

1 DAVID J. VAN HAVERMAAT, Cal. Bar No. 175761
Email: vanhavermaatd@sec.gov

2 Attorneys for Plaintiff
3 Securities and Exchange Commission
4 William P. Hicks, Associate Regional Director
5 John W. Berry, Regional Trial Counsel
6 5670 Wilshire Boulevard, 11th Floor
7 Los Angeles, California 90036
8 Telephone: (323) 965-3998
9 Facsimile: (323) 965-3908

7 **UNITED STATES DISTRICT COURT**
8 **CENTRAL DISTRICT OF CALIFORNIA**

10 SECURITIES AND EXCHANGE
11 COMMISSION,

12 Plaintiff,

13 vs.

14 JOHN THORNES,

15 Defendant,

16 and

17 CHRISTOPHER BURNELL; KYLE
18 LARICK; and DOREEN THORNES,

19 Relief Defendants.

Case No.

**COMPLAINT FOR VIOLATIONS
OF THE FEDERAL SECURITIES
LAWS**

20 Plaintiff Securities and Exchange Commission (“SEC”) alleges as follows:

21 **JURISDICTION AND VENUE**

22 1. This Court has jurisdiction over this action pursuant to Sections 20(b),
23 20(d)(1) and 22(a) of the Securities Act of 1933 (“Securities Act”), 15 U.S.C.
24 §§ 77t(b), 77t(d)(1) & 77v(a), and Sections 21(d)(1), 21(d)(3)(A), 21(e) and 27 of
25 the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §§ 78u(d)(1),
26 78u(d)(3)(A), 78u(e) & 78aa. The defendant has, directly or indirectly, made use of
27 the means or instrumentalities of interstate commerce, of the mails, or of the
28 facilities of a national securities exchange in connection with the transactions, acts,

1 practices and courses of business alleged in this complaint.

2 2. Venue is proper in this district pursuant to Section 22(a) of the
3 Securities Act, 15 U.S.C. § 77v(a), and Section 27 of the Exchange Act, 15 U.S.C.
4 § 78aa, because certain of the transactions, acts, practices and courses of conduct
5 constituting violations of the federal securities laws occurred within this district, and
6 the defendant and the relief defendants reside in the district.

7 **SUMMARY**

8 3. This case involves repeated misappropriation of funds by John T.
9 Thornes (“Thornes”), the former owner of a registered broker-dealer and investment
10 adviser firm, Thornes & Associates, Inc. Investment Securities (the “Firm”), from
11 two trust brokerage accounts at the Firm. From December 2010 through January
12 2013, Thornes misappropriated a combined total of \$4.4 million from the Shultz
13 Trust account, for which he was the trustee of the trust (as well as the registered
14 representative on the trust’s brokerage account), and the Harbison Scholarship Trust
15 (“Harbison Trust”) account, a non-discretionary brokerage account for which he was
16 the registered representative, and for which his mother, relief defendant Doreen K.
17 Thornes, (“Doreen”) was the trustee of the trust.

18 4. Thornes exercised control over the Shultz Trust brokerage account in his
19 capacity as the trustee of that trust. With respect to the Harbison Trust brokerage
20 account, Thornes usurped control from his mother and engaged in unauthorized
21 trading in the account as the registered representative. Thornes used this control to
22 misappropriate and transfer more than \$4.1 million from these accounts to his friends,
23 relief defendants Christopher L. Burnell (“Burnell”) and Kyle W. Larick (“Larick”),
24 for improper and unauthorized purposes, including \$2.9 million to Burnell for, among
25 other things, payment of Burnell’s gambling debts and tax liens, and more than \$1.2
26 million to Larick for, among other things, the purchase of a vacation home and a
27 luxury vehicle. As a result of Thornes’ actions, the two accounts lost substantial
28 portions of their value and incurred unnecessary margin interest and brokerage fees.

1 In addition, Thornes caused the Harbison Trust account to pay more than \$85,000 in
2 unauthorized and excessive trustee fees to Doreen.

3 5. Through this Complaint, the SEC seeks a permanent injunction
4 prohibiting Thornes from future federal securities laws violations, disgorgement with
5 prejudgment interest of all ill-gotten gains, including the monies obtained by the
6 relief defendants via Thornes' fraudulent conduct, and civil penalties against Thornes.

7 **DEFENDANT**

8 6. **John T. Thornes**, age 47, resides in Redlands, California. Thornes was
9 formerly the President, Chief Compliance Officer, Director, and Secretary of the
10 Firm, and he worked there throughout the relevant period.

11 **RELIEF DEFENDANTS**

12 7. **Kyle W. Larick**, age 45, resides in Redlands, California. Larick is
13 Thornes' longtime close friend.

14 8. **Christopher L. Burnell**, age 43, resides in Highland, California.
15 Burnell was a friend and business associate of Larick, who introduced Burnell to
16 Thornes in the fall of 2010.

17 9. **Doreen K. Thornes**, age 83, resides in Rialto, California. Doreen is
18 Thornes' mother. She was listed as a director of the Firm throughout the relevant
19 period.

20 **RELEVANT ENTITY**

21 10. **Thornes & Associates, Inc. Investment Securities (doing business as**
22 **Thornes & Associates, Inc.)**, based in Redlands, California, was registered with the
23 SEC as a broker-dealer from August 1996 to November 2013. The Firm was also
24 registered as an investment adviser with the State of California from December 2001
25 to September 2013. Since approximately 2004, Thornes was the sole owner of the
26 Firm. The Financial Industry Regulatory Association ("FINRA") filed an
27 administrative action against Thornes and the Firm in May 2013. On July 18, 2013,
28 the Firm offered to settle the matter on terms that included the Firm's expulsion from

1 FINRA membership. As of that date, the Firm's accounts were taken over by another
2 broker-dealer/investment adviser.

3 **THE FRAUDULENT SCHEME**

4 **A. Thornes' Misappropriation From The Shultz Trust Account**

5 11. From August 1996 until May 2013, Thornes was the registered
6 representative for the brokerage account of the Shultz Trust, which had been established
7 for the health, support and maintenance of an 80-year old homemaker. The beneficiary,
8 a dementia patient, has lived at home with 24-hour nursing care since April 2007. In
9 May 2007, Thornes replaced the beneficiary as trustee, giving him control over the
10 Shultz Trust brokerage account.

11 12. From August 1996 to February 2012, the investment objective/risk
12 tolerance for the Shultz Trust account was listed as "Conservative Growth & Income."
13 As of March 2011, about 76% of the Shultz Trust account's assets were held in mutual
14 fund shares, and 19% in fixed income securities. The Firm moved to a new clearing
15 broker in February 2012, at which time Thornes designated the account's investment
16 objective as "Balanced/Conservative growth." Thornes revised the designation in June
17 2012 to "Balanced Growth," with a "Low Risk" tolerance.

18 13. From April 2011 to March 2013, Thornes abused his position as trustee for
19 the Shultz Trust by misappropriating the trust's funds, improperly transferring a total of
20 \$1.7 million from the Shultz Trust to his friend, Burnell.

21 14. To facilitate the transfer of funds out of the Shultz Trust account, Thornes
22 sold securities from the account in at least 25 separate trades.

23 15. Thornes transferred money from the Shultz Trust to Burnell for a variety of
24 purposes unrelated to the purpose of the trust, including satisfying Burnell's tax lien
25 liability, purportedly chartering a private jet to transport Burnell's supposedly sick wife
26 for medical care, and to pay for Burnell's gambling and/or gambling debts at a nearby
27 casino.

28 16. Burnell did not have a legitimate claim to the funds that Thornes

1 transferred to him from the Shultz Trust account. Thornes knew or was reckless in not
2 knowing that none of the payments to Burnell advanced the purposes of the trust, which
3 was established for Shultz's health, support, and maintenance, and that Burnell did not
4 have a legitimate claim to the funds. Neither Burnell nor Thornes ever repaid the funds
5 that Thornes misappropriated from the Shultz Trust account.

6 17. Using his control over the Shultz Trust as the trustee, Thornes converted
7 the Shultz Trust brokerage account to a margin account to obtain margin funds.
8 Subsequently, he sold securities in the account to generate additional funds to avoid a
9 margin call and to cover additional transfers to Burnell. Thornes' trading on margin
10 was inconsistent with the low risk tolerance for the account.

11 18. Between April 2011 and March 2013, Thornes caused the Shultz Trust to
12 pay the Firm margin interest in the amount of \$49,000 and brokerage commissions of
13 \$11,422. As the sole owner of the Firm, Thornes benefited from these payments.

14 19. As a result of Thornes' actions, the Shultz Trust account balance was
15 depleted from over \$2.08 million in March 2011 to approximately \$384,000 as of April
16 30, 2013.

17 **B. Thornes' Misappropriation From The Harbison Trust Account**

18 20. From August 1996 until May 2013, Thornes was the registered
19 representative for the Harbison Trust account, a non-discretionary brokerage account
20 held at the Firm. The Harbison Trust was created by the will of a Thornes family friend
21 who died in 1993. The purpose of the trust was to fund college scholarships for local
22 high school graduates, with the recipients to be selected by a committee designated by
23 the trustee. The will named as the initial trustee Thornes' father, who was succeeded in
24 1996 by Thornes' mother, Doreen. Because Doreen had no training in finance,
25 accounting, or the duties of a trustee, she relied upon Thornes to make all decisions
26 related to the Harbison Trust account, including all decisions regarding trading of
27 securities in the Harbison Trust account.

28 21. From August 1996 through January 2012, the investment objective/risk

1 tolerance of the Harbison Trust account was designated as “Long Term Growth &
2 Income.” Thornes changed the designation in February 2012 to “Preservation of
3 Principal/Income,” and in June 2012 to “Preservation of Principal/Income,” with a
4 “Minimal Risk” tolerance. As of November 2010, the Harbison Trust account value
5 was \$3.05 million.

6 22. From December 2010 to March 2013, Thornes misappropriated funds from
7 the Harbison Trust account, transferring \$1.2 million in twenty-two separate transfers to
8 Burnell. Thornes periodically had Doreen sign blank checks, through which Thornes
9 transferred funds to the trust’s bank account, from which he obtained cashier’s checks
10 made out to Burnell. To make the Harbison Trust account’s assets available for
11 transfer, Thornes sold securities from the account in at least 25 separate unauthorized
12 trades.

13 23. Thornes transferred substantial funds from the Harbison Trust account to
14 Burnell for a variety of purposes unrelated to the purpose of the trust, including
15 purported “bridge loans” to Burnell, the payment of Burnell’s tax liens, and other
16 personal expenses of Burnell. Thornes knew or was reckless in not knowing that none
17 of the payments to Burnell advanced the purposes of the Harbison Trust.

18 24. Thornes also transferred more than \$1.2 million from the Harbison Trust
19 account to Larick in three separate disbursements in late 2010 and early 2011. Of those
20 funds, \$800,000 was used by Larick for the purchase of a vacation home in Big Bear,
21 California, and \$93,000 was used for a luxury vehicle for Larick.

22 25. Neither Burnell nor Larick had a legitimate claim to the funds that Thornes
23 transferred to them from the Harbison Trust account. Thornes knew or was reckless in
24 not knowing that none of the transfers to Burnell or Larick advanced the purposes of the
25 Harbison Trust, and that neither Burnell nor Larick had a legitimate claim to the funds.
26 Neither Burnell, Larick, nor Thornes ever repaid the funds that Thornes
27 misappropriated from the Harbison Trust account.

28 26. Beginning in 2010, Thornes converted the Harbison Trust brokerage

1 account to a margin account to obtain margin funds. Subsequently, he sold securities in
2 the Harbison Trust brokerage account, without authorization, to generate additional
3 funds to avoid a margin call and to cover additional transfers to Burnell. Converting the
4 Harbison Trust brokerage account to a margin account was inconsistent with the low
5 risk tolerance for the account.

6 27. Thornes knew or was reckless in not knowing that he did not have the
7 authority to sell securities in the Harbison Trust account without the approval of the
8 trustee.

9 28. From December 1, 2010 through March 31, 2013, Thornes caused the
10 Harbison Trust to pay the Firm \$74,507 in margin interest, and \$42,091 in brokerage
11 commissions on securities transactions in the account, including sales conducted
12 primarily to avoid a margin call. As the sole owner of the Firm, Thornes benefited from
13 these payments.

14 29. Thornes also paid Doreen excessive fees for serving as the trustee of the
15 Harbison Trust. The will that established the Harbison Trust provided for a trustee fee
16 equal to “one percent of the average net value of the principal of the trust estate during
17 each calendar year for all ordinary services rendered by the trustee and to reasonable
18 additional compensation for any extraordinary services rendered.” Nonetheless, even
19 while the securities in the Harbison Trust account were being sold off, and the value of
20 the trust assets rapidly declined, Thornes caused the Harbison Trust to pay Doreen a
21 purported fee of \$4,000 per month through March 2013. Based on the value of the
22 Harbison Trust account, Thornes overpaid Doreen \$85,570 during the period from
23 December 1, 2010 through March 31, 2013. Doreen did not have a legitimate claim to
24 those funds.

25 30. As a result of Thornes’ actions, the Harbison Trust account was depleted
26 from \$3 million in November 2010 to approximately \$155,000 by April 2013, with
27 minimal funds used for the educational purposes for which the trust was established.

28 ///

1 **FIRST CLAIM FOR RELIEF**

2 **FRAUD IN THE OFFER AND SALE OF SECURITIES**

3 **Violations Of Section 17(a)(1) Of The Securities Act**

4 **(Against Thornes)**

5 31. The SEC realleges and incorporates by reference paragraphs 1 through
6 30 above.

7 32. Defendant Thornes, by engaging in the conduct described above, in the
8 offer or sale of securities by the use of means or instruments of transportation or
9 communication in interstate commerce or by use of the mails, directly or indirectly,
10 with scienter, employed devices, schemes, or artifices to defraud.

11 33. By engaging in the conduct described above, defendant Thornes
12 violated, and unless restrained and enjoined will continue to violate, Section 17(a)(1)
13 of the Securities Act, 15 U.S.C. § 77q(a)(1).

14 **SECOND CLAIM FOR RELIEF**

15 **FRAUD IN CONNECTION WITH THE**

16 **PURCHASE OR SALE OF SECURITIES**

17 **Violations Of Section 10(b) Of The Exchange Act and**

18 **Rules 10b-5(a) and (c) Thereunder**

19 **(Against Thornes)**

20 34. The SEC realleges and incorporates by reference paragraphs 1 through
21 30 above.

22 35. Defendant Thornes, by engaging in the conduct described above, directly
23 or indirectly, in connection with the purchase or sale of a security, by the use of
24 means or instrumentalities of interstate commerce, of the mails, or of the facilities of
25 a national securities exchange, with scienter:

26 a. employed devices, schemes, or artifices to defraud; or

27 b. engaged in acts, practices, or courses of business which operated
28 or would operate as a fraud or deceit upon other persons.

1 36. By engaging in the conduct described above, defendant Thornes
2 violated, and unless restrained and enjoined will continue to violate, Section 10(b) of
3 the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5(a) and (c) thereunder, 17
4 C.F.R. § 240.10b-5(a) & (c).

5 **THIRD CLAIM FOR RELIEF**

6 **RELIEF DEFENDANTS RECEIVED ILL-GOTTEN GAINS**

7 **(Against All Relief Defendants)**

8 37. The SEC realleges and incorporates by reference paragraphs 1 through
9 30 above.

10 38. In the manner described above, each relief defendant received ill-gotten
11 gains for which they gave no consideration and to which they have no legitimate
12 claim.

13 **PRAAYER FOR RELIEF**

14 WHEREFORE, the SEC respectfully requests that the Court:

15 **I.**

16 Issue findings of fact and conclusions of law that defendant Thornes committed
17 the alleged violations.

18 **II.**

19 Issue a judgment, in a form consistent with Fed. R. Civ. P. 65(d), permanently
20 enjoining defendant Thornes, and his agents, servants, employees, and attorneys, and
21 those persons in active concert or participation with any of them, who receive actual
22 notice of the judgment by personal service or otherwise, and each of them, from
23 violating Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), and Section 10(b) of
24 the Exchange Act, 15 U.S.C. §§ 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. §
25 240.10b-5.

26 **III.**

27 Order defendant Thornes to disgorge all ill-gotten gains from his illegal
28 conduct, together with prejudgment interest thereon, and order relief defendants

1 Burnell, Larick, and Doreen to disgorge all ill-gotten gains from defendant Thornes'
2 illegal conduct to which the relief defendants do not have a legitimate claim, together
3 with prejudgment interest thereon.

4 **IV.**

5 Order defendant Thornes to pay civil penalties under Section 20(d) of the
6 Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the Exchange Act, 15
7 U.S.C. § 78u(d)(3).

8 **V.**

9 Retain jurisdiction of this action in accordance with the principles of equity and
10 the Federal Rules of Civil Procedure in order to implement and carry out the terms of
11 all orders and decrees that may be entered, or to entertain any suitable application or
12 motion for additional relief within the jurisdiction of this Court.

13 **VI.**

14 Grant such other and further relief as this Court may determine to be just and
15 necessary.

16
17 Dated: August 4, 2014

/s/ David J. Van Havermaat

David J. Van Havermaat
Attorney for Plaintiff
Securities and Exchange Commission