

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JUL 26 2004  
10-5-04

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

MICHAEL SCRIVO,

Defendant.

04 CV 5837  
04 Civ. ( )

RECEIVED  
JUL 27 2004  
U.S. DISTRICT COURT  
S.D. N.Y.

**FINAL JUDGMENT OF PERMANENT INJUNCTION AND OTHER RELIEF AGAINST MICHAEL SCRIVO AS HIERS**

Plaintiff United States Securities and Exchange Commission ("Commission")  
having commenced this action on June 25, 2004 by filing its Complaint ("Complaint") for  
injunctive and other equitable relief, charging Defendant Michael Scrivo ("Scrivo") with  
violations of Sections 10(b), 13(a), 13(b)(2), and 13(b)(5) of the Securities Exchange Act  
of 1934 [15 U.S.C. §§ 78j(b), 78m(a), 78m(b)(2), and 78(b)(5)] and Rules 10b-5, 12b-20,  
13a-1, 13a-13, 13b2-1, and 13b2-2 thereunder [17 C.F.R. §§ 240.10b-5, 240.12b-20,  
240.13a-1, 240.13a-13, 240.13b2-1, and 240.13b2-2]; and defendant Scrivo, having  
executed the Consent of Michael Scrivo to Final Judgment of Permanent Injunction and  
Other Relief ("Consent"), which is annexed hereto, having admitted to the service of the  
Summons and Complaint on him, having admitted to the jurisdiction of this Court over  
him and over the subject matter of this action, having waived the entry of findings of fact  
and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, and  
without admitting or denying the allegations of the Commission's Complaint (except as

to jurisdiction, which are admitted), and having consented to the entry of this Final Judgment of Permanent Injunction And Other Relief Against Michael Scrivo ("Final Judgment"); without further notice:

I.

**IT IS ORDERED, ADJUDGED AND DECREED** that defendant Scrivo, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of a national securities exchange, in connection with the purchase or sale of any security, be and hereby is permanently restrained and enjoined from:

- (a) employing any device, scheme, or artifice to defraud;
- (b) making any untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (c) engaging in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in violation of Section 10(b) of the Securities Exchange Act of 1934 [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5].

II.

**IT IS ORDERED, ADJUDGED AND DECREED** that defendant Scrivo, be and hereby is permanently restrained and enjoined from:

- (a) failing to file with the Commission in accordance with the rules and regulations prescribed by the Commission, such information and documents as the Commission has prescribed;

- (b) filing with the Commission information and documents, including the amendments thereto, which contain false and materially misleading statements or omissions of material fact;
- (c) failing to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of an issuer;
- (d) failing to file such further material information as is necessary to make the required statements made therein in light of the circumstances in which they were made, not misleading; and
- (e) failing to implement or circumventing a system of internal accounting controls and falsifying or causing to be falsified any books, records, or accounts subject to Section 13(b)(2)(A) of the Securities Exchange Act of 1934, in violation of Sections 13(a), 13(b)(2), and 13(b)(5) of the Exchange Act [15 U.S.C. §§ 78m(a) and 78m(b)(2)] and Exchange Act Rules 12b-20, 13a-1, 13a-13, 13b2-1, and 13b2-2 [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-13, 240.13b2-1, and 240.13b2-2].

### III.

**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)], defendant Scrivo is prohibited, for five 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)].

IV.

IT IS ORDERED, ADJUDGED AND DECREED that within 10 days of the entry of this Final Judgment, Scrivo shall pay a civil penalty to the United States Treasury pursuant to Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d) in the amount of \$20,000.

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the payment required by Paragraph IV shall be made by U.S. postal money order, certified check, bank cashier's check, or bank money order payable to the order of the "United States Securities and Exchange Commission." These payments shall be transmitted to the Comptroller, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, under cover of a letter that identifies the defendant, the name and civil action number of this litigation, and the court in which it was brought. The cover letter also shall contain the investigation name (*In the Matter of Vicon Fiber Optics, Inc.*) and the case number assigned by the Commission staff (NY-6782), and shall identify the payment as a civil penalty. A copy of the cover letter and of any money orders or checks, front and back, shall be transmitted simultaneously to Teresa A. Rodriguez, Securities and Exchange Commission, 233 Broadway, 11th Floor, New York, New York 10279.

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to Rule 65(d) of the Federal Rules of Civil Procedure, this Final Judgment shall be binding upon Scrivo, his agents, servants, employees, and attorneys, and upon those

persons in active concert or participation with him who receive actual notice of this Final Judgment by personal service or otherwise.

**VII.**

**IT IS FURTHER ORDERED** that the attached Consent be, and hereby is, incorporated herein with the same force and effect as if fully set forth herein.

**VIII.**

**IT IS FURTHER ORDERED** that the Court shall retain jurisdiction of this matter for all purposes, including, but not limited to, implementing and enforcing the terms and conditions of this Final Judgment.

**IX.**

**IT IS FURTHER ORDERED** that the Court expressly determines that there is no just reason for delay in the entry of this Final Judgment. The Clerk of the Court is hereby directed pursuant to Rule 54(b) of the Federal Rules of Civil Procedure to enter this Final Judgment forthwith.

**X.**

**IT IS FURTHER ORDERED** that pursuant to Rule 65(d) of the Federal Rules of Civil Procedure, this Final Judgment is binding upon defendant Scivo.

Dated: October 5, 2004

**SO ORDERED:**



United States District Judge



**CONSENT OF MICHAEL SCRIVO TO  
FINAL JUDGMENT OF PERMANENT INJUNCTION AND OTHER RELIEF**

1. Defendant Michael Scrivo ("Scrivo"), upon the advice of counsel and being fully apprised of his rights, having read and understood the terms of the attached Final Judgment of Permanent Injunction and Other Relief Against Michael Scrivo ("Final Judgment"), admits to the jurisdiction of this Court, waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, and without further notice, prior trial, hearing, presentation of any evidence, adjudication of any issue of fact or argument, and without admitting or denying the allegations contained in the Complaint of Plaintiff Securities and Exchange Commission ("Commission") (except as to jurisdiction, which is admitted), hereby consents to the entry of the annexed Final Judgment.

2. Scrivo agrees that this Consent of Michael Scrivo to Final Judgment of Permanent Injunction and Other Relief ("Consent") shall be incorporated by reference in and made part of the Final Judgment.

3. Scrivo waives any right he may have to appeal from the Final Judgment.

4. Scrivo agrees that he will not oppose the enforcement of the Final Judgment on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waives any objection he may have based thereon.

5. Scrivo acknowledges that any violation of any of the terms of the annexed Final Judgment may place him in contempt of this Court and subject him to civil or criminal sanctions, or both.

6. Scrivo enters into this Consent voluntarily and acknowledges that no tender, offer, promise, or threat of any kind has been made by plaintiff Commission, or

any member, officer, attorney, agent, or representative, to induce him to enter into this Consent.

7. Scrivo acknowledges that he has read, understands, and agrees to comply with the policy of the Commission, set forth in 17 C.F.R. § 202.5(e), not to permit a defendant to consent to a judgment or order that imposes relief or a sanction while denying any allegation in the Complaint or finding in a judgment or order. In compliance with this policy, Scrivo agrees not to take any action or make, or permit to be made, any public statement denying, directly or indirectly, any allegations in the Complaint or creating the impression that the Complaint or Final Judgment is without factual basis. If Scrivo breaches this agreement, the Commission may petition the Court to vacate the Final Judgment and restore this proceeding to the active docket. Nothing in this provision affects Scrivo's (i) testimonial obligations or (ii) right to take legal positions in litigation in which the Commission is not a party.

8. Scrivo acknowledges that, subject to the procedures set forth in Commission rules, he has been informed that the Commission, in its sole and exclusive discretion, may refer this matter, or any information or evidence gathered in connection therewith or derived therefrom, to any person or entity having appropriate administrative, civil, or criminal jurisdiction.

9. Scrivo acknowledges and agrees that this civil action, and his Consent to the entry of the Final Judgment, are for the purposes of resolving this civil action only, in conformity with the provisions of 17 C.F.R. § 202.5(f), and do not resolve, affect, or preclude any other action or proceeding that may be brought against Scrivo. Consistent with the provisions of 17 C.F.R. § 202.5(f), Scrivo waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or

civil penalty herein. Scervo acknowledges that the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and other regulatory organizations.

10. Scervo acknowledges that this Consent embodies the entire understanding of the parties concerning the settlement of this action.

11. Scervo consents further that this Court shall retain jurisdiction of this matter for all purposes.

12. Except as explicitly provided in this Final Judgment and Consent, nothing herein is intended to or shall be construed to have created, compromised, settled or adjudicated any claims, causes of action, or rights of any person whomsoever, other than as between the Commission and Scervo, in accordance with the Consent.

13. Scervo hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996 or any other provision of law to pursue reimbursement of attorney's fees or other fees, expenses or costs expended by Scervo to defend against this action. For these purposes, Scervo agrees that Scervo is not the prevailing party in this action since the parties have reached a good faith settlement.

14. Scervo hereby consents and agrees that the Commission may present the annexed Final Judgment to the Court for signature, filing, and entry without further notice and delay.

15. Scervo agrees that service by first class mail to Mr. Robert J. Anello, Esq., Morvillo, Abramowitz, Grand, Iason & Silberberg, P.C., 565 Fifth Avenue, New York, N.Y. 10017, shall be deemed personal service for all correspondence, service and notices



