

returns. Caufield used a combination of verbal pitches and written offering materials to solicit investors, falsely portraying the investment as lucrative and safe. He did not disclose that: (1) the franchise routinely failed to meet its current financial obligations; (2) the notes were not secured by the franchise's business assets, as claimed; and (3) investor funds would be used to pay his obligations on the prior, past-due notes. Additionally, Caufield did not register the offering with the SEC as required.

3. By engaging in this conduct, Caufield violated the antifraud and registration provisions of the federal securities laws. He also violated the fiduciary duties he owed to his advisory clients. In the interest of protecting the public from any further violations of the federal securities laws, the SEC brings this action.

JURISDICTION AND VENUE

4. The SEC brings this action under Section 20(b) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77t(b)], Section 21(d) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78u(d)], and Section 209(d) of the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. § 80b-9(d)] seeking to permanently restrain and enjoin Caufield from engaging in the unlawful acts, practices, and courses of business alleged herein.

5. This Court has jurisdiction over this action under Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)], Section 27 of the Exchange Act [15 U.S.C. § 78aa], and Section 214(a) of the Advisers Act [15 U.S.C. § 80b-14].

6. The Defendant, directly and indirectly, made use of the mails or of the means or instrumentalities of interstate commerce in connection with the transactions, acts, practices, or courses of business described in this Complaint.

7. Venue is proper because the transactions, acts, practices, and courses of business described below occurred within the jurisdiction of the Northern District of Texas.

PARTIES

8. Plaintiff SEC is an agency of the United States of America charged with enforcing the federal securities laws.

9. Defendant Caufield, age 59, resides in Colleyville, Texas. Caufield started in the securities industry in 1984 as a registered broker-dealer representative and worked in the securities industry in various capacities until 2015. Although not presently registered with the SEC or associated with a regulated entity, Caufield was the sole associated person, operator, and owner of DAT Capital—a state-registered investment adviser from 2008 to 2015. During the offering, Caufield operated the franchise out of Irving, Texas and Frisco, Texas.

FACTS

A. *Caufield acted as an investment adviser.*

10. For more than 30 years, Caufield worked in the securities industry in various capacities. In 2008, he established DAT Capital—which was registered as an investment adviser in Illinois, Indiana, Wisconsin, and Texas. Through DAT Capital, Caufield provided investment advisory services—including recommending investments in different securities. He provided these services for a fee, which was based on the amount of client assets under management. Caufield managed as much as \$13 million in client assets as part of his advisory business.

11. As an investment adviser, Caufield was a fiduciary to his clients. Consequently, he had a fundamental obligation to act in his clients' best interests and to provide investment advice that was in their best interests. He also owed his clients a duty of undivided loyalty and

utmost good faith. Finally, he was required to employ reasonable care to avoid misleading his clients and to provide them full and fair disclosure of all material facts.

B. Caufield offered unregistered securities.

12. In 2011, Caufield sought to expand his business activities and entered into discussions with a franchisor about purchasing its Dallas, Texas based franchise. The franchisor and its franchises were in the business of providing investment education classes. Caufield ultimately acquired the franchise later that year.

13. After that, from at least as early as 2013 until 2017, Caufield coordinated a series of integrated securities offerings to raise capital—purportedly to finance and operate the franchise. In these offerings, he offered high-yield notes with annual interest rates ranging from 10% to 18%. The maturities on the notes ranged from 60 days to 24 months. These offerings, which were not limited to accredited investors,¹ were not registered with the SEC.

14. These offerings were an integrated offering, since they shared a number of key characteristics: (1) Caufield controlled the operations of each of the note issuers and their bank accounts and facilitated the transfer of funds between the issuers and the franchise; (2) Caufield did not take any steps to verify whether the investors were accredited; (3) Caufield represented that franchise revenues would be used to repay investors; (4) Caufield represented that investor funds would be used to pay the expenses of acquiring and operating the franchise; (5) Caufield represented that each note would be secured by franchise assets; and (6) Caufield portrayed the franchise as a financially successful business venture.

¹ An accredited investor is high-net-worth and/or sophisticated investor, as defined by the relevant statutes, rules, and regulations.

15. Between 2013 and 2017, Caufield raised approximately \$6.8 million through the integrated securities offering. He received investments from more than 30 investors—including his advisory clients, to whom he recommended the investments.

C. Caufield made material misrepresentations in connection with the securities offering.

16. Caufield marketed the notes through both verbal presentations and written materials. When doing so, he misled investors regarding the financial condition of the franchise and the risks of the notes.

17. As Caufield knew as its owner and operator, the franchise was strained financially throughout the time of the offering. It was not generating sufficient revenue to pay its current liabilities. As a result, the franchise could only stay afloat by using proceeds from the offering—rather than business revenues—to pay these liabilities.

18. For example, Caufield knew that the franchise was regularly delinquent in its franchise payments to the franchisor. This resulted in the franchise violating the terms of the franchise agreement, which jeopardized Caufield's ownership of the franchise. Caufield cured these delinquencies by using incoming investor funds from the offering to pay the past-due obligations. On at least six occasions, Caufield used a total of \$368,362.31 in investor funds to pay the franchise's obligations to the franchisor.

19. Despite the franchise's strained financial condition, Caufield touted its supposed financial success when offering the notes to prospective investors. In both written offering materials distributed to investors and verbal pitches, Caufield claimed that the franchise was a profitable and financially successful enterprise—even though it was not.

20. Caufield also sometimes included unaudited financial information for the franchise in his written offering materials—including a profit-and-loss statement and facts on

student enrollment and tuition. This financial information was misleading because it portrayed the franchise to be financially successful. It did not disclose important information regarding the franchise's liabilities, including details about the millions of dollars in notes payable from the offering.

21. Caufield also represented—both verbally and in writing—that the notes were secured by the franchise's assets. In reality, however, Caufield never caused the franchise, or any of the entities he controlled, to file a financing statement in favor of the investors. Nor did he ever cause the franchise to segregate proceeds for the purpose of repaying the notes. Therefore, in reality, the notes were completely unsecured.

D. Caufield misapplied investor funds in order to keep the franchise afloat and to pay promised returns on the notes.

22. Due to the franchise's strained financial condition, Caufield deceptively misapplied investor funds to keep it afloat. He also failed to disclose this deceptive conduct to investors.

23. Caufield represented that: (1) he would use investor funds to finance franchise operations (typically advertising campaigns or expansion and relocation expenses); and (2) he would use franchise operating revenues (not funds from other investors) to repay investors. However, as the controller of the bank accounts, he did not actually do this. In reality—since the franchise was failing financially, as detailed above—Caufield resorted to misapplying investor funds both to pay unauthorized business expenses and to pay the promised investment returns.

E. Funds were repaid to investors through payments from later investors and the sale of the franchise.

24. From 2013 to 2017, Caufield raised \$6,762,031.37 from investors while returning \$6,147,216.23 to them. This left a shortfall to investors of \$614,815.14.

25. After the SEC's investigation began, the franchisor placed Caufield and the Dallas franchise on heightened supervision. Then, in 2018, the Dallas franchise was sold to an independent third party. The sale of the franchise, pursuant to terms set by the franchisor, resulted in an additional distribution of \$1,329,976.97 to the franchise's student investors.

CLAIMS FOR RELIEF

First Claim Violations of Section 17(a) of the Securities Act

26. The SEC re-alleges and incorporates paragraphs 1-25 by reference as if set forth fully herein.

27. Defendant Caufield, directly or indirectly, singly or in concert with others, in the offer or sale of securities, by use of any means or instruments of transportation or communication in interstate commerce or by use of the mails: (a) employed devices, schemes, or artifices to defraud; and/or (b) obtained money or property by means of untrue statements of a material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and/or (c) engaged in transactions, practices, or courses of business which operate or would operate as a fraud or deceit upon the purchasers.

28. With respect to violations of Sections 17(a)(2) and (3) of the Securities Act, Caufield acted knowingly, recklessly, or negligently. With respect to violations of Section 17(a)(1) of the Securities Act, Caufield acted knowingly or recklessly.

29. Consequently, Caufield has violated and, unless enjoined, will continue to violate Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

Second Claim
Violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder

30. The SEC re-alleges and incorporates paragraphs 1-25 by reference as if set forth fully herein.

31. Defendant Caufield, directly or indirectly, singly or in concert with others, in connection with the purchase or sale of securities, by the use of any means or instrumentality of interstate commerce or of the mails, knowingly or recklessly: (a) employed devices, schemes, or artifices to defraud; and/or (b) made untrue statements of a material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and/or (c) engaged in acts, practices, or courses of business which operate or would operate as a fraud or deceit upon purchasers of securities, or upon other persons.

32. Consequently, Caufield violated and, unless enjoined, will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

Third Claim
Violations of Sections 206(1) and (2) of the Advisers Act

33. The SEC re-alleges and incorporates paragraphs 1-25 by reference as if set forth fully herein.

34. Defendant Caufield, directly or indirectly, singly or in concert with others, by the use of any means or instrumentality of interstate commerce or of the mails, knowingly or recklessly: (a) employed devices, schemes, or artifices to defraud a client of prospective clients;

and/or (b) engaged in transactions, practices, or courses of business which operate or would operate as a fraud or deceit upon a client or prospective client.

35. Consequently, Caufield violated and, unless enjoined, will continue to violate Sections 206(1) and (2) of the Advisers Act [15 U.S.C. § 80b-6(1) and (2)].

Fourth Claim
Violation of Sections 5(a) and 5(c) of the Securities Act

36. The SEC re-alleges and incorporates paragraphs 1-25 by reference as if set forth fully herein.

37. Defendant Caufield directly or indirectly, singly or in concert, has made use of the means or instruments of transportation or communication in interstate commerce, or the mails, to offer and sell securities when no registration statement was filed or in effect as to such securities and when no exemption from registration was applicable.

38. Consequently, Caufield violated and, unless enjoined, will continue to violate Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c).]

RELIEF REQUESTED

The SEC respectfully requests that this Court enter a judgment:²

- A. Permanently enjoining Defendant Caufield from:
- a. violating Sections 5(a), 5(c), and 17(a) of the Securities Act [15 U.S.C. §§ 77e(a), 77e(c), and 77q(a)]; Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]; and Sections 206(1) and (2) of the Advisers Act [15 U.S.C. §§ 80b-6(1) and (2)].
 - b. directly or indirectly, including, but not limited to, through any entity owned or controlled by him, participating in the issuance, purchase, offer, or sale of any securities; provided, however, that such injunction shall not prevent Caufield from purchasing or selling securities listed on a national securities exchange for his own personal account
- B. Ordering the Defendant to disgorge \$614,815.12, an amount equal to the funds and benefits he obtained illegally, or to which he is otherwise not entitled, as a result of the violations alleged, plus prejudgment interest of \$126,032.11, for a total of \$741,847.25; but deeming payment of these amounts satisfied by the \$1,329,976.97 million payment made for the benefit of investors in connection with the sale of Defendant's franchise business.
- C. Imposing a \$160,000.00 civil penalty upon Defendant, pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)], and Section 203(i) of the Advisers Act [15 U.S.C. § 80b-3(i)].
- D. Ordering such other relief as this Court may deem just and proper.

² See Unopposed Motion to Enter Final Judgment which is being filed in conjunction with the Complaint.

Dated: September 17, 2018

Respectfully Submitted,

s/ Chris Davis

Chris Davis

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COMMISSION

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

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

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

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

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

Attorneys (If Known)

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

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- PTF DEF Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

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

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, TORTS, PERSONAL INJURY, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Brief description of cause:

VII. REQUESTED IN COMPLAINT:

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

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

Case 3:18-cv-02468-N Document 1-1 Filed 09/17/18 Page 2 of 2 PageID 13
INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If a related case exists, whether pending or closed, insert the docket numbers and the corresponding judge names for such cases. A case is related to this filing if the case: 1) involves some or all of the same parties and is based on the same or similar claim; 2) involves the same property, transaction, or event; 3) involves substantially similar issues of law and fact; and/or 4) involves the same estate in a bankruptcy appeal.

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