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NORTHERN DISTRICT OF CALIFORNIA

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN JOSE DIVISION

11 SECURITIES AND EXCHANGE COMMISSION

Case No.

12 Plaintiff,

COMPLAINT

13 vs.

14 WALID H. MAGHRIBI,

15 Defendant.

C 06 5756 RS

RMW

16  
17 Plaintiff Securities and Exchange Commission ("the Commission") alleges:

18 **SUMMARY OF THE ACTION**

19 1. This matter involves false financial reporting at Sipex Corporation ("Sipex" or  
20 the "Company"), a manufacturer of integrated circuits based in Milpitas, California. Sipex  
21 improperly recorded and reported revenue on two transactions where the sales were not final  
22 because payment from the buyer was contingent on the buyer reselling the products to others.  
23 As a result, the Company publicly reported inflated and inaccurate revenue for the third and  
24 fourth quarters of fiscal 2003. The former Chief Executive Officer of Sipex, Walid H.  
25 Maghribi, failed to prevent Sipex's improper revenue recognition.

26 2. In the first sale, Sipex employees agreed with the buyer, a Sipex distributor,  
27 that the distributor did not have to take or pay for the Sipex product until another company,  
28 the end user, "qualified" or accepted it and the distributor could resell it. Maghribi was aware

1 of facts suggesting the existence of this arrangement, yet he failed to stop Sipex from  
2 recognizing revenue as if the sale were final. On the second sale, Maghribi was aware that a  
3 Sipex sales executive had given another distributor a written right to return the Sipex product  
4 if the distributor could not resell it, but Maghribi again failed to prevent Sipex from  
5 recognizing the associated revenue as if it were a final sale.

6 3. Generally accepted accounting principles (“GAAP”) dictate that Sipex should  
7 not have recognized revenue on these two sales because the sales were contingent on the  
8 distributor being able to resell the product. Nonetheless, revenues from the sales were  
9 included in press releases, current and periodic reports, and a registration statement that Sipex  
10 publicly filed with the Commission under Maghribi’s direction.

11 4. Maghribi tracked the progress of the two transactions at issue, and as CEO,  
12 was in a position to prevent improper revenue recognition and subsequent reporting of the  
13 materially inflated financial results. Maghribi failed to do so, and thus violated the federal  
14 securities laws.

#### 15 JURISDICTION AND VENUE

16 5. The Commission brings this action pursuant to Sections 20(b) and 20(c) of the  
17 Securities Act of 1933 (“Securities Act”) [15 U.S.C. §§ 77t(b), 77t(c)] and Sections 21(d) and  
18 21(e) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §§ 78u(d),  
19 78u(e)]. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(c), and  
20 22(a) of the Securities Act [15 U.S.C. §§ 77t(b), 77t(c), 77v(a)] and Sections 21(e) and 27 of  
21 the Exchange Act [15 U.S.C. §§ 78u(e) and 78aa].

22 6. Maghribi, directly or indirectly, has made use of the means and  
23 instrumentalities of interstate commerce, of the mails, or of the facilities of a national  
24 securities exchange, in connection with the acts, practices, courses of business, and  
25 transactions alleged herein.

26 7. This district is an appropriate venue for this action under Section 22(a) of the  
27 Securities Act [15 U.S.C. § 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. § 78aa].  
28 Certain of the transactions, acts, practices and courses of business constituting the violations

1 alleged herein occurred within the Northern District of California. Assignment to the San  
2 Jose Division is appropriate because much of the relevant conduct took place in Santa Clara  
3 County.

#### 4 THE DEFENDANT

5 8. Walid H. Maghribi, age 54, resides in Los Gatos, California. At the time of the  
6 events alleged herein, Maghribi was the CEO and president of Sipex and one of its directors.  
7 Maghribi resigned from Sipex in December 2004.

#### 8 THE COMPANY

9 9. Sipex Corporation is a Massachusetts corporation headquartered in Milpitas,  
10 California. The Company's common stock is registered with the Commission under Section  
11 12(g) of the Exchange Act.

12 10. Sipex sells integrated circuit parts to distributors who then resell the parts to  
13 end users to be placed in products such as computers and communications equipment. At the  
14 time of the events alleged herein, Sipex's policy for most distributors (including those  
15 involved here) was to recognize revenue when product was shipped, assuming all other  
16 revenue recognition criteria under GAAP were met.

#### 17 VIOLATIVE CONDUCT

##### 18 **Maghribi Failed To Prevent Sipex From Reporting Improper Revenue** 19 **On A Contingent Sale In The Third Quarter Of 2003**

20 11. In mid-September 2003, near the end of its third quarter of fiscal 2003 (which  
21 ended September 27, 2003), Sipex was attempting to sell its "207" parts through distribution  
22 channels for ultimate placement in a product sold by a specific end user. As Maghribi wrote  
23 in an email on September 18, 2003, however, the end user had not yet "qualified," or  
24 approved the 207 parts as appropriate for placement in its product.

25 12. Sipex made a sale of \$168,400 in 207 parts to a European distributor in late  
26 September 2003. This sale was contingent on the end user's qualification. Specifically, at the  
27 time of the sale one or more Sipex employees agreed with the European distributor that it did  
28 not have to take physical delivery of the 207 parts or pay for them until the end user qualified

1 the parts and the distributor could resell them for use in the end user's product. At this time,  
2 Sipex personnel believed that the end user most likely would qualify the parts by no later than  
3 the end of October 2003, one month after the third quarter end.

4 13. On September 24, 2003, Maghribi received an email from a Sipex employee  
5 referring to the sale of the 207 parts to the European distributor. The employee stated in the  
6 email that by special arrangement, the 207 parts were to be shipped to and held at Sipex's  
7 freight forwarder in Germany rather than being shipped to the European distributor. In the  
8 email the employee referred to the 207 parts sale as a "favor" from the European distributor.  
9 On September 29, 2003, Maghribi received an email from another Sipex employee informing  
10 him that the end user still had not qualified the 207 parts. Maghribi did not address these  
11 circumstances with Sipex's accounting and finance staff.

12 14. Sipex recognized third quarter revenue on the sale of the 207 parts to the  
13 European distributor. GAAP prohibited Sipex from recognizing the revenue because the sale  
14 was contingent on the end user's qualification, and Sipex could not reasonably estimate  
15 returns.

16 15. On October 30, 2003, Sipex issued a press release reviewed by Maghribi,  
17 which Sipex attached to a Form 8-K current report filed with the Commission. The press  
18 release announced that Sipex had achieved third quarter revenue of \$16.5 million, exceeding  
19 the analyst consensus of \$16.3 million. The \$16.5 million revenue amount inappropriately  
20 included the \$168,400 sale of the 207 parts to the European distributor, although the end user  
21 had not qualified the parts and the distributor therefore was not obligated to take physical  
22 delivery of the parts or pay for them. The press release noted that \$16.5 million was "roughly  
23 flat with" Sipex's \$16.6 million in revenue for the third quarter of the previous year. On  
24 November 17, 2003, Sipex filed with the Commission a Form 10-Q quarterly report, reviewed  
25 by Maghribi, also stating third quarter revenue that included the 207 parts sale, although the  
26 end user had not qualified the parts and the sale remained contingent on the qualification.

27 16. During December 2003 and January 2004, Maghribi received emails from  
28 Sipex employees stating that Sipex was still seeking the end user's qualification of the 207

1 parts. Also, in December 2003, a Sipex employee informed Maghribi that the European  
2 distributor was late in paying its invoice for the 207 parts sale of \$168,400. Maghribi failed to  
3 take any steps to determine if Sipex had properly recognized revenue on the 207 parts sale in  
4 the previous quarter.

5 17. In the first quarter of fiscal 2004, Sipex took an allowance for the 207 parts  
6 sale as a potentially uncollectible receivable. Maghribi became aware of the allowance  
7 through his routine review of Sipex's receivables. In May 2004, the European distributor still  
8 had not paid for the 207 parts and its manager refused to pay, telling a Sipex employee that  
9 the 207 parts sale had been a "favor." Thereafter, Sipex wrote off the receivable as a bad  
10 debt. Maghribi learned of the write-off from a Sipex employee, and Maghribi did nothing to  
11 investigate the propriety of the initial revenue recognition on the 207 parts sale in the third  
12 quarter of 2003.

13 **Maghribi Failed To Prevent Sipex From Reporting Improper Revenue**  
14 **On A Contingent Sale In The Fourth Quarter Of 2003**

15 18. In mid-December 2003, near the end of Sipex's fourth quarter of fiscal 2003  
16 (which ended December 31, 2003), an Asian distributor had an order for Sipex's "3203" parts  
17 scheduled for shipment later that month. Sipex and the Asian distributor intended that the  
18 distributor would resell the parts for ultimate placement in a specific end user's product. The  
19 Asian distributor, however, informed a Sipex sales executive that it was concerned about its  
20 ability to resell the parts to the end user. To persuade the distributor to keep the December  
21 shipment date, the sales executive sent an email to the distributor giving it a right to return the  
22 parts for a full refund if it could not resell them for ultimate placement in the end user's  
23 product. After receiving this email, dated December 19, 2003, the distributor agreed to keep  
24 the scheduled order, and the 3203 parts were shipped to the distributor in December 2003.  
25 This generated a sale of \$219,450 for Sipex.

26 19. Sipex recognized fourth quarter revenue on the sale of the 3203 parts to the  
27 Asian distributor. Under GAAP, Sipex should not have recognized revenue from the sale  
28 because of the return right granted in the sales executive's December 19<sup>th</sup> email.

1           20.     On January 7, 2004, before Sipex completed the quarter-end process of closing  
2 its books, the sales executive discussed the December 19<sup>th</sup> email with Maghribi and an  
3 employee of Sipex's finance department. Over the next two days, Maghribi received  
4 information from the Asian distributor and the sales executive indicating that the distributor  
5 would likely be able to resell the 3203 parts to the end user. However, the return right granted  
6 in the December 19<sup>th</sup> email remained in force.

7           21.     On February 19, 2004, Sipex issued a press release reviewed by Maghribi and  
8 attached to a Form 8-K report that Sipex filed with the Commission. The press release  
9 announced that Sipex had achieved fourth quarter revenue under GAAP of \$4.2 million, after  
10 a non-cash charge of \$12.9 million. The \$4.2 million included the sale of the 3203 parts to  
11 the Asian distributor. Although Maghribi knew about the sales executive's December 19<sup>th</sup>  
12 email granting the return right, he failed to follow up on the matter after receiving the  
13 information indicating the distributor likely could resell the parts and failed to prevent Sipex  
14 from including the 3203 parts sale in fourth quarter revenue. The sale provided 5.5% of  
15 Sipex's total fourth quarter revenue.

16           22.     Maghribi was a member of Sipex's disclosure committee, which met in early  
17 March 2004. A purpose of the meeting was to vet any sales terms such as those granted in the  
18 sales executive's December 19<sup>th</sup> email before Sipex filed its annual report on Form 10-K.  
19 Maghribi did not disclose the December 19<sup>th</sup> email during the meeting.

20           23.     On March 15, 2004, Sipex filed with the Commission its Form 10-K, which  
21 Maghribi reviewed and signed. In addition to Sipex's annual financial results for fiscal 2003,  
22 the report included a quarterly breakdown with the earlier-reported incorrect revenue figures  
23 for the third and fourth quarters.

24           24.     On May 24, 2004, a Sipex employee copied Maghribi on an email saying that  
25 the Asian distributor had refused to pay for the 3203 parts and had produced the December  
26 19<sup>th</sup> email as justification. Maghribi took no action to address the propriety of the earlier  
27 revenue recognition on the 3203 parts sale.

1 **OTHER EVENTS**

2 25. In June 2004, Sipex filed with the Commission a Form S-8 registration  
3 statement covering shares of Sipex stock to be issued under the Company's stock option plan  
4 and option agreements. Maghribi signed the registration statement, which incorporated by  
5 reference the March 15, 2004 annual report discussed above.

6 26. On December 6, 2004, Sipex issued a press release announcing that Maghribi  
7 had resigned because of disagreements with the board of directors over growth and prospects  
8 for the Company. In late December 2004, Sipex's management became aware that the  
9 Company might have entered into contingent sales. On January 20, 2005, Sipex issued a  
10 press release announcing that it was conducting an internal investigation and might need to  
11 restate previously reported financial results due to improperly recognized revenue on sales  
12 involving terms such as return rights. The closing price of Sipex's stock that day was \$3.84.  
13 The next day, January 21, 2005, the closing price was \$2.94, a drop of 23%.

14 **FIRST CLAIM FOR RELIEF**

15 *Violations of Sections 17(a)(2) and (3) of the Securities Act*

16 27. The Commission realleges and incorporates by reference paragraphs 1-26  
17 above.

18 28. Through the conduct alleged above, Maghribi, in the offer or sale of securities  
19 by the use of means or instruments of transportation or communication in interstate commerce  
20 or by use of the mails, directly or indirectly:

21 (a) obtained money or property by means of untrue statements of material fact or  
22 omissions of material facts necessary in order to make the statements made, in light of  
23 the circumstances under which they were made, not misleading; and

24 (b) engaged in transactions, practices, and courses of business which operated or  
25 would operate as a fraud or deceit upon the purchaser.

26 29. Maghribi has violated, and unless restrained and enjoined, will continue to  
27 violate Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and  
28

1 77q(a)(3)].

2 **SECOND CLAIM FOR RELIEF**

3 *Aiding and Abetting Violations of Section 13(a) of the Exchange Act and*  
4 *Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder*

5 30. The Commission realleges and incorporates by reference paragraphs 1-26  
6 above.

7 31. Sipex filed with the Commission current, quarterly, and annual reports on  
8 Forms 8-K, 10-Q, and 10-K that contained untrue statements of material fact and omitted to  
9 state material information required to be stated therein or necessary in order to make the  
10 required statements, in the light of the circumstances under which they were made, not  
11 misleading, in violation of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-  
12 11, and 13a-13 thereunder.

13 32. Through the conduct alleged above, Maghribi knowingly provided substantial  
14 assistance to Sipex in its violations of Section 13(a) of the Exchange Act and Rules 12b-20,  
15 13a-1, 13a-11, and 13a-13 thereunder, and therefore is liable as an aider and abettor pursuant  
16 to Section 20(e) of the Exchange Act [15 U.S.C. §78t(e)].

17 33. Maghribi has aided and abetted and unless restrained and enjoined will  
18 continue to aid and abet violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)]  
19 and Rules 12b-20, 13a-1, 13a-11, and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-  
20 11, and 240.13a-13] thereunder.

21 **THIRD CLAIM FOR RELIEF**

22 *Aiding and Abetting violations of Section 13(b)(2)(A) of the Exchange Act*

23 34. The Commission realleges and incorporates by reference paragraphs 1-26  
24 above.

25 35. Sipex failed to make and keep books, records, or accounts which, in reasonable  
26 detail, accurately and fairly reflected its transactions and dispositions of its assets, in violation  
27 of Section 13(b)(2)(A) of the Exchange Act.

28 36. Through the conduct alleged above, Maghribi knowingly provided substantial

1 assistance to Sipex in its violations of Section 13(b)(2)(A) of the Exchange Act, and therefore  
2 is liable as an aider and abettor pursuant to Section 20(e) of the Exchange Act [15 U.S.C.  
3 §78t(e)].

4 37. Maghribi has aided and abetted and unless restrained and enjoined will  
5 continue to aid and abet violations of Section 13(b)(2)(A) of the Exchange Act [15 U.S.C.  
6 §78m(b)(2)(A)].

#### 7 **FOURTH CLAIM FOR RELIEF**

##### 8 *Aiding and Abetting Violations of Section 13(b)(2)(B) of the Exchange Act*

9 38. The Commission realleges and incorporates by reference paragraphs 1-26  
10 above.

11 39. Sipex violated Section 13(b)(2)(B) of the Exchange Act, which obligates  
12 issuers of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l]  
13 to devise and maintain a sufficient system of internal accounting controls.

14 40. Through the conduct alleged above, Maghribi knowingly provided substantial  
15 assistance to Sipex in its violations of Section 13(b)(2)(B) of the Exchange Act, and therefore  
16 is liable as an aider and abettor pursuant to Section 20(e) of the Exchange Act [15 U.S.C.  
17 §78t(e)].

18 41. Maghribi has aided and abetted and unless restrained and enjoined will  
19 continue to aid and abet violations of Section 13(b)(2)(B) of the Exchange Act [15 U.S.C.  
20 §78m(b)(2)(B)].

#### 21 **FIFTH CLAIM FOR RELIEF**

##### 22 *Violations of Section 13(b)(5) of the Exchange Act*

23 42. The Commission realleges and incorporates by reference paragraphs 1-26  
24 above.

25 43. Through the conduct alleged above, Maghribi knowingly circumvented Sipex's  
26 system of internal accounting controls, and knowingly falsified Sipex's books, records, and  
27 accounts.

28 44. Maghribi has violated, and unless restrained and enjoined, will continue to

1 | violate Section 13(b)(5) of the Exchange Act [15 U.S.C. §78m(b)(5)].

2 | **SIXTH CLAIM FOR RELIEF**

3 | *Violations of Rule 13b2-1 Under the Exchange Act*

4 | 45. The Commission realleges and incorporates by reference paragraphs 1-26  
5 | above.

6 | 46. Through the conduct alleged above, Maghribi directly and indirectly falsified  
7 | and caused to be falsified Sipex's books, records, and accounts.

8 | 47. Maghribi has violated, and unless restrained and enjoined, will continue to  
9 | violate Rule 13b2-1 under the Exchange Act [17 C.F.R. §240.13b2-1].

10 | **PRAAYER FOR RELIEF**

11 | WHEREFORE, the Commission respectfully requests that this Court:

12 | I.

13 | Permanently enjoin Maghribi from violating Sections 17(a)(2) and (3) of the Securities  
14 | Act and Section 13(b)(5) of the Exchange Act and Rule 13b2-1 thereunder, and from aiding  
15 | and abetting violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act  
16 | and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder.

17 | II.

18 | Order Maghribi to pay civil penalties pursuant to Section 20(d) of the Securities Act  
19 | [15 U.S.C. § 77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)].

20 | III.

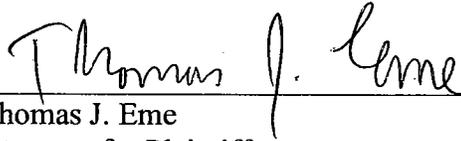
21 | Retain jurisdiction of this action in accordance with the principles of equity and the  
22 | Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders  
23 | and decrees that may be entered, or to entertain any suitable application or motion for  
24 | additional relief within the jurisdiction of this Court.

IV.

Grant such other and further relief as this Court may determine to be just and necessary.

Dated: September 20, 2006

Respectfully submitted,



Thomas J. Eme  
Attorney for Plaintiff  
SECURITIES AND EXCHANGE COMMISSION

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