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9 **UNITED STATES DISTRICT COURT**  
10 **DISTRICT OF ARIZONA**

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13 Securities and Exchange Commission,  
14 Plaintiff,  
15 vs.  
16 David A. Harbour,  
17 Defendant.

Case No.

**COMPLAINT**

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

21 **JURISDICTION AND VENUE**

22 1. The Court has jurisdiction over this action pursuant to Sections 20(b),  
23 20(d)(1) and 22(a) of the Securities Act of 1933 (“Securities Act”), 15 U.S.C. §§ 77t(b),  
24 77t(d)(1) & 77v(a), and Sections 21(d)(1), 21(d)(3)(A), 21(e) and 27(a) of the Securities  
25 Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §§ 78u(d)(1), 78u(d)(3)(A), 78u(e)  
26 & 78aa(a).

27 2. Defendant has, directly or indirectly, made use of the means or  
28 instrumentalities of interstate commerce or of the mails in connection with the

1 transactions, acts, practices and courses of business alleged in this complaint.

2 3. Venue is proper in this district pursuant to Section 22(a) of the Securities  
3 Act, 15 U.S.C. § 77v(a), and Section 27(a) of the Exchange Act, 15 U.S.C. § 78aa(a)  
4 because certain of the transactions, acts, practices and courses of conduct constituting  
5 violations of the federal securities laws occurred within this district. In addition, venue is  
6 proper in this district because Defendant David Harbour resides in this district.

7 **SUMMARY**

8 4. This matter is based on misrepresentations by Defendant David A. Harbour  
9 (“Harbour”) concerning the use of investor funds in connection with his fundraising  
10 activities. Between July 2014 and August 2016, Harbour, through various entities he  
11 managed and controlled, raised money from his friends and business acquaintances by  
12 representing to them that their funds would be used to finance various businesses,  
13 including an American Indian business entity engaged in high-interest installment lending  
14 to consumers. Instead of directing the money to revenue-generating businesses that could  
15 achieve the high returns he promised, Harbour used substantial portions of the invested  
16 funds to finance his personal lifestyle and pay off his personal debts. Harbour ultimately  
17 used \$1,535,000 of the \$2,450,000 that he raised from four investors to pay his personal  
18 expenses and pay off his debts.

19 5. By engaging in this conduct, Harbour violated Section 10(b) of the  
20 Securities Exchange Act of 1934 (“Exchange Act”) and Rule 10b-5(b) promulgated  
21 thereunder and Section 17(a)(2) of the Securities Act of 1933 (“Securities Act”).

22 **THE DEFENDANT**

23 6. **Defendant David A. Harbour** is a resident of Scottsdale, Arizona.  
24 Harbour previously held FINRA Series 7 and 63 qualifications and was last associated  
25 with a broker-dealer in January 2008.

26 **OTHER RELEVANT ENTITIES**

27 7. **Tribal Lending Entity A** was an online consumer lending enterprise that  
28 was a duly-organized subsidiary of an American Indian tribe. Tribal Lending Entity A



1 a loan agreement with Tribal Lending Entity A. The agreement specified that Oak Tree  
2 would extend up to \$10 million in credit to Tribal Lending Entity A at an annual interest  
3 rate not to exceed 16% so that Tribal Lending Entity A could “implement, operate and  
4 maintain its online consumer lending businesses currently in development.” Harbour  
5 signed the loan agreement as Oak Tree’s “Manager.” Between August 2014 and October  
6 2015, Oak Tree provided approximately \$2.9 million in capital to Tribal Lending Entity  
7 A.

8 14. From its inception in 2014 until late 2016, Harbour was actively involved  
9 in Tribal Lending Entity A’s business. In late 2016, a third party creditor of Tribal  
10 Lending Entity A took over the entity’s operations.

## 11 2. Other Harbour Ventures

12 15. Between July 2014 and August 2016, Harbour was engaged in other  
13 business ventures, including a merchant cash advance business, as well as businesses  
14 associated with the same American Indian tribe that related to healthcare and fire-  
15 fighting. Harbour described some of these ventures when seeking to raise money from  
16 the four investors.

### 17 B. Harbour’s Misrepresentations Regarding Use of Investor Funds

18 16. Harbour sought to raise money from investors to finance these enterprises,  
19 and particularly Tribal Lending Entity A. Between July 2014 and August 2016, Harbour,  
20 through four entities he created and controlled, raised money from four individual  
21 investors, telling them their investments would be used to finance Tribal Lending Entity  
22 A or other revenue-generating businesses, and promising substantial returns. Instead of  
23 using the invested money as represented, Harbour used \$1,535,000 of the \$2,450,000  
24 raised from these four investors to finance his personal lifestyle and pay off his debts.

#### 25 1. Investor A

26 17. In July 2014, Harbour, through Oak Tree, raised \$500,000 from a limited  
27 liability company controlled by Investor A, a resident of Illinois. Harbour orally  
28 represented to Investor A that the \$500,000 would be used solely to finance a consumer

1 installment lending operation to be run by an American Indian tribal entity.

2 18. Harbour signed the promissory note for \$500,000 that Oak Tree issued to  
3 Investor A's LLC and that included 12% annual interest.

4 19. Harbour was a signatory on the Oak Tree bank account to which Investor A  
5 transferred the \$500,000 and had control over the money in that account and transfers or  
6 withdrawals from the account.

7 20. Contrary to Harbour's representations, much of the money invested by  
8 Investor A never went to Tribal Lending Entity A or any consumer lending business but  
9 instead was used by Harbour to pay his personal living expenses and debts. For example,  
10 days after receiving the \$500,000, Harbour wired \$35,000 to pay an individual who had  
11 loaned him money. Harbour also spent \$144,000 to pay his credit card bills. The credit  
12 card charges included tens of thousands of dollars of Harbour's personal expenses such  
13 as private jets, Disney cruise trips, a visit to Universal Studios, golf tournament tickets,  
14 and a roughly \$2,300 restaurant bill. Altogether, Harbour used \$310,000 of the \$500,000  
15 provided by Investor A in ways that were inconsistent with his representations to Investor  
16 A.

## 17 2. Investor B

18 21. In December 2014, Harbour, through his Pujanza entity, raised \$1 million  
19 from Investor B, a resident of California. Harbour told Investor B that his \$1 million  
20 investment would be pooled with other investor funds to finance various businesses  
21 connected to Harbour, including a consumer lending operation and a project related to  
22 healthcare. Harbour also promised Investor B that through these investments Investor B  
23 would achieve a 20% annual return. Based on these representations from Harbour,  
24 Investor B understood that his money would be invested in revenue-generating  
25 businesses, including a consumer lending operation, that would get him the promised  
26 high return.

27 22. Investor B's investment was structured such that he received a 1%  
28 membership interest in Pujanza, with Harbour, the "managing member" of Pujanza,

1 retaining a 99% membership interest. The “First Amended and Restated Operating  
2 Agreement for Pujanza Management, LLC,” the only written agreement related to  
3 Investor B’s investment, indicated that “[t]he Company is formed for the purpose of  
4 making investments in the form of equity investments or debt investments in various  
5 industries.”

6 23. Investor B played no role in running Pujanza’s business operations and was  
7 relying solely on Harbour’s efforts to achieve profits.

8 24. As a signatory on the Pujanza bank account, Harbour exercised control over  
9 money in that account including Investor B’s \$1 million investment.

10 25. Contrary to his representations to Investor B, Harbour used \$650,000 of the  
11 \$1 million invested by Investor B to finance his personal lifestyle. For example, within  
12 two days of receiving the \$1 million from Investor B, Harbour spent \$223,000 to pay his  
13 credit card bills. The personal credit card charges related to, among other things, private  
14 jets, a Disney cruise vacation, concert tickets, a week-long stay at the Four Seasons Hotel  
15 in Orlando, Florida, and daily living expenses for Harbour and his family. Harbour also  
16 used Investor B’s money to pay over \$12,000 to a country club and to repay \$36,000 to  
17 an investor from a prior business venture.

### 18 3. Investor C

19 26. In October 2015, Harbour, through his Oak Tree and Milagro entities,  
20 raised \$500,000 from Investor C, a resident of Texas. Harbour orally told Investor C that  
21 the \$500,000 investment would be used to finance Tribal Lending Entity A’s lending  
22 operations and that the returns on the investment would allow Investor C to recover  
23 money he had lost in a previous investment to which Harbour was connected. Harbour  
24 sent Investor C marketing presentations for Tribal Lending Entity A and other  
25 information about its business, including an opinion letter from a law firm attesting to the  
26 legality of Tribal Lending Entity A’s lending operations.

27 27. Investor C’s investment was structured as a promissory note that also  
28 included a loan agreement. The promissory note executed by Oak Tree and Milagro (and

1 signed by Harbour) stated next to “Use of Proceeds” that “BORROWER [Oak Tree] shall  
2 use proceeds under this Note solely for the purpose of lending money to [the American  
3 Indian tribe that formed Tribal Lending Entity A].” The loan agreement similarly stated  
4 that the purpose of the loan was for Oak Tree and Milagro “to implement, operate and  
5 maintain [their] commercial lending business to [Tribal Lending Entity A].” The  
6 promissory note issued by Oak Tree and Milagro to Investor C provided for an annual  
7 return of 15%. Harbour also personally guaranteed Investor C’s \$500,000 investment.

8 28. Investor C was relying solely on the efforts of Harbour to achieve a return  
9 on his investment and played no role in the operations of Oak Tree, Milagro, or Tribal  
10 Lending Entity A.

11 29. Harbour was a signatory on the Oak Tree bank account to which Investor C  
12 transferred his \$500,000 and had control over the money in that account and transfers or  
13 withdrawals from the account.

14 30. Contrary to his representations to Investor C, Harbour used \$275,000 of  
15 Investor C’s \$500,000 investment on personal expenses that had no connection to Tribal  
16 Lending Entity A or any revenue-generating businesses. Harbour used investor funds to  
17 pay off substantial personal credit card statements, this time spending about \$70,000 of  
18 Investor C’s money to pay off a single monthly statement that included charges for  
19 personal expenses including restaurant meals, groceries, clothing, private jets, stays at  
20 resorts, and significant payments to a university’s sports program. Harbour additionally  
21 sent roughly \$90,000 to the account of an entity associated with one of his family  
22 members. He also used the funds to pay for golf clubs, life insurance premiums, car  
23 payments, and to make a small interest payment to Investor B.

#### 24 4. Investor D

25 31. Between August 2015 and August 2016, Harbour, through the Highpointe  
26 entity, raised \$450,000 from Investor D, a resident of Arizona. Harbour orally presented  
27 Investor D with various business ideas and promised that his investment would be pooled  
28 with other investor proceeds to be put into revenue-generating businesses, including

1 lending and healthcare related projects. Harbour also sent Investor D a presentation  
2 describing Tribal Lending Entity A's business and encouraged Investor D to reach out to  
3 Tribal Lending Entity A's lawyers to discuss the business.

4 32. Highpointe issued six promissory notes to Investor D that Harbour signed  
5 on behalf of Highpointe. The promissory notes specified an annual interest rate of 15%  
6 with the potential for an additional 5% per year at Harbour's discretion. The notes  
7 further stated that the money being exchanged constituted a "business loan."

8 33. Investor D was to play no role in any of these businesses and was relying  
9 on Harbour's efforts to achieve a profit so as to be able to pay back Investor D.

10 34. Harbour was a signatory on the Highpointe bank account to which Investor  
11 D transferred his investment funds and had control over the money in that account and  
12 transfers or withdrawals from the account.

13 35. Contrary to his representations to Investor D, Harbour used at least  
14 \$300,000 of Investor D's \$450,000 investment for personal purposes, including paying  
15 off personal debts. Harbour spent over \$80,000 of Investor D's funds to pay off credit  
16 card charges. These charges included thousands of dollars in purchases at Neiman  
17 Marcus, over \$17,000 in payments to a residential architecture firm, thousands of dollars  
18 on expenses related to a golf tournament, and payments to a Beverly Hills plastic  
19 surgeon, as well as meals at restaurants, groceries, and purchases from Costco, Target,  
20 and Amazon. Harbour additionally used Investor D's money to take out a cashier's  
21 check for \$101,000 that appears unrelated to any business activity. Harbour also used  
22 \$50,000 to pay an individual who had invested with him in the past.

23 36. Harbour's misrepresentations were material, as the four investors would  
24 have considered it important to their investment decisions to know how Harbour was  
25 using their funds, as that could directly impact their ability to receive back their principal  
26 investments and achieve the high returns that Harbour promised.

27 37. Harbour acted with scienter. He knew, or was reckless in not knowing, that  
28 the representations he made regarding the use of investor funds were false or misleading.

1 38. In addition, Harbour failed to exercise reasonable care by making  
2 materially false and misleading representations about how the investors' money would be  
3 used.

4 39. During all relevant times, Harbour made use of the means or  
5 instrumentalities of interstate commerce or of the mails in connection with the  
6 transactions, acts, practices, and courses of business alleged in this complaint.

7 **FIRST CLAIM FOR RELIEF**

8 **Fraud in Connection with the Purchase and Sale of Securities**

9 **Violations of Section 10(b) of the Exchange Act and Rule 10b-5(b)**

10 **(Against Harbour)**

11 40. The SEC realleges and incorporates by reference paragraphs 1 through 39  
12 above.

13 41. Harbour made false and misleading statements to the investors. He  
14 represented that their money would be used either to specifically finance Tribal Lending  
15 Entity A's operations or more generally to finance other Harbour business ventures.  
16 Despite these representations, Harbour spent over \$1.5 million of the invested funds for  
17 personal expenses and to pay off his personal debts. These misrepresentations  
18 concerning use of funds were material to the investors.

19 42. Harbour acted with scienter. He knew, or was reckless in not knowing, that  
20 his statements regarding the use of investor funds were false and misleading. Harbour  
21 orally made the statements to the four investors, and he signed on behalf of his entities  
22 the agreements and documents evidencing the terms of the investments. Harbour  
23 controlled the bank accounts from which he misappropriated the investor money, as well  
24 as the various bank accounts between which investor funds were transferred before he  
25 ultimately used them to pay off his personal expenses. As the person who had made the  
26 representations to the investors, Harbour undoubtedly knew or was reckless in not  
27 knowing that the manner in which he used the investor funds was inconsistent with what  
28 he told the investors.



1 indirectly, in the offer or sale of securities, and by the use of means or instruments of  
2 transportation or communication in interstate commerce or by use of the mails directly or  
3 indirectly, obtained money or property by means of untrue statements of a material fact  
4 or by omitting to state a material fact necessary in order to make the statements made, in  
5 light of the circumstances under which they were made, not misleading.

6 49. By engaging in the conduct described above, Harbour violated, and unless  
7 restrained and enjoined will continue to violate Section 17(a)(2) of the Securities Act, 15  
8 U.S.C. § 77q(a)(2).

9 **PRAYER FOR RELIEF**

10 WHEREFORE, the SEC respectfully requests that the Court:

11 **I.**

12 Issue findings of fact and conclusions of law that Harbour committed the alleged  
13 violations.

14 **II.**

15 Issue judgments, in forms consistent with Rule 65(d) of the Federal Rules of Civil  
16 Procedure, permanently enjoining Harbour, and his officers, agents, servants, employees,  
17 and attorneys, and those persons in active concert or participation with any of them, who  
18 receive actual notice of the judgment by personal service or otherwise, and each of them,  
19 from violating Section 10(b) of the Exchange Act [15 U.S.C. §§ 78j(b)] and Rule 10b-  
20 5(b) thereunder [17 C.F.R. § 240.10b-5(b)], and Section 17(a)(2) of the Securities Act [15  
21 U.S.C. § 77q(a)(2)].

22 **III.**

23 Order Harbour to disgorge all funds received from his illegal conduct, together  
24 with prejudgment interest thereon.

25 **IV.**

26 Order Harbour to pay civil penalties under Section 20(d) of the Securities Act [15  
27 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].  
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**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 and necessary.

Dated: July 31, 2018

s/ Amy J. Longo  
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Amy J. Longo  
Attorney for Plaintiff  
Securities and Exchange Commission