

1 DANIEL S. LIM (Cal. Bar No. 292406)
Email: limda@sec.gov
2 KELLY C. BOWERS (Cal. Bar No. 164007)
Email: bowersk@sec.gov

3 Attorneys for Plaintiff
4 Securities and Exchange Commission
Michele Wein Layne, Regional Director
5 Gary Y. Leung, Regional Trial Counsel
444 S. Flower Street, Suite 900
6 Los Angeles, California 90071
Telephone: (323) 965-3998
7 Facsimile: (213) 443-1904

8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 **SECURITIES AND EXCHANGE**
11 **COMMISSION,**

12 **Plaintiff,**

13 **vs.**

14 **MATTHEW J. WERTHE (dba HSR**
15 **Wealth Management),**

16 **Defendant.**

Case No. **'23CV0815L DDL**

COMPLAINT

17
18 Plaintiff Securities and Exchange Commission (“SEC”) alleges:

19 **JURISDICTION AND VENUE**

20 1. The Court has jurisdiction over this action pursuant to Sections 20(b),
21 20(d)(1), and 22(a) of the Securities Act of 1933 (“Securities Act”), 15 U.S.C.
22 §§ 77t(b), 77t(d)(1) & 77v(a), Sections 21(d)(1), 21(d)(3)(A), 21(e) and 27(a) of the
23 Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §§ 78u(d)(1),
24 78u(d)(3)(A), 78u(e) & 78aa(a), and Sections 209(d), 209(e)(1) and 214 of the
25 Investment Advisers Act of 1940 (“Advisers Act”), 15 U.S.C. §§ 80b-9(d), 80b-
26 9(e)(1) & 90b-14.

27 2. Defendant Matthew J. Werthe (“Werthe”) has, directly or indirectly,
28 made use of the means or instrumentalities of interstate commerce, of the mails, or of

1 the facilities of a national securities exchange in connection with the transactions,
2 acts, practices and courses of business alleged in this complaint.

3 3. Venue is proper in this district pursuant to Section 22(a) of the Securities
4 Act, 15 U.S.C. § 77v(a), Section 27(a) of the Exchange Act, 15 U.S.C. § 78aa(a), and
5 Section 214 of the Advisers Act, 15 U.S.C. §§ 80b-14, because certain of the
6 transactions, acts, practices and courses of conduct constituting violations of the
7 federal securities laws occurred within this district. In addition, venue is proper in
8 this district because Werthe resides in this district.

9 **SUMMARY**

10 4. This case is about a “cherry-picking” scheme carried out by Werthe, an
11 investment adviser doing business as HSR Wealth Management (“HSR”), a sole
12 proprietorship that Werthe solely owned and controlled.

13 5. Between in or around May 2021 and March 2022, Werthe dba HSR
14 managed approximately \$12 million for approximately 54 clients. During this time,
15 Werthe had discretionary authority over his clients’ investment accounts, meaning he
16 had the authority to make investment decisions and execute trades on his clients’
17 behalf. Werthe executed nearly all of these trades through what is commonly called a
18 “block trading account,” which allowed him to place a single stock trade and later
19 allocate portions of that stock trade among the various accounts over which he had
20 discretionary trading authority. These allocations could be submitted to the
21 brokerage firm at the end of the trading day, so Werthe had the opportunity to
22 “cherry-pick”—that is, to disproportionately allocate winning trades to his personal
23 account (the “Werthe account”), and to disproportionately allocate losing trades to all
24 other accounts, which were almost all client accounts (the “client accounts”).

25 6. Werthe used that opportunity to engage in fraud. For approximately ten
26 months, Werthe disproportionately allocated profitable trades to the Werthe account,
27 and disproportionately allocated unprofitable trades to his clients’ accounts. As a
28 result, Werthe reaped substantial profits at his clients’ expense, violated the fiduciary

1 duties he owed to his clients, and violated the antifraud provisions of the federal
2 securities laws.

3 7. Further, during this same period, Werthe made false and misleading
4 representations to clients and prospective clients, including that: he would not
5 personally trade in the same securities as those he traded on behalf of his clients, HSR
6 did not aggregate trades, HSR did not “typically” aggregate trades, and the broker-
7 dealer with custody over his clients’ accounts (“Broker A”) was cutting ties with
8 HSR for reasons other than Werthe’s suspicious trading activity.

9 8. In total, Werthe’s cherry-picking scheme enabled him to obtain over
10 \$400,000 for his own account. At the same time, the client accounts suffered losses
11 of over \$500,000 because of Werthe’s fraud. Notably, both the California
12 Department of Financial Protection and Innovation (“DFPI”) and Broker A had
13 repeatedly reached out to Werthe about his trading activity and/or false
14 representations, beginning in June 2021. Werthe’s cherry-picking only ceased in
15 March 2022 when Broker A cut ties with Werthe and HSR.

16 9. By engaging in this conduct, defendant Werthe violated the antifraud
17 provisions of Sections 17(a) of the Securities Act, 15 U.S.C. § 77q(a), Section 10(b)
18 of the Securities Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17
19 C.F.R. § 240.10b-5, and Sections 206(1) and 206(2) of the Advisers Act, 15 U.S.C.
20 § 80b-6(1) and (2).

21 10. With this action, the SEC seeks a permanent injunction prohibiting
22 future violations of the federal securities laws, a conduct-based injunction, and an
23 order requiring Werthe to disgorge his ill-gotten gains, along with prejudgment
24 interest, and pay civil penalties.

25 **THE DEFENDANT**

26 11. Defendant Matthew J. Werthe is a resident of San Diego, California.
27 Since approximately June 2019, Werthe has been the sole proprietor, owner, control
28 person, only employee, and chief compliance officer at HSR. Prior to 2019, Werthe

1 worked at an investment advisory firm for six years.

2 12. Werthe is a registered investment adviser with California. According to
3 its March 15, 2022 Form ADV, as of that time, HSR had 54 clients and \$12,271,873
4 in assets under management.

5 **THE ALLEGATIONS**

6 **A. Background**

7 13. Werthe began doing business as HSR in or around June 2019.

8 14. Werthe provided a variety of financial planning services to individuals
9 regarding the management of their financial resources based upon their financial
10 situation, goals, and objectives.

11 15. At all relevant times, Werthe was an investment adviser under Section
12 202(a)(11) of the Advisers Act, 15 U.S.C. §80b-2(a)(11), because he provided
13 investment advice for compensation to his clients regarding securities.

14 16. Werthe provided investment advice by using his discretionary authority
15 over his clients' accounts to buy and sell securities. He received compensation by
16 charging his clients an advisory fee that was a percentage of their assets under
17 management.

18 17. Most of the trades that Werthe executed on behalf of clients were
19 through a block trading account at Broker A, the custodian of the assets under HSR's
20 management.

21 18. HSR's block trading account at Broker A allowed Werthe to place a
22 single trade in a stock through the block trading account, and later that same day,
23 allocate portions of that trade to multiple client accounts and/or his personal account.

24 19. Werthe was the only person at HSR who allocated trades executed in the
25 block trading account.

26 **B. The Cherry-Picking Scheme**

27 20. From approximately May 2021 through approximately March 2022,
28 Werthe misused the block trading account at Broker A to engage in a fraudulent

1 scheme to defraud HSR’s investment advisory clients by cherry-picking and
2 disproportionately allocating profitable trades to his own personal account. In doing
3 so, Werthe defrauded his clients and violated the fiduciary duties that he owed to
4 them.

5 21. Werthe carried out this scheme by executing trades in the block trading
6 account and taking advantage of the time he had to allocate those trades in order to
7 determine the security’s intraday performance.

8 22. For example, when the price of a stock rose between the time of the
9 trade and the time of the allocation, Werthe disproportionately allocated those
10 profitable trades to his personal account. In most instances when Werthe did this, he
11 sold the security that same day, making it a day-trade and locking in the profit.

12 23. By contrast, when the price of a stock went down between the time of
13 the trade and the time of the allocation, Werthe disproportionally allocated those
14 unprofitable trades to the client accounts as long positions (*i.e.*, stocks to be held in
15 their accounts).

16 24. This scheme, by its very nature, was inherently deceptive because
17 cherry-picking is virtually impossible for clients to detect on their own. They
18 generally are unable to see how their adviser allocates trades and rely on their adviser
19 to meet his fiduciary duty of care to provide investment advice that is in their best
20 interest, and meet his fiduciary duty of loyalty by putting their financial interests
21 ahead of his own. Thus, each allocation of a trade based on the security’s
22 performance was an inherently deceptive act in furtherance of the scheme.

23 25. Werthe’s cherry-picking allowed him to make tens of thousands of
24 dollars from a single block trade.

25 a. As one example, on or about September 1, 2021, Werthe used the
26 block trading account to purchase 3,000 shares of Vinco Ventures Inc. stock
27 (“BBIG”) at approximately 7:20 a.m. ET for \$8.43 per share (for a total of \$25,290).

28 b. Then, at 10:20 a.m. ET that same day, Werthe sold all 3,000

1 shares of BBIG for \$9.40 per share (for a total of \$28,200).

2 c. At 10:21 a.m. ET, Werthe allocated the 7:20 a.m. ET purchase of
3 3000 BBIG shares for \$8.43 per share in the following way: 2,500 shares were
4 allocated to the Werthe account, and the remaining 500 shares were allocated to one
5 client account.

6 d. At 10:22 a.m. ET, Werthe allocated the 10:20 a.m. ET sale of
7 3000 BBIG shares for \$9.40 per share in the same exact way, rendering both
8 allocations profitable, but much more so for the Werthe account.

9 26. Werthe's cherry-picking also allowed him to transfer unprofitable trades,
10 including those resulting in tens of thousands of dollars in unrealized losses,
11 exclusively to client accounts.

12 a. As one example, on or about February 24, 2022, Werthe used the
13 block trading account to purchase 15,000 shares of ProShares Ultra VIS Short-Term
14 Futures ETF stock ("UVXY") at approximately 7:10 a.m. ET for \$21.38 per share,
15 for a total of \$320,700.

16 b. Then, at 2:50 p.m. ET, when the share price was trading at
17 approximately \$17.75 per share, Werthe allocated all 15,000 shares of UVXY to 69
18 client accounts, rendering this allocation unprofitable.

19 c. At the time of allocation, the client accounts suffered an
20 unrealized loss of \$3.63 per share, or \$54,450 for all 15,000 shares.

21 27. At the time of these allocations, Werthe knew the purchase price of the
22 block purchase and the sale price of the block sale.

23 28. In total, during the relevant period, Werthe's allocations through the
24 block trading account resulted in approximately : (1) 86% of trades on behalf of the
25 Werthe account being profitable; and (2) 36% of the trades on behalf of the client
26 accounts being profitable.

27 29. During the same period, Werthe's allocations through the block trading
28 account resulted in approximately: (1) a 1.2% or greater rate of return on investments

1 for the Werthe account; and (2) a -1.27% rate of return on investments for the client
2 accounts.

3 30. Notably, on or about September 29, 2021, Broker A contacted Werthe
4 and asked him to stop day-trading through the block trading account, as Broker A
5 needed to review his trading activities. Werthe confirmed to Broker A that he
6 understood.

7 31. Then, on or about October 21, 2021, Broker A again questioned Werthe
8 about his self-serving, day-trade allocations from the block trading account.

9 32. During this October 21, 2021 interview, Werthe asserted that he made
10 allocation decisions before any trades are placed, but admitted he had no evidence to
11 prove that claim.

12 33. Despite these admonitions, Werthe continued to cherry-pick profitable
13 trades to his own account.

14 34. Further, on or about March 4, 2022, Broker A again confronted Werthe
15 about the high profitability of trades allocated to Werthe's personal account. In
16 response, Werthe admitted that such trades did not "look good."

17 35. During this same March 4, 2022 interview, Werthe confirmed again that
18 he did not keep any records of his predetermined allocation decisions. Specifically,
19 Werthe claimed that he would write down all of his anticipated trade allocations in
20 the morning, but throw those notes away afterwards.

21 36. As a result, on or about March 25, 2022, Broker A notified Werthe via
22 letter that: (1) Broker A was terminating its relationship with HSR; (2) no new
23 accounts could be opened on Broker A's platform; (3) Werthe's block account access
24 had been disabled; (3) HSR's block trading account had been closed; and (4) any
25 agreement between Werthe and Broker A was being terminated in or around 90 days.

26 37. In its letter to HSR, Broker A's only justification for terminating its
27 relationship with HSR was Broker A's "concerns about trading activity by HSR."

28 38. The scheme resulted in Werthe receiving over \$400,000. If Werthe's

1 account had earned the same return as the average return across all the accounts, he
2 would have lost tens of thousands of dollars, rather than generate any profit. Thus,
3 Werthe's ill-gotten gains is over \$450,000.

4 **C. Werthe's False and Misleading Statements**

5 39. As an investment adviser registered with the State of California during
6 the relevant period, Werthe was required to file a "Form ADV Part 2A" for HSR with
7 the Investment Adviser Registration Depository. In this form, also known as a
8 brochure, investment advisers are required to write in plain English the types of
9 advisory services offered, the adviser's fee schedule, disciplinary information,
10 conflicts of interest, and the educational and business background of management and
11 key advisory personnel of the adviser. When filed, the brochures are available to the
12 public.

13 40. HSR's brochures were filed approximately four times from 2020 to
14 2022. These brochures were provided and/or made available to Werthe's clients.
15 Further, the brochures were publicly available to clients and prospective clients
16 online at the SEC's website.

17 41. At all relevant times, Werthe was responsible for reviewing drafts of
18 HSR's brochures prepared by the firm's outside compliance consultant, suggesting
19 changes, and authorizing their filing.

20 42. Further, since HSR's inception in June 2019, Werthe has been HSR's
21 sole proprietor, owner, chief compliance officer, and employee and therefore the only
22 person who has had responsibility for its disclosures.

23 43. Werthe had ultimate authority over the statements contained in HSR's
24 brochures, including their content and whether or how to communicate them to
25 clients and prospective clients.

26 44. HSR's brochures contained materially false and misleading statements
27 concerning its allocation of trades and its management of conflicts of interest relating
28 to Werthe's own personal trading.

1 **1. False and misleading statement that Werthe did not transact**
2 **in same securities as his advisory clients**

3 45. First, HSR’s brochures dated March 23, 2020, November 15, 2021, and
4 March 15, 2022 each stated: “Mr. Werthe does not transact in the same securities for
5 personal accounts as he may buy or sell for Client accounts.”

6 46. This statement was false and misleading during the relevant period
7 because all or nearly all of Werthe’s personal trades during this time were in the same
8 securities that he traded on behalf of his clients.

9 47. Indeed, on or about June 22, 2021, a representative from DFPI had
10 contacted Werthe, and informed him that this portion of HSR’s brochure needed to be
11 corrected to state that Werthe did personally trade in the same securities as those he
12 bought and sold on behalf of his clients.

13 48. Additionally, as mentioned above, on or about October 21, 2021, Broker
14 A asked Werthe about this statement, noting that Broker A’s data showed Werthe to
15 be day-trading “alongside clients in the same securities.”

16 49. A reasonable client would have considered it important that, in contrast
17 to what was represented in HSR’s brochures dated March 23, 2020, November 15,
18 2021, and March 15, 2022, Werthe was executing personal trades in the same
19 securities that he traded on behalf of his clients.

20 **2. False and misleading statement that Werthe and HSR would**
21 **put clients’ interests first**

22 50. Second, HSR’s brochures dated March 23, 2020, November 15, 2021,
23 and March 15, 2022 each also stated the following: “HSR or individuals associated
24 with HSR are permitted to buy or sell for their personal account(s) securities or
25 investment products identical to those recommended to or already owned by
26 Clients. . . . [A]s part of HSR’s fiduciary duty to Clients, HSR and its supervised
27 persons will endeavor at all times to put the interests of the Clients first.”

28 51. This statement was false and misleading during the relevant period

1 because Werthe disproportionately allocated profitable trades to his own account and
2 losing trades to client accounts, demonstrably putting his own interests over his
3 clients’.

4 52. A reasonable client would have considered it important that, in contrast
5 to what was represented in HSR’s brochures dated March 23, 2020, November 15,
6 2021, and March 15, 2022, Werthe was allocating a disproportionate number of
7 winning trades to himself and losing trades to clients’ accounts, and that on several
8 occasions, Werthe allocated better-priced shares to himself when he traded the same
9 security for his own account and client accounts on the same day.

10 **3. False and misleading statement that HSR did not aggregate**
11 **client trades through block trading**

12 53. Third, HSR’s brochure dated March 23, 2020 stated: “HSR effects
13 transactions for each Client independently and does not aggregate trades.”

14 54. This statement was false and misleading because Werthe aggregated
15 client trades, and aggregated his own personal trades with client trades through block
16 trading accounts. Werthe eventually revised this statement, but only after DFPI sent
17 him a Deficiency Letter on October 12, 2021, noting that he should amend the
18 statement.

19 **4. False and misleading statement that “typically,” HSR did not**
20 **aggregate client trades through block trading**

21 55. Fourth, on HSR’s brochure dated November 15, 2021, Werthe revised
22 HSR’s firm brochure to state: “HSR typically effects transactions for each Client
23 independently. At times, when able to and as applicable, the Firm can aggregate
24 trades of accounts.”

25 56. Once again, even this revised statement was false and misleading
26 because Werthe did not “typically” effect client transactions independently; indeed,
27 to the contrary, Werthe aggregated approximately 93.8% of his clients’ trades, in
28 terms of dollars traded.

1 57. A reasonable client would have considered it important that, in contrast
2 to what was represented in HSR’s brochure dated November 15, 2021, Werthe was
3 aggregating the vast majority, approximately 93.8%, of his clients’ trades, in terms of
4 dollars traded.

5 **5. False and misleading statements about Broker A’s**
6 **termination of its relationship with HSR**

7 58. Fifth, in addition to the misrepresentations in HSR’s brochures, Werthe
8 misled clients about the reason for why Broker A was no longer going to be HSR’s
9 broker-dealer custodian. On or about March 27, 2022—after he received the letter
10 from Broker A terminating its relationship with HSR due to “concerns about trading
11 activity”—Werthe sent an email to clients stating, among other things, that Broker
12 A’s “service level has decreased dramatically, and its “costs are being added
13 incrementally.”

14 59. This statement was false and misleading because none of the reasons
15 Werthe provided to his clients, including Broker A’s services and costs, were reasons
16 that HSR was severing ties with Broker A. Rather, as Werthe knew from his various
17 communications with representatives of Broker A and the aforementioned letter, the
18 real reason for the termination was Broker A’s “concerns about [Werthe’s] trading
19 activity.”

20 60. A reasonable client would have considered it important that, in contrast
21 to what was represented in Werthe’s email to clients in March 2022, Broker A
22 terminated its relationship with HSR due to concerns about Werthe’s trading activity.

23 61. Werthe obtained money by means of his misrepresentations in HSR’s
24 brochures and the March 2022 client email. Werthe also unfairly and substantially
25 profited from his cherry-picking at the expense of HSR’s clients.

26 **D. Werthe’s Scienter and Negligence**

27 62. Werthe was a fiduciary for his clients and owed his clients a duty of
28 loyalty. That duty of loyalty included an affirmative duty of utmost good faith, a

1 duty to provide full and fair disclosure of all material facts, and a duty to employ
2 reasonable care to avoid misleading his clients. Werthe also owed his advisory
3 clients a separate duty of care. His duty of care included a duty to provide investment
4 advice that was in the best interest of his clients, and a duty to seek best execution of
5 his clients' securities transactions. Despite knowing of these duties, Werthe engaged
6 in cherry-picking.

7 63. Further, Werthe was the only person at HSR who had authority to
8 determine how to allocate trades, and all trades placed in HSR's block trading
9 account were allocated by him.

10 64. Moreover, based on a statistical analysis of the subject trades, trade
11 allocations, and first-day investment returns, the likelihood that Werthe's
12 disproportionate allocation of profitable trades to his own account and unprofitable
13 trades to client accounts resulted from random chance, as opposed to knowing and
14 intentional conduct, is, at best, less than one in a million.

15 65. Additionally, beginning at least in or about June 2021 and continuing
16 through March 2022, Werthe was contacted multiple times about his improper trading
17 practices, but he continued to engage in cherry-picking.

18 66. Relatedly, Werthe was also informed by Broker A that it was
19 terminating its relationship with HSR due, at least in part, to Werthe's trading
20 activity.

21 67. Werthe accordingly knew, or was reckless in not knowing, that using the
22 block trading account to allocate winning trades to his own account and losing trades
23 to client accounts defrauded his clients and violated the fiduciary duties that he owed
24 to them.

25 68. Werthe also acted negligently when engaging in his cherry-picking
26 scheme. Werthe failed to act as a reasonable person would under the circumstances
27 when acting as his clients' investment adviser, by disproportionately allocating
28 winning trades to himself, and losing trades to his advisory clients.

1 and (b) engaged in acts, practices, or courses of business which operated or would
2 operate as a fraud or deceit upon other persons.

3 75. Defendant Werthe knew, or was reckless in not knowing, that he
4 employed devices, schemes, or artifices to defraud and engaged in acts, practices, or
5 courses of business that operated as a fraud upon persons by the conduct described in
6 detail above.

7 76. By engaging in the conduct described above, defendant Werthe violated,
8 and unless restrained and enjoined will continue to violate, Section 10(b) of the
9 Exchange Act, 15 U.S.C. § 78j(b), and Rules 10b-5(a) and 10b-5(c) thereunder, 17
10 C.F.R. §§ 240.10b-5(a) & 240.10b-5(c).

11 **SECOND CLAIM FOR RELIEF**

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

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

14 77. The SEC realleges and incorporates by reference paragraphs 1 through
15 71 above.

16 78. As alleged above, defendant Werthe made untrue statements of material
17 fact in HSR's brochures concerning its trading practices, prioritization of clients'
18 interests over HSR's, and the volume of its aggregated trades.

19 79. By engaging in the conduct described above, defendant Werthe, directly
20 or indirectly, in connection with the purchase or sale of a security, and by the use of
21 means or instrumentalities of interstate commerce, of the mails, or of the facilities of
22 a national securities exchange, made untrue statements of material fact or omitted to
23 state a material fact necessary in order to make the statements made, in light of the
24 circumstances under which they were made, not misleading.

25 80. Defendant Werthe knew, or was reckless in not knowing, that he made
26 untrue statements of material fact or omitted to state a material fact necessary in order
27 to make the statements made, in light of the circumstances under which they were
28 made, not misleading.

1 81. By engaging in the conduct described above, defendant Werthe violated,
2 and unless restrained and enjoined will continue to violate, Section 10(b) of the
3 Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5(b) thereunder, 17 C.F.R.
4 §§ 240.10b-5(b).

5 **THIRD CLAIM FOR RELIEF**

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

7 **Violations of Sections 17(a)(1) and (3) of the Securities Act**

8 82. The SEC realleges and incorporates by reference paragraphs 1 through
9 71 above.

10 83. As alleged above, defendant Werthe engaged in a scheme to defraud his
11 clients, and engaged in acts, practices or courses of business that operated as a fraud
12 upon his clients, by cherry-picking profitable trades for his personal account at the
13 expense of his clients despite multiple warnings from regulators and HSR's broker-
14 custodian. This cherry-picking scheme was inherently deceptive and created the false
15 appearance that first-day losses suffered in client accounts were attributable to market
16 forces rather than defendant Werthe's fraudulent trade allocation practices. In
17 carrying out this fraud, Werthe engaged in a number of deceptive acts in addition to
18 cherry-picking, including making false and misleading statements in HSR's
19 brochures concerning HSR's trading practices, prioritizing clients' interests over
20 HSR's, and the volume of HSR's aggregated trades.

21 84. By engaging in the conduct described above, defendant Werthe, directly
22 or indirectly, in the offer or sale of securities, and by the use of means or instruments
23 of transportation or communication in interstate commerce or by use of the mails
24 directly or indirectly: (a) employed devices, schemes, or artifices to defraud; and
25 (b) engaged in transactions, practices, or courses of business which operated or would
26 operate as a fraud or deceit upon the purchaser.

27 85. Defendant Werthe knew, or was reckless in not knowing, that he
28 employed devices, schemes, or artifices to defraud and engaged in acts, practices, or

1 courses of business that operated as a fraud upon persons by the conduct described in
2 detail above, and his conduct in doing so was also unreasonable and therefore
3 negligent.

4 86. By engaging in the conduct described above, defendant Werthe violated,
5 and unless restrained and enjoined will continue to violate, Sections 17(a)(1) and
6 17(a)(3) of the Securities Act, 15 U.S.C. §§ 77q(a)(1) & 77q(a)(3).

7 **FOURTH CLAIM FOR RELIEF**

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

9 **Violations of Section 17(a)(2) of the Securities Act**

10 87. The SEC realleges and incorporates by reference paragraphs 1 through
11 71 above.

12 88. As alleged above, defendant Werthe obtained money by means of untrue
13 statements of material fact in HSR's brochures concerning its trading practices,
14 prioritization of clients' interests over HSR's, and the volume of its aggregated
15 trades.

16 89. By engaging in the conduct described above, defendant Werthe, directly
17 or indirectly, in the offer or sale of securities, and by the use of means or instruments
18 of transportation or communication in interstate commerce or by use of the mails,
19 obtained money or property by means of untrue statements of a material fact or by
20 omitting to state a material fact necessary in order to make the statements made, in
21 light of the circumstances under which they were made, not misleading.

22 90. Defendant Werthe, knew, or was reckless in not knowing, that he
23 obtained money or property by means of untrue statements of a material fact or by
24 omitting to state a material fact necessary in order to make the statements made, in
25 light of the circumstances under which they were made, not misleading, and his
26 conduct in doing so was unreasonable and therefore negligent.

27 91. By engaging in the conduct described above, defendant Werthe,
28 violated, and unless restrained and enjoined will continue to violate, Section 17(a)(2)

1 of the Securities Act, 15 U.S.C. § 77q(a)(2).

2 **FIFTH CLAIM FOR RELIEF**

3 **Fraud by an Investment Adviser**

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

5 92. The SEC realleges and incorporates by reference paragraphs 1 through
6 71 above.

7 93. As alleged above, defendant Werthe had an adviser-client relationship
8 with, and therefore owed a fiduciary duty to, each of HSR's clients. Defendant
9 Werthe breached his fiduciary duty to his clients by carrying out the cherry-picking
10 scheme—which was inherently deceptive and created the false appearance that first-
11 day losses suffered in client accounts were attributable to market forces rather than
12 defendant Werthe's fraudulent trade allocation practices—and by making materially
13 false and misleading statements. These false and misleading statements included
14 those in HSR's brochures, and also those in Werthe's March 2022 email to clients
15 concerning HSR's move to a different broker-dealer custodian.

16 94. By engaging in the conduct described above, defendant Werthe, directly
17 or indirectly, by use of the mails or means and instrumentalities of interstate
18 commerce: (a) employed devices, schemes, or artifices to defraud clients or
19 prospective clients; and (b) engaged in transactions, practices, or courses of business
20 which operated as a fraud or deceit upon clients or prospective clients.

21 95. Defendant Werthe knew, or was reckless in not knowing, that he
22 employed devices, schemes and artifices to defraud clients or prospective clients, or
23 engaged in transactions, practices, or courses of business which operated as a fraud or
24 deceit upon clients or prospective clients, and his conduct in doing so was
25 unreasonable and therefore negligent.

26 96. By engaging in the conduct described above, defendant Werthe violated,
27 and unless restrained and enjoined, is reasonably likely to continue to violate,
28 Sections 206(1) and (2) of the Advisers Act, 15 U.S.C. §§ 80b-6(1) & 80b-6(2).

PRAYER FOR RELIEF

WHEREFORE, the SEC respectfully requests that the Court:

I.

Issue findings of fact and conclusions of law that defendant Werthe committed the alleged violations.

II.

Issue a judgment, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, permanently enjoining defendant Werthe from, directly or indirectly, including, but not limited to, through any entity owned or controlled by him, violating Section 17(a) of the Securities Act, 15 U.S.C. §77q(a), Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5, and Section 206(1) and (2) of the Advisers Act, 15 U.S.C. §§ 80b-6(1) & 80b-6(2).

III.

Issue a judgment, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, permanently enjoining defendant Werthe from, directly or indirectly, including, but not limited to, through any entity owned or controlled by him, participating in the purchase, offer, or sale of any security other than for his own personal accounts.

IV.

Order defendant Werthe to disgorge all funds received from his illegal conduct together with prejudgment interest thereon pursuant to Securities Exchange Act of 1934, Section 21(d)(3), (d)(5) and (d)(7), 15 U.S.C. §§ 78u(d)(3), (d)(5) and (d)(7).

V.

Order defendant Werthe to pay civil penalties under Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3), and Section 209(e) of the Adviser Act, 15 U.S.C. § 80b-9(e).

VI.

Retain jurisdiction of this action in accordance with the principles of equity and

1 the Federal Rules of Civil Procedure in order to implement and carry out the terms of
2 all orders and decrees that may be entered, or to entertain any suitable application or
3 motion for additional relief within the jurisdiction of this Court.

4 **VII.**

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

7 Dated: May 4, 2023

8 */s/ Daniel S. Lim*

9

DANIEL S. LIM

10 KELLY C. BOWERS

11 Attorneys for Plaintiff

12 Securities and Exchange Commission
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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.)

I. (a) PLAINTIFFS

Securities and Exchange Commission

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Daniel Lim and Kelly Bowers Securities & Exchange Commission, 444 S. Flower St., Suite 900 Los Angeles, CA 90071, Telephone: (323) 965-3998

DEFENDANTS '23CV0815 L DDL

Matthew J. Werthe (dba HSR Wealth Management)

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

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

Attorneys (If Known)

Michelle Jacko, Jacko Law Group, PC, 1350 Columbia Street, Suite 300, San Diego, CA 92101

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

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 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)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, 1 1, 2 2, 3 3, 4 4, 5 5, 6 6

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

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Personal Injury, Labor, and Tax Suits.

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

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 15 U.S.C. § 78j(b), 17 C.F.R. §§ 240.10b-5(a-c), 15 U.S.C. §§ 77q(a)(1-3), 15 U.S.C. §§ 80b-6(1-2). Brief description of cause: Complaint alleges violation of federal securities laws.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

May 4, 2023 /s/ Daniel Lim

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. **(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

- II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 - United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 - Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)

- III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

- IV. **Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).

- V. **Origin.** Place an "X" in one of the seven boxes.
 - Original Proceedings. (1) Cases which originate in the United States district courts.
 - Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 - Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 - Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.

PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.

- VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.

- VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

- VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.