

Karen L. Martinez (7914)
Email: martinezk@sec.gov
Thomas M. Melton (4999)
Email: meltont@sec.gov
Securities and Exchange Commission
15 W. South Temple, Suite 1800
Salt Lake City, UT 84101
Tel: (801) 524-5796

**UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

v. :

KEVIN J. WILCOX, JENNIFER E. THOENNES, :
and ERIC R. NELSON, :

Defendants, :

Case No. _____

Judge _____

COMPLAINT

The Securities and Exchange Commission (“Commission”) alleges as follows:

I. SUMMARY

1. This case involves a Ponzi scheme that, along with two distinct but related Ponzi schemes, is the subject of a related civil injunctive action filed by the Commission against Joseph A. Nelson (“Nelson”) and others in the District Court for the District of Utah, SEC v. Zufelt, et al., 2:10-cv-00574 (DB) (D. Utah, June 23, 2010). From at least June 2005 through June 2010, Nelson and his associates, including at various times Defendants Kevin J. Wilcox (“Wilcox”) and Jennifer E. Thoennes (“Thoennes”), solicited at least \$16 million dollars from more than 100 persons to invest in promissory notes offered by JCN, Inc. (“JCN”), JCN Capital, LLC, (“JCN

Capital”) and JCN International, LLC (“JCN International”) (collectively, the “Nelson Companies”), all of which Nelson owns and controls. Certain other persons invested with Nelson personally.

2. Nelson, Wilcox, and Thoennes told investors – many of whom are fellow members of the Church of Jesus Christ of Latter Day Saints (“LDS”) that Nelson identified and targeted through church connections and during church functions – that Nelson and the Nelson Companies were engaged in the business of purchasing merchant portfolios, holding them for a certain period of time, and then selling them for a profit to financial institutions, such as banks. They claimed that Nelson and the Nelson Companies earned money from so-called “residual income” generated by the merchant portfolios while they were in Nelson’s possession, as well as from profits generated when the portfolios were supposedly sold. Investors were promised extraordinary rates of return – up to 200% – in a very short amount of time.

3. All of these claims are materially false or misleading. Nelson never bought or sold a merchant portfolio. Instead, Nelson used invested funds to make monthly payments to investors, pay his personal expenses, and pay his employees and associates, including Wilcox, Thoennes, and his brother, Defendant Eric R. Nelson (“Eric Nelson”).

4. Eric Nelson, who was associated with the Nelson Companies from at least early 2007 through July 2010, created fictitious documents that were used to mislead investors into believing that Joseph Nelson and the Nelson Companies owned and earned monthly processing fees from merchant portfolios. Eric Nelson also created documents that deceived investors about the continued solvency of Nelson and the Nelson Companies. For example, Eric Nelson altered his brother’s bank statements to reflect balances that were far in excess of the amounts actually in his brother’s accounts.

5. Of the at least \$16 million invested in the Nelson Companies, Nelson repaid approximately \$7 million to investors in the form of purported payments of residual income, interest and principal, thereby creating the illusion of legitimate investment returns. Further, no transactions in securities offered or sold by or for the Nelson Companies were registered with the Commission, or are eligible for an exemption from registration.

6. By committing the acts described in this Complaint, the Defendants each committed fraud by knowingly or recklessly employing a scheme to defraud and engaging in acts and practices that operated as a fraud or deceit upon investors. In addition, Wilcox and Thoennes knowingly or recklessly made materially false or misleading statements or omissions about the Nelson Companies, the promised returns on invested funds, the source of repayment of invested funds, the security of the investments, and the intended use of the invested funds. Each Defendant directly or indirectly engaged in and, unless restrained and enjoined by the Court, will continue to engage in, transactions, acts, practices and courses of business that violate Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)], Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder. The defendants aided and abetted violations by Nelson and the Nelson Companies of the same provisions.

7. Wilcox and Thoennes also violated and, unless restrained and enjoined by the Court, will continue to violate Securities Act Sections 5(a) and 5(c) [15 U.S.C. §§ 77e(a) and 77e(c)] by offering to sell, selling, and delivering after sales to the public, and offering to sell through the use or medium of a prospectus, securities as to which no registration statement was or is in effect or on file with the Commission, and for which no exemption was or is available.

8. Wilcox and Thoennes each also violated and, unless restrained and enjoined by the Court, will continue to violate Exchange Act Section 15(a) [15 U.S.C. § 78o(a)] by acting as an unregistered broker or dealer of securities. In addition, Wilcox and Thoennes aided and abetted Nelson's violations of Exchange Act Section 15(a).

9. The Commission therefore seeks a judgment: (i) permanently enjoining Wilcox and Thoennes from engaging in violations of Securities Act Sections 5(a) and 5(c); (ii) permanently enjoining each Defendant from engaging in violations of Securities Act Section 17(a), Exchange Act Section 10(b) and Rule 10b-5; (iii) permanently enjoining each Defendant from aiding and abetting violations of Exchange Act Section 10(b) and Rule 10b-5; (iv) permanently enjoining Wilcox and Thoennes from engaging in violations of Exchange Act Section 15(a); (v) permanently enjoining Wilcox and Thoennes from aiding and abetting violations of Exchange Act Section 15(a); (vi) requiring each Defendant to pay a civil monetary penalty pursuant to Securities Act Section 20(d) [15 U.S.C. § 77t(d)] and Exchange Act Section 21(d)(3) [15 U.S.C. § 78u(d)(3)]; (vii) requiring each Defendant to make an accounting; and (viii) requiring each Defendant to disgorge all ill-gotten gains, along with prejudgment interest.

II. JURISDICTION AND VENUE

10. The Court has jurisdiction over this action pursuant to Securities Act Section 20(b) and 22(a) [15 U.S.C. §§ 77t(b) and 77v(a)] and Exchange Act Sections 21(d), 21(e) and 27 [15 U.S.C. §§ 78u(d), 78u(e) and 78aa]. The Defendants made use of the means or instruments of interstate commerce, of the mails, or of the facilities of a national securities exchange in connection with the acts, transactions, practices and courses of business alleged in this Complaint.

11. Venue lies in the District of Utah pursuant to Securities Act Section 22(a) and Exchange Act Section 27 because certain of the acts, practices and courses of business constituting the violations of law alleged in this Complaint occurred within this district. Specifically, (i) the Defendants defrauded investors in this district, (ii) many of the defrauded investors reside in this district, and (iii) the Nelson Companies were located in this district.

III. PARTIES

A. Plaintiff

12. Plaintiff is the Securities and Exchange Commission.

B. Defendants

13. **Kevin J. Wilcox**, age 30 and a resident of Vacaville, California, served as Vice President of JCN, Inc. from approximately May 2008 to July 2010. Wilcox's cousin, Crystal Wilcox Nelson, is married to Joseph Nelson.

14. **Jennifer E. Thoennes**, age 36 and a resident of Saugus, Massachusetts, served as Project Manager of JCN, Inc. from approximately August 2009 through January 2010.

15. **Eric R. Nelson**, age 36 and a resident of Layton, Utah, is Joseph Nelson's brother. Eric Nelson was associated with the Nelson Companies from at least early 2007 through July 2010.

IV. FACTS

A. Background

16. When merchants accept credit card payments from customers, those payments are usually processed for a small fee by intermediate companies generally known as "processors." Processors also provide merchants with other services, such as fraud detection and charge dispute resolution. This line of business is referred to as the "merchant services" industry.

17. A “merchant portfolio” is a book of business consisting of a large number of contracts between a group of merchants and a particular sales agent or processor. The portfolio, being a distinct group of revenue-generating contracts, is a quantifiable asset. As a result, merchant portfolios are priced, purchased and sold among companies participating in the merchant services industry.

**B. Nelson, Wilcox, and Thoennes Sold Fraudulent Investments
in the Nelson Companies.**

1. The Solicitation of Investors

18. Beginning in approximately June 2005, Nelson began soliciting persons to invest in his companies. From at least January 2007 through June 2010, Nelson and his associates, including at times Wilcox and Thoennes, convinced over 100 persons to invest at least \$16 million in JCN, JCN Capital and JCN International (collectively, the “Nelson Companies”), or to invest money with Nelson personally. Between May 2008 and July 2010, Wilcox raised and helped to raise approximately \$3 million from at least 11 people and solicited investments from numerous other individuals who did not invest in the Nelson Companies. Between August 2009 and January 2010, Thoennes raised and helped to raise at least \$1.5 million from at least 4 persons, and solicited investments from at least 15 other individuals who did not invest with JCN, Inc.

19. Nelson used his position of authority in The Church of Jesus Christ of Latter Day Saints to lull prospective investors. During the period of Nelson’s fraud, he served as a “Mission Leader” for his local Ward, a term which denotes a group of congregations, and as a High Counselor. Nelson actively targeted fellow LDS members, reaching out to them through church connections and during church functions, and many if not most of his investors are LDS members.

20. Nelson, Wilcox, and Thoennes told investors that (i) Nelson and the Nelson Companies were engaged in the business of purchasing and selling merchant credit card portfolios; (ii) Joseph Nelson and the Nelson Companies owned merchant credit card portfolios; (iii) Joseph Nelson and the Nelson Companies earned monthly residual fees generated by the merchant credit card portfolios they owned; (iv) investor funds would be used to purchase additional portfolios; and (v) as part owners of the merchant credit card portfolios, investors would earn a portion of the monthly residual fees generated by the portfolios.

21. Nelson, Wilcox, and Thoennes lured investors by offering extraordinary rates of return. Most investors were given promissory notes, the majority of which ranged from 30 days to one year, and had interest rates ranging from 14% to 60%, on an annualized basis. The notes also called for the payment of an additional premium at maturity, the majority of which ranged from 20% to 60% of the principal amount invested. In other cases, investors were simply told that they would double their money. Thoennes also sent e-mails to investors promising “guaranteed returns of 66% per year.”

22. Nelson, Wilcox, and Thoennes showed certain investors documents that deceived them into believing that the Nelson Companies were engaged in a legitimate business. Among them is a JCN “Executive Summary” which claimed, among other things, that JCN and its partners were “at the forefront of the credit card industry,” that JCN was “a leading producer and provider of credit card processing and sales throughout the United States,” that JCN had “sold one of its processing sectors for over two million dollars in 2005,” and that “[w]e continuously buy and sell [merchant] portfolios for great returns to investors.” Nelson also showed certain investors a lengthy chart that he explained was a list of merchants that comprised a particular merchant portfolio. Nelson also showed certain investors a purported letter of intent from a third

party to purchase a merchant portfolio from JCN. Nelson used this letter to convince certain investors that he had arranged a sale that would lead to the swift and certain return of their investments and promised returns.

23. None of these representations was true, and Nelson, Wilcox, and Thoennes knew or were reckless in not knowing that they were not true. Nelson and his companies never purchased or sold a single merchant portfolio. The money invested with Nelson and the Nelson Companies was instead used by Nelson to make incremental payments to investors in a Ponzi-scheme fashion, to pay his associates, including Wilcox and Thoennes, and to pay his own lavish personal expenses, as well as those of other family members. Wilcox and Thoennes knew or were reckless in not knowing that Nelson and the Nelson Companies never purchased any merchant credit card portfolios, and that investor funds were used for undisclosed purposes, including repaying existing investors.

24. Eric Nelson, Joseph Nelson's brother, was associated with the Nelson Companies from at least early 2007 through July 2010 during which time, at his brother's direction, he created fictitious documents that Joseph Nelson and his associates used to mislead investors into believing that Joseph Nelson and the Nelson Companies were engaged in the business of buying and selling merchant credit card portfolios. For example, Eric Nelson compiled "Portfolio Verification Reports" that contained certain information about the economic performance of the merchant portfolios supposedly owned or under consideration for purchase by Joseph Nelson and the Nelson companies. Eric Nelson also created portfolio "certificates" that purported to be from the credit card processors who supposedly sold credit card portfolios to Joseph Nelson and the Nelson Companies. In addition, Eric Nelson created documents that purported to be from the

processors that supposedly showed the monthly “residual” income paid to the Nelson Companies.

25. Eric Nelson also created letters purporting to be from HSBC Bank and JPMorgan Chase stating that HSBC and/or JPMorgan Chase would repay investors if Nelson or the Nelson Companies defaulted on their promissory notes.

26. In addition, Eric Nelson created fictitious statements for his brother’s accounts at Charles Schwab and University Federal Credit Union. Among other things, Eric Nelson created a fake deposit history reflecting deposits made into Joseph Nelson’s account at Charles Schwab by various processors associated with the portfolios supposedly owned by Joseph Nelson and the Nelson Companies. On several occasions, Eric Nelson altered the balances on his brother’s Charles Schwab and University Federal account summaries to reflect cash balances of approximately \$2 million when, in fact, the balances in these accounts were nowhere near that amount.

27. Eric Nelson knew or was reckless in not knowing that the documents he created for his brother were entirely fictitious. He also knew or was reckless in not knowing that Joseph Nelson intended to and did use these documents to mislead investors.

2. Nelson, Wilcox, and Thoennes Lulled Investors

28. Nelson and Wilcox lulled investors for months, giving them bogus excuses for their delayed “residual” payments and providing them with false assurances regarding the continued viability of the Nelson Companies. Beginning in September 2009, Wilcox purported to operate Skyline Payment Services, LLC as a supposed “third party” payment company out of his residence in Vacaville, California. Wilcox and Nelson represented to investors that Skyline was an independent entity that would process investors’ monthly “residual” payments without

many of the supposed issues that Wilcox and Joseph Nelson claimed were the cause of prior investor payment delays. However, Skyline was owned and controlled by Joseph Nelson and was therefore not a “third party” company as represented to investors. Rather, it was simply an additional diversion to dissuade investors from demanding the return of their investments.

29. Thoennes also lulled and helped Nelson lull investors by providing them with false assurances about Nelson and the Nelson Companies. For example, Thoennes arranged for Nelson to obtain an account statement from a third party reflecting that Nelson had \$2 million. Thoennes knew that Nelson did not actually have access to these funds, nor could he use them as collateral, yet she nevertheless arranged for Nelson to obtain this deceptive account statement knowing or being reckless in not knowing that Joseph Nelson intended to and did use it to deceive investors into believing he had \$2 million when, in fact, he did not. Thoennes also drafted an email for Joseph Nelson to send to investors in which she pretended to be a third-party broker for certain “assurity bonds” and suggested that a transaction in such bonds was imminent, thereby deceiving investors into believing that their investment would be repaid. Thoennes knew or was reckless in not knowing that this email was misleading and that Joseph Nelson intended to and did send it to investors.

FIRST CLAIM

Each Defendant Violated Exchange Act Section 10(b) and Rule 10b-5

30. The Commission realleges paragraphs 1 through 29 above.

31. Each Defendant, directly and indirectly, with scienter, by use of the means or instrumentalities of interstate commerce, or of the mails, has employed devices, schemes or artifices to defraud; has 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 have engaged in acts, practices or courses of business which operated as a fraud or deceit upon the purchasers or sellers of securities.

32. By reason of the foregoing, each Defendant has violated and, unless restrained and enjoined, will continue to violate Exchange Act Section 10(b) [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5].

SECOND CLAIM

Each Defendant Aided and Abetted Violations of Exchange Act Section 10(b) and Rule 10b-5

33. The Commission realleges paragraphs 1 through 32 above.

34. Pursuant to Exchange Act Section 20(e), each Defendant knowingly provided substantial assistance to the fraudulent conduct of JCN, JCN Capital and JCN International, as alleged in Paragraphs 1 through 32 above. Each defendant therefore aided and abetted the violations of JCN, JCN Capital and JCN International and, unless restrained and enjoined, will continue to aid and abet violations of Exchange Act Section 10(b) and Rule 10b-5.

35. Pursuant to Exchange Act Section 20(e), each Defendant knowingly provided substantial assistance to the fraudulent conduct of Nelson, as alleged in Paragraphs 1 through 32 above. Each Defendant therefore aided and abetted the violations Nelson and, unless restrained and enjoined, will continue to aid and abet violations of Exchange Act Section 10(b) and Rule 10b-5.

THIRD CLAIM

Each Defendant Violated Securities Act Section 17(a)

36. The Commission realleges paragraphs 1 through 35 above.

37. Each Defendant, directly or indirectly, in the offer or sale of securities, by the use of the means or instruments of transportation or communication in interstate commerce or by the

use of the mails: (a) has employed devices, schemes or artifices to defraud; (b) has obtained money or property by means of untrue statements of material fact and omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) has engaged in transactions, acts, practices and courses of business that operated or would operate as a fraud upon purchasers of securities.

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

FOURTH CLAIM

Wilcox and Thoennes Violated Securities Act Sections 5(a) and 5(c)

39. The Commission realleges paragraphs 1 through 38 above.

40. The Nelson Company promissory notes are securities.

41. Wilcox and Thoennes, directly or indirectly, made use of the means or instruments of transportation or communication in interstate commerce or of the mails to offer and sell securities in the form of oral agreements, purchase agreements and promissory notes through the use or medium of a prospectus or otherwise, and carried or caused to be carried through the mails, or in interstate commerce, by means or instruments of transportation, such securities for the purpose of sale or for delivery after sale, when no registration statement had been filed or was in effect as to such securities.

42. By reason of the foregoing, Wilcox and Thoennes have violated and, unless restrained and enjoined, will continue to violate Securities Act Sections 5(a) and 5(c) [15 U.S.C. §§ 77e(a) and 77e(c)].

FIFTH CLAIM

Wilcox and Thoennes Violated Exchange Act Section 15(a)

43. The Commission realleges paragraphs 1 through 42 above.

44. Wilcox and Thoennes, while acting as a broker or dealer, each made use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any securities in the form of purchase agreements and promissory notes without being registered with the Commission as a broker or dealer or an associated person of a registered broker-dealer.

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

SIXTH CLAIM

Wilcox and Thoennes Aided and Abetted Violations of Exchange Act Section 15(a)

46. The Commission realleges paragraphs 1 through 45 above.

47. Pursuant to Exchange Act Section 20(e) [15 U.S.C. § 78t(e)], Wilcox and Thoennes knowingly provided substantial assistance to Nelson with respect to his actions as an unregistered broker or dealer of securities. Wilcox and Thoennes therefore aided and abetted the violations of Nelson and, unless restrained and enjoined, will continue to aid and abet violations of Exchange Act Section 15(a) [15 U.S.C. § 78o(a)].

V. PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court:

I.

Enter judgment in favor of the Commission finding that the Defendants violated the federal securities laws and Commission rules as alleged in this Complaint;

II.

Permanently enjoin the Defendants from further violations of the federal securities laws and Commission rules alleged against them in this Complaint;

III.

Order the Defendants to disgorge and pay, as the Court may direct, all ill-gotten gains received or benefits in any form derived from the illegal conduct alleged in this Complaint, together with pre-judgment interest thereon;

IV.

Order the Defendants to pay civil monetary penalties pursuant to Securities Act Section 20(d) and Exchange Act Section 21(d)(3);

VI.

Order each Defendant to make an accounting.

VII.

Grant such equitable relief as may be appropriate or necessary for the benefit of investors pursuant to Exchange Act Section 21(d)(5) [15 U.S.C. § 78u(d)(5)].

Respectfully submitted this 29th day of December 2011.

/s/ Karen L. Martinez

Karen L. Martinez (7914)
Email: martinezk@sec.gov
Thomas M. Melton (4999)
Email: meltont@sec.gov
Securities and Exchange Commission
15 W. South Temple, Suite 1800
Salt Lake City, UT 84101
Tel: (801) 524-5796

ATTORNEYS FOR PLAINTIFF