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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

JOSHUA YAFA; GLOBAL MEDIA
MARKETING, INC.; MICHAEL O'BRIEN
PICKENS; M3, INC.; M3 RESEARCH LLC;
and SERAFIN SIERRA,

COMPLAINT

Defendants,

HEM-HEM WAH-WAH, LLC,

Relief Defendant.

Plaintiff Securities and Exchange Commission (“Commission”) alleges:

NATURE OF PROCEEDINGS

1. Two stock promoters engaged in a scam designed to mislead investors into believing they had inadvertently received a confidential stock tip faxed from a stockbroker to his client. The handwritten faxes had the appearance of an urgent message from a financial planner intended only for his client, “Dr. Mitchel,” urging the doctor to buy shares of a stock that was about to triple in price. In fact, both the financial planner and Dr. Mitchel were fictitious. Four versions of the bogus faxes, each promoting a different stock, were sent to more than one million recipients across the country. As a result, numerous investors bought the stocks, driving up the price of each stock dramatically. The stock promoters proceeded to unload their shares onto duped investors, reaping more than half a million dollars.

2. On December 16, 2004, defendant Joshua Yafa and his company, defendant Global Media Marketing, Inc., transmitted false faxes to approximately 153,000 fax machines across the United States urging the purchase of AVL Global, Inc. (“AVLL”). While other investors were buying AVLL and driving up the price, Yafa sold his AVLL shares, yielding gross proceeds of several hundred thousand dollars.

3. Defendant Serafin Sierra, an employee of the company that broadcast the AVLL fax, forwarded a copy of the Yafa fax to defendant Michael O’Brien Pickens, a stock promoter, intending to help Pickens launch a copycat scheme. Working through his two companies, defendants M3, Inc. and M3 Research LLC, Pickens on December 16, 20 and 22, 2004, sent similar false faxes to nearly one million fax machines to promote sales of three other stocks, Data Evolution Holdings, Inc. (“DTEV”), Infinium Labs, Inc. (“IFLB”), and Soleil Film, Inc. (“SFLM”). Pickens sold into the resulting price rise and yielded gross proceeds of more than \$300,000. Sierra received compensation as a salesperson for his role in the promotion.

4. The Commission seeks return from defendants of benefits they obtained from violations of the federal securities laws, civil penalties for those violations and an injunction against all defendants for future violations of the securities laws.

JURISDICTION AND VENUE

5. The Commission brings this action pursuant to Section 20(b) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77t(b)] and Section 21(d) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78(d)].

6. The Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Sections 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(e), 78aa].

7. This Court is a proper venue for this action because acts, transactions, practices and courses of business constituting the violations alleged in this Complaint occurred within this District. Among other things, recipients of each of the versions of the faxes discussed in this Complaint reside in this District and received copies of the faxes in this District.

8. In connection with the conduct alleged in this Complaint, each defendant directly or indirectly made use of the means or instruments of transportation or communication in interstate commerce, or the means or instrumentalities of interstate commerce, or the mails.

DEFENDANTS

9. **Joshua Yafa** ("Yafa"), age 31, resides in Coral Gables, Florida. Yafa promotes stocks, primarily stocks priced below five dollars ("penny stocks"), for compensation.

10. **Global Media Marketing, Inc.** ("Global Media") is a corporation organized under the laws of the State of Florida with its principal place of business in Orlando, Florida. Yafa is an officer, director and controlling person of Global Media.

11. **Michael O'Brien Pickens** ("Pickens"), age 51, resides in Nocona, Texas.

Pickens promotes stocks, primarily penny stocks, for compensation. For the purposes of this action, Pickens acted at all times on behalf of M3, Inc. an M3 Research LLC.

12. **M3, Inc.** is a corporation organized under the laws of the State of Delaware with its principal place of business in Nocona, Texas. M3, Inc. is engaged in the business of stock promotion for compensation. Pickens is an officer, director and controlling person of M3, Inc.

13. **M3 Research LLC** is a limited liability company organized under the laws of the State of Delaware with its principal place of business in Nocona, Texas. M3 Research LLC is engaged in the business of stock promotion for compensation. Pickens is a managing member of M3 Research, Inc.

14. **Serafin Sierra** ("Sierra"), age 45, resides in Miami, Florida. At all times relevant to this action, Sierra was a sales representative employed by Vision Lab Telecommunications, Inc. ("Vision Lab"). Vision Lab is engaged in the business of telemarketing, including but not limited to the transmission of documents to multiple telephone numbers, known as "fax blasting."

RELIEF DEFENDANT

15. **Hem-Hem Wah-Wah, LLC** is named as a defendant in this action solely for the purpose of obtaining full relief. Hem-Hem Wah-Wah, LLC is a limited liability company organized under the laws of the State of Florida with its principal place of business in Orlando, Florida. Defendant Yafa is a managing member of the company.

FACTUAL ALLEGATIONS

The Scheme to Manipulate AVLL Stock

16. In or about December 2004, defendants Yafa and Global Media agreed, expressly or by conduct, to increase the sales volume and price of AVLL stock by fraudulently creating

demand for the stock through artifice. To do this, they engaged in a misleading fax campaign after which thousands of investors purchased the stock.

17. In December 2004, AVLL stock was quoted in the electronic quotation service operated by the Pink Sheets, LLC. AVLL is a penny stock, as defined by Section 3(a)(51) of the Exchange Act [15 U.S.C. § 78c(a)(51)] and Rule 3a51-1 thereunder [17 C.F.R. § 240.3a51-1].

18. In or about October 2004, AVLL hired Yafa as a public relations consultant to stimulate interest in AVLL stock. Yafa began a promotional campaign for AVLL in December 2004 by faxing promotional literature, news items and other documents concerning AVLL. As compensation for his services, AVLL transferred 750,000 shares of its stock to brokerage accounts Yafa controlled, including an account held in the name of relief defendant Hem-Hem Wah-Wah, LLC.

19. On December 13, 2004, Yafa drafted a typewritten letter addressed to a fictitious "Dr. Michael Mitchel" from a fictitious stock advisor, "Technology Trader," recommending the purchase of AVLL stock. Yafa sent this letter by e-mail to an intermediary, Stalin Antonio Asenjo ("Asenjo"), who had a business relationship with a fax blasting firm, Vision Lab.

20. On December 13, 2004, Asenjo contacted Vision Lab and asked Vision Lab to transmit the Dr. Mitchel letter to a list of fax numbers. Asenjo asked Vision Lab to charge the cost of the transmission to an account previously created in the name of Yafa's company, Global Media.

21. Prior to the opening of the stock market on December 14, 2004, Vision Lab transmitted the Dr. Mitchel typewritten letter on Yafa's behalf from its Florida computer server over the telephone wires to approximately 19,000 fax machines. At the end of December 14, AVLL stock traded at \$2.50 per share on volume of approximately 4,500 shares.

22. On the morning of December 15, 2004, Yafa sent Asenjo the following fax and asked him to arrange for its transmission:

Dec 15 2004 10:39AM

13058604063

p. 1

Dr Mitchel

WILL you please put your
cell phone on. I have been trying
to get you for 2 hours. I have
a stock for you that will triple
in price just like the last stock
I gave you "SIRI" did. I can't
get you on either phone. Either
call me, or call Linda to place
the new trade we need to
buy "AVLL" now—

P.S. you better be good to me
this Christmas. No other stockbroker
has given you back to back wins.
Thanks, your shinning star Financial Planner
hahaha →

23. Sometime during the day on December 15, 2004, the text was rewritten on Yafa's behalf on a "Capital Financial" fax cover sheet addressed to the fictitious "Dr. Mitchel" from an equally fictitious "Chris." Yafa intended the fax, reproduced below, to create the false and

misleading impression that each recipient had accidentally received a legitimate stock tip meant for a single sophisticated investor:

Capital Financial

Facsimile Transmittal

To: Dr. Mitchel Fax:

From: Chris Date: 12/15/2004

Re: Symbol AVLL Pages:

CC:

Urgent For Review Please Comment Please Reply Please Recycle

AVLL



Will you please put your cell phone on. I have been trying to get you for 2 hours. I have a stock for you that will tripple in price just like the last stock I gave you "SIRI" did. I can't get you on either phone. Either call me, or call Linda to place the new trade. We need to buy "AVLL" now —

P.S
 You better be good to me this Christmas. No other Stock Broker has given you back to back wins.

Thanks, your shinning star Financial Planner
 ha ha ha

CONFIDENTIALITY NOTICE: THIS MESSAGE (INCLUDING ATTACHMENTS) CONTAINS CONFIDENTIAL INFORMATION AND IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED.
 If have received this an error please call 888-820-6298

24. After the close of the stock market on December 15, 2004, Vision Lab transmitted the fax on Yafa's behalf from its Florida computer server over the telephone wires to approximately 153,000 fax machines across the United States. The fax was received by the Commission's Northeast Regional Office on December 16, 2004. The fax did not disclose Yafa's compensation from AVLL.

25. The fax had an immediate and dramatic effect on the trading price and volume of AVLL stock. On December 15, 2004, the stock closed at \$2.80 per share. On December 16, 2004, however, the first trading day following the fax transmittal, the stock soared to \$4.10 before closing for the day at a price of \$3.50 per share, a 25% increase over the previous day's close. Moreover, approximately 877,267 shares of AVLL stock were traded that day. By contrast, in the period from November 15 to December 15, 2004, an average of 25,656 AVLL shares traded each day, with a high volume of 105,340 shares.

26. A reasonable investor who received the Dr. Mitchel fax would consider the information important in deciding whether to purchase AVLL stock. In fact, at least some of the purchasers of AVLL shares on December 16, 2004, reported that the Dr. Mitchel fax influenced their decision to purchase the stock.

27. On December 16, 2004, Yafa sold 19,700 shares of AVLL stock at prices ranging from \$3.60 to \$3.77 per share, yielding gross proceeds of approximately \$69,000. Yafa continued to sell AVLL stock at artificially high prices through December 2004, yielding additional proceeds of approximately \$50,000. Yafa continued to sell shares of AVLL into January 2005, yielding additional proceeds of approximately \$189,000. In total, Yafa received more than \$300,000 from his AVLL stock sales.

28. Some of the AVLL stock transferred as compensation to Yafa was transferred to Hem-Hem Wah-Wah, LLC and sold after the Dr. Mitchel fax was sent out. Hem-Hem Wah-Wah, LLC has no legitimate claim to such stock or the proceeds of the sales.

The Copycat Scheme

29. In or about December 2004, defendants Pickens and his companies M3, Inc. and M3 Research LLC engaged in a scheme to increase the sales volume and price of DTEV, IFLB and SFLM stock by fraudulently creating demand for these stocks through artifice. To accomplish this, they altered the AVLL version of the Dr. Mitchel fax to tout stocks promoted by Pickens.

30. DTEV, IFLB and SFLM stock was quoted in the electronic quotation service operated by Pink Sheets, LLC. DTEV, IFLB and SFLM are penny stocks, as defined by Section 3(a)(51) of the Exchange Act [15 U.S.C. § 78c(a)(51)] and Rule 3a51-1 thereunder [17 C.F.R. § 240.3a51-1].

31. In the fall of 2004, DTEV, IFLB and SFLM separately hired Pickens, through M3, Inc. and M3 Research LLC, to promote the companies and their securities. DTEV and SFLM paid Pickens by transferring some of their stock to brokerage accounts held in the name of Pickens's companies. IFLB paid Pickens \$200,000. Pickens initially promoted the companies by transmitting promotional literature, news items and other business information by fax through Vision Lab.

32. On December 16, 2004, while working at Vision Lab, Sierra learned about the Dr. Mitchel fax used to promote AVLL stock. That afternoon, Sierra gave Pickens the text of the Dr. Mitchel fax concerning AVLL, either by faxing Pickens a copy or reading it to Pickens over the telephone, or both. When Sierra provided the Dr. Mitchel fax to Pickens, he knew (or acted with extreme recklessness in failing to determine) that Pickens would use the fax as part of a fraudulent scheme to induce the purchase of stock. Later that afternoon, Pickens sent the Dr. Mitchel fax to an intermediary, Thomas Edward McKee ("McKee"). McKee, who resides in North Massapequa, New York, had a business relationship with Vision Lab that allowed McKee to set up fax blasts through Vision Lab.

33. On December 16, 2004, Pickens (or others working on his behalf) created three new documents that altered the Dr. Mitchel fax, substituting DTEV, IFLB and SFLM for AVLL. Pickens intended these faxes, which were otherwise nearly identical to the original fax, to create the false and misleading impression that each recipient had accidentally received a legitimate stock tip meant for a single sophisticated investor. Pickens (or others working on his behalf) transmitted the altered documents through Vision Lab to fax numbers obtained from a database.

34. Prior to the opening of the stock market on December 17, 2004, Vision Lab transmitted the DTEV, IFLB and SFLM versions of the Dr. Mitchel fax on Pickens's behalf from its Florida computer server over the telephone wires to 650,000 fax machines across the United States. The IFLB fax was received by the Commission's San Francisco District Office on December 17. None of the faxes disclosed Pickens's compensation from any of DTEV, IFLB, or SFLM.

35. The faxes had an immediate and dramatic effect on the trading price and volume of DTEV, IFLB and SFLM stock. On December 16, DTEV stock closed at \$4.75. On December 17, 2004, the first trading day following the transmittal of Pickens's copycat faxes, investors purchased approximately 153,157 shares of DTEV stock at prices ranging from \$4.50 to \$6.00. DTEV stock closed on December 17 at \$5.60 per share, an 18% increase over the previous close. (By contrast, during the period from November 16 to December 16, 2004, DTEV stock had an average daily volume of 24,177, with a high volume of 63,561 shares on December 2, 2004.)

36. A reasonable investor who received the Dr. Mitchel fax would consider the information important in deciding whether to purchase DTEV stock. In fact, at least some of the purchasers of DTEV shares on December 17, 2004, reported that the Dr. Mitchel fax influenced their decision to purchase the stock.

37. On December 16, 2004, IFLB stock closed at 24 cents per share. On December 17, 2004, investors purchased approximately 6,847,289 shares of IFLB stock at prices ranging from 25 to 53 cents per share. IFLB stock closed at 47 cents per share, an increase of nearly 96% over the previous close. (By contrast, during the period from November 16 to December 16, 2004, IFLB stock had an average daily volume of 770,485, with a high volume of 1,400,409 on November 16, 2004.)

38. A reasonable investor who received the Dr. Mitchel fax would consider the information important in deciding whether to purchase IFLB stock. In fact, at least some of the purchasers of IFLB shares on December 17, 2004, reported that the Dr. Mitchel fax influenced their decision to purchase the stock.

39. On December 16, 2004, SFLM stock closed at 35 cents per share. On December 17, 2004, investors purchased approximately 960,999 shares of SFLM stock at prices ranging from 38 to 55 cents per share, closing at 48 cents per share, an increase of 37% over the previous day's close. (By contrast, during the period from November 16 to December 16, 2004, SFLM stock had an average daily volume of 65,352, with a high volume of 215,338 on December 15, 2004.)

40. A reasonable investor who received the Dr. Mitchel fax would consider the information important in deciding whether to purchase SFLM stock. In fact, at least some of the purchasers of SFLM shares on December 17, 2004, reported that the Dr. Mitchel fax influenced their decision to purchase the stock.

41. During the afternoon on December 17, 2004, Sierra sent Pickens an e-mail message saying, "Hope you're happy with today!" and "I was a little nervous about this idea but it looks like it's working out well! What's your plan for next week?" Pickens responded by e-mail the same day, "I'm going to do it again next week – it's beautiful."

42. Prior to the opening of the stock market on December 20, 2004, on Pickens's behalf, Vision Lab retransmitted the same Dr. Mitchel fax touting DTEV, IFLB and SFLM stock from its Florida computer server over the telephone wires to approximately 179,000 fax machines across the United States. On December 20, DTEV stock hit a high of \$5.95 per share before closing at \$5.47 per share on trading volume of 96,985 shares. IFLB stock hit a high of 64 cents per share before closing at 46 cents per share on trading volume of 6,325,311 shares. SFLM stock hit a high of 63 cents per share before closing at 59 cents per share on trading volume of 838,371 shares.

43. Prior to the opening of the stock market on December 22, 2004, on Pickens's behalf, Vision Lab retransmitted the Dr. Mitchel fax touting IFLB stock from its Florida computer server over the telephone wires to approximately 143,000 fax machines across the United States. On December 22, IFLB stock closed at 54 cents per share on trading volume of 4,636,753 shares.

44. On December 22, 2004, Pickens asked McKee to retransmit the DTEV faxes. McKee called Vision Lab and obtained a copy of the DTEV handwritten fax addressed to Dr. Mitchel. Following that request, either Pickens or McKee (on Pickens's behalf) asked Vision Lab to retransmit the DTEV Dr. Mitchel fax. That afternoon, Vision Lab transmitted the DTEV Dr. Mitchel fax from its Florida computer server over the telephone wires to approximately 35,000 fax machines across the United States. On December 22, 2004, DTEV stock hit a high of \$5.50 per share before closing at \$5.12.

45. On December 20, 2004, Pickens sold 9,500 shares of DTEV stock at \$5.67 per share, yielding gross proceeds of \$53,885. Pickens sold 515,300 shares of SFLM stock from December 17, 2004, through December 31, 2004, receiving approximately \$263,500 in proceeds from the sales. Pickens, whose gross proceeds exceeded \$300,000, sold his shares of DTEV and SFLM stock at the artificially high prices created by the Dr. Mitchel faxes.

46. Pickens paid McKee for the fax blasts concerning DTEV, IFLB and SFLM. McKee, in turn, paid Vision Lab. Sierra received commissions on the work performed by Vision Lab on the Pickens accounts and may have received additional compensation directly from either Pickens or McKee.

FIRST CLAIM FOR RELIEF

(Against Yafa, Global Media, Pickens, M3, Inc., M3 Research LLC)

Violations of Exchange Act Section 10(b) and Rule 10b-5

47. The Commission realleges and incorporates by reference Paragraphs 1 through 46 above.

48. In December 2004, defendants Yafa, Global Media, Pickens, M3, Inc., and M3 Research LLC, directly or indirectly, in connection with the purchase or sale of securities, by the use of the means or instruments of interstate commerce, or the mails, or a facility of any national securities exchange, with scienter: (a) employed devices, schemes, or artifices to defraud; (b) obtained money or property by means of untrue statements of material fact or omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon purchasers of securities.

49. Defendants Yafa, Global Media, Pickens, M3, Inc., and M3 Research LLC, by such conduct, violated 15 U.S.C. § 78j(b) and 17 C.F.R. 240.10b-5 and, unless enjoined, will continue to engage in such violations.

SECOND CLAIM FOR RELIEF

(Against Yafa, Global Media, Pickens, M3, Inc., M3 Research LLC)

Violations of Securities Act Section 17(a)

50. The Commission realleges and incorporates by reference Paragraphs 1 through 46 above.

51. In December 2004, defendants Yafa, Global Media, Pickens, M3 Inc., and M3 Research LLC and directly or indirectly, in the offer or sale of securities, by the use of the means or instruments of transportation or communication in interstate commerce, or by use of the mails: (a) with scienter, employed devices, schemes, or artifices to defraud; (b) obtained money or property by means of untrue statements of material fact or omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon purchasers of securities.

52. Defendants Yafa, Global Media, Pickens, M3 Inc., and M3 Research LLC, by such conduct, violated 15 U.S.C. § 77q(a) and, unless enjoined, will continue to engage in such violations.

THIRD CLAIM FOR RELIEF

(Against Yafa, Global Media, Pickens, M3, Inc., M3 Research LLC)

Violations of Securities Act Section 17(b)

53. The Commission realleges and incorporates by reference Paragraphs 1 through 46 above.

54. Defendants Yafa, Global Media, Pickens, M3, Inc., and M3 Research LLC, directly and indirectly, by use of the means and instruments of transportation and communication in interstate commerce and the mails, published, gave publicity to, and circulated notices, circulars, advertisements, articles, letters, and other communications which, though not purporting to offer a security for sale, described such security for consideration received or to be received from an issuer without disclosing the receipt, both past and prospective, of such consideration and the amount thereof.

55. Defendants Yafa, Global Media, Pickens, M3 Inc., and M3 Research LLC, by such conduct, violated 15 U.S.C. § 77q(b) and, unless enjoined, will continue to engage in such violations.

FOURTH CLAIM FOR RELIEF

(Against Sierra)

Aiding and Abetting Securities Law Violations

56. The Commission realleges and incorporates by reference Paragraphs 1 through 46 above.

57. As set forth above, defendants Pickens, M3 Inc., and M3 Research LLC violated 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5.

58. Defendant Sierra knowingly provided substantial assistance to defendants Pickens, M3 Inc., and M3 Research LLC with respect to these violations of the securities laws.

59. Defendant Sierra, by such conduct, violated 15 U.S.C. §§ 77q(a), 77q(b) and 78j(b) and 17 C.F.R. § 240.10b-5 and, unless enjoined, will continue to engage in such violations.

RELIEF REQUESTED

The Commission respectfully requests that the Court:

I.

Enjoin defendants Yafa, Global Media, Pickens, M3 Inc., and M3 Research LLC from engaging in future conduct in violation of 15 U.S.C. §§ 77q(a), 77q(b), and 78(j) and 17 C.F.R. § 240.10b-5.

II.

Enjoin defendant Sierra from engaging in future conduct that aids and abets violations of 15 U.S.C. § 78(j) and 17 C.F.R. § 240.10b-5.

III.

Order defendants Yafa, Global Media, Pickens, M3 Inc., M3 Research LLC, Sierra and relief defendant Hem-Hem Wah-Wah, LLC to disgorge all benefits they obtained from their violations of the securities laws.

IV.

Order defendants Yafa, Global Media, Pickens, M3 Inc., and M3 Research LLC, and Sierra to pay a civil penalty.

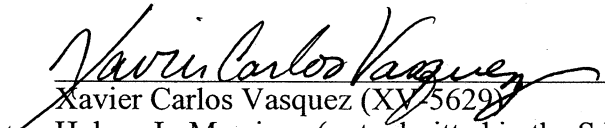
V.

Prohibit defendants Yafa and Pickens from participating in any offering of penny stock, pursuant to Section 21(d)(6) of the Exchange Act [15 U.S.C. § 78u(d)(6)].

VI.

Grant such other and further relief as this Court may determine to be just and necessary.

Dated: San Francisco, California
July 14, 2005


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