

1 **STATE OF WASHINGTON**
2 **DEPARTMENT OF FINANCIAL INSTITUTIONS**
3 **SECURITIES DIVISION**

4 IN THE MATTER OF DETERMINING
Whether there has been a violation of the
Securities Act of Washington by:

5 WebRotator, Inc.,
6 Scott B. Wilkerson,

Respondents.

Order No. S-17-2138-18-SC01

STATEMENT OF CHARGES AND NOTICE OF
INTENT TO ENTER ORDER TO CEASE AND
DESIST, TO IMPOSE A FINE, AND TO CHARGE
COSTS

7 THE STATE OF WASHINGTON TO:

WebRotator, Inc.
8 Scott B. Wilkerson

9 **STATEMENT OF CHARGES**

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

15 **TENTATIVE FINDINGS OF FACT**

16 **Respondents**

17 1. WebRotator, Inc. ("WebRotator") is a Washington State company incorporated on March 4,
18 2011 with its principal place of business in King County, Washington. WebRotator was administratively
19 dissolved on August 1, 2017, was reinstated on June 14, 2018, and is currently active. WebRotator is a
20 technology company that purports to be developing software that displays the results of an on-line search in
21 a rotating manner.

22 2. Scott B. Wilkerson ("Wilkerson") is a resident of Fall City, Washington, and he is the founder
23 and CEO of WebRotator, Inc.

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DEPARTMENT OF FINANCIAL INSTITUTIONS
Securities Division
PO Box 9033
Olympia, WA 98507-9033
360-902-8760

1 **Prior Action by the Securities Division**

2 3. On February 29, 2016, the Securities Division entered a Statement of Charges against
3 WebRotator and Wilkerson alleging violations of the Securities Act of Washington. The Statement of Charges
4 alleged that, between March 2011 and August 2015, WebRotator and Wilkerson offered and sold about \$2.5
5 million of unregistered WebRotator stock to more than 100 investors. The Statement of Charges also alleged
6 that WebRotator and Wilkerson failed to disclose material information about the investment to investors,
7 including the status of the technology, the status of the patent, the financial status of the company, the financial
8 background of Wilkerson, the value of WebRotator stock, and the use of investor funds.

9 4. On August 5, 2016, the Securities Division entered into a Consent Order with WebRotator and
10 Wilkerson in settlement of the Statement of Charges. In the Consent Order, the Securities Division entered its
11 Findings of Fact and concluded that Wilkerson and WebRotator violated registration and anti-fraud provisions
12 of the Securities Act. Without admitting or denying the allegations, WebRotator and Wilkerson agreed to
13 cease and desist from violating the Securities Act, and Wilkerson agreed to pay fines and costs totaling
14 \$30,000.

15 **Continued Offers and Sales of Unregistered Securities**

16 *Overview*

17 5. Despite entering into the Consent Order with the Securities Division, Wilkerson and
18 WebRotator continued to offer and sell unregistered securities in WebRotator without disclosing material
19 information to investors. Between February 2017 and April 2018, Wilkerson and WebRotator raised at least
20 \$167,500 from 10 investors. WebRotator and Wilkerson did not have a pre-existing, substantive relationship
21 with at least three of these investors at the time that WebRotator and Wilkerson solicited their investments.
22 WebRotator and Wilkerson failed to disclose material information to investors, including Wilkerson's
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1 financial history, WebRotator's financial condition, the Consent Order with the Securities Division, the status
2 of WebRotator's patent application, and Wilkerson's use of investor funds.

3 *WebRotator's Technology*

4 6. In 2013 and 2015, WebRotator paid developers to complete a prototype of WebRotator's
5 content rotating technology. That prototype was never completed to WebRotator's satisfaction. In July 2016,
6 WebRotator paid a developer to work on the technology, but the payment was refunded by the developer in
7 September 2016.

8 7. Since at least August 2016, WebRotator has had two possible avenues to earn revenue. One
9 avenue was to launch WebRotator's search engine and earn revenue through ad sales. Since at least August
10 2016, Wilkerson has told investors that the company's technology was being developed by several
11 experienced developers in multiple countries. In conference calls between August 2016 and March 2017,
12 Wilkerson told investors that the technology was either close to being completed or was completed. In January
13 2017, Wilkerson told investors on a conference call that WebRotator had "a product that's 100% bulletproof,
14 ready to go." In March 2017, Wilkerson told investors that the search engine would be unveiled at a
15 shareholder conference scheduled for April. Wilkerson then canceled the shareholder conference and did not
16 reschedule it. In an April 2017 conference call, Wilkerson told investors that WebRotator would launch the
17 search engine that year. To date, WebRotator has not launched its search engine.

18 8. A second avenue was to license WebRotator's technology to e-commerce websites, which
19 would allow the site to display search results in a rotating manner. In multiple conference calls between
20 August 2016 and April 2017, Wilkerson told investors that Wilkerson had met or was going to meet with
21 major online retailers like Nike, Amazon, and eBay, that the licensing opportunities were "formalized" or
22 ready to go, and that a licensing agreement would be announced to investors soon. In a March 2017 conference
23 call, Wilkerson told a select group of investors that WebRotator had a product that could be licensed, and that

1 they were talking to Amazon about licensing WebRotator’s technology. To date, WebRotator has not
2 announced any licensing agreements or earned any revenue from its content rotating technology.

3 *February 2017 Offer and Sale of Unregistered Securities*

4 9. Between at least August 2016 and April 2017, Wilkerson told investors that WebRotator would
5 soon engage in an Initial Public Offering (“IPO”). In a December 2016 conference call, Wilkerson told
6 investors that the company would complete its IPO in the first quarter of 2017. In a January 2017 conference
7 call, Wilkerson told investors that the company was going to be listed on foreign exchanges called the
8 European Stock Exchange and the Startup Stock Exchange, which were “like E*TRADE for startups.”
9 Wilkerson told investors that they would be able to trade their WebRotator stock on the exchanges. Wilkerson
10 also told investors that WebRotator would be announcing its first revenues near the time of the IPO. Wilkerson
11 told investors that the value of the company was “through the roof” compared to the year before, and that the
12 investors’ investment had grown exponentially.

13 10. On February 2, 2017, WebRotator sent an email to the company’s investors offering them
14 additional shares of WebRotator stock. WebRotator told investors that it was nearing the final stages of a
15 merger/acquisition with the group that was funding the development of WebRotator’s technology. These final
16 stages required audits of the company’s business and assets. WebRotator told investors that these audits cost
17 about \$75,000. WebRotator told investors that it was selling pre-IPO stock options at \$0.50 a share for a
18 limited time. WebRotator told investors that they would have to pay market price for any stock purchases that
19 were made after the company’s IPO.

20 11. Wilkerson told at least one investor who emailed about WebRotator’s offer that the company
21 was “shooting for” an IPO date of March 3, 2017. Wilkerson told the investor that WebRotator’s product was
22 ready for launch, and that WebRotator had revenue making contracts in place that would attract investors to
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1 buy the company's stock. To date, WebRotator has not merged with another company, announced any
2 licensing agreements, or completed an IPO.

3 12. At least four investors purchased \$57,000 of WebRotator stock in response to the February
4 2017 email offer. Wilkerson and WebRotator failed to disclose material information related to the investment,
5 including information about the contemplated IPO and use of investor funds.

6 13. WebRotator and Wilkerson failed to disclose material information about the exchanges that
7 Wilkerson said would host WebRotator's IPO. Wilkerson told investors that WebRotator would be listed on
8 foreign exchanges called the European Stock Exchange and the Startup Stock Exchange. Wilkerson failed to
9 disclose to investors that the European Stock Exchange was an unregulated equity crowdfunding platform
10 that did not support stock trading. Wilkerson also failed to disclose that the Startup Stock Exchange was not
11 a stock exchange. Instead, it was a listing agent for the Dutch Caribbean Securities Exchange, a stock
12 exchange in Curacao.

13 14. Wilkerson misrepresented the regulatory status of the Startup Stock Exchange. In a December
14 2016 conference call, Wilkerson told investors that the Startup Stock Exchange was started a few years earlier
15 with the "United State Congress and the Securities and Exchange Commission." He told investors that the
16 Startup Stock Exchange was in 170 countries and was "fully regulated by the Securities and Exchange
17 Commission" and "approved" by Congress. In an October 2016 conference call, Wilkerson told investors that
18 the Startup Stock Exchange was "approved" by the Securities and Exchange Commission. In truth, the Startup
19 Stock Exchange was a foreign listing agent for a stock exchange based in Curacao, and it had not been
20 approved by Congress or the Securities and Exchange Commission.

21 15. WebRotator and Wilkerson failed to disclose the risks of an IPO. In multiple conference calls,
22 Wilkerson told investors that they would be able to trade their stock after the company completed their IPO.
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1 Wilkerson failed to disclose to investors that an active trading market for WebRotator stock may never
2 develop, and that investors may not be able to trade their stock for more than their original purchase price.

3 16. WebRotator and Wilkerson misrepresented the use of investor funds. In its February 2017
4 email offer, WebRotator represented to investors that investment funds were needed to pay \$75,000 in audit-
5 related invoices. WebRotator also represented that these invoices had to be paid before the merger and IPO
6 could move forward. In reality, the company did not hire any third parties to do work for the company's
7 contemplated merger or IPO in this time period, and Wilkerson did not use the funds to pay audit-related
8 invoices. While some investor funds were used to make payments to WebRotator's business and patent
9 attorneys, Wilkerson used the bulk of the funds for other purposes, including restaurants, car expenses, car
10 loan payments, retail stores, entertainment, utilities, and cash withdrawals.

11 *Additional Offers and Sales of Unregistered Securities*

12 17. Between April 2017 and April 2018, WebRotator and Wilkerson offered and sold at least
13 \$106,500 of additional investments in WebRotator to five investors. Wilkerson and WebRotator sold both
14 shares of WebRotator stock and convertible promissory notes to these investors. Wilkerson and WebRotator
15 misrepresented the use of investment funds.

16 18. In or around April 2017, Wilkerson told an investor who purchased \$10,000 of stock that his
17 funds would be used to pay for the costs of completing the company's IPO. These costs included lawyers'
18 fees and filing fees. Despite his representations, Wilkerson used \$1,200 or less of the investor's funds for IPO
19 costs. Wilkerson used the rest of the investor's funds for other purposes, including restaurants, grocery stores,
20 gym expenses, gas, car expenses, entertainment, and cash withdrawals. In or around July 2017, Wilkerson
21 told an investor who purchased \$25,000 of stock that his funds would be used to pay \$20,000 to the company's
22 patent attorney. While Wilkerson used up to \$10,800 of the investor's funds to make payments to the patent
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1 attorney, Wilkerson used the rest of the investor's funds for other purposes, including car loan payments, car
2 expenses, restaurants, payments to family members, rent, court fees, utilities, and cash withdrawals.

3 19. In or around November 2017, Wilkerson told two investors who invested \$10,000 and \$20,000
4 that their funds would be used to finalize the company's technology or to pay patent and legal expenses. In
5 fact, Wilkerson used about two-thirds of the investors' combined funds for other purposes, including
6 payments to family members, gas, car expenses, restaurants, grocery stores, entertainment, a sporting event,
7 payments to Wilkerson's criminal attorneys, utilities, and cash withdrawals.

8 *Omissions Related to WebRotator and Wilkerson's Financial Condition*

9 20. Between at least February and November 2017, WebRotator and Wilkerson failed to disclose
10 material information to investors related to Wilkerson's financial background. Wilkerson filed for personal
11 bankruptcy in June 2011. He received a discharge of his debts in September 2011. Wilkerson again filed for
12 personal bankruptcy in 2014. He filed for Chapter 13 bankruptcy in January 2014 and Chapter 11 bankruptcy
13 in February 2014. Both actions were dismissed in February 2014. Wilkerson and WebRotator failed to
14 disclose Wilkerson's bankruptcies to at least three investors before they invested.

15 21. On September 21, 2017, a judgment totaling about \$6,800 was entered against Wilkerson for
16 his failure to pay rent for his apartment in Snoqualmie, Washington. The judgment also authorized
17 Wilkerson's eviction from the premises. Wilkerson and WebRotator failed to disclose this judgment and
18 eviction to at least one investor before she invested.

19 22. WebRotator and Wilkerson failed to disclose material information related to WebRotator's
20 financial condition. On February 24, 2016, a judgment totaling about \$96,000 was entered against WebRotator
21 for its failure to pay rent for its office in Bellevue, Washington. The judgment also authorized WebRotator's
22 eviction from the premises. Between February and November 2017, Wilkerson and WebRotator failed to
23

1 disclose to at least three investors that WebRotator had been evicted from its office for failing to pay rent, and
2 that WebRotator was subject to a judgment of at least \$96,000.

3 23. In addition, Wilkerson misrepresented WebRotator's judgment and eviction to at least two
4 investors before they invested additional funds. Wilkerson told one investor who responded to WebRotator's
5 February 2017 email offer that WebRotator no longer had an office because the rent had doubled. Wilkerson
6 told another investor that WebRotator moved out of its office because it didn't need the expense. Wilkerson
7 failed to disclose to these investors that WebRotator had been evicted from its office and owed a judgment
8 for unpaid rent.

9 *Misrepresentations and Fraudulent Statements Related to the Patent Application*

10 24. Wilkerson filed a patent application with the United States Patent & Trademark Office
11 ("USPTO") in around November 2013 for WebRotator's content rotating software. In September 2015, the
12 USPTO issued a non-final rejection. After WebRotator requested additional reviews, the USPTO issued a
13 non-final rejection in November 2016, a final rejection in April 2016, and a non-final rejection in July 2017.
14 In February 2018, after WebRotator failed to respond to the agency's July 2017 decision, the USPTO issued
15 a notice of abandonment to WebRotator. To date, the status of WebRotator's patent application is abandoned.

16 25. Wilkerson made fraudulent statements about the status of the company's patent to at least one
17 investor. In or around April 2018, Wilkerson told a prospective promissory note investor that the company
18 needed additional funds to make a payment to its patent attorney. Wilkerson also told the investor that the
19 company had an international patent application, and that both the international and United States patent
20 applications would expire if WebRotator didn't make additional payments on the applications. Wilkerson told
21 the investor that the investment funds would be used for the company's patent applications. Wilkerson's
22 statements to the investor were false. Wilkerson did not use any of the investor's \$3,000 investment to make
23 a payment towards the company's patent applications. In addition, Wilkerson failed to disclose that both the

1 United States and international patent applications had been abandoned at the time that Wilkerson solicited
2 funds from the investor.

3 *Misrepresentations and Omissions Related to the Consent Order*

4 26. Wilkerson made misrepresentations and omissions to investors regarding the 2016 Consent
5 Order with the Securities Division. Between at least February and November 2017, Wilkerson and
6 WebRotator failed to disclose the 2016 Consent Order, or its findings, to at least two new investors. At least
7 one of these investors received a Private Placement Memorandum before investing, but the Consent Order
8 was not disclosed in the version that the investor received.

9 27. Wilkerson made misleading statements concerning the 2016 Consent Order to at least three
10 investors who later made additional investments in WebRotator. In May 2016, Wilkerson emailed an investor
11 and told him that Wilkerson and WebRotator were found “not guilty” of any wrongdoing after a year-long
12 investigation by the Securities Division. Similarly, in August 2016, Wilkerson told investors on a conference
13 call that Wilkerson and WebRotator had entered into a settlement agreement with the Securities Division in
14 which they were found to have “no guilt whatsoever” for any of the Division’s allegations. Contrary to
15 Wilkerson’s representations, while Wilkerson and WebRotator did not admit or deny the allegations in the
16 Consent Order, the Securities Division concluded that Wilkerson and WebRotator had violated registration
17 and ant-fraud provisions of the Securities Act.

18 **Registration Status**

19 28. WebRotator, Inc. is not currently registered to sell its securities in the state of Washington and
20 has not previously been so registered.

21 29. Scott B. Wilkerson is not currently registered as a securities salesperson or broker-dealer in
22 the state of Washington and has not previously been so registered.

1 *Failure to Comply with Regulation D, Rule 506*

2 30. On or around February 22, 2017, WebRotator filed with the Securities Division a claim of
3 exemption from registration for an offering under Regulation D, Rule 506(b).

4 31. Under Regulation D, Rule 506, an exemption is not available to an issuer if, in the last 10 years,
5 the issuer or its executive officer has been the subject of a final order by a state securities regulator that was
6 based on a violation of any law that prohibits fraudulent, manipulative, or deceptive conduct.

7 32. On August 5, 2016, the Securities Division entered into a Consent Order with WebRotator and
8 Wilkerson in which the Securities Division concluded that WebRotator and Wilkerson violated RCW
9 21.20.010, a law that prohibits fraudulent, manipulative, or deceptive conduct. The Division's Consent Order
10 constitutes a final order under Regulation D, Rule 506, so an exemption under Rule 506 was not available to
11 WebRotator at the time that it filed the notice of exemption.

12 33. Further, Regulation D, Rule 506(b) prohibits an issuer, or any person acting on behalf of an
13 issuer, from offering or selling securities through any form of general solicitation. WebRotator and Wilkerson
14 offered and sold investments in WebRotator to investors with whom they did not have a substantive, pre-
15 existing relationship, which constitutes general solicitation and violates the general solicitation provisions of
16 Regulation D, Rule 506(b).

17
18 Based upon the above Tentative Findings of Fact, the following Conclusions of Law are made:

19 **CONCLUSIONS OF LAW**

20 1. The offer or sale of shares of WebRotator stock and convertible promissory notes as described
21 above constitutes the offer or sale of a security as defined in RCW 21.20.005(14) and RCW 21.20.005(17).
22
23

1 Inc. shall be jointly and severally liable for and shall pay the costs, fees, and other expenses incurred in the
2 administrative investigation and hearing of this matter, in an amount not less than \$15,000.

3 **AUTHORITY AND PROCEDURE**

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

11 Signed and Entered this 22nd day of February, 2019.

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15 William M. Beatty
16 Securities Administrator

17 Approved by:

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20 Suzanne Sarason
21 Chief of Enforcement

22 Presented by:

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25 Holly Mack-Kretzler
26 Financial Legal Examiner

27 Reviewed by:

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Robert Kondrat
Financial Legal Examiner Supervisor

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