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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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**SECURITIES AND EXCHANGE COMMISSION,**

**Plaintiff**

v.

**JOHN N. IRWIN, CPA and  
JACKLIN ASSOCIATES, INC.,**

**Defendants.**

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Civil Action No.

11-cv-4929

**COMPLAINT**

Plaintiff Securities and Exchange Commission (the "Commission") alleges as follows:

**SUMMARY**

1. From at least February 1995 through December 2008, John N. Irwin ("Irwin"), a Certified Public Accountant, and his firm, Jacklin Associates, Inc. ("Jacklin") (collectively, the "Defendants"), participated in a multi-million dollar Ponzi scheme orchestrated and run by Joseph S. Forte ("Forte"), thereby expanding Forte's investor base and ultimate victim pool through the misconduct described herein.

2. In December 2008, Forte confessed to federal authorities that, for over a decade, he, through his limited partnership, Joseph Forte, L.P. ("Forte LP"), had been operating a Ponzi scheme in which he fraudulently obtained approximately \$50 million from roughly 80 investors through the sale of securities in the form of limited partnership interests in Forte LP. From the inception of the scheme, Forte and Forte LP fraudulently obtained and retained investments through misrepresentations regarding, among other things, use of invested funds, investment

returns, and investor account balances. Subsequent investigation of Forte's confession has revealed over 100 investors who collectively invested over \$75 million.

3. On January 7, 2009, the Commission and the United States Commodity Futures Trading Commission filed civil actions against Forte and Forte LP and successfully sought emergency relief which, inter alia, froze the assets of the defendants and enjoined further illegal conduct (collectively, the "Civil Actions"). SEC v. Forte, et al., 09-CV-0063-PD (E.D. Pa.); CFTC v. Forte, 09-CV-0064-PD (E.D. Pa.). In parallel criminal proceedings, Forte pled guilty to charges of wire fraud, mail fraud, bank fraud and money laundering and was sentenced to 15 years in prison (the "Criminal Action"). U.S. v. Forte, 09-CR-304-JED (E.D. Pa.).

4. Irwin, through Jacklin, solicited investors for Forte LP. In doing so, he relied exclusively on Forte's misrepresentations about Forte LP's stellar performance and, without performing any due diligence, passed along to investors materially false and misleading information about, among other things, Forte LP's current value and growth, historical performance, rapid-trading strategy, and retention of an accountant. Irwin, through Jacklin, also performed back office and bookkeeping functions for Forte LP, including creating and issuing to investors false quarterly statements and tax documents prepared based on the false information provided by Forte.

5. In communicating the fraudulent information to investors, Irwin disregarded red flags that should have alerted him that the information that he was passing on was false. Indeed, Irwin had a powerful incentive to disregard those red flags, because Forte paid him and Jacklin millions of dollars in the form of purported trading profits and fees. Over the course of the fraud, Irwin, through Jacklin, received ill-gotten gains exceeding \$5 million.

6. As a result of the conduct described in this Complaint, defendants Irwin and Jacklin have violated, and unless restrained and enjoined will continue to violate, Sections 17(a)(2) and 17(a)(3) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. § 77q(a)(2) and (3)].

### **JURISDICTION AND VENUE**

7. The Commission brings this action pursuant to Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)], to enjoin such acts, transactions, practices, and courses of business; obtain disgorgement and civil penalties; and for other appropriate relief.

8. This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)].

9. The Defendants are found within the Eastern District of Pennsylvania. In addition, certain of the offers or sales underlying the violations alleged herein, in which the Defendants participated, occurred within the Eastern District of Pennsylvania and elsewhere, and were effected through the use of means or instruments of transportation or communication in interstate commerce, or by the use of the mails.

### **DEFENDANTS**

10. **John N. Irwin**, age 73, is a resident of Villanova, Pennsylvania. He has been a Certified Public Accountant in Pennsylvania since 1961.

11. **Jacklin Associates, Inc.** is a financial consulting firm incorporated in Pennsylvania, with its principal place of business in Radnor, Pennsylvania. Irwin founded Jacklin in 1981, and, at all times relevant to the facts alleged in this Complaint, has been its President.

## FACTS

12. At all times relevant to the facts alleged in this Complaint, defendant Irwin controlled Jacklin, and defendant Jacklin acted by and through defendant Irwin.

### *The Relationship Between the Defendants and Forte LP*

13. In 1995, Forte, Irwin, and an acquaintance of Irwin formed Forte LP, ostensibly to permit Forte to trade in "securities futures," including S&P 500 stock index futures. Forte was the general partner of Forte LP. According to the Limited Partnership agreement provided to investors (the "Limited Partnership Agreement"), Forte had sole and exclusive control of the partnership.

14. Irwin and his acquaintance were Forte LP's first investors and, as such, were limited partners in Forte LP. The limited partnership interests in Forte LP held by Irwin, his acquaintance, and other investors in Forte LP, were securities.

15. Throughout the duration of the fraud, Irwin, through Jacklin, performed back office and bookkeeping services for Forte LP, including the preparation and issuance of quarterly investor statements, tax returns, and K-1 schedules.

16. Forte received a management fee of one-half of one percent of the capital of Forte LP on a quarterly basis, as well as an incentive fee based upon a sliding scale measured by the performance of the partnership.

17. In addition, in early 1995, Irwin entered into an agreement with Forte in which Irwin agreed, through Jacklin, to pay Forte a salary of \$4,000 a month plus benefits through the end of 1995, as well as other Forte LP expenses, so that Forte could devote all of his time to organizing and managing Forte LP. Under that agreement, Forte agreed to pay to Jacklin fifty percent (50%) of all of the management and incentive fees that he received in connection with

Forte LP until Forte reimbursed Jacklin for all Forte LP expenses, including Forte's salary. After all such expenses were reimbursed, Jacklin was thereafter entitled to fifteen percent (15%) of the management and incentive fees. This arrangement continued through the duration of the fraud.

**Forte's Fraudulent Scheme**

18. In December 2008, Forte confessed to federal authorities that he operated a Ponzi scheme for thirteen years, leading to the Civil Actions and the Criminal Action.

19. In sum, from 1995 through December 2008, in order to obtain, and retain, investments in Forte LP, Forte and Forte LP misrepresented and omitted material facts in statements to investors and potential investors in Forte LP, including facts regarding:

- a. The use of investor funds, which purportedly were to be invested in "securities futures;"
- b. Forte LP's trading performance, which purportedly ranged from (approximately) 18% through 38%;
- c. The value of individual investor holdings in Forte LP; and
- d. The value of Forte LP.

20. In fact, Forte diverted most of the invested money. Among other things, for approximately four and a half years, between October 2002 and February 2007, Forte did not deposit any investor funds into the trading account of Forte LP, and from October 2004 through July 2007, Forte conducted minimal trading in the account. Rather, Forte diverted most of investor funds to meet redemption requests of other investors in Forte LP, to pay fees to himself and Jacklin, for personal use and the use of his family and friends, and to various third parties as donations or otherwise.

21. Moreover, the positive returns reported by Forte and Forte LP to investors were fictitious. From the inception of Forte LP, Forte lost money when trading futures, and his returns were not as he reported them to be. From January 1998 through October 2008, the trading account of Forte LP had net trading losses of over \$3 million. During this period, Forte's trading was profitable in only one year, 2002, when he realized a profit of \$21,823.

22. Forte also misrepresented the oversight of Forte LP. Specifically, in the Limited Partnership Agreement, Forte and Forte LP falsely identified an accounting firm as the accountant for Forte LP; and in an amended limited partnership agreement, Forte and Forte LP represented that the "accountant for the [Forte LP] shall be as directed by the General Partner and John Irwin," but, aside from the activities performed by the Defendants, no accounting was performed on behalf of the partnership.

23. According to the Judgment in the Criminal Action, this scheme resulted in investor losses of \$34,865,554.89.

**The Defendants' Participation in the Fraudulent Scheme**

24. Irwin and Jacklin repeated Forte's misrepresentations, including those set forth above, directly to investors in communications, correspondence, quarterly statements, and tax documents. Indeed, Irwin and Jacklin operated as a vehicle through which Forte made the misrepresentations, including those set forth above, to a wider audience including many of Irwin's acquaintances. All of this false information was material -- it was information that a reasonable investor would consider important in making an investment decision. In addition, the misrepresentations held greater weight with their audience as a result of Irwin's professional background, of which many investors were aware.

25. From the inception of Forte LP, Irwin, an experienced Certified Public Accountant, businessman, and investor, continuously solicited friends, family, and business associates to invest in Forte LP without conducting any due diligence or independently verifying information provided to him by Forte. Ultimately, many of Forte LP's investors invested because of their direct or indirect association with Irwin.

26. For example, in December 1998, Irwin sent a potential investor a memo attaching the "results of operations for each quarter since inception," which Irwin prepared solely based on Forte's reported annualized returns of between 32% and 38% from the inception of the partnership through December 31, 1998. These reported returns – clearly information important to investors in determining whether or not to invest -- were fictitious. In truth, Forte regularly lost money in his futures trading during this time period.

27. Moreover, in August 2002, Irwin sent potential investors a letter stating that,

[Forte LP] has been in existence since 1995 and the returns have ranged from 29% to 36% on an annualized basis. Mr. Forte invests only in S&P 500 futures contracts. His positioning is based upon channels derived from proprietary computer programs. . . .

As with those disseminated in 1998, the historical returns Irwin provided to investors in August 2002 were false and based solely on information provided by Forte.

28. In addition, Irwin helped distribute Forte's written solicitation material. Specifically, the Defendants, by mail, e-mail, and otherwise, sent to potential investors copies of the Limited Partnership Agreement and the amended limited partnership agreement, both of which contained false and misleading statements regarding Forte LP's use of an accountant and, accordingly, the existence of independent oversight of Forte LP. Specifically, the Limited Partnership Agreement falsely identified an accounting firm as the accountant for Forte LP – the identified firm was never retained to provide services to the partnership. The amended version of

the Limited Partnership Agreement provided that the “accountant for the [Forte LP] shall be as directed by the General Partner and John Irwin,” but, aside from the activities performed by the Defendants, no accounting was performed on behalf of the partnership.

29. Moreover, over the duration of Forte’s scheme, Irwin and Jacklin improperly lulled existing investors into a sense of false security by preparing and sending to investors quarterly and annual statements that contained false information. Specifically, these statements purported to show each investor’s contributions, withdrawals and capital account, as well as Forte LP’s growth, expenses, and current value. However, each of these statements was materially false and misleading because it did not reflect the true value of either Forte LP or the investor’s capital account.

30. Irwin and Jacklin prepared the false statements using information provided to them by Forte in the form of e-mails and handwritten notes. Irwin neither requested, nor received from Forte, any supporting documentation, such as copies of the trading account statements or trade confirmations. Rather, Irwin relied solely on the informally reported returns provided to him by Forte. Had Irwin reviewed Forte LP brokerage records, he would have known that, among other things, investor funds were not being deposited into the account, the balance in the account did not match the balance reported by Forte, little or no trading was taking place in the account, and Forte LP was not achieving the returns that he had been reporting.

31. From 1995 through 2007, Irwin and Jacklin prepared the tax returns for Forte LP together with the individual investors’ K-1 schedules. Irwin and Jacklin prepared the annual tax documents based solely on information provided by Forte. Each tax document prepared by the Defendants recorded earnings that were, in fact, fictional and fraudulent.

32. Notwithstanding a duty to speak fully and truthfully once he disclosed material facts in connection with a securities transaction, Irwin also failed to disclose to existing and potential investors his financial incentive, as set forth in his agreement with Forte, in obtaining, and maintaining, investments in Forte LP -- namely that he, through Jacklin, received a percentage of Forte's fees.

33. Irwin ignored red flags regarding the accuracy of Forte LP's purported trading profits and the legitimacy of Forte LP. For example, from 1995 through 2002, Forte provided Irwin with false investment account documents that purported to be 1099 forms from Forte LP's brokerage firm. Each of the forms appeared on its face to have been altered or fabricated. In 2003, Forte stopped sending Irwin the 1099 forms as year-end support for the numbers he was reporting. However, despite Irwin's considerable accounting experience, he failed to request the documents from the institutions themselves.

34. Further, Forte had exclusive control over Forte LP's brokerage and banking accounts. Irwin had over 35 years of accounting experience before establishing Forte LP and was an experienced investor who provided consulting services to others. In light of all this experience, and his active role in Forte LP, Irwin knew or should have recognized the risks inherent in Forte's exclusive and unfettered control over Forte LP's financial accounts.

35. The consistently large gains reported by Forte every year were another red flag Irwin improperly ignored. As Irwin knew, Forte was a previously unsuccessful computer salesman and gym owner with no formal experience or training in the financial markets. Given Irwin's significant experience as an accountant, investor, and businessman, and his active role in Forte LP, he should have been skeptical of Forte's reports of consistently large trading profits in

the trading of futures over a period of thirteen years, and should have independently verified the same before communicating with investors.

36. Finally, Irwin was aware that Forte had an incentive to exaggerate or misstate Forte LP's performance because Irwin knew that Forte's compensation was directly tied to Forte LP's purported losses or gains. Irwin participated in the drafting of sections of the Limited Partnership Agreement and amended Limited Partnership Agreement that provided for Forte to receive a management fee and incentive fee based on Forte LP's returns. Significantly, Irwin also was aware that the larger the "profits" Forte LP reportedly earned, the more fees Forte could claim and, consequently, the greater the compensation Irwin and Jacklin were entitled to receive pursuant to their agreement with Forte.

### **CLAIM FOR RELIEF**

#### **Violations of Section 17(a)(2) and 17(a)(3) of the Securities Act**

37. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 36 inclusive, as if the same were fully set forth herein.

38. By engaging in the conduct described above, defendants Irwin and Jacklin, in the offer or sale of securities, by the use of means or instruments of transportation or communication in interstate commerce and/or by use of the mails, directly or indirectly:

(a) Obtained money or property by means of an untrue statement of material fact or by omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and

(b) Engaged in a transaction, practice, or course of business which operated or would operate as a fraud or deceit upon the purchaser.

39. By engaging in the foregoing conduct, defendants Irwin and Jacklin have violated, and unless restrained and enjoined will continue to violate, Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. § 77q(a)(2) and (3)].

**PRAYER FOR RELIEF**

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

**I.**

Permanently restraining and enjoining defendants Irwin and Jacklin from violating Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. § 77q(a)(2) and (3)].

**II.**

Ordering defendants defendants Irwin and Jacklin to disgorge any and all ill-gotten gains, together with prejudgment interest, derived from the activities set forth in this Complaint.

**III.**

Ordering defendants defendants Irwin and Jacklin to pay civil penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)].

**IV.**

Granting such other and further relief as the Court may deem just and appropriate.

Respectfully submitted,

s/Catherine E. Pappas

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