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FILED
Clerk of the Superior Court

MAY 25 2012

By: Lee Ryan, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

THE PEOPLE OF THE STATE OF CALIFORNIA, by and through the CALIFORNIA CORPORATIONS COMMISSIONER,

Plaintiff,

vs.

SMARTWEAR TECHNOLOGIES, a San Diego County fictitious business name; SMARTWEAR TECHNOLOGIES, INC., a Delaware corporation; NORMAN FRANK REED, an individual; ROBERT REED, an individual; SEAN BORZAGE BOYD, an individual; and DOES 1 through 10, inclusive,

Defendants,

And

GLOBAL GENERAL TECHNOLOGIES, INC., a Nevada corporation; and LEXIT TECHNOLOGY, INC., a Colorado corporation,

Relief Defendants.

Case No.: 37-2008-00091291-CU-MC-CTL

[PROPOSED] STATEMENT OF DECISION AS TO RELIEF DEFENDANTS VERICORP, INC. AND APPLIED DIGITAL TECHNOLOGIES, INC.

Judge: Hon. Ronald S. Prager
Dept: C-71

1 Plaintiff, the People of the State of California, by and through the California Corporations
2 Commissioner (“Commissioner” or “Plaintiff”), filed a Complaint in September 2008 pursuant to
3 section 25530 of the California Corporate Securities Law of 1968 (“CSL”), California Corporations
4 Code section 25000 et seq., to enjoin the Defendants from violating the CSL and for other equitable
5 relief, including restitution and civil penalties. The operative complaint (“Complaint”) alleges claims
6 for violations of sections 25110 and 25401¹ against Defendants SmartWear Technologies, Inc.
7 (“SmartWear”), Norman Frank Reed, Robert Reed, Sean Borzage Boyd and Walter Robert Reed
8 (collectively “Defendants”), and the imposition of a constructive trust/unjust enrichment against
9 relief defendants.

10 On February 3, 2010, this Court granted Plaintiff’s request to add Vericorp, Inc. (“Vericorp”)
11 and Applied Digital Technologies, Inc. (“Applied Digital”) as relief defendants.

12 Defendants and relief defendants are in default. On May 4, 2012 a default prove-up
13 proceeding was held as to the Defendants before the Honorable Ronald S. Prager. The Court entered
14 a default judgment against the Defendants, finding in favor of Plaintiff on its claims for violations of
15 sections 25110 and 25401. Notably, the Court found that Defendants made numerous
16 misrepresentations and failed to disclose material facts to potential investors in the offer and sale of
17 securities in SmartWear, in violation of CSL section 25401.

18 On May 25, 2012, a default prove-up proceeding was held before this Court as to Vericorp
19 and Applied Digital. Plaintiff was represented by Alex M. Calero, Senior Corporations Counsel.

20 After consideration of the evidence presented, the Court makes the following Findings of Fact
21 and Conclusions of Law:

22 FINDINGS OF FACT

- 23 1. Relief defendant Vericorp, a Wyoming corporation, received assets from SmartWear.
- 24 2. Specifically, Vericorp received assets, in the form of patent applications, from
25 SmartWear, identified as followed:
 - 26 a. 2006244141 (Australian patent application);

27 _____
28 ¹ All statutory references are to the California Corporations Code unless otherwise noted.

- b. 2,599,363 (Canadian patent application);
- c. 6790238.7 (European Patent Organization application);
- d. 2008-510313 (Japanese patent application);
- e. US2006/17753 (World Intellectual Property Organization patent application);
- f. 7112303 (United Kingdom patent application);
- g. 60/744,586 (United States patent application);
- h. 11/539,597 (United States patent application);
- i. 60/678,600 (United States patent application); and
- j. 60/744,590 (United States patent application).

3. Money from the corporate bank account of SmartWear was used to pay for the legal fees necessary to develop the patent applications identified in paragraph 2 above.

4. Vericorp did not pay any consideration for the patent applications identified in paragraph 2 above. SmartWear valued the worth of these patent applications at \$8,200,000.00.

5. Relief defendant Applied Digital, a Delaware corporation, received assets from SmartWear.

6. Specifically, Applied Digital received assets, in the form of intellectual properties, from SmartWear, identified as followed:

a. The Emergency Response Information Network or ERIN project. This intellectual property includes all trademarks, software, hardware, prototypes, the domain name erinusa.net and the website addresses www.erinusa.net and www.erin911.com; and

b. The Lifelink or Life Link project. This intellectual property includes trademarks, software, hardware, prototypes, the domain name lifelink.info and the website address www.lifelink.info.

7. Applied Digital did not pay any consideration for the intellectual properties identified in paragraph 6 above. Applied Digital valued the worth of these intellectual properties at \$8,000,000.00.

8. The assets, identified in paragraphs 2 and 6 above, are the proceeds of the fraudulent offering of securities in SmartWear. On May 4, 2012, this Court entered a default judgment against

1 the Defendants. In the default judgment and statement of decision, this Court found that the
2 Defendants made numerous misrepresentations and failed to disclose material facts to potential
3 investors in the offer and sale of securities in SmartWear. For example, Defendants failed to disclose
4 that officers of SmartWear were issued cease and desist orders for violations of state securities laws
5 and Defendants misrepresented the nature and extent of SmartWear's business by telling potential
6 investors that SmartWear had contracts with such companies as Disney and the Port of Los Angeles.
7 Based on these misrepresentations and omissions, individuals invested their money with SmartWear.

8 CONCLUSIONS OF LAW

9 Third Cause of Action:

10 **Plaintiff Proved by a Preponderance of the Evidence that Relief Defendants Vericorp, Inc. and** 11 **Applied Digital Technologies, Inc. Are Unjustly Enriched, A Constructive Trust Should be** 12 **Imposed for the Benefit of Defrauded Investors.**

13 1. The Commissioner may include in any civil action a claim for ancillary relief on
14 behalf of the injured investors pursuant to CSL section 25530, subdivision (b). Investors in
15 SmartWear were injured by Defendants' fraudulent securities scheme and the unlawful transfer of
16 assets to Vericorp and Applied Digital.

17 2. A relief defendant is one that: (a) has received ill-gotten funds; and (b) does not have a
18 legitimate claim to those funds. (*Janvey v. Adams* (5th Cir. 2009) 588 F.3d 831, 834; *SEC v. Colello*
19 (9th Cir. 1998) 139 F.3d 674, 677.) The legal concept of a relief defendant is a general principle
20 drawing from the court's equitable powers and the court's inherent ability to recover ill-gotten gains
21 for the benefit of injured victims. (*SEC v. Colello* (9th Cir. 1998) 139 F.3d 674, 676; *Commodity*
22 *Futures Trading Comm. v. IBS, Inc.* (W.D.N.C. 2000) 113 F. Supp. 2d 830, 852.)

23 3. A person who gains something by fraud, undue influence or other wrongful act has
24 received an ill-gotten asset and is an involuntary trustee of the thing gained, for the benefit of the
25 person who is rightfully entitled to it. (Civ. Code, §§ 2223, 2224.)

26 4. The Court finds that Vericorp and Applied Digital received assets, as set forth in
27 Finding of Fact Nos. 2 and 6 above, from SmartWear. The Court finds that these assets are ill-gotten
28 gains, traceable to the fraudulent securities offering in SmartWear.

