

1 DEMETRIOS A. BOUTRIS (124161)
California Corporations Commissioner
2 VIRGINIA JO DUNLAP (142221)
Assistant Commissioner
3 DANIEL P.O'DONNELL (177872)
Corporations Counsel
4 1515 K Street, Suite 200
Sacramento, California 95814
5 Telephone: (916) 322-6998

Filed: March 21, 2003

6 Attorneys for People of the State of California

7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF FRESNO

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

12 Plaintiff,

13 vs.

14 JEFFREY DAVID NICKEL, individually and
doing business as RATENET, an unknown
15 business entity, RATENET, LLC, a
16 California Limited Liability Company, and
DOES 1 through 20,

17 Defendants.

Case No.: 03 CE CG 00964

**COMPLAINT FOR PERMANENT
INJUNCTION, CIVIL PENALTIES AND
ANCILLARY RELIEF**

(Corporations Code §§ 25110, 25210,
25401, 25530 and 25535)

18 Demetrios A. Boutris, California Corporations Commissioner (hereinafter
19 "Commissioner"), acting to protect the public from the unlawful and fraudulent sale of
20 unqualified securities, brings this action in the public interest in the name of the People of
21 the State of California, and alleges as follows:
22

23 **JURISDICTION AND VENUE**

24 1. The Commissioner files this complaint and institutes these proceedings
25 pursuant to section 25530 of the California Corporations Code for injunctive, declaratory
26 and other relief due to violations by the defendants and their co-conspirators of the
27 California Securities Law of 1968, California Corporations Code section 25000, *et seq.*
28

1 Specifically, the Plaintiff seeks to enjoin defendants from effecting transactions in
2 securities in this state without having secured from the California Corporations
3 Commissioner a certificate authorizing defendants to act in that capacity, and from
4 offering and selling unqualified, nonexempt securities by means of misrepresentations or
5 omissions of material facts. Plaintiff also seeks civil penalties pursuant to Corporations
6 Code section 25535.

7 2. Jurisdiction and venue as to each defendant is proper in this judicial district
8 pursuant to the provisions of Corporations Code section 25530 and sections 395(a) and
9 395.5 of the California Code of Civil Procedure. Each defendant either maintains an
10 office, has an agent, is found or transacts business, directly or indirectly in the County of
11 Fresno. The Plaintiff's cause of action arose in part within the County of Fresno, and a
12 number of the transactions at issue took place in this County. Many of the unlawful acts
13 hereinafter alleged directly affected investors within the State of California and, more
14 particularly, within the County of Fresno.

15 **DEFENDANTS**

16 3. Defendant Jeffrey David Nickel, and Does 1 through 10, inclusive,
17 (hereinafter "Jeffrey David Nickel" or "Nickel") is a natural person residing in the County
18 of Fresno and at all times mentioned herein, was doing business under the fictitious
19 name of RateNet. During the period of time covered by this complaint, Jeffrey David
20 Nickel, individually and doing business as RateNet, offered and sold securities in violation
21 of Corporations Code sections 25110, 25210 and 25401, while domiciled in Fresno
22 County and the State of California. The transactions, which involved violations of law
23 hereinafter described, were conducted in various counties in the State of California,
24 including the County of Fresno.

25 4. Defendant RateNet, LLC, and Does 11 through 20 inclusive, (hereinafter
26 "RateNet, LLC") is a California Limited Liability Company formed by Jeffrey David Nickel
27 in the County of Fresno. During the period of time covered by this complaint, RateNet,
28 LLC, offered and sold securities in violation of Corporations Code sections 25110, 25210

1 and 25401, out of its offices in Fresno County and the State of California. The
2 transactions, which involved violations of law hereinafter described, were conducted in
3 various counties in the State of California, including the County of Fresno.

4 5. Defendants sued herein under the fictitious names Does 1 through 20,
5 inclusive, are unknown to plaintiff who therefore sues such defendants by such fictitious
6 names. Plaintiff will amend this complaint to show the true name of each such defendant
7 when the same has been ascertained. Plaintiff is informed and believes, and thereon
8 alleges, that all defendants, including the Doe defendants, were at all times mentioned,
9 principals, agents, employers, employees, co-venturers, or co-conspirators, and were
10 acting in their respective capacities in doing the acts complained of, thereby imputing
11 liability to each other.

12 6. Plaintiff is informed and believes, and on such information and belief
13 alleges that each Defendant alleged to have committed any act, did and committed the
14 same pursuant to a common plan and scheme among all named Defendants, and did so
15 as the agent for each and all of his co-Defendants and pursuant to and in furtherance of
16 such common plan and scheme.

17 **FACTUAL BACKGROUND**

18 7. TLC Investment & Trade Co., TLC America, Inc., dba Brea Development
19 Company, TLC Brokerage, Inc., dba TLC Marketing, TLC Development, Inc., and/or TLC
20 Real Properties RLLP-1, (hereinafter collectively referred to as "TLC"), at all times
21 covered by this complaint were located in Southern California.

22 8. At all times covered by this complaint, TLC issued investment instruments
23 in the form of promissory notes, real estate investment agreements and/or investment
24 contracts, all of which are securities under the California Corporate Securities Law of
25 1968, Corporations Code 25000 *et. seq.*. TLC offered and sold these securities through
26 two distinct investment programs – Tax Liens Certificates and Opportunity Properties.

27 9. TLC represented that these securities had a one-year term, carried an
28 interest rate of between 8 and 15 percent, and that the principal would be repaid at the

1 maturity date. At the end of each one-year period, the investor was offered the chance to
2 “rollover” the investment for another one-year period. Each offer by defendants and/or
3 TLC to “rollover” the investment is a separate offer and each completed “rollover” a
4 separate sale of securities in violation of the California Corporate Securities Law of 1968,
5 Corporations Code 25000 *et. seq.*

6 10. These securities were offered and sold to California’s investing public by a
7 network of sales agents recruited by TLC. TLC raised more than \$156 million nationwide
8 from more than 1,800 investors.

9 11. These securities were not qualified with the State of California nor were
10 there any exemptions from qualification available under the California Corporate
11 Securities Law of 1968, Corporations Code 25000 *et. seq.*

12 12. Beginning at an exact date that is unknown to plaintiff, but at least since
13 May 1998 and continuing at least until September 2000, Jeffrey David Nickel, individually
14 and under the fictitious business name of RateNet, became an agent of TLC, in which
15 capacity he offered and sold securities issued by TLC to California investors.

16 13. Beginning at an exact date that is unknown to plaintiff, but at least since
17 May 1998 and continuing at least until September 2000, RateNet, LLC, also engaged in
18 the offer and sale of securities issued by TLC to California investors.

19 14. At all time covered by the complaint defendants also recruited other agents
20 to offer and sell TLC’s securities, and were thereafter the Master or Recruiting Agents to
21 those agents.

22 15. Defendants received sales commissions from TLC ranging from
23 approximately 4½ percent to 6 percent on each dollar invested. Further, each time
24 investors reinvested their initial investments - and some investors “rolled over” their
25 investment more than once - defendants received yet another commission. In addition,
26 defendants received an “override” commission on the sales of agents they recruited.

27 16. At all times covered by the complaint, defendants were not licensed by the
28 State of California, or any other similar licensing entity, to sell the securities at issue.

1 17. The securities issued by TLC were offered and sold by means of untrue
2 statements of material fact and omissions of material facts, in violation of the California
3 Corporate Securities Law of 1968, Corporations Code 25000 *et. seq.*

4 18. Defendants offered and sold the securities by way of numerous sales
5 brochures and materials produced by TLC that included untrue statements of material
6 fact and omissions of material facts. The defendants also made oral representations to
7 investors based on information told them to by TLC. The defendants performed little
8 independent due diligence to confirm the veracity of either the content of these sales
9 brochures, or to any of the oral or written communications of TLC.

10 19. Specifically, defendants represented to prospective investors that the Tax
11 Lien Certificates were a “safe, liquid, tax-deferred investment”, in part because the
12 investor held title to the property as tenants in common, and that the investor’s principle
13 was secured by real estate, while the interest was guaranteed by a promissory note. In
14 fact, few, if any, investors were actually placed on the deeds to the properties purchased
15 by TLC and therefore were not secured. These facts would have been material to any
16 investor’s decision to invest in TLC, but defendants did not disclose these facts to the
17 investors.

18 20. Defendants also represented to investors, through TLC’s sales brochures
19 and oral representations that these Tax Lien Certificates would pay the investors a fixed
20 interest rate of between 8% and 15%. In fact, TLC never generated a profit, and between
21 1998 and 2000 when defendants were making these representations to investors and
22 potential investors, TLC had lost at least \$15 million. And in order to make interest
23 payments at these promised rates to investors, TLC used money from new investors,
24 creating a classic Ponzi scheme. These facts would have been material to any investor’s
25 decision to invest in TLC, but defendants did not disclose these facts to the investors.

26 21. Defendants represented to prospective investors that the Opportunity
27 Properties investments were a “Safe, Liquid, Fixed Rate Investment,” in part by
28 representing that the investor would be secured by a deed on the real property as tenants

1 in common with TLC. In fact, few if any investors were actually placed on the deeds to
2 the properties purchased by TLC and they were therefore not secured. These facts
3 would have been material to any investor's decision to invest in TLC, but defendants did
4 not disclose these facts to the investors.

5 22. Defendants also represented to investors that the Opportunity Properties
6 investments would provide "Guaranteed high returns." In fact, TLC never generated a
7 profit, and between 1998 and 2000 had lost at least \$15 million. And in order to make
8 interest payments at these promised rates to investors, TLC used money from new
9 investors, creating a classic Ponzi scheme. These facts would have been material to any
10 investor's decision to invest in TLC, but defendants did not disclose these facts to the
11 investors.

12 23. Defendants further failed to inform potential investors that they received a
13 commission of up to 6 percent on every investment, as well as on every rollover of the
14 investment, and that they also received "override" commissions on the sales of agents
15 that they recruited. They also failed to inform investors that there were people above
16 them who also received commissions on the sale of these investments, including Edward
17 F. "Frank" Cossey ("Cossey"), President of TLC and that the total commissions paid by
18 TLC exceeded \$20 million or approximately 13 percent of every dollar invested. These
19 facts would have been material to any investor's decision to invest in TLC, but
20 defendants did not disclose these facts to the investors.

21 24. On October 5, 2000, the United States Securities and Exchange
22 Commission ("SEC") obtained a restraining order against TLC and Cossey, among
23 others. The SEC alleged that TLC was operating an illegal Ponzi scheme. The United
24 States District Court, Central District of California, also put TLC into receivership,
25 appointing Robb Evans as receiver. Since that time, Cossey, along with Gary Williams,
26 Chief Financial Officer of TLC, have pled guilty in federal criminal actions instituted
27 against them and are serving prison time, based on their activities at TLC.

28 25. The SEC alleged that TLC engaged in several kinds of securities fraud

1 relating to their purported real estate business. The SEC's complaint alleged that TLC
2 falsely represented that it was engaged in the real estate business when it in fact was
3 using investor funds to (a) pay other investors; (b) invest over \$10 million in a fraudulent
4 "prime bank" scheme; (3) buy racehorses; (4) make charitable contributions in the
5 amount of \$1.55 million to the high school where Cossey's son played football, including
6 \$1 million for repairs to the stadium; and (5) be wired overseas.

7 26. Defendants did not disclose any of these facts alleged by the SEC in their
8 complaint to prospective investors. These facts would have been material to any
9 investor's decision to invest in TLC.

10 27. While unlawfully engaged, defendants sold more than \$8,400,000 in
11 unlawful securities to more than 180 separate victims in California, for which they
12 received more than \$950,000 in sales commissions from TLC, and, in addition, received
13 more than \$50,000 in "override" commissions on sales made by agents they recruited.

14 **FIRST CAUSE OF ACTION**

15 UNLAWFUL OFFER AND SALE OF UNQUALIFIED, NONEXEMPT SECURITIES 16 (Corporations Code §25110) AS AGAINST ALL DEFENDANTS

17 28. Plaintiff realleges and incorporates herein by reference paragraphs 1
18 through 27, inclusive, as though set forth at length herein.

19 29. Corporations Code section 25110 makes it unlawful to offer or sell
20 nonexempt, unqualified securities. That section states:

21 It is unlawful for any person to offer or sell in this state any security in an
22 issuer transaction (other than in a transaction subject to Section 25120),
23 whether or not by or through underwriters, unless such sale has been
24 qualified under Section 25111, 25112 or 25113 (and no order under Section
25 25140 or subdivision (a) of Section 25143 is in effect with respect to such
26 qualification) or unless such security or transaction is exempted or not subject
27 to qualification under Chapter 1 (commencing with Section 25100) of this
28 part.

29 30. Defendants' pattern of conduct, as set forth above, violated section
30 25110, and demonstrates the necessity for granting permanent injunctive and
31 ancillary relief restraining such and similar acts in violation of section 25110, and

1 providing restitution or disgorgement to investors, as well as imposition of appropriate
2 civil penalties.

3 WHEREFORE, Plaintiff prays for judgment against defendants, and each of
4 them, as set forth below

5 **SECOND CAUSE OF ACTION**

6 UNLICENSED BROKER-DEALER ACTIVITY
7 (Corporations Code §25210)
8 AS AGAINST ALL DEFENDANTS

9 31. Plaintiff realleges and incorporates herein by reference paragraphs 1
10 through 30, inclusive, as though set forth at length herein.

11 32. Corporations Code section 25210(a) sets forth the securities broker-dealer
12 licensure requirement as follows:

13 Unless exempted under the provisions of Chapter 1 (commencing with
14 Section 25200) of this part, no broker-dealer shall effect any transaction
15 in, or induce or attempt to induce the purchase or sale of; any security in
16 this state unless the broker-dealer has first applied for and secured from
17 the commissioner a certificate, then in effect, authorizing that person to
18 act in that capacity.

19 33. Defendants' pattern of conduct, as set forth above, violated section 25210
20 and demonstrates the necessity for granting permanent injunctive and ancillary relief
21 restraining such and similar acts in violation of section 25210, and providing restitution or
22 disgorgement to investors, as well as imposition of appropriate civil penalties.

23 WHEREFORE, Plaintiff prays for judgment against defendants, and each of them,
24 as set forth below.

25 **THIRD CAUSE OF ACTION**

26 UNLAWFUL OFFER AND SALE OF SECURITIES BY MEANS OF
27 UNTRUE STATEMENTS OR OMISSIONS OF MATERIAL FACT
28 (Corporations Code §25401)
AS AGAINST ALL DEFENDANTS

34. Plaintiff realleges and incorporates herein by reference paragraphs 1
through 33, inclusive, as though set forth at length herein.

35. Corporations Code section 25401 makes it unlawful to offer or sell

1 securities by means of untrue statements or omissions of material fact. This section
2 states:

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

9 36. Defendants' pattern of conduct, as set forth above, violated section 25401
10 and demonstrates the necessity for granting injunctive and ancillary relief restraining such
11 and similar acts in violation of section 25401, and providing restitution or disgorgement to
12 investors, as well as imposition of appropriate civil penalties.

13 WHEREFORE, Plaintiff prays for judgment against defendants, and each of them,
14 as set forth below.

15 **PRAYER**

16 WHEREFORE, Plaintiff prays for judgment against defendants, and each of them,
17 as follows:

18 1. That pursuant to Corporations Code section 25110 defendants Jeffrey
19 David Nickel, RateNet, LLC, and their agents, servants, employees, associates, officers,
20 representatives, and all persons acting under or in concert with or for them, with actual or
21 constructive notice of any injunction or restraining order issued in this matter shall be
22 enjoined and restrained from offering or selling in this state any security in an issuer
23 transaction, whether or not by or through underwriters, unless such sale has been
24 qualified or unless such security or transaction is exempted from the qualification
25 requirement.

26 2. That pursuant to Corporations Code section 25210 defendants, Jeffrey
27 David Nickel, RateNet, LLC, and their agents, servants, employees, associates, officers,
28 representatives, and all persons acting under or in concert with or for them, with actual or
constructive notice of any injunction or restraining order issued in this matter, shall be
enjoined and restrained from effecting transactions in any security in this state without

1 first applying for and securing from the Commissioner of Corporations a certificate
2 authorizing defendants to act in the capacity of a broker-dealer unless exempted.

3 3. That pursuant to Corporations Code section 25401 defendants, Jeffrey
4 David Nickel, RateNet, LLC, and their agents, servants, employees, associates, officers,
5 representatives, and all persons acting under or in concert with or for them, with actual or
6 constructive notice of any injunction or restraining order issued in this matter shall be
7 enjoined and restrained from offering or selling any security in this state by means of any
8 written or oral communication which includes an untrue statement of a material fact or
9 omits to state a material fact necessary in order to make the statements made, in the light
10 of the circumstances under which they were made, not misleading.

11 3. That defendants Jeffrey David Nickel, RateNet, LLC, and each of them, be
12 ordered to disgorge all profits and compensation obtained as a result of the violations of
13 law complained of herein, all in the amounts and manner provided for by law, according
14 to proof at trial.

15 4. That defendants Jeffrey David Nickel, RateNet, LLC, and each of them, be
16 ordered to pay restitution in the principal amount paid by each investor to whom
17 securities were sold by means of the unlawful conduct of defendants, described herein,
18 less the amount of any repayment of principal to any such investor by any defendant or
19 entity named in this Complaint, with interest from the date of investment on the amount of
20 principal contribution remaining unpaid, according to proof at trial.

21 5. That defendants Jeffrey David Nickel, RateNet, LLC, and each of them, be
22 assessed a civil penalty in an amount not to exceed Twenty Five Thousand Dollars
23 (\$25,000) for each separate violation of Corporation Code sections 25110, 25210, and
24 25401 committed by defendants as alleged in the First, Second and Third Causes of
25 Action, according to proof at trial;

26 6. That plaintiff recover its costs of suit herein, including costs of investigation;

27 //

28

1 7. For such and further relief as the court may deem just and proper.

2 Dated: March 19, 2003

3
4 DEMETRIOS A. BOUTRIS
 California Corporations Commissioner

5
6 By: _____/s/
7 DANIEL P. O'DONNELL
8 Attorney for Plaintiff
 People of the State of California

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28