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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO, Department of Finance, Plaintiff, vs. Jeffrey S. Brendel, an individual, Defendant.	Civil No. CV OC 9905305D **COMPLAINT** Fee Category: Exempt

Comes now the State of Idaho, Department of Finance, Gavin M. Gee, Director, by and through counsel, to complain and allege as follows:

JURISDICTION

1. This action is brought under the provisions of the Idaho Securities Act, Title 30, Chapter 14, Idaho Code, and the Idaho Commodity Code, Title 30, Chapter 15, Idaho Code, and in particular Idaho Code §§30-1442 and 1510, wherein the Director of the Idaho Department of Finance ("Department") is empowered to bring actions seeking

injunctive and other relief against defendants who have either violated or are about to violate provisions of the Idaho Securities Act, the Idaho Commodity Code or any Rule thereunder.

VENUE

2. The acts and practices alleged herein comprising violations of law by the above-named Defendant occurred in the conduct of trade and commerce in Ada County, and elsewhere in the State of Idaho.

BACKGROUND

3. Austin Forex International, Inc. ("AFI") is a Texas corporation whose primary business address was 100 Congress, Suite 1900, Austin, Texas. AFI is now also known as International Foreign Exchange, Inc. At all times pertinent to this Complaint, AFI conducted business under the name Austin Forex International, Inc. and/or AFI. AFI also conducted and/or directed business, or the business of an affiliate, from an office located at 333 South Main Street, Suite 204, Ketchum, Idaho.

4. Austin Forex International of Sun Valley, Inc. ("AFI of Sun Valley") is a Texas corporation that was directly or indirectly controlled by AFI and/or AFI's principals. AFI of Sun Valley conducted business in Idaho and elsewhere. AFI of Sun Valley is now also known as International Foreign Exchange, Inc. At all times pertinent to this Complaint, AFI of Sun Valley conducted business under the names Austin Forex International, Inc., Austin Forex of Sun Valley, Inc., and/or AFI.

5. At all times pertinent to this Complaint, Defendant Jeffrey S. Brendel ("Brendel") was an employee of AFI of Sun Valley. Brendel sold securities to investors in the form of investment contracts for trading in foreign currency through AFI. The

investment contracts are also commodity contracts.

6. AFI was engaged in the business of "making the international foreign currency exchange market accessible to and more profitable for the private investor". In this enterprise, AFI raised funds from private investors for the purported purpose of actively trading foreign currencies in the "spot" / cash market. This currency trading was conducted on a leveraged basis through other intermediaries that claim to offer access to international currency "spot" markets.

7. Investors were solicited to invest through AFI and to allow it, or other traders supervised by AFI, to trade in foreign currencies on a discretionary basis. In connection with its solicitations, AFI, its agents and employees, advised potential investors that AFI's "track record" in trading foreign currencies had resulted in profits to investors of between 70% to 100% annually.

8. Block currency trades are purportedly executed by AFI and then apportioned among the individual investors via a computer software program. E Forex is purportedly engaged in providing a mechanism to trade and account for foreign currency transactions. E Forex executed trades on behalf of AFI, but did so through the use of various "omnibus" accounts carried in the name of AFI. Investors did not have segregated accounts at E Forex and AFI was responsible for investor accounting and the monthly reports generated and distributed to investors.

9. AFI issued investor statements every two weeks to once per month, depending on the period of time in question. Regardless of the time frame, AFI's monthly statements reported only those currency transactions that had been completed (e.g., bought and subsequently sold). Along with some explanation of costs incurred and some

other items, investors were provided with a report of their "current balance". This current balance did not account for the profit or loss that remained outstanding as a result of unreported open positions carried by AFI on behalf of its investors. Based on the periodic statements, investors were unable to determine a) the currency positions for which they remained liable, b) whether the unreported outstanding currency positions were carried at a profit or loss, c) the net equity position accruing to the client as a result of outstanding currency positions, d) the amount of leverage to which the client was exposed as a result of the unreported outstanding currency positions, and e) the amount of margin exposure accruing to the individual investor.

10. AFI's currency trades were completed through the purchase or sale of currency "lots" that are valued at approximately $70,000 to $100,000 U.S. currency. The minimum margin to carry a one lot position during the course of day trading is $1,000 U.S. As such, AFI's investors could possibly realize leverage as high as 100 to 1.

11. The currency trading markets utilized by AFI are not regulated under the federal Commodity Exchange Act or by the Commodity Futures Trading Commission (CFTC). AFI and its agents and employees were not registered with the CFTC or any other regulatory body. E Forex, Inc. (formerly, International Financial & Trading Network, Inc.), the firm through which AFI reportedly traded currencies, was not registered with the CFTC.

12. Beginning on a date uncertain, but at least since September 1997, Brendel offered and sold foreign currency investment opportunities and/or foreign currency trading programs to Idaho residents and others from within and without the State of Idaho. Idaho residents were solicited to commit investment monies into a pool of funds

that would be committed to foreign currency trading and that AFI, or a trader supervised by AFI, would trade the invested funds at the trader's discretion. AFI and Brendel represented to Idaho residents that, while the investment program is not without risk, AFI's objective was to provide investors with a 6% to 8% per month return on their investment and that the investment was very liquid. In connection with AFI's offer and sale of the discretionary foreign currency investment program, investors were informed that AFI would receive commissions for each currency trade executed and that AFI might receive additional fees and a portion of any mark-up or spread between the offer price and sale price of any foreign currency.

SECURITIES ACT VIOLATIONS

A. Sale of Unregistered Securities

13. The discretionary foreign currency investment/trading programs offered and sold by Brendel are investment contract securities as defined in Idaho Code § 30-1402(12).

14. The securities offered and sold by Brendel have not been registered with the Idaho Department of Finance as required pursuant to Idaho Code § 30-1416.

15. Brendel has violated Idaho Code § 30-1416.

B. Sale of Securities by Unregistered Broker-dealers or Salesmen

16. At no time has Brendel been licensed by the Department of Finance as a broker-dealer or salesman for a broker-dealer to sell or offer for sale securities as required by Idaho Code § 30-1406.

17. Brendel has violated Idaho Code § 30-1406.

C. Fraud In Connection With the Offer And Sale Of Securities

18. In connection with the offer or sale of securities, Brendel omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading in violation of the antifraud provision of the Idaho Securities Act. The omissions of Defendant include, but are not limited to, the following:

a. Brendel failed to inform offerees and investors of AFI's financial condition and the exact mechanics of how investor monies would be applied and accounted for.

b. Brendel failed to disclose the specific nature and amounts of any compensation or other remuneration accruing to AFI as a result of the discretionary foreign currency trading program.

c. Brendel failed to disclose that investor funds would be commingled in accounts used by AFI to pay AFI's operating and other expenses.

d. Brendel did not advise Idaho investors of the maximum mark-up or spread profits that AFI would accept in the conduct of their business on behalf of the investor.

e. Brendel failed to disclose that AFI would also receive a portion of the margin interest charges made against the investor's account.

f. Brendel failed to advise Idaho investors of the amount of leverage that an investor might be exposed to and that AFI had the ability to leverage investment monies as high as 100 to 1.

g. Brendel failed to inform investors that rapid fluctuations in the currency markets could lead to losses much greater than the amount of equity invested in the currency trading program.

h. Brendel failed to disclose that Russell Erxleben, the President of AFI, had personally filed a Chapter 7 Bankruptcy that was discharged during 1994.

i. Brendel failed to disclose that Russell Erxleben, the President of AFI, has experienced continuing problems with the payment of personal income taxes and was then subject to a federal tax lien in an amount greater than $100,000.00.

j. After February 24, 1998, Brendel failed to inform investors that AFI was the subject of an investigation being conducted by the State of Texas Securities Board.

k. Brendel failed to disclose that the securities were not registered with the Idaho Department of Finance as required under Idaho Code § 30-1416.

l. Brendel failed to disclose that he is not licensed with the Idaho Department of Finance as required under Idaho Code § 30-1406.

m. Brendel failed to inform investors that the historic and probable returns represented to them did not include the recognition of sizable trading losses in currency positions that had not been closed.

19. Brendel has violated Idaho Code § 30-1403(2).

COMMODITY CODE VIOLATIONS

20. The foreign currencies traded on behalf of Idaho investors are commodities as defined at Idaho Code §30-1501(3).

21. The means through which these commodities were sold were "commodity contracts" as defined in Idaho Code § 30-1501(4).

A. Omission of Material Facts

22. Brendel has, directly or indirectly, in connection with commodity contracts,

omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading. The omitted facts include, but are not limited to, the following:

a. Brendel failed to inform offerees and/or investors of AFI's financial condition and the exact mechanics of how investor monies would be applied and accounted for.

b. Brendel failed to disclose the specific nature and amounts of any compensation or other remuneration accruing to AFI as a result of the discretionary foreign currency trading program.

c. Brendel failed to disclose that investor funds would be commingled in accounts used by AFI to pay their operating and other expenses.

d. Brendel did not advise Idaho investors of the maximum mark-up or spread profits that AFI would accept in the conduct of its business on behalf of the investor.

e. Brendel failed to disclose that AFI would also receive a portion of the margin interest charges made against investors' accounts.

f. Brendel failed to advise Idaho investors of the amount of leverage that investors might be exposed to and that AFI had the ability to leverage investment monies as high as 100 to 1.

g. Brendel failed to inform investors that rapid fluctuations in the currency markets could lead to losses greater than the amount of equity invested in the currency trading program.

h. Brendel failed to disclose that Russell Erxleben, the President of AFI, had

personally filed a Chapter 7 Bankruptcy that was discharged during 1994.

i. Brendel failed to disclose that Russell Erxleben, the President of AFI, has experienced continuing problems with the payment of personal income taxes and was then subject to a federal tax lien in an amount greater than $100,000.00.

j. After February 24, 1998, Brendel failed to inform investors that AFI is the subject of a regulatory investigation being conducted by the State of Texas Securities Board.

k. Brendel failed to inform investors that the historic and probable returns represented to them did not include the recognition of sizable trading losses in currency positions that had not been closed.

28. Idaho Code § 30-1506(b) prohibits any person, directly or indirectly, in connection with a commodity contract, from making any untrue statement of material fact or omitting 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.

29. Brendel has violated Idaho Code § 30-1506(b).

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for a Judgment in favor of Plaintiff and against Defendant as follows:

A. That Defendant be adjudged to have violated the Idaho Securities Act, the Idaho Commodity Code and Rules thereunder.

B. That Defendant be permanently enjoined from engaging in any acts, practices or omissions which would constitute violations of the Idaho Securities Act, Title 30, Chapter 14, Idaho Code, the Idaho Commodity Code, Title 30, Chapter 15, Idaho Code,

and in particular, that he be permanently enjoined from:

1. Selling or offering for sale nonexempt securities in any form in the State of Idaho until such time as the securities have been registered with the Idaho Department of Finance in accordance with Title 30, Chapter 14, Idaho Code;
2. Selling or offering for sale nonexempt securities in any form in the State of Idaho until such time as Defendant has registered as a broker-dealer or salesman for a broker-dealer or issuer with the Idaho Department of Finance, in accordance with Title 30, Chapter 14, Idaho Code;
3. Selling or offering for sale nonexempt commodities in the State of Idaho.
4. While engaged in or in connection with the offer, sale or purchase of any security or commodity:
   (a) Employing any device, scheme or artifice to defraud any investors in the securities or commodities;
   (b) Making any untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading;
   (c) Engaging in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

4. Aiding, abetting, counseling, inducing or causing any other person to engage in any of the types of conduct described in paragraphs 1, 2, 3, or 4, above.

C. That Defendant be prohibited from claiming the availability of, using, or offering or selling securities or commodities, under any exemptions under the Idaho Securities Act or the Idaho Commodity Code without receiving the prior written consent of the Director.

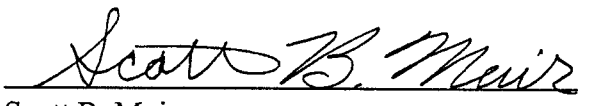
D. That Defendant be ordered to restore to each person in interest any consideration which may have been acquired or transferred in violation of the Idaho Securities Act or the Idaho Commodity Code, net of monies received by investors from AFI distributions.

E. That Defendant be ordered to pay a civil penalty to Plaintiff in an amount of $10,000 for each violation of the Idaho Securities Act or the Idaho Commodity Code.

F. That Plaintiff be awarded attorney's fees and costs incurred in the preparation and the prosecution of this action, and if judgment is taken by default herein, that $5,000 is a reasonable attorney's fee.

G. Such other and further relief as this Court may deem equitable and just.

DATED this 15th day of October, 1999.



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