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8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 OAKLAND DIVISION

11  
12 SECURITIES AND EXCHANGE COMMISSION,

13 Plaintiff,

14 vs.

15 CHICAGO D&P, INC., PATRICIA MORGEN and  
16 SHALOM GIBSON,

17 Defendants,

18 and

19 REALTOPIA, INC.

20 Relief Defendant.  
21

Case No. \_\_\_\_\_

COMPLAINT

22  
23 Plaintiff Securities and Exchange Commission (“Commission”) alleges:

24 **JURISDICTION**

25 1. This Court has jurisdiction over this action pursuant to Sections 20(d)(1) and 22(a) of  
26 the Securities Act of 1933 (the “Securities Act”) [15 U.S.C. §§ 77t(d)(1) and 77v(a)] and Sections  
27 21(d)(3), 21(e) and 27 of the Securities Exchange Act of 1934 (the “Exchange Act”) [15 U.S.C. §§  
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1 78u(d)(3), 78u(e) and 78aa]. Defendants, directly or indirectly, have made use of the means and  
2 instrumentalities of interstate commerce or of the mails in connection with the acts, transactions,  
3 practices and courses of business alleged in this Complaint.

4 2. Venue in this District is proper pursuant to Section 22(a) of the Securities Act  
5 [15 U.S.C. §77v(a)] and Section 27 of the Exchange Act [15 U.S.C. §78aa] because the defendants  
6 are located in the Northern District of California and a substantial portion of the conduct alleged in  
7 this Complaint occurred within the Northern District of California.

8 3. Assignment to the Oakland Division of this Court is proper because a substantial part  
9 of the events or omissions that give rise to the claim occurred in Alameda, Contra Costa, and San  
10 Mateo counties.

### 11 **SUMMARY OF THE ACTION**

12 4. This matter involves fraud in the offer and sale of unregistered securities by  
13 defendants Chicago D&P, Inc., Patricia (“Pat”) Morgen, and Shalom Gibson. From at least January  
14 2001, Morgen and Chicago D&P have been soliciting investments in a purported real estate financing  
15 venture referred to as the Investor Funding Group.<sup>1</sup> Chicago D&P claims to offer “phenomenal”  
16 rates of return of as much as 36% (or more) annually. The Company claims it will use investor funds  
17 to “close Chicago D&P’s property acquisitions in-house, thereby avoiding the necessity of obtaining  
18 outside funding.” This purportedly “enables [the Company’s] investors, and not outside lenders, to  
19 recapture the rate of return on Chicago D&P’s real estate acquisitions.”

20 5. The offering materials include a chart showing the “exact profits” to be paid to  
21 investors. The chart states: “Over a 6-month period, you have made a cumulative profit of 18% on  
22 your initial investment. Every 6 months, your 18% compounds. After 1 year, you are at 36% +  
23 bonuses and it keeps growing.” The offering materials make no reference to any potential risk to  
24 one’s investment. Rather, the materials promise investors “a safe, yet rather aggressive profit” and a  
25 “rare win-win opportunity” bringing “incredible returns.”

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27 <sup>1</sup> The Chicago D&P offering materials represent that the company was founded by Morgen in  
28 1998, but the Commission is aware only of bank records showing that the bank account into which  
investors deposited funds was opened (and received its first investor deposit) in January 2001.

1           6.       Since January 2001, defendants have raised at least \$10 million from several hundred  
2 investors. From at least October 16, 2003 through April 14, 2004 alone, defendants raised  
3 approximately \$6.4 million from more than 200 investors (or groups of investors). Defendants  
4 continue to raise money from investors and, in fact, defendants raised approximately \$2 million from  
5 investors in the last month alone.

6           7.       In their offering materials provided to investors, defendants falsely represent that  
7 investors are purchasing investments in a real estate acquisition company “for the purpose of funding  
8 Chicago D&P, Inc. Real Estate Acquisitions,” and that those who invest between \$10,000 and  
9 \$100,000 in six month increments will receive a rate of return of from 18% to 27% based on profits  
10 generated from Chicago D&P’s real estate acquisition business. Moreover, defendants promise “the  
11 opportunity for increased returns as investors are offered the opportunity to rollover their investment  
12 for an additional six months and the end of the original term.” Defendants also promise “an  
13 additional bonus of 6% for referring other individuals....” The offering materials additionally  
14 represent that investors will “share in the growth and profits of the company’s real estate endeavors.”

15           8.       All of these claims are false. Chicago D&P primarily uses investment proceeds  
16 obtained from investors for improper and undisclosed purposes. From October 16, 2003 to April 14,  
17 2004, defendants raised approximately \$6.4 million from investors. During the same time period,  
18 defendants raised at most \$600,000 from non-investor sources, but paid approximately \$3.2 million  
19 in so-called profits to investors. The alleged profit payments to existing investors were funded  
20 almost entirely by money received from new investors to the scheme. Moreover, defendants diverted  
21 a significant portion of investor funds – several hundred thousand dollars over the last six months  
22 alone – into cash and personal expenses. In addition to at least \$50,000 in cash withdrawals from  
23 Chicago D&P’s main account, defendants used a debit card to make payments to clothes stores, spas  
24 and for other personal items. Defendants also used approximately \$230,000 over the past six months  
25 to pay defendant Morgen’s American Express credit card bills.

26           9.       By offering to sell and selling unregistered securities, the defendants violated Sections  
27 5(a), and 5(c) and 17(a) of the Securities Act [15 U.S.C. §§ 77e(a), 77e(c) and 77q(a)]. By making  
28 material misstatements and omissions in the offer and sale of securities, the defendants violated

1 Section 17(a) of the Securities Act, and Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and  
2 Rule 10b-5 [17 C.F.R. §§ 240.10b-5] thereunder. The Commission seeks an injunction against future  
3 conduct that violates the securities laws, disgorgement of ill-gotten gains, and civil money penalties.  
4 As to Chicago D&P, the Commission also seeks the appointment of a Receiver to oversee the  
5 operations of Chicago D&P and all of its subsidiaries, including the receipt of any rent payments to  
6 the entities and the disbursement of interest payments to investors. The Commission further seeks  
7 disgorgement of all investor funds disbursed to the relief defendant.

#### 8 **AUTHORITY TO BRING THIS ACTION**

9 10. The Commission brings this action pursuant to Sections 20(b) and 20(d) of the  
10 Securities Act [15 U.S.C. §§ 77t(b) and 77t(d)] and Sections 21(d) and 21(e) of the Exchange Act  
11 [15 U.S.C. §§ 78u(d) and 78u(e)].

#### 12 **DEFENDANTS**

13 11. Defendant Chicago D&P, Inc. is incorporated in the State of Nevada and primarily  
14 conducts business in the San Francisco Bay Area and Reno, Nevada.

15 12. Defendant Patricia Morgen, age 57, is a resident of Emeryville, California. Morgen is  
16 Chicago D&P's Founder, President and Senior Vice President of Acquisitions.

17 13. Defendant Shalom Gibson is a resident of either Berkeley, California or Reno,  
18 Nevada. Gibson is a board member of Chicago D&P, and the President and Secretary of Chicago  
19 D&P's subsidiary or affiliate, Realtopia, Inc. Gibson controlled several of the Chicago D&P bank  
20 accounts, as well as that of Realtopia.

#### 21 **RELIEF DEFENDANT**

22 14. Relief defendant Realtopia, Inc. is incorporated in the State of Nevada and is a  
23 subsidiary of Chicago D&P. Realtopia is controlled by Gibson and Morgen.

#### 24 **FACTUAL ALLEGATIONS**

25 15. Beginning in or about October 2003, defendants offered and sold securities in the form  
26 of investments in a purported funding group to finance real estate acquisitions.

27 16. No registration statement was filed with the Commission or was in effect with respect  
28 to the securities that Chicago D&P, Morgen and Gibson offered and sold.

1           17.     Potential investors are asked to execute a “Chicago Development & Planning  
2 Investment Agreement” (the “Agreement”), which Morgen executes on behalf of Chicago D&P. The  
3 Agreement sets forth the rate of return promised to the investor for the initial investment period, and  
4 provides that the investment may be rolled over at the end of the period. The Agreement states that  
5 “Chicago D&P, Inc. will use these funds in whatever way is necessary to operate Real Estate  
6 Business and culminate real estate transactions.”

7           18.     Once an investor signs the Agreement, she is provided wire transfer instructions to  
8 transmit investment funds to Chicago D&P’s Bank of America business checking account. The  
9 money is then transferred to a variety of other accounts owned or controlled by Morgen and Chicago  
10 D&P, including accounts of several Chicago D&P subsidiaries or affiliates. These entities include  
11 California Development & Planning, Realtopia, Nasaky Investment Group, Oroshima Alliance,  
12 Diversified Builders, The Society of Financial Abundance, and Lifestyles of the Up and Coming.

13           19.     The Agreement provides that the money received from the investor is to be used “for  
14 the purpose of funding Chicago D&P, Inc. Real Estate Acquisitions.” Chicago D&P also offered to  
15 pay bonuses to give prospective investors an incentive to invest promptly – usually within a few days  
16 or a couple of weeks after receiving the offering materials. The “bonus” varied from month to  
17 month, and also varied based on whether the investor committed to “lend the funds” for a period of  
18 six months or one year.

19           20.     One investor, Shirley Brown, a 67 year old resident of Pasadena, California, entered  
20 into the “Lender Six Month Roll Over Agreement.” Brown invested \$10,000 on April 13, 2004.  
21 Brown’s agreement included a “DOUBLE your money APRIL Bonus of \$10,000, making a total  
22 investment of \$20,000 if funds are made available on or before April 13, 2004.” Brown’s agreement  
23 further provided that Brown would receive 3 payments every 60 days after the funds had been  
24 invested for six months. Brown’s agreement further provided that “[e]arly withdrawal on or before  
25 April 13, 2005 will void this contract and its promotions and any bonus.”

26           21.     Between October 16, 2003 and April 14, 2004, Chicago D& P raised more than \$6.4  
27 million from more than 200 investors (or groups of investors) from individuals throughout the United  
28 States. Morgen, Gibson and other individuals affiliated with Chicago D&P diverted a substantial

1 amount of money received by Chicago D&P from investors for personal expenses. In addition to at  
2 least \$50,000 in cash withdrawals from Chicago D&P's main bank account, defendants used a debit  
3 card issued for the account to make payments to clothes stores such as Victoria's Secret and Macy's,  
4 spas and for other personal items. Defendants also used approximately \$230,000 of investor funds  
5 over the past six months to pay Morgen's American Express credit card bills. In addition, defendant  
6 Gibson used investor funds for such personal expenses as gambling and health club fees.

7 22. Chicago D&P's offering materials and the investor Agreement provided that funds  
8 invested in Chicago D&P would be used to fund Chicago D&P real estate acquisitions. The offering  
9 materials also stated that profits from real estate acquisitions would be used to pay investors a return  
10 of up to 36% (or more) on their original investment.

11 23. Chicago D&P's offering materials further provided that Chicago D&P would pay an  
12 additional bonus of 6% "for referring other individuals who are looking for profitable investments."  
13 The offering materials state that investors should "consider discussing the opportunity with two 2-3  
14 (sic) other individuals who are looking for prudent profitable investments."

15 24. The Chicago D&P offering materials represented that payments that investors received  
16 from Chicago D&P represented profits from Chicago D&P's real estate acquisition business. In  
17 reality, the payments to existing investors primarily came from new investors to the scheme.

### 18 **ALLEGATIONS RELATING TO RELIEF DEFENDANTS**

19 25. Since October 2003, Chicago D&P has transferred large sums of investor money to  
20 Realtopia. In April 2004, Chicago D&P transferred \$200,000 of investor funds to a Morgan Stanley  
21 account controlled by defendant Morgen. On May 3, 2004, Chicago D&P transferred \$200,000 from  
22 the Morgan Stanley account and also certain other funds to Realtopia. Realtopia improperly received  
23 these transfers of investors' funds and used the funds to pay a variety of personal expenses.

### 24 **FIRST CLAIM FOR RELIEF**

#### 25 **(Violations of Section 17(a) of the Securities Act)**

26 26. The Commission hereby incorporates paragraphs 1 through 25 by reference.

27 27. Defendants Chicago D&P, Pat Morgen and Shalom Gibson have, by engaging in the  
28 conduct set forth above, directly or indirectly, in the offer or sale of securities, by the use of means or

1 instruments of transportation or communication in interstate commerce, or of the mails: (a) with  
2 scienter, employed devices, schemes or artifices to defraud; (b) obtained money or property by means  
3 of untrue statements of material fact or by omitting to state material facts necessary in order to make  
4 the statements made, in the light of the circumstances under which they were made, not misleading;  
5 or (c) engaged in transactions, practices or courses of business which operated or would operate as a  
6 fraud or deceit upon the purchasers of such securities.

7 28. By reason of the foregoing, defendants have directly or indirectly violated Section  
8 17(a) of the Securities Act [15 U.S.C. § 77q(a)] and unless enjoined will continue to violate Section  
9 17(a) of the Securities Act.

## 10 **SECOND CLAIM FOR RELIEF**

### 11 **(Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder)**

12 29. The Commission hereby incorporates Paragraphs 1 through 25 by reference.

13 30. Defendants Chicago D&P, Pat Morgen and Shalom Gibson have, by engaging in the  
14 conduct set forth above, directly or indirectly, by use of means or instrumentalities of interstate  
15 commerce, or of the mails, or of a facility of a national security exchange, with scienter: (a)  
16 employed devices, schemes or artifices to defraud; (b) made untrue statements of material fact or  
17 omitted to state material facts necessary in order to make the statements made, in light of the  
18 circumstances under which they were made, not misleading; or (c) engaged in acts, practices or  
19 courses of business which operated or would operate as a fraud or deceit upon other persons, in  
20 connection with the purchase or sale of securities.

21 31. By reason of the foregoing, defendants have directly or indirectly violated Section  
22 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. §§ 240.10b-5] and unless  
23 enjoined will continue to violate Section 10(b) of the Exchange Act and Rule 10b-5.

## 24 **THIRD CLAIM FOR RELIEF**

### 25 **Violations of Section 5(a) and 5(c) of the Securities Act**

26 32. The Commission hereby incorporates Paragraphs 1 through 25 by reference.

27 33. Defendants Chicago D&P, Pat Morgen and Shalom Gibson have, by engaging in the  
28 conduct set forth above, directly or indirectly, through use of the means or instruments of

1 transportation or communication in interstate commerce or of the mails, offered to sell or sold  
2 securities or carried or caused such securities to be carried through the mails or in interstate  
3 commerce, for the purpose of sale or delivery after sale.

4 34. No registration statement was filed with the Commission or was in effect with respect  
5 to the securities offered by defendants prior to the offer or sale of these securities.

6 35. By reason of the foregoing, defendants have directly or indirectly violated Sections  
7 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)], and unless restrained and  
8 enjoined will continue to violate these provisions.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, the Commission respectfully requests that the Court:

11 I.

12 Enjoin defendants Chicago D&P, Morgen and Gibson from, directly or indirectly, engaging in  
13 conduct in violation of Sections 5(a), and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a), and 77e(c)].

14 II

15 Enjoin defendants Chicago D&P, Morgen and Gibson from, directly or indirectly, engaging in  
16 conduct in violation of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] and Section 10(b) of  
17 the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

18 III

19 Enjoin defendant Chicago D&P, Morgen and Gibson from, directly or indirectly, engaging in  
20 conduct in violation of Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)].

21 IV.

22 Order defendants Chicago D&P, Morgen and Gibson to disgorge their ill-gotten gains in an  
23 amount according to proof, plus prejudgment interest thereon.

24 V.

25 Order relief defendant Realtopia to disgorge its ill-gotten gains in an amount according to  
26 proof, plus prejudgment interest thereon.

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VI.

Order defendants Chicago D&P, Morgen and Gibson to pay civil money penalties pursuant to Section 20(d)(1) of the Securities Act [15 U.S.C. §77t(d)(1)] and Section 21A of the Exchange Act [15 U.S.C. §78u-1].

VII.

Order appointment of a receiver to oversee the operations of Chicago D&P.

VIII.

Retain 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.

IX.

Grant such other and further relief as this Court may deem just, equitable, and necessary.

Dated: May 4, 2004

Respectfully submitted:

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