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8
9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

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13 **SECURITIES AND EXCHANGE
COMMISSION,**

14 **Plaintiff,**

15 **vs.**

16
17 **CRAIG ARSENAULT, ATLAS
CAPITAL MANAGEMENT, INC.,
18 and ACT GLOBAL INVESTMENTS,**

19 **Defendants.**

Case No. 8:18-cv-02220

20
21 **COMPLAINT**

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

23 **JURISDICTION AND VENUE**

24 1. The Court has jurisdiction over this action pursuant to Sections 20(b),
25 20(d)(1) and 22(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. §§
26 77t(b), 77t(d)(1) & 77v(a)], Sections 21(d)(1), 21(d)(3)(A), 21(e) and 27(a) of the
27 Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §§ 78u(d)(1),
28 78u(d)(3)(A), 78u(e) & 78aa(a)], and Sections 209(d), 209(e)(1) and 214 of the

1 Investment Advisers Act of 1940 (“Advisers Act”) [15 U.S.C. §§ 80b-9(d), 80b-
2 9(e)(1) & 90b-14]. Defendants have, directly or indirectly, made use of the means or
3 instrumentalities of interstate commerce, of the mails, or of the facilities of a national
4 securities exchange in connection with the transactions, acts, practices and courses of
5 business alleged in this Complaint.

6 2. Venue is proper in this district pursuant to Section 22(a) of the Securities
7 Act [15 U.S.C. § 77v(a)], Section 27(a) of the Exchange Act [15 U.S.C. § 78aa(a)],
8 and Section 214 of the Advisers Act [15 U.S.C. § 90b-14], because certain of the
9 transactions, acts, practices and courses of conduct constituting violations of the
10 federal securities laws occurred within this district. In addition, venue is proper in
11 this district because all of the defendants are inhabitants of and transact business in
12 this district.

13 SUMMARY

14 3. This matter concerns an ongoing multi-million dollar fraud by
15 defendants Craig Arsenault and the two entities he founded, managed, and controlled
16 – defendants Atlas Capital Management, Inc. (“Atlas”) and ACT Global Investments
17 (“ACT”). Atlas is Arsenault’s investment advisory firm, and ACT is a company he
18 formed and convinced several of his advisory clients to invest in.

19 4. From the outset, Arsenault told his advisory clients that ACT would use
20 their money to make secured short-term loans to doctors. But instead, without the
21 clients’ knowledge or consent, ACT made unsecured loans to, for example, a used car
22 dealer, and these loans had little or no prospect of being repaid. Also unbeknownst to
23 his clients, Arsenault forgave all that was due on one of those unsecured loans, as part
24 of an exchange for an interest in undeveloped land in Oceanside, California.

25 5. Since 2012 and continuing to the present, Arsenault prepared and sent
26 monthly account statements to the clients invested in ACT, falsely reporting that their
27 investments were generating substantial monthly interest income. In many cases,
28 these monthly account statements caused his advisory clients to reinvest their

1 reported interest income and to invest even more money in ACT. In fact, ACT was
2 receiving substantially less interest income than was reported in the monthly
3 statements, and it was unlikely that the reported interest income would ever be
4 collected.

5 6. In addition, the defendants misappropriated and misused over \$1 million
6 of client funds in ACT. Instead of investing the clients' funds as he had promised,
7 Arsenault used a substantial portion of client funds to pay himself directly, to lend
8 himself money, to send to Atlas, or to reimburse himself for undocumented ACT
9 expenses. All of these payments were without the knowledge or consent of his
10 advisory clients.

11 7. Most recently, in late October and early November 2018, Arsenault
12 offered two advisory clients who had invested in ACT an interest in a new company
13 that he said owned the undeveloped parcel in Oceanside. But Arsenault never told
14 them that he had transferred the title to the land to the new company he formed,
15 without the knowledge or consent of the other property owners, thus creating a
16 possible cloud over his company's title to the property.

17 8. As a result of their fraudulent and deceptive conduct, Arsenault, Atlas
18 and ACT are violating, and unless enjoined, will continue to violate, Section 17(a) of
19 the Securities Act [15 U.S.C. §§ 77q(a)] and Section 10b of the Exchange Act [15
20 U.S.C. § 78j] and Rule 10b-5 thereunder [17 C.F.R. §§ 240.10b-5]. In addition, by
21 that same conduct, and by their breaches of their fiduciary duties as investment
22 advisers to their advisory clients, Arsenault and Atlas are violating, and unless
23 enjoined, will continue to violate, Sections 206(1) and 206(2) of the Advisers Act [15
24 U.S.C. §§ 80b-6(1) & 80b-6(2)].

25 **THE DEFENDANTS**

26 9. Craig Arsenault, age 49, is a resident of Laguna Niguel, California.
27 Arsenault is not registered with the SEC in any capacity and holds no securities
28 licenses.

1 10. Atlas Capital Management, Inc. is a California corporation with its
2 principal place of business in Laguna Niguel, California. It is an investment adviser
3 registered with State of California. Atlas is also a third-party administrator for
4 retirement plans managed by other advisers and custodied at various broker-dealers.

5 11. ACT Global Investments is a California corporation with its principal
6 place of business in Laguna Niguel, California. ACT was formed and is solely
7 owned and controlled by Arsenault.

8 **FACTUAL ALLEGATIONS**

9 12. As alleged in more detail below, the defendants have defrauded Atlas
10 clients invested in ACT from at least January 2014 to the present.

11 13. On June 8, 2018, Arsenault, Atlas and ACT entered into a tolling
12 agreement with the SEC to toll the running of any statute of limitations for any action
13 or proceeding against them, including any sanctions or relief that may be sought or
14 imposed in such action or proceeding, from June 1, 2018 through May 31, 2019.

15 **A. The ACT Offering**

16 14. Atlas is an investment advisory firm that has approximately 165 clients
17 and \$25 million in assets under management that are custodied at an SEC-registered
18 broker-dealer. Atlas charges its clients an advisory fee that is a percentage of the
19 assets the clients have under the firm's management. Most of Atlas' profits are
20 distributed to Arsenault.

21 15. Arsenault formed ACT in 2012 as an investment vehicle for his advisory
22 clients at Atlas.

23 16. Arsenault is a 50% owner and the president of Atlas, and is the 100%
24 owner and president of ACT. Arsenault was principally responsible for advising
25 Atlas' advisory clients on their securities investments, and received most of Atlas'
26 profits.

27 17. In soliciting advisory clients to invest in ACT, Arsenault told clients that
28 he would invest their monies in secured short-term bridge loans to doctors. In

1 particular, he told them the loans were for the acquisition of medical equipment, that
2 ACT would have a security interest in the underlying medical equipment in case a
3 doctor defaulted on the loan, that clients would be paid a return of approximately 1%
4 month, in the form of interest income based on ACT's use of client funds, and that
5 the clients would be repaid their principal and interest within 30 to 60 days of a
6 withdrawal demand. Arsenault also told clients that he had personally invested his
7 own funds in ACT.

8 18. Beginning in November 2012 and continuing to the present, Atlas and
9 Arsenault convinced approximately nine Atlas advisory clients to invest in ACT. The
10 clients invested in ACT by sending checks payable to ACT to Arsenault's Atlas
11 office, which Arsenault then deposited into ACT's bank account, or by wiring funds
12 directly into ACT's bank account.

13 19. As of September 30, 2018, these advisory clients had invested a total of
14 approximately \$5.7 million in ACT, and had withdrawn a total of approximately \$2.6
15 million, for a net cash investment of approximately \$3.1 million.

16 20. The vast majority of the \$5.7 million was invested by clients making
17 multiple investments of new monies, from 2015 through March 2018.

18 21. Only three clients made just a single investment. Two of those invested
19 in January 2017.

20 22. The other six clients each made two or more investments, including
21 investments in 2015, 2016, 2017, and/or 2018.

22 23. The client with the largest investment in ACT, after making his first
23 investments in 2013, invested eight more times from 2014 through 2016, investing
24 \$150,000 to \$500,000 each time, for a total of approximately \$2,725,000.

25 24. In addition to the \$5.7 million, as of September 30, 2018, advisory
26 clients had reinvested in ACT at least about \$1.8 million in interest income that
27 Arsenault represented had been earned on their ACT investments.

28 25. Accordingly, as of September 30, 2018, ACT and Arsenault owed the

1 advisory clients who had invested in ACT at least about \$4.9 million.

2 26. The clients' investments in ACT constituted securities in the form of
3 investment contracts and/or notes. The investments are investment contracts because
4 the clients invested money, their funds were pooled in ACT's bank account for the
5 stated purpose of ACT providing financing to other businesses, and their expectation
6 of profits derived solely from Arsenault's and ACT's efforts.

7 27. In some cases, Arsenault referred to the investments in ACT as "notes."
8 The investments in ACT can also be considered notes because ACT used the
9 investments to finance its business, and the clients invested in ACT primarily for the
10 profit the investments were expected to return, the ACT investments were sold to
11 numerous advisory clients and were sometimes referred to as "notes," and there is no
12 other regulatory scheme other than the enforcement of the securities laws that reduces
13 the risk of investment.

14 **B. False Monthly Reports to Advisory Clients Invested in ACT**

15 28. From January 2014 to the present, on approximately a monthly basis,
16 Arsenault, on behalf of ACT, sent monthly account statements to the advisory clients
17 who had invested in ACT.

18 29. The monthly account statements would reflect the statement date, the
19 name and address of the holder of the account, the amount of year-to-date deposits
20 and withdrawals, the starting account value and the ending account balance for each
21 month, the interest income for each the month, the amount of interest income that had
22 been reinvested, and the fees charged for the month. Each account statement was
23 cumulative, in that it reported activity for the current month, as well as for each prior
24 month and year.

25 30. Arsenault reviewed and approved the content of all of the monthly
26 account statements sent to the ACT investors.

27 31. The monthly account statements were sent from Arsenault's Atlas email
28 address to the advisory clients who invested in ACT.

1 32. All of ACT's monthly account statements from January 2014 to the
2 present have been materially misleading. Although these statements reported interest
3 income of approximately 1% per month on the amount invested, they did not disclose
4 that, since at least 2014, ACT had not, in fact, received a substantial portion of that
5 reported interest income.

6 33. The table below sets forth the difference in interest income reported to
7 investors in ACT's monthly account statements and the actual interest income ACT
8 had received during the years in question:

Year	Actual Interest Income from ACT Investments	Interest Income Reported to Advisory Clients	Percent of Reported Interest Income that ACT Reported To Investors But Had Not Received
2014	\$0	\$81,705.42	100%
2015	\$24,763.68	\$161,153.41	84.7%
2016	\$355,288.80	\$453,730.22	21.7%
2017	\$400,847.88	\$572,709.34	30.0%
2018	\$276,719.40	\$408,589.66	32.3%

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17 34. In addition to reporting the interest income earned each month, ACT's
18 account statements reported "starting account value," reflecting the value of the
19 account for the preceding month, and the "ending account balance," reflecting the
20 value of the account balance, at the end of the month, based on interest income that
21 that had purportedly been earned and received that month.

22 35. The reported ending account balance led the ACT investors to believe
23 that those funds were, in fact, available for withdrawal, within 30 to 60 days, should
24 the client make such a demand.

25 36. ACT's monthly account statements had no numerical entry under the
26 column for "fees," thus representing to the clients that no fees or expenses had been
27 charged against their account balances.
28

1 37. None of ACT's monthly account statements sent to the clients between
2 January 2014 and the present reflected the substantial amounts Arsenault, ACT and
3 Atlas had misappropriated and taken for themselves, as alleged in paragraphs 57-65
4 below.

5 38. As such, the monthly account statements provided to the clients invested
6 in ACT, since at least January 2014 to the present, were materially false and
7 misleading, as they falsely made it appear as if: (a) the clients' funds were invested in
8 income-producing investments; (b) that their money was, in fact, earning and
9 receiving interest income in the amounts reported; (c) that their principal and
10 accumulated interest income was secure and available to be withdrawn within 30 to
11 60 days of a withdrawal demand; and (d) that their money had not been used to pay
12 Arsenault, Atlas or Act.

13 39. In addition, ACT's monthly account statements caused many investors
14 to believe that their purported interest income had been reinvested with ACT, when in
15 fact, no new investments were made and no new funds had been lent to existing
16 borrowers.

17 40. ACT's monthly accounts statements, reflecting that the investment of
18 client money had generated substantial returns, caused many investors to enter into
19 new securities transactions with ACT, by contributing additional funds to ACT.

20 41. For example, one investor, who had invested \$321,000 as of March
21 2013, made substantial investments of new money in ACT, of \$250,000 in January
22 2015, \$115,000 in October 2015, \$250,000 in June 2016, and \$100,000 in June of
23 2016, based on ACT's monthly account statements showing her investments were
24 earning substantial interest income. Had that investor known that the interest income
25 reported to her in ACT's monthly account statements were substantially less than the
26 amount reported, she would not have made those additional investments in 2015,
27 2016, and 2017.

28 42. Arsenault knew, or was reckless in not knowing, that ACT's monthly

1 account statements sent to clients between January 2014 and the present were false
2 and misleading. He also was negligent and did not exercise reasonable care in
3 ensuring that these monthly statements were materially accurate and not misleading.

4 43. Although Arsenault may claim that the monthly account statements
5 simply reflected interest income that had “accrued,” rather than interest that had
6 actually been received, the account statements do not reflect that. The Atlas clients
7 who invested in ACT also did not know that. Thus, even if it was just accrued
8 income, that was not disclosed to any of the ACT investors.

9 44. A reasonable investor in ACT would have found it material and would
10 have wanted to know that the interest income reflected in the monthly account
11 statements for ACT had not actually been received, that the investments were not
12 generating the income reported in the statements, that the principal balances reported
13 in the statements was not secure or readily available for withdrawal, and that
14 Arsenault had misappropriated substantial portions of client funds and the interest
15 income thereon for himself and his firm, Atlas.

16 45. As sole owner of ACT and the 50% owner and president of Atlas,
17 Arsenault’s conduct, scienter and negligence are properly imputed to those entities.

18 **C. Misrepresentations and Omissions about the Use of Client Funds**
19 **Invested in ACT**

20 46. Arsenault commingled advisory client money in one ACT bank account
21 and used portions of it to make four unsecured investments, none of which involved
22 secured short-term bridge loans to doctors.

23 47. ACT made unsecured loans totaling about \$930,000 to the owner of used
24 car dealerships to finance the dealer’s car inventory. The car dealer made sporadic
25 principal and/or interest payments totaling about \$360,000 in 2013 and made no
26 payments from 2014 through 2016.

27 48. In 2017, ACT lent an approximately \$360,000 in additional funds to the
28 car dealer but received payments totaling only \$35,000. As of January 2018, the car

1 dealer owed ACT approximately \$900,000 plus unpaid interest.

2 49. In January 2018, and as alleged in more detail below, Arsenault fully
3 released the car dealer from having to repay ACT on the loan as part of a real estate
4 transaction involving undeveloped land in Oceanside, California.

5 50. Second, in 2015 and 2016, ACT made unsecured loans of about \$2.7
6 million to a seller of mobile homes to finance its inventory of homes. That entity has
7 been paying ACT approximately 1.5% interest per month on the current loan balance
8 (currently, approximately \$31,000 per month), and has periodically made some
9 principal payments. As of October 30, 2018, this loan balance is approximately
10 \$2.15 million.

11 51. Third, in early 2016, ACT provided Arsenault with \$300,000 so he could
12 buy his personal residence. Arsenault documented this transfer as a supposed
13 unsecured loan that required him to pay 4% interest each year. However, Arsenault
14 has made no payments on this “loan” at all. To the extent it was a loan, with accrued
15 4% interest per year, the loan balance has grown to \$330,000.

16 52. Fourth, in September 2016, ACT invested in a 16.4 acre parcel of
17 undeveloped real property in Oceanside, California. Specifically, ACT provided
18 \$600,000 to the car dealer referenced above and a third party, to purchase the
19 Oceanside property for \$1.26 million. Although ACT provided almost half the
20 capital for the purchase, the car dealer and the third party were the only ones on the
21 title.

22 53. In January 2018, ACT, the car dealer, the other third party, and a law
23 firm entered into a series of agreements where title to the Oceanside property was
24 transferred to a newly created entity, Ocean Palms Villas Land Holding Company,
25 LLC (“OPV”). Under the terms of the transaction, OPV was to be owned by the four
26 parties to the agreements (ACT, the car dealer, the third party and the law firm).

27 54. As part of that arrangement, ACT became a 30% owner of OPV and, in
28 exchange, ACT agreed to release the car dealer from all of his debt owed to ACT.

1 The total amount of debt released was estimated to be about \$1.8 million, which
2 consisted of approximately \$900,000 principal on the car dealer's loan, unpaid
3 interest on the loan, and \$600,000 for the Oceanside property.

4 55. Since at least January 2014 to the present, the defendants did not
5 disclose in ACT's monthly account statements, or elsewhere, either orally or in
6 writing, to the Atlas clients who had invested in ACT, that: (a) ACT had made no
7 investments in secured short-term bridge loans to doctors, or any secured loans to any
8 entity; (b) Arsenault had initially made unsecured investments in the used car dealer;
9 (c) he made further unsecured investments in the used car dealer at a time when the
10 car dealer was no longer performing its obligations under the loan; (d) he released all
11 of the car dealer's debt owed to ACT; (e) ACT had invested in undeveloped land in
12 Oceanside, California; and (f) ACT had invested with the dealer of mobile homes.
13 Instead, the monthly account statements merely reported income from the ACT
14 investments.

15 56. These misleading and false misrepresentations and omissions were
16 material to the advisory clients who invested in ACT. Any reasonable Atlas client
17 who had invested in ACT would have wanted to know that ACT had made unsecured
18 loans to a car dealer and a manufacturer of mobile homes, instead of secured loans to
19 doctors, that ACT had lent the car dealer more money even though the car dealer was
20 in arrears on its original loan from ACT, that ACT released the car dealer's debt, and
21 that ACT had invested in undeveloped land.

22 **D. Arsenault's Misappropriation and Misuse of ACT Funds**

23 57. The defendants also misappropriated and misused advisory client money
24 invested in ACT to make various undisclosed payments to Arsenault, Atlas and ACT.
25 This misappropriation and misuse of client money took many forms.

26 58. First, Atlas and ACT engaged in a series of roundtrip transactions from
27 approximately December 2014 through October 2017 that left Atlas with, net, about
28 \$332,000 of funds invested in ACT by Atlas clients.

1 59. The second form of misappropriation took place from June 2013 to as
2 recently as August 2018. During that time, ACT made payments to Arsenault
3 totaling approximately \$190,000. This includes \$19,500 that Arsenault paid himself
4 as recently as August 2018 (as alleged in more detail below). Arsenault now claims
5 these payments were for reimbursement of ACT expenses and for his compensation.
6 But the defendants have not provided the SEC with any records that document those
7 expenses or any agreement that reflects Arsenault's alleged compensation.

8 60. A third form of misappropriation took place from June 2013 through
9 August 2018. During that time, ACT also paid for approximately \$240,000 of ACT
10 expenses, using the funds the Atlas clients had invested in ACT.

11 61. Finally, as alleged above, Arsenault, caused ACT to make a personal
12 "loan" of \$300,000 to him in 2016, which he has never paid any interest or principal
13 on.

14 62. In total, the defendants misappropriated and misused at approximately
15 \$1,050,000 from ACT to benefit Atlas and Arsenault. All of this money came from
16 money invested by Atlas clients in ACT or from the minimal amount of interest ACT
17 had earned and received, for the benefit of the clients invested in ACT, on its loans
18 and investments.

19 63. None of these payments were disclosed to each of the Atlas advisory
20 clients who had invested in ACT.

21 64. Any reasonable investor in ACT would have considered the fact that
22 over \$1 million of client money invested in ACT had been misappropriated or
23 misused to be material and something they would have wanted to know.

24 65. Arsenault knew, or was reckless in not knowing that Atlas client funds
25 had been misappropriated and misused. He also was negligent and did not exercise
26 reasonable care in ensuring the funds would not be misappropriated or misused, or in
27 ensuring that the clients invested in ACT were made aware of this misappropriation
28 and misuse.

1 **E. The Defendants' Recent Deceptive Conduct**

2 **1. The new investment in the loan to the mobile home seller**

3 66. In March 2018, Arsenault made material misrepresentations and
4 omissions to two existing advisory clients to cause them to invest additional money in
5 ACT.

6 67. These two clients had already invested \$200,000 in ACT. In March
7 2018, Arsenault convinced these two clients to invest another \$250,000 by telling
8 them that another advisory client wanted to withdraw his funds from ACT and that
9 their new investment would be used to replace that other client's investment in the
10 loan to the seller of mobile homes.

11 68. According to ACT's and the borrower's records, at that time, the seller
12 of mobile homes owed ACT about \$2.21 million but ACT owed \$2.36 million to the
13 clients whose money had been allegedly allocated to that specific loan. In other
14 words, ACT's own accounting records showed that it was obligated to pay the
15 advisory clients about \$150,000 more than it was owed by the seller of mobile homes.
16 Thus, the new \$250,000 investment Arsenault was asking the two clients to make in
17 this loan could never be repaid from the loan even if the borrower repaid the entire
18 balance.

19 69. Arsenault's representations and omissions about this new investment
20 were therefore false and misleading because there were insufficient funds to pay
21 those clients back if they had made the investment.

22 70. Such information, had it been disclosed, would have been material to
23 those advisory clients.

24 71. Arsenault knew, or was reckless in not knowing, that the representations
25 and omissions he made to the two clients about the new investment were false and
26 misleading. He was also negligent and did not exercise reasonable care in ensuring
27 that the truth about the investment was fully and accurately disclosed to the two
28 clients.

1 **2. The Oceanside property transfer**

2 72. On information and belief, in July 2018, Arsenault transferred title of the
3 Oceanside property from OPV to a company he managed and ACT owned, AJF
4 Development Group, LLC (“AJF”).

5 73. On information and belief, Arsenault transferred the title to AJF without
6 authorization from the other OPV owners.

7 74. Arsenault used the property as collateral for AJF to obtain a \$1.5 million
8 loan from a hard-money lender.

9 75. On information and belief, Arsenault used documents with forged
10 signatures of the other members of OPV to obtain the loan.

11 76. AJF received \$467,000 of the loan proceeds. The remaining funds
12 remain in escrow with the lender, or have been used to pay loan fees and expenses.

13 77. In August 2018, AJF transferred to ACT \$310,000, which (combined
14 with other ACT monies) Arsenault used to pay \$270,000 to an ACT advisory client
15 who had demanded a withdrawal.

16 78. Arsenault also transferred \$19,500 of the loan proceeds from the hard
17 money lender to himself.

18 79. In late October 2018, in a verified complaint, other members of OPV
19 sued ACT, Arsenault, AJF, and others, in California state court to quiet title on the
20 Oceanside property, alleging that Arsenault’s transfer of the Oceanside property to
21 AJF was not authorized. That lawsuit seeks to transfer the title back to OPV, to void
22 the lien securing the \$1.5 million hard money loan, to expel ACT from OPV, and \$5
23 million in monetary damages.

24 80. In addition, in late October and early November 2018, Arsenault made
25 misleading statements to two existing ACT clients in offering them an interest in AFJ
26 (and thus the Oceanside property) if they agreed to amend the terms of their ACT
27 investment.

28 81. As alleged above, under the original terms of their ACT investments, the

1 clients were to be paid interest of about 1% each month, and could be repaid in full
2 within 30 to 60 days of a withdrawal request. In exchange for an interest in AJF,
3 Arsenault asked the clients to agree to change those terms so that their investments
4 would pay 10% per year and the principal and interest would not be payable until
5 another two years.

6 82. The proposed written agreements he sent to the clients he made this
7 proposal to stated that AJF owned the Oceanside property. His email forwarding
8 those agreements stated that the property had been valued “as is” at \$8 million.

9 83. When Arsenault presented this deal to the clients, he made material
10 misrepresentations and omissions.

11 84. Specifically, at the time Arsenault made the offer to the first client, he
12 had already transferred the property from OPV to AJF without the approval of the
13 other co-owners of OPV. He did not disclose this to the client.

14 85. By the time he made the offer to the second client, Arsenault, AJF and
15 ACT had been sued in the quiet title action, there was a *lis pendens* on the property,
16 and the plaintiffs in that action were seeking \$5 million in damages from AJF and
17 ACT, to void the title transfer to AJF as unauthorized, and to expel ACT from OPV,
18 the original owner of the property. He did not disclose any of this to either client.

19 86. Any reasonable investor would have considered this information
20 material and would have wanted to know the truth about AJF’s ownership of the
21 property and the manner in which it acquired title, about the quiet title action and the
22 relief sought and obtained in that action, and about the hard-money loan.

23 87. Arsenault knew, or was reckless in not knowing that he had not
24 disclosed and had misrepresented to the two clients the full truth about AJF’s
25 ownership of the property and the manner in which it acquired title, about the quiet
26 title action and the relief sought and obtained in that action, and about the hard-
27 money loan. He was also negligent and did not exercise reasonable care in ensuring
28 that the truth was disclosed to these clients.

1 **FIRST CLAIM FOR RELIEF**

2 **Fraud in the Connection with the Purchase and Sale of Securities**
3 **Violations of Section 10(b) of the Exchange Act and Rule 10b-5(b)**
4 **(against all Defendants)**

5 88. The SEC realleges and incorporates by reference paragraphs 1 through
6 87 above.

7 89. From at least January 2014 to the present, Arsenault, Atlas and ACT
8 made false and misleading misrepresentations and omissions to Atlas clients who
9 invested in ACT by providing monthly account statements to those clients that falsely
10 indicated that their investments in ACT: (a) were invested in income-producing
11 investments; (b) were receiving interest income in the amounts reported in the
12 statements; (c) were secure and available to be withdrawn within 30 to 60 days of a
13 withdrawal demand; and (d) had not been used to pay Arsenault, Atlas and ACT.

14 90. In addition, from at least January 2014 to the present, Arsenault, on
15 behalf of Atlas and ACT, made oral misrepresentations and omissions to advisory
16 clients invested in ACT that were materially false and misleading, by falsely
17 representing that their monies would be invested in secured short-term bridge loans to
18 doctors, and by failing to advise each advisory client that their monies had been
19 invested in unsecured loans to car dealerships, a manufacturer of mobile homes, and
20 in undeveloped land in Oceanside, California.

21 91. By engaging in the conduct described above, Arsenault, Atlas and ACT,
22 and each of them, directly or indirectly, in connection with the purchase or sale of a
23 security, by the use of means or instrumentalities of interstate commerce, of the
24 mails, or of the facilities of a national securities exchange, with scienter, made untrue
25 statements of a material fact or omitted to state a material fact necessary in order to
26 make the statements made, in the light of the circumstances under which they were
27 made, not misleading.

28 92. By engaging in the conduct described above, Arsenault, Atlas and ACT,

1 and each of them, violated, and unless restrained and enjoined will continue to
2 violate, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5(b)
3 thereunder, 17 C.F.R. § 240.10b-5(b).

4 **SECOND CLAIM FOR RELIEF**

5 **Fraud in Connection with the Purchase or Sale of Securities**

6 **Violations of Section 10(b) of the Exchange Act and Rule 10b-5(a) and (c)**
7 **(against all Defendants)**

8 93. The SEC realleges and incorporates by reference paragraphs 1 through
9 87 above.

10 94. Arsenault, acting on behalf of Atlas and ACT, misappropriated and
11 misused, without disclosure to the clients invested in ACT, more than approximately
12 \$1 million from ACT to benefit himself and Atlas.

13 95. By engaging in the conduct described above, Arsenault, Atlas and ACT,
14 and each of them, directly or indirectly, in connection with the purchase or sale of a
15 security, and by the use of means or instrumentalities of interstate commerce, of the
16 mails, or of the facilities of a national securities exchange, with scienter: (a)
17 employed devices, schemes, or artifices to defraud; and (b) engaged in acts, practices,
18 or courses of business which operated or would operate as a fraud or deceit upon
19 other persons.

20 96. By engaging in the conduct described above, Arsenault, Atlas and ACT,
21 and each of them, violated, and unless restrained and enjoined will continue to
22 violate, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rules 10b-5(a)
23 and 10b-5(c) thereunder, 17 C.F.R. §§ 240.10b-5(a) & 240.10b-5(c).

24 **THIRD CLAIM FOR RELIEF**

25 **Fraud in the Offer or Sale of Securities**

26 **Violations of Section 17(a)(2) of the Securities Act**
27 **(against all Defendants)**

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

1 87 above.

2 98. From at least January 2014 to the present, Arsenault, Atlas and ACT
3 obtained money by means of false and misleading misrepresentations and omissions
4 to Atlas clients who invested in ACT by providing monthly account statements to
5 those clients that falsely indicated that their investments in ACT: (a) were invested in
6 income-producing investments; (b) were receiving interest income in the amounts
7 reported in the statements; (c) were secure and available to be withdrawn within 30 to
8 60 days of a withdrawal demand; and (d) had not been used to pay Arsenault, Atlas
9 and ACT.

10 99. In addition, from at least January 2014 to the present, Arsenault, on
11 behalf of Atlas and ACT, obtained money by means of oral misrepresentations and
12 omissions that Arsenault made, on behalf of ACT and Atlas to advisory clients
13 invested in ACT. These representations and omissions were materially false and
14 misleading, by falsely representing that their monies would be invested in secured
15 short-term bridge loans to doctors, and by failing to advise each advisory client that
16 their monies had been invested in unsecured loans to car dealerships, a manufacturer
17 of mobile homes, and in undeveloped land in Oceanside, California.

18 100. By engaging in the conduct described above, Arsenault, Atlas and ACT,
19 and each of them, directly or indirectly, in the offer or sale of securities, and by the
20 use of means or instruments of transportation or communication in interstate
21 commerce or by use of the mails directly or indirectly: obtained money or property by
22 means of untrue statements of a material fact or by omitting to state a material fact
23 necessary in order to make the statements made, in light of the circumstances under
24 which they were made, not misleading.

25 101. Defendants knowingly or recklessly or negligently, obtained money or
26 property by means of untrue statements of a material fact or by omitting to state a
27 material fact necessary in order to make the statements made, in light of the
28 circumstances under which they were made, not misleading.

1 102. By engaging in the conduct described above, Arsenault, Atlas and ACT,
2 and each of them, violated, and unless restrained and enjoined, will continue to
3 violate, Sections 17(a)(2) of the Securities Act, 15 U.S.C. §§ 77q(a)(2).

4
5 **FOURTH CLAIM FOR RELIEF**

6 **Fraud in the Offer or Sale of Securities**

7 **Violations of Section 17(a)(1) & (3) of the Securities Act**

8 **(against all Defendants)**

9 103. The SEC realleges and incorporates by reference paragraphs 1 through
10 87 above.

11 104. Arsenault, acting on behalf of Atlas and ACT, misappropriated and
12 misused, without disclosure to the clients invested in ACT, more than approximately
13 \$1 million from ACT to benefit himself and Atlas.

14 105. By engaging in the conduct described above, Defendant Arsenault, Atlas
15 and ACT, and each of them, directly or indirectly, in the offer or sale of securities,
16 and by the use of means or instruments of transportation or communication in
17 interstate commerce or by use of the mails directly or indirectly: (a) employed
18 devices, schemes, or artifices to defraud; and (b) engaged in transactions, practices, or
19 courses of business which operated or would operate as a fraud or deceit upon the
20 purchaser.

21 106. Defendants knowingly or recklessly employed devices, schemes and
22 artifices to defraud; and knowingly, recklessly or negligently, engaged in
23 transactions, practices, or courses of business which operated or would operate as a
24 fraud or deceit upon the purchaser.

25 107. By engaging in the conduct described above, Arsenault, Atlas and ACT,
26 and each of them, violated, and unless restrained and enjoined will continue to
27 violate, Sections 17(a)(1) and 17(a)(3) of the Securities Act, 15 U.S.C. §§ 77q(a)(1)
28 & 77q(a)(3).

1 **FIFTH CLAIM FOR RELIEF**

2 **Fraud by an Investment Adviser**

3 **Violations of Sections 206(1) and 206(2) of the Advisers Act**

4 **(against Defendants Arsenault and Atlas)**

5 108. The SEC realleges and incorporates by reference paragraphs 1 through
6 87 of this Complaint as if fully set forth herein.

7 109. Defendants Arsenault and Atlas, at all relevant times, were investment
8 advisers within the meaning of Section 202(a)(11) of the Advisers Act, 15 U.S.C. §
9 80b-2(a)(11).

10 110. Among other things, Arsenault and Atlas made material misstatements
11 and omissions, and breached their fiduciary duties to their advisory clients who had
12 invested in ACT, by: (a) misrepresenting the nature of the investments ACT would
13 make; (b) preparing and distributing monthly account statements to clients invested in
14 ACT that misrepresented the income received on their investments as well as the
15 principal balance available for withdrawal; (c) misappropriating clients funds to
16 benefit Arsenault and Atlas; (d) paying ACT expenses with client funds without
17 disclosing such payments to the advisory clients invested in ACT; (e) failing to
18 disclose to advisory clients invested in ACT, either in their monthly ACT account
19 statements or otherwise, that their funds had been misappropriated and used for
20 unauthorized and undisclosed purposes; and (f) encouraging clients invested in ACT
21 to invest additional monies without disclosing the investments were unlikely to ever
22 be repaid.

23 111. In addition, Arsenault and Atlas made material misstatements and
24 omissions, and breached their fiduciary duties to their advisory clients who had
25 invested in ACT, by encouraging them to invest in AJF in exchange for agreeing to
26 amend the terms of their ACT investments, without telling them that Arsenault had
27 fraudulently transferred the Oceanside property from OPV to AJF, without the
28 consent of OPV's co-owners, and that he had encumbered the property with \$1.5

1 million dollar loan, a portion of which he used to pay a withdrawal demand by
2 another advisory client, and to pay himself.

3 112. By engaging in the conduct described above, Arsenault and Atlas, and
4 each of them, directly or indirectly, by use of the mails or means and instrumentalities
5 of interstate commerce: (a) employed or are employing devices, schemes or artifices
6 to defraud clients or prospective clients; and (b) engaged in or are engaging in
7 transactions, practices, or courses of business which operated as a fraud or deceit
8 upon clients or prospective clients.

9 113. By engaging in the conduct described above, Arsenault and Atlas, and
10 each of them, have violated, and unless restrained and enjoined, are reasonably likely
11 to continue to violate, Sections 206(1) and (2) of the Advisers Act, 15 U.S.C. §§ 80b-
12 6(1) & 80b-6(2).

13 **PRAYER FOR RELIEF**

14 WHEREFORE, the SEC respectfully requests that the Court:

15 **I.**

16 Issue findings of fact and conclusions of law that Defendants committed the
17 alleged violations.

18 **II.**

19 Issue judgments, in forms consistent with Rule 65(d) of the Federal Rules of
20 Civil Procedure, permanently enjoining Arsenault, Atlas and ACT , and their officers,
21 agents, servants, employees and attorneys, and those persons in active concert or
22 participation with any of them, who receive actual notice of the judgment by personal
23 service or otherwise, and each of them, from violating Section 17(a) of the Securities
24 Act [15 U.S.C. §77q(a)], and Section 10(b) of the Exchange Act [15 U.S.C. §§
25 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

26 **III.**

27 Issue judgments, in forms consistent with Rule 65(d) of the Federal Rules of
28 Civil Procedure, permanently enjoining Arsenault and Atlas, and their officers,

1 agents, servants, employees and attorneys, and those persons in active concert or
2 participation with any of them, who receive actual notice of the judgment by personal
3 service or otherwise, and each of them, from violating, and unless restrained and
4 enjoined, are reasonably likely to continue to violate, Sections 206(1) and (2) of the
5 Advisers Act, 15 U.S.C. §§ 80b-6(1) & 80b-6(2).

6 **IV.**

7 Order Defendants to disgorge all ill-gotten gains received from their illegal
8 conduct, together with prejudgment interest thereon.

9 **V.**

10 Order Arsenault and Atlas to pay civil penalties under Section 20(d) of the
11 Securities Act [15 U.S.C. § 77t(d)], Section 21(d)(3) of the Exchange Act [15 U.S.C.
12 § 78u(d)(3)], and Section 209(e) of the Advisers Act [15 U.S.C. § 809-9(e)].

13 **VI.**

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

18 **VII.**

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

21 Dated: December 13, 2018

22 */s/ Donald W. Searles*

23 DONALD W. SEARLES

24 Attorney for Plaintiff

25 Securities and Exchange Commission