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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, Plaintiff, vs. SHEILA LEA JONES, aka SHEILA LEA JOHNSON, aka SHEILA LEA KILBORN, an individual, Defendant.	Case No. CV OC 0912003 **COMPLAINT** Fee Category: Exempt

COMES NOW the State of Idaho, Department of Finance, Securities Bureau, Gavin M. Gee, Director (Department), 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 Idaho's Uniform Securities Act (2004), Idaho Code § 30-14-101 *et seq.* (USA), and in particular Idaho Code § 30-14-603, wherein the

Department is authorized to bring a civil action seeking injunctive and other relief against persons who have either violated or are about to violate provisions of the USA.

2. This action is also brought pursuant to the Idaho Financial Fraud Prevention Act, Idaho Code § 67-2750 *et seq.* (IFFPA), including Idaho Code §§ 67-2755(4) and 67-2755(5), wherein the Department is authorized to bring an action in any court of competent jurisdiction to seek injunctive and other relief upon a showing that a person has engaged in or is about to engage in any act or practice constituting a violation of the IFFPA or any rule promulgated thereunder.

VENUE

3. The acts and practices alleged herein comprising violations of law by the above-named Defendant occurred in Ada County, Idaho, and elsewhere in the state of Idaho. Defendant resided or was located in Idaho when the alleged acts constituting violations of the USA and the IFFPA were committed.

JURISDICTION

4. Defendant Sheila Lea Jones, aka Sheila Lea Johnson, aka Sheila Lea Kilborn (Jones) personally engaged in unlawful securities transactions with Idaho residents. Jones made material misrepresentations and omitted material information in connection with the offer or sale of securities, and employed a device, scheme or artifice to defraud, in violation of Idaho's Uniform Securities Act (2004), Idaho Code § 30-14-101 *et seq.*

5. Jones conducted business as Vitruvian Investment Group, LLC (VIG), a limited liability company formed on July 11, 2003, under the laws of the State of Idaho, with a principal place of business at 104 E. Fairview Avenue #102, Meridian, Idaho 83642. Jones was VIG's sole managing member. VIG was administratively dissolved on October 6, 2009.

6. Jones also conducted business as Vitruvian Investments, Inc. (VInc), a corporation formed on August 30, 2005, under the laws of the State of Idaho, with a principal place of business at 104 E. Fairview Avenue #102, Meridian, Idaho 83642. VInc is in good standing as of the date of the filing of this complaint, and Jones is its president. VInc held Idaho Mortgage Broker/Lender License No. MBL-5199 from December 20, 2005 through January 2, 2009.

CASE SUMMARY

7. Between 2005 and 2008, Jones issued securities in the form of debentures for the purpose of pooling investment moneys into a fund she created. Jones told her investors that the fund would make short-term construction loans backed by a first position lien in real estate. She guaranteed her investors returns of at least seven percent (7%) per year.

8. Jones set up two companies. VIG was a limited liability company established to hold the investor money and to hold the assets, such as loans, purchased with investor money. VInc was established as a management vehicle for VIG. VInc also found money-making opportunities for the VIG funds, and brokered loans to VIG.

9. Jones defrauded investors by misrepresenting the investment and by omitting material information from the investor solicitations. Her offering documents described specific types of loans it would make and described specific qualifications for borrowers. However, she departed from the guidelines and used fund assets for purposes not disclosed to her investors. For example, Jones used investor funds to make interest payments to other investors. She also spent investor money on personal and business expenses, she made loans to herself, and she departed from investor expectations in various other ways as described more fully below.

10. The offering documents also described certain business practices that would be

followed by VIG and VInc, such as independent review of her accounting, and "Advisory Board" approval when departing from the lending guidelines. Although Jones followed some of the practices during some periods, over time she strayed further and further from the guidelines until eventually she virtually ignored them altogether. Jones paid investors for as long as she could, but the business model required ongoing new investments and loans. The scheme collapsed when the Treasure Valley housing market, which had been booming, cooled off in 2007 and 2008. Despite demand, the invested funds have not been returned to investors. Both VIG and VInc are currently in Chapter 7 Bankruptcy.

DEFENDANT

11. Defendant Jones resided in Kuna, Idaho at all times relevant herein.

12. Defendant's company, Vitruvian Investment Group, LLC, is an Idaho limited liability company doing business in Idaho. VIG filed for Chapter 7 bankruptcy protection on November 3, 2008 in the United States Bankruptcy Court for the District of Idaho.

13. Defendant's company Vitruvian Investments, Inc. is an Idaho corporation doing business in Idaho. VInc filed for Chapter 7 bankruptcy protection on December 5, 2008 in the United States Bankruptcy Court for the District of Idaho.

FACTS

Background

14. After attending college in Maryland, Jones returned to Idaho where she worked at several local banks. She eventually left the banking industry to work in real estate private placement firms.

15. On or about September 11, 2003, HMR Financial filed a Regulation D Rule 506 notice, where Jones was identified as a promoter of a $10,000,000 debenture offering to make

real estate loans and equity investments. The initial filing does not indicate that funds had been raised at that time.

16. On or about April 27, 2004, HMR Financial filed an amended Regulation D Rule 506 notice indicating it had sold debentures totaling $380,000 to four investors. The amended notice also provided that the offering could be sold in the state of California.

17. In or around August 2005, Jones purchased HMR Financial and changed the business name to Vitruvian Investment Group, LLC. Soon after, on or around November 14, 2005, VIG made an amended Regulation D Rule 506 filing to reflect the name change and to identify Jones as the sole promoter and beneficial owner.

18. Around that same time, Jones formed Vitruvian Investments, Inc. and began to solicit investors to pool investment money into the VIG "Advantage Fund," (Fund) which specialized in "short-term construction and development lending, as well as conventional real estate transactions including both commercial and residential loans."

19. Jones, through VIG, accepted investor money from Idaho residents. In exchange Jones dba VIG issued debentures for the purpose of funding real estate transactions. Debentures are securities under Idaho Code § 30-14-102(28).

20. At the time of investment, investors were given a prospectus that made numerous representations about the Advantage Fund and how it would be managed. Jones also made these same representations verbally when pitching the investment. These representations were calculated to induce investors into investing with VIG.

21. The prospectus changed a bit over time, and more than one version exists, but until the last prospectus, the changes are immaterial to this lawsuit. However, the material representations and omissions were present in every prospectus given to investors. (See

Attachment A for a representative copy of the Prospectus given to investors.) A late version of the prospectus had significant changes and disclosed many of the practices Jones eventually engaged in but which had been prohibited by the earlier prospectuses. This last version was not given to investors, nor did Jones verbally tell investors about the specific changes she made to the Fund's lending practices.

The Investment

22. Jones's business model for the investment involved the two companies, VIG and VInc. VIG was the pool into which investor money was placed, and from which loans to borrowers were made. VInc was essentially a management vehicle. Under the auspices of VInc, Jones solicited borrowers for the Fund, evaluated their credit-worthiness, transferred monies among various bank accounts, serviced the loans, paid bills, paid interest to the investors from alleged earnings of the Fund, and accomplished the various and sundry tasks involved in furthering the goals of the investment.

23. Jones disclosed that VInc would be paid 1% to 3% of the loan amount, but asserted that "these fees are paid by the Borrower and not by the Debenture Holders or by the Company." VInc would also be paid "1.00% percent of the overall yield fund yield."

24. Jones disclosed that VIG would receive "30% of the net profit return in the event of profit realized by the sale of assets, such as a property received in foreclosure or upon realization of profit from a joint venture opportunity funded within the Fund."

25. Jones guaranteed investors a minimum return on investment of 7% annually, but asserted that "we are projecting the weighted average return on investment to be **8%-10.5% long term**." (Emphasis in original.) She provided investor and prospective investors with various statements and charts purporting to show quarterly yield over time. The yields shown

may have been accurate in the early years of the investment, but by 2008 the yields were overstated, for reasons described in the next paragraphs.

Overstated Yields

26. Jones structured her loans by allocating a portion of them to payment reserve accounts. She would then make periodic interest payments on the loans from the reserves so it would appear that the loans were performing, even though the borrowers were not actually making payments. This structure, or something similar to it, is not uncommon in construction lending. For example,[1] a builder might want to borrow $200,000 to construct a house on bare ground. Jones would loan the builder $250,000, disburse $200,000, and keep $50,000 in reserve to use to make payments. Thus, a builder could get a loan, make no payments until the house sold, and then pay off the balance.

27. As the Idaho real estate market declined in 2007 and 2008, and builders began to experience difficulty selling the homes they built with VIG loans, some of these loans did not get repaid as anticipated. Instead of foreclosing or taking a deed to the property in lieu of foreclosing, Jones extended the term of the loan and raised the principle amount of it. Thus, for example, the $250,000 loan above might climb to $300,000 as Jones increased the principle and allocated the new $50,000 to the reserve account to provide a source of funds to make ongoing payments on the loan.

28. The problem with the foregoing is that investors did not get new value for the new lending, and the loan to value ratios began to skew outside the expected ranges. Several of the loans eventually defaulted. Throughout the time that Jones was counting payments from the reserve accounts as providing yield on the problem loans, the loans were not actually performing. A number of VIG's loans received no payments from borrowers, and eventually resulted in a

[1] The numbers in this example are illustrative only, and not taken from actual loan files.

loss, but Jones's accounting practices reported these as performing loans with a handsome yield, thereby overstating the yield.

Deviation from Investor Expectations

29. It appears that in the early years Jones attempted to manage the Fund according to the guidelines set forth in the prospectuses, but over time she deviated further and further from the guidelines without telling her investors. Eventually Jones began to use investor funds for her personal benefit, and she took active steps to conceal this activity. She also paid herself, both directly and through her companies, amounts far in excess of the stated compensation.

30. On or around February 20, 2007, Jones took out a loan in the amount of $300,000 from VIG to fund a remodel of her personal residence. Although from 2005 through 2008, Jones signed business correspondence and debentures as "Sheila L. Johnson," and later after re-marrying, as "Sheila L. Jones," she originally made her personal construction loan under the name "Lea Kilborn."[2] The loan was later listed under the name "S-4 Family Trust" and even later as "Shamrock Family Trust." Such loan was not disclosed to investors as being a personal loan to Jones nor was any disclosure made to investors regarding a potential conflict of interest. Jones increased the loan amount over time. The amount listed in VIG's bankruptcy filings for this loan is $429,010.00, as of November 3, 2008.

31. The prospectuses described four types of loans to be made by VIG with investor money: Residential; Light Commercial; Special purpose; and Joint Venture – Acquisition. Each of the four types had specified loan to value ratios, and each contemplated some real estate construction or development basis for the loan. Nevertheless, Jones made unsecured business operating loans to her company, VInc. The loans were disclosed to investors, but the lack of security was not. The amount listed in VIG's bankruptcy filings for this loan is $523,299.33, as

[2] Jones's maiden name was Sheila Lea Kilborn.

of November 3, 2008.

32. On or about August 15, 2007, Jones made a loan to her employee David Hall in the amount of $151,901.09. This loan was to purchase property in Valley County, Idaho and had a maturity date of August 15, 2017. Jones did not disclose to her investors that she made a loan with a ten year maturity date in contravention of the statement in the prospectus that "All loans will contain a maturity date not to exceed 24 months from the date of origination." She also did not disclose that she made a loan to an employee.

Joint Ventures

33. As noted above, the Fund's prospectus listed "Joint Venture – Acquisition" as one of the types of loans it might make, stating: "This category includes: Construction or development of any of the above stated property types where the Portfolio becomes an Equity or Joint Venture partner. **THIS TIER REQUIRES A UNANIMOUS VOTE BY THE BOARD OF ADVISORS PRIOR TO COMMITMENT.**" (Emphasis in original.) A later version of the prospectus changed the emphasized language to the more sedate and less restricted: "This Tier is solely at the Manager's [Jones's] discretion all underwriting guidelines as to all other tiers strictly apply." The latter version of the prospectus was never distributed to investors, nor were investors told of the change.

34. Jones entered into two real estate transactions that eventually were denominated as joint ventures, both for property in Valley County, Idaho. The Joint Ventures purported to allocate 70% of their worth to VIG, 20% to VInc, and 10% to Jones.

35. Neither transaction was approved by the Board of Advisors, nor disclosed to them.

36. Jones used VIG funds to purchase the two properties in her name, but carried the

loans on the VIG books as being made to Remington-Carter Custom Homes. Jones obtained construction financing on one of the properties (Goldfork property) through Bank S., to which she gave a first position deed of trust to secure the loan made in the amount of $731,250. She eventually created a Joint Venture ostensibly between Jones, VIG and VInc to take ownership of the properties. The Joint Ventures were reported on VIG bankruptcy filing as valued at $677,021.33 (Clearwater property) and $559,855.09 (Goldfork property).

Financial Fraud Prevention Act

37. On or around October 9, 2007, Jones obtained a personal loan of approximately $731,250.00 from Bank S. to finance construction of the home on the Goldfork property. In the loan application provided to Bank S., Jones reported false information, some of which is set forth as follows:

a. That she owned a Note Receivable due within one year, in the amount of $139,200, given by Dave and Nora Hall. In reality, this debt was the loan made by VIG to Dave Hall described in paragraph 32 above, and was not due until August 15, 2017.

b. That she owned the Clearwater property mentioned above, with equity of $270,000. This property was purchased with VIG funds and was eventually described by Jones as being an asset of the Joint Venture described above, and was listed in the bankruptcy filings as an asset of VIG.

c. That she owned property at 12877 Spring Valley, Donnelly, Idaho valued at $139,200. This is the same property purchased by Dave and Nora Hall. Thus, Jones listed this property twice as an asset of hers, when in reality it was an asset of the Halls, subject to a security interest in VIG.

d. She failed to report her personal loan on property at Tunstin Lane, Kuna Idaho,

known at various times as the Lea Kilborn or S-4 Family Trust or Shamrock Family Trust loan, payable to VIG, in the approximate amount of $429,000.[3]

Misrepresentations

38. To induce investors to invest, Jones made material false representations. Jones made misrepresentations verbally and in writing, and made them to various investors, but essentially made the same misrepresentations to all investors. Without these misrepresentations, many investors would not have invested. The misrepresentations described below occurred at various times between 2005 and 2008 whenever Jones provided a prospectus to a potential investor. Jones made many of the same misrepresentations verbally when she pitched the investment.

a. Jones represented to investors that the investment would contain a maturity date not to exceed 24 months from the date of origination. This was false because the David Hall and the Lea Kilborn/S-4 Family Trust/Shamrock Family Trust loans in the Fund portfolio had maturity dates that extended beyond 24 months.

b. Jones represented to investors that the investment was an asset-backed investment secured by real estate loans and investments. This is false because loans made by VIG to Four Black Belts (Loan # VI06096), Mocha Moose-Taplin (Loan # HMR05050), VInc (Loan # VITINC), and Heather Clark (VI080110) were not backed by real estate assets.

c. Jones represented to investors that not less than 75% of the portfolio balance would be invested in first lien position real estate loans. This was false because Jones allowed less than 60% of the VIG loan portfolio to be secured by a first lien position.

d. Jones represented to investors that all joint venture acquisitions would require a

[3] It was reported on VIG's bankruptcy filing in 2008 as a loan to Sheila L. Johnston (Jones) in the amount of $429,010.

unanimous vote by the Board of Advisors prior to commitment. This is false because Jones entered into two joint venture acquisitions described above without the Board's knowledge or approval.

e. Jones represented to investors that the Fund would be reconciled on a monthly basis by a CPA. This is false because after November 2006, the Fund has not been reconciled whatsoever.

f. Jones represented to investors that an audit of the Fund's business would be performed by a CPA. This is false because no such audit has taken place.

g. Jones represented to investors that "all significant deviations from the underwriting criteria are to be reviewed and approved by the Manager and by the appointed Board ofAdvisors." This is false because some loans deviated from the guidelines as described in subparagraphs a., b., and c. above, but the deviations were not approved by the Board of Advisors.

h. Jones represented to investors that "The Managers strictly adhere" to the lending guideline stated in the prospectus "for every loan transaction that is submitted for funding." These statements are false because Jones did not "strictly adhere" to the guidelines and because she did not adhere to the guidelines for every loan, as described in subparagraphs a., b., and c. above.

Material Omissions

39. Jones did not tell potential investors certain information that would be necessary to make other statements not misleading, and that an investor would likely consider as material to a decision to invest with Jones. The omissions described below occurred at various times between 2005 and 2008. Jones made the material omissions verbally and in writing, and made

them to various investors, but essentially omitted the same information from communications with all investors. Had investors known this omitted information, they would not have invested. Jones failed to disclose the following material information:

a. That as the Fund manager, she would approve funding of loans for her own personal benefit.

a. That some investor money would be used for Jones' personal benefit.

b. That some investor money would be used to pay for operating or other miscellaneous expenses.

c. That investor money could be used to make interest payments to other investors.

d. That the only way the Fund could be successful would be to continue to bring new investor money into the Fund.

e. That she entered into Joint Ventures for the purchase of property in Valley County, Idaho.

COUNT ONE
(Fraud - False and Misleading Statements)

40. The allegations of paragraphs 1 through 39 above, including sub-paragraphs, are realleged and incorporated herein as if set forth verbatim.

41. 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 light of the circumstances under which they were made, not misleading.

42. Jones' misrepresentations to prospective investors, as set forth in paragraphs 38.a. through 38.h. above, were made in connection with the offer, sale or purchase of securities. Jones' misrepresentations were material and were false and misleading, constituting violations of

Idaho Code § 30-14-501(2) as to each misrepresentation to each investor.

43. Jones' omissions of material facts and failures to disclose material information to prospective investors, as set forth above in paragraphs 39.a. through 39.e., were made in connection with the offer, sale or purchase of securities. Jones omissions of material facts and failures to disclose material information as described herein constitute violations of Idaho Code § 30-14-501(2) as to each omission and failure to disclose to each investor. Jones made such omissions to virtually every investor.

44. During the second or third week of April 2008, Jones met with investor CD in Jones' business office at 1880 South Cobalt Point Way, in Meridian, Idaho. In that meeting, Jones provided investor CD with the prospectus described above and verbally reiterated the misrepresentations embodied in Exhibit A hereto and described in paragraphs 38.a. through 38.h. above. She also omitted the material information described in paragraphs 39.a. through 39.e. above. Jones' statements at this meeting and Jones' statements contained in Exhibit A are representative of other meetings with other investors in furtherance of the fraud, which will be proved with specificity at trial.

COUNT TWO
(Fraudulent Conduct)

45. The allegations of paragraphs 1 through 39, including subparagraphs, above are realleged and incorporated herein as if set forth verbatim.

46. Idaho Code § 30-14-501(3) provides that it is unlawful for any person, directly or indirectly, in connection with the offer, sale or purchase of a security, to engage in an act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

47. Defendant's acts as set forth in paragraphs 1 through 39, including subparagraphs,

above were made in connection with the offer, sale or purchase of securities. Her conduct as described in paragraphs 1 through 39, including subparagraphs, 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 violation of Idaho Code § 30-14-501(3) as to each omission to each investor.

48. Specifically, Jones' ongoing misrepresentations and omissions about the liquidity of the investment were designed to perpetuate the fraud. The misrepresentations and omissions were intended to, and did, beguile investors into giving money to Jones. Plaintiff is uncertain exactly when the fraud began, but it was well underway in 2007 and continued through October 2008 when Jones shut down the investment.

49. By making the misrepresentations verbally and in the prospectus in order to lure investors, Jones engaged in transactions that operated as a fraud or deceit. Additionally, as described above, Jones's concealment of her personal loan by making it in various unfamiliar names was an effort to perpetuate the fraud by hiding the loan from her Board of Advisors and investors. Also, Jones's acts in buying property in Valley County, Idaho in her name with investor money was an effort to conceal the purchases from investors and was part of the ongoing overall fraud.

COUNT THREE
(Violations of the Idaho Financial Fraud Prevention Act)

50. The allegations of paragraphs 1 through 39, including subparagraphs, above are realleged and incorporated herein as if set forth verbatim.

51. The Idaho Financial Fraud Prevention Act, at Idaho Code § 67-2752(1) (IFFPA), provides that it is unlawful for any person, directly or indirectly, to employ any device, scheme or artifice to defraud a financial institution. Idaho Code § 67-2752(2), provides that it is

unlawful for any person, directly or indirectly, "to obtain or attempt to obtain money, funds, credits, assets, securities, or other property owned by, or under the custody or control of a financial institution by means of false or fraudulent pretenses [or] representations."

65. Jones submitted to Bank S. an application for a loan that contained false information concerning her personal assets and liabilities, as referenced in paragraphs 37.a. through 37.e. above. She failed to report certain debts and she claimed assets that did not belong to her, thereby falsely inflating her net worth in order to qualify for a loan. These acts constituted a scheme or artifice to defraud a financial institution, in violation of Idaho Code § 67-2752(1). She also submitted this false information in order to obtain funds from the bank, in violation of Idaho Code § 67-2752(2).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the Court enter Judgment against Defendant as follows:

Idaho's Uniform Securities Act (2004)

1. That Defendant be adjudged to have violated Idaho's Uniform Securities Act (2004), Idaho Code § 30-14-101 *et seq.*, rules promulgated thereunder, and other applicable federal laws and regulations as proven at trial, as to Counts One and Two alleged above, as well as any additional counts proven at trial.

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

3. That Defendant be ordered to pay a civil penalty of up to $10,000 for each

violation of the USA as the Court deems appropriate, pursuant to Idaho Code § 30-14-603(b)(2)(C), for total penalties of at least $20,000, and that the Court award a money judgment in favor of Plaintiff in such amount.

4. That Defendant be ordered to make restitution to investors, pursuant to Idaho Code §30-14-603(b)(2)(C) in the amount of three million seven hundred thousand dollars ($3,700,000), or such other amount as proven at trial. That Defendant 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.

5. That Plaintiff 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 Plaintiff in such amount. Should judgment be taken by default herein, Plaintiff asserts that $5,000 is a reasonable sum for the same.

Idaho Financial Fraud Prevention Act

6. That Defendant be adjudged to have violated Idaho Financial Fraud Prevention Act (IFFPA), pursuant to Idaho Code § 67-2755(4) as to Count Three alleged above.

7. That Defendant be permanently enjoined from engaging in any act or practice violating any provision of the IFFPA:

8. That Defendant be ordered to restore to Bank S. any consideration, funds or property which may have been acquired or transferred in violation of the IFFPA, in such amount as is proved at trial, pursuant to Idaho Code § 67-2755(5)(a);

9. That Defendant be ordered to pay a civil penalty of up to $10,000 for each violation of the IFFPA as the Court deems appropriate, pursuant to Idaho Code § 67-2755(5)(b), for total penalties of $10,000, and that the Court award a money judgment in favor of Plaintiff in

such amount.

10. That Defendant be ordered to pay to Plaintiff reasonable investigative expenses and attorney fees incurred by prosecution of this action, pursuant to Idaho Code § 67-2755(5)(c). Should this matter go by default, Plaintiff asserts that $5,000 is a reasonable amount for such expenses and attorney fees; and

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

DATED this 22nd day of October, 2009.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

ALAN CONILOGUE
Deputy Attorney General