

MICHAEL A. PIAZZA, *pro hac vice*
JOSE F. SANCHEZ, Cal. Bar No. 161362
NICOLAS MORGAN, Cal. Bar No. 166441
ANDREW J. DUNBAR, Cal. Bar No. 203265
ELIZABETH P. SMITH, Cal. Bar No. 210732
KAROL L. K. POLLOCK, Cal. Bar No. 77009
ROBERT H. CONRRAD, Cal. Bar No. 199498

Priority
Send
Enter
Closed
JS-5/JS-6
JS-2/JS-3
Scan Only

SCANNED
1/18/05

Attorneys for Plaintiff
Securities and Exchange Commission
Randall R. Lee, Regional Director
Sandra J. Harris, Associate Regional Director
Briane Nelson Mitchell, Associate Regional Director
5670 Wilshire Boulevard, 11th Floor
Los Angeles, California 90036
Telephone: (323) 965-3998
Facsimile: (323) 965-3908

FILED
CLERK, U.S. DISTRICT COURT
JAN 18 2005
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY

LOGGED

2005 JAN 14

CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

HENRY C. YUEN, ELSIE M. LEUNG,
JONATHAN B. ORLICK, and CRAIG M.
WAGGY,

Defendants.

Case No. CV 03-4376 MRP (PLAx)

**FINAL JUDGMENT OF
PERMANENT INJUNCTION AND
OTHER RELIEF AS TO
DEFENDANT JONATHAN B.
ORLICK**

ENTERED
CLERK, U.S. DISTRICT COURT
JAN 20 2005
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY
BY MG

THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(d).

The Securities and Exchange Commission having filed a Third Amended Complaint ("Complaint") and Defendant Jonathan B. Orlick ("Orlick") having entered a general appearance; consented to the Court's jurisdiction over Orlick and the subject matter of this action; consented to entry of this Final Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

434

SCANNED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I.

IT IS ORDERED, ADJUDGED, AND DECREED that Orlick and his agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5, by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

II.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Orlick and his agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from knowingly circumventing or knowingly failing to implement a system of internal accounting controls, or by knowingly falsifying any book, record or account required to be kept by an issuer, in violation Section 13(b)(5) of the Exchange Act, 15 U.S.C. § 78m(b)(5).

///
///

SCANNED

1 III.

2 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Orlick
3 and his agents, servants, employees, attorneys, and all persons in active concert or
4 participation with them who receive actual notice of this Final Judgment by
5 personal service or otherwise are permanently restrained and enjoined from
6 violating Exchange Act Rule 13b2-2, 17 C.F.R. § 240.13b2-2, by, in connection
7 with audits or examinations of financial statements and the preparation and filing
8 of financial statements and reports required to be filed with the Securities and
9 Exchange Commission ("Commission"), directly or indirectly making or causing
10 to be made materially false or misleading statements to accountants, or by directly
11 or indirectly omitting to state or causing another person to omit to state to
12 accountants material facts necessary in order to make statements made to the
13 accountants, in light of the circumstances under which such statements were made,
14 not misleading.

15 IV.

16 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Orlick
17 and his agents, servants, employees, attorneys, and all persons in active concert or
18 participation with them who receive actual notice of this Final Judgment by
19 personal service or otherwise are permanently restrained and enjoined from aiding
20 and abetting an issuer's filing of annual reports with the Commission on Forms 10-
21 K and quarterly reports with the Commission on Forms 10-Q that fail to contain
22 material information necessary to make the required statements in the Forms 10-K
23 or 10-Q, in light of the circumstances under which they are made, not misleading,
24 in violation of Section 13(a) of the Exchange Act, 15 U.S.C. § 78m(a), and Rules
25 12b-20, 13a-1, and 13a-13 thereunder, 17 C.F.R. §§ 240.12b-20, 240.13a-1, and
26 240.13a-13.

27 ///

28 ///

PLANNED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Orlick and his agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from aiding and abetting any violation of Section 13 (b)(2)(A) of the Exchange Act, 15 U.S.C. § 78m(b)(2)(A), and Rule 13-b2-1 thereunder, 17 C.F.R. § 240.13b2-1, by knowingly providing substantial assistance to an issuer that failed to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and disposition of the assets of the issuer.

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to Section 21(d)(2) of the Exchange Act, 15 U.S.C. § 78u(d)(2), Orlick is prohibited for ten years following the date of entry of this Final Judgment from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act, 15 U.S.C. § 78l, or that is required to file reports pursuant to Section 15(d) of the Exchange Act, 15 U.S.C. § 78o(d).

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Orlick is liable for disgorgement of \$150,000.00, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$5,510.62, and a civil penalty in the amount of \$150,000.00 pursuant to Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3). Orlick shall satisfy this obligation by (i) paying \$155,510.62 within 10 days of the date of this Final Judgment, and (2) paying \$150,000.00 within six months of the date of this Final Judgment. Each payment shall be submitted to the Clerk of this Court together with a cover letter identifying Orlick as a defendant in this action; setting forth the title and civil action number of this action and the name of this Court; and

SCANNED

1 specifying that payment is made pursuant to this Final Judgment. Orlick shall
2 simultaneously transmit photocopies of such payment and letter to the
3 Commission's counsel in this action. By making these payments, Orlick
4 relinquishes all legal and equitable right, title, and interest in such funds, and no
5 part of the funds shall be returned to Orlick. Orlick shall pay post-judgment
6 interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

7 The Clerk shall deposit the funds into an interest bearing account. These
8 funds, together with any interest and income earned thereon (collectively, the
9 "Fund"), shall be held by in such account until further order of the Court. In
10 accordance with 28 U.S.C. § 1914 and the guidelines set by the Director of the
11 Administrative Office of the United States Courts, the Clerk is directed, without
12 further order of this Court, to deduct from the income earned on the money in the
13 Fund a fee equal to ten percent of the income earned on the Fund. Such fee shall
14 not exceed that authorized by the Judicial Conference of the United States.

15 The Commission may by motion propose a plan to distribute the Fund
16 subject to the Court's approval. Such a plan may provide that Fund shall be
17 distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-
18 Oxley Act of 2002. Regardless of whether any such Fair Fund distribution is
19 made, amounts ordered to be paid as civil penalties pursuant to this Judgment shall
20 be treated as penalties paid to the government for all purposes, including all tax
21 purposes. To preserve the deterrent effect of the civil penalty, Orlick shall not,
22 after offset or reduction of any award of compensatory damages in any Related
23 Investor Action based on Orlick's payment of disgorgement in this action, further
24 benefit by offset or reduction of such compensatory damages award by the amount
25 of any part of Orlick's payment of a civil penalty in this action ("Penalty Offset").
26 If the court in any Related Investor Action grants such a Penalty Offset, Orlick
27 shall, within 30 days after entry of a final order granting the Penalty Offset, notify
28 the Commission's counsel in this action and pay the amount of the Penalty Offset

SCANNED

1 to the United States Treasury or to a Fair Fund, as the Commission directs. Such a
2 payment shall not be deemed an additional civil penalty and shall not be deemed to
3 change the amount of the civil penalty imposed in this Judgment. For purposes of
4 this paragraph, a "Related Investor Action" means a private damages action
5 brought against Orlick by or on behalf of one or more investors based on
6 substantially the same facts as alleged in the Complaint in this action:

7 **VIII.**

8 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the
9 Consent is incorporated herein with the same force and effect as if fully set forth
10 herein, and that Orlick shall comply with all of the undertakings and agreements
11 set forth therein.


12 **IX.**

13 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this
14 Court shall retain jurisdiction of this matter for the purposes of enforcing the terms
15 of this Final Judgment.

16 **X.**

17 There being no just reason for delay, pursuant to Rule 54(b) of the Federal
18 Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment
19 forthwith and without further notice.

20
21
22 DATED:

January 18, 2005 
HONORABLE MARIANA R. PFAELZER
UNITED STATES DISTRICT JUDGE

PROOF OF SERVICE

SCANNED

I am over the age of 18 years and not a party to this action. My business address is:

U.S. SECURITIES AND EXCHANGE COMMISSION, 5670 Wilshire Boulevard, 11th Floor, Los Angeles, California 90036-3648

Telephone No. (323) 965-3998; Facsimile No. (323) 965-3908.

On January 14, 2005, I caused to be delivered the document entitled **FINAL JUDGMENT OF PERMANENT INJUNCTION AND OTHER RELIEF AS TO DEFENDANT JONATHAN B. ORLICK** upon the party to this action addressed as stated on the attached service list:

OFFICE MAIL: By placing in sealed envelope(s), which I placed for collection and mailing today following ordinary business practices. I am readily familiar with this agency's practice for collection and processing of correspondence for mailing; such correspondence would be deposited with the U.S. Postal Service on the same day in the ordinary course of business.

PERSONAL DEPOSIT IN MAIL: By placing in sealed envelope(s), which I personally deposited with the U.S. Postal Service. Each such envelope was deposited with the U.S. Postal Service at Los Angeles, California, with first class postage thereon fully prepaid.

EXPRESS U.S. MAIL: Each such envelope was deposited in a facility regularly maintained at the U.S. Postal Service for receipt of Express Mail at Los Angeles, California, with Express Mail postage paid.

HAND DELIVERY: I caused to be hand delivered each such envelope to the office of the addressee.

FEDERAL EXPRESS :By placing in sealed envelope(s) designated by Federal Express with delivery fees paid or provided for, which I deposited in a facility regularly maintained by Federal Express or delivered to a Federal Express courier, at Los Angeles, California.

ELECTRONIC MAIL: By transmitting the document by electronic mail to the electronic mail address as stated on the attached service list.

FAX (BY AGREEMENT ONLY): By transmitting the document by facsimile transmission. The transmission was reported as complete and without error.

(Federal) I declare that I am employed in the office of a member of the bar of this Court, at whose direction the service was made. I declare under penalty of perjury that the foregoing is true and correct.

Date: January 14, 2005

Magnolia M. Marcelo
MAGNOLIA M. MARCELO

SEC v. HENRY C. YUEN et al.
United States District Court - Central District of California
Case No. CV 03-4376 MRP (PLAx)
(LA-2590)

SCANNED

SERVICE LIST

Michelle A. Rice, Esq.
Sean R. O'Brien, Esq.
Arkin Kaplan & Cohen LLP
590 Madison Avenue
New York, NY 10022
Facsimile: (212) 333-2350
Attorneys for Defendants Henry C. Yuen and Elsie Ma Leung

David Wheeler, Esq.
Augustini & Wheeler LLP
525 W. 6th Street, Suite 300
Los Angeles, CA 90014
Facsimile: (213) 688-7600
Attorney for Defendants Henry C. Yuen and Elsie Ma Leung

David W. Shapiro, Esq.
John F. Cove, Jr., Esq.
Boies, Schiller & Flexner, LLP
1999 Harrison Street, Suite 900
Oakland, CA 94612
Facsimile: (510) 874-1460
Attorney for Defendant Elsie Ma Leung

Robert Brownlie, Esq.
Susan Resley, Esq.
DLA Piper Rudnick Gray Cary US LLP
153 Townsend Street, Suite 800
San Francisco, CA 94107-1907
Facsimile: (415) 836-2501
Attorney for Defendant Jonathan Orlick

Richard Marmaro, Esq.
Jonathan E. Rich, Esq.
Proskauer Rose
2049 Century Park Est, Suite 3200
Los Angeles, CA 90067-3206
Facsimile: (310) 557-2193
Attorney for Defendant Craig M. Waggy