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**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 )

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**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.

*In-Flight Entertainment (AeroFi)*

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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,  
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.  
16

*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,  
25

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.  
16

### 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*  
24



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

12 *Rescission Offer*

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

19 29. When making the rescission offer to investors, the Respondents also failed to disclose other  
20 material information about WebRotator to the investors. The Respondents each failed to disclose the  
21 business and operating history of WebRotator, including the company's record of operating losses, its lack  
22 of revenues, and its failed business ventures. They each failed to disclose that the "web rotating software"  
23 patent application that was paid for with company funds was not owned by the company. They each failed  
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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

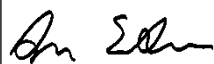
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11 SIGNED and ENTERED this 5<sup>th</sup> day of August, 2016

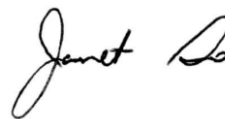
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16 William M. Beatty  
17 Securities Administrator

16 Approved by:

16 Presented by:

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20 \_\_\_\_\_  
21 Suzanne Sarason  
22 Chief of Enforcement

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21 Janet So  
22 Financial Legal Examiner

21 Reviewed by:

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25 \_\_\_\_\_  
26 Robert Kondrat  
27 Financial Legal Examiner Supervisor