

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS

FILED

2011 JUL 19 AM 9:25

CLERK US DISTRICT COURT  
WESTERN DISTRICT OF TEXAS

BY \_\_\_\_\_  
DEPUTY

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

vs.

JOHN RAFFLE AND DAVID  
APPLEGATE,

Defendants,

AND

KATHY RAFFLE,

Relief Defendant.

Civil Action No.

1:11 - CV - 540 - SS

AGREED FINAL JUDGMENT

The Securities and Exchange Commission having filed a Complaint and Defendant John Raffle, having entered a general appearance; consented to the Court's jurisdiction over Defendant and the subject matter of this action; consented to entry of this Agreed 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 Agreed Final Judgment, it is HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

I.

Defendant is restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)] and 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 (i) channel-stuffing products; (ii) manipulating distributor agreements; and (3) improperly recording as revenue uncollectible sales.

II.

Defendant is restrained and enjoined from violating Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] and Rule 13b2-1 [17 C.F.R. § 240.13b2-1] by (i) manipulating distributor agreements; (ii) withholding information about the calculation of distributor commissions; and (iii) improperly using product returns to smooth revenues.

III.

Defendant is restrained and enjoined from violating Exchange Act Rule 13b2-2 [17 C.F.R. § 240.13b2-2] by (i) withholding information about the calculation of distributor commissions, and (ii) misleading auditors about the use of product returns to smooth revenues.

IV.

Defendant is restrained and enjoined from aiding and abetting any violation of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1 and 240.13a-13], by causing an issuer to file inaccurate annual or quarterly financial reports because of improper revenue recognition practices.

V.

Defendant is restrained and enjoined from aiding and abetting any violation of Exchange Act Section 13(b)(2)(A) [15 U.S.C. §§ 78m(b)(2)(A)], by causing an issuer to improperly record revenue.

VI.

Defendant is restrained and enjoined from aiding and abetting any violation of Exchange Act Section 13(b)(2)(B) [15 U.S.C. §§ 78m (b)(2)(B)], by causing an issuer to deviate from a system of internal accounting controls relating to revenue recognition.

VII.

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)] and Section 20(e) of the Securities Act [15 U.S.C. § 77t(e)], Defendant is prohibited for five years following the date of entry of this Agreed 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)].

VIII.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement of \$1,782,742.43 representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$329,230.44, for a total of \$2,111,972.87. Based on Defendant's sworn representations in his Statement of Financial Condition dated March 29, 2011, and other documents and information submitted to the Commission, however, the Court is not ordering Defendant to pay a civil penalty, and payment of all but \$175,000 of the disgorgement and pre-judgment interest thereon is waived. Defendant shall satisfy this obligation in six installments as follows: (1) \$50,000 within 14 days after entry of this Agreed Final Judgment, (2) \$25,000 within 180 days after entry of this Agreed Final Judgment, (3) \$25,000 within 365 days after entry of this Agreed Final

Judgment, (4) \$25,000 within two years after entry of this Agreed Final Judgment, and (5) \$50,000 within three years after entry of this Agreed Final Judgment. If Defendant fails to make any payment by these agreed dates and/or in the agreed amounts, all outstanding payments under this Agreed Final Judgment, including post-judgment interest, minus any payments made, shall become due and payable immediately without further application to the Court. Defendant will make these payments by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission. The payments shall be delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312, and shall be accompanied by a letter identifying John Raffle as a defendant in this action; setting forth the title and civil action number of this action and the name of this Court; and specifying that payment is made pursuant to this Agreed Final Judgment. Defendant shall pay post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961. The Commission shall remit the funds paid pursuant to this paragraph to the United States Treasury.

The determination not to impose a civil penalty and to waive payment of all but \$175,000 of the disgorgement and pre-judgment interest is contingent upon the accuracy and completeness of Defendant's Statement of Financial Condition. If at any time following the entry of this Agreed Final Judgment the Commission obtains information indicating that Defendant's representations to the Commission concerning his assets, income, liabilities, or net worth were fraudulent, misleading, inaccurate, or incomplete in any material respect as of the time such representations were made, the Commission may, at its sole discretion and without prior notice to Defendant, petition the Court for an order requiring Defendant to pay the unpaid portion of the

disgorgement, pre-judgment and post-judgment interest thereon, and the maximum civil penalty allowable under the law. In connection with any such petition, the only issue shall be whether the financial information provided by Defendant was fraudulent, misleading, inaccurate, or incomplete in any material respect as of the time such representations were made. In its petition, the Commission may move this Court to consider all available remedies, including, but not limited to, ordering Defendant to pay funds or assets, directing the forfeiture of any assets, or sanctions for contempt of this Agreed Final Judgment. The Commission may also request additional discovery. Defendant may not, by way of defense to such petition: (1) challenge the validity of the Consent or this Agreed Final Judgment; (2) contest the allegations in the Complaint filed by the Commission; (3) assert that payment of disgorgement, pre-judgment and post-judgment interest or a civil penalty should not be ordered; (4) contest the amount of disgorgement and pre-judgment and post-judgment interest; (5) contest the imposition of the maximum civil penalty allowable under the law; or (6) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

IX.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that based on Defendant's agreement to cooperate in a Commission investigation and/or related enforcement action, the Court is not ordering Defendant to pay a civil penalty or disgorgement in excess of \$175,000. If at any time following the entry of the Final Judgment the Commission obtains information indicating that Defendant knowingly provided materially false or misleading information or materials to the Commission or in a related proceeding, the Commission may, at its sole discretion and without prior notice to the Defendant, petition the Court for an order

requiring Defendant to pay additional disgorgement and/or seek a civil penalty. In connection with any such petition and at any hearing held on such a motion: (a) Defendant will be precluded from arguing that he did not violate the federal securities laws as alleged in the Complaint; (b) Defendant may not challenge the validity of the Judgment, this Consent, or any related Undertakings; (c) the allegations of the Complaint, solely for the purposes of such motion, shall be accepted as and deemed true by the Court; and (d) the Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. Under these circumstances, the parties may take discovery, including discovery from appropriate non-parties.

X.

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

XI.

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

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

Dated: July 18, 2011

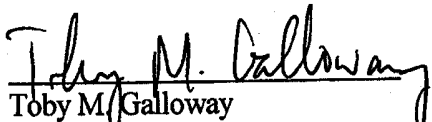
*Ramsparks*  
UNITED STATES DISTRICT JUDGE

Approved as to form and content



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