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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

vs.

LION GATE CAPITAL, INC., and  
KENNETH RICKEL,

Defendants.

Case No. **CV08-06574**  
**COMPLAINT**

**DSF (MANX)**

BY \_\_\_\_\_  
CLERK OF DISTRICT COURT  
CENTRAL DISTRICT OF CALIF.  
LOS ANGELES  
2008 OCT - 7 AM 10:10

FILED

SUMMARY

1  
2       1.     This matter involves multiple violations of Rule 105 of Regulation M  
3 under the Securities Exchange Act of 1934 (“Exchange Act”) by Lion Gate  
4 Capital, Inc. (“Lion Gate”) and its principal, Kenneth Rickel (“Rickel”), who is  
5 Lion Gate’s beneficiary (collectively, the “Defendants”). From January 2005  
6 through September 2006, Defendants violated Rule 105 when they used shares  
7 purchased in at least fourteen registered public offerings to cover short sales that  
8 occurred during the five business days before the pricing of those offerings (the  
9 “restricted period”). Defendants realized profits of at least \$207,291 from this  
10 illegal trading.

11       2.     During the time of the conduct alleged in this Complaint, Rule 105  
12 prohibited covering a short sale with securities purchased in a registered offering if  
13 the short sale occurred during the restricted period. A “short sale” is any sale of a  
14 security that the seller does not own, or any sale that is consummated by the  
15 delivery of a security by or for the seller. *See* 17 C.F.R. § 240.3b-3 (now Rule  
16 200(a) of Regulation SHO, 17 C.F.R. § 242.200(a)).

17       3.     The purpose of Rule 105 is to prevent manipulative trading by short  
18 sellers prior to registered public offerings, and to promote offering prices that are  
19 based upon open market prices, determined by supply and demand, rather than by  
20 artificial forces. Short sellers who violate the rule’s prohibitions can profit unfairly  
21 because they largely avoid exposure to market risk by using shares purchased at a  
22 discount in a registered offering to cover restricted period short sales.

23       4.     At all relevant times, Rickel made all trading and investment  
24 decisions on behalf of Lion Gate. Rickel directed and authorized the trading of the  
25 securities that are at issue in this Complaint, including the sham transactions that  
26 obfuscated the violations.

27       5.     By engaging in the conduct described in this Complaint, Defendants  
28 have violated, and unless enjoined will continue to violate, Rule 105 of Regulation

1 M under the Exchange Act, 17 C.F.R. § 242.105 (effective until Oct. 8, 2007).

2 6. By this Complaint, the U.S. Securities & Exchange Commission  
3 (“Commission”) seeks an order: (1) permanently enjoining the Defendants from  
4 future violations of Rule 105, (2) requiring Lion Gate and Rickel to disgorge the  
5 ill-gotten gains and pay prejudgment interest, (3) requiring the Defendants to pay  
6 civil monetary penalties, and (4) providing other appropriate relief.

7 **JURISDICTION AND VENUE**

8 7. This Court has jurisdiction over this action pursuant to Sections 21(d),  
9 21(e), and 27 of the Exchange Act, 15 U.S.C. §§ 78u(d), 78u(e) and 78aa.  
10 Defendants, directly or indirectly, singly or in concert, made use of the means or  
11 instrumentalities of interstate commerce, of the mails, or of a facility of a national  
12 securities exchange in connection with the transactions, acts, practices, and courses  
13 of business alleged in this Complaint.

14 8. Venue is proper in this district pursuant to Section 27 of the Exchange  
15 Act, 15 U.S.C. § 78aa, because Lion Gate has its principal place of business within  
16 this district, Rickel resided within this district during the relevant time period, and  
17 certain of the transactions, acts, practices, and courses of conduct constituting  
18 violations of the laws alleged in this Complaint occurred within this district.

19 **DEFENDANTS**

20 9. Lion Gate Capital, Inc. is a California corporation with its principal  
21 place of business in Beverly Hills, California. Lion Gate engages in the business  
22 of actively trading various securities.

23 10. Kenneth Rickel is a resident of Los Angeles, California. Rickel is the  
24 president, sole owner and sole employee of Lion Gate, and its only trader. Rickel  
25 makes all investment decisions for Lion Gate and has sole discretion over trading  
26 orders. Rickel directed and authorized the trading of the securities described in  
27 this Complaint.

28 /////

1 **FACTS**

2 **A. Rule 105 Prohibited Both Direct Covering of Restricted Period Short**  
3 **Sales and Sham Transactions**

4 11. At all relevant times, Rule 105 provided, in pertinent part: “[i]n  
5 connection with an offering of securities for cash pursuant to a registration  
6 statement or a notification on Form 1-A . . . filed under the Securities Act, it shall  
7 be unlawful for any person to cover a short sale with offering securities purchased  
8 from an underwriter or broker or dealer participating in the offering, if such short  
9 sale occurred during . . . . [t]he period beginning five business days before the  
10 pricing of the offered securities and ending with such pricing . . . .” 17 C.F.R. §  
11 242.105 (effective until Oct. 8, 2007). Rule 105 is prophylactic, and its  
12 prohibitions apply regardless of the short seller’s intent in effecting the short sales.

13 12. At the time of the conduct alleged in this Complaint, Rule 105  
14 prohibited traders from directly covering restricted period short sales with shares  
15 obtained in the follow-on offering. Nor could traders avoid liability under Rule  
16 105 by entering into “sham transactions” that gave the appearance that restricted  
17 period short sales were covered using shares purchased in the open market, rather  
18 than offering shares.

19 13. In a sham transaction, the trader makes short sales within the  
20 restricted period and obtains shares in the follow-on offering, but may not use the  
21 offering shares directly to cover his short sales. Rather, the trader might sell the  
22 offering shares into the open market and, contemporaneously or nearly  
23 contemporaneously, purchase shares on the open market to cover the pre-pricing  
24 short sales. If those post-offering transactions have no legitimate economic  
25 purpose or substance, result in no genuine change in beneficial ownership, and/or  
26 incur little to no market risk, those transactions may be sham transactions that  
27 violate Rule 105.

28 14. Frequently, traders engaging in sham transactions make use of a

1 trading tactic called a “boxed position” to preserve the ability to profit at the time  
2 of the follow-on offerings. That is, the trader simultaneously maintains a short  
3 position (established during the Rule 105 restricted period) and a long position  
4 (established by purchasing in the follow-on offering). Ultimately, the trader  
5 “flattens the box” by liquidating or cancelling out both the long and the short  
6 positions. It is at this point that the trader realizes his profit, which he locked in at  
7 the time he established a boxed position.

8 15. The Commission amended Rule 105 effective October 9, 2007. The  
9 amended rule generally prohibits purchasing a security in a registered offering if  
10 the buyer has a restricted period short position in that security. The Defendants’  
11 conduct alleged in this Complaint would violate the amended Rule 105 as well.

12 **B. Lion Gate and Rickel Traded in Violation of Rule 105**

13 16. Lion Gate and Rickel violated Rule 105 by making restricted period  
14 short sales in the shares of at least fourteen issuers, purchasing shares in those  
15 issuers’ follow-on offerings, using the offering shares to cover the short sales, and  
16 engaging in sham transactions designed to obfuscated the violations of Rule 105.

17 17. From January 2005 through September 2006, Lion Gate made short  
18 sales of the shares of at least the following fourteen issuers: TC Pipelines, LP  
19 (TCLP), Minrad International, Inc. (BUF), IPC Holdings, Ltd. (IPCR), Axsys  
20 Technologies, Inc. (AXYS), Randgold Resources, Inc. (GOLD), Fiberstars, Inc.  
21 (FBST), Pharmaxis, Ltd. (PXSL), Lifetime Brands, Inc. (LCUT), American  
22 Capital Strategies, Ltd. (ACAS), Axesstel, Inc. (AFT), TGC Industries, Inc. (TGE),  
23 Brigham Exploration Co. (BEXP), Gasco Energy (GSX), and Extra Storage Space,  
24 Inc. (EXR). Each of these issuers’ shares was traded, at the relevant times, on the  
25 American Stock Exchange, New York Stock Exchange, or NASDAQ stock  
26 exchange.

27 18. These short sales occurred during the restricted period prior to the  
28 pricing of registered public offerings of the shares of those fourteen issuers.

1           19. Lion Gate subsequently received allocations of shares, and purchased  
2 shares, from underwriters, brokers, or dealers participating in those registered  
3 public offerings.

4           20. Lion Gate then used the offering shares to cover the short sales. Lion  
5 Gate engaged in sham transactions that obfuscated its violations of Rule 105.

6           21. Lion Gate and Rickel used two types of sham transactions to  
7 obfuscate the Rule 105 violations: (1) cross trades; and (2) contemporaneous open  
8 market sales and purchases.

9           22. In total, Lion Gate and Rickel's illegal trading earned them profits of  
10 at least \$207,291.

11           23. Rickel made every trading decision and placed every one of Lion  
12 Gate's violative trades described herein.

13 **C. Lion Gate and Rickel Violated Rule 105 Through Cross Trading**

14           24. On at least eight occasions, Lion Gate violated Rule 105 while  
15 engaging in sham transactions that involved cross trading. On those occasions,  
16 Lion Gate sold short during the restricted period and subsequently purchased  
17 shares in the offerings, thereby establishing a boxed position, or simultaneous long  
18 and short positions in shares of the same issuers. Lion Gate then bought and sold  
19 post-pricing shares of the same issuers, purportedly on the open market. Lion  
20 Gate's records reflected that the "open market" purchases were used to cover its  
21 restricted period short sales and the "open market" sales were of the shares  
22 acquired during the offerings, thereby "flattening" the boxed position.

23           25. These post-pricing sales and purchases did not occur on the open  
24 market, however. Rather, Lion Gate placed orders to sell and purchase the post-  
25 pricing shares through the same broker and directed the broker to mark them as  
26 "cross trades." A cross trade occurs when a trader buys and sells the same shares  
27 to itself. Lion Gate's cross trades were sham transactions. Lion Gate flattened its  
28 boxed positions by using the shares it purchased in the offerings to cover all or part

1 of its restricted period short sales. These cross trade sham transactions occurred in  
2 shares of the following issuers: TC Pipelines, LP (TCLP), Minrad International,  
3 Inc. (BUF), IPC Holdings, Ltd. (IPCR), Axsys Technologies, Inc. (AXYS),  
4 Randgold Resources, Inc. (GOLD), Fiberstars, Inc. (FBST), Pharmaxis, Ltd.  
5 (PXSL), and Lifetime Brands, Inc. (LCUT).

6 26. TC Pipelines, LP (TCLP). On March 18, 2005, Lion Gate purchased  
7 2,200 shares of TCLP at \$37.04 in a registered offering. During the restricted  
8 period prior to the pricing of this offering, Lion Gate had sold short 5,125 shares of  
9 TCLP at an average of \$37.54 per share. Lion Gate covered a portion of its  
10 restricted period short sales with the 2,200 shares purchased in the offering. Lion  
11 Gate realized a profit of approximately \$1,096 from its illicit trading. After the  
12 pricing of the offering, Lion Gate also placed a cross trade order to buy and sell  
13 5,125 shares of TCLP. The cross trade was a sham transaction that created the  
14 false appearance that Lion Gate went to the open market to purchase shares to  
15 cover all of its restricted period short sales.

16 27. Axsys Technologies (AXYS). On September 22, 2005, Lion Gate  
17 purchased 25,000 shares of AXYS at \$18.00 in a registered offering. During the  
18 restricted period prior to the pricing of this offering, Lion Gate had sold short  
19 8,334 shares of AXYS at an average of \$18.21 per share. Lion Gate covered its  
20 restricted period short sales with 8,334 of the shares purchased in the offering.  
21 Lion Gate realized a profit of approximately \$1,767 from its illicit trading. After  
22 the pricing of the offering, Lion Gate also placed a cross trade order to buy and sell  
23 8,334 shares of AXYS. The cross trade was a sham transaction that created the  
24 false appearance that Lion Gate went to the open market to purchase shares to  
25 cover its restricted period short sales.

26 28. IPC Holdings, Ltd. (IPCR). On November 1, 2005, Lion Gate  
27 purchased 13,500 shares of IPCR at \$26.25 in a registered offering. During the  
28 restricted period prior to the pricing of this offering, Lion Gate had sold short



1 15,000 shares of IPCR at an average of \$26.26 per share. Lion Gate covered a  
2 portion of its restricted period short sales with the 13,500 shares purchased in the  
3 offering. Lion Gate realized a profit of approximately \$1,650 from its illicit  
4 trading. After the pricing of the offering, Lion Gate also placed a cross trade order  
5 to buy and sell 15,000 shares of IPCR. The cross trade was a sham transaction that  
6 created the false appearance that Lion Gate went to the open market to purchase  
7 shares to cover all of its restricted period short sales.

8 29. Randgold Resources, Inc. (GOLD). On November 1, 2005, Lion Gate  
9 purchased 45,000 shares of GOLD at \$13.50 in a registered offering. During the  
10 restricted period prior to the pricing of this offering, Lion Gate had sold short  
11 7,500 shares of GOLD at an average of \$15.00 per share. Lion Gate covered its  
12 restricted period short sales with 7,500 of the shares purchased in the offering.  
13 Lion Gate realized a profit of approximately \$11,250 from its illicit trading. After  
14 the pricing of the offering, Lion Gate also placed a cross trade order to buy and sell  
15 22,500 shares of GOLD. The cross trade was a sham transaction that created the  
16 false appearance that Lion Gate went to the open market to purchase shares to  
17 cover its restricted period short sales.

18 30. Fiberstars, Inc. (FBST). On November 2, 2005, Lion Gate purchased  
19 40,000 shares of FBST at \$8.25 in a registered offering. During the restricted  
20 period prior to the pricing of this offering, Lion Gate had sold short 14,000 shares  
21 of FBST at an average of \$8.59 per share. Lion Gate covered its restricted period  
22 short sales with 14,000 of the shares purchased in the offering. Lion Gate realized  
23 a profit of approximately \$4,703 from its illicit trading. After the pricing of the  
24 offering, Lion Gate also placed a cross trade order to buy and sell 14,000 shares of  
25 FBST. The cross trade was a sham transaction that created the false appearance  
26 that Lion Gate went to the open market to purchase shares to cover its restricted  
27 period short sales.

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1           31.   Pharmaxis, Ltd. (PXSL). On November 7, 2005, Lion Gate purchased  
2 15,000 shares of PXSL at \$24.16 in a registered offering. During the restricted  
3 period prior to the pricing of this offering, Lion Gate had sold short 2,100 shares of  
4 PXSL at an average of \$25.80 per share. Lion Gate covered its restricted period  
5 short sales with 2,100 of the shares purchased in the offering. Lion Gate realized a  
6 profit of approximately \$3,436 from its illicit trading. After the pricing of the  
7 offering, Lion Gate also placed a cross trade order to buy and sell 2,100 shares of  
8 PXSL. The cross trade was a sham transaction that created the false appearance  
9 that Lion Gate went to the open market to purchase shares to cover its restricted  
10 period short sales.

11           32.   Lifetime Brands, Inc. (LCUT). On November 18, 2005, Lion Gate  
12 purchased 10,000 shares of LCUT at \$21.50 in a registered offering. During the  
13 restricted period prior to the pricing of this offering, Lion Gate had sold short  
14 19,312 shares of LCUT at an average of \$23.10 per share. Lion Gate covered a  
15 portion of its restricted period short sales with the 10,000 shares purchased in the  
16 offering. Lion Gate realized a profit of approximately \$17,291 from its illicit  
17 trading. After the pricing of the offering, Lion Gate also placed a cross trade order  
18 to buy and sell 15,000 shares of LCUT. The cross trade was a sham transaction  
19 that created the false appearance that Lion Gate went to the open market to  
20 purchase shares to cover all of its restricted period short sales.

21           33.   Minrad International, Inc. (BUF). On May 24, 2006, Lion Gate  
22 purchased 70,000 shares of BUF at \$3.25 in a registered offering. During the  
23 restricted period prior to the pricing of this offering, Lion Gate had sold short  
24 60,900 shares of BUF at an average of \$3.77 per share. Lion Gate covered its  
25 restricted period short sales with 60,900 of the shares purchased in the offering.  
26 Lion Gate realized a profit of approximately \$31,659 from its illicit trading. After  
27 the pricing of the offering, Lion Gate also placed a cross trade order to buy and sell  
28 70,000 shares of BUF. The cross trade was a sham transaction that created the

1 false appearance that Lion Gate went to the open market to purchase shares to  
2 cover its restricted period short sales.

3 **D. Lion Gate and Rickel Violated Rule 105 Through Contemporaneous**  
4 **Trading**

5 34. Another type of sham transaction utilized by Lion Gate and Rickel to  
6 evade Rule 105 was the contemporaneous or nearly contemporaneous sale and  
7 purchase of post-pricing shares. On at least six occasions, Lion Gate once again  
8 established a boxed position by selling short during the restricted periods and  
9 subsequently purchasing shares in the offerings. Lion Gate then entered  
10 contemporaneous, post-pricing “sell” and “buy” orders, purportedly to sell the  
11 offering shares and to purchase shares to cover its short positions, respectively.

12 35. These contemporaneous, post-pricing transactions were shams. The  
13 market risk incurred relative to the gains earned through the trading conduct was  
14 minimal. Further, these transactions served no legitimate economic purpose and  
15 did not result in meaningful changes in ownership. Rather, they provided Lion  
16 Gate with a means of locking in the identical, or nearly identical, gains as it would  
17 have achieved by immediately applying the offering shares to cover the short  
18 position established during the restricted period. The contemporaneous trading  
19 merely obfuscated the violations of Rule 105. These contemporaneous sham  
20 transactions occurred in shares of the following issuers: American Capital  
21 Strategies, Ltd. (ACAS), Axesstel, Inc. (AFT), TGC Industries, Inc. (TGE),  
22 Brigham Exploration Co. (BEXP), Gasco Energy (GSX), and Extra Storage Space,  
23 Inc. (EXR).

24 36. American Capital Strategies, Ltd. (ACAS). On February 15, 2005,  
25 Lion Gate purchased 4,200 shares of ACAS at \$37.11 in a registered offering.  
26 During the restricted period prior to the pricing of this offering, Lion Gate had sold  
27 short 11,100 shares of ACAS at an average of \$37.15 per share. Lion Gate  
28 covered a portion of its restricted period short sales with the 4,200 shares

1 purchased in the offering. Lion Gate realized a profit of approximately \$168 from  
2 its illicit trading. After the pricing of the offering, Lion Gate entered  
3 contemporaneous orders to buy and sell shares of ACAS. The contemporaneous  
4 trading was a sham transaction with no legitimate economic purpose or substance,  
5 resulted in no genuine change in beneficial ownership, and in which Lion Gate  
6 incurred little to no market risk.

7 37. Axisstel, Inc. (AFT). On February 25, 2005, Lion Gate purchased  
8 350,000 shares of AFT at \$4.00 in a registered offering. During the restricted period  
9 prior to the pricing of this offering, Lion Gate had sold short 48,800 shares of AFT at  
10 an average of \$4.50 per share. Lion Gate covered its restricted period short sales with  
11 48,800 of the shares purchased in the offering. Lion Gate realized a profit of  
12 approximately \$24,629 from its illicit trading. After the pricing of the offering, Lion  
13 Gate entered contemporaneous orders to buy and sell shares of AFT. The  
14 contemporaneous trading was a sham transaction with no legitimate economic  
15 purpose or substance, resulted in no genuine change in beneficial ownership, and in  
16 which Lion Gate incurred little to no market risk.

17 38. TGC Industries, Inc. (TGE). On October 6, 2005, Lion Gate  
18 purchased 215,000 shares of TGE at \$7.50 in a registered offering. During the  
19 restricted period prior to the pricing of this offering, Lion Gate had sold short  
20 50,700 shares of TGE at an average of \$8.46 per share. Lion Gate covered its  
21 restricted period short sales with 50,700 of the shares purchased in the offering.  
22 Lion Gate realized a profit of approximately \$48,451 from its illicit trading. After  
23 the pricing of the offering, Lion Gate entered contemporaneous orders to buy and  
24 sell shares of TGE. The contemporaneous trading was a sham transaction with no  
25 legitimate economic purpose or substance, resulted in no genuine change in  
26 beneficial ownership, and in which Lion Gate incurred little to no market risk.

27 39. Brigham Exploration Co. (BEXP). On November 18, 2005, Lion  
28 Gate purchased 75,000 shares of BEXP at \$12.00 in a registered offering. During

1 the restricted period prior to the pricing of this offering, Lion Gate had sold short  
2 34,929 shares of BEXP at an average of \$13.11 per share. Lion Gate covered its  
3 restricted period short sales with 34,929 of the shares purchased in the offering.  
4 Lion Gate realized a profit of approximately \$38,911 from its illicit trading. After  
5 the pricing of the offering, Lion Gate entered contemporaneous orders to buy and  
6 sell shares of BEXP. The contemporaneous trading was a sham transaction with  
7 no legitimate economic purpose or substance, resulted in no genuine change in  
8 beneficial ownership, and in which Lion Gate incurred little to no market risk.

9 40. Gasco Energy (GSX). On November 18, 2005, Lion Gate purchased  
10 45,000 shares of GSX at \$6.50 in a registered offering. During the restricted period  
11 prior to the pricing of this offering, Lion Gate had sold short 20,000 shares of GSX at  
12 an average of \$6.77 per share. Lion Gate covered its restricted period short sales with  
13 20,000 of the shares purchased in the offering. Lion Gate realized a profit of  
14 approximately \$5,308 from its illicit trading. After the pricing of the offering, Lion  
15 Gate entered contemporaneous orders to buy and sell shares of GSX. The  
16 contemporaneous trading was a sham transaction with no legitimate economic  
17 purpose or substance, resulted in no genuine change in beneficial ownership, and in  
18 which Lion Gate incurred little to no market risk.

19 41. Extra Space Storage, Inc. (EXR). On September 21, 2006, Lion Gate  
20 purchased 40,000 shares of EXR at \$17.00 in a registered offering. During the  
21 restricted period prior to the pricing of this offering, Lion Gate had sold short  
22 55,000 shares of EXR at an average of \$17.42 per share. Lion Gate covered a  
23 portion of its restricted period short sales with 40,000 shares purchased in the  
24 offering. Lion Gate realized a profit of approximately \$16,972 from its illicit  
25 trading. After the pricing of the offering, Lion Gate entered contemporaneous  
26 orders to buy and sell shares of EXR. The contemporaneous trading was a sham  
27 transaction with no legitimate economic purpose or substance, resulted in no  
28 genuine change in beneficial ownership, and in which Lion Gate incurred little to

1 no market risk.

2 **FIRST CLAIM FOR RELIEF**

3 **VIOLATIONS OF RULE 105 OF REGULATION M UNDER THE**  
4 **EXCHANGE ACT**

5 **Violations of Rule 105 of Regulation M under the Exchange Act**  
6 **(Against All Defendants)**

7 42. The Commission realleges and incorporates by reference ¶¶ 1 through  
8 41 above.

9 43. As set forth above, between January 2005 and September 2006, in  
10 connection with at least fourteen public offerings, defendants Lion Gate and  
11 Rickel, directly or indirectly, singly or in concert, by use of the means or  
12 instruments of transportation or communication in, or the means or  
13 instrumentalities of, interstate commerce, or by the use of the mails, or of a facility  
14 of a national securities exchange, violated Rule 105 of Regulation M, 17 C.F.R. §  
15 242.105, by covering short sales with offered securities purchased from an  
16 underwriter or broker or dealer participating in the offering when the short sales  
17 occurred during the five-day period beginning five business days before the pricing  
18 of the offered securities and ending with such pricing.

19 44. By engaging in the conduct described above, Lion Gate and Rickel,  
20 directly or indirectly, singly or in concert, violated, and unless restrained and  
21 enjoined will continue to violate, Rule 105 of Regulation M under the Exchange  
22 Act, 17 C.F.R. § 242.105.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, the Commission respectfully requests that the Court:

25 (a) Issue findings of fact and conclusions of law that Defendants  
26 committed the alleged violations.

27 (b) Issue judgments, in a form consistent with Rule 65(d) of the Federal  
28 Rules of Civil Procedure, permanently enjoining Lion Gate and Rickel, their

1 agents, servants, employees, attorneys, and those persons in active concert or  
2 participation with them, who receive actual notice of the order by personal service  
3 or otherwise, from violating Rule 105 of Regulation M, 17 C.F.R. § 242.105.

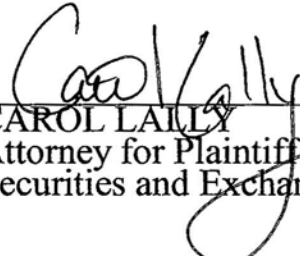
4 (c) Order Lion Gate and Rickel to disgorge all ill-gotten gains from their  
5 illegal conduct, together with prejudgment interest thereon.

6 (d) Order Lion Gate and Rickel to pay civil penalties pursuant to Section  
7 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3).

8 (e) Retain jurisdiction of this action in accordance with the principles of  
9 equity and the Federal Rules of Civil Procedure in order to implement and carry  
10 out the terms of all orders and decrees that may be entered, or to entertain any  
11 suitable application or motion for additional relief within the jurisdiction of this  
12 Court.

13 (f) Grant such other and further relief as this Court may determine to be  
14 just and necessary.

15  
16 DATED: October 7, 2008

17   
18 CAROL LALLY  
19 Attorney for Plaintiff  
20 Securities and Exchange Commission  
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