ORIGINAL

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

U.S. SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

PAUL G. MERKLINGER, and
ENCORE ASSOCIATED LEASING, LLC,

Defendants,

and

BRIAN J. MERKLINGER,

Relief Defendant.

______________________________/

Case: 2:08-cv-13184
Judge: Rosen, Gerald E
MJ: Majzoub, Mona K
Filed: 07-24-2008 At 10:15 AM
CMP POSSIBLE SEALED MATTER TRO (DA)

COMPLAINT

Plaintiff, U.S. Securities and Exchange Commission ("SEC"), alleges and states as follows:

SUMMARY

1. This matter involves a scheme to defraud by Paul G. Merklinger ("Merklinger"), a recidivist and resident of Novi, Michigan, and Encore Associated Leasing, LLC ("EAL"), a company formed, owned, and controlled by Merklinger, which was purportedly in the business of collecting, shredding and recycling used tires. The SEC has also named Merklinger's son, Brian J. Merklinger ("Brian Merklinger"), as a relief defendant.

2. From September 2006 to July 2007, Merklinger and EAL (collectively, "Defendants") fraudulently raised at least $7.2 million from five investors through the offer and sale of securities in EAL.

3. The EAL investments each consisted of: (1) an individual limited liability company ("LLC") priced at $500,000, whose sole asset was to be a single "T2" tire collecting/shredding truck ("T2 shredding truck"), which EAL could repurchase for $1 after five years, and (2) a $10,000 warrant which the investor could exchange for a 1% unit in EAL after a five-year period.

4. The Defendants represented that $425,000 of each EAL investment would be used for the cost of the T2 shredding truck, with most or all of the remainder to be used for operating capital. They further represented that EAL would lease the T2 shredding trucks from the investors, use them to collect and shred used tires from tire and auto retailers, that each truck would generate gross revenue of $33,000 to $66,000 per month, and that EAL would pay the investors $15,000 in monthly leasing fees and investment interest. Merklinger also represented that a working prototype of the T2 shredding truck existed, that the trucks would be in operation shortly after the investments were received, and that after five years, the investors could expect investment returns up to 372% and the warrant would be worth at least $1.2 million.

5. The Defendants' representations were all false and misleading. The trucks cost much less than $425,000, and there was no working prototype and no reasonable basis for the revenue, income, and return figures that Merklinger gave to the investors. Merklinger never developed a T2 shredding truck that was capable of sustained commercial operations. Further, Merklinger used more than $950,000 of investor funds for his personal benefit, including

approximately $435,000 for his purported "salary," more than $229,000 for the purchase of luxury automobiles and watercraft, more than $180,000 for rental payments, and extravagant landscaping and furnishings for his home, and over $98,000 for back taxes. Merklinger also spent or transferred more than $172,000 for the benefit of his son, Relief Defendant Brian Merklinger, including $74,000 for the purchase of a high performance sports car. In addition, Merklinger used more than $134,000 of investor money to make payments to investors in a related company, Encore Tire Recovery Inc. – Mich. ("ETR"), one of his earlier investment schemes. Finally, Merklinger failed to disclose that he had been barred for 10 years by the Ontario Securities Commission ("OSC") in connection with a prior investment scheme in Canada, and instead told the EAL investors that the Canadian scheme had been a "boon" for investors.

6. Merklinger and EAL, directly and indirectly, have engaged, and unless enjoined, will continue to engage in transactions, acts, practices and courses of business which constitute violations of Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. §77(q)(a)] and Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. §78j(b)] and Rule 10b-5 [17 C.F.R. §240.10b-5] promulgated thereunder.

7. The SEC brings this action to restrain and enjoin such transactions, acts, practices, and course of business pursuant to Section 20(b) of the Securities Act [15 U.S.C. §77t(b)] and Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§78u(d) and 78u(e)].

DEFENDANTS

8. **Paul G. Merklinger**, age 62, is a Canadian citizen and resident of Novi, Michigan. Merklinger is the President, CEO, and eighty percent owner of EAL, and he

personally offered and sold the company's securities to investors. On March 3, 1992, Merklinger settled an action filed by the OSC regarding Merklinger's uses of $1.4 million (Canadian) of investor money in connection with his involvement in a real estate development project (the "Jantree investments") and agreed to a 10-year bar from the Ontario securities markets. Moreover, in 1993, he was sentenced to 90 days in jail for contempt of court for dissipating assets in violation of an asset preservation order in his divorce case.

9. **Encore Associated Leasing, LLC** is a Michigan LLC formed in 2003 with its principal places of business in Livonia and Novi, Michigan. EAL is purportedly in the business of collecting, shredding, and recycling used tires. EAL offered and sold securities to investors from September 2006 through at least July 2007. EAL's securities are not registered with the SEC.

RELIEF DEFENDANT

10. **Brian J. Merklinger**, age 32, is a Canadian citizen and resident of Novi, Michigan and is Merklinger's son. EAL documents state that Brian Merklinger is a member of EAL's board of directors, and, through another entity, owns twenty percent of the company with his brothers. Brian Merklinger is a co-signatory with Merklinger on a bank account in which Merklinger co-mingled investors' funds, which were used to pay for both Merklingers' personal expenses. Merklinger spent or transferred more than $172,000 in investor funds for the benefit of Brian Merklinger.

JURISDICTION

11. This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Sections 21(e) and 27 of the Exchange Act [15 U.S.C. §§

78u(e) and 78aa]. Venue is proper in this Court pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. §78aa].

12. The acts, transactions, practices, and courses of business constituting the violations alleged herein occurred within the jurisdiction of the United States District Court for the Eastern District of Michigan and elsewhere.

13. Defendants, directly and indirectly, have made, and are making, use of the means and instrumentalities of interstate commerce, the means and instruments of transportation and communication in interstate commerce, and the mails, in connection with the acts, transactions, practices, and courses of business alleged herein.

FACTS

The General Representations

14. Between September 2006 and July 2007, the Defendants raised over $7.2 million from five EAL investors. While certain specifics of the EAL investments varied for each investor, the representations generally remained the same. The $510,000 investments, which the offering materials describe as "securities," each consisted of: (1) an individual LLC priced at $500,000, whose sole asset was to be a single T2 shredding truck, which Merklinger referred to as an "LLC unit," which Encore could repurchase for $1 after five years; and (2) a $10,000 warrant which the investor could exchange for a 1% unit in EAL after a five-year period. The Defendants further represented that EAL would lease the T2 shredding trucks from the investors and use them to collect and shred used tires from tire and auto retailers, that each T2 shredding truck was projected to generate gross revenue of $33,000 to $66,000 per month, and that EAL would pay investors approximately $15,000 in monthly leasing fees and "investment interest."

Merklinger also represented that a working prototype of the T2 shredding truck existed, that the trucks would be in operation shortly after the investments were received, that after five years the investors could expect returns on their investments ranging from 57% to 372%, and the warrant would be worth at least $1.2 million. Finally, the EAL offering materials further represented in a "Use(s) of Funds" table that $425,000 of each investment would be used for the cost of the investor's T2 shredding truck and that $60,000 to $75,000 would be used for start up operating capital or a capital contribution. Merklinger never disclosed that he would use the investors' funds for his personal benefit. Indeed, Merklinger told the investors that they would be paid first, before Merklinger received any money from the business. (collectively these representations are the "general representations").

The First Investor

15. EAL's first investor was one of Merklinger's neighbors (the "first investor"). In early 2006 Merklinger began soliciting the first investor to invest in both ETR and EAL.

16. From approximately October 1995 through January 2006, Merklinger raised approximately $2 million from nearly 30 ETR investors. Merklinger and ETR represented to investors that their funds would be used to finance ETR's tire recycling business in the Detroit area. ETR, however, has never conducted commercial operations nor earned any profits and its only source of cash came from investors, and none of the investors received any returns. By the end of 2006, ETR had no cash or other tangible assets, with outstanding liabilities of more than $2.4 million.

17. In the summer of 2006, Merklinger gave the first investor an EAL private placement memorandum ("PPM") and additional offering materials that included many of the

general representations discussed in the above paragraph. The PPM also represented that, in exchange for the right to operate his T2 shredding truck for five years, EAL would pay: (1) $50,000 annually for five years; (2) $3,300 in monthly lease payments; and (3) $10,000 per month into a "sinking fund" for five years and at the end of the five-year period, the first investor would receive $500,000 out of the sinking fund.

18. On July 9, 2006, the first investor signed an EAL subscription agreement, and Merklinger told him that his T2 shredding truck would be ready within three months of receiving the full $510,000.

19. Pursuant to the subscription agreement, the first investor was supposed to pay EAL an $85,000 down payment ($75,000 towards the LLC unit and $10,000 for the warrant) and obtain a bank loan for the remaining $425,000. Merklinger told the first investor that because the truck he purchased would be EAL's first T2 shredding truck, it would initially be used for "promotional purposes" to show to potential investors and customers. Because this meant that the commercial operation of the first investor's T2 shredding truck (and thus his monthly payments) would be delayed, Merklinger agreed to pay the interest on the first investor's $425,000 bank loan.

20. As of late August 2006, the first investor had not paid EAL and was considering not proceeding with the investment. Merklinger pressured the first investor into continuing with the investment by falsely representing that EAL had already spent $365,000 of the $425,000 that the T2 shredding truck would purportedly cost and then by threatening to sue the first investor.

21. On September 25, 2006, the first investor wrote two checks totaling $85,000 to EAL. In November 2006, the first investor obtained two bank loans totaling $425,000, and on November 8 and 15, he respectively wrote checks of $175,000 and $250,000 to EAL.

22. When the first investor made his initial $85,000 EAL investment, Merklinger deposited the funds into an EAL bank account that had less than $50 in it.

23. Between September 30, 2006 and January 30, 2007, Merklinger used the first investor's money to pay $10,000 in back rent to his landlord, pay $4,100 to Brian Merklinger, and withdraw $95,000 in cash and "payroll checks" to himself.

24. In addition, on January 30, 2007, Merklinger used the first investor's money to make a $10,429 settlement payment to an ETR investor who had previously sued him. Pursuant to the settlement agreement with this ETR investor, Merklinger had to make 16 quarterly payments of $10,429 through October 2010, and he used EAL investor proceeds to make five such payments to this ETR investor through January 2008.

25. Merklinger did use $216,726 of the $425,000 sent by the first investor in November to buy a single front-loading garbage truck. EAL's projected cost to convert this garbage truck to the T2 shredding truck was $65,000, such that the total "cost" of the shredding truck was only $281,726, far less than the $425,000 that Merklinger had previously represented to the first investor.

26. The Defendants never made any of the promised payments to the first investor.

27. Through March 8, 2007, EAL had no other investors and no operating revenues.

The Second Investor Group

28. Merklinger began soliciting a family of investors (the "second investor group"), shortly after receiving the final payment from the first investor. Merklinger's primary contacts for the second investor group were the adult son and the adult grandson of the family patriarch.

29. On November 17, 2006, Merklinger was introduced to the grandson by a business acquaintance, and the three of them met that day. At this meeting, Merklinger discussed the EAL investment and showed the grandson an EAL PowerPoint presentation that referred to a prototype T2 shredding truck that was "completed and operational." He also showed the grandson a "Talking Points" presentation on his laptop that stated that EAL was a "Passive Investment." Collectively, the PowerPoint and Talking Point presentations contained many of the representations described above in the general representations paragraph.

30. At the November 17, 2006 meeting, Merklinger also told the grandson that it would take four to six weeks to build each new T2 shredding truck. Merklinger further orally represented that: (1) the investor would own the T2 shredding truck; (2) if EAL failed, the investors would have the right to liquidate or operate their T2 shredding trucks; and (3) EAL would start paying the investors the monthly lease and investment interest payments, respectively, within 30 and 60 days after EAL received the $510,000 investment. The grandson relayed all of this information to the entire second investor group.

31. On February 5, 2007, the son and grandson traveled to Detroit to meet with Merklinger. At this meeting, Merklinger went over the same "Talking Points" presentation that he had shown the grandson in November. Merklinger also represented that a consortium of investors was ready to invest in at least 10 new T2 shredding trucks. Merklinger also

represented that Waste Management, Inc. had offered to buy the EAL business concept for $20 to 25 million, but that he wanted to sell the company in five years at over $1 billion. Merklinger also took the son and grandson to a garbage truck repair and service facility, and showed them approximately 14 front-loading garbage trucks purportedly delivered for EAL. Although these 14 garbage trucks had not been converted to T2 shredding trucks, Merklinger told them that the first investor's truck had been converted into a "prototype" T2 shredding truck and was functioning properly.

32. Two days after this meeting, Merklinger, in an email to the son, falsely represented that he "[s]old some more trucks to another investor yesterday morning."

33. Merklinger then sent the second investor group offering materials that described the Jantree investments in Canada as a "boon" to his investors, and failed to disclose the OSC bar.

34. The week after the Detroit meeting, the grandson informed Merklinger that the family patriarch and his wife would invest in 10 LLC units and warrants through Willow Creek Farm, LLC, a family controlled LLC for which the son was the manager, and that the son and his wife would purchase two, for a collective total of $6,120,000.

35. The second investor group made an initial down payment of $85,000 per LLC unit/warrant and financed the remaining $425,000 for each investment with a bank loan. On March 7 and 8, 2007, they wired $1,020,000 in total to the Defendants for the down payments for their 12 LLC units/warrants.

36. On March 16, 2007, the second investor group met with Merklinger to sign the EAL investment documents. For each of the 12 LLC units/warrants purchased, they received a

virtually identical book of closing documents, which contained an EAL subscription agreement and other types of materials that contained many of the representations described above in the general representations paragraph.

37. On March 26, 2007, the second investor group obtained their loans and wired $4.98 million to EAL, and then wired the remaining $100,000 of their investment on April 2, 2007.

38. On March 6, 2007, the EAL bank account into which Merklinger deposited the second investor group's payments had a balance of less than $3,000.

39. Between March 8 and May 20, 2007, Merklinger used the second investor group's money to: (1) buy himself, the very day that he received all of the down payment, a Mercedes Benz convertible and a fully-loaded Ford pickup truck for, collectively, $208,078 and buy Brian Merklinger, that same day, a $74,465 Ford Shelby sports car; (2) pay $10,000 in back rent on his personal residence; (3) buy a Jacuzzi costing $8,474; (4) pay $65,000 to an ETR investor who had threatened to sue him; and to pay himself over $375,000, which he used to, among other things, pay back taxes in excess of $98,000 and pay $115,000 to a landscaper for work on his rented personal residence.

40. On March 8, 2007, Merklinger also used $40,000 of the second investor group's money to make a down payment to finally attempt to convert the first investor's garbage truck into the first T2 shredding truck.

41. On March 26, 2007, Merklinger used $3,089,442 of the second investor group's money to pay for 14 garbage trucks at an average price of $220,674, even though the second investor group had only purchased 12 trucks. In early May, 2007, Merklinger paid the contractor

who made and installed the shredders and conveyors a $375,000 fifty percent down payment to begin work on 15 additional shredder/conveyor systems, at an average total price of $48,333 each. Thus, the cost per T2 shredding truck for the second investor group was only $269,007, far less than the $425,000 that Merklinger had represented.

42. Contrary to Merklinger's representations that the second investor group's T2 shredding trucks would be ready for operation within four to six weeks from the receipt of their investment, their trucks have not yet become fully operational.

43. The Defendants have not made any of the promised payments to the second investor group.

The Third Investor

44. EAL's third investor was an owner, along with her husband, of a garbage truck repair and service facility where Merklinger had stored some of EAL's trucks.

45. In March 2007, Merklinger met with the third investor and her husband about EAL. At another meeting that month, Merklinger falsely told the third investor that he had invested $16 million of his own money into the EAL project.

46. On March 22, 2007, Merklinger emailed the third investor offering materials similar to those that he sent to the second investor group, which included many of the representations described above in the general representations paragraph.

47. On April 17, 2007, the third investor informed Merklinger that she would purchase one T2 shredding truck. However, for the next two months, she continued to discuss with Merklinger the specifics of the investment.

48. In April 2007, Merklinger purchased an office facility in Livonia, Michigan for $2 million, with no money down, pursuant to an agreement to make over $400,000 in improvements to the property and that the purchase price was to be paid over three years. In May 2007, Merklinger began spending hundreds of thousands of dollars of the second investor group's money on the improvements for this facility, and he began to hire EAL employees. However, no T2 shredding trucks were operational and EAL's only source of funding remained the second investor group's money. Nevertheless, Merklinger sought to create the appearance of well-funded new business in advance of a June 21, 2007 "launch" and press conference in which Merklinger would unveil EAL to the public.

49. In April 2007, at Merklinger's request, the third investor's husband began assisting Merklinger with EAL's business.

50. At a meeting in May 2007, Merklinger told the third investor that in the event the T2 shredding truck failed to generate sufficient tire collecting revenue, EAL would pay the investor's monthly rental and interest payments from the funds received from their $510,000 investment.

51. Prior to the June 21, 2007 scheduled "launch" of EAL, Merklinger provided the third investor with a "Confidential Private Placement Memorandum Supplement" (the "Supp. PPM") dated June 1, 2007, which stated that a "prototype" T2 shredding truck was functioning. This statement was false, because the first investor's prototype had yet to function properly. The Supp. PPM also described the Canadian Jantree investments as a "boon" for the investors and did not disclose the OSC's 10-year bar. In addition to these disclosures, the Supp. PPM stated that

the purchase price of the EAL warrant would increase from $10,000 to $150,000 on June 21, 2007, the day of the launch.

52. The third investor wanted to avoid the price increase for the warrant, so on the day before the launch, she provided Merklinger with two checks totaling $85,000 as a down payment.

53. On July 5, 2007, the third investor signed the closing documents, which contained many of the representations described above in the general representations paragraph and identified the VIN number for her truck. She then gave Merklinger a check for $425,000.

54. Merklinger commingled the third investor's money with the second investor group's money. Between June 21 and July 11, 2007, Merklinger used these commingled investor funds to pay himself $45,000 in cash and purported "payroll" checks, purchase two jet skis for $21,590, spend $4,236 for his girlfriend's trip to Las Vegas, give $4,000 to Brian Merklinger for his student loans, and make $17,800 in payments to three ETR investors. Merklinger used much of the remaining money to pay for the expensive renovations and decorating that he had previously commissioned for the Livonia facility.

The Fourth Investor

55. The fourth investor is the brother-in-law of the third investor.

56. The third investor forwarded the fourth investor the EAL offering materials that Merklinger had provided to her in March 2007, and the fourth investor became interested in investing in EAL.

57. On June 11, 2007, the third investor informed the fourth investor that Merklinger had told her that the price of the warrant was going to increase from $10,000 to $150,000, and that she planned to invest prior to the June 21 launch.

58. The fourth investor remained hesitant to invest in EAL, but in mid-June 2007, both Merklinger and Merklinger's attorney each told him that he could make an $85,000 down payment, which would include the warrant purchase, and that this down payment would be refundable within 120 days.

59. On June 22, 2007, the fourth investor sent Merklinger a letter confirming the 120-day refund arrangement and two checks totaling $85,000.

60. Merklinger commingled the fourth investor's $85,000 with the other investor funds, and then withdrew $5,000 in "salary" and used over $29,000 to pay for services associated with the launch and renovations to the Livonia facility.

61. On September 14, 2007, after deciding to not complete his investment, the fourth investor requested the return of his money. Merklinger refused to return the $85,000.

The Unsuccessful Launch and The Failure of EAL

62. Merklinger spent over $460,000 of investor money renovating the Livonia facility and on marketing expenses, over $10,000 for catering, and approximately $50,000 to a media relations company to produce the launch, which included magicians, a band, dancers, and a speech by noted environmentalist Robert Kennedy Jr.

63. At the launch, Merklinger gave a speech promoting the T2 shredding truck and EAL's business plan. Among the hundreds of attendees at launch were the first investor, the second investor group, and the third investor, as well as the press and many potential investors

that Merklinger had invited. Even though the first investor's prototype did not yet work properly, Merklinger nonetheless attempted to use it as a demonstration at the launch. The prototype failed to successfully shred tires, which Merklinger blamed on "dirt in the prototype's hydraulics." Following the launch, he hosted a lavish party at his home for potential investors, but he was unsuccessful in raising any additional funds from the launch.

64. By August 20, 2007, EAL had less than $107,000 in its bank account.

65. On August 20, 2007, Merklinger convinced an ETR investor to give EAL $100,000 in exchange for a promissory note that is currently due on August 20, 2008. Merklinger told this ETR investor that he would repay the note after selling a T2 shredding truck to a future EAL investor.

66. In the summer and fall of 2007, EAL attempted to operate a few T2 shredding trucks with very limited success. Specifically, he attempted to operate the first investor's prototype and another T2 shredding truck in July and August 2007, but both failed to function properly. From August through December 2007, four of the second investor group's shredding trucks were able to intermittently operate and collectively generated over $42,000 in revenues, far less than what had been represented by Merklinger. Merklinger, however, did not pay any of this revenue to the second investor group.

67. On October 1, 2007, EAL's garbage truck supplier, who had not been paid for four of the trucks, repossessed these garbage trucks, including the one that the third investor had purportedly purchased.

68. By November 2007, the second investor group had been demanding payments from Merklinger for six months.

69. On November 15, 2007, Merklinger met with the second investor group under the guise of trying to assist them in making their monthly interest payments on the loans that they had taken out to fund their investments. However, Merklinger instead attempted to solicit an additional $123,841 per truck, or $1,486,102 in total, to "retrofit" their trucks with shredders provided by a new vendor; again overstating the actual costs by $25,000 per truck.

70. On November 19, 2007, Merklinger followed up with a letter stating that if the second investor group immediately paid $1.48 million, EAL could put their T2 shredding trucks into service by January 2008, and that the trucks would then generate sufficient cash flow to repay the retrofit costs by December 2008.

71. When the second investor group refused to pay the retrofit costs, Merklinger wrote to them that the shredders on their trucks had "completely failed" and that they were not entitled to any payments because their trucks had not yet started commercial operations. This statement was false because, among other reasons, four of their trucks had been in commercial operations, albeit unsuccessfully, since August 2007.

72. On January 22, 2008, the second investor group demanded that Merklinger liquidate their trucks and repay them, which Merklinger refused to do.

73. By January 2008, EAL had ceased its minimal business operations, and almost all of its remaining employees had been laid off.

74. On January 3, 2008, EAL sold two of its unconverted garbage trucks for $363,000 to a waste collection company in Indiana.

75. By late May 2008, Merklinger was evicted from the Livonia facility for failure to make any payments owed under the $2 million land sale contract.

76. In late May 2008, Merklinger hired movers to remove anything of value from the facility, and he moved the most valuable property to his personal residence, including computers, audio-visual equipment, and expensive furniture. Merklinger moved the remaining property, including office furniture, artwork, and equipment, to a building he purportedly attempted to rent in Wixom, Michigan. Merklinger failed to pay the $4,500 moving expenses and was quickly evicted from this new building. He subsequently moved the assets stored there to a storage facility in Redford, Michigan.

Merklinger's Recent Fraudulent Solicitations and Dissipation of Assets

77. On June 18, 2008, after receiving the SEC staff's investigative subpoenas, Merklinger sold two luxury cars that he had purchased with the second investor group's money, and a third that he purchased with ETR investor money, for a total of $131,500. He used this money to pay Brian Merklinger $82,000 in checks.

78. Merklinger also made arrangements for Brian Merklinger to move to California, and to send with him two cars (including the $74,000 Ford Shelby) and most of the items of value from Merklinger's personal residence.

79. On June 30, Merklinger also wired $2,500 to a new bank account.

80. To the best of the SEC's knowledge, the Defendants and Brian Merklinger remain at least in possession or control of the first investor's truck, which is currently at an Ohio vendor facility, two cars, the jet skis, and other items of value that were purchased with investor funds, which are still believed to be inside Merklinger's home, at the storage facility, or in the possession of Brian Merklinger, and are likely still in possession of some of the proceeds of the June 18, 2008 car sales.

81. Despite the failure of EAL, Merklinger is continuing to solicit investors.

82. In late May 2008, Merklinger met with the first investor and assured him that his investment was still safe, and that Merklinger was in discussions with two venture capital firms about putting EAL trucks into service in Mexico and Dubai.

83. On June 2, 2008, Merklinger telephoned the son in the second investor group and his wife, and proposed that they sell nine of their trucks so that he could use the money to retrofit the remaining three.

84. During the first week of July 2008, Merklinger telephoned the first investor and asked him for $75,000 to retrofit his truck.

85. On July 9, Merklinger called the first investor to schedule a meeting to discuss the $75,000 additional investment.

86. On July 12, 2008, Merklinger called the first investor again and asked him for another $75,000 to $80,000 to retrofit his truck.

87. On July 16, 2008, Merklinger sent the first investor an email suggesting that the first investor use his T2 shredding truck as collateral for an $89,000 loan to pay for the retrofit costs

COUNT I

Violations of Section 17(a)(1) of the Securities Act
[15 U.S.C. § 77q(a)(1)]

88. Paragraphs 1 through 87 above are realleged and incorporated herein by reference.

89. By their conduct, Merklinger and EAL, in the offer or sale of EAL's securities, by the use of any means or instruments of transportation or communication in interstate commerce and by the use of the mails, directly or indirectly, have employed devices, schemes or artifices to defraud.

90. Merklinger and EAL acted with scienter.

91. By reason of the foregoing, Merklinger and EAL violated Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)].

COUNT II

Violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act
[15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)]

92. Paragraphs 1 through 87 above are realleged and incorporated herein by reference.

93. By their conduct, Merklinger and EAL, in the offer or sale of EAL's securities, by the use of any means or instruments of transportation and communication in interstate commerce and by the use of the mails, directly or indirectly, have obtained money or property by means of untrue statements of material fact or omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or have engaged in transactions, practices or courses of business which have been operating as a fraud or deceit upon purchasers of EAL's securities.

94. By reason of the foregoing, Merklinger and EAL violated Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)].

COUNT III

Violations of Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 Thereunder
[17 C.F.R. § 240.10b-5]

95. Paragraphs 1 through 87 above are realleged and incorporated herein by reference.

96. By their conduct, Merklinger and EAL, in connection with the purchase or sale of EAL's securities, by the use of any means or instrumentalities of interstate commerce or by the use of the mails, directly or indirectly: (a) employed a device, scheme or artifice to defraud; (b) made untrue statements of material fact and omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaged in an act, practice, or course of business which has been or is operating as a fraud or deceit upon other persons, including purchasers and sellers of such securities.

97. Merklinger and EAL acted with scienter.

98. By reason of the foregoing, Merklinger and EAL have violated Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5].

COUNT IV

Relief Defendant

99. Paragraphs 1 through 87 above are realleged and incorporated herein by reference.

100. Altogether, the Defendants received approximately $7.2 million in ill-gotten funds through their illegal offering of securities.

101. Merklinger transferred at least $546,000 of EAL investor funds into a bank account for which Brian Merklinger was a co-signor.

102. Merklinger used EAL investor funds to purchase a $74,000 high performance sports car for Brian Merklinger and transferred at least $4,000 of investor funds to Brian Merklinger him to pay his student loans.

103. Merklinger also recently transferred $82,000, along with several assets that he had purchased with investor funds to Brian Merklinger.

104. Brian Merklinger currently possesses or controls investor funds and assets purchased with investor funds.

105. The offering proceeds that Brian Merklinger received from the Defendants and currently possesses or controls constitute ill-gotten gains.

106. Brian Merklinger has no legitimate claim to the ill-gotten funds that he received from the Defendants or to any assets that the he acquired or that the Defendants acquired for him with those ill-gotten funds.

RELIEF REQUESTED

WHEREFORE, the SEC requests that the Court:

I.

Find that Defendants Merklinger and EAL committed the violations charged and alleged herein, and that through these violations Merklinger and EAL, and Relief Defendant, Brian Merklinger, obtained ill-gotten gains.

II.

Issue a Temporary Restraining Order, and Orders of Preliminary and Permanent Injunction, restraining the Defendants, their officers, agents, servants, employees, attorneys, and all person in active concert or participation with them, and each of them, from violating and from aiding and abetting violations of: (a) Sections 17(a)(1), 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §77(c)(a), (c); 15 U.S.C. § 77q(a)(1), (a)(2), (a)(3)]; (b) Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)]; and (c) and Rule 10b-5 promulgated thereunder [17 C.F.R. 240.10b-5].

III.

Order the Defendants and Relief Defendant to pay disgorgement of their ill-gotten gains, derived directly or indirectly from the conduct complained of herein, together with prejudgment interest thereon.

IV.

Order the Defendant Merklinger to pay the SEC civil penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)].

V.

Retain jurisdiction of this action in order to implement and carry out the terms of all orders and decrees that may be entered or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

VI.

Grant orders for such further relief as the Court deems appropriate.

Respectfully submitted,

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Dated: July 24, 2008

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

County in which this action arose Oakland County

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

ORIGINAL

I. (a) PLAINTIFFS
U.S. SECURITIES AND EXCHANGE COMMISSION

DEFENDANTS
PAUL G. MERKLINGER, ENCORE ASSOCIATED LEASING, LLC, AND BRIAN J. MERKLINGER

(b) County of Residence of First Listed Plaintiff ______
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Oakland County
(IN U.S. PLAINTIFF CASES ONLY)

HE

Case: 2:08-cv-13184
Judge: Rosen, Gerald E
MJ: Majzoub, Mona K
Filed: 07-24-2008 At 10:15 AM
CMP POSSIBLE SEALED MATTER TRO (DA)

(c) Attorney's (Firm Name, Address, and Telephone Number)
U.S. SECURITIES AND EXCHANGE COMMISSION ----BENJAMIN J. HANAUER, JAMES G. LUNDY, KATHRYN A. PYSZKA, JAMES G. O'KEEFE
175 W. JACKSON BLVD., CHICAGO, IL 60604 (312) 353-7390

II. BASIS OF JURISDICTION (Select One Box Only)

- ☑ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CI[...] (For Diversity Cases Only) [...] and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	XX 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☑ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	X 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Select One Box Only)

850

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury - Med. Malpractice
- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence

Habeas Corpus:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R. & Truck
- ☐ 650 Airline Regs.
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt.Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 810 Selective Service
- ■ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900 Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN (Select One Box Only)

- ☑ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

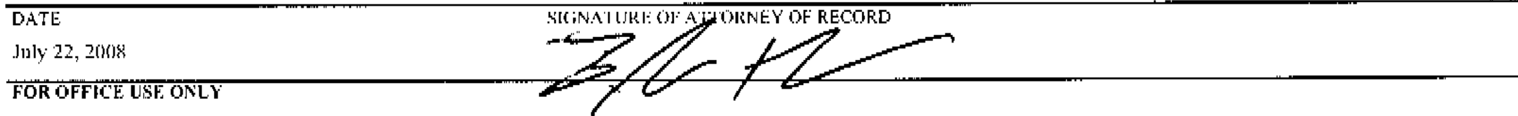
VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (**Do not cite jurisdictional statutes unless diversity**):
15 U.S.C. §77v (a), 15 U.S.C. §§78u(c) and 78aa
Brief description of cause:

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 — **DEMAND $** — CHECK YES only if demanded in complaint: **JURY DEMAND:** ☐ Yes ☑ No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE ______ DOCKET NUMBER ______

DATE
July 22, 2008

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT # ______ AMOUNT ______ APPLYING IFP ______ JUDGE ______ MAG. JUDGE ______

PURSUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously dismissed?

☐ Yes
☑ No

If yes, give the following information:

Court: ______________________

Case No.: ______________________

Judge: ______________________

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

☐ Yes
☑ No

If yes, give the following information:

Court: ______________________

Case No.: ______________________

Judge: ______________________

Notes :