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SUPERIOR COURT BERGEN COUNTY
FILED

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SUPERIOR COURT OF NEW JERSEY
BERGEN COUNTY
CHANCERY DIVISION: EQUITY
DOCKET NO. BER-C- 204-11

PAULA T. DOW,
Attorney General of New Jersey,
on behalf of
ABBE R. TIGER, Chief of the
New Jersey Bureau of Securities,

Plaintiff,

v.

THOMAS J. FAGAN,
Individually and as Chairman of the
Board, President and
Chief Executive Officer of
Energex Systems, Inc.,
Managing Member and President of
Arbios Acquisition Partners, LLC,
and as Chairman of the Board,
President and Chief Executive
Officer of Arbios Systems, Inc.;
CANDACE FAGAN, Individually; and
ENERGEX SYSTEMS, INC.,
a Delaware corporation;
ARBIOS ACQUISITION PARTNERS, LLC,
a Delaware limited liability
company; and
ARBIOS SYSTEMS, INC.,
a Delaware corporation,

Defendants.

Civil Action

VERIFIED COMPLAINT

Paula T. Dow, Attorney General of New Jersey, on behalf of

Plaintiff Abbe R. Tiger, Chief of the New Jersey Bureau of Securities ("Bureau Chief" or "Plaintiff"), having offices at 153 Halsey Street, City of Newark, County of Essex, State of New Jersey, by way of Verified Complaint against the above-named defendants, says:

PRELIMINARY STATEMENT

1. This case arises from the sale of unregistered securities and fraudulent conduct by defendant Thomas J. Fagan ("Fagan"), the defendant entities he controlled, and his wife Candace Fagan. Fagan, who has never been and is not now registered to sell securities, sold Energex Systems, Inc. ("Energex") stock for more than ten (10) years, since at least 2000 through at least February 2011. He raised approximately \$9.5 million from approximately 784 investors, including approximately 228 investors from New Jersey, without providing any disclosures to investors prior to the stock purchases, including the fact that he was not registered with the Bureau to sell securities. Although Energex was effectively non-revenue producing, Fagan transferred more than \$2.1 million to himself under more than a dozen different descriptions. Thousands of additional Energex dollars were admittedly spent by Fagan for his and his wife's benefit through the use of an Energex American Express ("Amex") charge card. Fagan also withdrew thousands of dollars from Energex's account through ATM cash withdrawals at

casinos and other locations. This diversion of corporate funds to Fagan was material information that should have been, but was not, disclosed to investors in Energex.

2. In 2009, Fagan founded defendant Arbios Acquisition Partners, LLC ("AAP") to gain control of defendant Arbios Systems, Inc. ("ASI"), and commenced selling ASI's securities, i.e., ASI stock ("ASI Stock") and unregistered ASI Promissory Notes ("ASI Promissory Notes"). Fagan also: (1) commingled funds among the entities; (2) used AAP funds for his personal use, directly and through Energex; (3) used ASI funds for his personal use; (4) used AAP funds to pay Energex Amex bills; (5) operated defendants Energex and AAP as unregistered broker-dealers; and (6) continued to operate AAP for the receipt of money used for Fagan's personal benefit, well beyond the time needed to fulfill the stated purpose of AAP. Once again, this was material information that should have been, but was not, disclosed to investors in these entities. In total, Fagan benefitted financially from his misuse of Energex, AAP and ASI funds in the amount of approximately \$2.3 million. As a result of Fagan's conduct, the defendant entities have little or no money in their bank accounts. The filing of this action is necessary for violations of the registration and antifraud provisions of the New Jersey Uniform Securities Law (1997), N.J.S.A. 49:3-47 et seq.

3. Prospective investors were defrauded by, among other things:
 - a. the omission of material information by Fagan and Energex in connection with the offer, purchase and/or sale of the Energex Stock;
 - b. The failure to disclose Fagan's misuse of Energex, AAP and ASI funds, most of which were investor funds;
 - c. the course of business of Energex, ASI and AAP, through Fagan, which operated as fraud or deceit on investors; and
 - d. the acts of defendants Energex, through Fagan, and Candace Fagan in using and allowing investor funds to be used for their own purposes.

JURISDICTION AND VENUE

4. The New Jersey Bureau of Securities (the "Bureau") is a state regulatory agency charged with the administration and enforcement of the New Jersey Uniform Securities Law (1997) N.J.S.A. 49:3-47 et seq. ("Securities Law").
5. Plaintiff brings this action pursuant to the Securities Law for violations of:
 - a. N.J.S.A. 49:3-52(b) (making materially false and misleading statements or omitting facts necessary to make the statements made not misleading);
 - b. N.J.S.A. 49:3-52(c) (engaging in any act or practice, or course of business which would operate as a fraud or

deceit upon any person in connection with the offer, sale or purchase of securities);

- c. N.J.S.A. 49:3-56(a) (acting as an unregistered agent);
- d. N.J.S.A. 49:3-56(a) (acting as an unregistered broker-dealer);
- e. N.J.S.A. 49:3-56(h) (employing an unregistered agent);
and
- f. N.J.S.A. 49:3-60 (selling unregistered securities).

6. Plaintiff also seeks: (1) disgorgement of at least \$2.3 million from defendants Fagan and Candace Fagan (collectively "the Fagans") who were unjustly enriched, singularly and collectively, by the actions of defendant Fagan, defendant Energex through defendant Fagan, defendant AAP through defendant Fagan, and defendant ASI through defendant Fagan; (2) freezing of the assets of the defendants; and (3) appointment of a receiver over the defendants.
7. Jurisdiction is proper over defendants for violations of the Securities Law that are the subject of this Verified Complaint because each alleged violation originated from this State. Therefore, pursuant to N.J.S.A. 49:3-51, all sales and offers to sell securities originated from New Jersey, whether or not either party was then present in this State.
8. Venue is proper pursuant to R. 4:3-2(a) because it lies where the cause of action arose.

PARTIES

9. Plaintiff is the principal executive of the Bureau.
10. Defendant Fagan is an individual who, at all relevant times, resided in Emerson, New Jersey. Since approximately 2000, Fagan has been the Chairman of the Board, President, Chief Executive Officer and principal stockholder of defendant Energex. He also functioned as the de facto Secretary and Treasurer of defendant Energex, although he allowed a third party figurehead to sign the Energex Stock certificates as the nominal Secretary of Energex. Defendant Fagan had and continues to have full control over Energex's finances. Fagan has also been the Chairman of the Board, President and Chief Executive Officer of defendant ASI since on or about September 21, 2009. Defendant Fagan is also the Managing Member of defendant AAP and has been so since in or about January 2009. He has never been registered with the Bureau in any capacity.
11. Defendant Candace Fagan is an individual who, at all relevant times, was married to Fagan and resided in Emerson, New Jersey. She has been licensed in New Jersey as a professional counselor and LCADC by the Board of Marriage and Family Therapists in the New Jersey Division of Consumer Affairs, and maintained an office in Fort Lee, New Jersey and at Energex's office in Allendale, New Jersey. There is no evidence that she paid rent to Energex.

12. Defendant Energex was incorporated in Delaware on or about August 4, 1999 under the name Orthomedics, Inc. Its name was changed to Orthosonix, Inc. on or about March 23, 2000. Its name was changed to Energex Systems, Inc. on or about January 16, 2003. Defendant Energex is no longer in existence or in good standing under the laws of the State of Delaware, having become inoperative and void as of March 1, 2010 for non-payment of taxes, according to the Delaware Secretary of State. Defendant Energex is located in Allendale, New Jersey.
13. Defendant AAP is a Delaware limited liability company formed on January 21, 2009. It ceased to be in good standing on June 1, 2009, by reason of neglect, refusal, or failure to pay an annual tax, but remains a domestic limited liability company formed under Chapter 18 of Title 6, according to the Delaware Secretary of State. Defendant AAP is located in Allendale, New Jersey, at the same address as Energex. Defendant AAP was formed by Fagan for the purpose of participating in the reorganization of ASI through ASI's Chapter 11 bankruptcy case. Defendant Fagan has controlled AAP as its President and sole managing member since its formation. Defendant Energex allegedly holds an 85% membership interest in defendant AAP.
14. Defendant ASI is a Delaware corporation formed on or about June 3, 2005. Its stock is traded on the "Over The Counter Bulletin Board." According to the Delaware Secretary of State,

it has failed to file the annual franchise tax report and pay the franchise taxes currently due. ASI is located in Allendale, New Jersey, at the same address as Energex. Defendant Fagan has controlled defendant ASI since on or about September 21, 2009, the effective date of its Chapter 11 plan of reorganization. Cara Fagan, Fagan's daughter, became a Director, Secretary and Treasurer of defendant ASI after September 21, 2009.

FACTUAL BACKGROUND

A. Energex

15. Since in or about 2000 and continuing through at least February 2011, defendants Fagan and Energex, through defendant Fagan, sold securities in the form of the Energex Stock.
16. The Energex Stock was not registered with the Bureau, not "federally covered," nor was it exempt from registration.
17. The Energex Stock was sold to approximately 784 investors in 26 states.
18. Approximately 228 of the investors were located in New Jersey.
19. All of Fagan's friends invested in the Energex Stock.
20. On January 29, 2009, defendant Energex's website stated, in pertinent part:

About Us
Energex Systems, Inc. is dedicated to the development, manufacturing and marketing of patented therapeutic medical devices that use energy sources innovatively to treat chronic conditions and diseases. Founded in 1999, the

company has developed two very unique, patented medical technologies, both having international appeal to patients and the medical community alike because of the conditions they treat.

Looking ahead

Energex® Device: The Company's first innovative product, Energex Device is now available and on the market for the relief of chronic TMJ pain. Using pulsed radio frequency energy, Energex Device is a safe, effective, non-invasive therapy administered in minutes to patients

Hemo-Modulator technology:

Ultra-violet light in the C band (UVC) energy treatment of blood-borne disease such as Hepatitis C, HIV/AIDS and other Ribonucleic Acid (RNA) viruses. Unlike conventional drug therapies that are limited by the patient's ethnicity and geno-types we are hopeful that our clinical studies will establish that this unique therapy is safe and highly effective in all ethnic groups and genotypes.

Preliminary results of our Hepatitis C clinical trial performed at Warren Hospital in Phillipsburg, NJ, have shown substantial reductions in viral load for most of the trial participants treated with the Hemo-Modulator technology. The trial is being conducted under an Investigational Device Exemption (IDE) that was granted by the Federal Food and Drug Administration (FDA) in October 2004. In the trial, an average viral load reduction of the first three participants was approximately 81% in just a 17-day period, and there have been no adverse events.

21. Defendant Energex claims to have two (2) biotechnology products, the immunomodulator a/k/a the Hemo-modulator and the Hemo-sterilizer, in FDA-approved clinical trials.
22. Upon information and belief, defendant Energex may own or

license other patented products and/or processes.

23. Between in or about 2000 and through in or about April 2011, the main source of defendant Energex's funding was the approximately \$9.5 million generated from the sale of the Energex Stock, plus a one-time \$750,000.00 payment for the Hemomodulator device. It also received nominal revenue from the sale and use payments of the "Energex device." All other funds used to operate Energex were from the sale of the Energex Stock by defendant Fagan.
24. Defendant Fagan and Energex, through Fagan, admittedly failed to provide prospective Energex investors with material information prior to the offer and sale of the Energex Stock.
25. The omitted material information included, but is not limited to:
 - a. The true insolvency of Energex as a result of Fagan's misuse of Energex's funds;
 - b. the Energex Stock was not registered or exempt from state or federal registration;
 - c. Fagan was not registered with the Bureau or any securities regulator to sell securities;
 - d. Defendant Energex's employees and non-employees were issued Energex corporate Amex charge cards and since in or about 2003 through in or about 2010, and the Energex Amex card charges were paid by defendant Energex, without

reimbursement to Energex;

- e. Fagan's daughter, Cara Fagan, an Energex employee, made personal purchases on the Energex Amex card for a computer and internet service without reimbursement to Energex;
- f. Defendant Candace Fagan, a non-Energex employee, was issued an Energex Amex card of her own "for convenience," according to defendant Fagan, which was used to charge approximately \$5,704.67 for meals and gasoline between in or about 2004 and in or about 2008, without reimbursement to Energex;
- g. Defendant Candace Fagan's use of Energex's premises for her professional practice without payment to Energex for rent;
- h. Fagan would and did admittedly use Energex funds for his and/or defendant Candace Fagan's personal benefit including, but not limited to:
 - i. at least \$24,600.00 of unreimbursed Energex funds for his personal benefit through the use of the Energex Amex card to pay for, among other things:
 - (1) jewelry;
 - (2) landscaping for the Fagans' residence;
 - (3) trips to casinos; and
 - (4) a sports club membership;

- ii. at least \$4,679.28 of unreimbursed Energex funds for defendant Candace Fagan's personal benefit through the use of the Energex Amex card to pay for Candace Fagan's travel expenses, which included trips to the 2006 Winter Olympics in Torino, Italy, and Florida, among other locations;
 - iii. at least \$8,000.00 of unreimbursed Energex funds for personal casino hotel expenses in Las Vegas, Nevada;
 - iv. unreimbursed personal travel to Las Vegas, Nevada, Atlantic City, New Jersey and Torino, Italy for the Winter Olympics, for Fagan paid by Energex;
 - v. tens of thousands of dollars for political and charitable contributions unreimbursed to Energex and/or; and
 - vi. at least \$1,970.00 for the benefit of an unrelated business in which Fagan was involved, Mr. Sandless; and
- i. Since at least 2003 through and including approximately 2009, defendant Fagan would, and did, transfer more than \$2.1 million funds to himself from defendant Energex for payroll and through additional descriptions including, but not limited to: (1) loans to shareholders; (2) loans to himself; (3) auto allowance; (4) bonus; (5) salaries -

officers; (6) stock sale - suspense; (7) suspense; (8) ATM withdrawals; and (9) other. The more than \$2.1 million defendant Fagan transferred to himself included, but was not limited to:

Payroll, auto allowance, salary/bonus	\$1,246,938.00
Suspense	\$ 337,841.00
Other	\$ 336,970.00
Loans	\$ 155,500.00
ATM withdrawals + withdrawals	\$ 107,132.00

26. The misuse of defendant Energex's funds by defendant Energex, through defendant Fagan, was made without disclosure to investors of defendant Energex.
27. In or about April and May 2008, defendant Fagan purportedly reimbursed defendant Energex for his personal expenses by transfers of \$50,000.00 on or about April 17, 2008, and \$24,800.00 to Energex's account on or about April 25, 2008.
28. The foregoing reimbursements were illusory because defendant Energex, through defendant Fagan, transferred the \$24,800.00 and \$50,000.00 back to Fagan by Energex checks issued on or about April 25, 2008, and May 30, 2008, respectively, which resulted in no money being reimbursed by Fagan back to Energex.
29. Defendant Fagan's misuse of investor funds far exceeds any other claimed reimbursement he may have made to Energex.

30. By engaging in the aforementioned conduct, defendant Fagan operated defendant Energex without oversight by a Board of Directors over his misuse of investor funds, and with total disregard and lack of control over the use of the Energex Amex card by employees and non-employees of Energex, all without investors' knowledge.
31. Defendant Fagan has characterized his misuse of defendant Energex's funds as "sloppy bookkeeping."
32. On or about March 24, 2009, counsel for Fagan and Energex appeared at the Bureau to discuss the sale of the unregistered Energex Stock by Energex, through Fagan. Counsel acceded to the Bureau's demand that Energex cease and desist its efforts to raise money.
33. Notwithstanding the agreement not to raise money, Energex, through Fagan, continued to raise funds through the continued sale of Energex Stock after March 24, 2009.
34. Additionally, in or about January 2009, Fagan founded and formed defendant AAP to participate in the reorganization of defendant ASI through ASI's Chapter 11 bankruptcy plan.
35. At all relevant times, defendant AAP was controlled by defendant Fagan as the sole Managing Member.
36. As part of AAP's acquisition of ASI, Fagan solicited funds from Energex investors for the acquisition of ASI Stock.
37. On or about September 21, 2009, a Notice of Effective Date and

Deadline for Certain Claims of First Amended Chapter 11 plan of Reorganization was entered in the ASI bankruptcy, which provided, among other things, that the effective date of the ASI's reorganization plan was September 21, 2009.

38. Upon the issuance of ASI shares to AAP after the effective date of the ASI Chapter 11 plan, Fagan purportedly assigned all right, title, and interest in AAP's ownership of ASI stock, to Energex without consideration.
39. The alleged assignment of the ASI shares to Energex by AAP is invalid for lack of consideration.
40. Energex is not listed as a shareholder of ASI on ASI's shareholder list maintained by its stock transfer agent.
41. AAP, which is controlled by Fagan via Energex's 85% interest in the company, owns approximately 50.012% of ASI.
42. Defendants Fagan and Candace Fagan, in turn, personally own approximately 9.282% of ASI stock. Consequently, defendant Fagan effectively has a 59.294% controlling interest in ASI by virtue of his individual stock ownership and controlling positions in Energex and AAP.
43. As of September 21, 2009, the effective date of the ASI bankruptcy plan, defendant Fagan became the Chairman of the Board, CEO and President of defendant ASI.
44. At this point, defendant Fagan continued to sell the unregistered Energex Stock and the ASI Stock, while he was not

- registered to sell securities.
45. Investor funds raised by the sale of the Energex Stock after 2009 were, at times, paid to defendant AAP.
 46. Similarly, investor funds raised by the sale of the ASI Stock on or after September 21, 2009, were at times paid to defendant Energex.
 47. Additionally, in or about 2009, defendant Fagan solicited investors to purchase the Energex Stock and the ASI Stock, on Energex letterhead, signed by Fagan as "Partner" of defendant AAP, prior to the September 21, 2009 effective date of the ASI bankruptcy plan.
 48. As a result, defendants AAP and Energex acted as unregistered broker-dealers.
 49. In or about December 2009 through at least May 2010, defendant Fagan, who continued to be unregistered to sell securities, offered and sold at least seven (7) ASI Promissory Notes issued by defendant ASI.
 50. The ASI Promissory Notes promised to pay 10% per annum and additional consideration in the form of ASI stock, pledges by Energex and/or "origination fees" ranging from \$700.00 to \$1,500.00.
 51. The ASI Promissory Notes are "securities" as defined in the Securities Law.
 52. The ASI Promissory Notes were not registered or exempt from

state or federal registration.

53. Funds raised from investors by defendant Fagan from the sale of the unregistered Energex Stock and the ASI Stock were paid to either defendant Energex or defendant AAP.
54. Funds raised from the sale of the ASI Promissory Notes were paid to defendant ASI.
55. At all relevant times, defendant Fagan controlled the bank accounts of defendants AAP and ASI, in addition to the bank account of defendant Energex.
56. Defendant Fagan commingled investor funds between defendants Energex, AAP and ASI, resulting in a net financial benefit to defendant Energex.
57. Defendant Fagan misused defendant AAP's funds to pay defendant Energex's expenses including, but not limited to, the Energex Amex bill.
58. Defendant Fagan made inter-company transfers of funds between defendants Energex, AAP and ASI, including purported "loans" to defendant Energex.
59. Defendant Fagan transferred thousands of dollars of AAP and ASI funds to himself and used the AAP and ASI funds for his personal benefit in a manner similar to the methods he employed with the Energex investors funds including, but not limited to:
 - a. Issuing an ASI check to himself; and

- b. ATM cash withdrawals, "officer loans," debit purchases for Fagan's personal benefit, checks, cash withdrawals and purchases at a home repair retailer denoted on AAP documents as "officer loans."
60. Defendant Fagan withdrew hundreds of thousands of dollars from defendant AAP's account through "debit" cash transactions that were purportedly for the benefit of defendant Energex.
61. The AAP funds were used, in great part, for Fagan's personal benefit.
62. Defendant Fagan's aforementioned conduct, including the transfer of funds between Energex, AAP and ASI before and after the effective date of the ASI Chapter 11 Plan, the purported but legally invalid transfer of ASI stock to Energex, and his personal use of Energex, AAP and ASI's funds, were done to further enrich defendant Fagan while he continued to sell unregistered Energex Stock and ASI Stock, and the unregistered ASI Promissory Notes.

COUNT I

MAKING MATERIALLY FALSE AND MISLEADING STATEMENTS
AND/OR OMITTING MATERIAL FACTS
IN VIOLATION OF N.J.S.A. 49:3-52(b)
(As to defendants Thomas Fagan and Energex)

63. Plaintiff repeats the allegations in the preceding paragraphs as if more fully set forth herein.
64. Defendants Fagan, individually, and Energex, through Fagan,

made materially false and misleading statements and/or omitted material facts to investors in connection with the offer and sale of securities.

65. Among the omitted facts not disclosed to investors were as follows:

- a. The true insolvency of Energex as a result of Fagan's misuse of Energex's funds;
- b. the Energex Stock was not registered or exempt from state or federal registration;
- c. Fagan was not registered with the Bureau or any securities regulator to sell securities;
- d. Defendant Energex's employees and non-employees were issued Energex corporate American Express ("Amex") charge cards and since in or about 2003 through in or about 2010, and the Energex Amex card charges were paid by defendant Energex, without reimbursement to Energex;
- e. Fagan's daughter, Cara Fagan, an Energex employee, made personal purchases on the Energex Amex card for a computer and internet service without reimbursement to Energex;
- f. Defendant Candace Fagan, a non-Energex employee, was issued an Energex Amex card of her own "for convenience," according to defendant Fagan, which was used to charge approximately \$5,704.67 for meals and gasoline between in

or about 2004 and in or about 2008, without reimbursement to Energex;

g. Defendant Candace Fagan's use of Energex's premises for her professional practice without payment to Energex for rent;

h. Fagan would and did admittedly use Energex funds for his and/or defendant Candace Fagan's personal benefit including, but not limited to:

i. at least \$24,600.00 of unreimbursed Energex funds for his personal benefit through the use of the Energex Amex card to pay for, among other things:

(1) jewelry;

(2) landscaping for the Fagans' residence;

(3) trips to casinos; and

(4) a sports club membership;

ii. at least \$4,679.28 of unreimbursed Energex funds for defendant Candace Fagan's personal benefit through the use of the Energex Amex card to pay for Candace Fagan's travel expenses, which included trips to the 2006 Winter Olympics in Torino, Italy, and Florida, among other locations;

iii. at least \$8,000.00 of unreimbursed Energex funds for personal casino hotel expenses in Las Vegas, Nevada;

- iv. unreimbursed personal travel to Las Vegas, Nevada, Atlantic City, New Jersey and Torino, Italy for the Winter Olympics, for Fagan paid by Energex;
- v. tens of thousands of dollars for political and charitable contributions unreimbursed to Energex and/or; and
- vi. at least \$1,970.00 for the benefit of an unrelated business in which Fagan was involved, Mr. Sandless; and
- i. Since at least 2003 through and including approximately 2009, defendant Fagan would, and did, transfer more than \$2.1 million to himself from defendant Energex for payroll and through additional descriptions including, but not limited to: (1) loans to shareholders; (2) loans to himself; (3) auto allowance; (4) bonus; (5) salaries - officers; (6) stock sale - suspense; (7) suspense; (8) ATM withdrawals; and (9) other. The more than \$2.1 million defendant Fagan transferred to himself included, but was not limited to:

Payroll, auto allowance, salary/bonus	\$1,246,938.00
Suspense	\$ 337,841.00
Other	\$ 336,970.00
Loans	\$ 155,500.00
ATM withdrawals + withdrawals	\$ 107,132.00

66. Each omission was in violation of N.J.S.A. 49:3-52(b).
67. Each violation of N.J.S.A. 49:3-52(b) by defendants Fagan and Energex upon each investor is a separate violation and is cause for the imposition of a civil monetary penalty for each separate violation pursuant to N.J.S.A. 49:3-70.1.

COUNT II

ENGAGING IN ANY ACT OR PRACTICE WHICH WOULD OPERATE
AS A FRAUD OR DECEIT UPON ANY PERSON IN CONNECTION
WITH THE OFFER, SALE OR PURCHASE OF SECURITIES
IN VIOLATION OF N.J.S.A. 49:3-52(c)
(As to defendants Thomas Fagan, Candace Fagan, and Energex)

68. Plaintiff repeats the allegations in the preceding paragraphs as if more fully set forth herein.
69. Defendants Fagan, Candace Fagan and Energex, through Fagan, engaged in an act, practice and course of business that operated as a fraud and/or deceit upon the investors and others, in violation of N.J.S.A. 49:3-52(c) by, among other things:
- a. allowing non-employees of Energex, including defendant Candace Fagan, to use Energex Amex card and the charges being paid by Energex funds;
 - b. the payment of Candace Fagan's travel expenses by Energex funds; and
 - c. Candace Fagan maintaining an office at Energex's premises for her counseling practice without paying rent.
70. Each violation of N.J.S.A. 49:3-52(c) by defendants Fagan,

Candace Fagan, and Energex upon each investor is a separate violation and is cause for the imposition of a civil monetary penalty for each separate violation pursuant to N.J.S.A. 49:3-70.1.

COUNT III

ENGAGING IN ANY ACT OR PRACTICE WHICH WOULD OPERATE
AS A FRAUD OR DECEIT UPON ANY PERSON IN CONNECTION
WITH THE OFFER, SALE OR PURCHASE OF SECURITIES
IN VIOLATION OF N.J.S.A. 49:3-52(c)

(As to defendants Thomas Fagan, Energex, AAP and ASI)

71. Plaintiff repeats the allegations in the preceding paragraphs as if more fully set forth herein.
72. Defendants Fagan, Energex, through Fagan, AAP, through Fagan, and ASI, through Fagan, engaged in an act, practice and course of business that operated as a fraud and/or deceit upon the investors and others, in violation of N.J.S.A. 49:3-52(c) by, among other things:
 - a. Fagan controlling Energex, AAP and ASI in a manner that:
 - i. had no controls or oversight, which allowed Fagan to use Energex, AAP and ASI funds to enrich himself while he continued to sell the unregistered Energex Stock, the ASI stock and unregistered ASI Promissory Notes;
 - ii. disregarding the separate corporate structure of Energex, AAP, and ASI, by commingling the entities' funds; misuse of the commingled entities' funds for

Fagan's personal benefit through inter-company loans, loans to Fagan, payment of Fagan's personal expenses, transfers of funds between the entities; and misusing AAP funds to pay Energex expenses.

73. Each violation of N.J.S.A. 49:3-52(c) by defendants Fagan, Energex, AAP and ASI upon each investor is a separate violation and is cause for the imposition of a civil monetary penalty for each separate violation pursuant to N.J.S.A. 49:3-70.1.

COUNT IV

ACTING AS AN AGENT WITHOUT REGISTRATION
IN VIOLATION OF N.J.S.A. 49:3-56(a)
(As to defendant Thomas Fagan)

74. Plaintiff repeats the allegations in the preceding paragraphs as if more fully set forth herein.
75. Defendant Fagan represented Energex and ASI in effecting or attempting to effect transactions in securities from or in New Jersey and, thus, acted as an agent, as defined in N.J.S.A. 49:3-49(b) of the Securities Law, without being registered with the Bureau to sell the Energex Stock, the ASI Stock or the ASI Promissory Notes.
76. Defendant Fagan violated N.J.S.A. 49:3-56(a) which requires, among other things, that only persons registered with the Bureau may lawfully act as an agent.
77. Each sale to investors constitutes a separate violation of

N.J.S.A. 49:3-56(a) and is cause for the imposition of a civil monetary penalty for each separate violation pursuant to N.J.S.A. 49:3-70.1.

COUNT V

EMPLOYING AN UNREGISTERED AGENT
IN VIOLATION OF N.J.S.A. 49:3-56(h)
(As to defendants Energex and ASI)

78. Plaintiff repeats the allegations in the preceding paragraphs as if more fully set forth herein.
79. Defendants Energex and ASI employed an agent in effecting or attempting to effect transactions in securities from and in New Jersey.
80. Defendant Fagan acted as an agent as defined in N.J.S.A. 49:3-49(b) of the Securities Law, without being registered with the Bureau.
81. Defendants Energex and ASI's conduct constituted employing an agent who was not registered with the Bureau to sell the Energex Stock, the ASI Stock or the ASI Promissory Notes in violation of N.J.S.A. 49:3-56(h).
82. Each sale to investors is a separate violation of N.J.S.A. 49:3-56(h) and is cause for the imposition of a civil monetary penalty for each separate violation pursuant to N.J.S.A. 49:3-70.1.

COUNT VI

SELLING UNREGISTERED SECURITIES
IN VIOLATION OF N.J.S.A. 49:3-60

(As against defendants Thomas Fagan, Energex, AAP and ASI)

83. Plaintiff repeats the allegations in the preceding paragraphs as if more fully set forth herein.
84. Defendants Fagan, Energex and AAP offered and sold securities in the form of the Energex Stock that were not registered with the Bureau.
85. Defendants Fagan and ASI offered and sold securities in the form of the ASI Promissory Notes that were not registered with the Bureau.
86. The securities were required to be registered with the Bureau pursuant to N.J.S.A. 49:3-60.
87. Each offer and sale of unregistered securities constitutes a separate violation of N.J.S.A. 49:3-60 and is cause for the imposition of a civil monetary penalty for each separate violation pursuant to N.J.S.A. 49:3-70.1.

COUNT VII

ACTING AS A BROKER-DEALER WITHOUT REGISTRATION
IN VIOLATION OF N.J.S.A. 49:3-56(a)

(As to defendants Energex and AAP)

88. Plaintiff repeats the allegations in the preceding paragraphs as if more fully set forth herein.
89. Defendants Energex and AAP were engaged in the business of

effecting or attempting to effect transactions in securities for the account of others through the sale of the ASI stock, from or in New Jersey and, thus, acted as broker-dealers, as defined in N.J.S.A. 49:3-49(c) of the Securities Law, without being registered with the Bureau as broker-dealers.

90. Defendant AAP was engaged in the business of effecting or attempting to effect transactions in securities for the account of others through the sale of the Energex stock, from or in New Jersey and, thus, acted as a broker-dealer, as defined in N.J.S.A. 49:3-49(c) of the Securities Law, without being registered with the Bureau as a broker-dealer.
91. Defendants Energex and AAP violated N.J.S.A. 49:3-56(a) which requires, among other things, that only persons registered with the Bureau may lawfully act as a broker-dealer.
92. Each sale to investors constitutes a separate violation of N.J.S.A. 49:3-56(a) and is cause for the imposition of a civil monetary penalty for each separate violation pursuant to N.J.S.A. 49:3-70.1.

COUNT VIII

FREEZING OF ASSETS

(As to defendants Thomas Fagan, Candace Fagan,
Energex, AAP and ASI)

93. Plaintiff repeats the allegations in the preceding paragraphs as if more fully set forth herein.

94. Pursuant to N.J.S.A. 49:3-69(a)(2), the assets, real and personal, of defendants should be frozen in that such assets should not be disposed of, transferred, dissipated, encumbered, or withdrawn pending further order of this Court.

COUNT IX

UNJUST ENRICHMENT

(As to defendants Thomas Fagan and Candace Fagan)

95. Plaintiff repeats the allegations in the preceding paragraphs as if more fully set forth herein.
96. Defendant Fagan directly and indirectly transferred funds to himself and was unjustly enriched with Energex, AAP and ASI's funds, to which he had no legal right.
97. Defendant Candace Fagan was unjustly enriched by Energex paying for her personal expenses either directly or through Candace Fagan's use of an Energex Amex card and Energex's payment of Candace Fagan's travel charged on the Amex bills and rent-free use of the Energex office for her personal business.
98. Defendant Candace Fagan had no legal right to Energex funds.
99. The funds used by Energex to pay for defendant Candace Fagan's personal expenses belonged to Energex to be properly used for the operation of Energex.
100. As such, defendants Fagan and Candace Fagan were unjustly enriched at the expense of Energex investors.

101. Each unauthorized transfer of Energex funds is cause for a judgment requiring disgorgement of the funds.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the entry of a judgment pursuant to N.J.S.A. 49:3-47 et seq.:

- a. Finding that defendants Fagan, Candace Fagan, Energex, AAP and ASI engaged in the acts and practices alleged above;
- b. Finding that such acts and practices constitute violations of the Securities Law;
- c. Permanently enjoining defendants Fagan, Candace Fagan, Energex, AAP and ASI from violating the Securities Law in any manner;
- d. Permanently enjoining defendants Fagan, Energex and AAP from engaging in the securities business in New Jersey in any capacity including, but not limited to, acting as a broker-dealer, investment adviser, investment adviser representative, agent or otherwise;
- e. Permanently enjoining the issuance, sale, offer for sale, purchase, offer to purchase, promotion, negotiation, solicitation, advertisement or distribution from or within New Jersey of any securities, by or on behalf of defendant Fagan, Energex, AAP, and ASI, their officers, directors, employees, agents, brokers, partners,

stockholders, attorneys, successors, subsidiaries and affiliates;

- f. Permanently enjoining Fagan from controlling, managing and/or supervising any issuer as that term is defined in N.J.S.A. 49:3-49(h);
- g. Freezing the assets of defendants Fagan, Candace Fagan, Energex, AAP, and ASI, and enjoining defendants Fagan, Candace Fagan, Energex, AAP, and ASI, and all persons who receive actual or constructive notice of this order from directly or indirectly disposing of, transferring, selling, dissipating, encumbering, liquidating, or withdrawing any assets or property, real or personal, owned or controlled by defendants Fagan, Candace Fagan, Energex, AAP and ASI, except that they may pay ordinary and necessary business and/or living expenses which have been approved in advance by Plaintiff or, the Court appointed receiver, or if Plaintiff or the receiver objects, are then approved by the Court;
- h. Enjoining the defendants and each and every person who receives actual or constructive notice of this order, from destroying or concealing any books, records and documents relating in any way to the business, financial and personal affairs of the defendants Fagan, Candace Fagan, Energex, AAP and ASI;

- i. Requiring the defendants Fagan, Candace Fagan, Energex, AAP and ASI to provide Plaintiff with an accounting, at their expense, performed in accordance with Generally Accepted Accounting Principles, of the business records and accounts of defendants Fagan, Candace Fagan, Energex, AAP and ASI and all underlying documents and information used to prepare the accounting;
- j. Affording each purchaser of securities issued by Energex the option of rescinding such purchase and obtaining a refund of monies paid, plus interest and expenses incident to effecting the purchase and rescission, with funding for the rescission acceptable to Plaintiff;
- k. Affording each purchaser of securities issued by Energex and ASI, the option of receiving restitution of losses incurred on disposition of the securities, plus interest and expenses incident to effecting the purchase and restitution;
- l. Assessing civil monetary penalties against defendants Fagan, Candace Fagan, Energex, AAP and ASI for each violation of the Securities Law in accordance with N.J.S.A. 49:3-70.1;
- m. Requiring defendants Fagan, Candace Fagan, Energex, AAP and ASI to pay restitution and/or disgorgement of all profits and/or funds gained through violations of the

Securities Law;

- n. Appointing a receiver for and over defendants Fagan, Candace Fagan, Energex, AAP and ASI with the same powers and responsibilities as a receiver appointed pursuant to N.J.S.A. 49:3-69, to serve without bond, and who shall:
- i. immediately take into possession and take title to all of the real and personal property of the defendants Fagan, Candace Fagan, Energex, AAP and ASI including, but not limited to, causes of action and all such assets obtained in the future, and undertake all actions necessary or appropriate to maintain optimal value of these assets, including the liquidation of any such assets;
 - ii. review all the books and records of and pertaining to the defendants Fagan, Candace Fagan, Energex, AAP and ASI, and report to the Court within ninety (90) days of this Order:
 - (1) the identities of all investors and creditors of the defendants Fagan, Candace Fagan, Energex, AAP, and ASI, past and present, and the status of their accounts;
 - (2) the financial condition of the defendants Fagan, Candace Fagan, Energex, AAP, and ASI, their successors, subsidiaries and affiliates;

and

(3) a preliminary plan to distribute the assets of the defendants Fagan, Energex, AAP and ASI to their investors and/or creditors, and any action as recommended by the receiver with regard to defendant Candace Fagan.

iii. determine the necessity of retaining professionals including, but not limited to, accountants and attorneys, to assist the receiver in fulfilling the responsibilities as ordered by the Court, and upon making a determination of necessity and obtaining Plaintiff's consent, make application to the Court in accordance with the Rules of Court, for an order permitting the retention of such professionals by the receiver;

iv. be held harmless from and against any liabilities, including costs and expenses of defending claims, for which the receiver may become liable or incur by reason of any act or omission to act in the course of performing the receiver's duties, except upon a finding by this Court of gross negligence or willful failure of the receiver to comply with the terms of this or any other order of this Court, irrespective of the time when such claims are

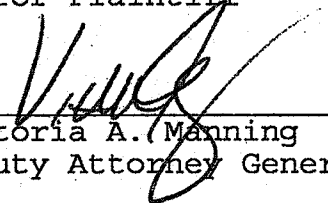
filed;

- v. be compensated out of the estate of the defendants Fagan, Candace Fagan, Energex, AAP and/or ASI, their successors, subsidiaries and affiliates, and/or such funds as the receiver may recover;
- vi. be permitted to resign upon giving written notice to the Court and Plaintiff of the receiver's intention to resign, which resignation shall not become effective until appointment by the Court of a successor which shall be subject to receiver's approval;
- vii. have the full statutory powers to perform the receiver's duties, including the powers delineated in N.J.S.A. 49:3-69 (c) and (d) and Title 14 of the New Jersey Statutes, Corporation, General, including, but not limited to, those set forth at N.J.S.A. 14A:14-1 et seq. or so far as the provisions thereof are applicable; and
- n. Affording Plaintiff and affected third parties any additional relief the court may deem just and equitable.

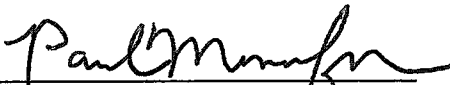
PAULA T. DOW
ATTORNEY GENERAL OF NEW JERSEY
Counsel for Plaintiff

Dated: July 14, 2011

By:


Victoria A. Manning
Deputy Attorney General

Dated: July 14, 2011


Paul E. Minnefor
Deputy Attorney General

RULE 4:5-1 CERTIFICATION

Pursuant to R. 4:5-1, the undersigned certifies that the matter in controversy is not the subject of any pending or contemplated actions.

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with R. 1:38-7(b).

I certify that the foregoing statements made by me are true. I am aware that if any of those statements are willfully false, I am subject to punishment.

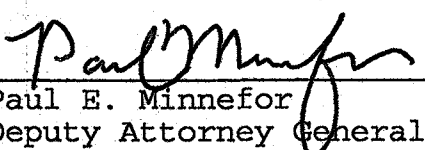
PAULA T. DOW
ATTORNEY GENERAL OF NEW JERSEY
Counsel for Plaintiff

Dated: July 14, 2011

By:


Victoria A. Manning
Deputy Attorney General

Dated: July 14, 2011

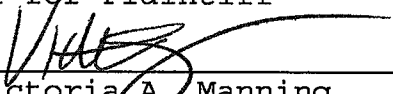

Paul E. Minnefor
Deputy Attorney General

DESIGNATION OF TRIAL COUNSEL

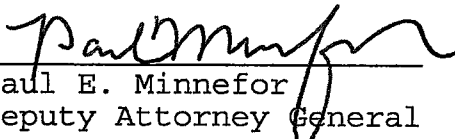
Deputy Attorneys General Victoria A. Manning and Paul E. Minnefor are hereby designated as trial counsel for this matter.

PAULA T. DOW
ATTORNEY GENERAL OF NEW JERSEY
Counsel for Plaintiff

Dated: July 14, 2011

By: 
Victoria A. Manning
Deputy Attorney General

Dated: July 14, 2011


Paul E. Minnefor
Deputy Attorney General

VERIFICATION

RUDOLPH G. BASSMAN, of full age, certifies as follows:

I am the Chief of Enforcement with the New Jersey Bureau of Securities. I have read the foregoing Verified Complaint and on my own personal knowledge from review of documents in possession of the New Jersey Bureau of Securities, I know that the facts set forth herein are true and they are incorporated in this certification by reference, except for those alleged upon information and belief.

I certify that the above statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: July 14, 2011



Rudolph G. Bassman
Chief of Enforcement
Bureau of Securities
New Jersey Bureau of Securities