Republic of the Philippines
Department of Finance
Securities and Exchange Commission
PICC Secretariat Building, PICC Complex, Pasay City

In the matter of:
GREENLIFE LEISURE FARMS, INC.
AND/OR GREENLIFE LEISURE FARM
AND DEVELOPMENT, INC.

SEC CDO Case No. 04-17-041

ENFORCEMENT AND INVESTOR
PROTECTION DEPARTMENT,
Movant.
x--x

CEASE AND DESIST ORDER

This resolves the *Motion for Urgent Ex-Parte Cease and Desist Order*[1] filed on 18 April 2017 by the Enforcement and Investor Protection Department (**EIPD**), enjoining GREENLIFE LEISURE FARMS, INC. (**GREENLIFE FARMS**) AND GREENLIFE LEISURE FARM AND DEVELOPMENT, INC. (**GREENLIFE DEVELOPMENT**) and their interlocking directors and officers, representatives, salesmen, agents and any and all persons, conduit, entities and subsidiaries claiming and acting for and in their behalf, **to cease and desist** from engaging in activities of selling and/or offering for sale securities in the form of investment contracts until the requisite registration statement is duly filed with and approved by the Commission and the corresponding license to offer/sell securities is issued.

I. FACTS ESTABLISHED BY THE ARTICLES OF INCORPORATION OF GREENLIFE FARMS AND GREENLIFE DEVELOPMENT

The respective Articles of Incorporation of GREENLIFE FARMS and GREENLIFE DEVELOPMENT reveal the following information:

	GREENLIFE FARMS	**GREENLIFE DEVELOPMENT**
Corporate Name	Greenlife Leisure Farms, Inc.	Greenlife Leisure Farm and Development, Inc.
Domestic/Foreign	Domestic	Domestic
Stock/Non-Stock	Stock	Stock
Filipino Equity	100%	100%
Registration Date	9 March 2010	13 December 2010
Registration Number	CS201003562	CS201020464
Principal Address	41 Timog Avenue, Diliman,	41 Timog Avenue, Diliman,

[1] Dated 18 April 2017.

	Quezon City	Quezon City
Authorized Capital Stock	PHP 1,000,000 divided into 10,000 shares with a par value of PHP 100 per share	PHP 1,000,000 divided into 10,000 shares with a par value of PHP 100 per share
Primary Purpose	To engage in, operate, conduct and maintain the business of production, manufacturing, processing, importing, bartering, warehousing, transporting, sales, marketing, whether as principal or agent or otherwise, the term marketing to include purchase, sale, import, export trade, and or deal in, all kinds of products, goods, commodities, merchandise, and wares which are the lawful objects of commerce, such as but not limited to agricultural products and by products, construction equipment, construction equipment, materials, and requirements, foods, drugs, and cosmetics.	To deal and engage in land or property management and development business in all its branches and ramifications, to hold, develop, manage, administer, sell, convey, encumber, purchase, acquire, rent, or otherwise deal in and dispose of, for itself and for others for profit and advantage, residential including but not limited to, all kinds of housing projects, commercial, industrial, agricultural, urban or other kinds or real property, improved or unimproved, with or to such persons and entities and under such terms and conditions as ay be permitted by law; to acquire, purchase, hold, manage, develop, and sell lots, with or without buildings or improvements for such consideration and in such manner or form as the corporation may determine or as the law permits; to erect, construct, alter, manage, operate, lease, in whole or in part, buildings and tenements of the commission or for such fees as may be proper or legal and to exercise or undertake such other powers and purposes as may be required and necessarily implied from the purpose herein mentioned.
Name, Nationality, and Residence of Incorporators and Initial Directors (with interlocking directors shaded)	**Vincent L. Lopez** (Filipino) 57 P. Tuazon St., Cubao, Quezon City	**Vincent L. Lopez** (Filipino) 57 P. Tuazon St., Cubao, Quezon City
	Ceferina Corrine T. Lopez (Filipino) 41 Ilaya St., Mandaluyong City	**Ceferina Corrine T. Lopez** (Filipino) 41 Ilaya St., Mandaluyong City
	Nemecio C. Barrameda (Filipino) 32 Arayat Street corner Road 1, Mandaluyong City	**Nemecio C. Barrameda** (Filipino) 32 Arayat Street corner Road 1, Mandaluyong City
	Francis Gerard M. Sia (Filipino) 258 F. Bernardo St., Mandaluyong City	**Francis Gerard M. Sia** (Filipino) 258 F. Bernardo St., Mandaluyong City
	Francisco M. Laigo (Filipino) 71 Chestnut St., West Fairview Park, Quezon City	**Raymond L. Lopez** (Filipino) 57 P. Tuazon St., Cubao, Quezon City
	Ritche A. Watanabe (Filipino) 183 Pilar St., Addition Hills, San Juan City	

	Raul Leo C. Solomon (Filipino) Unit 706, Bel Air Soho Condo, Polaris St., Makati City	
	Jose Alejandro E. Galvez (Filipino) 2510 Bigbend St., Phase 5, Parkhomes Subd., Muntinlupa City	
	Constancia S. Sibulo (Filipino) 129 Scout Lozano St., Quezon City	
	Agripina P. Zafra (Filipino) 34 Sta. Fe, bo Kapitolyo, Pasig City	
	Jeff Yu Lu (Filipino) 29 Ortigas St., San Rafael, Pasay City	
Type of License	**Primary License only.** Granted separate juridical personality but not allowed to sell securities.	**Primary License only.** Granted separate juridical personality but not allowed to sell securities.

Note that GREENLIFE FARMS and GREENLIFE DEVELOPMENT have the following in common: (a) ***four (4) interlocking directors***; (b) ***same principal address***; (c) ***same identifying phrase*** "Greenlife Leisure" in their corporate name; (d) ***same year of incorporation***, 2010; (e) ***same financial structure*** (*i.e.*, ACS of PHP 1,000,000 divided into 10,000 shares of PHP 100 par value); and (f) ***same license granted***, primary only.

II. FACTS ESTABLISHED BY THE COMPLAINT-AFFIDAVIT OF WILLIE B. DAVID

The complainant, Willie B. David ("Willie David"), stated under oath that:

(A) Sometime in early 2010, Willie attended a Livelihood Expo where he met representatives of GREENLIFE FARMS. He received some flyers, was given a verbal overview of the company and the mechanics of the investment, and was asked to sign their visitor book.

(B) After a few days, Willie David received a phone call from a certain Lorena Fausto and she invited him to an Investors' Briefing to be conducted by the company President, Vincent ("Vince") Lopez.

(C) On the scheduled date, Willie attended the Investors' Briefing, where he spoke with Vince Lopez (President), Francis Sia (Finance Officer), and Lorena Fausto (Membership Director) of GREENLIFE FARMS.

(D) Vince Lopez pointed-out some other directors/officers present, but these persons did not converse with Willie David as they were busy doing one-on-one solicitation with the other potential investors.

(E) Willie David was convinced by the presentation given by Vince Lopez and Lorena Fausto, the substance of which was:

(1) GREENLIFE FARMS has access to a farm named "Greenlife Mango Orchard" a.k.a. "Hacienda Verde," located in Acoje Road, Lucanpon South, Sta. Cruz, Zambales, originally a Lopez family property, which has five hundred (500) mango trees that are known to produce export-quality mangoes.

(2) GREENLIFE FARMS presented statistics to show that mango exports is a viable market; considering that Vince Lopez already had access to a mango farm, GREENLIFE FARMS was created in 2010 specifically to seize this opportunity.

(3) GREENLIFE FARMS would be more profitable if it exports certified-organic mangoes and thus it applied for certification as an Organic Farm with the Organic Certification Center of the Philippines (OCCP). When approved—supposedly in 2013—the price of GREENLIFE's export mangoes would practically double, from PHP 500/kilo to PHP 800-1,000/kilo.

(4) GREENLIFE FARMS explained that a **"Preferred Member/Investor"** would be entitled to a 60% share of the annual profits from existing mango trees, the other 40% going to GREENLIFE FARMS.[2] In contrast, a **"Non-preferred Member/Investor"** would be entitled to future profits from mango trees yet unplanted.

(5) **For preferred member/investors, the profit-sharing scheme would begin in 2013, the year when OCCP certification was expected.** For non-preferred member/investors, it would begin in 2016, when the mango seedlings mature into fruit-bearing trees. Profits were expected to rise annually, viz:

(a) Preferred member/investors are entitled to profits from matured/existing mango trees, to wit:
PHP 30,000 on the 3rd year (2013)
PHP 36,000 on the 4th year (2014)
PHP 42,000 on the 5th year (2015)
PHP 48,000 on the 6th year (2016)
PHP 54,000 on the 7th year (2017)
PHP 60,000 on the 8th year (2018)
PHP 60,000 on the 9th year (2019)
PHP 60,000 on the 10th year (2010)

[2] **Annexes E and G** of Complaint-Affidavit of Willie B. David.

(b) **Preferred member/investors are also granted <u>incentives</u> in exchange for sponsoring mango seedlings to Non-preferred member/investors, to wit:**
PHP 24,000 on the 6th year (2016)
PHP 24,000 on the 7th year (2017)
PHP 48,000 on the 8th year (2018)
PHP 48,000 on the 9th year (2019)
PHP 48,000 on the 10th year (2020)

(c) **Non-preferred member/investors, are entitled to profits from the yet-unplanted mango seedlings, to wit:**

(6) **All member/investors (preferred and non-preferred)** would also be entitled to Lifetime Free Access to the mango farm (Greenlife Orchard a.k.a. Hacienda Verde)[3]. GREENLIFE FARMS represented that, starting 2011, ***farm amenities*** would include picnic pavilion, café restaurant, view-deck, horseback riding, ATV trail, bike trail, and jogging path. To date, these amenities are still non-existent.

(7) **All member/investors (preferred and non-preferred)** will also receive an annual free vacation of 21 days and 20 nights at GREENLIFE FARMS' next project, the Sambali Wellness Beach Resort.[4] Upon completion in 2015, ***resort facilities*** would include kayak, pedal boat, island boat ride, jet ski, team-building facilities, campsite, beach volleyball, infinity pool, aqua slide, spa, karaoke, pool café, and gourmet restaurant. To date, these facilities are still non-existent.

(8) GREENLIFE explained that it uses a "**pooling system**" to reduce risk, insuring the annual income to member/investors against natural calamities that would affect mango trees.

(9) GREENLIFE also explained that benefits enjoyed by member/investors are **transferable** to their family members, thus creating a "lifetime partnership" where the member/investors help preserve the mango farm, while receiving export profits and using the farm/resort facilities.

(F) On **25 June 2010**, Willie David deposited **One Hundred Nine Thousand Seven Hundred Sixty Pesos (PHP 109,760)** to **BDO Account No. 4950264616** in the name of GREENLIFE FARMS.

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[3] **Annexes E1 and F** of Complaint-Affidavit of Willie B. David.
[4] **Annexes E1 and F1** of Complaint-Affidavit of Willie B. David.

(G) GREENLIFE FARMS issued to Willie David the following documents, which were duly attached to the complaint-affidavit:

(1) GREENLIFE FARMS **Official Receipt**[5] No. 0019;

(2) GREENLIFE FARMS **Membership Card** No. 9232064;

(3) GREENLIFE FARMS **Confirmation Letter**[6]; and

(4) GREENLIFE FARMS **Certificate of Sponsorship**[7].

(5) On **14 November 2012**, before profits became due, Vince Lopez sent an email to Willie David (but addressed to all "GREENLIFE" member/investors), announcing the conversion of **GREENLIFE FARMS** ***membership*** to **GREENLIFE DEVELOPMENT** ***shares of stock***. In the email signature line, Vince Lopez identified himself as the "President/Founder," presumably of the same "Greenlife" or "Greenlife Leisure" in the address bar, but the signature clearly states that he specifically represents GREENLIFE DEVELOPMENT. Pictures of **Hacienda Verde** were also attached to the email.

(6) The email was among those duly attached (as "Annex G") to Willie David's complaint-affidavit. **It contains the names "Greenlife," "Greenlife Leisure," "Greenlife Leisure Farms, Inc.," and "Greenlife Leisure Farm and Development" which are *used interchangeably* by Vince Lopez.** Moreover, there is a conversion of membership in one entity (GREENLIFE FARMS) for equity shares of another entity (GREENLIFE DEVELOPMENT). For convenience, the full text (with typos) of Vince Lopez' email is reproduced here:

Vince Lopez <vincelopez@greenlifeleisure>
To
willie david

Greetings to all Greenlife Members,

Thank you very much for the trust and support you have given our Green Project. Currently we are rehabilitating our Mango Orchard. We are expected to harvest by 2013 our first batch of Organic Mangoes. But still a lot of work to do so we can achieve higher output from each tree. We are targeting to increase our production for the next 5 years by consistently nurturing each mango trees.

Just an update , we are no longer accepting members to join greenlife. To show my sincere appreciation for all the support and great advise given to me by the

[5] **Annex B** of Complaint-Affidavit of Willie B. David.
[6] **Annex C** of Complaint-Affidavit of Willie B. David.
[7] **Annex D** of Complaint-Affidavit of Willie B. David.

Preferred Members, I am converting your Membership to Ownership by issuing you shares of stock coming from Greenlife Leisure Farm and Development, Inc. by 2013. The difference would be a lot, since your dividends now in not only concentrated on Mangoes and also other income generating projects of Greenlife. But wait there's more since land titles are under Greenlife, making you a shareholder means you are a partowner of the company making your investment secure. Lastly you can still retain your membership status if you prefer to be a member.

Here's updated pictures of Greenlife Hacienda Verde.

Thank you and Best Regards,
Vincent Lopez
President / Founder
Greenlife Leisure Farm and Development Inc.

(7) Willie David maintained an email correspondence with Vince Lopez from 29 June 2010 to 9 February 2017, which he attached to his Complaint-Affidavit as **Annex G.**

(8) On 7 February 2017, after several years of not giving member/investors any return, whether as profit-share in GREENLIFE FARMS or as stock dividend in GREENLIFE DEVELOPMENT, Vince Lopez suggested via Email that Willie David should try selling his membership/share to others, to wit:

Start ko palang magbenta ulet. Baka may buyer ka rin marefer much better. Nasa contract naman na pwede nyo ibenta sa iba"[8]

(9) To reiterate, Willie David transacted with both GREENLIFE FARMS and GREENLIFE DEVELOPMENT, through the entities' common representative/head, Vince Lopez. The dividing line between the two is blurred because Vince Lopez communicated on behalf of "Greenlife" and "Greenlife Leisure," which could refer to either.

III. FACTS ESTABLISHED BY THE SURVEILLANCE EFFORTS OF MOVANT EIPD

A. Ocular Inspection

1. On **15 February 2017**, the EIPD conducted an ocular inspection of and surveillance operation at the common registered address of GREENLIFE FARMS and GREENLIFE DEVELOPMENT at 57-A P. Tuazon Street, Cubao, Quezon City to validate the allegations of Willie David. The business address turned out to be a residential house that had been vacated or unoccupied for a considerable time.[9]

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[8] Email of Vince Lopez to Willie David (7 February 2017 at 9:29 pm), **Annex G4** of Complaint-Affidavit of Willie B. David.
[9] Pars. 9-10 of Motion.

2. On **4 April 2017** and on **12 April 2017**, the EIPD conducted ocular inspections of and surveillance operations at the Greenlife Orchard a.k.a. Hacienda Verde, where the organic mangoes for export are supposedly being grown. According to the "Greenlife Leisure" website, the farm was located at Acoje Road, Barangay Lucapon, Sta. Cruz, Zambales. There they met three men: (a) a certain Alex Rivera; (b) a man wearing fatigues and the nameplate "Tamandong"; and (c) a certain Elmer Dimaculungan, the caretaker. These individuals confirmed that Hacienda Verde is owned by "the Lopezes," by which they meant Vince Lopez and his "ka-bakas" (partners). Vince Lopez was said to often visit Hacienda Verde and was scheduled to visit that weekend. The caretaker suggested setting an appointment with Vince Lopez, whose details may be gleaned from the "Hacienda Verde" website (i.e., different from the "Greenlife Leisure" website).[10]

B. Website Inspection

1. **"Greenlife Leisure" website (www.greenlifeleisure.com)**
On **13 March 2017**, the EIPD inspected the "Greenlife Leisure" website, as indicated in the brochures presented by Willie David. The EIPD confirmed that GREENLIFE FARMS was indeed offering membership cards that carry certain benefits, including "shares" of GREENLIFE DEVELOPMENT. The website explained that "Platinum Members" will get a minimum of 2 shares, while "Preferred Elite Members" will get a minimum of 1 share. GREENLIFE FARMS members shall be given Certificates of Title to farm lots in Hacienda Verde, as well as stock dividends from GREENLIFE DEVELOPMENT. **Thus, the current terms of membership are different from those narrated by Willie David. Nonetheless, it is clear that the lines are blurred between GREENLIFE FARMS and GREENLIFE DEVELOPMENT. Consistent with the allegations of Willie David, membership (*profit-sharing*) in GREENLIFE FARMS results in *stock ownership* in GREENLIFE DEVELOPMENT.** Consistent with Willie David's claim, additional benefits include free access to the *farm facilities* of Hacienda Verde and the *resort facilities* of Sambali Wellness Beach Resort.[11]

2. **"Hacienda Verde" website (Facebook account)**
On **4 April 2017**, the EIPD inspected the "Hacienda Verde" website, as suggested by its caretaker, Elmer Dimaculangan. The Hacienda Verde website also included advertisements for GREENLIFE FARMS and GREENLIFE DEVELOPMENT specifically, as well as the common/confusing names "Greenlife" and "Greenlife Leisure." The EIPD verified the "Greenlife" is offering the following investment

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[10] Par. 15 of the Motion.
[11] Pars. 12-14 of Motion.

opportunities: (a) **Organic Mango Partnership Program**, divided into Preferred and Non-preferred, ***exactly as claimed by Willie David***, *including the clearly stated PHP 109,760 investment entitling a preferred member to 60% profit-share;* (b) Preferred Membership Card; (c) Platinum Membership Card; (d) Profit-Sharing Program; and (e) schemes unrelated to mangoes, such as Cattle Fattening Operation, etc. On the same website, GREENLIFE FARMS represents that it will convert its members to shareholders of GREENLIFE DEVELOPMENT by 2013. Screenshots of the "Hacienda Verde" website were duly attached to the Motion as **Annex H**.[12]

C. **MSRD Certification** that neither GREENLIFE FARMS nor GREENLIFE DEVELOPMENT has been granted a Permit to Sell securities.

D. **CGFD Certification** that neither GREENLIFE FARMS nor GREENLIFE DEVELOPMENT is a registered issuer of mutual funds.

IV. GREENLIFE FARMS AND GREENLIFE DEVELOPMENT ARE ALTER EGOS

GREENLIFE FARMS' and GREENLIFE DEVELOPMENT's respective incorporation documents reveal common ownership and common-involvement in the mango partnership; both entities even used the same fictitious business address. "Greenlife" and "Greenlife Leisure" are names used to identify either/both GREENLIFE FARMS and GREENLIFE DEVELOPMENT, as evident from the "Greenlife Leisure" website/brochures, as well as the emails of common President/Founder Vince Lopez.[13]

In his 14 November 2012 email, Vince Lopez clearly stated that GREENLIFE FARMS memberships were converted into GREENLIFE DEVELOPMENT shares; he uses the names "Greenlife" and "Greenlife Leisure" to describe either/both entities ***interchangeably*** in that email.

Similarly, in his 7 February 2017 email, Vince Lopez refers to the binding terms of Willie David's membership "contract" (profit-sharing certificate) in GREENLIFE FARMS, about 4 years after he "converted" it into shares of stock in GREENLIFE DEVELOPMENT; even the investment in one entity is ***interchangeable*** with an investment in the other.

It may be inferred that the entity-at-play depends entirely on what would give Vince Lopez and his partners an advantage. There is a clear intention to blur the lines between these 2 entities; they are clearly alter egos of each other.

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12 Pars. 16-20 of Motion.
13 **Annex G** of the Complaint-Affidavit of Willie B. David.

The foregoing considered, we now resolve the case on the merits based on the allegations contained in the motion and the evidence presented.

We find merit in the motion.

EIPD's motion, supported by substantial evidence, shows that GREENLIFE FARMS and GREENLIFE DEVELOPMENT are selling or offering for sale to the public **securities** in the form of **investment contracts** without the necessary license from the Commission. Over and above a textbook example of investment contracts, there is even a purported issuance of ***shares of stock*** (Section 3(a) of the SRC) of GREENLIFE DEVELOPMENT, in exchange for membership interest—which may be considered a ***certificate of participation in a profit sharing agreement***, under Section 3(b) of the SRC—in GREENLIFE FARMS.

Securities are "shares, participation or interests in a corporation or in a commercial enterprise or profit-making venture and evidenced by a certificate, contract, instrument, whether written or electronic in character"[14] and includes an investment contract.[15]

Section 8.1 of the SRC provides that securities shall not be sold or offered for sale or distribution within the Philippines, without a registration statement duly filed with and approved by the Commission. In connection therewith, Section 12.1 of the SRC states that all securities required to be registered under Subsection 8.1 shall be registered through the filing by the issuer in the main office of the Commission, of a sworn registration statement with respect to such securities, in such form and containing such information and documents as the Commission shall prescribe.

An "investment contract" has been defined as follows:

> "G. An *investment contract* means a contract, transaction or scheme (collectively 'contract') whereby a person invests his money in a common enterprise and is led to expect profits primarily from the efforts of others.
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> 1. An investment is presumed to exist whenever a person seeks to use the money or property of others on the promise of profits.
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> 2. A *common enterprise* is deemed created when two (2) or more investors 'pool' their resources – creating a common enterprise, even if the promoter receives nothing more than a broker's commission."[16]

The concept of an investment contract in the Philippines is of American origin. It traces its roots from the US Supreme Court case *Securities Exchange Commission v. W.J. Howey Co.*[17] where the Court stated that an investment contract is a

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[14] Section 3.1, Securities Regulation Code (SRC).
[15] Section 3.1 (b), SRC.
[16] SRC Rule 3(1)(G), Amended Implementing Rules and Regulations (IRR) of the SRC.
[17] *SEC v. Howey*, 328 U.S. 293, 66 S. Ct. 1100, 90 L. Ed. 1244, 163 A.L.R. 1043 (1946).

transaction, contract, or scheme whereby a person (1) makes an investment of money, (2) in a common enterprise, (3) with the expectation of profits, (4) to be derived solely from the efforts of others.

In the subsequent U.S. Supreme Court case of *Securities Exchange Commission v. Glenn W. Turner Enterprises, Inc.*, it was held that the element that profits must come "solely" from the efforts of others should be liberally construed as "primarily." The court reasoned that a literal reading of the requirement "solely" would lead to unrealistic results, whereas a flexible reading is in accord with the statutory policy of affording broad protection to the public. Thus, it is no longer necessary that the expected profit accrue solely from the efforts of others. [18]

The concept of an investment contract has since been transported in the Philippines. In the landmark case of *Power Homes Unlimited Corporation v. Securities and Exchange Commission*[19], the Philippine Supreme Court stated that an investment contract in our jurisdiction, to be a security subject to regulation by the Commission, must be proved to be **(1) an investment of money; (2) in a common enterprise; (3) with expectation of profits, (4) primarily from efforts of others**. Under this definition, whenever an investor relinquishes control over his or her funds and submits their control to another for the purpose of deriving profits from them, he or she is in fact investing in a security.[20]

As to the first requisite, an investment of money occurs when an investor commits money to an enterprise or venture in a manner that subjects himself to financial loss.[21] In the instant case, Willie David joined GREENLIFE FARMS as a preferred member/investor in the mango partnership program by paying the amount of One Hundred Nine Thousand Seven Hundred Sixty Pesos (PHP 109,760). In return, he and other such investors (whether preferred or non-preferred) would supposedly receive *future* profits from the non-ongoing export of organic mangoes, plus *future* free access to non-existent farm and resort amenities. All of these member/investors, according to Vince Lopez, are presently stockholders of GREENLIFE DEVELOPMENT. The investment in one entity (FARMS) was investment in the other entity (DEVELOPMENT) as well. Thus, the first element is present.

As to the second requisite, a common enterprise is deemed created when two (2) or more investors "pool" their resources. Several tests have evolved to determine what constitutes "common enterprise".[22] **One of these tests is the horizontal commonality approach. Under this test, the determination of whether a transaction satisfies the commonality element of the modified Howey test involves an inquiry into whether the said transaction involves the joint participation of more than one investor in (i) the investment of funds or (ii) the**

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[18] *SEC v. Turner*, 474 F. 2d 476, 414 U.S. 821, 94 (1973).
[19] G.R. No. 164182, 26 February 2008.
[20] *Investment Co. Institute v. Camp*, 274 F. Supp. 624 (D. D.C. 1967).
[21] *SEC v. International Mining Exchange, Inc.*, 515 F. Supp. 1062.
[22] *In the Matter of Octopus Network, Inc.*, SEC-PED Case No. 98-2220, 22 May 1998.

sharing of profits.[23] **Furthermore, joint participation by investors in the same investment enterprise, achieved by pooling the invested funds for a common purpose, is required in order to satisfy the common enterprise element.**[24]

In the instant case, GREENLIFE FARMS and DEVELOPMENT (collectively as "Greenlife" or "Greenlife Leisure") themselves represent that they pool their investors' (Willie David's and others') money into a common fund. Willie David twice verified the existence of his fellow preferred member/investors: (a) at the livelihood expo, and (b) at the investors' briefing. Moreover, the pivotal conversion of GREENLIFE FARMS membership to GREENLIFE DEVELOPMENT shares in 2012 removed all doubt that FARMS' pool of capital is *one and the same* as DEVELOPMENT's pool of capital. Therefore, the second requisite is present.

As to the third requisite, there must be an expectation of profits. Profits may either be through capital appreciation resulting from the development of the initial investment, or participation in earnings resulting from the use of investors' funds. In both cases, investors are "attracted primarily by the prospects of a return on his investment."[25] In the instant case, Willie David, as a preferred member/investor, was promised a 60% profit share, increasing annually, from the export of organic mangoes produced by the existing mango trees at Greenlife Orchard a.k.a. Hacienda Verde. Non-preferred member/investors would be entitled to lesser annual profits from yet-unplanted mango trees. The projected amounts are all written in the "Greenlife Mango Partnership Program" brochure[26] and in Vince Lopez' emails[27]. Additional benefits such as free access to farm and resort facilities, as well as the transferability of these benefits to family members, sweetened the deal. This expectation of profit from GREENLIFE FARMS turned into an expectation from GREENLIFE DEVELOPMENT, when the member/investors' of one entity were converted into shareholders of the other in 2012. Thus, the third element is present.

As to the fourth requisite, there must be the expectation of profits primarily from the efforts of others. In *Turner*[28], the US Supreme Court adopted a more realistic test—whether the efforts made by those other than the investors are undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise. In the instant case, GREENLIFE FARMS and GREENLIFE DEVELOPMENT, through their common founder Vince Lopez, created, marketed, and operated the "mango partnership." Willie David, for instance, did not exert any effort beyond investing his money. The member/investors of GREENLIFE FARMS, now stockholders of GREENLIFE DEVELOPMENT, earn *primarily* from the efforts of others. Therefore, the fourth element is present.

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[23] Note 26, citing 69 Am Jur 2d citing Stenger v. R.H. Love Galleries, Inc. 741 F2d 144.

[24] Note 26, citing Wasnowic v. Chicago Bd. of Trade 352 F Supp 1066.

[25] *Power Homes Unlimited Corporation v. Securities and Exchange Commission.*

[26] **Annex E** of Complaint-Affidavit of Willie B. David.

[27] **Annex G** of Complaint-Affidavit of Willie B. David.

[28] Note 33, Supra.

Since all the elements of an ***investment contract*** are present, GREENLIFE FARMS and GREENLIFE DEVELOPMENT should be considered as engaged in selling and/or offering for sale of investment contracts, which are considered "securities" under the SRC. In fact, GREENLIFE DEVELOPMENT, according to Vince Lopez, is even offering ***shares of stock***, which is obviously a security[29], in exchange for the membership interest (which the EIPD rightly points out as a ***certificate of participation in a profit-sharing agreement***, another obvious security[30]) in GREENLIFE FARMS.

In *Power Homes Unlimited vs. Securities and Exchange Commission*[31], the Supreme Court ruled that:

> "As an **investment contract that is security under R.A. No. 8799, it must be <u>registered</u> with** public respondent **SEC**, otherwise the SEC cannot protect the investing public from fraudulent securities. The strict regulation of securities is founded on the premise that the capital markets depend on the investing public's level of confidence in the system."

Since GREENLIFE FARMS and GREENLIFE DEVELOPMENT are engaged in selling and/or offering for sale securities, whether in the form of investment contracts or otherwise, both of them should be registered with the Commission.

Furthermore, Rule 3, paragraph 1, sub-paragraph N of the SRC provides that:

> "**Public offering means a random or indiscriminate offering of securities in general to anyone who will buy, whether solicited or unsolicited**. Any solicitation or presentation of securities for sale through any of the following modes shall be presumed to be a public offering:
>
> i. Publication in a newspaper, magazine or printed reading material which is distributed within the Philippines or any part thereof;
> ii. Presentation in any public or commercial place;
> iii. Advertisement or announcement in any radio or television, or any online or e-mail system; or
> iv. Distribution and/or making available flyers, brochures or any offering material in a public or commercial space, or mailing the same to prospective purchasers."

In the instant case, evidence adduced by EIPD show that GREENLIFE FARMS and GREENLIFE DEVELOPMENT are offering for sale its investment schemes publicly through one-on-one sales, brochures, and online advertisements to potential investors without prior registration.

Relative thereto, Section 64 of the SRC provides that:

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29 Section 3(a), SRC.
30 Section 3(b), SRC.
31 Note 34 Supra.

> Section 64. *Cease and Desist Order.* – 64.1. **The Commission**, after proper investigation or verification, ***motu proprio*** or upon verified complaint by any aggrieved party, **may issue a cease and desist order without the necessity of a prior hearing if in its judgment the act or practice, unless restrained, will operate as a fraud on investors or is otherwise likely to cause grave or irreparable injury or prejudice to the investing public**.

Thus, there are two essential requirements that must be complied with before a cease and desist order is issued: **First**, a proper investigation or verification was conducted; and **Second**, there must be a finding that the act or practice, unless restrained, will operate as a fraud on investors or is otherwise likely to cause grave or irreparable injury or prejudice to the investing public.[32]

As to the first requirement, EIPD conducted **three (3) ocular inspections** and **two (2) website inspections** as evidenced by its Investigation Reports. MSRD and CGFD Certifications were obtained, which clearly indicate that GREENLIFE FARMS and GREENLIFE DEVELOPMENT are both not licensed to sell securities. It is evident that EIPD conducted a diligent investigation of both entities.

As to the second requirement, based on EIPD's investigation, (a) based on Vince Lopez's emails to its investors—the latest received by Willie David was as recent as 9 February 2017—where the latter are encouraged to sell to others, and (b) based on the continuous advertising via the "Greenlife Leisure" and "Hacienda Verde" websites, GREENLIFE FARMS and GREENLIFE DEVELOPMENT are **still engaged** in the offering and selling of securities without the necessary license from the Commission.

Thus, in the absence of a secondary license, GREENLIFE FARMS and GREENLIFE DEVELOPMENT should be restrained from offering or selling securities, whether in the form of investment contracts or otherwise.

WHEREFORE, premises considered, **GREENLIFE LEISURE FARMS, INC. and GREENLIFE LEISURE FARM AND DEVELOPMENT, INC.**, their partners, officers, directors, agents, representatives, conduits, assigns, AND ANY AND ALL PERSONS CLAIMING AND ACTING FOR AND IN THEIR BEHALF are hereby ordered to **IMMEDIATELY CEASE AND DESIST[33], UNDER PAIN OF CONTEMPT**, from engaging in activities of selling and/or offering for sale securities in the form of investment contracts or any others of the same nature, as discussed in this *Order*, until the requisite registration statement is duly filed with and approved by the Commission and the corresponding to offer/sell is issued.

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[32] SEC vs. Performance Foreign Exchange Corporation, G.R. No. 154131, 20 July 2006.

[33] Section 64.1, SRC – The Commission, after proper investigation or verification, *motu propio*, or upon verified complaint by any aggrieved party, may issue a cease and desist order without the necessity of a prior hearing if in its judgment the act or practice, unless restrained, will operate as fraud on investors or is otherwise likely to cause grave or irreparable injury or prejudice to the investing public.

Furthermore, the subject corporations are directed to cease its internet presence relating to above-stated investment activities. The Commission will institute the appropriate administrative and criminal action against any persons or entities found to act as solicitors, information providers, salesmen, agents, brokers, dealers or the like for and in behalf of the subject corporations.

The **Enforcement and Investor Protection Department** is hereby **DIRECTED** to: 1) serve this *Order* to **GREENLIFE LEISURE FARMS, INC. and GREENLIFE LEISURE FARM AND DEVELOPMENT, INC.**, their President, General Manager, Corporate Secretary, Treasurer, In-House Counsel or partners; 2) post copies of the *Order* at the entrance of the main office and/or branches, if any, of **GREENLIFE LEISURE FARMS, INC. and GREENLIFE LEISURE FARM AND DEVELOPMENT, INC.**

Let a copy of this *Order* be also posted in the Commission's website; published in a national newspaper of general circulation and furnished to the Company Registration and Monitoring Department, the Corporation Finance Department and the Economic Research and Information Department for their information and appropriate action.

EIPD is **FURTHER DIRECTED** to submit a formal compliance report, by way of a pleading, to the Commission *En Banc* WITHIN FIVE (5) DAYS from receipt of this *Cease and Desist Order.*

In accordance with the provisions of Sec. 64.3[34] of SRC and Sec. 4-3 of the 2016 Rules of Procedure of the Commission, the parties subject of this *Cease and Desist Order* may file a request for the lifting thereof within five (5) days from receipt hereof.

FAIL NOT UNDER PENALTY OF LAW.

SO ORDERED.

Pasay City, Philippines; 18 May 2017.

[34] Section 64.3, SRC – Any person against whom a cease and desist order was issued may, within five (5) days from receipt of the order, file a formal request for a lifting thereof. Said request shall be set for hearing by the Commission not later than fifteen (15) days from its filing and the resolution thereof shall be made not later than ten (10) days from the termination of the hearing. If the Commission fails to resolve the request within the time herein prescribed, the cease and desist order shall automatically be lifted.

The dispositive portion reads:

WHEREFORE, premises considered, **GREENLIFE LEISURE FARMS, INC. and GREENLIFE LEISURE FARM AND DEVELOPMENT, INC.**, their partners, officers, directors, agents, representatives, conduits, assigns, and any and all persons claiming and acting for and in THEIR behalf are hereby ordered to **IMMEDIATELY CEASE AND DESIST, UNDER PAIN OF CONTEMPT**, from engaging in activities of selling and/or offering for sale securities in the form of investment contracts or any others of the same nature, as discussed in this *Order*, until the requisite registration statement is duly filed with and approved by the Commission and the corresponding to offer/sell is issued.

Furthermore, the subject corporations are directed to cease its internet presence relating to above-stated investment activities. The Commission will institute the appropriate administrative and criminal action against any persons or entities found to act as solicitors, information providers, salesmen, agents, brokers, dealers or the like for and in behalf of the subject corporations.

The **Enforcement and Investor Protection Department** is hereby **DIRECTED** to: 1) serve this *Order* to **GREENLIFE LEISURE FARMS, INC. and GREENLIFE LEISURE FARM AND DEVELOPMENT, INC.**, their President, General Manager, Corporate Secretary, Treasurer, In-House Counsel or partners; 2) post copies of the *Order* at the entrance of the main office and/or branches, if any, of **GREENLIFE LEISURE FARMS, INC. and GREENLIFE LEISURE FARM AND DEVELOPMENT, INC.**

Let a copy of this *Order* be also posted in the Commission's website; published in a national newspaper of general circulation and furnished to the Company Registration and Monitoring Department, the Corporation Finance Department and the Economic Research and Information Department for their information and appropriate action.

EIPD is **FURTHER DIRECTED** to submit a formal compliance report, by way of a pleading, to the Commission *En Banc* within five (5) days from receipt of this *Cease and Desist Order.*

In accordance with the provisions of Sec. 64.3 of SRC and Sec. 4-3 of the 2016 Rules of Procedure of the Commission, the parties subject of this *Cease and Desist Order* may file a request for the lifting thereof within five (5) days from receipt hereof.

FAIL NOT UNDER PENALTY OF LAW.

SO ORDERED.

TERESITA J. HERBOSA
Chairperson

ANTONIETA F. IBE
Commissioner

EMILIO B. AQUINO
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

BLAS JAMES G. VITERBO*
Commissioner

*On Vacation Leave