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11 **UNITED STATES DISTRICT COURT**

12 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

13 **SECURITIES AND EXCHANGE
COMMISSION,**

14 **Plaintiff,**

15 **vs.**

16 **SCOTT CHARLES MESSIER, an
individual, and
JAY ZOLA SCORATOW, an
individual,**

17 **Defendants.**

18 **Case No. '20CV0105 BAS AGS**

19 **COMPLAINT**

20 Plaintiff, Securities and Exchange Commission (the “Commission”), alleges
21 as follows:

22 **SUMMARY OF THE ACTION**

23 1. Scott Charles Messier (“Messier”) and Jay Zola Scoratow
24 (“Scoratow”) (collectively, “Defendants”) participated in a securities solicitation
25 scheme that involved soliciting investors to purchase the securities of numerous
26 microcap companies whose shares traded on the over-the-counter market.

1 2. Scoratow negotiated deals with the sellers of the microcap shares and
2 Messier managed various solicitors and coordinated the trades between the sellers
3 of the shares and investors to enable the sellers to offload their shares without
4 significantly affecting the market for the thinly traded stock.

5 3. While engaged in this conduct, Messier was neither registered with
6 the Commission as brokers or dealers nor associated with a broker or dealer
7 registered with the Commission.

8 4. Defendants earned transaction-based compensation for their
9 solicitation activities, which generally amounted to 5% of investment proceeds for
10 each Defendant.

11 5. By engaging in this conduct, as further described herein, Messier
12 violated and, unless restrained and enjoined by this Court, may continue to violate
13 Section 15(a)(1) of the Securities Exchange Act of 1934 (“Exchange Act”) [15
14 U.S.C. § 78o(a)(1)].

15 6. By engaging in this conduct, as further described herein, Scoratow
16 aided and abetted Messier’s violations of Section 15(a)(1) of the Exchange Act [15
17 U.S.C. § 78o(a)(1)].

18 7. By engaging in this conduct, as further described herein, Defendants
19 violated and, unless restrained and enjoined by this Court, may continue to violate
20 Section 17(a)(1) and (3) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C.
21 § 77q(a)(1) and (3)], Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and
22 Exchange Act Rule 10b–5(a) and (c) [17 C.F.R. § 240.10b–5(a) and (c)].

23 **JURISDICTION AND VENUE**

24 8. The Commission brings this action pursuant to Sections 20(b) and
25 20(d) of the Securities Act [15 U.S.C. § 77t(b) and (g)] and Sections 21(d) and (e)
26 of the Exchange Act [15 U.S.C. § 78u(d) and (e)] to enjoin such acts, practices,
27 and courses of business, and to obtain disgorgement, prejudgment interest, civil
28

1 money penalties, and such other and further relief as this Court may deem just and
2 appropriate.

3 9. Defendants were involved in the offer and sale of the common stock
4 of numerous microcap companies, which are each a “security” as that term is
5 defined under Section 2(a)(1) of the Securities Act [15 U.S.C. § 77b(a)(1)] and
6 Section 3(a)(10) of the Exchange Act [15 U.S.C. § 78c(a)(10)].

7 10. Defendants, directly or indirectly, made use of the mails or the means
8 or instrumentalities of interstate commerce in connection with the conduct alleged
9 in this Complaint.

10 11. This Court has subject matter jurisdiction over this action pursuant to
11 Section 22 of the Securities Act [15 U.S.C. § 77v], Sections 21(d) and 27 of the
12 Exchange Act [15 U.S.C. §§ 78u(d) and 78aa], and 28 U.S.C. § 1331.

13 12. Venue in this District is proper because Defendants are found, inhabit,
14 and/or transacted business in the Southern District of California and because one or
15 more acts or transactions constituting the violations occurred in the Southern
16 District of California.

17 DEFENDANTS

18 13. **Scott Charles Messier**, born in 1963, is last known to reside in San
19 Marcos, California and managed a securities solicitation operation beginning in or
20 around mid-2014.

21 14. **Jay Zola Scoratow**, born 1956, is last known to reside in La Jolla,
22 California and assisted Messier with his securities solicitation operation beginning
23 in or around July 2015.

24 FACTS

25 15. While working as a solicitor in the securities solicitation business in
26 2014, Messier became familiar with various call centers that were engaged in
27 securities solicitations.

1 understanding that selling large amounts of thinly traded microcap stock
2 through standard brokerage sell orders would take a long time (if using limit
3 orders) and/or cause a collapse in the share price (if using market orders).

4 b. The selling shareholder would thus enter into arrangements
5 with Scoratow and Messier (the terms of which were negotiated by
6 Scoratow) whereby the selling shareholder would hire Scoratow and Messier
7 to facilitate the sale of the selling shareholder's shares.

8 c. Messier would then engage his network of call centers and
9 independent solicitors to begin a sales campaign of the identified microcap
10 stock.

11 d. Using purchased lead lists, Messier and the other solicitors
12 would call prospective investors throughout the United States and inquired
13 whether the prospect had an active brokerage account with online order-
14 entry functionality.

15 e. If the prospective investor had such a brokerage account, the
16 solicitors were instructed to pitch the promoted security—*i.e.*, the one the
17 selling shareholder owned and wished to liquidate—to the prospect.

18 f. Once a prospective investor was persuaded to purchase the
19 promoted security and determined how much money he or she would like to
20 invest, the solicitor would tell the investor that a “market maker” needed to
21 be contacted to determine the appropriate share price.

22 g. Instead of contacting a market maker, the solicitor would pass
23 this information on to either Messier or the call-center operator, who would
24 contact the selling shareholder.

25 h. The selling shareholder would then check the current level II
26 quotation (which shows the offers on the ask and bid) for the subject security
27 and provide the call center-operator with a limit order price.

1 i. Messier or the call-center operator would communicate that
2 price to the solicitor, who would pass the information along to the investor.

3 j. The solicitor would instruct the investor to enter a purchase
4 limit order online in the investor's brokerage account at the coordinated
5 price. At the same time, the selling shareholder would place a sell limit order
6 for the same amount of shares at the same price.

7 k. Through these means, the investor's buy order and the selling
8 shareholder's sell order were likely to match, thus enabling the selling
9 shareholder to liquidate his or her position in the subject security piecemeal
10 into a market with ready purchasers.

11 l. Messier and the selling shareholder would determine how many
12 shares of the investor's order were "captured" (*i.e.*, matched between the
13 investor and the selling shareholder), and the selling shareholder would pay
14 Scratow a gross commission that was generally 40% of the invested funds.

15 m. Of this amount, Messier and Scratow each retained 5% and
16 would pay the remaining 30% to the call-center operators and solicitors.

17 23. Messier and Scratow's operation solicited investors to purchase the
18 shares of at least seven microcap companies with the following ticker symbols:
19 CMRL/SBES, GMNI, GOHE, KPOC, MMEG, TPTW, and UATG.

20 24. Messier was involved in this securities solicitation business from at
21 least February 2014 until at least March 2018.

22 25. Between December 2014 and March 2018, Messier received at least
23 \$730,592.00 in gross commissions.

24 26. Scratow was engaged in this securities solicitation business from at
25 least July 2015 until at least September 2016, during which time he received at
26 least \$1,301,699.00 in gross commissions and paid out approximately \$998,473.90
27 in commissions to the solicitors working for him and Messier.

1 **FIRST CLAIM FOR RELIEF**

2 **Violations of Section 15(a)(1) of the Exchange Act [15 U.S.C. § 78o(a)(1)]**

3 ***(Against Messier)***

4 27. The Commission re-alleges and incorporates by reference each and
5 every allegation in paragraphs 1–26, inclusive, as if they were fully set forth
6 herein.

7 28. By engaging in the conduct described above, Defendant Messier:

8 a. engaged in the business of effecting transactions in securities
9 for the account of others; and

10 b. directly or indirectly, made use of the mails or the means or
11 instrumentalities of interstate commerce to effect transactions in, or to induce or
12 attempt to induce the purchase or sale of, securities without being registered as a
13 broker or dealer with the Commission or associated with a broker or dealer
14 registered with the Commission.

15 29. By reason of the foregoing, Messier violated and, unless enjoined,
16 will continue to violate Sections 15(a)(1) of the Exchange Act [15 U.S.C.
17 § 78o(a)(1)].

18 **SECOND CLAIM FOR RELIEF**

19 **Violations, via aiding and abetting, of Section 15(a)(1) of the Exchange Act**

20 **[15 U.S.C. § 78o(a)(1)]**

21 ***(Against Defendant Scratow)***

22 30. The Commission re-alleges and incorporates by reference each and
23 every allegation in paragraphs 1–26, inclusive, as if they were fully set forth
24 herein.

25 31. By engaging in the conduct described above and as described in
26 paragraphs 27-29 above, Defendant Messier violated Section 15(a)(1) of the
27 Exchange Act.

1 37. With respect to violations of Section 17(a)(1) of the Securities Act,
2 each of the Defendants engaged in the above-referenced conduct knowingly or
3 with sever recklessness.

4 38. By reason of the foregoing, Defendants each violated and, unless
5 enjoined, will continue to violate Sections 17(a)(1) and (3) of the Securities Act
6 [15 U.S.C. § 77q(a)(1) and (3)].

7 **FOURTH CLAIM FOR RELIEF**

8 **Violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and**
9 **Exchange Act Rule 10b–5(a) and (c) [17 C.F.R. § 240.10b–5(a) and (c)]**

10 *(Against each Defendant)*

11 39. The Commission re-alleges and incorporates by reference each and
12 every allegation in paragraphs 1–26, inclusive, as if they were fully set forth
13 herein.

14 40. By engaging in the conduct described above, Defendants, directly or
15 indirectly, in connection with the purchase or sale of securities, by use of the
16 means and instrumentalities of interstate commerce or by use of the mails have

- 17 a. employed devices, schemes, and artifices to defraud; and
18 b. engaged in acts, practices, and course of business which
19 operated as a fraud and deceit upon purchasers, prospective purchasers, and other
20 persons.

21 41. Defendants engaged in the above-referenced conduct knowingly or
22 with severe recklessness.

23 42. By reason of the foregoing, Defendants each violated and, unless
24 enjoined, will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. §
25 78j(b)] and Exchange Act Rule 10b–5(a) and (c) [17 C.F.R. § 240.10b–5(a) and
26 (c)].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court enter a final judgment:

I.

Permanently restraining and enjoining Defendants from, directly or indirectly, engaging in conduct in violation of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Sections 10(b) and 15(a)(1) of the Exchange Act [15 U.S.C. §§ 78j(b), 78o(a)(1)], and Exchange Act Rule 10b–5 [17 C.F.R. § 240.10b–5];

II.

Permanently restraining and enjoining Defendants from directly or indirectly, including, but not limited to, through any entity owned or controlled any of them, soliciting any person or entity to purchase or sell any security;

III.

Ordering Defendants to disgorge all ill-gotten gains or unjust enrichment derived from the activities set forth in this Complaint, together with prejudgment interest thereon;

IV.

Ordering Defendants to pay a civil penalty pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] and Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)];

V.

Retaining 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; and,

1 **VI.**

2 Granting such other and further relief as this Court may deem just, equitable,
3 or necessary in connection with the enforcement of the federal securities laws and
4 for the protection of investors.

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6 Dated: January 15, 2020.

7 /s/ David D. Whipple

8 David D. Whipple
9 Attorney for Plaintiff
10 Securities and Exchange Commission
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