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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92070743
Party	Plaintiff Wells Fargo Clearing Services, LLC
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Signature	/Nathaniel St. Clair, II/
Date	04/01/2019
Attachments	Response to Motion to Suspend - FINAL.pdf(2733744 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In Re Registration Nos:

3782665

4722740

5346562

5346563

5633102

**Wells Fargo Clearing Services, LLC,
and The Hamo Group of Wells Fargo
Advisors,
Petitioners**

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§

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v.

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**Jalinski Advisory Group,
Respondent**

Cancellation No. 92070743

**PETITIONER'S RESPONSE TO RESPONDENT'S MOTION TO SUSPEND
PROCEEDING IN VIEW OF PENDING CIVIL ACTION
PURSUANT TO 37 C.F.R. 2.117**

I. INTRODUCTION

Petitioner Wells Fargo Clearing Services, LLC d/b/a Wells Fargo Advisors and Petitioner The Hamo Group of Wells Fargo Advisors (collectively “Petitioners” or “Hamo Group”) respond to Respondent Jalinski Advisory Group’s (“Jalinski” or “Respondent”) Motion to Suspend Proceeding in View of Pending Civil Action (“Motion to Suspend”) and requests that the Trademark Trial and Appeal Board (“TTAB” or “Board”) deny Respondent’s Motion to Suspend.

In the interest of seeking a speedy resolution of the matter, preserving the resources of the TTAB and the District Court, and of balancing the interests of the parties, Petitioners request that the Board deny Respondent’s Motion to Suspend and proceed with Petitioners’ Petition to Cancel the registrations for the trademarks at issue in this proceeding – FINANCIAL QUARTERBACK and THE FINANCIAL QUARTERBACK, namely U.S. Trademark Registration Nos. 3782665, 4722740, 5346562, 5346563, and 5633102 (collectively “Asserted Trademarks”). A prompt decision from the TTAB will lead to a speedy resolution of this case and will not delay the administration of justice. The pending civil action is still in the very early stages of litigation, primarily due to the multiple extensions for discovery deadlines requested by Respondent. In requesting extensions to almost every deadline in the case, Respondent has delayed discovery deadlines a total of *over 100 days* already and is seeking additional unmerited time extensions. Respondent has intentionally taken advantage of the federal judicial system and has evaded litigation of the core issues in this dispute in order to coerce settlement out of Hamo Group. Respondent now seeks to suspend the proceeding in front of the TTAB, in order to further delay final resolution of this case.

A decision from the TTAB will undoubtedly assist and guide the District Court in a resolution of the pending civil action, because all of the issues before the District Court are predicated on the *validity* and *enforceability* of rights in the Asserted Trademarks. Should the Board conclude that the trademarks are not protectable and are not entitled to federal registration, as Petitioners maintain that they are not, the Board’s decision would materially impair—if not entirely bar—the claims brought in the pending civil action, as well as in the dozen cases across the country brought by Respondent.

II. FACTUAL AND PROCEDURAL BACKGROUND

The pending litigation in District Court is a trademark dispute over the use of “financial quarterback,” styled *Jalinski Advisory Group, Inc. v. The Hamo Group of Wells Fargo Advisors*, Civil Case No. 18 CIV 12161-SFC-DRG (“District Court Case”). This is only one of the multiple trademark infringement lawsuits that Respondent has filed this year, thereby painting a well-defined picture of Respondent as an IP-licensing entity, seeking to receive quick settlements for financial benefit, rather than as a trademark owner legitimately policing its rights. Jalinski has filed substantially similar complaints against twelve other defendants in courts across the United States, all based on their alleged impermissible use of the term “financial quarterback.” (Exh. A, List of Jalinski Cases in Federal District Courts). Moreover, on information and belief, Jalinski has sent multiple demand letters to financial entities across the nation, seeking a license or settlement from other users of the phrase “financial quarterback,” in hopes of receiving additional unwarranted payments.

Hamo Group filed its Answer and Counterclaim on September 7, 2018. (Exh. B, Hamo Group Answer). Petitioners, like many other financial advisory firms and investment groups, have used the term “financial quarterback” in a generic or descriptive fashion since, at least, 2006. *Id.* It is Petitioners’ fervent position that the term “financial quarterback” is commonly used in the

United States wealth management industry in reference to the financial advisor's role as a coordinator of generalized financial services, including financial planning, financial management, financial advisory retirement planning, investment advisory, and investment management. *Id.* The term "financial quarterback" is frequently used in a generic or descriptive nature in financial periodicals. As such, the Asserted Trademarks do not actually function as trademarks of Respondent, are not entitled to federal registration, and cannot serve as the basis for any of Respondent's claims against the Hamo Group or the other entities it has sued. As a result of Respondent's litigious actions, Respondent's Trademark Registration Nos. 3,782,665, 4,722,740, 5,346,562, and 5,346,563 have been repeatedly challenged by other parties and are currently subject to cancellation proceedings. *Id.*

The pending civil action in District Court is still in the early discovery phase of litigation, due to Respondent's intentional delay tactics. Although some initial written discovery has been exchanged, no major activity has occurred in this case to date. More specifically, on December 31, 2018, Respondent requested from Hamo Group up to a two-week extension to respond to Hamo Group's document requests, which was granted by Hamo Group. Ten days earlier, on December 21, 2018, Respondent requested that Hamo Group agree to extend the Respondent's expert report deadlines from January 23, 2019 to May 12, 2019, which was a request of nearly four months. (Exh. C, Scheduling Order). Hamo Group agreed to an extension of four weeks. The new deadline was set for February 20, 2019, for Respondent's expert report – a deadline which Respondent still failed to meet. On the very day before Respondent's expert disclosures were due after the first extension request, Jalinski again requested that Hamo Group agree to an additional three-month extension, extending Respondent's new expert discovery deadline to May 12, 2019. In an effort to be amenable, Hamo Group again agreed to a second extension of four weeks, extending

Respondent's expert deadline to March 20, 2019. Ironically, Jalinski also requested a 21-day extension to respond to Hamo Group's Motion to Stay Proceeding Pending Petition for Cancellation – *a document in which Hamo Group specifically cited to the numerous extensions already requested by Respondent in order to delay litigation*. Hamo Group again agreed to a 10-day extension for Jalinski to file a response.

In the same e-mail correspondence, Jalinski requested a third extension to its expert discovery deadline, seeking to stay the expert deadlines pending the outcome of Hamo Group's Motion to Stay, which is not set to be heard until July 2019. (Exh. D, Discovery emails). This extension would constitute an additional four-month extension. Had Hamo Group consented to this request, the parties would not be able to complete fact and expert discovery by September 2019, as required by the scheduling order. Hamo Group did not consent to Respondent's request; nonetheless, Respondent missed the March 20, 2019 deadline for expert disclosures in utter disregard of the District Court's deadlines. Even as recently as March 28, 2019, Petitioners reached out to counsel for Respondent to receive an update on the expert disclosures, as evidenced by Exhibit E. (Exh. E, Expert Disclosure Email). Petitioners were willing to accept Respondent's disclosures, albeit delayed, in an effort to be reasonable. However, counsel for Respondent failed to respond to Petitioners request. These latest requests for extensions and ignored deadlines are further indicative of Respondent's ongoing delay and unwillingness to move in the District Court case.

Petitioners filed the Petition to Cancel the Asserted Trademarks with the Board on February 28, 2019 (the "Petition"). In the Petition, Petitioners challenged the validity of the registrations for the Asserted Trademarks on the basis of genericness, descriptiveness, and forfeiture of rights through naked licensing. (Exh. F, Petition). On March 8, 2019, Hamo Group also filed its Motion

to Stay Proceedings in federal court, in the Eastern District of Michigan, pending the Petition to Cancel before the Board. The trial in the civil action is currently scheduled for March/April 2020.

III. ARGUMENT AND ANALYSIS

Suspension of Board proceedings is within the discretion of the TTAB. *See* TBMP § 510.02(a). Particularly, the Board may suspend a proceeding before it, if a civil action involves other matters outside the Board’s jurisdiction or broader issues beyond the right to registration. *Id.*; *Ennis, Inc. v. Joel L. Beling*, 2015 WL 9901181, at *1 (TTAB Feb. 27, 2015) (“suspension of proceedings is discretionary with the Board”). Moreover, if the court before which a civil action is pending elects to suspend the civil action to await determination of the Board proceeding and the Board is so advised, the Board will go forward with its proceeding. TBMP § 510.02(a). Here, consideration of the Petition to Cancel is appropriate because it is not likely to prolong the dispute and all of the issues before the District Court Case are predicated on the *validity* and *enforceability* of rights in the Asserted Trademarks, issues squarely within the purview of the TTAB’s expertise. *Driving Force, Inc. v. Manpower, Inc.*, 498 F. Supp. 21, 25 (E.D. Penn. 1980).¹

A. Petitioners Seek a Timely Resolution of the Issues in this Matter.

Respondent’s only argument in favor of suspending the TTAB proceeding is that the Petition to Cancel is “delayed” because “the parties have made substantial progress in discovery in the District Court Action.” The “prejudice” Respondent points to is artificial at best and Respondent’s contention that Hamo Group’s Petition to Cancel is delayed is *plainly false*. Respondent’s argument that “[Hamo Group] is using this proposed TTAB proceeding as an improper and untimely procedural gambit to delay its day of reckoning the District Court” is particularly laughable.

¹ Hamo Group acknowledges the inclusion of citations to non-precedential cases. Hamo Group has included such citations in the interest of being thorough in its analysis. *See* TBMP 101.03 N. 2.

Petitioners are eager for a final resolution of this matter. However, prompt adjudication is not a concern for Respondent in this case as Respondent has repeatedly taken steps to delay the adjudication of its alleged infringement claim. In its Motion to Suspend, Respondent further claimed that the TTAB proceeding should be suspended because “the parties are slated to complete fact and expert discovery by September, 2019.” Yet, it is unclear how the parties will complete fact and expert discovery in the District Court Case by the stated deadline when Respondent has requested *three* extensions for its expert deadlines alone. In fact, if the Respondent had its way, Respondent’s originally proposed extensions for expert discovery would have resulted in at least a six-month delay of the District Court Case. Because Petitioners desire a final resolution of the case, they have granted Respondent only a fraction of the extensions it has requested—still totaling over *three months* of delays. Most egregiously, Respondent has yet to serve its expert disclosures, which were due March 20, 2019. Respondent has missed its deadline, without providing a cause or reason to Petitioners. These continuous postponements by Respondent are truly indicative of Respondent’s underlying desire to avoid litigating the substance of this matter.

As evidenced above, the parties have not “made substantial progress in discovery in the District Court Action” because Jalinski has prolonged almost every discovery deadline in the District Court case thus far. See *Santana’s Grill, Inc. v. Castaneda*, No. 03-CV-2340-L(RBB), 2004 WL 7331445, (S.D. Cal. June 2, 2004) (granting a stay pending cancellation proceedings in the USPTO because the plaintiff could not show that it would suffer any harm from a stay). Accordingly, Respondent cannot argue that this proceeding will delay this case any more than Respondent has already delayed its progress. Respondent has clearly attempted to take advantage of the federal judicial system in seeking numerous extensions, in order to avoid resolving the issues in the case. Respondent filed its Motion to Suspend in order to continue to exploit the procedural

leniencies offered in the District Court Case, further delay the case, and force the Hamo Group into settlement. Respondent's actions are a misuse of the time and resources of the District Court, the TTAB, and Petitioners.

Filing the TTAB cancellation proceeding is Petitioners' attempt to reach a final disposition of this dispute – not only for Hamo Group but several other third-parties as well. The TTAB's decision will lead to a speedy resolution of this case and any of the remaining other twelve cases filed before district courts nationwide by Jalinski. *See Nat'l Mktg. Consultants, Inc. v. Blue Cross & Blue Shield Ass'n*, No. 87 C 7161, 1987 WL 20138, at *2 (N.D. Ill. Nov. 19, 1987).

B. The TTAB Has the Expertise to Decide Trademark Validity Issues.

Judicial economy will be facilitated by considering the Petition to Cancel because Respondent's claims in the District Court Case are fundamentally dependent upon whether or not the Asserted Trademarks are valid and enforceable, the very question posed to the Board by the Petitioners and others. Resolution of whether the Asserted Trademarks are entitled to federal registration, based on their validity and enforceability can be dispositive as to the infringement claims, and the Board's specialized knowledge can be leveraged in an expeditious manner through a cancellation proceeding. Should the TTAB conclude that the Asserted Trademarks are not protectable and are not entitled to federal registration, this decision would materially impair—if not entirely bar—the claims brought in the various pending civil actions.

The bases for Petitioners' cancellation proceeding against the trademark registrations do not depend on or require findings relating to a likelihood of consumer confusion. *Cf. Spring Air Co. v. Englander Licensing Ltd. Liability Co.*, No. 01-C-7140, 2001 WL 1543510, at *2 (N.D. Ill. Nov. 29, 2001) (holding that likelihood of consumer confusion is an issue within the conventional competence of the courts). In its pleading, Petitioners challenge the *validity* of the registrations for the Asserted Trademarks on the basis of genericness, descriptiveness, and forfeiture of rights

through naked licensing. These are discrete, narrow issues, for which the Board's expertise is necessary.

In reaching its decision, the Board draws upon familiarity with the array of trademark cases which it has analyzed in the past. *Driving Force, Inc.*, 498 F. Supp. at 25. The TTAB should have an opportunity to apply its expert, specialized knowledge and experience here because it may serve as a final disposition of this matter. *Id.* See *Citicasters Co. v. Country Club Commc'n*, No. 97-0678 RJK, 1997 WL 715034, at *2 (C.D. Cal. July 21, 1997) (granting a stay to await the outcome of the cancellation proceedings before the USPTO because the outcome would provide assistance to the court on the nature of the asserted trademarks).

Similarly, here, the TTAB's determinations on the issues before it would be tremendously useful to the District Court case in resolving fundamental questions. The TTAB will exercise its expertise to determine: (i) whether the trademark registrations should be cancelled, thereby precluding, at least, Respondent's claims under Section 32(1) of the Lanham Act; (ii) whether the Asserted Trademarks are generic or descriptive, precluding Respondent's claims for common law infringement and deceptive practices; and (iii) whether unsupervised licensing by Respondent militates against the Asserted Trademarks' validity and enforceability. These decisions will be useful to guide the District Court Case in resolving the pending civil litigation.

The process of cancellation is an efficient and targeted process. It is accomplished primarily through written declarations and evidence and, in this case, focuses solely on the **validity** and **enforceability** of the Asserted Trademarks. By contrast, federal litigation of Respondent's infringement claims will require the resolution of multiple complex issues, all of which are predicated on the validity of the trademark registrations, and will be expensive, time-consuming and burdensome for the litigants and the District Court. A speedy resolution of the cancellation

proceeding will result in a decreased economic burden on the litigants and the court.

IV. CONCLUSION

The balance of considerations in this proceeding favors denying Respondent's Motion to Suspend. The cancellation proceeding is targeted to resolve issues of trademark validity and enforceability. Given the circumstances of this proceeding and Respondent's own continuous delay, proceeding with the Petition to Cancel offers the maximum efficiency, with no prejudice to the parties. Jalinski's motion should be denied, and the Petition to Cancel should be granted.

Dated: April 1, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 1, 2019, I caused the above-referenced document to be served on the parties of record via electronic mail.

/s/ Nathaniel St. Clair, II/
Nathaniel St. Clair, II

EXHIBIT

A

Defendant	District	Case Filed
BJL Wealth Management LLC No. 1:18-cv-00034	DNJ	1/2/18
Frank Karpack No. 2:18-cv-00036	DNJ	1/2/18
Joel Isaacson & Co, LLC No. 1:18-cv-00021	SDNY	1/2/18
Forte Management LLC No. 1:18-cv-00024	SDNY	1/2/18
Del-Sette Capital Management LLC No. 1:18-cv-00010	NDNY	1/2/18
Quarterback Financial Group LLC No. 3:18-cv-00424	NDTX	2/20/18
Franklin Retirement Solutions, Inc. No. 2:18-cv-00801	EDPA	2/22/2018
David Rae No. 2:18-cv-01871	CDCA	3/6/18
Henrickson Nauta Wealth Advisors, Inc. No. 1:18-cv-00759	WDMI	7/10/18

McClean Asset Management Corporation No. 1:18-cv-00923	EDVA	7/26/18
Thom Macdonnell No. 4:18-cv-00092	EDVA	7/26/18
Financial Architects, Inc. and Larry Steinberg No. 2:18-cv-06828	CDCA	8/8/18

EXHIBIT B

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

JALINSKI ADVISORY GROUP, INC.,

Plaintiff / Counter-
Defendant,

v.

Case No. 2:18-cv-12161

Honorable Sean F. Cox
Magistrate Judge Anthony P. Patti

THE HAMO GROUP OF WELLS
FARGO ADVISORS,

Defendant / Counter-
Plaintiff.

**ANSWER, AFFIRMATIVE
DEFENSES, AND
COUNTERCLAIMS**

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Defendant The Hamo Group of Wells Fargo Advisors (“Hamo Group”), by
and through its attorneys hereby submits its Answer, Affirmative Defenses, and

Counterclaims (“Answer”) to Plaintiff Jalinski Advisory Group, Inc.’s (“Jalinski”) Original Complaint (“Complaint”) as follows:

Nature of Action and Relief Sought

1. Hamo Group denies the allegations in Paragraph 1 of the Complaint.
2. Hamo Group is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 of the Complaint, and therefore denies the same.
3. Hamo Group denies the allegations in Paragraph 3 of the Complaint.
4. Hamo Group denies the allegations in Paragraph 4 of the Complaint.
5. Hamo Group admits that Jalinski purports to seek injunctive and monetary relief based on allegations for trademark infringement, unfair competition, false designation of origin, and trademark dilution. Hamo Group denies that the Hamo Group has committed any such acts and denies that Jalinski is entitled to any relief whatsoever.

The Parties

6. Hamo Group is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6 of the Complaint, and therefore denies the same.

7. Hamo Group admits that it is a Michigan entity having an address at 5406 Gateway Centre Drive, Suite D, Flint, MI 48507. Hamo Group denies the remaining allegations in this paragraph.

Jurisdiction and Venue

8. Hamo Group admits the allegations in this paragraph.

9. Hamo Group admits that this Court has personal jurisdiction over Hamo Group based upon its contacts with this forum, but denies that Hamo Group committed any act giving rise to this lawsuit in this forum.

10. Hamo Group admits the allegations in this paragraph.

Facts Common to All Claims

I. Jalinski

A. Jalinski's Brand and Services

11. Hamo Group is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11 of the Complaint, and therefore denies the same.

12. Hamo Group is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 12 of the Complaint, and therefore denies the same.

13. Hamo Group is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 13 of the Complaint, and therefore denies the same.

B. Jalinski's Asserted Trademark Rights

14. Hamo Group admits that U.S. Trademark Application Serial No. 86353875 identifies the mark "The Financial Quarterback," lists services in international class 41, and identifies Jalinski as the owner. Hamo Group further admits that the mark in this application was registered by the United States Patent and Trademark office ("USPTO") on April 21, 2015, based on an application filed July 31, 2014. Hamo Group denies the remaining allegations in this paragraph.

15. Hamo Group admits that U.S. Trademark Application Serial No. 77752160, Registration No. 3782665, identifies the mark "Financial Quarterback," lists services in international class 36, and identifies Jalinski as the owner by assignment. Hamo Group further admits that the mark in this application was registered by the USPTO on April 27, 2010, based on an application filed June 4, 2009. Hamo Group further admits that a declaration of incontestability under Section 15 of the Trademark Act, 15 U.S.C. §1065 for this registration has been acknowledged by the USPTO. Hamo Group admits that U.S. Trademark Application Serial No. 86314778, Registration No. 5346562, identifies the mark "The Financial Quarterback," lists services in international class 36, and identifies

Jalinski as the owner. Hamo Group further admits that the mark in this application was registered by the USPTO on November 28, 2017, based on an application filed June 19, 2014. Hamo Group denies the remaining allegations in this paragraph.

16. Hamo Group admits that U.S. Trademark Application Serial No. 86318879, Registration No. 5346563, identifies the mark “The Financial Quarterback,” identifies services in international class 35, and lists Jalinski as the owner. Hamo Group further admits that the mark in this application was registered by the USPTO on November 28, 2017, based on an application filed June 24, 2014. Hamo Group denies the remaining allegations in this paragraph.

17. Hamo Group admits that pending U.S. Trademark Application Serial No. 86318944 identifies the mark “The Financial Quarterback,” lists goods in international Class 9, and identifies Jalinski as the owner. Hamo Group denies the remaining allegations in this paragraph.

18. Hamo Group denies the allegations in this paragraph.

II. Hamo Group’s Activities

19. Hamo Group admits that it provides financial management, investment management, investment advisory, financial planning, and financial advisory services to its clients. Hamo Group denies the remaining allegations in this paragraph.

20. Hamo Group denies the allegations in Paragraph 20 of the Complaint.

21. Hamo Group denies the allegations in Paragraph 21 of the Complaint.

22. Hamo Group admits that it is not related to or affiliated with Jalinski.

Hamo Group denies the remaining allegations in this paragraph.

23. Hamo Group denies the allegations in Paragraph 23 of the Complaint.

24. Hamo Group denies the allegations in Paragraph 24 of the Complaint.

25. Hamo Group denies the allegations in Paragraph 25 of the Complaint.

COUNT I

Trademark Infringement under Section 32(1) of the Lanham Act (15 U.S.C. § 1114(1)) (Jalinski's Class 41 Trademark)

26. Hamo Group incorporates by reference its responses to the previous allegations to the extent those allegations have been incorporated into this paragraph.

27. Hamo Group denies each and every allegation in Paragraph 27 of the Complaint.

28. Hamo Group denies each and every allegation in Paragraph 28 of the Complaint.

29. Hamo Group denies each and every allegation in Paragraph 29 of the Complaint.

30. Hamo Group denies each and every allegation in Paragraph 30 of the Complaint.

COUNT II
Trademark Infringement under Section 32(1) of the Lanham Act (15 U.S.C. §
1114(1))
(Jalinski's Class 36 Trademarks)

31. Hamo Group incorporates by reference its responses to the previous allegations to the extent those allegations have been incorporated into this paragraph.

32. Hamo Group denies each and every allegation in Paragraph 32 of the Complaint.

33. Hamo Group denies each and every allegation in Paragraph 33 of the Complaint.

34. Hamo Group denies each and every allegation in Paragraph 34 of the Complaint.

35. Hamo Group denies each and every allegation in Paragraph 35 of the Complaint.

COUNT III
Trademark Infringement under Section 32(1) of the Lanham Act (15 U.S.C. §
1114(1))
(Jalinski's Class 35 Trademark)

36. Hamo Group incorporates by reference its responses to the previous allegations to the extent those allegations have been incorporated into this paragraph.

37. Hamo Group denies each and every allegation in Paragraph 37 of the Complaint.

38. Hamo Group denies each and every allegation in Paragraph 38 of the Complaint.

39. Hamo Group denies each and every allegation in Paragraph 39 of the Complaint.

40. Hamo Group denies each and every allegation in Paragraph 40 of the Complaint.

COUNT IV

Unfair Competition and False Designation of Origin under Section 43(a) of the Lanham Act (15 U.S.C. § 1125(a)) (Jalinski's Class 41 Trademark)

41. Hamo Group incorporates by reference its responses to the previous allegations to the extent those allegations have been incorporated into this paragraph.

42. Hamo Group denies each and every allegation in Paragraph 42 of the Complaint.

43. Hamo Group denies each and every allegation in Paragraph 43 of the Complaint.

44. Hamo Group denies each and every allegation in Paragraph 44 of the Complaint.

45. Hamo Group denies each and every allegation in Paragraph 45 of the Complaint.

46. Hamo Group denies each and every allegation in Paragraph 46 of the Complaint.

COUNT V

Unfair Competition and False Designation of Origin under Section 43(a) of the Lanham Act (15 U.S.C. § 1125(a)) (Jalinski's Class 36 Trademarks)

47. Hamo Group incorporates by reference its responses to the previous allegations to the extent those allegations have been incorporated into this paragraph.

48. Hamo Group denies each and every allegation in Paragraph 48 of the Complaint.

49. Hamo Group denies each and every allegation in Paragraph 49 of the Complaint.

50. Hamo Group denies each and every allegation in Paragraph 50 of the Complaint.

51. Hamo Group denies each and every allegation in Paragraph 51 of the Complaint.

52. Hamo Group denies each and every allegation in Paragraph 52 of the Complaint.

COUNT VI

Unfair Competition and False Designation of Origin under Section 43(a) of the Lanham Act (15 U.S.C. § 1125(a)) (Jalinski's Class 35 Trademark)

53. Hamo Group incorporates by reference its responses to the previous allegations to the extent those allegations have been incorporated into this paragraph.

54. Hamo Group denies each and every allegation in Paragraph 54 of the Complaint.

55. Hamo Group denies each and every allegation in Paragraph 55 of the Complaint.

56. Hamo Group denies each and every allegation in Paragraph 56 of the Complaint.

57. Hamo Group denies each and every allegation in Paragraph 57 of the Complaint.

58. Hamo Group denies each and every allegation in Paragraph 58 of the Complaint.

COUNT VII
Trademark Dilution under Section 43(c) of the Lanham Act (15 U.S.C. §
1125(c))
(Jalinski's Class 41 Trademark)

59. Hamo Group incorporates by reference its responses to the previous allegations to the extent those allegations have been incorporated into this paragraph.

60. Hamo Group denies each and every allegation in Paragraph 60 of the Complaint.

61. Hamo Group denies each and every allegation in Paragraph 61 of the Complaint.

62. Hamo Group denies each and every allegation in Paragraph 62 of the Complaint.

63. Hamo Group denies each and every allegation in Paragraph 63 of the Complaint.

64. Hamo Group denies each and every allegation in Paragraph 64 of the Complaint.

COUNT VIII
Trademark Dilution under Section 43(c) of the Lanham Act (15 U.S.C. §
1125(c))
(Jalinski's Class 36 Trademarks)

65. Hamo Group incorporates by reference its responses to the previous allegations to the extent those allegations have been incorporated into this paragraph.

66. Hamo Group denies each and every allegation in Paragraph 66 of the Complaint.

67. Hamo Group denies each and every allegation in Paragraph 67 of the Complaint.

68. Hamo Group denies each and every allegation in Paragraph 68 of the Complaint.

69. Hamo Group denies each and every allegation in Paragraph 69 of the Complaint.

70. Hamo Group denies each and every allegation in Paragraph 70 of the Complaint.

COUNT IX
Trademark Dilution under Section 43(c) of the Lanham Act (15 U.S.C. §
1125(c))
(Jalinski's Class 35 Trademark)

71. Hamo Group incorporates by reference its responses to the previous allegations to the extent those allegations have been incorporated into this paragraph.

72. Hamo Group denies each and every allegation in Paragraph 72 of the Complaint.

73. Hamo Group denies each and every allegation in Paragraph 73 of the Complaint.

74. Hamo Group denies each and every allegation in Paragraph 74 of the Complaint.

75. Hamo Group denies each and every allegation in Paragraph 75 of the Complaint.

76. Hamo Group denies each and every allegation in Paragraph 76 of the Complaint.

COUNT X
Common Law Trademark Infringement and Unfair Competition

77. Hamo Group incorporates by reference its responses to the previous allegations to the extent those allegations have been incorporated into this paragraph.

78. Hamo Group denies each and every allegation in Paragraph 78 of the Complaint.

79. Hamo Group denies each and every allegation in Paragraph 79 of the Complaint.

80. Hamo Group denies each and every allegation in Paragraph 80 of the Complaint.

81. Hamo Group denies each and every allegation in Paragraph 81 of the Complaint.

82. Hamo Group denies each and every allegation in Paragraph 82 of the Complaint.

COUNT XI
Unfair and Deceptive Practices under MCL 445.901-922

83. Hamo Group incorporates by reference its responses to the previous allegations to the extent those allegations have been incorporated into this paragraph.

84. Hamo Group denies each and every allegation in Paragraph 84 of the Complaint.

85. Hamo Group denies each and every allegation in Paragraph 85 of the Complaint.

86. Hamo Group denies each and every allegation in Paragraph 86 of the Complaint.

87. Hamo Group denies each and every allegation in Paragraph 87 of the Complaint.

88. Hamo Group denies each and every allegation in Paragraph 88 of the Complaint.

Relief Sought

Hamo Group denies that Jalinski is entitled any relief whatsoever, including the relief requested in the Relief Sought portion of the Complaint and paragraphs 1-5 thereto, and denies any allegations contained therein. Jalinski's prayer for relief should be denied with prejudice, and Jalinski should take nothing.

Demand for Jury Trial

Jalinski's jury demand requires no answer. Hamo Group demands a jury trial on all issues so triable.

AFFIRMATIVE DEFENSES

Without prejudice to the denials hereinabove set forth in the Answer, without admitting any of Jalinski's allegations not otherwise admitted, and without undertaking any of the burdens imposed by law on Jalinski, Hamo Group asserts the following Affirmative Defenses to Jalinski's Complaint, and expressly reserves the right to allege additional Affirmative Defenses as they become known during this litigation:

FIRST AFFIRMATIVE DEFENSE
(Failure to State a Claim)

The Complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE
(Unenforceable Trademark Rights)

The claims alleged in Jalinski's Complaint (hereinafter "Jalinski's claims") are barred, in whole or in part, to the extent that Plaintiff's trademarks and/or trademark registrations are abandoned, invalid and/or unenforceable.

THIRD AFFIRMATIVE DEFENSE
(Fair Use)

Jalinski's claims are barred, in whole or in part, by the doctrines of fair use, nominative fair use and/or descriptive use.

FOURTH AFFIRMATIVE DEFENSE
(Generic, Descriptive, Lacks Secondary Meaning)

Jalinski's claims are barred, in whole or in part, on the basis that some or all of the plaintiff's marks are generic, descriptive, and lack secondary meaning.

FIFTH AFFIRMATIVE DEFENSE
(No False Designation of Origin or Likelihood of Confusion)

Jalinski's claims are barred, in whole or in part, on the basis that no acts or use or display of any mark by Hamo Group creates a false designation of origin or likelihood of confusion, in violation of any right alleged to be held or owned by Jalinski.

SIXTH AFFIRMATIVE DEFENSE
(Estoppel, Acquiescence, Unclean Hands, and Laches)

The Complaint and each and every cause of action therein are barred, in whole or in part, by the doctrines of estoppel, acquiescence, unclean hands, and/or laches.

SEVENTH AFFIRMATIVE DEFENSE
(Dilution)

Jalinski's claims are barred, in whole or in part, by the dilution of some or all of the alleged trademarks at issue, by virtue of extensive third-party use of the phrase "Financial Quarterback" across the nation.

EIGHTH AFFIRMATIVE DEFENSE
(Lack of Fame)

Jalinski's claims are barred, in whole or in part, because the marks upon which the Action was brought are not famous as that term is defined in 15 U.S.C. § 1125(c)(1).

NINTH AFFIRMATIVE DEFENSE
(Failure to Mitigate Damages)

Jalinski's claims are barred, in whole or in part, because of a failure to mitigate damages, if such damages exist.

TENTH AFFIRMATIVE DEFENSE
(No Causation)

Jalinski's claims are barred, in whole or in part, because Jalinski's damages, if any, were not caused by Hamo Group.

ELEVENTH AFFIRMATIVE DEFENSE
(Innocent Usage)

Jalinski's claims are barred, in whole or in part, because the alleged acts of The Hamo Group were neither willful, wanton, malicious, nor in bad faith.

TWELFTH AFFIRMATIVE DEFENSE
(Priority of Use)

Jalinski's claims are barred, in whole or in part, because to the extent Hamo Group used any marks upon which the Action was brought, such use was prior to Jalinski's first use of those marks, and therefore Hamo Group has superior rights in and to the phrase "financial quarterback" in connection with the stated services.

THIRTEENTH AFFIRMATIVE DEFENSE
(Statute of Limitations)

Jalinski's claims are barred, in whole or in part, by applicable statute of limitations. Hamo Group used the phrase "financial quarterback" in a brochure in 2006 and it has continuously used the phrase "financial quarterback" on its website since at least 2006. Hamo Group did not file this lawsuit until 2018.

FOURTEENTH AFFIRMATIVE DEFENSE
(Duplicative Recovery)

Jalinski's claims are barred, in whole or in part, because Jalinski seeks overlapping and duplicative recoveries for a single alleged wrong.

FIFTEENTH AFFIRMATIVE DEFENSE
(No Unfair Competition)

Jalinski's claims are barred, in whole or in part, because no act or action by Hamo Group constituted an act of unfair competition in violation of any right alleged to be held or owned by Jalinski.

Reservation of Additional Defenses

Hamo Group reserves all affirmative defenses under the Federal Rules of Civil Procedure and any other defense, at law or in equity, which may now exist or in the future may be available based on the discovery and further factual investigation in this case.

COUNTERCLAIMS

1. Defendant/Counter-Plaintiff Hamo Group files this Counterclaim against Plaintiff/Counter-Defendant Jalinski, and in support of these counterclaims alleges as follows:

Parties

2. Hamo Group is a Michigan entity with its principal place of business at 5406 Gateway Centre Drive, Suite D, Flint, MI 48507.

3. Upon information and belief, Jalinski is a New Jersey corporation with a principal place of business at 1400 Hooper Avenue, Suite 210, Toms River, NJ 08753.

Jurisdiction and Venue

4. These counterclaims are brought under the Lanham Act, 15 U.S.C. § 1051, et seq. and the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202.

5. This Court has subject matter jurisdiction over these counterclaims by virtue of 15 U.S.C. §§ 1119 and 1121 (Lanham Act), 28 U.S.C. § 1331 (Federal Question Jurisdiction), 28 U.S.C. § 1338 (Patent, Trademark, Copyright), and 28 U.S.C. § 1367 (Supplemental Jurisdiction).

6. This Court has personal jurisdiction over Jalinski because, *inter alia*, Jalinski submitted to personal jurisdiction of this Court and venue in this District by commencing this action.

Background Facts

7. Hamo Group does not use, and has never used, the purported trademarks.

8. Hamo Group had never heard of Jalinski and was not aware of the purported trademarks prior to this lawsuit.

9. Hamo Group has used the term “financial quarterback” since 2006. During that time, over 12 years ago, Hamo Group used the term in its brochure in 2006 as a *sub-heading* to *describe* the various services Hamo Group offers. The brochure is attached as **Exhibit A**. Hamo Group also incorporates the phrase “financial quarterback” on its website under a description of Hamo Group’s history

and has been doing so since 2006. A screenshot of Hamo Group's website is attached as **Exhibit B**.

10. Jalinski alleges that it "demand[ed] [Hamo Group] cease this conduct" in 2015. Hamo Group never formally received this alleged demand letter in 2015. Hamo Group has requested evidence of any transmittal or receipt of the letter from Jalinski; however, Jalinski has yet to produce a record of service or any evidence that it was ever transmitted to the Hamo Group.

11. The term "financial quarterback" is commonly used in the United States wealth management industry in reference to the coordination of generalized financial services, including financial planning, financial management, financial advisory retirement planning, investment advisory, and investment management.

12. The term "quarterback" is a common term used in business to refer to "a person who directs or coordinates an operation or project." *Quarterback*, English Oxford Living Dictionaries (2018), <https://en.oxforddictionaries.com/definition/quarterback> (accessed August 30, 2018).

13. The term "financial quarterback" is often used in a descriptive nature in financial periodicals as a reference to the coordination of generalized financial services, including financial planning, financial management, financial advisory retirement planning, investment advisory, and investment management. A

compilation of online publications demonstrating the generic and descriptive nature of the phrase “quarterback financial” is attached as **Exhibit C**.

14. Hamo Group has used the phrase “financial quarterback” descriptively and/or generically prior to Jalinski’s purported date of first use.

15. Hamo Group has used the phrase “financial quarterback” descriptively and/or generically prior to Jalinski’s filing dates for the purported trademarks.

16. Jalinski has licensed use of the mark “The Financial Quarterback” to the original registrant of U.S. Trademark Registration No. 3,782,665, Investment Financial Services, Inc., without any contractual provisions or obligations relating to quality control.

17. On information and belief, Defendant Jalinski has attempted to assert the purported trademarks against over 100 different financial advisory firms. Jalinski has sent hundreds of letters seeking a license or settlement, in hopes of receiving undue compensation. As this is only one of the multiple trademark infringement lawsuits Plaintiff has filed this year, Plaintiff is seemingly an IP licensing entity seeking to earn a quick pay day.

18. As a result of Jalinski’s litigious actions, Jalinski’s Trademark Registration Nos. 3,782,665, 4,722,740, 5,346,562, and 5,346,563 are currently subject to cancellation proceedings.

19. As set forth below, there is an actual and ongoing controversy between Jalinski and Hamo Group as to whether any alleged activity by Hamo Group infringes any valid and enforceable trademarks owned by Jalinski.

Count One:
Declaratory Judgment of Non-Infringement

20. Hamo Group incorporates by reference the foregoing paragraphs of its Counterclaims.

21. There are multiple prior and continuous third-party uses of the term “financial quarterback” in connection with financial planning, financial management, financial advisory retirement planning, investment advisory, and investment management services.

22. To the extent Jalinski has trademark rights in the asserted “FINANCIAL QUARTERBACK” or “THE FINANCIAL QUARTERBACK” marks, if at all, the asserted marks are generic, weak, and/or descriptive, and entitled to narrow protection.

23. Any use by Hamo Group of the term “financial quarterback” is not likely to cause confusion, mistake, or deception, or confuse the relevant public as to source, sponsorship, or affiliation with Jalinski.

24. There are significant differences in how Hamo Group’s use of the term “financial quarterback” and Jalinski’s purported trademarks are actually used in commerce, including differences in the services and/or goods, customers, and

channels of trade. Jalinski uses the term “financial quarterback” in radio broadcasts and podcasts. Hamo Group used the term as a subheading in a brochure in 2006 and uses it on its website in one sentence to describe its company’s goals and objectives.

25. Any use by Hamo Group of the term “financial quarterback” has existed in the marketplace without any confusion for many years, and it is not likely to cause confusion, mistake, or deception of origin.

26. On information and belief, Hamo Group does not provide services in the same geographic location as Jalinski. For example, Hamo Group offers wealth management services for clients most of whom are located in or near Michigan.

27. To the extent any trademark use occurred, Hamo Group used the term “financial quarterback” in a descriptive manner only.

28. To the extent any trademark use occurred, Hamo Group’s use of the term “financial quarterback” was fair use.

29. Hamo Group would be damaged, and is being damaged, by the enforcement of Jalinski’s purported trademarks against Hamo Group.

30. Accordingly, Hamo Group is entitled to a declaratory judgment that it does not infringe or dilute the purported trademarks or otherwise violate state or federal statutory or common law.

Count Two:
Cancellation of Jalinski's Trademark Registrations

31. Hamo Group incorporates by reference the foregoing paragraphs of its Counterclaims.

32. On information and belief, third parties have continuously used the phrase “financial quarterback” generically and descriptively since before September 10, 2008—the alleged date of Jalinski's purported first use of the phrase in interstate commerce, indicated in U.S. Trademark Registration No. 4722740.

33. The phrase “financial quarterback” is a term of art within the financial services industry. The registered marks are used in their ordinary meaning to describe financial services.

34. The phrase “financial quarterback” does not create, in and of itself, a distinct commercial impression apart from its generic or descriptive meaning within the financial services industry.

35. Furthermore, Jalinski's FINANCIAL QUARTERBACK Marks are descriptive in that the phrase immediately describes the services offered under those marks and such marks have not become distinctive in commerce. 15 U.S.C. § 1052(f).

36. Furthermore, Jalinski's license of the mark “The Financial Quarterback” to Investment Financial Services, Inc. contains no provisions or

obligations relating to quality control so Jalinski is unable to exercise any control over Investment Financial Services, Inc.'s use of the mark.

37. Accordingly, U.S. Trademark Registration No. 3,782,665 is subject to cancellation on grounds of genericness pursuant to 15 U.S.C. § 1064(3).

38. Accordingly, U.S. Trademark Registration Nos. 4,722,740, 5,346,562, and 5,346,563 are subject to cancellation on grounds of genericness and descriptiveness pursuant to 15 U.S.C. §§ 1052(e), 1064(1), and 1064(3).

39. Accordingly, U.S. Trademark Registration Nos. 3,782,665, 4,722,740, 5,346,562, and 5,346,563 are subject to cancellation on the grounds that Jalinski does not control and is not able to legitimately exercise control over the use of the mark pursuant to 15 U.S.C. §1064(5).

Prayer for Relief

WHEREFORE, Hamo Group respectfully prays that this Court:

- a. Enter judgment in its favor and against Jalinski, dismissing with prejudice each of the claims asserted by Jalinski;
- b. Declare, adjudge, and decree that Hamo Group has not infringed any rights that Jalinski may have in the purported FINANCIAL QUARTERBACK or THE FINANCIAL QUARTERBACK Marks;
- c. Declare, adjudge, and decree that the use of the term “financial quarterback” by The Hamo Group does not infringe any rights that

Jalinski may have in the purported FINANCIAL QUARTERBACK or THE FINANCIAL QUARTERBACK Marks;

- d. Declare, adjudge, and decree that Jalinski has not been damaged in any way by the use of the purported FINANCIAL QUARTERBACK or THE FINANCIAL QUARTERBACK Marks;
- e. Order cancellation of the asserted FINANCIAL QUARTERBACK and THE FINANCIAL QUARTERBACK Marks;
- f. Award Hamo Group its damages, costs, disbursements and attorneys' fees pursuant to Section 35(a) of the Lanham Act (15 U.S.C. § 1117(a)); and
- g. Award Hamo Group such other and further relief in its favor as the Court deems appropriate.

Respectfully submitted,

DYKEMA GOSSETT PLLC

By: /s/ Samantha L. Walls

Sherrie L. Farrell (P57205)

Samantha L. Walls (P75727)

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Date: September 7, 2018

CERTIFICATE OF SERVICE

I hereby certify that on September 7, 2018, I caused the above-referenced document to be served on the parties of record via this Court's ECF System, which will provide notification to all attorneys of record.

/s/ Samantha L. Walls
Samantha L. Walls
P75727

DYKEMA GOSSETT A PROFESSIONAL LIMITED LIABILITY COMPANY • 400 RENAISSANCE CENTER • DETROIT, MICHIGAN 48243

EXHIBIT A

smithbarney.com

The Hamo Group at Smith Barney

citigroup
SMITHBARNEY

The Hamo Group at Smith Barney

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Flint, MI 48532

phone (810) 230-2948

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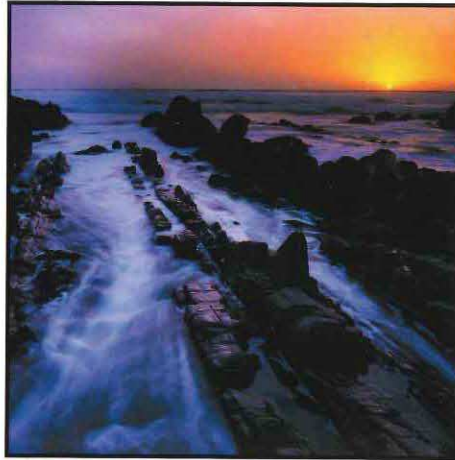
e-mail joseph.m.hamo@smithbarney.com

website fa.smithbarney.com/hamo

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our vision



Our clients' needs are paramount, and we can help them accomplish their goals. We believe in superior client service, which means that we are accessible to our clients, willing to be measured according to their expectations, and to be proactive and clear communicators. We have a solid process to provide comprehensive analysis and advice delivered by knowledgeable professionals. Our process includes consistent follow-up on investments, risk, and special needs. We are qualified to determine, implement and oversee all our clients' financial goals and objectives. Our goal is to be our clients' "financial quarterback."

We Focus on Total Return

Total return is price appreciation plus income earned. This focus helps to ensure that our clients are hedged against inflation and have an increasing income stream over time.

Investment Portfolios Monitored on an Ongoing Basis

We recommend regular reviews for all clients annually. This helps to make sure that your portfolio remains in line with your investment objectives and allows us to adjust your portfolio to accommodate changing economic conditions, as well as changes in your personal situation.

Extensive Research

The tremendous amount of information is an invaluable resource we can access for your benefit. This will enable us to assist you in creating a sophisticated and well-positioned investment portfolio.

Complete Estate Planning

As a Certified Financial Planner, I can offer estate planning services and direct you in the implementation of such a plan.

Financial Quarterback

Bring all aspects of your financial health together in one complete financial plan including insurance needs analysis, education planning for children and grandchildren, retirement planning, tax planning, estate planning and asset allocation strategies.

EXHIBIT B



Sign On | wellsfargo.com

The Hamo Group of Wells Fargo Advisors

Group Financial Advisors

JOSEPH M. HAMO

Senior Vice President - Investments



Address: 5406 GATEWAY CENTRE DRIVE, SUITE D, FLINT, MI 48507

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Our Group

The Hamo Group of Wells Fargo Advisors was formed in 2000 when Joe Sr. partnered with his son, Joseph M. Hamo, CRPC®, Senior Vice President – Investments. Julie had been assisting Joe Sr. since 1988 and Renee joined the team in 2015 to complete all members of the group. After Joe Sr.'s passing we continue to serve our clients with the same dedication, commitment and determination. We formed a team to better assist our clients in the servicing of their accounts and planning for their futures. We feel the team approach allows us to provide superior client service. We hold ourselves accountable to our clients and take the achievement of their goals very seriously. We have a solid process to provide comprehensive analysis and advice delivered by credentialed professionals. We spend time to understand our client's financial concerns and work together to develop a customized program designed to best meet their needs. We are qualified to determine, implement and oversee all our clients' financial goals and objectives. Our goal is to be our clients "financial quarterback".

Our Associate(s): Julie M. Russ Senior Registered Client Associate ; Renee M. Trail Client Associate

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EXHIBIT C

Helping your clients plan in the midst of their grief

ACCOUNTING TODAY

August 24, 1998

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Section: FINANCIAL PLANNING

Length: 541 words

Byline: By Tracey Miller-Segarra

Body

Certified financial planner Joe Kopczynski expertly kept track of his own family's financial matters right up until the moment tragedy struck 10 years ago.

That was the day his 16-year-old daughter drowned on her way home from work when a freak rainstorm from the mountains swept her car off the road.

Living through the tragedy and its aftermath gave Kopczynski an insider's perspective on what planners should and should not do when dealing with grieving clients. "The first couple of days were a daze - I didn't understand what was going on," Kopczynski, of Universal Advisory Services in Albuquerque, N.M., tells other planners. "I never thought that I was going to bury my oldest daughter."

To further compound the tragedy, Kopczynski was his own financial planner and in the weeks following his daughter's death, the family's finances fell into disarray.

"In retrospect, I could have used a coordinator to tell me what needed to be done, to physically write out checks and help me pay the bills," Kopczynski said.

But he also warns planners who are dealing with grieving clients to be extra sensitive to their loss and rein in any inclinations to get estate and other financial matters settled immediately.

"No one in this position is in a decision-making mode," he said.

Other planners advise their peers to start preparing clients for their own death or the death of a loved one by making sure that various financial papers are in order so that when a death occurs, the planner will be able to more smoothly coordinate both the decedent's and the survivor's affairs.

Many planners advocate setting up a file folder on each client that lists everything that needs to be done when a person passes away. The file would include the locations of key financial documents like wills and life insurance policies, information on death certificates and important phone numbers.

Helping your clients plan in the midst of their grief

Planner Deena Katz of Coral Gables, Fla.-based Evensky, Brown, Katz & Levitt notes that more leeway is possible when dealing with a client who is dying and wants to put his affairs in order.

She recommends that planners read Elisabeth Kubler-Ross's book, "On Death and Dying," to understand the stages that people go through when confronting death.

"If someone knows they are dying, most want to talk about it," she said. "It helps to know what stage your client is in."

Katz says that it's important to first get permission from the dying client to talk to all his other advisers - including accountants and attorneys. "Then you can act as the financial quarterback," Katz said.

Estate planning attorney Jonathan Forster, of Shulman, Rogers, Gandal, Pordy & Ecker in Rockville, Md., said that the key is to work behind the scenes "to help them make a few decisions so you can make a lot of others."

Forster also warned planners that many parents have never talked to their children about their wills and that once that client passes away, would-be heirs quickly swoop down to scavenge for money and contest the client's wishes.

"Do a good job on wills because the clients will disappear and you will have a lot of other folks coming to you with different agendas," he warned.

Load-Date: August 21, 1998

Topeka C-J: GTrust can devise a financial game plan

Topeka C-J: GTrust can devise a financial game plan

Published: Jan 13 2002 17:22:09

Jan. 13 (The Topeka Capital-Journal) -- Richard Salmen

The Capital-Journal

GTrust, the company that assisted Andy and Amy Green, is a Topeka- based asset management business that serves as a financial quarterback for its clients.

The company has 18 employees and manages about \$220 million in assets, said Richard Salmen, market president of the Overland Park office.

Daryl Craft is chairman and president.

Clients aren't charged commissions. They pay a retainer fee for "us to do their income tax, estate planning, insurance planning, investments and retirement planning.

"We balance living for today and planning for tomorrow, that is our role," Salmen said.

Typically, GTrust professionals meet with clients 12 times in the first year and four times a year after that. When mortgage rates dropped last year, GTrust helped several clients refinance their mortgages to save money.

"We don't focus on retirement. We focus on financial independence because the two don't mean the same thing," he said.

"Financial independence is the day you can choose to quit work, you could live the lifestyle you want to live without having to work. To me that is true financial independence," Salmen said. "For the Greens, that is a long ways away. But for them, they chose to have kids close together early in their marriage."

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-0- Jun/18/2013 22:54 GMT

"Managing expectations": The key to wealth management

The CPA Journal

September 2002

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Section: Pg. 8; Vol. 72; No. 9; ISSN: 0732-8435

Length: 1014 words

Byline: Higgins, Gloria J

Body

ABSTRACT

Wealth management has become a critical issue for the high-net-worth individual as a result of several years of stock market appreciation, followed by a significant decline in value. Defining wealth-management services from both the investor and CPA sides are critical to a successful relationship. Investors' expectations vary with their portfolio's values and growth, their technical skills and the CPA's perspective. Managing the expectations of the CPA-wealth manager is as important as managing those of the investor. Managing expectations is the foundation of a successful wealth-management practice. The CPA-wealth manager should consider building strategic relationships with other investment professionals, especially those with a strong commitment to clients rather than investment products. Managing the firm's expectations generally revolves around profitability.

FULL TEXT

SEPTEMBER IS HIGH-NETWORTH MONTH (SINCE 1992) Wealth management has become a critical issue for the high-networth individual as a result of several years of stock market appreciation, followed by a significant decline in value. In addition, demographics and the challenges of transferring wealth between generations have created the need for a new approach to financial services.

Large financial institutions define wealth-management services broadly, covering everything from serving as the **"financial quarterback"** to providing "buy/sell" investment decisions and stock picking. Although some CPAs have transitioned to the buy/sell professional, the **financial quarterback** is a more natural position. Defining this position from both sides and managing expectations are critical to a successful relationship.

Managing Investor Expectations

Investors' expectations vary with their portfolio's values and growth, their technical skills, and the CPA's perspective. Although most Americans are familiar with investments and the related terminology, few people understand the nuances of successful investing, and many take unnecessary financial risks. Because most CPAs' professional training has focused on historical financial information, giving advice predicated on future events is difficult at best.

The wealth manager must also develop tools for understanding an individual's tolerance for market volatility. For example, September 2001 differentiated wealth managers; although, from a financial perspective, the sky was falling, this didn't mean that portfolios should be liquidated. The **financial quarterback's** primary responsibility is to work with clients on positioning their portfolio so they have peace of mind during times of great uncertainty and anxiety. This "soft" issue—the psychology of investing—can be as important as the assets in the portfolio.

The wrong kind of diversification; 'Di-worse-ification:' Adding investments or advisors that increase the risk of a portfolio.

Accounting Today

November 5, 2007

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Section: FINANCIAL PLANNING; Pg. 14; Vol. 21; No. 20

Length: 1167 words

Byline: Larry Swedroe

Body

Individuals managing their own assets receive no legal guidance on the standards for prudent investing.

Fortunately, they can look to the Uniform Prudent Investor Act for guidelines. The act sets forth standards that govern the investment activities of trustees, and is currently the law in almost every state. While those standards do not apply to individuals managing their own assets, they do provide guidance on what the courts consider prudent investing.

Modern Portfolio Theory identifies asset allocation as the most important issue when investing and managing assets, because it determines well over 90 percent of the risk and expected reward of a portfolio. In fact, the act identifies the tradeoff between risk and return as the fiduciary's central consideration. The act incorporated one of the most important tenets of MPT in stating, "Because broad diversification is fundamental to the concept of risk management, it is incorporated into the definition of prudent investing."

Unfortunately, some investors make mistakes in their efforts to diversify risks. The reason is that some types of diversification are less effective than others, some are ineffective - and some can even increase risk.

WORSE AND WORSE

Probably the most common error made by individual investors related to diversification is purchasing several different mutual funds, each of which invests in the same asset class. Owning five different U.S. large growth funds provides only a minimal amount of diversification. This is a case of investors failing to understand that while they own different funds, all the funds are invested in the same basket - they are exposed to the same types of risks.

A similar error is made by many affluent investors. Not wanting to have all their eggs in one basket, they hire several investment advisor firms. This is a mistake on two fronts. The first mistake we have already discussed. Diversification, and the amount of risk in a portfolio, is no more determined by the number of advisors you have than it is determined by the number of stocks you own. Instead, as the academic research demonstrates, almost all of the risk of a portfolio is determined by its asset allocation.

The other mistake is that the hiring of multiple advisors can create several problems:

- * Working with multiple advisors complicates the management of the portfolio.
- * Economies of scale can be lost - advisors who charge by the amount of assets under management typically charge lower fees on larger portfolios.
- * There is the potential for duplication of holdings, both in terms of individual stocks and asset class exposure. Thus, the portfolio may not be effectively diversified, and thus more risky than it should be. Also note that if the investor is using

The wrong kind of diversification; 'Di-worse-ification:' Adding investments or advisors that increase the risk of a portfolio.

actively managed funds, the more advisors that invest in the same asset class, the more likely it is that you will be paying high active-management fees while owning a portfolio that looks more and more like a group of low-cost index funds. On the other hand, if the investor believes in passive management, there is no need for more than one advisor.

* If each advisor operates independently, there is the potential for inefficient tax management.

* If each advisor operates independently, style drift is likely to occur - the overall portfolio's desired asset allocation may not be maintained.

A FINANCIAL 'QUARTERBACK'

Having a well-thought-out investment plan is only one of the necessary conditions for success. (Among the other necessary conditions is having the discipline to adhere to the plan.)

The sufficient condition is to integrate the investment plan into a carefully constructed estate, tax and risk management (insurance) plan, because investment decisions and performance can impact other areas of the plan. For example, there might be a well-designed investment plan, but the financial plan fails because the primary breadwinner died without sufficient insurance (or was disabled without disability insurance).

To ensure that you have the greatest chance of achieving your financial goals, you should have a qualified wealth manager serve as the **quarterback** of your financial services team. That person should be responsible for coordinating asset allocation, estate, tax management and risk management (insurance) plans. And they should make the appropriate adjustments as your ability, willingness and need to take risk change over time. For example, better-than-expected investment performance may reduce the need to take risk, resulting in the ability to lower your equity allocation.

Better-than-expected investment performance can also impact your plans in conflicting ways. For example, higher-than-expected returns might allow you to self-insure risks that you previously bought insurance to cover (e.g., life, long-term health care, disability). It may also increase a family's ability to achieve other goals, such as donating to charity. On the other hand, it might increase your need for life insurance, if that is the most efficient way to pay estate taxes.

SUMMARY

While diversification is part of the prudent investment strategy, some kinds of diversification are more effective than others. Hiring multiple investment advisors creates the potential for inefficient portfolio management. And it may add unwanted complexity to your life, while increasing costs.

There is a simple solution that eliminates the need to hire multiple advisors. First, adopt a passive investment strategy. Second, hire an advisor who operates an "open platform" - they don't sell any proprietary products and are thus able to buy any product.

Third, hire an accredited advisor such as a CPA/PFS or a CFP advisor who not only provides investment management services, but wealth management services as well. Doing so will not only provide you the best chance of achieving your financial goals, but it will also simplify your life.

Fourth, make sure that the advisor provides a fiduciary standard of care. A fiduciary standard is often considered the highest legal duty that one party can have to another. This differs from the suitability standard present in many brokerage firms. That standard only requires that a product or service be suitable - it does not have to be in the investor's best interest.

Finally, you should make sure that you disclose all of your investment accounts (e.g., 401(k)) and all of your financial assets (e.g., stock options, life insurance, trusts) to your **financial quarterback**. That is the only way you can be sure that your plan is a well-integrated one. And it is the only way to be sure that you don't end up "di-worse-ifying" your portfolio.

Larry Swedroe is the author of The Only Guide to a Winning

Investment Strategy You Will Ever Need and the director of research for and a principal of both Buckingham Asset Management Inc. and BAM Advisor Services LLC, in St. Louis. His views are not necessarily those of Buckingham Asset Management or BAM Advisor Services.



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Financial Quarterbacks Wave Of The Future

SEPTEMBER 16, 2011 • [KAREN DEMASTERS](#)

The future of being a financial planner may be that of an overseer or "quarterback" managing other advisors, says Jimmy Lee, a certified fund specialist (CFS) and managing partner of Strategic Wealth Associates.

That is the way he sees himself and his wealth management firm, based in Arizona, California, Nevada and New Mexico, especially in dealing with high-net-worth individuals and families that have more than one financial advisor.

"The financial advisor of tomorrow, who will operate in a more fluid marketplace, will find a real need for financial quarterbacks," Lee says. "High-net-worth investors do not have all their eggs in one basket and for good reasons, so they have more than one advisor, but who is looking at all the different advisors?"

Lee calls the new position a quarterback, a CFO or manager of managers. Whatever the name, he has seen the potential for the position to save millions of dollars for high-net-worth individuals.

Lee had one prospect with several advisors, each managing a portfolio, which the client thought assured him of diversity. Instead, all of the portfolios were being managed nearly the same and when the market took a nose dive, he lost substantial amounts of money.

"He made an emotional decision to get out of the market at the wrong time and never got back in. He was also managing a substantial part of his assets himself," Lee explains. "This person went from more than \$60 million to \$5 million. If he had had a CFO overseeing the investments, this never would have happened."

In other instances, assets are mislabeled, which can affect the way a trust account is handled. Another client moved from a non-community property state to a community property state, which would have changed the distribution of his assets. The quarterback is needed to straighten out these types of problems, Lee says.

When confronted with these situations, Lee says, he brings in an attorney or a tax expert from the firm to give advice. The firm aggregates accounts so they can see all investments. They will work with all the clients' advisors, with the client making the ultimate decisions. Strategic Wealth Associates offers a gamut of possibilities, from taking over all of the money management and investments, to working with the clients' advisors and attorneys while managing some of the funds, to acting purely as a consultant.

"To be an effective advisor for the future, it is important to understand the need for a financial quarterback for the ultra-high-net-worth clients, and not have the client's investments operating in separate silos and managed by separate, autonomous people," Lee says.

-Karen DeMasters

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WEALTH PLANNING

Really Rich Really Want Financial Quarterbacks

Enthusiasm for the financial quarterback role is growing among the super-rich, according to research released Wednesday by Morgan Stanley and Campden Research.

Kristen French | Jun 27, 2012

“Financial quarterback” has become a cliché in the wealth management industry. For years, coaches and marketing gurus have urged advisors to become that central financial point person who coordinates and executes all investment and financial decisions for wealthy clients. Playing quarterback means being lead coordinator of a client’s other financial service providers and givers-of-advice, such as accountants, estate attorneys, trust officers, etc.

But all clichés have a grain of truth, and if you listened to the coaches and the gurus, good for you, because it turns out enthusiasm for the quarterback role is growing among the super-rich, according to research released Wednesday by Morgan Stanley and Campden Research. Campden surveyed 53 North American ultra-high-net-worth individuals, nearly two-thirds of whom had net worth of more than \$100 million.

In fact, the quarterback idea is relatively new. It didn’t really catch on with the rich until after the market went into a tailspin in 2007. Even back in 2010, only a quarter of ultra-affluent families were using a quarterback. Today, that number has grown to 42 percent, according to Campden.

“That just under half of the research participants have now adopted this model further bolsters the trend of ultra-affluent families’ fine tuning how they use advisors,” wrote the authors of the Campden report. “The families are developing a better understanding of what their various advisors can and cannot do for them and are taking more responsibility for understanding their wealth plans.

It’s not yet ubiquitous, of course. Some 46 percent of respondents said they don’t use a quarterback—preferring to work independently with other financial advisors instead. Another 12 percent don’t use specialist advisors at all.

So, who do the wealthy tend to select to act as a quarterback? For the older generation (those over 49 years of age and representing 55 percent of survey respondents), accountants (37 percent) and private banks or trust companies (27 percent) were the preferred professional types. For the younger generation respondents (those 20 to 49), multi-family offices topped the list (57 percent.)

Most wealthy families also tend to have one primary advisor for money management, though they sprinkle their assets around among a number of satellite advisors as well. About 60 percent of respondents said they work with individual financial advisors who are specifically devoted to selecting money managers, and of those, more than half use more than one. The most common motivation was to diversify risk and gain access to unique investment strategies. About 73 percent of those who use multiple financial advisors to select money managers tend to concentrate their wealth with one of those advisors. Half of those who use a primary investment advisor put 75 percent or more of their assets with that advisor.

As prior studies have shown, ultra wealth investors are generally happy with their primary investment advisors, though older generation investors are more satisfied than younger investors. Few investors, old or young, planned to change advisors over the next couple of years.

One thing the wealthy crave: Solid aggregated reporting. Some 70 percent ranked this very to extremely important to them.

Source URL: <https://www.wealthmanagement.com/wealth-planning/really-rich-really-want-financial-quarterbacks>

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SOURCE: SEI



September 25, 2014 09:00 ET

SEI White Paper: Wealth Managers to Become More Like Financial Quarterbacks

On-Demand Data and Real-Time Decision Making Will Be Essential for Next-Generation Wealth Managers

OAKS, PA--(Marketwired - Sep 25, 2014) - As the financial industry faces changing consumer desires and expanding digital offerings, bank and trust wealth management firms are at a crossroads in how to best bring young wealth managers into the fold, while simultaneously ensuring they have the support needed to succeed with the new breed of investor. According to an [SEI](#) (NASDAQ: [SEIC](#)) white paper released today, firms can help their wealth managers optimize performance, productivity, and client satisfaction ratings by improving their infrastructures. The paper, "Creating the Next Generation of Wealth Managers: The Financial Quarterback," explores what the wealth managers of the future will look like, and the role leadership plays in fostering employee and client growth.

"Through our research, we've discovered that wealth managers are most productive and add the most value to a firm when they're working with clients to develop effective strategies to achieve life goals. With the abundance of digital strategies, pure investment and return advice is not enough -- wealth managers must leverage the human factor to stand apart," said [Al Chiaradonna](#), Senior Vice President, [SEI Wealth Platform\(SM\)](#), North America [Private Banking](#). "But, we've found that many firms are struggling to help wealth managers focus primarily on client-facing work because administrative and operational tasks get in the way. This points to a fundamental problem in an evolving industry like ours. If firms don't analyze what makes a wealth manager productive, how can they expect higher productivity?"

The paper reveals that the next generation of successful wealth managers will be more like financial quarterbacks versus traditional wealth managers. No longer will they set long-term strategies and evaluate them quarterly or annually, they will evaluate situations in real-time and make changes where appropriate. Tools and on-demand data that help them better understand the entire client relationship, not simply transaction-based systems, are the keys to the future.

Similarly, investors are changing as well, especially in the way they talk about their money. As such, goals-based investing has become an industry buzzword and a favored method to determine how to invest. That, in turn, alters the way wealth managers need to interact with their clients. The paper encourages senior management to help wealth managers cut down on non-client-facing activities in order to manage a more effective and comprehensive communication process.

To set wealth managers up for success, the industry should heed sports science, reveals the paper. Game film, data, good coaching, and a quality supporting cast all combine to put superior athletes in positions to win every day. This model translates well for wealth management firms. Firms looking to move from good to great need to better utilize the technology and information at their disposal to determine how the business model and company environment impacts wealth manager effectiveness. Only then can they work to correct any irregularities and improve performance.

"Just like a coach spends extra time molding a player, senior management needs to take the lead in turning wealth managers into the firm's all-star financial quarterbacks," said [Chiaradonna](#). "That takes more than just a pep talk here and there; it involves digging into the psyche of a wealth manager and creating best practices and strategies that help differentiate the firm from others."

The paper, published by SEI Executive Connections, is the fourth in a four-part series, titled "SEI Insights: The Future of Wealth Management," which explores four key areas outside of the financial industry that offer opportunities for transformation in the wealth management industry. The first three parts of the series examined the benefits of employing a unified platform to overcome legacy system issues, embracing business model reinvention to improve enterprise risk management, and challenging traditional thinking around asset-based segmentation. SEI Executive Connections is a community for bank executives and industry experts which provides business intelligence and opportunities to interact on banking topics and trends. To request a copy of the full paper, please visit <http://www.seic.com/enUS/banks/14683.htm?cmpid=pr-925-advproductivity-wp>.

About the SEI Wealth Platform(SM)

The SEI Wealth Platform (the Platform) is an outsourcing solution for wealth managers encompassing wealth processing services and wealth management programs, combined with business process expertise. With the Platform, SEI provides wealth management organizations with the infrastructure, operations, and administrative support necessary to capitalize on their strategic objectives in a constantly shifting market. The SEI Wealth Platform supports trading and transactions on 115 stock exchanges in 48 countries and 33 currencies, through the use of straight-through processing and a single operating infrastructure environment. For more information, visit: www.seic.com/wealthplatform.

About SEI

SEI (NASDAQ: [SEIC](#)) is a leading global provider of investment processing, investment management, and investment operations solutions that help corporations, financial institutions, financial advisors, and ultra-high-net-worth families create and manage wealth. As of June 30, 2014, through its subsidiaries and partnerships in which the company has a significant interest, SEI manages or administers \$602 billion in mutual fund and pooled or separately managed assets, including \$249 billion in assets under management and \$353 billion in client assets under administration. For more information, visit www.seic.com.

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Practical tips for tax professionals on client investment trends

accountingtoday.com

December 28, 2016

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Section: Vol. 1; No. 1

Length: 1251 words

Byline: Stephen Riley

Body

The importance of a tax professional's role will increase as robo-advisory takes hold and algorithms replace investment advisors. Your role as tax and compliance expert will broaden to include "**financial quarterback**," charged with tax-aware investment consulting.

Over time high-net-worth clients will grow to rely on their tax professionals to provide thoughtful counsel on key vulnerabilities including the growth of passive investing.

According to the Financial Times, index-like equity investment now comprises over a third of the market, and this does not fully account for "closet indexers" or those who closely track a benchmark but are reluctant to acknowledge it. With robo gaining substantial traction that percentage is sure to grow. A recent Deloitte research report forecast \$5 trillion of robo (exchange-traded fund) market share growth over the next decade in addition to the current allocation of \$3 plus trillion in ETF investments overall. This combined \$8 trillion represents nearly 30 percent of current household wealth by Deloitte's measure. Further, the majority of ETF growth is likely to flow into inexpensive equity indexes supported by a few bulge bracket firms. Enormous inflows into index-like equity ETFs, especially at or near the top of the market, will increase the potential for unforeseen consequences.

Several tips that may help you support improved client outcomes are listed below.

Portfolio Management Best Practices Tips

Be sure to encourage tax-aware best practices, including the use of separately managed accounts, or SMAs, with taxable assets, asset location management planning, realized gain budgeting, tax-loss harvesting, and FIFO (highest in, first out) accounting. Employing a client-customized combination of both active and passive strategies in core high net worth portfolios with the goal of achieving the best possible risk-based outcome should be the goal of all advisors and tax professionals.

Beware, passive stock indexes were never intended to be templates for investment products. Valuation inefficiencies (under and over valuations) in index-like investment products are likely to grow over the next several years and this is sure to impact the results they achieve. Investors should avoid the boom and bust cycles that commonly occur with overly popular investments and now confronts passive index-like investment products.

Active management must exist in order for passive investable index products to remain viable. Passive investments are likely to lose valuation efficiencies in the absence of sufficient active management. We believe that over-investment in passive index-like investments will lead to mispricing and inefficiencies over time and ultimately underperformance.

Index-like equity funds are market cap size-weighted, which can create mispricing. Within investable stock indexes, capitalization-based weighting will cause larger capitalized corporations to attract greater investment, creating the potential for both concentration and momentum risk to become a problem in rising markets.

How to Steal Clients in a Bull Market

Wealth Management

November 23, 2017

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Length: 520 words

Byline: Matt Oechsli

Body

One advisor recently asked me, "How can you get affluent clients to change advisors when the market's at an all-time high?"

His question highlights a misconception that has been around for a long time: When the markets are up and client portfolios are growing, you may assume everyone is happy. But that's not necessarily correct.

One of our clients, for example, a true rainmaking team, brought in \$32 million in September and \$28 million in October. They also had an \$8 million new client confirmed, but didn't formally include that because all the funds had yet to transfer. Many advisors would celebrate bringing those assets in over a five year period. What gives?

Whether it's lack of training, not understanding affluent investors, fear, laziness—or some combination of these—many advisors use the bull market as an excuse for not prospecting.

Affluent Reality

- Affluent loyalty is not determined by market fluctuations.
- Affluent loyalty is determined by a combination of the comprehensive nature and professionalism of the services provided, and the quality of the relationship.
- When markets are up, affluent clients do not credit their financial advisor for their portfolio's performance.

Stealing Affluent Clients

Truly understanding the above (affluent reality) is a requirement for stealing clients. It's also helpful to understand the perception gap between affluent clients and their advisor. For the past decade in our surveys of affluent investors and advisors, we asked questions to determine how the relationship was perceived. With very little variance year-to-year, a little over 25 percent of affluent clients viewed that they had a social relationship with their advisor, whereas nearly 75 percent of advisors thought they social relationships with their affluent clients.

Opportunity awaits advisors with the right attitude. At least three-quarters of today's affluent clients are not ideal clients, meaning they're poachable if approached properly. Today's affluent also want a primary advisor capable of overseeing the multi-dimensional aspects of their family's financial affairs. For years we've been telling the industry that the affluent want a personal family physician of finances, or to use football parlance, **a financial quarterback.**

To get into your poaching persona, think of yourself as that good doctor at a social event, asking someone who's been blowing their nose, "Have you had a flu shot?" Your version of the flu shot question is to simply ask, "Has your advisor reviewed your financial plan recently?" If not, you're in. If they don't have a plan, you're in. If they don't have a strong relationship with their advisor, you've got a foot in the door. Another approach is to ask, "When was the last time you had all of your financial documents reviewed?"

EXHIBIT C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Jalinski Advisory Group, Inc.,

Plaintiff(s),

v.

The Hamo Group of Wells Fargo Advisors,

Defendant(s).

Case Number: 18-12161

Hon. Sean F. Cox

**PARTIES ARE DIRECTED TO PROVIDE
A HARD COPY (ON ONE SIDE ONLY) OF
ALL MOTIONS, RESPONSES, REPLIES
AND EXHIBITS, TABBED, TO CHAMBERS**

SCHEDULING ORDER

This cause having come before the Court pursuant to Rule 16, Fed. R.Civ.P., the Court therefore enters the following schedule controlling the progress of this case:

NOW THEREFORE, IT IS ORDERED that:

EXPERTS. Plaintiff's expert disclosure and reports are due by: **January 23, 2019**; Defendant's expert disclosure and reports are due by: **March 25, 2019**

WITNESSES. The deadline for identification of all witnesses who may testify at trial, including expert witnesses, is **August 23, 2019**.

DISCOVERY. All discovery shall be completed by: **September 23, 2019**.

DISCOVERY MOTIONS ARE DUE BY: 6 WEEKS PRIOR TO DISCOVERY CUTOFF

FACILITATION. The Court will hold a status conference regarding facilitation on: **October 8, 2019 at 2:00 p.m.**

DISPOSITIVE MOTIONS. Dispositive motions are due by: **October 25, 2019**.

*****SEE ATTACHED PRACTICE GUIDELINES BEFORE FILING ANY MOTION***** If you fail to comply with those guidelines, the motion (or response) will not be considered as timely and will not be heard.

FINAL PRETRIAL. Final Pretrial is scheduled for: **February 18, 2020 at 2:00 p.m.**

A proposed Joint Pretrial Statement signed by counsel for all parties, shall be filed with the Court **one week prior** to the Final Pretrial Conference. The requirements of such a pretrial order are attached. *All requirements must be complied with.*

***Note:** Because the main focus of the **Final Pretrial Conference** will be on settlement, counsel must bring their **clients** and any persons with **full settlement authority up to Plaintiff's demand** with them to the conference and any **settlement conferences**. If you have any

questions concerning this matter, please call my Case Manager at (313) 234-2653.

TRIAL is scheduled for the months of: **March/April 2020.**

DATE: October 26, 2018

s/ SEAN F. COX

UNITED STATES DISTRICT JUDGE

Copies to: **the attorneys of record**

***** Motion Practice *****

A. Scheduling

1. Motions to dismiss may be filed at any time. Motions for summary judgment should generally be filed following the close of discovery.
2. After a motion is filed, the case manager will generally set a date for a hearing. The dates are firm and extensions will be granted only for good cause shown. Again, counsel desiring an extension should contact the case manager.

B. Protective Orders

Protective orders shall not be entered routinely. In addition to the requirements under Local Rule 5.3, which are to be strictly followed, a protective order including a provision for filing a pleading, paper or exhibit, etc. under seal shall be subject to the following limitations: The entire pleading, paper, exhibit, etc. may not be filed under seal. Only the portion of the document(s) which are not to be publically disclosed may be filed under seal. In such instances, the portion to be filed under seal requires an endorsement by the Court on a cover page. A party's presentment to the Court for the endorsement shall be accompanied by an explanation why the portion of the document(s) is confidential.

C. Briefing Guidelines

1. Requirements for All Motions.

The parties must provide the Court with a Judge's Copy of all motions and briefs filed in support of and in opposition to motions. The parties must also provide the Court with a Judge's Copy of all exhibits filed in relation to a motion. The Judge's Copy of Exhibits should also be indexed and tabbed. In addition, on the Judge's Copy of the Exhibits the relevant parts of all exhibits, including deposition transcripts and cases, must be **highlighted**. The two or three most relevant cases must be attached as exhibits. Briefs must contain a table of contents and an index of authorities.

2. Motions for Summary Judgment

Before filing or responding to motions for summary judgment, the parties are urged to familiarize themselves with *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986), *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986), and *Matsushita Electric Industrial Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574 (1986). An excellent summary of these cases appears in Street v. J.C Bradford & Co., 886 F.2d 1472 (6th Cir. 1989).

a. The moving party's papers shall include a separate document entitled **Statement of Material Facts Not in Dispute**. The statement shall list in separately numbered paragraphs concise statements of each undisputed material fact, supported by appropriate citations to the record. The Statement shall include all necessary material facts that, if undisputed, would result in summary judgment for the movant.

b. In response, the opposing party shall file a separate document entitled **Counter-Statement of Disputed Facts**. The counter-statement shall list in separately numbered paragraphs following the order of the movant's statement, whether each of the facts asserted by the moving party is admitted or denied and shall also be supported by appropriate citations to the record. The Counter-Statement shall also include, in a separate section, a list of each issue of material fact as to which it is contended there is a genuine issue for trial.

c. All material facts as set forth in the Statement of Material Facts Not in Dispute shall be deemed admitted unless controverted in the Counter-Statement of Disputed Facts.

d. The statements shall be non-argumentative and avoid the use of color words or distortions of the record in a party's favor. Conclusory, speculative, or conjectural statements in support of a position shall be avoided. Hearsay statements and other inadmissible evidence cannot be considered.

e. Facts stated in the Statement of Material Facts Not In Dispute and Counter-Statement of Disputed Facts shall be supported with appropriate citations to the record, including but not limited to the pleadings, interrogatories, admissions, depositions, affidavits and documentary exhibits. Citations to the record must be **specific**, *i.e.*, cite to a discrete page or portion of deposition testimony or page(s) of documentary evidence, not simply the entire deposition or document. The appropriate portion of the text of a source cited shall be highlighted and filed with the Court as part of an appendix separate from the brief. It is preferred that only the cited excerpts of depositions, as opposed to the entire deposition, be filed. **The text cited shall be placed in proper context**. The appendix shall contain an index and shall be tabbed.

f. The Statement of Material Facts Not In Dispute and Counter-Statement of Disputed Facts are not included in calculating the length of the brief.

g. Counsel are discouraged from employing elaborate boilerplate recitations of the summary judgment standard or lengthy string citations in support of well established legal principles. Instead, counsel should focus their analysis on a few well chosen cases, preferably recent and from controlling courts. Counsel are encouraged to supply the Court with copies of their main cases, with the relevant passage highlighted and tabbed. Further exhibits should be highlighted and tabbed (deposition transcripts, documents).

3. Other Motions.

Although the above requirements are for motions for summary judgment, counsel are strongly encouraged to follow them to the fullest extent possible for other motions, such as motions for entry of judgment and motions to dismiss.

4. Ruling on Motions.

The court endeavors to decide pending motions promptly, ordinarily within three weeks after a hearing, or within two weeks after the time for a response has passed without a response being filed. Complex motions or those raising novel issues may require additional time to conclude. If a motion has been pending in chambers without resolution for an apparently inordinate time, counsel are asked to notify the court's case manager, in writing (jointly if possible), as to the status of the motion. Such notification is a service that is appreciated by the court.

5. Page Limits for Briefs.

The court does not grant motions to extend the page limits for briefs provided under the local court rules, unless warranted by a unique/novel question of law or other extraordinary circumstances.

Any briefs filed in excess of the page limitations set forth in Local Rule 7.1 will be stricken.

Counsel: Prior to trial please contact the Court Reporter for directions for trial exhibits.

Case Number _____

Case Caption **v.** _____

Appearance - Plaintiff _____

Appearance - Defendant _____

E X H I B I T S

DATE	PLF/DEF NO.	BRIEF DESCRIPTION	OFF'D	REC'D
		S A M P L E		

LR 16.2 Joint Final Pretrial Order

(a) Joint Final Pretrial Order. The parties shall furnish a joint final pretrial order in every civil case at, or if the judge requires, before the final pretrial conference. This joint final pretrial order shall fulfill the parties' disclosure obligations under Fed.R.Civ.P. 26(a)(3), unless the Judge orders otherwise. All objections specified in Rule 26(a)(3) shall be made in this order. Counsel for plaintiff(s) or a plaintiff without counsel shall convene a conference for all parties to confer and collaborate in formulating a concise joint final pretrial order. Counsel for plaintiff(s) or a plaintiff without counsel shall compile the order. Counsel for all parties and any party without counsel shall approve and sign the order. Counsel for plaintiff(s) or a plaintiff without counsel shall submit an original and one copy of the order to the assigned Judge for approval and adoption. The order shall provide for the signature of the Court and, when signed and filed in the Clerk's Office, becomes an order of the Court, superseding the pleadings and governing the course of trial unless modified by further order. The pretrial order shall not be a vehicle for adding claims or defenses. The order will not be filed in the Clerk's Office until the Judge has signed it.

(b) Contents of Order. The joint final pretrial order shall contain, under numbered and captioned headings, the following:

(1) Jurisdiction. The parties shall state the basis for Federal Court jurisdiction and whether jurisdiction is contested by any party.

(2) Plaintiffs' Claims. The statement of the claim or claims of plaintiffs shall include legal theories.

(3) Defendants' Claims. The statement of the defenses or claims of defendants, or third parties, shall include legal theories.

(4) Stipulation of Facts. The parties shall state, in separately numbered paragraphs, all uncontested facts.

(5) Issues of Fact to be Litigated.

(6) Issues of Law to be Litigated.

(7) Evidence Problems Likely to Arise at Trial. Include objections to exhibits and to the use of deposition testimony, including the objections required under Fed.R.Civ.P. 26(a)(3). The order shall list all motions *in limine* of which counsel or a party without counsel should reasonably be aware.

(8) Witnesses. Each party shall list all witnesses whom that party will call and all witnesses whom that party may call. This listing shall include, but is not limited to, the disclosures required under Fed.R.Civ.P. 26(a)(3)(A) and (B). A party may, without further notice, call a witness listed by another party as a "will call" witness. Except as permitted by the Court for good cause a party may not list a witness unless the witness was included on a witness list submitted under a prior order or has been deposed. The list shall state whether the witness is an expert and whether testimony will be offered by deposition. Only listed witnesses will be permitted to testify at trial, except for rebuttal witnesses whose testimony could not be reasonably anticipated before trial, or except for good cause shown. The provisions of Fed.R.Civ.P. 37(c)(1) shall apply to a failure to

list a witness.

(9) Exhibits. The parties must number and list, with appropriate identification, each exhibit, including summaries, as provided in Fed. R. Civ. P. 26(a)(3)©. Objections to listed exhibits must be stated in the joint pretrial order. Only listed exhibits will be considered for admission at trial, except for rebuttal exhibits which could not be reasonably anticipated before trial, or except for good cause shown. The provisions of Fed. R. Civ. P. 37(c)(1) will apply to a failure to list an exhibit.

(10) Damages. The parties shall itemize all claimed damages and shall specify damages that can be calculated from objective data. The parties shall stipulate to those damages not in dispute.

(11) Trial

(A) Jury or non-jury.

(B) Length of trial - Each party shall state how many days it needs to present its case. The trial day starts at 8:30 a.m. and ends at 1:00 p.m.. The court may hold afternoon trial sessions depending on the court's schedule. You will be held to the number of days you list to present your case.

(12) Settlement. Counsel or a party without counsel shall state that they have conferred and considered the possibility of settlement, giving the most recent place and date, and state the current status of negotiations and any plans for further discussions. They may state that they wish the Court to schedule a settlement conference.

(c) Failure to Cooperate. For failure to cooperate in preparing or submitting the joint final pretrial order or failure to comply strictly with the terms of the joint final pretrial order, the Court may dismiss claims, enter default judgment, refuse to permit witnesses to testify or to admit exhibits, assess costs and expenses, including attorney fees, or impose other appropriate sanctions.

(d) Filing of Trial Briefs, Findings and Instructions. The joint final pretrial order must further provide that trial briefs and requests for jury instructions must be filed one week before trial and proposed findings of fact and conclusions of law in nonjury cases must be filed one week before trial unless the court orders otherwise.

(e) Additional Requirements. A Judge, in an appropriate case, may add additional requirements to the joint final pretrial order, or may suspend application of this Rule, in whole or in part.

(f) Juror Costs Attributable to Parties. Each party shall also acknowledge that the Court may assess juror expenses under LR 38.2.

COMMENT: Under LR 16.2(b)(9), any objection based on foundation or authenticity will be deemed waived if not raised before trial.

EXHIBIT D

Collins, Pam

From: Rita Lenane-Massey <rlmassey@bartonesq.com>
Sent: Monday, December 31, 2018 1:06 PM
To: St. Clair, Nate; Somaya, Devanshi; Farrell, Sherrie; Walls, Samantha
Cc: Maurice Ross; Jason T. Newman
Subject: Jalinski / Hamo Group

****RECEIVED FROM EXTERNAL SENDER – USE CAUTION****

Counsel:

We'd like to request a two-week extension to respond to Defendant's document requests, interrogatories and requests to admit, from January 7 to January 21. Please let us know if you are amenable to this request.

Best,

Rita Lenane-Massey

Associate
Barton LLP
Graybar Building
420 Lexington Avenue, 18th floor
New York, New York 10170
Tel: 212-687-6262 | Direct Dial: 212-885-8819

rlmassey@bartonesq.com | www.bartonesq.com | [bio](#) | [vcard](#)

BARTON

Collins, Pam

From: St. Clair, Nate <nstclair@jw.com>
Sent: Monday, December 31, 2018 1:31 PM
To: Rita Lenane-Massey; Somaya, Devanshi; sfarrell@dykema.com; Walls, Samantha
Cc: Maurice Ross; Jason T. Newman
Subject: RE: Jalinski / Hamo Group

Good afternoon, Rita.

Defendant's counsel can be available to available to confer with on the various extensions requested in your email, on Thursday, January 3rd, between 2:30 – 5:00 pm CST. Please let me know if we can find to speak on Thursday. If so, please circulate a calendar notice with a dial-in number for the Parties. In the meantime, we will confer with our client. Many thanks in advance! Happy New Year to you all.

Cheers,

Nate St. Clair, II | Partner

2323 Ross Avenue, Suite 600 | Dallas, TX | 75201

V: (214) 953-5948 | F: (214) 661-6848 | C: (972) 679-3131 | nstclair@jw.com

<https://www.linkedin.com/in/natestclair/>



Texas Bar College
Professionalism Through Education

From: Rita Lenane-Massey <rlmassey@bartonesq.com>
Sent: Friday, December 21, 2018 3:17 PM
To: St. Clair, Nate <nstclair@jw.com>; Somaya, Devanshi <dsomaya@jw.com>; sfarrell@dykema.com; Walls, Samantha <SWalls@dykema.com>
Cc: Maurice Ross <mross@bartonesq.com>; Jason T. Newman <jnewman@cardellilaw.com>
Subject: Jalinski / Hamo Group

****RECEIVED FROM EXTERNAL SENDER – USE CAUTION****

Counsel:

We'd like to confer with you regarding expert discovery deadlines in this matter. In our 26(f) conference, we agreed that expert reports should be due at the end of 2019. However, the Court ordered them due by the end of next month, despite extending discovery through September 2019. At this point, our position is that these deadlines don't make sense and are nearly impossible to comply with. Our survey expert will need more time to complete his work, and the parties are not close to finishing the exchange of documents (indeed, we will be sending an email under separate cover addressing Defendant's document production).

We propose writing to the Court and asking for an extension on the expert report deadlines from January 23 and March 25, 2019 to May 12, 2019 and July 11, 2019. Please let us know your position on this.

Happy holidays,

Rita Lenane-Massey

Associate

Barton LLP

Graybar Building

420 Lexington Avenue, 18th floor

New York, New York 10170

Tel: 212-687-6262 | Direct Dial: 212-885-8819

rlmassey@bartonesq.com | www.bartonesq.com | [bio](#) | [vcard](#)

BARTON

Collins, Pam

From: Somaya, Devanshi <dsomaya@jw.com>
Sent: Monday, January 7, 2019 3:31 PM
To: Maurice Ross; Rita Lenane-Massey; Jason T. Newman
Cc: St. Clair, Nate; Borrelli, Sara K.; Walls, Samantha; sfarrell@dykema.com
Subject: JAG v. Hamo Group; discovery deadlines

Counsel:

Per your conversation with Nate St. Clair on January 4, 2019, this email correspondence confirms that Plaintiff JAG will be in a position to produce discovery Friday, January 11, 2019 instead of today (1/7/19). Defendant's counsel will agree to that extension for your discovery responses. Moreover, in response to Plaintiff's extension request for expert discovery, Defendant's counsel does not immediately see the need for an extension of the Court's deadlines. However, our client is open to an extension of up to four (4) weeks for both Plaintiff and Defendant expert deadlines. This alters the Plaintiff's current deadline from Wednesday, January 23, 2019 to Wednesday, February 20, 2019 and the Defendant's current deadline from Monday, March 25, 2019 to Monday, April 22, 2019.

In light of the requested discovery extensions, this seems like an opportunity for the parties to reconsider settlement. Please let us know if you are willing to re-visit settlement discussions in the near future.

Thank you,

Devanshi Somaya
2323 Ross Avenue, Suite 600 | Dallas, TX | 75201
V: (214) 953-5873 | F: (214) 661-6873 | dsomaya@jw.com



Collins, Pam

From: Rita Lenane-Massey <rlmassey@bartonesq.com>
Sent: Tuesday, February 19, 2019 11:10 AM
To: St. Clair, Nate; Somaya, Devanshi; sfarrell@dykema.com; Walls, Samantha
Cc: Maurice Ross; Jason T. Newman
Subject: Jalinski / Hamo Group
Attachments: Notice of Deposition of Julie Russ.PDF; Notice of Deposition of Marc Beshany.PDF; Notice of Deposition of Joseph Hamo.PDF

****RECEIVED FROM EXTERNAL SENDER – USE CAUTION****

Counsel:

We propose requesting from the Court an extension of the expert discovery deadlines in this matter to May 12, 2019 and July 11, 2019. As we have previously discussed, this proposal will not affect the remaining discovery deadlines in the Court's schedule and will allow the parties to complete fact discovery before entering the expert discovery phase. Please let us know if you will consent to requesting an extension of the expert discovery deadline in this matter.

In any event, we need to step up fact discovery in this matter. We cannot imagine that the 150 documents produced by your client represents its full document production, and as we have raised in previous emails, Defendant's production so far does not even include financial documents. We also must begin scheduling depositions to be completed over the next six weeks. Accordingly, please find attached deposition notices for Joseph Hamo, Marc Beshany and Julie Russ.

Finally, please let us know if your client has a response to our demand, and whether there is any interest in scheduling a mediation in this matter. Our client's position remains that early resolution is in the best interest of all parties.

Sincerely,

Rita Lenane-Massey

Associate
Barton LLP

Please make note of our new address!

711 Third Avenue, 14th Floor

New York, New York 10017

Tel: 212-687-6262 | Direct Dial: 212-885-8819

rlmassey@bartonesq.com | www.bartonesq.com | [bio](#) | [vcard](#)

BARTON

Collins, Pam

From: Somaya, Devanshi
Sent: Wednesday, February 20, 2019 4:24 PM
To: Rita Lenane-Massey; St. Clair, Nate; sfarrell@dykema.com; Walls, Samantha
Cc: Maurice Ross; Jason T. Newman; St. Clair, Nate; sfarrell@dykema.com; Walls, Samantha; Borrelli, Sara K.
Subject: RE: Jalinski / Hamo Group

Counsel,

First, we agree to extend the expert discovery deadlines by 4 weeks. As such, you have our consent to file the stipulation and proposed order.

With respect to any discovery pertaining to the requested advertising and marketing documents, we disagree with Plaintiff's position that you have not been provided with the discovery responses needed to move forward with your expert reports. As previously discussed, although a large volume of documents do not exist, Defendant has produced all documents in its possession relevant to the advertising and marketing issues, as detailed in your discovery requests. Additionally, to that end, in our January 15, 2019 document production and correspondence, we detailed all the discovery requests for which no documents exist. As it pertains to marketing and advertising "practices," Hamo Group unfortunately has no relevant and responsive documents to that request.

In furtherance of our effort to facilitate the discovery process, after further reviewing our earlier January correspondence, if there are specific topics/requests for which you feel you need more information, we are open to conferring immediately, so that you can complete your expert disclosures in a timely manner. In our effort to comply with all requests, we responded to Plaintiff's discovery requests as accurately as possible, but admittedly, we encountered several issues discerning the applicability of some of the requests due to their broad nature. Many of Plaintiff's requests were not applicable to the Hamo Group. For example, in Request No. 9, Plaintiff requests production of "Documents that relate to or concern the selection and user of the name 'Quarterback Financial Group' as the name of your company." Of course, Defendant's name is not "Quarterback Financial Group," nor is our client's name relevant to this lawsuit (as in Request No. 34). Additionally, in Request Nos. 7-8, Plaintiff requests production of documents concerning or relating to "use of the term 'quarterback'" in connection with a domain name. In the present case, no known domain names of the Hamo Group include any such term in the domain. Thus, no such documents exist. Despite this and in light of our continued cooperation on these issues, we seek to move this case along and hopefully reach a reasonable resolution in the near future.

Please let me know if we need to further confer regarding this issue or a potential, reasonable settlement offer.

Thank you,

Devanshi Somaya
2323 Ross Avenue, Suite 600 | Dallas, TX | 75201
V: (214) 953-5873 | F: (214) 661-6873 | dsomaya@jw.com



From: Rita Lenane-Massey <rlmassey@bartonesq.com>
Sent: Wednesday, February 20, 2019 1:26 PM
To: Somaya, Devanshi <dsomaya@jw.com>; St. Clair, Nate <nstclair@jw.com>; sfarrell@dykema.com; Walls, Samantha

<SWalls@dykema.com>

Cc: Maurice Ross <mross@bartonesq.com>; Jason T. Newman <jnewman@cardellilaw.com>

Subject: RE: Jalinski / Hamo Group

****RECEIVED FROM EXTERNAL SENDER – USE CAUTION****

Devanshi:

Thank you for your email and for your agreement to extend the expert discovery deadlines by 4 weeks. However, as we have discussed over the past months, we do not have the discovery from Defendant that we need to move forward with expert reports. For this reason, we can't guarantee that the additional 4 weeks will be sufficient given that we don't have discovery on Defendant's finances or marketing/advertising expenditures and practices.

Attached please find the stipulation and proposed order for an additional 4 weeks of expert discovery. However, we reserve the right to seek a further extension from the Court should this extension be insufficient. Please let us know if we have your consent to file.

Sincerely,

Rita Lenane-Massey

Associate

Barton LLP

Please make note of our new address!

711 Third Avenue, 14th Floor

New York, New York 10017

Tel: 212-687-6262 | Direct Dial: 212-885-8819

rlmassey@bartonesq.com | www.bartonesq.com | [bio](#) | [vcard](#)

BARTON

From: Somaya, Devanshi <dsomaya@jw.com>

Sent: Wednesday, February 20, 2019 1:46 PM

To: Rita Lenane-Massey <rlmassey@bartonesq.com>; Maurice Ross <mross@bartonesq.com>; Jason T. Newman <jnewman@cardellilaw.com>

Cc: St. Clair, Nate <nstclair@jw.com>; sfarrell@dykema.com; Walls, Samantha <SWalls@dykema.com>

Subject: 00502444.000.MSG - RE: Jalinski / Hamo Group

Counsel:

Thank you for email. We appreciate you notifying us of your intent to file a motion to extend the expert deadlines in this matter. Admittedly, we were a bit surprised that you would give us a time deadline today by which to respond, for an extension that you are now seeking for the second time, and that you sent to us merely the day before your expert report is due.

We did not agree to your original proposed deadlines regarding expert discovery in December 2018 (see attached email), and we do not agree to your proposed deadlines regarding the exact same dates at this time. As I stated, this is the second request for an extension regarding the same expert discovery deadlines. On December 21, 2018, you requested that we agree to extend the expert report deadlines from January 23, 2019 and March 25, 2019 to May 12, 2019 and July 11, 2019. Due to the holidays, we agreed to an extension of four weeks, despite our client's reluctance to do so. The new deadlines were set for February 20, 2019 and April 22, 2019. Your expert report is due today, and it now appears that your client is again requesting that we agree to extend the expert discovery deadlines to May 12, 2019 and July 11, 2019. Prior to this, you have also requested from us a two-week extension to respond to our document requests, which we granted.

Candidly, this request is unfortunate and adverse to how we originally expected this case would progress. In hopes of resolving this matter or being better positioned to defend it, we agreed to some form of all of the earlier extension requests – yet we are in the same position that we were in three months ago. While our client would likely not agree to a three month extension period (and we have had less than 24 hours to reasonably confer with our client from your email on yesterday), we can agree to consent to another four week extension period for both Plaintiff and Defendant. This alters the Plaintiff's current deadline from Wednesday, February 20, 2019 to Wednesday, March 20, 2019. This alters Defendant's current deadline from April 22, 2019 to May 20, 2019. Please note that this consent is being provided with the expectation that we will receive your expert disclosures and reports in a timely manner, based on this agreement.

Additionally, we are awaiting an opportunity to confer further with our client regarding your proposal for deposition dates. We will follow-up separately to address such scheduling in the coming days. Please confirm agreement regarding the aforementioned agreed extensions on the expert disclosures. We are available later today if we need to confer further telephonically.

Thank you,

Devanshi Somaya

2323 Ross Avenue, Suite 600 | Dallas, TX | 75201
V: (214) 953-5873 | F: (214) 661-6873 | dsomaya@jw.com



From: Rita Lenane-Massey <rlmassey@bartonesq.com>

Sent: Wednesday, February 20, 2019 9:50 AM

To: St. Clair, Nate <nstclair@jw.com>; Somaya, Devanshi <dsomaya@jw.com>; sfarrell@dykema.com; Walls, Samantha <SWalls@dykema.com>

Cc: Maurice Ross <mross@bartonesq.com>; Jason T. Newman <jnewman@cardellilaw.com>

Subject: Jalinski / Hamo Group

****RECEIVED FROM EXTERNAL SENDER – USE CAUTION****

Counsel:

Pursuant to Local Rule 7.1, we are seeking concurrence in a motion to extend the expert deadlines in this matter, which we will file today if concurrence is denied. Alternatively, attached please find a proposed stipulated order extending these deadlines. Please let us know by 1pm if you will consent to our filing the stip, or we will move forward with our motion.

Sincerely,

Rita Lenane-Massey

Associate
Barton LLP

Please make note of our new address!

711 Third Avenue, 14th Floor
New York, New York 10017
Tel: 212-687-6262 | Direct Dial: 212-885-8819

rlmassey@bartonesq.com | www.bartonesq.com | [bio](#) | [vcard](#)

BARTON

Collins, Pam

From: Rita Lenane-Massey <rlmassey@bartonesq.com>
Sent: Monday, March 18, 2019 2:22 PM
To: St. Clair, Nate; Somaya, Devanshi; Borrelli, Sara K.; sfarrell@dykema.com; Walls, Samantha
Cc: Maurice Ross; Jason T. Newman
Subject: Jalinski / Hamo Group

****RECEIVED FROM EXTERNAL SENDER – USE CAUTION****

Counsel:

Please provide your availability for a meet and confer pursuant to Rule 7.1 on our anticipated cross-motion for sanctions (which we hope will become unnecessary after we meet and confer). We have availability any afternoon this week. We'd also request your consent to a 21-day extension to respond to your motion to stay, should you choose not to withdraw it.

Finally, in view of the pending motion to stay, we intend to seek an extension to the expert discovery deadlines for both Plaintiff and Defendant. Please let us know if we have your consent for a stay of these disclosure deadlines pending the outcome of your motion.

Sincerely,

Rita Lenane-Massey

Associate

Barton LLP

Please make note of our new address!

711 Third Avenue, 14th Floor

New York, New York 10017

Tel: 212-687-6262 | Direct Dial: 212-885-8819

rlmassey@bartonesq.com | www.bartonesq.com | [bio](#) | [vcard](#)

BARTON

Collins, Pam

From: Somaya, Devanshi
Sent: Wednesday, March 20, 2019 2:10 PM
To: Rita Lenane-Massey
Cc: Maurice Ross; Jason T. Newman; St. Clair, Nate; Borrelli, Sara K.; sfarrell@dykema.com; Walls, Samantha
Subject: RE: Jalinski / Hamo Group

Rita,

Thursday at 3:30 is fine. Please circulate a dial-in number at your convenience.

As to your request for an extension to respond to our motion to stay, we will not oppose a 10-day extension, moving your deadline to file a response to April 1. We think any further extension will create unnecessary delay. Admittedly, we are surprised that you would request a further extension, specifically in response to a Motion to Stay, since you have chosen to oppose proceeding before the TTAB on the pertinent issues of the case. However, to date, we have been willing/compliant to your 4-5 extension requests, so we will grant you the 10-day extension for your response.

Thank you,

Devanshi Somaya

2323 Ross Avenue, Suite 600 | Dallas, TX | 75201
V: (214) 953-5873 | F: (214) 661-6873 | dsomaya@jw.com



From: Rita Lenane-Massey <rlmassey@bartonesq.com>
Sent: Tuesday, March 19, 2019 4:54 PM
To: Somaya, Devanshi <dsomaya@jw.com>; St. Clair, Nate <nstclair@jw.com>; Borrelli, Sara K. <sborrelli@jw.com>; sfarrell@dykema.com; Walls, Samantha <SWalls@dykema.com>
Cc: Maurice Ross <mross@bartonesq.com>; Jason T. Newman <jnewman@cardellilaw.com>
Subject: Jalinski / Hamo Group

****RECEIVED FROM EXTERNAL SENDER – USE CAUTION****

Counsel:

We are available to have a substantive discussion on our proposed motions on Thursday at 4:30pm EST, 3:30pm CST. We'll circulate a dial-in number in a subsequent email.

However, since we are unable to speak until that time, we would appreciate your consent today to our request for an extension of time to respond to the motion to stay. As you know, the hearing on this motion is scheduled for June 6, so the proposed extension will not impact the adjudication of the motion. If you do not consent to the extension of the briefing schedule today, we will have no alternative other than to apply to the Court for an extension, including to point out this unreasonable lack of cooperation on scheduling.

Best,

Rita Lenane-Massey

Associate

Barton LLP

Please make note of our new address!

711 Third Avenue, 14th Floor

New York, New York 10017

Tel: 212-687-6262 | Direct Dial: 212-885-8819

rlmassey@bartonesq.com | www.bartonesq.com | [bio](#) | [vcard](#)

BARTON

EXHIBIT E

Collins, Pam

From: Somaya, Devanshi
Sent: Thursday, March 28, 2019 6:29 PM
To: Maurice Ross; Rita Lenane-Massey; Jason T. Newman
Cc: St. Clair, Nate; Borrelli, Sara K.; Walls, Samantha; sfarrell@dykema.com
Subject: Plaintiff's expert disclosures deadline

Counsel:

As you know, Plaintiff Jalinski's deadline for expert disclosures was March 20, 2019. We did not receive your expert disclosures, nor did our local counsel. You also failed to request an extension from the Court. To be clear, you only asked for an extension once in your e-mail correspondence dated March 18, 2019, in which you also asked for an extension to file your response to our Motion to Stay. We granted you the 10-day extension for your response, but we **did not** consent to your third request for an extension for expert disclosures. You did not mention an extension after that initial e-mail, nor did you do so in our subsequent teleconference last week.

Judge Cox clearly stated that deadlines continue to run until our Motion to Stay is heard, so we are preserving our rights in notifying you of your missed deadline. If we do not receive your expert disclosures immediately, as they are now over a week late, we plan to request an immediate telephonic conference with the Court to discuss this ongoing discovery issue.

This is in light of the fact that you have already requested approximately six months of extensions and we have granted you two months of extensions for the **same** deadline.

Thank you,

Devanshi Somaya
2323 Ross Avenue, Suite 600 | Dallas, TX | 75201
V: (214) 953-5873 | F: (214) 661-6873 | dsomaya@jw.com



EXHIBIT F

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of U.S. Registration Nos.

3782665

4722740

5346562

5346563

5633102

WELLS FARGO CLEARING SERVICES,
LLC and

THE HAMO GROUP OF WELLS FARGO
ADVISORS,

Petitioners;

vs.

JALINSKI ADVISORY GROUP, INC.,

Respondent.

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Proceeding No. _____

PETITION TO CANCEL

Wells Fargo Clearing Services, LLC d/b/a Wells Fargo Advisors, a limited liability corporation, organized under the laws of the State of Delaware, with an address at 1 North Jefferson Avenue, St. Louis, MO 63103 ("WFCS") and The Hamo Group of Wells Fargo Advisors, a separate group within Wells Fargo Advisors with an address at 5406 Gateway Centre Drive, Suite D, Flint, MI 48507 ("The Hamo Group") believe that they will be damaged by the above-captioned registrations and request that they be cancelled.

As grounds for the Petition, WFCS and The Hamo Group allege as follows:

1. WFCS is a limited liability corporation organized under the laws of the State of Delaware with an address at 1 North Jefferson Avenue, St. Louis, MO 63103.
2. WFCS is a premier financial services firm, serving clients nationwide with investment planning and advisory services.
3. The Hamo Group is a separate group within Wells Fargo Advisors with an address at 5406 Gateway Centre Drive, Suite D, Flint, MI 48507.
4. The Hamo Group provides investment planning and advisory services with respect to college funding, retirement, structuring of estates, asset allocation, liability and risk management, in and around the Flint, Michigan metropolitan region.
5. Respondent is a New Jersey corporation with an address at 1400 Hooper Avenue, Toms River, NJ 08753.
6. According to United States Patent and Trademark Office (“USPTO”) records, Respondent is the current owner of U.S. Trademark Registration Nos. 3782665; 4722740; 5346562; 5346563 and 5633102 (hereinafter collectively the “Registrations”).
7. U.S. Trademark Registration No. 3782665, identifies the mark “Financial Quarterback” and lists services in International Class 36. The mark was registered by the USPTO on April 27, 2010, based on an application filed June 4, 2009.
8. U.S. Trademark Registration No. 4722740 identifies the mark “The Financial Quarterback” and lists services in International Class 41. The mark was registered by the USPTO on April 21, 2015, based on an application filed July 31, 2014.
9. U.S. Trademark Registration No. 5346562, identifies the mark “The Financial Quarterback” and lists services in International Class 36. The mark was registered by the USPTO on November 28, 2017, based on an application filed June 19, 2014.

10. U.S. Trademark Registration No. 5346563, identifies the mark “The Financial Quarterback” and lists services in International Class 35. The mark was registered by the USPTO on November 28, 2017, based on an application filed June 24, 2014.

11. U.S. Trademark Registration No. 5633102 identifies the mark “The Financial Quarterback” and lists goods in International Class 9. The mark was registered by the USPTO on December 18, 2018, based on an application filed June 24, 2014.

12. On July 10, 2018, Respondent filed suit in the U.S. District Court for the Eastern District of Michigan in the pending litigation, *Jalinski Advisory Group, Inc. v. The Hamo Group of Wells Fargo Advisors*, Case No. 2:18-cv-12161, purporting to seek injunctive and monetary relief based on allegations of trademark infringement, unfair competition, false designation of origin and trademark dilution, relating to Petitioners’ use of “financial quarterback” in connection with financial advisory and planning services.

13. Petitioners have a direct and personal stake in the outcome of this proceeding as it relates to the aforementioned civil action and additionally, Petitioners wish to preserve their right to continue the use of the generic and/or descriptive term “financial quarterback” in their business.

Count I

Genericness as to the Registrations

14. Petitioners repeat and reallege all the allegations in Paragraphs 1-13 as if fully set forth herein.

15. The word “Quarterback” is a noun defined as “one who directs and leads”. <http://www.merriam-webster.com>, copy attached hereto as Exhibit “A”.

16. According to many well-known publications such as *Forbes* and *The Wall Street Journal*, the words “financial quarterback” are used in the financial services field to identify the leadership role of a financial advisor in providing a specific category or level of services for high net worth customers regardless of source. For example, in an article entitled “*How to Match Yourself with the Right Financial Advisor*”, the author states that “True wealth strategists will act as a *financial quarterback* and bring your whole financial life into clear view taking everything into consideration.” <https://www.forbes.com/sites/robrussell/2016/04/27/how-to-match-yourself-with-the-right-financial-advisor/#4e0bbf1848a3>, copy attached hereto as Exhibit “B”.

17. On information and belief, providers of financial advisory and planning services have widely used the words “financial quarterback” as a generic term to convey that they have assumed the leadership role in providing or directing wealth strategy.

18. The addition of the word “the” to “financial quarterback” does not alter its genericness.

19. Accordingly, Respondent’s alleged marks FINANCIAL QUARTERBACK and THE FINANCIAL QUARTERBACK are incapable of distinguishing Respondent’s goods and services because they are generic terms pursuant to 15 U.S.C. Section 1064.

20. Respondent’s alleged marks FINANCIAL QUARTERBACK and THE FINANCIAL QUARTERBACK are unregistrable for all the goods and services listed in the Registrations because all these goods and services relate to Respondent’s primary financial services or are offered in the financial industry.

21. Petitioners have the prospective right to expand their current use of the generic term “financial quarterback” in their business.

22. The Registrations improperly provide exclusive rights to Respondent and cause damage and injury to Petitioners, as well as many others in the financial services industry, as the Registrations would preclude Petitioners from offering financial advisory and planning services using the term “financial quarterback” generically.

Count II

Descriptiveness as to Registration Nos. 4722740; 5346562; 5346563; and 5633102

23. Petitioners repeat and reallege all the allegations in Paragraphs 1-22 as if fully set forth herein.

24. If not deemed generic, the words “financial quarterback” merely describe the role or the financial services of the advisor to direct and lead investment decisions for high net worth customers.

25. On information and belief, providers of financial advisory and planning services have widely used the words “financial quarterback” generically and/or descriptively to convey that they have assumed the leadership role in providing or directing wealth strategy.

26. On information and belief, Respondent’s use of “financial quarterback” therefore has not been substantially exclusive.

27. On information and belief, the words “financial quarterback” have not acquired a secondary meaning such that the relevant public has understood that these words indicate Respondent as the source of financial advisory and planning services.

28. The addition of the word “the” to “financial quarterback” does not alter its genericness and/or descriptiveness.

29. Accordingly, Respondent's alleged marks FINANCIAL QUARTERBACK and THE FINANCIAL QUARTERBACK are not entitled to registration pursuant to 15 U.S.C. Section 1052 on alternative grounds that they are merely descriptive.

30. Respondent's alleged marks FINANCIAL QUARTERBACK and THE FINANCIAL QUARTERBACK are unregistrable for all the goods and services listed in Registration Nos. 4722740; 5346562; 5346563; and 5633102 because all these goods and services relate to Respondent's primary financial services or are offered in the financial industry.

31. Petitioners have the prospective right to expand their current use of the merely descriptive term "financial quarterback" in their business.

32. Registration Nos. 4722740; 5346562; 5346563 and 5633102 improperly provide exclusive rights to Respondent and cause damage and injury to Petitioners, as well as many others in the financial services industry, as the Registrations would preclude Petitioners from offering financial advisory and planning services using the term "financial quarterback" generically and/or descriptively.

Count III

Abandonment – Uncontrolled Licensing

33. Petitioners repeat and reallege all the allegations in Paragraphs 1-32 as if fully set forth herein.

34. Respondent and Jack Wolff, Daniel J. Wolff, Investment Financial Services, Inc., Southern Trust Financial Planning, Inc. and ZNJ Consulting, Inc. have entered into a trademark cross-license and co-existence agreement pertaining to the alleged trademarks FINANCIAL QUARTERBACK and THE FINANCIAL QUARTERBACK and the Registrations, copy attached hereto as Exhibit "C".

35. The trademark cross-license and co-existence agreement does not give Respondent any control over the use of the alleged trademarks of the Registrations by Jack Wolff, Daniel J. Wolff, Investment Financial Services, Inc., Southern Trust Financial Planning, Inc. and ZNJ Consulting, Inc. in connection with their goods and services in violation of 15 U.S.C. Sec. 1055 and 1127.

36. On information and belief, Respondent does not control and has not controlled the nature and quality of the goods and services offered under the alleged trademarks of the Registrations by Jack Wolff, Daniel J. Wolff, Investment Financial Services, Inc., Southern Trust Financial Planning, Inc. and ZNJ Consulting, Inc. in violation of 15 U.S.C. Sec. 1055 and 1127.

37. On information and belief, Respondent has engaged in uncontrolled "naked licensing" and that as a consequence of the absence of such control, Respondent has abandoned its rights to the use and registration of FINANCIAL QUARTERBACK or derivations thereof.

WHEREFORE, based on all Counts I, II and III above, Petitioners request that the aforementioned registrations be cancelled.

This requisite fees have been submitted electronically for each of the Registrations against which the Petition to Cancel has been filed.

Dated: February __, 2019

Respectfully submitted,

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