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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. BRADLEY A. HOLCOM, Defendant.	Case No. '12CV1623 H JMA **COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff, the United States Securities and Exchange Commission ("SEC"), states and alleges as follows against Defendant Bradley A. Holcom ("Holcom"):

SUMMARY OF THE CASE

1. Holcom masterminded a fraudulent, unregistered securities offering that sold $42 million worth of promissory notes to more than 150 investors located across the United States. Holcom lured these investors, many of whom were senior citizens, by offering them guaranteed monthly interest payments on purportedly safe deals: their funds would be used to finance the development of specific pieces of real estate in and around Yuma, Arizona, and each investment would be secured by a first-position trust deed on the underlying property. That is, investors were led to believe that even if their promissory notes were not repaid, they would have the ability to foreclose on the property to recover their investment. In reality, the investments were unsecured, and the same piece of underlying property was often pledged as purported collateral on numerous investors' promissory notes.

2. In addition to misrepresenting how investor funds would be used and secured, Holcom was also running a classic Ponzi scheme. While Holcom used some of the investors' funds to develop real estate, he also relied on those funds to make interest and principal payments on promissory notes coming due. What's more, Holcom misappropriated investor funds to pay himself a handsome salary and commissions of more than $2 million and, in some cases, to fund his other business ventures.

3. By 2008, as the Arizona real estate market had peaked and began to decline, Holcom's scheme collapsed. Investors lost principal in excess of $25 million. Holcom has been evading his creditors – and the SEC – ever since.

4. By his actions, Holcom violated the anti-fraud provisions of the federal securities laws. Holcom also offered and sold securities in violation of the registration provisions of the federal securities laws. Finally, Holcom acted as an unregistered broker-dealer of securities when he actively solicited potential investors.

5. The SEC brings this civil enforcement action seeking permanent injunctions, disgorgement plus pre- and post-judgment interest, and appropriate civil penalties against Holcom for violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§ 77e(a), 77e(c), and 77q(a); Sections 10(b) and 15(a) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§ 78j(b) and 78o(a); and Rule 10b-5, 17 C.F.R. §240.10b-5.

JURISDICTION AND VENUE

6. The Court has jurisdiction pursuant to Securities Act Sections 20(b) and 22(a), 15 U.S.C. §§ 77t(b) and 77v(a), and Exchange Act Sections 21(d), 21(e), and 27, 15 U.S.C. §§ 78u(d) and (e) and 78aa.

7. In connection with the acts described in this Complaint, Holcom has used the mails, other instruments of communication in interstate commerce, and means or instrumentalities of interstate commerce.

8. Venue is proper in this Court pursuant to Securities Act Section 22(a), 15 U.S.C. § 77v(a), Exchange Act Section 27, 15 U.S.C. § 78aa, and 28 U.S.C. § 1391(b)(1) and (2). Certain of the acts and transactions constituting the violations of law alleged herein occurred within this judicial district. For example, Holcom offered, and certain investors purchased, securities within this judicial district. Further, Aztec Funding, Inc., a company through which Holcom operated his scheme, maintained an office in this judicial district.

DEFENDANT

9. **Bradley A. Holcom** is believed to reside in or near Welches, Oregon, but may currently be in hiding in North Dakota. Holcom owned or controlled numerous entities involved in the fraudulent scheme that is the subject of this Complaint.

FACTS

I. Holcom's Offer and Sale of Promissory Notes

10. In the early 1990s, Holcom moved from North Carolina to San Diego. In 1997, Holcom formed a mortgage brokerage firm, Aztec Funding, Inc., to broker loans between private lenders and construction companies in the Yuma, Arizona area.

11. By 2004, Holcom had moved to Yuma and established a construction company, AB Builders, Inc. Holcom began his work in Yuma by developing single-family homes, but quickly moved on to larger projects, such as commercial buildings and residential subdivisions.

12. To fund his Yuma construction projects, Holcom established a scheme to sell promissory notes purportedly secured by trust deeds on real estate. Holcom essentially asked investors to lend him money for a fixed period of time and promised, in return, to give them monthly interest payments plus security in the form of a trust deed on the individual piece of property in which their money was invested. In connection with this trust deed investment scheme, between 2004 and 2008, Holcom offered and sold promissory notes, which were securities, to investors in various states.

13. Holcom used Aztec Funding as the mortgage broker, and AB Builders as the construction arm, of the trust deed investment scheme. He used other entities to aid in the scheme as well. Holcom was the managing member of Realty Professionals 24/7, LLC, which operated as the real estate brokerage arm of the scheme. Realty Professionals issued promissory

notes to investors and held title to real estate. Holcom was also the president and CEO of TD Loans, Inc., another company that issued promissory notes to investors and held title to real estate. Finally, Holcom directed his bookkeeper – and former life partner – Jose L. Pinedo ("Pinedo") to form a number of entities that, like Realty Professionals and TD Loans, would issue promissory notes and hold title to real estate. Those entities were: Pen Holdings, LLC; Performance Equity, Inc.; Compadre Properties, LLC; and RPIA, LLC. Holcom had formal titles with only a few of these entities, but in fact operated and controlled them all.

14. Holcom marketed the trust deed investment scheme through Aztec Funding's website and in sales brochures. Holcom also solicited investors personally, through face-to-face meetings, e-mails, and telephone conversations.

15. As part of soliciting investors for the trust deed investment scheme, Holcom falsely told investors that their funds would be segregated and used to finance the purchase and construction of a specific home or building. Holcom also claimed that the investments were safe, and carried little risk, because investors would receive a personally-guaranteed promissory note and a first priority trust deed to the underlying real estate as collateral. Holcom further represented that investors would receive guaranteed monthly interest payments amounting to at least ten percent per year, along with a return of their principal at the end of the promissory note period. Holcom explained that the program was a type of short-term financing, as the sale of the developed real estate would generate enough profit to enable him to repay the investment.

16. Once an individual was persuaded to invest in the trust deed investment scheme, Holcom sent that investor a packet of offering documents. Those offering documents included:

- *Promissory Notes*, issued by Realty Professionals, TD Loans, Pen Holdings, Performance Equity, Compadre Properties, or RPIA. These entities also held the title to the real estate to be developed.
- *Collateral Assignments of Beneficial Interest*, which purported to convey to the investors title to a particular piece of real property in order to provide security for the promissory note.
- *Lender's Disclosure Statements*, which indicated that the investors held "first priority" liens on the real property collateralizing their promissory note, and that no other superior encumbrances or liens existed on the property. The disclosure statement further represented that the amount of the investment would never exceed the collateral property's value. This was, essentially, a loan-to-value ratio that purported to show the investor had sufficient equity in the event the property's value decreased.
- *Broker Price Opinions*, prepared by Holcom, which set forth his opinion of the fair market value of the collateral property, and also reiterated the representations in the Disclosure Statement regarding the loan-to-value ratio.

17. Holcom drafted the offering documents, and had ultimate authority over their content and whether to send them to investors. He also signed and sent the offering documents to investors.

18. Investors in the trust deed investment scheme did not have any duties or management roles in the operation of the scheme. Rather, they were passive investors, expecting to earn profits through Holcom's efforts.

II. Holcom's Misrepresentations, Fraud, and Deceit

19. The statements Holcom made to investors, both orally and through the written offering documents, were materially false and misleading. For example, contrary to the representations made by Holcom and contained in the offering documents, the investors' promissory notes were not secured by any underlying real estate. The "collateral assignment of beneficial interest" was a *personal* interest; it did not give the holder any interest in the actual *property*. Thus, investors could not foreclose on the underlying property in the event their promissory notes were not paid. Several investors discovered this fact the hard way, when they tried unsuccessfully to foreclose on "their" property after they failed to receive their promised payments.

20. Holcom's statements, confirmed by the offering documents, that investors held a first priority lien on the specific property underlying their promissory note were also false. In fact, Holcom often used one property to "secure" multiple promissory notes, meaning that numerous investors were each told – falsely – that they had the first priority claim to the same piece of real estate.

21. Similarly, because the same property was often attached to multiple notes, investors were not actually guaranteed a reasonable loan-to-value ratio. For example, Holcom sold one investor two $125,000 promissory notes, each of which was allegedly secured by a separate parcel of residential property worth approximately $180,000. In fact, as this investor later discovered, each lot was subject to – and the investor's purported security interest subordinate to – approximately $8 million in encumbrances.

22. Finally, Holcom falsely claimed that investors' funds would be segregated and used only for a specific home or building. In reality, investor funds were pooled and simply

deposited into the general operating accounts of each of the entities issuing the promissory notes, and were co-mingled with other investor funds. These funds were routinely transferred between the entities' bank accounts, and were essentially treated as undocumented (and undisclosed) interest-free loans between the entities. Further, as described below, Holcom routinely misappropriated these funds to operate his other businesses and to pay himself.

23. These false and misleading statements were made to investors between at least 2004 and 2008. Specifically, the misrepresentations or omissions were contained in the offering documents sent to investors throughout that time period. The misrepresentations and omissions were also made in meetings and other conversations with individual investors. For example:

- In May 2008, Holcom spoke by phone with a potential investor in her 70s ("Investor A"). Based on those conversations, the investor was led to believe that her investment would be secured by a trust deed on a specific piece of property, and that her investment would be in first position to any others. She also understood that the value of the underlying property would exceed her investment, and that title to the underlying property would be in her name. Further, at no time was the investor told that her funds would be pooled or invested in the same piece of property as other investors. As a result of these conversations, Investor A put $500,000 into the trust deed investment scheme.
- During the fall of 2008, Holcom stopped making full interest payments to Investor A. Concerned, Investor A met with Holcom in October 2008. During this meeting, Holcom showed the investor two residential properties and a commercial establishment, and told the investor that this was where her money was invested: $125,000 in each of the residential lots, and $250,000 in the commercial property.

During another meeting in December 2008, Holcom reiterated that the investor's funds were secure, claiming that she "owned two houses and a shopping center." Since mid-December 2008, however, the investor has not heard from Holcom. A title report showed that each of the residential lots was encumbered by, and Investor A's interests subordinate to, more than $8 million.

- During meetings with another elderly investor ("Investor B") in 2005 and 2006, Holcom represented that her investments would be secured by a specific piece of property, and that her loans would have first priority over any other encumbrances. Holcom claimed that her investments would be recorded and protected through collateral assignments of beneficial interest, which, he falsely claimed, were essentially trust deeds. Holcom further represented her investments were guaranteed because the value of the individual underlying properties exceeded the amount of the individual loans. After Investor B's interest payments abruptly stopped in the summer or fall of 2009, she discovered that, contrary to Holcom's claims, other investors were also linked to the specific properties "securing" her investments, and that the loans on those properties exceeded their value.
- Holcom communicated with another investor ("Investor C") multiple times between approximately December 2005 and January 2007. As with the other investors, Holcom represented that the investment would be secured by a first-position trust deed on a specific piece of property, and that the loan would not exceed 60% of the value of that property. Holcom also claimed that there would be only one loan per property.

- Holcom held periodic meetings every few months with two other investors ("Investors D and E"). Holcom's relationship with these investors began prior to the trust deed investment scheme, but continued through at least 2008. As a result of these meetings, the investors understood that their investments were designated for a particular piece of property and were secured by that underlying property. The investors further understood that their investments were in first-priority position on that underlying property. Based on Holcom's representations and the offering documents, the investors also understood that their investments had a reasonable loan-to-value ratio, and that there were no superior encumbrances on the underlying properties. Holcom repeatedly represented that these investors' funds were held separately and not co-mingled with other investor funds. The investors were never told that their money would be used to fund Holcom's other businesses. Finally, during a meeting in late 2008, Holcom specifically represented to Investors D and E that he was not running a Ponzi scheme.

On information and belief, Holcom made similar misrepresentations in meetings and conversations with other investors between at least 2004 and 2008.

24. Each of these misrepresentations and omissions was material, as investors would have considered them important to their investment decision.

25. Holcom knew, or was reckless in not knowing, that he made numerous material misstatements and omissions, and committed many deceptive acts, in furtherance of the fraudulent trust deed investment scheme.

III. Holcom's Misappropriation of Investor Funds

26. Not only did Holcom raise investor funds through fraud and deceit, he misappropriated those funds for his personal benefit.

27. For example, between approximately 2004 and 2008, Holcom paid himself at least $1.6 million by simply issuing checks to himself from the bank accounts that held investor funds. Those payments were not disclosed to investors.

28. In addition, Holcom paid himself a commission on every transaction in the trust deed investment scheme. While the amount of commissions was not uniform, Holcom paid himself total commissions of nearly $800,000, which amounts to approximately 2% of each promissory note sold. Those commissions were not disclosed to investors.

29. Finally, Holcom used investor funds to pay for the operations of his other, unsuccessful business ventures. For example, investor funds were used to pay the operating expenses of Holcom's ultimately-failed flea market, restaurants, and laundromats. Investors were not told about, and did not authorize, this use of their funds.

IV. Holcom's Ponzi Scheme

30. On top of being marketed by way of false and misleading statements, and Holcom's misappropriation of funds, the trust deed investment scheme was, in fact, a Ponzi scheme. Although some investor funds were used to purchase and develop real estate, these real estate investments did not generate sufficient net income to pay the principal and interest on all of the investors' promissory notes. As a result, Holcom relied on investor funds to meet principal and interest payment obligations.

31. As the Arizona real estate market peaked, Holcom's scheme began to unravel. New investments plummeted, from $16.5 million in 2005 to $3.9 million in 2006. Interest

payments on outstanding promissory notes were increasingly delayed, and Holcom began sending letters to investors requesting that they agree to reduce their interest amounts. By late summer 2008, interest payments stopped altogether, although Holcom continued pitching the trust deed investment scheme, making misrepresentations, and offering and selling promissory notes, through September 2008.

32. Holcom shuttered all of his real estate operations in Yuma in 2009. He has been evading creditors, as well as the SEC, since that time.

33. After the SEC began the investigation that led to the filing of this lawsuit, Holcom sent Pinedo a telling e-mail:

> We had a long history of using [investors'] money fairly loosely and this continued during the next few years [following the market's peak] as there was no quick recovery in site. Our main problem was that we were paying $250K monthly in land interest payments for future subdivisions that would never be developed.

V. Holcom's Offer and Sale of Unregistered Securities

34. Securities may not be offered or sold unless a registration statement for that security has been filed with the SEC. Each sale of a security must be made pursuant to a registration statement or must fall under a registration exemption.

35. The promissory notes offered and sold to investors as part of the trust deed investment scheme were securities under federal law. Investors purchased the promissory notes in order to earn profits in the form of monthly interest payments. The investors were passive investors, expecting to earn profits through Holcom's efforts. The notes were offered to the public, as part of the trust deed investment scheme, through Aztec Funding's website, sales brochures, and through personal solicitations by Holcom. Any purported risk-reducing features of the notes, such as being secured by real estate, were illusory, as detailed above. Finally,

investor funds were pooled, and the success of the investments depended on the success of Holcom's efforts.

36. Holcom offered and sold these securities to investors using the means or instruments of interstate commerce, including but not limited to telephones, e-mail, and the mails. Holcom marketed the trust deed investment scheme through Aztec Funding's website, and solicited investors personally through, among other things, e-mails and telephone conversations. Holcom also drafted, signed, and sent offering documents, including promissory notes, to investors.

37. At the time of the offers and sales of those promissory notes, there were no registration statements filed or in effect.

38. The separate issuances of the promissory notes – by Compadre Properties, Pen Holdings, Performance Equity, Realty Professionals, RPIA, and TD Loans – are subject to integration. Holcom controlled each of these entities, which were used interchangeably to perpetuate the fraudulent scheme. Holcom disregarded corporate formalities, including by operating and controlling each entity regardless of whether he had a formal title or role and continuously shuffling funds among the entities. The entities were all engaged in the same type of business – indeed, in identical operations. Finally, investor funds were commingled among, and routinely transferred between, the entities' bank accounts.

39. Further, the promissory note offerings essentially constituted one continuous offering. The offerings were all part of a single plan and were made for the same purpose – to raise funds for the fraudulent trust deed investment scheme. Additionally, the offerings all involved the sale of promissory notes for cash and were continuous between 2004 and the fall of 2008.

40. No registration exemption applied to the integrated offering of the promissory notes. Holcom offered and sold promissory notes totaling approximately $42 million to more than 150 investors nationwide. Holcom engaged in general solicitations through Aztec Funding's website and brochures offered to the public. Investors were not provided with accredited investor questionnaires, financial statements for the entities issuing the promissory notes, or other required financial information about the note issuers. Moreover, at least some of the investors were not sophisticated or accredited investors pursuant to SEC rules and regulations.

VI. Holcom's Actions As An Unregistered Broker-Dealer

41. A broker or dealer may not use certain means, such as the mails or telephone, to effect transactions in securities unless that broker or dealer is registered with the SEC, associated with a registered broker-dealer, or subject to an exemption or safe-harbor.

42. Holcom acted as a broker by using means of interstate commerce to market and sell the promissory notes issued in the trust deed investment scheme. Holcom marketed the trust deed investment scheme through Aztec Funding's website, and solicited investors personally through, among other things, e-mails and telephone conversations. He obtained funds, through the mails or by wire transfer, from investors. He also advised investors about the purported merits of the trust deed investment scheme, and negotiated with investors on behalf of the entities who formally issued the promissory notes. Holcom paid himself transaction-based compensation totaling nearly $800,000, or approximately 2% of each promissory note sold.

43. Despite acting as a broker, Holcom was not registered with the SEC, associated with a registered broker-dealer, nor was he subject to any exemption or safe harbor.

FIRST CLAIM FOR RELIEF
Fraud - Violations of Securities Act Section 17(a)
15 U.S.C. § 77q(a)

44. The SEC incorporates the allegations of paragraphs 1 through 43 as if fully set forth herein.

45. Holcom, directly or indirectly, with scienter, in the offer or sale of securities, by use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, employed a device, scheme, or artifice to defraud, in violation of Section 17(a)(1) of the Securities Act.

46. Holcom, directly or indirectly, in the offer or sale of securities, by use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, obtained money or property by means of untrue statements of material fact or by omissions to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading, in violation of Section 17(a)(2) of the Securities Act.

47. Holcom, directly or indirectly, in the offer or sale of securities, by use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, engaged in transactions, practices, or courses of business which operated as a fraud or deceit upon the purchasers of securities, in violation of Section 17(a)(3) of the Securities Act.

48. Holcom has violated, and unless restrained and enjoined will in the future violate, Securities Act Section 17(a), 15 U.S.C. § 77q(a).

SECOND CLAIM FOR RELIEF
Fraud – Violations of Exchange Act Section 10(b)
and Rule 10b-5 Thereunder
15 U.S.C. §§ 78j(b) and 17 C.F.R. § 240.10b-5

49. The SEC incorporates the allegations of paragraphs 1 through 43 as if fully set forth herein.

50. Holcom, acting with scienter, by use of the means or instrumentalities of interstate commerce or of the mails, or of any facility of a national securities exchange, used or employed, in connection with the purchase or sale of a security, a manipulative or deceptive device or contrivance in contravention of the rules and regulations of the SEC; employed devices, schemes or artifices to defraud; made untrue statements of material fact or omitted 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 engaged in acts, practices or courses of business which operated or would operate as a fraud or deceit upon any person, in violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

51. Holcom has violated, and unless restrained and enjoined will in the future violate, Exchange Act Section 10(b), 15 U.S.C. §§ 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5.

THIRD CLAIM FOR RELIEF
Sale of Unregistered Securities: Violations of Sections 5(a) and 5(c)
of the Securities Act
15 U.S.C. §§ 77e(a) and 77e(c)

52. The SEC incorporates the allegations of paragraphs 1 through 43 as if fully set forth herein.

53. Holcom, directly or indirectly, made use of the means or instruments of transportation or communication in interstate commerce or of the mails to offer or sell securities through the use or medium of a prospectus or otherwise, or carried or caused to be carried

through the mails, or in interstate commerce, by means or instruments of transportation, such securities for the purpose of sale or for delivery after sale, when no registration statement had been filed or was in effect and no exemption from registration applied as to such securities, in violation of Sections 5(a) and (c) of the Securities Act.

54. Holcom has violated, and unless restrained and enjoined will in the future violate, Securities Act Sections 5(a) and 5(c), 15 U.S.C. §§ 77e(a) and 77e(c).

FOURTH CLAIM FOR RELIEF
Unregistered Broker-Dealer: Violations of Section 15(a)(1)
of the Exchange Act
15 U.S.C. § 78o(a)(1)

55. The SEC incorporates the allegations of paragraphs 1 through 43 as if fully set forth herein.

56. Holcom, directly or indirectly, made use of the mails or means or instrumentalities of interstate commerce to effect transactions in or to induce or attempt to induce the purchase or sale of a security without being registered in accordance with Section 15(b) of the Exchange Act, in violation of Section 15(a)(1) of the Exchange Act.

57. Holcom has violated, and unless restrained and enjoined will in the future violate, Section 15(a)(1) of the Exchange Act, 15 U.S.C. § 78o(a)(1).

PRAYER FOR RELIEF

WHEREFORE, the SEC respectfully requests that the Court:

1. Find that Holcom committed the violations alleged in this Complaint;

2. Enter an Injunction, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, enjoining Holcom from violating the laws and rules alleged against him in this Complaint;

3. Enter an Order directing Holcom to disgorge all ill-gotten gains, together with prejudgment and post judgment interest;

4. Enter an Order directing Holcom to pay civil money penalties pursuant to Securities Act Section 20(d), 15 U.S.C. § 77t(d), and Exchange Act Section 21(d), 15 U.S.C. § 78u(d); and

5. Grant such other equitable relief as this Court may deem just or appropriate.

DATED: June 29, 2012

Respectfully submitted,

s/ Molly M. White

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