

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

**FRANK DAPPAH and
YATALIE CAPITAL MANAGEMENT, a/k/a
YATALIE CAPITAL MANAGEMENT CO,
CREATO FUNDS L.P., a/k/a YATALIE
CAPITAL, INC., a/k/a CREATO FUNDS, L.P.,
a/k/a YATALIE CAPITAL MANAGEMENT
CO.,**

Defendants.

Civil Action No. _____

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

Plaintiff, Securities and Exchange Commission (the “Commission”), files its complaint and alleges that:

SUMMARY

1. This case involves the charging of grossly excessive fees to the clients of a small investment advisory firm, the improper registration by the firm with the Commission, materially false statements by the Defendants to actual and prospective advisory clients and to the Commission, and related violations of the federal securities laws.

2. The defendants in this action are the North Carolina sole proprietorship Yatalie Capital Management (a/k/a Yatalie Capital Management Co, Creato Funds L.P., a/k/a Yatalie Capital,

Inc., a/k/a Creato Funds, L.P., a/k/a Yatalie Capital Management Co. (collectively, “Yatalie”) and Frank Dappah (“Dappah”) (collectively, “Defendants”).

3. Dappah and Yatalie, who have full discretionary authority over all client accounts (many of which are IRAs), took fees far in excess of the amounts authorized by their clients’ advisory agreements, without notifying the clients or obtaining their approval. Between March 2012 and July 2013, Yatalie charged advisory fees of nearly \$75,000 on assets under management averaging approximately \$205,000.

4. One client of Yatalie invested \$22,924.92 on October 30, 2012, and by July 2013, over \$9,200 in unauthorized fees had been taken from her account by Yatalie.

5. Trade-PMR, Inc. (“TPMR”) is the introducing broker and custodian for the majority of Yatalie’s clients. When TPMR questioned Dappah about the validity of his fees, Dappah attempted to conceal the fraud by sending TPMR altered versions of client advisory agreements in an effort to justify the charges.

6. In addition to wrongfully imposing client fees and misappropriating client assets, Yatalie improperly registered with the Commission as an investment adviser; made multiple materially false statements on its Forms ADV, website, and in other advertisements; and lost client advisory agreements.

VIOLATIONS

7. Defendants have engaged in, and, unless restrained and enjoined by this Court, will continue to engage in, acts, practices, schemes and courses of business that constituted and will constitute violations of Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10(b)-5 thereunder [17 C.F.R. § 240.10b-5], as well as Sections

203A, 204, 206(1), 206(2), 206(4), and 207 of the Investment Advisers Act of 1940 [15 U.S.C. §§ 80b-3a, 80b-4, 80b-6(1), 80b-6(2), 80b-6(4), and 80b-7] (“Advisers Act”) and Rules 204-2 and 206(4)-1 thereunder [17 C.F.R. §§ 275.204-2 and 275.206(4)-1].

JURISDICTION AND VENUE

8. The Commission brings this action pursuant to Sections 21(d) and (e) of the Exchange Act [15 U.S.C. §§ 78u(d) and 78u(e)] and Sections 209 and 214 of the Advisers Act [15 U.S.C. §§ 80b-9 and 80b-14] to enjoin Defendants from engaging in the transactions, acts, practices, and courses of business alleged in this complaint, and transactions, acts, practices, and courses of business of similar purport and object, for civil penalties and for other equitable relief.

9. This Court has jurisdiction over this action pursuant to Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa] and Section 214 of the Advisers Act [15 U.S.C. § 80b-14].

10. Defendants, directly and indirectly, made and are making use of the means and instrumentalities of interstate commerce, and of the mails, in connection with the transactions, acts, practices, and courses of business alleged in this complaint, and made use of the mails and means of instrumentality of interstate commerce to effect transactions, or to induce or to attempt to induce the purchase or sale of securities alleged in this complaint.

11. Certain of the transactions, acts, practices, and courses of business constituting violations of the Exchange Act and the Advisers Act occurred in the Western District of North Carolina. In addition, Dappah resides in the Western District of North Carolina and Yatalie’s principal place of business is in the Western District of North Carolina.

12. Defendants, unless restrained and enjoined by this Court, will continue to engage in the transactions, acts, practices, and courses of business alleged in this complaint, and in transactions, acts, practices, and courses of business of similar purport and object.

THE DEFENDANTS

13. **Dappah**, 33, is a resident of Charlotte, North Carolina. Dappah is the principal of Defendant Yatalie, which is a North Carolina sole proprietorship.

14. **Yatalie** is a North Carolina sole proprietorship with its principal place of business in Charlotte, North Carolina. Yatalie is also known as Yatalie Capital Management Co, Creato Funds L.P.; Yatalie Capital, Inc.; Creato Funds, L.P.; and Yatalie Capital Management Co., though it is not a corporation, a limited partnership, or any type of corporate entity (other than a sole proprietorship). Yatalie has been registered with the Commission as investment adviser since November 2010 and has been registered with the State of North Carolina as a sole proprietorship since July 2011.

FACTS

The Excessive Fee Scheme

15. After its founding in late 2010, Yatalie, through Dappah's connections in the insurance industry, obtained clients who would typically sign advisory agreements with Yatalie and simultaneously open a brokerage account with TPMR.

16. On the account applications, clients would typically name Yatalie as their investment adviser, and Dappah would then sign the applications as the "advisor."

17. Clients would fund their accounts through either a cash contribution or a transfer of already-owned securities, and provide Dappah with full discretionary authority over the accounts.

18. The general fee structure established by the advisory agreements is an annual advisory fee of between 1.5% and 3%; a monthly administrative fee of \$35; and a \$25 per transaction “advisor assisted trading fee.”

19. Through TPMPR’s web portal, Dappah has the ability to change the amount of fees charged to the clients under their agreements, and to impose any additional unauthorized fees that he chooses. All fees inputted by Dappah through the TPMPR web portal are deducted from the clients’ accounts and deposited in Yatalie’s sundry account with TPMPR.

20. Dappah has misused the TPMPR web portal to extract additional fees from Yatalie’s clients without notice or authorization. On multiple occasions, the Defendants sold client securities in order to generate a sufficient cash balance from which to take their unauthorized fees.

Dappah Fraudulently Alters Documents to Conceal His Fraud

21. TPMPR asked Dappah about his fee practices in late August 2013. In response to that inquiry, Dappah sent TPMPR five purported advisory agreements. Dappah, however, fraudulently altered the advisory agreements to add language pertaining to fees that was not in the executed agreements.

22. Specifically, Dappah altered the agreements to reflect that he is entitled to charge clients additional fees of \$300 per hour for in-person or telephone consultations.

Other False Statements and Misconduct

23. In addition to taking unauthorized fees as described above, Dappah and Yatalie made additional false and misleading statements in multiple Forms ADV that Yatalie filed with the Commission in 2012 and 2013.

24. Specifically, on at least twelve different Form ADVs filed with the Commission between September 4, 2012 and August 14, 2013, Dappah improperly registered Yatalie with the Commission as an “Internet adviser” under Rule 203A-2(e) of the Advisers Act. Yatalie is not and was not an “Internet adviser” under the Rule, in that it never had assets under management exceeding \$25 million or provided investment advice to all of its clients exclusively through an interactive website.

25. In addition, Yatalie’s June 19, 2013, July 8, 2013, and August 14, 2013 Form ADVs filed with the Commission falsely stated that Yatalie had \$1 million in discretionary assets under management. In fact, Yatalie had approximately \$140,000 in assets under management at the time that it filed those Form ADVs.

26. Further, 14 different Forms ADV filed with the Commission by Yatalie between August 15, 2012 and August 14, 2013 falsely state that 26-50% of Yatalie’s clients are “banking or thrift institutions,” “investment companies,” “business development companies,” “pooled investment vehicles (other than investment companies),” “pension and profit sharing plans (but not the plan participants),” “charitable organizations,” “state or municipal government entities,” and “other investment advisers.” None of Yatalie’s clients fall or have ever fallen into any of those categories.

27. Yatalie’s website contains false and fraudulent statements; namely, that Yatalie has “nearly 120 speculation groups in 30 nations”; that Yatalie has “clients...from nearly every corner of the globe”; and that Yatalie has clients who are “governments, companies, foundations, and millions of individuals.”

28. Dappah falsely and fraudulently stated that Yatalie is a “FINRA member company” on both his personal LinkedIn page and in an online advertising brochure that dates from 2011.

29. Dappah posted a purported client testimonial video to YouTube, praising the quality of the services supposedly provided to the purported client by Yatalie. In fact, the purported client was an actress hired and paid by Dappah, and she was never a client of Yatalie. These facts were not disclosed in the video or elsewhere. The statements disseminated by Dappah were therefore false and misleading.

30. Finally, Dappah has failed to maintain—and purports to have “lost”—certain of the advisory agreements that he entered into with clients of Yatalie.

COUNT I – FRAUD

Violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]

31. Paragraphs 1 through 30 are hereby re-alleged and incorporated herein by reference.

32. From at least March 2012 to at least July 2013, Defendants, in connection with the purchase and sale of securities described herein, by the use of the means and instrumentalities of interstate commerce and by use of the mails, directly and indirectly:

- a. employed devices, schemes, and artifices to defraud;

- b. made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and
- c. engaged in acts, practices, and courses of business which would and did operate as a fraud and deceit upon the purchasers of such securities, all as more particularly described above.

33. Defendants knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud, made untrue statements of material facts and omitted to state material facts, and engaged in fraudulent acts, practices and courses of business. In engaging in such conduct, Defendants acted with scienter; that is, with an intent to deceive, manipulate or defraud or with a severely reckless disregard for the truth.

34. By reason of the foregoing, Defendants, directly and indirectly, have violated and, unless enjoined, will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

COUNT II – FRAUD

Violations of Section 206(1) of the Advisers Act [15 U.S.C. § 80b-6(1)]

35. Paragraphs 1 through 30 are hereby re-alleged and are incorporated herein by reference.

36. From at least March 2012 to at least July 2013, Defendants, acting as investment advisers, using the mails and the means and instrumentalities of interstate commerce, directly and indirectly, employed devices, schemes and artifices to defraud one or more advisory clients and/or prospective clients.

37. Defendants knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud. In engaging in such conduct, Defendants acted with scienter; that is, with intent to deceive, manipulate or defraud or with a severe reckless disregard for the truth.

38. By reason of the foregoing, Defendants, directly and indirectly, have violated, and, unless enjoined, Defendants will continue to violate Section 206(1) of the Advisers Act [15 U.S.C. § 80b-6(1)].

COUNT III – FRAUD

Violations of Section 206(2) of the Advisers Act [15 U.S.C. § 80b-6(2)]

39. Paragraphs 1 through 30 are hereby re-alleged and are incorporated herein by reference.

40. From at least March 2012 to at least July 2013, Defendants, acting as investment advisers, by the use of the mails and the means and instrumentalities of interstate commerce, directly and indirectly, engaged in transactions, practices, and courses of business which would and did operate as a fraud and deceit on one or more advisory clients and/or prospective clients.

41. By reason of the foregoing, Defendants, directly and indirectly, have violated and, unless enjoined, will continue to violate Section 206(2) of the Advisers Act [15 U.S.C. § 80b-6(2)].

COUNT IV – FRAUD

Violations of Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-1 thereunder [17 C.F.R. § 275.206(4)-1]

42. Paragraphs 1 through 30 are hereby re-alleged and are incorporated herein by reference.

43. From at least March 2012 to at least July 2013, Yatalie, while an investment adviser registered with the Commission, and Dappah, while acting as an investment adviser, published, circulated, and distributed advertisements:

- a. That referred, directly or indirectly, to a testimonial concerning Yatalie and/or advice, analysis, reports, or other services rendered by Yatalie; and
- b. That contained untrue statements of material fact, or that were otherwise false or misleading.

44. Yatalie and Dappah knowingly, intentionally, and/or recklessly published, circulated, and distributed such advertisements, and engaged in fraudulent acts, practices, and courses of business. In engaging in such conduct, Yatalie and Dappah acted with scienter; that is, with an intent to deceive, manipulate or defraud or with a severely reckless disregard for the truth.

45. By reason of the foregoing, Yatalie and Dappah, directly and indirectly, violated and, unless enjoined, will continue to violate, Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-1 thereunder [17 C.F.R. § 275.206(4)-1].

COUNT V – IMPROPER REGISTRATION OF INVESTMENT ADVISER

Violations of Section 203A of the Advisers Act [15 U.S.C. § 80b-3a]

46. Paragraphs 1 through 30 are hereby re-alleged and are incorporated herein by reference.

47. Section 203A of the Advisers Act [15 U.S.C. § 80b-3a] provides that no investment adviser that is regulated or required to be regulated as an investment adviser in the state in which it maintains its principal office and place of business shall register under Section 203 of the Advisers Act, unless the adviser has not less than \$25 million in assets under management (or such higher amount as the Commission may deem appropriate by rule) or is an adviser to a

registered investment company. Rule 203A-2 of the Advisers Act [17 C.F.R. § 275.203A-2], among other things, permits an investment adviser that provides investment advice to all of its clients exclusively through an interactive website (except that the investment adviser may provide investment advice to fewer than fifteen clients through other means during the preceding twelve months) to register with the Commission.

48. Despite registering with the Commission as an investment adviser under Rule 203A-2, Yatalie never had \$25 million or more in assets under management and never provided investment advice to its clients through an interactive website.

49. Yatalie never met any of the other criteria that would make it eligible to register with the Commission pursuant to Section 203A of the Advisers Act [15 U.S.C. § 80b-3a].

50. By reason of the foregoing, Yatalie and Dappah violated, and, unless enjoined, will continue to violate, Section 203A of the Advisers Act [15 U.S.C. § 80b-3a].

COUNT VI – FAILURE OF INVESTMENT ADVISER TO RETAIN RECORDS

Violations of Section 204 of the Advisers Act [15 U.S.C. § 80b-4] and Rule 204-2 thereunder [17 C.F.R. § 275.204-2]

51. Paragraphs 1 through 30 are hereby re-alleged and are incorporated herein by reference.

52. Yatalie, at all relevant times was, and since November 2010 has been, an investment adviser registered with the Commission. Dappah, since November 2010, has been acting as an investment adviser.

53. Yatalie and Dappah failed to make, maintain on Yatalie's premises, or keep, true, accurate and current books and records relating to Yatalie's investment advisory business. Specifically, the Defendants failed to maintain on Yatalie's premises, or keep, true, accurate, and current written agreements (or copies thereof) entered into by Yatalie with all of its clients.

54. By reason of the foregoing, Yatalie and Dappah violated, and, unless enjoined, will continue to violate, Section 204 of the Advisers Act [15 U.S.C. § 80b-4] and Rule 204-2 thereunder [17 C.F.R. § 275.204-1].

COUNT VII – MATERIAL MISSTATEMENT IN REGISTRATION APPLICATION

**Violations of Section 207 of the Advisers Act
[15 U.S.C. § 80b-7]**

55. Paragraphs 1 through 30 are hereby re-alleged and are incorporated herein by reference.

56. Yatalie, at all relevant times was, and since at least November 2010 has been, an investment adviser registered with the Commission. Dappah, at all relevant times, and since at least November 2010, has been acting as an investment adviser.

57. Yatalie and Dappah willfully made untrue statements of material fact in Forms ADV that Yatalie filed with the Commission, or willfully omitted to state in such Forms ADV a material fact required to be stated therein.

58. By reason of the foregoing, Yatalie and Dappah violated, and unless enjoined, will continue to violate, Section 207 of the Advisers Act [15 U.S.C. § 80b-7].

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Commission respectfully prays for:

I.

Findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, finding that Dappah and Yatalie committed the violations alleged herein.

II.

Permanent injunctions enjoining Dappah and Yatalie, their agents, servants, employees, and attorneys from violating, directly or indirectly, Section 10(b) of the Exchange Act [15 U.S.C.

§78(b) and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], as well as Sections 203A, 204, 206(1), 206(2), 206(4), and 207 of the Advisers Act [15 U.S.C. §§ 80b-3a, 80b-4, 80b-6(1), 80b-6(2), 80b6-(4), and 80b-7] and Rules 204-2 and 206(4)-1 thereunder [17 C.F.R. §§ 275.204-2 and 275.206(4)-1].

III.

An order requiring the disgorgement by Dappah and Yatalie of all ill-gotten gains or unjust enrichment with prejudgment interest, to effect the remedial purposes of the federal securities laws.

IV.

An order pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)] and Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)] imposing civil penalties against Defendants.

V.

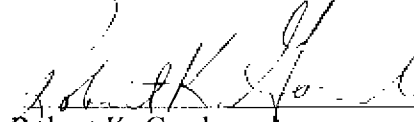
An order authorizing the Commission to take expedited discovery; freezing Dappah's and Yatalie's assets pending further order of the Court; requiring Dappah and Yatalie to provide the Commission with a sworn accounting of all funds received by them pursuant to the scheme described herein (and the disposition and use of the same); and prohibiting the destruction of documents reflecting the business and financial activities of Dappah and Yatalie pending further order of the Court.

VI.

Such other and further relief as this Court may deem just, equitable, and appropriate in connection with the enforcement of the federal securities laws and for the protection of investors.

Dated this 27th day of September, 2013.

Respectfully submitted,



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