

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

PEOPLE OF THE STATE OF NEW YORK,
by LETITIA JAMES, Attorney General
of the State of New York

VERIFIED PETITION

Petitioner,

- against -

Index No.

LEAR CAPITAL, INC. and KEVIN DEMERITT

Respondents.

LETITIA JAMES
Attorney General of the State of New York
28 Liberty Street
New York, NY 10005

Of Counsel:

PETER POPE
Chief of the Investor Protection Bureau
TANYA TRAKHT
Assistant Attorney General
KENNETH J. HAIM
Assistant Attorney General
CHRISTOPHER L. BOYD
Assistant Attorney General

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Petitioner, the People of the State of New York, by its attorney, Letitia James, Attorney General of the State of New York (“OAG” or “Petitioner”), alleges upon information and belief:

NATURE OF THE ACTION

1. Lear Capital, Inc. (“Lear Capital” or “Lear”) is a California based telemarketer, which defrauded nearly 1,000 New York investors, including many residing in Erie County and other parts of Western New York, by persuading them through false and misleading statements to invest in precious metals in the form of coins or bars, and charging them up to 33% in hidden commissions on over \$43 million sales of precious metals since 2014 – all while failing to register as a commodity broker-dealer, commodity investment advisor, and a telemarketer in the State of New York as required by law. Lear’s scheme was to fraudulently persuade investors, many elderly, to withdraw money from their existing investment retirement accounts (“IRAs”) or other savings and to buy precious metals from Lear.

2. Virtually every step of the sales process was permeated with fraud. To earn trust from prospective investors at the beginning, Lear falsely told them that Lear’s success was directly related to the investors’ success and that investors’ financial security was Lear’s main concern. In truth, Lear’s success was in conflict with investors’ interests: Lear profited immediately by charging a hidden up-front commission of up to 33% that caused the investments to instantly lose up to one-third of their value. The higher the commission the salesperson could charge on a transaction, the more profit for the salesperson and Lear to the detriment of the investor.

3. Multiple investors who asked about the commission before the sale were simply lied to and told a smaller commission than what Lear eventually charged. Lear similarly lied to investors about the value of coins it sold, falsely contending that so-called “semi-numismatic” coins had value above and beyond the cost of the precious metals they contained and concealing that the main difference between the bullion and semi-numismatic coins was Lear’s exorbitant commission on the latter. Lear later offered to repurchase these coins from investors at a much lower price, calling them “underperforming.” Worse, having repurchased these “underperforming” coins at their lower price, Lear then resold them to new victims at a substantial markup.

4. In addition, as part of its scheme, Lear systematically obtained what it claimed was evidence of consent from investors for the up to 33% instant reduction in their investments. After multiple unrecorded sales calls, Lear would tell investors who had agreed to buy coins that Lear needed to make a recording to verify terms of purchase for the benefit of both Lear and the investor. Investors were told that they needed to answer “yes” to every question on the recording, that the recording was a formality, and that if they gave any other answer or asked any questions, they would have to start over.

5. But the true purpose of the recording was to cheat the investor. Buried among a series of innocuous questions, Lear asked: “Do you understand that the ask to cost fee is 33 percent, yes or no.” The phrase “ask to cost fee” is a made-up term invented by Respondent DeMeritt. Lear, however, repeatedly used it as part of the fraud to later claim that investors had “consented” to giving up to Lear a full one-third of their investment.

6. Lear took additional fraudulent steps after recording the purchase confirmation. It sent some investors invoices that omitted any mention of the commissions, at the same time that Lear's own internal documents, which investors never received, prominently displayed Lear's fee. Only after payment did Lear mail the customer a receipt which – in tiny, faint font at the bottom of the page – stated Lear's fee and the significant amount the assets now needed to appreciate for the investor just to “break even,” often approaching 50%. Many investors, especially elderly, never noticed this “disclosure” and were shocked to see in their first statement from their new IRA custodian that the value of their retirement holdings had declined by a third.

7. When investors contacted Lear to inquire about the missing funds, Lear misled them again. It told them that the IRA custodian's values at current prices of the metal (or “spot price”) did not reflect the true asset value, which was “above and beyond” the spot value. These claims were false. Lear did not have a reasonable basis to represent that “semi-numismatic” coins, especially Canadian wildlife coins designed by and minted for Lear, have value “above and beyond” spot price. The steep drop in the asset value as reported by the IRA custodian, as compared to the amount investor paid for the metals, was primarily due to Lear's fraudulent commission. If an investor asked for his money back, Lear played back the recorded confirmation where the investor purportedly “affirmed” the fee.

8. Lear committed all these frauds and made material misstatements and omissions described above while failing to register in New York as a commodity broker-dealer or commodity investment advisor. The Legislature passed New York's commodities registration statute in 1984 because “unscrupulous salesmen” were operating “on the fringes of the legitimate commodities industry,” Abrams Memorandum for the Governor (July 10, 1984), just as Lear is

here. Failing to register as a commodity broker-dealer or salesperson is explicitly defined as a “fraudulent practice” under the General Business Law (“GBL”) § 352 *et seq.* (the “Martin Act”), *see* GBL § 359-e(14)(j) and (l). And here, of course, Lear has also engaged in repeated frauds against individual investors. Lear also ran afoul of New York’s telemarketing laws by failing to register as a telemarketer in New York. GBL § 399-pp. Respondent DeMeritt, who controls Lear, was aware of and participated in these fraudulent and illegal practices.

9. The OAG consequently seeks an order from this Court finding that Respondents have engaged in repeated fraud and illegality and an order directing an accounting and the return to victims of the monies Lear defrauded from them, as well as disgorgement, damages, civil penalties and costs.

10. Specifically, Respondents have engaged in repeated illegal acts under New York Executive Law (“Executive Law”) § 63(12), including: (a) Respondents have violated GBL § 359-e(14)(b, j, k and l) by selling commodities in New York State without registering – a violation of a basic investor protection requirement of the Martin Act; (b) Respondents have also violated the Martin Act by performing acts in the sale of commodities that have a tendency to deceive or mislead the purchasing public; (c) Respondents have violated GBL § 349 by making representations and omissions that were objectively “likely to mislead a reasonable consumer acting reasonably under the circumstances;” and (d) Respondents have violated GBL § 399-pp because Lear failed to register as a telemarketer with the State of New York and Respondents failed to comply with the laws applicable to telemarketers. Respondents also committed persistent fraud under Executive Law § 63(12) in that Respondents repeatedly engaged in acts that have the capacity or tendency to deceive investors.

11. Petitioner seeks an order and judgment: (a) permanently enjoining Respondents from engaging in the deceptive, fraudulent and illegal acts and practices alleged herein; (b) enjoining Respondents from participation in any securities and commodities sales in the State of New York, (c) directing Respondents to provide a full accounting of payments received from New York investors; (d) directing Respondents to pay restitution, disgorgement and damages; (e) pursuant to GBL § 350-d, imposing a civil penalty of five thousand dollars for each deceptive act committed by Respondents; (f) pursuant to GBL § 349-c, imposing a civil penalty of ten thousand dollars for each deceptive act committed by Respondents affecting persons sixty-five years old or older; (g) pursuant to GBL 399-pp, imposing a civil penalty of two thousand dollars for each telemarketing call made by Lear while unlicensed and (h) pursuant to CPLR § 8303(a)(6), granting costs to the State of New York of two thousand dollars.

PARTIES

12. Plaintiff Letitia James is the Attorney General of the State of New York. The State of New York has an interest in upholding the laws of the State, and the OAG is charged with enforcing those laws. The OAG brings this action on behalf of the People of the State of New York pursuant to, among other authorities, Executive Law § 63(12), General Business Law §§ 349 and 399-pp and the Martin Act.

13. Respondent Lear Capital, Inc. is a privately held California corporation, which has transacted business with the public within the State of New York under the name “Lear Capital, Inc.” Lear Capital maintains a business address at 1990 South Bundy Drive, Suite 650,

Los Angeles, California 90025. Lear Capital claims to be “America's Precious Metals leader since 1997” with “\$3 billion in trusted transactions.” *See* Ex.1.¹

14. Respondent Kevin DeMeritt is a resident of the State of California and is the founder, chairman, and majority shareholder of Lear Capital.

JURISDICTION AND VENUE

15. Petitioner brings this special proceeding pursuant to Executive Law § 63(12) and GBL Articles 22-A, 23-A, and § 399-pp to enjoin Respondents’ fraudulent, illegal and deceptive business practices. Petitioner also seeks restitution on behalf of consumers, disgorgement, damages, civil penalties and costs, as authorized by law, to be paid to the State of New York.

16. Executive Law § 63(12) authorizes the OAG to apply for an order enjoining the continuance of repeated fraudulent or illegal acts in the carrying on, conducting or transacting of business affecting the interests of the public within the State of New York. Executive Law § 63(12) expressly authorizes the OAG to make such application by “action or proceeding.” Executive Law § 63(12) also empowers the OAG to seek restitution, damages, injunctive relief, and costs when any person or business entity has engaged in repeated fraudulent or illegal acts or has otherwise demonstrated persistent fraud or illegality in the carrying on, conducting or transacting of business.

17. The Martin Act protects New Yorkers from fraudulent investment-related conduct. The Martin Act empowers the OAG to seek legal and equitable relief for the use of fraudulent practices in the issuance, exchange, purchase, sale, promotion, negotiation,

¹ References herein to “Ex. _” refer to exhibits attached to the Trakht Affirmation, filed in support of this Petition.

advertisement, investment advice, or distribution of securities and commodities in or from the State of New York.

18. GBL Article 22-A prohibits deceptive business practices and empowers the OAG to seek restitution and injunctive relief. GBL § 350-d empowers the OAG to seek civil penalties in the amount of up to five thousand for each violation of GBL Article 22-A. GBL § 349-c empowers the OAG to seek a civil penalty of up to ten thousand dollars per each deceptive act affecting individuals aged 65 and older.

19. GBL § 399-pp is New York's Telemarketing and Consumer Fraud and Abuse Prevention Act, which contains certain requirement for telemarketers, including a requirement to register. Lear has acted as a telemarketer in New York while having failed to register.

20. Respondents conducted telemarketing business, offered and sold commodities, and were a commodity investment advisor to the public in the State of New York. Respondents' misrepresentations were made to investors in the State of New York.

21. The Court has jurisdiction over the subject matter of this action, personal jurisdiction over the Respondents, and authority to grant the relief requested pursuant to the Executive Law § 63(12), the Martin Act, and GBL §§ 349, 399-pp.

22. Pursuant to C.P.L.R. § 503 venue is proper in Erie County because the OAG's Buffalo office is located in Erie County and victims are located in Erie County.

STATEMENT OF FACTS**I. Lear Capital Failed to Register with the Department of Law****A. Lear Capital Failed to Register with the Department of Law as a Commodity Broker-Dealer**

23. Between 2014 and 2021, Lear sold commodities through accounts, agreements or contracts to the public in New York primarily for investment purposes, and thus was a commodity broker-dealer as defined in the General Business Law. Lear had almost 1,000 investors from New York since 2014 who paid over \$43.7 million for precious metals. Ex. 2. Lear failed to register in New York and knowingly employed two or more unregistered salesmen, both of which are fraudulent practices under the statute. Exs. 3, 4 at 212:14-22.

24. A commodity is defined to include any “metal” and “any foreign currency.” GBL § 359-e (14)(a)(i). A commodity contract includes any account, agreement or contract for the purchase or sale of a commodity primarily for speculation or investment purposes. GBL § 359-e (14)(a)(ii). A commodity broker-dealer is any person engaged in the business of selling or offering for sale commodities through commodity contracts to the public within or from New York. GBL § 359-e (14)(a)(iii). A commodity salesperson is any person employed by or representing a commodity broker-dealer in selling or offering for sale commodities through commodity contracts to the public within or from New York. GBL § 359-e (14)(a)(iv).

25. Lear repeatedly engaged in the business of offering for sale, selling and buying precious metals in the form of gold, silver or platinum bars or coins to and from the public in the State of New York for the purpose of investment by creating accounts or by entering into

contracts or agreements with New York investors. Consequently, Lear is and was a commodity broker-dealer under New York law.

26. Subject to certain exemptions which do not apply to Lear, subdivision 14(b) of GBL § 359-e and Title 13, New York Codes, Rules and Regulations (“N.Y.C.R.R.”) § 13.2 require that under New York law, any commodity broker-dealer or commodity salesperson “shall file” with the OAG a registration statement. GBL § 359-e (14)(b); 13 N.Y.C.R.R. § 13.2. Failure to register is illegal and a fraudulent practice. GBL § 359-e (14)(j) and (l). In addition, a person who engages in a business requiring registration under the Martin Act and who knowingly employs two or more unregistered commodity salespersons with the knowledge that they are not so registered has committed an illegality under the statute. GBL § 359-e (14)(k).

27. Lear is not excluded from registration as a commodity broker-dealer under GBL § 359-e (14)(g). GBL § 359-e (14)(g) states that the “provisions of this subdivision shall not apply to (iii) any other person registered, temporarily licensed, or exempt from registration under the commodity exchange act [“CEA”], as amended, or the rules and regulations promulgated thereunder where such registration, license or exemption relates directly to the activity engaged in.”

28. Lear is not exempt from registration under the CEA because the transactions in which Lear engages are not covered under the registration provisions of the CEA or under Commodity Futures Trading Commission’s (“CFTC”) registration provisions. Lear is not, and is not required to be, registered (including temporarily licensed) under the CEA for its sales of precious metals. Lear does not sell precious metals for future delivery. Lear’s transactions are not leveraged, margined or financed transactions. Lear is engaged in the business of selling

precious metals for immediate delivery. Because Lear is not covered under the CEA's or the CFTC regulations, it is not specifically exempted from such coverage by the CEA.

29. Lear is also not exempt from registration requirements under 13 N.Y.C.R.R. 13.1 because it has no retail stores in the State of New York and did no face to face transactions with New York investors.

30. Lear has never been registered with the OAG as a commodity broker-dealer.² Ex. 3. At all times relevant to this petition, Lear and DeMeritt knowingly employed two or more commodity salespersons who were not registered with the State of New York in violation of the statute. Ex. 4, 212:14-22.

B. Lear Capital Failed to Register as a Commodity Investment Advisor

31. In addition to failing to register as a commodity broker-dealer, Lear also failed to register as a commodity investment advisor. Ex. 3.

32. A commodity investment advisor is any person who engages in the business of advising members of the public as to the advisability of investing in, purchasing, selling or holding commodity contracts. GBL § 359-e (14)(a)(v). Commodity investment advisors must register with the OAG. GBL § 359-e 14(b) and Title 13, N.Y.C.R.R. § 13.2.

33. Lear acted as a commodity investment advisor and misled investors by claiming that the financial security of its clients was Lear's main concern. Ex. 1. It advised customers on

² After the OAG sent Respondents a notice on May 24, 2021, of intent to sue them for, *inter alia*, failure to register as a commodity broker-dealer and commodity investment advisor, Lear submitted an email indicating its intent to register as a commodity broker-dealer and mailed checks to the OAG but did not attach Form CBD or other referenced forms. Lear failed to deliver the required forms to the OAG as mandated by Title 13 N.Y.C.R.R. Part 13.6.

investing in, purchasing, selling or holding precious metals through accounts, agreements or contracts with Lear. It advised customers on purported investment diversification, selected coins for investors' portfolios, monitored their precious metals portfolio performance, suggested when to invest more funds into precious metals or when to trade out of one type of precious metal into another, and encouraged investors to liquidate securities and transfer assets out of their traditional IRAs to purchase more precious metals from Lear. It helped investors open self-directed IRAs to hold these precious metals. Lear took compensation for this advice.

34. As to providing investment advice, Lear stated on its website:

At Lear Capital, your long-term financial security is our main concern. ... We can help you diversify your portfolio by purchasing bullion, acquiring premium rare coins, or by adding physical gold and silver to your existing IRA account. Whether you're looking to realign your asset allocation, maintain an aggressive hedge against global volatility, or secure tangible retirement protection, Lear Capital has a plan for you...

We provide you with a personal account representative ... and a "real-time" investment relationship that keeps you abreast of spot pricing, precious metals news, and economic events that impact your retirement and your future.

See Ex. 1.

35. Lear frequently compared making investments in precious metals to investing in stocks and advised investors to diversify their portfolio. On its website, Lear states:

Diversification - We can't stress this enough: diversification is crucial to every person's portfolio, especially when it comes to retirement savings. Silver and gold IRAs allow you to hold assets that are rarely found in employer-sponsored 401(k)s and conventional IRAs.

Ex. 6.

36. Despite Lear's boilerplate disclosures that investors "should not invest more than twenty percent (20%) of [their] available investment funds in Precious Metals" (Ex. 18), Lear advised its clients to move as much money from their IRAs as possible into precious metals IRAs by incentivizing them with "free" coins. Gundermann Affid. ¶¶ 6, 7. Lear even coached its customers to counter conflicting advice from legitimate financial advisors and "prep[ed]" the investor "for any objection from FA [financial advisor]." Ex. 7 at LEAR003439. A Lear IRA advisor made the following note in the log of calls between Lear and one investor:

I called and spoke with client. He wants to rollover \$500k into Metals IRA. we need to call Financial Advisor to liquidate - that call is scheduled for tomorrow @ 8 am PST.
BROKERS - I strongly recommend calling client this afternoon and "prepping him" for the liquidation tomorrow. This is what his financial advisor will say: (1) Why are moving such a large portion? (2) Why don't you do some Gold/Silver ETFs instead?

Ex. 8 at LEAR003784.

37. Finally, Lear monitored investors' portfolios and contacted them about purportedly "underperforming" IRAs to recommend that they trade out of one allegedly underperforming metal and into what they contended was a better-performing metal. Ex. 15 at LEAR000129; *see also* Gundermann Affid. ¶ 16; White Affid. ¶ 17; Gross Affid. ¶¶ 13-15; Klejment Affid. ¶ 18.

38. Lear failed to register as a commodity investment advisor with the OAG in violation of GBL § 359-e (14)(a)(v). Lear has thus engaged in a fraudulent practice in violation of the Martin Act and an illegality in violation of the Executive Law § 63(12).

II. Lear Capital Failed to Register as a Telemarketer in New York State in Violation of GBL § 399-pp

39. Lear Capital conducts its business predominantly by telephone, employs “dialers” to contact investors, and has even registered as a telemarketer in many states other than New York. Ex. 5. New York’s telemarketing statute, GBL § 399-pp, is intended to provide “additional requirements applicable to the telemarketing industry not present in the federal statute” and is to be “construed whenever reasonable as providing additional protections to victims of telemarketing fraud.” GBL § 399-pp(1). GBL § 399-pp defines a “telemarketer” as any person who, for financial gain “either initiates, or initiates and receives telephone calls to or from a customer when the customer is in this state.” GBL § 399-pp(2)(j).

40. GBL § 399-pp(3)(a) states that “no person shall act as a telemarketer without first having received a certificate of registration from the secretary as provided in this section.” GBL § 399-pp(3)(b) states that “no person required to register...shall act as a telemarketer without holding a valid certificate of registration from the secretary...” Lear has operated as an unregistered telemarketer in New York. Ex. 5.

41. Furthermore, Lear has violated GBL § 399-pp(6)(a)(3), which states that it shall be unlawful for any telemarketer to “give false or misleading information” by misleading investors that their retirement savings would be safe with Lear without clearly disclosing its fee and misleading them about the value of their investments. Lear also violated GBL § 399-pp(6)(b)(2) which requires that telemarketers provide “in a clear and coherent manner using words with common and everyday meanings” “the cost of the goods or services that are the subject of the call.” GBL § 399-pp further provides that “[i]n every case where the court shall

determine that a violation of this section has occurred, it may impose a civil penalty of not less than one thousand dollars nor more than two thousand dollars for each violation.” GBL § 399-pp(11)(b).

42. Every violation of GBL § 399-pp, including failure to register, “shall be deemed a deceptive act and practice subject to enforcement under article twenty-two-A of this chapter.” GBL § 399-pp(11)(a). Lear’s numerous violations of GBL § 399-pp also amount to repeated illegality in violation of Executive Law § 63(12).

III. Many Investors Lost One Third of Their Investments as a Result of Lear Capital’s Fraudulent Business Practices

43. In addition to committing fraudulent and illegal acts by its failure to register and obtain a telemarketing license, Lear systematically defrauded New York investors. First, Lear salespeople falsely told prospective investors that Lear’s “main concern” was the investor’s long-term financial security and that Lear’s interests were aligned with the investors. In truth, Lear’s business plan was to allow salespeople to maximize their commissions at the expense of investors’ long-term financial stability. Second, Lear made repeated false and misleading statements about the value of the coins it was pushing investors to buy, so-called “semi-numismatic” coins, without reasonable basis to make such statements. Finally, while assuring investors that purchasing precious metals through Lear would help safeguard their retirement and savings, Lear charged investors exorbitant hidden fees that instantly reduced the value of New Yorkers’ investments by as much as a third. These misstatements and omissions were material.

A. Respondents Fraudulently Claimed Their Interests Were Aligned with Investors

44. Lear falsely told investors, many elderly, that “your long-term financial security is our main concern.” Ex. 1. It also told investors that their success was “directly related to your success.” Ex. 9 at LEAR005285; Ex. 10 at LEAR005250. In truth, the success of the salespeople was inversely related to investors’ success. The higher the commission the salesperson could charge on a transaction, the more profit for the salesperson and Lear to the detriment of the investor.

45. Lear targeted unsophisticated investors by advertising extensively on television and radio networks, by appealing to and stoking investors’ fear of economic and market collapse and mistrust of the stock market, and by promising them preservation of their retirement funds through investment in precious metals IRAs through Lear.

46. Lear worked to gain investors’ trust and trained its salespeople to ask potential investors “do you trust Lear Capital and **most importantly**, do you trust me to help you the best I can here?” followed by “my success is directly related to your success” and finally “**Is that the kind of person you want working for you?**” (emphasis in the script). Ex. 9 at LEAR005284-85; Ex. 10 at LEAR005250.

47. These statements were false and misleading. Not only were Lear salespeople not working *for* the investors, but the success of Lear and its sales representatives was inversely related to investors’ success: the higher the commission the salesperson could charge on a transaction, the more profit for the salesperson and Lear to the detriment of the investor.

48. Indeed, sales of metals into IRAs was the most lucrative part of Lear's business precisely because large sales translated both into large commissions for its sales people and profits for Lear. In training documents for salespeople titled *IRA Training 101*, Lear asked: "Why Bother Learning All This Info? Why not just do Cash deals?" The answer was a simple graphic:



Ex. 11 at LEAR004151. The same slide stated: "2015 Average Numis [non-IRA] Deal: \$13.2k **Versus 2015 Average IRA Deal: \$52.1k**". *Id.* (emphasis in the original). Thus, Lear's salesmen were instructed to "[p]itch the Metals IRAs to every prospect." *Id.* Indeed, IRA sales comprised 21% in transactions and 53% in dollar volume of Lear Capital's sales to New Yorkers. Ex. 2 (calculations by the OAG).

49. Lear trained its sales force to systematically gain customers' trust to convince them to invest their life savings into precious metals IRAs:

- ▶ Your prospect has been contributing to their "nest egg" for 10, 20, 30+ years!
 - ▶ This isn't a one call close!
 - ▶ Become knowledgeable to build trust
 - ▶ Frequent contact = establish rapport

Ex. 11 at LEAR004149.

50. As to divergence of interest, for any IRA sale, Respondent DeMeritt testified that a salesperson could charge anywhere from 0% (sell at cost) to 33% above cost for any metal sold into an IRA. Ex. 4 at 67:22-25; 68:9-14. And, indeed, Lear's sales representatives routinely charged investors' the maximum spread of 33%.

51. It was, consequently, false and misleading for Lear to state that the investors' success was "directly related" to the salespersons' success or that Lear's salespeople were working *for* the investors or cared about their financial security. Lear's misstatements were material because they misled investors about Lear's interests being aligned with those of investors. But Lear's sales representatives were instead working to fleece investors of their hard-earned savings.

B. Respondents Made False and Misleading Statements About the Value of Coins Sold

52. Lear systematically made false and misleading material misstatements about coins that it sold to investors, specifically about so-called "semi-numismatic" coins. The price of semi-numismatic coins was not directly related to the market price of precious metals (as "bullion" coins are) and the coins were not graded by independent third parties (as true "numismatic" coins are). "Semi-numismatic" coins are instead a commodity that Lear sold (and resold) using repeated false and misleading statements about their worth.

53. Lear defined bullion as coins whose value is derived primarily from their precious metals content, with its value very closely related to the spot prices of the precious metal. *See* Ex. 12. Lear typically charged up to a 10% fee for bullion sold outside of an IRA (because, according to Lear, that is the most Lear could charge to stay competitive). Ex. 4 at 67:7-25.

54. Lear defined numismatic coins as “rare coins” which “must have been minted prior to 1933 and can never be reproduced,” and whose value is “a function of the current spot price and a premium allocated by its rarity.” These metals are graded by independent third parties such as Professional Coin Grading Service and the Numismatic Guaranty Corporation . See Ex. 12. Lear charged up to 33% spread on numismatic coins. Ex. 2; Ex. 4 at 68:9-14.

55. Many investors contacted Lear intending to invest in a product that tracked the prices of the commodity, *i.e.* bullion. Lockwood Affid. ¶ 4; Gross Affid. ¶ 5; McNichol Affid. ¶ 3. Much of Lear’s advertising revolved around performance of precious metal commodities and Lear published commodity price charts on its website. Yet, when investors called Lear and asked for bullion, Lear’s salespeople were trained to steer them into purchasing “semi-numismatic” coins, for which Lear charged investors up to 33% as commission. Ex. 2; Ex. 9 at LEAR005288; Ex. 10 at LEAR005249.

56. These “semi-numismatic” coins were designed by Lear and were minted every year for sale exclusively by Lear.³ For example, Lear created the “Canadian Wildlife series” coins such as the Arctic Fox, the Snow Falcon, the Grizzly Bear, the Polar Bear & Cub among others. Canadian Wildlife coins accounted for more than half of Lear’s sales in New York by dollar volume (54%) and for the bulk of its fees (63%). Ex. 2 (calculations by the OAG).

57. Lear’s training materials provided a script of how to convince investors asking for bullion to purchase these “semi-numismatic” coins by misleadingly comparing them to the numismatic coins (which pre-date 1933 and are graded by independent third parties) and telling

³ It is a common practice in the precious metals industry to have an “exclusive” agreement with a mint for coin manufacturing. After a year, other dealers can sell these coins as well.

investors that they had the potential to appreciate more than bullion. “Silver Polar Bear and Cub is our best performing silver because it gives you more bullion so it acts like bullion moving up with silver. But it also has a fixed/limited supply and can appreciate if silver does nothing.” Ex. 9 at LEAR005288; Ex. 10 at LEAR005249.

58. Lear sales representatives stated that “semi-numismatic” coins were just like bullion only better. Lockwood Affid. ¶ 6. Some salespeople falsely represented that these coins were collectable, unique or numismatic. Gray Affid. ¶ 5; Brady Affid. at ¶ 4; Ex. 15 at LEAR000129. Some invoices for Canadian Wildlife coin even falsely indicated that the coins were “numismatic.” Exs. 13, 14. But Lear salespeople did not disclose that the real difference between bullion and “semi-numismatics” was not a hypothetical scarcity premium but Lear’s own commission: only up to 10% on bullion coins and nearly 33% on “semi-numismatics” in cash transactions.

59. Lear’s statements about the scarcity premium of “semi-numismatic” coins were false and misleading because Lear had no reasonable basis to represent that these coins were any more valuable than their metal value. In fact, when disillusioned investors wanted to sell their Canadian Wildlife coins back to Lear, Lear sometimes offered to buy them back at close to spot price. Trakht Affid. ¶ 54.

60. Even worse, after selecting semi-numismatic coins for clients’ portfolios, Lear contacted these same investors just a year later, informed them that their coins were “underperforming” and pressured them to sell their coins and buy a different type of metal, netting Lear an additional commission. Ex. 15 at LEAR000129; *see also* Gundermann Affid. ¶ 16; White Affid. ¶ 17; Gross Affid. ¶¶ 13-15; Klejment Affid. ¶ 18; Mulhern Affid. ¶ 9. Lear

salespeople did this in direct contravention to Lear's own advice during the recorded confirmation that "precious metals should be considered a long-term investment and should be held for at least 3 to 5 years." Ex. 18.

61. For example, a Senior IRA Portfolio Manager at Lear, sent a letter to many investors (the majority of whom dealt with a different salesperson during their original purchase), similar to the one quoted below:

I am in the process of reviewing client IRA portfolios, like yours, that are, unfortunately, still in a negative position. In looking at your current account standing, the collectible gold and silver numismatic coins your purchased for your IRA have simply not performed to forecast or expectation...This is why we think making a move out of your underperforming gold and silver holdings, and into Platinum bullion...would give you a better chance of repositioning your holdings for maximum appreciation...[Y]our account qualifies for Lear Capital's "Metal Exchange" program, which means simply trading your negatively underperforming gold and silver coins in your IRA...for pure Platinum bullion...**This costs you ZERO dollars out of pocket.**

Ex. 15 at LEAR000129 (emphasis in the original).⁴

62. One investor received such a letter merely thirteen months after a different Lear sales representative selected Canadian Wildlife coins for him, which were now "underperforming." The major reason his "negative position" was the 33% fee this investor had paid Lear upon purchase. The quoted letter omitted any mention of that fee. The distraught investor, afraid to lose more of his retirement money, agreed to sell his gold and silver back to Lear, sold them below spot price, and was charged an additional 14% for the purchase of platinum, despite being promised that Lear would charge him no fees for this exchange. *See* Gundermann Affid. ¶¶ 16-18.

⁴ IRS regulations regarding IRAs do not allow numismatic or collectable coins to be placed in an IRA.

63. Lear's advice to investors about their "underperforming" portfolios was simply an additional scheme to generate even more fees from selling investors a new product and reselling the same repurchased coins to new unsuspecting buyers for another 33% hidden markup. After Lear gave one investor a damning evaluation of his Polar Bear & Cub coins, Lear turned around and recommended and sold the same coins to dozens of other unsuspecting customers, charging up to 33% commissions for most of them. Ex. 2 (calculations by the OAG).

C. Lear Capital Misled Investors by Concealing its Commissions

64. Lear engaged in a systematic scheme to defraud investors by (1) advising them to purchase coins for capital preservation and then (2) secretly charging commissions that instantly reduced their investments by up to one third. As to the fraudulent 33% commissions, Lear repeatedly lied to investors about them, and then systematically misled investors while providing Lear with a way to falsely contend that the investor had consented to giving Lear an extraordinary one-third of the total value of the investment.

1. Lear Capital marketed capital preservation

65. Lear marketed financial security to investors through investment in precious metals: "[a]t Lear Capital, your long-term financial security is our main concern." Ex. 1. This differentiated Lear from a retailer of other goods. Lear said that it strives to build a "real-time investment relationship" with its clients (*id.*), and it reached out to them from time to time to review their investments and make new recommendations. Lear intentionally built customer trust over months and years.

66. Lear advised investors how to achieve safety from market fluctuation and inflation as well as preservation of principal. Lear Capital's Precious Metals IRAs brochure

advertised precious metals IRAs as a means to “Protect Your Retirement.” Ex. 16 at LEAR000789. For example, the brochure stated that gold is “an ideal vehicle for principal preservation in these uncertain economic and political times,” and that one of the benefits of opening a precious metals IRA is to “offer an additional layer of protection, helping to maintain the value of your hard-earned dollars.” *Id.* at LEAR000791. It also stated:

With all of the economic and financial uncertainty today, it is unclear what the future will bring. Ensure that the money you are setting away for the future retains its purchasing power and consider diversifying your portfolio with precious metals. Store and save your purchasing power in physical assets.

Id. at LEAR000789.

67. Lear’s website similarly stated that the benefit of investing in silver or gold was that “[b]y placing precious metals in your IRA, you can thus preserve your buying power and safeguard your money from the effects of inflation” and that “[d]iversifying your portfolio with precious metals helps protect your retirement money by shielding it from the volatility associated with stock and other paper assets.” Ex. 17.

68. Having marketed precious metals as a vehicle to achieve principal preservation and protection of assets in the times of economic uncertainty, Lear then misled investors about one certainty – that, upon making a purchase with Lear, they would immediately lose up to one third of their retirement money and savings to Lear’s commission.

69. Lear did so in two ways. First, some sales representatives simply lied to investors about the amount of their fees. Second, Lear systematically misled investors about the fees while simultaneously creating a false record that investors consented to Lear’s taking one-third of their investment.

2. *Lear Capital lied to investors about its fees*

70. Lear Capital calls customers many times to convince them to make a purchase. In the course of these conversations, it makes numerous statements and misrepresentations, many alleged above. Lear does not create audio recordings of these calls until after Lear convinces the investors to purchase the coins it recommends, and then Lear makes a two-and-a-half-minute scripted and misleading audio recording. Investors reported repeated instances of false and misleading statements that took place before the tape recording was turned on.

71. For example, multiple investors interviewed by the OAG reported that during their conversation with Lear before the recorded confirmation, Lear agreed with them on the fee, but charged them a different fee:

- Daniel McNichol reports specifically inquiring about the commission and being told that the fee would be approximately 2-3% of the investment. He was instead charged 25%. McNichol reports that when his salesperson asked him during the recorded confirmation to affirm that he understood that “the maximum ask to cost fee is 33%,” McNichol repeatedly told him that they had agreed to a 2-3% fee. McNichol reports having to re-record the confirmation six to seven times (none but the last one was saved by Lear). McNichol was tricked into finally saying “yes” but the recording is as follows: “Do you understand that our numismatic **maximum** ask to cost fee is 33% and that there **is a risk here**, that is...**of market fluctuation**, do you understand that?” “Yes.” Ex. 19 at 3:19-24 (voice emphasis); McNichol Affid. ¶¶ 3, 5-7.
- John Diggs reported an almost identical conversation with his salesman. He was told that the fee on his transaction would be 2-3% of his investment but was ultimately charged 33%. Diggs Affid. ¶¶ 3, 5-6.
- Joseph Martino reports asking whether there was a commission or a fee for his transaction with Lear and was told that the only fee was a charge for taking the silver out of the ground. He was charged an almost 33% fee on his purchase. Martino Affid. ¶ 4.

- Judith Klejment reports that her salesman did a “dry run” of the recorded confirmation with her before placing her on the recorded line. During the dry run, he stated: “We sell collectables and rare coins as well so that’s an average of everything we sell. These coins were discounted so you got a discount on these. That 33% doesn’t apply, but I got to put it in there.” Ex. 20 at 11:1-8. When the salesperson asked her to affirm during the recorded confirmation that she understood that “the maximum ask to cost fee is 33%,” Klejment said “yes” because the sales person told her before the recording that this fee did not apply to her. Despite Lear salesman’s assurances to the contrary, Klejment was in fact charged 33% on her investment. Klejment Affid. ¶¶ 10-12, 16.

3. Lear Capital defrauded investors of up to 33% of their investment

72. Lear systematically cheated investors by charging them close to a 33% transaction fee it concealed. Because of this fraud, on the very day that an investor purchased commodities from Lear, the value of that investment dropped by up to a third.

73. A crucial part of the fraud was the recording that Lear made after it had persuaded an investor to buy coins. In that recording Lear used a made-up term for commissions in order to create a false record that the investor had consented to a 33% commission when, in truth, the investor had given no such consent.

74. The fraud was straightforward. As discussed above, during the initial stages, Lear promised investors that investment in precious metals would help them preserve their retirement and other savings. During this pitch, the salesperson omitted telling the investor (or, as discussed above, sometimes actively lied to the investor) that Lear was going to charge up to a 33% fee on day one, that Lear would not buy the coins or bars back at the price they were selling them, and that the value of the investment was thus guaranteed to instantly lose a third of its value – the very opposite of value preservation.

75. Lear recorded investors' purported consent to this undisclosed and unconscionable fee in anticipation of inevitable complaints. By design, Lear's initial conversations with investors had not been recorded. Only after convincing the investor to hand over their retirement investments and savings to Lear, would its salespeople blaze through a series of boilerplate terms on a recorded line.

76. Specifically, after agreeing how much an investor would spend and after selecting the coins for the investor, Lear salespeople informed the investor that they had to make a recorded confirmation to "verify and make record of the terms of this transaction for the both of us." *See* Ex. 18. Lear sales representatives emphasized the boilerplate nature of the information they were going to read off the script. Klejment Affid. ¶¶ 7-9, Ex. 20 at 9:17-19.

77. To complete the recorded confirmation, investors were told to answer "yes" to all the questions posed to them, and that if they stopped to interrupt to ask questions, the recording of all the questions and answers would have to start all over again. Klejment Affid. ¶ 8; Ex. 20 at 8:25-9:5. The salesperson then asked a series of questions, many unobjectionable – for example "You understand that Lear Capital does not provide tax advice?" Ex. 18.

78. But buried in these questions was a phrase that Lear subsequently used to falsely contend that victims knew and understood that they had agreed to a commission of 33%. The salesperson asked: "Do you understand that the ask to cost fee is [33] percent, yes or no?" And, on the recording, victims repeatedly simply said "yes," just as they had been instructed to do.

79. Specifically, in various iterations the script included the following questions:

- Do you understand that it is Lear Capital's opinion that precious metals should be considered a long-term investment and should be held for at least 3 to 5 years? Yes or No?
- [If a purchase was of a numismatic coin outside the IRA] Do you understand that your purchase is a numismatic item and not a bullion item? Yes or No?
- Do you understand that in Lear Capital's opinion, you should not invest more than twenty percent (20%) of your available investment funds in Precious Metals? Yes or No?
- You understand that Lear Capital is not an investment or financial advisor and the decision to purchase or sell is subject to your own research and judgment? Yes or No?
- You understand that Lear Capital does not provide tax advice? Yes or No?
- You understand that it is Lear Capital's opinion that the possibility of a gold recall is extremely unlikely and should not factor in to your buying decision? Yes or No?
- Do you understand that the **ASK TO COST FEE IS [ACTUAL SPREAD]%**. Yes or No?⁵
- Do you understand that there is a risk of market fluctuation? Yes or No?

Ex. 18 (emphasis in the original).

80. The sales representative then proceeded to confirm that Lear was making an order containing the number of coins the customer was going to receive, the price of each coin and the total price plus shipping. The salesperson would also remind the investor of any "free" coins Lear would send them. Ex. 36 (sample voice files of recorded confirmations).

81. Having been told that the questions were merely confirmatory and boilerplate, investors answered "yes" to all the rapid-fire questions, including the statement about "the ask to cost fee."⁶

⁵ During the call the words "actual spread" were replaced by a percentage.

⁶ Following the call, some investors received confirmation emails from Lear, which looked like an automated email, congratulated the investor on their purchase, stated that no invoice is attached for privacy reasons, confirmed investor's address, stated that Lear will not ship metals until payment is received, provided bank and wire information for payment, offered free coins for referrals, included a signature block for the salesperson, and only after that, on the very bottom of the email, provided a link "Click here" to Terms and Agreements. Clicking on the link takes the investor to a different page where the script is presented in writing. Ex. 21.

82. The phrase “ask to cost fee” is nothing more than Lear’s own fraudulent term invented by Respondent DeMeritt. It has no common definition. It is not defined in any financial or other dictionary to mean “commission” or “spread” or “transaction fee.” “Ask to cost fee” is not a term used widely in the industry to indicate profit to the seller or cost to the client. Most importantly, the made-up phrase “ask to cost fee of 33%” did not inform investors that they were the ones paying a fee or that they would lose up to a third of their investment immediately upon consummation of the transaction with Lear. Brady Affid. ¶ 9; Gray Affid. ¶ 6; White Affid. ¶ 9 Martino Affid. ¶ 5; Mulhern Affid. ¶ 8.

83. Many investors, especially the elderly, were not even able to discern the term “ask to cost fee” during Lear’s rapid-fire questions. In fact, when the OAG sent one of the recorded confirmation voice files to Veritext to transcribe, the reporter provided the following transcription: “Do you understand that our numismatic maximum (indiscernible) fee is 33 percent...” *See* Ex. 20 at 3:20-21.

84. If an investor noticed the unfamiliar phrase “ask to cost fee” and inquired about its meaning, Lear’s Addendum to the Compliance Policies and Procedures Manual instructed its sales representatives to lie: “APPROVED EXPLANATION OF THE ASK TO COST FEE: There is a cost to bring the metal out of the ground, extract it, refine it, mint it and manufacture it, and this is all factored along with Lear’s fees....” Ex. 22 at LEAR003973.

85. This explanation was false. Lear does not engage in mining, refining, minting or manufacturing coins, and the mining costs were already included in the spot price of a precious metal. Ex. 4 at 135:1-5. “Ask to cost fee” was simply Lear’s commission, commonly known in the industry as the “spread” or a “transaction fee,” and Lear itself defines it as “spread” in its

Shipping and Transaction Agreement⁷ (Ex. 15) and as a “transaction fee” in the invoices that are sent to its clients after payment. *See* Exs. 13, 14.

86. After investors realized that Lear defrauded them out of up to one third of their investment, they complained to Lear Capital stating that they were never told of a 33% fee. As part of the fraud, Lear routinely responded by sending investors the audio recording of their confirmation as “proof” that they knew of and had agreed to Lear’s exorbitant fee. Gross Affid. ¶ 20; Hazelton Affid. ¶ 16; Gundermann Affid. ¶ 14.

4. *Lear Capital’s invoices concealed fees and mislead investors*

87. Lear’s invoices continued the fraud. After the recorded confirmation and prior to payment, Lear sent some investors an email with a “confirmation invoice.” This confirmation invoice entirely omitted the fact and the size of the transaction fee. Ex. 24. By way of example:

⁷ Lear’s Shipping and Transaction Agreement (later known as Lear Capital Transaction Agreement), which contained several pages of boiler-plate language in a tiny point font, provided general ranges of prices for different transactions for IRA and non-IRA sales:

These numbers, however, are only general ranges and approximations, which are subject to change ... The actual Spread on any particular transaction could be any amount within the referenced ranges (or even possibly outside those ranges.) ... LCI’s [Lear’s] Spread range may be different (higher and/or lower), and the Spread LCI charges may be higher or lower, at the time of and for any given transaction.

Ex. 23. No customer could learn the spread on his particular transaction from the Shipping and Transaction Agreement. DeMeritt admitted that Shipping and Transaction Agreement does not disclose an exact fee that each customer is charged. Ex. 4 at 137:9-14.

Qty	Description	Metal	Content (Oz)	Price	PriceExt
300	1.5 Oz. Silver Grizzly Bear	Ag	1.50	\$46.69	\$14,007.00
6	1.5 Oz. Silver Grizzly Bear	Ag	1.50	\$0.00	\$0.00
Sub Total:					\$14,007.00
Shipping:					\$0.00
Total Invoice:					\$14,007.00

Metal: Au - Gold, Ag - Silver, Pd - Palladium, Pt - Platinum

Ex. 24.

88. In contrast, Lear’s internal documents showed the spread, and instead of the fraudulent phrase “ask to cost fee” called it “spread.” Below is one of Lear’s internal transaction invoices. It is formatted similarly to the chart sent to investors but contains a column just to the right of “price” titled “Spread” on each transaction. See Ex. 25. Lear did not share this document with its investors.

Qty	Date	Description	Grade	Price	Spread	PriceExt
300		1.5 Oz. Silver Grizzly Bear		\$46.69	33%	\$14,007.00
6		1.5 Oz. Silver Grizzly Bear		\$0.00	0%	\$0.00
Sub Total:						\$14,007.00
Shipping:						\$0.00
Total Invoice:						\$14,007.00

Ex. 25.

89. Only after investors paid for the purchase and were locked into the transaction, did Lear send them an invoice which mentioned the transaction fee – and, even then, only in fine print. Ex. 14.

Qty	Description	Metal	Content (Oz)	Price	PriceExt
213	Silver Grizzly Bear	Ag	1.50	\$47.04	\$10,019.52
4	Silver Grizzly Bear	Ag	1.50	\$0.00	\$0.00
Sub Total:					\$10,019.52
Shipping:					\$68.00
Total Invoice:					\$10,087.52

At Lear Capital your satisfaction is our priority. Your account representative is your primary contact; however, if you have any questions or concerns which you believe may require someone other than your representative, please call our dedicated Customer Care line at 1-(800)-885-LEAR, or email us at jeremyjason@learcapital.com.

Metal: Au - Gold, Ag - Silver, Pd - Palladium, Pt - Platinum
Disclosure: Precious Metals and Coins should be considered a long-term investment. You should be prepared to hold the metals for a period of 3-5 years or longer. Currently, Lear includes a transaction fee. The fee is the difference between our cost and the ask/sale price on numismatic coins that can average thirty three percent. The fee between our market cost and the ask/sale price on this transaction was 32.58 percent. Based on this fee, your metals will need to increase approximately 48.63% to break even. When requesting a quote, please specify if you are looking to buy or sell as the quotes will vary.

Ex. 14.

90. In this example, under the large table describing the purchase, including the quantity, and the price the investor paid for his coins, and under the bolded italic language stating that “[a]t Lear Capital your satisfaction is our priority...”, under a metals key and in faint letters

and tiny font, Lear stated that the investor's purchase "includes a transaction fee," here, of 32.58%. It also stated, that, based on this fee, the metals purchased would need to increase approximately 48.63% for the buyer to break even.⁸

91. Often, investors who received these invoices, many of whom were elderly, did not even notice this fine-print, footnoted language. Mulhern Affid. ¶ 8; Gray Sr. Affid. ¶ 6 Martino Affid. ¶ 6.

92. Many who invested their IRA accounts were unaware that they lost up to 33% of their investment to Lear's fees until they later received their statements from the custodians of the new self-directed IRAs which held their coins. Mulhern Affid. ¶ 6; Klejment Affid. ¶ 14; Hazelton Affid. ¶ 13; Gundermann Affid. ¶ 12. These statements listed the value of their holdings at spot prices – well below what the investors had paid for them. *See* Ex. 26. When investors complained to Lear about the decline in value of their investment, Lear assured them that spot prices were not representative of the value of their coins, that their coins are worth "above and beyond spot price" and instructed them to obtain values from Lear, which would be more reflective of the actual value. *See* Ex. 27; Brady Affid. ¶ 11.

⁸ Purported "break even" point mentioned in Lear's invoices, is the amount by which precious metals would have to appreciate to be worth what the investor paid for them, given Lear's cost. This term is itself misleading, because it assumes Lear's cost as a valid base against which to assess the investment. However, Lear's wholesaler has also marked up these coins with its own commission, which is included in Lear's cost and not clearly disclosed. For coins which derive their value primarily from their bullion content, including the so called "semi-numismatic" Canadian Wildlife coins, markup over melt is instructive. Markup over melt indicates the amount the precious metal sold to investor was marked up over the spot price of the metal contained in the investor's coins and was often above 60%-70%. *See* Trakht Affirmation, Section VI.

93. Lear's explanation to investors of their self-directed IRA statements was misleading. The steep declines in the IRA values came primarily from Lear's fees and not from the IRA custodian's failure to account for the hypothetical scarcity premium of the "semi-numismatic" coins.

94. Some investors asked Lear how they could monitor the value of their investments. Lear misled them by telling some that they should check the prices of their coins on Lear's website and note what Lear was selling them for. Brady Affid. ¶ 11. This was false and misleading, because Lear would not buy back the coins for the price it listed on the website because those prices included Lear's exorbitant commission.

95. In other instances, when an investor asked about the value of their portfolio, Lear would send them a summary of their invoice – that is the price they paid for the coins, not the value of those coins. Gundermann Affid. ¶ 11. It could take a customer several inquiries to Lear to finally get the value of the investment as requested. White Affid. ¶ 12.

96. Lear's numerous misstatements and omissions aimed at concealing its high transaction fee from investors were material, deceptive and fraudulent.

IV. Lear Capital Knew Investors Were Misled by Its Undisclosed Fees but Failed to Correct Its Disclosure

97. Over the years, Lear received numerous complaints about its business practices. An internal document from April 2019 from Lear's employee charged with reviewing Lear's customer reviews (including online complaints) as part of Lear's recent "Reputation Initiative," stated:

without question the number 1 complaint that has exploded in the past two years have (*sic*) been a variant of: I reached out to Lear Capital with the intention of

buying “X bullion product” only to be convinced by my sales rep that I should purchase “Y Canadian Coin series” coin. I sent “100%” of my chosen (*sic*) investment amount only to learn that my account value is now worth, “50-70%” of the original 100% I sent.

See Ex. 28, at LEAR032259.

98. The Lear employee identified “The Problem”:

Too often negative review customers communicate they were not clearly told that the products they purchased from Lear were premium priced products and their sales reps took liberties to hide this information, oftentimes with malicious intent.

Id.

99. To deal with these numerous complaints (which tarnished its online reputation and thus threatened the scheme), Lear proposed either “suppress[ing] reviews” or refunding investors who complained on various online review boards “in exchange for the client removing all reviews and promising to not post again.” *Id.*

100. The strategy was to buy the silence of the defrauded investors who loudly complained, to continue defrauding those who suffered their losses in silence, and to perpetuate frauds against other new, prospective investors. Lear understood that investors looking for principal preservation in their IRA accounts would never give informed consent to its transaction fee of up to 33% for coins whose value primarily came from bullion or for such a large fee on their IRA in general. As one defrauded investor put it in an email when presented with an audio copy of his recorded confirmation as evidence of having “agreed” to the 24% fee on his transaction:

Seriously????????????????
24% FEE on my IRA????????????????????????????????
And I said YES to that????????????????
In a bar?
In a dope den?
i Pay 1% on my mutual funds.
Why on EARTH would I pay 24% FEE on my
IRA??

Let's go to the videotape!
And let's play that to the AG.....
Now I think we're getting somewhere.
Do you think I'd pay \$50,000 to buy coins?
Bad enough I paid 4%!!!!!!!

Ex. 29.

V. Respondent DeMeritt Implemented, Oversaw, Authorized, and Participated in Lear's Fraudulent and Illegal Practices

101. Respondent DeMeritt is the founder, chairman, and majority shareholder of Lear Capital. DeMeritt controls the company. DeMeritt supervised, oversaw and approved all advertisement and misrepresentations made to investors, including that investors' "long-term financial security is our main concern" while encouraging Lear's salespeople to charge the maximum commission on purchases to maximize Lear's and DeMeritt's profits.

102. DeMeritt determined which coins were labeled numismatic or semi-numismatic or bullion, Ex. 4 at 63:7-18, which in turn determined the maximum commission a salesperson could and was encouraged to charge for them.

103. DeMeritt drafted and approved the training materials and personally used them to train Lear's sales representative. Exs. 9, 10; Ex. 4 at 165:16-18; 167:6-169:20. These training materials contained fraudulent representations that Lear was working "for" its investors, that

Lear's "success is directly related to your [investor's] success," instructed Lear's sales representatives how to steer customers from bullion to "semi-numismatic" coins.

104. DeMeritt oversaw the drafting of and approved the script used during the recorded confirmation and coined the term "ask to cost fee" to conceal from investors Lear's exorbitant commissions. Ex. 18; Ex. 4 at 128:12-17.

105. DeMeritt oversaw and approved the text of the Addendum to the Compliance Policies and Procedures Manual, including the fraudulent definition of "ask to cost fee." DeMeritt also approved the design of all the invoices, which intentionally concealed the transaction fee in tiny font on the very bottom of the documents. Ex. 4 at 139:7-21.

106. In short, DeMeritt participated in and had knowledge of the fraudulent and deceptive practices engaged in by Lear and its sales representatives.

VI. Lear Capital Failed to Produce Documents and Records Pursuant to OAG's Supplemental Subpoena

107. During the course of its investigation, the OAG learned that Lear had failed to produce certain evidence in response to OAG's January 14, 2020 subpoena, specifically data and a recorded conversation of one of the victims. When the OAG pointed this out in May 2021, Lear still did not produce this evidence. Ex. 31. Consequently, on May 28, 2021, the OAG served an additional subpoena on Lear, commanding the production of those and similar documents with a return date of June 4, 2021. Ex. 32.

108. Lear did not move to quash. Instead of producing responsive documents and information, on June 4, Lear wrote the OAG that it did not believe that the continued use of the

OAG's statutory subpoenas was "appropriate" because the OAG had expressed an intention to commence an action. Ex. 33.

109. Under the plain terms of the statute, the OAG's "power of subpoena . . . shall not abate or terminate by reason of any action or proceeding brought by the attorney-general under this article." GLB § 352(2) (Executive Law § 63(12) contains similar language). *A fortiori*, statutory subpoena power is certainly not suspended because the OAG has stated an intention to commence an action.

110. In addition, under the statute, "a person who fails to obey the command of a subpoena without reasonable cause" is "guilty of a misdemeanor," GBL § 352(4), and a violation of criminal law is an "illegal act" under Executive Law § 62(12).

CONCLUSION

111. Respondents defrauded vulnerable and unsophisticated investors, many elderly, whom it advised to shield their retirement and other savings from inflation and market fluctuation by inducing them to invest in precious metals. Instead of helping them to preserve their assets as promised, Lear cheated them out of up to 33% of their investment and engaged in fraudulent and misleading conduct to prevent or delay investors from learning what it had done. Respondents perpetrated this fraud in New York without having registered as a telemarketer, commodity broker-dealer, commodity investment advisor and without registering any salespersons— all of which are independent fraudulent practices under New York law.

112. The OAG seeks an order from this court: (1) permanently enjoining Respondents from participation in any offer and sale of commodities or securities in the State of New York

and from engaging in fraudulent practices, (2) ordering restitution to the victims; (3) ordering an accounting; (4) ordering disgorgement of monies obtained through the fraudulent practices; and (5) awarding damages, civil penalties and costs.

EVIDENCE

113. The Affirmation of Tanya Trakht, sworn to on June 17, 2021, filed herewith and exhibits thereto, summarizes Respondents' fraudulent and illegal activity.

114. The affidavits of investors Judith Klejment, sworn to on May 20, 2021; Joseph Martino, sworn to on May 19, 2021, Daniel McNichol, sworn to on May 20, 2021; Thomas Brady, sworn to on May 2, 2021; Jack Gross, sworn to on May 20, 2021; Thomas Gundermann, sworn to on May 18, 2021; Robert Gray, Sr., sworn to on May 23, 2021; Sherrill Hazelton, sworn to on May 21, 2021; Cynthia P. Hazelton, sworn to on May 21, 2021; Loren Lockwood, sworn to on June 2, 2021; Terry White, sworn to on June 3, 2021; Gloria Mulhern, sworn to on June 3, 2021; William Blickensderfer, sworn to on June 8, 2021; and John Diggs, sworn to on June 16, 2021, filed herewith, describe Respondents' fraudulent and illegal business practices.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

PURSUANT TO EXECUTIVE LAW § 63(12): FRAUD

115. The Attorney General repeats and re-alleges the paragraphs above as if fully stated herein.

116. Respondents have repeatedly and persistently engaged in fraud in the offer and sale of precious metals to investors.

117. Respondents' conduct constitutes repeated and persistent fraud in violation of Executive Law § 63(12).

SECOND CAUSE OF ACTION

PURSUANT TO EXECUTIVE LAW § 63(12): ILLEGALITY VIOLATIONS OF GENERAL BUSINESS LAW ARTICLE 23-A (Martin Act Securities Fraud - General Business Law §§ 352 *et seq.*)

118. The Attorney General repeats and re-alleges the paragraphs above as if fully stated herein.

119. The acts and practices of the Respondents alleged herein violated Article 23-A of the General Business Law, in that they constituted a scheme to defraud and other fraudulent practices as defined in General Business Law §§ 352 *et seq.*

120. The acts and practices of the Respondents alleged herein violated Article 23-A of the General Business Law, in that Respondents made promises or representations as to the future which were beyond reasonable expectation or unwarranted by existing circumstances.

121. The acts and practices of the Respondents alleged herein violated Article 23-A of the General Business Law, in that Respondents made, or caused to be made, representations or statements which were false, where (i) they knew the truth, or (ii) with reasonable efforts could have known the truth, or (iii) made no reasonable effort to ascertain the truth, or (iv) did not have knowledge concerning the representations or statements made or where Respondents made material omissions, where said representations, statements or omissions were engaged in to induce or promote the issuance, distribution, exchange, sale, negotiation, or purchase within or from this state of commodities.

122. The acts and practices of the Respondents alleged herein violated Article 23-A of the General Business Law, in that they involved the use or employment of a fraud, deception, concealment, suppression, or false pretense, where said uses or employments were engaged in to induce or promote the issuance, distribution, exchange, sale, negotiation, or purchase within or from this state of commodities.

123. Respondents have repeatedly and persistently violated GBL Article 23-A.

124. Respondents' conduct constitutes repeated and persistent illegality in violation of Executive Law § 63(12).

THIRD CAUSE OF ACTION

PURSUANT TO EXECUTIVE LAW § 63(12): ILLEGALITY VIOLATIONS OF GENERAL BUSINESS LAW ARTICLE 23-A (Martin Act Failure to Register - General Business Law § 359-e; 13 N.Y.C.R.R 13)

125. The Attorney General repeats and re-alleges the paragraphs above as if fully stated herein.

126. The acts and practices of Respondents alleged above violated New York General Business Law § 359-e insofar as Respondents are subject to GBL § 359-e (14) and 13 N.Y.C.R.R. 13 and failed to register as a "commodity broker-dealer" or "commodity investment advisor" and failed to register any "commodity salesperson."

127. In separate and discrete transactions involving no fewer than 1,000 individuals, Respondents sold or offered for sale or have purchased or offered to purchase commodities through accounts, agreements or contracts to the public in New York primarily for investment

purposes and engaged in the business of advising such persons as to the advisability of investing in, purchasing, selling or holding commodity contracts.

128. Respondents were not registered with the OAG as a commodity broker-dealer, a commodity salesperson, or a commodity investment advisor and Respondents are not excluded from such registration requirements.

129. Each sale, offer to sell, purchase or offer to purchase a commodity through account agreements or contracts by Respondents is a fraudulent practice that is unlawful under Art. 23-A of the New York General Business Law. Subdivision 14(l) of Section 349-e provides further that the failure to file the required registration statement “shall constitute a fraudulent practice” as that term is defined for purposes of Martin Act.

130. Respondents engaged in a business requiring registration under the Martin Act and knowingly employed two or more persons for the purpose of engaging in conduct requiring registration as a commodity broker-dealer, commodity salesperson, or commodity investment advisor under the Martin Act with the knowledge that they were not so registered.

131. Respondents have repeatedly and persistently violated GBL § 359-e and 13 N.Y.C.R.R. 13.

132. Respondents’ conduct constitutes repeated and persistent illegality in violation of Executive Law § 63(12).

FOURTH CAUSE OF ACTION

PURSUANT TO EXECUTIVE LAW § 63(12): ILLEGALITY VIOLATIONS OF GENERAL BUSINESS LAW ARTICLE 22-A (Deceptive Business Acts and Practices – General Business Law § 349)

133. The Attorney General repeats and re-alleges the paragraphs above as if fully stated herein.

134. GBL § 349 declares it unlawful to engage in deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in the state of New York.

135. Respondents have repeatedly and persistently engaged in deceptive acts and practices in connection with the sale of investments in precious metals to New York citizens.

136. Respondents have engaged in repeated and persistent deceptive acts or practices in violation of GBL § 349.

137. Respondents' conduct constitutes repeated and persistent illegality in violation of Executive Law § 63(12).

FIFTH CAUSE OF ACTION

PURSUANT TO EXECUTIVE LAW § 63(12): ILLEGALITY VIOLATIONS OF GBL § 399-pp

138. The Attorney General repeats and re-alleges the paragraphs above as if fully stated herein.

139. GBL § 399-pp requires telemarketers to register with the New York State Department of State.

140. Lear has repeatedly and persistently violated GBL § 399-pp while conducting business in New York as a telemarketer without registering.

141. Respondents have engaged in repeated and persistent acts or practices in violation of GBL § 399-pp.

142. Respondents' violations of GBL § 399-pp are each deemed a violation of GBL Article 22-A.

143. Respondents' conduct constitutes repeated and persistent illegality in violation of Executive Law § 63(12).

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully demands that the Court issue and order and judgment against Respondents as follows:

A. Permanently enjoining Respondents and their principals, agents, and employees from engaging in the fraudulent, deceptive and illegal acts alleged herein and from violating the Martin Act, Article 23-A of the General Business Law, Article 22-A of the General Business Law, Section 399-pp of the General Business Law and Executive Law § 63(12);

B. Permanently enjoining Respondents from engaging in the business of offering, selling or purchasing commodities or securities, or providing investment advice, within or from the State of New York, and permanently barring Respondents from engaging in any conduct that would require registration under GBL § 359-e or GBL § 359-eee;

C. Permanently enjoining Respondents from acting as a telemarketer in the State of New York;

D. Directing Respondents to comply with the OAG's May 28, 2021 Supplemental Subpoena;

E. Directing Respondents to produce all records of all contacts and transactions with any resident of the State of New York since January 1, 2014 and to provide a full accounting of

all payments received from or made to such individuals, including records identifying the ultimate recipients of any proceeds received by Respondents, such records to include the true identities of Lear's salespersons;

F. Directing Respondents to make full restitution to all residents of the State of New York, including any person who so resided at the time of their transaction, who have entered into any transaction recommended, advised, offered or executed by Respondents together with damages for injuries suffered by such individuals, including interest as permitted by law;

G. Directing Respondents to pay damages caused, directly or indirectly, by the fraudulent and deceptive acts and repeated fraudulent acts and persistent illegality complained of herein plus applicable pre-judgment interest;

H. Directing Respondents to disgorge all amounts obtained in connection with or as a result of the violations of law alleged herein and all moneys obtained in connection with or as a result of the fraudulent practice alleged herein;

I. Directing Respondents to pay penalties for each instance of offer and sale of commodities while unregistered in accordance with New York law;

J. Pursuant to GBL § 350-d, imposing a civil penalty of five thousand dollars for each deceptive act committed by Respondents;

K. Pursuant to GBL § 349-c, imposing a civil penalty of ten thousand dollars for each deceptive act committed by Respondents that impacted individuals aged 65 and older;

L. Pursuant to GBL § 399-pp, imposing a civil penalty of two thousand dollars for each telemarketing call made by Respondents to New York citizens while unlicensed and for each call that violated the prohibitions of GBL § 399-pp;

M. Awarding costs to the State of New York of two thousand dollars against each Respondent pursuant to CPLR § 8303(a)(6);

N. Authorizing Petitioner to docket as a money judgment any order issued by the Court on this motion fixing the amount of money owed by Respondents, including restitution, disgorgement, damages, penalties and costs, pursuant to CPLR § 2222; and

O. Granting such other and further relief as may be just and proper.

Dated: Buffalo, New York
June 17, 2021

LETITIA JAMES
Attorney General of the State of New York

By: Christopher L Boyd
Christopher L. Boyd
Assistant Attorney General

Kenneth J. Haim
Assistant Attorney General

Tanya Trakht
Assistant Attorney General

Peter Pope
Chief of the Investor Protection Bureau
28 Liberty Street
New York, New York 10005
Tel.: (716) 853-8457

Counsel for the People of the State of New York

VERIFICATION

STATE OF NEW YORK)
ERIE COUNTY) ss.:

Christopher L. Boyd, Esq., an attorney and member of the bar of this Court, being duly sworn, deposes and says:

1. I am an Assistant Attorney General in the office of Letitia James, Attorney General of the State of New York, and I am duly authorized to make this verification.

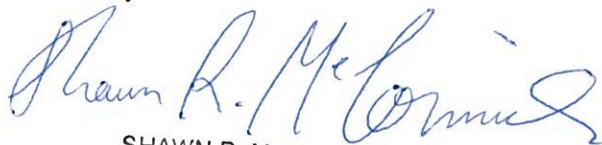
2. I have read the foregoing petition and I know the contents thereof; the same is true to my own knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters I believe them to be true.

The reason this verification is not made by Petitioner is that Petitioner is a body politic. The Attorney General is Petitioner's statutory representative.



Christopher L. Boyd

Sworn to before me this
17th day of June, 2021



SHAWN R. MCCORMICK
Notary Public, State of New York
Qualified in Erie County
No. 01MC6177214
Commission Expires 11/13/2021