

propert[ies]” with historic and anticipated annual returns on the royalty interests ranging from 25% to at least 38%. Defendants made some distributions to investors, but to do so, they used money they raised from other investors to fund the bulk of the payments – *i.e.*, *Ponzi* payments. Defendant falsely characterized the distributions they made to investors as returns on royalty interests from oil-and-gas production, when, in reality, they were mostly *Ponzi* payments.

3. By engaging in the conduct described in this Complaint, Defendants participated in a fraudulent scheme in which they offered and sold securities in unregistered transactions, in violation of Sections 5(a) and (c) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. § 77e], and violated, and continue to violate, the anti-fraud provisions of the federal securities laws, specifically Section 17(a) of the 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 [17 C.F.R. § 240.10b-5] thereunder.

JURISDICTION AND VENUE

4. The investments offered and sold by Defendants are “securities” under Section 2(1) of the Securities Act [15 U.S.C. § 77b(1)] and Section 3(a)(10) of the Exchange Act [15 U.S.C. § 78c(a)(10)].

5. The Commission brings this action under 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)] to temporarily, preliminarily, and permanently enjoin Defendants from future violations of the federal securities laws.

6. This Court has jurisdiction over this action, and venue is proper, under Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. §

78aa]. Prosper's principal office is in Dallas, and a number of Defendants' investors reside in Dallas.

7. Defendants, directly or indirectly, made use of the means or instruments of transportation and communication, 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. Certain of the transactions, acts, practices, and courses of business occurred in the Northern District of Texas.

STATEMENT OF FACTS

Defendants

8. Defendant May, 45, resides in Dallas, Texas. May is the president of Prosper. Public records reveal that from 1983 to 2002, May was arrested 13 times for various criminal violations, including theft, theft by check, credit card abuse, revocation of probation and failure to appear. These arrests resulted in at least 14 convictions, with dispositions ranging from probation to 20-years imprisonment. Most recently, he was released from prison in or about 2007.

9. Defendant Prosper is incorporated in multiple states including Texas, Arkansas, Oklahoma and Louisiana. Prosper is headquartered in Dallas, Texas. It purports to be an operator of oil-and-gas properties.

Defendants' Fraud

10. From at least 2008, continuing to at least February 2010, Defendants advertised investment opportunities in oil-and-gas royalty interests. The advertisements appeared in various publications, including *The Wall Street Journal*, *Barron's*, *The Oklahoman*, *The Jewish Voice*, and *The Abilene Reporter*. They also appeared on the auction site eBay and in direct e-mails to

existing investors. In these advertisements and other communications with investors, Defendants claimed that the royalty interests for sale had yielded or would yield annual returns ranging from 25% to at least 38%. As a result of their solicitations, Defendants sold purported royalty interests to at least 99 investors.

11. Defendants have paid some returns to investors, but the vast majority of those returns have been *Ponzi* payments. The Commission has obtained and analyzed records for six bank accounts in which Prosper and May received investor funds and royalty revenues, and from which they made distributions to investors. Those records show that, during the period November 2008 through December 2009, Prosper received payments of approximately \$107,000 from entities that appear to be oil-and-gas operators, but made distributions to investors totaling at least \$840,000.

12. The excess returns were paid from investor funds. For example, the bank records reflect that on December 12, 2008, the consolidated balance of the six accounts was \$96.98. Between December 13 and December 30, 2008, \$45,060 in investor funds was deposited in these accounts. During the same period, even though there were no deposits of oil-and-gas revenues to the accounts, Prosper/May appear to have made distributions to investors from the accounts totaling \$12,755.68.

13. Defendant falsely characterized the distributions they made to investors as returns on royalty interests from oil-and-gas production, when, in reality, they were mostly *Ponzi* payments.

14. Records for the six accounts indicate that, in addition to making *Ponzi* payments, May or other Prosper employees used investor funds for various lavish personal expenses, including approximately \$611,000 for vehicle purchases and expenses (including purchases by

May of a Ferrari, a BMW and a Mercedes), \$400,000 in credit card payments, \$430,000 for meals, entertainment and retail purchases, \$324,000 in travel expenses, and \$89,000 in cash withdrawals. In addition, during the scheme, May and Prosper acquired multiple houses and condominiums, including homes in Dallas, each valued at approximately \$1.5 million. May also caused \$611,000 in investor funds to be transferred to his personal bank accounts. As of December 31, 2009, only about \$220,000 remained in the bank accounts for which the Commission currently has records.

15. In offering and selling the securities, Defendants did not provide potential investors with private placement memoranda or similar materials. In their advertisements and communications with investors, Defendants did not disclose the risks associated with oil-and-gas investments. Defendants also did not disclose that they intended to pay returns to investors using the principal payments of other investors. And of course, Defendants did not tell investors that they had spent and were continuing to spend investor proceeds to fund extravagant lifestyles.

FIRST CLAIM

Violations of Section 17(a) of the Securities Act

16. Plaintiff Commission re-alleges and incorporates paragraphs 1 through 15 of this Complaint by reference as if set forth *verbatim*.

17. Defendants, directly or indirectly, singly or in concert with others, in the offer or sale of securities, by use of the means and instrumentalities of interstate commerce and by use of the mails have: (a) employed devices, schemes, and artifices to defraud; (b) obtained money or property by means of untrue statements of a material fact and omitted to state a material fact 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, and courses of business which operate or would operate as a fraud and deceit upon the purchasers.

18. As a part of and in furtherance of their scheme, the Defendants, directly and indirectly, prepared, disseminated, or used advertisements, contracts, promotional materials, and investor and other correspondence, which contained untrue statements of material facts and misrepresentations of material facts, and which 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, including, but not limited to, those set forth in Paragraphs 1 through 15 above.

19. Defendants made the above-referenced misrepresentations and omissions knowingly or with severe recklessness regarding the truth.

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

SECOND CLAIM

Violations of Section 10(b) of the Exchange Act and Rule 10b-5

21. Plaintiff Commission re-alleges and incorporates paragraphs 1 through 15 of this Complaint by reference as if set forth *verbatim*.

22. The Defendants, directly or indirectly, singly or in concert with others, in connection with the purchase or sale of securities, by use of the means and instrumentalities of interstate commerce and by use of the mails have: (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of a material fact and omitted to state a material fact 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

operate or would operate as a fraud and deceit upon purchasers, prospective purchasers, and any other persons.

23. As a part of and in furtherance of their scheme, the Defendants, directly and indirectly, prepared, disseminated, or used advertisements, contracts, promotional materials, and investor and other correspondence, which contained untrue statements of material facts and misrepresentations of material facts, and which 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, including, but not limited to, those set forth in Paragraphs 1 through 15 above.

24. The Defendants made the above-referenced misrepresentations and omissions knowingly or with severe recklessness regarding the truth.

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

THIRD CLAIM

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

26. Plaintiff Commission repeats and realleges paragraphs 1 through 15 of this Complaint and incorporated herein by reference as if set forth verbatim.

27. Defendants, directly or indirectly, singly and in concert with others, have been offering to sell, selling and delivering after sale, certain securities, and have been, directly and indirectly: (a) making use of the means and instruments of transportation and communication in interstate commerce and of the mails to sell securities, through the use of written contracts, offering documents and otherwise; (b) carrying and causing 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) making use of the means or instruments of transportation and communication in interstate commerce and of the mails to offer to sell such securities.

28. As described in this Complaint, Defendants offered and sold securities to the public through general solicitations of interest. No registration statement has been filed with the Commission or is otherwise in effect with respect to these securities.

29. For these reasons, Defendants 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)].

RELIEF REQUESTED

Therefore, Plaintiff respectfully requests that this Court:

I.

Preliminarily and Permanently enjoin Defendants from violating Sections 5(a), 5(c) and 17(a) of the Securities Act [15 U.S.C. §§ 77e 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.

Enter an Order immediately freezing the assets of Defendants and directing that all financial or depository institutions comply with the Court's Order.

III.

Order the appointment of a receiver to recover, preserve and distribute funds and assets for the benefit of investors.

IV.

Enter an Order against Defendants prohibiting the destruction of documents and permitting the parties to take expedited discovery.

V.

Order the Defendants to disgorge an amount equal to the funds and benefits they obtained illegally, or to which they are otherwise not entitled, as a result of the violations alleged, plus prejudgment interest on that amount.

VI.

Order the Defendants to pay civil monetary penalties in an amount determined as appropriate by the Court under 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)] for the violations alleged herein.

VII.

Order such further relief as this Court may deem just and proper.

Dated: March 2, 2010

Respectfully submitted,



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