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**UNITED STATES BANKRUPTCY COURT**

**DISTRICT OF NEVADA**

In re

NAVELLIER & ASSOCIATES, INC.,

Debtor.

Case No. 25-50820-hlb

Chapter 11

**U.S. SECURITIES AND EXCHANGE COMMISSION'S MOTION TO DISMISS CHAPTER 11 CASE, OR IN THE ALTERNATIVE, TO CONVERT CASE TO CHAPTER 7, AND SUPPORTING MEMORANDUM OF LAW**

Hearing Date: March 18, 2026
Hearing Time: 1:30 p.m. (PT)

The U.S. Securities and Exchange Commission (the "SEC"), a creditor in this case, moves pursuant to 11 U.S.C. §1112(b) for entry of an Order dismissing this Chapter 11 case, or in the alternative, converting this case to Chapter 7, for cause. Cause exists because the bankruptcy was not filed in good faith, but rather as a litigation tactic to collaterally attack a final judgment entered in federal district court against Debtor Navellier & Associates ("Debtor") and its founder, and to frustrate the SEC's efforts to return funds to harmed investors. Moreover, the SEC is the Debtor's only significant creditor, and the other general unsecured claims are *de minimis*. The Debtor's dispute with the SEC should be resolved in the district court, which has expressly retained jurisdiction over the matter.

## MEMORANDUM OF LAW

## I. PRELIMINARY STATEMENT

In 2021, the SEC obtained a $31.3 million judgment in Massachusetts federal court against the Debtor for violating anti-fraud provisions of the federal securities laws. The Debtor's sole owner – Louis Navellier ("Navellier") – also violated these laws and was held jointly and severally liable with the Debtor for most of the judgment. The First Circuit Court of Appeals affirmed the judgment, and the U.S. Supreme Court denied the Debtor's and Navellier's petition for certiorari.

The final judgment orders the Debtor and Navellier to pay the SEC. After payment, the judgment provides that the SEC may propose a plan to distribute the money to harmed investors. The judgment further provides that any distribution plan proposed by the SEC must be approved and overseen by the district court, and the district court has expressly retained jurisdiction for this purpose.

Rather than pay the judgment, the Debtor and Navellier have pursued a multi-faceted litigation strategy to delay and hinder the SEC from collecting the funds and distributing them to investors. First, while the Massachusetts litigation was still pending, the Debtor and Navellier sued the SEC in Nevada federal court, seeking to enjoin the SEC from continuing the enforcement case in Massachusetts, and to recover more than $50 million in purported damages for the SEC's allegedly unlawful prosecution. The claims in the Nevada action are based on arguments that the Debtor and Navellier raised as affirmative defenses in the enforcement case, which were rejected by both the Massachusetts district court and the First Circuit. The Nevada action remains pending (only recently unstayed), yet the Debtor has not disclosed the litigation, nor its alleged $50 million claim, on its bankruptcy schedules or statement of financial affairs. Second, in September 2025, Navellier and his wife filed a complaint in Florida federal court seeking to bar the SEC from enforcing its final judgment against the couple's assets allegedly held as tenants by the entirety, including multiple bank accounts, 13 vehicles and an oceanfront mansion in Palm Beach County, Florida.

The third prong of the Debtor's and Navellier's litigation strategy involves the Debtor filing this Chapter 11 case to pursue a theory that the Debtor can satisfy the SEC's judgment by using the bankruptcy case to pay harmed investors a small fraction of what they would likely receive in a district court distribution. This strategy was revealed at the November 17, 2025, meeting of creditors, where Mr. Navellier and Debtor's counsel explained that they intend to pay the SEC nothing, and instead, to have the Debtor conduct its own solicitation and review of investor claims for payment through a bankruptcy plan. After the Debtor pays so-called "legitimate" investor claims (which Mr. Navellier estimated will total only "20-some thousand" dollars), the Debtor will seek to have the district court's $31 million judgment deemed fully satisfied.

The Debtor's proposed use of Chapter 11 disregards the plain terms of the judgment and infringes upon the district court's jurisdiction over the distribution of funds to investors. The multiple court actions initiated by the Debtor and Navellier are improper collateral attacks on the Massachusetts court's final judgment and demonstrate that this Chapter 11 case has nothing to do with reorganizing a financially troubled business. Instead, this bankruptcy was filed solely to delay and hinder the SEC from enforcing the Massachusetts federal court's lawful order, and to shield Navellier's personal assets from collection.

For these reasons, the SEC requests that this Court dismiss or convert this case to Chapter 7, for cause, under Section 1112(b) of the Bankruptcy Code. If the Court finds that cause has been established under Section 1112(b), then dismissal is in the best interests of creditors and should be ordered accordingly.

## II. JURISDICTION

This Court has subject matter jurisdiction over this proceeding pursuant to 28 U.S.C. §1334(b). This is a core proceeding under 28 U.S.C. §157(b)(2)(A) and (O). Pursuant to Local Rule 9014.2, the SEC does not consent to entry of a final order or judgment by the bankruptcy court if it is determined that the bankruptcy judge, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

## III. FACTUAL BACKGROUND

### A. The Massachusetts Enforcement Action Leading to the Final Judgment

On August 31, 2017, the SEC commenced a civil action against the Debtor and Navellier (collectively, the "Defendants") in the U.S. District Court for the District of Massachusetts ("District Court"). *See SEC v. Navellier & Associates, Inc. and Louis Navellier*, Case No. 17-cv-11633-DJC (D. Mass.) (the "SEC Action"). The SEC alleged that from 2010 to 2013, Navellier, through the Debtor, while acting as an investment adviser, defrauded clients and prospective clients by misleading them about the performance track record of the "Vireo AlphaSector" investment strategies that the Debtor offered. The SEC alleged that this conduct violated the anti-fraud provisions of Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 (the "Advisers Act"). A copy of the complaint in the SEC Action is attached as Exhibit 1 to the adversary complaint (the "Adversary Complaint") filed in this bankruptcy case at Doc. No. 1 in Adv. Proc. 25-05047 (Bankr. D. Nev.).

#### i. The District Court Grants the SEC's Motion for Summary Judgment and Denies the Defendants' Motion for Summary Judgment

On August 12, 2019, the SEC and the Defendants both filed motions for summary judgment in the SEC Action, with the Defendants arguing *inter alia* that the SEC was practicing selective enforcement. On February 13, 2020, the District Court entered an order (the "SJ Order") denying the Defendants' selective enforcement defense, and granting the SEC's motion with respect to the Defendants' violations of Sections 206(1) and 206(2) of the Advisers Act. The District Court concluded that "the undisputed record shows that the Defendants engaged in a course of business that operated a fraud or deceit upon their clients." (SJ Order at p.19). A copy of the SJ Order is attached as Exhibit 2 to the Adversary Complaint.

Following entry of the SJ Order and denial of Defendants' motion for reconsideration, the District Court entered judgment on June 2, 2020 (the "Original Judgment"), imposing permanent injunctions and ordering payment of disgorgement, prejudgment interest and civil penalties. The District Court found the Defendants jointly and severally liable for disgorgement in the amount of $28,964,571 "representing profits and sale proceeds gained as a result of the conduct alleged in the Complaint [,]" plus interest, and ordered that the Debtor and Navellier pay civil penalties of $2 million and $500,000, respectively. SEC Action, District Court docket entry ("DDE") 295.

The Defendants appealed the SJ Order on April 13, 2020, and the Original Judgment on June 4, 2020. DDE 273, 297.

ii. The District Court Amends the Judgment After the Supreme Court's *Liu* Decision.

After the appeal was filed, the SEC filed a motion for limited remand due to the issuance of the Supreme Court's decision in *Liu v. SEC*, 140 S.Ct. 1936 (2020).[1] After briefing, the District Court made amended findings of fact and conclusions of law (the "Amended Findings") applying *Liu*, and entered an amended final judgment ("Amended Final Judgment"). Copies of the Amended Findings and Amended Final Judgment are attached to the Adversary Complaint as Exhibits 3 and 4, respectively.

[1] In *Liu v. SEC*, 140 S. Ct. 1936, 1940 (2020), the Supreme Court held that "a disgorgement award that does not exceed a wrongdoer's net profits and is awarded for victims" is permissible equitable relief under Exchange Act Section 21(d)(5), 15 U.S.C. §78u(d)(5). In addition, *Liu* identified "principles that may guide" how disgorgement should be measured, apportioned, and distributed. 140 S. Ct. at 1947-50.

First, in its Amended Findings, the District Court decided the appropriateness and amount of disgorgement applying the principles from *Liu*. The District Court found that disgorgement was "appropriate to deprive [Navellier] and [the Debtor] of unjust profits they made from their repeated fraudulent marketing misrepresentations and failures to disclose material information to clients about Vireo products." (Amended Findings at ¶11). The court then determined that the advisory fees paid by clients, as well as the proceeds from the sale of the Vireo AlphaSector business, each constitute "ill-gotten gains" of the Defendants' fraudulent marketing scheme. (*Id.* at ¶31). From these sources, the District Court found that the Defendants jointly obtained a gross profit of $36,775,867. (*Id*. at ¶37). The court then deducted $14,041,380 in legitimate expenses, and ordered disgorgement of $22,734,487, plus prejudgment interest in the amount of $6,635,403. (*Id* at ¶¶ 67-68, 73).

Second, the District Court decided whether it was appropriate under *Liu* to make the Defendants jointly and severally liable for the disgorgement and prejudgment interest. (Amended Findings at ¶¶12–19). The court found that Navellier controlled all aspects of the Debtor during the relevant time period and he "had final authority over [the Debtor's] fraudulent activity." (*Id.* at ¶15). The court also found that "Navellier knew the marketing was misleading, had the power to stop [the Debtor] from its fraudulent marketing efforts, and authorized [the Debtor's] staff to continue the marketing campaign anyway." (*Id.* at ¶16). Finally, the court found that "both Defendants benefited from their concerted wrongdoing." (*Id.* at ¶18). Based on these findings, the District Court concluded "Defendants may properly be held joint and severally liable for disgorgement as partners engaged in concerted wrongdoing." (*Id.* at ¶19).

Finally, in the Amended Findings, the District Court decided whether disgorgement would be "for the benefit of investors" within the meaning of *Liu* and Exchange Act Section 21(d)(5). (Amended Findings at ¶¶20-25). The District Court found that the Defendants' clients were harmed because, through their misconduct, the Defendants breached their duties of utmost good faith, to fully disclose all material facts, and to employ reasonable care to avoid misleading clients. (*Id.* at ¶¶21-22). The court observed that the SEC intends to distribute the disgorged funds to the Vireo AlphaSector clients (*Id.* at ¶23) and thus concluded that the award of disgorgement was permissible under *Liu.*

The Amended Final Judgment states that the Debtor and Navellier "shall satisfy [their joint and several disgorgement] obligation by paying $29,369,890 to the Securities and Exchange Commission within 30 days after entry of this Final Judgment," and that the SEC "shall hold the funds … and may propose a plan to distribute the [funds] subject to the Court's approval." (Amended Judgment at pp.2, 3). Critically, the judgment also states that ***"[t]he Court shall retain jurisdiction over the administration of any distribution of the Fund,"*** and that the SEC "may enforce the Court's judgment for disgorgement and prejudgment interest by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after 30 days following entry of this Final Judgment." (*Id.* at p.3) (emphasis added).

iii. The First Circuit Court of Appeals Affirms the District Court's Rulings

Upon Defendants' appeal, the First Circuit Court of Appeals issued an opinion dated July 16, 2024 (the "Opinion") affirming the District Court's SJ Order, the Amended Findings and the Amended Final Judgment. A true and correct copy of the Opinion is attached to the Adversary Complaint as Exhibit 5.

In its ruling, the First Circuit reviewed the District Court's application of the *Liu* decision and concluded that the disgorgement ordered was appropriate under *Liu*. The First Circuit rejected the Defendants' argument that "disgorgement was not an available equitable remedy here because [the Debtor's] Vireo AlphaSector clients did not suffer pecuniary harm," holding that that argument "mischaracterize[d] the nature and purpose of disgorgement," and that "[n]either *Liu* nor our case law … require investors to suffer pecuniary harm as a precondition to a disgorgement award." (Opinion at p.35 & n.14). Instead, "[d]isgorgement is a 'profit-based measure of unjust enrichment' which reflects the foundational principle that 'it would be inequitable that [a wrongdoer] should make a profit out of [their] own wrong.'" (*Id*. at pp.35-36, *citing Liu*, 591 U.S. at 79-80). The First Circuit further noted that because Defendants' misrepresentations induced clients into paying fees, the SEC's distribution of disgorgement to harmed investors "will remedy a direct harm to Vireo AlphaSector clients," even though clients may have profited from their investments. (*Id.* at p.36, fn. 14). And the court noted its prior holding that "when a fiduciary has secured an undue advantage by virtue of his position, equitable relief is available even in the absence of direct economic loss[.]" (*Id*. at 36, *quoting In re PHC, Inc. S'holder Litig.*, 894 F.3d 419, 436 (1st Cir. 2018)).

The First Circuit also rejected several other challenges by the Defendants to the District Court's rulings. First, the court described as "unavailing" the Defendants' argument that the District Court erred in ordering joint and several liability for the disgorgement and prejudgment interest. (Opinion at pp.39-40). Second, the First Circuit rejected the Defendants' claim that there was no causal connection between Defendants' violations and both the advisory fees paid by clients and the proceeds from the sale of the AlphaSector business. (*Id.* at pp.40-42). Finally, the First Circuit upheld the District Court's denial of the Defendants' selective enforcement defense, concluding that their "selective enforcement claim fails as a matter of law." (*Id.* at p.33).

On March 3, 2025, the Debtor and Navellier filed a petition for writ of certiorari to the Supreme Court, which the Court denied, 2025 WL 1603606 (U.S. June 6, 2025). On August 18, 2025, the Court also rejected the Defendant's request for rehearing, 2025 WL 2382100 (U.S. Aug. 18, 2025).

B. <u>The Debtor and Navellier Commence Litigation Against the SEC in Other Courts.</u>

i. <u>The Nevada Action</u>

After the Original Judgment was entered and while the case was on remand from the First Circuit, the Defendants sued the SEC on August 31, 2021, in the U.S. District Court for the District of Nevada for damages and injunctive relief relating to the SEC Action. S*ee Navellier & Associates, Inc., and Louis Navellier v. U.S.A. ex. rel. SEC*, Case No. 21-cv-00395-ART-CSD (D. Nev.) (the "<u>Nevada Action</u>"). Following entry of the Amended Final Judgment, the Debtor and Navellier filed a first amended complaint in the Nevada Action on April 1, 2022.

In the first amended complaint (the "<u>Nevada Complaint</u>"), the Debtor and Navellier seek to relitigate many of the issues that were decided against them in the SEC Action, including their claim of selective enforcement by the SEC. They ask the Nevada court to enjoin the SEC from continuing to litigate the SEC Action (and thus, presumably, precluding collection and any distribution in that case), and to award damages in excess of $50 million. A true and correct copy of the Nevada Complaint is attached hereto as Exhibit A.

The Nevada Action was stayed while the SEC Action was appealed to the First Circuit, but the stay was lifted on August 25, 2025, after the U.S. Supreme Court declined to hear the Defendants' appeal of the First Circuit's Opinion. However, the Nevada Action was again stayed during the roughly six-week government lapse in appropriations, until November 13, 2025.

On December 8, 2025, the SEC filed a motion to dismiss the Nevada Action on the grounds of sovereign immunity, mootness, res judicata and collateral estoppel. (Nevada Action, ECF No. 48). On January 2, 2026, the Debtor and Navellier filed their joint opposition to the SEC's motion to dismiss. (the "Opposition," Nevada Action, ECF No. 55). In the Opposition, despite the finality of the various rulings in the SEC Action, the Debtor and Navellier nevertheless argued that it would be manifestly unjust for the Nevada district court to give preclusive effect to the final rulings made in the SEC Action because:

> "In the Massachusetts district court and First Circuit record, there is no support for the finding that [the Debtor] or Mr. Navellier made a false or misleading statement. To the contrary, the undisputed evidence established that the allegedly false statement was actually true. There was no fraud. The investor 'victims' received exactly the investment advice they were promised, and received back not only their initial investment, plus all the advisory fees they paid to [the Debtor], plus $211 Million in profits. Thus, there was no basis for disgorgement."

(Opposition at p.12). According to the Debtor and Navellier, the Nevada court should enjoin the SEC from enforcing the Amended Final Judgment because its claims are "all based on the Massachusetts and First Circuit inequitable and manifestly unjust decisions which are not entitled to res judicata or collateral estoppel application." (*Id.* at p.17).

The Debtor did not disclose the Nevada Action (or its alleged claim for $50 million) on its bankruptcy schedules or statement of financial affairs in this case. Moreover, the attorney who is currently jointly representing both the Debtor and Navellier in the Nevada Action has not filed an employment application in this bankruptcy case, nor disclosed his connections to the debtor, creditors and other parties in interest, as required by Bankruptcy Rule 2014.

ii. The Florida Action

On September 8, 2025, Navellier and his wife filed an action against the SEC in U.S. District Court for the Southern District of Florida (the "Florida Court") in a case styled *Louis and Wendy Navellier v. SEC*, Case No. 9:25-cv-81112 (S.D. Fla.) (the "Florida Action"). In the Florida Action, the Navelliers seek a declaratory judgment that the SEC cannot execute on the Amended Final Judgment against assets allegedly held by them as tenants by the entirety, including multiple bank accounts, 13 vehicles, and the oceanfront mansion in Palm Beach County, Florida. A true and correct copy of the complaint filed in the Florida Action is attached hereto as Exhibit B.

The Florida Court held a scheduling conference on December 16, 2025, and subsequently entered the *Pretrial Scheduling Order and Order Referring Case to Mediation* (the "Scheduling Order"). The Scheduling Order scheduled a trial in the case for a two-week period commencing July 13, 2026.

C. The Debtor's Chapter 11 Filing.

The Debtor filed this Chapter 11 case on September 5, 2025, the Friday before Navellier and his wife filed the Florida Action. Both cases were filed less than three weeks after the petition for rehearing was denied by the U.S. Supreme Court on August 18, 2025. The timing of these filings strongly suggest that the primary purpose of the bankruptcy is to help Navellier shield his personal assets from enforcement of the Amended Final Judgment. The Debtor's disclosures do not demonstrate any legitimate need to reorganize. In addition, Navellier's testimony at the November 17, 2025 meeting of creditors (discussed below) revealed that the bankruptcy case was filed for an improper purpose.

i. The Debtor's Assets and Liabilities.

Navellier controls the Debtor by himself. He is listed as the Debtor's sole owner, president, secretary, treasurer and director. (ECF No. 33 at p.13).

The Debtor's scheduled assets consist primarily of cash, deposits, accounts receivable and some furniture and equipment. Setting aside the Debtor's customer lists and goodwill (which the Debtor values at $1.4 million), the value of the Debtor's scheduled assets is less than $1 million. (*See* ECF No. 33).

The SEC's $31 million judgment is by far the Debtor's largest claim. The Debtor has no secured creditors. The scheduled priority wage claims held by the Debtor's 13 employees have been paid. The general claims bar date in this case passed on January 5, 2026. (ECF No. 3). Only five creditors filed a claim:

| | |
|---|---|
| 1. Broadridge Financial Solutions: | $5,333.00 |
| 2. New York State Dept. of Tax and Fin.: | $203,602.97 |
| 3. Mass. Dept. of Revenue: | $7,482.96 |
| 4. City of Philadelphia, Dept. of Revenue: | $28,656.45 |
| 5. David and Pamela Ihns Family Trust: | $78,642.00 |

ii. <u>The November 17, 2025 Meeting of Creditors.</u>

A meeting of creditors was conducted in this case on November 17, 2025. At that meeting, it was revealed that the Debtor filed this bankruptcy to usurp the District Court of its jurisdiction over the process to distribute funds to harmed investors, and to try to shield Navellier from personal liability under the Amended Final Judgment.

At the meeting, Navellier testified that the Debtor listed on its Schedule F more than 6,600 former clients who were investors in the Debtor's Vireo AlphaSector strategy from 2011 to 2013. All of these claims were scheduled at $0.00. Navellier testified that only a few investors suffered a loss and estimated total losses of only "20-some thousand" dollars. *See Nov. 17, 2025 Transcript of Continued Section 341 Meeting* at 15 (the "<u>341 Mtg. Tr.</u>," a copy of which is attached as <u>Exhibit C</u>).

Debtor's counsel then explained at the meeting that they intend for the Debtor to pay nothing to the SEC under the Amended Final Judgment. (341 Mtg. Tr. at p.18) ("The money isn't supposed to go to the SEC for disgorgement."). Instead, the Debtor will solicit investors to file in the bankruptcy case any claims for damages they may have. (*Id.* at pp.18-19). The Debtor then plans to review and adjudicate any filed claims as part of the claim objection process. (*Id.* at pp.19-20). After the Debtor pays whatever investor claims are ultimately allowed under a bankruptcy plan, the Debtor and Navellier will argue that their joint and several disgorgement obligation under the Amended Final Judgment is satisfied.

The Debtor's effort to satisfy the Amended Final Judgment by implementing its own investor claim process – and paying only a tiny fraction of the disgorgement to investors – is premised on the Debtor's mistaken view that (i) the disgorgement payment under the Amended Final Judgment is not supposed to go to the SEC (341 Mtg. Tr. at p.18), (ii) "disgorgement is supposed to go to the victims that allegedly suffered harm" (*Id.* at 17); and (iii) "the SEC was never able to prove or show that there were actually any victims that suffered harm." (*Id.*). However, the District Court and First Circuit have already rejected these arguments when entering and affirming the Amended Final Judgment and determining that disgorgement was an appropriate remedy.

Moreover, the Debtor's plan violates the plain terms of the Amended Final Judgment and directly infringes upon the District Court's retained jurisdiction. Notwithstanding the Debtor's belief that "the money isn't supposed to go to the SEC," the judgment unambiguously requires that payment be made to the SEC. The judgment also directs the SEC to propose to the District Court a plan to distribute the disgorged funds to investors – not for the Debtor to decide as part of its own bankruptcy how much and whom to pay.

iii. The SEC's Non-Dischargeability Action.

On December 5, 2025, the SEC filed the Adversary Complaint seeking a determination that the Debtor's obligations under the Amended Final Judgment are excepted from discharge pursuant to Section 1141(d)(6)(A) of the Bankruptcy Code. (*See SEC v. Navellier & Associates, Inc.*, Adv Proc. 25-05047 (Bankr. D. Nev.)). Counsel for the Debtor recently appeared in that proceeding and the SEC agreed to counsel's request for a 45-day extension of the deadline to answer or respond to the Adversary Complaint.

## IV. ARGUMENT

The Debtor's bankruptcy filing lacks good faith because it was filed for the improper purpose of frustrating collection, collaterally attacking the Amended Final Judgment and usurping the District Court of its jurisdiction over the distribution of funds to investors. The Debtor's financial disclosures make clear that this case is effectively a two-party dispute that should be resolved in the District Court pursuant to its retained jurisdiction. Moreover, the bankruptcy filing is part of a multi-pronged litigation strategy by the Debtor and Navellier designed to avoid paying the SEC (thus delaying the ultimate distribution to investors in the SEC Action) and to shield Navellier's personal assets from collection. Therefore, cause exists for this Court to dismiss the bankruptcy case under Section 1112(b) of the Bankruptcy Code.

### A. Bankruptcy Code Section 1112(b)

Section 1112(b) of the Bankruptcy Code provides that "the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interest of creditors and the estate, for cause …." 11 U.S.C. §1112(b)(1). Although the statute does not define "for cause," it identifies a nonexclusive list of factors that may constitute "cause." *See* 11 U.S.C. §1112(b)(4). "[T]he list contained in 1112(b)(4) is illustrative, not exhaustive. *In re Mense*, 509 B.R. 269, 277 (Bankr. C.D. Cal. 2014). Here, the Debtor's petition was not filed in good faith, which is sufficient "cause" under the statute.

### B. Cause Exists Because the Bankruptcy Case was Not Filed in Good Faith

"[C]ourts have overwhelmingly held that a lack of good faith in filing a Chapter 11 Petition establishes cause for dismissal." *In re Marshall*, 721 F.3d 1032, 1047 (9th Cir. 2013) (*citing In re Marsch*, 36 F.3d 825, 828 (9th Cir. 1994)). "The existence of good faith depends on an amalgam of factors and not on a specific fact….The test is whether a debtor is attempting to unreasonably deter and harass creditors or attempting to effect a speedy, efficient reorganization on a feasible basis." *Marsch*, 36 F.3d at 828. (citation omitted); *see also Mense*, 509 B.R. at 276 (requiring good faith "deter[s] filings that seek to achieve objectives outside the legitimate scope of the bankruptcy laws").

Courts consider a number of factors to determine whether a debtor has filed a petition in bad faith, including whether: "(1) the debtor has only one asset; (2) the debtor has an ongoing business to reorganize; (3) there are any unsecured creditors; (4) the debtor has any cash flow or sources of income to sustain a plan of reorganization or to make adequate protection payments; and (5) the case is essentially a two party dispute capable of prompt adjudication in state court." *In re St. Paul Self Storage Ltd. Partnership*, 185 B.R. 580, 582-83 (9th Cir. BAP 1995). Courts in this Circuit take a "totality of the circumstances" approach where "[t]he bankruptcy court does not have to consider all factors, nor does it have to weigh them equally. A bankruptcy court may find one factor dispositive or may find bad faith even if none of the factors are present." *In re Windscheffel*, 2017 WL 1371294, *4 (9th Cir. BAP 2017) (*citing In re Mahmood*, 2017 WL 1032569, *4 (9th Cir. BAP 2017)).

Relevant here, if the bankruptcy case was filed to resolve a two-party dispute that should be or has been resolved in a different forum, courts have found that sufficient to determine that the case was filed in bad faith. *See e.g. In re Oasis at Wild Horse Ranch LLC*, 2011 WL 4502102, *10 (9th Cir. BAP 2011) (the BAP affirmed bankruptcy court's finding that the bankruptcy case was filed in bad faith, and that "it is an 'apparent two-party dispute that can be resolved outside of the Bankruptcy Court's jurisdiction.'"). The Ninth Circuit in *In re Marsch* "articulated the relationship between the good faith determination and the dismissal of petitions filed merely for tactical advantage:

> The term 'good faith' is somewhat misleading. Though it suggests that the debtor's subjective intent is determinative, this is not the case. Instead the 'good faith' requirement encompasses several, distinct equitable limitations that courts have placed on Chapter 11 filings. Courts have implied limitations to deter filings that seek to achieve objectives outside the legitimate scope of the bankruptcy law. Pursuant to 11 U.S.C. 1112(b), courts have dismissed cases filed for a variety of tactical reasons unrelated to reorganization.

*In re SGL Carbon Corp*., 200 F.3d 154, 165 (3rd Cir. 1999) (*citing Marsch,* 36 F.3d at 828). In *SGL Carbon*, the Third Circuit found that the debtor's chapter 11 petition lacked a valid reorganizational purpose and therefore lacked good faith, making the case subject to dismissal for cause. *Id*. at 169.[2] Similarly, courts in the Second Circuit have found that using the bankruptcy court to relitigate rather than reorganize was an "an impermissible use of Chapter 11[.]" *CTC 9th Ave. P'ship v. Norton Co. (In re C-TC 9th Ave. P'ship)*, 113 F.3d 1304, 1310 (2d Cir. 1997).

Here, the Debtor filed this case shortly after the Supreme Court denied its petition for rehearing in the SEC Action. With no ability to pursue additional appeals in that case, the Debtor and Navellier commenced actions in other courts seeking to collaterally attack the Amended Final Judgment and to frustrate the SEC's collection efforts. Using bankruptcy to improperly relitigate previously adjudicated matters supports a finding that the bankruptcy filing lacks good faith. *See e.g., In re Wally Findlay Galleries Inc*., 36 B.R. 849, 851 (Bankr. S.D.N.Y. 1984) (Court dismissed bankruptcy case where debtor sought to use the bankruptcy court to relitigate and not reorganize).

Next, the Debtor does not intend to use Chapter 11 to propose a confirmable plan or reorganize its business. Instead, the Debtor intends to use the bankruptcy and this Court to seize control over the process for paying harmed investors, despite the District Court's continued jurisdiction over a distribution in the SEC Action. The District Court's judgment authorizes the SEC – not the Debtor – to propose a plan that identifies harmed investors and the amount of their distributions, which plan must be approved by the District Court before implementation. Further, by taking control over the process for distributing disgorged funds to investors, the Debtor is violating the rule that a defendant in an SEC action who has been ordered to disgorge funds has no right to challenge the victim's claims to the disgorgement fund. *See SEC v. Blavin*, 760 F.2d 706, 713 (6th Cir. 1985) (*citing SEC v. Lund*, 570 F.Supp.1397, 1405 (C.D. Cal. 1983); *SEC v. Golconda Mining Co.*, 327 F. Supp. 257 (S.D.N.Y. 1971)); *accord SEC v. Vuono*, Case No. 13-MC-405(JFB) 2013 WL 6837568 at *5 (E.D.N.Y. Dec. 26, 2013) ("[T]he wrongdoer has

[2] In *SGL*, the Third Circuit noted that "Chapter 11 vests petitioners with considerable powers—the automatic stay, the exclusive right to propose a reorganization plan, the discharge of debts, etc.—that can impose significant hardships on creditors. When financially troubled petitioners seek a chance to remain in business, the exercise of those powers is justified. But this is not so when a petitioner's aim lies outside those of the Bankruptcy Code." *Id*. at 165-166.

an interest in challenging the determination of whether he violated the securities laws and the amount of any ill-gotten gains obtained from the misconduct; however, once those issues are resolved, he does not have any standing to challenge how the amount disgorged is distributed.").

Finally, the Debtor's filing lacks good faith because it was filed in an apparent effort to shield Navellier's personal assets from collection. Not only was this case filed on the business day before Navellier filed the Florida Action, but he and his counsel also admitted at the meeting of creditors that the Debtor plans to pay only a small fraction of the judgment amount to investors and then – based on those payments – seek to have the entire $31 million judgment debt deemed satisfied. Even assuming the Debtor could discharge its liability to the SEC in Chapter 11 (which is currently contested), such a discharge would not run to Navellier's benefit. *See* 11 U.S.C. §524(e) (stating that the "discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt."). Moreover, if Navellier filed for personal bankruptcy he would not be entitled to discharge his debt to the SEC. *See* 11 U.S.C. §523(a)(2) & (a) (19).[3]

The Debtor has not demonstrated that this bankruptcy was filed for a legitimate reorganization purpose. Instead, this case involves a two-party dispute between the Debtor and the SEC, and the District Court retains jurisdiction over the Debtor's disgorgement judgment and any distribution to investors in the SEC Action. The timing of this filing demonstrates that the purpose of the bankruptcy was to continue to delay the SEC's collection efforts and to shield Navellier's personal assets. Further, the arguments upon which the Debtor and Navellier rely to avoid paying the SEC (both in this case and in the Nevada Action) have already been litigated and decided against them. Despite actively litigating the Nevada Action, the Debtor has not disclosed that litigation in this bankruptcy nor sought to have the employment of the Debtor's litigation counsel approved by this Court. The Debtor has no meaningful unsecured debt other

[3] Section 523(a)(2) excepts from discharge debts arising from fraud, and Section 523(a)(19) provides, in pertinent part, that a "discharge under section 727, 1141, … does not discharge an individual debtor from any debt … (19) that – (A) is for - the violation of any Federal securities laws … and (B) results, before, on, or after the date on which the petition was filed, from – (i) any judgment, order, consent order, or decree entered in any Federal or State judicial or administrative proceeding[]".

than the debt to the SEC. Moreover, the SEC's claim is based on a final adjudication of fraud, and thus, would not be dischargable in this case. Based on the totality of the circumstances, "cause" exists under Section 1112(b) to dismiss or convert this case.

C. The Bankruptcy Case Should be Dismissed

"'The moving party has the initial burden of making a prima facie case to support its allegations of bad faith…." *In re Mense*, 509 B.R. at 277, but after that showing is made, the burden shifts to the Debtor to show the case was filed in good faith. *Id.* If the court finds cause for dismissal or conversion, "…the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, . . . unless the court determines that the appointment under section 1104(a) of a trustee or examiner is in the best interest of creditors and the estate." *Id.*, 11 U.S.C. §1112(b)(1).

It is in the best interests of the SEC and the other creditors to dismiss this bankruptcy case rather than convert it to a Chapter 7 proceeding. Because this case turns on a two-party dispute involving a non-dischargeable debt, remaining in bankruptcy will result in additional costs to the Debtor and its creditors, with no offsetting benefits. Further, dismissing this case will allow the SEC to collect funds and propose a plan to the District Court for payments to harmed investors. Accordingly, the SEC requests that this case be dismissed.

WHEREFORE, the U.S. Securities and Exchange Commission requests entry of an Order dismissing the Debtor's bankruptcy case and providing other relief that is just and appropriate.

Dated: January 13, 2026

By: ___*/s/ David Baddley*___________

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Counsel for the Commission

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing Motion was served on this date upon all registered users in this case by the Court's CM/ECF Noticing System, and also by U.S. Mail, first-class postage prepaid, on January 13, 2026 upon the following creditors:

Broadridge Financial Solutions
1155 Long Island Avenue
Edgewood, NY 11717

New York State Dept. of Taxation and Finance
Bankruptcy Section
P.O. Box 5300
Albany, NY 12205-0300

Mass. Dept. of Revenue: Bankruptcy Unit
P.O. Box 7090
Boston, MA 02204-7090

City of Philadelphia, Dept. of Revenue
1401 JFK Blvd.
Concourse, Taxpayer Services
Philadelphia, PA 19102

Pamela & David Ihns
9026 S. Juniper St.
Tempe, AZ 85284

*David Baddley*____________________
David Baddley

**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

| | |
|---|---|
| NAVELLIER & ASSOCIATES, INC., a Nevada corporation, and LOUIS NAVELLIER, an individual<br><br>Plaintiffs,<br>v.<br><br>UNITED STATES OF AMERICA, by and through its agency, the SECURITIES AND EXCHANGE COMMISSION<br>Defendants | Civil Action No.<br><br><br>JURY TRIAL DEMANDED |

**FIRST AMENDED COMPLAINT**

Plaintiffs, Navellier & Associates, Inc. ("NAI") and Louis Navellier ("LN"), hereby amend their Complaint, as a matter of course, pursuant to F. R. Civ. P. §15(a)(1)(B), to allege the following against Defendant the United States of America ("USA") by and through its agency, the Securities and Exchange Commission ("SEC"), and hereby demand a jury trial.

## PARTIES

1. Plaintiff, Navellier & Associates, Inc. ("NAI"), is a Nevada corporation and citizen of Nevada, with its headquarters in Reno, Nevada

2. Plaintiff, Louis Navellier ("LN"), is an individual and citizen and resident of the State of Florida, who works in Reno, Nevada.

3. Defendant is the United States of America, by and through its agency, the Securities and Exchange Commission ("SEC"), a federal governmental agency organized under the laws of the United States, and headquartered in Washington D.C., with offices in the State of Nevada.

## JURISDICTION AND VENUE

4. Federal question jurisdiction in this Court is appropriate under 28 U.S.C. §1331 because Plaintiffs' rights to equal protection of the law under the Fifth Amendment of the United States Constitution have been violated by the Defendant USA, by and through the SEC, and upon information and belief, by its officers and employees Marc J. Jones, Robert B. Baker, William J. Donahue, Stephanie Avakian, and others. This Court also has jurisdiction under 28 U.S.C. §1332 based on complete diversity because this action is between citizens of different states and the amount in controversy exceeds $75,000.

5. Venue in this district is appropriate under 28 U.S.C. §1391(b)(2) because Plaintiffs are located here and the wrongful conduct by Defendant occurred in this district or was directed to occur in this district.

## BACKGROUND

6. Plaintiff NAI is an investment advisory firm that provides investment advice to clients, most of whom are referred to NAI by other investment advisory firms or investment professionals. NAI was organized under the laws of and is a resident of and is headquartered in the State of Nevada.

7. NAI has been providing investment advisory services to individuals, entities, mutual funds and retirement plans since 1987. Its investment advisory services are based on proprietary investment strategies developed by LN applying modern portfolio theory principles designed to outperform the relevant market ("aggressive growth" strategies).

8. From 1987, NAI developed and applied a number of proprietary aggressive growth strategies to manage its client accounts (NAI core strategies). Clients would enter into investment advisory agreements with NAI whereby the client would select a particular NAI core investment strategy, transfer his/her/its money to a custodian account (usually at the client's brokerage firm) and then, would send periodic instructions to the client's broker to buy or sell specified securities, in accordance with the NAI strategy for which the client had contracted.

9. In September of 2009, about a year after the stock market crash, NAI's then director of marketing, Paula Boyd, was approached by F-Squared about a "defensive" strategy for investing whereby F-Squared would statistically analyze the stock market, split it into companies in nine basic sectors of the economy (such as financial stocks, health care stocks, tech stocks etc.), recommend investment in an exchange traded fund ("ETF") that held stocks in that particular sector, create a model "sector rotation" investment strategy for investing in those ETFs, which proprietary strategy F-Squared licensed to various investment advisory firms and individuals

including, but not limited to NAI, Wells Fargo Advisors, Beaumont Financial Partners, First Trust, LPL Financial, Raymond James Financial Services, Royal Bank of Canada ("RBC"), Stifel, United Capital Financial Advisors, LLC and others.

10. An "ETF" is a fund made up of securities in a particular sector of the economy. Unlike a mutual fund, ETF shares trade during the day on an exchange like a single stock.

11. The investment advisory firms entered into model management agreements with F-Squared whereby the investment advisory firm would license the AlphaSector Allocator or AlphaSector Premium strategy from F-Squared and F-Squared would send the firm periodic investment signals. Using the AlphaSector strategy, F-Squared then sent signals to investment advisory firms, like NAI, indicating which sector ETFs to purchase, which to sell, which to hold and which to cash out and hold as cash (treasuries). F-Squared sent its AlphaSector Allocator strategy signals, on a monthly basis.

12. F-Squared sent AlphaSector Premium strategy signals to its licensees on a weekly basis.

13. F-Squared represented to Paula Boyd of NAI that the AlphaSector ETF sector rotation strategy had been developed by a New England based wealth management firm that managed the assets of a group of high-net-worth clients. That the firm did not want to get into the investment advisory business (as opposed to remaining as a wealth manager) and therefore, was willing to and had agreed to license its ETF sector rotation strategy to F-Squared on a confidential basis by providing F-Squared with periodic investment signals, which signals F-Squared could then sub-license to various investment advisory firms which those firms could use as a defensive strategy for clients that were looking for defensive investment strategies.

14. Defensive investment strategies are strategies designed not to beat the market by much, but also, not to risk losing as much as more aggressive strategies.

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15. The F-Squared AlphaSector Allocator and AlphaSector Premium strategies proposed to (and did) achieve this defensive investment performance by investing only in ETFs. The ETF fund itself was spread (invested) in a number of stocks in various sectors of the economy (such as financial companies or tech companies, etc).

16. In addition to signaling investments in only ETFs (as opposed to individual stocks), the AlphaSector strategies were disciplined so that if the analytical analysis showed that one or more of the particular sectors was declining, that sector or sectors would be sold and go to cash. If four or more sectors indicated sell, then the entire strategy (all nine sectors) would be sold and go to cash or cash equivalents (treasury ETFs) and remain in cash until the analytics indicated an upturn in four or more sectors, at which time the strategy would generate buy signals for some or all of the sectors that had gone to cash.

17. In this “go to cash” component, the AlphaSector strategies were designed to minimize or avoid significant stock market downturns and avoid or reduce losses.

18. In addition to re-licensing its AlphaSector strategies, F-Squared’s affiliated company, “Analytics”, created an index of historical hypothetical performance for the F-Squared AlphaSector Allocator and AlphaSector Premium strategies.

19. An index is an imaginary (hypothetical) collection of specific securities. Index performance is a calculation of how that hypothetical collection of securities hypothetically would have performed (increased or decreased in value over time) if someone had actually invested in those securities over a given period of time.

20. The S & P 500, for example, is an index. It imagines investments in 500 specific stocks and measures how those 500 stocks collectively would have performed each day, if someone had actually invested in all of those 500 stocks that day, and historically over a period of time.

21. F-Squared provided its index of selected ETFs to NASDAQ OMX each day and NASDAQ OMX then calculated the hypothetical performance of each AlphaSector strategy as well as that strategy's historical performance.

22. Hypothetical performance records for the F-Squared AlphaSector Allocator and AlphaSector Premium strategies were calculated, verified and published daily by NASDAQ OMX tracking their hypothetical index performance since April 2001.

23. NASDAQ OMX is considered the pre-eminent index performance calculating firm in the United States if not the world. It is considered the reliable "gold standard" for index performance calculations.

24. Paula Boyd was intrigued by the AlphaSector strategies and discussed them with NAI's chief compliance officer and in-house, general counsel, Peter Knapp.

25. In October of 2009, Mr. Knapp travelled to Boston to do due diligence for NAI on the F-Squared AlphaSector Allocator strategy. He met with Howard Present, the founder of F-Squared and principal investment advisor analyst of F-Squared, and other key employees of F-Squared

26. Mr. Knapp discussed and received written information regarding the F-Squared AlphaSector Allocator strategy, the history of the strategy, its index and historical index performance record, correspondence from Robert Hughes of NASDAQ OMX confirming the historical index performance of the strategy, and correspondence between head of compliance at Virtus, a large mutual fund company with over Five (5) Billion Dollars invested in the AlphaSector Allocator strategy, which was being sub-advised by F-Squared.

27. Mr. Knapp asked for trade confirmations or statements to substantiate the performance but was told that the information was highly confidential, that the wealth management firm that developed the strategy and licensed it to F-Squared had not provided and would not provide the

statements for actual trades, for fear that the strategy would be appropriated (which fear F-Squared also had if it disclosed it to NAI).

28. Shortly thereafter, Howard Present did send a spread sheet for hypothetical trades, applying the AlphaSector Allocator strategy used by NASDAQ OMX in calculating the index hypothetical performance going back to April 2001.

29. NAI had its analysts test the spreadsheet. They corroborated that the spreadsheet and index performance calculation going back to 2001 was correct.

30. In October of 2009, Peter Knapp prepared an Executive Summary package consisting of a summary of his due diligence, the Robert Hughes NASDAQ OMX letter, Virtus general counsel correspondence and the F-Squared-provided index performance spreadsheet.

31. Mr. Knapp, NAI's President, Arjen Kuyper, and Paula Boyd all met with LN and recommended to him that NAI enter into a model management agreement with F-Squared to license (obtain) the periodic AlphaSector Allocator (and later AlphaSector Premium) signals from F-Squared in order to create an NAI AlphaSector based investment strategy.

32. LN was hesitant to have NAI create a defensive ETF strategy because he was concerned that it would confuse and dilute NAI's brand as a well-known aggressive growth management (as opposed to a defensive investment management) firm built on aggressive growth investment strategies designed to significantly outperform the market.

33. He was reluctant because he viewed the AlphaSector strategy as a defensive, index-tracking strategy which was significantly different than the strategies on which NAI had built its reputation.

34. However, based on the due diligence done by NAI's general counsel and chief compliance officer and the third-party information provided and information provided by F-Squared, including

but not limited to Hughes NASDAQ OMX letter, and market appetite for a defensive product to "compliment" NAI's aggressive growth strategies, LN agreed to NAI licensing the strategies from F-Squared, and providing and managing assets based on those signals, but insisted that those strategies be done under a "Vireo" brand without the Navellier name in the title of the Vireo strategies, so that investors did not confuse the Vireo defensive strategies with the core Navellier aggressive growth strategies.

35. LN was, is and always had been a hands-off owner and employer, who preferred/prefers to hire people he trusted and believed to be competent to do their jobs and run the day-to-day operations of the company, and then relied on them, while he focused on developing, refining and setting overall strategic policy and vision for NAI. He focused on giving seminars on his insights and outlook on the markets in general, and promoting NAI's core, non-Vireo strategies, and building the non-Vireo good will of NAI. He never marketed or advised any person to use NAI's Vireo strategies.

36. As part of the standard model management agreement with F-Squared, F-Squared insisted on reviewing any NAI marketing material.

37. F-Squared also provided its own marketing material and information regarding its AlphaSector strategies to NAI which marketing material and information F-Squared represented was true and correct

38. F-Squared also provided its own marketing material and information regarding its AlphaSector strategies to F-Squared's other licensees.

39. The F-Squared marketing material contained historical AlphaSector <u>index</u> performance history going back to April 2001 and represented that its AlphaSector strategies (and indexes) were

based on the investment strategies of another investment adviser, who had live traded some of its clients' investments based on its strategies since 2001.

40. The source of F-Squared's AlphaSector index performance(s) was NASDAQ OMX's index performance calculations.

41. The 2001 to 2008 F-Squared AlphaSector Allocator and AlphaSector Premium index performance records (that the SEC claims were misleading) are the clearly labeled performance records of the AlphaSector Allocator index, and of the AlphaSector Premium index.

42. The 2001 to 2008 AlphaSector Allocator and AlphaSector Premium index performance records are not the actual performance of those strategies with real money invested and managed by NAI according to those strategies.

43. The disclosures accompanying those index performance records from 2001-2008 make clear that they are the hypothetical performance, from 2001-2008, of how the ETFs in the AlphaSector strategy would hypothetically have performed applying the AlphaSector strategy if someone had actually invested in those ETFs during the entire 2001-2008 period.

44. An SEC "No Action Letter" is an SEC written response to an inquiry from a person or entity subject to SEC regulation and enforcement seeking guidance from the SEC as to whether it (the SEC) would take enforcement action, i.e., consider the proposed action a violation of the securities laws if the questioner took the proposed actions.

45. The SEC's published response, in a no action letter, that it would not consider the proposed action (or action as modified according to SEC suggestions) a violation and would not bring enforcement proceedings, is guidance to others that the SEC will not seek enforcement for such actions, i.e., that such actions are not securities law violations.

46. The SEC itself has issued two "No Action Letters", the Clover Letter and the LDS Letter, indicating it would take no enforcement action (i.e., that it is not a violation of Section 206 of the Investment Advisors Act) for an investment adviser to advertise its hypothetical historical performance for a strategy before actual ("live") money was managed according to that strategy.

47. In both of those No Action Letters, the SEC indicated that it would not consider advertising of hypothetical or "back-tested", historical performance for an investment strategy to be a securities law violation so long as certain disclosures were made in the advertisement indicating that the performance was hypothetical performance.

48. NAI's broker brochures for its Vireo AlphaSector Allocator and for its Vireo AlphaSector Premium strategies clearly indicated that the <u>index</u> performance for those two strategies was a hypothetical index performance, not the performance of actual money invested in those strategies since 2001.

49. The Navellier broker brochures for its Vireo AlphaSector Allocator and Vireo AlphaSector Premium strategies were not, as the SEC claimed, "advertisements".

50. The Navellier broker brochures for its Vireo AlphaSector Allocator and Vireo AlphaSector Premium strategies were clearly marked, and provided for one-on-one presentations only to other sophisticated, registered investment advisors or financial advisors.

51. The Navellier broker brochures for its Vireo AlphaSector Allocator and Vireo AlphaSector Premium strategies were not distributed by NAI or by LN to or authorized to be distributed to investors or potential investors in the Vireo AlphaSector strategies.

52. NAI did not advertise its Vireo AlphaSector Allocator or its Vireo AlphaSector Premium investment advisory services to investors or to potential investors.

53. NAI made its AlphaSector investment advisory services known to other, selected investment advisors or stockbrokers. Those selected investment advisers or financial advisers who had clients that were interested in having their money managed according to the AlphaSector Allocator or AlphaSector Premium strategy would enter into "dual contracts" or "wrap fee" contracts with their own investment adviser or broker and NAI to manage the client's money according to the AlphaSector strategy the investor had selected.

54. Under a "dual contract", the referring investment advisor and NAI each entered into an investment advisory agreement with the client for the administration/oversight of the client's account and the investment management of the client account and the client paid the referring advisor and NAI separately.

55. Under a "wrap fee" contract, the referring advisor and the client entered into a contract and paid the referring advisor a single fee (wrap fee) which included NAI's advisory fee which the referring advisor then paid to NAI.

56. Wells Fargo Advisors ("WFA") marketed the AlphaSector strategy and published the same index performance and live traded statement as NAI and then referred at least 4,000 of its clients to NAI, pursuant to dual or wrap fee contracts.

57. Royal Bank of Canada ("RBC") marketed these strategies to its clients and referred at least 100 of them, pursuant to dual contracts, for co-management to NAI and published the same index performance and live traded statement as NAI.

58. Linsco Private Ledger Corp. ("LPL") marketed these strategies and referred its clients, pursuant to dual contracts, for co-management to NAI and published the same index performance and live traded statement as NAI.

59. Compass marketed these strategies and referred its clients to NAI under dual contracts and published the same index performance and live traded statement as NAI.

60. Congress Wealth Management ("Congress") marketed these strategies to its clients and referred them to NAI pursuant to dual contracts and published the same index performance and live traded statement as NAI.

61. NAI did not market or advertise the two (2) AlphaSector investment strategies, AlphaSector Allocator and AlphaSector Premium, to investors or to potential investors. The NAI Vireo AlphaSector Allocator and NAI Vireo AlphaSector Premium clients were marketed to by other investment advisory professionals. Those investment advisory professionals marketed the AlphaSector investment strategies to their clients and then referred their clients (those who were interested in having their monies invested according to those strategies) to NAI.

62. LN is an investment adviser but was not an investment adviser to any of the NAI Vireo AlphaSector Allocator or NAI Vireo AlphaSector Premium clients.

63. LN did not market or advertise the AlphaSector Allocator or AlphaSector Premium (or any other Vireo AlphaSector) strategies.

64. The NAI Vireo AlphaSector Allocator strategy was an investment strategy that divided the stock market into nine (9) sectors (such as tech, financial, medical, etc.)

65. The NAI Vireo AlphaSector Allocator strategy invested in nine exchange traded funds ("ETF"s) that each held stocks in one of the nine sectors.

66. The NAI Vireo AlphaSector Allocator strategy was based on monthly signals that NAI received from F-Squared pursuant to a licensing agreement. Under that licensing agreement, F-Squared sent buy, sell, hold or convert to cash "signals" for each sector ETF to NAI on a monthly

basis. NAI would then follow those "signals" from F-Squared to trade in NAI client accounts that were invested in the Vireo AlphaSector Allocator strategy.

67. NAI also licensed the F-Squared AlphaSector Premium strategy in the same way, i.e., NAI received weekly signals from F-Squared and then traded in its Vireo AlphaSector Premium client accounts according to the F-Squared signals.

68. LN did not market the Vireo AlphaSector Allocator or Vireo AlphaSector Premium strategies or services to any persons or entities.

69. LN did not manage or provide investment advice applying those strategies to any persons or entities and did not market them to any investors or potential investors.

70. Between August 11, 2011 and June of 2012, NAI presented to professional investment advisers, broker brochures for Vireo AlphaSector Allocator

71. Between August 11, 2011 and June of 2012, NAI presented to professional investment advisers, broker brochures for Vireo AlphaSector Premium.

72. Those brochures contained an F-Squared AlphaSector Allocator index performance record from April 2001-2008.

73. Those brochures clearly indicated that the 2001-2008 F-Squared AlphaSector index performance record contained therein was hypothetical, i.e., how the hypothetical performance of the index for each of those strategies would have performed during the period 2001-2008 if actual trades with real money had been invested according to the strategy.

74. The NAI broker brochures also clearly indicated that the source of the particular 2001-2008 F-Squared AlphaSector index performance records was Morningstar or NASDAQ OMX, sources that NAI believed to be credible, reliable and accurate.

75. F-Squared provided those 2001-2008 index performance records to NAI, supported by NASDAQ OMX letter, as the source of those index performance records along with backup performance worksheets.

76. F-Squared provided those same 2001-2008 index performance records to numerous other investment advisory firms to whom it licensed these strategies and who republished them.

77. Howard Present and F-Squared officers repeatedly told NAI that those 2001-2008 index performance records were correct.

78. Those NAI brochures all also contained the clearly shown, GIPS-verified, <u>actual</u> performance achieved by NAI for its investment management of the Vireo AlphaSector Allocator strategy.

79. Those NAI brochures all also contained the clearly shown, GIPS-verified, <u>actual</u> performance achieved by NAI, for its investment management of the GIPS-verified, <u>actual</u> performance, for its actual management of its clients' monies, using the AlphaSector Premium strategy.

80. The index hypothetical performance records shown in NAI's brochures, and the based on another adviser's live traded strategy statement, were not "false" or incorrect and were not material to investors' decisions to hire NAI to manage their monies according to those strategies.

81. Prior to July 2011, NAI's Vireo AlphaSector Allocator and Vireo AlphaSector Premium brochures contained a true but immaterial statement that F-Squared's Allocator strategies were based on another adviser's strategy which the other advisers had used to live trade for clients since April 2001. That same immaterial statement appeared in the AlphaSector Allocator and AlphaSector Premium marketing materials of other investment advisers including, but not limited to WFA, Beaumont, First Trust, RBC, Raymond James, LPL, and others.

## Similarly Situated

82. NAI's broker brochures, which contained the 2001-2008 AlphaSector Allocator and AlphaSector Premium index performance records, stated

> AlphaSector Allocator Premium Index Performance
>
> NAI's broker brochures, which contained either the 2001-2008 AlphaSector Allocator or April 2001 – [June 2011] …
>
> cumulative return [262.4] % …
>
> Source: F-Squared

83. The based on live traded strategy and not back tested statement and the 2001-2008 NAI brochure index performance record statements were the same as the statements and performance record statements made or published by Wells Fargo Advisors in its marketing of the AlphaSector Allocator and the AlphaSector Premium strategies.:

> AlphaSector Allocator Premium
>
> Index Performance April 2001 – [June] 2011 …
>
> Cumulative Return 262.4%
>
> Source: F-Squared

84. The based on live traded strategy and not back tested statement and the NAI 2001-2008 index performance record statements were the same as the 2001-2008 index performance record statements made by Beaumont Financial Partners in its marketing materials presented to its investors.:

> BMC AlphaSector Premium Index
>
> 3/31/2001 – [9/30/2011]
>
> Cumulative Return 262.4%

85. The based on live traded strategy and not back tested statement and the NAI 2001-2008 index performance record statements were the same as the 2001-2008 index performance record statements made by First Trust in its marketing materials:

The chart to the left illustrates the models

[AlphaSector Premium Index] performance

in up and down markets from April 2001-2011,

Source: F-Squared Investments, April 2001 – April 2011

86. The based on live traded strategy and not back tested statement and the NAI 2001-2008 index performance record graph was the same as the 2001-2008 index performance record graph made by Shamrock in its marketing materials presented to its investors.:

AlphaSector Premium

AlphaSector Premium

Index April 2001 – March 2012

Source: F-Squared Investments

87. The based on live traded strategy and not back tested statement and the NAI 2001-2008 index performance record statements were the same as the 2001-2008 index performance record statements made by Hilliard Lyons in its marketing materials presented to its investors.:

AlphaSector Premium

Index April 2001 – December 2011

Cumulative Return 256.7%

Source: NASDAQ OMX

Active Index Solutions [F-Squared entity]

88. The based on live traded strategy and not back tested statement and the NAI 2001-2008 index performance record statements were the same as the 2001-2008 index performance record statements made by Cantella in its marketing materials presented to its investors.:

AlphaSector Rotation [Allocator]

Index April 2001 – December 2012

Cumulative Return 144.1%

Source: F-Squared Investments

**Due Diligence**

89. NAI did as much, or substantially more due diligence on F-Squared and its 2001-2008 index performance record and live traded statement, including receiving and relying on Robert Hughes' NASDAQ OMX letter confirming the validity of the F-Squared index performance from 2001-2008 and the based on another adviser's live traded strategy statement, as the other advisors and financial advisor entities that marketed that same index performance to their clients.

90. Mr. Haviland of Beaumont Financial Partners admitted that its due diligence consisted of reliance on Howard Present's representations and the NASDAQ OMX letter.

91. Just like NAI, Mr. Haviland asked for but was not given trade confirmations or statements to support the 2001-2008 index performance.

92. There are no trade confirmations or statements for indexes' performance because indexes do not actually make trades. The "trades" are hypothetical.

93. David Hallman of United Capital Advisers, which marketed these AlphaSector strategies to its bank customers, admitted that he repeatedly asked for but was not given confirmations of the trades

94. United Capital Advisers still had its investment advisory clients invest in these strategies.

95. Patti Loepker, who oversaw investment adviser marketing for Wells Fargo Advisors which raised over $1.3 Billion just for investment in these Vireo strategies, testified that Wells Fargo Advisors put these strategies on its Professional Advisor Network ("PAN") platform (and on its website) with no due diligence done on these same AlphaSector index performance records or same statements or oversight of WFA's thousands of financial advisors who were marketing these AlphaSector index performance records.

96. WFA provided its financial advisors with Morningstar Direct screens whereby they could and did access F-Squared's 2001-2008 AlphaSector index performance records and print them out to distribute to clients for marketing purposes.

97. The SEC and its officers and employees, Marc Jones, Robert Baker, William Donahue, Stephanie Avakian and other employees, brought and then continued to pursue a federal lawsuit against NAI and LN, claiming that NAI and LN were negligent and acted fraudulently or recklessly in violation of Section 206 of the Investment Advisors Act by allegedly distributing (they did not) the based on another adviser's live traded, not back tested strategy statement, but did not bring any enforcement action against WFA or others who did the same thing.

98. Robert Hughes of NASDAQ OMX, the pre-eminent index performance record calculator/analyst, testified that NASDAQ OMX supposedly did do, and represented that it had done, due diligence and analyzed the 2001-2008 index performance records of the F-Squared

AlphaSector Allocator and AlphaSector Premium indexes, and that those F-Squared strategies were based on another adviser's live-traded, not back tested strategy.

99. NASDAQ OMX confirmed in writing the AlphaSector index performance and the based on live-traded, not back tested statements for F-Squared to use and distribute to investment advisors, including NAI.

100. Mr. Hughes much later (after the fact) testified that "his" letter was actually written and given to him on F-Squared stationery by Howard Present, CEO of F-Squared.

101. Mr. Hughes much later (after the fact) testified that he then re-printed it verbatim on NASDAQ OMX stationery, without doing due diligence to determine if the performance and statements were true, and personally signed it without believing the information was even true.

102. Mr. Hughes much later (after the fact) testified that he did all that as a favor to Howard Present who contemporaneously happened to be promising him that F-Squared would be contracting with NASDAQ OMX to publish sixty-four (64) other F-Squared indexes at $90,000 per index.

103. The SEC was aware of NASDAQ OMX's and Mr. Hughes' supposedly fraudulent letter and AlphaSector index verification.

104. The SEC brought no enforcement action, sought no penalties, and did not censure, suspend, or bar NASDAQ OMX, Mr. Hughes, or anyone else at NASDAQ OMX from the securities industry for aiding and abetting F-Squared in its alleged "fraudulent" scheme, or for any other alleged securities laws violations.

105. As to the small investment advisory firms that the SEC did select to enforce against for marketing the same based on another adviser's live traded, not back tested strategy statements and

the 2001-2008 AlphaSector index performance record, the SEC only imposed penalties of $100,000 to $500,000.

106. The SEC did not seek disgorgement, censure or a lifetime ban from the securities industry against any of these firms and sought no enforcement of any kind against any of the individuals at those firms.

107. The SEC imposed only monetary penalties in the following amounts against the following investment advisory firms: AssetMark ($500,000); BB & J Securities ($200,000); Banyan Partners ($200,000) Congress Wealth Management ($100,000); Constellation Wealth Advisors ($100,000); Executive Monetary Management ($100,000); HT Partners ($100,000); Hilliard Lyons ($200,000); Ladenburg Thalman Asset Management ($200,000); Prospera Financial Services ($100,000); Risk Paradigm Group ($100,000); Scheider Downs Wealth Management Advisors ($100,000); Shamrock Asset Management ($200,000).

108. The SEC agreed to a $13.4 Million disgorgement and censure against Virtus, but no enforcement against any individual officers who committed the alleged violations for Virtus.

109. The SEC agreed to a $6.3 Million disgorgement and censure against Ameriprise, but no enforcement against any individual officers who committed the alleged violations for Ameriprise.

110. The SEC agreed to a $ 482,595 disgorgement and censure against Horter, but no enforcement against any individual officers who committed the alleged violations for Horter.

111. The SEC sought no lifetime (or any) ban from the securities industry against any of those companies or individuals, even though the SEC admitted they were similarly situated to NAI and LN.

112. The SEC did not seek any enforcement against any individual at any of these 21 firms.

113. In October of 2016, the SEC began "settlement negotiations" with NAI, by demanding payment of $23 Million in disgorgement.

114. The demand was based on NAI's alleged violations of Section 206 of the Investment Advisors Act in marketing the supposedly false AlphaSector index performance record, and live traded, not back tested statement; the same "marketing" and supposed violations committed by Wells Fargo Advisors (and others) against whom the SEC sought no enforcement.

115. The SEC demanded disgorgement of the supposed $9 Million in profits NAI supposedly made managing all its Vireo AlphaSector strategies (the vast majority of which were AlphaSector Alphadex strategies. The marketing brochures for those strategies did not contain "tainted" 2001-2008 index performance and based on live traded strategy "marketing" materials, and the SEC did not claim they violated the securities laws.

116. The SEC's $23 Million demand sought disgorgement of fees NAI earned for managing investments in strategies before August 11, 2011 (which disgorgement is barred by the statute of limitations) (*Kokech vs SEC* (2017) 137 S. Ct. 1635, 164) and for managing investments after June 2012, when there was no "marketing" of the 2001-2008 index performance record or the based on live traded strategy statement.

117. The SEC sought disgorgement of NAI's investment advisory fees, despite the fact that NAI had made over $210 Million for its AlphaSector Allocator and AlphaSector Premium management clients managing their monies.

118. The SEC also sought disgorgement of the $14 Million in sale proceeds NAI received from its 2013 sale of its goodwill to F-Squared.

119. NAI denied any violations and presented detailed, financial information to the SEC to refute the SEC claim for $23 Million in "ill-gotten gains".

120. NAI demonstrated that only the broker brochures for the Vireo AlphaSector Allocator and for the Vireo AlphaSector Premium strategies contained references to a 2001-2008 index performance record or the live traded strategy statement.

121. NAI also demonstrated that, as a matter of law, the statute of limitations barred any disgorgement for the period prior to August 11, 2011, and that the Vireo brochures after June 2012 did not contain the allegedly false index performance record or the based on live traded strategy statement.

122. Even if NAI had committed securities law violations (it did not), disgorgement was only available for profits for the period August 11, 2011 through June 2012 and was offset by expenses and payments back to NAI clients. That "net profit" causally connected to NAI's supposed "violations" amounted to zero or "at most" $360,935 as later conceded by the SEC.

123. There was no legal basis for disgorgement and no securities law violation in NAI selling its Vireo goodwill and assets to F-Squared.

124. F-Squared could not have been defrauded by the 2001-2008 index performance record that it created or the based on live traded strategy statement it had made.

125. The NAI Vireo clients did not have to transfer to F-Squared. The fact that clients did transfer to F-Squared to manage their monies according to NAI's AlphaSector strategies shows that the goodwill was from NAI actual performance and not from the 2001-2008 index performance record. Therefore, there was no basis for disgorgement of the $14 Million in sale proceeds.

**Settlement Contract**

126. On April 24, 2017, William Donahue of the SEC sent an e-mail to NAI's and LN's legal counsel setting forth the basis for the SEC's offer of settlement, indicating that it agreed to no disgorgement of the $14 Million, and to limiting disgorgement of NAI's investment advisory fees to the fees for the period August 11, 2011, through June 2012 and only for fees for managing the Allocator and Premium strategies.

127. The SEC and NAI and LN, in a series of emails, negotiated and reached a written settlement agreement agreeing to a settlement of $714,425 payable by NAI to the SEC and consisting of $360,935 in disgorgement, $53,530 in pre-judgment interest on said disgorgement and a $300,000 penalty. In exchange, the SEC agreed to not bring any enforcement or litigation against NAI or LN in connection with the Vireo AlphaSector marketing.

128. The SEC also agreed that no claims or enforcement would be brought against Mr. Navellier personally.

129. Thereafter, the SEC drafted a more formal settlement contract in the form of an administrative "order", in which "order" it incorporated all the terms of the settlement contract formed, agreed upon and entered into by both sides through their written emails. In addition to the agreed upon contract terms, the USA (SEC) proposed to add two new terms - a new provision for a "censure" of NAI and a new provision that NAI had "willfully" made misrepresentations - that were not part of the existing settlement agreement that had been reached and agreed upon.

130. Those two new terms were materially different from the terms to which NAI, LN and the SEC had agreed.

131. NAI was unwilling to change the settlement that had been reached and agreed upon.

132. The USA (SEC) thereafter breached the settlement agreement by instituting a lawsuit against NAI and LN alleging that they had violated the Investment Advisers Act of 1940 in connection with the marketing of NAI's Vireo AlphaSector Premium and Vireo AlphaSector Allocator strategies ("the Massachusetts litigation"). The SEC decided to breach the settlement agreement and to punish not only NAI, but also LN, by filing a lawsuit, on August 31, 2017, against NAI and against LN personally, seeking $28 Million in disgorgement and lifetime bans from being investment advisers against both NAI and LN.

134. The SEC lawsuit and the adverse publicity from the SEC's breach, by filing its contractually barred lawsuit against NAI and LN, has caused and continues to cause the destruction of most of NAI's business, and future business, and business opportunities, and has caused NAI and LN to lose tens of millions of dollars, and has caused severe reputational damage to NAI and to LN.

135. In an attempt to mitigate the damage to them caused by the SEC's breach of contract and by its selective enforcement against them, NAI and LN subsequently caved in to the SEC's coercion and offered to again agree to all of the settlement terms previously agreed upon and to the two new terms ("censure" and "willful") the SEC had demanded in its modification demand.

136. NAI and LN offered and agreed to pay not only the $714,452 but added $186,000 (for the SEC's "trouble" in filing the civil complaint) and agreed to "censure" and agreed to the "willful" language and even offered another favorable term to the SEC - the hiring of an outside, independent compliance firm to monitor NAI's and LN's actions, to ensure compliance with the securities laws.

137. The SEC refused the mitigation offers by NAI and LN, i.e., the SEC rejected its own, revised settlement terms.

138. In order to punish NAI and LN for refusing to modify the settlement agreement and for exercising their right to defend themselves in court when the SEC breached the settlement agreement, the SEC selectively pursued litigation and continues to pursue litigation and administrative proceedings against NAI and against LN, in bad faith, by claiming that NAI's and LN's alleged marketing of the 2001-2008 AlphaSector index performance record and the based on live trading statement violated Section 206 of the Investment Advisors Act.

139. The SEC did not enforce against WFA, Beaumont, Raymond James, RBC, NASDAQ OMX, Fulcrum or the numerous other investment advisory firms and individuals, all of whom marketed the same 2001-2008 AlphaSector index performance record and based on another adviser's 'live traded strategy' statement. Therefore, those other investment advisory firms and individuals also allegedly violated Section 206 in exactly the same way, and to many of the same clients as NAI, but they were not enforced or litigated against by the SEC.

140. Evidence of the SEC's bad faith is the fact that it sought and is still seeking disgorgement of $23 Million, when the SEC knows (has conceded) that no amount of disgorgement or, at most, only $360,935 in disgorgement is even arguably legally recoverable.

141. The SEC is seeking ***67 times*** the amount of disgorgement that, at most, is even arguably legally permitted.

142. As to the firms and individuals (similarly situated to NAI and LN respectively) that the SEC did enforce against, it only sought relatively small penalties (no disgorgement and no censure and no bar from the securities industry and *no individual* enforcement) against them, i.e., much milder enforcement than that brought against NAI and LN.

143. There was (is) no reason, other than bad faith punishment, for the SEC to file the Massachusetts litigation against NAI and LN and to seek these draconian penalties.

144. The SEC has gone after LN personally and is seeking 67 times more "disgorgement" ($28 Million) simply because NAI and LN had the temerity to refuse to revoke the settlement agreement they and the SEC had reached, and to then exercise their Sixth Amendment constitutional right to defend themselves against the SEC's baseless litigation demands.

## Punishment / Bad Faith / Animus – Improper Purpose

145. On August 31, 2017, the SEC, through and at the instigation of its officers and employees, Marc Jones, Robert Baker, William Donahue, Stephanie Avakian, and others, filed a lawsuit against NAI and LN claiming NAI and LN had violated §§206(1), 206(2) and 206(4) of the Investment Advisors Act 15 U.S.C. §806-6(1), (2), (3) and (4) and Rule 206(4)-1(a)(5) of the Investment Advisors Act and that LN had aided and abetted NAI in those alleged violations. The SEC has continued, to this day, to wrongfully pursue those baseless claims against NAI and LN and has widely publicized its actions against them. The SEC is seeking $28 Million in disgorgement from NAI and LN and, in 2020, filed an administrative proceeding with the Securities and Exchange Commission seeking lifetime bans from the securities industry against NAI and LN.

146. The SEC is pursuing that litigation despite the fact that it previously conceded that there was no need or basis for any enforcement action against LN and no need or basis for banning NAI from the securities industry.

147. The SEC continues to improperly seek those penalties (67 times the amount it could legally disgorge even if it could prove violations), in order to punish NAI and LN for not agreeing to rescind the settlement agreement NAI and LN had entered into with the SEC.

**The SEC's Continuing Breach of Contract and Selective Enforcement Against NAI and LN But Not Against Similarly Situated Individuals**

148. On August 31, 2017, the SEC improperly brought an action, not only against NAI but also against LN personally, claiming they directly violated Sections 206(1), 206(2) and 206(4) of the Investment Advisors Act by allegedly negligently and fraudulently marketing the AlphaSector 2001-2008 index performance records and by making the based on another adviser's live traded strategy statement or, in the alternative, that LN aided and abetted NAI in allegedly negligently and fraudulently marketing those 2001-2008 index performance records and making that statement.

149. LN never marketed those strategies to anyone and did not aid or abet in the distribution of those index performance records or statement, which index performance records and statement were true and were not material.

150. The index performance records, and the 'live traded, not back tested' statement, were not false or incorrect. They were true.

151. The performance record spread sheet provided to NAI by F-Squared was tested and confirmed by NAI to be correct.

152. LN repeatedly tried to discourage and stifle NAI's salespeople from "marketing" the Vireo AlphaSector Allocator and Vireo AlphaSector Premium strategies, not because he knew them to be false (he did not and they were not), but because he personally didn't like ("hated" and was "jealous" of) Howard Present and how he was appropriating NAI's salespeople away from marketing NAI core, non-Vireo investment strategies.

153. Mr. Navellier didn't want those defensive strategies "marketed" by NAI because they conflicted with NAI's core, aggressive growth strategies.

154. In addition to taking no enforcement action against Robert Hughes or NASDAQ OMX, the SEC took no enforcement action against Patti Loepker of WFA, who condoned WFA's marketing of these AlphaSector index performance records and live traded statement and did no due diligence.

155. The SEC brought no enforcement against Ron Santangelo, a member of the investment committee of F-Squared, who did not disclose and who approved dissemination of F-Squared's AlphaSector 2001-2008 index performance record and live traded statement.

156. The SEC did not bring any enforcement action against Juan Vargas, the F-Squared analyst who allegedly conspired with and assisted Howard Present in creating the allegedly false F-Squared AlphaSector 2001-2008 index performance records and the live traded statement.

157. The SEC did not bring any enforcement action against Rick Tomney, Howard Present's right-hand man, who repeatedly confirmed to NAI and other investment advisors that the 2001-2008 index performance records and 'live traded' statements were true.

158. The SEC brought no enforcement action against any individuals at Virtus, such as Peter Bachelor, who supposedly knew that the 2001-2008 performance record was supposedly false, but still ordered the Virtus marketers to continue to market it and the live traded statement.

159. The SEC brought no enforcement action against Cory Hoffstein or Jay Morton or Thomas Rosedale, or Newfound, the persons and entity that allegedly conspired with and aided and abetted F-Squared and Howard Present in their marketing of the allegedly fraudulent 2001-2008 AlphaSector index performance record and the live traded statement.

160. Mr. Hoffstein, Mr. Morton and Mr. Rosedale collaborated with Howard Present and F-Squared to create the allegedly false index performance records and the live traded statement and then stood silently by as the allegedly false index performance records and the live traded statement were marketed by F-Squared, never disputing that the AlphaSector strategy and index performance began in 2001, because those individuals were reaping the profits to the tune of $3 Million per year each, from the licensing and advertising of those strategies having an inception date of April 2001 and an index performance record from 2001-2008.

161. Instead of enforcing against these three alleged, principal "violators" (the originators, along with Howard Present and F-Squared, of the alleged fraud about the origin of the strategies and index performance record), the SEC allowed them to keep all their "profits" and, in addition, it is believed, paid them whistleblower fees for giving testimony against Howard Present.

162. Mr. Hoffman and Mr. Morton only came forward with whistleblower accusations after Howard Present and F-Squared terminated the licensing agreement and stopped paying the millions of dollars to each of them in royalties that they were receiving from F-Squared's marketing of these strategies.

## **The Sale**

163. LN denigrated NAI's own Vireo strategies internally at NAI to stop NAI's marketers from marketing NAI Vireo strategies, instead of marketing NAI's core, non-Vireo strategies.

164. LN clashed with Howard Present personally.

165. On August 6, 2013, NAI accepted F-Squared's offer to buy NAI's Vireo good will (customer list, broker list, advisor list and NAI GIPS- compliant actual performance records) for $14 Million.

166. At the time of F-Squared's purchase, NAI had made $220 Million in profits for NAI AlphaSector Allocator and AlphaSector Premium clients who had invested in these strategies.

167. None of those over 6,000 Vireo clients sued NAI or LN for fraud or for false advertising or for misleading them with a 2001-2008 index performance record or based on live traded strategy statement or for rescission or for violations of the Investment Advisors Act or for any other claim. No class actions were filed against NAI or LN. No client complained to NAI about being harmed as a result of the index performance record or 'live traded' statement.

168. When NAI sold its Vireo goodwill to F-Squared, almost all of the 6,000 plus Vireo clients consented to the sale and remained invested in those AlphaSector strategies and continued to have their monies managed by F-Squared, using the AlphaSector strategies.

169. The fact that almost all of the 6,000 plus Vireo clients consented to the sale and remained invested in those AlphaSector strategies, is clear evidence that they were in the strategies because of NAI's management and actual performance, not because of the 2001-2008 hypothetical index performance or the based on 'live traded' strategy statement.

## FIRST CAUSE OF ACTION

## (Breach of Contract)

170. Plaintiffs reallege and incorporate herein Paragraphs 1 through 169 as though fully set forth herein.

171. NAI and LN and the SEC entered into a written contract that provided that NAI would pay the SEC $714,425 consisting of $360,935 in disgorgement, $53,530 in pre-judgment interest on said disgorgement and a $300,000 penalty in exchange for the SEC's promise and agreement that it would not file any litigation or seek any enforcement against NAI or LN in connection with the Vireo AlphaSector marketing and strategies or related matters.

172. NAI and LN agreed to all terms of the agreement and performed and were prepared, ready, willing, and able to perform their obligations (pay the full $714,425) under the contract.

173. The SEC breached the contract, on August 31, 2017, by filing a lawsuit against NAI and LN alleging they had violated §206 of the Investment Advisors Act in connection with their alleged marketing of the Vireo AlphaSector Allocator and AlphaSector Premium strategies. The SEC continued to breach the settlement contract by continuing to litigate that lawsuit and by publicly bringing an administrative action in 2020 before the Securities and Exchange Commission to recover $28 Million and to permanently bar NAI and LN from pursuing their profession as investment advisers.

174. The SEC's breach of contract and continuing breach of contract has caused NAI to lose tens of millions of dollars (over $50 Million) in investment advisory fees from existing clients and long-existing clients and in lost future fees from those clients who have terminated NAI's and LN's investment advisory services, due to the adverse publicity from the SEC's filing, and continued prosecution of the lawsuit. NAI and LN have lost additional tens of millions of dollars of business from referring brokers, advisors and clients who severed their investment advisory business relationships with NAI and LN as a result of the SEC filing and pursuing the lawsuit and administrative action, resulting in the loss and continuing loss of millions of dollars in profits by NAI and LN. These professionals will not do business with or refer clients to NAI or LN and have

advised their clients to terminate their advisory relationships with NAI and LN as a result of the SEC's breach by filing and pursuing the Massachusetts litigation. These professionals have also removed NAI's and LN's services from their platforms of services they make available to their clients. The SEC's breach has caused NAI's assets under management (the value of monies NAI manages) to drop from approximately Three Billion Dollars down to less than $700 Million causing the subsequent loss of fees on those lost assets. The SEC's lawsuit has also caused further tens of millions of dollars of damage in loss of prospective fees from new clients. The SEC's breach has also damaged NAI and LN by reducing and essentially eliminating tens of millions of dollars in the equity value of NAI's business by greatly reducing the amount of assets under management.

175. The SEC's breach of contract, by filing and pursuing its lawsuit against NAI and LN, has also caused them damages in the form of attorney's fees, costs and expenses incurred in having to defend against that SEC lawsuit and administrative action.

**SECOND CAUSE OF ACTION**

**(Fifth Amendment Denial of Equal Protection)**

176. Plaintiffs reallege and incorporate herein Paragraphs 1 through 169 as though fully set forth herein.

177. The United States (SEC) has engaged in selective enforcement by filing and continuing to pursue the Massachusetts lawsuit and claims against NAI and LN and each of them in violation of NAI's and LN's Fifth Amendment constitutional rights to equal protection of law and to not be treated differently (have an enforcement action brought against them) than those

similarly situated to NAI and LN. In particular, as set forth above, Wells Fargo Advisors, Patti Loepker, and relevant Wells Fargo Advisors' compliance officers and investment advisors and brokers at Wells Fargo Advisors, marketed and advised their clients to have their investments managed or jointly managed under wrap fee agreements with NAI, or Beaumont or Raymond James, or RBC or others using the same F-Squared derived AlphaSector based marketing materials, which contained the same F-Squared 2001-2008 AlphaSector index "performance figures", and "live money" or "live assets" or "not back-tested" statements. However, the SEC did not enforce against them, or they were not enforced against in the same way the SEC has sought to enforce against NAI and LN.

178. The SEC has not enforced against or sought to enforce against the below listed investment advisors and individual investment advisors and their executives or control persons identified in Paragraph 182 below, nor has it sought the same remedies against them, such as a lifetime ban or any bar from being an investment advisor, against the following persons or entities, even though they made the same allegedly false or misleading "2001-2008 AlphaSector performance" and "live money" and "not back-tested" representations in their marketing materials to investors or potential investors that the SEC claims NAI and LN made to investors and which representations the SEC claims violated §206(1)(2) and (4) and the "advertising rule" of the Investment Advisors Act.

179. The SEC has not sought to ban any of the below listed persons or entities identified in Paragraph 182 below for these alleged frauds. The SEC has only sought to enforce, with a ban from being an investment adviser or affiliated with an investment adviser, against NAI and LN. who did the same or less than the following investment advisers against whom the SEC has not sought enforcement or has not sought to ban from being investment advisers.

180. This selective enforcement against the "class of one" (NAI and LN) has no rational basis and there is no valid reason for the SEC to seek to ban NAI and LN from being investment advisers for allegedly doing the same or less allegedly violative acts in connection with advertising AlphaSector, than the below identified investment advisers identified in Paragraph 182 below.

181. In the alternative, the SEC is selectively enforcing against NAI and LN by bringing this action and seeking to ban NAI and LN from being investment advisers while failing or refusing to seek any enforcement or the same enforcement against the persons and entities identified below who are similarly situated to NAI and LN and who allegedly committed the same alleged §206 violations that NAI and LN allegedly committed, because NAI and LN exercised their Sixth Amendment constitutional right to petition the courts to defend against the SEC's unfounded claims (of alleged Investment Advisors Act §206 violations). Thus, when NAI declined to revise the settlement agreement, the SEC filed a civil action to punish NAI and punish and coerce LN for exercising their constitutional right to petition for redress in the courts. The SEC has continued its selective enforcement by continuing to pursue that litigation.

182. The persons and entities who are similarly situated (who allegedly committed the same alleged acts and omissions by publishing the same allegedly false AlphaSector index performance record and the same 'based on live traded' statement as NAI (and allegedly LN) include but are not limited to:

Ameriprise Financial Services, Inc., Banyan Partners, Peter Batchelar, Beaumont Financial Partners, LLC, Paul Cahill, Cantella & Co., Congress Wealth Management, First Trust Portfolios, LP, Foliometrix, LLC, Fulcrum Equity Management, LLC, Harbor Financial Services, Horter Investment Management, LLC, HT Partners, LPL Financial, LLC, Ladenburg Thalman Asset Management, Morton Wealth Advisors, NASDAQ OMX Group, Virtus Investment Partners, Placemark Investment Services, Inc., Prospera Financial, Raymond James Financial Services, Royal Bank of Canada, Ron Santangelo, Shamrock Asset Management, Stifel, Richard Tomney, United Capital Financial Advisers, LLC, Wells Fargo Advisors, and others.

**THIRD CAUSE OF ACTION**

**(Injunctive Relief)**

183. Plaintiffs reallege and incorporate herein Paragraphs 1 through 182 above as though fully set forth herein.

184. The United States (SEC) continues to pursue and litigate against NAI and LN in the Massachusetts litigation with full knowledge that it has waived, released, and forfeited any right to sue NAI and LN in connection with or arising from NAI's alleged marketing and LN's alleged marketing of the NAI Vireo strategies, all to the continuing harm and detriment to NAI and LN, and if they are not enjoined, Defendants herein threaten to and will further harm and injure NAI and LN.

185. The United States (SEC) should be enjoined, and Plaintiffs herein hereby request that this Court temporarily and permanently enjoin the United States from continuing to litigate the Massachusetts litigation against NAI and LN and/or any litigation arising from said lawsuit, including but not limited to appeals and/or SEC enforcement actions.

**FOURTH CAUSE OF ACTION**

**(Federal Tort Claims Act)**

**28 U.S.C. §1346(b)(1)**

186. Plaintiffs reallege and incorporate herein Paragraphs 1 through 185 above as though fully set forth herein.

187. The United States (SEC), by and through its employees acting within the scope of their employment, have abused the legal process by intentionally or negligently initiating and pursuing litigation against Plaintiffs, which litigation they know or should have known, was without merit and unfounded. Defendants have used and abused the legal process in order to cause unjustified settlements in bad faith and without cause. Such actions caused injuries to Plaintiffs' property - diminution, substantial reduction, and imminent destruction of the value of the NAI business. If the United States (SEC) were a private person, it would be liable to Plaintiffs for violation of Nevada state law and/or Massachusetts state law for bad faith "settlement" negotiations, abuse of process, and/or negligence or selective enforcement, all to the detriment of both NAI and LN.

188. As a direct and proximate result of Defendants' said wrongful acts in violation of 28 U.S.C. §1346(b)(1), Plaintiffs herein have been harmed in excess of $50 Million.

## WAIVER OF SOVEREIGN IMMUNITY

189. Plaintiffs reallege and incorporate herein Paragraphs 1 through 188 above as though fully set forth herein.

190. The Defendant, the United States of America (SEC) has waived sovereign immunity and has consented to being sued for its wrongful acts, pursuant to 28 U.S.C. §1346(b)(1) and 5 U.S.C. §702 and 28 U.S.C. §1491.

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**WHEREFORE**, Plaintiffs pray for judgment in their favor as follows:

1. As to the First Cause of Action, for damages against the SEC for breach of contract, in an amount in excess of Fifty Million Dollars according to proof.

2. As to the Second Cause of Action, for damages against the SEC for violation of Plaintiffs' Fifth Amendment rights to equal protection of the law under the United States Constitution, in an amount in excess of Fifty Million Dollars according to proof.

3. As to the Third Cause of Action, injunctive or other equitable relief enjoining Defendant from continuing to litigate and bring legal action against Plaintiffs.

4. As to the Fourth Cause of Action, for damages in excess of $50 Million according to proof.

5. That the Court order an award to NAI and LN, under the Equal Access to Justice Act (5 U.S.C. 504), attorney's fees, costs, and other expenses they have incurred. and

6. That the Court award such other and further relief as it may deem just and proper.

Dated: April 1, 2022

Respectfully submitted,

By: /s/ Samuel Kornhauser
Samuel Kornhauser

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Email: samuel.kornhauser@gmail.com

Attorney for Plaintiffs

**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs demand trial by jury in this action of all issues so triable, whether at law or in equity.

Dated: April 1, 2022

Respectfully submitted,

By: /s/ Samuel Kornhauser
Samuel Kornhauser

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Attorney for Plaintiffs

**CERTIFICATE OF SERVICE**

I certify that on April 1, 2022, a copy of the foregoing was electronically filed through the ECF system and will be sent electronically to the attorneys of record.

Dated: April 1, 2022

/s/ Samuel Rolnick
Samuel Rolnick

**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF FLORIDA**

CASE NO: _________________________

LOUIS NAVELLIER and WENDY NAVELLIER,

Plaintiffs

v.

U.S. SECURITIES AND EXCHANGE COMMISSION

Defendant
.
__________________________________ /

## <u>COMPLAINT FOR DECLARATORY JUDGMENT</u>

Plaintiffs, Louis Navellier and Wendy Navellier (collectively, the "Plaintiffs"), by and through undersigned counsel, hereby files this cause of action seeking a declaratory judgment against the U.S. Securities and Exchange Commission (the "SEC" or the "Defendant") and allege as follows:

## <u>JURISDICTION, PARTIES, AND VENUE</u>

1. Plaintiffs Louis Navellier and Wendy Navellier are husband and wife, and are residents of Palm Beach County, Florida.

2. Defendant the SEC is an independent federal agency headquartered in Washington, D.C.

3. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1346.

4. Venue is proper, pursuant to 28 U.S.C. § 1402(a)(1), because the Plaintiffs reside in this district.

## **FACTUAL BACKGROUND**

### ***Introduction***

5. This declaratory judgment action stems from the SEC's judgment related to violations of the Investment Advisers Act of 1940 (the "Advisers Act") against Louis Navellier and Navellier & Associates, Inc. ("NAI") and the SEC's commencement of efforts to begin enforcing that judgment.

### ***The SEC's Case Against Lousi Navellier and NAI***

6. On August 31, 2017, the SEC brought suit against Louis Navellier and NAI in the United States District Court for the District of Massachusetts ("the District Court") for violations of the Advisers Act from 2009 through 2013, and sought permanent injunctions, disgorgement and civil monetary penalties.

7. On August 21, 2019, the SEC moved for partial summary judgment and Louis Navellier and NAI cross-moved for summary judgment.

8. On February 13, 2020, after holding a hearing on the motions, the District Court entered its final judgment. Therein the District Court (1) permanently enjoined Louis Navellier and NAI from violating section 206(1) and 206(2) of the

Advisers Act; (2) held them jointly and severally liable for disgorgement in the amount of $28,964,571 plus prejudgment interest of $6,513,619; and (3) ordered NAI and Louis Navellier to respectively pay civil penalties of $2 million and $500,000.

9. Louis Navellier and NAI timely appealed from the District Court's judgment in favor of the SEC, denial of reconsideration and final judgment.

10. After the United States Supreme Court's June 22, 2020, decision in *Lius v. SEC*, 591 U.S. 71 (2020), the United States Circuit Court of Appeals for the First Circuit granted the SEC's motion for limited to remand to allow the District Court to make factual findings and conclusions of law regarding the disgorgement award in light of *Liu*.

11. On September 21, 2021, the District Court entered its amended final judgment, lowering the disgorgement amount to $22,7343,487 with prejudgment interest of $6,635,403, along with amended disgorgement findings of fact and conclusions of law. Louis Navellier and NAI timely appealed from the District Court's amended final judgment.

12. On October 13, 2021, Louis Navellier and NAI moved to stay enforcement of the amended final judgment pending their appeals and to reduce the supersedeas bond.

13. On October 19, 2021, Louis Navellier and NAI moved the District Court to alter or amend its amended final judgment.

14. On September 13, 2022, the District Court denied both of the October 2021 motions, and Louis Navellier and NAI timely appealed from the District Court's denial of both motions.

15. On October 7, 2022, Louis Navellier and NAI renewed their motion to reduce the supersedeas bond, which the District Court again denied. They timely appealed from the District Court's denial of their renewed motion.

16. On August 7, 2023, the First Circuit consolidated the four appeals.

17. On July 16, 2024, the First Circuit affirmed the District Court's judgments in the consolidated appeals.

18. Louis Navellier and NAI timely filed a petition for a writ of certiorari to the United States Supreme Court.

19. On June 6, 2025, the Supreme Court denied the petition for certiorari. Louis Navelier and NAI timely petitioned for rehearing which was denied on August 18, 2025.

***The SEC Begins Efforts to Enforce the Amended Judgments***

20. On July 7, 2023, the SEC issued its first set of requests for production of documents and its first set of interrogatories to Louis Navellier in aid of execution on its judgment (together "Execution Discovery").

21. In the Execution Discovery the SEC sought information not only about Louis Navellier's assets, but also Wendy Navellier's assets as well.

22. On September 5, 2023, Louis Navellier responded to the Execution Discovery, primarily objecting to most requests on a variety of bases, including his then-pending appeal.

23. On April 5, 2024, the SEC moved to compel based on Louis Navellier's responses to the Execution Discovery.

24. After the First Circuit affirmed the District Court's judgement, on January 14, 2025, the District Court granted the SEC's motion to compel related to the Execution Discovery.

25. On November 4, 2024, the SEC seized a tax return refund owed to Louis Navellier and Wendy Navellier, who had filed their tax return jointly. Wendy Navellier has appealed this seizure as to her portion of the tax return.

26. On March 5, 2025, the SEC issued a subpoena to J.P. Morgan Chase Bank seeking documents related to all entity accounts over which Louis Navellier has had signature authority since January 1, 1995.

### *Assets Held in Florida by Louis Navellier and His Wife Wendy Navellier as Tenants by the Entireties*

27. Louis and Wendy Navellier have been married since July 2, 1995.

28. Louis and Wendy Navellier purchased their home at 1440 S. Ocean Boulevard in Manalapan, Florida, on July 1, 1998 (the "Navellier Home"), well before the events at issue in the SEC's suit against Louis Navellier and NAI.

29. They purchased the Navellier Home as husband and wife and it is held by them as tenants by the entireties.

30. Louis and Wendy Navellier also have joint bank accounts at various banks in Florida that they also hold as tenants by the entireties.

31. Louis and Wendy Navellier own 13 vehicles registered in the state of Florida, all of which are held as tenants by the entireties.

32. Upon information and belief, the SEC intends to try to enforce its judgment against Louis Navellier and NAI against assets held in Florida by Louis Navellier and Wendy Navellier as tenants by the entirety.

**COUNT I**
**28 U.S.C § 2201-2202**
**(Declaratory Judgment)**

33. Louis and Wendy Navellier repeat, reassert, and realleges each of the allegations in paragraphs 5 through 33 as if fully set forth herein.

34. The SEC has a judgment against NAI and Louis Navellier.

35. The SEC does not have a judgment against Wendy Navellier.

36. The SEC is seeking to execute on its judgment against Louis Navellier and NAI.

37. Louis and Wendy Navellier hold various assets in this jurisdiction as tenants by the entirety.

38. In view of the SEC's efforts to execute on its judgment there is a real threat to assets held by Louis and Wendy Navellier as tenants by the entirety.

39. There is a justiciable question as to whether the SEC can execute its judgment against Louis Navellier on assets held by him and Wendy Navellier, his wife, as tenants by the entirety; and there is an actual and present need for declaration by the Court as to whether these assets are available for execution on the SEC's judgment.

40. Accordingly, Plaintiffs respectfully seek a declaratory judgment that assets held in Florida by them as tenants in the entirety are not available for the SEC to execute against in order to satisfy its judgment against Louis Navellier and NAI.

**WHEREFORE,** Plaintiffs, Louis Navellier and Wendy Navellier, demand judgment in their favor and against Defendant, the SEC, for declaratory relief under 28 U.S.C. §§ 2201-2202 as to the fact that the SEC cannot execute its judgment against Louis Navellier and NAI on assets held by Louis Navellier and Wendy Navellier as tenants in the entirety, and for such further and other relief as the Court deems just and proper.

## PRAYER FOR RELIEF

**WHEREFORE**, Plaintiffs hereby petition this Court for an order providing for the following relief:

A. A declaration that the SEC cannot execute its judgment against Louis Navellier and NAI on assets held by Louis Navellier and Wendy Navellier as tenants in the entirety; and

B. Pursuant to 28 U.S.C. § 2202, any other relief these circumstances may require this court needs necessary or proper.

## JURY DEMAND

Plaintiffs hereby demand a trial by jury.

Dated: September 8, 2025

| | |
|---|---|
| **BLACK SREBNICK, P.A.**<br>201 South Biscayne Boulevard<br>Suite 1300<br>Miami, Florida 33131<br>Phone: (305) 371-6421<br><br>By: /s/ Jared Lopez<br>Jared Lopez, Esq.<br>Florida Bar No. 103616<br>Zaharah R. Markoe, Esq.<br>Florida Bar No. 504734<br>jlopez@royblack.com<br>zmarkoe@royblack.com<br>civilpeadings@royblack.com<br>*Attorneys For Plaintiffs, Louis Navellier and Wendy Navellier* | **LAW OFFICES OF SAMUEL KORNHAUSER**<br>Law Offices of Samuel Kornhauser<br>155 Jackson Street, Suite 1807<br>San Francisco, California, 94111<br>Telephone: (415) 981-6281<br><br>By: /s/ Samuel Kornhauser<br>Samuel Kornhauser, Esq.<br>CA Bar No. 83528<br>Email: samuel.kornhauser@gmail.com<br><br>*Pro hac vice admission anticipated*<br><br>*Attorney For Plaintiffs, Louis Navellier and Wendy Navellier* |

Save As... | Print | Reset

JS 44 (Rev. 04/21) FLSD Revised 12/02/2022

# CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)* **NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.**

**I. (a) PLAINTIFFS** LOUIS NAVELLIER and WENDY NAVELLIER

**DEFENDANTS** U.S. SECURITIES AND EXCHANGE COMMISSION

**(b)** County of Residence of First Listed Plaintiff Palm Beach County, FL
*(EXCEPT IN U.S. PLAINTIFF CASES)*

County of Residence of First Listed Defendant
*(IN U.S. PLAINTIFF CASES ONLY)*

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

**(c)** Attorneys *(Firm Name, Address, and Telephone Number)*
Jared Lopez, Esq. and Zaharah R. Markoe, Esq.
Black Srebnick, P.A., 201 South Biscayne Blvd., Suite 1300
Miami, FL 33131, 305-371-6421

Attorneys *(If Known)*

**(d)** Check County Where Action Arose: ☐ MIAMI- DADE ☐ MONROE ☐ BROWARD ☒ PALM BEACH ☐ MARTIN ☐ ST. LUCIE ☐ INDIAN RIVER ☐ OKEECHOBEE ☐ HIGHLANDS

## II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question *(U.S. Government Not a Party)*
- ☒ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

## III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*

*(For Diversity Cases Only)*

| | PTF | DEF | | PTF | DEF |
|---|---|---|---|---|---|
| ☐ Citizen of This State | ☐ 1 | ☐ 1 | Incorporated *or* Principal Place of Business In This State | ☐ 4 | ☐ 4 |
| ☐ Citizen of Another State | ☐ 2 | ☐ 2 | Incorporated *and* Principal Place of Business In Another State | ☐ 5 | ☐ 5 |
| Citizen or Subject of a Foreign Country | ☐ 3 | ☐ 3 | Foreign Nation | ☐ 6 | ☐ 6 |

## IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions

**CONTRACT**
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

**TORTS**

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Med. Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

**FORFEITURE/PENALTY**
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

**BANKRUPTCY**
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

**INTELLECTUAL PROPERTY RIGHTS**
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent – Abbreviated New Drug Application
- ☐ 840 Trademark
- ☐ 880 Defend Trade Secrets Act of 2016

**OTHER STATUTES**
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit (15 USC 1681 or 1692)
- ☐ 485 Telephone Consumer Protection Act (TCPA)
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☒ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

**LABOR**
- ☐ 710 Fair Labor Standards Acts
- ☐ 720 Labor/Mgmt. Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

**SOCIAL SECURITY**
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

**REAL PROPERTY**
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

**CIVIL RIGHTS**
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

**PRISONER PETITIONS**

**Habeas Corpus:**
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

**Other:**
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee – Conditions of Confinement

**FEDERAL TAX SUITS**
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

**IMMIGRATION**
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

## V. ORIGIN *(Place an "X" in One Box Only)*

- ■ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Re-filed (See VI below)
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district *(specify)*
- ☐ 6 Multidistrict Litigation Transfer
- ☐ 7 Appeal to District Judge from Magistrate Judgment
- ☐ 8 Multidistrict Litigation – Direct File
- ☐ 9 Remanded from Appellate Court

## VI. RELATED/ RE-FILED CASE(S)

(See instructions): a) Re-filed Case ☐YES ☒ NO b) Related Cases ☐YES ☒ NO
JUDGE: DOCKET NUMBER:

## VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause *(Do not cite jurisdictional statutes unless diversity)*:
28 USC §§ 2201-2202 - single count complaint seeking declaratory judgment.
LENGTH OF TRIAL via 2 days estimated (for both sides to try entire case)

## VIII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

**DEMAND $**

CHECK YES only if demanded in complaint:
**JURY DEMAND:** ■ Yes ☐ No

**ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE**

DATE: September 8, 2025

SIGNATURE OF ATTORNEY OF RECORD: /s/ Jared Lopez

**FOR OFFICE USE ONLY : RECEIPT #** **AMOUNT** **IFP** **JUDGE** **MAG JUDGE**

0001

THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of: )
) File No. B-03078-A
NAVELLIER & ASSOCIATES, INC. ) Amended: 12/2/2025

SUBJECT: Audio of 11-17-25 Meeting of Creditors
3 (1).m4a
PAGES: 1 through 23

AUDIO TRANSCRIPTION

Diversified Reporting Services, Inc.
(202) 467-9200

0002

P R O C E E D I N G S

Audio of 11-17-25 Meeting of Creditors 3 (1).m4a

MR. DAY: We are now on the record for the continued meeting of creditors for Chapter 11 debtor, Navellier & Associates, Inc., case number is 25-50820. This case was commenced on September 5th, 2025. Today s date is November 17th, 2025. It s a few minutes after our 2:00 p.m. start time, and we re here for a continued setting of this meeting. The U.S. Trustee has already conducted an initial setting of the meeting. We ve gone through all of our regular admonitions, I ll just repeat a few of them here.

First, my name is Jared Day. I m a trial attorney with the office of the United States Trustee. This is a meeting that is required under Section 341(a) of the bankruptcy code. The purpose of this meeting is to allow for an examination of the debtor s representative under oath. Questions may include, but are not limited to, why the case was filed, the operation of any business in the prospects for the debtor s reorganization.

I ll initially question the debtor s representative and then I ll turn the time over to any creditors or parties of interest that have

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questions.

We are conducting this meeting telephonically. It s being digitally recorded. If there s anyone that would like a copy of the audio file for this meeting, you can just send me an e-mail and we ll make arrangements to get you a copy. My e-mail address is jared.a.day@usdoj.gov. And the U.S. Trustee keeps these audio recordings for two years after Chapter 11 cases are closed.

So, let s go right into appearances, and let s start by taking an appearance from debtor s general bankruptcy counsel. Norma, if you want to go first, and then Sally.

MS. GUARIGLIA: Good afternoon, this is Norma Guariglia, co-general bankruptcy counsel for the debtor. Thank you.

MS. ARMSTRONG: Yes, good afternoon. Sally Armstrong, co-general counsel -- general bankruptcy counsel for the debtor.

MR. DAY: Okay, good morning.

And then we have the debtor s responsible individual, or representative, on the line. Mr. Navellier, I ll have you state your name for the record.

MR. NAVELLIER: Louis Gene, G-E-N-E,

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Navellier.

MR. DAY: Okay, and Mr. Navellier, we put you under oath during the first setting of this meeting, so I ll just remind you that you remain under oath. And, do you understand that your testimony here today remains under penalty of perjury?

MR. NAVELLIER: Yes, sir.

MR. DAY: Okay. Let s see. As I mentioned, we went through all, kind of, our regular admonitions. I recognize Mr. Navellier s voice, so I can confirm we do have the same individual that appeared for the first setting of this meeting.

In terms of the creditor s committee, just - first question for you, and/or the debtor s general bankruptcy counsel, do you currently find any need to amend the list of the debtor s largest -- twenty largest unsecured creditors, or is the list that is currently on file still accurate?

MR. NAVELLIER: Looks accurate. (Inaudible).

MR. DAY: Okay. And, Norma and/or Sally, do you agree with that? Any -- as you re -- as you continue to prepare the debt schedules in this case, which were filed after the first setting of this

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meeting, did you come across any reason that the top twenty list would need to be amended?

MS. GUARIGLIA: This is Norma Guariglia. No, the current list is still accurate because all of the creditors that we subsequently added are all contingent on liquidated and disputed for zero amounts, so it did not change the twenty highest in this group.

MR. DAY: Okay. And, let s see. The debtor filed a notice of continued first meeting of creditors on November 6th, 2025. That s Docket 39. I didn t see -- there s no certificate of service filed with that document. Can debtor s general bankruptcy counsel attest that the service was completed on that same date, or one or two days after that? Again, that date is November 6th, 2025.

(No audible response.)

MR. DAY: And - did you --

MR. NAVELLIER: (Inaudible.)

MR. DAY: Do I still have everyone on the line?

(Simultaneous conversation.)

MS. ARMSTRONG: So, Mr. Navellier and I are still on the line, Jared. And, yes. Either Norma and I can attest to that because we worked with Omni

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Claims Solution on that mailing.

MR. DAY: Okay, so on the forthcoming noticing, we ll call it the administrative agent, they took care of the mailings for that notice of continued 341 meeting? Is that correct?

MS. ARMSTRONG: Yes, they did.

MR. DAY: Okay.

MS. ARMSTRONG: And -- yeah. Correct.

MR. DAY: Okay, and do you know specifically what date they would ve mailed those out? Would it have been November 6th? Or close thereto?

MS. ARMSTRONG: It was very close thereto.

MR. DAY: Okay.

MS. ARMSTRONG: And I can find that out for you.

MR. DAY: Okay. Yeah, I think the reason for the question is, we just want to make sure that sufficient time has passed for all of the creditors listed on the Schedule E/F to receive notice of the meeting, which would inform whether we should continue the meeting again.

Does debtor s general bankruptcy counsel have an opinion on that? In your view, would it be beneficial to continue this meeting once more, or do

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you think sufficient amount of notice of the continued meeting has been provided?

(Simultaneous conversation.)

MS. ARMSTRONG: I -- sorry, go ahead. My apologies.

MS. GUARIGLIA: Sorry, no. Sorry, yeah, I got dropped off the call. So, I jumped back on. Sorry if I left you all hanging, but -- Jared, to answer your first question, the service was completed on November 7th.

MR. DAY: Okay, perfect.

MS. GUARIGLIA: It was the day after the notice was filed. And I think Omni is waiting to file the certificate cause we re filing the application to employ it had been going back and forth to finalize that.

So, I mean, I think that creditors got enough notice, because most of them are 10 to 12 years old, if they re even creditors, right? I mean, we don t know that they really even are. I would think most of them, the majority of them, do not have claim. But that s my opinion, anyway. Sally might have a different opinion from mine.

MS. ARMSTRONG: I -- again, Sally Armstrong. I agree, and in fact Mr. Day, Norma and I

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have already received one e-mail about a mailing that went to an address that -- where we, a potential investor creditor no longer lived. And it has already gotten from that address to the representative. So I think there s been plenty of time.

MR. DAY: Okay. Yeah, it sounds like, if the service took place on November 7th, it s been about 10 days. And I inquired with folks on our end, and I think we are comfortable concluding the meeting today. So, sounds like we re all on the same page there.

Okay. And then, I m just going to pull up, this would be Docket No. 33. And that was the Schedule A/B. Just wanted to get a status update from you, Mr. Navellier, regarding the debtor in possession bank accounts.

Do you know where we stand with those?

MR. NAVELLIER: Yes, Norma -- got Western Alliance to comply with the court order. And then, we are consolidating our other account into Western Alliance, so it ll all be one master account. The main thing that s going on is, the other account which is -- I m sorry, I m trying to find it here. It was on our form here. Yeah, First Citizens Bank,

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they get all the money from billing, okay? And, we get most of the money from Schwab. And the -- we re in the -- we ve been working with Schwab to get the ACH number changed. My -- my CFO died, he had cancer and died last week. So -- or, two weeks ago. I m sorry. So, I had to fly to Reno, get all the accounts changed, but we had a glitch with Schwab. But that should be verified no later than tomorrow, and then we have to go through all the, who deposited money, and our goal is to close -- close the First Citizens Bank and then have everything in person at an independent bank, which is now Western Alliance.

MR. DAY: Okay. And, I m sorry to hear about the CFO. I didn t know he was ill at the time of our first setting this meeting.

So, the

MS. GUARIGLIA: Jared?

MR. DAY: Yeah?

MS. GUARIGLIA: Real quickly, this is Norma Guariglia. I actually just received an e-mail from the bank with the signature cards for the -- account, because I had asked for those so I could give them to you. So, I will e-mail those to you here in a second.

MR. DAY: Oh, that s great. That s

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perfect. Okay.

MS. GUARIGLIA: Yep.

MR. DAY: Yeah, I think everything has gone to plan in terms of the cash management motion and the interim and final orders on that motion. So that is no longer an issue. We covered the administrative requirements during the first setting of this meeting, so I think that kind of leaves us with

Docket 35, which was filed after the first setting of the meeting, and that is the debtor s Declaration Under Penalty of Perjury for Non-Individual Debtors. It has a summary of assets and liabilities for non-individuals, has a Schedule D for any secured creditors, a Schedule E/F for any unsecured creditors of the debtor, and then we have Schedule G, executory contracts, unexpired leases, and then Schedule H, recurring co-debtors. So let me just confirm some of the information.

Mr. Navellier, for pre-petition, unexpired leases, or executory contracts, there s just the one listed. It indicates it s a non-residential real property lease for a business premises located at 1st East Liberty Street, in Reno, Nevada. Is that the debtor s only pre-petition, unexpired lease?

MR. NAVELLIER: Correct.

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MR. DAY: Okay. And then, on Schedule H, it asks for any co-obligers with the debtor on any debtor s debts, and we have yourself with regard to the U.S. Securities and Exchange Commission debt, and yourself with regard to the Donald Putnam and Grail Partners, LLC debt. Does the debtor have any other co-obligers?

MR. NAVELLIER: We have the State of New York in there.

MR. DAY: Did you say State of New York ?

MR. NAVELLIER: Yeah.

MR. DAY: So, is there a non-debtor third-party that s obligated on that debt as well?

MR. NAVELLIER: Uh, I apologize. My CFO would know that but he died. But, we -- the State of New York filed a tax lean on our business, at least over $140,000. That is disputed, we have no idea what that lean was for.

MR. DAY: Okay. And, who is obligated on that tax debt besides the debtor, if anyone?

MR. NAVELLIER: It was Navellier & Associates, Inc.

MR. DAY: Okay. Okay.

I think we re good there.

So, is that a -- Norma, is that a secured

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obligation then? Is that what I m hearing? Or no.

MS. GUARIGLIA: Uh, Jared, I think it s with it on Schedule E.

MR. DAY: Yeah, I did see -- I saw them in E, and he s indicating --

MS. GUARIGLIA: Yeah, I did not see their lean information, I mean, I could be wrong on that. So yeah, they re listed on Schedule E, Department of Taxation. Uh, yeah, I did not see any lean information --
Sally and I will talk to Mr. Navellier and try to figure that out. I don t know what the lean would have touched, too. Because I don t know that Navellier has assets in New York.
MR. DAY: Okay.
MS. GUARIGLIA: Anyway, I haven t seen any of that, so we ll talk about it and see if it needs to get moved to Schedule D. Yeah.
MR. DAY: Okay. And, I didn t check the claims register prior to the meeting. You don t know if they filed a proof claim, do you?
MR. NAVELLIER: No, I don t think so. But -- go ahead.
MS. GUARIGLIA: They might be one of the only creditors that filed a claim thus far, let me

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see real quick.
There s been one claim filed.
MR. DAY: Oh, okay.
MS. GUARIGLIA: And, it was an agency. Oh, no. It s the City of Philadelphia, Department of Revenue. I knew it was some department of revenue, but it was -- it s not New York.
MR. DAY: Okay. And that s City of Philadelphia. Is that one filed as a secured debt in any way? Or is that one filed as unsecured?
MS. GUARIGLIA: That one is filed as -- here, I can tell you here in one second.
(Pause.)
MS. GUARIGLIA: It s just filed as a unsecured claim.
MR. DAY: Okay. Alright. So, Mr. Navellier, besides this New York tax agency, does the debtor have any other secured debts, in your view?
MR. NAVELLIER: No.
MR. DAY: Okay. And, from your perspective, has the debtor listed all of it s unsecured obligations, at least all of those that you re aware of?
MR. NAVELLIER: Yes, sir.
MR. DAY: Okay. And I understand the

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priority wage claims, I do see the New York, Department of Taxation as a tax liability. On the unsecured claims, most of them going on for over a

thousand pages, are -- appear to be individuals and entities with a note that says Potential damages arising from investments in Vireo AlphaSector in 2011 through 2013 .
Would you and/or the debtor s counsel just kind of give us your best explanation for what those claims represent?
MR. NAVELLIER: Sure. We managed money for over 6,600 clients. We sold the business in September of 2013. They all were given -- there s these consent rules that the SEC has that we had to comply with, so they all effectively consented to the sale of the business, otherwise they could opt out and not be sold. The business was sold to F2, another investment advisor. Okay?
What happened is, the SEC decided to claw back the asset sale proceeds, the 14 million, and the management.
And the First Circuit -- the appellate court found me guilty, because they -- they shut down that other manager, F2, in 2017 in a case. I was not a party to that case, but they said because of that
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case, I m guilty and I caused harm.
I don t know how I did that, but that s what happened. And so, the -- obviously the money has to go to the shareholders -- I mean, to the clients. And we re -- petitioned the clients for damages, and if they have no damages, we would respectfully ask it to be dismissed.
I do know that as a group, the clients made 220 million, but there were a minority of people that I believe lost some money. About 20-some thousand.
So, the minority of these people should have claims.
MR. DAY: Okay.
MR. NAVELLIER: What really makes this case very awkward is the asset sale.
Obviously when you sell a business, you don t normally give much to people who weren t shareholders. On top of keyholders. I m not a mutual entity, so I have no idea of what the First Circuit was doing. I have no idea how I can be convicted in another case where I was not a party to. Or at the trial.
MR. DAY: Okay. That is helpful.
When you re referring to the business, what was the name of the business that was sold?
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MR. NAVELLIER: F2 Advisors.

MR. DAY: Okay.

MR. NAVELLIER: And they also had to go into bankruptcy. They tried to claw back the 14 million, and their bankruptcy court denied it.

MR. DAY: I see.

MR. NAVELLIER: But the First Circuit still tried to get it back, even though it s already been denied by the F2 bankruptcy court.

MR. DAY: Okay. And did I --

(Simultaneous conversation.)

MR. NAVELLIER: Go ahead. Sorry, Norma. Go ahead.

MS. GUARIGLIA: I just want to clarify for the record, when Mr. Navellier says he was found guilty, there was no -- there s no criminal conviction or proceeding made. I think he means to say liable, so -- the judgement. And that s the SEC judgement, but there is no criminal liability, right?

MR. NAVELLIER: Yep.

(Simultaneous conversation.)

MR. NAVELLIER: We re very grateful the courts said I did not manage this, the assets, and I did not sell this product. So I m very grateful the courts said that, but they held me liable -- I forget



what it s called. Causing connection.

MR. DAY: Hmm.

MR. NAVELLIER: And they said that I was causally connected, and so therefore, I am liable.

MR. DAY: Okay, I see.

MR. NAVELLIER: Even though I had nothing to do with it, but -- other than selling it and getting rid of it.

MR. DAY: Yeah, okay. And that makes up the bulk of these unsecured claims, and they re all listed at zero. So is the idea to kind of give them some time and see if they file claims? Would they have -- basically, do they hold like, is it litigation claims against the debtor -- potential litigation claims against the debtor?

MS. GUARIGLIA: Can I answer that, Jared?

MR. DAY: Yeah.

MS. GUARIGLIA: Because I think it s more of a legal question. Okay. Correct. So, in that SEC judgement, okay, there s a portion, the majority of it, is for this this disgorgement. Okay? And a disgorgement is supposed to go to the victims that allegedly suffered harm, right? And the SEC was never able to prove or show that there were actually any victims that suffered harm. And that s the issue

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that was on appeal, okay?

And now there s a circuit wait on that, because now there s varying opinions now, among the circuits, as to whether the SEC should have gotten that disgorgement, because it did not prove that there was any pecuniary harm to any -- so, that s what we re doing is, these are all the potential investors in that financial product that could have suffered harm, that would be the ones, would be the beneficiaries, of this disgorgement. Okay? And so, they ll have their opportunity to file claim and show that they did suffer harm, if they did.

What Mr. Navellier said, overwhelmingly, the group made a profit on this sale, although there could be a few minor investors that suffered losses. And so, once that s established in the bankruptcy court, then the debtor will propose a plan to pay that disgorgement pro -- or, portion of the judgement to the investors, because that s who is supposed to get the money. The money isn t supposed to go to the SEC for disgorgement.

MR. DAY: I see.

MS. GUARIGLIA: Does that make sense?

MR. DAY: Yeah, it does.

MR. NAVELLIER: The supreme court -- well,

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before it went to the appellate court, twenty days after the federal, first trial with the federal judge, twenty days later, the supreme court (inaudible) ruled the government is not entitled to disgorgement, because there was no law. Okay? So we were relieved of that, right? And then the -- but then the SEC said let s give it to the people , which are the clients. And that s what we re doing. We re in the process of determining that.

MR. DAY: Okay. And, for one of the clients to participate or make a claim for, you know, damages or receiving any of the disgorgement funds, do they need to make -- have any, like, some sort of showing of proof to a non-bankruptcy court?

That s probably a question for you, Norma.

MS. GUARIGLIA: No. I mean, we would just adjudicate it through a claim objection process in the bankruptcy court. But, you know, that seems to be the most efficient and quickest way to get these folks money if they did indeed suffer any financial harm.

MR. DAY: I see.

MS. GUARIGLIA: And so, you know, they file a claim and then we would review it, and then, you know, if it seems valid, there would be no objection.

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And if it, you know, if it s overstated or whatever, then we would just have a regular claim objection process in the bankruptcy court.

MR. DAY: Okay. And let me just ask, I ve heard a couple of people join, did -- do we have anyone on the line that s called in for a separate meeting? The creditors for Stick s Logistics?

(No audible response.)

MR. DAY: Okay, good. We re now a half hour since 2:00 p.m., so I think we ve caught everyone in that other case.

Alright, well let s see. Those were the amended schedules that were filed after the first meeting, and I understand that -- I saw your e-mail, Norma. The debtor s going to be filing its application to employ an administrative agent on shortened time. Do you know when that ll be filed?

MS. GUARIGLIA: I believe we will file the application between today and tomorrow. So, the application for Sally s firm and my firm, we will just do on regular notice. Jared, I think you saw the e-mail with the court clerk -- calendar clerk that gave us a hearing date --

MR. DAY: Yeah.

MS. GUARIGLIA: -- in December.

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MR. DAY: Yeah.

MS. GUARIGLIA: December 16th, I believe.

So we ll fit the attorney employment applications on that, and then the claims noticing agent, we will act for sure with the county on that.

And I believe you had agreed to that before. But I can t -- can I confirm that you agreed to shortened time on that one?

MR. DAY: Oh, yeah. Yeah. You can indicate that U.S. Trustee consents to an OST on that one.

Okay, well then let s see if anyone else has joined us. Again, we re here for the continued meeting of creditors of Navellier & Associates, Inc. for anyone that joined late.

Is there anyone on the line today that has any questions for the debtor s representative?

(No audible response.)

MR. DAY: Okay, I am not hearing any and I don t think we have any other matters outstanding

that would cause us to continue the meeting again. I ll just open it up. Any other comments from general bankruptcy counsel and/or Mr. Navellier that you d like to put on the record this afternoon?
(Simultaneous conversation.)

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MR. NAVELLIER: My goal is to address and find any people who were harmed, deal with them, and we want to close the case and move on. We pay our bills, so we are in the process of trying to do that.
MR. DAY: Okay. And was -- Norma, were you trying to say something as well?
MS. GUARIGLIA: I was. I wanted to correct the record. I did find the proof of claim that was filed by the Department of Taxation. So I -- they did actually file a claim, and it is Claim No. 2 in the case, and it is unsecured.
MR. DAY: Unsecured? Okay. And that s consistent with the schedules. Okay.
Alright, well I don t see any further reason to continue this meeting again. Again, I ll just ask for the record, is there anyone on the line that has any questions for Mr. Navellier before we conclude this meeting?
(No audible response.)
MR. DAY: Okay, hearing none.
Again, Jared Day for the U.S. Trustee. We will go ahead and conclude the meeting of creditors in this case, and we are now off the record.
(End of recording.)

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I, Kyleigh McGinnis, hereby certify that the foregoing transcript is a complete, true, and accurate transcription of all matters contained on the recorded proceedings in the matter of:

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Kyleigh McGinnis, Transcriber