

DISTRICT COURT, LARIMER COUNTY, STATE OF COLORADO Court Address: 201 Laporte Ave., Fort Collins, CO 80521	DATE FILED May 28, 2025 8:44 AM FILING ID: 3BDD24A39CC48 CASE NUMBER: 2025CV30491 COURT USE ONLY
Plaintiff(s): DAVID ELZEA, DEBORAH ELZEA-JOSTES, MARK ZYK and RHONA FLANAGAN, Defendant(s): NAVIGATION WEALTH MANAGEMENT, INC. and ADAM BRUNIN.	
Jeffrey Pederson, # 30177 LAW OFFICES OF JEFFREY PEDERSON, PC 5619 DTC Pkwy, Suite 1100, Greenwood Village, CO 80111 Tele: 303-300-5022 jdp@jpedersonlaw.com	Case No.: 2025CV30491 Div.: 5A
AMENDED COMPLAINT AND JURY DEMAND	

PLAINTIFFS, Mark Zyk, Rhona Flanagan, David Elzea and Deborah Elzea-Jostes, by and through their counsel and for their Complaint and Jury Demand state the following:

I. PARTIES

1. Plaintiffs David Elzea and Deborah Elzea-Jostes (“Elzea Plaintiffs”) reside in Loveland, Colorado. They retained the services of Defendants to manage their retirement savings.

2. Plaintiffs Mark Zyk and Rhona Flanagan (“Zyk Plaintiffs”) reside in Fort Collins, Colorado. They retained the services of Defendants to manage their life savings.

3. Defendant Adam Brunin (“Brunin”) is a registered investment advisor representative and resident of Colorado who, at all relevant times, acted as an investment advisor to Plaintiffs. At all relevant times, he was the principal, officer, actual agent, ostensible, control person and alter ego of Defendant Navigation Wealth Management, Inc.

4. Defendant Navigation Wealth Management, Inc. is a Colorado business entity engaged in providing investment advisory services, with its principal office located at 2038 Caribou Dr., Unit 100, Fort Collins, CO 80525. This Defendant is responsible not only for its own misconduct but also vicariously responsible for Brunin’s conduct.

II. JURISDICTION AND VENUE

5. Jurisdiction and venue are proper in this Court under C.R.C.P. 98. Defendants reside and conduct business in this county and the wrongful acts alleged herein occurred within Larimer County, State of Colorado.

6. Further, Defendants availed themselves to the jurisdiction of Colorado by being licensed by the State of Colorado and by selling securities and investment advisory services to residents of Colorado.

7. No arbitration agreement exists between the parties.

III. GENERAL ALLEGATIONS

8. Elzea Plaintiffs became investment advisory clients of Defendants in 2021.

9. Zyk Plaintiffs became investment advisory clients of Defendants in January 2024.

A. Elzea Plaintiffs

10. Plaintiffs were not sophisticated investors and were fearful of losses as they had sustained during the Covid-19 crash.

11. Defendants held themselves out as registered investment advisers. In this capacity, Plaintiffs and Defendants entered into an investment advisory relationship where Defendants had discretionary authority to invest Plaintiff's portfolio in a manner consistent with her best interests.

12. In March 2024, the Elzea Plaintiffs requested a meeting to discuss Deborah Elzea-Jostes' early retirement. At the time, David Elzea was already 65 years of age.

13. At the March meeting, Elzea Plaintiffs wanted to discuss fixed investments. They had recently gone to a seminar of a rival investment advisor who promised 5% annual returns with fixed investments.

14. Fixed investments have no or very small risk for loss and this is a fact known by Brunin at the time.

15. The Elzea Plaintiffs wanted to discuss fixed investments as a safe way to fund their retirement.

16. Brunin responded that they should not be in fixed investments and he could obtain returns of "5% all day long" and indicated that the investments they had seen were unwise.

17. Defendants presented with the results of his algorithm showing best and worst case scenarios, and both represent the funds growing significantly and not suffering losses.

18. Defendants assured Plaintiffs that their existing savings were sufficient for Plaintiff Deborah Elzea-Jostes to also retire—despite her being well below retirement age and the couple holding a \$550,000 mortgage, with a daughter who suffers from disabilities.

19. One week later, in reliance upon these assurances, Plaintiff Deborah Elzea-Jostes retired from her career to devote her time to meaningful volunteer work in children’s health.

20. Elzea Plaintiffs repeatedly emphasized that they were not sophisticated about markets, returns or risks and had elected to go with a professional, so they could rely upon Defendant’s expertise.

21. Elzea Plaintiffs told Brunin that they wanted to know what type of return they could safely anticipate. They told Brunin that another advisor that they spoke to told them that he could obtain a 5% yearly return with little to no risk. Brunin responded that he could get a much greater return with no risk.

22. Elzea Plaintiffs relied upon the representation of Brunin that the strategy that he would employ would have no risk.

23. Defendants exercised discretionary control over the Elzea Plaintiffs’ accounts and invested 100% of their assets in equities—initially in S&P 500 stocks and later shifted entirely to small-cap equities in the Russell 2000 index.

24. This asset allocation was inconsistent with the Elzea Plaintiffs’ risk tolerance, the industry standard for retirees and the fundamental principles of diversification.

25. Defendants utilized algorithms to execute the trades. These algorithms often triggered the trades in question without oversight from licensed advisors.

26. Defendants continued to engage in market timing and other risky strategies, which proved to be wrong, including panic selling after a Japanese yen report caused the S & P 500 market to dip 11% in a single day, only to rebound days later.

27. An appropriate investment allocation and management would not have been susceptible to such volatility.

28. Defendant's faulty attempts at market timing, reliance on faulty proprietary algorithms and overall risk taking and lack of diversification, resulted in an estimated \$210,000 in lost portfolio value from March to September 2024.

29. Plaintiffs requested an urgent meeting with him the prior week, and he delayed the meeting, explaining in writing that he would be on vacation.

30. On August 4, 2024, there was a sale of all of the Elzea Plaintiff's equities resulting in a loss of over \$200,000 and the sale was performed by Defendants while the principal and their appointed representative, Adam Bruin, was out of office on vacation.

31. When Defendant Brunin was available six days after the meeting request, the damage had been done, as all of their assets held in equities had been moved to cash assets by one of Defendant's colleagues, none of whom are trading qualified, or by an automated trading system while he was out of office.

32. Review of the ADV records of Defendants' indicate that Brunin would have been the only licensed person in the office, and that his vacation left no representative to oversee the automated trading.

33. Defendant admitted in phone calls to both Elzea Plaintiffs after the sale that selling equities at a market low was not aligned with either his instincts or his professional experience, but that his algorithms were responsible.

34. Defendant also admitted in these calls that Elzea Plaintiffs' anger was justified and that all of his clients were similarly angry at him.

35. With this admission, Elzea Plaintiffs learned that Defendant treated all client funds in the same way, without regard to risk tolerance, retired status, or objectives.

36. Meanwhile, the S&P 500 saw record gains of approximately 22% during this same period, and interest-bearing accounts offered risk-free returns of approximately 5%.

37. Defendants' conduct violated both the duty of care and fiduciary duties owed to Plaintiffs under Colorado law.

38. At all relevant times, Brunin acted as the representative of Navigation Wealth, held himself out as the principal of Navigation Wealth, fostered the trust of plaintiffs because of the size and resources of Navigation Wealth and otherwise gave the full indication that he was a representative/employee of Navigation Wealth.

39. At the time Defendants advised that Debbie Jostes-Elzea retire, she was working at a sales position, had planned to continue working at that position, and the retirement from that position came with the understanding and foreseeable result that the income from that position would be forfeited by retiring.

40. A suitable investment strategy during this time period, such as one that was invested primarily in fixed income, a strategy consistent with the industry standard for individuals retiring

at the age of the Plaintiffs, would have made a positive investment return and/or generated income. This was lost by the actions of Defendants.

41. In meetings in late August 2024, Brunin acknowledged the wrongdoing and blamed an algorithm that he implemented for making errant trades. This is the first time the Elzea knew or could have known of any wrongdoing.

42. The errant strategy of the Defendants' caused the retirement savings of the Elzea Plaintiffs' to decrease by hundreds of thousands of dollars.

B. Zyk Plaintiffs

43. The Zyk Plaintiffs had a limited investing history and neither work in finance. Mark Zyk worked at the time for King Soopers as a grocery clerk and Rhona Flanagan works in administrative services for the Poudre School District. The funds given to Defendants were almost the totality of their liquid savings and came from the one-time event of the sale of their home.

44. Defendants had a duty to ascertain the level of investment sophistication and ability to withstand risk and ability. Had these factors been applied, only conservative investments should have been provided.

45. The Zyk Plaintiffs trusted Defendants and entered into an investment advisory relationship and paid Defendants an advisory fee based upon a percentage of the assets entrusted to Defendants.

46. Under this relationship, Defendants agreed to manage Zyk Plaintiffs' holdings and Zyk Plaintiffs gave Defendants discretionary authority to invest their savings in a manner consistent with their best interests.

47. Brunin indicated that he could provide a suitable portfolio and effectively oversee their savings.

48. The Zyk Plaintiffs had little to no investment experience prior to their relationship with Defendants beyond holding their funds in savings accounts and CDs.

49. Brunin indicated that he had an algorithm that assisted him in the choosing of investments.

50. The amount of funds the Zyk Plaintiffs transferred into their account was approximately \$210,000. This was all of their retirement savings and would be very difficult to replace if the funds were lost.

51. Brunin initially took these funds and invested approximately 80% in an IShares Russell 2000 index fund. This is a fund that invests in the highly aggressive, small-cap Russell 2000 index.

52. Brunin invested the remainder of the funds in Direxion Daily Small Cap Bull 3X Shares ("TNA"). This is a triple leveraged ETF that is keyed to the performance of approximately 2000 small cap stocks.

53. Both investments were too aggressive for the Zyk Plaintiffs. Further, the investment left them overconcentrated in small cap stocks considering their investment sophistication and risk tolerance.

54. Leveraged ETFs like TNA reset on a daily basis. This means that the losses can compound exponentially in a stock downturn. The industry standard is that such investments are suitable only for the speculative, sophisticated investors, and then only suitable as an intra-day hedge.

55. The risk posed by leveraged ETFs is difficult for most investors to ascertain. In fact, the information Brunin received from Direxion describes the funds as “more volatile than investing in diversified funds” and that “the use of leverage [...] increases the risk [...]not suitable for all investors [...] should only be utilized only by sophisticated investors who understand [...] consequences of seeking daily leveraged investment results and intend to actively monitor and manage their investment.”

56. Brunin routinely invested the Zyk Plaintiffs in such triple leveraged ETFs and left them in such positions for weeks.

57. In 2020, the SEC attempted to stop, or at least significantly limit, the use of triple leveraged ETFs because of the extreme hazard that the investments posed to commercial investors. The SEC in its Rule 18f-4 ruled that new triple leverage exposure ETFs could no longer be offered, but that existing funds would be “grandfathered in”.

58. The leveraged investments were not suitable for any retail investor and not in the best interests of the Zyk Plaintiffs.

59. The risk from such leveraged investments is so high that some broker-dealers, such as Vanguard, will not allow any investors, even those with the most sophistication and greatest tolerance for risk, to trade such leveraged ETFs on their trading platforms.

60. Subsequently, Brunin went back and forth from funds to cash and back to funds.

61. The market timing strategy was too aggressive for the Zyk Plaintiffs.

62. At all relevant times, the Defendants concentrated the portfolio in equity investments. Such a concentration is in contradiction with a conservative or even a moderate portfolio under the Modern Portfolio Theory, which is the industry standard.

63. In June 2024, Defendants concentrated the portfolio in equities by investing 80% in an S&P 500 fund and approximately 20% in Direxion Daily S&P 500 3x (“SPXL”). This, once again, left the portfolio overconcentrated and exposed to the highly pernicious triple leveraged ETF.

64. In July 2024, Defendants invested the entire portfolio in small capital equities. This included the reinvesting in TNA.

65. In August 2024, Defendants continued to hold the triple leveraged ETF along an equity index fund. The portfolio lost approximately \$25,000, or approximately 12% of its value, during this month. Suitable and appropriate investments would not have suffered such loss.

66. In September 2024, Defendants continued to hold Zyk Plaintiffs savings in triple leveraged ETFs and the savings continued to lose considerable value.

67. In October 2024, after complaints by Plaintiffs, Defendants moved the portfolio to a money market account.

68. In December 2024, Defendants moved the portfolio back to indexed funds, and tripled leveraged indexed funds. This caused additional losses.

69. In January through March 2025, Defendants continued to invest the portfolio in such leveraged funds, concentrate in equities and invested heavily in small cap equities, and continued to lose value in the portfolio.

70. The losses in the portfolio were made during a period of considerable gains in the financial markets as a whole.

71. Suitable investments increased in value during the relevant time period.

72. Defendants' actions were a direct and proximate cause of loss in the savings of the Zyk Plaintiffs.

**IV. CAUSES OF ACTION AND CLAIMS FOR RELIEF FOR ALL PLAINTIFFS
AND AGAINST ALL DEFENDANTS**

**FIRST CLAIM FOR RELIEF
(Breach of Fiduciary Duty)**

73. Plaintiffs incorporate all preceding paragraphs, as if fully stated verbatim, herein.

74. As investment advisors and as the grantee of discretionary authority over Plaintiffs' accounts, Defendants owed fiduciary duties. Defendants' duties include, but are not limited to, those of loyalty, candor/full disclosure and care.

75. Defendants breached those duties by failing to honor Plaintiffs' conservative investment needs, tolerance for risk, the irreplaceable nature of the funds provided, their retired status, engaging in unsuitable investment strategies, choosing of investments in their best interests and failing to exercise reasonable care in portfolio management in light of Plaintiffs' circumstances.

76. Defendants failed to disclose the risk of the strategy chosen, accurately describe the investments, the funds chosen by defendants, the risks of the funds and over-concentration in those funds, the risks of using an algorithm to manage the portfolio, the disregard of modern portfolio theory and the risk of being over-concentrated in equity investments.

77. Defendants mismanaged the portfolio in a manner inconsistent with the level of care required by a registered investment adviser.

78. Defendants inappropriately increased risk and failed to disclose such risks in their frequent trading.

79. Defendants failed to ensure the reliability of the automated trading utilized and failed to have sufficient written policies to ensure that any automated trading acts sufficiently in the best interests of the Defendants' investors.

80. Defendants failed to provide full disclosure as to the risk associated with the financial management offered by Defendants, along with the reliance upon and lack of supervision over algorithms and artificial intelligence choosing trades and the timing of such trades.

81. Navigation Wealth is responsible for all actions of its representative due to apparent and actual agency, and *respondeat superior*.

82. As a direct and proximate result, Plaintiffs suffered damage as described herein. Navigation Wealth is responsible for all actions of its representative due to its control person status, apparent and actual agency, and *respondeat superior*.

SECOND CLAIM FOR RELIEF

(Negligence)

83. Plaintiffs incorporate by reference, as if stated verbatim herein, all preceding paragraphs.

84. Defendants had a duty to exercise reasonable care and diligence in managing Plaintiffs' investments consistent with their stated objectives and risk tolerance.

85. Defendants' failure to diversify, reliance on market timing, and mismanagement of Plaintiffs' retirement accounts constituted a breach of that duty.

86. Defendants failed to supervise the holdings of the account and the trading therein in a manner consistent with the appropriate allocation of assets as dictated by the industry standard.

87. Defendants failed to appropriately supervise their automated trading, either by not following the written procedures or failing to have sufficient written procedures to oversee the trading, or any other mechanism or person choosing and effectuating the transactions.

88. All actions identified in the prior cause of action and claim for relief are grounds for negligence if, alternatively, a fiduciary relationship does not exist.

89. As a direct and proximate result, Plaintiffs suffered substantial financial losses. Navigation Wealth is responsible for all actions of its representative due to its control person status, apparent and actual agency, and *respondeat superior*.

**THIRD CLAIM FOR RELIEF
(Negligent Misrepresentation)**

90. Plaintiffs incorporate by reference, as if stated verbatim herein, all preceding paragraphs.

91. Defendants made material misrepresentations about the safety, returns, and appropriateness of their investment strategies.

92. Defendant repeatedly showed charts and graphs that with Defendant's methods their money would not only last for 30 or more years of retirement, but also that they would have funds remaining to leave millions to their daughter.

93. The representations were incorrect and the representations were known to create unnecessary risk at the time made by Brunin.

94. Disclosures concerning Defendants' automated trading were not given and were not contained in the appropriate disclosures or ADVs of Defendants.

95. Plaintiffs justifiably relied upon these representations in making significant life decisions, including retirement.

96. Navigation Wealth is responsible for all actions of its representative due to apparent and actual agency, and respondeat superior.

97. Such reliance directly resulted in financial harm and the other damage described herein. Navigation Wealth is responsible for all actions of its representative due to its control person status, apparent and actual agency, and *respondeat* superior.

**FOURTH CAUSE OF ACTION AND CLAIM FOR RELIEF
(Violation of the Colorado Securities Act)**

98. Plaintiffs incorporate by reference, as if stated verbatim herein, all preceding paragraphs.

99. Defendants utilized an algorithm to determine the time of trade, the securities traded and the size of the trades.

100. Plaintiffs did not authorize such trades and did not give the algorithm discretionary authority to make such trades.

101. The algorithm did not and could not act as a registered investment adviser representative because it was not and could not be licensed as such. As such, an adequately licensed individual needed to supervise and oversee the operations of the automated trading, which failed to exist at the time of some or all of the trades.

102. Failing to adequately supervise trades of artificial intelligence to made trades is in violation of the Colorado Securities Act, C.R.S. Secs. 11-51-401 and 11-51-604.

103. Deferring investment decisions to artificial intelligence is an undisclosed material fact. Such non-disclosure is in violation of C.R.S. Secs. 11-51-501 and 11-51-604.

104. Other misrepresentations exist in the provision of the investment advisory services. These include the representation that the proposed investment strategy could safely obtain returns in excess of 8% and other misrepresentations and material omissions identified above.

105. Defendants gave every reason to believe that Defendants' strategy was safe and that their funds would be secure enough to allow Debbie Elzea Jostes to retire and for Elzea Plaintiffs to receive sufficient income from their investments.

106. Defendants gave the Zky Plaintiffs every reason to believe that the investments chose would be consistent with their lack of investment sophistication and consistent with those of a portfolio in their best interests. Disclosure of the shortcomings of the investment strategy were also needed to keep Brunin's statements from being misleading.

107. Defendants failed to disclose the high risk of the strategy or the highly speculative nature of the investments chosen which is a material omission necessary to make other statements made by Defendants not misleading.

108. Defendants failed to appropriately disclose its automated or algorithm-triggered trading and associate risks in the required ADV disclosures.

109. These violations are the direct and proximate cause of damage to Plaintiffs.

110. Navigation Wealth is responsible for all actions of its representative due to its control person status, apparent and actual agency, and *respondeat superior*.

111. Defendant Brunin was a control person as identified and defined within the Colorado statutes and he not only was personally involved in all decision making, but he was also directly in charge of anyone or anything exercising trades or investment strategy.

V. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor and against Defendants as follows:

- A. Awarding compensatory damages in an amount to be determined at trial;
- B. Awarding consequential and/or incidental damages including lost growth and income from appropriate investments and lost employment income;
- C. Awarding pre- and post-judgment interest as allowed by law;
- D. Awarding costs as permitted by law;
- E. Granting such other and further relief as this Court deems just and proper; and
- F. Awarding statutory attorney fees.

VI. DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury on all issues so triable.

112. Respectfully submitted this 28th day of May 2025.

Attorney for the Plaintiff

/s/ Jeffrey Pederson

Jeffrey Pederson, Reg No. 30177

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-and-

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