

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

Case No. ~~2023-~~

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By: s/Jonathan B. Williams  
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October 6, 2023

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Alan Wilson,  
In his official capacity as the Securities  
Commissioner for the State of South Carolina,

v.

Jessica Lauren Walsh; Apogee & Company,  
LLC; and FifthUp, LLC,

\_\_\_\_\_

)  
) **IN THE COURT OF COMMON PLEAS**  
)  
) **FOR THE FIFTH JUDICIAL CIRCUIT**  
)  
)  
)

Case No. \_\_\_\_\_ Plaintiff, Alan Wilson, in his official capacity as

South Carolina (the "Securities Commissioner"), complaining that D

Plaintiff, )

("Walsh"), Apogee & Company, LLC ("Apogee"), and FifthUp

the "Defendants") have engaged, are engaging, or are about to en

of business constituting violations of the South Carolina Unifo

Code Ann. § 35-1-101, *et seq.*, and the regulations and rules prom

the "Securities Act"), alleges the following:

**THE PARTIES**

1. Pursuant to S.C. Code Ann. § 35-1-603, the Securities Commissioner is designated and authorized to maintain a civil action in the Richland County Court of Common Pleas to enforce compliance with the Securities Act.

2. At all times material herein, Walsh was a resident of South Carolina.

3. Apogee is a South Carolina limited liability company formed in South Carolina by Walsh on March 31, 2021, with a last known principal place of business located at 10517 Ocean Highway, Pawleys Island, South Carolina 29585. Walsh is the owner and sole member of Apogee.

4. FifthUp is a Wyoming limited liability company formed by a Wyoming law firm at the direction of Walsh on February 28, 2023. Upon information and belief, Walsh is the owner and sole member of FifthUp.

### **RELATED PARTIES**

5. GSE Properties, LLC (“GSE”) is a limited liability company organized and existing under the laws of the State of South Carolina with its principal place of business located in Horry County, South Carolina. Walsh is the owner, registered agent, and sole member of GSE.

6. 544 South Joint Venture (“544 South”) is a business entity doing business in Horry County, South Carolina, which was formed and is managed by Walsh.

### **JURISDICTION**

7. Walsh is a person residing and doing business in South Carolina.

8. Apogee is a business operating in South Carolina.

9. FifthUp is a business operating in South Carolina.

10. This Court has jurisdiction over the parties and the subject matter of this action.

11. This action is properly brought in the Richland County Court of Common Pleas pursuant to S.C. Code Ann. §35-1-603(a), which authorizes the Securities Commissioner to bring an action in the Richland County Court of Common Pleas to enjoin violations of and enforce compliance with the Act.

### **VENUE**

12. Venue is statutorily prescribed and proper in the Richland County Court of

Common Pleas, Fifth Judicial Circuit.

**RELEVANT PERIOD**

13. Except as otherwise expressly stated, the conduct described herein occurred between January 1, 2021, and the present (the “Relevant Period”).

**ALLEGATIONS**

**A. Violation of the Securities Commissioner’s Consent Order**

14. On February 18, 2021, the Securities Division of the Office of the Attorney General of the State of South Carolina (the “Division”) issued an Order to Cease and Desist (the “2021 Cease and Desist Order”), which ordered Walsh, GSE, and 544 South (i) to cease and desist from violating the Securities Act; (ii) to pay a civil penalty of \$25,000; and (iii) to pay \$5,000 for the costs associ

17. In the Consent Order, among other things, Walsh, GSE, and 544 South agreed to pay back the Investor and expressly consented to (i) refrain from violating the Act; (ii) pay a civil penalty; and (iii) agreed to be “**PERMANENTLY BARRED** from participating in any aspect of the securities industry in or from the State of South Carolina.” (emphasis in the original).

18. Walsh was represented by an attorney when she executed the Consent Order on April 11, 2022.

19. The Division has determined that during the Relevant Period, and particularly after April 11, 2022, Walsh has knowingly and willfully violated the Consent Order (i) by failing to cease and desist from violating the Act and (ii) by participating in the securities industry in or from the State of South Carolina.

20. Walsh has participated in the securities industry personally and through her companies Apogee and FifthUp.

**B. Violation of the Securities Act by Walsh, Apogee, and FifthUp**

21. Specifically, during the Relevant Period, Walsh has texted, called, emailed, and talked with the founder (the “Founder”) of a start-up company (the “Company”) and made numerous representations and misrepresentations about her prowess in investment and business circles, which she claimed would result in growing investments in the Company. These representations included the following:

- i. that Walsh could properly advise the Founder on how to negotiate equity interests in the Company;
- ii. that Walsh knew and/or could find and/or has found wealthy individuals to invest in the Company;



**C. Fraudulent Misappropriation of Funds**

25. In the course of the Defendants' securities related activities, Walsh through her companies, Apogee and FifthUp, misappropriated money the Founder invested in his Company.

26. Initially, Walsh convinced the Founder that she would develop and improve the investor "pitch deck" for presentations to prospective investors.

27. Walsh convinced the Founder to give her at least \$5,000 for her work to develop the presentation.

28. The Founder was never provided a "pitch deck" or any other work product from Walsh.

29. These funds were deposited into an Apogee business checking bank account opened and maintained by Walsh (the "Apogee Bank Account"). Walsh used the money for her personal benefit.

30. The Founder loaned Walsh additional money that he sent via wire transfers to the Apogee Bank Account, and he wrote Walsh several checks, which were deposited into the Apogee Bank Account.

31. Thereafter, in July of 2023, Walsh represented to the Founder that she had contracted with a marketing company in New York (the "Marketing Company") to develop marketing materials for the Company, including new "branding" for the Company, and a new brand name for the Company.

32. Walsh claimed that these marketing materials would be used to find and solicit investors for the Company.

33. Walsh wrote to the Founder that if he could pay half of the \$175,000 invoice to the Marketing Company that she—Walsh—would pay the other half.







xii. Purchase(s) from jewelry stores, grocery stores, clothing stores, gas stations, a pharmacy store, discount “dollar” stores, an online massage device retailer, a vitamin supplement retailer, a shoe store, online sporting/concert event ticket resellers, an online mattress store, two outdoor apparel and equipment retailers, a surf and “board” equipment retailer, and an online secondhand clothing and home goods seller;

~~x~~ ~~x~~ ~~vii.~~ The purchase of a ticket(s) to a

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51. The Company is an issuer of securities as defined in S.C. Code Ann. § 35-1-102(17).

52. Walsh has acted as an agent of an issuer of securities as defined in S.C. Code Ann. § 35-1-102(2).

53. Walsh was not registered as an agent with the Division in violation of S.C. Code Ann. § 35-1-402.

**FOR A SECOND CAUSE OF ACTION**

58. Walsh executed the Consent Order on April 11, 2022, on behalf of herself and her companies, which same Consent Order was subsequently published online on April 25, 2022, pursuant to S.C. Code Ann. § 35-1-604(h).

59.

- G. Ordering the Defendants to disgorge ill-gotten gains obtained in connection with her promotion of the Company;
- H. Ordering the Defendants to pay restitution to the Founder;
- I. Imposing civil penalties on the Defendants in the amount of ten thousand (\$10,000.00) dollars per violation for each violation of the Securities Act; and
- J. Providing for such other and further relief as may be just and proper, including but not limited to enjoining the Defendants from liquidating, moving or otherwise disposing of any and all assets, wherever such assets may be situated, and/or permanent injunctive relief as may be directed by the Court.

Respectfully submitted,

ALAN WILSON  
Securities Commissioner

Jonathan B. Williams (S.C. Bar No. 72509)  
Assistant Deputy Attorney General

Post Office Box 11549  
Columbia, SC 29211  
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By: s/Jonathan B. Williams  
*Attorney for the Securities Commissioner*

October 6, 2023

Columbia, South Carolina

# EXHIBIT 1

AND DESIS 2

Respondents. )

Master No. 20101610

U.S. PATENT

... liability company organized and existing

... County of Rich, South Carolina. The last

Carolina.



for her personal benefit.

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\* Cornerstone Sports Marketing ( Cornerstone ) is a business entity doing business and incorporated in the State of South Carolina. According to the South Carolina Secretary of State's Office, Cornerstone's registered agent is

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that she had access to funds to repay the Investor. Walsh asked the Investor not to share the altered document with the Division.

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16. AS part of its investigation, the Division has sent multiple subpoenas to Walsh to appear and produce documents. Walsh has failed to comply with the subpoenas propounded by the Division.

17. Specifically, on January 16, 2020, the Division served Walsh with a subpoena at multiple addresses to appear on February 5, 2020, to answer questions and to produce records regarding the Division's investigation. An attorney contacted the Division on February 4, 2020. He stated he was going to meet with Walsh regarding his representation of Walsh, and at his request, the Division agreed to an extension to respond to the subpoena. Thereafter, a tentative

of course of business that operates or would operate as a fraud or upon which it is

22. Respondents participated in the offer and sale of a security by means of a scheme to defraud; made untrue statements of a material fact or omitted to state material facts necessary in order to make the statements, in light of the circumstances under which they were made, not

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<sup>3</sup> The Division recognizes that the COVID-19 pandemic created delays with respect to some aspects of subpoena compliance.

[REDACTED]

a. The Respondents and every successor, affiliate, control person, agent, ~~SOI~~ partner,

[REDACTED]

and employee of the respondents, and every entity owned, operated, or indirectly or directly controlled by or on behalf of the Respondents **CEASE AND DESIST** from transacting business in this State in violation of the Act;

b. The Respondents shall jointly and severally pay a civil penalty in the amount of twenty-five thousand dollars (\$25,000) if this Order becomes effective by operation of law, or, if a Respondent seeks a hearing and any legal authority resolves this matter, pay a civil penalty in an amount not to exceed \$10,000.00 for each violation of the Act and the actual cost of the investigation or proceeding; and

[REDACTED]

c. The Respondents shall jointly and severally pay five thousand dollars (\$5,000) for the costs associated with this investigation, or, if a Respondent seeks a

thirty-day (30) period stated above shall be deemed a waiver by that Respondent of the right to such a hearing. Failure of a Respondent to file an Answer, including a request for a hearing, shall result in this Order, including the stated civil penalty and any assessed costs, becoming final as to that Respondent by operation of law.

This Order does not prevent the Division, or any other agency, including without limitation civil and criminal law enforcement agencies, from seeking additional civil or criminal remedies

ENTERED, this the 18th day of February, 2023.

ALAN WILSON  
SECURITIES COMMISSIONER

JONATHAN B. WILLIAMS  
Assistant Deputy Attorney General

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# EXHIBIT 2





operating. Walsh was a member and manager of 344 South.

#### **IV. FINDINGS OF FACT**

5. On or about January 16, 2019, Walsh issued a promissory note on behalf of the Respondents to a South Carolina resident (the "Resident").

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operated by the Respondents.

7. After conducting an investigation, the Division issued the Cease and Desist Order.

herein, pursuant to S.C. Code Ann. § 35-1-102(29), constitutes a security.

12. The Respondents sold a security in South Carolina, which was neither registered with the Division nor exempt from such registration, in violation of S.C. Code Ann. § 35-1-301.

13. This Order is appropriate and in the public interest, pursuant to the Act.

**VI. ORDER**

**NOW THEREFORE**, pursuant to S.C. Code Ann. § 35-1-604(a)(1), it is hereby **ORDERED** that:

A. The Respondents and every successor, affiliate, control person, agent, servant, and employee of the Respondents, and every entity owned, operated, or indirectly or directly controlled by, or on behalf of the Respondents shall not participate in any transaction in violation of the Act and agree to **CEASE AND DESIST** such transactions in this State;

result from activities of the respondents not detailed in the above and below.

Consent Order.

By: Walter Wilson

Walter Wilson  
Securities Commissioner  
State of South Carolina

By: [Signature] Date: 1/11/2020  
Jonathan Harvey, Esq.

Columbia, SC 29201

South Carolina Attorney General's Office Securities Division

By: [Signature] Date: 4/19/22  
Jonathan B. Williams  
Assistant Deputy Attorney General