

1 13. **Kirschner** resides in Delray Beach, Florida and is a former managing
2 member of Premiere and a current managing member of AEP. He and his business
3 partner founded Premiere and AEP, and hired and paid sales agents to, among other
4 things, solicit investors to purchase unregistered stock in TDI. On October 3, 2013,
5 in a related case, a court in the Southern District of Florida entered a consent
6 judgment which, among others things, enjoined Kirschner from further violations of
7 the registration and antifraud provisions of federal securities laws. SEC v. Advanced
8 Equity Partners, LLC et al., 13-cv-64321-RSR (S.D. Fla.).

11 **III. JURISDICTION AND VENUE**

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13 14. The Court has jurisdiction over this action pursuant to Sections 20(b),
14 20(d) and 22(a) of the Securities Act, 15 U.S.C. §§ 77t(b), 77t(d) and 77v(a); and
15 Sections 21(d), 21(e) and 27 of the Exchange Act, 15 U.S.C. §§ 78u(d), 78u(e) and
16 78aa.

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18 15. The Court has personal jurisdiction over the Defendants and venue is
19 proper in the Central District of California because many of the Defendants' acts
20 constituting violations of the Securities Act and the Exchange Act occurred in the
21 District. More specifically, the Defendants offered and sold securities and recruited
22 sales agents who offered and sold securities from offices in Valencia, California. In
23 addition, proceeds from the fraudulent sale of securities flowed in and transaction-
24 based payments to sales agents came out of bank accounts located in Valencia.
25 Moreover, Baker and Dritsas reside in the Central District of California.

1 16. In connection with the conduct alleged in this Complaint, the
2 Defendants, directly and indirectly, singly or in concert with others, made use of the
3 means or instrumentalities of interstate commerce, the means and instruments of
4 transportation or communication in interstate commerce, and the mails.
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6 **IV. FACTUAL ALLEGATIONS**

7 **A. TDI and Relationships with Premiere and AEP**

8 17. TDI was incorporated in 2010 to develop and market a portfolio of
9 products and inventions, including a laser-line system designed to mark first downs
10 in professional and collegiate football games, including the NFL. TDI states that its
11 laser system generates a green line on the field which is visible in the stadium to
12 players, fans and on television. TDI represents that use of its technology would
13 decrease the time used by officials to determine first downs and generate more time
14 to be sold to television advertisers.
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18 18. Sometime in 2010, TDI entered into an agreement with Kirschner and
19 his business partner to solicit investors to raise capital by selling TDI stock.
20 Kirschner and his business partner formed Premiere, and later AEP, which, among
21 other things, offered and sold unregistered TDI stock.
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23 19. Premiere and AEP entered into agreements with the Defendants to act
24 as sales agents to offer and sell TDI stock. Pursuant to these agreements, the
25 Defendants received transaction-based compensation in the form of commissions
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1 and other fees. The Defendants retained approximately 50% of investor proceeds as
2 commissions or other fees on their sale of TDI stock.

3 20. Baker and Dritsas were aware that Premiere or AEP were also taking a
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5 portion of investor proceeds as commissions or other fees.

6 21. Baker and Dritsas offered and sold TDI stock directly to investors and
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8 received transaction-based compensation in the form of undisclosed commissions
9 and other fees derived from investor proceeds.

10 22. In addition, Baker and Dritsas recruited, hired and supervised sales
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12 agents who were paid transaction-based compensation in connection with the offer
13 and sale of TDI stock from bank accounts Baker and or Dritsas controlled and held
14 by CalPacific.

15 23. Some of these sales agents served as self-described "fronters" whose
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17 primary responsibility was to use investor lead lists which consisted of contact
18 information of potential investors. Fronters made initial contact with potential
19 investors and referred those interested in TDI to Baker, Dritsas or others to complete
20 the stock purchase transaction.

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22 24. Baker or Dritsas earned a percentage of every stock purchase as a
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24 commission or fee, even on those sales made by the sales agents they hired.

25 25. From approximately July 2011 until February 2012, CalPacific received
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27 approximately \$234,000 from Premiere as compensation for the offer and sale of
28 TDI stock.

1 26. From February 2012 until November 2012, CalPacific received
2 approximately \$72,000 from AEP as compensation for the offer and sale of TDI
3 stock.
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5 **B. The Defendants' Solicitation of TDI Stock**

6 27. No registration statement was filed or in effect with the Commission
7 pursuant to the Securities Act with respect to the TDI stock that the Defendants and
8 their sales agents offered and sold, and no exemption from registration existed with
9 respect to these securities and transactions.
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11 28. The Defendants and their sales agents made material misrepresentations
12 to investors regarding commissions and others fees charged to investors and the
13 actual use of investor proceeds.
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15 29. Furthermore, the Defendants recklessly made specific representations to
16 investors in connection with the offer and sale of TDI stock without taking any basic
17 steps to verify the truthfulness of those representations. In some instances the
18 Defendants made representations regarding the expectant timing of and return on a
19 purported initial public offering ("IPO") of TDI stock. On other occasions, the
20 Defendants made representations regarding the status of negotiations with the NFL
21 and the purported use of TDI's first down laser system technology by certain teams
22 and stadiums, or in the 2013 Super Bowl.
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26 30. The Defendants and their sales agents instructed investors to send, and
27 investors did send, all payments for TDI stock transactions to bank accounts either
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1 Premiere or AEP held or controlled. Premiere and AEP used these bank accounts to
2 pay its sales agents transaction-based compensation, including CalPacific.

3 31. Neither the Defendants nor their sales agents were registered as broker-
4 dealers or associated with a registered broker-dealer while facilitating and
5 participating in these securities sales.
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7 **C. Material Misrepresentations and Omissions**

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9 32. In connection with the offering of securities during the relevant period,
10 the Defendants made the following material misrepresentations and omissions to
11 investors.
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13 1. **Undisclosed Exorbitant Commissions or Other Fees**

14 33. The Defendants made representations to investors about the use of
15 investor funds for TDI's business that were materially misleading because they
16 failed to disclose sale commissions and others fees that added up to approximately
17 50% of the funds raised from investors in connection with the offer and sale of
18 unregistered TDI stock.
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21 34. The Defendants also knew their sales agents materially misled investors
22 by failing to disclose to investors the exorbitant commissions and other fees paid
23 from the offering proceeds.
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25 35. For example, in November 2011, Baker told an investor that no more
26 than "ten cents on every dollar of investor money" would be used as a commission
27 or other fee. Dritsas told the same investor that he would not charge any
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1 commission for a trade – “not even a dime” when, in fact, CalPacific received 50%
2 of that investor’s proceeds as commissions or other fees in connection with the offer
3 and sale of TDI stock.

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5 2. Use of Proceeds

6 36. The Defendants or their sales agents also misrepresented the actual use
7 of investor proceeds.

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9 37. For example, in November 2011, Baker told an investor that 90 percent
10 of investor proceeds would go “directly to the business.” Dritsas told this same
11 investor that all of the money raised was being used to install the laser-line system in
12 the 32 stadiums of the NFL and a portion would be used for TDI’s cash reserves.

13
14 38. These representations were false. At the time of these representations,
15 Dritsas and Baker were receiving 50% of investor proceeds as commissions or other
16 fees.
17

18 3. Promises about Pending IPO and Investment Returns

19 39. The Defendants and their sales agents recklessly made specific
20 representations to investors concerning the timing of and expected return on a
21 purported TDI IPO without taking any basic steps to verify the truthfulness of those
22 representations.
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25 40. For example, in November 2011 Baker told an investor TDI would go
26 public within seven months – in about May 2012. Dritsas promised this same
27 investor that TDI would go public within a year of November 2011, but was
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1 confident it would be within six to eight months. At that time, TDI had no
2 immediate plans to go public and there was no basis for these statements.

3 41. In addition, the Defendants and their sales agents represented that the
4 value of TDI stock would increase significantly from \$2.50 per share as a result of
5 the purported IPO. For example, Dritsas told an investor that TDI already had a
6 book share value of \$8.50 and that the expected opening share price would be
7 between \$8.00 and \$10.00. Dritsas had no basis for these statements and failed to
8 take any basic steps to verify the truthfulness of these representations.
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11 4. Use of the Technology

12 42. Baker and Dritsas also recklessly made specific representations to
13 investors regarding the status of negotiations with, and the use of the technology by,
14 the NFL.
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16 43. For example, Baker told at least one investor that “now, currently we
17 [TDI] split those revenues, the advertising revenues with the NFL 50/50.” Dritsas
18 told the same investor the NFL already had agreed to use TDI’s technology during
19 the NFL’s 2012 mini-camp. At that time, TDI had no agreement with the NFL, and
20 Baker and Dritsas took no basic steps to verify the truthfulness of those
21 representations.
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COUNT I

Violation of Sections 5(a) and 5(c) of the Securities Act of 1933

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3 44. The Commission realleges and incorporates paragraphs 1 through 31 of
4 this Complaint.
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6 45. No registration statement was filed or in effect with the Commission
7 pursuant to the Securities Act with respect to the securities and transactions
8 described in this Complaint and no exemption from registration existed with respect
9 to these securities and transactions.
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11 46. As described above, the Defendants directly or indirectly: (a) made use
12 of the means or instruments of transportation or communication in interstate
13 commerce or of the mails to sell, through the use or medium of any prospectus or
14 otherwise, securities as to which no registration statement was in effect; (b) for the
15 purpose of sale or delivery after sale, carried or caused to be carried through the
16 mails or in interstate commerce, by means or instruments of transportation, securities
17 as to which no registration statement was in effect; or (c) made use of means or
18 instruments of transportation or communication in interstate commerce or of the
19 mails to offer to sell, through the use or medium of a prospectus or otherwise,
20 securities as to which no registration statement has been filed.
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22 47. By reasons of the foregoing, the Defendants violated, and, unless
23 restrained and enjoined, are reasonably likely to continue to violate, Sections 5(a)
24 and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a) and 77e(c).
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COUNT II

Fraud in Violation of Section 17(a)(1) of the Securities Act

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3 48. The Commission realleges and incorporates paragraphs 1 through 43 of
4 this Complaint.
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6 49. From no later than August 2011 until at least November 2012, the
7 Defendants directly and indirectly, by use of the means or instruments of
8 transportation or communication in interstate commerce and by use of the mails, in
9 the offer or sale of securities, as described in this complaint, knowingly, willfully or
10 recklessly employed devices, schemes or artifices to defraud.
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13 50. By reason of the foregoing, the Defendants directly and indirectly
14 violated, and, unless enjoined, are reasonably likely to continue to violate, Section
15 17(a)(1) of the Securities Act, 15 U.S.C. § 77q(a)(1).
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COUNT III

Fraud in Violation of Sections 17(a)(2) and 17(a)(3) of the Securities Act

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19 51. The Commission realleges and incorporates paragraphs 1 through 43 of
20 this Complaint.
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22 52. From no later than August 2011 until at least November 2012, the
23 Defendants directly and indirectly, by use of the means or instruments of
24 transportation or communication in interstate commerce and by the use of the mails,
25 in the offer or sale of securities: (a) obtained money or property by means of untrue
26 statements of material facts and omissions to state material facts necessary to make
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1 the statements made, in the light of the circumstances under which they were made,
2 not misleading; or (b) engaged in transactions, practices and courses of business
3 which operated and will operate as a fraud or deceit upon purchasers and prospective
4 purchasers of such securities.
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6 53. By reason of the foregoing, the Defendants directly and indirectly
7 violated, and, unless enjoined, are reasonably likely to continue to violate, Sections
8 17(a)(2) and 17(a)(3) of the Securities Act, 15 U.S.C. §§ 77q(a)(2) and 77q(a)(3).
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10 **COUNT IV**

11 **Fraud In Violation of Section 10(b) and Rule 10b-5 of the Exchange Act**

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13 54. The Commission realleges and incorporates paragraphs 1 through 43 of
14 this Complaint.

15 55. From no later than August 2011 until at least November 2012, the
16 Defendants directly and indirectly, by use of the means and instrumentalities of
17 interstate commerce, and of the mails in connection with the purchase or sale of the
18 securities, as described in this complaint, knowingly, willfully or recklessly; (1)
19 employed devices, schemes or artifices to defraud; (2) made untrue statements of
20 material facts and omitted to state material facts necessary in order to make the
21 statements made, in the light of the circumstances under which they were made, not
22 misleading; or (3) engaged in acts, practices and courses of business, which operated
23 as a fraud upon the purchasers of such securities and will operate as a fraud upon the
24 purchasers of such securities.
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1 56. By reasons of the foregoing, the Defendants directly or indirectly
2 violated, and, unless enjoined, are reasonably likely to continue to violate, Section
3 10(b) and Rule 10b-5 of the Exchange Act, 15 U.S.C. § 78j(b), and 17 C.F.R. §
4 240.10b-5.
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6 **COUNT V**

7 **Violation of Section 15(a) of the Exchange Act**

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9 57. The Commission realleges and incorporates paragraphs 1 through 38 of
10 this Complaint.

11 58. From no later than August 2011 until at least November 2012, the
12 Defendants, while acting as or associated with a broker or dealer, effected
13 transactions in, or induced or attempted to induce the purchase or sale of, securities
14 while they were not registered with the Commission as a broker or dealer or when
15 they were not associated with an entity registered with the commission as a broker-
16 dealer.
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19 59. By reasons of the foregoing, the Defendants directly or indirectly
20 violated, and, unless enjoined, are reasonably likely to continue to violate, Section
21 15(a) of the Exchange Act, 15 U.S.C. § 78o(a).
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RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests the Court:

I.

Declaratory Relief

Declare, determine and find that the Defendants have committed the violations of the federal securities laws alleged in this Complaint.

II.

Permanent Injunctive Relief

Issue a Permanent Injunction restraining and enjoining the Defendants, their officers, agents, servants, employees, attorneys, representatives and all persons in active concert or participation with them, and each of them, from violating Sections 5(a), 5(c), 17(a)(1), (2) and (3) of the Securities Act, and Sections 10(b) and 15(a) and Rule 10b-5 of the Exchange Act.

III.

Disgorgement and Prejudgment Interest

Issue an order directing the Defendants to disgorge all ill-gotten gains as a result of the conduct alleged in the complaint, together with prejudgment interest on all disgorgement amounts.

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IV.

Penalties

Issue an Order directing each of the Defendants to pay a civil money penalty pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d).

V.

Penny Stock Bar

Issue an Order barring Baker and Dritsas from participating in any offering of a penny stock, pursuant to Section 20(g) of the Securities Act, 15 U.S.C. § 77t(g), and Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d), for the violations alleged in this Complaint.

VI.

Further Relief

Grant such other and further relief as may be necessary and appropriate.

VII.


Retention of Jurisdiction

Further, the Commission respectfully requests the Court retain jurisdiction over this action in order to implement and carry out the terms of all orders and

1 decrees that may be entered or to entertain any suitable application or motion by the
2 Commission for additional relief within the jurisdiction of this Court.
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5 Respectfully submitted,

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7 July 23, 2014


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Complaints and Other Initiating Documents

[2:14-cv-05754 Securities and Exchange Commission v. CalPacific Equity Group, LLC et al](#)

UNITED STATES DISTRICT COURT for the CENTRAL DISTRICT OF CALIFORNIA

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Case Number: [2:14-cv-05754](#)

Filer: Securities and Exchange Commission

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Docket Text:

COMPLAINT No Fee Required - US Government, filed by Plaintiff Securities and Exchange Commission. (Attorney Donald W Searles added to party Securities and Exchange Commission(pty:pla))(Searles, Donald)

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