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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

JOSE L. PINEDO,

Defendant.

Case No. '12CV1620 W BLM

COMPLAINT

Plaintiff, the United States Securities and Exchange Commission ("SEC"), states and alleges as follows against Defendant Jose L. Pinedo ("Pinedo"):

SUMMARY OF THE CASE

1. Pinedo's former partner, Bradley A. Holcom ("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, the scheme collapsed. Investors lost principal in excess of $25 million.

4. Pinedo maintained the books and records of Holcom's numerous corporate entities, including those involved in this scheme. For some entities used in the scheme, Pinedo also served as an officer or manager. At Holcom's request, Pinedo often signed documents without question, including promissory notes and other documents sent to investors. Those documents contained material misrepresentations or omissions of material fact.

5. By his actions, Pinedo violated two sections of the antifraud provisions of the federal securities laws. Pinedo also offered and sold securities in violation of the registration provisions of the federal securities laws.

6. The SEC brings this civil enforcement action seeking against Pinedo a permanent injunction, disgorgement plus pre- and post-judgment interest, for violations of Sections 5(a), 5(c), 17(a)(2) and 17(a)(3) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§ 77e(a), 77e(c), and 77q(a).

JURISDICTION AND VENUE

7. The Court has jurisdiction pursuant to Securities Act Sections 20(b) and 22(a), 15 U.S.C. §§ 77t(b) and 77v(a).

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

9. Venue is proper in this Court pursuant to Securities Act Section 22(a), 15 U.S.C. § 77v(a). Certain of the acts and transactions constituting the violations of law alleged herein occurred within this judicial district. For example, certain investors purchased securities within this judicial district. Aztec Funding, Inc., a company through which Holcom operated his

scheme, maintained an office in this judicial district. Further, Pinedo resides in this judicial district.

DEFENDANT

10. **Jose L. Pinedo** lives in San Diego, California. He holds an accounting degree from the Technologico de Montorray in Mexico, as well as an inactive Mexican *Examen general de Egreso*, a license similar to that held by a U.S. certified public accountant. Pinedo served as the bookkeeper for Holcom's entities, including those involved in the scheme that is the subject of this Complaint, during all relevant times.

FACTS

I. The Offer and Sale of Promissory Notes

11. Holcom met Pinedo in the early 1990s. 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.

12. 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. Pinedo remained in San Diego, but continued to maintain the books and records for Holcom's entities.

13. 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 and Pinedo offered and sold promissory notes, which were securities, to investors in various states.

14. Aztec Funding served as the mortgage broker, and AB Builders as the construction arm, of the trust deed investment scheme. Holcom and Pinedo 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 the president and CEO, and Pinedo the secretary, of TD Loans, Inc., another company that issued promissory notes to investors and held title to real estate. Finally, Holcom directed Pinedo to form a number of entities that, like Realty Professionals and TD Loans, would issue promissory notes and hold title to real estate: 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.

15. 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.

16. 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.

17. Once an individual was persuaded to invest in the trust deed investment scheme, Holcom and/or Pinedo 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 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.

18. Although Holcom drafted the offering documents, and had ultimate authority over their content and whether to send them to investors, both he and Pinedo signed and sent the offering documents to investors.

19. 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. Misrepresentations, Fraud, and Deceit

20. The statements made to investors, both by Holcom orally and through the written offering documents that Pinedo signed and sent to investors, were materially false and misleading. Pinedo often signed the offering documents as an officer of the issuing entity, but did so without conducting any due diligence as to their content.

21. 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 when they tried unsuccessfully to foreclose on "their" property after they failed to receive their promised payments.

22. Further, 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.

23. 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.

24. 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. As the bookkeeper for Holcom's entities, Pinedo knew or was reckless in not knowing that investors funds were pooled, co-mingled, and routinely transferred between the entities. Pinedo also knew or was reckless in not knowing that Holcom was paying himself from investor funds.

25. 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.

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

III. Holcom's Misappropriation of Investor Funds

27. Not only did Holcom raise investor funds through fraud and deceit, he misappropriated those funds for his personal benefit. As the bookkeeper for Holcom's entities, Pinedo knew or was reckless in not knowing that Holcom was paying himself from investor funds.

28. 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.

29. 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 two percent of each promissory note sold. Those commissions were not disclosed to investors.

30. Finally, as the bookkeeper for Holcom's entities, Pinedo knew or was reckless in not knowing that 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.

31. Although he was not paid commissions, Pinedo was paid an annual salary that came, at least in part, from co-mingled investor funds.

IV. Holcom's Ponzi Scheme

32. 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.

33. As the Arizona real estate market peaked, the 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. Holcom shuttered all of his real estate operations in Yuma in 2009.

34. 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. Offer and Sale of Unregistered Securities

35. 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.

36. 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.

37. These securities were offered and sold 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. Pinedo signed and sent the offering documents, including promissory notes, to investors.

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

39. The separate issuances of the promissory notes – by Compadre Properties, Pen Holdings, Performance Equity, Realty Professionals, RPIA, and TD Loans – are subject to integration. These entities were used interchangeably to perpetuate the fraudulent scheme. Holcom and Pinedo disregarded corporate formalities. 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.

40. 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.

41. No registration exemption applied to the integrated offering of the promissory notes. The promissory notes totaling approximately $42 million were offered and sold to more than 150 investors nationwide. General solicitations were made to the public through Aztec Funding's website and brochures. 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.

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

42. The SEC incorporates the allegations of paragraphs 1 through 41 as if fully set forth herein.

43. Pinedo, 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.

44. Pinedo, 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.

45. Pinedo 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
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)

46. The SEC incorporates the allegations of paragraphs 1 through 41 as if fully set forth herein.

47. Pinedo, 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.

48. Pinedo 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).

PRAYER FOR RELIEF

WHEREFORE, the SEC respectfully requests that the Court:

1. Find that Defendant Pinedo 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 Defendant Pinedo from violating the laws and rules alleged against him in this Complaint;

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

4. 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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