

IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

FILED IN THE DISTRICT COURT  
OKLAHOMA COUNTY, OKLA.

JUN - 5 2008

PATRICIA PRESLEY, COURT CLERK  
by ~~DEPUTY~~

Oklahoma Department of Securities )  
*ex rel.* Irving L. Faught, )  
Administrator, )  
 )  
Plaintiff, )

v. )

Case No.

Precious Oro Resources, LLC, )  
an Oklahoma limited liability company; )  
Thomas R. Ezell, an individual; and )  
Nolan V. Harris, an individual, )  
 )  
Defendants, )

and )

TMP Metals, LLC, )  
a Texas limited liability company; )  
Don Lynn Nunnally, an individual; )  
Donna F. Elliott, an individual; and )  
Eduwiges Baeza, an individual; )

Defendants Solely For )  
Purposes of Equitable Relief. )

CJ-2008-5138

**PETITION FOR PERMANENT INJUNCTION**

**AND OTHER EQUITABLE RELIEF**

COMES NOW the Plaintiff, Oklahoma Department of Securities, *ex rel.* Irving L. Faught, ("Department"), and for its claims against the above-named Defendants, alleges and states as follows:

**OVERVIEW**

1. This case involves violations of the Oklahoma Uniform Securities Act of 2004 (the "Act"), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (Supp. 2003), by Precious Oro Resources, LLC, Thomas R. Ezell, and Nolan V. Harris ("Defendants"). Specifically, the Department

alleges Defendants have offered and sold unregistered securities in violation of Section 1-301 of the Act, failed to register as agents in violation of Section 1-402 of the Act, employed unregistered agents in violation of Section 1-402 of the Act, and/or perpetrated a fraud in connection with the offer, sale or purchase of securities in violation of Section 1-501 of the Act.

### **JURISDICTION**

2. The Administrator of the Department brings this action pursuant to Section 1-603 of the Act and is the proper party to bring this action against the Defendants.

3. Pursuant to Sections 1-102 and 1-610 of the Act, Defendants, in connection with their activities in the offer, sale, and/or purchase of securities, are subject to the provisions of the Act. By virtue of their transaction of business by contract and otherwise and commission of other acts in this state, Defendants are subject to the jurisdiction of this Court and to service of summons within or outside of this state.

4. Defendants have engaged and are engaging in acts and practices in violation of the Act. Unless enjoined, they will continue to engage in the acts and practices set forth herein and acts and practices of similar purport and object.

5. Relief Defendants TMP Metals, LLC, Don L. Nunnally, Donna F. Elliott and Eduwiges Baeza (collectively, "Relief Defendants"), received cash that is the proceeds, or is traceable to the proceeds, of the unlawful activities of Defendants ("Investor Assets").

### **DEFENDANTS**

6. Precious Oro Resources, LLC ("POR") is an Oklahoma limited liability company, with its principal place of business in Broken Arrow, Oklahoma. At all times material hereto, POR issued, offered and/or sold securities in and/or from Oklahoma as described herein.

7. Thomas R. Ezell ("Ezell"), an individual and Oklahoma resident, is the registered agent of POR and controls all acts of POR. At all times material hereto, Ezell offered and/or sold securities in and/or from Oklahoma as described herein.

8. Nolan V. Harris ("Harris"), an individual and Oklahoma resident, is an agent of POR and controls all acts of POR. At all times material hereto, Harris offered and/or sold securities in and/or from Oklahoma as described herein.

#### **RELIEF DEFENDANTS**

9. TMP Metals, LLC ("TMP") is a Texas limited liability company, with a purported place of business in The Colony, Texas. TMP received Investor Assets from POR's bank account.

10. Don Lynn Nunnally ("Nunnally"), an individual and Texas resident, is a managing member and agent of TMP.

11. Donna F. Elliott ("Elliott"), an individual and Texas resident, is a managing member and agent of TMP.

12. Eduwiges Baeza ("Baeza"), an individual and Texas resident, is a managing member and agent of TMP.

#### **NATURE OF THE CASE**

13. Beginning in or about February 2008, and continuing to the present, Defendants have engaged in the issuance, offer and/or sale of securities in and/or from the state of Oklahoma to investors ("Investors") in the nature of notes the proceeds of which are purportedly used to make investments in "ore concentrate" ("Investment Loans"). Defendants represent to Investors that the ore concentrate is purchased from Precious Oro Resources-Mexico and processed into gold and silver for sale. Defendants represent to Investors that ten percent (10%) interest on the

Investment Loan principal will be paid approximately every thirty (30) days. If no ore concentrate is purchased, Defendants represent that the Investor funds will be returned within 30 days.

14. Investor funds totaling in excess of \$2,300,000 have been deposited into an account at Bank of Oklahoma in the name of Precious Oro Resources. Less than \$1,000,000 remains in the account. Defendants have withdrawn portions of the Investment Loan proceeds for personal expenses.

15. In February, 2008, Relief Defendants received Investor Assets from Defendants in the nature of a bank transfer of \$490,000.

### **FIRST CAUSE OF ACTION**

#### **(Violation of Section 1-301 of the Act: Offer and/or Sale of Unregistered Securities)**

16. Plaintiff realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 15 above.

17. The Investment Loans are securities as defined by Section 1-102 of the Act.

18. The securities offered and sold by Defendants are not and have not been registered under the Act nor have the securities been offered or sold pursuant to an exemption from registration under Sections 1-201 through 1-203 of the Act.

19. By reason of the foregoing, Defendants have violated, are violating, and unless enjoined, will continue to violate Section 1-301 of the Act.

## SECOND CAUSE OF ACTION

### (Violation of Section 1-402 of the Act: Failure to Register as Agents and Employing Unregistered Agents)

20. Plaintiff realleges and incorporates by reference each and every allegation contained in the preceding cause of action.

21. POR is an issuer as defined in Section 1-102 of the Act.

22. Defendants Ezell and Harris are not registered in any capacity under the Act.

23. Defendants Ezell and Harris, by virtue of their efforts and activities in transacting business in this state, are agents, as defined in Section 1-102 of the Act. Defendants Ezell and Harris transacted and are transacting business in this state as agents without the benefit of registration under the Act.

24. POR employed at least one unregistered agent.

25. By reason of the foregoing, Defendants have violated, are violating, and unless enjoined, will continue to violate Section 1-402 of the Act.

## THIRD CAUSE OF ACTION

### (Violation of Section 1-501 of the Act: Untrue Statements of Material Fact and Omissions of Material Fact in Connection With Offer, Sale or Purchase of Securities)

26. Plaintiff realleges and incorporates by reference each and every allegation contained in the preceding causes of action.

27. Defendants, in connection with the offer and/or sale of securities, directly and indirectly, omitted and are omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were and are made, not misleading including, but not limited to, the following matters:

a. any general or specific risk factors associated with the Investment Loans;

- b. that the Investment Loans are securities under the Act;
- c. that the Investment Loans have not been and are not registered under the Act;
- d. that the individuals who offer and sell the Investment Loans were not and are not registered as agents under the Act; and
- e. that Defendants would use Investor funds for the payment of personal expenses of the Defendants.

28. By reason of the foregoing, Defendants, directly and indirectly, have violated, are violating, and unless enjoined, will continue to violate Section 1-501 of the Act.

#### **FOURTH CAUSE OF ACTION**

**(Violation of Section 1-501 of the Act:  
Engaging in any Act, Practice, or Course of Business Which Operates or  
Would Operate as a Fraud or Deceit upon any Person)**

29. Plaintiff realleges and incorporates by reference each and every allegation contained in the preceding causes of action.

30. Defendants, in connection with the offer, sale or purchase of securities, and through the omissions of material fact described in paragraph 27 above, have engaged and are engaging in an act, practice, or course of business that has operated and continues to operate as a fraud or deceit upon other persons.

31. By reason of the foregoing, Defendants, directly and indirectly, have violated, are violating, and unless enjoined, will continue to violate Section 1-501 of the Act.

#### **FIFTH CAUSE OF ACTION (Relief Defendants)**

32. Plaintiff realleges and incorporates by reference each and every allegation contained in the preceding causes of action.

33. Relief Defendants have received Investor Assets from one or more of the Defendants.

34. Relief Defendants have received the Investor Assets as part of and/or in furtherance of the securities violations alleged above. Under the circumstances, it is not just, equitable or conscionable for Relief Defendants to retain the Investor Assets at the expense of the Investors.

### **PRAYER FOR RELIEF**

Defendants have engaged in acts and practices in violation of the Act and have, as a result of these activities, received a substantial amount of money from Investors. Unless enjoined, Defendants will continue to engage in the acts and practices set forth herein and acts and practices of similar purport and object. A danger exists that the money received by Defendants from the Investors or money or securities held by Defendants on behalf of the Investors will be lost, removed or transferred. A temporary restraining order to issue *instanter* and temporary and permanent injunctions to issue against Defendants are necessary to preserve the money received and money or securities held, to preserve the records relating thereto and to prevent further violations of the Act.

Relief Defendants received Investor Assets from Defendants. It is necessary to the equitable resolution of this case to require the Relief Defendants to disgorge their profits and to pay restitution for the benefit of Investors. A danger exists that such Investor Assets will be lost, removed or transferred.

WHEREFORE, based upon the foregoing, and pursuant to the authority specifically granted by Section 1-603 of the Act, the Department prays for the court to grant the following relief:

I.

A temporary restraining order to issue *instanter* and temporary and permanent injunctions, restraining and enjoining the Defendants, their agents, servants, employees, assigns and all those persons, directly or indirectly, acting on their behalf, under their direction and control, and/or in active concert or participation with them, who receive actual notice of the restraining order or temporary and/or permanent injunctions, by personal service, facsimile or otherwise, and each of them from offering and selling any security in and/or from this state including, but not limited to, the Investment Loans;

II.

An order *instanter* prohibiting Defendants and Relief Defendants, their agents, servants, employees, assigns and all those persons, directly or indirectly, acting on their behalf, under their direction and control, and/or in active concert or participation with them, who receive actual notice of the order, by personal service, facsimile or otherwise, and each of them from tampering with, mutilating, altering, erasing, concealing, removing, destroying or otherwise disposing of any and all books, records, documents, files, correspondence, computer disks, tapes or other data recordings of any type, pertaining to or referring to Defendants, Relief Defendants and/or the Investment Loans, or any other financial transactions by Defendants or Relief Defendants or to which Defendants or Relief Defendants were parties;

III.

An order *instanter* freezing the assets of Defendants and Relief Defendants and ordering that all banks, depository institutions, brokerage firms, or other financial institutions comply with the Court's order;

IV.

An order *instanter* prohibiting Defendants and Relief Defendants, their agents, servants, employees, assigns and all those persons, directly or indirectly, acting on their behalf, under their direction and control, and/or in active concert or participation with them, who receive actual notice of the order, by personal service, facsimile or otherwise, and each of them from directly or indirectly, transferring, withdrawing, concealing, removing, destroying, or otherwise disposing of any and all assets.

V.

An order *instanter* requiring Defendants to file with this Court and to serve on Plaintiff, within fifteen (15) days of the filing of this Petition, an accounting, under oath, detailing all of their assets and detailing all funds received from Investors and the disposition and/or use of those funds;

VI.

An order requiring Defendants and Relief Defendants to make restitution to any and all Investors who purchased securities from Defendants or who transferred money to Defendants for the purpose of participating in the Investment Loans or otherwise making investments on their behalf;

VII.

An order requiring Defendants and Relief Defendants, their agents, servants, employees, assigns, and all persons, directly or indirectly, acting on their behalf, under their direction and control, and/or in active concert or participation with them, to disgorge all ill-gotten gains;

VIII.

An order imposing a civil penalty against Defendants in the amount of Fifty Thousand Dollars (\$50,000.00) each; and

IX.

Such other equitable relief as the Court may deem necessary, just and proper in connection with the enforcement of the Act.

Respectfully submitted,

OKLAHOMA DEPARTMENT OF SECURITIES  
Irving L. Faught, Administrator

By:



Jennifer Shaw (OBA #20839)  
Patricia A. Labarthe (OBA #10391)  
Oklahoma Department of Securities  
120 North Robinson, Suite 860  
Oklahoma City, Oklahoma 73102  
(405) 280-7700

STATE OF OKLAHOMA )  
 )  
COUNTY OF OKLAHOMA )      SS.

Irving Faught, of lawful age, being first duly sworn deposes and says: that he is the Administrator of the Oklahoma Department of Securities, that he has read the foregoing Petition for Permanent Injunction and Other Equitable Relief and knows the contents thereof, and that the matters and things stated therein have been provided to him by staff members of the Department under his authority and direction, and are true and correct to the best of his knowledge, information and belief.

(SEAL) Melanie Hall  
Melanie Hall, DEPUTY ADMINISTRATOR OF THE  
OKLAHOMA DEPARTMENT OF SECURITIES  
120 North Robinson, Suite 860  
Oklahoma City, Oklahoma 73102  
(405) 280-7700

Subscribed and sworn to before me this 5th day of June, 2008.

(NOTARIAL SEAL) Brenda London  
Notary Public

