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8
9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**
11 **WESTERN DIVISION**

12 **CV 08-06278 GAF (SSx)**

13 SECURITIES AND EXCHANGE
14 COMMISSION,

15 Plaintiff,

16 vs.

17 WEALTHWISE, LLC and
18 JEFFREY A. FORREST,

19 Defendants.

Case No.:

**COMPLAINT FOR VIOLATIONS OF THE
FEDERAL SECURITIES LAWS**

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1 Plaintiff Securities and Exchange Commission (“Commission”) alleges as
2 follows:

3 **JURISDICTION AND VENUE**

4 1. This Court has jurisdiction over this action pursuant to Sections 20(b),
5 20(d)(1) and 22(a) of the Securities Act of 1933 (“Securities Act”), 15 U.S.C.
6 §§ 77t(b), 77t(d)(1) & 77v(a), Sections 21(d)(1), 21(d)(3)(A), 21(e) and 27 of the
7 Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §§ 78u(d)(1),
8 78u(d)(3)(A), 78u(e) & 78aa, and Sections 209(d), 209(e)(1) and 214 of the
9 Investment Advisers Act of 1940 (“Investment Advisers Act”), 15 U.S.C.
10 §§ 80b-9(d), 80b-9(e)(1) & 80b-14. Defendants have, directly or indirectly, made
11 use of the means or instrumentalities of interstate commerce, of the mails, or of the
12 facilities of a national securities exchange, in connection with the transactions,
13 acts, practices, and courses of business alleged in this Complaint.

14 2. Venue is proper in this district pursuant to Section 22(a) of the
15 Securities Act, 15 U.S.C. § 77v(a), Section 27 of the Exchange Act, 15 U.S.C.
16 § 78aa, and Section 214 of the Investment Advisers Act, 15 U.S.C. § 80b-14,
17 because certain of the transactions, acts, practices, and courses of conduct
18 constituting violations of the federal securities laws occurred within this district
19 and Defendants reside in this district.

20 **SUMMARY**

21 3. This matter involves the unlawful failure to disclose a conflict of
22 interest by WealthWise, LLC (“WealthWise”), an investment adviser based in San
23 Luis Obispo, California, and its owner and principal, Jeffrey A. Forrest (“Forrest”).
24 From April 2005 to October 2006, Forrest recommended that more than 60
25 WealthWise clients invest approximately \$40 million in Apex Equity Options
26 Fund, LP (“Apex”), a hedge fund managed by Thompson Consulting, Inc. (“TCI”)
27 in Salt Lake City, Utah. Forrest told WealthWise clients that Apex would protect
28 their principal while generating 3% monthly returns through a purportedly

1 innovative options trading method. Forrest failed to disclose, however, that
2 WealthWise had a significant conflict of interest. Pursuant to a side agreement
3 between WealthWise and the president of TCI, WealthWise received a portion of
4 the performance fee that Apex paid TCI for all WealthWise assets invested in
5 Apex. Investments from WealthWise clients comprised over 90% of Apex's
6 assets, and between April 2005 and September 2007, WealthWise received an
7 estimated \$388,401.80 in performance fees from TCI. Apex suffered massive
8 losses in August 2007 as a result of TCI's risky trading strategy, and WealthWise
9 clients lost almost their entire investments.

10 4. By engaging in the conduct described in this complaint,
11 WealthWise and Forrest, directly and indirectly, engaged in acts, practices, and
12 courses of business in violation of Section 17(a) of the Securities Act, 15 U.S.C. §
13 77q(a), Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5
14 thereunder, 17 C.F.R. § 240.10b-5, and Sections 206(1) and 206(2) of the
15 Investment Advisers Act, 15 U.S.C. §§ 80b-6(1) & 80b-6(2).

16 5. The Commission brings this action for a judgment permanently
17 restraining and enjoining WealthWise and Forrest against future violations of the
18 federal securities laws, requiring an accounting, ordering disgorgement of unlawful
19 profits and prejudgment interest thereon, and imposing civil penalties against each
20 defendant.

21 THE DEFENDANTS

22 6. WealthWise, LLC is a California limited liability company and
23 investment adviser based in San Luis Obispo. WealthWise has been registered
24 with the Commission since December 15, 1997 and provides investment advisory
25 services from its main office in San Luis Obispo and branch offices in Ogden,
26 Utah; Westlake Village, California; and San Diego, California. As a registered
27 investment adviser, WealthWise must file with the Commission a Form ADV,
28 which requires the disclosure of certain material information about the investment

1 adviser. WealthWise was required to provide prospective and current clients a
2 copy of either Part II of the Form ADV or a document containing at least the
3 information required by Part II.

4 7. Jeffrey A. Forrest, age 53, resides in San Luis Obispo, California.
5 Forrest established WealthWise in 1997 and is the firm's president, chief executive
6 officer, and chief compliance officer.

7 RELATED NON-PARTIES

8 8. Apex Equity Options Fund, LP is a Delaware limited partnership and
9 hedge fund. Approximately \$47 million was invested in Apex, which claimed to
10 use a "short straddle or strangle" strategy that involved writing offsetting puts and
11 calls on major stock market indices.

12 9. Thompson Consulting, Inc. is a Utah corporation and investment
13 adviser based in Salt Lake City. TCI managed Apex, and charged Apex a
14 performance fee of 25% of the gain in net asset value over each quarter.

15 THE FRAUDULENT FAILURE TO DISCLOSE

16 A. THE APEX OFFERING

17 10. TCI first established Apex's trading account in April 2005 and began
18 soliciting investors immediately. By June 2007, Apex had approximately \$47
19 million in assets under management. TCI told investors that Apex's investment
20 strategy was trading options in a "short straddle or strangle" by offsetting put and
21 call contracts on an underlying market index to obtain profits generated from the
22 premiums paid by purchasers of the options. TCI represented that Apex's
23 investment strategy could result in annual returns of 36% and also represented that
24 any principal invested in Apex was not at risk.

25 11. On or about March 2007, TCI began investing Apex's funds in a
26 riskier manner than the one it had initially represented to investors. As a result,
27 Apex suffered massive losses, dropping from \$39 million in value on July 31, 2007
28 (already down from the approximately \$47 million in June) to about \$315,000 on

1 August 16.

2 **B. WEALTHWISE AND FORREST'S INVOLVEMENT IN APEX**

3 12. Forrest invested nearly \$40 million of WealthWise clients' assets in
4 Apex, which constituted the vast majority of Apex's total assets as well as
5 approximately half of WealthWise's total assets under management. Forty-seven
6 of WealthWise's clients had invested between 25% and 100% of their portfolios in
7 Apex when the fund suffered massive losses on August 16, 2007.

8 13. Forrest, as WealthWise's president and chief executive officer,
9 controls the firm. Forrest selects all of the investments WealthWise recommends
10 to its clients. He learned about Apex in or about March 2005 from a business
11 associate. He then traveled to Apex's Utah headquarters to conduct a half-day due
12 diligence session that, among other things, consisted of reviewing Apex's private
13 placement memorandum (the "Apex PPM") and questioning TCI principals about
14 the Apex PPM and Apex's investment strategy. Forrest recommended Apex to
15 two WealthWise clients several days later.

16 14. Forrest memorialized his decision to recommend Apex in a May 9,
17 2005 Letter of Engagement (the "Letter") between WealthWise and TCI. The
18 Letter, signed by Forrest and TCI's president, provided that TCI would receive a
19 performance fee set at 25% of Apex's net realized profits, calculated and payable
20 quarterly. The Letter further provided that WealthWise would be paid one eighth
21 of TCI's performance fee for all WealthWise clients invested in Apex, also
22 calculated and payable quarterly. TCI and WealthWise received a performance fee
23 in quarters where Apex profited but received no fee in quarters where Apex did not
24 profit. TCI paid WealthWise approximately \$388,401.80 in performance fees over
25 the course of the relationship.

26 15. Nearly all of the WealthWise clients who invested in Apex were
27 referred by Forrest. From April 2005 through October 2006, Forrest recommended
28 Apex to WealthWise clients in a variety of ways, including one-on-one discussions

1 about Apex held in person or over the telephone and three San Luis Obispo-based
2 investment seminars held jointly with TCI principals. Forrest was the primary
3 source of information about Apex for WealthWise clients. TCI sent Forrest copies
4 of Apex sales materials, including the Apex PPM, which Forrest then distributed
5 directly to WealthWise clients. From April 2005 through August 2007, Forrest
6 also drafted and disseminated periodic newsletters about Apex to WealthWise
7 clients. Apex's PPM and other sales materials do not mention TCI's performance
8 fee sharing arrangement with WealthWise.

9 **C. WEALTHWISE AND FORREST'S FAILURE TO DISCLOSE RECEIPT OF**
10 **PERFORMANCE FEES**

11 16. WealthWise and Forrest did not disclose to WealthWise clients
12 WealthWise's receipt of performance fees from TCI. Forrest understood the
13 conflict of interest created by this additional compensation and the risk of
14 misleading WealthWise clients that it posed.

15 17. Forrest's attorney advised him in early 2007 to update WealthWise's
16 Form ADV Part II to disclose to WealthWise clients a full description of the
17 performance fee arrangement and the resulting conflict of interest. Forrest
18 nevertheless waited until September 13, 2007 to disseminate to WealthWise clients
19 an updated Form ADV Part II ("the WealthWise ADV"). Even then the updated
20 WealthWise ADV described the performance fee arrangement in cursory and
21 unclear fashion. Forrest distributed the updated WealthWise ADV almost two
22 months after Apex's collapse and on the same day that Commission staff notified
23 him of its impending cause examination of WealthWise.

24 18. The failure to disclose the conflict of interest was material, in that a
25 reasonable investor would consider it important in deciding whether to follow the
26 recommendation to invest in Apex, that WealthWise and Forrest had a financial
27 interest in making such recommendations. At least one WealthWise client did not
28 know WealthWise and Forrest received performance fees until September 17,

1 2007, and had he known about the performance fee issue earlier, he never would
2 have invested in Apex.

3 **FIRST CLAIM FOR RELIEF**

4 **FRAUD IN THE OFFER OR SALE OF SECURITIES**

5 **Violations of Section 17(a) of the Securities Act**

6 **(Against Both Defendants)**

7 19. The Commission realleges and incorporates by reference paragraphs 1
8 through 18 above.

9 20. Defendants WealthWise and Forrest, and each of them, by engaging
10 in the conduct described above, directly or indirectly, in the offer or sale of
11 securities by the use of means or instruments of transportation or communication
12 in interstate commerce or by use of the mails:

- 13 a. with scienter, employed devices, schemes, or artifices to
14 defraud;
- 15 b. obtained money or property by means of untrue statements of a
16 material fact or by omitting to state a material fact necessary in
17 order to make the statements made, in light of the
18 circumstances under which they were made, not misleading; or
- 19 c. engaged in transactions, practices, or courses of business which
20 operated or would operate as a fraud or deceit upon the
21 purchaser.

22 21. By engaging in the conduct described above, Defendants WealthWise
23 and Forrest violated, and unless restrained and enjoined will continue to violate,
24 Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a).

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1 **SECOND CLAIM FOR RELIEF**

2 **FRAUD IN CONNECTION WITH THE PURCHASE OR SALE OF SECURITIES**

3 **Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder**

4 **(Against Both Defendants)**

5 22. The Commission realleges and incorporates by reference paragraphs 1
6 through 18 above.

7 23. Defendants WealthWise and Forrest, and each of them, by engaging
8 in the conduct described above, directly or indirectly, by use of means or
9 instrumentalities of interstate commerce, of the mails, or of the facilities of a
10 national securities exchange, with scienter:

- 11 a. employed devices, schemes, or artifices to defraud;
- 12 b. made untrue statements of a material fact or omitted to state a
13 material fact necessary in order to make the statements made,
14 in light of the circumstances under which they were made, not
15 misleading; or
- 16 c. engaged in acts, practices, or courses of business which
17 operated or would operate as a fraud or deceit upon other
18 persons.

19 24. By engaging in the conduct described above, Defendants WealthWise
20 and Forrest violated, and unless restrained and enjoined will continue to violate,
21 Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder,
22 17 C.F.R. § 240.10b-5.

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1 personal service or otherwise, and each of them, from violating Section 17(a) of
2 the Securities Act, 15 U.S.C. § 77q(a), Section 10(b) of the Exchange Act, 15
3 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5, and Sections
4 206(1) and 206(2) of the Investment Advisers Act, 15 U.S.C. §§ 80b-6(1) & 80b-
5 6(2).

6 **III.**

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

9 **IV.**

10 Order Defendants WealthWise and Forrest to file with this Court and serve
11 upon the Commission, within three business days, or within such extension of time
12 as the Commission agrees, a verified written accounting, signed by them under
13 penalty of perjury, of all performance fees Defendants received from TCI in
14 connection with WealthWise clients invested in Apex.

15 **V.**

16 Order Defendants WealthWise and Forrest to pay civil penalties pursuant to
17 Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), Section 21(d)(3) of the
18 Exchange Act, 15 U.S.C. § 78u(d)(3), and/or Section 209(e)(1) of the Investment
19 Advisers Act, 15 U.S.C. § 80b-9(e)(1).

20 **VI.**

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

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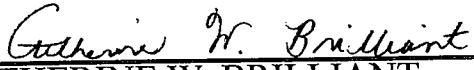
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VII.

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

DATED: September 24, 2008


CATHERINE W. BRILLIANT
Attorney for Plaintiff
Securities and Exchange Commission

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