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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

v.

**AQUA VIE BEVERAGE CORP.,
THOMAS J. GILLESPIE, and
JOSEPH J. WOZNIAK**

Defendants

04 Civ. ()

COMPLAINT

COMPLAINT

Plaintiff Securities and Exchange Commission (the “Commission”), as and for its complaint against Aqua Vie Beverage Corp. (“Aqua Vie”), Thomas Gillespie (“Gillespie”) and Joseph Wozniak (“Wozniak”) (collectively “the Defendants”), alleges as follows:

SUMMARY

1. Aqua Vie and its CEO, Gillespie, fraudulently promoted Aqua Vie’s common stock by means of millions of one-page tout sheets faxed to homes and businesses. Aqua Vie, Gillespie and Wozniak also offered millions of shares of Aqua Vie’s common stock publicly, without any registration statement in effect as to the offering. The unregistered public offering

included 2,750,000 shares offered and sold between November 2002 and May 2003 (the “relevant period”), by a company that distributed Aqua Vie’s faxes, Fax.com, Inc. (“Fax.com”).

2. The tout sheets presented Aqua Vie, a boutique bottled-water company, in an unrealistically favorable light, projecting high revenues and stock prices, and excluding a dismal history of sales and the expected termination of Aqua Vie’s bottling agreement. Neither Aqua Vie’s Commission filings nor the tout sheets disclosed the company’s substantial and prolonged unregistered offering of securities, or its arrangement with Fax.com. Further, Aqua Vie has not publicly filed any current financial information with the Commission. The company is delinquent with respect to its annual report on Form 10-KSB (“Form 10-K”) for its fiscal year ended July 31, 2003 and its quarterly report on Form 10-QSB (“Form 10-Q”) for its quarter ended October 31, 2003.

3. In an attempted end-run around the registration requirements contained in Section 5 of the Securities Act of 1933 (“Securities Act”), Aqua Vie, at Gillespie’s direction, issued millions of shares of common stock to Fax.com, Wozniak and others, which were immediately sold into the retail market. That is, the defendants dumped millions of shares into a market reflecting demand created by the fax promotion, without disclosing the increase in the public float of Aqua Vie securities. The unregistered offer and sale effectively kept afloat a struggling company that was far more successful at marketing its stock than its only product, bottled water.

JURISDICTION

4. This Court has jurisdiction of this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)], and Section 27 of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §78aa].

5. The Commission brings this action pursuant to authority conferred upon it by Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)], and Section 21(d)(1) of the Exchange Act [15 U.S.C. § 78u(d)(1)].

6. Defendants, directly or indirectly, have made use of the means and instrumentalities of interstate commerce, or of the mails, or of the facilities of a national securities exchange in connection with the acts, practices, and courses of business alleged herein.

7. Certain of the acts, practices and courses of business alleged below have occurred in the Southern District of New York including, but not limited to, the offer and sale of securities by Aqua Vie to individuals residing in the Southern District of New York.

DEFENDANTS

8. **Aqua Vie**, a Delaware corporation with its principal place of business in Ketchum, Idaho, is a bottled-water company. In August 1999, Aqua Vie merged into a publicly traded shell, Barhill Acquisition Corporation, and adopted Barhill's SEC reporting status. Aqua Vie was quoted on the Over-the-Counter Bulletin Board during the relevant period. On May 2, 2003, the Commission suspended trading in Aqua Vie stock, because of questions raised regarding the accuracy and completeness of information about Aqua Vie in fax broadcasts and on the Internet concerning, among other things, Aqua Vie's revenue projections and transactions in the securities of Aqua Vie by certain individuals or entities providing services to Aqua Vie. Following the ten-day suspension, Aqua Vie has resumed trading on the pink sheets electronic quotation service. Aqua Vie's common stock is registered with the Commission under Section 12(g) of the Exchange Act.

9. **Gillespie**, age 57, founded Aqua Vie and, at all relevant times, served as Aqua Vie's CEO, president, and sole director. Gillespie lives in Ketchum, Idaho.

10. **Joseph J. Wozniak**, a former officer of Aqua Vie, provided consulting services to the company throughout the relevant period. Wozniak lives in Seattle, Washington.

FACTS

Aqua Vie, an Unsuccessful Beverage Company

11. Aqua Vie, a private company that began business in Hawaii and moved to Idaho in or around 1990, first became a publicly reporting company in 1991 by means of a reverse merger with a publicly traded shell company. In 1995, Aqua Vie was forced into bankruptcy by one of its debenture-holders, emerging from Chapter 11 in December 1996.

12. Aqua Vie employed at most five full-time individuals, including Gillespie, during the relevant period. As president and CEO, Gillespie was assisted by three or four individuals, none of whom was an officer of the company. During the relevant period, Aqua Vie made numerous disbursements to Gillespie totaling over \$175,000.

13. Aqua Vie has never owned or operated any facility for producing its only product, bottled water. Instead, Aqua Vie used a food packager based in Fresno, California, named Lyons Magnus Company (“Lyons Magnus”), to bottle and label water according to Aqua Vie’s specifications. While Aqua Vie discusses various types of beverages in its sales literature and stock promotions, Lyons Magnus has produced only one type of water for Aqua Vie, a product line of bottled, sweetened spring water in various flavors, named “Hydrators,” which purportedly contain no preservatives.

14. Aqua Vie has not succeeded in creating large retail demand for Hydrators, despite its large marketing expenditures. Aqua Vie has no affiliation with similarly named water products, such as “Aquafina,” produced by Pepsi.

15. Since the fiscal year ended July 31, 1999 (“FY 1999”), Aqua Vie has reported losses, based on expenses that greatly exceed its revenues. For example, in its most recently filed annual report on Form 10-K for its fiscal year ended July 31, 2002, Aqua Vie reported a net loss of \$1,829,675, with revenues of less than \$200,000. Aqua vie has not reported revenues above \$1 million per year for the past five years. Aqua Vie’s independent auditor has issued a “going concern” opinion about Aqua Vie in its reports on the company’s financial statements for each year since FY 1999.

16. Aqua Vie did not purchase cases of bottled waters from its supplier, Lyons Magnus, in the contractually required amounts. Under its agreement, Aqua Vie was required to order at least 100,000 cases each year, or 2.4 million bottles. In each of the years from 1999 to 2002, Aqua Vie never ordered more than 61,000 cases. In 2002, Aqua Vie ordered and took delivery of only 7,339 cases.

17. In February 2003, Lyons Magnus notified Aqua Vie that it would not renew the supply agreement, because Aqua Vie was not ordering or taking delivery in accordance with the supply agreement. The agreement expired on June 26, 2003. Lyons Magnus has not supplied any product to Aqua Vie since March 2003. Aqua Vie has not entered into agreements with any other supplier to replace Lyons Magnus.

Aqua Vie’s Stock Promotion

18. Despite Aqua Vie’s lack of success in selling bottled water, Gillespie promoted its stock vigorously to potential investors, by means of one-page faxes designed to appear as investment newsletters (“tout sheets”).

19. In October 2002, Gillespie retained the services of a fax-distribution company based in Aliso Viejo, California, Fax.com, to distribute the tout sheets by means of facsimile

technology. Fax.com, which offers large-scale promotional fax distribution services for advertising a wide variety of items, including stock in public companies, maintains a database of millions of telephone numbers for fax machines in homes and businesses throughout the United States.

20. The agreement between Aqua Vie and Fax.com provides that Aqua Vie is to pay 5 cents to Fax.com for each completed transmission of an Aqua Vie tout sheet. Under the agreement, Aqua Vie could pay Fax.com either in cash, or its equivalent in the unrestricted common stock of Aqua Vie.

21. Gillespie provided Fax.com with the text for the tout sheets, which were disseminated in at least four different versions by Fax.com, from October 2002, through April 2003. Gillespie participated in the drafting of the text for the tout sheets and was aware of the contents of the tout sheets.

22. Fax.com telephonically transmitted Aqua Vie tout sheets millions of times from October 2002 through April 2003. Specifically, Aqua Vie tout sheets were disseminated the number of times indicated parenthetically after each month: October 2002 (219,260); November 2002 (1,966,001); December 2002 (1,942,218); January 2003 (2,653,222); February 2003 (4,556,780); March 2003 (6,022,141). Fax.com also distributed Aqua Vie tout sheets in April 2003.

23. Fax.com was paid in kind the equivalent of 5 cents for each of these successful transmissions, for a total of at least 18,860,439 transmissions. The form of payment was Aqua Vie common stock, referred to in paragraphs 37 through 39, *infra*.

24. The tout sheets misrepresent Aqua Vie's financial condition, portraying Aqua Vie as a successful, promising company. The tout sheets also project large increases in the price of

Aqua Vie common stock. The tout sheets contain no disclosure of Aqua Vie's history of losses or cancellation of the Lyons Magnus supply contract.

25. A tout sheet disseminated in December 2002 by Fax.com on behalf of Aqua Vie appears to be a newsletter named "OTC Today/Over-the-Counter Today" ("December Tout Sheet"). Under the banner appears the caption, "A Weekly OTC Today Investor Alert Publication." The headline over newspaper-style columns is: "Aqua Vie Hydrator™ Water Emerges Nationwide in \$100 Billion Market."

26. The December Tout Sheet projects a 12-month target price for Aqua Vie common stock of \$2.65 per share. There is no reasonable basis in fact for this target share price. In December, Aqua Vie was trading at an average of less than \$0.50 per share.

27. The December Tout Sheet contains the following statement: "Looking forward, **AQVB** has secured valuable shelf space, which is expected to generate **sales revenue in excess of \$7 million** for the coming year. **AQVB** is **perfectly positioned to dominate** the 'all-natural' segment of the **\$100 billion beverage industry.**" (Emphasis in original.)

28. These projections for Aqua Vie's stock price and revenues are false and misleading. In December 2002, Aqua Vie did not have the wherewithal to generate \$7 million in revenues in the following year, and was in no position to succeed in the highly competitive and well-capitalized beverage industry.

29. A tout sheet disseminated in March 2003 by Fax.com on behalf of Aqua Vie appears under the banner "OTC Stock Today/OTC Stock Market Report" ("March Tout Sheet"). Under the banner appears the caption, "BREAKING ALERT: Bottled Water Demand Begins to Grow." The newspaper-style headline in the March Tout Sheet is: "First Kids Flavored Water to Enter \$100 Billion Beverage Market."

30. Aqua Vie has never distributed any product line targeted specifically to children.

31. Like the December Tout Sheet, the March Tout Sheet fraudulently projects high stock prices and revenues for Aqua Vie.

32. The March Tout Sheet contains a “12 Month Target Price” of \$5.25 for Aqua Vie common stock, at a time when Aqua Vie stock traded at around 58 cents per share.

33. The March Tout Sheet contains a specific projection of \$6.5 million for Aqua Vie’s revenues by December 31, 2003. Despite the fact that the company had revenues of only \$30,421 for the entire quarter from January 31, 2003 through April 30, 2003, and only \$15,976 for the prior quarter, the March Tout Sheet repeats the same baseless revenue projection of “\$7 million for the coming year” from the December Tout Sheet.

34. There is no reasonable basis in fact for either of these revenue projections. By March 2003, Gillespie had been notified by Lyons Magnus that it would cease supplying bottled water to Aqua Vie, a development that made it impossible for Aqua Vie to generate revenues of any magnitude. The March Tout Sheet does not disclose the termination of the agreement, nor that Aqua Vie and Gillespie had not taken any steps to find a new bottler to take Lyons Magnus’s place.

35. Both the December and March Tout Sheets contain similar small-print text that purports to contain information about the tout sheets. For example, they both refer to a “Jordan Richard Assoc.,” “a paid publicist for Aqua Vie,” as an entity that assisted in the preparation of the “report.” There is no disclosure in either of the tout sheets that the company and its sole officer, Gillespie, were responsible for the content of the tout sheets and that Gillespie arranged with Fax.com to have the tout sheets disseminated in exchange for millions of shares of purportedly free-trading stock.

36. The stock promotion described in paragraphs 18 through 35 *supra* significantly affected the demand for Aqua Vie stock. In the month prior to the fax campaign, Aqua Vie stock never traded above \$0.19 per share. Just one month later, in late October 2002, Aqua Vie's stock reached \$0.385 and traded at a substantially higher volume. About six weeks later, in early December, Aqua Vie stock reached \$0.71 with a volume in excess of 1.2 million shares. The market for Aqua Vie spiked again in March, a month in which fax transmissions increased substantially, the share price climbing to \$0.89, and approximately 2.3 million shares trading on March 26, 2003.

Aqua Vie's Unregistered Offering of Common Stock

37. Aqua Vie paid for the stock promotion with millions of shares of its common stock, which were issued by Aqua Vie's transfer agent directly to Fax.com. Gillespie represented to Fax.com that the stock was free-trading.

38. On 78 separate occasions during the relevant period, Gillespie directed Aqua Vie's transfer agent, Atlas Stock Transfer Corporation ("Atlas Transfer"), to distribute a total of 2.75 million shares of common stock to Fax.com. Gillespie instructed Atlas Transfer to issue the shares to Fax.com on certificates bearing no restrictive legends.

39. The shares issued to Fax.com were cancelled out and reissued into street name. Fax.com then sold the stock into the retail market through brokerage accounts for proceeds of over \$1.2 million. The payment to Fax.com of millions of newly issued shares of Aqua Vie common stock that were purportedly free-trading is not disclosed in any of the tout sheets.

40. During the relevant period, Aqua Vie also paid for other expenses with millions of shares of common stock that was newly issued and sold into the retail market without any

registration statement in effect. In each written instruction to the transfer agent concerning these shares, Gillespie directed that the shares be issued without restrictive legends.

41. The largest seller of Aqua Vie common stock during the relevant period was Wozniak, a former officer of Aqua Vie who holds substantial amounts of convertible preferred stock issued to him in series lettered A, F, I, J and K beginning in October 1998. By terms that vary slightly from series to series, the preferred stock held by Wozniak was convertible into common stock of the company.

42. Wozniak, a purported “consultant” to Aqua Vie, maintains records of Aqua Vie’s convertible preferred stock, which is not handled by Aqua Vie’s transfer agent.

43. During the relevant period, Wozniak sold over 3.2 million shares of Aqua Vie common stock into the retail market. From his proceeds of \$1.59 million, Wozniak paid \$1.2 million to Aqua Vie, retaining the balance to cover his tax liability. Wozniak engaged in these transactions for the benefit of Aqua Vie, which was raising capital through Wozniak’s stock sales.

44. During the relevant period, Gillespie’s sister sold 491,350 shares of Aqua Vie common stock into the retail market for proceeds of \$336,698.89 and used the proceeds to pay Aqua Vie’s operating expenses.

45. Aqua Vie did not file a registration statement for the offerings of the shares sold by Fax.com, Wozniak, and Gillespie’s sister, and the offerings did not qualify for an exemption or safe harbor from registration.

Omissions from Aqua Vie’s SEC Filings

46. Aqua Vie’s quarterly reports on Form 10-Q for its quarters ended January 31, 2003 and April 30, 2003 (“April 10-Q”), do not disclose Aqua Vie’s arrangement with Fax.com,

the unregistered sale of newly issued common stock into the retail market by Fax.com and Wozniak, which significantly increased the float of Aqua Vie stock, and the capital-raising transactions by Wozniak and Gillespie. The April 10-Q does not disclose the termination of the Lyons Magnus supply agreement.

47. Gillespie signed Aqua Vie's quarterly reports on Form 10-Q for the quarters ended January 31, 2003 and April 30, 2003. Further, he signed certifications for both Form 10-Q's, certifying that he had reviewed them and that they did not contain any untrue statement of material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by those quarterly reports.

48. Aqua Vie's annual report for its fiscal year ended July 31, 2003, was due to be filed with the Commission on October 30, 2003. Aqua Vie's quarterly report for its quarter ended October 31, 2003 was due to be filed with the Commission on December 16, 2003. As of February 18, 2004 neither report had been filed.

49. As Aqua Vie's sole officer and director, Gillespie is responsible for the content of Aqua Vie's filings and Aqua Vie's failure to file its annual report for its fiscal year ended July 31, 2003 and its quarterly report for the quarter ended October 31, 2003.

CLAIM ONE

Sale of Unregistered Securities

Violations of Sections 5(a) and 5(c) of the Securities Act (Against All Defendants)

50. Plaintiff repeats and realleges paragraphs 1 through 17 and 37 through 45 *supra*.

51. Aqua Vie, Gillespie, and Wozniak, directly or indirectly, have made use of the means or instruments of transportation or communication in interstate commerce or of the mails to sell and offer to sell securities through the use or medium of a prospectus or otherwise when no registration statement has been filed or was in effect as to such securities and when no exemption from registration was available.

52. By reason of the offers and sales of Aqua Vie stock, Aqua Vie, Gillespie and Wozniak violated Sections 5(a) and (c) of the Securities Act [15 U.S.C. §§ 77e(a) and (c)] and, unless restrained and enjoined, will continue to do so.

CLAIM TWO

Fraudulent Offer and Sale

Violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder (Against Aqua Vie and Gillespie)

53. Plaintiff repeats and realleges paragraphs 1 through 49 *supra*.

54. Aqua Vie and Gillespie, directly or indirectly, singly or in concert, by the use of the means or instruments of transportation or communication in, or the instrumentalities of interstate commerce or of the mails, in the offer or sale and in connection with the purchase or sale of the common stock of Aqua Vie have: (a) employed, are employing and are about to

employ devices, schemes or artifices to defraud; (b) obtained, are obtaining and are about to obtain money by means of, and otherwise made, untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (c) engaged, are engaged and are about to engage in acts, practices or courses of business which operated or would operate as a fraud or deceit upon purchasers of securities in violation of Section 17(a) of the Securities Act [15 U.S.C. §77q(a)], and Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 [17 C.F.R. §240.10b-5] thereunder.

55. As part of and in furtherance of this unlawful conduct, Aqua Vie and Gillespie knowingly or recklessly made misrepresentations and omissions as more fully set forth above in paragraphs 24 through 36 and 46 through 47 and 49.

56. The misrepresentations and omissions set forth above were material.

57. By reason of the foregoing, Aqua Vie and Gillespie have violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and, unless restrained and enjoined, will continue to do so.

CLAIM THREE

False and Misleading Filings and Delinquent Filings

Violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 (Against Aqua Vie and Against Gillespie as a Controlling Person of Aqua Vie)

58. The Commission repeats and realleges paragraphs 1 through 17 and 48 through 49.

59. Aqua Vie failed to file with the Commission, in accordance with the rules and regulations prescribed by the Commission, such quarterly reports and annual reports as the Commission has prescribed and Aqua Vie has failed to include, in addition to the information expressly required to be stated in such reports, such further material information as was necessary to make the statements made therein, in light of the circumstances in which they are made, not misleading, in violation of Section 13(a) of the Exchange Act, 15 U.S.C. § 78m(a), and Rules 12b-20, 13a-1 and 13a-13, 17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-13. As described above, Aqua Vie failed to file its annual report on Form 10-K for its fiscal year ended July 31, 2003 and its quarterly report on Form 10-Q for its quarter ended October 31, 2003. Aqua Vie's quarterly reports on Form 10-Q for its quarters ended January 31, 2003 and April 30, 2003, were false and misleading because they failed to disclose Wozniak and Fax.com's unregistered sales of Aqua Vie common stock into the retail market Aqua Vie's receipt of proceeds from those unregistered sales.

60. At all times relevant hereto, Gillespie was a control person of Aqua Vie for the purposes of Section 20(a) of the Exchange Act, 15 U.S.C. § 78t(a).

61. Gillespie knowingly or recklessly, directly or indirectly, singly or in concert, engaged in fraudulent practices resulting in statements in Aqua Vie's quarterly reports on Form 10-Q for its quarters ended January 31, 2003 and April 30, 2003 that were false and misleading, because they failed to disclose Wozniak and Fax.com's unregistered sales of Aqua Vie common stock into the retail market and Aqua Vie's receipt of proceeds from those unregistered sales.

62. By reason of the foregoing, Aqua Vie is liable for violations of Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-13; and unless it is enjoined, Aqua Vie will again engage in conduct that would render it liable for violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13.

63. By reason of the foregoing, Gillespie is liable as a controlling person, pursuant to Section 20(a) of the Exchange Act, for Aqua Vie's violations of Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-13; and unless he is enjoined, will again engage in conduct that would render him liable, pursuant to Section 20(a) of the Exchange Act, for violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13.

CLAIM FOUR

False Certification

Violations of Section 13(a) of the Exchange Act and Rule 13a-14 (Against Gillespie and Aqua Vie)

64. The Commission repeats and realleges paragraphs 1 through 17, 46 through 47 and 49 *supra*.

65. Gillespie and Aqua Vie failed to file with the Commission, in accordance with the rules and regulations prescribed by the Commission, such certifications to Aqua Vie's quarterly

reports as the Commission has prescribed and Gillespie and Aqua Vie have failed to include, in addition to the information expressly required to be stated in such certifications, such further material information as was necessary to make the statements made therein, in light of the circumstances in which they are made, not misleading, in violation of Section 13(a) of the Exchange Act, 15 U.S.C. § 78m(a), and Rule 13a-14.

66. Gillespie falsely certified that Aqua Vie's quarterly reports for the quarters ended January 31, 2003 and April 30, 2003 did not contain any untrue statement of material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading.

67. At all times relevant hereto, Gillespie was a principal executive officer and/or a principal financial officer of Aqua Vie for the purposes of Section 13(a) of the Exchange Act, 15 U.S.C. § 78t(a) and Rule 13a-14.

68. By reason of the foregoing, Gillespie and Aqua Vie are liable for violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rule 13a-14 [17 C.F.R. 240.13a-14] thereunder; and unless it is enjoined, Gillespie and Aqua Vie will again engage in conduct that would render him liable for violations of Section 13(a) of the Exchange Act and Rule 13a-14.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court issue:

I.

An Order permanently enjoining Aqua Vie, Gillespie, and Wozniak, and each of them, and their officers, agents, servants, employees, attorneys, and those persons in active concert or

participation with them who receive actual notice by personal service or otherwise, from violating, directly or indirectly, Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)].

II.

An Order permanently enjoining Aqua Vie and Gillespie, and each of them, and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice by personal service or otherwise, from violating, directly or indirectly, Section 17(a) of the Securities Act [15 U.S.C. § 77q] and Sections 10(b) and 13(a) of the Exchange Act [15 U.S.C. §§ 78j(b) and 78m(a)] and Rules 10b-5, 12b-20, 13a-1, and 13a-13 [17 C.F.R. 240.10b-5, 12b-20, 13a-1, and 13a.13] thereunder.

III.

An Order permanently enjoining Gillespie and Aqua Vie, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice by personal service or otherwise, from violating, directly or indirectly, Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rule 13a-14 [17 C.F.R. 240.13a-14] thereunder.

IV.

A Final Judgment imposing against Gillespie and Wozniak civil money 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)].

V.

A Final Judgment requiring Gillespie and Wozniak to disgorge the amount of their ill-gotten gains, plus prejudgment interest, or such other and further amount as the Court may find appropriate.

VI.

An order barring Gillespie from acting as an officer or director of any issuer required to file reports pursuant to Sections 12(b), 12(g), or 15(d) of the Exchange Act, pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. §78u(d)(2)] as a result of his violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

VII.

An order barring Gillespie from participating in the offering of penny stock pursuant to Sections 20(g)(1) of the Securities Act [15 U.S.C. § 77t(g)(1)] and 21(d)(6)(a) of the Exchange Act [15 U.S.C. § 78u(d)(6)(a)] as a result of his violations of Sections 5(a), 5(c) and 17(a) of the Securities Act and Section 10(b) of the Exchange Act.

VIII.

An order barring Wozniak from participating in the offering of penny stock pursuant to Sections 20(g)(1) of the Securities Act [15 U.S.C. § 77t(g)(1)] as a result of his violations of Sections 5(a) and (c) of the Securities Act.

VIII.

An Order or Final Judgment granting such other relief as this Court may deem just or appropriate.

Dated: February 23, 2004

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