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

By: *JH* JAMES N. HATTEN, Clerk
Deputy Clerk

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

WILLIAM M. OSTERHOUT and
PROSPERITY NETWORK, INC.
d/b/a PROSPERITY
AUTOMATED SYSTEM,

Defendants.

Civil Action No.

06 CV 23 18

COMPLAINT FOR EMERGENCY INJUNCTIVE AND OTHER RELIEF

Plaintiff, Securities and Exchange Commission ("Commission"), alleges
that:

OVERVIEW

1. William M. Osterhout ("Osterhout") and an entity that he controls,
the Prosperity Network, Inc. ("PNI"), have orchestrated a fraudulent pyramid
scheme from as early July 2005 through the present.

2. Osterhout and PNI, which operates under the name Prosperity Automated System (“PAS”), offer and sell interests in their pyramid scheme through a series of approximately 25,000 internet websites, owned by either PNI or PNI investors.

3. These websites tout PAS as a “100% Automated Multi-Income Marketing Portal that Showers You with Hands-Free Cash.” Many of the websites lure investors with outlandish claims of potential profits.

4. While Defendants claim that their program is designed to market goods and services, the primary returns that investors earn from these securities come from sales to “downline” investors.

5. Upon information and belief, Osterhout and PNI have sold \$15 million of securities in the PAS scheme to more than 5,000 investors, who are located in several states including Georgia.

6. Through their conduct, Osterhout and PNI 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), 5(c), and 17(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. §

77q(a)], 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].

JURISDICTION AND VENUE

7. 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 Osterhout and PNI 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.

8. This Court has jurisdiction over this action pursuant to Sections 20 and 22 of the Securities Act [15 U.S.C. §§ 77t and 77v] and Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa].

9. Defendants Osterhout and PNI, 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.

10. 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. Defendant have solicited investments from and sold interests in their pyramid scheme to individuals who reside in the Northern District of Georgia.

11. Defendants Osterhout and PNI, 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

12. **William M. Osterhout**, upon information and belief, is approximately 51 years of age, and resides in Citrus Heights, California. Osterhout represents himself to be the chief executive officer and president of PNI, as well as the creator of PAS.

13. **Prosperity Network, Inc.**, is a North Carolina corporation organized in January 1994 under the previous name of WMO, Inc. PNI's principal place of business is Citrus Heights, California. Osterhout controls PNI.

The Fraudulent Pyramid Scheme

14. PAS exists almost exclusively on the internet through a series of approximately 25,000 interconnected websites owned by either PNI or its investors.

15. These websites solicit investors by touting PAS as a work-at-home business that generates “a substantial passive income” with “[n]o prospecting ... [n]o advertising ... [n]o selling” and does “ALL the hard work ... for you.” The websites appear intentionally vague and provide little insight at the initial stage into exactly what PAS is or what it does, beyond the representation that PAS is a “100% Automated Multi-Income Marketing Portal that Showers You with Hands-Free Cash!”

16. Many of the PAS websites contain professional flash video presentations and testimonials that extol the ease of the purported fully automated marketing system component of PAS and the corresponding opportunities to earn significant returns with little to no effort.

17. Some of the testimonials on these websites represent that investors can earn “\$2,500 a day, without speaking to anyone,” “\$100,000+ in First 6 Months,” and even “\$250,000 in less than 18Months.” One PAS website

represented “Earn Thousands in Extra Monthly Income by doing ... Absolutely Nothing! Your Success is Guaranteed!”, “Double Your Money Guarantee” and “Completely risk free!” Another PAS website states that: “If you’re interested in making hassle-free money, there are only TWO things you need to do: 1. Buy your license to use the Prosperity Automated System, and 2. Check your email to see when money is on its way to you!”

18. In order to purchase PAS memberships, prospective investors must first submit their personal information, including name, e-mail address, and telephone number, into fields on an existing PAS website and agree to be contacted by a PAS “team leader.” Team leaders are trained by Osterhout and others and considered independent contractors of PNI compensated directly by PNI for their services.

19. The team leader then calls the prospective investor, responds to any questions, and directs the investor to additional online information that is found in a second level of most PAS websites.

20. The PAS team leader explains that there are three distinct levels of membership in PAS that may be purchased: (1) an associate membership at a

cost of \$49.95; (2) a basic level membership at a cost of \$1,995; or (3) a premier level membership at a cost of \$3,895.

21. An investor who purchases a PAS membership, regardless of the level, receives the following: (1) a unique replicated PAS website and automated marketing system that is created by PNI and housed on PNI's server (www.prosperityautomatedsystem.com); (2) services of team leaders to contact and solicit prospective investors; and (3) electronic back-office support and information.

22. All PAS replicated websites that PNI creates for investors are automatically designed to continually offer PAS memberships for sale to prospective investors.

23. PAS members earn returns based on sales of PAS memberships to new investors.

24. The payout to existing PAS members for additional memberships sold through their replicated websites depends on the level of membership the existing member initially purchased. The more expensive the membership level purchased, the fewer sales of additional PAS memberships are required

before a new investor can receive a percentage of additional future membership sales.

25. PNI considers a sale of a new membership to be attributable to a specific PAS investor based on the first PAS website the new investor inputs his or her contact information into. The existing PAS investor identified on the PAS website in question is frequently referred to as the new investor's "sponsor," while the new investor is considered part of the existing investor's "downline."

26. Investors who purchase at the premier level must "give-up" all proceeds from the first PAS premier membership sale with which they are credited to their sponsor. The sponsor then retains \$3,000 from the sale and directs \$895 to PNI. For all future premier level membership sales, the new investor retains \$3,000 and directs \$895 to PNI.

27. New investors who purchase at the basic level must give-up their first two premier sales to their sponsor before being eligible to retain any of the proceeds, and investors who purchase an associate membership must give up their first three premier sales.

28. New investors can also become qualified by selling two basic level memberships for each of the premier level memberships they are required to sell under the structure as explained in the text.

29. Sales of associate memberships, for which all proceeds are directed to PNI, do not contribute to PAS investor qualification.

30. PNI refers to this method of membership sales compensation as a “one-up” system. Under this structure, every investor who purchases a PAS membership, at any level, must be credited with sales of PAS memberships to at least three new investors before recouping the initial investment.

31. Specifically, for a new PAS member who invests at the premier level at the cost of \$3,895, the new investor receives no proceeds from the first premier sale, which is given-up to the new investor’s sponsor. The new investor receives \$3,000 for the sale of the second premier membership with which he or she is credited, and then will reach and exceed the break-even point only upon the sale of the third premier membership.

32. As it takes three additional new investors before any one investor can realize any returns, at all times at least three out of four investors, or 75%, will not have recouped their initial investment with PAS. Moreover, as there

are a finite number of prospective investors who could ultimately choose to invest through the purchase of a PAS membership, PAS must by definition collapse when there are no further investors, and will leave the significant majority of investors with substantial losses.

33. There is no disclaimer on any PAS website disclosing that PAS is a pyramid scheme. To the contrary many PAS websites specifically state that PAS is “[a]bsolutely not” a pyramid or Ponzi scheme

34. Upon information and belief, Osterhout and PNI have offered and sold at least \$15 million of securities to more than 5,000 investors since as early as July 2005. These investors are located in various states, including Georgia, and foreign countries.

35. Upon information and belief, approximately 80% of these investors have invested at the most expensive “premier” level.

The PAS Program Requires Minimal Effort from Investors

36. A key component of the PAS solicitation used to attract new investors is the “totally passive” and “automated” aspect of PAS and how PAS does “ALL the hard work” necessary for investors to generate the returns represented in member testimonials.

37. PNI has designed a method to refer prospective investors to existing investor websites. The primary PAS website, www.prosperityautomatedsystem.com, is not actually accessible itself. When a prospective investor or curious web-surfer triggers a search-engine query that yields PAS as a result, or manually enters the primary PAS website URL into a web-browser, PNI directs the user to a specific PAS website by rotating through the existing investor websites.

38. In order to participate in this rotation system, members must pay an additional monthly “adpak” fee of \$190 to PNI. The first month of adpak rotation services is included with the purchase of a premier or basic membership.

39. PNI also allows investors to increase the frequency of their rotation among existing PAS websites through the purchase of additional adpaks beyond one per month. For investors to participate in PAS in a passive method and take advantage of the completely automated system that is advertised, they must therefore continually purchase adpaks in addition to purchasing a PAS membership.

40. PNI does not require members to purchase adpaks, and some PAS investors choose to undertake their own advertising efforts to attract new investors (including radio commercials, press releases, print-advertisements, and internet search-engine keyword purchases).

41. The PAS members who undertake their own advertising efforts frequently utilize fanciful web-domains to house custom-made PAS websites that contain all of the information found in the typical replicated PAS websites, but offer even more outrageous testimonials in an effort to attract new investors to submit their personal information to team leaders.

42. Examples of typical custom PAS investor websites include www.clickandgrowrich.biz, www.lazyandrich.net, www.profits4doingnothing.com, and www.retire-fast.com.

43. Even these more active PAS members rely on PAS team leaders to speak with prospective investors in an effort to convince them to invest, and new investors are still the primary source of the funds generating any returns for these more active members.

44. PNI also provides the replicated website and back-office support to these more active PAS members.

Defendants Obscure the Pyramid Nature of their Scheme

45. PNI promotes PAS as a fully “automated” internet based marketing system. In early offerings to PAS investors in 2005, Osterhout and PNI made clear to investors that PAS would, with no investor effort, market itself to new investors on behalf of existing investors. PNI and Osterhout stated that “We do everything for you and you get to keep almost all of the money...and we’re talking a lot of money!”

46. In these early offerings to PAS investors, PNI and Osterhout made representations to investors that “Success is Guaranteed!” and that the purchase of a PAS membership was “Completely risk free!” PNI and Osterhout also offered a “Double Your Money Guarantee” to early investors.

47. Many of the at least 5,000 unique investors in PAS purchased PAS memberships in reliance on the statements of PNI and Osterhout that all that was necessary to succeed with PAS was the purchase of a PAS membership and the continual purchase of adpaks, and that PAS would then market itself to new investors.

48. PNI and Osterhout have since modified the description of PAS used to attract new investors, and now claim that PAS provides an internet

based marketing service to persons who have an existing good or service they wish to offer and need marketing and sales support to sell it, in addition to automatically marketing and selling PAS memberships to new investors.

49. PNI's current PAS membership agreement requires that investors identify a "primary product" in addition to PAS memberships that they wish to market on their replicated PAS website.

50. Despite these revised statements by PNI and Osterhout regarding the need for a "primary product," PAS remains designed to generate returns for existing investors almost entirely based upon the sales of new memberships to downline investors, rather than sales of any product or services.

51. PAS replicated websites state, "If you dont [sic] have a product, no problem!" PNI then provides a choice of several PNI affiliated products for PAS investors to offer.

52. The vast majority of PAS websites offer no goods or services other than PAS memberships or PNI affiliated products.

53. Those PAS members who actually market goods or services through their PAS website derive substantially all of their profits from the sale of new PAS memberships, rather than the sale of the other goods or services.

54. Moreover, the PAS team leaders, who are responsible for contacting potential investors who access a PAS website, have no role in marketing or selling any products other than PAS memberships. They cannot respond to inquiries made on a PAS investor's website for anything but the sale of PAS memberships.

55. Upon information and belief, PNI does no marketing for any goods and services offered by any PAS member, other than listing the goods and services on the investor's replicated website – making the PAS automated marketing system little more than a very costly webpage advertisement for those PAS investors who actually have an existing product or service to sell.

56. There has been no registration statement filed with the Commission with respect to the offering of the securities described herein.

The Offering Is On-Going

57. Defendants' fraudulent offering is on-going.

58. Moreover, PNI has recently begun issuing press releases and including flash video presentations on replicated websites touting forthcoming appearances on CNN and The Discovery Channel.

59. PNI claims that PAS will be “featured on national television” and was selected by the Platinum Television Group (“Platinum”) for a “segment on innovative Home-Based Business Solutions as part of the Models in Excellence series.” PNI gives the appearance that PAS will be part of a news or educational based series of programming.

60. Platinum is an “infomercial” producer, and PNI has apparently purchased and produced commercial advertising to be run nationally in the near future.

61. A significant influx of new investors may be attracted to PAS if these commercial advertisements air as PNI claims.

COUNT I—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)]

62. Paragraphs 1 through 61 are hereby realleged and are incorporated herein by reference.

63. 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.

64. From at least as early as July 2005, Osterhout and PNI, 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.

65. 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 II—FRAUD

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

66. Paragraphs 1 through 61 are hereby realleged and are incorporated herein by reference.

67. From at least as early as July 2005, defendants Osterhout and PNI, 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.

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

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

70. By reason of the foregoing, the 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)].

COUNT III—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)]

71. Paragraphs 1 through 61 are hereby realleged and are incorporated herein by reference.

72. From at least as early as July 2005, defendants Osterhout and PNI, 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.

73. By reason of the foregoing, defendants Osterhout and PNI, 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 IV—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]

74. Paragraphs 1 through 61 are hereby realleged and are incorporated herein by reference.

75. From at least as early as July 2005, defendants Osterhout and PNI, 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.

76. Defendants Osterhout and PNI 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, the defendants acted with scienter, that is, with an intent to deceive, manipulate or defraud or with a severe reckless disregard for the truth.

77. By reason of the foregoing, defendants Osterhout and PNI, 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].

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 the defendants named herein committed the violations alleged herein.

II.

A temporary restraining order, preliminary and permanent injunctions enjoining the defendants, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the order of injunction, by personal service or otherwise, and each of them, from violating, directly or indirectly, Sections 5 and 17(a) of the Securities Act [15 U.S.C. §§ 77e(a) and (c) and 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] promulgated thereunder.

III.

An order requiring an accounting of the use of proceeds of the sales of the securities 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, and an order freezing the assets and preserving documents of the defendants, to preserve the status quo.

IV.

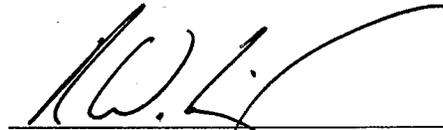
An order pursuant to Section 20(d) of the Securities Act [15 U.S.C. 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. 78u(d)(3)] imposing civil penalties against defendants.

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 this 27th day of September, 2006.

Respectfully submitted,



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