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UNITED STATES OF AMERICA
BEFORE THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION

SCOTTSDALE CAPITAL ADVISORS CORP., JOHN J.
HURRY, TIMOTHY B. DIBLASI, AND D. MICHAEL
CRUZ'S APPLICATION FOR REVIEW
NAC Decision (July 20, 2018)
FINRA Hearing Panel Decision (June 20, 2017)
Complaint No. 2014041724601

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APPLICATION FOR REVIEW

Pursuant to Section 19(d)(2) of the Securities Exchange Act of 1934, and Rule 420 of the Commission's Rules of Practice, Scottsdale Capital Advisors Corp. ("SCA"), John J. Hurry, Timothy B. DiBlasi, and D. Michael Cruz (collectively, the "Petitioners")¹ submit this Application for Review of the July 20, 2018 decision of FINRA's National Adjudicatory Council (the "NAC") in FINRA Complaint No. 2014041724601 (the "Decision").

The Decision's findings were incorrect because the NAC misapplied the law, relied on improper authority, and based its conclusions on unreliable or otherwise improperly admitted evidence or speculation. Without limiting the generality of the foregoing, the issues on which Petitioners request review include the following:

- a) SCA and Mr. Hurry liquidated unregistered and nonexempt microcap securities, in violation of Section 5 of the Securities Act and FINRA Rule 2010;
- b) SCA did not perform a reasonable searching inquiry when determining whether to approve the sale of restricted securities;
- c) SCA's due diligence was cursory and incomplete, and thus unreasonable;

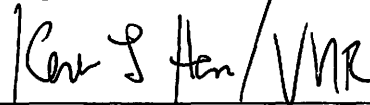
¹ Petitioners, who may be served through the undersigned, are located at 7170 E. McDonald Dr., Suite 6, Scottsdale, AZ, 85253, (480) 603-4900.

- d) SCA was unable to establish that the selling customers were non-affiliates of the issuers, that they met the requisite one-year holding period for the resale of restricted securities, or that the underlying instruments were, in fact, securities;
- e) SCA was unable to demonstrate that the issuers of the relevant deposits and liquidations were not shell companies;
- f) SCA cannot rely on Securities Act Rule 144 because it failed to establish that its due diligence was not part of a plan or scheme to evade the registration requirements of the Act;
- g) Mr. Hurry's creation, management, and control of Cayman Securities Clearing and Trading SEZC Ltd. ("CSCT") was unethical and in violation of FINRA Rule 2010;
- h) SCA and Mr. DiBlasi maintained deficient and inadequate written supervisory procedures ("WSPs") related to Section 5, in violation of FINRA Rule 2010 and NASD Rule 3010;
- i) SCA and Mr. Cruz failed to supervise the firm's microcap liquidation business, in violation of FINRA Rule 2010 and NASD Rule 3010; and
- j) FINRA's reliance on Mr. Ruzicka's ex parte investigative testimony and the NAC's refusal to admit new evidence concerning Mr. Ruzicka's reliability and credibility.

Even if the Commission were to uphold any of the findings of liability, the sanctions should be reversed or substantially reduced because they are not in line with FINRA's sanctions guidelines and are punitive, not remedial.

Dated: July 23, 2018

Respectfully Submitted,

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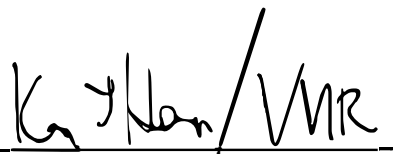
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**NOTICE OF APPEARANCE ON BEHALF OF SCOTTSDALE CAPITAL ADVISORS
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Please take notice that, pursuant to Rule 102(b) and (d) of the Commission's Rules of Practice, Kevin J. Harnisch, an attorney at Norton Rose Fulbright US LLP who may be contacted at the address in the signature block below, hereby enters an appearance on behalf of Scottsdale Capital Advisors Corp., John J. Hurry, Timothy B. DiBlasi, and D. Michael Cruz (collectively, the "Petitioners"), all of whom are located at 7170 E. McDonald Dr., Suite 6, Scottsdale, AZ, 85253, with a telephone number of (480) 603-4900, in the Petitioners' Application for Review of the above captioned proceedings.

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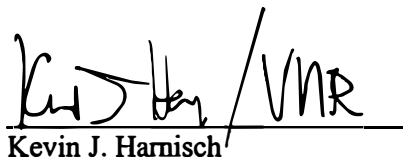
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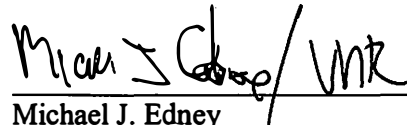
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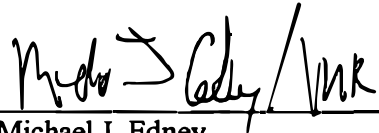
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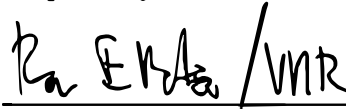
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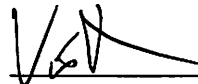
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Please take notice that, pursuant to Rule 102(b) and (d) of the Commission's Rules of Practice, Vijay N. Rao, an attorney at Norton Rose Fulbright US LLP who may be contacted at the address in the signature block below, hereby enters an appearance on behalf of Scottsdale Capital Advisors Corp., John J. Hurry, Timothy B. DiBlasi, and D. Michael Cruz (collectively, the "Petitioners"), all of whom are located at 7170 E. McDonald Dr., Suite 6, Scottsdale, AZ, 85253, with a telephone number of (480) 603-4900, in the Petitioners' Application for Review of the above captioned proceedings.

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BEFORE THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION**

In the Matter of the Application of

JOHN J. HURRY
(CRD No. 2146449),

For a Motion to Stay Sanctions Imposed by
FINRA

**MOTION TO STAY SANCTIONS AND INCORPORATED MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT**

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INTRODUCTION

Pursuant to Rule of Practice 401, Petitioner John J. Hurry—a twenty-seven-year veteran of the securities industry with a previously pristine disciplinary history—hereby moves to stay the effectiveness of the bar imposed by FINRA’s National Adjudicatory Council (the “NAC”), which affirmed a FINRA Hearing Panel decision, pending the Commission’s review of this matter.¹ FINRA’s Department of Enforcement (“Enforcement”) charged Mr. Hurry with violating Section 5 of the Securities Act of 1933 in connection with the deposit and liquidation of microcap securities for three issuers through Scottsdale Capital Advisors (“SCA”), a broker-dealer that Mr. Hurry co founded. By reason of Mr. Hurry’s alleged participation in the Section 5 violations, Enforcement contended that Mr. Hurry had violated FINRA Rule 2010, which requires the observance of “high standards of commercial honor and just and equitable principles of trade.” FINRA R. 2010.

The standards for imposing individual liability in Section 5 cases are stringent and there is no evidence linking Mr. Hurry to the transactions at issue. Instead of acknowledging Enforcement’s failure of proof, the NAC invented a new, post hoc theory of liability premised on perfectly legal conduct and patently faulty logic. Specifically, the NAC barred Mr. Hurry because he established a broker-dealer in the Cayman Islands—Cayman Securities Clearing and Trading SEZC Ltd. (“CSCT”)—that unquestionably provided various tax advantages in connection with securities transactions by foreign financial institutions. Although this had absolutely no impact on how SCA processed microcap deposits and did not diminish any of the records that SCA maintained, the NAC summarily concluded that Mr. Hurry’s only purpose for creating CSCT was

¹ Under FINRA’s rules, all sanctions “other than a bar or an expulsion” are automatically stayed pending the Commission’s review. FINRA R. 9370. Accordingly, this motion addresses only the bar against Mr. Hurry. A more fulsome brief addressing the bases for reversal of the findings and sanctions against all Respondents, including additional bases for reversal with respect to Mr. Hurry, will be filed in accordance with the briefing schedule that the Commission establishes.

to insulate SCA from regulatory scrutiny, and used this uncharged theory as grounds for a permanent industry bar. The likelihood of Mr. Hurry prevailing against such an illogical theory that Enforcement did not even include in the Complaint is high. And for the reasons described herein, the collateral consequences of not staying the bar pending the Commission's review would be severe and irreversible. Thus, the Commission should grant this motion to stay.

The Commission weighs four factors in deciding whether to grant a stay: (1) "whether there is a strong likelihood that the moving party will succeed on the merits of the appeal"; (2) "whether the moving party will suffer irreparable harm without a stay"; (3) "whether any person will suffer substantial harm as a result of a stay"; and (4) "whether a stay is likely to serve the public interest." *Michael Earl McCune*, SEC Release No. 77921, 2016 WL 2997935, at *1 (May 25, 2016). The factors are "not accorded equal weight": "a stay may be granted where there is a high probability of irreparable harm, but a lower probability of success on the merits, or vice versa." *Id.*; *see also Scattered Corp.*, 52 S.E.C. 1314, 1315 (Apr. 28, 1997) (the petitioner need only show "a substantial case on the merits" if the other three factors "strongly favor a stay"). Here, all four factors strongly support a stay.

Aside from the legal infirmity of barring somebody for uncharged theories of liability tied to wholly legal conduct, the permanent bar, if not stayed, will cause irreparable injury to Mr. Hurry and to the many employees of SCA and a clearing firm, Alpine Securities Corp. ("Alpine"), which are owned by Mr. Hurry's family trusts.² Given the strong likelihood that Mr. Hurry will prevail on appeal, coupled with the irreparable injury that will flow from the immediate imposition of a bar, the Commission should stay the effectiveness of that bar pending the Commission's review.

² SCA's and Alpine's holding companies are owned by a series of family trusts for which Mr. Hurry, his wife Justine Hurry, and their family are beneficiaries. Through the trusts, Mr. and Mrs. Hurry are management trustees.

To avoid any concern that a stay would somehow not be in the public interest, Mr. Hurry will agree to remain uninvolved in evaluating whether potential sales of unregistered stock are eligible for an exemption from registration and/or to refrain from involvement in the management of any SEC-registered broker-dealers during the pendency of the Commission's review.

BACKGROUND

I. The Microcap Securities Market and Section 5 of the Securities Act

SCA is one of the leading broker-dealers in the microcap securities market. The microcap market provides liquidity for small and upstart issuers that lack the resources to obtain listings on the more well-known exchanges. It is no secret that FINRA dislikes the microcap market. In fact, prior to bringing this case, Enforcement unsuccessfully pursued disciplinary charges against Mr. Hurry and SCA, and Enforcement's questionable conduct in that investigation is now the subject of an ongoing civil lawsuit that Mr. Hurry filed against FINRA.³ This background provides important context for the decisions below, in which FINRA blatantly disregarded controlling legal principles to assess individual liability on Mr. Hurry.

In this matter, Enforcement charged Mr. Hurry with violating Section 5 of the Securities Act, which Enforcement argued triggered a violation of FINRA Rule 2010, the organization's general ethical rule.⁴ Section 5 prohibits the sale of unregistered securities absent an exemption from registration. The Hearing Panel held that Mr. Hurry personally violated Section 5 despite the complete absence of evidence indicating that Mr. Hurry had any involvement in the

³ See Second Amended Complaint ¶¶ 1–7, 56–257, *Hurry v. FINRA*, No. 2:14-cv-02490 (D. Ariz. Aug. 28, 2015), ECF No. 71 (attached hereto as Exhibit 1).

⁴ Complaint ¶¶ 143–57, *Dep't of Enforcement v. Scottsdale Capital Advisors Corp.*, Disciplinary Proceeding No. 2014041724601 (May 15, 2015) (FINRA 00032–35).

transactions.⁵ In apparent recognition of this evidentiary failure, the NAC has shifted course to an uncharged theory of liability and has held that Mr. Hurry violated FINRA Rule 2010 because of his creation and management of a perfectly lawful and tax-efficient entity, CSCT.⁶ The Commission cannot countenance FINRA’s attempt to invent after-the-fact theories of liability to salvage the fatal evidentiary infirmities in Enforcement’s case.

II. Overview of SCA

SCA is a broker-dealer that processes physical and electronic deposits of listed and non-listed securities, including Pink Sheets, OTCBB, and Rule 144 restricted stock.⁷ SCA customers often deposit unregistered stock and then seek to sell it. SCA executes those sales only if, after performing due diligence on the stock deposit, its staff—and, in particular, its dedicated Rule 144 review team—concludes that the stock qualifies for an exemption from registration, such as the

⁵ Extended Hearing Panel Decision at 87, *Dep’t of Enforcement v. Scottsdale Capital Advisors Corp.*, Disciplinary Proceeding No. 2014041724601 (FINRA OHO March 31, 2017) (“Panel Decision”) (FINRA 00032–35). On June 20, 2017, FINRA’s Office of General Counsel granted the Hearing Officer’s unilateral request for a remand of the Panel Decision to correct an assertedly non-substantive “factual error.” On June 22, 2017, the Panel issued an amended decision that corrected a material error yet continued to find Respondents liable. *See generally* Amended Extended Hearing Panel Decision, *Dep’t of Enforcement v. Scottsdale Capital Advisors Corp.*, Disciplinary Proceeding No. 2014041724601 (FINRA OHO June 22, 2017) (the “Amended Decision”). References to the Panel Decision are to both the Panel Decision and the Amended Decision, except where noted otherwise.

⁶ NAC Decision at 83, *Dep’t of Enforcement v. Scottsdale Capital Advisors Corp.*, Disciplinary Proceeding No. 2014041724601 (FINRA NAC July 20, 2018) (“NAC Decision”).

⁷ Rule 144 is a safe harbor that applies to sales of unregistered stock provided that a broker-dealer satisfies the following objective criteria: (1) the seller has held the securities for at least one year, including permitted “tacking”; (2) the seller is not an “affiliate” of the issuer; and (3) the issuer is not a shell company. 17 C.F.R. § 230.144(b)(1). In addition, there must be adequate current public information about the issuer. *Id.* § 230.144(b)(1), (c). If Rule 144 does not apply, a broker-dealer that sells unregistered securities is still protected from liability under Section 4(a)(4) of the Securities Act, known as the broker’s exemption, provided that the broker-dealer conducted reasonable diligence as to the applicability of an exemption. *See Wonsover v. SEC*, 205 F.3d 408, 413 n.11 (D.C. Cir. 2000).

Rule 144 safe harbor.⁸ Mr. Hurry had no role in that review and approval process.⁹ In fact, Mr. Hurry withdrew from management and the day-to-day operations of SCA in 2012, long before the relevant time period in this case (December 2013 to June 2014).¹⁰

III. Alpine Securities Corporation

In 2012, Mr. Hurry indirectly acquired Alpine, a registered broker-dealer and clearing firm, through a holding company that is owned by his family trusts.¹¹ Alpine provides clearing services for its customers, including SCA.¹² Beginning in 2013, in order to reduce complications and risks with respect to tax withholding, Alpine made the business decision to stop providing clearing services for transactions on behalf of foreign financial firms unless those transactions were routed through a foreign broker-dealer that was an IRS-approved Qualified Intermediary (“QI”).¹³ If transactions come through a QI, the tax withholding obligations lie with the QI rather than the clearing firm.¹⁴ The tax withholding obligations related to transactions for foreign financial firms

⁸ See FINRA Hr’g Tr. (“Tr.”) 1953:11–25, 1954:11–13, 22–24 (Day 8) (DiBlasi) (FINRA 004295, 004296); Tr. 2251:17–2252:4, 2313:11–22 (Day 10) (D’Mura) (FINRA 004594–95, 004656).

⁹ See Tr. 149:12–15 (Day 1) (Cruz) (FINRA 002487); Tr. 573:6–574:14 (Day 3) (Cruz) (FINRA 002912–13); Tr. 1548:22–25 (Day 7) (Hurry) (FINRA 003889); Tr. 1822:23–1823:5 (Day 8) (Diekmann) (FINRA 004164–65); Tr. 2304:16–25, 2318:18–22 (Day 10) (D’Mura) (FINRA 004647, 004661); CX-178 at 76:16–21, 85:11–18, 85:24–86:15 (FINRA 006242, 006251–52).

¹⁰ Tr. 1551:6–21 (Day 7) (Hurry) (FINRA 003892).

¹¹ See Tr. 1307:8–16 (Day 6) (Hurry) (FINRA 003648).

¹² See, e.g., Tr. 382:11–15 (Day 2) (Cruz) (FINRA 002720).

¹³ Tr. 305:23–306:5, 316:1–2 (Day 2) (Cruz) (FINRA 002643–44, 002654); Tr. 563:1–9 (Day 3) (Cruz) (FINRA 002902); Tr. 861:17–20 (Day 4) (Diekmann) (FINRA 003155); Tr. 1117:3–10 (Day 5) (Noiman) (FINRA 003457); Tr. 1642:21–1644:18 (Day 7) (Hurry) (FINRA 003983–85); Tr. 2346:2–23 (Day 10) (Frankel) (FINRA 004689).

¹⁴ “A qualified intermediary (QI) is any foreign intermediary (or foreign branch of a U.S. intermediary) that has entered into a qualified intermediary withholding agreement with the IRS. . . . [T]he QI assumes primary withholding responsibility and primary Form 1099 reporting and

are complicated and the potential repercussions can be significant, so Alpine's decision regarding the use of QIs was logical.¹⁵ The risks Alpine sought to minimize by using a QI are real and not theoretical. Indeed, the Commission fined Oppenheimer & Co. \$10 million for violating Section 17(a) of the Exchange Act and Rule 17a-3 by "fail[ing] to properly withhold and remit taxes [owed by its customers] to the IRS" and, in turn, "fail[ing] to record this liability and resulting expenses, which caused its books and records to become inaccurate."¹⁶

IV. Cayman Securities Clearing and Trading SEZC Ltd.

Recognizing the potential growth opportunities for QIs, Mr. Hurry established CSCT in the Cayman Islands.¹⁷ Locating in the Cayman Islands provided tax deferral advantages, and registering for business in the Caymans' so-called "special economic zone" provided quicker issuance of work permits.¹⁸

Mr. Hurry hired Gregory Ruzicka, an attorney who had previously represented Mr. Hurry in a variety of legal matters, to manage the firm, a process that included obtaining IRS approval to act as a QI and retaining KPMG to fulfill the mandatory QI audit process.¹⁹ Although Mr. Ruzicka

backup withholding responsibility for a payment." *Miscellaneous Qualified Intermediary Information*, IRS.gov, <https://www.irs.gov/businesses/international-businesses/miscellaneous-qualified-intermediary-information> (last updated Aug. 4, 2016); *see also* Tr. 1553:5–9 (Day 7) (Hurry) (FINRA 003894).

¹⁵ *See* Tr. 1554:12–1557:6 (Day 7) (Hurry) (FINRA 003895–98).

¹⁶ Order Instituting Administrative and Cease-and-Desist Proceedings at 2, *Oppenheimer & Co. Inc.*, SEC Release No. 74141 (Jan. 27, 2015).

¹⁷ Tr. 1552:7–1557:6, 1561:21–1565:16 (Day 7) (Hurry) (FINRA 003893–98, 003902–06).

¹⁸ *Id.*

¹⁹ Tr. 1553:2–19, 1574:19–1575:7 (Day 7) (Hurry) (FINRA 003894, 003915–16); *see also* RX-33. Although Mr. Ruzicka was an entrepreneurial lawyer who had previously run his own law firm, Enforcement and the Decisions presume Mr. Hurry acted nefariously by hiring Mr. Ruzicka

was not practicing law at the time Mr. Hurry hired him as his law firm had dissolved, he had two master's degrees, one of which was in United States tax, and he held himself out as having extensive investment knowledge.²⁰ He also spent months studying Rule 144 before starting at CSCT.²¹ And once CSCT began receiving stock deposits from customers, Craig D'Mura, who was regarded as one of the best reviewers on SCA's specialized Rule 144 review team, joined CSCT to assist in the stock deposit review process.²²

Importantly, although Messrs. Ruzicka and D'Mura performed an initial review of proposed stock deposits for compliance with Rule 144, they were not the final decision-makers as to whether the stocks would be sold in the United States. Instead, if they were satisfied based upon their review, Messrs. Ruzicka and D'Mura then forwarded the stock deposits to SCA for its own independent review.²³ SCA, not CSCT, made the final decision as to whether it believed an unregistered security fell within the Rule 144 safe harbor.²⁴

because Mr. Ruzicka was out of work after experiencing personal issues when Mr. Hurry hired him. *See, e.g.*, Panel Decision at 21, 24–25, 65, 88; NAC Decision at 79 81, 83.

²⁰ Tr. 1575:8 11, 1575:20 1576:6 (Day 7) (Hurry) (FINRA 003916 17); *see* CX-29 at 15 (FINRA 005659).

²¹ CX-29 at 15 (FINRA 005659); RX-59 at 1 (FINRA 009403); Tr. 1575:16 1577:11 (Day 7) (Hurry) (FINRA 003916 18).

²² Tr. 1599:4 1601:9, 1603:25–1604:8 (Day 7) (Hurry) (FINRA 003940–45); *see* RX-73 at 1 (FINRA 009405).

²³ Messrs. Ruzicka and D'Mura were adamant that they only forwarded deposits to SCA that they thought met the requirements of Rule 144. *See* Tr. 2311:18 21, 2325:15 2326:4 (Day 10) (D'Mura) (FINRA 004654, 004668 69); CX-178 at 81 83, 92 93 (FINRA 006247–49, 006258 59).

²⁴ *See, e.g.*, CX-178 at 91 (FINRA 006257).

V. Allegations of Sales of Unregistered Stock in Three Issuers by CSCT Customers

Enforcement alleged that two foreign financial institutions (“FFIs”)—Unicorn International Securities (“Unicorn”) and Montage Securities (“Montage”)—deposited at CSCT unregistered shares of three issuers on behalf of the FFIs’ own customers, and CSCT, in turn, sold those stocks through SCA.²⁵ Enforcement contended that those sales violated Section 5.²⁶ Enforcement alleged that Mr. Hurry personally violated Section 5 “[b]y being a necessary participant and substantial factor in the foregoing sales of unregistered securities.”²⁷ That was the sole charge against Mr. Hurry.²⁸

DISCUSSION

Although Enforcement’s sole charge against Mr. Hurry was that he was a necessary participant and substantial factor in the alleged Section 5 violations, the NAC devised its own theory for imposing liability on Mr. Hurry because the evidence did not support the charged conduct. The serious flaws in that approach are numerous and will likely lead to reversal. Thus, the Commission should stay the effectiveness of the bar in order to prevent the significant and irreparable harm that otherwise would result.

I. No Evidence Links Mr. Hurry to the Relevant Transactions

The high threshold for imposing individual liability under Section 5 requires affirmative evidence that the individual directly and substantially participated in key aspects of the allegedly

²⁵ FINRA Complaint ¶¶ 45–56, 143–57 (FINRA 000015–18, 000032–35).

²⁶ *Id.* ¶¶ 156–57 (FINRA 000035).

²⁷ *Id.* ¶ 157 (FINRA 000035).

²⁸ *See id.* ¶¶ 143–57 (FINRA 000032–35).

unlawful sales.²⁹ Enforcement clearly recognized that legal requirement as it included in the Complaint that Mr. Hurry was “a necessary participant and substantial factor” in the transactions.³⁰ The mere fact that a person owns or controls a broker-dealer or other entity involved in the sales process is not enough to sustain individual liability. Indeed, the Ninth Circuit, to which Mr. Hurry has the right of appeal, has made this point abundantly clear.

As the Ninth Circuit has explained, before Section 5 liability can attach, the regulator must prove that the respondent’s “role in the transaction [was] a significant one.” *SEC v. CMKM Diamonds, Inc.*, 729 F.3d 1248, 1255 (9th Cir. 2013). “Defendants play a significant role when they are both a ‘necessary participant’ and ‘substantial factor’ in the sales transaction.” *Id.* This standard is demanding by design: “[I]t is particularly important that the necessary participant and substantial factor test be carefully applied to each case so as not to subject defendants with a de

²⁹ Importantly, FINRA does not have the statutory authority to bring enforcement actions premised on Section 5, as Sections 15A and 19 of the Exchange Act expressly and unambiguously (1) limit FINRA’s disciplinary powers to violations of the Exchange Act and (2) designate the SEC the exclusive regulatory body authorized to enforce the Securities Act. *See* 15 U.S.C. §§ 78o-3(b)(2), (h)(i), 78s(g)(1) (empowering FINRA to discipline member firms only for violations of “this chapter,” “the rules and regulations thereunder,” and the organization’s own rules); *id.* § 78s(h)(3) (authorizing the SEC alone to discipline “any person” for violating “any provision of the Securities Act of 1933”). This point has been addressed in prior briefing related to the hearing and will be addressed in the appellate briefs in this matter. *See, e.g.*, Respondent’s Opening Brief at 74-75, *Dep’t of Enforcement v. Scottsdale Capital Advisors Corp.*, Disciplinary Proceeding No. 2014041724601 (July 19, 2017) (“NAC Opening Brief”). For now, it suffices to observe that the Supreme Court held just this term that the plain text of the federal securities laws trumps any purported congressional intent. *See Cyan, Inc. v. Beaver Cty. Emps. Ret. Fund*, 138 S. Ct. 1061, 1073 (2018) (holding that SLUSA did not divest state courts of concurrent jurisdiction over class actions alleging only violations of the Securities Act, notwithstanding an apparent congressional purpose of combatting legal gamesmanship, and explaining: “This Court has long rejected the notion that ‘whatever furthers the statute’s primary objective must be the law.’ Even if Congress could or should have done more, still it ‘wrote the statute it wrote—meaning, a statute going so far and no further.’”). This strongly suggests that FINRA’s atextual claim of authority over the Securities Act—a topic to which the NAC dedicated a single paragraph—will not survive judicial review. *See* NAC Decision at 91.

³⁰ FINRA Complaint ¶¶ 152, 157 (FINRA 000090, 000091).

minimis or insubstantial role in a securities scheme to strict liability.” *Id.* at 1257. As a result, “[a] participant’s title, standing alone, cannot determine liability under Section 5, because the mere fact that a defendant is labeled as an issuer, a broker, a transfer agent, a CEO, a purchaser, or an attorney, does not adequately explain what role the defendant actually played in the scheme at issue.” *Id.* at 1258.

Both the Hearing Panel and the NAC, however, simply ignored the requirement that Enforcement prove that Mr. Hurry had significant direct participation in the violative transactions. For example, the Hearing Panel based its conclusion on a subjective view that Mr. Hurry was a “master puppeteer” because he established CSCT and the Hearing Panel believed that he introduced a number of FFIs to CSCT.³¹ But those conclusions do not equate to direct and substantial personal involvement in the specific transactions at issue. As explained in *CMKM Diamonds*, a person’s ownership of an entity involved in the sales process is not an appropriate basis for imposing Section 5 liability. *See* 729 F.3d at 1258.

There is not a shred of evidence—neither testimony nor exhibits—indicating that Mr. Hurry had any role in the stock deposits for the three issuers. All witnesses who testified about CSCT’s and SCA’s stock deposit review practices—including Enforcement’s own witnesses, Gregory Ruzicka³² and Craig D’Mura—confirmed that Mr. Ruzicka, not Mr. Hurry, ran the daily

³¹ Hearing Panel Decision at 88. Those FFIs made dozens of other deposits at CSCT, none of which Enforcement claimed violated Section 5. *See* RX-40 at 2 (FINRA 009256).

³² Mr. Ruzicka did not testify at the hearing. Instead, the Hearing Officer admitted into evidence the full transcript of Mr. Ruzicka’s on-the-record testimony (“OTR”) despite his manifest disdain for Mr. Hurry and his admission that he had lied to Enforcement in a prior interview. *See* Respondents’ Opening NAC Br. 61–66; Respondents’ Reply NAC Br. 21–22. And the NAC not only credited that testimony, but also refused to consider new evidence that Mr. Ruzicka has been deemed incompetent to stand trial in California for a slew of charges consistent with a progressively deteriorating mental state. NAC Decision at 91–94. This is another basis for reversal that will be addressed in subsequent briefing in this appeal.

operations of CSCT.³³ And those same witnesses all confirmed that Mr. Hurry neither asked them about any particular stock deposit requests—let alone the three stock deposits at issue—nor urged them to reconsider any rejections.³⁴ This is especially notable because Mr. Ruzicka estimated that he rejected approximately 80% of the deposits he reviewed, including roughly 50% of Unicorn’s deposits and 70% of Montage’s deposits.³⁵ For deposits that passed through Mr. Ruzicka’s and Mr. D’Mura’s review, SCA then rejected an additional 46%.³⁶ Despite all of these rejections, there is absolutely no suggestion that Mr. Hurry ever complained or asked the reviewers at CSCT or SCA to do anything differently.

Had Mr. Hurry wanted to facilitate the sale of unregistered stock without an exemption, as Enforcement implied, one would expect him to have taken steps to remove any impediments to the sales process—most notably, the high deposit-rejection rate at CSCT and SCA. But that did not happen. Instead, Mr. Hurry was completely passive with respect to the approval and sales processes. In fact, as Enforcement conceded before the NAC, there are no emails or records of telephone communications between Mr. Hurry and others during the time that the subject deposits

³³ Tr. 575:23–576:9 (Day 3) (Cruz) (FINRA 002914–15); Tr. 759:23–25 (Day 4) (Diekmann) (FINRA 003098); Tr. 2271:5–2273:7 (Day 10) (D’Mura) (FINRA 004614–16); CX-178 at 38:18–19, 55:7–10, 56:6–9 (FINRA 006204, 006221–22).

³⁴ Tr. 149:12–15 (Day 1) (Cruz) (FINRA 002487); Tr. 573:6–574:14 (Day 3) (Cruz) (FINRA 002912–13); Tr. 1822:23–1823:5 (Day 8) (Diekmann) (FINRA 004164–65); Tr. 2304:16–25, 2318:18–22 (Day 10) (D’Mura) (FINRA 004647, 004661); CX-178 at 76:16–21, 85:11–18, 85:24–86:15 (FINRA 006242, 006251–52).

³⁵ CX-178 at 92–93 (FINRA 006258–59).

³⁶ See RX-40 at 2 (FINRA 009256).

were being evaluated.³⁷ That is irreconcilable with an argument that Mr. Hurry personally and actively took significant and substantial steps to violate Section 5.

Presumably recognizing its inability to reconcile the evidence with the necessary and substantial participation test, the Hearing Panel made up its own test and rationale for imposing Section 5 liability on Mr. Hurry.³⁸ In doing so, the Hearing Panel explicitly ignored the charges in the complaint to find Mr. Hurry liable.³⁹

The Hearing Panel's approach, however, amounted to imposing Section 5 liability on Mr. Hurry solely because he established SCA and CSCT. But the courts have expressly rejected that type of overly simplistic reasoning as counter to the requirement that there be proof of direct and substantial participation in the underlying transactions before Section 5 liability can attach. It is precisely for that reason that the Ninth Circuit in *CMKM Diamonds* reversed summary judgment in favor of the Commission on its claim that a transfer agent was liable for the sale of securities in violation of Section 5. *See* 729 F.3d at 1258–59. Even though the unlawful sales could not have occurred without the approval of the transfer agent, the transfer agent could not be held personally liable without evidence of more direct and substantive involvement than merely effectuating the transfer of the stock from the seller to the buyer. *Id.* at 1259. More recent decisions have followed *CMKM Diamonds* and have cut off Section 5 liability absent evidence of both “substantial” and “necessary” participation in securities sales. *See, e.g., SEC v. Jones*, 300 F. Supp. 3d 312, 316–17 (D. Mass. 2018) (investor's receipt of commissions on securities purchased by other investors, communications with other investors, and coordination with mastermind of alleged scheme to allay

³⁷ NAC Oral Argument Tr. 160:12–23.

³⁸ Amended Panel Decision at 86-90.

³⁹ Complaint at ¶ 157.

concerns of other investors, even taken together and viewed in the light most favorable to the Commission, did not give rise to participatory liability under Section 5).

A review of Section 5 case law demonstrates that individual liability uniformly turns on proof that the defendant has either sold the unregistered securities himself or has taken concrete steps necessary to effectuate those sales (e.g., negotiating transactions, controlling the issuer, issuing opinion letters, or directing the issuance of shares).⁴⁰ Given the non-existence of such evidence with respect to Mr. Hurry, the Hearing Panel's decision was legally unsustainable.

Upon recognizing the infirmity of the Hearing Panel's decision, the NAC should have reversed the decision. The NAC, however, chose to ignore the actual charges in the Complaint,

⁴⁰ See, e.g., *SEC v. Gillespie*, 349 F. App'x 129, 131 (9th Cir. 2009) (mem.) (controlled issuer and directed consultant to sell stock and remit proceeds); *SEC v. Calvo*, 378 F.3d 1211, 1215 (11th Cir. 2004) (negotiated and signed transactional documents and opened brokerage account); *Geiger v. SEC*, 363 F.3d 481, 487 (D.C. Cir. 2004) (found buyer, negotiated terms, facilitated sale, and fraudulently obtained attorney opinion letter); *SEC v. Alexander*, 115 F. Supp. 3d 1071, 1084 (N.D. Cal. 2015) (solicited buyers and negotiated sales); *SEC v. e-Smart Techs., Inc.*, 74 F. Supp. 3d 306, 328 (D.D.C. 2014) (organized and directed scheme and signed transactional documents); *SEC v. Greenstone Holdings, Inc.*, 954 F. Supp. 2d 211, 213–14 (S.D.N.Y. 2013) (authorized and directed issuance of shares or drafted false attorney opinion letters); *SEC v. Universal Express, Inc.*, 475 F. Supp. 2d 412, 425, 430, 437 (S.D.N.Y. 2007) (directed issuance of shares, offered and sold shares, or exercised trading authority over sellers' accounts); *SEC v. Alpha Telecom, Inc.*, 187 F. Supp. 2d 1250, 1254–56, 1260 (D. Or. 2002) (owned and controlled issuer and had role in day-to-day operations); *SEC v. Friendly Power Co.*, 49 F. Supp. 2d 1363, 1366, 1372 (S.D. Fla. 1999) (directed and participated in operations and “conceived of and planned the scheme” by which ownership interests were sold); *SEC v. Cavanagh*, 1 F. Supp. 2d 337, 372 (S.D.N.Y. 1998) (sold shares or negotiated and executed sales); *SEC v. Softpoint, Inc.*, 958 F. Supp. 846, 860 (S.D.N.Y. 1997) (prepared marketing agreements, arranged for broker-dealers to sell stock, and acted as intermediary between broker-dealers and issuers); *Arthur W. Lewis*, SEC Release No. 75511, 2015 WL 4481236, at *2, *6 (July 23, 2015) (approved subordinate's sales and advocated for change of firm policies to permit sales); *John A. Carley*, SEC Release No. 57246, 2008 WL 268598, at *10–11 (Jan. 31, 2008) (maintained accounts, executed trades, and directed transfer agent); *Owen V. Kane*, SEC Release No. 23827, 1986 WL 626043, at *3 (Nov. 20, 1986) (laid the groundwork for broker's purchase of shares, opened and serviced account, and entered sale orders).

which formed the basis for the presentation of Mr. Hurry's defense at the hearing, abandoned the Section 5 analysis, and created its own illogical theory of liability.⁴¹

II. Mr. Hurry's Creation and Control of CSCT Was Lawful and Does Not Give Rise to Rule 2010 Liability

The NAC barred Mr. Hurry because it decided that his creation and control of CSCT was for the sole purpose of insulating SCA from regulatory scrutiny.⁴² The NAC pointed to Mr. Hurry's ownership of CSCT, SCA, and Alpine and the resulting "vertical[] integrat[ion]" of those businesses, along with Mr. Ruzicka's alleged lack of directly relevant experience, as evidence of a scheme to evade the regulatory protections of the federal securities laws.⁴³ Glaringly, however, the NAC is unable to point to any actual or even alleged wrongdoing by CSCT. Nothing about the structure or operation of CSCT is unlawful. And the record is clear that CSCT was established to provide legitimate tax efficiencies.

Contrary to the implications of the NAC's faulty reasoning, CSCT had absolutely no ability to approve the sale of microcap stocks in U.S. markets—that authority remained with SCA. Nor did it reduce in any way the due diligence that SCA performed in deciding whether to approve a deposit of microcap securities. The questions SCA asked and the information it gathered remained unchanged. Its recordkeeping remained unchanged. Therefore, the information available to regulators remained unchanged.

⁴¹ See NAC Decision at 83.

⁴² *Id.*

⁴³ *Id.*; see also *id.* at 1, 15, 16, 76.

Thus, counter to the NAC's unsupported statement that Mr. Hurry established CSCT so that SCA could "evade regulatory scrutiny,"⁴⁴ none of the work related to approving a deposit for sale in the U.S. was somehow transferred from SCA to CSCT. SCA still performed the very same due diligence. It gathered the same documents. It asked the same follow-up questions. The creation of CSCT did not shift any diligence outside of the U.S. or beyond the reach of U.S. regulators, as the NAC claims. Indeed, there is no evidence in the record or findings in the Hearing Panel or NAC decisions that the use of CSCT resulted in SCA not having information that it otherwise would have had. The only change brought about by the creation of CSCT—indeed, the entire reason for CSCT's creation—was the easing of tax withholding complications and tax deferral. In sum, the notion that Mr. Hurry created CSCT in order help SCA evade regulatory scrutiny is contrary to the facts and to common sense.

The NAC's argumentative shift is nothing more than a back-door attempt to hold Mr. Hurry liable for the Section 5 violations that FINRA speculates occurred without confronting the stringent test of necessary and substantial participation required for a finding of individual Section 5 liability. The theory upon which Enforcement charged Mr. Hurry and which was the basis for Mr. Hurry's defense was that Mr. Hurry personally violated Section 5, resulting in a Rule 2010 violation.⁴⁵ The NAC, realizing that any Rule 2010 violation predicated on individual Section 5 liability would not survive legal scrutiny in light of the evidentiary record, has turned to an uncharged and standardless basis for imposing liability that amounts to little more than a dislike of Mr. Hurry's activities. An individual cannot be charged with a Rule 2010 violation, and

⁴⁴ *Id.* at 83.

⁴⁵ Complaint at ¶ 157.

subsequently barred from the securities industry and deprived of his livelihood, simply because FINRA does not *like* what he does.

Before barring somebody, the theory of liability must be charged in the complaint such that the respondent can present all available defenses. Similarly, in order to justify liability there must be evidence supporting findings of actual, unethical conduct. Those necessary predicates do not exist here. Accordingly, Mr. Hurry's likelihood of success on appeal is high.

III. The Sanctions Are Patently Excessive

FINRA's sanctions are excessive and unmoored from any guiding legal principles. The NAC's Decision imposed FINRA's equivalent of the death penalty against Mr. Hurry because his actions in creating CSCT were "purposeful" and "egregious".^{46, 47} However, the NAC's sanctions cannot be reconciled with the fact that *nothing about Mr. Hurry's creation, control, or management of CSCT was improper*. The NAC is unable to point to even a single instance of wrongdoing by Mr. Hurry, and instead relies on its "estimation" that Mr. Hurry behaved unlawfully.⁴⁸ Such speculation cannot support the draconian sanctions issued in this matter.

In sum, FINRA's factual and legal errors make out, at the very least, a "substantial case" for reversal. *See Scattered Corp.*, 52 S.E.C. at 1318–19.

⁴⁶ NAC Decision at 102.

⁴⁷ FINRA sanctions must be remedial, not punitive. Recent Supreme Court precedent calls into question whether a permanent bar can be considered remedial, which changes the SEC's analysis of whether such a bar is "excessive or oppressive." *See, e.g., Saad v. SEC*, 873 F.3d 297, 304–07 (D.C. Cir. 2017) (Kavanaugh, J. concurring) (discussing the impact of *Kokesh v. SEC*, 137 S. Ct. 1635 (2017), on whether FINRA bars are punitive or remedial). The Commission should grant Mr. Hurry's motion to stay so that the issue of whether FINRA is even permitted to issue a bar under the circumstances of this case can be more fully considered.

⁴⁸ NAC Decision at 83.

IV. Mr. Hurry Will Suffer Irreparable Harm Absent a Stay

Mr. Hurry undoubtedly will be irreparably harmed in the absence of a stay. Unlike most cases involving stays of industry bars, the basis here is not the hardship of finding another job or source of income pending the Commission's decision. Unless a stay is granted, Mr. Hurry will be forced to divest his control interests in the entities within the SCA and Alpine ownership structures. Selling SCA and Alpine is not practical given the lack of any public or ready market as well as the numerous tax implications and other considerations. Moreover, any such sale would be at very distressed prices given the circumstances. In addition, the inability of SCA and Alpine to access capital from Mr. Hurry could threaten or significantly limit ongoing operations, which could negatively impact numerous employees of those firms. There is no practical way to undo those consequences should Mr. Hurry ultimately prevail on appeal. Those types of damages are not reversible, and therefore the harm is irreparable.

A stay is merited when the petitioner would otherwise lose the benefit of a successful appeal. *See Scattered Corp.*, 52 S.E.C. at 1320 (staying a firm's expulsion, an executive's bar, and their respective fines "pending the resolution of this case on the merits" because "[t]he benefit of any possible reduction of [the] bar and fines . . . would be lost, absent a stay at this juncture"). Courts have held, in the analogous context of motions for injunctive relief, that the dilution or divestiture of a control interest in a business constitutes irreparable harm. *See, e.g., Wisdom Import Sales Co. v. Labatt Brewing Co.*, 339 F.3d 101, 114 (2d Cir. 2003) (affirming injunction because "the denial of a controlling ownership interest in a corporation may constitute irreparable harm"); *Int'l Equity Invs., Inc. v. Opportunity Equity Partners, Ltd.*, 441 F. Supp. 2d 552, 563-64 (S.D.N.Y. 2006) (noting that "[i]rreparable injury has been found . . . in 'the dilution of a party's stake in, or party's loss of control of, a business'" and granting injunction because "the loss of control itself—even if temporary—may constitute irreparable harm"); *Davis v. Rondina*, 741 F. Supp. 1115, 1125

(S.D.N.Y. 1990) (granting injunction because “loss of the opportunity to continue to manage the company which [plaintiff] has helped to build” constituted irreparable harm); *Street v. Vitti*, 685 F. Supp. 379, 384 (S.D.N.Y. 1988) (awarding injunction where plaintiffs would lose their shares in close corporation and “their voice in management”).

These previously recognized reasons for granting a stay apply here. Without a stay, many of the benefits of a successful appeal will be forever lost.

V. No Person Will Suffer Substantial Harm as a Result of a Stay, and a Stay Is in the Public Interest

Finally, the balance of the equities and the public interest favor a stay. To find a stay to be against the public interest, the Commission generally looks for direct evidence that the petitioners violated substantive securities laws or engaged in patently offensive and egregious behavior in violation of FINRA rules.⁴⁹ There is no claim, let alone any evidence, that Mr. Hurry took affirmative steps to sell or approve the sale of the stock at issue in this case. Instead, the theory of liability is predicated on Mr. Hurry’s control interest in CSCT, not on any actions he took with respect to the discrete stock deposits in the three companies at issue. Given Mr. Hurry’s previously unblemished record (not a single reportable customer complaint ever in Mr. Hurry’s career or any personal regulatory issues prior to this) and the nature of the NAC’s reasoning, which do not

⁴⁹ See, e.g., *Ahmed Gadelkareem*, SEC Release No. 80586, 2017 WL 1735943, at *1 (May 3, 2017) (petitioner “embark[ed] on a campaign of abusive, harassing, and threatening communications directed at employees of his former member firm,” which included making false allegations fraud to the former firm’s customers and impersonating an NYPD officer); *Kenny A. Akindemowo*, SEC Release No. 78352, 2016 WL 3877888, at *3 (July 18, 2016) (petitioner converted investor funds for personal use); *Meyers Assocs., L.P.*, SEC Release No. 77994, 2016 WL 3124674, at *4–5 (June 3, 2016) (petitioner willfully aided firm’s failure to respond to state regulator’s document request and had a significant prior disciplinary history); *Christopher A. Parris*, SEC Release No. 77500, 2016 WL 1298225, at *3 (April 4, 2016) (petitioner refused to produce documents pursuant to FINRA Rule 8210); *William Scholander*, SEC Release No. 74437, 2015 WL 904234, at *7–8 (Mar. 4, 2015) (petitioners sold customers securities of a company with which they previously did business, without disclosing the prior relationship).

involve any alleged customer losses, there is no reason to believe that “any person will suffer substantial harm as a result of a stay.” *McCune*, 2016 WL 2997935, at *1 (May 25, 2016); *see also Scattered Corp.*, 52 S.E.C. at 1319 (no harm to others where unrefuted evidence showed that petitioners “d[id] not trade directly with the investing public”).


Mr. Hurry is not involved in the day-to-day operations of SCA or Alpine. Indeed, Mr. Hurry would be amenable to the Commission conditioning a stay on his commitment to remain uninvolved in the stock deposit review process or from otherwise managing the affairs of those entities or of any other SEC registered broker-dealer during the pendency of the Commission’s review of this matter. *See Scattered Corp.*, 52 S.E.C. at 1320–21 (granting motion to stay effectiveness of bar subject to conditions restricting involvement in certain types of trading). Such explicit limitations in the Commission’s order would foreclose any concern that any person would be at risk of harm or the public interest would be adversely affected by the stay.

CONCLUSION

For the foregoing reasons, the Commission should stay the bar against Mr. Hurry until the Commission has rendered a final decision on the merits.

Dated: July 23, 2018

Respectfully Submitted,

Handwritten signatures of four individuals: Kevin J. Harnisch, Michael J. Edney, Ryan E. Meltzer, and Vijay N. Rao. The signatures are written in black ink and are positioned above a horizontal line.

Kevin J. Harnisch

Michael J. Edney

Ryan E. Meltzer

Vijay N. Rao

Norton Rose Fulbright US LLP

799 9th Street NW, Suite 1000


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(202) 662-4520 telephone

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ATTORNEY CERTIFICATION

Pursuant to Rule 154(c) of the Commission's Rules of Practice, I hereby certify that foregoing document contains 6,419 words, exclusive of the tables of contents and authorities.

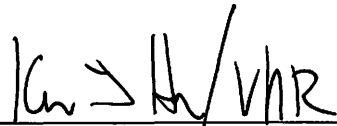

Kevin J. Harnisch

CERTIFICATE OF SERVICE

I hereby certify that on July 23, 2018, I caused the foregoing to be served by facsimile and via first class mail, return receipt requested, on the following:

The Office of the Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Mailstop 1090-10915
Washington, D.C. 20549
(703) 813-9793 – facsimile
(202) 772-9324 – facsimile (alternate)

Attn: Jante C. Turner
Office of General Counsel
FINRA
1735 K. Street, NW
Washington, D.C. 20006
(202) 728-8264 – facsimile



Kevin J. Harnisch

**UNITED STATES OF AMERICA
BEFORE THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION**

In the Matter of the Application of

JOHN J. HURRY
(CRD No. 2146449),

For a Motion to Stay Sanctions Imposed by
FINRA

**MOTION TO STAY SANCTIONS AND INCORPORATED MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT**

EXHIBIT 1

1 Robert A. Mandel, SBN 022936
2 Taylor C. Young, SBN 020743
3 Peter A. Silverman, SBN 020679
4 **MANDEL YOUNG PLC**
5 3001 E. Camelback Rd., Ste. 140
6 Phoenix, Arizona 85016
7 Tel (602) 424-8480
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11 peter@mandelyoung.com
12 courtorders@mandelyoung.com
13 *Attorneys for Plaintiffs*

10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE DISTRICT OF ARIZONA**

12 John J. Hurry and Justine Hurry, as husband
13 and wife; Investment Services Corporation,
14 an Arizona corporation; Hurry Family
15 Revocable Trust d/t/d October 18, 2011
16 amended November 26, 2012, a Nevada
17 trust; Investment Services Partners LLC, an
18 Arizona limited liability company;
19 Scottsdale Capital Advisors Partners LLC an
20 Arizona limited liability company; SCAP I
21 LLC, an Arizona limited liability company;
22 SCAP II LLC, an Arizona limited liability
23 company; SCAP III LLC, an Arizona
24 limited liability company; SCAP 4 LLC, an
25 Arizona limited liability company; SCAP 6
26 LLC, a Nevada limited liability company;
27 SCAP 7 LLC, a Nevada limited liability
28 company; SCAP 8 LLC, an Arizona limited
liability company; SCAP 9 LLC, a Nevada
limited liability company; SCAP 10 LLC, a
Nevada limited liability company; BRICFM
LLC d/b/a Corner of Paradise Ice Cream
Store, a California limited liability company;
CJ3 LLC, a Montana limited liability
company; Association of Securities Dealers

Case No. CV-14-02490-PHX-ROS

SECOND AMENDED COMPLAINT

JURY TRIAL DEMANDED

1 LLC, a Delaware limited liability company;
2 SCAP 5 LLC, an Arizona limited liability
3 company; Investment Services Capital LLC,
4 a Nevada limited liability company;
5 Investment Services Holdings Corp., a
6 Nevada corporation; NEWCONMGT LLC,
7 a Nevada limited liability company; ISC
8 LLC, an Alaska limited liability company;
9 ISHC LLC, a Montana limited liability
10 company; NEWMGT LLC, a Nevada
11 limited liability company; SCAINTL LLC, a
12 Nevada limited liability company; FLJH
13 LLC, a Nevada limited liability company;
14 ASD Holding Company LLC, a Delaware
15 limited liability company; Hurry
16 Foundation, a Nevada non-profit 501(c)(3)
17 organization.

Plaintiffs,

v.

15 Financial Industry Regulatory Authority,
16 Inc., a Delaware corporation, Scott M.
17 Andersen, a natural person, John and/or Jane
18 Does 1-10.

Defendants.

NATURE OF THE ACTION

22 1. This action stems from deliberate, retaliatory, and extra-regulatory conduct by the
23 Financial Industry Regulatory Authority, Inc. (“FINRA”), a self-regulatory organization (“SRO”)
24 acting under authority of the U.S. Securities and Exchange Commission (“SEC”); Scott M.
25 Andersen (“Andersen”), FINRA’s former regional deputy counsel; and several other FINRA staff
26 members whose identities are currently unknown. (Andersen and unknown Does are collectively
27
28

1 referred to as the “Individual Defendants.” Individual Defendants and FINRA are collectively
2 referred to as “Defendants”).

3
4 2. John and Justine Hurry (the “Hurrys”) are successful entrepreneurs who own or
5 operate several businesses in Arizona, Montana, Nevada, Utah, and California. Two of these
6 businesses, non-parties Scottsdale Capital Advisors Corporation (“SCA”), and Alpine Securities
7 Corporation (“Alpine”), are registered broker-dealers and members of FINRA. (Alpine and SCA
8 are collectively referred to as the “Member Firms.”) SCA and Alpine are among the largest and
9 most dominant firms in the clearing microcap securities market in the United States. Though
10 legal, the microcap securities market, often referred to as the over-the-counter (“OTC”) market,
11 is disfavored as a “high risk” industry by FINRA and the SEC. The Hurrys’ other businesses
12 include commercial and residential real estate ventures, retail operations, and prospective ventures
13 in aerospace, defense, technology, professional services, and innovative consumer goods.

14
15
16
17 3. John Hurry’s role in the securities industry extends beyond any ownership interest
18 he has in the Member Firms. In his capacity as an experienced industry leader and as one of a
19 growing chorus of critics with regard to overreach and abuse by FINRA, John Hurry has sought
20 to improve the industry through the creation of a new self-regulated organization, the “Association
21 of Securities Dealers LLC” or “ASD,” a potential competitor to FINRA. ASD’s purpose includes
22 the laudatory goals of removing barriers to and preserving a free and open market and a national
23 market system, while adhering to securities laws.

24
25
26 4. In November of 2012, FINRA and Andersen improperly gained entry to the Hurrys’
27 office at Investment Services Corporation (“ISC”), a non-member company, and coerced access
28 to the computers and hard-drives the Hurrys use for their non-securities related business and

1 personal pursuits (“ISC computers”). Defendants unlawfully accessed and copied the sensitive,
2 private, confidential, attorney-client privileged, attorney work product, and proprietary computer
3 data, including trade secrets, contained in the ISC computers.
4

5 5. FINRA regularly and explicitly relies upon the potential for a lifetime ban to coerce
6 compliance from its members and associated persons. When FINRA and Andersen were sued for
7 unlawfully accessing and copying the non-member computer data, Defendants coerced the Hurrys
8 into dropping the lawsuit under threat of disciplinary action against the Hurrys and/or those
9 associated with the Member Firms.
10

11 6. Dropping the lawsuit did not mollify the Defendants. Instead, Defendants pursued
12 an unlawful course of conduct designed to prevent the Hurrys from expanding in the over-the-
13 counter sector, shrink their sphere of influence in the securities industry, and, ultimately, drive
14 them out of business altogether. Through an orchestrated campaign of harassment, defamatory
15 statements, press leaks, and capricious interference with the Hurrys’ business relationships,
16 Defendants have caused and continue to cause unwarranted reputational damage to the Hurrys
17 and the numerous closely held businesses in which the Hurrys have a direct or indirect interest.
18
19
20

21 7. FINRA’s executive leadership has shown nothing but callous disregard to entreaties
22 to investigate and stop these reputational injuries. FINRA knows or should know that such
23 reputational injuries inevitably interfere with the target’s ability to stay in business by, among
24 other things, causing a loss of essential banking relationships. On information and belief, this is
25 the precise consequence Defendants have pursued through direct and indirect means utilizing
26 tactics consistent with those relied on by the federal government in its Operation Choke Point, a
27 highly controversial and unlawful program to drive companies and individuals engaged in legal
28

1 activities out of business through extra-regulatory means. Under the program, government
2 officials have pressured banks and other financial institutions to cut off accounts for targeted
3 businesses engaged in “high risk” activities. Disfavored industries include gun stores, casinos,
4 tobacco distributors, short-term lenders, among other legal businesses. Government officials have
5 painted the targeted businesses as “high risk,” inflicted reputational harm, and engaged in behind-
6 the-scenes, extra-regulatory strong-arm tactics. Officials have created fear among members of the
7 financial industry—reportedly telling banks they would face increased audits and scrutiny if they
8 maintained relationships with customers in disfavored industries. Reportedly, the operation was
9 led by Department of Justice officials working in partnership with officials from other agencies
10 including the Treasury and the SEC. As alleged in this Second Amended Complaint, FINRA has
11 engaged in extra-regulatory activity targeted at the Hurrys and their businesses using the
12 Operation Choke Point model:
13
14
15
16

17 a. FINRA and the SEC view the legal microcap securities market with disfavor
18 and as high risk;

19 b. FINRA and the Individual Defendants have targeted the Hurrys, as major
20 players in the market, to limit their influence and force them out of the sector.
21

22 c. The campaign by FINRA and the Individual Defendants has included the
23 infliction of reputational harm and the intentional destruction of the Hurrys’ business and financial
24 relationships;
25

26 d. The misconduct by FINRA and the Individual Defendants bears no
27 legitimate relationship to their regulatory functions and authority.
28

With no other recourse, the Hurrys and several of their businesses now seek relief in this Court.

PARTIES

1
2 8. Plaintiff John J. Hurry is a natural person and resident of Douglas County, State of
3 Nevada.
4

5 9. Plaintiff Justine Hurry is a natural person and resident of Douglas County, State of
6 Nevada.
7

8 10. Plaintiff ISC is an Arizona corporation with its principal place of business in
9 Scottsdale, Arizona.

10 11. Plaintiff Hurry Family Revocable Trust d/t/d October 18, 2011, amended November
11 26, 2012, (“Hurry Family Trust”) is a Nevada trust. John Hurry and Justine Hurry are trustees of
12 the Hurry Family Trust.
13

14 12. Plaintiff Investment Services Partners LLC is a limited liability company organized
15 and existing under the laws of the State of Arizona with its principal place of business in
16 Scottsdale, Arizona.
17

18 13. Plaintiff Scottsdale Capital Advisors Partners LLC is a limited liability company
19 organized and existing under the laws of the State of Arizona with its principal place of business
20 in Scottsdale, Arizona.
21

22 14. Plaintiff SCAP I LLC is a limited liability company organized and existing under
23 the laws of the State of Arizona with its principal place of business in Scottsdale, Arizona.
24

25 15. Plaintiff SCAP II LLC is a limited liability company organized and existing under
26 the laws of the State of Arizona with its principal place of business in Scottsdale, Arizona.
27

28 16. Plaintiff SCAP III LLC is a limited liability company organized and existing under
the laws of the State of Arizona with its principal place of business in Newport Beach, California.

1 17. Plaintiff SCAP 4 LLC is a limited liability company organized and existing under
2 the laws of the State of Arizona with its principal place of business in Arizona.

3 18. Plaintiff SCAP 6 LLC is a limited liability company organized and existing under
4 the laws of the State of Nevada with its principal place of business in Nevada.

5 19. Plaintiff SCAP 7 LLC is a limited liability company organized and existing under
6 the laws of the State of Nevada with its principal place of business in Nevada.

7 20. Plaintiff SCAP 8 LLC is a limited liability company organized and existing under
8 the laws of the State of Arizona with its principal place of business in Scottsdale, Arizona.

9 21. Plaintiff SCAP 9 LLC is a limited liability company organized and existing under
10 the laws of the State of Nevada with its principal place of business in Salt Lake City, Utah.

11 22. Plaintiff SCAP 10 LLC is a limited liability company organized and existing under
12 the laws of the State of Nevada with its principal place of business in Nevada.

13 23. Plaintiff BRICFM LLC, d/b/a Corner of Paradise Ice Cream Store, is a limited
14 liability company organized and existing under the laws of the State of California with its principal
15 place of business in Newport, California.

16 24. Plaintiff CJ3 LLC is a limited liability company organized and existing under the
17 laws of the State of Montana with its principal place of business in Montana.

18 25. Plaintiff Association of Securities Dealers LLC is a limited liability company
19 organized and existing under the laws of the State of Delaware with its principal place of business
20 in Scottsdale, Arizona.

21 26. Plaintiff SCAP 5 LLC is a limited liability company organized and existing under
22 the laws of the State of Arizona with its principal place of business in Arizona.

1 27. Plaintiff Investment Services Capital LLC is a limited liability company organized
2 and existing under the laws of the State of Nevada with its principal place of business in Nevada.

3
4 28. Plaintiff Investment Services Holdings Corp is a Nevada corporation with its
5 principal place of business in Nevada.

6 29. Plaintiff NEWCONMGT LLC is a limited liability company organized and existing
7 under the laws of the State of Nevada with its principal place of business in Nevada.
8

9 30. Plaintiff ISC LLC is a limited liability company organized and existing under the
10 laws of the State of Alaska with its principal place of business in Alaska.

11 31. Plaintiff ISHC LLC is a limited liability company organized and existing under the
12 laws of the State of Montana with its principal place of business in Montana.
13

14 32. Plaintiff NEWMGT LLC is a limited liability company organized and existing
15 under the laws of the State of Nevada with its principal place of business in Nevada.
16

17 33. Plaintiff SCAINTL LLC is a limited liability company organized and existing under
18 the laws of the State of Nevada with its principal place of business in Nevada.

19 34. Plaintiff FLJH LLC is a limited liability company organized and existing under the
20 laws of the State of Nevada with its principal place of business in Florida.
21

22 35. Plaintiff ASD Holding Company LLC is a limited liability company organized and
23 existing under the laws of the State of Delaware with its principal place of business in Scottsdale,
24 Arizona.
25

26 36. Plaintiff Hurry Foundation is a non-profit organization (501(c)(3)) organized and
27 existing under the laws of the State of Nevada, with its principal place of operation in Nevada.
28

1 37. Collectively, the plaintiffs in paragraphs 10 through 36 are the “Business Plaintiffs.”
2 Collectively, the Business Plaintiffs and the Hurrys are referred to as Plaintiffs.

3
4 38. The Hurrys, jointly or separately, have direct or indirect ownership interest in each
5 of the Business Plaintiffs.

6 39. FINRA is a private, not-for-profit corporation organized and existing under the laws
7 of the State of Delaware that operates from Washington D.C. and New York City with regional
8 offices throughout the United States.

9
10 40. FINRA is an SRO registered with the SEC as a national securities association.
11 FINRA has regulatory power, delegated from Congress through the SEC in the Securities
12 Exchange Act of 1934 (the “Exchange Act”), over broker-dealer firms registered under section 15
13 of the Exchange Act and their registered associated persons.

14
15 41. Andersen is a natural person who, on information and belief, is domiciled in the
16 State of California. He was a FINRA employee holding the title “Deputy Regional Chief Counsel”
17 until on or about April 6, 2015, when Andersen’s employment abruptly ceased with FINRA.

18
19 42. Plaintiffs do not know the true names of John and/or Jane Does 1 through 10,
20 inclusive, and therefore sue them by those fictitious names.

21
22 43. John and/or Jane Does 1-10 are employees or agents of FINRA who unlawfully
23 accessed, inspected, copied, or seized three password protected computers belonging to ISC, and
24 the several hard drives within them, and/or unlawfully reviewed, copied, retained, or disseminated
25 information copied from the ISC computers that is beyond FINRA’s jurisdiction, and/or acted in
26 concert with Andersen to coerce and retaliate against the Hurrys for bringing their lawsuit and/or
27 engaging in constitutionally protected activity.
28

1 businesses associated with the Hurrlys have been closely and directly coordinated with the SEC
2 and/or other federal authorities.

3
4 54. According to at least one press account, the SEC and FINRA are working together
5 in a purported investigation of the broker-dealers associated with the Hurrlys.

6 55. Moreover, the inquiries from the SEC and FINRA to the Hurrlys and businesses
7 associated with the Hurrlys overlap temporally and substantively in a manner that demonstrates
8 joint activity by the regulators. As one example, described fully below, subpoenas from the SEC
9 have closely followed record requests from FINRA substantially mirroring the type and scope of
10 records to be produced.
11

12
13 ***FINRA and the Individual Defendants Coerce Access to the ISC***
14 ***Office and Seize, Access, and Copy the ISC Computers***

15 56. Scottsdale Partners is one of the Hurrlys' several real estate businesses, which owns
16 two adjacent building complexes in Scottsdale, Arizona—one at 7110 East McDonald Drive
17 (“Kiva Professional Plaza”), and the other at 7170 East McDonald Drive (“Scottsdale Professional
18 Plaza”). Scottsdale Partners is not involved in broker-dealer activities, is not a FINRA “member”
19 or “associated person” under FINRA’s Bylaws or FINRA’s Procedures, and is not subject to
20 FINRA’s regulatory jurisdiction.
21

22 57. Scottsdale Partners leases offices in the plazas to numerous business tenants
23 unrelated to the Hurrlys or their several companies, including a dental practice, a Chinese medicine
24 herbalist, an accounting practice, a physical therapy practice, a pain management clinic, a financial
25 advisory practice, and a sleep disorders institute (collectively, the “Non-Hurry Business
26
27
28 Tenants”).

1 58. In November of 2012, the offices and common areas in Suite 6 of the Scottsdale
2 Professional Plaza, which share a common reception area, were reserved for and divided among
3 the Hurrys' several businesses.
4

5 59. Scottsdale Partners leases several of the offices in Suite 6 to Non-Party Scottsdale
6 Capital Advisors Corporation ("SCA"), an Arizona corporation operating as a securities broker-
7 dealer that John and Justine founded in 2001.
8

9 60. SCA is a FINRA "member" and is subject to FINRA regulations.

10 61. In November of 2012, Scottsdale Partners also provided offices in Suite 6 to
11 employees of Scottsdale Partners who perform building maintenance services for the two plazas.
12

13 62. Scottsdale Partners also leases office space at the Scottsdale Professional Plaza to
14 ISC. Presently, ISC's offices are located exclusively in Suite 4 of the Scottsdale Professional Plaza
15 (the "ISC Office Suite"). In November 2012, ISC's offices were located in space it leased from
16 Scottsdale Partners in Suite 6—specifically, the northwest corner office of Suite 6 (the "ISC
17 Corner Office"). ("ISC Office" refers to both the ISC Corner Office and the ISC Office Suite
18 unless context otherwise demands.) At all times relevant to this Complaint, FINRA was on notice
19 of the location of the ISC Office.
20
21

22 63. ISC is neither a FINRA "member" nor a FINRA "associated person" under
23 FINRA's By-laws and Enforcement Department Procedures Manual ("FINRA's Procedures").
24

25 64. Scottsdale Partners conducts business out of the ISC Office. At all times relevant to
26 this Complaint, the plaza's several tenants remit their rent payments and provide landlord notices
27 to Scottsdale Partners at the ISC Office.
28

1 65. In November 2012, ISC owned and maintained the ISC Computers—three password
2 protected computers and the several hard drives within them—located in the ISC Office.

3 66. The ISC Computers were connected to the internet and used in interstate commerce
4 and communications.
5

6 67. When working onsite at the Scottsdale Professional Plaza, the Hurrlys use the ISC
7 Computers in the ISC Office primarily to attend to the management and operations of ISC,
8 Scottsdale Partners, their other non-member real estate businesses, and new and potential business
9 ventures that arise for them from time to time.
10

11 68. When working onsite at the Scottsdale Professional Plaza, Hurrlys also use the ISC
12 Computers in the ISC Office for all or most of their charitable endeavors and the personal affairs
13 of their immediate and extended family, including, but not limited to, financial, legal, tax, medical,
14 educational, and numerous other personal matters, as described in greater detail below.
15
16

17 69. When working from one of their homes or otherwise away from Scottsdale
18 Professional Plaza, the Hurrlys access the ISC Computers remotely for the same purposes listed in
19 paragraphs 67 - 68.
20

21 70. A single gigabyte of electronic data is the equivalent of approximately 894,784
22 pages of plaintext or 4,473 200-page books.

23 71. In November 2012, the ISC Computers contained hundreds of gigabytes of
24 electronic data that (1) were not SCA's "books and records" (nor the books and records of any
25 other FINRA member) or (2) were unrelated to SCA, including at least the following categories
26 of sensitive, private, confidential, privileged, and proprietary information that ISC is duty bound
27 to protect from disclosure (collectively, the "Extra-Jurisdictional Materials"):
28

1 a. confidential and legally protected employment files, medical records, and
2 health information of ISC's and Scottsdale Partners' employees and their family members
3 including, but not limited to, John Davidson, John Lumpkin, John Hurry, Justine Hurry, and
4 various employees of Corner of Paradise in Newport, California;

6 b. proprietary, confidential, and sensitive business, employee, and customer
7 information for numerous non-member entities, which has competitive value because it is not
8 generally known or ascertainable by competitors who could use it to their economic advantage,
9 including, but not limited to, information pertaining to the Non-Hurry Business Tenants, and to
10 the Hurrys' past, present, and future non-regulated businesses and entrepreneurial commercial
11 ventures, such as counterparty information, customer lists, client lists, accounts, business financial
12 information, payroll information, contracts, settlement agreements, non-disclosure agreements,
13 trade secrets, production methods, formulas, plans, and other intellectual property;

17 c. private and confidential communications regarding sensitive family and
18 business matters related to the Hurry family and extended family, including the health records of
19 John and Justine and their four children, the health, military and financial records of Justine's
20 elderly father, for whom Justine holds a power-of-attorney, the account numbers and details of
21 the Hurry's personal bank accounts and accounts at other financial institutions, and a variety of
22 other private personal data, including photos;

25 d. privileged attorney-client communications between John or Justine both in
26 their personal and/or official capacities, on the one hand, and their legal advisors, on the other,
27 with related attorney work product;

28 e. confidential school records related to the Hurrys' children;

1 f. personal estate and financial planning information for the Hurrlys, including
2 their trust documents, living wills, and the location and disposition of various personal financial
3 assets of the couple; and

4
5 g. business tax returns for various non-member entities and other financial
6 information, including bank account numbers, passwords, and general ledgers.

7
8 72. On the morning of November 12, 2012, staff members representing FINRA's
9 Departments of Member Regulation and Enforcement commenced FINRA Matter
10 No. 20120327319 with a surprise onsite examination of SCA at its headquarters in Suite 6 of the
11 Scottsdale Professional Plaza. Staff members represented at least five FINRA offices (Dallas,
12 Denver, Los Angeles, New York City, and Rockville) and included Andersen, Christina L.
13 Stanland ("Stanland"), FINRA's principal regional counsel, Steven C. Bender, Rebecca Kramer,
14 Cia M. Fiske, Stacie A. Jungling, Christopher Leigh, Nicholas Moor, and Cindy Ponikvar.

15
16
17 73. FINRA's arrival at Suite 6 bore hallmarks of a government raid. Andersen and his
18 examination team arrived unannounced first thing in the morning. They deliberately intimidated
19 the receptionist and FINRA staff fanned out throughout the offices, bullying SCA personnel and
20 interrupting and interfering with the performance of their job duties.

21
22 74. Andersen and his examination team commandeered SCA's conference room and set
23 up an office of their own within it for four consecutive days, operating around the clock, during
24 which time they interfered with the business operations in Suite 6.

25
26 75. FINRA staff also roamed the outside common areas and parking lot of Scottsdale
27 Professional Plaza, disturbing and causing Non-Hurry Business Tenants enough concern to
28

1 inquire of SCA personnel and FINRA staff whether the FINRA individuals were law enforcement
2 or government agents.

3
4 76. FINRA did not disclose to SCA or the Hurrys at the time of the onsite examination
5 its cause for examining SCA in FINRA Matter No. 20120327319.

6
7 77. In the period between the commencement of the onsite examination of SCA on
8 November 12, 2012, and the date of this Second Amended Complaint, FINRA has not charged
9 SCA or any SCA personnel with wrongdoing in FINRA Matter No. 20120327319.

10
11 78. Andersen, FINRA's Deputy Regional Chief Counsel, led the team of FINRA staff
12 members that conducted FINRA's onsite examination of SCA in FINRA Matter
13 No. 20120327319.

14
15 79. When they arrived at SCA's headquarters, Andersen or a member of his team
16 presented SCA's chief compliance officer with a Procedural Rule 8210 Request (the "8210
17 Request") and related correspondence addressed to John solely in his purported capacity as
18 "president" of SCA.

19
20 80. FINRA issued no separate FINRA Rule 8210 request to John, Justine, or any other
21 "associated person" of SCA in his or her personal capacity relating to FINRA Matter No.
22 20120327319.

23
24 81. Both Justine and John were under considerable emotional strain at the time of the
25 onsite examination. Justine had recently been [REDACTED].
26 She was scheduled to [REDACTED] on January 17, 2013, to remove it. Nobody knew or could
27 have known whether or not [REDACTED]. John, Justine, and their four children [REDACTED]
28 [REDACTED]

1 82. Because Justine’s ██████████ was to be followed by at least ten weeks of
2 convalescence, John was preparing to single-handedly undertake ██████████
3 Justine, their four children, and their several companies and business ventures when FINRA
4 commenced the onsite examination of SCA.
5

6 83. Neither John nor Justine was at SCA’s headquarters in Suite 6, or at the ISC Office
7 during FINRA’s onsite examination of SCA.
8

9 84. FINRA demanded of SCA in the 8210 Request “immediate access to inspect and
10 copy . . . information in the possession, custody, or control of [SCA] and its subsidiaries, affiliates,
11 predecessor corporations, principals, employees, and any other affiliated persons.”
12

13 85. FINRA warned SCA in the 8210 Request that “your failure to provide access to the
14 firm’s books and records requested . . . may result in a disciplinary action Sanctions that could
15 be imposed include fines, expulsion and a permanent bar from the industry.”
16

17 86. Among other items, FINRA demanded in the 8210 Request that SCA produce
18 “[f]orensic images of *the hard drives* of select firm employees *identified onsite* by FINRA staff”
19 (emphasis added), advised SCA that “[u]nder FINRA Rule 8210, you are obligated to respond to
20 this request fully, promptly, and without qualification,” and warned SCA that “[a]ny failure on
21 your part to satisfy these obligations could expose you to sanctions, including a permanent bar
22 from the securities industry.”
23

24 87. Andersen also provided SCA’s representatives with a letter dated November 12,
25 2012, (the “Privilege Letter”) wherein he expressed that SCA could provide FINRA with a
26 detailed “privilege log” identifying each electronic record collected by FINRA that SCA claims
27 is “privileged” (the latter term undefined, but subsequently clarified to embrace private and
28

1 proprietary information unrelated to SCA) and FINRA would “agree to consider those claims and,
2 *without reviewing the document, to delete or otherwise segregate* those documents for which your
3 privilege claim seems reasonable.” (Emphasis added).
4

5 88. Andersen asserted in words or substance to SCA representatives on the afternoon of
6 November 12, 2012, that FINRA has jurisdiction over the ISC Computers and the power to compel
7 unfettered access to those devices in their entirety. ISC is not a FINRA member firm. There is
8 nothing in FINRA Rule 8210 that authorizes FINRA to demand or seize ISC’s computers and
9 hard drives. Interpreting Rule 8210 as providing such authority exceeds the jurisdictional bounds
10 set forth for SRO’s in the Securities and Exchange Act of 1934 and violates the Hurrys’ and
11 Business Plaintiffs constitutional right to due process.
12
13

14 89. Andersen made the foregoing assertion even though SCA was the only recipient of
15 FINRA’s 8210 Request, which applies only to the books and records of SCA and despite the fact
16 that FINRA has no regulatory jurisdiction over ISC.
17

18 90. Andersen demanded in words or substance on the afternoon of November 12, 2012,
19 that SCA unlock the ISC Office so FINRA staff under his command could enter ISC’s premises,
20 seize the ISC Computers, access the ISC Computers, and create “mirror images” of the ISC
21 Computers in their entirety.
22

23 91. Andersen’s demand for access to the ISC Computers in their entirety was improper
24 for numerous reasons, including that the ISC Computers were not on SCA’s premises but instead
25 on ISC’s premises, that the ISC Computers do not belong to SCA, and that the ISC Computers
26 are used predominantly for purposes unrelated to SCA and laden with sensitive, private,
27
28

1 confidential, attorney-client privileged, work product, and/or proprietary information not
2 comprising books and records related to SCA, *i.e.*, the Extra-Jurisdictional Materials.

3
4 92. At the time of his demands, Andersen was informed that, to the extent the ISC
5 Computers contain any SCA-related material, that material likely comprises emails to or from
6 John or Justine at their respective SCA-email addresses, which are preserved in a third-party,
7 SEC-approved, cloud-based, verifiable and auditable, electronic data repository maintained by
8 Smarsh, Inc., which could readily provide a true and correct copy of every non-privileged email
9 to or from John or Justine at their respective SCA-email addresses without prejudicing the privacy,
10 privilege, and proprietary rights of ISC and the other individuals and entities about whom Extra-
11 Jurisdictional Material exists on the ISC Computers.
12
13

14 93. Andersen afforded no serious consideration during the onsite examination to any
15 representations or alternative proposals regarding the handling of the ISC Computers.
16

17 ***FINRA and the Individual Defendants Access the ISC Computers***
18 ***through Coercion and Deceit***

19 94. Andersen told SCA representatives on November 12, 2012, that FINRA would issue
20 “Wells Notices” to several SCA personnel “within the next 15 minutes” if SCA continued to resist
21 his demand to unlock the ISC Office and allow the FINRA examination team to enter the premises,
22 seize the ISC Computers, access the ISC Computers, and create “mirror images” of the ISC
23 Computers in their entirety.
24

25 95. To be “Wells’d” is a reportable event on a registered person’s Form U4 and carries
26 a significant stigma in the securities industry.
27
28

1 96. The stigma associated with “being Wells’d” can be immediate and devastating to
2 the respondent’s career, reputation, and livelihood.

3
4 97. The mere issuance of a Wells Notice to a securities professional with regulatory
5 compliance duties can make it extraordinarily difficult for the respondent to find another job in
6 the securities industry, even if the respondent ultimately is found not to have engaged in the
7 alleged misconduct.
8

9 98. It was outside the bounds of FINRA’s authority for Andersen to threaten to serve a
10 Wells Notice on SCA staff members in the next fifteen minutes if they did not unlock the door to
11 a non-member firm’s office. Andersen’s threat to issue Wells Notices to SCA’s personnel, with
12 the instant attendant stigma and risk that those personnel would face a permanent bar from
13 working in the securities industry, was intended to coerce SCA representatives to unlock the ISC
14 Office and allow the FINRA examination team to access the ISC Computers and, ultimately, had
15 just that effect.
16
17

18 99. With Andersen’s threat of imminent Wells Notices for SCA personnel, John and
19 Justine were presented with a classic Morton’s fork, *i.e.*, as SCA’s founders and indirect owners
20 they could abate the immediate peril to the careers, reputations, and livelihoods of SCA employees
21 or, as the founders and indirect owners of ISC, they could continue to shield ISC’s Computers
22 from intrusion and protect the entities and individuals, including themselves, whose private,
23 privileged, and proprietary information is contained in the ISC Computers. They could not do
24 both.
25
26

27 100. Under the circumstances, Andersen’s “Wells Notice” ultimatum reasonably caused
28 enormous duress for John and Justine, compounding [REDACTED] with which they

1 were burdened because of [REDACTED] and [REDACTED]

2 [REDACTED].
3
4 101. Ultimately, FINRA staff under Andersen's command accessed the ISC Office,
5 seized the ISC Computers, accessed the ISC Computers, and copied the ISC Computers in their
6 entirety. FINRA had no right to coerce and demand that SCA grant it access to a non-FINRA
7 member firm's office and the computers and hard drives therein, and FINRA further had no right
8 to access ISC's devices and make mirror images of them.
9

10 102. Andersen, in undertaking and directing other FINRA staff to undertake the tasks of
11 seizing, accessing and copying the ISC Computers in their entirety, failed to hue to the limits of
12 FINRA Rule 8210.
13

14 103. Andersen, in undertaking and directing other FINRA staff to undertake the tasks of
15 seizing, accessing and copying the ISC Computers in their entirety, violated those provisions of
16 FINRA's procedures that define the nature and scope of FINRA's jurisdiction and that prevail on
17 FINRA staff to respect FINRA's jurisdictional boundaries when conducting examinations.
18

19 104. FINRA, in seizing, accessing and copying the ISC Computers in their entirety,
20 deprived ISC of the full use of those devices for at least five days.
21

22 105. FINRA forced SCA to retain the costly services of a forensic data specialist to
23 monitor and log all material events pertaining to the time-consuming electronic data extraction
24 process to assess the safe handling of the devices and integrity of the data within.
25

26 106. Neither John, Justine, nor any agent or representative of SCA or ISC ever authorized
27 FINRA to review any of the Extra-Jurisdictional Materials. Regulatory counsel for SCA objected
28 to the seizing and copying of the ISC Computers and demanded that FINRA not review any of

1 the electronic information it copied from the ISC Computers using any procedure that failed to
2 protect the Extra-Jurisdictional Materials from review or dissemination.

3
4 107. FINRA, in seizing, accessing, and copying the ISC Computers in their entirety,
5 knowingly and willfully arrogated to itself, at Andersen's direction, and over strenuous objections,
6 the hundreds of gigabytes of Extra-Jurisdictional Material believed to exist on those devices.

7
8 ***FINRA and the Individual Defendants Refuse to Protect the***
9 ***Extra-Jurisdictional Materials from Review and Dissemination***

10 108. Continuing to ignore the fact that the ISC Computers belonged to ISC, FINRA,
11 Andersen, and Stanland initially required that SCA provide a "privilege log" of all electronic
12 information on the ISC Computers—copies of which FINRA now had in its possession.

13
14 109. It is impractical, ineffective, and punitive for FINRA to require a small broker-
15 dealer's attorneys to parse as much as two terabytes of electronic data, the equivalent of nearly
16 1.8 billion pages of plaintext, from a non-member's computers to identify and log every piece of
17 digital information that is privileged, irrelevant, or both, when such privileged and/or irrelevant
18 digital information is anticipated to constitute the majority of that electronic data. Indeed, the
19 Hurrys expended hundreds of thousands of dollars just to collect and track the seized and copied
20 drives.
21

22
23 110. Despite the representation in the Privilege Letter that FINRA would consider
24 "privilege" claims "*without reviewing the document*" and would "*delete or otherwise segregate*"
25 those documents—Andersen responded to SCA's regulatory counsel's written request that the
26 Extra-Jurisdictional Materials be returned by stating that FINRA could not agree to return or
27 destroy any such data because the data purportedly cannot be disaggregated and also stated that,
28

1 if Andersen disagreed with SCA's claim of "privilege" on any document, a FINRA staff member
2 would review that document and decide whether, in the FINRA staff member's view, the
3 "privilege" claim is warranted.
4

5 111. Upon information and belief, FINRA commonly uses a method to identify
6 potentially attorney-client privileged documents where a search is run for materials containing the
7 names of attorneys provided by the member, those materials are then segregated and copies
8 provided to the member's attorney for preparation of a privilege log on those documents.
9

10 112. As John and Justine prepared [REDACTED], it became evident that the
11 "privilege log" approach was unworkable.
12

13 113. FINRA agreed to allow SCA to submit a list of "search terms" beyond attorney
14 names which, if used in electronic searches of FINRA's mirror image copies of the ISC
15 Computers, would yield Extra-Jurisdictional Material.
16

17 114. Under this method, FINRA would run searches of FINRA's mirror image copies of
18 the ISC Computers using the off-limits search terms, provide SCA with some unspecified way to
19 identify the specific electronic data those search terms identified, require SCA to perform a
20 "privilege" review of that enormous universe of electronic data, and require SCA to provide
21 FINRA with a "privilege" log identifying the basis of each of its "privilege" objections to each
22 item of digitized information in that universe.
23
24

25 115. The "search terms" method and associated review protocol is unworkable to protect
26 the Extra-Jurisdictional Material from review, dissemination, or disclosure.
27
28

1 116. To craft a list of search terms that would provide a reasonable measure of assurance
2 that all of the Extra-Jurisdictional Material is excluded from FINRA's review is unduly
3 burdensome and entirely impractical, if not impossible.

4
5 117. The review protocol wherein a FINRA staff member determines the validity of
6 privilege claims impinges on regulatory counsels' legal and ethical responsibilities to identify and
7 shield attorney-client privileged data and work product from disclosure.
8

9 118. The more sensible, practical, and efficient approach to dealing with the ISC
10 Computers is for FINRA to place its copies of the ISC Computers in the custody of a mutually-
11 acceptable, neutral, third-party forensic computer specialist to extract any SCA books and records
12 relevant to the undisclosed purpose of FINRA's examination of SCA without prejudicing the
13 privacy, privilege, and proprietary rights of those individuals and non-member entities about
14 whom Extra-Jurisdictional Material exists on the ISC Computers.
15
16

17 119. SCA, in reaction to further demands and threats by FINRA, and in good faith,
18 provided FINRA with a list of search terms that SCA surmised would shield—at least initially—
19 significant privileged and Extra-Jurisdictional Material.
20

21 120. FINRA rejected the vast majority of the search terms that SCA proposed to yield
22 potentially privileged documents, including such terms as "attorney," "lawyer," "counsel,"
23 "counselor," "confidential," "immunity," "litigation," "memorandum," "analysis," "evaluation,"
24 "advice," "court," "arbitration," "lawsuit," "action," "case," "precedent," "claim," "defense,"
25 "object," "objection," "motion," "complaint," "pleading," "discovery," "civil procedure,"
26 "judge," "arbitrator," "adversary," "opposing counsel," "confidentiality agreement," "NDA,"
27 "release," and "non-disclosure agreement."
28

1 121. FINRA also rejected the vast majority of the search terms that SCA proposed to
2 yield Extra-Jurisdictional Material, including the terms in the preceding paragraph, the names of
3 the Hurrys' non-member entities, and such terms as "University of San Francisco," "Stanford
4 Medical," "Phoenix Childrens Hospital," "Veteran's Association," "Accountant," "Apartment,"
5 "Beneficiary," "Bicycle," "Bookkeeper," "Building," "Brain," "Brother," "Charity,"
6 "Charitable," "Child," "Children," "Church," "Dad," "Doctor," "Enjoin," "Executor," "Father,"
7 "Grade," "Grandma," "Grandmother," "Grandpa," "Grandfather," "Guardian," "Healthcare,"
8 "Home," "Ice cream," "Ill," "Illness," "Infection," "IRA," "IRS," "Landlord," "Lease,"
9 "Military," "Mom," "Mortgage," "Mother," "Philanthropy," "Revocable Trust," "Retirement,"
10 "School," "Script," "Sick," "Sister," "Social Security," "SSN," "Surgery," "Teacher," "Tenant,"
11 "Title," "Treatment," "Trip," "Trustee," "Vacation," and "Veteran's Administration."

12
13
14
15
16 122. The search terms that FINRA rejected were likely to identify Extra-Jurisdictional
17 Material. Highlighting just one example, the search term "ice cream" was intended to exclude
18 electronic data pertaining to Plaintiff Corner of Paradise, the Hurrys' non-member ice cream shop
19 in Newport Beach, California.

20
21 123. Neither FINRA, Andersen, nor Stanland had or has any intention of shielding the
22 Extra-Jurisdictional Materials from review by FINRA staff.

23
24 124. Neither FINRA nor Andersen had or has any intention of not distributing or sharing,
25 or not causing or allowing the Extra-Jurisdictional Materials to be distributed or shared, with
26 government agencies. FINRA's mere act of searching the copies of the ISC Computers could
27 permanently impair significant constitutional protections, including Fourth Amendment
28 protections, to which the Hurrys and Business Plaintiffs are otherwise entitled.

1 125. Neither the Hurrays nor the Business Plaintiffs had or have any desire or intention of
2 interfering with FINRA's legitimate examination of its members. To the contrary, the Hurrays and
3 the Business Plaintiffs have cooperated with several requests by FINRA.
4

5 126. ISC even offered to search for and produce from ISC's computers and hard drives
6 any non-privileged SCA books and records related to the undisclosed purpose of FINRA's
7 examination of SCA, a process that should satisfy any legitimate objective of FINRA's SCA
8 examination without prejudicing the privacy, privilege, and proprietary interests of ISC and other
9 individuals and non-member entities.
10

11 127. ISC also offered to share with FINRA the expense of having the ISC Computers
12 placed in the custody of a mutually-acceptable, third-party, neutral forensic computer specialist
13 so any non-privileged SCA books and records related to the undisclosed purpose of FINRA's
14 examination of SCA can be isolated for production. The latter proposal likewise would satisfy any
15 legitimate objective of FINRA's examination of SCA without prejudicing the privacy, privilege,
16 and proprietary interests of individuals and non-member entities
17
18

19 128. FINRA rejected the aforementioned proposals.
20

21 129. As a direct and proximate result of FINRA's and the Individual Defendants' actions,
22 the Plaintiffs have been and continue to be irreparably injured in that FINRA coercively,
23 deceitfully, and in violation of its jurisdictional boundaries and federal and state law (a) seized the
24 ISC Computers on ISC's premises, (b) accessed the ISC Computers, (c) copied the ISC Computers
25 in their entirety, and (d) refused thereafter to return or destroy the Extra-Jurisdictional Material
26 they copied from the ISC Computers.
27
28

1 130. FINRA, Andersen, Stanland, and the Individual Defendants have no independent
2 basis or authority to retain the Extra-Jurisdictional Materials.

3
4 131. As a direct and proximate result of FINRA's, Andersen's, Stanland's, and the
5 Individual Defendants' actions, Plaintiffs have been and continue to be irreparably injured by the
6 imposition of a punitive, unduly burdensome, vexatious, ineffective, and impracticable electronic
7 data review process whereby FINRA ultimately reserves the "right" unilaterally to decide whether
8 to review Extra-Jurisdictional Materials.
9

10 132. As a direct and proximate result of Defendants' actions, the Plaintiffs have been and
11 continue to be irreparably injured by FINRA's intent to review, retain, and disclose to government
12 agencies the Extra-Jurisdictional Materials, in blatant violation of privacy, privilege, and
13 proprietary rights of the Hurrlys, ISC, and the individuals and entities about whom electronic data
14 exists on FINRA's copy of the ISC Computers.
15
16

17 ***ISC and the Hurrlys Demand Destruction, Return, or Escrow of the Copies of***
18 ***the ISC Computers***

19 133. On February 27, 2013, the Hurrlys and ISC demanded that FINRA destroy, return,
20 or deposit with a mutually-acceptable third party computer forensic specialist, any copies of the
21 ISC Computers in FINRA's possession for purposes of preservation and security.
22

23 134. On March 1, 2013, FINRA assured ISC and the Hurrlys that FINRA had not
24 "accessed the Hurrlys' hard drives, and will not do so until there is an agreement on the data that
25 may be accessed." This was consistent with numerous prior communications made to SCA's
26 counsel where FINRA assured them that no review of computer material would take place absent
27 agreement and a mutually acceptable process for resolving disputes.
28

1 ***ISC Seeks Court Intervention to Protect the Confidential Data***
2 ***from Disclosure, Review, and Dissemination***

3 135. On March 8, 2013, ISC filed suit in the U.S. District Court for the District of Arizona
4 against FINRA and Andersen, alleging that Andersen's invasion of the ISC Office and seizure
5 and copying of the ISC Computers violated the Computer Fraud and Abuse Act, 18 U.S.C. § 1030
6 *et seq.*, among other claims.

8 136. Hopeful that FINRA would be amenable to settling the dispute on mutually
9 agreeable terms, the Hurrys refrained from serving the complaint but sent copies both to FINRA
10 and to Andersen.

12 137. In the months that followed, neither FINRA nor Andersen proposed any method for
13 examining any non-privileged books and records of SCA that might be on the ISC Computers
14 without violating the privacy and proprietary interests of non-members.

16 138. Instead, on information and belief, FINRA, Andersen, and the Individual
17 Defendants devised a plan to harass and then strong-arm the Hurrys and ISC into dropping their
18 lawsuit against FINRA and Andersen.

20 ***Defendants Engage in a Pattern of Harassment Meant to***
21 ***Intimidate, Coerce, and Harm the Hurrys and Business Plaintiffs***

22 139. In the months that followed the seizure and copying of the ISC Computers,
23 Defendants engaged in a pattern of escalating harassment of the Hurrys and the businesses
24 associated with the Hurrys designed to intimidate, annoy, coerce, and harm the Hurrys and
25 Business Plaintiffs.
26

27 140. On or about December 20, 2012, Alpine filed a standard form application with
28 FINRA for permission to provide retail margin account services on a self-clearing basis and to

1 remove the restriction upon the firm that it would have no one other than John Hurry dually
2 registered and/or associated with SCA.

3
4 141. FINRA informed Alpine that it should withdraw the application because it would
5 never be approved.

6
7 142. Then FINRA demanded that Alpine provide John Hurry's personal bank records for
8 FINRA's review and examination as part of the application, allegedly due to a line of credit
9 between Alpine and John Hurry. On information and belief, the request for personal bank records
10 was nothing more than a pretext to harass the Hurrlys' and further invade their privacy.

11
12 143. In response to the request for bank records, John Hurry produced a "Depository
13 Validation" from JP Morgan Chase Bank verifying that the Hurrlys' trust account maintained a
14 minimum of \$3,000,000 in collected funds.

15
16 144. Based upon the Depository Validation and other information in FINRA's possession
17 regarding the Hurrlys' financial resources, FINRA knew or should have known that John Hurry
18 had sufficient liquidity to provide contingent funding to Alpine should the firm need to draw on
19 the line of credit.
20

21 145. Nonetheless, on or about May 3, 2013, FINRA issued a denial of Alpine's
22 application to provide retail margin account services on a self-clearing basis.

23
24 146. This denial letter was arbitrary and a pretext to harass the Hurrlys, impair their
25 businesses and livelihood without due process of law, pressure them into waiving constitutional
26 privacy protections, coerce them to drop their lawsuit against FINRA and Andersen, reduce their
27 influence in the OTC sector, and, ultimately, drive them out of business.
28

1 147. Even when FINRA ultimately approved Alpine to provide retail margin account
2 services on a self-clearing basis, it did so with a margin that was arbitrarily restrictive and largely
3 ineffective for the firm's intended business purposes.
4

5 148. During this same period, the Nevada Secretary of State's Securities Division issued
6 24 subpoenas seeking numerous records from businesses associated with the Hurrys. On
7 information and belief, there was no active or pending investigation by the Nevada authorities nor
8 was there lawful cause to seek the records. Rather, on information and belief, the subpoenas were
9 issued at the prompting of Andersen and/or one of the Individual Defendants. The Securities
10 Division eventually withdrew the subpoenas.
11
12

13 149. Andersen also participated directly in the harassment. On or about June 19, 2013,
14 FINRA and Andersen conducted the first in a series of on-the-record ("OTR") interviews with
15 employees and officers of the Hurrys' companies.
16

17 150. Neither the interview of June 19, 2013, nor any of the OTR interviews that followed
18 was conducted strictly in furtherance of legitimate examination goals; the interviews were, rather,
19 designed to harass and cause reputational damage to the Hurrys and their businesses.
20

21 151. In the course of the OTR interviews, Andersen and Individual Defendants framed
22 their questions to insinuate to the interviewees that John Hurry had been engaging in money
23 laundering activities or unlawful activities. These false insinuations that John Hurry is or was
24 engaged in money laundering, that he or his employees were paid in cash, and that customers were
25 permitted to pay in cash, were all deliberate attempts to cause reputational damage to the Hurrys
26 and those businesses associated with them.
27
28

1 152. As a direct and proximate result of these false insinuations that John Hurry is or was
2 involved in unlawful activity, at least one senior level officer resigned from a business associated
3 with the Hurrys. At least one other senior employee has resigned from a Business Plaintiff as a
4 result of FINRA's and the Individual Defendants' harassing and disparaging conduct.
5

6 ***FINRA, Andersen, Stanland, and the Individual Defendants Threaten and***
7 ***Coerce the Hurrys into Abandoning the Lawsuit against FINRA and Andersen***

8 153. On June 25, 2013, Andersen resurrected his threat to "analyz[e]"—without any
9 reasonable method to protect the privacy and propriety interests of non-parties—the information,
10 documents, and data contained on the Hurry's hard drives" "beginning *this* Friday [June 28, 2013]
11 at noon EDT [9:00 a.m. MST]."
12

13 154. Andersen issued this threat despite that FINRA and ISC had not yet agreed on a
14 mutually acceptable process for resolving disputes regarding Extra-Jurisdictional Material and the
15 ISC Computers.
16

17 155. Among the new assertions that Andersen made in his letter was the false assertion
18 that the seizure of the ISC Computers was part of an investigation of John Hurry's outside business
19 activities. This was nothing more than an after-the-fact attempt to justify Andersen's unlawful
20 invasion of the ISC Office and confiscation of the ISC Computers.
21
22

23 156. FINRA's Procedural Rule 8210 Request of November 12, 2012, was addressed to
24 John Hurry only in his capacity as president of SCA, not in his personal capacity or in his capacity
25 as an owner or manager of any outside business.
26
27
28

1 157. Despite seeking disclosure of vast quantities of SCA books and records, FINRA had
2 made no demand whatsoever in its Procedural Rule 8210 Request of November 2012 for
3 disclosure of records related to the Hurrlys' outside business activities.
4

5 158. SCA employees were not questioned during the OTRs begun in June 2013 regarding
6 the Hurrlys' outside business activities.
7

8 159. On June 26, 2013, in response to Andersen's renewed threat to harm ISC and the
9 Hurrlys by reviewing and analyzing Extra-Jurisdictional Materials, ISC expressed in writing to
10 FINRA's outside litigation counsel that it had "no desire to impede FINRA's legitimate
11 examination of a member firm" and that "[w]ithout conceding the presence of any such materials
12 on the ISC Computers, ISC has never objected, and does not object today, to FINRA reviewing
13 non-privileged SCA books, records, and accounts to the extent ISC and its counsel find them on
14 the ISC Computers."
15

16
17 160. Despite this renewed invitation to negotiate a resolution that would preserve the
18 privacy and proprietary interests of non-members while acknowledging FINRA's right to
19 investigate SCA, FINRA refused to discuss any method for examining non-privileged books and
20 records of SCA that might be on the ISC Computers.
21

22 161. On June 27, 2013, through its outside counsel, FINRA doubled-down on the
23 Andersen threat and accused the Hurrlys of attempting to "delay and obstruct FINRA's proper
24 regulatory review" by causing ISC to commence its first lawsuit regarding the Extra-Jurisdictional
25 Materials.
26

27 162. FINRA and the Individual Defendants knew or should have known that its
28 accusations of an improper motive were false and pretextual.

1 163. FINRA, Andersen, and FINRA's outside counsel made their accusations regarding
2 the Hurrys' purported improper motive in order to intimidate the Hurrys and coerce them not to
3 serve their complaint and to abandon their lawsuit.
4

5 164. The Hurrys reasonably understood FINRA's accusations as a threat to bring
6 disciplinary action against them if they allowed ISC to persist in vindicating its rights and the
7 rights of others with data on the ISC Computers.
8

9 165. The same day that FINRA falsely accused the Hurrys of attempting to "delay and
10 obstruct FINRA's proper regulatory review" of John Hurry's outside business activities, the SEC
11 issued a subpoena to John Hurry seeking production of electronic and other records.
12

13 166. Faced with that prospect of having to defend themselves against contrived
14 obstruction charges in an 8210 proceeding and potentially losing their livelihood as a result, and
15 already feeling the effects of harassment from the multiple quarters, the Hurrys were left with no
16 reasonable alternative but to cause ISC to stand down. This did not mean, however, that the
17 Hurrys, ISC, the Business Plaintiffs, or anyone else with information on the ISC Computers
18 consented to FINRA's access, examination, or retention of the Extra-Jurisdictional materials in
19 FINRA's possession.
20
21

22 167. As of the filing of this Complaint, Defendants still unreasonably retain the Extra-
23 Judicial Material, which was secured in excess of their jurisdiction, and is being held by
24 Defendants without independent basis or authority to do so.
25
26
27
28

1 ***Defendants Embark on a Campaign to Discredit, Intimidate, and***
2 ***Harm the Hurrys While Avoiding Further Scrutiny and the***
3 ***Requirement of Due Process***

4 168. On information and belief, when it was clear that ISC was not going to serve its
5 lawsuit, Defendants embarked on a campaign to discredit the Hurrys, intimidate them from
6 pursuing their federal lawsuit, and force them out of the OTC sector, while avoiding the scrutiny
7 and due process attendant to formal regulatory action.

8
9 169. On or about September 19, 2013, FINRA conducted an OTR of John Hurry.

10 170. During the Hurry OTR, John Hurry was asked to disclose the name of the financial
11 institution in which he conducted his personal banking. He responded in substance that his primary
12 personal banking relationship was with Chase, where his trust accounts were established.

13
14 171. On or about October 7 and October 18, 2013, FINRA propounded Rule 8210
15 requests seeking personal and business records from the Hurrys and their non-regulated
16 businesses, including bank records, phone records, and flight records.

17
18 172. FINRA's demands for records were unnecessarily overbroad and sought records not
19 reasonably related to any issue in FINRA's examination. FINRA's staff had no evidence or
20 grounds to believe that the records they sought contained any information relevant to the subject
21 of FINRA's examination. The 8210 requests were intended to harass the Hurrys, injure and impair
22 Hurrys' businesses, pressure the Hurrys to waive their constitutional privacy protections, retaliate
23 against the Hurrys for bringing their lawsuit against FINRA and Andersen, and prevent the Hurrys
24 from reinitiating their lawsuit against FINRA, Andersen, or others.
25
26
27
28

1 173. The overbroad and overreaching 8210 requests were also part of a scheme to harass
2 the Hurrlys into abandoning the OTC sector, part of their lawful business activities, without due
3 process of law.
4

5 174. Faced with the threat of further charges of obstruction, the Hurrlys provided FINRA
6 with hundreds of pages of personal bank records, personal phone records, and flight records.
7 FINRA's request was unduly burdensome, extremely costly and time consuming. Nevertheless,
8 the Hurrlys fully cooperated. The records were redacted to remove personal information pursuant
9 to an agreement with FINRA, marked confidential, and provided to FINRA over the Hurrlys'
10 express objections.
11
12

13 175. On or about February 4, 2014, a short time after the Hurrlys provided their records
14 in redacted form as per their agreement with FINRA, the SEC issued a subpoena to Pinnacle
15 Aviation for the very same flight records as well as for communications between the Hurrlys and
16 the company that manages the airplane. The timing and substance of the subpoena from the SEC
17 establish close coordination between FINRA and the SEC, including on matters that do not
18 concern FINRA's regulatory functions. The subpoena invaded the Hurrlys' business and privacy
19 interests by exposing information redacted by the Hurrlys when responding to FINRA's 8210
20 request and revealing private and sensitive communications to regulators.
21
22

23
24 ***Defendants Leak Non-Public, Confidential, and Misleading Information to the
Deal Pipeline***
25

26 176. On information and belief, in furtherance of their scheme to discredit, harass, and
27 injure the Hurrlys, Andersen, or the other Individual Defendants, conspired to leak non-public,
28 confidential, and false and misleading information to a reporter for the Deal Pipeline, a financial

1 news and information service whose readership includes a range of financial institutions and other
2 key audiences in the financial services market. Defendants leaked the information for the specific
3 purpose and with the design of causing its publication.
4

5 177. On or about September 17, 2013, Bill Meagher (“Meagher”) of the Deal Pipeline
6 wrote the first of several articles using the information leaked by FINRA. Citing “internal
7 documents” Meagher obtained from FINRA, Meagher described “a series of reports Finra sent to
8 the SEC in 2012 and 2013.”
9

10 178. The “internal documents” to which Meagher alluded were obtained from FINRA’s
11 Office of Fraud Detection and Market Intelligence (“OFDI”).
12

13 179. The “internal documents” to which Meagher alluded made reference to “trading
14 records obtained from U.S.-based broker[] Scottsdale Capital Advisors,” among others.
15

16 180. Meagher’s article disclosed non-public information including the name of an
17 individual who opened a trading account with SCA, when the account had been opened, on whose
18 behalf it was opened, and the volume of trading in the account. Meagher identified no source for
19 these disclosures in his article apart from FINRA.
20

21 181. On information and belief, Andersen, and FINRA staff members from OFDI, were
22 present for all testimony taken as part of FINRA Matter No. 20120327319.
23

24 182. On December 3, 2013, the Deal Pipeline’s Meagher contacted SCA’s outside
25 regulatory counsel, seeking responses from SCA, Alpine, and/or the Hurrys to several questions
26 regarding FINRA’s investigation into trading in a company called Biozoom, among other matters.
27 Meagher’s inquiries reflected a knowledge of non-public and confidential information, the leaking
28 of which can be attributed plausibly only to FINRA.

1 183. Meagher requested comments from SCA's outside regulatory counsel regarding a
2 former SCA employee, Tim Scarpino—specifically, comments regarding the termination of his
3 employment with SCA, which was known to FINRA investigators but had not been publicly
4 reported by SCA.
5

6 184. Meagher also requested comments from SCA's outside regulatory counsel
7 regarding John Hurry's plans to buy Wilson Davis, a transaction which was known to FINRA, but
8 had not been publicly reported.
9

10 185. Meagher's questions demonstrated that, at minimum, he had knowledge of
11 FINRA's ongoing examination of SCA, and the questions posed by FINRA staff members to SCA
12 and its employees. His questions reflected a distinct "prosecutorial" perspective consistent with
13 the tenor of FINRA's examination. His questions made reference to a full spectrum of details
14 reflecting FINRA Matter No. 20120327319 and what FINRA had learned regarding SCA's
15 business, internal practices, customers, customer transactions, securities deposits, wire activities,
16 and trading activity. Other than SCA's in-house and outside regulatory counsel, only Andersen
17 and the other Individual Defendants who were present at the OTRs would have had knowledge of
18 the details reflected in Meagher's questions.
19
20
21

22 186. Neither SCA's outside regulatory counsel nor anyone else associated with SCA,
23 Alpine, or the Hurrys responded to Meagher's inquiries. Any calls from Meagher were referred
24 to the president and chief counsel of SCA without discussing the matters with Meagher. The
25 president and chief counsel of SCA was unable to identify anyone at SCA or Alpine who provided
26 the leaks to Meagher.
27
28

1 187. On December 3, 2013, SCA's outside regulatory counsel emailed Andersen
2 expressing that "SCA is extremely concerned that confidential information has been leaked that
3 may be damaging to the firm or its employees" and asking that Andersen "advise as to whether
4 [FINRA] Staff is aware of this information being provided to the reporter."
5

6 188. Andersen never responded to the December 3, 2013, inquiry by SCA's outside
7 regulatory counsel.
8

9 189. On or about December 4, 2013, Brad Bennett, FINRA's head of enforcement, left a
10 voice mail for SCA's outside regulatory counsel.
11

12 190. Despite that the September 17, 2013, Deal Pipeline article demonstrated that
13 Meagher was provided internal documents from FINRA, Bennett was dismissive of the concerns
14 and suggested that the press leaks "could have come from someone at Scottsdale [Capital
15 Advisors]."
16

17 191. Bennett expressed in his December 4 voicemail that he was "confident on our side
18 that we didn't leak" and declined to respond further, stating that "no one on staff can have anything
19 more to say about it."
20

21 192. On December 6, 2013, just days after the inquiries from Meagher, the Deal Pipeline
22 ran an article by Meagher entitled, "FBI, securities officials investigating Scottsdale Capital,
23 Alpine Securities, source says." As his source, Meagher referenced in his December 6 article only
24 "a person familiar with those investigations."
25

26 193. The information disclosed in Meagher's December 6 article was non-public and
27 confidential.
28

1 194. Meagher's December 6 article demonstrated knowledge of FINRA's ongoing
2 examination of SCA, Alpine, and the questions FINRA staff members had posed to those
3 companies and their employees. His article reflected a distinct "prosecutorial" perspective
4 consistent with the tenor of FINRA's examination.
5

6 195. According to Meagher's December 6 article, FINRA is "work[ing] with the SEC"
7 on investigations involving SCA, Alpine, and the Hurrys."
8

9 196. Meagher also reported in his December 6, 2013, article that "John Hurry, who
10 controls both Scottsdale and Alpine, is in negotiations to buy Wilson Davis."
11

12 197. On information and belief, no one associated with the parties to the Wilson Davis
13 purchase informed Meagher or anyone else in the media that John Hurry or any entity associated
14 with the Hurrys was acquiring Wilson Davis. The article made clear that the Deal Pipeline did not
15 receive comments from anyone who was approached by Meagher at SCA.
16

17 198. Meagher falsely and misleadingly stated in his December 6, 2013, article that the
18 FBI was investigating SCA and Alpine falsely implying that the firms or their principals are
19 targets of criminal or securities' investigations.
20

21 199. On information and belief, SCA is and was not the target of any federal law
22 enforcement investigation and neither are Alpine nor the Hurrys.
23

24 200. Meagher falsely reported in his December 6 article that Biozoom shareholders were
25 allowed to trade in violation of SCA policies and were provided special perks. Meagher also
26 falsely implied in his December 6 article that SCA had disregarded "red flags" regarding the
27 Biozoom trades and that SCA had failed to follow up.
28

1 201. On information and belief, if FINRA conducted any investigation regarding the
2 press leaks following the inquiry from SCA's outside regulatory counsel to Andersen and the
3 subsequent voice message from Bennett, the investigation was incomplete and inadequate.
4

5 202. On information and belief, if FINRA took any action to curb or prevent press leaks
6 or inappropriate disclosure of confidential or non-public information regarding the Hurrys, their
7 businesses, or their customers following the inquiry from SCA's regulatory counsel to Andersen
8 and the subsequent voice message from Bennett, the action was incomplete and inadequate.
9

10 203. On January 9, 2014, SCA's chief in-house counsel, wrote the FINRA Office of the
11 Ombudsman and Robert L.D. Colby, FINRA's Chief Legal Officer, regarding the information
12 leak to Meagher and the Deal Pipeline. The January 9 letter notified FINRA that SCA and its
13 customers have been embarrassed and harmed by the reports and sought a "full investigation" of
14 the matter by FINRA and the SEC. He also requested an assurance that "FINRA is appropriately
15 safeguarding confidential information obtained during its investigations."
16
17

18 204. On information and belief, if FINRA conducted any investigation regarding the
19 press leaks following SCA's January 9, 2014, letter, the investigation was incomplete and
20 inadequate.
21

22 205. On information and belief, if FINRA took any action to curb or prevent press leaks
23 or inappropriate disclosure of confidential or non-public information regarding the Hurrys, their
24 businesses, or their customers following the January 9, 2014, letter, the action was incomplete and
25 inadequate.
26

27 206. On February 18, 2014, outside counsel for John Hurry spoke with Deb Tarasevich
28 (Assistant Director of Enforcement) and Jennie Krasner (Senior Counsel) of the SEC. Counsel

1 expressed concerns regarding the leaks and the reputational harm they were causing the Hurrlys
2 and their businesses.

3
4 207. Tarasevich stated that no one at the SEC was speaking to the press about any
5 investigations or examinations involving the Hurrlys.

6
7 208. On March 20, 2014, the Deal Pipeline published a Bill Meagher article entitled
8 “SEC requests default judgment in \$34M Biozoom pump-and-dump case.” The article mentions
9 information that would only be known to FINRA, SEC, and SCA, including that a FINRA audit
10 of SCA was scheduled for the end of March and that FINRA had made a regulatory request for
11 the personal notes of SCA employees.

12
13 209. The March 20, 2014, article repeats the false and misleading statement that the FBI
14 is investigating SCA and Alpine and repeats the false and misleading implication that the firms or
15 their principals are the targets of criminal or securities’ investigations. The March 20, 2014, article
16 further falsely implies that SCA and/or the Hurrlys were involved in a “pump-and-dump” scheme
17 with Biozoom.

18
19 210. As the disclosures of non-public and confidential information to Meagher was
20 attributable to FINRA, on March 21, 2014, SCA’s in-house counsel again emailed Colby detailing
21 SCA’s concerns about the March 20, 2014, article in the Deal Pipeline. He explained that breach
22 of confidentiality associated with FINRA’s examination and “the distorted factual portrayal of
23 these disclosures has interfered with current and prospective business relationships of SCA.” He
24 demanded that the disclosure of confidential or non-public matters stop immediately.
25
26

27
28 211. On March 21, 2014, Colby confirmed to SCA that “FINRA’s policies prohibit
disclosing our audit schedule and regulatory requests to firms.” Colby represented that FINRA’s

1 “Ombudsman’s office is actively reviewing whether our staff disclosed any information
2 inconsistent with our policies.”

3
4 212. As of the filing of this Second Amended Complaint, FINRA has not communicated
5 the result of any Ombudsman’s office review to SCA or the Hurrlys.

6
7 213. On information and belief, FINRA did not conduct a thorough and adequate
8 investigation regarding the press leaks and inappropriate disclosures following SCA’s March 21,
9 2014 email.

10
11 214. On information and belief, FINRA did not take action to curb inappropriate leaks or
12 disclosures of confidential, non-public, and misleading information regarding the Hurrlys, their
13 businesses, or their customers following the March 21, 2014, email.

14
15 215. On April 9, 2014, outside counsel for SCA received a phone call from reporter Bill
16 Meagher. The reporter informed SCA’s counsel that the Deal Pipeline would be publishing a story
17 that would disclose that FINRA AML examiners appeared at the SCA offices in March of 2014
18 and requested account documentation for a number of customer accounts, which he specified by
19 name.

20
21 216. On or about April 16, 2014, the Deal Pipeline published an article written by
22 Meagher disclosing an unannounced FINRA examination of SCA. Under FINRA policies,
23 unannounced examinations of members are non-public and confidential. The article contained
24 details regarding the unannounced examination of SCA that could be known only to FINRA and
25 SCA.

26
27 217. On or about April 17, 2014, SCA’s in-house counsel emailed Colby notifying him
28 of the contact from Meagher, the April 16, 2014, article in the Deal Pipeline, and attesting “no

1 one at [SCA] disclosed to the press the [unannounced] visit or the documentation [FINRA
2 examiners] requested.” He notified Colby that “FINRA Staff are providing information to this
3 reporter on a near real-time basis, with the apparent intent to embarrass and/or financially hurt
4 [SCA], as well as to expose confidential client information.” He continued that “[t]his behavior,
5 if coming from FINRA Staff, is a violation of your own policies and unbecoming of a member
6 regulatory organization.” He requested that FINRA “thoroughly investigate this matter, and
7 respond” to him or SCA’s outside regulatory counsel, “whether anyone on the Staff has in fact
8 violated FINRA policies.”
9
10

11
12 218. In response to SCA’s email, on or about April 17, 2014, Colby confirmed that
13 “[p]roviding information to the press about exams is unacceptable” and promised that he “will
14 review this situation also.”
15

16 219. On information and belief, FINRA did not conduct an appropriate, thorough, and
17 adequate investigation regarding the press leaks and inappropriate disclosures following SCA’s
18 April 17, 2014, email.
19

20 220. On information and belief, FINRA did not take action to curb inappropriate leaks or
21 disclosures of confidential, non-public, and misleading information regarding the Hurrlys, their
22 businesses, or their customers following the April 17, 2014, email from SCA.
23

24 ***The Leaks to the Deal Pipeline Damage the Hurrlys’ Reputation, Harm Customer
25 Relationships, and Force Closure of the Hurrlys’ Bank Accounts***

26 221. On or about February 3, 2014, Morgan Stanley denied an application by Alpine for
27 an omnibus account. On information and belief, the Morgan Stanley denial of Alpine’s application
28 was directly and proximately caused by leaked information appearing in the December 6, 2013,

1 Deal Pipeline article. Alpine lost at least one major client or prospective client as a direct and
2 proximate result of the Morgan Stanley denial of the omnibus account application. The denial has
3 injured and impaired Alpine's ongoing business operations and business expansion.
4

5 222. On or about February 26, 2014, John Hurry was notified by J.P. Morgan Private
6 Bank, where he had been a longtime client, that the bank was closing his accounts. The bank
7 informed him that based upon a review of its client relationships, it had determined that Mr.
8 Hurry's "interests are no longer served by maintaining a relationship with J.P. Morgan Private
9 Bank." Based upon information and belief, the closure of the Hurrays' accounts by J.P. Morgan
10 Private Bank was directly and proximately caused by leaked information appearing the December
11 6, 2013, Deal Pipeline article.
12
13

14 223. The closure of the J.P. Morgan Private Bank accounts impaired numerous
15 prospective and existing business transactions and relationships for the Hurrays.
16

17 224. On or about May 19, 2014, Chase Bank notified the Hurrays that it was closing all
18 accounts associated with the Hurrays and their businesses. Upon information and belief, the closure
19 of the Hurrays' accounts by Chase Bank was directly and proximately caused by Defendants'
20 actions including wrongful and inappropriate leaks of information to Meagher, which was then
21 published by the Deal Pipeline.
22

23 225. The closure of the Chase Bank accounts, including accounts for Plaintiff ISC, which
24 provides administrative and legal services to the Hurrays' other businesses, and accounts for
25 Plaintiff Corner of Paradise, the Hurrays' retail ice cream parlor and bicycle rental shop, has and
26 will directly and substantially impair the Hurrays' business operations.
27
28

1 226. On or about September 11, 2014, Zions Bank notified Alpine in writing of its intent
2 to close accounts associated with Alpine and the Hurrys. Upon information and belief, the closure
3 of these accounts by Zions Bank was directly and proximately caused by Defendants' actions
4 including wrongful and inappropriate leaks of information to Meagher, which was then published
5 by the Deal Pipeline.
6

7 227. On or about July 16, 2015, the Hurrys were informed that Comerica Bank was
8 closing their account. These various bank account closures were modeled on tactics used by DOJ,
9 the Treasury Department and the SEC in Operation Choke Point. Indeed, a representative of the
10 Office of the Comptroller of the Currency directly cautioned Zions Bank against doing business
11 with broker-dealers generally, and specifically with the Hurrys' business Alpine Securities.
12

13 228. The closure of the Zions Bank accounts has and will directly and substantially
14 impair the Hurrys' business operations.
15

16 229. On information and belief, other bank accounts for businesses associated with the
17 Hurrys are being negatively impacted in ways similar to the Chase and Zions accounts.
18

19 230. On information and belief, other banks, as a direct and proximate result of the Deal
20 Pipeline articles, have refused to open accounts for businesses associated with the Hurrys or have
21 announced their intent to terminate their customer relationship with those businesses based on
22 perceived "reputational risk."
23

24 231. As Defendants are well aware, maintaining bank accounts and banking relationships
25 is essential to the Hurrys' livelihood and to the viability of each of the Business Plaintiffs and
26 other businesses with which the Hurrys are affiliated. Unless Defendants' unlawful and tortious
27 conduct is stopped, it is likely that the Hurrys will be unable to pursue their entrepreneurial activity
28

1 and the Business Plaintiffs will be forced to shut down. At a minimum, the Hurrys will be
2 effectively barred from doing business in the securities industry despite no formal sanction from
3 FINRA or the SEC dictating that result.
4

5 ***FINRA Wrongfully Interferes with Plaintiff WD Clearing's Acquisition of the Broker-***
6 ***Dealer, Wilson Davis & Co. citing the Deal Pipeline Article***

7 232. The harm from the Deal Pipeline articles has not been limited to third parties.
8 FINRA, itself, has cited one of the Deal Pipeline articles as a pretext for denying the Hurrys the
9 right to purchase an interest in broker-dealer Wilson Davis & Co.
10

11 233. On April 30, 2013, John Hurry entered into a Financing Agreement with Wilson-
12 Davis & Co., Inc. ("Wilson Davis"), a closely held Utah corporation and securities broker/dealer
13 headquartered in Salt Lake City, and its shareholders ("Wilson Davis Shareholders").
14

15 234. Pursuant to the Financing Agreement, John Hurry lent to Wilson Davis the sum of
16 four million dollars in exchange for (i) a Senior Promissory Note in the principal amount of four
17 million dollars and (ii) an option to purchase one hundred percent of the issued and outstanding
18 equity interests of Wilson Davis (the "Wilson Davis Option").
19

20 235. Absent the loan from the Hurrys, Wilson Davis likely would have ceased operating
21 as a going concern. FINRA received contemporaneous notice of the Financing Agreement and the
22 Wilson Davis Option.
23

24 236. On or about September 16, 2013, John Hurry assigned the Wilson Davis Option to
25 WD Clearing, LLC, a company he formed and controlled, and to various independently controlled
26 trusts formed to acquire ownership interest in Wilson Davis (collectively, the "Wilson Davis
27 Buyers").
28

1 237. On or about September 16, 2013, the Wilson Davis Buyers each exercised their
2 respective rights under the Wilson Davis Option.

3 238. On or about December 2, 2013, the Wilson Davis Buyers entered into a Securities
4 Purchase Agreement (“Wilson Davis Purchase Agreement”) with Wilson Davis and the Wilson
5 Davis Shareholders to effectuate the transactions contemplated by the exercise of the Wilson
6 Davis Option. Under the Wilson Davis Purchase Agreement, the Wilson Davis Buyers agreed to
7 buy, and the Wilson Davis Shareholders agreed to sell, one hundred percent ownership interest in
8 Wilson Davis. The parties to the transaction agreed that it would close on “the seventh business
9 day of the first month subsequent to the passage of at least 30 days following the filing of a
10 ‘substantially complete’ [Continuing Membership Application]” with FINRA.
11

12 239. As of February 24, 2014, FINRA had received a “substantially complete”
13 Continuing Membership Application requesting approval of the change in Wilson Davis’s firm
14 ownership.
15

16 240. Despite receiving a substantially complete application, FINRA did not approve the
17 change in ownership. Rather, FINRA, acting through agents Leyna Goro, Kathy Gurczynski,
18 Joseph Sheirer, Domingo Diaz, and Jennifer Danby, imposed unjustified, arbitrary, and pretextual
19 requirements upon the Wilson Davis Buyers and—in violation of its own rules—unlawfully
20 directed Wilson Davis not to close the transaction with the Wilson Davis Buyers.
21

22 241. Although FINRA requires advance notice in the form of a change in ownership, it
23 does not require prior approval. NASD Rule 1017(c)(1) states that “[a] member may effect a
24 change in ownership or control prior to the conclusion of the proceeding, but the Department may
25 place new interim restrictions on the member based on the standards in Rule 1014, pending final
26
27
28

1 Department action.” As FINRA advises in its Continuing Membership Guide, “[i]n the event of a
2 denial, lapse or withdrawal of the application, the new owners (if the transaction has been
3 consummated) may not conduct business.”
4

5 242. On February 25, 2014, FINRA purported to impose “interim restrictions”
6 prohibiting Wilson Davis from:

- 7
- 8 • “Effecting any portion of the . . . ownership change transaction, including unapproved
9 individuals or entities acting in any capacity that would suggests that they are approved
10 direct and/or indirect owners of the Firm”
 - 11 • “Permitting any trustee, grantor, or beneficiary of the trusts – including, but not limited to,
12 Mr. Hurry – to act in any principal, supervisory or control capacity.”
13

14 243. According to FINRA, the interim restrictions on Wilson Davis “are based upon the
15 fact that the Staff is in the process of reviewing the Firm’s information to determine whether the
16 Firm meets all of the Standards in Rule 1014, including, but not limited to, 1014(a)(1), (3), (7)
17 and (13).”
18

19 244. FINRA justified its interim restrictions by noting specifically that it had concerns
20 based on “an article relating to an investigation involving Scottsdale Capital and Alpine Securities,
21 which are controlled by Mr. Hurry.” On information and belief, the FINRA letter refers to the
22 December 6, 2013, Deal Pipeline article by Meagher, which is based upon non-public,
23 confidential, and misleading information secretly leaked by FINRA or the Individual Defendants.
24
25
26
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28

1 245. As a direct and proximate result of FINRA's interim restrictions, Wilson Davis
2 refused to close the transaction with the Wilson Davis Buyers, resulting in separate litigation by
3 the Wilson Davis Buyers seeking to enforce the agreed transaction ("Wilson Davis litigation").
4

5 246. Moreover, when J.P. Morgan Private Bank terminated its banking relationship with
6 the Hurrys, it also closed accounts for the several trusts that comprise the Wilson Davis Buyers.
7 These account terminations, which were a direct and proximate result of FINRA's and the
8 Individual Defendants' wrongful conduct, have directly and substantially impaired the Wilson
9 Davis transaction.
10

11 ***The Deal Pipeline Articles and Pretextual Investigation Conducted by FINRA***
12 ***and Individual Defendants Leads to Additional Harm to the Hurrys, the***
13 ***Business Plaintiffs, and Businesses Associated with the Hurrys***

14 247. As a direct and proximate result of improper and wrongful leaks to Bill Meagher
15 and their subsequent and calculated publication in the Deal Pipeline articles, John Hurry has had
16 prospective investments in businesses across various sectors hampered, delayed, or declined.
17

18 248. SCA has been notified by at least one website catering to the OTC investment sector,
19 where SCA has been a longtime advertiser, that the website will no longer accept SCA's
20 advertisements. Based upon information and belief, the rejection of SCA as an advertiser is the
21 direct and proximate result of the Operation Choke Point-like tactics employed by FINRA,
22 including the pretextual examination conducted by FINRA and Individual Defendants and the
23 improper and wrongful leaks of non-public, confidential, and misleading information targeting
24 the Hurrys and published in the Deal Pipeline.
25
26
27
28

1 249. As a direct and proximate result of the inappropriate disclosures to the press and
2 FINRA's failure to investigate and curb these leaks, Plaintiffs have suffered substantial
3 reputational harm and injury to existing and prospective business relationships.
4

5 ***Continuing its Pattern of Ongoing Harm to the Hurrys, FINRA Issues Premature Wells***
6 ***Notice that Inexplicably Names John Hurry Individually Shortly After He Completes***
7 ***Majority of Filings Necessary to Establish Separate Self-Regulatory Organization and at the***
8 ***Eleventh Hour Before the Wilson Davis Closing***

9 250. On August 31, 2014, John Hurry completed the majority of filings with the SEC
10 necessary to advance his goal of establishing a separate self-regulated organization named
11 "Association of Securities Dealers LLC" or "ASD," one of the plaintiffs in this action.

12 251. On the morning of September 12, 2014, the Wilson Davis Buyers amended their
13 complaint in the Wilson Davis litigation to include claims of securities fraud based on Wilson
14 Davis' conduct related to the underlying transaction.

15 252. Later that same day, on the afternoon of September 12, 2014, FINRA issued a Wells
16 notice that named John Hurry individually. The notice was not related to FINRA Matter No.
17 20120327319 or any of the facts raised in this Complaint. The Wells notice is the first reportable
18 event against John Hurry under FINRA rules in his more than 20 years in the securities industry.
19 The agents involved in issuing this Wells notice were Blake Snyder, Surveillance Director; Jason
20 Foye, Examination Manager; Eli Renshaw, Regulatory Principal; Laura Leigh Blackston, Senior
21 Regional Counsel; and Aimee Williams-Ramey, Regional Chief Counsel, Enforcement.
22

23 253. The Wells notice that named John Hurry, among others, lacked merit. Upon
24 information and belief, the Wells Notice was a pretext by FINRA to block the Hurry family trust's
25 purchase the following week of the broker-dealer Wilson Davis & Co. The proximity of the Wells
26
27
28

1 Notice on September 12, 2014 and the projected closing date of September 16, 2014 for the sale
2 of Wilson Davis strongly suggests the Wells Notice was a last minute tactic by FINRA and the
3 Individual Defendants to prevent the sale. Indeed, in a dramatic departure from FINRA procedure,
4 Defendants issued the Wells notice before collecting documents or deposing John Hurry.
5

6 254. On September 15, 2014, FINRA agents Domingo Diaz, Jennifer Danby, and Allissa
7 Robinson engaged in a conversation with Mark O. Van Wagoner of Wilson Davis, and provided
8 Mr. Van Wagoner with specific information regarding the Wells notice as to John Hurry,
9 apparently deeming it appropriate to provide more notice to this third-party regarding FINRA's
10 concerns than to John Hurry himself.
11

12 255. During the September 15, 2014, conversation between FINRA agents and a Wilson
13 Davis representative, the FINRA agents specifically requested that Wilson Davis withdraw its
14 pending application
15

16 256. On September 17, 2014, Wilson Davis gave into FINRA's coercive demand and
17 withdrew the pending Continuing Membership Application.
18

19 257. On September 22, 2014, the judge in the Wilson Davis litigation issued an order
20 granting a partial summary judgment in that case excusing Wilson Davis' performance of the
21 transaction agreement with the Wilson Davis Buyers on the basis of FINRA's interference. The
22 remaining claims in the Wilson Davis litigation are currently pending discovery. The Wilson
23 Davis Buyers are also pursuing SEC review of FINRA's actions with regard to the Wilson Davis
24 transaction. FINRA has taken the position that the SEC lacks jurisdiction to conduct such review.
25
26
27
28

FIRST CAUSE OF ACTION

Violation of 18 U.S.C. § 1030 (a)(2)(C)

1
2
3 258. Plaintiffs repeat and incorporate by reference all prior allegations of this Complaint
4 as if fully set forth herein.
5

6 259. The ISC Computers were “protected” under the CFAA.

7 260. Defendants accessed the ISC Computers intentionally.

8 261. Defendants accessed the ISC Computers through coercion and deceit.

9
10 262. Defendants accessed the ISC Computers without authorization, or, in the alternative,
11 exceeded authorized access to them.

12 263. As a result of the misconduct alleged herein, Plaintiffs suffered a loss of \$5,000 or
13 more.
14

15 264. The misconduct alleged herein constitutes violations of 18 U.S.C. § 1030(a)(2)(C).

16 265. The misconduct by Defendants bears no legitimate relationship to the regulatory
17 functions and authority of FINRA and the Individual Defendants.
18

19 266. No rule or statute under which FINRA operates purports to preempt the CFAA.

20 267. Plaintiffs have suffered damage and loss through the cost of responding to the
21 offenses, including conducting damage assessments and restoring data, programs, systems and or
22 information to its condition prior to the offenses.
23

24 268. Unless Defendants are enjoined from violating and continuing to violate 18 U.S.C.
25 § 1030(a)(2)(C), Plaintiffs will continue to suffer irreparable injury.
26

27 269. Plaintiffs have no adequate remedy at law and are entitled to injunctive relief.
28

1 270. Plaintiffs are entitled to an award of compensatory damages in an amount to be
2 proven at trial.

3
4 **SECOND CAUSE OF ACTION**

5 **Violation of 18 U.S.C. § 1030(a)(5)(C)**

6 271. Plaintiffs repeat and incorporate by reference all prior allegations of this Complaint
7 as if fully set forth herein.

8 272. The ISC Computers were “protected” under the CFAA.

9 273. Defendants accessed the ISC Computers intentionally.

10 274. Defendants accessed the ISC Computers through coercion and deceit.

11 275. Defendants accessed the ISC Computers without authorization.

12 276. Defendants caused damage to the ISC Computers.

13 277. As a direct and proximate result of Defendants’ unauthorized access of the ISC
14 Computers, Plaintiffs suffered a loss of \$5,000 or more.

15 278. The misconduct alleged herein constitutes violations of 18 U.S.C. § 1030(a)(5)(C).

16 279. The misconduct by Defendants bears no legitimate relationship to the regulatory
17 functions and authority of FINRA and the Individual Defendants.

18 280. No rule or statute under which FINRA operates purports to preempt the CFAA.

19 281. Plaintiffs have suffered damage and loss through the cost of responding to the
20 offenses, including conducting damage assessments and restoring data, programs, systems and or
21 information to its condition prior to the offenses.

22 282. Unless Defendants are restrained and enjoined from violating and continuing to
23 violate 18 U.S.C. § 1030(a)(5)(C), Plaintiffs will continue to suffer irreparable injury.
24
25
26
27
28

1 283. Plaintiffs have no adequate remedy at law and are entitled to injunctive relief.

2 284. Plaintiffs are entitled to an award of compensatory damages in an amount to be
3 proven at trial.
4

5 **THIRD CAUSE OF ACTION**

6 **Trespass Upon Chattel**

7 285. Plaintiffs repeat and incorporate by reference all prior paragraphs of this Complaint
8 as if fully set forth herein.
9

10 286. Defendants accessed the ISC computers through coercion and deceit.

11 287. Defendants dispossessed Plaintiffs of the ISC Computers, including for a substantial
12 period of time.
13

14 288. Defendants impaired the ISC Computers.

15 289. The misconduct alleged herein constitutes trespass upon chattel.

16 290. The misconduct by Defendants bears no legitimate relationship to the regulatory
17 functions and authority of FINRA and the Individual Defendants.
18

19 291. As a direct and proximate result of Defendants' trespass upon chattel, Plaintiffs have
20 suffered, and continue to suffer, irreparable injury.
21

22 292. Plaintiffs have no adequate remedy at law and are entitled to injunctive relief.

23 293. Plaintiffs are entitled to an award of compensatory damages in an amount to be
24 proven at trial.
25

26 **FOURTH CAUSE OF ACTION**

27 **Intrusion Upon Seclusion**

28 294. Plaintiffs incorporate by reference all prior paragraphs of this Complaint.

1 295. Defendants, by engaging in the misconduct alleged herein, intruded upon the
2 solitude and seclusion of the private affairs and concerns of Plaintiffs and those individuals and
3 entities who have private, privileged, and proprietary information in Plaintiffs' custody.
4

5 296. Defendants' intrusion was intentional.

6 297. Defendants' intrusion would be highly offensive to a reasonable person.
7

8 298. As a direct and proximate result of Defendants' intrusion upon seclusion, Plaintiffs
9 have suffered, and continue to suffer, irreparable injury.

10 299. Plaintiffs have no adequate remedy at law and are entitled to injunctive relief.
11

12 300. Plaintiffs are entitled to an award of compensatory damages in an amount to be
13 proven at trial.

14 **FIFTH CAUSE OF ACTION**

15 **Conversion**

16
17 301. Plaintiffs repeat and incorporate by reference all prior paragraphs of this Complaint
18 as if fully set forth herein.

19 302. Defendants have wrongfully and intentionally asserted dominion and control over
20 the private, sensitive, personal, confidential, privileged, and proprietary information belonging to
21 Plaintiffs in a manner that is inconsistent with Plaintiffs' ownership of the information.
22

23 303. As a direct and proximate result of Defendants' conversion, Plaintiffs have suffered,
24 and continue to suffer, irreparable injury.
25

26 304. Plaintiffs have no adequate remedy at law and are entitled to injunctive relief.
27

28 305. Plaintiffs are entitled to an award of compensatory damages in an amount to be
proven at trial.

SIXTH CAUSE OF ACTION

Misappropriation of Trade Secrets

1
2
3 306. Plaintiffs repeat and incorporate by reference all prior paragraphs of this Complaint
4 as if fully set forth herein.
5

6 307. Defendants, in seizing, accessing and copying the ISC Computers in their entirety,
7 acquired one or more trade secrets of one or more persons.
8

9 308. Defendants knew or had reason to know that the trade secrets were acquired by
10 improper means.

11 309. As a direct and proximate result of Defendants' misappropriation of trade secrets,
12 Plaintiffs have suffered, and continue to suffer, irreparable injury.
13

14 310. Plaintiffs have no adequate remedy at law and are entitled to injunctive relief.

15 311. Plaintiffs are entitled to an award of compensatory damages in an amount to be
16 proven at trial.
17

SEVENTH CAUSE OF ACTION

Prima Facie Tort

18
19
20 312. Plaintiffs incorporate by reference all prior paragraphs of this Complaint.
21

22 313. Defendants have intentionally caused injury to Plaintiffs.

23 314. Defendants' conduct is culpable and not justifiable under the circumstances.

24 315. As a direct and proximate result of misconduct alleged, Plaintiffs have suffered, and
25 continue to suffer, irreparable injury.
26

27 316. Plaintiffs have no adequate remedy at law and are entitled to injunctive relief.
28

NINTH CAUSE OF ACTION

Defamation and Defamation by Implication

1
2
3
4 325. Plaintiffs repeat and incorporate by reference all prior allegations of this Complaint
5 as if fully set forth herein.

6 326. Defendants conspired to malign, harass, humiliate and injure Plaintiffs by making
7 false statements to Meagher of the Deal Pipeline, statements intended for publication in the Deal
8 Pipeline or for other public dissemination.

9
10 327. Defendants falsely stated that John Hurry, Justine Hurry, and/or their businesses
11 were engaged in money laundering.

12
13 328. Defendants falsely stated that John Hurry, Justine Hurry, and/or businesses
14 associated with the Hurrys were under investigation by the FBI, and falsely implied they were the
15 target of criminal investigations.

16
17 329. Defendants falsely stated that John Hurry, Justine Hurry, and/or businesses
18 associated with the Hurrys were involved in a “pump-and dump” scheme.

19
20 330. Defendants falsely stated that John Hurry, Justine Hurry and/or businesses
21 associated with the Hurrys allowed Biozoom shareholders to trade in violation of SCA policies
22 and were provided special perks.

23
24 331. Defendants falsely implied that John Hurry and/or Justine Hurry caused SCA to
25 disregard so-called “red flags” regarding the Biozoom trades and failed to follow up.

26 332. The false and malicious statements are attributable to FINRA and/or the Individual
27 Defendants.
28

1 333. The Deal Pipeline article dated September 17, 2013 cited “internal documents”
2 obtained by Meagher. Those documents could only have originated with FINRA and/or the
3 Individual Defendants.
4

5 334. When Meagher contacted SCA on December 3, 2013, neither SCA’s outside
6 regulatory counsel nor anyone associated with SCA, Alpine, or the Hurrlys responded to
7 Meagher’s inquiries.
8

9 335. The Deal Pipeline article dated December 6, 2015 made clear that the Deal Pipeline
10 did not receive comments from anyone associated with SCA approached by Meagher.
11

12 336. The Deal Pipeline article dated March 20, 2014 mentioned information that would
13 only be known to FINRA, the SEC, and SCA. The SEC categorically denied disseminating such
14 information to the press.
15

16 337. The Deal Pipeline article dated April 16, 2014 disclosed non-public information
17 regarding FINRA’s onsite examination. SCA’s in-house made clear in an inquiry to FINRA that
18 no one at SCA disclosed to the press the unannounced visit or the the documents FINRA
19 examiners requested.
20

21 338. Indeed, following internal inquiries by top leadership of SCA, Plaintiffs are satisfied
22 that the leaks either did not or could not originate with SCA, Alpine, the Hurrlys, or any other
23 entity or individual associated with the Hurrlys.
24

25 339. The leaks are attributable to Defendants, who possess rare and intimate knowledge
26 of the non-public and confidential information reflected in Meagher’s damaging articles.
27

28 340. Defendants made and continue to make these statements and omissions knowing
that the statements were and are false; in the alternative, Defendants have acted and continue to

1 act in reckless disregard of the truth in making each of these defamatory statements; in the
2 alternative, Defendants have been and continue to be negligent in failing to ascertain the truth of
3 each of these defamatory statements before publishing them.
4

5 341. Defendants' defamatory statements were and are published or otherwise
6 disseminated with evil motives and malice toward Plaintiffs, were and are intended and designed
7 to injure and defame Plaintiffs, and did injure and defame and continue to injure and defame
8 Plaintiffs.
9

10 342. Each defamatory statement, singularly or in combination, has impeached and
11 continues to impeach the honesty and integrity of Plaintiffs, leaving their reputation severely
12 damaged and subjecting them to scorn in the eyes of business associates, current and prospective
13 clients, and the general public.
14

15 343. Some of Defendants' false and defamatory statements have imputed egregious
16 conduct onto John Hurry.
17

18 344. Upon information and belief, Defendants continue to make defamatory statements
19 to third parties in an effort to impair the Hurrys' business relationships, to force the Hurrys out of
20 business, prevent the Hurrys from establishing new and competing businesses, and destroy the
21 Hurrys' livelihood.
22

23 345. Many of these false and defamatory statements are made in a secretive manner that
24 inhibits Plaintiffs' ability to discover and respond to the sum and substance of the statements until
25 well after they are made.
26

27 346. Nothing in FINRA Rules permits the "leaking" of internal documents.
28

1 347. Defendants' wrongful conduct bears no legitimate relationship to the regulatory
2 functions and authority of FINRA and the Individual Defendants. By reason of the false, libelous,
3 and defamatory statements set forth in this Complaint, Plaintiffs have suffered damages and are
4 entitled to an award of compensatory damages in an amount to be proven at trial.
5

6 348. Defendants' wrongful conduct was guided by evil motives and/or by willful or
7 wanton disregard of the rights of others, such that Plaintiffs are entitled to punitive damages.
8

9 **TENTH CAUSE OF ACTION**

10 **Intentional Interference with Contract Relationship or Business Expectancy**

11 349. John Hurry and his companies have or had a valid contract with Wilson Davis.
12

13 350. The Hurrys and Business Plaintiffs also have or had valid contracts with numerous
14 banking institutions, including JP Morgan Private, Comerica, and Chase.

15 351. Defendants are and were aware of these contractual relationships.
16

17 352. Defendants intentionally interfered with the Wilson Davis contract by coercing
18 Wilson Davis into withdrawing its continuing membership application and inducing Wilson Davis
19 to breach the contract and resist the acquisition.
20

21 353. Defendants also intentionally interfered with the banking relationships of the Hurrys
22 and Business Plaintiffs, causing the banks to terminate their business relationships with the
23 Hurrys, Business Plaintiffs, and businesses associated with the Hurrys by knowingly, willfully,
24 and intentionally increasing the Hurrys' "reputational risk" and improperly pressuring banking
25 institutions to terminate or refuse banking relationships with the Hurrys, Business Plaintiffs, and
26 businesses associated with the Hurrys.
27
28

1 354. In an effort to force the Hurrys out of the microcap securities business, Defendants
2 leaked non-public and confidential information to Meagher for publication in the Deal Pipeline.

3
4 355. Upon information and belief, the dissemination of the non-public and confidential
5 information was intended to inflict reputational harm upon the Hurrys and related businesses.

6 356. Upon information and belief, Defendants sought to blemish the Hurrys and related
7 businesses so that banks and other financial institutions would be unwilling to commence or
8 maintain banking relationships.

9
10 357. Upon information and belief, the Wells notice issued in September 2014 was further
11 intended to harm the Hurrys' relationships with financial institutions by causing reputational
12 harm.

13
14 358. On July 16, 2015, Comerica Bank terminated its relationship with the Hurrys,
15 further denying them and related businesses access to critical capital.

16
17 359. Upon information and belief, this recent blow to the Hurrys underscores the efficacy
18 of Defendants' campaign to interfere with the Hurrys' contractual relations as alleged herein.

19
20 360. Defendants' have modeled their actions on the actions on the controversial and
21 unlawful Operation Choke Point, in which government agencies sought to squeeze disfavored but
22 legal companies out of business.

23
24 361. Defendants' wrongful conduct bears no legitimate relationship to the regulatory
25 functions and authority of FINRA and the Individual Defendants.

26 362. Defendants' intentional acts and defamatory statements have resulted in a loss of
27 beneficial economic relationships and actual profits to Plaintiffs.
28

1 363. Plaintiffs have sustained damages as a direct and proximate result of Defendants'
2 intentional business interference and are entitled to an award of compensatory damages in an
3 amount to be proven at trial.
4

5 364. Defendants' wrongful conduct was guided by evil motives and/or by willful or
6 wanton disregard of the rights of others, such that Plaintiffs are entitled to punitive damages.
7

8 **ELEVENTH CAUSE OF ACTION**

9 **Public Disclosure of Private Facts**

10 365. Plaintiffs repeat and incorporate herein by reference all prior allegations of this
11 Complaint as if fully set forth herein.
12

13 366. Defendants intentionally and wrongfully disclosed the private affairs and concerns
14 of Plaintiffs.
15

16 367. Defendants' disclosure of Plaintiffs' private affairs and concerns is highly offensive
17 to Plaintiffs.
18

19 368. Defendants' disclosure of Plaintiffs' private affairs and concerns would be highly
20 offensive to a reasonable person.
21

22 369. Defendants' disclosure of Plaintiffs private affairs and concerns also is not a matter
23 of legitimate concern to the public.
24

25 370. The wrongful disclosure of Plaintiffs' private affairs and concerns, for purposes of
26 this claim, consists of Defendants' leaks to Meagher concerning the on-site examination of SCA
27 on November 12, 2014 and related examinations under FINRA Matter no. 20120327319.
28

371. Defendants' misconduct is highly offensive to any reasonable person in that the
publicity Defendants gave to FINRA's examination of SCA cast a negative and injurious light on

1 Plaintiffs with respect investors, financial institutions and other critical audiences and
2 relationships.

3
4 372. FINRA's examination of SCA is not a matter of legitimate public concern, as
5 evidenced by FINRA's own policies. FINRA's policy is that examinations under FINRA Rule
6 8210 are non-public and confidential. Stated differently, the public is not entitled to know.

7
8 373. Examinations under Rule 8210 are routinely used to gain information regarding
9 FINRA members or associated persons that are not the recipient of the 8210 Request. In other
10 words, a recipient of an 8210 Request may have done nothing wrong.

11
12 374. As FINRA's 8210 letter explains, the examination "should not be construed as an
13 indication that the Enforcement Department or the Department of Member Regulation or its staff
14 has determined that any violations of federal securities laws or FINRA, NASD, NYSE or MSRB
15 rules have occurred."

16
17 375. After nearly three years, Plaintiffs are not the subject of any regulatory action arising
18 out of FINRA Matter No. 20120327319. Defendants' disclosure of such examinations, as alleged
19 in this Complaint, has inflicted irrevocable harm.

20
21 376. As a direct and proximate result of Defendants' disclosure of Plaintiffs' private
22 affairs and concerns, Plaintiffs suffered mental anguish and economic harm.

23
24 377. Plaintiffs have sustained damages as a direct and proximate result of Defendants'
25 public disclosure of private facts and are entitled to an award of compensatory damages in an
26 amount to be proven at trial.

27
28 378. Defendants' wrongful conduct is and was guided by evil motives and/or by willful
or wanton disregard of the rights of others, such that Plaintiffs are entitled to punitive damages.

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TWELFTH CAUSE OF ACTION

False Light

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4 379. Plaintiffs repeat and incorporate by reference all prior allegations of this Complaint
5 as if fully set forth herein.

6 380. Defendants intentionally and wrongfully gave publicity to matters concerning
7 Plaintiffs that place Plaintiffs before the public in a false light and, thus, wrongfully invaded
8 Plaintiffs' privacy.
9

10 381. Defendants falsely stated that John Hurry, Justine Hurry, and/or their businesses
11 were engaged in money laundering.
12

13 382. Defendants falsely stated that John Hurry, Justine Hurry, and/or businesses
14 associated with the Hurrays were under investigation by the FBI, and falsely implied they were the
15 target of criminal investigations.
16

17 383. Defendants falsely stated that John Hurry, Justine Hurry, and/or businesses
18 associated with the Hurrays were involved in a "pump-and dump" scheme.
19

20 384. Defendants falsely stated that John Hurry, Justine Hurry and/or businesses
21 associated with the Hurrays allowed Biozoom shareholders to trade in violation of SCA policies
22 and were provided special perks.
23

24 385. Defendants falsely implied that John Hurry and/or Justine Hurry caused SCA to
25 disregard so-called "red flags" regarding the Biozoom trades and failed to follow up.

26 386. The false light in which Plaintiffs have been placed is highly offensive to Plaintiffs
27 and would be highly offensive to a reasonable person.
28

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment in their favor and against Defendants as follows:

A. For an injunction restraining and enjoining FINRA, Andersen, Individual Defendants, and all other persons or entities acting in concert with them, including but not limited to FINRA's employees, agents, representatives, subsidiaries, affiliates, and attorneys, from:

1. continuing unlawfully to maintain possession of the ISC Computer data in its entirety, including the Extra-Jurisdictional Materials.

2. failing to immediately return or certify the destruction of the ISC Computer data, including all Extra-Jurisdictional Materials.

3. making any further review or use of the ISC Computer data, including all Extra-Jurisdictional Materials.

4. disclosing or distributing the ISC Computer data, including any Extra-Jurisdictional Materials, either in whole or in part to any person or entity other than the Hurrys or Plaintiff ISC.

5. further disclosure of information protected under the Privacy Act.

B. Enjoining Andersen, the Individual Defendants, FINRA, its board officers, employees, and agents from implementing, applying, or taking any action whatsoever or applying informal pressure to banks to encourage them to refuse or terminate business relationships with the Hurrys, Business Plaintiffs, or any businesses associated with the Hurrys.

C. Awarding actual damages in favor of Plaintiffs against Defendants in an amount to

1 be determined by the trier of fact.

2 D. Awarding punitive damages in favor of Plaintiffs and against Defendants in an
3 amount no less than \$50 million.
4

5 E. Awarding Plaintiffs their reasonable costs and attorneys' fees incurred in bringing
6 this action.

7
8 F. For such further relief the Court deems just and appropriate.

9
10 DATED this 28th day of August, 2015.

11 MANDEL YOUNG PLC

12 By: /s/ Taylor C. Young
13 Robert A. Mandel
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16 3001 E. Camelback Rd., Suite 140
17 Phoenix, Arizona 85016
18 *Attorneys for Plaintiffs*
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28

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the foregoing was transmitted this 28th day of August 2015 to the Office of the Clerk of the U.S. District Court using the CM/ECF System, which will send notification of such filing and transmittal of a Notice of Electronic Filing to all CM/ECF registrants for this case.

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