

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**Case No. 04-80272-CIV-HURLEY/HOPKINS**

**SECURITIES AND EXCHANGE COMMISSION,**

**Plaintiff,**

**v.**

**UNCOMMON MEDIA GROUP, INC.,  
LAWRENCE GALLO,  
TIMOTHY RAFFERTY AND FREDERICK  
HORNICK, JR.,**

**Defendants.**

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**AMENDED COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF**

Plaintiff Securities and Exchange Commission (the “SEC” or “Commission”) alleges and states as follows:

1. Since at least August 2002 through 2004, Lawrence Gallo (“Gallo”), Timothy Rafferty (“Rafferty”) and Frederick B. Hornick, Jr. (“Hornick”), using the company Uncommon Media Group, Inc. (“UMDA”) (collectively “Defendants”), swindled 200 investors out of at least \$1.4 million through material misrepresentations and omissions relating to the operations and profitability of the issuers, returns on the investments and use of investor proceeds.

**DEFENDANTS**

2. UMDA was a Florida corporation incorporated in July 1993, with its principal place of business in New York, New York.

3. Gallo was the president and chief executive officer of UMDA.

4. Rafferty was a promoter and sales agent for UMDA.

5. Hornick was a promoter and sales agent for UMDA.

### **JURISDICTION AND VENUE**

6. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d) and 22(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§ 77t(b), 77t(d) and 77v(a), and Sections 21(d), 21(e), and 27 of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§ 78u(d), 78u(e) and 78aa.

7. This Court has personal jurisdiction over Defendants and venue is proper in the Southern District of Florida because Defendants' acts and transactions constituting violations of the Securities Act and the Exchange Act occurred in the Southern District of Florida.

8. Defendants, directly and indirectly, have made use of the means and instrumentalities of interstate commerce, the means and instruments of transportation and communication in interstate commerce, and the mails, in connection with the acts, practices, and courses of business set forth in this Complaint.

### **THE FRAUDULENT SCHEME**

9. Since at least August 2002, Gallo, Rafferty and Hornick raised funds, through UMDA and its subsidiary 3<sup>rd</sup> Dimension, Inc. ("3D"), by offering promissory notes and common stock. Gallo, the mastermind behind the scheme, recruited investors by word of mouth and through independent sales agents and promoters such as Hornick and Rafferty. Hornick was paid commissions for the funds he raised from investors.

10. Investors were recruited at seminars, hosted by Gallo, Rafferty and Hornick, in person or on the telephone, at various locations throughout the country. For example, seminars were held in Denver, Colorado on October 7, 2003 and on December 3, 2003. Another seminar

was held in Salt Lake City, Utah in January 2004. Attendance at the seminars ranged from 20 to over 100 participants.

11. During the seminars, Gallo represented to investors that UMDA and 3D were successful companies. Among other things, Gallo stated that: 3D had the technology to meet current demands of the music, movie and cellular telephone industries; UMDA had completed deals with many companies; and UMDA had established contracts and was about to announce a “major acquisition.”

12. During the seminars, Rafferty, acting at the direction or with the approval of Gallo, told investors that UMDA would be listed on the AMEX stock exchange in 2004. Rafferty also identified streams of revenue and represented that the company would be profitable over the next few years. Rafferty made exorbitant projections as to the future value of UMDA’s stock and stated that several “multi-dollar per share” buy-out offers had already been made but turned down.

13. In late February 2003, during telephone solicitations and in emails, Hornick stated to investors that 3D made \$100 million a year in South America from its cellular telephone video streaming technology and that an additional \$500 million in revenue is expected this year from a contract with a “major U.S. carrier.” Hornick further stated in the emails that 3D was a “successful company and signing many valuable contracts,” “their technology is already in the market place” and that the expected revenue for the year is “in the 100s of millions of dollars.”

14. Hornick, during telephone solicitations in February 2004, promised an investor exorbitant returns on an investment in 3D. Hornick stated that 3D stock purchased at \$3.50 per share would split five to one in ninety days, be “put into” a publicly traded company and be worth \$10 per share. Hornick reiterated in an email to that same investor that 3D’s stock would

open on NASDAQ at \$10.00 per share by this summer. Hornick further said that in the next five years 3D's stock would be worth \$100 per share.

15. All of the statements concerning the profitability, viability and prospects of UMDA and 3D were false and misleading. Neither UMDA nor 3D had any revenues. In fact, UMDA reported a net loss of over \$1.4 million for the financial period ending March 31, 2003 and the company had only reported de minimus revenues of \$29,312 since its inception. 3D had never generated any revenues whatsoever. Moreover, UMDA's auditors expressed a going concerning opinion about UMDA in December 2001 indicating that the ability of the company to continue operating was questionable. In light of UMDA's and 3D's dismal financial condition, Gallo's, Rafferty's and Hornick's projections of tremendous returns on investments in the companies and listing on the AMEX stock exchange were completely baseless and false and were made knowingly or with severe recklessness.

16. In addition to the affirmative lies told to investors, material omissions were made during the offer and sale of UMDA's and 3D's securities. Gallo, Rafferty and Hornick described themselves as having successful backgrounds in the securities industry. At no time did Gallo, Rafferty nor Hornick disclose their checkered pasts which included: (a) a pending civil action and criminal indictment for securities fraud against Gallo; (b) a 1990 securities fraud conviction as to Rafferty and a 1993 SEC permanent antifraud injunction; and (c) a 1998 NASD censure, fine and industry bar against Hornick. Similarly, at no time did Gallo, Rafferty nor Hornick tell investors that UMDA itself was a defendant in a pending SEC action for securities fraud.

17. Lastly, Gallo and possibly others were using investor funds for personal uses instead of to fund the operations and product development of UMDA and 3D. From August 2002 to December 2003, approximately 30% of the \$1.4 million in investor deposits was

disbursed in cash, ATM withdrawals, cashier check purchases and transfers to other bank accounts including Gallo's personal checking account.

### **COUNT I**

#### **Sale of Unregistered Securities in Violation of Sections 5(a) and 5(c) of the Securities Act**

18. The Commission repeats and realleges Paragraphs 1 through 17 of this Complaint as if fully set forth herein.

19. No registration statement was filed or in effect with the Commission pursuant to the Securities Act and no exemption from registration exists with respect to the securities and transactions described in this Complaint.

20. Since a date unknown but at least since August 2002 through 2004, Defendants, directly and indirectly, have been: (a) making use of the means or instruments of transportation or communication in interstate commerce or of the mails to sell securities, through the use or medium of a prospectus or otherwise; (b) carrying securities or causing such securities to be carried through the mails or in interstate commerce, by any means or instruments of transportation, for the purpose of sale or delivery after sale; and/or (c) making use of the means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise, without a registration statement having been filed or being in effect with the Commission as to such securities.

21. By reason of the foregoing, Defendants, directly and indirectly, have violated, and unless enjoined, will continue to violate Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a) and 77e(c).

### **COUNT II**

**Fraud in Violation of Section 17(a)(1) of the Securities Act**

22. The Commission repeats and realleges Paragraphs 1 through 17 of this Complaint as if fully set forth herein.

23. Since a date unknown but at least since August 2002 through 2004, Defendants, directly and indirectly, by use of the means or instruments of transportation or communication in interstate commerce and by use of the mails, in the offer or sale of securities, have been knowingly, willfully or recklessly employing devices, schemes or artifices to defraud.

24. By reason of the foregoing, Defendants, directly and indirectly, have violated and, unless enjoined, will continue to violate Section 17(a)(1) of the Securities Act, 15 U.S.C. § 77q(a)(1).

**COUNT III**

**Fraud in Violation of Section 10(b) of the Exchange Act  
and Rule 10b-5 Promulgated Thereunder**

25. The Commission repeats and realleges Paragraphs 1 through 17 of this Complaint as if fully set forth herein.

26. Since a date unknown but at least since August 2002 through 2004, Defendants, directly and indirectly, by use of the means and instrumentality of interstate commerce, and of the mails in connection with the purchase or sale of securities, have been knowingly, willfully or recklessly: (a) employing devices, schemes or artifices to defraud; (b) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and/or (c) engaging in acts, practices and courses of business which have operated, are now operating and will operate as a fraud upon the purchasers of such securities.

27. By reason of the foregoing, Defendants, directly or indirectly, have violated and, unless enjoined, will continue to violate Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5.

**COUNT IV**

**Operating as Unregistered Broker-Dealers in Violation of  
Section 15(a)(1) of the Exchange Act**

**(Solely as to Hornick)**

28. The Commission repeats and realleges Paragraphs 1 through 17 of this Complaint as if fully set forth herein.

29. Since a date unknown but at least since August 2002 through 2004, Defendant Hornick, directly and indirectly, by use of the means and instrumentality of interstate commerce, while acting as a broker or dealer engaged in the business of effecting transactions in securities for the accounts of others, effected transactions in securities, or induced or attempted to induce the purchase and sale of securities, without registering as a broker-dealer in accordance with Section 15(b) of the Exchange Act, 15 U.S.C. § 78o(b).

30. By reason of the foregoing, Defendant Hornick directly and indirectly, has violated and, unless enjoined, will continue to violate Section 15(a)(1) of the Exchange Act, 15 U.S.C. § 78o(a)(1).

**COUNT V**

**Fraud in Violation of Sections 17(a)(2) and 17(a)(3) of the Securities Act**

31. The Commission repeats and realleges paragraphs 1 through 17 of its Complaint.

32. Since a date unknown but at least since August 2002 through 2004, Defendants, directly and indirectly, by use of the means or instruments of transportation or communication in interstate commerce and by the use of the mails, in the offer or sale of securities, as described in

this Complaint, have: (a) obtained money or property by means of untrue statements of material facts and omissions to state material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading; and/or (b) engaged in transactions, practices and courses of business which are now operating and will operate as a fraud or deceit upon purchasers and prospective purchasers of such securities.

33. By reason of the foregoing, the Defendants, directly and indirectly, have violated and, unless 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 77q(a)(3).

### **RELIEF REQUESTED**

**WHEREFORE**, the Commission respectfully requests that the Court:

#### **I. Declaratory Relief**

Declare, determine and find that Defendants UMDA, Gallo, Rafferty, and Hornick committed the violations of the federal securities laws alleged in this Complaint.

#### **II. Temporary Restraining Order, Preliminary and Permanent Injunctive Relief**

Issue a Temporary Restraining Order, a Preliminary Injunction and a Permanent Injunction, restraining and enjoining Defendants UMDA, Gallo, Rafferty, Hornick, their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, and each of them, from violating: Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a) and 77e(c); Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a); Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5, thereunder; and, solely as to Hornick, Section 15(a)(1) of the Exchange Act, 15 U.S.C. § 78o(a)(1).

### **III. Disgorgement**

Issue an Order requiring Defendants UMDA, Gallo, Rafferty, and Hornick to disgorge all ill-gotten profits or proceeds that they have received as a result of the acts and/or courses of conduct complained of herein, with prejudgment interest.

### **IV. Penalties**

Issue an Order directing Defendants UMDA, Gallo, Rafferty, and Hornick to pay civil money penalties pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d) of the Exchange Act, 15 U.S.C. § 78(d)(3).

### **V. Asset Freeze and Accounting**

Issue an Order freezing the assets of Defendants UMDA, Gallo, Rafferty, and Hornick until further order of the Court, and requiring sworn accountings from each of them.

### **VI. Penny Stock Bar**

Issue an Order, pursuant to Section 603 of the Sarbanes-Oxley Act of 2002 [Public Law No. 107 - 204, 116 Stat. 745 (July 30, 2002)], Section 21(d)(6) of the Exchange Act, 15 U.S.C. § 78u(d)(6), and Section 20(g) of the Securities Act, 15 U.S.C. § 77t(g), and pursuant to the Court's equitable powers, permanently barring Rafferty and Hornick from participating in an offering of penny stock.

### **VII. Officer & Director Bar**

Issue an Order pursuant to Section 20(e) of the Securities Act, 15 U.S.C. § 77t(e), and Section 21(d)(2) of the Exchange Act, 15 U.S.C. § 78u(d)(2), barring Gallo from serving as an officer or director of any issuer required to file reports with the Commission pursuant to Sections 12(b), 12(d) or 15(d) of the Exchange Act, 15 U.S.C. §§ 78l(b) and (g), and § 78o(d).

**VIII. Records Preservation and Expedited Discovery**

Issue an Order requiring Defendants UMDA, Gallo, Rafferty, and Hornick to preserve any records related to the subject matter of this lawsuit that are in their custody, possession or subject to their control, and to respond to discovery on an expedited basis.

**IX. Further Relief**

Grant such other and further relief as may be necessary and appropriate.

**X. Retention of Jurisdiction**

Further, the Commission respectfully requests that the Court retain jurisdiction over this action 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 by the Commission for additional relief within the jurisdiction of this Court.

Respectfully submitted,

DATED: November 17, 2008

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**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that on November 17, 2008, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

s/ C. Ian Anderson  
C. Ian Anderson

**SERVICE LIST**

Securities and Exchange Commission v. Uncommon Media Group, Inc., et al.  
Case No. 04-80272-CIV-HURLEY  
United States District Court, Southern District of Florida

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