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9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 **SECURITIES AND EXCHANGE**
12 **COMMISSION,**

13 Plaintiff,

14 vs.

15 **JOHN ANTHONY GIUNTI AND**
16 **INTERACTIVE MEDIA SOLUTIONS,**
17 **LLC,**

18 Defendants.

Case No. '17CV1504 BEN BLM
COMPLAINT

19
20
21 Plaintiff Securities and Exchange Commission ("SEC") alleges:

22 **JURISDICTION AND VENUE**

23 1. This Court has jurisdiction over this action pursuant to Sections 20(b),
24 20(d)(1), and 22(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§
25 77t(b), 77t(d)(1), & 77v(a)], and Sections 21(d)(1), 21(d)(3)(A), 21(e), and 27(a) of
26 the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78u(d)(1),
27 78u(d)(3)(A), 78u(e), & 78aa(a)].

28 2. The defendants have, directly or indirectly, made use of the means or

1 instrumentalities of interstate commerce, or of the mails, in connection with the
2 transactions, acts, practices and courses of business alleged in this Complaint.

3 3. Venue is proper in this district pursuant to Section 22(a) of the
4 Securities Act [15 U.S.C. § 77v(a)] and Section 27(a) of the Exchange Act [15
5 U.S.C. § 78aa(a)] because certain of the transactions, acts, practices, and courses of
6 conduct constituting violations of the federal securities laws occurred within this
7 district. In addition, venue is proper in this district because the defendants reside
8 in this district in San Diego, California.

9 **SUMMARY**

10 4. This action arises from a securities offering fraud perpetrated by
11 Defendant Interactive Media Solutions, LLC (“IMS”) and its sole principal,
12 Defendant John Anthony Giunti (“Giunti”). IMS claims to have a cellphone
13 application (“app”) that can send money from a cellphone to a bank account, to
14 pick up at a bank, or to pay a bill.

15 5. Giunti solicited IMS investments from friends, family, business
16 associates, and investors in a former company. From July 2015 to November
17 2016, IMS and Giunti raised nearly half a million dollars from more than 20
18 investors through this offering fraud.

19 6. IMS and Giunti convinced investors that they could profit from the
20 success of this start-up company. However, IMS and Giunti misrepresented
21 material facts in the IMS securities offering, including that:

- 22 a. investor funds would be spent for business purposes, when
23 instead almost all investor funds were spent for Giunti’s
24 personal purposes;
- 25 b. IMS had positive cash flow, when it had no revenue from
26 operations;
- 27 c. IMS had a business partnership with Google and space at
28 Google’s offices, when it had no connection with Google and

1 was based at Giunti's home and operated out of a business
2 center in San Diego; and

3 d. Giunti earned an MBA from Columbia University, when he had
4 not.

5 7. IMS and Giunti had planned to raise \$5 million in a future securities
6 offering and hoped to create a public company through an initial public offering of
7 its securities (an "IPO").

8 THE DEFENDANTS

9 8. **Defendant Interactive Media Solutions, LLC ("IMS")** is a
10 Delaware limited liability company based in San Diego, California. IMS was
11 founded by John Anthony Giunti, who is its sole principal. IMS is based at
12 Giunti's home and operates out of a business center in San Diego, California.

13 9. **Defendant John Anthony Giunti**, age 49, resides in San Diego,
14 California. He is IMS' founder and sole principal. In 2015, he was convicted in
15 San Diego Superior Court for a misdemeanor for writing bad checks. His sentence
16 included a fine and credit for one day served in jail.

17 FACTUAL ALLEGATIONS

18 **A. Background**

19 10. Giunti was previously affiliated with a private company in the
20 television broadcasting business. Through this work, he gained experience with
21 securities offerings and developed relationships with investors. After that business
22 was liquidated, Giunti stayed in touch with its investors and eventually solicited
23 them to invest in IMS.

24 11. Giunti is the founder and sole principal of IMS. He runs the business
25 out of his San Diego home and a San Diego business center.

26 12. IMS claims to have an app that can send money from any cellphone in
27 the United States to a bank account or to pick up at a bank, even one in a foreign
28 country, or to pay a bill. Yet there is no evidence of the existence and

1 functionality of this app other than Giunti's own unsubstantiated claims about
2 engineers and companies all located in China.

3 **B. IMS and Giunti Sold Securities Investments in IMS**

4 13. From at least July 2015 to November 2016, IMS and Giunti sold
5 investments in IMS in the form of membership units in the limited liability
6 company.

7 14. IMS and Giunti raised nearly half a million dollars from more than 20
8 investors.

9 15. The securities offering was directed primarily to the investors in a
10 former business; approximately two-thirds of the IMS investors were also investors
11 in that company. In addition, Giunti pitched the IMS investment to people he
12 knew, including friends, family, and people he met through investors or previous
13 jobs.

14 16. IMS and Giunti created an illusion that IMS was a successful start-up
15 company and convinced investors that they could profit from IMS's success. From
16 at least July 2015, Giunti pitched the IMS securities investments in telephone calls
17 and e-mail messages with investors, explaining that IMS needed funds from
18 investors to operate this start-up business and to prepare for an initial public
19 offering of its securities.

20 17. In November 2015, Giunti prepared a document for IMS called an
21 Interim Update (hereinafter referred to as the "IMS Update").

22 18. IMS and Giunti used the IMS Update to raise funds from investors.

23 19. The IMS Update asked investors "to consider increasing their
24 ownership to enable IMS to have the proper financial resources to expeditiously
25 reach its goals." The IMS Update stated that "our current plans for IPO and the
26 need to hire personnel and expected legal expenses associated with our initiatives,
27 keep us on the move to raise additional funds needed to budget these resources and
28 initiatives faster than current business cash flows can accommodate."

1 20. The IMS Update offering document made several representations,
 2 including that:

3 a. IMS planned to use investor proceeds from “this phase of
 4 fundraising” for its business, as detailed in this use of proceeds
 5 table:

Budget (Pre-IPO)	Cost
Technology Patents (7 total)	\$105,000
Investor Relations	\$15,000
Website Project	\$35,000
Legal	\$40,000
Operations (6 months @ \$20,000 per month)	\$120,000
China Business Development	\$25,000
Total	\$340,000

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- 13 b. IMS’ current “use of proceeds” had only “minor changes” from
 14 its “earlier phases of fundraising;”
- 15 c. IMS’ business operations generated positive cash flow, and it
 16 would take at least 9 months to generate the \$340,000 needed to
 17 support its IPO and other objectives (i.e., it had positive cash
 18 flow of more than \$37,000 per month);
- 19 d. IMS had office space at Google on the Westside of Los Angeles
 20 where the “IMS Team” worked as part of the IMS “Google
 21 partnership program;” and
- 22 e. Giunti earned an MBA from Columbia University over 20 years
 23 ago.

24 21. In December 2016, Giunti emailed another update to raise funds for
 25 IMS from investors. This document repeated the representations about cash flow:
 26 “IMS management feels very strongly that the need to accomplish our goals in an
 27 expedited manner, rather than through the 6+ months it will take if we finance
 28 these objectives through current cash flow make this fundraising period perhaps

1 the most critical in IMS' history.”

2 22. Giunti made similar oral representations to investors. Giunti
3 explained in telephone calls with investors that their funds would be used for
4 IMS's business operations. Throughout the securities offering, Giunti conducted
5 regular “investor update” conference calls. The purpose of these calls was to
6 describe the current status of the company's business, to seek additional
7 investments, and to describe the planned use of investor proceeds. He also
8 conveyed similar information to investors in one-on-one telephone calls.

9 23. Investors used several different methods for making their equity
10 investments in IMS, including sending checks payable to IMS, wiring cash into
11 IMS's bank account, and using credit cards through a payment processing
12 company.

13 24. IMS and Giunti pooled investor cash investments into an IMS bank
14 account.

15 25. From July 2015 through November 2016, IMS and Giunti raised at
16 least \$482,960 from 24 investors.

17 26. IMS and Giunti had planned to raise \$5 million in a future securities
18 offering. Giunti prepared a draft Private Placement Memorandum for this \$5
19 million offering and planned to move forward as soon as the SEC finished its
20 enforcement investigation. Giunti also hoped that IMS would become a public
21 company through an IPO; he had already selected professionals to join the
22 company after it became public and Giunti planned to be the CEO of the public
23 company.

24 **C. IMS and Giunti Misappropriated Investor Funds**

25 27. In the IMS Update offering document, IMS and Giunti listed six (6)
26 business purposes for the use of investor proceeds. Likewise, Giunti explained in
27 telephone calls with investors that their funds would be used for IMS's business
28 operations. IMS and Giunti misrepresented the use of investor proceeds because

1 they misappropriated investor funds.

2 28. IMS and Giunti spent only a small amount of the money raised from
3 investors on IMS's business operations during the relevant time period.

4 29. Instead of using investor funds as represented for business purposes,
5 IMS and Giunti used almost all of the investor proceeds for Giunti's personal
6 purposes. Specifically, they used investor funds for Giunti's retail purchases, large
7 cash withdrawals, private-school tuition for his children, luxury vacations, and
8 political contributions.

9 30. IMS and Giunti also used a small amount of investor funds to make
10 principal refunds to investors who requested them.

11 **D. IMS and Giunti Made Additional Misrepresentations of Facts**

12 31. In addition to misappropriating investor funds, IMS and Giunti
13 knowingly made several other material misrepresentations to investors.

14 32. The IMS Update claimed that the business had positive "cash flow."
15 Giunti told investors in telephone calls that IMS had revenue from operations,
16 when, in fact, it did not have any paying customers during 2015 or 2016.

17 33. The IMS Update touted the company's office space at Google in Los
18 Angeles, where it claimed the "IMS Team" worked as part of a "Google
19 partnership program." Furthermore, Giunti touted to investors the company's
20 business relationship with Google. In fact, neither IMS nor Giunti had any
21 business relationship with Google, and IMS's business was based in Giunti's home
22 and a San Diego business center.

23 34. The IMS Update misrepresented that Giunti earned an MBA from
24 Columbia University. To the contrary, Giunti did not earn an MBA from
25 Columbia University.

26 35. Investors relied on the representations from IMS and Giunti, and
27 purchased the IMS securities after IMS and Giunti made these material
28 misrepresentations.

1 **E. Scheme to Defraud**

2 36. IMS and Giunti raised investor funds allegedly to build the IMS
3 business and instead misappropriated investor funds. IMS and Giunti knowingly
4 took actions in furtherance of their fraudulent scheme.

5 37. When Giunti was unable to open a bank account under his own
6 control, he enlisted help from a family member.

7 38. Giunti had his mother make a filing in Florida for the fictitious
8 business name "Interactive Media Solutions."

9 39. Giunti directed his mother to open a bank account in her name doing
10 business as Interactive Media Solutions, while knowing that she had nothing to do
11 with the business of IMS.

12 40. As investors purchased the securities and their funds were deposited
13 into this bank account, Giunti fraudulently withdrew those funds for his personal
14 expenses.

15 41. When several investors requested return of their principal, IMS and
16 Giunti repaid these investments using capital invested by other investors, thus
17 perpetrating the fraudulent notion that IMS was a successful business that was
18 generating income, when, in fact, it was not.

19 **FIRST CLAIM FOR RELIEF**

20 **Fraud in the Offer or Sale of Securities**

21 **Violations of Sections 17(a) of the Securities Act**

22 **Against All Defendants**

23 42. Paragraphs 1 through 41 are realleged and incorporated by reference.

24 43. By reason of the conduct described above, the Defendants, directly or
25 indirectly, in the offer or sale of securities by the use of means or instruments of
26 transportation or communication in interstate commerce, or by use of the mails:
27 (a) with scienter, employed devices, schemes or artifices to defraud; (b) obtained
28 money or property by means of untrue statements of a material fact or by omitting

1 to state a material fact necessary in order to make the statements made, in light of
2 the circumstances under which they were made, not misleading; or (c) engaged in
3 transactions, practices or courses of business which operated or would operate as a
4 fraud or deceit upon the purchaser.

5 44. Defendants knew, or were reckless or negligent in not knowing, that
6 they (i) employed devices, schemes and artifices to defraud, (ii) obtained money or
7 property by means of untrue statements of a material fact or by omitting to state a
8 material fact necessary in order to make the statements made, in light of the
9 circumstances under which they were made, not misleading, and (iii) engaged in
10 transactions, practices or courses of conduct that operated as a fraud on the
11 investing public by the conduct described above.

12 45. By engaging in the conduct described above, Defendants violated, and
13 unless restrained and enjoined, will continue to violate, Section 17(a) of the
14 Securities Act [15 U.S.C. § 77q(a)].

15 **SECOND CLAIM FOR RELIEF**

16 **Fraud in Connection with the Purchase or Sale of Securities**

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

18 **Against All Defendants**

19 46. Paragraphs 1 through 41 are realleged and incorporated by reference.

20 47. By reason of the conduct described above, Defendants, directly or
21 indirectly, in connection with the purchase or sale of a security, by the use of
22 means or instrumentalities of interstate commerce or of the mails: (a) employed
23 devices, schemes, or artifices to defraud; (b) made untrue statements of a material
24 fact or omitted to state a material fact necessary in order to make the statements
25 made, in the light of the circumstances under which they were made, not
26 misleading; or (c) engaged in acts, practices, or courses of business which operated
27 or would operate as a fraud or deceit upon other persons.

28 48. Defendants knew, or were reckless in not knowing, that they (i)

1 employed devices, schemes and artifices to defraud, (ii) made untrue statements of
2 a material fact or omitted to state a material fact necessary in order to make the
3 statements made, in the light of the circumstances under which they were made,
4 not misleading, and (iii) engaged in transactions, practices or courses of conduct
5 that operated as a fraud on the investing public by the conduct described in detail
6 above.

7 49. By engaging in the conduct described above, Defendants violated, and
8 unless restrained and enjoined, will continue to violate, Section 10(b) of the
9 Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §
10 240.10b-5].

11 **PRAYER FOR RELIEF**

12 WHEREFORE, the SEC respectfully requests that the Court:

13 **I.**

14 Issue findings of fact and conclusions of law that Defendants IMS and
15 Giunti committed the alleged violations.

16 **II.**

17 Issue a judgment, in a form consistent with Rule 65(d) of the Federal Rules
18 of Civil Procedure, permanently enjoining Defendants IMS and Giunti, and their
19 officers, agents, servants, employees and attorneys, and those persons in active
20 concert or participation with any of them, who receive actual notice of the
21 judgment by personal service or otherwise, and each of them, from violating
22 Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Section 10(b) of the
23 Exchange Act, and Rule 10b-5 thereunder [15 U.S.C. § 78j(b), 17 C.F.R. §
24 240.10b-5].

25 **III.**

26 Order Defendants IMS and Giunti to disgorge all ill-gotten gains from their
27 illegal conduct, together with prejudgment interest thereon.

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1 **IV.**

2 Order Defendant Giunti to pay civil penalties pursuant to Section 20(d) of
3 the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act
4 [15 U.S.C. § 78u(d)(3)].

5 **V.**

6 Order that Defendant Giunti is prohibited from acting as an officer or
7 director of any issuer that has a class of securities registered pursuant to Section 12
8 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to
9 Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

10 **VI.**

11 Order that Defendant Giunti is permanently enjoined from directly or
12 indirectly, including but not limited to through any entity owned or controlled by
13 him, participating in the issuance, purchase, offer, or sale of any security in an
14 unregistered offering by an issuer. Provided, however, that such injunction shall
15 not prevent him from purchasing or selling securities listed on a national securities
16 exchange for his own personal account.

17 **VII.**

18 Retain jurisdiction of this action in accordance with the principles of equity
19 and the Federal Rules of Civil Procedure in order to implement and carry out the
20 terms of all orders and decrees that may be entered, or to entertain any suitable
21 application or motion for additional relief within the jurisdiction of this Court.

22 **VIII.**

23 Grant such other and further relief as the Court may determine to be just and
24 appropriate.

25 Dated: 7/25/2017

Janet Rich Weissman
26 /s/ Janet Rich Weissman
27 Janet Rich Weissman
28 Attorney for Plaintiff
Securities and Exchange Commission