

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-17686

In the Matter of

JAMES Y. LEE,

Respondent.

DECLARATION OF JENNIFER PELTZ

I, Jennifer Peltz, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am an attorney and a member in good standing of the bar of the State of Illinois.

I am employed as a Senior Counsel in the Division of Enforcement by the United States Securities and Exchange Commission.

2. On February 13, 2014, the Securities and Exchange Commission instituted a civil injunctive action against James Y. Lee ("Lee") in the District Court for the Southern District of California, *SEC v. Lee*, 14-cv-00347-LAB-BGS. A true and correct copy of the complaint is attached as Exhibit A.

3. On May 7, 2016, Lee consented to the entry of a final judgment against him. A true and correct copy of Lee's consent is attached as Exhibit B.

4. On July 15, 2016, the District Court entered final judgment against Lee. Among other things, the final judgment permanently enjoined Lee from violations of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, Sections 17(a)(1) and (a)(2) of the Securities Act of 1933, and Sections 206(1) and 206(2) of the Investment Advisers Act of 1940. A true and correct copy of the final judgment is attached as Exhibit C.

5. On October 9, 2014, the United States Attorney filed a criminal information against Lee in the Southern District of California, *US v. Lee*, 14-cr-02937-BEN. Lee pleaded guilty to the information. A true and correct copy of Lee's plea agreement is attached as Exhibit D. A true and correct copy of the transcript of Lee's Change of Plea Hearing is attached as Exhibit E. A true and correct copy of the criminal judgment is attached as Exhibit F.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on January 30, 2017, in Chicago, Illinois.



Jennifer Peltz

Exhibit A

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13
14 **UNITED STATES DISTRICT COURT**
15 **SOUTHERN DISTRICT OF CALIFORNIA**

16 SECURITIES AND EXCHANGE
17 COMMISSION,

18 Plaintiff,

19 vs.

20 JAMES Y. LEE

21 Defendant,

22 and LARISSA O. ETTORE, ELX
INTERNATIONAL, INC., CLAYTON K.
LEE, ADVANCED CENTURY CORP.,
23 LOLITA GATCHALIAN, ULTRA
INTERNATIONAL, INC., and SOT
24 GROUP, INC.,

25 Relief Defendants.

Case No. '14CV0347 LAB BGS

**COMPLAINT FOR VIOLATIONS OF
THE FEDERAL SECURITIES LAWS**

DEMAND FOR JURY TRIAL

1 Plaintiff Securities and Exchange Commission (the "Commission") alleges the
2 following against Defendant James Y. Lee ("Lee") and Relief Defendants Larissa O.
3 Ettore, ELX International, Inc., Clayton K. Lee, Advanced Century Corp., Lolita
4 Gatchalian, Ultra International Inc., and SOT Group, Inc., and hereby demands a jury
5 trial:

6 **SUMMARY OF THE ACTION**

7 1. This enforcement action concerns an unregistered investment adviser
8 who gained his clients' trust through deceit and then abused this misplaced trust to
9 further defraud his clients in other ways, after they provided him investment funds
10 to manage on their behalf.

11 2. Defendant Lee misled investors about his background, portraying
12 himself as a highly successful financial industry expert, while failing to disclose a
13 prior criminal conviction for embezzlement and a more recent Commission cease-
14 and-desist order for his role in unlawful penny stock offerings.

15 3. To further entice investors to place retirement or other needed savings
16 in his unclean hands, Lee misrepresented investors' risk of loss. Lee covered up
17 the truth of the undisclosed risks of his speculative options trading strategy with
18 false assurances to protect clients from downside risk through "stop-loss" controls
19 and by partially reimbursing any losses out of his own supposedly "deep pockets."

20 4. Lee also deceived certain clients by providing them with inflated
21 investment returns in order to collect undeserved management fees.

22 5. Finally, Lee traded in penny stocks in some client accounts, which
23 was outside of his discretionary authority, and fraudulently induced one client to
24 enter into a convertible promissory note with another penny stock company.

25 6. Lee was no more interested in sharing in his clients' eventual and
26 substantial losses (as promised) than he was in paying millions of dollars owed to
27 the federal government for his past illegal conduct, so he purposefully avoided
28 holding assets in his own name by funneling monies through the Relief

1 Defendants. Lee instructed clients to pay his management fees to various shell
2 companies owned by his girlfriend, son, and two long-time associates,
3 respectively. These companies, in turn, disbursed a portion of the funds to Lee and
4 to the friends and family that served as his de facto intermediaries.

5 7. Through the conduct alleged in this Complaint, Lee engaged in: (1)
6 fraudulent or deceptive conduct in connection with the purchase or sale of
7 securities, in violation of Section 10(b) of the Securities Exchange Act of 1934
8 (“Exchange Act”) and Rule 10b-5 thereunder; (2) fraud in the offer or sale of
9 securities in violation of Section 17(a)(1) and (2) of the Securities Act of 1933
10 (“Securities Act”); and (3) fraudulent or deceptive conduct with respect to
11 investment advisory clients, in violation of Section 206(1) and (2) of the
12 Investment Advisers Act of 1940 (“Advisers Act”).

13 8. Accordingly, the Commission seeks the following relief: (a) entry of
14 a permanent injunction prohibiting Lee from further violations of the relevant
15 provisions of the federal securities laws; (b) disgorgement of Lee’s ill-gotten gains,
16 plus pre-judgment interest; (c) disgorgement by the Relief Defendants of all unjust
17 enrichment and/or ill-gotten gain received from Lee, plus pre-judgment interest,
18 with Lee jointly and severally liable with the corporate Relief Defendants; and (d)
19 the imposition of a civil monetary penalty against Lee due to the egregious nature
20 of his violations.

21 **JURISDICTION AND VENUE**

22 9. The Commission seeks a permanent injunction and disgorgement
23 pursuant to Section 20(b) of the Securities Act [15 U.S.C. §§ 77t(b)], Section
24 21(d)(1) of the Exchange Act [15 U.S.C. § 78u(d)(1)], and Section 209(d) of the
25 Advisers Act [15 U.S.C. §§ 80b-9(d)].

26 10. The Commission seeks the imposition of a civil monetary penalty
27 pursuant to Section 20(d) of the Securities Act [15 U.S.C. §§ 77t(d)], Section
28 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], and Section 209(e) of the

1 Advisers Act [15 U.S.C. §§ 80b-9(e)].

2 11. This Court has jurisdiction over this action pursuant to Sections 20(d)
3 and 22(a) of the Securities Act [15 U.S.C. §§ 77t(d), 77v(a)], Sections 21(d), 21(e),
4 and 27(a) of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), 77aa(a)],⁹ and
5 Sections 209(d), 209(e) and 214(a) of the Advisers Act [15 U.S.C. §§ 80b-9(d),
6 80b-9(e), 80b-14(a)].

7 12. Venue is proper pursuant to Section 22(a) of the Securities Act [15
8 U.S.C. § 77v(a)], Section 27(a) of the Exchange Act [15 U.S.C. § 78aa(a)], and
9 Section 214(a) of the Advisers Act [15 U.S.C. § 80b-14(a)].

10 13. A substantial part of the acts and transactions giving rise to the claims
11 alleged herein occurred in this district and, as set forth below, Defendant and one
12 or more Relief Defendants reside and/or transact business in this district.

13 14. In connection with the conduct alleged in this Complaint, Defendant
14 Lee directly or indirectly made use of the means or instrumentalities of
15 transportation or communication in interstate commerce, the facilities of a national
16 securities exchange, or the mails.

17 15. Lee's conduct involved fraud, deceit, or deliberate or reckless
18 disregard of regulatory requirements, and resulted in substantial loss, or significant
19 risk of substantial loss, to other persons.

20 16. Unless enjoined, Lee is likely to continue to engage in the securities
21 law violations alleged herein, or in similar conduct that would violate the federal
22 securities laws.

23 **DEFENDANT**

24 17. **James Y. Lee**, age 58, resides in La Jolla, California. Lee is not
25 registered with the Commission and has never held any securities licenses.

26 **RELIEF DEFENDANTS**

27 18. **Larissa O. Ettore** ("Ettore"), age 37, is Lee's girlfriend. She is a
28 resident of La Jolla, California, and the sole officer and director of ELX

1 International Corp., one of the companies that Lee used to collect client
2 management fees and disburse the proceeds. Ettore is not registered with the
3 Commission and has never held any securities licenses.

4 19. **ELX International, Corp.** ("ELX"), is a Texas corporation that
5 maintains an office in San Diego, California. ELX received funds from Lee's
6 clients and made payments to (or for the benefit of) Lee as well his family, friends
7 and/or associates.

8 20. **Clayton K. Lee**, age 34, is Lee's son. He is a resident of Alameda,
9 California, and the sole officer and director of Advanced Century Corp., one of the
10 companies that Lee used to collect client management fees and disburse the
11 proceeds. Clayton Lee is not registered with the Commission and has never held
12 any securities licenses.

13 21. **Advanced Century Corp.** ("Advanced Century"), is a California
14 corporation that maintains an office in Alameda, California. Advanced Century
15 received funds from Lee's clients and made payments to (or for the benefit of) Lee
16 as well as his family (including Clayton Lee), friends and/or associates.

17 22. **Lolita Gatchalian** ("Gatchalian"), age 55, is a long-time associate of
18 Lee. She is a resident of Albany, California, and the sole officer and director of
19 Ultra International Corp., one of the companies Lee used to collect client
20 management fees and disburse the proceeds. Gatchalian is not registered with the
21 Commission and has never held any securities licenses.

22 23. **Ultra International, Inc.** ("Ultra"), is a Nevada Corporation with its
23 place of business in Albany, California. Ultra received funds from Lee's clients
24 and made payments to (or for the benefit of) Lee and Gatchalian.

25 24. **SOT Group, Inc.** ("SOT"), is a Nevada Corporation with its principal
26 place of business in San Diego, California. SOT's sole officer and director is a
27 long-time associate of Lee. SOT received funds from Lee's clients and made
28 payments to (or for the benefit of) Lee as well as his family, friends and/or

1 associates.

2 **FACTUAL ALLEGATIONS**

3 25. Starting in December 2008, if not earlier, Lee solicited investors in
4 multiple states (including California, Colorado, and Texas) to open online
5 brokerage accounts, including margin accounts, for purposes of allowing him to
6 trade stock options on their behalf and share in any profits.

7 26. A stock “option” is a security that gives the purchaser the right, but
8 not the obligation, to buy (in the case of a “call” option) or sell (in the case of a
9 “put” option) shares of a company’s stock for a specified price (the “strike price”)
10 until the expiration date of the option contract.

11 27. Conversely, the party that writes (or “sells to open”) the option
12 contract, receiving a payment for doing so, is obligated to sell the shares to, or buy
13 the shares from, the option holder at the specified price if the option is timely
14 exercised.

15 28. Generally, the value of an option will change as the price of the
16 underlying stock changes. When an option expires, it no longer has any value.

17 29. Many of the investors who became Lee’s clients had limited
18 investment experience and no prior options trading experience.

19 30. From March 2009 through May 2011, at least 24 clients opened
20 brokerage accounts for purposes of investing in options through Lee.

21 31. Lee’s clients funded individual accounts opened in their names at
22 Scottrade OptionsFirst or Charles Schwab, by mailing checks and making wire or
23 other transfers to these online brokers.

24 32. Lee exercised near complete control over client accounts, determining
25 what options should be traded and when. Lee had access to client accounts
26 through use of client user name and password information. Lee executed the
27 trades in the accounts or directed others to do so per his instructions. Lee
28 conducted this activity out of SOT’s office in San Diego, among other places.

1 **Lee misled clients about his background**

2 33. Lee's clients often were first introduced to him at pre-arranged
3 meetings held in hotel suites or conference rooms, among other places. Most
4 prospective clients were family, friends or acquaintances of one of two early Lee
5 investors, who helped facilitate these meetings.

6 34. To induce prospective clients into believing he was an investment
7 adviser worthy of fiduciary trust, Lee portrayed himself as a wealthy and
8 successful financial industry expert who now enjoyed helping others to make
9 money.

10 35. In terms of his educational background, Lee told investors that he had
11 a law degree, an MBA, PhD and was a CPA.

12 36. In terms of his work history, Lee told investors (among other things)
13 that he had over 20 years of trading experience, including on the floor of the New
14 York Stock Exchange and at large broker-dealers, and advised companies on tax,
15 acquisition and/or financing matters.

16 37. In terms of his trading operation, Lee told investors that he had a large
17 research team in China that helped him to identify profitable options trades. Using
18 this support and his own "proprietary" strategies, Lee said he oversaw options
19 trading in the accounts of select "family and friends." Lee likened himself to a
20 coach that was calling the plays for various "quarterbacks" who executed trades at
21 his direction in client accounts.

22 38. Among other occasions, Lee made these representations (described in
23 paragraphs 34 to 37) to an investor in a meeting held on or about October 8, 2009
24 in Las Vegas, Nevada; to a different investor in a meeting held on or about October
25 9, 2009 in Las Vegas, Nevada; and over several meetings held with another
26 investor on or about February 22, 2011, April 20, 2011 and May 2011 in Houston,
27 Texas.

28 39. The same or substantially similar representations were made by Lee to

1 numerous other investors between December 2008 and May 2011.

2 40. When touting his purported professional and financial success, Lee
3 failed to disclose past and more recent serious legal troubles.

4 41. Lee had been the chief financial officer of a mortgage company that
5 ceased operating in 1993. Lee failed to disclose to his clients that he had been
6 convicted in 1997 of wire fraud and embezzlement related to the mortgage
7 company's business activities and pension plan. Lee was sentenced to 30 months
8 in prison and ordered to pay \$2,880,000 in restitution. He has made only minimal
9 payments towards this obligation.

10 42. Despite this, Lee described his mortgage-industry background to at
11 least one investor in glowing terms, stating in a December 2008 meeting in Las
12 Vegas that he had built a mortgage company and sold it for a lot of money.

13 43. Likewise, Lee failed to disclose to his clients that in a 2008
14 administrative proceeding, the Commission entered an order making findings and
15 imposing sanctions by default against Lee related to his involvement in
16 unregistered offerings of billions of shares in penny stock companies. Specifically,
17 after he affirmatively declined to defend the proceeding, Lee was ordered to cease
18 and desist from committing or causing violations of Sections 5(a) and 5(c) of the
19 Securities Act and further ordered to disgorge ill-gotten gains of \$2,866,375 plus
20 prejudgment interest. See In re Alexander & Wade, Inc., and James Y. Lee,
21 Securities Act Release No. 8954 (A.L.J. Aug. 28, 2008). Lee has not made any
22 payments to satisfy this obligation.

23 44. When confronted in a meeting in early 2009 by an investor who
24 learned about the Commission cease and desist order, Lee placated the investor by
25 falsely claiming that his name was later removed from the Commission's lawsuit
26 because he was merely a consultant whose advice had been misused by corporate
27 management. Believing this to be true, the investor later repeated this information
28 to another prospective Lee client in an email sent on June 10, 2010. The next day,

1 the existing client forwarded this exchange to Lee, but Lee did nothing to correct
2 the false explanation.

3 45. The information Lee failed to disclose to his clients was material. A
4 reasonable investor would want to know about Lee's prior criminal conviction and
5 securities law violations before entrusting savings to his discretion.

6 **Lee misled clients about their investment risk**

7 46. In addition to what Lee's clients, problematically, did not know about
8 his background, the full picture of their investment risk was further obscured by
9 Lee's incomplete and false assurances about the safety of their trading accounts
10 with him.

11 47. In the investor meetings in Las Vegas and Houston described above,
12 as well as in similar pitches to other investors, Lee indicated that he, or one of his
13 "quarterbacks" that submitted trades for execution in client accounts at his
14 direction, would closely monitor account performance to adhere to conservative
15 trading guidelines he established, which ensured consistently positive results.

16 48. Lee, however, did not discuss with clients the risks of options trading,
17 in particular the risks of his preferred strategy—writing (or "selling to open")
18 uncovered (or "naked") option positions. An uncovered position is one in which
19 the option writer does not own shares of the underlying stock. Whereas an option
20 holder's potential loss is limited to the amount paid for the option (should the
21 option expire worthless or "out of the money"), the option writer's potential loss is
22 not so limited (and may be unlimited, if writing uncovered calls) because the writer
23 may have to buy or sell shares of the underlying stock at an unfavorable price
24 compared to the current market price.

25 49. Lee also did not disclose to clients the related risks involved with his
26 trading on "margin." In a margin account, the brokerage firm lends the investor
27 cash, using the account as collateral, to purchase securities. With respect to
28 options trading, margin also refers to the cash or securities required to be deposited

1 as collateral for the option writer's obligation to buy or sell shares of the
2 underlying stock. Margin requirements for option writing are complex and vary
3 based on option type. An uncovered option writer may be required to provide the
4 broker with additional cash or securities in the event of adverse market
5 movements.

6 50. Lee did not explain to his clients that they could: (a) lose more money
7 than invested in the margin account; (b) have to deposit additional cash or
8 securities in the margin account on short notice to cover market losses; and (c) be
9 forced to sell some or all of the securities held in the account if the account value
10 falls below a certain threshold.

11 51. Instead of making these risk disclosures, Lee made empty guarantees.
12 To attract the business of at least twelve clients, Lee promised that if their accounts
13 actually suffered any realized losses, he would split the losses with them "50/50"
14 and repay them out of his own supposedly "deep pockets." In return, as described
15 further below, Lee asked to share "50/50" in the clients' realized gains.

16 52. This equal sharing of profits and losses was among the representations
17 made in the investor meetings described above in paragraph 38.

18 53. While Lee put few things in writing, he confirmed his agreement to
19 share losses equally with one investor, in a June 24, 2011 email.

20 54. Lee also told certain clients his trading platform included the
21 application of "stop-losses," or risk controls, that prevented clients from losing
22 more than 10%. Lee also told one of these clients that the principal in her account
23 would be safe and not at risk, in their initial meeting held on or about October 8,
24 2009 in Las Vegas.

25 55. Despite Lee's claims about the safety of client investments, all of
26 Lee's clients faced margin calls and suffered substantial losses in their accounts.

27 56. By early 2012, Lee's clients collectively had lost over \$11 million
28 (out of approximately \$25 million invested) and additionally paid over \$3.3 million

1 in fees.

2 57. Nonetheless, Lee failed to share in client losses as promised and as
3 demanded by clients. He repaid less than \$200,000 and most clients received
4 nothing.

5 58. Lee's misleading statements about the management of client assets
6 were material. A reasonable investor would want to know the truth about the risks
7 associated with Lee's trading strategy, including the absence of promised
8 safeguards and loss-sharing, when deciding to invest with Lee.

9 **Lee charged fees based on false performance**

10 59. Part of Lee's usual pitch to prospective clients was that he would keep
11 their best interests in mind, more so than large, traditional firms that he said spent
12 most of their money on overhead expenses. Lee, however, charged high fees and
13 even defrauded certain clients by knowingly charging fees based on overstated
14 investment results.

15 60. Lee told prospective clients that they would pay 50% of monthly
16 realized profits as management fees. He later reduced his fee to 25% for some
17 clients. Lee told prospective clients that no written contract with him was needed,
18 but if a client did not pay his invoices, he would stop trading in that client's
19 account.

20 61. Lee, or others at his direction, calculated the realized gains or losses in
21 client accounts on a monthly basis. Lee determined the percentage of monthly
22 realized profits that clients would be charged as a management fee and when
23 clients would be invoiced.

24 62. In his zeal to profit at his clients' expense, Lee charged fees to three
25 of his investment advisory clients based on false account performance for February
26 2011 and concealed from the clients that they had actually incurred net realized
27 losses that month, such that no fees were due.

28 63. Lee had an arrangement to pay a portion of the fees generated by the

1 accounts of these three clients to another individual (also a Lee investor) who
2 introduced the clients to Lee and helped manage their accounts at Lee's direction.
3 This individual went along with Lee's plan to spread the realized losses in these
4 client accounts over five months and to charge only one-fifth of the realized losses
5 against the realized gains for February 2011, so it would appear that the clients had
6 net realized profits for which management fees were due. Accordingly, the three
7 clients received invoices for management fees from Lee, and/or the individual that
8 managed their accounts at Lee's direction, based on the false net realized profits
9 for February 2011, which invoices the clients paid.

10 64. As for the supposed deferral of the remainder of the losses to future
11 months, this never came to pass. Lee billed one of the clients for management fees
12 in subsequent months without reducing the client's gains by any offsetting
13 adjustments for the prior February 2011 losses. The other two clients incurred
14 additional losses after February 2011 and did not receive further invoices for the
15 affected accounts.

16 65. By exaggerating gains and minimizing losses, Lee deceived his clients
17 about the true performance of their investments and his associated fees.

18 **Lee traded outside his discretionary authority in penny stocks**

19 66. Lee or others acting at his direction, purchased and sold penny stocks
20 in two client accounts even though Lee only had an agreement with these clients to
21 trade options.

22 **Lee misled a client about another penny stock investment**

23 67. In July 2009, Lee advised one of his clients to invest in Axia Group
24 Inc. ("Axia"), which at the time was a Nevada Corporation based in Cave Creek,
25 Arizona.

26 68. Based on Lee's recommendation, the client invested \$15,000 in Axia
27 through a convertible promissory note.

28 69. Lee said that he served as a consultant to small companies like Axia,

1 and helped take them public via the over-the-counter market. Lee further claimed
2 that he was compensated only in stock.

3 70. At the time of the client's \$15,000 investment, Axia had less than
4 \$700 in its bank account. There was only one additional deposit in the account (for
5 \$2,490) before it was liquidated in March 2010. Unbeknown to Lee's client, after
6 receiving his \$15,000 investment, Axia began transferring funds to companies and
7 individuals associated with Lee: two payments to ELX totaling \$8,000; two
8 payments to MAKJ Capital Solutions, Inc. totaling \$4,500; and one payment to
9 Ettore's brother for \$1,500. Lee never disclosed these cash payments to his client.

10 71. Lee's deceit about his relationship with Axia and the use of his
11 client's investment proceeds was material. A reasonable investor would want to
12 know that in recommending Axia, Lee stood to be the primary beneficiary from an
13 investment in the company.

14 **Lee diverted fraudulent proceeds to the Relief Defendants**

15 72. To avoid having assets in his own name, and to reinforce his contrived
16 image as a successful money manager, Lee's clients were invoiced by and paid
17 management fees to various shell companies controlled by Lee, namely ELX,
18 Advanced Century, Ultra and/or SOT (the "Corporate Relief Defendants").

19 73. Lee, or others at his direction, sent invoices to clients through email
20 and mail. Many client invoices were prepared and sent by an administrative
21 assistant who worked with Lee out of SOT's San Diego office.

22 74. Lee's clients paid the invoices by mailing checks or making wire
23 transfers to the Corporate Relief Defendants.

24 75. During the relevant period, the Corporate Relief Defendants were
25 almost exclusively funded by Lee's clients.

26 76. SOT received over \$990,000 from various Lee clients, plus additional
27 funds from ELX.

28 77. ELX received over \$900,000 from various Lee clients, plus additional

1 funds from Advanced Century and SOT.

2 78. Advanced Century received over \$660,000 from various Lee clients,
3 plus additional funds from ELX.

4 79. Ultra received over \$130,000 of Lee client funds.

5 80. The Corporate Relief Defendants, in turn, funneled a portion of the
6 client fees to Lee, his family, friends and/or close associates, as well as businesses
7 they controlled.

8 81. Among other individuals and entities, the Corporate Relief
9 Defendants disbursed the monies received from Lee's clients to Ettore, Clayton
10 Lee and/or Gatchalian (the "Individual Relief Defendants").

11 82. Ettore received over \$390,000 from ELX and SOT, in payments made
12 directly to Ettore or for her benefit.

13 83. Clayton Lee received over \$40,000 in payments from SOT and
14 Advanced Century.

15 84. Gatchalian received over \$69,000 in payments from Ultra.

16 85. The Individual Relief Defendants, and the Corporate Relief
17 Defendants they formed, collaborated with Lee by serving as intermediaries for
18 payments related to his investment advisory business.

19 86. The Corporate Relief Defendants were formed at the request and
20 direction of Lee, and Lee conducted the corporations' businesses.

21 87. The management fees paid by Lee's clients to the Corporate Relief
22 Defendants, and the above-described amounts received by the Individual Relief
23 Defendants, constitute proceeds of Lee's fraud.

24 88. When Lee appeared before Commission staff for investigative
25 testimony, he invoked his Fifth Amendment right against self-incrimination and
26 refused to answer any questions about his background, his representations to
27 investors, his trading strategy and the other conduct described above.

28

1 **FIRST CLAIM FOR RELIEF**

2 **Violations of Section 10(b) of the Exchange Act and Rule 10b-5**

3 89. The Commission repeats and incorporates by reference the allegations
4 in paragraphs 1 through 88 above.

5 90. By engaging in the conduct described above, Defendant Lee, directly
6 or indirectly, acting knowingly or recklessly, in connection with the purchase or
7 sale of securities, by the use of means and instrumentalities of interstate commerce,
8 or of the mails, or a facility of a national securities exchange: (a) employed
9 devices, schemes or artifices to defraud; (b) made untrue statements of material
10 fact or omitted to state a material fact necessary to make the statements made, in
11 the light of the circumstances under which they were made, not misleading; and (c)
12 engaged in acts, practices or courses of business which operated as a fraud or
13 deceit upon certain persons.

14 91. As a result, Defendant violated, and unless enjoined will likely
15 continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and
16 Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

17 **SECOND CLAIM FOR RELIEF**

18 **Violations of Section 17(a)(1) and (2) of the Securities Act**

19 92. The Commission repeats and incorporates by reference the allegations
20 in paragraphs 1 through 88 above.

21 93. Defendant, by engaging in the conduct described above, directly or
22 indirectly, in the offer or sale of securities by use of the means or instruments of
23 transportation or communication in interstate commerce or by use of the mails: (a)
24 with scienter, employed devices, schemes, or artifices to defraud; and (b) obtained
25 money or property by means of untrue statements of material fact or omissions to
26 state a material fact necessary to make the statements made, in light of the
27 circumstances under which they were made, not misleading.

28 94. By engaging in the conduct described above, Defendant violated, and

1 unless enjoined will likely continue to violate, Section 17(a)(1) and (2) of the
2 Securities Act [15 U.S.C. § 77q(a)(1), (2)].

3 **THIRD CLAIM FOR RELIEF**

4 **(Violations of Section 206(1) and 206(2) of the Advisers Act)**

5 95. The Commission repeats and incorporates by reference the allegations
6 in paragraphs 1 through 88 above.

7 96. Defendant Lee was an “investment adviser” within the meaning of
8 Section 202(a)(11) of the Advisers Act [15 U.S.C. § 80b-2(a)(11)].

9 97. By engaging in the conduct described above, Defendant, directly or
10 indirectly, while acting as an investment adviser, by use of the mails or any means
11 or instrumentality of interstate commerce: (a) with scienter, employed devices,
12 schemes, or artifices to defraud clients or prospective clients; and (b) engaged in
13 transactions, practices, or courses of business which operated or would operate as a
14 fraud or deceit upon clients or prospective clients.

15 98. By engaging in the conduct described above, Defendant has violated,
16 and unless enjoined will likely continue to violate, Section 206(1) and (2) of the
17 Advisers Act [15 U.S.C. § 80b-6(1), (2)].

18 **FOURTH CLAIM FOR RELIEF**

19 **(Unjust Enrichment of Relief Defendants)**

20 99. The Commission repeats and incorporates by reference the allegations
21 in paragraphs 1 through 88 above.

22 100. Section 21(d)(5) of the Exchange Act [15 U.S.C. § 78u(d)(5)] states:
23 “In any action or proceeding brought or instituted by the Commission under any
24 provision of the securities laws, the Commission may seek, and any Federal court
25 may grant, any equitable relief that may be appropriate or necessary for the benefit
26 of investors.”

27 101. As described above, Relief Defendants ELX, Advanced Century,
28 Ultra, SOT, Ettore, Clayton Lee and Gatchalian received investor funds under

1 circumstances dictating that, in equity and good conscience, they should not be
2 allowed to retain such funds.

3 102. As a result, each Relief Defendant is liable for unjust enrichment and
4 should be required to return his, her or its ill-gotten gains, in an amount to be
5 determined by the Court.

6 103. Defendant Lee should be held jointly and severally liable for the total
7 amounts received by each of the respective Corporate Relief Defendants as a result
8 of the conduct described above.

9 **PRAYER FOR RELIEF**

10 **WHEREFORE**, the Commission respectfully requests that the Court:

11 A. Enter a permanent injunction restraining Defendant and each of his
12 agents, servants, employees and attorneys and those persons in active concert or
13 participation with him who receive actual notice of the injunction by personal
14 service or otherwise, including facsimile transmission or overnight delivery
15 service, from directly or indirectly engaging in the conduct described above, or in
16 conduct of similar purport and effect, in violation of:

- 17 1. Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and
18 Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5];
- 19 2. Section 17(a)(1) and (2) of the Securities Act [15 U.S.C.
20 § 77q(a)(1), (2)]; and
- 21 3. Section 206(1) and 206(2) of the Advisers Act [15 U.S.C.
22 § 80(b)-6(1), (2)].

23 B. Require Defendant to disgorge his ill-gotten gains and losses avoided,
24 plus prejudgment interest;

25 C. Order Defendant to pay an appropriate civil monetary penalty
26 pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], Section
27 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], and Section 209(e) of the
28 Advisers Act [15 U.S.C. § 80b-9(e)];

1 D. Require the Relief Defendants to disgorge all unjust enrichment
2 and/or ill-gotten gain received directly or indirectly from Defendant, plus
3 prejudgment interest, holding Defendant jointly and severally liable with the
4 respective Corporate Relief Defendants;

5 E. Retain jurisdiction over this action to implement and carry out the
6 terms of all orders and decrees that may be entered or to entertain any suitable
7 application or motion for additional relief, within the jurisdiction of this Court; and

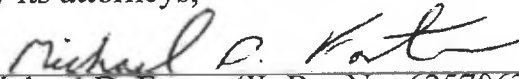
8 F. Award such other and further relief as the Court deems just and
9 proper.

10
11 Dated: February 13, 2014

Respectfully submitted,

12 **Securities and Exchange Commission,**

13 By its attorneys,

14 

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Exhibit B

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

JAMES Y. LEE

Defendant,

and LARISSA O. ETTORE, ELX
INTERNATIONAL, INC., CLAYTON K.
LEE, ADVANCED CENTURY CORP.,
LOLITA GATCHALIAN, ULTRA
INTERNATIONAL, INC., and SOT
GROUP, INC.,

Relief Defendants.

Case No. 14-CV-0347-LAB-BGS

**CONSENT OF DEFENDANT
JAMES Y. LEE**

15 1. Defendant James Y. Lee (“Defendant” or “Lee”) waives service of a
16 summons and the complaint in this action, enters a general appearance, and admits
17 the Court’s jurisdiction over Defendant and over the subject matter of this action.

18 2. Defendant has pleaded guilty to criminal conduct relating to certain
19 matters alleged in the complaint in this action. Specifically, in *United States v.*
20 *James Yiu Lee*, Case No. 14-cr-2937-BEN (S.D. Cal.), Defendant pleaded guilty to
21 obstruction of justice in violation of 18 U.S.C. § 1503. In connection with that
22 plea, Defendant admitted that: (a) he “solicited clients to conduct on-line trading
23 on their behalf in exchange for a share of profits”; (b) he “induced potential clients
24 to hire [Defendant] by fraudulently making false representations and promises, and
25 omitting material information”; (c) he “sent falsified invoices to clients”; (d) he
26 “solicited clients through fraudulent means”; and (e) his “fraudulent conduct
27 caused losses of over \$10 million” for 14 investor victims, all of whom are among
28 Lee’s alleged victims in this matter. This Consent shall remain in full force and