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11 UNITED STATES DISTRICT COURT
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 ED CV 05 - 00877

SGL

14 SECURITIES AND EXCHANGE
15 COMMISSION,

16 Plaintiff,

17 v.

18 HARVEY P. TABB,

19 Defendant.

Case No.:

COMPLAINT FOR VIOLATIONS
OF THE FEDERAL SECURITIES
LAWS

20 Plaintiff Securities and Exchange Commission ("Commission") alleges as
21 follows:

22 JURISDICTION AND VENUE

23 1. This Court has jurisdiction over this action pursuant to Sections 20(b),
24 20(d)(1), and 22(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§
25 77t(b), 77t(d)(1), & 77v(a), and Sections 21(d)(1), 21(d)(3)(A), 21(e), and 27 of
26 the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§ 78u(d)(1),
27 78u(d)(3)(A), 78u(e), & 78aa. Defendant has, directly or indirectly, made use of
28 the means or instrumentalities of interstate commerce, or of the mails, in

1 connection with the transactions, acts, practices, and courses of business alleged in
2 this Complaint.

3 2. Venue is proper in this district pursuant to Section 22(a) of the
4 Securities Act, 15 U.S.C. § 77v(a), and Section 27 of the Exchange Act, 15 U.S.C.
5 § 78aa, because certain of the transactions, acts, practices, and courses of conduct
6 constituting violations of the federal securities laws occurred within this district.

7 SUMMARY

8 3. This case involves a fraudulent unregistered offering of securities by
9 Harvey P. Tabb, a recidivist securities law violator who is the subject of a
10 permanent injunction obtained by the Commission in 1995. From spring 2001 to
11 September 2003, Tabb raised approximately \$2.3 million from 50 investors
12 nationwide by selling securities in the form of purported “general partnership”
13 interests through general public solicitation.

14 4. Tabb sold the securities to finance a wine grape venture known as
15 “Buy the Vine” that consisted of four vineyards located in Temecula, California.
16 When selling the securities, Tabb made several misrepresentations and omitted to
17 disclose important information relating to the projected returns, the funds needed
18 to operate the venture, the ownership of the vineyard lands, and the business
19 experience possessed by him and his son, who was touted as a manager of the
20 venture. Tabb also misappropriated investor funds for purposes undisclosed to
21 investors.

22 5. By engaging in the conduct described in this Complaint, the defendant
23 has violated the securities registration and antifraud provisions of the Securities
24 Act and the Exchange Act. By this Complaint, the Commission seeks a permanent
25 injunction and civil penalties against the defendant.

26 THE DEFENDANT

27 6. Defendant Harvey P. Tabb, 60, resides in Murrieta, California. Tabb
28 owns and controls Gelt Corporation, a Nevada corporation that did business in

1 California as “Buy the Vine.” On September 29, 1995, the United States District
2 Court for the Northern District of California issued an order permanently enjoining
3 Tabb from future violations of the federal securities laws as a result of his
4 involvement in a fraudulent offering of unregistered purported partnership interests
5 that raised \$3.2 million from more than 225 investors. Tabb is not registered with
6 the Commission.

7 THE FRAUDULENT SCHEME

8 7. From spring 2001 through September 2003, the defendant raised
9 approximately \$2.3 million from investors nationwide through his fraudulent and
10 unregistered public offering.

11 **A. The Offering**

12 8. Tabb began soliciting investors in Buy the Vine in early 2001. Buy
13 the Vine initially involved one vineyard but ultimately encompassed four
14 vineyards. Although Tabb sold interests in each of the vineyards separately, he
15 distributed substantially the same offering documents for all of them.

16 9. The offering materials for Buy the Vine consisted of, among other
17 things, brochures describing the venture; fliers entitled “Winning Team” that
18 touted the business experience of Tabb and his son; a “Subscription Agreement for
19 the General Partnership”; the “General Partnership Agreement and Terms,” which
20 included an Estimated Use of Proceeds Chart; and an Expenses and Earnings Chart
21 that projected returns over the life of the venture (between 13 and 15 years).
22 Investors also typically received a document that purported to be a lease of the
23 vineyard land from a third party named C.A. Properties Management.

24 10. Tabb distributed the offering materials nationwide by mailing them to
25 potential investors. Some of these investors had responded to advertisements Tabb
26 placed in magazines of general circulation, such as *Wine Spectator*, *Food & Wine*
27 *Magazine*, and *Wine Country Living*. Tabb also created a website for Buy the Vine
28 that described the venture and solicited inquiries from investors, in response to

1 which Tabb mailed the offering materials.

2 11. Tabb sold investors a full or partial "general partnership" interest in
3 one or more of the vineyards. Although documents distributed to and signed by
4 investors purported to describe their investment as a general partnership, these
5 documents did not contain any of the basic elements of a partnership agreement,
6 such as the structure of the partnership, the rights and voting powers of the general
7 partners, access to books and records, or the authority and accountability of the
8 managing general partner. Tabb signed the investment documents on Buy the
9 Vine's behalf as Managing General Partner for each of the vineyards.

10 12. Investors were promised a return based on profit from the vineyards'
11 operation after two years. As compensation for his role in managing the venture,
12 Tabb was to receive 28% of these profits.

13 13. The interests in the vineyards were securities in the form of
14 investment contracts in that the investors' funds were pooled with the expectation
15 of profit from Tabb's management of Buy the Vine.

16 14. Between spring 2001 and September 2003, Tabb sold approximately
17 \$2.3 million in vineyard interests. Tabb ceased soliciting investors in September
18 2003. Although three of the vineyards became partially or fully operational, none
19 of the investors received any return.

20 **B. Defendant's Misrepresentations And Omissions**

21 **1. Projected Returns**

22 15. Potential investors in at least two of the vineyards received a chart
23 created by Tabb purporting to describe the returns that could be expected during
24 the life of the vineyard. These charts projected phenomenal returns of more than
25 450% based in large part on the anticipated price of grapes per ton. The chart
26 projected that this price would rise from \$1,000 per ton in the first year to as high
27 as \$3,600 per ton in fifteen years.

28 16. These prices lacked any reasonable basis because Tabb, who had no

1 experience in the wine grape industry, projected grape prices as high as \$3,600 per
2 ton based solely on his own estimation of future pricing. Tabb failed to submit his
3 chart of projected returns for scrutiny by anyone experienced in the wine grape
4 industry before distributing it to investors. In fact, the prices Tabb projected far
5 exceeded any that had previously been received for grapes grown in Temecula (the
6 highest price had been about \$1,400 per ton).

7 17. The prices projected by Tabb were not only unreasonable but also
8 misleadingly suggested that the price for grapes, a commodity subject to market
9 and natural forces, would consistently rise every year for more than ten years.

10 18. The projected earnings charts distributed by Tabb also contained a
11 fundamental inconsistency not discernible to the lay investor. According to the
12 charts, both the price per ton of grapes and the tons per acre harvested would
13 consistently rise. However, grapes harvested at a high tonnage per acre will not
14 command the highest prices because these grapes are generally not of the quality
15 needed for higher-end wines. As a result, it was misleading for Tabb to project, for
16 example, that grapes harvested at 12 tons per acre would fetch \$3,000 per ton.

17 2. Use of Investor Proceeds

18 19. Upon investing in Buy the Vine, investors were provided a document
19 entitled "Estimated Use of Proceeds of the Offering: Costs Analysis, Vineyard
20 Development & Management." This chart purported to detail the expenditures
21 required to establish a fully-functioning vineyard and how investor funds were to
22 be allocated to pay these costs.

23 20. Tabb informed investors that, if Buy the Vine were able to establish a
24 vineyard at a cost less than the amount raised from investors, it could retain the
25 excess amount as an "incentive."

26 21. To generate a higher amount of excess for Buy the Vine, Tabb
27 inflated and misstated a number of items on the use of proceeds charts. For
28 example, in one chart, Tabb estimated the cost of planting to be \$385,880 when in

1 fact he had paid a farming company \$235,782 for preparing and planting the
2 vineyard. Similarly, in another chart, Tabb estimated the cost of property
3 preparation and grading to be \$42,300 and the cost of planting to be \$502,900
4 when in fact Tabb had paid the farming company \$224,521 for all of these tasks.
5 Tabb also included fictitious costs in the charts, such as “ongoing property
6 maintenance.”

7 22. Tabb made these misrepresentations knowingly because, when
8 launching Buy the Vine, he had consulted about the cost to establish wine grape
9 vineyards with a well-known farming company in Temecula that he later retained
10 to perform this work for Buy the Vine.

11 **3. Ownership of Vineyard Land**

12 23. In offering materials and conversations, Tabb informed investors that
13 the vineyard land had been leased from a third party, C.A. Properties Management.
14 Tabb also indicated that, for only a single payment of \$25,000 for each vineyard,
15 the land could be used for the life of the investment and then returned to that entity.
16 In addition, Tabb advised investors that the land was ultimately owned by an entity
17 he described as “the Kaiser Foundation,” not C.A. Properties Management, and
18 that Buy the Vine had no interest in C.A. Properties Management.

19 24. Contrary to these representations, Tabb had asked his ex-wife, whom
20 he remarried while operating Buy the Vine, to purchase the vineyard land through
21 her trust and suggested that she form an entity to hold title and lease the land to
22 Buy the Vine. That entity, C.A. Properties Management, was formed in April
23 2001. Tabb arranged to purchase the vineyard land with his ex-wife’s funds,
24 signed some of the purchase documents on behalf of Buy the Vine, and then used
25 thousands of dollars of investor proceeds to pay the mortgages without informing
26 investors or telling them that the \$25,000 one-time lease payment had been made
27 to an entity owned and controlled by Tabb’s ex-wife.

28 ///

1 **4. Background of the Defendant and His Son**

2 25. The offering materials contained a flier entitled “Winning Team” that
3 touted Tabb’s business acumen. The flier stated that Tabb “has been an investment
4 consultant for over 35 years” who brings “extensive experience in investment
5 opportunities and money management to Buy the Vine.” The flier also stated that
6 Tabb’s “most recent experience was in managing a partnership that purchased
7 automobile dealerships, shopping centers, and apartment complexes.”

8 26. The flier also touted the business experience of Tabb’s son, whom it
9 identified as Buy the Vine’s property manager. Tabb’s son was reported to have
10 “15 years of experience in sales and marketing and contract negotiation.” In
11 addition, the flier stated that Tabb’s son would “extend our business to internet
12 sales.”

13 27. These descriptions failed to disclose, among other things, the material
14 facts that (a) Tabb had been permanently enjoined by the Commission in 1995 in
15 connection with an unregistered and fraudulent securities offering, (b) when the
16 Buy the Vine offering began in 2001, Tabb was the subject of a cease-and-desist
17 order from the Pennsylvania Securities Commission in connection with the
18 automobile dealership venture described in the flier, and (c) Tabb’s son had pled
19 guilty in 2000 to conspiracy to commit mail fraud and tax evasion in connection
20 with the sale of fraudulent memorabilia over the Internet.

21 **C. Misappropriation Of Investor Funds**

22 28. By inflating and misstating the expenditures necessary to establish
23 operational vineyards, Tabb concealed his misappropriation of a large amount of
24 investor money that he spent for purposes unknown to investors. Of the
25 approximately \$2.3 million raised, Tabb misappropriated approximately \$650,000.
26 Tabb spent roughly \$500,000 of that sum in connection with the purchases of
27 vineyard land even though he had informed investors that the vineyard land had
28 been leased from a third party. He used the remaining money for various personal

1 expenses and obligations, such as pet care, his son's college tuition, travel, and
2 loans to family members.

3 **D. The Defendant Acted With Scienter**

4 29. Based on the foregoing, Tabb knew, or was reckless in not knowing,
5 that his offering of securities in Buy the Vine and his misappropriation of investor
6 funds was fraudulent.

7 30. Tabb had previously been enjoined by the Commission in connection
8 with a fraudulent offering and thus was well aware of the antifraud provisions of
9 the securities laws.

10 31. Tabb created the data underlying the projected returns by speculating,
11 without any basis, as to how grape prices would perform in the future, and failed to
12 consult with anyone in the wine grape industry before distributing his projections
13 to investors.

14 32. Although information from Buy the Vine's farm manager apprised
15 Tabb of the cost to establish operational vineyards, he nevertheless provided
16 inflated and misstated figures to investors for such expenses.

17 33. Even though Tabb had decided to buy the vineyard lands, had signed
18 documents to effect those purchases, and had persuaded his ex-wife to finance
19 those purchases, he told investors that the vineyard lands had been leased from an
20 unaffiliated third party and fabricated a \$25,000 lease fee.

21 34. Tabb lured investors by touting his and his son's business experience
22 while deliberately failing to disclose his previous securities law violations and his
23 son's guilty plea to charges of conspiracy to commit mail fraud and tax evasion.

24 **FIRST CLAIM FOR RELIEF**

25 **UNREGISTERED OFFER AND SALE OF SECURITIES**

26 **Violations of Sections 5(a) and 5(c) of the Securities Act**

27 35. The Commission realleges and incorporates by reference paragraphs 1
28 through 34 above.

1 and unless restrained and enjoined will continue to violate, Section 17(a) of the
2 Securities Act, 15 U.S.C. § 77q(a).

3 **THIRD CLAIM FOR RELIEF**

4 **FRAUD IN CONNECTION WITH THE**
5 **PURCHASE OR SALE OF SECURITIES**

6 **Violations of Section 10(b) of the Exchange Act**
7 **and Rule 10b-5 thereunder**

8 42. The Commission realleges and incorporates by reference paragraphs 1
9 through 34 above.

10 43. The defendant, by engaging in the conduct described above, directly
11 or indirectly, in connection with the purchase or sale of a security, by the use of
12 means or instrumentalities of interstate commerce, or of the mails, with scienter:

- 13 a. employed devices, schemes, or artifices to defraud;
14 b. made untrue statements of a material fact or omitted to state a
15 material fact necessary in order to make the statements made,
16 in light of the circumstances under which they were made, not
17 misleading; or
18 c. engaged in acts, practices, or courses of business which
19 operated or would operate as a fraud or deceit upon other
20 persons.

21 44. By engaging in the conduct described above, the defendant violated,
22 and unless restrained and enjoined will continue to violate, Section 10(b) of the
23 Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. §
24 240.10b-5.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, the Commission respectfully requests that the Court:

27 **I.**

28 Issue findings of fact and conclusions of law that the defendant committed

1 the alleged violations.

2 **II.**

3 Issue orders, in a form consistent with Rule 65(d) of the Federal Rules of
4 Civil Procedure, permanently enjoining the defendant and his officers, agents,
5 servants, employees, and attorneys, and those persons in active concert or
6 participation with any of them, who receive actual notice of the order by personal
7 service or otherwise, and each of them, from violating Sections 5(a), 5(c), and
8 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5
9 thereunder.

10 **III.**

11 Order the defendant to pay civil penalties under Section 20(d) of the
12 Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the Exchange Act, 15
13 U.S.C. § 78u(d)(3).

14 **IV.**

15 Retain jurisdiction of this action in accordance with the principles of equity
16 and the Federal Rules of Civil Procedure in order to implement and carry out the
17 terms of all orders and decrees that may be entered, or to entertain any suitable
18 application or motion for additional relief within the jurisdiction of this Court.

19 **V.**

20 Grant such other and further relief as this Court may determine to be just
21 and necessary.

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23 DATED: September 19, 2005


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