

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 98545 / September 27, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21730

In the Matter of

Lawrence I. Rosen,

Respondent.

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Lawrence I. Rosen (“Rosen” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over Respondent and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of violations of the beneficial ownership reporting requirements of the federal securities laws.
2. Section 13(d) of the Exchange Act and the rules promulgated thereunder require any person who directly or indirectly acquires beneficial ownership of more than 5% of a registered class of equity security to file a statement with the Commission disclosing certain information and to file certain updating amendments. Section 13(d) is a key provision that allows shareholders and potential investors to evaluate changes in substantial shareholdings. See 113 Cong. Rec. 855 (1967). The duty to file is not dependent on any intention by the stockholder to gain control of the company, but on a mechanical 5% ownership test.
3. Section 16(a) of the Exchange Act and the rules promulgated thereunder require officers and directors of a company with a registered class of equity security, and any beneficial owners of greater than 10% of such class, to file certain reports of securities holdings and transactions. Section 16(a) was motivated by a belief that "the most potent weapon against the abuse of inside information is full and prompt publicity" and by a desire "to give investors an idea of the purchases and sales by insiders which may in turn indicate their private opinion as to prospects of the company." H.R. Rep. 73-1383, at 13, 24 (1934). Reflecting this informational purpose, the obligation to file applies irrespective of profits or the filer's reasons for engaging in the transactions. The Sarbanes-Oxley Act of 2002 and Commission implementing regulations accelerated the reporting deadline for most transactions to two business days and mandated that all reports be filed electronically on EDGAR to facilitate rapid dissemination to the public.
4. While subject to these reporting requirements, Respondent violated Section 13(d) by failing to timely file initial statements or required amendments with respect to Respondent's beneficial ownership of the registered class of common stock of JAKKS Pacific, Inc. ("JAKKS"), Meet Group Inc. ("Meet Group"), FTE Networks, Inc. ("FTE"), FuelCell Energy Inc. ("FuelCell"), and Remark Holdings Inc. ("Remark") and violated Section 16(a) on multiple occasions by failing to timely file reports of holdings and transactions in JAKKS' securities.

Respondent

5. Rosen, age 64, was subject at all relevant times to Section 13(d) of the Exchange Act as an acquirer of greater than 5% beneficial ownership of registered classes of securities of JAKKS, Meet Group, FTE, FuelCell, and Remark, and was subject at all relevant times to Section 16(a) of

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

the Exchange Act as a greater than 10% beneficial owner of the registered class of common stock of JAKKS.

Issuers

6. JAKKS is a Delaware corporation with its principal place of business in Santa Monica, California. JAKKS's common stock is and has been at all relevant times registered with the Commission under Section 12 of the Exchange Act and trades on the NASDAQ stock market (ticker: JAKK). Rosen acquired beneficial ownership of more than 5% of JAKKS's registered class of common stock as of December 8, 2020, and acquired greater than 10% beneficial ownership as of February 26, 2021.

7. Meet Group is a Delaware corporation with its principal place of business in Pennsylvania. Meet Group's common stock was at all relevant times registered with the Commission under Section 12 of the Exchange Act and traded on the NASDAQ stock market (ticker: MEET) until September 2020, when it ceased to trade after being acquired and terminated its Section 12 registration. Rosen acquired beneficial ownership of more than 5% of Meet Group's registered class of common stock as of March 29, 2018 and remained a greater than 5% beneficial owner until the September 2020 acquisition.

8. FTE is a Nevada corporation with its principal place of business in New York, New York. FTE's common stock was at all relevant times registered with the Commission under Section 12 of the Exchange Act and traded on the NYSE stock market (ticker: FTNW) until it was suspended from trading in December 2019 and de-listed in May 2020. Rosen acquired beneficial ownership of more than 5% of FTE's registered class of common stock as of February 8, 2019 and remained a greater than 5% beneficial owner until October 16, 2019.

9. FuelCell is a Delaware corporation with its principal place of business in Danbury, Connecticut. FuelCell's common stock is and has been at all relevant times registered with the Commission under Section 12 of the Exchange Act and trades on the NASDAQ stock market (ticker: FCEL). Rosen acquired beneficial ownership of more than 5% of FuelCell's registered class of common stock as of November 21, 2019. By December 31, 2020, Rosen ceased to be a greater than 5% beneficial owner.

10. Remark is a Delaware corporation with its principal place of business in Las Vegas, Nevada. Remark's common stock is and has been at all relevant times registered with the Commission under Section 12 of the Exchange Act and trades on the NASDAQ stock market (ticker: MARK). Rosen acquired beneficial ownership of more than 5% of Remark's registered class of common stock as of June 19, 2018 and remains a greater than 5% beneficial owner.

Applicable Legal Framework

11. Under Section 13(d)(1) of the Exchange Act, any person, including a group, who has acquired beneficial ownership of more than 5% of any class of equity security registered under Section 12 of the Exchange Act must publicly file, within 10 days after the acquisition, a disclosure

statement with the Commission. Rule 13d-1(a) requires the statement to contain the information specified by Schedule 13D, which includes, among other things, the identity of the beneficial owners, the amount of beneficial ownership, and plans or proposals regarding the issuer.

12. Section 13(d)(2) of the Exchange Act and Rule 13d-2(a) thereunder require a filer to amend a Schedule 13D promptly as material changes occur in disclosures previously made, including but not limited to, any material increase or decrease in the percentage of the class beneficially owned. An acquisition or disposition of beneficial ownership of securities in an amount equal to 1% or more of the class of securities is deemed material for purposes of Rule 13d-2. Any delay in filing beyond the date the filing reasonably can be made may not be prompt.²

13. As an alternative to filing on Schedule 13D, certain statutory provisions and rules allow the use of short-form disclosure statements on Schedule 13G with differing timing requirements under certain conditions. Rule 13d-1(c) provides that, in lieu of filing a Schedule 13D, a person may file a short-form statement on Schedule 13G within 10 days after the triggering acquisition if the person “has not acquired the securities with any purpose, or with the effect of, changing or influencing the control of the issuer, or in connection with or as a participant in any transaction having that purpose or effect,” and is not directly or indirectly the beneficial owner of 20% or more of the class of securities (a “Passive Investor 13G Filer”). Under Rule 13d-1(f)(1), a Passive Investor 13G Filer must file a Schedule 13D within 10 days after beneficial ownership first equals or exceeds 20 percent of the class and is prohibited from voting or acquiring additional securities of the class until 10 days after the Schedule 13D is filed.

14. Passive Investor 13G Filers are required, under Exchange Act Rule 13d-2(b), to file an annual amendment within 45 days after the end of each calendar year if there are any changes in the information reported in the previous filing on that Schedule, unless certain limited exceptions apply. In addition to annual amendments, under Exchange Act Rule 13d-2(d), a Passive Investor 13G Filer must also amend the Schedule 13G promptly upon acquiring beneficial ownership of greater than 10% of a registered class of equity securities and must thereafter promptly amend the Schedule 13G upon increasing or decreasing its beneficial ownership by more than 5% of the class.

15. Under Section 13(d) of the Exchange Act and the application of Rule 13d-3, a beneficial owner of a security includes “any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise” has or shares voting or investment power with respect to such security. More than one person may be a beneficial owner of the same securities.

16. Section 16(a) of the Exchange Act and the rules promulgated thereunder apply to every person who is the beneficial owner of more than 10% of any class of equity security registered pursuant to Section 12 of the Exchange Act, and any officer or director of the issuer of any such security (collectively, “insiders”). For purposes of determining status as a greater than

² Amendments to Beneficial Ownership Reporting Requirements, SEC Release No. 34-39538 (Jan. 12, 1998), 63 Fed. Reg. 2854, 2855 n.14 (Jan. 16, 1998).

10% beneficial owner under Section 16(a), the term means any person who is deemed a beneficial owner under Section 13(d) of the Exchange Act and the rules thereunder, subject to limited exceptions.

17. Pursuant to Section 16(a) and Rule 16a-3, insiders are required to file initial statements of holdings on Form 3 and keep this information current by reporting transactions on Forms 4 and 5. Specifically, within 10 days after becoming an insider, or on or before the effective date of the Section 12 registration of the class of equity security, an insider must file a Form 3 report disclosing all securities of the issuer in which the insider has or is deemed to have a direct or indirect pecuniary interest. To keep this information current, insiders must file Form 4 reports disclosing transactions resulting in a change in beneficial ownership within two business days following the execution date of the transaction, except for limited types of transactions eligible for deferred reporting. Transactions required to be reported on Form 4 include purchases and sales of securities, exercises and conversions of derivative securities, and grants or awards of securities from the issuer. In addition, insiders are required to file a Form 5 report within 45 days after the issuer's fiscal year-end to report any transactions or holdings that should have been, but were not, reported on Form 3 or 4 (as applicable) during the issuer's most recent fiscal year and any transactions eligible for deferred reporting (unless the insider has previously reported all such transactions).

18. There is no state of mind requirement for violations of Section 16(a) and 13(d) and the rules thereunder.³ The failure to timely file a required report, even if inadvertent, constitutes a violation.⁴

Respondent Failed to File Required Section 16(a) Reports on a Timely Basis

19. As a greater than 10% beneficial owner of JAKKS since February 26, 2021, Respondent has been subject to the reporting requirements of Exchange Act Section 16(a) and remains subject to those requirements.

³ See, e.g., SEC v. Savoy Indus., Inc., 587 F.2d 1149, 1167 (D.C. Cir. 1978) (“Indeed, the plain language of section 13(d)(1) gives no hint that intentional conduct need be found, but rather, appears to place a simple and affirmative duty of reporting on certain persons. The legislative history confirms that Congress was concerned with providing disclosure to investors, and not merely with protecting them from fraudulent conduct”); SEC v. e-Smart Technologies, Inc., 82 F. Supp. 3d 97, 104 (D.D.C. 2015) (scienter is not required to establish a violation of Section 16(a) of the Exchange Act).

⁴ Cf. Oppenheimer & Co., Inc., 47 SEC 286, 1980 WL 26901, at *2 (May 19, 1980) (Commission opinion) (“We have previously held that the failure to make a required report, even though inadvertent, constitutes a willful violation”); see generally Herbert Moskowitz, 77 SEC Docket 446, 2002 WL 434524, at *7 (Mar. 21, 2002) (Commission opinion) (“evidence of both motive for non-disclosure and actual market impact ... is irrelevant” to whether violations of Section 13(d) of the Exchange Act and Rules 13d-1 and 13d-2 thereunder occurred); Mandated Electronic Filing and Website Posting for Forms 3, 4 and 5, SEC Release No. 34-47809 (May 7, 2003), 68 Fed. Reg. 25788, 25792 (May 13, 2003) (noting that an issuer's eligibility for temporary relief from disclosing Forms 4 filed one business day late by its insiders “does not change the fact that any Form 3, 4 or 5 filed later than the applicable due date violates Section 16(a)”) (emphasis added).

20. Although Respondent filed a Schedule 13G amendment on March 3, 2021 with respect to JAKKS reporting his beneficial ownership percentage as 10.6%, Respondent did not begin to file any Section 16(a) reports until February 16, 2022—almost one year after he had become required to do so. On February 16, 2022, Respondent filed an untimely Form 3 that incorrectly identified October 2, 2021 as the date on which he became a greater than 10% beneficial owner, and filed untimely Forms 4 as to his open-market purchases of JAKKS' common stock on numerous dates between October 25, 2021 and February 10, 2022. It was not until January 26, 2023 that Respondent filed Forms 4 to report his numerous prior purchases between March 8, 2021 and October 8, 2021. In addition, after Respondent filed the initial Form 3 and Forms 4 on February 16, 2022, Respondent also failed to file on a timely basis for sale transactions in May and June 2022, which were also not reported on a Form 4 until January 26, 2023. Respondent's late reports include transactions executed on the following dates that were required to be reported on Form 4 within two business days:

<u>Form Type</u>	<u>Date of Trans.</u>	<u>Due Date</u>	<u>Date Filed</u>
4	3/8/2021	3/10/2021	1/26/2023
4	3/10/2021	3/12/2021	1/26/2023
4	3/12/2021	3/16/2021	1/26/2023
4	3/17/2021	3/19/2021	1/26/2023
4	3/19/2021	3/23/2021	1/26/2023
4	3/24/2021	3/26/2021	1/26/2023
4	3/25/2021	3/29/2021	1/26/2023
4	4/8/2021	4/12/2021	1/26/2023
4	6/9/2021	6/11/2021	1/26/2023
4	6/11/2021	6/15/2021	1/26/2023
4	6/14/2021	6/16/2021	1/26/2023
4	6/15/2021	6/17/2021	1/26/2023
4	6/16/2021	6/18/2021	1/26/2023
4	6/17/2021	6/21/2021	1/26/2023
4	6/18/2021	6/22/2021	1/26/2023
4	6/24/2021	6/28/2021	1/26/2023
4	6/28/2021	6/30/2021	1/26/2023
4	7/6/2021	7/8/2021	1/26/2023
4	7/7/2021	7/9/2021	1/26/2023

<u>Form Type</u>	<u>Date of Trans.</u>	<u>Due Date</u>	<u>Date Filed</u>
4	7/8/2021	7/12/2021	1/26/2023
4	7/9/2021	7/13/2021	1/26/2023
4	7/12/2021	7/14/2021	1/26/2023
4	7/15/2021	7/19/2021	1/26/2023
4	8/5/2021	8/9/2021	1/26/2023
4	8/6/2021	8/10/2021	1/26/2023
4	10/8/2021	10/13/2021	1/26/2023
4	10/25/2021	10/27/2021	2/16/2022
4	10/27/2021	10/29/2021	2/16/2022
4	10/28/2021	11/1/2021	2/16/2022
4	10/29/2021	11/2/2021	2/16/2022
4	11/4/2021	11/8/2021	2/16/2022
4	11/11/2021	11/15/2021	2/16/2022
4	11/12/2021	11/16/2021	2/16/2022
4	11/15/2021	11/17/2021	2/16/2022
4	11/16/2021	11/18/2021	2/16/2022
4	11/18/2021	11/22/2021	2/16/2022
4	11/19/2021	11/23/2021	2/16/2022
4	11/22/2021	11/24/2021	2/16/2022
4	11/26/2021	11/30/2021	2/16/2022
4	12/7/2021	12/9/2021	2/16/2022
4	12/8/2021	12/10/2021	2/16/2022
4	12/9/2021	12/13/2021	2/16/2022
4	12/10/2021	12/14/2021	2/16/2022
4	12/13/2021	12/15/2021	2/16/2022
4	12/14/2021	12/16/2021	2/16/2022
4	12/15/2021	12/17/2021	2/16/2022
4	12/21/2021	12/23/2021	2/16/2022
4	12/22/2021	12/27/2021	2/16/2022

<u>Form Type</u>	<u>Date of Trans.</u>	<u>Due Date</u>	<u>Date Filed</u>
4	12/23/2021	12/28/2021	2/16/2022
4	12/30/2021	1/4/2022	2/16/2022
4	1/7/2022	1/11/2022	2/16/2022
4	1/26/2022	1/28/2022	2/16/2022
4	1/28/2022	2/1/2022	2/16/2022
4	1/31/2022	2/2/2022	2/16/2022
4	2/1/2022	2/3/2022	2/16/2022
4	2/2/2022	2/4/2022	2/16/2022
4	2/3/2022	2/7/2022	2/16/2022
4	2/4/2022	2/8/2022	2/16/2022
4	2/7/2022	2/9/2022	2/16/2022
4	2/8/2022	2/10/2022	2/16/2022
4	2/9/2022	2/11/2022	2/16/2022
4	2/10/2022	2/12/2022	2/16/2022
5	5/9/2022	5/11/2022	1/26/2023
5	5/10/2022	5/12/2022	1/26/2023
5	6/17/2022	6/21/2022	1/26/2023

21. Respondent's late-reported transactions included open-market purchases of JAKKS common stock from March 8, 2021 to February 10, 2022 with an aggregate market value of approximately \$13 million as well as sales of JAKKS stock on three dates in May and June 2022. Respondent also failed to timely file a required Form 5 to report transactions that should have been reported on Forms 4 during JAKKS's fiscal year 2021 but were not.

22. As a result of the conduct described above, Respondent violated Section 16(a) of the Exchange Act and Rule 16a-3 thereunder.

Respondent Failed to Timely File on Schedule 13G and 13D

23. Respondent has been subject to the reporting requirements of Exchange Act Section 13(d) since acquiring beneficial ownership of more than 5% of the class of registered common stock of JAKKS as of December 8, 2020, and remains subject to those requirements. Respondent was required to file a Schedule 13D within 10 days, or in lieu thereof, file a Schedule 13G within 10 days if eligible under Rule 13d-1(c) as a Passive Investor 13G Filer.

Respondent's filing of an initial Schedule 13G statement on February 22, 2021 did not comply with the applicable 10-day filing deadline.

24. With respect to his beneficial ownership of JAKKS common stock, Respondent also failed to make timely and accurately filings required of persons relying on Rule 13d-1(c) as Passive Investor 13G Filers, including:

- As of July 12, 2021, Respondent's beneficial ownership had increased to more than 15%, an increase of more than 5% of the class of securities from the amount set forth previously, which information was only partially reflected in an amendment filed February 3, 2022, and was not accurately reflected in an amendment until January 26, 2023—neither of which were prompt; and
- Between at least April 11, 2022 and May 9, 2022, Respondent was ineligible to file on Schedule 13G because Respondent's beneficial ownership exceeded 20%. As a result, Respondent was required under Rule 13d-1(f) to, among other things, file a Schedule 13D within 10 days of the date on which Respondent's beneficial ownership equaled or exceeded 20%. Respondent failed to file a Schedule 13D until January 26, 2023.

25. Respondent also failed to timely file initial statements pursuant to Exchange Act Section 13(d) and Rule 13d-1 thereunder as required after acquiring beneficial ownership of more than 5% of the outstanding class of common stock of Meet Group, FTE, FuelCell, and Remark. Respondent was required to file a Schedule 13D within 10 days after the date he acquired greater than 5% beneficial ownership with respect to each of these issuers, or in lieu thereof, file a Schedule 13G within 10 days of such triggering acquisition if eligible under Rule 13d-1(c) as a Passive Investor 13G Filer.

26. Respondent became subject to the reporting requirements of Exchange Act Section 13(d) with respect to Meet Group after acquiring beneficial ownership of more than 5% of Meet Group's common stock as of March 29, 2018. Respondent's filing of an initial Schedule 13G statement on November 16, 2018, did not comply with the applicable 10-day filing deadline.

27. Respondent became subject to the reporting requirements of Exchange Act Section 13(d) with respect to FTE after acquiring beneficial ownership of more than 5% of FTE's common stock as of February 8, 2019. Respondent's filing of an initial Schedule 13G statement on March 1, 2019, did not comply with the applicable 10-day filing deadline.

28. Respondent became subject to the reporting requirements of Exchange Act Section 13(d) with respect to FuelCell after acquiring beneficial ownership of more than 5% of FuelCell's common stock as of November 21, 2019. Respondent's filing of an initial Schedule 13G statement on February 10, 2020, did not comply with the applicable 10-day filing deadline.

29. Respondent became subject to the reporting requirements of Exchange Act Section 13(d) with respect to Remark after acquiring beneficial ownership of more than 5% of Remark's common stock as of June 19, 2018. Respondent's filing of an initial Schedule 13G statement on July 31, 2019, did not comply with the applicable 10-day filing deadline.

30. As a result of the conduct described above, Respondent violated Section 13(d) of the Exchange Act and Rules 13d-1 and 13d-2 thereunder.

Respondent's Remedial Efforts

31. In determining to accept Respondent's Offer, the Commission considered certain remedial acts undertaken by Respondent and cooperation afforded to Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent cease and desist from committing or causing any violations and any future violations of Sections 13(d) and 16(a) of the Exchange Act and Rules 13d-1, 13d-2 and 16a-3 promulgated thereunder.

B. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$150,000 to the Securities and Exchange Commission, for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Lawrence I. Rosen as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Thomas Smith, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 100 Pearl Street, Suite 20-100, New York, NY 10004.

C. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, he shall not argue that he is entitled to, nor shall he benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that he shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

By the Commission.

Vanessa A. Countryman
Secretary