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CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

CALIFORNIA AUTOCARE CORPORATION,
AUTOCARE AMERICORP,
JOSEPH SANFELLIPO, JAMES E. GASPER,
KIMBALL R. VANCE, JR., and ELIHU M. SIGAL,

Defendants.

Civil Action No.
EDCV 02-1229 VAP (SGLx)

**COMPLAINT FOR VIOLATIONS OF
THE FEDERAL SECURITIES LAWS**

JURISDICTION

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

2. Venue is proper in this district pursuant to Section 22(a) of the Securities Act, 15 U.S.C. § 77v(a), and Section 27 of the Exchange Act, 15 U.S.C. § 78aa, because certain of the transactions, acts, practices and courses of conduct constituting violations of the laws alleged occurred within this District and because certain of the defendants reside in and transact business in this District.

SUMMARY

3. This case involves the ongoing fraudulent offer and sale of the common stock of California AutoCare Corporation ("CAC") by CAC, its parent company, defendant AutoCare Americorp ("AutoCare"), and by their chief executive officer, defendant Joseph Sanfellopo ("Sanfellopo"), and three sales agents, defendants James E. Gasper

("Gasper"), Kimball R. Vance, Jr. ("Vance") and Elihu M. Sigal ("Sigal"). From at least July 2002 continuing to the present, defendants CAC, AutoCare and Sanfellipo have made material misrepresentations in connection with the offer and sale of CAC securities that: (1) CAC and AutoCare have partnerships with well-known automotive brands; (2) CAC and AutoCare are in sponsorship negotiations with Starbucks and Krispy Kreme; and (3) at least twenty retail AutoCare America locations exist in California when, in fact, only five AutoCare America locations exist in California.

4. By engaging in the conduct alleged in this Complaint, each of the defendants has violated the securities registration provisions of Sections 5(a) and 5(c) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§ 77e(a) & 77e(c). Additionally, defendants CAC, AutoCare and Sanfellipo have violated the antifraud provisions of Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5. Finally, defendants Gasper, Vance and Sigal have violated the broker-dealer registration provisions of Section 15(a)(1) of the Exchange Act, 15 U.S.C. § 78o(a)(1). The Commission seeks a temporary restraining order and preliminary and permanent injunctions prohibiting future such conduct, as well as an asset freeze order, an order appointing a receiver, and other emergency relief, and orders that the defendants disgorge their ill-gotten gains and pay civil penalties.

THE DEFENDANTS

5. **California AutoCare Corporation, dba AutoCare America ("CAC")**, was incorporated in Nevada on or about May 15, 2001 and is based in Carlsbad and Encinitas, California. CAC also has an office in Palm Desert, California from which it solicits investors. CAC represents itself as the exclusive licensor of franchises for AutoCare, and CAC purports to purchase "underperforming neighborhood automobile service and maintenance centers for conversion to the AutoCare America service center brand."

6. **AutoCare Americorp ("AutoCare"), dba AutoCare America**, was incorporated in Nevada on or about January 29, 2002, and purports to franchise automobile repair and maintenance service centers. AutoCare, headquartered in Carlsbad, California, owns approximately 85% of CAC's common stock. AutoCare is the registrant of, and administrative contact for, the www.autocareamerica.net website.

7. **Joseph Sanfellipo**, who resides in Laguna Beach, California, is the founder, chairman of the board, president, and chief executive officer of CAC. He is also the founder, majority stockholder, chief executive officer, president, secretary, and treasurer of AutoCare. On or about April 27, 1998 the Commission issued a cease-and-desist order against Sanfellipo prohibiting future violations of Section 10(b) of the Exchange Act and Rules 10b-5 and 13b2-2 thereunder. In the Matter of Joseph Sanfellipo, Admin. Proc. No. 3-9588, 1998 SEC LEXIS 780, 1998 WL 199183 (April 27, 1998).

8. **James E. Gasper**, who resides in Solana Beach, California, is the vice president of business development of CAC and operates primarily from CAC's Carlsbad office.

9. Kimball R. Vance, Jr., who resides in La Quinta, California, is a vice president and sales agent in CAC's Palm Desert office.

10. **Elihu M. Sigal**, who resides in Palm Desert, California, is a sales agent and office manager in CAC's Palm Desert office.

THE FRAUDULENT SCHEME

11. CAC, AutoCare and Sanfellipo have offered securities in the form of common stock of CAC from at least July 2002 to the present. Through a Private Placement Memorandum ("PPM") dated July 29, 2002, CAC began offering for sale up to 6,000,000 shares of its common stock at prices between \$1.00 and \$2.50 per share. The minimum purchase is 5,000 shares. According to the PPM, shares in CAC were recently being offered at \$2.50 per share, ostensibly to "accredited" investors only. Such investors must have a net worth of at least \$1 million, personal income greater than \$200,000 during the previous two years, or joint annual income greater than \$300,000 during the previous two years. In fact, not all of CAC's investors are "accredited."

12. CAC sells its securities through telemarketing and over the Internet. The company employs independent contractors who use lead lists and scripts to solicit investors. Currently, CAC sales agents are inviting potential investors to attend a luncheon to hear Sanfellipo discuss CAC. CAC also publicizes the offering through its website, www.autocareamerica.net. After obtaining a user name and a password from a CAC sales agent, investors can download CAC's current PPM and subscription agreement from CAC's website.

Website Misrepresentations

13. The autocareamerica.net website displays the Shell Oil Company ("Shell"), Interstate Batteries System of America, Inc. ("Interstate") and Monroe Shocks, a brand of Tenneco Automotive, Inc. ("Monroe") logos and represents that "these are just a few of our name brand partners . . ." Additionally, during July and August 2002, the website displayed the logo of NAPA Auto Parts ("NAPA"), and represented that AutoCare had a "strategic partnership" with NAPA.

14. The autocareamerica.net website also states that Shell (1) agreed to a strategic marketing partnership with AutoCare America; (2) "will provide \$10,000 dollars for every affiliate that agrees to join the AutoCare America team"; (3) "agreed to contribute marketing dollars for ACA grand openings"; and (4) agreed to provide "up to \$2,000 in matching funds." Further, the website features recorded statements by Sanfellipo about the company's operations and business relationships in which Sanfellipo claims CAC has a partnership with Shell.

15. The website also claims that CAC is negotiating "sponsorships" with Krispy Kreme and Starbucks, among other name-brand retail companies.

16. These representations are false. Shell, Interstate, Monroe and NAPA have not entered into partnership agreements with AutoCare America. Similarly, Krispy Kreme and Starbucks are not in sponsorship negotiations with AutoCare America.

Telemarketing Sales Practices and Misrepresentations

17. CAC conducts telemarketing from CAC's office in Palm Desert. Gasper, Vance, and Sigal manage CAC's telemarketing operations from that location. Gasper, Vance and Sigal coach sales agents what to tell investors to obtain their investment. Gasper, Vance and Sigal approve and modify sales agents' scripts that contain the misrepresentations regarding CAC's claimed relationships with Shell, NAPA, Monroe, and Interstate. Gasper, Vance, and Sigal also personally offer and sell CAC securities to investors over the telephone.

18. Sanfellipo manages the day-to-day operations of the CAC and AutoCare business from CAC's executive offices in Encinitas, California, and Gasper and Vance report to him. Sanfellipo has visited CAC's Palm Desert office where the telemarketing effort is based and, on those occasions, was available to speak to any investor who wanted to talk to CAC's president. Sanfellipo also participated in conference calls with sales agents. Additionally, Sanfellipo's signature appears on letters addressed to prospective and existing investors concerning CAC's stock offering.

19. CAC sales agents tell potential investors that companies like Shell, NAPA, Monroe, and Interstate would not "contract" with CAC if they did not feel that CAC was not growing and had great potential.

20. In approximately August 2002, NAPA sent CAC a letter demanding that AutoCare America cease and desist from its unauthorized use of NAPA's trade name and trademark. Sanfellipo apologized to NAPA for the unauthorized use of NAPA's name and removed NAPA's logo from the website. Nevertheless, CAC continued to falsely represent that CAC had a strategic partnership with NAPA in its telemarketing.

21. CAC sales agents, including Gasper, Vance, and Sigal, told investors over the telephone that CAC has forty retail locations, including at least twenty in California. In fact, the California Department of Consumer Affairs, Bureau of Automotive Repairs, has certified that CAC is licensed to operate only five retail locations in California.

22. Gasper told sales agents to encourage non-accredited investors to indicate on CAC's subscription agreement that they were accredited. CAC sales agents solicited investors who were otherwise unable to invest by encouraging them to use funds from retirement accounts to purchase CAC securities and by recommending to non-accredited investors that they mark their subscription agreements to indicate that they in fact were accredited investors.

23. CAC sales agents also engaged in high pressure sales tactics. CAC sales agents offered to reduce the minimum investment amount to entice reluctant investors and warned investors that if they did not buy CAC's shares offered under the PPM quickly, the price per share was going to increase.

24. Finally, CAC sales agents told potential investors they would make a 400% return on their investment when CAC "goes public" in "30 to 60 days," in "60 to 90 days," in "90 days to six months," or in "one and a half to two years."

25. After soliciting potential investors, CAC sent them information packages that include text describing CAC's claimed "strategic partnerships" with Shell, NAPA, Monroe, and Interstate that featured each company's logo.

FIRST CLAIM FOR RELIEF
UNREGISTERED OFFER AND SALE OF SECURITIES
Violations of Sections 5(a) and 5(c) of the Securities Act,
15 U.S.C. §§ 77e(a) & 77e(c)
(Against all Defendants)

26. Paragraphs 1 through 25 are realleged and incorporated herein by reference.
27. Defendants CAC, AutoCare, Sanfellipo, Gasper, Vance and Sigal, by engaging in the conduct described above, directly or indirectly:
- a. made use of means or instruments of transportation or communication in interstate commerce or of the mails to sell securities through the use or medium of a prospectus or otherwise;
 - b. carried or caused to be carried through the mails or in interstate commerce, by means or instruments of transportation, securities for the purpose of sale or for delivery after sale; or
 - c. made use of means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy, through the use or medium of any prospectus or otherwise, securities.
28. No registration statement has been filed with the Commission or has been in effect with respect to these securities.
29. By reason of the foregoing, defendants CAC, AutoCare, Sanfellipo, Gasper, Vance and Sigal violated, and unless restrained and enjoined will continue to violate, Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a) & 77e(c).

SECOND CLAIM FOR RELIEF
FRAUD IN THE OFFER OR SALE OF SECURITIES
Violations of Section 17(a) of the Securities Act,
15 U.S.C. §77q(a)
(Against Defendants CAC, AutoCare and Sanfellipo)

30. Paragraphs 1 through 25 are realleged and incorporated herein by reference.
31. Defendants CAC, AutoCare and Sanfellipo, by engaging in the conduct described above, directly or indirectly, in the offer or sale of securities, by the use of means or instruments of transportation or communication in interstate commerce or by use of the mails:
- a. with scienter, employed devices, schemes or artifices to defraud;
 - b. obtained money or property by means of untrue statements of material fact or by omitting 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; or
 - c. engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon the purchasers of such securities;

in violation of Section 17(a) of the Securities Act.

32. By reason of the foregoing, defendants CAC, AutoCare and Sanfellipo violated, and unless restrained and enjoined will continue to violate, Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a).

THIRD CLAIM FOR RELIEF
FRAUD IN CONNECTION WITH THE
PURCHASE OR SALE OF SECURITIES
Violations of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b),
and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5
(Against Defendants CAC, AutoCare and Sanfellipo)

33. Paragraphs 1 through 25 are realleged and incorporated herein by reference.
34. Defendants CAC, AutoCare and Sanfellipo, by engaging in the conduct described above, directly or indirectly, in connection with the purchase or sale of securities, by the use of means or instrumentalities of interstate commerce, or of the mails, or of a facility of a national securities exchange, with scienter:
- a. employed devices, schemes or artifices to defraud;
 - b. made untrue statements of material fact or omitted 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; or

c. engaged in acts, practices or courses of business which operated or would operate as a fraud or deceit upon other persons;

in violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

35. By reason of the foregoing, defendants CAC, AutoCare and Sanfellipo violated and, unless restrained and enjoined will continue to violate, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

FOURTH CLAIM FOR RELIEF
FAILURE TO REGISTER AS A BROKER-DEALER
Section 15(a)(1) of the Exchange Act,
15 U.S.C. § 78o(a)(1)
(Against Defendants Gasper, Vance and Sigal)

36. Paragraphs 1 through 25 are realleged and incorporated herein by this reference.

37. Defendants Gasper, Vance and Sigal, by engaging in the conduct described above, made use of the mails or means or instrumentalities of interstate commerce to effect transactions in, or to induce or attempt to induce the purchase or sale of, securities.

38. During the relevant period, defendants Gasper, Vance and Sigal have neither been registered with the Commission as broker-dealers in accordance with Section 15(b) of the Exchange Act, 15 U.S.C. § 78o(b), nor associated with a Commission registered broker-dealer.

39. By reason of the foregoing, defendants Gasper, Vance and Sigal violated, and unless restrained and enjoined will continue to violate, Section 15(a)(1) of the Exchange Act, 15 U.S.C. § 78o(a)(1).

FIFTH CLAIM FOR RELIEF
VIOLATION OF CEASE AND DESIST ORDER
(Against Defendant Sanfellipo)

40. Paragraphs 1 through 25 are realleged and incorporated herein by this reference.

41. On or about April 27, 1998, the Commission issued a cease-and-desist order against Sanfellipo prohibiting future violations of Section 10(b) of the Exchange Act and Rules 10b-5 and 13b2-2 thereunder. In the Matter of Joseph Sanfellipo, Admin. Proc. No. 3-9588, 1998 SEC LEXIS 780, 1998 WL 199183 (April 27, 1998). This order was issued pursuant to Section 21C of the Exchange Act, 15 U.S.C. § 78u-3.

42. By engaging in the conduct described herein, Defendant Sanfellipo violated the cease-and-desist order.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

I.

Issue findings of fact and conclusions of law that defendants engaged in the alleged violations.

II.

Issue orders temporarily, preliminarily and permanently enjoining defendants CAC, AutoCare, Sanfellipo, Gasper, Vance and Sigal and their officers, agents, servants, employees, and attorneys, and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from violating Sections 5(a) and 5(c) of the Securities Act.

III.

Issue orders temporarily, preliminarily and permanently enjoining defendants CAC, AutoCare and Sanfellipo and their officers, agents, servants, employees, and attorneys, and all persons in active concert or participation with them

who receive actual notice of the injunction by personal service or otherwise, and each of them, from violating Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

IV.

Issue orders temporarily, preliminarily and permanently enjoining defendants Gasper, Vance and Sigal and their agents, servants, employees, and attorneys, and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from violating Section 15(a)(1) of the Exchange Act.

V.

Issue a temporary restraining order and a preliminary injunction freezing the assets of each of the defendants, prohibiting the defendants from destroying documents, and allowing expedited discovery; appointing a receiver over defendants CAC and AutoCare; and ordering accountings.

VI.

Enter an order that the defendants disgorge all ill-gotten gains from their illegal conduct, together with prejudgment interest thereon.

VII.

Enter an order that defendants pay civil penalties pursuant to Section 20(d) of the Securities Act, 15 U.S.C. 77t(d), and Section 21(d)(3) of the Exchange Act, 15 U.S.C. 78u(d)(3).

VIII.

Enter an order requiring Defendant Sanfellipo to comply with the Cease-and-Desist Order issued by the Commission in In the Matter of Joseph Sanfellipo, Admin. Proc. No. 3-9588, 1998 SEC LEXIS 780, 1998 WL 199183 (April 27, 1998).

IX.

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

DATED: November 14, 2002

Respectfully submitted,

<signed>

MARIANNE WISNER
Attorney for Plaintiff
Securities and Exchange Commission