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SOUTHERN DISTRICT OF CALIFORNIA

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8 UNITED STATES DISTRICT COURT

9 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

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11 SECURITIES AND EXCHANGE COMMISSION,

12 Plaintiff,

13 vs.

14 SATCOM, INC., SATCOM MARKETING AND
DISTRIBUTION, INC., TRICAP VENTURES,
15 COASTAL ENTERPRISES, LLOYD D. PAINE,
SCOTT C. MESSIER and LAWRENCE C.
16 HARVEY,

17 Defendants.

Case No.

'99 cv 0234 IEG LAB

COMPLAINT FOR VIOLATION OF THE
FEDERAL SECURITIES LAWS

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20 Plaintiff Securities and Exchange Commission ("the
21 Commission") for its Complaint alleges:

22 JURISDICTION

23 1. This Court has jurisdiction over this action pursuant to
24 Sections 20(b), 20(d)(1), and 22(a) of the Securities Act of 1933
25 ("Securities Act") [15 U.S.C. §§ 77t(b), 77t(d)(1), and 77v(a)]
26 and Sections 21(d)(1), 21(d)(3)(A), 21(e), and 27 of the Securities
27 Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78u(d)(1),
28 78u(d)(3)(A), 78u(e), and 78aa]. Defendants have, directly or

1 indirectly, made use of the means or instrumentalities of interstate
2 commerce, of the mails, or of the facilities of a national
3 securities exchange in connection with the securities transactions
4 described in this Complaint.

5 SUMMARY

6 2. From May 1997 to the present, Defendants have used a
7 fraudulent scheme in the offer and sale of common stock in SatCom,
8 Inc. ("SatCom") and SatCom Marketing and Distribution, Inc.
9 ("SMD") to raise approximately \$3.1 million from about 150
10 investors nationwide. In selling the SatCom and SMD stock,
11 Defendants have misrepresented to investors that investor funds will
12 be used for the development, manufacture, marketing and sales of
13 SatCom's products and that no investor funds will be used for sales
14 commissions. In fact, only approximately 5% of all investor funds
15 have been applied towards the stated purpose. Approximately 38% of
16 the funds raised have been transferred to Defendants Coastal
17 Enterprises ("Coastal"), Tricap Ventures ("Tricap"), Lloyd D.
18 Paine ("Paine"), Scott C. Messier ("Messier") and Lawrence C.
19 Harvey ("Harvey"), or to others for their benefit. In excess of
20 40% of the funds raised have been used to pay undisclosed sales
21 commissions. The Commission seeks temporary and preliminary
22 injunctions and asset freezes, permanent injunctions, disgorgement,
23 and civil penalties against SatCom, SMD, Tricap, Coastal, Paine,
24 Messier and Harvey.

25 THE DEFENDANTS

26 3. SatCom, Inc. ("SatCom"), a California corporation
27 located in San Diego, California, purports to be a
28 telecommunications company developing an AM/FM radio, a personal

1 communication and computing device, and a reusable space launch
2 vehicle. SatCom is operated by Paine, its president and Chief
3 Executive Officer.

4 4. SatCom Marketing and Distribution, Inc. ("SMD"), a
5 California corporation with offices in San Diego, California,
6 purports to market and distribute SatCom's products.

7 5. Tricap Ventures ("Tricap"), an irrevocable trust
8 with offices in San Diego, California, is under contract with SatCom
9 and SMD to assist in the sale of their common stock.

10 6. Coastal Enterprises ("Coastal"), an irrevocable
11 trust with offices in San Diego, California, is under contract with
12 SatCom and SMD to assist in the sale of their common stock.

13 7. Lloyd D. Paine ("Paine"), age 53, resides in Jamul,
14 California and is the president, CEO and a member of the board of
15 directors of SatCom and SMD.

16 8. Scott C. Messier ("Messier"), age 35, resides in
17 San Diego, California and is a Chief Financing Director and member
18 of the board of directors of SatCom and SMD. Messier is an
19 executive advisor to Tricap and Coastal.

20 9. Lawrence C. Harvey ("Harvey"), age 38, resides in
21 San Diego, California and is a Chief Financing Director and member
22 of the board of directors of SatCom and SMD. Harvey is an executive
23 advisor to Tricap and Coastal.

24 ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF

25 The Investment In SatCom and SMD Stock

26 10. From approximately May 1997 to November 1998,
27 Defendants Paine and SatCom offered and sold shares of common stock
28 in SatCom. In October 1997, Defendants Tricap, Coastal, Messier and

Harvey entered into contracts to join SatCom and Paine in the offer and sale of shares of SatCom common stock. In November 1998, Defendants Paine, Messier and Harvey formed defendant SMD for the stated purpose of marketing and distributing SatCom's products. From November 1998 to the present, Defendants SMD, Tricap, Coastal, Paine, Messier and Harvey offered and sold shares of common stock in SMD.

11. SatCom and SMD have conducted four offerings, one of which is presently ongoing. In May 1997, SatCom first offered for sale 500,000 shares of common stock in SatCom and "revenue participation interests" in SatCom at \$2.00 per share. SatCom raised \$1 million in its first offering. In May 1998, SatCom began its second offering of 500,000 shares of common stock and "revenue participation interests" at \$2.00 per share. SatCom raised \$1 million in its second offering. In October 1998, SMD began its first offering of 500,000 shares of common stock in SMD at \$2.00 per share. SMD raised \$1 million in its first offering. On November 1, 1998, SMD began its second offering of 2,000,000 shares of common stock at \$2.00 per share. This offering is ongoing, and SMD has raised less than \$1 million to date.

12. SatCom represented to investors, both orally and in writing, that the purpose of its two securities offerings was to finance the design, development and production of SatCom's products.

13. SMD represented to investors, both orally and in writing, that the purpose of its two securities offerings was to market and distribute SatCom's products and provide SatCom with lines of credit.

The Offer And Sale Of SatCom and SMD Stock

14. From approximately May 1997 to the present, Defendants SatCom and Paine operated a "boiler room" in San Diego, California through which investors were telephonically solicited to purchase shares of common stock in SatCom. From approximately October 1997 to the present, Defendants Tricap, Coastal, Messier and Harvey have assisted in the operation of the "boiler room" by providing facilities and advice on its operation. From approximately November 1998, Defendant SMD has assisted in the operation of the "boiler room" by providing and compensating sales agents.

15. Defendants offered and sold SatCom and SMD stock through sales agents who, pursuant to Messier and Harvey's instructions and supervision, called prospective investors nationwide from telemarketing "lead lists" obtained with investor funds. The sales agents telephonically prospective investors who had no prior connection to SatCom or SMD.

16. The sales agents receive commissions of approximately 12% of the amount raised through the "boiler room." Tricap and Coastal receive commissions ranging from 30-50% of the amount raised in exchange for providing facilities and advice in operating the "boiler room."

17. Defendants offered and sold SatCom and SMD stock using written offering documents, including a SatCom Private Placement Memorandum dated November 20, 1997, a SatCom Private Placement Memorandum dated May 1, 1998, an SMD Private Placement Memorandum dated October 1, 1998, an SMD Private Placement Memorandum dated November 1, 1998, and two undated, unsigned, glossy

1 brochures (collectively referred to as the "offering documents").
2 Defendants Paine, Messier and Harvey have reviewed all of the
3 offering documents.

4 **Misrepresentations And Omissions Of Material Facts**

5 18. Each of the offering documents made certain
6 representations regarding the use of investor proceeds. The
7 offering documents stated that no sales commissions would be paid
8 for the sale of SatCom and SMD stock. The offering documents
9 represented that SatCom and SMD would use the proceeds to develop,
10 manufacture and sell SatCom's products. More specifically, the
11 offering documents represented that approximately half of the
12 initial \$2 million raised would be used for prototypes, inventories
13 and production costs of SatCom's AM/FM radio and flashlight,
14 personal communications and computing device, and reusable space
15 launch vehicle. The offering documents did not disclose that any
16 investor funds would be paid to Paine, Messier, Harvey, Tricap or
17 Coastal, or to others for their benefit.

18 19. Contrary to the Defendants' representations in the
19 offering documents, in excess of 40% of the funds raised have been
20 paid as sales commissions to the sales agents, Tricap and Coastal,
21 for each offering.

22 20. Contrary to Defendants' representations in the
23 offering documents, SatCom and SMD have used less than 5% of the
24 proceeds on the development, manufacture and marketing of SatCom's
25 products.

26 21. Contrary to Defendants' representations, Defendant
27 Paine and his family have received a substantial portion of proceeds
28 of the SatCom offerings for payment of personal expenses, including

1 payment of more than \$135,000 directly to Paine and his family,
2 payment of more than \$250,000 for the personal American Express card
3 of Paine's wife (used in substantial part for personal expenses of
4 the Paine family) and the purchase of a Mercedes Benz automobile for
5 the use of Paine's wife.

6 22. As of October 1998 of the more than \$3 million that
7 had been raised, approximately \$400,000 remained in bank accounts
8 controlled by Defendants. In addition to the payments set forth in
9 paragraphs 1 through 21, supra, the balance of the funds raised have
10 been used for undisclosed and undetermined purposes including
11 operating costs of the "boiler room."

12 **FIRST CLAIM FOR RELIEF**

13 **FRAUD IN THE OFFER OR SALE OF SECURITIES**

14 **Section 17(a) of the Securities Act**

15 **(Against All Defendants)**

16 23. Paragraphs 1 through 22 are realleged and
17 incorporated by this reference.

18 24. Defendants SatCom, SMD, Tricap, Coastal, Paine,
19 Messier and Harvey, by engaging in the conduct described above,
20 directly or indirectly, in the offer or sale of securities, by the
21 use of means or instruments of transportation or communication in
22 interstate commerce or by use of the mails:

23 (a) with scienter, employed devices, schemes or artifices
24 to defraud;

25 (b) obtained money or property by means of untrue
26 statements of material fact or by omitting to state
27 material facts necessary in order to make the
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1 statements made, in light of the circumstances under
2 which they were made, not misleading; or

3 (c) engaged in transactions, practices or courses of
4 business which operated or would operate as a fraud
5 or deceit upon the purchasers of such securities.

6 25. By reason of the facts and circumstances described
7 above, Defendants SatCom, SMD, Tricap, Coastal, Paine, Messier and
8 Harvey violated, and unless restrained and enjoined will continue to
9 violate, Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

10 **SECOND CLAIM FOR RELIEF**

11 **FRAUD IN CONNECTION WITH THE PURCHASE OR SALE OF SECURITIES**

12 **Section 10(b) of the Exchange Act**

13 **and Rule 10b-5 Thereunder**

14 **(Against All Defendants)**

15 26. Paragraphs 1 through 22 are realleged and
16 incorporated by this reference.

17 27. Defendants SatCom, SMD, Tricap, Coastal, Paine,
18 Messier and Harvey, by engaging in the conduct described above,
19 directly or indirectly, in connection with the purchase or sale of
20 securities, by the use of the means or instrumentalities of
21 interstate commerce, or of the mails, or of a facility of a national
22 securities exchange, with scienter:

23 (a) employed devices, schemes or artifices to defraud;

24 (b) made untrue statements of material fact or omitted to
25 state material facts necessary in order to make the
26 statements made, in light of the circumstances under
27 which they were made, not misleading; or

1 (c) engaged in acts, practices or courses of business
2 which operated or would operate as a fraud or deceit
3 upon other persons.

4 28. By reason of the facts and circumstances described
5 above, Defendants SatCom, SMD, Tricap, Coastal, Paine, Messier and
6 Harvey violated, and unless restrained and enjoined will continue to
7 violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and
8 Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

9 **THIRD CLAIM FOR RELIEF**

10 **OFFER AND SALE OF UNREGISTERED SECURITIES**

11 **Violations of Sections 5(a) and 5(c)**
12 **of the Securities Act [15 U.S.C. §§ 77e(a) & 77e(c)]**
13 **(Against All Defendants)**

14 29. Paragraphs 1 through 22 are realleged and
15 incorporated herein by reference.

16 30. By reason of the facts and circumstances described
17 above, Defendants SatCom, SMD, Tricap, Coastal, Paine, Messier and
18 Harvey, directly or indirectly, through use of the means or
19 instruments of transportation or communication in interstate
20 commerce or the mails, offered to sell or sold securities in the
21 form of common stock, or, directly or indirectly, carried or caused
22 such securities to be carried through the mails or in interstate
23 commerce, for the purpose of sale or delivery after sale.

24 31. No registration statement has been filed with the
25 Commission or is in effect with respect to these securities.

26 32. By reason of the foregoing, Defendants SatCom, SMD,
27 Tricap, Coastal, Paine, Messier and Harvey violated, and unless
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1 restrained and enjoined will continue to violated, Sections 5(a) and
2 5(c) of the Securities Act.

3 PRAYER FOR RELIEF

4 Wherefore, the Commission respectfully requests that the
5 Court:

6 I.

7 Issue orders temporarily, preliminarily and permanently
8 enjoining Defendants SatCom, SMD, Tricap, Coastal, Paine, Messier
9 and Harvey, and their officers, agents, servants, employees, and
10 attorneys, and those persons in active concert or participation with
11 any of them, who receive actual notice of the order by personal
12 service or otherwise, from violating Sections 5(a), 5(c) and 17(a)
13 of the Securities Act, Section 10(b) of the Exchange Act and Rule
14 10b-5 thereunder;

15 II.

16 Issue a temporary restraining order and a preliminary
17 injunction freezing the assets of each of the Defendants;

18 III.

19 Order Defendants SatCom, SMD, Tricap, Coastal, Paine,
20 Messier and Harvey to disgorge all benefits, and pay prejudgment
21 interest, gained as a result of their illegal conduct;

22 IV.

23 Impose a civil penalty against Defendants SatCom, SMD,
24 Tricap, Coastal, Paine, Messier and Harvey;

25 V.


26 Retain jurisdiction of this action in accordance with the
27 principles of equity and the Federal Rules of Civil Procedure in
28 order to implement and carry out the terms of all orders and decrees

1 that may be entered, or to entertain any suitable application or
2 motion for additional relief within the jurisdiction of this Court;

3 VI.

4 Grant such other and further relief as this Court may
5 determine to be just and necessary.

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7 DATED: February 9, 1999



Nicolas Morgan
Attorney for Plaintiff
Securities and Exchange Commission

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