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GENERAL DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES, CA

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10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12 **SOUTHERN DIVISION**

13 **SECURITIES AND EXCHANGE**
14 **COMMISSION,**

15 Plaintiff,

16 vs.

17 **JERRY L. AUBREY, TIMOTHY J.**
AUBREY, BRIAN S. CHERRY,
AARON M. GLASSER,

18 Defendants.

Case No. SAEV11-1564 JUS (PNV/x)

COMPLAINT

1 1. Progressive Energy Partners, LLC (“PEP”), Jerry L. Aubrey,
2 Timothy J. Aubrey, Brian S. Cherry, and Aaron M. Glasser conducted an \$11
3 million boiler room fraud that victimized more than 200 investors. From
4 approximately September 2005 to December 2009, PEP fraudulently offered and
5 sold its securities to investors nationwide and in Canada through unregistered
6 offerings. The Defendants claimed the investors’ money would be used to develop
7 and support oil and gas wells. In fact, the bulk of the money was used to line the
8 Defendants’ pockets, fund lavish lifestyles, and make Ponzi-like payments
9 intended to perpetuate the fraud.

10 2. Jerry Aubrey, PEP’s principal, used PEP to run a Ponzi scheme by
11 paying alleged investor returns with money raised from new investors. Tim
12 Aubrey played a key role in the fraud by helping his brother manage PEP. Both
13 Jerry and Tim Aubrey misappropriated investor funds for their personal use to pay
14 for, among other things, box seats at Lakers basketball games, trips to Hawaii and
15 Las Vegas, and personal attorney’s fees, as well as taking direct distributions by
16 cash or check. In carrying out the fraud, Jerry Aubrey, Tim Aubrey, Brian Cherry,
17 and Aaron Glasser (collectively, the “Defendants”): 1) misrepresented to investors
18 they could expect a greater than 50% annual return on their investment; 2) failed to
19 disclose to investors that up to 35% of their investment would be used to pay sales
20 commissions; and 3) falsely represented to investors that PEP used an accounting
21 firm to assist with investor distributions.

22 3. The Defendants, by engaging in the conduct described in this
23 complaint, have violated, and unless enjoined will continue to violate, the
24 registration, antifraud, and broker-dealer registration provisions of the federal
25 securities laws. By this action, the Securities and Exchange Commission
26 (“Commission”) seeks permanent injunctions, disgorgement with prejudgment
27 interest, and civil penalties.

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1 **JURISDICTION AND VENUE**

2 4. This Court has jurisdiction over this action pursuant to Sections 20(b),
3 20(d)(1) and 22(a) of the Securities Act of 1933 (“Securities Act”), 15 U.S.C.
4 §§ 77t(b), 77t(d)(1), & 77v(a), and Sections 21(d)(1), 21(d)(3)(A), 21(e), and 27 of
5 the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §§ 78u(d)(1),
6 78u(d)(3)(A), 78u(e), & 78aa. The Defendants have, directly or indirectly, made
7 use of the means or instrumentalities of interstate commerce, of the mails, or of the
8 facilities of a national securities exchange in connection with the transactions, acts,
9 practices and courses of business alleged in this Complaint.

10 5. Venue is proper in this district pursuant to Section 22(a) of the
11 Securities Act, 15 U.S.C. § 77v(a), and Section 27 of the Exchange Act, 15 U.S.C.
12 § 78aa, because certain of the transactions, acts, practices, and courses of conduct
13 constituting violations of the federal securities laws occurred within this district,
14 and most of the Defendants reside or are located in this district.

15 **DEFENDANTS**

16 6. Jerry L. Aubrey, of Moreno Valley, California, was PEP’s founder,
17 managing member, and a PEP salesperson. Jerry Aubrey operated PEP from about
18 May 2005 to April 2010. He holds no securities licenses and has never been
19 registered with the Commission in any capacity.

20 7. In April 2007, the Florida Attorney General’s Office criminally
21 charged Jerry Aubrey with securities fraud in connection with the offer and sale of
22 security interests in a body scan imaging business that he operated from
23 approximately December 2000 to October 2003. *State of Fla. v. Aubrey*, Case No.
24 07-31911CFAES (Fla. Volusia County Ct. 2007). In July 2010, he pled guilty to
25 one count of securities or investment fraud in that matter. In October 2010, he was
26 sentenced to five years in prison followed by 25 years probation, and he was
27 ordered to pay \$5,795,923 in restitution. Jerry Aubrey is currently serving his
28 prison sentence in Florida and has not yet paid any restitution.

1 13. From September 2005 through December 2009, PEP raised
2 approximately \$11 million from more than 200 investors nationwide and in Canada
3 through five unregistered securities offerings of limited liability company (“LLC”)
4 interests (which were called “units” in PEP’s Private Placement Memorandum, or
5 “PPMs”). PEP’s offerings were titled Progressive Energy Partners, LLC #1
6 through #5 (“PEP #1 through #5”). The Defendants sold units or partial units of
7 \$25,000 in the five offerings. The Defendants caused PEP to take in more money
8 in most of its offerings than the PPMs permitted. The Defendants also sometimes
9 extended the offering periods beyond what was stated in the PPMs. Some
10 investors invested in multiple offerings. The money raised from each offering was
11 supposed to be used to develop and support oil and gas wells.

12 14. PEP #1 offered \$900,000 worth of units and raised \$1,361,250 from
13 September 2005 to October 2006 from 57 investors. PEP #2 offered \$1,500,000
14 worth of units and raised \$1,962,500 from October 2006 to March 2007 from 61
15 investors. PEP #3 offered \$2,000,000 worth of units and raised \$2,674,985 from
16 March 2007 to October 2007 from 67 investors. PEP #4 offered \$1,800,000 worth
17 of units and raised \$4,549,905 from October 2007 to April 2009 from 91 investors.
18 PEP #5 offered \$1,800,000 worth of units and raised \$462,500 from May 2009 to
19 December 2009 from 19 investors. Details of these offerings are summarized
20 below:

Offering	Dates Funds Were Raised	Amount Offered	Amount Raised	Number of Investors
PEP #1	Sept. 2005 – Oct. 2006	\$900,000	\$1,361,250	57
PEP #2	Oct. 2006 – Mar. 2007	\$1,500,000	\$1,962,500	61
PEP #3	Mar. 2007 – Oct. 2007	\$2,000,000	\$2,674,985	67
PEP #4	Oct. 2007 – Apr. 2009	\$1,800,000	\$4,549,905	91
PEP #5	May 2009 – Dec. 2009	\$1,800,000	\$462,500	19
Totals		\$8,000,000	\$11,011,140	295

1 15. Jerry Aubrey prepared the offering and marketing materials (the
2 “Offering Materials”) that were mailed to potential investors for PEP #1 through
3 #5. The Offering Materials for each offering included a cover letter, a PPM, an
4 LLC agreement, a subscription agreement, a purchaser questionnaire, a brochure,
5 and projection statements. The Offering Materials for the five different offerings
6 were very similar, and the same brochure was used for all five offerings.

7 **A. Solicitation of Investors**

8 16. To solicit investors, Jerry and Tim Aubrey established and operated a
9 boiler room with 196 telephone lines. Jerry Aubrey bought an automatic dialer
10 that cold called potential investors nationwide and in Canada. Tim Aubrey
11 purchased lead lists with potential investors’ phone numbers and loaded the lead
12 lists onto the automatic dialer. The automatic dialer called the potential investors
13 on the lead lists, and the potential investors heard a pre-recorded sales script when
14 they answered the phone. If the potential investors were interested in investing,
15 they left a voice message on the automatic dialer. PEP salespeople called those
16 potential investors who left a voice message. Tim Aubrey also purchased lead lists
17 that PEP salespeople used to cold call potential investors. In addition, Jerry and
18 Tim Aubrey personally cold called potential investors to solicit their investment.
19 PEP also used a website (www.pepllc.net) to solicit investors.

20 17. PEP salespeople were called “fronters” and “closers.” Tim Aubrey
21 supervised the fronters, and Jerry Aubrey supervised the closers. Fronters were
22 salespeople who made the initial cold call to potential investors and sometimes
23 read sales scripts to potential investors. If the potential investors were interested in
24 investing, then Tim Aubrey authorized the mailing of Offering Materials to the
25 potential investors. A closer then called the potential investors to complete the
26 sale. Investors sent checks payable to PEP or wired funds directly to PEP’s bank
27 accounts.

28 18. Cherry worked for PEP as a fronter and a closer for almost two and a

1 half years, from about September 2006 to January 2009. Cherry solicited investors
2 for PEP #1 through #4. Cherry read or skimmed the PPMs, brochure, projection
3 statements, and LLC agreements for those offerings.

4 19. Glasser worked for PEP as a fronter and a closer for more than three
5 years, from approximately August 2006 to October 2009. Glasser solicited
6 investors for PEP #1 through #5.

7 **B. Misappropriation of Investor Funds and Material Misrepresentations**
8 **And Omissions of Material Fact**

9 20. Jerry Aubrey used investor funds to run a Ponzi scheme, and Jerry and
10 Tim Aubrey misused investor funds to pay for numerous personal expenses. The
11 Defendants also made multiple false and misleading statements to investors. The
12 Defendants misrepresented that investors could expect a greater than 50% annual
13 return on investment, failed to disclose that investor funds would be used to pay up
14 to 35% sales commissions, and falsely represented that PEP used a CPA firm to
15 assist with investor distributions.

16 **1. Jerry and Tim Aubrey Misused Investor Funds**

17 21. The PPMs prepared by Jerry Aubrey for PEP #1 through #5 falsely
18 represented that almost half of investor funds would be spent on oil and gas wells
19 and the remainder of investor funds would be used for other business expenses.
20 But investor funds were not spent as represented in the PPMs. Only about
21 \$887,458, or 8%, of the \$11 million raised from all five offerings was spent on oil
22 and gas wells.

23 22. Instead of using investor funds for oil and gas wells, Jerry Aubrey
24 used most of the \$11 million to pay alleged investor returns, personal expenses,
25 and undisclosed sales commissions to PEP salespeople, and to distribute cash and
26 checks to himself and family members (including Tim Aubrey).

27 23. Jerry Aubrey, who controlled PEP's bank accounts and determined
28 investor distribution amounts, used approximately \$2 million of investor funds to

1 pay alleged investor returns and return some investor principal. During the almost
2 five years PEP was in operation, PEP only had \$169,439 in total revenue, and PEP
3 had no profits. PEP's only operational revenue came from six wells in West
4 Virginia that PEP leased for PEP #1. PEP never developed any wells for PEP #2
5 through #5. Because PEP generated no profits, PEP's only source of money was
6 new investor funds. Using new investor money, Jerry Aubrey transferred investor
7 funds between PEP's bank accounts to pay alleged investor returns.

8 24. Jerry and Tim Aubrey misappropriated more than \$3.2 million of
9 investor funds for their personal use. Jerry Aubrey withdrew about \$500,000
10 directly from PEP's bank accounts to pay for personal expenses, and he distributed
11 another \$2.7 million in cash and checks to himself, Tim Aubrey, their mother, and
12 their company, Allied Marketing Consultants. A portion of the \$2.7 million in
13 cash and checks were alleged salary and sales commissions paid to Jerry and Tim
14 Aubrey, even though PEP's legitimate business activities were virtually
15 nonexistent.

16 25. According to Tim Aubrey, Jerry Aubrey used investor funds to do "all
17 kinds of things... limo rides... to [Staples Center] for Lakers game[s]... Vegas...
18 strip clubs and just being a high roller." Jerry and Tim Aubrey spent investor
19 funds on such items as:

- 20 • Rent for the Aubrey family's lavish house in Orange County, California.
21 The Aubreys paid as much as \$7,100 per month for a three story,
22 approximately 4,000 square foot house, equipped with large screen
23 televisions, a pool table, giant fish aquariums with exotic fish, a hot tub, a
24 pool, and a tennis court.
- 25 • Personal attorney's fees, including fees for the defense of Jerry Aubrey's
26 criminal securities fraud case in Florida.
- 27 • Box seats at Lakers basketball games and limousine rides to Lakers games.
- 28 • Family vacations, which included two trips to Maui, Hawaii.

- Vacations for Jerry Aubrey, Tim Aubrey, PEP salespeople, and administrative staff, which included trips to Las Vegas, Palm Springs, and Big Bear.
- A Lexus car and jewelry for Jerry Aubrey's girlfriend.
- Trucks, cars, and Harley Davidson motorcycles.
- Expensive fish, including miniature sharks, and fish aquariums.

26. The chart below details how the bulk of investor funds were spent:

Type of Expense	Approximate Amount Spent
Ponzi distributions to investors (including some return of investor principal)	\$2,033,695 (of which \$437,150 was return of investor principal)
Jerry and Tim Aubrey's personal use	\$3,219,945
Undisclosed sales commissions	\$2,233,254
Employee payroll	\$891,096
Phone bills, lead lists, automatic dialer, offering documents	\$401,216
Other business expenses	\$437,766
Total	\$9,216,972

27. Jerry and Tim Aubrey knew, or were reckless in not knowing, that they were misusing investor proceeds in contravention of their representations to investors.

2. The Defendants Misrepresented PEP's Return on Investment

28. The Defendants falsely represented that investors could expect an extremely high return on investment. PEP's brochure, which was prepared by Jerry Aubrey, contained a section titled "Potential High Financial Rewards" that falsely stated PEP had a "return of capital in as little as 12 to 24 months," "better than 10 to 1 potential return on investment," and "greater than 50% annual rate of

1 return.” In addition to sending the brochure to potential investors, PEP salespeople
2 sometimes used the brochure as a script when they spoke with potential investors
3 over the phone.

4 29. PEP’s projection statements for PEP #1 through #5 falsely projected
5 that for the first year the oil and gas wells were operating, PEP would make large
6 investor distributions ranging from \$23,069 to \$52,399 on a \$25,000 investment.
7 The statements also projected that for the first five years the wells were operating,
8 total investor distributions would range from \$91,708 to \$212,811 on a \$25,000
9 investment. In addition to sending the projection statements to potential investors,
10 PEP salespeople sometimes used the projection statements when they spoke with
11 potential investors over the phone.

12 30. Tim Aubrey and Aaron Glasser prepared sales scripts that Tim
13 Aubrey gave the frontiers to read to potential investors. Jerry Aubrey and Tim
14 Aubrey also used an automatic dialer that had a script that potential investors
15 heard. These scripts generally said PEP projected annual returns of more than
16 70%, or PEP had potential returns of better than 10 to 1.

17 31. Cherry sometimes read the misleading “Potential High Financial
18 Rewards” section from PEP’s brochure to potential investors. At times, Cherry
19 also read a sales script to potential investors that falsely claimed PEP had high
20 returns. In addition, Cherry falsely told potential investors they had a chance to
21 earn multiples on their investment for the life of the wells and the average life of a
22 well was 10 to 14 years. Cherry also told potential investors, “it’s not a matter of if
23 you’re going to make money, it’s how much you’re going to make.”

24 32. Glasser wrote a letter to a potential investor assuring him that if he did
25 not earn a 73% return on his investment, then he could sell his investment back to
26 PEP. Glasser also wrote an email to an existing investor stating that he was
27 earning a 45% annual return on PEP #1, and that if the investor invested in PEP #3,
28 he would earn \$1,740 per month for each \$25,000 unit, an almost 84% annual

1 return. Glasser reviewed the projection statements for PEP #3 and #4 with at least
2 one investor over the phone. Glasser also told this investor that the investor was
3 making a 40-60% return on PEP #1 and that another company was interested in
4 buying PEP's wells for a large price. Furthermore, Glasser told at least one other
5 investor that PEP #4 was a great investment that would make more money than
6 PEP #2.

7 33. In fact, PEP only had \$169,439 in revenue from December 2007 to
8 January 2010 and no profits. Despite PEP's lack of revenue and profit, the
9 Defendants continued to use the brochure, projection statements, and sales scripts.
10 The Defendants knew, or were reckless in not knowing, that their representations
11 regarding PEP's return on investment were false.

12 **3. The Defendants Failed to Disclose Sales Commissions**

13 34. The Defendants failed to disclose to potential investors that up to 35%
14 of their investment would be used to pay sales commissions. The PPMs for PEP
15 #1 through #5 were silent on the subject of sales commissions, and the Defendants
16 did not disclose the sales commissions to investors. The amount of sales
17 commission varied depending on whether an investor was a new investor or an
18 existing investor and whether the salesperson fronted and/or closed the deal.
19 Fronters generally received 5-7% of the funds raised. Closers generally received
20 20-30% of the funds raised. Jerry Aubrey, who authorized the payment of sales
21 commissions to salespeople, paid about \$2.2 million in undisclosed sales
22 commissions.

23 35. Jerry and Tim Aubrey each took a 2% sales commission on all PEP
24 investments sold. Cherry received up to a 25% sales commission on investments
25 he sold, and he received total sales commissions of about \$337,450. Glasser
26 received up to a 25% sales commission on investments he sold, and he received
27 total sales commissions of about \$741,633. The Defendants knew, or were
28 reckless in not knowing, that the sales commissions were not disclosed to

1 investors.

2 **4. The Defendants Misrepresented the Help of an Accounting**
3 **Firm in Making Investor Distributions**

4 36. Jerry Aubrey prepared the LLC agreements that falsely stated that
5 PEP used the assistance of an “independent CPA firm” to make distributions to
6 investors. PEP did not use an independent CPA firm— Jerry Aubrey simply
7 decided how much to distribute to investors. In addition, Cherry and Glasser each
8 misrepresented to at least one investor that PEP’s financial statements were
9 audited. The Defendants knew, or were reckless in not knowing, that PEP did not
10 use an independent CPA to make distributions to investors and that PEP did not
11 have audited financial statements.

12 **FIRST CLAIM FOR RELIEF**

13 **Unregistered Offer and Sale of Securities**

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

15 **(Against All Defendants)**

16 37. The Commission realleges and incorporates by reference paragraphs 1
17 through 36 above.

18 38. The Defendants, and each of them, by engaging in the conduct
19 described above, directly or indirectly, made use of means or instruments of
20 transportation or communication in interstate commerce or of the mails, to offer to
21 sell or to sell securities, or to carry or cause such securities to be carried through
22 the mails or in interstate commerce for the purpose of sale or for delivery after
23 sale.

24 39. No registration statement has been filed with the Commission or has
25 been in effect with respect to any of the offerings alleged herein.

26 40. By engaging in the conduct described above, all of the Defendants
27 violated, and unless restrained and enjoined will continue to violate, Sections 5(a)
28 and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a) and 77e(c).

1 make the statements made, in the light of the circumstances under which they were
2 made, not misleading.

3 49. Jerry Aubrey knew, or was reckless in not knowing, that PEP's and
4 PEP #1 through #5's conduct was improper and Jerry Aubrey knowingly and
5 substantially assisted PEP and PEP #1 through #5 in directly or indirectly violating
6 Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R.
7 § 240.10b-5, thereunder.

8 50. By engaging in the conduct described above, pursuant to Section
9 20(e) of the Exchange Act, 15 U.S.C. § 78t(e), Jerry Aubrey aided and abetted the
10 violations of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule
11 10b-5, 17 C.F.R. § 240.10b-5, thereunder.

12 **FIFTH CLAIM FOR RELIEF**

13 **Failure to Register as a Broker-Dealer**

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

15 **(Against All Defendants)**

16 51. The Commission realleges and incorporates by reference paragraphs 1
17 through 36 above.

18 52. The Defendants, and each of them, by engaging in the conduct
19 described above, directly or indirectly, made use of the mails or means or
20 instrumentalities of interstate commerce to effect transactions in, or to induce or
21 attempt to induce, the purchase or sale of securities, without being registered as
22 brokers or dealers in accordance with Section 15(a) of the Exchange Act, 15
23 U.S.C. § 78o(a).

24 53. By engaging in the conduct described above, the Defendants violated
25 and unless restrained and enjoined will continue to violate Section 15(a) of the
26 Exchange Act, 15 U.S.C. § 78o(a).

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, the Commission respectfully requests that the Court:

3 **I.**

4 Issue findings of fact and conclusions of law that the Defendants committed
5 the alleged violations.

6 **II.**

7 Issue judgments, in forms consistent with Rule 65(d) of the Federal Rules of
8 Civil Procedure:

- 9 A. Temporarily, preliminarily and permanently enjoining the Defendants
10 and their officers, agents, servants, employees, and attorneys, and
11 those persons in active concert or participation with any of them, who
12 receive actual notice of the judgment by personal service or otherwise,
13 and each of them, from violating Sections 5(a), 5(c), and 17(a) of the
14 Securities Act, 15 U.S.C. §§ 77e(a), 77e(c), & 77q(a), and Sections
15 10(b) and 15(a) of the Exchange Act, 15 U.S.C. §§ 78j(b) & 78o(a),
16 and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.
- 17 B. Permanently enjoining Jerry Aubrey and any entity he owns or
18 controls from offering unregistered securities in the future.
- 19 C. Ordering Tim Aubrey, Cherry, and Glasser to disgorge all ill-gotten
20 gains from their illegal conduct, together with prejudgment interest
21 thereon.
- 22 D. Ordering Tim Aubrey, Cherry, and Glasser to pay civil penalties
23 under Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and
24 Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3).

25 **III.**

26 Retain jurisdiction of this action in accordance with the principles of equity
27 and the Federal Rules of Civil Procedure in order to implement and carry out the
28 terms of all orders and decrees that may be entered, or to entertain any suitable

1 application or motion for additional relief within the jurisdiction of this Court.

2 **IV.**

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

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6 DATED: October 11, 2011



JENNIFER T. PURPERO
MOLLY M. WHITE
Attorneys for Plaintiff
Securities and Exchange Commission

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