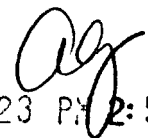


FILED



**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

OCT 23 PM 2:58  
UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA, FLORIDA

SECURITIES AND EXCHANGE  
COMMISSION,

CASE NO. 8:00-CV-614-T-26F

Plaintiff,

v.

DIGITAL LIGHTWAVE, INC. and  
BRYAN J. ZWAN,

Defendants.

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**FINAL JUDGMENT OF PERMANENT INJUNCTION  
AND OTHER RELIEF AS TO BRYAN J. ZWAN**

Plaintiff Securities and Exchange Commission (“Commission”) commenced this action by filing its Complaint against defendants. In its Complaint, the Commission sought a permanent injunction to prohibit violations by Bryan Zwan (“Zwan”), among others, of Rule 13b2-2, 17 C.F.R. § 240.13b2-2, promulgated under the Securities Exchange Act of 1934 (“Exchange Act”) and his aiding and abetting violations of Sections 13(a) and 13(b)(2) of the Exchange Act, 15 U.S.C. §§ 78m(a) and 78m(b)(2) and Rules 12b-20 and 13a-13, 17 C.F.R. §§ 240.12b-20, and 240.13a-13, thereunder.

Defendant Zwan, by his consent, which is contained in the Stipulation and Consent for the Entry of a Final Judgment of Permanent Injunction and Other Relief attached hereto, without admitting or denying any of the remaining allegations in the Commission’s Complaint, except as to the jurisdiction of this Court, has agreed to the entry of this Final Judgment of Permanent Injunction and Other Relief (“Final Judgment”). This Court having accepted such Consent and this Court having jurisdiction

over Zwan and the subject matter hereof, and the Court being fully advised of the premises,

**I.**  
**VIOLATION OF SECTIONS 13(b)(2)(A) AND**  
**13(b)(2)(B) OF THE EXCHANGE ACT**

**IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** that Zwan, his officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, and each of them, who receive notice of this Final Judgment, by personal service or otherwise, be and they hereby are, permanently restrained and enjoined from aiding and abetting violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act, 15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B), by directly or indirectly failing to:

- (a) make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of Digital or any other issuer; and
- (b) devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that:
  - (i) transactions are executed in accordance with management's general or specific authorization;
  - (ii) transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (II) to maintain accountability for assets;
  - (iii) access to assets is permitted only in accordance with management's general or specific authorization; and

- (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

**II.**  
**VIOLATION OF SECTION 13(a) OF THE EXCHANGE ACT**  
**AND RULES 12b-20 AND 13a-13, THEREUNDER**

**IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** that Zwan, his officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, and each of them, who receive notice of this Final Judgment, by personal service or otherwise, be and they hereby are, permanently restrained and enjoined from aiding and abetting violations of Section 13(a) of the Exchange Act, 15 U.S.C. § 78m(a), and Rules 12b-20 and 13a-13, 17 C.F.R. §§ 240.12b-20, and 240.13a-13, thereunder, by directly or indirectly, filing or causing to be filed with the Commission any quarterly report on behalf of Digital, or any other issuer, required to be filed with the Commission pursuant to Section 13(a) of the Exchange Act, 15 U.S.C. § 78m(a) and the rules and regulations promulgated thereunder, which contains any untrue statement of material fact, which omits to state any material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, or which omits to disclose any information required to be disclosed.

**III.**  
**VIOLATION OF RULE 13b2-2**  
**PROMULGATED UNDER THE EXCHANGE ACT**

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Zwan, his officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, and each of them, who receive notice of this Final Judgment, by personal service or otherwise, be and they hereby are, permanently restrained and

enjoined from, directly or indirectly: (a) making or causing to be made materially false or misleading statements; or (b) omitting to state, or causing another person to omit to state, any material facts necessary in order to make the statements made, in light of the circumstances under which such statements were made, not misleading to an accountant in connection with: (1) any audit or examination of financial statements required to be pursuant to regulation 13A under the Exchange Act or (2) the preparation or filing of any document or report required to be filed with the Commission, in violation of Rule 13b2-2, 17 C.F.R. § 240.13b2-2, promulgated under the Exchange Act.

**IV.**  
**CIVIL PENALTIES**

**IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** that Zwan shall, within thirty (30) days of the entry of this Final Judgment, pay a civil money penalty pursuant to Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78(d)(3) in the amount of \$10,000 to the United States Treasury. Such payment shall be: (i) made by United States postal money order, certified check, bank cashier's check or bank money order; (ii) made payable to the Securities and Exchange Commission; (iii) hand-delivered or mailed to the Comptroller, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (iv) submitted under cover letter that identifies Zwan as the defendant in this action, the case number of this action, a copy of which cover letter and money order or check shall be sent to John Teakell, Esq., Senior Trial Counsel, Securities and Exchange Commission, Southeast Regional Office, 1401 Brickell Avenue, Suite 200, Miami, Florida 33131.

**V.**  
**DISMISSAL OF CERTAIN ALLEGATIONS**

**IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** that the allegations of the Complaint relating to Zwan charging violations of the anti-fraud

provisions of the Securities Act of 1933 and the Exchange Act contained in Counts I, II and III of the Complaint are dismissed with prejudice.

**VI.**  
**RETENTION OF JURISDICTION**

**IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** that this Court will retain jurisdiction over this matter and defendant Zwan, and will order other and further relief that this Court deems appropriate under the circumstances.

**DONE AND ORDERED** at 12:52 o'clock P.m. this 23 day of October, 2001 in chambers at Tampa, Florida.

  
\_\_\_\_\_  
**UNITED STATES DISTRICT JUDGE**

Copies provided to:

John Teakell, Esq.  
Kerry A. Zinn, Esq.  
Counsel for Plaintiff  
SECURITIES AND EXCHANGE COMMISSION  
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Burton W. Wiand, Esq.  
Counsel for Defendant Bryan J. Zwan  
Fowler, White, Gillen, Boggs,  
Villareal & Banker, P.A.  
501 East Kennedy Boulevard  
Tampa, Florida 33602

Date Printed: 10/24/2001

Notice sent to:

- ✓  
— John R. Teakell, Esq.  
Securities and Exchange Commission  
1401 Brickell Ave., Suite 200  
Miami, FL 33131
- ✓  
— Kerry A. Zinn, Esq.  
Securities and Exchange Commission  
1401 Brickell Ave., Suite 200  
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— W. Reece Bader, Esq.  
Orrick, Herrington & Sutcliffe, LLP  
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- ✓  
— Robert Freitas, Esq.  
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— Burton Webb Wiand, Esq.  
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501 E. Kennedy Blvd., Suite 1500  
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- ✓  
— Holly R. Skolnick, Esq.  
Greenberg Traurig, P.A.  
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Miami, FL 33131

