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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff, : Civil Action No.

v. :

1 12·CV-1605

GERALD D. KEGLEY and  
PRISM FINANCIAL SERVICES, LLC,

Defendants. :

COMPLAINT FOR INJUNCTIVE RELIEF

Plaintiff, Securities and Exchange Commission (the "Commission"), files its complaint and alleges that:

OVERVIEW

1. This case concerns Gerald D. Kegley ("Kegley") and the company he operates, Prism Financial Services, LLC ("Prism"). From at least April 8, 2010, to at least August 20, 2010, Defendants participated in a "Prime Bank" scheme conducted by Patricia Diane Gruber ("Gruber"), Kadar Josey, Elite Resources, LLC ("Elite") and Elite3 Holding Corp (collectively known as the "Elite Entities").

The “Prime Bank” scheme defrauded at least nine investors of approximately \$2.85 million.

2. The Elite Entities represented to victims that they could, after investing, draw upon bank issued guarantees worth millions of dollars without incurring a corresponding obligation to repay the withdrawn funds. In at least one case, the Elite Entities represented that the investor would receive a 40,000% return on the investment.

3. Investors were told in written agreements that their funds would be: (a) used to purchase the described bank guarantees; and (b) held in escrow until the bank guarantees were issued. No bank guarantees were ever obtained and the Elite Entities and Defendants misappropriated investor funds.

4. The investment operations described in these written agreements do not exist. In fact, the only bank guarantee that was provided to an investor was fictitious.

5. Kegley and Prism were instrumental in the “Prime Bank” scheme. They were directly responsible for introducing six individuals who invested \$1.95 million in the scheme.

6. Specifically, Kegley transmitted to investors the misrepresentations made by the Elite Entities about: (a) the existence of bank guarantees purportedly paying an excessively high rate of return; and (b) that any funds invested would remain in escrow until the bank guarantee was funded.

7. Kegley separately misrepresented that he and Prism would be paid commissions only once the investor received the bank guarantee. In actuality, Kegley and Prism were paid commissions relatively soon after the investors transferred the money.

8. Kegley also told investors that he had worked with Gruber on a previous successful bank guarantee program. In fact, Kegley believed that this purportedly successful program was actually a fraudulent scheme and reported this belief to the Federal Bureau of Investigation. Furthermore, Kegley admitted that he believed that all bank guarantee programs were fraudulent.

### **VIOLATIONS**

9. Defendants have engaged and, unless restrained and enjoined by this Court, will continue to engage in acts and practices that constitute and will constitute violations of Sections 5(a), (c), and 17(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. §§ 77e(a), 77e(c) and 77q(a)] and Section 10(b) of the Securities

Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5] and Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)].

10. Additionally, Defendants have aided and abetted and, unless restrained and enjoined by this Court, will continue to aid and abet violations 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].

#### **JURISDICTION AND VENUE**

11. The Commission brings this action pursuant to Sections 20 and 22 of the Securities Act [15 U.S.C. §§ 77t and 77v] and Sections 21(d) and 21(e) of the Exchange Act [15 U.S.C. §§ 78u(d) and 78u(e)] to enjoin Defendants from engaging in the transactions, acts, practices, and courses of business alleged in this complaint, and transactions, acts, practices, and courses of business of similar purport and object, for civil penalties and for other equitable relief.

12. This Court has jurisdiction over this action pursuant to Section 22 of the Securities Act [15 U.S.C. § 77v] and Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa].

13. Defendants, directly and indirectly, made use of the mails, the means and instruments of transportation and communication in interstate commerce and the means and instrumentalities of interstate commerce in connection with the transactions, acts, practices, and courses of business alleged in this complaint and made use of mail and means of instrumentality of interstate commerce to effect transactions, or to induce or to attempt to induce the purchase or sale of securities alleged in this complaint.

14. Certain of the transactions, acts, practices, and courses of business constituting violations of the Securities Act and the Exchange Act occurred in the Northern District of Georgia.

15. Defendants, unless restrained and enjoined by this Court, will continue to engage in the transactions, acts, practices, and courses of business alleged in this complaint, and in transactions, acts, practices, and courses of business of similar purport and object.

#### **THE DEFENDANTS**

16. Gerald Don Kegley, age 41, is a resident of Chandler, Arizona. Kegley is the sole owner and operator of Prism. He is also the former son-in-law of Gruber,

the managing member of Elite and the director of Elite3. Kegley has never registered as a broker-dealer or as an investment adviser.

17. Prism Financial Services, LLC, is an Arizona limited liability company that is located in Chandler, Arizona and is owned and operated by Kegley, and Kegley was solely responsible for Prism's operations. Kegley created Prism as a broker or intermediary that would receive commissions for introducing customers into bank guarantee investments.

#### **RELATED PARTIES**

18. Patricia Diane Gruber, age 59, of Dunwoody, Georgia, is the managing member of Elite and the director of Elite3. Gruber was named as a defendant in SEC v. Elite Resources, LLC, et al., Civil Action No. 1:10-cv-03522 (N.D. Ga. 2010) in connection with her role in the "Prime Bank" scheme. A consent order has been entered against Gruber imposing a permanent injunction but leaving monetary issues for later resolution.

19. Kadar M. Josey, age 41, of Tucker, Georgia, is the secretary and chief financial officer of Elite and the secretary of Elite3. Josey was named as a defendant in SEC v. Elite Resources, LLC, et al., Civil Action No. 1:10-cv-03522 (N.D. Ga. 2010) in connection with his role in the "Prime Bank" scheme. A

consent order has been entered against Josey imposing a permanent injunction but leaving monetary issues for later resolution.

20. Elite Resources LLC is a Georgia limited liability company formed in September 2009. Gruber is its managing member and Josey is its secretary and chief financial officer. Elite Resources was named as a defendant in SEC v. Elite Resources, LLC, et al., Civil Action No. 1:10-cv-03522 (N.D. Ga. 2010) in connection with its role in the “Prime Bank” scheme. A consent order has been entered against Elite Resources imposing a permanent injunction but leaving monetary issues for later resolution.

21. Elite3 Holding Corp. is purportedly a Grand Cayman Corporation with Gruber as its Director and Josey as its counsel and secretary. Elite3 was named as a defendant in SEC v. Elite Resources, LLC, et al., Civil Action No. 1:10-cv-03522 (N.D. Ga. 2010) in connection with its role in the “Prime Bank” scheme. A consent order has been entered against Elite3 imposing a permanent injunction but leaving monetary issues for later resolution.

### **THE "PRIME BANK" SCHEME**

22. From at least April 8, 2010 to at least August 20, 2010, the Elite Entities conducted a fraudulent scheme that defrauded at least nine investors throughout the country and Canada of \$2.85 million.

23. The Elite Entities told investors that they could, after investing, draw upon bank issued guarantees worth millions of dollars without having to repay the withdrawn funds.

24. The Elite Entities represented to investors that their funds would be: (a) used to purchase the described bank guarantees; and (b) held in escrow until the bank guarantees were issued. Both representations were false.

25. No bank guarantees offering the exorbitant returns promised by the Elite Entities exist.

26. Moreover, investor funds were not held in escrow. Instead, the funds were misappropriated immediately upon receipt.

### **DEFENDANTS' ROLE IN THE FRAUDULENT SCHEME**

27. Kegley and Prism participated in this fraudulent scheme by serving as ~~unregistered broker-dealers who introduced six investors to the Elite Entities.~~

These six individuals invested \$1.95 million in the scheme.

28. Kegley and Prism received commissions from the funds invested by the individuals they introduced to the fraudulent scheme. Specifically, Kegley and Prism were paid at least \$99,940 by the Elite Entities from funds invested by individuals Kegley and Prism introduced to the fraudulent scheme.

29. Kegley and Prism were a key part of the fraudulent scheme. Kegley and Prism acted as conduits of information between the Elite Entities and the investors.

30. Kegley and Prism recruited investors and gathered information from each investor detailing the investor's name, address, phone number, legal counsel (if any), and proof of funds. Kegley and Prism then forwarded that information to the Elite Entities.

31. Kegley and Prism provided investors with the Elite Entities' claims about the "Prime Bank" investments and the rates of returns. Kegley and Prism also communicated to investors the Elite Entities' representation that all investor funds would remain in escrow until the bank guarantee was issued. Kegley and Prism repeated these misrepresentations to investors despite knowing or being severely reckless in not knowing that they were false.

32. In addition to transmitting these material misrepresentations about the “Prime Bank” scheme to investors, Kegley and Prism also made their own independent material misrepresentations to investors.

33. First, Kegley told investors that he and Prism would receive their commission only after the bank guarantee was acquired or funded.

34. Defendants knew or were reckless in not knowing that this representation was false when made because as soon as the Elite Entities received investor funds, and prior to the bank guarantee’s being funded or acquired, Gruber sent commission payments from investor funds to accounts controlled by Kegley.

35. Second, Kegley told investors that he had been involved in a prior successful investment opportunity with Gruber in 2009.

36. Defendants knew or were reckless in not knowing that this representation was false when made because the 2009 investment opportunity was not successful. In fact, Kegley actually reported the principal organizer of that investment opportunity to the Federal Bureau of Investigation because he believed that the investment opportunity was fraudulent.

37. Finally, Kegley failed to disclose to investors that he had never seen a bank guarantee he did not believe was fraudulent. Kegley admitted that he believed bank guarantees to be money-losing ventures and a total fraud.

**NO REGISTRATION STATEMENT  
WAS FILED WITH THE COMMISSION**

38. The bank guarantee investments offered by Kegley and Prism qualify as “securities” as that term is defined under federal securities laws.

39. No registration statement or exemptive form was filed with the Commission with respect to the offer and sale of the bank guarantee investments by Kegley and Prism.

40. No investor was provided with financial statements in connection with the offer and sale of bank guarantee investments by Kegley and Prism.

41. Kegley and Prism made no effort to obtain financial information from the individuals who invested in the “Prime Bank” scheme to determine whether the individuals qualified as accredited investors.

42. No exemption applies to the offer and sale of the bank guarantee investments by Kegley and Prism.

## **KEGLEY AND PRISM ACTED AS UNREGISTERED BROKERS**

43. Kegley and Prism operated as unregistered broker-dealers in the “Prime Bank” scheme. During the relevant time period, neither Kegley nor Prism were registered with the Commission in any capacity.

44. Kegley and Prism held themselves out as broker-dealers in a “Fee Agreement” executed by Prism and the investors. The first sentence in the agreement reads: “This agreement is made . . . by and between Prism Financial Services, LLC, hereinafter referred to as ‘Broker’.”

45. Moreover, Prism’s signature block on the signature page of the “Fee Agreement” reads: “Broker: Jerry Kegley.”

46. The express terms of the “Fee Agreement” establish that Prism and Kegley actually operated as brokers. According to the “Fee Agreement,” Prism was to receive a transaction based commission as a fee for its services of 0.5% of the face value of the bank guarantee.

47. Kegley’s communications to investors also establish that he held himself and Prism out as broker-dealers. In one email to an individual representing an investor, Kegley wrote that “there are no other broker’s [sic] beyond my company.” Kegley also self-identified as “simply a broker.”

**COUNT I—FRAUD**

**Violations of Section 17(a)(1) of the Securities Act  
[15 U.S.C. § 77q(a)(1)]**

48. Paragraphs 1 through 47 are hereby re-alleged and are incorporated herein by reference.

49. From at least April 8, 2010, to at least August 20, 2010, Defendants, in the offer and sale of the securities described herein, by the use of means and instruments of transportation and communication in interstate commerce and by use of the mails, directly and indirectly, employed devices, schemes and artifices to defraud purchasers of such securities, all as more particularly described above.

50. Defendants knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud.

51. While engaging in the course of conduct described above, Defendants acted with scienter, that is, with an intent to deceive, manipulate or defraud or with a severely reckless disregard for the truth.

52. By reason of the foregoing, Defendants, directly and indirectly, have violated and, unless enjoined, will continue to violate Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)].

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**COUNT II—FRAUD**

**Violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act  
[15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)]**

53. Paragraphs 1 through 47 are hereby realleged and are incorporated herein by reference.

54. From at least April 8, 2010, to at least August 20, 2010, Defendants, in the offer and sale of the securities described herein, by use of means and instruments of transportation and communication in interstate commerce and by use of the mails, directly and indirectly:

a. obtained money and 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

b. engaged in transactions, practices and courses of business which would and did operate as a fraud and deceit upon the purchasers of such securities,

all as more particularly described above.

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55. By reason of the foregoing, Defendants, directly and indirectly, have violated and, unless enjoined, will continue to violate Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and 77q(a)(3)].

**COUNT III—FRAUD**

**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]**

56. Paragraphs 1 through 47 are hereby re-alleged and are incorporated herein by reference.

57. From at least April 8, 2010, to at least August 20, 2010, Defendants, in connection with the purchase and sale of securities described herein, by the use of the means and instrumentalities of interstate commerce and by use of the mails, directly and indirectly:

- a. employed devices, schemes, and artifices to defraud;
- b. made untrue statements of material facts and 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; and
- c. ~~engaged in acts, practices, and courses of business which would and~~  
did operate as a fraud and deceit upon the purchasers of such securities,

all as more particularly described above.

58. Defendants knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud, made untrue statements of material facts and omitted to state material facts, and engaged in fraudulent acts, practices and courses of business. In engaging in such conduct, Defendants acted with scienter, that is, with an intent to deceive, manipulate or defraud or with a severely reckless disregard for the truth.

59. By reason of the foregoing, Defendants, directly and indirectly, have violated and, unless 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].

#### **COUNT IV—UNREGISTERED OFFERING OF SECURITIES**

##### **Violations of Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)]**

60. Paragraphs 1 through 47 are hereby realleged and are incorporated herein by reference.

61. No registration statement has been filed or is in effect with the Commission pursuant to the Securities Act and no exemption from registration exists with respect to the transactions described herein.

62. From at least April 8, 2010, to at least August 20, 2010, Defendants, singly and in concert, have:

- (a) made use of the means or instruments of transportation or communication in interstate commerce or of the mails to sell securities, through the use or medium of a prospectus or otherwise;
- (b) carried securities or caused such securities to be carried through the mails or in interstate commerce, by any means or instruments of transportation, for the purpose of sale or for delivery after sale; and
- (c) made use of the means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy securities, through the use or medium of any prospectus or otherwise,

without a registration statement having been filed with the Commission as to such securities.

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63. By reason of the foregoing, Defendants, directly and indirectly, singly and in concert, have violated Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)].

**COUNT V — AIDING AND ABETTING**

**Aiding and Abetting Violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder  
[15 U.S.C. § 77 q(a), 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5]**

64. Paragraphs 1 through 47 are hereby restated and incorporated by reference.

65. From at least April 8, 2010, to at least August 20, 2010, Defendants aided and abetted the Elite Entities in their violations of Section 17(a) of the Securities Act [15 U.S.C. § 77 q(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] by knowingly or recklessly providing substantial assistance to the Elite Entities in furtherance of the fraudulent scheme.

**COUNT VI — EFFECTING SECURITIES TRANSACTIONS FOR  
THE ACCOUNTS OF OTHERS WITHOUT BEING REGISTERED  
WITH THE COMMISSION AS A BROKER-DEALER**

**Violations of Section 15(a) of the Exchange Act  
[15 U.S.C. § 78o(a)]**

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66. Paragraphs 1 through 47 are hereby restated and incorporated by reference.

67. From at least April 8, 2010, to at least August 20, 2010, Defendants have been using the mails and the means and instrumentalities of interstate commerce, to effect transactions in, or induce or attempt to induce the purchase or sale of securities, without registering with the Commission as a broker, as more particularly described above.

68. By reason of the foregoing, Defendants have violated Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)].

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Commission respectfully prays for:

**I.**

Findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, finding that Defendants named herein committed the violations alleged herein.

**II.**

A permanent injunction enjoining Defendants, their officers, agents, servants, employees, and attorneys from violating, directly or indirectly, Sections 5(a), (c), and 17(a) of the Securities Act [15 U.S.C. §§ 77e(a), 77e(c) and 77 q(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] and Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)], and enjoining Defendants from aiding and abetting any violations of Section 17(a) of the Securities Act [15 U.S.C. § 77 q(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.**

An order requiring an accounting by Defendants of the use of proceeds of the fraudulent conduct described in this Complaint and the disgorgement by Defendants of all ill-gotten gains or unjust enrichment with prejudgment interest, to effect the remedial purposes of the federal securities laws.

### **IV.**

An order pursuant to Section 20(d) of the Securities Act [15 U.S.C. §77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)] imposing civil penalties against Defendants.

### **V.**

Such other and further relief as this Court may deem just, equitable, and appropriate in connection with the enforcement of the federal securities laws and for the protection of investors.

Dated: May 8, 2012

Respectfully submitted,



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