

1 MARC J. BLAU, Cal. Bar No. 198162
Email: blaum@sec.gov
2 SARA D. KALIN, Cal. Bar No. 212156
Email: kalins@sec.gov

3 Attorneys for Plaintiff
4 Securities and Exchange Commission
Michele Wein Layne, Regional Director
5 Lorraine B. Echavarria, Associate Regional Director
John W. Berry, Regional Trial Counsel
6 5670 Wilshire Boulevard, 11th Floor
Los Angeles, California 90036
7 Telephone: (323) 965-3998
Facsimile: (323) 965-3908

8
9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 **SECURITIES AND EXCHANGE**
COMMISSION,

12 Plaintiff,

13 vs.

14 **JOHN G. RIZZO,**

15 Defendant.
16

Case No. '13CV1801 MMABLM

**COMPLAINT FOR VIOLATIONS
OF THE FEDERAL SECURITIES
LAWS**

17
18 **COMPLAINT**

19 Plaintiff Securities and Exchange Commission (“SEC”) alleges as follows:

20 **SUMMARY**

21 1. In 2009, Defendant John G. Rizzo engaged in a fraudulent scheme that
22 used offshore boiler rooms to solicit approximately \$2.5 million in investments in
23 iTrackr Systems, Inc. (“iTrackr”), a Florida corporation. The boiler rooms failed to
24 disclose that up to 80% of each investment would be paid back to the boiler rooms
25 as commission, and a portion of the remaining amount would go to Rizzo, who
26 controlled the scheme.

27 2. Rizzo purposely used offshore boiler rooms to solicit foreign investors
28 in an attempt to evade the U.S. securities registration requirements. He also used

1 U.S.-based escrow agents and bank accounts to make the investments appear more
2 legitimate to investors.

3 3. After an investor's wire of funds arrived in one of the U.S. bank
4 accounts, Rizzo arranged for the funds to be subsequently transferred to an account
5 he controlled in Belize. Rizzo used the Belize account to pay the boiler room
6 operators and funnel money to his own accounts, in an attempt to conceal his
7 scheme.

8 4. As a result of the conduct described in this Complaint, Rizzo violated
9 Sections 17(a)(1) and (a)(3) of the Securities Act of 1933 ("Securities Act"), 15
10 U.S.C. § 77q(a)(1) and (3); Section 10(b) of the Securities Exchange Act of 1934
11 ("Exchange Act"), 15 U.S.C. § 78j(b); and Exchange Act Rules 10b-5(a) and (c), 17
12 C.F.R. § 240.10b-5(a) and (c). Unless restrained and enjoined, Rizzo is reasonably
13 likely to continue to violate the federal securities laws.

14 **JURISDICTION AND VENUE**

15 5. This Court has jurisdiction over this action pursuant to Sections 20(b),
16 20(d) and 22(a) of the Securities Act, 15 U.S.C. §§ 77t(b), 77t(d) and 77v(a), and
17 Sections 21(d) and 27 of the Exchange Act, 15 U.S.C. §§ 78u(d) and 78aa.

18 6. Venue is proper in this district pursuant to Section 22(a) of the Securities
19 Act and Section 27 of the Exchange Act, because certain of the transactions, acts,
20 practices, and courses of conduct constituting violations of the federal securities laws
21 occurred within this district. For example, one of the escrow agents Rizzo used was an
22 attorney in San Diego with an escrow account at a San Diego bank.

23 7. Rizzo, directly or indirectly, made use of the means or
24 instrumentalities of interstate commerce, of the mails, or of the facilities of a
25 national securities exchange, in connection with the transactions, acts, practices,
26 and courses of business alleged in this Complaint.

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28 ///

1 **THE DEFENDANT**

2 8. **John G. Rizzo** (“Rizzo”), age 51, resides in Boca Raton, Florida.
3 Rizzo founded iTrackr in 2006 and was its CEO at all relevant times.

4 **AFFILIATED ENTITY**

5 9. **iTrackr Systems, Inc.** is a Florida corporation with its principal place
6 of business in Boca Raton, Florida. The company developed software capable of
7 tracking electronics inventory at local stores. iTrackr’s stock is quoted on the OTC
8 Link under the symbol “IRYS.” Its common stock was registered with the SEC
9 pursuant to Section 12(g) of the Exchange Act until July 24, 2013, when its
10 registration was revoked. At all relevant times, iTrackr qualified as a penny stock
11 as defined by Rule 3a51-1 of the Exchange Act, and did not meet any exceptions to
12 that rule.

13 **STATEMENT OF FACTS**

14 **A. Background**

15 10. In early 2006, Rizzo organized iTrackr and began raising money for
16 the company.

17 11. In or about 2006, Rizzo also purchased a shell company in the British
18 Virgin Islands (“BVI”). Rizzo’s BVI entity was unrelated to iTrackr and was used
19 by Rizzo to evade U.S. income tax.

20 12. To conceal his ownership of the funds held by the BVI entity, Rizzo
21 opened a bank account in Belize and a brokerage account in Canada, both in the
22 name of the BVI entity, and named his father-in-law, a Bulgarian citizen, as the
23 beneficial owner of the company and its accounts.

24 **B. The Boiler Room Scheme**

25 13. In or about late 2008/early 2009, Rizzo hired “boiler rooms” in Europe
26 to solicit investments in iTrackr from investors in the United Kingdom (“UK”).

27 14. Rizzo agreed to pay the boiler room operators a commission of up to
28 80% of the amount they raised from investors. At the time of this agreement,

1 Rizzo knew that the amount of commissions would not be disclosed to investors,
2 and knew that the commission amount was a material fact.

3 15. In order to avoid the U.S. securities registration requirements, Rizzo
4 used his BVI entity to sell iTrackr shares to UK investors. In order to make the
5 investment in iTrackr appear more legitimate, investors were instructed to send
6 their money to U.S. escrow companies and bank accounts.

7 **1. The Investment Paperwork**

8 16. Rizzo directed his Florida-based administrative assistant to stay in
9 contact with the boiler room operators and send investment paperwork to the UK
10 investors who had expressed an interest in purchasing iTrackr shares. The
11 paperwork included wiring instructions that directed investors to wire funds to
12 various entities and individuals, including an escrow agent in San Diego, using a
13 San Diego-based bank account.

14 17. The investment paperwork also included a Stock Purchase
15 Agreement. The agreement required that the investor sign the document and return
16 it to Rizzo's administrative assistant. However, it also included a provision
17 indicating that the seller could reject the terms of the agreement for any reason,
18 including not receiving investor funds within 31 days. The agreement further
19 stated that the escrow agent, who in some cases was a San Diego lawyer, would
20 coordinate the release of stock certificates from the U.S.-based stock transfer agent
21 on behalf of the seller.

22 **2. The Cover-Up**

23 18. Once the UK investors wired their funds to one of the U.S. bank
24 accounts, Rizzo directed the transfer of funds to his bank account in Belize, from
25 which he paid the boiler room commissions.

26 19. Rizzo instructed his administrative assistant to keep track of each
27 investment, the bank accounts through which they were transferred, and the
28 amounts owed to the various boiler rooms.

- 1 a. employed devices, schemes, or artifices to defraud; and/or
- 2 b. engaged in acts, practices, or courses of business which
- 3 operated or would operate as a fraud or deceit upon any person.

4 26. By engaging in the foregoing conduct, Rizzo violated, and unless
5 restrained and enjoined will continue to violate, Section 10(b) of the Exchange
6 Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, the SEC respectfully requests that the Court:

9 **I.**

10 Issue findings of fact and conclusions of law that Rizzo committed the
11 alleged violations.

12 **II.**

13 Issue a permanent injunction restraining and enjoining Rizzo and his
14 officers, agents, servants, employees, attorneys, and all persons in active concert of
15 participation with them, and each of them, from violating Sections 17(a)(1) and
16 17(a)(3) of the Securities Act, and Section 10(b) and Rule 10b-5(a) and (c) of the
17 Exchange Act, as indicated above.

18 **III.**

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

22 **IV.**

23 Issue an Order directing Rizzo to pay civil money penalties pursuant to Section
24 20(d) of the Securities Act, 15 U.S.C. § 77t(d); and Section 21(d) of the Exchange
25 Act, 15 U.S.C. § 78(d)(3).

26 **V.**

27 Issue an order barring Rizzo from participating in any offering of penny
28 stock, pursuant to Section 20(g) of the Securities Act, 15 U.S.C. § 77t(g), and

1 Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d), for the violations alleged
2 in this Complaint.

3 **VI.**

4 Issue an Order pursuant to Section 20(e) of the Securities Act and Section
5 21(d)(2) of the Exchange Act, 15 U.S.C. § 77t(e) and 15 U.S.C. § 78u(d)(2),
6 barring Rizzo from acting as an officer or director of any issuer that has a class of
7 securities registered pursuant to Section 12 of the Exchange Act or that is required
8 to file reports pursuant to Section 15(d) of the Exchange Act.

9 **VII.**

10 Retain jurisdiction of this action in accordance with the principles of equity
11 and the Federal Rules of Civil Procedure in order to implement and carry out the
12 terms of all orders and decrees that may be entered, or to entertain any suitable
13 application or motion for additional relief within the jurisdiction of this Court.

14 **VIII.**

15 Grant such other and further relief as this Court may determine to be just and
16 necessary.

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18
19 DATED: August 2, 2013

/s/ Sara D. Kalin
SARA D. KALIN
Attorney for Plaintiff
Securities and Exchange Commission
Email: kalins@sec.gov

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 NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
SECURITIES AND EXCHANGE COMMISSION
(b) County of Residence of First Listed Plaintiff
(c) Attorneys (Firm Name, Address, and Telephone Number)
Sara D. Kalin (323) 965-3998
Securities and Exchange Commission
5670 Wilshire Blvd., 11th Floor, Los Angeles, CA 90036

DEFENDANTS
JOHN G. RIZZO
'13CV1801 MMABLM
County of Residence of First Listed Defendant Palm Beach County
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)
Steven M. Goldsobel (310) 552-4848
Law Offices of Steven M. Goldsobel
1900 Avenue of the Stars, Suite 1800, Los Angeles, CA 90067

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
X 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
Citizen of This State 1 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 3 Foreign Nation 6 6

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

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Labor, etc.

V. ORIGIN (Place an "X" in One Box Only)
X 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District
6 Multidistrict Litigation

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. §§ 77q(a)(1) & 77q(a)(3); 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5 thereunder.
Brief description of cause:
The Complaint alleges violations of the federal securities laws.

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$
CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

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

DATE August 2, 2013 SIGNATURE OF ATTORNEY OF RECORD /s/ Sara D. Kalin

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.