

1 3. Investors who bought securities in the TDIP would provide either
2 **HOLCOM** or one of the entities that **HOLCOM** owned or controlled with a cash
3 investment. In return, the investors would receive a promissory note with a fixed
4 rate of interest, typically between ten and thirteen percent. At the end of the
5 investment period, investors were entitled to repayment of the principal investment
6 in a single lump sum, which would retire the note. As additional security for their
7 investment, investors in the TDIP were entitled to a first position lien or “First
8 Trust Deed” on the property under development, meaning that if **HOLCOM** was
9 unable to repay the principal due under the notes, the investors would have the
10 right to directly foreclose on the underlying development property.

11 4. The securities **HOLCOM** sold through the TDIP were securities
12 pursuant to Title 15, United States Code, Section 78c(a)(10).

13 **B. The Relevant Entities**

14 5. **HOLCOM** used a number of entities that he owned or controlled to
15 operate the TDIP, including: **Aztec Funding, Inc.**, which acted as the mortgage
16 brokerage; **AB Builders, Inc.**, which acted as the construction arm, and; **Realty**
17 **Professionals 24/7, LLC**, which operated as the real estate brokerage arm.

18 6. In addition, **HOLCOM** used a number of entities that he owned or
19 controlled to issue promissory notes and to hold title to real estate under the TDIP,
20 including:

- 21 • **TD Loans, Inc.;**
- 22 • **Compadre Properties, LLC;**
- 23 • **Pen Holdings, LLC (a/k/a Pen Holdings NV, LLC and Pen**
24 **Holdings Property Management);**
- 25 • **Performance Equity, Inc., and;**
- 26 • **RPIA, LLC.**

1 **C. The Victims**

2 7. By the end of 2008, **HOLCOM** had raised approximately \$50 million
3 from individual investors living in the state of California, Arizona, and elsewhere
4 through the sale of securities under the TDIP.

5 **II. THE SCHEME TO DEFRAUD**

6 **A. Overview of the Scheme to Defraud**

7 8. From at least in or about January 2004, the exact date being unknown
8 to the Grand Jury, and continuing into 2010, **HOLCOM** devised, intended to
9 devise, and executed a scheme to defraud investors.

10 9. First, in order to induce investors into purchasing securities through
11 the TDIP, **HOLCOM** misrepresented the safety and security of the investment.
12 **HOLCOM** promised investors that their investment would be secured by a first
13 position lien on a specific piece of real property with an attractive loan to value
14 ratio, even though **HOLCOM** knew that in reality no such lien or rights were
15 conveyed to investors.

16 10. Second, even though **HOLCOM** received investors' funds in
17 purported exchange for, among other things, a first position lien on a specific
18 property, **HOLCOM** had encumbered that property with additional liens without
19 informing investors of the change in the safety and security of their investment.

20 11. Third, **HOLCOM** deeded or sold outright properties in which
21 investors believed that they had a first position lien to other investors and to his
22 creditors without making principal payments back to the original investors and
23 without informing those investors of the deed or sale.

24 12. Fourth, **HOLCOM** made and caused others to make false and
25 misleading statements about his own financial condition, the financial condition of
26 the TDIP, and the manner in which he was using investors' money.

1 **B. Purpose of the Scheme**

2 The purpose of the scheme was to (a) enrich **HOLCOM**; (b) solicit and obtain
3 millions of dollars of investors' funds through false and misleading pretenses,
4 representations and promises; and (c) conceal from investors the financial
5 condition of the TDIP and the manner in which he was using investors' money.

6 **C. Misrepresentations About the TDIP Investment Structure**

7 13. An investor in the TDIP would typically provide **HOLCOM** or the
8 entities that he owned or controlled with investment funds sent through the mail or
9 by wire. After receiving the funds, **HOLCOM** would provide or cause others to
10 provide investors with a series of documents which purported to set forth the
11 investors' rights and **HOLCOM's** obligations.

12 14. First, investors would receive Promissory Notes, which were typically
13 issued by **Compadre Properties, Pen Holdings, Performance Equity, Realty**
14 **Professionals 24/7, RPIA, or TD Loans** (collectively, the "Trust Deed Issuers")
15 and which entitled investors to fixed interest payments for a set period of time.

16 15. Second, investors would receive Collateral Assignments of Beneficial
17 Interest ("Collateral Assignments"), which purported to convey to investors title to
18 particular real property in order to provide security for the promissory note
19 investment. **HOLCOM** used the Collateral Assignments to convey the false
20 impression to the TDIP investors that their investment was secured by a first
21 position lien in the underlying property. However, under Arizona law, the
22 Collateral Assignments used by **HOLCOM** in the TDIP do not convey any interest
23 in real property to the holder. As **HOLCOM** knew and in contrast to his
24 representations to investors, under Arizona law a Collateral Assignment in a deed
25 of trust is merely a personal interest which does not convey the right to directly
26 foreclose on real property.

1 16. Third, investors would receive from **HOLCOM** Lender's Disclosure
2 Statements, which also falsely represented that investors held "first priority" liens
3 on real property, and that no other superior encumbrances or liens on the real estate
4 securing the note existed. The Lender's Disclosure Statements further represented
5 that the amount of the promissory note investment would never exceed 50 percent
6 of the property's value, thus purporting to demonstrate there was sufficient equity
7 to protect the investors in the event the property's value decreased.

8 17. Fourth, investors received Broker Price Opinions, which were
9 purportedly prepared by **HOLCOM**, and which set forth **HOLCOM's** opinion of
10 the current fair market value of the underlying collateral, and reiterated the
11 representations in the Lender's Disclosure Statements regarding the loan-to-value
12 ratio.

13 **D. Concealing the TDIP's Deteriorating Financial Condition**

14 18. By at least 2008, the TDIP's financial condition was deteriorating, and
15 **HOLCOM** was unable to make timely interest payments to his investors.
16 However, **HOLCOM** continued to solicit new investors for the TDIP even though
17 he knew that the TDIP did not have sufficient capital to make interest payments to
18 his existing investors while also developing the properties he had already
19 purchased.

20 19. Because **HOLCOM** never conveyed to the TDIP investors a real
21 property interest in the properties he was purportedly developing, and because
22 **HOLCOM** needed additional capital to satisfy his creditors and to pay his
23 investors interest, **HOLCOM** encumbered some of the properties with liens
24 superior to those of the TDIP investors, meaning that even if the investors had a
25 legal right to foreclose on the properties, **HOLCOM** would have subordinated

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1 their rights to a senior lender without ever informing the investors of the change in
2 the safety and security of their investment.

3 20. In addition, in an attempt to satisfy **HOLCOM**'s creditors and some
4 of the investors who had not received their principal or interest payments on their
5 investments, **HOLCOM** deeded or sold outright properties in which investors
6 purportedly had a first lien position without informing the investors in the
7 properties of the change in the safety and security of their investment.

8 21. Because of the false and misleading statements that **HOLCOM** made
9 to investors in the TDIP, many investors did not discover that **HOLCOM** had (a)
10 never conveyed to them a real property interest which would allow them to
11 foreclose directly on the property; (b) encumbered their properties with senior
12 loans, or; (c) deeded or sold their properties out from under them until after
13 **HOLCOM** stopped making payments.

14 Counts 1 - 8

15 (Mail Fraud – 18 U.S.C. § 1341)

16 22. The Grand Jury realleges and incorporates by reference paragraphs 1
17 through 22 of this Indictment.

18 23. From at least in or about January 2004, the exact date being unknown
19 to the Grand Jury, and continuing into 2010, in the Southern District of California
20 and elsewhere, Defendant **BRADLEY A. HOLCOM** knowingly devised and
21 intended to devise, with the intent to defraud, a material scheme and artifice to
22 defraud and to obtain money and property by means of materially false and
23 fraudulent pretenses, representations and promises, and by intentional concealment
24 and omission of material facts.

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1 26. From at least in or about January 2004, the exact date being unknown
2 to the Grand Jury, and continuing into 2010, in the Southern District of California
3 and elsewhere, Defendant **BRADLEY A. HOLCOM** knowingly devised and
4 intended to devise, with the intent to defraud, a material scheme and artifice to
5 defraud and to obtain money and property by means of materially false and
6 fraudulent pretenses, representations and promises, and by intentional concealment
7 and omission of material facts.

8 27. On or about the dates set forth below, within the Southern District of
9 California and elsewhere, Defendant **BRADLEY A. HOLCOM**, for the purpose
10 of executing such scheme and artifice to defraud and attempting to do so, caused to
11 be transmitted on the below listed dates by means of wire and radio
12 communication in interstate commerce the following writings, signs, signals, and
13 sounds:

| COUNT | APPROXIMATE DATE | WIRE |
|-------|-------------------|--|
| 9 | May 13, 2008 | Electronic funds transfer of approximately \$500,000 to Wells Fargo in California and processed in Minnesota |
| 10 | May 13, 2008 | Interstate telephone call between investor J.W. and Aztec Funding employee in California |
| 11 | September 3, 2008 | Electronic mail sent from HOLCOM to investor S.L. in California and routed through Texas |
| 12 | December 4, 2008 | Electronic mail sent from HOLCOM to investor S.L. in California and routed through Texas |

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25 All in violation of Title 18, United States Code, Section 1343.

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Count 13

**(Securities Fraud – 15 U.S.C. §§ 78j(b) and 78ff(a);
Title 17, Code of Federal Regulations, Section 240.10b-5)**

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4 28. The Grand Jury realleges and incorporates by reference paragraphs 1
5 through 22 of this Indictment.

6 29. From at least in or about January 2004 through the end of 2008,
7 within the Southern District of California and elsewhere, Defendant **BRADLEY**
8 **A. HOLCOM**, did willfully and knowingly, directly and indirectly, by the use of
9 the means and instrumentalities of interstate commerce, and of the mails, and of
10 facilities of national securities exchanges, in connection with the purchase and sale
11 of securities, use and employ manipulative and deceptive devices and contrivances
12 in violation of Title 15, United States Code, Sections 78j(b) and 78ff(a) and
13 Title 17, Code of Federal Regulations, Section 240.10b-5 by: (a) employing
14 devices, schemes and artifices to defraud; (b) making untrue statements of material
15 fact and omitting to state material facts necessary in order to make the statements
16 made, in the light of the circumstances under which they were made, not
17 misleading; and (c) engaging in acts, practices and courses of business which
18 operated and would operate as a fraud and deceit upon purchasers of securities sold
19 through the TDIP, to wit, **HOLCOM** made false and misleading representations to
20 investors in the TDIP about the safety and security of their investment and the
21 manner in which he was using investor money.

22 All in violation of Title 15, United States Code, Sections 78j(b) and 78ff(a);
23 Title 17, Code of Federal Regulations, Section 240.10b-5.

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1 **FORFEITURE ALLEGATION**

2 30. The allegations contained in paragraphs 1 through 30 of this
3 Indictment are hereby realleged and incorporated by reference for the purpose of
4 alleging forfeiture pursuant to Title 18, United States Code, Section 981(a)(1)(C),
5 and Title 28, United States Code, Section 2461(c).

6 31. As the result of committing wire fraud, mail fraud, and the securities
7 fraud offenses, in violation of Title 18, United States Code, Sections 1343, and
8 Title 15, United States Code, Sections 78j(b) & 78ff, Title 17, Code of Federal
9 Regulations, Section 240.10b-5, and, as alleged in Counts 1 through 12 of this
10 Indictment, **BRADLEY A. HOLCOM**, the defendant, shall forfeit to the United
11 States pursuant to Title 18, United States Code, Section 981(a)(1)(c) and Title 28,
12 United States Code, Section 2461, all property, real and personal, that constitutes
13 or is derived from proceeds traceable to the commission of the offenses alleged in
14 Counts 1 through 12 of this Indictment.

15 **Substitute Asset Provision**

16 32. If any of the above described forfeitable property, as a result of any
17 act or omission of the defendants:

- 18 (a) cannot be located upon the exercise of due diligence;
- 19 (b) has been transferred or sold to, or deposited with, a third person;
- 20 (c) has been placed beyond the jurisdiction of the Court;
- 21 (d) has been substantially diminished in value;
- 22 (e) or has been commingled with other property which cannot be
23 subdivided without difficulty;

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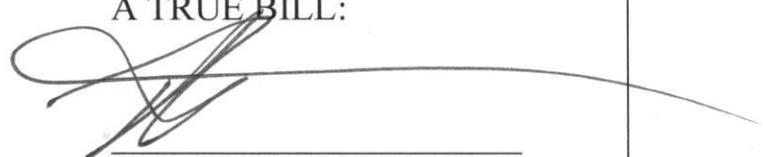
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1 it is the intent of the United States, pursuant to Title 21, United States Code,
2 Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c),
3 to seek forfeiture of any other property of said defendant up to the value of the
4 above forfeitable property.

5 DATED: May 9, 2013.

6 A TRUE BILL:

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8 _____
9 Foreperson

10 LAURA E. DUFFY
11 United States Attorney

12 By: 
13 STEPHEN CLARK
14 Assistant United States Attorney

15 JEFFREY H. KNOX
16 Chief
17 Fraud Section, Criminal Division
18 U.S. Department of Justice

19 By: 
20 HENRY P. VAN DYCK
21 Trial Attorney
22 Fraud Section, Criminal Division
23 U.S. Department of Justice
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