RECEIPT

LORAIN COUNTY
Court of Common Pleas

TOM ORLANDO, Clerk
LORAIN COUNTY JUSTICE CENTER
225 COURT STREET
ELYRIA, OHIO 44035

Cashier/Bookkeeping (440) 329-5625

RECEIPT INFORMATION	
Receipt Number: **18-0021941**	Receipt Date/Time **Jul 26 2018 8:03AM**
Receipt Type: **Civil Case Receipt**	

CASE INFORMATION	
Case Number: **18CV195836**	Judge: **Hon. Judge Mark A. Betleski**
Case Caption: **BRIAN HARRISON VS MATTHEW LINKLATER**	

PAYMENT INFORMATION	
Paid By: **VAHAN SHAHRIMANYAN**	Paid For:
Payment Type: **Check**	Paid To: **C.C.**
Amount Tendered: **$300.00**	Balance Due (after this payment): **$0.00**
Description: **NEW CIVIL/TW**	

18CV195836

www.LorainCounty.com/Clerk

Last revised: 08/22/2008

FILED
LORAIN COUNTY

2018 JUL 26 A 8:01

COURT OF COMMON PLEAS
TOM ORLANDO

LORAIN COUNTY COURT OF COMMON PLEAS

Civil Case Designation Sheet

Brian Harrison
Plaintiff

-v-

Matthew Linklater
Defendant

18CV195836
Case Number (to be completed by Clerk)

JUDGE MARK A. BETLESKI
Assigned Judge (to be completed by Clerk)

☐ **RE-FILING**
Former case number and previously assigned Judge ______________________.

☐ **REQUEST FOR CONSOLIDATION** (must also file motion with Court)
List companion case(s) ______________________.

☐ **PROFESSIONAL TORT**
- ☐ Medical Malpractice
- ☐ Dental Malpractice
- ☐ Optometric Malpractice
- ☐ Chiropractic Malpractice
- ☐ Legal Malpractice
- ☐ Other Malpractice

☐ **PRODUCTS LIABILITY**
- ☐ Personal Injury
- ☐ Wrongful Death
- ☐ ______________

☐ **OTHER TORT**
- ☐ Personal Injury
- ☐ Wrongful Death
- ☐ Vehicle Accident
- ☒ Miscellaneous

☐ **WORKERS' COMPENSATION**
- ☐ Non-compliant Employer
- ☐ Appeal

☐ **FORECLOSURE**
- ☐ Foreclosure
- ☐ Foreclosure – Taxes
- ☐ Foreclosure – Mechanic's Lien

Permanent parcel no. ______________

☐ **ADMINISTRATIVE APPEAL**
- ☐ Civil Service
- ☐ Motor Vehicle
- ☐ Unemployment
- ☐ Liquor
- ☐ Taxes
- ☐ Zoning

☐ **OTHER CIVIL**
- ☐ Appropriation
- ☐ Accounting
- ☐ Breach of Contract
- ☐ Cognovit
- ☐ Complex Litigation classification request
- ☐ Consumer Sales Act (Rev. Code § 1345)
- ☐ Declaratory Judgment (related case & Judge)

____

- ☐ Habeas Corpus
- ☐ Injunction
- ☐ Mandamus
- ☐ Replevin
- ☐ Specific Performance
- ☐ Stalking Civil Protection Order
- ☐ Foreign Judgment
- ☐ Arbitration Confirmation
- ☐ Civ. R. 3(F) Notice of Pending Litigation
- ☐ ______________

DATE: 07/25/2018

ATTORNEY/PARTY: [signature]

OHIO SUPREME COURT NUMBER: 0090803

Last revised: 08/22/2008

FILED
LORAIN COUNTY
2018 JUL 26 A 8:01
COURT OF COMMON PLEAS
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DATE: 07/25/2018

ATTORNEY/PARTY: [signature]

OHIO SUPREME COURT NUMBER: 0090803

IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO

FILED
LORAIN COUNTY
2018 JUL 26 A 8:01
COURT OF COMMON PLEAS
TOM ORLANDO

Brian Harrison, c/o Peiffer Wolf Carr & Kane A Professional Law Corporation 1422 Euclid Avenue Suite 1610 Cleveland, Ohio 44115 Plaintiff, v. Matthew Linklater 1616 West Warren Boulevard Chicago, Illinois 60612 Defendant.	Civil Action No: (Jury Trial Demanded) 18CV195836 JUDGE MARK A. BETLESKI

Plaintiff complains of Defendant and respectfully alleges as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff Brian Harrison ("Plaintiff") is a citizen and resident of the County of Lorain in the State of Ohio.

2. Defendant Matt Linklater ("Defendant") is, upon information and belief, a citizen of the State of Illinois. Defendant offers his advising and financial services to the general public. Defendant advised Plaintiff to purchase a FIP, LLC ("FIP") pension investment.

3. Venue is proper in this County by virtue of, among other things, the fact that substantial part of the events giving rise to this Complaint occurred in this County.

4. Jurisdiction is proper in Lorain County, Ohio as the acts and services complained of occurred in Lorain County.

THE FIP SCHEME

5. FIP promoted a dual strategy against the citizens of Ohio: it bought pensions under questionable terms and it sold those pension streams to investors without disclosing the risks.

6. On the front end, FIP made loans to Ohio residents secured by their future pension or payments, without being licensed as required by Ohio law.

7. FIP also turned around and sold those pension payments to its investors, often through intermediaries. The basic idea of pension related structured cash flow, the other side of the FIP coin, is this: an investor pays a lump sum in exchange for the right to collect another individual's pension, disability plan, or other benefit program. Provided that the pension holder lives long enough, the investor could see a return in excess of his initial investment. Unfortunately, there are hurdles faced by many who engage in these risky investments – the pensioner could pass away suddenly, or certain federal laws, such as the Employee Retirement Income Security Act of 1974 ("ERISA") could disqualify the investor from receiving the benefits purchased with the upfront lump-sum payment.

8. A further unexplained risk would be if FIP ceased doing business as a result of ongoing and concluded regulatory investigations.

9. At least 11 states and the CFPB have found these arrangements problematic. As the CFPB found, "[i]n the past few years, the income stream market has come under sharp scrutiny for allegedly marketing loans at undisclosed, exorbitant interest rates to vulnerable populations, including veterans and the elderly." *See John Doe Co. v. CFPB*, 849 F.3d 1129, 1130 (D.C. Cir. 2017); U.S. Gov't Accountability Off., GAO-14-420, Pension Advance Transactions: Questionable Business Practices Identified (2014),

http://www.gao.gov/assets/670/663800.pdf. In February of 2017, the City of Los Angeles also filed suit against Future Income Payments, alleging that the company charged usurious, hidden interest rates as high as ninety-six percent, prohibited early termination of the loans (thereby ensuring that consumers could not avoid the high interest rates), and employed abusive collection practices.

10. The states and their regulators have flagged these transactions as loans subject to lending and usury laws:

a. The State of Colorado determined that FIP Delaware and other Kohn entities were making loans without proper licensure. In a January 2015 assurance of discontinuance, FIP Delaware and other Kohn entities agreed not to enter into any transactions in Colorado without first obtaining a supervised lender's license and not to charge interest on their existing agreements in Colorado.

b. In March of 2015, the State of California issued a desist and refrain order against FIP Delaware and other entities owned or controlled by Kohn, alleging that they were engaged in the business of financial lending or brokerage without a license. In September of 2015, FIP Delaware and other Kohn entities agreed not to engage in transactions in California without obtaining a license.

c. In March of 2016, FIP Delaware entered into an assurance of discontinuance with the Commonwealth of Massachusetts that it would not enter into any future agreements with Massachusetts residents and that it would not charge interest on its existing contracts with Massachusetts residents.

d. In June of 2016, FIP Delaware entered into a settlement with the State of North Carolina whereby it agreed to reform its existing North Carolina transactions and to ensure that any future transactions with North Carolina residents would comply with the state's usury laws.

e. FIP Delaware entered into a consent order with the State of New York in October of 2016, in which it agreed not to enter into any future transactions with New York residents and not to charge interest on its existing contracts with residents of New York.

f. Under a December of 2016 consent order with the State of Washington, PAS agreed not to enter into any transactions with Washington residents without obtaining a license and not to charge interest on its existing contracts with Washington residents.

g. Under an assurance of compliance reached with the State of Iowa in December of 2016, FIP Delaware agreed not to enter into any future transactions with Iowa consumers and not to charge interest on its existing contracts in Iowa.

h. In February of 2017, as noted above, the Los Angeles City Attorney filed suit against Kohn, FIP Delaware, and other Kohn entities for, *inter alia*, failing to obtain a license to lend, making usurious loans, failing to disclose the terms of the loans, falsely threatening defaulting borrowers with criminal liability if they failed to make their monthly payments, and making illegal and harassing phone calls to collect on defaulted loan payments.

i. In May of 2017, the Commonwealth of Pennsylvania issued a cease and desist order against FIP Delaware, Kohn, and all other persons and companies under their control for engaging in the business of making loans without a license and charging usurious rates of interest.

j. In August of 2017, the State of Minnesota asked the court to find that FIP's actions violated Minnesota law, and enjoin it from continuing in those violations; to declare all FIP loans to be void and releasing Minnesota residents from any obligations incurred under those agreements; to force FIP to make restitution to any residents harmed by its practices; and to require FIP to pay civil penalties.

k. In January of 2018, the State of Oregon launched an investigation of FIP's practices.

l. In February of 2018, the Illinois Department of Financial and Professional Regulation issued a cease and desist order, providing that FIP cease making loans to Illinois residents, stop collecting on loans previously made to Illinois residents, and produce all documents in its possession containing all information pertinent to past and present contracts with Illinois residents.

m. In March of 2018, the Commonwealth of Virginia sued FIP, alleging that it targeted elderly veterans and retired civil servants in a scheme that masquerades high-interest predatory loans as "pension sales."

n. In April of 2018, the State of Illinois asked the court to void FIP's deceptive contracts and sought restitution for Illinois residents who had contracted with FIP. The State also sought to prohibit FIP from marketing or offering loan services without being licensed in the state. Civil penalties were also requested.

o. In April of 2018, the State of Maryland ordered FIP to stop making new pension advances and other loans to Maryland consumers, and it also required that FIP stop collecting on any existing advances or other loans.

11. Balanced on top of this shaky framework, FIP also created an investment pyramid. Once the pensioners had sold the future rights to the monthly cash flows of their pensions in exchange for lump sum payments, FIP – and/or the financial institutions through which they made the purchase – turned around and sold the monthly cash flows to investors. The investments were advertised as sources of predictable monthly income with high yields, with benefits increasing based on extended investment terms, but they came with complex financial risks that were not disclosed to the investors.

12. Pension structured cash flows are illiquid, which means that they can be difficult to sell. These products are not usually registered with the U.S. Securities and Exchange Commission ("SEC"), so – when problems do arise – it can be difficult to resolve them. Further complicating this nebulous situation is that the investor's legal rights to the pension cash flow can be challenged since it is often illegal to purchase pension funds.

13. In spite of the obvious risks and the many regulatory actions taken against FIP, Defendant assured Plaintiff and his other clients that FIP was a safe investment – and many of the clients pulled substantial sums out of balanced mutual funds and other stable investments to purchase a pension structured cash flow with FIP. These contracts generated monthly payments at favorable rates up until the point where the risks chased FIP out of business – and the investors were suddenly left with nothing to show for their investments.

PLAINTIFF'S FACTUAL BACKGROUND

14. Plaintiff Brian Harrison is a resident of North Ridgeville, Ohio. In early 2016, Brian received an inheritance after his father passed away. Defendant was aware Brian received an inheritance and encouraged him to purchase a life insurance policy with the proceeds.

15. Instead of recommending that Plaintiff use the inheritance he received to directly pay for the policy, Defendant recommended that Brian use $100,000 of the inheritance to pay for a FIP investment and use the monthly payments from the FIP investment to pay the insurance policy's premiums.

16. Following Defendant's advice, Plaintiff purchased the FIP investment in conjunction with the life insurance policy and relied on the FIP investment's monthly payments to cover the cost of the life insurance premiums.

17. In early 2018, FIP stopped paying investors and, as a result, Plaintiff stopped receiving the monthly payments he was reliant upon to pay his premiums.

18. Defendant has placed Plaintiff in a terrible situation as he has lost almost the entirety of his $100,000 FIP investment and is now burdened with extremely high insurance premiums. Defendant's conduct has caused Plaintiff serious financial losses.

FOR THE FIRST CAUSE OF ACTION
BREACH OF CONTRACT

19. Each and every allegation contained in the foregoing paragraphs is hereby re-alleged fully as if set out herein.

20. Plaintiff entered into a contract with Defendant.

21. Defendant contracted with Plaintiff ("Agreement") to provide sound financial advice.

22. The Agreement constituted a legal, valid and binding contract between Plaintiff and Defendant.

23. Defendant breached those obligations by failing to conduct due diligence and by recommending the purchase of FIP products. For example, Defendant should have discovered that the FIP product was a fraud, was banned in multiple states, and that it was under intense investigation by other states.

24. As a direct and proximate result of Defendant's breaches, Plaintiff is entitled to recover the damages he suffered including (1) actual damages, including the return of his principal and interest at the rate specified in the investment, (2) consequential damages, (3) costs, (4) prejudgment interest at the highest legal rate, and (5) such other relief as is just, equitable, and proper arising from the Defendant's breaches.

FOR THE SECOND CAUSE OF ACTION
Breach of Fiduciary Duty

25. Each and every allegation contained in the foregoing paragraphs is hereby re-alleged as fully as if set out herein.

26. Defendant was a fiduciary to each investor, including Plaintiff, to whom he gave investment advice, provided investment services, and/or solicited or sold financial products including FIP.

27. Defendant owed Plaintiff the utmost good faith and to act solely in the best interests of the Plaintiff.

28. Defendant had the duty to ascertain the quality of the investment and to refrain from soliciting or entering into transactions that were illegal and/or improper.

29. Upon information and belief, Defendant violated his fiduciary obligations to Plaintiff and by failing to conduct appropriate due diligence as to FIP.

30. As result of Defendant's breach of fiduciary duty, Plaintiff proximately suffered substantial injury and damage. Plaintiff is therefore entitled to (1) actual damages, (2) consequential damages, (3) punitive damages, and (4) such other relief as is just, equitable, and proper.

FOR THE THIRD CAUSE OF ACTION
Common Law Negligence

31. Each and every allegation contained in the foregoing paragraphs is hereby re-alleged as fully as if set out herein.

32. Defendant offered investment advice to Plaintiff and thus owed the Plaintiff the clear duty to exercise reasonable care, skill, diligence and prudence under the circumstances presented by Plaintiff's unique situation and investment objectives.

33. Defendant breached his respective duties to Plaintiff to exercise reasonable care, skill, diligence and prudence under the circumstances and such breaches caused Plaintiff to suffer damages.

34. Plaintiff is entitled to (1) actual damages, (2) consequential damages, (3) costs, (4) prejudgment interest, and (5) such other relief as is just, equitable and proper.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

a. For actual damages;

b. For consequential damages;

c. For prejudgment interest at the highest legal rate;

d. For the costs of this action;

e. For reasonable attorneys' fees; and

f. For such other and further relief as is just, equitable, and proper.

July 25, 2018

Respectfully submitted,

/s/ James P. Booker

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