KEVIN V. RYAN (CASBN 118321)
United States Attorney

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

UNITED STATES OF AMERICA,	)	No.
Plaintiff,	))	VIOLATIONS: 18 U.S.C. § 371 and 15 U.S.C. § 78m(b)(5) – Conspiracy to Falsify Accounting Records; 15 U.S.C. §§ 78j(b) and 78ff – Securities Fraud
v.	))))	
	)	SAN JOSE VENUE
JOHN DAWS,	))	
Defendant.	))	
_____	)	

<u>I N F O R M A T I O N</u>

The United States Attorney charges:

<u>I. BACKGROUND</u>

At all times relevant to this Information:

<u>A. The Company</u>

1.   Cylink was a California corporation, with its principal offices in Santa

Clara, California. The company's common stock was registered with the United States

Securities and Exchange Commission ("SEC") pursuant to Section 12(g) of the Exchange

Act and was traded on the national market of the National Association of Securities

Dealers' Automated Quotation System ("NASDAQ"), an electronic trading system.

Cylink had shareholders located throughout the United States, including in the Northern

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District of California. Cylink developed, marketed, and supported computer network security products to allow the secure transmission of information. Cylink also developed, marketed and supported wireless communications products, but sold its wireless division to another company on April 1, 1998. Cylink itself was acquired by another company on February 6, 2003.

2.   As a public company, Cylink was required to comply with regulations of the SEC. Those regulations are designed to protect members of the investing public by, among other things, ensuring that a company's financial information is accurately recorded and disclosed to the public.

3.   Under SEC regulations, Cylink and its officers had a duty to: (a) make and keep books, records, and accounts that fairly and accurately reflected the company's business transactions; (b) devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that the company's transactions were recorded as necessary to permit the preparation of reliable financial statements; and (c) file quarterly reports (using Form 10-Q) and annual reports (using Form 10-K) with the SEC.

B. The Defendant

4.   The defendant John Daws ("DAWS") was Cylink's Chief Financial Officer ("CFO") from September 1995 to November 1998. DAWS worked at Cylink's headquarters office in Santa Clara, California. Daws was also Cylink's Vice President of Finance and Administration. As Cylink's CFO, DAWS was responsible for ensuring that the Company complied with its own revenue recognition policy and with Generally Accepted Accounting Principles ("GAAP").

II. THE FDC TRANSACTION

5.   In or about June 1998, during Cylink's second fiscal quarter, Cylink entered into an agreement with its customer Federal Data Corporation (FDC) to sell approximately $900,000 worth of Cylink's products to FDC for resale by FDC to an end-user, the United States Postal Service. However, on or about June 26, 1998, Cylink's Vice President of Sales, Thomas Butler, signed an "out letter" to FDC offering, on behalf

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of Cylink, "special terms and conditions" that included Cylink's agreement (1) to ship its products to a Cylink-approved bonded warehouse until such time that the Postal Service required delivery of the products to their location; and (2) that if FDC did not receive an order from the Postal Service for the products on the purchase order by September 30, 1998, Cylink would "accept return of all product for full credit without limitation or additional performance by FDC." As DAWS well knew, this "out letter" meant that the FDC order, which remained contingent, could not be recorded as revenue for the second quarter under GAAP.

6. FDC did not receive an order for the Cylink products by September 30, 1998 and rescinded its purchase order. DAWS nevertheless caused $900,000 in revenue from the transaction to be recorded in Cylink's books and records and reported to the investing public in Cylink's Form 10-Q, filed with the SEC.

III. THE DPS TRANSACTION

7. In November 1997, Cylink's wireless division received a $3.7 million purchase order from Data Processing Systems ("DPS"), a small distributor based in the Middle East. DAWS approved the order contingent on the delivery by DPS of a letter of credit in favor of Cylink. By late December 1997, DPS had not provided a letter of credit. Nevertheless, with the end of the fiscal year approaching, DAWS directed the product to be shipped to a third-party warehouse. DAWS elected to ship the product to the warehouse on his own and for the benefit of Cylink, not in response to any request by DPS. At the time Cylink shipped the product to the warehouse, there was no fixed schedule for the delivery of the product from the warehouse to DPS.

8. Also in December 1997, DAWS directed that the terms of the DPS order be changed on Cylink's internal order processing system from "letter of credit" to "120 days open credit" in order to conceal from Cylink's outside auditors the material fact that Cylink did not intend to ship the order until payment was made or guaranteed by a letter of credit.

9. Because Cylink had not received the letter of credit from DPS, a key term

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of Cylink's agreement with the DPS was not fulfilled prior to the close of fiscal 1997 and revenue recognition in that year was improper. DAWS nevertheless caused $3.7 million from the transaction to be recorded as revenue in Cylink's books and records and reported to the investing public in Cylink's Form 10-Q, filed with the SEC. This revenue allowed Cylink's wireless division to meet its quarterly goal of $25 million in revenue for that quarter of 1997.

COUNT ONE: 18 U.S.C. § 371 (Conspiracy to Falsify Accounting Records)

10.   Paragraphs 1 through 6 of this Information are realleged and incorporated as if fully set forth here.

11.   Between in or about June and October 1998, in the Northern District of California, and elsewhere, the defendant

JOHN DAWS,

and others, did knowingly and willfully conspire to commit an offense against the United States, namely, falsification of Cylink's books, records and accounts reflecting the transactions and disposition of the assets of the company, in violation of Title 15, United States Code, Section 78m(b)(5) and Title 17, Code of Federal Regulations, Section 240.13b2-1.

12.   In furtherance of the conspiracy and to effect the objects thereof, DAWS and his co-conspirators committed and caused to be committed the following overt act in the Northern District of California and elsewhere: on or about August 12, 1998, Cylink reported its second quarter financial results, including the improperly recognized revenue from the FDC transaction, in a Form 10-Q filed with the SEC, signed by DAWS as Cylink's Chief Financial Officer;

All in violation of Title 18, United States Code, Section 371 and Title 15, United States Code, Sections 78m(b)(5) and Title 17, Code of Federal Regulations, Section 240.13b2-1.

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COUNT TWO: 15 U.S.C. §§ 78j(b) and 78ff (Securities Fraud)

14.   Paragraphs 1 through 4 and 7 through 9 of this Information are realleged and incorporated as if fully set forth here.

15.   On or about April 12, 1998, in the Northern District of California, and elsewhere, the defendant

JOHN DAWS,

knowingly and willfully, directly and indirectly, by the use of the facilities of a national securities exchanges, did use and employ manipulative and deceptive devices and contrivances in connection with the purchase and sale of securities issued by Cylink, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by: (a) employing devices, schemes, and artifices to defraud; (b) making and causing Cylink to make untrue statements of material fact and omitting to state facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon purchasers of Cylink securities.

16.   Specifically, DAWS did fraudulently include in Cylink's 1997 year-end financial results, contained in a Form 10-K signed by DAWS and filed with the SEC, approximately $3.7 million in improperly recognized revenue from the DPS transaction.

All in violation of Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Section 240.10b-5.

DATED:

KEVIN V. RYAN
United States Attorney

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MATTHEW A. PARRELLA
Chief, San Jose Branch Office

(Approved as to form: _____)
                AUSA Callaway

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