

STATE OF IDAHO  
COUNTY OF KOOTENAI } SS  
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CLERK DISTRICT COURT

DEPUTY \_\_\_\_\_

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**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT**

**OF THE STATE OF IDAHO, IN AND FOR KOOTENAI COUNTY**

STATE OF IDAHO, DEPARTMENT OF  
FINANCE, SECURITIES BUREAU,

Plaintiff,

vs.

KEITH EUGENE MITCHELL,

Defendant.

Case No. CN-11-1776

**VERIFIED COMPLAINT**

Fee category: Exempt

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

1. This action is brought pursuant to the Idaho Commodity Code (the Act), Idaho Code § 30-1501 *et seq.*, and in particular, Idaho Code § 30-1510(2), wherein the Director is authorized to bring actions seeking injunctive and other relief when it appears to the Director that

Assigned to:  
JOHN PATRICK LUSTER

any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of the Act, or any rule or order promulgated thereunder.

2. The acts and practices herein comprising violations of law by the above-named Defendant occurred in Kootenai County and elsewhere in the state of Idaho.

### **FACTS**

1. Defendant Keith Eugene Mitchell (Mitchell) has been a resident of Coeur d'Alene, Kootenai County, Idaho and has conducted business in Idaho during all times relevant herein. He has conducted business under various names, including Investing for Mission, Inc., IFM Humanitarian Fund, LLC, and The Option Group, LLC (OTG). Mitchell formed OTG on June 26, 2007 for the purpose of conducting an investment enterprise.

2. On June 4, 2003, Finance issued an Order to Cease and Desist against Mitchell and the IFM Humanitarian Fund, LLC. Mitchell and the IFM Humanitarian Fund, LLC were ordered to cease and desist from violations of the Idaho Securities Act, and were ordered to pay a civil penalty in the amount of \$25,000.

3. Beginning at an unknown time but at least as early as February 2007, Mitchell solicited investors to participate with him in an enterprise that invested in commodity futures options. Mitchell desired to avoid complying with commodities trading regulations, so he attempted to set up his trading activity in a manner designed to avoid applicable laws and regulations. Mitchell did not obtain registration or licensure with either Finance or with the Commodity Futures Trading Commission (CFTC).

4. Mitchell's plan required that his investors open a commodities trading account with his crony, his brother-in-law Keith Yrjana, doing business as the Options Trading

Company, LLC (OTC). Mitchell would periodically tell the investor what investments to make, and the investor would then direct Yrjana to make the investments.

5. Yrjana and OTC were appropriately licensed to conduct commodities trading. They placed their orders into the commodity market through a company then known as Alaron Futures and Options (Alaron).

6. Mitchell's plan was set up so that he did not do actual trading for his customers. Rather, his customers were to follow his advice and direct Yrjana to make the investment as instructed by Mitchell. Mitchell would provide to his customers a writing specifying certain buy and sell transactions. The customer would then sign and date the writing, and pass it to Yrjana to effectuate the transaction. For example, on or about November 27, 2007, Mitchell advised investor MR to place orders as shown below.

<b>BUY</b>	<b>SELL</b>
10 December 1435 put 10 December 1390 mini put	10 December 1440 mini put 10 December 1425 put
10 December 1390 put	10 December 1395 mini put 10 December 1380 put

• If market trades between 1360 and 1355; buy December 1345 mini put

7. Mitchell's investment enterprise invested in the commodities market, buying and selling options on securities futures.

8. Mitchell struck agreements with each investor that he would receive 20% of any profits made from the investments as compensation for the trading advice. During the time the

investment enterprise was active, Mitchell received \$90,639.82 from his investors as his 20% fee. He also received \$187,360 from Yrjana, which was Mitchell's share of the commissions paid by Alaron to Yrjana and OTC.

9. Mitchell met with prospective investors in person, and spoke to them over the phone, during the days preceding their first investment. Mitchell also met with a group of potential investors at the Coeur d'Alene Resort on or about May 7, 2007. During these discussions, which were held to persuade potential investors to participate in the enterprise, Mitchell made several material misrepresentations about the investment to the potential investors. He also failed to disclose certain material information to the prospective investors. The misrepresentations and omissions had the effect of misinforming potential investors about the facts of the investment, rendering them unable to make a rational and informed investment decision.

10. Mitchell told potential investors that they could expect three to five percent returns monthly on their investments, or 36% to 60% returns annually.

11. Mitchell told potential investors that the most they stood to lose was five percent of their principal.

12. Mitchell told potential investors that their investment had substantial liquidity and that they could obtain return of their principal upon 30 days notice.

13. In 2008, the stock market moved in a manner incompatible with Mitchell's trading system, which essentially wiped out the positions held by his investors. Instead of a three to five percent return, most of his investors lost most of their investments. The loss was not limited to five percent, and in some cases the losses approached 90% to 100%. With these

losses, liquidity has been completely destroyed and investors are unable to obtain return of their investments.

14. Mitchell did not tell his potential investors that in June 2003, Finance had ordered him to cease and desist from violations of the Idaho Securities Act, and he did not tell them that he was not registered with the CFTC.

15. Finance is aware of seven investors who participated in Mitchell's enterprise, but it is possible that other investors exist. One of the seven was an LLC that pooled money of its members and invested it with Mitchell. Thus, more than six people were affected.

16. The seven investors, including the LLC, invested approximately \$1,822,000 with Mitchell. Of that amount, the investors sustained losses totaling approximately \$1,325,000. The loss amount is net of returns received by the investors while the enterprise was active.

**COUNT ONE**  
**(Unlawful Commodity Activities)**

17. The allegations of paragraphs 1 through 16 above are realleged and incorporated herein as if set forth verbatim.

18. Idaho Code § 30-1505 provides that no person shall act as a commodity merchant unless that person is registered or temporarily licensed with the CFTC, or is exempt.

19. Idaho Code § 30-1501(4)(a) defines "commodity merchant" as, among other things, a commodity trading advisor. 7 U.S.C. § 1a(6) defines "commodity trading advisor" as any person who, for compensation or profit, engages in the business of advising others, either directly or through publications, writings, or electronic media, as to the value of or the advisability of trading in any contract of sale of a commodity for future delivery.

20. Mitchell advised his investors as to the value of or the advisability of trading in any contract of sale of a commodity for future delivery.

21. Mitchell's enterprise as described in this complaint, and his advice to his investors, all while not licensed or registered, constituted violations of Idaho Code § 30-1505 as to each investor every time he advised the investor about the advisability of a trade.

**COUNT TWO**  
**(Fraudulent Conduct)**

22. The allegations of paragraphs 1 through 16 above are realleged and incorporated herein as if set forth verbatim.

23. Idaho Code § 30-1506(1)(b) provides that it is unlawful for any person, directly or indirectly, in connection with a commodity contract or commodity option, to make any 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.

24. Mitchell knew or reasonably should have known that the representations described in paragraphs 10, 11 and 12 above to prospective investors in his enterprise were false, and therefore were untrue statements of material fact, constituting violations of Idaho Code § 30-1506(1)(b) as to each representation to each investor.

25. Mitchell's failure to tell his potential investors that in June 2003, Finance had ordered him to cease and desist from violations of the Idaho Securities Act, and his failure to tell them that he was not registered with the CFTC, constitutes omissions of material facts in connection with the offer or sale of a commodity contract or commodity option, constituting a violation of Idaho Code § 30-1506(1)(b) as to each victim, for a total of at least seven violations.

**COUNT THREE**  
**(Device, Scheme or Artifice to Defraud)**

26. The allegations of paragraphs 1 through 16 above are realleged and incorporated herein as if set forth verbatim.

27. Idaho Code § 30-1506(1)(a) provides that it is unlawful for any person, directly or indirectly, in connection with a commodity contract or commodity option, to employ any device, scheme or artifice to defraud.

28. Mitchell's conduct giving rise to the violations of the Act as alleged in this complaint, constitutes a device, scheme or artifice to defraud investors or prospective investors in his enterprise, in violation of Idaho Code § 30-1506(1)(a) as to each victim, for a total of at least seven violations.

**COUNT FOUR**  
**(Fraudulent Conduct)**

29. The allegations of paragraphs 1 through 16 above are realleged and incorporated herein as if set forth verbatim.

30. Idaho Code § 30-1506(1)(c) provides that it is unlawful for any person, directly or indirectly, in connection with a commodity contract or commodity option, to engage in any transaction, act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

31. Mitchell's conduct giving rise to the violations of the Act alleged in this complaint, constitutes engaging in transactions, acts, practices, or courses of business which operate or would operate as a fraud or deceit upon investors or prospective investors in the enterprise, in violation of Idaho Code § 30-1506(1)(c) as to each victim, for a total of at least seven violations.

**PRAYER FOR RELIEF**

WHEREFORE, Finance prays for a judgment in its favor and against Mitchell as follows:

1. That Mitchell be adjudged to have violated the Idaho Commodity Code, Idaho Code § 30-1501 *et seq.*, and other applicable federal laws and regulations as proven at trial, as to Counts One through Four alleged above, as well as any additional counts proven at trial.

2. That Mitchell be permanently enjoined from engaging in any act or practice violating any provision of the Idaho Commodity Code or any rule promulgated thereunder, or any applicable federal laws or regulations, pursuant to Idaho Code §§ 30-1510(2)(b) and 30-1511(1)(a).

3. That Mitchell be permanently enjoined from buying, selling, or advising others about the value of buying or selling, any commodity or security in the state of Idaho, pursuant to Idaho Code §§ 30-1510(2)(b) and 30-1511(1)(a).

4. That Mitchell be ordered to pay a civil penalty of one hundred thousand dollars (\$100,000) for the violations of the Idaho Commodity Code described in this complaint, and that the court award a money judgment in favor of Finance in such amount, pursuant to Idaho Code § 30-1511(1)(b)(i).

5. That Mitchell be ordered to make restitution to investors in the amount of one million three hundred twenty-five thousand seven dollars and sixty-two cents (\$1,325,007.62), pursuant to Idaho Code § 30-1511(1)(b)(iv). That Defendant pay the restitution amount to Finance, to be delivered to the investors, and that the Court award a money judgment in favor of Finance for such amount.

6. That Finance 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 Finance in such amount. Should judgment be taken by default herein, Finance asserts that five thousand dollars (\$5,000) is a reasonable sum for the same.




7. That the Court award a money judgment to Finance in the total amount of one million four hundred thirty thousand seven dollars and sixty-two cents (\$1,430,007.62), which amount includes restitution, penalties, and attorney fees.

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

DATED this 28<sup>th</sup> day of February, 2011.

STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL

  
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ALAN CONILOGUE  
Deputy Attorney General

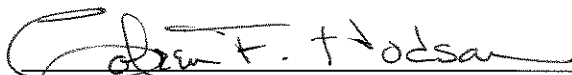
**VERIFICATION**

STATE OF IDAHO    )  
                              )ss.  
County of Ada     )

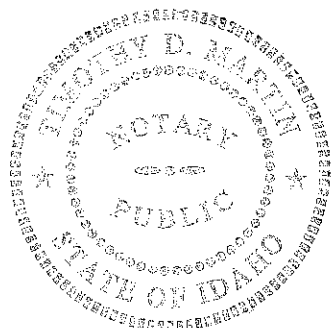
COLEEN F. HODSON, Investigator for the Securities Bureau of the Department of Finance, State of Idaho, being first duly sworn, deposes and says:


I have read the foregoing Verified Complaint, and know the contents thereof; and that the same are true to the best of my knowledge and belief.

DATED this 18 day of February, 2011.

  
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COLEEN F. HODSON

SUBSCRIBED AND SWORN to before me this 18 day of February, 2011.



  
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Notary Public for Idaho  
Residing at: Boise, Ada, Idaho  
My Commission Expires: 11/12/2011