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11
 12 **UNITED STATES DISTRICT COURT**
 13 **NORTHERN DISTRICT OF CALIFORNIA**
 14 **SAN FRANCISCO DIVISION**

15
 16 **SECURITIES AND EXCHANGE**
 17 **COMMISSION,**
 18 *Plaintiff,*
 19 **v.**
 20 **ADESH KUMAR TYAGI,**
 21 *Defendant.*

Case No. 3:17-cv-3128
COMPLAINT
JURY TRIAL DEMANDED

22
 23
 24 Plaintiff Securities and Exchange Commission (the “Commission”) alleges as follows:

25 **SUMMARY OF THE ACTION**

26 1. The Commission brings this civil enforcement action against Adesh Kumar Tyagi
 27 (“Tyagi” or “Defendant”), a convicted felon, who engaged in a fraudulent scheme to inflate the

1 share price of Systems America, Inc. (“Systems America” or “the Company”) — a penny stock
2 company of which he was the sole officer, sole director, and majority shareholder. Between June
3 2010 and July 2012, Tyagi violated the antifraud provisions of the federal securities laws by:

- 4 • Making materially false and misleading statements about Systems America in
5 disclosures that he published directly to investors on www.OTCMarkets.com;
- 6 • Omitting material facts about Systems America from the OTC Markets
7 disclosures that were necessary to prevent the disclosures from being
8 misleading;
- 9 • Making materially false and misleading statements about Systems America in
10 press releases that he disseminated or caused to be disseminated to PR
11 Newswire for circulation to the investing public;
- 12 • Omitting material facts about Systems America from the press releases that
13 were necessary to prevent the press releases from being misleading;
- 14 • Engaging in manipulative trading in his brokerage accounts, including
15 “marking the close” — trading at or near the close of the market in an attempt
16 to influence the price of Systems America stock; and
- 17 • Engaging in manipulative trading in his brokerage accounts, including
18 uneconomic buying of small quantities of Systems America stock during the
19 trading day for the purpose of driving up the security’s price and trading
20 volume.

21 2. In addition to violating the antifraud provisions of the federal securities laws,
22 Tyagi also violated the beneficial ownership reporting requirements. Specifically,

- 23 • Tyagi failed to file with the Commission a Schedule 13D Beneficial
24 Ownership Report when he acquired beneficial ownership of more than 5% of
25 Systems America;
- 26 • Tyagi failed to file with the Commission Form 3 Initial Statements of
27 Beneficial Ownership of Securities when he acquired beneficial ownership of

1 more than 10% of Systems America and when he became an officer and
2 director of the Company; and

- 3 • Tyagi failed to file with the Commission Form 4 and Form 5 Statements of
4 Changes in Beneficial Ownership when he bought and sold shares of Systems
5 America.

6 3. By making false statements and engaging in the transactions, acts, practices, and
7 courses of business alleged in this Complaint, Tyagi directly violated: § 17(a) of the Securities
8 Act of 1933 (“the Securities Act”) [15 U.S.C. § 77q(a)]; § 10(b) of the Securities Exchange Act
9 of 1934 (“the Exchange Act”) and Rule 10b-5 thereunder [15 U.S.C. § 78j(b) and 17 C.F.R. §
10 240.10b-5]; § 13(d) of the Exchange Act and Rule 13d-1 thereunder [15 U.S.C. § 78m(d) and 17
11 C.F.R. § 240.13d-1]; and § 16(a) of the Exchange Act and Rule 16a-3 thereunder [15 U.S.C. §
12 78p(a) and 17 C.F.R. § 240.16a-3]. Tyagi also is secondarily liable — as an aider and abettor
13 pursuant to § 20(e) of the Exchange Act [15 U.S.C. § 78t(e)] and as a control person pursuant to
14 § 20(a) of the Exchange Act [15 U.S.C. § 78t(a)] — for Systems America’s primary violations
15 of § 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5(b) thereunder [17 CFR §
16 240.10b-5(b)].

17 4. Unless this Court enjoins Tyagi, he will continue to engage in fraudulent conduct
18 similar to that alleged in this Complaint.

19 5. The Commission thus seeks the following relief against Tyagi:

- 20 • An injunction permanently restraining Tyagi from committing future
21 violations of the federal securities laws;
- 22 • An injunction permanently enjoining Tyagi from, directly or indirectly,
23 including, but not limited to, through an entity owned or controlled by Tyagi,
24 participating in the issuance, purchase, offer, or sale of any security of an
25 entity of which he is an officer, director, owner, direct or indirect, of 10% or
26 more of the issued and outstanding securities, or control person;

27

- 1 • An order requiring Tyagi to disgorge \$274,610.43 in ill-gotten gains, plus
2 prejudgment interest;
- 3 • An order imposing civil money penalties on Tyagi;
- 4 • An order barring Tyagi from serving as an officer or director of any public
5 company;
- 6 • An order permanently barring Tyagi from participating in any future penny
7 stock offerings; and
- 8 • Any other relief consistent with the evidence adduced at the trial of this case
9 and applicable law.

10 **JURISDICTION, VENUE, AND INTRADISTRICT ASSIGNMENT**

11 6. The Court has jurisdiction over this action pursuant to §§ 20(b), 20(d), and 22(a)
12 of the Securities Act and §§ 21(d), 21(e), and 27(a) of the Exchange Act. [15 U.S.C. §§ 77t(b),
13 77t(d), 77v(a), 78u(d), 78u(e), and 78aa(a)]. The Commission alleges that Defendant, directly
14 and indirectly, made use of the mails, the means and instruments of transportation and
15 communication in interstate commerce, and the means and instrumentalities of interstate
16 commerce in connection with the transactions, acts, practices, and courses of business alleged in
17 this Complaint.

18 7. Venue is proper in this district pursuant to § 22(a) of the Securities Act and § 27
19 of the Exchange Act. [15 U.S.C. §§ 77v(a), 78aa]. Defendant is found, inhabits, or transacts
20 business in this District, and certain of the acts, practices, courses of conduct, and transactions
21 constituting violations of the federal securities laws occurred in this District.

22 8. Pursuant to Civil Local Rule 3-2, this action may be properly assigned to the San
23 Francisco Division because the action arose in the counties of Contra Costa and San Francisco.

24 **GLOSSARY OF TERMS USED IN THE COMPLAINT**

25 9. A reverse merger is a transaction in which an existing public shell company
26 acquires a private operating company—usually one that is seeking access to funding in the U.S.
27 capital markets. Typically, the shareholders of the private operating company exchange their

1 shares for a large majority of the shares of the public shell company. Although the public shell
2 company survives the merger, the private operating company's shareholders gain a controlling
3 interest in the voting power and outstanding shares of stock of the public shell company. Also
4 typically, the private operating company's management takes over the board of directors and
5 management of the public shell company. The assets and business operations of the post-merger
6 public company are primarily, if not solely, those of the private operating company. A private
7 operating company may pursue a reverse merger in order to facilitate its access to the capital
8 markets, including the liquidity that comes with having its stock or the stock of its publicly
9 traded holding company quoted on a market or listed on an exchange. Private operating
10 companies generally have access only to private forms of equity, while public companies
11 potentially have access to funding from a broader pool of public investors. A reverse merger
12 often is perceived to be a quicker and cheaper method of "going public" than an initial public
13 offering.

14 10. A penny stock is a security issued by a small company that generally trades at less
15 than \$5 per share. Penny stocks generally are quoted over-the-counter, on trading platforms such
16 as OTC Link. Penny stocks may trade infrequently, which means their owners may have
17 difficulty selling them.

18 11. A buy limit order is an order to purchase a security at or below a certain price.
19 Instead of paying market price for the security, the buyer sets the price that he or she is willing to
20 pay for a certain number of shares. The buyer is guaranteed to pay that price or less because the
21 order is executed only when a seller's price matches the amount set by the buyer. If the specified
22 price is never met, the order is not filled.

23 12. A sell limit order is an order to sell a security at or above a certain price. Instead
24 of taking market price for a security, the seller sets the price at which he or she is willing to sell a
25 certain number of shares. The seller is guaranteed to sell at or above the specified price because
26 the order is executed only when a buyer matches the seller's price. If the specified price is never
27 matched, the order is not filled.

1 13. "Marking the close" is the practice of trading at or near the close of the market in
2 an attempt to influence the price of a security.

3 **THE DEFENDANT**

4 14. Tyagi, age 49, resides in Danville, California. Tyagi was the Chief Executive
5 Officer, President, Secretary, sole Director, and majority shareholder of Systems America. He
6 also served as the Company's interim Chief Financial Officer in 2011 and 2012. From 1996
7 through at least July 2012, the Defendant also served as Chairman, CEO, and President of a
8 privately held Delaware corporation that also was named Systems America, Inc. ("Systems
9 America DE").

10 15. On November 9, 2016, in connection with the some of the manipulative trading
11 alleged herein, the Defendant pled guilty to one count of securities fraud in violation of 15
12 U.S.C. §§ 78j and 78ff and 17 C.F.R. § 240.10b-5. *United States v. Adesh Kumar Tyagi*, 8:16-
13 cr-00115-JVS (C.D. Cal.). Tyagi currently is awaiting sentencing in his criminal securities fraud
14 case.

15 16. Tyagi has a prior conviction in California for grand theft. *The People of the State*
16 *of California vs. Adesh Kumar Tyagi*, CC937464 (Superior Court of California, County of Santa
17 Clara) (May 19, 2009).

18 17. Tyagi also was charged by the State of Nevada with using a bad check to obtain
19 credit from a casino. *The State of Nevada v. Adesh Kumar Tyagi*, 09F16115X (Justice Court,
20 Las Vegas Township, Clark County, Nevada) (August 6, 2009). The criminal charges were
21 dismissed in connection with a civil settlement between Tyagi and the casino.

22 **THE ISSUER**

23 18. Systems America was originally incorporated in 1984 in Canada under the name
24 133166 Canada, Inc. 133166 Canada, Inc. changed its name to Receptagen, Ltd. on July 12,
25 1993 and reincorporated in Florida in October 2001 as Receptagen, Inc. The Company changed
26 its name three more times: to Spantel Communications, Inc. in October 2001; to Systems
27 America, Inc. in or about February 2010; and to Cloudeeva, Inc. in 2013.

1 19. Tyagi became involved with the Company in 2010 at or around the time that it
2 changed its name from Spantel Communications to Systems America, Inc. The name was
3 changed because Tyagi was reverse merging his privately-held Systems America DE into the
4 Company. In the reverse merger, Systems America DE's ownership passed from Tyagi to the
5 Company with Systems America DE becoming a wholly owned subsidiary of Systems America.
6 Tyagi was the Chairman, CEO, and President of Systems America DE and the CEO, President,
7 and Secretary of Systems America. He also was the Systems America's sole Director and
8 majority shareholder.

9 20. Systems America's common stock originally was registered with the Commission
10 in 1994 pursuant to Exchange Act § 12(g) [15 U.S.C. § 78l(g)]. The securities were registered
11 under the name Receptagen, Ltd. In December 2009, when the Company was called Spantel
12 Communications, Inc., the Company attempted to deregister its securities by filing a Form 15
13 with the Commission. The stock was ineligible for deregistration, however, because the
14 Company exceeded the maximum number of shareholders of record allowed by Exchange Act
15 Rule 12g-4 [17 C.F.R. § 240.12g-4] for deregistration via a Form 15. The Company — first as
16 Spantel Communications and then as Systems America and Cloudeeva, Inc. — failed to file any
17 periodic report for any period after June 30, 2006. As a result, the Commission deregistered the
18 Company's securities pursuant to Exchange Act §12(j) [15 U.S.C. § 78l]. The Company, which
19 was then called Cloudeeva, Inc., consented to the deregistration, which became effective on July
20 16, 2014.

21 21. Before the deregistration, Systems America's common stock was quoted on OTC
22 Link, which is operated by OTC Markets, Inc. ("OTC Markets"). Systems America was quoted
23 under the symbols "SMAR" and "SYAI." Systems America was a penny stock.

24 22. On July 21, 2014, the Company — then named Cloudeeva, Inc. — and its
25 subsidiary, Systems America DE, filed voluntary Chapter 11 petitions in the United States
26 Bankruptcy Court for the District of New Jersey. The bankruptcy proceedings subsequently
27

1 were consolidated and converted to a Chapter 7 proceeding, which remains pending. *See In Re:*
2 *Cloudeeva, Inc.*, Case No. 14-24874 (KCF) (D.N.J. Bankruptcy).

3 **FACTS**

4 22. Tyagi operated his privately held Systems America DE as an information
5 technology service company from at least 1994 through the mid-2000s.

6 23. Systems America DE purportedly provided services to Fortune 500 clients and
7 had operations in India as well as the United States.

8 24. In 2005, however, Tyagi stopped “pay[ing] any attention . . . [to] this business at
9 all.”

10 25. Systems America DE’s revenues plummeted. According to Tyagi, Systems
11 America DE’s revenue declined from \$18.5 million in 1999, to \$1.1 million in 2006, \$920,000 in
12 2007, \$500,000 in 2008, and \$100,000 in the first three months of its 2009 fiscal year. The
13 business essentially went dormant.

14 26. In or about August 2009, Tyagi took a job at Aero Financial (“Aero”), a Nevada
15 corporation headquartered in San Diego, California. Aero facilitated reverse mergers between
16 private companies and publicly traded shell companies. Aero also provided promotional and
17 growth-support services to development-stage companies.

18 27. Observing how Aero’s principal, James Price, was able to reverse merge private
19 companies into publicly traded shells and thereby gain access to the securities markets, Tyagi
20 decided to resuscitate Systems America DE. Tyagi informed Price that Tyagi was “reviving
21 [Systems America DE] so that we can reverse merge it as a public company and we can use
22 stock to acquire companies.”

23 28. With Aero’s assistance, Tyagi reverse merged Systems America DE into a
24 publicly traded shell — the former Spantel Communications, Inc. — in June 2010.

25 29. Tyagi was the sole officer, sole director, and sole employee of the merged entity.
26 Two individuals joined the Company as independent contractors in early September 2010. Later
27

1 that month, the Company hired one full-time employee. Two full-time employees were added in
2 October 2010.

3
4 30. Tyagi sought to reinvent Systems America as a provider of cloud computing
5 support services. His game plan was to grow the Company through acquisitions.

6 31. Lacking cash, however, he engaged in a fraudulent scheme to artificially inflate
7 the per-share price of the Company's securities so that he could use Systems America stock to
8 acquire other companies. He also sold Systems America stock at artificially inflated prices to
9 generate cash to pay the Company's operating expenses and certain of his personal expenses.

10
11 **I. Tyagi Made Materially False and Misleading Statements About Systems America In**
12 **Disclosures Published On www.OTCMarkets.com and Omitted Material Facts**
13 **Necessary to Make the Disclosures Not Misleading**

14 32. Tyagi made materially false and misleading statements about Systems America in
15 three separate disclosures published about the Company on OTC Disclosure and News Service:
16 (1) the Initial Company Information and Disclosure Statement ("Initial Disclosure"); (2) the
17 Annual Report for Fiscal Year 2010 and Updated Information and Disclosure Statement (the
18 "2010 Annual Report"); and (3) the Annual Report for Fiscal Year Ended December 31, 2011
19 (the "2011 Annual Report") (collectively, "Disclosures"). From these Disclosures, Tyagi also
20 omitted material facts about Systems America necessary to make the Disclosures not misleading.

21 33. The materially false and misleading statements and the material omissions in the
22 Disclosures concerned Tyagi's criminal history, how many customers Systems America had and
23 who they were, and how many employees worked for the Company.

24 34. Tyagi published each of the Disclosures directly to the investing public on
25 www.OTCMarkets.com.

26 35. Tyagi drafted the Disclosures and had ultimate authority over the content of the
27 Disclosures, including the materially false and misleading statements and the material omissions.

1 36. Tyagi also had ultimate authority over whether and how to communicate the
2 Disclosures that included the materially false and misleading statements and the material
3 omissions; he made the decision to publish the Disclosures to the investing public through OTC
4 Disclosure and News Service.

5 37. Tyagi knew, or was reckless or negligent in not knowing, that the statements in
6 the Disclosures were materially false and misleading and that the omissions were material.

7 **A. OTC Disclosure and News Service**

8 38. OTC Disclosure and News Service was an online portal that allowed issuers with
9 securities quoted on OTC Markets to publish online financials, news, and other company-related
10 information. The information published by the companies was directly available to investors on
11 www.OTCMarkets.com.

12 39. OTC Disclosure and News Service was a subscription service; only issuers who
13 paid OTC Markets an annual fee were permitted to publish their company information to
14 investors on www.OTCMarkets.com.

15 40. OTC Markets developed “information tiers” to help investors evaluate the quality
16 of the company information that subscribing issuers published through OTC Disclosure and
17 News Service.

18 41. OTC Markets ranked issuers into three tiers based on the type, quantity, and
19 timeliness of their disclosures. The top tier was “Current Information;” the second tier was
20 “Limited Information;” and the third tier was “No Information.”

21 42. Each information tier was associated with a different level of perceived
22 investment risk. OTC Markets assumed that issuers in the “Current Information” tier carried the
23 lowest level of risk for investors, whereas issuers in the “No Information” tier carried the highest
24 level of risk.

25 43. OTC Markets communicated its assessment of investment risk by attaching a risk
26 symbol to each tier. Issuers in the “Current Information” tier were marked with a green check
27 mark to reflect their perceived low level of risk to investors. Issuers in the “Limited

1 Information” tier were marked with a yellow yield sign to convey to investors that they should
2 use caution when investing in the issuers. Issuers in the “No Information” tier were marked with
3 a red stop sign to make investors hesitant about investing in the issuers. OTC Markets intended
4 to make it difficult for issuers in the “No Information” tier to trade.

5 44. In addition to ranking issuers in the three information tiers, OTC Markets labeled
6 some issuers as “Caveat Emptor.” This was an express warning attached to an issuer when OTC
7 Markets believed there was a public interest concern associated with the issuer, such as a stock
8 promotion campaign that was influencing the security’s price or significant corporate actions
9 being undertaken without much disclosure. OTC Markets marked “Caveat Emptor” issuers with
10 skulls-and-crossbones. Being marked “Caveat Emptor” negatively impacted a security’s trading.

11 45. Issuers sought to avoid designation as “Caveat Emptor” and qualify for the
12 highest possible information tier.

13 46. To help issuers make the disclosures necessary to move the issuers’ securities up
14 the information tiers, OTC Disclosure and News Service provided written guidance about what
15 information an issuer must disclose to qualify for the “Current Information” tier.

16 47. The written guidance was published in a publicly available document entitled, *The*
17 *Alternative Reporting Standard: Guidelines for Providing Adequate Current Information* (“the
18 *Guidelines*”).

19 48. The *Guidelines* instructed that “[c]urrent and potential investors in the issuer’s
20 securities should be provided with all ‘material’ information — the information available to the
21 issuer necessary for the investor to make a sound investment decision.”

22 49. The *Guidelines* explained that “[t]he disclosure should enable an investor of
23 ordinary intelligence and investment skills to understand the issuer’s business and prospects.”

24 50. The *Guidelines* required issuers to file an Initial Disclosure Statement, as well as
25 “Current Updates,” “Quarterly Updates,” and “Annual Updates” “to reflect new developments
26 after the publication of the initial issuer disclosure statement.”

27

1 51. The *Guidelines* detailed specific information that must be disclosed because OTC
2 Markets deemed the information necessary for an investor of ordinary intelligence and
3 investment skills to make a sound investment decision.

4 52. Among other things, the *Guidelines* required issuers to identify their officers,
5 directors, and control persons, as well as disclose whether, in the last five years, they had “been
6 the subject of: . . . [a] conviction in a criminal proceeding or named as a defendant in a pending
7 criminal proceeding (excluding traffic violations and other minor offenses).”

8 53. The *Guidelines* also required issuers to disclose their total number of employees
9 and how many of the employees worked full-time.

10 54. The *Guidelines* also required issuers to disclose the nature of the products and
11 services they offered, including the markets for their principal products and services and whether
12 the issuer was dependent on only one or a few customers.

13 55. Pursuant to the *Guidelines*, each disclosure published on www.OTCMarkets.com
14 had to be certified by the company’s chief executive officer and chief financial officer or their
15 equivalents. The certification required the certifying officer to state that “based on [his or her]
16 knowledge, this disclosure statement does not contain any untrue statement of a material fact or
17 omit to state a material fact necessary to make the statements made, in light of the circumstances
18 under which such statements were made, not misleading with respect to the period covered by
19 this disclosure statement.”

20 **B. Tyagi Subscribed To OTC Disclosure and News Service**

21 56. Tyagi subscribed Systems America to OTC Disclosure and News Service on July
22 1, 2010.

23 57. He signed the subscription application as Systems America’s President and Chief
24 Executive Officer.

25 58. OTC Markets provided Tyagi with login credentials for OTC Disclosure and
26 News Service, including a user name, password, and digital token. Tyagi received the only set of
27

1 login credentials for Systems America, and by his agreement with OTC Disclosure and News
2 Service, he was prohibited from sharing his login credentials with anyone.

3 59. When Tyagi subscribed Systems America to OTC Disclosure and News Service,
4 the Company was designated “Caveat Emptor” and marked with a skull-and-crossbones.

5 60. Tyagi contacted OTC Disclosure and News Service to inquire about how to take
6 Systems America out of the “Caveat Emptor” category.

7 61. In response, OTC Markets provided Tyagi with the *Guidelines*.

8 **C. Tyagi Published An Initial Disclosure Containing Materially False and Misleading**
9 **Statements and Omissions of Material Facts**

10 62. On July 2, 2010, Tyagi published the Initial Disclosure on behalf of Systems
11 America on www.OTCMarkets.com.

12 63. He certified that, based on his knowledge, the “disclosure statement [did] not
13 contain any untrue statement of a material fact or omit to state a material fact necessary to make
14 the statements made, in light of the circumstances under which such statements were made, not
15 misleading with respect to the period covered by [the] disclosure statement.”

16 64. Despite Tyagi’s certification, the Initial Disclosure contained materially false and
17 misleading statements and omitted information which made other statements in the Initial
18 Disclosure materially misleading.

19 65. The Initial Disclosure falsely stated, in its “Legal/Disciplinary History” section,
20 that “Mr. Tyagi is not a party to any material litigation.”

21 66. In truth, Tyagi was, at that time, a defendant in two pending criminal proceedings:

- 22 • In California, Tyagi had been charged with felony grand theft for embezzling
23 \$4,800,000 from an elderly real estate investor; and
- 24 • In Nevada, Tyagi had been charged with using a bad check to procure
25 \$925,000 in cash and/or gambling chips from a Nevada casino without having
26 sufficient funds to cover the check, and having done so with intent, or the
27 presumption of intent, to defraud.

1 67. The Initial Disclosure falsely stated that Systems America “employs 8 full-time
2 employees, that includes [sic] software developers, sales and marketing, delivery management,
3 finance and administration and also engages independent contractors to perform information
4 technology services as of June 30, 2010.”

5 68. In truth, Systems America had no full-time employees as of June 30, 2010. At
6 that time, Tyagi was still employed by Aero Financial. Tyagi did not hire Systems America’s
7 first full-time employee until September 2010.

8 69. The Initial Disclosure falsely stated, in a section titled “Customers,” that the
9 Company provided “services directly to many Fortune 500 companies, as well as small to
10 medium sized enterprises, and, to a lesser extent, as a member of consulting teams assembled by
11 other information technology consultants, such as the consulting practices offered to Hitachi
12 Consulting.”

13 70. In truth, by the end of 2010, Systems America only had two principal customers:
14 Qualtran, LLC and India West Newspaper. Neither was a Fortune 500 company, and neither had
15 any relationship to Hitachi Consulting. Systems America’s revenue for fiscal year 2010 totaled
16 only \$26,701, and at least \$23,499 of the total revenue came from Qualtran, LLC and India West
17 Newspaper.

18 71. As Systems America’s sole officer and director and majority shareholder, Tyagi
19 knew, or was reckless or negligent in not knowing, that the misstatements detailed in paragraphs
20 64-70 were false.

21 72. The false statements detailed in paragraphs 64-69 also were material:

- 22 • The *Guidelines* required disclosure of the information contained in the false
23 statements because OTC Markets believed that the information was necessary
24 for an investor of ordinary intelligence and investment skills to understand
25 Systems America’s business and prospects;

- 1 • OTC Markets deemed the information that was the subject of the false
2 statements in paragraphs 64-70 important enough to require its certification by
3 Tyagi as Systems America’s CEO;
- 4 • After Tyagi published the false Initial Disclosure, OTC Markets moved
5 Systems America up to the Limited Information Tier and removed the
6 “Caveat Emptor” designation. Systems America was marked with a yellow
7 yield sign instead of a skull-and-crossbones; and
- 8 • The false statements detailed in paragraphs 64-69 concerned key components
9 of the business: the integrity of its sole officer and director and majority
10 shareholder; the company’s human resources; and its business operations.

11 73. In addition to containing the material misrepresentations detailed in paragraphs
12 64-69, the Initial Disclosure omitted material facts necessary to make the other statements in the
13 Initial Disclosure not misleading:

- 14 • The Initial Disclosure omitted to state that Tyagi was a defendant in two
15 criminal proceedings;
- 16 • The Initial Disclosure omitted to state that Systems America’s only putative
17 claim to Fortune 500 clients was based on work that Systems America DE
18 purportedly had performed from the late 1990s until the mid-2000s;
- 19 • The Initial Disclosure also omitted to state that Systems America DE had been
20 dormant since 2005 when Tyagi stopped paying attention to the business; and
- 21 • The Initial Disclosure also omitted to state that Tyagi had only revived
22 Systems America in June 2010 for the purpose of using it in a reverse merger
23 to gain access to the securities markets.

24 74. The omissions detailed in paragraph 73 were material because they concerned the
25 integrity of Systems America’s leadership and the Company’s core operations, including whether
26 and when the Company was operational and whether it had any existing client relationships.

27

1 75. On the first trading day after the Initial Disclosure was published, July 6, 2010,
2 Systems America's stock price opened and closed at \$1.01, and the trading volume was 400
3 shares. On the trading day before the Initial Disclosure was published, only 100 shares of
4 Systems America traded, and the stock opened and closed at \$0.51 per share.

5 76. Tyagi sold shares of Systems America only four days after publishing the false
6 and misleading Initial Disclosure: he sold five shares on July 6, 2010 at a price of \$1.01 per
7 share.

8 **D. Tyagi Published A 2010 Annual Report Containing Materially False And**
9 **Misleading Statements**

10 77. Tyagi published the 2010 Annual Report on OTC Disclosure and News Service
11 on February 24, 2011.

12 78. Tyagi certified that, to his knowledge, the 2010 Annual Report contained no
13 materially false or misleading statements.

14 79. Despite Tyagi's certification, the 2010 Annual Report contained materially false
15 and misleading statements.

16 80. The 2010 Annual Report contained a "Legal/Disciplinary History" section that
17 falsely stated that "[n]one of the [Company's officers or directors] has ever been named as a
18 defendant in a criminal proceeding or convicted of a criminal offense."

19 81. When Tyagi filed the 2010 Annual Report, he had criminal cases pending against
20 him in California and Nevada.

21 82. As Systems America's sole officer and director and majority shareholder, Tyagi
22 knew, or was reckless or negligent in not knowing, that the statements detailed in paragraphs 79-
23 80 were false.

24 83. The false statements detailed in paragraphs 79-80 also were material:

- 25 • The *Guidelines* required disclosure of the information contained in the false
26 statements because OTC Markets believed that the information was necessary
27

1 for an investor of ordinary intelligence and investment skills to understand
2 Systems America's business and prospects;

- 3 • OTC Markets deemed the information that was the subject of the false
4 statements in paragraphs 79-80 important enough to require its certification by
5 Tyagi as Systems America's CEO and interim CFO;
- 6 • After the 2010 Annual Report was published, OTC Markets moved Systems
7 America to the highest Current Information Tier and marked the security with
8 a green check mark; and
- 9 • The false statements detailed in paragraphs 79-80 concerned the integrity of
10 Systems America's sole officer and director and majority shareholder.

11 84. Tyagi sold shares of Systems America within three weeks of publishing the false
12 and misleading 2010 Annual Report: he sold 8,200 shares on March 11, 2011 at prices of \$0.84
13 and \$0.89 per share.

14 **E. Tyagi Published A 2011 Annual Report Containing Materially False And**
15 **Misleading Statements**

16 85. Tyagi published the 2011 Annual Report on OTC Disclosure and News Service
17 on July 24, 2012.

18 86. Tyagi certified that, to his knowledge, the 2011 Annual Report contained no
19 materially false or misleading statements.

20 87. Despite Tyagi's certification, the 2011 Annual Report contained materially false
21 and misleading statements.

22 88. The 2011 Annual Report contained a "Legal/Disciplinary History" section that
23 falsely stated that "[n]one of the [Company's officers or directors] has ever been named as a
24 defendant in a criminal proceeding or convicted of a criminal offense."

25 89. When Tyagi filed the 2011 Annual Report, he had criminal cases pending against
26 him in California and Nevada.

27

1 90. As Systems America's sole officer and director and majority shareholder, Tyagi
2 knew, or was reckless or negligent in not knowing, that the statements detailed in paragraphs 85-
3 88 were false.

4 91. The false statements detailed in paragraphs 85-88 also were material:

- 5 • The Guidelines required disclosure of the information contained in the false
6 statements because OTC Markets believed that the information was necessary
7 for an investor of ordinary intelligence and investment skills to understand
8 Systems America's business and prospects;
- 9 • OTC Markets deemed the information that was the subject of the false
10 statements in paragraphs 85-88 important enough to require its certification by
11 Tyagi as Systems America's CEO and CFO;
- 12 • After the 2011 Annual Report was published, OTC Markets returned Systems
13 America to the highest Current Information Tier and labeled it with a green
14 check mark. The Company had been downgraded to the No Information Tier
15 and marked with a red stop sign because the Company's disclosures for 2011
16 were untimely; and
- 17 • The false statements detailed in paragraphs 85-88 concerned the integrity of
18 Systems America's sole officer and director and majority shareholder.

19 92. The 2011 Annual Report was published at approximately 1:04 p.m. Eastern on
20 July 24, 2012. Only 9,960 shares of Systems America had traded the day before. But on July
21 24, the stock price closed higher (\$0.03) than it opened (\$0.02) and saw significantly increased
22 volume of 135,680 shares. The next trading day, July 25, 2012, the share price increased further,
23 opening at \$0.048 and closing at \$0.045 on a significantly increased volume of 204,260 shares.

1 **II. Tyagi Made Materially False and Misleading Statements About Systems America In**
2 **Press Releases Disseminated to PR Newswire and Omitted Material Facts Necessary**
3 **to Make the Press Releases Not Misleading**

4 93. Tyagi made materially false and misleading statements about Systems America in
5 at least 16 press releases that he or someone at Aero — who was working at his direction and on
6 his behalf — transmitted to PR Newswire for circulation to the investing public. From these
7 press releases, Tyagi also omitted material facts about Systems America necessary to make the
8 press releases not misleading.

9 94. Tyagi participated in drafting all 16 press releases. He also was quoted in them.
10 He was the source of the false statements detailed in paragraphs 97-100 below.

11 95. Between July 13, 2010 and January 21, 2011, Tyagi authorized Aero and a second
12 firm that was providing promotion services to the Company to transmit five press releases to PR
13 Newswire for publication.

14 96. Thereafter, Tyagi either transmitted or directed his executive assistant to transmit
15 the remaining 11 press releases to PR Newswire.

16 97. The press releases contained a paragraph captioned “About Systems America”
17 that described the Company’s business.

18 98. The paragraph as it appeared in press releases dated July 13, August 24, and
19 December 16, 2010, and February 23, 2011 contained the following two sentences:

20 Today, Systems America delivers superior business process outsourcing,
21 information technology outsourcing, and systems and integration services to
22 hundreds of clients worldwide. Building on a core competency of efficient
23 technology infrastructure outsourcing, the company, headquartered in . . .
24 California, United States now supports operations in nearly 20 countries.

25 99. The “About Systems America” paragraph in press releases dated November 12,
26 2010 and January 21, February 28, and March 8 and 11, 2011 contained the same two sentences,
27 except that the first sentence stated that the Company “deliver[ed] *superior cloud computing*,

1 information technology consulting services, and systems and integration services to hundreds of
2 clients worldwide.” (emphasis added).

3 100. The opening word “Today” was dropped from the six press releases dated March
4 29, April 15, June 20, August 30 and 31, and September 6, 2011. In these press releases, along
5 with a March 9, 2011 press release, Systems America’s business description had been changed
6 from “business process outsourcing” to “superior cloud computing.”
7 Five of the last six press releases and the press release dated March 9, 2011 deleted the reference
8 to the Company “now supporting operations in nearly 20 countries.”

9 101. The statement appearing in all 16 press releases that the Company “delivers . . .
10 services to hundreds of clients worldwide” and the statement appearing in 10 of the press
11 releases that the “company . . . now supports operations in nearly 20 countries,” was false.

12 102. Systems America DE essentially had been defunct since 2005, and its residual
13 revenues had steadily dwindled over a five-year period until Tyagi decided to revive the
14 Company in 2010.

15 103. The Company only had two main clients in 2010.

16 104. The Company did not support operations in any foreign countries in 2010 and
17 2011.

18 105. As Systems America’s sole officer and director and majority shareholder, Tyagi
19 knew, or was reckless or negligent in not knowing, that the statements detailed in paragraphs 98-
20 100 were false.

21 106. The false statements detailed in paragraphs 97-100 also were material because
22 they concerned Systems America’s core business, including the nature of its services, the identity
23 of its customers, and the scale of its operations.

24 107. In addition to containing the material misrepresentations detailed in paragraphs 97
25 -104, the press releases omitted material facts necessary to make the other statements in the press
26 releases not misleading:

27

- 1 • The press releases omitted to state that Systems America’s only putative claim
- 2 to “hundreds of clients worldwide” was based on work that Systems America
- 3 DE purportedly had performed from the late 1990s until the mid-2000s;
- 4 • The press releases also omitted to state that Systems America DE had been
- 5 dormant since 2005 when Tyagi stopped paying attention to the business; and
- 6 • The press releases also omitted to state that Tyagi had only revived Systems
- 7 America in June 2010 for the purpose of using it in a reverse merger to gain
- 8 access to the securities markets.

9 108. The omissions detailed in paragraph 107 were material because they concerned
10 Systems America’s core operations, including whether and when the Company was operational,
11 and whether it had any existing client relationships.

12 109. In general, the Company’s issuance of the press releases detailed above was
13 followed by a per-share price rise and/or increase in trading volume. On 10, or 67 percent, of the
14 15 dates on which the press releases containing the misstatements discussed above were
15 published before the close of trading, the per-share price closed higher than it opened and/or the
16 total daily trading volume increased relative to the prior trading day.

17 110. Tyagi sold Company stock out of personal brokerage accounts after publishing all
18 16 press releases. All of these sales of Company stock resulted in his receiving sales proceeds.
19 With regard to five press releases, the Defendant sold Company stock within four days of
20 publication, including two dates, November 12, 2010 and March 11, 2011, in which the
21 Defendant subsequently sold stock on the release’s publication date. For all but two of the press
22 releases, the Defendant sold Company stock within 30 days after the release’s publication.

23 **III. Tyagi Engaged In Manipulative Trading In His Brokerage Accounts**

24 111. On November 9, 2016, Tyagi pled guilty to securities fraud in violation of 15
25 U.S.C. §§ 78j and 78ff and 17 C.F.R. § 240.10b-5. *United States v. Adesh Kumar Tyagi*, 8:16-
26 cr-00115-JVS (C.D. Cal.).

27

1 112. In his guilty plea, Tyagi admitted that between at least October 2010 and March
2 2011, he engaged in a fraudulent scheme to manipulate the market for Systems America
3 securities and that his fraudulent scheme involved deceptive actions that were designed to
4 control the price of Systems America securities and their trading volume.

5 113. Tyagi stated under oath when he entered his guilty plea that “I traded shares of
6 SYAI, which is Systems America, Inc., at the time and closed at certain times of the day to show
7 the appearance that the stock was at a higher price.”

8 114. Tyagi acknowledged under oath that he engaged in these trading activities with
9 “the purpose to artificially inflate the market price of the stock.”

10 115. He also admitted under oath that he took advantage of the prices that he had
11 artificially inflated by selling Systems America securities into the market. In total, Tyagi made
12 \$274,610.43 in illicit proceeds from his sale of 274,578 shares of Systems America.

13 116. In his guilty plea, Tyagi admitted to engaging in two different types of
14 manipulative trading: “marking the close” and intra-daily trades to simulate volume and thereby
15 increase price.

16 **A. Tyagi “Marked The Close”**

17 117. Tyagi pled guilty to “marking the close” on at least 16 separate occasions. He
18 admitted to knowingly purchasing Systems America securities at the close of the trading day at
19 prices higher than those at which Systems America had been trading for the purpose of raising
20 the security’s closing price.

21 118. Trading records reveal that Tyagi “marked the close” on at least 16 different
22 dates: (1) August 24, 2010; (2) August 25, 2010; (3) September 1, 2010; (4) October 8, 2010; (5)
23 October 14, 2010; (6) December 2, 2010; (7) December 7, 2010; (8) January 6, 2011; (9) January
24 7, 2011; (10) January 10, 2011; (11) January 11, 2011; (12) January 12, 2011; (13) January 19,
25 2011; (14) January 20, 2011; (15) March 7, 2011; and (16) March 10, 2011.

26 119. On each of these 16 dates, Tyagi placed buy-limit orders for Systems America
27 securities between 3:36 p.m. and 3:59 p.m. Eastern.

1 120. OTC Link's open regular market hours are 9:30 a.m. until 4:00 p.m. Eastern.

2 121. Tyagi's Systems America trading on the 16 dates occurred during the last half
3 hour of open regular market trading for the security.

4 122. **August 24, 2010 Trading:** At 3:36 p.m. Eastern, Tyagi placed a buy-limit order
5 for 100 shares of SMAR at \$3.75 per share. At that time, SMAR was trading at only \$3.20 per
6 share. Tyagi's buy limit order was executed immediately at a price of \$3.50 per share, which
7 lifted the price of SMAR by \$0.30 and set SMAR's closing price for the trading day.

8 123. **August 25, 2010 Trading:** At 3:55 p.m. Eastern, Tyagi placed a buy limit order
9 for 100 shares of SMAR at \$3.50 per share. SMAR's price had dipped to \$3.20 compared to the
10 closing price of \$3.50 the day before. Tyagi's buy limit order was executed immediately at a
11 price of \$3.50 per share, and pushed the closing price for the day back up to \$3.50.

12 124. **September 1, 2010 Trading:** At 3:55 p.m. Eastern, Tyagi placed a buy limit
13 order for 100 shares of SMAR at \$2.50 per share. The stock's last reported trade was \$2.30 per
14 share compared to a daily high of \$3.00 at the opening. Tyagi's order executed at \$2.30.
15 Approximately one minute later, Tyagi placed a buy limit order for 750 shares of SMAR at \$2.30
16 per share. Tyagi's order executed immediately at that price, locking in \$2.30 as SMAR's closing
17 price for the day.

18 125. **October 8, 2010 Trading:** Approximately 24 minutes before the market closed,
19 Tyagi placed a buy limit order for 100 SYAI shares at \$3.35 per share. The last reported trade
20 was at \$2.90. Tyagi's order executed at a price of \$3.08. There was no further trading until 3:58
21 p.m. Eastern when Tyagi placed a buy limit order for 112 SYAI shares at \$3.35. Tyagi's order
22 was executed immediately and set SYAI's closing price at \$3.08 per share.

23 126. **October 14, 2010 Trading:** At 3:41 p.m. Eastern, Tyagi placed a buy limit order
24 for 100 shares of SYAI at \$3.28 per share. SYAI last traded at \$3.05 per share. Tyagi's order
25 was executed immediately at a price of \$3.24 per share, which lifted the price of SYAI by \$0.19
26 and set SYAI's closing price for the trading day.

27

1 127. **December 2, 2010 Trading:** At 3:51 p.m. Eastern, Tyagi placed a buy limit order
2 for 100 SYAI shares at a price of \$3.15 per share. At that time, SYAI was trading at \$2.99 per
3 share. Tyagi's order was executed immediately at \$3.05 per share. The closing price for the day
4 was \$3.05, which was \$0.06 higher than the execution price for the last order filled before
5 Tyagi's order.

6 128. **December 7, 2010 Trading:** At 3:59 p.m. Eastern, Tyagi placed a buy limit order
7 for 100 SYAI shares at \$2.90 per share. The last SYAI trade was at \$2.85. Tyagi's order was
8 executed immediately at \$2.85 per share and set SYAI's closing price.

9 129. **January 6, 2011 Trading:** At 3:54 p.m. Eastern, Tyagi placed a buy limit order
10 for 100 shares of SYAI at \$2.50 per share. The last SYAI trade was at \$2.21 per share. Tyagi's
11 order was immediately executed and raised SYAI's price to \$2.45 per share, which became the
12 stock's closing price for the day.

13 130. **January 7, 2011 Trading:** At 3:59 p.m. Eastern, Tyagi placed a buy limit order
14 for 100 shares of SYAI at \$2.42 per share. SYAI previously traded at \$2.25. Tyagi's order was
15 immediately executed, lifting SYAI's price by \$0.14 to \$2.39 per share. Tyagi's order was the
16 last of the day and his execution price of \$2.39 per share became SYAI's closing price.

17 131. **January 10, 2011 Trading:** At 3:56 p.m. Eastern, Tyagi placed a buy limit order
18 for 100 shares of SYAI at \$2.20 per share. SYAI had been trading at \$2.15. Tyagi's order
19 executed immediately and raised SYAI's price to \$2.20 per share, which became the security's
20 closing price for the day.

21 132. **January 11, 2011 Trading:** At 3:55 p.m. Eastern, Tyagi placed a buy limit order
22 for 100 shares of SYAI at \$2.45 per share. SYAI had been trading at \$2.30 per share. Tyagi's
23 order raised SYAI's price by \$0.15 per share.

24 133. **January 12, 2011 Trading:** At 3:49 p.m. Eastern, Tyagi placed a buy limit order
25 for 100 shares of SYAI at \$2.49 per share. SYAI had last traded at \$2.40 per share. Tyagi's
26 order was executed immediately, raising SYAI's price to \$2.49 per share and setting the closing
27 price.

1 134. **January 19, 2011 Trading:** At 3:58 p.m. Eastern, Tyagi placed a buy limit order
2 for 100 shares at \$2.05 per share. SYAI was trading at \$1.70. Tyagi's order was executed
3 immediately at \$2.00 per share. On Tyagi's order, SYAI's price closed at \$2.00 per share.

4 135. **January 20, 2011 Trading:** Tyagi placed a buy limit order for 100 shares at 3:56
5 p.m. Eastern. The price was \$1.82 per share — \$0.17 more than the price of the last reported
6 trade at \$1.65. Tyagi's order was executed immediately and pushed SYAI's price to \$1.80,
7 which became the closing price for the day.

8 136. **March 7, 2011 Trading:** At 3:55 p.m. Eastern, Tyagi placed a buy limit order
9 for 5,000 shares at \$0.70 per share. That day the stock was trading at \$0.45 per share. Tyagi's
10 order was executed immediately, raised the price of SYAI to \$0.55 per share, and set the closing
11 price.

12 137. **March 10, 2011 Trading:** At 3:56 p.m. Eastern, Tyagi placed a buy limit order
13 for 200 shares of SYAI at \$0.75 per share. SYAI had been trading at \$0.40 per share. Tyagi's
14 order executed immediately at \$0.75 per share, which raised the share price by \$0.35 and
15 established the closing price for the day.

16 **B. Tyagi Engaged In Manipulative Intra-Daily Trading**

17 138. Tyagi also pled guilty to manipulative intra-daily trading on at least two separate
18 occasions. He admitted to knowingly attempting “to influence the price or volume of SYAI by
19 buying and/or selling SYAI to create the appearance of substantial trading activity [in the]
20 security to artificially increase the price and volume of SYAI.”

21 139. In addition to the two instances of manipulative intra-daily trading to which Tyagi
22 pled guilty, trading records reveal at least eight other dates on which Tyagi engaged in
23 manipulative intra-daily trading to artificially increase the price and volume of SYAI.

24 140. In total, Tyagi engaged in manipulative intra-daily trading on ten separate dates:
25 (1) September 30, 2010; (2) October 6, 2010; (3) October 8, 2010; (4) October 12, 2010; (5)
26 January 14, 2011; (6) January 19, 2011; (7) March 4, 2011; (8) March 8, 2011; (9) March 9,
27 2011; and (10) March 10, 2011.

1 141. Tyagi often traded Systems America in small quantities, buying 100-200 shares of
2 the security.

3 142. For example, on January 19, Tyagi executed 12 buy-limit orders. Eight of them
4 were for 100 shares of Systems America.

5 143. Tyagi's trading often was economically irrational.

6 144. On numerous occasions, Tyagi placed buy-limit orders at prices higher than
7 Systems America's last reported trade.

8 145. For example,

- 9 • On March 4, 2011 at 11:50 a.m., Tyagi placed an order to purchase 200 shares
10 at a limit price of \$0.70 per share. The last reported trade price for SYAI was
11 only \$0.48 per share. Tyagi's order executed at \$0.58 and \$0.70 per share,
12 which increased the price of SYAI.
- 13 • Only four minutes later, Tyagi placed another buy-limit order for SYAI
14 securities. This time he ordered 3,000 shares at \$0.90 per share. Tyagi knew
15 that there were only 2,500 shares of SYAI available for sale and that the
16 asking price was \$0.70 per share. In a recording of the phone call that he
17 made to his brokerage firm to place the order, Tyagi stated that he wanted to
18 "to push it [the stock price] to ninety cents."

19 146. In other instances, Tyagi contemporaneously *sold low and bought high*. For
20 example, on January 19, 2011,

- 21 • At 3:43 p.m., Tyagi placed an *order to sell* 1,000 SYAI shares at a limit
22 price of \$1.80. His order was executed at that price.
- 23 • Approximately one minute later, Tyagi placed an *order to buy* 800 SYAI
24 shares at a limit price of \$2.05 per share. His order was executed at \$1.99
25 and \$2.00 per share.
- 26 • At 3:46 p.m., Tyagi placed an *order to sell* another 1,100 SYAI shares at a
27 limit price of \$1.80 per share. His order was executed at that price.

- 1 • Within one minute of his sale executing, Tyagi placed an *order to buy*
2 1,000 SYAI shares at a limit price of \$2.10. His buy limit order was
3 executed at prices of \$1.99 and \$2.00 per share.
- 4 • At 3:53 p.m., Tyagi placed an *order to sell* 1,000 SYAI shares at a limit
5 price of \$1.76 per share. His order was executed at that price.
- 6 • One minute later, Tyagi placed an *order to buy* 100 SYAI shares at a limit
7 price of \$2.05. His order was executed at a price of \$2.05 per share.

8 147. There was no legitimate purpose for Tyagi's trading.

9 148. Tyagi's trading in Systems America was designed to simulate an active market for
10 the security and thereby artificially increase Systems America's price and volume.

11 **IV. Tyagi Violated the Beneficial Ownership Reporting Requirements**

12 149. Systems America's securities were registered with the Commission pursuant to §
13 12(g) of the Exchange Act [15 U.S.C. § 78l(g)].

14 150. Officers, directors, and certain shareholders of § 12(g) reporting companies are
15 required to file beneficial ownership reports with the Commission. Pursuant to §16(a)(4) of the
16 Exchange Act [15 U.S.C. § 78p(a)(4)], such reports are made available to the investing public on
17 the Commission's website and must also be made available on any website that the issuer
18 maintains.

19 151. As System America's sole officer and director and majority shareholder, Tyagi
20 was required to file beneficial ownership reports with the Commission because Systems America
21 had securities registered with the Commission.

22 152. This obligation only terminated in 2015 after the Commission deregistered
23 Systems America's securities for failure to file periodic reports.

24 153. Notwithstanding his reporting obligations as System America's sole officer and
25 director and majority shareholder, Tyagi never filed any beneficial ownership reports with the
26 Commission.

27 **A. Schedule 13D**

1 154. A person is required to file a Schedule 13D with the Commission when the person
2 acquires beneficial ownership of more than 5% of a § 12(g) reporting company's equity
3 securities.

4 155. Schedule 13D is due within 10 days of the acquisition that results in the person
5 owning more than 5% of the public company.

6 156. The purpose of Schedule 13D is to disclose to the investing public the identity and
7 background of any large shareholders of a public company.

8 157. Among other things, Schedule 13D requires 5% beneficial owners to disclose
9 "[w]hether or not, during the last five years, such person has been convicted in a criminal
10 proceeding (excluding traffic violations or similar misdemeanors) and, if so, give the dates,
11 nature of conviction, name and location of court, any penalty imposed, or other disposition of the
12 case."

13 158. If any of the material facts underlying a Schedule 13D change, the 5% beneficial
14 owner must file an amendment with the Commission promptly.

15 159. On June 17, 2010, Tyagi acquired 21,000,000 shares of Systems America's
16 common stock as part of the reverse merger that created the Company.

17 160. As a result, Tyagi owned 99.49% of Systems America's outstanding common
18 stock.

19 161. Accordingly, Tyagi was required to file a Schedule 13D by June 24, 2010.

20 162. Tyagi never filed a Schedule 13D.

21 163. Tyagi's disclosure obligation under Schedule 13D was mandatory and ongoing
22 because during the entire period that Systems America was a public company Tyagi owned more
23 than 5% of its equity securities.

24 164. Accordingly, Tyagi was required to file a Schedule 13D to disclose that he had
25 been convicted of embezzlement in California.

26 165. At no time did Tyagi ever file a Schedule 13D to disclose his criminal conviction.
27

1 166. Tyagi's failure to file any beneficial ownership reports under Schedule 13D
2 withheld his identity and critical information about his background from the investing public,
3 including his criminal conviction.

4 **B. Form 3**

5 167. A person who becomes an officer or director of a public company or acquires
6 beneficial ownership of more than 10% of its equity securities must file a Form 3 Initial
7 Statement of Beneficial Ownership with the Commission.

8 168. Form 3 is due no later than 10 days after the person becomes an officer or director
9 or acquires more than a 10% ownership stake in the public company.

10 169. The purpose of Form 3 is to disclose to the investing public how much of the
11 public company is owned by insiders.

12 170. Tyagi became Systems America's sole officer and director on June 10, 2010.

13 171. Tyagi was required to file a Form 3 with the Commission by June 20, 2010.

14 172. On June 17, 2010, Tyagi acquired 21,000,000 of Systems America's 21,107,179
15 shares outstanding, so his ownership interest in the Company far exceeded the 10% threshold
16 required to trigger a Form 3 filing.

17 173. Tyagi was required to file a Form 3 with the Commission by June 27, 2010.

18 174. Tyagi never filed any Initial Statement of Beneficial Ownership.

19 **C. Forms 4 and Forms 5**

20 175. An officer or director who owns shares is required to file beneficial ownership
21 reports with the Commission whenever the officer or director's ownership interests in the public
22 company change. A beneficial owner of more than 10% of a public company also is required to
23 file beneficial ownership reports with the Commission. In other words, officers, directors, and
24 principal shareholders must file reports with the Commission whenever they buy or sell the
25 public company's securities.

1 176. A Form 4 Statement of Changes in Beneficial Ownership must be filed before the
2 end of the second business day after the day on which the transaction took place that resulted in
3 the change in the officer's, director's, or principal shareholder's beneficial ownership.

4 177. An officer, director, or principal shareholder also must file with the Commission
5 an Annual Statement of Changes in Beneficial Ownership of Securities. This Form 5 reports any
6 changes in the officer's, director's, or principal shareholder's beneficial ownership that were not
7 otherwise reported on a Form 4, whether as a result of an exemption or a late filing.

8 178. If required to be filed, a Form 5 Annual Statement of Change in Beneficial
9 Ownership of Securities must be filed on or before the 45th day after the end of the issuer's fiscal
10 year in which the corporate insider was subject to Exchange Act § 16(a) [15 U.S.C. § 78p(a)].

11 179. During the time that Tyagi was an officer, director, and principal shareholder of
12 Systems America, he engaged in 291 separate purchase or sale transactions in Company
13 securities that changed his beneficial ownership in Systems America.

14 180. Each of these 291 changes in Tyagi's beneficial ownership of Systems America
15 required Tyagi to file a Form 4 or a Form 5 with the Commission.

16 181. Tyagi did not file a single Form 4 or Form 5 with the Commission.

17 182. Tyagi failed to file 87 Forms 4.

18 183. Tyagi failed to file five Forms 5.

19 **FIRST CLAIM**

20 **Violation of § 17(a) of the Securities Act**

21 **[15 U.S.C. § 77q(a)]**

22 184. Paragraphs 1 through 183 are realleged and incorporated by reference herein.

23 185. By engaging in the conduct described above, Tyagi, directly or indirectly, in the
24 offer or sale of securities by the use of means or instruments of transportation or communication
25 in interstate commerce or by use of the mails:

26 a. knowingly or recklessly employed devices, schemes, or artifices to defraud;

27

1 b. knowingly, recklessly, or negligently obtained money or property by means of
2 untrue statements of material fact or omissions of material facts necessary in
3 order to make the statements made, in light of the circumstances under which
4 they were made, not misleading; or

5 c. knowingly, recklessly, or negligently engaged in transactions, practices, or
6 courses of business which operated or would operate as a fraud or deceit upon
7 the purchaser.

8 186. By engaging in the conduct described above, the Tyagi violated, and unless
9 restrained and enjoined will continue to violate §§17(a)(1), 17(a)(2), and 17(a)(3) of the
10 Securities Act [15 U.S.C. § 77q(a)(1), (2), and (3)].

11 **SECOND CLAIM**

12 **Violations of §10(b) of the Exchange Act and Rule 10b-5 Thereunder**

13 **[15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5]**

14 187. Paragraphs 1 through 183 are realleged and incorporated by reference herein.

15 188. By engaging in the conduct described above, Tyagi, directly or indirectly, in
16 connection with the purchase or sale of a security, by the use of any means or instrumentality of
17 interstate commerce, [or] of the mails, . . . knowingly or recklessly:

18 a. employed devices, schemes, or artifices to defraud;

19 b. made untrue statements of a material fact or omitted to state a material fact
20 necessary in order to make the statements made, in light of the circumstances
21 under which they were made, not misleading; or

22 c. engaged in acts, practices, or courses of business which operated or would
23 operate as a fraud or deceit upon other persons.

24 189. By engaging in the conduct described above, Tyagi violated and, unless restrained
25 and enjoined, will continue to violate §10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule
26 10b-5(a), (b) and (c) thereunder [17 CFR § 240.10b-5(a), (b), and (c)].

27

1 **THIRD CLAIM**

2 **Aiding and Abetting Violations of § 10(b) of the Exchange Act and**
3 **Exchange Act Rule 10b-5(b)**

4 190. Paragraphs 1 through 183 are realleged and incorporated by reference herein.

5 191. By engaging in the conduct described above, Systems America, directly or
6 indirectly, in connection with the purchase or sale of a security, by the use of any means or
7 instrumentality of interstate commerce, [or] of the mails, . . . , knowingly or recklessly:

8 . . .

9 b. made untrue statements of a material fact or omitted to state a material fact
10 necessary in order to make the statements made, in the light of the
11 circumstances under which they were made, not misleading

12 192. Systems America violated § 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and
13 Rule 10b-5(b) thereunder [17 CFR § 240.10b-5(b)].

14 193. By his actions described above, Tyagi knowingly or recklessly provided
15 substantial assistance to: Systems America's violations of § 10(b) of the Exchange Act [15
16 U.S.C. § 78j(b)] and Rule 10b-5(b) thereunder [17 CFR § 240.10b-5 (b)].

17 194. Accordingly, Tyagi aided and abetted the primary violations described above and,
18 pursuant to § 20(e) of the Exchange Act [15 U.S.C. § 78t(e)], is liable for such violations.

19 195. Unless restrained and enjoined, Tyagi will continue to aid and abet violations of §
20 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5(b) thereunder [17 CFR §
21 240.10b-5(b)].

22 **FOURTH CLAIM**

23 **Controlling Person Liability for Violations of § 10(b) of the Exchange Act**
24 **and Exchange Act Rule 10b-5(b)**

25 196. Paragraphs 1 through 183 are realleged and incorporated by reference herein.

26 197. By engaging in the conduct described above, Systems America violated § 10(b) of
27 the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5(b) thereunder [17 CFR § 240.10b-5(b)].

1 198. Tyagi: (a) directly or indirectly controlled Systems America; and (b) possessed
2 the power and ability to control Systems America as to its violation of § 10(b) of the Exchange
3 Act [15 U.S.C. § 78j(b)] and Rule 10b-5(b) thereunder [17 CFR § 240.10b-5(b)].

4 199. Accordingly, Tyagi is liable as a controlling person pursuant to § 20(a) of the
5 Exchange Act [15 U.S.C. § 78t(a)] as to Systems America's violation of § 10(b) of the Exchange
6 Act [15 U.S.C. § 78j(b)] and Rule 10b-5(b) thereunder [17 CFR § 240.10b-5(b)].

7 200. Unless restrained and enjoined, Tyagi will continue to engage in conduct that
8 would render him liable, under § 20(a) of the Exchange Act [15 U.S.C. § 78t(a)], for violations
9 of § 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5(b) thereunder [17 CFR §
10 240.10b-5(b)].

11 **FIFTH CLAIM**

12 **Violation of Exchange Act § 16(a) and Rule 16a-3 Thereunder**

13 **[15 U.S.C. § 78p(a) and 17 C.F.R. § 240.16a-3]**

14 201. Paragraphs 1 through 183 are realleged and incorporated by reference herein.

15 202. Beginning on or about June 17, 2010 and continuing throughout the relevant
16 period, Tyagi was an officer and director of the Company within the meaning of Rule 16a-1(f) of
17 the Exchange Act [17 C.F.R. § 240.16a-1(f)]).

18 203. During the same period, he was a majority owner of the Company's issued and
19 outstanding common stock.

20 204. At no time did Tyagi file a Form 3 reflecting his ownership interest in the
21 Company.

22 205. At no time did Tyagi file a Form 4 or Form 5 reflecting changes in his ownership
23 of Company securities.

24 206. By engaging in the conduct described above, Tyagi violated, and unless restrained
25 and enjoined will continue to violate, §16(a) of the Exchange Act [15 U.S.C. § 78p(a)] and
26 Exchange Act Rule 16a-3 [17 C.F.R. 240.16a-3].

27

1 **SIXTH CLAIM**

2 **Violation of Exchange Act §13(d) and Rule 13d-1 Thereunder**

3 **[15 U.S.C. § 78m(d) and 17 C.F.R. § 240.13d-1]**

4 207. Paragraphs 1 through 183 are realleged and incorporated by reference herein.

5 208. During the relevant period, Tyagi was an officer and director of Systems America
6 who beneficially owned more than five percent of the Company's outstanding shares of common
7 stock.

8 209. Section 13(d) of the Exchange Act [15 U.S.C. § 78m(d)] and Rule 13d-1 [17
9 C.F.R. § 240.13d-1] provide that any person who acquires, directly or indirectly, the beneficial
10 ownership of more than five percent of any class of equity securities registered under §12 of the
11 Exchange Act [15 U.S.C. § 78l] must file a statement on Schedule 13D with the Commission.
12 The statement must include, *inter alia*, specified information about the acquisition, and the type
13 and number of shares held. The Schedule 13D must be filed within 10 days after the acquisition.

14 210. Tyagi acquired more than five percent of the beneficial ownership of the
15 Company's common stock on or about June 17, 2010, and therefore had a duty to file a Schedule
16 13D with the Commission.

17 211. Tyagi failed to file a Form 13D within the 10-day period or at any other time.

18 212. By engaging in the conduct described above, Tyagi violated, and unless restrained
19 and enjoined will again violate, § 13(d) of the Exchange Act [15 U.S.C. § 78m(d)] and Rule 13d-
20 1 [17 C.F.R. § 240.13d-1] thereunder.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, the Commission respectfully requests that the Court:

23 **I.**

24 Pursuant to § 20(b) of the Securities Act [15 U.S.C. § 77t(b)] and § 21(d)(1) of the
25 Exchange Act [15 U.S.C. § 78u(d)(1)], permanently enjoin Tyagi from violating § 17(a) of the
26 Securities Act [15 U.S.C. § 77q(a)] and § 10(b), 13(d), and 16(a) of the Exchange Act [15 U.S.C.

27

1 §§ 78j(b), 78p(a), and 78m(d)] and Exchange Act Rules 10b 5, 13d-1, 13d-2, and 16a-3
2 thereunder [17 C.F.R. §§ 240.10b-5, 240.13d-1, 240.13d-2, and 240.16a-3].

3 **II.**

4 Pursuant to § 20(b) of the Securities Act [15 U.S.C. § 77t(b)] and §21(d)(1) of the
5 Exchange Act [15 U.S.C. § 78u(d)(1)], permanently enjoin Tyagi from, directly or indirectly,
6 including, but not limited to, through an entity owned or controlled by the Defendant,
7 participating in the issuance, purchase, offer, or sale of any security of an entity of which he is an
8 officer, director, owner, direct or indirect, of 10% or more of the issued and outstanding
9 securities, or control person.

10 **III.**

11 Order Tyagi to disgorge \$274,610.43 in ill-gotten gains obtained as a result of the
12 violations alleged in this Complaint, with prejudgment interest.

13 **IV.**

14 Order Tyagi to pay civil penalties under § 20(d) of the Securities Act [15 U.S.C. § 77t(d)]
15 and § 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

16 **V.**

17 Pursuant to § 20(e) of the Securities Act [15 U.S.C. § 77t(e)] and §21(d)(2) of the
18 Exchange Act [15 U.S.C. § 78u(d)(2)], bar Tyagi from acting as an officer or director of any
19 issuer that has a class of securities registered pursuant to Exchange Act §12 [15 U.S.C. § 78l] or
20 that is required to file reports pursuant to Exchange Act §15(d) [15 U.S.C. § 78o(d)].

21 **VI.**

22 Pursuant to §20(g) of the Securities Act [15 U.S.C. § 77t(g)] and §21(d)(6) of the
23 Exchange Act [15 U.S.C. § 78u(d)(6)], permanently bar Tyagi from participating in an offering
24 of penny stock, including engaging in activities with a broker, dealer, or issuer for purposes of
25 issuing, trading, or inducing or attempting to induce the purchase or sale of any penny stock.

26 **VII.**

27 Grant such further relief as the Court may deem just and appropriate.

DEMAND FOR JURY TRIAL

The Commission hereby demands a trial by jury pursuant to Rule 38(b) of the Federal Rules of Civil Procedure.

Dated: May 30, 2017

Respectfully submitted,

/s/Britt Whitesell Biles
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