

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,**

Plaintiff,

v.

ROBERT ALEXANDER and KIZZANG, LLC,

Defendants.

Civil Action No.

JURY TRIAL DEMANDED

COMPLAINT

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

SUMMARY

1. This action involves a fraudulent securities offering by Defendants Robert Alexander (“Alexander”) and Kizzang, LLC (“Kizzang” or the “Company”). Alexander founded Kizzang in 2013 and represented to potential investors that the Company would be a gambling-style platform that offered online and mobile digital sweepstakes entertainment.

2. From at least February 2013 to mid-2017, Alexander raised approximately \$9 million from approximately 53 investors in Kizzang. Alexander falsely told investors that the funds entrusted to him by them would be used solely for business purposes. Instead, Alexander used the Kizzang bank accounts, funded almost entirely with investor dollars, as his personal piggybank, misappropriating at least \$1.3 million to pay for, among other things, his daily living expenses, his daughter’s culinary school tuition, his mortgage and car payments, and his gambling habit. Alexander also failed to disclose material information to investors, including his use of investor funds to make a \$50,000 payment to satisfy a prior legal judgment entered against

him, arising out of a lawsuit alleging that he had stolen approximately \$1.2 million from a business associate.

3. By virtue of the conduct alleged herein, each of the Defendants violated, and unless permanently enjoined will continue to violate, Section 17(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. § 77q(a)], and Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

4. The Court should permanently enjoin each of the Defendants from violating the securities laws; order the Defendants to disgorge their ill-gotten gains, together with prejudgment interest thereon, and to pay civil money penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]; and order any other relief the Court may deem just and appropriate.

JURISDICTION AND VENUE

5. The Court possesses jurisdiction over this action pursuant to Sections 20(b), 20(d) and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b), 77t(d) and 77v(a)], and Sections 21(d) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d) and 78aa].

6. 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 acts, practices, transactions and courses of business alleged in this Complaint, including communications with investors and prospective investors, occurred within the Southern District of New York.

7. Defendants, directly or indirectly, singly or in concert, 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 herein.

8. The Defendants' conduct involved fraud, deceit, or deliberate or reckless disregard of regulatory requirements, and resulted in substantial loss, or significant risk of substantial loss, to other persons.

DEFENDANTS

9. Robert Alexander, age 49, is a resident of Bayside, New York. At the time of the alleged conduct, Alexander resided in Las Vegas, Nevada. Alexander was the founder and sole principal of Kizzang, and had signatory authority over Kizzang's bank accounts.

10. Kizzang, LLC was a Nevada limited liability company, organized in January 2013, with a principal place of business in Las Vegas, Nevada that, upon information and belief, ceased doing business sometime in 2017. Alexander was Kizzang's founder and sole principal and had exclusive authority and decision-making with respect to Kizzang's business.

FACTS

A. Background

11. Alexander is a self-described entrepreneur with a history in the video game industry, including the sale and distribution of video games.

12. Alexander founded Kizzang in January 2013 and represented to investors and the public that Kizzang was a "new media sweepstakes company" that offered digital sweepstakes entertainment, available on mobile devices, via social media, and on the Web. Users could purportedly play free games, including scratch games, parlay cards, and slot tournaments, for the chance to win cash and other prizes. The platform purported to monetize consumer traffic via advertisements and sponsorships.

13. In reality, Alexander used Kizzang as a vehicle to fund his daily living expenses and lifestyle. Beginning shortly after the incorporation of Kizzang and receipt of the first investment in the Company, Alexander began to misappropriate investor funds. Kizzang never had any meaningful source of revenue and was insolvent by December 5, 2017.

B. Alexander's and Kizzang's Misrepresentations to Investors

14. Shortly after Kizzang's incorporation on January 10, 2013, Alexander began to solicit investors in Kizzang, including from among his friends and business associates. In doing so, Alexander from the outset relied on misrepresentations and omissions, particularly about his intended use of investor funds. Between February 2013 and approximately mid-2017, Kizzang conducted at least three capital raises, obtaining approximately \$9 million.

15. Alexander and Kizzang made misrepresentations to prospective and current investors, and omitted material information, regarding the intended and prior use of investor funds, Alexander's background and personal investment in Kizzang, Kizzang's investment prospects, and the amount of funds raised.

16. On April 4, 2015, Alexander e-mailed a Kizzang financing summary term sheet, Kizzang investor presentation and subscription agreement to Investor A. The term sheet delineated that the \$5.4 million in proceeds from Kizzang's ongoing offering would be used specifically for the following Kizzang business expenses:

- "General and Administrative Expenses" – \$1,298,000
- "Market Launch and Advertising" – \$2,075,000
- "Technology and Development" – \$1,400,000
- "Operating Reserves" – \$627,000

17. A Kizzang investor presentation attached to Alexander's April 4, 2015 email to Investor A also represented that Kizzang had raised \$7.5 million as of March 2015.

18. In approximately August 2015, a Kizzang operating agreement was provided by Kizzang to Investors B and C. The agreement, signed by Alexander, represented that any reimbursement from Kizzang to which Alexander would be entitled as manager, was limited to "reasonable and documented out of pocket costs and expenses incurred by it *for or on behalf of the Company*" (emphasis added). On August 18, 2015, Kizzang also communicated to Investors B and C that their original investment would be returned in January 2016 and that, in total, Investors B and C would receive a minimum of "10 times" return on their investment.

19. On February 10, 2016, a Kizzang investor and associate of Alexander provided a Company investor deck to Investor D. In the deck, Kizzang represented that the Company had raised more than \$10 million in its last two financing rounds. The next day, Alexander e-mailed Investor D, attaching a Kizzang financing summary term sheet. The term sheet represented that the \$6.5 million in proceeds to be raised in the ongoing offering would be used for Kizzang business expenses, specifically: \$4.5 million for "General Corporate Purposes, Product Development, and Working Capital," \$500,000 for "Facebook Marketing," and \$1.5 million for "Licensing Fees."

20. Shortly after these emails, on February 18, 2016, Alexander met with Investor D in Miami, Florida. At this meeting, Alexander guaranteed to Investor D that Kizzang would break even within three years. In order to further induce Investor D's investment in Kizzang, Alexander represented to Investor D that he had personally invested millions of dollars in Kizzang, and that he had made a charitable donation of \$50 million to a prominent Los Angeles hospital.

21. Alexander's and Kizzang's representations to Investors A, B, C, and D were false. Alexander did not personally invest millions of dollars in Kizzang, and did not donate any funds, let alone \$50 million, to the Los Angeles hospital. Moreover, Alexander did not solely use the money raised from investors, including Investors A, B, C, and D, for Kizzang business expenses, such as product development, marketing, or advertising, or for costs and expenses on behalf of Kizzang for which he might have been entitled to reimbursement, but instead spent hundreds of thousands of dollars raised from investors to cover his daily living expenses and fund his frequent gambling outings. This conduct occurred before and continued after Investor A's, B's, C's, and D's investments. Further, Kizzang had raised, at most, only \$5 million by April 2015 and \$7.7 million by February 2016. Alexander also knew, or was reckless in not knowing, that Kizzang would not break even within three years and would not return ten times the original investment, particularly in light of his own misappropriation of investor funds.

22. After receiving the communications from Alexander and Kizzang detailed above, which included material misrepresentations and failed to include material information, particularly about Alexander's intended use of investor funds, Investor A invested \$100,000 in Kizzang on April 7, 2015, Investors B and C invested a total of \$1 million on August 26, 2015, and September 11, 2015, and Investor D invested \$501,000 in Kizzang on February 26, 2016.

23. Similarly, Alexander and Kizzang misrepresented to Prospective Investor E how investor funds had been spent to date and the amount of cash Kizzang had on its balance sheet. On June 24, 2015, in response to a request for details regarding Kizzang's expenses for "travel, meals and entertainment for 2013 and 2014," Alexander provided Prospective Investor E with a spreadsheet. The spreadsheet reflected, among other expenditures: \$9,992.43 for a hotel charge on March 13, 2013, \$18,630 on April 16, 2013 for "Moving Expenses David," and \$18,952 on

December 30, 2013 for “Moving Expenses Vincent.” Alexander also provided Prospective Investor E with a copy of Kizzang’s balance sheet reflecting a cash balance of \$1,559,082.13 in Kizzang’s checking account, as of March 31, 2015.

24. The spreadsheet and balance sheet entries provided to Prospective Investor E by Alexander were false. Kizzang had not spent \$9,992.43 at a hotel, or \$18,630 and \$18,952 on moving expenses. Instead, in March 2013, Alexander spent \$9,000 gambling at Casino A; in mid-April 2013, Alexander withdrew a total of \$18,630 at Casino B in Las Vegas and sustained thousands of dollars in gambling losses; and between December 29 and 30, 2013, Alexander spent \$19,700 gambling at Casino C, also in Las Vegas. Further, Kizzang’s cash balance in its checking account was in fact \$58,064.38, not \$1,559,082.13, as of March 31, 2015.

25. Alexander and Kizzang additionally misrepresented to prospective and current investors, including to Investor D, the extent of Alexander’s background in the gaming industry, specifically, that Alexander had “led the creation of” a prominent video game. In fact, Alexander had no role in the creation of this video game.

26. In soliciting investors in Kizzang, Alexander also failed to disclose that a judgment had previously been entered against him in a lawsuit by a business associate for stealing approximately \$1.2 million, and losing, through gambling, the vast majority of the funds.

C. Defendants Misappropriated Investor Funds

27. Contrary to Alexander’s and Kizzang’s representations to investors, Alexander pilfered Kizzang investor funds, using Kizzang as his personal piggybank, including when Alexander’s personal finances were depleted. Alexander spent at least \$1.3 million of investor funds on personal expenses, including daily living expenses as mundane as gas and groceries,

and hundreds of thousands of dollars gambling at Las Vegas casinos. These personal expenses include:

TYPE OF EXPENSE	APPROXIMATE AMOUNT SPENT (2013 TO 2017)
Personal credit card bills	\$ 579,000
Gambling	\$ 404,000
Financing for home in gated community in Las Vegas	\$ 110,000
Restaurants (including casino restaurants)	\$ 69,000
Satisfaction of outstanding Judgment against Alexander	\$ 50,000
Movies, TV subscriptions, event tickets	\$ 34,000
Hotels in Las Vegas (including casino hotels)	\$ 29,000
Shopping (apparel, shoes, and luxury department stores)	\$ 28,500
Culinary school tuition (for Alexander's daughter)	\$ 28,000
Luxury car payments (for Alexander's daughter)	\$ 25,000
Nightclubs and adult entertainment in Miami and Las Vegas	\$ 3,000
Amusement parks	\$ 2,300
Liquor and party stores	\$ 2,200

28. Approximately one month after incorporating Kizzang, with only \$318.38 in his personal checking account, on February 15, 2013, Alexander withdrew at a bank branch in Las Vegas \$20,000 in cash from Kizzang's bank account and deposited \$10,000 of that cash into his personal checking account. Alexander used the \$10,000 to pay off his personal credit cards, cover an ATM withdrawal at a Las Vegas casino, and pay for daily expenses such as groceries and pharmacy charges. Again, on February 26, 2013, when Alexander had only \$937.74 in his

personal checking account, he deposited a \$10,000 check from Kizzang into his personal account and used the funds to pay his phone, auto insurance, and credit card bills.

29. On April 1, 2013, Alexander used \$50,000 of investor funds to settle a lawsuit against him, *COKeM International, Ltd., v. Robert Alexander and Game Warehouse, Inc.*, 08-cv-01339, Dkt. 17 (D. Minn. Feb. 6, 2009). In that lawsuit, Alexander and his company, Game Warehouse, Inc., were accused by a distributor of video games and computer software of misappropriating more than \$1.2 million and gambling away the vast majority of the funds.

30. On September 11, 2015, pursuant to their investment in Kizzang, Investors B and C wired \$900,000 to Kizzang. However, in the days leading up to this investment, Alexander removed more than \$6,800 of investor funds from Kizzang's bank account to pay his daughter's culinary school tuition and \$7,000 to pay his personal credit card bill. Shortly after receipt of the investment, Alexander removed an additional \$5,400 from Kizzang's bank account to pay his personal credit card bills.

1. Alexander's Gambling

31. Over \$400,000 in investor funds were squandered to support Alexander's gambling habit. Alexander's use of investor funds to pay for his gambling, as well as other personal expenses, often occurred shortly after receiving additional investment funds and after Kizzang's account balances had been depleted due to Alexander's misappropriation of investor dollars.

32. On September 18, 2013, Kizzang had only approximately \$5,500 in its bank accounts. On September 20, 2013, Kizzang and Alexander received a \$30,000 investment, and, on September 23, 2013, \$9,575 of the newly invested funds were withdrawn at Casino D in

Illinois. Alexander proceeded to lose approximately \$9,500 gambling at Casino D on the same day.

33. On December 26, 2013, when Kizzang's accounts had a total balance of approximately \$1,000, Kizzang and Alexander received a \$25,000 investment. On December 29, 2013, approximately half of the newly invested funds were withdrawn at Casino C in Las Vegas. Alexander proceeded to lose \$9,200 gambling at Casino C on that same day. On December 31, 2013, the other half of these investor funds was withdrawn, also at Casino C, where Alexander proceeded to lose \$10,500 gambling.

34. From December 5 to December 7, 2014, Alexander withdrew more than \$18,000 in cash from Kizzang's bank account while at a casino on the Las Vegas Strip and from a nearby bank branch. Alexander gambled at a craps table and lost more than \$20,000 gambling on those days. At the time, Alexander had a negative balance in his personal checking account.

35. In similar patterns, in September 2014, January 2016, and November 2016, Alexander used newly invested Kizzang proceeds to gamble investor funds.

D. Continuing Solicitations, Misrepresentations, and Misappropriation

36. As Alexander misused investor funds on personal expenses, he and Kizzang continued to solicit additional investments in Kizzang, including from existing investors. In doing so, they failed to disclose that Alexander had already spent a large portion of investor funds on personal expenses, in addition to misrepresenting the success of the Company and the reasons Kizzang sought additional capital.

37. On May 28, 2015, Alexander emailed a Kizzang investor to request additional funds, writing "Monday is payroll and I need 55k." The following day, the investor wired \$10,000 to the Kizzang bank account. Alexander failed, however, to disclose to the investor that

in the days and weeks prior to his May 28 email, between May 1 and May 26, 2015, he had spent more than \$20,000 of investor funds on a gambling spree at four different casinos in Las Vegas and Indiana.

38. In a December 3, 2015 conversation with Investor B, in which Investor B questioned Alexander about the status of the investment by Investors B and C, Alexander stated that a sweepstakes company had offered to purchase Kizzang for \$160 million, that Alexander had personally invested \$5 million in the Company, and that a hedge fund in California had invested \$3 million in Kizzang. Those representations were false. In reality, no sweepstakes company had offered to purchase Kizzang nor had a California hedge fund invested \$3 million in the Company. Further, Alexander had not personally invested millions of dollars in Kizzang.

39. In a July 1, 2016 email soliciting an additional investment from Investor D, Alexander stated that “the main reasons for the new needed influx of capital” are “Licensing, building new content, Insurance costs for larger prizes and Marketing (TV and Social).” Despite that representation, that same day, Alexander spent more than \$1,000 in Kizzang investor funds at an adult entertainment establishment in Las Vegas.

40. In another communication with Investor D on November 4, 2016, soliciting additional investment, Alexander and Kizzang represented that the proceeds from the current financing would be used for “Customer Acquisition, Advertising, Marketing Partnerships, [and] Game Development.” That representation was false. In reality, Alexander continued to misappropriate funds raised during this time period. For example, Kizzang received a \$250,000 investment from Investor F on November 7, 2016. On November 7 and November 8, 2016, Alexander used Kizzang funds to make over \$14,000 in payments to his personal credit cards.

E. Kizzang's Unpaid Expenses

41. While Alexander misappropriated and dissipated investor funds, many of Kizzang's legitimate business expenses went unpaid, leaving a trail of lawsuits and claims against the company. Between 2013 and 2017, ten former Kizzang employees filed claims for unpaid wages and/or health insurance with the Nevada Office of the Labor Commissioner, alleging a combined total of approximately \$80,000 in unpaid wages. At least two of the complaints alleged that Kizzang failed to pay the employee's health insurance, while making healthcare deductions from the employee's paycheck, and at least five of the claims were turned over to collections following a failure by Kizzang to respond to the determination in favor of the employee.

42. Kizzang also failed to pay unemployment insurance taxes owed to the State of Nevada. On June 6, 2017 and April 17, 2018, the Eighth Judicial District Court of the State of Nevada entered separate judgments against Kizzang, for a combined total of \$38,228.96 in contributions owed to the Employment Security Division of the State of Nevada.

43. On February 9, 2016, Kizzang entered into a contract with Sports Illustrated, pursuant to which Kizzang would become a Sports Illustrated marketing partner. Under that and subsequent agreements, Kizzang owed approximately \$1 million to Sports Illustrated. Kizzang and Alexander failed to make any payments to Sports Illustrated, despite Kizzang and Alexander repeatedly touting Kizzang's partnership with Sports Illustrated to investors and potential investors, including in an investor presentation disseminated on June 30, 2016, which highlighted Kizzang's partnership with the Sports Illustrated 2016 Swimsuit Issue. As a result of Kizzang's failure to pay Sports Illustrated pursuant to its contract, a complaint was filed by Time Inc. against Kizzang and Alexander in October 2016 in the Southern District of New York. On

March 15, 2017, the Court entered a default judgment in favor of Time, Inc. and against Kizzang and Alexander in the amount of \$1,025,384.62.

F. Kizzang's Insolvency

44. Alexander continued to solicit funds from existing shareholders well into 2017. On May 30, 2017, he wrote to investors regarding an additional “opportunity” to invest, stating that Kizzang “has insufficient capital to keep the Company operational and needs to raise a million dollars to keep the doors open and pursue a promising business opportunity in Mexico. These new funds are for working capital, legal fees, lottery machines, prizes, and insurance.” That representation was false. In fact, following this communication, Alexander continued to misappropriate investor funds in order to pay for his daily living expenses, including fast food, his personal credit card bills, and cash withdrawn at a horse-racing facility in New York.

45. On November 13, 2017, Alexander informed shareholders that Kizzang had been inactive for five months and that the company was “hopelessly insolvent.” The financial institution holding the Kizzang bank accounts closed the account on December 5, 2017, due to its overdrawn status.

FIRST CLAIM FOR RELIEF
Fraud in the Offer or Sale of Securities
Violations of Sections 17(a) of the Securities Act
Against All Defendants

46. Paragraphs 1 through 46 are realleged and incorporated by reference.

47. By reason of the conduct described above, the Defendants, directly or indirectly, in the offer or sale of securities by the use of means or instruments of transportation or communication in interstate commerce, or by use of the mails: (a) employed devices, schemes or artifices to defraud; (b) obtained money or property by means of untrue statements of a 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; or (c) engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon the purchaser.

48. Defendants knew, or were reckless in not knowing, that they (i) employed devices, schemes and artifices to defraud, and (ii) engaged in transactions, practices or courses of conduct that operated as a fraud on the investing public by the conduct described above, in violation of Sections 17(a)(1) and (3) of the Securities Act [15 U.S.C. §§ 77q(a)(1) and 77q(a)(3)].

49. Defendants knowingly, or acting recklessly or negligently in not knowing, obtained money or property by means of untrue statements of a 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, in violation of Section 17(a)(2) of the Securities Act [15 U.S.C. § 77q(a)(2)].

50. By engaging in the conduct described above, Defendants violated, and unless restrained and enjoined, will continue to violate, Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

SECOND CLAIM FOR RELIEF

**Fraud in Connection with the Purchase or Sale of Securities
Violations of Section 10(b) of the Exchange Act and Rule 10b-5
Against All Defendants**

51. Paragraphs 1 through 46 are realleged and incorporated by reference.

52. By reason of the conduct described above, Defendants, directly or indirectly, in connection with the purchase or sale of a security, by the use of means or instrumentalities of interstate commerce or of the mails: (a) employed devices, schemes, or artifices to defraud; (b) made untrue statements 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 or would operate as a fraud or deceit upon other persons.

53. Defendants knew, or were reckless in not knowing, that they (i) employed devices, schemes and artifices to defraud, (ii) made untrue statements 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, and (iii) engaged in transactions, practices or courses of conduct that operated as a fraud on the investing public by the conduct described in detail above.

54. By engaging in the conduct described above, Defendants violated, and unless restrained and enjoined, will continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court issue a Final Judgment:

I.

Finding that Defendants Kizzang and Alexander violated the securities laws and rules promulgated thereunder as alleged against them herein.

II.

Permanently enjoining Defendants Kizzang and Alexander and their agents, servants, employees and attorneys and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from committing future violations of each of the securities laws and rules promulgated thereunder, or

alternatively, from aiding and abetting such future violations, as respectively alleged against them herein.

III.

Ordering Defendants Kizzang and Alexander to disgorge any and all ill-gotten gains they received as a result of the violations of the federal securities laws, plus prejudgment interest thereon, pursuant to Section 21(d)(5) of the Exchange Act [15 U.S.C. § 78u(d)(5)].

IV.

Ordering Defendants Kizzang and Alexander to pay civil monetary penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)] for violations of the federal securities laws.

V.

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

Dated: February 7, 2019

Respectfully submitted,



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