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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF SACRAMENTO

10 Case No. **00AS00776**



*196  
GOVT  
SUMMONS ISSUED*

11 THE PEOPLE OF THE STATE OF  
12 CALIFORNIA, by and through the  
13 COMMISSIONER OF CORPORATIONS,

Case No. **00AS00776**  
COMPLAINT FOR INJUNCTION AND  
ANCILLARY RELIEF (VIOLATION OF  
CORPORATE SECURITIES LAW)

14 Plaintiff,

CORPORATIONS CODE §25110  
(Qualification Requirement)

15 v.

CORPORATIONS CODE §25401 (Disclosure  
Requirement)

16 HAPJACK MARKETING, INC.;  
17 INNOVATIVE BUSINESS SOLUTIONS,  
18 LLC; HOTEL CONNECT, LLC; WORLD  
19 CASH NETWORK, LLC; BILLY RAY  
SMITH; CLAUDE D. SMITH; MARK  
20 L.EHRLICH; BRIAN T. GRIGGS; GARY M.  
APPELBLATT; DAVID D. FARRELL;  
21 HAROLD P. COFFIN; AND DOES 1 through  
100,

22 Defendants.

23  
24 THE PEOPLE OF THE STATE OF CALIFORNIA, by and through William Kenefick,  
25 California Corporations Acting Commissioner and head of the California Department of  
26 Corporations ("DOC"), allege as follows on information and belief:

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1           8.     Billy Ray Smith is an individual residing in Fresno County. At various times  
2 pertinent hereto, he was an officer, director, member, manager or shareholder for Hapjack, HC,  
3 IBS, and WCN. He was at all times pertinent hereto, a controlling person providing substantial  
4 assistance to Hapjack, HC, IBS, and WCN.

5           9.     Claude D. Smith, brother of Billy Ray Smith, is an individual residing in Fresno  
6 County. At various times pertinent hereto, he was an officer, shareholder, member, manager or  
7 director for Hapjack, HC, IBS, and WCN. He was, at all times pertinent hereto, a controlling  
8 person providing substantial assistance to Hapjack, HC, IBS and WCN.

9           10.    Mark L. Ehrlich ("Ehrlich") is an individual residing in Fresno County. At  
10 various times pertinent hereto, he was an officer, member, manager or director for HC, IBS and  
11 WCN. He was, at all times pertinent hereto, a controlling person providing substantial assistance  
12 to HC, IBS and WCN.

13          11.    Brian T. Griggs ("Griggs") is an individual residing in Fresno County. At various  
14 times, pertinent hereto, he was an officer, shareholder, director, member or manager for Hapjack,  
15 HC, IBS, and WCN. He was, at all times pertinent hereto, a controlling person providing  
16 substantial assistance to Hapjack, HC, WCN, and IBS.

17          12.    Gary M. Appelblatt ("Appelblatt") is an individual residing in Sacramento County. At all  
18 times herein, he acted as trustee in connection with promissory notes issued by HC, WCN and  
19 IBS. In connection with the promissory notes, he was at all times pertinent hereto, an offeror  
20 within the meaning of CSL sections 25008 and 25017, and he was providing substantial  
21 assistance to the co-defendants violating the CSL provisions alleged herein, all within the  
22 meaning of CSL section 25403(b).

23          13.    David D. Farrell ("Farrell") is an individual residing in Fresno County. At  
24 various times pertinent hereto, he was a director, officer, shareholder, member, or manager for  
25 Hapjack, HC, IBS, and WCN. He was, at all times pertinent hereto, a controlling person  
26 providing substantial assistance to Hapjack, HC, WCN, and IBS.

27          14.    Harold P. Coffin ("Coffin") is an individual residing in Fresno County. At  
28 various times pertinent hereto, he was the Chief Financial Officer, director, officer, shareholder,

1 member, or manager for Hapjack, HC, IBS, and WCN. In 1992 the California Board Of  
2 Accountancy revoked Coffin's license to practice as a certified public accountant in California.  
3 He was, at all times pertinent hereto, a controlling person providing substantial assistance to  
4 Hapjack, HC, WCN, and IBS.

5 15. Defendants DOES 1 through 100 are persons, corporations, partnerships, limited  
6 liability companies, or other entities that have done acts alleged in this Complaint. Plaintiff  
7 alleges that said defendants, Does 1 through 100, at various times mentioned herein, have acted  
8 and are continuing to act in concert with the defendants named in paragraphs 4-14; that each of  
9 said Does participated in the alleged acts and transactions; and that each is responsible therefore.  
10 Their true names and capacities, whether individual, corporate, associate or otherwise, are  
11 unknown to plaintiff and are named herein pursuant to section 474 of the Code of Civil  
12 Procedure as Does 1 through 100. Plaintiff hereby asks leave to amend this complaint to show  
13 their true names and capacities when they have been determined.

14 16. Whenever any allegation is made in this Complaint to "Defendants" doing any  
15 act, the allegation shall mean the act of each defendant acting individually, jointly and severally  
16 and the conspiring of those defendants to so act. Each defendant herein alleged to have  
17 committed any act, did so pursuant to and in furtherance of a common plan, scheme and  
18 conspiracy and as an agent for each and every co-defendant. Each defendant acted in conspiracy  
19 to violate the CSL.

20 17. Whenever any allegation is made in this Complaint of the act of any company  
21 defendant, the allegation shall mean acts done or authorized by the officers, directors, managing  
22 partners, and the agents and employees of said company defendant while acting within the  
23 course and scope of their employment.

#### 24 STATEMENT OF FACTS

25 18. In sum, for approximately three years Defendants have been fraudulently  
26 marketing unqualified securities in the form of short-term promissory notes. Defendants have  
27 obtained an estimated \$20 million from the issuance, offer and sale of these unqualified  
28 securities to hundreds of investors, many of whom are elderly California residents.

1 **IBS SHORT-TERM PROMISSORY NOTES**

2 19. IBS is a start-up business with no operating history and no financial statements.  
3 IBS was organized by Billy Ray Smith, Claude Smith, and Griggs to locate sites for the sale,  
4 installation and maintenance of automated teller machines ("ATMs") and cash ticket machines  
5 (CTMs").

6 20. To raise funds, IBS issues nine-month promissory notes in denominations of  
7 \$25,000 totaling \$5 million. The offer and sale of IBS promissory notes is effected in part  
8 through the use of a written offering statement dated December 1, 1996 ("IBS Offering  
9 Statement"). The IBS Offering Statement was prepared or authorized by Defendants.

10 21. At all times herein, attorney Gary M. Appelblatt of Sacramento, California, acted  
11 as trustee for the IBS promissory note issuance pursuant to the IBS Offering Statement. As such,  
12 IBS investors and prospective investors correspond with trustee Appelblatt's Sacramento office  
13 on a regular basis.

14 22. IBS investors are initially promised a 13.35% annual rate of return, paid quarterly.  
15 However, principal is seldom repaid at the end of the first nine month promissory note term  
16 because investors are repeatedly offered and sold a replacement IBS promissory note for an  
17 additional nine month term at the increased annual rate of return of 15%.

18 23. From late 1996 to the present, at least \$5 million of IBS promissory notes have  
19 been offered and sold to at least 50 investors scattered throughout the United States, including  
20 California.

21 24. Approximately \$2 million of IBS notes remain outstanding and unpaid, accruing  
22 interest at the promised rate of 13.35% - 15% per annum.

23 **HC SHORT TERM PROMISSORY NOTES**

24 25. HC is a start-up business with no operating history and no financial statements.  
25 HC was organized by Billy Ray Smith, Claude Smith, and Griggs to locate sites for the sale,  
26 installation, and maintenance of telephone service in economy motel rooms.

27 26. To raise funds, HC issues nine-month promissory notes in denominations of  
28 \$25,000 totaling \$10 million. The offer and sale of HC promissory notes is effected in part

1 through the use of written offering statements dated March 31, 1997 ("HC Offering  
2 Statements"). The HC Offering Statements were prepared or authorized by Defendants.

3 27. At all times herein, attorney Gary M. Appelblatt of Sacramento, California, acted  
4 as trustee for the HC promissory note issuance pursuant to the HC Offering Statements. As such,  
5 HC investors and prospective investors correspond with trustee Appelblatt's Sacramento office  
6 on a regular basis.

7 28. HC investors are initially promised a 13.35% annual rate of return, paid quarterly.  
8 However, principal is seldom repaid at the end of the first nine month promissory note term  
9 because investors are repeatedly offered and sold a replacement HC promissory note for an  
10 additional nine month term at the increased annual rate of return of 15%.

11 29. From mid-1997 to the present, approximately \$10 million of HC promissory notes  
12 have been offered and sold to at least 200 investors scattered throughout the United States,  
13 including California.

14 30. Approximately \$8 Million of HC notes remain outstanding and unpaid, accruing  
15 interest at the promised rate of 13.35% - 15% per annum.

#### 16 **WCN SHORT-TERM PROMISSORY NOTES**

17 31. WCN is a start-up business with no operating history and no financial statements.  
18 WCN was organized by Billy Ray Smith, Claude Smith, Griggs, and Ehrlich to locate sites for  
19 the sale, installation, and maintenance of ATMs and CTMs.

20 32. To raise funds, WCN issues nine-month promissory notes in denominations of  
21 \$25,000 totaling \$5 million. The offer and sale of WCN promissory notes is effected in part  
22 through the use of a written offering statement dated September 1, 1997 ("WCN Offering  
23 Statement"). The WCN Offering Statement was prepared or authorized by Defendants.

24 33. At all times herein, attorney Gary M. Appelblatt of Sacramento, California, acted  
25 as trustee for the WCN promissory note issuance pursuant to the WCN Offering Statement. As  
26 such, WCN investors and prospective investors correspond with trustee Appelblatt's Sacramento  
27 office on a regular basis.

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1 42. CSL section 25110 provides in relevant part as follows:

2 It is unlawful for any person to offer or sell in this state any security in an issuer  
3 transaction . . . whether or not by or through underwriters . . . unless such sale has  
4 been qualified . . . or unless such security or transaction is exempted or not  
subject to qualification under Chapter 1 (commencing with Section 25100) of this  
part. . . .

5 43. The nine-month promissory notes issued by IBS, HC, and WCN are securities  
6 within the provisions of the CSL.

7 44. The Defendants offered for sale and sold the securities within the state of  
8 California within the meaning of CSL sections 25008 and 25017 by making offers within  
9 California or by having money paid for those securities mailed, wired or otherwise sent to and  
10 received by Defendants while geographically within California.

11 45. The securities referred to herein are issued by IBS, HC, and WCN. Thus, the  
12 sales referred to herein are "issuer transactions" within the meaning of CSL sections 25010 and  
13 25011.

14 46. The securities referred to herein are issued, offered and sold without Defendants  
15 obtaining qualification by the Commissioner.

16 47. The securities referred to herein are not exempt from the requirement of  
17 qualification.

18 48. In selling these securities without qualification, Defendants offer and sell, or  
19 direct or aid and abet, or substantially assist, the offer and sale of such unqualified, non-exempt  
20 securities in violation of CSL section 25110. Unless enjoined by this Court, Defendants will  
21 continue to violate CSL section 25110.

22 **SECOND CAUSE OF ACTION**

23 **MISREPRESENTATION OR OMISSION OF MATERIAL FACTS IN VIOLATION OF**  
24 **CSL SECTION 25401 (ALL DEFENDANTS)**

25 49. Plaintiff realleges and incorporates by reference paragraphs 1 through 48 of this  
26 Complaint as though fully set forth herein.

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1           50.     CSL section 25401 states as follows:

2           It is unlawful for any person to offer or sell a security in this state or buy or offer  
3           to buy a security in this state by means of any written or oral communication  
4           which includes an untrue statement of a material fact or omits to state a material  
5           fact necessary in order to make the statements made, in the light of the  
6           circumstances under which they were made, not misleading.

7           51.     The marketing of these securities is conducted by Hapjack as described herein.  
8           Agents recruited and purportedly trained by Hapjack are instructed to provide prospective  
9           investors with the IBS Offering Statement, the HC Offering Statements, and/or the WCN  
10          Offering Statement.

11          52.     In offering and selling the IBS nine-month promissory note securities referred to  
12          herein, Defendants make, aid and abet, or substantially assist the making of, specific untrue  
13          statements and/or misrepresentations concerning material facts to some or all prospective  
14          investors. In offering and selling the IBS nine month promissory note securities referred to  
15          herein, Defendants also omit to state, aid and abet, or substantially assist the omission of,  
16          material facts to some or all prospective investors. The misrepresentations or omissions include,  
17          but are not limited to, the following:

18                A.     Investors were falsely told that audited annual financial statements and unaudited  
19                quarterly financial statements for IBS are available to investors.

20                B.     Investors were not told that IBS no longer has the services of its experienced key  
21                executive, Jeffrey McKay.

22                C.     Investors were falsely told that trustee Gary Appelblatt controls investor funds.

23                D.     Investors were falsely told that the IBS securities offering will close as of  
24                September 1, 1997.

25                E.     Investors were falsely told that investors can receive principal and interest for a  
26                maximum of two terms totaling 18 months.

27                F.     Investors were falsely told that a major source of repayment of principal and  
28                interest to investors is income/profit from processing merchant transactions for use of the ATMs  
29                and CTMs.

1 G. Investors were falsely told that the maximum sales commission payable from  
2 investor proceeds is 7% of the investment.

3 H. Investors were not told that investor funds have been and are being transferred to  
4 different entities controlled by Defendants.

5 I. Investors were not told that some of the collateral allegedly securing the  
6 promissory notes is no longer in existence.

7 J. Investors were not told that superior site locations for ATMs or CTMs were  
8 allocated to different entities controlled by Defendants, thereby leaving inferior site locations to  
9 investors.

10 53. In offering and selling the HC nine month promissory note securities referred to  
11 herein, Defendants make, aid and abet, or substantially assist the making of, specific untrue  
12 statements and/or misrepresentations concerning material facts to some or all prospective  
13 investors. In offering and selling the HC securities referred to herein, Defendants also omit to  
14 state, aid and abet, or substantially assist the omission of, material facts to some or all  
15 prospective investors. The misrepresentations or omissions include, but are not limited to, the  
16 following:

17 A. Investors were falsely told that audited annual financial statements and quarterly  
18 unaudited financial statements for HC are available to investors.

19 B. Investors were not told that HC no longer uses the services of experienced key  
20 executive, William Yotty.

21 C. Investors were falsely told that trustee Gary Appelblatt controls investor funds.

22 D. Investors were falsely told that the offering will close December 1, 1997.

23 E. Investors were falsely told that the offering is for a maximum of \$5 million.

24 F. Investors were falsely told that a major source of repayment of principal and  
25 interest to investors is income/profit from telephonic equipment placed in motel rooms.

26 G. Investors were falsely told that investors can receive principal and interest for a  
27 maximum of two terms totaling 18 months.

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1 H. Investors were falsely told that the maximum sales commission payable from  
2 investor proceeds is 7% of the investment.

3 I. Investors were not told that investor funds have been and are being transferred to  
4 different entities controlled by Defendants.

5 J. Investors were not told that some of the collateral allegedly securing the  
6 promissory notes is no longer in existence.

7 54. In offering and selling the WCN nine month promissory note securities referred to  
8 herein, Defendants make, aid and abet, or substantially assist the making of, certain untrue  
9 statements and/or misrepresentations concerning material facts to some or all prospective  
10 investors. In offering and selling the WCN securities referred to herein, Defendants also omit to  
11 state, aid and abet, or substantially assist the omission of, material facts to some or all  
12 prospective investors. The misrepresentations or omissions include, but are not limited to, the  
13 following:

14 A. Investors were falsely told that audited annual financial statements and unaudited  
15 quarterly financial statements for WCN are available to investors.

16 B. Investors were falsely told that trustee Gary Appelblatt controls investor funds.

17 C. Investors were falsely told that the offering will close June 1, 1998.

18 D. Investors were falsely told that investors can receive principal and interest for a  
19 maximum of two terms totaling 18 months.

20 E. Investors were falsely told that a major source of repayment of principal and  
21 interest to investors is income/profits generated from processing merchant transactions for use of  
22 the ATMs or CTMs.

23 F. Investors were not told that some of the collateral initially securing the  
24 promissory notes is no longer in existence.

25 G. Investors were not told that investor funds have been and are being transferred to  
26 different entities controlled by Defendants.

1 H. Investors were not told that superior site locations for ATMs or CTMs were  
2 allocated to different entities controlled by Defendants, thereby leaving inferior site locations to  
3 investors.

4 I. Investors were falsely told that the maximum sales commission payable from  
5 investor proceeds is 7% of the investment.

6 55. The misstatements and omissions referred to herein are of material facts within  
7 the meaning of CSL section 25401 as construed by pertinent case law because they concern  
8 matters which a reasonable investor would consider in deciding whether to invest.

9 56. Defendants' misrepresentations and omissions are in connection with the offer  
10 and sale of securities.

11 57. Defendants' misrepresentations and omissions are in violation of CSL section  
12 25401. Unless enjoined, Defendants will continue to violate CSL section 25401.

13 WHEREFORE, plaintiff prays for:

14 1. Orders of preliminary and permanent injunction enjoining defendants Hapjack  
15 Marketing, Inc., Innovative Business Solutions, LLC, Hotel Connect, LLC, World Cash  
16 Network, LLC, Billy Ray Smith, Claude D. Smith, Mark L. Ehrlich, Brian T. Griggs, Gary M.  
17 Appelblatt, David D. Farrell, and Harold P. Coffin, and such Does as may be subsequently  
18 named, from violating Corporations Code section 25110, or aiding and abetting or substantially  
19 assisting the violations thereof, by directly or indirectly offering to sell or selling securities  
20 including but not limited to those in the form of nine month promissory notes issued by  
21 Innovative Business Solutions, LLC, Hotel Connect, LLC, and World Cash Network, LLC.

22 2. Orders of preliminary and permanent injunction enjoining defendants Hapjack  
23 Marketing, Inc., Innovative Business Solutions, LLC, Hotel Connect, LLC, World Cash  
24 Network, LLC, Billy Ray Smith, Claude D. Smith, Mark L. Ehrlich, Brian T. Griggs, Gary M.  
25 Appelblatt, David D. Farrell, and Harold P. Coffin, and such Does as may be subsequently  
26 named, from violating Corporations Code section 25401, or aiding and abetting or substantially  
27 assisting the violations thereof, by directly or indirectly offering to sell or selling securities in the  
28 form of nine month promissory notes issued by Innovative Business Solutions, LLC, Hotel

1 Connect, LLC, and World Cash Network, LLC, or any other security, in this state by means of  
2 any written or oral communication which contains untrue statements of any material fact or  
3 omits or fails to state any material fact necessary to make the statements made, in light of the  
4 circumstances under which they were made, not misleading, including but not limited to the  
5 misrepresentations and omissions complained of herein;

6 3. The appointment of an independent auditor or other designated fiduciary or  
7 officer of the Court ("Auditor"), pursuant to and subject to the rights, duties, protections and  
8 privileges provided in Corporations Code section 25530 and such additional rights, privileges,  
9 duties and responsibilities as this Court may order. Said Auditor shall be provided complete  
10 access to all assets, bank accounts, personnel, books and records of defendants Hapjack  
11 Marketing, Inc., Innovative Business Solutions, LLC, Hotel Connect, LLC, and World Cash  
12 Network, LLC, for the purpose of: (a) confirming collateral pledged to investors; (b) preparing  
13 current financial statements including but not limited to balance sheets, income statements and  
14 statements of changes in financial condition; and (c) tracing investor proceeds; all at the expense  
15 of these entities.

16 4. Judgment requiring defendants Hapjack Marketing, Inc., Innovative Business  
17 Solutions, LLC, Hotel Connect, LLC, and World Cash Network, LLC and such Does as may be  
18 subsequently named to be jointly and severally liable to pay full restitution to all known  
19 investors who have not been repaid principal and/or interest as promised;

20 5. Judgment requiring all defendants and such Does as may be subsequently named  
21 to be jointly and severally liable to pay civil penalties to the California Corporations  
22 Commissioner for each specific violation, according to proof, pursuant to Corporations Code  
23 section 25535.

24 6. Judgment requiring all defendants and such Does as may be subsequently named  
25 to disgorge all ill-gotten gains in connection with the offer and sale of securities.

26 7. This Court to retain jurisdiction of this action to implement and carry out the  
27 terms of all orders and decrees that may be entered herein or to entertain any suitable application  
28 or motion by plaintiff for additional relief within the jurisdiction of this Court; and

1 8. Such other and further relief as this Court may deem necessary and proper.

2 Dated: 2/10/00

3 WILLIAM KENEFICK  
4 Acting Commissioner of Corporations

5 By:

6 W. RICHARD SINTEK  
7 Corporations Counsel  
8 Attorney for Plaintiff  
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