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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11 SECURITIES AND EXCHANGE COMMISSION,
12 Plaintiff,

13 vs.

14 THE ROSE FUND, LLC, THE ROSE FUND, INC.,
15 TRF HOLDINGS, INC., MICHAEL ALEXANDER,
PAUL NELSON, and WILLIAM WRIGHT,

16 Defendants,

17 and

18 ROSE COLLECTIONS, INC., PACIFIC VIDEO
19 NETWORK, INC., RESORT MANAGEMENT CO.,
20 INC., WEB INVENTIONS, INC., WHO BANGING,
INC., and YAE, INC.,

21 Relief Defendants.

Case No. _____

COMPLAINT

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23
24 Plaintiff Securities and Exchange Commission (“Commission”) alleges:

25 **JURISDICTION**

26 1. This Court has jurisdiction over this action pursuant to Sections 20(d)(1) and 22(a) of
27 the Securities Act of 1933 (the “Securities Act”) [15 U.S.C. §§ 77t(d)(1) and 77v(a)] and Sections
28 21(d)(3), 21(e) and 27 of the Securities Exchange Act of 1934 (the “Exchange Act”) [15 U.S.C. §§

1 78u(d)(3), 78u(e) and 78aa]. Defendants, directly or indirectly, have made use of the means and
2 instrumentalities of interstate commerce or of the mails in connection with the acts, transactions,
3 practices and courses of business alleged in this Complaint.

4 2. Venue in this District is proper pursuant to Section 22(a) of the Securities Act
5 [15 U.S.C. §77v(a)] and Section 27 of the Exchange Act [15 U.S.C. §78aa] because a substantial
6 portion of the conduct alleged in this Complaint occurred within the Northern District of California.

7 3. Assignment to the San Francisco Division of this Court is proper because a substantial
8 part of the events or omissions that give rise to the claim occurred in San Francisco, Marin, and San
9 Mateo counties.

10 SUMMARY OF THE ACTION

11 4. This matter involves fraud in the offer and sale of unregistered securities by
12 defendants The Rose Fund, LLC (“Rose Fund”), The Rose Fund, Inc., TRF Holdings, Inc. (“TRF
13 Holdings”) (collectively, the “Rose Fund entities”), Michael Alexander, Paul Nelson, and William
14 Wright. From at least October 2002 through September 2003, defendants raised approximately \$3.3
15 million from over 100 investors. Defendants falsely represented that investors were purchasing
16 investments in a mortgage lending company, and that they would receive an annual rate of return of
17 12% based on interest generated from the Rose Fund’s business operations. Defendants claimed that
18 the investments were “safe,” “IRS approved,” and secured by California real estate. Investment
19 salesman Wright also told investors that the Rose Fund had a well-established track record of success
20 and, depending on the investor, that the firm had been in business for 17 years, for 23 years, or for 30
21 years.

22 5. All of these claims were false. The Rose Fund was only incorporated in October
23 2002, only began making loans in 2003, and had never operated profitably. Moreover, the Rose Fund
24 entities used investment proceeds obtained from investors for improper and undisclosed purposes.
25 For example, the Fund paid out over one million dollars to Alexander, Nelson and Wright--- which
26 comprised 30% of the total funds raised from investors--- even though the investors were told
27 commissions would not exceed 5% of the invested funds. Alexander spent over \$400,000 in investor
28 funds at gambling establishments, including one racetrack that was less than a ten-minute drive from

1 the Rose Fund entities' offices. In order to lull investors into believing their investments were safe
2 and profitable, the Rose Fund began making partial payments to investors, purportedly generated
3 from lending activities, when in actuality the payments came from investors' own money – a classic
4 Ponzi scheme.

5 6. By offering to sell and selling unregistered securities, the defendants violated Sections
6 5(a), and 5(c) and 17(a) of the Securities Act [15 U.S.C. §§ 77e(a), 77e(c) and 77q(a)]. By making
7 material misstatements and omissions in the offer and sale of securities, the defendants violated
8 Section 17(a) of the Securities Act, and Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and
9 Rule 10b-5 [17 C.F.R. §§ 240.10b-5] thereunder. The Commission seeks an injunction against future
10 conduct that violates the securities laws, disgorgement of ill-gotten gains, and civil money penalties.
11 As to the Rose Fund entities, the Commission also seeks the appointment of a Receiver to oversee the
12 operations of the entities, including the receipt of mortgage payments to the entities and the
13 disbursement of interest payments to investors. The Commission further seeks disgorgement of all
14 investor funds disbursed to the relief defendants.

15 **AUTHORITY TO BRING THIS ACTION**

16 7. The Commission brings this action pursuant to Sections 20(b) and 20(d) of the
17 Securities Act [15 U.S.C. §§ 77t(b) and 77t(d)] and Sections 21(d) and 21(e) of the Exchange Act
18 [15 U.S.C. §§ 78u(d) and 78u(e)].

19 **DEFENDANTS**

20 8. Defendant The Rose Fund, LLC, is a limited liability company in the State of
21 California with its principal place of business in San Diego, California.

22 9. Defendant The Rose Fund, Inc., is incorporated in the State of California with its
23 principal place of business in San Diego, California. The Rose Fund, Inc. is primarily responsible for
24 managing the affairs of the Rose Fund.

25 10. Defendant TRF Holdings, Inc., is incorporated in the State of California with its
26 principal place of business in San Diego, California.

27 11. Defendant Michael Alexander is a resident of Solana Beach, California. Alexander is
28 the President of The Rose Fund, Inc., and President of TRF Holdings.

1 12. Defendant Paul Nelson is a resident of San Diego, California, and also maintains a
2 residence in Bothell, Washington. Nelson is the Chief Financial Officer of The Rose Fund, Inc.

3 13. Defendant William Wright is a resident of San Diego, California. Wright is the lead
4 sales person for the Rose Fund entities.

5 **RELIEF DEFENDANTS**

6 14. Relief defendant Rose Collections, Inc., purports to be a corporation responsible for
7 collecting interest payments on behalf of the Rose Fund's mortgage lending business.

8 15. Relief Defendant Pacific Video Network, Inc., is incorporated in the State of
9 California with a principal place of business in Solana Beach, California. Pacific Video Network is
10 controlled by defendant Alexander.

11 16. Relief Defendant Resort Management Co., Inc., is incorporated in the State of
12 California with its principal place of business in Solana Beach, California. Resort Management is
13 controlled by defendant Alexander.

14 17. Relief Defendant Web Inventions, Inc., purports to be incorporated in the State of
15 California, with a principal place of business in Bothell, Washington. Web Inventions is controlled
16 by Nelson.

17 18. Relief Defendant Who Banging, Inc., is incorporated in the State of California with its
18 principal place of business in San Diego, California. Who Banging is controlled by Wright.

19 19. Relief Defendant YAE, Inc., is incorporated in the State of California with its
20 principal place of business in San Diego, California. YAE is controlled by Wright.

21 **FACTUAL ALLEGATIONS**

22 20. Beginning in at least October 2001, defendants offered and sold securities in the form
23 of investments in two related companies.

24 21. Defendants offered and sold securities in the form of limited liability company units of
25 the Rose Fund. Defendants sold California investors participation rights in the Rose Fund units for
26 \$1,000 per unit.

27 22. Defendants also offered and sold securities in the form of promissory notes of TRF
28 Holdings. The securities were sold to investors nationwide.

1 23. No registration statement was filed with the Commission or was in effect with respect
2 to the securities that defendants offered and sold.

3 24. Beginning in January 2002, defendants placed advertisements in California
4 newspapers, including frequent ads in the San Francisco Chronicle and the San Jose Mercury News,
5 to locate potential investors. The ads stated “12-15%” in large letters. The ads also stated “\$ Interest
6 Paid Monthly \$ IRA/401K Approved \$ Secured by CA Real Estate.” Beginning in May 2003, the
7 ad also added “\$ Safe” to its description of the investment. The ad provided a phone number for
8 interested investors to call.

9 25. These statements were materially false when made, or omitted to state facts necessary
10 to make them not materially misleading. The Rose Fund entities were only able to pay 12 percent
11 interest to existing investors by soliciting funds from new investors; investments in the Rose Fund
12 were not “approved” for investment in an IRA or 401K by the Internal Revenue Service or by any
13 other governmental agency; and the investments were not “safe.” Defendants knew, or were reckless
14 in not knowing, that the statements in the ads were materially false and misleading.

15 26. Defendant Wright spoke with investors who called the phone number included in the
16 newspaper advertisements. In some instances, he told investors that the Rose Fund had been in
17 business for 17, 23 or 30 years, that the Rose Fund performed better than the stock market, that the
18 Rose Fund was safe, and that investors could withdraw their investment at any time. All of these
19 statements were materially false at the time that Wright made them, and he knowingly or recklessly
20 made these false statements to investors in order to induce them to invest in the Rose Fund entities. In
21 reality, the Rose Fund only incorporated in October 2002, and only began making loans in March
22 2003.

23 27. The Rose Fund entities, Nelson and Wright provided each investor with a copy of the
24 Rose Fund Offering Memorandum, the Rose Fund Operating Agreement, and the Rose Fund
25 Subscription Agreement. The Operating Agreement and Subscription Agreement were signed by
26 each investor, and executed by Nelson on behalf of The Rose Fund Inc. (as the manager of the Rose
27 Fund).

28

1 28. The Offering Memorandum and Operating Agreement provided that funds invested in
2 the Rose Fund would be used to fund home loans to individuals secured by trust deeds on those
3 individuals' homes. Income from the home loan mortgage payments would be used to pay investors
4 their guaranteed 12% return. Any excess income would purportedly be divided between the Rose
5 Fund, Inc. and investors. There were no rights to redeem units and receive a refund from the Fund.

6 29. The Offering Memorandum also provided that the Fund would pay commissions of
7 only 5% on sales of Rose Fund units, and that the Rose Fund Inc. would receive a fee of ½ of one
8 percent of the book value of the loans each year on January 15. The Offering Memorandum stated
9 that the manager was to receive no distributions unless the investors first received their guaranteed
10 interest payments.

11 30. Defendants also offered California and non-California investors unsecured promissory
12 notes in TRF Holdings. The Rose Fund Entities, Nelson and Wright provided investors with the
13 Rose Fund Offering Memorandum or the substantially similar Rose Fund prospectus. Nelson and
14 Wright led investors to believe that funds invested in TRF Holdings would be used to fund home
15 loans made by the Rose Fund. These investors were similarly promised an annual 12% rate of return
16 on their investment.

17 31. Investors who gave money to TRF received a copy of a promissory note with a cover
18 letter from Nelson as the CFO of The Rose Fund, Inc. The cover note was written on Rose Fund
19 stationary and enclosed the original note signed by Alexander as President of TRF. The TRF
20 investors were led to believe that their investments were to be used to fund the operations of the Rose
21 Fund.

22 32. Between October 2002 and September 2003, defendants raised \$3.3 million from over
23 100 investors in 19 states. Many of the investors reside in this district, including at least three
24 investors who reside in San Francisco.

25 33. Investment funds for the Rose Fund were deposited in the Rose Fund LLC Escrow
26 Account. Investment funds for TRF Holdings were deposited into a separate account for TRF
27 Holdings. On at least 3 occasions, investor funds received from non-California residents, who were
28

1 purportedly TRF Holdings investors, were commingled with funds received from the California
2 resident Rose Fund investors.

3 34. Beginning in March 2003 and continuing through September 2003, defendant
4 Alexander withdrew over \$400,000 from the Rose Fund entities bank accounts at gambling
5 establishments. Alexander withdrew \$183,500 from the Rose Fund LLC Escrow Account and
6 \$223,600 from the TRF Holdings account for his gambling activities.

7 35. Alexander also wrote large checks to corporations controlled by himself and
8 defendants Nelson and Wright (those corporations are named herein as relief defendants). These
9 payments were not disclosed in the Offering Memorandum and were far in excess of the 5%
10 commission disclosed to investors.

11 36. The Rose Fund entities paid investors interest payments before the Rose Fund had
12 made any home loans or received any loan payments from borrowers. Contrary to representations
13 made to investors, these payments originated from investors' own money, rather than income
14 generated by the Rose Fund's purported mortgage lending business.

15 37. Defendants provided TRF investors a substantially identical prospectus to the one
16 provided to Rose Fund unit investors. Defendants mislead TRF investors into believing that their
17 investments would be used to fund the Rose Fund's mortgages. To perpetuate the myth that TRF
18 note holders participated in the Rose Fund mortgages, defendants sent them a letter describing the
19 success of the Rose Fund and attaching a log of Rose Fund mortgages. In reality, TRF funds were
20 deposited into a separate account that was never used to fund a single mortgage. Instead, the majority
21 of excessive commissions, cash withdrawals, and gambling charges were made to the TRF account.

22 **ALLEGATIONS RELATING TO RELIEF DEFENDANTS**

23 38. Since October 2002, the Rose Fund entities and defendant Alexander have written
24 checks on Rose Fund bank accounts to Web Inventions for approximately \$86,301. These transfers
25 of investors' funds were not made to further the avowed business purposes of the Rose Fund, but
26 rather were intended to enrich defendant Nelson.

27 39. Since October 2002, the Rose Fund entities and defendant Alexander have written
28 checks on Rose Fund bank accounts to Who Banging for approximately \$375,234. These transfers of

1 investors' funds were not made to further the avowed business purposes of the Rose Fund, but rather
2 were intended to enrich defendant Wright.

3 40. Since October 2002, the Rose Fund entities and defendant Alexander have written
4 checks on Rose Fund bank accounts to YAE for approximately \$152,297. These transfers of
5 investors' funds were not made to further the avowed business purposes of the Rose Fund, but rather
6 were intended to enrich defendant Wright.

7 41. Since October 2002, the Rose Fund entities and defendant Alexander have written
8 checks on Rose Fund bank accounts to Pacific Video Network for approximately \$391,500. These
9 transfers of investors' funds were not made to further the avowed business purposes of the Rose Fund
10 but rather were intended to enrich defendant Alexander.

11 42. Since October 2002, the Rose Fund entities and defendant Alexander have written
12 checks on Rose Fund bank accounts to Resort Management Co. for approximately \$30,000. These
13 transfers of investors' funds were not made to further the avowed business purposes of the Rose Fund
14 but rather were intended to enrich defendant Alexander.

15 **FIRST CLAIM FOR RELIEF**

16 **(Violations of Section 17(a) of the Securities Act)**

17 43. The Commission hereby incorporates paragraphs 1 through 42 by reference.

18 44. Defendants Rose Fund, The Rose Fund, Inc., TRF Holdings, Nelson, Alexander, and
19 Wright have, by engaging in the conduct set forth above, directly or indirectly, in the offer or sale of
20 securities, by the use of means or instruments of transportation or communication in interstate
21 commerce, or of the mails: (a) with scienter, employed devices, schemes or artifices to defraud;
22 (b) obtained money or property by means of untrue statements of material fact or by omitting to state
23 material facts necessary in order to make the statements made, in the light of the circumstances under
24 which they were made, not misleading; or (c) engaged in transactions, practices or courses of
25 business which operated or would operate as a fraud or deceit upon the purchasers of such securities.

26 45. By reason of the foregoing, defendants have directly or indirectly violated Section
27 17(a) of the Securities Act [15 U.S.C. § 77q(a)] and unless enjoined will continue to violate Section
28 17(a) of the Securities Act.

SECOND CLAIM FOR RELIEF

**(Violations of Section 10(b) of the Exchange Act
and Rule 10b-5 Thereunder)**

46. The Commission hereby incorporates Paragraphs 1 through 42 by reference.

47. Defendants Rose Fund, The Rose Fund, Inc., TRF Holdings, Nelson, Alexander, and Wright have, by engaging in the conduct set forth above, directly or indirectly, by use of means or instrumentalities of interstate commerce, or of the mails, or of a facility of a national security exchange, with scienter: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in 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, in connection with the purchase or sale of securities.

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

THIRD CLAIM FOR RELIEF

Violations of Section 5(a) and 5(c) of the Securities Act

49. The Commission hereby incorporates Paragraphs 1 through 42 by reference.

50. Defendants Rose Fund, The Rose Fund, Inc., TRF Holdings, Alexander, Nelson and Wright have, by engaging in the conduct set forth above, directly or indirectly, through use of the means or instruments of transportation or communication in interstate commerce or of the mails, offered to sell or sold securities or carried or caused such securities to be carried through the mails or in interstate commerce, for the purpose of sale or delivery after sale.

51. No registration statement was filed with the Commission or was in effect with respect to the securities offered by defendants prior to the offer or sale of these securities.

52. By reason of the foregoing, defendants have directly or indirectly violated Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)], and unless restrained and enjoined will continue to violate these provisions.

FOURTH CLAIM FOR RELIEF

**(Violations of Section 15(a) of the Exchange Act
Against Wright)**

53. The Commission incorporates paragraphs 1 through 42 by reference.

54. Defendant Wright, directly or indirectly, through use of the means or instruments of transportation or communication in interstate commerce or the mails, acted as a broker and/or effected transactions in, and induced or attempted to induce the purchase or sale of, securities (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) without being registered with the Commission in accordance with Section 15(b) of the Exchange Act [15 U.S.C. § 78o(b)].

55. By reason of the foregoing, defendant Wright has directly or indirectly violated Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)], and unless restrained and enjoined will continue to violate Section 15(a) of the Exchange Act.

FIFTH CAUSE OF ACTION

**(Violations of Section 20(a) of the Exchange Act
Against Defendant Alexander)**

56. The Commission incorporates paragraphs 1 through 42 by reference.

57. By virtue of his position, stock ownership, agency, course of conduct and/or agreement with other persons, defendant Alexander directly or indirectly controlled The Rose Fund, Inc., TRF Holdings, Inc., and The Rose Fund LLC, and/or other persons who violated the provisions of the Exchange Act and rules thereunder. Alexander is therefore liable under Section 20 of the Exchange Act [15 U.S.C. § 78t] to the same extent as the controlled person for any violations of the Exchange Act.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court:

I.

Enjoin defendants The Rose Fund, LLC, The Rose Fund, Inc., TRF Holdings, Inc., Alexander, Nelson and Wright from, directly or indirectly, engaging in conduct in violation of Sections 5(a), and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a), and 77e(c)].

II

Enjoin defendants The Rose Fund, LLC, The Rose Fund, Inc., TRF Holdings, Inc., Alexander, Nelson and Wright from, directly or indirectly, engaging in conduct in violation of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] and 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].

III

Enjoin defendant Wright from, directly or indirectly, engaging in conduct in violation of Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)].

IV.

Order defendants The Rose Fund, LLC, The Rose Fund, Inc., TRF Holdings, Inc., Alexander, Nelson and Wright to disgorge their ill-gotten gains in an amount according to proof, plus prejudgment interest thereon.

V.

Order relief defendants Rose Collections, Inc., Web Inventions, Who Banging, YAE, Pacific Video Network and Resort Management Co. to disgorge their ill-gotten gains in an amount according to proof, plus prejudgment interest thereon.

VI.

Order defendants The Rose Fund, LLC, The Rose Fund, Inc., TRF Holdings, Inc., Alexander, Nelson and Wright to pay civil money penalties pursuant to Section 20(d)(1) of the Securities Act [15 U.S.C. § 77t(d)(1)] and Section 21A of the Exchange Act [15 U.S.C. § 78u-1].

VII.

Order appointment of a receiver to oversee the operations of the Rose Fund entities.

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VIII.

Retain 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.

IX.

Grant such other and further relief as this Court may deem just, equitable, and necessary.

Dated: October 10, 2003

Respectfully submitted:

By: _____
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James A. Howell
Christopher C. Cooke
X. Carlos Vasquez

Attorneys for Plaintiff
SECURITIES AND EXCHANGE COMMISSION