

ORIGINAL

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A. Hernandez

11 UNITED STATES DISTRICT COURT
12 SOUTHERN DISTRICT OF CALIFORNIA

'97 CV 1684 H (POR)

14 _____ :
15 SECURITIES AND EXCHANGE COMMISSION, :
16 Plaintiff, :
17 v. :
18 CHARLES ANTHONY FERRACONE, :
19 JAMES W. FARRELL, JAMES L. :
20 ERICKSTEEN, GARY L. MOORE, :
21 JILL HALL, and GUIDO BENSBERG, :
22 Defendants. :
23 _____ :

Civil Action No.

COMPLAINT

24 Plaintiff Securities and Exchange Commission (the
25 "Commission") alleges:

SUMMARY

26 1. This case arises from a fraudulent stock leasing scheme
27 involving hundreds of millions of shares of stock in at least 18
28 publicly-traded companies. For a period of at least two years,
the defendants acquired this restricted stock by falsely

CR

1 promising the issuing companies, among other things, that they
2 would pay the issuing companies large monthly rental fees for the
3 stock, that they would not sell, pledge, or otherwise transfer
4 the stock, and that these companies could take the stock back
5 after a year. Upon acquiring the stock certificates, however,
6 the defendants in fact sought to sublease, pledge, and otherwise
7 transfer the stock to third parties, without disclosing the many
8 restrictions that encumbered the stock, in order to fraudulently
9 obtain property, money, or credit. The defendants' fraudulent
10 conduct has resulted in losses of more than \$9.5 million.

11 2. The defendants violated the antifraud provisions
12 contained in the Section 17(a) of the Securities Act of 1933 (the
13 "Securities Act") [15 U.S.C. § 77q(a)], Section 10(b) of the
14 Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C.
15 § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], and
16 they are likely to repeat such violations in the future unless
17 the Court enjoins them from doing so. Accordingly, the
18 Commission seeks relief in the form of injunctions, disgorgement,
19 civil penalties, and other appropriate remedies.

20 JURISDICTION AND VENUE

21 3. The Commission brings this action pursuant to Section
22 20(b) of the Securities Act [15 U.S.C. § 77t(b)] and Section
23 21(d) of the Exchange Act [15 U.S.C. § 78u(d)].

24 4. The Court has jurisdiction pursuant to Section 22(a) of
25 the Securities Act [15 U.S.C. § 77v(a)] and Sections 21(e) and 27
26 of the Exchange Act [15 U.S.C. §§ 78u(e) and 78aa].

27 5. The defendants used the means and instrumentalities of
28 interstate commerce and the mails in furtherance of the acts

1 | alleged herein, including conduct within the Southern District of
2 | California.

3 | **DEFENDANTS**

4 | 6. Defendant Charles Anthony Ferracone resides in San
5 | Diego, California. During the relevant period, Ferracone acted
6 | as a so-called "finder" of securities for defendant James L.
7 | Ericksteen and his affiliated entities and as an agent for Delta
8 | West Management Trust ("Delta West"), an Isle of Man trust
9 | established for the purpose of engaging in stock leasing
10 | transactions such as those described herein.

11 | 7. Defendant James L. Ericksteen resides in Canada.
12 | During the relevant period, Ericksteen was the president and sole
13 | shareholder of Formula Management Services, Inc. ("FMS") and
14 | James Ericksteen and Associates ("JE&A"), two Canadian
15 | corporations established for the purpose of buying, selling, and
16 | leasing restricted securities. He was also a controlling agent
17 | of Helix Capital Corp. ("Helix Capital"), a Turks and Caicos
18 | Islands corporation established for similar purposes.

19 | 8. Defendant Gary L. Moore resides in Canada and is a
20 | Canadian barrister and solicitor whose clients include Ericksteen
21 | and certain of his affiliated entities. During the relevant
22 | period, Moore held himself out as an agent for Ericksteen and his
23 | affiliated entities.

24 | 9. Defendant James W. Farrell resides in Utah. During the
25 | relevant period, Farrell was a trustee of Delta West and of Alpha
26 | Tech Business Services Trust ("Alpha Tech"), a Utah trust
27 | established for the purpose of engaging in stock leasing
28 | transactions such as those described herein.

1 10. Defendant Jill Hall resides in Utah. During the
2 relevant period, Hall was a trustee of Delta West and acted as a
3 so-called "finder" for FMS and Helix Capital.

4 11. Defendant Guido Bensberg resides in Florida,
5 Switzerland, and Luxembourg. During the relevant period,
6 Bensberg controlled Philmont A.V.V., an Aruba company he
7 established for the purpose of engaging in certain securities
8 transactions, and Red Oak Ltd., an Isle of Man corporation he
9 established for the purpose of engaging in one of the
10 transactions described herein.

11 **FIRST CLAIM**

12 **Violations of Securities Act Section 17(a) and Exchange Act**

13 **Section 10(b) and Rule 10b-5 Thereunder By Defendants**

14 **Farrell, Ericksteen, Ferracone, Moore, and Hall**

15 12. Paragraphs 1-11 are realleged and incorporated herein
16 by reference.

17 13. Beginning as early as November 1992 and continuing
18 through at least December 1994, defendants Farrell, Ericksteen,
19 Ferracone, Moore, and Hall (collectively referred to hereinafter
20 as the "Broker Defendants"), acting on behalf of the trusts and
21 corporate entities previously described, solicited numerous
22 publicly-traded issuers to enter into agreements styled
23 "Subscription Agreements." These Subscription Agreements, which
24 were substantially similar in each case, gave the Broker
25 Defendants temporary physical custody of stock certificates
26 representing millions of restricted shares of the issuer's common
27 stock in exchange for a monthly "interest" payment to the issuer
28

1 and a promise that the Broker Defendants would tender full
2 payment for the shares a year later.

3 14. During the relevant period, the Broker Defendants
4 solicited and entered into such Subscription Agreements with
5 issuers as described below:

6 (a) In and around August and November 1992, defendant
7 Ericksteen solicited Logos International, Inc., a
8 Nevada-based public company whose stock traded in
9 the "pink sheets," and caused JE&A to enter into
10 Subscription Agreements to rent approximately
11 5,000,000 shares of restricted Logos stock for
12 twelve monthly payments of \$72,500 per month.

13 (b) In and around January and March 1993, an agent for
14 defendant Ericksteen solicited Eagle Holdings,
15 Inc., a Colorado-based public company whose stock
16 traded on the NASDAQ small cap market, and caused
17 JE&A and Helix Capital to enter into Subscription
18 Agreements to rent, respectively, 1,667,000 and
19 625,000 shares of restricted Eagle Holdings stock
20 for twelve monthly payments of, respectively,
21 \$20,833 and \$16,666 per month.

22 (c) In and around July 1993, defendant Ferracone
23 solicited Blue Chip Computerware, Inc., a New
24 York-based public company whose stock traded on
25 the NASDAQ small cap market, and caused FMS to
26 enter into a Subscription Agreement to rent
27 6,253,250 shares of restricted Blue Chip stock for
28 twelve monthly payments of \$33,333 per month.

1 (d) In and around January 1993, July 1994 and October
2 1994, defendant Ferracone solicited Republic
3 International Corp., a Beverly Hills, California-
4 based public company whose stock traded in the
5 pink sheets, and caused JE&A and Helix Capital to
6 enter into Subscription Agreements to rent,
7 respectively, 1,333,500 and 53,600,000 shares of
8 restricted Republic stock for twelve monthly
9 payments of, respectively, \$50,000 and \$500,000
10 per month.

11 (e) In and around February and July 1994, defendants
12 Ericksteen, Moore, and Ferracone solicited Dynatec
13 International Corp., a Salt Lake City, Utah-based
14 public company whose stock traded on the NASDAQ
15 small cap market, and caused FMS to enter into
16 Subscription Agreements to rent approximately
17 30,000,000 shares of restricted Dynatec stock for
18 twelve monthly payments of \$550,000 per month.

19 (f) In and around July 1994, defendants Ericksteen,
20 Moore, and Ferracone solicited International
21 Brewing and Manufacturing Corp., a San Diego,
22 California-based public company whose stock traded
23 over the counter, and caused Helix to enter into
24 Subscription Agreements to rent 7,500,000 shares
25 of restricted International Brewing stock for
26 twelve monthly payments of \$90,000 per month.

27 (g) In and around November and December 1994,
28 defendant Farrell solicited Laser Friendly, Inc.,

1 a Scarborough, Ontario-based public company whose
2 stock traded on the NASDAQ small cap market, and
3 caused Delta West and Helix Capital to enter into
4 Subscription Agreements to rent, respectively,
5 30,000,000 and 15,000,000 shares of restricted
6 Laser Friendly stock for twelve monthly payments
7 of, respectively, \$650,000 and \$150,000 per month.

8 (h) In and around July and September 1994, defendants
9 Ericksteen and Moore solicited Maxxim
10 International Inc., a Dallas, Texas-based public
11 company whose stock traded over the counter, and
12 caused Helix Capital to enter into Subscription
13 Agreements to rent 37,833,333 shares of restricted
14 Maxxim stock for twelve monthly payments of
15 \$266,875 per month.

16 (i) In and around March, June and July 1994, defendant
17 Ferracone solicited Nor Star Group, a Fort
18 Lauderdale, Florida-based public company whose
19 stock traded over the counter, and caused FMS to
20 enter into Subscription Agreements to rent
21 19,322,000 shares of restricted Nor Star stock for
22 twelve monthly payments of \$155,500 per month.

23 (j) In and around July and August 1994 defendants
24 Ericksteen and Ferracone solicited Phoenix Summus
25 Corp., a Carson City, Nevada-based public company
26 whose stock traded over the counter, and caused
27 Helix Capital and FMS to enter into Subscription
28 Agreements to rent, respectively, 21,000,000 and

1 20,000,000 shares of restricted Phoenix Summus
2 stock for twelve monthly payments of,
3 respectively, \$78,750 and \$75,000 per month.

4 (k) In and around November 1994 defendant Farrell
5 solicited Surgimetrics USA, Inc., a Norcross,
6 Georgia-based public company whose stock traded
7 over the counter, and caused FMS and Delta West to
8 enter into Subscription Agreements to rent,
9 respectively, 11,000,000 and 15,000,000 shares of
10 restricted Surgimetrics stock for twelve monthly
11 payments of, respectively, \$330,000 and \$1,125,000
12 per month.

13 (l) In and around November and December 1994 defendant
14 Farrell solicited Tera West Ventures, Inc., a Las
15 Vegas, Nevada-based public company whose stock
16 traded over the counter, and caused FMS and Delta
17 West to enter into Subscription Agreements to
18 rent, respectively, 15,000,000 and 20,000,000
19 shares of restricted Tera West stock for twelve
20 monthly payments of, respectively, \$206,250 and
21 \$833,333 per month.

22 (m) In and around November and December 1994 defendant
23 Farrell solicited Metro Wireless Interactive
24 Corp., a Marina del Ray, California-based public
25 company whose stock traded over the counter, and
26 caused Delta West to enter into Subscription
27 Agreements to rent 25,000,000 shares of restricted
28

1 Metro Wireless stock for twelve monthly payments
2 of \$900,000 per month.

3 (n) In and around November and December 1994 defendant
4 Farrell solicited Essential Technologies, Inc., a
5 Nevada-based public company whose stock traded
6 over the counter, and caused Delta West to enter
7 into Subscription Agreements to rent 25,000,000
8 shares of restricted Essential Technologies stock
9 for twelve monthly payments of \$1,050,000 per
10 month.

11 (o) In and around June 1994 defendants Ericksteen and
12 Ferracone solicited National Health & Safety
13 Corp., a Warminster, Pennsylvania-based public
14 company whose stock traded over the counter, and
15 caused Helix Capital to enter into a Subscription
16 Agreement to rent 2,777,779 shares of restricted
17 National Health stock for twelve monthly payments
18 of \$72,917 per month.

19 (p) In and around February, June and July 1994
20 Ferracone solicited Parkside Industries, Inc., a
21 North Hollywood, California-based public company
22 whose stock traded over the counter, and caused
23 FMS and Helix, respectively, to enter into
24 Subscription Agreements to rent 7,670,000 and
25 36,190,333 shares of restricted Parkside stock for
26 twelve monthly payments of, respectively, \$57,500
27 and \$250,000 per month.
28

1 (q) In and around July 1994 defendant Farrell
2 solicited American Nortel Communications, Inc., a
3 Salt Lake City, Utah-based public company whose
4 stock traded over the counter, and caused FMS to
5 enter into a Subscription Agreement to rent
6 40,000,000 shares of restricted American Nortel
7 stock on terms presently unknown to the
8 Commission.

9 15. These Subscription Agreements were part of a fraudulent
10 scheme by the Defendant Brokers to obtain stock certificates
11 through material misstatements and omissions, and then to use
12 those certificates to obtain property or money, principally in
13 the form of credit, from third parties. The terms of the
14 Subscription Agreements placed explicit and unequivocal
15 restrictions on the use and transferability of the stock, but the
16 Broker Defendants had no intention of abiding by those
17 restrictions or disclosing them to the third parties from whom
18 they would fraudulently seek to obtain property or money.

19 16. Among other things, the Subscription Agreements
20 prohibited the Broker Defendants from selling, transferring, or
21 otherwise disposing of the stock in any way. Moreover, although
22 the agreements purported to give the Broker Defendants an option
23 to purchase the stock after a year by tendering full payment of
24 principal, the agreements explicitly allowed the issuer to reject
25 the Broker Defendants' tender, take back the shares, and keep all
26 of the monthly interest payments that were made during the one-
27 year lease period. When they agreed to these terms, however, the
28 Broker Defendants knew that they in fact intended to pledge or

1 transfer the stock in violation of the Subscription Agreements
2 and in ways designed to defraud third parties.

3 17. Contemporaneous with their acquisitions of the above-
4 described restricted securities, the Broker Defendants and their
5 agents knowingly used or sought to use those securities in ways
6 that violated the Subscription Agreements and were designed to
7 defraud third parties. In doing so, the Broker Defendants
8 knowingly or recklessly made, and caused others to make, untrue
9 statements of material fact about the ownership, value, and
10 transferability of the securities, and omitted to state material
11 facts necessary in order to make the statements made, in light of
12 the circumstances under which they were made, not misleading. By
13 way of specific example:

14 (a) In December 1994 defendant Farrell deposited
15 restricted stock obtained from Essential
16 Technologies, Laser Friendly, Metro Wireless, and
17 Tera West, having a purported collective market
18 value of more than \$200 million, into an account
19 at Dean Witter Reynolds, and thereafter defendants
20 Farrell, Hall, and Ferracone unsuccessfully
21 attempted to persuade Dean Witter to issue a
22 letter falsely stating that the securities were
23 held "free and clear for disposition according to
24 the instructions of Delta West Management Trust."

25 (b) After Dean Witter rebuffed the foregoing attempt
26 to have the shares so designated, in December
27 1994, defendant Farrell deposited many of the same
28 securities, endorsed by defendants Farrell and

1 Hall, with Omni Bank in Detroit in an unsuccessful
2 attempt to obtain loans using the securities as
3 collateral.

4 (c) In the fall of 1994, defendant Ericksteen opened
5 an account in the name of FMS at Kemper
6 Securities, Inc. in Houston and personally
7 delivered certificates representing millions of
8 shares of stock obtained from five different
9 issuers - Phoenix Summus, Parkside, Nor Star
10 Group, International Brewing, and Maxxim. He
11 thereafter falsely told Kemper's registered
12 representative that FMS owned the stock and led
13 the representative to believe that FMS intended to
14 trade the stock, which would have violated the
15 terms of the Subscription Agreements with the
16 issuers.

17 (d) In July 1994 defendants Ericksteen and Moore
18 subleased approximately 1 million shares of stock
19 rented from National Health & Safety Corp. to an
20 entity called Capital Investment Bank, receiving
21 \$50,000 in return. Defendants Ericksteen and
22 Moore both knew that Capital Investment Bank
23 intended to transfer the stock to yet another
24 entity for the purpose of pledging it as
25 collateral for a loan.

26 (e) In November and December 1994 defendant Ericksteen
27 entered into agreements to sublease millions of
28 rented shares of Laser Friendly and Dynatec stock

1 to an entity called FirstVest Capital Corp.

2 Ericksteen knew or was reckless in not knowing
3 that FirstVest Capital Corp. intended to use the
4 stock as collateral to obtain credit. Ericksteen
5 received at least \$25,000 from the latter
6 arrangement.

7 (f) In January 1995 defendant Farrell agreed on behalf
8 of Delta West to sublease millions of rented
9 shares of restricted Surgimetrics and Medical
10 Assets Management stock to an entity called
11 Pilgrim Financial, which defendant Farrell knew
12 was intending to use the stock as collateral to
13 obtain credit.

14 (g) In December 1992 defendant Ericksteen and an
15 affiliated person subleased restricted stock
16 obtained from Eagle Holdings, Republic
17 International, Blue Chip, and Maxxim to Pegasus
18 Insurance Company, an offshore insurer having some
19 business in the United States, and received
20 \$273,000 in return. Pegasus subsequently listed
21 the stock as an asset for purposes of increasing
22 its statutory capital and surplus in an
23 application it filed with the Texas Insurance
24 Commission, although the scheme failed when the
25 Texas Insurance Commission rejected Pegasus's
26 application.

27 18. By reason of the foregoing, defendants Farrell,
28 Ericksteen, Ferracone, Moore, and Hall directly or indirectly

1 violated Section 17(a) of the Securities Act and Section 10(b) of
2 the Exchange Act and Rule 10b-5 thereunder.

3 **SECOND CLAIM**

4 **Violation of Securities Act Section 17(a) and**
5 **Exchange Act Section 10(b) and Rule 10b-5 by Defendants**
6 **Farrell, Ericksteen, Ferracone, Moore, and Bensberg**

7 19. Paragraphs 1-18 are realleged and incorporated herein
8 by reference.

9 20. In or about the summer of 1994, as part of the Broker
10 Defendants' scheme to defraud, defendants Ericksteen and Moore,
11 acting on behalf of Helix Capital, subleased to defendant
12 Bensberg certain of the restricted stocks that defendants
13 Ericksteen, Moore, Farrell, and Ferracone had acquired from
14 issuers pursuant to the Subscription Agreements described above.
15 Bensberg, acting through an alter ego corporation called Red Oak
16 Ltd., thereafter agreed to pay Helix Capital approximately
17 \$4,500,000 per year to sublease and use restricted stock of eight
18 companies -- Laser Friendly, Surgimetrics, Tera West, Maxxim,
19 Phoenix Summus, Parkside, International Brewing, and Nor Star
20 Group. Defendants Ericksteen, Moore, Farrell, and Ferracone
21 knew, or were reckless in not knowing, that these restricted
22 securities would be used by Bensberg to defraud third parties.

23 21. After acquiring these securities from Helix Capital,
24 Bensberg pledged them as collateral to obtain a \$5 million line
25 of credit from Bank Leu, a Swiss bank. Bensberg, with intent to
26 defraud Bank Leu, falsely told representatives of Bank Leu that
27 he had purchased the securities from Helix Capital and that he
28 owned them outright, and he failed to tell them about the

1 significant restrictions and encumbrances on the securities.
2 Bensberg subsequently drew down more than \$3 million against his
3 line of credit at Bank Leu, paying \$1.35 million to Helix Capital
4 under the terms of the sublease agreement and spending most of
5 the rest on personal matters.

6 22. By reason of the foregoing, defendants Ericksteen,
7 Moore, Farrell, Ferracone, and Bensberg directly or indirectly
8 violated Section 17(a) of the Securities Act and Section 10(b) of
9 the Exchange Act and Rule 10b-5 thereunder.

10 **THIRD CLAIM**

11 **Violation of Securities Act**

12 **Section 17(a) and Exchange Act**

13 **Section 10(b) and Rule 10b-5**

14 **by Defendant Bensberg**

15 23. Paragraphs 1-22 are realleged and incorporated herein
16 by reference.

17 24. In or about January 1996, defendant Bensberg, acting
18 through and on behalf of an Aruban alter ego corporation called
19 Philmont A.V.V., entered into two subscription agreements with
20 Affinity Teleproductions, Inc., a Florida-based company whose
21 stock trades on the NASDAQ small cap market. The first agreement
22 obligated Bensberg to pay Affinity \$5 million cash for 1 million
23 shares of restricted Affinity stock, and the second obligated
24 Bensberg to execute a \$5 million promissory note, payable a year
25 later, for an additional 1 million shares of restricted Affinity
26 stock. Both agreements were contingent upon Bensberg obtaining
27 credit from a financial institution by pledging the restricted
28 Affinity stock as collateral.

1 25. Contemporaneous with obtaining the restricted Affinity
2 stock, Bensberg pledged that stock as collateral to obtain \$6.5
3 million in credit from the London office of Lehman Brothers, Inc.
4 With intent to defraud Lehman, Bensberg falsely stated to Lehman
5 personnel that the Affinity stock was fully paid for, that
6 Bensberg owned the stock "free and clear," that the stock was
7 freely tradeable, and that there were no restrictions on the
8 stock.

9 26. On February 22, 1996, in reliance upon Bensberg's
10 misrepresentations, Lehman's London office extended credit to
11 Bensberg in the amount of \$6.5 million. Bensberg immediately
12 withdrew the funds, wired \$5 million to Affinity to pay for 1
13 million shares of the Affinity stock, and used substantially all
14 of the remaining \$1.5 million for personal matters.

15 27. By reason of the foregoing, defendant Bensberg violated
16 Section 17(a) of the Securities Act and Section 10(b) of the
17 Exchange Act and Rule 10b-5 thereunder.

18 **PRAYER FOR RELIEF**

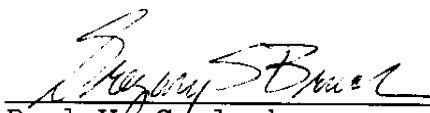
19 WHEREFORE, the Commission respectfully requests that this
20 Court:

- 21 (a) enjoin Farrell, Ericksteen, Ferracone, Moore, Hall, and
22 Bensberg from violating Section 17(a) of the Securities
23 Act and Section 10(b) of the Exchange and Rule 10b-5
24 thereunder;
- 25 (b) order Farrell, Ericksteen, Ferracone, Moore, Hall, and
26 Bensberg to disgorge all consideration they received as
27 a result of their unlawful conduct;

- 1 (c) order Defendants Farrell, Ericksteen, Ferracone, Moore,
2 Hall, and Bensberg to pay civil penalties pursuant to
3 Section 21(d)(3)(A) of the Exchange Act and 20(d)(1) of
4 the Securities Act; and
5 (d) grant such other and further relief as the Court deems
6 just and appropriate.

7
8 Respectfully submitted,

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11 DATED: September 16, 1997



Paul V. Gerlach
James A. Howell
Thomas V. Sjoblom
Gregory S. Bruch
Russell G. Ryan
Thomas A. Sporkin

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15 Attorneys for Plaintiff
16 Securities and Exchange Commission
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