

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

**CV-05**

**5851**

UNITED STATES SECURITIES AND  
EXCHANGE COMMISSION,  
Plaintiff,

v.

ESAFETYWORLD, INC.  
k/n/a EZ AUCTION & SHIPPING INC  
and RAYMOND BURGHARD,  
Defendants.

HURLEY, J.

LINDSAY, M.J.



COMPLAINT

Plaintiff, the United States Securities and Exchange Commission, as and for its Complaint,  
states and alleges:

SUMMARY

1. During 2000-2001 eSafetyworld, Inc., now known as EZ Auctions & Shipping Inc., and/or certain of its officers violated the Federal securities laws by: (1) engaging in a manipulative scheme intended to create liquidity for, and increase the price of, eSafety stock; (2) making false statements to eSafety's auditors; (3) making false and misleading statements in public filings with the Commission about eSafety's revenues and profits from consulting contracts; and (4) issuing a false and misleading press release that claimed eSafety had developed a product to prevent the spread of anthrax spores while opening mail. Further, Raymond Burghard violated the Federal securities laws by signing a false loan agreement and a false loan confirmation that he knew would be provided to eSafety's auditors.

## JURISDICTION

2. This Court has jurisdiction pursuant to Sections 21(d), 21(e), and 27 of the Securities and Exchange Act of 1934 [15 U.S.C. §§ 78u(d), 78u(e) and 78aa], and Section 1331 of Title 28, United States Code. The Commission brings this action pursuant to Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e) and 78aa].

3. Venue is proper in this district, pursuant to Sections 21(d), 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e) and 78aa], and Section 1391(b) and (c) of Title 28, United States Code, because substantial events or omissions giving rise to the Commission's claim occurred, and the corporate defendant resides, in this district.

4. Defendants used the means or instruments of interstate commerce or the mails, or the facilities of a national securities exchange in connection with the acts described herein.

## DEFENDANTS

5. ESafety is a Nevada corporation with its principal place of business during 2000 and 2001 in Bohemia, New York. During the relevant period, the Company sold disposable garments, industrial safety equipment, and clean room equipment. ESafety's common stock is registered with the Commission pursuant to Section 12(g) of the Exchange Act, and was listed for trading on the National Association of Securities Dealers Automated Quotation System (Nasdaq) SmallCap Market until October 22, 2001, when Nasdaq suspended trading in the Company's securities. Beginning on or about December 13, 2001, eSafety stock traded over the counter in the Pink Sheets. On December 24, 2002, eSafety announced that it would discontinue its operations effective December 31, 2002. ESafety has continued to be quoted in the Pink Sheets, and on February 28, 2005, with different management, it purported to change its name to EZ Auctions & Shipping Inc. ("EZAU") and undergo a 1 for 45 reverse stock split.

6. Raymond Burghard resided in Saint James, New York, during the time of the conduct alleged in this complaint and now lives in Orlando, Florida. During 2000 and 2001 Burghard controlled and operated Monetary Advancement International. Burghard also was Managing Director of Harbor Ridge Communications, Inc. He is a former stockbroker of eSafety.

#### **OTHER RELEVANT PERSONS**

7. Edward A. Heil resides in Ridge, New York. Heil was the Chairman, President and Chief Executive Officer of eSafety during 2000 and 2001. Heil, a CPA since 1973, was responsible for setting policy and overseeing the general operations of the Company. Heil founded eSafety with Raymond Bret Jenkins in July 1997. He also formed Harbor Ridge Communications, Inc., in which he was President and a director.

8. Raymond Bret Jenkins resides in South Jordan, Utah. He founded eSafety with Heil in July 1997. Jenkins became eSafety's Chief Financial Officer in the fall of 1999. Jenkins was also a director of Harbor Ridge Communications, Inc.

9. Harbor Ridge Communications, Inc. was a company that Heil formed in or about March 2001 supposedly to conduct investor relations work. Heil was the President and a director, and Burghard managed the operations of Harbor Ridge as its Managing Director. Harbor Ridge was in fact a telephone operation used to promote the stock of eSafety and other companies.

10. Monetary Advancement International was an entity controlled and operated by Burghard.

#### **FACTUAL ALLEGATIONS**

##### **Market Manipulation**

11. During the period from January 2001 through June 2001, eSafety and Heil engaged in a scheme to manipulate the price of eSafety's stock.

12. From at least January 2001 through June 2001, Heil had an understanding with Burghard, whereby eSafety transferred funds to Monetary Advancement and Harbor Ridge for Burghard to purchase and sell eSafety shares in the open market. The purpose of the purchases and sales was to create liquidity for, and increase the price of, eSafety stock – in particular, to keep the price of eSafety stock above \$1 per share.

13. As a part of this scheme, Heil instructed Burghard to buy eSafety shares from the open market. eSafety later reimbursed Burghard for his purchases. During 2000 and 2001 Burghard's trades accounted for substantial percentages of the daily trading volume in eSafety.

14. Between January 2001 and June 2001, eSafety transferred a total of at least \$473,288 to Monetary Advancement and/or Harbor Ridge to purchase eSafety stock and fund Harbor Ridge's operations.

#### **False Statements to Auditors**

15. The money that eSafety transferred to Monetary Advancement and/or Harbor Ridge was the subject of a document dated April 3, 2001 that purported to be a loan agreement. The document stated, in relevant part, that "[t]he money sent and to be sent to Harbor Ridge Communications by eSAFETYWORLD shall be treated as a loan to Harbor Ridge Communications, Inc." The document also provided that eSafety had the option to convert the principal amount of the loan into a 50% equity interest in Harbor Ridge.

16. None of the money that eSafety transferred to Monetary Advancement and/or Harbor Ridge represented a loan from eSafety to Harbor Ridge. Instead, the cash advances were used in Harbor Ridge's stock promotion activities, including the manipulation of eSafety stock.

17. Burghard and Heil both signed the purported loan agreement.

18. At the time that they signed the purported loan agreement, Burghard knew that the money that eSafety transferred to Monetary Advancement and/or Harbor Ridge was not a loan and that Harbor Ridge was not obligated to pay any part of the money transferred back to eSafety.

19. Heil gave Burghard the loan agreement for his signature at eSafety's offices at the same time that eSafety's auditor was conducting an audit of eSafety at its offices.

20. When Burghard signed the loan agreement, he knew that it would be provided to eSafety's auditors. Indeed, Burghard knew that eSafety's auditor was conducting an audit of eSafety at its offices the day that Burghard signed the loan agreement.

21. Burghard signed the loan agreement so that eSafety would pay Monetary Advancement a fee in connection with the transfer of funds.

22. ESafety provided the purported loan agreement to its auditors.

23. In September 2001, eSafety's auditors were conducting an audit of eSafety's fiscal year end June 30, 2001 financial statements. Burghard was asked to "confirm directly to them [the auditors] the following information relating to our note receivable to you as of June 30, 2001," and listed as an "original amount of indebtedness" \$473,288.32. Heil provided eSafety's auditors with the confirmation of eSafety's purported loan to Harbor Ridge.

24. Burghard and Heil signed the loan confirmation.

25. Burghard and Heil knew that eSafety had transferred a total of about \$473,288 to Monetary Advancement and/or Harbor Ridge to purchase eSafety stock and fund Harbor Ridge's operations. At the time that they signed the confirmation of the purported loan, Burghard and Heil knew that the money that eSafety transferred to Monetary Advancement and/or Harbor Ridge was not a loan and that Harbor Ridge was not obligated to pay any part of the money transferred back to eSafety.

26. Under the notation, "The above information agrees with our records," Burghard signed the loan confirmation document and dated it September 12, 2001. Burghard signed the confirmation at eSafety's offices on the same day that eSafety's auditor was conducting the audit of eSafety's financial statements. Burghard admitted that he knew that the confirmation would be provided to eSafety's auditors in connection with the audit of eSafety's financial statements.

27. In its Form 10-KSB filing for the period ended June 30, 2001, eSafety falsely represented that it had "invested \$473,288 [in] loans to Harbor Ridge, a privately-held public relations firm specializing in services to emerging public companies." ESafety wrote off this "loan" in fiscal year ended June 30, 2002.

28. Based on the intended purpose of the cash advances and the fact that Harbor Ridge expended the monies to purchase eSafety stock and fund Harbor Ridge's operations, eSafety should have treated the cash advances of \$473,288 as expenses rather than as an asset. By treating the monies as an asset, eSafety understated its net loss for fiscal 2001 by an additional 132%, assuming a 32% tax rate.

### **False and Misleading Filings with the SEC**

#### *ESafety's "Consulting Business"*

29. In September 2000, eSafety announced that it would provide "consulting services" to start-up companies, a new line of business for eSafety. As set forth below, during its fiscal year 2001 (July 1, 2000 – June 30, 2001) eSafety recognized as revenue certain start-up company stock that eSafety purportedly would receive as payment for consulting services. Most of eSafety's consulting clients were corporations without revenues, assets, employees or operations, and several eSafety officers, directors and other personnel were also officers and directors of eSafety's consulting clients. In many instances, eSafety never received the shares it claimed as revenue.

When the company recognized the stock as revenue it valued the shares at 25 cents (\$0.25) each without any reasonable basis for such a value.

30. According to its filings, eSafety had a total of twelve (12) consulting clients in fiscal year 2001. Ten (10) never conducted any business operations, two (2) were never formally organized, and many had common ownership or management with eSafety or family members of eSafety management.

31. ESafety's revenue recognition policy for consulting services, devised by Heil with the concurrence of Jenkins, assumed: (1) eSafety would be compensated with consulting clients' common stock; (2) eSafety would value that stock at 25 cents (\$0.25) per share; and (3) eSafety would recognize revenue corresponding to the percentage of work on the consulting project that eSafety had completed.

32. ESafety valued the shares at 25 cents (\$0.25) each because eSafety's consulting clients "had no real balance sheets and were just working on an idea," and that "any company with a reasonable idea would be valued at 25 cents" per share. ESafety did not perform any further analysis of the shares' value. ESafety did not maintain any documents to support its valuation of the consulting shares.

33. ESafety's recognition of revenue from its purported consulting business did not comply with Generally Accepted Accounting Principles (GAAP) for a number of reasons that Heil and Jenkins knew, or was reckless in not knowing. ESafety should have determined the fair value of the consulting shares by referring to estimated realizable values in cash transactions of the same or similar assets, quoted market prices, independent appraisals, estimated fair values of assets or services received in exchange, or other available evidence. Fair value is not determinable where major uncertainties exist about realizing the value of the asset. See Accounting Principles Board

Opinion No. 29, *Accounting for Nonmonetary Transactions*. Similarly, GAAP prescribes that revenues should not be recognized until realizable and earned. See Concept Statement No. 5, *Recognition and Measurement in Financial Statements of Business Enterprises* at ¶ 83.a (“Revenues and gains are realizable when related assets received or held are readily convertible to known amounts of cash”).

34. ESafety never received the majority of the shares it claimed as revenue. Moreover, eSafety’s future receipt of shares was highly speculative because most of eSafety’s clients were corporations without revenues, assets, employees or operations. Although some of the companies filed registration statements with the Commission in an attempt to register their stock, many of those companies subsequently withdrew those registration statements.

35. ESafety did not reasonably determine fair values for the stock of the consulting clients, and the 25 cent per share valuation was unreasonable. There was no basis to believe that the shares, if ever received, could be readily convertible to any known amount of cash, also preventing revenue recognition in compliance with GAAP.

36. For example, eSafety did not reasonably value the shares of Sunrise Computer. Jenkins was a principal of Sunrise Computer, which was never more than a concept, never existed as a legal entity, did no business, and was abandoned before it was ever legally organized. The value of Sunrise Computer stock was of speculatively little or no value. Nevertheless, eSafety recognized \$75,000 of revenue in the second quarter of fiscal year 2001 for Sunrise Computer stock it purportedly was to receive.

37. In another instance, eSafety did not reasonably value the shares of AMP Productions. Jenkins, Heil and Heil’s daughter (a director of eSafety, as well as its Chief Administrative Officer) were board members of AMP; Jenkins was President and Secretary; and



Heil's daughter was Vice President. AMP had no revenues, virtually no assets, and never commenced operations. Nevertheless, eSafety recognized \$150,000 in revenues in the third quarter of fiscal year 2001 for AMP stock it purportedly was to receive.

38. The percentages of completion that eSafety ascribed to certain consulting contracts for revenue recognition were without any basis in fact. Heil and Jenkins knew, or were reckless in not knowing, that the consulting revenues that eSafety recognized were improper because they failed to comply with accepted revenue recognition policies and the majority of such transactions lacked substance. Heil and Jenkins knew that many of the companies had no revenues, assets, employees or operations and were related parties.

*Over 69% of eSafety's Total Revenues for Fiscal Year 2001 Consisted of Unrealized and Unsupported Consulting Revenue*

39. During the first three quarters of its fiscal year 2001, eSafety reported total revenues of \$249,420; \$236,619; and \$374,152, respectively. More than 60% of eSafety's total revenue for those periods related to eSafety's unrealized and unsupported consulting revenues.

40. During the fourth quarter of fiscal year 2001, eSafety recognized total revenues of \$404,784. More than 80% of eSafety's total revenue for that period related to eSafety's unrealized and unsupported consulting revenue.

41. For fiscal year 2001, eSafety recognized total revenues of \$1,264,975. More than 69% of eSafety's total revenue for fiscal year 2001 related to eSafety's unrealized and unsupported consulting revenue.

42. ESafety reported the following total revenues in its Forms 10-QSB (quarterly filings with the Commission) and Form NT 10-KSB (notification of late filing of annual report); the consulting revenues listed were included in total revenues but not separately disclosed in eSafety's public filings:

Period	Total Revenues	Consulting Revenues	Consulting Revenues as Percentage of Total Revenues
1st Quarter 2001	\$249,420	\$150,000	60.1%
2 <sup>nd</sup> Quarter 2001	\$236,619	\$150,000	63.4%
3 <sup>rd</sup> Quarter 2001	\$374,152	\$240,000	64.1%
4 <sup>th</sup> Quarter 2001	\$404,784	\$340,000	84.0%
Total Year-End	\$1,264,975	\$880,000	69.6%

43. The inclusion of eSafety's unrealized and unsupported consulting revenue in its quarterly and annual filings was material to the financial statements.

44. At the end of each quarter in eSafety's fiscal year 2001, Heil and Jenkins signed and/or authorized the issuance of management representation letters to eSafety's outside auditors that falsely stated, "[t]he financial statement[s] ... present the financial position, results of operations, and cash flows of eSafetyWorld, Inc. in conformity with generally accepted accounting principles." Heil and Jenkins reviewed and approved the figures reported in eSafety's financial statements.

*ESafety Reported False and Misleading Consulting Revenues  
in its 2001 Form 12b-25/NT 10-KSB*

45. On September 28, 2001, eSafety filed a Form 12b-25, also known as a Form NT 10-KSB. A Form NT 10-KSB is a notification that a small business company is unable to file timely its annual report.

46. ESafety made false statements in its Form NT 10-KSB by stating:

The Registrant has not been able to complete the audited financial statements and other narrative information necessary to enable it to complete the Registrants' Annual Report on Form 10-KSB by September 28, 2001, the required filing date, without unreasonable effort and expense. The Registrants' auditor is located in Manhattan and their activity was disrupted by the recent tragedy.

... *The Registrant anticipates reporting revenues of approximately \$1,260,000 and pretax income of continuing operations of approximately \$310,000 for the year ended June 30, 2001, compared to revenues of approximately \$720,000 and pretax income from continuing operations of approximately \$39,000 for the year ended June 30, 2000. The Registrant is still in discussion [sic] with its auditor*

*regarding estimates relating to discontinued operations and certain intangibles.*

(emphasis added.)

47. Heil knew that consulting revenue from eSafety's clients comprised a material percentage of the revenues disclosed in the Form NT 10-KSB. He further knew, or was reckless in not knowing, that the recognition and valuation of the shares was not in compliance with GAAP. Jenkins substantially assisted in the drafting of the Form NT 10-KSB and was at least reckless as to whether its statements about revenues were true or false. Those revenues were included in the Form NT 10-KSB filed with the Commission.

48. ESafety's Form NT 10-KSB was also false and misleading in stating that the "Registrant is still in discussion[s] with its auditor regarding estimates relating to discontinued operations and certain intangibles." In fact, eSafety and Heil knew that the auditors' primary concern was eSafety's recognition of consulting revenues and the auditors' inability to conclude that eSafety had complied with GAAP in recognizing consulting revenues. At the time of the filing, eSafety's auditors had already resolved issues regarding "discontinued operations" with eSafety.

49. On the Form NT 10-KSB, eSafety reported revenues of "approximately \$1,260,000," and an increase of approximately \$270,000 in pretax income from fiscal year 2000. ESafety listed the bulk of these revenues as stemming from "consulting revenues" it had recognized during the first, second and third quarters of fiscal year 2001.

*ESafety's 2001 Form 10-KSB Was False and Misleading*

50. In October 2001, eSafety's auditors informed eSafety that they did not agree with its conclusion that shares received from eSafety's consulting clients should be valued at 25 cents per share. The auditors had also determined that they would not support eSafety's recognition of any consulting revenues as income.

51. Heil disputed the auditors' conclusions in communications with them. As a result, on October 16, 2001, the auditors sent a letter to eSafety stating that they were resigning because of "significant differences regarding certain accounting matters." After Heil received the auditors' resignation letter, he agreed to adjust eSafety's fiscal 2001 financial statements and reverse all \$880,000 of its consulting revenues. Upon eSafety's reversal of the disputed consulting revenues, the auditors withdrew their resignation letter and issued an unqualified audit report.

*ESafety's Failure to Restate Prior Quarters Contradicted GAAP*

52. On October 29, 2001, eSafety filed with the Commission its annual report for fiscal year 2001 on Form 10-KSB, in which it reversed all consulting revenues from its annual financial statements. ESafety had earlier reported these same disputed consulting revenues in its first through third quarter 2001 reports. Those quarterly reports did not comply with GAAP for the same reasons that the auditors insisted eSafety reverse the consulting revenues at year end -- the shares were not subject to reasonable fair valuation and were not realizable, and the transactions lacked substance because they were based on agreements with non-operating or non-existent companies (many of which were related parties) for services not rendered. ESafety, Heil and Jenkins knew these facts during the quarters. GAAP requires the restatement of prior period financial statements when errors are discovered. Accounting Principles Board Opinion No. 20, *Accounting Errors*, and AU §722.34. However, eSafety never restated consulting revenue from

the first through third quarters of fiscal year 2001. ESafety knew or was reckless in not knowing that GAAP required eSafety to restate its first through third quarter reports.

*ESafety's Improper Deferral of Costs*

53. When it reversed its consulting revenues, eSafety also improperly reversed and deferred certain costs supposedly related to consulting services. ESafety incurred consulting costs associated with compensation paid to eSafety's officers, including general administrative services performed for the general management of the company. In compliance with GAAP, eSafety originally treated such consulting costs as period costs and expensed them as incurred during eSafety's fiscal year. At the end of the fiscal year, in its Form 10-KSB, eSafety reversed and deferred consulting costs of approximately \$373,000. Of that amount, at least \$152,000 was general and administrative expenses. These costs should not have been reversed, but rather should have remained as period expenses when incurred during fiscal 2001. As a result of this failure to comply with GAAP, eSafety understated its net loss in its Form 10-KSB for fiscal year 2001 by at least \$152,000.

*Failure to Report Related Party Transaction*

54. ESafety's Form 10-KSB filing for the period ended June 30, 2001, did not disclose that Harbor Ridge was a related party entity, as required by generally accepted accounting principles ("GAAP"). See Statement of Financial Accounting Standards number 57.

55. Harbor Ridge was a related party entity to eSafety because Heil was the President and CEO of eSafety, as well as the President and a director of Harbor Ridge; and Jenkins was the CFO of eSafety and a director of Harbor Ridge.

*Failure to Maintain Manually Signed Copies of Filings Violated Regulation S-T*

56. On September 28, 2001, eSafety filed its electronic Form NT 10-KSB signed by Jenkins. ESafety did not maintain a manually signed copy of the signature page or other document authenticating, acknowledging, or otherwise adopting the signature.

57. Similarly eSafety's electronic Form 10-KSB for fiscal year ended June 30, 2001, showed Heil and Jenkins as signatories. ESafety did not maintain a manually signed copy of the signature page or other document authenticating, acknowledging, or otherwise adopting the signature.

58. According to Commission Regulation S-T, 17 C.F.R. § 232.302, "each signatory to an electronic filing shall manually sign a signature page or other document authenticating, acknowledging or otherwise adopting his or her signature that appears in typed form within [the company's] electronic filing" with the SEC. The document is to be retained by the company for five (5) years.

**False and Misleading Press Release**

59. In October 2001, the United States faced a perceived terrorist threat involving deadly anthrax spores spread through the United States mail. On October 18, 2001, eSafety received an invitation to participate in a conference scheduled for the following day concerning ongoing efforts to protect against such threats. The conference was intended to address safety products for use in the event of, among other things, threats posed by biological contaminants in

the mails. During the evening of October 18, 2001, Heil drafted a press release announcing a proposed new product. The press release, dated October 19, 2001, stated:

ESafetyworld Announces New Product to Combat Anthrax Terror ...  
eSafetyworld, Inc. ... today announced that it has developed a revolutionary product that will make opening mail safer by preventing the spread of anthrax spores or other contaminants into the air after an envelope or package has been opened. With proper use a person opening a contaminated envelope will also be protected. This new product, which will be simple to use, will be priced for use in commercial mailrooms and the home. The product will be available for sale in approximately two weeks and will probably sell for less than \$500.

60. The October 19<sup>th</sup> press release claimed the product would “make opening the mail safer by preventing the spread of anthrax spores or other contaminants,” even though eSafety had no prototype for the product and had conducted nothing but paper calculations on its feasibility. Although the press release described the product as revolutionary, eSafety and Heil did not know whether there were other similar devices on the market. The press release also indicated that the product would “probably sell for less than \$500.” However, when Heil wrote the press release, he did not know exactly what it would cost to produce the device, or what eSafety would charge for the product.

61. Although eSafety had no such product at the time, the Chief Operating Officer COO attempted to develop the product described in the October 19<sup>th</sup> press release. During the evening of October 18, 2001, the COO approached the President of Clean Room Engineering, a manufacturer with offices next to eSafety’s, about producing a simple “glove box” device. This was the COO’s first contact with Clean Room regarding such a product. On October 19, 2001, Clean Room signed a confidentiality agreement with eSafety regarding the glove box device.

62. On October 19<sup>th</sup>, immediately after eSafety issued its press release, the company's stock price increased dramatically, closing the day at \$3.18 per share, or 413% above the previous day's close of \$0.62 per share. Trading volume for the same period increased 57,085%, from 11,500 shares to more than 6.5 million shares. On October 22, 2001, in response to the press release and the effects it had on eSafety's stock price, Nasdaq suspended trading in eSafety stock and requested a meeting with the Company.

**COUNT I**

**(Violations, and Aiding and Abetting Violations, of the  
Antifraud Provisions of the Exchange Act)**

**(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)  
(Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)]  
(Defendants eSafety and Burghard))**

63. The Commission realleges and incorporates by reference the allegations contained in Paragraphs 1 through 62 above.

64. eSafety knowingly, directly and indirectly, by use of the means and instrumentalities of interstate commerce or the mails or the facilities of a national securities exchange, in connection with the purchase and sale of securities, employed devices, schemes or artifices to defraud; made untrue statements of material facts and/or omissions 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/or engaged in acts, practices or courses of business which operated or would operate as a fraud or deceit upon any person.



65. Section 20(e) of the Exchange Act provides that any person who knowingly provides substantial assistance to another person in violation of a provision of the Exchange Act, or of any rule or regulation issued under the Exchange Act, shall be deemed to be in violation of such provision to the same extent as the person to whom such assistance is provided.

66. By reason of the conduct described above, Burghard knowingly provided substantial assistance to eSafety in its violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder in connection with eSafety's filing of a false Form 10-KSB.

67. By reason of the conduct described above, eSafety violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Burghard aided and abetted those violations.

## **COUNT II**

### **(Violations, and Aiding and Abetting Violations, of the Financial Reporting Provisions of the Exchange Act)**

**(Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 12b-25,  
13a-1 and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.12b-25, 240.13a-1 and 240.13a-13])  
(Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)]  
(Defendants eSafety and Burghard))**

68. The Commission re-alleges and incorporates by reference the allegations contained in Paragraphs 1 through 62 above.

69. ESafety filed with the Commission: (1) a materially false and misleading Form NT-10 KSB for fiscal year 2001; (2) a materially false annual report on Form 10-KSB for fiscal year 2001; and (3) materially false and misleading quarterly reports on Forms 10-QSB for the quarters ending September 30, 2000; December 31, 2000; and March 31, 2001.

70. Section 20(e) of the Exchange Act provides that any person who knowingly provides substantial assistance to another person in violation of a provision of the Exchange Act, or of any rule or regulation issued under the Exchange Act, shall be deemed to be in violation of such provision to the same extent as the person to whom such assistance is provided.

71. By reason of the conduct described above, Burghard knowingly provided substantial assistance to defendant eSafety in its filing with the Commission of a materially false annual report on Form 10-KSB for fiscal year 2001.

72. By reason of the foregoing, eSafety violated Section 13(a) of the Exchange Act and Rules 12b-20, 12b-25, 13a-1 and 13a-3 thereunder, and Burghard aided and abetted eSafety's violations of Section 13(a) of the Exchange Act and Rule 13a-13.

### **COUNT III**

#### **(Violations, and Aiding and Abetting Violations, of Books and Records Provisions of the Exchange Act)**

**(Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and  
78m(b)(2)(B)] and Rule 13b2-1 [17 C.F.R. §§ 240.13b2-1])  
(Section 20(e) of the Exchange Act [15 U.S.C. §78t(e)]  
(Defendants eSafety and Burghard))**

73. The Commission re-alleges and incorporates by reference the allegations contained in Paragraphs 1 through 62 above.

74. eSafety failed to make and keep books, records and accounts which accurately and fairly reflected its transactions and dispositions of its assets.

75. Section 20(e) of the Exchange Act provides that any person who knowingly provides substantial assistance to another person in violation of a provision of the Exchange Act, or of any rule or regulation issued under the Exchange Act, shall be deemed to be in violation of such provision to the same extent as the person to whom such assistance is provided.

76. By reason of the conduct described above, Burghard knowingly provided substantial assistance to defendant eSafety in its failures to make and keep books, records and accounts which accurately and fairly reflected its transactions and dispositions of its assets. By reason of the foregoing, eSafety violated, and Burghard aided and abetted eSafety's violations of, Section 13(b)(2)(A) of the Exchange Act and Rule 13b2-1 thereunder..

#### COUNT IV

#### **(Violations, and Aiding and Abetting Violations, of Internal Controls Provisions of the Exchange Act)**

**(Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A) and  
78m(b)(2)(B)])**

**(Section 20(e) of the Exchange Act [15 U.S.C. §78t(e)])  
(Defendant eSafety)**

77. The Commission re-alleges and incorporates by reference the allegations contained in Paragraphs 1 through 62 above.

78. ESafety failed to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that: (i) its transactions were executed in accordance with management's authorization; (ii) transactions were recorded as necessary to permit preparation of financial statements in conformity with GAAP and maintain accountability for assets; (iii) access to assets was permitted only in accordance with management's authorization; and (iv) recorded accountability for assets was compared with the existing assets at reasonable intervals and appropriate action was taken with respect to any differences.

79. By reason of the foregoing, eSafety violated Section 13(b)(2)(B) of the Exchange Act.

**COUNT V**

**(Aiding and Abetting Violations of the  
Representations to Auditors Rule)  
(Exchange Act Rule 13b2-2 [17 C.F.R. § 240.13b2-2])  
(Section 20(e) of the Exchange Act [15 U.S.C. §78t(e)])  
(Defendant Burghard)**

80. The Commission re-alleges and incorporates by reference the allegations contained in Paragraphs 1 through 62 above

81. Heil, directly or indirectly, made or caused to be made a materially false and misleading statement; or omitted to state, or caused another person to omit to state, a material fact necessary in order to make statements made, in light of the circumstances under which such statements were made, not misleading to eSafety's accountant in connection with audits or examinations of eSafety's required financial statements, or in connection with the preparation or filing of any document or report required to be filed with the Commission.

82. Section 20(e) of the Exchange Act provides that any person who knowingly provides substantial assistance to another person in violation of a provision of the Exchange Act, or of any rule or regulation issued under the Exchange Act, shall be deemed to be in violation of such provision to the same extent as the person to whom such assistance is provided.

83. By reason of the conduct described above, Burghard knowingly provided substantial assistance to Heil, an officer of eSafety, in making or causing to be made a materially false and misleading statement; or omitting to state, or causing another person to omit to state, a material fact necessary in order to make statements made, in light of the circumstances under which such statements were made, not misleading to eSafety's accountant in connection with

audits or examinations of eSafety's required financial statements, or in connection with the preparation or filing of any document or report required to be filed with the Commission.

84. By reason of the foregoing, Burghard aided and abetted Heil's violations of Exchange Act Rule 13b2-2.

**COUNT VI**

**(Violations of the  
Electronic Filing Rules and Regulations)  
(Regulation S-T, 17 C.F.R. § 232.302)  
(Section 20(e) of the Exchange Act [15 U.S.C. §78t(e)]  
(Defendant eSafety)**

85. The Commission re-alleges and incorporates by reference the allegations contained in Paragraphs 1 through 62 above.

86. eSafety did not retain manually signed signature pages or other documents authenticating, acknowledging or otherwise adopting signatures that appeared in typed form within eSafety's electronic filings with the Commission for the required five (5) years.

87. By reason of the foregoing, eSafety violated Commission Regulation S-T, 17 C.F.R. §232.302.

**PRAYER FOR RELIEF**

Wherefore, the Commission respectfully requests that this Court:

(A) Enjoin eSafety from violating Sections 10(b), 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act; Rules 10b-5, 13a-1, 13a-13, 13b2-1, 12b-20 and 12b-25 thereunder; and Section 232.302 of Commission Regulation S-T;

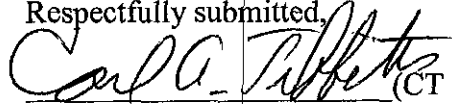
(B) Enjoin Burghard from aiding and abetting violations of Sections 10(b), 13(a) and 13(b)(2)(A) of the Exchange Act, and Rules 10b-5, 13a-1, 13b2-1 and 13b2-2 thereunder;

(C) Order Burghard to pay a civil money penalty pursuant to Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d); and

(D) Grant all further legal or equitable relief that the Court deems appropriate.

Dated: December 15, 2005

Respectfully submitted,

  
(CT 3248)

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