

FILED

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

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UNITED STATES SECURITIES AND
EXCHANGE COMMISSION
100 F Street, N.E.
Washington, DC 20549,

CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA

Plaintiff,

v.

Civ. Action No. 1'07CV895
LO/BEP

MICHAEL SAQUELLA,
a.k.a., MICHAEL PALOMA,
and LAWRENCE KAPLAN,

Defendants.

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

For its complaint against Michael Saquella, a.k.a., Michael Paloma ("Paloma"), and Lawrence Kaplan ("Kaplan") (collectively, the "Defendants"), Plaintiff the United States Securities and Exchange Commission (the "Commission") alleges as follows:

SUMMARY

1. This matter concerns a scheme to violate the registration and antifraud provisions of the federal securities laws. Over the past four years, Michael Paloma has orchestrated the unlawful public offerings of securities of at least seven companies and the subsequent manipulation of the securities of those companies. In 2002, in a separate action, Paloma was fined and permanently enjoined in a federal district court action from violating the registration and antifraud provisions of the federal securities laws.

2. To facilitate this new scheme, Paloma surreptitiously gained control of all, or nearly all of the shares of at least seven small, privately held companies by promising the principals of those companies that he could provide them with hundreds of thousands of

dollars in funding. Relying on these disingenuous promises, the principals agreed to issue shares of their companies to entities that Paloma claimed were either accredited investors or underwriters necessary to facilitate the financing. In reality, these entities were merely straw men, controlled entirely by Paloma.

3. In each instance, once he gained control of the company's shares, Paloma arranged to unlawfully offer and sell the company's shares to the public via the Pink Sheets, an electronic quotation system. Thereafter, Paloma coordinated manipulative trading, including wash sales and matched orders, which artificially inflated the value of the stock of each company. This trading was carried out, in part, by Scottsdale, Arizona-based trader, Lawrence Kaplan. Paloma gave hundreds of thousands of shares of these companies' stock to Kaplan as compensation for his participation in the scheme.

4. With the artificial appearance of an active trading market established, Paloma coordinated promotional blast fax and spam e-mail campaigns that provided potential investors with often misleading information concerning each issuer's operations.

5. Ultimately, Paloma and Kaplan profited by dumping stock of the new issuers into the public market at the artificially inflated prices. After Paloma, Kaplan and other associates liquidated their holdings, they ceased trading and the market for the shares, lacking support, dropped precipitously.

6. These companies were left with tarnished reputations and only a tiny fraction of the financing promised by Paloma. In contrast, Paloma and his associates realized significant profits by retaining the vast majority of the proceeds of the offerings. Public investors who bought shares based upon the artificial appearance of an active market and the misleading promotional campaigns were left holding virtually worthless securities.

7. Paloma's conduct violated 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)(1), and Section 10(b) of the Securities and Exchange Act of 1934 ("Exchange Act"), 15 U.S.C § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5, thereunder. Kaplan's conduct violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

JURISDICTION AND VENUE

8. The Commission brings this action pursuant to authority conferred by Section 20(b) of the Securities Act, 15 U.S.C. § 77t(a), and Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d), seeking to temporarily restrain, preliminarily enjoin, and permanently enjoin Defendants from engaging in the wrongful conduct alleged in this complaint.

9. This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act, 15 U.S.C. § 77v(a), and Sections 21(d), 21(e) and 27 of the Exchange Act, 15 U.S.C. §§ 78u(d), 77u(e) and 78aa. Defendants directly or indirectly, singly or in concert, have made use of the means or instrumentalities of transportation or communication in, or the instrumentalities of, interstate commerce, or of the mails, in connection with the transactions, acts, practices, and courses of business alleged in this complaint.

10. Venue lies in this district pursuant to Section 22(a) of the Securities Act, 15 U.S.C. § 77v(a), and Section 27 of the Exchange Act, 15 U.S.C. § 78aa. Certain of the transactions, acts, practices, and courses of business constituting the violations alleged herein occurred within the Eastern District of Virginia.

DEFENDANTS

11. Michael Paloma, a.k.a., Michael Saquella, age 47, is a resident of Mesa, Arizona. Paloma coordinated the fraudulent scheme that is the subject of this Complaint. Paloma controls a number of entities (collectively, “the Paloma-controlled entities”) that either facilitated unlawful public offerings or received shares in the offerings.

12. Lawrence Kaplan, age 63, is a resident of Scottsdale, Arizona. Paloma gave Kaplan hundreds of thousands of shares of stock and directed him to place unsolicited bids, wash sales and matched orders in the securities of the issuers discussed herein.

RELATED ENTITIES AND INDIVIDUALS

13. Kenneth Christison, Esq., a member of the California bar, was responsible for drafting several legal opinion letters that made it possible for the Paloma-controlled entities to obtain shares of the defrauded issuers free of restrictive legends.

14. Courtside Products, Inc. (Pink Sheets symbol CSDP) is a Spokane, Washington-based manufacturer of sports bags. Defendants participated in the unlawful public offering and subsequent manipulation of the company’s securities.

15. Latin Heat Entertainment, Inc. (Pink Sheets symbol LHET) is a West Covina, California-based magazine publishing company. Defendants participated in the unlawful public offering and subsequent manipulation of the company’s securities.

16. Xtreme Technologies, Inc. (Pink Sheets symbol XTMG) is a Spokane, Washington-based telecommunications consulting services firm. Defendants participated in the unlawful public offering and subsequent manipulation of the company’s securities.

17. PokerBook Gaming Corp. (Pink Sheets symbol POKG) is a Hollywood, Florida-based online gaming business. Defendants participated in the unlawful public offering and subsequent manipulation of the company's securities.

18. Motion DNA Corp. (Pink Sheets symbol MTDX, formerly MOTD) is a Scottsdale, Arizona-based provider of diagnostic testing. Defendants participated in the unlawful public offering and subsequent manipulation of the company's securities.

19. TKO Holdings, Ltd. (Pink Sheets symbol TKHL) is a Pompano Beach, Florida-based manufacturer of fitness and boxing equipment. Defendants participated in the unlawful public offering and subsequent manipulation of the company's securities.

20. Commanche Properties, Inc. (Pink Sheets symbol CMCH) is a Tucson, Arizona-based entertainment company. Defendant Paloma participated in the unlawful public offering and subsequent manipulation of the company's securities.

GENERAL ALLEGATIONS

Background

21. Michael Paloma was previously enjoined by the District Court for the District of Columbia for conduct that occurred while he served as president and CEO of publicly-traded Desert Winds Entertainment Corp. ("Desert Winds"). In March of 1999, Paloma caused Desert Winds—an entity whose sole revenues were generated by a one time, male-versus-female kickboxing event—to issue a press release announcing that it had signed a contract with Warner Bros. Television worth \$25 million in revenues. In reality, no such contract existed. The fictitious contract was incorporated into Desert Winds' financial statements as a \$19.8 million receivable and reflected in the company's Form 10-12G which was filed with the Commission in 1999. During this timeframe, Paloma

profited by selling Desert Winds stock in transactions that violated the registration requirements of Section 5 of the Securities Act.

22. In June 2002, the Commission filed a settled civil action against Paloma for his participation in the Desert Winds scheme. The Commission's complaint alleged that Paloma's conduct violated the antifraud provisions of the Securities Act and Exchange Act as well as the registration provisions of the Securities Act. Without admitting or denying the allegations, Paloma agreed to: (1) an injunction, barring him from future violations of these provisions, (2) pay \$442,319 in disgorgement plus \$27,070.64 in pre-judgment interest, (3) pay a civil penalty of \$65,000, and (4) a permanent bar preventing Paloma from acting as an officer or director of a public company. *SEC v. Michael Paloma*, Civ. Action No. 1:02CV00645 (D.D.C. June 6, 2002). To date, Paloma has not paid any portion of this outstanding judgment.

Paloma's Recent Scheme

23. Less than two years after the entry of the injunction, Paloma commenced a new, highly profitable scheme, one that he repeated several times. In this new scheme, Paloma solicited small, privately held companies in need of financing. Passing himself off as a legitimate financier, Paloma claimed that he could raise significant funds for a company by conducting an offering of its securities. Typically, the principals of the companies he solicited were inexperienced in the field of public finance.

24. The standard agreement that Paloma entered into with a company provided that Paloma would arrange for the company's shares to be quoted on the Pink Sheets; thereafter, he would use his best efforts to facilitate the sale of up to \$1 million of those shares to the public. Paloma concealed important facts, including his intent to conduct an

unlawful public distribution of the company's shares and then manipulate the market for those shares.

25. Sections 5(a) and 5(c) of the Securities Act prohibit the offer and sale to the public of any security unless a registration statement is in effect with regard to the security, absent an applicable exemption from registration [15 U.S.C. §§77e (a) & (c)]. No registration statement had been filed with the Commission or was in effect with regard to any public sale of the securities at issue, and no exemption, claimed by Defendants or otherwise, is applicable.

26. In conducting the offerings described herein, neither Paloma nor the companies complied with requirements of Rule 504 of Regulation D of the Securities Act, or any other provisions that exempt or except securities offerings from the registration requirements of the federal securities laws.

27. For Paloma's scheme to work, it was essential that he obtained a substantial block of the each company's purportedly free-trading shares, devoid of any restrictive legends. Legends on shares give potential third party purchasers and financial intermediaries notice that the shares are encumbered as to transferability in instances where the proposed transactions have not been registered pursuant to Section 5 of the Securities Act.

28. To facilitate this need, Paloma hired a lawyer to sign a boilerplate opinion letter stating that the shares could lawfully be issued without any restrictive legend, pursuant to Rule 504 of Regulation D of the Securities Act, and that there would be "no restriction on resale of the securities sold in the offering as proposed if the purchasers do, in fact, qualify as 'accredited investors.' "

29. Paloma then provided the opinion letter to a transfer agent who, relying upon the lawyer's conclusion, physically issued the share certificates without any restrictive legend. Thereafter, Paloma directed the companies to instruct the transfer agent to deliver the shares to various entities that Paloma claimed were either accredited investors or underwriters necessary to facilitate the sale of shares. In reality, the entities receiving the shares were entities that Paloma created solely to serve as conduits for his fraud. Paloma concealed these facts from the companies.

30. Paloma then arranged to obtain CUSIP numbers from Standard & Poor's and ticker symbols from the NASD, both predicates for the securities to be traded publicly.

31. At this point in Paloma's scheme, even though the companies had no audited financials, and had published little, if any, information regarding their operations, products or services, Paloma had effectively prepared their shares to be quoted on the Pink Sheets and offered and sold unconditionally to the public.

32. Next, Paloma transferred hundreds of thousands of shares of each company's stock, typically at no cost, to Lawrence Kaplan, a Scottsdale, Arizona-based resident. At Paloma's direction, Kaplan contacted broker-dealers and placed limit orders to buy shares of the company's new stock at a set price unrelated to any market or demand for the security. Shortly after this "unsolicited bid" was placed, using another brokerage account, Kaplan, Paloma, or another related individual placed an order to sell shares of the same stock. These contemporaneous buy and sell orders represented the first public trades of the stock, and for all intents and purposes, the company became a publicly traded entity, albeit one that has obtained this status improperly.

33. Publishing unsolicited quotes allows a broker-dealer to meet an exception to Rule 15c2-11 of the Exchange Act, which requires a broker who wishes to quote a security to have in its possession current information, including financial information, about the issuer of the securities.

34. Thereafter, Paloma, Kaplan and/or others engaged in wash sales and matched orders, selling shares back and forth at artificial prices. This created the appearance of an active market. In no case was Kaplan purchasing securities based upon the issuer's potential or the intrinsic value of the issuer's stock.

35. In some instances, the account representative for both Kaplan and Paloma's accounts was Marshall Klein, a San Diego, California-based representative at broker-dealer World Trade Financial. On January 12, 2004, Klein, 45, pled guilty to one felony count of conspiracy to commit wire, mail and securities fraud based upon his involvement in a criminal conspiracy to impact artificially the demand and price of the publicly-traded securities of FoneCash, Inc. *U.S. v. Klein*, Case No. 03-CR-2654-JM (S.D. Cal.).

36. With the artificial appearance of an active market established, Paloma needed only to induce unsuspecting investors to buy the shares. To accomplish this, Paloma hired an investor relations firm to create a handful of press releases that purported to announce newsworthy events. Paloma then hired spammers to incorporate these press releases into millions of e-mail messages and blast faxes that included material misstatements and/or baseless price projections, and which typically failed to adequately disclose the nature and source of the spammer's compensation. These spam e-mails and blast faxes were often disseminated without the approval of the companies.

37. Many of the spam e-mails were disseminated through Dulles, Virginia-based America Online. Many of the recipients of the spam e-mails or blast faxes were Virginia residents, or were individuals who received these e-mails or faxes in Virginia.

38. After the promotional campaign was underway and investors were attracted to the market, Paloma and his circle of associates dumped their shares. Since these individuals initially acquired the shares at no cost, all sales, no matter the price, resulted in a profit to Paloma and his associates. Once their positions were liquidated, these individuals ceased their wash sale and promotional activities. Without this artificial stimulation, the share price collapsed. The companies received only a miniscule portion of what Paloma originally promised in financing and were left with the burden of erasing the negative stigma associated with being the subject of a spam campaign. Investors, many of whom are Virginia residents, were left with virtually worthless securities.

39. Paloma has used this blueprint numerous times during the past three years, including in connection with the offerings of the securities of Courtside Products, Inc., Latin Heat Entertainment, Inc., Xtreme Technologies, Inc., PokerBook Gaming Corp., Commanche Properties, Inc., TKO Holdings Ltd. and Motion DNA Corp.

40. As a result of his scheme, Paloma realized in excess of \$2,155,034. Only approximately 10% of these funds were given to the companies. By dumping his shares at the artificially inflated prices, Lawrence Kaplan realized profits of \$677,632.

Courtside Products

41. Courtside Products, Inc. ("Courtside Products"), founded by Lola Emter ("Emter"), is a Spokane, Washington-based company that manufactures sports bags. During May 2004, after exhausting a \$150,000 bank loan, privately held Courtside

Products actively sought capital to continue its operations. Around that time, a consultant that Emter hired to help obtain financing for Courtside Products introduced her to Paloma. Paloma told Emter he could guarantee \$250,000 for Courtside Products by taking the company public.

42. At Paloma's direction, on or about September 28, 2004, Emter instructed First American Stock Transfer, Inc. ("First American"), a Phoenix, Arizona-based transfer agent, to issue 18.75 million shares of Courtside Products stock to three entities which, unbeknownst to Emter, were controlled by Paloma.

43. These shares were issued without a restrictive legend pursuant to a Rule 504 opinion of counsel letter signed by Kenneth Christison. Christison received cash and 50,000 shares of Courtside Products stock from Paloma for authoring this opinion. With these issuances, Paloma controlled all but 50,000 of the purportedly free-trading shares of Courtside Products.

44. On or about September 28, 2004, Paloma transferred 200,000 shares of Courtside Products stock to Lawrence Kaplan. In return, on or about October 7, 2004, Kaplan, through a nominee account, became the first public buyer of Courtside Products shares when he placed an unsolicited bid to purchase 200 shares of Courtside Products at \$.48 per share. Later that day, Paloma entered orders to buy a total of 1,000 shares of Courtside Products stock at \$.48 per share, and sell a total of 5,200 shares at \$.45 per share through a different account. These transactions created the artificial appearance of legitimate trading activity in the company's securities.

45. On October 12, 2004, Paloma sold 32,000 shares of Courtside Products stock through a nominee account at \$.60 per share while simultaneously purchasing 32,000 shares in yet a different nominee account at \$.56 per share.

46. In early October 2004, Paloma referred Emter to an investor relations firm to assist her in the creation of a number of press releases. On October 22, 2004, this investor relations firm issued a press release on behalf of Courtside Products.

47. Beginning on or around October 23, 2004, and continuing through January 2005, Paloma coordinated the dissemination of spam e-mails and blast faxes touting shares of Courtside Products.

48. Some of the spam e-mails and blast faxes stated that "Courtside Products (CSDP) is a prime TAKEOVER target for Nike and Reebok!" Others provided a "Strong Buy Rating" for the company with a projected target price of \$4.50 per share. Subsequent spams provided a "Strong Buy" recommendation for the issuer, and instructed investors to look for a "Possible **strategic** Alliance" as well as "Increased Exposure from media outlets including television networks," and expansion plans that "call for 30% to 35% increase in sales in 2005." Defendants knew, or were reckless in not knowing, that these statements were material and were misleading and/or false.

49. None of the spam e-mails or blast faxes disclosed the fact that Paloma, a securities recidivist who controlled the shares of the company, had paid for the dissemination of these materials. Defendants knew, or were reckless in not knowing, that these omissions were material and were misleading and/or false.

50. Between October 7, 2004 and January 21, 2005, during the timeframe of the spam e-mail and blast fax campaigns, Paloma sold at least 1,880,065 shares of Courtside

