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CENTRAL DIVISION
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CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

6 Attorneys for the People of the State of California

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN DIEGO**

10 THE PEOPLE OF THE STATE OF
CALIFORNIA, by and through the
11 CALIFORNIA CORPORATIONS
COMMISSIONER,
12
Plaintiff,
13
vs.
14
15 APPLIED DIGITAL TECHNOLOGIES, INC.,
a Delaware corporation,
16 ROBERT REED, an individual, and
CHRIS PONISH, an individual,
17
Defendants.

Case No.:
**COMPLAINT FOR PERMANENT
INJUNCTION AND ANCILLARY RELIEF**
**(VIOLATION OF AN ORDER ISSUED BY
THE CALIFORNIA CORPORATIONS
COMMISSIONER)**
Judge:
Dept:
Date Action Filed:

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19 The California Corporations Commissioner, Jan Lynn Owen, acting to protect the public
20 from the unlawful and fraudulent offer or sale of securities, brings this action in the public interest,
21 in the name of the People of the State of California. The People of the State of California allege:

22 **VENUE AND JURISDICTION**

23 1. The California Corporations Commissioner (“Commissioner” or “Plaintiff”) brings
24 this action to enjoin the defendants from violating an Order of the Commissioner issued under the
25 Corporate Securities Law of 1968 (California Corporations Code section 25000, et seq.) and to
26 enforce the defendant’s compliance with the terms of the Commissioner’s Order.

27 2. Plaintiff brings this action pursuant to California Corporations Code section 25530, in
28 her capacity as head of the California Department of Corporations.

1 9. APPLIED DIGITAL, REED and PONISH did not challenge the allegations made in
2 the administrative action.

3 10. On or about July 28, 2011, an administrative hearing was held at the Office of
4 Administrative Hearings and presided over by an Administrative Law Judge. APPLIED DIGITAL,
5 REED and PONISH did not appear at the administrative hearing.

6 11. On or about May 7, 2012, the Commissioner issued a Decision and Order pursuant to
7 the provisions of the California Administrative Procedures Act.

8 12. The Order specifies that the Decision shall become effective on June 6, 2012.

9 13. The Decision and Order issued the following orders, in part, against APPLIED
10 DIGITAL, REED and PONISH:

11 (A) An order levying administrative penalties of \$3,487,000.00, jointly and
12 severally;

13 (B) An order granting ancillary relief, in the form of restitution on behalf of
14 defrauded investors in Applied Digital Technologies, Inc., of \$3,861,950.00, jointly and severally;

15 (C) A desist and refrain order prohibiting the (i) offer or sale of unqualified, non-
16 exempt securities in the State of California and (ii) offer, sale or buying of any security in the State
17 of California which includes an untrue statement of a material fact or omits a material fact; and

18 (D) Recovery of attorneys' fees and costs in the amount of \$100,000.00, jointly
19 and severally.

20 14. The Decision and Order were served on APPLIED DIGITAL, REED and PONISH.

21 15. APPLIED DIGITAL, REED and PONISH failed to seek reconsideration of the
22 Decision and Order, file a writ of mandate or otherwise appeal the Decision and Order. The Decision
23 and Order are now final.

24 16. As of today's date, APPLIED DIGITAL, REED and PONISH have failed to make the
25 payments ordered by the Commissioner. Furthermore, APPLIED DIGITAL, REED and PONISH
26 have failed to contact Plaintiff to request more time to comply with the Decision and Order.
27 Therefore, APPLIED DIGITAL, REED and PONISH are in violation of the Commissioner's Order.

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FIRST CAUSE OF ACTION
VIOLATION OF AN ORDER ISSUED BY
THE CALIFORNIA CORPORATIONS COMMISSIONER
(AGAINST DEFENDANTS APPLIED DIGITAL, REED AND PONISH)

17. Plaintiff incorporates by reference paragraphs 1 through 16 of this Complaint as though fully set forth herein.

18. California Corporations Code section 25530, in pertinent part, provides:

(a) Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this division or any rule or order hereunder, the commissioner may in the commissioner's discretion bring an action in the name of the people of the State of California in the superior court to enjoin the acts or practices or to enforce compliance with this law or any rule or order hereunder. Upon a proper showing, a permanent . . . injunction . . . shall be granted . . . or any other ancillary relief may be granted as appropriate.

(b) If the commissioner determines it is in the public interest, the commissioner may include in any action authorized by subdivision (a) a claim for ancillary relief, including but not limited to, a claim for restitution or disgorgement or damages on behalf of the persons injured by the act or practice constituting the subject matter of the action, and the court shall have jurisdiction to award additional relief.

(c) In any case in which a defendant is ordered by the court to pay restitution to a victim, the court may in its order require the payment as a money judgment, which shall be enforceable by a victim as if the restitution order were a separate civil judgment, and enforceable in the same manner as is provided for the enforcement of any other money judgment. Any order issued under this subdivision shall contain provisions that are designed to achieve a fair and orderly satisfaction of the judgment.

(California Corporations Code § 25530.)

19. Plaintiff initiated an administrative action against APPLIED DIGITAL, REED and PONISH for alleged violations of the Corporate Securities Law of 1968.

20. After appropriate notice and opportunity to be heard, the Commissioner issued a Decision and Order.

21. The Decision and Order required APPLIED DIGITAL, REED and PONISH to make payments of administrative penalties, ancillary relief, in the form of restitution on behalf of the defrauded investors, and to pay to Plaintiff certain costs and fees.

1 22. To this date, APPLIED DIGITAL, REED and PONISH have not made any such
2 payments. As such, APPLIED DIGITAL, REED and PONISH are in violation of the Decision and
3 Order issued by the Commissioner.

4 23. Section 25530(a) of the California Corporations Code provides that when it appears
5 that any person has engaged, or is about to engage, in a violation of any Order issued under the
6 Corporate Securities Law of 1968, the Commissioner may bring an action in the name of the People,
7 in the Superior Court, to enjoin violation of and enforce compliance with the Order.

8 24. The Commissioner seeks an injunction requiring APPLIED DIGITAL, REED and
9 PONISH to comply with the Order. Unless enjoined by this Court, APPLIED DIGITAL, REED and
10 PONISH will continue to violate the Order.

11 25. Section 25530(b) of the California Corporations Code provides that the
12 Commissioner may include in an action authorized by subdivision (a) a claim for ancillary relief,
13 including but not limited to a claim for restitution on behalf of defrauded investors, and the court
14 shall have jurisdiction to award the additional relief.

15 26. The Commissioner seeks ancillary relief, in the form of restitution and reimbursement
16 of investigative costs and attorneys' fees, to effect the terms of the Order. Ancillary relief is
17 necessary, in the public interest and is consistent with the purposes, policies and provisions of the
18 Corporate Securities Law of 1968.

PRAYER

19
20 WHEREFORE, Plaintiff prays for a final judgment against APPLIED DIGITAL, REED and
21 PONISH as follows:

I. INJUNCTIVE RELIEF

22 For a Permanent Injunction, pursuant to California Corporations Code section 25530:

23 1. Enjoining and restraining APPLIED DIGITAL, REED and PONISH from violating
24 the Order of the Commissioner, by failing to pay the administrative penalties, ancillary relief and
25 attorney's fees and costs required by the Order; and
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27 2. Compelling APPLIED DIGITAL, REED and PONISH to comply with the terms of
28 the Commissioner's Order, by paying the administrative penalties, ancillary relief and attorney's fees
and costs required by the Order.

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II. ANCILLARY RELIEF

For Ancillary Relief, pursuant to California Corporations Code section 25530, in accordance with the terms of the Order of the Commissioner, requiring APPLIED DIGITAL, REED and PONISH, jointly and severally, to:

- 1. Pay administrative penalties in the amount of \$3,487,000.00;
- 2. Pay ancillary relief, in the form of restitution on behalf of defrauded investors in Applied Digital Technologies, Inc., in the amount of \$3,861,950.00; and
- 3. Pay attorneys' fees and costs in the amount of \$100,000.00.

III. THIS COURT TO RETAIN JURISDICTION

For an Order that this Court shall retain jurisdiction of this action in order to implement and carry out the terms of all orders and decrees that may be entered herein or to entertain any suitable application or motion by Plaintiff for additional relief within the jurisdiction of this Court.

IV. OTHER RELIEF

For such other and further relief as this Court may deem necessary and proper.

Dated: August 1, 2012

JAN LYNN OWEN
California Corporations Commissioner

By: _____
ALEX M. CALERO
Corporations Counsel
Attorney for the People of California