of interest. These misleading statements and omissions concerning
9 potential conflicts of interest and compensation were material, and concerned
10 information that was required to be disclosed in Criterion's Forms ADV.

11 137. As alleged above, Gravette signed Criterion's Forms ADV and was
12 responsible for their review. In signing Criterion's Forms ADV, Gravette certified
13 under penalty of perjury that the information and statements made in each ADV,
14 including all exhibits and other information submitted, were true and correct and did
15 not omit required information.

16 138. As alleged above, Gravette's failure to disclose their obvious conflicts of
17 interest was willful, knowing, intentional, or reckless. Because Gravette either co-
18 owned or owned and controlled Criterion, and acted within the scope of his authority
19 as President and Chief Compliance Officer of Criterion in reviewing, signing, and
20 submitting Criterion's Forms ADV, his willfulness, knowledge, intent, or
21 recklessness can be imputed to Criterion.

22 139. By engaging in the conduct described above, Criterion and Gravette
23 willfully violated, and unless restrained and enjoined will continue to violate, Section
24 207 of the Advisers Act, 15 U.S.C. §80b-7.

25 **FOURTH CLAIM FOR RELIEF**

26 **Violations of Section 206(4) of the Advisers Act and Rule 206(4)-7 Thereunder**
27 **(against Defendant Criterion)**

28 140. The SEC realleges and incorporates by reference paragraphs 1 through

1 121 above.

2 141. Rule 206(4)-7 under Section 206(4) of the Advisers Act requires
3 registered investment advisers to adopt and implement written policies and
4 procedures that are reasonably designed to prevent violations of the Advisers Act and
5 its rules. Rule 206(4)-7 also requires an investment adviser to conduct an annual
6 review of both the adequacy of its written policies and procedures and the
7 effectiveness of their implementation.

8 142. Criterion violated Rule 206(4)-7 by failing to adopt written policies and
9 procedures reasonably designed to prevent Advisers Act violations. Even though
10 private placement investments comprised a significant component of its business,
11 Criterion's compliance manual failed to address due diligence and valuation of
12 private placements. Moreover, from 2008 through at least 2016, Criterion failed to
13 conduct its required annual review of its compliance policies, procedures, and
14 manual. Last, from 2008 through at least 2016, Criterion did not implement written
15 policies and procedures requiring full and accurate disclosures in its Forms ADV,
16 which were materially misleading in light of Criterion's undisclosed conflicts of
17 interest arising from its compensation arrangements with third-party fund sponsors.

18 143. By engaging in the conduct described above, Defendant Criterion
19 violated, and unless restrained and enjoined will continue to violate, Section 206(4)
20 of the Advisers Act, 15 U.S.C. §80b-4, and Rule 206(4)-7 thereunder, 17 C.F.R. §
21 275.206(4)-7.

22 **FIFTH CLAIM FOR RELIEF**

23 **Aiding and Abetting Violations of Sections 206(1), 206(2), and 207 of the**
24 **Advisers Act**
25 **(against Defendant Gravette)**

26 144. The SEC realleges and incorporates by reference paragraphs 1 through
27 121 above.

28 145. By reason of the conduct described above, Defendant Criterion violated

1 Sections 206(1), 206(2) and 207 of the Advisers Act, 15 U.S.C. §§ 80b-6(1), 80b-
2 6(2), and 80b-6(7).

3 146. In the alternative, by reason of his conduct described above, Defendant
4 Gravette knowingly and recklessly provided substantial assistance to, and thereby
5 aided and abetted Criterion in its violations of Sections 206(1), 206(2) and 207 of the
6 Advisers Act.

7 147. By engaging in the conduct described above, Defendant Gravette has
8 violated, and unless restrained and enjoined, is reasonably likely to continue to
9 violate, Section 209(f) of the Advisers Act, 15 U.S.C. §80b-9(f).

10 **SIXTH CLAIM FOR RELIEF**

11 **Aiding and Abetting Violations of Sections 206(1) and 206(2) of the Advisers Act**
12 **(against Defendant MacArthur)**

13 148. The SEC realleges and incorporates by reference paragraphs 1 through
14 121 above.

15 149. By reason of the conduct described above, Defendant Criterion violated
16 Sections 206(1) and 206(2) of the Advisers Act, 15 U.S.C. §§ 80b-6(1) and 80b-6(2).

17 150. In the alternative, by reason of his conduct described above, Defendant
18 MacArthur knowingly and recklessly provided substantial assistance to, and thereby
19 aided and abetted Criterion in its violations of Sections 206(1) and 206(2) of the
20 Advisers Act.

21 151. By engaging in the conduct described above, Defendant MacArthur has
22 violated, and unless restrained and enjoined, is reasonably likely to continue to
23 violate, Section 209(f) of the Advisers Act, 15 U.S.C. §80b-9(f).

24 **PRAYER FOR RELIEF**

25 WHEREFORE, the SEC respectfully requests that the Court:

26 **I.**

27 Issue findings of fact and conclusions of law that Defendants committed the
28 alleged violations.

1 **II.**

2 Issue judgments, in forms consistent with Rule 65(d) of the Federal Rules of
3 Civil Procedure, permanently enjoining Criterion, and its officers, agents, servants,
4 employees and attorneys, and those persons in active concert or participation with
5 any of them, who receive actual notice of the judgment by personal service or
6 otherwise, and each of them, from violating Section 206(1) of the Advisers Act [15
7 U.S.C. § 80b-6(1)], Section 206(2) of the Advisers Act [15 U.S.C. §80b-6(2)],
8 Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-7
9 thereunder [17 C.F.R. § 275.206(4)-7], and Section 207 of the Advisers Act [15
10 U.S.C. § 80b-6(7)], .

11 **III.**

12 Issue judgments, in forms consistent with Rule 65(d) of the Federal Rules of
13 Civil Procedure, permanently enjoining Gravette, and his agents, servants, employees
14 and attorneys, and those persons in active concert or participation with any of them,
15 who receive actual notice of the judgment by personal service or otherwise, and each
16 of them, from violating Section 206(1) of the Advisers Act [15 U.S.C. § 80b-6(1)],
17 Section 206(2) of the Advisers Act [15 U.S.C. §80b-6(2)], Section 207 of the
18 Advisers Act [15 U.S.C. § 80b-6(7)], and Section 209(f) of the Advisers Act [15
19 U.S.C. § 80b-9(f)].

20 **IV.**

21 Issue judgments, in forms consistent with Rule 65(d) of the Federal Rules of
22 Civil Procedure, permanently enjoining MacArthur, and his agents, servants,
23 employees and attorneys, and those persons in active concert or participation with
24 any of them, who receive actual notice of the judgment by personal service or
25 otherwise, and each of them, from violating Section 206(1) of the Advisers Act [15
26 U.S.C. § 80b-6(1)], Section 206(2) of the Advisers Act [15 U.S.C. §80b-6(2)], and
27 Section 209(f) of the Advisers Act [15 U.S.C. § 80b-9(f)].
28

1 **V.**

2 Issue judgments, in forms consistent with Rule 65(d) of the Federal Rules of
3 Civil Procedure, permanently enjoining Criterion, Gravette, and MacArthur, and their
4 officers, agents, servants, employees, and attorneys, and those persons in active
5 concert or participation with any of them, who receive actual notice of the judgment
6 by personal service or otherwise (including MacArthur's officers, agents, and
7 employees at M2 Financial, LLC), from receiving any compensation, beyond an
8 advisory fee paid by or on behalf of a client, from an advisory client's purchase or
9 sale of securities or other investment products unless the following is disclosed, in
10 writing, before the completion of each transaction: (i) the type of compensation; (ii)
11 the recipients of the compensation; (iii) the amount of compensation (or an annual
12 approximation of any compensation, such as with trailing referral fees); (iv) the
13 potential or actual impact of the compensation if any on clients' investment returns;
14 and (v) the corresponding conflict of interest.

15 **VI.**

16 Order Defendants to disgorge all funds received from their illegal conduct,
17 together with prejudgment interest thereon.

18 **VII.**

19 Order Defendants to pay civil penalties under Section 209(e) of the Advisers
20 Act, 15 U.S.C. §80b-6(9)(e).

21 **VIII.**

22 Retain jurisdiction of this action in accordance with the principles of equity and
23 the Federal Rules of Civil Procedure in order to implement and carry out the terms of
24 all orders and decrees that may be entered, or to entertain any suitable application or
25 motion for additional relief within the jurisdiction of this Court.

26 **IX.**

27 Grant such other and further relief as this Court may determine to be just and
28 necessary.

1 Dated: February 11, 2020

2 */s/ Donald W. Searles*

3 DONALD W. SEARLES

4 Attorney for Plaintiff

5 Securities and Exchange Commission

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