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U.S. DISTRICT COURT  
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FEDERAL BUILDING  
SALT LAKE CITY, UT 84101

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

SECURITIES AND EXCHANGE COMMISSION,  
  
PLAINTIFF,

v.

JOHN SCOTT CLARK, IMPACT CASH, LLC a Utah  
Limited Liability Company and IMPACT PAYMENT  
SYSTEMS, LLC a Nevada Limited Liability Company,  
  
DEFENDANTS.

Case: 1:11cv00046  
Assigned To : Kimball, Dale A.  
Assign. Date : 3/25/2011  
Description: SEC v. Clark et al

**COMPLAINT**

Plaintiff, Securities and Exchange Commission (the "Commission"), for its  
Complaint against Defendants alleges as follows:

**INTRODUCTION**

1. This matter involves an offering fraud and Ponzi scheme operated by John Scott Clark through his companies, Impact Cash, LLC and Impact Payment Systems, LLC, (collectively "Impact") which operated an online payday loan company.
2. From March 2006 through September 2010, Impact and Clark raised more than \$47 million from at least 120 investors for the purpose of funding payday

loans, purchasing lists of leads for payday loan customers, and paying the operating expenses of Impact.

3. Clark did not deploy investor capital to make payday loans as represented, but instead diverted investor funds for his personal use. He also misappropriated investor money to fund outside business ventures and used new investor funds to pay purported profits to earlier investors.

#### **JURISDICTION AND VENUE**

4. This Court has subject matter jurisdiction by authority of Sections 20 and 22 of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. §§ 77t and 77v] and Sections 21 and Section 27 of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. §§ 78u and 78aa].
5. Defendants, directly and indirectly, singly and in concert, have made use of the means and instrumentalities of interstate commerce and the mails in connection with the transactions, acts and courses of business alleged herein, certain of which have occurred within the District of Utah.
6. Venue for this action is proper in the District of Utah under Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and under Section 27 of the Exchange Act [15 U.S.C. § 78aa] because certain of the transactions, acts, practices, and courses of business alleged in this Complaint took place in this district and because certain of the defendants reside in and transact business in this district.
7. Defendants, unless restrained and enjoined by this Court, will continue to engage in the transactions, acts, practices, and course of business alleged

herein and in transactions, acts, practices, and courses of business of similar purport and object.

8. Defendants' conduct took place in connection with the offer, purchase and/or sale of Impact securities.

#### **DEFENDANTS**

9. **Impact Cash, LLC, ("Impact Cash")** is a Utah limited liability company with its principal place of business in Logan, Utah. Impact Cash is an online payday loan company. Impact has not registered any offering of its securities under the Securities Act or a class of securities under the Exchange Act.
10. **Impact Payment Systems, LLC ("IPS")** is a Nevada limited liability company with its principal place of business in Logan, Utah. IPS was incorporated in 2004 for the purpose of providing payment processing services as a licensed third-party automated clearing house ("ACH") processor through the Federal Reserve payment processing network. IPS later transformed into an online payday loan company operating in conjunction with Impact Cash. IPS has not registered any offering of its securities under the Securities Act or a class of securities under the Exchange Act.
11. John Scott Clark ("Clark"), age 58, is a Utah resident living in Hyde Park, Utah. Clark is the founder and control person of Impact Cash and IPS. Clark has never been registered with the Commission or any other regulatory agency in any capacity.

## BACKGROUND

12. Between 2006 and 2010, Clark sold Impact securities to over 120 investors in unregistered, non-exempt transactions raising at least \$47 million.  
Approximately \$4 million of the raised funds represent money raised for equity investments in Impact. The balance of \$43 million came from investors seeking to provide capital to Impact to fund payday loans.
13. Clark's representations to the equity investors were essentially identical to those made to investors seeking to fund the loans. Most investors did not know in which entity they invested and simply referred to Clark's company as Impact.
14. Clark told investors that Impact could consistently generate returns averaging at least 80% per year.
15. Clark explained to investors that Impact would create a unique LLC for each investor or investor group for the purpose of investing with Impact. The investor LLC would then enter into a Joint Operating Agreement with Impact to provide money to Impact to fund payday loans.
16. Clark assured investors that their investment capital would be segregated in a bank account owed by the investors' particular LLC.
17. Clark told investors that their capital would be used in two ways: 1) to purchase lists of borrowers that had a history of repaying payday loans and; 2) to fund payday loans for Impact customers.
18. Clark indicated to investors that their LLCs would own the borrower lists purchased with their LLCs' funds. Clark further stated that all the proceeds from

the loans would be returned to the investor's LLC minus fees that Impact would deduct for administering the loans, purchasing leads and other administrative expenses.

19. Clark recruited investors through referrals from other investors. Many of Clark's early investors mentioned their astronomical returns to their families or business associates, who then invested with Clark.
20. Clark also recruited investors by attending trade shows in various states, attending payday loan conferences and paying salespeople to locate potential investors to meet with Clark.
21. Clark paid one salesperson between \$500,000 and \$600,000 over a four or five year period to locate potential investors and attend payday loan conferences and trade shows.
22. Clark also paid certain individuals commissions ranging from 2% to 4% for bringing in investors to Impact.
23. Most investors received no documentation discussing the investment in Impact.
24. Impact did not distribute a private placement memorandum or any other document disclosing the nature of the investment or the risks involved to investors.
25. Clark did not provide financial disclosures or audited financial statements to any investor.
26. Clark did not seek to determine all investors' financial condition, annual income, net worth or any financial information many investors. In instances where Clark did obtain this information, it was obtained after the investment had been made.

27. Clark gave equity investors stock certificates representing shares in IPS to evidence an investment. For those investors who funded the payday loans, Clark provided a Joint Operating Agreement purported entered into by IPS and the LLC formed by Impact for each group of investors for the sole purpose of funding payday loans. The Joint Operating Agreement details the fees that Impact would deduct from the proceeds of the loans.
28. Clark provided monthly statements to investors listing principal investment amount, the purported profit and the monthly and in some cases yearly return. Account statements to customers showed annualized returns varying from 30% to more than 200%.

#### **Clark's Misrepresentations**

29. Contrary to the representations Clark made to investors, Impact did not utilize all investor funds to make payday loans or purchase leads.
30. Instead, Clark used investors' funds for personal purposes and to make unauthorized investments, including a real estate investment company, a diabetes research company and an online products store.
31. Clark failed to disclose he used new investor funds to pay purported profits to earlier investors.
32. Clark did not segregate investor funds as represented and simply deposited investments into one large pool from which Clark withdrew funds for business and personal purposes.
33. Clark explained to investors that repeat payday loan customers were extremely valuable because the default rate for repeat customers was much lower than for

first time customers. Clark represented that the borrower lists he sold to Impact investors were repeat customers with low default rates. This representation was false. In many instances the borrowers were not repeat customers and in other instances the borrower lists were a complete fabrication.

34. Clark also levied fictitious charges on investors deducting fees for non-existent leads.
35. Clark engaged in self-dealing by purchasing borrower leads from third parties, making undisclosed mark-ups to the costs of those leads, then purportedly selling the leads to Impact investors.
36. Clark misrepresented returns to investors. Clark routinely altered investor account statements provided to him by Impact's accounting department adjusting rates of return to create artificially high annual rates of return. The altered account statements were then sent to investors.
37. Clark's misrepresentations and omissions were material.

#### **The Scheme Begins to Unravel**

38. Concerns about Clark began to surface in fall 2009. At that time, investors experienced difficulty in obtaining account statements from Clark.
39. Clark began to spend lavishly. He bragged about purchasing multiple vehicles worth more than \$100,000 each, including at least three Mercedes Benz' and a 1963 restored Corvette. Clark installed a \$25,000 home theater system in his home, purchased expensive furniture and bronze statuary, snowmobiles, and openly discussed giving large amounts of money to friends and family members.

40. In late 2009 and early 2010, some investors asked Clark to liquidate and return their investment. Clark repeatedly ignored the liquidation requests.
41. In late September 2010, Clark admitted to a family member and Impact investor to misappropriating investor funds, overpaying certain investors and compromising the company.
42. As a result of Clark's admission, certain Impact investors undertook a review of Impact's books and records. Those investors learned that Clark directed accounting staff to record all payday loan repayments as income rather than allocating the payments between principal, interest and fees. Clark's instructions resulted in overstated revenues and receivables in the account statements shown to investors and prospective investors.
43. After investors tallied the amount of money each group or individual had invested, it became clear that Clark had misrepresented the amount of capital he raised. Investors determined that Clark had raised significantly more investor money than was being deployed for the purpose of making payday loans.
44. Accounting records showed that Clark diverted investor money for various other business ventures, including but not limited to, a real estate investment company, a diabetes research company and an online products store.
45. Accounting records also demonstrated that Clark used new investor funds to pay earlier investors purported profits and for personal expenses.

**FIRST CAUSE OF ACTION**  
**EMPLOYMENT OF A DEVICE, SCHEME OR ARTIFICE TO DEFRAUD**  
**Violation of Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)]**

46. The Commission realleges and incorporates by reference the allegations contained in Paragraphs 1 through 45, above.
47. Defendants, and each of them, by engaging in conduct described in Paragraphs 1 through 45, above, 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 use of the mails, with scienter, employed devices, schemes, or artifices to defraud.
48. By reason of the foregoing, Defendants, and each of them, directly or indirectly, violated, and unless restrained and enjoined by this Court, will continue to violate Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)].

**SECOND CAUSE OF ACTION**  
**FRAUD IN THE OFFER AND SALE OF SECURITIES**  
**Violations of Section 17(a)(2) and (3) of the Securities Act**  
**[15 U.S.C. § 77q(a)(2) and (3)]**

49. The Commission realleges and incorporates by reference the allegations contained in Paragraphs 1 through 45, above.
50. Defendants, and each of them, by engaging in the conduct described in Paragraphs 1 through 45, above, directly and indirectly, in the offer and sale of securities, by the use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, obtained money or property by means of untrue statements of 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, and

engaged in transactions, practices, or courses of business which operate or would operate as a fraud or deceit upon the purchaser.

51. By reason of the foregoing, Defendants, and each of them, directly or indirectly, violated, and unless restrained and enjoined will continue to violate, Section 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)].

**THIRD CAUSE OF ACTION  
FRAUD IN CONNECTION WITH THE PURCHASE AND  
SALE OF SECURITIES**

**Violations of 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]**

52. The Commission realleges and incorporates by reference the allegations contained in Paragraphs 1 through 45, above.
53. Defendants, and each of them, by engaging in the conduct described in Paragraphs 1 through 45, above, directly or indirectly, by the use of means or instrumentalities of interstate commerce or use of the mails, in connection with the purchase or sale of securities, with scienter, (1) employed devices, schemes, or artifices to defraud; (2) made untrue statements of material fact or omitted to state a material fact necessary in order to make statements made, in light of the circumstances under which they were made not misleading; or (3) engaged in acts, practices, or courses of business that operated or would operate as a fraud and deceit upon other persons.
54. By reason of the foregoing, Defendants, and each of them, 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].

**FOURTH CAUSE OF ACTION**  
**OFFER AND SALE OF UNREGISTERED SECURITIES**  
**Violation of Sections 5(a) and (c) of the Securities Act [15 U.S.C. § 77e(a) and (c)]**

55. The Commission realleges and incorporates by reference the allegations contained in Paragraphs 1 through 45, above.
56. Defendants, and each of them, by engaging in the conduct described in paragraphs 1 through 45, above, directly or indirectly, through use of the means or instruments of transportation or communication in interstate commerce or the mails, offered to sell or sold securities or, directly or indirectly, or carried such securities through the mails or in interstate commerce, for the purpose of sale or delivery after sale.
57. No registration statement has been filed with the Commission or has been in effect with respect to these securities.
58. By reason of the foregoing, Defendants, directly or indirectly violated, and unless enjoined will continue to violate Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)].

**FIFTH CAUSE OF ACTION**  
**OFFER AND SALE OF SECURITIES BY AN**  
**UNREGISTERED BROKER OR DEALER**  
**Violation of Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)]**

59. The Commission realleges and incorporates by reference the allegations contained in Paragraphs 1 through 45, above.
60. Defendant Clark, directly or indirectly, made use of the mails or the means or instrumentalities of interstate commerce to effect transactions in, or to induce or attempt to induce the purchase and sale of, securities without being registered as a broker or dealer with the Commission or associated with a broker-dealer registered with the Commission.

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

### **RELIEF REQUESTED**

WHEREFORE, the Commission respectfully requests that this Court:

#### **I**

Issue findings of fact and conclusions of law that the Defendants committed the violations charged herein.

#### **II**

Issue in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure orders that preliminarily and permanently enjoin, Defendant Impact, and its officers agents, servants, employees, attorneys, and accountants, and those persons in active concert or participation with any of them, who receive actual notice of the order by personal service or otherwise, and each of them, from engaging in transactions, acts, practices, and courses of business described herein, and from engaging in conduct of similar purport and object in violation of Sections 5(a), 5(c) and 17(a) of the Securities Act, and Sections 10(b) of the Exchange Act and Rule 10b-5 thereunder.

#### **III**

Issue in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure orders that preliminarily and permanently enjoin, Defendant Clark, and his officers agents, servants, employees, attorneys, and accountants, and those persons in active concert or participation with any of them, who receive actual notice of the order by personal service or otherwise, and each of them, from engaging in transactions, acts, practices, and courses of business described herein, and from engaging in conduct of similar purport and object in violation of Sections 5(a), 5(c) and 17(a) of the Securities Act, and Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder.

**IV**

Issue, in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure, orders that preliminarily and permanently enjoin Defendants, and their officers, agents, servants, employees, attorneys, and accountants, and those persons in active concert or participation with any of them, who receive actual notice of the order by personal service or otherwise, and each of them, from: (A) transferring, changing, wasting, dissipating, converting, concealing, or otherwise disposing of, in any manner, any funds, assets, claims, or other property or assets owned or controlled by, or in the possession or custody of these Defendants; and (B) transferring, assigning, selling, hypothecating, or otherwise disposing of any assets of Impact.

**V**

Issue in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure orders that preliminary and permanently restrain and enjoin Defendants, and each of them, and their officers agents, servants, employees, attorneys, and accountants, and those persons in active concert or participation with any of them, who receive actual notice of the order by personal service or otherwise, and each of them, from destroying, mutilating, concealing, transferring, altering, or otherwise disposing of, in any manner, books, records, computer programs, computer files, computer printouts, correspondence, including e-mail, whether stored electronically or in hard-copy, memoranda, brochures, or any other documents of any kind that pertain in any manner to the business of the Defendants.

**VI**

Enter an order directing Defendants, and each of them, to pay civil money penalties pursuant to Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act.

**VII**

Enter an order directing Defendants to disgorge all ill-gotten gains received during the period of violative conduct and pay prejudgment interest on such ill-gotten gains.

**VIII**

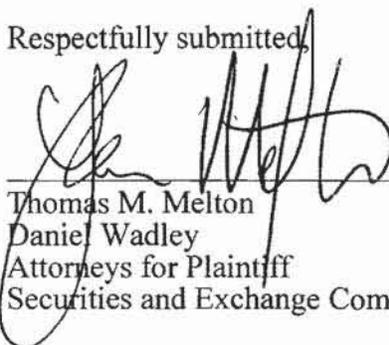
Grant such further equitable relief as this Court deems just, appropriate, and necessary, including, but not limited to, a freeze of assets, appointment of a receiver for Impact Cash and IPS and the acceleration of discovery, including the forthwith production of documents.

**IX**

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.

Dated this 25<sup>th</sup> day of March 2011.

Respectfully submitted,



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Daniel Wadley  
Attorneys for Plaintiff  
Securities and Exchange Commission