BEFORE THE ARBITRAL TRIBUNAL OF THE AMERICAN ARBITRATION ASSOCIATION

MARK and BARBARA FOX, **CLAIMANTS,** **v.** **WEALTH NAVIGATION ADVISORS (CRD #140612)** **RESPONDENT.**	**STATEMENT OF CLAIM**

COMES NOW Claimants Mark Fox ("Mark") and Barbara Fox ("Barbara") (collectively "Claimants") and seek damages from Wealth Navigation Advisors ("WNA" or "Respondent") due to its supervisory failures relating to a decade-long, $29 million Ponzi scheme operated by one of its former registered investment advisers, Stephen Romney Swensen ("Swensen").

From 2011 to 2022, the now-deceased investment adviser operated Crew Capital, a fraudulent investment offering that raised over $29 million from more than 50 investors, including $850,000 invested by Claimants in 2019 while Swensen was registered with Respondent. Less than three years later, in 2022 as Swensen's fraudulent scheme was collapsing, the WNA financial adviser committed suicide, which was followed shortly by a Securities & Exchange Commission action filed against Crew Capital and Swensen's estate alleging the shocking details of the fraudulent scheme.

But not for WNA's negligent failure to supervise Swensen, Claimants would never have invested money in Swensen's Crew Capital fund and suffered devastating investment losses. WNA's overall supervisory structure was inadequate to reasonably supervise Swensen, and WNA failed to establish supervisory policies and procedures and failed to follow those policies and

procedures it had in place. WNA also failed to reasonably follow up on red flags relating to Swensen's ongoing fraudulent conduct. Such failure is in direct violation of the trust Claimants held in Respondent and the duties owed to them.

I. THE PARTIES

A. Claimants Mark and Barbara Fox

Mark and Barbara Fox are 61 and 59 years old, married, and live in Cocoa Beach, Florida. Mark obtained his bachelor's of science degree in chemical engineering from Tennessee Technological University in 1983, and later earned his master's degree in business management from University of Phoenix in 1989. Since 2004, Mark has owned and operated several companies, including Resona.Health, where he invents medical devices that use resonance frequency therapy to help common ailments in people and pets, such as pain, PTSD, ADD/ADHD, cold sores, shingles, depression, among other ailments.

Mark also is a distinguished commissioned officer and Army Engineer Office Course graduate, and he spent the early part of his career working as a rocket scientist. Specifically, Mark worked for Thiokol Corporation, which manufactured rocket engines and was one of the world's largest producers of solid rocket motors for the aerospace and defense industries. Mark held several positions at Thiokol, including as Chief Engineer, Space Shuttle propellant; Chief Program Manager for propellant, liner, and insulation for the Space Shuttle Solid Rocket Motor; Manager of Engineering Services Division; Research Manager for the development of new rocket motor nozzle ablatives, composite nozzle assemblies, and advanced Polyacrylonitrile (PAN) materials for the Air Force Advanced Launch System (ALS); and Manager of the Space Shuttle Solid Rocket Booster, Rotation, Processing, and Surge Facility (RPSF) located at NASA's Kennedy Space Center, Florida.

Barbara Fox currently works as a Vice President for Oracle. She earned her bachelor's degree in accounting and computer science, and has worked tirelessly for over 30 years for Oracle. Unfortunately, WNA and Swensen's misconduct has forced Barbara to change her retirement plans. Specifically, before discovering Swensen's fraudulent conduct in 2022, Barbara hired a replacement at Oracle and planned for her retirement to begin in 2023. Today, Barbara is now forced to continue working and does not know when she will retire. Further, Barbara is now receiving psychiatric treatment to cope with the shocking revelation of Swensen's misconduct.

B. Respondent Wealth Navigation Advisors (CRD #140612)

Respondent Wealth Navigation Advisors is an SEC registered investment advisory firm with its main office in Centerville, Utah. Wealth Navigation, LLC has been in operation since 2007 and is wholly owned by WN Holdings, LLC. WN Holdings, LLC is owned by Axis Family Holdings, LLC. The firm does business, among other names, under the name Oak Lane Advisors, which operates in several states, including Arizona, California, Colorado, Idaho, Montana, Nevada, Oregon, Utah, and Washington. WNA manages over $250 million in assets for hundreds of clients.

Stephen Swensen was registered as an investment adviser with WNA from 2018 until his death in June 2022. According to its March 2022 Form ADV, WNA had a relationship with Stephen Swensen and non-party Jacob Cazier's "Navigation Capital Group." On June 6, 2022, WNA terminated Swensen for failing to disclose an outside business activity.

C. Non-Party Stephen Swensen (CRD #2885578)

Swensen was a former resident of Kaysville, Utah who operated the Crew Capital fraud while he was a registered representative of broker-dealers Summit Brokerage Services, Inc. (March 2020 to June 2014), Allegis Investment Services, LLC (July 2014 to May 2018), and J.W.

Cole Financial, Inc. (May 2018 to June 2018), and an investment adviser representative of Allegis Investment Advisors, LLC (February 2017 to May 2018), J.W. Cole Advisors, Inc. (May 2018 to June 2018), and Respondent Wealth Navigation Advisors (June 2018 to June 2022). He passed his Series 63, Series 65, SIE, and Series 6 examinations.

Swensen initially worked with his father, Philip Swensen, who was a registered representative of several broker-dealers during his career. Philip Swensen developed an investment approach that involved four "buckets." The safest investments were put into "Bucket 1," and were for short-term cash flow needs. The remaining three buckets were for progressively riskier investments, with the potential for higher returns. After Philip Swensen retired in July 2014, Swensen retained many of Philip's customers and continued using the "four bucket" approach, including with Claimants.

On June 6, 2022, Swensen committed suicide, and his estate along with Crew Capital was sued by the SEC shortly thereafter in October 2022. As detailed below, the SEC alleges that Swensen operated a decade-long Ponzi-like scheme whereby he swindled nearly $30 million of investor money through his Crew Capital scheme.

D. Non-party Jacob Cazier (CRD #6904198)

From approximately May 2018 to approximately May 2022, Swensen worked with Jacob Cazier, an investment adviser representative of WNA. Cazier has passed his Series 65, 63, SIE and 6 examinations. He has been registered with WNA since October 4, 2018. Cazier was previously registered with J.W. Cole Advisors as an investment adviser from May 2018 to September 2018, and as a broker with J.W. Cole Financial, Inc. from May 2018 to September 2018. Cazier also worked as a broker with Allegis Investment Services from January 2018 to May 2018.

E. Non-party Jason Kimber (CRD # 6244188)

Jason Kimber is currently registered as a broker and investment adviser with J.W. Cole. Specifically, he is registered as a broker with J.W. Cole Financial, Inc. out of Logan, UT, and has been registered with the firm since May 8, 2020. Kimber also is currently registered as an investment adviser with J.W. Cole Advisors, Inc., and has been registered with the firm in this capacity since November 2020. Before joining J.W. Cole, Kimber was registered with Allegis Investment Services, LLC from July 2014 to May 2018 as a broker. He also was a broker at Summit Brokerage Services from September 2013 to July 2014.

Kimber has two customer disputes on his BrokerCheck Report with damages exceeding $13 million that most certainly relate to the Crew Capital-Swensen fraud scheme. The customer disputes were filed on December 20, 2022, and November 1, 2022, respectively. The first customer dispute alleges that "while affiliated with Allegis Investment Services, LLC, between July 2014 and May 2018, Kimber's former partner was involved in a fraud. Customers allege that Kimber indirectly benefited from the operation, and that Kimber should have identified the operation as a fraud." The second customer complaint contains the identical allegation.

II. FACTUAL BACKGROUND

Around 25 years ago, Claimant Mark Fox met WNA's Swensen while spending time in an aviation hangar at the Ogden City airport in Utah. Both pilots, Claimant and Swensen shared their passion for airplanes and went on to form a friendship that spanned many years. Swensen eventually recruited Mark and Barbara to become investment advisory and brokerage firm clients, and Claimants followed their friend as Swensen hopped around from firm to firm over the last 15 years, most recent of which was with WNA from 2018 to 2022.

In 2019, while Swensen was registered as an investment adviser with WNA, Swensen approached Mark about a new investment opportunity: the Crew Capital Funds. Swensen

represented the Crew Capital funds as low-risk and that it was guaranteed to pay 5% annually, and up to 10% annually, depending on the performance of the S&P 500 index. Swensen represented to Mark that Jacob Cazier was helping him with the Crew Capital fund investing. Indeed, Cazier would participate and help Swensen during presentations to Mark over the last few years on the performance of his Crew Capital investments. Trusting their long-time friend, Mark and Barbara invested $850,000 in the Crew Capital fund at the recommendation of Swensen.

Over the next three years, Mark would periodically meet with Swensen and Cazier to review their income plan, including the investment in Crew Capital. The reports would display the Oak Lane Advisors'[1] logo and name on the documents, and Claimants believed the Crew Capital fund was just one of the several investment opportunities available through Respondent. In 2022, however, Mark discovered the disturbing truth about Swensen and the Crew Capital fund: that his money was gone.

Claimants' Discovery of the Fraud and the SEC's Complaint Against Crew Capital and Swensen's Estate

On June 6, 2022, Swensen committed suicide.[2] Mark discovered the news about Swensen's death shortly afterwards, but he did not learn about the adviser's misconduct and the extent of the Crew Capital fraud until the next month, in July 2022. Shocked by the news, Mark would later learn like the rest of the investing public of Swensen's decade-long scheme when reading the Securities and Exchange Commission's Complaint filed against Crew Capital and Swensen's estate in October 2022.

[1] Oak Lane Advisors is a d/b/a of WNA.
[2] That same day, WNA terminated Swensen for failing to disclose outside business activities, most certainly referring to his decade-long Crew Capital scheme.

According to the Complaint, from at least July 2011, Swensen started offering and selling investment interests in Crew Capital. Similar to Mark and Barbara's case, the SEC alleged that Swensen solicited his brokerage firm and investment advisory customers and clients during meetings at which Swensen advised them on their investment portfolios and retirement plans. Swensen recommended that his customers and clients invest in Crew Capital as part of their investment and retirement strategy.

Swensen gave other investors like Claimants the exact same pitch about Crew Capital. Specifically, that Crew Capital was a safe investment fund that paid guaranteed minimum returns of 5% annually, with possible annual returns as high as 10% depending on how well the S&P 500 performed that year. He said that Crew Capital could provide their retirement income. He further said that Crew Capital was a "Bucket 1" investment, the safest investment in their portfolios.

The SEC also alleged that Swensen provided documentation about Crew Capital investment to some investors. These documents falsely described Crew Capital as an "actively managed portfolio" that invested both in senior secured floating rate loans and options on the S&P 500 index. Documents also falsely showed that Pacific Investment Management Company, LLC was the subadvisor to Crew Capital, just as was the case with Mark and Barbara.

The SEC also claimed that Swensen provided investors with falsified PIMCO documents to make it appear that PIMCO and Crew Capital together managed a "Senior Floating Rate Fund." Swensen allegedly doctored actual PIMCO documentation for PIMCO's Senior Floating Rate Fund by adding his Crew Capital logo and the words "Crew" and "Crew Capital Group" in various places. In fact, PIMCO never had any relationship with either Swensen or Crew Capital.

Swensen also developed and maintained websites, including www.crewfunds.com, for Crew Capital with the assistance of a web developer and a graphic designer. Investors like

Claimants were able to log in and view their account balances, including the fictitious returns. Investor accounts at the websites purported to show daily accrual of the guaranteed 5% annual returns, with an additional annual lump sum payment of up to another 5% annual return on the anniversary of the date of their investment. In fact, the representations regarding the accrual of funds in investor accounts were entirely fictitious.

As it turned out, Swensen's representations to Claimants about Crew Capital were completely fabricated. Neither Swensen nor Crew Capital invested money that investors put into Crew Capital. Neither Swensen nor Crew Capital had any affiliation with PIMCO. Instead, Swensen used investor funds as though it were his personal piggy bank. He made Ponzi-type payments of returns to investors, which were funded from their own capital investment and from the capital investments of other victims.

Swensen also used Crew Capital's money to pay for his family's living expenses. He used Crew Capital's money to buy and maintain several airplanes. He used Crew Capital's money to purchase homes and vehicles, and to fund his and his family's lifestyle. Swensen spent Crew Capital's money on the living expenses of at least two mistresses. Swensen also used Crew Capital's money to pay the operating expenses of two of his other businesses, Swensen Capital, LLC[3] and Wingman, LLC.[4]

WNA's failure to supervise Swensen directly caused Mark and Barbara to suffer substantial financial and emotional losses. Barbara now is forced to delay her retirement plans and receiving psychiatric treatment to cope with these major life changes resulting from the fraudulent

[3] Swensen Capital, LLC (f/k/a Last Advisor, LLC f/k/a Four Buckets, LLC) is a Utah LLC formed in January 2014, and does business under the name Bucket Bliss. Its principal place of business is in Layton, Utah. He was the sole manager of Swensen Capital.

[4] Wingman, LLC ("Wingman") is a Utah limited liability company formed in August 2020 with a principal place of business in Kaysville, Utah. Swensen was Wingman's sole manager.

scheme. But not for WNA's negligent failure to supervise Swensen and detect his fraudulent scheme, Mark and Barbara would not have suffered devastating investment losses.

III. JURISDICTION

This case is arbitrable pursuant to the Federal Arbitration Act and the Arbitration clauses contained in the client agreements between Claimant and Respondents Claimant Investment Advisory Agreement with Wealth Navigation Advisors contains the following:

ARBITRATION AGREEMENT

NO PERSON SHALL BRING A PUTATIVE OR CERTIFIED CLASS ACTION TO ARBITRATION, NOR SEEK TO ENFORCE ANY PREDISPUTE ARBITRATION AGREEMENT AGAINST ANY PERSON WHO HAS INITIATED IN COURT A PUTATIVE CLASS ACTION; OR WHO IS A MEMBER OF A PUTATIVE CLASS WHO HAS NOT OPTED OUT OF THE CLASS WITH RESPECT TO ANY CLAIMS ENCOMPASSED BY THE PUTATIVE CLASS ACTION UNTIL; (i) THE CLASS CERTIFICATION IS DENIED; (ii) THE CLASS IS DECERTIFIED; OR (iii) THE PERSON IS EXCLUDED FROM THE CLASS BY THE COURT. SUCH FORBEARANCE TO ENFORCE AN AGREEMENT TO ARBITRATE SHALL NOT CONSTITUTE A WAIVER OF ANY RIGHTS UNDER THIS AGREEMENT EXCEPT TO THE EXTENT STATED HEREIN.

ANY CONTROVERSY BETWEEN CLIENT AND ADVISOR SHALL BE SUBMITTED TO ARBITRATION UNDER THE AUSPICES AND ACCORDING TO THE RULES THEN IN EFFECT OF THE AMERICAN ARBITRATION ASSOCIATION, EXCEPT IN THE EVENT THAT THE ARBITRATION IS COMMENCED BY OR AGAINST A MEMBER FIRM OF THE FINANCIAL INDUSTRY REGULATORY AUTHORITY ("FINRA"), IN WHICH CASE SUCH ARBITRATION SHALL BE CONDUCTED BEFORE FINRA, IN ACCORDANCE WITH ITS RULES. ARBITRATION MUST BE COMMENCED BY SERVICE ON THE OTHER PARTY OF A WRITTEN DEMAND FOR ARBITRATION OR A WRITTEN NOTICE OF INTENTION TO ARBITRATE, THEREIN ELECTING THE ARBITRATION TRIBUNAL. JUDGMENT ON ANY SUCH AWARD MAY BE ENTERED BY ANY COURT OF COMPETENT JURISDICTION.

See Exh. 1. The Federal Arbitration Act states such arbitration clauses to be "valid, irrevocable, and enforceable," binding parties to submit an eligible dispute to arbitration. 9 USCS § 2. Based on AAA Consumer Arbitration Rule 1, as the parties included a clause providing for arbitration of any dispute through the AAA, the parties authorized the AAA to administer the arbitration. Therefore, Respondent is bound to arbitrate this dispute.

IV. LEGAL BASES UPON WHICH RELIEF CAN BE GRANTED

Swensen operated the wide-reaching, multi-million Ponzi-like scheme under the nose of WNA from 2018 to 2022. WNA knew, or should have known, that Swensen was soliciting clients such as Mark and Barbara for his illegal outside business activity. Swensen, as a registered investment adviser, owed a fiduciary duty and duty of undivided loyalty to his WNA clients. As a

fiduciary, WNA had a duty to disclose material information to their clients. Yet, WNA only terminated Swensen for failing to disclose an unapproved outside business activity on June 6, 2022, the same very day the investment adviser committed suicide.

Further, the Advisers Act Rule 206(4)-7 (the "Compliance Rule") requires registered investment advisers to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules that the Commission has adopted under the Advisers Act by the adviser or any of its supervised persons. In developing its policies and procedures, an adviser should identify matters that create risk exposure for the adviser and its clients in light of the firm's particular operations and then design compliance policies and procedures that address those risks. The Compliance Rule also requires advisers to review, no less frequently than annually, the adequacy of the policies and procedures established and the effectiveness of their implementation. Here, WNA failed in its supervisory obligations, which directly caused Claimants to suffer devastating investment losses.

A. BREACH OF FIDUCIARY DUTY

At all times relevant hereto, there existed between Respondent and Claimants a fiduciary relationship by reason that:

- Respondents, at all times, possessed superior knowledge, judgment, skill, and experience in the securities market and its regulations in contrast to Claimants;
- Respondents and its professionals held themselves out to be experienced and skilled in acting within the usual scope of their duties; and
- Respondents exercised discretionary control, either de jure or de facto, over Claimants' accounts and oversaw the transactions of funds without informed approval;

This fiduciary duty also arose from and is implied by the contractual relationship between Claimants and Respondent. Respondent's actions, through Swensen, constituted breach of the duty of loyalty, negligence, and breach of trust. Due to their relationships with Respondent, Claimants

reasonably relied, to their detriment, on Respondent's superior knowledge, skill, judgment and experience in handling their accounts and investments. They counted on this skill and, in particular, on Respondent's knowledge of the regulations governing advisory firms and financial professionals, to protect their assets and manage them appropriately according to their wishes. The breach of this relationship caused damage to Claimants.

B. FAILURE TO SUPERVISE

Respondent is required to have a system in place to supervise their Registered Representatives. Respondent must also appropriately train its registered representatives to follow the securities laws, rules, and protocols outlined by the SEC and state securities laws as they relate to the services offered to clients. Respondent was negligent in its failure to monitor and supervise Swensen's activity. Had they been properly supervising Swensen, Respondent would have realized that Swensen was operating Crew Capital scheme in violation of Respondent's policies and securities laws. Had Respondent been supervising Swensen adequately, it would also have stopped his sales of Crew Capital. Respondent knew, or should have known, that Swensen was operating undisclosed and unapproved outside business activities. Respondents' failure to supervise Swensen caused Claimants to suffer harm.

C. NEGLIGENCE

Respondent as an investment adviser owed a duty of care to Claimants. The industry standard of care is set forth by SEC rules and Respondent's own internal guidelines. Respondent's violation of these standards constitutes negligence. Respondent, through Swensen, as more fully described above, acted negligently in failing to detect Swensen's undisclosed outside business activity. Respondent was negligent in its failure to monitor and supervise Swensen's activity, as well as failing to conduct adequate due diligence on Swensen during onboarding to discover his outside

business activity. This conduct is a breach of Respondent's duty of care it owed to Claimants. As a result of this negligence, Claimants have suffered damages.

D. BREACH OF CONTRACT

Respondent entered into express or implied contracts with Claimants whereby it agreed to provide investment services to them. As part of this contract, Respondent was obligated to provide investment services with regard to Claimants' accounts and uphold the laws, rules, and regulations that govern the securities industry and brokerage firm accounts. Respondents breached their contractual duties to Claimants and caused the losses Claimants suffered.

E. RESPONDEAT SUPERIOR

Pursuant to the doctrine of *respondeat superior*, a principal is liable for acts of its agent committed within the scope of the agency. Respondent IS liable to Claimants under the doctrine of *respondeat superior* for Swensen's actions or inactions while it cloaked him with authority to act on its behalf. They are also responsible for their agents' failure to supervise him. Swensen was fully authorized to hold himself out to the public as Respondents' employee and registered representative of Respondent. He acted within the course and scope of his employment and/or agency with Respondent when advising Claimants and managing their accounts. Therefore, Respondent is liable to Claimants under the doctrine of *respondeat superior*.

RELIEF REQUESTED

As a result of the course of conduct outlined above, Respondent is liable to Claimants as follows:

(1) for all losses of principal suffered by Claimants;

(2) for all interest, commissions and fees paid by Claimants;

(3) for the loss of income that would have been received had Claimants' accounts been managed properly, as well as other losses, foreseeable or not, that Claimants have suffered, including non-pecuniary losses;

(4) emotional distress damages for Barbara Fox;

(5) for attorneys' fees, costs and other expenses;

(6) for interest, both pre-judgment and post-judgment;

(7) for all other sums Claimants are entitled to at law or equity; and

(8) for punitive damages.

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Respectfully Submitted,

/s/ Jason J. Kane

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