

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.

| | |
|--|---|
| SECURITIES AND EXCHANGE COMMISSION, |) |
| |) |
| Plaintiff, |) |
| v. |) |
| |) |
| LANCE T. BERGER, |) |
| |) |
| Defendant. |) |
| _____ |) |

COMPLAINT

Plaintiff Securities and Exchange Commission alleges as follows:

I. INTRODUCTION

1. From no later than December 2012 through February 2013, Defendant Lance T. Berger, a stock promoter, engaged in a fraudulent scheme and market manipulation involving the stock of Face Up Entertainment Group, Inc. (“FUEG”). The scheme involved an illegal payment to Berger and a purportedly corrupt promoter as an inducement to arrange email blasts and press releases and to engage in the fraudulent purchase of FUEG stock.

2. Berger participated in this scheme in an effort to falsely generate the appearance of market interest in FUEG, induce public purchases of the stock, and artificially increase its trading volume and price.

3. Unbeknownst to Berger, however, the corrupt promoter was a witness cooperating with the FBI.

4. As a result of the conduct described in this Complaint, Berger violated Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. § 78j(b), and

Exchange Act Rule 10b-5(a) and (c), 17 C.F.R. §§ 240.10b-5(a) and (c). Unless restrained and enjoined, Berger is reasonably likely to continue to violate the federal securities laws.

5. The Commission respectfully requests that the Court enter: (a) a permanent injunction restraining and enjoining Berger from violating the federal securities laws; (b) an order directing Berger to pay disgorgement with prejudgment interest; (c) an order directing Berger to pay civil money penalties; and (d) an order barring Berger from participating in any offering of a penny stock.

II. DEFENDANT AND RELATED ENTITY

6. At all times relevant to this action, Berger was a stock promoter for FUEG. Berger resides in Pembroke Pines, Florida.

7. At all times relevant to this action, FUEG was a Florida corporation with principal offices located in Valley Stream, New York. The company purported to be in the business of operating an internet gaming website that charged a monthly membership fee. At all times relevant to this action, FUEG's stock was quoted on the OTC Link operated by OTC Markets Group, Inc. and the OTC Bulletin Board under the symbol "FUEG." In April 2013, however, the Commission entered an order suspending trading in the securities of FUEG for a ten-day period, pursuant to Section 12(k) of the Exchange Act. In May 2013, FUEG filed a Form 15 with the Commission to deregister its stock.

8. FUEG's stock is a "penny stock" as defined by the Exchange Act. At all times relevant to this action, the stock's shares traded at less than 43 cents per share. During the same time period, FUEG's stock did not meet any of the exceptions to penny stock classification pursuant to Section 3(a)(51) and Rule 3a51-1 of the Exchange Act. For example, the company's stock: (a) did not trade on a national securities exchange; (b) was not an "NMS stock," as defined

in 17 C.F.R. § 242.600(b)(47); (c) did not have net tangible assets (*i.e.*, total assets less intangible assets and liabilities) in excess of \$5,000,000; and (d) did not have average revenue of approximately \$6,000,000 for the last three years. *See* Exchange Act, Rule 3a51-1(g).

III. JURISDICTION AND VENUE

9. The Court has jurisdiction over this action pursuant to Sections 21(d) and 27 of the Exchange Act, 15 U.S.C. §§ 78u(d) and 78aa.

10. This Court has personal jurisdiction over Berger, and venue is proper in the Southern District of Florida, because Berger resides in the District and because a substantial part of Berger's acts and transactions constituting violations of the Exchange Act occurred in the District. For example, Berger met with the cooperating witness in Palm Beach County on December 7, 2012, to discuss the scheme. In addition, Berger participated on telephone calls with the cooperating witness while in Broward County and also deposited the inducement payment into the cooperating witness's bank account in the District.

11. Berger, directly or indirectly, made use of the means or instruments of transportation or communication in interstate commerce, or of a means or instrumentality of interstate commerce, or of the mails, in connection with the conduct alleged in this Complaint.

IV. THE FRAUDULENT SCHEME

12. In December 2012, Berger, a stock promoter for several penny stock companies, including FUEG, along with another stock promoter who was a business associate of Berger's, began discussions with the cooperating witness regarding possible fraudulent stock transactions involving several issuers, including FUEG.

13. Following a face-to-face meeting on December 7, 2012, Berger, the business associate and the cooperating witness continued to communicate through a series of telephone

conversations and emails over the next two months. During these conversations, they agreed the business associate would make a \$10,000 inducement payment to Berger and the cooperating witness to participate in the manipulation of FUEG stock. The business associate would pay the money directly to Berger who would then forward \$5,000 to the cooperating witness.

14. As part of the scheme, Berger agreed to arrange email blasts and provide “bid support” by lining up the cooperating witness, and possibly others, to purchase FUEG stock. Berger also agreed to provide the cooperating witness with advance notice of press releases that Berger would arrange for FUEG to issue to coordinate with the fraudulent trading. The press releases would be timed so it would appear the buying activity was spurred by positive news about the company.

15. On February 4, 2013, Berger and the cooperating witness discussed the upcoming manipulation of FUEG stock and when the company would be issuing press releases. Berger told the cooperating witness that the goal was to “. . . get [the stock price] back in the 20’s.” In addition, during that conversation, when addressing how the manipulation could attract potential investors, Berger remarked to the cooperating witness that “people, when they see it, they got [sic] to think that what they’re getting is legit. When they see volume, they think, oh wow . . .”

16. The next day, on February 5, 2013, Berger told the cooperating witness the business associate had sent him the \$10,000 payment. When the cooperating witness asked Berger to wire his share of the payment, Berger said he preferred instead to deposit the money directly into the cooperating witness’s bank account because “they can never hit you for wire fraud, if you never sent one, right?” Berger also mentioned to the witness he had received the advance press release and FUEG was going to be announcing “beta testing” with Facebook. Berger said the press release would be issued at 9:50 a.m. on February 7, 2013.

17. On February 6, 2013, Berger deposited \$5,000 into the cooperating witness's bank account at a bank in the District. That same day, during a telephone call with the cooperating witness, Berger confirmed he had an advance copy of the press release FUEG would be issuing the following day and that he was in the process of revising the header for the release. Berger also told the cooperating witness to start buying FUEG stock as soon as the release came out.

18. Later that same day, Berger called the cooperating witness to tell him that the scheme would be pushed back one day from February 7, 2013 to February 8, 2013, and the press release would be issued on February 8 at 9:55 a.m.

19. On February 8, 2013, at 9:55 a.m. – the exact time Berger had confirmed to the cooperating witness two days earlier – FUEG issued a press release announcing that it had begun “[c]losed Beta testing of its Facebook integrated gaming software.”

20. That same day, the FBI, posing as the cooperating witness, purchased a total of 35,000 shares of FUEG in the open market, in three separate transactions, at prices ranging from \$.20 to \$.215 per share, for a total principal cost of approximately \$7,350. The cooperating witness told Berger that he had purchased the shares as agreed.

21. Although Berger and the cooperating witness previously had discussed the possibility of a second round of manipulative buying, ultimately there were no further transactions.

COUNT I

Fraud in Violation of Section 10(b) and Rule 10b-5(a) and (c) of the Exchange Act

22. The Commission realleges and incorporates paragraphs 1 through 21 of its Complaint.

23. From no later than December 2012 through February 2013, Berger, directly and indirectly, by use of the means or instrumentalities of interstate commerce, or of the mails, in connection with the purchase or sale of securities, knowingly, willfully or recklessly:

- (a) employed devices, schemes or artifices to defraud; or
- (b) engaged in acts, practices, or courses of business which operated or would have operated as a fraud or deceit upon any person.

24. By reason of the foregoing, Berger directly and indirectly violated and, unless enjoined, is reasonably likely to continue to violate, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Exchange Act Rule 10b-5(a) and (c), 17 C.F.R. §§ 240.10b-5(a) and (c).

RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that the Court:

I.

Declaratory Relief

Declare, determine, and find that Berger has committed the violations of the federal securities laws alleged in this Complaint.

II.

Permanent Injunctive Relief

Issue a Permanent Injunction restraining and enjoining Berger, his officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, and each of them, from violating Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5(a) and (c), as indicated above.

III.

Disgorgement

Issue an Order directing Berger to disgorge all ill-gotten gains, including prejudgment interest, resulting from the acts or courses of conduct alleged in this Complaint.

IV.

Penalties

Issue an Order directing Berger to pay a civil money penalty pursuant to Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3).

V.

Penny Stock Bar

Issue an Order barring Berger from participating in any offering of a penny stock, pursuant to Section 21(d)(6) of the Exchange Act, 15 U.S.C. § 78u(d)(6).

VI.

Further Relief

Grant such other and further relief as may be necessary and appropriate.

VII.

Retention of Jurisdiction

Further, the Commission respectfully requests that the Court retain jurisdiction over this action in order to implement and carry out the terms of all orders and decrees that it may enter, or to entertain any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court.

Dated: September 27, 2013

Respectfully submitted,

By:



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JS 44 (Rev. 2/08)

CIVIL COVER SHEET

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.) **NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.**

I. (a) PLAINTIFFS

SECURITIES AND EXCHANGE COMMISSION

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

(c) Attorney's (Firm Name, Address, and Telephone Number)

Patrick R. Costello, Esq., (305) 982-6380
Securities and Exchange Commission
801 Brickell Avenue, Suite 1800, Miami, FL 33131

DEFENDANTS

LANCE T. BERGER

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

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT LAND INVOLVED.

Attorneys (If Known)

(d) Check County Where Action Arose: MIAMI-DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER OKEECHOBEE ISLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

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

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES |
|--|--|--|--|---|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury | PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395(f)) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input checked="" type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes |
| REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities Employment <input type="checkbox"/> 446 Amer. w/Disabilities Other <input type="checkbox"/> 440 Other Civil Rights | PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition | LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions | |

V. ORIGIN

(Place an "X" in One Box Only)

- 1 Original Proceeding 2 Removed from State Court 3 Re-filed- (see VI below) 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

VI. RELATED/RE-FILED CASE(S).

(See instructions second page):

a) Re-filed Case YES NO b) Related Cases YES NO

JUDGE

DOCKET NUMBER

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):

15 U.S.C. § 78j(b); 17 C.F.R. §§ 240.10b-5(a) and (c). Violations of the federal securities laws.

LENGTH OF TRIAL via 5 days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION DEMAND \$ _____ CHECK YES only if demanded in complaint:

UNDER F.R.C.P. 23 Permanent Injunction, JURY DEMAND: Yes No

Disgorgement and Civil Penalty, Penny Stock Bar

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

SIGNATURE OF ATTORNEY OF RECORD

DATE

Patrick R. Costello

09/27/2013

FOR OFFICE USE ONLY

AMOUNT

RECEIPT #

IFP

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: