

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

Civil Action No. 1:23-cv-22148-DPG

ROSH CHODESH II LIMITED PARTNERSHIP, a Missouri limited partnership;
JOSHUA HERMELIN, Successor Trustee on behalf of
the SNOW WHITE TRUST II UAD July 3, 2020;
DAVID HERMELIN, an individual;
MICHAEL HERMELIN, an individual; and
JOSHUA HERMELIN, an individual;

Plaintiffs,

v.

JAN S. WIMPFHEIMER, an individual;
MADISON GOLD, LLC, a Delaware limited liability company;
SCHWELL WIMPFHEIMER & ASSOCIATES, LLP, a Delaware limited liability partnership;
EAST HUDSON CAPITAL, LLC, a Delaware limited liability company; and
WHITE ROAD CAPITAL, LLC, a Delaware limited liability company;

Defendants.

SECOND AMENDED COMPLAINT FOR DAMAGES AND EQUITABLE RELIEF

Plaintiffs ROSH CHODESH II LIMITED PARTNERSHIP, a Missouri limited partnership;
JOSHUA HERMELIN, Successor Trustee on behalf of the SNOW WHITE TRUST II UAD July 3,
2020; DAVID HERMELIN, an individual; MICHAEL HERMELIN, an individual; JOSHUA
HERMELIN, an individual (collectively hereafter referred to as “Plaintiffs”), by and through
undersigned counsel, hereby sue Defendants JAN S. WIMPFHEIMER, an individual
(“WIMPFHEIMER”); MADISON GOLD, LLC, a Delaware limited liability company (“MADISON
GOLD”); SCHWELL WIMPFHEIMER & ASSOCIATES, LLP, a Delaware limited liability
partnership (“SWA”); EAST HUDSON CAPITAL, LLC, a Delaware limited liability company
(“EAST HUDSON CAPITAL”); and WHITE ROAD CAPITAL, LLC, a Delaware limited liability
company (“WHITE ROAD CAPITAL”), for damages and equitable relief. As grounds therefor,
Plaintiffs allege the following:

SILVER MILLER

PRELIMINARY STATEMENT

1. This action is brought by Plaintiffs, who invested a principal sum of Three Million Fifty Thousand Dollars (\$3,050,000.00) in an investment series with MADISON GOLD (Series I) at the behest and upon the solicitations of MADISON GOLD and its chief spokesperson WIMPFHEIMER, who also (through his law firm SWA) prepared the legal papers memorializing and surrounding Plaintiffs' investments as well as the non-disclosure agreements that would keep Plaintiffs in the dark as to the details of their investment.

2. To secure Plaintiffs' confidence and their investment funds, MADISON GOLD and WIMPFHEIMER employed a series of false and misleading representations -- all of which resulted in a devastating economic loss to Plaintiffs.

3. Notwithstanding MADISON GOLD and WIMPFHEIMER's affirmative representations to Plaintiffs that they would profit handsomely from investing in MADISON GOLD Series I, MADISON GOLD and WIMPFHEIMER misrepresented critical information, utilized WIMPFHEIMER's law firm SWA to gain Plaintiffs' trust, and failed to disclose multiple conflicts of interest both legally and ethically as a financial promoter.

4. Upon information and belief, and based on documents recently filed in other lawsuits, investment returns represented by MADISON GOLD were not legitimately generated returns; MADISON GOLD failed to disclose payments to promoters, and MADISON GOLD and WIMPFHEIMER presented Plaintiffs purposefully inaccurate representations of returns generated from EAST HUDSON CAPITAL and WHITE ROAD CAPITAL.

5. Ultimately, when concerns arose and demands to review books and records were made, MADISON GOLD and WIMPFHEIMER denied Plaintiffs access to the books and records and hid behind self-created walls to deny Plaintiffs information because it would have revealed MADISON GOLD and WIMPFHEIMER as fraudsters and WIMPFHEIMER as an illegal promoter.

6. Plaintiffs bring this action to recover from Defendants the lucrative financial assets taken from them under fraudulent pretenses.

PARTIES, JURISDICTION AND VENUE

THE PARTIES

Plaintiffs

7. Plaintiff ROSH CHODESH II LIMITED PARTNERSHIP is a Missouri limited partnership with its principal place of business in St. Louis, Missouri.

8. Plaintiff JOSHUA HERMELIN is the Successor Trustee of the SNOW WHITE TRUST II UAD July 3, 2020, an investment trust formed and existing under the laws of the State of Missouri as of the entity's creation on or about July 3, 2020. JOSHUA HERMELIN brings some of his claims herein solely in his capacity as the Successor Trustee of the SNOW WHITE TRUST II, and not in his individual capacity.

9. DAVID HERMELIN is an individual domiciled in St. Louis, Missouri; is a United States citizen; and is *sui juris*.

10. MICHAEL HERMELIN is an individual domiciled in Jerusalem, Israel; is a citizen of the United States and Israel; and is *sui juris*.

11. JOSHUA HERMELIN is an individual domiciled in Jerusalem, Israel; is a citizen of the United States and Israel; and is *sui juris*. In addition to the claims he brings as the Successor Trustee of the SNOW WHITE TRUST II UAD July 3, 2020, he also brings claims in his individual capacity.

Defendants

12. Defendant WIMPFHEIMER is an individual domiciled in Israel, is a citizen of the United States, Israel, and the United Kingdom, and is *sui juris*.

13. Defendant MADISON GOLD is a Delaware limited liability company with its principal place of business in Aventura, Florida.

14. Defendant SWA is a Delaware limited liability partnership with its principal place of business in New York, New York. SWA is a law firm of which Defendant WIMPFHEIMER is a founding member and a current Partner at the firm.

15. At all times relevant hereto, WIMPFHEIMER was a member-owner of MADISON GOLD and served as the primary point of contact between Plaintiffs and MADISON GOLD.

16. Defendant EAST HUDSON CAPITAL is a Delaware limited liability company with its principal place of business in Long Island City, New York.

17. At times relevant hereto, WIMPFHEIMER held a sizeable ownership interest in EAST HUDSON CAPITAL of at least twenty-five percent (25%) of the entity.

18. Defendant WHITE ROAD CAPITAL is a Delaware limited liability company with its principal place of business in Long Island City, New York.

19. At times relevant hereto, WIMPFHEIMER held a sizeable ownership interest in WHITE ROAD CAPITAL.

Other Liable Persons/Entities

20. Along with Defendants, there are likely other parties who may be liable to Plaintiffs, but about whom Plaintiffs currently lack specific facts to permit them to name these persons or entities as party defendants. By not naming such persons or entities at this time, Plaintiffs are not waiving their right to amend this pleading to add such parties, should the facts warrant adding such parties.

JURISDICTION AND VENUE

21. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331, involving an action pursuant to 18 U.S.C. §§ 1962(c) and (d), the Federal Racketeer Influenced and Corrupt Organizations Act (the “RICO Act”).

22. Additionally, the Court has supplemental jurisdiction over this action pursuant to 28 U.S.C. § 1367(a), involving claims that are so related to claims in the action within the Court’s original

jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

23. Alternatively, this Court has subject matter jurisdiction over this Action pursuant to 28 U.S.C. § 1332, because there is complete diversity between the parties and the amount in controversy exceeds \$75,000.00.

24. This court has general personal jurisdiction over Defendants because the RICO Act provides for nationwide service of process, and Defendants conduct a substantial portion of their business in the United States. MADISON GOLD, for example, conducts all or substantially all of its business in the United States, is incorporated in Delaware, and is headquartered in Florida.

25. This Court also has personal jurisdiction over the defendants because: (a) at least one of the defendants operates an entity that is present and/or doing business within this jurisdiction, (b) at least one of the defendants resides and works within this jurisdiction, and (c) the defendants' tortious activity occurred within this jurisdiction.

26. WIMPFHEIMER sent numerous electronic mail messages to Plaintiffs which represented that WIMPFHEIMER was living and/or performing business services in Aventura, Florida by using the following signature block (redacted to conceal e-mail address and telephone numbers).

A signature block for Jan S. Wimpfheimer, Madison Gold LLC, 3029 NE 188 Street #912, Aventura, FL 33180. The email address is MadisonGoldLLC@gmail.com. The phone number is redacted with a black box, showing only the area code 1000 and the number -1400.

Jan S. Wimpfheimer
Madison Gold LLC
3029 NE 188 Street #912
Aventura, FL 33180
MadisonGoldLLC@gmail.com
i [REDACTED].com
[REDACTED] 1000
[REDACTED] -1400

27. WIMPFHEIMER told Plaintiffs that he practiced law out of Aventura, Florida.

28. WIMPFHEIMER's SWA Partner, Andrea Rosenblum Bernstein, has a law license in Florida and also practices law in South Florida.

29. Upon information and belief, both WIMPFHEIMER and Mrs. Rosenblum Bernstein predominantly worked from their South Florida residences when engaged with SWA clients.

30. All of the business and money related to Defendants' enterprise flowed through MADISON GOLD's business location in South Florida.

31. Venue of this action is proper in this Court pursuant to 28 U.S.C. § 1391, as the causes of action alleged herein arose in Miami-Dade County, Florida.

32. Additionally, the contracts that memorialized Plaintiffs' investments with MADISON GOLD contain the following forum selection clauses whereby MADISON GOLD (acting through WIMPFHEIMER) irrevocably consented to this Court as a forum in which to litigate a dispute such as this:

The following general provisions shall apply to this Agreement:

a. This Agreement shall be construed and enforced in accordance with the laws of the State of Florida, without giving effect to its principles or rules of conflict of

* * *

laws to the extent such principles or rules would require or permit the application of the laws of another jurisdiction; and each of the parties hereto irrevocably consents to the exclusive jurisdiction and venue of the federal and state courts located in the State of Florida, and waives the right to jury trial.

33. Similarly, every written agreement between Plaintiffs and MADISON GOLD memorializing Plaintiffs' investments (all of which were signed by WIMPFHEIMER) contains language identical to or akin to the following, which demonstrates the appropriateness of this forum as the venue in which to litigate this dispute:

e. Any notice given to the Company shall be sent by registered mail to 3029 NE 188 Street #912, Aventura, FL 33180 or emailed to Jan Wimpfheimer at jan@██████████.

* * *

No modification, change, waiver or amendment of this Agreement shall be effective unless in writing and signed by the Investor or other holder hereof. The governing law of this Agreement shall be the laws of the State of Florida.

34. Moreover, Defendants WIMPFHEIMER, MADISON GOLD, and SWA are alleged to have violated 18 U.S.C. §§ 1962(c) and (d); and thus, venue is proper within this district pursuant to 18 U.S.C. § 1965(a) as it relates to these defendants transacting their affairs and/or 18 U.S.C. § 1965(b).

GENERAL FACTUAL ALLEGATIONS

THE MASTER PARTICIPATION AGREEMENTS

35. EAST HUDSON CAPITAL is engaged in the business of merchant funding, which involves a lender's provision of an unsecured cash injection into a business with repayment based on a percentage of business sales rather than a pre-determined payment. This cash injection is often referred to as a merchant cash advance or "MCA."

36. Specifically, EAST HUDSON CAPITAL's business included, but was not limited to: (i) working with and expanding its existing merchant customer base; (ii) bringing in new merchant customer funding; (iii) underwriting the purchase of merchant accounts; and (iv) overseeing/handling all fundings, reconciliations, and collections.

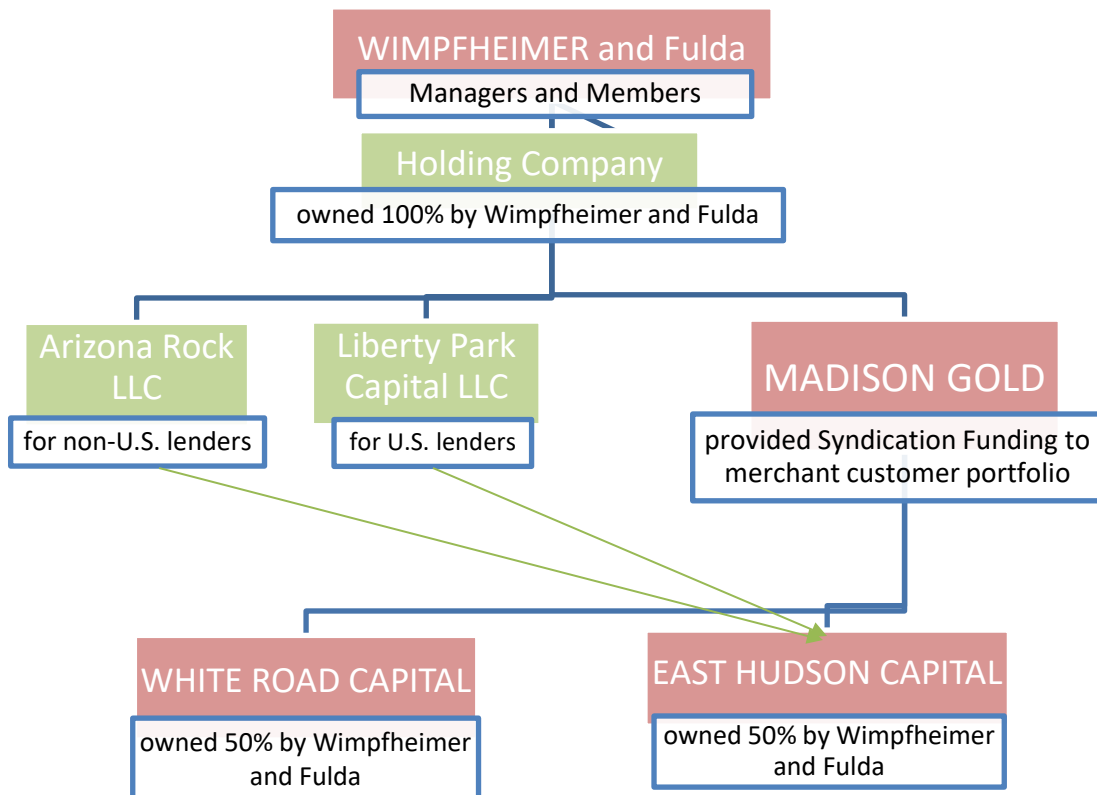
37. WHITE ROAD CAPITAL, like EAST HUDSON CAPITAL, was also in the business of syndicating, investing in, and managing merchant agreements and transactions that satisfied distinct underwriting criteria.

38. MADISON GOLD (under management by WIMPFHEIMER and his business partner Simche Daniel Fulda ["Fulda"]) is a company that, from time to time, provided "Syndication Funding" to EAST HUDSON CAPITAL and WHITE ROAD CAPITAL to invest in merchant accounts.

39. Other limited liability companies owned, operated, and controlled by WIMPFHEIMER and Fulda -- including Liberty Park Capital, LLC (for U.S. lenders) and Arizona

Rock, LLC (for non-U.S. lenders) -- existed to, from time-to-time, provide working capital loans to EAST HUDSON CAPITAL primarily to invest in merchant accounts.

40. The following flowchart is a rough demonstration of how some of the corporate entities under WIMPFHEIMER and Fulda’s control inter-relate, as their relationships were presented to Plaintiffs:



41. On or about March 25, 2019 and December 26, 2021, WIMPFHEIMER prepared Master Participation Agreements to reflect and memorialize the relationship between EAST HUDSON CAPITAL and MADISON GOLD, under which MADISON GOLD was to provide syndication funding to EAST HUDSON CAPITAL for EAST HUDSON CAPITAL to invest in merchant accounts.

42. Similarly, on or about April 1, 2019, WIMPFHEIMER prepared a Master Participation Agreement to reflect and memorialize the relationship between GFE NY, LLC d/b/a Global Funding Experts (a purported alter ego of WHITE ROAD CAPITAL) and MADISON GOLD, under which MADISON GOLD was to provide syndication funding to WHITE ROAD CAPITAL for WHITE ROAD CAPITAL to invest in merchant accounts.

43. Under those Master Participation Agreements, MADISON GOLD -- as a "Participant" -- became entitled to participate as a co-investor in merchant agreements (each, a "Merchant Agreement" and together with the other documents relating to such Merchant Agreement, a "Transaction") that EAST HUDSON CAPITAL and WHITE ROAD CAPITAL, each as "Lead," entered into with its merchant clients ("Clients"), pursuant to which EAST HUDSON CAPITAL and WHITE ROAD CAPITAL purchased future credit card, debit card, bank card, and/or other charge card, checks, and cash receivables from the Clients (the "Purchases").

44. Pursuant to the Master Participation Agreements, for each such Transaction in which MADISON GOLD participated, MADISON GOLD was required to contribute a certain percentage of the funded amount plus MADISON GOLD's pro rata share of the upfront commissions, if any, due to a sales partner (the "Participation Amount").

45. Additionally, pursuant to the Master Participation Agreements, EAST HUDSON CAPITAL and WHITE ROAD CAPITAL were each obligated, *inter alia*, to provide MADISON GOLD with access to an online Syndicate Portal, where EAST HUDSON CAPITAL and WHITE ROAD CAPITAL were to update the status of each Transaction on a weekly basis. Alternatively, EAST HUDSON CAPITAL and WHITE ROAD CAPITAL were each obligated to provide MADISON GOLD via electronic mail, both upon accepting an Offer for participation in a Transaction and thereafter on a weekly basis, a spreadsheet or other report containing information relating to the status of the Transaction, including: (i) funding name; (ii) total funded amount, (iii)

syndication amount (% or \$), (iv) payment remitted for related period (gross and net of any fees if applicable); (v) funded date, (vi) first payment date, (vii) number of missed payments, (viii) status (written off, active, etc.), (ix) amount paid to partner to date (cumulative payments received), and (x) note column where explanations can be given on fundings not paying as expected (the “Weekly Reports”).

46. MADISON GOLD’s contributions of the Participation Amounts under the Master Participation Agreements were to be made through a series of distinct tranches or portfolios, each designated as a discretely managed “Series” for reporting and accounting purposes and, each maintaining its own bank account for the Transactions associated with the particular series.

47. Such Series included: Series A (Adams), Series B (Davis), Series C (King), Series D (Solomon), Series E (Marks), Series F (MadB), Series G (Garfield), Series H (Austin), and -- most relevantly for the purposes of this lawsuit -- Series I.

48. Pursuant to the Master Participation Agreements, MADISON GOLD was required to fund its Participation Amounts through these discrete Series because each Series represented a particular type of investment in a particular type of Transaction satisfying distinct underwriting criteria.

PLAINTIFFS’ INVESTMENTS IN SERIES I OF MADISON GOLD

49. To induce investor participation in one or more of the investment Series, MADISON GOLD and WIMPFHEIMER made to potential investors numerous factual representations about the profitability and prudence of the investment; along with the strength of the relationship between MADISON GOLD and EAST HUDSON CAPITAL.

50. During his solicitation of Plaintiffs, WIMPFHEIMER portrayed himself as an expert in merchant funding.

51. Plaintiffs were among the investors successfully solicited by MADISON GOLD and WIMPFHEIMER to invest in a MADISON GOLD investment Series.

52. During the relevant period, Plaintiffs made the following investments in Series I of MADISON GOLD, at the behest, solicitation, and instruction of MADISON GOLD and WIMPFHEIMER:

DATE	INVESTOR	PRINCIPAL AMOUNT INVESTED
July 24, 2022	ROSH CHODESH II LIMITED PARTNERSHIP	\$1,000,000.00
September 13, 2022	DAVID HERMELIN	\$240,000.00
September 13, 2022	MICHAEL HERMELIN	\$240,000.00
September 13, 2022	JOSHUA HERMELIN	\$120,000.00
September 28, 2022	ROSH CHODESH II LIMITED PARTNERSHIP	\$750,000.00
September 28, 2022	SNOW WHITE TRUST II UAD July 3, 2020	\$500,000.00
January 20, 2023	SNOW WHITE TRUST II UAD July 3, 2020	\$200,000.00
TOTAL		\$3,050,000.00

53. Among the representations made by MADISON GOLD and WIMPFHEIMER to Plaintiffs was that Plaintiffs' investment return would be larger if the principal amount of Plaintiffs' investment were larger.

54. In a May 2022 written exchange using electronic messaging service WhatsApp, Plaintiffs expressed to MADISON GOLD and WIMPFHEIMER Plaintiffs' concern about MADISON GOLD's investments strategies and what appeared to be -- in comparison to other investment funds -- MADISON GOLD's rather meager projected return on Plaintiffs' potential investment. In response to Plaintiffs' concerns, WIMPFHEIMER -- on behalf of himself and MADISON GOLD -- quoted a specific rate of return, thereby inducing Plaintiffs to increase the potential for their return-on-investment by increasing the amount of their principal investment, *to wit*:

[23/05/2022, 10:48:26] Jan: Michael, hope you're well. Would you be interested in taking the discussion forward?

[23/05/2022, 11:45:21] Michael Hermelin: I think so but we're still in discussions with various funds to understand their investment strategies. Tbh... your 12% is on the lower end of some of what is being offered to us.

[23/05/2022, 12:18:26] Jan: Ok... But remember that for \$500,000 it's 15% and for \$2m or more it's 18%.

55. Prior to making any of their investments, Plaintiffs also requested that they be provided a complete audit of MADISON GOLD's financials as soon as they were ready -- a request to which WIMPFHEIMER -- on behalf of himself and MADISON GOLD -- agreed in a separate WhatsApp communication:

[18/07/2022, 11:00:40] Michael Hermelin: Will the audit of your company be complete within the next 6 months? If so, would you be willing to let us read it?

[18/07/2022, 11:00:55] Jan: Yes and yes[.]

56. Additionally, in a July 6, 2022 e-mail to Plaintiffs' counsel at that time, WIMPFHEIMER stated: "I am prepared to provide quarterly written confirmation for the assets of Madison Gold LLC are double the liabilities, as we discussed."

57. Accordingly, the terms of a Side Letter executed by the parties on July 24, 2022 (the "7/24/22 Side Letter") included a requirement that MADISON GOLD maintain an asset-to-debt ratio of at least 2:1 and further required MADISON GOLD to notify Plaintiffs within three (3) business days of becoming aware that its assets to debt ratio fell below that 2:1 standard.

58. Further, the 7/22/24 Side Letter provides that if such a change in the assets-to-debts ratio were to occur, Plaintiffs would have the right to demand payment within 30 days of all outstanding sums due to them, including unpaid interest.

59. In response to Plaintiff MICHAEL HERMELIN's personal investment, WIMPFHEIMER sent him an e-mail on September 13, 2022, stating: "[T]hanks Michael, we are excited to have you make a personal investment -- thanks for your trust!"

60. Plaintiffs reasonably relied upon the truthfulness of MADISON GOLD and WIMPFHEIMER's representations and acted in accordance therewith.

61. Furthermore, MADISON GOLD and WIMPFHEIMER knew Plaintiffs (not just Plaintiff MICHAEL HERMELIN) had placed their trust in MADISON GOLD and WIMPFHEIMER, yet MADISON GOLD and WIMPFHEIMER belied that trust anyway.

**MADISON GOLD AND WIMPFHEIMER WITHHELD FROM PLAINTIFFS
THE WORSENING DISPUTE BETWEEN EAST HUDSON CAPITAL AND MADISON GOLD**

62. Unbeknownst to Plaintiffs -- and contrary to the representations made to them by MADISON GOLD and WIMPFHEIMER -- a dispute between EAST HUDSON CAPITAL and MADISON GOLD had emerged no later than the first quarter of 2022, which preceded Plaintiffs' investments by several months.

63. According to multiple lawsuits filed by EAST HUDSON CAPITAL¹:
- (a) Liberty Park Capital and Arizona Rock (entities controlled by WIMPFHEIMER and Fulda) had not timely funded the minimum \$11.4 million of working capital loans WIMPFHEIMER and Fulda committed to provide to EAST HUDSON CAPITAL for their 50% membership-ownership interests in EAST HUDSON CAPITAL;
 - (b) EAST HUDSON CAPITAL -- in the first quarter of 2022 -- "*became increasingly concerned over the cumbersome structure [WIMPFHEIMER] . . . created for the Syndication Funding and the tediousness of administering these accounts*" and demanded greater transparency regarding the Specific Funding arrangements, including knowing "*who the investors were, what business arrangements or commitments were made with the investors, [and] what was being reported [by MADISON GOLD] to the investors*";

¹ *East Hudson Capital LLC, et al. v. Jan S. Wimpfheimer, Simche Daniel Fulda, Liberty Park Capital LLC, Arizona Rock LLC, Madison Gold LLC, et al.*, Supreme Court – County of Queens, New York – Index No. 710129/2023 (“May 2023 Case”) and *East Hudson Capital LLC et al. v. Jan S. Wimpfheimer, Simche Daniel Fulda, Liberty Park Capital LLC, Arizona Rock LLC, Madison Gold, LLC, AB Int’l Investors LLC, and Boardwalk 400 LLC.*, Supreme Court – County of Queens, New York – Index No. 706695/2024 (“March 2024 Case”).

- (c) Some time prior to July 2022, EAST HUDSON CAPITAL expressed to WIMPFHEIMER its request that EAST HUDSON CAPITAL and MADISON GOLD “*phase out of the Syndication Funding merchant funding agreements*”;
- (d) WIMPFHEIMER “*insisted on maintaining their Syndication Funding transactions*” and “*also insisted on maintaining the secrecy of [MADISON GOLD’s] investors and internal business arrangements*”; and
- (e) “*Starting in July 2022 and for the next six months, the parties engaged in the restructuring process.*”

64. While soliciting Plaintiffs’ initial and subsequent investments with MADISON GOLD, MADISON GOLD and WIMPFHEIMER kept Plaintiffs unaware that Liberty Park Capital and Arizona Rock had failed to timely meet their funding requirements and kept Plaintiffs unaware of the brewing discontent between EAST HUDSON CAPITAL and MADISON GOLD.

65. Plaintiffs did not learn of the dispute between EAST HUDSON CAPITAL and MADISON GOLD -- and the apparent early-2022 breakdown of their professional relationship -- until approximately March 2023, after all of their investments had already been made.

66. Had Plaintiffs been aware of the rift between EAST HUDSON CAPITAL and MADISON GOLD, Plaintiffs would not have followed MADISON GOLD and WIMPFHEIMER’s solicitations and would not have invested their funds with MADISON GOLD.

**MADISON GOLD AND WIMPFHEIMER WITHHELD FROM PLAINTIFFS
THE DIVERSION OF INVESTED FUNDS ENTRUSTED TO MADISON GOLD’S OVERSIGHT**

67. Similarly, MADISON GOLD and WIMPFHEIMER withheld from Plaintiffs vital information about funds entrusted to MADISON GOLD having been diverted to unauthorized recipients and used for unauthorized purposes.

68. According to information contained in a lawsuit filed in May 2023 by MADISON GOLD:

- (a) On some unknown date, WHITE ROAD CAPITAL assumed all the rights and responsibilities as the counterparty to MADISON GOLD under a Master Participation Agreement;

- (b) Instead of using the Participation Amounts in accordance with specific written criteria applicable to the specific investment Series through which MADISON GOLD funded those Participation Amounts, WHITE ROAD CAPITAL commingled all of the funds it received from MADISON GOLD for the Participation Amounts, regardless of the particular Series through which those Participation Amounts were funded and without maintaining discrete accounts for each separate Series; and
- (c) WHITE ROAD CAPITAL diverted to EAST HUDSON CAPITAL and other third parties Participation Amounts that MADISON GOLD had funded through the different Series.

69. While soliciting Plaintiffs' initial and subsequent investments with MADISON GOLD, MADISON GOLD and WIMPFHEIMER kept Plaintiffs unaware that funds placed with MADISON GOLD had been purportedly misappropriated and wrongfully diverted.

70. Plaintiffs did not learn of the unauthorized diversion of funds entrusted to MADISON GOLD until approximately May 2023, after all of their investments had already been made.

71. Had Plaintiffs been aware of the misappropriation and improper use of funds entrusted to MADISON GOLD, Plaintiffs would not have followed MADISON GOLD and WIMPFHEIMER's solicitations and would not have invested their funds with MADISON GOLD.

WIMPFHEIMER WITHHELD FROM PLAINTIFFS
THE CRIMINALLY USURIOUS NATURE OF HIS ENTITIES' LENDING PRACTICES

72. Furthermore, WIMPFHEIMER withheld from Plaintiffs vital information about the criminally usurious nature of the lending practices in which entities he operated were engaged.

73. Specifically, according to allegations made by EAST HUDSON CAPITAL in its May 2023 lawsuit against WIMPFHEIMER and several of the entities he operates, Liberty Park and Arizona Rock (WIMPFHEIMER-operated entities) made loans to EAST HUDSON CAPITAL between December 14, 2018, and October 29, 2020, ranging in amounts between \$10,000.00 and \$500,000.00; and each funding transaction was treated as a separate loan.

74. According to allegations made by EAST HUDSON CAPITAL in its May 2023 and March 2024 lawsuit against WIMPFHEIMER and several of the entities he operated, the rates of

return on loans in 2018 - 2023 made in New York State to EAST HUDSON CAPITAL by entities controlled by WIMPFHEIMER that are affiliated with MADISON GOLD ranged from 41.67% to 66.67%.

75. Pursuant to N.Y. Penal Law § 190.40, New York prohibits lenders from charging interest at a rate of more than twenty-five percent (25%) per year.

76. Charging interest on loans at a rate higher than twenty-five percent (25%) per year in New York is considered criminally usurious.

77. WIMPFHEIMER -- an attorney licensed to practice law in the State of New York who promotes on his own law firm website that he heads SWA's Private Equity and Investment Funds practices and focuses his professional practice on general corporate and transactional law -- withheld from Plaintiffs the illegal nature of his lending practices.

78. Had Plaintiffs been aware of criminally usurious nature of the activity in which WIMPFHEIMER was engaged for several years prior to soliciting Plaintiffs to invest in MADISON GOLD, Plaintiffs would not have followed WIMPFHEIMER's solicitations and would not have invested their funds with MADISON GOLD.

WIMPFHEIMER KNOWINGLY IGNORED HIS CONFLICTS OF INTEREST

79. WIMPFHEIMER is an attorney licensed to practice law in the State of New York.

80. At all times relevant hereto, WIMPFHEIMER was (and still is) a principal and the Managing Partner of SWA, which has its principal place of business in New York, New York. On its website, SWA also purports to maintain offices in Jerusalem, Israel.

81. Additionally, at all times material hereto, WIMPFHEIMER undertook multiple joint representations -- as both an attorney and as an investment promoter -- without disclosing (in writing or otherwise) the inherent conflict of interest of representing multiple parties and their business interests, even when those interests conflicted with one another.

82. Among the conflicts knowingly undertaken by WIMPFHEIMER, he simultaneously undertook to negotiate and structure the business relationships on behalf of MADISON GOLD, EAST HUDSON CAPITAL, and Plaintiffs -- despite their varied and, at times, contradictory legal interests.

83. At times relevant hereto, as referenced above, WIMPFHEIMER even held a sizeable ownership interest in EAST HUDSON CAPITAL and WHITE ROAD CAPITAL.

84. As proof that WIMPFHEIMER knew he was simultaneously playing multiple, conflicting roles, WIMPFHEIMER regularly used one e-mail address when electronically communicating with Plaintiffs about matters when WIMPFHEIMER was acting in the role of an attorney (*i.e.*, his SWA e-mail address); and WIMPFHEIMER regularly used a separate e-mail address when electronically communicating with Plaintiffs about matters when WIMPFHEIMER was acting in the role of a promotor and agent of MADISON GOLD.

85. For example, the majority of WIMPFHEIMER's emails to Plaintiffs came from the email address jan@yay.ve; however, WIMPFHEIMER used his law firm email address (jan@swalegal.com) on July 18, 2022, to send MICHAEL HERMELIN a copy of the QSF and MADISON GOLD non-disclosure agreement.

86. Despite his dual roles, WIMPFHEIMER did not advise or recommend to Plaintiffs to seek separate representation and advice of independent counsel prior to placing their funds in the MADISON GOLD investment opportunity WIMPFHEIMER was promoting to them.

87. Moreover, WIMPFHEIMER failed to disclose he was receiving payments as a promoter of EAST HUDSON CAPITAL and WHITE ROAD CAPITAL and paying other investors of MADISON GOLD for promoting Plaintiffs to MADISON GOLD, thereby decreasing the likelihood that enough funds would remain to pay back investors.

88. Those payments erected for WIMPFHEIMER conflicts of interest not only in his fiduciary role as investment advisor and promoter, but also as an attorney for all of the parties involved.

89. WIMPFHEIMER used his position as an attorney at SWA to bolster, falsely validate, and promote the fraudulent investment opportunity.

90. Additionally, SWA prepared Non-Disclosure Agreements that MADISON GOLD, WIMPFHEIMER, and Fulda insisted Plaintiffs and other investors sign in conjunction with any investments placed with MADISON GOLD.

91. Those Non-Disclosure Agreements were intentionally crafted to inhibit investors' (including Plaintiffs') ability to seek a meaningful remedy for any wrongdoing imposed upon those investors by Defendants.

92. Notwithstanding these material non-disclosures, WIMPFHEIMER prepared the critical agreements and related documents that established and surrounded the business relationship of the parties and dictated their duties and obligations to each other.

93. SWA is no stranger to conflicts of interest. Between 2017 and 2019, SWA was one of the defendants in a lawsuit in which SWA partner Dov Schwell was accused of falsely reporting in public corporate filings information about a company of which he was chairman. *Alpha Capital Anstalt v. Schwell et al*, No. 1:17-cv-1235-GHW (S.D.N.Y.). According to that case, Schwell and SWA Chief Legal Officer Michael Hughes deceptively led investors to believe that the company received money from a third-party funding source when in fact it had not. *Id.*

94. Mr. Schwell, in his capacity as a representative of SWA, was readily familiar with the MADISON GOLD investment plan and communicated with investors -- including Plaintiffs -- about MADISON GOLD in a manner that further perpetuated the fraudulent investment opportunity.

WIMPFHEIMER AND FULDA ENGAGED IN SELF-DEALING

95. Among other withheld information, WIMPFHEIMER and Fulda also engaged in self-dealing by siphoning business opportunities and funds away from MADISON GOLD and taking for themselves the profits from those business opportunities and paying themselves with those funds that were intended for MADISON GOLD and its interest-holders, including Plaintiffs.

96. By cash starving their companies through their taking of excessive fees, WIMPFHEIMER and Fulda left little remaining for the return of Plaintiffs' investment funds.

97. Plaintiffs were not made aware of WIMPFHEIMER and Fulda's self-dealings and the conflicts of interest that such activities raised.

98. In fact, the 7/24/22 Side Letter stated that WIMPFHEIMER and Fulda would not receive equity payments unless and until Plaintiffs first received full return of their principal investment(s) during the term of the agreements, which Plaintiffs did not receive.

99. Notwithstanding those contractual prohibitions, WIMPFHEIMER and Fulda paid themselves significant distributions well beyond reasonable compensation for any services they had provided.

100. Additionally, WIMPFHEIMER and Fulda obtained undisclosed spreads on certain fundings at Plaintiffs' expense and also personally benefitted from fees/charges concealed from Plaintiffs.

101. Likewise, according to the lawsuit filed by EAST HUDSON CAPITAL, WIMPFHEIMER and Fulda caused MADISON GOLD not to fund EAST HUDSON CAPITAL all of the funds that MADISON GOLD's investors (including Plaintiffs) had provided for that purpose. Instead, WIMPFHEIMER and Fulda concealed from EAST HUDSON CAPITAL and from MADISON GOLD's investors (including Plaintiffs) that WIMPFHEIMER and Fulda were paying themselves fees and other charges from the Syndication Funding.

102. If Plaintiffs knew that WIMPFHEIMER and Fulda were taking for themselves business opportunities and investment funds that rightfully belonged to MADISON GOLD, Plaintiffs would never had invested in MADISON GOLD and would have demanded an immediate return of all funds Plaintiffs had invested.

PLAINTIFFS WERE MISLED INTO THEIR INVESTMENTS WITH MADISON GOLD

103. As of the date of this filing, Defendants are holding Plaintiffs' funds and have prevented Plaintiffs from accessing, withdrawing, or reclaiming those funds.

104. According to the March 28, 2024 Complaint filed by EAST HUDSON against MADISON GOLD and WIMPFHEIMER in Queens County, New York (Index No. 706695/2024; DE 1), "the amounts collected from the portfolio of merchant contracts funded through Syndication are being segregated to be disbursed once" MADISON GOLD and WIMPFHEIMER meet certain demands of EAST HUDSON.

105. Additionally, upon information and belief formulated since the date this lawsuit was commenced, the \$3+ million Plaintiffs invested in MADISON GOLD represents the vast majority of the funds invested in all fundraising Series undertaken by MADISON GOLD -- another material fact that was withheld from Plaintiffs.

106. To the contrary, Plaintiffs were led to believe that their \$3+ million investments were just a small part of Defendants' purported \$100+ million investment funding operation.

107. In response to one or more of MICHAEL HERMELIN's proposed edits to the 7/24/22 Side Letter that was then under discussion and being negotiated by and between the parties, WIMPFHEIMER sent the following July 19, 2022 message from his MADISON GOLD email account to MICHAEL HERMELIN so he could share the information with his fellow plaintiff investors: "You get the same rights as other who invested the same amount as you – not those who invested more. You invest \$3m[,] you get the rights of anyone else who invested \$3m. You invest

\$1m[.] you get the same rights as anyone else who invested \$1m. I'm not sure why you're trying to play with that fair and obvious concept.”

108. When finalizing the terms of the parties' agreements, WIMPFHEIMER stated in a July 22, 2022 email to MICHAEL HERMELIN: “I'm assuming a minimum investment of \$1 million – I wouldn't give some of these terms for less than that. We will be happy if it's more, but that would have to be the minimum to move forward with these drafts.”

109. Had Plaintiffs been aware that their funds represented almost all funds invested in MADISON GOLD, Plaintiffs would not have invested.

110. Plaintiffs did not know, and through the exercise of reasonable diligence could not have discovered, the material factual misrepresentations and omissions of fact that were being perpetrated upon them by MADISON GOLD and WIMPFHEIMER -- whether in their individual capacity(ies), as a representative of MADISON GOLD, or in WIMPFHEIMER's role as a representative of SWA.

111. WIMPFHEIMER used his position of trust as a representative of MADISON GOLD, as a representative of EAST HUDSON CAPITAL, and as a representative of SWA to induce Plaintiffs' investments and successfully conduct and conceal all of the misleading activity perpetrated upon Plaintiffs in connection with their investments in MADISON GOLD.

PLAINTIFFS SUFFERED LOSSES DUE TO DEFENDANTS' SCHEME

112. The terms of the agreements between Plaintiffs and MADISON GOLD provided for monthly payments in the amount of 1.5% of Plaintiffs' investment amount for a set number of years, prior to repayment of the amount initially invested.

113. In the months following MADISON GOLD's receipt of Plaintiffs' investments, MADISON GOLD made monthly wire funds transfers to Plaintiffs as agreed from its bank account in New York, New York.

114. Following its initial investment in August 2022, ROSH CHODESH received monthly payments in its bank account located in Chicago, Illinois, between September 2022 and February 2023.

115. Following their initial investments in September 2022, DAVID HERMELIN, MICHAEL HERMELIN, and JOSH HERMELIN received from MADISON GOLD monthly payments between October 2022 and March 2023 in their banks located in Nevada, Israel, and New York, respectively.

116. Receipt of the promised monthly payments led Plaintiffs to believe that they would receive the return promised on their investment.

117. Those payments to Plaintiffs merely fabricated a false sense of security that the payments they had received were legitimate returns on their investments and that MADISON GOLD and WIMPFHEIMER would fulfill the terms of the written agreements.

118. Had Plaintiffs not received the initial monthly payments, they would have exercised all rights they had under the agreement between the parties, including demanding immediate repayment if the assets-to-debt ratio of MADISON GOLD fell below 2:1.

119. Had Plaintiffs not been induced with a false sense of security by receipt of the initial monthly payments, SNOW WHITE TRUST II would not have invested an additional \$200,000.00 in MADISON GOLD in January 2023.

120. As of March 2023, MADISON GOLD stopped sending monthly payments in connection with ROSH CHODESH's investments.

121. As of April 2023, MADISON GOLD stopped sending monthly payments in connection with the investments of SNOW WHITE TRUST II, DAVID HERMELIN, MICHAEL HERMELIN, AND JOSHUA HERMELIN.

122. Plaintiffs soon learned they were not the only investors to have been scammed by WIMPFHEIMER and MADISON GOLD.

123. As seen in the below Instagram posts from May 2023 and September 2023, WIMPFHEIMER even apparently scammed his former college roommate, Robby Berman:



robbyberman ISRAELI SEC INVESTIGATING MY FORMER COLLEGE ROOMMATE
Jan Wimpfheimer is being sued by multiple parties in America and Israel. The Israeli SEC interviewed me for their investigation of Jan.

Jan convinced me to give him a significant sum of my money by offering me a personal guarantee. I asked him how do I know he is not giving out more personal guarantees than he is worth. He promised me - in writing - he wasn't giving out more than 50% of what he is worth.

PS his lawyer just admitted to me Jan gave out more than \$26 million dollars in personal guarantees. If you too gave your money to Jan and didn't get it back please contact me.

Civil Action No. 1:23-cv-22148-DPG
Second Amended Complaint



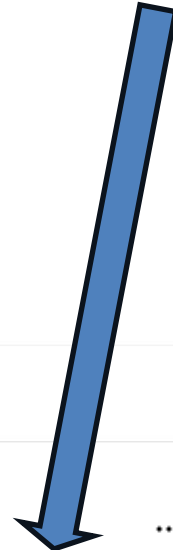
robbyberman • Follow

robbyberman If you have invested with Jan Wimpfheimer, a lawyer in Bet Shemesh, please contact me ASAP for our lawsuit. He has supposedly taken for his 'investment' a total of \$45 million.
45w

zvifingerman wild ... what kind of investment firm was he running?
44w Reply

darrenglick I'm sorry! Despicable
45w Reply

11 likes
May 31, 2023



robbyberman • Follow

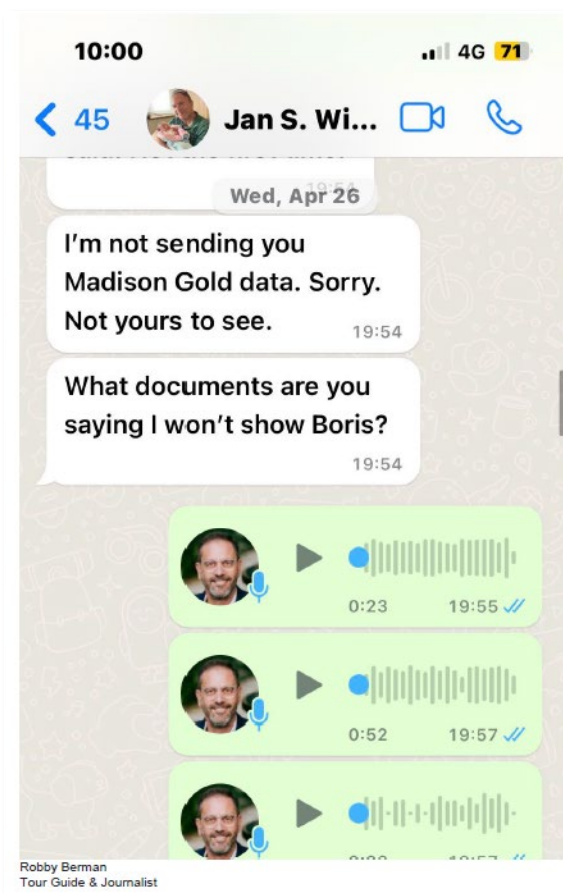
robbyberman If you have invested with Jan Wimpfheimer, a lawyer in Bet Shemesh, please contact me ASAP for our lawsuit. He has supposedly taken for his 'investment' a total of \$45 million.
45w

zvifingerman wild ... what kind of investment firm was he running?
44w Reply

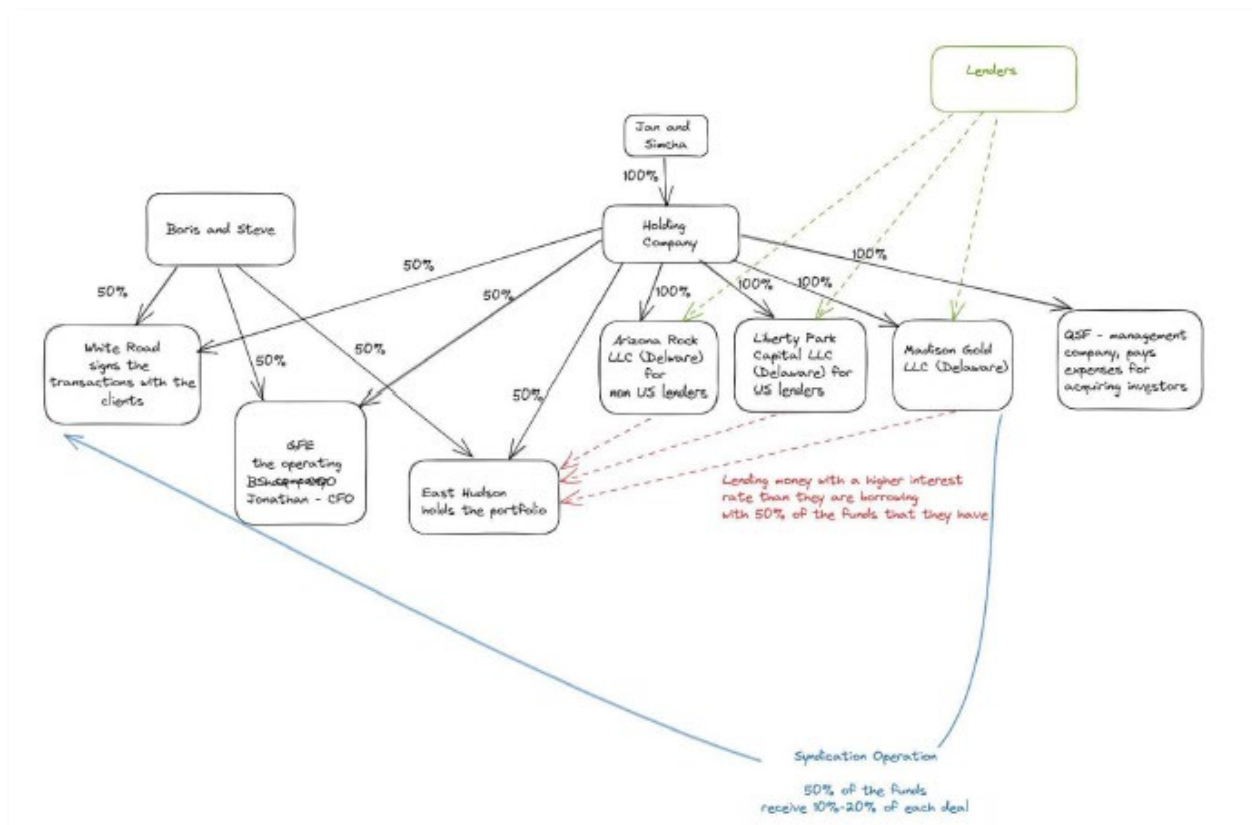
darrenglick I'm sorry! Despicable
45w Reply

124. Prior to becoming a victim of the enterprise himself, Berman successfully solicited investment funds from Plaintiffs and received undisclosed commission payments from MADISON GOLD (authorized by WIMPFHEIMER) for those successful solicitations.

125. In an email Berman sent to WIMPFHEIMER, Plaintiffs, and other investors on September 20, 2023, Berman said that WIMPFHEIMER's actions show he is lying and that WIMPFHEIMER refused to show Berman MADISON GOLD bank statements even while the two men were still friendly. Along with the email Berman sent the following excerpt of a conversation he had with WIMPFHEIMER via the Whatsapp application on April 26, 2023:



126. Berman, who is familiar with the enterprise, provided the following drawing created by a fellow investor which tracks the complicated racketeering activity crafted by the WIMPFHEIMER that corroborates Plaintiffs’ allegations:



127. As a result of the actions described above, Plaintiffs have suffered damages in an amount that will be proven at trial.

128. Plaintiffs duly performed all their duties and obligations; and any conditions precedent to Plaintiffs bringing this action have occurred, have been performed, or else have been excused or waived.

129. To enforce their rights, Plaintiffs have retained undersigned counsel and are obligated to pay counsel a reasonable fee for its services.

**COUNT I – VIOLATION OF RACKETEER INFLUENCED AND CORRUPT
ORGANIZATIONS ACT (“CIVIL RICO”)**

[18 U.S.C. § 1962(c)]

[AGAINST WIMPFHEIMER and MADISON GOLD]

Plaintiffs re-allege, and adopt by reference herein, Paragraphs 1-19 and 35-129 and further allege:

130. This is an action for damages pursuant to 18 U.S.C. § 1962(c) “Civil Racketeering” against Defendants WIMPFHEIMER and MADISON GOLD (the “RICO Defendants”).

The Applicable Statutes

131. This is a civil racketeering action for civil violations of the Racketeer Influenced and Corrupt Organizations Act (“RICO”) pursuant to 18 U.S.C. 1962(c) and 18 U.S.C. 1964(c).

132. Under 18 U.S.C. § 1962(c) it shall be unlawful for “any person employed by or associated with an enterprise engaged in, or the activities of which affect, interstate or foreign commerce to conduct or participate directly or indirectly in the conduct of such enterprise’s affairs for a pattern of racketeering activity or collection of unlawful debt.”

133. Federal Civil RICO, specifically 18 U.S.C. § 1964(c), creates a private right of action for any person injured in his business or property by reason of violation of § 1962 and provides for threefold the damages sustained as a result of recovery for the cost of suit, including reasonable attorney fees.

The Enterprise

134. Under Federal law, an “enterprise” is defined under 18 U.S.C. § 1961(4) as follows:

“enterprise” includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity

135. WIMPFHEIMER and MADISON GOLD formed an “Enterprise” associated in fact as described in 18 U.S.C. §1961(4), which functioned for the purpose of fraudulently obtaining and

retaining money from Plaintiffs through the material misrepresentations and/or the omission and concealment of material facts as described above and set forth below.

136. The Enterprise -- formed and directed by WIMPFHEIMER and MADISON GOLD -- made use of additional people and entities to carry out its scheme, including WIMPFHEIMER's partner Fulda; SWA, EAST HUDSON CAPITAL, WHITE ROAD CAPITAL, Arizona Rock LLC, and Liberty Park Capital LLC.

137. The Enterprise is an ongoing organization which engages in, and whose activities affect, interstate commerce.

138. The Enterprise had and has longevity, over 4 years, sufficient to permit each of the RICO Defendants to pursue the Enterprise's purpose.

139. WIMPFHEIMER and MADISON GOLD conducted the affairs of the Association in Fact.

140. MADISON GOLD, SWA, EAST HUDSON CAPITAL and WHITE ROAD CAPITAL were corporations/business entities with distinct identities and did not share a common or unified structure with each other. Thus, although MADISON GOLD, SWA, EAST HUDSON CAPITAL, WHITE ROAD CAPITAL, Arizona Rock LLC, and Liberty Park Capital LLC associate with each other and with other members of the Enterprise, they are "distinct" from the Association in Fact Enterprise in which they participate. Each corporate/business entity is not part of the same unified corporate structure and thus is distinct from an association of all of these entities and individuals.

Functioning Together as Continuing Unit

141. At all times relevant to this pleading, members and associates of the Association in Fact Enterprise functioned together as a continuing unit, with a common purpose for the economic

benefit and gain of WIMPFHEIMER and MADISON GOLD, who controlled the Enterprise, as further described below.

142. Each participant in the RICO Enterprise had systematic linkage to each other through corporate ties, contractual relationships, employment, financial ties, and continuing coordination of activities.

143. The Enterprise associates utilized SWA, EAST HUDSON CAPITAL, WHITE ROAD CAPITAL, Arizona Rock LLC, Liberty Park Capital LLC, and other entities (“Associated Entities”) as a vehicle for their racketeering activities.

144. Fulda knowingly assisted and cooperated in the Enterprise’s illegal activities, both in his individual capacity and as a representative and manager-member of several of the associated entities.

145. SWA is a legal entity controlled by WIMPFHEIMER.

146. Non-RICO Defendant EAST HUDSON CAPITAL is a legal entity of which WIMPFHEIMER and Fulda own 50% through their holding company Boardwalk 400 LLC and which other associates of WIMPFHEIMER and Fulda’s own 50%.

147. Non-RICO Defendant WHITE ROAD CAPITAL is a legal entity of which WIMPFHEIMER and Fulda own 50% and other associates of WIMPFHEIMER and Fulda’s own 50%.

148. Arizona Rock LLC is a legal entity controlled by WIMPFHEIMER and Fulda.

149. Liberty Park Capital LLC is a legal entity controlled by WIMPFHEIMER and Fulda.

150. The RICO Defendants ran their Enterprise by engaging in no fewer than fifty (50) acts of wire fraud – predicate activity in violation of 18 U.S.C. § 1343.

151. The RICO Defendants had the specific intent to participate in the overall RICO enterprise, which is evidenced by the schemes to defraud Plaintiffs and others as alleged hereinabove.

152. When pressed by Plaintiffs for information about where and how Plaintiffs' investment funds had been allocated, the RICO Defendants and the Enterprise associates have repeatedly failed and/or refused to provide Plaintiffs that information -- often under a purposefully obfuscatory design fashioned to conceal the wrongful nature of the Enterprise's illegal activities.

153. In fact, much of the information set forth herein about the defendants has been gleaned from litigation between the RICO Defendants and the Enterprise associates, *to wit*:

- East Hudson Capital LLC, et al. v. Jan S. Wimpfheimer, Simche Daniel Fulda, Liberty Park Capital LLC, Arizona Rock LLC, Madison Gold LLC, et al., Supreme Court - County of Queens, New York - Index No. 710129/2023
- AB International Investments LLC v. GFE NY, LLC, et al., Supreme Court - County of Queens, New York - Index No. 711174/2023
- Madison Gold LLC v. GFE NY, LLC, et al., Supreme Court - County of Queens, New York - Index No. 711175/2023
- Arizona Rock LLC, et al. v. East Hudson Capital LLC, et al., Supreme Court - County of Queens, New York - Index No. 712757/2023
- East Hudson Capital LLC et al. vs. Jan S. Wimpfheimer, et al., Supreme Court - County of Queens, New York - Index No. 706695/2024

and those allegations are relied upon for bringing these claims.

154. Based upon the RICO Defendants' unlawfully and fraudulently obtaining, retaining, transmitting, and causing transmission of monies through the use of interstate and international wirings, the same affected interstate commerce in furtherance of the racketeering schemes as alleged herein.

Common Purpose

155. The members of the Enterprise banded together with the common purpose to enrich themselves at the expense of Plaintiffs and other unsuspecting investors.

156. The RICO Defendants share the bounty of their criminal enterprise by, *inter alia*, sharing the financial gain from their fraudulently obtained monies.

157. The RICO Defendants utilized Enterprise components including the Associated Entities as a vehicle for their racketeering activities.

Operation and Management/Distinctness

158. To implement schemes successfully and convincingly to unlawfully steal from Plaintiffs and others, the RICO Defendants needed an organization and system that enabled them to effectively establish an aura of bona fide business operations, accounting, and charges.

159. The Enterprise provides that organization and system.

160. While the RICO Defendants participated in -- and are members of -- the Enterprise, they have a separate existence from the Enterprise; as each individual RICO Defendant is different than the Enterprise which they direct, control, and/or act willingly at the direction of another RICO Defendant.

161. The Enterprise is an association of the RICO Defendants and non-RICO Defendant associated entities and individuals and has operated since 2019.

The Racketeering Violation(s)

162. From on or before 2019 and continuing up through the date of the filing of this Complaint, the RICO Defendants -- each of whom are persons associated with or employed by the Enterprise -- did knowingly and unlawfully conduct, or participate, directly or indirectly, in the conduct of the affairs of the Enterprise through a pattern of racketeering activity within the meaning of 18 U.S.C. § 1961(1) and § 1961(5), all in violation of 18 U.S.C. § 1962(c).

163. Specifically, WIMPFHEIMER conducted and participated in the aforementioned Enterprise's affairs through multiple violations of 18 U.S.C. § 1343 by using interstate and international wires to make communications in furtherance of the Enterprise's scheme to fraudulently obtain and retain funds from Plaintiffs and others.

164. WIMPFHEIMER conducted and participated in the aforementioned Enterprise's affairs through multiple violations of 18 U.S.C. § 1343 by causing Plaintiffs and others to transfer to Defendants funds through interstate and international wires in furtherance of the Enterprise's scheme to fraudulently obtain and retain funds from Plaintiffs and others.

165. MADISON GOLD conducted and participated in the aforementioned Enterprise's affairs through multiple violations of 18 U.S.C. § 1343 by transmitting funds to Plaintiffs and others through interstate and international wires in furtherance of the Enterprise's scheme to fraudulently obtain and retain funds from Plaintiffs and others.

166. These RICO Defendants have engaged in a pattern of racketeering activity by committing at least two acts of racketeering activity after the effective date of the Federal RICO statute and also within ten (10) years of each individual act.

167. Plaintiffs include all details they have been able to uncover to date, though Plaintiffs believe discovery will uncover even more instances of wire fraud and other predicate acts that advanced, furthered, executed, and concealed the scheme. Because the particulars of many communications and funds transfers are within the exclusive control and within the exclusive knowledge of the RICO Defendants; who have withheld and concealed from Plaintiffs that information despite repeated demand for the information, documents related to those communications and acts in the RICO Defendants' exclusive control are expected to be the focus of discovery.

Schemes, Victims, and Injuries

168. This Count involves numerous schemes which were accomplished through a regular pattern and way of conducting the affairs of the enterprise through wire fraud to defraud Plaintiffs and others.

Pattern of Racketeering Activity

169. The course of conduct engaged in by the RICO Defendants satisfies both the “continuity” and “relationship” tests of racketeering activity, thereby constituting a pattern of racketeering activity, as that term is defined in 18 U.S.C. § 1961(5).

170. Plaintiffs allege the course of conduct engaged in by the RICO Defendants constituted both “continuity” and “relatedness” of the racketeering activity, thereby constituting a pattern of racketeering activity, as that term is defined in 18 U.S.C. § 1961(5).

171. Plaintiffs can show the relatedness prong because the predicate acts have the “similar purposes, results, participants, or methods of commission or are related to the affairs of the Enterprise.”

172. All predicate acts had the same purpose of defrauding Plaintiffs and others, all for the personal enrichment of the RICO Defendants and their associates.

Closed End Continuity

173. Each Defendant committed a series of related predicate acts, *i.e.*, from early 2019 through to present. Thus, continuity may be shown under the doctrine of closed-ended continuity.

Threat of Continuity (Open-Ended Continuity), in the Alternative

174. Alternatively, the acts of attempting to dupe new investors and continuing to commit numerous acts of wire fraud to accomplish defrauding Plaintiffs through stealing profits and business opportunities includes a threat of continuity where the RICO Defendants have implemented an intentional scheme to defraud Plaintiffs, and -- when the money runs out -- other MADISON GOLD investors.

175. The ongoing attempts to defraud unsuspecting investors and the continued scheme to profit through wire fraud creates the specific threat that the RICO Defendants will repeat their fraud, which damages Plaintiffs and others.

176. Using wire e-mail transmissions and electronic banking transfers to fraudulently cause harm to Plaintiffs and others is the regular way of conducting the RICO Defendants' ongoing business through MADISON GOLD.

177. The "regular way" of conducting the RICO Defendants' business is through committing the predicate acts of wire fraud.

178. Additionally, the RICO Defendants continue to engage in at least the predicate act of wire fraud that harms Plaintiffs and others on a daily basis.

179. The pattern of racketeering activity as set forth herein is established by the threat of continued activity, as the RICO Defendants have directed associates from 2019 through the present to repeatedly engage in the same illegal and illicit activities described herein.

180. Plaintiffs have specific knowledge of third parties who have been similarly defrauded or attempted to be defrauded through wire fraud.

181. The RICO Defendants are involved in all the above-mentioned schemes, with similar methods of commission, *to wit*: deceiving and defrauding unsuspecting investors into investing into a business that is operated for the purpose of funding WIMPFHEIMER and Fulda's lifestyles, raiding the business of all of its assets, and then moving on to the next unsuspecting investor and/or business associate.

182. The RICO Defendants' violations of 18 U.S.C. § 1962(c) have directly and proximately caused injuries and damages to Plaintiffs, and Plaintiffs are entitled to bring this action for three times their actual damages, as well as injunctive and equitable relief and costs and reasonable attorneys' fees pursuant to 18 U.S.C. § 1964(c).

RICO Defendants' Commission of Specific Predicate Acts

183. 18 U.S.C. 1962(c) makes it unlawful for a person associated with any enterprise, engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate,

directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

184. Among the predicate acts sufficient to show racketeering activity is 18 U.S.C. § 1343, which prohibits: (a) using wire communication in interstate or foreign commerce (b) to transmit, or cause transmission of, any writings or sounds, (c) for the purposes of executing a scheme to obtain money by means of false or fraudulent pretenses, representations, or promises.

Predicate Acts

Predicate Acts Arising From Violations of 18 U.S.C. § 1343

185. As described above and detailed in Section A below, WIMPFHEIMER conducted and participated in the aforementioned Enterprise's affairs through multiple violations of 18 U.S.C. § 1343 by using interstate and international wires to make communications in furtherance of the Enterprise's scheme to fraudulently obtain funds from Plaintiffs and others.

186. As described above and detailed in Section B below, WIMPFHEIMER conducted and participated in the aforementioned Enterprise's affairs through multiple violations of 18 U.S.C. § 1343 by causing Plaintiffs and others to transfer to Defendants funds through interstate and international wires in furtherance of the Enterprise's scheme to fraudulently obtain funds from Plaintiffs and others.

187. As described above and detailed in Section C below, MADISON GOLD conducted and participated in the aforementioned Enterprise's affairs through multiple violations of 18 U.S.C. § 1343 by transmitting funds to Plaintiffs and others through interstate and international wires in furtherance of the Enterprise's scheme to fraudulently obtain and retain Plaintiffs' and others' funds.

**(A) Predicate Acts Arising from Wimpfheimer’s Communications Made
Using Interstate and International Wires in Furtherance of the Scheme to Fraudulently
Obtain and Retain Funds in Violation of 18 U.S.C. § 1343**

188. The Enterprise devised and executed a scheme to fraudulently obtain and retain money from Plaintiffs and others through the material misrepresentations and/or the omission and concealment of material facts as described above and set forth below.

189. As outlined below, in furtherance of the Enterprise’s scheme to defraud, WIMPFHEIMER misrepresented: (i) the rate of return Plaintiffs would receive on their investment, (ii) the transparency associated with investments in MADISON GOLD, and (iii) the volume of Plaintiffs’ investment in relation to MADISON GOLD’s total funds.

190. In furtherance of his scheme, WIMPFHEIMER also omitted and concealed that MADISON GOLD’s merchant cash advance (“MCA”) transaction partner EAST HUDSON CAPITAL no longer wanted to engage in transactions involving third-party investors funds.

- i. **WIMPFHEIMER used interstate and international wires to falsely represent that Investors would earn a high rate of return on their investment.**

Predicate Act Category 1: Predicate Act No. 1

191. As alleged in Paragraph 54 above, MICHAEL HERMELIN told WIMPFHEIMER on May 23, 2022 via the electronic WhatsApp application that a 12% rate of return “is on the lower end of some of what is being offered” to Plaintiffs from other investment opportunities. In response, WIMPFHEIMER sent the following statement to MICHAEL HERMELIN via WhatsApp: “Ok . . . But remember that for \$500,000 it’s 15%, for \$2m or more it’s 18%.”

192. WIMPFHEIMER’s statement put a definite percentage on the return-on-investment Plaintiffs would receive, and WIMPFHEIMER thereby misrepresented that the more money Plaintiffs invested, the higher rate of return they would receive.

193. WIMPFHEIMER benefitted from the above statement because the high rate of return made it more likely that Plaintiffs would invest in MASDISON GOLD rather than other investments

available to them given that they could earn a specific, and high, rate of return if they invested with MASDISON GOLD.

194. Plaintiffs were harmed by the above statement because the high rate of return quoted to them influenced their decision to invest their money in MADISON GOLD rather than other investment opportunities available to them.

195. In furtherance of his scheme to defraud, in a February 10, 2021 email WIMPFHEIMER told investor (and former college roommate) Robby Berman, that WIMPFHEIMER personally guaranteed Berman's investment, that WIMPFHEIMER had not made personal guarantees in excess of 50% of his net worth, that he would not give any more personal guarantees, and that his net worth was growing nicely.

196. In fact, WIMPFHEIMER's personal guarantees exceeded 50% of his net worth, he made additional personal guarantees after February 2021, and his true net worth was shrinking rather than growing.

197. The email statements to Robby Berman harmed Plaintiffs because they coerced Berman to give his savings to WIMPFHEIMER and that additional cash provided the funding that allowed WIMPFHEIMER to continue operating his Ponzi scheme through the time at which Plaintiffs invested

- ii. **WIMPFHEIMER used interstate and international wires to falsely represent to Plaintiffs that their investments were only a small portion of the funds invested in Madison Gold.**

Predicate Act Category 2: Predicate Act Nos. 3-4

198. As alleged in Paragraph 107 above, while negotiating the terms of Plaintiffs' investments, MICHAEL HERMELIN made suggested edits to the 7/24/22 Side Letter.

199. In response to one or more of MICHAEL HERMELIN's proposed edits to the 7/24/22 Side Letter that was then under discussion and being negotiated by and between the parties,

WIMPFHEIMER sent the following July 19, 2022 message from his MADISON GOLD email account to MICHAEL HERMELIN's email account so he could share the information with his fellow plaintiff investors: "You get the same rights as other who invested the same amount as you – not those who invested more. You invest \$3m[,] you get the rights of anyone else who invested \$3m. You invest \$1m[,] you get the same rights as anyone else who invested \$1m. I'm not sure why you're trying to play with that fair and obvious concept."

200. As set forth in Paragraph 108 above, when finalizing the terms of the parties' agreements, WIMPFHEIMER stated in a July 22, 2022, email to MICHAEL HERMELIN: "I'm assuming a minimum investment of \$1 million – I wouldn't give some of these terms for less than that. We will be happy if it's more, but that would have to be the minimum to move forward with these drafts."

201. WIMPFHEIMER's statement above implied to Plaintiffs that there were several investors in MADISON GOLD, with investments up to and above \$3,000,000.00; when in fact that was not true.

202. This representation by WIMPFHEIMER resulted in Plaintiffs believing that many other investors had entrusted their funds to WIMPFHEIMER and MADISON GOLD; and this false sense of security influenced Plaintiffs' decision to invest their funds with WIMPFHEIMER and MADISON GOLD.

203. This representation benefitted WIMPFHEIMER and MADISON GOLD because it enabled them to fraudulently obtain funds from Plaintiff by deceiving them into believing there were many investors in MADISON GOLD with large sums of investments.

- iii. **WIMPFHEIMER used interstate and international wires to falsely represent to Plaintiffs that their investments in Madison Gold would be transparent.**

Predicate Act Category 3: Predicate Acts Nos. 5-9

204. While WIMPFHEIMER was soliciting Plaintiffs for their investments, he falsely represented to Plaintiffs that the details of their investment, and the use of their investment money, would be transparent.

205. As set forth in Paragraph 55 above, the following exchange took place on July 18, 2022 between MICHAEL HERMELIN and WIMPFHEIMER via the WhatsApp application::

[18/07/2022, 11:00:40] Michael Hermelin: Will the audit of your company be complete within the next 6 months? If so, would you be willing to let us read it?
[18/07/2022, 11:00:55] Jan: Yes and yes[.]

206. The above representation was false, as Plaintiffs never received paperwork memorializing an audit of WIMPFHEIMER's company.

207. As also alleged above, in a July 6, 2022 email to Plaintiffs' counsel at that time, WIMPFHEIMER stated: "I am prepared to provide quarterly written confirmation for the assets of Madison Gold LLC are double the liabilities, as we discussed."

208. Accordingly, the terms of the 7/24/22 Side Letter included a requirement that MADISON GOLD maintain an asset-to-debt ration of at least 2:1 and further required MADISON GOLD to notify Plaintiffs within three (3) business days of becoming aware that its assets to debt ratio fell below this 2:1 ration.

209. Further, the 7/24/22 Side Letter provided that if such a change in the assets-to-debts ratio were to occur, Plaintiffs would have the right to demand payment within 30 days of all outstanding sums due to them, including unpaid interest.

210. Drafts of the 7/24/22 Side Letter, and the final executed version of the 7/24/22 Side Letter, were exchanged via email as follows:

- (a) From WIMPFHEIMER to MICHAEL HERMELIN on June 7, 2022;
- (b) From WIMPFHEIMER to MICHAEL HERMELIN on July 17, 2022;
- (c) From WIMPFHEIMER to MICHAEL HERMELIN on July 19, 2022

211. A draft of the 7/24/22 Side Letter was also sent by WIMPFHEIMER to DAVID HERMELIN on September 12, 2022, while the parties were negotiating proposed revisions to the 7/24/22 Side Letter.

212. The above representations by WIMPFHEIMER were false, as neither WIMPFHEIMER nor MADISON GOLD ever notified Plaintiffs that MADISON GOLD's assets-to-debt ratio fell below the 2:1 ratio or that MADISON GOLD did not have enough funds to pay its investors.

213. The above representations by WIMPFHEIMER led Plaintiffs to believe that they would be kept apprised of MADISON GOLD's financial status while their funds were invested with MADISON GOLD and that they would have time to withdraw their investments in the event MADISON GOLD's financial status posed a risk to Plaintiffs' investments.

214. These misrepresentations harmed Plaintiffs by creating a false sense of security that influenced Plaintiffs' decisions to invest their funds in MADISON GOLD.

215. These misrepresentations benefitted MADISON GOLD and WIMPFHEIMER because it caused Plaintiffs to invest their funds in MADISON GOLD, which WIMPFHEIMER used to pocket undisclosed spreads and fees and charges concealed from Plaintiffs.

- iv. **WIMPFHEIMER used interstate and international wires to knowingly conceal the material fact that East Hudson Capital wanted to end the syndication funding arrangement.**

Predicate Act Category 4: Predicate Act Nos. 10-15

216. The terms of the 7/24/22 Side Letter concerning Plaintiffs' investments in MCA transactions explained that funds received from Plaintiffs would "be used by the Company to acquire a portion of merchant cash advance transactions originated and managed by the Company and/or any

of its affiliates.” Thus, MADISON GOLD’s ability to provide a return on investment to Plaintiffs hinged on MADISON GOLD’s ability to acquire a portion of merchant cash advance transactions.

217. On July 5, 2022, WIMPFHEIMER met with then-counsel for ROSH CHODESH and the Hermelins for purposes of negotiating Plaintiffs’ investments with MADISON GOLD.

218. During their July 5, 2022 meeting, WIMPFHEIMER explained to Plaintiffs’ counsel the manner in which MADISON GOLD earns money for its investors through its position as portfolio investor in the MCA deals generated by GFE.

219. Approximately half of the money brought in by MADISON GOLD came from syndication arrangements.

220. According to WIMPFHEIMER, syndication money was used, at least in part, to meet the payment requirements of MADISON GOLD to its investors.

221. Because syndication arrangements made up a significant percentage of MADISON GOLD’s earnings, and because such funds were used to meet payments to investors, potential loss of the syndication arrangements was material to MADISON GOLD’s business, including the promises made to its investors.

222. In the first half of 2022, and therefore before or simultaneously with Defendants’ courting of Plaintiffs as potential investors, MADISON GOLD learned that its syndication business might be coming to an end.

223. EAST HUDSON CAPITAL, an entity instrumental in MADISON GOLD obtaining merchant cash advance transactions, advised WIMPFHEIMER that it wanted to “phase out of the Syndication Funding merchant funding agreement,” which was a reference to the transactions on which Plaintiffs’ investment with MADISON GOLD relied.

224. In July 2022, EAST HUDSON CAPITAL specifically told WIMPFHEIMER that EAST HUDSON CAPITAL had to be restructured and that the manner in which business was

conducted had to fundamentally change, including EAST HUDSON CAPITAL transitioning out of all Syndication Funding.

225. WIMPFHEIMER concealed the above material information from Plaintiffs during each communication between the parties and their representatives. Specifically, this information should have been, but was not, disclosed at the following times:

- (a) A May 8, 2022, Zoom meeting between WIMPFHEIMER and all Plaintiffs;
- (b) A June 7, 2022, email from WIMPFHEIMER to MICHAEL HERMELIN;
- (c) A July 17, 2022, email from WIMPFHEIMER to MICHAEL HERMELIN;
- (d) A July 18, 2022, email from WIMPFHEIMER to MICHAEL HERMELIN;
- (e) A July 19, 2022, email from WIMPFHEIMER to MICHAEL HERMELIN;
- (f) A July 22, 2022, email from WIMPFHEIMER to MICHAEL HERMELIN.

226. In January 2023, EAST HUDSON CAPITAL made clear to WIMPFEHIMER that payments to WIMPFEHIMER's entity Arizona Rock -- which was for the benefit of MADISON GOLD investors -- would cease unless WIMPFHEIMER provided EAST HUDSON CAPITAL transparency with respect to the MADISON GOLD investors.

(B) Predicate Acts Arising from Wimpfheimer Causing Transmission of Investment Funds to Madison Gold via Interstate and International Wires in Furtherance of the Scheme to Fraudulently Obtain Funds in Violation of 18 U.S.C. § 1343

Predicate Act Category 5: Predicate Acts Nos. 16-22

227. After securing Plaintiffs' commitment to invest money in MADISON GOLD, WIMPFHEIMER, on behalf of MADISON GOLD, provided Plaintiffs with instructions on how to send investment funds to MADISON GOLD. Specifically, on July 24, 2022, WIMPFHEIMER, on behalf of MADISON GOLD, instructed Plaintiff MICHAEL HERMELIN via email: "When you are ready to do so, please send funds for Madison Gold LLC to Madison Gold LLC 3029 Aventura . . . Account [***0353] JP Morgan Chase Bank."

228. Additionally, on July 25, 2022, WIMPFHEIMER told Plaintiff DAVID HERMELIN "Please send the wire today and send me confirmation when it's complete."

229. As a result of the above two statements, on July 25, 2022, a \$1,000,000.00 wire transfer was made from ROSH CHODESH II, LP's bank account in Chicago, Illinois, to MADISON GOLD LLC's bank account in New York, New York.

230. As a result of the above two statements, on September 14, 2022, a \$360,000 wire transfer was made from ROSH CHODESH II LP's bank account in Chicago, Illinois to MADISON GOLD's bank account in New York, New York. The transfer represented a \$240,000 investment from Defendant MICHAEL HERMELIN and a \$120,000 investment from Plaintiff JOSH HERMELIN.

231. As a result of the above two statements, on September 28, 2022, a \$750,000.00 wire transfer was made from ROSH CHODESH II LP's bank account in Chicago, Illinois to MADISON GOLD LLC's bank account in New York, New York.

232. As a result of the above two statements, on September 28, 2022, a \$500,000.00 transfer was also made from SNOW WHITE TRUST II's bank account in Chicago, Illinois to MADISON GOLD's bank account in New York, New York.

233. As a further result of the above two statements, on or around January 19, 2023, a \$200,000.00 wire transfer was made from SNOW WHITE TRUST II's bank account in Chicago, Illinois to MADISON GOLD's bank account in New York, New York.

234. On September 13, 2022, in regard to Plaintiff DAVID HERMELIN's personal investment in MADISON GOLD, WIMPFHEIMER on behalf of MADISON GOLD, instructed Plaintiff DAVID HERMELIN via email: "I will send you the Madison Gold LLC wire instructions separately."

235. As a result of the above statement, on September 14, 2022, a wire transfer of \$240,000 was made from DAVID HERMELIN's financial account in Reno, Nevada to MADISON GOLD's

bank account in New York, New York. The transfer represented an individual investment by Plaintiff DAVID HERMELIN.

236. Causing Plaintiffs to make the above wire funds transfers to MADISON GOLD's bank account furthered the Enterprise's scheme to defraud by placing in MADISON GOLD's hands funds used to line WIMPFHEIMER's pockets in the form of undisclosed spreads as well as fees and charges concealed from Plaintiffs.

237. Causing Plaintiffs to make the above wire funds transfers to MADISON GOLD's bank account harmed Plaintiffs because they were deprived of funds on which they had been led to believe they would yield a return on their investment when in fact the funds were used to line the pockets of WIMPFHEIMER in the form of undisclosed spreads as well as fees and charges concealed from Plaintiffs.

C. Predicate Acts Arising from Madison Gold's Transmission of Funds to Plaintiffs via Interstate and International Wires in Furtherance of the Scheme to Fraudulently Obtain and Retain Plaintiffs' Funds in Violation of 18 U.S.C. § 1343

Predicate Act Category 6: Predicate Acts Nos. 23-64

238. MADISON GOLD used interstate and international wires to send capital distributions to Plaintiffs in furtherance of its scheme to defraud investors in violation of 18 U.S.C. § 1343.

239. Pursuant to their investment agreements, MADISON GOLD was required to send Plaintiffs a specific amount of money each month.

240. In the months following MADISON GOLD's receipt of Plaintiffs' investments, in furtherance of its scheme to defraud, MADISON GOLD made distributions to Plaintiffs via wire funds transfers from its bank account in New York, New York ending in numbers ***0353, as detailed in the chart below:

Wire No.	Date	Transferee	Location of Transferee's Bank	Bank/ Financial Account Ending #s	Amount
1	8/31/2022	Rosh Chodesh II LP	Chicago, Illinois	***5971	\$15,000
2	9/1/2022	Rosh Chodesh II LP	Chicago, Illinois	***5971	\$11,250
3	10/25/2022	Rosh Chodesh II LP	Chicago, Illinois	***5971	\$15,000
4	10/28/2022	Rosh Chodesh II LP	Chicago, Illinois	***5971	\$11,250
5	10/28/2022	David Hermelin	Reno, Nevada	***0971	\$1,800
6	10/28/2022	David Hermelin	Reno, Nevada	***0971	\$3,600
7	10/28/2022	Michael Hermelin	Jerusalem, Israel	***016/18	\$3,600
8	10/28/2022	Michael Hermelin	Jerusalem, Israel	***016/18	\$1,800
9	10/28/2022	Josh Hermelin	New York, New York	***2426	\$900
10	10/28/2022	Josh Hermelin	New York, New York	***2426	\$1,800
11	10/28/2022	Snow White Trust II	Chicago, Illinois	***0152	\$7,500
12	11/25/2022	Rosh Chodesh II LP	Chicago, Illinois	***5971	\$15,000
13	11/25/2022	Rosh Chodesh II LP	Chicago, Illinois	***5971	\$15,000
14	12/1/2022	David Hermelin	Reno, Nevada	***0971	\$3,600
15	12/1/2022	Michael Hermelin	Jerusalem, Israel	***016/18	\$3,600
16	12/1/2022	Josh Hermelin	New York, New York	***2426	\$1,800
17	12/9/2022	Snow White Trust II	Chicago, Illinois	***0152	\$7,500
18	12/22/2022	David Hermelin	Reno, Nevada	***0971	\$3,600
19	12/22/2022	Michael Hermelin	Jerusalem, Israel	***016/18	\$3,600
20	12/22/2022	Josh Hermelin	New York, New York	***2426	\$1,800
21	12/22/2022	Snow White Trust II	Chicago, Illinois	***0152	\$7,500
22	12/23/2022	Rosh Chodesh II LP	Chicago, Illinois	***5971	\$15,000

23	12/23/2022	Rosh Chodesh II LP	Chicago, Illinois	***5971	\$11,250
24	1/25/2023	Rosh Chodesh II LP	Chicago, Illinois	***5971	\$15,000
25	1/25/2023	Rosh Chodesh II LP	Chicago, Illinois	***5971	\$11,250
26	1/25/2023	Snow White Trust II	Chicago, Illinois	***0152	\$7,500
27	1/25/2023	David Hermelin	Reno, Nevada	***0971	\$3,600
28	1/25/2023	Michael Hermelin	Jerusalem, Israel	***016/18	\$3,600
29	1/25/2023	Josh Hermelin	New York, New York	***2426	\$1,800
30	2/28/2023	Rosh Chodesh II LP	Chicago, Illinois	***5971	\$15,000
31	2/28/2023	Rosh Chodesh II LP	Chicago, Illinois	***5971	\$11,250
32	2/28/2023	Snow White Trust II	Chicago, Illinois	***0152	\$7,500
33	2/28/2023	Snow White Trust II	Chicago, Illinois	***0152	\$3,000
34	2/28/2023	David Hermelin	Reno, Nevada	***0971	\$3,600
35	2/28/2023	Michael Hermelin	Jerusalem, Israel	***016/18	\$3,600
36	2/28/2023	Josh Hermelin	New York, New York	***2426	\$1,800
37	3/24/2023	David Hermelin	Reno, Nevada	***0971	\$3,600
38	3/24/2023	Michael Hermelin	Jerusalem, Israel	***016/18	\$3,600
39	3/24/2023	Josh Hermelin	New York, New York	***2426	\$1,800
40	3/27/2023	Snow White Trust II	Chicago, Illinois	***5971	\$7,500
41	3/27/2023	Snow White Trust II	Chicago, Illinois	***5971	\$3,000

241. Each wire transfer listed above constitutes a separate instance of interstate and international wires in furtherance of the Enterprise's scheme to fraudulently obtain and retain Plaintiffs' funds.

242. Receipt of the promised monthly payments led Plaintiffs to believe that they would receive the return promised on their investment.

243. Due to the false sense of security created by receipt of the initial monthly distributions, Plaintiffs did not question MADISON GOLD's financial stability, allowing the Enterprise to continue its scheme to defraud without interruption.

244. In fact, reassured by their receipt of monthly payments by MADISON GOLD, an additional investment was made.

245. On or around January 19, 2023, Plaintiff SNOW WHITE TRUST II made an additional \$200,000.00 investment in MADISON GOLD.

246. As a direct and proximate result of the RICO Defendants' violation of 18 U.S.C. § 1962(c), Plaintiffs, and other victims, have been and are continuing, directly and proximately, to be injured as set forth more fully above.

**COUNT II – CONSPIRACY TO VIOLATE RACKETEER INFLUENCED AND
CORRUPT ORGANIZATIONS ACT (“CIVIL RICO”)**
[18 U.S.C. §§ 1962(d)]
[AGAINST WIMPFHEIMER, MADISON GOLD, and SWA]

Plaintiffs re-allege, and adopt by reference herein, Paragraphs 1-19; 35-129; and 131-246 above, and further allege:

247. This is an action for damages pursuant to 18 U.S.C. § 1962(d) “Civil Racketeering” against Defendants WIMPFHEIMER, MADISON GOLD, and SWA (the “RICO Conspiracy Defendants”).

248. Under 18 U.S.C. § 1962(d), it shall be unlawful to conspire to violate any of the RICO substantive provisions, including section 1962(c).

249. As set forth above, commencing in or about 2019 and continuing through the present time, WIMPFHEIMER, MADISON GOLD, and SWA conspired to violate 18 U.S.C. § 1962(c) in violation of 18 U.S.C. § 1962(d).

250. Each RICO Conspiracy Defendant agreed that a conspirator would conduct or participate in the affairs of the Enterprise through a pattern of racketeering, consisting of the predicate activity as more fully described in Count I above.

251. The conspiratorial objective of that mutual agreement was intended to defraud Plaintiffs and other unsuspecting investors by improperly inducing them through interstate wires and electronic means to invest funds with MADISON GOLD based on factual misrepresentations and withheld material facts.

252. In support of the overall objective of the conspiracy, Defendant SWA, through WIMPFHEIMER and other attorneys at the firm, prepared and provided non-disclosure agreements to Plaintiffs, which were sent via email to MICHAEL HERMELIN by WIMPFHEIMER from his SWA address on July 18, 2022.

253. Preparing and disseminating the non-disclosure agreements furthered the objective of the RICO enterprise because this prevented Plaintiffs from learning from, and discussing details about their investments with, others who may have been aware of Defendants' past and current deception.

254. Each RICO Conspiracy Defendant intended to further the schemes to defraud, which as described in Count I were completed and satisfied by at least one substantive individual Defendant.

255. As demonstrated in detail above, the WIMPFHEIMER, MADISON GOLD, and SWA have engaged in numerous predicate racketeering acts in furtherance of the conspiracy, including wire fraud, all designed to defraud Plaintiffs and other victims of money and other property interests and to conceal the nature, source, and location of such proceeds.

256. The nature of the above-described acts, material misrepresentations, and omissions in furtherance of the conspiracy give rise to an inference that each RICO Conspiracy Defendant not only agreed to the objective of conspiring to violate 18 U.S.C. § 1962(c), but they were aware that their ongoing fraudulent acts have been and are part of an overall pattern of racketeering activity.

257. The agreement to violate RICO with regard to each RICO Conspiracy Defendant is as follows:

- (a) WIMPFHEIMER has conspired to engage in multiple racketeering acts of mail fraud and wire fraud (described above), which Plaintiffs reallege and adopt by reference in this Count. He made or caused someone to make numerous misrepresentations of fact and has repeatedly concealed from Plaintiffs where their invested funds are and how they were expended. As a result, WIMPFHEIMER has intended to further the substantive violations of fraud, which were completed; and he adopted the goal of furthering or facilitating the criminal endeavor. Accordingly, WIMPFHEIMER conspired to violate 18 U.S.C. § 1962(c), all in violation of 18 U.S.C. § 1962(d);
- (b) MADISON GOLD has conspired to engage in multiple racketeering acts of mail fraud and wire fraud (described above), which Plaintiffs reallege and adopt by reference in this Count. MADISON GOLD has made or caused someone to make numerous misrepresentations of fact and has repeatedly concealed from Plaintiffs where their invested funds are and how they were expended. As a result, MADISON GOLD has intended to further the substantive violations of fraud, which were completed; and he adopted the goal of furthering or facilitating the criminal endeavor. Accordingly, MADISON GOLD conspired to violate 18 U.S.C. § 1962(c), all in violation of 18 U.S.C. § 1962(d); and
- (c) SWA has conspired to engage in multiple racketeering acts of mail fraud and wire fraud (described above), which Plaintiffs reallege and adopt by reference in this Count. SWA prepared Non-Disclosure Agreements crafted to conceal from Plaintiffs where their invested funds are and to intentionally limit Plaintiffs' ability to avail themselves of a reasonable remedy for wrongful activity perpetrated upon Plaintiffs by Defendants. The Non-Disclosure Agreements deprive investors (including Plaintiffs) of vital facts and evidence related to their investments, as the RICO Conspiracy Defendants hide that information behind the NDAs. As a result, SWA has intended to further the substantive violations of fraud, which were completed; and he adopted the goal of furthering or facilitating the criminal endeavor. Accordingly, SWA conspired to violate 18 U.S.C. § 1962(c), all in violation of 18 U.S.C. § 1962(d).

258. As a direct and proximate result of the RICO Conspiracy Defendants' agreement that conspirators would violate 18 U.S.C. § 1962(c), Plaintiffs, and other victims described in Count I, have been and are continuing, directly and proximately, to be injured as set forth more fully above.

**COUNT III – FRAUDULENT INDUCEMENT
[AGAINST WIMPFHEIMER and MADISON GOLD]**

Plaintiffs re-allege, and adopt by reference herein, Paragraphs 1-19 and 35--129 above, and further allege:

259. WIMPFHEIMER, by acts of both omission and commission, made false statements to Plaintiffs concerning material facts about their investments.

260. Specifically, WIMPFHEIMER's representations to Plaintiffs that, among other things:

- (a) investing in MADISON GOLD would be profitable and prudent and would bring a rate of return between 15% and 18%;
- (b) the relationship between MADISON GOLD and EAST HUDSON CAPITAL was solid; and
- (c) Plaintiffs' interests were all adequately covered in the paperwork WIMPFHEIMER had prepared to memorialize the terms of their investments in MADISON GOLD

were false, and WIMPFHEIMER knew at the time the statements were made to Plaintiffs that the statements were false.

261. WIMPFHEIMER intended that Plaintiffs would be induced into action by relying upon the statements of fact he made to Plaintiffs.

262. In the course of investing their funds with MADISON GOLD and entrusting the Defendants to properly handle their investments, Plaintiffs reasonably and justifiably relied on the statements of fact made to them by WIMPFHEIMER.

263. As a direct and proximate result of Plaintiffs' reliance on the statements made to them by WIMPFHEIMER, Plaintiffs have suffered damage.

COUNT IV – BREACH OF FIDUCIARY DUTY
[AGAINST WIMPFHEIMER]

Plaintiffs re-allege, and adopt by reference herein, Paragraphs 1-19 and 35-129 above, and further allege:

264. Plaintiffs and WIMPFHEIMER shared a relationship whereby:
- (a) Plaintiffs reposed trust and confidence in WIMPFHEIMER, and
 - (a) WIMPFHEIMER undertook such trust and assumed a duty to advise, counsel and/or protect Plaintiffs.
265. WIMPFHEIMER owed Plaintiffs a fiduciary duty to, among other things:
- (a) disclose to Plaintiffs all material information pertaining to Plaintiffs' investments in MADISON GOLD;
 - (b) refrain from making false statements or creating misimpressions of material fact as they relate to Plaintiffs' investments in MADISON GOLD;
 - (c) refrain from self-dealing; and
 - (d) reveal to Plaintiffs all legal conflicts of interest that might negatively impact WIMPFHEIMER's ability to fully and fairly represent Plaintiffs' legal interests in connection with their investments in MADISON GOLD.

266. WIMPFHEIMER knew Plaintiffs were relying on his expertise in their investments with MADISON GOLD as evidenced by the statement in Paragraph 56 wherein WIMPFHEIMER responds to news that MICHAEL HERMELIN is making a personal investment by thanking MICHAEL HERMELIN for his "trust"

267. WIMPFHEIMER breached his duty to Plaintiffs.

268. As a direct and proximate result of WIMPFHEIMERs breach of his duties, Plaintiffs have suffered damage.

COUNT V – NEGLIGENT MISREPRESENTATION
[AGAINST WIMPFHEIMER and MADISON GOLD]

Plaintiffs re-allege, and adopt by reference herein, Paragraphs 1-19 and 35-129 above, and further allege:

269. WIMPFHEIMER's misrepresentations and false promises were material to Plaintiffs, who reasonably relied upon those representations and promises.

270. Plaintiffs would not have agreed to invest their funds with MADISON GOLD if they had known that the investment was not as secure as represented by WIMPFHEIMER and was actually a fraudulent scheme; and Plaintiffs would not have lost approximately \$3,050,000.00.

271. WIMPFHEIMER intended that Plaintiffs rely on his representations and promises, as he knew that Plaintiffs would not entrust their investment funds to unreasonable risks of loss.

272. In reliance upon WIMPFHEIMER's representations and promises, Plaintiffs invested their funds with MADISON GOLD.

273. As a direct and proximate result of WIMPFHEIMER's wrongful actions, Plaintiffs have been damaged.

COUNT VI – CONVERSION
[AGAINST WIMPFHEIMER]

Plaintiffs re-allege, and adopt by reference herein, Paragraphs 1-19; 35-61; 67-71; 95-102; and 112-129 above, and further allege:

274. Plaintiffs transferred funds and assets to MADISON GOLD, acting by and through WIMPFHEIMER, for investment to participate in MADISON GOLD.

275. WIMPFHEIMER has kept all or a portion of Plaintiffs' funds and assets after Plaintiffs requested their return, despite WIMPFHEIMER's lack of any legitimate ownership interest in the assets.

276. By refusing to return to Plaintiffs their assets, WIMPFHEIMER intended to interfere with, and indeed has interfered with, Plaintiffs' ownership and interest in those holdings and has deprived Plaintiffs of their property, permanently or temporarily.

277. Upon information and belief, WIMPFHEIMER utilized all or a portion of Plaintiffs' funds and assets to cover WIMPFHEIMER and Fulda's own business expenses and to enrich WIMPFHEIMER and Fulda themselves.

278. As a result of WIMPFHEIMER's conversion of Plaintiffs' funds and assets to his own corporate and personal uses, Plaintiffs have suffered damage.

COUNT VII – RESCISSION OF CONTRACT(S)
[AGAINST MADISON GOLD]

Plaintiffs re-allege, and adopt by reference herein, Paragraphs 1-19 and 35-129 above, and further allege:

279. The terms of participation and investment in MADISON GOLD constitute contracts between: (1) Plaintiffs and (2) MADISON GOLD.

280. The terms of participation and investment in MADISON GOLD called for an investment of money by Plaintiffs.

281. As a result of fraud and false representations made to Plaintiffs in connection with their investments in MADISON GOLD, Plaintiffs state their demand that the contracts between them and MADISON GOLD be rescinded and canceled.

282. To the extent that Plaintiffs have received from MADISON GOLD any legitimately derived benefits through the contracts -- though none are known to them at this time -- Plaintiffs hereby offer to restore those benefits once they are identified and can be quantified. As of the date of filing this pleading, though, the only "benefits" Plaintiffs appear to have received are merely reallocations of investment funds contributed by other MADISON GOLD participants, and the

MADISON GOLD investment program was nothing more than a Ponzi scheme operated by Defendants WIMPFHEIMER, Fulda, and MADISON GOLD.

283. As a direct and proximate cause of the above-described conduct, Plaintiffs have been damaged.

284. MADISON GOLD is subject to liability because it is believed to control the assets invested by Plaintiffs, which must be disgorged and returned to Plaintiffs in effectuating the rescission of the contract into which they were unlawfully led.

COUNT VIII – BREACH OF CONTRACT(S)
[AGAINST MADISON GOLD]

Plaintiffs re-allege, and adopt by reference herein, Paragraphs 1-19 and 35-129 above, and further allege:

285. This cause of action is asserted as an alternative to the preceding cause of action that requests rescission of the contracts between Plaintiffs and MADISON GOLD.

286. The terms of participation and investment in MADISON GOLD constitute contracts between: (1) Plaintiffs and (2) MADISON GOLD.

287. The 7/24/22 Side Letter requires that MADISON GOLD's ratio of assets-to-debts be at least 2:1.

288. Under the terms of the 7/24/22 Side Letter, if at any time during the term of the contracts, that assets-to-debt ratio falls below 2:1, MADISON GOLD is required to notify Plaintiffs within three (3) business days of becoming aware of any such occurrence.

289. At least by March 2023, MADISON GOLD's asset-to-debt ratio fell below that standard, but MADISON GOLD failed to provide timely notice of a substandard asset-to-debt ratio at the company.

290. Moreover, the terms of the 7/24/22 Side Letter also provide that during such period of low ratio and until MADISON GOLD can certify to Plaintiffs that the ratio of assets-to-debts has

returned to at least 2:1, Plaintiffs have the right to demand payment of the sums due to them, including unpaid interest owed.

291. Plaintiffs timely presented to MADISON GOLD such a demand for payment, but MADISON GOLD failed to provide Plaintiffs the sums due and owing under the contracts.

292. As a direct and proximate cause of the above-described breaches of the contracts, Plaintiffs have been damaged.

COUNT IX – NEGLIGENT RETENTION AND SUPERVISION
[AGAINST SWA]

Plaintiffs re-allege, and adopt by reference herein, Paragraphs 1 -19 and 35-129 above, and further allege:

293. This is an action seeking damages based upon SWA's negligent retention and/or supervision of its management and/or employees, including but not limited to, WIMPFHEIMER; who were responsible for, *inter alia*, knowingly disregarding conflicts of interest of which he should have advised Plaintiffs.

294. At all times material hereto, SWA knew or should have known that WIMPFHEIMER was engaging in activities that were improper and perhaps illegal, including but not limited to:

- (a) ignoring SWA's own internal policies and procedures; and
- (b) violating regulations within the legal industry and other prudent and sound practices and procedures within the legal industry.

295. SWA had an obligation to investigate and monitor WIMPFHEIMER's activities; and, had it conducted even a reasonably diligent investigation, or indeed any monitoring of WIMPFHEIMER's activities, SWA would have discovered that WIMPFHEIMER was, in fact, ignoring his professional responsibilities and engaging in a scheme to defraud Plaintiffs and possibly other investors (including EAST HUDSON CAPITAL).

296. SWA had a duty to take steps to prevent or rectify WIMPFHEIMER's improper conduct.

297. As noted above, SWA Partner Dov Schwell was deeply familiar with the MADISON GOLD investment plan as well as WIMPFHEIMER's role and involvement with MADISON GOLD and its related entities; yet Schwell and SWA failed to forestall WIMPFHEIMER's activities in a manner that would have prevented him from perpetuating the fraudulent conduct inflicted upon Plaintiffs and others.

298. Rather than discharge its duties, SWA turned a blind eye to, or failed to exercise reasonable means to discover and correct, active misconduct and negligence on the part of WIMPFHEIMER; and instead permitted him to provide legal services on behalf of the firm in complete disregard for professional standards of conduct.

299. As a direct and proximate cause of the above-described conduct, Plaintiffs have been damaged.

**COUNT X – VIOLATION OF FLORIDA'S
DECEPTIVE AND UNFAIR TRADE PRACTICES ACT,
CHAPTER 501, § 211(1), FLA. STAT. ("FDUTPA")
[AGAINST WIMPFHEIMER and MADISON GOLD]**

Plaintiffs re-allege, and adopt by reference herein, Paragraphs 1-19 and 35-129 above, and further allege:

300. Chapter 501, Fla. Stat., Florida's Deceptive and Unfair Trade Practices Act is to be liberally construed to protect the consuming public, such as Plaintiffs in this case, from those who engage in unfair methods of competition, or unconscionable, deceptive or unfair acts or practices in the conduct of any trade or commerce.

301. Plaintiffs are "consumers" within the meaning of Fla. Stat. § 501.203(7).

302. By soliciting investor funds in the manner in which they did, MADISON GOLD and WIMPFHEIMER engaged in "trade and commerce" within the meaning of Fla. Stat. § 501.203(8).

303. While FDUTPA does not define “deceptive” and “unfair,” it incorporates by reference the Federal Trade Commission’s interpretations of these terms. The FTC has found that a “deceptive act or practice” encompasses “a representation, omission or practice that is likely to mislead the consumer acting reasonably in the circumstances, to the consumer’s detriment.”

304. The federal courts have defined a “deceptive trade practice” as any act or practice that has the tendency or capacity to deceive consumers and have defined an “unfair trade practice” as any act or practice that offends public policy and is immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers.

305. MADISON GOLD and WIMPFHEIMER’s acts and omissions of representing to Plaintiffs that, among other things:

- (a) investing in MADISON GOLD would be profitable and prudent and would bring a rate of return between 15% and 18%; and
- (b) the relationship between MADISON GOLD and EAST HUDSON CAPITAL was solid

constitute both deceptive and unfair trade practices because the false representations and omissions made by MADISON GOLD and WIMPFHEIMER have a tendency or capacity to deceive consumers, such as Plaintiffs, into investing in MADISON GOLD’s falsely-touted business and are immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers.

306. As a result of MADISON GOLD and WIMPFHEIMER’s deceptive trade practices, Plaintiffs were deceived into investing their funds with a company that functioned solely as an engine of fraud -- thus causing significant economic damage to Plaintiffs.

307. The materially false statements and omissions as described above, and the fact that this was a misleading investment, were unfair, unconscionable, and deceptive practices perpetrated on Plaintiffs which would have likely deceived a reasonable person under the circumstances.

308. MADISON GOLD and WIMPFHEIMER were on notice at all relevant times that the false representations of material facts described above were being communicated to prospective investors (such as Plaintiffs) by their authorized agents.

309. As a result of the false representations and violations described above, Plaintiffs have been damaged by, among other things losing their invested funds.

310. Plaintiffs have also been damaged in other and further ways subject to proof at trial.

311. Therefore, MADISON GOLD and WIMPFHEIMER engaged in unfair and deceptive trade practices in violation of Section 501.201 *et seq.*, Fla. Stat.

312. Pursuant to Sections 501.211(1) and 501.2105, Fla. Stat., Plaintiffs are entitled to recover from Defendants the reasonable amount of attorneys' fees Plaintiffs have had to incur in representing their interests in this matter.

COUNT XI – VIOLATION OF DELAWARE LIMITED LIABILITY COMPANY ACT
[6 Del. C. §18-305]
[AGAINST MADISON GOLD]

Plaintiffs re-allege, and adopt by reference herein, Paragraphs 1-19; 35-48; 55-58 above and Paragraphs 313-322 below, and further allege:

313. By virtue of their investments, Plaintiffs are all members of MADISON GOLD.

314. Pursuant to Section 18-305 of the Delaware Limited Liability Company Act (the "LLC Act"), Plaintiffs have the right to access and inspect the books and records of MADISON GOLD.

315. Among the information requested by Plaintiffs is the following:

- 1) True and full information regarding the status of the business and financial condition of MADISON GOLD;
- 2) A copy of the federal, state, and local income tax returns of MADISON GOLD for each year;
- 3) A current list of the name and last known business, residence, or mailing address of each member and manager of MADISON GOLD, as well as the percentage ownership or other designation of ownership each member has, including, without limitation, Plaintiffs;

- 4) A copy of any written MADISON GOLD agreement and certificate of formation and all amendments thereto, together with executed copies of any written powers of attorney pursuant to which the MADISON GOLD agreement and any certificate and all amendments thereto have been executed;
- 5) True and full information regarding the amount of cash and a description of and statement of the agreed value of any other property or services contributed by each member and which each member has agreed to contribute in the future and the date on which each became a member;
- 6) The detailed bank statements for MADISON GOLD for the period July 1, 2022 through present, including, without limitation, the MADISON GOLD account at JP Morgan Chase Bank, Columbus Branch Circle, account number ***0353;
- 7) An accounting of the use of all funds invested by the Members in MADISON GOLD, including, without limitation, proof of wire(s) or other methods of transfer(s) of Plaintiffs' monies to the affiliated entities of MADISON GOLD that was to originate and manage the MCA transactions for Plaintiffs;
- 8) Copies of all partnership or other agreements related to the investment of MADISON GOLD funds, including, without limitation, agreements with or related to Global Funding Experts and EAST HUDSON CAPITAL;
- 9) An accounting of any direct or indirect payments of equity distributions and management or other fees paid from MADISON GOLD to the Principals of MADISON GOLD or any affiliate of the Principals of MADISON GOLD; and
- 10) Any and all other information establishing the creation of MADISON GOLD as a Series under MADISON GOLD, LLC and the relative rights and obligations of the members and managers of MADISON GOLD. In the event no such documentation exists, or there is any overlap or other commingling between the assets and liabilities of MADISON GOLD and any other Series of MADISON GOLD, LLC, then all of the foregoing requests for information should apply to the same information for MADISON GOLD, LLC and such other Series.

316. The information was requested by Plaintiffs in good faith and is directly connected with proper purposes, which include Plaintiffs' interest in determining: (1) the proper use of Plaintiffs' investments in accordance with their agreements with MADISON GOLD, (2) the relative rights and obligations of all members of MADISON GOLD, including Plaintiffs, and (3) MADISON GOLD's rights and obligations with respect to its investments in other entities.

317. Despite Plaintiffs' repeated written requests, MADISON GOLD has refused to provide Plaintiffs access to the relevant books and records, including information reflecting where and how their investments have been utilized and how much of Plaintiffs' invested funds still remain under the control of MADISON GOLD.

318. For example, the following April 2023 WhatsApp exchange between Plaintiff MICHAEL HERMELIN (on behalf of himself and all Plaintiffs) and Defendant WIMPFHEIMER (on behalf of himself and his fellow corporate Defendant entities) clearly demonstrates, Defendants refused to answer simple questions about whether Plaintiffs' investment funds were utilized as they were supposed to be by Defendants:

[24/04/2023, 20:57:49] Michael Hermelin: Jan... can you please send us confirmation (proof) that the monies you received from us from all entities and individuals was transferred to East Hudson and/or [White Road Capital]?

[24/04/2023, 22:49:18] Jan: I suggest all your requests come through your lawyer.

[24/04/2023, 22:50:06] Michael Hermelin: Did you send all of our investments to East Hudson and/or [White Road Capital]?

[24/04/2023, 22:50:30] Jan: I would rather have a collaborative atmosphere where investors work with us to accomplish the collective goal. But you seem to be going in a different direction.

[24/04/2023, 22:51:08] Michael Hermelin: Can you please answer the question?

[24/04/2023, 22:53:33] Michael Hermelin: You can't answer such a simple question?

[24/04/2023, 22:53:53] Jan: I can. But I won't.

319. Since that pre-litigation inquiry, MADISON GOLD (through WIMPFHEIMER and its litigation attorneys in this matter) have repeatedly refused to permit Plaintiffs access to MADISON GOLD's books and records and will only provide self-selected access to summary information through an "Attorneys Eyes Only" process.

320. As recently as a few days prior to Plaintiffs filing their Amended Complaint in this action, counsel for MADISON GOLD and WIMPFHEIMER expressed to undersigned counsel MADISON GOLD/WIMPFHEIMER's insistence that Plaintiffs not be permitted to view the requested information amongst a list of onerous terms behind which MADISON GOLD and WIMPFHEIMER insist the requested financial information be concealed -- the following of which is but an excerpt:

1. Madison Gold, LLC will make available summary financial data related to Madison Gold, LLC's operations and financial condition along with bank records in redacted form (other investor names will be redacted).
2. The referenced records will be made available only to counsel of record for the plaintiffs in the case pending in the Southern District of Florida and will be strictly "attorney's eyes only". The plaintiffs will not be provided access.
3. No copies of any type will be authorized and no copies of this highly confidential information will be provided.

* * *

7. The records will be produced for inspection as set forth above at the office of Madison Gold, LLC's counsel either in New York City or Miami, Florida, at your clients' election.

Such a proposal, though, is designed to obfuscate the needed information and disclosures and is designed to prevent Plaintiffs from reasonably reviewing and evaluating the information presented by MADISON GOLD.

321. As a direct result of MADISON GOLD's refusal to provide Plaintiffs fair and complete access to MADISON GOLD's books and records, MADISON GOLD has violated the LLC Act.

322. Plaintiffs request that the Court order MADISON GOLD to furnish Plaintiffs the information requested.

COUNT XII – ACCOUNTING

[AGAINST MADISON GOLD, EAST HUDSON CAPITAL, and WHITE ROAD CAPITAL]

Plaintiffs re-allege, and adopt by reference herein, Paragraphs 1-19 and 35-129 above and Paragraphs 323-333 below, and further allege:

323. MADISON GOLD, EAST HUDSON CAPITAL, and WHITE ROAD CAPITAL each owe fiduciary duties to their stakeholders.

324. Despite Plaintiffs' requests, MADISON GOLD, EAST HUDSON CAPITAL, and WHITE ROAD CAPITAL have refused to provide Plaintiffs access to the relevant books and records, including information reflecting where and how their investments have been utilized and how much of Plaintiffs' invested funds still remain under the control of MADISON GOLD, EAST HUDSON CAPITAL, and WHITE ROAD CAPITAL.

325. As the following April 2023 WhatsApp exchange between Plaintiff MICHAEL HERMELIN (on behalf of himself and all Plaintiffs) and Defendant WIMPFHEIMER (on behalf of himself and his fellow corporate Defendant entities) clearly demonstrates, Defendants refused to answer simple questions about whether Plaintiffs' investment funds were utilized as they were supposed to be by Defendants:

[24/04/2023, 20:57:49] Michael Hermelin: Jan... can you please send us confirmation (proof) that the monies you received from us from all entities and individuals was transferred to East Hudson and/or [White Road Capital]?

[24/04/2023, 22:49:18] Jan: I suggest all your requests come through your lawyer.

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[24/04/2023, 22:53:33] Michael Hermelin: You can't answer such a simple question?

[24/04/2023, 22:53:53] Jan: I can. But I won't.

326. The manner in which MADISON GOLD, EAST HUDSON CAPITAL, and WHITE ROAD CAPITAL pooled and allocated assets invested are so complicated that a jury would not be able to ascertain damages.

327. For example, MADISON GOLD, EAST HUDSON CAPITAL, and WHITE ROAD CAPITAL have created an intricate network of limited liability companies through which investor funds have flowed, and it is impossible for Plaintiffs to discern -- without guidance and explanation from MADISON GOLD, EAST HUDSON CAPITAL, and WHITE ROAD CAPITAL -- the path through which Plaintiffs' funds have been transferred.

328. The full amount of payments that have flowed between MADISON GOLD, EAST HUDSON CAPITAL, and WHITE ROAD CAPITAL are unknown to Plaintiffs, because *inter alia* MADISON GOLD purports in public legal filings that it has been denied access to the EAST HUDSON CAPITAL and WHITE ROAD CAPITAL Syndicate Portals and Weekly Reports that would calculate such sums -- information owed by MADISON GOLD to Plaintiffs as their fiduciary.

329. The sole means of ascertaining such information and documentation are within the control of MADISON GOLD, EAST HUDSON CAPITAL, and WHITE ROAD CAPITAL.

330. Prior to bringing this lawsuit, Plaintiffs demanded from MADISON GOLD and WIMPFHEIMER a full accounting of all monies owed to Plaintiffs as well as an accounting of how MADISON GOLD used the funds invested by Plaintiffs -- including a confirmation of the timing and amount of any and all investments made by MADISON GOLD in EAST HUDSON CAPITAL and WHITE ROAD CAPITAL using the funds invested by Plaintiffs.

331. As of the date of this filing, no accounting has been provided to Plaintiffs.

332. An accounting is required to determine the amount of money owed to Plaintiffs.

333. To the extent MADISON GOLD is unable or unwilling to provide an accounting, EAST HUDSON CAPITAL and WHITE ROAD CAPITAL should be compelled to provide Plaintiffs an accounting demonstrating each investment made by MADISON GOLD in EAST HUDSON CAPITAL and WHITE ROAD CAPITAL using the funds invested by Plaintiffs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray for relief as follows:

- (a) A judgment awarding Plaintiffs equitable restitution, including, without limitation, rescission of their investments in MADISON GOLD, restoration of the *status quo ante*, and return to Plaintiffs all investments funds taken from them in connection with the MADISON GOLD investment program;
- (b) An award of any and all additional damages recoverable under law including but not limited to actual damages, compensatory damages, punitive damages, incidental damages, and consequential damages;
- (c) An Order requiring MADISON GOLD to provide Plaintiffs copies of, or access to, the documents and information requested from MADISON GOLD pursuant to Section 18-305 of the Delaware Limited Liability Company Act;
- (d) An Order requiring an accounting from MADISON GOLD, EAST HUDSON CAPITAL, and WHITE ROAD CAPITAL of the remaining funds and assets raised from Plaintiffs in connection with the MADISON GOLD investment program;
- (e) An Order imposing upon MADISON GOLD, EAST HUDSON CAPITAL, and WHITE ROAD CAPITAL a constructive trust over the funds and assets rightfully belonging to Plaintiffs;
- (f) Pre- and post-judgment interest;
- (g) Attorneys' fees, expenses, and the costs of this action; and
- (h) All other and further relief as the Court deems necessary, just, and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury on all claims so triable.

RESERVATION OF RIGHTS

Plaintiffs reserve their right to further amend this Second Amended Complaint, upon completion of their investigation and discovery, to assert any additional claims for relief against Defendants or other parties as may be warranted under the circumstances and as allowed by law.

Respectfully submitted,

SILVER MILLER

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By: /s/ David C. Silver

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was electronically filed with the Clerk of Court on this 10th day of May 2024 by using the CM/ECF system which will send a notice of electronic filing to the following CM/ECF participant(s): **ALLAN A. JOSEPH, ESQ., CHRISTOPHER M. DAVID, ESQ., and JEFFREY J. MOLINARO ESQ.,** FUERST ITTLEMAN DAVID & JOSEPH, *Counsel for Defendants Jan S. Wimpfheimer and Madison Gold LLC*, SunTrust Int'l Center, One Southeast Third Ave. - Suite 1800, Miami, FL 33131, E-mail: ajoseph@fidjlaw.com; cdavid@fidjlaw.com; jmolinaro@fidjlaw.com; **KENNETH R. DRAKE, ESQ.,** DEMAHY LABRADOR DRAKE & CABEZA, *Counsel for Defendant Schwell Wimpfheimer & Associates, LLP*, Douglas Entrance - 12th Floor, 806 Douglas Road, Coral Gables, FL 33134, E-mail: kendrake@dldlawyers.com; and **JUAN C. ZORRILLA, ESQ. and VICTOR M. VELARDE, ESQ.,** FOWLER WHITE BURNETT, P.A., *Counsel for Defendants East Hudson Capital LLC*, Brickell Arch - Fourteenth Floor, 1395 Brickell Avenue, Miami, Florida 33131, E-mail: jzorrilla@fowler-white.com, vvelarde@fowler-white.com.

/s/ David C. Silver

DAVID C. SILVER