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Los Angeles Superior Court

AUG 08 2006

John A. Clarke, Executive Officer/Clerk
By *R. Giles* Deputy
D. Giles

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF LOS ANGELES

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12 THE PEOPLE OF THE STATE OF
13 CALIFORNIA, by and through the
California Corporations Commissioner,

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15 Plaintiff,

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18 v.

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20 TONY M. NAVA, JR., as an individual; and
21 Does 1 through 10, inclusive,

22 Defendants.
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CASE NO. BC356585

COMPLAINT FOR TEMPORARY
RESTRAINING ORDER, PRELIMINARY
INJUNCTION; PERMANENT INJUNCTION;
CIVIL PENALTIES; AND ANCILLARY
RELIEF

VIOLATIONS OF CORPORATIONS CODE
SECTION 25110
(UNQUALIFIED SALES OF SECURITIES)

VIOLATIONS OF CORPORATIONS CODE
SECTION 25401
(FRAUD IN CONNECTION WITH THE
OFFER AND SALE OF SECURITIES)

VIOLATIONS OF DESIST AND REFRAIN
ORDER ISSUED BY THE COMMISSIONER
(CORPORATIONS CODE SECTION 25530)

VIOLATIONS OF CORPORATIONS CODE
SECTION 25404
(ALTERATION AND FALSIFICATION OF
DOCUMENT)

1 Preston DuFauchard, California Corporations Commissioner, acting to protect the public
2 from unlawful and fraudulent sales of securities, brings this action in the public interest in the name
3 of the People of the State of California. The People of the State of California allege:

4 **JURISDICTION AND VENUE**

5 1. The California Corporations Commissioner ("Commissioner") brings this action to
6 enjoin the defendants from violating the California Corporate Securities Law of 1968 (Corporations
7 Code section 25000, et seq.) and to request necessary equitable and ancillary relief. The
8 Commissioner is authorized to administer and enforce the provisions of the Corporate Securities
9 Law.

10 2. The Commissioner brings this action pursuant to Corporations Code section 25530
11 and Government Code section 11180 et seq., in his capacity as head of the California Department of
12 Corporations.

13 3. Defendants have transacted and continue to transact business within Los Angeles
14 County and other counties of California. The violations of law described herein have occurred and
15 will continue to occur within Los Angeles County and elsewhere in California unless enjoined.

16 **DEFENDANTS**

17 4. Defendant Tony M. Nava, Jr. ("Nava") is an individual whose last known residence
18 was at 103 E. Lincoln Ave., Montebello, California 90640 and whose last known business address
19 was at 2360 S. Garfield Ave., Monterey Park, California 91754.

20 5. Defendants sued herein under the fictitious names Does 1 through 10, inclusive, are
21 unknown to plaintiff who therefore sues such defendants by such fictitious names, pursuant to the
22 provisions of Code of Civil Procedure section 474. The Commissioner asks leave of the court to
23 amend the Complaint and allege the true names and capacities of such defendants at such time as the
24 same have been ascertained.

25 6. The Commissioner is informed and believes, and thereon alleges that, at all relevant
26 times hereto, the defendants named as officers, directors, agents or employees, acted in such
27 capacities in connection with the acts, practices and schemes of business set forth below.

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1 13. Defendant Nava solicited his fellow Hispanic business associates, friends and
2 acquaintances to invest.

3 14. Defendant Nava used his fellow Hispanic business associates, friends and
4 acquaintances to solicit other Hispanic investors.

5 15. Defendant Nava made material misrepresentations and/or omitted to disclose material
6 facts, including but not limited to the representation that investors would receive interest ranging
7 from 10% to 55 % on their investments, generally within 10 to 45 business days of the investment.
8 This projection had no reasonable basis in fact. Most of the investors have not received any of their
9 money back.

10 16. On or about December 10, 2002, the Commissioner issued a Desist and Refrain Order
11 (“2002 Order”) against Nava and Nava Marketing Corporation for offering and selling unqualified,
12 non-exempt securities, in violation of Section 25110. The securities offered and sold, totaling at
13 least \$10,000.00, to at least 4 investors residing in California, consisted of investment contracts
14 referred to as “Investment Agreements.” Numerous attempts to personally serve Nava were
15 unsuccessful. Accordingly, the Commissioner was served on behalf of Nava pursuant to Section
16 25550, on September 19, 2003.

17 17. On or about March 1, 2006, the Commissioner issued another Desist and Refrain
18 Order (“2006 Order”) against Nava for offering and selling unqualified, non-exempt securities, in
19 violation of Section 25110. Notwithstanding the 2002 Order, Nava continued to offer and sell
20 investment contracts referred to as “Investing Agreements” totaling at least \$490,000.00 to at least
21 11 investors residing in California. Nava was personally served with the 2006 Order on March 30,
22 2006.

23 18. On or about June 14, 2006, the Commissioner received information that Nava altered
24 and falsified the 2006 Order by adding language that was not in the 2006 Order when it was issued.
25 The added language read as follows: “Action taken against Tony M. Nava, Jr.: All bank accounts be
26 seized until all investigations are conducted. Bank account hold time: Money will be released
27 pending court clearance. March 27, 2006: No fraud found on Tony M. Nava, Jr. (Associates review
28 under court clearance).” The issuance date of March 1, 2006 and the name of the Commissioner

1 were deleted from the altered and falsified order. None of the statements in the language added by
2 Nava are true.

3 19. At least 2 investors received the altered and falsified order from Nava, sometime in
4 May 2006. By sending out this altered and falsified order, Nava was attempting to impede and
5 obstruct the Department's investigation by suppressing any suspicion of his illegal activities and to
6 contain the investors' dissatisfaction in not getting their money back.

7 **FIRST CAUSE OF ACTION**

8 **OFFER AND SALE OF UNQUALIFIED, NON-EXEMPT SECURITIES**
9 **IN VIOLATION OF CORPORATIONS CODE SECTION 25110**
10 **(ALL DEFENDANTS)**

11 20. Plaintiff incorporates by reference paragraphs 1 through 19 of this Complaint as
12 though fully set forth herein.

13 21. Corporations Code section 25110 provides, in pertinent part, as follows:

14 It is unlawful for any person to offer or sell in this state any security
15 in an issuer transaction . . . whether or not by or through underwriters
16 . . . unless such sale has been qualified under Section 25111 . . . or
17 unless such security or transaction is exempted under Chapter 1
18 (commencing with Section 25100) of this part.

19 22. Beginning in at least March 2002 and continuing thereafter, Defendants, and each of
20 them, offered and sold investment contracts referred to as "Investing Agreements," totaling at least
21 \$500,000.00, to at least 15 investors, residing in California.

22 23. The investments offered and sold by Defendants are "securities" within the meaning
23 of Section 25019. The securities include, but are not necessarily limited to, investment contracts
24 referred to as "Investing Agreements."

25 24. The sales of investment contracts were "issuer transactions" within the
26 meaning of Sections 25010 and 25011.

27 25. Defendants, and each of them, "offered and sold" the securities "within the state" of
28 California within the meaning of Sections 25008 and 25017.

29 26. The Commissioner has not issued a permit or other form of qualification authorizing
the offer and sale of the securities referred to herein in the state of California.

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1 material fact and/or omit to state material facts to some or all of the investors. The untrue statements
2 and/or omissions include but are not necessarily limited to, the following:

3 A. Nava’s representations to investors that they would receive interest ranging from 10%
4 to 55% on their investments within 10 to 45 business days of the date of investment. These
5 statements had no reasonable basis in fact. Most of the investors have not gotten any money back
6 from Nava.

7 B. Nava’s failure to inform investors that he and his company, Nava Marketing
8 Corporation were the subjects of a Desist and Refrain Order issued by the Commissioner on
9 December 10, 2002, prohibiting them from offering and selling securities.

10 35. The misstatements and omissions referred to herein were “material facts” within the
11 meaning of Section 25401 since they concerned matters that a “reasonable investor” would consider
12 in deciding whether to invest.

13 36. Defendant Nava’s offer and sale of securities were by means of misrepresentations
14 and omissions within the meaning of Section 25401.

15 37. Some or all of defendant Nava’s misrepresentations and omissions of material fact
16 took place “within the state” of California within the meaning of Section 25008.

17 38. In doing the actions alleged in paragraphs 10 through 19, Plaintiff is informed and
18 believes, and thereon alleges that Defendants, and each of them, knowingly and willfully conspired
19 and agreed among themselves to make untrue statements of material fact and/or omitted to state
20 material facts in the offer and sale of the securities described herein.

21 39. Plaintiff is informed and believes, and thereon alleges that in pursuance of the above-
22 described conspiracy, Defendants, and each of them, misrepresented material facts and/or omitted to
23 state materials facts, including but not limited to defendant Nava’s misrepresentation concerning the
24 return on the investments.

25 40. Plaintiff is informed and believes, and thereon alleges that the last overt act in
26 pursuance of the above-described conspiracy occurred sometime in May 2006 on which date Nava
27 sent out the altered and falsified Desist and Refrain Order issued on March 1, 2006, to at least 2
28 investors.

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41. Unless enjoined, Defendants will continue to violate Section 25401.

THIRD CAUSE OF ACTION
VIOLATIONS OF PRIOR DESIST AND REFRAIN ORDER
ISSUED BY THE COMMISSIONER
(DEFENDANT NAVA)

42. Plaintiff incorporates by reference paragraphs 1 through 41 of this Complaint as though fully set forth herein.

43. Corporations Code section 25530 provides, in pertinent part, as follows:

(a) Whenever it appears to the commissioner that any person has engaged or about to engage in any act or practice constituting a violation of any provision of this division or any rule or order hereunder, the commissioner may in the commissioner's discretion bring an action in the name of the people of the State of California in the superior court to enjoin the acts or practices or to enforce compliance with this law or any rule or order hereunder

44. On or about December 10, 2002, the Commissioner issued a Desist and Refrain Order against Nava and Nava Marketing Corporation for offering and selling unqualified securities totaling at least \$10,000 to at least 4 investors residing in California, in violation of Section 25110. Numerous attempts to personally serve Nava were unsuccessful. Accordingly, this order was served on the Commissioner on behalf of Nava and Nava Marketing Corporation pursuant to Section 25550, on September 19, 2003.

45. Following the issuance and service of the Desist and Refrain Order discussed in paragraph 44, the Commissioner learned that from March 2004 to at least January 2006, Nava continued to offer and sell investment contracts referred to as "Investing Agreements" totaling at least \$490,000.00 to at least 11 investors residing in California. In doing so, Nava violated the Desist and Refrain Order issued by the Commissioner on or about December 10, 2002.

46. Unless enjoined, defendant Nava will continue to violate the Desist and Refrain Order issued by the Commissioner.

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FOURTH CAUSE OF ACTION

**ALTERATION AND/OR FALSIFICATION OF DOCUMENT
IN VIOLATION OF CORPORATIONS CODE SECTION 25404
(ALL DEFENDANTS)**

47. Plaintiff incorporates by reference paragraphs 1 through 46 of this Complaint as though fully set forth herein.

48. Corporations Code section 25404 provides, as follows:

It is unlawful for any person to knowingly alter, destroy, mutilate, conceal, cover up, falsify, or make a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the administration or enforcement of this division.

49. On or about March 1, 2006, the Commissioner issued to and subsequently served a Desist and Refrain Order on Nava, directing him to immediately desist and refrain from offering and selling unqualified securities in the state of California, unless and until he applied for and secured from the Commissioner a qualification authorizing him to offer and sell securities or unless he is exempted from the provisions of Corporations Code section 25110.

50. On or about June 14, 2006, the Commissioner received information that Nava had altered and falsified the Desist and Refrain Order, issued on March 1, 2006, by adding language that was not in the order when issued. The added language read as follows: "Action taken against Tony M. Nava, Jr.: All bank accounts be seized until all investigations are conducted. Bank account hold time: Money will be released pending court clearance. March 27, 2006: No fraud found on Tony M. Nava, Jr. (Associates review under court clearance)." The issuance date of March 1, 2006 and the name of the Commissioner were deleted from the altered and falsified order. None of the statements in the language added by Nava are true.

51. At least 2 investors received the altered and falsified Desist and Refrain Order from Nava, sometime in May 2006. By sending investors this altered and falsified order, especially to the extent it states that the Commissioner had not found fraud, Nava is attempting to suppress any suspicion of his illegal activities and to contain the investors' dissatisfaction in not getting their money back. Nava is impeding the administration and enforcement of the Corporate Securities Law

1 by sending this altered and falsified order because this may deter current and prospective investors
2 from reporting complaints about Nava. It may also discourage investors from cooperating with the
3 Department's ongoing investigation. Without cooperation of the investors, the Department would
4 not be able to pursue further action against Nava.

5 52. Unless enjoined by this Court, Nava will continue to violate Section 25404.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, plaintiff prays for judgment against all Defendants, as follows:

8 **I. INJUNCTIVE RELIEF FOR THE VIOLATIONS:**

9 1. For an order of temporary restraining order, preliminary injunction and permanent
10 injunction enjoining, defendant Nava, and such Does as may subsequently be named, and each of
11 them, their officers, directors, successors in interest, agents, employees, attorneys in fact, and all
12 persons acting in concert or participating with them, or any of them, from directly or indirectly:

13 A. Violating Section 25110, by offering to sell, selling, arranging for the sale of,
14 issuing, engaging in the business of selling, negotiating for the sale of, or otherwise in any way
15 dealing or participating in the offer or sale of, any security of any kind, including but not limited to
16 the securities described in this Complaint, unless such security or transaction is qualified or
17 exempted or not subject to qualification;

18 B. Violating Section 25401 by offering to sell or selling any security of any kind,
19 including but not limited to, the securities described in this Complaint, by means of any written or
20 oral communication which includes any untrue statement of material fact or omits or fails to state
21 any material fact necessary in order to make the statements made, in the light of the circumstances
22 under which they are made, not misleading, including but not limited to the misrepresentations
23 and/or omissions alleged in this Complaint;

24 C. Violating any Desist and Refrain Order issued by the Commissioner including the
25 order issued on December 10, 2002, by offering and selling unqualified, non-exempt securities in
26 violation of California Corporations Code section 25110.

27 D. Violating Section 25404, by knowingly altering, destroying, mutilating, concealing,
28 covering, falsifying, or making a false entry in any record, document, or tangible object with the

1 intent to impede, obstruct, or influence the administration or enforcement of the California Corporate
2 Securities Law of 1968.

3 E. Removing, destroying, mutilating, concealing, altering, transferring, or otherwise
4 disposing of, in any manner, any books, records, computer programs, computer files, computer
5 printouts, correspondence, brochures, manuals, or any other “writings” or “documents” of any kind
6 as defined under Evidence Code section 250, relating to the transactions and course of conduct as
7 alleged in the complaint in this action, unless authorized by this Court;

8 F. Transferring, changing, disbursing, selling, dissipating, converting, pledging,
9 assigning, foreclosing, or otherwise disposing of any real property or personal property in their
10 possession or under their control, or in the possession of, or under the control of, any of the
11 Defendants, which property or other assets were derived or emanated from directly, or indirectly, the
12 sale and issuance of securities as alleged in this Complaint, without leave of the Court; and

13 G. Withdrawing, transferring, changing, disbursing, dissipating, converting,
14 pledging, or assigning any funds or other assets which were derived or emanated, directly or
15 indirectly, from the offer or sale of securities as alleged in this Complaint, from any
16 accounts at any bank, savings and loan association, broker-dealer or any other financial
17 institution in the name of any of the Defendants, or controlled by any of the Defendants,
18 without leave of the Court.

19 **II. RESCISSION AND RESTITUTION**

20 1. For a Final Judgment requiring defendant Nava, and such Does as may be
21 subsequently named, and each of them, individually, jointly and severally, to rescind each
22 and all of the unlawful transactions alleged in this Complaint, as shall be determined by this
23 Court to have occurred, and further requiring defendant Nava and such Does as may be
24 subsequently named, and each of them, individually, jointly and severally, to pay full
25 restitution to each person determined to have been subject to the Defendants’ acts or
26 practices which constitute violations of the Corporate Securities Law, in an amount of at
27 least \$500,000.00, or according to proof. In addition, to pay either the contracted rate of
28 interest or the legal rate of interest in the amounts invested by the investors from the dates of

1 their investments to the date of judgment herein.

2 2. For a Final Judgment requiring defendant Nava, and such Does as may be
3 subsequently named, and each of them, individually, jointly and severally, to disgorge to all
4 known investors all benefits received, including but not limited to, salaries, commissions,
5 fees, profits and any other remuneration, derived directly or indirectly, from the actions or
6 practices which constitute violations of the Corporate Securities Law.

7 **III. CIVIL PENALTIES**

8 For a Final Judgment requiring defendant Nava, and such Does as may be
9 subsequently named, and each of them, to pay to the Department of Corporations \$25,000 as
10 a civil penalty for each act in violation of the Corporate Securities Law, as authorized by
11 Corporations Code section 25535, in an amount of at least \$975,000.00 or according to
12 proof.

13 **IV. OTHER RELIEF**

14 For such other and further relief as this Court may deem necessary and proper.

16 Dated: August 7, 2006
17 Los Angeles, California

PRESTON DuFAUCHARD
California Corporations Commissioner

By: _____
MARLOU de LUNA
Senior Corporations Counsel
Attorney for Plaintiff

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