

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.:

SECURITIES AND EXCHANGE COMMISSION,	)
	)
Plaintiff,	)
	)
v.	)
	)
DAVID P. ORTIZ,	)
	)
Defendant.	)
	)

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**COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF**

Plaintiff Securities and Exchange Commission (“Commission”) alleges:

**I. INTRODUCTION**

1. From no later than July 2017 through July 2018, Defendant David P. Ortiz served as an unregistered broker on behalf of 1 Global Capital, LLC (“1 Global” or “the Company”), a South Florida merchant cash advance company. During that time, Ortiz raised more than \$6 million for 1 Global from the offer and sale of securities in unregistered transactions to at least 60 investors. Ortiz earned at least \$149,000 in commissions from those sales.

2. 1 Global marketed its investment as a safe and secure alternative to the stock market and baselessly claimed that investing in the Company’s merchant cash advance business would achieve high single-digit or low double-digit annual returns. Like other 1 Global sales agents, Ortiz repeated those claims to prospective investors.

3. Unbeknownst to Ortiz’s clients, many of whom invested their retirement savings, 1 Global’s business was a fraud. 1 Global and its chairman and chief executive officer Carl Ruderman were misrepresenting how they were using investor money, syphoning off millions in investor funds to fund Ruderman’s luxury lifestyle and operate unrelated businesses. 1 Global’s

business came to a crashing halt when it filed for bankruptcy in July 2018, leaving many of Ortiz's customers and thousands of other investors with hundreds of millions of dollars in losses.

4. During the time he offered and sold 1 Global's securities, Ortiz was not registered as a broker-dealer with the Commission or associated with a registered broker-dealer. Additionally, 1 Global did not register its securities offering with the Commission, and there was no applicable exemption from registration for this offering.

5. By engaging in this conduct, Ortiz violated Sections 5(a) and 5(c) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77e(a) and 77e(c)], and Section 15(a)(1) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78o(a)(1)]. The Commission seeks an injunction against Ortiz from future violations of these provisions, as well as disgorgement of ill-gotten gains, prejudgment interest on disgorgement, and a civil money penalty.

## **II. DEFENDANT**

6. Ortiz, 59, resides in Whittier, California. He currently holds a Series 6 securities license and previously held a Series 63 securities license. Since August 2016, Ortiz has been associated with David Ortiz Advisors, Inc., an investment adviser firm registered with the State of California. Ortiz is also state-licensed to sell insurance and annuity products.

## **III. JURISDICTION**

7. This Court has 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), 21(e) and 27(a) of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e) and 78aa(a)].

8. This Court has personal jurisdiction over Ortiz and venue is proper in the Southern District of Florida because 1 Global transacted business from its headquarters in Hallandale Beach, Florida, and Ortiz regularly transacted business with 1 Global by email and telephone from July

2017 through July 2018. Ortiz offered and sold the securities of 1 Global – a company based in the Southern District of Florida – to his clients. This activity involved numerous specific acts, including but not limited to:

- a. Via the wholesaler referred to in Paragraph 21, receiving 1 Global’s marketing materials;
- b. Showing those marketing materials to potential clients and using them to pitch the 1 Global investment;
- c. Having his clients sign 1 Global’s investment instrument and send it to 1 Global; where 1 Global representatives signed it and returned it to investors;
- d. Having his clients send money directly to 1 Global to invest;
- e. Via the wholesaler, receiving commission checks from 1 Global;
- f. Receiving copies of his clients’ monthly account statements from 1 Global via email;
- g. Having at least three conversations with 1 Global’s outside counsel in 2017, where the two discussed features of the 1 Global investment, including why the outside counsel claimed the 1 Global notes were not securities;
- h. Reviewing an attorney opinion letter prepared for 1 Global;
- i. Via the wholesaler, receiving due diligence materials on 1 Global, including 1 Global financial statements; and
- j. Speaking to 1 Global’s director of investor relations at least twice on the telephone, once about client statements and once about the return of clients’ principal.

9. In connection with the conduct alleged in this Complaint, Ortiz, directly and indirectly, singly or in concert with others, made use of the means or instrumentalities of interstate commerce, the means or instruments of transportation or communication in interstate commerce, and of the mails.

#### **IV. FACTUAL ALLEGATIONS**

##### **A. The 1 Global Offering**

10. From 2014 until July 27, 2018, 1 Global and Ruderman fraudulently raised at least \$320 million from the sale of unregistered securities to more than 3,600 investors nationwide. 1 Global was in the business of funding merchant cash advances (“MCAs”) - short-term loans to small and medium-sized businesses. According to its marketing materials and website, 1 Global provided these businesses with an alternative source of funding to traditional bank loans and other financing methods. 1 Global funded its MCA business and operations almost entirely with money from investors, whom the Company referred to alternately as “Lenders” or “Syndicate Partners.”

11. For the vast majority of the four-plus years 1 Global offered and sold its investment, it used instruments entitled either a Syndication Partner Agreement (“SPA”) or a Memorandum of Indebtedness (“MOI”) as the note or contract between the Company and investors. The SPAs termed the investors partners, while the MOIs called investors lenders. The only use of investor funds 1 Global specifically identified in both documents as well as in its marketing materials was for MCAs. After 1 Global received investor funds, it pooled and commingled them together in non-segregated 1 Global bank accounts.

12. The SPAs and MOIs had terms of either nine months or one year. While the MOI stated that it was a nine-month note, for most of the time 1 Global raised money from investors the MOI also stated the note would automatically roll over into a new nine-month term unless the investor expressly informed the Company in writing at least 30 days before the end of the nine months that he or she did not want the note to roll over.

13. 1 Global represented to investors in marketing materials it gave its sales agents to distribute - including Ortiz - that it collected an average of \$1.30 to \$1.40 on each dollar it advanced

in an MCA. This was the means by which 1 Global and investors both purportedly made a profit.

14. Although 1 Global sent investors monthly account statements purporting to show each investor's account credited with interest payments, investors did not receive those payments right away. 1 Global only paid that interest when investors cashed out. Thus, the majority of investors, who allowed their investments to roll after nine months, never received interest payments and ultimately lost their principal. This practice allowed 1 Global and Ruderman to misappropriate investor funds.

15. The profitability of the 1 Global investment was derived solely from the efforts of 1 Global. Investors had no control over how Ruderman and 1 Global used their money. Investors could not and did not manage their MCA loan portfolios; it was solely up to 1 Global whether and when to use an investor's money to fund MCAs and which MCAs to fund. The success of the investment and whether an investor earned profits was solely dependent on 1 Global's decisions on MCA funding and other uses of money, as well as repayment and collection efforts.

#### **B. 1 Global and Ruderman's Misrepresentations**

16. 1 Global and Ruderman's false representations to investors in marketing materials and on monthly account statements included: (a) that 1 Global would use their money to fund MCAs; (b) the monthly statements accurately disclosed the existing value of the investment; and (c) that the Company's supposed independent audit firm agreed with 1 Global's method of calculating investors' returns.

17. In reality, 1 Global and Ruderman used a substantial amount of investors' funds for purposes other than making MCAs, including on operations and non-MCA business transactions. In addition, Ruderman misappropriated at least \$32 million in investor funds to enrich himself as well as several companies in which he or his family members had a direct interest. This included

money to help fund a family vacation to Greece, monthly payments for a Mercedes Benz, monthly American Express credit card payments, payments for Ruderman's household staff, \$4 million to his family trust, and \$1 million to one of his sons to invest in cryptocurrency.

18. Furthermore, with Ruderman's knowledge, 1 Global provided every investor with a monthly account statement that falsely showed the investor's portfolio value. The statements reflected the investor's fractional interest in a number of MCAs, and a monetary figure alternatively called "cash not yet deployed," "cash to be deployed," or "cash for future receivables." Regardless of the terminology used, the figure represented the amount of the investment that 1 Global had not yet put into MCAs and was purportedly sitting in 1 Global's bank accounts available for MCA funding.

19. However, starting no later than October 2017, the monthly account statements were false because, due in large part to Ruderman's misappropriation, they overstated by \$23 million to \$50 million the amount of cash available for investors in 1 Global's bank accounts. Because that amount was false, the total value of each investor's portfolio, the increase in the valuation since the original investment, and the rate of return each account statement showed, were all overstated.

20. Finally, each investor's monthly account statement falsely claimed, "Our independent audit firm, Daszkal Bolton L.L.P., has endorsed and agrees with the rate of return formula." However, Daszkal Bolton never audited 1 Global's financial statements, and never endorsed or agreed with 1 Global's rate of return formula.

**C. Ortiz Acted as an Unregistered Broker-Dealer and Offered and Sold  
1 Global Notes in Unregistered Securities Transactions**

21. 1 Global recruited a network of dozens of external, mostly unregistered, sales agents, including Ortiz. Ortiz was associated with a company that called itself an alternative investment wholesaler and learned about 1 Global from the wholesaler. Ortiz's agreement with

the wholesaler provided that Ortiz would receive a commission of approximately 2.5 percent on all direct sales he made.

22. The wholesaler regularly provided 1 Global sales materials to Ortiz for use in marketing the investment. Those materials included a list of Frequently Asked Questions, a history of the Company, and a description of both the MCA program and the investment process. Ortiz used the materials in soliciting clients to invest, attaching them to emails and using the information when he spoke to prospective investors.

23. The sales materials touted 1 Global's alleged consistently high returns for investors. The Frequently Asked Questions claimed 1 Global investors had averaged "high single digit" and "low double digit" annual returns. In addition, 1 Global sent copies of monthly investor account statements to Ortiz and other sales agents to show investors. Those account statements showed returns ranging from 8 to 17 percent a year.

24. Using this information, Ortiz told investors 1 Global could earn high single digit to low double digit returns a year. In at least one instance, Ortiz emailed a prospective investor stating that 1 Global averaged a 15 percent annual return – a figure even higher than those promoted by 1 Global.

25. Ortiz also repeated 1 Global's assertions that the company offered better returns than fixed instruments such as annuities, and was a safe, short-term alternative to more risky stock market investments. In addition, he personally vouched for the company's business model. For example an email to an investor stated "as far as credit worthiness is concerned, this company relative to others I have reviewed has the strictest underwriting standards and lowest default rate. There are reserves that protect the principle as well ultra-diversification."

26. Ortiz furthermore forwarded 1 Global's Frequently Asked Questions to investors

without checking to see whether those representations conflicted with his own knowledge. One of those Frequently Asked Questions falsely stated that investor “returns are offered and secured by [the MCA] funding portfolio itself.” Although Ortiz knew investors’ investments were not secured by the MCA loans, he never questioned 1 Global about the discrepancy and continued to send the Frequently Asked Questions to investors.

27. The MOI, the document Ortiz had investors sign to make their investment in 1 Global, and which Ortiz reviewed with investors, clearly stated that it was within 1 Global’s sole discretion how to use investors’ funds. Ortiz never questioned this statement, and how it contradicted the company’s representations that investor funds were secured by MCAs.

28. 1 Global’s outside counsel told Ortiz and other sales agents that 1 Global’s notes were not securities because they were only for terms of nine months. Although aware of the automatic rollover provision in the MOIs, Ortiz never questioned whether that provision affected whether the notes were for longer than nine months.

29. Ortiz also never spoke to anyone at Daszkal Bolton to verify that the firm was 1 Global’s “independent auditor,” or whether it truly verified 1 Global’s formula for determining investors’ rates of return. Despite that, and despite never seeing any audited financial statements from 1 Global, he sent at least one email to an investor stating that 1 Global was “independently audited.”

30. From no later than July 2017 through July 2018, Ortiz used the 1 Global materials to offer and sell 1 Global’s securities to investors via various means, including emails, telephone calls, and in-person meetings. Through the wholesaler, 1 Global paid Ortiz \$149,986 in transaction-based sales commissions, earned as a result of Ortiz raising approximately \$6 million in transactions with at least 60 investors. During the time he sold 1 Global notes in unregistered

securities offerings, Ortiz was neither a registered broker-dealer nor associated with a registered broker-dealer.

**CLAIMS FOR RELIEF**

**COUNT I**

**Violations of Sections 5(a) and 5(c) of the Securities Act**

31. The Commission repeats and realleges Paragraphs 1 through 30 of this Complaint as if fully set forth herein.

32. No registration statement was filed or in effect with the Commission pursuant to the Securities Act with respect to the securities Ortiz offered and sold as described in this Complaint and no exemption from registration existed with respect to these securities.

33. From no later than July 2017 and continuing through July 2018, Ortiz directly and indirectly:

- (a) made use of any 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) carried or caused to be carried securities through the mails or in interstate commerce, by any means or instruments of transportation, for the purpose of sale or delivery after sale; or
- (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 any security;

without a registration statement having been filed or being in effect with the Commission as to such securities.

34. By reason of the foregoing, Ortiz violated, and unless enjoined is reasonably likely to continue to violate, Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)].

**COUNT II**

**Violations of Section 15(a)(1) of the Exchange Act**

35. The Commission repeats and realleges Paragraphs 1 through 30 of this Complaint as if fully set forth herein.

36. From no later than July 2017 and continuing through July 2018, Ortiz, directly or indirectly, by the use of the mails or any means or instrumentality of interstate commerce effected transactions in, or induced or attempted to induce the purchase or sale of securities, while he was not registered with the Commission as a broker or dealer or not associated with an entity registered with the Commission as a broker-dealer.

37. By reason of the foregoing, Ortiz violated, and unless enjoined is reasonably likely to 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 the Court find Ortiz committed the violations alleged, and:

**A.**

**Permanent Injunctive Relief**

Issue a permanent injunction enjoining Ortiz from violating Sections 5(a) and 5(c) of the Securities Act and Section 15(a)(1) of the Exchange Act.

**B.**

**Disgorgement and Prejudgment Interest**

Issue an Order directing Ortiz to disgorge all ill-gotten gains or proceeds received as a result of the acts and/or courses of conduct complained of herein, with prejudgment interest thereon.

C.

**Civil Money Penalty**

Issue an Order directing Ortiz to pay a civil money penalty pursuant to Section 20(d) of the Securities Act and Section 21(d) of the Exchange Act.

D.

**Further Relief**

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

E.

**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 it may enter, or to entertain any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court.

**JURY DEMAND**

The Commission demands a jury trial on all issues so triable – the issues of whether Ortiz is liable for violations of the securities laws.

March 17, 2021

Respectfully submitted,

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