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CENTRAL DIST. OF CALIF.
LOS ANGELES

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BY _____

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

13 SECURITIES AND EXCHANGE
COMMISSION,

14 Plaintiff,

15 vs.

16 ENVISION DIRECT L.L.C. and GARY R.
17 HEADDING,

18 Defendants.

SACV10-00241 JVS MLGx
Case No.

COMPLAINT FOR VIOLATIONS
OF THE FEDERAL SECURITIES
LAWS

20 Plaintiff Securities and Exchange Commission ("Commission") alleges as
21 follows:

22 **JURISDICTION AND VENUE**

23 1. This Court has jurisdiction over this action pursuant to
24 Sections 209(d), 209(e)(1), and 214 of the Investment Advisers Act of 1940
25 ("Advisers Act"), 15 U.S.C. §§ 80b-9(d), 80b-9(e)(1), and 80b-14. Defendants
26 have, directly or indirectly, made use of the means or instrumentalities of interstate
27 commerce, of the mails, or of the facilities of a national securities exchange in
28 connection with the transactions, acts, practices, and courses of business alleged in

1 this complaint.

2 2. Venue is proper in this district pursuant to Section 214 of the Advisers
3 Act, 15 U.S.C. § 80b-14, because certain of the transactions, acts, practices and
4 courses of conduct constituting violations of the federal securities laws occurred
5 within this district and defendants reside in this district.

6 **SUMMARY**

7 3. The Commission brings this case against a former registered
8 investment adviser, Envision Direct L.L.C. (“Envision”), and its owner Gary R.
9 Headding (“Headding,” and collectively with Envision, “Defendants”).
10 Defendants committed fraud when they withdrew unauthorized advisory fees of
11 nearly \$50,000 from three clients and stole approximately \$274,000 from two of
12 these clients. In addition, they violated books and records rules applicable to
13 investment advisers. Through this Complaint, the Commission seeks permanent
14 injunctions, disgorgement with prejudgment interest, and civil penalties.

15 **DEFENDANTS**

16 4. **Envision Direct L.L.C.** is a California limited liability company. Its
17 current address is in Newport Beach, California. From June 29, 2005 to June 4,
18 2009, Envision was registered with the Commission as an investment adviser.
19 During the relevant time period, its registered name with the Commission was
20 “Envision Direct LLC doing business as Envision Capital Management LLC.” On
21 June 4, 2009, Envision filed a Form ADV-W with the Commission and thereby
22 withdrew its registration as an investment adviser.

23 5. **Gary R. Headding**, age 41, lives in Newport Beach, California.
24 During the relevant time period, he controlled Envision as its president, chief
25 executive officer, chief compliance officer, and sole owner, and made the
26 investment decisions for Envision clients.

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1 **THE FRAUDULENT SCHEME**

2 **A. Envision's Business And The Commission's Examination**

3 6. In 2005, Envision registered with the Commission as an investment
4 adviser.

5 7. By the first quarter of 2007, Envision had approximately 50 clients
6 and \$40 million of assets under management. In the second quarter of 2007, two
7 principals left Envision with their clients, leaving Headding the sole owner of
8 Envision. Defendants' assets under management continued to diminish as
9 accounts lost value and clients left the firm, and by the end of May 2009, they had
10 only three clients and less than one million dollars under management.

11 8. Envision and Headding had discretionary trading authority in their
12 clients' brokerage accounts. Specifically, their clients had brokerage accounts at a
13 Commission-registered and unaffiliated broker-dealer (referred to herein as the
14 "Broker-Dealer"), and the clients granted Headding discretionary trading authority
15 over their accounts. Headding exercised that authority by making trades directly
16 through the Broker-Dealer's investment adviser online trading platform until
17 Headding ceased participating in that program in late 2007. Headding, however,
18 continued to have discretionary trading authority in at least one client account
19 because he convinced that client to provide him with her password for online
20 access to her brokerage account.

21 9. On June 1, 2009, the Commission's investment advisory examination
22 staff contacted Headding. On June 4, when the Commission's examination staff
23 arrived to conduct an examination of Envision, Headding informed them that he
24 had filed a Form ADV-W that same morning to withdraw Envision's registration
25 as an investment adviser.

26 **B. Envision And Headding Misappropriated Funds From Clients**

27 10. Between April 2007 and May 2008, Envision and Headding
28 misappropriated \$274,256 from two clients. Headding made six transfers from two

1 clients' accounts, transferring funds from his clients' brokerage accounts to
2 Envision and himself without his clients' authorization.

3 11. One client was a college student with no prior investment experience.
4 After working as a college intern for Defendants, she selected them to manage her
5 only significant asset, insurance proceeds of \$470,000 that she had received from
6 her mother's life insurance policy. Between April 2007 and May 2008,
7 Defendants misappropriated at least \$243,256 of the client's funds through four
8 separate transfers out of her brokerage account. Heading misrepresented to the
9 client that these monies would be used to invest on her behalf. Heading
10 misappropriated the clients' funds for a variety of personal uses, including funding
11 his own Individual Retirement Account. Although Defendants had discretionary
12 authority over the client's account (and she gave Heading her account password),
13 she did not authorize Heading to use her funds for his own use.

14 12. Defendants similarly stole money from another client, a friend of
15 Heading's family. In June 2007, Defendants withdrew funds twice from this
16 client's account without his consent or knowledge. The two withdrawals totaled
17 \$31,000, which was nearly 95% of the funds in the account at the time.

18 13. Envision and Heading owed a fiduciary duty to their advisory
19 clients. Clients trusted Defendants to manage their assets and to invest funds on
20 their behalf. Defendants defrauded their clients when they stole their clients'
21 funds.

22 **C. Envision And Heading Inflated Their Advisory Fees**

23 14. Pursuant to Envision's agreements with its clients, Defendants'
24 investment advisory fees were supposed to range between 0.5% and 2% of their
25 clients' assets under management. Defendants, however, withdrew excessive fees
26 ranging from 3.6% to 12.9% from three clients. Between March and August 2007,
27 Defendants misappropriated a total of \$47,481 from three clients through
28 unauthorized advisory fees.

1 15. Defendants took these improper fees through the Broker-Dealer's
2 investment adviser online platform. Between March and August 2007, Headding
3 instructed the Broker-Dealer to deduct advisory fees in specific amounts from
4 client accounts.

5 16. Between March and August 2007, Defendants took fees of \$11,037
6 from the college student client referenced above, which constituted a 3.6% fee.

7 17. Between April and May 2007, Defendants took fees of \$15,937 from
8 a client, which constituted an 8.9% fee.

9 18. In May 2007, Defendants took fees of \$20,507 from the family friend
10 client referenced above, which constituted a 12.9% fee.

11 19. Envision and Headding defrauded their clients when they took fees in
12 excess of the amounts that they had disclosed to and agreed upon with those
13 clients.

14 **D. Defendants Failed To Make And Keep Required Records**

15 20. Envision did not make and keep books and records required to be
16 made and kept as part of its advisory business under Section 204 of the Advisers
17 Act and Rule 204-2 thereunder. [15 U.S.C. § 80b-4 and 17 C.F.R. § 275.204-2.]

18 21. Headding placed Envision's books and records in a storage facility,
19 which eventually disposed of them when Headding failed to pay storage fees.

20 22. Specifically, Envision and Headding failed to keep the following
21 required books and records:

- 22 • Memoranda of each order given by Envision for the purchase or
23 sale of a security (required by Rule 204-2(a)(3) of the Advisers
24 Act) [17 C.F.R. § 275.204-2(a)(3)].
- 25 • Written communications sent and received by Envision (required
26 by Rule 204-2(a)(7) of the Advisers Act) [17 C.F.R. § 275.204-
27 2(a)(7)].
- 28 • Record of all accounts in which Envision had discretionary power

1 with respect to funds, securities, or transactions of any client
2 (required by Rule 204-2(a)(8) of the Advisers Act) 17 C.F.R.
3 § 275.204-2(a)(8).].

- 4 • Written agreements between Envision and any client (required by
5 Rule 204-2(a)(10) of the Advisers Act) 17 C.F.R. § 275.204-
6 2(a)(10).].
- 7 • Envision’s policies and procedures (required by Rule 204-2(a)(17)
8 of the Advisers Act) 17 C.F.R. § 275.204-2(a)(17).].

9 23. Envision also did not comply with Rule 204-2(f) of the Advisers Act
10 [17 C.F.R. § 275.204-2(f)], which requires that before an investment adviser ceases
11 to conduct business as an investment adviser, it must arrange for the preservation
12 of the required records and notify the Commission in writing of the exact address
13 where the books and records will be maintained. When Envision ceased its
14 business Defendants neither preserved its required records nor notified the
15 Commission in writing about the location of its records.

16 **FIRST CLAIM FOR RELIEF**

17 **FRAUD BY AN INVESTMENT ADVISER**

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

19 **(Against All Defendants)**

20 24. The Commission realleges and incorporates by reference paragraphs 1
21 through 23 above.

22 25. Defendants Envision and Heading, and each of them, by engaging in
23 the conduct described above, directly or indirectly, by use of the mails or other
24 means or instrumentalities of interstate commerce:

- 25 a. with scienter, employed devices, schemes, or artifices to
26 defraud clients or prospective clients; or
- 27 b. engaged in transactions, practices, or courses of business which
28 operated as a fraud or deceit upon clients or prospective clients.

1 Sections 209(d) of the Advisers Act, 15 U.S.C. § 80b-9(d), defendant Headding
2 aided and abetted Envision's violations, and unless restrained and enjoined will
3 continue to aid and abet violations of Section 204 of the Advisers Act, 15 U.S.C.
4 § 80b-4, and Rule 204-2 thereunder, 17 C.F.R. § 275.204-2.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, the Commission respectfully requests that the Court:

7 **I.**

8 Issue findings of fact and conclusions of law that Defendants committed the
9 alleged violations.

10 **II.**

11 Issue judgments, in a form consistent with Fed. R. Civ. P. 65(d),
12 permanently enjoining Defendants Envision and Headding, and their agents,
13 servants, employees, and attorneys, and those persons in active concert or
14 participation with any of them, who receive actual notice of the judgment by
15 personal service or otherwise, and each of them, from violating Sections 206(1),
16 and 206(2) of the Advisers Act, 15 U.S.C. §§ 80b-6(1) & 80b-6(2), enjoining
17 Envision from violating Section 204 of the Advisers Act, 15 U.S.C. § 80b-4 and
18 Rule 204-2 thereunder, 17 C.F.R. § 275.204-2, and enjoining Headding from
19 aiding and abetting violations of Section 204 of the Advisers Act, 15 U.S.C.
20 § 80b-4 and Rule 204-2 thereunder, 17 C.F.R. § 275.204-2.

21 **III.**

22 Order Defendants Envision and Headding to disgorge all ill-gotten gains
23 from their illegal conduct, together with prejudgment interest thereon.

24 **IV.**

25 Order Defendants Envision and Headding to pay civil penalties pursuant to
26 Section 209(e)(1) of the Advisers Act, 15 U.S.C. § 80b-9(e)(1).

27 **V.**

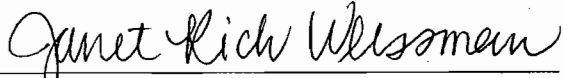
28 Retain jurisdiction of this action in accordance with the principles of equity

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

4 **VI.**

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

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8 DATED: March 1, 2010


JANET RICH WEISSMAN
Attorney for Plaintiff
Securities and Exchange Commission

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