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**UNITED STATES DISTRICT COURT**
**DISTRICT OF NEVADA**

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| SECURITIES AND EXCHANGE COMMISSION,<br><br>Plaintiff,<br><br>v.<br><br>ZACHARY BROOKE ROBERTS, an individual,<br><br>Defendant. | Case No. 2:16-cv-1664 |

# COMPLAINT

Plaintiff, Securities and Exchange Commission (the "Commission"), alleges as follows:

## SUMMARY OF THE ACTION

1. Between December 2011 and July 2012 (the "relevant period"), Encore Acceptance I, LLC ("EAI"), a Nevada limited liability company then owned and controlled by Defendant Zachary Brooke Roberts, raised approximately $1.72 million through the sale of

promissory note securities to a group of approximately 18 investors for use in connection with an online payday lending business operated in partnership with The Chippewa Cree Tribe of the Rocky Boy's Reservation, Montana (the "Tribe" or "Tribal"), a federally-recognized Native American tribe. In furtherance of a fraudulent scheme, neither EAI nor its representatives (which included Roberts) informed investors that certain persons and entities affiliated with EAI were then and had previously been making payments to certain members of and officials of the Tribe, and that the existence of these payments, if discovered by the Tribe and deemed by them to be improper or fraudulent, could materially threaten the safety, security, and return of the investor funds. What statements EAI did make to investors were incomplete and materially misleading.

2. By engaging in this conduct, as further described herein, EAI and Roberts violated Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 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].

3. In the alternative, as the individual controlling EAI during the relevant period, Roberts, pursuant to Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)], is liable for EAI's violations of Section 10(b) of the Exchange Act and Rule 10b–5 thereunder.

4. Unless restrained and enjoined by this Court, Roberts may continue to violate Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b–5 thereunder.

## JURISDICTION AND VENUE

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

Act [15 U.S.C. §§ 78u(d) and 78u(e)] to enjoin such acts, practices, and courses of business, and to obtain disgorgement, prejudgment interest, civil money penalties, an officer and director bar, and such other and further relief as this Court may deem just and appropriate.

6. EAI and Roberts, directly or indirectly, made use of the means or instruments of transportation or communication in interstate commerce, or of the mails, in connection with the conduct alleged in this Complaint.

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

8. Venue in this District is proper because Roberts is found in, inhabits, and/or transacted business, including through EAI, in this District, and because one or more acts or transactions constituting the violations occurred in this District.

## DEFENDANT

9. **Zachary Brooke Roberts**, age 45, is a resident of Henderson, Nevada. Roberts, who possesses a law degree and is an inactive member of the State Bar of California, is the sole individual who controlled EAI during the relevant period. Roberts also controlled Encore Services, LLC, and possessed an undocumented and/or indirect ownership interest in and co-control over Encore Service Corporation, LLC, during the relevant period.

## RELATED PERSONS AND ENTITIES

10. **Encore Acceptance I, LLC**, is a Nevada domestic limited liability company formed on March 29, 2011, and which maintains its principal place of business in Henderson, Nevada.

11. **Encore Acceptance, LLC** ("EAL"), is a Nevada domestic limited liability company formed on July 21, 2010, and which maintains its principal place of business in Henderson, Nevada.

12. **Encore Service Corporation, LLC** ("ESC"), is a Nevada domestic limited liability company formed on October 12, 2010, and which maintains its principal place of business in Henderson, Nevada.

13. **Encore Services, LLC** ("ESL"), is a Nevada domestic limited liability company formed on May 26, 2011, and which maintains its principal place of business in Henderson, Nevada.

14. **Richard Lee Broome**, age 58, is a business partner of Roberts and is last known to reside in El Granada, California. Although nominally the owner and manager of ESC during the relevant period, Broome has stated that he, Roberts, and Martin Gasper Mazzara (another of Roberts' business partners) are partners in various different ventures, and that they discuss things and take actions with an understanding of the partnership agreement that underlies everything. He has stated that the partnership agreement is verbal, not in writing.

15. **First American Capital Resources, LLC** ("FACR"), is a limited liability company created, during October 2010, under the law of the Tribe and is owned by the Tribe. FACR, which maintains its principal place of business in Montana, was created by the Tribe to engage in the online payday lending business under a management agreement with ESC. FACR has a subsidiary, **First American Capital Resources ONE, LLC** ("FACR1"), through which some of its activities were conducted.

16. **Plain Green, LLC**, is a limited liability company created, on May 13, 2010,

under the law of the Tribe and is owned by the Tribe. Plain Green, which maintains its principal place of business in Montana, became a business partner with Think Finance, Inc., a large Texas-based lending entity.

17. **James Howard Eastlick, Jr., Ph.D.**, age 50, is not a member of the Tribe but formerly served as Clinical Director of the Tribe's health clinic. Eastlick is last known to reside in Federal Correctional Institution Sheridan in Sheridan, Oregon, and is believed to have owned a one-third (⅓) interest in Ideal Consulting, LLC, and full (either individually or with/through his spouse) interest in Trio Consulting, LLC.

18. **Neal Paul Rosette (Sr.)**, age 54, is a member of the Tribe last known to reside in Federal Correctional Institution Sheridan in Sheridan, Oregon. Rosette was previously the CEO of two of the Tribe's lending business entities: FACR and Plain Green. Rosette is believed to have owned a one-third (⅓) interest in Ideal Consulting, LLC. Rosette pled guilty in December 2015 to federal criminal charges arising from activity that is discussed herein and was sentenced to 38 months imprisonment.

19. **Billi Anne Raining Bird Morsette**, age 40, is a member of the Tribe last known to reside in Federal Correctional Institution Dublin in Dublin, California. Morsette was previously the COO (and later CEO) of two of the Tribe's lending business entities: FACR and Plain Green. Morsette is believed to have owned a one-third (⅓) interest in Ideal Consulting, LLC. Morsette pled guilty in December 2015 to federal criminal charges arising from activity that is discussed herein and was sentenced to 41 months imprisonment.

20. **Ideal Consulting, LLC** ("Ideal Consulting"), is a Montana domestic limited liability company formed on August 2, 2011, and which is believed to maintain its principal

place of business in Havre, Montana. Ideal Consulting has been owned, during the relevant period, equally by Eastlick, Rosette, and Morsette.

21. **Trio Consulting, LLC** ("Trio Consulting"), is a Montana domestic limited liability company formed on September 19, 2011, and which maintains its principal place of business in Havre, Montana. Ideal Consulting has been owned, during the relevant period, by Eastlick, either individually or with/through his spouse.

## STATEMENT OF FACTS

22. At some point during early 2010, Roberts was introduced to the Tribe and, in conjunction with Broome, Mazzara, and, possibly, other associates (collectively, the "Encore associates"), came to an agreement with the Tribe to advise and manage the Tribe's then nascent entry into the online payday lending industry via the Tribe's newly formed FACR subsidiary (which, as described above, subsequently included a subsidiary of its own: FACR1).

23. The entity via which Roberts and the other Encore associates provided advisory and management services to FACR was ESC, which was ostensibly owned and managed by Broome.

24. To govern the new advisory and management relationship, ESC, the Tribe, and FACR entered into a *Management Agreement* dated October 22, 2010.

25. Among other things, the *Management Agreement* contained provisions prohibiting ESC from interfering in Tribal affairs (§ 8.2), making payments to members of Tribal government (§ 8.4), and restricting Tribal members' ability to possess financial interests in FACR or ESC (§ 8.6).

26. Sometime during early 2011, the Tribe was approached by and entered into

negotiations with Think Finance, Inc., a large Texas-based lender that controlled a significant loan portfolio and which sought to have the Tribe become a business partner with it in regard to the loan portfolio. Roberts and the other Encore associates assisted the Tribe in performing due diligence on the new business opportunity, and the Tribe eventually utilized its Plain Green entity to pursue the business opportunity with Think Finance. This business venture, due to the size of the loan portfolio, was expected to be lucrative and to generate significant cash flow for the Tribe through Plain Green.

27. The Encore associates sought compensation from the Tribe in the amount of $15,000.00 for their due diligence work on the Think Finance proposal and a retainer equal to 10% of the future gross income of Plain Green in exchange for providing ongoing advice to the Tribe in regard to the Think Finance–Plain Green business venture.

28. This compensation proposal was not accepted by the Tribe.

29. During May 2011, an amended *Management Agreement* (dated April 14, 2011) was executed between ESC and FACR. This amended agreement, in addition to increasing ESC's share of FACR's profits to 49% from 40%, also introduced language that had the effect of providing ESC with a significantly expanded revenue pool over which it could assert its management fee claims.

30. While the original *Management Agreement* pertained only to FACR and subsidiaries thereof, the amended agreement pertained to "one or more instrumentalities and commercial subdivisions of the Tribe" and included "FACR and any other entity formed by the Tribe to undertake business of the type conducted by FACR." ESC's objective in executing the amended *Management Agreement* was to obtain a share of the expected profits from the Think

Finance – Plain Green business venture.

31. Around the same time that the amended *Management Agreement* came into being, Roberts and/or one of the other Encore associates also created a new *Fee Agreement* among ESL, several of the Tribe's lending businesses (including FACR and Plain Green but specifically excluding FACR1, as to which ESC continued to assert a claim to 49% of the profits pursuant to the amended *Management Agreement*), and, ostensibly, the Tribe itself.

32. Pursuant to the *Fee Agreement*, which was supposedly executed on June 1, 2011, but was more likely executed in late July 2011 and also contained one or more forged signatures on behalf of the Tribe's entities, ESL became entitled to receive 15% "of all Gross Revenues in the course of their [(*i.e.*, various of the Tribe's lending entities, including those created subsequent to the date of the agreement)] online lending business[es] in perpetuity for as long as the Tribe or its lending entities receive revenue from lending activities."

33. As for the reason for the new *Fee Agreement*, Roberts, in connection with an arbitration proceeding between ESL and the Tribe *et al*., testified that ESC, apparently in view of the terms of the amended *Management Agreement*, believed it possessed exclusive management rights over the Tribe's lending business activities, and this exclusivity entitled ESC to 49% of the Tribe's profits derived from Plain Green's activities.

34. Recognizing that seeking to take 49% of the Tribe's profits derived from Plain Green—a business that was established *before* the *Management Agreement* was amended to include the purported exclusivity provisions—was, as Roberts testified in connection with the aforementioned arbitration, "just too much to expect," Roberts and the other Encore associates instead decided to seek 15% of the Tribe's profits via the *Fee Agreement* (in addition to the 49%

ostensibly granted to them on FACR1's profits pursuant to the terms of the amended *Management Agreement*).

35. Roberts and the other Encore associates initially were unsuccessful in having their proposed *Fee Agreement* adopted and implemented by the Tribe and its various lending businesses.

36. Roberts and the other Encore associates only achieved success in having their proposed *Fee Agreement* adopted and implemented by the Tribe once they enlisted the services of Eastlick and reached an agreement through him to pass through one-third (⅓) of ESL's expected receipts under the proposed *Fee Agreement* to Ideal Consulting, a shell entity then believed by Roberts and the other Encore associates to be owned in equal shares by Rosette and Morsette, both of whom were then senior officers of FACR and Plain Green in addition to being members of the Tribe.

37. For his services, Eastlick is also believed to have secured an unwritten agreement with Roberts and the other Encore associates to receive, via another shell entity, Trio Consulting, 20% of ESL's remaining two-thirds (⅔) of its anticipated receipts received under the *Fee Agreement*.

38. Consistent with these agreements, banking records of ESL show that, between September 2011 and July 2013, a total of $1,157,476.37 was paid by ESL to Ideal Consulting, and a total of $463,748.09 was paid by ESL to Trio Consulting. Additionally, on or about August 5, 2011, a wire in the amount of $50,652.40 was received by Ideal Consulting from an entity named Worldwide Portfolio Management, LLC, which shares the same physical address as numerous other entities affiliated with Roberts.

39. During the period when the amended *Management Agreement* and the *Fee Agreement* were put into effect, Roberts and the other Encore associates continued to move forward with establishing the FACR lending business.

40. Needing additional capital to fund FACR after funding from a Salt Lake City, Utah-based private fund proved insufficient, Roberts caused EAI to offer and sell promissory notes to investors.

41. The EAI promissory notes issued and sold to investors are securities.

42. Between December 2011 and July 2012, EAI offered and sold, via Roberts and at least one other individual, approximately $1.72 million of high-interest (24%) promissory note securities to approximately 18 investors via a private placement memorandum (the "PPM") which contained various information about EAI and the planned use of investor funds in connection with FACR and its subsidiary, FACR1.

43. EAI failed to disclose in the PPM, and Roberts and the other EAI promissory note salesman failed to orally disclose to investors, information concerning (a) the payments ESL made and was continuing to make to Ideal Consulting and to Trio Consulting, (b) the agreements, written or otherwise, pursuant to which those payments were being made, (c) the identities of the individuals behind Ideal Consulting and Trio Consulting and the nature of the relationships between those individuals and the Tribe, (d) the close association between Roberts, EAI, ESC, ESL, and EAL, (e) that such payments by ESL to Ideal Consulting and to Trio Consulting (along with an ownership interests in ESC that Eastlick obtained in connection with certain loans he made to EAL) violated the terms of the *Management Agreement* and the amended *Management Agreement* (*e.g.*, §§ 8.2, 8.4, and 8.6) and would be deemed to be an

instance wherein "…[ESC], or a principal, director or officer of [ESC], has committed an act of personal dishonesty or breach of fiduciary duty to [FACR] that results or was intended to result in a personal profit to [ESC]" (§ 9.3 [Termination for Cause] of the *Management Agreement* and the amended *Management Agreement*), and (f) that if the Tribe/its entities terminated the amended *Management Agreement* and ceased to continue to do business with ESC, such an action would materially threaten the safety and viability of the investors' EAI promissory note investments as their return was significantly dependent upon the continued existence of a harmonious business relationship between ESC, the Tribe, and the Tribe's FACR and FACR1 entities.

44. There is a substantial likelihood that a reasonable investor would have considered the omitted information material in deciding whether or not to invest in the EAI promissory note securities.

45. EAI was under a duty to disclose this information to investors and potential investors in view of the materiality of the information and EAI's fiduciary or agency relationship, course of prior dealings, and attendant circumstances such that investors had placed trust and confidence in EAI.

46. In addition to these omissions, EAI engaged in one or more misstatements of material fact or omissions to state a material fact necessary in order to make the statements made not misleading.

47. In the PPM, EAI and Roberts stated to investors that: "Our ability to make the required payments under the [terms of the promissory notes] is directly related to [FACR (or FACR1)]'s and [ESC's] ability to successfully operate an Internet-based consumer lending

business."

48. This statement, and the explanation that followed it in the PPM, were materially misleading because they failed to also inform investors that EAI's ability to make the required payments was also, as developments have shown, directly related to the Tribe not terminating its business relationship with ESC upon discovery of the payment scheme described herein.

49. The EAI PPM also stated to investors that: "Debt instruments bearing high interest rates, such as the Loan, are often associated with ponzi [*sic*] schemes, particularly in the payday loan business… We have no evidence that [FACR (or FACR1)] or [ESC] is, or would be, involved in such a scheme; however, fraud is common in situations in which notes with high rates of interest are issued and in the payday loan industry. Noteholders of [EAI] may lose some or all of its [*sic*] investments because of fraud or other illegal practice by [FACR (or FACR1)], [ESC] or an affiliate."

50. This statement was materially misleading because it failed to disclose the existence of the payment scheme discussed herein that was operational *before* this statement was provided to investors via the PPM (*i.e.*, the alleged fraud was an actuality and not a potentiality).

51. The EAI PPM also stated to investors that: "Additional risks and uncertainties not presently known to us or that we currently deem immaterial may also impair our business operations and your investment."

52. This statement was materially misleading because existence of the payment scheme described herein and the likely result of its potential discovery by the Tribe was a risk known to EAI and to Roberts that could not credibly be deemed immaterial.

53. Following the Tribe's discovery of the payment scheme described herein and the

consequent termination by it of its business relationship with ESC, EAI and Roberts misled and lulled the EAI promissory note investors by stating to them, via an *Information Statement*, that the business disruption was due to a change in Tribal leadership.

54. The *Information Statement* failed to disclose the existence of the payment scheme described herein. As such, it was materially misleading and made in furtherance of EAI's and Roberts' fraudulent scheme.

55. EAI, via its and Roberts' fraudulent omissions, misstatements, and scheme, thus improperly obtained at least $1,719,832.50 in investor funds.

## CAUSES OF ACTION

### First Cause of Action
### Violation of Section 17(a) of the Securities Act
### [15 U.S.C. § 77q(a)]

56. The Commission re-alleges and incorporates by reference each and every allegation in paragraphs 1-55, inclusive, as if they were fully set forth herein.

57. By engaging in the conduct described above, Roberts, in the offer or sale of securities by the use of means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly, employed a device, scheme, or artifice to defraud; obtained money or property by means of one or more untrue statements of a material fact or omissions 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 operated as a fraud or deceit upon the purchasers of the EAI promissory note securities.

58. Roberts, acting through EAI, intentionally or recklessly engaged in the fraudulent

or deceitful conduct described above.

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

**Second Cause of Action**
**Violation of Section 10(b) of the Exchange Act and Rule 10b–5(b) Thereunder**
**[15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b–5]**

60. The Commission re-alleges and incorporates by reference each and every allegation in paragraphs 1-55, inclusive, as if they were fully set forth herein.

61. By engaging in the conduct described above, Roberts, in connection with the purchase or sale of a security, and while making use of means or instrumentalities of interstate commerce or of the mails, employed a device, scheme, or artifice to defraud; made one or more untrue statements of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and engaged in an act, practice, or course of business which operated as a fraud or deceit upon one or more persons.

62. Roberts, as the sole person that controlled EAI, was the maker of the one or more untrue statements of a material fact or omissions to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

63. Roberts, acting through EAI, intentionally or recklessly engaged in the fraudulent or deceitful conduct described above.

64. By reason of the foregoing, Roberts violated 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, unless enjoined, will continue to violate Section 10(b) of the Exchange Act and Rule 10b–5 thereunder.

**Third Cause of Action**
**Violation, as a Control Person, of Section 10(b) of the Exchange Act and Rule 10b–5(b) Thereunder**
**[15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b–5 via 15 U.S.C. § 78t(a)]**

65. The Commission re-alleges and incorporates by reference each and every allegation in paragraphs 1-55, inclusive, as if they were fully set forth herein.

66. During the relevant period, Roberts was the sole person who controlled EAI.

67. Pursuant to Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)], every person who, directly or indirectly, controls any entity liable under any provision of the Exchange Act or of any rule or regulation thereunder shall also be liable jointly and severally with and to the same extent as such controlled entity to any person to whom such controlled person is liable (including the Commission), unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action.

68. Roberts did not act in good faith and directly induced the act or acts constituting EAI's violations of the Exchange Act and the rules promulgated thereunder.

69. By reason of the foregoing, and in the alternative to his direct violations of the Exchange Act and the rules promulgated thereunder described above, Roberts violated 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] through his control of EAI and, unless enjoined, will continue to violate Section 10(b) of the Exchange Act and Rule 10b–5 thereunder.

**PRAYER FOR RELIEF**

WHEREFORE, the Commission respectfully requests that this Court find that Defendant

Zachary Brooke Roberts committed the violations alleged herein and enter a final judgment:

**I.**

Permanently restraining and enjoining Roberts 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];

**II.**

Ordering Roberts to disgorge all ill-gotten gains derived from the activities set forth in this Complaint, together with prejudgment interest thereon;

**III.**

Ordering Roberts to pay a civil penalty 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)];

**IV.**

Permanently prohibiting, pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], Roberts from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)];

**V.**

Retaining 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; and,

**VI.**

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

Dated: July 14, 2016

Respectfully submitted,

/s/ Daniel J. Wadley
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