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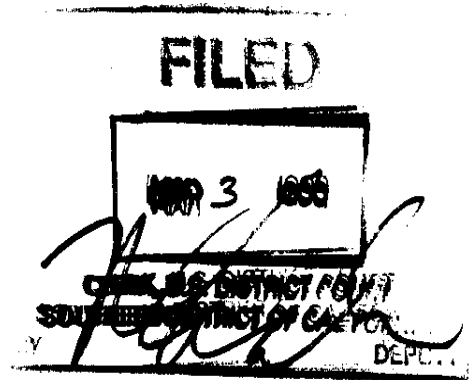
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3:98-CV-01810 SEC V. ALLIANCE LEASING

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10 UNITED STATES DISTRICT COURT  
 11 SOUTHERN DISTRICT OF CALIFORNIA

12 SECURITIES AND EXCHANGE  
13 COMMISSION,

14 Plaintiff,

15 vs.

16 ALLIANCE LEASING CORPORATION,  
 PRIME ATLANTIC, INC., CHARLES  
 BROWNE, SUSAN BROWNE, SHARON  
 17 OLIVER, DAVID HALSEY, and BRACCUS  
 GIAVANNO,

18 Defendants.  
19

Case No. 98 CV 1810J CGA

FIRST AMENDED COMPLAINT FOR  
VIOLATIONS OF THE FEDERAL  
SECURITIES LAWS

20

21 Plaintiff Securities and Exchange Commission (the "Commission"), for its First  
 22 Amended Complaint against Defendants Alliance Leasing Corporation ("Alliance"), Prime  
 23 Atlantic, Inc. ("Prime"), Charles Browne ("C. Browne"), Susan Browne ("S. Browne"),  
 24 Sharon Oliver ("Oliver"), David Halsey ("Halsey"), and Braccus Giavanno ("Giavanno")  
 25 (collectively, the "Defendants"), alleges as follows:

26 I. JURISDICTION

27 1. This Court has jurisdiction over this action pursuant to Sections 20(d)(1)  
 28 and 22(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77t(d)(1)

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1 & 77v(a)] and Sections 21(d)(3)(A), 21(e), and 27 of the Securities Exchange Act of 1934  
2 (“Exchange Act”) [15 U.S.C. §§ 78u(d)(3)(A), 78u(e), & 78aa]. The Defendants have  
3 made use of the mails, means or instruments of transportation or communication in  
4 interstate commerce, or means and instrumentalities of interstate commerce in connection  
5 with the transactions, acts, practices, and courses of business alleged in this Complaint.

6 **II. SUMMARY OF THE ACTION**

7       2. This action involves a fraudulent unregistered securities offering. Since at  
8 least December 1997, Alliance and Prime raised at least \$54 million from over  
9 1,500 investors nationwide by claiming that investors will receive monthly lease payments  
10 on commercial equipment (such as automatic teller machines, photocopiers, computers,  
11 cellular phones, and kitchen equipment). Alliance and Prime solicited investors with claims  
12 that investors would earn a 14-16% annual return on their investment with little or no risk.

13       3. In reality, Alliance and Prime reaped commissions of at least 30% of the  
14 capital raised from investors. Alliance, Prime, and their principals failed to disclose this to  
15 potential investors. Alliance and its principals also misrepresented or omitted to disclose  
16 other material facts concerning the equipment lease investment, including: (i) the Ponzi-like  
17 nature of the investment; (ii) non-arm’s length transactions between Alliance and related  
18 companies; (iii) the purported existence of an “escrow account” at a major brokerage firm  
19 to hold investor funds; and (iv) the issuance of injunctions and cease-and-desist orders by  
20 state securities agencies against two of Alliance’s principals for previous securities law  
21 violations.

22       4. The equipment leasing investments are securities in the form of investment  
23 contracts. Alliance failed to register these securities with the Commission. Alliance,  
24 Prime, their principals, and their agents illegally sold the unregistered securities, and Prime  
25 and its principals acted as an unregistered broker-dealer in violation of the federal securities  
26 laws.

27       5. By this Complaint, the Commission seeks the entry of preliminary and  
28 permanent injunctions prohibiting further sales of these securities. The Commission also

1 seeks the imposition of monetary penalties against all of the Defendants for their illegal  
2 conduct, and the disgorgement of ill-gotten gains by the Defendants with prejudice  
3 interest as a result of this securities offering.

4 **III. THE DEFENDANTS**

5 6. Alliance is a Nevada corporation with its principal place of business in San  
6 Diego, California. No registration statement has ever been filed with the Commission or is  
7 in effect for Alliance's securities. In July 1998, the State of Mississippi entered a cease-  
8 and-desist order against Alliance prohibiting the fraudulent sale of unregistered securities.

9 7. C. Browne is a resident of San Diego, California, and, until November 1998,  
10 was Alliance's Chief Executive Officer. In 1995, the California Superior Court enjoined  
11 and fined C. Browne for the fraudulent sale of unregistered securities and for acting as an  
12 unregistered broker-dealer. C. Browne was also the subject of a 1995 Wisconsin cease-  
13 and-desist order for securities registration violations. Both the California and Wisconsin  
14 actions related to his participation in a wireless cable television investment scheme.

15 C. Browne was also charged with securities registration violations and fraud by the State of  
16 Mississippi in July 1998 ("Mississippi Order"). C. Browne filed for personal bankruptcy  
17 in 1994.

18 8. S. Browne is a resident of San Diego, California, and, until November 1998,  
19 was Alliance's Chief Operating Officer. In 1995, the California Superior Court enjoined  
20 and fined S. Browne for the fraudulent sale of unregistered securities and for acting as an  
21 unregistered broker-dealer. S. Browne was also the subject of a 1995 Wisconsin cease-and-  
22 desist order for securities registration violations. S. Browne is also a party to the  
23 Mississippi Order.

24 9. Oliver resides in Cypress, California. Until November 1998, Oliver was  
25 Alliance's Vice-President for Administration, and was one of Alliance's principals. Oliver  
26 was named in the Mississippi Order. C. Browne, S. Browne, and Oliver collectively own  
27 and/or control a majority of stock in Alliance.

28

1 10. Prime is a Florida corporation with its principal place of business in  
2 Jacksonville, Florida. At all relevant times, Prime has not been registered with the  
3 Commission as a broker-dealer or in any other capacity.

4 11. David Halsey is a resident of Jacksonville, Florida, and is Prime's Chief  
5 Executive Officer and co-owner. Halsey was formerly a registered representative who held  
6 Series 7, 24, and 63 securities licenses. Halsey was named in the Mississippi Order. At all  
7 relevant times, Halsey has not been registered with the Commission as a broker-dealer or  
8 associated with a registered broker-dealer.

9 12. Braccus Giavanno is a resident of Orlando, Florida and is Prime's Director of  
10 Sales and Marketing and co-owner. At all relevant times, Giavanno has not been registered  
11 with the Commission as a broker-dealer or associated with a registered broker-dealer

12 **IV. ALLEGATIONS COMMON TO ALL CLAIMS**

13 **A. Nature of the Offering**

14 13. Since at least December 1997, Alliance and Prime offered and sold securities  
15 in the form of investment contracts to investors in at least 32 states.

16 14. According to Alliance's offering materials and sales agents, investor money  
17 was to be used to purchase commercial office or kitchen equipment. Alliance raised money  
18 from investors in amounts ranging from \$5,000 to at least \$200,000.

19 15. Alliance represented to investors that it would enter into an agreement with a  
20 third-party lessee to lease the equipment. The lease payments made under this agreement  
21 would purportedly be paid to investors on a monthly basis for two years. For certain  
22 investors, Alliance also promised that it would pay investors a "balloon payment" at the  
23 end of the two year period.

24 16. Alliance's offering materials represented that investors would earn a return of  
25 at least 14% per year on this equipment lease investment for two years. Alliance variously  
26 represented that this investment was "guaranteed" or "low risk."

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1 17. Investors' money was pooled together, purportedly to purchase equipment to  
2 be leased to third-party lessees. In addition, certain investors and Alliance were to share  
3 jointly in the profits derived from these leases on a pro rata basis.

4 18. Alliance had the sole responsibility for purchasing this equipment. Alliance  
5 also identified potential lessees, reviewed the lessees' credit, obtained personal guarantees  
6 from the owners of these businesses, and negotiated the terms of the lease agreements with  
7 the lessees on behalf of investors.

8 19. In the course of the offering, Alliance disclosed that investors would only pay  
9 Alliance a fee of 10% of their initial investment.

10 20. Certain investors requested the opportunity to approve a summary of the  
11 terms of the proposed equipment lease negotiated by Alliance. However, investors  
12 participated in this investment without making any decisions concerning the selection of a  
13 lessee or the terms of the equipment lease.

14 21. Furthermore, investors were to have no role in the operation or management  
15 of this investment after Alliance established the lease. Investors did not anticipate that they  
16 would participate in the day-to-day activities of Alliance or its equipment leasing business.  
17 Investors anticipated that they will be only passive participants in this investment.

18 **B. The Sales Effort**

19 22. Alliance retained Prime to market this equipment leasing investment to the  
20 public. In turn, Prime solicited insurance agents, stock brokers, and others to offer the  
21 Alliance equipment lease investment to their customers.

22 23. Alliance paid Prime a commission of 30% of the initial investment made by  
23 an investor.

24 24. To date, Alliance raised at least \$54 million from investors as a result of this  
25 offering. Over the course of the offering, Alliance paid more than \$12 million to Prime in  
26 commissions.

27 25. Alliance sales agents told certain investors that Merrill Lynch, Pierce, Fenner  
28 & Smith, Inc. ("Merrill Lynch"), a national brokerage firm, would hold investor funds in

1 an escrow account, and would not release this money until it was to be used to purchase  
2 equipment for the investor. However, Alliance never established such an escrow account at  
3 Merrill Lynch.

4 **V. MISREPRESENTATIONS AND OMISSIONS OF FACT IN THE**  
5 **OFFERING DOCUMENTS**

6 26. The Defendants have made material misrepresentations and omitted to  
7 disclose material facts in connection with this offering.

8 27. The Defendants falsely stated that investors would pay Alliance a fee of only  
9 10% of the offering proceeds in the transaction. In fact, the Defendants failed to disclose  
10 to potential investors that at least an additional 30% of the money raised from investors was  
11 paid from Alliance to Prime.

12 28. Alliance, C. Browne, S. Browne, and Oliver failed to disclose to investors  
13 that the equipment lease transactions were actually a form of a "Ponzi" scheme. The  
14 majority of Alliance's equipment lease agreements were with Sovereign Financial  
15 Corporation ("SFC") for the lease of ATM equipment. Alliance paid SFC with investor  
16 funds at the beginning of the lease term. SFC then used these investor funds to pay  
17 Alliance for what purportedly were SFC's security deposit and first four monthly lease  
18 payments to Alliance under the lease. Alliance subsequently paid this money to investors  
19 and falsely stated that it represented a return on their investment. Alliance and its principal  
20 failed to disclose to investors that they were being repaid with their own funds, rather than  
21 from revenue legitimately generated from the underlying equipment lease contract.

22 29. Alliance, C. Browne, S. Browne, and Oliver also had no factual basis for  
23 stating to investors that investors would be paid a balloon payment at the end of two years  
24 to receive the promised return on their investment. Alliance, C. Browne, S. Browne, and  
25 Oliver claimed that the balloon payment would come from "flipping" the leases (that is, the  
26 sale of the remaining lease payments to a third party). However, Alliance never entered  
27 into any agreement to "flip" any of the leases, and could not do so in a manner to pay  
28 investors and operate at a profit.

1 30. Alliance, C. Browne, S. Browne, and Oliver failed to disclose to investors  
2 that the majority of the equipment leasing agreements which underlay this investment were  
3 with related companies and were not arm's-length transaction. More than two-thirds of all  
4 of Alliance lease agreements were with companies owned, operated, or controlled by  
5 C. Browne, S. Browne, or members of their family.

6 31. Alliance, C. Browne, S. Browne, and Oliver falsely represented to investors  
7 that Alliance established, and was holding investor funds in, a protected escrow account at  
8 Merrill Lynch. The false statements about the existence of the escrow account falsely  
9 implied that a third party was holding investor funds only to be release for disclosed  
10 purposes.

11 32. Alliance, C. Browne, S. Browne, and Oliver falsely stated that C. Browne  
12 and S. Browne were reputable business people. In fact, these defendants failed to disclose  
13 that C. Browne and S. Browne had been the subject of permanent injunctions and cease-  
14 and-desist orders related to the fraudulent offer and sale of unregistered securities to  
15 investors, and that C. Browne had previously filed for personal bankruptcy.

16 **FIRST CLAIM**

17 **FRAUD IN THE OFFER OR SALE OF SECURITIES**

18 **Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)]**

19 **(All Defendants)**

20 33. Paragraphs 1 through 32 are realleged and incorporated herein by reference.

21 34. Defendants, and each of them, by engaging in the conduct described in  
22 paragraphs 1 through 32 above, in the offer or sale of securities, by the use of means or  
23 instruments of transportation or communication in interstate commerce or by the use of the  
24 mails, directly or indirectly: (1) with scienter, employed devices, schemes or artifices to  
25 defraud; (2) obtained money or property by means of untrue statements of material fact or  
26 omissions to state material facts necessary in order to make the statements made, in the  
27 light of the circumstances under which they were made, not misleading; (3) engaged in  
28



1 transactions, practices or courses of business which operated or would operate as a fraud or  
2 deceit upon the purchaser, in violation of Section 17(a) of the Securities Act.

3 35. By reason of the foregoing, Defendants, and each of them, violated, and  
4 unless enjoined will continue to violate, Section 17(a) of the Securities Act.

5 **SECOND CLAIM**

6 **FRAUD IN CONNECTION WITH THE PURCHASE OR SALE OF SECURITIES**

7 **Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and**

8 **Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]**

9 **(All Defendants)**

10 36. Paragraphs 1 through 32 are realleged and incorporated herein by reference.

11 37. Defendants, and each of them, by engaging in the conduct described in  
12 paragraphs 1 through 32 above, directly or indirectly, in connection with the purchase or  
13 sale of securities, by the use of means or instrumentalities of interstate commerce, or of the  
14 mails, with scienter: (1) employed devices, schemes or artifices to defraud; (2) made  
15 untrue statements of material fact or omitted to state material facts necessary in order to  
16 make the statements made, in the light of the circumstances under which they were made,  
17 not misleading; or (3) engaged in acts, practices or courses of business which operated or  
18 would operate as a fraud or deceit upon other persons, in violation of Section 10(b) of the  
19 Exchange Act and Rule 10b-5 thereunder.

20 38. By reason of the foregoing, Defendants, and each of them, violated, and  
21 unless enjoined will continue to violate, Section 10(b) of the Exchange Act and Rule 10b-5  
22 thereunder.

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**THIRD CLAIM**

**OFFER AND SALE OF UNREGISTERED SECURITIES**

**Sections 5(a) and 5(c) of the Securities Act**

**[15 U.S.C. §§ 77e(a) and 77e(c)]**

**(All Defendants)**

39. Paragraphs 1 through 32 of this Complaint are realleged and incorporated herein by reference.

40. Defendants, and each of them, by engaging in the conduct described in Paragraphs 1 through 32 above, directly or indirectly, through the means or instruments of transportation or communication in interstate commerce or the mails, offered to sell or sold securities in the form of investment contracts described to investors as "equipment lease investments," or, directly or indirectly, carried or caused such securities to be carried through the mails or in interstate commerce, for the purpose of sale or delivery after sale.

41. No registration statement has been filed with the Commission or is in effect with respect to such securities.

42. By reason of the foregoing, Defendants, and each of them, violated, and unless enjoined will continue to violate, Sections 5(a) and 5(c) of the Securities Act.

**FOURTH CLAIM**

**VIOLATIONS OF THE BROKER-DEALER REGISTRATION PROVISIONS**

**Section 15(a)(1) of the Exchange Act**

**[15 U.S.C. § 78o(a)(1)]**

**(Defendants Prime, Halsey, and Giavanno)**

43. Paragraphs 1 through 32 of this Complaint are realleged and incorporated herein by reference.

44. Defendants Prime, Halsey, and Giavanno, by engaging in the conduct described in Paragraphs 1 through 32 above, directly or indirectly, made use of the mails or means or instrumentalities of interstate commerce to effect transactions in securities,

1 without being registered as a broker or dealer in accordance with Section 15(b) of the  
2 Exchange Act, in violation of Section 15(a)(1) of the Exchange Act.

3 45. Defendant Prime was not registered with the Commission as a broker or  
4 dealer during the relevant time period. Neither Defendants Halsey nor Giavanno were  
5 registered with the Commission as a broker-dealer or associated with a registered broker-  
6 dealer during the relevant time period.

7 46. By reason of the foregoing, Defendants Prime, Halsey, and Giavanno  
8 violated, and unless enjoined will continue to violate, Section 15(a)(1) of the Exchange Act.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, the Commission respectfully prays that this Court:

11 1. Issue findings of fact and conclusions of law that each of the Defendants  
12 committed the violations charged and alleged herein.

13 2. Issue preliminary and permanent injunctions against each of the Defendants for  
14 violations of Sections 5(a), 5(c), and 17(a) of the Securities Act and Section 10(b) of the  
15 Exchange Act and Rule 10b-5 thereunder.

16 3. Issue preliminary and permanent injunctions against Defendants Prime, Halsey,  
17 and Giavanno for violations of Section 15(a)(1) of the Exchange Act.

18 4. Order each of the Defendants to pay civil penalties pursuant to Section 20(d)(1)  
19 of the Securities Act [15 U.S.C. § 77t(d)(1)] and Section 21(d)(3)(A) of the Exchange Act  
20 [15 U.S.C. § 78u(d)(3)(A)].

21 5. Order each of the Defendants to disgorge all money they received, whether  
22 directly or indirectly, as a result of their illegal conduct, and to pay prejudgment interest  
23 thereon.

24 6. Grant such further relief as this Court may determine to be just, equitable, and  
25 necessary, including, but not limited to, orders freezing assets in the possession, custody, or  
26 control of the Defendants, granting expedited discovery, and requiring an accounting from the  
27 Defendants concerning the use of investor funds.

28



PROOF OF SERVICE BY MAIL

1  
2 I, Magnolia M. Marcelo, declare that I am, and was at the time  
3 of service of the papers herein referred to, over the age of  
4 eighteen (18) years and not a party to the within action. My  
5 business address is 5670 Wilshire Boulevard, 11th Floor, Los  
6 Angeles, California 90036, which is located in the county in which  
7 the within-mentioned mailing occurred. I am readily familiar with  
8 the practice at my place of business for the collection and  
9 processing of correspondence for mailing with the United States  
10 Postal Service. Such correspondence is deposited with the United  
11 States Postal Service on the same day in the ordinary course of  
12 business.

13 On January 22, 1999, I served the following document entitled  
14 **PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**  
15 **MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT FOR VIOLATIONS OF**  
16 **THE FEDERAL SECURITIES LAWS** by placing a true and correct copies in  
17 a separate envelope for each addressee named below, with the name  
18 and address of the person served shown on the envelope as follows:

19 **SEE ATTACHED SERVICE LIST**

20 and by sealing the envelope and placing it in the appropriate  
21 location at my place of business for collection and mailing with  
22 postage fully prepaid in accordance with ordinary business practice.

23 I declare under penalty of perjury under the laws of the United  
24 States of America that the foregoing is true and correct and that I  
25 am employed in the office of a member of the bar of this Court at  
26 whose direction the service was made.

27 \*

28 \*

Executed on January 22, 1999, at Los Angeles, California.

Magnolia M. Marcelo  
Print or Type Name

*Magnolia M. Marcelo*  
Signature

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SEC v. ALLIANCE LEASING CORP., et al.

Case No. 98 CV 1810J CGA

SERVICE LIST

January 22, 1999

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