

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

AJN INVESTMENTS, LLC and
JASON ADAM OGDEN,

Defendants.

C.A. No. 0:16-cv-63036

COMPLAINT

For its Complaint against Defendants AJN Investments, LLC (“AJN”) and Jason Adam Ogden, Plaintiff Securities and Exchange Commission (“SEC” or the “Commission”) alleges as follows:

SUMMARY

1. Between October 2011 and April 2015, AJN and its then CEO Jason Adam Ogden raised approximately \$6.7 million from 14 foreign investors through the AJN EB-5 investment offering. The EB-5 immigrant investor program provides a path to permanent residency for foreign investors who invest in a commercial enterprise that creates at least 10 jobs for American workers through either direct employment (*e.g.* store employees) or indirect job stimulation (*e.g.* store construction).

2. AJN was formed for the purpose of using EB-5 investor money to own and operate stores franchised from two other business controlled by Ogden: Juiceblendz International, Inc. (“Juiceblendz”) and Yoblendz International, LLC (“Yoblendz”). In return for

their financial contribution, the investors were told that their money would be used to build and operate Juiceblendz and Yoblendz stores that would generate a 5% preferred return and other cash distributions as well as create jobs which, according to an economic impact analysis report attached to the offering materials, were expected to be sufficient to qualify for an EB-5 visa and ultimately a green card.

3. Instead, Ogden used investor funds for various undisclosed purposes, including funding lawsuit settlements and loans unrelated to AJN, paying management fees to Seekem, Inc. (the Ogden-controlled managing member of AJN), and funding AJN payroll and other operating expenses. Ogden also changed AJN's business plan mid-stream to focus on building less costly, less profitable kiosks, but continued to solicit investors with the stale offering materials and, later, a revised economic impact analysis based on untrue cost and revenue assumptions. By failing to use investor funds for construction costs as contemplated by the offering materials and by failing to meet the unrealistic revenue projections underlying the economic impact analyses, Ogden jeopardized AJN investors' ability to create the necessary jobs to obtain a green card under the EB-5 program.

4. In August 2016, to resolve a private arbitration, Ogden ceased operating AJN, Yoblendz and Juiceblendz and transferred all of his shares in those entities (held by Blendz Holding, LLC) to a third party who had no role in the conduct alleged herein, and who has assumed control of the businesses and replaced Seekem as its managing member. Ogden has no ongoing control over the entities and has given up any interests in, or claims against, the entities and investors.

5. By committing the acts alleged in this Complaint, Defendants Ogden and AJN directly and indirectly engaged in, and unless restrained and enjoined by the Court will continue

to engage in, acts, transactions, practices, and courses of business that violate securities-registration and anti-fraud provisions of the federal securities laws, specifically Sections 5(a), 5(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].

6. The SEC brings this action seeking permanent injunctions as to each Defendant, disgorgement plus prejudgment interest and a civil penalty as to Defendant Ogden, and all other equitable and ancillary relief to which the Court determines the SEC is entitled.

JURISDICTION AND VENUE

7. The SEC brings this action under Securities Act Section 20(b) [15 U.S.C. §77t(b)] and Exchange Act Section 21(d) [15 U.S.C. §78u(d)], seeking to restrain and enjoin the Defendants permanently from engaging in such acts and practices as alleged herein.

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

9. Each of the limited liability company membership interests offered and sold as described in this complaint is a “security” as that term is defined under Securities Act Section 2(a)(1) [15 U.S. C. § 77b(a)(1)] and Exchange Act Section 3(a)(10) [5 U.S. C. § 78c(a)(10)].

10. The Defendants, directly and indirectly, made use of the mails or of the means and instrumentalities of interstate commerce in connection with the transactions, acts, practices, and courses of business described in this complaint.

11. Venue is proper because Defendants reside in, and a substantial part of the events, acts, and omissions giving rise to the claims occurred in, the Southern District of Florida.

PARTIES

12. Plaintiff SEC is an agency of the United States government charged with regulating the country's securities industry and prosecuting civil and administrative cases to enforce the country's securities laws.

13. Defendant AJN is a limited liability company organized under Florida law. During all times relevant to the conduct alleged herein, AJN was headquartered in Weston, Broward County, Florida, and as of August 2016 it is headquartered in Sugarland, Texas.

14. Defendant Ogden is a natural person residing in Southwest Ranches, Broward County, Florida.

STATEMENT OF FACTS

I. The EB-5 Program

15. The EB-5 Immigrant Investor Pilot Program was created by Congress in 1990 to stimulate the U.S. economy through job creation and capital investment by foreign investors. Under the program, which is administered by the U.S. Citizenship & Immigration Service (“USCIS”), foreign nationals are eligible to petition USCIS for a green card when they can show they have 1) invested \$500,000 in a high unemployment or rural area (or \$1 million in any area), 2) in a commercial enterprise, 3) that carries a risk of loss, and 4) creates at least 10 full-time jobs for U.S. workers. Job creation can be met through “direct jobs”, such as jobs for employees who work directly for the business created by the investment, or “indirect jobs”, which are jobs typically created by businesses that supply services or goods to the EB-5 business, such as construction services. From the investor’s perspective, in addition to the potential financial return, one of the most important aspects of an EB-5 investment is typically the ability for the investor to obtain a green card.

16. After making the \$500,000 investment, the foreign investor petitions USCIS for a conditional green card, which is valid for two years. The investor submits an EB-5 economic report as part of his initial green card application that outlines how many jobs the investment is projected to create and whether those jobs are direct or indirect. Indirect jobs are estimated using a USCIS approved economic methodology, such as the RIMS II methodology created by the Bureau of Economic Analysis. To estimate the number of jobs created, the RIMS II methodology takes 1) projected costs, such as construction costs for stores, associated with the investment and/or projected revenues resulting from the investment, and 2) applies an employment multiplier that takes into account the proposed project's location and industry.

17. At the end of the two year conditional period, the EB-5 investor requests that USCIS issue a permanent green card. In determining whether to grant the request for a permanent green card, USCIS considers, among other things, whether the actual project costs and/or revenues resulting from the EB-5 investment were sufficient to create the required 10 jobs.

II. The AJN Offering

18. In AJN's Confidential Private Placement Memorandum ("PPM"), AJN and Ogden told investors that in exchange for the \$550,000 subscription price, each investor would receive one unit of limited liability company membership interest in AJN, a 5% annual return on investment, and distributions of cash available from a specific Juiceblendz smoothie or Yoblendz frozen yogurt franchise store. The PPM also stated that each investor would have the right to consult with the managing member regarding the location of their store, and the managing member would be responsible for maintaining separate books of account for each store in order to track that store's financial performance.

19. Pursuant to the terms of the PPM, Seekem, as managing member of AJN, was entitled to receive a one-time \$50,000 administrative fee per investor, a 50% membership interest in AJN, and an annual management fee.

20. The units of limited liability company membership interests offered by AJN are investment contracts and thus securities as defined by section 2(a)(1) of the Securities Act and Section 3(a)(10) of the Exchange Act because the AJN investors invested money in a common enterprise with the expectation of profits derived solely from the efforts of Defendants.

21. The AJN EB-5 offering was not registered with the Commission and no registration exemption was applicable.

22. Potential investors were identified through a number of avenues, including conferences and road shows, networking with immigration attorneys and brokers (who posted AJN-approved marketing materials on the internet), and subscribing to a website designed to match EB-5 offerings and investors. While all investors were asked to sign the subscription agreement outside the country, several investors came to Florida for a visit and sales meeting and Ogden knew that at least two investors were living in the United States before they became AJN investors. The AJN investments were not finalized until the investment documents and funds were received by AJN in the United States.

23. Although the managing member reserved the right to reallocate funds to the extent “reasonably necessary,” the PPM summarized the overall projected use of proceeds as follows:

Recipient of Funds	Amount	Purpose
Seekem	\$50,000	Administrative fee intended to covers initial expenses associated with the creation of AJN and legal and promotional fees.
AJN	\$75,000	Working capital
	\$25,000	Reserve management services fee paid to Seekem
Juiceblendz	\$400,000	Store construction fee to cover store construction, equipping and opening expenses.

24. The allocation of \$400,000 to store construction was of particular importance for two reasons. First, under the RIMS II methodology, the basis for estimating how many jobs a project will create is the amount of the projected construction cost, along with projected revenues. The representation to USCIS that at least 10 jobs per investor would be created by the AJN investment was based on the \$400,000 allocation. Second, the \$400,000 is the largest component (80 percent) of the \$500,000 required to be invested to qualify for the EB-5 program. The construction cost estimate in the PPM was purportedly based on Ogden's experience opening in-line franchise stores and was not tied to meeting the \$500,000 EB-5 requirement. The Franchise Disclosure Documents attached to the PPM, however, indicate that at that time the estimated opening costs were between \$94,750 and \$293,000 for a Juiceblendz franchise store and between \$109,550 and \$448,000 for a Yoblendz franchise store, and Ogden had never opened a store that cost \$400,000 or more to build.

25. The PPM also included a 32-page AJN five-year financial projection model, including a five-year profit and loss statement for AJN, and financial projections for a single Yoblendz and Juiceblendz store, which showed projected revenues after the second year of \$819,000 for Yoblendz and \$506,000 for Juiceblendz. Like the construction cost, a store's

revenue is a critical component of the RIMS II methodology used to calculate job creation and

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essential to determining whether the foreign investor has met the threshold of creating 10 jobs for permanent residency under the EB-5 program after two years.

26. Finally, the PPM included a 47-page report that evaluated the economic impact of developing and operating Yoblendz and Juiceblendz stores in certain counties of Florida. The report used the RIMS II methodology to estimate the number of indirect jobs created per store. Using an average construction cost per store of \$400,000 (the exact dollar amount estimated for store construction per the PPM) and average store revenues of \$785,000 (a number in the range of estimated revenues for a Yoblendz or Juiceblendz store), the report concluded that just over 24 jobs would be created from the construction and operation of each store. Thus, according to the report attached to the offering materials, the AJN EB-5 investor should have easily exceeded the required minimum of 10 jobs created.

III. Business Model Changes From Stores to Smaller, Less Costly, Less Profitable Kiosk Franchises

27. Ogden accepted AJN's first foreign investment in October 2011 and continued to solicit investments through at least April 2015. By late 2013, AJN's business model changed, apparently due to a downturn in the frozen yogurt market. Instead of constructing Juiceblendz and Yoblendz stores in strip malls, Ogden sought to focus on sports arena and university campus markets, which required smaller kiosk-type stores.

28. Kiosks were significantly cheaper to build than stores. Despite knowing that the actual construction costs were significantly less, Ogden kept paying Juiceblendz the full \$400,000 construction services fee.

29. Due to the limited hours of operation, seasonality, and restricted customer access, the arena and university kiosks were also projected to produce less revenue than a traditional store.

30. Despite the change in business model, Ogden never updated the PPM. Therefore, four investors who invested in 2014 and 2015 did so based on the original PPM, containing stale cost and revenue projections.

31. While the PPM was never updated, the economic report was updated in April 2015, purportedly to reflect the change in business model from stores to kiosks. AJN provided the updated report to at least two investors. However, the updated report misrepresented the construction cost and profit projections for kiosks, and as such misrepresented AJN's ability to create the requisite number of jobs for an EB-5 visa. First, with respect to construction costs, the updated report assumed that average construction cost for a kiosk is \$400,000 – the same number estimated in the original economic report and the PPM, and a number unsupported by the new business model. Second, the updated report assumed average revenues, purportedly based on actual 2014 kiosk revenues, of \$221,943 per kiosk. For stores, the updated report assumed that store revenues were twice that as kiosks, or \$443,886. In fact, the maximum 2014 revenue for any AJN store or kiosk was \$146,916, and average 2014 revenue for all stores and kiosks was \$73,407, well below the numbers stated in the updated report. As a result of these revised assumptions, the economic report reduced the projected jobs created per store from 24 to 15. Had the real construction costs and revenue projections been used, the job creation projection would have been even lower, likely below the EB-5 program's 10 job threshold.

32. In addition to switching from stores to kiosks, the business circumstances changed in other ways that impacted the amount of investors' capital that was being used to create jobs. For example, in at least one location, a university was so eager to attract business to campus that it paid for the majority of the build-out itself. In two other instances, instead of building new locations for the investors, AJN assigned two existing corporate-owned stores to new AJN

investors, reclassified the expenses on the books, and spent just a few thousand dollars on renovations.

IV. Defendants' Misstatements

33. Ogden, individually and through AJN, made material misstatements that led investors to believe investing in AJN would be financially beneficial and afford them an opportunity to receive EB-5 visas.

34. All investors relied on false statements in the PPM that the majority of investor funds would be used by Juiceblendz to construct job-creating franchise stores as outlined in the offering documents, not to settle unrelated loans and lawsuits or to pay for management fees and operating expenses.

35. Investors who joined AJN after the business model changed and were given an outdated PPM and economic impact report were also misled by stale information related to the construction costs and financial projection estimates for the store type assigned to them (i.e., a kiosk).

36. The last two investors, who received a revised economic impact report, were misled by the highly inflated construction costs and revenue estimates that had no relation to the known facts at the time.

37. The misstatements regarding the use of funds and projected costs and revenues were material. The misstatements had a direct impact on the investors' ability to evaluate whether or not their investments would be financially beneficial or would ultimately qualify for a green card, which is material to the typical EB-5 investor.

38. Defendants knew or were severely reckless in not knowing that the PPM statements regarding use of funds were untrue at the outset, that the business model changed over

time resulting in a stale PPM, and that the revised economic report contained false assumptions.

V. Defendants Misappropriated Investor Funds

39. Starting immediately after the first investor joined AJN in October 2011 and continuing through at least July 2015, Ogden misappropriated investor funds by using them for purposes other than those disclosed in the PPM. Ogden's actions were not "reasonably necessary" reallocations as contemplated by the PPM. Rather, Ogden completely removed money from the AJN project and used it for unrelated expenses to the detriment of both the investors' financial position and EB-5 visa eligibility. Ogden's control over all involved entities – AJN, Seekem, Juiceblendz, and Yobblendz – allowed him to move investor money around as he saw fit without question.

40. Ogden used at least \$2 million of the AJN investor funds or funds comingled with investor funds to pay lawsuit expenses, lawsuit settlements, and loans, all of which were unrelated to AJN. The lawsuit expenses and lawsuit settlements were mostly related to disputes between Ogden's other companies (Juiceblendz or Yobblendz) and disgruntled franchisees.

41. Ogden also used investor funds to pay for management fees purportedly owed to Seekem, an entity that he also owned. Under the terms of the investment, Seekem was entitled to an annual management fee equal to the greater of five percent of (1) each store's gross volume of business or (2) each member's capital contribution. According to the PPM's use of funds chart, \$25,000 of the initial investment should have been reserved in anticipation of payment of these management fees. However, Ogden never directed AJN to reserve for these management fees; rather, Ogden spent the money on the unrelated lawsuit expenses and loans described above. To pay Seekem's outstanding management fees, Ogden misappropriated Investor 11's funds by causing AJN to transfer only \$152,000 (instead of the usual \$400,000) of Investor 11's \$550,000

investment to Juiceblendz for construction fees. Unbeknownst to Investor 11, the remainder was retained at AJN to pay Seekem. Most importantly, those funds were not invested in a job creating enterprise on behalf of Investor 11 as stated in the PPM and as required under the EB-5 program.

42. Finally, in order to fund operating expenses for AJN (including payroll), Ogden transferred money from Juiceblendz accounts, which contained investors' construction cost fees, back to AJN, such that those funds were no longer invested in a job creating enterprise.

43. In addition to misappropriating investor funds to cover unrelated or undisclosed business expenses and liabilities, Ogden used at least \$1,008,681 of the investors' funds for his own personal benefit, including for undisclosed cash compensation, meals and entertainment, and to repay a personal loan.

44. Overall, even though Ogden transferred \$4.5 million from AJN to Juiceblendz for purported construction costs, only \$1.25 million was spent on store construction (or just over \$700,000 excluding the reclassified expenses described in paragraph 32). Moreover, at least six of the investors who invested in 2012 and 2013, prior to the change in business model from store to kiosk, still did not have either a store or a kiosk as of late 2015, and there was no money left for kiosk construction build-outs because Ogden had already used it for the various non-AJN purposes described above. Moreover, it is highly unlikely such kiosks would meet the EB-5 requirements for job creation.

45. By misappropriating money the investors believed was being used for store construction to pay for unrelated lawsuits and loans, management fees, and operational expenses, Ogden, individually and through AJN, knowingly employed a scheme to defraud investors.

46. The misappropriation of funds is material to investors because, among other reasons, it has been so extensive that Ogden and AJN have not had sufficient funds to complete construction of the stores contemplated in the offering materials.

FIRST CLAIM FOR RELIEF
Violations of Exchange Act Section 10(b) and Exchange Act Rule 10b-5

47. Plaintiff SEC re-alleges and incorporates paragraphs 1 through 46 of this Complaint by reference as if set forth verbatim in this Claim.

48. Defendants Ogden and AJN directly or indirectly, singly or in concert with others, in connection with the purchase and sale of securities, by use of the means and instrumentalities of interstate commerce or by use of the mails, have (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material facts and have 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 operated as a fraud and deceit upon purchasers, prospective purchasers, and other persons.

49. Defendants Ogden and AJN engaged in the above-referenced conduct and made the above-referenced untrue and misleading statements knowingly or with severe recklessness.

50. By reason of the foregoing, Defendants Ogden and AJN 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 [17 C.F.R. § 240.10b-5] thereunder.

SECOND CLAIM FOR RELIEF
Violations of Securities Act Section 17(a)

51. Plaintiff SEC re-alleges and incorporates paragraphs 1 through 46 of this Complaint by reference as if set forth verbatim in this Claim.

52. By engaging in the acts and conduct alleged herein, Defendants Ogden and AJN directly or indirectly, singly or in concert with others, in the offer and sale of securities, by use of the means and instruments of transportation and communication in interstate commerce or by use of the mails, have (a) employed devices, schemes, or artifices to defraud; (b) obtained money or property by means of untrue statements of material fact or 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 (c) engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit.

53. With respect to violations of Securities Act Sections 17(a)(2) and (3), Defendants Ogden and AJN were at least negligent in their conduct and in the untrue and misleading statements alleged herein. With respect to violations of Securities Act Section 17(a)(1), Defendants Ogden and AJN engaged in the referenced conduct and made the referenced untrue and misleading statements knowingly or with severe recklessness.

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

THIRD CLAIM
Violations of Securities Act Sections 5(a) and 5(c)

55. Plaintiff SEC re-alleges and incorporates paragraphs 1 through 46 of this Complaint by reference as if set forth verbatim in this Claim.

56. Defendants Ogden and AJN, directly or indirectly, singly or in concert with others, have offered to sell, sold, and delivered after sale, certain securities and have (a) made use of the means and instruments of transportation and communication in interstate commerce and of the mails to sell securities, through the use of email, interstate carrier, brokerage transactions, or otherwise; (b) carried and caused to be carried through the mails and in interstate

commerce by the means and instruments of transportation such securities for the purpose of sale and for delivery after sale; and (c) made use of the means or instruments of transportation and communication in interstate commerce or of the mails to offer to sell such securities.

57. By reason of the foregoing, Defendants Ogden and AJN have violated, and unless enjoined will continue to violate, Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e (c)].

PRAYER FOR RELIEF

WHEREFORE, the SEC respectfully requests that the Court enter a judgment:

I.

Permanently enjoining Defendants Ogden and AJN from future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act [15 U.S.C. §§ 77e(a), 77e(c), and 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.

Permanently enjoining Defendant Ogden from directly or indirectly, including but not limited to through any entity owned by or controlled by Defendant Ogden, soliciting or accepting funds from any person or entity for any unregistered offering of securities;

III.

Ordering Defendant Ogden to disgorge ill-gotten gains from the conduct alleged herein plus prejudgment interest thereon;

IV.

Imposing a civil penalty against Defendant Ogden 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)] for violations of the federal securities laws as alleged herein; and

V.

Imposing such other and further relief as the SEC may show itself entitled.

Dated: December 28, 2016

Respectfully submitted,

s/Timothy L. Evans

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