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**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR ADA COUNTY**

STATE OF IDAHO, DEPARTMENT OF  
FINANCE, SECURITIES BUREAU,

Plaintiff,

vs.

ZACHARY LATIMER, individually and  
dba VELOCITY2, LLC, and Z.V.  
LATIMER INVESTMENTS, INC.,

Defendant.

Case No. CV 0C 1423083

**COMPLAINT**

Fee category: Exempt

COMES NOW the State of Idaho, Department of Finance, Gavin M. Gee, Director, (the Department), by and through its counsel, Alan Conilogue, Deputy Attorney General, and upon information and belief, complains and alleges as follows.

This action is brought pursuant to Idaho's Uniform Securities Act (2004), Idaho Code § 30-14-101 *et seq.* (the Act), and in particular Idaho Code § 30-14-603, wherein the Department is authorized to bring actions seeking injunctive and other relief against persons who have either violated or are about to violate provisions of the Act or any rule promulgated thereunder.

### **CASE SUMMARY**

The statements in this Case Summary are not part of the allegations supporting the Department's causes of action, but are simply intended to provide a framework for understanding this regulatory enforcement lawsuit.

The Department alleges that defendant Zachary V. Latimer (Latimer) offered or sold securities in the form of promissory notes from Velocity2, LLC. These notes were issued to investors in Idaho and Utah. Idaho residents invested one million dollars (\$1,000,000).

Latimer failed to register these securities and failed to register as an issuer agent as required by law. During the course of persuading investors to part with their money, Latimer made material misrepresentations and omitted material information necessary for investors to make an informed choice, all in violation of Idaho's Uniform Securities Act.

### **DEFENDANT**

1. Zachary Latimer (Latimer) was a Utah resident at the time he made offers and sales of unregistered securities to Idaho investors. During the time relevant herein, he was associated with the address 955 E. 380 S. Smithfield, UT 84335.

2. Latimer's last known address is 92-1021 Koio Drive, #M, Kapolei, HI 96707.

3. Z. V. Latimer Investments, Inc. is a Utah corporation and Latimer is the sole shareholder, director, and officer.

4. Velocity2, LLC (Velocity) is a Utah Limited Liability Company owned and operated by Latimer through Z. V. Latimer Investments, Inc.

5. Z. V. Latimer Investments, Inc. is the sole member and the managing member of Velocity.

### **FACTS**

6. Beginning on a date uncertain, but at least since May of 2008, Latimer offered and sold securities in the form of unsecured promissory notes to residents of Idaho and other states. The promissory notes evidenced loans from investors that Latimer was supposed to use by placing the money in other investments, which Latimer described as “platform banking investments.”

7. In early 2008, Latimer’s associate, Jeff Young, referred Idaho investor DC (also referred to in the case-related documents as DMC or MC) and DC’s wife to Latimer as potential investors. Young had been DC’s neighbor in Idaho.

8. DC was an Idaho resident at all times relevant to this matter.

9. Around the time of making the referral, and before DC invested, Young told Latimer that DC lived in Idaho.

10. Beginning around February or March 2008, Latimer began pitching the platform banking investment to DC by calling to DC’s home in Idaho, by sending email and email attachments, and eventually by meeting with him in Latimer’s office in Utah.

11. Latimer told DC that his money would be loaned to an investment trading company and placed in an escrow account, enhancing the trading company’s balance sheet in order to acquire larger lines of credit with financial institutions.

12. Latimer represented that DC's money would be safe because it would never leave the escrow account. Latimer represented that the investment was liquid because investors could draw out their money at any time. Latimer also represented that DC would receive a 60% return on his investment, with a return of the principle in 12 months.

13. DC was provided with a private placement memorandum and a subscription agreement issued by Velocity.

14. The private placement memorandum states that Velocity was formed to make a debt capital investment in Kinetic Holdings, LLC (a Utah limited liability company).

15. Kinetic Holdings, LLC, in turn, was supposed to place the funds with an intermediate private investment fund organized in Utah ("Intermediate Fund 1"), which was supposed to lend funds to another intermediate private investment fund organized in Utah ("Intermediate Fund 2"), which in turn was also supposed to lend funds to a certain leasing company organized under the laws of the state of Utah.

16. This leasing company was supposedly engaged in the business of leasing funds through joint ventures to established international and domestic private trade institutions.

17. In May 2008, DC decided to invest in promissory notes issued by Velocity, and on May 15, 2008 caused five hundred thousand dollars (\$500,000) to be wired into Velocity's Cache Valley Bank account in Utah.

18. Latimer issued a promissory note to DC for \$500,000 on May 16, 2008. Latimer represented to DC that DC's \$500,000.00 was invested in a Master Loan Agreement with Madison Capital Management, LLC (MCM).

19. On May 14, 2008, the day before DC wired his money, and apparently in anticipation of it, Latimer signed a Master Loan Agreement with MCM loaning them DC's \$500,000.00. This was essentially an unsecured loan.

20. Latimer signed the Master Loan Agreement personally and made no mention of Velocity, DC, or any other lenders or investors. Latimer signed the agreement on May 14, 2008, and MCM signed on May 25, 2008

21. On May 16, 2008, the day after he received DCs money, Latimer wired the \$500,000.00 to the Capital Law Group in Arlington Heights, IL. Capital Law Group acted as the escrow agent for MCM.

22. Also on May 14, 2008, the day before receiving DC's \$500,000, Latimer signed an "Escrow Agreement" between himself and MCM. Exhibit X to the Escrow agreement, the Release Notice, provided Latimer "hereby authorizes and directs the release by the Escrow Agent of the Escrow Funds to the Borrower, Madison Capital Management, LLC, ...". In other words, the day before he received D.C.'s money, Latimer authorized its release from escrow, thereby violating his promises that the money would be safe and would never leave the escrow account. Despite signing that release and in violation of his promises, Latimer accepted DC's money anyway.

23. Latimer was asked about this during a deposition in another civil matter:

Q: Did you, at the time you executed these documents [the Escrow Agreement and the Release Notice], did you disclose to [DC and wife] that you were releasing their funds from escrow directly to Madison Capital Management?

A: I don't think so.

24. Latimer knew at the time that he was acting contrary to his promises to DC. He testified:

Q: So prior to receiving the wired funds from [DC and wife] on the 15th of May, you knew that their funds wouldn't be held in an escrow account for the duration of their investment because you had already signed a release notice the day before authorizing the release of funds from escrow, correct?

A: Yeah, I had signed that.

25. The funds having been released from escrow, MCM forwarded them to Florida Investment Enterprises, Inc. (FIED).

26. On August 7, 2008, Latimer sent a payment of \$25,000.00 to DC, which Latimer represented was an interest payment on DC's investment in Velocity. Latimer made this \$25,000 payment to DC from a \$33,855 payment he received from MCM.

27. This interest payment helped Latimer convince DC to make another platform banking investment.

28. Latimer made representations to DC about the safety and nature of this second platform banking investment that were virtually identical to the representations made regarding the first.

29. On September 3, 2008, DC made an additional investment of \$500,000.00 in Velocity. This was also memorialized by a promissory note issued by Velocity, in the amount of \$500,000.

30. DC wired these funds to the Velocity bank account at Cache Valley Bank in Utah on September 3, 2008.

31. On September 4, 2008, Latimer signed another Master Loan Agreement, to loan \$500,000 to Sovereign Equity Group, Inc (SEGI). DC did not receive copies of the "master loan agreements." No mention is made of DC or any other lenders or investors.

32. On September 4, 2008, Latimer signed an Escrow Agreement and a Release Notice releasing DCs funds from escrow and freeing them for distribution to SEGI.

33. On September 4, 2008, Latimer wired \$250,000.00 from Velocity's bank account to The Stallworth Firm, LLC in Monroeville, AL. The Stallworth Firm, LLC was an escrow agent for SEGI.

34. On September 12, 2008 Latimer wired an additional \$250,000.00 from Velocity's bank account to The Stallworth Firm, LLC.

35. DC's second investment was the source of funds for these two \$250,000 transfers.

36. On October 22, 2008, DC received another payment in the amount of \$15,000.00, which Latimer claimed was another interest payment from DC's first investment.

37. On November 17, 2008, Latimer paid DC another \$15,000.00 and stated it was an interest payment from his second investment, with SEGI. Latimer did not provide any evidence that any of the payments actually came from either of the two investment funds. In a separate civil action, Latimer represented to the court that he had not received any interest proceeds from his investment in SEGI.

38. These are the only returns DC received from his investment with Latimer.

39. Other than the amounts referred to previously, Latimer failed to make any monthly additional interest payments as required by the promissory notes issued by Velocity. Velocity has defaulted under the terms of the promissory note.

#### **VIOLATIONS**

40. The promissory notes offered and sold by the Latimer were "securities" as defined in Idaho Code, Section 30-14-102(28).

41. Idaho Code, §30-14-102(28) provides that " 'Security' means a note;". "Note" in this definition includes promissory notes offered for investment purposes, such as Latimer's.

42. Idaho Code, §30-14-102(28)(d) provides that a security includes as an “investment contract” an investment in a common enterprise with the expectation of profits based solely on the efforts of a person other than the investor.

43. Investor DC invested in a common enterprise with Latimer, he expected profits, and did not participate in any of the efforts to obtain a return on his investments.

44. The promissory notes issued by Latimer, and the underlying Master Loan Agreements, constituted investment contracts.

**COUNT ONE**  
**(Unregistered Securities)**

45. Latimer issued, sold or offered for sale in Idaho securities in the form of notes and investment contracts, as described above. These securities were not registered, nor exempt from registration, with the Idaho Department of Finance (the Department) as required by Idaho Code, Section 30-14-301.

46. Latimer’s failure to register such securities with the Department constitutes a violation of Idaho Code § 30-14-301.

**COUNT TWO**  
**(Failure to Register)**

47. Latimer was not licensed to sell securities in, to, or from Idaho as required by Idaho Code, Section 30-14-402, which requires that all persons who offer or sell securities in this State be registered as an agent. It provides:

It is unlawful for an individual to transact business in this state as an agent unless the individual is registered under this chapter as an agent or is exempt from registration as an agent under subsection (b) of this section.

48. Idaho Code § 30-14-102 provides the following definitions:

(2) “Agent” means an individual, other than a broker-dealer, who represents an issuer in effecting or attempting to effect purchases or sales of the issuer's securities.

49. When Latimer talked to DC and convinced him to invest, Latimer acted as an agent of Velocity regarding the securities identified above.

50. Latimer's failure to register as an agent is a violation of Idaho Code, § 30-14-402.

**COUNT THREE**  
**(Misrepresentations and Omissions of Material Fact)**

51. Idaho Code § 30-14-501(2) provides that it is unlawful for any person, directly or indirectly, in connection with the offer, sale or purchase of a security, to make an untrue statement of material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

52. In connection with the offer and sale of securities, Latimer made the following misrepresentations to DC:

a. That funds would be used by the end parties to provide "international and domestic credit financing to businesses and institutions in a variety of forms, including but not limited to: (a) international or domestic trade credit, (b) bridge loans, (c) hard-money loans and (d) high-rated bonds."

b. That DC would receive 60% interest per annum and that the note would be paid off in 12 months (pursuant to the promissory note).

c. That the note would pay 24% interest (pursuant to the private placement memorandum).

d. That DC's money would be used by Velocity to make an investment in Kinetic Holdings, LLC. Kinetic Holdings, LLC, in turn would place funds with Intermediate Fund 1, which would lend funds to Intermediate Fund 2, which would then lend funds to a

certain Utah leasing company, which would lease funds to joint ventures with established international and domestic private trade institutions.

e. That the interest payments DC received were interest proceeds of his investments in SEGI.

53. In connection with the offer and sale of securities, Latimer made the following omissions of material fact:

a. That he would release the escrow on DCs money immediately upon forwarding the money to the underlying investment, and that therefore the money would not be held in an escrow or attorney trust account.

b. According to the note signed by Latimer and MCM, that the funds could be used for any undisclosed purpose.

c. According to the note signed by Latimer and SEGI, that the funds could be used for any undisclosed purpose.

d. That DC's money was loaned directly to MCM, in Latimer's name, with no mention of Kinetic Holdings, LLC, or any other entity outlined in the private placement memorandum or the promissory note received by DC.

e. According to the notes signed by Latimer and MCM and SEGI, that the interest return on the investment was only going to be 15% interest per annum.

f. Latimer failed to provide a basis for the unusually high rate of return promised to the investor.

g. Latimer failed to disclose to DC that the alleged interest payments paid to DC were returns earned by DC's invested money.

h. That the securities were not registered as required by law, and that Latimer was not licensed to conduct securities transactions as required by law.

54. Latimer's omissions of material facts and failure to disclose material information to DC were made in connection with the offer, sale or purchase of securities. Latimer's omission of material facts and failures to disclose material information, as specifically set forth in paragraph 53 a. through h. above, constitute violations of Idaho Code § 30-14-501(2) as to each omission and failure to disclose.

### **PRAYER FOR RELIEF**

1. WHEREFORE, the Department prays for judgment in favor of the Department and against Latimer as follows:

2. That Latimer be adjudged to have violated Idaho's Uniform Securities Act (2004), Idaho Code § 30-14-101 *et seq.*, as to Counts One through Three alleged above, as well as any additional counts proven at trial.

3. That Latimer be permanently enjoined from engaging in any act or practice violating any provision of the Act or any rule promulgated thereunder, pursuant to Idaho Code § 30-14-603(b)(1), and that he be permanently enjoined from selling or offering for sale securities in any form in the state of Idaho.

4. That Latimer be enjoined for the period of five years from working in the financial services industry in Idaho, including selling insurance, pursuant to Idaho Code § 30-14-603(b)(1).

5. That Latimer be ordered to make restitution to investors, pursuant to Idaho Code §30-14-603(b)(2)(C), in the amount of at least nine hundred forty-five thousand dollars (\$945,000), or such other amount as proven at trial, that Latimer pay the restitution amount to

Plaintiff, to be delivered to the investors, and that the Court award a money judgment in favor of Plaintiff in such amount.

6. That Latimer be ordered to pay a civil penalty of up to ten thousand dollars (\$10,000) for each violation of Idaho's Uniform Securities Act (2004) as the Court deems appropriate, pursuant to Idaho Code § 30-14-603(b)(2)(C), for total penalties of at least thirty thousand dollars (\$30,000) and that the Court award a money judgment in favor of the Department in such amount.

7. That the Department be awarded attorney fees and costs incurred in the preparation and prosecution of this action, pursuant to Idaho Code § 12-121, and that the court award a money judgment in favor of the Department in such amount. Should judgment be taken by default herein, the Department asserts that \$1,000 is a reasonable sum for the same.

8. For such further relief as this Court may deem just and equitable under the circumstances.

DATED this 9 day of December, 2014.

STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL

  
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ALAN CONILOGUE  
Deputy Attorney General