

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA**

SECURITIES AND EXCHANGE COMMISSION,)	
)	
Plaintiff,)	
)	CASE NO.
v.)	
)	
PAUL SIMMONS,)	COMPLAINT AND
RODNEY GILBERT,)	DEMAND FOR JURY
JOHN ZANKOWSKI,)	TRIAL
KERRY KENNEDY,)	
STANLEY SICILIANO and)	INJUNCTIVE RELIEF
ERIC LITTMAN,)	SOUGHT
)	
Defendants.)	
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Plaintiff, Securities and Exchange Commission (“SEC”) alleges:

INTRODUCTION

1. The SEC brings this action to address a “pump-and-dump” stock manipulation scheme involving millions of shares of the common stock of Nutraceutical Clinical Laboratories International, Inc. (“Nutraceutical” or the “Company”). The scheme violated the registration and anti-fraud provisions of the federal securities laws. Defendants include Paul Simmons and Rodney Gilbert, officers of the Company, John Zankowski, who acted as outside counsel, and Kerry Kennedy and Stanley Siciliano who were hired by Nutraceutical to fraudulently promote the Company’s stock. Defendant Eric Littman, a securities attorney, assisted the other Defendants in the scheme to evade the registration requirements of the federal securities laws.

2. In June 2000, Defendants Simmons, Gilbert, Zankowski and Kennedy conducted a reverse Merger (the “Merger”) of Nutraceutical into a publicly traded and SEC registered “shell” company (without assets or operations) named October Project II Corp. (“October Project”). At the same time, these four defendants secretly purchased nearly all of the shares owned by Defendant Littman, who owned the shell with Dennis Sturm. In September 2000, Zankowski, with help from Littman, fraudulently caused the Company’s transfer agent (an entity that kept records of who owned its stock) to remove restrictive legends from the shares he, Simmons, Gilbert and Kennedy had purchased from Littman and Sturm. The transfer agent then reissued these shares as purportedly non-restricted shares. Defendants Simmons, Gilbert, Zankowski and Kennedy then moved their shares to offshore nominee accounts they controlled.

3. In October and November 2000, Defendant Simmons disseminated false and misleading publicity about the Company, while Kennedy and fellow stock promoter Stanley Siciliano, falsely “touted” Nutraceutical stock on an Internet message board. Stock “touting”, in general terms, is promoting a stock in exchange for compensation. Defendants Kennedy and Siciliano also manipulated the market for the Company’s stock. Between September 2000 and mid-2001, all of the Defendants “dumped” (sold) many or all of their shares for over \$1.8 million in illicit profits, in violation of the registration and anti-fraud provisions of the federal securities laws.

4. The SEC brings this action to restrain and enjoin all the Defendants from future violations of the federal securities laws and to seek other relief, including an accounting and disgorgement of ill-gotten gains, civil penalties, penny stock bars and, as to Defendants Simmons and Gilbert, officer and director bars.

DEFENDANTS

5. Paul L. Simmons (“Simmons”), age 75, founded Nutraceutical in September 1997. He served as the Company’s Chief Executive Officer (“CEO”) from 1997 through May 2002 and was its controlling shareholder during that time. Simmons retired from the Company on August 28, 2002

6. Rodney C. Gilbert (“Gilbert”), age 65, served as Corporate Secretary, Treasurer and Chief Financial Officer (“CFO”) of Nutraceutical from September 1999 through approximately January 2001.

7. John B. Zankowski, Esq. (“Zankowski”), age 35, owns a business-consulting firm, is licensed to practice law in New York and practiced law in Georgia. From approximately April 1999 until spring 2001, he was both business advisor and securities counsel to the Company.

8. Kerry P. Kennedy (“Kennedy”), age 40, was a penny stock promoter who helped engineer the merger between Nutraceutical and October Project and orchestrated the fraudulent promotion of Nutraceutical stock.

9. Stanley J. Siciliano (“Siciliano”), age 37, was a penny stock promoter who, in coordination with Kennedy, fraudulently promoted Nutraceutical stock.

10. Eric P. Littman, Esq. (“Littman”), 49, is a Miami-based securities attorney. Littman was the majority stockholder in October Project, negotiated its merger with Nutraceutical and sold nearly all of his 3.965 million shares to Defendants Simmons, Gilbert, Zankowski and Kennedy.

OTHER RELEVANT INDIVIDUALS AND ENTITIES

11. Nutraceutical Clinical Laboratories International, Inc. (“Nutraeutical” or the “Company”), located in St. Petersburg, Florida, was engaged in the business of testing and manufacturing a food preservative. At no time was a registration statement filed or in effect for the Company under the federal securities laws. In January 2000, the Company’s shares were approved for quotation on the “Pink Sheets” and were traded as a “penny stock” for the vast majority of the time covered by this complaint. The “Pink Sheets” are a provider of pricing and financial information for the “over the counter” (“OTC”) securities market. In approximately June 2000, Nutraeutical merged into shell company named October Projects II Corp. (“October Projects”), which was renamed Nutraeutical after the reverse merger (the “Merger”).

12. The Star Companies, collectively RMH Associates, J. Rothschild, Inc., and Eagle Rock Corp, are each Cayman Island entities personally owned and controlled by Simmons and Gilbert. These offshore companies were created shortly before Nutraeutical’s merger with October Project to hold the 3.75 million Nutraeutical shares Simmons and Gilbert secretly purchased from Littman and Sturm in the Merger. Their purpose was to hide Simmons and Gilbert’s ownership of the shares when they sold them into the public market. As officers of the Company, Simmons and Gilbert were limited in their ability to legally sell the shares.

13. Dennis Sturm (“Sturm”), along with Littman, was a major stockholder in October Project prior to its merger with Nutraeutical. He owned one million shares of October Project before the Merger, and like Littman, sold nearly all of them to Simmons, Gilbert, Zankowski and Kennedy in a secret stock sale as part of the Merger.

JURISDICTION AND VENUE

14. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d) and 22(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. §§ 77t(b), 77t(d) and 77v(a)], and Sections 21(d), 21(e), and 27 of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §§ 78u(d), 78u(e) and 78aa].

15. The Defendants, directly and indirectly, have made use of the means and instrumentalities of interstate commerce, the means and instruments of transportation and communication in interstate commerce, and the mails, in connection with the acts, practices, and courses of business set forth in this Complaint.

16. Venue is proper in the Middle District of Florida pursuant to Section 22 of the Securities Act [Title 15 U.S.C. § 77v], and Section 27 of the Exchange Act [Title 15 U.S.C. § 78aa] because certain of the Defendants’ acts and transactions constituting violations of the laws alleged herein occurred in the Middle District of Florida. In addition, the principal offices of Nutraceutical were located in the Middle District of Florida.

THE FRAUDULENT SCHEME

June 2000: Nutraceutical Merges Into October Project

17. In 1999, Nutraceutical’s CEO Paul Simmons hired attorney John Zankowski to locate a publicly traded shell company into which Nutraceutical, then a private company, could merge. In early 2000, Zankowski introduced Simmons to penny stock promoter Kerry Kennedy, who offered October Project as a merger partner. Nutraceutical merged into October Project in a stock-for-stock transaction on June 1, 2000.

18. Before the Merger, October Project was a shell company with 50 million shares of common stock. Only five million of these 50 million shares were issued and outstanding. The founder, sole officer and director of October Project was Defendant Eric Littman, who 3.965 million shares. Dennis Sturm owned one million shares.

19. Because Littman and Sturm acquired their shares directly from October Project in a private transaction 1997, all of their 4.965 million shares were “restricted” securities at the time of the Merger. “Restricted” securities include securities acquired directly or indirectly from an issuer, or from an affiliate of the issuer, in a transaction or chain of transactions not involving any public offering. Littman and Sturm were affiliates of October Project at the time of the Merger because of the size of their ownership and, as to Littman, because he was the sole officer and director of the company. As affiliates, Littman’s and Sturm’s 4.965 million shares were also “control shares.” Control shares are those owned or controlled by an affiliate of the shares’ issuer. The federal securities laws impose various conditions on sales of control and restricted securities if the sales transactions are not registered with the SEC.

20. As a result of the Merger, Nutraceutical became a wholly owned subsidiary of October Project. Forty-five million shares of October Project (all the authorized but previously unissued shares) were issued to Nutraceutical’s existing shareholders as restricted shares. Under the terms of the written merger agreement, it appeared as if the other 5 million October Project shares (nearly all of which were issued to Littman and Sturm) would remain with Littman, Sturm and the other existing October Project shareholders. However, simultaneously with the Merger, Littman and Sturm

secretly sold 4.715 million of these shares to Simmons, Gilbert, Zankowski and Kennedy in an undisclosed side agreement.

21. Simmons and Gilbert anonymously bought 3.75 million of the 4.715 million shares sold by Littman and Sturm, through the Star Companies, which were Cayman entities they created to hold and then sell their shares. Simmons and Gilbert bought their shares using \$129,500 they raised from a Nutraceutical shareholder under false pretenses.

22. The rest of the 4.715 million shares were transferred anonymously to entities owned by Kennedy and Zankowski as compensation for putting the Merger together and for providing other purported “services”—865,000 shares to Kennedy and 100,000 shares to Zankowski. In exchange for his shares, Kennedy also agreed to pay Littman and Sturm \$20,000.

23. In July 2000, approximately one month after the Merger, October Project changed its name to Nutraceutical. By September 2000, the ticker symbol for the Company’s stock on the “Pink Sheets” was changed from “OCTX” to “NCCL”.

Summer 2000: Simmons, Gilbert, Zankowski, Kennedy and Littman Circumvent Resale Restrictions on Their Nutraceutical Shares

24. The 4.715 million shares Littman and Sturm secretly sold to Simmons, Gilbert, Zankowski and Kennedy were restricted shares and the stock certificates for the shares were printed with legends indicating that resale of the shares was restricted under the federal securities laws. Specifically, the shares could not be sold to public investors unless the shares were sold in a registered offering—in other words, a SEC registration statement was in effect—or the sale met one of the exemptions from registration under the federal securities laws applicable to restricted securities.

25. If there were no registration statement, the resale restrictions prohibited Simmons, Gilbert, Kennedy and Zankowski from publicly selling any of these shares for at least one year. Although the Defendants sold hundreds of thousands of Nutraceutical shares to the public in late 2000 and early 2001, Littman, Simmons, Gilbert, Zankowski and Kennedy never filed a registration statement for the sale of those shares, nor met the requirements of any of the exemptions from registration before selling the securities

26. As part of the scheme to circumvent the registration requirements of the federal securities laws, Zankowski deceived the Company's stock transfer agent into removing the restrictive legends from the stock certificates for the 4.715 million shares. The removal of the restrictive legends from the stock certificates enabled Simmons, Gilbert, Zankowski and Kennedy to sell the shares in the OTC securities market without letting the buyers of the shares know that the shares had sales restrictions.

27. Zankowski convinced the transfer agent to remove the restricted legends by sending a fraudulent legal opinion letter to the agent claiming that: (1) the sale of stock by Littman and Sturm to Simmons, Gilbert, Zankowski and Kennedy occurred September 1, 2000, and, thus, met an exemption from registration set forth in SEC Rule 144(k); (2) due to that 144(k) exemption, as well as the fact that Littman and Sturm were not affiliated with the Company at the purported September 1, 2000 date of the sale, the 4.715 million shares were no longer restricted or control shares; and, (3) as a result, the recipients of the shares, the entities controlled by Simmons, Gilbert, Zankowski and Kennedy, could lawfully resell the shares without further legal restriction.

28. Zankowski knew, or was reckless in not knowing, that his legal opinion letter was false and misleading because the sale of stock by Littman and Sturm to

Simmons, Gilbert, Zankowski and Kennedy Littman did not qualify for any exemption (Rule 144(k) or otherwise) to the registration requirements of the federal securities laws. The secret stock sale did not qualify for an exemption from registration under Rule 144(k) because Littman and Sturm actually sold the shares in June 2000 (at the time of the Merger), when they were affiliates of the Company. Zankowski also knew, or was reckless in not knowing, that the shares Simmons and Gilbert purchased through the Star Companies remained restricted and control shares after the sale because Simmons and Gilbert were also affiliates of the Company at the time of the transaction.

29. In order to evade the registration requirements, Littman sent a signed stockholder questionnaire to the transfer agent at the same time that Zankowski sent his opinion letter. In his stockholder questionnaire, Littman represented that, as of September 1, 2000, he owned 3.715 million shares and did not have a present intention, either individually or together with any other shareholder, to sell all or a part of the shares. These representations were false because Littman had already sold nearly all of his shares together with Sturm to Simmons, Gilbert, Zankowski and Kennedy as part of the June 2000 Merger. Sturm submitted a similar stockholder questionnaire at Littman's behest.

30. In early September 2000, the fraudulent legal opinion letter and the stockholder questionnaires caused the transfer agent to reissue the 4.715 shares to the entities controlled by Simmons, Gilbert, Zankowski and Kennedy, without legends on the stock certificates identifying the shares as having resale restrictions.

31. Once the legends were removed from the stock certificates, Simmons, Gilbert, Zankowski and Kennedy were able to sell the shares to public investors through

their entities. Simmons, together with Kennedy and fellow promoter Siciliano began “pumping” the market price for the Company’s stock through misleading press releases, touting on the internet, and manipulative trading.

**Simmons Pumps Nutraceutical Stock Through False Statements
on the Company’s Website and in Press Releases**

32. In October and November 2000, Nutraceutical CEO Simmons published materially false or misleading statements about the Company on its website and in press releases, which he disseminated to the public through business wires, mailings to Nutraceutical shareholders, and stock promoters he hired.

33. The public statements issued by Simmons: (1) claimed that Nutraceutical’s preservative was tested and proven to preserve “hundreds of food and beverage products three to five times longer than chemical preservatives used today”; (2) announced more than \$40 million in contracts for the production and distribution of the preservative; and (3) stated that Nutraceutical’s shares were “poised” to trade on the NASDAQ and Over-the-Counter Bulletin Board (“OTCBB”) stock markets.

34. Simmons knew, or was reckless in not knowing, the public statements he published were materially false and misleading because Nutraceutical’s preservative had never been proven as effective by either the Company or any independent party. The Company’s testing was totally subjective (nothing beyond looking, smelling and tasting the tested foods), never independently verified and therefore unreliable.

35. Simmons also knew, or was reckless in not knowing, that his public statements in three November 2000 press releases in were materially false and misleading because they not only distorted the value and nature of the Nutraceutical’s claimed “\$40 million” in contracts but also grossly overstated the readiness of the Company to

manufacture and sell its preservative and derivative products. Two of these press releases claimed Nutraceutical had signed two contracts, valued at \$10 million and \$20 million, to distribute the preservative, with “deliveries scheduled to begin immediately.” However, the Company had no preservative to distribute, and these contracts merely granted a third party the right to be the exclusive distributor of the preservative, should any be produced. A third November 2000 press release claimed Nutraceutical had also signed a contract to produce \$1 million worth of paintballs per month “as fast as the Company [could] gear-up to deliver ([first delivery date] estimated to be January 30, 2001)” However, as of May, 2001, more than three months after the estimated delivery date, Nutraceutical had not manufactured a single paintball because it did not have a manufacturing facility, the equipment, or the technology necessary to do so. Nutraceutical could not even produce the raw material for the paintballs—a by-product of the preservative—because it was unable to produce the preservative itself. Nutraceutical never delivered any products under any of the contracts publicized by Simmons because it could not produce the preservative.

36. Simmons also knew, or was reckless in not knowing, that his statement that Nutraceutical’s stock was “poised to trade” on the NASDAQ and OTCBB stock markets in a mid-October 2000 press release was materially false and misleading. As Simmons knew, the Company did not have independently audited financial statements, a prerequisite for listing on NASDAQ or the OTCBB.

37. Simmons never publicly disclosed the truth about the terms of the Company’s contracts or its failure to perform them. Nor did he update the press releases or Nutraceutical’s website to correct these misstatements and omissions. Instead,

Simmons hired promoters to draw even more people to Nutraceutical's website, its press releases and other public statements.

Promoters Kennedy and Siciliano Fraudulently Tout Nutraceutical on the Internet

38. Simmons and Gilbert, with Zankowski's knowledge, paid Kennedy and Siciliano with free trading Nutraceutical shares to perform "promotional" services, including "assist[ing] the company in making a market for the stock" and "maintain[ing] and build[ing]" the stock price. Kennedy was paid 865,000 shares as part of the Merger. He recruited Siciliano in the summer of 2000. Simmons paid Siciliano 100,000 shares to provide "promotional" services for Nutraceutical.

39. While Simmons was issuing false and misleading press releases about Nutraceutical in October and November 2000, Kennedy and Siciliano posted anonymous favorable messages about Nutraceutical stock on the "Raging Bull" internet website. Neither Kennedy nor Siciliano disclosed the compensation they had received for touting Nutraceutical stock in their postings. They timed these favorable postings to coincide with Simmons' false press releases. Siciliano also promoted the stock by handing out false press releases at an investor conference in New York.

40. For example, on October 17, 2000, Nutraceutical issued a false press release touting its preservative, claiming its stock was "poised" to trade on NASDAQ and the OTCBB, and referring investors to Raging Bull for other "investor comments." That same day, using the pseudonym "Rainmaker1" in a message on the Raging Bull message board dedicated to Nutraceutical stock, Siciliano claimed that Nutraceutical's stock—trading then around \$5 per share—would rise to \$150 per share. He also posted other wildly optimistic statements about the company on October 17, 2000, and recommended

the Company as a “STRONG BUY!!!!!!!!!!!!!!” Siciliano received 100,000 Nutraceutical shares Kennedy and Simmons had promised him for his role in the scheme the same day. Siciliano knew, or was reckless in not knowing, that his statements were false and misleading as had no basis to make these claims.

41. On the same day, using the pseudonym “Pupunu,” Promoter Kennedy posted on Raging Bull the following response to Siciliano’s posting containing the baseless \$150/share prediction:

It seems to me that with [Nutraceutical’s] margins on the preservative alon (sic) that they could justify a market cap of \$750,000,000 dollars (sic) which would put the stock in the \$15.00 range. The only caveat I see is their ability to provide enough to meet the worlds (sic) demands. Proper marketing with good PR could be a financial windfall for investors at this point because of the world’s food problem. Rain [Siciliano’s pseudonym] if this becomes a sexy investment from (sic) solving hunger problems the (sic) u (sic) may be understating the per share #

When he made his Raging Bull postings Kennedy knew, or was reckless in not knowing, that the Company had yet to produce any preservative on a commercial scale because he had visited Nutraceutical’s facilities on a regular basis during the second half of 2000.

42. In mid-October 2000, during the days and weeks surrounding their favorable Raging Bull postings about Nutraceutical, Kennedy and Siciliano sold tens of thousands of shares of their Nutraceutical stock.

Kennedy and Siciliano Manipulate the Market for Nutraceutical Stock

43. Throughout the fourth quarter of 2000 and into 2001, while falsely touting and selling off much of their Nutraceutical stock, and while Simmons was disseminating misleading publicity about the Company, Kennedy and Siciliano also engaged in a scheme to artificially inflate the demand for Nutraceutical stock, and to prop up its price.

This was done through bogus, prearranged stock trades among their own and related accounts.

44. The market for Nutraceutical stock was ripe for manipulation for several reasons. First, there was no trustworthy financial information about the Company publicly available. Financial statements were not published after the Merger, nor were any requisite SEC filings made that contained such information. The only information came in the form of Simmons' false and misleading press releases and other public statements made on Nutraceutical's website and elsewhere. Second, there had been scant trading in the stock. Only about 40,000 Nutraceutical shares had traded on just 22 days of trading between the June 2000 Merger and early October 2000, when Kennedy and Siciliano began their manipulation. Finally, when Kennedy and Siciliano started their manipulative trading in early October 2000, they, together with Simmons, Gilbert and Zankowski, controlled as much as 95 percent of the five million purportedly non-restricted shares of Nutraceutical stock.

45. Soon after receiving his 865,000 shares in late September and early October, Kennedy distributed approximately 300,000 of these shares to offshore brokerage accounts owned and controlled by approximately twenty of his friends and associates (the "Transferee Accounts"). One of Kennedy's transferees was Siciliano who received 100,000 of his shares from Kennedy on October 17, 2000. At Kennedy's recommendation, many of these Transferee Accounts were opened with the same broker at Global Securities Corp., a brokerage firm in Vancouver, Canada, only weeks before Kennedy transferred his Nutraceutical shares to them.

46. Between October 2, 2000, and February 2, 2001, Kennedy and Siciliano conducted “matched orders” and “wash sales” in Nutraceutical stock between themselves and among some Transferee Accounts to: (1) simulate market activity in Nutraceutical stock; (2) mislead the market that genuine investors were buying for legitimate investment purposes; and (3) artificially prop up the Company’s stock price. “Matched” orders are “orders for the purchase/sale of a security that are entered with the knowledge that orders of substantially the same size, at substantially the same time and price, have been or will be entered by the same or different persons for the sale/purchase of such security.” “Wash” sales are transactions involving no change in beneficial ownership. Many of these matched orders and wash sales were executed only seconds apart, and more than half were executed less than an hour apart. Kennedy and Siciliano timed some of their manipulative trades in October and November to coincide with the Company’s false and misleading press releases and their own false touts on Raging Bull.

47. Between September 2000 and January 2001, Kennedy’s distribution of hundreds of thousands of purportedly non-restricted Nutraceutical shares to his friends and associates together with the matched orders and wash sales conducted by Kennedy and Siciliano, steadily increased the volume of trading in the stock, giving investors a false picture of genuine market activity. Their manipulation also propped up the price of Nutraceutical stock.

The Defendants Sell Their Nutraceutical Stock

48. The dissemination of false and misleading information about the Company by Simmons in October and November 2000, together with fraudulent Internet touting and manipulative trading in the fourth quarter of 2000 by Kennedy and Siciliano, caused increased trading volume in Nutraceutical stock and propped up the stock price. The Defendants sold their Nutraceutical shares into this artificially inflated market for sizeable profits.

49. Simmons and Gilbert, through their Star Companies, received 3.75 million Nutraceutical shares in the October Projects merger. In October 2000 and mid-2001, Simmons and Gilbert used 600,000 shares to repay two separate personal loans to Simmons, totaling \$400,000. In mid-2001 and early 2002, Simmons and Gilbert, through their Star Companies, also sold 235,000 of these shares for more than \$600,000, making their total profit approximately \$1 million. Simmons and Gilbert paid Kennedy and Siciliano hundreds of thousands of shares to manipulate Nutraceutical's stock price at the time Simmons repeatedly published materially false and misleading statements about the Nutraceutical on the Company's website and in press releases. Simmons and Gilbert knew, or were reckless in not knowing, that they were selling shares into an artificially inflated market (created in part by their own conduct) in violation of the registration and antifraud provisions of the federal securities laws.

50. In late 2000 and early 2001, Kennedy sold hundreds of thousands of Nutraceutical shares for approximately \$440,000 in profits. Later in 2001, Kennedy sold many more Nutraceutical shares for approximately \$400,000 in profits. In the fourth quarter of 2000, Kennedy also transferred approximately 300,000 Nutraceutical shares

with a market value of approximately \$1.5 million to his friends and colleagues. Kennedy repeatedly made anonymous, false postings on Raging Bull about Nutraceutical and his own stock trades and engaged in repeated fraudulent stock trading to manipulate the market for Nutraceutical stock. Kennedy knew, or was reckless in not knowing, that he was selling shares into an artificially inflated market (created in part by his own conduct) in violation of the registration and antifraud provisions of the federal securities laws.

51. In the fourth quarter of 2000, Siciliano publicly sold approximately 100,000 Nutraceutical shares for approximately \$63,000 in illicit profits. Like Kennedy, Siciliano repeatedly made anonymous, false postings on Raging Bull about Nutraceutical and his own stock trades and engaged in repeated fraudulent stock trading to manipulate the market for Nutraceutical stock. Siciliano knew, or was reckless in not knowing, that he was selling shares into an artificially inflated market (created in part by his own conduct) in violation of the registration and antifraud provisions of the federal securities laws.

52. In 2000 and 2001, Zankowski publicly sold thousands Nutraceutical stock for approximately \$170,000 in illicit profits. He also compensated his employees and others with thousands of shares of Nutraceutical stock with a market value of approximately \$81,000. Nutraceutical also paid Zankowski \$10,000 for legal and other services he provided in connection with the merger. As counsel for the Company, Zankowski knew, or was reckless in not knowing, that he was improperly selling restricted shares to the investing public, and that he was selling shares into an artificially

inflated market in violation of the registration and antifraud provisions of the federal securities laws.

53. Littman was paid approximately \$150,000 for the sale of his October Projects shares to Simmons, Gilbert, Zankowski and Kennedy. In September 2000, Littman transferred to his wife and another person half of the 200,000 purportedly non-restricted Nutraceutical shares he kept after the Merger. The market value of these 100,000 shares was approximately \$500,000 at the time of transfer. Littman publicly sold thousands of Nutraceutical shares in 2001 for a profit of approximately \$130,000.

COUNT I
OFFER AND SALE OF UNREGISTERED SECURITIES IN VIOLATION OF
SECTIONS 5(a) AND 5(c) OF THE SECURITIES ACT
(All Defendants)

54. The Commission repeats and realleges Paragraphs 1 through 53 of this Complaint as if fully set forth herein.

55. No registration statement was filed or in effect with the Commission pursuant to the Securities Act and no exemption from registration exists with respect to the securities and transactions described in this Complaint.

56. From approximately May 2000 through the end of 2002, the Defendants, directly and indirectly: (i) made use of the means or instruments of transportation or communication in interstate commerce or of the mails to sell securities, through the use or medium of a prospectus or otherwise; and/or (ii) made use of the means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy securities through the use or medium of any prospectus or otherwise, without a registration statement having been filed or being in effect with the SEC as to such securities.

57. By reason of the foregoing, the Defendants, directly or indirectly, have violated Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a) and 77e(c).

COUNT II
FRAUD IN VIOLATION OF SECTION 10(b)
OF THE EXCHANGE ACT AND RULE 10b-5 THEREUNDER
(Defendants Simmons, Gilbert, Kennedy, Zankowski and Siciliano)

58. The Commission repeats and realleges Paragraphs 1 through 53 of this Complaint as if fully set forth herein.

59. From approximately May 2000 through mid-2001, Simmons, Gilbert, Kennedy, Zankowski and Siciliano, directly and indirectly, by use of the means and instrumentalities of interstate commerce, and of the mails in connection with the purchase or sale of securities, knowingly, willfully or recklessly: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material facts and/or omitted 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 (c) engaged in acts, practices and courses of business which operated as a fraud upon the purchasers of such securities.

60. By reason of the foregoing, Defendants Simmons, Gilbert, Kennedy, Zankowski and Siciliano, directly or indirectly, violated Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Exchange Act Rule 10b-5, 17 C.F.R. § 240.10b-5.

COUNT III
TOUTING IN VIOLATION OF
SECTION 17(b) OF THE SECURITIES ACT
(Defendants Kennedy and Siciliano)

61. The Commission repeats and realleges Paragraphs 1 through 53 of this Complaint as if fully set forth herein.

62. From approximately October through December 2000, Kennedy and Siciliano, directly and indirectly, by use of any means or instruments of transportation or communication in interstate commerce, or by use of the mails, published, gave publicity to or circulated communications which, though not purporting to offer a security, described such security for a consideration received or to be received, directly or indirectly, from an issuer, underwriter or dealer, without fully disclosing the receipt, whether past or prospective, of such consideration and the amount thereof.

63. By reason of the foregoing, Kennedy and Siciliano, directly or indirectly, have violated and, unless enjoined, will continue to violate Section 17(b) of the Securities Act, 15 U.S.C. § 77q(b).

RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that this Court enter an Order:

A. Pursuant to Section 20(b) of the Securities Act [15 U.S.C. §77t(b)], permanently enjoining Simmons, Gilbert, Kennedy, Zankowski, Siciliano and Littman from future violations of Sections 5(a) and (c) of the Securities Act [15 U.S.C. §§ 77(e)(a) and (c)];

B. Pursuant to Section 21(d)(1) of the Exchange Act [15 U.S.C. § 78u(d)(1)], permanently enjoining Simmons Gilbert, Kennedy, Zankowski and Siciliano from future

violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78(j)(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5];

C. Pursuant to Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)], permanently enjoining Kennedy and Siciliano from future violations of Section 17(b) of the Securities Act [15 U.S.C. § 77q(b)];

D. Pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], directing Simmons, Gilbert, Kennedy, Zankowski, Siciliano and Littman to pay civil money penalties;

E. Pursuant to Section 20(g) of the Securities Act [15 U.S.C. § 77t(g)] and Section 21(d)(6) [15 U.S.C. § 78(u)(d)(6)] of the Exchange Act, barring Simmons, Gilbert, Kennedy, Zankowski, Siciliano and Littman from participating in an offering of penny stock;

F. Pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78(u)(d)(2)], barring Simmons and Gilbert from serving as officers or directors of any public company;

G. Requiring Simmons, Gilbert, Kennedy, Zankowski, Siciliano and Littman to disgorge any profits, gains or other proceeds realized as a result of their illegal conduct, with prejudgment interest;

H. Granting such further relief as this Court may deem just and appropriate.

Dated: November 12, 2004

Respectfully submitted,

By:

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