**UNITED STATES DISTRICT COURT**
**NORTHERN DISTRICT OF ILLINOIS**
**EASTERN DIVISION**

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| **SECURITIES AND EXCHANGE COMMISSION,** | **FILED UNDER SEAL** |
| **Plaintiff,** | **Civil Action No. 09 cv 7429** |
| **v.** | **Honorable Blanche M. Manning** |
| **CANOPY FINANCIAL, INC., AND JEREMY J. BLACKBURN,** | **Magistrate Judge Maria Valdez** |
| **Defendants.** | |

# COMPLAINT

Plaintiff, the United States Securities and Exchange Commission ("SEC" or "Commission"), alleges as follows:

## NATURE OF THE ACTION

1. During the period from at least October 2008, through at least August 2009, defendants Canopy Financial, Inc. ("Canopy") and Jeremy J. Blackburn ("Blackburn") engaged in a fraudulent scheme to raise $75 million from investors in a private placement offering for the Canopy preferred securities (the "2009 Canopy Offering"). To induce investors to invest in the offering, Canopy, through Blackburn and others, provided unsuspecting investors with documents misrepresenting the Canopy's financial condition. Before the 2009 Canopy Offering, Canopy and Blackburn provided falsified financial statements, a falsified audit report, at least one falsified bank statement, and inaccurate monthly operating reports to investors.

2. As part of the 2009 Canopy Offering, Canopy received approximately $75 million and Blackburn received approximately $1.625 million after redeeming 250,000 shares of Canopy

common stock. As part of the scheme, Blackburn also misappropriated at least $1.17 million in investor funds into his personal bank accounts. After the payouts in the 2009 Canopy Offering, on information and belief, Canopy retains approximately $8 million.

3. By virtue of their conduct as alleged herein, Defendants have engaged in transactions, acts, practices, and courses of business that constitute violations of 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 promulgated thereunder [17 C.F.R. § 240.10b-5].

4. The Commission, in the interest of protecting the public from further fraudulent activity and to provide relief to investors injured by Defendants' fraudulent scheme, brings this civil enforcement action for a judgment: (a) permanently enjoining Defendants from future violations of the antifraud provisions of the federal securities laws; (b) requiring Defendants to disgorge their ill-gotten gains, plus prejudgment interest thereon; (c) imposing an appropriate civil penalty against Defendants; and (d) such other relief as the Court deems appropriate.

5. In light of the possible dissipation of remaining investor assets by Blackburn, the SEC is seeking immediate, emergency relief at the outset of this lawsuit, including the entry of a temporary restraining order against Blackburn, the imposition of an asset freeze, and other ancillary relief.

## JURISDICTION

6. The Commission brings this action pursuant to the authority conferred by Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)] seeking to restrain and enjoin permanently Defendants from engaging in the

acts, practices, transactions and courses of business alleged herein, and for such other equitable relief as may be appropriate or necessary for the benefit of investors.

7. The Commission also seeks a final judgment ordering Defendants to disgorge ill-gotten gains and pay prejudgment interest thereon, and ordering Defendants to pay civil money penalties pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] and Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)].

8. This Court has jurisdiction over this action, and venue lies in this District, pursuant to Sections 20(d) and 22(a) of the Securities Act [15 U.S.C. §§ 77t(d) and 77v(a)] and Sections 21(d) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d) and 78aa]. Defendants, directly or indirectly, singly or in concert, have made use of the means or instruments of transportation or communication in, and the means or instrumentalities of, interstate commerce, or of the mails, in connection with the transactions, acts, practices, and courses of business alleged herein. Some of these transactions, acts, practices and courses of business occurred in the Northern District of Illinois, where Canopy maintained its headquarters and largest office during the scheme, and Defendants made certain representations during the relevant period.

9. The Defendants have, directly and indirectly, made, and are making, use of the mails, and of the means and instrumentalities of interstate commerce, in connection with the transactions, acts, practices and courses of business alleged in this Complaint.

10. There is a reasonable likelihood that Defendants will, unless enjoined, continue to engage in the transactions, acts, practices and courses of business set forth in this Complaint, and transactions, acts, practices and courses of business of similar purport and object.

## DEFENDANTS

11. **Canopy Financial, Inc.** is a privately-held Delaware corporation with its headquarters in Chicago, Illinois, and other offices located in San Francisco, California and Plainsboro, New Jersey. Canopy provides a platform to assist its clients with administering and managing their employees' health savings and flexible spending accounts. Canopy was founded in or about December 2004 by Blackburn, Vikram A. Kashyap ("Kashyap") and Anthony T. Banas ("Banas"). Until approximately early November 2009, Kashyap was Chief Executive Officer, Blackburn was Chief Operating Officer ("COO") and President, and Banas was Chief Technology Officer. Both Kashyap and Banas remain members of the Canopy Board of Directors. Canopy is not registered with the Commission in any capacity.

12. **Jeremy J. Blackburn**, age 36, is a resident of Grove Heights, Minnesota and Malibu, California. Blackburn resigned as Canopy's COO, President and Canopy Board member during approximately the first week of November 2009. Blackburn has never held any securities industry licenses.

## THE 2009 CANOPY OFFERING

13. Beginning in or about October 2008, Canopy, through Blackburn, Kashyap and Banas, began discussing a private placement offering for the sale of Canopy Series D preferred stock with prospective investors. These investors included Spectrum Equity Investors V, LP, ("Spectrum"), a private equity investment firm with clients such as pension plans, private foundations, and other entity and individual investors. Canopy informed investors that the funds raised in the proposed offering would fund Canopy's operations and expansion and pay certain redeeming shareholders.

14. Before the 2009 Canopy Offering, Blackburn, Kashyap, and Banas initially owned 100% of Canopy's shares. Between Canopy's formation in December 2004 and the 2009 Canopy Offering, Blackburn, Kashyap and Banas retained shares and additional new investors acquired a certain number of Canopy preferred shares.

15. Beginning in approximately early 2009, Spectrum began conducting due diligence to determine whether it would invest in Canopy's private placement offering.

16. Spectrum requested Canopy, through Blackburn and Kashyap, to provide, among other things, information about Canopy's financial condition, including audited financial statements, monthly operating reports, and proof of cash.

## **DEFENDANT'S MISREPRESENTATIONS DURING THE 2009 CANOPY OFFERING**

The Existence of a KPMG Audit and an Authentic KPMG Audit Report

17. Before the 2009 Canopy Offering, Canopy represented to Spectrum that KPMG, LLP ("KPMG") had audited Canopy's 2007 and 2008 financial statements. KPMG is a professional services firm that provides audit and other client services.

18. Before the 2009 Canopy Offering, Canopy, through Blackburn and Kashyap, provided to Spectrum by email a document titled "KPMG Independent Auditor's Report," (hereinafter referred to as the "KPMG Audit Report") dated June 29, 2009, and a document titled "Canopy Financial, Inc. Consolidated Financial Statements for the years ended December 31, 2009 and 2007 (With Independent Auditors' Report Thereon)"(hereinafter referred to as "Canopy's audited financial statements").

19. The KPMG Audit Report that Canopy, through Blackburn, Kashyap and others, provided to investors stated that Canopy's consolidated financial statements for the years ended

December 31, 2008, and 2007, fairly presented Canopy's financial position in accordance with U.S. generally accepted accounting principles.

20. Blackburn knew that KPMG had never audited Canopy's financial statements and that the KPMG Audit Report was forged and Canopy's audited financial statements were false.

21. Blackburn sent Kashyap an email dated June 30, 2009, attaching the KPMG Audit Report and the audited Canopy financial statements, with an email subject heading of "Audit Finally Complete," and email text stating "I never wanna [sic] go through this again!!"

22. Blackburn reminded Banas to lie about the existence of the KPMG audit in two emails from Blackburn to Banas dated April 13, 2009.

<u>The Canopy Monthly Operating Reports</u>

23. Before the 2009 Canopy Offering, Canopy also provided Spectrum and other investors with monthly operating reports for February 2009, March 2009, April 2009 and May 2009 ("Canopy Operating Reports"). The Canopy Operating Reports included information purporting to show the total number of client accounts, projected and actual revenues and expenses for the current and preceding months, and earnings. Along with certain of the Canopy Operating Reports, Canopy also provided a cover letter signed by Blackburn and Kashyap providing a summary of the state of Canopy's current and prospective business.

24. Canopy's operating reports for April 2009 and May 2009 also included information purporting to show Canopy's current cash balances.

25. The Canopy Operating Reports provided to investors show an increase in the number of client accounts, increasing from 214,735 in February 2009, to 1,012,002 in May 2009.

26. Blackburn knew or should have known that the Canopy Operating Report entries showing the number of client accounts were false. As of June 2009, Canopy's internal records show that it only had 81,618 client accounts.

The False Northern Trust Company Bank Statement

27. Canopy, through Blackburn, provided to Spectrum a Northern Trust Company ("Northern Trust") account statement purporting to show Canopy's cash balance for the period June 2009 was approximately $8.9 million.

28. Blackburn forged, or caused to be forged, the June 2009 Northern Trust bank statement he provided to Spectrum before the 2009 Canopy Offering. The forged statement misstated the ownership of the account, the real bank account number and the real account balance. The forged statement showed the account as a Canopy account ending in -9601 with a balance of $8.9 million. The real account was a custodial account for the benefit of a Canopy client, Coventry Health, with an account number ending in -9602, and a balance of approximately $86,000 in June 2009.

## INVESTORS IN THE 2009 CANOPY OFFERING INVESTED BASED ON THE DEFENDANTS' MISREPRESENTATIONS

29. After conducting due diligence and reviewing the information provided by Canopy, through Blackburn and others, Spectrum and other investors decided to invest in the 2009 Canopy Offering.

30. The offering closed in two phases. In July 2009, Spectrum and two other investors paid approximately $63,073,243 in exchange for 8,898,245 shares of preferred stock. In August 2009, Spectrum and two additional investors paid approximately $11,926,751 in exchange for 1,682,602 shares of preferred stock. In total, Canopy raised and received approximately $75 million in the 2009 Canopy Offering.

31. As part of the 2009 Canopy Offering, Canopy paid approximately $40 million in redemptions to previously existing investors.

**THE DEFENDANTS' FRAUD IS EXPOSED**

32. In or about November 2009, Canopy, through its newly-employed General Counsel, began a search for a Chief Financial Officer and contacted an acquaintance at KPMG for possible candidates. Canopy's General Counsel sent what he understood were the KPMG Audit Report and "Canopy's audited financial statements" to his KPMG acquaintance.

33. KPMG quickly responded to Canopy and advised Canopy in a "Cease-and-Desist Demand" letter dated November 3, 2009, that Canopy used KPMG's name without KPMG's authorization and consent. Further, KPMG told Canopy that it: (1) had never been retained nor agreed to audit any of Canopy's financial statements; and (2) did not issue the audit opinion dated June 29, 2009. KPMG demanded, among other things, that Canopy "immediately CEASE AND DESIST from using the subject report and/or the unauthorized use of the KPMG name…."

34. KPMG did not prepare the KPMG Audit Report that Blackburn, and through him Canopy, gave to Spectrum and other investors in connection with the 2009 Canopy Offering, and neither reviewed nor audited "Canopy's audited financial statements" that Blackburn, and through him, Canopy, gave to investors in connection with the 2009 Canopy Offering.

**THE DEFENDANTS' ILL-GOTTEN GAINS**

35. Blackburn received $1.625 million in the 2009 Canopy Offering after redeeming 250,000 shares of common stock.

36. As part of the scheme, Blackburn also misappropriated at least $1.17 million from Canopy and deposited the proceeds into his personal bank accounts.

37. Canopy received the net proceeds from the 2009 Canopy Offering after the share redemptions and the costs associated with the offering were satisfied. On information and belief, there is approximately $8 million remaining from the 2009 Canopy Offering.

## **COUNT I**

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

38. Paragraphs 1 through 37 are realleged and incorporated herein by reference.

39. As is set forth more fully herein, Canopy and Blackburn, in the offer or sale of securities, by the use of the means and instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly employed devices, schemes or artifices to defraud.

40. Canopy and Blackburn knowingly or recklessly engaged in the fraudulent conduct described above.

41. By reason of the foregoing, Canopy and Blackburn violated Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)].

## **COUNT II**

### 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)]

42. Paragraphs 1 through 37 are realleged and incorporated herein by reference.

43. Canopy and Blackburn, in the offer or sale of securities, by the use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly have obtained money or property by means of untrue statements of material fact or 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; or engaged in a transaction,

practice, or course of business which operated or would operate as a fraud or deceit upon purchaser of securities.

44. By reason of the foregoing, Canopy and Blackburn violated 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

### 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]

45. Paragraphs 1 through 37 are realleged and incorporated by reference.

46. Canopy and Blackburn, in connection with the purchase or sale of securities, directly or indirectly, by the use of the means or instrumentalities of interstate commerce or of the mails: (a) used or employed a device, scheme, or artifice to defraud; (b) made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) and engaged in acts, practices, or courses of business which operated or would operate as a fraud and deceit upon the purchasers and prospective sellers of such securities.

47. Canopy and Blackburn acted knowingly or recklessly when they engaged in the fraudulent conduct described above.

48. By reason of the foregoing, Canopy and Blackburn violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5].

## RELIEF REQUESTED

WHEREFORE, the Commission requests that this Court enter a judgment:

A. Finding that Defendants Canopy and Blackburn committed the violations alleged against them herein;

B. Permanently enjoining and restraining Defendants Canopy and Blackburn from further violations of Sections 17(a)(1), (2) and (3) of the Securities Act [15 U.S.C. §§ 77q(a)(1), (2) and (3)] and Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5];

C. Ordering Defendants Canopy and Blackburn to pay as disgorgement all ill-gotten gains obtained through the 2009 Canopy Offering, plus prejudgment interest thereon;

D. Ordering Defendants Canopy and Blackburn to pay an appropriate civil monetary 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)];

E. Retaining jurisdiction over this action to implement and carry out the terms of all orders and decrees that may be entered and to entertain any suitable application or motion for additional relief within the jurisdiction of the Court; and

F. Granting such other and additional relief as this Court deems appropriate.

Respectfully Submitted,

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