

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

PACIFIC WEALTH MANAGEMENT, LLC, a  
limited liability company,

Plaintiff,

v.

PACIFIC WEALTH MANAGEMENT, INC., a  
corporation,

and

ROSS WOLF, an individual,

Defendants.

Case No. 2:12-cv-1310

**COMPLAINT FOR:**

1. Federal Service Mark Infringement in Violation of 15 U.S.C. § 1114(1)
2. Federal Service Mark Infringement, Unfair Competition, and False Designation of Origin in Violation of 15 U.S.C. § 1125(a)
3. Cybersquatting in Violation of 15 U.S.C. § 1125(d)
4. Unfair Competition in Violation of Rev. Code Wash. § 19.86 *et seq.*
5. Service Mark Infringement in Violation of Washington's Common Law
6. Unfair Competition and Misappropriation in Violation of Washington's Common Law
7. Breach of Contract
8. Unjust Enrichment

**JURY TRIAL DEMANDED**

COMPLAINT  
Case No.

FISH & RICHARDSON P.C.  
12390 El Camino Real  
San Diego, CA 92130  
Telephone: (858) 678-5070

1 For its Complaint against defendants Pacific Wealth Management, Inc. ("PWMI")  
2 and Mr. Ross Wolf ("Mr. Wolf") (collectively, the "Defendants"), plaintiff Pacific  
3 Wealth Management, LLC ("Plaintiff" or "Pacific Wealth") hereby states and alleges as  
4 follows:

5 **THE PARTIES**

6 1. Plaintiff Pacific Wealth is a California limited liability company having a  
7 place of business at 12544 High Bluff Drive, Suite 440, San Diego, California 92130.  
8

9 2. Upon information and belief, defendant PWMI is incorporated in the State of  
10 Washington and has a principal place of business at 13353 Bel-Red Road, #105,  
11 Bellevue, Washington 98005, in the Western District of the State of Washington.

12 3. Upon information and belief, defendant Mr. Wolf resides in the Western  
13 District of the State of Washington.

14 **NATURE OF THE ACTION**

15 4. This action by Pacific Wealth seeks permanent injunctive relief and  
16 damages against Defendants under Sections 32(1) and 43(a) of the Lanham Act of 1946,  
17 as amended ("Lanham Act"), 15 U.S.C. §§ 1114(1) and 1125(a), the transfer of the  
18 <pacificwmm.com> domain name under Section 43(d) of the Lanham Act, 15 U.S.C. §  
19 1125(d), and permanent injunctive relief and damages under the statutory and common  
20 laws of the State of Washington.  
21

22 5. Pacific Wealth is a financial-management and estate-planning company,  
23 and is the owner of all rights, title, and interest in and to the service mark and trade name  
24

1 PACIFIC WEALTH MANAGEMENT in connection with financial and estate-planning  
2 services.

3 6. Upon information and belief, defendant Mr. Wolf is the President and  
4 Registered Agent of defendant PWMI.

5 7. Defendants began using the identical service mark and trade name  
6 PACIFIC WEALTH MANAGEMENT (the “Infringing Service Mark and Trade Name”)  
7 in connection with PWMI’s financial-planning and estate-planning services long after  
8 Pacific Wealth acquired rights to the service mark and trade name PACIFIC WEALTH  
9 MANAGEMENT. Not only is Defendants’ Infringing Service Mark and Trade Name  
10 identical to Pacific Wealth’s PACIFIC WEALTH MANAGEMENT service mark and  
11 trade name, but Defendants also use it in connection with services that are identical or  
12 nearly identical to Pacific Wealth’s services. In addition, Defendants registered and  
13 began using the *<pacificwm.com>* domain name in connection with their financial and  
14 estate-planning services long after Pacific Wealth registered and began using its  
15 *<pacwealth.com>* domain name.  
16

17 8. Upon Pacific Wealth’s request, Defendants agreed to cease use of its  
18 Infringing Service Mark and Trade Name, including amending its trade name with  
19 Washington’s Secretary of State, FINRA, and the domain registrar for its  
20 *<pacificwm.com>* domain name, conceding Pacific Wealth’s superior rights in and to the  
21 PACIFIC WEALTH MANAGEMENT service mark and trade name.  
22

23 9. To date, however, Defendants have failed to amend the trade name with  
24 Washington’s Secretary of State, FINRA, and the domain registrar for its  
25

1 <pacificwm.com> domain name, despite Pacific Wealth's numerous follow-up requests,  
 2 forcing Pacific Wealth to file this action. In fact, contrary to their written agreement,  
 3 Defendants **renewed** their license under FINRA and their registration of the  
 4 <pacificwm.com> domain name under the trade name Pacific Wealth Management, Inc.

5 10. Defendants' conduct already has caused actual confusion in the  
 6 marketplace, stemming from a financial-services event Defendants held at the Sheraton  
 7 Bellevue Hotel in the Greater Seattle Area of the State of Washington.

8 11. Unless Defendants are enjoined from using the Infringing Service Mark  
 9 and Trade Name, and are forced to transfer the <pacificwm.com> domain name to Pacific  
 10 Wealth, the service mark PACIFIC WEALTH MANAGEMENT will continue to be  
 11 infringed, to the detriment of Pacific Wealth and the public.

### 12 **JURISDICTION AND VENUE**

13 12. This Court has subject matter jurisdiction over this action under Sections  
 14 1331 (federal question jurisdiction), 1338(a) (service mark infringement and unfair  
 15 competition), and 1338(b) and 1367(a) (supplemental jurisdiction over claims arising  
 16 under Washington's statutory and common laws) of the United States Code, 28 U.S.C.  
 17 §§ 1331, 1338(a), 1338(b), and 1367(a), and under Section 39(a) of the Lanham Act, 15  
 18 U.S.C. § 1121(a).

19 13. Upon information and belief, this Court has personal jurisdiction over  
 20 defendant PWMI because it is incorporated in the State of Washington and has its  
 21 principal place of business in the State of Washington. Upon information and belief,  
 22 this Court has personal jurisdiction over defendant Mr. Wolf because he has resided in  
 23

1 the State of Washington since at least as early as 2003, and currently is employed and  
2 conducts business in the State of Washington. In addition, the claims alleged herein  
3 arise from Defendants' acts in the State of Washington, and Defendants' acts have  
4 damaged Pacific Wealth in the State of Washington.

5 14. Upon information and belief, venue is proper in this judicial district under  
6 Sections 1391(b)(1) and (2) and (c) of the United States Code, 28 U.S.C. §§1391(b)(1)  
7 and (2) and (c).  
8

### 9 **BACKGROUND**

#### 10 **Pacific Wealth and Its Valuable Service Mark Rights**

11 15. Pacific Wealth is a premier financial-management and estate-planning  
12 company based in San Diego, California. With its unparalleled expertise and  
13 comprehensive approach to helping clients throughout the United States preserve and  
14 grow wealth, Pacific Wealth has achieved enormous success since it first opened its  
15 doors for business over a decade ago. Pacific Wealth is well recognized today by  
16 consumers as a trusted and valued leader in the field of finance and estate-planning.  
17

18 16. As early as October 1, 2001, Pacific Wealth adopted and began to use the  
19 service mark and trade name PACIFIC WEALTH MANAGEMENT in commerce in the  
20 United States in connection with its financial and estate-planning services. Since that  
21 time, Pacific Wealth has used the PACIFIC WEALTH MANAGEMENT service mark  
22 and trade name continuously in commerce in the United States in connection with such  
23 services, including in the Greater Seattle area of the State of Washington.  
24

17. Since it began conducting business in 2001, Pacific Wealth has earned over \$18 million in revenue under and in connection with the PACIFIC WEALTH MANAGEMENT service mark and trade name, and has spent over \$700,000.00 advertising and promoting its financial and estate-planning services under and in connection with the PACIFIC WEALTH MANAGEMENT service mark and trade name.

18. Pacific Wealth advertises, offers, and renders its financial and estate-planning services under and in connection with the PACIFIC WEALTH MANAGEMENT service mark and trade name to consumers throughout the United States, including in the Greater Seattle area of the State of Washington.

19. The PACIFIC WEALTH MANAGEMENT service mark and trade name is always a prominent feature of Pacific Wealth's advertising and promotional materials. As an example, a snapshot of Pacific Wealth's website displaying the PACIFIC WEALTH MANAGEMENT service mark and trade name is depicted below:



20. Pacific Wealth has received press recognizing the high-quality services it offers and renders under and in connection with the PACIFIC WEALTH MANAGEMENT service mark and trade name.

21. Pacific Wealth registered and has used the <pacificwealthmanagement.com> domain name since October 9, 2000, the <pacwealth.com> domain name since June 12, 2001, and the <pacific-wealth.com> domain name since August 5, 2002 in connection with the advertising, offering, and rendering of its financial and estate-planning services under and in connection with the PACIFIC WEALTH MANAGEMENT service mark and trade name. The BETTERWHOIS records for the foregoing domain names are annexed hereto as **Exhibit 1**. Pacific Wealth uses the <pacwealth.com> domain name as the primary domain name for its company, and the above snapshot of its website is accessible through the <pacwealth.com> domain name.

22. Because of Pacific Wealth's long use and extensive advertising and promotion of the PACIFIC WEALTH MANAGEMENT service mark and trade name, it has come to be and is now recognized and relied upon by the trade and the public as identifying the services of Pacific Wealth and distinguishing them from others.

23. In addition to its longstanding common law rights in the service mark PACIFIC WEALTH MANAGEMENT, Pacific Wealth owns two United States registrations for the PACIFIC WEALTH MANAGEMENT service mark in connection with financial planning, consulting, and investment services: Registration No. 3,364,497 for the word mark PACIFIC WEALTH MANAGEMENT, issued to Pacific Wealth on

January 8, 2008, and Registration No. 3,361,463 for the word and design mark depicted below, issued to Pacific Wealth on January 1, 2008:



Annexed hereto as **Exhibit 2** are true and correct copies of the foregoing Certificates of Registration.

24. The PACIFIC WEALTH MANAGEMENT service mark and trade name is distinctive and represents a valuable goodwill and reputation belonging exclusively to Pacific Wealth.

### **Defendants' Wrongful Conduct**

25. Upon information and belief, Defendants adopted and first used the Infringing Service Mark and Trade Name in connection with financial and estate-planning services on or about May 27, 2010, the date on which Defendants incorporated Pacific Wealth Management, Inc. in the State of Washington. Annexed hereto as **Exhibit 3** is a true and correct screenshot from Washington's Secretary of State's website showing the date on which Defendants incorporated Pacific Wealth Management, Inc. As shown in **Exhibit 3**, defendant Mr. Wolf is "ALL Officers" and the Registered Agent of Pacific Wealth Management, Inc.

26. Defendant Mr. Wolf registered the <pacificwm.com> domain name on June 15, 2010 and has used the <pacificwm.com> domain name in connection with the advertising, offering, and/or rendering of finance and estate-planning services under and



1 in connection with the Infringing Service Mark and Trade Name. Annexed hereto as  
2 **Exhibit 4** is a true and correct copy of the WHOIS record for the <*pacificwm.com*>  
3 domain name showing the date on which Defendant registered it.

4 27. Upon information and belief, Defendants have advertised, offered and/or  
5 rendered their financial and estate-planning services to consumers in the Greater Seattle  
6 area of the State of Washington.

7 28. Pacific Wealth first learned of Defendants' use of the Infringing Service  
8 Mark and Trade Name and the <*pacificwm.com*> domain name in connection with their  
9 financial-planning and estate-planning services in or around November 2010. That  
10 discovery promptly led Pacific Wealth to demand that Defendants cease all use of the  
11 Infringing Service Mark and Trade Name as well as the <*pacificwm.com*> domain  
12 name. A true and correct copy of Pacific Wealth's letter to Defendants dated November  
13 16, 2010 is annexed hereto as **Exhibit 5**.

14 29. On December 9, 2010, defendant Mr. Wolf responded to Pacific Wealth's  
15 letter, stating that: "... we are in the process of making the necessary changes." A true  
16 and correct copy of Mr. Wolf's e-mail dated December 9, 2010 is annexed hereto as  
17 **Exhibit 6**.

18 30. Upon information and belief, Defendants offered and/or rendered their  
19 financial-planning and estate-planning services under and in connection with the  
20 Infringing Service Mark and Trade Name in February 2011. A snapshot of Defendants'  
21 website from February 2011 displaying the Infringing Service Mark and Trade Name  
22  
23  
24  
25  
26

and describing the services they offered and/or rendered under and in connection with it is depicted below:



A true and correct copy of the screenshot from Defendants' website dated February 2011 is annexed hereto as **Exhibit 7**.

31. On April 4, 2011, defendant Mr. Wolf e-mailed Pacific Wealth's counsel, claiming that Defendants were no longer using the Infringing Service Mark and Trade Name. Pacific Wealth's counsel confirmed that, as of April 4, 2011, Defendants appeared to no longer be using the Infringing Service Mark and Trade Name in connection with the *<pacificwm.com>* domain name.

32. About a year later, Pacific Wealth learned that, on March 30, 2012, Defendants filed form ADV with FINRA under the Pacific Wealth Management, Inc. trade name. A true and correct copy of form ADV is annexed hereto as **Exhibit 8**. As of March 30, 2012, Defendants still had not amended the Pacific Wealth Management, Inc. trade name nor had they relinquished the *<pacificwm.com>* domain name.

1           33. In or around this time, Pacific Wealth also learned that Defendants'  
2 conduct had caused actual confusion in the marketplace, stemming from a financial-  
3 services event Defendants held at the Sheraton Bellevue Hotel in the Greater Seattle  
4 Area of the State of Washington

5           34. On April 4, 2012, Pacific Wealth mailed a follow-up letter to Defendants  
6 in which it referenced Defendants' recently filed form ADV and the actual confusion  
7 occurring in the marketplace and reiterated its demands that Defendants cease all use of  
8 the Infringing Service Mark and Trade Name and the <pacifcwm.com> domain name.  
9 A true and correct copy of Pacific Wealth's letter to Defendant dated April 4, 2012 is  
10 annexed hereto as **Exhibit 9**.

11           35. On that same day, defendant Mr. Wolf e-mailed Pacific Wealth's counsel,  
12 in which he stated: "PWM, Inc. has NO clients!!!!!! Sue me if you want, there are no  
13 assets and NO clients! What are you [a]fraid of, me stealing business?" A true and  
14 correct copy of Mr. Wolf's e-mail is annexed hereto as **Exhibit 10**.

15           36. Later that month, Pacific Wealth's counsel telephoned defendant Mr.  
16 Wolf, requesting that he honor his prior agreement and comply with Pacific Wealth's  
17 demands. Pacific Wealth's counsel even offered to assist him with the filing of the  
18 forms to amend the Pacific Wealth Management, Inc. trade name. Mr. Wolf again  
19 agreed to comply, and Pacific Wealth prepared the forms for his review and signature.

20           37. Nearly two months later, and despite numerous follow-up e-mails and  
21 telephone calls, Pacific Wealth still has not received the signed forms from Mr. Wolf for  
22 filing with Washington's Secretary of State.

1           38.     Upon information and belief, Defendants still have not amended the  
2 Pacific Wealth Management, Inc. trade name with Washington's Secretary of State,  
3 FINRA, or the domain registrar for the <pacificwm.com> domain name, forcing Pacific  
4 Wealth to conclude that they intend to resume their use of the Infringing Service Mark  
5 and Trade Name in the future, as they did earlier this year, when they filed form ADV  
6 with FINRA. Annexed hereto as **Exhibit 3** is a true and correct copy from the  
7 Washington's Secretary of State's website showing the active status of Pacific Wealth  
8 Management, Inc.  
9

10           39.     Defendants' failure to cease all use of the Infringing Service Mark and  
11 Trade Name has caused, and is likely to continue to cause, confusion as to whether  
12 Defendants' services originate from or are somehow sponsored or endorsed by or  
13 affiliated with Pacific Wealth.  
14

15           40.     Pacific Wealth never consented to or authorized Defendants' use of the  
16 Infringing Service Mark and Trade Name. In fact, Pacific Wealth expressly objected to  
17 such use, as alleged herein.  
18

19           41.     Upon information and belief, Defendants' services advertised, offered,  
20 and/or rendered under the Infringing Service Mark and Trade Name are directed to the  
21 same or similar consumers of Pacific Wealth's services, and through the same or similar  
22 channels of trade as are used by Pacific Wealth to advertise, offer, and/or render its  
23 services under the PACIFIC WEALTH MANAGEMENT service mark and trade name.  
24

25           42.     Defendants' use of the Infringing Service Mark and Trade Name is with  
26 disregard to Pacific Wealth's rights.  
27

43. Defendants' conduct constitutes an ongoing threat to Pacific Wealth and the public. Pacific Wealth has suffered and will continue to suffer irreparable injury as a result of Defendants' conduct, which injury is not compensable by monetary damages. Unless Defendants are restrained and enjoined from engaging in their infringing conduct, Pacific Wealth will continue to suffer irreparable injury.

### **FIRST CAUSE OF ACTION**

#### ***(Service Mark Infringement in Violation of 15 U.S.C. § 1114(1))***

44. Pacific Wealth incorporates herein by reference each and every allegation in the preceding paragraphs.

45. Long before Defendants adopted and used the Infringing Service Mark and Trade Name, Defendants had either actual notice and knowledge or constructive notice (pursuant to 15 U.S.C. § 1072) of Pacific Wealth's ownership and registration of the identical PACIFIC WEALTH MANAGEMENT service mark.

46. Upon information and belief, Defendants' advertising, offering, and/or rendering of financial and estate-planning services under the Infringing Service Mark and Trade Name is an attempt to trade off of the goodwill, reputation, and selling power established by Pacific Wealth under the identical PACIFIC WEALTH MANAGEMENT service mark, and is an attempt to create a false impression of association with Pacific Wealth.

47. Upon information and belief, Defendants' failure to cease all use of the Infringing Service Mark and Trade Name and the <pacificwmm.com> domain name after Pacific Wealth demanded that Defendants cease all use of the PACIFIC WEALTH

1 MANAGEMENT service mark and trade name and *<pac-wealth.com>* domain name, is  
2 a deliberate and willful attempt to trade off of the goodwill, reputation, and selling  
3 power established by Pacific Wealth under the PACIFIC WEALTH MANAGEMENT  
4 service mark, and is a deliberate and willful attempt to create a false impression of  
5 association with Pacific Wealth.

6 48. Upon information and belief, Defendants' services advertised, offered,  
7 and/or rendered under the Infringing Service Mark and Trade Name moved, and may  
8 still move through, the same or similar channels of trade, and were offered and/or  
9 rendered, and may still be offered and/or rendered, through the same or similar channels  
10 of distribution and to the same or similar consumer groups as the services that are  
11 offered and rendered by Pacific Wealth under the identical PACIFIC WEALTH  
12 MANAGEMENT service mark and trade name.

13 49. Defendants' unauthorized use of the Infringing Service Mark and Trade  
14 Name has caused, and is likely to continue to cause, consumers to be confused as to the  
15 source, nature, and quality of the services that Defendants offered and/or rendered in  
16 connection with the Infringing Service Mark and Trade Name.

17 50. Defendants' unauthorized use of the Infringing Service Mark and Trade  
18 Name has and will to continue to indicate falsely to consumers that their services  
19 originate from or are in some manner connected with, sponsored by, affiliated with, or  
20 related to Pacific Wealth, and/or the services offered and rendered by Pacific Wealth.

21 51. Defendants' unauthorized use of the Infringing Service Mark and Trade  
22 Name facilitates the acceptance of Defendants' services throughout the marketplace, not  
23

1 based on the quality of the services offered and/or rendered by Defendant, but on the  
2 association that the public is likely to make with Pacific Wealth and the reputation and  
3 goodwill associated with Pacific Wealth's services.

4 52. Defendants' unauthorized use of the Infringing Service Mark and Trade  
5 Name deprives Pacific Wealth of the ability to control the quality of the services  
6 marketed under the trade name and service mark, and instead, places Pacific Wealth's  
7 valuable reputation and goodwill into the hands of Defendants, over whom Pacific  
8 Wealth has no control.  
9

10 53. The conduct of Defendants alleged herein has caused, and is likely to  
11 continue to cause, confusion or mistake or to deceive consumers or potential consumers  
12 wishing to use Pacific Wealth's services and has caused, and is also likely to continue to  
13 confuse consumers as to an affiliation between Pacific Wealth and Defendants.

14 54. Defendants' conduct alleged herein constitutes federal service mark  
15 infringement in violation of Section 1114(1) of the Lanham Act, 15 U.S.C. § 1114.  
16

17 55. Pacific Wealth has been, is now, and will be harmed irreparably by  
18 Defendants' conduct alleged herein, and unless enjoined by the Court, Defendants will  
19 continue to infringe upon the PACIFIC WEALTH MANAGEMENT service mark.  
20 There is no adequate remedy at law for the harm caused by the acts of infringement  
21 alleged herein.  
22

23 56. As a direct and proximate result of Defendants' infringing conduct, Pacific  
24 Wealth has suffered and will continue to suffer irreparable injury to its business  
25 reputation and goodwill for which no adequate remedy exists at law.  
26

57. Defendants' conduct alleged herein is knowing, willful, and deliberate, entitling Pacific Wealth to an accounting of any of Defendants' profits, increased damages, and an award of its attorneys' fees and costs incurred in prosecuting this action under Section 1117 of the Lanham Act, 15 U.S.C. § 1117.

## **SECOND CAUSE OF ACTION**

### ***(Service Mark Infringement, Unfair Competition, and False Designation of Origin in Violation of 15 U.S.C. § 1125(a))***

58. Pacific Wealth incorporates herein by reference each and every allegation in the preceding paragraphs.

59. Pacific Wealth is informed and believes that Defendants chose the Infringing Service Mark and Trade Name, and took the other actions alleged herein, to cause confusion or mistake, or to deceive the public as to the origin, sponsorship, association or approval of their services, deliberately to pass off their services as those of Pacific Wealth, and/or to falsely imply an association with Pacific Wealth.

60. Defendants' conduct alleged herein constitutes, among other things, false designation of origin, which has caused, and is likely to continue to cause confusion or mistake, or to deceive the public as to the origin, sponsorship, association or approval of the services of Pacific Wealth.

61. Defendants' conduct constitutes service mark infringement and unfair competition in violation of Section 1125(a) of the Lanham Act, 15 U.S.C. § 1125(a).

62. Unless enjoined, Defendants will continue their infringing conduct.

63. As a direct and proximate result of Defendants' infringing conduct, Pacific Wealth has suffered, and will continue to suffer, irreparable injury to its business



1 reputation and goodwill for which no adequate remedy exists at law.

2 64. Defendants' complained-of conduct is knowing, willful, and deliberate,  
3 entitling Pacific Wealth to an accounting of Defendants' profits, increased damages, and  
4 an award of its attorneys' fees and costs incurred in prosecuting this action under 15  
5 U.S.C. § 1117.

### 6 **THIRD CAUSE OF ACTION**

#### 7 ***(Cybersquatting in Violation of 15 U.S.C. § 1125(d))***

8  
9 65. Pacific Wealth incorporates herein by reference each and every allegation  
10 in the preceding paragraphs.

11 66. Defendants' <pacificwm.com> domain name is confusingly similar to  
12 Pacific Wealth's PACIFIC WEALTH MANAGEMENT mark and Pacific Wealth's  
13 <pacwealth.com> domain name, which Pacific Wealth registered and used long before  
14 Defendants registered or used the <pacificwm.com> domain name.

15  
16 67. Defendants have registered, trafficked in, used, and/or are using the  
17 <pacificwm.com> domain name with the bad-faith intent to profit from Pacific Wealth's  
18 PACIFIC WEALTH MANAGEMENT mark. In particular, upon information and  
19 belief, Defendants registered and used the <pacificwm.com> domain name in order to  
20 divert consumers from Pacific Wealth's website to a website accessible under the  
21 <pacificwm.com> domain name that could harm the goodwill represented by the  
22 PACIFIC WEALTH MANAGEMENT mark for commercial gain, by creating a  
23 likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the  
24 website. In addition, Defendants are using a domain name that is confusingly similar to  
25

Pacific Wealth's domain name, and confusingly similar to Pacific Wealth's trade name and service mark, to operate a website that advertises, offers, and/or renders directly competing and/or related services.

68. Defendants' actions constitute a violation of Section 43(d) of the Lanham Act, 15 U.S.C. § 1125(d). Pacific Wealth has been, is now, and will be harmed irreparably by Defendants' conduct alleged herein, and, unless enjoined by the Court, Defendants' unauthorized use of the <pacificwm.com> domain name will continue, and there is no adequate remedy at law for the harm caused by the acts alleged herein.

#### **FOURTH CAUSE OF ACTION**

##### ***(Unfair and Deceptive Acts and Practices in Violation of Rev. Code Wash. § 19.86 et seq.)***

69. Pacific Wealth incorporates herein by reference each and every allegation in the preceding paragraphs.

70. Defendants' unauthorized use of the Infringing Service Mark and Trade Name constitutes an unfair and/or deceptive method of competition and business and an unfair and/or deceptive trade practice and business, which is damaging to the public interest in violation of Washington's Consumer Protection Act, Rev. Code Wash. § 19.86 et seq.

71. Defendants' unauthorized use of the Infringing Service Mark and Trade Name has been knowing, willful, and deliberate.

72. Pacific Wealth has been, and will continue to be, irreparably harmed by reason of Defendants' unfair methods of competition and unfair trade practices in violation of Washington's Consumer Protection Act. Such irreparable damage will

continue unless the acts of Defendants are enjoined.

**FIFTH CAUSE OF ACTION**

***(Service Mark Infringement in Violation of Washington's Common Law)***

73. Pacific Wealth incorporates herein by reference each and every allegation in the preceding paragraphs.

74. Defendants' unauthorized use of the Infringing Service Mark and Trade Name in interstate commerce in connection with the advertising, offering, and/or rendering of financial and estate-planning services has caused, and is likely to continue to cause, confusion, and mistake, and/or deception as to the affiliation, connection or association of Defendants and Pacific Wealth, and/or as to the origin, sponsorship, or approval of Defendants' services by Pacific Wealth. Defendants' conduct has caused, and will continue to cause, irreparable harm to Pacific Wealth.

75. Defendants' unauthorized use of the Infringing Service Mark and Trade Name has been knowing, willful, and deliberate and constitutes service mark infringement of Pacific Wealth's common-law service mark rights in and to the PACIFIC WEALTH MANAGEMENT service mark in the State of Washington.

**SIXTH CAUSE OF ACTION**

***(Unfair Competition and Misappropriation in Violation of Washington's Common Law)***

76. Pacific Wealth incorporates herein by reference each and every allegation in the preceding paragraphs.

77. Defendants' unauthorized use of the Infringing Service Mark and Trade Name as alleged herein constitutes unfair competition under Washington's common law.

1           78. Defendants' conduct has resulted in the "passing off" of their services as  
2 the services of Pacific Wealth, or as somehow related or associated with, or sponsored or  
3 endorsed by, Pacific Wealth.

4           79. By reason of Defendants' unauthorized use of the Infringing Service Mark  
5 and Trade Name as alleged herein, Pacific Wealth has suffered and is likely to continue  
6 to suffer, actual, permanent, and irreparable injury, the extent of which is presently not  
7 known, and Pacific Wealth will continue to suffer damage and irreparable injury unless  
8 Defendants are enjoined permanently from all use of the Infringing Service Mark and  
9 Trade Name.  
10

11           80. As alleged herein, Defendants' unauthorized use of the Infringing Service  
12 Mark and Trade Name is willful, with knowledge of the likelihood of confusion between  
13 it and Pacific Wealth's identical PACIFIC WEALTH MANAGEMENT service mark  
14 and trade name.  
15

#### 16           **SEVENTH CAUSE OF ACTION**

#### 17           ***(Breach of Contract)***

18           81. Pacific Wealth incorporates herein by reference each and every allegation  
19 in the preceding paragraphs.

20           82. Mr. Wolf agreed to cease all use of the Infringing Service Mark and Trade  
21 Name in writing on at least two separate occasions as evidenced in **Exhibits 6 and 10**  
22 and as alleged in Paragraph 36 and these writings constitute a legal contract under the  
23 laws of the State of Washington.  
24

25           83. Defendants materially breached their agreement with Pacific Wealth when  
26

1 Mr. Wolf failed to sign the forms for amending the Pacific Wealth Management, Inc.  
2 trade name, which Pacific Wealth had e-mailed to him, and when they renewed their  
3 license under FINRA and their registration of the <pacificwm.com> domain name under  
4 the trade name Pacific Wealth Management, Inc.

5 84. Defendants' material breaches of the agreement have injured, and will  
6 continue to injure irreparably, Pacific Wealth. Damages alone are not adequate to  
7 compensate Pacific Wealth for Defendants' unlawful conduct, and Pacific Wealth is  
8 entitled to injunctive relief.  
9

10 85. Among other things, Defendants should be enjoined from continuing to  
11 use the Infringing Service Mark and Trade Name.

12 86. In addition, and/or in the alternative, as a direct and proximate result of  
13 Defendants' unlawful conduct, Pacific Wealth is entitled to the monetary damages it has  
14 suffered in an amount to be proven at the time of trial.  
15

16 **EIGHTH CAUSE OF ACTION**

17 ***(Unjust Enrichment)***

18 87. Pacific Wealth incorporates herein by reference each and every allegation  
19 in the preceding paragraphs.

20 88. Defendants have received the benefits of Pacific Wealth's service mark  
21 without compensating Pacific Wealth for such benefits.  
22

23 89. Defendants have received such benefits unfairly.

24 90. By reason of the foregoing, Defendants unjustly were enriched, in an  
25 unknown amount, and Pacific Wealth is entitled to restitution.  
26

**PRAYER FOR RELIEF**

WHEREFORE, in consideration of the foregoing, Pacific Wealth respectfully requests that the Court enter an Order granting the following relief:

a) For judgment that the PACIFIC WEALTH MANAGEMENT service mark has been and will continue to be infringed by Defendants' use of the Infringing Service Mark and Trade Name in violation of 15 U.S.C. §§ 1114(1) and 1125(a) and Washington's common law;

b) For judgment that Defendants have competed unfairly with Pacific Wealth in violation of 15 U.S.C. § 1125(a);

c) For judgment that Defendants has competed unfairly with Pacific Wealth in violation of Washington's Consumer Protection Act;

d) For judgment that Defendants has competed unfairly with Pacific Wealth in violation of Washington's common law;

e) Permanently enjoining Defendants from using the Infringing Service Mark and Trade Name, or any other word, words, phrases, symbols, logos, or combination of words or symbols that would create a likelihood of confusion, mistake and/or deception with the PACIFIC WEALTH MANAGEMENT service mark, in connection with any type of financial product or service;

f) Permanently enjoining Defendants from otherwise infringing the PACIFIC WEALTH MANAGEMENT mark and/or engaging in further such unlawful acts and from reaping any additional commercial advantage from the misappropriation of the rights of Pacific Wealth in the PACIFIC WEALTH MANAGEMENT service

mark and the registration of the service mark;

g) Ordering Defendants to recall all material containing the Infringing Service Mark and Trade Name, or any other word, words, phrases, symbols, logos, or combination of words or symbols that would create a likelihood of confusion, mistake and/or deception with the PACIFIC WEALTH MANAGEMENT service mark, in connection with any type of financial product or service;

h) Requiring Defendants to destroy, at their sole and exclusive cost, all materials in their possession or under his control that bear the Infringing Service Mark and Trade Name, or any other word, words, phrases, symbols, logos, or combination of words or symbols that would create a likelihood of confusion, mistake and/or deception with the PACIFIC WEALTH MANAGEMENT service mark, in connection with any type of financial product or service;

i) Declaring, adjudging, and decreeing that Pacific Wealth is the sole legal and equitable owner of the <pacificwm.com> domain name and ordering Defendants to transfer ownership of the <pacificwm.com> domain name to Pacific Wealth;

j) For all actual damages sustained by Pacific Wealth as the result of Defendants' acts of infringement, together with prejudgment interest, according to proof, under 15 U.S.C. § 1117;

k) For an accounting of Defendants' profits resulting from their acts of infringement under 15 U.S.C. § 1117;

l) Such damages and profits to be trebled and awarded to Pacific Wealth under 15 U.S.C. § 1117 on the grounds that Defendants' acts of infringement have been

willful, deliberate, and in bad faith;

m) For an award of attorneys' fees under 15 U.S.C. § 1117 or as otherwise permitted by law;

n) For Pacific Wealth's costs of suit, including its reasonable litigation expenses, under 15 U.S.C. § 1117;

o) Defendants be ordered to pay Pacific Wealth damages for common law service mark infringement, unjust enrichment, and unfair competition under Washington's common law;

p) Defendants be ordered to pay Pacific Wealth its actual damages, treble damages, interest, costs, and reasonable attorneys' fees under Washington's Consumer Protection Act, Rev. Code Wash. § 19.86 *et seq.*

q) Defendants be directed to file with the Court and serve on Pacific Wealth within thirty (30) days after service of such injunction, a written report under 15 U.S.C. § 1116 setting forth in detail the manner and form in which Defendants have complied with the injunction; and

r) Granting Pacific Wealth such additional, other, or further relief as the Court deems just and proper.

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**DEMAND FOR JURY TRIAL**

Pacific Wealth demands a trial by jury on all issues so triable.

DATED: August 2, 2012

Respectfully submitted,

FISH & RICHARDSON P.C.

By: s/ Drew W. Schoentrup  
Drew W. Schoentrup (Bar No. 43302)

Attorneys for Plaintiff  
PACIFIC WEALTH MANAGEMENT, LLC