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13 UNITED STATES DISTRICT COURT
14 EASTERN DISTRICT OF CALIFORNIA
15 SACRAMENTO DIVISION

16 SECURITIES AND EXCHANGE COMMISSION,

17 Plaintiff,

18 v.

19 DAVID A. SOUZA and D.A. SOUZA
20 INVESTMENTS, LLC,

21 Defendants.

Case No. 2:09-cv-02421-FCD-KJM

COMPLAINT

22 Plaintiff Securities and Exchange Commission (the "Commission") alleges:

23 **SUMMARY OF THE ACTION**

24 1. This matter involves a fraudulent investment scheme targeting members of a
25 Redding, California church community, carried out by David A. Souza ("Souza") and his
26 company, D.A. Souza Investments, LLC ("Souza Investments"). From August 2007 to April
27 2008, Souza baselessly touted his alleged investing acumen and promised sky high rates of
28 return. Souza induced approximately 28 investors within the church community to invest a total
of more than \$1 million into pooled funds to purchase stocks and enter into other investment
opportunities. Souza took advantage of his recent affiliation with the church to gain investors'

1 trust by appealing to their religious faith through such slogans as “Where Business Is Moral and
2 the Miraculous Is Routine.”

3 2. In reality, Souza and Souza Investments never invested any of the money they
4 received from investors. Instead, they diverted most of the investors’ money to expenditures
5 designed to create the false appearance of a successful business operation. Defendants used
6 another portion of the money to pay certain investors fictitious high returns in the style of a
7 Ponzi scheme, with the remainder used for payment of Souza’s personal living expenses. Souza
8 had no formal training or experience in investing or money management and no prior track
9 record of successful (or any) investing.

10 3. Souza’s scheme unraveled after he was confronted by investors and church
11 officials who had grown suspicious. In subsequent letters, Souza assured investors that he would
12 soon return their “investment[s] plus accrued earnings,” but failed to deliver on his promises and
13 had no means to do so.

14 4. Defendants Souza and Souza Investments violated the antifraud provisions of
15 the federal securities laws by misappropriating investor assets and by making materially false
16 and misleading statements in connection with the offer, purchase, and sale of securities. Souza
17 further made misrepresentations or omissions of material fact to investors in pooled investment
18 funds. In addition, Defendants violated the registration provisions of the federal securities laws
19 by offering and issuing securities without filing with the Commission a registration statement
20 that would have provided investors with important information about Defendants’ business and
21 finances.

22 5. As a result of these violations, the Commission brings this civil enforcement
23 action to require that Defendants be enjoined from future violations of the federal securities laws,
24 disgorge their ill-gotten gains, with prejudgment interest, and pay civil money penalties.

25 **JURISDICTION AND VENUE**

26 6. The Commission brings this action pursuant to Sections 20(b), 20(d), and 22(a)
27 of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. §§ 77t(b) and 77t(d)]; Sections 21(d)
28 and 21(e) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §§ 78u(d) and

1 78u(e)]; and Sections 209 and 214 of the Investment Advisers Act of 1940 (“Advisers Act”)
2 [15 U.S.C. §§ 80b-9 and 80b-14].

3 7. This Court has jurisdiction over this action pursuant to Sections 20(b) and 22(a)
4 of the Securities Act [15 U.S.C. §§ 77t(b) and 77v(a)]; Sections 21(d), 21(e), and 27 of the
5 Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa]; and Sections 209 and 214 of the
6 Advisers Act [15 U.S.C. §§ 80b-9 and 80b-14]. The defendants, directly or indirectly, have
7 made use of the means and instrumentalities of interstate commerce and of the mails in
8 connection with the acts, practices, and courses of business alleged in this complaint.

9 8. Venue is proper in this District pursuant to Section 22(a) of the Securities Act
10 [15 U.S.C. § 77v]; Section 27 of the Exchange Act [15 U.S.C. § 78aa]; and Section 214 of the
11 Advisers Act [15 U.S.C. § 80b-14]. During the period described in this complaint, Souza resided
12 in the District, and Souza Investments’ principal place of business is located in the District. In
13 addition, acts, practices, and courses of business alleged in the complaint occurred in the District.
14 This action has been filed in the Sacramento Division according to Local Rule 3-120(d) because
15 the case arises from acts, practices, and courses of business that occurred in Shasta County,
16 California.

17 DEFENDANTS

18 9. **David A. Souza**, age 53, of Redding, California, is the President, CEO, and sole
19 Manager of Souza Investments. He has never been registered with the Commission in any
20 capacity.

21 10. **D.A. Souza Investments, LLC** is a Nevada limited liability company formed
22 by David Souza on October 10, 2007 with headquarters in Redding, California. Souza
23 Investments has never been registered with the Commission in any capacity.

24 FACTUAL ALLEGATIONS

25 **Souza Solicited Investors From A Church Community By Falsely Claiming** 26 **Extraordinarily High Rates Of Return**

27 11. In approximately May 2007, Souza, a former handyman, automotive body shop
28 owner and truck driver, entered a Redding, California church community. Beginning in August

1 2007 through at least April 2008, Souza fraudulently induced individuals with ties to the church
2 community to invest in what he claimed were pooled investment programs that he managed.
3 Using his affiliation with the church, Souza gained the trust of prospective investors by
4 appealing to their religious faith, claiming, for example, that Souza Investments' purported
5 success could be attributed not only to its management, but to the "obvious favor of God."

6 12. Initially, investors provided investment funds directly to Souza. In October
7 2007, Souza established a limited liability company called D.A. Souza Investments, LLC. Souza
8 distributed written materials to investors under the Souza Investments name, and some investors
9 purchased interests in an investment pool purportedly operated by Souza Investments. At all
10 times, Souza acted as President and CEO of Souza Investments and held himself out to investors
11 as the only person involved in making investment decisions and managing investor funds.

12 13. Although Souza had no formal financial training or investment experience, he
13 convinced individuals to invest with him by touting the purportedly phenomenal success he was
14 achieving in the stock market. Representing that the investments would generate high returns,
15 Souza individually and through Souza Investments told investors that their money would be
16 placed into pools that would be invested in stocks. Souza also told some investors that their
17 money would purchase interests in a separate pooled investment fund that would invest in
18 business projects, such as a property development venture in Calexico, California or a
19 prospective water bottling plant in Oklahoma.

20 14. Both before and after investors gave him money, Souza frequently cited the
21 high rates of return he claimed to be earning (e.g., 78% quarterly) by investing in stocks. As an
22 example, Souza persuaded one investor to refinance the mortgage on her home and invest the
23 funds with him to take advantage of the better rate of return he insisted he could earn for her.
24 Souza also told prospective investors about existing investors who had already doubled or tripled
25 their money. In March 2008, Souza paid \$10,000 to a young couple who had invested \$1,500 six
26 months earlier. Upon hearing of this apparent 566% dividend payment, others acquainted with
27 the couple invested money with Souza. In addition, some existing investors contributed
28 additional money based on Souza's representations about the growth in their initial investments.

1 15. For Souza’s efforts as an investment adviser, investor agreements provided that
2 he would be compensated by management fees as high as 20 per cent, calculated as a percentage
3 of the net gains on the investments.

4 16. In early 2008, Souza provided prospective investors with an eight-page, full-
5 color Souza Investments business prospectus, featuring the slogan, “Where Business Is Moral
6 and the Miraculous Is Routine.” Among other representations, the prospectus contains a line
7 graph depicting a “2007 Rate of Return” of 79%, shown to have been reached between July 2007
8 and January 2008. A note to the graph states: “Actualized annual rate of return on investments
9 would equal 158%.” Certain individuals invested money with Souza based in part on the rate of
10 return depicted in the prospectus.

11 17. By offering and selling investments in pooled investment funds, for which
12 investors expected profits solely from Defendants’ efforts, Souza and Souza Investments
13 participated in the offer and sale of securities. Defendants offered the securities without filing a
14 registration statement with the Commission and without having a registration statement in effect
15 as to the securities offering, as required by the federal securities laws. Had such a statement
16 been filed, investors would have had access to important information pertinent to their
17 investment decisions.

18 18. In just nine months, Souza and Souza Investments raised more than \$1 million
19 from approximately 28 investors residing in multiple states, including California, Arizona, and
20 Texas. Some out-of-state investors wired the money for their investments to Defendants.
21 Defendants took no steps to determine whether prospective investors were financially qualified
22 or had the requisite investment experience to invest in the purported investment programs they
23 offered. Many investors were not financially sophisticated and did not have sufficient assets or
24 income to take on the risk of investing with Souza.

25 **In Reality, Souza Never Made Any Investments And Instead Used Investor Money**
26 **For Unauthorized Purposes**

27 19. Although Souza told investors that he would invest their money in stocks and/or
28 in various business ventures, in reality, Defendants never made any investments whatsoever.

1 Souza pooled the money Defendants received from investors in multiple bank accounts,
2 including his personal accounts, and commingled funds among the accounts. Rather than
3 investing the money as he had represented to investors, Souza used it for a number of
4 expenditures that were undisclosed to and unauthorized by investors.

5 20. Souza used a substantial portion of investor funds for expenditures that made it
6 appear as if his supposed investment programs were operating successfully, thereby making the
7 investments more attractive to prospective investors. For example, of the more than \$1 million
8 Defendants raised from investors, Souza distributed approximately \$230,000 back to certain
9 investors, much of it as purported dividend payments in the style of a Ponzi scheme. Souza also
10 spent approximately \$100,000 to rent a luxurious office space and to supply it with furniture and
11 computers, and he made more than \$100,000 in charitable contributions to the church
12 community.

13 21. Souza misappropriated additional investor funds for his personal living
14 expenses, including dental and optical expenses, clothing, and groceries. In addition, he spent
15 nearly \$45,000 on multi-level marketing programs and used approximately \$35,000 to purchase
16 investment books and investment products advertised on the Internet. These uses of funds were
17 never disclosed to investors.

18 22. Defendants knew or were reckless in not knowing that the claims they made to
19 prospective and existing investors regarding their purported investment returns were materially
20 false and misleading. Further, Defendants knew or were reckless in not knowing that they were
21 misappropriating investor funds, using investor funds contrary to disclosed purposes, and making
22 materially false and misleading statements and omissions regarding their use of investor funds.

23 **Souza's Scheme Unraveled When Investors Became Suspicious**

24 23. In approximately April 2008, an investor asked Souza to redeem his \$200,000
25 investment. Souza wrote the investor a check for \$350,000, stating that the original investment
26 had grown to that amount. When the investor attempted to cash the check, however, it bounced.
27 Thereafter, Souza offered a series of excuses, but never fully repaid the investor. The investor
28

1 became suspicious and shared his concerns with others. Ultimately, investors and church
2 officials confronted Souza, and the fraudulent scheme came to light.

3 24. In June 2008, Souza sent investors a form letter stating that “[d]ue to the
4 scrutiny of [the] Church,” he had “resolved to divest [sic] all investors.” In the letter, Souza
5 promised to “pay your investment plus accrued earnings by cashier’s check within thirty days . . .
6 contingent upon the receipt of expected funds sufficient to effect [t]his buyout.” Souza had no
7 reasonable basis for making that statement, and he has never delivered on his promise to redeem
8 the investments.

9 **FIRST CLAIM FOR RELIEF**

10 **Violations Of Section 17(a) Of The Securities Act By All Defendants**

11 25. The Commission hereby incorporates by reference Paragraphs 1 through 24
12 above.

13 26. By engaging in the conduct set forth above, Defendants Souza and Souza
14 Investments, and each of them, have, directly or indirectly, in the offer or sale of securities, by
15 the use of means or instruments of transportation or communication in interstate commerce, or of
16 the mails: (a) with scienter, employed devices, schemes, or artifices to defraud; (b) obtained
17 money or property by means of untrue statements of material fact or by omitting to state material
18 facts necessary in order to make statements made, in the light of the circumstances under which
19 they were made, not misleading; and (c) engaged in transactions, practices, or courses of
20 business which operated or would operate as a fraud or deceit upon the purchasers of such
21 securities.

22 27. By reason of the foregoing, Defendants have directly or indirectly violated, and
23 unless enjoined, will continue to violate, Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

24 **SECOND CLAIM FOR RELIEF**

25 **Violations Of Section 10(b) Of The Exchange Act And** 26 **Rule 10b-5 Thereunder By All Defendants**

27 28. The Commission hereby incorporates by reference Paragraphs 1 through 24
28 above.

1 29. By engaging in the conduct set forth above, Defendants Souza and Souza
2 Investments, and each of them, directly or indirectly, by use of means or instrumentalities of
3 interstate commerce, or of the mails, or of a facility of a national security exchange, with
4 scienter: (a) employed devices, schemes, or artifices to defraud; (b) made untrue statements of
5 material fact or omitted to state material facts necessary in order to make the statements made, in
6 light of the circumstances under which they were made, not misleading; and (c) engaged in acts,
7 practices, or courses of business which operated or would operate as a fraud or deceit upon other
8 persons, in connection with the purchase or sale of securities.

9 30. By reason of the foregoing, Defendants have directly or indirectly violated, and
10 unless enjoined will continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)]
11 and Rule 10b-5 thereunder [17 C.F.R. §§ 240.10b-5].

12 **THIRD CLAIM FOR RELIEF**

13 **Violations Of Sections 206(1) And (2) Of The**
14 **Investment Advisers Act Of 1940 By Souza**

15 31. The Commission hereby incorporates by reference Paragraphs 1 through 24
16 above.

17 32. At all relevant times, Souza acted as an investment adviser, as defined by
18 Section 202(a)(11) of the Advisers Act [15 U.S.C. § 80b-2(a)(11)], to the pooled investment
19 funds.

20 33. By engaging in the acts and conduct alleged above, Souza, directly or indirectly,
21 through use of the means or instruments of transportation or communication in interstate
22 commerce or of the mails, and while engaged in the business of advising others for compensation
23 as to the advisability of investing in, purchasing, or selling securities: (a) with scienter,
24 employed devices, schemes, and artifices to defraud; and (b) engaged in acts, practices, or
25 courses of business which operated or would operate as a fraud or deceit upon clients or
26 prospective clients.

1 **FIFTH CLAIM FOR RELIEF**

2 **Violations Of Section 5(a) And 5(c) Of The Securities Act By All Defendants**

3 40. The Commission hereby incorporates by reference Paragraphs 1 through 24
4 above.

5 41. By engaging in the acts and conduct alleged above, Defendants Souza and
6 Souza Investments, and each of them, directly or indirectly, made use of means or instruments of
7 transportation or communication in interstate commerce or of the mails to offer and to sell
8 securities through the use or medium of a prospectus or otherwise when no registration statement
9 had been filed or was in effect as to such securities and no exemption from registration was
10 available.

11 42. By reason of the foregoing, Defendants have violated and, unless enjoined, will
12 continue to violate, Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)].

13 **RELIEF REQUESTED**

14 WHEREFORE, the Commission respectfully requests that the Court:

15 I.

16 Enjoin Defendants Souza and Souza Investments from directly or indirectly violating
17 Sections 5(a), 5(c), and 17(a) of the Securities Act [15 U.S.C. §§ 77e(a), 77e(c), and 77q(a)],
18 Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R.
19 § 240.10b-5].

20 II.

21 Enjoin Defendant Souza from directly or indirectly violating Sections 206(1), 206(2), and
22 206(4) of the Advisers Act [15 U.S.C. §§ 80b-6(1), 80b-6(2), and 80b-6(4)] and Rule 206(4)-8
23 thereunder [17 C.F.R. § 275.206(4)-8].

24 III.

25 Order Defendants Souza and Souza Investments to disgorge their ill-gotten gains
26 according to proof, plus prejudgment interest thereon.
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IV.

Order Defendant Souza to pay civil money penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)], and Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)].

V.

Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure 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 such other and further relief as this Court may determine to be just, equitable, and necessary.

Dated: August 28, 2009

Respectfully submitted,

/s/ Jennifer L. Scafe
Jennifer L. Scafe

Attorney for Plaintiff
SECURITIES AND EXCHANGE
COMMISSION