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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

Case No.

JARED JEFFREY DAVIS and
DALE BURKE PINCHOT,

Defendants.

COMPLAINT

Plaintiff, Securities and Exchange Commission (the “Commission”), files this Complaint against Defendants Jared Jeffrey Davis (“Davis”) and Dale Burke Pinchot (“Pinchot”) (collectively, “Defendants”) and alleges as follows:

SUMMARY OF THE ACTION

1. From at least early 2012 through at least June 2016 (the “Relevant Period”), Defendants Davis and Pinchot, operating through multiple private entities, engaged in the

2. fraudulent offer and sale of binary options securities to investors.

3. During the Relevant Period, the Defendants collected at least \$10 million in investor funds, of which they obtained a portion thereof, while neither was registered with the Commission as either a broker or a dealer nor while either was associated with a broker or dealer registered with the Commission.

4. In connection with the offer and sale of securities to investors, Davis violated and, unless restrained and enjoined by this Court, will continue to violate 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)]; Sections 10b and 15(a)(1) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §§ 78j(b) and 78o(a)(1)], and Exchange Act Rule 10b–5 [17 C.F.R. § 240.10b–5].

5. In connection with the offer and sale of securities to investors, Pinchot violated and, unless restrained and enjoined by this Court, will continue to violate Section 17(a)(2) of the Securities Act [15 U.S.C. § 77q(a)(2)].

JURISDICTION AND VENUE

6. The Commission brings this action pursuant to Sections 20(b) and 20(d) of the Securities Act [15 U.S.C. §§ 77t(b) and 77t(d)] and Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d) and 78u(e)].

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

8. Venue in this District is proper pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27(a) of the Exchange Act [15 U.S.C. § 78aa(a)]. Acts, practices, and courses of business constituting the violations alleged herein have occurred within the

jurisdiction of the United States District Court for the Northern District of Ohio and elsewhere. Moreover, the Defendants transacted business in this district. Venue also is appropriate pursuant to 28 U.S.C. § 1391. A substantial part of the events or omissions giving rise to the claims discussed herein occurred within this district [28 U.S.C. § 1391(b)(2)].

9. The Defendants, directly or indirectly, made use of means or instruments of transportation or communication in interstate commerce, or of the mails, or of any facility of any national securities exchange in connection with the alleged acts, practices, and courses of business.

DEFENDANTS

10. **Jared Jeffrey Davis**, born 1976, is last known to be a resident of Sandusky, Ohio. Davis and business partner Pinchot directly or indirectly owned multiple companies and internet websites that offered binary options securities trading to investors, and Davis served as the primary manager of the overall enterprise.

11. **Dale Burke Pinchot**, born 1970, is last known to be a resident of Yardley, Pennsylvania, and was the partner of Davis in the binary options business.

STATEMENT OF FACTS

A. Binary Options

12. A binary option is a type of options contract in which the payout depends entirely on the outcome of a yes/no, or binary, proposition or event such as whether the price of a particular underlying asset (*e.g.*, an individual stock, an index of stocks, a currency, a commodity) will rise above or fall below a specified amount at a specified future point in time.

13. Once the option is acquired by the investor, there is typically no further decision for the investor to make regarding the exercise of the binary option because binary option

contracts exercise automatically at expiration.

14. Unlike some other types of options, binary option contracts do not give the holder the right to buy or sell the specified underlying asset. When the binary option expires, the option holder typically receives an amount (sometimes referred to as the “payout”) that is either a pre-determined amount or a percentage return based on initial investment (*i.e.*, the premium) or loses all or nearly all of his or her investment. For example, a binary option contract with Apple stock as its underlying asset might, on the question of whether or not the price of Apple stock will be above or below \$X per share five minutes hence, offer investors terms of a 70% payout on a winning trade or a 100% loss of capital on a losing trade.

15. Given this all-or-nothing payout structure, binary option contracts are also sometimes referred to as “all-or-nothing options” or “fixed-return options.”

16. Binary option contracts based on securities and securities-based indices are themselves securities and thus are subject to the federal securities laws.

B. The Unregistered Binary Options Industry

17. The unregistered binary options industry is often composed of three primary components sometimes referred to as “platforms,” “brands,” and “affiliate marketers.”

18. Platforms, frequently based in Israel but sometimes based in other locations, such as Bulgaria, are, as the moniker implies, the foundation of the unregistered binary options industry.

19. Platforms offer services for a fee that other intermediaries, called brands (discussed below), purchase or license and that may include software related to (a) trade entry and execution services, (b) customer account and client relationship management (“CRM”), (c) access to investment products (*i.e.*, various binary option contracts), and (d) back office IT

support. Some platforms also provide introductions to affiliate marketers (described below).

20. Brands, also known in the unregistered binary options industry as “private labels,” “white labels,” or “brokers,” may be established with a relatively modest investment and typically operate under a trade name while contracting with a platform for trade, customer account, and back office systems and services.

21. Generally, brand operators, such as the Defendants, possess custody of customer funds, do not charge commissions on trades, and are the counterparty to each customer binary options transaction.

22. Affiliate marketers are independent entities who produce sophisticated internet marketing campaigns centered on ephemeral websites and videos promoting the purportedly extraordinary and easy profits that can be obtained through binary options trading (although some campaigns may not specifically mention binary options).

23. These internet marketing campaigns, including those hired by Davis, frequently employ false statements, false testimonials, and/or falsified trading results, created by the affiliate marketer, to lure potential victims in and to shepherd them, for a fee, to binary option brand websites such as those operated by the Defendants.

C. Economics of the Unregistered Binary Options Industry and Binary Option Brands

24. The economic basis of the unregistered binary options industry as participated in by the Defendants is predicated upon the knowledge that, in the aggregate and utilizing sufficiently volatile underlying assets, investors are likely to win only slightly more than 50% of their trades.

25. By structuring binary option contracts such that investors will be credited, typically, with only a 70-85% payout on winning trades and a 95-100% loss of capital on losing

trades, the binary options industry can rely on the almost equal distribution of trade outcomes (*i.e.*, wins and losses) to, as with casinos, mathematically assure themselves of a profit over time.

26. Brands, such as those operated by the Defendants, derive their revenue from being the counterparty to losing customer trades and retaining what is forfeited by customers thereby. In other words, binary option brands, such as those operated by the Defendants, have a keen interest in having their customers lose money through binary options trading.

27. To better ensure this profitable (to the brand) outcome, at least some platforms offered their brand customers access to software services or protocols, sometimes referred to as “risk management,” that would further increase the odds against investor customers of the brands.

28. These risk management protocols, applied at the platform level to investor accounts at the request of the brand operator, act to increase the likelihood that a given customer’s binary option trades will “lose” (and the opposite can be done with the accounts of discouraged customers in order to induce them, via experiencing a limited number of winning trades, to keep trading and/or to deposit additional funds into their binary options trading account).

29. Thus, brands, such as those operated by the Defendants, in order to generate meaningful and ongoing revenue require three things: (i) that customers actively trade their binary options accounts (*i.e.*, so that the effects of the math underlying the payout structure have an opportunity to apply); (ii) that that trading is unsuccessful (*i.e.*, customers lose money to the brand via losing trades); and (iii) that a constant stream of new customers is found to replace those who have either lost all of their investment capital or who have closed their account after discovering that binary options trading is unlikely to prove a profitable long-term endeavor.

D. The Defendants' Binary Options Business

30. During or before early 2012, the Defendants undertook steps, including the formation of various foreign shell companies with foreign bank accounts, to establish their first binary options brand, OptionMint (www.optionmint.com).

31. Over the next few years, the Defendants established an additional three brands—OptionKing (www.optionking.com), Option Queen (www.optionqueen.com), and OptionPrince (www.optionprince.com)—additional foreign shell companies with foreign bank accounts, and, operating at various times, three call centers (with employees) located in Sandusky, Ohio; Costa Rica; and Sint Maarten.

32. This binary options enterprise, referred to hereinafter as the “Enterprise,” although co-owned by the Defendants, was at all times primarily managed by Davis.

33. During the Relevant Period, the Enterprise accepted, as customers, investors located throughout the United States and around the world and offered and sold to them binary option contracts on individual stocks, stock indices, currencies, and commodities collecting at least \$10 million (in aggregate) from them thereby of which the Defendants obtained a portion thereof.

34. The offer and sale of binary option securities (*i.e.*, those binary options based on securities and securities-based indices) by the Defendants and the Enterprise was not registered with the Commission, and neither were the Defendants or the Enterprise registered with the Commission as either a broker or a dealer, and nor were the Defendants associated with a broker or dealer registered with the Commission.

35. In connection with the offer, purchase (by investors), and sale of binary option securities, Davis, directly or indirectly through the Enterprise, engaged in the making of

misstatements of material fact or omitted to state material facts necessary in order to make the statements made not misleading and obtained money or property from binary options securities investors thereby. For example, Davis (a) in Enterprise marketing emails and/or in Enterprise telephone sales scripts used by Enterprise call center employees (both of which were approved by Davis), misrepresented the number of successful binary option investors the Enterprise had and omitted the fact that, to be successful, an investor would need to win an unlikely high percentage of his or her trades, (b) misrepresented the security of investor funds which were, in fact, comingled with the general funds of the Enterprise, (c) misrepresented the knowledge and experience of Enterprise employees who advised customers on binary options trading, (d) misrepresented the Enterprise's interest in seeing its customers succeed by omitting to disclose the basic fact that the Enterprise, and thus the Defendants, effectively took the opposing position on each trade and thus required customers to lose money via binary options trading in order for the Enterprise and the Defendants to make money, and (e) failed to disclose that Davis and the Enterprise could and oftentimes would increase the odds against customer success via application of risk management protocols.

36. Davis also engaged in misstatements and omissions in the *Terms & Conditions* section of the OptionMint website (which he controlled). For example, although this section contained a risk disclosure statement, it was silent on the ability of Davis, via the Enterprise, to have risk management protocols applied to the accounts of winning customers. Similarly, although this section contained a disclosure that "bonus money" (an inducement, such as, for example, a matching \$500 credit on a \$500 deposit made in order to lure wavering prospective customers into opening and funding a binary options account) must be turned over (*i.e.*, traded) 30 times before it could be withdrawn by the customer, it was silent on the fact that,

mathematically, an investor was likely to lose all of his or her investment capital prior to achieving this turnover level. Finally, although this section discussed OptionMint's "know-your-customer" policy and the supposed need for obtaining certain identifying documents from customers, it was silent about the fact that Davis, via the Enterprise, could and would use those documents against customers who attempted to effect a debit/credit card chargeback once they realized that they had been misinformed about the realities of binary options trading.

37. Davis also, directly or indirectly through the Enterprise, engaged in a fraudulent scheme. In addition to Davis's misrepresentations and omissions described above, Davis also directed Enterprise employees to (a) disseminate fake trading results to customers in an effort to get them to enter into binary option trades, (b) have risk management protocols applied to the accounts of "winning" customers so that their subsequent trades would be less likely to win, and (c) "burn" certain customer accounts through excessive trading.

38. Pinchot, as a business partner, financier, and benefactor of the overall Enterprise, knew or should have known about the Enterprise's operations and trading activities, including the misrepresentations and omissions described herein.

E. Summation

39. Through the conduct described herein, Davis, via the Enterprise, violated (a) the registration provisions of Sections 5(a) and 5(c) of the Securities Act; (b) the antifraud provisions of Section 17(a) of the Securities Act; (c) the antifraud provisions of Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5 thereunder; and, (d) the broker-dealer registration provisions of Section 15(a)(1) of the Exchange Act in connection with securities offered through the Enterprise and improperly obtained money thereby.

40. Through the conduct described herein, Pinchot, via Davis and the Enterprise,

violated the antifraud provisions of Section 17(a)(2) of the Securities Act in connection with securities offered through the Enterprise and improperly obtained money thereby.

CLAIMS FOR RELIEF

First Claim for Relief
Unregistered Offer and Sale of Securities
Violations of Sections 5(a) and 5(c) of the Securities Act
[15 U.S.C. §§ 77e(a) and 77e(c)]
(against defendant Davis)

41. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1-39, inclusive, as if they were fully set forth herein.

42. By engaging in the conduct described above, Davis, singly or in concert with others:

a. made use of means or instruments of transportation or communication in interstate commerce or of the mails to sell securities, as to which no registration statement was in effect, through the use or medium of any prospectus or otherwise;

b. carried or caused to be carried through the mails or in interstate commerce, by any means or instruments of transportation, securities, as to which no registration statement was in effect, for the purpose of sale or for delivery after sale; and,

c. made use of any 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 securities as to which no registration statement had been filed.

43. In regard to the sale of the securities described herein, no exemption validly applied to the registration requirements described above.

44. By reason of the foregoing, Davis 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)].

Second Claim for Relief
Fraud or Deceit in the Offer and Sale of Securities
Violations of Section 17(a) of the Securities Act
[15 U.S.C. § 77q(a)]
(against defendant Davis)

45. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1-39, inclusive, as if they were fully set forth herein.

46. By engaging in the conduct described above, Davis, directly or indirectly, singly or in concert with others, in the offer or sale of securities by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly and with *scienter*:

- a. employed a device, scheme, or artifice to defraud,
- b. obtained money or property by means of an untrue statement of a material fact or an omission 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; or,
- c. engaged in transactions, practices, or courses of business which operated as a fraud or deceit upon the purchaser.

47. By reason of the foregoing, Davis violated and, unless enjoined, will continue to violate Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

Third Claim for Relief
Fraud or Deceit in the Offer and Sale of Securities
Violations of Section 17(a)(2) of the Securities Act
[15 U.S.C. § 77q(a)(2)]
(against defendant Pinchot)

48. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1-39, inclusive, as if they were fully set forth herein.

49. By engaging in the conduct described above, Pinchot, directly or indirectly, singly

or in concert with others, in the offer or sale of securities by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly obtained money or property by means of an untrue statement of a material fact or an omission 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.

50. By reason of the foregoing, Pinchot violated and, unless enjoined, will continue to violate Section 17(a)(2) of the Securities Act [15 U.S.C. § 77q(a)(2)].

Fourth Claim for Relief
Fraud in Connection with the Purchase or Sale of Securities
Violation of Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5 Thereunder
[15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5]
(against defendant Davis)

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

52. By engaging in the conduct described above, Davis, directly or indirectly, singly or in concert with others, in connection with the purchase or sale of securities by the use of any means or instrumentalities of interstate commerce or of the mails, or of any facility of any national securities exchange, directly or indirectly and with *scienter*:

- a. employed a device, scheme, or artifice to defraud,
- b. made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or,
- c. engaged in acts, practices, or courses of business which operated as a fraud or deceit upon a person.

53. By reason of the foregoing, Davis violated and, unless enjoined, will continue to

violate Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

Fifth Claim for Relief
Registration of Brokers and Dealers
Violation of Section 15(a)(1) of the Exchange Act [15 U.S.C. § 78o(a)(1)]
(against defendant Davis)

54. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1-39, inclusive, as if they were fully set forth herein.

55. By engaging in the conduct described above, Davis, directly or indirectly, singly or in concert with others, made use of the mails or other means or instrumentalities of interstate commerce to effect transactions in or induce or attempt to induce the purchase or sale of securities while not being registered with the Commission as a broker or dealer or while not being associated with an entity registered with the Commission as a broker or dealer.

56. By reason of the foregoing, Davis violated and, unless enjoined, will continue to violate Section 15(a)(1) of the Exchange Act [15 U.S.C. § 78o(a)(1)].

RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that this Court find that the Defendants committed the violations alleged herein and enter a judgment:

I.

Permanently restraining and enjoining Davis and his agents, servants, employees, attorneys, and all other persons in active concert or participation with them, from, directly or indirectly, engaging in conduct in violation of Section 5 of the Securities Act [15 U.S.C. § 77e];

II.

Permanently restraining and enjoining each of Davis and Pinchot and their respective agents, servants, employees, attorneys, and all other persons in active concert or participation

with them, from, directly or indirectly, engaging in conduct in violation of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)];

III.

Permanently restraining and enjoining Davis and his agents, servants, employees, attorneys, and all other persons in active concert or participation with them, from, directly or indirectly, engaging in conduct in violation of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b–5 thereunder [17 C.F.R. § 240.10b–5];

IV.

Permanently restraining and enjoining Davis and his agents, servants, employees, attorneys, and all other persons in active concert or participation with them, from, directly or indirectly, engaging in conduct in violation of Section 15(a)(1) of the Exchange Act [15 U.S.C. § 78o(a)(1)];

V.

Permanently restraining and enjoining each of Davis and Pinchot from, directly or indirectly, including, but not limited to, through any entity owned or controlled by each, participating in the issuance, purchase, offer, sale, or promotion of any binary option security.

VI.

Ordering each of Davis and Pinchot to disgorge ill-gotten gains derived directly or indirectly from the activities set forth in this Complaint along with prejudgment interest thereon;

VII.

Ordering each of Davis and Pinchot to pay civil penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and, solely in regard to Davis, Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)];

VIII.

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,

IX.

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

Dated: December 10, 2018

Respectfully submitted,



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