

**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
SECURITIES DIVISION**

IN THE MATTER OF DETERMINING) Order No.: S-15-1702-16-CO01
Whether there has been a violation of the)
Securities Act of Washington by:) CONSENT ORDER
)
Scott B. Wilkerson,)
WebRotator, Inc.,)
)
Respondents)

INTRODUCTION

On February 29, 2016, the Securities Administrator of the Securities Division of the Department of Financial Institutions (“Securities Division”) issued a Statement of Charges and Notice of Intent to Enter Order to Cease and Desist, to Impose a Fine, and to Charge Costs (“Statement of Charges”), Order Number S-15-1702-15-SC01, against Respondents Scott B. Wilkerson and WebRotator, Inc. Pursuant to the Securities Act of Washington, RCW 21.20, the Securities Division and Respondents Scott B. Wilkerson and WebRotator, Inc. do hereby enter into this Consent Order in settlement of the matters set forth in the Statement of Charges and as alleged below. Respondents Scott B. Wilkerson and WebRotator, Inc. neither admit nor deny the Findings of Fact and Conclusions of Law as stated below.

FINDINGS OF FACT

Respondents

1. Scott B. Wilkerson (“Wilkerson”) is a Washington resident and President of WebRotator, Inc.
2. WebRotator, Inc. (“WebRotator”) is a Washington corporation that was incorporated on March 4, 2011. The corporation’s principal place of business is in Bellevue, Washington. WebRotator’s

1 primary business purpose is to develop and market software that displays Internet search engine results in a
2 rotating order.

3 **Offering of WebRotator Common Stock**

4 3. From at least March 2011 until August 2015, the Respondents have offered and sold more
5 than \$2.5 million worth of WebRotator common stock to more than 100 shareholders, many of whom are
6 Washington residents. The Respondents have offered and sold shares of WebRotator common stock at
7 \$0.125 cents per share, at \$0.25 cents per share, and at \$1.00 per share. Most of the shares were sold from
8 2013 forward. Many of the shares were offered and sold through word-of-mouth presentations. Some of
9 the investors were friends or family members of Wilkerson, or were introduced to WebRotator by
10 Wilkerson's friends or family members.

11 4. When offering and selling WebRotator stock, the Respondents provided investors with a
12 nondisclosure agreement that required shareholders to maintain the confidentiality of certain information
13 that they received about the company. The Respondents also provided a stock subscription agreement and a
14 business plan. In 2013, WebRotator's attorney drafted a private placement memorandum for a \$25,000,000
15 offering of WebRotator stock, but the Respondents did not give investors a private placement memorandum.
16 From time to time, Wilkerson would send investor newsletters with updates about the company.

18 **WebRotator's Business Activities**

19 5. WebRotator's stated primary business purpose was to develop a rotating display of search
20 engine results for computers or mobile devices. At the same time, the company tried to offer and sell other
21 products and services. WebRotator tried to offer an in-flight entertainment ("IFE") system for airlines.
22 WebRotator tried to launch a music and record production company. WebRotator also tried to develop a
23 texting program that could be used for mobile phone advertising. None of these business activities were
24 successful.
25

In-Flight Entertainment (AeroFi)

1
2 6. In an April 18, 2014 letter to shareholders, Wilkerson misleadingly stated that WebRotator
3 had acquired an in-flight entertainment (“IFE”) company. The letter explained that during 2013,
4 WebRotator’s executive team had attended an in-flight entertainment convention, where they identified a
5 company called “Aerofi” as an attractive acquisition candidate. The letter stated that AeroFi needed
6 WebRotator’s technology and that the two companies would be a “perfect fit.” The letter misleadingly
7 stated that “in just 12 months we have successfully acquired an established In-Flight Entertainment
8 company based in Europe called AeroFi.” In fact, WebRotator never completed the acquisition of AeroFi.
9 Instead, WebRotator paid \$75,000 for AeroFi’s expenses and overhead costs.

10 7. The Respondents each failed to disclose WebRotator and Aerofi’s business and financial
11 operating history. The Respondents each failed to disclose the amount of money that would be required to
12 develop an in-flight entertainment system. The Respondents each failed to disclose the competition for
13 providing in-flight entertainment. The Respondents each failed to disclose the technology risks of providing
14 in-flight entertainment. The Respondents each failed to disclose governmental regulations that could affect
15 in-flight entertainment, including aviation and communication regulations.
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Music and Records Production (Rotator Records)

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18 8. In his April 18, 2014 letter to shareholders, Wilkerson misleadingly stated that WebRotator
19 had launched a music division called Rotator Records. Wilkerson stated that Rotator Records represented
20 four artists who were getting ready for a worldwide tour. Later, in an October 2015 letter to shareholders,
21 Wilkerson stated that “this division [Rotator Records] will not be launched until we hit certain milestones of
22 development in our other two divisions: Search and IFE.”

23 9. The Respondents each failed to disclose the business and operating history of Rotator
24 Records. The Respondents each failed to disclose why Rotator Records was not being currently developed,
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1 what milestones needed to be reached before development, and why Rotator Records had significantly less
2 potential than the company's other two divisions. The Respondents each failed to disclose the amount of
3 funds that would be required for Rotator Records. The Respondents each failed to disclose the copyright
4 status, if any, for whatever music was played or produced; the amount of any music produced; the format of
5 any music produced; the terms of the artists' contracts; the terms of any music distribution contracts; and the
6 marketing efforts that were made, if any, to sell music.

7 *Mobile Phone Texting*

8 10. WebRotator and Wilkerson unsuccessfully attempted to develop a mobile phone texting
9 business and they failed to disclose to investors the business failure and the costs associated with the texting
10 business. In March 2013, Wilkerson began working for WebRotator full-time, and Wilkerson contacted a
11 business associate who specialized in using text messaging for advertising and social media branding.
12 Between approximately August 2013 and December 2013, Wilkerson and his business associate worked on
13 trying to develop a mobile phone texting business that would incorporate the WebRotator display concept.
14 WebRotator spent approximately \$750,000 to try and create a texting business. WebRotator's texting
15 business was not successful and the concept was abandoned.
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17 **WebRotator's Search Engine Display Technology**

18 11. In a January 2012 Executive Summary, the Respondents misleadingly stated that WebRotator
19 had already developed "the world's first hands-free, visually rotating search experience that provides a
20 refreshing user interactive web search from home, work or mobile device." In fact, the software had never
21 been marketed or completed and it was still in a prototype phase.

22 12. Approximately ten years ago, Wilkerson and his brother-in-law, a software developer, began
23 creating a product that eventually led to the development of the WebRotator software. Wilkerson's brother-
24 in-law developed software for displaying rotating advertisements on a digital screen, but the hardware costs
25

1 were too expensive and the concept was not commercially successful. WebRotator has now paid more than
2 \$230,000 to an outside consulting firm for development of the search engine software. WebRotator still
3 owes the outside consulting firm approximately \$100,000.

4 13. In November 2013, Wilkerson, his brother-in-law, and his texting business associate were
5 named as the inventors on a patent application for “content rotating software” that was filed with the U.S.
6 Patent and Trademark Office. According to the U.S. Patent and Trademark Office website, the patent
7 application was subject to a Non-Final Rejection on September 2, 2015 and was subject to a Final Rejection
8 that was mailed on April 7, 2016. The patent application is still being pursued through a Request for
9 Continued Examination.

10 **Undisclosed Investment Risks**

11 *Intellectual Property Risks*

12 14. When offering and selling or offering to purchase WebRotator stock, the Respondents each
13 failed to disclose to investors that the company’s web rotating technology had not been completed and that
14 the payments to the outside consulting firm were not completed. The Respondents failed to disclose that the
15 software was still in the prototype phase and that it had not been tested in any commercial application. The
16 Respondents failed to disclose that the software had not been copyrighted.

17 15. When offering and selling or offering to purchase WebRotator stock, the Respondents each
18 failed to disclose to investors that Wilkerson, his brother-in-law, and his texting business associate were
19 named as the inventors on the web rotating technology patent application. The Respondents each failed to
20 disclose that there was no written agreement that specified the percentage that each of the inventors would
21 own in the technology. The Respondents each failed to disclose that WebRotator did not have any licensing
22 agreement for the use of the web rotating technology.
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1 16. When offering and selling or offering to purchase WebRotator stock, the Respondents each
2 failed to disclose to investors the costs associated with pursuing a patent application. The Respondents each
3 failed to disclose that WebRotator has spent over \$150,000 for its United States web rotating patent
4 application and that it was planning to spend another \$250,000 for international patent filing fees for the
5 same technology.

6 17. When offering or selling or offering to purchase WebRotator stock, the Respondents each
7 failed to disclose to investors the status of the web rotating patent application that was filed in the United
8 States and paid for with company funds. The Respondents each failed to disclose that the U.S. patent
9 application was rejected.

10 *Additional Business Risks*

11 18. When offering and selling or offering to purchase WebRotator stock, the Respondents each
12 failed to disclose specific business risks about the investment. The Respondents each failed to disclose the
13 company's business and operating history, including its history of losses and its significant employee
14 turnover. The Respondents each failed to disclose that investors might lose all of their investment due to the
15 company's undercapitalization. The Respondents each failed to disclose additional technology risks,
16 including the risk of developing outdated technology and the risk of having no software developers on staff.
17 Respondents each failed to disclose the nature of competition within the software, music, and in-flight
18 entertainment industries.

19 *Undisclosed Information about Wilkerson*

20
21 19. When offering and selling or offering to purchase WebRotator stock, the Respondents each
22 failed to disclose the shareholdings of Wilkerson and his brother-in-law. Wilkerson and his brother-in-law
23 each own five million shares of WebRotator stock, which together represents about 30% of the ownership of
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1 WebRotator. The Respondents each failed to disclose the amount of consideration that was paid for those
2 shares.

3 20. When offering and selling or offering to purchase WebRotator stock, the Respondents each
4 failed to disclose to investors the amount of Wilkerson's annual salary and other compensation. Wilkerson
5 received a salary of \$115,000 in 2013 and \$152,000 in 2014. Wilkerson's annual salary for 2016 is
6 \$125,000.

7 21. The Respondents failed to disclose other compensation paid by WebRotator to Wilkerson.
8 For example, in November 2013, WebRotator paid approximately \$9,500 for Wilkerson and the
9 WebRotator CFO to stay at the Ritz-Carlton hotel in Kapalua, Hawaii for one week. In September 2013,
10 WebRotator paid approximately \$5,000 to Saks Fifth Avenue for Wilkerson's business suits and other
11 clothing. In September 2013, WebRotator paid more than \$16,000 to Nordstrom for Wilkerson's business
12 suits and other clothing. Wilkerson testified before the Securities Division that these amounts were included
13 in his 2013 annual salary payments.

14 22. When offering and selling or offering to purchase WebRotator stock, the Respondents each
15 failed to disclose that Wilkerson has filed for personal bankruptcy twice within the past five years.
16 Wilkerson filed for Chapter 7 bankruptcy on June 13, 2011. That bankruptcy was discharged on September
17 15, 2011. Wilkerson filed for Chapter 13 bankruptcy on February 7, 2014. That bankruptcy was terminated
18 on March 19, 2014.

20 **Financial Projections**

21 23. When offering and selling WebRotator stock, the Respondents each provided investors with
22 written offering materials that included financial projections that had no reasonable basis, given the
23 company's operating history. In sworn testimony before the Securities Division on October 30, 2015,
24 Wilkerson stated that "[W]e have never made any money, we're not making money." By the end of 2015,
25

1 WebRotator had never successfully marketed a single product and had never generated any significant
2 revenues.

3 24. When offering and selling WebRotator stock, the Respondents provided investors with an
4 August 2011 business plan that contained misleading financial projections. The plan included *pro forma*
5 financial statements that showed a projected net profit of more than \$2.3 million for 2011, more than \$7.5
6 million for 2012, \$13.9 million for 2013, and \$36 million for 2014.

7 25. When offering and selling WebRotator stock, the Respondents provided investors with a
8 brochure that was prepared sometime around 2013 that contained misleading financial projections. The
9 projections showed gross profits of \$5.4 million for 2014, \$69.8 million for 2015, and \$149.4 million for
10 2016.

11 **Misleading Communications**

12 *Valuation Increase and Dividend Announcement*

13 26. In an April 2014 letter to shareholders, the Respondents misleadingly stated that the value of
14 WebRotator's stock was about to double and that the company was preparing to pay dividends. In an April
15 18, 2014 letter to WebRotator shareholders, Wilkerson stated that "Your investment in this company has
16 already increased as we will be raising the valuation to \$2.00 a share effective May 1, 2014." The
17 Respondents each failed to disclose to investors that WebRotator had no significant assets and that the \$2.00
18 per share price was an arbitrary price that had no relationship to the company's actual value. The letter
19 further stated that "We will also be announcing a dividend plan in 2015." The Respondents each failed to
20 disclose to some investors that WebRotator had a history of operating losses and had never generated any
21 earnings for making dividend payments.
22

23 *November 15, 2015 Email to Shareholders*
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1 to disclose that Wilkerson’s patent for “web rotating software” was rejected by the U.S. Patent and
2 Trademark Office.

3 *December 7, 2015 Conference Call*

4 30. In a December 7, 2015 one-way telephone conference call for shareholders, where
5 shareholders were not permitted to ask any questions, Wilkerson falsely claimed that he could not provide
6 detailed information about WebRotator’s current activities due to “insider trading restrictions.” In fact,
7 insider trading laws do not generally apply to private companies whose stock is not publicly traded.

8 **Registration Status**

9 31. On September 25, 2013, WebRotator, Inc. filed a \$5,000,000 Regulation D, Rule 506(b)
10 exemption filing with the U.S. Securities and Exchange Commission. The filing was electronically signed
11 by Wilkerson. The filing required a \$250,000 minimum investment, but no WebRotator stock was ever
12 sold pursuant to that exemption. Instead, the Respondents continued making offers and sales of
13 WebRotator stock for less than \$250,000.

14 32. WebRotator stock has never been registered in the state of Washington, and WebRotator has
15 never filed a claim of exemption with the Securities Administrator of the State of Washington.

16 33. Wilkerson has never been registered as a securities broker-dealer or salesperson in the state
17 of Washington.

18
19 Based upon the above Findings of Fact, the following Conclusions of Law are made:

20 **CONCLUSIONS OF LAW**

21 1. The offer and/or sale of stock described above constitute the offer and/or sale of a security, as
22 defined in RCW 21.20.005(14) and (17).

1 2. Scott B. Wilkerson and WebRotator, Inc. have each violated RCW 21.20.140, because, as
2 set forth in the Findings of Fact, Respondents offered and/or sold securities for which no registration is on
3 file with the Securities Administrator.

4 3. Scott B. Wilkerson has violated RCW 21.20.040 by offering and/or selling said securities
5 while not being registered as a securities broker-dealer or salesperson in the state of Washington.

6 4. Scott B. Wilkerson and WebRotator, Inc. have each violated RCW 21.20.010(2), because, as
7 set forth in the Tentative Findings of Fact, in connection with the offer or sale of securities, Respondents
8 each made untrue statements of material fact or omitted to state material facts necessary to make the
9 statements made, in the light of the circumstances under which they were made, not misleading.

10 Based upon the foregoing and finding it in the public interest:

11 **CONSENT ORDER**

12 IT IS AGREED AND ORDERED that Respondents Scott B. Wilkerson and WebRotator, Inc., their
13 agents, and employees each shall cease and desist from violating RCW 21.20.140, the securities registration
14 section of the Securities Act of Washington.

15 IT IS FURTHER AGREED AND ORDERED that Respondent Scott B. Wilkerson, his agents, and
16 employees each shall cease and desist from violating RCW 21.20.040, the securities salesperson and broker-
17 dealer registration section of the Securities Act of Washington.

18 IT IS FURTHER AGREED AND ORDERED that Respondents Scott B. Wilkerson and
19 WebRotator, Inc., their agents and employees each shall cease and desist from any violation of RCW
20 21.20.010, the anti-fraud section of the Securities Act of Washington.

21 IT IS FURTHER AGREED AND ORDERED that Respondent Scott B. Wilkerson shall be liable for
22 and shall pay a fine of \$25,000, with one payment of \$2,500 due prior to the entry of this order and nine
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1 additional payments of \$2,500 due each month for nine consecutive months following the entry of this
2 order. The consecutive monthly payments shall be due on the first business day of each month.

3 IT IS FURTHER AGREED AND ORDERED that Scott B. Wilkerson shall be liable for and shall
4 pay investigative costs of \$5,000. The investigative costs shall be paid in two monthly installments of
5 \$2,500 each. The first \$2,500 payment shall be due within one month after the fine has been paid in full.
6 The remaining payment shall be due one month later.

7 IT IS FURTHER AGREED that if Scott B. Wilkerson fails to make any monthly payment, the fines
8 and investigative costs imposed as to Scott B. Wilkerson shall become immediately due and payable, and
9 the Securities Division may seek enforcement of the Consent Order pursuant to RCW 21.20.395.

10 IT IS FURTHER AGREED that the Securities Division has jurisdiction to enter this Consent Order.

11 IT IS FURTHER AGREED that Respondents Scott B. Wilkerson and WebRotator, Inc. entered into
12 this Consent Order freely and voluntarily and with a full understanding of its terms and significance.
13

14 IT IS FURTHER AGREED that in consideration of the foregoing, Respondents, Scott B. Wilkerson
15 and WebRotator, Inc., each waive their right to a hearing and to judicial review of this matter pursuant to
16 RCW 21.20.440 and Chapter 34.05 RCW.

17 **WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.**

18
19 Signed this ___22nd___ day of _____July_____, 2016

20 Signed by:

21 WebRotator, Inc.

22
23 /s/ _____
24 Scott B. Wilkerson
25 President

1 Signed by:

2
3 /s/ _____
4 Scott B. Wilkerson, Individually

5 Approved as to form by:

6
7 /s/ _____
8 Derek A. Bishop, Attorney for Respondents
9 WSBA #39363

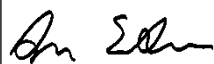
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11 SIGNED and ENTERED this 5th day of August, 2016

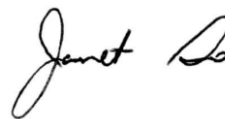
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15 _____
16 William M. Beatty
17 Securities Administrator

16 Approved by:

16 Presented by:

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20 _____
21 Suzanne Sarason
22 Chief of Enforcement

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20 _____
21 Janet So
22 Financial Legal Examiner

21 Reviewed by:

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25 _____
26 Robert Kondrat
27 Financial Legal Examiner Supervisor

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**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
SECURITIES DIVISION**

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) NOTICE OF INTENT TO ENTER
Scott B. Wilkerson,) ORDER TO CEASE AND DESIST,
WebRotator, Inc.,) TO IMPOSE A FINE, AND TO
) CHARGE COSTS
Respondents)

THE STATE OF WASHINGTON TO: Scott Brian Wilkerson
WebRotator, Inc.

STATEMENT OF CHARGES

Please take notice that the Securities Administrator of the state of Washington has reason to believe that Respondents, Scott B. Wilkerson and WebRotator, Inc., have each violated the Securities Act of Washington. The Securities Administrator believes those violations justify the entry of an order against the Respondents to cease and desist from such violations and to charge costs pursuant to RCW 21.20.390, and under RCW 21.20.395 to impose a fine. The Securities Administrator finds as follows:

TENTATIVE FINDINGS OF FACT

Respondents

1. Scott B. Wilkerson (“Wilkerson”) is a Washington resident and President of WebRotator, Inc.
2. WebRotator, Inc. (“WebRotator”) is a Washington corporation that was incorporated on March 4, 2011. The corporation’s principal place of business is in Bellevue, Washington. WebRotator’s primary business purpose is to develop and market software that displays Internet search engine results in a rotating order.

Offering of WebRotator Common Stock

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2 3. From at least March 2011 until August 2015, the Respondents have offered and sold more
3 than \$2.5 million worth of WebRotator common stock to more than 100 shareholders, many of whom are
4 Washington residents. The Respondents have offered and sold shares of WebRotator common stock at
5 \$0.125 cents per share, at \$0.25 cents per share, and at \$1.00 per share. Most of the shares were sold from
6 2013 forward. Many of the shares were offered and sold through word-of-mouth presentations. Some of
7 the investors were friends or family members of Wilkerson, or were introduced to WebRotator by
8 Wilkerson's friends or family members.

9 4. When offering and selling WebRotator stock, the Respondents provided investors with a
10 nondisclosure agreement that required shareholders to maintain the confidentiality of certain information
11 that they received about the company. The Respondents also provided a stock subscription agreement and a
12 business plan. In 2013, WebRotator's attorney drafted a private placement memorandum for a \$25,000,000
13 offering of WebRotator stock, but the Respondents did not give investors a private placement memorandum.
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WebRotator's Failed Business Activities

16 5. WebRotator's stated primary business purpose was to develop a rotating display of search
17 engine results for computers or mobile devices. At the same time, the company tried to offer and sell other
18 products and services. WebRotator tried to offer an in-flight entertainment ("IFE") system for airlines.
19 WebRotator tried to launch a music and record production company. WebRotator also tried to develop a
20 texting program that could be used for mobile phone advertising. None of these business activities were
21 successful.
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2 6. In an April 18, 2014 letter to shareholders, Wilkerson misleadingly stated that WebRotator
3 had acquired an in-flight entertainment (“IFE”) company. The letter explained that during 2013,
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5 company called “Aerofi” as an attractive acquisition candidate. The letter stated that AeroFi needed
6 WebRotator’s technology and that the two companies would be a “perfect fit.” The letter misleadingly
7 stated that “in just 12 months we have successfully acquired an established In-Flight Entertainment
8 company based in Europe called AeroFi.” In fact, WebRotator had never acquired AeroFi. Instead,
9 WebRotator paid \$75,000 for AeroFi’s expenses and overhead costs.

10 7. The Respondents each failed to disclose WebRotator and Aerofi’s business and financial
11 operating history. The Respondents each failed to disclose the amount of money that would be required to
12 develop an in-flight entertainment system. The Respondents each failed to disclose the competition for
13 providing in-flight entertainment. The Respondents each failed to disclose the technology risks of providing
14 in-flight entertainment. The Respondents each failed to disclose governmental regulations that could affect
15 in-flight entertainment, including aviation and communication regulations.
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20 four artists who were getting ready for a worldwide tour. Later, in an October 2015 letter to shareholders,
21 Wilkerson stated that “this division [Rotator Records] will not be launched until we hit certain milestones of
22 development in our other two divisions: Search and IFE.”

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24 Records. The Respondents each failed to disclose why Rotator Records was not being currently developed,
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1 what milestones needed to be reached before development, and why Rotator Records had significantly less
2 potential than the company's other two divisions. The Respondents each failed to disclose the amount of
3 funds that would be required for Rotator Records. The Respondents each failed to disclose the copyright
4 status, if any, for whatever music was played or produced; the amount of any music produced; the format of
5 any music produced; the terms of the artists' contracts; the terms of any music distribution contracts; and the
6 marketing efforts that were made, if any, to sell music.

7 *Mobile Phone Texting*

8 10. WebRotator and Wilkerson unsuccessfully attempted to develop a mobile phone texting
9 business and they failed to disclose to investors the business failure and the costs associated with the texting
10 business. In March 2013, Wilkerson began working for WebRotator full-time, and Wilkerson contacted a
11 business associate who specialized in using text messaging for advertising and social media branding.
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13 trying to develop a mobile phone texting business that would incorporate the WebRotator display concept.
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17 **WebRotator's Search Engine Display Technology**

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19 had already developed "the world's first hands-free, visually rotating search experience that provides a
20 refreshing user interactive web search from home, work or mobile device." In fact, the software was never
21 marketed or completed and the existing software is still in a prototype phase.

22 12. Approximately ten years ago, Wilkerson and his brother-in-law, a software developer, began
23 creating a product that eventually led to the development of the WebRotator software. Wilkerson's brother-
24 in-law developed software for displaying rotating advertisements on a digital screen, but the hardware costs
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1 were too expensive and the concept was not commercially successful. WebRotator has now paid more than
2 \$230,000 to an outside consulting firm for development of the existing software. WebRotator still owes the
3 outside consulting firm more than \$100,000.

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5 named as the inventors on a patent application for “content rotating software” that was filed with the U.S.
6 Patent and Trademark Office. According to the U.S. Patent and Trademark Office website, the patent was
7 subject to a Non-Final Rejection on September 2, 2015.

8 **Undisclosed Investment Risks**

9 *Intellectual Property Risks*

10 14. When offering and selling or offering to purchase WebRotator stock, the Respondents each
11 failed to disclose to investors that the company’s web rotating technology had not been completed and that
12 WebRotator did not have full rights to the existing software programming code until the payments to the
13 outside consulting firm were completed. The Respondents failed to disclose that the software was still in
14 the prototype phase and that it had not been tested in any commercial application. The Respondents failed
15 to disclose that the software had not been copyrighted.

16 15. When offering and selling or offering to purchase WebRotator stock, the Respondents each
17 failed to disclose to investors that WebRotator did not have a patent for the web rotating technology. The
18 Respondents each failed to disclose that Wilkerson, his brother-in-law, and his texting business associate
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20 failed to disclose that there is no written agreement that specifies the percentage that each of the inventors
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2 shares.

3 20. When offering and selling or offering to purchase WebRotator stock, the Respondents each
4 failed to disclose to investors the amount of Wilkerson's annual salary and other compensation. Wilkerson
5 received a salary of \$115,000 in 2013 and \$152,000 in 2014. Wilkerson's annual salary for 2016 is
6 \$125,000.

7 21. The Respondents failed to disclose other compensation paid by WebRotator to Wilkerson.
8 For example, in November 2013, WebRotator paid approximately \$9,500 for Wilkerson and the
9 WebRotator CFO to stay at the Ritz-Carlton hotel in Kapalua, Hawaii for one week. In September 2013,
10 WebRotator paid approximately \$5,000 to Saks Fifth Avenue for Wilkerson's business suits and other
11 clothing. In September 2013, WebRotator paid more than \$16,000 to Nordstrom for Wilkerson's business
12 suits and other clothing.

13 22. When offering and selling or offering to purchase WebRotator stock, the Respondents each
14 failed to disclose that Wilkerson has filed for personal bankruptcy twice within the past five years.
15 Wilkerson filed for Chapter 7 bankruptcy on June 13, 2011. That bankruptcy was discharged on September
16 15, 2011. Wilkerson filed for Chapter 13 bankruptcy on February 7, 2014. That bankruptcy was terminated
17 on March 19, 2014.

18
19 **Misleading Financial Projections**

20 23. When offering and selling WebRotator stock, the Respondents each provided investors with
21 written offering materials that included financial projections that had no reasonable basis, given the
22 company's operating history. The Respondents each failed to provide investors with historical operating
23 results to compare with the projections. In sworn testimony before the Securities Division on October 30,
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1 2015, Wilkerson stated that “[W]e have never made any money, we’re not making money.” By the end of
2 2015, WebRotator had never successfully marketed a single product and had never generated any revenues.

3 24. When offering and selling WebRotator stock, the Respondents provided investors with an
4 August 2011 business plan that contained misleading financial projections. The plan included *pro forma*
5 financial statements that showed a projected net profit of more than \$2.3 million for 2011, more than \$7.5
6 million for 2012, \$13.9 million for 2013, and \$36 million for 2014. The assumptions underlying the
7 projections were not disclosed.

8 25. When offering and selling WebRotator stock, the Respondents provided investors with a
9 brochure that was prepared sometime around 2013 that contained misleading financial projections. The
10 projections showed gross profits of \$5.4 million for 2014, \$69.8 million for 2015, and \$149.4 million for
11 2016. The assumptions underlying the projections were not disclosed. The projections were also
12 misleading because the projected profits were stated on a gross, rather than a net, basis.

13 **Misleading and Fraudulent Communications**

14 *Misleading Valuation Increase and Dividend Announcement*

15 26. In an April 2014 letter to shareholders, the Respondents misleadingly stated that the value of
16 WebRotator’s stock was about to double and that the company was preparing to pay dividends. In an April
17 18, 2014 letter to WebRotator shareholders, Wilkerson stated that “Your investment in this company has
18 already increased as we will be raising the valuation to \$2.00 a share effective May 1, 2014.” The
19 Respondents each failed to disclose to investors that WebRotator had no significant assets and that the \$2.00
20 per share price was an arbitrary price that had no relationship to the company’s actual value. The letter
21 further stated that “We will also be announcing a dividend plan in 2015.” The Respondents each failed to
22 disclose to investors that WebRotator had a history of operating losses and had never generated any earnings
23 for making dividend payments.
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November 15, 2015 Email to Shareholders

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2 27. On November 15, 2015, Wilkerson and WebRotator sent a misleading email to shareholders
3 concerning the Securities Division's investigation. The Respondents stated that an investor questionnaire
4 from the Department of Financial Institutions was "part of the normal DFI process to verify that we are
5 compliant with our investor files as we enter our IPO process." In fact, the questionnaire was part of an
6 enforcement investigation that was initiated by the Securities Division to determine whether the
7 Respondents had violated the Securities Act of Washington and was not part of an initial public offering
8 review process. The Respondents also told shareholders that any information regarding WebRotator was
9 strictly confidential and was subject to a non-disclosure agreement. The Respondents stated that the sharing
10 of information by investors would be a violation of the non-disclosure agreement and "may result in legal
11 action." However, the company's nondisclosure agreement did not address shareholder cooperation with
12 government agencies who might investigate the company and its representatives for possible violations of
13 securities laws.

Misleading and Fraudulent Rescission Offer

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16 28. After sending the November 15 email message to shareholders, the Respondents made a
17 written offer to buy back any shareholder's WebRotator stock at its purchase price. When making the
18 offer, the Respondents each failed to disclose that WebRotator did not have sufficient assets to make full
19 rescission to all investors. The Respondents also failed to disclose to investors that prior to the making of
20 the rescission offer, at least three shareholders had already requested a return of their investment, but had
21 never been repaid.

22 29. When making the rescission offer to investors, the Respondents also failed to disclose other
23 material information about WebRotator to the investors. The Respondents each failed to disclose the
24 business and operating history of WebRotator, including the company's record of operating losses, its lack
25

1 of revenues, and its failed business ventures. They each failed to disclose that the “web rotating software”
2 patent application that was paid for with company funds was not owned by the company. They each failed
3 to disclose that Wilkerson’s patent for “web rotating software” was rejected by the U.S. Patent and
4 Trademark Office. They each failed to disclose that WebRotator did not own any completed software.

5 *December 7, 2015 Conference Call*

6 30. In a December 7, 2015 one-way telephone conference call for shareholders, where
7 shareholders were not permitted to ask any questions, Wilkerson falsely claimed that he could not provide
8 detailed information about WebRotator’s current activities due to “insider trading restrictions.” In fact,
9 insider trading laws do not generally apply to private companies whose stock is not publicly traded.

10 **Registration Status**

11 31. On September 25, 2013, WebRotator, Inc. filed a \$5,000,000 Regulation D, Rule 506(b)
12 exemption filing with the U.S. Securities and Exchange Commission. The filing was electronically signed
13 by Wilkerson. The filing required a \$250,000 minimum investment, but no WebRotator stock was ever
14 sold pursuant to that exemption. Instead, the Respondents continued making offers and sales of
15 WebRotator stock for less than \$250,000.

16 32. WebRotator stock has never been registered in the state of Washington, and WebRotator has
17 never filed a claim of exemption with the Securities Administrator of the State of Washington.

18 33. Wilkerson has never been registered as a securities broker-dealer or salesperson in the state
19 of Washington.

20
21 Based upon the above Tentative Findings of Fact, the following Conclusions of Law are made:

22 **CONCLUSIONS OF LAW**

23 1. The offer and/or sale of stock described above constitute the offer and/or sale of a security, as
24 defined in RCW 21.20.005(14) and (17).
25

1 2. Scott B. Wilkerson and WebRotator, Inc. have each violated RCW 21.20.140, because, as
2 set forth in the Tentative Findings of Fact, Respondents offered and/or sold securities for which no
3 registration is on file with the Securities Administrator.

4 3. Scott B. Wilkerson has violated RCW 21.20.040 by offering and/or selling said securities
5 while not being registered as a securities broker-dealer or salesperson in the state of Washington.

6 4. Scott B. Wilkerson and WebRotator, Inc. have each violated RCW 21.20.010(2), because, as
7 set forth in the Tentative Findings of Fact, in connection with the offer or sale of securities, Respondents
8 each made untrue statements of material fact or omitted to state material facts necessary to make the
9 statements made, in the light of the circumstances under which they were made, not misleading

10 **NOTICE OF INTENT TO ORDER RESPONDENTS TO CEASE AND DESIST**

11 Based upon the above Tentative Findings of Fact and Conclusions of Law, the Securities
12 Administrator intends to order, pursuant to RCW 21.20.390(1), that Respondents, Scott B. Wilkerson and
13 WebRotator, Inc., and their agents and employees each shall cease and desist from any violations of RCW
14 21.20.010, RCW 21.20.040, and RCW 21.20.140.

15 **NOTICE OF INTENT TO IMPOSE A FINE**

16 Pursuant to RCW 21.20.395, and based upon the Tentative Findings of Fact and Conclusions of
17 Law, the Securities Administrator intends to order that Respondent Scott B. Wilkerson shall be liable for
18 and shall pay a fine of \$25,000.

19 **NOTICE OF INTENT TO CHARGE COSTS**

20 Pursuant to 21.20.390, and based upon the Tentative Findings of Fact and Conclusions of Law, the
21 Securities Administrator intends to order that Respondent Scott B. Wilkerson shall be liable for and shall
22 pay the costs, fees, and other expenses incurred in the administrative investigation and hearing of this
23 matter, in an amount not less than \$5,000.
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AUTHORITY AND PROCEDURE

This Statement of Charges is entered pursuant to the provisions of Chapter 21.20 RCW and is subject to the provisions of Chapter 34.05 RCW. Respondents may each make a written request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this Order. If a Respondent does not make a hearing request in the time allowed, the Securities Administrator intends to adopt the above Tentative Findings of Fact and Conclusions of Law as final and to enter a permanent order to cease and desist as to that Respondent, to impose any fines sought against that respondent, and to charge any costs sought against that Respondent.

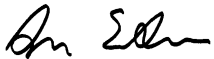
Signed and Entered this 29th day of February, 2016



William M. Beatty
Securities Administrator

Approved by:

Presented by:



Suzanne Sarason
Chief of Enforcement

Janet So
Financial Legal Examiner

Reviewed by:



Robert Kondrat
Financial Legal Examiner Supervisor