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12 **UNITED STATES DISTRICT COURT**
13 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

15 SECURITIES AND EXCHANGE
16 COMMISSION,

Plaintiff,

17 vs.

18 VENCENT A. DONLAN,

19 Defendant,

20 and

21 ROBIN D. COLLS DONLAN,

22 Relief Defendant.

Case No.: 07 CV 00793 JAH (LSP)

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

1 Plaintiff Securities and Exchange Commission (the "Commission") alleges as follows:

2 **Jurisdiction and Venue**

3 1. The Court has jurisdiction over this action pursuant to Sections 20(b), 20(d)(1),
4 and 22(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§ 77t(b), 775(d)(1), and
5 77v(a), and Sections 21(d)(1), 21(d)(3)(A), 21(e), and 27 of the Securities Exchange Act of 1934
6 ("Exchange Act"), 15 U.S.C. §§ 78u(d)(1), 78(d)(3)(A), 78u(e), and 78aa. Defendant Vincent
7 A. Donlan ("Donlan") has, directly or indirectly, made use of the means or instrumentalities of
8 interstate commerce, or of the mails, or of the facilities of a national securities exchange, in or in
9 connection with the transactions, acts, practices, and courses of business alleged in this
10 Complaint.

11 2. Venue is proper in this district pursuant to Section 22(a) of the Securities Act, 15
12 U.S.C. §§ 77v(a), and Section 27 of the Exchange Act, 15 U.S.C. § 78aa, because certain of the
13 transactions, acts, practices, and courses of business constituting violations of the federal
14 securities laws occurred within this district.

15 **Summary**

16 3. During the 2002 to 2003 time period, Donlan, while he was the stock options
17 administrator at Wireless Facilities, Inc. ("WFI"), engaged in a fraudulent scheme by which he
18 took more than 700,000 shares of the company's stock and stock options. Donlan directed
19 WFI's brokerage firm and transfer agent to issue WFI stock and stock options in the name of his
20 wife, relief defendant Robin D. Colls Donlan ("Colls"), and transfer the securities to a brokerage
21 account held in Colls' name. Donlan created false entries in WFI's stock plan management and
22 reporting software to hide these transactions. Donlan then sold these securities on the open
23 market. Donlan and Colls made approximately \$7.2 million through the sale and exercise of the
24 fraudulently issued WFI securities.

25 4. By engaging in the conduct described in this Complaint, defendant has violated
26 Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a) and (c), and Section 10(b) of the
27 Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5. The
28 Commission seeks a permanent injunction, disgorgement with prejudgment interest, and civil

1 penalties against defendant Donlan, and disgorgement with prejudgment interest against relief
2 defendant Colls.

3 **Defendant**

4 5. **Vencent A. Donlan**, age 44, resides in San Diego, California. Donlan was a
5 temporary employee at WFI from May to August 2002, and WFI's stock options administrator
6 from August 2002 to July 2004. Donlan's starting annual salary at WFI was \$60,000, which was
7 later increased to \$65,000 per year. WFI authorized the grant of 5,520 stock options to Donlan
8 during his tenure at the company. Donlan exercised 1,853 of these stock options in 2002, and
9 300 more in 2003. WFI cancelled the remainder when Donlan left the company in July 2004.

10 **Relief Defendant**

11 6. **Robin D. Colls Donlan**, age 44, resides in San Diego, California. Colls married
12 Donlan in Nevada in March 2002. Colls has never worked for WFI, and WFI has never
13 authorized the grant of its stock or stock options to her. Nonetheless, Colls was the primary
14 account holder of a brokerage account, held jointly with Donlan, that received 728,229 shares of
15 WFI stock and stock options.

16 **Other Relevant Entity**

17 7. **Wireless Facilities Inc.** is a Delaware corporation headquartered in San Diego,
18 California, and is a provider of outsourced engineering and network deployment services,
19 security systems engineering and integration services, and other technical services for the
20 wireless communications industry. WFI's common stock is registered pursuant to Section 12(g)
21 of the Exchange Act and is traded on the Nasdaq Stock Market.

22 **The Fraudulent Scheme**

23 **A. Donlan Fraudulently Caused WFI to Issue Stock and Options to Colls**

24 8. As WFI's stock options administrator, Donlan managed the process by which
25 WFI distributed stock options to its officers, directors, and employees. In particular, Donlan had
26 primary control over Equity Edge, the software program that WFI used to account for, and
27 transmit information about, its stock options. Through Equity Edge and related software, Donlan
28 created stock options grants and opened individual accounts with WFI's brokerage firm,

1 E*Trade Securities, so that WFI's officers, directors, and employees could access and exercise
2 those options. Donlan also used Equity Edge and related software to instruct E*Trade and WFI's
3 transfer agent, Wells Fargo Shareowner Services, to issue and transfer stock to WFI's officers,
4 directors, and employees.

5 9. During the relevant time period, Donlan had primary responsibility for entering
6 WFI's stock options data into Equity Edge. Because he had administrative level user rights on
7 Equity Edge, Donlan was able to issue and transfer stock options on his own authority, giving
8 him effective control over WFI's options distributions.

9 10. In June 2002, Donlan used Equity Edge to create a WFI options account with
10 E*Trade in Colls' name, but registered as a joint account (the "Joint Account"). In creating the
11 Joint Account, Donlan falsely stated on the account opening documents that Colls was a WFI
12 employee. Colls and/or Donlan later added Donlan to the Joint Account, but because Colls was
13 the primary account holder her name remained the first one listed.

14 11. Between November 2002 and November 2003, Donlan fraudulently caused WFI to
15 issue at least 728,229 shares of its stock and stock options to Colls. Donlan effected his fraudulent
16 scheme by making false entries in WFI's Equity Edge program to create and then hide stock options
17 grants to Colls and by providing false information to WFI's brokerage firm and transfer agent.

18 12. Donlan used two methods for fraudulently issuing the WFI stock and stock
19 options. First, Donlan sent emails from his WFI email account to E*Trade falsely stating that
20 Colls had performed cash exercises of WFI options (*i.e.*, paid WFI cash for shares of its stock)
21 and directing E*Trade to initiate the transfer of the resulting shares into the Joint Account in
22 Colls' name. Donlan fraudulently caused WFI to issue 548,229 shares of WFI stock using this
23 method, and the shares were transferred directly into the Joint Account as WFI stock. Second,
24 Donlan used Equity Edge to falsely inform E*Trade that WFI had awarded Colls stock options
25 and to request that E*Trade register them in the Joint Account in Colls' name. Donlan
26 fraudulently caused WFI to issue 180,000 stock options using this method, and E*Trade
27 registered the shares in the Joint Account as exercisable options. Donlan then faxed documents
28 to WFI's transfer agent directing it to issue the 728,229 shares of WFI stock in Colls' name and

1 to transfer the shares to E*Trade for the benefit of Colls.

2 13. Donlan caused twenty-seven such issuances and transfers to the Joint Account
3 over a thirteen month period. WFI did not authorize the grant or issuance of any of these shares.

4 14. Donlan hid these unauthorized transactions from WFI by manipulating the
5 company's Equity Edge program to make it look like the stock options awards were authorized. For
6 example, Donlan parked a large number of purported stock option grants in Equity Edge accounts
7 that he created in the abbreviated names of real WFI employees (e.g., "Tom" instead of
8 "Thomas"), but using Colls' social security number. Donlan later back-filled into Equity Edge
9 the names (and, at least once, the correct social security number) of WFI employees as the
10 recipients of the issued options, thereby making the grants appear to be valid.

11 **B. Unregistered Sale of the WFI Shares**

12 15. When the fraudulently issued WFI securities became available for trade in the
13 Joint Account, Donlan exercised the options and sold the stock on the open market. These stock
14 sales were not registered. In connection with these transactions, E*Trade sought confirmation
15 from WFI that it had authorized the award of the shares of WFI stock and stock options to Colls.
16 Donlan used his position as stock options administrator at WFI to falsely verify that the options
17 were valid and authorized by WFI.

18 16. Donlan and/or Colls received approximately \$7.2 million in net proceeds from the
19 sale and exercise of the fraudulently issued WFI securities.

20 **C. Transfer and Use of The Proceeds**

21 17. Between November 2002 and November 2004, Donlan and/or Colls transferred
22 all but 50¢ of the proceeds from the WFI stock sales and options exercises out of the Joint
23 Account using wire transfers, checks, and ATM transactions. A number of the wire transfers and
24 checks were directed to financial institutions, including banks, brokerages, and credit card
25 companies.

26 18. An unknown amount of the proceeds from Donlan and/or Colls' unauthorized sale
27 and exercise of WFI's securities is still in active accounts with these financial institutions. For
28 example, Donlan currently holds approximately \$1.83 million in securities and cash in an open

1 TD Ameritrade brokerage account. Donlan has recently withdrawn large sums from this
2 account; between January and April 2007, Donlan transferred approximately \$540,000 out of his
3 TD Ameritrade brokerage account. Donlan also has approximately \$15,000 in a Charles Schwab
4 brokerage account.

5 19. In addition, Donlan used the proceeds from the WFI securities sales to purchase
6 real estate. In January 2004, Donlan and Colls purchased a home in San Diego, California, for
7 \$942,000 in cash. In January 2007, Donlan and Colls paid \$655,000 in cash for property in
8 Julian, California.

9 **First Claim for Relief**

10 **Unregistered Offer And Sale Of Securities**

11 **Violations of Sections 5(a) and 5(c) of the Securities Act**

12 20. The Commission realleges and incorporates by reference paragraphs 1 through 19
13 above.

14 21. Defendant, by engaging in the conduct described above, directly or indirectly,
15 made use of means or instruments of transportation or communication in interstate commerce or
16 of the mails, to offer to sell or to sell securities, or to carry or cause such securities to be carried
17 through the mails or in interstate commerce for the purpose of sale or for delivery after sale.

18 22. No registration statement has been filed with the Commission or has been in
19 effect with respect to any of the sales alleged herein.

20 23. By engaging in the conduct described above, the defendant violated, and unless
21 restrained and enjoined will continue to violate, Sections 5(a) and 5(c) of the Securities Act, 15
22 U.S.C. §§ 77e(a) and (c).

23 **Second Claim for Relief**

24 **Fraud In Connection With The Purchase or Sale of Securities**

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

26 24. The Commission realleges and incorporates by reference paragraphs 1 through 19
27 above.

28 25. Defendant, by engaging in the conduct described above, directly or indirectly, in

1 connection with the purchase or sale of a security, by the use of means or instrumentalities of
2 interstate commerce, of the mails, or of the facilities of a national securities exchange, with
3 scienter:

- 4 a. employed devices, schemes, or artifices to defraud;
- 5 b. made untrue statements of a material fact or omitted to state a material fact
6 necessary in order to make the statements made, in light of the
7 circumstances under which they were made, not misleading; or
- 8 c. engaged in acts, practices, or courses of business which operated or would
9 operate as a fraud or deceit upon other persons.

10 26. By engaging in the conduct described above, defendant violated, and unless
11 restrained and enjoined will continue to violate, Section 10(b) of the Exchange Act, 15 U.S.C. §
12 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

13 **Prayer For Relief**

14 WHEREFORE, the Commission respectfully requests that the Court:

15 **I.**

16 Issue findings of fact and conclusions of law that defendant committed the alleged
17 violations.

18 **II.**

19 Issue a judgment, in a form consistent with Fed. R. Civ. P. 65(d), permanently enjoining
20 defendant, and those persons in active concert or participation with him who receive actual
21 notice of the judgment by personal service or otherwise, from violating Sections 5(a) and 5(c) of
22 the Securities Act, 15 U.S.C. §§ 77e(a) and (c), and Section 10(b) of the Exchange Act, 15
23 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

24 **III.**

25 Issue, in a form consistent with Fed. R. Civ. P. 65, a temporary restraining order and
26 preliminary injunction freezing the assets of defendant and relief defendant and orders
27 prohibiting them from destroying documents; directing an accounting; and expediting discovery.
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IV.

Order defendant and relief defendant to disgorge all ill-gotten gains from defendant's illegal conduct, together with prejudgment interest thereon.

V.

Order defendant to pay civil penalties pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d) and Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3).

VI.

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

VII.

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

DATED: May 16, 2007

/s/ Morgan Ward Doran
BRIANE NELSON MITCHELL
KELLY C. BOWERS
VICTORIA A. LEVIN
MORGAN B. WARD DORAN
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Securities and Exchange Commission

PROOF OF SERVICE

I am over the age of 18 years and not a party to this action. My business address is:

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Telephone No. (323) 965-3998; Facsimile No. (323) 965-3908.

On May 16, 2007, I served the document entitled **FIRST AMENDED COMPLAINT FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS** upon the parties to this action addressed as stated on the attached service list:

OFFICE MAIL: By placing in sealed envelope(s), which I placed for collection and mailing today following ordinary business practices. I am readily familiar with this agency's practice for collection and processing of correspondence for mailing; such correspondence would be deposited with the U.S. Postal Service on the same day in the ordinary course of business.

PERSONAL DEPOSIT IN MAIL: By placing in sealed envelope(s), which I personally deposited with the U.S. Postal Service. Each such envelope was deposited with the U.S. Postal Service at Los Angeles, California, with first class postage thereon fully prepaid.

EXPRESS U.S. MAIL: Each such envelope was deposited in a facility regularly maintained at the U.S. Postal Service for receipt of Express Mail at Los Angeles, California, with Express Mail postage paid.

HAND DELIVERY: I caused to be hand delivered such envelope/document to each addressee on the attached service list.

FEDERAL EXPRESS: By placing in sealed envelope(s) designated by Federal Express with delivery fees paid or provided for, which I deposited in a facility regularly maintained by Federal Express or delivered to a Federal Express courier, at Los Angeles, California.

ELECTRONIC MAIL: By transmitting the document by electronic mail to the electronic mail address as stated on the attached service list.

FAX: By transmitting the document by facsimile transmission. The transmission was reported as complete and without error.

(Federal) I declare that I am employed in the office of a member of the bar of this Court, at whose direction the service was made. I declare under penalty of perjury that the foregoing is true and correct.

Date: May 16, 2007

/s/ Morgan Ward Doran
MORGAN WARD DORAN

1 **SEC v. VENCENT A. DONLAN AND ROBIN D. COLLS DONLAN**
2 **United States District Court - Southern District of California**
3 **Case No. 07-CV-00793 JAH (LSP)**
4 **(LA-3359)**

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